

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

1st July 1999

Before:

MR JUSTICE LADDIE

JOHN ALFRED DONOVAN
(Plaintiff)

-v-

SHELL UK LTD
(Defendant)
(by Original Action)

AND BETWEEN

SHELL UK LTD
(Plaintiff by Counterclaim)

-and-

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

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

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



SMITH BERNAL
INTERNATIONAL

A LEGALINK COMPANY

[1] Thursday, 1st July 1999
 [2] (10.30 am)
 [3] MR ANDREW JOHN LAZENBY (continued)
 [4] Cross-examination by MR COX (continued)
 [5] MR COX: Mr Lazenby, we were yesterday just having a look at
 [6] the proposals that had been put to Shell as at
 [7] 12th May. I think you have had a chance to look at some
 [8] of them overnight; is that right?
 [9] A: I have.
 [10] Q: Could you look at volume 2 first, page 812. That is a
 [11] letter relating to a proposal subsequently put to
 [12] Mr Watson, as you may know, by Sheard Thomson Harris
 [13] concerning the tagcard which you spoke of yesterday. Do
 [14] you recall?
 [15] A: Sorry, which tagcard are we talking about here?
 [16] Q: This is a letter, as I understand it, concerning a
 [17] tagcard presentation that is put to Mr Watson in
 [18] February. This is the tagcard that he refers to in his
 [19] witness statement. Did you know anything about that?
 [20] A: I do not think I knew about the presentation at the time
 [21] that it was made in February. I had only just joined
 [22] the department.
 [23] Q: Again, from what I can see of that, and certainly from
 [24] what Mr Watson appears to say in his witness statement,
 [25] it again appears to be a technology-based proposal. Is

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[1] point] we would need to define a clear set of marketing
 [2] promotional objectives which you wish to achieve from
 [3] such a scheme.
 [4] "A promotional concept would then be proposed -
 [5] including theming, rewards and mechanics."
 [6] This document too proposes no promotional
 [7] concept. It focuses again upon the use of technology in
 [8] long-term loyalty schemes. Do you see that?
 [9] A: I have not looked at the whole concept. But, reading
 [10] this page, it seems to indicate that.
 [11] Q: Yes. So it comes to this - I do not know if you can
 [12] help me from your reading overnight: apart from GHA
 [13] Powerpoints that we will come to in a moment, from what
 [14] the papers disclose - would you agree - there is no
 [15] reference anywhere in any proposal put to Shell up to
 [16] 12th May 1992 that refers to a multibrand loyalty
 [17] concept of the type we are dealing with in this case?
 [18] A: I checked through the documents last night, the
 [19] Senior King one, the tag network proposal which is not
 [20] the one we have just looked at - that is a separate
 [21] proposal - and the GHA one. The Senior King one does
 [22] not mention multipartner. The tag one that I looked at
 [23] from 1991 does mention a "family of participants" or
 [24] something like that, but does not go into it in detail,
 [25] to be fair, and GHA indeed does, as a core part of it,

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[1] that your understanding of it?
 [2] A: I only came to know about this one later on in the
 [3] year. But, so far as I can recall, it was predominantly
 [4] looking at the technology as this was a very cheap means
 [5] of giving cards out, as far as I can remember.
 [6] Q: If you can just turn a little bit further on in that
 [7] bundle to 827, you will see an agency with which I think
 [8] you did become familiar called Communications Agency
 [9] Limited. Do you remember them?
 [10] A: Again, I was aware of them, but I would not say that
 [11] I was familiar with them.
 [12] Q: Well, we will see that subsequently in the year I think
 [13] you actually met them. That is why I asked you.
 [14] A: I may well have met them.
 [15] Q: You met lots of agencies?
 [16] A: I was meeting agencies, four or five a week.
 [17] Q: Quite. This is again something referred to, both in the
 [18] discovery and also the witness statements. I wanted to
 [19] look at it briefly with you. This was a presentation on
 [20] 20th March 1992 - page 827 tells us that - and, again,
 [21] if you would like to look, please, at 835, which sets
 [22] out what this company is suggesting to Shell, we will
 [23] see that what is suggested is really, apart from the
 [24] technology:
 [25] "As a first step for Shell [the second bullet

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[1] focus on multiretail and multibrand participation.
 [2] Q: We will look at GHA Powerpoints, because that is in a
 [3] separate position. The one you referred to, the second
 [4] one that refers to, really only refers to possible
 [5] link-ups with third parties, does it not?
 [6] A: No, in part of it it mentions "a family of retailers" or
 [7] words of that sort.
 [8] Q: Would you like to take us to it? Do you have the
 [9] document with you?
 [10] A: Yes, can I get it out?
 [11] Q: Yes, by all means, with his Lordship's leave. Does it
 [12] have a page number, your copy?
 [13] A: Yes, it was taken straight out of the file bundles
 [14] I believe.
 [15] Q: What was it?
 [16] A: Page 725.
 [17] Q: That is in the same volume we are looking at. I wanted
 [18] you to be able to look at these. Point out to me the
 [19] passage you are dealing with.
 [20] A: In the third paragraph there it mentions a family of
 [21] accounts:
 [22] "The ultimate aim of the new company will be to
 [23] have a family of accounts."
 [24] Q: I see, "a family of accounts in non-competing business
 [25] sectors".

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[1] A: Yes, which is multiretailer participation. Now, as
 [2] I say, it does not go on to say anything about that
 [3] further in the proposal, but that seems to be core
 [4] element of what they are proposing.
 [5] Q: If one looks at page 729, I think, again to be fair,
 [6] there is reference in the top paragraph to indicating
 [7] that it is not a merchandise-based collector scheme but
 [8] something which could be linked with High Street
 [9] retailers/retailers.
 [10] A: Yes.
 [11] Q: But no indication of how the scheme would operate,
 [12] merely a reference to the fact that the aim was to have
 [13] third party retailers involved?
 [14] A: It seems to be pretty open, it could be developed in any
 [15] way and I do not know what they were getting at. But
 [16] they seemed to be indicating a family of participating
 [17] promoters and possibly, either the same or separately,
 [18] redemption at High Street retailers. It does not make
 [19] that clear, whether they are part of the promotion or
 [20] whether they are just redeemers.
 [21] Q: So let us come on now, if we can. Because, with that
 [22] exception, bearing that in mind, as you very rightly
 [23] point out, there is a reference in that document. The
 [24] only document that deals with a multibrand concept, in
 [25] any fleshed out way at least, other than simply the

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[1] references you have taken us to, is GHA Powerpoints, is
 [2] it not?
 [3] A: GHA Powerpoints make a very detailed proposal,
 [4] fundamentally linking in third party participants, yes.
 [5] Q: Could I just have an answer to the question, if I may.
 [6] I know it is easy to mishear. The only document that
 [7] I have been able to find - and certainly I imagine you
 [8] have had an opportunity to look yourself, apart from
 [9] last night - is GHA Powerpoints that refers to a
 [10] multibrand loyalty concept?
 [11] A: I am not trying to be avoid any questions. I agree with
 [12] your point to a certain point. I would say, yes, and
 [13] also it is detailed in the tag proposal and also we know
 [14] about Air Miles which there was frequent documentation
 [15] about way into the past when it was launched. That we
 [16] have always talked about being a multipartner retail
 [17] promotion. I do not have the documentation here at the
 [18] moment, but that was clearly also on the agenda.
 [19] Q: We will come to that. But my question was: the only
 [20] document - meaning what we are focussing on, the
 [21] proposal to Shell. Leave other matters to one side for
 [22] the moment - the only proposal which deals in any
 [23] detailed way with a multibrand loyalty concept, other
 [24] than just ambiguous references, is GHA Powerpoints, is
 [25] it not?

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[1] A: Yes, and we were also participating in Air Miles at the
 [2] same time. So it was in the open arena, if you like.
 [3] Q: Again, we will come to Air Miles. I am talking about
 [4] the proposals put to Shell.
 [5] A: In the proposals put to Shell at this stage, the ones we
 [6] have looked at, GHA is the only one that refers to it in
 [7] more than a passing reference which is ambiguous and
 [8] could be developed in any way.
 [9] Q: Yes. I imagine, because you were present at the
 [10] Powerpoints meeting, were you not, on 16th March 1992?
 [11] A: Yes.
 [12] Q: - I imagine that you are not saying, are you, that you
 [13] did a Powerpoints scheme?
 [14] A: That Smart was Powerpoints?
 [15] Q: Yes.
 [16] A: No.
 [17] Q: You are not saying, I assume, that Powerpoints and Smart
 [18] were the same and that you simply took an idea which
 [19] Powerpoints had proposed to you to implement Smart?
 [20] A: Clearly that is what I just said; they are not the same
 [21] thing.
 [22] Q: They are not the same thing, are they?
 [23] A: No.
 [24] Q: Powerpoints, of course, was a proposal I assume that you
 [25] understood to be presented to you in confidence, was it

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[1] not?
 [2] A: Indeed.
 [3] Q: And plainly it would have been wrong, would it not, to
 [4] have used ideas and information that had been presented
 [5] to you in confidence by Powerpoints?
 [6] A: Indeed, if they were ideas and information which had not
 [7] been in the public arena or which we were not aware of
 [8] already, yes.
 [9] Q: Did anybody ever write to Powerpoints declining to treat
 [10] their application or proposal in confidence?
 [11] A: Declining to treat it in confidence?
 [12] Q: Yes, saying there was any element of the scheme in
 [13] respect of which they considered, on behalf of Shell,
 [14] confidence should not apply?
 [15] A: I cannot speak for anyone else, but I never did.
 [16] Q: No.
 [17] A: I was not involved very closely with this until later on
 [18] in the year. So, when the first part of that
 [19] relationship was being developed, I was not closely
 [20] involved in it, beyond being at the presentation.
 [21] Q: I appreciate that. You had been at the presentation.
 [22] As at 12th May we have discussed what your state of mind
 [23] was yesterday. You then went away on holiday, I think?
 [24] A: Yes.
 [25] Q: Then you returned on 26th May.

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[1] A: Yes.
 [2] Q: Let us just get the timing of this, if we can; you meet
 [3] Powerpoints on 16th March with Mr Watson?
 [4] A: Yes.
 [5] Q: You meet Mr Donovan on 12th May 1992, as we discussed
 [6] yesterday?
 [7] A: Yes.
 [8] Q: You then go on holiday, I suppose, a day or two later?
 [9] A: I think 12th May was a Tuesday and I went the following
 [10] Friday night or Saturday.
 [11] Q: You are then away until 26th May?
 [12] A: Yes.
 [13] Q: On 4th June you meet Mr Donovan again?
 [14] A: Yes.
 [15] Q: Then I think on 10th June, do you recall, you had a
 [16] meeting concerning Onyx strategy? Six days after you
 [17] met Mr Donovan, you had a meeting concerning promotional
 [18] strategy and Onyx. Would it help to have your diary?
 [19] A: It would.
 [20] Q: Right. I wonder if we could have a look at the
 [21] bundle of diaries for 10th June 1992. My Lord, I hope
 [22] your Lordship has them. 11A, my Lord.
 [23] (10.45 am)
 [24] Page 5082, I am told. What you tend to do with
 [25] the diaries is you put under the column "Schedule", if

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[1] A: I cannot remember whether I knew he was preparing it,
 [2] but that would be logical.
 [3] Q: You collaborated, did you not, in making the first
 [4] serious presentation to senior management - Mr Sweeney
 [5] at senior management?
 [6] A: Yes.
 [7] Q: On the change of direction that we discussed yesterday.
 [8] Do you remember, towards long-term?
 [9] A: I do not remember, but it is quite possible and quite
 [10] logical.
 [11] Q: Yes. What we know, and what we established yesterday,
 [12] is that Mr Watson and you agreed on the need for a
 [13] long-term promotion; correct?
 [14] A: We both knew that we - we both were of the opinion that
 [15] we needed a long-term promotion. I do not know whether
 [16] it would go so far as to say we had sat down and worked
 [17] it out together and agreed with each other. But we were
 [18] certainly both of that mind. I just repeat that my
 [19] personal focus at the time was on managing five or six
 [20] short-term promotions and that took up most of my time.
 [21] Q: Let us have a look, if we may, at your witness
 [22] statement. Do you have it there?
 [23] A: C2, yes?
 [24] Q: C2, yes. Paragraph 15, page 8;
 [25] "Also on 11th June David Watson reported to

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[1] we have a look at -
 [2] A: Which page?
 [3] Q: 5082. Do you have it?
 [4] A: Yes.
 [5] Q: What you tend to do is you have, in this particular
 [6] diary - I think it is a filofax, is it?
 [7] A: It is a different brand but the same kind of thing.
 [8] Q: So you have a "Schedule" column which lists your
 [9] meetings and a "Contact" column which presumably means
 [10] either phone calls or some form of correspondence?
 [11] A: Yes.
 [12] Q: If you look in the "Schedule" column, you will
 [13] see "Project Onyx THA", which is Mr Hannagan is it not?
 [14] A: Yes.
 [15] Q: And "/DJW", who is Mr Watson?
 [16] A: Yes.
 [17] Q: Which means, does it not - and it looks very much as if
 [18] your diary is accurate - you met on
 [19] 10th June concerning Project Onyx?
 [20] A: It looks like that, yes.
 [21] Q: That of course would be entirely consistent with your
 [22] evidence, as I understand it. Because, at that time,
 [23] you knew that Mr Watson was preparing a note, did you
 [24] not, on Onyx and the way forward on long-term promotions
 [25] for Mr Sweeney?

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[1] Graham Sweeney about Project Onyx. I was involved with
 [2] the preparation for this meeting. By now I was having
 [3] discussions with David about the strategy for the longer
 [4] term, on which he and I agreed."
 [5] So it follows, does it not, that by the 11th
 [6] - and, in fact, plainly some time before - you and
 [7] Mr Watson had agreed that a change of direction was
 [8] necessary? As I think you said yesterday.
 [9] A: That was certainly my opinion.
 [10] Q: You knew, in fact, as you told us yesterday, you were
 [11] keen, Mr Watson was keen on moving into a long-term
 [12] loyalty scheme using electronic cards possibly, possibly
 [13] with a link-up to third parties?
 [14] A: Yes, that was the tone and context of many of the
 [15] presentations we had seen or the buzz in the market, if
 [16] you like.
 [17] Q: And you knew that, in order to persuade Shell's senior
 [18] management to go against their instinct at that time,
 [19] you would have to come up with something different and
 [20] more appealing than Collect and Select, as we agreed
 [21] yesterday?
 [22] A: Yes.
 [23] Q: Now, by the 11th, according to your witness
 [24] statement - and it would appear from your diary - you
 [25] are certainly collaborating on the presentation to

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[1] Mr Sweeney, are you not?

[2] A: I had probably had input or consultation. I cannot
[3] remember how much actual contribution I made to the
[4] presentation itself.

[5] Q: You were involved in the preparation for the meeting,
[6] were you not?

[7] A: I would imagine that I would normally be involved in
[8] preparation for such meetings.

[9] Q: Yes. You were involved in collaborating, were you not,
[10] in the note that was prepared for Mr Sweeney?

[11] A: I cannot remember in detail. It is logical to assume
[12] I had input to it. We were talking about this at the
[13] same time as talking about all of the other promotions
[14] we were doing at the time and all the other business
[15] activities.

[16] Q: This of course was something quite different; it
[17] represented a radical change of policy, did it not, if
[18] it would go through?

[19] A: Yes.

[20] Q: Yes. If we can look just again at the timing of this.

[21] A: Yes.

[22] Q: You have met on Onyx on 10th June, Mr Donovan you have
[23] met on 4th. On the 11th the note is prepared for
[24] Mr Sweeney. I wonder if we could look at that. It is
[25] at volume E3, page 1062. Before we look at that,

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[1] of that at that time. So probably the tactical or
[2] strategic direction, yes.

[3] Q: The promotional concept then?

[4] A: Probably the marketing side.

[5] Q: And the promotional framework?

[6] A: Probably.

[7] Q: Yes. So technology of course, Mr Hannagan, that was his
[8] brief?

[9] A: That was what he had been looking at for the previous
[10] six months.

[11] Q: Your input would have been on the promotional side?

[12] A: I assume so. I cannot remember exactly in detail what
[13] was going on at the time, but that would be logical.

[14] Q: If we have a look at the 11th June note for a moment,
[15] please, at 1062. It is dated 11th from Mr Watson to
[16] Mr Sweeney. You had, of course, met Mr Watson and
[17] Mr Hannagan the day before;

[18] "Under the code name Onyx", as he reports to
[19] Mr Sweeney, "we have been assessing feasibility and
[20] options of using magnetic stripe card or Smart Cards."
[21] Then there is an analysis of low-tech, high-tech,
[22] Smart Cards, tagcards;

[23] "Our analysis suggests, should we wish to proceed,
[24] our choice should be between high-technology and
[25] magnetic stripe or a Smart Card. Low technology and

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[1] I wonder if you could turn in C2 - keep E3 open - to
[2] Mr Watson's witness statement, tab 3, page 104,
[3] paragraph 31. You see what Mr Watson says at
[4] paragraph 31. He deals first with not having seen the
[5] document submitted on 12th May meeting. I think he
[6] probably means in the letter afterwards;

[7] "Throughout this period, Andrew Lazenby kept me
[8] updated on his progress on Project Onyx, including
[9] details of his ongoing dealing with a number of outside
[10] agencies."

[11] Then information that he had no reason to hide
[12] Don Marketing's involvement. Over the page you will see
[13] he then deals with June 1992;

[14] "A presentation was to be made to Graham Sweeney
[15] on electronics."

[16] Then deals with 11th June 1992 note.

[17] So it looks there, does it not, that, if Mr Watson
[18] is right, you certainly were pretty actively involved in
[19] at least preparing for the meeting and in Project Onyx?

[20] A: Just having quickly skimmed those notes, I think what
[21] David is getting at is that I was being consulted for
[22] strategic input probably. He does not indicate that
[23] I was contributing much to the actual presentation.
[24] Which I was not; I knew nothing about the technology
[25] and, if it was focused on technology, I had no knowledge

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[1] magnetic stripe has a cost disadvantage."

[2] And further discussion then of tagcards which can
[3] only store 20 or 30 transactions, cardboard not plastic,
[4] and obviously not highly sophisticated;

[5] "Before, however, we move forward on any
[6] technology, we must now decide what type of promotion we
[7] actually wish to run. UORM13 ..." What does UORM
[8] stand for?

[9] A: It is just a company reference for the retail
[10] department, retail marketing department.

[11] Q: "... do not believe it is worth making any technological
[12] innovations if we intend to continue running short-term
[13] promotions. Dissonance between more modern promotional
[14] mechanic and what would remain a relatively simple offer
[15] clearly perceived by customers ... no obvious commercial
[16] gains ... would not be leapfrogging our competitors or
[17] perceived as catching up. No cost savings.

[18] "This leads us to the same decision point as we
[19] have reached by other means. During 1993 we should
[20] plan, either to get out of national promotions
[21] altogether, or plan to implement a longer term
[22] collection scheme. Such a scheme should be electronic
[23] and should involve other retailers, not only in the
[24] redeeming of points, but also in the issuing of points.
[25] A long-term electronic scheme with such third party

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[1] link-ups would leapfrog our competitors as our scheme
[2] would be the only one with multiple retailer issuers of
[3] points and it would encompass all aspects of other
[4] existing schemes."

[5] Time pressure is referred to;

[6] "The other pressure is the potential third parties
[7] are starting to get snapped up. Marks & Spencer and
[8] Boots tied to Total, Argos are with Mobil and B&Q are
[9] now committed to Burma, at least until August 1994."

[10] Then:

[11] "Tesco, Sainsburys and Safeways have been talking
[12] to many of the same agencies that we have spoken to. If
[13] one of them were to go with BP or Esso, it would not
[14] look very clever. We are of course currently pursuing
[15] the Powerpoints option. We require, however, a lot more
[16] information from Powerpoints as to the technical
[17] qualities of their system, as well as about likely other
[18] participants before we can judge how serious an option
[19] this is."

[20] Then the proposed plan, our proposed plan;

[21] "Continue to keep up-to-date with technical
[22] improvements. Continue to investigate the Powerpoints
[23] option. Actively pursue other agencies like GHA for
[24] other option schemes similar to Powerpoints, approach
[25] certain key third parties directly to gauge their true

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[1] levels of interest and to ensure we are not messed
[2] around by agencies."

[3] So that was the position as it was put forward to
[4] Mr Sweeney on 11th June and, by that time, Mr Lazenby,
[5] what it would appear is there were certain features
[6] beginning to take shape in the thinking of you and
[7] Mr Watson and possibly Mr Hannagan. Can we deal with
[8] them one by one? Let us first deal with technology.
[9] Electronic technology of some kind seemed a good idea?

[10] A: Yes.

[11] Q: Whether it be Mag Stripe or whether it be the more
[12] sophisticated Smart Card?

[13] A: It was one of the key differentiating features, one of
[14] the most interesting steps forward that we were looking
[15] at at the time. It was enabling, and meant that we
[16] could do things very different.

[17] Q: But, of course, as we have been seen, right back to 1991
[18] electronic technology was being hawked at you - when I
[19] say "you", I mean Shell - by a number of people?

[20] A: Yes, and some of them were more credible, some were
[21] less. Some of the proposals, the costs were far too
[22] high and, indeed, Shell had been keeping a watching
[23] brief to a certain extent on technology since the
[24] mid-1980s.

[25] Q: That is right. Technology-based suggestions we have

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[1] looked at yesterday. Suggestions for stand-alone
[2] simple, straightforward, as you put it yesterday,
[3] conventional catalogue schemes proliferated, did they
[4] not?

[5] A: Ideas and proposals for them did, yes.

[6] Q: Proposals, quite. But, by the time you have reached
[7] 11th June, first the idea of technology is there and
[8] using some kind of electronic technology; second, that
[9] such a scheme should involve other retailers, not only
[10] in the redeeming of points, but also the issuing of
[11] points. So that is the second feature that emerges from
[12] that document; would you agree?

[13] A: That is clearly detailed there, yes.

[14] Q: Let us carry on on the features. Third, if you are
[15] going to have a scheme that is going to be electronic
[16] with partners issuing and redeeming points, you need to
[17] get there pretty fast because other third parties who
[18] are desirable are being snapped up?

[19] A: Yes.

[20] Q: If you have a look -

[21] A: Other desirable third party partners are being taken
[22] and, therefore, being locked out from us, yes.

[23] Q: In some form of alliance or tie-up with other oil
[24] companies?

[25] A: All such tie-ups were always exclusive. So, as soon as

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[1] any desirable partner was snapped up, we would be locked
[2] out for a certain period, if not for ever.

[3] Q: So, at this stage, the suggestion is, if we are going to
[4] have a scheme, electronic with partners issuing and
[5] redeeming, we have to move fairly fast, yes?

[6] A: I just said yes.

[7] Q: I am digesting the document. Look at it please -

[8] A: That is what the document says, yes.

[9] Q: And, secondly, what our plan is to pursue the
[10] Powerpoints option, though we have certain doubts or
[11] reservations about it?

[12] A: It says we need a lot more detail about it.

[13] Q: A lot more detail.

[14] A: Because it did not really go into the technology, as far
[15] as I can see, at all.

[16] Q: Can we come to the Powerpoints document, which I think
[17] is in front of you, or you had last night to be able to
[18] look at?

[19] A: Yes.

[20] Q: We will be able to find it at volume 2, page 843.
[21] (11.00 am)

[22] This is a proposal set out reasonably neatly at
[23] 845. It talks about the foundation of the company in
[24] the autumn of 1991;

[25] "An integrated customer recruitment and customer

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[1] retention service to be offered to retailers, other
 [2] service providers and manufacturers.
 [3] "GHA Powerpoints have already presented the
 [4] concept to a selected major retailer and other service
 [5] provider groups, including petrol, grocery, travel and
 [6] clothing. Each has expressed enormous positive interest
 [7] in the concept and a willingness to participate as a
 [8] member of a Powerpoints network, subject to the
 [9] conditions of appropriate partners, in non-competitive
 [10] market sectors and acceptability of the contract terms."

[11] Now, how did you understand GHA Powerpoints'
 [12] proposal to work?

[13] **A:** There was a currency which was common between a variety
 [14] of participating partners. The partners would issue
 [15] points on a basis they chose themselves to customers in
 [16] return for purchase of their goods. The customers would
 [17] collect together the points, which could then be used
 [18] for a variety of rewards at each of the retailers or in
 [19] each of their own catalogues or whatever. Powerpoints
 [20] were clearly going to manage the whole scheme/system.
 [21] They were then going to sell the points to the
 [22] partners. The partners would have their own branding on
 [23] the promotion. So the cards, for the sake of argument,
 [24] would look like a Shell card with a common currency
 [25] label on them, and the participating retailers would

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[1] The second key thing is that clearly Powerpoints
 [2] was run by Powerpoints on behalf of a group of retailers
 [3] and Smart was ultimately set up by Shell in the ultimate
 [4] format that it was operated in. That has a number of
 [5] consequences as well.

[6] **Q:** There are some others, are there not?

[7] **A:** There are a variety of others, yes.

[8] **Q:** For example, one of them is - as far as one can see
 [9] from the proposal - there is no proposal here for
 [10] redeemer-only partners?

[11] **A:** Not that I can see.

[12] **Q:** No. The other of course is that you could not integrate
 [13] Air Miles, could you, into the points collection? It
 [14] would have to be run as a separate scheme, because this
 [15] was a proprietary scheme; Powerpoints?

[16] **A:** This leaves actually open the flexibility for doing what
 [17] we did with Air Miles. Because Air Miles, when it was
 [18] started off with Smart, was nothing more than a means of
 [19] cashing in your Smart points. Indeed, at the beginning,
 [20] for the first few years, we had to have a swap of Smart
 [21] points for Air Miles. I do not quite know how it works
 [22] now, but that was certainly how it was set up, and that
 [23] could clearly be done using this.

[24] **Q:** It could be. But, of course, if they were running their
 [25] own proprietary scheme, they might not be too happy

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[1] have access to data within the confines of the Data
 [2] Protection Act.

[3] **Q:** Quite. At a cost, from the way the document -

[4] **A:** There is always a cost to accessing data and data bases
 [5] for use in marketing.

[6] **Q:** They would sell, as it were, that service along with the
 [7] points?

[8] **A:** It is not clear whether they were going to make a profit
 [9] on it themselves, or whether they were going to pass on
 [10] the costs. There is always a cost of preparing a mail
 [11] shot list from a data base, whoever owns it.

[12] **Q:** Quite. This proposal on 11th June, the note to
 [13] Mr Sweeney was going to be moved forward, albeit perhaps
 [14] tentatively in the sense that you needed further
 [15] information. What is the difference, do you think,
 [16] between Powerpoints and the Smart Scheme?

[17] **A:** There are a number of differences. I cannot remember
 [18] the technology that Powerpoints was based on, but Smart
 [19] is clearly based on Smart Cards rather than on
 [20] Mag Stripe cards, which has a large number of
 [21] consequences in terms of what the promotion can do, what
 [22] the capability is, what we can give to customers, the
 [23] interest we can give to customers and the flexibility we
 [24] have to provide rewards and issue rates of points and
 [25] things like that. So that is the first key thing.

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[1] about incorporating on their technology and on their
 [2] cards an Air Miles collection?

[3] **A:** I cannot comment on what they may or may not have
 [4] thought.

[5] **Q:** But the nature of the relationship between the parties,
 [6] the participants, was also, of course, different.

[7] Because direct relationships of a contractual kind
 [8] certainly would not have been needed; do you agree?

[9] **A:** Between the participants?

[10] **Q:** Between the retailers.

[11] **A:** There would have been indirect legal or commercial
 [12] relationship, because each retailer would have a
 [13] contract with Powerpoints and, within that contract,
 [14] they would be bound to - they would make certain
 [15] undertakings and there would be certain safeguards and
 [16] so on which each retail got for itself. For example,
 [17] exclusivity in sector and so on.

[18] **Q:** So there would be no need for direct negotiation or
 [19] contractual relationship between the parties, would
 [20] there? Between the participants?

[21] **A:** Not that I can see.

[22] **Q:** No. Therefore the relationships between each of the
 [23] participants would be regulated and controlled by
 [24] Powerpoints?

[25] **A:** Yes.

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[1] Q: In addition to that, the data base would be owned by
 [2] Powerpoints?
 [3] A: I do not think you could say that actually. Because how
 [4] data bases work is that, if Shell had brought a number
 [5] of customers; in other words, a number of customers had
 [6] been recruited at Shell sites and had Shell-branded
 [7] cards, then they would be regarded as Shell's
 [8] customers. I do not know the details of the Data
 [9] Protection Act, but, for example, if a customer was a
 [10] Shell customer, they could not be mail shot by, for
 [11] example, Sainsburys, if they were participating. And
 [12] vice versa. So it is not fair to say the data or the
 [13] customer data would be owned by Powerpoints at all. In
 [14] fact, they would not own any of it; they would manage it
 [15] and probably manipulate it within the confines of the
 [16] Data Protection Act.
 [17] Q: All right. They would control it perhaps is the best
 [18] way to say it.
 [19] A: They would police it maybe.
 [20] Q: Let us move on. Because this question of the
 [21] relationship between the participants was a subject of
 [22] some importance to you, was it not? You were aware,
 [23] were you not, of the differences and the significance of
 [24] the differences of having direct relationships with the
 [25] retailer participants in any scheme?

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[1] differences between all of the options on the table
 [2] before us. As I say, the relationships with the third
 [3] parties was something which we had plenty of experience
 [4] in from the 1980s.
 [5] Q: Let me see if I can approach this a different way;
 [6] AT&T's scheme was very similar to that of Powerpoints,
 [7] was it not?
 [8] A: I think so, yes.
 [9] Q: It was a third party operating a network, acting as
 [10] banker to the points and selling the points?
 [11] A: I cannot remember the detail actually, without having
 [12] looked at their proposals or whatever. But that seems
 [13] to match what I remember. They had a couple of
 [14] particular differences from GHA. They had a
 [15] relationship with Air Miles for example. They already
 [16] had equipment in many retail outlets, so some of the
 [17] capital investment was already there, and they were a
 [18] very large credible blue chip company. They were part
 [19] of - or are a large international company. So they had
 [20] a lot of credibility. Where Powerpoints was a small
 [21] agency with 10, 20 or 30 people and an idea, which may
 [22] or may not have been developed to fruition.
 [23] Q: But the scheme they were proposing was very similar to
 [24] Powerpoints, was it not?
 [25] A: I would say it was similar, yes.

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[1] A: We had had experience of both. We had had much
 [2] experience of participating with other retailers. We
 [3] had plenty of experience of dealing, through Air Miles,
 [4] with other third parties.
 [5] Q: Again, my question was; it was significant to you, was
 [6] it not, the nature of the relationship with the
 [7] participating retailers in any scheme?
 [8] A: That was one of the things which we had quite a lot of
 [9] knowledge on beforehand. So we had opinions before
 [10] GHA Powerpoints. Therefore, to look at a scheme where a
 [11] third party managed it, in the same way as Air Miles
 [12] does or did, would be quite different from somebody else
 [13] managing the relationship, as we had with Collect and
 [14] Select.
 [15] Q: Yes. You discussed, did you not, a different type of
 [16] relationship than that which would be - and
 [17] subsequently the Smart Scheme became - than that which
 [18] would have been the case with Powerpoints? A different
 [19] type of relationship between the participating
 [20] retailers?
 [21] A: Sorry, discussed where?
 [22] Q: From an early stage in 1992 you were aware of and
 [23] discussing the significant differences between these
 [24] types of relationship?
 [25] A: We always had a clear view strategically of the

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[1] Q: The promotional scheme, the promotional framework?
 [2] A: I cannot remember in detail what the promotion they were
 [3] proposing was. But, so far as I can recall, it was
 [4] similar.
 [5] Q: Let us have a look, just to refresh your memory.
 [6] (11.15 am)
 [7] You had discussions with AT&T in the latter part
 [8] of 1992, did you not?
 [9] A: Yes.
 [10] Q: Indeed, you added - because, from 11th June onwards, as
 [11] we shall see, you and Mr Hannagan were looking at
 [12] potential suppliers?
 [13] A: Yes.
 [14] Q: There then came a point when a number of people were put
 [15] into a list of 14, the players?
 [16] A: Yes.
 [17] Q: They were reduced to six, subsequently to two?
 [18] A: Yes.
 [19] Q: You added to the list, I think, at some particular
 [20] point, as we shall see, AT&T's name?
 [21] A: Yes.
 [22] Q: I just want to give you some indication or refresh your
 [23] memory. We think it is E3/1286A. You will see it is an
 [24] article in the Retail Automation and the central column
 [25] sets out the essence of it.

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[1] A: Yes.

[2] Q: Central points bank. It seems to me - I do not know if

[3] you agree - very, very similar to the Powerpoints

[4] scheme. A network operated by AT&T, acting as banker?

[5] A: It is very similar, I agree.

[6] Q: Yes. Why was it - perhaps you can help me - that you

[7] considered that it would be perceived as no different to

[8] current competitor offerings when you minuted, I think,

[9] Mr Leggatt in October?

[10] A: Where is that? Sorry, can I have a look?

[11] Q: By all means: 1318 of the same volume.

[12] A: Where is that?

[13] Q: 1321, if you turn to this particular passage. You see,

[14] this is a note that you wrote on 28th October to

[15] Mr Watson and Mr Hannagan about the six, where we had

[16] got down to six. What you said about AT&T is that it

[17] will be perceived as no different to current competitor

[18] offerings, you stated. And made some observations about

[19] system to be run by AT&T and their data basing.

[20] Again, can you help me. I simply want to

[21] understand what you meant here. Because I understand

[22] this is consistent. We both agree it is not the same as

[23] the Smart Scheme. Why was it no different from current

[24] competitor offerings?

[25] A: I cannot remember exactly what I meant there, but it was

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[1] why we talked to them briefly.

[2] Q: So, anyway, AT&T was no different, in your mind, to

[3] competitor offers?

[4] A: There was nothing distinct about it, and the other

[5] reasons here also weigh heavily against their proposal

[6] as it ended up in, whenever this was, towards the end of

[7] October 1992.

[8] Q: So what you were moving for was something different and

[9] more original than AT&T by this time; the end of

[10] October?

[11] A: As I said yesterday, we were looking for something which

[12] was very different from all competitor offerings and

[13] which was going to provide barriers to entry to people

[14] following us as well.

[15] Q: One way, of course, of being different was not to enter

[16] some proprietary third party run scheme, but was to set

[17] up, was it not, a Shell-led consortium of retailers

[18] directly dealing with each other and sharing costs and

[19] benefits?

[20] A: It could have been a group of retailers dealing with

[21] each other. It could have been a group of retailers

[22] coordinated by Shell and Shell could have acted as the

[23] hub, if you like, of the group.

[24] Q: A Shell-led consortium?

[25] A: A Shell scheme including other retailers. It could have

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[1] probably relating this to, for example, Powerpoints.

[2] I do not know.

[3] Q: Yes. Powerpoints certainly is the only one. You are

[4] still in negotiation with them. But current competitor

[5] offerings?

[6] A: What I may well have had in my mind is Premier Points,

[7] which is almost identical. If you had extended Premier

[8] Points, as they were trying to do, to other retailers -

[9] indeed, they talked to us - then it would have been

[10] ended up being something, from a customer's point of

[11] view, identical to this.

[12] Q: Premier Points did talk to you, but only upon the basis

[13] of you replacing Esso on Northern Ireland, I think?

[14] A: No, on the basis - they were with Mobil all through and

[15] they talked to us on the basis of filling the gaps in

[16] their network where Mobil did not compete -

[17] Q: Which was Northern Ireland.

[18] A: - which was in Scotland and Northern Ireland.

[19] Q: And there was a possibility that, when the contract

[20] expired with Mobil, you might come and replace them?

[21] A: Yes. And there is an example - and we thought about -

[22] the reason why we talked to them was that we had an

[23] opportunity for running what could have been a pilot in

[24] Scotland and Northern Ireland to see how well it

[25] competed against any other options that we had. That is

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[1] been a consortium, if you like to put the word on it.

[2] Q: That is the word Shell put on it, was it not?

[3] A: It has put all sorts of words on it. I do not have a

[4] hang up about that particularly. A group of retailers

[5] jointly participating to each other's mutual benefit.

[6] Q: In an exclusive consortium?

[7] A: Everything we did was exclusive. There was no point in

[8] us doing anything which was not exclusive.

[9] Q: Meaning in that particular market sector?

[10] A: Per market sector. At any time there was no point in us

[11] doing a deal with WH Smith's and Menzies for example.

[12] For a start, they would never do that. There was no

[13] benefit to them in that. Doing it with Sainsburys and

[14] Tesco, it would be great for us but Sainsburys and Tesco

[15] would never do it. That was a trivial point, if you

[16] like, about doing any partnership deal.

[17] Q: But, on the other hand, if one looks at some of these

[18] schemes, they are not exclusive, are they? Air Miles,

[19] for example, allows their points to be collected by

[20] different hotel chains?

[21] A: I cannot remember the detail, but the fundamental

[22] principle of Air Miles was that it was exclusive to

[23] sector. Indeed, we had long and exciting discussions,

[24] if you like, with Air Miles about when Sainsburys wanted

[25] to issue points on their petrol, for example, and when

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[1] we wanted to issue points on our grocery items in our
 [2] stores. That was a fundamental principle of Air Miles
 [3] right from the start. I cannot remember how it
 [4] developed, but that was key, core.
 [5] Q: Let us come back, if we can, to the difference, the
 [6] departure, you took away from schemes like Powerpoints
 [7] and AT&T. What you moved towards, and what you
 [8] subsequently set up in form, was a Shell-led consortium
 [9] of retailers, was it not? A partnership?
 [10] A: What we eventually set up was a Shell promotion which we
 [11] did our best and ultimately did get other retailers to
 [12] participate in as issuers and redeemers.
 [13] Q: But I think you actually mention this, do you not? If
 [14] you have a look at your witness statement. I read it
 [15] with some interest because it catches the excitement you
 [16] felt, does it not? Have a look at your witness
 [17] statement in tab 1. You describe something that you
 [18] called the "Shell Vision", did you not?
 [19] A: Vision is a woolly word, yes, and we commonly had good
 [20] ideas or the vision would sort of encapsulate what our
 [21] thinking was at a particular time.
 [22] Q: Yes. When you became in charge - because, in early
 [23] 1993, you were put in charge of this project, were you
 [24] not?
 [25] A: I think I had kind of inherited control of it when it

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[1] A: Yes.
 [2] Q: And other proposals put to you, such as AT&T?
 [3] A: Yes.
 [4] Q: I want to ask you again, in what did that difference
 [5] reside in terms of the promotional concept?
 [6] A: Difference from what?
 [7] Q: From competitors offerings like AT&T, schemes like that
 [8] and any other competitor offerings?
 [9] A: Well, bearing in mind that many of the proposals that we
 [10] had had, for example AT&T and Powerpoints, and to a
 [11] greater extent, the Senior King proposal, were basic
 [12] concepts which had not been developed nor were they, the
 [13] main difference, I think, that we would regard as being
 [14] part of - the core parts of Smart - Hercules, if you
 [15] like, at the time - the use of technology was the key
 [16] one, core one, which enabled us to do all sorts of
 [17] things better and different than anyone had in the
 [18] past. Indeed, issuing and redeeming retailers was a key
 [19] one. If we could achieve that. We needed exciting and
 [20] different promotions and what I mean by "promotions" is
 [21] not just issue and redemption, retailers which we had
 [22] had back to the 1980s, but we needed new and fresh
 [23] approaches which were being enabled by the technology.
 [24] That is why basically we turned to Option One. Because
 [25] we had had - they had provided us with a lot of good

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[1] became clear that it was more in my area of
 [2] responsibility than Tim's, who had been working on it
 [3] beforehand. That was happening towards the end of 1992,
 [4] when it became clear it was a promotion which was
 [5] probably going to move on.
 [6] Q: If you look at paragraph 36 of your witness statement,
 [7] through to 38. By the time you had become the Project
 [8] Manager for Hercules, as it was, Onyx. But you,
 [9] I think, gave it the name "Hercules" did you not?
 [10] A: Yes. Tim's responsibility was predominantly in
 [11] producing promotional literature and point of sale
 [12] materials and that was a full-time job in itself.
 [13] Q: You say in paragraph 38;
 [14] "I also set out our vision for the next generation
 [15] of strategic loyalty promotions. We briefed Option One
 [16] to act as our promotions agency to review this
 [17] vision ..."
 [18] At 41 you refer to;
 [19] "The name I chose was Project Hercules."
 [20] Indeed the schedules became "The Labours of
 [21] Hercules". So it became your baby, did it not?
 [22] A: Very much, yes.
 [23] Q: What you perceived yourself to be doing, as I understand
 [24] it, was something new and different from competitor
 [25] offerings?

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[1] interesting novel thinking and ideas on the promotional
 [2] theming, if you like. So those are four of the things I
 [3] think were the core differences which we would see from
 [4] competitor offerings. There were a variety of ones
 [5] which were better than what we had at the moment. I
 [6] have not gone into the technology at all but that was
 [7] half of the whole excitement of the thing at the time.
 [8] Q: One of the things though that did attract you
 [9] throughout, would you agree with me, was the idea of
 [10] what I think you called a true partnership between the
 [11] participants?
 [12] A: Probably, that sounds correct. I think what I had in
 [13] mind there was something going beyond what we had with
 [14] Airmiles.
 [15] Q: What you called it, apart from using the expression "a
 [16] true partnership", a true partnership which in a note
 [17] which you appended in April 93 you described as the
 [18] Aladdin's lamp?
 [19] A: Sorry, where is that?
 [20] Q: We will look at it in a minute. Do you remember
 [21] regarding the idea of a true partnership as the
 [22] Aladdin's lamp?
 [23] A: No, I don't remember regarding it as that at the time.
 [24] I have seen the note subsequently.
 [25] Q: And it is your note?

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[1] A: I can't remember it in detail but I seem to recall when
 [2] I looked at it the other day that it was my
 [3] handwriting. I could confirm that if I look at it.
 [4] Q: We will look at it in a minute. I think we are agreed,
 [5] and you certainly agree with me, that a true partnership
 [6] was something which you regarded as different and
 [7] important?
 [8] A: I certainly regarded it as very important to the scheme.
 [9] Q: And different. No other scheme like it, was there?
 [10] A: There were schemes which were similar to it, but there
 [11] was no other scheme which was a fully integrated
 [12] issuer/redeemer scheme.
 [13] Q: With direct relationships between the partners if they
 [14] could be achieved?
 [15] A: With direct relationships between Shell and our partner
 [16] promoters; not necessarily between the partners of the
 [17] scheme.
 [18] Q: Right, with Shell. Let us have a look in 92, where we
 [19] were in the sequence of events. Having taken that
 [20] little view of the future, I wanted to place this in
 [21] time, if we can. On 11th June we have looked at the
 [22] Swecney memo, which is in file 3, 1062. That 11th June
 [23] memo, as we have already established, dealt with issuers
 [24] and redeemers, some form of electronic technology and
 [25] pursuing the Power Points option, correct?

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[1] think on the 16th July you had met Mr McMahon of Concept
 [2] Systems?
 [3] A: Yes.
 [4] Q: Mr McMahon you had telephoned on 26th May, or rather you
 [5] had had a telephone conversation with him on 26th May?
 [6] A: Yes, I think he sent an unsolicited letter or something
 [7] and I phoned him back, as he had invited me to do,
 [8] because he probably said something, like many people did
 [9] at the time, that he has the best idea that Shell had
 [10] ever had, and that we would be missing out on it, and
 [11] probably he was offering it to Esso, BP, Texaco et
 [12] cetera, so I rang him back.
 [13] Q: If you keep your finger in 1168 we will just see at 1055
 [14] how that had occurred, because on the 4th June he had
 [15] written to you. With this letter, three pages, really
 [16] quotations for the administration of Smart Card based
 [17] customer loyalty programme, and then really it is a sort
 [18] of detail of what appears to be costs, technology and so
 [19] on. There does not appear to be any kind of proposal
 [20] framework indicated?
 [21] A: No. As far as I recall, when I spoke to him he
 [22] indicated a long-term scheme using technology. I can't
 [23] remember whether he mentioned retailers or not.
 [24] Probably the reason why he wrote this, he says "as
 [25] promised", probably he started launching into the

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[1] A: And also looking at anything else available in the
 [2] market, yes.
 [3] Q: Indeed, looking for other option/schemes similar to
 [4] Power Points?
 [5] A: Yes.
 [6] Q: We have looked at the differences between Power Points
 [7] and AT&T and later on in the future what the Shell Smart
 [8] or Shell Vision was, and how it became implemented and
 [9] we will have to look at that in more detail in due
 [10] course. What I want to ask you is this. Would you turn
 [11] to a little further on in that bundle, 1168. When did
 [12] the idea first occur to you of a partnership as opposed
 [13] to a retailer network?
 [14] A: I don't know. Shell had experience of participating as
 [15] a partner in someone else's scheme, Airmiles, and that
 [16] was very effective in many ways and didn't meet all of
 [17] our requirements. We also had experience of doing
 [18] things ourselves. I have to say the Shell culture was
 [19] far more comfortable with doing things ourselves,
 [20] leading things ourselves. That is how Shell works. So
 [21] the two things were not, you know, it is a logical step
 [22] to go from one to the other, and I am sure that it was
 [23] in everyone's minds right from the start.
 [24] Q: We will look at your witness statement in due course,
 [25] but have a look at this letter for a moment because I

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[1] numbers over the phone, and I probably said "Drop me
 [2] something in writing so I can look at it".
 [3] Q: That of course you received on the same day as you saw
 [4] Mr Donovan, by coincidence, 4th June?
 [5] A: He wrote it on 4th June. I can't remember when I
 [6] received it.
 [7] Q: It looks as though it has been faxed. You then, did you
 [8] not, met Mr McMahon on 16th July?
 [9] A: I think actually what was happening at this time -
 [10] clearly the 4th June I was not involved really with the
 [11] long-term scheme with Onyx or whatever. What I did with
 [12] this was gave it straight to Tim, which was standard
 [13] practice with all technology long-term kind of stuff; I
 [14] handed it over to Tim. Probably what happened was that
 [15] I spoke to him without knowing it was going to be
 [16] long-term and technology based on 26th May - I can't
 [17] remember - asked him to put it in writing, so I could
 [18] hand it on to Tim, so that Tim did not have to go
 [19] through the same telephone conversation. I think what
 [20] then happened was that Tim dealt with Mike McMahon to
 [21] some extent, but Mike certainly felt that he needed to
 [22] keep in touch with me, so he kept ringing me, I can't
 [23] remember how many times, but certainly on the 2nd July.
 [24] Then for some reason I ended up meeting him on 16th July
 [25] probably; is that right?

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[1] Q: Why didn't you mention that 16th July meeting in your
[2] witness statement? Have a look at page 9. You do
[3] mention at page 9, paragraph 17, the meeting on 2nd July
[4] 1992, or at least having a long conversation with
[5] Mr McMahon in negotiations with Texaco, and then you
[6] mention at paragraph 17 the 30th July meeting, but you
[7] don't mention the 16th July?

[8] A: No.

[9] Q: Why was that?

[10] A: I think I had probably forgotten about the 16th July
[11] meeting when I prepared the witness statement, and when
[12] I checked my diaries then there was a meeting there.
[13] There were so many meetings and discussions going on
[14] with everyone, I couldn't possibly remember seven years
[15] ago every meeting that I had with every person.

[16] Q: Of course, but presumably you had some documents to
[17] check and look at?

[18] A: I checked my diary ultimately. I did not leave it out
[19] deliberately or on purpose. I just forgot about it.

[20] Q: Let us look at what happened at that meeting, because it
[21] appears that you did have a meeting with him in the
[22] evening at least on the 16th July, if you look at 1168,
[23] and Mr McMahon is writing to you;

[24] "As I understand it, Shell would like to launch a
[25] Smart card customer loyalty and promotion programme

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[1] are you not, which involves part ownership or
[2] partnership between retailers in a scheme. This is not
[3] Power Points, is it?

[4] A: Power Points was on the agenda, but we wouldn't have
[5] talked to another agency about a concept or proposal
[6] which a third party had proposed to us.

[7] Q: This is not Power Points in your mind when you make
[8] these observations and have this discussion with
[9] Mr McMahon. You are talking about a different type of
[10] scheme are you not, as an option?

[11] A: I am talking about all of the various - what I would
[12] probably have done at the meeting was outlined all the
[13] various options that we were thinking about at the time,
[14] but I can't remember the detail of the meeting, so that
[15] is only my assumption.

[16] Q: How did the idea of a partnership led by Shell come to
[17] you between 12th May and 17th or 16th July?

[18] A: As I said earlier, the idea of Shell leading a scheme
[19] involving a load of other retailers was on the agenda
[20] for a long time earlier than 12th May 1992. It was the
[21] kind of thing Shell always did. We had always ran our
[22] own promotions. We always linked directly with other
[23] retailers as far as anybody could remember. It was not
[24] a case of suddenly thinking "Wow, that is how do it", if
[25] you like. It is a logical progression, it is a trivial

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[1] towards the latter end of next year, but would be more
[2] interested in doing so in conjunction with some other
[3] selected complementary retailers. The options are that
[4] Shell owns the scheme and invites the other retailers to
[5] participate on a transaction charge basis or,
[6] alternatively, each member of the scheme in part
[7] contributes to the cost of the scheme and is part
[8] owner." Do you see that?

[9] A: Yes.

[10] Q: That is what you told Mr McMahon, is it not?

[11] A: That is what he confirmed that he heard me saying. I
[12] can't remember what was discussed at the meeting at
[13] all. I don't have any contemporaneous documents or
[14] anything which I can check back on and I can't remember
[15] the meeting.

[16] Q: Do you have any reason to doubt that Mr McMahon's
[17] contemporary letter to you is inaccurate in terms of
[18] what he is saying you told him?

[19] A: I can't remember what I said, so I have no reason to
[20] doubt that what he says here is at least in part right.
[21] It is possible that he could have forgotten or
[22] overlooked some parts of it, because at the time we were
[23] looking at all sorts of options, including pulling out
[24] of promotions altogether.

[25] Q: By this time you are certainly considering an option,

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[1] step, although the result is powerful.

[2] Q: But it is not a step, is it, that is anywhere elsewhere
[3] to be found in any document or any proposal to you or
[4] any existing scheme? Can you think of a scheme on 16th
[5] July 92 in which each member exclusive member within the
[6] group part owns the scheme, contributing to the costs,
[7] in a partnership? Did you know of any at the time?

[8] A: It is seven years ago so I can't remember exactly what I
[9] knew or didn't know at the time, but I can say that it
[10] was trivial. It was always there if you like. It was

[11] like everyone knew we wanted to do long-term loyalty
[12] schemes. That was not a big step at one stage. Shell
[13] ran our own promotions. That is how Shell operates.

[14] Q: Can you explain the mental process by which you reached
[15] the conclusion of the possibility of a partnership of
[16] exclusive retailers as opposed to Power Points or AT&T?

[17] A: Everyone in the department when I was there was clear we
[18] needed to be in long-term schemes. It was logical.

[19] Shell always ran their own schemes. There was no mental
[20] process to go through it or, indeed, if someone had
[21] stepped aside, as I probably did at some stage and said
[22] "What are all the options here?", one of the options is
[23] to do it as a Shell run scheme. It is not like a
[24] revelation, in the same way as suddenly seeing Smart
[25] cards and their capabilities for the first time was.

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[1] That was a key step in my mind. That was a clear step
 [2] change in thinking in early 1992, which had not been
 [3] there beforehand.

[4] Q: Nobody is saying it is a revelation. I am just asking
 [5] you how and when, when if you can, but how did the idea
 [6] occur to you?

[7] A: I can't remember, it was always there.

[8] Q: What was the mental process?

[9] A: I do not think there was any mental process. If you sit
 [10] aside and work out all the options for travelling to
 [11] Bristol from here, there are all sorts of options and
 [12] anyone can come to all those different options. If you
 [13] are looking for a mental process, anyone could have
 [14] raised those with a bit of knowledge of the market.

[15] Q: Anyone could have done you say, but who did?

[16] A: Well, I can't remember. I am saying that everyone in
 [17] the department seemed to be of that opinion at the
 [18] time. It was not something which was unusual. We had
 [19] always run our own promotions. We had always run
 [20] Collect & Select. We had always done it on our own. We
 [21] had always linked with third parties ourselves, B&Q,
 [22] Little Chef and Collect & Select I know clearly. We had
 [23] experience of doing it the other way. We preferred
 [24] doing it ourselves.

[25] Q: Thank you, but somebody at some point within that small

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[1] say "this scheme" has a variety of different features;
 [2] one of which is Shell running it, another of which is
 [3] having a load of retailers issuing and redeeming,
 [4] another feature and a key feature is use of technology
 [5] and particularly Smart Cards, and then a whole load of
 [6] other features as well. When you say "the scheme", the
 [7] scheme has many, many facets, and that is what Shell
 [8] managers or Shell publicity will have meant, and
 [9] external observers I imagine when they said "This has
 [10] never been done before". It never had in all of its
 [11] facets.

[12] Q: One of the facets in which it was said to be unique was
 [13] the idea of a partnership or a consortium of retailers.
 [14] We will go to those documents. Do you deny that?

[15] A: Deny what?

[16] Q: That the consortium based approach was said to be
 [17] originally unique by Shell throughout 94/95 and even in
 [18] 93?

[19] A: You will have to take me to the documents so I cannot
 [20] deny or not at the moment, but the point about this is
 [21] that we were linking with third party retailers to issue
 [22] points, and that was the key step forward. We saw right
 [23] from the start that the easiest way of making it happen
 [24] was for us to run the thing and to manage it, select our
 [25] own partners and so on.

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[1] department in which you worked must have said to
 [2] themselves "One good way of doing this would be to have
 [3] a partnership of retailers part owning, sharing costs".
 [4] Somebody must have said that, and somebody else must
 [5] have said "That is a good idea".

[6] A: I do not see - I don't know what you are getting at. I
 [7] never heard or experienced such a process regarding this
 [8] particular feature. That process happened a number of
 [9] occasions, all the time in fact on for example the
 [10] technology, the technology developments and what we
 [11] could do with that. You frequently had the same thing
 [12] happen when people made proposals of good promotional
 [13] concepts. I felt the same when I saw the MegaMatch
 [14] proposal, which came to me completely new at the 12th
 [15] May meeting. It was a good idea. That kind of thing
 [16] you remember, if there is a step change. The fact of
 [17] Shell managing or running a system was trivial. We
 [18] always ran our own promotions. It was not a case of one
 [19] day somebody came in and said "Let's run our own
 [20] promotion".

[21] Q: Mr Lazenby, this idea, this scheme, was something which
 [22] not only never Shell had done before, but nobody had
 [23] ever done before; that is what Shell used to say, was it
 [24] not?

[25] A: Yes, and the scheme that is being referred to when you

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[1] Q: Link ups to third parties of course is nothing new, is
 [2] it?

[3] A: We had done redemption options. We had done
 [4] negotiations and fixed deals with third parties quite
 [5] frequently and ongoing, indeed throughout this period.

[6] Q: It is the nature of the relationship and the link up
 [7] between the third parties which is what is important, is
 [8] it not?

[9] A: There are a variety of different natures about
 [10] relationships, yes, and both sides of the relationship
 [11] will have a certain agenda for themselves when they
 [12] enter into the relationship.

[13] Q: You, in the summer of 1992, for the first time in this
 [14] document, 1168 - have another look at it if you would
 [15] - this is the first ever mention in any document in
 [16] the thousands put in by Shell's lawyers, of any mention
 [17] at all of a scheme in which costs are shared and
 [18] ownership is shared within a consortium of retailers.
 [19] Would you accept that from me? Do you have any reason
 [20] to doubt it?

[21] A: I don't know, so I will accept it from you if you tell
 [22] me.

[23] Q: There is no document, and we have looked at the only one
 [24] resembling it, GHA, a moment ago - it occurs in a
 [25] letter to you, reciting something you are said to have

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[1] said to this gentleman, Mr McMahon?
 [2] **A:** Okay. It may not be documented in the documents we have
 [3] here. We may not have a whole record of all the
 [4] documents at the time and we certainly don't have
 [5] records of all the discussions and so on which were
 [6] going on at the time, clearly.
 [7] **Q:** Why did you ask - I see you have a handwritten note. I
 [8] take it that is yours on 1168?
 [9] **A:** Yes, it is.
 [10] **Q:** You said, "David, for your information, FYI, I have my
 [11] own hard copy, let's discuss."
 [12] **A:** Yes.
 [13] **Q:** What was that meaning?
 [14] **A:** I can't remember, but what it probably meant was "David,
 [15] here's another idea for Project Onyx". I can't remember
 [16] whether he had been aware of it or not yet, and I can't
 [17] remember exactly why I wanted to talk to him about it.
 [18] **Q:** Exactly. Here's an idea for project Onyx. You wanted to
 [19] talk to him about it; presumably he had not known
 [20] anything about it before?
 [21] **A:** I can't remember whether or not he had. He was very
 [22] close to the project, so if Tim and I had been speaking
 [23] to a supplier I am sure that he would have been
 [24] involved. I can't remember why I particularly needed to
 [25] speak to him about this particular letter.

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[1] part ownership partnership in a group of retailers?
 [2] **A:** I have no reason to believe or to agree with you with
 [3] that.
 [4] **Q:** Do you have any reason to disagree?
 [5] **A:** There are a number of subjects discussed in here, so I
 [6] could have been wanting to talk to him about for example
 [7] the third party partners that are mentioned there. I
 [8] could have been wanting to talk to him about giving
 [9] approval for speaking to them. I could have been
 [10] wanting to talk to him about the concept loyalty
 [11] proposal in general. I could have been wanting to talk
 [12] to him about the Board meeting that he refers to in the
 [13] last line. I could have been wanting to talk to him
 [14] about any of those things.
 [15] **Q:** Yes, you could, and therefore it could also, I suppose,
 [16] have been, and it follows, does it not, you have no
 [17] reason to disagree, that it may have been about the
 [18] proposal for a new form of scheme that you are putting
 [19] in the middle of that letter?
 [20] **A:** It is not necessarily a proposal for a new form of
 [21] scheme, because it may well be that it was in the open
 [22] arena with David in my discussions with him before that.
 [23] **Q:** It may well be, but it does not appear anywhere in any
 [24] document, you see?
 [25] **A:** No, but if it was in discussions it would not

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[1] **Q:** Wasn't it because it showed you having taken a step in
 [2] the thinking from the 11th June and proposing a new form
 [3] of relationship between the retailers or link up with
 [4] the third party retailers, and you wanted to discuss it
 [5] with him?
 [6] **A:** I do not think that is the case at all. There is no
 [7] reason to assume that that is the case. I can't
 [8] remember why I needed to discuss it with him. There
 [9] could have been any number of options.
 [10] **Q:** There is no trace in any papers before of you discussing
 [11] with Mr Watson or Mr Watson with Sweeney or Hannagan
 [12] with anybody of an idea for participation on a
 [13] partnership basis, is there?
 [14] **A:** That is what you have just told me. I mean, to be fair,
 [15] Tim was focusing on the technology side. We have not
 [16] got any documents or any reflection of what Mr Sweeney
 [17] said or thought. These kind of ideas sometimes actually
 [18] got cascaded down from senior management. I don't know
 [19] if we have got a full reflection of Mr Watson's thinking
 [20] at the time. I certainly cannot speak for him, clearly.
 [21] **Q:** I will be able to ask him I am sure, but I am asking you
 [22] for the moment, when you set out to Mr McMahon this
 [23] idea, and you put a note asking to discuss it with
 [24] David, didn't you mean this idea, which had never been
 [25] trailed before in any document or any suggestion, for a

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[1] necessarily be documented necessarily, and I think those
 [2] are the five subjects that the letter is possibly about,
 [3] and it could have been any. I could have wanted to talk
 [4] to him about any of those five subjects or anything
 [5] else. I can't remember the meeting. I can't remember
 [6] receiving the letter, nor talking to David afterwards
 [7] about it.
 [8] **Q:** So this idea for ownership of the scheme or joint
 [9] ownership and contribution to costs is, according to
 [10] you, possibly, though you cannot be sure, somewhere
 [11] around in the ether within the department?
 [12] **A:** Yes.
 [13] **Q:** Undocumented. It is a mere coincidence, is it, that
 [14] precisely that idea had been put to you on 12th May and
 [15] again in writing in Concept 4 between the 12th May and
 [16] 4th June?
 [17] **A:** As I said yesterday, I can't remember discussing
 [18] anything on 12th May. I can't remember receiving or
 [19] indeed reading the Concept 4 proposal which was sent on
 [20] 14th May. I may have done. I may have flicked over
 [21] them. If I did, and this is supposition now, if I did,
 [22] then that is part of a lot larger subject. It may have
 [23] been, I may have overlooked it or whatever. I cannot
 [24] say because I can't remember having read it at all.
 [25] **Q:** I didn't read it, you can't remember whether reading it

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[1]
[2] **A:** Sorry, what I said was I can't remember having read it.
[3] **Q:** Did you speak to Mr Donovan about it on 4th June when
[4] you met him just a few days before -
[5] **A:** I have no recollection of speaking to John Donovan about
[6] this particular thing at that 4th June meeting. I do
[7] remember distinctly talking about their new proposal
[8] which was billed as the new big idea.
[9] **Q:** You have no recollection about talking to Mr Donovan or
[10] Mr Sotherton about this subject at all, do you,
[11] according to you?
[12] **A:** I might have discussed it in passing.
[13] **Q:** Will you answer my question. Do you have any
[14] recollection at all of ever discussing this subject with
[15] Mr Donovan and Mr Sotherton?
[16] **A:** I have no recollection of discussing it with them. I
[17] have reason to believe it was discussed, and therefore
[18] it must have been in passing, because the letter was
[19] sent, and it says that it was after I had asked for it,
[20] and there is no reason why a letter would be on our
[21] files which said - and therefore which was received by
[22] us at some stage which said that we had talked about
[23] something which had not been talked about.
[24] **Q:** Mr Lazenby, would you look at volume 3, 1132.
[25] **MR JUSTICE LADDIE:** Mr Lazenby, can you leave court just

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[1] if the suggestion of a partnership of the form which you
[2] say is critical was not in Concept 4, it is nowhere else
[3] until a letter of two months later.
[4] **MR COX:** No, my Lord, in my submission not and it will form
[5] part of submissions subsequently, of course, but if
[6] there was a discussion on 12th May, the fully defined
[7] idea would have been discussed.
[8] **MR JUSTICE LADDIE:** Fine, I understand that, but if you are
[9] saying that it is in Concept 4, and you are saying to
[10] him it is a coincidence because it is in -
[11] **MR COX:** I accept that.
[12] **MR JUSTICE LADDIE:** It is not in Concept 4 as I understand
[13] it, is that right?
[14] **MR COX:** No, my Lord, there is some intimation of it, we
[15] submit, and -
[16] **MR JUSTICE LADDIE:** Fine. Because it is so important,
[17] Mr Cox, to the case, and because your case is that this
[18] was - the idea of shared cost partnership was made
[19] known to the defendants in 1990 -
[20] **MR COX:** I completely understand your Lordship's point.
[21] **MR JUSTICE LADDIE:** I think you have really got to put it
[22] to him.
[23] **MR COX:** I will do that, yes.
[24] **MR JUSTICE LADDIE:** Could somebody call Mr Lazenby.
[25] **MR HOBBS:** Before that happens, could I be permitted to say

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[1] for a moment, please. Don't talk to anybody outside.
[2] (The witness withdrew.)
[3] **MR JUSTICE LADDIE:** Mr Cox, you are on a vital part of the
[4] case, absolutely vital, and I have been taking notes of
[5] the way the cross-examination has gone, and it is
[6] important that of course you get your client's case
[7] put. Now, what you have made quite clear to this
[8] witness, that link up - and I have taken a note,
[9] link-ups with third parties were nothing new, and you
[10] have put to him it was the nature of the link-up that
[11] counted, and you say, 1168, for the first time we are
[12] talking about a partnership of shared cost. Do you
[13] remember that? Then crucially you put to this witness
[14] that it is "just a mere coincidence" that "this shared
[15] costs type of partnership was put to you just after
[16] Mr Donovan had put it to you" and in particular you
[17] referred to Concept 4.
[18] Mr Cox, take it from me I do understand the
[19] importance of this. You have suggested to this witness
[20] that that idea of a partnership of shared costs was in
[21] Concept 4. I think if you are going to put that to the
[22] witness you ought to take him to Concept 4 and show him
[23] where in that there is any reference to shared costs, as
[24] opposed to what it merely says, which is linking
[25] together a group of retailers. It is crucial, because

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[1] something, my Lord?
[2] **MR JUSTICE LADDIE:** Why?
[3] **MR HOBBS:** I will not then. It directly relates to what
[4] your Lordship has just put to my learned friend.
[5] **MR JUSTICE LADDIE:** You will get your chance to re-examine
[6] the witness.
[7] **MR HOBBS:** If your Lordship pleases.
[8] (The witness returned.)
[9] **MR JUSTICE LADDIE:** I am sorry, Mr Lazenby, lawyers talk.
[10] **MR COX:** Mr Lazenby, we were looking at the letter to
[11] Mr McMahon or rather from Mr McMahon at 1168. You have
[12] said you do not remember either the letter - is that
[13] right, or the conversation with Mr McMahon?
[14] **A:** I couldn't remember the letter or the conversation.
[15] **Q:** And you cannot remember any conversation on the subject
[16] with Mr Donovan?
[17] **A:** On which subject?
[18] **Q:** On the multibrand loyalty card concept?
[19] **A:** I can't remember any conversation at all with
[20] Mr Donovan. It must have arisen in the 12th May meeting
[21] because there is no other reason for sending the letter
[22] on the 14th, but I have no memory of it. It was
[23] probably in passing at some stage.
[24] **Q:** You accept then now that there was such a conversation
[25] on 12th May. It must have been a conversation, would

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[1] you agree, sufficient for your interest to have been
 [2] aroused?
 [3] **A:** I wouldn't agree with that because, if my interest had
 [4] been aroused, I would have made a note about it in my
 [5] meeting notes. I used to keep - have a lot of stuff
 [6] which was discussed and on my mind all the time and
 [7] therefore I made extensive notes whenever I was in a
 [8] meeting. If anything of consequence came up in any
 [9] meeting I normally made a note of it.
 [10] **Q:** I understood that you accepted now that the note, if you
 [11] will turn in the same bundle, volume 2, that the note in
 [12] volume 2, E2, at 973 - in fact it is 980, that is the
 [13] end, that Mr Sotherton had mentioned the multibrand
 [14] loyalty card scheme presented to Paul King. "Andrew
 [15] Lazenby said Shell could be interested but at a later
 [16] date. Will ask Paul for proposal to make sure it is
 [17] retained for long-term."
 [18] You must have had a discussion that would have
 [19] enabled you to say you could be interested, must you
 [20] not?
 [21] **A:** I can't remember the discussion.
 [22] **Q:** Of course, the letter of 14th May notes your interest in
 [23] it, which you have no reason to doubt?
 [24] **A:** But such a letter would not say that you were not
 [25] interested in something and therefore it is here. It is

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[1] **A:** Comic Relief was a loyalty, a short-term tactical
 [2] loyalty promotion. There is a big difference between a
 [3] short term loyalty promotion, where one was giving away
 [4] merchandise, which could be toy cars or baseball caps or
 [5] whatever, compared to a game theme which was what Don
 [6] Marketing were specialists at. They are completely
 [7] different games promotions mechanics.
 [8] **Q:** We will come back to that. Let us have a look at
 [9] Concept 4, which is to be found in volume one at 345.
 [10] You had received this - certainly it had been sent on
 [11] the 14th May, discussion on the 12th, you arrived back
 [12] in your office on 26th May, you meet Mr Donovan on 4th
 [13] June, the minute to Sweeney goes on 11th June, and you
 [14] meet McMahon for at least your second meeting with him
 [15] on 16th July. That is the timetable we are looking at?
 [16] **A:** I don't know if I had two meetings with Mike McMahon or
 [17] whether the 16th July was the first one. I also - you
 [18] know, the David Watson briefing note to Graham Sweeney
 [19] of the 11th June, I am not copied in on that, so it is
 [20] quite possible that I was not actually given a draft of
 [21] it to look at or closely involved with the production of
 [22] it. I was clearly talking to David about this general
 [23] area the day before.
 [24] **Q:** You prepared for the meeting, is what you said in your
 [25] witness statement. Do you recall?

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[1] a logical thing to put in a letter.
 [2] **Q:** But it wouldn't have been sent, as we have already
 [3] agreed, unless you had expressed interest?
 [4] **A:** I can't remember discussing it at all in the meeting,
 [5] but it is possible that it was mentioned in passing at
 [6] some stage in the meeting for a minute or two. I don't
 [7] know. If they had said "There is a proposal predating
 [8] this date which was given to Paul King", it is very
 [9] logical, though I can't remember it, that I said "Okay,
 [10] maybe you could send it to me or maybe I can ask Paul
 [11] for it", something like that. If it was a passing
 [12] comment, particularly if it was at the end of a meeting
 [13] which I was trying to get out of - I was speaking to
 [14] promotions specialists, to games specialists. You know,
 [15] to talk suddenly about loyalty and long-term schemes and
 [16] stuff would be completely illogical in the scope of a
 [17] meeting. Therefore, it might well have completely
 [18] escaped my knowledge or memory.
 [19] **Q:** Really. You subsequently employed Option One for games
 [20] in 1992, did you not?
 [21] **A:** Which games?
 [22] **Q:** Various promotions, suggestions for games they made in
 [23] 1992?
 [24] **A:** Which ones?
 [25] **Q:** Comic Relief?

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[1] **A:** Whereabouts is that?
 [2] **Q:** You helped in the preparation for the meeting?
 [3] **A:** I may have been assuming that at the meeting on the 10th
 [4] that we had - that was focused on thinking about what
 [5] Onyx would be, to help David prepare the note. I did
 [6] not do any more than that. If I was involved in putting
 [7] forward a note I was copied in on it normally.
 [8] **Q:** "I was involved in the preparation for the meeting". It
 [9] is in your witness statement.
 [10] **A:** Okay.
 [11] **Q:** Let us have a look at Concept 4, which you received
 [12] sometime in the week of the 26th May - when I say
 [13] "received", because that is when you got back into the
 [14] office?
 [15] **A:** Yes.
 [16] **Q:** If you did not have it just before you left. A
 [17] multibrand loyalty programme; we have looked at it
 [18] together before.
 [19] "Create the ultimate loyalty building programme,
 [20] whether adopted now or at a later date." "Talk about
 [21] "Overcoming the main weakness. Our concept stems from
 [22] the multibrand MegaMatch game. Universal currency."
 [23] If you turn the page;
 [24] "The scheme would involve several major multiples
 [25] operating in complementary but non-competitive trades,

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[1] each with national representation, participating in a
 [2] promotional programme of epic size. Financial
 [3] institutions could be involved. Meetings with Barclays
 [4] and the Post Office in relation to Project 100...
 [5] could advertise issue and redeem the promotional
 [6] currency."

[7] **Next paragraph:** "The project would combine the
 [8] enormous high street visibility and huge customer
 [9] franchise of the proposed partners to create a long-term
 [10] promotion reaching every UK household, thereby
 [11] generating unprecedented interest and participation. It
 [12] could also take advantage of the vast purchasing power
 [13] of the consortium to achieve economies of scale to
 [14] minimise marketing and merchandise costs."

[15] If you turn the page; "We predict that MegaMatch
 [16] and this proposed development concept will come to
 [17] pass. The benefits will be reaped by the first
 [18] consortium to be set up."

[19] What that document is suggesting is that by
 [20] joining together in a consortium you can achieve, by
 [21] sharing costs, economies of scale and minimising costs,
 [22] is it not?

[23] **A:** It talks about economies of scale. It talks about
 [24] consortiums and so on. Economies of scale could be
 [25] achieved in any manner or means. Airmiles achieved

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[1] **MR JUSTICE LADDIE:** It includes the bottom paragraph on
 [2] 346.

[3] **MR COX:** He has spoken about the major multiples, operating
 [4] in complementary and non-competitive trades, national
 [5] representation, combining the enormous visibility. "It
 [6] could also take advantage of the vast purchasing power
 [7] of the consortium to achieve economies of scale to
 [8] minimise marketing and merchandise costs. A multibrand
 [9] collection scheme linking together a group of the
 [10] largest retailers in the UK would make a huge impact,
 [11] whether used on a short-term or a long-term basis", and
 [12] then over the page "first consortium will reap the
 [13] benefits".

[14] My question to you is very simple. It may seem a
 [15] self-evident question to you. I am not asking you were
 [16] there any other ways in which you could share costs or
 [17] save costs, but the consortium is being pointed out as
 [18] being a way of achieving economies of scale and sharing
 [19] costs, is it not?

[20] **A:** This proposal says "consortium" once or twice. It
 [21] doesn't say what a consortium is or whatever. It also
 [22] does not say it at this stage. Now if you read this
 [23] page, it could be achieved in any manner or means. This
 [24] could relate to Airmiles, as far as you are concerned on
 [25] this page.

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[1] economies of scale. That part of what you are saying is
 [2] not quite right.

[3] **Q:** That is not my question?

[4] **A:** What is the question, sorry?

[5] **Q:** The question is, it is the case that this document is
 [6] pointing out that by getting together in a partnership,
 [7] a consortium of partners, you can achieve cost benefits,
 [8] sharing of costs, is it not?

[9] **A:** As I just said, costs -

[10] **Q:** That is my question.

[11] **A:** Not completely, because costs could be saved in a number
 [12] of ways. If we had had a Shell led scheme with a number
 [13] of retail partners, the same costs benefits would have
 [14] been achieved. Therefore, the answer to your question
 [15] is no.

[16] **Q:** No, no, no, that is not the answer to my question. My
 [17] question is, as you read this document, it is saying,
 [18] whether or not there are other ways of doing it, that by
 [19] joining together in a consortium of partners you can
 [20] achieve economies of scale and cost sharing?

[21] **A:** I mean this document is a very general collection of
 [22] particular features which could be developed in many
 [23] different ways, and one way of reading it would be the
 [24] way that you are reading it, I guess.

[25] **Q:** Have another look at it, at 346. He has spoken about -

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[1] **Q:** Does Airmiles - do the partners redeem the points?

[2] **A:** The partners do not redeem the points.

[3] **Q:** The redemption is done, certainly 1990-1992, purely by
 [4] purposes of the selling of British Airways seats, was it
 [5] not?

[6] **A:** Yes, it was. I think there were a number of other
 [7] travel related, so there could be some holiday ones at
 [8] the time. I can't remember explicitly.

[9] **Q:** The main focus of the Airmiles scheme was to sell
 [10] British Airways seats, was it not?

[11] **A:** No, the Airmiles scheme was a loyalty scheme which was
 [12] very effective for certain channels of the market, and
 [13] the people who set it up managed to persuade British
 [14] Airways that it was a good thing for them, because it
 [15] disposed of excess seats for them. The reason it was
 [16] set up was as a loyalty concept.

[17] **Q:** The reason why Airmiles was set up was that Mr Keith
 [18] Mills was requested by British Airways to find a way of
 [19] selling seats that they could not otherwise dispose of.
 [20] Did you know that?

[21] **A:** I can't remember specifically why or what I knew about
 [22] it.

[23] **Q:** Mr Mills came up with the idea of Airmiles, selling them
 [24] in effect to people like Shell, as a loyalty reward.

[25] You knew that, did you not?

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[1] A: I knew that he had sold them to Shell. I knew that he
[2] had come up with the idea. I did not know where it came
[3] from.

[4] Q: It was not a partnership of retailers at all. It was
[5] simply that those retailers issued Airmiles and they
[6] were redeemed for British Airways seats, was it not?

[7] A: The only part of this page which is not relevant to
[8] Airmiles is the part where it talks about redeeming the
[9] promotional currency. The rest of it, I mean, I do not
[10] want to go into the detail of it all, but if you read it
[11] on a very superficial level or even a medium level it is
[12] a very general, generic proposal with many features,
[13] which are the same as Airmiles or GHA or anything.

[14] Q: Of course, at the same time you were also discussing
[15] MegaMatch, were you not, with Mr Donovan's company?

[16] A: And as Don Marketing was the games specialist, MegaMatch
[17] was the key thing we were talking about with them, and
[18] that along with 7 or 8 other proposals were being
[19] developed to a stage where we could research them
[20] competitively against each other to see which one
[21] customers, consumers in the marketplace preferred.

[22] Q: MegaMatch was based on a consortium principle, was it
[23] not?

[24] A: If you can show me the proposal we can have a look at
[25] it. My memory is that it was going to be Shell led and

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[1] A: I can't remember what was discussed though.

[2] Q: Let us have a look at 1132 in that same bundle. From
[3] about the beginning of August - you had met Mr McMahon
[4] on the 16th, you have the letter back on the 17th, you
[5] set about, do you not, preparing a marketing brief for
[6] Project Onyx in August?

[7] A: Yes, this was where I can definitely remember that I was
[8] getting quite involved with Onyx.

[9] Q: We have dealt with that. We may have to deal with it a
[10] little more. You know I suggest to you that though you
[11] may have become actively more and more actively
[12] involved, you are certainly keenly interested by 12th
[13] May 92?

[14] A: I think I said that I was interested in long-term
[15] promotions. I did not know anything about technology.
[16] I did not really know anything about Onyx. I got more
[17] and more involved in Onyx between when I started the
[18] department and about the beginning of August was when
[19] clearly I became responsible for the marketing offer,
[20] and Tim was responsible for the technology, so we were
[21] working parallel tracks at that stage.

[22] Q: In July you have the discussions with Mr McMahon. You
[23] meet him on the 16th. You meet him again on the 30th?

[24] A: With David Watson.

[25] Q: You have given him a commission, have you not, to go out

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[1] a few other people were brought in. I can't remember
[2] what - consortium, if you want to focus on the word
[3] consortium, I can't remember how that word was used or
[4] what connotations it carried. My impression of what
[5] MegaMatch was was that it was brought to us and it would
[6] be an extension of Make Money, which I was very aware
[7] of, and it would extend it by having more game pieces
[8] put into the marketplace by multiple partner issuing.
[9] It was nothing to do with redemptions and that kind of
[10] thing, but it was going to be a few different retailers
[11] all benefitting because of customers going to them
[12] because of the game pieces. That is not the definition
[13] of a consortium to me. It is a short-term game.

[14] Q: I do not want to show you at this stage the MegaMatch
[15] proposal which refers to consortium throughout it. But
[16] let us move on if we may, because I would like you to
[17] look at the development that appears for the first time
[18] at 1168 on 17th July. It is part of your thinking, I
[19] suggest to you, visibly at least, from that point on, I
[20] suggest to you, from the moment that you had the
[21] discussions on 12th May with Mr Donovan and read
[22] subsequently Concept 4?

[23] A: I can't remember those discussions so I do not agree
[24] with you there.

[25] Q: If you cannot remember it is possible you did, I assume?

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[1] and make contact with third parties?

[2] A: As far as I recall, Mike McMahon was quite persistent,
[3] so that is probably why I ended up having meetings and
[4] so on with him. If people kept ringing in forcing their
[5] ideas, you would end up speaking to them. I said
[6] yesterday, people would quite frequently misconstrue in
[7] a meeting, if I said "Well, prove that you can bring
[8] third party partners", they would misconstrue that as a
[9] mandate to go out and speak on behalf of Shell with
[10] third parties. The reason why I would normally
[11] challenge them to bring a third party, as I said, was
[12] that every person or every other proposal that I got on
[13] my desk, in the 10 or 20 a week, would say "We can do an
[14] exclusive deal with you with Boots, Marks & Spencers,
[15] Sainsbury's, Tesco", whatever, these were two a penny,
[16] and the idea of doing that is not new. The key question
[17] then comes "Are they actually acting on behalf of the
[18] third party? Can they actually do the tie up? Can they
[19] bring them in? What can they show to prove that they
[20] can?"

[21] Q: Have a look at the letter at 1168 again. Is that what
[22] you are saying about Mr McMahon, that somehow he was
[23] another fellow talking about having links with
[24] retailers. Because, look at the letter; "Before I
[25] contact these people to commit to a sequence of

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[1] meetings, I would like your confirmation. I further
 [2] understand that we need to have in place our formal
 [3] proposals to go to your Board at the end of August."
 [4] That is what you told him, was it not?
 [5] A: That is what the letter says. I can't remember the
 [6] meeting or the discussions, so I cannot say what was
 [7] said.
 [8] Q: If you had got this letter, which you did, because your
 [9] own writing is on it, you would have been bound surely
 [10] to say "What on earth is he talking about, about going
 [11] to the Board", if it had been wrong?
 [12] A: He may have misconstrued it. I can't remember the
 [13] discussion, but it could have meant that we were putting
 [14] forward a detailed proposal by the end of August,
 [15] because that may have been the idea at that stage.
 [16] Q: "To go to your Board at the end of August, this is going
 [17] to require a considerable amount of your time and that
 [18] of your boss, but if we are to have any chance of
 [19] hitting a November 93 deadline for such a scheme, we
 [20] need to have sign off not later than September." The
 [21] fact is that you told him that you wanted to go forward
 [22] with a new scheme, a novel scheme I suggest you told
 [23] him, set out in part at least in this letter, and you
 [24] wanted it to have Board approval by the end of August,
 [25] didn't you?

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[1] A: It looks like we discussed something of that sort. This
 [2] could be leaving out other elements of the conversation
 [3] because, if I was outlining all the options that we were
 [4] looking at at the time, we were certainly still looking
 [5] at pulling out of promotions altogether. What we did
 [6] need to do though, this was the whole purpose of the
 [7] Onyx development or project, was to find the detailed
 [8] mechanics and the costs of all the options that were
 [9] available.
 [10] Q: You were keen to give Mr McMahon the impression that he
 [11] was going to be employed by Shell, were you not?
 [12] A: I would not put it that way. I would say that he was
 [13] one of the options that we were looking at for the type
 [14] of scheme which was going to be one of the options that
 [15] we were going to go on with for the long-term scheme.
 [16] You sit in front of an agency, you don't say "There is
 [17] no chance for you to get in here but do some work for us
 [18] or tell us what your proposal is." Of course you give
 [19] them some kind of encouragement to tell you what they
 [20] are thinking or what their idea is. You cannot go on
 [21] without some idea of that.
 [22] Q: On 2nd July you had a very long conversation with
 [23] Mr McMahon. Have a look at your witness statement
 [24] please at paragraph 17;
 [25] "I confirmed that we would be interested in a deal

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[1] A: I do not think that is the fact. I might have said a
 [2] variety of things. I might have said that we were
 [3] looking for senior management approval or something like
 [4] that. I did not write the letter. I did not write a
 [5] response. I can't remember the details of the
 [6] discussion, so it might not reflect what the meeting
 [7] said it might. I might have said we would need to have
 [8] a detailed proposal to go to management and he might
 [9] have understood it to say to go to the Board or
 [10] whatever. Certainly the time scales are about right
 [11] because by this stage we were committed up to
 [12] October/November 93 with short-term proposals, and we
 [13] knew there was going to be a long preparation period,
 [14] and indeed that we had commitments for promotions up to
 [15] that stage, so that was what was driving the timescale.
 [16] There is no reason at the meeting I had with him the day
 [17] before that I would have raised the idea of retailers
 [18] and asked him to go out and speak to them. I only ever
 [19] did that if people came to us suggesting the use of
 [20] retailers.
 [21] Q: That may be, but you gave him the details contained in
 [22] this letter, and you told him, I suggest to you, that
 [23] you needed to have in place his formal proposals to go
 [24] to your Board at the end of August. Do you accept that
 [25] or don't you?

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[1] they were setting up and said we would endeavour to get
 [2] a letter of intent to him by the end of August". Do you
 [3] see that?
 [4] A: Yes.
 [5] Q: The reason why you were keen is because you felt you
 [6] could steal, as you thought to yourself, Texaco's deal,
 [7] didn't you?
 [8] A: I did. That is how Mike McMahon billed it at that
 [9] stage. He said "Texaco are on the verge of signing, but
 [10] clearly I would prefer to go with Shell because it is a
 [11] bigger and better company", blah blah blah, "and if you
 [12] give me some indication then I will hold it for you".
 [13] That was the tenor of the conversation. I probably then
 [14] said "Well, how long do you need?" He probably said "The
 [15] end of August." And I said "Well, we will work towards
 [16] the end of August to give you some kind of indication
 [17] that we can work with you. If you can please hold off
 [18] doing any exclusive type of deal with Texaco in the
 [19] meantime."
 [20] Q: Yes. What you wanted him to do, what you wanted to
 [21] persuade him to do was not to tie up any deal with
 [22] Texaco before you had had a chance to see whether Shell
 [23] wanted it?
 [24] A: Yes, we didn't really know what the scheme was at all at
 [25] this stage. We had some superficial numbers and a few

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[1] sort of top level ideas or concepts, I guess, but we
 [2] didn't know what it was, so we couldn't give any
 [3] commitment at this stage. I suspect he was using a
 [4] negotiating ploy, putting pressure on us by claiming
 [5] that a competitor was there. Sometimes those ploys
 [6] work.

[7] **Q:** Have a look, would you at 1139. This is I think an
 [8] internal E-mail, is it not, within the company?

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

[10] **Q:** To Mr Hannagan, dated 2nd July 92. It is volume 3?

[11] **A:** Yes.

[12] **Q:** "Had a long conversation with Mike McMahon tonight,
 [13] during which he confirmed that the other oil company he
 [14] is currently in consultation with is Texaco, and indeed
 [15] they have full management approval for his proposal and
 [16] are taking it for Board approval on Monday, after which
 [17] they will want to go ahead. I got his agreement that he
 [18] will hold any irrevocable commitment until at least the
 [19] end of August, before which we have a chance to steal
 [20] Tex's deal, us being his preferred partner. I am sending
 [21] him a letter tomorrow to confirm that we are considering
 [22] seriously his proposal and will try to get to the
 [23] position of sending a letter of intent by the end of
 [24] August. I will let you okay the letter, David."

[25] So it looks as though on the 2nd, that

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[1] **A:** Yes.

[2] **Q:** And what you have told Mr McMahon is "Hang fire, don't
 [3] do the deal with Texaco", you hoping to steal it, as it
 [4] would appear from this, and "we will get back to you
 [5] with a letter of intent by the end of August". That is
 [6] what you are saying in this E-mail?

[7] **A:** Yes, he dictated the timescale. He said he can hold off
 [8] until the end of August. Therefore, as normal
 [9] commercial discussion, I would say "We will do our best
 [10] to get thereby the end of August." I could have felt

[11] personally that it was going to be challenging to do
 [12] that. However, if he came up with a scheme which was
 [13] the best thing ever, then things can be moved fast.

[14] **Q:** But then you go further, because on 16th July you tell
 [15] him that he needs to have in place his formal proposals
 [16] to go to your Board at the end of August?

[17] **A:** Yes, that is building on this conversation here.

[18] **Q:** That is building on the 16th July conversation, as
 [19] represented and reflected in his letter to you of the
 [20] 17th?

[21] **A:** Indeed, but all of that is building from the
 [22] conversation of the 2nd July, or whenever it was, where
 [23] he has dictated the timescale that he can hold off with
 [24] the Texaco deal until the end of August, and that was
 [25] the agreement between us. Now, it sounds to me from the

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[1] conversation, you persuaded him to stall the deal with
 [2] Texaco?

[3] **A:** If there was a deal with Texaco, indeed, yes.

[4] **Q:** That is your assumption.

[5] **A:** This E-mail is to Tim Hannagan and David Watson.

[6] **Q:** Then on the 16th you have the meeting, and on the 17th a
 [7] letter back from Mr McMahon that we have seen?

[8] **A:** Yes.

[9] **Q:** And Mr McMahon believes that you are going to go to your
 [10] Board at the end of August?

[11] **A:** Yes. You can see from the E-mail that you have just
 [12] referred to, page 1139, my opinion of getting approval
 [13] from the Board, or sending a letter of intent. The
 [14] reason I say that is that in the penultimate sentence of
 [15] the E-mail, after the word "August" there are two
 [16] exclamation marks in brackets. What that indicates is a
 [17] degree, a large degree of incredulity about being able
 [18] to get to that stage by then.

[19] **Q:** What it indicates is that you know you were spinning him
 [20] along, did it not?

[21] **A:** What it indicates is that I was trying to reserve a
 [22] position now.

[23] **Q:** Because there may well have been a deal with Texaco?

[24] **A:** There may well.

[25] **Q:** And you assumed there was?

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[1] tone of the letter on the 17th that I still had not seen
 [2] anything concrete from him about it, so I was probably
 [3] by that stage trying to put some pressure on him to get
 [4] some meat that we could actually evaluate.

[5] **Q:** What Mr McMahon came to you with was a technology and
 [6] talking to some retailers, and on the 16th you put to
 [7] him the option of a partnership between retailers
 [8] sharing costs to mutual advantage, part ownership, did
 [9] you not, 1168. You said you needed his proposals for
 [10] the Board to approve at the end of August?

[11] **A:** Your second question first; the end of August deadline
 [12] was set by him, which was going to be the exclusion
 [13] period that he could give us to put together our case so
 [14] we could get in ahead of Texaco. On the first case, two
 [15] of the options which must have been discussed I assume
 [16] at the meeting, but I can't remember, are detailed in
 [17] this note, one of which is sharing costs, the other of
 [18] which is partners participating on the basis of
 [19] transaction costs, and I have a feeling that we will
 [20] have talked about all of the other options but I don't
 [21] know. I can't remember the meeting.

[22] **Q:** He reflects simply these two. Can I ask you about the
 [23] Board. Are you seriously saying that for his proposal
 [24] you would be able to convene the Board at the end of
 [25] August?

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[1] A: No, I was probably talking about getting senior
[2] approval, because we were a long way away. I mean, we
[3] were a long way away from making any kind of proposal at
[4] this stage.

[5] Q: Exactly.

[6] A: What I needed from him, what I was not getting, was some
[7] meat, some detail of his proposal. Therefore, in the
[8] context of the discussions, I was probably trying to,
[9] you know, he will probably ask questions like "How can
[10] we take this on?" I would say "We will need Board
[11] approval ultimately for making these kind of
[12] investments." He will probably have - and then the
[13] conversation about how long, blah blah will have come
[14] up.

[15] Q: Mr Lazenby, you told him that it was going to go to the
[16] Board at the end of August. You put your two
[17] exclamation marks by getting him a letter of intent two
[18] weeks before, when you wrote to your colleagues, because
[19] you knew, as you say, you were a long way away, and you
[20] would never be able to achieve that, but you were
[21] spinning him along, were you not?

[22] A: No, I was trying to get a detailed proposal out of him,
[23] and I didn't want us to lose the concept, if there was
[24] any value in it, to a competitor before we knew what it
[25] was and before we could evaluate it.

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[1] the end of August timescale was dictated by him. What I
[2] was probably hoping was that we had seen his proposal,
[3] we could make some kind of evaluation of it and see
[4] whether at that stage we were going to be able to say
[5] more like "Right, we are interested in this. We can
[6] make a letter of commitment of some sort." I don't know
[7] whether I discussed the Board or not. Clearly I cannot
[8] call the Board. Clearly the Board might not even be the
[9] decision making body. The only thing that I can
[10] remember is talking about giving letters of intent.
[11] That is what I say in my E-mail reflecting the meeting
[12] immediately after I had had it.

[13] Q: In your E-mail you say "We will get you a letter of
[14] intent!", as you have agreed, because you knew that was
[15] unlikely?

[16] A: I say "I will try to get to the position of sending a
[17] letter of intent." So already it is not committing to
[18] that.

[19] Q: On the 16th July you went further, I suggest to you, and
[20] you said you want his proposals for the Board at the end
[21] of August. But you knew that it was inconceivable that
[22] the Board would be in a position or anybody to give a
[23] letter of intent or approval to his proposals by the end
[24] of August, did you not?

[25] A: No, the Board would not be meeting. A letter of intent

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[1] Q: Thank you. Exactly. You wanted to hold on to the
[2] concept and the idea that Mr - and the possible value
[3] that Mr McMahon could be to you, and you were prepared
[4] to spin him a line in order to make sure he went nowhere
[5] else with it, were you not?

[6] A: He had already been elsewhere and indeed he had somebody
[7] else, according to what he was saying, he already had
[8] somebody else who was about to commit to it. I was not
[9] trying to stop him from going elsewhere. Everybody in
[10] the industry always touted new ideas around everybody.
[11] Clearly Mike McMahon had done that with this one. GHA
[12] had done it with their one. We couldn't take any kind
[13] of decision until we knew what the proposal was. On
[14] this occasion he was on the verge of signing with
[15] Texaco. He wanted to come with us. Shell is a bigger
[16] network, therefore a bigger prize from his point of view
[17] for his concept. It was in his interest to wait before
[18] making any irrevocable decision which would have
[19] excluded Shell and, therefore, he was quite happy to
[20] agree to this kind of compromise position.

[21] Q: But you knew you would never be in a position by the end
[22] of August to convene the Board. You don't convene
[23] Boards, do you, as the promotions department?

[24] A: No, clearly I do not, but we could have got a lot
[25] further towards making some kind of decision. I mean,

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[1] was certainly not out of the question, because the
[2] letter of intent could be anything.

[3] Q: By the beginning of August - I beg your pardon, a
[4] letter of intent could be anything. What does that
[5] mean?

[6] A: I mean a letter of intent may have included some
[7] financial transaction; it may not. There is a very
[8] large scale of what that might involve, but what was key
[9] at this stage was getting the detail of his proposals so
[10] we could decide whether we were going to take it on or
[11] not.

[12] Q: By the beginning of August you were beginning to compose
[13] your marketing brief at 1132, please.

[14] "Project Onyx Marketing Brief. NB;
[15] Confidentiality statement." What is the next
[16] hieroglyphic?

[17] A: The second line on the page you mean.

[18] Q: Yes, please?

[19] A: Says: "NB; Confidentiality statement", and there is an
[20] arrow and it says "PM", who is Pamela Marsh, our legal
[21] adviser at the time.

[22] Q: "What is it not? Copy of Mobil, Total, Burma replacement
[23] for paper vouchers. A life style loyalty scheme. What
[24] is it? The next step..." and you have put the arrow "A
[25] long-term loyalty scheme. A lifetime life style loyalty

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[1] scheme. Multi-promotional HGV,AM" what is the next
 [2] one?
 [3] A: "C Store", convenience store.
 [4] Q: "Third parties. Possibility of both issuing and
 [5] redeeming points at third parties. Time limits.
 [6] Possibly catalogue system. Shell to approach third
 [7] parties direct. Possibly Shell own managed scheme.
 [8] Shell one of some equal participants", and then there is
 [9] an arrow. What is the next?
 [10] A: "Or run by third party".
 [11] Q: "Or run by third party". So that follows on from
 [12] Mr McMahon's letter to you and your meeting with him
 [13] 16th/17th July. You are considering here, are you not,
 [14] Shell to be one of some equal participants in the
 [15] scheme?
 [16] A: I mean, that is one of the three options that I detail
 [17] here. I do not know when this actual manuscript note
 [18] was written, but that is one of three option that we
 [19] have got on the table at this stage.
 [20] Q: You know, do you not, that you were preparing the
 [21] marketing brief in August of 92?
 [22] A: I think it was written in early August 92, so I could
 [23] have been working on it in July.
 [24] Q: Right. This is a handwritten preliminary preparation?
 [25] A: Yes.

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[1] A: Yes.
 [2] Q: Mr Armstrong-Holmes had written, for the record, if you
 [3] want to have a look at it at 931, if you want to flick
 [4] back to Mr McNab, talking about a green promotion?
 [5] A: Yes.
 [6] Q: Which would be a first?
 [7] A: Yes.
 [8] Q: And you asked him to come in to see you?
 [9] A: Yes.
 [10] Q: And now Mr Armstrong-Holmes and you met on the 1st May
 [11] 1992, do you agree?
 [12] A: Yes.
 [13] Q: You had a chance to review these documents, I assume?
 [14] A: I have.
 [15] Q: He presented to you, did he not, an idea for a "Spring
 [16] into Shell" bulbs promotion?
 [17] A: Yes, it was of that theme. It was gardening related
 [18] theme bulbs, seeds, that kind of thing.
 [19] Q: If we have a look at the promotion itself, it is at
 [20] 954. "Spring into Shell Promotion. Proposed by Mr John
 [21] Armstrong-Holmes."
 [22] There is the introduction passages and the idea is
 [23] set out in the next pages. If you look for example at
 [24] 965 or 964 it starts under "Method". It was to get
 [25] people into the Spring into Shell promotion. The method

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[1] Q: For what became a typed document?
 [2] A: Yes.
 [3] Q: For sending to the players in project Onyx?
 [4] A: Yes.
 [5] Q: Possible suppliers?
 [6] A: Yes.
 [7] Q: And you were by this stage considering a Shell own
 [8] or/managed scheme?
 [9] A: It says "Shell run or managed scheme".
 [10] Q: Shell run/managed scheme?
 [11] A: Yes.
 [12] Q: Or Shell one of some equal participants?
 [13] A: Yes.
 [14] Q: Or run by a third party?
 [15] A: Yes.
 [16] Q: So let us move on from there if we may. Before we take
 [17] our leave of August, you had had an approach from
 [18] Mr Armstrong-Holmes?
 [19] A: Yes.
 [20] Q: Mr Armstrong-Holmes had written I think originally to
 [21] Mr McNab, had he not, volume 2, 935.
 [22] Mr Armstrong-Holmes had written to you concerning a
 [23] gardening idea that he had had. You replied to him at
 [24] 935 on 7th April 1992, asking him to come in and see
 [25] you, did you not?

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[1] over the page is to remove an element of collection by
 [2] giving all customers a mini pack of seeds when they buy
 [3] 6 pounds worth of petrol. Customers select from ranges
 [4] of variety. Each customer be given one green Shell
 [5] point for each 6 pounds worth of petrol they buy, and so
 [6] on. The purchasers collect green Shell points and
 [7] select the items of their choice from a range featured
 [8] with Spring into Shell gardeners' catalogue, 965, and
 [9] then there are a series of things you could get. You
 [10] were interested by that idea, were you not?
 [11] A: It was one of the more novel ones that I had seen.
 [12] Q: You had asked around and you had found out, had you not,
 [13] that there had been nothing like it before?
 [14] A: I had asked around in the department, as I normally did
 [15] with a new promotion, and the other guys in the team
 [16] were interested in it too; one of them particularly was
 [17] a keen gardener. We discussed what other gardening
 [18] related promotions we had had in the past. We had
 [19] talked about green-related promotions but the novel
 [20] slant on this one was probably seeds and bulbs or
 [21] something like that.
 [22] Q: So you said to Mr Armstrong-Holmes that you were going
 [23] to put the matter into research, did you not?
 [24] A: Yes, I did, and indeed we did research it. The normal
 [25] process for selecting promotions was to put it into

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[1] competitive market research with a number of other
 [2] ideas.
 [3] Q: And you told Mr Armstrong-Holmes that you would be in a
 [4] position to give him further detail on or after a
 [5] meeting on 13th May, did you not?
 [6] A: I can't remember. Is that detailed somewhere in
 [7] correspondence?
 [8] Q: I am asking you first. You cannot remember, is that
 [9] right?
 [10] A: I certainly will have said to him that I will come back
 [11] to him. I can't remember details of dates and so on.
 [12] Q: Did you subsequently speak to Mr Armstrong-Holmes and
 [13] tell him that you had put it out to research because the
 [14] reaction had been good?
 [15] A: I probably did, yes. I mean, he would probably ring me
 [16] back to check what the status was with the idea. I
 [17] would probably then have told him - in fact I did tell
 [18] him that we had discussed it in the promotional team
 [19] meeting, and it was one of the ideas which we felt was
 [20] stronger and worth going forward to research.
 [21] Q: That idea of course was put forward to you in
 [22] confidence, as you accepted?
 [23] A: Yes.
 [24] Q: When you spoke to him again, and told him it was going
 [25] into research, you also told him, I suggest to you, that

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[1] including it in long-term schemes, unless I was talking
 [2] to him about the fact that gardening themes had been
 [3] used in the past in Collect & Select.
 [4] Q: Can you help me with this. Do you know where the
 [5] research is for this gardening concept?
 [6] A: Yes, it is somewhere in batch 3, I think. Do you want
 [7] me to look for it?
 [8] Q: Have a look at volume 3 if you would.
 [9] A: I don't have any indexes here.
 [10] Q: Who did the research?
 [11] A: I think it was a company called Conquest Research.
 [12] Q: How did it perform?
 [13] A: What, the gardening theme.
 [14] Q: Yes?
 [15] A: It was one of the weaker concepts. Do you want me to
 [16] find the research?
 [17] Q: If you have it, if you can see it in volume 3 I would be
 [18] grateful.
 [19] A: It would help if I had -
 [20] MR HOBBS: E3, 1088.
 [21] A: Yes, that is it.
 [22] MR COX: You were still keen on the idea?
 [23] A: At what stage?
 [24] Q: When the research came in?
 [25] A: All of the ideas that we put forward for research were

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[1] it could be included in a multi-retailer scheme that
 [2] Shell was then considering?
 [3] A: I have no memory of that at all. I can't remember
 [4] discussing that with him at all. There is no reason at
 [5] all for me to raise that or proactivate it. We were
 [6] talking about a short-term loyalty scheme here. In May
 [7] my focus was very much on getting promotions for 1993.
 [8] That was what most of my time and attention was spent
 [9] on, and this was very much a short-term 8 or 12 week
 [10] tactical promotion, and a good idea for one.
 [11] Q: But one of the ways it could be used, and I think in
 [12] fact you did use a gardening catalogue or concept in the
 [13] Shell Smart scheme eventually, did you not?
 [14] A: Not while I was there, but we had had gardening themes
 [15] prior to this. We had given away gardening tools and
 [16] all sort of things.
 [17] Q: One of the things that you said to him, was it not, was
 [18] "If we don't run it by itself as a promotion on its
 [19] own, we could run it in a long-term scheme that we are
 [20] considering."
 [21] A: I mean, I don't remember the discussion at any
 [22] particular time. I remember talking to him in general
 [23] about this scheme, this proposal, and the status it had
 [24] in the research, and when we might use it and so on.
 [25] There is no real reason to go on and talk about

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[1] the better or best of the ones which we had received.
 [2] We also knew that as a selecting body we were not
 [3] representative of our customers. There were four or
 [4] five of us. Normally what happened, as indeed was the
 [5] case with here, we could not predict which ones were
 [6] going to be the winners, which is why we always put them
 [7] to research. Indeed, when we got approval for doing
 [8] particular promotions, it wouldn't have been accepted if
 [9] we had just put it forward as our own summary of the
 [10] best of the concepts that were on the table before us.
 [11] Q: Let us just see where we are. Mr Armstrong-Holmes has
 [12] put his idea forward in confidence. You have told him
 [13] that the reaction was good in discussion within Shell.
 [14] It is put out to research. It comes back. It performs
 [15] averagely in the research, but it is an idea which you
 [16] are still interested in.
 [17] A: As soon as the research comes back, that gives me the
 [18] answer as to whether I am going to use that concept.
 [19] Gardening, I think if you flick through to the end, it
 [20] will be clear that gardening was one of the least
 [21] successful themes, and the gardening was the concept
 [22] which Mr Armstrong-Holmes had put forward to us. It was
 [23] a surprise. One of my team members was particularly
 [24] keen on gardening. But as soon as gardening performed
 [25] badly, and as soon as we had therefore chosen other

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[1] concepts to go forward with, it was off the agenda. It
 [2] went into the files.
 [3] Q: But could still have been wheeled out as part of a
 [4] long-term scheme reward?
 [5] A: I mean, I did not do anything further with this once it
 [6] had failed in research. There was no reason to.
 [7] Q: You continued to talk to Mr Armstrong-Holmes on the
 [8] phone, did you not?
 [9] A: Mr Armstrong-Holmes was also persistent, as are many of
 [10] the people who propose ideas, and he probably kept
 [11] ringing me up.
 [12] Q: What do you mean "probably"? Did he or didn't he?
 [13] A: I cannot remember in detail, but I recall maybe one or
 [14] two conversations, but I don't recall when or what was
 [15] discussed or any details of what was said in those.
 [16] There was no reason, once the concept had failed with
 [17] consumers, to continue thinking about it or leaving it
 [18] on the agenda for what was my task, which was short-term
 [19] promotions.
 [20] Q: Have a look at 938, because another agency, 938 in
 [21] volume 2, had also asked you or put forward a discussion
 [22] paper called the Hazell Consultancy, had it not?
 [23] A: Yes.
 [24] Q: The Hazell Consultancy had come up with a gardening
 [25] idea, had it not?

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[1] Q: Now, Conquest Research went into research and produced
 [2] the report in July, did it not, 92?
 [3] A: I can't remember when the report was actually produced.
 [4] Yes, July 92, yes.
 [5] Q: What date would you have received in July the Conquest
 [6] Research?
 [7] A: I can't remember. There may be a diary appointment
 [8] which would tell but I don't know.
 [9] Q: We will have a look in due course, but if you turn to
 [10] 1178, volume 3, you replied to the Hazell Consultancy on
 [11] 31st July 1992, having had the results of market
 [12] research, by which you refer to Conquest, did you not?
 [13] A: Yes.
 [14] Q: And you mentioned to Hazell the document we have just
 [15] looked at, that "I did research a gardening concept
 [16] which we had formulated internally." You had never
 [17] formulated internally any garden concept, had you?
 [18] A: On this occasion what I am referring to I think is
 [19] purely - or rather, what I am trying to get at is that
 [20] with this Consultancy we had already had the idea prior
 [21] to them proposing it. It is probably some kind of a
 [22] throw away comment just to make it very clear to them
 [23] that we already had that concept when it was proposed.
 [24] Q: So when you say "formulated internally", we are not to
 [25] read you at your word; we are to mean in fact that by

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[1] A: Yes. I mean, many people came up with the same ideas
 [2] all the time.
 [3] Q: 948. This was not necessarily the same idea?
 [4] A: It was similar.
 [5] Q: It was an idea with similar features but not necessarily
 [6] the same. At page 948 -
 [7] A: Yes.
 [8] Q: Presented to you on 8th June. You have a handwritten
 [9] note on it, don't you, "Analysis of business - good.
 [10] Concepts not original. Possibility number 1, but all
 [11] the remainder already under consideration."
 [12] MR JUSTICE LADDIE: Did you say 948?
 [13] MR COX: 938, my Lord. 948 is where the garden theme is.
 [14] MR COX: Your handwritten note is on the cover of the
 [15] document at 938.
 [16] A: Yes.
 [17] Q: Your critique of it was that the concepts were not
 [18] original, except possibly number 1?
 [19] A: Yes.
 [20] Q: All the remainder were already under consideration?
 [21] A: Yes.
 [22] Q: Which would include of course proposal 5 at 948?
 [23] A: Yes, the gardening.
 [24] Q: That was already under consideration, was it not?
 [25] A: We were considering John Armstrong-Holmes's proposal.

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[1] "internally" you mean by another agency,
 [2] Mr Armstrong-Holmes?
 [3] A: Yes, I mean to an external agency like Hazell it would
 [4] not matter whether we generated it internally or with
 [5] another agency. To them it would not be relevant where
 [6] it came from.
 [7] Q: "If I use it" you went on "We will plan and implement
 [8] the whole promotion internally, not utilising any
 [9] external agencies."
 [10] A: Yes.
 [11] Q: So really it is quite a mental leap we have to make
 [12] here; not only are you not saying that it is an
 [13] external agency, you are saying it is not.
 [14] A: Just to confirm, this is a "go away" letter to an agency
 [15] whose ideas we are not going to take up, and clearly
 [16] not, and I am making it as clear as possible to them
 [17] that there is no "in" for them on this gardening
 [18] promotion. The fact that I tell these guys that we are
 [19] going to run it internally, not using external agencies,
 [20] is kind of irrelevant, because if we had gone away and
 [21] used it elsewhere or developed it internally we would
 [22] clearly have used Mr Armstrong-Holmes, or at minimum
 [23] compensated him for the concept, if we had used his
 [24] concept.
 [25] Q: But you see by now I thought you said just a few minutes

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[1] ago to his Lordship that the idea was in the file. It
 [2] was binned?
 [3] A: I can't remember when Conquest research came back.
 [4] Q: It is before this letter, is it not?
 [5] A: Probably, yes.
 [6] Q: It refers to it, does it not. Are you saying that there
 [7] is other research with a gardening concept?
 [8] A: No. The Conquest Research is undated here. Without
 [9] checking my diary I don't know when it came in. I also
 [10] don't know when at that stage I would have filed away
 [11] the failing concepts.
 [12] Q: We had the formal results of the market research on
 [13] eight promotional concepts. That is the Conquest
 [14] Research, unless there was other research on 8
 [15] promotional concepts, is it not?
 [16] A: That is the Conquest Research, yes.
 [17] Q: "I did research a gardening concept which we had
 [18] formulated internally." You say that was a throw away
 [19] comment. It does not really matter whether you told the
 [20] truth or not, because you were addressing somebody
 [21] else.
 [22] A: It is irrelevant to this agency where it came from
 [23] because, as I said in the meeting with them, as my
 [24] manuscript note on their proposal document says, all of
 [25] these concepts are not original.

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[1] agency whether I am interested or not ongoing on a theme
 [2] which is similar to another one which has failed.
 [3] Q: Secondly, suppose you had run the gardening concept
 [4] using Mr Armstrong-Holmes's agency, and the Hazell
 [5] Consultancy got to hear of it. Wouldn't it have been
 [6] embarrassing to you?
 [7] A: I mean there is a - it might have been slightly
 [8] embarrassing, but there is a full explanation of it. I
 [9] had a good relationship with these guys. They were a
 [10] good group of people. We spoke to each other at the
 [11] same level. We had a good relationship as far as it
 [12] went, in terms of they put forward a few proposals.
 [13] Q: Did you set high store on relationships, getting on with
 [14] those people who suited you and being not people you
 [15] thought otherwise -
 [16] A: How do you mean "set high store on"?
 [17] Q: Well, you were a person who passed opinions on people
 [18] were you not, in writing? You used expressions like
 [19] "used car salesman" about Mr McMahon. You commented
 [20] about certain other people that they were "rather
 [21] irritating". Do you recall those observations?
 [22] A: I do. Everyone makes comments about other people.
 [23] Q: So the type of person you were dealing with - nothing
 [24] wrong with this, perfectly understandable - the type of
 [25] person you were dealing with meant quite a lot to you.

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[1] Q: If it is irrelevant, why not tell the truth?
 [2] A: To make it absolutely plain that it was something that
 [3] we had. I don't know why I put it in this particular
 [4] formulation rather than any other.
 [5] Q: "If I use it we will plan and implement the whole
 [6] promotion internally, not utilising any external
 [7] agencies". You are saying there, are you not, you will
 [8] do it within Shell with no other agencies?
 [9] A: That is what the note says. The meaning is "Go away.
 [10] We have got this concept and we could develop it in any
 [11] way." One of the ways which John Armstrong-Holmes's
 [12] concept could have been developed, and we did this with
 [13] some concepts and some promotions, would be that we paid
 [14] a concept fee to Mr Armstrong-Holmes and did it
 [15] ourselves. We were acquainted and we normally did
 [16] premium product promotions ourselves. That would be one
 [17] way forward with it.
 [18] Q: Let us get this straight. First, this letter does not
 [19] suggest for a moment that you have lost interest in the
 [20] idea, does it?
 [21] A: No, it doesn't.
 [22] Q: So when you said a little while ago that really it was
 [23] dead and over because of the research, that was not
 [24] correct, was it?
 [25] A: That was correct. I do not need to explain to another

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[1] They had to have some sort of -
 [2] A: If you want to look at the "used car salesman" kind of
 [3] comments, those were in a very specific context.
 [4] Q: We will come to them in due course. It may be we can
 [5] finish dealing with this letter. So I understand your
 [6] answer, if I may, would there have been any reason why
 [7] not, simply to say "A previous agency has already come
 [8] up with this idea", and to tell the truth like that?
 [9] A: There would be no reason not to.
 [10] Q: Why not then?
 [11] A: I have not got a clue.
 [12] Q: You just habitually, do you, as casually as that put
 [13] down an untruth?
 [14] A: No, it is not habitually and casually putting down
 [15] untruths. As you said, the promotion which Hazell
 [16] Consultancy had put up was similar to what John
 [17] Armstrong-Holmes had put. We had other gardening
 [18] elements all the way through Collect & Select. So the
 [19] concept itself is interesting but maybe not completely
 [20] new. John Armstrong-Holmes had a new slant on it, which
 [21] was the seeds. I did not know at the time probably
 [22] whether there was anything else similar around. It
 [23] seemed safest at the time. It seemed like the best
 [24] thing to say to them, that we have already got this
 [25] thing, we will do it ourselves, if we run it at all, and

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[1] that was going to be the clearest thing which was going
 [2] to make sure that they did not continue to pester me,
 [3] keep ringing and saying "Are you doing this? Are you
 [4] doing this? Can we help you? Can we help you?", which
 [5] many agencies did. You needed to be as clear as
 [6] possible that they were not going to be helping you,
 [7] working with you.
 [8] **MR COX:** Would that be a convenient moment?
 [9] **MR JUSTICE LADDIE:** Yes.
 [10] (1.00 pm)
 [11] (The short adjournment)
 [12] (2.00 pm)
 [13] **MR COX:** Mr Lazenby was dealing with Mr Armstrong-Holmes.
 [14] Just so that we can fix our bearings, please, about your
 [15] dealings with Mr Armstrong-Holmes I wonder if you would
 [16] look at the diary at file 11 A, again, your diary.
 [17] You recall Mr Armstrong-Holmes giving evidence, I
 [18] am sure, and saying that you had told him that on 13th
 [19] May there would be a meeting concerning promotions at
 [20] which you would present this concept?
 [21] **A:** I remember him saying that I cannot remember whether
 [22] that is when the meeting was or when I said.
 [23] **Q:** Can I ask you to help me with page 5048, which is a copy
 [24] of your diary?
 [25] **A:** Yes.

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[1] moment. Is it volume 2, I am so sorry. Volume 2, yes.
 [2] Have you got it?
 [3] **A:** Not yet, 981?
 [4] **Q:** 981. Do you see that, in your diary, you have recorded a
 [5] telephone number by the side of John Donovan's name?
 [6] **A:** Yes.
 [7] **Q:** That number is - could you read it out?
 [8] **A:** You just read it out - 0284 388308.
 [9] **Q:** On 981, do you see the direct lines number that has been
 [10] stamped in the top right-hand corner?
 [11] **A:** Yes.
 [12] **Q:** It is the same number, is it not?
 [13] **A:** Yes.
 [14] **Q:** Why do you think you would have made that entry in your
 [15] diary on 14th May of John Donovan's direct line number?
 [16] **A:** I will have made the entry and I will have crossed it
 [17] through because I must have made a phone call to Mr
 [18] Donovan, probably, possibly rather, in response to a
 [19] call which he would have left for me on my answering
 [20] machine.
 [21] **Q:** Sorry.
 [22] **A:** My system was if calls came into my answering machine,
 [23] then I would write them in my contact note. If I made
 [24] the call, then I would strike it through when it was
 [25] done.

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[1] **Q:** Do we see there a promo project meeting at 2 o'clock?
 [2] **A:** Yes.
 [3] **Q:** Was that to discuss promotions?
 [4] **A:** Yes.
 [5] **Q:** So it would follow then -
 [6] **A:** Yes.
 [7] **Q:** - Presumably you did tell him there was a 13th May
 [8] meeting?
 [9] **A:** I may well have done, yes.
 [10] **Q:** So when he says in his witness statement, and again on
 [11] oath in court last week, that you had told him there was
 [12] a meeting on the 13th, as chance had it, there was
 [13] indeed a meeting on the 13th?
 [14] **A:** Yes.
 [15] **Q:** Could you turn the page, since we are with this folder.
 [16] You recall, do you see, on 14th May, as it happens, an
 [17] entry second from bottom, under the contacts list?
 [18] **A:** Yes.
 [19] **Q:** Does it read; "John Donovan, 0284 388308"?
 [20] **MR JUSTICE LADDIE:** Which page are we on?
 [21] **MR COX:** 5050.
 [22] **A:** It does.
 [23] **Q:** Is that the John Donovan who is sitting in front of you?
 [24] **A:** Yes, I think it probably is.
 [25] **Q:** Could you look in volume 3, 981, for me, just for a

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[1] **Q:** So is it possible you were responding to a fax of the
 [2] letter of 14th May, and that you had recorded the direct
 [3] line number in your diary when you had received it?
 [4] **A:** It is remotely possible, but I normally would have faxed
 [5] back. If a fax came in, I would normally write down here
 [6] a telephone number. If a message had been left on my
 [7] answering machine with a number to call back to, I would
 [8] make a note of it so that I could remember the number
 [9] and make sure the call was made. I normally try to
 [10] return calls on the day that I receive them on my
 [11] answering machine.
 [12] **Q:** You had only just met Mr Donovan for the first time just
 [13] two days before?
 [14] **A:** Yes.
 [15] **Q:** As I look at the letters - I may be wrong - this is
 [16] the first time certainly on any letter that the direct
 [17] line number had been included. No, I beg your pardon, it
 [18] is not. It is on 27th April as well. So, at some stage,
 [19] anyway, you have recorded the direct line number?
 [20] **A:** Yes.
 [21] **Q:** But you have it on 14th May, and it would indicate to
 [22] you anyway that you had had some kind of telephone
 [23] contact?
 [24] **A:** During that day, yes.
 [25] **Q:** With him?

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[1] A: With someone in his office, yes, or him, I cannot
[2] remember the call, I cannot remember what was said.
[3] Q: But the immediate reference would have been of course
[4] what had happened on 12th May and possibly this letter,
[5] would it not?

[6] A: Yes, Mr Donovan used to ring up, if he had sent a
[7] letter, to make sure it had been received, or, I do not
[8] know, to chase it up. If it was on the same day as it
[9] was sent, then it was probably to say that it was being
[10] sent. It would probably have just been a very quick
[11] phone call.

[12] Q: Yes. Let us have a look a little further, because of
[13] course this is the week that you go on holiday in the
[14] end, is it not, on the Friday?

[15] A: I think Saturday morning actually.

[16] Q: Indeed, there is a gap in your diary?

[17] A: Yes.

[18] Q: You appear to be returning on the 26th?

[19] A: Yes.

[20] Q: Coming back to Mr Armstrong-Holmes, did he ask you
[21] whether you would grant him an option, or rather whether
[22] you wished him to grant you an option on the gardening
[23] concept he had proposed?

[24] A: I have no memory at all of Mr Armstrong-Holmes asking me
[25] to grant him any sort of formal commitment or option

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[1] A: I cannot say whether he is lying or not. I have no
[2] recollection at all of talking to Mr Armstrong-Holmes
[3] after the Conquest research in 1992 July came back
[4] saying his concept was not good, it had researched
[5] badly, there was, therefore, no reason for us to pursue
[6] it, or debate it, or discuss it any longer.

[7] It is possible, quite possible, that Mr
[8] Armstrong-Holmes, along with the hoards of other people,
[9] kept ringing in for a whole manner of reasons. I mean,
[10] people rang us all the time, either chasing ideas they
[11] had put in, which they were trying to persuade us to
[12] use, or, in the normal course of events, as we were
[13] developing ideas and concepts and so on, it is possible.
[14] I would not possibly be able to remember everybody who
[15] called us.

[16] Q: Let me try to jog your memory a bit, if I may, because
[17] you remember him saying he asked you, "Would you like to
[18] negotiate an option on our concept?", and he reminded
[19] you that you had told him that you had an option on a
[20] long-term loyalty scheme. Is he mistaken or lying about
[21] that?

[22] A: I mean, I would not say suggest he was lying about
[23] anything particularly. I do not recall talking in 1993,
[24] I do not recall talking to Mr Armstrong-Holmes at all
[25] after the research. There was no reason for me to,

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[1] formally of any sort on his short-term gardening
[2] promotion.

[3] Q: Yes. What I am asking you is did he say to you, "Would
[4] you like to have an option on this concept?" In other
[5] words, "Would you like me to hold it for your disposal?"

[6] A: I have no recollection of him saying that at any stage.

[7] Q: You know that he says he did ask you that question, do
[8] you not?

[9] A: Well, I have seen that in his testimony.

[10] Q: You were here when he gave evidence, were you not?

[11] A: Yes.

[12] Q: So you know he has said on oath he did ask you whether
[13] you wished him to grant you an option on his idea?

[14] A: At what stage was this?

[15] Q: This was in the summer of 1993.

[16] A: Before or after the research?

[17] Q: After the research, because the research was in 1992, in
[18] July.

[19] A: Yes.

[20] Q: In the summer of 1993, he has said to his Lordship -
[21] and it is in his written statement as well - that he
[22] said to you, "Well, would you like me to grant you an
[23] option on this idea?"

[24] A: Sorry, is that a question?

[25] Q: Yes. Did that happen? Is he lying?

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[1] maybe, apart from once when I reported back we were not
[2] going to use the concept.

[3] I cannot recall ever talking to Mr
[4] Armstrong-Holmes about a long-term scheme, or about how
[5] his element of it about his gardening concept might or
[6] might not fit into it. Again, there was no reason to
[7] talk about it. So, therefore, no reason why I might have
[8] talked about any options of any sort.

[9] Q: You told him that that option had been inherited from a
[10] predecessor and that Shell no longer entered into such
[11] agreements, did you not?

[12] A: Sorry, what was that?

[13] Q: You told Mr Armstrong-Holmes that the option that you
[14] had referred to, about a long-term loyalty scheme, had
[15] been inherited from a predecessor, did you not?

[16] A: Well, I cannot have done because I did not know about
[17] any. There was no option that was inherited from any
[18] predecessor so I cannot possibly have suggested that I
[19] had an option which was on my books which was inherited
[20] from anybody.

[21] Q: Can I understand it correctly, so that the court can
[22] understand your case on this. Mr Armstrong-Holmes simply
[23] cannot be telling the truth? Had he reminded you that he
[24] had told you about an option on a long-term loyalty
[25] concept, and asked you whether you would like to have an

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[1] option on his gardening idea? He simply cannot be
[2] telling the truth, can he?
[3] **A:** He might be mistaken. What he is saying there I do not
[4] agree with. I did not know that there was any option on
[5] anything. There was no option handed over to me at any
[6] stage by any of my predecessors. I did not know about
[7] any option. There was no paperwork, no mention of any
[8] kind of option from anybody. So no way that I could have
[9] discussed it or mentioned it to Mr Armstrong-Holmes. He
[10] could have been getting confused with anything.

[11] **Q:** Let us go in. I have to ask these questions on what Mr
[12] Armstrong-Holmes has said. You told him in that
[13] conversation that you had inherited it from a
[14] predecessor; you disagreed about that for the reasons
[15] you have given, that Shell no longer entered into such
[16] agreements, but you assured him that Shell definitely
[17] had his concept earmarked for further research and asked
[18] him to be patient. Did you say that to him?

[19] **A:** The third of the comments?

[20] **Q:** Yes.

[21] **A:** As I say again, I cannot remember any conversation with
[22] Mr Armstrong-Holmes after the end of July 1992, say. It
[23] is quite possible, if he rang in, chasing, at any stage
[24] in the future that I would remember his concept and
[25] mention, as a throwaway comment, to try and get him off

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[1] position as at the letter which I hope you still have
[2] open in front of you, of 31st July 1992, at 1178?
[3] **A:** No, where is that?
[4] **Q:** 1178, volume 3, the letter we have just been discussing,
[5] the time we have reached now in the sequence of events.
[6] All these things happening at very much the same time;
[7] your contact with Mr Armstrong-Holmes, your contact with
[8] Concept Systems and Mr McMahon all happening in July?
[9] **A:** As I said, there were a lot of other things happening at
[10] the same time. This was less than 20 per cent of my time
[11] spent on this at the time.

[12] **Q:** Indeed, Mr Donovan had been in touch with you towards
[13] the end of July himself.

[14] My Lord, there are some additional matters I wish
[15] to insert at this point. It is probably better - they
[16] come from discovery, I make it plain.

[17] **MR JUSTICE LADDIE:** They will go into the E bundle.

[18] **MR COX:** They can go in the E bundle, because they are
[19] contemporaneous.

[20] Just so we can fill in a few gaps in what is
[21] happening at this period, if you could turn - we are in
[22] July 1992 - to 1167. My Lord, I think this will be
[23] 1167.

[24] **A:** It is a letter of 14th July 1992. Would you be kind
[25] enough to write, if you have a pen, Mr Lazenby, 1167 A

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[1] the line, "Oh, yes, I have your concept. If we ever use
[2] it, we will come back to you." That was the standard way
[3] of trying to handle the large number of calls that we
[4] got all the time.

[5] **Q:** Right, so you said, "If we ever use it, you will get
[6] back to him", and that was your standard approach?

[7] **A:** Yes.

[8] **Q:** If you got back to him, you would negotiate some kind of
[9] fee, I assume?

[10] **A:** Indeed, if we used his concept, we would negotiate some
[11] kind of fee. As I said before lunch, his concept was an
[12] idea. We could have done anything from just buying the
[13] idea and implementing it ourselves, or full hog in
[14] getting him to implement the whole thing for us. It was
[15] more likely the former rather than the latter approach,
[16] given Mr Armstrong-Holmes's company was a very small
[17] agency, without the kind of credibility and resources we
[18] would normally expect to deal with.

[19] **Q:** So the history of that then is, as we have seen, that
[20] you have written to the Hazel Consultancy, saying that
[21] it was an idea internally formulated. I do not want to
[22] ask you questions about that. You have already given the
[23] court your answers about it, saying that if you did it,
[24] the idea, it would be done wholly internally by Shell,
[25] with no reference to any external agencies. That is the

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[1] and 1167 B, and slip it in just before the letter to Mr
[2] McMahon on the 17th.

[3] What this is a letter to you from Don Marketing
[4] concerning adding a game to the Shell collection
[5] vouchers?

[6] **A:** Yes.

[7] **Q:** You probably remember it, it was a suggestion that on
[8] the Shell collection vouchers you might have a game on
[9] the back?

[10] **A:** Yes. The promotion we were running during the summer was
[11] an average one. It was not really succeeding extremely
[12] well in the market. In passing, I think we had discussed
[13] the possibility of giving it an improvement by putting a
[14] promotional game on the back of some or all of the
[15] vouchers.

[16] **Q:** Yes. Next letter, please, is in that bundle, is the 21st
[17] July, the follow-up with standard terms and conditions.

[18] I wonder if you could turn to 1169. No, I beg your
[19] pardon, that is already in this bundle so we do not need
[20] that one. Looking through it, your contact with Mr -

[21] **MR JUSTICE LADDIE:** Which one do we not need?

[22] **MR COX:** My Lord, we do not need the next two pages, because
[23] they are in fact already in the bundle.

[24] **MR JUSTICE LADDIE:** That is the one with the terms and
[25] conditions.

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[1] **MR COX:** Yes, my Lord, it is 21st July. On page 1169, very
 [2] much this time, Mr Donovan contacts you, does he not,
 [3] about the Mega Match proposal?
 [4] **A:** Yes.
 [5] **Q:** He is referring to the research results that we have
 [6] already looked at, in brief, from Conquest?
 [7] **A:** Yes.
 [8] **Q:** Understanding that there is imminent consideration going
 [9] to be given to those research results?
 [10] **A:** Yes, and I seem to recall Mr Donovan was on the phone a
 [11] lot at the time.
 [12] **Q:** Interested in knowing how Mega Match had fared in the -
 [13] **A:** Yes, promoting his scheme, as most of the other people
 [14] who promoted their schemes also were.
 [15] **Q:** Exactly so, and talking about the Shell, Mega Match idea
 [16] with the various participants. If we turn now to page
 [17] 1172. I do not want to take too long. 1172. Forgive me,
 [18] there is also that letter about collection vouchers and
 [19] the inclusion of standard terms and conditions. Then, on
 [20] 28th July, again further the Mega Match multi-brand
 [21] project, 1172.
 [22] Given the phone conversation with Tim Ostler at
 [23] Safeway, plainly you had discussed - would you agree
 [24] with me - the implication of this letter is, a contact
 [25] made by Mr Donovan with Tim Ostler of Safeway?

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[1] are preparing the marketing brief for Project Onyx,
 [2] correct?
 [3] **A:** Yes.
 [4] **Q:** On 4th August, you wrote to Mr Donovan at page 1202?
 [5] **A:** Yes.
 [6] **Q:** Informing him that Mega Match had not emerged, although
 [7] it had done pretty well, it was third I think you put
 [8] it. You were not going to develop Mega Match?
 [9] **A:** Yes, not at that stage. I said we were going to develop
 [10] or use the two concepts that had researched better with
 [11] consumers.
 [12] **Q:** Sorry, I did not catch that, were not or were?
 [13] **A:** We were going to use the first and second promotion that
 [14] had fared much better in the research and consumer
 [15] reaction.
 [16] **Q:** Yes, it may be a small matter, but if we go to the
 [17] Conquest research, can you help me how you derive from
 [18] this that Mega Match came third?
 [19] **A:** Where is it?
 [20] **Q:** It is just a few pages before, 1088. I am going to ask
 [21] you to be my guide, Mr Lazenby, if you would, through
 [22] this research. You are probably familiar with this kind
 [23] of document. Take us, would you, to where Mega Match
 [24] comes third in these promotional findings because it was
 [25] this you were referring to on 4th August, was it not?

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[1] **A:** Can I just read it quickly?
 [2] **Q:** Please do.
 [3] **A:** Yes, okay.
 [4] **Q:** It looks as though you were going to, at that stage.
 [5] Something had been discussed about you contacting
 [6] Safeway directly?
 [7] **A:** It looks like that, yes.
 [8] **Q:** Again, no reason to suppose that is inaccurate or not a
 [9] proper reflection of your discussions is there?
 [10] **A:** No, that is correct, that is an intent to ring Safeway
 [11] after this note.
 [12] **Q:** The next document in our pile is one of the 24th, but I
 [13] think that may already be in there. No, it is not. Could
 [14] you slip before that letter, 1172, the next document in
 [15] the loose bundle. It will be 117 A, if his Lordship
 [16] pleases.
 [17] **MR JUSTICE LADDIE:** I doubt it. I think it should be 1171 A.
 [18] **MR COX:** Your Lordship is quite right, 1171.
 [19] **A:** If you could write that on, I would be grateful.
 [20] So this all relates of course to the research on
 [21] Mega Match, does it not?
 [22] **A:** Yes.
 [23] **Q:** These bits and the imminence of it?
 [24] **A:** Yes.
 [25] **Q:** And what we know at the same time of course is that you

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[1] **A:** Yes..
 [2] **Q:** We see some graphs, do we?
 [3] **A:** Sorry, what was the question again?
 [4] **Q:** I would like you to help us, if you would, how Mega
 [5] Match comes third, where the findings are?
 [6] **A:** If you look in the conclusions. The conclusions of the
 [7] research agency are on page 1129 to 1131. That would be
 [8] their summary or their analysis of the detail that goes
 [9] beforehand. I can go into the detail if you like.
 [10] **Q:** But you said it came third in your letter; that is what
 [11] I am really getting at?
 [12] **A:** Yes.
 [13] **Q:** Can you indicate how it was you came to tell Mr Donovan
 [14] that Mega Match had come third?
 [15] **A:** Okay. In the conclusion there, clearly, Mega Match is
 [16] second after UK Travel which -
 [17] **Q:** Page?
 [18] **A:** 1130.
 [19] **Q:** Yes.
 [20] **A:** UK Travel was far and away ahead.
 [21] **Q:** Yes.
 [22] **A:** Then, in the opinion of the research company, as far as
 [23] I can remember, they thought that Mega Match and Comic
 [24] Relief were quite similar, but put Mega Match ahead. We
 [25] then would have applied some kind of rationale or logic

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[1] to that, which would, from our analysis, have put it
[2] third.

[3] Now, I can go into the detail here, if you like,
[4] but I cannot remember the rationale about it.

[5] Q: It did not come third in this research then; is that
[6] what you are trying to say?

[7] A: In our analysis, using the research as support, it was
[8] clearly third in our thinking of what we wanted to use.

[9] Q: Sorry, did it or did it not come third in the research
[10] that you referred to, to Mr Donovan, in this letter?

[11] A: In the analysis of the research agency, they ranked it
[12] after UK Travel and -

[13] Q: Second?

[14] A: Sorry?

[15] Q: Second.

[16] A: They ranked it after UK Travel, and I cannot remember
[17] the detail, without looking at all the detail in the
[18] pack, but it was somewhere after UK Travel and, from
[19] memory, it was quite close to Comic Relief. There were
[20] registered severe credibility problems.

[21] Okay, the other input to our decision as to where
[22] it came against all the other promotions we were
[23] evaluating would have been things like management; in
[24] the same way as they did not like long-term schemes at
[25] the time, they also hated the idea of games. There was a

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[1] which is what you are doing here - is not the way you
[2] use this kind of research.

[3] So there will be other data in here which
[4] indicates different results from the consumers, you
[5] know, interest is one, or appeal is one, interest is
[6] another. Likelihood of participation is another factor
[7] that we always looked at.

[8] Q: Yes.

[9] A: Right, and what my letter to Mr Donovan on 4th August is
[10] trying to communicate is that this concept is not one
[11] that we are taking forward; the reason is that because,
[12] in our analysis, in our evaluation by this stage, it is
[13] not one of the two; it is the third best concept we
[14] have.

[15] Q: I just wanted you to help me, as I said, because I said
[16] when I commenced this question that I was wondering
[17] where it emerged during the research. It transpires it
[18] does not emerge in research; it emerges in the process
[19] of analysis in the department?

[20] A: Part of which is based on what the research is saying.
[21] Without going through the research I cannot find other
[22] data which would have supported our position on this.

[23] Q: In any event, if there is anything in the research
[24] document you want to point to, have a look, but when I
[25] looked through, I have to confess, I did not see any

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[1] big management reservation about the use of games for
[2] promotions. It would have taken something that was
[3] really very strong and a very compelling argument for us
[4] to propose to that to management. For it to come second,
[5] with some significant consumer reservations, along side
[6] one or maybe two other concepts, was certainly not
[7] compelling.

[8] Q: As you know, we got our formal market research back on
[9] 22nd July, and;

[10] "Mega Match performed pretty well, faring well
[11] over all groups and surprisingly not with any avoidance
[12] by high mileage drivers." In fact it was the third most
[13] successful concept in this research.

[14] Again, it transpires, does it not, that it was
[15] second. If you look at 1097, its mean score is 3.12 with
[16] UK Travel coming in at 3.44 and Comic Relief - which is
[17] Option One's suggestion, is it not?

[18] A: UK Travel and Comic Relief were both Option One's
[19] suggestion.

[20] Q: 3.12, Mega Match, and then the others we can see across
[21] the line. I just wanted to ask you; so it is not in fact
[22] the research in which it came third; it was some process
[23] of analysis that is not documented here?

[24] A: As I say, I will have to check through the rest of the
[25] research, because taking one table as the result -

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[1] profound anxiety being expressed anywhere on any
[2] particular area on Mega Match, but, please, do look
[3] through.

[4] A: I think one of the key tables we always looked at was
[5] the table on page 1109.

[6] Q: Yes.

[7] A: Which is talking about, "If we run this promotion, will
[8] you, as a consumer, are you likely to change from what
[9] you are currently doing to participate in this
[10] promotion?", and that was one of the key questions that
[11] we always asked, because people can say, "Oh, yes, I am
[12] really interested in that. It is a great idea", but
[13] still not change their collection patterns.

[14] One of the key question was, "Will you stop what
[15] you are doing at the moment and come to us because of
[16] this?" This table here, therefore, is what we had in
[17] mind. This is really the killer table. When you have two
[18] promotions which are very close to each other otherwise,
[19] this would be the one that tends to put favour in terms
[20] of it.

[21] Frankly, the two were quite close in all the
[22] research. This one tended to work its way in favour of
[23] Comic Relief. The other elements in our minds of the
[24] promotion department, when we were doing evaluation,
[25] were things like, "Management do not like games. There

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[1] are no other partners already signed up. It is going to
 [2] be challenging to get them in place by the time." So we
 [3] did not want to put all our eggs in a basket which was
 [4] not proven, whereas Comic Relief was an option on the
 [5] table which we could sign off straight away.

[6] I wanted to say very clearly to Mr Donovan, "We
 [7] are not going to do this at this stage."

[8] **Q:** That, of course, you did say, very clearly, "We are not
 [9] going to do that at this stage." In your last paragraph
 [10] on this letter, you did say you still liked the idea,
 [11] which of course was, I imagine, correct. Page 1202,
 [12] where we were, on 4th August.

[13] **A:** Yes.

[14] **Q:** Indeed, you went on to say:

[15] "I am, in fact, speaking directly to a variety of
 [16] suitable partners."

[17] You were not talking about Mega Match there, were
 [18] you?

[19] **A:** What I was trying to do there was - I think, at this
 [20] stage, or I know at this stage, I was getting concerned
 [21] about the number of suppliers and agencies and
 [22] individuals in the market, who were running around and
 [23] quoting Shell or representing themselves as acting on
 [24] Shell's behalf, possibly as a result of my prior
 [25] approach of saying, of challenging people to prove that

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[1] few days before, to approach third parties on your
 [2] behalf, had you not?

[3] **A:** As I just said, my thinking was changing quite rapidly
 [4] on how to deal with third parties. At this stage, as I
 [5] said before lunch, I think probably, although I cannot
 [6] remember the conversation or letters, the tone of the
 [7] conversation was that Mr McMahon said he had a variety
 [8] of contacts with retailers, and I said, "Do you? Great.
 [9] Well, let us talk if you can bring them along."

[10] He interpreted that in the a way number of people
 [11] tended to, as saying, "Go out and get these people on
 [12] behalf of Shell to bring them in to talk to Shell about
 [13] it."

[14] **Q:** We have already discussed that. He probably was
 [15] affected, I suggest to you, by the fact that you were
 [16] talking about the need for proposals to go forward to
 [17] the board at the end of August.

[18] But let us come back, if we may, to the sequence
 [19] of events, because at the beginning of August - the
 [20] date may be hard to determine but could you turn to
 [21] volume 2 at page 470. This is the document prepared by
 [22] Mr Hannagan. Again, in August, the players for Project
 [23] Onyx, is it not?

[24] **A:** I am getting snowed down by paper here.

[25] **Q:** It is 470.

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[1] they had a third party partner.

[2] If they came along saying they had Boots in their
 [3] pocket, challenging them to do that. They would normally
 [4] misconstrue that, saying it is a Shell mandate to go out
 [5] and say they are speaking on behalf of Shell.

[6] What I was trying to do at this stage was to
 [7] change the focus, which very quickly in my mind changed
 [8] after this, and indeed which was the focus of, I think,
 [9] David Watson from the start, that if we did any third
 [10] party link-ups, except where there was a clear and
 [11] absolutely definite linkage, as there were in some
 [12] instances, then we would create the contact directly
 [13] with the third party, and we would negotiate it
 [14] directly.

[15] I mean, it would be far more effective and
 [16] efficient for Shell to go and talk to Sainsburys, Boots
 [17] or Marks & Spencers, rather than getting third parties
 [18] to do the same. If that third party did not already have
 [19] a really strong contact or relationship with the agency.

[20] **Q:** Yes. Anyway, does it follow from that you were not
 [21] talking to them about Mega Match?

[22] **A:** No, we were not talking to them about Mega Match.
 [23] Indeed, I do not think we were talking about anything in
 [24] particular at that stage.

[25] **Q:** Well, you had already asked of course Mr McMahon, just a

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[1] **A:** I have the page; I need a bit of space.

[2] **Q:** You, okay?

[3] **A:** Yes.

[4] **Q:** This is the document containing reference to the
 [5] players?

[6] **A:** Yes.

[7] **Q:** Which Mr Hannagan prepared, but in respect of which, as
 [8] I understand it, you were involved?

[9] **A:** Yes. Tim was responsible for the technology side. He
 [10] knew all of that stuff and, therefore, he wrote the
 [11] document but, as far as I can remember, this was about
 [12] the pros and cons of what each of the suppliers he
 [13] talked about could provide.

[14] **Q:** We will see that. It lists, does it not, 14 particular
 [15] companies with whom, over the months - some we have
 [16] seen. Let us go through them. Senior King we have
 [17] already seen. The Sheard Thomson Harris, we know that
 [18] was the Tag card. We have seen a letter relating to
 [19] that?

[20] **A:** Yes.

[21] **Q:** Communications Agency, we have seen your contact or
 [22] Shell's contact with that?

[23] **A:** Yes.

[24] **Q:** Jeff Howe Associates, we of course know who they are?

[25] **A:** Yes.

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[1] Q: The Sales Machine, there is some documentation in
[2] relation to The Sales Machine. It is as described there.
[3] Technical systems similar to Tag card, not as
[4] sophisticated.

[5] Concept Systems, obviously you know.
[6] "This is a specialist consultancy, matching client
[7] requirement for loyalty schemes to technology
[8] available."

[9] There is a relationship with Fortronic.

[10] "Concept Systems have a very good understanding of
[11] the options available and can offer a variety of
[12] packages, including consultancy and turn key. Concept
[13] Systems will manage everything, from collection of the
[14] appropriate system to database marketing."

[15] Then Dallington, McQuordales, Mids, Innovations,
[16] Blue Chip, key points and plus points. I want to put
[17] this to you and see if you can agree. Apart from Power
[18] Points, there was, in none of these 14 players, a
[19] proposal for a multi-brand concept similar to that being
[20] put forward by Mr Donovan in Concept 4 and in the
[21] Sainsburys letter, was there?

[22] A: We have not even looked at the Sainsburys letter yet.

[23] Q: We will come to that in due course. I think you have had
[24] plenty of opportunity, I am sure, to see it before, have
[25] you not?

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[1] A: I know what you are talking about now. No, you are
[2] right, I am sure that Concept Systems - basically
[3] Concept Systems was the only other one that I had any
[4] particular dealings with before this stage, apart from
[5] Senior King and Jeff Howe.

[6] As I say, I am pretty sure that Concept Systems
[7] mentioned all sorts of options for what promotion could
[8] be hung on all sorts of options of technology, and,
[9] within that conversation, they will have mentioned
[10] retailers, but I cannot remember the detail.

[11] Q: Yes. Now, there is another copy of this document which I
[12] want to take you to in file 3, because there came a
[13] point, did there not, when you added AT&T to it, as we
[14] have already discussed; is that right?

[15] A: Yes, it is.

[16] Q: I think there is a copy in the documents, which for the
[17] moment I do not have, but which, in any event, you had
[18] actually written to AT&T on presumably your discussion
[19] copy. Why did you add AT&T?

[20] A: I did add them. I added them because, in the period
[21] shortly before we had talked about this, which must have
[22] been somewhere around 4th August, I happened to have
[23] contact with individuals in AT&T, who described to me
[24] their ideas of what they were doing here. They seemed,
[25] therefore, like another player.

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[1] I had come into contact with them through Air
[2] Miles. They were involved with Air Miles. I had met, as
[3] far as I recall, the main player there. I had met her at
[4] an Air Miles meeting, and the subject had come up in
[5] conversation. Therefore, we put them on the players
[6] list.

[7] Q: Yes. So you arranged, in consequence of the listing of
[8] the 14 players, did you and Mr Hannagan arrange for each
[9] one to give - or rather you selected I think six first,
[10] did you not -

[11] A: Yes.

[12] Q: - To give presentations?

[13] A: Tim and I used this as a long list to discuss with
[14] David, and to agree between the three of us which ones
[15] we would look at in more detail, because clearly we
[16] could not take 15 concepts forward in further detailed
[17] evaluation.

[18] Q: And so at 1253, letters that have already been looked
[19] at, not with you but with an earlier witness, letters
[20] were sent by you to the various persons who had been
[21] selected?

[22] A: Yes.

[23] Q: During September and October, did those people make
[24] their presentations?

[25] A: As far as I can recall, I think we gave them three weeks

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[1] or something. It was late September and early October
[2] where we had got to, at that stage, and where Tim and
[3] David and I had agreed we had a pretty good idea of what
[4] we wanted, or certainly the basic idea. What we were not
[5] clear about was how the various suppliers could match
[6] what they had with our requirements. What we wanted
[7] them, therefore, to do was to answer a series of
[8] questions and explain exactly how their proposal would
[9] fit in with what our vision was, as far as it was
[10] developed at that stage.

[11] Q: Yes. Did you attend the presentations for each of the
[12] six?

[13] A: I did, yes, Tim and I did.

[14] Q: Having had their proposals, did you then discuss with
[15] David Watson, and I imagine Mr Hannagan, which of the
[16] six should then be selected?

[17] A: I evaluated the responses by the six agencies, along
[18] with Tim, on the basis of a list of criteria I had
[19] developed beforehand and, therefore, was looking out for
[20] when they did their presentations as we had our
[21] meetings. That evaluation or analysis, therefore,
[22] enabled us to rank the various of the six short-listed.
[23] There were two, therefore, that came out as being closer
[24] matches with what our requirements at that stage were
[25] than the other four.

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[1] Q: So two emerged as having close matches; the other four
[2] were some way off?

[3] A: The other four had done a variety of different things
[4] which ranged from not answering the brief at all, to
[5] answering and telling us again what they had, rather
[6] than telling us how their concept could satisfy our
[7] requirements.

[8] Therefore, on some of them, we did not have enough
[9] information to base our evaluation on. There was always
[10] this suspicion that some or all of them might have been
[11] okay, but that on the basis of the proposal they put
[12] forward to us - because bear in mind this was just a
[13] discussion phase - they were not the front runners.

[14] Q: Well, you had in fact selected two and rejected the
[15] other four, had you not?

[16] A: I mean, in terms of taking it forward, there were two
[17] which were clearly better than the other ones. The other
[18] four, as I said, either did not give a satisfactory
[19] response, or gave a response which did not answer the
[20] brief.

[21] Therefore, because the two which we did
[22] short-list, which were the front runners, did not also
[23] completely answer what we had asked for, there was
[24] always a chance that they would not be the people who we
[25] ultimately adopted. Therefore, the other four, if they

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[1] therefore, the ones we will focus on.

[2] Q: Have a look at 1302, would you, in the same bundle. A
[3] note from you to Mr Watson and Mr Hannagan on 28th
[4] November 1992. A report to your colleagues and, in
[5] particular, your immediate boss, Mr Watson, correct?

[6] A: I think it is probably more likely a confirmation of a
[7] discussion we all had.

[8] Q: "Extensive research was conducted on this project. In
[9] this time, exploratory meetings conducted. September
[10] 1992, it was decided it was ripe to get involved and
[11] set-up a formal feasibility study. Hence, from the total
[12] list, six suppliers selected. Given a formal brief by
[13] Hannagan and AJL [that is you] And then given the
[14] opportunity to pitch. After their pitch, two of the
[15] groups were short-listed for further development. The
[16] other four were rejected as follows", and then you deal
[17] with them.

[18] Does the word rejected mean what it says?

[19] A: I think in this context, it probably does not mean the
[20] dictionary definition of rejected, because otherwise we
[21] would not have gone back to them asking for a lot more
[22] information. We went back looking for information
[23] because they had not satisfactorily answered the brief
[24] that we had given out in the first instance.

[25] Q: Let me just recap a little. When you use language

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[1] had come back and answered the brief, and given us what
[2] we wanted, there was always a chance they could actually
[3] come back with a better proposal than one of the other
[4] ones. Many of them were very general proposals.

[5] Q: If you look in volume 3, page 1304, you had decisively
[6] rejected, had you not, operations like Concept Systems,
[7] by the time you had written to GHA and Senior King? You
[8] knew you were not going to work with them, did you not?

[9] A: No, as I have just said, with them, there was always the
[10] possibility that certainly some of them came forward.
[11] For example, I think that Concept Systems were always
[12] saying they could do anything that we wanted. The basis
[13] of their proposals was, "We could do it." They could do
[14] anything we wanted. They did not give us any detail at
[15] that stage.

[16] So, therefore, whilst they appeared to be quite
[17] credible and knowledgeable, there was no meat on which
[18] we could actually get our teeth into. Therefore, we
[19] could not ultimately say, "Yes, we will never work with
[20] them."

[21] It was at this stage, however, clearly coming
[22] forward that the two other ones were going to be the
[23] ones that were better than the other four. The first two
[24] were going to be better than the other four and,
[25] therefore, the ones likely to come through and,

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[1] habitually, Mr Lazenby, do you use it to express what
[2] you truly believe, and believe to be the fact, or do you
[3] use language in some fashion that it is not supposed to
[4] be taken at face value?

[5] You see, this is not the only example of your
[6] language not being taken at face value, is it? The
[7] letter, for example, that we have looked at just a
[8] little while ago, about internally doing it in Shell. We
[9] are to read that as simply being a way to say goodbye.
[10] This, we are not to read then in the meaning of
[11] rejected; it does not mean rejected?

[12] A: I mean, as I have said, these four people had not
[13] satisfactorily answered the brief. They were, therefore,
[14] probably not going to be worked - we probably were not
[15] going to be able to work with them because they did not
[16] have a product that we would want to use, or work, or
[17] develop, or work with them on that basis.

[18] I think in our minds they were probably out of the
[19] frame, but there was a chance that, if they answered the
[20] brief correctly, they would come through. At the same
[21] time as the two people we short-listed, neither of them
[22] had a proposal which completely matched what our
[23] requirement was, and, indeed, both of which we might not
[24] have taken forward. Basically, we were still in an
[25] investigative phase of gathering information.

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[1] Q: These were the reasons for rejection of the other four
[2] being recorded in writing, are they not?

[3] A: Yes.

[4] Q: Let us have a look at what they were.

[5] "Concept Systems, competent technology, using
[6] strong technological solution, using Fortronic hardware,
[7] Phased implementation of mag tape and SMART card. No
[8] promotional know-how. No perceived difference for
[9] customers, and no leapfrog lock-out" - that means you
[10] take a qualitative leap forward that others would find
[11] hard to follow; is that not right?

[12] A: Correct.

[13] Q: "Above all, the personnel are used-car salesmen who
[14] would have a credibility gap with Shell management."

[15] What did you mean by that?

[16] A: I think, by this stage, the people in Concept Systems
[17] were beginning to lose credibility, because they could
[18] not put forward a detailed proposal. They were able to
[19] talk until the cows came home a good line. I mean, they
[20] could talk endlessly about what could or what might be
[21] done, or what could happen, but there was nothing
[22] tangible which they could ever propose. Everything was
[23] always possible. Everything was possible. They could do
[24] everything.

[25] Therefore, their credibility was low. It was also

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[1] that the technology, the Fortronic equipment, was some
[2] of the better stuff around. I cannot remember whether we
[3] had spoken to any Fortronic personnel or not at that
[4] stage, but that was certainly Tim's opinion, and that,
[5] if we did not work with Concept Systems, we should still
[6] continue to think to bear in mind Fortronic as the
[7] technology.

[8] Q: But the possibility of using it independently", what you
[9] mean, therefore, surely, is Mr McMahon, as you said in
[10] your witness statement - we did need not go through it
[11] now, but we can if you wish to - had an alliance, an
[12] agreement, with Fortronic to represent it. What you were
[13] placing down here, or noting for your colleagues
[14] internally, was the possibility that it might be
[15] possible to use the technology without having to put up
[16] with the used-car salesmen; is that not right?

[17] A: I do not think it is quite right. I do not know, or I
[18] cannot remember, whether we knew about any formalised
[19] relationship between Fortronic and Mike McMahon. I
[20] cannot remember whether we knew that or not.

[21] Q: Would you look at page 9 of your witness statement,
[22] paragraph 17.

[23] A: Yes.

[24] Q: I think you mention it in passing at page 9 in your
[25] witness statement.

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[1] the kind of approach that they would have, my last
[2] comment there, we would not have been happy to put these
[3] people up in front of senior Shell management in a way
[4] which we would have been happy to put forward, for
[5] example, Senior King or Jeff Howe Associates.

[6] Q: So from 2nd July to 28th October, Concept Systems had
[7] hung on in the expectation that you would get a Letter
[8] of Intent or board approval for them, whilst, in the
[9] meantime, you were forming the conclusion that they were
[10] used-car salesmen, who had a credibility gap with Shell
[11] management; that is what it comes to, is it?

[12] A: In the time between whenever it was, 16th July, and this
[13] time, we were of course evaluating what they were saying
[14] to us. At the same time, from early August onwards, they
[15] knew that they were one of a variety of people whose
[16] ideas and concepts we were evaluating. So they were
[17] clear, I believe, from shortly after the 17th July. They
[18] knew things were changing. They knew things moved fast
[19] in promotions. They knew probably from that stage that
[20] it was a bit more competitive and, indeed, that they
[21] were one of a group of people we were evaluating.

[22] Q: What did you mean by "possibility of using Fortronic
[23] technology independently"?

[24] A: I cannot remember exactly, but I suspect that Tim,
[25] having looked at all the technologies, had identified

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[1] A: Yes.

[2] Q: "On 30th July, David Watson and I had a meeting with
[3] him, at which he told me he had joined forces with
[4] Fortronic, a subsidiary of De la Rue, and that Fortronic
[5] were interested in supplying the technology for a
[6] long-term loyalty card."

[7] This is significant in the context of Mr Donovan's
[8] claim that it was he who first suggested Fortronic?

[9] A: Yes.

[10] Q: So you mention it there in the context of Fortronic and
[11] its relevance to Mr Donovan's idea?

[12] A: Yes.

[13] Q: But you knew from 30th July. By 28th October, you are
[14] postulating the possibility that you could do it without
[15] him, are you not?

[16] A: I think, well, clearly we came, or I certainly came, to
[17] know of Fortronic through Concept Systems. The
[18] technology and approach was clearly one of the stronger
[19] approaches. Fortronic themselves are well-known in the
[20] petrol industry; they provide card-reader equipment to
[21] many forecourts. So credibility is high. I certainly
[22] never knew there was any kind of relationship between
[23] Fortronic and Concept Systems. Concept Systems were
[24] purely saying, "We will propose you to use this
[25] equipment."

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[1] Q: When you say "possibility of using Fortronic technology
[2] independently", it simply means we could go to the shops
[3] and buy Fortronic technology?

[4] A: Exactly.

[5] Q: Right. Let us go on with Sheard Thomson Harris. We see
[6] that. You say:

[7] "Low-tech solution. A stone-age printer. Not
[8] really more than a replacement for paper vouchers."

[9] That is your verdict on STH?

[10] A: Yes.

[11] Q: "McQuordales did not do any more than establish
[12] credentials, which might be a tolerable solution. Need a
[13] great deal of further time from Shell and its resources
[14] just to get to the same position as the other five.

[15] AT&T Istel we have looked at, have we not?

[16] "Perceived as no different to current competitor
[17] offerings, and needs some work on the tills. It will be
[18] run by AT&T and they will gain from the databasing and
[19] polling."

[20] McQuordales: "Individuals would be very difficult
[21] to work with because they are very irritating?"

[22] A: They were.

[23] Q: So those four, by jove, looking at that, they are
[24] unlikely to come back, are they not? They are pretty
[25] stern judgments. They are rejected?

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[1] idea, particularly these ones where we had actually
[2] started to put in quite a lot of creative input and
[3] marketing value from our side, what we expected to
[4] happen with some or all of them was that they would go
[5] straight to competitors with that idea, having taken the
[6] marketing input or the value we had put in from the
[7] Shell's point of view.

[8] I mean, this was a standard practice in the
[9] industry. Agencies always used to, particularly if you
[10] gave them a clear reject, immediately, almost sometimes
[11] the next day, take the idea to a competitor. On one
[12] hand, you might say, "If we have rejected it, then it
[13] was not worth it." But, on the other hand, commercially
[14] we had added quite a lot of value to them so it was in
[15] our interest to delay or forestall them from doing that
[16] kind of thing for as long as possible, if they were not
[17] already talking to competitors anyway, and that is what
[18] that note is getting at.

[19] Q: Yes, indeed. It was in your interests to make sure that
[20] they did not go straight away to another oil company and
[21] start talking about the systems they had to sell?

[22] A: If they were not already talking to other oil companies,
[23] it was certainly in our interest to delay them going for
[24] as long as possible, because, as I say, it was standard
[25] industry practice. Almost every agency we knew would be

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[1] A: I mean, in our minds we probably were not going develop
[2] very much further with them. We were giving them last
[3] chances, because they had not answered the brief
[4] sufficiently. Indeed, I think McQuordales, I think we
[5] basically said to them, "We are not interested", but the
[6] other ones, they could have all developed.

[7] Indeed, I think, as far as I can recall, Tim was
[8] particularly interested in the STH proposal.

[9] Q: What did you mean by "keep rejects holding on as long as
[10] possible"?

[11] A: This is in my file note?

[12] Q: 1304.

[13] A: Yes.

[14] Q: You had a meeting with David Watson?

[15] A: Yes.

[16] Q: And you agreed?

[17] A: Yes.

[18] Q: To keep the rejects holding on as long as possible?

[19] A: Yes. What we meant by saying that in discussion was that
[20] it was a standard practice in the industry that any
[21] agency would be touting any idea around to almost anyone
[22] who would listen to them. We saw all sorts of ideas
[23] brought to us having been through a variety of our
[24] competitors and so on.

[25] Therefore, what we expected to happen with any

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[1] doing this.

[2] Q: Why was it in your interests?

[3] A: To delay them talking to any competitor, which might
[4] have led to a competitor producing something which came
[5] out of one of these proposals.

[6] Q: So Shell could be the first?

[7] A: So that Shell could be the first with this kind of
[8] scheme, which we had basically outlined in our marketing
[9] brief to these six agencies.

[10] Q: Yes, under guise of confidentiality - a factor we need
[11] not look at it but - you had imposed confidentiality on
[12] it. So of course they could not use any Shell
[13] information but, by keeping them holding on as long as
[14] possible, they could not even legitimately sell their
[15] own systems, could they? They could not go anywhere else
[16] because they thought Shell was interested?

[17] A: We knew it was general industry practice, and indeed
[18] some of these people were already talking to
[19] competitors. For example, AT&T were desperately using
[20] press and PR in the market place to generate interest in
[21] their idea. We knew they were all talking to competitors
[22] anyway. Almost all of them quoted that they were Concept
[23] Systems, so they were on the verge of doing a deal with
[24] Texaco. So, therefore, it was in our interests to keep
[25] them thinking we were interested in their idea for as

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[1] long as possible.

[2] Q: I thought I had asked you, and put that to you, sometime
[3] ago today, when you said, as I recollect, that that had
[4] not been your reason, but we are agreed anyway that the
[5] reasons why you said to Concept Systems, are we now, and
[6] kept them hanging on, and now these other four people,
[7] is because you wished to preserve the advantage of Shell
[8] of being the first into the market place with a scheme
[9] like this?

[10] A: Of course.

[11] Q: Yes. The position is that, thereafter, you had detailed
[12] meetings - when I say you, I mean Shell and it's
[13] employees, but you, as a consequence of this decision -
[14] in which a good deal of confidential information was
[15] passed to Shell by these four rejects, did you not?

[16] A: I can remember a meeting where I met somebody from
[17] Fortronic. I cannot remember what other meetings and so
[18] on we had.

[19] Q: Can I help you?

[20] A: Yes, please.

[21] Q: First, let us have a look back at the letters that you
[22] wrote. Take, for example, the letter to Mr McMahon at
[23] 1313. They are pretty standard form ones?

[24] A: Yes.

[25] Q: You wrote to Mr McMahon saying you had seen all the

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[1] Q: Which was it; keep them hanging on so that Shell gains
[2] the advantage in the market place for being the first
[3] scheme, or because you really genuinely wanted further
[4] information? You have given both answers.

[5] A: I think both things were achieved by looking for further
[6] information from them.

[7] Q: Let us have a look at the letter and what you wanted.

[8] "However, we have done some initial analysis and
[9] identified further information that we do need", and
[10] then you ask: "Give your best estimate, with certain
[11] assumptions, for all these various questions, costings
[12] and so on. Can you specify current money for the mag
[13] stripe and the SMART card? Can you confirm comfortable
[14] timescales to launch of a pilot into full national roll
[15] out? I would much appreciate it if you could put this
[16] data together for 14th November."

[17] I have seen no document indicating that Mr McMahon
[18] had not been able to provide to you detailed information
[19] of this type as long ago as 4th June. Do you remember
[20] the letter -

[21] A: Yes, I do.

[22] Q: - With the detailed costings and assumptions. Are you
[23] saying, seriously, that Mr McMahon had not been in a
[24] position to provide this information to you?

[25] A: I cannot remember what his proposal was in response to

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[1] proposals for Project Onyx, but had not had a chance to
[2] compare them. That, of course, was not true, was it? You
[3] had compared them. You had reached your conclusions. You
[4] had established the rejections.

[5] A: I think it was partly true, because we had not been able
[6] to compare them, because many of them had not given us
[7] the data that we needed, which is then detailed further
[8] down the page. It would be true to say that it is not
[9] completely correct.

[10] Q: It is not completely correct. Since Tim is away this
[11] week, that is going to be delayed even longer. What was
[12] true was that, by the 23rd, you had established the two
[13] you were going to select, reject the four and recorded
[14] it in the note of the 28th, the day after this. Remember
[15] that is the sequence?

[16] A: I do, but, I keep saying, the other four had not given
[17] us sufficient information. Therefore, we were writing
[18] back to them to see if they could give us the correct
[19] information which would bring back their concept. I
[20] mean, in our minds we were probably not going to use
[21] them, but there was a chance that, if their probably
[22] exhortations and all of the verbiage that they were
[23] giving us was correct, in fact they could start to talk
[24] detail and specifics that we were looking for here, then
[25] their proposal could have come back.

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[1] our specific brief at 4th September. I cannot remember
[2] what his proposal was.

[3] Q: Have a look at 1320 again. Keep your finger in that
[4] page.

[5] Your criticisms of Concept Systems at 1320;
[6] "Their competent technological approach. Strong
[7] technological solution."

[8] Your criticism is no promotional know-how and that
[9] they are used-car salesmen, not that they have not
[10] provided you with information of a technological kind
[11] that you are asking for here?

[12] A: This is a summary. I cannot remember whether they gave
[13] us detailed costings in line with what we were asking
[14] for, and in line with the letter on the prior page. It
[15] is possible they gave us some of them but not all of
[16] them.

[17] Q: But if they had been deficient in this respect,
[18] seriously deficient, you would have noted it, would you
[19] not? That was not the reason.

[20] A: I may not have noted it in a bullet point note
[21] summarising a discussion I had had with two of my
[22] colleagues.

[23] Q: But you asked the same question of each of them. Turn
[24] the page.

[25] A: Yes, if it is a standard letter, you send a standard

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[1] letter back. All the introductions to send them out were
 [2] the same. Discussion with these people, as a consequence
 [3] of these letters, some of them indeed probably said, "We
 [4] have given you some of this information", and I have
 [5] said, "Yes, that is fine. We know you have given us
 [6] that, but we need a full response on all aspects of it."

[7] Q: Did they all not give the same information then, because
 [8] it appears quiet coincidentally that they did not?

[9] A: As I am saying, I prepared the standard letter, which
 [10] was the kind of information that they had not given us.

[11] Q: But you asked them all the same information; look at the
 [12] page.

[13] A: Yes. I sent a standard letter for ease of writing.

[14] Q: GHA was one you selected, was it not?

[15] A: Yes.

[16] Q: Turn the page, 1315. You asked them for the same
 [17] information?

[18] A: Yes.

[19] Q: Have a look at it?

[20] A: Yes.

[21] Q: It is rubbish what you are saying, is it not, and you
 [22] know it to be rubbish?

[23] A: What is rubbish?

[24] Q: What is rubbish is this excuse you gave of them not
 [25] having provided the relevant information, and so that

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[1] hardware costs, is so that when they send them back we
 [2] can easily, without having to interpret response, or
 [3] having to analyse it any further, just slot the numbers
 [4] that they had responded on into a grid.

[5] Now we had not done that in the first phase of the
 [6] evaluation, I suspect when we realised that we had made
 [7] a mistake in not doing that, therefore, we were going
 [8] out to get the further information. The reason why we
 [9] realised we had made a mistake in not doing that was
 [10] because we had had a variety of responses in a variety
 [11] of different formats and many of them without giving a
 [12] full response.

[13] Q: Having taken the decision for those four to keep rejects
 [14] holding on as long as possible?

[15] A: Or, if you look at it another way, of giving them a
 [16] chance to fully pitch their position, because they had
 [17] not given us a sufficient or a full response at that
 [18] stage. Keeping rejects, keeping people who we did not
 [19] think we were going to be working with, holding on, I
 [20] have just explained what we did about that.

[21] Q: Yes, you have. Thank you.

[22] A: And why.

[23] Q: So let us move on. We have had a look at those letters.
 [24] You then receive a letter. I want to focus on AT&T
 [25] first, 1325.

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[1] would be one of the reasons why you rejected them. It is
 [2] just not true, is it?

[3] A: No, it is true and it is not rubbish. Many of them had
 [4] not responded in sufficient detail to the brief that we
 [5] had sent out. Therefore, we asked for more information
 [6] from all of them in fact, some of them, in fact, I think
 [7] it was Senior King came back to us saying, "We have
 [8] given you most of this information", and that was part
 [9] of the correspondence we went through at the time.

[10] Q: What is the distinction between Mr McMahon, on 1313, on
 [11] the basis of some lack of information, which is the
 [12] distinction you are seeking to draw, and the letter to
 [13] Mr Miles of Jeff Howe Associates at 1315. You are asking
 [14] them exactly the same information, are you not?

[15] A: I am asking them for information. What tended to happen,
 [16] if you asked people for this kind of information, which
 [17] could easily be loose and misconstrued, is that they
 [18] would all answer, and probably did, as the agencies
 [19] normally did in any pitch, or any proposal, competitive
 [20] proposal, they would all answer the question in
 [21] completely different ways which would make it very
 [22] difficult to compare their responses.

[23] What is, therefore, the purpose of sending out a
 [24] letter of this sort, which is in a standard format,
 [25] looking for exactly specific items like total set-up

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[1] My Lord, there is a further letter for the bundle
 [2] which I would ask be included.

[3] MR JUSTICE LADDIE: We have not actually included all the
 [4] ones that you handed up before.

[5] MR COX: My Lord, I think they are replicas. They seem to
 [6] have been copies already in the bundle.

[7] MR JUSTICE LADDIE: Unless somebody tells me to hang on to
 [8] everything, I will throw it out.

[9] MR COX: Everything loose, my Lord. My Lord, your Lordship
 [10] may have the AT&T letters in that bundle.

[11] MR JUSTICE LADDIE: What date are they?

[12] MR COX: My Lord, 5th November 1992. The one for the
 [13] 11th is, the one for the 5th is not. I hope it is in
 [14] that bundle. It is.

[15] MR JUSTICE LADDIE: Where is that going to go?

[16] MR COX: With your Lordship's leave, it should go just
 [17] before, I suggest, 1325. So 1324F.

[18] MR JUSTICE LADDIE: And G.

[19] MR COX: And G.

[20] You received this letter from AT&T ISTEEL,
 [21] Mr Lazenby;

[22] "Thank you for your letter of 27th October ..."

[23] That is referring to one of the letters that
 [24] his Lordship and we have been looking at that you had
 [25] sent to the six people who had pitched?

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[1] A: Yes.
 [2] Q: The AT&T letter had been a letter of rejection. Or
 [3] rather, it had not rejected them, it had asked them for
 [4] further information?
 [5] A: Correct.
 [6] Q: "Thank you for your letter [says AT&T] concerning the
 [7] potential costings for Project Onyx. As you will
 [8] recall, our proposal utilises existing point of sale
 [9] hardware and I am meeting with Nick Bradshaw ..."
 [10] Who is Nick Bradshaw?
 [11] A: Nick Bradshaw was in our IT department. He was seconded
 [12] from the middle of 1992, I think, onto Project Onyx.
 [13] Q: Indeed. He had come in sometime in the summer of 1992,
 [14] had he not?
 [15] A: Yes.
 [16] Q: And Mr Bradshaw, this letter records, is going to meet
 [17] the author of this letter, Miss Julie Humphreys, the
 [18] Business Development Manager of AT&T ISTEEL;
 [19] "... to confirm our initial understanding that
 [20] your current ranges of tills and card readers could be
 [21] utilised. With regard to the potential cost areas you
 [22] mention ..."
 [23] Then there are various details mentioned about
 [24] that and further information set out in the letter.
 [25] Over the page;

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[1] not?
 [2] A: I assume so, yes.
 [3] Q: If we turn the page; 11th November 1992. Again, from
 [4] Humphreys;
 [5] "As promised I met with Nick Bradshaw yesterday to
 [6] review our Customer Loyalty proposal for using your own
 [7] point of sale hardware."
 [8] A: Yes.
 [9] Q: "Nick very kindly spent considerable time with me to
 [10] discuss in detail the various aspects of our proposal
 [11] and its fit with your Edacom, Dassault and Nixdorf kit.
 [12] "From our conversation we both believe that your
 [13] current hardware is capable of supporting our proposed
 [14] scheme. As I highlighted you will have some software
 [15] enhancements to make and we have identified these and,
 [16] where possible, estimated costs. These are obviously
 [17] beyond AT&T ISTEEL's control as they are dependent upon
 [18] your own IT function ..."
 [19] Then there is a summary of findings dealing with
 [20] the;
 [21] "... capability of the point of sale hardware to
 [22] accept a magnetic stripe loyalty card; capacity of
 [23] hardware to hold loyalty transactions; redemption of
 [24] loyalty points [at 4]."
 [25] A summary of a good deal of discussion;

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[1] "As you know, we have been developing this rather
 [2] unique scheme for some time and, at this stage, we are
 [3] anxious to protect confidentiality as discussed and feel
 [4] it necessary to ask you to sign our confidentiality
 [5] agreement. We look forward to hearing from you further
 [6] once you have talked things through."
 [7] Does your Lordship actually have that document?
 [8] It should have been photocopied. It may have been
 [9] omitted. I have a copy for your Lordship if it is -
 [10] MR JUSTICE LADDIE: Is that one you handed up?
 [11] MR COX: My Lord, it should have been. It may have been
 [12] omitted.
 [13] MR JUSTICE LADDIE: It will be H, will it?
 [14] MR COX: It will, my Lord?
 [15] A: Sorry, I do not have one.
 [16] Q: So AT&T were anxious that you should sign a
 [17] confidentiality undertaking. You received it. Do you
 [18] happen to remember what you did with it before the
 [19] meeting?
 [20] A: I cannot remember receiving it. Before what meeting?
 [21] Q: Before the meeting that Mr Bradshaw had with
 [22] Miss Humphreys?
 [23] A: I cannot remember receiving it.
 [24] Q: This document came from Shell's files. So, if it came
 [25] from Shell's files, it must have been received, must it

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[1] "I hope this level of detail will answer the
 [2] points you raise and has not been too heavy to wade
 [3] through as I am afraid Nick and I reverted to
 [4] true 'techies' yesterday as we started to discuss the
 [5] scheme.
 [6] "Please do not hesitate to contact me for further
 [7] information ... look forward to your response when you
 [8] and Tim have made your deliberations."
 [9] The other companies, particularly Concept Systems,
 [10] you also had discussions with after October 1992, did
 [11] you not?
 [12] A: Yes, I believe so.
 [13] Q: And you never, ever reconsidered, at any stage, taking
 [14] them into the Project Onyx, did you?
 [15] A: We would have reconsidered them at any stage if any
 [16] further or new information had come out of our further
 [17] investigations with them. We would not have spent a
 [18] huge amount of time, for example, with AT&T if there was
 [19] absolutely no way we were going to go forward with them
 [20] however.
 [21] Q: What you were doing was making sure that they would not
 [22] go to your competitors, were you not?
 [23] A: That was part of what we were doing, as I said earlier
 [24] on.
 [25] Q: Indeed, the two you selected, Mr Lazenby; namely,

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[1] GHA and Senior King, really never heard from you again
 [2] virtually, did they?
 [3] A: I do not think it is fair to say that. I cannot
 [4] remember; but we were talking to them all through and
 [5] I can distinctly remember talking to them in
 [6] January 1993.
 [7] Q: The first contact that Senior King had – or pretty well
 [8] the first they learned of what your true intentions
 [9] were – was when they wrote to complain that, at your
 [10] instigation, Option One had approached their
 [11] manufacturer Schlumberger and tried to cut them out, was
 [12] it not?
 [13] A: I will take your word for it. I do not know in detail.
 [14] Q: Do you remember the letter?
 [15] A: Can you point me to it?
 [16] Q: There is a chain of these letters. Let us have a look
 [17] at 26th February 1993, Volume 4, page 1640. This is
 [18] 1st of March, but it is reflective of this chain of
 [19] correspondence.
 [20] A: Sorry?
 [21] Q: 1640; letter of 1st March 1993. You were aware, were
 [22] you not, at the end of February, Senior King were
 [23] vehemently complaining to Mr Watson that, though they
 [24] had been selected apparently, and told they had been
 [25] selected. The next thing they hear is that they are

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[1] pursued them as a standard approach to any selection or
 [2] purchase. These were the best suppliers of equipment
 [3] and they were one of the people who we wanted to speak
 [4] to directly. Schlumberger were one of the biggest
 [5] suppliers of Smart Cards, as far as I remember, in
 [6] Europe.
 [7] Q: Let us just have a look at the letter briefly. It is to
 [8] Mr Watson;
 [9] "Dear David, the following confirms our
 [10] conversation regarding SPS ...", which is Schlumberger.
 [11] Is that the pronunciation, " ...", and its
 [12] relationship – sorry, "SPS" is Senior King, is it not?
 [13] A: Yes, SPS I think was another company they set up for
 [14] some reason.
 [15] Q: Sales promotion.
 [16] A: Yes, that is right.
 [17] Q: "... and its relationship with Schlumberger. Could
 [18] I ask you to call me if you don't agree with my
 [19] interpretation as to our agreement and action."
 [20] Then it is set out at 1640;
 [21] "SPS have an agreement with Schlumberger whereby
 [22] we develop together the use of Smart Cards for
 [23] promotional marketing. It enables both companies to
 [24] invest resource and develop a product. This
 [25] particularly applies to the Shell situation where the

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[1] trying to be cut out by an agency called Option One
 [2] getting in touch with their manufacturer?
 [3] A: I cannot remember in general everything that happened
 [4] between 28th October, for example, and March, when this
 [5] letter was written. This, again, I remind you, is only
 [6] still probably less than 50 per cent of my time was
 [7] spent on this. I was still implementing three or four
 [8] short-term promotions. This was done in addition to
 [9] those things and, therefore, it is not unusual that
 [10] I might not have spent very much time in November and
 [11] December on this. Because we were preparing a new
 [12] promotion which launched in early January. My focus
 [13] definitely was on that new promotion.
 [14] I cannot remember when or how we corresponded or
 [15] communicated with Senior King in November, December,
 [16] January and February 1993. I was aware that they had
 [17] come back to David, I think, regarding Option One
 [18] speaking to Schlumberger. I do not think we knew at any
 [19] stage – we knew they were talking to Schlumberger.
 [20] I do not think that we knew at any stage that
 [21] Senior King regarded Schlumberger as their supplier in
 [22] the same sense as – I certainly never knew that
 [23] Concept Systems regarded Fortronic as their supplier.
 [24] We were never made – we were never made aware of these
 [25] relationships at all by Fortronic or Schlumberger and we

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[1] development of Onyx was carried out in partnership with
 [2] Schlumberger."
 [3] Do you see that?
 [4] A: Yes.
 [5] Q: "Therefore, as a consequence, any meeting with
 [6] Schlumberger and Shell should take place with SPS."
 [7] That is why I find your answer previously rather
 [8] surprising. Because, Senior King, in its earlier
 [9] gestation of its proposals for your Onyx project, had
 [10] been in relationship with Schlumberger and developed its
 [11] technological proposals with them. Were you not aware
 [12] of that?
 [13] A: I cannot remember when Schlumberger came on the scene.
 [14] Senior King, when we first talked to them, were in a
 [15] very close relationship with Hughes Electronics.
 [16] David Watson and Tim Hannagan went to visit Hughes'
 [17] factory in Scotland in January 1992 just before
 [18] I arrived. I think all through I thought that
 [19] Senior King had this relationship with Hughes. I cannot
 [20] remember when they started to talk about Schlumberger at
 [21] all. Certainly, by January 1993, when we switched
 [22] horses, if you like, the Hughes relationship with
 [23] Senior King had fallen apart for whatever reason.
 [24] I think Hughes had decided to exit the UK market. They
 [25] were retrenching or something. So, therefore,

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[1] Senior King, who had had, as one of their main planks to
 [2] their proposal, this special relationship with Hughes
 [3] which they were developing; particular technology,
 [4] contactless(?) Smart Cards, suddenly fell apart. That
 [5] was part of the reason why, in January 1993, suddenly
 [6] the Senior King proposal also became a lot less
 [7] interesting, in my mind.

[8] Q: Have a look at the rest of the letter. There is a
 [9] report of a conversation with Option One from a
 [10] gentleman belonging to Schlumberger. In his
 [11] conversation with Option One;

[12] "Gerard has confirmed today that in his
 [13] conversation with Option One he made the above
 [14] absolutely clear [the relationship with
 [15] Schlumberger] ... In the context of the broad question
 [16] as simply being a supplier of an 'off the shelf' product
 [17] the answer was of course 'yes'."

[18] They had been asked whether he would be willing to
 [19] work with other companies other than SPS.

[20] So Schlumberger was asked, according to this -
 [21] and this is the complaint made to Mr Watson, "Would you
 [22] be willing to work with other companies other than SPS?"

[23] "In the context of that broad question the answer
 [24] was 'yes'. However, when it was confirmed by Julian at
 [25] Option One that the retailer was Shell Gerard made it

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[1] you and Andrew that the electronic solution was the
 [2] right one for Shell. As a marketing man, I still
 [3] retain sufficient objectivity to continue to make that
 [4] recommendation as I am quite convinced Shell will be the
 [5] last into the market whereas they should be leading the
 [6] market with a leading edge product."

[7] There is no doubt that, by 1st March 1993,
 [8] Senior King had been excluded, had they not?

[9] A: Yes.

[10] Q: Option One had been formally retained? Mr Leggatt had
 [11] approved it?

[12] A: No. To use words carefully, we had employed them to do
 [13] a specific project for three months. When you talk
 [14] about "retaining" an agency that normally indicates a
 [15] fee which they will do any varying amounts of work over
 [16] a long period.

[17] Q: Option One had been brought in, on the evidence of you,
 [18] Mr Watson and others, specifically for the Project Onyx
 [19] scheme, three months in the first instance. But, of
 [20] course, as we know, it went on being renewed and
 [21] renewed, did it not?

[22] A: (Witness nods).

[23] Q: And Senior King had been, by 2nd March, cut out, had it
 [24] not?

[25] A: Yes.

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[1] plain that he could not attend a meeting because of the
 [2] SPS involvement. Julian then said SPS was 'out of the
 [3] frame' as Shell did not want to work with them [SPS] any
 [4] longer and challenged Gerard to confirm that with a
 [5] direct call to Andrew Lazenby. I want to stress this
 [6] point very clearly as Gerard was pressed very firmly by
 [7] me and he was adamant that this was at sequence of
 [8] events.

[9] "We have agreed therefore that, whilst Option One
 [10] can discuss with Schlumberger the specification of the
 [11] software, Schlumberger will not be attending meetings
 [12] with Shell and are not in a position to divulge the
 [13] promotional application which has been developed
 [14] exclusively with SPS. Gerard is quite clear on this
 [15] point and is relieved the situation is now clearly
 [16] understood.

[17] "Should you wish in the future to involve
 [18] Option One once the strategic review has been completed,
 [19] then I am sure an amicable arrangement can be made
 [20] whereby SPS and Schlumberger work as part of the
 [21] development team with Shell and any agency. Our sole
 [22] interest is to successfully launch a product we strongly
 [23] believe in and think is strategically right for Shell.

[24] "Whilst on the strategic point, we carried out
 [25] this strategic review many months ago which convinced

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[1] Q: As indeed, though they never heard from you, I suggest
 [2] to you, to this effect, had GHA Powerpoints?

[3] A: They had. Both of them were - David Watson certainly
 [4] and I decided in January that neither of their
 [5] proposals, their positions, were any longer close to
 [6] what we were looking for. Therefore we decided to -
 [7] almost to start again from scratch; to use a new agency
 [8] who had very much a promotional slant. Because what we
 [9] were not getting from any of the other people was a
 [10] clear view of what the promotional - if you like, the
 [11] soft elements of the promotion were going to be. We
 [12] knew a lot about the technology. A lot of the suppliers
 [13] had brought us all sorts of technological approaches and
 [14] we had been looking at that for years - for two years
 [15] with Project Onyx. What was missing from all of it was
 [16] a promotional slant. Therefore, Option One, who we had
 [17] been working with by then for six or seven months, their
 [18] credentials and promotions were very high. They knew
 [19] very little about technology in terms of the detailed
 [20] techie stuff. They knew the kinds of things it could
 [21] do. But we appointed them on the basis they review what
 [22] we thought we were doing and take forward the
 [23] promotional answer and looking very much to
 [24] implementation, one of their strengths being their links
 [25] with third party retailers.

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[1] Q: Do you recall that Senior King were writing to you
[2] earlier on in the year, in January, saying, "Look, we
[3] want to be able to sell this idea elsewhere and we
[4] really must have a decision from you"?

[5] A: Can you help me where that is? I cannot remember.

[6] Q: I will promise to help you with that. It is in the old
[7] discovery, which I will have to dig out.

[8] A: Thank you.

[9] Q: But it was a letter - there are a number of them in
[10] fact - but there was a letter on 13th January 1993 and
[11] there was correspondence at the end of 1992. These
[12] people got frustrated, did they not? They were saying
[13] "When is Shell going to make a decision?" Do you not
[14] remember that?

[15] A: I would expect them to be continuing to contact us. The
[16] last contact that I can remember was their response to
[17] one of the standard letters that we gave out looking for
[18] detailed information, saying that they had given us most
[19] of that already. I cannot remember after that, but I do
[20] expect that they were in contact with us through that
[21] period. I cannot remember what we were doing with Onyx
[22] as a project at that stage, but, as I said, I was
[23] definitely deeply involved with preparing the
[24] Comic Relief and UK travel promotions, both of which
[25] were consuming most, if not all, of my time in putting

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[1] collateral roads, the thing can get stretched out.

[2] I will bear that very carefully in mind.

[3] Mr Lazenby, can I come back to the sequence we
[4] were following. You had just told me, in answer to my
[5] questions a moment ago, that what you were looking for
[6] and what you did not have was a "promotional slant",
[7] I think were the words you used; is that right?

[8] A: What we were looking for was the promotional - the
[9] detailed promotional spark, I guess is how you would
[10] regard it, and looking for people who we actually felt
[11] could credibly implement something of this sort.

[12] Q: Could you look at volume 3 at 1318.
[13] (3.30 pm)

[14] On 28th October 1992 you penned a note to
[15] Mr Watson about a promotional partnership with
[16] Sainsburys, did you not?

[17] A: Yes.

[18] Q: And you set out in strong terms your recommendation to
[19] Mr Watson that Sainsburys would be an ideal promotional
[20] partner and you set out the reasons why; correct?

[21] A: Yes.

[22] Q: You then set out a number of ways in which that
[23] partnership could apply. At paragraph 2, under
[24] "Project Onyx" you describe the;

[25] "... truly universal 'lifestyle' promotion, where

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[1] together contracts and developing creative and so on.

[2] Q: What they were saying to you - to put it in a
[3] nutshell - is "Look, if you are not going to come up
[4] with a decision, this is a good promotional product. We
[5] want to be able to sell this potentially around the
[6] world"?

[7] A: I cannot remember that. I will have to have a look at
[8] the documents.

[9] Q: I will show you the document tomorrow.

[10] MR JUSTICE LADDIE: Mr Cox, I am, as you know, very
[11] concerned, as all judges have to be now, about the
[12] efficient use of the court's time and the unnecessary
[13] incursion of costs, which the clients have to bear, not
[14] the lawyers, unfortunately, I have to put this very
[15] carefully; I do not wish to interrupt the way you
[16] conduct your cross-examination -

[17] MR COX: No, my Lord.

[18] MR JUSTICE LADDIE: - but, of course, you are aware you
[19] have a duty, not just to the court, but to your clients
[20] to make sure that cross-examination relates to the
[21] matters in issue. If it does not and time overruns, all
[22] sorts of consequences can follow. I do hope you are
[23] bearing in mind what are the actual issues in this case.

[24] MR COX: My Lord, I do, very much, and quite understand
[25] your Lordship's point. If one goes down too many

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[1] customers collect generic points, collected from

[2] different points, into a pool. The grocer acting as a
[3] major collecting source beside ourselves and neither of
[4] us being a key location."

[5] You then make the point; if another grocer was in
[6] Air Miles, you would tie up two of them.

[7] A: Yes.

[8] Q: At the end of that document you strongly recommended the
[9] first two routes as being the most attractive long-term
[10] and strategically useful; third and fourth discarded;
[11] fifth developed as best but limited use of a link with
[12] J Sainsburys. As a result of that, were you
[13] aware - this was a document at the same time, by the
[14] way, as the shortlist selection rationale we have looked
[15] at - that Mr Watson did indeed, two days later, write
[16] to Sainsburys?

[17] A: Yes, I am aware of that.

[18] Q: 1323. Would you agree with Mr Watson in his witness
[19] statement at paragraph 74 - you need not turn to it
[20] now. Just take it from me that this is what he
[21] says - a tie-up with a major grocer, and particularly
[22] Sainsburys, was a prize?

[23] A: Yes, that was standard understood knowledge from the
[24] market. We were talking about that all the way through
[25] from when I joined the department.

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[1] Q: The elusive Holy Grail of loyalty schemes?
 [2] A: That is a bit of marketing hype, but linkage with one of
 [3] the three major supermarkets would have fallen into that
 [4] description, yes.
 [5] Q: And an approach to Sainsburys direct, a major plum
 [6] retailer like Sainsburys, was a sensitive issue, was it
 [7] not?
 [8] A: We had a variety of contacts with them all through. We
 [9] would definitely want to control the contact. Because,
 [10] certainly at this stage, they were becoming a major
 [11] petrol player. I also know that - we also knew at the
 [12] time rather that various of our senior managers,
 [13] David Pirret, for example, or even above, the Head of
 [14] Retail, were in contact with Sainsburys socially or in
 [15] business engagements. So contact with Sainsburys was,
 [16] I would suggest, probably sensitive. We certainly did
 [17] not want to queer the pitch.
 [18] Q: It may or may not be right - I appreciate your desire
 [19] to qualify your answer - but does it come down to this;
 [20] yes, it was sensitive?
 [21] A: What do you mean when you are suggesting it is
 [22] sensitive?
 [23] Q: Relationships between two major retailers of this kind
 [24] would involve some delicate negotiation, would it not?
 [25] A: It would - in my experience, it would take a large

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[1] you like.
 [2] Q: As with most other major retailers?
 [3] A: Yes.
 [4] Q: But here we have a situation where you decided to
 [5] recommend it. You knew, as you have just agreed,
 [6] Mr Watson had written the letter. But you, at this
 [7] time, were particularly interested in getting Sainsburys
 [8] onboard and making contact with them, were you not?
 [9] A: I was no more interested at this stage than at any stage
 [10] through the year or through the promotion actually.
 [11] Q: Really?
 [12] A: Yes. I was slightly more interested maybe because they
 [13] had come up in conversation with Air Miles. But there
 [14] was no sudden massive peak of interest. They were
 [15] always interesting if we could have got them in in one
 [16] way or another. We had researched promotions linking
 [17] with Sainsburys in the middle of the year.
 [18] Q: From 28th October - possibly before - you were
 [19] particularly interested, I suggest to you, in contacting
 [20] Sainsburys, were you not?
 [21] A: I do not know why you suggest that. We were always
 [22] interested in contacting Sainsburys or talking to them.
 [23] We talked to them at a variety of different times, one
 [24] of which was at this time. I went to visit - to see
 [25] Mr Noble with David Watson at some stage. I cannot

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[1] amount of negotiation, both delicate and indelicate.
 [2] Q: You said to Mr Watson "Let's try Sainsburys" and
 [3] Mr Watson did indeed, on 30th October, write to
 [4] Sainsburys and propose, at paragraph 4, a major points
 [5] promotion: collecting points, paper or electronic, from
 [6] both Shell and Sainsburys outlets and from other
 [7] retailers, banks and so on, and redeeming them from a
 [8] mail catalogue. You are currently studying the
 [9] feasibility of this option and believe it would be a
 [10] powerful marketing tool. You were aware, were you not,
 [11] that Mr Watson had adopted your suggestion and written
 [12] that letter?
 [13] A: Sorry, I knew that he had written the letter. The
 [14] reason why I had written my, if you like, discussion
 [15] document about Sainsburys a couple of pages before here
 [16] was because probably I had mentioned this to David, he
 [17] had asked me to put down my thoughts in writing. I have
 [18] a feeling that the reason why I wrote - I mentioned it
 [19] to David in the first place was because I had been in a
 [20] meeting with Air Miles where Air Miles had suggested
 [21] that Sainsburys were either going to trial the use of
 [22] Air Miles or were very likely to join them as an actual
 [23] scheme partner. Now, that is the actual sequence of
 [24] events. But Sainsburys were on the cards all the way
 [25] through the year. So they were never off the agenda, if

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[1] remember when. It was not a particular time of high
 [2] activity at this stage.
 [3] Q: At the end of October and throughout the beginning of
 [4] November, I suggest to you, you had Sainsburys
 [5] perpetually on your mind and were trying and were in
 [6] contact with them?
 [7] A: As I say, I do not know why you suggest that. I heard
 [8] them discussed with Air Miles, probably discussed their
 [9] entry along with Air Miles. I then probably mentioned
 [10] it to David Watson; the fact that, for the first time,
 [11] Sainsburys seemed to be coming along to talk to
 [12] Air Miles. David then asked me to write a positioning
 [13] document to capture my thoughts on exactly how we might
 [14] deal with Sainsburys. David then used my thoughts to
 [15] develop a letter to David Noble at Sainsburys, in which
 [16] he suggested they should get together.
 [17] Q: And, thereafter, you were in touch, or trying to get in
 [18] touch, and were regarding Sainsburys for the next
 [19] considerable period - at least two weeks - as somebody
 [20] you had to deal with almost every day, were you not?
 [21] A: Honestly, no more - with no higher priority than at any
 [22] other stage in the year.
 [23] Q: Let us have a look at your diary, 11B, please.
 [24] (3.45 pm)
 [25] Do you remember Mr Tim Johns?

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[1] A: No, I am sorry. I do not remember the name at all.
 [2] Q: Let us have a look at 28th October.
 [3] MR JUSTICE LADDIE: Page?
 [4] MR COX: Page 5310, my Lord.
 [5] Mr Lazenby, you have told us your practice to
 [6] write in the contact section -
 [7] A: Yes.
 [8] Q: - and cross out when you have achieved contact?
 [9] A: Correct.
 [10] Q: As a general rule; is that right?
 [11] A: Yes.
 [12] Q: On 28th have you made a note "Sainsburys??" with a tick
 [13] in the left-hand for a phone call?
 [14] A: Correct.
 [15] Q: What does that mean?
 [16] A: That means I had made a note for myself to ring
 [17] Sainsburys and, because it was not crossed through,
 [18] I did not speak to them that day.
 [19] Q: But we know that that day you were writing the note we
 [20] have just looked at?
 [21] A: Actually, if you look two pages before, 5308, under
 [22] "Activity", there is a note which says "Sainsburys
 [23] note", which is crossed through, which indicates I had
 [24] written the note the day before, given it to
 [25] David Watson. It was probably, if you look at the entry

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[1] to them.
 [2] MR COX: Watch and see with me, if you would not mind, how
 [3] long it stays there. 2nd November; 5318 "Sainsburys",
 [4] ringed on this occasion. You have put a ring round it?
 [5] A: Yes.
 [6] Q: 3rd November; Sainsburys, but this time you have put a
 [7] colon with the name of a gentleman called Tim Johns?
 [8] A: Yes.
 [9] Q: That is a contact at Sainsburys, is it not?
 [10] A: It looks like that. I do not recall the gentleman at
 [11] all.
 [12] Q: Turn the page. 4th November; do you see a note four
 [13] entries down, "Tim Johns"?
 [14] A: Yes.
 [15] Q: 5th November; do you see that you have now apparently
 [16] made contact with Mr Johns. Because you have crossed
 [17] his name through, just over halfway down the contact
 [18] list?
 [19] A: Yes.
 [20] Q: Would you keep turning the pages.
 [21] A: Can I just make a small point of clarification; I have
 [22] just remembered that Comic Relief that year, which was
 [23] the promotion which I said earlier on I was working on a
 [24] lot, one of the other participating companies was also
 [25] Sainsburys.

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[1] at page 5310 again, to be discussed at a meeting I had
 [2] with David, as I had frequent ones, on promotional
 [3] strategy.
 [4] Q: So it was written on the 27th, given to him on the 28th,
 [5] talked about on the 28th and you make a note to make
 [6] contact with Sainsburys on the 28th?
 [7] A: Correct. It could have been that, in the process of
 [8] discussing it with David, he suggested I made contact
 [9] with them, or I may have thought to do that off my own
 [10] bat.
 [11] Q: Turn the page; 5312. When you put a tick in the
 [12] telephone symbol column, does that mean you have made
 [13] the call?
 [14] A: No, I have explained the tick indicates I have to make a
 [15] call. It indicates that I have actually succeeded in
 [16] making the call or discussing or whatever. If the entry
 [17] is crossed through - and you will see on that
 [18] page there about half of them maybe are crossed through.
 [19] Q: Sainsburys. Turn the page. 30th October "Sainsburys"?
 [20] A: Yes.
 [21] Q: Turn the page to 2nd November.
 [22] MR JUSTICE LADDIE: So, on 5314, you would not have phoned
 [23] them on that day either?
 [24] A: This means I probably tried to phone them but never got
 [25] through. If it stays there, it means I have not spoken

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[1] Q: Right. Fine. But turn the page to 5332; again,
 [2] "Tim Johns". Do you see that?
 [3] A: Yes, not crossed through, so not spoken to.
 [4] Q: 11th November; "Tim Johns"?
 [5] A: Not crossed through, so not spoken to.
 [6] Q: But in mind to have to talk to?
 [7] A: If I had a reason to talk to him the day before, then
 [8] that would be carried over.
 [9] Q: Exactly.
 [10] A: As I say, it could well have been in relation to
 [11] Comic Relief issues. I cannot remember why in
 [12] particular.
 [13] Q: Yes. That is why I suggest to you - and do you wish to
 [14] reconsider your answer - that, for the first, certainly
 [15] twelve days of November, you had, for one reason or
 [16] another, Sainsburys on your mind?
 [17] A: As I say, it was no peak of focus on Sainsburys.
 [18] Sainsburys were involved in Comic Relief. We were
 [19] talking to Comic Relief almost full-time at that stage.
 [20] I was actually in meetings with Comic Relief where all
 [21] the other participants, particularly Woolworth and
 [22] Sainsburys, were also involved. It is quite possible
 [23] that, because we were thinking about long-term schemes,
 [24] multiretailer schemes and so on, when I was sitting in a
 [25] meeting where these people were across the table or

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[1] whatever, it either jogged my memory to maybe think of
[2] ringing the person who is sitting there, whose name and
[3] contact telephone number I get, directly afterwards, or,
[4] indeed, talk about it over coffee or whatever. That is
[5] possible, but I cannot remember.

[6] **Q:** Do you agree that Sainsburys, for one reason or another,
[7] was on your mind in the latter part of October and the
[8] first twelve days of November?

[9] **A:** Further to what I said earlier on, it is now clear that
[10] I was trying to make a phone call or phone calls to
[11] Sainsburys and latterly to Tim Johns in that time.
[12] Indeed, I made one phone call to Tim Johns where
[13] I obviously got through. Otherwise, as with all the
[14] other telephone calls I was making, I did not get
[15] through and, therefore, the call was carried over.
[16] Therefore, I think it is not completely fair to
[17] summarise that as a massive peak of activity where
[18] Sainsburys is at the forefront of my mind in particular
[19] at that time.

[20] **Q:** I did not say it was a peak of activity, or ask you that
[21] question. It is not every day that you have a phone
[22] call to make to Sainsburys, is it?

[23] **A:** No.

[24] **Q:** If one looks at your diaries - and I have - it is
[25] extremely rare, in fact. In fact, I think this is the

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[1] **A:** Yes, and David suggested that he and they get together,
[2] and he would have included me in that.

[3] **Q:** Now -

[4] **A:** So there is no reason for us both to be chasing them.
[5] It may well be I was trying to make contact with them
[6] following up from that letter. I do not know.

[7] **Q:** You met Mr Donovan and Mr Sotherton, did you not, on
[8] 24th November 1992?

[9] **A:** Correct.

[10] **Q:** And that meeting was arranged, I suggest to you, two or
[11] three weeks before, at the beginning of November?

[12] **A:** I cannot remember when it was organised.

[13] **Q:** It would have been organised well in advance, would it
[14] not?

[15] **A:** It would have been organised in advance.

[16] **Q:** I suggest to you - do you deny it - that it was
[17] organised in the early part of November?

[18] **A:** I cannot deny or agree. I do not know. I cannot
[19] remember when it was organised. It could have been
[20] three or four weeks before, it could have been one or
[21] two weeks before. The meetings with Mr Donovan - there
[22] was no fixed time-frame for organising them.

[23] **Q:** You had a telephone conversation, did you not, in order
[24] to fix it?

[25] **A:** So far as I can remember, but I cannot remember the

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[1] only period in your diaries which indicates any contact
[2] by telephone with Sainsburys at all.

[3] **A:** Okay.

[4] **Q:** There may be another one. No doubt I shall be
[5] corrected. But we will check it. You can have a look
[6] overnight for me, if you like, and tell me whether or
[7] not there is any other period -

[8] **MR COX:** Are you saying these two weeks are the only period?
[9] Is that what you are putting to the witness, Mr Cox?

[10] **MR COX:** My Lord, I am putting it to him. I am asking him
[11] whether he can help me with this proposition; this is
[12] the only period where I can find - and I would ask you
[13] to look overnight, Mr Lazenby - contact with Sainsburys
[14] recorded in your diary?

[15] **A:** It is possible I did not speak to Sainsburys all the
[16] time; directly speak to them. Most of the time,
[17] because, when we were in touch with them, they were not
[18] interested in any activity with us. Normally it would
[19] also be fair to say David Watson had a better contact
[20] with them through David Noble.

[21] **Q:** There was something more significant, of course, at this
[22] time. Because you knew that David Watson, your boss,
[23] had just written to Sainsburys on 30th October, as a
[24] result of your recommendation, proposing a lifestyle
[25] promotion between the two partners, had they not?

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[1] actual phone call at all.

[2] **Q:** There is no document. Would it have been normal to fix
[3] one by telephone?

[4] **A:** It would not have been unusual.

[5] **Q:** No. You had a telephone conversation with Mr Donovan in
[6] the early part of November to fix that meeting. You
[7] cannot recollect?

[8] **A:** I cannot recollect it, no. It is quite possible. If
[9] Mr Donovan rang me directly and managed to get me there
[10] at my desk, that we had a discussion and organised the
[11] meeting straightaway. If it is not recorded in my diary
[12] and my telephone log, that means I did not call
[13] Mr Donovan.

[14] **Q:** Right. During the course of that conversation you asked
[15] him - I suggest to you - whether he could bring with
[16] him to the meeting of 24th November a letter that you
[17] knew him to have written two years before to Sainsburys,
[18] did you not?

[19] **A:** No, I do not - I did not know about the letter. There
[20] is no reason why I would bring up, out of the blue, such
[21] a subject. Mr Donovan rang me out of the blue, probably
[22] saying something like, "I have another couple of great
[23] ideas for you", and I probably then said "Okay, let's
[24] have a look at them. The last ones were quite good.
[25] Let's see when we can get together". There is

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[1] absolutely no reason why I should have asked for a
 [2] letter about which I knew nothing.
 [3] **Q:** It is just a coincidence, is it, that, on
 [4] 28th October, you had written a strong recommendation
 [5] to Watson and that, two days later, to your own
 [6] knowledge, he had adopted that proposal and written to
 [7] Sainsburys, and just a coincidence, as I suggest to you,
 [8] that Mr Donovan has contended throughout, as you know,
 [9] that you had the letter on 24th November? That is a
 [10] coincidence, is it?
 [11] **A:** I have explained why the Sainsburys briefing document
 [12] and letter were made by me at the end of October. It
 [13] was seizing what we perceived as a marketing
 [14] opportunity, I think. Because Sainsburys - either we
 [15] had suddenly become aware of them -
 [16] **Q:** I am not asking that question. Forgive me -
 [17] **A:** I am trying to explain why we were talking to
 [18] Sainsburys. We were talking to Sainsburys for the
 [19] reasons I have explained earlier; because we became
 [20] aware of them through Comic Relief and/or Air Miles.
 [21] I mentioned it to David, David asked me to write a
 [22] strategy document. This was all completely
 [23] correspondence between David Watson and myself. Whether
 [24] or not, in a completely unprompted telephone call which
 [25] Mr Donovan must have made to me some time prior to

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[1] the Concept Four on 4th June?
 [2] **A:** On 26th May or beforehand, yes. I mean, we have been
 [3] through all of this.
 [4] **Q:** Exactly. You have no recollection at all, is the point,
 [5] is it not?
 [6] **A:** About Concept Four and about the Sainsburys letter, no.
 [7] **Q:** No. You see, I want to understand, if I may, exactly
 [8] what you are saying about 24th November.
 [9] (4.00 pm)
 [10] Page 15 of your witness statement, paragraph 30:
 [11] "On 24th November I had a meeting with
 [12] John Donovan."
 [13] You omit any reference to Mr Sotherton. Do you
 [14] accept that Mr Sotherton was present?
 [15] **A:** I do.
 [16] **Q:** "At this meeting we discussed two new promotions that he
 [17] put forward; Hollywood Collection and Make Merry. As
 [18] usual, I made a note of this meeting. I understand from
 [19] Mr Donovan's Statement of Claim that he alleges he left
 [20] me a copy of a July 1990 letter he had written to
 [21] Sainsburys at this meeting. I have no recollection of
 [22] ever requesting, discussing or seeing that letter."
 [23] **First proposition:** is that correct? You have no
 [24] recollection of requesting, discussing or seeing that
 [25] letter?

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[1] 24th November, he mentioned a letter or mentioned
 [2] Sainsburys, I cannot remember what was discussed at that
 [3] telephone call. I had hundreds of calls every week.
 [4] But I never knew about this Sainsburys letter.
 [5] **Q:** Mr Donovan could never have known that Mr Watson had
 [6] written to Sainsburys, could he?
 [7] **A:** No.
 [8] **Q:** He could never have known that, on the 28th, you had
 [9] recommended to Watson such an approach to Sainsburys,
 [10] could he?
 [11] **A:** I do not think there is any way he could, no.
 [12] **Q:** No. But he has, as you know, asserted throughout this
 [13] entire proceeding that you asked him to bring a copy of
 [14] a Sainsburys letter to the meeting on 24th November. He
 [15] has always asserted that; you know that, do you not?
 [16] **A:** I do know that.
 [17] **Q:** You cannot recollect that conversation on the telephone?
 [18] **A:** I have no recollection of it at all.
 [19] **Q:** No. Indeed, it is right to say that you have no
 [20] recollection of the conversation on 12th May about this
 [21] multibrand loyalty concept?
 [22] **A:** No. But, as we ascertained earlier on, clearly
 [23] something was mentioned at some stage. Probably in
 [24] passing.
 [25] **Q:** No recollection of any discussion about the receipt of

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[1] **A:** Correct. I have never seen it.
 [2] **Q:** That is different from saying "I have no recollection of
 [3] it". Which is it?
 [4] **A:** If you compare the Concept Four and the Sainsburys
 [5] letter, having now poured over Concept Four for some
 [6] months in preparation for this trial, it seems to jog
 [7] memories. Nothing more than that. It seems to come
 [8] back to me that it may have been mentioned in passing.
 [9] But that is only after pouring over it in the last few
 [10] months. Nothing has jogged any memories about the
 [11] Sainsburys letter or even any discussion at all with
 [12] Mr Donovan about Sainsburys or anything.
 [13] **Q:** Forgive me, did you have the recollection, dimly
 [14] stirring, of seeing Concept Four when you made your
 [15] witness statement?
 [16] **A:** I do not think I did. It was some months ago when we
 [17] had to file these. It is only a dim recollection and,
 [18] as I say, if you look at it, it is a collection of
 [19] generic concepts or ideas.
 [20] **Q:** We will come to that. You have no recollection of
 [21] requesting or seeing the letter?
 [22] **A:** No.
 [23] **Q:** Do you say that you did not see the letter, or that you
 [24] just have no recollection of it?
 [25] **A:** I did not see the letter. I am quite sure of that.

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[1] Q: Why are you sure of that?

[2] A: I have - how can one be sure? There are two pieces of
[3] proof that I base my evidence on; I have no recollection
[4] of it. There is no note in the documents - in the
[5] notes that I made at the time of the meeting. I have no
[6] recollection of it at all.

[7] Q: There was no note of any such discussion in your note of
[8] 12th May, was there?

[9] A: No. There is, however, a letter afterwards in our files
[10] which appended to it Concept Four, which was an extract
[11] from -

[12] Q: Yes, quite. We have seen it. I am concentrating on the
[13] note. If your note is an accurate guide, then it would
[14] be equally accurate a guide for 12th May, would it not?

[15] A: If something was mentioned of significance, then I made
[16] a note of it. 12th May; I made no mention or no note
[17] about Concept Four. Because, as I keep saying, I cannot
[18] remember it being mentioned. It may have been mentioned
[19] in passing as a throwaway comment or -

[20] MR JUSTICE LADDIE: You are talking about Concept Four?

[21] A: Talking about Concept Four - as a throwaway comment or
[22] as we walked out of the door of the building or
[23] something like that, anything like that, I am sorry, if
[24] I made no note of it in either meeting, it is because,
[25] to my best knowledge, it was not discussed in any - it

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[1] Q: It does a bit, you see. Look again at your witness
[2] statement. It is possible that you may have been shown
[3] a copy of the Sainsburys letter, is it not?

[4] A: I am sure that I was not shown any letter. I have clear
[5] memory that I was not shown any letter or any document
[6] pertaining to Sainsburys in that meeting.

[7] Q: How can you be sure of that, if you cannot recollect the
[8] meeting and believe there may have been some reference?

[9] A: I can remember the meeting. I can remember the two
[10] proposals put forward; Hollywood and Make Merry.
[11] I thought they were not strong proposals. I even
[12] remember thinking about - the Make Merry, I think, part
[13] of it was talking about mince pies. There had been a
[14] very bad experience at Shell with mince pies in the
[15] past. So I can remember -

[16] Q: Let us leave mince pies aside for now, if we can. Let
[17] us concentrate on 24th November and your recollections.
[18] Because, upon the basis of your recollections, you see,
[19] two men are impugned as having defrauded and forged and
[20] lied their way through these proceeding on oath. So
[21] I want to determine, if I can, the real state of your
[22] recollection and the solidity and foundation of it.

[23] As I understand your evidence at the moment, you
[24] are conceding that there may have been some passing or
[25] marginal discussion of the multibrand loyalty concept on

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[1] was not discussed in any detail at all.

[2] MR COX: It was not the primary focus of the meeting?

[3] A: It was not discussed in any detail at all. It might
[4] have been a throwaway comment at some stage during the
[5] meeting. Or, indeed, after the meeting or as we walked
[6] out of the building, or something like that.

[7] Q: Does it follow on 24th November that the same applies?

[8] A: Yes.

[9] Q: There may well have been some reference which you did
[10] not think significant enough to note?

[11] A: There may well have been a reference to multiparty
[12] loyalty schemes. I have no recollection at all of
[13] anything like, and I have never seen the Sainsburys
[14] letter.

[15] Q: Just pause. Because we may be getting somewhere at
[16] least. A chink of light may be appearing. It could be
[17] then that there was discussion of the multibrand loyalty
[18] concept on 24th November?

[19] A: If there was discussion in the May meeting, in passing
[20] or in walking out of the building or whatever, it is
[21] possible. But this is now supposition. It is possible
[22] it also could have been discussed in the same way in an
[23] uncoordinated, unstructured, random throwaway manner in
[24] the other meeting in the same way as it might have been
[25] in the first. If that answers your question.

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[1] 24th November?

[2] A: I have no evidence to say either way about that.

[3] Q: Right. If you cannot recollect, how can you say that
[4] you were not at least shown the letter on 24th November?

[5] A: I am absolutely sure that the first time I saw the
[6] letter was when - indeed, both letters from
[7] 24th July 1990, was when they were revealed to me in the
[8] last few months. When I saw them, I was clear I had
[9] never seen them before. I had never heard the name of
[10] Mr Horley beforehand. None of these things rang any
[11] bells at all at any stage when I had been looking at
[12] them.

[13] Q: As you say in your witness statement, you have no
[14] recollection at all of any discussions with Mr Donovan?

[15] A: About multiparty retailer schemes?

[16] Q: Yes.

[17] A: Indeed, that is what I just said.

[18] MR JUSTICE LADDIE: Mr Cox, at some stage of your choice you
[19] ought to put to him what it is that Mr Donovan says in
[20] paragraph 59 of his witness statement.

[21] MR COX: My Lord, I have not left this subject. Although we
[22] may have to come back to it.

[23] MR JUSTICE LADDIE: You are putting it forward as maybe a
[24] give away line. But that is not the way Mr Donovan sees
[25] it. Carry on.

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[1] MR COX: I am seeking to establish - because things are
[2] changing, I would like to get how much the witness can
[3] recollect as he sits here and see where we stand on
[4] common ground.

[5] Mr Lazenby, you say;

[6] "I understand from Mr Donovan's Statement of Claim
[7] that he alleges he left me a copy of a July 1990 letter
[8] that he had written to Sainsburys at this meeting."

[9] There is no reason why he would have brought it
[10] along to that meeting. Do you consider that there is
[11] really no reason why you would not have asked for that
[12] letter?

[13] A: That is what I consider. I never knew about it and,
[14] indeed, if Mr Donovan rang me up out of the blue, there
[15] is no reason why, in the course of a short conversation
[16] to arrange a meeting, I would suddenly bring in the
[17] existence of some other huge subject.

[18] Q: It was not a huge subject. All you wanted to do, or may
[19] have wanted to do, I suggest to you, is check, knowing
[20] that an approach had been made to Sainsburys in 1990,
[21] how the matter had been left with Sainsburys. That
[22] would be a perfectly sensible reason, would it not?

[23] A: That is all supposition. If I had known there had been
[24] contact or whatever, then maybe it is possible that, if
[25] Mr Donovan rang out of the blue, I might have remembered

[1] on Friday, 2nd July 1999)

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[1] that on the spur of the moment, when we were talking
[2] about other things. But that is all complete
[3] supposition and hypothesis. I never knew Mr Donovan had
[4] spoken to Sainsburys. Mr Donovan was a games man, he
[5] had a variety of games and, in my mind, all the way
[6] through, all my dealings, there was never any suggestion
[7] that he had had anything to do with loyalty. I had no
[8] knowledge at all of that. We talked to him about a
[9] number of games, he had run a number of games in the
[10] past, and he had good credibility as a games supplier.

[11] Q: I suggest to you that you knew very well about this
[12] multibrand loyalty concept and you knew that he had
[13] written to Sainsburys and, because, in the immediate few
[14] days before you arranged the meeting, you knew another
[15] letter had been written to Sainsburys proposing a very
[16] similar arrangement and a similar scheme, you wanted to
[17] see exactly what had been said in the letter. Did you
[18] not?

[19] A: No.

[20] MR COX: My Lord, would that be a convenient moment?

[21] MR JUSTICE LADDIE: Yes. Any idea how long -

[22] MR COX: All day.

[23] MR JUSTICE LADDIE: All day tomorrow.

[24] (4.10 pm)

[25] (The court adjourned until 10.30 am

[1] MR ANDREW JOHN LAZENBY (continued)
[2] Cross-examination by MR COX (continued) 1

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