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1 (10.30 am)

2 THE CHAIRMAN: Good morning, ladies and gentlemen. Yes,  
3 Mr Morris.

4 MR MORRIS: Sir, and members of the tribunal. Before  
5 I start my opening, there is one matter of housekeeping  
6 that I would like to raise which follows on from the  
7 hearing on Friday.

8 SportsWorld International have agreed for the terms  
9 of the executed licensing agreement, which I think is  
10 dated August 2002, to be disclosed. I understand that  
11 everybody including you, members of the tribunal, have  
12 been provided with a copy.

13 There would be a request that the same terms apply  
14 in terms of referring to figures in open court.

15 The only other thing I would say about that  
16 agreement is that I am instructed that it may, in  
17 certain respects, more accurately reflect  
18 the arrangements that were in place in 2000 and 2001.

19 THE CHAIRMAN: Yes, thank you.

20 Opening submissions by MR MORRIS

21 MR MORRIS: Members of the tribunal, this is the hearing of  
22 the appeals on liability of JJB Sports PLC and Allsports  
23 Limited against the decision of the Office of Fair  
24 Trading made on 1st August 2003.

25 In that decision, the OFT found that ten companies,

1 including JJB and Allsports, had entered into unlawful  
2 price-fixing agreements concerning replica football kit.  
3 Those agreements infringed the chapter 1 prohibition in  
4 the Competition Act 1998. As a result of those findings  
5 of infringement, the OFT imposed financial penalties  
6 upon eight of the ten companies.

7 JJB was fined £8.373 million; Allsports was fined  
8 £1.35 million; Umbro was fined £6.641 million;  
9 Manchester United was fined £1.652 million; and  
10 Sports Soccer was fined £123,000.

11 By now the tribunal is familiar with the background  
12 of this case and with the parties' representation, and  
13 I do not propose to introduce the cast of characters in  
14 the courtroom today.

15 What I propose to do in this opening in the next  
16 hour or so is, first, to set the screen for the relevant  
17 events; secondly, to make certain general points which  
18 the OFT contend are key to the tribunal's assessment of  
19 the issues; thirdly then to turn to each of the four  
20 agreements which are in issue on these appeals and look  
21 at them briefly.

22 Sir, you will have seen that we have prepared a slim  
23 red file which contains a number of documents which  
24 I propose to refer to in the course of this opening.  
25 These documents are documents which are to be found in

1 the trial bundles, but we have drawn them together for  
2 the purpose of this morning, for ease of reference. As  
3 you can see, this is referred to as the opening bundle.

4 Before I turn to the first of my three topics, may  
5 I remind the tribunal of the following. This appeal is  
6 about unlawful price-fixing of replica kit and in  
7 the main about unlawful price-fixing of replica shirts.  
8 In this case the price fixing is both between competing  
9 retailers and between a manufacturer and retailers.  
10 This is a particularly serious form of anti-competitive  
11 conduct.

12 That price fixing took place over a period of almost  
13 18 months, from April 2000 to August 2001. Indeed, that  
14 such price-fixing did take place is not in issue of  
15 these appeals. Of the ten companies found to have  
16 participated at one time or another in the price-fixing,  
17 only two now seek to contest those findings. Most  
18 particularly, Manchester United and the FA licensed the  
19 kit licensors; Umbro, the manufacturer, and JD and  
20 Blacks, two of the main retailers, do not contest  
21 the OFT's findings, that is participation in price  
22 fixing.

23 JJB say that they did not participate; Allsports  
24 also say that they did not participate, and, of course,  
25 that is the question for these appeals. That there was

1 price-fixing in this sector relating to this product is  
2 not in doubt.

3 In the decision, the OFT found that there were seven  
4 price-fixing agreements, and this appeal concerns four  
5 of those. You will be familiar with them already but I  
6 will just enumerate them in opening.

7 The first is the England Agreement, which concerns  
8 the pricing of the England replica shirts at the time of  
9 the Euro 2000 championship. The second is  
10 the Manchester United agreement, or the MU agreement,  
11 which concerns the pricing of Manchester United home  
12 replica shirts launched on 1st August 2000. The third  
13 is what is referred to as the Continuation Agreement  
14 concerning the price of both England and MU replica  
15 shirts through to the end of August 2001. Finally  
16 we have the England Direct Agreement which concerned  
17 England replica kit sold through a company called  
18 Sportsetail that agreement being made in  
19 February 2000 and carrying on beyond the point where  
20 the Act came into force, on 1st March 2000.

21 JJB was found to have participated in all four of  
22 those agreements; Allsports was found to have  
23 participated in the first two. Both parties deny  
24 participation in any. The OFT maintains that JJB and  
25 Allsports did participate in the agreements, as has been

1 found.

2 So I turn to my first topic, which is setting  
3 the scene. What are we talking about and who is  
4 involved? First, the product.

5 What is in issue here is replica football kit.  
6 Replica kit is the shirt, shorts and socks of a football  
7 team, as worn by that team when playing competitive  
8 football, more precisely it comprises authentic  
9 reproductions of the short and long sleeved shirts,  
10 shorts and socks to which a football club or national  
11 team's logo or trademark are applied. The kit also  
12 bears the logos of the manufacturer and sponsors. As  
13 you will be aware, for each team there is, in general,  
14 a home kit, an away kit, and a third kit. There is also  
15 a distinctive kit as worn by a goalkeeper, and kit is  
16 supplied in adult, youth and junior sizes.

17 New team kit designs are introduced regularly and  
18 worn by the team in question on a regular cycle. In  
19 general, home kit design is changed every two years, and  
20 away kit design is changed annually.

21 These appeals centre upon the replica kit of two  
22 particular teams, Manchester United and the England  
23 national team.

24 I have brought before the court today, just so that  
25 we can all see what we are talking about, the shirts in

1 question. If I can perhaps hold them up, and I am sure  
2 if anybody wants to look at them, if members of the  
3 tribunal want to look at them -- I will be tugged in  
4 the back if I get this wrong, but as I understand it,  
5 this is the England home shirt 1999 (indicating), which  
6 was the England kit throughout the period up to 2001 and  
7 was the England home shirt that was worn during  
8 the Euro 2000 championship.

9 Then we have the Manchester United home kit for  
10 2000 which was launched on 1st August 2000. You will  
11 see ...

12 This is the Manchester United home kit launched on  
13 1st August 2000, I hope everybody will agree. Just by  
14 way of illustration you see there that first of all  
15 Vodafone is the sponsor, and the Manchester United and  
16 the Umbro badge, which is Umbro's trademark.  
17 The significance of this shirt is that I believe it was  
18 the first shirt where a change of sponsor was introduced  
19 for the first time. I believe the sponsor before  
20 1st August 2000 was Sharp and this shirt was the first  
21 shirt with the new sponsor, and this was  
22 Manchester United's first new sponsor for 18 years.  
23 That is all I want to say about that one.

24 Then I am told that this one is the Centenary Kit,  
25 (indicating) launched in July 2001, a special shirt made

1 to celebrate the centenary of Manchester United, and its  
2 most interesting feature, I am told, is that it is  
3 reversible. I understand that it was the first  
4 reversible shirt. So if I do that ... I produce a gold  
5 shirt. So that is the third shirt.

6 Then I have for illustration the England shirt which  
7 replaced the one I showed you first off, which is the  
8 England home shirt launched, I think, 23rd April 2001.  
9 I believe that also will be the subject of discussion  
10 during the next week or so.

11 So those are the shirts and that is what we are  
12 talking about. You will see I think, on the England  
13 shirt that all you have on the England shirts is -- as  
14 opposed to the Manchester United shirt -- is Umbro's  
15 logo and the England badge, but you do not have  
16 the sponsors on the front, as you do in the case of  
17 the club kit.

18 So those are the shirts. But in the sportswear  
19 industry generally, replica kit is described as licensed  
20 kit or as part of licensed products because it is  
21 produced by the manufacturer, in this case Umbro, under  
22 a licence from a particular football club. However,  
23 the sportswear industry generally comprises a far wider  
24 range of products: sports and leisure clothing,  
25 footwear, equipment and luggage.

1           And apart from licensed kit, these other products  
2 fall into what -- I will just give you two real heads:  
3 other licensed products, which are goods other than  
4 replica kit but which do bear the marks or logos  
5 belonging to a team. Those products might be,  
6 for example, a T-shirt with the England logo on but not  
7 team kit. And it can range all the way into casual  
8 clothes, bags, mugs and pens.

9           And then branded products, which are products sold  
10 by and bearing the trademark or the logo of  
11 the manufacturer, such as Umbro or Nike, but which do  
12 not carry any trademark or logos of any particular team.

13           The distinction between licensed products and in  
14 particular licensed replica kit and branded or  
15 non-licensed products is one we would suggest  
16 the tribunal should bear in mind throughout this  
17 hearing.

18           We would, however, add one further observation: In  
19 the sector as a whole, replica kit is regarded as  
20 a statement product; it is a very important product; it  
21 is a headline product in the industry.

22           Let me turn now to the people involved,  
23 the companies.

24           There are three distinct levels of operation as far  
25 as concerns replica kit. There is the licensor of



1 the kit; the football club or in the case of a national  
2 team, the national football association. The licensor  
3 owns the rights to reproduce the authentic strip bearing  
4 its trademark and logos and for present purposes, as you  
5 will be aware, the relevant licensors are  
6 Manchester United and the FA.

7 Then we have the sportswear manufacturers,  
8 the company licensed by the club to make and sell  
9 the replica kit of the club's team. These companies  
10 include Adidas, Nike, Reebok, and in our case, most  
11 particularly, Umbro. Here we are concerned with Umbro,  
12 because they were the manufacturers of the shirts in  
13 question.

14 Then there are the sportswear retailers selling  
15 a wide range of sports apparel, footwear and equipment.  
16 Whilst at the relevant time there were about 3500  
17 individual retail outlets in the UK, there were and are,  
18 a relatively small number of larger, national,  
19 nationwide companies with chains of stores. Most  
20 replica kit is sold through these companies,  
21 the national chains, and through the football clubs  
22 themselves. At the relevant time, the principal large  
23 chains involved in the sale of replica kit were JJB,  
24 Allsports, JD, sometimes known as JD Sports, Blacks and  
25 Sports Soccer, as it was then known. Of course,

1 Manchester United and the other clubs were also involved  
2 at this retail level as well as being at the licensor  
3 level, at the top of the chain.

4 If we take a slightly closer look at those involved,  
5 as I have indicated, the licensors are MU and the FA.  
6 Both were found to have been party to one or more of  
7 the price-fixing agreements: MU was found to be a party  
8 to the MU agreement and the FA was party to the England  
9 Direct Agreement.

10 Umbro is the manufacturer in question. At that time  
11 Umbro was the licensed manufacturer of both the MU  
12 replica kit and the England replica kit. It remains to  
13 this day the manufacturer of the England kit, but with  
14 effect from 2002, it lost its rights in relation to  
15 the Manchester United replica kit. Since then, since,  
16 I believe, 2002, the Manchester United kit has been  
17 manufactured under licence to one of Umbro's main  
18 competitors, Nike. I also believe that the red shirt  
19 that I held up earlier was the last Umbro  
20 Manchester United red shirt, and the next one thereafter  
21 launched is a Nike shirt.

22 Umbro is a company based in Cheadle in Cheshire.  
23 Its Chief Executive Officer at the time was, and  
24 remains, Mr Peter McGuigan. Its Chief Operating Officer  
25 at the relevant times was Mr Christopher Ronnie, Mr

1 Martin Prothero was a board member and responsible for  
2 marketing and international, and Mr Philipo Fellone,  
3 known as Mr Phil Fellone, was also a board member and  
4 was its UK sales director.

5 The relevant account managers for present purposes  
6 were Mr Lee Attfield for Sports Soccer, Mr Phil Bryan  
7 for JJB and Mr Anthony May for Allsports and JD.

8 Turning now to the retailers. JJB Sports is  
9 a company based in Wigan. It is the largest sportswear  
10 retailer in the country and Mr David Whelan is its  
11 chairman and was also, at relevant times to this case,  
12 Chief Executive Officer. The late Mr Duncan Sharpe was  
13 also for part of the relevant time, Chief Operating  
14 Officer. Mr Colin Russell was and remains an associate  
15 director with responsibility for replica kit.

16 Allsports is a sportswear retailer based in Bredbury  
17 near Stockport in Cheshire. At all times it has been in  
18 the top five national sports retailers and at the start  
19 of the period in question was the second largest after  
20 JJB. It has over 200 stores located mainly in  
21 High Streets.

22 Blacks is a retailer of outdoor clothing and  
23 equipment but also a retailer of sportswear and sports  
24 equipment. During the time in question its replica  
25 business was carried out by its subsidiary, known as

1 First Sport. Mr Tom Knight was the Managing Director of  
2 First Sport and Blacks retail.

3 JD Sports is a sports retailer based in Lancashire.  
4 In May 2002 it bought the sports and fashion division of  
5 Blacks, and Mr Barry Bown was Chief Operating Officer.

6 Sports Soccer, now known as Sports World is  
7 a sportswear retailer based in Dunstable. During the  
8 period in question the number of its retailer outlets  
9 grew from 60 to approximately 90. Its owner and Chief  
10 Executive is Mr Mike Ashley.

11 As you will have noticed, many of those working in  
12 the sportswear and equipment business in this country  
13 have at one time or another, worked for more than one of  
14 the main players. This is a world which is  
15 characterised by close business, and indeed, personal  
16 relationships, centred upon, not only the business, but  
17 also the sporting background to that business. It is  
18 common within the industry for people to socialise at  
19 sporting events, to meet at football matches and to play  
20 sport together. There also appears to be a good deal of  
21 movement in employment between all of those involved  
22 whether football clubs, sportswear manufacturers or  
23 retailers.

24 Put another way, there appears to be an active  
25 transfer market in the business.

1           So, for example, Mr David Patrick MD of Allsports at  
2           the time had previously worked for JD. Mr Steve  
3           Richards, who at the relevant time was at  
4           Manchester United, had previously been Managing Director  
5           of Allsports, Mr Peter Draper who was also a senior  
6           executive at Manchester United at the relevant time had  
7           previously worked for Umbro et cetera. Mr Preston  
8           worked first for Umbro and then for JJB, Mr Chris Ronnie  
9           who was at Umbro is now at Sports World.

10           Relationships go back many, many years in some cases  
11           and will continue in the future. Those individuals who  
12           have given evidence in writing and those who are coming  
13           to this tribunal to give oral evidence will, long after  
14           this appeal is over, remain involved in the sports  
15           business and will have continuing commercial  
16           relationships with other companies and continuing  
17           personal relationships with particular individuals.

18           This is something which the tribunal will, in our  
19           submission, need to bear in mind when considering  
20           the evidence placed before the tribunal. Some witnesses  
21           may be anxious not to offend people in the industry when  
22           this may affect their future working relationships.

23           Can I now turn to my second main head.

24           This head has three sub-heads. First I am going to  
25           talk about the nature of and the approach to

1 the evidence. Secondly, I am going to make a very short  
2 observation on legal principles. Thirdly I am going to  
3 make some key points about the replica kit market and  
4 the way that market operates.

5 Over the next few days the tribunal will hear oral  
6 evidence from about a dozen individuals and as the  
7 tribunal has indicated, that evidence will relate to  
8 specific events on specific dates, which are said to be  
9 central to the determination of the issues. Of course,  
10 I have in mind events between 24th May and 3rd June in  
11 relation to the England Agreement, the meeting at  
12 Mr Hughes's house on 8th June in relation to  
13 the Manchester United agreement, perhaps also one or  
14 more of the meetings in June 2001 relating to  
15 the Manchester United Centenary Kit, and a meeting in  
16 late January 2000 in relation to the England Direct  
17 Agreement.

18 JJB and Allsports place and will seek to place much  
19 reliance upon the need to determine almost to the word  
20 precisely what was said on specific occasions by  
21 specific individuals up to almost four years ago; in  
22 fact in some cases more than four years ago. There is  
23 a risk that that will turn the case into a memory case.

24 This evidence will, of course, be extremely  
25 important. However, in our submission the tribunal must

1 assess that evidence in its proper and full context.  
2 That context comprises other equally important evidence,  
3 the evidence of the surrounding circumstances, what had  
4 been going on before, and what went on afterwards, and  
5 also the contemporaneous documentary evidence.

6 I do not need to remind you, sir, of this tribunal's  
7 own observations in the Claymore Dairies case on  
8 the approach to evidence in Cartel case, nor, sir, of  
9 your experience as to the nature of price fixing  
10 agreements. The OFT does not seek to give greater  
11 emphasis to one type of evidence than another, but it  
12 does say that in seeking to establish the facts and in  
13 assessing witness evidence, it should assess  
14 the evidence bearing in mind that full context including  
15 not only documents, but also matters of undisputed fact.

16 In our submission, context is vital, and  
17 the tribunal should make its findings based not just on  
18 oral recollection now given but upon all the evidence  
19 before the tribunal.

20 As far as documents are concerned, in the present  
21 case and perhaps rather unusually there is a substantial  
22 evidence of contemporaneous evidence: we have Umbro's  
23 monthly management reports, we have individual file  
24 notes, both internal and recording meetings, we have  
25 letters and faxes between the parties, and we have

1 contemporaneous internal memoranda. All these provide  
2 important contemporaneous evidence which is not only  
3 itself directly relevant to particular facts but also  
4 sets the background and context for what witnesses are  
5 now saying.

6 We also have contemporaneous diary records. As  
7 you will be aware, Mr Hughes has made available his  
8 diary for 2000, and in addition to the entries which he  
9 himself refers to in his witness statement, there are  
10 now additional entries and one in particular to which  
11 I will be referring shortly, which again may provide  
12 further direct relevant contemporaneous evidence.

13 We now also have Mr Ronnie's diaries for the whole  
14 of the year 2000 and 2001. These were found a couple of  
15 weeks ago by Mr Ronnie at his mother's house.

16 In an effort to complete the picture, the OFT did  
17 ask JJB whether the diaries of Mr Whelan and Mr Sharpe  
18 for those years might also be proffered to the tribunal.  
19 However, we have been told that Mr Whelan and Mr Sharpe  
20 did not keep diaries.

21 Can I turn to the second of my sub-topics -- I think  
22 we are still in subheading 2, "relevant legal  
23 principles".

24 THE CHAIRMAN: Mr Morris, I do not think that we, the  
25 tribunal, have Mr Ronnie's diaries. If we do, I am not



1           sure that our attention has been specifically drawn to  
2           them.

3   MR MORRIS: I think you do: bundle E4. Which contains  
4           Mr Ronnie's diaries and also relevant extracts of  
5           Mr Hughes's diaries, so it is a wholly diary  
6           bundle which should have been provided over the weekend.

7   THE CHAIRMAN: So something that has arrived over  
8           the weekend?

9   MR MORRIS: This morning I am informed.

10   THE CHAIRMAN: It is not a bundle we have had a chance to  
11           look at yet.

12   MR MORRIS: I apologise.

13           Can I turn to the relevant legal principles.

14           I do not propose to address the tribunal on the law  
15           in this opening. You will have seen the OFT's principal  
16           propositions of law in its defences and reference to  
17           other relevant principles in the decision, and further  
18           submissions will be made as necessary in the course of  
19           closing. At this stage I confine myself to one  
20           observation.

21           It is our submission that the central notion  
22           inherent in the concept of a concerted practice, or  
23           indeed if you analyse it a bit further, probably also in  
24           an agreement, is that of the elimination or  
25           the reduction of uncertainty. The essence of

1 price-fixing is that as a result of cooperation or  
2 contact between competitors there has been  
3 an elimination or a reduction in uncertainty on the part  
4 of one or more of them as to the pricing intentions of  
5 one or more of the others.

6 The concept of elimination or reduction of  
7 uncertainty has been central to the jurisprudence of  
8 the European Court right from Dyestuffs in 1972, all  
9 the way through to, most recently, Cemonterie,  
10 the cement case in 2000.

11 In the present case, the OFT contends that, at  
12 the very least in each case, as a result of the facts  
13 and events, there was a relevant reduction in  
14 uncertainty. There is clear evidence of contact between  
15 the parties. The question then goes to the reduction of  
16 uncertainty and we say that that is established.

17 So, for example, before the 8th June meeting at  
18 Mr Hughes's house and assuming no agreement had been  
19 made before that date, each attendant at that meeting  
20 could not be certain as to the price at which each of  
21 the others would sell the new Manchester United home  
22 shirt at its launch on 1st August 2000.

23 When each attendant emerged from that meeting on  
24 8th June, that uncertainty had been reduced.

25 Similarly, in relation to the England Agreement,

1       once each retailer had received the news from Umbro that  
2       Sports Soccer had agreed not to discount the England  
3       replica shirt for the duration of England's  
4       participation in Euro 2000 their pre-existing  
5       uncertainty as to Sports Soccer's pricing intentions had  
6       been reduced if not eliminated.

7             That is all I propose to say about the law at this  
8       stage.

9       THE CHAIRMAN:   Yes.

10      MR MORRIS:   I now make a number of points on the replica kit  
11      business in the market, the nature of the market.  
12      First, sales of replica kit are extremely sensitive to  
13      price.  If one retailer cuts his price this will be  
14      readily and quickly apparent both to members of  
15      the public and to competitors.  Such a reduction in  
16      price is likely to lead to a substantial increase in  
17      sales volumes.

18             Secondly, sales of replica kit are concentrated very  
19      substantially in key selling periods in a year.  For a  
20      club kit a new home replica kit is usually launched in  
21      August, in time for the commencement of the new club  
22      football season.  In the case of the England national  
23      team kit, the position is slightly different, that is  
24      generally launched in April, at around St George's Day.

25             As for club kits, the vast majority of sales take

1 place in the period immediately following a launch, in  
2 the case of a home kit, that means the period from  
3 August to Christmas.

4 The national kit: another key selling period is  
5 the period in the lead-up to and participation in  
6 an international tournament in which the national team  
7 is taking part and which, with a bit of luck in  
8 England's case, means every two years when the European  
9 Championships or the World Cup take place.

10 Not only are there key selling periods for replica  
11 kit, but some replica kit is more commercially  
12 significant than others. Manchester United, the most  
13 renowned club, and in recent years the most successful  
14 club in the United Kingdom, is one such kit and  
15 the England national team is another. They are two of  
16 the most important, if not the most important, replica  
17 kits on the market. At the relevant time they were  
18 the two highest selling replica kits in  
19 the United Kingdom.

20 From the point of view of those involved in replica  
21 kit, be they licensor, manufacturer or retailer,  
22 the launch of a new Manchester United kit, particularly  
23 the famous red home kit, and the launch of an England  
24 kit or the participation of England in an international  
25 tournament represent the most significant commercial

1 opportunities.

2 The second point I wish to make under this head is  
3 one which goes to the timeframe we are talking about.

4 This case concerns directly events between  
5 April 2000 and August 2001. It is worth placing those  
6 events in their historic context.

7 The investigation which led to the decision was not  
8 the first time that price-fixing in the replica kit  
9 market had been in issue. Well before this period and  
10 under the previous legislation, the Office of Fair  
11 Trading had investigated the issue of resale price  
12 maintenance in respect of replica football kit. The OFT  
13 found evidence that football clubs were encouraging  
14 manufacturers to take steps to maintain retail prices of  
15 the retailers.

16 I should add as an aside that we would suggest that  
17 the document we were looking at on Friday evening, the  
18 Blackburn Rovers document, it is very likely that that  
19 document which was a document dated in 1998 was a  
20 document which effectively was dealing with that very  
21 same issue, namely resale price maintenance as between  
22 the clubs and the manufacturers and which was  
23 the subject of the earlier investigation.

24 As a result of the earlier investigation, in  
25 August 1999, almost four years to the day before

1 the decision in the present case, the FA and the FA  
2 Premier League clubs gave non-statutory assurances to  
3 the Office of Fair Trading that they would seek to  
4 prevent such resale price maintenance. As a result,  
5 Manchester United wrote to Umbro asking Umbro to write  
6 to its dealers to make clear that retailers were free to  
7 determine their own prices, and indeed Umbro did write  
8 in those terms to its dealers.

9 I would like to make now some observations about  
10 the people involved in the market. I have already given  
11 you some background about the companies; I now propose  
12 to make a few observations about the actual role of each  
13 of the companies in the replica kit market.

14 First as regards Manchester United.  
15 Manchester United wished to ensure that the retail price  
16 of its replica kit was maintained and it put pressure on  
17 Umbro to take steps to this end. These are undisputed  
18 findings made by the OFT.

19 As to Umbro, Umbro is a sportswear manufacturer, it  
20 was and is relatively small compared with its main  
21 competitors such as Adidas and Nike. It was, however,  
22 in a strong position in the sub-sector of replica kit  
23 given its licence for the two major products. However,  
24 at the time it considered that its business was  
25 over-dependent on replica kit and it wanted to expand

1 and compete more effectively in branded products.

2 As far as replica kit was concerned, it had  
3 an interest in maintaining its own wholesale prices to  
4 cover the ever-increasing licence fees demanded by the  
5 football clubs, and Umbro's attitude to retail pricing  
6 at the time was that it wished retailers to keep replica  
7 kit prices up, either to their own RRP or at least to  
8 what had become known as High Street prices.

9 You will recall, sir, that in the decision there is  
10 a distinction made between RRP which for much of the  
11 period was £42.99, and the High Street price which had  
12 become recognised as £39.99. When I talk about  
13 the figures, you will also be well familiar that I am  
14 talking about the price of an adult short-sleeved shirt.

15 JJB was the largest retailer with by far the largest  
16 volume of sales of replica kit. Historically it had  
17 consistently run across the board discount schemes in  
18 its stores right up to the period in question. And it  
19 regularly offered discounts which applied to replica  
20 kit, either nationally, locally or in response to  
21 particular competitors, mainly Sports Soccer.

22 In this appeal and indeed in the investigation JJB  
23 relied upon a publicly stated policy of pricing  
24 short-sleeved shirts at no more than £39.99. The OFT's  
25 position on this is that prior to the period in question

1           there was no certainty as to JJB's price at launch, and  
2           JJB did not necessarily price at £39.99, either at  
3           launch or during key selling periods.

4           Allsports had a different approach: it aimed its  
5           products and service at the more aspirational end of  
6           the market and was opposed to discounting generally and  
7           on replica kit. At the time, it was the official  
8           retailer of, and had a close relationship with  
9           Manchester United.

10           As to JD and Blacks, in 1999 they were the third and  
11           fourth largest sports retailers, but by 2000 they had  
12           overtaken Allsports in terms of turnover.

13   THE CHAIRMAN: You mean they had both overtaken Allsports?

14   MR MORRIS: Yes, they had both overtaken.

15           Then there is Sports Soccer. It entered the market  
16           in 1999 with a business strategy of heavy discounting  
17           not only of replica kit, but of all products.

18           Sports Soccer has been and remains a committed  
19           discounter, and it has been very successful in that  
20           strategy. By 2001 it had become the second largest  
21           national sportswear retailer.

22           Sports Soccer was the complainant in this case. It  
23           went to the OFT to complain that it was being forced not  
24           to discount.

25           It did not apply for leniency. Mr Ashley went to



1 the OFT not with the benefit of lawyers' advice but by  
2 way of a direct approach. He was aware from the outset  
3 and acknowledged that his company stood to be fined.

4 In considering all the evidence in this case, the  
5 tribunal may wish to ask itself a number of questions  
6 about Sports Soccer. Why should Sports Soccer,  
7 a committed discounter, enter into a price-fixing  
8 agreement? Then why, having done that, would  
9 Sports Soccer blow the whistle on price-fixing  
10 agreements to which it was a party? Why would  
11 Sports Soccer seek to implicate other retailers in that  
12 price-fixing if it were not true?

13 The OFT submits that the only reason for  
14 Sports Soccer's actions in going to the OFT was to free  
15 itself of the very real price-fixing pressure being  
16 placed on it by Umbro and other retailers.

17 I turn now to the relationship between Umbro and  
18 Sports Soccer.

19 Before I make a number of short points, I make two  
20 points about the licensing agreement and arrangements  
21 with which we have been concerned both on -- mainly on  
22 Friday.

23 This is the first of two points about the licensing  
24 agreement. First, the licensing agreement or  
25 arrangements did not apply to replica kit; they applied

1 to what are known as sourced products, and source  
2 products were branded and not licensed replica kit.

3 Secondly, the divide by 2.5 formula, which as  
4 you will recall was a divide by 2.5 of Sports Soccer's  
5 selling price, did not apply to replica kit although  
6 Sports Soccer was from time to time trying to get those  
7 terms from Umbro.

8 That is all I wish to say about the licensing  
9 agreement. I would now like to make a number of points  
10 about the relationship more generally.

11 First, it is not in issue in this case, and the OFT  
12 has positively and clearly found that Umbro and  
13 Sports Soccer did enter into price-fixing agreements  
14 relating to England, MU and indeed other  
15 Umbro-manufactured licensed replica kit. Those  
16 agreements covered the entire period from April 2000 to  
17 August 2001.

18 Secondly, in general Sports Soccer wanted to  
19 discount replica kit and Umbro did not want replica kit  
20 to be discounted.

21 Thirdly, one way or another, Umbro managed to  
22 persuade Sports Soccer to agree to raise its prices at  
23 key selling periods. Not only that, but at key times  
24 Sports Soccer actually did raise its prices or at least  
25 desist from its practice of discounting.

1           Fourthly, as far as replica kit was concerned, JJB  
2           was a far larger customer for Umbro than was  
3           Sports Soccer, moreover Allsports was as large, if not  
4           larger, than Sports Soccer, that is in relation to  
5           replica kit.

6           The question remains whether Umbro managed to  
7           persuade Sports Soccer, because it in turn perceived  
8           commercial pressure from JJB and Allsports for them to  
9           do this. The OFT's case is that it did, and that this  
10          was a cause of the agreement between Umbro and  
11          Sports Soccer.

12          The recent submissions made by Allsports and JJB on  
13          the relationship, in our submission, show a confusion on  
14          this point. On the one hand it is said that all  
15          the power is with Sports Soccer; on the other hand it is  
16          said that Umbro was able, of its own motion, to put  
17          pressure on Sports Soccer themselves.

18          I have one final undisputed fact to raise before  
19          I turn to the agreements. In the period in question,  
20          pricing of replica kit at launch and during key selling  
21          periods was practically uniform across all retailers.  
22          Before the period in question, the pricing was not so  
23          uniform.

24          Can I now turn to the four agreements, sir.  
25          The ground is well covered in the decision and in

1 the OFT's defences and in its opening skeleton. Here  
2 what I propose to do is to run through it at something  
3 of a canter, taking you to the documents in the red file  
4 just so that we can see the actual documents rather than  
5 read them as we have all read bits in various other  
6 places. So I turn first to the England Agreement.

7 Can I also add that you will find at the beginning  
8 of the opening bundle, before tab 1, a chronology that  
9 we have prepared, which you may find useful to have open  
10 as I go through this.

11 THE CHAIRMAN: Yes.

12 MR MORRIS: This chronology is essentially the chronology  
13 which is at the back of the decision; it has been broken  
14 down into the four agreements, and it has had one or two  
15 things added in to bring us up to date in the light of  
16 certain evidence. Its intention is to be as neutral as  
17 possible, and it is not intended to make estimates of  
18 one party's side or the other. To the extent that  
19 we have done, I apologise. Its intention is to be  
20 a guide as to where we are going with the chronology.

21 The England Agreement concerned the pricing of  
22 the England replica kit shirts in the lead-up to and  
23 during England's participation in the Euro 2000  
24 tournament. The OFT's case is that JJB, Allsports, JD  
25 and Blacks, as well as Umbro and Sports Soccer, were

1 party to an agreement or a concerted practice to fix  
2 the prices of England shirts during that period.

3 In 1999 Sports Soccer had consistently been  
4 discounting replica kit. There was a history of  
5 complaints about Sports Soccer's pricing from both JJB  
6 and Allsports. At the time of the very launch of  
7 the England shirt in question -- which was the first one  
8 I showed you -- in April 1999, Allsports expressed its  
9 concern about the price of England kit.

10 If I may ask you to go to the red bundle, tab 1,  
11 page 1, you will see there a letter from Mr Michael  
12 Guest of Allsports to Mr Gourlay of Umbro dated  
13 20th April, headed "Re: England Contract". It reads:

14 "Further to several meetings regarding the pricing  
15 of replica kits in general ..."

16 THE CHAIRMAN: I think we have read it, Mr Morris.

17 MR MORRIS: I am grateful. The particular paragraphs are 1  
18 and 3 and paragraph 6 over the page, but in particular  
19 paragraphs 1 and 3 that I would refer you to, sir.

20 THE CHAIRMAN: Yes.

21 MR MORRIS: I am grateful, sir.

22 Despite protestations, in fact Sports Soccer did  
23 sell the England shirt at a discount in April 1999. At  
24 that time, the RRP was, I believe, £49.99 and initially  
25 Sports Soccer went out at £40. This is in April 1999.

1 Then there were further reductions in September 1999 to  
2 £28 and then it went back up to £32 on 4th April 2000.  
3 Others also were selling the England shirt at a discount  
4 in that period.

5 Euro 2000 was going to be a key selling period for  
6 this replica kit, and in April 2000 following  
7 complaints, in particular by JJB at a meeting, Umbro  
8 managed to get Sports Soccer to agree to raise the price  
9 of the England kit to £39.99 for adult short-sleeved.

10 If you go to page 22 of the bundle, you will see  
11 there the Umbro monthly management report for April,  
12 with a report from Mr Fellone. The paragraphs to which  
13 I would draw your particular attention are the second  
14 paragraph, which refers to discounting, and the fact  
15 that JJB are not currently discounting, and then  
16 the fourth paragraph, where there is an indication that  
17 Sports Soccer have agreed to sell all new Umbro licensed  
18 kit at £40.

19 However, Sports Soccer did not stick to that  
20 agreement made in April and did not increase its prices  
21 for the England shirt to £39.99. On 24th May there was  
22 a further meeting between Umbro and Sports Soccer at  
23 which Sports Soccer agreed to sell the England home and  
24 away shirt at £39.99. That is to be found at pages 3  
25 and 5 of the documents.

1           Page 3 is a list of discussion points for  
2           the meeting of 24th May 2000, and at item 2 you will  
3           see:

4           "England and licensed retail price until after  
5           the England Germany game."

6           And there is a tick by the side of it. I believe  
7           the England Germany game was on 17th June, but I may be  
8           wrong.

9           And then if you go two pages along you will see this  
10          is an attendance note of a meeting on 24th May at  
11          Dunstable. In the middle of page 5 you will see  
12          the page beginning:

13          "Sports Soccer agreed to increase the price of  
14          England..."

15          I will not read it to you, sir, but it is those  
16          seven lines in the middle of page 5.

17          Umbro then decided to ring the other retailers to  
18          tell them of Sports Soccer's agreement. Mr Phil Fellone  
19          rang JD, Blacks, Debenhams and John Lewis. If you go to  
20          page 7 you will see on 2nd June a fax from Mr Fellone to  
21          Mr Ryman of Debenhams. You will see there on page 7:

22          "Further to our conversation yesterday regarding our  
23          licensed kits, the other retailers mentioned including  
24          John Lewis have agreed to the request which will take  
25          effect from the opening of business on Saturday

1 3rd June."

2 Mr Ronnie rang JJB and Allsports at some time  
3 between 29th May and 2nd June.

4 At that time JD had a cap promotion on the England  
5 shirt and at that time not only were JD selling at lower  
6 than 39.99 but they were also giving away a free Admiral  
7 cap. Blacks were also selling at 36.99 in  
8 the south-east. Allsports expressed concern about these  
9 matters to Umbro and in particular on 2nd June Mr Hughes  
10 met Mr Ronnie and at that meeting Mr Hughes expressed  
11 his concerns about the JD promotion on the England shirt  
12 both to Mr Ronnie and to Mr Knight during the course of  
13 a telephone conversation that took place in that meeting  
14 with Mr Ronnie, Mr Knight being of Blacks.

15 Complaints then came in from the retailers to Umbro  
16 that Sports Soccer still had not raised its prices, this  
17 is before 2nd June, and in fact at the same time  
18 Mr Knight rang Mr Ashley directly.

19 On the night of the 2nd and 3rd June Sports Soccer  
20 did raise its prices. I think the 2nd June was a Friday  
21 and overnight Sports Soccer did raise its price of  
22 the England shirt to 39.99 and everybody else from  
23 either the 2nd or the 3rd aligned and maintained those  
24 prices until England's exit from the tournament when  
25 they lost to Romania on June 20th.



1 Over the weekend of the 2nd and 3rd June Mr Hughes  
2 made an entry in his diary for 5th June. If you would  
3 go to pages 79 and 80 of this bundle you will see at  
4 page 79 the actual diary extract for that for 5th June.  
5 I think it is common ground that that entry will have  
6 been made over the weekend.

7 Over the page at page 80 is Allsports' transcription  
8 of that diary entry. You will see near the bottom two  
9 entries:

10 "Agree Manchester United and England prices with  
11 everyone, including Mike Ashley and the Sports Trade  
12 Cartel arrange a meeting regularly."

13 And you will see the reference there to England  
14 prices as well as to Manchester United prices.

15 Finally in relation to England, sir, Mr Ronnie  
16 recorded events in the main monthly management report.  
17 If you will turn to pages 35 and 37 of the bundle -- 35  
18 is the beginning of the monthly management report for  
19 May 2000. At page 37 you will see Mr Ronnie's report.

20 Perhaps, sir, you would like to read the first six  
21 paragraphs of that document. (Pause).

22 THE CHAIRMAN: Yes.

23 MR MORRIS: I am grateful. In summary, JJB and Allsports  
24 complained to Umbro about Sports Soccer's discounting.  
25 Umbro obtained Sports Soccer's agreement to raise

1 the price of the England shirt. Umbro then told JJB and  
2 Allsports that it had obtained Sports Soccer's agreement  
3 and warned them not themselves to discount.

4 Further, we say, even if you are not satisfied that  
5 Umbro reported back to JJB and Allsports the fact of  
6 Sports Soccer's agreement, we submit that JJB and  
7 Allsports' conduct both before and at this time is  
8 sufficient to render each of them a party to  
9 the agreement by all that the England shirt would be  
10 priced at 39.99 during Euro 2000.

11 Can I turn to the Manchester United agreement?

12 THE CHAIRMAN: Yes.

13 MR MORRIS: The OFT's case here is that JJB, Allsports and  
14 Blacks, as well as Sports Soccer and Umbro, agreed to  
15 coordinate their pricing on the new MU home replica  
16 shirt that was launched on 1st August.

17 Can I take you to the central documents here and  
18 a quick canter through the chronology.

19 On 25th May there was a meeting between Mr Hughes  
20 and Mr Richards of Manchester United at which  
21 the Manchester United kit was discussed. On that same  
22 day, in the evening, there was the Allsports golf day  
23 dinner at which Mr Hughes addressed the brand  
24 representatives of Adidas, Nike, Umbro sitting round  
25 the table about his concerns about their treatment of

1 Allsports and in particular about Sports Soccer's  
2 discounting, in particular of the Predator boot.

3 At that dinner or shortly after that dinner  
4 Mr Hughes decided to set up a meeting with Mr Ashley and  
5 Mr Whelan.

6 On 30th May Mr Hughes took steps to set up that  
7 meeting with Mr Whelan and Mr Ashley, and he makes  
8 a note to himself to get Mr Ashley's telephone number  
9 from Mr Ronnie.

10 If you go to pages 73-74 of the bundle, you will see  
11 a diary entry, and again transcribed on page 74:

12 "Phone Dave Whelan, Mike Ashley. Manchester United  
13 shirt price. Get number from Chris Ronnie."

14 If you look at the way it is written on the previous  
15 page the "get number from Chris Ronnie" is in fact  
16 positioned underneath Mike Ashley. I only point that  
17 out because the transcription does not quite record that  
18 fact.

19 On 2nd June, which is the Friday, Mr Hughes meets  
20 with Mr Ronnie and Mr Ashley for the purpose of getting  
21 Mr Ashley's phone number and he also seeks to get hold  
22 of a physical sample of the red shirt, the one I showed  
23 you.

24 Over the weekend, as we have already seen, Mr Hughes  
25 makes an entry in his diary for 5th June to set up

1 the meeting. That is at 79 and 80 and I have already  
2 taken you to that entry in relation to the England  
3 agreement.

4 On 6th June, pages 81 and 82, we have a further  
5 diary entry:

6 "Phone and visit Dave Whelan with  
7 the Manchester United shirt."

8 Over the page on 7th June --

9 THE CHAIRMAN: Just a moment.

10 MR MORRIS: I am sorry, I was going too fast. I was at 82,  
11 6th June. Now I am going to 84, which is 7th June. And  
12 you will see there the entry that Mr Patrick and  
13 Mr Guest had gone to the USA today, and there is  
14 a reference also to phoning Steve Richards --

15 THE CHAIRMAN: I am sorry, I am still on page 81, and I am  
16 looking at page 82, which is the transcription, and  
17 I can see that there is something that says -- now on  
18 the original page 81:

19 "10 o'clock, marketing meeting."

20 Where do I find --

21 MR MORRIS: Just below 12.30, which has been missed out, is  
22 the:

23 "Phone and visit Dave Whelan with a  
24 Manchester United shirt."

25 I will be corrected if I am wrong but I think it is

1 the one underneath that.

2 THE CHAIRMAN: Yes.

3 MR MORRIS: I should say, sir, for your information that in  
4 file E4, which you will have an opportunity to look at,  
5 we have provided colour photocopies of some of these  
6 entries. In fact, the writing is clearer from  
7 the colour photocopies.

8 We then get to 8th June and the meeting takes place  
9 at around 1 o'clock at Mr Hughes's house. Mr Ashley  
10 comes up by train from Luton. Mr Whelan and Mr Sharpe  
11 arrive by helicopter.

12 The meeting is recorded at 313 and 314 of the diary:

13 "12.30: Mike Ashley, Lisa Gregory to pick up from  
14 Mac [Macclesfield] 1 pm: sandwiches at HTH [Holly Tree  
15 House]."

16 Of course, sir, there are different accounts of what  
17 happened and what was said at that meeting.

18 The OFT's case is that both Mr Whelan and Mr Ashley  
19 did indicate at that meeting that each would price  
20 the MU home shirt at launch at 39.99, as did Mr Hughes,  
21 who had wanted them to agree to a higher price.

22 Mr Hughes says, as does Mr Whelan, that no agreement was  
23 made and that Mr Ashley did not give an indication as to  
24 his pricing intention.

25 Later that day Mr Ronnie records agreement in

1 the monthly management report which is the paragraph at  
2 page 37 to which I have just referred you; that is  
3 the fifth paragraph on page 37:

4 "This has been a major step forward in the retail  
5 price of England and the launch of Manchester United."

6 And then on the next morning, 9th June, Mr Hughes  
7 puts in his diary that he is at the office; that is  
8 page ... actually it is not in the bundle. I am not  
9 going to take you to it anyway.

10 On that morning Mr Hughes writes two memoranda to  
11 Mr Patrick and Mr Guest, and they are at pages 8 and 9.  
12 You will recall, sir, that at that time Mr Guest and  
13 Mr Patrick are in the USA.

14 There on pages 8 and 9 we have two memoranda and  
15 again I would invite you to read both of those memoranda  
16 now. I do not propose to read them out.

17 We then jump to 1st August, when the Man U new home  
18 shirt was launched, and JJB, Allsports and Sports Soccer  
19 all priced at 39.99.

20 We then turn to 14th August, which is just less than  
21 two weeks after launch, and look at Mr Hughes's diary  
22 for that day. If you would go to page 87-89.

23 What you see on page 87 is the diary entry for  
24 Monday, 14th August, and you will see three black  
25 marked-out entries. The middle one of those entries,

1 what is underneath the middle one of those entries is in  
2 fact what is set out at page 88, which is if you go down  
3 four:

4 "Phone Mike Ashley to review Manchester United  
5 launch and other issues."

6 If you then go over a page, sir, you will see  
7 a photo of that entry as it actually is, with the black  
8 marker pen ignored. You will see from that, two-thirds  
9 of the way down on page 89, the words:

10 "Phone Mike Ashley to review Manchester United  
11 launch and other issues".

12 That image, sir has been obtained recently by  
13 the Office of Fair Trading through the laboratory of  
14 the government chemist. It is common grounds that  
15 the entry for 14th August reads as is set out on  
16 page 88.

17 THE CHAIRMAN: What, if any, importance do you invite us to  
18 attach to the fact that there are some entries covered  
19 by black marks on Monday, 14th August?

20 MR MORRIS: At this stage, I do not invite you to draw  
21 anything from that. I explain this at the moment by way  
22 of what the entry says; I could not really show you what  
23 the entry says without showing you what it is in  
24 the diary. That is a matter which may arise for further  
25 consideration at a later stage.

1 THE CHAIRMAN: Yes.

2 MR MORRIS: In summary on the Manchester United agreement,  
3 Mr Hughes organised the meeting for the specific purpose  
4 of fixing the price of the Manchester United shirt  
5 between himself, Allsports, JJB and Sports Soccer.  
6 Mr Ashley travelled up specifically for that purpose.

7 Pricing was discussed at that meeting, and all came  
8 away with a clear understanding that Sports Soccer and  
9 JJB would price at 39.99 at launch. There was  
10 an agreement to price at 39.99 at launch, or at the very  
11 least a reduction in uncertainty as to the price  
12 intentions of all or at least of JJB and Sports Soccer.

13 Can I turn now to the Continuation Agreement --

14 THE CHAIRMAN: Mr Morris, we have just ticked over 11.30 --

15 MR MORRIS: I will try to gallop rather than canter over  
16 the rest of my submissions.

17 You are familiar with this, sir. It concerns  
18 the continued participation of JJB in the price fixing  
19 arrangements which are established as involving  
20 Sports Soccer and Umbro relating to England and MU for  
21 the period right up to August 2001. It is decision  
22 paragraph 480:

23 "The issues have a number of strands. The OFT's  
24 case is that the evidence, both individually and taken  
25 together, demonstrate JJB's continued participation."



1           For your reference, our argument is summarised in  
2 paragraph 41 of our opening skeleton on liability.

3           The OFT relies on certain general matters, but it  
4 also relies on two particular events or circumstances.  
5 First, events surrounding the Manchester United  
6 Centenary Kit and, secondly, the Carlisle store.

7           If I can just take you on the Centenary Kit through  
8 the chronology very briefly.

9           There was to be a new kit for launch at the end of  
10 July 2001; that is the gold and white shirt known as  
11 the MU Centenary Kit. JJB had ordered a quantity of  
12 that kit.

13           In April and May 2001 Umbro sold a quantity of  
14 the red kit to Sports Soccer at clearance prices, and  
15 JJB found out about this.

16           If you go to the bundle at page 12, on 1st June 2001  
17 JJB cancelled its order for Centenary Kit, or cancelled  
18 40,000 of that order.

19           On 7th or 8th June there was a meeting which took  
20 place between Umbro and JJB at which the Centenary Kit  
21 cancellation was discussed. That was a meeting it  
22 appears between Mr Preston, Mr Sharpe, Mr Fellone and  
23 Mr Ronnie at least.

24           Although some of the witnesses put this meeting as  
25 occurring on 8th June, it may be -- and I draw this to

1 your attention now because it appears from Mr Ronnie's  
2 diary -- that that meeting may have taken place on  
3 7th June. I will not take you to Mr Ronnie's diary  
4 entry for that day now but if you look at the diary  
5 entry you will see that.

6 Umbro went back to Sports Soccer and got  
7 an assurance from them that it would not discount  
8 the Centenary Kit for the first few weeks after its  
9 launch.

10 If you go to pages 64 and 65 you will see this  
11 issue recorded in the monthly management report for  
12 May 2001. At page 64, under section 2, the second  
13 paragraph, you will see the relevant paragraph there:

14 "The licensed marketplace continues ..."

15 If you go over the page, sir, and you look at  
16 the bottom of the page under section 5, the first  
17 bullet, you will see the words:

18 "Resolve current Sports Soccer issue ..."

19 We then move swiftly to 15th June where there was  
20 a further meeting between JJB and Umbro at the offices  
21 of JJB between Mr Ronnie and Mr Whelan. At that meeting  
22 an agreement was made for the supply of further red home  
23 kit to JJB and for the Centenary Kit order to be  
24 reinstated. You will see that recorded at pages 14 and  
25 15 in a letter from Mr Ronnie to Mr Whelan. The letter

1 is in fact at page 14, and that will be familiar.

2 You will see the reference to the supply being  
3 exclusive; that JJB was buying up the full amount of  
4 the production of the red home kit.

5 So you will recall that this is at the period where  
6 Umbro's rights were going to come to an end and the next  
7 red kit was going to be produced by Nike.

8 Over the page at page 15 you will see a letter from  
9 Mr Russell reinstating the order for the Centenary Kit;  
10 a letter of 19th June from Mr Russell to Mr Bryan.

11 Then on 26th June, if you flick ahead to the 17th,  
12 you will see a fax from Mr Whelan to Mr Tucker of Nike  
13 which on the second page, on page 18 -- this is a fax  
14 from Mr Whelan to Mr Tucker of Nike. On the second  
15 page of that fax he records what had happened with Umbro  
16 in relation to buying up the total production of the red  
17 home kit.

18 You will see that at the end:

19 "This should enable a smooth transition from Umbro  
20 to Nike and ensure that the MU shirt is not bastardised  
21 on price around the country."

22 Those are the documents in relation to the Centenary  
23 Kit. The OFT's case on that is set out in its liability  
24 skeleton at paragraphs 41B and 41C. I do not propose to  
25 repeat that now in view of the time constraints.

1           Could you look at one more document in relation to  
2 continuation, and that is on page 11. Page 11 is  
3 a document which concerns the launch of the new England  
4 home kit 2001, which was the last of the four shirts  
5 I showed you earlier on in this opening.

6           What you have is that is the date of the launch.  
7 What happened on that day is that JJB discounted its  
8 price of the England shirt at the Carlisle store on that  
9 day by offering a 25 per cent discount off the England  
10 new kit. And you see that from the first bullet point  
11 of that file note.

12           Umbro complained to JJB about that discount, and  
13 JJB's reaction to that complaint is recorded in that  
14 file note.

15           Sir, I am sure you have the point. Whilst JJB  
16 contend that this is indicative of discounting by JJB  
17 and shows that it was not party to any price fixing,  
18 the OFT says that the terms in which Umbro's complaint  
19 was received supports the view that there was an overall  
20 arrangement and that was in fact JJB acting outside  
21 the scope of that arrangement and Umbro complaining  
22 about it.

23           Can I turn very briefly to England Direct. You will  
24 be familiar with the subject matter of the England  
25 Direct Agreement. The OFT's case is that the agreement,

1       which was an agreement that Sports E-tail's price for  
2       the England replica kit would be pegged to JJB's retail  
3       prices for the same products to avoid Sports E-tail  
4       undercutting JJB -- the OFT's case is that that  
5       agreement was made at that meeting on or around  
6       24th January 2000 at JJB's offices at Wigan, attended by  
7       Mr Russell of JJB, Mr Smith and Mr Armstrong of the FA  
8       and Mr Marsh of Umbro, and that agreement made at that  
9       meeting is plainly evidenced by the letter of  
10      7th February 2000 from Mr Smith of the FA to Mr Russell  
11      of JJB.

12             If I can just take you to that letter, the last  
13      document I will take you to, sir, at page 93.

14             You will see that it is headed "England Direct".  
15      Perhaps you would like to read the first six  
16      paragraphs of that letter. (Pause).

17      THE CHAIRMAN:   Yes.

18      MR MORRIS:   Sir, the issue here is relatively  
19      straightforward and set out in the skeletons.  JJB says  
20      that there was never any agreement to peg prices made at  
21      the meeting.  They say that it was clear by  
22      11th February, which is the next document on page 96.  
23      They say they made it clear that they would not  
24      participate in any such arrangement.  Therefore, they  
25      either never made the arrangement or it had terminated

1 before the Act came into force.

2 The OFT's response is that any indication of  
3 non-acceptance given by JJB was only in respect of  
4 the route of supply of the kit, in other words it was to  
5 be supplied by Umbro rather than JJB, and that had  
6 nothing to do with the price pegging aspect, and at no  
7 time did JJB inform any of the other parties that it was  
8 not party to the price pegging aspect of the agreement.

9 That concludes my review of the documents and my  
10 opening. However, before the tribunal proceeds to hear  
11 evidence, I should inform you that I am instructed that  
12 Umbro have now raised objections to the disclosure of  
13 the 2002 agreement with Sports Soccer which I handed up  
14 to you a few moments ago. I understand that their  
15 counsel is in court now and would wish to raise this  
16 matter at some appropriate time.

17 I gather that it has been agreed that if  
18 the tribunal thinks it convenient the matter should be  
19 addressed privately now, without anybody else present,  
20 and that that is a matter which should be dealt with at  
21 this stage.

22 I also understand that Umbro says that it disputes  
23 the point that the agreement's terms applied in 2000 and  
24 2001.

25 I should say that I did say in opening that it may;

1 I did not say it would go any further than that.

2 Nevertheless I understand that this is a matter  
3 which Umbro wishes to raise and I place that before you  
4 now, sir.

5 THE CHAIRMAN: Thank you, Mr Morris. I think there are two  
6 housekeeping points. The first is that I did promise  
7 the shorthand writer that we would have a short break  
8 halfway through the morning, and we are more or less  
9 halfway through the morning, so it is time for a short  
10 break in any event.

11 As far as the Umbro document is concerned --  
12 Mr Green, you do not have a microphone.

13 MR GREEN: No, I do not.

14 THE CHAIRMAN: I think you need one for technical purposes.

15 We are a bit reluctant to break the whole hearing to  
16 deal with this. It is a matter we really have to deal  
17 with now before Mr Ashley goes into the witness-box.

18 I think you are about to say we have to deal with it.

19 MR GREEN: It is certainly a matter that needs to be dealt  
20 with before the witness enters the witness-box.

21 THE CHAIRMAN: In that case we will rise anyway for  
22 five minutes, to give the shorthand writer a break and  
23 to give everybody a short break. We will then resume  
24 in-camera and hear your submissions about this document,  
25 unless anyone has any objections about that course.

1 LORD GRABINER: Sir, I am very concerned about the notion of  
2 going in and out of camera without any justification  
3 having been provided. In my respectful submission it is  
4 not appropriate to do that, certainly not without a very  
5 clear understanding of why going into camera is  
6 justified or necessary or thought to be necessary.

7 THE CHAIRMAN: I think in this case, Lord Grabiner,  
8 the document we are about to discuss is a document which  
9 in normal circumstances would attract business  
10 confidentiality. I would have thought it is quite  
11 difficult to start discussing it, at least on  
12 a precautionary basis, without going into camera first.

13 LORD GRABINER: I do not want to quibble with you at this  
14 stage -- or at all, actually. I would suggest that  
15 the mere concept of business confidentiality is simply  
16 not good enough. All litigation ought to be conducted  
17 in public and business confidences inevitably are  
18 revealed in public. That is what litigation is all  
19 about.

20 MR WEST-KNIGHTS: I simply say that I entirely concur with  
21 the submissions made by Lord Grabiner, and secondly to  
22 say that if in-camera precludes the presence of my  
23 client I would be doubly unhappy. Plainly my client  
24 must be allowed to hear the submission.

25 MR GREEN: It has to be done without the clients, at least



1 in the first instance, so that it can be discussed  
2 between lawyers. Otherwise we cannot speak freely about  
3 the contents of the document.

4 MR WEST-KNIGHTS: If I may respectfully say, the document's  
5 predecessors have been discussed between me and my  
6 clients on the footing of your express ruling and  
7 subject on the pink notion -- on the footing that  
8 we were told in terms by Mr Morris on Friday that those  
9 documents represented the arrangement between  
10 the parties. This is just a gloss on that and therefore  
11 at worst these are pink documents which can be discussed  
12 in the presence of our clients.

13 THE CHAIRMAN: Yes. Lord Grabiner.

14 LORD GRABINER: I do apologise. One point that my learned  
15 friend made in the course of his opening was that we  
16 receive from him a qualification to what we were told on  
17 Friday.

18 What we were told on Friday by the solicitor who  
19 produced the document was that the documents that we saw  
20 on Friday, apart from the 2000 document which we did not  
21 see on Friday, reflected the deal. What my learned  
22 friend said a little earlier in the course of his  
23 opening was that it was not now wholly recorded in that  
24 document; and to an extent what was in this document  
25 actually reflected what was going on then. But he did

1 not particularise the respect in which this new  
2 agreement is said to have been applicable in  
3 the relevant period.

4 So we are a little bit in the dark about that as  
5 well.

6 THE CHAIRMAN: Yes. I think, gentlemen, we hear what you  
7 say but we will have to go into camera at least in  
8 the first instance to deal with this document.

9 We will rise now until five to twelve by that clock,  
10 and we will resume in camera to deal with this document.

11 (11.50 am)

12 (A short break)

13 (Proceedings held in camera)

14 (The short adjournment)

15 (2.15 pm)

16 THE CHAIRMAN: Yes, Mr Green.

17 MR GREEN: You should have on your desk the redacted  
18 version. It has been suggested that I have just been  
19 told that solicitors already holding the unredacted  
20 versions should be entitled to keep them until the end  
21 of the hearing and destroy them. I have no objection to  
22 that if they are prepared to give an undertaking to that  
23 effect.

24 THE CHAIRMAN: We will sort that out at the end of today.

25 Yes, Mr Morris.

1 MR MORRIS: Sir, in those circumstances I would call  
2 the first witness, who is Mr Ashley.

3 MR MICHAEL ASHLEY (sworn)

4 THE CHAIRMAN: Good afternoon, Mr Ashley, I am sorry to have  
5 kept you waiting. Would you like to sit down; there is  
6 a chair there. Could you speak relatively close to  
7 the microphone and direct your answers in the general  
8 direction of us, so we can hear what you are saying.

9 Examination-in-chief by MR MORRIS

10 Q. Your full name is Michael James Wallace Ashley?

11 A. That is correct.

12 Q. And you are currently the owner and Chief Executive  
13 Officer of Sports Soccer International Limited?

14 A. That is correct.

15 Q. Would you turn to the witness bundle which you have in  
16 front of you. You have provided two witness statements  
17 to the tribunal for the purpose of these hearings.

18 If you turn to page 1, can I confirm that that is  
19 your first witness statement?

20 A. That is correct.

21 Q. If you go to page 2, can you confirm that that is your  
22 signature at the foot of that page?

23 A. That is correct.

24 Q. If you then go to page 134, which I think is behind  
25 the tab "Ashley 2", can you confirm that that is your

1 second statement?

2 A. That is correct.

3 Q. And if you go to page 143, can you confirm that that is  
4 again your signature?

5 A. Yes, that is correct.

6 Q. Can you confirm that the contents of those two witness  
7 statements constitute your evidence before this  
8 tribunal?

9 A. Yes, I can.

10 Q. Mr Ashley I would like to ask you three brief questions.  
11 First of all, can you tell the tribunal briefly a little  
12 bit of your business background, how you started and how  
13 you got to where you are today?

14 A. I started the business about 20-odd years ago now, with  
15 one shop in Maidenhead of about 250 square feet.  
16 Basically, over a period of the next 20 years we grew  
17 organically to where we are roughly today, of about 130  
18 units. Basically that is what we have done.

19 The only exceptional thing we probably did was to  
20 source the product directly ourselves back in probably  
21 the late -- or early 90s, late 80s, early 90s. So that  
22 is about the only difference I would say from us, from  
23 our competitors, and our model has always been one of  
24 discount.

25 That is it, that is basically us.

1 Q. Yes, thank you. I was going to ask you about your  
2 business philosophy. In connection with discounting,  
3 could you explain to the tribunal what are  
4 the advantages of discounting as far as replica kit is  
5 concerned?

6 A. Replica kit is basically a very known product, so if you  
7 are to discount replica kit it is not only the fact that  
8 you would actually genuinely make more because you would  
9 sell a lot more, it also makes the consumers feel very  
10 comfortable that the other product in the store they are  
11 buying is also of the equivalent value, as in it is  
12 obviously therefore also likely to be cheaper.

13 Q. The tribunal is aware of the fact that in March 2001 you  
14 went to the OFT about the matters which are the subject  
15 matter of these proceedings.

16 Again, can you tell the tribunal in your own words  
17 why it was that you went to the OFT?

18 A. Basically we had been put under incredible pressure to  
19 end this discounting policy philosophy, we were having  
20 to give in to it to such an extent that it was becoming  
21 for us -- probably if we did not get it stopped it would  
22 have physically destroyed our business.

23 So we thought we cannot seem to avoid not getting  
24 into this full price situation, so obviously we went and  
25 complained.

1           Actually we had previously been and complained, so  
2           it was not the first time.

3   Q.   When was that?

4   A.   I think it was about two years previous.  I do not have  
5           the date; I am sorry about that.

6   MR MORRIS:  Thank you, Mr Ashley.  I have no further  
7           questions, but no doubt there will be some.

8   THE CHAIRMAN:  Thank you, Mr Ashley.  Counsel for JJB may  
9           have some questions for you.

10                           Cross-examination by LORD GRABINER

11   LORD GRABINER:  Mr Ashley, you should have near you  
12           a bundle of the documents that I want to show you.  If  
13           you have not, it will be provided to you.  It saves  
14           looking through lots of different bundles.  It is  
15           the bundle that says "JJB Sports" and the witness  
16           cross-examination bundle.  If you can have that handy.

17   THE CHAIRMAN:  Do we need this, Lord Grabiner?

18   MR MORRIS:  We also would like it, if possible.

19   LORD GRABINER:  I think it is only the witness who has this.  
20           I am going to be giving you the full references in any  
21           event.  You have almost certainly marked up your own  
22           versions.

23   THE CHAIRMAN:  There is a spare copy; we have one copy.

24   LORD GRABINER:  I will be giving the full references in any  
25           event.

1 THE CHAIRMAN: It is just that we have to find the documents  
2 as well.

3 LORD GRABINER: Not my suggestion -- but there it is.

4 Mr Ashley, can I ask you about the working methods  
5 adopted by you in your office.

6 If you look at file 1, page 45 -- not that one.

7 There is something called a witness file 1, the witness  
8 bundle. It is to your left.

9 A. Right, okay.

10 Q. That contains your witness statements made in these  
11 proceedings.

12 A. Okay.

13 Q. If you look at page 45 you will see that this is  
14 a transcript of Sports Soccer's evidence given to  
15 the OFT on 11th July 2002?

16 A. Yes.

17 Q. And you were represented on that occasion by Ms Hankey  
18 of Cameron McKenna?

19 A. Yes.

20 Q. If you look at page 50, the passage at the foot of  
21 the page which sets out the business style that was  
22 adopted. Perhaps you could just read that to yourself,  
23 lines 29 onwards. (Pause).

24 Just over to the next page, to the end of the first  
25 paragraph, line 15.

1           (Pause).

2   A.   Okay, yes.

3   Q.   Is that a fair summary of the way that the office is

4       run?

5   A.   Our office, yes, Sports World, yes.

6   Q.   That it is not a paper-driven office; yes or no?

7   A.   No.

8   Q.   It is not a paper-driven office.  And the business you

9       do is principally done on the telephone or in

10      face-to-face meetings?

11  A.   That is correct.

12  Q.   And written records of meetings and telephone

13      conversations are not made; is that right?

14  A.   No, that is not correct.  They are not made in the same

15      detail as other companies.

16  Q.   What is the procedure, what do you do?  You make a note

17      of a meeting or of a telephone conversation?

18  A.   It depends who it is who is dealing with it.  The buyer

19      will obviously make a lot of notes, because he is

20      the buyer, or somebody in, say, the retail -- dealing

21      with retail issues.

22           Personally I do not tend to make huge amounts of

23      notes, so it is a personal --

24  THE CHAIRMAN:  I do not personally make many notes.

25  A.   Yes.



1 LORD GRABINER: And if you do make notes, what do you do with  
2 them? Do you file them or do you just destroy them when  
3 they apparently cease to have any relevance?

4 A. I actually give them to the MD, so he then looks after  
5 them from that point onwards.

6 Q. What does he do with them, does he file them?

7 A. He can do, yes, if he thinks they are relevant or they  
8 might be of some use.

9 Q. Is it fair to say that it is difficult to put a time or  
10 date on events and conversations going back over  
11 the years?

12 A. It is more difficult with me, yes.

13 Q. That is said on your behalf at the top of page 51, is it  
14 not, in the third line:

15 "It has been genuinely quite difficult for  
16 Sports Soccer to pin down particular instances and to  
17 give particular detail of particular reasons of persons  
18 at particular times saying a particular thing because  
19 there are not written records kept by the company of  
20 those sorts of issues."

21 A. Yes, that is correct, yes.

22 Q. I want to ask you about the England Euro 2000 agreement,  
23 so to speak, to kick off with.

24 Could you look first of all in the file you are  
25 looking at at the moment at page 5.

1 A. Okay.

2 Q. This is the OFT's note of a meeting --

3 THE CHAIRMAN: I am sorry, Mr Morris is on his feet.

4 MR MORRIS: I am in the dark.

5 THE CHAIRMAN: We are still in the witness bundle.

6 LORD GRABINER: The witness file is where I am. Page 5.

7 This is the OFT's note of a meeting with you on

8 13th March 2001; you see that from the top of

9 the page --

10 THE CHAIRMAN: The 30th I think, Lord Grabiner.

11 LORD GRABINER: Friday 30th March, forgive me, yes.

12 If you look at page 6, paragraph 6, perhaps you

13 could look at that. You see in the middle of

14 paragraph 6 it says:

15 "He also said ..."

16 So someone is recording what you are saying:

17 "... that last year he attended a meeting with other

18 retailers, including Dave Wren... "

19 Because the person writing this down obviously did

20 not know what the names were, but that is presumably

21 Mr Whelan?

22 A. That is correct, yes.

23 Q. "... of JJB, the UK's biggest sports goods retailer, and

24 Dave Hyde of [but it looks as though that was Mr Hughes]

25 Allsports to agree the price at which they would all

1 retail replica England shirts. Mike Ashley said that  
2 the meeting had been instigated by Chris Ronnie,  
3 the chief operating officer of Umbro, which company  
4 manufactured England shirts."

5 A. That is correct, yes.

6 Q. You said that the meeting had been instigated by  
7 Mr Ronnie?

8 A. That is correct, yes.

9 Q. And you also said that the meeting was in respect of  
10 an agreement for retail prices for replica England  
11 shirts?

12 A. That is correct, yes.

13 Q. That was, of course, a reference to the meeting on  
14 8th June at Mr Hughes's home near Macclesfield, I  
15 suggest. Is that right?

16 A. That is correct.

17 Q. I am sure, you might not be able to recall the precise  
18 exchanges of the conversation that took place, but I am  
19 sure you will remember that somebody pitched up in  
20 a helicopter? I am sure you will remember that, it is  
21 the kind of thing which might stick in somebody's mind.

22 A. I do.

23 Q. You might also recall that Mr Hughes spent some time  
24 showing you all around his house?

25 A. I do.

1 Q. The conversation that you were having with the OFT in  
2 this March 2001 meeting was only about nine months after  
3 that episode, was it not?  
4 A. That is correct, yes.  
5 Q. You subsequently corrected this piece of evidence that  
6 I have just shown to you by pointing out that  
7 the agreement arrived at was in respect of  
8 Manchester United replica shirts, and not England  
9 shirts; that is right, is it not?  
10 A. That is correct, yes.  
11 Q. I will show you the correction in its sequence  
12 chronologically in a moment.  
13 Obviously at the meeting you were trying to be frank  
14 and forthright with the OFT and as helpful as possible?  
15 A. Yes, that is correct.  
16 Q. But in quite an important respect your recollection let  
17 you down.  
18 A. No, it was just a slip of the tongue.  
19 Q. A slip of the tongue?  
20 A. Yes.  
21 Q. About five months after your March meeting with the OFT  
22 you had another meeting, this time I think on  
23 13th August 2001 with amongst others somebody called  
24 Ms Kent from the OFT, and you will pick that up from  
25 page 8, just a couple of pages further on in the same

1 bundle.

2 A. That is correct.

3 Q. Would you be good enough to look at paragraph 10, which  
4 is at the foot of page 9 where it starts:

5 "CK [Ms Kent] referred to Sports Soccer's  
6 allegations in relation to the England shirt and  
7 the meeting that had taken place between the retailers.  
8 Mr Ashley said it was very difficult to recollect  
9 the precise events."

10 So obviously that is an accurate record of what you  
11 said at the time?

12 A. That is correct, yes.

13 Q. "As he recalled matters, there had not been a meeting as  
14 such. Chris Ronnie of Umbro had contacted Mike Ashley  
15 some time before the European Championships, probably  
16 May/June of last year, saying that he [Chris Ronnie] had  
17 contacted named people at other retailers who had agreed  
18 to price the England home shirt at 39.99. Mr Ashley  
19 could not recall the precise details of  
20 the conversations but thought the names referred to by  
21 Chris Ronnie included Duncan Sharpe of JJB Sports ..."

22 And then other persons who are named.

23 Over the page:

24 "MA had confirmed to Chris Ronnie that Sports Soccer  
25 would conform and retail the England shirt for 39.99."

1           So that is a record of what you told the OFT on that  
2 occasion; under that?

3 A. That is correct.

4 Q. You say there that Mr Ronnie had told you that he had  
5 already reached an agreement with other retailers,  
6 including JJB and Allsports, to price the England shirt  
7 at 39.99, and that you had agreed to conform, that is to  
8 participate, in the same agreement. So that is  
9 the version of the story that you were then telling?

10 A. Yes, that is correct, yes.

11 Q. Is that still your recollection? Sitting here now, is  
12 that an accurate record of your conversation with  
13 Mr Ronnie?

14 A. Yes.

15 Q. So you had reached an agreement, he told you that he had  
16 reached an agreement with the other retailers, and that  
17 you had agreed to conform to that agreement?

18 A. Yes, that would be correct.

19 Q. Now, if you would look, still in the same file, at  
20 page 13 you will see that this is a response prepared by  
21 your company's solicitors of 9th July 2002, and I show  
22 you that page just so that you can see what the nature  
23 of the document is.

24           Then if you go to page 30, paragraph 3.2.3, you make  
25 the correction that I mentioned a few minutes ago,

1 through your solicitors. In fact, the meeting that took  
2 place was for the purpose of discussing  
3 the Manchester United replica shirt kit:

4 "The discussions with regard to the England replica  
5 kit were undertaken through a series of bilateral  
6 telephone conversations, and no meeting ever took place  
7 in respect of this."

8 A. Yes, that is correct, yes.

9 Q. So the solicitors have corrected the Manchester United  
10 point and they have also made the point about  
11 the bilateral conversations in respect of the England  
12 kit, and that you say is right?

13 A. Yes, that is correct.

14 Q. How did it come about that your memory improved on that  
15 point? Is it your point that, as you said earlier, it  
16 was just a slip of the tongue?

17 A. That is correct.

18 Q. Did you talk to other people before making that  
19 correction?

20 A. I honestly cannot remember.

21 Q. What I am concerned about is whether what has been  
22 corrected there is your recollection or what somebody  
23 else might have suggested to you actually happened?

24 A. Sorry, can you ask me the question again? I am sorry.

25 Q. Yes. What I want to know is whether your correction of

1 the transcript, in effect, is the result of what  
2 somebody else told you must have been a mistake, or  
3 whether in fact you have a clear recollection as to what  
4 the subject matter of that original conversation was.

5 A. It was a very clear recollection.

6 Q. So that the correction shown there is a reflection of  
7 your actual memory, sitting here now?

8 A. Yes.

9 Q. And, what, the reason that it was corrected was because  
10 you read through the transcript, spotted the mistake and  
11 asked your solicitors to correct it; is that what  
12 happened?

13 A. That is the bit I cannot remember. I cannot remember  
14 who spotted it or ... I do not remember, I am sorry.

15 Q. Now, is that paragraph, 3.2.3, that I just read to you  
16 correct in all material respects?

17 Do read it carefully. If you want to correct any of  
18 it, please do so. (Pause).

19 A. Only to say that when I say "and no meeting ever took  
20 place", I mean no meeting with other retailers ever took  
21 place over England.

22 Q. Why do you read that in?

23 A. Because we would have lots of conversations with Umbro  
24 re the price of replica jerseys.

25 Q. Yes, but why could they not have been the subject of



1           those bilateral telephone conversations to which you  
2           refer in the sentence?

3   A.   The England shirts, they were.  But it says here:

4           "... and no meeting ever took place in respect of  
5           this."

6           A meeting did take place in respect of England, yes,  
7           but not with David Hughes or Dave Whelan.  There was no  
8           specific meeting over England.

9   Q.   Why did you say then, or cause your solicitors to say:

10          "... and no meeting ever took place in respect of  
11          this", whereas in fact I think you are saying that  
12          meetings in fact did take place?

13   A.   Yes, but not over England with the other retailers.  We  
14          would have a meeting with Umbro twice a week.  So if you  
15          call that a meeting, they would bring up prices on  
16          a weekly basis.

17          I am trying to be absolutely crystal-clear.

18          For example, speaking to Chris Ronnie, I would speak  
19          to him face-to-face at that meeting over England or with  
20          the account manager or whatever.

21   Q.   It is just odd that it was not correct the first time  
22          round?

23   A.   It is correct, actually.  I am just trying to absolutely  
24          clarify it for you.

25   Q.   So when it says that no meeting ever took place, in fact

1 meetings did take place, but not with other retailers;  
2 that is the way you put it?

3 A. Yes, that is correct.

4 Q. There were meetings with Umbro?

5 A. Yes, yes. That is trying to refer to other retailers,  
6 that is what I am trying to say.

7 Q. E1, tab 29, page 272, if you could find that document.  
8 If you look at tab 3 in that cross-examination bundle,  
9 the white one that I gave you at the beginning or that  
10 was given to you at the beginning --

11 A. This one?

12 Q. Does that say "Cross-examination Bundle" on the front?

13 A. It says "Supplementary Skeleton of -- "

14 Q. No, it is the fat one.

15 A. Yes, I have it.

16 Q. If you go to tab 3 you will find the document that I am  
17 interested in.

18 THE CHAIRMAN: Sorry, I am not there yet, Lord Grabiner.

19 LORD GRABINER: No problem.

20 If it is helpful we have two spare volumes of that  
21 cross-examination bundle. I just do not know how  
22 important it is to the tribunal to have access back to  
23 the original documents.

24 THE CHAIRMAN: I think we ought to be following it if  
25 we can, Lord Grabiner --

1 LORD GRABINER: Through your own bundles?

2 THE CHAIRMAN: It is going to be easier to follow it,  
3 I think, through a cross-examination bundle. I do not  
4 know how many you have available.

5 LORD GRABINER: We have two more, one for each of your two  
6 colleagues.

7 Mr Ashley, you have probably seen this document  
8 before --

9 THE CHAIRMAN: Sorry, Lord Grabiner. Where are we now?

10 LORD GRABINER: We are looking at tab 29 of E1, or tab 3 in  
11 that bundle I have just provided you with. I think  
12 everybody in the room will be familiar with this  
13 document.

14 This is an Umbro document that records a meeting  
15 with Sports Soccer on 24th May; you can see that from  
16 page 272, a meeting attended by you, Mr Ashley,  
17 Mr Ronnie, Mr Monagham and Mr Nevitt. And the meeting  
18 was at Dunstable, which I think are your offices?

19 A. That is correct.

20 Q. And the bit I am interested in is on the second page.  
21 This document I think was prepared by Mr Attfield; maybe  
22 you cannot really comment upon that?

23 A. I personally have not read this before.

24 Q. You have never read this document?

25 A. Not this document, no.

1 Q. Really?

2 A. Really.

3 Q. If you look at the second page you can see -- at  
4 the first break it says:

5 "Sports Soccer agreed to increase the price of  
6 England home and away kits for a set period of 60 days  
7 to maintain the prices of licensed kits including  
8 goalkeepers and infant kit."

9 And then:

10 "Mike Ashley, MA, stated that by matching  
11 the High Street price would mean a reduction in his  
12 buying within the category, and therefore the target of  
13 £6 million may not be achieved."

14 That is the agreement concerning the England kit, is  
15 it not?

16 A. That is correct.

17 Q. So there was a meeting, and you attended it?

18 A. Most definitely.

19 Q. Now if you could go back to the witness file, file 1,  
20 page 83, one point I think we are agreed about is that,  
21 certainly in so far as the documents we have so far  
22 seen, you never made any reference at all to any meeting  
23 with Umbro at which that agreement was made.

24 Do you understand the point I am making?

25 A. No, I do not believe that is the case.

1 Q. Well, what I am suggesting is that -- and I have taken  
2 you I think accurately to the chronological sequence so  
3 far. In the chronological sequence so far, in meetings  
4 with the OFT and in written submissions made on your  
5 behalf by solicitors, there was no reference to  
6 the 24th May meeting with Umbro at which this deal was  
7 done, as recorded in that note I have just shown you.  
8 What I am suggesting to you is that in the material that  
9 I have shown you so far you made no reference at all to  
10 such a meeting or such an agreement having been made at  
11 such a meeting?

12 A. No, we had quite clearly, when we had been to the OFT,  
13 made it very clear that the price pressure put on us by  
14 brands is on a weekly basis. So there is a perpetual  
15 ongoing price maintenance being forced to charge on  
16 the RRP basis. Therefore, it is assumed that everybody  
17 will realise that meetings take place if not on a daily  
18 then on a weekly basis across all product categories,  
19 not just replica shirts.

20 Q. I just think that we are possibly at slightly  
21 cross-purposes.

22 All I am suggesting to you is that in  
23 the contemporaneous records of your conversations with  
24 the OFT --

25 A. Sorry, what does that word mean?

1 Q. That word means at the same time, a note that is made at  
2 the time.

3 In those notes there is no record of your having  
4 said that there was an oral agreement made at a meeting  
5 with Umbro; and nor did your solicitors say that in  
6 the document I showed you a little earlier?

7 A. I would think if you go back to my statement to the OFT,  
8 I would say that there is perpetual pressure and  
9 perpetual agreements across most if not all product  
10 categories. So if you go back to my meeting with  
11 the OFT, when I went to complain about it in the March,  
12 I think you will find that is when I say there is huge  
13 pressure from most brands, Umbro, Nike, Adidas, Reebok,  
14 I think you will find it says exactly that.

15 Q. What it does not say is that you had a meeting in the  
16 May where you made an agreement with Umbro to that  
17 effect. That is what it does not say.

18 A. It would not necessary need to say that. By me going to  
19 complain I am saying that these fellows are putting me  
20 under huge pressure to charge the RRP's for products.  
21 There is perpetual pressure from all brands. Why would  
22 I have to sit there and say that last May this happened  
23 at 2.30 on that day. I was there complaining, telling  
24 them what was happening.

25 Q. If you go forward to page 83 in the same bundle,

1           you will find that there is something called a written  
2           explanation and clarification of statements made by  
3           Sports Soccer at the oral hearing of 11th July 2002.  
4           And that is the first page of it. Do you see that?  
5        A. Page 83 in the black book. Where am I trying to look?  
6        Q. Just to see that that is the front page of the document.  
7           I think there is another written submission put before  
8           the OFT by your solicitors?  
9        A. Okay, fine.  
10       Q. What it purports to do is to clarify or to explain  
11        the evidence that you had given on 11th July. If you  
12        look at page 88, do you see it says in the middle of  
13        the page, pages 22-24, they are going through a previous  
14        submission --  
15       A. Sorry, are we on page 87?  
16       Q. Page 88.  
17       A. Thank you.  
18       Q. The reference to pages 22-24 is a reference back to  
19        the submission that had previously been made by your  
20        solicitors that I showed you a little earlier.  
21                Then in the third paragraph of page 88, underneath  
22        that side heading in the middle of the page, it says:  
23                "As Ms Hankey explained, it has been very difficult  
24        for Mr Forsey or Mr Ashley to remember the specifics of  
25        each instance when Sports Soccer agreed with Umbro to

1 price the products at Umbro's desired price levels."

2 Do you see that?

3 A. Yes, I do.

4 Q. And that is true, is it not?

5 A. That is correct.

6 Q. "However, Sports Soccer has been able to recall  
7 the following instances when such an agreement took  
8 place, and Sports Soccer provided details of these in  
9 its meetings with the Office in March and August of  
10 2001:

11 "1. A series of telephone calls with Umbro  
12 regarding the England replica kit in May 2000.

13 "2. A meeting on 8th June 2000 at which  
14 Sports Soccer agreed with Umbro, Allsports and JJB  
15 the prices of the Manchester United home replica kit.

16 "Save for the agreements reached at the meeting of  
17 8th June 2000, an incident Sports Soccer voluntarily  
18 disclosed to the Office in its meetings of March and  
19 August 2001, and the telephone conversation with  
20 Mr Knight of Blacks, neither Mr Ashley nor Mr Forsey can  
21 recall any other instances where Sports Soccer has met  
22 with, discussed or agreed with other retailers  
23 the prices of replica football kit."

24 A. Yes, that is correct.

25 Q. So at that stage again there does not appear to have



1           been any memory of the 24th May meeting, because it is  
2           not referred to.

3   A.   I will have to go back and repeat it again.  This is  
4           about other retailers, with other retailers, the price  
5           of replica football kit.

6   Q.   If you look at (i) on page 88, it says:  
7           "A series of telephone calls with Umbro."

8   A.   Yes, it should say, "A series of telephone calls with  
9           Umbro" -- and it probably should say "and retailers",  
10          should it not?

11  Q.   Should it not also say, "Telephone calls and meetings  
12          with Umbro, face-to-face meetings"?

13  A.   Meetings with Umbro, I have said again, were on a weekly  
14          basis.

15  Q.   The point is that this is an attempt by solicitors for  
16          about, I think, the third time to improve the quality of  
17          your evidence, you see, to the OFT; do you understand  
18          that?

19  A.   No, I do not agree that is the case at all.

20  Q.   That was the purpose of this document, was it not?

21  A.   No, I do not think it was.  I think it was just to  
22          clarify everything.

23  Q.   Was it not then designed to improve the quality of  
24          the evidence you had given?  It is described as  
25          a written explanation and clarification of statements

1           made by Sports Soccer.

2   A.   To clarify things, yes, that is correct.  Not to

3           improve.

4   Q.   I did not mean to use the word "improve" in any

5           offensive way --

6   A.   It is easy to use the wrong word, is it not?

7   Q.   Yes, it is indeed.  But I think you might have taken it

8           the wrong way.

9   A.   Right.

10   Q.   All I was suggesting to you was that having thought

11           about it, so to speak, for the third time all it talks

12           about is a series of telephone calls with Umbro.  But

13           I think your evidence to the tribunal is that there were

14           meetings as well.  And in order for this piece to be

15           accurate it should have made express reference to

16           meetings with Umbro AS well?

17   A.   The meetings with Umbro we would not make specific

18           reference to because we would not specifically remember

19           them.  That is Lee Attfield's note from Umbro; it is not

20           ours.  It is not an exception, it is not a unique thing

21           with a brand making us charge the full RRP.  This is

22           an ongoing weekly conversation across most product

23           categories.

24   Q.   If in fact you had the conversation of 24th May, which

25           I think you acknowledge you did have, why is that not

1 something that you could have remembered and you could  
2 have caused the solicitors to write down in that letter  
3 and send it to the OFT?

4 A. Because it is such a normal thing, such a weekly  
5 occurrence, that I would not remember exactly when it  
6 was. I would not say: on May 24th I had to agree to  
7 charge the full price for the England kit. There was no  
8 reason for me specifically to remember that, and also  
9 that week all the other products that I was being put  
10 under pressure to charge the full RRP on.

11 Remember, you are just dealing with the replica kit.  
12 I am dealing with the vast majority of all the products  
13 I sell.

14 Q. But the peculiarity about this transaction was of course  
15 it was an agreement between you and Umbro to price fix,  
16 was it not?

17 A. It was, yes.

18 Q. So I suppose that would have stuck in your memory as  
19 well?

20 A. Absolutely. I say it again: with brands it is a weekly  
21 occurrence, if a not daily.

22 Q. To make price fixing agreements?

23 A. That is why I went to the OFT. This was not just about  
24 an England and a Manchester United shirt; this was  
25 an industry-wide retail enforcement, price fixing --

1           whatever you want to call it. When you say I was in  
2           agreement with Umbro; I would like to say I was not in  
3           agreement. I would like to say I was forced to charge  
4           the RRP, not willing or as if I agreed. Because  
5           agreement implies that I agreed with what I was doing  
6           and I absolutely did not. I was forced.

7   Q. Part of the exercise that I am engaged upon, in case it  
8           is not obvious and apparent, is to try to test  
9           the quality of your recollection; do you understand?

10   A. I understand that, yes.

11   Q. Now if you look in the same witness file at page 134,  
12           this is a copy of your most recent witness statement; it  
13           was signed by you on 28th November 2003, and you get  
14           that if you go to the --

15   THE CHAIRMAN: I am sorry, Lord Grabiner. Which file are we  
16           in now?

17   LORD GRABINER: Still in the witness file at page 134. If  
18           you look at the back end of it at page 134 you will see  
19           that it was signed by you, Mr Ashley, on 28th November  
20           2003, and I was suggesting that this is the most recent  
21           statement that you have made on this subject.

22   A. Yes, I believe that to be correct, yes.

23   Q. If you look at page 137 in paragraph 10, you say:

24           "My understanding of the events surrounding  
25           the price increase is as follows:

1           "On Wednesday 24th May 2000, Sean Nevitt and  
2           I attended a meeting with Chris Ronnie and Lee Attfield  
3           at which we agreed to raise the price of the England  
4           home shirts to 39.99. I think I told them it would take  
5           a few days to put the price change in place in all our  
6           stores."  
7    A. That is correct.  
8    Q. So this is the first time, you see, you come down to  
9           the detail of a meeting and you give the precise date of  
10           the meeting and the persons who attended the meeting;  
11           you understand?  
12   A. Yes, correct.  
13   Q. So presumably somebody had shown you  
14           the 24th May manuscript note which enabled you to  
15           recover a memory of this episode?  
16   A. No.  
17   Q. So how did it come about that -- it may be that you are  
18           one of those people who memory improves with time --  
19   A. Like a wine?  
20   Q. I beg your pardon?  
21   A. Like a wine.  
22   Q. Indeed, wine does, but what about memory?  
23   A. You suggested it, not me.  
24   Q. You said wine. I did not say anything about wine.  
25   A. You said memory.

1 Q. Does your memory improve with time?

2 A. I have no idea.

3 Q. Well, it is your memory.

4 A. All right, it is your time.

5 THE CHAIRMAN: I think the question now, Mr Ashley, being  
6 asked is: did anything jog your memory to enable you to  
7 put a date on this meeting that is referred to in  
8 paragraph 10?

9 A. I would think that -- what I am trying to say there is  
10 that we did have discussions, and for example we would  
11 maybe have gone over the event with, for example,  
12 Mr Nevitt who would have possibly a lot better  
13 recollection of the event of that meeting than I would,  
14 the buyer -- because he is the buyer. As you say, I did  
15 not even get all the people in the meeting. You said  
16 there was another one, Mark Monaghan, and I have not  
17 even mentioned him.

18 So the memory could have been triggered by  
19 Mr Nevitt.

20 LORD GRABINER: But if Mr Nevitt said that it was on  
21 24th May what would you do? Say: you are absolutely  
22 right, it was 24th May? Is that how the memory works?

23 A. If he had it written down and he knew it was 24th May,  
24 that is fine.

25 Q. Did he have it written down?

1 A. He could well have done.

2 Q. I do not think we have seen any piece of paper where he  
3 does have it written down.

4 A. I ... I have not seen any bit of paper from him in this,  
5 but I would think he has more of a daybook where he does  
6 write things down.

7 Q. You see --

8 A. He tends to make notes of meetings because he is  
9 the buyer. So when he writes it down he will have  
10 notes.

11 Q. How was it, then, that his memory was jogged in  
12 November 2003?

13 A. Why should it not be? He had probably looked it up in  
14 his daybook where he makes notes of the meetings.

15 Q. We have not seen a note of any such meeting.

16 A. I am not saying he has one. I said probably.

17 Q. The likely explanation is that somebody drew  
18 the 24th May transcript to your attention or told you of  
19 its existence.

20 A. Are you talking about this one here?

21 Q. Yes.

22 A. I am telling you that I have not seen Lee Attfield's  
23 notes of that meeting.

24 Q. You see, what I am suggesting is that it is difficult if  
25 not impossible to understand how you could have hit upon

1 the 24th May date without somebody having drawn that  
2 document or its contents to your attention?

3 A. I just said that Mr Nevitt has a daybook, you can ask  
4 the other people here today, and he makes notes on what  
5 he agrees on prices or terms or who he is meeting.

6 If I am sitting in a meeting, he is the buyer,  
7 therefore he is writing down what is relevant, as I am  
8 not writing anything down while I am sitting here.

9 Q. Have you discussed this meeting of 24th May, for example  
10 with Mr Ronnie, on occasions when you have been  
11 preparing for this case?

12 A. I am not absolutely sure.

13 Q. Well, again, you are the only person who can answer that  
14 question apart from Mr Ronnie.

15 Have you had conversations with Mr Ronnie?

16 A. I have had conversations with Mr Ronnie, yes. Whether  
17 or not we specifically talked about that meeting,  
18 I honestly cannot remember.

19 Q. Might you have done?

20 A. It is possible, yes.

21 Q. Do you think it is possible that you might have got the  
22 date from him from something he said to you?

23 A. (Pause). Possible. Very unlikely I would have thought.  
24 Because he has not shown me any file notes or anything  
25 else, so I would think that is most unlikely.



1 Q. Do you have any recollection of him saying that  
2 Mr Attfield made a note of this meeting?  
3 A. That is the bit that I cannot remember.  
4 Q. You cannot remember it at all?  
5 A. No, I said I cannot remember it specifically.  
6 Q. Mr Ronnie's position is that in May of 2000 he was  
7 employed by Umbro; that is right, is it not?  
8 A. Yes, yes.  
9 Q. But now he works for Sports World?  
10 A. That is correct, yes.  
11 Q. And he joined Sports World in September 2003?  
12 A. That is correct.  
13 Q. I am being told it is February 2003, I do not know if  
14 you can help on that. Was it February or September --  
15 forgive me, it looks as though the suggestion is that he  
16 left Umbro in February 2003 and joined you in  
17 September 2003; is that right?  
18 A. Yes, that is about right.  
19 Q. You see, what I suggest is that if it were not for  
20 the date or for somebody telling you what was in  
21 the note, you would not have any independent  
22 recollection at all of the content of that note?  
23 A. Unless as I say Mr Nevitt had shown me in his daybook in  
24 which he keeps notes.  
25 Q. If there is such a document, perhaps if I may, can

1 we have the production of it? It should have been  
2 produced by now if it does exist. If it exists we would  
3 like to see a copy of it.

4 A. It is a big thick yearly diary, and he has them going  
5 back X number of years, so it absolutely  
6 one hundred per cent exists.

7 Q. Yes, well, I am not suggesting otherwise. It is just  
8 that we have not seen it.

9 A. Okay.

10 Q. So you now accept, do you, that Mr Ronnie had not told  
11 you on the telephone that he had already reached  
12 an agreement with other retailers to fix the price of  
13 the England home shirt, and that he was trying to get  
14 you to join in with the agreement?

15 That is rather a long question --

16 THE CHAIRMAN: I think you should break it down and go in  
17 stages, and perhaps go back to the document you are  
18 referring to.

19 LORD GRABINER: Yes. If you go back to page 8 in that  
20 bundle. Right at the beginning of this little group of  
21 questions I was asking you I showed you the piece at  
22 the foot of page 9 in the bundle, which is part of  
23 paragraph 10, do you see that? Page 9; it has several  
24 zeros and then a number 9.

25 A. I am on the wrong page. Sorry. Is that "Mike Ashley

1 joined the meeting at approximately 11 am"?

2 Q. That is the one. If you go to paragraph 10, a few  
3 lines into it, it says:

4 "As he recalled matters, there had not been  
5 a meeting as such. Chris Ronnie of Umbro had contacted  
6 Mike Ashley some time before the European Championships,  
7 probably May/June last year, saying that he,  
8 Chris Ronnie, had contacted named people at other  
9 retailers who had agreed to price the then England shirt  
10 at 39.99. MA could not recall the precise details but  
11 thought the names referred to by Chris Ronnie included  
12 Duncan Sharpe."

13 Do you still stand by that?

14 A. Yes.

15 Q. So that involves the proposition that an agreement had  
16 already been reached and that Mr Ronnie was trying to  
17 get you to join into the agreement; do you understand?

18 A. Yes.

19 Q. As I understood the position, the agreement that we are  
20 talking about was actually made on 24th May?

21 A. Yes.

22 Q. Do you not think there is any inconsistency between  
23 those two positions?

24 A. I am not exactly sure what you are trying to get at.  
25 Are you trying to say that he fixed the price with us

1 first before he fixed the price with other retailers?

2 What are you trying to say? Sorry.

3 Q. It is what you are trying to say actually, not what I am  
4 trying to say. What you had told the OFT was that  
5 Mr Ronnie had made agreements with other retailers, and  
6 then I think was getting you to accede or to come into  
7 the same agreement. That I think is the thrust of what  
8 you say in paragraph 10?

9 A. Okay, yes, I accept that.

10 Q. But is that consistent with your having made a specific  
11 agreement on 24th May with Umbro that the price would be  
12 fixed accordingly?

13 A. Yes. When I make an agreement with Umbro, so that we  
14 are crystal clear on this, I have to make it as I keep  
15 saying on a daily or weekly or whatever basis. But that  
16 does not mean I will stick to it. Because I am not --  
17 it is not an agreement; it is me being forced to do it.  
18 So there is a big difference.

19 So if you agree a price maintenance with me or force  
20 me to do something, that does not necessarily mean that  
21 I will carry it out. Because there is -- it is not  
22 financially sensible for me to carry it out, therefore  
23 I try not to instigate what I am forced to agree.

24 Q. If you could just concentrate on my question. I know  
25 that I am a bit long-winded, for which I apologise, and

1 you do not need to nod at that!

2 What I want to try to get at is the apparent  
3 disconnect, I would suggest, between what you say on  
4 page 9, the substance of which is that Mr Ronnie made  
5 a deal with other retailers and then asked you to join  
6 in. That is the way you originally put it on the OFT?

7 A. That is correct.

8 Q. When you go to page 137, for example, in the same  
9 bundle, you say nothing about that at all. What you say  
10 is:

11 "I attended a meeting on Wednesday  
12 24th May 2000 with Mr Nevitt at which we agreed to raise  
13 the price of the England home shirts to 39.99."

14 So what I am suggesting, you see, is that these are  
15 two quite distinct stories that are being suggested?

16 A. Yes, and they are absolutely linked. So we -- so what  
17 would have happened on the 24th is we would have had to  
18 agree to the higher price. But we would not have done  
19 the higher price had we not been further pressured by  
20 Mr Ronnie. Because we have to agree full price --  
21 I have to keep saying it the whole time so we can get  
22 the picture -- on the vast majority of products we sell.  
23 Our skill is in then not sticking to those RRP's.

24 Q. When you sat down at the meeting of 24th May 2000, did  
25 you believe that Mr Ronnie had already made deals with

1 other retailers; did he tell you that that is what  
2 he had done?

3 A. I honestly cannot remember.

4 Q. You cannot remember it now, but apparently you could  
5 remember it when you gave your evidence which is shown  
6 at page 9.

7 A. Page 9. (Pause).

8 THE CHAIRMAN: I do not know that it is completely clear  
9 from pages 9 and 10 exactly what the order of events  
10 was. Although it looks as if --

11 LORD GRABINER: That is a matter for debate, if I may  
12 respectfully say so, and a matter for submission.

13 THE CHAIRMAN: Yes.

14 LORD GRABINER: I am very, very keen to get the witness's  
15 answers.

16 What I am suggesting to you is simply this: that  
17 you had a recollection when you gave this evidence at  
18 page 9 to the OFT that a deal had already been done  
19 between Mr Ronnie and other retailers and that you were  
20 being invited to participate in that deal.

21 Now you I think said a moment ago that you cannot  
22 recall that that was the position. Is that what you are  
23 saying?

24 A. Yes, I think that is what I am saying. I am not  
25 completely certain what you are saying, so I had better

1 not say yes.

2 Q. No, you should not say yes, so let me do it again  
3 slowly.

4 What I am suggesting is that your original story to  
5 the OFT was that you were told by Mr Ronnie that he had  
6 made an agreement with other retailers and that he was  
7 asking you to join into that agreement, you on behalf of  
8 Sports Soccer. What I am suggesting is that that is  
9 the thrust of what is being said in that paragraph 10.  
10 That is my first point.

11 A. Okay.

12 Q. I think what you said a few moments ago was that at this  
13 instance in time, sitting here now, you cannot remember  
14 if that is what Mr Ronnie told you at the time?

15 A. No, I cannot remember now, no.

16 Q. That is the point. But what you can remember now, but  
17 what apparently you could not remember on page 9, was  
18 that you had a meeting on 24th May 2000 when you made  
19 a specific agreement with Mr Ronnie to raise the price  
20 of England home shirts; that you can remember, sitting  
21 here now?

22 A. Why can I remember it specifically sitting here now?

23 I do not remember the 24th May specifically sitting here  
24 now.

25 Q. You see, you made the statement in which that fact is

1 recorded as your evidence, and you have signed it as  
2 being true to the best of your knowledge and belief.

3 A. Yes, but you keep using the word "now".

4 Q. Yes, but you made this statement about six months ago,  
5 in September of 2003; it is now March 2004. Are you  
6 saying that your memory has weakened since last  
7 September?

8 A. I am saying that I am not able to be as specific as time  
9 goes on. I do not want to say absolutely I can remember  
10 this or that. It is difficult to remember the specifics  
11 of that many years ago now.

12 Q. But you were prepared to say in November of last year  
13 that your memory was sufficiently specific?

14 A. My understanding of the events surrounding; yes? This  
15 is my understanding of the events surrounding on  
16 Wednesday 24th. I did not say I specifically remember.

17 Q. You do not specifically remember?

18 A. I do not say that, do I? I have even missed a person  
19 off who was apparently there.

20 Q. It is perfectly apparent from the balance of that  
21 sentence that what you were saying in that witness  
22 statement was that you had a very plain and sufficiently  
23 clear recollection of a meeting on 24th May at which  
24 that agreement was made.

25 A. And I have said that I think that that could -- could --



1 well have been attributed to Mr Nevitt.

2 Q. But when I asked you a few minutes ago if that was your  
3 memory of it, what did you say, that it was dependent  
4 entirely upon what Mr Nevitt said to you?

5 A. I cannot remember what I just said a few minutes ago.  
6 You would have to tell me what I said.

7 Q. So are we getting your evidence or are we getting  
8 Mr Nevitt's evidence?

9 A. Are you getting my evidence or are you getting  
10 Mr Nevitt's evidence?

11 Q. When you record in paragraph 10 the facts that you do  
12 record, is that because Mr Nevitt told you that  
13 the meeting must have taken place then, or is it because  
14 you can remember these events and that is why you have  
15 recorded them in your own witness statement?

16 A. It could well be that Mr Nevitt had shown me his daybook  
17 that has triggered my memory of those events. Enough to  
18 say my understanding of the events.

19 Q. But you have no memory as I understand it of Mr Nevitt  
20 showing you his daybook?

21 A. Not specifically, no. It would not be a specifically  
22 big thing. He would have notes of other prices and  
23 other deals, yes?

24 Q. But sitting here now --

25 A. I think it is the most likely trigger for my -- to be

1           able to be specific about 24th May -- his notes. That  
2           is the most likely reason for my answer number 10.

3   Q.   But you are just trying to reconstruct it without having  
4           any specific memory of it?

5   A.   When you are shown something -- if I had been shown  
6           something that would trigger my memory, it would trigger  
7           my memory. So I am not trying to reconstruct it. If it  
8           is in his daybook and it is written down, that is it,  
9           and we looked back through and said: this is where we  
10          agreed to do this and that, oh yes, I remember it now.  
11          That is more the sort of -- what I am trying to explain.

12   Q.   You see, I am not interested in your attempted  
13          reconstruction or your hypothesis about what may or may  
14          not have happened. I am asking you a terribly simple  
15          question and I am going to ask once more.

16                 Do you have any memory of Mr Nevitt showing you his  
17          daybook which recorded this agreement? And I think that  
18          is susceptible of a yes or no.

19   A.   No, I am going to go for a maybe.

20   Q.   A maybe?

21   A.   A maybe. Because I would not like to say yes and  
22          I would not like to say no, and he has; yes?

23   THE CHAIRMAN: Mr Ashley, as far as you are concerned as of  
24          today, this afternoon, are you able to say whether or  
25          not you have a recollection of this meeting of

1           24th May that we are talking about?

2   A.   24th May 2000 ...

3   THE CHAIRMAN:   It is a long time ago.

4   A.   I have to be honest, I cannot remember it specifically.

5   THE CHAIRMAN:   Yes.

6   LORD GRABINER:   Mr Ashley, I would like to turn to

7           a separate topic, the Manchester United agreement.

8           Just to recap, it is something we have already

9           talked about and I do not want to dwell on it. You

10          first told the OFT that the meeting of 8th June with

11          Mr Whelan and Mr Hughes was in respect of England

12          shirts, and you then said that was a slip of the tongue

13          and you corrected it to confirm the fact that it was

14          concerned with Manchester United shirts; is that right?

15   A.   That is correct.

16   Q.   On 11th July 2002 there was a hearing with the OFT, and

17          you gave oral evidence to the OFT. And that is back in

18          the witness file. If you go to page 45, that is

19          the start page that I have shown you before, and that is

20          a transcript of what passed.

21   A.   Yes.

22   Q.   And the bit I want to show you is at page 69.

23          The relevant bit starts at line 8; do you see that?

24   A.   Yes.

25   Q.   This is you speaking:

1           "The only reason we met JJB was on Umbro's  
2           instigation. Let us get that 100 per cent correct.  
3           I had never met Dave Whelan before that. I would not  
4           know if I had run over him in the car."

5           That is a very curious expression, but we will pass  
6           over it:

7           "I do not know him, I had never spoken to him before  
8           that day, but things got so bad that in the end they  
9           said: your assurance to us is not enough, you will not  
10          be discounting the new Manchester United home shirt, you  
11          will have to have a meeting with Dave Whelan, we will  
12          have it at Dave Hughes's house and we will organise it.  
13          That is what happened and that is what I turned up to.  
14          Again, do not ask me to 100 per cent recite it,  
15          I cannot, I cannot physically remember who said what. I  
16          arrived, Dave Hughes was there, and Dave Whelan and his  
17          son-in-law, Duncan Sharpe. Duncan Sharpe arrived by  
18          helicopter, the home shirt was discussed and it was  
19          agreed that we would have to be 39.99 for it and that  
20          was the end of the meeting. It did not take very  
21          long ..."

22          And so on. You can read through the balance of  
23          the answer if you would like to yourself just for  
24          flavour and context. (Pause).

25   THE CHAIRMAN: There is then an exchange about whether

1 the agreement extended to the shorts and to the socks as  
2 well as the shirts.

3 LORD GRABINER: So you say that the only reason you met with  
4 JJB was on Umbro's instigation. Presumably it was also  
5 on Umbro's instigation that you should also meet with  
6 Mr Hughes of Allsports at the same meeting; is that  
7 right?

8 A. Yes.

9 Q. When you say Umbro's instigation, would I be right in  
10 assuming that that was on Mr Ronnie's instigation?

11 A. Yes.

12 Q. So you are saying that you went along there because he  
13 told you to; is that your point?

14 A. Basically, yes.

15 Q. Now, you do very fairly accept that you cannot remember  
16 exactly who said what.

17 A. Yes.

18 Q. Now, if that was your view in 2002, in July, I suppose  
19 it would not have improved now that we are in  
20 March 2004?

21 A. I hope not.

22 Q. So you are not the sort of person whose memory improves  
23 with the passing of time?

24 A. I said I hope not.

25 Q. According to this version, it was a very short meeting:



1 MR WEST-KNIGHTS: With my learned friend's permission, may  
2 I just say that if Mr Hughes is seen to stand up and  
3 walk about it is because, by reason of his knees, he  
4 cannot sit down for prolonged periods.

5 THE CHAIRMAN: Thank you for telling us. Yes,  
6 Lord Grabiner.

7 LORD GRABINER: May it please you, sir.

8 Mr Ashley, I was just going to invite your attention  
9 to the solicitors' further elucidation which is at  
10 the bottom of page 89; do you see that? Where they say  
11 this:

12 "Mr Ashley provided some detail of the meeting which  
13 took place on 8th June 2000 at the oral hearing. There  
14 is not much more factual information that Sports Soccer  
15 is able to provide about this meeting, other than at  
16 this meeting Mr Ashley records that he was shown for  
17 the first time the new Manchester United home shirt. It  
18 was the exceptional circumstance of the first meeting  
19 with David Whelan, the rival of JJB, the helicopter  
20 arrival of one of the participants which fixed  
21 the meeting in Mr Ashley's memory. Otherwise Mr Ashley  
22 fully stated his recollections of this meeting at  
23 the oral hearing as reflected in the transcript."

24 You have seen all that?

25 A. Yes.

1 Q. I am assuming that they wrote this letter after having  
2 taken your instructions?

3 A. I presume that is correct, yes.

4 Q. And that there was nothing else of substance that you  
5 could add to the evidence you had given, that is  
6 the thrust of what they are saying?

7 A. Yes, that is correct.

8 Q. Now, what happened thereafter was that your solicitors  
9 served a response to the OFT's supplementary Rule 14  
10 notice, and that response was dated 19th January 2003,  
11 and you will find it in the same bundle just a few  
12 pages on at page 94, the first page of it.

13 Then if you go to page 108, the foot of page 108,  
14 you see the bottom box which has the number 42 on  
15 the left-hand side; do you see that?

16 A. Yes.

17 Q. This is again your solicitors speaking:

18 "Sports Soccer maintains that Umbro requested  
19 Sports Soccer attend this meeting so as to give  
20 reassurance to JJB and Allsports as to Sports Soccer's  
21 pricing intentions. Umbro informed Sports Soccer to  
22 expect a telephone call inviting Mike Ashley to such  
23 a meeting. Mike Ashley of Sports Soccer then received  
24 an invitation by telephone from Mr Hughes of Allsports.  
25 This meeting was the first and only meeting that



1 Mike Ashley or any other personnel from Sports Soccer  
2 had ever attended with Sports Soccer's competitors.  
3 Apart from running into personnel of competing retailers  
4 at trade fairs ..."

5 You can just glance at the rest of that paragraph if  
6 you want to. The next paragraph:

7 "Mike Ashley only attended the meeting because of  
8 the intense pressure placed on Sports Soccer by Umbro.  
9 It was not in Mike Ashley's interests to discuss his  
10 pricing policy with competitors. However, he attended  
11 so as to ensure that he continued to receive full orders  
12 or Umbro products and to avoid being denied the ability  
13 to order future Umbro products.

14 "Mike Ashley recalls that the meeting was fairly  
15 short in duration, chaired by David Hughes.  
16 The discussion focused on the pricing of the MU home  
17 shirt, an example of which David Hughes showed the other  
18 attendees at the meeting. David Hughes stated that he  
19 did not think it was in all the parties' interests to  
20 have a price war, and although he wanted the retail  
21 price to be around £44.99, he was happy to accept  
22 a retail price of £39.99. JJB stated that its position  
23 was that it would retail the shirt at £39.99."

24 Now I want to ask you this. First of all, you  
25 repeat the point that you had previously made that you

1 had attended the meeting at the request of Umbro?

2 A. Yes.

3 Q. And indeed you go on to say that you were put under

4 intense pressure by Umbro to attend the meeting?

5 A. Yes.

6 Q. And that is true, is it?

7 A. Yes.

8 Q. Towards the end of the entry you say that Mr Hughes

9 wanted the retail price to be £44.99. Now, that is

10 a brand new point, is it not, in the sequence that

11 we have been looking at; that is the first time that

12 that point has been made in any submission made by you

13 or on your behalf to the OFT?

14 A. If you say so, yes.

15 Q. And that is what happened, is it not?

16 A. That he wanted it to be at 44.99, yes.

17 Q. Yes. You see, you did not refer to this in

18 the transcript of July 2002 or in the supplementary

19 explanation that was provided by the solicitors.

20 A. Okay, no.

21 Q. Now, you see, the impression that one might get from

22 evidence that I have been asking you about so far on

23 this point is that the only matter discussed was

24 a retail price of 39.99 which was probably agreed to.

25 One might form that impression, you see, I am

1 suggesting, from the earlier materials that we looked  
2 at?

3 A. Right.

4 Q. In fact, what happened, as you correctly point out in  
5 this response, is that the meeting kicked off with  
6 Mr Hughes seeking an agreement at 44.99; that is right,  
7 is it not?

8 A. That is correct, yes.

9 Q. And Mr Whelan's reaction to that was that he was not  
10 prepared to make any such agreement?

11 A. Not at 44.99, no.

12 Q. He said that as was well known JJB did not sell adult  
13 shirts above £40, or words to that effect, did he not?

14 A. That I cannot remember now.

15 Q. But he might have said that?

16 A. He might have done, yes.

17 Q. And knowing what you know about JJB's business and  
18 pricing tactics over many years of experience that is  
19 exactly the sort of thing you might have expected him to  
20 say?

21 A. I do not know what I might have expected him to say.  
22 I know that JJB would have wanted a price of 39.99.

23 Q. Well, all I am suggesting is that he said that JJB  
24 simply did not sell adult shirts above £40, and I think  
25 you are saying he might well have said that?

1 A. I said I cannot remember what he said, the same as  
2 I said earlier.

3 Q. No, but he might have said that, might not he?

4 A. He might have done. He might have not have done, but he  
5 might have done.

6 Q. Did he say anything along the lines that this was  
7 a well-known policy of JJB and it was also known in  
8 the city?

9 A. When you ask me that sort of question now it is a bit  
10 like the earlier questions on the March. I cannot  
11 remember now.

12 Q. No, absolutely. If you cannot remember, you must say  
13 so.

14 A. So all I would say is look at what is -- it is  
15 impossible to remember now exactly what somebody said  
16 four years ago.

17 Q. I know it places a very big burden upon the person  
18 trying to wrack their brain to remember it, including  
19 you.

20 A. That is correct.

21 Q. What I suggest is that he said he was not prepared to  
22 agree any prices?

23 A. No, that he did not say.

24 Q. So you have a very clear recollection of that?

25 A. Yes, yes.

1 Q. Although it was four years ago?

2 A. Yes, because I know what the outcome of the meeting was,  
3 so I am absolutely certain that there was an agreed  
4 price of 39.99.

5 Q. And he then left the meeting?

6 A. Give or take, yes.

7 Q. What I am suggesting to you -- so there is no  
8 misunderstanding between us -- is that he never made any  
9 such agreement.

10 A. 39.99?

11 Q. That is what I am suggesting.

12 A. Then you are wrong.

13 Q. What I am saying is that when Mr Hughes declared that  
14 the supposed purpose of the meeting was to agree  
15 a figure at 44.99, Mr Whelan refused to make any such  
16 agreement, and the meeting came to an end. That is what  
17 I am suggesting to you.

18 A. That is incorrect.

19 Q. You have a very clear recollection sitting here now that  
20 what I have just said is incorrect?

21 A. That is correct, yes.

22 Q. Can you look at your second witness statement which is  
23 in the same file at page 134. That is the beginning of  
24 it. This is the statement that was made on  
25 23rd November 2003, just a few months ago. If you look

1 at page 139, and look at the paragraphs 21 on to --  
2 really all the way on to paragraph 35.

3 THE CHAIRMAN: Do you want Mr Ashley to re-read that  
4 paragraph?

5 LORD GRABINER: I would be grateful if he would do so, yes.

6 THE CHAIRMAN: Just take a moment to re-read them, Mr  
7 Ashley.

8 A. What was the reference?

9 LORD GRABINER: 21 starting at the foot of page 139, down to  
10 and including paragraph 35, which is on page 142.

11 THE CHAIRMAN: Take your time because we are reading them  
12 while you are reading them.

13 A. Okay. (Pause).  
14 Where was I reading up to?

15 LORD GRABINER: Paragraph 35.

16 A. I have read it, yes.

17 Q. Thank you very much. First of all, the first  
18 observation I would make and invite your comment on is  
19 that this is a very much fuller version of what took  
20 place than any you have previously provided, is it?

21 A. That is correct.

22 Q. Again, why is that?

23 A. I think that on the first -- where you talk about  
24 the oral submissions that I went to, there was a limit  
25 to the amount of time et cetera that we had there, so

1           there was no specific reason for the OFT to go into more  
2           detail other than to say that the purpose of the meeting  
3           was to agree the 39.99. It was agreed. That was it.  
4           It was a short meeting.

5   Q.   When the solicitors then gave a written explanation or  
6           addition, such as it was, to the evidence you had given,  
7           there was not any time constraint in there, was there?

8   A.   No. I think they have said the 44.99 --

9   Q.   No, they did not. In the earlier one the solicitors  
10          made no reference to the 44/39, not in the first one  
11          anyway.

12   A.   Okay, sorry.

13   Q.   Look at paragraph 29 -- that seems to be the start of  
14          the meeting. The meeting took place in David Hughes's  
15          study?

16   A.   That is correct.

17   Q.   And it seems from the sequence laid out here that  
18          the very first thing was Mr Hughes, as you say here, not  
19          asking for 44.99 but saying -- what you say is very,  
20          very definitely stated:

21                 "He definitely said he thought he could get £45 for  
22                 the shirt."

23   A.   Oh, definitely.

24   Q.   So you have a clear recollection sitting here now that  
25          that is what he said?

1 A. Definitely.

2 Q. And that is how the meeting began?

3 A. I do not know if it is exactly how the meeting began,  
4 but I remember him saying that the shirt was worth  
5 44.99, yes.

6 Q. Well, it says to get £45 for the shirt -- or am I being  
7 a bit pedantic?

8 A. You are being pedantic. It is the same thing. 40 and  
9 39.99 are also the same.

10 Q. Well, 45 and 44.99 you mean are exactly the same?

11 A. Yes, and 40 and 39.99 are also the same.

12 Q. The sequence is right, is it, that that is how  
13 the meeting started, in the sense that when you prepared  
14 this statement that was your best recollection of how  
15 the meeting developed, because that is the first point  
16 you mention?

17 A. Okay, if you say so, yes.

18 Q. Well, no, it is if you say so that matters. I was not  
19 there.

20 A. Did the meeting start with David Hughes going on about  
21 it being ... I do not know if that is where it actually  
22 started. No, I do not remember, I am sorry.

23 THE CHAIRMAN: This is in response to Mr Hughes's statement,  
24 Lord Grabiner, is that not right, commenting here on  
25 Mr Hughes's statement. So to see how the meeting



1 started and the full context we would need to see what  
2 Mr Hughes was saying about this.

3 LORD GRABINER: It may be what the witness is really doing  
4 here, and again it is really a matter for submission, is  
5 setting out in the fullest way that we have so far seen  
6 his version of what took place at that meeting, in  
7 the light no doubt of what other people had said in  
8 their witness statements.

9 THE CHAIRMAN: Yes.

10 LORD GRABINER: Over the next couple of paragraphs you talk  
11 about what Mr Whelan said about the right price being  
12 39.99. David Whelan said words to the effect that:

13 "The right price is 39.99 and I am going to be  
14 charging 39.99."

15 Is that a bit of a gloss on what happened or are you  
16 saying that you do not actually have a recollection of  
17 him saying those words?

18 A. David Whelan said words to the effect; that is what he  
19 is saying.

20 Q. Is it not possible that what he was saying was: you know  
21 that the practice at JJB is not to charge more than £40,  
22 and that what you are doing here is putting what I call  
23 a gloss on what he was saying?

24 A. No.

25 Q. That is not possible?

1 A. A gloss?

2 Q. Well, you are looking back over several years and this  
3 is the way you are summarising it; that is what I am  
4 trying to suggest to you.

5 A. No. What that says is what happened.

6 Q. You did know about the regular practice of JJB.

7 I wonder if you could look back in the same file at  
8 page 25.

9 This is part of your solicitors' written response to  
10 the OFT. Rule 14 notice. If you look at page 13 you  
11 see the bit in the paragraph 2.2.37; do you see that  
12 long paragraph near the top of the page?

13 A. Yes.

14 Q. In the fifth line it says:

15 "In practice the retailers had for a few years  
16 settled down to recognise that the prices the customer  
17 would bear were just under the psychological barriers of  
18 £30 junior shirts, £40 adult shirts, thus prices of  
19 £29.99 and £39.99 were recognised price points.  
20 They were adopted by JJB, which was and remains  
21 the largest of the retailers group and which was  
22 therefore a sort of price leader. It might therefore be  
23 said that the retailers in general acknowledged that  
24 these were prices that the consumer would pay.  
25 Sports Soccer recalls a time when JJB tried selling the

1 adult shirt at over £40 but quickly had to return to  
2 the £39.99 point because of the effect on sales. So  
3 prices at these levels were somewhat general knowledge,  
4 rather than the subject of specific and separate  
5 agreements."

6 And that is right, is it not?

7 A. Yes, because the trade price is £21.30; that dictates  
8 the retail price.

9 Q. By adding on a percentage?

10 A. Yes.

11 Q. And similarly in respect of the £39.99?

12 A. That is the £39.99 --

13 Q. I understand, forgive me. But the substance of what is  
14 in that paragraph in relation to JJB's pricing policy  
15 was well known to you and to the market generally?

16 A. JJB was the RRP for replica shirts.

17 Q. For the whole of the market?

18 A. JJB's policy was to be the full RRP for replica shirts,  
19 that was their policy, 39.99, in other words.

20 Q. I understand. Fine. Now I want to come away from that  
21 topic, and I want to --

22 THE CHAIRMAN: Lord Grabiner, if you are leaving pages 139  
23 and 140 -- 141 and 142, it is entirely a matter for you  
24 whether you are going to put paragraph 32 or ask him  
25 questions about paragraph 32 on the top of page 142.

1 LORD GRABINER: I have put my case to the witness, I think.

2 THE CHAIRMAN: Yes, very well.

3 LORD GRABINER: Now I want to ask you something about

4 the relationship between Umbro and Sports Soccer. Can

5 the witness be provided with copies of our supplementary

6 skeleton arguments with some documents that were annexed

7 to it?

8 THE CHAIRMAN: Do you have the copies that you need,

9 Mr Ashley?

10 Are there copies for the tribunal?

11 LORD GRABINER: You will have seen these last week, sir;

12 these were the bits of paper that we annexed to our

13 supplementary skeleton.

14 THE CHAIRMAN: We can put the witness file away now, can we?

15 LORD GRABINER: You can, yes.

16 THE CHAIRMAN: This is the supplementary.

17 LORD GRABINER: This is the one from last Thursday,

18 3rd March.

19 Mr Ashley, did you know that in the year 2000, and

20 maybe even earlier but certainly in the year 2000, Umbro

21 was in some financial difficulties?

22 A. (Pause).

23 Q. It is not a very difficult question.

24 A. I would have to define "financial difficulties". Did

25 I think they were not doing enough sales and they were

1 a bit disappointed and that sort of thing? Probably.

2 Q. No, I think I meant a bit more than that. I think you  
3 understand what "financial difficulties" means. I do  
4 not think it is something you suffer from, but I think  
5 it is something they were suffering from --

6 A. I permanently suffer from it!

7 Q. I am tempted to say I will cry for you, but --

8 A. Yes.

9 THE CHAIRMAN: Can you recollect?

10 A. I think Umbro were worrying about sales and sales  
11 volumes.

12 LORD GRABINER: What about cashflow?

13 A. Yes, they were worried about cashflow.

14 Q. They were worried about cashflow?

15 A. Yes, that is correct.

16 Q. How did you know that?

17 A. They must have told me.

18 Q. And they were worried about margins?

19 A. Probably. But most brands are worried about margins.

20 Q. Margins are critical in this business, as in all retail  
21 trade?

22 A. Margin and volume, you need a combination of the both,  
23 obviously.

24 Q. If your margin is right, it does not really matter that  
25 you are not securing more market share, does it?

1 A. No, it does matter. The two are absolutely linked,  
2 volume and margin. It is no good if you pay nothing for  
3 the product for the product and you do not sell enough.  
4 On the other hand it is no good if you sell a billion  
5 pounds' worth and your margin is too low. So they are  
6 absolutely -- the two lines need to come together.

7 Q. If you can maintain your margins, even if you are not  
8 enlarging your market share, things are not too bad, are  
9 they?

10 A. If you can maintain your margins even though you are not  
11 growing your market share ... it depends on that  
12 particular market. What happens if that market has  
13 grown 100 per cent, so it is not a yes/no question.

14 Essentially if the market was flat and not growing  
15 and you were maintaining your margins that would be  
16 okay, so long as the market was flat.

17 Q. If there was a mature market --

18 A. Correct.

19 Q. -- and you were not able to grow by acquiring your  
20 competitor's share or part of it, if you could sustain  
21 your margin your business is doing well?

22 A. It is doing okay in a flat market, yes.

23 Q. Now, if we look for example at the first annexure to  
24 that document, I am not quite sure what the numbering is  
25 and I apologise, but you will find the report and

1 accounts or an extract of them from Umbro holdings?

2 A. Okay.

3 Q. So you see that for the 12 months ending

4 31st December 2000 there is a turnover figure of

5 100 million-odd; do you see that?

6 A. I do.

7 Q. And there is a cost of sales of 89 million-odd?

8 A. Okay.

9 Q. If you come down to the loss or profit on ordinary

10 activities for the financial year, you can see a trading

11 loss of 6.9 million?

12 A. Yes.

13 Q. So that is what I mean by financial difficulties. That

14 is what that reveals, does it not?

15 A. It depends what they had budgeted for. I do not know

16 what they had budgeted for, I have no idea. They could

17 have budgeted to lose 12 million and only lost 7

18 million, and in actual fact it was a good result. But

19 on the face of it it does not look brilliant, no.

20 Q. Coming back to your answer of a few minutes ago, what

21 were the circumstances that led Umbro to reveal to you

22 that they did have financial difficulties? That is

23 quite a surprising thing for a person with whom you have

24 contractual relations to disclose to you?

25 A. It is an unusual thing to do, yes.

1 Q. On the face of it it is commercially rather stupid, is  
2 it not?

3 A. You would think so. I personally would not recommend  
4 it.

5 Q. Of course, if you know that the person with whom you are  
6 bargaining is in financial difficulty, that might  
7 improve your ability to produce a much better deal on  
8 future transactions?

9 A. That was my previous answer, yes.

10 Q. It is not a very complicated thought, though, is it?

11 A. No, I would agree with you.

12 Q. If you go forward to the next tab there are two  
13 documents there which I think come from Umbro which  
14 reveal the amount of business being conducted as between  
15 JJB on the one hand and Umbro, and then Sports Soccer  
16 and Umbro. The JJB figure, if you look in the bottom  
17 right-hand side, the second column in, the JJB figure is  
18 30,700,000-odd; do you see that?

19 A. Yes, 30,769,000, yes.

20 Q. For the year 2000?

21 A. Yes.

22 Q. If we go over the page we see that there is a figure  
23 which is nearly twice as much reflecting the extent of  
24 the trading relationship between Sports Soccer and Umbro  
25 at just under 60 millions?



1 A. That is correct but it is incorrect.

2 Q. Perhaps you would like to elucidate?

3 A. The 60 million is not turnover done in that particular  
4 year.

5 Q. How do you know that?

6 A. Because we did not -- if we had paid 60 million for  
7 goods we would have had to sell them for around  
8 120 million. I do not know what our turnover was in  
9 2000, but Umbro would have had to have been about  
10 40 per cent of our business or 30 per cent, something  
11 like that.

12 Q. I know it is difficult to ask you to explain their  
13 figures, but do you have any explanation as to how it  
14 comes about that the figure shows nearly 60 millions?

15 A. Yes, because I believe that it is a booked figure, where  
16 we have agreed to do a certain amount of turnover and it  
17 has been pulled forward into that year.

18 Q. So this looks like upfront cash --

19 A. That would be a better way of putting it.

20 Q. Upfront cash being provided by Sports Soccer to Umbro?

21 A. Yes, that is correct.

22 Q. In advance of product being taken down?

23 A. Brought in, yes, correct.

24 MR COLGATE: Can I be absolutely clear. Is that cash?

25 A. We would have advanced them money, yes. Money or let

1           them put in invoices. So maybe the cash was due to  
2           follow later but the invoices were sent in.

3   MR COLGATE: Can you recall?

4   A. Not exactly, sorry. I would have though that would  
5           relate -- let me think. In 2000 ... I cannot recall  
6           when we actually made the payments, no. The physical  
7           cash could have gone in or that could have been just  
8           the paper part of it.

9   THE CHAIRMAN: So it is at least invoiced?

10   A. It would have been at least invoiced, yes.

11   THE CHAIRMAN: And it may have been paid but you are not  
12           sure, how much of the invoices are still outstanding?

13   A. At that time, no, I cannot remember, I am sorry.

14   LORD GRABINER: Presumably this figure is taken into account  
15           in the figures for the year 2000 that we looked at on  
16           the first page showing that they are making a loss,  
17           notwithstanding taking a credit of 60 million into their  
18           books in respect of that year?

19   A. No, the whole credit is not 60 million; part of that  
20           figure would have been. I do not know what part it is.

21   Q. No, an element of it is advanced payment I think you  
22           said?

23   A. Yes, an element of it.

24   Q. So they are still making a loss on the year's trading,  
25           trading loss, notwithstanding that an element of the 60

1 millions is an advanced royalty payment?

2 A. Yes, that appears to be the case, yes.

3 Q. What I would like to know is how much of that 60  
4 millions was advanced payment? There are two questions  
5 really, and it may be that you do not know the answers  
6 now, but I would like them tomorrow when we resume this  
7 exercise.

8 First of all, I would like to know what element of  
9 the 59 was advance royalty. Secondly, I would like to  
10 know when the cash was paid, precisely.

11 A. I will try to find that information for you.

12 Q. It should not be difficult; they are very large sums of  
13 money, are they not?

14 A. I do not think it will be that difficult.

15 Q. It may be that the solicitor can get that information,  
16 because I am anxious not to involve you in conversations  
17 with other people about the matters that we are now  
18 discussing. I am sure that the question is well  
19 understood and, provided the solicitor is directed to  
20 the appropriate person from whom to get the information,  
21 we will be able to have that information.

22 As far as you know it should not be difficult to get  
23 it, should it?

24 A. I think not, no, it should not be a problem.

25 Q. Now, how did it come about that there was an agreement

1           that you make these advanced cash payments to Umbro?

2   A.   Why did I make --

3   Q.   How did it come about? Did they ask you? Did you

4           suggest it to them? What is the origin of it?

5   A.   I cannot be absolutely sure. I think we suggested to

6           them, but I am not certain on that, that they grant us

7           a licence and we give them their margin so they would

8           make their normal margin of, say, 30 per cent.

9   Q.   So you think you suggested it to them?

10   A.   I only think that, yes.

11   Q.   I suppose a reason why you would have suggested it to

12           them is because you knew that they needed some cash

13           injection?

14   A.   No, it is not that. It is because we know that

15           the trade price of what they paid for product is far

16           greater than the trade price that we paid for exactly

17           the same product. So to give you an example, if they

18           paid £10 for a product we would only pay something like

19           £6 or £7 possibly for that product. They would then add

20           their 30 per cent on the £10 or the 40 per cent, making

21           it £14, and sell it to us. Whereas if we pay them

22           the 30 per cent it is only on our -- our cost base is so

23           much lower that we have saved the £2 already.

24           Therefore, we keep the saving at source.

25   THE CHAIRMAN: If I have understood you, Mr Ashley, for some

1 reason, and you will no doubt tell us why, you are able  
2 to buy on better terms than Umbro can buy, is that  
3 right, from your sources?

4 A. When I said the opening thing, how I built the business,  
5 the click was that I was doing direct sourcing in  
6 the late 80s, early 90s, so we built up tremendous  
7 relationships --

8 THE CHAIRMAN: These are your suppliers in the Far East?

9 A. Yes, we were in China before -- nearly one of the first  
10 people in sports in China, in Bangladesh and those sorts  
11 of parts.

12 THE CHAIRMAN: And you reckon, if I have understood it --  
13 although I do not want to put words into your mouth --  
14 that you were getting at the time better times out of  
15 China and Bangladesh than Umbro could?

16 A. Substantially better. Roughly around -- we could save  
17 them 50 per cent. We were 50 per cent -- I must get  
18 the 50 per cent the right way round. They would pay  
19 50 per cent more than us for the same product, on  
20 an average basis for exactly the same product, even  
21 sometimes out of exactly the same factory.

22 LORD GRABINER: What you have been describing, I think, is  
23 the key to the success of certain retail establishments  
24 in the UK and no doubt elsewhere in the world and  
25 the comparative failure of others. Your talent is in

1 sourcing. I am sure you have many talents, but one of  
2 them is in your ability to source products more cheaply  
3 than they could source.

4 A. Yes, correct. I have an advantage there, yes.

5 Q. And you would go so far as to say that even purchasing  
6 from the same factory you reckon you could do a better  
7 deal?

8 A. Correct, definitely.

9 Q. So this licence arrangement that you are talking about  
10 is one that would give you the ability to purchase  
11 the gear that you wanted -- you to do the purchasing --  
12 at a cheaper price, to account to Umbro for its profit  
13 or what would otherwise have been its profit but on what  
14 basis, on a lower purchase price or on a higher purchase  
15 price?

16 A. Sorry, what was the question again? I am sorry.

17 Q. Your licence arrangement assumes that you would do your  
18 own sourcing?

19 A. Correct.

20 Q. Ie you would manufacture with their consent?

21 A. Yes.

22 Q. From your sources?

23 A. Yes.

24 Q. How would you account to them? How would you preserve  
25 their margin or pay their profit?

1 A. That is done on the price that we retail the goods at,  
2 less an established mark-up, and then paying them their  
3 percentage on that -- again if I just give an example.

4 If the retail was £10, divide it by 2.5, 4; and we  
5 would at that time in 2000 as I recall pay them  
6 30 per cent on the £4, giving them £1.20.

7 Q. So the money you would pay them would be on the basis of  
8 your acquisition cost, not on what would have been their  
9 acquisition cost?

10 A. No, it would have been on my retail price.

11 Q. Forgive me, it is a discount off your retail price which  
12 is itself driven by the fact that you have been able to  
13 acquire goods cheaper?

14 A. Basically, yes, it is the retail. £10 retail, 2.5, to  
15 get what we would call the cost of the goods. Umbro  
16 would then get 30 per cent on the 2.5 off the retail, ie  
17 giving them 30 per cent of £4, £1.20.

18 Q. So they would get less money in cash terms on  
19 a particular transaction doing it in this way, but you  
20 would expect to do much more turnover?

21 A. They would not necessarily even get less in cash terms.

22 Say, for example, that I could then sell that  
23 product at £10 and their normal cost for that product  
24 was £3. They have actually gained 20p more.

25 Q. I think your point is that they could not buy cheaper

1 than you?

2 A. No, they could not. That is why in some instances they

3 actually gained more margin as well, because they got

4 a guaranteed 30 per cent.

5 THE CHAIRMAN: If I have understood it, they have

6 a guaranteed margin?

7 A. Yes.

8 THE CHAIRMAN: And you have the advantage of being able to

9 sell the Umbro brand?

10 A. That is absolutely correct.

11 LORD GRABINER: A part of this deal, leaving aside

12 the beauty of your position to be able to improve their

13 position and your position in one go, was the fact that

14 you nevertheless agreed to give them a cash injection as

15 well as part of this deal. What I would like to know is

16 why?

17 A. I think that was to get the deal.

18 Q. But was not the deal valuable as it stood to both

19 parties? If I can just explain that, it gets all this

20 off their balance sheet, does it not, it means that

21 you are undertaking the burden of sourcing the goods?

22 A. Yes.

23 Q. And you are going to preserve the quality of their brand

24 because you have entered into arrangements that will

25 protect their trademarks?



1 A. The trademark, yes.

2 Q. So they will be protected, you are not going to produce  
3 duff goods, you are going to produce good quality goods,  
4 which satisfies their requirements, so their brand is  
5 not damaged?

6 A. Yes.

7 Q. So from their point of view and your point of view this  
8 is all very attractive, they also get the benefit of  
9 your selling at cheaper prices which means that  
10 presumably you will be able to get a bigger share of  
11 market?

12 A. That is correct.

13 Q. So why do you need to give them a financial incentive as  
14 well?

15 A. Because it is not natural for brands to grant licences.  
16 They normally want to be absolute masters of their own  
17 destiny. So I could answer that and say: why have Nike  
18 not given me one? Because they do not want to. They  
19 want to remain in control. It is not normal for any  
20 major brand to grant a licence. It is not impossible,  
21 it is just not standard.

22 Q. It may be that Nike's ability to source was as good as  
23 yours and rather better than Umbro's, so there would be  
24 no motivation in them to do any similar deal?

25 A. No, the motivation is control of the brand, not so much

1 the cost price.

2 Q. But the brand is controlled by making sure that there  
3 are contractual provisions in place which give them  
4 the protection that they are looking for?

5 A. The brand would argue that the control of the brand is  
6 in maintaining the whole marketplace. That is why you  
7 get back to the maintenance piece again here. A brand  
8 is in making sure that he has a balanced portfolio of  
9 customers, and not one customer do they become dependent  
10 upon. So granting licences can be a very dangerous game  
11 if you give somebody like me an edge on the market,  
12 because I can drive the prices lower, therefore drive  
13 more volume through me, and the thing becomes a whole  
14 spiral of growth down one particular channel.

15 Q. Absolutely, and that is one of the points I wanted to  
16 come to, but it is convenient to take it now.

17 One of the consequences of an arrangement like this  
18 is that you will be immediately putting pressure on  
19 Umbro's prices to you?

20 A. Putting pressure on Umbro's prices to me? We would then  
21 have no need for example to buy a T-shirt from Umbro; we  
22 would source it ourselves, or shorts. There would be no  
23 need to buy it directly from Umbro, no.

24 Q. And this would give you an improved position in  
25 the retail market because you would be able to undercut

1           your competitors?

2    A.   That is true, yes.

3    Q.   And they would then come back to Umbro and say: what is

4           the nature of this relationship that you have with

5           Sports Soccer which enables to undercut our prices

6           because these are quite fine margins that we are at.

7    A.   They would not necessarily see what I was able to do --

8    Q.   I am sure they could not, I think that was the whole

9           point, this was a confidential arrangement --

10   THE CHAIRMAN:  I think you just interrupted the witness,

11           I do not think he had quite finished, forgive me

12           Lord Grabiner.

13   A.   They would not be able to see it because we had as

14           a norm, as an average, about 25 per cent off the retail

15           anyway.

16   LORD GRABINER:  They would not know as I understand it

17           the deal that you had made with Umbro.

18   A.   I would not think so.

19   Q.   And you are not going to tell them and nor are Umbro?

20   A.   Absolutely, I would not have thought that was good.

21   Q.   They might have guessed that something was going on

22           because of the substantial reductions that you were able

23           to offer on the same product in the market?

24   A.   No, the reductions are normal, because I am normally

25           25 per cent off anyway.

1 Q. Presumably that is because your skill runs across  
2 the whole of the business, and not just in relation to  
3 football shirts?

4 A. That is what I try to do, discount it blanket, across  
5 the board.

6 Q. You must appreciate, and maybe you do not, I do not know  
7 if this is controversial, that the effect of all this is  
8 bound to impose pressure on Umbro from other retailers  
9 and bound to affect Umbro's margins in its negotiations  
10 with other retailers?

11 A. No, because that would be our normal price. If  
12 a product is £12.99, we are normally for example £10.  
13 All the difference is on this particular £10 I am making  
14 more margin because I am sourcing it. I am making more  
15 margin.

16 Q. Are you suggesting then that none of this has any impact  
17 upon Umbro's dealings with your competitors, the other  
18 retailers?

19 A. Not if they do not get to know about it, they should not  
20 see a difference in the marketplace, no.

21 Q. Except they might have formed an impression that some  
22 special deal was in place without actually knowing what  
23 the precise nature of it was?

24 A. I can imagine that. The sports trade industry is a very  
25 small industry, and people move from one brand to

1 another. So a secret agreement can only be a secret as  
2 long as the people in that brand stay at that brand.  
3 Because they move round the industry.

4 Q. All I am suggesting is that if that was their suspicion,  
5 even if they did not know the detail, this is bound to  
6 have an impact upon subsequent negotiations between  
7 Umbro and your fellow retailer competitors because they  
8 would be looking for an improved deal in order to try to  
9 compete with you in marketplace?

10 A. I will say it again. What we charged was just  
11 our normal discount off. So to them we would be  
12 behaving no differently than if we had bought  
13 the product normally off Umbro. They would not be able  
14 to see it in the marketplace.

15 Q. It is just that they would want to know surely why it  
16 was that with a branded product you would be able to  
17 undercut as much as you were able to do so; is that not  
18 the point?

19 A. No, because I keep on -- the prices we charge would be  
20 what we normally charged even if we bought the product  
21 off Umbro --

22 Q. That is not right, surely. Because the point about  
23 buying them, as you put it, off Umbro is that you would  
24 have buying taking account also of Umbro's increased  
25 sourcing price compared with yours?

1 A. If I can just take it back to the example --

2 Q. Forgive me, if I can just finish the question. If

3 you were to do it that way, you would be cutting into

4 your own margins, would you not?

5 A. I am the one who benefited from the better margin, yes.

6 If I had bought the product from Umbro I would not have

7 obtained such a good buying price. When I source it

8 myself, even though I give them the same margin that

9 they would make on me, the 30 per cent, my buying price

10 is reduced because it is off my discount that

11 I originally source at.

12 Q. Your point is that you are funding the preservation of

13 their margin out of your improved sourcing talents?

14 A. Yes, correct.

15 Q. And all I am suggesting is that if it was coming from

16 them, you would have to pay on the basis that they were

17 sourcing at a more expensive price than you would able

18 to source at, which would have undercut your margin

19 unless they were prepared to give up their margin?

20 A. That is totally correct.

21 THE CHAIRMAN: I think at some point, Lord Grabiner, we need

22 to bring the discussion back to the case that we have

23 and link it in --

24 LORD GRABINER: I wish I knew what the case was, actually,

25 because we are looking at materials here that we have

1 not previous had any explanation of or explanation for,  
2 so I am doing my very best, but this is all new material  
3 to me as well.

4 MR COLGATE: Mr Ashley, how do you fix the retail price?

5 You are saying it is a price as if you had bought it  
6 from Umbro, but what is the incentive on you to do that,  
7 because it relates back to the margin you pay Umbro?

8 A. Why would I not sell it at a lower price rather than  
9 a higher price?

10 MR COLGATE: Why would you not want to sell it at an even  
11 lower price? Is that because you and Umbro have agreed  
12 the price at which the product will be sold?

13 A. Basically you have Sports Soccer's normal selling price,  
14 which is about 25 per cent off their normal retail  
15 price. When you get a licence like that -- if I was  
16 able to buy a T-shirt in for £1, Umbro would take a very  
17 dim view if I were to retail it at £2 when their in-line  
18 T-shirt was, say, £6.99. So around that 25 per cent off  
19 their normal selling price for that product. That is  
20 how it basically the deal is done. So I cannot just  
21 sell Umbro product at anything I like.

22 LORD GRABINER: But the agreement, and that is maybe why you  
23 needed the price-fixing agreement, ensured that you got  
24 a super-profit. So you were not selling it out at  
25 rock-bottom prices which would undermine the brand; you

1 would sell at higher prices which would make it look  
2 quite solid in the market but which would give  
3 Sports Soccer an attractive profit, would it not?  
4 A. If I could I would always sell it at the lowest possible  
5 price between volume and margin. Because a super-profit  
6 is not what is interesting; what is interesting is  
7 the volume.  
8 Q. Yes, you have to get the balance between the profit --  
9 A. And the margin. In this particular instance what this  
10 gentleman said is correct, why would I not sell it lower  
11 and lower and lower, because there was a kind of  
12 understanding that it was within plus or minus  
13 25 per cent of what we would call their regular in-line  
14 product.  
15 Q. That essentially is a price fixing exercise, is it not?  
16 A. I am not fixing the price with anybody.  
17 Q. Not even with Umbro?  
18 A. No, because not every product has an exact -- if you  
19 take 25 per cent off of 10, what does that equal? 7.5.  
20 It is not a price point. So you might be 7 or you might  
21 be 8. So it is not: this is what you will charge for  
22 that product. Absolutely not.  
23 LORD GRABINER: Sir, can I enquire how long you intend to  
24 sit?  
25 THE CHAIRMAN: We had envisaged rising at about 4.30.



1 LORD GRABINER: As far as I am concerned, and subject of  
2 course to the tribunal, that would be a convenient  
3 moment for me because I wanted to go on to another  
4 document. So with your agreement my suggestion is that  
5 the tribunal should adjourn now.

6 THE CHAIRMAN: Do you have any forecast as to how much  
7 longer you might be, Lord Grabiner?

8 LORD GRABINER: I would expect to be about another hour or  
9 hour and a half. I will do my best, obviously.

10 THE CHAIRMAN: Of course.

11 LORD GRABINER: I would have concluded my cross-examination  
12 were it not for the extra documents some time ago. All  
13 I have left to ask the witness about is the extra  
14 documents, meaning those annexed to the supplementary  
15 skeletons, which we have started but not yet finished,  
16 and the one or two documents produced on Friday and bits  
17 of what was produced today.

18 THE CHAIRMAN: I see. Mr West-Knights, do you have any  
19 forecast, even in the most broad terms, as to how long  
20 you might wish to be in the light of how Lord Grabiner  
21 has been getting on?

22 MR WEST-KNIGHTS: Yes, tentatively.

23 THE CHAIRMAN: Are you able to share it with us?

24 LORD GRABINER: Sorry, I was not merely answering your  
25 question only literally, although I have many children

1           who like to play that game. Assuming that by an hour  
2           and a half means noon tomorrow, I would not anticipate  
3           finishing with Mr Ashley until lunchtime of  
4           the following day.

5   THE CHAIRMAN:   So you want a whole day?

6   MR WEST-KNIGHTS:  I do not want a whole day; I anticipate --

7   THE CHAIRMAN:  You anticipate a day?

8   MR WEST-KNIGHTS:  Yes.

9   THE CHAIRMAN:  I think we would like to explore with  
10          the parties the possibility of starting earlier  
11          tomorrow.

12  MR WEST-KNIGHTS:  Can I express a blunt view? From my  
13          limited judicial experience, I have recently tried  
14          a case that ran for many days, we were trying to fit  
15          a quart into a pint pot, we did sit long days, and after  
16          two days it turned out to be a total mistake. There is  
17          a very good reason why we sit from 10.30 to 4.30:  
18          because that is plenty to do, and there is a lot to do  
19          at both ends of the day.

20          Tempting though it is, it has a higher cost than  
21          might be visible. Of course I sympathise, but frankly  
22          we are not adrift by half an hour or so; we are well  
23          adrift, as I thought we might be. If you are going to  
24          sit a little bit earlier or later, I would invite you  
25          not overdoing it from everybody's point of view. This

1 is taxing for the witnesses, the tribunal and us.

2 THE CHAIRMAN: I think we would like to try to start at  
3 10.15 tomorrow. It is a modest gesture --

4 MR WEST-KNIGHTS: Modest is sensible, if I might say so.

5 MR MORRIS: Sir, may I make an observation on timetabling.  
6 We did have a set timetable. We are of course aware  
7 that there may be some movement. We are not really  
8 going way over at the moment. We have been delayed by  
9 a matter which delayed us this morning by a couple of  
10 hours. We intend to be as concise as we can when it  
11 comes to cross-examination. We believe that  
12 Lord Grabiner has thus far effectively done as expected  
13 in terms of the general confining the matters. We would  
14 hope that that would go across the board to all parties.

15 Of course it is a matter entirely for the tribunal  
16 as to where the tribunal feels advantage lies best in  
17 terms of timing, but we are going to endeavour to keep  
18 as much as possible to the timetable. We would ask the  
19 Tribunal --

20 THE CHAIRMAN: We will do our best, Mr Morris. We have to  
21 give everybody a fair share.

22 MR MORRIS: I quite understand that.

23 THE CHAIRMAN: Mr Ashley, I am sorry that we are going to  
24 have to over to tomorrow and we might even need you on  
25 Wednesday.

1 A. I will tell my mum I will be late home for tea!

2 THE CHAIRMAN: If I could remind once again that you must  
3 not discuss the case with anybody while you are giving  
4 your evidence. Thank you very much.

5 (4.35 pm)

6 (The hearing adjourned until 10.15 am the following day)

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