

1 St Patrick's Day, Wednesday, 17th March 2004

2 (10.20 am)

3 THE PRESIDENT: Yes, Mr West-Knights.

4 MR WEST-KNIGHTS: Good morning. I understand Mr Whelan has  
5 been jammed up somewhere and is due to appear shortly.

6 I raised yesterday very quickly the question of  
7 the comparative figures. We received a piece of paper  
8 from Umbro with Sports Soccer's figure on it on some  
9 basis.

10 THE PRESIDENT: Yes.

11 MR WEST-KNIGHTS: I had been asking for some time that we be  
12 provided with the turnovers -- just for the year 2000 --  
13 for licensed and branded, just those two categories or  
14 the top ten accounts. So we get JJB, Sports Soccer,  
15 JD Sports, First Sport, ourselves. I think MU were  
16 quite a big player. But it would be very helpful just  
17 to have the definitive comparative picture, particularly  
18 as we are not yet clear on what basis the new  
19 Sports Soccer figures come -- that is to say, if they  
20 are referable to a turnover of 83 million, or back to  
21 the old 125.

22 So just to shape that down, it seems to me sensible  
23 that we have one benchmark so that we know what we are  
24 talking about.

25 I spoke to Miss Roseveare this morning. She said

1 that she was unaware of my having said anything about  
2 this yesterday, but said to me that she made her  
3 position clear on Friday: no. She has now absented  
4 herself. I did say I was going to make an application  
5 as soon as the tribunal sat. She was here just seconds  
6 ago and she has gone, or at least she is not in  
7 the room.

8 So I make an application, please, against whoever it  
9 is that you can order direct, or whatever the kind word  
10 is, that within 24 hours we have a single piece of paper  
11 showing on the same basis the actual turnover in (a)  
12 licensed and (b) branded in Umbro for 2000 for the top  
13 ten accounts.

14 I would have thought it is wholly uncontroversial.  
15 It relates to the year 2000. The figures are somewhere.  
16 Miss Roseveare has returned.

17 THE PRESIDENT: Miss Roseveare, we need your kind assistance  
18 for a moment, if you would be kind enough to come  
19 forward.

20 While you were out of the court just a moment ago,  
21 Mr West-Knights asked us for a ruling that would procure  
22 a piece of paper with Umbro's sales on it for the year  
23 2000 divided between licensed and branded product for  
24 its -- he asks for the top ten accounts so that we can  
25 have a picture of the relative importance of the various

1 customers. He tells me that you are resistant to that  
2 suggestion.

3 I would like to establish first of all what Umbro's  
4 position is in this regard.

5 MISS ROSEVEARE: Correct. I am resistant to it. I am now  
6 being asked for further information. But in respect, I  
7 will say in relation to the hearing the Friday before  
8 when that topic was raised for the first time, and I  
9 believe Mr Green was here, Allsports did say they were  
10 not going to further request that information.

11 The reason why I rushed out of the room is that  
12 seconds ago I had just been speaking to the person who  
13 would be able to provide that information. He is not in  
14 the office today.

15 THE PRESIDENT: He is not in the office.

16 MISS ROSEVEARE: No, he is not. He will be back later in  
17 the week.

18 In respect of the top ten accounts, I am still not  
19 quite clear why they request the top ten accounts. They  
20 had been raising the point about the top three. Why it  
21 has to be the top ten -- because that does involve a lot  
22 of extra work by people back at the office -- that  
23 information is not just a question of pressing a button,  
24 it is a question of collating the information. If it  
25 was just the top five I could understand why they would

1           be interested in the top five.

2   THE PRESIDENT:  Yes, thank you very much indeed.

3           Mr Morris, do you have a view on this?

4   MR MORRIS:  Not really, sir, other than the fact that

5           I think this point got rather lost earlier on.

6           I slightly thought it was not being pursued.  I also

7           thought that there was material already there which

8           showed other than the top three or four, but maybe

9           Mr West-Knights will know.  I know that Mr West-Knights

10          did ask for it initially, but really I can only echo

11          the trouble that Umbro is being put to in relation to

12          this.  It does, in our submission, seem to be rather

13          excessive in circumstances where the issue is rather

14          peripheral.  We have been working on the top three or

15          the top four, or even the top five, because that brings

16          in JD and First Sport at the time, I think.  Why you

17          need the further five -- I suggest it may not be

18          relevant.

19   THE PRESIDENT:  I think our reaction, Miss Roseveare, is

20          that a piece of paper which set out the position in

21          relation to the top five accounts in a way that we could

22          understand it, at least in the first instance,

23          Mr West-Knights, would be quite useful.

24   MR WEST-KNIGHTS:  Can I just justify the top ten, and the

25          idea that this is going to take a long time is eyewash.

1 Yes of course we have some figures in the books --

2 THE PRESIDENT: It is four years ago. Not everybody keeps  
3 everything for this time.

4 MR WEST-KNIGHTS: They have, in every single one of  
5 the 2001 management accounts, the reflective figure back  
6 to 2000. But we do not know whether that is a figure  
7 that needs to be massaged, because it is a figure that  
8 shows 59 million for Sports Soccer.

9 So it may be that they could glance at  
10 the 2001 management reports and say apart from  
11 Sports Soccer these figures are real, and all they have  
12 to do is to break them up between licensed and brands.

13 The reason why I say the top ten, apart from the  
14 fact that it is my learned friend Mr Peretz's being of  
15 "un certain age", it rolls off the tongue nicely. But  
16 we are looking at Sports Soccer, JJB, Allsports, JD and  
17 First Sport -- that is five. Now, within the little  
18 flock that Mr May was dealing with, we add in Manchester  
19 United whose position is relevant, plainly. There was  
20 the importance to them of their shirt in terms of its  
21 being sold. And the other player in my little bit of  
22 the ship is Celtic.

23 Those, then, are the seven ones which are relevant,  
24 Celtic and MU partly because they are the other bit of  
25 Mr May's flock, and partly because if you have the ten,

1           you can see what shape the animal is; whether there is a  
2           large number of batsmen at 7, 8 and 9 who are really  
3           rather good, or whether the truth is there are two  
4           superb batsmen, a couple of middle orders and rest  
5           rabbits, if you are with me, sir.

6           The top ten is not logical. It gives us the shape  
7           of the animal. In any event, it must be seven.

8           Whether or not this has been lost in the wash as of  
9           ten days ago, it is something that I raised recently and  
10          as I say, was expressly raised on Friday, which is why I  
11          raised it again with you yesterday. Let us not worry  
12          about the history of it. It may be that there has been  
13          a misunderstanding, but I cannot believe that to a  
14          person at Umbro this is very difficult: we think we have  
15          the information, what we cannot tell is whether it is on  
16          the same basis or not. That is all. But thank you,  
17          sir. I see where you are coming from.

18        THE PRESIDENT: Yes, Miss Roseveare.

19        MISS ROSEVEARE: Can I make a comment. In terms of  
20          cross-checking against the management reports, we do not  
21          keep them in the record, we have to get them out of  
22          the archives.

23          In relation to Manchester United and Celtic, I think  
24          that comment is slightly misconceived in respect that  
25          they do traditionally only purchase replica kit rather

1 than license and branded, so they are trying to get  
2 a picture of the whole of our customer base in relation  
3 to the top seven, and that is quite not correct because  
4 it is a disproportionate amount of licence sale  
5 purchased. But the top five, it might be slightly  
6 easier for us to get that information quickly, because I  
7 know that is the request. But as I say, it is not just  
8 a matter of pressing a finance button and turning it red  
9 in ten minutes.

10 THE PRESIDENT: What I think would help the tribunal --  
11 thank you, Mr West-Knights, I think we have taken this  
12 as far as we can, we just have to decide what is what --  
13 if for the year 2000 the turnover for actual sales of  
14 licensed and branded respectively for JJB,  
15 Sports Soccer, First Sport, Allsports and JD, it would  
16 be useful for us to know what is going on.

17 If at the same time without undue inconvenience  
18 somebody could give us the figure of the sales of  
19 replica kit to Manchester United, that would also be  
20 useful. I am not myself particularly persuaded that we  
21 need Celtic at this stage.

22 MR WEST-KNIGHTS: Sir, that is very helpful because once  
23 we have the anchor figure for MU, we know it is all  
24 licensed. We have the two comparative figures for Man U  
25 and Celtic, so we will have Celtic for ourselves. That

1           will be fine.

2   THE PRESIDENT: I am sorry, I am very conscious of the great  
3           help that Umbro has given to us throughout these  
4           proceedings --

5   MISS ROSEVEARE: I cannot guarantee that it will be today.  
6           Somebody will have to work on it tomorrow because  
7           the person responsible is out of the office day.

8   THE PRESIDENT: Best endeavours would be greatly  
9           appreciated.

10           Yes?

11   MR MORRIS: I was just wondering whether we were going to  
12           deal with Ms Charnock?

13   THE PRESIDENT: If we can deal with that while we are  
14           waiting.

15   MR MORRIS: In the light of conversations with Allsports'  
16           counsel, the OFT in an ideal world would have preferred  
17           her to be cross-examined for two reasons.

18           One is to explain and explore the nature of  
19           the conduit of complaints coming through her into  
20           Mr May. And secondly because we would like to have  
21           explored with her where she fitted in in terms of  
22           seniority. We consider it would have been helpful for  
23           her to be cross-examined.

24           I understand the basis of the position is that parts  
25           of her first statement will stay in, relatively



1 uncontroversial stuff. Her second statement will not be  
2 relied upon and will not be put in at all. On that  
3 basis, we would be content for her not to be called for  
4 cross-examination.

5 THE PRESIDENT: Is that agreed?

6 MR MORRIS: I discussed it with Mr Peretz, not  
7 Mr West-Knights.

8 MR WEST-KNIGHTS: In the end, it is up to you gentlemen, if  
9 I may say so. One thing you have stressed is an absence  
10 of artificiality in these proceedings. I imagine that  
11 you have read Charnock 2 and you will have seen, as it  
12 were, the jousting at that stage between her statement  
13 at least, and Mr May's statement and his actual words.  
14 It is on that basis that we do not think we need to  
15 trouble the tribunal with that one, but it is entirely  
16 up to you. If you take the view that it is there, and  
17 you are going to pay it such attentions as it merits,  
18 fine. I would imagine that that is very little. This  
19 is so peripheral, especially now that we have heard  
20 Mr May, and entirely up to you.

21 MR MORRIS: Sir, two observations. We do not think that  
22 the issue is peripheral. Secondly, to the extent that  
23 it is suggested that parts of her second statement would  
24 be read by the tribunal, relied upon or taken account  
25 of, in those circumstances we would wish to

1 cross-examine her.

2 THE PRESIDENT: There is a practical difficulty in  
3 cross-examining her which is that we have no means of  
4 getting hold of her.

5 MR MORRIS: I realise that, but that is a separate issue.  
6 We left the matter over so that we could consider  
7 the position. Our position is that if her second  
8 statement does not go in at all, we are content. If,  
9 however, it is to be referred to or relied upon in  
10 whatever basis, we would wish to explore the possibility  
11 of getting hold of her.

12 THE PRESIDENT: My instinctive reaction is that it would not  
13 be fair for the tribunal to rely on that statement which  
14 has not been cross-examined on.

15 I would be inclined to leave this issue where it  
16 lies.

17 MR MORRIS: On that basis we would be content.

18 MR WEST-KNIGHTS: It troubles me to hear my learned friend  
19 say that he does not think it is peripheral.

20 THE PRESIDENT: This is a matter for later argument.

21 MR WEST-KNIGHTS: I do not want my learned friend to make  
22 assertions about the alleged quantity of Mr May's  
23 evidence, with which we profoundly disagree, and then  
24 start saying: "Nah, nah, nah, it is unchallenged."

25 THE PRESIDENT: Let us cross that bridge when we get to it.

1 MR WEST-KNIGHTS: If my learned friend wants to be  
2 difficult, I will just say that under the Civil Evidence  
3 Act I am putting in the two Charnock statements. If you  
4 want to get her, you get her. We cannot.

5 THE PRESIDENT: I think I have made the tribunal's position  
6 clear. We are not going to rely on a witness statement  
7 that one party wants to cross-examine on if there has  
8 not been a cross-examination for whatever reason.

9 MR WEST-KNIGHTS: Apart from the view which I take,  
10 we cannot, it appears, obtain Ms Charnock.  
11 The statement when it was taken was taken, as it were,  
12 without any pressure being put on her, she gave it  
13 voluntarily. We do not know what it is that upset her,  
14 it may be nothing to do with this case. She may be  
15 unwell. One simply does not know.

16 We may have to revisit that, but let us see what he  
17 says in closing. But I am only trying to help.

18 THE PRESIDENT: The first assumption is that everybody is  
19 trying to help. The second assumption is that we have  
20 a sort of mental filter in our heads, which is a bit  
21 like a filter that filters out spam and related things,  
22 that tries to filter out remarks that are not germane to  
23 the issues we have to decide.

24 It is not necessary constantly to rebut side remarks  
25 that are not necessarily related to the evidential

1 issues.

2 MR WEST-KNIGHTS: So be it, sir. Not everybody in this case  
3 is trying to help, and it will be your decision in due  
4 course to find out who is not.

5 THE PRESIDENT: We assume that everybody is trying to help.  
6 If you wish to make a contrary submission, we will get  
7 to that in due course.

8 LORD GRABINER: Sir, my filter has been working overtime  
9 throughout these proceedings.

10 Mr Whelan is here and we can resume with him.  
11 I finished my examination-in-chief and he can now be  
12 cross-examined.

13 THE PRESIDENT: Thank you very much.

14 Mr Whelan, if you would like to come back in  
15 the witness-box.

16 (10.40 am)

17 DAVID WHELAN (continued)

18 THE PRESIDENT: Good morning, Mr Whelan, please take a seat.

19 THE WITNESS: Good morning.

20 THE PRESIDENT: You are still under oath from yesterday.

21 A. I see, thank you.

22 MR MORRIS: Sir, we have prepared a short cross-examination  
23 bundle which we are about to distribute, which will be  
24 given to Mr Whelan and to everybody else. (Handed).

25 A. Thank you.

1 Cross-examination by MR MORRIS

2 Q. Mr Whelan, you are currently chairman of JJB Sports Plc?

3 A. Yes.

4 Q. In addition to your role as chairman you were also chief  
5 executive until Mr Sharpe was appointed chief executive?

6 A. That is right.

7 Q. Mr Sharpe is your son-in-law?

8 A. That is right.

9 Q. If you turn to paragraph 3 of your statement, which is  
10 not that file but the other file, if you go towards  
11 the back, at page 424 -- I think you were taken to those  
12 statements yesterday. I think page 424 is your first  
13 witness statement. Paragraph 3:

14 "Until two years ago, I was both chairman and chief  
15 operating officer of JJB. In 2000, Duncan Sharpe was  
16 appointed chief operating officer."

17 In fact, it is right that Mr Sharpe succeeded you as  
18 chief executive with effect from 1st February 2001, is  
19 it not?

20 A. Yes.

21 Q. And you were chief executive throughout 2000?

22 A. Yes.

23 Q. I would like to turn to the question of your involvement  
24 in the running of the company in your capacity as both  
25 chief executive and chairman.

1           As chief executive prior to February 2001 you had  
2           day-to-day involvement in the running of the company?

3   A.   Yes.

4   Q.   You were involved in making decisions on the selling  
5           prices of replica shirts?

6   A.   Absolutely.

7   Q.   Now, if we go to paragraph 6 of your witness statement,  
8           which is over the page at 425, you say in the second  
9           part of it:

10           "Just before the World Cup in 1998 I announced to  
11           a meeting of analysts in the City that JJB would never  
12           seek to sell a replica shirt at a price in excess of  
13           £40."

14   A.   Can I just turn that one up?

15   Q.   Page 425, paragraph 6, the second sentence where it  
16           says:

17           "Just before the World Cup in 1998 I announced to  
18           a meeting of analysts in the City that JJB would never  
19           seek to sell a replica shirt at a price in excess of  
20           £40."

21           That would have been in about April or May of 1998  
22           because I think the World Cup was in June of that year  
23           in France?

24   A.   Yes.

25   Q.   In fact, JJB continued to sell shirts in excess of £40

1 for about a year after that --

2 A. No.

3 Q. -- until the late spring of 1999?

4 A. No.

5 Q. Okay, well I am going to give you three examples. We  
6 suggest that you did, and I will give you three  
7 examples.

8 The first example is that you sold the Umbro Everton  
9 away shirt, which was the 1998 launch shirt, which you  
10 received in July 1998 at £44.99, and you only reduced  
11 the price of that shirt to 39.99 in late May 1999?

12 A. At that particular time there was a lot of pressure from  
13 manufacturers and football clubs to increase the price  
14 of a replica shirt from what had been the price £36,  
15 £40, 39.99, which was around the price. There was a lot  
16 of pressure from a lot of areas, especially  
17 manufacturers, to push the price up to as much as £50.

18 We resisted the £50, we resisted the £45, and then  
19 they settled on a price of 42.99, which you would agree  
20 is a very, very strange price, 42.99. We did not think  
21 it was a price that the consumer would pay, and as you  
22 rightly say I decided in JJB that £40 was the maximum  
23 that we could possibly sell a shirt at, and I announced  
24 to the City at one of our meetings in the City that it  
25 would be JJB's absolute policy never to sell a replica

1 shirt at above £40.

2 There was the odd exception in that shirts came out  
3 that were non-absorbent for sweat, et cetera, various  
4 things that came out, football shirts and rugby shirts,  
5 that obviously were quite a different one from  
6 the average replica shirt. They would not be the  
7 average replica shirt that we know, as such.

8 And there was the occasion when a special shirt was  
9 manufactured by Umbro, or Nike, or Adidas in the new  
10 development form that did come out, and we would sell  
11 that particular shirt at more than £40. But it was not  
12 the average replica shirt. This particular one,  
13 I cannot say it was or I cannot say it was not.

14 Q. Can you give any other examples of the ones that were  
15 different?

16 A. The ones that were different, if you look at the last  
17 tournament we had, Nike brought out certain shirts there  
18 that were revolutionary shirts, and they were selling as  
19 much as, I think, £50.

20 So they are all -- over the last two or three years  
21 there have been all kinds of developments going on with  
22 the manufacturers and new formats and new things coming  
23 out that have tried -- and the manufacturers have tried  
24 and have succeeded in selling shirts above £40.

25 Q. Can I take you back to the examples I gave you.



1           The first one was the Umbro Everton away shirt that was  
2           sold at 44.99 until late May 1999; do you accept that  
3           that is correct?

4    A.   I cannot accept that, because I honestly do not know.  
5           Mr Colin Russell who will be next in the box will give  
6           you the absolute answer to that.

7    Q.   Can I put it to you that that shirt was priced at 44.99  
8           and the Umbro Nottingham Forest home shirt was priced at  
9           44.99 until late May 1999, and the Reebok Liverpool home  
10          shirt was priced at 42.99 until mid March 1999?

11   A.   If you are saying that they were priced at that, I would  
12          say you are right.  If JJB actually sold them, I would  
13          say please ask Colin Russell and he would give you  
14          the exact answer, because I could not sit here and give  
15          you a truthful answer on that.

16   Q.   It is Mr Russell's fourth statement at paragraph 9 in  
17          relation to Umbro Everton, paragraph 11 Notts Forest,  
18          and paragraphs 7 and 8 the Liverpool Reebok shirt, and  
19          also the Umbro Scotland shirt at paragraph 6.

20                 JJB also sold shirts at less than 39.99 in launch  
21          periods in the period 1999-2001, did it not?

22   A.   Yes.

23   Q.   Very well, we will return to that a little bit later.

24                 Can I take you back to paragraph 3 of your statement  
25          which I think is open there at page 424.  You say in

1 the second sentence of that -- I took you to the first  
2 sentence -- the second sentence says:

3 "This has led to a reduction in my day-to-day  
4 involvement of the running of the company, but I am  
5 still involved in the annual negotiations with  
6 manufacturers such as Umbro, Adidas, et cetera, on  
7 matters such as wholesale prices."

8 A. Yes.

9 Q. In fact at that time your involvement in the business  
10 remained very hands-on, did it not?

11 A. I think even now my involvement is hands-on, yes.

12 Q. Could I invite you to take up the smaller bundle.  
13 We are going to look at a few press articles which may  
14 cast some light on your involvement in the business.

15 If you go to tab 2 of this bundle, this is  
16 an article from the Independent newspaper, and it is  
17 August 20th 2001. The paragraph I would like to draw to  
18 your attention I hope is marked at the bottom in your  
19 bundle and it starts with the words:

20 "If there is one thing I am in business ..." --

21 THE PRESIDENT: Sorry, where are we, Mr Morris?

22 MR MORRIS: Tab 2, first page, towards the bottom there  
23 should be a line --

24 A. I have the line.

25 Q. And the words I am going to read start:

1 "If there is one thing, I am ..." --

2 THE PRESIDENT: I am not there yet.

3 MR MORRIS: Sir, down the page, up from the bottom two  
4 paragraphs, and the last line of the previous paragraph.

5 THE PRESIDENT: Yes.

6 MR MORRIS: It says as follows, and this is quoting you:

7 "If there is one thing I am in business it is  
8 ruthless. Mr Whelan and his family still own  
9 37 per cent of JJB ... but he stepped back to become  
10 non-executive chairman this year. However, he is still  
11 very hands-on, buzzing around the country in the group's  
12 helicopter and corporate jet to assess new and existing  
13 sites. 'I know the city does not like these things, but  
14 we have got over 400 stores now ...'. He is a stickler  
15 for detail. 'It is cheque-down Fridays, I sign every  
16 cheque with Duncan Sharpe [JJB's Chief Executive and  
17 Whelan's son-in-law]. When you sign a cheque it teaches  
18 you the value of money."

19 Fair comment, this?

20 A. Yes.

21 Q. Yes. If you go over the page, again at the bottom there  
22 should be a little passage marked in the bottom right,  
23 the last paragraph halfway through, the words starting:

24 "As it is ..."

25 It says as follows, Mr Whelan:

1            "As it is, he has a quasi-dynastic succession in  
2            place with Sharpe in place as chief executive. 'Had he  
3            not been good enough, I would not have given him  
4            the job. He knows I will kick him up the arse when  
5            necessary'."

6            At the time, did Duncan Sharpe in general defer to  
7            you, or was he independent-minded?

8            A. It appears to me that it is some reporter writing on me,  
9            is that what it is?

10          Q. It is an article and it appears he must have interviewed  
11          you, and there are quotations here.

12          A. Some of this would be his interpretation, of course.

13          Q. Of course. I am asking you whether this is fair  
14          comment, and I am asking in particular whether  
15          Duncan Sharpe deferred to you or whether he was  
16          independent-minded in the business?

17          A. If you realise that when I founded JJB in 1978, and I  
18          had grown JJB and built JJB, obviously you are very  
19          protective of it. We had gone to the market and become  
20          a Plc and various things change when you do that.  
21          Obviously I was looking for my son-in-law,  
22          Duncan Sharpe, to have the ability, to have  
23          the know-how, and for me to teach him what I could for  
24          as long as I could, so that I would get him ready for  
25          when I eventually retire or fade away, that

1 Duncan Sharpe would be equipped to run JJB Sports.

2 What I was trying to do: I used to, as I said in  
3 that which was quite true, I would be involved in  
4 the day-to-day negotiations especially with the big  
5 manufacturers, and I would usually be involved with  
6 anything of any nature in pricing, in promotions, in  
7 various things, and definitely in negotiations with  
8 the bigger companies.

9 THE PRESIDENT: Yes, thank you.

10 MR MORRIS: So ultimately you were in charge.

11 A. Well, I am the chairman and I am still in charge.

12 Q. I understand that. I was exploring the nature of  
13 the business relationship with Mr Sharpe.

14 A. Yes.

15 Q. Can we turn over the page to page 3, and this is  
16 a Financial Times article. If you go to the second  
17 page of that, in the second paragraph you will see  
18 a mark on the right-hand side. Near the bottom, it  
19 says:

20 "Renowned as a tough manager, Mr Whelan freely  
21 suggests that some staff may consider him a bastard, but  
22 he says he does not care unduly about that because 'I am  
23 fair'."

24 Again, would you say that was a fair comment?

25 A. Again, this is someone writing a report of me as to what

1 he feels and how he finds my character. Again this is  
2 someone's consideration of me. But if you ask am  
3 I fair, I always try to be.

4 Q. But you are tough as well?

5 A. Absolutely.

6 Q. Yes.

7 THE PRESIDENT: Tough but fair; yes?

8 A. Yes.

9 MR MORRIS: Over the page you will see the second  
10 paragraph marked:

11 "In family businesses, plainly, the ordinary  
12 motivations of managers are mixed with something more  
13 personal. This is not my job, it is my life. If you  
14 hurt JJB, you hurt me."

15 A. Yes.

16 Q. You agree?

17 A. I will agree.

18 Q. Finally, can we go over the page again -- this is  
19 a Manchester Evening News article of October 17th 2001,  
20 first page, at the bottom, the last paragraph -- tab 4?

21 A. Yes.

22 Q. The bottom of the page, the last three lines:

23 "In business like sport Mr Whelan believes that  
24 the key qualities of success are teamwork, leadership,  
25 hard work and determination. He said 'I played football

1 for 14 years and loved every minute of it. One thing it  
2 does teach you is that you never give in: you fight and  
3 fight and fight whatever the situation, wherever  
4 you are. And that is the same in business'."

5 Is that a fair reflection of your business?

6 A. It misses out one thing: I also believe in honesty. But  
7 that I would say is correct.

8 Q. Thank you. Let us now return to the detail. I would  
9 like to ask you some questions about your involvement in  
10 the making of decisions in setting retail prices at  
11 least of a replica kit.

12 My question is: your involvement in making those  
13 decisions continued after Mr Sharpe became chief  
14 executive?

15 A. Yes.

16 Q. Yes. Could we look at your second witness statement, in  
17 the big bundle at page 440.

18 A. At 440?

19 Q. Page 440, paragraph 16. It reads as follows:

20 "Within JJB, every decision on launch prices for  
21 replica kit is taken by me, in conjunction with  
22 the chief executive of JJB, formerly the late  
23 Duncan Sharpe and currently Tom Knight, only two or  
24 three days before launch. If anyone had wanted an  
25 assurance about JJB's launch prices, they would have had

1 to get it from me."

2 A. That is right, yes.

3 Q. Even Colin Russell, who says that he was responsible for  
4 sales of replica, kit was not included in  
5 the decision-making on launch prices, was he?

6 A. Not until probably a week before we launched.

7 Q. If you go further down in that paragraph, it says,  
8 the penultimate sentence -- four lines up from the end  
9 of that paragraph:

10 "Colin Russell would not have been given the launch  
11 price information to pass it on and would never have  
12 done so in any event."

13 So my question for you is: since you had not taken  
14 the decision on launch prices until two or three days  
15 before, Colin Russell would not know the decision of  
16 the launch price until that decision was taken?

17 A. Launch prices are something very price-sensitive,  
18 because what I do not want and what no-one else wants is  
19 your competitor to find out what you are going to retail  
20 your England advert or your Man United advert at. So it  
21 is very, very sensitive information. And it would be  
22 held a very, very close secret until we had to do it  
23 because of the time element of giving it to publishers,  
24 giving it to the television companies.

25 So it would be held to as near to the launch as



1 possible.

2 Q. Was Colin Russell involved in that process?

3 A. Colin Russell would, like he has been given now, have a  
4 launch coming up of the new England away, Colin at  
5 present has four prices and he does not know which  
6 particular price we are going to jump to until we make  
7 the decision at the last minute.

8 MR COLGATE: But how about at the time we are talking about  
9 here?

10 MR MORRIS: Was the position in relation to about  
11 Colin Russell's knowledge the same in 1999, 2000 and  
12 2001?

13 A. I think since 99 and up to today, I think things have  
14 got a little bit tighter. There is more competition on  
15 the High Streets because supermarkets are jumping in on  
16 the act, on the scene.

17 So I would say that this process has become tighter  
18 and tighter, and you are going nearer and nearer  
19 the mark in order to avoid competition, especially  
20 supermarkets.

21 There is a hell of a great market in the replica kit  
22 and there is a big demand for supermarkets to get hold  
23 of it purely for advertising purposes. So it has  
24 tightened up considerably since 99 and 1998.

25 MR COLGATE: Thank you for that. I am more interested in

1 the decision, not the process.

2 MR MORRIS: I do not have any objection to you asking that  
3 question.

4 MR COLGATE: The question is --

5 MR MORRIS: Who knew the decision on the launch price?

6 A. At that particular time when Duncan Sharpe was alive, it  
7 would be Duncan Sharpe and myself who would decide what  
8 price we were going at, we would then inform Colin  
9 Russell who would then inform our advertising  
10 department.

11 MR MORRIS: You were also involved in deciding on the  
12 discounting campaigns in JJB stores, including for  
13 replica shirts, both before and after you stepped down  
14 as chief executive?

15 A. Yes.

16 Q. In late 1999 you ran a very extensive campaign,  
17 a 20 per cent off everything campaign across your  
18 stores?

19 A. Probably.

20 Q. Can I take you to the thinner bundle here, and ask you  
21 to go to tab 5.

22 It is an email so it is rather small. I will direct  
23 you to the relevant passage.

24 This is an internal Nike email or letter, it is  
25 dated 24th October 1999. It has within it an embedded

1 email which is Friday, October 22nd, and you will see  
2 that it starts, that embedded email starts:  
3 "Hi, Gary ..."  
4 You will see a paragraph that reads as follows:  
5 "The discounting is now, it appears, in JJB as well  
6 as Sports Division. 20 per cent off everything and  
7 across all brands, and Sports Soccer have gone to  
8 a third off in response."  
9 So that is Nike recording your 20 per cent off  
10 everything campaign in October 1999, and there is no  
11 reason to think that that was not the case, is there?  
12 A. This is a Nike document, if they are reporting it  
13 I would say they are reporting it accurately.  
14 Q. Thank you. This document records a price war, does it  
15 not, between you and JJB --  
16 THE PRESIDENT: Sports Soccer, you mean?  
17 MR MORRIS: -- I do apologise, between you and  
18 Sports Soccer?  
19 A. I think it was a price war across the whole of  
20 the industry at that time.  
21 Q. But it refers specifically to JJB -- Sports Division was  
22 part of JJB at that time?  
23 A. We had just bought Sports Division around that time.  
24 What i might just add on this thing here, when you buy a  
25 company like Sports Division -- I think we paid in

1 the order of 260 million for it -- obviously we were  
2 taking over quite a lot of stock that JJB would not  
3 normally carry.

4 If my memory is serving me well here, it could well  
5 be that we were bringing both companies together and  
6 we were clearing all kinds of stock in order to get  
7 JJB's and Sports Division's stock in line and in  
8 proportion to how we wanted it. I think that could be  
9 part and parcel of that particular promotion, yes.

10 Q. The specific reference made by Nike is that  
11 Sports Soccer went to a third off, which on my reckoning  
12 is 33 per cent, in response. So my suggestion to you is  
13 that this document is recording you cutting and  
14 Sports Soccer cutting in response?

15 A. I could not deny that.

16 THE PRESIDENT: That sounds right to you, does it?

17 A. Yes, I could not deny that.

18 MR MORRIS: Can we go over the page and look at another Nike  
19 document, about the same time, an email from  
20 Martin Boyse to Jamie Tunnicliffe. It reads as follows:

21 "Boysy: met with Sean today. Broached the subject  
22 of football replica at £30. As we both expected, his  
23 answer was: this is a direct attack at JJB, we must be  
24 seen to be competing in the football market ...since JJB  
25 have taken an extra 20 per cent off replica at 39.99.

1           We have seen a dramatic dip in football sales."

2           The Sean being referred to there is Sean Nevitt?

3   A.   Yes.

4   Q.   Referring to Sports Soccer.  And this is referring again  
5       to a further discounting campaign of yours of  
6       20 per cent off replica at that time?

7   THE PRESIDENT:  And what is the question?

8   MR MORRIS:  I am asking the witness to confirm that this  
9       further confirms that there was a discounting campaign  
10      by JJB, a 20 per cent off discounting campaign at that  
11      time.

12  A.   I do not think I can comment on internal Nike documents,  
13      to be honest.

14  THE PRESIDENT:  The question is -- and you have already been  
15      asked it -- to your recollection was JJB discounting at  
16      around 20 per cent in October 1999?

17  A.   I would say so.

18  THE PRESIDENT:  Thank you.

19  MR MORRIS:  This policy of widespread, across the board  
20      discounting on all goods continued relentlessly through  
21      the first 18 weeks of the following year, 2000?

22  THE PRESIDENT:  Are you moving away from replica now?

23  MR MORRIS:  No, the question initially has always been about  
24      discounting campaigns across the stores, which included  
25      replica kit.  So the Nike letter of the 24th refers to

1 everything and across all brands.

2 A. As I just said, we had taken over quite a big company  
3 and we were in the process of knocking the stock into  
4 shape, and the best way to knock it into shape is to  
5 discount certain things and advertise it, and knock your  
6 stock into shape, so that could have run on for one  
7 month, two months, four or five months.

8 Q. In February 2000, you ran a 17.5 per cent off "Let JJB  
9 pay your VAT" discount campaign, and that campaign was  
10 again across the board in the stores on all goods?

11 A. That was everywhere through the nation, yes.

12 Q. And you remember that campaign?

13 A. Absolutely.

14 Q. And that was followed immediately, and I am now talking  
15 about after March 2002, by the previously used  
16 20 per cent off all products campaign, but only in towns  
17 and cities where you were directly competing with  
18 Sports Soccer?

19 A. Maybe, yes.

20 Q. And that one lasted all the way to 23rd April 2000?

21 A. It could have, yes.

22 Q. Well, you do not dispute the fact that it did?

23 A. We had campaigns running of that nature, definitely.

24 Q. But that policy, JJB's policy at that time of across  
25 the board deep discounting was not universally

1 well-received in the City, was it?

2 A. You all know the City, sir, you all know that the City  
3 look for turnover of sales and the bottom line.  
4 Sometimes it is difficult to give them a good top line,  
5 gross margin and bottom line. So these things all run  
6 together.

7 The City is very demanding, the City wants growth,  
8 it is my job to try to ensure that JJB are seen to grow.  
9 But the top line and the bottom line are the two  
10 important things, but they are both affected by  
11 the gross margin, of course.

12 Q. Can I ask you to look at tab 8. There is an analyst  
13 report from Merrill Lynch dated 14th February 2000,  
14 an analyst report on JJB. If you look at the right-hand  
15 side there is some narrative and you will see  
16 the heading "Fundamental Highlights". The first indent  
17 says:

18 "We concur with management's positive near term  
19 outlook on JJB sector's prospects, but we continue to  
20 remain concerned about the long-term damage to margins  
21 caused by JJB's aggressive promotional stance to drive  
22 LFLs."

23 Pause for a moment: LFLs is like-for-like sales?

24 A. Yes.

25 Q. And it continues:

1           "Our concern is that margins could fall even further  
2           than the 100 bps flagged by JJB as they have, in our  
3           view, exhausted the potential to secure improved terms  
4           from the brands."

5           You were aware of that report at this time?

6   A.   There are quite a lot of these reports -- do fly about,  
7           and I get them mostly put on my desk, whether I read  
8           them or not ... but I do think I read this one.

9   Q.   At the end of April 2000, just a little after this  
10          report, there was an important change in JJB's pricing  
11          policy, was there not?

12   A.   I would not say an important change, no.

13   Q.   I am suggesting to you that you ended your policy of  
14          across the board discounting?

15   A.   Throughout any year we would have promotional targets  
16          and we would have estimates of sales et cetera that we  
17          would like to do. Obviously if we would fall behind on  
18          our target, we may up promotional activity, offers  
19          throughout the stores.

20          The other way, if we are running ahead of target, we  
21          would start to look at margin and see if we can get  
22          a bit of extra margin. It is normal in any retail  
23          company.

24   Q.   Yes. Can I ask you to look at tab 9. This is your  
25          statement from your company's annual report for the year



1           2001?

2    A.   Yes.

3    Q.   Well, the annual report of 2001, presumably reporting on  
4           the accounting year just ended.

5           If you go to the chairman's statement, the first  
6           page on the left-hand, you will see the second  
7           paragraph:

8           "Our core retail business has continued to grow at  
9           a steady rate ... strong demand across our product  
10          ranges in the second half of the year enabled us to  
11          reduce the level of promotional activity from across  
12          the board discounting, and to focus on more targeted  
13          price campaigns."

14   A.   Yes.

15   Q.   So that is you stating that this was a shift from a  
16          discounting policy across the board to more targeted  
17          campaigns?

18   A.   That was done for a specific reason.

19   Q.   Yes, but the question I asked you was whether there was  
20          a change in policy on discounting?

21   A.   Yes, there was.

22   Q.   Thank you.

23   THE PRESIDENT:  There was a change?

24   A.   There was a change.

25   MR MORRIS:  But competition on the High Street did not go

1 away, did it?

2 A. Competition on the High Street never goes away.

3 Q. It was still tough, particularly from Sports Soccer; JJB  
4 was finding competition difficult from Sports Soccer?

5 A. No, not at that time, no.

6 Q. Well, let us carry on, shall we?

7 You were worried specifically about the difficulties  
8 of obtaining full margins in those competitive  
9 conditions, and you voiced your concerns to the board  
10 about the difficulty of obtaining full margins?

11 A. I would voice my concerns to the board at an annual or  
12 a monthly meeting and I would voice my concerns or  
13 pleasures on whatever I thought was happening in  
14 the High Street and how we were prepared to go out on  
15 the High Street.

16 THE PRESIDENT: Yes. What date are we on, Mr Morris?

17 MR MORRIS: The period after April of 2000, and I am now  
18 going to take you to tab 10, to a board minute. In  
19 line with exchanges with JJB, I am not going to read  
20 that document out; I am going to ask Mr Whelan to read  
21 a particular passage.

22 THE PRESIDENT: Yes.

23 MR MORRIS: On the second page of that document at  
24 the bottom, under the heading -- you see the heading  
25 there, and not reading it out, it refers to the period

1 we are talking about.

2 Can I draw your attention to the last paragraph,  
3 starting:

4 "David ..."?

5 A. Yes.

6 Q. So my question for you is: as at that time you were  
7 reporting what you were reporting there as to state of  
8 competition?

9 A. From the reading of that, it appears that we have done  
10 better than forecast and we were making more money than  
11 we actually forecast. Obviously I would give a report  
12 on the level of pressures on margins, competition on  
13 the High Street. That would be a normal report that  
14 I would give.

15 THE PRESIDENT: Yes.

16 MR MORRIS: My suggestion to you is that it was

17 Sports Soccer who was at that time the most active  
18 discounter amongst the sports apparel retailers.

19 A. Probably.

20 Q. Can I now turn to the question of JJB's relationship  
21 with Umbro? I want to ask you some questions about  
22 that.

23 In 2000 and 2001 you dealt mainly with Chris Ronnie,  
24 the COO, in relation to buying from Umbro?

25 A. No, we dealt with Phil Bryant -- the one in charge of

1 Umbro was a gentleman by the name of Phil Bryant. He  
2 used to visit JJB -- Colin Russell could tell you  
3 better, but I would see him in our offices at least  
4 three times a week, and he was the man responsible for  
5 dealing with Umbro and JJB, and he, I think, would  
6 report back to Phil Fellone who would report to  
7 Chris Ronnie.

8 Q. But in your dealings with Umbro, when you had an  
9 exchange with Umbro you dealt with Mr Ronnie?

10 A. If there was anything that was important or  
11 unsatisfactory or whatever, I would deal with either  
12 Chris Ronnie or Peter McGuigan.

13 Q. Can you turn up Mr Ronnie's third statement; it is in  
14 the same bundle, the larger bundle, on your right, and  
15 go to page 221, paragraph 13.

16 THE PRESIDENT: Please give us a moment to look at it.  
17 (Pause).

18 MR MORRIS: In the light of what he says, would you accept  
19 that your dealings were mainly with Mr Ronnie, that  
20 you had dealings with Mr Ronnie?

21 A. Mr Ronnie claims here that I would ring him at least  
22 once a week. Now that is completely wrong. I would  
23 never ring Chris Ronnie at least once a week.

24 THE PRESIDENT: Slow down a little, Mr Whelan.

25 A. Sorry. Chris Ronnie also alleged in Umbro that he used

1 to have lunch with me every Friday, which again is  
2 a complete fabrication. I never used to go for lunch on  
3 a Friday.

4 THE PRESIDENT: When did he make that claim?

5 A. He claims that to Peter McGuigan, that on a Friday  
6 afternoon he would take me out to lunch, which is a  
7 complete lie, a complete fabrication, and what Mr Ronnie  
8 is saying here, that I would ring him at least once  
9 a week, is a complete joke. I would never ring him once  
10 a week.

11 MR MORRIS: In fact, you say you mainly had face-to-face  
12 meetings with him.

13 A. Two, three or four a year, yes.

14 Q. If you go to your witness statement at page 437 in  
15 the same bundle --

16 THE PRESIDENT: Sorry, page ...?

17 MR MORRIS: Page 437. Where you deal in fact in response to  
18 what Mr Ronnie said at paragraph 13.

19 THE PRESIDENT: Yes.

20 MR MORRIS: You say there that:

21 "Mr Ronnie alleged that I called him at least once  
22 a week ... it is quite well known within the sports  
23 trade that I do not telephone buyers or managers as  
24 I much prefer face-to-face meetings."

25 So you did have face-to-face meetings with him?

1 A. I have just said, probably 3 or 4 a year.

2 Q. Yes. And you did also deal with Mr McGuigan, as you  
3 have just said, but you dealt with Mr McGuigan less  
4 often than with Mr Ronnie?

5 A. I would probably 3 to 4o times a year, same as Mr  
6 Ronnie.

7 Q. Shall we see what Mr McGuigan said about that. This is  
8 in witness statement bundle 2, if you could get that  
9 out.

10 THE PRESIDENT: Page?

11 MR MORRIS: Page 253. There he says, at paragraph 8:

12 "I have received telephone calls from Dave Whelan to  
13 discuss business in general. On several occasions he  
14 would discuss Mike Ashley and the effect of Sport  
15 Soccer's entrance into the replica market. He would  
16 state that there was no need for Sports Soccer to  
17 discount the products ... he did not like the fact that  
18 Sport Soccer's market share was increasing. It was  
19 having an impact on the traditionally high profit margin  
20 that JJB made on replica shirts."

21 My suggestion is that you actually dealt with  
22 Mr Ronnie, you spoke to Mr Ronnie or dealt with him more  
23 often on the actual side than you did with Mr McGuigan?

24 A. Maybe two or three times a year, yes. But limited for  
25 the two of them, to be honest, limited.

1 Q. Very well. It is the case, is it not, that you  
2 personally did not tend to deal with Umbro  
3 representatives other than Mr Ronnie; Duncan Sharpe and  
4 Colin Russell would have dealt with that?

5 A. I agree.

6 THE PRESIDENT: Are you putting paragraph 8 of Mr McGuigan's  
7 statement?

8 MR MORRIS: I am very happy to do so. Would you go back to  
9 paragraph 8, page 253. Would you like to comment on  
10 that paragraph, on the rest of paragraph 8, what  
11 Mr McGuigan says there?

12 A. If Mr McGuigan -- I must say that I regard Mr McGuigan  
13 as an honest person, by the way. If Mr McGuigan says  
14 that I rang him then I would agree that I rang him; and  
15 if Mr McGuigan says that I would say that Sports Soccer  
16 were having an impact on the replica market, I would say  
17 that I probably did say that. They did have an impact  
18 on the replica market; that was there for everyone to  
19 see.

20 THE PRESIDENT: Mr Whelan, I would like you to read the rest  
21 of the paragraph and see if you agree with it.

22 A. I cannot see me making a comment like "fly out of  
23 the store" or "get it sorted" -- these are not phrases  
24 or comments that I would normally use.

25 "Fly out of the store", it is not one that I would

1 use. It may be Mr Ronnie's statement or Mr McGuigan's  
2 idea of, if things move quickly out of the store. "Fly  
3 out of the store" is not a comment that I would have  
4 made.

5 MR MORRIS: You might have used words to that effect?

6 A. I may have said something very similar.

7 Q. He is suggesting that, in your view, there was no need  
8 for Sports Soccer to discount the product because it did  
9 sell well?

10 A. If I was saying to Peter McGuigan that the shirts are  
11 selling very well and there is no need for us to  
12 discount them because we are getting the money that  
13 we are asking for, the customer is prepared to pay,  
14 I think that is what it was about.

15 Q. Thank you, that is very helpful.

16 Can we go back now -- putting that bundle to one  
17 side. Just for your and everybody's convenience I will  
18 be mainly staying in bundle 3. There may be the odd  
19 moment where I jump into one of the other bundles.  
20 Bundle 3 is the big bundle.

21 If we go to page 437, now into your second  
22 statement. I think this was made on 20th January 2003.  
23 This is after receiving something called  
24 the supplementary Rule 14, which you may now be familiar  
25 with or may not be, but this is a slightly later stage



1 in the procedure.

2 If you go to the bottom of paragraph 4 you say:

3 "As the chairman of JJB I am involved in  
4 the day-to-day running of the company."

5 And then you go on:

6 "I would definitely know if anyone from JJB had  
7 attempted to fix any price with Umbro. I am certain  
8 that no one did."

9 A. Yes.

10 Q. So your position is that you were aware of the basis of  
11 JJB's discussions with Umbro about supply issues and  
12 about pricing issues on replica kit?

13 A. I would not be involved in the day-to-day supply  
14 information of when we placed orders or were calling for  
15 deliveries, I would not be involved in he those.  
16 I would primarily be involved in what the trade price  
17 was, what the discount was and the retail price that  
18 we were prepared to put out on the High Street.

19 Q. But in order to say that, "I would definitely know if  
20 anyone had attempted to fix any price", you must have  
21 been aware about pricing discussions or any pricing  
22 issues as between JJB and Umbro?

23 A. As I say it, I would be made aware of any price-fixing,  
24 and I would be made aware of any price fixing.

25 As far as I am concerned, I know that there was no

1 attempted price-fixing.

2 Q. Would you accept as a general proposition that at that  
3 time JJB had considerable market power so far as its  
4 relationship with Umbro was concerned?

5 A. Yes.

6 Q. If you look at your second statement at paragraph 8 --  
7 in fact before I go there can I ask you a further  
8 question. Would you have said that at that time JJB had  
9 the greatest purchasing power of all the sports  
10 retailers?

11 A. Well, before this tribunal I would have said yes, but  
12 having seen some of the information that has come  
13 forward, I would doubt that.

14 THE PRESIDENT: Try putting yourself back to 2000 --

15 A. I would have thought that we were the most powerful,  
16 yes.

17 MR MORRIS: If you go to paragraph 8, over the page at 438,  
18 you say:

19 "On occasions we do cancel orders. The reason might  
20 be that the quality is not right, a delivery is late or  
21 because a certain product is not selling well,  
22 for example because of the weather. However, we have  
23 never cancelled or threatened to cancel orders in  
24 an effort to prevent discounting by other retailers."

25 As well as those ways of applying pressure --

1           cancelling orders and threatening to cancel orders which  
2           you mention there -- you would accept also that you  
3           could apply pressure by declining to place orders in  
4           the first place? So, I am distinguishing between  
5           an order that is cancelled or threatened to be cancelled  
6           and an order that is not yet placed and declining to  
7           place an order. That would be an alternative way?

8    A. I think if you look through the dealings that we had  
9           with Nike, Adidas, et cetera we would normally say --  
10           we are placing orders six or seven months down the line,  
11           and we would have in place a cancellation policy where  
12           we could cancel 10 per cent of any order for  
13           the following order.

14                 We would take the initial drop and then, going  
15           forward, we would negotiate with any manufacturer that  
16           we would be allowed to cancel 10 per cent of any order  
17           that is still outstanding, so long as we give them 28  
18           days' notice.

19                 That would be normal practice for JJB within  
20           the trade, and I would imagine it still is.

21    Q. My question was -- and I am not sure I had the answer  
22           precisely -- you could also decline to place orders.  
23           Rather than just cancelling orders, you would at times  
24           decline to place orders in your negotiations?

25    A. We decline to place orders every single week of every

1 single year, because if we look at a range of products  
2 and we do not like it, we decline to buy it.

3 Q. Can you look at what Mr Russell says at page 286 in  
4 his statement. So we are going back to look at another  
5 statement.

6 Mr Russell at paragraph 16 is talking about  
7 December 2000 and he is talking about wholesale prices,  
8 this great argument about going up to 42.99 that nobody  
9 likes:

10 "Umbro launched a new range...the wholesale price  
11 would be 22.90 which gave an RRP of 42.99. Adidas moved  
12 to this wholesale price of 22.90 at the same time. In  
13 response to Umbro's attempt to raise prices, JJB  
14 declined to place any orders with Umbro. Umbro  
15 eventually agreed to reduce the wholesale price to  
16 21.30. I believe this was a special price ... we  
17 adopted a similar approach in relation to Adidas,  
18 refusing to place orders with them as late as January,  
19 February 2000."

20 So my question was: you did sometimes decline to  
21 place orders in your negotiations over wholesale prices  
22 with companies such as Umbro and other suppliers such as  
23 Adidas?

24 A. That paragraph there just deals with our statement that  
25 we would not sell a replica shirt over £40 when the

1 manufacturers are attempting to put it to 42 and 45. We  
2 resisted the manufacturers, and consequently all the  
3 manufacturers backed down and came with the original  
4 wholesale prices.

5 Q. In order to make them do that, you declined to place  
6 an order. You said: we are not having it at that price,  
7 go away.

8 A. Yes, normal pressure.

9 Q. And they came back and you did the deal?

10 A. Correct.

11 Q. I would like to add to the list of matters which you  
12 have put in your statement -- we have just taken you to  
13 paragraph 8 of your second statement where you give  
14 reasons for cancelling.

15 I would like to suggest to you that you have also  
16 cancelled or threatened to cancel orders because you  
17 have considered the wholesale price to be excessive.  
18 I am not talking about declining to place an order; I am  
19 talking about cancelling or threatening to cancel  
20 an order when you consider the wholesale price to be  
21 excessive?

22 A. If we had already placed the order, we would not cancel  
23 it unless the delivery was late, the quality was not  
24 good or it was not selling and we had the right to  
25 cancel the 10 per cent off that order.

1 Q. Can I take you to Mr Sharpe's statement in the same  
2 bundle at 396, paragraph 12. He says as follows:  
3 "JJB have cancelled orders because we have  
4 considered the wholesale prices to be excessive, and  
5 this has resulted in the manufacturers backing down."  
6 A. Mm-hm.  
7 Q. So you would not disagree with that?  
8 A. I would disagree, I think he has the wrong thing there.  
9 I think what he was meaning to say is we refused to  
10 order in order to get the manufacturer to back down,  
11 which we did. I think he has got the wrong word there.  
12 Q. So you would say it is decline rather than cancel?  
13 A. I would say decline rather than cancel, yes.  
14 Q. Can I ask you to go to tab 11 over in the other bundle,  
15 over to your left in the smaller bundle. This is an  
16 extract from the hearing at the Office of Fair Trading  
17 on 13th August 2002 where you attended with Mr Sharpe  
18 and Mr Russell.  
19 If you go over the page, this is -- and you will  
20 remember it better than I because I was not there. This  
21 is in the middle of a slide presentation by  
22 Colin Russell. If you go to the bottom of  
23 the page you will see -- two-thirds of the way down, 26,  
24 slide 4. Right at the bottom, Mr Russell says -- this  
25 is line 37 right at the end:

1            "We cannot deny that JJB has significant purchasing  
2            power and a truly national retail market presence.  
3            We have decided to use this in an amendment to restrain  
4            wholesale price increases."  
5            A. I do not have that particular one. I am on page 27.  
6            THE PRESIDENT: You need to start at the bottom of  
7            the previous page, page 26.  
8            MR MORRIS: Yes, the bottom of the previous page.  
9            If you go down to the penultimate line, right at  
10           the bottom, the word "we" in the right-hand corner:  
11           "We cannot deny that ..."?  
12           A. No, I do not think we could. I think that is fair.  
13           Q. And it says:  
14           "... we have decided to use that power in an attempt  
15           to restrain wholesale prices."  
16           A. Yes.  
17           Q. You would agree with that?  
18           A. Yes.  
19           Q. Can I take you back to your second statement -- there is  
20           quite a lot of jumping around here, Mr Whelan, I am  
21           attempting to take it at the pace we can all --  
22           A. Back to my original?  
23           Q. This is back to your second witness statement, page 438.  
24           A. Yes.  
25           Q. This is dealing again with the paragraph of Mr Ronnie

1 about the "flies out of the store". You say:

2 "I am sure I have never used such an expression .."

3 Paragraph 5, top of the page, line 3, and you  
4 reiterate that you never use such an expression:

5 "I do not believe I have ever commented to  
6 Chris Ronnie or anyone else at Umbro on Sports Soccer's  
7 pricing policy."

8 A. Yes.

9 Q. In paragraph 6, you are then discussing Mr McGuigan  
10 about the paragraph I have just taken you to,  
11 Mr McGuigan's statement. Again, I am counting  
12 the lines down, line 6 of paragraph 6. You say:

13 "I do not recall discussing Sports Soccer with  
14 Peter McGuigan."

15 A. Yes.

16 Q. Now, do you stand by what you said about not discussing  
17 Sports Soccer with Umbro, or, on reflection, would you  
18 like to in any way qualify those statements?

19 A. I think in the normal world and the business we live in,  
20 I would discuss all kinds of things. There would be  
21 nothing wrong in me discussing with a competitor: how  
22 are we doing, what was the policy, and looking at it.  
23 I think it would be perfectly normal for me to discuss  
24 business that is going on in the High Street, whether it  
25 be Marks and Spencer, Sports Soccer, Asda, whatever.



1 I would discuss people, definitely.

2 Q. And you would discuss Sports Soccer's pricing policy?

3 A. Maybe, yes.

4 Q. Peter McGuigan says on several occasions you did  
5 complain that Mike Ashley was rocking the boat in  
6 the sports retail market by selling products at a  
7 discount price?

8 A. I think I have already said that he had an impact.  
9 I would have said to Peter McGuigan there is no question  
10 that Sports Soccer are having an impact within  
11 the retail sports trade, and they are still having  
12 an impact today.

13 Q. And you did not like the fact that their market share  
14 was increasing?

15 A. I do not like the fact that any competitor's market  
16 share is increasing. That is not something that is  
17 strange, it is something we have to fight.

18 THE PRESIDENT: No. We are only trying to get a feel for  
19 these sorts of conversations, Mr Whelan.

20 MR MORRIS: If I take you back to witness bundle 2, just to  
21 another paragraph of Mr McGuigan.

22 A. Is it the small one?

23 Q. No, I think it is the one that was put away.

24 THE PRESIDENT: We probably need to take a break at some  
25 point, Mr Morris.

1 MR MORRIS: Yes, I am grateful. Can I just see my notes and  
2 see where I am on this? I think I will just deal with  
3 this, sir -- if you are thinking about a break in  
4 the next five minutes or so --

5 THE PRESIDENT: Yes, I am.

6 MR MORRIS: We will do that.

7 I just want you to go to page 226 of that bundle.  
8 Page 226 is the beginning of that statement, and I am  
9 going to take you to 233.

10 This is Mr McGuigan's -- I believe it is his  
11 February statement.

12 In paragraph 36 he says, again, talking about phone  
13 calls with you:

14 "On several occasions, especially during spring and  
15 summer 2000, David Whelan would steer the conversation  
16 towards Sports Soccer. He would complain that  
17 Mike Ashley of Sports Soccer was 'rocking the boat' in  
18 the sports retail market by selling products at discount  
19 price."

20 Would that be a fair reflection of the conversations  
21 you had with Mr McGuigan?

22 A. I would discuss trade, definitely, with Peter McGuigan  
23 at times. I would say that Sports Soccer were having  
24 an impact. Whether I said rocking the boat, maybe.  
25 I would suggest that I had said they are obviously

1           having an impact in the market with the policy.

2    Q.   Yes.  You did not like them discounting?

3    A.   It is not a case of like; it is a case of what

4           the reality was.

5    Q.   Yes.  But it was the fact that they were discounting was

6           the thing that made you -- that you raised with

7           Mr McGuigan?

8    A.   I would talk about business in general --

9    Q.   I understand --

10   A.   I am sure that I would discuss Sports Soccer, yes.

11   Q.   And their discounting policy?

12   A.   No, I would not talk about that.  I would say that their

13           policy was affecting the whole of the trade and

14           the ramifications are going to spread far and wide.

15           Those are the kind of things I would talk about.

16   Q.   And what were those ramifications?

17   A.   The ramifications are of a very, very keen competitor

18           when you go into a market, it changes the whole concept

19           of the market.

20   Q.   What do you mean by that?

21   A.   By making the likes of JJB respond with better prices,

22           better delivery service, better service in the stores.

23           A competitor in the market is usually good for

24           the market because everybody has to respond in a certain

25           way.



1 the passage from Mr Ronnie's third statement about the  
2 telephone calls and contact you had with him. I think  
3 in fairness, I would like to put to you what Mr Ronnie  
4 says in his fourth witness statement about that so could  
5 you go to page 241 in the bundle, paragraph 16. If you  
6 would like to read that. It is Mr Ronnie correcting  
7 what he said about the nature of the phone calls.

8 A. Yes.

9 Q. He says that the calls were particularly prevalent in  
10 the period leading up to the start of the championship.

11 A. He does?

12 Q. Yes. And what is your response to that?

13 A. I categorically deny that.

14 Q. There were no phone calls?

15 A. There may have been one. His original statement said  
16 that I would call him, which I absolutely deny. Here he  
17 is trying put one of two things right by saying that  
18 I would call him only before the launch of a replica  
19 shirt, and is not the case either.

20 Q. You did not call him?

21 A. No.

22 Q. But there were calls, so he called you?

23 A. We are bound to have spoken in the course of trading,  
24 we have to have spoken, yes.

25 Q. And the period leading up to the start of a championship

1 is a particularly important period, is it not, for  
2 replica kit?

3 A. Yes.

4 Q. So it would be more likely that you would want to speak  
5 to him in that period about prices?

6 A. I would be speaking to Mr Ronnie about prices but I  
7 think, as I said yesterday, we would be speaking a lot  
8 more on footballs that were being sold at £3, T-shirts  
9 et cetera, and we were trying to match them in the  
10 market and I think that would be where I would be  
11 telling Mr Ronnie, to put pressure on him to say: why  
12 can we not buy this product and sell it at these prices,  
13 please?

14 Q. I will come back to the football in a moment.  
15 Can I go back to where we were before the break?  
16 We have established that a major aggravation for you  
17 in the year 2000 was Sports Soccer's discounting policy?

18 A. Not a major aggravation, I did not say that, I did not  
19 agree with that. Not a major aggravation.

20 THE PRESIDENT: How would you describe it then?

21 A. I would say that within the marketplace it was having  
22 a great effect on the rest of the sports trade.

23 Q. And they were the leading discounters?

24 A. Alongside JJB. As you have already said, we were  
25 discounting at 30 per cent, we were discounting

1           25 per cent, we will pay VAT. Obviously we were there  
2           in the market and a very active part of the market.

3    Q. We know that there was a change in policy, that you went  
4           from across-the-board discounting to targeted.

5    A. There was a reason for that.

6    Q. Because the City did not like the discounting?

7    A. No, that was not the reason. The reason was that in  
8           that particular year, British Home Stores, Marks  
9           & Spencers, Arcadia on the High Street were having  
10          a torrid time because of management problems. They were  
11          buying really poorly and in that particular year, JJB  
12          who are sports retailer, we became in that year, number  
13          one retailer for kiddies' clothing.

14                I said at the time that this is very strange for JJB  
15          to be the number 1 seller of kiddies' clothing in  
16          the UK. Obviously when your opposition is very, very  
17          weak or very, very poor, if you can get a little more  
18          margin, obviously, you will get the margin. Because  
19          the opposition at that particular time Marks & Spencers,  
20          Arcadia, British Home Stores, were all really struggling  
21          with the selection and the lines of the clothing, we  
22          made hay there and we became number one retailer of  
23          kiddies' clothing in the UK. That was the reason --

24    Q. But you shifted from an across-the-board discounting  
25          policy?

1 A. Yes, into more targeted.

2 Q. And in general, you did not want to discount, it was  
3 Sports Soccer who discounted and you followed?

4 A. No. We watched the rest of the trade. We did exactly  
5 what we felt JJB would benefit from.

6 Q. And the concern that you had about discounting was that  
7 it was affecting your margins?

8 A. If you look at our margins since we went on the market  
9 our margins have never moved between 47.8 and  
10 49 per cent, so we have not moved more than 1.2 per cent  
11 over a period of five or six years in our gross margin  
12 in our accounts.

13 Q. You were reporting to the board in August 2000 about  
14 the period pre-July 2000, that your concern about  
15 competition was the difficulties of obtaining full  
16 margins. That was what you were reporting to the board  
17 at that time.

18 A. I think if you asked me to read that before, I think you  
19 are coming to the meeting where I said that our profits  
20 were going to exceed expectations, but however, we would  
21 have to look at margins for the second half of the year.  
22 I think that is what you are referring to.

23 Q. I am referring to the board report and the question that  
24 I am asking you -- I am suggesting to you that you were  
25 not indifferent about whether there was discounting.



1 I am suggesting to you that actually, once we got passed  
2 April 2000, you changed your discounting policy, you did  
3 not want to discount because you were concerned about  
4 your margins?

5 A. No, I have just told you the reason and I have just gone  
6 through that very carefully why a business must change  
7 and adapt on a monthly or quarterly basis as to what  
8 competition is, as to how your forecasts are going, as  
9 to what your sales are like.

10 Obviously we would change like the rest of  
11 the industry.

12 Q. But you did change from those across-the-board discounts  
13 to the targeted discounts?

14 A. For a specific reason, yes.

15 Q. Going back to the discussions with Umbro, the fact is  
16 that discounting by other retailers, including  
17 Sports Soccer, was a major topic of conversation with  
18 Umbro. When I say a topic of conversation, I am talking  
19 about between JJB and Umbro generally, not just you in  
20 your conversations.

21 At that interface between JJB and Umbro, the topic  
22 of discounting by other retailers was a major topic of  
23 conversation.

24 A. No.

25 Q. I would suggest to you that it was that topic,

1           discounting by others, was routinely used by JJB as  
2           an argument in favour of you getting better deals.

3   A.   If you are talking about would we negotiate better  
4           terms, obviously we would try to negotiate better terms  
5           with anybody and everything, and that is a continuing  
6           thing today.

7   Q.   Yes, and in the course of that discussion you, JJB,  
8           would be referring to the fact that other retailers were  
9           discounting and in particular Sports Soccer?

10   A.   No.

11   Q.   Can we look at what Mr Russell says, please?

12   A.   What page?

13   Q.   Page 371. This is his second statement, and I am  
14           looking at paragraphs 4 and 6. If you go to  
15           paragraph 4, this is Mr Russell --

16   THE PRESIDENT: We need to read it first, Mr Morris.

17   A.   Yes.

18   MR MORRIS: In paragraph 4 he refers to an area manager  
19           noting a competing shop undercutting prices and he had  
20           contacted Mr Russell for a decision. He then says, four  
21           line up from the bottom:

22                    "Sometimes I would mention discounting by  
23           a competitor, for instance Sports Soccer, to Phil Bryant  
24           and sometimes he would mention it to me."

25                    So they would be discussing Sports Soccer's

1           discounting?

2   A.   Yes.

3   Q.   If you go to paragraph 6 -- I do not know if you read  
4       that or if you just read 4 --

5   THE PRESIDENT:   We have looked at 6 already.

6   MR MORRIS:   I am asking whether Mr Whelan has read 6.

7   A.   Yes.

8   Q.   There he is giving specific examples of where he used  
9       discounting by other retailers and in particular  
10       Sports Soccer as a bargaining counter, is he not?

11  A.   Just point me to where you want me to look at.

12  Q.   He says:

13                "For example, the Umbro Manchester United third  
14       jersey was launched in September 2000 at normal trade  
15       prices.   Following discounting by Sports Soccer,  
16       I managed to buy 48,000 adult and children's shirts at  
17       clearance prices of £9.75 delivery in December".

18                Then he says again:

19                "A similar case was the Umbro Chelsea away shirt,  
20       launched in May 2000.   Again, following discounting by  
21       Sports Soccer to £30, only 75 days after launch,  
22       I managed to buy 20,000 adult and children's shirts at  
23       prices of £6.50 and £5.50 on 15th December.   I used  
24       the same strategy with all suppliers."

25                And the strategy he is there referring to is

1 the strategy of using discounting by others as  
2 an argument in favour of you, JJB, obtaining a better  
3 deal.

4 A. I do not think whatever Allsports did would bring  
5 the price down from £16-17 to £6.50 and £5.50. That is  
6 obviously a clearance shirt that we are talking about  
7 there.

8 Mr Russell will be able to tell you exactly that  
9 the Umbro Chelsea away shirt launched May 2000 if he was  
10 buying it at £6.50 or £5.50, it obviously would be  
11 a clearance shirt.

12 Q. But what Mr Russell says there is that discounting was  
13 therefore a general argument in favour of better deals,  
14 and he refers to the fact that he used that strategy,  
15 that the fact that Sports Soccer were discounting to go  
16 back to the supplier and say, "We want a better deal".

17 A. I think that is fair comment, that we would use whatever  
18 means we could to get better prices.

19 Q. Yes, yes. Given JJB's power in the market, it would  
20 have been an obvious strategy for JJB from mid-2000 to  
21 complain about Sports Soccer's pricing policy to Umbro  
22 and to ask Umbro to sort it out?

23 A. I would not use the words "sort it out", it is not  
24 the words I would use. Where that has come from, I  
25 think it is a Chris Ronnie saying that, that has gone

1 into the proceedings. It is not one of JJB's words,  
2 "sort it out".

3 Obviously we would use all kinds of things to get  
4 the wholesale prices down. That is normal commercial  
5 sense and normal commercial trading.

6 Q. Can you look at paragraph 8 of your second statement;  
7 I am now at page 438 of the same bundle.

8 Before I take you to that particular paragraph at  
9 438 can I just clarify the proposition. When you  
10 referred to the words "sort it out", what I am putting  
11 to you is this: it was an obvious strategy to JJB to  
12 complain about Sports Soccer's pricing policy not just  
13 in order for you to get a better deal but in order to  
14 encourage Umbro to take steps to stop Sports Soccer  
15 discounting; the words "sort it out", that is what I am  
16 referring to.

17 A. Firstly they would never do it and secondly  
18 Sports Soccer would take no notice of Umbro.

19 Q. Indeed, that is exactly what you say effectively in  
20 paragraph 8. If you go to paragraph 8, at the bottom of  
21 paragraph 8, I think we have already looked at the first  
22 bit of paragraph 8 where we talk about cancelling  
23 orders. At the bottom you say:

24 "I have never asked Umbro to attempt to prevent  
25 discounting by other retailers and I would never have

1           expected Sports Soccer, for instance, to respond to any  
2           such pressure from Umbro".

3    A.   That is what I just said, yes.

4    Q.   Let us look at the logic of that.  Let us assume that  
5           Umbro did cancel deliveries of major replica shirts  
6           during a key selling period.  Sports Soccer certainly  
7           could be expected to have been concerned --

8    A.   If they cancelled deliveries to JJB --

9    Q.   No, I am talking about Umbro cancelling a delivery to  
10           Sports Soccer at the time of a key selling period of  
11           a major replica shirt.  If that had happened --

12   A.   The first I knew about it was when I read it in  
13           the evidence here.

14   Q.   I am asking you this question: assume that Umbro did  
15           cancel a delivery of, say, an England shirt just before  
16           Euro 2000, or an England shirt coming up now --

17   A.   To Sports Soccer?

18   Q.   To Sports Soccer.

19   A.   Yes.

20   Q.   Sports Soccer would be concerned, would they not?

21   A.   I would imagine so, greatly concerned.

22   Q.   Yes.  And then at paragraph 9 of your statement you  
23           say -- and this is explaining what you were saying about  
24           Sports Soccer:

25                 "During the times when Umbro allege that we

1 threatened to cancel orders, such as before and during  
2 the Euro 2000, it would have made no commercial sense to  
3 reduce orders. We would never have done so, because  
4 the shirt was selling so well."

5 Sorry, I am on page 438, paragraph 9. You are  
6 carrying on from the previous paragraph where you were  
7 saying that you would not expect Sports Soccer to  
8 respond from pressure, and then you say effectively ..  
9 I will read it again:

10 "During the times when Umbro allege that we  
11 threatened to cancel orders, such as before and during  
12 Euro 2000, it would have made no commercial sense to  
13 reduce orders. We would never have done so, because  
14 the shirt was selling so well."

15 That is not the point, is it, because you could  
16 perfectly well have threatened to cancel orders, your  
17 orders, or declined to place orders for non-replica kit  
18 at that time as a means of encouraging Umbro to take  
19 action against Sports Soccer.

20 You make the point here that: we would never cancel  
21 because it was replica and was selling so well, and I am  
22 suggesting to you, that you could have threatened to  
23 cancel orders or declined to place orders for things  
24 other than replica kit.

25 A. We did decline to place orders apart from replica kit

1 because we could not compete, and as I have told you  
2 before, footballs and all kinds of things were being  
3 sold to Sports Soccer at prices that were way, way below  
4 anything we had been offered and we were told were  
5 coming from the grey market.

6 So, yes, we did come out of that market, that is  
7 commercial sense: if we cannot compete, then either sell  
8 something else or come out of the market.

9 Q. You had purchasing power across the board with Umbro and  
10 if you had declined to place an order for branded  
11 products, that itself could have had an effect on  
12 Umbro's attitude towards replica kit and Sports Soccer's  
13 discounting?

14 A. When we are looking to buy apparel, which is  
15 the clothing we are talking about, not replica kit, we  
16 look at what companies have across the board: will it  
17 sell, what is the quality, what is the price, and we  
18 make a reasoned judgment on which we should buy and  
19 which we should not buy. That would be the same for  
20 Umbro and everybody.

21 Q. I understand that. I was suggesting to you that your  
22 statement in paragraph 9, the reason why you would never  
23 cancel orders such as before or during Euro 2000, your  
24 statement there is confined to replica kit?

25 A. Yes.



1 Q. And you say it would be commercially daft to cancel  
2 replica kit at the time of a tournament?

3 A. Yes.

4 Q. What I am suggesting to you is that in order to put  
5 the commercial pressure on Umbro, you would have had  
6 other means of doing so, in other words, other goods in  
7 relation to branded non-replica kit products?

8 A. But we did not.

9 Q. But I am ... very well. I am suggesting to you that  
10 paragraph 9 does not meet the point that you did not  
11 have the ability by cancelling orders in relation to  
12 other goods.

13 A. But we did not do that.

14 Q. Very well. I suggest to you that the reality is that  
15 you and Mr Sharpe or Mr Russell did apply pressure to  
16 Umbro to stop Sports Soccer from discounting?

17 A. No.

18 Q. Can we look a bit more closely at the argument that you  
19 make that you would not have expected any member of your  
20 staff to have applied pressure. Can we look at  
21 paragraph 3 of your same witness statement at page 437.

22 What you say there is that you deny allegations that  
23 you applied pressure:

24 "... I am also not aware that any member of my staff  
25 engaged in such activity. I would certainly not expect

1           them to have done so, since I had made it known within  
2           JJB that I am firmly against such behaviour."

3   A.   Yes.

4   Q.   Did you circulate a note to members of staff ordering  
5           them not to apply pressure to Umbro to stop Discounting?

6   A.   No.

7   Q.   So how would they have known?

8   A.   It would be on a weekly or fortnightly meeting when I  
9           pull buyers together to assess what stock is selling,  
10           what stock is not selling, what price reductions we have  
11           to look at. Generally the relationship with suppliers,  
12           obviously Nike, Umbro, we changed the reps from time to  
13           time. And I asked the buyers for reports on  
14           communications: are we being serviced very well, are  
15           deliveries on time, are deliveries being delivered so  
16           they are easier to check off?

17           Those kinds of things would normally be every  
18           fortnight and we would discuss that with buyers and  
19           merchandisers.

20   Q.   You would actually say to them at each meeting: I am  
21           firmly against any of you applying any pressure?

22   A.   I do not think I would sort of say that exactly as you  
23           put it. I think the whole company know my beliefs.  
24           You have read quite a lot of my beliefs out and they are  
25           fairly well known within the city and I think they are

1           fairly well-known within JJB as well.

2   Q.   You cannot point to any specific instance when you would  
3        have said: whatever you do, do not put any pressure on  
4        Umbro about Sports Soccer's pricing or anybody else's  
5        pricing?

6   A.   No, I could not say that with any honesty that  
7        I remember it, because I do not.

8   Q.   Duncan Sharpe does not mention anything about that in  
9        his witness statement?

10  A.   No.

11  Q.   No.  What did you say to Duncan Sharpe about not  
12        applying pressure to Umbro, can you remember?

13  A.   If I say I could remember any discussions about Umbro  
14        with Duncan Sharpe I would be telling a lie.  I cannot  
15        say that I can remember one discussion about what  
16        you are talking about, no, I cannot.

17  Q.   How would he have known that you were so set against  
18        such conduct?

19  A.   Duncan was my son-in-law and he did know certain things  
20        in business that I stood for and still stand for.

21           I told you before that I was grooming him to be the  
22        next chairman, if possible, of JJB Sports, he was at  
23        every meeting that I conducted, he knew my philosophy  
24        and thoughts.  He knew certain things, like I was  
25        really, really against gambling.  So Duncan did know me

1 quite well.

2 Q. I am not contesting that. Mr Russell does not say that  
3 you spoke to him about this in either of his witness  
4 statements.

5 A. When you question Mr Russell I am sure he will agree  
6 that my sentiments, my thoughts, my rules and  
7 regulations do go around JJB quite firmly.

8 Q. Okay. I want you to assume that Duncan Sharpe or  
9 Colin Russell did, in fact, apply pressure to Umbro, and  
10 that they knew, in the light of what you have just told  
11 the tribunal, that it was directly against your wishes.

12 On that assumption, if they had done that, they  
13 would not have wanted to tell you, would they?

14 A. They would not do that.

15 Q. The question I am asking you -- I know you said they  
16 would not do it but I am asking you to assume that  
17 they had done it, I know you say they would not have.  
18 On that assumption, and their knowledge that you are  
19 dead set against it, it must be right, must it not, that  
20 they would not have wanted to tell you?

21 A. If they ever thought of doing it I am sure that they  
22 would not like me to find it out.

23 Q. They would not have needed to revert to tell you what  
24 they had done, and when I say what they had done, I am  
25 saying they had gone to Umbro and said get

1 Sports Soccer's prices up, because that would not have  
2 necessitated any change in JJB's prices.

3 If you have a situation where JJB are at £39.99 and  
4 Sports Soccer go out at £34.99 or whatever it is, Duncan  
5 or Colin went to Umbro and said, "Let's do something  
6 about this", you have just said that they would not have  
7 wanted to report it back to you because you are dead set  
8 against it and they would not have needed to report it  
9 back to you because your price was already set at  
10 £39.99.

11 A. The first thing they would report is the competition  
12 which I have said we would report on a weekly or a  
13 fortnightly basis and obviously they would report what  
14 competition, generally, in the trade were pricing at.  
15 That was our business, if we responded we would respond  
16 and respond quickly, if we decided to stay at £39.99 and  
17 have a slightly reduced sale but a better margin, that  
18 would be a decision for us to make.

19 I cannot envisage any time when Colin Russell or  
20 Duncan Sharpe would go behind my back and do things like  
21 you suggest.

22 Q. Thank you.

23 THE PRESIDENT: Are you leaving paragraph 3 of that  
24 statement?

25 MR MORRIS: I am.

1 THE PRESIDENT: Mr Whelan, could you glance back at  
2 paragraph 3 on page 437 that you have been asked about.  
3 You say that you deny allegations that you applied  
4 pressure on Umbro in order to get Sports Soccer to  
5 increase its retail price on football kit, and then you  
6 say that you are not aware of any member of staff  
7 engaging in such activity:

8 "I certainly would not expect them to have done so  
9 as I have made it known within JJB that I am firmly  
10 against such behaviour."

11 What is the behaviour that you are referring to  
12 there that you are firmly against?

13 A. It is price-fixing.

14 THE PRESIDENT: Yes.

15 A. Which I do know is against the law, and I would be  
16 absolutely against it.

17 THE PRESIDENT: Right. Thank you.

18 MR MORRIS: Can I now turn to the question of the meeting  
19 that you had at Mr Hughes's house on 8th June. Before  
20 we begin on that topic, can I ask you: have you talked  
21 through your recollection of that meeting in detail with  
22 anyone over the last few weeks or months?

23 A. The recollection of that meeting -- I do not need to  
24 turn it up because the recollections are actual facts in  
25 my brain. I do not need to turn it up, that meeting, so

1 I have not discussed it with anybody, there is no need  
2 to discuss it, everything that I put in that statement  
3 is in my brain because it is the honest truth and you  
4 never need to re-read or re-write anything that is  
5 truthful.

6 Q. So you have not discussed it?

7 A. No.

8 Q. I want to start with your acquaintance with the host of  
9 the meeting, Mr Hughes. Can I take you to paragraph 24  
10 of your first statement at page 428.

11 You say there at the bottom of page 428:

12 "My contact with other retailers is almost  
13 nonexistent, save for discussions about references for  
14 potential employees or social contacts at trade fairs."

15 But in fact it is the case that you used to know  
16 David Hughes very well, did you not?

17 A. No.

18 Q. You have known him for about 25 years, and you used to  
19 speak to each other often in the olden days when he had  
20 about ten shops and you had about twenty-five.

21 A. I think I have just put it there -- I said I have had  
22 very little contact with any competitors apart from at  
23 trade fairs and social events.

24 Q. Can we look at what Mr Hughes has to say about this, at  
25 file 1, page 295, paragraph 21. Mr Hughes says:

1            "I have known David Whelan for 25 years, he is in  
2            the same industry as me and I used to know him very  
3            well. Before 2000 I had not spoken to him for about  
4            three years and after the meeting with him I did not  
5            speak to him again.

6            "We used to speak to each other more regularly when  
7            I had about ten shops and he had about 25."

8            Do you agree with that?

9            A. That is Mr Hughes's opinion. Okay. If Mr Hughes is of  
10           the opinion that I was a better friend, fine, yes.

11           I still did not speak to him a lot.

12           Q. Your recollection is that you did not speak to him even  
13           in the old days very often?

14           A. No.

15           Q. Can we go back to your first witness statement, back to  
16           bundle 3 again, page 429. Page 428, paragraph 25,  
17           the bottom of that page, and you refer to receiving  
18           a telephone call from Mr Hughes?

19           A. Yes.

20           Q. At some time on 8th June or shortly before. And then  
21           you say:

22           "David Hughes asked for a meeting with me but he did  
23           not disclose the reason."

24           You have just said that everything is fixed in your  
25           mind. Can you remember now what he said to you in



1 the course of that telephone conversation?

2 A. Yes, he rang up and said, "David, how are you,"  
3 et cetera, as would be normal. "I would like to have  
4 a discussion with you about business". I said, "When  
5 would you like the discussion, David?" He said,  
6 "I would like it as soon as possible, because it is  
7 quite important".

8 So I think he rang actually the day before --  
9 I think that is my recollection -- the day before  
10 the 8th, I think he rang on the 7th. I said, "Okay,  
11 we will go across quickly".

12 I spoke to Duncan Sharpe and said that David Hughes  
13 has asked for a meeting and he said it is quite  
14 important, and I do recall quite clearly saying to  
15 Duncan, "David is due in for an operation on his spine",  
16 and it was quite serious, and the rumour in the trade  
17 was that David Hughes was wanting to retire because of  
18 problems he had with his health.

19 So I quite naturally assumed that he wanted to talk  
20 about the sale of Allsports.

21 Q. But you did not ask Mr Hughes what the purpose of  
22 the meeting was?

23 A. No.

24 Q. Your solicitors have said that it is unlikely that you  
25 would have been prepared to attend a meeting without

1           having any idea of its purpose.

2    A.   My solicitors have said that?

3    Q.   If you go to the small bundle now, at tab 12.  It is

4           the thin one; it is probably buried under things there.

5           If you go to the first page you might recall this

6           document.

7    A.   To the first page?

8    Q.   No, it is in tab 12, the first page of tab 12 --

9    A.   Is this the right one?

10   Q.   Sorry, there is a 12A and a 12B, it is the beginning of

11           12, like that.  (Indicating).

12   A.   Thank you, I have it.

13   Q.   This is JJB's written response to the thing called

14           the supplementary rule notice, dated 26th November.

15           That is the date of the notice.  This is in fact dated

16           about 17th January 2003.  These were written submissions

17           prepared on behalf of your company, presumably with your

18           input.

19           Sorry, I asked a question: did you have input into

20           the preparation of these written submissions put in on

21           behalf of JJB?  You were asked about them by your

22           solicitors?

23   A.   I cannot recall having read this one before, to be

24           honest.  I cannot recall having read this particular

25           one.  Whether they asked me anything about it or not,

1 I cannot say.

2 Q. Can I take you to paragraph 2.24 which is on the second  
3 page. In paragraph 45 of the supplementary notice, that  
4 is what the OFT had been saying:

5 "... the director says that JJB has stated that it  
6 was not aware in advance of the purpose of the meeting."  
7 Which is what you just said.

8 A. Yes.

9 Q. Your solicitors on your behalf say:

10 "It is unlikely that David Whelan would have been  
11 prepared to attend a meeting without having any idea of  
12 its purpose."  
13 That is right, is it not?

14 A. That is what they say.

15 Q. I am asking you whether it is right --

16 THE PRESIDENT: You need to let the witness read the rest of  
17 it, I think, Mr Morris.

18 A. I think it says there that it is his belief that  
19 Mr Hughes wished to sell Allsports. That is the reason  
20 that I thought he had asked me to go.

21 MR MORRIS: I understand, but the point that I am putting to  
22 you is this: you did not get that information from  
23 Mr Hughes?

24 A. No, I did not ask for it.

25 Q. What I am suggesting to you is that it is rather unusual

1           for a man as busy as you are, as we will see in a moment  
2           from the helicopter log, to go to a meeting without  
3           asking the person who you are going to the meeting with,  
4           what the purpose of the meeting is.

5    A.   Mr Hughes said it was important.  I quite wrongly jumped  
6           to the importance being the sale of his business, and  
7           that is quite a fact.

8    Q.   This is a meeting at the personal house of one of your  
9           main competitors?

10   A.   Yes.

11   Q.   And you are dead set against price-fixing?

12   A.   Absolutely.

13   Q.   And you are going to a meeting with a competitor without  
14           asking the competitor the purpose of the meeting?

15   A.   If I meet a competitor in the street, I am allowed to  
16           talk to him.  It did not mean to say that I am going to  
17           try to concoct a deal because he is a competitor.

18   Q.   Of course I understand that.  I am suggesting to you  
19           that it is highly unlikely that you would have gone to  
20           a meeting with Mr Hughes without even asking him in the  
21           course of that conversation what it was about?

22   A.   Then you would be wrong.

23   Q.   And you assumed off your own bat that the purpose was to  
24           discuss selling the business?

25   A.   Absolutely.

1 Q. And nothing Mr Hughes said led you to assume this?

2 A. Mr Hughes said the meeting was important. As I said,  
3 I wrongly assumed that he wanted to sell the business.

4 Q. At that time, Allsports' stores were relatively small,  
5 were they not?

6 A. In size?

7 Q. In size.

8 A. They still are.

9 Q. Average size about 1420 square feet?

10 A. I would probably say 1800 to 2000 square feet.

11 Q. But that small?

12 A. Yes.

13 Q. Can I ask you to go to the small file and go to tab 12B.  
14 There should be two additional tabs that have been  
15 inserted. I think on yours it is purple in colour.  
16 You will see there JJB's interim report for 31st July  
17 2001.

18 If you go over two pages you see three  
19 paragraphs down, the paragraph on the left-hand side  
20 beginning:

21 "We have continued our policy of a migration from  
22 smaller stores to superstores in which we are able to  
23 display our product range in full. Our objective  
24 remains to develop a portfolio of between 450 and 500  
25 superstores in the UK."

1 A. Yes.

2 Q. A superstore is much, much bigger? What sort of square  
3 footage is that?

4 A. Yes, 10-18,000 square feet.

5 Q. Perhaps eight times the size?

6 A. Yes, eight times.

7 Q. So in 2000 you would not have been interested in buying  
8 the Allsports business, would you?

9 A. (Pause). No. One word: no.

10 THE PRESIDENT: You were not interested.

11 A. I would not have been interested, but I was interested  
12 to listen. One must always listen if a competitor wants  
13 to sell. Always.

14 MR MORRIS: So you went to a meeting on the assumption that  
15 it was about selling even though you were not interested  
16 in buying?

17 A. I would not have bought.

18 Q. David Hughes says, and I am talking about the period  
19 immediately before the meeting, that he did not manage  
20 to speak to you at all and he says that he actually  
21 spoke to Duncan Sharpe?

22 A. I think David actually spoke to me, but that is  
23 a difference of opinion and it is quite a long time ago.

24 Q. Yes, and recollections can differ over time.

25 A. Well, the truth very rarely differs.

1 Q. That I would not disagree with you, but recollection can  
2 differ.

3 A. Recollections and other things can differ.  
4

5 Q. Can I take you to Mr Hughes's statement to remind you  
6 what he said. It is the big orange bundle, bundle 1.

7 A. Sorry, what page?

8 Q. I am going to take you to page 307, Mr Hughes's witness  
9 statement. It starts:

10 "My diary entry for 6th June reads ..."

11 A. Hang on.

12 Q. Page 307. It may be that you do not have the right  
13 bundle.

14 A. Yes.

15 Q. And it starts:

16 "My diary entry for Tuesday 6th June 2000 reads,  
17 'Phone and visit D Whelan with Man United Shirt'. This  
18 suggests to me that I still had not heard back from  
19 David Whelan or Duncan Sharpe by then. When  
20 I eventually spoke to Duncan Sharpe, which I think I did  
21 on Tuesday afternoon, I told him that Mike Ashley had  
22 been invited to a meeting and the purpose was to stop  
23 Sports Soccer and JJB heavily discounting the prices of  
24 premium products on launch. I probably said words to  
25 the effect 'there is enough blood on the carpet and was

1           it not time that Sports Soccer and JJB stopped beating  
2           each other up. Could we not get around a table and sort  
3           it out'. I did not mention the Man U shirt to him. I may  
4           also have said something like 'profit is not a dirty  
5           word and there is no need for us to be running around  
6           like busy fools cutting prices'. That call would have  
7           lasted no more than a couple of minutes. Duncan Sharpe  
8           then arranged for David Whelan and himself to be at  
9           the meeting. I do not know what Duncan told David  
10          Whelan. Had I spoken to David Whelan, I would have told  
11          him what I told Duncan Sharpe. But I do not recall  
12          speaking to David in advance of the meeting."

13    A.    At the top it looks like he has actually phoned me.

14    Q.    He has, if you go back a paragraph --

15    A.    That is what it looks like to me, that he has spoken to  
16          me and he has spoken to Duncan and he is saying there  
17          that he has had no reply.

18    Q.    Can you go back a page, the previous page, to Monday,  
19          5th June:

20                 "I tried to telephone David Whelan in the morning  
21                 but was told that he was not around. I asked instead to  
22                 be put through to the late Duncan Sharpe. He was  
23                 unavailable and I left a message for him to call.  
24                 I rang Duncan Sharpe about two or three times before he  
25                 returned my call. I do not read anything into that



1           except that that was just how Duncan was."

2           What he is saying there is that he first of all  
3           tried you and did not speak to you and in fact spoke to  
4           Duncan Sharpe. At the end he says:

5           "Had I spoken to David Whelan, I would have told him  
6           what I told Duncan Sharpe."

7   A. As you know, Duncan is not here to say whether or not  
8           that is true. I can only tell you what I can tell you  
9           and I definitely spoke to David Hughes and I definitely  
10          did not know the contents or what this meeting was about  
11          that has been my statement throughout and that remains  
12          so.

13   Q. He is quite a chatty person, David Hughes, is he not?

14   A. I would not call him chatty, I would call David a little  
15          bit dour to be honest.

16   Q. He does not sort of engage in conversation, he is very  
17          sort of, to the point is he?

18   A. I would say that David is quite a dour person.

19   Q. He is saying here that he was telling Duncan, and he  
20          says that he does not recall talking to you but he says  
21          that if he had talked to you, he would have said what  
22          the purpose of the meeting was.

23   A. I think he is admitting there that I did not know  
24          the purpose of the meeting there. And I definitely did  
25          not know the purpose of the meeting.

1 Q. Can you think of any reason why Mr Hughes's recollection  
2 might be wrong about this?

3 A. No.

4 Q. You went to the meeting in the company helicopter?

5 A. Yes.

6 Q. And we can see the log sheet, which was originally  
7 attached to your witness statement but we have put it in  
8 the little bundle, at 14.

9 If you go down that you see item 6, which starts:  
10 "From Wigan to ..."

11 I will come back to that in a moment.

12 The sixth item down is the flight to Mr Hughes's  
13 house.

14 A. Yes.

15 Q. Can you tell us whether -- we are not clear -- the only  
16 journey of those listed there in which you would have  
17 been involved would have been that last one, or would  
18 that be all you?

19 A. I do not think that would be all me. But the law is  
20 that the helicopter pilot has to record every single  
21 thing.

22 Q. I understand that.

23 A. The pilot must have who is on board for each flight. I  
24 do not think that is provided for, so I cannot say  
25 whether I was involved or not.

1 Q. Can I ask you this: this looks as though it is  
2 a helicopter charter company at this stage?  
3 A. No, it is JJB's helicopter.  
4 Q. Right, so these are all JJB business flights?  
5 A. Yes.  
6 Q. When you take off and land to and from Wigan, where do  
7 you take off and land?  
8 A. From the warehouse, the office.  
9 Q. And is that a public aerodrome?  
10 A. No, it is our own private landing area.  
11 Q. Now, when you look at the word "to" -- what we have is  
12 Blackpool to Wigan, Wigan to Ross-on-Wye, Ross-on-Wye to  
13 Chorley, Chorley to Barton --  
14 A. Barton is an airport quite close to Manchester.  
15 Q. So that is a public aerodrome?  
16 A. Yes.  
17 Q. Blackpool; was that public or private?  
18 A. Blackpool was the place we used to refuel. We refuel  
19 actually at the head office now, but then we used to  
20 refuel at Blackpool so it probably was going to refuel  
21 there.  
22 Q. Is that an aerodrome?  
23 A. Yes, Blackpool Airport.  
24 Q. Then we get the final flight and then I think it says:  
25 "Private landing near Jodrell Bank"?

1 A. That would be David Hughes's house.

2 Q. Do you know why there the designation "private landing"  
3 was used?

4 A. I would say it is probably the rules and regulations of  
5 flying a helicopter or aeroplane, you have to put down  
6 where you land and whether it is private or commercial.

7 Q. But that was not put down for Wigan, was it?

8 A. Wigan is head office.

9 Q. That is a private landing?

10 A. I am a passenger, I do not fly, I have never flown in my  
11 life, I have no intention of ever taking lessons and  
12 you are not talking to the most intelligent person on  
13 getting to the bottom of these but I can assure you that  
14 these are all kept --

15 Q. I am sure they are and I am sure they are kept in  
16 accordance with regulations. I am just questioning why  
17 if Wigan is a private landing and Jodrell Bank is  
18 a private landing, it says private landing for one and  
19 not the other.

20 A. I could not tell you.

21 Q. Mr Hughes's house in Chelford, I think it is about  
22 45 minutes' drive from JJB's offices in Wigan, is it  
23 not, roughly?

24 A. About that, yes.

25 Q. Any reason why you took the helicopter?

1 A. To get to the meeting and get back to the office and  
2 carry on with business. As I said earlier, we would  
3 frequently fly, or everyday we would fly all around.  
4 When you have over 400 stores and I want to visit six  
5 stores in a day, the only way to get around is by  
6 helicopter.

7 So I use it on a frequent basis as the rest of  
8 the team do.

9 Q. Mr Sharpe said in his witness statement that you took  
10 the helicopter because you believed that Mr Hughes was  
11 looking to sell his business; that is what he said in  
12 his witness statement.

13 A. I do not know why I would take a helicopter if he was  
14 looking to sell his business. I take it for one thing,  
15 transport.

16 Q. That is the question that I was asking you. Why would Mr  
17 Sharpe have said that because there was the prospect of  
18 a business sale that that was a reason -- that was not  
19 a particular reason for taking the helicopter?

20 A. I would not say that, no.

21 Q. Let us turn to the meeting itself. Can we look at  
22 Mr Hughes's statement at paragraph 94, page 309, file 1.

23 A. Does it have a tab number?

24 Q. It is tab H, file 1, page 309, paragraph 94. Can we  
25 read paragraph 94 -- perhaps rather than me reading it

1 out, if you can read it through. It sets out  
2 the timetable for the meeting.

3 A. Yes. (Pause).

4 Q. Going back to the timetable in paragraph 94, would you  
5 broadly agree with that timetable?

6 A. If the helicopter time thing agrees with it, I would  
7 agree with it.

8 Q. I think it does, the start and the take-off, so you  
9 agree with the stages?

10 A. Yes.

11 Q. Everyone agrees that the initial period after you landed  
12 was taken up with a quick tour of the house and  
13 pleasantries?

14 A. It was.

15 Q. Duncan Sharpe said that that lasted for about  
16 ten minutes?

17 A. Yes.

18 Q. Mr Ashley in fact, says that the event was quite jovial  
19 and relaxed, and he says that you remarked to  
20 David Hughes that some things in the house must have  
21 cost a few bob. Does that sound about right?

22 A. No.

23 Q. It was not jovial and relaxed?

24 A. No.

25 Q. And you did not say those things?

1 A. No.

2 Q. So what was the atmosphere?

3 A. I had never met Mike Ashley before. Apparently he says  
4 I had, but I could not recall it. When I saw him there  
5 I was shocked to be perfectly honest, because what  
6 I thought I was coming to the meeting for was obviously  
7 wrong, and I was shocked to see Mike Ashley there.  
8 I was a bit taken aback I must say, and I thought: what  
9 the hell is he doing at David Hughes's?

10 So the atmosphere was not relaxed in any way, shape  
11 or form.

12 Q. So you were shocked when you saw him?

13 A. Yes.

14 Q. So why did you not leave straight away?

15 A. If I go and see somebody and I am shocked, I think it  
16 would be very, very bad-mannered to say, "I have never  
17 met you before, I am going". I do not think that is  
18 the way people live.

19 Q. Did you express your shock? Did you say to him: what  
20 the hell are you doing here?

21 A. No.

22 Q. You did not even ask?

23 A. I did not even ask. It was not my call. I had not  
24 arranged the meeting, I had been asked to attend  
25 a meeting but I did not know what it was about. I went

1           there and had a look around David's house, said it was  
2           very nice. His wife gave us a cup of coffee and David  
3           then said, "Come into the lounge" or whatever it was,  
4           and there was sat Mike Ashley who I had never seen  
5           before.

6    Q.   There you are meeting Mr Ashley for the first time,  
7           never seen him before. You knew then, did you not, that  
8           this was not about selling Mr Hughes's business?

9    A.   Yes.

10   Q.   And you said nothing? You did not say, "What is this  
11           meeting about then?", when you saw him there?

12   A.   I had not called the meeting so obviously I am going to  
13           have a cup of tea and sit down and await events.

14   Q.   You are a man dead set against price-fixing --

15   A.   Yes, absolutely.

16   Q.   -- and here you are absolutely against price-fixing, you  
17           know this is a terrible thing, against everything you  
18           stand for, and for the first time ever you are at  
19           a competitor's house, not only with that competitor but  
20           with another competitor. You think that this is  
21           a meeting about selling the business, you know as soon  
22           as you see Mr Ashley that it cannot be, and you say  
23           nothing?

24   A.   Yes. I wait.

25   Q.   Are you sure that the first time you saw Mr Ashley was



1           when you got into the lounge?

2   A.   I think so.

3   Q.   You think so?

4   A.   Yes.  My recollection is that I went into the kitchen,  
5           he had quite a nice hall, and I was given a quick tour  
6           of the -- because it was a new house I was given a quick  
7           tour and I was ushered into the lounge with  
8           Duncan Sharpe.

9   Q.   And who went on the tour with you?

10  A.   David Hughes, Dave Hughes's wife did not want to tour,  
11           on my recollection she stayed in the kitchen making  
12           the tea or the coffee.

13  Q.   And Mr Ashley?

14  A.   I did not know he was there.

15  Q.   You did not know he was there at all when you landed?

16  A.   No.

17  Q.   If you go back to paragraph 94 which you have just said  
18           you agree with, Mr Hughes says that Mike Ashley was  
19           there as the helicopter landed and that you met him then  
20           and there?

21  A.   Not according to my recollections.

22  Q.   But you did say a few moments ago that that was  
23           an accurate description and you did not disagree with  
24           paragraph 94.  Now you are saying that in fact Mr Ashley  
25           was not there as the helicopter landed, and you did not

1 meet him face-to-face either -- I do not know whether it  
2 was on the lawn or wherever the helicopter was, or  
3 indeed in the kitchen. Now you are saying that you did  
4 not meet him until you went into the study?

5 A. I have always said that. I am not now saying that;  
6 I have always said that.

7 THE PRESIDENT: Could you just glance back to page 209 of Mr  
8 Hughes's statement, Mr Whelan? Against the heading  
9 "13.11 hours" there is a passage that begins:  
10 "David Whelan and Duncan Sharpe alight from  
11 the helicopter ..."  
12 Just read that little bit down to the end of  
13 the passage.

14 A. At 299?

15 THE PRESIDENT: Page 209 in Mr Hughes's statement.

16 A. (Pause). Yes.

17 THE PRESIDENT: Does that accord with your recollection?

18 A. David Hughes is saying there obviously that I met him  
19 outside. My recollection is that I did not meet him  
20 outside, I met him inside. That was my original  
21 statement and that is what I thought was the absolute  
22 truth, so I put it down and I have never changed it.

23 MR MORRIS: So you are now saying that you did not meet him  
24 until 1323 effectively, when you get into the study. On  
25 that basis Mr Hughes must have left Mr Ashley in

1 the study whilst you had your pleasantries and the tea  
2 and walked round the house.

3 A. The tea was served in the meeting, I did not have tea  
4 before that. I did have a quick walk around, I am  
5 talking minutes here, not half an hour or 15 minutes and  
6 the tea was served when we went into the meeting room  
7 which I think was in the front lounge.

8 Q. So there was no tea in the kitchen?

9 A. I think Mrs Hughes was making the tea when I popped in  
10 to say hello to her. I had never met David Hughes's  
11 wife, you see.

12 Q. You say that you did not know Mr Ashley was there until  
13 you went into the study?

14 A. Yes.

15 Q. Can I just take you to paragraph 28 of your first  
16 witness statement on page 429. That is bundle 3. This  
17 is your statement, this is your recollection?

18 A. Yes.

19 Q. You say at paragraph 28:

20 "On arrival David Hughes told me that Mike Ashley  
21 was also present."

22 A. Mm-hm.

23 Q. Now, you have just said that you did not know until you  
24 got into the study that he was present?

25 A. I had never met him until I got into the study, I had

1 never met him in my life. If I said that there then  
2 that would be -- at that particular time I would have  
3 put that down and if that is there, I would stick with  
4 it now, yes.

5 Q. So you were told that he was there?

6 A. Probably, yes.

7 Q. So you were told upon arrival, and yet you did not ask  
8 then and there: what is he doing there?

9 A. No. Because when you get out of a helicopter, the first  
10 thing you have to do is get from under the blades.

11 Q. I understand that.

12 A. And the helicopter landed a hundred yards or so from  
13 the house, and the first thing you do is get from under  
14 the blades and walk towards the house.

15 Q. At that point Mr Hughes says to you, "I have Mike Ashley  
16 here"?

17 A. It is a long time ago, I cannot remember that.  
18 I honestly thought, looking back at it now, that I first  
19 met Mike Ashley when he was in the lounge. If I say  
20 there that he told him before then I will have to go  
21 with that.

22 Q. Which is it? What is your recollection now?

23 A. My recollection now is that I must stay with my  
24 statement, I must stay with my statement. Because I put  
25 that down believing that to be the truth.

1 Q. Very well, so because that was made earlier, it is more  
2 likely to be the true recollection, this statement; and  
3 on arrival you are told that Mr Ashley is there and you  
4 say that you said nothing?

5 A. I would have nothing to say because we were going into  
6 the house for a meeting. So I wait for the meeting to  
7 start and then I will soon learn what it was about.  
8 When I learned I left.

9 Q. Even though you were shocked and surprised, you did not  
10 say, "What is he doing here, David?"

11 A. I am not the kind of person who would sort of be shocked  
12 and surprised. What I said was that I was surprised  
13 he was there, and I was, because I was not expecting to  
14 see anybody expect David Hughes because I thought he was  
15 selling his business. So I was shocked, but you have to  
16 get on with the business and it was a meeting. I  
17 thought I would wait to see what the meeting was about;  
18 immediately the meeting started and they started talking  
19 about, "This shirt is worth £45", I said, "Sorry,  
20 we have a stated policy that we will never sell a shirt  
21 above £40" and I left. I said to Duncan, "Let's go".

22 Q. Mr Whelan, you are obviously a man with very firm views  
23 about things.

24 A. Sometimes, yes.

25 Q. Are you suggesting that you are the sort of person who

1           when you find out that two competitors are present at  
2           a meeting when you were surprised, I think you said --  
3           you probably also said "shocked" but I would have to go  
4           back into the transcript -- that you would wait 10 or 15  
5           minutes before saying anything?

6    A.   I did not wait 10 or 15 minutes, I waited until the  
7           meeting started.

8    Q.   You said that on arrival -- this is 13.11 -- that you  
9           were told Mike Ashley was there, and you said that you  
10           said nothing about it until the meeting in the study,  
11           which was about 12 minutes later.

12   A.   Okay.

13   Q.   So you said nothing at all?

14   A.   No, I was looking round the house, being pleasant with  
15           Mrs Hughes, et cetera.

16   Q.   So that part of it was jovial or relatively relaxed?

17   A.   It was something that David was proud of and he wanted  
18           to show me.

19   Q.   I understand that, this was the first time you had been.  
20           It was a new house, was it not?

21   A.   Yes.

22   Q.   And he was proud of it?

23   A.   He was proud of it.

24   Q.   Can we now move to the meeting in the study, I call it  
25           the study, I think you call it the lounge, but I think

1           we have the same place in mind. You have it obviously  
2           in your mind more than I do because I have never been  
3           there.

4    A.   Yes.

5    Q.   Mr Hughes and Mr Ashley agrees, that at the meeting  
6           Mr Hughes picked this up? (Indicates).

7    A.   He did.

8    Q.   He did?

9    A.   He did.

10   Q.   So you remember that now?

11   A.   Oh, yes, that started the meeting.

12   Q.   That is something you have never said before, is it?

13   A.   The meeting was very brief. That was the first thing  
14           that David Hughes started the meeting with. He held  
15           the shirt up like that and said: this is the new  
16           Manchester United shirt that is going to be launched --  
17           I think it was August -- and I think it is worth £45.  
18           That was the start of the meeting, and as far as I was  
19           concerned, that was the end of the meeting.

20   Q.   Can you go to tab 16 of the thin bundle.

21           This is a letter from your solicitors, DLA, on 13th  
22           March. Do you have the same?

23   A.   Yes, I have it.

24   Q.   This is to the Office of Fair Trading, 13th March 2003,  
25           and it is picking up some points that were made at

1 the oral hearing.

2 Paragraph 4DLA says as follows:

3 "You [the OFT] also asked whether or not it was  
4 the case that David Hughes had produced a sample of  
5 the Manchester United home shirt at the meeting at his  
6 house on 8th June 2000. I have referred this question  
7 back to our client, and Dave Whelan confirms that  
8 the reason that he did not mention this in his  
9 statements is that he has no recollection of it. He  
10 would have seen a sample of the shirts some time before  
11 that when it would have been presented by the sales  
12 representative. To see the shirt again at  
13 David Hughes's house would have held no particular  
14 significance and would not have been memorable."

15 So there it is being said that you have no  
16 recollection of that; and now you have just said that  
17 you absolutely remember it.

18 A. By the solicitor, not me, by the solicitor. My reaction  
19 to that shirt was instant for you: that was the shirt  
20 that I saw at David Hughes's house. My reaction was  
21 instant and honest and truthful.

22 What this solicitor has put down is up to this  
23 solicitor, had he asked me the same question that you  
24 asked me, he would have got the same answer.

25 Q. Well he says that he did ask you that question.



1 A. What he says and what happened, I do not know. My  
2 reaction to your shirt immediately sir, was: yes, that  
3 is what started the meeting. There is no question that  
4 that started the meeting.

5 Q. You were asked specifically about this because that is  
6 precisely what David Hughes's and Mike Ashley's  
7 recollection was, that this did happen.

8 A. Absolutely.

9 Q. And your solicitor was asked and he says, does he not,  
10 that:

11 "I have referred this question back to our client  
12 and Dave Whelan confirms that the reason he did not  
13 mention this in his statements is that he has no  
14 recollection of it."

15 A. Let me say that the solicitor is entirely wrong. I have  
16 given you the honest facts, I did see that.

17 Q. So the solicitor did not go back to you at all?

18 A. I cannot recall it because I would have told him what  
19 I told you: that shirt started the meeting.

20 Q. You have never mentioned this before in any of your  
21 witness statements?

22 A. No.

23 Q. Can you think of any reason why your solicitor, who is  
24 no doubt somebody you trust, would say what he said  
25 here?

1 A. I do not know, I can make investigations after this and  
2 find out who has actually written this and sort of  
3 say --

4 Q. "What the hell has been going on"?

5 A. Correct. But it is not true.

6 THE PRESIDENT: When you get to a convenient moment,  
7 Mr Morris.

8 MR MORRIS: Yes, I think that is a convenient moment, sir.

9 THE PRESIDENT: Fine. We will say 2 o'clock. No discussing  
10 your evidence, Mr Whelan.

11 A. Thank you, no.

12 (1.00 pm)

13 (The short adjournment)

14 (2.00 pm)

15 THE PRESIDENT: Mr Morris.

16 MR MORRIS: Thank you, sir.

17 Mr Whelan, we were talking about  
18 the 8th June meeting. I want to move on now, still on  
19 8th June, to what was said once you moved into the study  
20 or I think the lounge as you described it.

21 Can we go to bundle 3, your witness statement  
22 bundle, which is the big one, and go to your first  
23 witness statement at paragraph 29.

24 Page 49, paragraph 29. After a quick look around  
25 the house and a cup of coffee --

1 A. Yes.

2 Q. -- you say there that David Hughes initially suggested:

3 "... that it would be helpful for all of us to get

4 together on a more regular basis to discuss business.

5 He then suggested that the wanted to discuss the launch

6 of the forthcoming Manchester United shirt and the fact

7 that he felt that all retailers should set a retail

8 price of £45."

9 A. Yes.

10 Q. In fact, everybody else who has given evidence about

11 the meeting said exactly the same thing at that stage:

12 Mr Sharpe, Mr Ashley, Mr Hughes and you all agree on

13 that having happened?

14 A. Yes.

15 Q. On your account, you responded at paragraph 30 by saying

16 that you had on numerous occasions stated publicly that

17 the company would never sell a replica shirt at a price

18 in excess of £40, and moreover you were not willing to

19 discuss the retail price with anyone:

20 "... and Duncan and I left the meeting."

21 A. Yes.

22 Q. You were in the study for about 15/20 minutes?

23 A. I do not think it was as long as that.

24 Q. I took you to Mr Hughes's witness statement at

25 paragraph 54, and the timetable was set out there, with

1           which you have broadly agreed this morning, which shows  
2           that you were in the meeting in the study lasting  
3           18 minutes, on a very precise basis.

4           On Mr Hughes's account with which you agreed before  
5           lunch it was 15 to 20 minutes or so in the study, was it  
6           not?

7   A.   I thought the meeting was very, very short. That is my  
8           interpretation of it, a very short meeting.

9   Q.   But we know do we not as a fact that you were in total,  
10          from the helicopter to the helicopter take-off, almost  
11          an hour, 52 minutes, and we have ten minutes in  
12          the study. We have the start and the finish --

13   A.   Yes.

14   Q.   -- and you agreed that roughly 18 minutes seemed about  
15          right for the study?

16   A.   Okay.

17   Q.   I would suggest to you that if that is right what  
18          you have just described as you did cannot have been all  
19          that happened in those 18 minutes, or 15-20 minutes?

20   A.   That is what I can remember of it. And I gave  
21          a truthful account of what I remember.

22   Q.   Can we look at what the other people there said  
23          happened. Can we first of all turn to what Mr Ashley  
24          says; that is in witness statement bundle 1, page 141.

25          Would you like to read to yourself paragraphs 31-35,

1 pages 141-142.

2 THE PRESIDENT: I think he perhaps ought to start at 28, and  
3 I think you perhaps ought to take him through it,  
4 Mr Morris.

5 MR MORRIS: Very well. I will read the statement.

6 Paragraph 28 --

7 THE PRESIDENT: I do not know that you have to read it, but  
8 the witness should read it so he can see what is being  
9 said. (Pause).

10 Paragraph 32, this is after the £45 shirt --

11 Mr Ashley says that:

12 "David Whelan said quite clearly that the JJB price  
13 for replica shirts was 39.99. He got quite heated and  
14 started talking at me quite forcefully. He said to me  
15 words to the effect that 'The price will be 39.99,  
16 son.'"

17 If you go down to the end of 33, Mr Ashley says:

18 "David Whelan said, 'There is a club in north, son,  
19 and you are not part of it'."

20 Leave aside the question of prices, did you say  
21 words to the effect: there is a club in the north, son,  
22 and you are not part of it?

23 A. No.

24 Q. Mr Ashley is not the only one who says that you did say  
25 that. Can we go to Mr Hughes; this is in the same

1 volume at page 310.

2 Again just perhaps to orient yourself as to what  
3 we are talking about, you might want to start reading to  
4 yourself from about 97, but I am going to take you to  
5 100 in a moment. It is page 310, paragraph 97.

6 If you go to paragraph 100, over the page at 311,  
7 you will see three lines down Mr Hughes says:

8 "At about this time, it may have been in response to  
9 Ashley's complaint that he was unloved [and you have  
10 just read about that], David Whelan said to Mike Ashley:  
11 you know, there are a few of us in the North that have  
12 been around for some time and know how this business  
13 works. He did not use the word club. David was  
14 sabre-rattling, but Mike Ashley did not appear to be  
15 intimidated by what David Whelan had said; quite  
16 the opposite."

17 And then if we look in bundle 3, back to your  
18 bundle, at page 230. This is Mr Ronnie's witness  
19 statement at paragraph 56. He is reporting what  
20 Mike Ashley said to him after the meeting. You will see  
21 in line 4 of that paragraph he says:

22 "Mike Ashley also reported that David Whelan had  
23 said, 'There is a club, you know, in the north, son, and  
24 you are not part of it'."

25 Now, are you quite sure that nothing like this

1           happened, or on reflection is that possible that it  
2           might have done?

3    A.   I never use those types of phrases, "There's a club in  
4           the North," I would never use that phrase.  I say that  
5           Chris Ronnie was not even at the meeting.

6    Q.   I understand that, but Mr Hughes and Mr Ashley both say  
7           that there was a reference to a north/south divide, put  
8           it that way.  Mr Hughes says you did not use the word  
9           "club", but he does say that you said that there are  
10          a few of us in the north that have been around for some  
11          time.

12                 In the light of their evidence, Mr Hughes's and  
13                 Mr Ashley's, is it possible that you might have made  
14                 some such reference to the north?

15    A.   Firstly I think both accept that I never used the word  
16           "club".  I cannot recall using any reference whatsoever  
17           to a divide between the north and the south.

18    THE PRESIDENT:  No reference to "some of us up in  
19           the north"?

20    A.   No, it is not something that I would ever recall using,  
21           that.

22    MR MORRIS:  It is true, is it not, that Allsports, JD, JJB  
23           and indeed Umbro are all based in the North of England,  
24           in fact in the North-West.

25    A.   Including Adidas, yes.

1 Q. But Sports Soccer is in the south?

2 A. Yes.

3 Q. So it would have been a natural thing to say --

4 A. No.

5 Q. -- to make the distinction?

6 A. Not a natural thing for me to say, no.

7 Q. Can you think of any reason why Mr Ashley and Mr Hughes

8 would remember such a phrase or reference being used and

9 the fact that you cannot remember such a reference or

10 phrase, why are they saying that?

11 A. I think both of what they say differs. They both say

12 different things and I am saying different things, so

13 that is three of us saying different things.

14 I have no recollection of me referring to anything

15 that happens in the north or anything that happens in

16 the south.

17 Q. Very well. Let us turn to another thing that was said

18 to have happened in the meeting in the study during

19 those 15 or 20 minutes.

20 Can you go back to Mr Hughes's witness statement at

21 paragraph 99, which I think have just been looking at,

22 page 310. In which he is talking about Mr Ashley having

23 an outburst -- he says: he came out with a tirade to

24 the effect that he was the pariah of the industry, that

25 he was unloved, and as a consequence he felt that



1 manufacturers did not give him the amount of stock he  
2 wanted. Mike Ashley says that he cannot say that what  
3 Mr Hughes there describes did not happen; in other words  
4 he says, yes, it might well have happened. Ashley  
5 second paragraph 33.

6 Do you remember anything like that happening?

7 A. I think what you have to remember in this is that I left  
8 the meeting, and I reported that I left the meeting, and  
9 I left Mr Ashley and David Hughes together. So what  
10 happened after I left, I really cannot comment on that.

11 But I cannot recall any of that shouting and tirade  
12 going on, I cannot remember any of that.

13 Q. Are you saying that when you left the meeting -- are you  
14 saying that you left early on --

15 A. When I left the meeting I left David Hughes and  
16 Mike Ashley in the house. David Hughes came out to see  
17 me off on the helicopter and then went back in  
18 the house. What happened after that I cannot comment  
19 on, I do not know.

20 Q. I am talking about the time in which you were in  
21 the room for the 20 minutes or so. I am trying to  
22 explore with you what else might have been said other  
23 than: I never price at higher than £40 and I am going.  
24 The 18 or 15 minutes of time being spent there, both of  
25 these witnesses are saying that other things were said

1           whilst you were in the room. I am asking you if you  
2           remember what both Mr Hughes and Mr Ashley said  
3           happened, which was namely that Mr Ashley had a bit of  
4           a bleat about how he felt unloved.

5    A. He may well have. I cannot really recall that. He may  
6           well have had a bleat about not being loved. I do not  
7           recall, to be honest.

8    Q. But it is possible that it could have happened whilst  
9           you were there?

10   A. It could have, yes.

11   Q. Can we turn to what you actually said about JJB's  
12           pricing intentions at that meeting. I want to start  
13           with what Mr Lane-Smith and Mr Beaver report that you  
14           said to the JJB board a few weeks later. You remember  
15           that there was a board meeting about 18 or 19 days  
16           later?

17   A. Yes.

18   Q. Can we go to witness bundle 1, the one you have actually  
19           been in, I think, at page 156. Would you like to read  
20           paragraph 4?

21   A. Yes.

22   Q. So what he is saying there is that when the question  
23           arose you stated that you would not discuss pricing with  
24           competitors and you and Duncan left?

25   A. Yes.

1 Q. And Mr Lane-Smith, who is in witness bundle 2, which is  
2 a different bundle -- I am taking you first of all to  
3 what Mr Beaver says you said at the meeting and I am now  
4 going to take you to what Mr Lane-Smith said you said at  
5 the board meeting. That is at pages 84 and 85.

6 If you would read on page 85, paragraph 10 first,  
7 which is at the bottom of the page, where he says his  
8 recollection is very clear?

9 A. Yes.

10 Q. And then if you go back up to paragraph 7?

11 A. Yes.

12 Q. So his account of what you said was that when Mr Hughes  
13 said that he wanted to discuss minimum prices, you  
14 immediately responded by saying that you never agreed to  
15 maintain prices, did not enter into discussions, and  
16 then left?

17 A. Yes.

18 Q. Now, are these accounts of what you told the board as  
19 recorded here essentially the whole story of what  
20 happened at that meeting? When I say that meeting,  
21 I mean 8th June.

22 A. The very next board meeting after 8th June is  
23 the meeting at which I reported me being asked to go to  
24 David Hughes's house. I gave them a brief resume of  
25 what had happened, that I had been asked to go, that

1 I did not know what I was going for, that I had not met  
2 Mike Ashley before. I was asked would we agree to  
3 a price of £45? I responded by saying: our price has  
4 been publicly stated, we will never sell a shirt above  
5 £40. I did not say it will be 39; I said: we will never  
6 sell a shirt above £40. And then we left as quickly as  
7 possible.

8 That is what I reported to the board meeting. These  
9 are minutes taken by our secretary of that particular  
10 meeting. Mr Lane-Smith was going to minute in his own  
11 daybook in the office and apparently he had forgotten to  
12 do that, and I think that is why they had to give these  
13 statements, just to confirm that I had reported it.

14 Q. We have not seen any minutes, I think, but I have been  
15 taking you to the statements rather than the minutes --

16 A. I think there are three of these. You have not  
17 mentioned the other non-executive director,  
18 Mr Andrew Thomas, who was also at the meeting. I think  
19 he has also put a witness statement in to that effect.

20 Q. I was not aware of that fact. I do not think he has.

21 A. I was under the impression that Mr Lane-Smith,  
22 Mr David Beaver and Mr Andrew Thomas were all at  
23 the meeting, and I was under the impression they were  
24 all putting a witness statement to that effect in of  
25 what they actually heard.

1 Q. But the fact is on the evidence that I have just taken  
2 you to is that neither Mr Lane-Smith nor Mr Beaver say  
3 that you had told the board that you had mentioned  
4 the £40 price point during the meeting. Neither of them  
5 mention the £40 policy.

6 A. I did not mention £40, I said: we will never sell  
7 a shirt above £40. I think it is important to remember  
8 that, above £40.

9 Q. I understand that point. The point I am making is that  
10 neither of them mention even that. Neither of them say  
11 in their witness statement Mr Whelan reported that his  
12 policy was never to go above £40. When I say the price  
13 point I mean your ceiling.

14 The point I am putting to you is that neither of  
15 those gentlemen say that you mentioned the £40 price  
16 ceiling during the board meeting when you reported back?

17 A. I do not think there is any doubt that I did report this  
18 to the full board. I do not think there is any doubt  
19 whatsoever that I reported as much as I thought was  
20 necessary, that I disclosed that I was being asked to  
21 break the law and that I refused to do so and walked  
22 away. That my main intention when reporting to that  
23 full board meeting, and this I did.

24 Q. It seems that it was certainly the case that your  
25 evidence and Mr Sharpe and Mr Hughes and Mr Ashley all

1 say that at the meeting on 8th June you did mention  
2 the £40 price point one way or another. What I am  
3 putting to you is that it seems that you mentioned it on  
4 8th June but omitted to tell the board on 27th June?

5 A. No, I did not omit to tell the board. I gave the board  
6 a full resume of what had happened at that meeting.

7 Q. So the accounts of Mr Lane-Smith and Mr Beaver, despite  
8 the fact that Mr Lane-Smith said that he very clearly  
9 recalled your report, are inaccurate and not full?

10 A. I think they are accurate in everything they say, that  
11 I reported that fully at that meeting.

12 Q. But they omit the reference to the £40?

13 A. If they omit it, they omit it. But they do report that  
14 I reported it back to the board.

15 Q. Very well. Let us go back to Mr Hughes and let us focus  
16 on what you did say on 8th June, rather than what  
17 you were saying on 26th June. We are in witness  
18 bundle 1, at page 310.

19 A. Yes.

20 Q. I am going to read paragraph 97:

21 "David Whelan then said ..."

22 And we are back in the study:

23 "... something to the following effect:

24 manufacturers have been trying to push shirts above £40  
25 for some time. The RRP on the Man U shirt is £42.99.

1 As far as I am concerned, £39.99 is the right price for  
2 replica shirts. That has been our policy for quite some  
3 time and that will continue to be it.

4 "I distinctly recall him saying something like:  
5 we have told the City that is our price for replica  
6 shirts, and that is it. David Whelan said that he told  
7 the City analysts that he would never sell over £40 and  
8 that this was his time-honoured formula."

9 Is that a fair account of what you said?

10 A. Yes.

11 THE PRESIDENT: Do you think, Mr Whelan, just looking at  
12 that, that what Mr Hughes is saying here is that you  
13 said words to the effect: as far as I am concerned  
14 £39.99 is the right price for replica shirts; that has  
15 been our policy for quite some time and it will continue  
16 to be it. That something --

17 A. No, I do not agree with that. I said our policy is  
18 a publicly-stated policy of never selling a shirt above  
19 £40, and that will remain so.

20 THE PRESIDENT: That is also said in this paragraph.  
21 The question is whether you said what Mr Hughes seems to  
22 be saying you said, which is: as far as I am concerned  
23 39.99 is the right price for replica shirts; that has  
24 been our policy for quite some time and it will continue  
25 to be it.

1 A. No, I did not say that. I think -- it is common  
2 knowledge that JJB did sell an awful of their launches  
3 at 39.99. We have supplied evidence to the OFT that it  
4 has been 99 per cent of the cases over a five-year  
5 period that we have launched at 39.99. It was no  
6 secret; they could guess I suppose that we would be  
7 launching at 39.99.

8 THE PRESIDENT: Yes.

9 MR MORRIS: Mr Ashley came away from that meeting absolutely  
10 sure that you were going to price at 39.99; that was his  
11 evidence.

12 A. That is his evidence.

13 Q. How would he have known that?

14 A. He would not know that from me. He would be looking at  
15 evidence of our launches previously. I have just said  
16 to the judge that it was common knowledge that we had  
17 done it, I have supplied your office with all  
18 the information they asked for, and out of probably 60  
19 launches of replica shirts we have launched  
20 one hundred per cent at 39.99.

21 Q. But you said earlier that the decision is not taken  
22 until the last two or three days?

23 A. Absolutely right.

24 Q. Mike Ashley would not price at 39.99 just because  
25 Mr Hughes had said that he would, would he?



1 A. I do not know what Mike Ashley would do.

2 Q. He would only price at 39.99 if he knew that you were  
3 going to price at 39.99?

4 A. That is a question for Mr Ashley.

5 Q. It is. The position is, is it not, that Mr Ashley was  
6 a committed discounter and he would if he could always  
7 go lower?

8 A. Again, Mr Ashley's decisions are not mine.

9 Q. As a matter of logic, let us assume that he always goes  
10 out at a discount at launch, you knew pretty well by  
11 then what his policy was about pricing and launch?

12 A. His prices moved around an awful lot, an awful lot his  
13 prices moved around, and it was very difficult to pick  
14 a price that Mr Ashley would launch at, really  
15 difficult. Whether it was interference from Umbro or  
16 his own decisions, I do not know, but his prices really  
17 moved up and down quite a lot.

18 Q. We know that he went out at 39.99 on August 1st; is that  
19 a fact?

20 A. Well, if that is a fact, that is a fact.

21 Q. You see, what I am saying to you is that Mike Ashley  
22 would not have gone out at 39.99 had he not known for  
23 sure that you would do the same?

24 A. Mike Ashley did not know for sure what JJB would do at  
25 that time or any other time.

1 Q. When I put that paragraph to you a moment ago,  
2 the paragraph of Mr Hughes, your initial response to  
3 the paragraph as a whole was that you said yes. And  
4 then the president asked you some supplementary  
5 questions and you clarified your answer.

6 But the fact is, is it not, that you may well have  
7 said that you would follow your policy of charging 39.99  
8 for replica shirts?

9 A. No.

10 Q. You have just said to us that it was your general  
11 policy?

12 A. I said our general policy was quite well known. I did  
13 not say we would be 39. I will repeat what I said:  
14 we will never sell a replica shirt above £40.

15 Q. And you did not say that you might charge less than  
16 39.99?

17 A. I have just said what I repeated and that is exactly  
18 what I said: we will not sell a shirt above £40, public  
19 policy.

20 Q. Can you turn back to the board meeting that we were  
21 talking a few moments ago. Can I take you back to  
22 Mr Beaver's statement, which is in file 1, the same file  
23 as Mr Hughes's statement, at page 156.

24 If you would read paragraphs 5 and 6. (Pause).

25 A. Yes.

1 Q. So the position is that Mr Beaver was insistent that  
2 what you had told them should be minuted in  
3 the board minutes, was he not?

4 A. Yes.

5 Q. And he said that he remained insistent even though you  
6 did not want it to be minuted?

7 A. He did.

8 Q. You remember you not wanting it to be minuted?

9 A. Yes.

10 Q. Why did you not want it to be minuted?

11 A. I knew that what I had been asked to do was against  
12 the law and illegal. I reported it to the board meeting  
13 for that reason: to say to the board, yes, I have been  
14 to a meeting and no, I refused to take part in any  
15 price-fixing.

16 David Beaver being David Beaver is a stickler for  
17 rules and regulation. He said: I think this is  
18 important enough to be minuted. I said to the board,  
19 the full board: while David was right, I knew that this  
20 was against the law and I had been approached to fix  
21 a price and I had refused to do it. If we had minuted  
22 it I thought David Hughes could be in serious trouble  
23 for attempting to fix a price. I was not -- I think he  
24 asked to fix the price before he was actually in  
25 trouble, he did attempt to fix the price and failed.

1           That is why I asked the board not to put it in  
2           the minutes. Mr Roger Lane-Smith, being a solicitor,  
3           then came to the rescue and said: I will minute this in  
4           my daybook and if it is ever required I will be able to  
5           produce it. Mr Beaver was perfectly happy with that.

6    Q. But no agreement had been made, had it?

7    A. No agreement had been made on price-fixing.

8    Q. And you realised that that meeting was a sensitive  
9           issue?

10   A. I realised it was against the law.

11   Q. Yes. Dangerous territory?

12   A. No, just against the law.

13   Q. Legally risky, put it that way, against the law.  
14           You had been at a meeting where price-fixing had been  
15           suggested; you were worried that Mr Hughes might get  
16           into trouble?

17   A. Yes.

18   Q. You realised that it was potentially unlawful, at least  
19           for Mr Hughes, you seem to be suggesting?

20   A. Unlawful, yes.

21   Q. Surely it would have been better for you to record  
22           the fact that you had not entered into any agreement and  
23           to minute the fact that you, JJB, had not made any  
24           agreement. We would not be here today if you had done  
25           that, or we might not be.

1 A. Looking back at the facts, David Beaver was absolutely  
2 right, it should have been minuted in JJB's books.  
3 However, when an eminent solicitor says he will minute  
4 it in his daybook in his office, I think that gave me  
5 sufficient comfort that I had reported that I had been  
6 approached to break the law and I had point blank  
7 refused to do so.

8 Q. Let us move on to Mr Lane-Smith and what he agreed. At  
9 paragraph 6 you have already read that you recorded that  
10 as a compromise -- you said it was agreed that  
11 Mr Lane-Smith would do a private minute, so that would  
12 be covered by legal privilege. You have just said that  
13 you accurately recall that having happened --

14 A. Am I reading the daybook?

15 Q. I am reading from Mr Beaver still.

16 A. Right.

17 Q. I will be coming to Mr Lane-Smith in a moment.

18 A. Right.

19 Q. Then if we go to Mr Lane-Smith, which is in the other  
20 file you have just been given, bundle 2, at page 85,  
21 paragraph 8.

22 A. Yes.

23 Q. So there would be a separate note on Mr Lane-Smith's  
24 file; yes?

25 A. Yes.

1 Q. And the note would be kept at DLA's offices rather than  
2 JJB's?

3 A. Yes.

4 Q. Were you aware that Mr Lane-Smith did not in fact take  
5 any notes at that meeting?

6 A. No.

7 Q. Would you accept from me that he says he did not take  
8 any notes at that meeting?

9 A. If Mr Lane-Smith says he did not take any notes, I will  
10 accept what Mr Lane-Smith says.

11 Q. Are you aware that Mr Lane-Smith did not in fact make  
12 the minute that he had been tasked to make?

13 A. I found that out when we were asked to produce certain  
14 evidence to the OFT and I referred to Mr Lane-Smith and  
15 said: can you get that book, the book where you have  
16 minuted this, and could we have a copy of it, please?  
17 That is the first time I knew that he had forgotten  
18 to minute it.

19 Q. And that is when you found out he had not done it?

20 A. Yes.

21 Q. But this was a very important matter. Did you not  
22 consider chasing up at the time and ensuring that it had  
23 been minuted?

24 A. Mr Lane-Smith is a very, very solicitor, and good  
25 solicitors are normally very diligent in what they

1 record. I naturally assumed that Mr Lane-Smith would  
2 have minuted it and had minuted it.

3 Q. But he had not?

4 A. He had not.

5 Q. I am going to move on to another topic now; I am going  
6 to move on to the events of 2001 --

7 THE PRESIDENT: Mr Morris, before you do, I think as regards  
8 Mr Ashley's statement --

9 MR MORRIS: Yes, you would like to put something?

10 THE PRESIDENT: In the first volume at page 141, I think  
11 I would like you to give the witness a chance to deal  
12 with paragraphs 31 and 32.

13 MR MORRIS: Yes. I think, sir -- maybe I am wrong --  
14 I invited him to read those paragraphs, the whole of  
15 those paragraphs from 28-35.

16 THE PRESIDENT: You did invite him to read them, but I am  
17 not sure --

18 MR MORRIS: 32 I definitely read to him.

19 THE PRESIDENT: I do not recall you then asking him any  
20 questions about it. I may be wrong, but there is no  
21 harm in going over it again.

22 MR MORRIS: Very well, sir, I am very grateful.  
23 Paragraph 31, Mr Whelan -- I will read it out --

24 A. I have read it.

25 Q. This is words to the effect that the right price is

1 39.99, I am going to be charging 39.99.

2 And then he says -- and I think I have actually put  
3 the point:

4 "There was no doubt that JJB would be pricing at  
5 39.99. If I had had the slightest inkling that there  
6 was some uncertainty about his intentions then I would  
7 have gone back to Umbro to say that there was no  
8 agreement and would have used this as an excuse for  
9 discounts."

10 I think it was the point I was putting to you  
11 earlier: why would Mr Ashley --

12 THE PRESIDENT: I think the question that I would like to  
13 see put to this witness is whether Mr Whelan said words  
14 to the effect that: the right price is 39.99 and I am  
15 going to be charging 39.99?

16 A. Yes, I think we have had that question, sir. The answer  
17 is I definitely did not agree to that. My statement was  
18 absolutely clear: we will never sell a shirt above £40;  
19 that is our declared public policy.

20 THE PRESIDENT: Yes.

21 A. I never agreed that I would sell at 39.99 with  
22 Mike Ashley, with David Hughes, Allsports. I never  
23 agreed any price whatsoever with them. I left with them  
24 thinking it is his public policy, which I did give them.

25 THE PRESIDENT: Not above 40.



1 A. Nothing above 40. We would never sell anything above  
2 40. I never discussed what that price would be or any  
3 other price.

4 THE PRESIDENT: Yes.

5 MR MORRIS: Can I ask you to look at paragraph 42:  
6 "David Whelan said quite clearly that the JJB price  
7 for replica shirts was 39.99. He got quite heated and  
8 started talking at me quite forcefully."  
9 And I did put the next bit to you. Did you say that  
10 to Mr Ashley, that the price was 39.99?

11 A. No.

12 Q. Did you get heated?

13 A. No.

14 Q. What did you say to him?

15 A. I said what I have repeated: we will never sell a shirt  
16 above £40 and I will not agree to any price-fixing here.  
17 Or words to that effect.

18 Q. Are you suggesting that Mike Ashley wanted the price to  
19 be 39.99?

20 A. I am not suggesting anything for Mike Ashley.  
21 Mike Ashley makes his own decisions.

22 Q. Can you recall what Mike Ashley said about this issue?  
23 David Hughes stands up and says: I want 45. You say:  
24 I am never going above 39.99. What does Mr Ashley say?

25 A. Mike Ashley did not have a lot to say about it, to be

1 perfectly honest. I think he wanted to see a reaction  
2 from me. If I would get a reaction from Mike Ashley  
3 he was against going to £45. That was the impression  
4 I got.

5 Q. From something he said --

6 A. The impression of his manner, the way he behaved when  
7 David Hughes suggested --

8 THE PRESIDENT: He was against £45.

9 A. Yes. When he suggested £45 ... there are certain things  
10 that people do that you get an impression from.

11 £45 to Mike Ashley would be a lot of money, and he  
12 knew that was not the right price. He sort of  
13 (indicating): oh. And then I sort of said: sorry,  
14 we will never sell anything over £40 ... public policy.

15 And that defused the situation, to a degree.

16 MR MORRIS: Did he say anything about 39.99?

17 A. No.

18 Q. Nothing?

19 A. No.

20 THE PRESIDENT: I think you need to put paragraph 35,  
21 Mr Morris.

22 MR MORRIS: Look at paragraph 35, this is Mr Ashley  
23 continuing:

24 "I told David Hughes, David Whelan and Duncan Sharpe  
25 that there was no problem, that I had got the message

1           and that I agreed that I [that is Mr Ashley] would price  
2           at 39.99 on the MU home shirt."  
3    A.   No.  
4    Q.   He did not say any of that?  
5    A.   No.  
6    Q.   "I showed no resistance to their position and did not  
7           try to suggest another price point.  Everyone was  
8           absolutely certain on that agreement."  
9    A.   Are you saying that Mr Ashley said that?  
10   Q.   This is what Mr Ashley is saying.  
11   A.   No.  
12   Q.   "The atmosphere at the end of the meeting was very  
13           cordial and business-like."  
14   A.   No.  
15   Q.   What was the atmosphere?  
16   A.   It was quite charged when I said: we are leaving  
17           the meeting.  
18   Q.   When did you say that?  
19   A.   After I declared our public policy and I said: as far as  
20           we are concerned we are meeting now.  
21   Q.   And that was, what, four minutes, five minutes?  
22   A.   Whatever time it took to get to the meaty part of  
23           the meeting, that was when we started to discuss what  
24           the meeting was called for.  The meeting was obviously  
25           called to discuss the price of the Manchester United

1 shirt. Immediately the shirt appeared and I reacted,  
2 and it sort of brought the meeting quickly to a close.

3 They stayed there, by the way; I just left. Those  
4 two stayed there. If they carried on talking, I do not  
5 know that.

6 Q. Okay, can we move on to the centenary kit of 2000, and  
7 that is the gold reversible shirt.

8 Could you go to your first witness statement at  
9 bundle 3 at page 427.

10 Can I just ask you one further question on  
11 the 8th June meeting. When you left did you leave  
12 the two of them -- you left them behind you just said.  
13 When you left the meeting on 8th June you left  
14 David Hughes and Mike Ashley behind?

15 A. No, David Hughes followed me out, of course, and just  
16 said; thank you very much, blah, blah, whatever, and  
17 just watched me --

18 THE PRESIDENT: Did he see you to the helicopter? Can  
19 you describe what happened?

20 A. He did not come to the helicopter with me; he came to  
21 the end of the patio, and I went on to the lawn with  
22 Duncan and we got into the helicopter, started it and  
23 took off.

24 Reading through this thing, he then took Mr Ashley  
25 back to the railway station or whatever. I do not know

1           what happened after that.

2   THE PRESIDENT:  Very well.

3   MR MORRIS:  I was just asking at what point you left.

4           Can we now go to the centenary kit.  I am going to  
5   take the story in stages, since you gave evidence about  
6   this yesterday.

7           Can we look at paragraph 17 to start with.  You say  
8   in your second sentence:

9           "Umbro approached JJB in October 2000 to see whether  
10   JJB would place orders for pre-Christmas production at  
11   reduced wholesale prices, an order for approximately  
12   50,000 mixed pieces of adult and junior replica kit was  
13   placed."

14          Were you directly involved in that approach from  
15   Umbro or did someone at JJB tell you about that  
16   happening?

17   A.  Colin Russell would tell me that they had approached him  
18   with a slightly reduced price.

19   Q.  And he would have told you at the time, not told you  
20   since?

21   A.  He would have discussed with me and Duncan Sharpe should  
22   we in fact take any more of these shirts because of  
23   the announcement that has been made.  There were real  
24   worries about whether these shirts were going to stand  
25   the test of time.

1 Q. Mr Russell in fact tells us that those 50,000 pieces  
2 were in fact bought for £4.75 for adult and £12.75 for  
3 children for delivery in December 2000. Does that sound  
4 right?

5 A. Yes, it sounds right.

6 Q. Then if we go back to paragraph 17, and I am really  
7 taking the story chronologically as best I can.  
8 You will find in line 5 the words:  
9 "During April 2001 ..."  
10 Are you with me?

11 A. Yes.

12 Q. "... Umbro approached JJB asking for offers on a further  
13 package of MU home shirts. JJB made an offer to  
14 purchase the stock at clearance prices and also asked to  
15 be given the opportunity to match other offers put to  
16 Umbro."

17 A. Yes.

18 Q. So that is a further package of clearance prices?

19 A. That was the clearance that they approached us with.  
20 Colin Russell will verify this I hope tomorrow or tell  
21 you the exact things. This I am assuming is Umbro  
22 approaching Chris Ronnie and offering those clearance  
23 shirts at £10 and £11. That is what I am assuming this  
24 is.

25 Q. Can you recall how were involved at that time in

1 those dealings between Umbro and JJB, talking about  
2 April 2001?

3 A. If this is the time that I am thinking about, and I am  
4 reasonably sure that it is, Colin Russell would come to  
5 Duncan Sharpe and Duncan would come to me, or in this  
6 particular case -- it is quite important -- they might  
7 have both come to me and said: Umbro, Chris Ronnie, have  
8 approached us to see if we want quite a large stock of  
9 the Umbro shirts at £10 for children's and £11 for  
10 adults. But I did know about that.

11 Q. Paragraph 18:

12 "I subsequently discovered that this further package  
13 had been sold to Sports Soccer at prices that allowed  
14 them to retail the shirt at £15 for a child and £20 for  
15 an adult.

16 "The shirts were sold at less than the price JJB had  
17 paid for them, and we were unlikely to be able to sell  
18 the remaining stock of 50,000 except at a loss."

19 A. Do not forget, we had paid for the initial purchase full  
20 wholesale price less discount.

21 Q. In fact, the shirts were not being sold at less than  
22 you had paid?

23 A. Getting on the borderline.

24 Q. Well, you have just agreed that you had paid 14.75 for  
25 adults for those?

1 A. When we initially bought them we would pay full  
2 wholesale price less whatever discount at the time.  
3 What the exact price is I do not know, but Mr Russell  
4 can tell you that when he comes here.

5 Q. The ones you had delivered in December 2000?  
6 A. The special ones --

7 Q. At £14.75?  
8 A. Yes.

9 Q. By the time we get to April and May, when Sports Soccer  
10 were selling at £20, you could have matched that price  
11 and not made a loss?

12 A. Barely, yes. We made a very, very tiny profit --

13 Q. So it is not as you put it in your witness statement?  
14 A. Well, it is near enough.

15 Q. Then we go to paragraph 19 --

16 THE PRESIDENT: Sorry, Mr Morris. Can I try to follow this,  
17 Mr Whelan?

18 If you look at page 427, right at the top in that  
19 very first line it says:  
20 "At that time ..."  
21 The time of the Nike announcement:  
22 "... JJB had 50,000 shirts in stock that had been  
23 purchased at full price less discount."  
24 A. Yes.

25 THE PRESIDENT: So you start off with the 50,000. And then



1 in paragraph 17 you order apparently another 50,000  
2 pre-Christmas production, and that was at a reduced  
3 price.

4 A. Slightly reduced price, yes.

5 THE PRESIDENT: A slightly reduced price. And then when we  
6 get to paragraph 18 you say:

7 "We are unlikely to be able to sell the remaining  
8 stock of approximately 50,000 shirts except at a loss."

9 By that time is that 50,000 shirts that we are  
10 talking about the 50,000 that you bought around  
11 Christmas, or the 50,000 that you were left with when  
12 the Nike announcement was made, or a bit of both or  
13 what?

14 A. If it says 50,000 -- initially we would place an order  
15 for 50,000. When we placed that and started to sell  
16 them then came Manchester United's announcement that  
17 Nike were going to take over, which put the shirts on  
18 a very, very slippery slope.

19 Umbro approached us to say: we will sell you some  
20 more shirts at a slightly reduced price, probably  
21 another £2 off the wholesale price, because they were  
22 worried that they had those shirts. After that they  
23 approached us with a further offer to sell the shirt at  
24 £10 and £11 which to us was the final clearance package.  
25 That is how we saw it. That was the package that was

1 eventually sold to Sports Soccer at £8 and £9.

2 THE PRESIDENT: I see.

3 MR MORRIS: The 50,000 at paragraph 17 which was for

4 delivery before Christmas, that had been purchased at

5 14.75 for adults.

6 A. Slightly reduced prices, yes.

7 Q. And that was to meet Christmas demand, because Christmas

8 presumably is a peak selling period?

9 A. Yes.

10 Q. Especially for the red shirt?

11 A. Yes.

12 Q. Even with the announcement?

13 A. Even with the announcement we still had to have stocks

14 of it because while we were worried we still had to

15 supply the demand.

16 Q. At paragraph 19 you record the fact that you were

17 disgusted with the way the matter had been handled by

18 Umbro?

19 A. Yes.

20 Q. And you say:

21 "We cancelled our order of the Manchester United

22 Centenary kit to encourage Umbro to come to

23 the table and to offer a satisfactory price to JJB for

24 any further Manchester United red home shirts in

25 the pipeline."

1 A. Mm-hm.

2 Q. Were you directly involved in that cancellation?

3 A. Yes.

4 Q. It was your decision to cancel?

5 A. It was the decision taken when they came and offered us  
6 clearance shirts at £10 and £11, and then when the price  
7 suddenly went retail down to £20 and £15 we were  
8 obviously aware that that clearance deal had been done  
9 with Sports Soccer.

10           Consequently, yes, we were very, very annoyed that  
11 we had not been given even an opportunity to buy some of  
12 those shirts to compete on the High Street.

13           I did ring Umbro and tell them of my displeasure, to  
14 which I did not get a satisfactory reply. So at this  
15 meeting with Duncan Sharpe and Colin Russell, we  
16 decided: how can we make Umbro come and sit round  
17 the table and listen to what we were seriously agreed  
18 about?

19           So I suggested to Duncan that we cancel half of  
20 the order that we had for the centenary shirt for  
21 Manchester United, cancel 40,000 out of the 80,000 that  
22 we had. And we believed that would make Umbro sit up  
23 and take notice and listen to our complaints.

24           That is actually what happened, and a deal was  
25 finally struck for the benefit of all.

1 Q. And you were disgusted because the shirts had been sold  
2 to Sports Soccer and not to you?

3 A. At the prices that we had been offered. We had been  
4 offered £10 and £11. If you were a buyer that they had  
5 come to you and the next day they go to somebody and  
6 say, "We will let you buy them for £8 and £9," you would  
7 be really upset like we were.

8 Q. You felt that you had a right to get the best terms?

9 A. We thought with we had the right to be offered some of  
10 those shirts, yes.

11 Q. On the same terms?

12 A. On exactly the same terms.

13 Q. I am going to suggest to you, Mr Whelan, that you had  
14 been given an opportunity to buy those shirts but you  
15 refused to take them first time round?

16 A. We were given an opportunity to buy at £10 and £11,  
17 we were.

18 Q. In fact, you had only offered £6 or £6.50?

19 A. No, certainly not.

20 Q. Can I take you to Mr Russell's witness statement at  
21 page 289. I think it is his first witness statement.  
22 At the bottom of the page, paragraph 31, Mr Russell  
23 says, the second sentence:  
24 "It transpired that Sports Soccer were willing to  
25 offer Umbro £10 apiece whereas JJB had previously

1           offered £6 apiece."

2    A.   Sorry, I do not have the right page.

3    Q.   Page 289, paragraph 31 at the bottom of the page.

4    A.   Yes, I have it.

5    Q.   What I am suggesting to you is that you had been  
6           offered, you had been given the chance, you offered  
7           £6 -- you just said you did not and here Mr Russell is  
8           saying that you did offer £6?

9    A.   Mr Russell will be in the box later, and Mr Russell is  
10           the man I think who should answer that question because  
11           I was not at that meeting that he had. I got the  
12           information that he had been offered this shirt at £10  
13           and £11 which was not a clearance price and we refused  
14           that. But we did say: if you can go back and negotiate  
15           and then come back and see us, please, then we can have  
16           further negotiation.

17           That is information that I got from Mr Russell, who  
18           will be in the box today, tomorrow, whatever, and I am  
19           sure that he can answer that with absolute authority.

20   Q.   What I am suggesting to you -- and we will be asking  
21           Mr Russell about this -- that what happened was that in  
22           fact Mr Ronnie managed to get more for his clearance  
23           shirts from Sports Soccer than he got from you, and that  
24           is why he did the deal with Sports Soccer?

25   A.   Mr Ronnie did all kinds of wonderful things. He sold

1           some of these, we found out later, to a company called  
2           Streetwise, who we had never even heard of, who had  
3           eight shops, not even recognised sports shops. So what  
4           Mr Ronnie got for his shirts I cannot tell you. We  
5           wanted to buy them at the same price, which was  
6           the normal clearance prices, £8 and £9 for clearance.

7       Q. That is not originally what happened. What originally  
8           happened is that you only offered £6 or £6.50.

9       A. I think if you ask Mr Russell that he will be able to  
10           give you an absolutely correct answer tomorrow or today.

11      Q. What was your worry? Why were you concerned that  
12           Mr Ronnie was selling to Streetwise? Why was that  
13           objectionable?

14      A. Firstly because Streetwise is not a brand that is  
15           well-known on the High Street. Streetwise have six  
16           shops. Streetwise ... we had just never heard of them.  
17           Suddenly they appear and they bought 40,000 shirts --  
18           40,000! -- at £8 and £9. It is absolutely unknown in  
19           the trade for a company with eight shops to buy that  
20           many shirts. Absolutely unknown. And it staggered me  
21           when I read that.

22      Q. What possible reason could you have for objecting to  
23           the identity of the people to whom Umbro was selling  
24           these shirts?

25      A. We did not object because I did not learn that until

1 the information was disclosed by Umbro because of this  
2 meeting. I did not know about that. I was staggered  
3 when I read that.

4 Q. You said you were disgusted at the time?

5 A. I was, I was disgusted that we had not been offered  
6 these shirts at the same price that we knew  
7 Sports Soccer had bought. We were told by  
8 Peter McGuigan what price Sports Soccer had paid.  
9 We were told by Peter McGuigan that he had instructed  
10 Ronnie to come and see JJB and make sure that they sold  
11 the shirts at exactly the same price.

12 Q. If it was the case that Mr Russell had offered £6 -- if  
13 it was -- and Sports Soccer had offered £10 or £11 --  
14 I mix the numbers up -- what possible objection could  
15 you have for Umbro taking the better price?

16 A. We could have no objection to that.

17 Q. I suggest you did object. That was the fact and you did  
18 object, you thought it was disgusting?

19 A. It is a commercial world. It is disgusting that we were  
20 offered them at £10 and £11 and then they were sold  
21 without even saying to us: we have brought the price  
22 down to £8 and £9, would you like some? That is normal  
23 behaviour.

24 Q. That might have been normal in your relationship with  
25 Umbro and JJB.

1 A. We had --

2 Q. You expected them to come back to you, did you not?

3 LORD GRABINER: Let him finish.

4 A. We had a very, very unusual relationship with Mr Ronnie.

5 A very unusual relationship with Mr Ronnie. Events have

6 shown why that relationship was unusual.

7 But why he would sell so many shirts to Streetwise,

8 an unknown, why they would even enter the situation, we

9 cannot tell. At the time we were really, really upset

10 that he had sold these shirts for £8 and £9 without

11 saying to JJB: would you like to buy a certain number of

12 these shirts at the reduced price of £8 and £9? And we

13 did not get that offer.

14 Q. Can I take you back to paragraph 19 of your witness

15 statement. We have read it but I want to pick it up

16 again. It is page 427.

17 A. Yes.

18 Q. You will see that you:

19 "... wanted them to come to the table to offer

20 a satisfactory price for any further Manchester United

21 shirts in the pipeline."

22 So the reason for the cancellation was to encourage

23 them to offer a price for any further shirts in

24 the pipeline?

25 A. The reason for the cancellation was one thing: to focus



1 their mind on our displeasure, and the fact that we were  
2 sitting on 50-60,000 shirts that we had paid way, way  
3 over the odds for. If they had offered a credit note,  
4 fine. Had they come and said: we will sell you  
5 a certain amount of product at such a discount enabling  
6 you to credit that particular football shirt, that would  
7 have been fine.

8 But we wanted the means to get Umbro to come back  
9 and sit down to negotiate the price of the 60,000 shirts  
10 that we were sitting on.

11 Q. You did not know that they had any further shirts in the  
12 pipeline at that time?

13 A. I did not know but I wanted them to come and sit down  
14 and negotiate. I would have accepted a credit note.

15 Q. In fact you say that you only found out later from  
16 Chris Ronnie that Umbro were in a position to make  
17 further shirts?

18 A. I found that out from Peter McGuigan. I phoned him with  
19 a serious complaint and Peter McGuigan said to me: I did  
20 not know that Chris Ronnie had sold the shirts to  
21 Sports Soccer at that price; I will send him in to see  
22 you, and he will buy extra material to supply your needs  
23 at the same price.

24 Q. Can I take you to page 440 and 441 of the statement.

25 Before we go there, can I just ask you: how many

1 shirts were you sitting on? What was the --

2 A. I have given you an estimate. Again Colin Russell will  
3 give you the exact figure when you question him later.  
4 I am giving you an estimate: we were sitting on  
5 something in the order of 50-60,000 shirts. That is my  
6 guesstimate now.

7 Q. It is just a guess?

8 A. It will not be a long way off. But Colin Russell will  
9 have the exact figure.

10 Q. You said in paragraph 18 of your first witness statement  
11 approximately 50,000. You are now saying 60,000 --

12 A. What I am saying is -- I am doing a guesstimate around  
13 the figure.

14 Q. And yesterday in the course of examination-in-chief you  
15 said 70,000?

16 A. I cannot remember saying 70,000. But you can get  
17 the absolute correct figure from the stock file.

18 Q. So you really cannot remember the precise details of  
19 the amount involved?

20 A. Let me say it was a lot. A lot.

21 Q. If we go to paragraphs 18-20 you have just said that you  
22 found out from Mr McGuigan about the extra shirts?

23 A. The extra material.

24 Q. That was in the Far East to be made up into shirts?

25 A. That is the story that I got.

1 Q. It is extra material. Go to paragraph 18, talking about  
2 May 2001, before the cancellation. If you go to  
3 page 441, line 2, you say:

4 "At that time we did not know that Umbro were in  
5 a position to manufacturer further Manchester United  
6 home shirts."

7 A. Yes.

8 Q. And then you go on in paragraph 19 to talk about  
9 the cancellation, and to talk about:

10 "... inducing them to make an attractive offer to  
11 solve our problems."

12 That is a more general statement, is it not? It is  
13 not shirts in the pipeline?

14 A. No --

15 Q. Because you did not know?

16 A. I just said if they will come to the table I would have  
17 accepted a credit note.

18 Q. You just said that Peter McGuigan told you. But what  
19 you say in paragraph 20 is:

20 "Chris Ronnie asked to have a meeting with me to  
21 discuss why we had cancelled the order. I met him on  
22 the 15th June and he told me that they had just found  
23 out that they had got so many thousand yards more  
24 material to make the Manchester United home shirt."

25 A. Yes.

1 Q. That indicates that he is telling you that they found  
2 the material there and then at that meeting?

3 A. Peter McGuigan had already informed me that there was  
4 material available to be purchased and he had instructed  
5 Chris Ronnie to purchase it.

6 Q. There is no reference to that in this witness statement,  
7 is there?

8 A. That is what actually happened.

9 Q. So this witness statement is not a full recollection,  
10 a full story of what happened, because there is no  
11 mention of a phone call with Mr McGuigan?

12 A. I am telling you -- it is in there that we were offered  
13 this extra material. So I did not think it would  
14 enlarge on that.

15 Q. It is quite a convoluted story, this, is it not?

16 A. No, it is a simple story.

17 Q. If it is a simple story, why is it not fully set out  
18 here?

19 A. I think it is fully set out there. What is not in there  
20 is that Peter McGuigan had already told me  
21 the information and had already said: we have found that  
22 we can purchase extra material.

23 Q. Can we go back to your first statement, which is at  
24 page 427, paragraph 20. It says:  
25 "Umbro responded by coming in to meet us. We were

1 told that they had 82,000 shirts on order. It was  
2 agreed that JJB would purchase all these shirts at £8 or  
3 £9 a piece and as part of the deal we reinstated  
4 the Manchester United centenary kit."

5 Which meet are you referring to there? (Pause).

6 It is likely to be the meeting between you and  
7 Mr Ronnie, I would suggest?

8 A. I would say so, it would appear so.

9 Q. And that would be on 15th June?

10 A. If you say so.

11 Q. Again, it was at that meeting that you were told  
12 about the 82,000 --

13 A. No, I was told previously in the meeting with  
14 Chris Ronnie by Peter McGuigan personally that he knew  
15 they had material could be purchased and they had  
16 instructed Ronnie to purchase it and to sell them to us  
17 for £8 and £9.

18 Q. It was part of that deal that you made with Chris Ronnie  
19 then that JJB reinstated the order for the centenary  
20 kit?

21 A. No, there was a further twist to that. Because when  
22 Chris Ronnie came in he asked me if he could get me  
23 shirts at £8 and £9 would I be prepared to order  
24 a further £2 million of apparel from Umbro? I said to  
25 Chris Ronnie that I would have to take that up with

1 the buyers, check out the stock position. I think in  
2 the end we finished up ordering about a further  
3 £1 million worth of apparel along with that order.

4 Q. I think if you could turn to the thin bundle and go to  
5 tab 18.

6 THE PRESIDENT: I would like to break at about ten-past,  
7 Mr Morris.

8 MR MORRIS: Yes, I am not going to be that much longer.

9 THE PRESIDENT: I am not hurrying you to finish.

10 MR MORRIS: No. I am grateful. It may be that we will have  
11 to stop when we have dealt with this letter.

12 Tab 17, the letter that followed the meeting. I am  
13 sure you will recall this letter. Would you like to  
14 read that letter?

15 A. Yes. (Pause).

16 Q. Just to confirm what that records, Umbro agreed to sell  
17 the total balance of stock in the UK?

18 A. Yes.

19 Q. And the full amount of production of the red shirt that  
20 was currently taking place in the Far East?

21 A. Yes.

22 Q. Umbro also confirmed that there would be no further  
23 production of home shirts?

24 A. Yes.

25 Q. The MU product was to be sold on an exclusive basis to

1           you?

2    A.   Yes.

3    Q.   And the current order for the MU away centenary kit was

4           to be reinstated?

5    A.   Yes.

6    Q.   That was the deal?

7    A.   Yes.

8    Q.   So you did not just want all the actual stock in

9           the pipeline, you wanted an exclusive sale which meant

10           that there would be no further production of those

11           shirts?

12   A.   There was no stock in the pipeline.  This stock that

13           Peter told me about, he said that the material that was

14           available could be purchased -- they had not purchased,

15           it but it could be purchased.  It is not dyed, by

16           the way, at that time, sir; it has to be dyed, it is

17           a white material.

18           He said: we can purchase this and we can make you if

19           I am giving a figure something in the order of 80,000.

20           I obviously asked the question: is this total production

21           and is there no more going to come off the line?  He

22           said: there is no more material and nothing else is

23           coming off the line.  What I was purchasing was what was

24           left.

25   Q.   And your agreement meant that no other retailer would be

1           able to get any more Umbro red home shirts?

2    A.   That was the last of them.

3    Q.   And there would be no further source for anybody else?

4    A.   No.

5    Q.   So Sports Soccer would not be able to get any more?

6    A.   Sports Soccer already had 40,000.

7    MR MORRIS:  Sir, I think that would be a convenient moment.

8    MR COLGATE:  Could I ask one question just on that one  
9           point.

10           When you bought those shirts at those prices and  
11           sold them in your stores, how did the gross margin of  
12           those shirts compare to the gross margin you were  
13           getting before?  Because presumably you reduced  
14           the price.

15   A.   We reduced the price.

16   MR COLGATE:  I am looking at the gross margin effect.

17   A.   We reduced the price to £20 for adults less VAT and £15  
18           for children's.  I think we managed to get that price  
19           for around about six months and then obviously you have  
20           to bring the price down again.

21           I think our margin would be overall -- we were sat  
22           on quite a lot of shirts that we had paid a lot more  
23           money for -- and I am sure that Mr Russell will have our  
24           price -- that will be equalled out, what we paid and  
25           what we bought.



1           If we had bought some at £15/£16 and they were  
2           buying some at £8/£9 you have to equate the price  
3           between the two of them to come out at a price of £12.  
4 MR COLGATE: You clearly are well-versed on pricing.  
5 A. Yes.  
6 MR COLGATE: Therefore I suspect that you know margins more  
7           than anybody in the business.  
8 A. (Indicates assent).  
9 MR COLGATE: When that shirt was first launched you would  
10          have launched it with a certain gross margin?  
11 A. Yes.  
12 MR COLGATE: Do you know what that was?  
13 A. The gross margin we would look for on replica shirt  
14          would be somewhere in the order of 40, 42, 43 per cent.  
15 MR COLGATE: When you then sold these shirts on the basis of  
16          this purchase price, can you remember, when you first  
17          got them and first sold them, what was the gross margin?  
18 A. I cannot remember what the actual margin would be  
19          overall --  
20 MR COLGATE: Specifically in relation to these shirts at  
21          that price.  
22 A. We would try to aim if we could to get something in  
23          the order of 30-40 per cent. That would be the target.  
24          We may well finish what we call "job them off" at  
25          the end and get rid of some at £10 and £14. So

1 the overall margin would probably finish up in the order  
2 of 35 per cent across the board.

3 MR COLGATE: Thank you very much.

4 MR MORRIS: Can I ask a further question on this topic: you  
5 just said that you sold them at 20 when you first got  
6 them and then you would have dropped the price further?

7 A. Six months later on so, probably, yes.

8 Q. Can you just go to page 289 of bundle 3, paragraph 30 of  
9 Mr Russell's statement. He is talking about these  
10 shirts and he says:

11 "The 80,000 shirts were received in  
12 October 2001 ..."

13 He sold 30,000 straight back to Manchester United  
14 presumably for sale in their retail outlets:

15 "... and the 50,000 were initially sold off at  
16 a retail price of £15 and £19 for adults ... they were  
17 later increased to 20 and 25 in November 2001."

18 A. Mr Russell is a witness here and Mr Russell can answer  
19 any questions you like on that. He runs this on  
20 a day-to-day basis, I do not. He can tell you  
21 the absolute truth; I can only guess. I think it is  
22 much better to get the truth.

23 Q. Very well, very well. You say that you had about  
24 60/70,000 already in stock?

25 A. Yes, a large number.

1 Q. You buy 82,000?

2 A. Clearance, yes.

3 Q. I am not looking at the price, I am looking at  
4 the volume. That is, as was your phrase, a lot of  
5 shirts?

6 A. Yes.

7 Q. Did you have any concern whether you would be able to  
8 sell all of those shirts -- 142,000 of a shirt that is  
9 going out of fashion?

10 A. We did have a concern, we had a real concern. What sort  
11 of gave us some comfort is the fact that Manchester  
12 United had been refused supplies from Umbro because of  
13 their announcement and probably it was justice.  
14 They had been refused the supply. And Manchester United  
15 sell an awful lot of shirts.

16 Manchester United had approached Colin Russell and  
17 Colin approached Duncan and myself to say: if we managed  
18 to buy any clearance would we please sell some of those  
19 shirts to Manchester United? Colin would obviously ask  
20 the quantity, and they wanted 30/35,000, and I think  
21 Colin agreed that we would release to them, at a small  
22 profit to JJB, 30,000 to Manchester United.

23 I accept what you are saying, it was an awful lot of  
24 shirts to take, but we had prepaid 30,000 to Manchester  
25 United.

1 Q. Presumably there was a risk that the price would be  
2 forced down?

3 A. At £8 or £9 I think we could get rid of those with  
4 a reasonable profit.

5 MR MORRIS: I will come back to that, if I may, after  
6 the break?

7 THE PRESIDENT: Right.

8 MR MORRIS: I apologise, sir, for the extra questioning.

9 THE PRESIDENT: We will take a short break.

10 (3.15 pm)

11 (A short break)

12 (3.35 pm)

13 MR MORRIS: Mr Whelan, we were dealing with the Manchester  
14 United centenary kit, and I was in your first witness  
15 statement at page 428 of bundle 3 -- no, I was not  
16 there; that is where I want to go now. If you would  
17 like to read paragraph 23, the first paragraph. (Pause).

18 You say in the middle of that paragraph:

19 "My concern was that the only other sports retailer  
20 besides JJB that was likely to be interested in a large  
21 quantity of shirts would be Sports Soccer, who had  
22 already clearly made a significant purchase and may not  
23 have wished to purchase more in this potentially  
24 depressed market."

25 But it is possible that Sports Soccer may have

1           wished to purchase more, is it not?

2    A.   Yes.

3    Q.   And you go on:

4           "The risk was that to clear the stocks Umbro would  
5           sell at very low prices large quantities of shirts that  
6           could end up on the grey market and with market traders.  
7           High Street retailers cannot compete with market traders  
8           in those conditions."

9           So as you say, you were concerned that the MU shirt  
10          would be sold at very low prices with which you could  
11          not compete. That means lower than even Sports Soccer  
12          were selling at that stage?

13   A.   When the market gets desperate then the prices also fall  
14          and get desperate. My concern was that this particular  
15          Manchester United shirt, which still had a further two  
16          years to run by the way, had been discredited by a very  
17          untimely announcement from Manchester United that  
18          they were switching allegiance and going to Nike two  
19          years down the line, most unfair on Umbro.

20          My concern, and I think everybody in the trade had  
21          a real concern that these shirts could be discounted and  
22          the distribution pattern changed enormously, and the  
23          distribution pattern was changed by going into shops as  
24          I mentioned. Once it started going to market stalls and  
25          market traders, then counterfeit becomes something that

1 can be done quite easily, because you can buy one of  
2 these Man U shirts in Hong Kong for as little as \$10.

3 Once that begins to take shape, if a Manchester  
4 United shirt comes into a market stall now it is clearly  
5 going to be a counterfeit shirt because there is no kind  
6 of supply that goes out to them. If it is on the market  
7 stall at £10 or £12 it clearly is not the real thing.

8 This is a great concern that I had at that time,  
9 yes.

10 Q. The question that I have for you, and I am trying to get  
11 it right, is at that stage, because of the original  
12 clearance deal, the price that Sports Soccer were  
13 selling at was £20. You buy some more and you are going  
14 to go in at £20. Your worry is that if you do not buy  
15 them and Sports Soccer do not buy them Umbro have  
16 a problem on their hands, they are going to clear  
17 the stock -- that stock, not the counterfeit -- is going  
18 to end up on the grey market at an even lower price than  
19 £20?

20 A. Absolutely, yes.

21 Q. So it was the price for that stock going lower than £20  
22 that was your concern?

23 A. No, it was what we call in the trade the bastardisation  
24 of a particular product or shirt. Manchester United as  
25 you know is a very, very high profile shirt. England is

1 probably the highest profile in the UK. Manchester  
2 United is by far and away the second highest profile.  
3 It is in Umbro's interest, JJB, Sports Soccer, the whole  
4 of the sports trade that that shirt is held in very,  
5 very high esteem.

6 Once a product like the Manchester United shirts  
7 gets bastardised around the nation where it is sold on  
8 market stalls, barrow boys, you name it. If it is being  
9 sold at as little as £10 that shirt loses its  
10 credibility.

11 Q. I understand that. But the concern was that this final  
12 lot of Umbro stock would end up on the market at those  
13 lower prices?

14 A. It was a worry, yes.

15 Q. And you say that in your statement quite clearly. Can  
16 we look at tab 18 of the thin bundle? This is a fax in  
17 fact from you to Mr Tucker of Nike. I believe Mr Tucker  
18 was the managing director of Nike?

19 A. That is right.

20 Q. And I think it is 26th June, so about a week or so after  
21 you have done the deal with Chris Ronnie.

22 Over the page -- I do not think we are concerned  
23 with the first page. I can read it out, the second  
24 page:

25 "Regarding the current MU home shirt, it would

1 appear that Umbro feel that they have received  
2 the sticky end of the wicket, and consequently have been  
3 jobbing the home market off at all kinds of prices. I  
4 had a meeting with Chris Ronnie last week and JJB have  
5 agreed to buy the total production of MU home shirts  
6 [about 85,000 units] but no further shirts can be made.

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

10 A. Yes.

11 Q. So your concern was to ensure that the shirt was not  
12 bastardised on price?

13 A. It is bastardised because the -- you have heard it used  
14 in the sports trade, and I have heard it in this  
15 hearing, and we all use the term, that if a product is  
16 bastardised it means it is discredited and sold at all  
17 kinds of prices in all kinds of destinations and from  
18 all kinds of outlets.

19 Q. If that happens, when Nike then launch their next one,  
20 whenever it will be, a year or two ahead, are they going  
21 to find it more difficult to sell at the 39.99 or  
22 whatever the price is?

23 A. No, I would not imagine so.

24 Q. So what is the reference of a smooth transition from  
25 Umbro to Nike?



1 A. The transition period, as I said I thought Umbro were  
2 treated very, very poorly in the whole episode with  
3 Manchester United declaring two years. They could have  
4 said: we are in negotiations, but they declared out and  
5 out that they were changing to Nike. That put alarm  
6 bells ringing in a lot of people's heads, especially in  
7 the retail trade, and it put it in the heads of  
8 Manchester United, Umbro and Nike.

9 Had Umbro really, really been vicious about their  
10 approach to this Umbro could have really, really  
11 bastardised that product and left Nike holding something  
12 they had paid [a huge sum] for the right to sell it over  
13 five years, they could have left Nike holding a very,  
14 very sticky end of a football shirt.

15 It was in my interests, JJB, and the whole sports  
16 trade, Manchester United, Nike and Umbro's interest that  
17 we did not allow a product of this quality to be  
18 bastardised around the nation on price or distribution.

19 Q. You said if something had not been done Nike would have  
20 been left with a very sticky end of a wicket, I think  
21 you said --

22 A. Having paid [a huge sum] for five years.

23 Q. What did you mean by that?

24 A. They had paid Manchester United [a huge sum] for  
25 the right to sponsor the Man U shirt.

1 Q. And what would the sticky end of the wicket have been  
2 for them?

3 A. They have to pick up then what Manchester United has  
4 always been, which is a shirt held in the very, very  
5 highest regard through the nation. They would have to  
6 pick a shirt up that had been dragged through  
7 the gutters, and I think it is quite apparent that could  
8 have happened.

9 Q. What I am suggesting you meant -- and you will obviously  
10 correct me if I am wrong -- is that they paid a lot of  
11 money for these rights, and they might not have been  
12 able to recoup their investment if it had been  
13 bastardised?

14 A. I received telephone calls from Jim Tucker to say:  
15 please tell me what is going on with the Manchester  
16 United shirt because we are picking this up in two  
17 years. Can you please tell me what is going on. And  
18 that little fax that I sent him sort of put him in  
19 the picture as to where the actual shirt was. It had  
20 been be sold off quite cheap but I through JJB had  
21 acquired the last remaining 82,000, as I think it says  
22 there, and they were coming into JJB and they would be  
23 distributed around JJB and through Manchester United  
24 only.

25 Q. But if Nike produced the next shirt -- which they did do

1 eventually although the dates elude me at the moment --  
2 and it was a high quality shirt no doubt and the like,  
3 why would they be concerned? Surely they would be able  
4 to get the price they needed to get for that shirt?

5 A. I think if you had paid [a huge sum] for a five-year  
6 period to buy or promote a football club, you would be  
7 concerned if that football club had its shirt sort of  
8 rubbed in the gutter. It is bastardisation of the  
9 product.

10 Q. But when you say "rubbed in the gutter", Nike would only  
11 be concerned if they could not get the price they wanted  
12 to get to recoup the sum paid.

13 A. That would be Nike's concern. My concern was that JJB  
14 had quite a large number of those shirts and we wanted  
15 to get out of those shirts at a profit and get into  
16 the new Nike shirt.

17 Q. Dealing with this concept of bastardisation, you say in  
18 your second witness statement at paragraph 23, page 442.  
19 From paragraph 23 you are referring to the fax that  
20 I have just taken you to:

21 "My fax of 26th June ..."

22 Over the page you say:

23 "What I was concerned about was what is called in  
24 the trade bastardisation. I foresaw that Umbro might  
25 off-load large quantities of shirts that could end up

1 with market traders, where authentic replica shirts are  
2 being sold at very low wholesale prices to market  
3 traders because the door is open to counterfeit goods."

4 There you are saying that you are trying to protect  
5 the authenticity of the shirt?

6 A. Yes.

7 Q. In your letter of 26th June to Nike, at 18, you do not  
8 just say "bastardisation", do you, you say  
9 "bastardisation on price"?

10 A. Yes.

11 Q. And I am suggesting to you that the word "bastardised"  
12 is used to mean that the value of the brand is devalued  
13 by discounting?

14 A. "Bastardisation" in the trade is something that we use  
15 when something is going and it is unknown. Why we use  
16 it, I do not know. You have obviously heard it through  
17 the trade, and it is a word we use for anything going  
18 into the unknown, destination or price. If it is  
19 really, really discounted low, we would say that  
20 the product is being bastardised. It is just a phrase  
21 that we would use in the trade.

22 Q. So effectively by this deal of buying this clearance  
23 kit -- and I am talking about the Umbro, I am not  
24 talking about the counterfeit goods, I am talking about  
25 the Umbro remaining stock -- you were effectively

1 stopping that product getting to the consumer at a price  
2 lower than £20?

3 A. No.

4 Q. Well, if you had not bought it all up it would have  
5 ended up on the market stalls, perhaps, the grey market?

6 A. Maybe.

7 Q. And it would have been priced at lower than £20?

8 A. It may have been priced above £20, we do not know; it is  
9 an unknown.

10 Q. Your concern was that you were preventing the risk that  
11 Umbro would sell at very low prices. You agreed with me  
12 a moment ago that if that had happened that would have  
13 meant the price would have fallen below the £20?

14 A. I bought the 82,000 and you asked me the question  
15 before, and it is a lot, and I did say that we had  
16 pre-sold 30,000 to Manchester United, and that 50,000  
17 brought our price in line with a price that we  
18 considered we could get out of the shirts and make  
19 a profit.

20 Q. Can I take you to tab 19 of the thin bundle.

21 This is the first page, the oral hearing before  
22 the Office of Fair Trading on 13th August 2002.

23 Over the page is just an extract from that, what  
24 you were saying at that meeting. You see at the top  
25 again Mr Russell refers to the jersey going to £15 and

1           £19.

2           If you go down the page to line 29, about two-thirds  
3 of the way down, you will see the paragraph which  
4 begins:

5           "Umbro reacted in a way that was not good for  
6 the sports trade. It was not good for the good name of  
7 Manchester United. They reacted by selling the shirts  
8 to anybody and everywhere.

9           "What upset me was that I went to Wigan market and  
10 I saw Manchester United shirts on sale at Wigan market  
11 at £14. £14! We had paid £18 for the same shirt and  
12 we had bought thousands of them. That was going on  
13 because Umbro were determined, absolutely determined, to  
14 create havoc in the market by distributing Manchester  
15 United shirts everywhere ... every person had that shirt  
16 and all were selling them at £14, £15 and £16. The deal  
17 that I did I thought was good for JJB. We had because  
18 the that were going to be made."

19           So it is clear, is it not, from that that what  
20 you were concerned about was the price?

21 A. I was concerned that these shirts were appearing in  
22 certain places. At that time I did not know that Umbro  
23 had sold a lot of these shirts to Streetwise and  
24 obviously the distribution was coming from Streetwise  
25 who were not really known in the sports trade.

1           I did not know where the shirts were coming from but  
2           I had seen that shirt on Wigan market and I had  
3           information that it was being sold and distributed  
4           around market stalls, and the prices were all over  
5           the place.

6    Q.   If you look back at what you said there, what was really  
7           getting your goat was the fact that it was £14.   £14!  
8           You repeat it, it was the price.

9    A.   What was getting my goat was that I had paid as much as  
10           that to buy them wholesale.

11   Q.   You had not bought the £9 or £10 ones, but £14.75  
12           you had paid for the second lot?

13   A.   Yes.

14   Q.   I am suggesting to you that the real concern about these  
15           things ending up on market stalls was the fact that  
16           the price would be low, very low, and that that was  
17           bastardisation on price and it was that which would give  
18           Nike a problem in the transition to the new shirt,  
19           because if the price comes down it is going to be  
20           difficult when the new shirt comes out if the public  
21           thinks: I can get it Man United shirts for £14, £15, why  
22           would they be paying 39.99 or whatever next time round  
23           on the new Nike launch?

24   A.   The public by the way were well aware, because it had  
25           been announced publicly, that Umbro were losing

1 the contract. So the public were aware that this shirt  
2 was being discounted and was available at discount  
3 around the nation.

4 As for why I wanted to buy the shirts, I will  
5 repeat: we were sat on a lot of shirts that we had paid  
6 £13, £14 or £15 for and I wanted to bring down  
7 the average cost of the JJB shirt to enable us to  
8 compete on the High Street.

9 Q. Whilst on the subject of the question of bastardisation,  
10 yesterday in your examination-in-chief, at page 74  
11 line 25 -- and I do not know if somebody has a copy of  
12 the transcript -- you were referred to the fact that  
13 Sports Soccer were offering a football at £3; you  
14 remember that?

15 A. Yes.

16 Q. I do not need to take you back to it. Can the witness  
17 be given bundle E1, which is a blue bundle, part 1,  
18 tab 15, page 85.

19 This is a monthly management report, an Umbro  
20 document, and this is Mr Bryant's section of that  
21 document. At that stage he was Umbro account manager  
22 for JJB?

23 A. Yes.

24 Q. And he is reporting about a football deal. I am going  
25 to suggest to you that you, JJB, were offered



1 the football, a football, at £5, and you did not take  
2 it.

3 If you go to about the third paragraph down on  
4 page 85.

5 A. What tab?

6 Q. I am sorry, tab 15, page 85C. Under "Equipment" it  
7 talks about previewing the 2001 gloves. You see below  
8 that -- this is February 2000 -- he says:

9 "The £5 football deal has fallen through due to  
10 the fact that JJB feel that Sports Soccer will  
11 bastardise the product."

12 A. Yes.

13 Q. Now that is nothing to do with counterfeiting; that is  
14 to do with price, is it not?

15 A. That is to do with they had a ball which they were  
16 selling for £3, which I stated before, we asked Umbro if  
17 we could be supplied with the ball so we could retail it  
18 at the £3, and they came to us and said: we will supply  
19 you with a ball that you can sell at £5. We said: that  
20 is not what we are looking for, sorry we do not want  
21 that.

22 Q. If you go forward in the same tab to page 98, this is  
23 a memorandum from Mr Baxter, an internal Umbro document  
24 to Mr Ronnie. February 2000, current issues: JJB  
25 presentation of D1 equipment.

1           Then you will see in either the second or the third  
2 paragraph the words:  
3           "Our £5 price ..."  
4           Are you with me?  
5 A. Yes.  
6 Q. "Our £5 price point ball will not be selected by JJB if  
7 we open it up to the trade and most importantly sport.  
8 JJB will run with the Patrick ball unless they can have  
9 ours exclusive."  
10 A. First of all, who is Mr Baxter, by the way?  
11 Q. Well, he is obviously an Umbro person. I do not have  
12 the immediate answer to that question.  
13           But the proposition that is being put here --  
14 A. How would Mr Baxter know what JJB said?  
15 THE PRESIDENT: I have slightly lost the thread, Mr Morris,  
16 of how this is related to the decision.  
17 MR MORRIS: It is related to the notion of bastardisation,  
18 sir, it is related to the proposition that the concern  
19 about bastardisation is discounting, the concern is  
20 solely to do with price. This is being referred to as  
21 an illustration of the use of "bastardisation" in  
22 the trade, in this case Sports Soccer discounting  
23 the balance at £3 --  
24 THE PRESIDENT: I cannot see the word "bastardisation" there  
25 for the moment.

1 MR MORRIS: If you go back to 85, it is by way of  
2 explanation of 85, which is the £5 football deal having  
3 fallen through due to the fact that JJB feel that  
4 Sports Soccer will bastardise the price.

5 A. That is the one that I was telling you they were selling  
6 at £3 and we wanted to sell it at £3. This fellow  
7 Baxter, I do not know how he can talk about JJB.

8 Q. Very well, we will leave that one for now. I have  
9 a couple more topics.

10 In the course of Mr Ronnie's and Mr Ashley's  
11 cross-examination, we heard a lot about the special  
12 relationship between them, that this licensing deal was  
13 a very unusual deal.

14 Did you have any kind of relationship with Umbro  
15 that was other than a normal buy/sell relationship?

16 A. No.

17 Q. I wanted to talk to you about Patrick, and I wanted to  
18 ask you two or three questions about that. Before I do  
19 so, I do not know if it is an issue of sensitivity for  
20 JJB?

21 A. No.

22 Q. It is not? I just wondered if somebody wanted us to go  
23 into camera.

24 A. No.

25 Q. Fine. Your relationship with Umbro was not just

1 manufacturer and retailer, was it?

2 A. It was just -- we were just a wholesale customer of  
3 Umbro, nothing else.

4 Q. Did you not have an agreement with Umbro whereby Umbro  
5 would design, manufacture and source products for JJB's  
6 exclusive Patrick range?

7 A. No.

8 Q. Patrick is a brand which you now own; is that right?

9 A. Patrick is a brand that we now own the licensing right  
10 for, for a period of 20 years. We do not actually own  
11 the brand. We have the rights to the licensing of that  
12 brand and the supply and retail of it for a period of  
13 20 years.

14 Q. An exclusive licence?

15 A. An exclusive licence to JJB. Nothing to do with Umbro  
16 in any way, shape or form.

17 Q. What I am going to suggest is that JJB paid Umbro  
18 a commission for product relating to Patrick?

19 A. No.

20 Q. That is not correct?

21 A. No. If you were looking at: Mr Ronnie approached us to  
22 see if it would be a possibility that we could use  
23 the sourcing and the design. What has come out in this  
24 hearing is that this was not Ronnie, it was  
25 Sports Soccer. We just refused to have anything to do

1 with it.

2 Q. Can I ask you to look at the very last document in  
3 the thin bundle.

4 This is an extract from Umbro Group's financial  
5 reports for the period ending 31st July 2001 and it was  
6 attached to a monthly management report of Umbro so  
7 I entirely accept this is an Umbro document.

8 A. Yes.

9 Q. If you go down the page, under B, the third bullet point  
10 then refers to royalties and commissions.

11 A. Royalty and commission income?

12 Q. I am very near the bottom of this page, Mr Whelan.

13 A. Yes, I have it.

14 Q. "Brand royalties are 1.7 million higher. Germany and  
15 France are accounting for ..." --

16 THE PRESIDENT: There is no need to read out the figures.

17 MR MORRIS: Thank you, sir.

18 "Badge royalties are X lower due to mainly reduced  
19 Manchester United... Commissions are [so much] higher  
20 due to recognition of intra-company commissions of X,  
21 apparel commissions of Y, and Patrick commissions of  
22 [another figure]."

23 A. I think probably Umbro had some deal with the gentleman  
24 who owned Patrick before we actually got the licensing  
25 rights. But I think that would be for 1999 or

1 something --

2 Q. This is for the period ending --

3 A. July 2000. I think it is actually before we got

4 the deal with Patrick, to be honest.

5 Q. What was that deal?

6 A. When we signed that we would take the licence from

7 Patrick for a period of 20 years with a 5 year option.

8 Before that Patrick was a free brand and the gentleman

9 who owned it used to go and see the likes of Umbro to

10 see if they wanted to make something under the Patrick

11 brand and pay him a licence. I think that is what that

12 is referring to.

13 Q. But you now have the exclusive manufacturing rights.

14 A. We have that.

15 Q. So you are effectively the manufacturer of Patrick?

16 A. Three years ago we got that.

17 Q. And that is sourced through Umbro -- do Umbro source

18 that?

19 A. No. That is sourced entirely by our own sourcing

20 department.

21 Q. Would it be possible for you to find out overnight and

22 be able to tell the tribunal the date when your deal

23 with Umbro --

24 THE PRESIDENT: I think, Mr Morris, that --

25 MR MORRIS: Very well, sir.

1 THE PRESIDENT: -- this is a collateral issue and the answer  
2 is fine.

3 MR MORRIS: Very well. I am going to deal with two more  
4 points. The first is this.

5 In the course of your evidence-in-chief yesterday  
6 you referred to your discussions with Mr McGuigan, and  
7 you referred to the fact that -- and we were talking in  
8 the context of I think early 2003.

9 You said: we never discussed anything at all with  
10 the OFT investigation.

11 A. At meetings, no.

12 Q. Can I just take you to the transcript.

13 Page 76, lines 10-15.

14 A. Do I have this, sir?

15 THE PRESIDENT: No, I think it is just coming, Mr Whelan.

16 Hold on a minute.

17 MR MORRIS: Just bear with me, sir, I may have the wrong  
18 reference. Page 78, it was my misreading.

19 Can I give him the quartile version because I am not  
20 sure that the printed-off version that comes earlier is  
21 with the same numbering. I might be wrong.

22 Sir, I do not know if you are working off  
23 the manuscript version?

24 I am looking at page 78, line 10.

25 MR COLGATE: Line 12.

1 MR MORRIS: Line 10:  
2 "Did you have any such conversation with  
3 Mr McGuigan?"  
4 LORD GRABINER: It is page 78, line 10 in the manuscript.  
5 MR MORRIS: Your answer was:  
6 "Firstly, I should say that before Mr McGuigan would  
7 even speak to me always said the following: I will not  
8 discuss anything at all about the OFT. Which I thought  
9 was very fair and we never discussed anything at all  
10 about the OFT investigation."  
11 And then you refer to Mr Ronnie and then say in 18:  
12 "I definitely did not say anything about the OFT  
13 investigation to Mr McGuigan."  
14 A. Yes.  
15 Q. Have you ever discussed this case with Mr McGuigan?  
16 A. Peripherally, yes, peripherally. If you want the truth  
17 I would have said: what a waste of time this case is.  
18 And I also said I disliked being tried in a kangaroo  
19 court. I have said those things to him. I have never  
20 discussed his statement or my statements with him.  
21 Q. Have you discussed the case with him since the decision?  
22 A. Since the decision ...? I have not really discussed  
23 anything at all about the actual case. I have spoken to  
24 him about peripheries, as I say, but I cannot recall  
25 having spoken to him about evidence or statements.



1 Q. You are sure about that?

2 A. Yes, I am fairly sure about that.

3 Q. Can you go to your third witness statement right at  
4 the end of bundle 3, at page 443.

5 A. Yes.

6 Q. You say:

7 "I make this further statement following the OFT's  
8 decision and following conversations I have subsequently  
9 had with Peter McGuigan and Phil Fellone and Phil  
10 Bryant."

11 A. Yes.

12 Q. So there you are referring to conversations with  
13 Mr McGuigan about the case.

14 A. I think the idea is that the original statement,  
15 the original statements made by myself -- what I am  
16 saying here -- I am trying to correct things. I am  
17 saying that Mr McGuigan told me that he did attend  
18 the meeting and I think I said it was a meeting between  
19 Chris Ronnie, Colin Russell and myself.

20 Q. Yes, if you look at paragraph 2 at the end,  
21 Peter McGuigan has also told me that he attended  
22 the meeting?

23 A. Yes, I think he probably put that right.

24 Q. You have talked to him about the case, about  
25 the evidence?

1 A. I spoke to him about peripheries, I never spoke to him  
2 about the context of the case.

3 Q. Well, this is barely periphery, with respect Mr Whelan.  
4 This is the evidence you are giving to the tribunal.

5 A. If I have a memory and I say that these people were  
6 there, and if one man who I have already said is very  
7 honest says to me: I was actually at that meeting,  
8 I will take his word and say ... so I would amend that  
9 there and put it right.

10 Q. Can I also just hand up one extra document. Could you  
11 provide copies to Mr Whelan and the tribunal. (Handed).

12 This is an exchange of correspondence between  
13 the Office of Fair Trading and your solicitors.  
14 The background to this is --

15 THE PRESIDENT: Wait a minute. Has JJB seen this?

16 MR MORRIS: If I can just explain the background --

17 THE PRESIDENT: Wait a minute. Let us have a read of this  
18 first.

19 MR MORRIS: Sir, the relevant part starts at the bottom of  
20 the first page of this letter.

21 THE PRESIDENT: So in very general terms, at a quick look,  
22 this is the OFT seeking some further particulars of  
23 JJB's case; is that right?

24 MR MORRIS: Yes, more particularly. Sir, if you go to  
25 the middle of the page you will see a reference to

1 Colin Russell.

2 THE PRESIDENT: Yes.

3 MR MORRIS: And you see paragraph 10 and 11.

4 Mr Russell gave further evidence in his further  
5 witness statements. That evidence was given on  
6 the basis of an understanding. The OFT were asking what  
7 the source of that understanding from Mr Russell's  
8 evidence was. It was to do with, again, the events  
9 surrounding the Manchester United centenary kit.

10 THE PRESIDENT: Yes.

11 MR MORRIS: If you go over two pages to DLA's reply of  
12 7th November you will find the answer to those  
13 questions; and you will find them in the second  
14 paragraph under paragraph 10:

15 "In relation to Colin Russell's statement that he  
16 understood that Chris Ronnie had told us that the shirts  
17 were cleared at £10 and £11 and Mr McGuigan told JJB  
18 he had enough fabric ... Colin Russell's source is  
19 conversations David Whelan has recently had with  
20 Peter McGuigan. David Whelan has passed this  
21 information on to Colin Russell."

22 Similarly at paragraph 11, again in relation to  
23 Mr Russell's understanding recorded in Mr Russell's  
24 witness statement:

25 "The source of that is recent conversations between

1 Dave Whelan and Peter McGuigan, the contents of which  
2 were made known to Mr Russell."

3 So the proposition is twofold.

4 You spoke to Mr McGuigan about the evidence  
5 regarding the centenary kit. As a result of what  
6 Mr McGuigan told you, you did two things with that  
7 information: first of all put it in your own witness  
8 statement that I have just taken you to, paragraph 2;  
9 and secondly you passed some of that information on to  
10 Mr Russell and he incorporated that information into his  
11 witness statement?

12 A. If I am reading this correctly all this says is what  
13 I have stated, that I spoke to Mr Peter McGuigan about  
14 the Manchester United shirts and Mr McGuigan told me  
15 that he had got cloth that he could purchase and if we  
16 wanted him to purchase he would purchase it and sell us  
17 at the same price as he sold to Sports Soccer. I think  
18 we have been through that.

19 And I think I told you that I told Colin Russell and  
20 Duncan Sharpe about the information I had  
21 received before Chris Ronnie came to see me and the rest  
22 of them.

23 Q. I understand that, Mr Whelan. The question really goes  
24 to the nature of your discussions with Mr McGuigan  
25 between 2003 and November 2003. I am not talking about

1 the events of the centenary kit.

2 I am just asking you to agree, and I think you do  
3 agree, that you have spoken to Mr McGuigan about  
4 the case after 1st August 2003 in the context of  
5 the preparation of your witness statement and  
6 Mr Russell's witness statement for this hearing?

7 A. No. I have spoken to Peter McGuigan only on  
8 peripheries. I have never discussed the OFT case with  
9 Mr McGuigan either on the phone or face-to-face.

10 Q. This letter from the DLA seems to suggest -- well, it  
11 does suggest the opposite.

12 It says in the letter of 7th November:

13 "Colin Russell's source is conversations David  
14 Whelan has had recently with Peter McGuigan."

15 That is what your solicitors are saying --

16 A. What is the source?

17 Q. The source of Colin Russell's ... what this letter is  
18 saying is that you had as recently as at 7th November of  
19 last year spoken to Peter McGuigan about past events,  
20 and you had passed that information on to Colin Russell?

21 A. I have only discussed with Peter McGuigan what I tell  
22 you is periphery stuff with this case. I have never sat  
23 down and talked face-to-face or on the telephone about  
24 any statement in connection with this particular case.

25 Q. That just cannot be right, Mr Whelan. Paragraph 1 of

1 your third statement says:

2 "I make this further statement following the Office  
3 of Fair Trading's decision [after August 2003] and  
4 following conversations I have consequently had with  
5 Peter McGuigan."

6 A. I will be putting right what --

7 Q. Yes?

8 A. I think in the original one I probably said that  
9 Peter McGuigan was not at the meeting. When I read  
10 certain other things it was obvious that Peter McGuigan  
11 was at the meeting and I was putting that right.

12 Q. Yes, but you were finding that information out from  
13 conversations that you had with Peter McGuigan?

14 A. No, I do not think so. I think it is in the case  
15 somewhere.

16 Q. Can I take you to page 443, right at the end of  
17 the third bundle.

18 It says:

19 "I make this further statement ..."

20 So this is being made on 30th September 2003:

21 "... following the OFT's decision ..."

22 We know it is after 1st August:

23 "... and following conversations that I have  
24 subsequently ..."

25 That means after 1st August:

1            "... had with Peter McGuigan."

2            And then you go on to say in paragraph 2  
3 the suggestion about what had happened in May 2001:

4            "I have now been made aware of a note made by  
5 Phil Fellone. It seems likely that this meeting took  
6 place after the cancellation of the order.

7 Peter McGuigan has also told me that he attended this  
8 meeting."

9            Now, what I am suggesting is it is plain from this  
10 witness statement, your witness statement, that you did  
11 derive further information from conversations that  
12 you have had with Mr McGuigan since 1st August 2003.

13 A. I was under the impression that when you make a first  
14 statement and you then make a second statement,  
15 the second statement is made subsequently, after  
16 you have read the various things that are provided, what  
17 little we get provided, by the office.

18            So obviously I have read something in there and  
19 I have seen that Peter McGuigan disagrees with something  
20 that I have said. One of us is right and one of us is  
21 wrong.

22            I have said that Mr McGuigan is in my opinion  
23 an honest man, and I have no reason to doubt that he was  
24 at the meeting, and I would alter that.

25 Q. I am not criticising your modification of the evidence.

1           The simple point I am putting to you is that you state  
2           in this witness statement that you had spoken to  
3           Mr McGuigan after 1st August 2003 about the case?

4    A.   I have not spoken to Mr McGuigan about anything to do  
5           with this case apart from peripheries and normal  
6           conversation that normal people have about what is going  
7           on in the world.

8    Q.   Before I leave that point, it is also plain from  
9           page 443 -- again can I take you back to it -- that you  
10          also had conversations after 1st August 2003 with  
11          Phil Fellone of Umbro?

12   A.   Probably I would see Phil a lot more than I would see  
13          anyone else.  Again I would only have periphery  
14          discussions with Phil Fellone regarding the case.

15   Q.   It is plain also from paragraph 2 that those discussions  
16          must have included conversations about the meeting there  
17          dated as 8th June 2001?

18   A.   I have obviously read something there because it says:  
19                 "It seems likely therefore this meeting took place  
20                 on 8th June".

21   Q.   Yes, it is the note made by Mr Fellone?

22   A.   If he has made a note and I have not, I would accept  
23          what I have read.

24   Q.   Very well, I do not wish to take that further.

25                 Can I just finish with one final question, and it is



1           this.

2           You said this morning when you were referred to  
3           Mr Ronnie's statements, all the stuff about it flying  
4           out of the window, you said that the words "sort it out"  
5           were not the sort of words that you would use?

6   A.   No.

7   Q.   But you would use words like "what the hell is going  
8           on"?

9   A.   Yes.

10   Q.   And that is the sort of thing that you would have said  
11           to Peter McGuigan or Chris Ronnie when you were raising  
12           this subject: Peter, what the hell is going on here?

13   A.   Quite right.

14   Q.   Yes.  When you said that you were saying it because you  
15           did not like what was going on?

16   A.   I did not understand what was going on.

17   Q.   And you said it because you wanted something to be done  
18           about it?

19   A.   I said it because I would like an explanation as to what  
20           the hell was going on in the trade at that particular  
21           time.

22   MR MORRIS:  Yes.  Thank you very much.  I have no further  
23           questions.

24   THE PRESIDENT:  Thank you very much, Mr Morris.  I think  
25           there may be one or two matters that the tribunal would

1           like to canvass with the witness before you

2           re-examine --

3   MR MORRIS:   Sorry, sir.  Can I just take a moment?

4   THE PRESIDENT:  Yes.  (Pause).

5   MR MORRIS:  I do wish to put one further point, sir.

6           I was asking you about your discussions with  
7           Mr McGuigan after 1st August 2003 about the case, which  
8           you said was only peripheral.  If you were speaking to  
9           him then, is there any reason why you were not also  
10          speaking to him before the decision about the OFT  
11          investigation.  There is no difference, is there,  
12          between before or after August 2003?

13   A.  I think what you have to understand is that  
14          Peter McGuigan, as I say, is a very honest person and  
15          we cannot stop discussing things, we cannot stop doing  
16          business, we have to do business together and we both  
17          came to the decision that we were going to have to deal  
18          with each other so we were going to have to get on even  
19          though this case has gone on and on and on, we still  
20          have to do business and we would get on with business as  
21          normal but we would not discuss anything at all to do  
22          with the investigation except the odd peripheries as  
23          I have said: what a waste of time what is going on, all  
24          that kind of stuff.

25          We did not discuss anything that was relevant to any

1 witness statement or anything to do with Umbro or JJB.

2 We would not discuss it.

3 MR MORRIS: Thank you very much.

4 Thank you, sir.

5 MR WEST-KNIGHTS: I have no cross-examination of this

6 witness.

7 THE PRESIDENT: Mr Whelan, are you bearing up? We have one

8 or two things I would like to clarify.

9 Questions by the Tribunal

10 THE PRESIDENT: Could you go back to the end of 1999,

11 the period when some discounting was going on, as we

12 heard about earlier. I think we saw a document that

13 said that I think in October 1999 you were taking

14 20 per cent of replica, which I would imagine would have

15 brought your price down from 39.99 to 32.99 or

16 thereabouts, is that right?

17 A. Yes.

18 THE PRESIDENT: What I would like to try to get in my head,

19 and we may have it elsewhere in the case but I do not

20 have it in my head at the moment -- see if we can get it

21 out together -- is how long that went on for and at what

22 stage we got back up to 39.99, if you see what I mean.

23 A. Yes.

24 THE PRESIDENT: If we take it in stages, was that

25 discounting on replica kit going on through the end of

1 1999 and into early 2000, from your recollection?

2 A. Well, the normal pattern in the year's trade,  
3 the quietest month of the year is obviously February.  
4 January is the sales; February is sort of the time when  
5 new stock is coming in and you have no new stock. So  
6 that is the quietest month.

7 Usually the second quietest month is October. We  
8 would look at certain things: October would be a prime  
9 target for us, and before 5th November which somehow  
10 triggers Christmas -- why it does I do not know but in  
11 the consumers eyes 5th November triggers the start of  
12 Christmas -- so October is usually a quiet month when  
13 people save. So that would be a prime time when we  
14 would introduce 20 per cent off replica or off all shoes  
15 or off whatever and we would probably do that for a  
16 period of four weeks and it would come off the first  
17 week in November because trade for Christmas would be  
18 beginning to start.

19 That would be the normal pattern.

20 THE PRESIDENT: I appreciate the answer about normal  
21 pattern, but I would like to get at what actually  
22 happened in November 1999 and thereafter.

23 Can you remember, say, before Christmas 1999 was  
24 the price still at 32.99 or was it at some other level?

25 A. If we had done a promotion we would normally do it for

1 a period of four weeks, and if we had 20 per cent of all  
2 replica kit we would do that for the whole of October,  
3 and on 1st November it would go back to its normal  
4 price.

5 THE PRESIDENT: Do you have any recollection of whether that  
6 happened in November 1999 or December 1999?

7 A. No. I am sure it would do because when you are coming  
8 up to November you are coming up to Christmas time and  
9 you do not need to discount or put sales on in that  
10 period.

11 THE PRESIDENT: If we now go the other side of Christmas --  
12 I think you mentioned the period of the sales and that  
13 February was a very quiet month -- Is that the sort of  
14 time when you would go back to a discounted price or  
15 not?

16 A. Whatever you do in February it is difficult to generate  
17 sales, whatever you do. It is not normal for us to  
18 discount only clearance stock. Clearance stock is end  
19 of lines, when you have four left in a store. If  
20 you have four left in 400 stores you have 1600 lying  
21 around the company, which is an awful lot, but in each  
22 store you have to get rid of it and that is called  
23 the clearance month.

24 So normally in February we would not run a certain  
25 product like shoes, replica, football boots with

1 a certain discount off. That would not be the normal  
2 pattern.

3 THE PRESIDENT: Can you recall, getting on to March 2000,  
4 from your recollection whether you were discounting  
5 replica in March 2000?

6 A. If I am on the right year, 2000, and not 2001 --  
7 probably Mr Russell can inform you better tomorrow -- we  
8 did run the "JJB will pay your VAT", and we ran that up  
9 to the budget which we thought would put it in people's  
10 minds. I think it might have been in the year 2000 and  
11 we ran the fact that JJB will pay your VAT ... that  
12 meant 17.5 per cent off across the board, even kiddies'  
13 wear which has no VAT. It was a certain thing we tried  
14 out, with the budget coming up we put it into people's  
15 mind: JJB will pay your VAT.

16 I think that was 2000 and we ran that from the whole  
17 of March, up to the budget.

18 THE PRESIDENT: Can you recall, and maybe we will have to  
19 discuss this with Mr Russell, whether there came a time  
20 when the price went back up again to 39.99?

21 A. I do not know what date, but it would definitely go back  
22 to 39.99, definitely.

23 THE PRESIDENT: Can we try to fix that date or should we ask  
24 Mr Russell or ask him to go back in the records?

25 A. I think Mr Russell should go into the records and give

1           you the accurate answer. We would have that on  
2           the computer.

3   THE PRESIDENT: Just for completeness, there is a document  
4           we have been referred to quite often in this case which  
5           is an internal Umbro document that Mr Ronnie's report  
6           prepared on 8th June 2000 regarding the month of May.

7           It refers to what he describes as an agreement: JJB,  
8           Sports Soccer, Sports Soccer, JD Sport and Allsports.

9           It says:

10           "Following a month of dialogue with the above  
11           accounts, Umbro cannot allow our statement product to be  
12           discounted."

13           What I would like to ask you is whether you have  
14           a recollection of a dialogue with Umbro in around  
15           April or May 2000 about the price at which the England  
16           shirt might be priced immediately before and at  
17           the Euro 2000 tournament?

18   A. I think that if there were a dialogue that took place --  
19           I would be very surprised if a dialogue would take place  
20           about what price we were going to sell it at, and if it  
21           did take place I think Mr Russell would know much more  
22           about that than I do at that particular date. I think  
23           they would approach him rather than approach me and then  
24           he would inform me. I cannot recall Colin Russell  
25           coming to me and saying: we were in dialogue or we were

1 in conversation or we have had a meeting and they want  
2 us to go at 39.99. He knew that I would disregard that  
3 totally and say not interested in what they want;  
4 we will sell at the price we think is appropriate.

5 THE PRESIDENT: Right, thank you.

6 MR COLGATE: Mr Whelan, do you mind if I go back on a couple  
7 of things you have said to get it clear in my mind.  
8 I would like first of all to go back to this  
9 8th June meeting and the telephone call.

10 A. 8th June 2000 or 2001?

11 MR COLGATE: The meeting with Mr Hughes.

12 THE PRESIDENT: 2000.

13 A. Yes.

14 MR COLGATE: I think in the end you thought on balance that  
15 you took the call from Mr Hughes rather than Mr Sharpe.

16 A. I thought so, yes.

17 MR COLGATE: Did you know at that time where Mr Hughes  
18 lived?

19 A. No.

20 MR COLGATE: It was the new house, was it not?

21 A. I thought he lived on Alderley Edge. That is where  
22 I thought he lived. Obviously he had moved further down  
23 into Cheshire --

24 MR COLGATE: But you did not know.

25 A. No.



1 MR COLGATE: How were the arrangements set up (a) to find  
2 out where Mr Hughes lived, and (b) to organise  
3 the helicopter?

4 A. David Hughes said it is at the mast in Cheshire, which  
5 is quite a famous landmark, Jodrell Bank. He lived  
6 within a quarter of a mile of Jodrell Bank and obviously  
7 all the pilots know Jodrell Bank so he said: I live at  
8 Jodrell Bank, 1000 yards from there, and when I hear  
9 the helicopter I will come out to meet you ...  
10 you cannot miss it, we have three ponds at the bottom of  
11 the lawn, it is only 500 yards from Jodrell Bank, and  
12 when you come I will come out and wave to you -- when it  
13 is a private landing so long as the pilot gets a good  
14 landmark he can pick out where he is going.

15 MR COLGATE: So it is pretty clear from what you said there  
16 that you discussed that Mr Hughes.  
17 You took Mr Sharpe with you?

18 A. Yes.

19 MR COLGATE: Did you ask Mr Hughes whether that was all  
20 right, or would he have assumed? How did  
21 the arrangement work?

22 A. I think David Hughes would know that -- at that  
23 particular time I would take Duncan Sharpe everywhere,  
24 because I was intent on getting him ready to take over  
25 for when I decided to retire. He was our chief

1           operating officer, or our chief exec, it would be my  
2           intention always to take the chief exec with me wherever  
3           I go if there is a meeting on.

4   MR COLGATE:   So it would not matter what the meeting was  
5           about.

6   A.   No, if it was with a supplier and I thought it was  
7           relevant that the chief exec or the chief operating  
8           officer should know about it, I would obviously take him  
9           with me.

10   MR COLGATE:   Would Mr Hughes have known that?

11   A.   I assume that Mr Hughes would know that I would usually  
12           operate alongside the chief exec.

13   MR COLGATE:   Right.   The phone call I think to you by  
14           Mr Hughes was made on 6th June; it might have been on  
15           the 5th, but probably on the 6th.

16   A.   It could be.

17   MR COLGATE:   And the meeting was on the 8th.

18   A.   Yes.

19   MR COLGATE:   Can you recall whether that caused you any  
20           difficulties, because it is really quite short notice?

21   A.   Whatever difficulties it caused, if a person like  
22           David Hughes rang me and said: I would like you to  
23           attend a meeting and it is fairly important, I would  
24           look at all kinds of ways the helicopter would be there  
25           in ten minutes.   We did it around lunchtime, so I fitted

1           it in and there was no problem.

2   MR COLGATE:  I find it slightly strange that someone rings

3           you up and says:  I want to have an important meeting

4           with you and you drop everything and go.

5   A.  Well --

6   MR COLGATE:  If somebody --

7   A.  Two days before is not dropping everything for me.

8           I operate on the basis that if my presence is required

9           somewhere, I rearrange my priorities.  Priorities in my

10          life is business, when I am in the office, and as is

11          well known in the trade I will drop everything if I have

12          to get to a place, if there is a problem in

13          the store ... whatever.  I know the eventualities that

14          could happen with 450 stores.  If anything comes up as

15          important I would drop everything and go.

16                 I did not think that was unusual, to be honest.

17  MR COLGATE:  I would like to ask you now about -- you said

18          quite clearly today that you are against price-fixing.

19  A.  Yes.

20  MR COLGATE:  Can you tell us, please, when you first became

21          aware that price-fixing was illegal?

22  A.  Well, I got prosecuted 40 years ago for selling

23          Cow & Gate baby milk and I was selling it for 2 and 11

24          when the actual retail price was 6.  I got prosecuted

25          for that and I was brought down to London for that

1 particular deal, and I got fined for that. I have never  
2 forgotten -- I got cleared at Wigan and they brought it  
3 to London and I had to go to the High Court, and I was  
4 fined for selling Cow & Gate baby food at 2 and 11  
5 rather than 3 and 6.

6 That was a lesson that I never, ever forgot, that it  
7 was against the law -- it is not the same now.

8 THE PRESIDENT: No, you could enforce it at one time but  
9 later it was changed.

10 A. I was disobeying retail price maintenance and I was  
11 prosecuted and fined something like £2,000 for  
12 discounting Cow & Gate baby food. It is something I  
13 will never forget and something that lives in my mind.

14 That is why I am against price-fixing of any  
15 description. I paid a heavy price for discounting at  
16 that time what I thought was an essential food.

17 MR COLGATE: In terms of your witness statement -- there is  
18 a difference between your first witness statement and  
19 your second witness statement. Do you have your witness  
20 statements handy?

21 It is talking about the 8th June meeting. I am on  
22 page 429.

23 This is the one you swore on 15th August 2002. You  
24 say in paragraph 30, which I am sure you understand and  
25 recall. If you then look at your second witness

1 statement on page 439 --

2 A. What number is the first page?

3 MR COLGATE: The first one is on 429, paragraph 30. On 439

4 in paragraph 13 there is an additional sentence stated.

5 Do you see that?

6 A. Yes.

7 MR COLGATE: Could you just tell us why that went in and why

8 the difference? (Pause).

9 A. I think in the second I was just sort of saying that we

10 did not make any agreement on the price of replica

11 shirts while I was present at David Hughes's, and

12 I would not be a party to any price-fixing.

13 As I said, I did not know whether Mike Ashley and

14 David Hughes continued the meeting inside the house.

15 MR COLGATE: Just to help me, did you discuss your witness

16 statement with Mr Sharpe?

17 A. Did I discuss the first one or the second one?

18 MR COLGATE: The first one.

19 A. I will have read his first witness statement and he will

20 have read mine. I think that is normal, after you have

21 done it and sent it. We had no secrets in JJB, so

22 obviously our information that we had put down I think

23 would be read by other people. I think that probably

24 would be the case in every company.

25 MR COLGATE: Before or after they were signed?

1 A. After they were signed.

2 MR COLGATE: Not before?

3 A. Oh, no. You have to sign and say this is how I saw it  
4 at the time.

5 MR COLGATE: So there was no discussion between you and  
6 Mr Sharpe about your witness statement in terms of what  
7 you were each saying before they were signed?

8 A. No, we both put down how we saw the meeting. Are you  
9 talking about the meeting of the 8th?

10 MR COLGATE: Yes.

11 A. We would both put down -- and I think it is clear from  
12 what Duncan Sharpe says that there are differences  
13 between his statement and mine. We would put down what  
14 we both felt to be the truth, we would sign them,  
15 they were submitted, and obviously we had access to ours  
16 and other people's statements.

17 MR COLGATE: Were they drafted by the same lawyer?

18 A. They were not drafted by a lawyer, they were drafted  
19 entirely by ourselves on a dictaphone and typed up in  
20 the office. We did not use a lawyer to do those.

21 MR COLGATE: In that case, do you mind if I ask you to stay  
22 at 429, paragraph 29, and go to Mr Sharpe's statement,  
23 which is at 394.

24 On your statement at 429 at paragraph 28 there is  
25 a paragraph there which I am sure you can read?

1 A. Yes.

2 MR COLGATE: If you then go to Mr Sharpe there is a very  
3 similar paragraph at 30, page 399.

4 It just struck me as being slightly odd that you and  
5 Mr Sharpe have used almost exactly the same words, and  
6 I just wondered if there was a reason for that.

7 A. The reason I think, reading that, would be that we are  
8 both putting it down as we saw it.

9 MR COLGATE: Almost exactly the same words.

10 A. If we both sort of get there and are shown round  
11 the house, all we can put down is the facts that we saw.  
12 There are differences in there slightly, but I see what  
13 you mean, and there are. To me that means that we both  
14 made separate statements and obviously we both feel that  
15 what we said is the truth.

16 MR COLGATE: You can see why I am asking the question.

17 A. Yes, I can see. I would imagine that if two people went  
18 somewhere and were asked to make a statement that  
19 the statement would be almost identical.

20 MR COLGATE: Okay. Can I finally touch on the board  
21 meeting, if I may. I know it is going over ground again  
22 and I am sorry to take your time.

23 Clearly as chairman of the business for a long time,  
24 I think from what I know of you that you would regard  
25 JJB as your prime importance, responsibility, a business

1           that you had built up over many, many years and you  
2           regard it as yours?

3    A.   Yes, absolutely.

4    MR COLGATE:  I find it odd, both from a business and  
5           commercial point of view, that as chairman if you had  
6           felt that you had done nothing wrong at that meeting why  
7           your record was not minuted, your record of the meeting,  
8           your recollection was not minuted.

9    A.   I knew that I had done something wrong, I had not fixed  
10          the price but I had been asked to what I thought was  
11          an illegal meeting.  I do not think there is any  
12          question, it was an attempt to fix prices.  I do not  
13          think that has ever, ever been disputed.

14                I came back and reported to the board, and I thought  
15                in the interests of JJB and the law, I must report this  
16                to a full board meeting.

17                Had we taken David Beaver's advice and said,  
18                "Chairman, minute that", because that is unlawful, what  
19                someone has asked you to do.  Had we minuted that there  
20                and then I think these questions now would never have  
21                been asked.  Had Roger Lane-Smith minuted that in his  
22                day book in his office, which he did say to me that he  
23                would do, and he has written that he was asked to do it,  
24                and we all assumed quite wrongly that Roger had done it  
25                and put the minute down.



1           But I thought it was important that we do minute it  
2           somewhere. David Beaver was insistent that we minute it  
3           in the JJB book. I was aware that I had been approached  
4           to break the law. I knew that David Hughes was wrong  
5           and if anything came of it it could be used in evidence  
6           against him.

7           I asked the board if they would consider that and  
8           consider that I had not agreed and that there was no  
9           deal done; consequently David Hughes had not broken  
10          the law and would we minute it outside of the main JJB  
11          board meeting.

12          Wrong to do it at the time, it should have been  
13          minuted there and then and then these questions would  
14          never have been asked because it was there. But what  
15          I do like to feel is that I did come back, I did report  
16          it and bring it to the attention of all of the people on  
17          the board, including three very senior people in the  
18          City, non-executives, and they all agree that this was  
19          reported by me and I think I did the right thing 99 per  
20          cent. I accept what you say that it should have been  
21          minuted in JJB's books, I will accept that now.

22   MR COLGATE: What I would like clarification on is if that  
23                was the discussion at the board meeting why were you not  
24                more specific in your first witness statement?

25   A. Whereabouts in my first statement?

1 MR COLGATE: In relation to what you have just said.

2 A. In my first witness statement did I not mention that  
3 I had reported it?

4 MR COLGATE: No, you did. But you use words -- I am just  
5 going to find it for you. It is page 429, paragraph 31.  
6 I think it is about the third sentence, Mr Whelan.

7 A. Yes, I reported the meeting with David Hughes at  
8 the very next board meeting.

9 MR COLGATE: You are now quite explicit to us about where  
10 you had been, the purpose of that meeting, and that you  
11 reported all of that to the board meeting.

12 A. Absolutely.

13 MR COLGATE: My question is: why were you not so explicit  
14 when you drew up your first witness statement in  
15 paragraph 31.

16 A. I was probably thinking at that time that  
17 Mr Roger Lane-Smith had minuted that in the daybook in  
18 the office and when this was produced it would come  
19 through and absolutely clear me that I was actually  
20 telling the truth in this statement.

21 At that particular time I may not have known that  
22 Roger Lane-Smith had not minuted that in his daybook in  
23 his office.

24 MR COLGATE: It is just that Mr Beaver says in his witness  
25 statement that in the end it was agreed that

1 Mr Lane-Smith would do it in order to have legal  
2 privilege.

3 A. I do not understand legal privilege, sir.

4 THE PRESIDENT: You are not the only one, I think!

5 MR COLGATE: I think it is to afford some protection when  
6 legal advice is given. But that does again put  
7 a slightly different slant on why it was not minuted.

8 A. It should have been minuted. It should have been. One  
9 of our non-execs was given a specific instruction  
10 to minute it and he failed to do so. He has sent  
11 the letter and I think I have seen it, where he  
12 apologises and acknowledges that he was asked  
13 specifically to minute that in his daybook in the office  
14 in Manchester.

15 I could have said: minute it in the JJB book,  
16 I agree. Wrong not to do it. Today you only learn  
17 those things. But I did take all reasonable steps to  
18 ensure that I had been approached to break the law and I  
19 had refused, and I thought that I had taken the  
20 appropriate steps to sort of confirm anything going  
21 forward that I had taken the necessary steps to report  
22 it.

23 MR COLGATE: I have no further questions. Thank you.

24 MR MORRIS: Sir, I hesitate to rise at this late hour but  
25 there is one matter arising out of Mr Colgate's

1 questions which I would like to be put through  
2 the tribunal, if necessary. It may be a matter we would  
3 like to make in submission and I would not like it to be  
4 said that the matter had not been raised.

5 It goes to the point about how these statements were  
6 prepared and what the designation at the bottom of  
7 the statements denotes. It is a matter that  
8 the tribunal could ask -- I do not know how you wish to  
9 proceed but I do not want it to be said that it was not  
10 put to the witness.

11 THE PRESIDENT: I think you should put the question,  
12 Mr Morris, if it is just one question.

13 MR MORRIS: It is just one question.

14 THE PRESIDENT: Yes, then put it to the witness.

15 Further cross-examination by MR MORRIS

16 Q. Would you go back to your second witness statement at  
17 page 437, and at the same time put your finger in page  
18 394 which is Duncan Sharpe's statement. Could  
19 the assistant also get out file 1 at page 156 just so  
20 we have it open.

21 I am directing your attention to the bottom  
22 left-hand corner of that where there is the designation  
23 MR/RS/106296 and then the numbers continue.

24 A. What page is that?

25 Q. Page 437 in the bottom left-hand corner, below the line.

1 All the hieroglyphics at the bottom. It says  
2 MR/RS/106296. And if you go back to Mr Sharpe's  
3 statement at 394 you will see a similar designation  
4 without MR but with RS/106296, the same number.

5 What I am going to suggest to you is that that is  
6 a solicitor's reference number?

7 A. It is certainly not mine.

8 Q. It is not yours?

9 A. No.

10 Q. And therefore the typist would be the solicitor, it  
11 would be the solicitor who had prepared this document,  
12 or it might be the case?

13 A. I think what happened here with witness statements is  
14 that we were asked to give a personal statement that  
15 I would use a dictaphone and our typist would type it  
16 up, and then we would fax it or post it to the solicitor  
17 representing us. I think that is what happened.

18 Q. And you do not recognise that number?

19 A. No.

20 Q. I am going to suggest that MR might be Martin Rees, your  
21 solicitor. If you go to 156 in bundle 1, Mr Beaver's  
22 statement, with a similar designation, you will see  
23 KV/KB/10296.

24 What I am suggesting there is that that might be  
25 a reference to Kate Vernon who is also at DLA. You do

1           not know?

2    A.   I think you are going to have to ask DLA about that.

3    MR MORRIS:  Thank you.  That was the question, and I am very

4           grateful, sir.

5    THE PRESIDENT:  We have no further questions, I think

6           we will stop there for the night now.

7    LORD GRABINER:  Well, I do not have any re-examination.

8           I just want to make one point in relation to a number of

9           questions that have been raised by Mr Colgate, and that

10          is this, that I am sure he does appreciate the fact that

11          it is common ground in this case that this witness

12          reported the facts back to the board meeting and that

13          Mr Lane-Smith who is the senior partner of DLA who

14          happens also to be a director of JJB by coincidence, has

15          made a witness statement about those facts, and

16          the contents of that statement are not challenged in

17          these proceedings.

18                 That is all I wanted to say about that.

19    MR COLGATE:  Thank you.

20    MR WEST-KNIGHTS:  Because it is ten to five -- are you going

21          to release Mr Whelan first?

22    THE PRESIDENT:  Yes, I think we can release Mr Whelan.

23          Thank you very much indeed, Mr Whelan.  I am sorry

24          you have had such a long day.

25    A.   Not at all, not a problem.

1 (4.50 pm)

2 (The witness withdrew)

3 MR WEST-KNIGHTS: Sir, first, I have never heard that very  
4 large number before as to what Nike paid MU for  
5 the sponsorship agreement. I apprehend that it could go  
6 into the transcript as "a huge sum".

7 THE PRESIDENT: Yes.

8 MR WEST-KNIGHTS: I do not know if the transcripts that  
9 you gentlemen are working off are paginated in the same  
10 way as the ones we are working off, but if we could  
11 liaise with the referendaire to find out, please, as  
12 otherwise madness will break out as we are proposing to  
13 put in a chronology as part of our closing which will  
14 have some of the references to the evidence.

15 THE PRESIDENT: Thank you.

16 MR WEST-KNIGHTS: Third, timetable -- we can no doubt come  
17 back to that, all of us.

18 No sign of the top five plus Manchester United  
19 information for the moment, if I can prod on that.

20 Last, I know where in the Umbro documents is  
21 the answer to your question about the VAT off. I do not  
22 want to trample on anybody's territory, I will say  
23 nothing more about it unless asked.

24 There is a source for that information in  
25 the documents before the tribunal.

1 THE PRESIDENT: If you have it handy, Mr West-Knights, for  
2 my note can I have it? Do you mind, Mr Morris?

3 MR MORRIS: I can also assist as well.

4 MR WEST-KNIGHTS: In the Umbro monthly management report for  
5 March, which will be found at E1/22, which is part 1 of  
6 E1, at a page that I cannot immediately grab there is  
7 a reference that during the course of the month JJB  
8 ended its VAT off promotion. So that is the report made  
9 in April in respect of the month of March.

10 If, as in today, we had all forgotten no doubt but  
11 there is a budget going on today -- and I imagine that  
12 the budget was on the same day last year, 17th March,  
13 St Patrick's Day.

14 THE PRESIDENT: Thank you.

15 MR MORRIS: Sir, on that subject, there is a further  
16 reference you may want to look at: the cross-examination  
17 bundle at tab 7, the sixth page of that tab; it is under  
18 the heading "Gross Margin". I am not going to read it  
19 out. I was going to take the witness to it but he  
20 agreed with the proposition that I did not bother. That  
21 will fill you in about discount campaigns a bit more.

22 It is tab 7, the sixth page, page 3, at the bottom  
23 of this section of that document.

24 THE PRESIDENT: Tab 7 of the minutes of the ...

25 MR MORRIS: Tab 7 is some board minutes, and there are some



1 papers attached to the board minutes, and that is why  
2 the numeration within that document is not --

3 THE PRESIDENT: Yes.

4 MR MORRIS: It is document that starts 3, "Turnover" at  
5 the top.

6 May draw to your attention both the paragraph 3  
7 there that refers to the pay your VAT campaign issue and  
8 also paragraph 4, and I am not going to read it out,  
9 sir, it is the paragraph that begins:

10 "Let your ..."

11 THE PRESIDENT: That gives a different date from the date  
12 that Mr West-Knights just gave me.

13 MR MORRIS: No, sir, if you read it just a little bit, it  
14 referred to the VAT campaign uses the word "was followed  
15 by".

16 THE PRESIDENT: Sorry?

17 MR MORRIS: Unless anybody has any objection to my reading  
18 it out I will read it.

19 The reason I am doing this is that I am very  
20 conscious that JJB wanted to make sure that  
21 their minutes were not --

22 THE PRESIDENT: I understand the point.

23 MR MORRIS: I am grateful, Sir.

24 MR WEST-KNIGHTS: So we do not have this?

25 MR MORRIS: No, you have not.

1 THE PRESIDENT: What time would you all like to start  
2 tomorrow?  
3 MR WEST-KNIGHTS: 10.30.  
4 THE PRESIDENT: 10.30.  
5 MR MORRIS: Sorry, is David Hughes available all tomorrow?  
6 MR WEST-KNIGHTS: He is coming down to London.  
7 THE PRESIDENT: What is the programme for tomorrow?  
8 Mr Russell next?  
9 MR MORRIS: Yes.  
10 MR WEST-KNIGHTS: Sir, we will make Mr Hughes available --  
11 THE PRESIDENT: It look as if we will get on to him  
12 tomorrow.  
13 MR WEST-KNIGHTS: I sincerely hope so.  
14 THE PRESIDENT: I will listen to my applications or  
15 suggestions.  
16 MR WEST-KNIGHTS: Our intention is to help the tribunal and  
17 get Mr Hughes in and out of the box.  
18 THE PRESIDENT: Thank you very much indeed. 10.30 tomorrow.  
19 ( 4.55 pm)  
20 (The hearing adjourned until 10.30 am the following day)  
21  
22  
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