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1 Thursday, 18th March 2004

2 (10.30 am)

3 THE PRESIDENT: Good morning, Mr West-Knights.

4 MR WEST-KNIGHTS: May it please you, sir. At the close of  
5 business yesterday I raised with you the question of  
6 the timetable and any application I might have to make  
7 in respect of Mr Hughes.

8 THE PRESIDENT: Yes.

9 MR WEST-KNIGHTS: Now, the position that we have reached is  
10 that the timetable which was published by the OFT over  
11 the weekend has fallen by the wayside because instead of  
12 having Messrs Preston and Bryant on Tuesday afternoon  
13 we had the application in respect of 4th March; and  
14 instead of having Mr Whelan in the morning of Wednesday  
15 and Mr Russell in the afternoon of Wednesday, yesterday,  
16 we had Mr Whelan. I have had a word with my learned  
17 friend Mr Morris who anticipates being most of the day  
18 with Mr Russell, or three-quarters of the day.

19 That inevitably means as I understand it that if  
20 Mr Hughes were to go into the witness-box this afternoon  
21 (a) it would be a late start, and (b) it would go over  
22 to tomorrow.

23 His position is that on the basis of this timetable  
24 he has made arrangements to be here today and he is here  
25 today.

1           The application which I have, and it may have some  
2           attractions for the tribunal forensically, is that  
3           Mr Hughes be interposed now.

4           The disadvantage, plainly, is that you do not get  
5           the continuous run of JJB evidence; the advantage is  
6           that you hear Mr Hughes on "helicopter day" within  
7           listening memory of having heard Mr Whelan on the same  
8           subject.

9   THE PRESIDENT:   Yes.

10   MR WEST-KNIGHTS:  But the bottom line is that Mr Hughes  
11           tells me that whilst he would be prepared to be here, as  
12           it were, first thing tomorrow to start his evidence he  
13           would infinitely prefer, he having come down from  
14           the north-west today and having made arrangements to be  
15           heard today, to give his evidence today and be out  
16           today.

17           On the timetable as it stood, the office anticipated  
18           his being only the morning.

19   THE PRESIDENT:  That was over-optimistic.

20   MR WEST-KNIGHTS:  I have said nothing beyond reporting  
21           the facts.

22           But on any view it would be helpful, deeply helpful,  
23           to him and to us if he could give evidence now that he  
24           is here on the basis, whether it was over-optimistic or  
25           not, that that was plan A.

1 LORD GRABINER: I am quite content with that. I have some  
2 questions for Mr Hughes. I am prepared to deal with his  
3 evidence. I was anticipating over the weekend that  
4 I would be questioning him today, and I am ready to do  
5 so. I would not have any difficulty with that  
6 suggestion.

7 THE PRESIDENT: Right. Yes, Mr Morris.

8 MR MORRIS: Sir, we would resist the proposal. This is  
9 something I did indicate last night to junior counsel  
10 for Allsports what our likely position was.

11 We anticipate that Mr Russell will be about three  
12 hours, maybe a little bit longer. We would then be in  
13 a position either to go to Mr Hughes or to Mr Guest,  
14 whichever was more convenient.

15 THE PRESIDENT: Three hours would take us to ...

16 MR WEST-KNIGHTS: Quarter to three.

17 THE PRESIDENT: After lunch.

18 MR MORRIS: Yes, after lunch.

19 THE PRESIDENT: But you would reach Mr Hughes today.

20 MR MORRIS: We would start Mr Hughes today. Then we would  
21 go over and finish Mr Hughes and Mr Guest tomorrow.

22 I do not really -- it is pointless going back over  
23 history. We were a little bit longer with Mr Whelan  
24 than we thought. A lot of people have been a lot  
25 longer. These things take longer, sir, as you are

1           aware.

2           A lot of witnesses have been inconvenienced, there  
3           has been a lot of juggling, Mr Whelan was put back by  
4           a day, by a further day. In terms of our  
5           cross-examination Mr Turner will be cross-examining  
6           Mr Russell. From our preparation point of view we would  
7           much prefer to go with the order that is there.

8           Everything has slipped, we perfectly understand  
9           that. We understand that Mr Hughes has come down today,  
10          Mr Ronnie was delayed, Mr Russell has been delayed. We  
11          think that the order of evidence should carry on through  
12          the parties as was originally planned. We are not far  
13          behind this week and we do really submit that the most  
14          appropriate way is to carry on with Mr Russell and to  
15          start with Mr Hughes or, if Allsports prefer, to start  
16          with Mr Guest this afternoon rather than Mr Hughes. We  
17          do not mind; we are prepared to do either.

18          Sir, we think the flow -- we have had the JJB  
19          evidence; matters follow on from what Mr Whelan said in  
20          the witness-box would flow most naturally into  
21          Mr Russell's evidence.

22   THE PRESIDENT: Yes.

23   MR WEST-KNIGHTS: I do not detect any reason for not putting  
24          Mr Hughes in, except the general point that Mr Whelan's  
25          evidence might flow into Mr Russell's evidence.

1           A fortiori I would have thought that from the tribunal's  
2           point of view, Mr Whelan's evidence is going to flow  
3           forward into Mr Hughes's evidence, but there it is.

4           Beyond the fact that there is some kind of curious  
5           tit-for-tat here that other witnesses have been messed  
6           about so it does not frightfully matter, I detect no  
7           reasoning in anything that Mr Morris has said. We are  
8           in your hands.

9           It would be very unfortunate if Mr Hughes ended up  
10          kicking his heels around today, wherever it were. He is  
11          away from home, you know a little bit about his  
12          condition and it would be unfortunate if he were kept  
13          here longer than was necessary, particularly, if I may  
14          say so, if he were either to go into the witness-box and  
15          have a half a start today, or have to kick his heels all  
16          day here and be here also for most of the day tomorrow  
17          as it would appear.

18          I hear my learned friend saying that we will do  
19          Hughes and Guest tomorrow, but I am bound to say that  
20          that has a smack of optimism too.

21          I am plainly in your hands, sir, but I am availing  
22          myself of the indication which you gave yesterday, and I  
23          am very grateful to you for hearing it.

24          (Pause)

25

1 RULING

2 THE PRESIDENT: Mr West-Knights, I am very sorry about  
3 the situation that has arisen, but I think that we,  
4 the tribunal, would prefer to go on with Mr Russell this  
5 morning. That is something that we are geared up to do,  
6 something we are prepared to do, that is how it was left  
7 last night. I hope we can get through Mr Russell in  
8 time to get onto Mr Hughes today and give him a good, as  
9 it were, innings in the latter half of the day.

10 I am very sorry, Mr Hughes, everybody has been  
11 inconvenienced to some extent. And we just have to take  
12 difficult decisions from time to time. There it is.

13 MR WEST-KNIGHTS: I have no further application, thank you,  
14 sir.

15 THE PRESIDENT: Thank you very much.

16 LORD GRABINER: If I may, I will call Mr Russell, sir.

17 THE PRESIDENT: Thank you, Lord Grabiner.

18 (10.40 am)

19 MR COLGATE: Lord Grabiner, when you start could you just  
20 clarify, Mr Russell's first statement does not appear in  
21 our version to have a last page, neither does the second  
22 statement, but his third statement appears to have  
23 a proper ending. Would you mind just clarifying that,  
24 please?

25 LORD GRABINER: Absolutely.

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MR COLIN RUSSELL (sworn)

Examination-in-chief by LORD GRABINER

Q. Mr Russell, you are Colin Russell?

A. Yes.

Q. In these proceedings you have made four statements?

A. Yes, that is correct.

Q. And you have heard what Mr Colgate said just a moment ago, so taking his point into account I wonder if we can just have a look across at those statements.

First of all, if you go to the first statement, at page 284. They are all in file 3. My version here is a 12-page document, ending at page 295. Every page of what I have bears your signature?

A. Yes.

Q. Is that your signature?

A. Yes, it is.

Q. Are the contents of that statement true?

A. Yes.

Q. Now just pause there. Is paragraph 59 the last paragraph of your statement?

A. Yes.

Q. I do not know what you have there, sir, on that one.

MR COLGATE: I have 295 and then Exhibit 1.

LORD GRABINER: Yes, that is what I have.

THE PRESIDENT: That is what it is?

1 LORD GRABINER: I think the answer is that that is what it  
2 is.

3 THE PRESIDENT: It sort of hangs in mid-air a bit.

4 LORD GRABINER: You mean the content or the documentation?

5 THE PRESIDENT: It is not immediately apparent that that is  
6 the end.

7 LORD GRABINER: I see, because he does not say "with love",  
8 or something like that? No, I understand, forgive my  
9 flippancy.

10 I just want to double-check with those instructing  
11 me.

12 MR COLGATE: The point is actually made clear if you look at  
13 383.

14 LORD GRABINER: Is it because there is not a Statement of  
15 Truth; is that the point?

16 MR COLGATE: No, I just wanted to be clear that there was  
17 not a page missing before the Statement of Truth.

18 LORD GRABINER: Let me just clarify the position. (Confers).  
19 What I am instructed is that the corporate people at  
20 DLA, my instructing solicitors, have that style of  
21 presentation in the document, a signature at the end of  
22 each page. But that is the totality of the statement.

23 MR COLGATE: Thank you.

24 LORD GRABINER: Could I go to the next one, Mr Russell; it  
25 is at page 370?



1 THE PRESIDENT: I am sorry, Lord Grabiner, when we see 158  
2 on that first statement, that is 15/8/02, is it?  
3 LORD GRABINER: Yes, 15/8.  
4 THE PRESIDENT: It does not actually give a year.  
5 LORD GRABINER: It is 2002. You get that from the index,  
6 but you are quite right it is not on the ... it may be  
7 that the corporate department at DLA should alter their  
8 arrangements, but it should have said 2002, because that  
9 is when it was made.  
10 THE PRESIDENT: Yes.  
11 LORD GRABINER: The second statement, as I say, is at  
12 page 370, Mr Russell.  
13 A. Yes.  
14 Q. This has a sort of different form, this was just pointed  
15 out. It runs through continuously to page 377?  
16 A. Yes.  
17 Q. Is that the totality of the statement?  
18 A. Yes.  
19 Q. Is that your signature at the end of the statement?  
20 A. Yes.  
21 Q. And are the contents of it true?  
22 A. Yes.  
23 Q. And the third statement is at page 380, into the next  
24 tab. That follows the format of the second statement  
25 and it runs through to page 383. Is that your signature

1           on page 383?

2    A.   Yes.

3    Q.   And are the contents of that statement true?

4    A.   Yes.

5    Q.   And the fourth statement is a couple of pages on, at

6           page 385A.  That is three pages long.  Is that your

7           signature at 385C?

8    A.   Yes.

9    Q.   And are the contents of that statement true?

10   A.   Yes.

11   Q.   I want to ask you about one matter arising out of some

12           questioning to Mr Whelan yesterday.  What I would like

13           to know from you is the mechanics or the process by way

14           these statements were produced.  That is all I am

15           interested in.

16   A.   Okay.

17   Q.   I do not mind you saying if there were people at

18           the solicitors that you spoke to and identifying who

19           they were and when, but I am only interested in

20           the mechanics.

21           I wonder if you can tell the tribunal when

22           they were.

23   A.   Yes.  Initially, when the investigation started,

24           the Manchester office of DLA sent a solicitor over

25           called Steven Licorice.  Steven went through with

1           myself, Mr Whelan and Mr Sharpe, took notes from each of  
2           us individually about our reactions to our findings on  
3           the Rule 14 notice --

4   Q.   Forgive me, when you say individually do you mean  
5           separately or he interviewed you together?

6   A.   No, he interviewed us separately.  He took a lot of  
7           notes.  Steven went away and prepared a witness  
8           statement in typed form and sent it back over to each of  
9           us individually.  We read those witness statements.  We  
10          then made any alterations we felt -- we were told all  
11          the way through that we could say anything we wanted,  
12          change anything we wanted and we had the final decision.

13                 We did that, finalised the final draft, signed it  
14                 and then obviously returned it to our solicitors.

15   THE PRESIDENT:  We are talking about the statement of  
16           15th August?

17   A.   Yes.  After that, the London office of DLA became  
18           involved, led by Martin Rees and Kate Vernon.  The same  
19           thing happened: Martin came up to Wigan and interviewed  
20           us separately.  We gave our versions -- I do not want to  
21           get confused here because obviously Mr Sharpe passed  
22           away unfortunately in October 2002.  I do not think  
23           he was involved in the second tranche of statements.

24                 Myself and Mr Whelan were.  We gave our evidence and  
25                 set out as what we believed was true, looking from other

1 the documents, and again, set down our own statements  
2 and signed them off.

3 And the same thing with the third and fourth  
4 statements.

5 THE PRESIDENT: So this is you sitting with Mr Rees?

6 A. Not always sitting with Mr Rees. In the initial sense,  
7 yes, but a lot of it was done by emails and phone calls  
8 with us all the way through.

9 LORD GRABINER: Was there any time when you drafted anything  
10 yourself, apart from making amendments to something that  
11 had been drafted for you.

12 A. In the draft, no, but I would tinker with it myself and  
13 play around with the words, what I wanted to say, and  
14 change it.

15 I know that when we got to the appeal stage in  
16 August 2003, Mr Whelan was working with his dictaphone  
17 and was producing stuff which really was just to help  
18 him gain his thoughts to put down what he wanted to say  
19 in his statements. He would come and show me that and  
20 say to me: is there anything you can see in there that  
21 you think is okay or not okay? Just have a look at it  
22 and see what you think. Mr Whelan was doing that then  
23 and I think that is possibly why he got confused  
24 yesterday in telling you that he had actually drafted  
25 his own statements. To my recollection, he never

1 drafted his own statements; they were all done in  
2 conjunction with the people from DLA.

3 LORD GRABINER: May I say on that point sir, that we are  
4 getting out an exact explanation as to the process that  
5 was undertaken in relation to Mr Whelan. I have myself  
6 seen this morning -- but I have not yet studied --  
7 a long document which was obviously produced by  
8 Mr Whelan himself in, I think, 2003.

9 THE PRESIDENT: A preparatory document of some kind?

10 LORD GRABINER: Yes, exactly. But not in relation to  
11 the original statement. What I am going to do at  
12 the appropriate moment, when I understand what the full  
13 position is, is to explain it.

14 If necessary we can provide that information in  
15 the form of a statement from my solicitors or you may be  
16 content to take it from me.

17 Whatever turns out to be the position, we will  
18 provide you with a full explanation as to what happened.

19 THE PRESIDENT: Thank you.

20 LORD GRABINER: Is there anything else you want to say about  
21 the preparation procedure in relation to the statements?

22 A. No. As far as I was concerned I was told all the way  
23 through personally that I always had the final say, it  
24 was my statement and anything I wanted to say I could  
25 say. They did not put any bars on me changing anything.

1 I did whatever I wanted to do.

2 LORD GRABINER: Thank you very much.

3 (10.50 am)

4 THE PRESIDENT: Mr Turner.

5 MR TURNER: Do you have a cross-examination bundle for

6 Mr Russell. If during the cross-examination the

7 tribunal and the parties could have that out, together

8 with witness bundle which contains Mr Russell's

9 statements, those will be the principal sources.

10 Cross-examination by MR TURNER

11 Q. Mr Russell, perhaps if we could begin, if you would just

12 open your first witness statement and just have it

13 ready.

14 THE PRESIDENT: This is page 284?

15 MR TURNER: It is page 284.

16 A. Yes.

17 Q. Mr Russell, I think you first joined JJB some 20 years

18 ago?

19 A. Yes, I think it was as long as that, yes.

20 Q. A long time?

21 A. Yes.

22 Q. And after a seven years' spell with the Admiral group in

23 1989, you came back to JJB in 1996?

24 A. That is correct, yes.

25 Q. And it was in 1999 that you became an associate

1 director?

2 A. Yes, that is correct.

3 Q. And you had overall responsibility from then for replica  
4 kit?

5 A. Yes.

6 Q. In the year 2000, as a piece of background information,  
7 I think the replica kit accounted for about 8-9 per cent  
8 of JJB's business turnover?

9 A. There or thereabouts, yes.

10 Q. For the record, there is a reference to that in tab 2 of  
11 the cross-examination bundle in the chairman's  
12 statement. In the company interim report.

13 Now, you have not only submitted four witness  
14 statements in the case, you also gave a slide  
15 presentation to the Office in August 2002 at the oral  
16 representations meeting?

17 A. Yes.

18 Q. And that was to do with JJB's pricing policy?

19 A. Yes.

20 Q. You were closely involved in the OFT investigation on  
21 the part of JJB?

22 A. Yes.

23 Q. In your second statement I see that you say at  
24 paragraph 2 that you have read the representations made  
25 by other parties to the investigation and in particular

1           you read the Umbro representations; do you see that?

2    A.   Yes.

3    Q.   Which other representations did you read?

4    A.   I read quite a lot of representations.  I certainly read

5           the latter ones by Mr Ashley.  I read quite a few of

6           them, yes.

7    Q.   Did you read the FA's?

8    A.   I read the FA's in terms of statements; I might not have

9           read all the FA's -- there was a lot of information at

10           the very back of the FA's, some very detailed documents;

11           some of them I did not read, no.

12   Q.   You also read, you say, the witness statements made by

13           Chris Ronnie, Phil Fellone, Martin Prothero, Simon Marsh

14           and Peter McGuigan?

15   A.   Yes.

16   Q.   And presumably you have commented on them where you felt

17           this was appropriate for your own statements?

18   A.   Yes.

19   Q.   To complete the picture, have you read the OFT's

20           decision --

21   A.   Yes.

22   Q.   -- or any bits of it?

23   A.   Yes.

24   Q.   You read it from cover to cover?

25   A.   Yes.



1 Q. Now, the first area that I would like to cover is  
2 the Sportsetail/England Direct agreement. This is  
3 an aspect of the case that has not yet featured much in  
4 the hearing, but its time has finally come.

5 Could you turn to your first statement on that and  
6 pick up the theme at paragraph 35, on page 290?

7 A. Yes.

8 Q. Just looking at paragraph 35, what you are doing there  
9 is referring to the FA's plans to set up an internet  
10 site to retail England replica direct to the public?

11 A. Yes.

12 Q. And they brought in a subsidiary of Haye & Robertson  
13 called Sportsetail to do that?

14 A. Yes.

15 Q. Can you go to paragraph 37 and have a look at that.  
16 What it says is that Martin Prothero of Umbro rang you  
17 in about October or November of 1999, and he explained  
18 that Umbro were concerned about Hay & Robertson's  
19 involvement in Sportsetail and the fact that Umbro would  
20 be seen to supply them direct because Haye & Robertson  
21 owned Admiral, which was a competitor of Umbro.

22 Moving on to paragraph 38, the proposed solution to  
23 that difficulty of Umbro's was that JJB could step in as  
24 an intermediary and supply Sportsetail.

25 Do you see that?

1 A. Yes.

2 Q. So your evidence was that this was purely an Umbro-based  
3 worry, and that it had nothing to do with JJB's  
4 concerns?

5 A. Yes, it was an Umbro worry, yes.

6 Q. I would like to suggest to you that that is wrong; that  
7 the documents and the other witnesses all tell  
8 a different story.

9 I would like to suggest to you that the real  
10 issue was ultimately JJB's, and JJB's issue was that it  
11 wished to avoid being undercut on price by a competitor.  
12 Do you understand?

13 A. Yes.

14 Q. Can we just test our own version first in terms of  
15 logic. You say that Umbro was worried about being seen  
16 to supply a subsidiary of a competitor brand?

17 A. Yes.

18 Q. Now that could not have just been social embarrassment.  
19 If it was a business concern it would have had business  
20 ramifications for Umbro; yes?

21 A. Yes.

22 Q. Now, what would those business ramifications have been  
23 if Umbro supplied Sportsetail directly?

24 A. I think to understand this, at the time, in 1999,  
25 we were what was called the official retailer of

1 England. We had made that agreement between Umbro and  
2 the FA, and it meant that we could sell certain products  
3 in our stores designed by Umbro, not the kit itself;  
4 that was sold by all retailers, but they would do  
5 specific products like pique shirts or shorts or sweat  
6 tops that were exclusively sold through our official  
7 retail outlets, and these were designated areas within  
8 over 300 stores in JJB.

9 The FA liked that idea because it gave them a lot of  
10 coverage across the country and put England on  
11 the High Street in a big way.

12 At that time in 1999 the FA had also decided to hand  
13 out a licence for the three lions, the actual badge that  
14 you see the England players wear, to a company called  
15 Haye & Robertson who were allowed to produce products  
16 with that badge on in what they called a more leisure  
17 wear style.

18 So the answer to your question, why Umbro were  
19 clearly unhappy about having to supply Hay & Robertson,  
20 in my opinion was because -- and also from what  
21 Martin Prothero did speak to me on phone and tell me --  
22 was that because Haye & Robertson had the right to  
23 produce three license badge products, Umbro saw them as  
24 a direct competitor in a certain part of their market,  
25 and that is why Umbro were not happy with it.

1           They had been asked by the FA to do this, and  
2           they were looking for a solution in the way that they  
3           could supply Sportsetail, and they did not want to be  
4           seen to be doing it themselves.

5   THE PRESIDENT:  What sort of products did Haye~& Robertson  
6           put the badge on?

7   A.  All sorts; mainly clothing, but you would have anything  
8           from T-shirts, pique shirts, sweat shirts, rain jackets.  
9           Allsorts and manners of products.  All which would have  
10           a direct competition in terms of the three lion badge.

11  MR TURNER:  Now, can I just return then to the precise  
12           question I asked?  What would the business ramifications  
13           have been if Umbro did supply Sportsetail directly?

14  A.  I think Umbro felt it may diminish certain sales of  
15           theirs in certain product categories, because it  
16           depended where Haye & Robertson were going to position  
17           their products in the marketplace.

18  Q.  Umbro did agree to supply Sportsetail directly, rapidly  
19           once you had dropped out of the distribution loop, did  
20           it not?

21  A.  Correct.

22  Q.  Nothing from Umbro's point of view had changed, had it?

23  A.  No, I think something had changed:  Umbro could not be  
24           seen to use a third party, ie JJB, to do it; they had to  
25           go ahead and do it themselves with the FA.

1 Q. When you say Umbro could not be seen to be using a third  
2 party, could you elaborate on that?

3 A. What I meant was that, basically, it was clear to me  
4 that what Umbro wanted to do was not be seen themselves  
5 by the FA to them to supply direct at that time in late  
6 1999. Clearly once we said: we do not want to do this,  
7 after looking at the proposal we said no, and then they  
8 supplied direct, you are quite right.

9 Q. And when they did supply direct, that did not cause any  
10 difficulties for Umbro, did it?

11 A. I would say it probably did. They were very, very keen  
12 not to have done this. This is what they told me. And  
13 I think that they had to sort of basically realise in  
14 the end that because the FA were putting them under  
15 pressure to get this thing up and running, they thought:  
16 we have to go ahead with this and get on with it. So  
17 they did get on with it.

18 Q. You say that they said -- are we talking about what  
19 Martin Prothero said to you?

20 A. Yes, Martin Prothero.

21 Q. Let me turn to the other side of the equation, you say  
22 at paragraph 38 that the proposal that JJB should act as  
23 the supplier to Sportsetail seemed to you to offer  
24 little to JJB.

25 Now, I would like to suggest to you that JJB would

1 get a very obvious benefit, because in principle, it  
2 could control the volume and the price of the wholesale  
3 supplies to a competitor, could it not?

4 A. No.

5 Q. Why not?

6 A. The only reason that we even entered into any  
7 discussions about this is that we were literally -- and  
8 I say it in my statements -- playing lip service to  
9 the FA. The FA are a very important body, and obviously  
10 the England official retailer project is a very  
11 important thing to JJB, it turns over a lot of money for  
12 us.

13 So we, as JJB, throughout the whole of the  
14 discussions really felt that it was not in our manner,  
15 we are a retailer, we retail in over 450 stores now in  
16 the UK and at that time, we were probably retailing in  
17 about 400 stores. It is not our policy normally to try  
18 to work with other parties on things. We actually do  
19 everything ourselves, we are a retailer, that is our  
20 skill. We are not a wholesaler and this was to be  
21 treated as a wholesale operation, and we did not want to  
22 do that.

23 Q. Could I return to my question please Mr Russell? In  
24 principle, by doing this JJB would control the volume  
25 and price of wholesale supplies to a retail competitor,

1           would it not?

2    A.   No.

3    Q.   Why not?  It was the wholesaler to a competitor selling

4           the same products.

5    A.   Because we were never, ever going to enter into any

6           agreement on this subject.

7    Q.   On the contrary, it was at one stage proposed that JJB

8           would step into the breach and become the supplier.  It

9           cannot have been right that you were never, ever going

10           to do it.

11   A.   No, from the start we basically listened, we were

12           courteous, we listened to what the FA had to say.  We

13           went into all the meetings and in the back of our minds

14           we never thought that this was going to get off

15           the ground.

16   Q.   Then may I reframe my question as a matter of principle

17           rather than whether you were actually really going to do

18           it?  Where you going to do it, had you done so, then you

19           would have been in a position to control the volume and

20           price of the supplies to a competitor.  That should be

21           a straightforward answer.

22   A.   I do not think it is straightforward because we really

23           never believed that we were ever going to do this.

24   Q.   We will move on and look at the evidence.

25           Can we start with the first meeting which you had,

1           which you refer to in paragraph 39 of your statement.  
2           If we glance at that we will see that you had a meeting  
3           with Mr Smith then of the FA, Mr Prothero and Mr Sharpe  
4           in late October?  
5    A.   Yes.  
6    Q.   And that after that meeting, Mr Prothero sent you  
7           a letter on 2nd November 1999. I would like you to turn  
8           that up please, you will find it in your  
9           cross-examination bundle at tab 18.  
10   A.   Yes.  
11   Q.   You are familiar with this letter?  
12   A.   Yes, I am, yes.  
13   Q.   Just glancing at it, I would like to look at bits with  
14           you. It is a letter addressed to you?  
15   A.   Yes.  
16   Q.   And we see from the first paragraph that it follows  
17           a telephone conversation with you that morning?  
18   A.   Yes.  
19   Q.   And that Mr Prothero wants to confirm for the purpose of  
20           good order the issues that have been discussed relative  
21           to the meeting that had been held with yourself,  
22           presumably Mr Sharpe, Mr Smith and himself on  
23           21st October; yes?  
24   A.   Yes.  
25   Q.   Now I would like you to drop down to the last-but-one



1 paragraph on that page:

2 "The real issue as I understand it, however, is that  
3 JJB are not happy with Haye & Robertson buying Umbro  
4 products directly from Umbro and wish to be the point of  
5 contact in that regard. I appreciate the debrief,  
6 Colin, and will continue the dialogue once I have  
7 discussed the aforementioned issues with David Smith at  
8 the FA."

9 Now that was plainly Mr Prothero's perception, you  
10 would agree?

11 A. It was Mr Prothero's perception in the letter, but  
12 actually in the actual telephone conversation that is  
13 not the stance that Mr Prothero came from.

14 Q. I see.

15 A. In the telephone conversation that he had with me,  
16 he was explaining to me the difficulties that he had  
17 been placed in as Umbro in having to supply what he  
18 believed to be a direct competitor of theirs on  
19 the three licensed brand, ie Hay & Robertson.

20 Q. How well do you remember that conversation?

21 A. I remember it very well.

22 Q. You do?

23 A. Yes.

24 Q. Why should Mr Prothero have been mistaken about the real  
25 issue following the very recent debrief with you?

1 A. I do not know why Martin Prothero wrote this, I have no  
2 idea why he wrote it like that.

3 Q. But you say it is totally wrong?

4 A. I am saying it is totally wrong, yes.

5 Q. You did not correct the point at the time, yes?

6 A. I did not write back to Mr Prothero, if that is what you  
7 mean.

8 Q. Did you correct it orally?

9 A. No.

10 Q. Looking again at paragraph 39 of your statement for  
11 a moment, what you say there is that you spoke to  
12 Mr Prothero afterwards, and that led to a second letter  
13 on 25th November 1999?

14 A. Yes.

15 Q. Let us read that; it is in the next tab, tab 19. Tell  
16 me when you have it.

17 A. I have it.

18 Q. From Martin again:

19 "Dear Colin. Following the meetings that we have  
20 held over the last few weeks in relation to the FA  
21 direct retail issues and against the backdrop of JJB's  
22 concern about Umbro supplying Haye & Robertson directly,  
23 I would propose the following solution:

24 "1. JJB Sports to supply the FA any Umbro FA  
25 licensed merchandise at wholesale price."

1           Do you see that?

2    A.   Yes.

3    Q.   So there we have again a clear written statement at

4           the time that the concern emanated from you.  Now, you

5           did not correct that either at the time?

6    A.   No.

7    Q.   You do not comment on that letter in your witness

8           statement?

9    A.   No.

10   Q.   Can we then turn to the views of the other people who

11           were involved.  Because as well as Mr Prothero there was

12           (1) Mr Marsh of Umbro?

13   A.   Yes.

14   Q.   And (2) Mr Smith, then of the FA?

15   A.   Yes.

16   Q.   You were aware that Mr Simon Marsh of Umbro said that it

17           was JJB who wanted to supply Sportsetail directly in his

18           witness statement, which you have read?

19   A.   I would like to see that, please.

20   Q.   We can show it to you if you like: it is at paragraph 22

21           of his July statement, which is in file 2.  If my system

22           worked it should also have got into

23           the cross-examination bundle, but we will look at it in

24           file 2.  It should be around about, in file 2, page 192.

25           I will find the tab in the cross-examination later.

1 Paragraph 22, at the top of the page:

2 "JJB was unhappy about the arrangement and had  
3 indicated to Umbro that it wished to supply the product  
4 to Sportsetail rather than supplies going directly from  
5 Umbro."

6 Do you see that?

7 A. Yes, I do.

8 Q. You did not deal with that either in your witness  
9 statement?

10 A. No.

11 Q. Why not? You had read it.

12 A. Because all through this, as I said from the start,  
13 basically JJB were paying lip service to the FA. We did  
14 not ever say that we ... sorry, we did not say that  
15 we were ever going to want to get into this agreement;  
16 we had no problems if Umbro wanted to supply them, we  
17 never objected to that, that was not our problem. It  
18 was Umbro who raised the concerns, Martin Prothero.

19 Q. So you say that you never indicated that you were going  
20 to get even into the distribution part of this  
21 agreement; is that right?

22 A. No. We had discussions along the terms of: how this  
23 could work, how it might work, whatever, but as I say,  
24 all throughout it, we were not ever going to do it.

25 Q. Internally you were not ever going to do it is your

1 evidence. What about externally; did you play them  
2 along?

3 A. Well, I suppose lip service is playing somebody along to  
4 a certain degree. We did say that we would talk to  
5 them, we will always listen, we will hear what they have  
6 to say, we will see if what they say makes sense or  
7 anything like that, but we were never, ever going to do  
8 this.

9 Q. Is that something that you have included in your witness  
10 statements before, the explanation you are giving now?

11 A. I do say that we were paying lip service, yes.

12 Q. We will come to that. Let us turn to the final player,  
13 Mr Smith of the FA?

14 A. Yes.

15 Q. His statement is in the cross-examination bundle and you  
16 should find it at tab 2.

17 A. Yes.

18 Q. Now I see that behind it is Mr Marsh's statement.

19 A. Very well.

20 Q. This is marked as draft 2. At the end, if you flick  
21 ahead to what is numbered 416, four pages along,  
22 you will see that Mr Smith has signed it and it bears  
23 the date 27th February 2002.

24 A. Yes.

25 Q. Is this a document that you have read before?

1 A. Yes.

2 Q. Shall we go to paragraph 13 and together read what it  
3 says?

4 A. Yes.

5 Q. "From around October 1999 and in the following months,  
6 during which time the negotiations in respect of  
7 the England Direct agreement were taking place,  
8 Martin Prothero, the head of marketing at Umbro,  
9 expressed to me his concern that the operation of  
10 England Direct might 'disturb Umbro's relationship with  
11 JJB'. I was informed by Martin that JJB was not happy  
12 with the possibility of Sportsetail purchasing items  
13 direct from Umbro and that although JJB did not wish to  
14 operate the website itself, it wished to remain  
15 the point of contact for supply."

16 A. Yes.

17 Q. So Mr Smith says there that he was told, again by  
18 Martin Prothero, that JJB was not happy with  
19 the possibility of Sportsetail purchasing items direct  
20 from Umbro; yes?

21 A. Yes.

22 Q. Now, you do deal with this in your statement, and your  
23 response to this is in paragraph 53 of your first  
24 statement. Shall we go to that?

25 A. Yes.

1 Q. This is dealing with a document called "The FA Executive  
2 Summary of Events", which was part of the FA's leniency  
3 application and which I am sure you have also seen?

4 A. I could not say for certain I have seen it. I may have  
5 but I cannot say.

6 Q. Well, you are dealing with it in paragraph 53, so  
7 you have seen it?

8 A. Okay.

9 Q. It repeats the statement from Mr Smith. And you argue  
10 here:

11 "The fact that we decided to supply Sportsetail --"

12 A. Declined.

13 Q. "... declined", I am sorry, "to supply Sportsetail",  
14 which of course you ultimately did, "shows that we were  
15 not concerned about Umbro supplying Sportsetail."

16 Do you still hold to that?

17 A. Yes.

18 Q. Mr Russell, matters had moved on by the time that JJB  
19 declined to supply Sportsetail because a new agreement  
20 had been made, and this new agreement removed any need  
21 for JJB to become involved in the physical distribution  
22 to Sportsetail to prevent itself being undercut on  
23 price.

24 I am going to suggest to you that it had been agreed  
25 with you that Sportsetail would not sell England replica

1 at a lower price than JJB.

2 A. No.

3 Q. That there would be price-pegging to JJB's price for  
4 the same articles in its stores.

5 A. No.

6 Q. Let us go to the key meeting between you and the  
7 representatives of the FA and Umbro which took place on  
8 24th or 25th January 2000. Do you remember that  
9 meeting?

10 A. Yes, I do.

11 Q. How clearly do you remember it?

12 A. Reasonably clearly.

13 Q. Simon Marsh was there for Umbro, and not  
14 Martin Prothero, I think; do you remember that?

15 A. I think so, yes.

16 Q. You are not sure?

17 A. I think it was Simon Marsh at that meeting, yes.

18 Q. Now, you touch on this at paragraphs 40-42 of your first  
19 statement. If you flick back we now come to this  
20 meeting in chronological order.

21 I would just like to go to paragraph 41 of your  
22 statement, because in that last sentence you say:

23 "There was no discussion with any representative of  
24 either Umbro or Sportsetail as to retail pricing."

25 Do you see that?



1 A. Yes.

2 Q. And then in paragraph 42, if you look at the last  
3 sentence, over the page, you also underline the point  
4 that:

5 "The question of Sportsetail's prices being pegged  
6 to JJB's price was not a matter with which I or JJB had  
7 any involvement, and it was not mentioned at  
8 the meeting."

9 Do you see that?

10 A. Yes.

11 Q. Now, I think you have retracted these definite  
12 statements in your third statement?

13 A. Yes.

14 Q. And your position now is set out in paragraph 15 of your  
15 third statement; can we look at that, please?

16 A. Yes.

17 Q. You will find it at page 382.

18 A. I have it.

19 Q. The part that I want to draw your attention to is that  
20 although you cannot recall the issue of price-pegging  
21 being mentioned at the meeting, you now say that you  
22 cannot be certain that it was not mentioned by someone  
23 in circumstances in which you were unaware of it; do  
24 you see that?

25 A. Yes.

1 Q. How could something like this which concerned JJB have  
2 been mentioned in circumstances in which you were  
3 unaware of it?

4 A. What I am saying in that is that -- David Smith was at  
5 that meeting was he, as well?

6 Q. You tell me.

7 A. I think he was, it was David Smith and Simon Marsh and  
8 what I am saying is that it could have been that between  
9 those two, they have spoken about this, but not to my  
10 recollection, and I never heard them speak about it.  
11 I certainly did not discuss price-pegging with either  
12 David Smith or Simon Marsh or anybody at Umbro or  
13 anybody at the FA.

14 Q. So you say it could have been mentioned at the meeting,  
15 but you would not have heard it being mentioned?

16 A. Yes.

17 Q. Shall we see what Mr Smith of the FA, then of the FA,  
18 subsequently said about the meeting when he spoke to his  
19 lawyers later on in October 2001? If you go to tab 21  
20 in your bundle, we find the attendance note with  
21 Bird & Bird solicitors of 2nd October 2001.

22 This is tab 21, the attendance note, the client is  
23 the Football Association, Bird & Bird, the date  
24 2nd October relating to a meeting on 1st October?

25 A. Yes.

1 Q. I would like to ask you to look at point 3. Do you see  
2 point 3?

3 A. Yes.

4 Q. If you cast your eye over that:

5 "A meeting took place in late January, early  
6 February 2000. David [Smith] could not remember  
7 precisely who was at the meeting. Umbro and JJB were  
8 nervous about the possibility that Sportsetail would  
9 undercut JJB's price. David Smith, at that time still  
10 with the FA, suggested that we would match High Street  
11 prices, and the FA recommended to Sportsetail that it  
12 should sell at the JJB price, that price being  
13 reflective of High Street prices generally."

14 A. Yes.

15 Q. That was the position, was it not, Mr Russell?

16 A. No.

17 Q. He also got it wrong?

18 A. Yes.

19 Q. At what point, according to you, did you find out that  
20 an agreement had been made that the Sportsetail price  
21 must be pegged to the price in JJB's stores? Was it  
22 only after the OFT investigation started or before?

23 A. I think that I only became aware of this phrase of  
24 pegging prices afterwards.

25 Q. After the investigation started?

1 A. I think so, yes.

2 Q. What about the substance of it as opposed to the phrase?

3 A. (Pause).

4 Q. When did you become aware of the arrangement?

5 A. Which arrangement, sorry?

6 Q. That they had to peg the prices to the price in the JJB  
7 stores, according to you?

8 A. I was not aware that there was any pegging of prices to  
9 JJB stores from David Smith or from Umbro or anybody  
10 until after I read all the correspondence after  
11 the investigation began.

12 Q. So you just did not know about this until  
13 the investigation began; that is your evidence?

14 A. The only other thing I can slightly remember is that we  
15 received a fax, I believe, from Alison Eaves at  
16 Sportsetail. Without seeing it in front of me now  
17 I would not be able to tell you exactly what that said,  
18 but they were asking us for prices, and we would not  
19 respond to that.

20 Q. We will deal with that in a moment; apart from that it  
21 was after the investigation started?

22 A. I think so, yes.

23 Q. It must have come as a surprise to you?

24 A. Yes, because we, throughout all of this only understood  
25 it that Umbro had a problem in doing this deal with

1 Haye & Robertson, and were trying to use us as  
2 an intermediary. So whatever Sportsetail wanted to sell  
3 at, they can sell at whatever price they like, that was  
4 not of interest to us.

5 The thing that was of interest to us was not to  
6 upset the FA in the first instance and just listen to  
7 what people had to say. Through my discussions with  
8 Mr Sharpe and Mr Whelan throughout the time, we were  
9 never, ever going to do this; it was never going to  
10 happen.

11 THE PRESIDENT: Why was price that Sportsetail might sell  
12 not of any interest to you? They might have sold at a  
13 very much reduced price.

14 A. That does not matter, that does not matter to us. At  
15 the end of the day in our experience what had been  
16 happening with mail order-type companies, which as I say  
17 we are not involved with, if you take Manchester United  
18 for example, you will probably pay more than the normal  
19 retail prices at the time because you would pay postage  
20 and packing, et cetera. So we found that they were  
21 actually usually more expensive than us, not cheaper or  
22 the same.

23 MR TURNER: Really?

24 A. Yes.

25 Q. I am going to suggest to you that the concern was what

1 Mr Whelan referred to yesterday as the "unknown",  
2 supplies going into the unknown on destination or price?  
3 A. No, no.  
4 Q. Let us confirm the answer to my question, then, which  
5 was yes, you were surprised when you found out about  
6 this arrangement after the investigation had started?  
7 A. Which arrangement?  
8 Q. The price-pegging arrangement.  
9 A. Between?  
10 Q. Between the FA and Sportsetail.  
11 A. The FA and Sportsetail, yes, I was surprised about that,  
12 yes.  
13 Q. You were?  
14 A. Yes.  
15 Q. Let us turn on, then, from the January 24th meeting, at  
16 which you did not hear what the others were saying, to  
17 the correspondence which followed which included  
18 yourself.  
19 Please turn to tab 22.  
20 A. Yes.  
21 Q. This is a fax from one of the FA representatives,  
22 Mr Armstrong, to Simon Marsh at Umbro. You will see it  
23 is dated 3 February 2000; yes?  
24 A. Yes.  
25 Q. On the cover page if you just glance at that you will

1           see that Mr Armstrong is asking Mr Marsh to confirm that  
2           all the points made in the letter concur with Mr Marsh's  
3           understanding of the situation; do you see that?

4    A.   Yes.

5    Q.   Turn over the page, please.  We have here a draft letter  
6           to you.

7    A.   Yes.

8    Q.   Do you see that?

9    A.   Yes, I do, yes.

10   Q.   And it is confirming the agreement which according to  
11           the author had been reached with you; yes?

12   A.   There had been no agreement reached.

13   Q.   You --

14   A.   This is a document which the other two parties -- sorry,  
15           Umbro have put together on their understanding of  
16           the situation, but there was no agreement.

17   Q.   Right.  So we are not talking yet about something that  
18           has reached you; I am simply talking about their  
19           understanding.  Yes?

20   A.   Okay.

21   Q.   Halfway down the page, I would like you to look at  
22           the paragraph that reads:

23                 "The retail price charged by England Direct for  
24           these products will not be less than the price charged  
25           by JJB.  As agreed ..."

1           And this is a draft letter to you:

2           "... you will supply us with details of all price

3           changes implemented by JJB in respect of these

4           products."

5           Do you see that?

6   A.   Yes.

7   Q.   So we can conclude from this, I think, Mr Russell, that

8           Mr Armstrong as well as Mr Smith believed that you had

9           agreed to this at the meeting on 24th January?

10   A.   We had not agreed to it.

11   Q.   I think you were aware that Mr Marsh of Umbro also says

12           in his statement that he remembers the price-pegging

13           agreement having been stated at the meeting?

14   A.   Yes.

15   Q.   So Mr Marsh of Umbro is also of that view. In fact,

16           I would suggest that everyone apart from you who was at

17           that meeting, Marsh, Armstrong, Smith --

18   A.   Excuse me, can I just say that I do not think

19           Mark Armstrong was at the meeting. Was he?

20   Q.   That is perhaps unclear.

21   A.   I do not remember him being there.

22   Q.   He, having drafted this --

23   A.   I do not recollect Armstrong being there. Marsh and

24           Smith, but not Mr Armstrong.

25   Q.   All right. But the other attendees at the meeting --



1 A. Marsh and Smith.

2 Q. -- have remembered agreeing with you that England  
3 Direct's price should be pegged against JJB's?

4 A. No, there was no agreement.

5 Q. But you will see that everyone apart from you has  
6 remembered that.

7 A. As I said in my further statement, if they spoke about  
8 that amongst themselves, they spoke about that amongst  
9 themselves. I certainly was not party to those  
10 conversations.

11 Q. And not only were you not party to it according to you,  
12 you did not learn about it until much later on?

13 A. No.

14 Q. Let us turn to the final version of the letter which is  
15 at tab 23. This is the letter that went to you?

16 A. Yes.

17 Q. It is in the same terms as the draft?

18 A. Yes.

19 Q. And five paragraphs down on page 1 we see you being told  
20 about the price-pegging arrangement, if I may call it  
21 that?

22 A. Yes.

23 Q. Over the page we see that this letter was signed by  
24 David Smith and that it was copied to Simon Marsh and  
25 Lance Yates, Sportsetail, for comments.

1 A. Yes.

2 Q. Was Lance Yates, by any chance, at that meeting or not?

3 A. Lance Yates was never at a meeting ever at JJB Sports,  
4 no.

5 Q. We see that you were specifically asked to copy Mr Smith  
6 in on any correspondence regarding England Direct with  
7 Umbro and Haye & Robertson: "please can you copy me in".  
8 Do you see that?

9 A. Yes.

10 Q. I am going to assume that you somehow missed  
11 the discussion about price-pegging at the meeting on  
12 24th January. You were still expressly put on notice by  
13 this letter to you on 7th February that an agreement had  
14 been reached to fix the retail price charged by  
15 Sportsetail, were you not?

16 A. No agreement was ever made.

17 Q. My question was: you were still expressly put on notice  
18 by this letter of 7th February that an agreement had  
19 been reached, were you not?

20 A. No. Because when I received this letter and it arrived  
21 on my desk, I read it because I read correspondence that  
22 is put in front of me. When I began to read down  
23 the items that had been discussed, I actually wrote  
24 a note saying no against one of the paragraphs --

25 Q. Ah, well we are coming to that.

1 A. Okay.

2 Q. I do not think it was in relation to this letter,  
3 Mr Russell. I think you may be confused on this. That  
4 was a subsequent piece of documentation.

5 A. It may have been, it may have been, yes.

6 Q. So in relation to this letter that would not have been  
7 the case. And there we have you being put on notice of  
8 the price-pegging arrangement?

9 A. We had not agreed anything about price-pegging. We had  
10 not entered into any agreement.

11 Q. I know your position, Mr Russell.

12 A. Okay.

13 Q. I am pointing to the documentary evidence and asking for  
14 your reaction to that.

15 A. My reaction is -- again if you want the phrase I will  
16 give it to you again, it was lip service because we did  
17 not reply to it, we did not telephone anybody about it,  
18 we did not do anything with it.

19 Q. Now that is something that I can agree with you on, in  
20 particular you did not respond to the FA pointing out  
21 that anything in this letter was mistaken, did you?

22 A. No.

23 Q. Instead, looking at your first statement, going to  
24 paragraph 44, you say that after a conversation with  
25 Mr Sharpe you spoke to Mr Marsh at Umbro on about

1 11th February -- so that is several days after this  
2 letter -- to say that JJB did not want to proceed with  
3 the arrangement.

4 A. Not that we did not want to proceed with  
5 the arrangement, I would not have said that version of  
6 it. What we were ringing to say was that we were not  
7 interested at all in supplying Haye & Robertson with any  
8 goods from Umbro.

9 Q. Well, can we just look at the terms of paragraph 44 for  
10 this, please.

11 The first interesting point about it is that you say  
12 there:

13 "I was coming to the view that there was no  
14 commercial advantage to JJB from the deal."

15 A. Mm-hm.

16 Q. That would appear to suggest that prior to this time you  
17 at least were undecided on the point or positively had  
18 entertained it?

19 A. No, we were not either of those things. From the start  
20 we did not think that this would be something that JJB  
21 would do.

22 Q. Now, it says that:

23 "Duncan [Mr Sharpe] instructed me not to proceed  
24 with the arrangement".

25 So it appears from what you were saying then that it

1 was only after the conversation with Mr Sharpe that  
2 the decision was taken not to proceed with  
3 the arrangement. Is that right?

4 A. There was no arrangement, but it was the case that  
5 Mr Sharpe, after I believe, having now  
6 received instructions from Mr Whelan, had basically told  
7 him that we were to ring up Umbro and tell them that  
8 we were not getting involved in anything to do with  
9 the supply of Sportsetail.

10 Q. I see. We know that you did not proceed with  
11 the distribution side of the agreement, but you did not  
12 tell Mr Marsh that JJB would not go ahead with  
13 the price-pegging part of the arrangement?

14 A. There was no price-pegging arrangement. We had never  
15 entered into discussions about price-pegging or  
16 price-fixing on England stock to be supplied to  
17 Sportsetail.

18 We, as a company, wanted to do our own thing in  
19 terms of retail. We had paid our lip service and it had  
20 reached the point, we had politely listened to what  
21 people had to say and how they wanted to do it, we were  
22 now giving them a complete affirmative: "no". It was  
23 a no -- there was no price arrangement so we did not  
24 have to say no to that. We just said: we do not want to  
25 be involved in this project whatsoever, we are not

1 interested, you go away and sort it out and do whatever  
2 you want to do.

3 Q. We have seen, Mr Russell, that everyone apart from you,  
4 and that includes Mr Marsh at Umbro, had formed the view  
5 that there was a price-pegging arrangement which had  
6 been reached. You have seen that?

7 A. I have seen what they have said, but I do not agree with  
8 it.

9 Q. Shall we look at what Mr Marsh said about the discussion  
10 with you, which is at paragraph 24 of his statement. If  
11 you have witness bundle 2 it should be at page 24.

12 But, slightly easier than picking up other bundles,  
13 it can be found in the cross-examination bundle. It is  
14 tucked behind Mr Smith at tab 20.

15 At the bottom numeration you will see 192?

16 A. Yes, I have that.

17 Q. We have at paragraph 24 what Mr Marsh says. He says:

18 "Later in February JJB decided that it would be  
19 logistically too difficult for them to supply  
20 Sportsetail."

21 Do you see that?

22 A. Yes, I do, yes.

23 Q. In fact, Mr Russell, after a conversation with you on  
24 11th February where you say that you told Mr Marsh that  
25 you did not want to become involved, Mr Marsh sends you

1 a fax which suggests clearly that he did not understand  
2 you to have told him that the price-pegging arrangement  
3 was not agreed to and suggests that he thought that it  
4 was ongoing?

5 A. The only thing that had been really discussed at any  
6 length in any of these meetings with Umbro and the FA  
7 was potentially the logistics of how this could be done.  
8 There was no mention of price-pegging, there was no  
9 mention of price fixing.

10 THE PRESIDENT: No mention of price-pegging?

11 A. No, and no mention of price-fixing, sir. Basically what  
12 was happening -- they, with us, were exploring a route  
13 of logistic supply. That was all, and that was all that  
14 we were looking at and paying lip service to.

15 MR TURNER: We have the meeting and what you said about it,  
16 we have the exchanges prior to that meeting which  
17 we have covered, and now we are having the documentation  
18 which followed that meeting.

19 A. Yes.

20 Q. What I am showing you in all of this documentation is  
21 the consistent evidence that others considered that  
22 the price-pegging arrangement was ongoing and that it  
23 was brought to your attention; do you understand?

24 A. Yes. But -- I understand what you are saying about what  
25 other people have said, but it seems to me, having read

1 all of the correspondence, that it is Mr Smith who is  
2 coming up all the time with this phrase "price-pegging",  
3 and it is Mr Smith in a lot of his correspondence who is  
4 talking about this.

5 I did not talk to Mr Smith about price-pegging.

6 I did not speak to Mr Marsh about price-pegging.

7 I spoke to nobody at Umbro or the FA about

8 price-pegging.

9 Q. If I can use a pun; I am not hung up on the  
10 price-pegging, but it is the concept which I am  
11 interested in.

12 A. All right then, can I just clarify that then? In terms  
13 of any discussions regarding price that Sportsetail may  
14 have wished to charge for their kits, there was no  
15 discussion.

16 THE PRESIDENT: So you were involved in no discussions  
17 regarding Sportsetail's prices?

18 A. No, none. Logistics, yes.

19 MR TURNER: We have the documents. Let us turn to the next  
20 one, which is the fax from Mr Marsh to you of  
21 11th February; it is at tab 24 of the cross-examination  
22 bundle. Do you have that.

23 A. I do.

24 Q. Let us start with the cover page:

25 "Further to our conversation [the conversation with



1           you earlier on] I would be grateful if you could take  
2           a look at the attached email regarding the above and  
3           provide me with your thoughts."

4           That is Simon Marsh?

5   A.   Yes.

6   Q.   If we turn the page we have a copy of an Umbro internal  
7           email dated 8th February which has been sent to you?

8   A.   Yes.

9   Q.   And let us go four paragraphs up from the bottom:

10           "ED [England Direct] have agreed that the retail  
11           price point will be the same as JJB, and as and when JJB  
12           start to clear their stock ED will be notified  
13           accordingly."

14           Do you see those words?

15   A.   Yes, I do see those words, yes.

16   Q.   As we can see from this, and you were referring to it  
17           a moment ago, your response was to write "no"  
18           specifically with an arrow against one part of the email  
19           only; do you see that?

20   A.   Yes, I do.

21   Q.   This is the part relating to advising England Direct of  
22           the styles selected by Umbro; yes?

23   A.   Yes.

24   Q.   And I see from this that you have made no other marks?

25   A.   No, there are no other marks on there, no.

1 Q. You did not point out that you were not agreeing to  
2 the price-pegging part of the document which you will  
3 have seen further down the page.

4 A. Yes. When I have written "no" on this document,  
5 obviously again I read the document, read it through,  
6 this was at the point now where basically, Duncan Sharpe  
7 had been talking to me about this and saying we need to  
8 bring this to a conclusion.

9 I wrote "no" specifically against that point because  
10 it would be incomprehensible for JJB to want to tell any  
11 other competitor of the styles it chooses. That is  
12 purely a matter for JJB. I also wrote the word "no"  
13 because, in my mind, it was saying: well, we are not  
14 doing any of this, no. It was no to not just that,  
15 the whole thing, we were not doing anything.

16 Q. That is an interesting point, "in your mind", but  
17 the arrow is pointing to only a little bit of it, is it  
18 not?

19 A. Yes.

20 Q. And what went back to Mr Marsh was the document with  
21 the word "no" and your arrow?

22 A. I am not actually so sure about that, to be honest with  
23 you because from my recollection of this, I did not ever  
24 send that document back to him with the word "no" on.  
25 I believe that document was the document that was

1           actually taken from my office, from my file, under  
2           the FA England file. I believe that is where that  
3           document has arisen. I do not believe that that  
4           document has ever been sent by me to anyone at Umbro.

5   Q.   Even if it was not sent --

6   A.   I do not think it was.

7   Q.   -- there was no negation of the price-pegging  
8           arrangement which the others thought had been reached so  
9           far as they were concerned at all?

10  A.   I think you will find that after I wrote no to this and  
11           basically knew that this was going to be no overall,  
12           we were not getting involved in anything logistically,  
13           we had made no arrangement, we just wanted now, out of  
14           courtesy, to let Umbro and indirectly the FA know that  
15           we were not interested in supplying Sportsetail  
16           with products.

17  Q.   You saw these repeated references in the documentation  
18           to you to this agreement and the retail price for it?

19  A.   Yes, I did.

20  Q.   Your solicitors have confirmed that you did not inform  
21           the FA that there was no need to peg prices to those of  
22           JJB?

23  A.   Yes.

24  Q.   Nor did you tell Sportsetail.

25  A.   No, we did not have any correspondence with Sportsetail,

1 no.

2 Q. Mr Smith's letter of 7th February to which we have just  
3 gone had asked to be kept informed, had it not?

4 A. Yes, it had. But I was under no obligation to do what  
5 Mr Smith told me to do. My concerns were for JJB and  
6 reporting to my directors.

7 Q. I understand that, who you report to. The point is that  
8 you did not ever draw to David Smith's or Sportsetail's  
9 attention that there was no need to peg prices to JJB's?

10 A. No, we had no correspondence with them at all.

11 Q. In practice we know that the FA and Sportsetail  
12 continued to believe that the Sportsetail price had to  
13 be pegged to the price offered in JJB's stores?

14 A. If they believed that, that was for them to believe  
15 themselves, but it had not been discussed with JJB.

16 Q. We know it happened, though, do we not?

17 A. What had happened?

18 Q. That they continued to peg the price for some  
19 considerable time?

20 A. I do not know that, actually.

21 Q. You do not know that?

22 A. No.

23 Q. We will come on to that?

24 THE PRESIDENT: Mr Turner, can you conveniently finish this  
25 topic or should we take the morning break now?

1 MR TURNER: I have about another 15 minutes.

2 THE PRESIDENT: Let us go on and see if we can finish  
3 the topic.

4 MR TURNER: JJB continued to reap the benefits of this  
5 price-pegging did it not?

6 A. We did not ever have an arrangement, in your words, of  
7 price-pegging. That never happened. We never had any  
8 arrangements.

9 Q. Okay. Let us go to the exchange of emails between  
10 Alison Eaves and David Smith, on 28th March which was  
11 the day before the Sportsetail launch. you will find  
12 that in your bundle at tab 26.

13 MR COLGATE: Could I just be absolutely clear what you did  
14 when you received that fax.

15 A. You mean the one which I wrote "no" to.

16 MR COLGATE: The one from Colin Russell to you; when you got  
17 it, could you just go over once more what you believe  
18 you did?

19 A. Can I just be clear on which one you are talking about?

20 MR COLGATE: This is the fax that we have just been looking  
21 at, tab 24, enclosing the email. I think that is  
22 actually dated 8th February.

23 A. Yes. I am reasonably sure that after I had received  
24 that, I actually very soon after that made the phone  
25 call to Simon Marsh to tell him: no, we are not doing

1           any of this supply arrangement, we do not want to be  
2           involved, that is what we want to do, and will you let  
3           the FA know and everyone else and he said that he would.

4   THE PRESIDENT: I follow it -- sorry, you finish  
5           the question.

6   MR COLGATE: It was all on the telephone, no correspondence?

7   A. There was no correspondence at all. I picked up  
8           the phone and I rang Simon Marsh after Duncan Sharpe had  
9           given me the instruction to do so.

10   MR COLGATE: I thought the Sharpe reference was to  
11           an earlier point.

12   A. No, I think we were talking about Duncan Sharpe coming  
13           back from a trade show.

14   MR COLGATE: Yes. Do you make reference to that in your  
15           statement?

16   A. Reference to what, sorry?

17   MR COLGATE: I am just trying to --

18   A. That I rang Simon Marsh after this? No, I do not think  
19           I did, no.

20   MR COLGATE: Thank you.

21   THE PRESIDENT: Can I just be clear, I am sorry, Mr Russell,  
22           this fax that you have had from Simon Marsh, in  
23           the paragraph against which you have written, "no", it  
24           says:  
25           "Umbro will present the product range to JJB, advise

1 the contact at ED et cetera. [It then goes on] ED will  
2 then place their commitment with JJB ..."

3 So that is all sort of implying a sort of supply  
4 arrangement between JJB and England Direct as far as  
5 I can understand it.

6 A. Yes.

7 THE PRESIDENT: And it is against that that you are writing  
8 "no", ie you do not want to be involved in the supply  
9 arrangement.

10 A. Physically I have written, "no" against that particular  
11 point, but as I explained in my mind it was no to  
12 the whole lot, we were not doing anything.

13 Also the point that I made was that I believe that  
14 that document was taken from my office, I did not send  
15 it anywhere, it did not come back from Simon Marsh.

16 THE PRESIDENT: When we go back to the cover  
17 page immediately before it at 332, Simon Marsh -- this  
18 is now on 11th February -- says:

19 "I would be grateful if you would take a look at  
20 the attached email regarding the above and provide me  
21 with your thoughts."

22 Your evidence is that you then telephoned  
23 Simon Marsh?

24 A. I think it was then, I think it was on 11th February  
25 that I actually rang him to tell him that, yes.

1 THE PRESIDENT: That you would not be involved in the supply  
2 arrangements?

3 A. That we would not be involved in anything to do with  
4 supplying at all, so he knew, he was clear and that was  
5 being courteous.

6 MR TURNER: We have seen that Mr Marsh says that in your  
7 view it would be logistically too difficult; that was  
8 from his statement.

9 A. Okay.

10 Q. I do not want to go back over old ground.  
11 We were going to tab 26, the exchange of emails  
12 between Alison Eaves and David Smith, just the day  
13 before the launch takes place.

14 A. Yes.

15 Q. In the bottom email we see that Alison Eaves is just  
16 finalising the stock and the price information on  
17 the website, and she needs prices for a variety of  
18 relevant products, including replica; do you see that?

19 A. Yes, I do.

20 Q. Then we go up to the top email from David Smith back to  
21 Alison Eaves, re Umbro kit:  
22 "The RRP must be pegged to the price offered within  
23 JJB stores. If you need that information, I am sure  
24 that Colin Russell at JJB will provide it if you mention  
25 my name."



1           Do you see that?

2   A.   Yes, I do, yes.

3   Q.   At that stage David Smith continues under the illusion,  
4       according to you, that you are in this agreement about  
5       price-pegging?

6   A.   Correct.  And I would say that David -- to be sure that  
7       I would provide him with any information it is really  
8       a lot of presumption on his part that I would even think  
9       of doing that.  As you know, subsequently when we  
10      received the fax from Alison Eaves asking us for our  
11      prices we did not reply to it because we were not  
12      involved in anything to do with prices for Sportsetail.

13  Q.   Shall we turn to that, tab 27, the following tab.  As  
14      you say, we then get a fax from Phil Hattersley?

15  A.   Phil Hattersley worked for me during that time, yes, on  
16      the records side of the business.

17  Q.   Yes.  Let us cast our eye over what Alison Eaves says.  
18      You see particularly the words:

19           "The retail price for the kit on our site has to be  
20      pegged to the JJB price.  So David Smith at the FA  
21      suggested that you could confirm your retail prices to  
22      me so we do not go out at a lower price."

23           Do you see that?

24  A.   Yes.

25  Q.   You were given a copy of this fax?

1 A. I saw this fax, yes.

2 Q. You saw that it referred to the agreement that  
3 the retail price on the website had to be pegged to  
4 the JJB price?

5 A. Yes, I saw the fax.

6 Q. You must have realised that the price-pegging agreement  
7 discussed at the January meeting at which you were  
8 present, and recorded in the February correspondence  
9 which was sent to you, was ongoing?

10 A. There was no price-pegging agreement.

11 Q. The answer to my question is ... yes or no?

12 A. Can you repeat it, please?

13 Q. You must have realised from all of this that  
14 the price-pegging agreement which had been discussed and  
15 detailed was ongoing?

16 A. No.

17 Q. At any rate, you did not take steps to distance yourself  
18 from it in any response?

19 A. If you mean we did not reply to it, we did not reply to  
20 it, no.

21 Q. If you turn over to tab 28, this is the FA's summary  
22 which has been submitted with the leniency  
23 application -- I think you will have seen this?

24 A. It was in the correspondence, yes.

25 Q. If you turn to page 5?

1 A. Yes.

2 Q. The relevant part of this is the emails of 9th June and  
3 13th June, all the way down that page and over to  
4 halfway on the following page in  
5 the paragraph beginning:  
6 "It is clear that once the FA was alerted to  
7 an arrangement established by one of its by then former  
8 employees which purported to set prices it took steps to  
9 bring any infringements of the Competition Act 1998 to  
10 an end."  
11 Yes?

12 A. No, there was no price-pegging agreement.

13 Q. I hear what you say, Mr Russell. The point is, I would  
14 suggest, that at no stage did you contact either the FA  
15 or Sportsetail to say that any price-pegging had nothing  
16 to do with you.

17 A. We did not contact the FA or Sportsetail, no.

18 MR TURNER: Sir, that concludes this topic.

19 THE PRESIDENT: Okay. Let us take the ten-minute break  
20 there.

21 Please do not discuss your evidence, Mr Russell,  
22 while you are giving it.

23 (11.55 am)

24 (A short break)

25 (12.05 pm)

1 MR COLGATE: Mr Turner, will you be taking us to any  
2 documentation showing what the actual prices were?

3 MR TURNER: Sir, beyond what there is in the documents that  
4 I have taken you to already and the acknowledgment that  
5 there was price-pegging, I was not intending to.

6 Perhaps if you would turn up tab 28 again, which is  
7 the FA's executive summary accompanying the leniency  
8 application, I will draw your attention to two  
9 particular elements.

10 On page 5 this is the passage which I indicated you  
11 might want to sideline because it is relevant all  
12 the way down to the following page. We can produce for  
13 the tribunal all the materials that are referred to if  
14 required, because I am not sure if they are on  
15 the tribunal's file.

16 In the first full paragraph:

17 "By emails of 9th June 2000 and 13th June ...  
18 discuss Sportsetail marketing via a page of Nationwide's  
19 website in an offer available only to Nationwide  
20 members. DS asked for the price at discount to be no  
21 lower than those offered within JJB. The arrangement  
22 was concluded on 13th June when the discounts were  
23 agreed."

24 That is one indication. If you drop down  
25 the page to the third bullet point from the bottom:

1           "On 15th January 2001, Alison Eaves emailed  
2           [Mark Armstrong] listing the styles of a range of  
3           clothing, including kit and other miscellaneous items  
4           and suggesting some possible marked down prices. Alison  
5           Eaves wrote the following day to Mark Armstrong listing  
6           the price for kits, stating 'we have to peg the home  
7           shirt to the same price as JJB,' £19.99 at that time."

8           Beyond that, we can go back to the file and see what  
9           further evidence there is of particular incidences of  
10          price matching. But the evidence that we have here is  
11          that it was ongoing over the period up until the time  
12          when the FA say, over the page, that once they were  
13          alerted to the arrangements established by one of their  
14          former employees, they took steps to bring  
15          the infringements to an end.

16 MR COLGATE: Thank you.

17 THE PRESIDENT: Mr Turner, that last reference, where  
18          Alison Eaves is recorded as saying: we have to peg  
19          the home shirt to the same price as JJB, £19.99. Do  
20          we have any evidence as to how Alison Eaves knew that  
21          the JJB price was £19.99?

22 MR TURNER: I will check that, sir. I believe there may be  
23          evidence from her that she got it from somebody in  
24          Umbro. Alternatively she may have simply consulted  
25          the store prices which would have been readily

1           available.

2   THE PRESIDENT:  I see.

3   MR TURNER:  Is that something that you would like us to look  
4           into?

5   THE PRESIDENT:  I think it would be useful.

6   MR HOSKINS:  I think Alison Eaves's witness statement deals  
7           with the point in file 1, page 244A, the final  
8           paragraph, which confirms what Mr Turner just said, that  
9           the prices were obtained from Umbro.

10  THE PRESIDENT:  Thank you Mr Hoskins.  Prices from Umbro.  
11           Yes.  I do not think we need to go into it now.

12  MR TURNER:  To dot the final "i" it arose out of the  
13           question that the tribunal canvassed while I was  
14           cross-examining the witness.  If you go to page 335 of  
15           witness file 3, this is, I think, perhaps the one  
16           document which I did not specifically take the witness  
17           to.  It completes the evidential picture, but was not  
18           something that went to the witness.

19           You have there an email from Simon Marsh within  
20           Umbro to various people within Umbro, and it has  
21           the text that we have seen before including  
22           the price-pegging text, four paragraphs up from  
23           the bottom.

24           At the top it has an interposition, "Phil", which  
25           presumably is Phil Bryant:

1           "Further to our discussion on Thursday regarding the  
2           above, I hereby enclose a modus operandi that was  
3           waiting for JJB approval. [I assume that is what  
4           follows]. Obviously JJB are now out of the loop and  
5           therefore we need to establish how we shall handle this  
6           account."

7           And the Office's finding in the decision was that  
8           that reference to being out of the loop was specifically  
9           a reference to distribution, but did not touch  
10          the price-pegging. So that would beat the evidential --

11        A. Could I just say on that, I think actually you may be  
12          mistaken and I think that the Phil it is referring to is  
13          Phil Fellone.

14        MR TURNER: It may be.

15        A. I think it is Phil Bryant.

16        Q. Thank you for that. May I now move to the next topic,  
17          which is your evidence on JJB's pricing policy.

18        A. Yes.

19        Q. What I will suggest to you is that your evidence on this  
20          has been inconsistent and that the conclusion we have is  
21          that JJB's pricing policy for replica has been more  
22          variable and unpredictable than you have painted it,  
23          certainly to the Office of Fair Trading at that stage  
24          and to a lesser extent to this tribunal.

25          I would like to begin by asking you to agree with

1 your basic propositions that I do not think will be  
2 controversial, because they appear in both your evidence  
3 and Mr Whelan's.

4 First, JJB has a truly national retail market  
5 presence; you now operate from 450 stores, I think you  
6 said earlier, in all of the major towns and cities of  
7 the United Kingdom?

8 A. Yes.

9 Q. Second, because the replica market is very  
10 price-sensitive, other retailers generally cannot afford  
11 to set retail prices which are higher than yours,  
12 you can set an effective ceiling for the market price?

13 A. Not always, no.

14 Q. Not always, but that has been the gist of your evidence.  
15 We will go to a bit of it, but that is what you said in  
16 the witness statements and your presentation. Shall we  
17 turn to tab 4 to see what you said to the Office of Fair  
18 Trading about that?

19 This is the text of your presentation which has been  
20 reproduced here. Do you have that?

21 A. Tab 4, yes.

22 Q. I am not going to go to all of the references; we can  
23 deal with that separately. You say at the top of  
24 page 27, lines 5-6, just after referring to the national  
25 retail market presence of your company:



1            "We also believe that our policy has held down  
2            retail market prices. In other words prices would  
3            have ..."

4    A.    Yes.

5    Q.    That is the point I am making to you; will you agree  
6            with that?

7    A.    Yes.

8    Q.    Now I want to establish what are the two main bits of  
9            pricing information that you, by which I mean JJB on its  
10            own account, have submitted in this case, setting out in  
11            detail JJB's replica prices.

12            The first set of data which you gave on this matter  
13            was your response to the Office's formal request for  
14            information in November 2001, I believe?

15    A.    Yes.

16    Q.    The Section 26 notice?

17    A.    Yes.

18    Q.    Do you remember that?

19    A.    Yes.

20    Q.    If we turn to tab 7 everyone will have in front of them  
21            a copy of the request which was dated 18th October 2001.

22    A.    Yes.

23    Q.    If you turn to question 7 on the third page you see that  
24            the Office asked you for a list in hardcopy and in  
25            electronic form of all the replica kit that you had sold

1 since 1st January 2000, and asked for quite a lot of  
2 detail about it, including at C the date when sales  
3 commenced, E, the retail prices charge, and F, whether  
4 any changes were made after launch to the retail prices  
5 and if so what they were and so on?

6 A. Yes.

7 Q. At the end of that, I should add, two pages on, we have  
8 the formal warning from the Office of Fair Trading which  
9 always comes with these notices about the need to  
10 provide true information and the sanctions for providing  
11 false or misleading information?

12 A. Yes.

13 Q. Were you involved in answering the Office's request?

14 A. This information was actually put together by -- mainly  
15 by Mark McCauley, our IT director.

16 Q. Were you involved in answering the OFT's request?

17 A. Yes.

18 Q. What was your involvement?

19 A. It was my job really to brief Mark on what requirements  
20 we needed to provide to the Office from the system, and  
21 that was it, really, to tell them what we needed.

22 Q. Did you supervise it at all going forward, or did you  
23 just leave it entirely to him, having told him what  
24 would be needed?

25 A. Once he had actually produced the information it was

1 shown to me, yes.

2 Q. Did you look at it and take steps to verify it was  
3 accurate?

4 A. Yes.

5 Q. Could you tell us, then, how was the information on  
6 prices compiled and what did you do to make sure it was  
7 accurate?

8 A. It was information which was lifted from the mainframe  
9 from JJB.

10 Q. Oh, it came from the mainframe?

11 A. I believe so, yes. To check it I looked back over some  
12 of the pricing pads that I keep at the end of every year  
13 to see if some of them were the same. Also within  
14 the system we have a way of monitoring all of our price  
15 changes.

16 Q. You do?

17 A. Yes.

18 Q. As and when --

19 A. Yes, from day 1 to whenever, to the finish of that kit.

20 Q. So you were --

21 A. I am not going to say here and now that I checked every  
22 single one.

23 Q. No, that would have taken longer than it takes to read  
24 War and Peace.

25 A. As far as I could see, it looked okay, yes.

1 Q. JJB's response on 22nd November 2001 is in the same tab,  
2 if you turn to it a few pages on. A letter from your  
3 solicitors, DLA, of 2nd November?

4 A. Yes.

5 Q. Flicking over the first page, we see the trading  
6 discounts that your company received from the various  
7 suppliers and the answer to 1, including Umbro on  
8 replica. At paragraph 7 is the answer to the Office's  
9 request in question 7; do you see that?

10 A. Yes.

11 Q. In that answer, which we will come back to in a moment,  
12 you explain how the list that you are providing from  
13 the mainframe works.

14 If you go over two pages you should have the first  
15 page of this very long spreadsheet that came out.

16 A. Yes.

17 Q. Really for nothing other than to understand how it  
18 works, if you take the very bottom line on the first  
19 page does it say: FILA Scotland goalkeeper jersey, home  
20 2000?

21 A. Yes, it does.

22 Q. So there we have the product, the shirt, which was  
23 the home shirt for that period, 2000-2002; the size in  
24 the next --

25 A. It actually says at the top, does it not, that it is

1           January sales 00 to February 01, not 02.

2    Q.   This came in November 2001 --

3    A.   I think you just said to 2002, did you not?

4    Q.   What I mean is the home shirt --

5    A.   Oh, you mean the description on the kit?

6    Q.   Yes.

7    A.   Yes, the kit in theory should have run from 2000 to

8           2002.

9    Q.   That is all I need.  Then we have the size?

10   A.   Yes.

11   Q.   Then we have the date of first receipt which you tell

12           us, and we do not need to go back to it now, would have

13           been about a week before launch, generally speaking?

14   A.   No, not necessarily on that one.  Because some of these

15           kits could be clearance.  If they are clearance kits --

16           and what I mean by clearance is, if you have bought

17           shirts that have not sold in the marketplace and

18           the manufacturers are looking to clear them -- they are

19           clearance.  In certain occasions, if we have done that

20           and put them out at a lower price than our normal £40

21           from day one because we have never stocked them before,

22           possibly, then it would not always be that it is a week

23           before the launch.  It could be that it was already

24           launched a year ago or something like that.

25   Q.   I understand that completely for clearance shirts.

1 I think the point is that what you were showing in this  
2 column is that this was the date of first receipt for  
3 the shirt before it was first launched --

4 THE PRESIDENT: What does "first receipt" mean?

5 A. I will take issue with you on the word "launch". Launch  
6 means that that kit has never been sold to the public  
7 before, okay? For instance, if England were going to  
8 launch on 31st March a new away kit, that kit has never  
9 been sold so that is the launch date.

10 After that, if somebody bought it after that and not  
11 the launch date, you can hardly say it is the launch, it  
12 is just a kit.

13 THE PRESIDENT: I am very slow, I am sorry, Mr Russell. If  
14 you go to the top of this document we are looking at, it  
15 says "first receipt" at the top of that column, what  
16 does that mean?

17 A. That is the first receipt that JJB has had coming into  
18 the warehouse. The mainframe system accepts it as  
19 a date, but it was recognised, booked onto our system in  
20 the warehouse. All I was trying to say was, you cannot  
21 always say that these dates are a week before launch or  
22 even three weeks, or the day of launch, because it  
23 depends. If we have done them before, they could have  
24 already have been launched.

25 THE PRESIDENT: I see.

1 MR TURNER: I think I was going a little bit too quickly.  
2 Let us go back to 7C on the previous page at the top,  
3 where you explain to the Office what the date of first  
4 receipt meant. If you want to read that to yourself for  
5 the moment.  
6 The list does include the date on which replica kit  
7 was first received, because you do not have, as it were,  
8 date of the launch --  
9 A. But it does not say the date it commenced.  
10 Q. You say:  
11 "The date when it was first received, which is  
12 generally one week before the kit is made available to  
13 the public~..."  
14 A. It can be a week, it can be a month, it can be just  
15 a matter of two or three days. It is the date that we  
16 received it into the warehouse.  
17 Q. Okay, I just want to get everybody to understand the  
18 dates. It is nothing more than that. In the next two  
19 columns you have broken down in units sold from  
20 January 2000 -- I think that should say really "to  
21 February 2001" in the first column. And then  
22 February 2001 to November 2001, the present, units sold  
23 for all of this stuff?  
24 A. Yes.  
25 Q. You have that?

1 A. Yes.

2 Q. Then in the next column whether it was an ongoing  
3 product in your stores or not?

4 A. Yes.

5 Q. And there is the current selling price at that stage.  
6 We can go back and clarify this if you have forgotten.

7 A. The only thing that suggests to me that that might not  
8 be the case is the last one, the goalkeeper jersey at  
9 £30 --

10 THE PRESIDENT: What do you understand "sold price" to mean,  
11 Mr Russell?

12 A. I think it means the first price that item was sold at.

13 MR TURNER: No, Mr Russell, because that is a lower price,  
14 you will see, than the price to along the right. So do  
15 you see it was discounted from 34.9 to £30?

16 A. Which one are we looking at?

17 Q. At the bottom row, to understand how it works.

18 A. Yes.

19 Q. We will go to the text in a moment but basically  
20 the first price is the one to the right --

21 A. I am sorry, I am sorry, can I stop you because on  
22 the one I have here there is nothing in these columns at  
23 all.

24 Q. No, but for the bottom row we see a sold price of --

25 A. Oh, now I am with you.



1 Q. I will come to the explanation in a moment. But that  
2 price was changed you say on 22nd April 2001 and it  
3 became £30?

4 A. Yes.

5 Q. At the time when this was produced, November 2001, it  
6 was still being sold at £30 in your stores. So that was  
7 then the current price. If you would like to refresh  
8 your memory on that to show that what I am saying is  
9 right, if we go to E and F on the previous page, and  
10 perhaps we should just do that, just to spend a moment  
11 reading that so that you have reminded yourself of  
12 the information that you provided. (Pause)?

13 A. Yes.

14 Q. So let us take that, I think, as being the core pricing  
15 data which you submitted to the Office of Fair Trading?

16 A. Yes.

17 Q. Now, one point that is immediately striking particularly  
18 from your answer to F on the previous page is that  
19 the information relates only to what you have called  
20 JJB's standard prices. And that means that it does not  
21 show transaction prices, by which I mean the impact of  
22 your discounting campaigns and your store by store  
23 discounts?

24 A. I understand, yes, I do understand, yes.

25 Q. So that is what the Office had at that stage?

1 A. I understand, yes.

2 Q. I think you say at the end of F, the last sentence:

3 "For technical reasons it would not be possible to

4 provide details of specific and individual price

5 discounts on a store by store basis ..."

6 For technical reasons.

7 A. Yes, it does say that, yes.

8 Q. And we know now that that was not right?

9 A. How was it not right?

10 Q. Because you were able to produce details of

11 your discounts on a store by store basis?

12 A. Oh, I think I see where you are coming from. You are

13 saying that, for example, the examples that we gave for

14 Manchester United for October 2000 where we had

15 specifically targeted a number of branches and reduced

16 the price, that information can be produced by JJB. But

17 in terms of where it is on the system I would not know,

18 but it is there somewhere unless they have cancelled it

19 off. You would have to ask Mark McCauley that, I do not

20 know.

21 Q. All I am saying now is that, for accuracy, it was not

22 actually the case that you could not produce discounts

23 on a store by store basis because you have subsequently

24 done so a few weeks ago?

25 A. Yes, in terms of Manchester United, yes.

1 Q. And others?

2 A. Yes.

3 Q. Thank you, okay. Let us move forward.

4 The evidence that you gave before the OFT about

5 JJB's pricing policy was simple and straightforward.

6 We have your standard prices set out in this data and

7 the comment that you had made that this generally

8 prevents the other major retailers from going higher

9 than your standard prices, at least on

10 an across-the-board basis?

11 A. Can I see where it says that?

12 Q. This is the point that we were discussing a few moments

13 ago, that because of your truly national market

14 presence, if you set a certain standard price and that

15 is your going out price, it is very difficult for

16 the other major retailers to charge significantly above

17 that?

18 A. Yes.

19 Q. You were proud of that?

20 A. Not proud of it but, yes, I would accept that.

21 Q. Can we go back to tab 4, which is the transcript of your

22 presentation to the Office. If you can flick over to

23 page 26; do you have that?

24 A. Yes.

25 Q. Under slide 4, if we pick this up at line 29, you said:

1           "Our policy not to retail shirts above 39.99 has  
2           been consistently applied since 1996. There has  
3           actually been only one exception to this, involving  
4           the Cool Motion shirts produced by Nike in the Brazil  
5           and Portugal colours for the 2002 World Cup."

6           Do you see that?

7    A. Yes.

8    Q. And we know that you said exactly the same thing at  
9           paragraph 20 of your witness statement, that JJB had  
10           been pricing at 39.99 on launch since 1996.

11   A. Since 1996, in my witness statement?

12   Q. Yes.

13   A. Which witness statement was that?

14   Q. We can go to it if you like, but it has the same effect  
15           as this.

16   A. Yes, please.

17   Q. It is paragraph 20 of your second witness statement.

18           This was about the suggestion that there was some  
19           new policy which arose in JJB in about the spring of  
20           2000. And you say firmly:

21           "This is not the case. JJB adopted no new policy  
22           ... launch since 1996, subject to local discounting ..  
23           including, interestingly, responses to price cutting by  
24           competitors."

25           Turning the page, there was no new policy to

1           communicate to Umbro but you have said pricing at 39.99  
2           on launch since 1996?

3    A.   Yes.  I think that --

4    Q.   All I want to say -- the question is: that was  
5           incorrect, as we now know?

6    A.   Yes, it is incorrect.

7    Q.   Yes.  But the evidence which has emerged as a result of  
8           the OFT's correspondence with your solicitors since  
9           the decision in the appeal is that you have, JJB has,  
10          retailed shirts above 39.99 on at least a number of  
11          occasions up to the end of May 1999?

12   A.   Yes.  Can I just say something on this.  Mr Whelan  
13          touched on it yesterday.

14   THE PRESIDENT:  Yes.

15   A.   It was in June 1998, the France World Cup, when  
16          Mr Whelan first really made this a public policy by  
17          talking about it to investors and people in his public  
18          life.

19                 At that time, the reason he was making these points  
20                 was because the manufacturers virtually en bloc were  
21                 trying to charge a higher trade price than 21.30 and ask  
22                 us to go above that price, and we did not think that was  
23                 right.

24                 I think the other key thing, and it has not been  
25                 said enough, I do not think in court, is that there is

1 another key price point for children's which we believe  
2 to be £30. That was also pushed to 32.99 by the  
3 manufacturers in terms of their trade prices.

4 So from June 1998 we did adopt this public policy.

5 What the gentleman is referring to in the terms  
6 of -- the only examples that I can think were outside  
7 that policy was from June 1998 kits launched. There is  
8 about three or four kits, Everton, Charlton, Nottingham  
9 Forest, which were indeed priced at 42.99.

10 The reason for that was that those kits were ordered  
11 six months previously, around about Christmas of  
12 the year before, so 1997. When we had put them on to  
13 the system we had set them up at a certain sale price,  
14 which was that, 42.99, and somebody in my office, it  
15 could even have been me, has forgotten to change  
16 that price back to £40 when the kit has been launched.

17 So we are talking about three kits out of hundreds  
18 of kits launched over that period.

19 MR TURNER: I do not want to trawl over this in great detail  
20 at all, but really just to get the flavour of it.

21 In your fourth witness statement I think you  
22 actually said that the policy was introduced in  
23 March 1999. We can go I think to tab 1, it is  
24 convenient, of the cross-examination bundle.  
25 Essentially there are several references. At

1 paragraph 6 you refer to the new pricing policy in  
2 March 1999 in the last sentence --

3 A. Did you say this was my witness statement 4?

4 Q. Yes.

5 A. Which paragraph, sorry?

6 Q. Paragraphs 6 onwards.

7 A. Jerseys launched prior to 1999?

8 Q. Yes.

9 A. Yes.

10 Q. And you refer in paragraph 6 -- paragraph 6 is the Umbro  
11 Scotland shirt, 44.99, which was changed in March 1999  
12 you say in line with the new pricing policy?

13 A. Yes.

14 Q. Paragraph 7 is Reebok Liverpool home shirt, 42.99.  
15 The timing of the launch is prior to the introduction of  
16 the pricing policy?

17 A. Yes, because the Liverpool home shirt was launched in  
18 May 1998, just before the June World Cup.

19 Q. Yes. Everton away shirt in paragraph 9. You say:  
20 "Prices changed to be in line with our new pricing  
21 policy in May 1999."  
22 That kit was launched in July 1998.

23 A. Yes, and I have just explained the reason for that.

24 Q. Yes. Anyway, the point is that, as you say in  
25 paragraph 13, at least March 1999 provides a sort of

1 watershed because you say that after that stage  
2 the pricing policy -- the change had been implemented?

3 A. We did have a publicly-stated policy in 1998, which  
4 I would say that 99 per cent we adhered to.

5 What I was trying to say about that statement was,  
6 certainly by March 1999, we were one hundred per cent  
7 trying to keep everything, if we could, in line with  
8 being 40 or 30.

9 Q. We will come to that in a few moments. But the first  
10 question I have is: in your original evidence to  
11 the Office of Fair Trading you obviously got  
12 the position wrong?

13 A. Mm-hm.

14 Q. How did that mistake occur?

15 A. Well, I think that -- you know, obviously over  
16 the period of the last three years, when your department  
17 is looked at in the scrutiny that my department is  
18 looked at, you see a lot of things, faults and all,  
19 warts and all, if you like. It became totally apparent  
20 to me on pricing that it was June 1998 when Mr Whelan  
21 stated the public policy, and that was when we stuck to  
22 that policy of 40 and 30.

23 Q. I see. Well, we now have Mr Whelan's evidence from  
24 yesterday -- transcript page 16, lines 2 to 13 which we  
25 are not going to turn up -- that he would be prepared to



1 make an exception on pricing, or might have made  
2 exceptions, for football shirts that were, in his words,  
3 quite a different one from the average replica shirt?

4 A. Okay, the only shirt that really particularly came into  
5 that category was a Nike shirt which Mr Whelan was  
6 trying to describe to you. It is basically a shirt  
7 called Cool Motion which was introduced for the Brazil  
8 national team and other national teams for Nike, and it  
9 was a very high performance product.

10 Nike asked us, as well as having the replica  
11 version, which was 40 and 30, they wanted us to put this  
12 statement product into a limited number of our stores.  
13 We were quite sceptical because we did not believe that  
14 people would pay -- I believe the shirts should have  
15 retailed at about £54 or even £60. But we went out with  
16 it at around £50. It was very limited in certain  
17 stores, and it was just a statement product that they  
18 wanted to do. But I have to stress that there was  
19 a replica version of it as well, which was at 40 and 30.

20 Q. Let us leave that as the evidence that you gave to the  
21 Office at the time, and we have explored that and  
22 certain problems with it.

23 I would now like to look at the pricing data that  
24 you supplied to this tribunal in the appeal.

25 A. Yes.

1 Q. Essentially we have a schedule attached to your fourth  
2 witness statement in tab 1 of the cross-examination  
3 bundle.

4 A. Yes.

5 Q. And this I think is really your own work?

6 A. It is not my own work. Again this is being produced by  
7 Mark McCauley our IT director. I have certainly -- yes,  
8 I have been talking to him about how we wanted to give  
9 the information. But at the end of the day he has  
10 actually lifted the information from the frame.

11 Q. Right. Well, your solicitors have said -- and tell me  
12 if this is right -- in the letter in tab 5 that this  
13 schedule represents almost all of JJB's replica sales  
14 and that it includes all the major kits.

15 A. Yes.

16 Q. And you are happy with that?

17 A. Yes.

18 Q. This statement is also based on information, I think  
19 you have clarified, taken from the JJB mainframe system?

20 A. Mm-hm.

21 Q. It was not based on the information used to prepare  
22 the response to the Office's Section 26 notice; or was  
23 it?

24 A. No, it was not used to ... no, it was not.

25 Q. Did you cross-check, or did Mark McCauley cross-check,

1 the information in your evidence for the tribunal  
2 against the details you had given to the Office to make  
3 sure it was as complete as you have said it is?

4 A. I am not sure whether he did, no.

5 Q. I have had the unfortunate task of looking at it. In  
6 fact, it is not complete and there are one or two  
7 examples which I found interesting that I would like to  
8 discuss with you.

9 Some significant shirts are missing. One example is  
10 that we have previously been discussing in court when  
11 Mr Mike Ashley was in the box, you will remember, in  
12 a quite different context, the Nottingham Forest home  
13 shirt launched in July 2000. That is not there, nor is  
14 the Nottingham Forest away shirt launched at the same  
15 time.

16 You can go back and check this afterwards, but you  
17 must not spend time going through this now. There are  
18 Nottingham Forest shirts in there, but not their earlier  
19 ones.

20 A. Okay.

21 Q. One particular shirt that is missing from your table is  
22 the FILA West Ham away shirt for 2000, 2001. Do  
23 you remember that particular shirt or not?

24 A. Yes, I think I can remember it, yes.

25 Q. Do you remember when it was launched?

1 A. Not off the top of my head, no.

2 Q. It was in the summer of 2000. To help you there is  
3 a picture of it in colour at tab 8, taken from the club  
4 brochure. If you go to the back of tab 8, there it is,  
5 do you see that?

6 A. Yes.

7 Q. And over the page is a gentleman wearing it.

8 A. Yes, right.

9 Q. Just looking at the page before the picture of  
10 the gentleman, we have the club's retail price of 44.99  
11 for the main adult sizes, the third line down; do  
12 you have that?

13 A. Yes.

14 THE PRESIDENT: I have lost you, Mr Turner -- oh, I have it.

15 MR TURNER: This page (indicating), the third row down.  
16 That tells us that the club price was 44.99, a point  
17 the club has confirmed.

18 Interestingly, the other major retailers have sold  
19 it on launch at 44.99, including Allsports and Blacks.  
20 I will not ask you to go to that, but you will find  
21 it -- and for the tribunal's note, tab 29 of this  
22 bundle is Blacks; tab 31 is Allsports; and we can go to  
23 that later.

24 But the proposition is that the other major  
25 retailers, including Blacks and Allsports, go out in

1 the summer of 2000 on this shirt at 44.99; do  
2 you remember that?

3 A. I will believe you because you are saying it is here --

4 Q. I am just wondering whether you recall that.

5 A. Not specifically, but I will take it as read if you have  
6 the facts.

7 Q. And it turns out that the other major chains,  
8 Giles Sports who are the leading retailer in Wales, the  
9 Midlands and the South-West of England, have nearly a  
10 hundred stores, also go out at 44.99?

11 A. Mm-hm.

12 Q. And so do Hargreaves, which has about 60 stores in  
13 the United Kingdom?

14 A. Yes, okay.

15 Q. Now, Mr Russell, these retail chains according to your  
16 evidence should not have been able to charge 44.99 for  
17 this shirt if you were pricing nationally at no more  
18 than 39.99?

19 A. Yes, if we were charging 39.99 I would accept that, yes.

20 Q. But you were not pricing at 39.99.  
21 If you go to tab 8 and look at the first two pages.  
22 Take the first page. This is just an extract from  
23 the data that you have given to the Office of Fair  
24 Trading?

25 A. Mm-hm.

1 THE PRESIDENT: This is the original?

2 MR TURNER: This is the original data. If you turn to

3 the second page you will have the first price.

4 A. Yes.

5 Q. The big sizes are at the bottom. Old price. And

6 they are all 44.99. Changed on 22nd October 2000 to

7 £39.99. And then you come back to the first page.

8 Changed again on April 2001 to £20. And so on and so

9 forth?

10 A. Yes.

11 Q. Now, here you did price above 39.99 at launch in

12 the year 2000.

13 A. Mm-hm.

14 Q. This is the very period we are concerned with. I would

15 like to ask you whether this example, the West Ham away

16 shirt, was or was not a bigger launch than

17 the Manchester United launch that year?

18 A. No, it was not as big a launch as Manchester United, no.

19 Q. In fact, Mr Whelan has said in the oral

20 representations -- tab 4, page 22 -- and I would ask you

21 whether you agree with this:

22 "When a Manchester United shirt comes out it is

23 a very big launch; there is only the England launch

24 which is bigger than the Manchester United launch."

25 A. Correct.

1 Q. Thank you. Now I want to turn to the question of JJB's  
2 selling replica shirts for under 39.99 at launch, or in  
3 the key selling period which immediately followed  
4 the launch. Can we turn to a convenient definition of  
5 what you mean by the key selling period for replica,  
6 which I would ask you to agree with, which is in your  
7 written representations on the Rule 14 notice.

8 If you turn to tab 10, here we have an extract from  
9 your written representations to JJB Sports; do you see  
10 that?

11 A. Yes.

12 Q. Turn over the page to page 15, three paragraphs up from  
13 the bottom. This is the third line down in that  
14 paragraph:

15 "As mentioned earlier, 80 to 90 of the volume of  
16 sales for any replica kit will take place in the four  
17 months immediately following launch. Therefore, to  
18 maximise profit, it would be normal to set the retail  
19 prices at launch at the maximum it was felt that  
20 the market would sustain that price, with discounting  
21 occurring after the first Christmas following launch at  
22 the earliest."

23 Do you agree with that?

24 A. On a general basis, yes. But, you could have  
25 a circumstance -- in most kits I would agree that is

1 the case, with most normal clubs.

2 But you could have a position with England where,  
3 yes, you would get the same thing repeated at launch.  
4 But what would also happen if they were involved in a  
5 tournament like Euro 2000 or the World Cup, you will get  
6 another rise and another lot of peak sales. Because  
7 obviously they are involved in the tournament and it is  
8 the euphoria created around that.

9 MR TURNER: Thank you very much for that. In the year  
10 immediately preceding the 2000 season with which this  
11 tribunal is concerned, in autumn 1999, JJB ran  
12 an extensive discount campaign with 20 per cent off  
13 everything?

14 A. Yes, I think in March of that year --

15 Q. October is what I am talking about.

16 A. 1999?

17 Q. Yes.

18 A. No, I do not know about 1999. Sorry, I was thinking  
19 ahead to 2000, I am sorry.

20 Q. No, I am sorry. Take a moment. We are back in  
21 the period of autumn 1999. You were running  
22 an extensive discounting campaign at least for some of  
23 this time with 20 per cent off everything. It was  
24 canvassed with Mr Whelan yesterday to some extent; do  
25 you recall that?



1 A. I do not recall an en bloc 20 per cent off all shops --  
2 is that what you are saying?

3 Q. At least over quite a lot of shops, and particularly  
4 where you were competing with Sports Soccer.

5 A. I do remember that happening in March 2000, definitely  
6 I remember that, following the 17.5 per cent during  
7 February campaign across all stores. I remember that.  
8 I do not remember October 1999, other than -- the only  
9 other thing that would have been happening is we opened  
10 new stores. We would have been knocking 20 per cent off  
11 everything for the first couple of weeks.

12 Q. I understand --

13 A. But I cannot remember en bloc. If you have evidence  
14 there is, fine. But I cannot remember it.

15 Q. I understand that. It is a difficult position to be in.  
16 Can we go back to paragraph 17 of your first statement,  
17 which is at page 286, page 287 in particular, in  
18 the witness statement bundle.

19 A. Yes.

20 Q. I just want to have a look at that. You will see that  
21 this paragraph first of all deals with the big price  
22 sensitivity of the replica market and so on. At the top  
23 of page 287:

24 "Hence other retailers generally cannot afford to  
25 set their retail prices higher than ours. They will

1 sometimes set them lower, even during periods of healthy  
2 demand, with a view to increasing their sales volume.  
3 The sensitivity of other retailers to JJB supplies list  
4 is apparently reflected in ..."

5 And then we have the October emails which we looked  
6 at yesterday and you have exhibited. Just in the last  
7 sentence we have the point that Sean Nevitt of  
8 Sports Soccer:

9 "... explained a decision by Sports Soccer to sell  
10 replica at £30 on the basis that JJB was selling at  
11 39.99 less 20 per cent, ie £31.99."

12 A. Mm-hm.

13 Q. So at this time you are selling replica at £31.91; yes?

14 A. Possibly in certain stores.

15 Q. In certain stores you are selling them as the result of  
16 a price war with Sports Soccer?

17 A. Yes.

18 MR TURNER: Sir, I do not think we need to go back to those  
19 documents; we saw them yesterday.

20 THE PRESIDENT: Yes.

21 MR TURNER: The effect of this, then, is that a number of  
22 the replica shirts launched in late 1999 -- which is  
23 detailed in your new evidence -- were sold at cut prices  
24 during the key selling period before Christmas of that  
25 year.

1 A. Depending on when the kit was launched. You could have  
2 a kit in 1999. I think that people need to understand  
3 that replica kits are not just launched in August when  
4 the football season starts; the typical cycle of replica  
5 kit launches starts from around about April of a year  
6 and will run right through to as late as October or  
7 November.

8 Q. That is absolutely right, Mr Russell. I do not want to  
9 go through all of these in nauseating detail, but there  
10 were a significant number of them which were launched in  
11 late July, August, September, which were all discounted  
12 pretty well at or very shortly after the launch date.  
13 And I will give you some examples if you would like?

14 A. No, no.

15 Q. You will accept that?

16 A. Yes.

17 Q. I will mention for the record Wimbledon FC away jersey  
18 launched 10th September 1999, Spurs away jersey,  
19 launched 16th September 1999, Le Coq Sheffield United  
20 home jersey, launched 30th September 1999.

21 I will stop there.

22 THE PRESIDENT: It is in the papers somewhere, is it?

23 MR TURNER: It is in the schedule attached to Mr Russell's  
24 fourth witness statement. He has actually identified  
25 very helpfully the precise launch date for all of

1 the kit that is mentioned.

2 If you go to tab 1 and look at that schedule, and if  
3 you take the first page of the schedule for ease of  
4 reference -- Mr Russell, would you like to turn that up?  
5 On the extreme right, you have the launch date. If you  
6 just track down, for example, to Le Coq QPR jersey,  
7 the second entry for that, about ten lines down,  
8 you will see for example that was launched on  
9 1st September 1999.

10 It is simply going through and extracting that  
11 a number of these shirts were launched in the relevant  
12 period which we are now discussing.

13 How the schedule works and the different changes  
14 I can also go through, but it is detailed in  
15 Mr Russell's statement.

16 THE PRESIDENT: Yes.

17 MR TURNER: So there it is, Mr Russell.

18 That discount campaign flowed into another discount  
19 campaign. JJB were discounting across the board all  
20 the way up until, I think, 23rd April 2000 of  
21 the following year.

22 A. When you say across the board, in 2000 are we talking  
23 about now?

24 Q. Yes.

25 A. In 2000, the major promotions of that year were the "let

1 JJB pay your VAT", which ran from roughly about  
2 the first week in February to March.

3 Q. 12 March.

4 A. Yes, thank you for that.

5 That was subsequently followed up with a selected  
6 stores 20 per cent off. I am not too sure of the end  
7 date to that but it started certainly in March.

8 Q. It ran to 23rd April. A lot of stores?

9 A. Well, the VAT I would accept was all stores in the month  
10 of February, which as Mr Whelan explained to you  
11 yesterday is the quietest month of the year.  
12 The following promotion was approximately 100 stores.

13 Q. That is right, 100 stores in town or cities where  
14 you were competing with Sports Soccer?

15 A. Yes.

16 Q. Just to complete that point perhaps we might just look  
17 at Umbro's view of your discounting in its  
18 April 2000 monthly management report which is in  
19 bundle E1, the first volume, page 182C.

20 I do not know if anything is blanked out of your  
21 page. I hope it is not.

22 A. I have it.

23 Q. At the bottom of this page we see the initials PF/JS,  
24 April 2000. PF may be Phil Fellone?

25 A. Yes.

1 Q. And the second paragraph is the one we are going to look  
2 at:

3 "JJB, after recently reporting a record profit for  
4 1999, have ended all blanket promotions in store and for  
5 the first time in six to nine months are not currently  
6 discounting. For how long, who knows."

7 A. That statement is actually incorrect, and I will tell  
8 you why. During the year of 2000 we had opened  
9 something in the region of around 30 stores in that  
10 year, much of which would have been in the second half  
11 of the year. As each one of those stores opened, it  
12 would open to stimulate trading in that store for  
13 the first two weeks, 20 per cent across everything.

14 So that was number one, and we would have opened  
15 probably 35 stores in 2001. So that was something that  
16 we were doing across the board.

17 Plus our marketing team would, throughout the rest  
18 of that year, be producing advertising, special  
19 discounted product into a range of products.

20 So the suggestion that we were not discounting and  
21 being value for money for the rest of the year, which is  
22 what is being suggested, is not right.

23 Q. All I am taking you to is Umbro's perception at that  
24 time of what was going on in the market. The OFT have  
25 identified that in the decision at paragraph 136 as

1 a point mark in the change of JJB's pricing policy, to  
2 which Mr Morris referred canvassing the point yesterday  
3 with Mr Whelan.

4 May I, Mr Russell, also suggest that, leaving aside  
5 1999 and what was happening then, you have also sold on  
6 the first day of launch of shirts at discounted prices  
7 where that has suited your purposes?

8 A. Not where it suited our purposes. You could have  
9 an occasion where, for instance, you are opening a new  
10 store and it coincides with the kit launch.

11 Q. That would not be the only occasion, would it?

12 A. Can you repeat the question?

13 Q. Yes. You have also sold in the period 2000/2001 for  
14 clarity on the first day of launch itself at discounted  
15 prices lower than High Street where that has suited your  
16 business purposes?

17 A. No, I do not think we have.

18 Q. Can I give you one example: the example is JJB retailing  
19 the new England shirt launched on 23rd April 2001 at  
20 a 25 per cent discount in the Carlisle store --

21 A. Yes.

22 Q. -- on the day of launch, which was not a new store?

23 A. Yes. If you have put a 20 per cent off promotion within  
24 a particular store and it happens to be the launch date,  
25 we would still go out with that shirt and carry on

1 launching it and obviously sell a lot more than  
2 normally.

3 Q. Yes. In other words, there is no invariable policy,  
4 Mr Russell --

5 A. Can I come back to this. Did you say the Carlisle  
6 store?

7 Q. Yes.

8 A. I am actually convinced in my mind that this branch is  
9 wrong. The reason I believe it to be wrong is that  
10 I believe there is a duplicated set of evidence that  
11 Bury branch is quoted as saying word for word in one of  
12 Umbro's file notes, exactly the same thing, that we have  
13 reduced the shirt on 23rd April. It is in my  
14 recollection a new store in Bury opening, not in  
15 Carlisle, that was that.

16 So I understand what you were saying about it being  
17 Carlisle and Carlisle being open, I do not believe  
18 Carlisle was the branch; I believe it was the Bury  
19 branch.

20 Q. I would like to finish the point on this. Take it for  
21 the moment as at Carlisle store --

22 A. I do dispute that.

23 Q. The decision to sell at a 25 per cent discount on  
24 the England replica was made by Mr Sharpe; yes?

25 A. No. What actually happened in the Bury example on



1 the day of launch for the England kit, it is documented  
2 that I received a phone call from Phil Bryant or  
3 Phil Fellone -- I cannot remember which -- asking me if  
4 we would actually take them off display because it was  
5 upsetting other retailers, probably more than likely  
6 Sports Soccer. So I think in Bury they did have a store  
7 near us.

8 I merely stated to him that I would talk to  
9 Duncan Sharpe about that, but in the initial sense no,  
10 I was not removing it.

11 That is what happened that day.

12 Q. Did you speak to Duncan Sharpe?

13 A. Yes, I did speak to Duncan Sharpe.

14 Q. And what did Duncan Sharpe decide?

15 A. He said something on the lines of: Colin, you know that  
16 is what we were going to continue to do. We are not  
17 going to take it off just to keep other people happy; if  
18 the store opens on that day and there is 20 per cent  
19 off, there is 20 per cent off.

20 I said: fine.

21 Q. Shall we just have a look at the file note; it should be  
22 at the very end of your cross-examination bundle, tucked  
23 behind tab 31 right at the very end.

24 THE PRESIDENT: It is tab 32, I think.

25 MR TURNER: You should have this file note, dated

1           23rd April 2001, subject --

2    A.   Can I just say that this word for word is exactly

3           the document that I have seen by Umbro referring

4           actually not to Carlisle but Bury.

5    Q.   Shall we just read it -- you have seen it before?

6    A.   Yes.

7    Q.   This is a Phil Bryant document.

8    A.   Where does it say it is a Phil Bryant document?

9    Q.   That is my understanding.  You say it is not?

10   A.   I am not sure, because I have seen the other one that is

11           exactly the same.

12   Q.   All right.  Let us see what it says then:

13           "Colin Russell advised in the morning of Carlisle

14           branch offering 25 per cent discount off England new kit

15           on launch day by P Bryant.  Concerns were raised [which

16           I take it were Phil's concerns] that this could give

17           other retailers the perfect opportunity to reduce their

18           stock and start a price war."

19           "Colin said he could see our point of view, but

20           the discount applied to all product as a result of

21           a commercial decision made by Duncan Sharpe.  He did

22           say, however, he would speak to Duncan when he came back

23           to the office that afternoon.  Phil Fellone had

24           a similar conversation with Colin later that morning.

25           Phil Bryant spoke to Colin at 4.45pm to advise that

1 Duncan was aware of our concerns, but stood by  
2 the original decision to apply the discount."  
3 What we see from this is that Phil Bryant raised  
4 concerns with you; yes?  
5 A. Yes.  
6 Q. He escalated it to Phil Fellone; yes?  
7 A. Yes.  
8 Q. On your side it was taken to Duncan Sharpe; yes?  
9 A. Yes.  
10 Q. You said that you could see Umbro's point of view --  
11 A. No.  
12 Q. You did not say that?  
13 A. No.  
14 Q. The note is wrong?  
15 A. The note is wrong. I did not say that I could see any  
16 point of view. I just told you that what I actually  
17 said to Phil was: it is our policy to do this, Phil.  
18 Basically that is what we were doing, because he was  
19 pleading with me to take the shirts off display.  
20 Q. How did you react to his suggestion that you should  
21 raise your price?  
22 A. I do not think -- he was not actually asking me to raise  
23 the price. He was asking me to take the shirts off  
24 display.  
25 Q. How did you react to that?

1 A. I said we would not do it.

2 Q. Were you shocked and puzzled?

3 A. No, because we had had similar occasions where other  
4 manufacturers -- when this had occurred, when we would  
5 have opened new stores and we had 20 per cent off across  
6 everything -- had rang us and asked us not to sell  
7 the shirts on that day. And we said no, we are selling  
8 the shirts.

9 Q. So this was the sort of thing that happened quite a lot?

10 A. Not quite a lot. But it did happen.

11 MR TURNER: Sir, I think this is a convenient moment, if it  
12 suits the tribunal.

13 THE PRESIDENT: Yes.

14 MR WEST-KNIGHTS: I have two matters I need to raise at some  
15 stage. I have taken it upon myself, but I need  
16 the retrospective approval of the tribunal if I may. I  
17 have released Mr Guest until 10.30 tomorrow, he is here  
18 under subpoena, you will remember. The other thing is  
19 the question of the figures, and I do need three minutes  
20 on this now. Time is trickling by. It is neutral, so  
21 far as Mr Russell is concerned.

22 If I can be quick about this. You will recall that  
23 Umbro put in a single sheet of paper purporting to show  
24 what the real turnover was between themselves and  
25 Sports Soccer in the year 2000. I have been scouring

1 the documents -- I do not want you to think I am rather  
2 manic about this, but I have been trying to see whether  
3 there is any check on those figures being right or not.

4 We have a problem with 2000, because it is subject  
5 to change by an immeasurable amount because of this  
6 licence arrangement.

7 However, I have turned up one document which appears  
8 to show the accurate and actual figure for the year  
9 1999. We are assured, first that none of these  
10 arrangements pertained in 1999; second, that  
11 Sports Soccer took no physical delivery of anything  
12 pursuant to these arrangements in the year 2000.

13 I wonder if I could ask you to go very rapidly to  
14 E1, part 2, tab 33. Everywhere else that I have looked  
15 for the like information in respect of others, or any  
16 other basis for the piece of paper that we have been  
17 provided with, is either a total redaction or it is  
18 missing.

19 In my bundle it is marked page 295C, but it may  
20 simply be that that is a replacement page because it had  
21 been partially redacted.

22 Do you have a page starting "Section 1, accounts  
23 analysis?"

24 THE PRESIDENT: Yes.

25 MR WEST-KNIGHTS: It is plainly part of the report by

1           Attfield, national area manager for the period  
2           June 2000.

3           I can tell you that we do not have the equivalent  
4           pages with the 1999 figures in respect of any other  
5           account or any other period. So we cannot do  
6           a like-for-like. Somebody has gone to a great deal of  
7           trouble to weed out the information from these documents  
8           at some stage.

9           The point which I make is that, in contrast to  
10          the assertion on this single piece of paper, the real  
11          Sports Soccer turnover between themselves and Umbro in  
12          the year 2000 was a figure of less than £15 million.  
13          We have a fact figure for the year 1999 -- which cannot  
14          be in any sense if what we have been told so far is  
15          true -- in any way affected by licensing arrangements,  
16          advance payments, royalties or any other form of  
17          fiddling about of a figure of just under 36 million.

18          All of the evidence has been that the relationship  
19          between Sports Soccer and Umbro strengthened between  
20          1999 and 2000, and particularly the evidence of  
21          Mr Ronnie that he was positively assisting Sports Soccer  
22          during late 1999 and early 2000 to improve its position  
23          in the market and that he was successful.

24          It is inconceivable that the real turnover between  
25          Umbro and Sports Soccer was way less than half in

1 the year 2000 of what it had been in the year 1999.  
2 Which is why I remind you that the figure for the year  
3 2000 of just under 15 million cannot be affected by  
4 deliveries made under the collateral arrangements,  
5 because we have been told in terms that there were no  
6 deliveries pursuant to those arrangements in 2000, and  
7 the figure for 1999 has to be completely real.

8 So there is that point which arises and puts an  
9 enormous question mark. As I said yesterday, these  
10 figures are remarkably low -- the ones that have been  
11 provided on the single sheet -- and in addition, we  
12 still await the top five plus MU accounts figures so  
13 we can see whether any of this adds up. At the moment,  
14 it does not.

15 At this rate, the tribunal will have expected to  
16 have finished all of the evidence by the time any cogent  
17 information emerges about what actually happened in  
18 the year 2000, and that is not satisfactory.

19 At the moment -- I do not say this in any sense with  
20 any glee -- we are going to need Ronnie and Ashley back.

21 I am sorry to interrupt, sir, but there are we are.  
22 Those are the two matters I wanted to raise, I am not  
23 asking for an instantaneous view, but --

24 THE PRESIDENT: I think at some stage you have to reduce to  
25 a piece of paper exactly what information it is you

1           seek, and invite us to make a formal order.

2   MR WEST-KNIGHTS:  It will be a short piece of paper.

3   THE PRESIDENT:  I have not done yet.

4   MR WEST-KNIGHTS:  I beg your pardon.  I am sorry, I misheard

5           you to say "I Have not done yet."

6   THE PRESIDENT:  We have not yet made an order against Umbro.

7   MR WEST-KNIGHTS:  You have given a pretty clear invitation.

8           On the face of it, the piece of paper which you have

9           from Umbro is worthless, inaccurate.  I am very happy

10          that I shall write something down which is an order that

11          Umbro provide forthwith the accurate figures for the

12          real turnover between themselves, Sports Soccer and the

13          top ten accounts -- let there be no mistake about it --

14          for the years 1999 and 2000, so that we can see them

15          side by side.  That is it.  Sorry to sound cross, I am

16          trying to be quick rather than cross.

17                 I have during, the course of Mr Russell's

18          cross-examination, been having a final look to see

19          whether there is any sense to be had from these papers,

20          and I am struck by how frequently the page where one

21          might expect to find the information does not exist.

22          This page is as clear as crystal.

23   THE PRESIDENT:  Yes.

24   MR MORRIS:  Sir, the only observation that I can make is

25          that there is nobody from Umbro here at the moment as



1 far as I can see. I may be able to make enquiries over  
2 the luncheon adjournment as to where they are. I am not  
3 sure whether it was top three, top five or top ten that  
4 was left yesterday.

5 THE PRESIDENT: We left it at top five, plus Manchester.

6 But let us see how --

7 MR MORRIS: And I will mention that point as well.

8 MR WEST-KNIGHTS: Can I say this quite neutrally, sir.

9 Because this is so much tied up with, we say,

10 the chronology of the period, the order that I shall be  
11 asking for will be against Umbro and the Office, so they  
12 can procure the -- I do not understand why it is my  
13 learned friend always thinks it is amusing to laugh.

14 I am giving him notice that he, as a public prosecutor,  
15 should give us this information.

16 MR MORRIS: At a request from my learned friend to my left,  
17 in the light of that could we say 2.05.

18 THE PRESIDENT: Yes, five past two.

19 (1.10 pm)

20 (The short adjournment)

21 (2.05 pm)

22 MR MORRIS: Sir, I have spoken to Miss Roseveare, who was on  
23 a train or about to get on a train. I think, as  
24 I understood it above the announcement at Waterloo or  
25 whether it was that she was, that she was back on her

1 way up to Umbro.

2 In relation to the figures that were asked to be  
3 provided yesterday, transcript page 7, lines 10 and  
4 following, they are being prepared and she hopes that  
5 they will be faxed to the tribunal in the course of  
6 the afternoon when she gets back and looks at it.

7 In relation to any other matters, which I would  
8 envisage includes the rest of the top 10 from what  
9 Mr West-Knights said, the enquiry about the 1999 figures  
10 raised by the reference to that document, she expressed  
11 a degree of resistance, along the lines: we have been  
12 doing our best and we are trying very hard.

13 I also passed on the proposition that the tribunal  
14 may be making an order or may contemplate making  
15 an order, and she said that Umbro would wish to make  
16 representations before any such order is made.

17 The third point is that she is making enquiries  
18 about the possibility of representation for Umbro should  
19 we reach that stage.

20 She is not here today, she is trying to be here as  
21 much as she can, but she has other matters to be getting  
22 on with.

23 That is the position, sir.

24 THE PRESIDENT: Mr West-Knights, can we deal with it at  
25 the end of the day rather than now?

1 MR WEST-KNIGHTS: I can take a hint as well as the next man.  
2 THE PRESIDENT: Thank you very much.  
3 MR WEST-KNIGHTS: But the order I am going to be asking you  
4 to make will be a fierce one.  
5 THE PRESIDENT: Let us deal with it later.  
6 MR TURNER: Before lunch we were talking about discounts at  
7 launch in the relevant period, and I was canvassing with  
8 Mr Russell the issue of the Carlisle shirt in 2001 when  
9 apparently the shirt was discounted. Mr Russell said  
10 that he thought there was confusion and it might have  
11 been the Bury branch.  
12 THE PRESIDENT: Yes.  
13 A. Yes.  
14 MR TURNER: Whether or not that is the case, sir, may I just  
15 hand up the result of some further investigation over  
16 lunch? (Handed).  
17 The short point is that the Bury branch was not  
18 a new store either in 2001.  
19 Perhaps we do not need to go there, I can show you  
20 the material if you would like?  
21 A. I recollected it may have been, so if you want to show  
22 me the material you have, I will look at it.  
23 Q. Let us show you the material.  
24 A. Yes, I will have a look. (Handed). Thank you.  
25 MR TURNER: Sir, these are extracts from the accounts for

1 the company, the first clip is for the year 2000,  
2 the second for 2001.

3 In relation to 2000, listing the store locations,  
4 you see Bury there in the first column. In relation to  
5 the year 2001 in Mr Duncan Sharpe's property review  
6 Carlisle and Bury are highlighted.

7 Finally, in case there should be any remaining  
8 doubt, if you would turn to tab 5 in  
9 the cross-examination bundle, that tab contains  
10 the correspondence about JJB's pricing and discounting  
11 with the Office in recent weeks.

12 If you would go forward in that to what is page 1205  
13 in the bottom right-hand corner, on that page and on  
14 the two following pages for the subsequent years we have  
15 a full list of the stores that were opened by JJB for  
16 the years 1999, 2000 and 2001?

17 A. Yes.

18 Q. This was information provided by DLA from JJB, and Bury  
19 is not in that list either. Do you see that,  
20 Mr Russell?

21 A. Yes.

22 Q. It is on the basis of that information that I was  
23 suggesting that you may have been mistaken in your  
24 recollection that the Bury store was a new store?

25 A. What I am absolutely convinced I am not mistaken of is

1           that there is a dual file note which does refer word for  
2           word and uses the Bury store.

3           So it is a bit confusing when you are seeing exactly  
4           word for word the same file note with two different  
5           branches.

6   Q.   I understand that, Mr Russell.  It does not affect my  
7           point.

8   THE PRESIDENT:  Is there a second note?

9   MR TURNER:  If there is in the file we will look for it.  My  
10           point were that, if that were the case, it does not  
11           affect the point that I am seeking to make.

12           There are only two other questions on the issue of  
13           your pricing, Mr Russell.  I would like you to take  
14           tab 10 of the cross-examination bundle.

15   A.   Yes.

16   Q.   Which we have already been to once.  This is an extract  
17           from your written representations?

18   A.   Mm-hm.

19   Q.   What we have here, if you look at the bottom of  
20           the page, page 874, and read over to the following page,  
21           is that we see in parentheses that between February and  
22           April JJB adopted certain specific promotions using till  
23           discounts on the England shirt, and those were  
24           discontinued since they did not generate earnings.

25           Do you remember that?

1 A. Yes.

2 Q. Now, those particular discounts I am just drawing to  
3 your attention were not included in the recent list of  
4 store discounts that were sent to us by your solicitors?

5 A. No, I believe the only list of specific store discounts  
6 was regarding some Manchester United and a couple of  
7 other clubs, but not England.

8 Q. Why was this one omitted?

9 A. From this ... are we talking about  
10 the February 17.5 per cent pay for VAT?

11 THE PRESIDENT: Well, it is JJB's document, so JJB  
12 presumably can tell us what it is talking about.

13 A. Yes, I think that it is the pay your VAT, which would  
14 have been taken off at till source, that is absolutely  
15 correct.

16 MR TURNER: I understand.

17 A. And then the subsequent March 20 per cent off certain  
18 hundred stores.

19 Q. Which ran to the end of April?

20 A. Yes.

21 Q. The discounting of stock was in May 2000, which is  
22 the beginning of the period with we are concerned in  
23 this case?

24 A. It did stop, I would accept, across the board. But it  
25 did not stop in terms of any new store openings. As

1 I told you, there was approximately 30 store openings  
2 that year. So if stores had been opening in May or June  
3 or July, they would have been subject to 20 per cent off  
4 for the first two weeks.

5 Q. I understand that clarification, and we have just seen  
6 the list.

7 I have a final question for you in relation to  
8 discounting, and this relates to the period after  
9 the decision was made, and after the period of  
10 the price-fixing found by the Office occurred.

11 I would like to ask you about the launch of  
12 the England kit on 23rd April 2003.

13 A. Last year?

14 Q. Yes.

15 A. The home kit?

16 Q. Yes. Do you remember that launch?

17 A. I absolutely remember it.

18 Q. Clearly?

19 A. Clearly.

20 Q. Can you tell us what JJB's national price at the launch  
21 of that kit was?

22 A. Yes, definitely. We went out for adults at £25 and £19  
23 for children.

24 Q. May I just hand to the witness and to my learned friends  
25 on the other side one further table. (Handed).

1           If you just have a look at that. This was a survey  
2           of the prices at which the major chains were selling  
3           the England kit at the launch on 23rd April 2003. As  
4           you say, we see for JJB stores there in the first row  
5           £25?  
6    A. Yes.  
7    Q. Do you see that?  
8    A. Yes, I do, yes.  
9    Q. What I would like to ask you about is the other  
10          offerings that we see for the other stores there.  
11          For example, Sports Soccer in the bottom row, do you see  
12          the adult shirt price of £24?  
13    A. Yes.  
14    Q. Do you remember that?  
15    A. I do. I would, however, slightly qualify this. I think  
16          the launch date -- I am trying to use my memory here.  
17          I think it may have been the 2nd or 3rd April; is that  
18          correct?  
19    Q. The launch was 23rd April --  
20    A. No, not last year it was not. I was lying in hospital  
21          at the time, I do remember that.  
22    Q. Yes, I am sorry, Mr Morris has drawn to my attention in  
23          little print under the first box it says that  
24          the shopping survey, England Direct, was conducted on  
25          2nd April; and under the second box, survey conducted on



1 3rd April. So it looks like you are right, 2nd and  
2 3rd April?

3 A. The Sports Soccer one is not accurate. If you look at  
4 the price they went out at on the morning of the launch,  
5 they actually went out at an advertised price of £20 and  
6 £30. What they did that day -- this is what we believe,  
7 I do not know for certain, I am guessing. What  
8 Sports Soccer did was follow us and they actually went  
9 as you can see a pound beneath JJB.

10 Q. On the very day of the launch?

11 A. On the very day of the launch. Up until the launch they  
12 were 30 and 20 and advertised at that, but only on  
13 the day itself at some time I believe they may have  
14 changed their pricing on it.

15 Q. Right. So that under these competitive conditions you  
16 launch at £25 and they react on the very day of launch  
17 to come down from £30 to £24?

18 A. That is what appeared to be happening, yes.

19 Q. If you turn over the page, another of the undertakings  
20 listed, we see Allsports listed there, £40 and £30?

21 A. Yes.

22 Q. Next to it in the "options offers" box we see that they  
23 appear to have been throwing in free Umbro sunglasses  
24 worth £20; do you recall that?

25 A. Yes, I think I do.

1 Q. And that is how they were competing at the time, as you  
2 recollect it?

3 A. Yes.

4 Q. Thank you very much.

5 Now I would like to move on if I may, Mr Russell, to  
6 a topic which was different, your relation with Umbro  
7 and the nature of the conversations that you had in  
8 2000 and 2001 with the people you dealt with at Umbro?

9 A. Yes.

10 Q. Do you accept first that JJB has significant purchasing  
11 power vis-a-vis Umbro?

12 A. Well, before we came to this tribunal I probably would  
13 have accepted that. Since what I have heard in  
14 the tribunal regarding the secret relationship between  
15 Umbro and Sports Soccer I am not so sure now.

16 Q. I am asking you for your perception --

17 A. Yes, back in 2000 definitely I would have believed that  
18 we were the greater purchasing power, yes.

19 Q. That is how it felt to you?

20 A. Yes.

21 Q. And it felt to you like that in 2001?

22 A. Yes.

23 Q. Now, you used that purchasing power to restrain  
24 wholesale prices, did you not?

25 A. We did.

1 Q. And you were successful?

2 A. After a lot of debating we were successful with Adidas  
3 and with Umbro, yes.

4 Q. And Nike as well?

5 A. And Nike as well, yes.

6 Q. You have given examples -- I will just give  
7 the reference for the transcript -- in your second  
8 statement at paragraph 6 of your success against,  
9 for example, Nike in relation to restraining increased  
10 wholesale terms.

11 In bringing Umbro round and to get what you wanted  
12 you would sometimes decline to place orders with them?

13 A. No, that is not how it was. What had happened was we  
14 had reached December 2000 following a year where, as  
15 I think I told you earlier, most of the manufacturers of  
16 replica kit were trying to increase the trade price of  
17 adults to £22.90 and they were also trying to increase  
18 the trade price on children's to make it a retail price  
19 of £32.99.

20 In December, after a year of 2000, where we had to  
21 accept a loss of margin because of that, we basically  
22 said that we wanted to retail, as we had said publicly  
23 at £40 therefore we believed that 21.30 was a fair price  
24 to pay. It was not trying to do anything else other  
25 than when they came in to look for new orders for

1 the following year we said unless we can get £21.30  
2 we were not going to order any.

3 Q. So to summarise, in response to Umbro's attempt to raise  
4 prices, you declined to place any orders with Umbro?

5 A. In summary, not just Umbro, but Umbro and Adidas  
6 particularly.

7 Q. Yes. And Umbro eventually agreed to reduce the price  
8 because of that?

9 A. They did indeed in January 2001.

10 Q. You also held a rather special position with Umbro, it  
11 seems, in relation to purchases of excess stock --

12 A. Sorry, can you repeat that?

13 Q. Yes. It was established, was it not, Mr Russell, that  
14 JJB had a right of first refusal so far as excess stock  
15 was concerned?

16 A. What actually happened there -- and we are talking about  
17 clearance products -- was that most of the manufacturers  
18 knew that JJB had the biggest shops, they were  
19 the biggest player in replica and they knew that when  
20 they had a lot of stock left they could come to JJB --  
21 over and number of years this was -- and basically be  
22 given what we believed and they must have believed was  
23 a fair price for their excess stock after a kit had  
24 finished or was coming to finish.

25 We did have a position where most times, yes, on

1 replica they would come to us. But there were occasions  
2 where we would make an offer, the offer was not accepted  
3 and they would go elsewhere.

4 Q. But you had the first offer from Umbro in relation to  
5 excess stock?

6 A. Mainly during that period, yes.

7 Q. That is to be found in your first witness statement at  
8 paragraph 26.

9 As far as buying replica from Umbro was concerned  
10 your main point of contact was Phil Bryant?

11 A. Yes.

12 Q. Then the JJB account manager?

13 A. Yes, indeed.

14 Q. If I am right he is now the JJB account manager at  
15 Gilbert & Pollards, another replica shirt brand?

16 A. Yes. I do not deal with them day to day now because  
17 they do very little replica. But yes, he is, yes.

18 Q. That is his function?

19 A. Yes.

20 Q. You would have regular phone calls with Mr Bryant,  
21 perhaps up to four or five times a day?

22 A. Yes, on certain occasions, yes.

23 Q. Mr Whelan said yesterday that he was in your offices at  
24 least three times a week?

25 A. Yes, he was. Not just to see me, though, I must point

1 out; Phil Bryant's job was not just to come and sell  
2 replica: he had to deal with our equipment buyer, he had  
3 to deal with our footwear buyer and in certain cases our  
4 textile buyer. So he was the key point of contact in  
5 Umbro for selling all product categories to JJB.

6 Q. So he would have known your business well?

7 A. Yes.

8 Q. I want to put to you two propositions which you said in  
9 your evidence which are really to the same effect.

10 I want to see what you say about these now.

11 First in your second statement, if you would turn it  
12 up, at paragraph 20. We were looking at this earlier  
13 on. If you cast your eye over it, it is the statement  
14 in the last sentence once you get there:

15 "JJB would never have communicated its pricing  
16 policy to Umbro beyond its public pricing policy of not  
17 exceeding £40 for the adult replica shirt."

18 Do you see that?

19 A. Yes.

20 Q. And you agree that that was the case?

21 A. Yes.

22 Q. Perhaps we do not need to turn it up, but I will tell  
23 you what you also said in your oral representations.

24 You have never been willing to discuss retail prices  
25 with manufacturers except to make it absolutely clear to

1           them in some cases that their recommended retail prices  
2           were too high?

3    A.   Yes, it says that.

4    Q.   And you agree with that now?

5    A.   Yes.

6    Q.   I would suggest to you that those statements are not  
7           quite correct.  Are you saying that in all of your  
8           discussions with Umbro in the time after you ended your  
9           policy of across the board promotions you never said to  
10          them that JJB's policy was to price replica at £40 price  
11          point?

12   A.   Umbro knew what JJB's policy was.

13   Q.   And what was that policy that they knew?

14   A.   I believe they knew that we would never sell replica at  
15          more than £40 or £30.

16   Q.   Did they know that it was your policy to aim the price  
17          of replica at £40?

18   A.   They could have an educated guess at that but as  
19          Mr Whelan explained to you yesterday in terms of  
20          particularly the major launch kits we still could make  
21          decisions up to as little as a week before, and we could  
22          if we had wanted to change the price the night before.  
23          So they would never have been one hundred per cent  
24          certain at all.

25   Q.   That is helpful.  Would it not inevitably have come up

1 in your day-to-day dealings with Umbro that you were  
2 looking to price the replica at £40 as a matter of  
3 policy?

4 A. I did not really discuss a lot with Umbro about what JJB  
5 was going to do in selling price. I was more interested  
6 in the wholesale price that we were receiving.

7 Q. I see. Can we turn to tab 11, please, in  
8 the cross-examination bundle; do you have that?

9 A. Yes.

10 Q. That is an internal Nike email of 6th December 2000,  
11 which you attached to your first witness statement; do  
12 you remember it?

13 A. Yes.

14 Q. It is headed "JJB Replica Update". I would like you to  
15 look halfway down where you see a discussion about  
16 the proposed Nike price for goalkeeper jerseys.

17 About halfway down the sentence begins:

18 "The only area of concern from a product point of  
19 view is goalkeeping jerseys. Only kids' sizes selling  
20 and we feel they were overpriced. They would want to  
21 sell these at the same price as replica jerseys, at £40.

22 "The £40 price mark is very important to them. They  
23 do not see themselves moving from this in the near  
24 future."

25 Do you see that?



1 A. Yes, I do, yes.

2 Q. So you did let Nike know that your policy was to sell  
3 jerseys at £40?

4 A. No, if you read that carefully you will see that what  
5 Martin Boyse is apparently referring to, we only buy  
6 goalkeepers jerseys in kids' sizes. £40 does not refer  
7 to kids' sizes; it is adults' sizes.

8 Q. I am not asking about the distinct topic of the kids'  
9 sizes. I am only asking about what he says here, which  
10 clearly suggests --

11 A. I think that the only thing that happened on that one  
12 was that Martin Boyse and Nike were trying to charge  
13 more at a trade price for the goalkeepers' kits than  
14 they were -- sorry, than they were for the shirt. So  
15 the shirt would be priced at £30 but the goalkeepers'  
16 kids shirt for Manchester United was, say, £35.

17 The point that I was making to him that day was that  
18 we would always want to retail the children's shirts  
19 across the board, goalkeepers and shirts, at £30.

20 Q. I will mention this just one more time and then move on.  
21 They would want to sell these at the same price as  
22 replica jerseys, £40 --

23 A. Not kids' we would not, definitely.

24 Q. And the £40 price mark is very important to them, they  
25 do not see themselves moving from this in the near

1 future. It says that you have told them that that is  
2 your price point for jerseys, £40?

3 A. We did not tell any manufacturer what we were going to  
4 retail our shirts for. If they in the marketplace saw  
5 that on the whole we were 40 and 30 they would see that  
6 and that would be their educated guess. We did not say  
7 to them: we are going to sell your shirt for £40, and  
8 they knew with JJB that they could not have a cast-iron  
9 certainty that that was the case.

10 Q. I understand. But this is as a general policy rather  
11 than in relation to any specific shirt?

12 A. No, we did not tell manufacturers what price we were  
13 going to retail their shirts for.

14 Q. I see. Mr Russell, you or perhaps someone senior to you  
15 such as Mr Sharpe or Mr Whelan did also discuss with  
16 Mr Bryant JJB's plans for discounting replica.

17 A. In what regard?

18 Q. The plans that you had for discounting for example Man U  
19 home jerseys. You would say --

20 A. Which Manchester United home jerseys, the one that was  
21 launched in 2000?

22 Q. For example.

23 A. No.

24 Q. Definitely not?

25 A. No, definitely not.

1 Q. Can we turn to the monthly management report for January  
2 2001, which you will find in E2, first volume, tab 66,  
3 page 554.

4 This is a management report within Umbro in  
5 January 2001. Mr Bryant's section begins at 554. There  
6 is his name.

7 I would like to turn over the page and look at  
8 licensed at the very bottom of that page.

9 A. Yes.

10 Q. "Reductions have been applied on Man U away third  
11 jerseys only. Manchester United home jerseys sales are  
12 hovering around the 2,000 a week mark, but no  
13 discounting is planned with the Champions League  
14 Programme and the sales that accompany success in  
15 the tournament just around the corner."

16 A. I am trying to see when this document is from. Which  
17 year is it from?

18 Q. 2001.

19 A. Yes.

20 Q. And it is Mr Bryant reporting in his account section on  
21 the position in relation here to JJB.

22 A. Yes.

23 Q. And he says, and he has got this from somewhere, that:

24 "Manchester United home jersey sales are hovering  
25 around this volume, but no discounting is planned ..",

1 as you have seen?

2 A. This is an Umbro internal document. The only person  
3 I would believe would say that was coming from them to  
4 Umbro was me. And I can tell you that I would not tell  
5 Phil Bryant what we were going to do with Manchester  
6 United.

7 The Manchester United home kit at that time, we  
8 would have been obviously -- had the 80,000 jerseys  
9 delivered -- hang on, 2002. No, it was earlier than  
10 that, was it not? Just let me recollect my thoughts on  
11 that.

12 It launched in 2000, by 2001 we had had  
13 a pre-Christmas delivery on the 14th, something like  
14 that. Basically he would not know. He would not have  
15 a clue. We would not tell him.

16 Q. That suggests that this information in his report is not  
17 based on anything that has come from JJB, and yet he  
18 feels able to say that no discounting planned by you is  
19 planned for the reasons he states?

20 A. I do not know how he could say that, because we would  
21 not tell him. If we wanted to change that price on  
22 Manchester United home jersey, we would change it.

23 Q. My suggestion to you, Mr Russell, is that this shows  
24 that you did discuss this sort of thing?

25 A. No, no.

1 Q. Let us move on. One of the arguments that you used with  
2 Mr Bryant to bargain for wholesale deals was that  
3 another retailer was discounting against your outlets?

4 A. Yes.

5 Q. Whenever Sports Soccer or someone else discounted,  
6 the position was that your area managers would ask to be  
7 able to respond by cutting their prices?

8 A. It is true that with 400 shops we have a whole network  
9 of area managers who cover the whole country, as well as  
10 the shop managers themselves who are told to keep an eye  
11 on the competition; good commercial practice, we want to  
12 know what the competitors are doing.

13 Yes, we would receive frequent calls from area  
14 managers giving us intelligence in terms of what was  
15 happening in the marketplace, but it was not their  
16 decision. They would clearly sometimes wish that we  
17 would respond. But it was our decision at head office,  
18 myself, Mr Sharpe and Mr Whelan, as to whether we did  
19 respond to any discounting.

20 Q. I understand. Perhaps as a matter of protocol, when  
21 I put a question if you could say "yes" or "no" and then  
22 go on to give the explanation. It stops me having to  
23 come back and ask the question again.

24 LORD GRABINER: It may do, but if it is not suitable to what  
25 it is the witness wants to respond, it is not

1 an appropriate way forward. He can answer questions  
2 the way he likes.

3 THE PRESIDENT: Listen to the question first, see if you can  
4 answer it and add a comment after. If you fell you want  
5 to comment before you answer it, do that. But we want  
6 to get the answer to that.

7 A. I will try to do that, sir.

8 MR TURNER: The question is: whenever Sports Soccer or  
9 someone else discounted, your area managers would ask to  
10 be able to respond --

11 A. Yes, on certain occasions yes, they would.

12 Q. It is not in any doubt, is it, that Sports Soccer  
13 followed a general policy of undercutting competitors  
14 across most product categories?

15 A. No.

16 Q. So discounting by Sports Soccer in particular would have  
17 been a recurring topic of your discussions with  
18 Phil Bryant at times?

19 A. Yes.

20 Q. Can we go to paragraph 7 of your second witness  
21 statement, please. Do you have that?

22 A. Yes.

23 Q. Just cast an eye over that.

24 A. Yes.

25 Q. It is the one beginning:

1           "With the benefit of hindsight ..."

2    A.   Yes, I have it, thank you.

3    Q.   Right, now you say that with the benefit of hindsight

4           you can see that it would have been tempting for Umbro

5           to deal with your complaints about other retailers by

6           putting pressure on them not to discount.   Yes?

7    A.   Yes.

8    Q.   But you also say that you would never have imagined that

9           Umbro could exercise any influence over Sports Soccer

10          because Sports Soccer was a committed discounter and

11          Mike Ashley was very much his own man?

12   A.   That is what I say, yes.

13   Q.   Even if Sports Soccer was a committed discounter,

14          the plain fact is that he would be damaged by Umbro not

15          meeting his orders particularly on replica kit at key

16          times, would he not?

17   A.   Yes.

18   Q.   Surely that would give any business a very serious cause

19          for concern?

20   A.   Yes.   I think we have been over this in court.

21          Mike Ashley put it as a must have product.

22   Q.   Exactly.   You were here when Mr Ashley dealt with this?

23   A.   Yes, I was.

24   Q.   Can I put to you what he said: a major national sports

25          apparel retailer could not credibly fail to have some

1 statement product like new replica for a major club or  
2 the England team not on sale at launch.

3 A. Yes, if you want to be credible, yes.

4 Q. Would that not then provide the basis for Umbro to be  
5 able to exercise the influence over Sports Soccer?

6 A. No. I think as I say in my statement it did not occur  
7 to me that Umbro would do that with Sports Soccer.

8 Q. Well, the reason you give which I was just exploring  
9 with you was that it was because Sports Soccer was  
10 a committed discounter and Mike Ashley was very much his  
11 own man?

12 A. Absolutely, yes.

13 Q. My suggestion was that if they were going to withdraw  
14 the kit in these times, it is a problem that would give  
15 him cause for concern and be an exercising influence  
16 over him. It must be right?

17 A. I stand by my statement, I stand by what I say in  
18 paragraph 7. I stand by every word of what I say in  
19 that statement.

20 Q. Very well. Let us move on to the decision-making  
21 process within JJB. Mr Whelan and Mr Sharpe would  
22 decide on the launch price of a new kit shortly before  
23 the new launch?

24 A. That is correct.

25 Q. To some extent I have learned some of this from



1 Mr Whelan yesterday.

2 A. Mm-hm.

3 Q. You were then informed about a week before the launch of  
4 the decision which had been reached by the bosses?

5 A. Yes.

6 Q. You would then inform the advertising department?

7 A. If it was being advertised. Not all kits were  
8 advertised. And I would say that Mr Whelan said to you  
9 a week; I would not take a week literally. It could be  
10 two weeks. If it was major kits it might be nearer to  
11 the date; if it was older kits, smaller kits, it might  
12 be further ahead.

13 Q. So a week to two weeks would be the period --

14 A. I am not even going to say that. It could be three  
15 weeks. He was giving you a broad generalisation.  
16 The bottom line he was trying to give you was that it  
17 was Mr Sharpe and Mr Whelan who would say to you: Colin,  
18 you will sell these kits for this price at launch.

19 Q. Okay. At least in 2000 and 2001 you personally had  
20 the discretion to cut the price only once the Christmas  
21 following the launch had passed?

22 A. Generally, yes. But, as I said to you earlier this  
23 morning, there would be occasions like the England kit  
24 and probably Manchester United where that would not be  
25 the case. I would still have to refer to Mr Sharpe and

1 Mr Whelan.

2 Q. Still have to?

3 A. Yes.

4 Q. As you said in your first statement at paragraph 24, if  
5 you wanted to change any prices before Christmas at all  
6 you needed to get approval?

7 A. Generally, yes.

8 Q. In 2000 and up until May 2001, the person in your  
9 company who took the decision whether to reduce prices  
10 to meet area managers' requests was Mr Sharpe?

11 A. Yes.

12 Q. And after that time the relevant person who could  
13 authorise your price cutting to meet competition was  
14 Mr Preston, who became the new buyer director and your  
15 direct boss?

16 A. Yes, in 2001, yes.

17 Q. And you have said that you would always raise cases of  
18 discounting with Mr Sharpe?

19 A. I did -- yes, if there was discounting happening I would  
20 keep Mr Sharpe informed of the intelligence that we had  
21 received, yes.

22 Q. What he would do would be to review the rate of sale and  
23 the stock levels, and he would form a view about whether  
24 you, JJB, should respond by cutting prices?

25 A. He did not always do what you have just suggested, he

1 did not always look the rate of sales. Sometimes he  
2 did, sometimes he did not. At other times he would just  
3 give me a decision.

4 Q. If it was not based on the rate of sale --

5 A. It would be based on Mr Sharpe's knowledge of the kit.  
6 What you have to remember here is that Mr Sharpe, before  
7 he became the COO, actually held a position that I hold  
8 now of the replica buyer for the company. So Mr Sharp  
9 did understand the replica business very, very well  
10 indeed.

11 Q. Mr Sharpe would have been fully aware of instances of  
12 discounting of replica over the marketplace?

13 A. Yes.

14 Q. And of the damage to JJB's sales and profits?

15 A. It was not the damage to our profits, because if we  
16 maintained our sale price we maintained our profits. It  
17 is all about the rate of sale.

18 Q. Not if other people are discounting with the result that  
19 the business shifts --

20 A. It depends how many shirts they bought as well. They  
21 could discount and sell out of them very quickly so in  
22 the long term we could do better with it anyway.

23 Q. You knew that Mr Sharpe had regular contact with  
24 Mr Ronnie from Umbro?

25 A. Yes, Mr Sharpe had regular contact with Mr Ronnie, yes.

1 Q. About how frequently would you say that they dealt with  
2 each other from your recollection?

3 A. I was not always present when Chris Ronnie met Duncan,  
4 so I can only guess at this. I would say -- in terms of  
5 Mr Ronnie visiting Mr Sharpe?

6 Q. Or speaking to him.

7 A. Speaking to him, maybe once in three or four weeks.  
8 Seeing him, probably about six or seven times a year,  
9 something like that.

10 Q. Just for information, from Mr Ronnie's 2001 diary, if  
11 you take the first half of 2001 you can quickly see  
12 references to about a dozen meetings or calls; would  
13 that sound about right?

14 A. Yes. As I say to you, when Chris Ronnie met with  
15 Duncan Sharpe they were discussing across the board  
16 things with JJB, not just replica. So I might not even  
17 know that he was in the building.

18 Q. No. Let us move from the internal JJB decision-making  
19 process on price to the specific question of pressure on  
20 Umbro in relation to pricing of the England kit in  
21 May 2000?

22 A. Yes.

23 Q. Can you please have a look at paragraph 16 of your  
24 second statement.

25 A. Yes.

1 Q. Just take a moment to read that through for yourself.  
2 (Pause).  
3 A. Yes.  
4 Q. The first point I want to pick up is that you say that  
5 you had no discussions with anybody at Umbro about this,  
6 by which I take you to mean the pricing of the England  
7 home kit during Euro 2000?  
8 A. Yes.  
9 Q. And that was your position?  
10 A. Yes.  
11 Q. Are you sure of that?  
12 A. Yes.  
13 Q. How can you be sure of that?  
14 A. I think I would remember if they were ringing me up to  
15 try to tell me to do something about the price on  
16 the biggest selling kit that we sell.  
17 Q. The proposition, Mr Russell, is not that they are asking  
18 you to do something about the price; it is you  
19 expressing concern about other people doing something on  
20 the price. That is the sort of conversation I am after.  
21 A. No.  
22 Q. How can you be sure that you would not have had that  
23 sort of conversation?  
24 A. Because we did not talk to Umbro about what price  
25 Sports Soccer or any other retailer chose to charge.

1 I would merely use it whenever I was seeing prices in  
2 Sports Soccer to try to get a better deal for JJB.

3 Q. You are saying that you never discussed Sports Soccer's  
4 discounting with --

5 A. No, I am saying that I did discuss Sports Soccer's  
6 discounting with Umbro, but only in regard to trying to  
7 get a better deal for JJB on wholesale or net/net  
8 prices.

9 Q. And you discussed their future discounting and what that  
10 might do to JJB?

11 A. No. No.

12 Q. Mr Russell, this was an important selling period, was it  
13 not --

14 A. On the lead up to Euro 2000, yes.

15 Q. You would have discussed the competitive behaviour in  
16 the marketplace, the likely competitive behaviour of  
17 other players like Sports Soccer with Mr Bryant?

18 A. Yes.

19 Q. You could well have warned Mr Bryant that the boss would  
20 not be happy if Sports Soccer was pulling down  
21 the price?

22 A. No.

23 Q. No?

24 A. No.

25 Q. Why not?

1 A. Because we were selling a lot of kits at that time of  
2 England. Do not forget, we were the official retailers  
3 of the England football team. We do not just sell the  
4 England football shirt, which is a very, very important  
5 product; we were selling all of the other products, not  
6 just, as Mr West-Knights describes it, "the other  
7 stuff".

8 We were also selling T-shirts and piques and rain  
9 jackets, a lot of other products. We were actually at  
10 that time looking to place more orders for England  
11 shirts. So we had good sales. There was a lot of  
12 optimism about that tournament.

13 Q. You had specific discussions not just about the range  
14 but about the particular elements of the range such as  
15 the England replica pricing?

16 A. With who?

17 Q. With Umbro. You would have discussed particular launch  
18 elements such as the England replica pricing?

19 A. I do not understand the question.

20 Q. Would you have discussed with Mr Bryant of Umbro  
21 the pricing for the proposed England kit sales in  
22 the lead-up to Euro 2000?

23 A. No, because we launched the kit at £40 and stayed at £40  
24 throughout.

25 Q. And you would not have discussed the competitive

1 behaviour of anybody?

2 A. I just said that we would have been aware of what other  
3 competitors were doing, but we were not discussing that  
4 with Umbro in any way, shape or form, other than to try  
5 to get a better deal for ourselves and some more England  
6 kit.

7 Q. The purpose is another matter. Mr Russell may I take  
8 you to the last part of paragraph 16. What you say  
9 there is:

10 "If Duncan had reached some agreement with  
11 Chris Ronnie he would have had to mention it to David  
12 Whelan and myself. If he had not done so it would have  
13 had no effect. Certainly Duncan never mentioned any  
14 such thing to me."

15 A. Mm-hm.

16 Q. Mr Russell, if JJB was already pricing at 39.99 then  
17 Mr Sharpe would not have had to mention to you or to  
18 Mr Whelan that he had put pressure on Umbro?

19 A. Yes, I can accept that, yes.

20 Q. What would have happened is that your own current prices  
21 would have been protected, and there would not have been  
22 any need to cut them to respond to Sports Soccer  
23 discounting; is that right?

24 A. No. Because Duncan's relationship with myself was that  
25 I reported directly to him. I knew -- and why I said



1           this in my statement is that if Duncan had been  
2           approached by anyone to alter something or try to do  
3           something I am sure that he would have told me what was  
4           going on, in my sector, in replica. I am sure he would  
5           have done.

6   Q.   On any issue Mr Sharpe would have raised with you --

7   A.   If it was about replica kit in general -- I cannot say  
8           on every single occasion, but in general, if there was  
9           some discussion or debate about replica kit I was  
10          the specialist for replica kit for JJB, and Duncan would  
11          talk to me about it.

12   Q.   If it was some discussion or debate about replica kit  
13          because you were the specialist Duncan would talk to you  
14          about it; is that your evidence?

15   A.   Yes, yes.

16   Q.   I will come back to that in construction in just  
17          a moment, Mr Russell.

18                 Sports Soccer in the lead-up to the Euro 2000  
19          tournament raised its prices from various levels: £32 in  
20          parts of the country up to a consistent 39.99 nationally  
21          at the end of May; do you remember that?

22   A.   I only -- I do not specifically recall it exactly at  
23          the time. I am sure it did happen but I am now more and  
24          more aware of it because of what I have heard in court  
25          and seen in the evidence.

1 Q. Would you not have been aware of that at the time?

2 A. Yes, I probably would have been from the area managers.

3 Q. Would that not have been contrary to past form as far as

4 Sports Soccer were concerned, given their general policy

5 of undercutting?

6 A. I would not be so sure that it was the first time

7 they had actually raised the price of a kit. I think

8 that did happen, not very often but it did happen,

9 sometimes I think.

10 Q. Would it not have been contrary to past form so far as

11 they were concerned so far as discounting during key

12 periods is concerned?

13 A. I just said, I do not know that it was the first time

14 they ever did it.

15 Q. In your second witness statement at paragraph 19 you

16 also say that you have no reason to believe that Duncan

17 would have placed any pressure on Umbro to prevent

18 discounting by retailers.

19 Do you stand by that?

20 A. Yes, I do.

21 Q. Mr Sharpe had a motivation to put pressure on Umbro so

22 that JJB's margins were protected, did he not?

23 A. I knew Duncan well enough to know that Duncan would not

24 do that.

25 Q. I am just putting to you that he had that motivation?

1 A. I do not think he had the motivation, because Duncan was  
2 concerned with JJB, not Sports Soccer, that is what he  
3 ran, JJB.

4 Q. Mr Sharpe also had the opportunity and the power to put  
5 pressure on Umbro?

6 A. I stand by what I just said. Duncan was well respected  
7 by all of the trade, and Duncan did not behave like  
8 that.

9 Q. Sports Soccer having uncharacteristically raised its  
10 prices at the beginning of June 2000 on the England  
11 shirt. Putting that together with Mr Sharpe's  
12 opportunity and motivation leads me to suggest that  
13 you cannot be sure that Mr Sharpe did not put pressure  
14 on Umbro?

15 A. I knew Duncan Sharpe extremely well as a friend and as  
16 a boss. And that was not Duncan's style.

17 Q. Let me in that case go back to what you were saying  
18 a moment or two ago. I suggest to you that he did not  
19 tell you everything about pricing discussions with  
20 others in the industry on replica; did he?

21 A. I can only tell you of discussions Duncan had with me.  
22 If he withheld anything how would I know?

23 Q. He certainly did not tell you about the meeting that  
24 he had gone to in Mr Hughes's house on  
25 8th June 2000 between retailers to discuss replica?

1 A. That is absolutely correct, he did not tell me, no.

2 Q. Can we then move on to a slightly different topic.

3 We were discussing a few moments ago that you never

4 thought that the account managers in Umbro would have

5 attempted to exert pressure on retailers; do

6 you remember that?

7 A. Yes.

8 Q. And you gave a second reason for your view which I have

9 not yet taken you to. You said that after the OFT's

10 investigation in 1999 all the account managers would be

11 well aware that there was nothing that they could do

12 about any retailer discounting and that it would be

13 illegal for them to try?

14 A. Yes.

15 Q. So your view at the time was that the Umbro account

16 managers would stay well away from price maintenance

17 activities?

18 A. Yes.

19 Q. We now know, all of us, that Umbro was in fact heavily

20 engaged in price-fixing activities over a period of many

21 months?

22 A. Yes, from the evidence I have seen, yes.

23 Q. Umbro has admitted lots of price-fixing from an early

24 stage, as we now know about the leniency application?

25 A. Yes.

1 Q. JD and Blacks have not contested being involved in that  
2 either.

3 A. (Indicates assent).

4 Q. Mr Russell, you were at the heart of the industry?

5 A. Mm-hm.

6 Q. With all of this at least going on in the market, are  
7 you saying that you had no whiff at any stage in 2000 or  
8 2001 that there was price-fixing in the industry on  
9 replica shirts?

10 A. I only knew what the account managers consistently told  
11 us as buyers from 1999 onwards, which was that they  
12 could not discuss prices of other retailers with JJB.

13 Q. From your discussions with other people in the industry  
14 at all levels at the time, did you have no inkling at  
15 any stage that there was price-fixing on replica shirts?

16 A. I do not have regular discussions with people in  
17 the trade apart from the other account managers of  
18 the brands who deal with me.

19 Q. With Umbro in particular?

20 A. No.

21 Q. Can you please turn to Mr Ronnie's third witness  
22 statement, Ronnie 3, at paragraph 58. It is in the same  
23 witness statement bundle.

24 This is not the aftermath of the 8th June meeting.

25 A. Yes.

1 Q. I believe it is several weeks later:

2 "Phil Bryant later reported to me [that is to  
3 Chris Ronnie] that Colin Russell of JJB later commented  
4 to him that it was obvious that those present at  
5 the meeting on 8th June 2000 were no longer hands-on in  
6 the business, as the agreement should have covered all  
7 products."

8 Do you see that?

9 A. Yes, I do.

10 Q. And you have dealt with that in paragraph 15 of your  
11 second statement, which is at page 374?

12 A. Second statement?

13 Q. Yes.

14 A. Yes, I have it.

15 Q. You address that about six or seven lines down. We see  
16 what you say, that you do remember Phil Bryant  
17 mentioning this alleged agreement to you; it was during  
18 a telephone call that you had made to him about some  
19 other matter:

20 "... I could not have rang him about this alleged  
21 agreement because I had no inkling of it. I was taken  
22 aback by what Phil Bryant had said. It seemed to be  
23 highly unlikely that David Whelan and Duncan Sharpe  
24 would have been prepared to enter into any price-fixing  
25 arrangement. Phil Bryant told me that the agreement

1 covered the shirt but not any other items of kit.  
2 I really cannot remember how I reacted to that, but it  
3 is possible that I said something to the effect that if  
4 they had agreed the price of the shirts they might as  
5 well have agreed the price of the other items.

6 "If I did say any such thing, it was not to suggest  
7 that it was a good idea to agree the prices of the other  
8 items, but merely that I accepted the point that if  
9 we were going to agree to the price of the shirts there  
10 would be nothing to stop us agreeing to the price of  
11 other things ...", and that you were shocked and puzzled  
12 by other things he said.

13 A. Yes, I was.

14 Q. You did not say to Mr Bryant that you thought that that  
15 was not possible because everyone knew price fixing was  
16 illegal, did you?

17 A. Not at the time, no.

18 Q. And that is because it was not shocking to you, was it?

19 A. No, I would like to say no to that, and I will explain  
20 why it was shocking to me.

21 I did not know that Mr Whelan and Mr Sharpe had gone  
22 to this meeting, I had no idea. They did not come and  
23 tell me that they were going off to a meeting at  
24 David Hughes's house.

25 When I was told this, I was told by Phil Bryant and

1 he sort of was saying to me: did you know they had  
2 a meeting the other day and they got together, and  
3 whatever else? It was absolutely a surprise to me, and  
4 I was shocked by it. Because it never would strike me  
5 that David Whelan, having worked for him for so long,  
6 would enter into such an agreement. They say that  
7 Mr Ashley is his own man; Mr Whelan is very much his own  
8 man as well.

9 Q. Finally on this point, I would like to ask you how this  
10 thinking of yours that you have explained makes sense.

11 Why is it that if you are going to agree the price  
12 of the shirts you would agree the price of the other  
13 items as well if you were hands-on; why is that?

14 A. I think I stand by what I say in the statement here  
15 really on all of that. I was shocked. It was  
16 an off-the-cuff remark that I made to Mr Bryant. It was  
17 because I was shocked that I made that remark.

18 Q. Yes, I am not questioning that at the moment. What  
19 I would like to know is what that means.

20 Why, if one is going to agree the price of  
21 the shirts, would one agree the price of the other items  
22 of kit as well if one was hands-on?

23 A. I could not understand why, if somebody was going to do  
24 that, why you would say just do the shirts, because you  
25 would try to get somebody to agree everything. That is



1           what was going through my mind then, that is all. It  
2           was just shock.

3   Q.   By "everything", you mean what else?

4   A.   Shorts and socks.

5   Q.   Why would they have a connection to the shirt?

6   A.   Well, because when you buy the replica shirt you buy  
7           shirt, shorts and socks, particularly children.

8   Q.   So you would do the whole lot?

9   A.   As I say, in a state of shock to the remark he said that  
10          is why I said it.

11           As I also say in my statement I really could not  
12          believe it when I put the phone down. So I went and saw  
13          Duncan and said: this guy from Umbro has told me this.  
14          And he said: it is true that we did go, but there was no  
15          agreement made at this meeting, not at all; in fact Dave  
16          and I stormed out. I think there has been enough  
17          evidence of that for the tribunal to hear.

18           I was not there but Duncan told me that Mr Whelan  
19          said: we are leaving, we are not making any agreement.

20   Q.   Maybe the panel might have other questions, but I am  
21          moving on to the last topic, the events surrounding  
22          the cancellation of the centenary kit in 2001, a subject  
23          close to your heart.

24   A.   Not really, but ...

25   Q.   I really want to cover two issues with you on this,

1           trying to pare this down.

2           The first is the considerable detail in your third  
3           statement of October 2003 which compares with your  
4           previous statements, and there are some odd  
5           inconsistencies which I would like to put to you; do  
6           you understand?

7    A.   Yes, I do.

8    Q.   I want to explore how the inconsistencies have crept in  
9           there and what that tells us about your recall of those  
10          events.

11          The second issue is a point of principle which  
12          arises from something in Mr Preston's witness statement.

13   A.   Okay.

14   Q.   Can we start with the first issue. Perhaps you would be  
15          so good as to go to paragraph 25 of your first  
16          statement.

17   A.   Yes.

18   Q.   Can I begin by asking you: when you wrote this statement  
19          and you gave your account of the events, to pick up on  
20          what Lord Grabiner was asking you originally, what did  
21          you base this account upon? Was it your recollection or  
22          did you also look on the account at some documents?

23   A.   I looked at documents, I went back and looked at figures  
24          and orders placed on this.

25   Q.   What did you look at?

1 A. I think I looked at a report that we can pull off that  
2 shows us all receipts of goods that we have against  
3 a particular product, ie Manchester United, to tell me  
4 the history of purchasing.

5 Q. Did you look at any different documents when it came to  
6 the later statement in October 2003?

7 A. No. I think it was still that particular document that  
8 was at the heart of it in terms of numbers.

9 Q. I see. We will come on to that in a moment.

10 A. Okay.

11 Q. You say here:

12 "In October 2000 JJB placed an order for about  
13 40,000 pieces at wholesale prices of 14.75 and 12.75  
14 respectively."

15 A. Yes, that is adults and children.

16 Q. You will have gone to the records and pulled out that  
17 information?

18 A. I would indeed, yes.

19 Q. Let us go to the parallel bit which is paragraph 5 of  
20 your third statement. Are you there?

21 A. Yes.

22 Q. Here we have 50,000 and not 40,000 shirts?

23 A. Yes.

24 Q. And we have a different price for the junior shirts?

25 A. Yes, I think the junior priced shirt is purely an error.

1 Q. That is a typo?

2 A. Yes.

3 Q. What about the volume?

4 A. No, the volume you will see there in this third  
5 statement is accurate, in terms of precise accuracy  
6 rather than a general figure which I probably gave in  
7 the first statement.

8 Q. They both came from the same document.

9 A. They came from a report that I pulled off, yes.

10 Q. Mr Russell, your solicitors have told us that there were  
11 no documents that underlay the preparation for your  
12 third statement. Did they ask you about that?

13 A. I cannot remember. I would confirm that in paragraph 5  
14 I believe those figures would have been right of what we  
15 received in October.

16 Q. All right. We may revisit later the question of  
17 the documents that underlay this, and perhaps you would  
18 be so good as to produce them.

19 Now can we go to paragraph 6 of your third  
20 statement?

21 A. Yes.

22 Q. There you say that the normal clearance prices had  
23 previously ranged from £7 to £10 and this is what you  
24 offered to Umbro.

25 A. Can I say no to that but give you a qualification to it.

1 Q. I will put the question and you give me the answer no.  
2 The question is: are you sure of that?  
3 A. I am sure that I put some prices to Mr Ronnie, yes.  
4 Would you like me to explain?  
5 Q. Just before you do so --  
6 THE PRESIDENT: I think the witness wants to add something.  
7 Then you can go back to the statement.  
8 MR TURNER: Okay.  
9 A. When Mr Ronnie came in, in April of 2001, and said that  
10 he had a quantity of Manchester United shirts, would we  
11 be interested, as you said earlier there was nothing new  
12 in that; they would come to us with the big quantities  
13 first.  
14 He did not give me a size split, to show me all  
15 the sizes available to look at the ratios. But I would  
16 assume that because it was Manchester United there would  
17 have been a decent size split. I asked him roughly how  
18 many. He only gave me a rough indication of how many  
19 shirts there would be. He said: what would you be  
20 prepared to pay for them?  
21 So I suggested to Mr Ronnie that we would be willing  
22 to pay sort of about £6.50 for men's and £5.50 for  
23 children's. Mr Ronnie then said to me: no, you know,  
24 for this because it has still over a year to go, that  
25 would not be enough. So I said to him: what -- in my

1 normal negotiations as a buyer, trying to get the other  
2 fella to name his price first, that is normal business  
3 practice.

4 Chris Ronnie said that he had had an offer or  
5 believed he could get an offer of Sports Soccer for £10.  
6 So I said: look, I do not want to go to £10, but I would  
7 be able to go higher than the £6.50 or £5.50 we normally  
8 offer and I am prepared to go higher than that.

9 Then Chris said to me: I cannot accept an offer for  
10 5 and 6. I said: I know that but if we were to go  
11 higher would you accept an offer? He said: we will  
12 think about it and let you know.

13 This was not the first time that this had ever  
14 happened. I had had lots and lots of negotiations like  
15 this where we had got to that point and we both  
16 understood that they would always come back to give us  
17 a chance to up the offer. Nothing came back at all, and  
18 that is what surprised us the most. The next thing we  
19 knew was that Chris Ronnie had sold this to  
20 Sports Soccer.

21 MR TURNER: Mr Russell, it is perhaps a little frustrating  
22 for us, but if you look at paragraph 6 of your third  
23 statement, it is not quite what you are saying now, not  
24 just in terms of the clearance prices which here you say  
25 ranged from £7 to £10 and now you have confirmed £5.50

1 and £6.50, but also in the explanation that was given.

2 How much care was taken in the preparation of this  
3 statement?

4 A. I tried as I did all of the way through this in every  
5 statement I made to put as much effort into it as I can.  
6 We obviously take these charges seriously.

7 I can honestly tell you that that was the discussion  
8 that I had with Chris Ronnie, and I could not believe it  
9 when he did not come back and he did sell them to  
10 Sports Soccer.

11 Q. I understand that. Why did you write in this statement  
12 £7 to £10 as clearance prices?

13 A. Clearance depends on what the kit is, when it is being  
14 offered to you, how much lifespan it has left. All  
15 these factors in clearance.

16 With this Manchester United -- previously to that  
17 discussion we would have cleared quite a lot of kits  
18 with Umbro at 6.50 and 5.50 and they were happy to  
19 accept that. I think with Manchester United they  
20 obviously wanted more money.

21 There were times with Umbro that we did not pay 6.50  
22 and 5.50 and we may have paid more, like 7.50 or 8.50,  
23 we might have done that if the kit was right and we  
24 though we could sell it off in time.

25 Q. At any rate, the figures in the statement are wrong and

1           what you are now telling us is correct?

2    A.   Yes.

3    Q.   Paragraph 7?

4    A.   Yes.

5    Q.   Have a look at that.  You say that you raised

6           the problem of the discounting of the home shirts with

7           Mr Bryant.

8    A.   The first person I raised it with was, yes, Mr Bryant,

9           yes.

10   Q.   And then complained directly to Mr Phil Fellone?

11   A.   No.  What happened was that Phil Bryant knew how shocked

12           and upset whereupon by the cancellation -- not

13           the cancellation the sale to Sports Soccer of

14           the Manchester United home strips, and Mr Fellone rang

15           me in the afternoon that day when I complained to

16           Mr Bryant about it.

17   Q.   And you spoke to Mr Fellone?

18   A.   Yes, I did.

19   Q.   That is not that you have mentioned before either in

20           your previous statements, is it not?

21   A.   That is definitely what happened when I spoke to Phil.

22   Q.   And you remembered that later --

23   A.   I remembered that later.  I do remember it because Phil

24           actually said to me: I am sorry, Colin, because Chris

25           has sold them to Sports Soccer.  He was almost being



1           apologetic about it.

2   Q.   So Phil would have been well aware that your complaint  
3           related to what had happened on the Manchester United  
4           home kit?

5   A.   Absolutely one hundred per cent.  He knew that we were  
6           really upset about the home kit.  He actually said to me  
7           at the time, I do not know where he was but it was out  
8           in the town.  He said: I do not know they have them  
9           because I have seen the POS myself saying 20 and 15 for  
10          the Man U home kit.

11  Q.   Were you here when Mr Fellone gave evidence?

12  A.   I was.

13  Q.   Mr Fellone, you will recall, does not remember this at  
14          all.  In fact, he told us that at the time he believed  
15          the problem was Sports Soccer discounting England  
16          replica; do you remember that?

17  A.   I do.  But I also heard him say that he did think that  
18          at the time, but subsequently he now realises it was not  
19          that.

20  Q.   For me that is the purpose of the question.  He said at  
21          Day 7, page 23, lines 13-16:

22                 "At the time this was my feeling.  I thought it was  
23                 to do with the England jersey.  It is not until much  
24                 later when I have read everybody's documents that it now  
25                 makes sense what JJB was saying at the time."

1           Do you recall that?

2   A.   I do, yes.

3   Q.   What he says had the ring of truth about it, did it not?

4   A.   It did not have any ring of truth about it being linked  
5       to England shirts. Throughout this whole case I have  
6       been mystified about that comment because at the time he  
7       is complaining about discounting we were about to place  
8       massive new orders on England, so I could not see what  
9       was getting that one from.

10  Q.   At any event, Mr Fellone says that he found out your  
11       version of events, which makes sense, much later on.

12  A.   Yes.

13  Q.   In the light of Mr Whelan's witness statement, which was  
14       the subject of discussion yesterday, he may also have  
15       been spoken to about the matter by Mr Whelan personally;  
16       do you have any knowledge of that?

17  A.   I am not aware of that, no.

18  Q.   At any rate, the point is that Mr Fellone and you do  
19       differ on his involvement at the time --

20  A.   I think, as Phil has said, at the time he was  
21       mistaken -- at the time he thought that, but now he  
22       honestly believes he was mistaken and I am sure that  
23       he has tried to tell the truth, as we all are, and he  
24       remembers what happened.

25  Q.   What he said to us was that his recollection at the time

1 was different. My question for you is: can he be right  
2 and you be wrong about what happened between you and him  
3 at the time?

4 A. No, I am definitely not wrong. I remember it exactly.  
5 I am sure that Mr Fellone now remembers exactly what  
6 happened.

7 As I said to you, the point was that Phil actually  
8 said to me, he was almost apologetic in saying that  
9 Chris Ronnie sold these to Sports Soccer. He knew how  
10 aggravated JJB were by the fact that that had happened  
11 and they had not come back to us. That was our only  
12 grievance was that he did not come back and give us  
13 a chance to up the offer, which he said he would do and  
14 did not.

15 Q. So he was apologetic?

16 A. Yes.

17 Q. Before we leave Mr Fellone, could I ask you about one  
18 further point: could you pick up witness bundle 1,  
19 please, and go to Mr Fellone's second statement, which  
20 is at 254. Turn to page 255, and have a look at  
21 paragraph 4:

22 "Most of the time retailers give me implied  
23 threats ..."

24 Just read that to yourself for the moment.

25 A. I have got to the end.

1 Q. You will see that he remembers you saying about another  
2 retailer's promotion: you know what will happen if  
3 the boss finds out. And he says that you meant  
4 Mr Whelan?

5 A. Mm-hm.

6 Q. Now that is his recollection of the words, and  
7 Mr Fellone is not making that up, is he, Mr Russell?

8 A. I do not know what Mr Fellone is trying to say.  
9 You will ... well, I have an idea what he is trying to  
10 imply by, you know, what will happen if the boss finds  
11 out I have not said to Mr Fellone you know what will  
12 happen when the boss finds out.

13 Q. We see from the paragraph that he is saying this is  
14 a threat as to what might happen if you do not help them  
15 to help you to control the price of replica products; do  
16 you see that?

17 A. Yes. I have always had -- and we like to try to have as  
18 good a relationship as we can with all of  
19 the representatives who come into the business. You get  
20 on with some of them, you do not get on with others, but  
21 you still have to do business, that is the name of  
22 the game.

23 I have always got on very, very well with  
24 Mr Fellone. Basically myself and Mr Fellone do not need  
25 to talk like that. If we have something to say to one

1 another, we can discuss it ourselves. I am an associate  
2 director of the company, I am capable of making my own  
3 decisions on how many we are going to buy or anything  
4 else, and I think Phil respects that.

5 So the threat: I will tell on you if you do not --  
6 I do not need to do that to Mr Fellone.

7 Q. Mr Whelan is the boss in your industry, is he not?

8 A. In our company he is absolutely the boss.

9 Q. More generally he is regarded as the boss in  
10 this industry?

11 A. In the industry, no. I am saying -- not in  
12 the industry, no. In JJB there would be not one person  
13 in that building who does not understand that Mr Whelan  
14 is the boss.

15 Q. That would be consistent with what Mr Fellone has said  
16 here with the remark that you may also remember him  
17 saying in the course of cross-examination by Lord  
18 Grabiner: I have lots of bosses?

19 A. Who said that?

20 Q. Mr Fellone said that.

21 A. Yes, I heard Mr Fellone say: I have lots of bosses, yes.

22 Q. My suggestion to you was that this was not an entirely  
23 unfamiliar comment recorded in paragraph 4 of the second  
24 statement.

25 A. I did not need to start saying to Phil Fellone: you will

1 know what will happen if the boss finds out. That  
2 implies that I cannot do my job and sort out whatever  
3 needs to be sorted out with Umbro on a day-to-day basis.

4 Q. Mr Russell, we are nearly at the end now. Can we turn  
5 to your third statement and look at paragraph 8.

6 A. Yes.

7 Q. You are referring there to the events of an internal JJB  
8 meeting on 31st May 2001 held by Duncan Sharpe?

9 A. Yes.

10 Q. Do you see that?

11 A. Yes.

12 Q. Once again your solicitors confirmed to us that there is  
13 no documentary material underlying this statement at all  
14 which has not been shown to us, you are aware of that?

15 A. Yes.

16 Q. Previously in your first statement you thought that  
17 the subsequent meeting with Umbro, when you expressed  
18 your concerns, had taken place in the month of May; now  
19 you are putting forward a different version of events,  
20 and you are remembering an internal meeting within JJB  
21 on a specific date, 31st May 2001. I would suggest to  
22 you that you could not possibly remember this more  
23 precisely over a year since your first statement.

24 A. I think the reason that I do remember it is because it  
25 was on 1st June when we actually cancelled the 40,000

1 jerseys. And I do honestly remember -- I did not in  
2 the first one, I admit. But I do now remember that we  
3 did have a meeting and Duncan told me -- I remember him  
4 getting me in the office and saying: cancel the shirts.

5 Q. Who was at that meeting?

6 A. I think the only three people present would have been  
7 possibly Steve Preston, Duncan Sharpe and myself.

8 Q. Sure?

9 A. Not sure, no.

10 Q. Mr Whelan told us yesterday, again for the first time,  
11 that he attended the internal meeting -- page 131,  
12 lines 15-23 -- and you have said that he did not. Which  
13 of you is correct?

14 A. Mr Whelan did not attend the meeting that I was at with  
15 Steve Preston and Duncan Sharpe. What Mr Whelan does in  
16 terms of meetings, and you would have to see Mr Whelan  
17 in action to understand this, Mr Whelan is in  
18 the meeting for about 30 seconds, he says what is to do  
19 and he leaves. He never even came into that meeting so  
20 Duncan has had a meeting just before it with the boss,  
21 the boss has told Duncan: do what I have said, cancel  
22 it. Duncan has come in and told us what to do.

23 Q. So he comes into the meeting, says what you are supposed  
24 to do and leaves?

25 A. A lot of the time, yes, believe me.

1 Q. It sounds what may have happened on 8th June 2000.

2 THE PRESIDENT: You do not have to answer that.

3 MR TURNER: That was a comment, I am sorry.

4 THE PRESIDENT: Please do not, Mr Turner.

5 MR TURNER: I understand, sir.

6 At paragraph 10 you describe the goings on at the

7 meeting on 8th June 2001.

8 A. Yes, on 8th June, yes.

9 Q. Would you mind turning up the DLA letter of 7th November

10 2003, which is at tab 15 of the cross-examination

11 bundle.

12 A. Yes.

13 Q. This is a letter that we went to yesterday; do

14 you remember it?

15 A. Yes.

16 Q. You were only at this meeting for, as you put it, a very

17 short time?

18 A. Yes.

19 Q. Your source of the information that you have put in the

20 witness statement, much of it, was conversations that

21 Mr Whelan has been having with Mr McGuigan of Umbro?

22 A. Yes, that is correct.

23 Q. Mr Whelan then passed the information back to you for

24 you to put in a statement?

25 A. Yes, he did.



1 Q. How did that come about.

2 A. That came about because David Whelan does, as he told  
3 you yesterday, infrequently have discussions with  
4 Mr McGuigan.

5 In trying to clarify the dates of the meetings  
6 I think it was as much on Mr McGuigan's part as  
7 Mr Whelan's part to try to work out when these dates  
8 were. Mr Whelan and Mr McGuigan have had  
9 a conversation. Mr Whelan came to my office and said:  
10 I have spoken to Peter McGuigan, he told me that  
11 the date that he actually came over and I was not here  
12 was 8th June.

13 Q. And the other details which you say you got from him?

14 A. Yes, absolutely, came from Mr Whelan.

15 Q. Why did you put this in your statement when it was  
16 Mr Whelan who had been having this detailed discussion  
17 with Mr McGuigan?

18 A. Because I was trying to be helpful in clarifying  
19 the chronology of what went on at what dates. I do not  
20 have anything in my diary to remind me of what the date  
21 was. But Mr McGuigan seemed very, very certain that  
22 that was the date to Mr Whelan. So I am taking it  
23 secondhand but I took it to be true.

24 Q. Were you at the meeting between Mr McGuigan and  
25 Mr Whelan?

1 A. No. I do not know whether there was a meeting or  
2 whether they spoke on the phone, I am not sure.

3 Q. Can we turn to the second topic that I mentioned, which  
4 is something that arises from Mr Preston's statement?

5 A. Yes.

6 Q. It would help me if you could pick up Mr Preston's  
7 second statement, which is probably in the second  
8 cross-examination file, paragraph 5, at page 267?

9 A. Yes.

10 Q. Did you see this statement in draft form before it was  
11 finalised?

12 A. Yes, I think I probably did. Yes.

13 Q. Did you have any input into what Mr Preston has said  
14 here?

15 A. No.

16 Q. How did it come to be shown to you in draft before it  
17 was finalised?

18 A. Mr Preston works in Holland now as manager to  
19 Acktisport.

20 I cannot remember whether Steve sent me a copy of it  
21 that he had received, or whether it was the solicitors.  
22 I cannot really remember, but I did see it.

23 Q. Why was it sent to you? For you to comment?

24 A. Yes, I could not have any input in it but just to show  
25 me what it was saying.

1 Q. Mr Preston was at the meeting on 8th June with Mr Sharpe  
2 on behalf of JJB?

3 A. Yes, he was.

4 Q. He would have known the thinking in relation to  
5 the cancellation of the order for 40,000 pieces of  
6 centenary kit.

7 A. Yes, he would have done, yes.

8 Q. Let us look at his explanation in paragraph 5, which is  
9 the key paragraph. If you would like to read that to  
10 yourself for the moment?

11 A. Yes. (Pause).

12 Q. Make sense?

13 A. Not all of it, no.

14 Q. Let us take it in stages. He makes the point that it  
15 made good sense to reduce JJB's exposure to Man U  
16 products, Manchester United products, given the fears  
17 about the finite level of demand; you see that?

18 A. Yes.

19 Q. Presumably this is the assumption which he discusses in  
20 paragraph 7, that Christmas would basically be the end  
21 of all sales of Umbro-branded Manchester United shirts?

22 A. That is -- you see, Steve is not in charge of replica;  
23 he was overall in terms of buying for the company in all  
24 categories. That is a -- you cannot make that  
25 assumption on a club like Manchester United. For

1 instance the year they won the European Champions  
2 League, the sales were bigger than they were at  
3 Christmas.

4 Football is like that, it is peaks and troughs. So  
5 you cannot make a generalisation like that.

6 THE PRESIDENT: Mr Turner, forgive me for a moment. I was  
7 hoping to get to the end of Mr Russell before the break,  
8 but the transcript writers are asking now for a break.  
9 If that is not too inconvenient we will take the break  
10 now.

11 MR TURNER: It is not, sir.

12 THE PRESIDENT: Then we will take the break now. Thank you  
13 very much.

14 (3.25 pm)

15 (A short break)

16

17

18 (3.35 pm)

19 MR TURNER: We were just looking at Mr Preston's statement,  
20 just talking about that part of paragraph 5 of his  
21 statement where he refers to the:

22 "... good sense of reducing JJB's exposure to  
23 Manchester United products given the fears about  
24 the finite level of demand."

25 A. Mm-hm.

1 Q. I think it may help in understanding what that means if  
2 we go back to paragraph 2 of his statement. If you cast  
3 your mind back to what Mr Whelan was saying yesterday?

4 A. Yes.

5 Q. I would suggest that the point being made is that  
6 the announcement having come out that Nike was going to  
7 take over the manufacturing of the replica products  
8 inevitably had the effect that discounting on the home  
9 shirt, as Mr Preston says, was likely to happen sooner  
10 than was otherwise the case?

11 A. Yes.

12 Q. And that essentially the Umbro line of Manchester United  
13 products was in a sense damaged goods or at least had  
14 a finite level of demand to them?

15 A. Yes, to somewhat more in -- somewhat more in 2001 than  
16 in 2000, but yes.

17 Q. If we look at paragraph 7, here again we see his point  
18 that:

19 "... it was reasonable for [you] to assume that  
20 Christmas would be basically the end of sales of all  
21 Umbro-branded Manchester United shirts and the centenary  
22 shirt only had a five-year shelf-life from its launch."

23 A. Yes, I see what he is saying, but when you buy on top of  
24 the stock you have another 80,000 jerseys you have to do  
25 that in the knowledge of when you think you can get out

1 of them.

2 Clearly in my mind I would have been thinking yes,  
3 by Christmas we would have liked to get rid of  
4 the majority of them. The actual fact was that after  
5 Christmas in 2000 we had somewhere in the region of  
6 30,000 shirts left. So we had to keep on selling them.

7 Q. I would like you to focus on what he says about  
8 the centenary shirt in the last sentence of paragraph 7:  
9 in all the circumstances you were staring in the face  
10 a five-month shelf-life from its launch?

11 A. No, I disagree with Mr Preston on this particular shirt.  
12 You have been given the shirt, if you recall it was  
13 the first reversible centenary shirt. It was always  
14 going to be a very special shirt for Manchester United  
15 because of what it was; it was almost like a collector's  
16 item. It is the only one that I have ever known so it  
17 was a special product.

18 Q. You wanted to sell it at launch at 39.99.

19 A. We wanted to sell it for whatever we felt was the right  
20 price, and we felt that the right price was our usual  
21 policy then of 40 and 30.

22 Q. Let us turn to paragraph 5 of Mr Preston's statement:

23 "It was by no means clear that it would be easy to  
24 sell the centenary shirt at reasonable margins, given  
25 the heavy discounting on the home shirt. Although

1 a certain proportion of purchasers would understand that  
2 the centenary shirt was a special item which they might  
3 well wish to buy for itself, there would be a large  
4 number of consumers who would simply be looking for  
5 a Manchester United shirt and would not  
6 distinguish between the centenary shirt and the home  
7 shirt. Discounting of the home shirt would therefore  
8 affect sales of the centenary shirt."

9 Do you see that?

10 A. Yes.

11 Q. That fear was presumably a good reason for what you did,  
12 to cancel part of the order for the 80,000 centenary  
13 shirts?

14 A. No, it had nothing to do with the centenary shirt in  
15 terms of how we perceived that would sell. We thought  
16 the centenary shirt would sell because of what it was.  
17 It was all to do with the home shirt cancellation.

18 What was in our minds as well was if they had done  
19 that to us on the home shirt, ie Chris Ronnie selling it  
20 off to Sports Soccer, they might possibly do it on the  
21 centenary shirt as well.

22 Q. Could you repeat that?

23 A. If as Umbro had done to us on the home shirt, they had  
24 sold at clearance prices to Sports Soccer, if they had  
25 done the same thing to us on the centenary shirt, yes,

1           it could have caused us a big problem.

2    Q.   So that was a concern that arose --

3    A.   It was a secondary concern.  The first concern was  
4           the cancellation of the home kit.  We were not concerned  
5           that we would sell 40,000.

6           If you look what I actually did, I ordered first of  
7           all 40,000 centenary shirts then I ordered a further  
8           40,000.  That is how I wanted them to come in: two lots  
9           of 40,000.  If you notice, what I did was cancel  
10          the second tranche; I was not going to cancel the first  
11          lot of 40,000 because I knew they would sell.  And we  
12          did not want to be without stock.

13   Q.   I would just like to say what you described as  
14          the secondary reason there, if Umbro had done the same  
15          thing to you on the centenary shirt it could have caused  
16          you a big problem.

17          With that in mind, I just want to look with that in  
18          mind at the solution to the problem which we all know  
19          happened, namely Umbro was going to sell a further  
20          80,000 or so red shirts, home shirts to you at low  
21          prices?

22   A.   Yes, but for delivery in I think it was October of that  
23          year.

24   Q.   Correct.  Now, this would give you the scope to compete  
25          against Sports Soccer on the red shirt at low prices by



1 averaging out your cost price?

2 A. Yes, it would help to do that, definitely yes.

3 Q. And the price of the red shirt was not going to be

4 pushed back above £20 as a result of you buying up

5 Umbro's remaining potential stock of the red shirts?

6 A. Push back up by who?

7 Q. It was not going to come back up above £20, the price to

8 which it had fallen when the sales to Sports Soccer and

9 Streetwise took place?

10 A. I did not know that, I do not know. I do not know.

11 Q. Mr Russell, all I am saying is that the price having

12 fallen to £20, you buying a further 80,000 red home

13 shirts at low prices would enable you to compete, but it

14 was not going to lead to the price of the shirt coming

15 back above £20, was it?

16 A. Yes, but that is why I asked you by who, JJB or

17 Sports Soccer?

18 Q. In the marketplace, assuming that the price that you can

19 charge is going to be affected by the price that

20 Sports Soccer charges?

21 A. I cannot say that for JJB. If you know the price

22 history of the shirt, we did actually put it above £20.

23 Q. What you were doing was preventing the price of the home

24 shirts from falling even further?

25 A. No, we were getting ourselves back in a commercial way

1 to an even playing field to be able to compete on price  
2 in the marketplace.

3 Q. Exactly. But the price would have fallen further was  
4 the concern, was it not, if Umbro had just jobbed  
5 the pieces off to market traders or to Sports Soccer or  
6 Streetwise again?

7 A. I do not know about that. I am not sure about that.

8 Q. The deal that you did, I would suggest, had that  
9 effect --

10 A. It did not from my point of view. From my point of view  
11 what it did was to enable my department, the replica  
12 department in JJB, to compete with Sports Soccer.

13 Q. On the already heavily discounted price on the home  
14 shirt?

15 A. Yes.

16 Q. It left you no better off in relation to the launch of  
17 the centenary shirt which was coming up, did it?

18 A. No better off in which way?

19 Q. In terms of your ability to compete against  
20 Sports Soccer or anybody else?

21 This is where I would turn to the secondary concern  
22 that you just mentioned, if Sports Soccer and Umbro had  
23 done a deal which led to low prices on the home shirt it  
24 might happen again on the centenary kit?

25 A. Yes, possibly it could have happened, yes.

1 Q. Just before we see that there was a potential problem in  
2 relation to the centenary kits prices which had not been  
3 resolved by this solution?

4 A. There was no problem with the centenary kit prices.  
5 That was not the issue. The issue was the home shirts,  
6 that was the issue that we wanted a commercial deal on  
7 and what we got as you heard from Mr Fellone and  
8 Mr Ronnie, they themselves told you it was a perfectly  
9 reasonable commercial deal that satisfied both parties.

10 Q. Paragraph 5, Mr Preston says:

11 "It was by no means clear that it would be easy to  
12 sell the centenary shirt at reasonable margins given  
13 the heavy discounting on the home shirt."

14 On the basis that he is saying that, it would  
15 follow, would it not, that Sports Soccer discounting  
16 the centenary kit would make it even more difficult for  
17 you to sell the centenary kit at reasonable margins?

18 A. No, as I was going to say before, and I am sorry  
19 I interrupted you, I do not agree with Mr Preston's  
20 analysis of this. Mr Preston made his own analysis. He  
21 is not dealing as I do day in and day out with replica  
22 kits, that is what I do for a living, it is my job.

23 I can tell you that there was no worry about  
24 the price of the centenary kit because the centenary kit  
25 was a very, very special jersey to the Manchester United

1 fans.

2 Q. When you saw this in the draft statement which was sent  
3 to you you realised immediately that what Mr Preston  
4 said was wrong?

5 A. No, I did not realise it was wrong. It is not for me  
6 really until you ask me to comment on it to comment on  
7 somebody else's statement. That is Steve's statement --  
8 he obviously believes in what he said. He was here the  
9 other day, you did not see him but I am sure he would  
10 have explained what he meant. But it is not to do with  
11 me what Steve Preston said in here.

12 Q. Then let me make two follow-up suggestions to you: it  
13 was Mr Preston and not you who was at the meeting on  
14 8th June 2001 for the whole time, you were there for  
15 only a short time?

16 A. That is correct.

17 Q. Therefore, if this was Mr Preston's view at the time,  
18 then that would have been what would have influenced his  
19 thinking in the course of that meeting?

20 A. I think that is a big if, with all respect, but this  
21 statement was made some time after the meeting had taken  
22 place. I do not know if he is giving you his  
23 recollection then or when he did this statement.

24 Q. Mr Russell, may we take it that this represents  
25 Mr Preston's recollection of the circumstances

1 surrounding the cancellation and reinstatement of  
2 the order for the centenary shirts which is what he said  
3 in paragraph 2?

4 LORD GRABINER: That is not a question that this witness can  
5 be asked, nor can he answer it.

6 THE PRESIDENT: I think it is probably a matter for  
7 submission, Mr Turner.

8 MR TURNER: Sir, I understand. I will move on.

9 Mr Russell, in relation to your own point you have  
10 made, the secondary consideration, which is that if this  
11 was going to happen on the red shirt it might happen  
12 again on the centenary shirt.

13 A. Yes, possibly.

14 Q. That would have provided a good reason, would it not,  
15 for you to have wanted an assurance that it would not  
16 happen on the centenary shirt?

17 A. No. We wanted to get back to an even playing field on  
18 the home shirt. The only reason the centenary kit was  
19 cancelled ... I have cancelled some kits in the past  
20 because they were late or for other reasons, like QC  
21 issues or whatever, and that did not happen a lot with  
22 JJB in terms of replica cancellations.

23 On this one you will see that I specifically put it  
24 in writing, and I did that for a reason. I wanted no  
25 mistakes with Umbro to realise how upset we were with



1 A. Yes, a lot. More than anyone else in the trade I would  
2 say.

3 MR COLGATE: And you obviously get into a negotiation with  
4 the supplier; you have said so yourself.

5 A. Yes, yes, absolutely.

6 MR COLGATE: And obviously you were there to get the best  
7 price for your company.

8 A. That is my job, yes.

9 MR COLGATE: Can you recall the number of occasions where  
10 you have had those negotiations, you have not been able  
11 to agree price and therefore you have not bought  
12 the product, around 2000/2001.

13 A. Not very many, not very many at all. We would normally  
14 offer what we believed was a fair price, and most  
15 manufacturers saw that as such and also as  
16 an opportunity for them to clear their whole stock in  
17 one fell swoop. And on many occasions, I can tell you,  
18 they would ask for prompt payment on these as well.

19 MR COLGATE: In your first witness statement, and I do not  
20 need to take you to it, you said in paragraph 31 that  
21 you had previously offered approximately £6 per piece.

22 A. No, I think that does not read like that. The way it  
23 reads -- I can understand --

24 MR COLGATE: Can I take you to it because those were your  
25 words: page 289, paragraph 31 of your first witness

1 statement.

2 A. I think the words "previously offer" actually are not  
3 referring to that particular kit, sir; I think it is  
4 saying our history with Umbro. The general price for  
5 an adult shirt we would pay is about 6.50. So I am not  
6 specifically saying that shirt; I am saying previously  
7 offered it was about 6.50. Although we had on certain  
8 other occasions gone up more than that if we felt that  
9 we could do that because we could sell the kit quicker  
10 or it was a big kit.

11 MR COLGATE: Okay. Let me move on, then, to your third  
12 witness statement at page 381.

13 A. Yes.

14 MR COLGATE: I am just trying to get in my own mind  
15 the commercial context in which this took place.

16 A. Of course.

17 MR COLGATE: In page 381, looking at paragraphs 7 and 8, you  
18 say in paragraph 8 that you had an average price of  
19 15.39 for the senior shirt and therefore were sitting on  
20 a huge potential loss.

21 A. It is probably stating the obvious, but it is 15.39 plus  
22 VAT on top of that. It brings it right up once you put  
23 VAT on that. Then you have a problem if a retailer is  
24 selling them at £20.

25 MR COLGATE: It is not a huge potential loss because grossed



1 up 15.39 is probably not far short of £20, and therefore  
2 you might break even.

3 A. You certainly would not break even on net/net basis when  
4 you took off all the costs incurred, which I appreciate  
5 we do not do on a day to day basis but I am sure you  
6 understand that. If you are looking at it in pure  
7 pounds, shillings and pence as gross, yes, and even at  
8 gross it is not -- you are going to be having a problem  
9 with that. When you take in all the overheads that  
10 we have to incur, no, I think we have a problem.

11 MR COLGATE: Thank you very much.

12 A. Okay.

13 THE PRESIDENT: Yes, Lord Grabiner.

14 LORD GRABINER: Sir, I have no re-examination. There is one  
15 point arising out of it which is this.

16 We believe that there is a Bury document, and I am  
17 sure you know what I mean by that, the reason we believe  
18 it is because my learned friend Mr Hoskins has seen it  
19 and I gather my learned friend Mr West-Knights has as  
20 well. We will dig it out and we will provide it but we  
21 cannot lay our hands on it at the moment.

22 One way of doing it would be through the witness but  
23 if it --

24 THE PRESIDENT: I do not think we need to do it through the  
25 witness unless it becomes necessary.

1 LORD GRABINER: So in those circumstances, may the witness  
2 be released?

3 THE PRESIDENT: Yes. We are very grateful to you,  
4 Mr Russell. Thank you very much indeed.

5 (3.55 pm)

6 (The witness withdrew)

7 THE PRESIDENT: Yes, Mr West-Knights.

8 MR WEST-KNIGHTS: I am in the tribunal's hands. There is  
9 the world of difference between quarter to three and  
10 five to four as to whether we start with Mr Hughes.  
11 I have asked him whether he is willing to start and he  
12 says yes. My own judgment is that the better thing  
13 would be to start first thing in the morning.

14 I have a substantive application to make in any  
15 event which is going to take some time to resolve.

16 THE PRESIDENT: If the application is going to relate to  
17 Umbro I am somewhat hesitant to deal with it in  
18 the absence of Umbro.

19 MR WEST-KNIGHTS: They choose to absent themselves from  
20 these proceedings it seems to us and when they as and  
21 when think it appropriate. They know perfectly well we  
22 have had a live issue for ten days as to an appropriate  
23 statement of facts in respect of what actually happened  
24 in the material period. We do not have it.

25 LORD GRABINER: Sir, I hesitate to say anything that

1 involves disagreeing with my learned friend but for our  
2 part we would like to press on. I think that I could,  
3 assuming that there is little or no  
4 examination-in-chief, I think that I could be concluded  
5 with the few questions that I have to ask by  
6 the ordinary time that you would rise today.

7 I must say that bearing in mind the time pressures  
8 that we are under, I would respectfully suggest that we  
9 do get on with it.

10 MR MORRIS: Sir, I am happy to start. I would also equally  
11 be happy to start early tomorrow morning. I would  
12 respectfully submit that as far as Umbro is concerned  
13 they should be here in relation to the other matters.

14 THE PRESIDENT: I think, if Mr Hughes does not mind, we  
15 would prefer to start today with Mr Hughes.

16 MR WEST-KNIGHTS: May I enquire before Mr Hughes starts when  
17 I can make this application? We do not even know that  
18 Umbro will be here tomorrow.

19 THE PRESIDENT: As I understood it, we were anticipating  
20 getting information from Umbro this afternoon; I do not  
21 know if that is arrived yet.

22 MR MORRIS: Sir, I have not heard that it has. I understood  
23 that Miss Roseveare was going to fax it straight to  
24 the tribunal. My mobile phone has been switched off.  
25 I do not know if she has phoned anybody else from

1 outside.

2 THE PRESIDENT: Could somebody from your team ascertain what  
3 the situation is and we will come back to it at 4.30 or  
4 soon after to see where we are.

5 MR WEST-KNIGHTS: In the circumstances I am content to deal  
6 with this at 10 o'clock in the morning. But I do want  
7 a direction, if I may, please, from the tribunal that  
8 Umbro be represented.

9 MR MORRIS: If they can get representation here tomorrow  
10 morning first thing then they should.

11 THE PRESIDENT: I think that would be a good idea.

12 (4.00 pm)

13 MR DAVID HUGHES (sworn)

14 THE PRESIDENT: Mr Hughes, would you prefer to stand or sit?

15 THE WITNESS: I would prefer to stand.

16 Examination-in-chief by MR WEST-KNIGHTS

17 Q. Although I and latterly somebody on that side will be  
18 asking you questions, if you could orient your body  
19 towards the tribunal it will naturally encourage you to  
20 engage with them rather than with the questioner,  
21 because as I am sure you understand at this moment you  
22 and the tribunal are the most important people in  
23 the room.

24 A. Thank you, Mr West-Knights, yes, sir.

25 Q. Would you please state your full name and address?

1 A. My name is David Edward Hughes. I live at Holly Tree  
2 House, Pepper Street, Chelford, Cheshire.

3 Q. Are Allsports still the Manchester United official  
4 retailer?

5 A. No, sir, we are not. The arrangement ended in May 2002.

6 Q. And the current incumbent is ...?

7 A. JJB Sports.

8 Q. What can you tell the tribunal about the Boshendale  
9 trophy?

10 A. Well, Mr West-Knights, this question was put to me this  
11 morning for the first time. The Boshendale trophy is  
12 a weekly tennis event competed for at Mere Golf Club in  
13 Cheshire by six or eight individuals who are long-term  
14 habitues of the club and the sports trade in general.

15 It includes Mr Guest, Mr Chris Ronnie,  
16 Mr Steve Smith of some fame as an ex England rugby union  
17 captain. It includes other chaps in the sports trade  
18 such as Ray Newton and John Allan. In total there are  
19 about eight of them who, for as long as I have ever  
20 known, ie 10 or 12 years, used to use Friday as POETS  
21 day, and I am advised it means push off early tomorrow  
22 is Saturday, which involves playing tennis at Mere Gold  
23 and Country Club every Friday afternoon so long as there  
24 is light throughout the year, and getting extremely  
25 inebriated on cheap wine known as Boshendale. I think

1           that is a fair summary.

2   Q.   How do you know about the Boshendale?

3   A.   Because I know three or four of the individuals

4           involved. I know Mr Newton quite well, I know

5           John Allan quite well. I knew Chris Ronnie extremely

6           well. Primarily my ex-buying director, Michael Guest,

7           used to irritate me greatly by disappearing early on

8           Friday early to indulge in the Boshendale trophy.

9   Q.   Are you aware as to whether there is in fact

10          a Boshendale trophy per se or not?

11  A.   I am not actually aware of that, no.

12  Q.   Helicopter day. How did the JJB people know where to

13          go?

14  A.   How to arrive at my house?

15  Q.   Yes.

16  A.   That was quite straightforward. I regularly, since

17          about 1998 -- well in fact since I have lived at Holly

18          Tree House I have used a helicopter charter company to

19          ferry me round the country maybe 10 or 12 days a year.

20          Clearly when I was arranging that meeting there was more

21          than one telephone conversation, both with Duncan Sharpe

22          and with Mike Ashley. On one of the conversations when

23          asking for directions I gave Duncan Sharpe the telephone

24          number of my regular pilot, helicopter pilot, who had

25          GPS numbers, global positioning satellite, that had

1 references that you simply tap into a helicopter to  
2 bring you to X marks the spot. So I made that call to  
3 Duncan Sharpe to give him the telephone number of my  
4 helicopter pilot in the expectation that their  
5 helicopter pilot would speak to my helicopter pilot to  
6 find out how to get there.

7 Q. Was there any conversation involving Jodrell Bank?

8 A. I think Jodrell Bank may well have been involved, yes.  
9 I live very close and in terms of general guidelines I  
10 might well have said that I live within half a mile or  
11 so of Jodrell Bank in Cheshire.

12 Q. To whom?

13 A. My recollection is that would have been to  
14 Duncan Sharpe.

15 Q. Would you please turn to or be given the witness bundle,  
16 bundle 1.

17 The first witness statement under that tab is  
18 something you can ignore. If you please go to page 290.

19 A. I have that.

20 Q. Could you keep a hand in 390 and go forward to 314?

21 A. 314A?

22 Q. No, 314. It should be a page bearing a signature and  
23 a date.

24 THE PRESIDENT: Just before you get to 314A you should see  
25 314, at the end of tab 1.

1 A. Sorry, yes, I have that.

2 MR WEST-KNIGHTS: On 314, whose signature is that?

3 A. That is mine.

4 Q. That statement spanning pages 290-314, is it on  
5 the issues which it addresses the truth, the whole truth  
6 and nothing but the truth?

7 A. It is.

8 Q. Have you had the opportunity of refreshing your memory  
9 by reading this statement recently?

10 A. Yes, I have.

11 Q. Have you taken that opportunity?

12 A. Yes, I have.

13 Q. Would you please turn to what in my bundle is merely  
14 the next page but what in yours may be another tab,  
15 pages 314A and B; do you have that?

16 A. Yes.

17 Q. That is a two-page statement. Is that your signature?

18 A. Yes.

19 Q. Again, is this statement the truth, the whole truth and  
20 nothing but the truth?

21 A. Yes, it is.

22 Q. When did you first find out about the special  
23 arrangements between Sports Soccer and Umbro? By which  
24 I mean the arrangements concerning the sourcing of  
25 branded products.



1 A. Certain products were forced to be released,  
2 I understand, in the two or three days before  
3 the tribunal began. I was given the opportunity to have  
4 sight but not control or copies of them. That first  
5 alerted me to the special arrangement, so 10 or 12 days  
6 ago. In fact, a fortnight ago. It was a Thursday and  
7 Friday going into the weekend before the tribunal began.

8 Q. Did you have any information about those arrangements  
9 prior to that date?

10 A. Absolute none whatsoever.

11 Q. Had you ever heard anybody discussing them?

12 A. Nobody at any time.

13 MR WEST-KNIGHTS: Thank you. If you wait there you will be  
14 asked some more questions by other people. Remember,  
15 please, address your answers to the tribunal.

16 (4.05 pm)

17 Cross-examination by LORD GRABINER

18 Q. Mr Hughes, if I were coming to your house by  
19 a helicopter, an improbable scenario, but if I were what  
20 landmarks or directions would you give me?

21 A. By helicopter?

22 Q. I think I said that, yes.

23 A. Yes, sir. If you were coming -- within the general  
24 area, Jodrell Bank is an enormous landmark in the flat  
25 plain of Cheshire. I live certainly as the crow flies

1           less than one mile from it, just beyond that 500 yards  
2           away there is a white water tower, which is highly  
3           visible in the very flat Cheshire plain where I live.

4           Those would be the prime landmarks, I think.

5   Q.   Any secondary ones?

6   A.   I realise -- I cannot immediately think that it -- it  
7           would be the most prominent.

8   Q.   What about the three ponds in your garden?

9   A.   Oh, yes. I have quite a large garden and there are  
10          three quite large ponds in them, from the air.

11   Q.   I suppose you would say to me: it is near Jodrell Bank,  
12          near the white tower and there are three ponds in  
13          the garden?

14   A.   Yes, when you spot the ponds, you are there, yes.

15   Q.   It is right, is it not, that when Mr Whelan and  
16          Mr Sharpe came to your house on 8th June they had never  
17          been there before?

18   A.   That is correct.

19   Q.   I think you had only recently moved to the house?

20   A.   Moved into the house in November 1997.

21   Q.   I see, so it is some time earlier. But anyway they had  
22          never been there?

23   A.   That is correct.

24   Q.   Do you recall any conversation with Mr Whelan giving him  
25          the same directions that you gave to me just a moment

1           ago?

2    A.   No, I do not.

3    Q.   You are quite certain about that?

4    A.   Obviously having seen the written statement that was  
5           presented yesterday or the transcript of what Mr Whelan  
6           had to say I am aware that he has a different view than  
7           I. But my best recollection is that all of my  
8           conversations with JJB on this issue were directly with  
9           Duncan Sharpe.

10   Q.   Do you say that in your conversations with Duncan Sharpe  
11          you gave him directions?

12   A.   I was unaware of that until yesterday, but upon my best  
13          recollection it was Duncan that I spoke to.

14   Q.   And you gave Duncan Sharpe the directions along similar  
15          lines to the ones you mentioned to me a moment ago?

16   A.   There were some direction given to Duncan. I gave  
17          Duncan my helicopter pilot's telephone number and  
18          obviously a few directions.

19   Q.   So you mentioned Jodrell Bank to him and you think you  
20          might have mentioned the three ponds as well?

21   A.   It is entirely possible.

22   Q.   But standing here now, you are quite certain first of  
23          all that that conversation took place?

24                 When I pause it means I have asked a question.

25   A.   Certainly. It was only when I arrived this morning that

1 I have seen the transcript of what Mr Whelan said  
2 yesterday and been made aware of these details. To  
3 the best of my recollection this morning, my  
4 conversation was not with David Whelan but could  
5 certainly have been with Duncan Sharpe.

6 Q. You are quite certain about that?

7 A. I am absolutely as sure as I can be.

8 Q. Even though it is a very long time ago?

9 A. To the best of my recollection.

10 Q. What makes you think it was with Mr Sharpe rather than  
11 with Mr Whelan?

12 A. I have already said that my whole conversation about  
13 this issue was with Duncan Sharpe, and not with David  
14 Whelan.

15 Q. Where were you when you had this conversation with  
16 Mr Sharpe; do you remember that?

17 A. Which conversation?

18 Q. The one you have just been describing to us.

19 A. There was more than one in that short period.

20 Q. In the conversation in which you think you might have  
21 given him directions for the landing of the helicopter,  
22 where were you?

23 A. I cannot remember. I do remember that it came quite  
24 late. We met on the Thursday. I think the arrangements  
25 were only made on the Tuesday to confirm that it was

1 possible for them to attend. It may even have been  
2 Wednesday. Within that 48-hour period.

3 Q. Are you confident that there were a number of  
4 conversations with Mr Sharpe, as I think you indicated  
5 in an answer a moment or two ago?

6 A. I think there were at least two. I would have to get  
7 the ducks in a row.

8 I had spoken to Mike Ashley for a provisional  
9 arrangement; I eventually got hold of Duncan Sharpe, and  
10 then I needed to confirm to Mike Ashley that I had got  
11 hold of Duncan Sharpe and confirm to Duncan Sharpe that  
12 there was definitely a meeting that was going to happen.  
13 So there were probably two conversations with each of  
14 those two people.

15 Q. Could you have a look at page 307 in the bundle, file 1.  
16 This is part of your witness statement at paragraph 82.

17 The impression that one might get from that is that  
18 there was simply one conversation?

19 A. May I read it?

20 Q. Forgive me, please do, yes. (Pause).

21 THE PRESIDENT: You might want to look at 81 as well,  
22 Mr Hughes.

23 A. Thank you. (Pause).

24 I have read 82.

25 LORD GRABINER: The impression one might gain from reading

1 the paragraph is that there was simply one conversation  
2 between you and Mr Sharpe, but I think you are now  
3 telling us that there must have been at least two.

4 A. I think there could be that impression. I think I am  
5 saying in that paragraph that I had not yet spoken to  
6 Duncan Sharpe although I had spoken to Mike Ashley.

7 Q. I am just talking about the number of conversations with  
8 Duncan Sharpe. What I am suggesting is that  
9 paragraph 82 on a fair reading suggests that you are  
10 talking about only one conversation, but what you have  
11 said a few moments ago is that there must have been at  
12 least two conversations with Mr Sharpe?

13 A. On that day or in that 24-hour period, I agree.

14 Q. Now could you look to paragraph 94, which is a couple of  
15 pages on, where you set out the timetable.

16 A. Yes.

17 Q. Look at the entry next to 13.11?

18 A. Yes.

19 Q. And perhaps you would read that to yourself?

20 A. (Pause). I have read 13.11, yes.

21 Q. Now you say there that Mr Whelan's body language made no  
22 secret of the fact that he despised Mike Ashley.

23 Were you aware of that before you organised  
24 the meeting on 8th June?

25 A. I think that the general gossip of the industry was that

1 Mr Whelan was not pleased with Mr Ashley.

2 Q. So you knew in advance of the meeting that he disliked  
3 Mr Ashley?

4 A. I thought that would be true, yes. I agree with that.

5 Q. And that knowledge, coupled with your observation of  
6 the body language, enables you to make that quite  
7 striking judgment, that he made no secret of the fact  
8 that he despised Mike Ashley. That is quite a strong  
9 statement, is it not?

10 A. I think there are two comments I would make on  
11 paragraph 94.

12 First of all --

13 Q. Well, just on that point. I have suggested to you that  
14 what you have said there is quite a striking comment,  
15 and a power judgment?

16 A. Yes. There is a key point I would make with that  
17 sentence.

18 Q. Please do.

19 A. I think ... where I have been appraised of this, I do  
20 not know. I think Mr Whelan thought that Mike Ashley  
21 was my gardener.

22 Q. So you think --

23 A. When he met him.

24 Q. Are you suggesting that he despised him or gave  
25 the impression that he despised him because he thought

1           that Mr Ashley was your gardener?

2   A.   Mr Whelan was not welcoming or friendly when he got out  
3           of the helicopter.

4   Q.   That is not the point you are making though, with  
5           respect, in this entry.  You are making it perfectly  
6           plain that he literally abhorred the sight of Mr Ashley  
7           literally on sight, that is the point that you are  
8           making?

9   THE PRESIDENT:  The word "abhor" is a little strong.

10   A.   Yes.

11   LORD GRABINER:  I am content with he despised Mike Ashley.

12   A.   It might be more fair for me to say that I was  
13           expecting ... there was only me that knew the purpose of  
14           the meeting.  I was aware that David Whelan by repute  
15           did not admire Mr Ashley.  It is quite possible that  
16           I was expecting that reaction.

17   Q.   What I suggest is that you must have known that if  
18           you had disclosed to Mr Whelan that he was being invited  
19           to attend a meeting with Mr Ashley, the probable  
20           response from him would have been: I am not prepared to  
21           come along?

22   A.   That is quite possible.

23   Q.   And so what I suggest is that you never told Mr Whelan  
24           that Mr Ashley was going to be there in advance of  
25           the meeting?



1 A. I did not say that to -- I did not say that to Mr Whelan  
2 directly because I did not speak to him.

3 Q. Nor would you have said it if you did speak to him to  
4 Mr Sharpe?

5 A. But I did speak to Mr Sharpe.

6 Q. Yes, but let us assume that you did speak to Mr Sharpe.  
7 What I am suggesting is that since you knew what  
8 reaction you might get from Mr Whelan, albeit indirectly  
9 through Mr Sharpe, that you would not have revealed to  
10 Mr Sharpe that Mr Ashley was going to be at the meeting?

11 A. I did reveal to Mr Sharpe that Mr Ashley was going to be  
12 at the meeting.

13 I was also aware that I was walking on eggshells,  
14 that the prospects of agreeing were not great, but  
15 Mr Sharpe knew the purpose -- no, not the purpose; knew  
16 that Mr Ashley would be at the meeting.

17 Q. You see, what I suggest is that you must have realised  
18 that whatever you said to Mr Sharpe might well be  
19 communicated onwards by Mr Sharpe to Mr Whelan. First  
20 of all do you agree with that?

21 A. My original intention was to speak to Mr Whelan to see  
22 if I could pull it off and persuade him. I did not in  
23 the end speak to David Whelan.

24 Q. Could you just answer my question?

25 A. I am sorry.

1 Q. That is okay. This is an unfamiliar circumstance.  
2           What I suggested was that you knew that whatever you  
3 said to Mr Sharpe might well be communicated onwards to  
4 Mr Whelan?

5 A. Yes.

6 Q. And if you told Mr Sharpe that Mr Ashley was going to be  
7 there that might put off Mr Whelan and indeed, as you  
8 said just a moment ago, you thought you were treading on  
9 eggshells in the whole enterprise.

10 A. Yes.

11 Q. Now, you were prime mover for this meeting, were you  
12 not?

13 A. Yes.

14 Q. You had had this discussion at the golf dinner with  
15 Mr Ronnie where you discussed the possibility of  
16 organising such a meeting?

17 A. No.

18 Q. That is not true?

19 A. That is not true.

20 Q. Mr Ronnie's evidence is all wrong about that, is it?

21 A. Mr Ronnie's evidence is not correct, but that does not  
22 answer your question, which is that I was the prime  
23 mover.

24 Q. You were keen -- and I do not want to get involved in  
25 a debate about this, and I am certainly not being

1 judgmental about it, but you were the person who wanted  
2 to make some price-fixing agreement in such a meeting.

3 A. Yes.

4 Q. Mr Whelan gave evidence yesterday about how he came to  
5 attend the meeting. His evidence is that you telephoned  
6 him around about 6th June and you told him that you  
7 wanted to have a business discussion with him and that  
8 it was important. What do you say to that?

9 A. As I have already said, I did not speak directly to  
10 David on the subject; I spoke to Duncan.

11 Q. If the conversation was with Duncan Sharpe, as you  
12 suggest it was, might that have been the content of  
13 the discussion?

14 A. Would you put the statement to me again, please?

15 Q. Yes. That you spoke to him around about 6th June and  
16 you told him that you wanted to have a discussion about  
17 business and that it was an important discussion?

18 A. Yes.

19 Q. It is right, is it not, that you were about to have some  
20 very serious back surgery?

21 A. That week, yes.

22 Q. You may rest assured that I am wholly sympathetic on  
23 that subject.

24 His evidence was and is that he thought in his own  
25 mind that you might be thinking about selling

1 the Allsports business?

2 A. Do you want me to comment on that?

3 Q. No, I think that is a fair point. That was his  
4 evidence.

5 A. Right.

6 Q. Do you think it is possible that Mr Whelan believed that  
7 the purpose of the meeting was that you were thinking of  
8 selling Allsports?

9 A. It is entirely possible. I do not know what message  
10 he had been given.

11 Q. Do you think it might have been a fair inference to draw  
12 given the knowledge which he obviously had that you were  
13 about to have some surgery?

14 A. It was my second surgery that year. It was well  
15 documented that I was not attending to my business as  
16 I would have liked.

17 Q. Yes.

18 A. It is entirely possible that he could have had that  
19 thought in his mind.

20 Q. Yes. In his witness statement, Mr Sharpe said --  
21 because Mr Sharpe did make a witness statement.

22 A. Yes.

23 Q. In his witness statement, because you will remember that  
24 Mr Sharpe did make a statement, he said that he believed  
25 that he had contacted Mr Whelan to request a meeting.

1           Can I just show you that just to remind you of it;  
2           file 3 of the witness statements, page 399,  
3           paragraphs 28-30.

4           He says:

5           "David Whelan and I were involved in the meeting  
6           with David Hughes and Mike Ashley on 8th June.  
7           I believe that David Whelan had been contacted by Hughes  
8           at short notice requesting a meeting. David I believed  
9           that he was looking to sell the business Allsports and  
10          for that reason we took a helicopter to his house."

11          And he says that they were both surprised to find  
12          that Mr Ashley was at your house when they arrived.  
13          You can see that in paragraph 30. Do you see that?

14         A. Yes.

15         Q. Now, in your witness statement, if you have taken all  
16          that on board, if you look back at your witness  
17          statement, which is at page 306 in the other bundle,  
18          I want you to look at paragraphs 81 and 82. You have  
19          looked at 82 already but I want you to look at 81.

20          You tell a different story.

21         A. Yes.

22         Q. Perhaps you can just read 81 to yourself.

23         A. (Pause). Yes.

24         Q. Paragraph 82 you might want to glance at again.

25         A. (Pause). Yes.

1 Q. You say that you spoke to Mr Sharpe.

2 A. Yes.

3 Q. You say that you told him that Mike Ashley had been  
4 invited to a meeting?

5 A. Yes.

6 Q. And that the purpose was to stop Sports Soccer and JJB  
7 heavily discounting the price of premium products on  
8 launch?

9 A. I would not have used those words to Duncan Sharpe,  
10 I have expanded on it for the purposes of explaining  
11 the situation.

12 Q. But that was the substance or summary of what you said  
13 to him?

14 A. Yes.

15 Q. But you do say that you did not mention the Manchester  
16 United shirt to him?

17 A. I absolutely did not.

18 Q. I want to consider the differences between your version  
19 and the versions of Mr Whelan and Mr Sharpe.  
20 You say that you spoke to Mr Sharpe; they say that  
21 you spoke to Mr Whelan. And we have identified that  
22 difference.

23 A. Yes.

24 Q. I suggest this comes out of the opening words of your  
25 paragraph 82. You seem to place a lot of reliance on

1 your diary entry for Tuesday, 6th June as the basis for  
2 your recollection. Because what you say is, having  
3 identified the diary entry and quoted from it:

4 "This suggests to me that I still had not heard back  
5 from David Whelan or Duncan Sharpe by then."

6 You were, I suggest, not surprisingly trying to  
7 reconstruct from the contemporary documents what must  
8 have happened at the time. Is that a fair thing for me  
9 to suggest?

10 A. The diary was certainly of assistance to me, yes, much.

11 Q. And you do seem to place a lot of reliance upon that  
12 very brief diary entry for the sentence that begins:

13 "This suggests to me ..."

14 A. Actually what I place a great deal of reliance on is  
15 paragraph 81. Because what I recall very vividly was  
16 that I was not successful in speaking to David, and that  
17 Duncan did what Duncan used to do, which was not reply  
18 to calls. That sticks very vividly in my memory; that  
19 is why I know that I spoke to Duncan. Because he did  
20 not return my call, I rang him several more times. God  
21 bless him, but anyone who knew Duncan knew that that was  
22 how he behaved.

23 Q. Eventually when you did speak to him, did you call him  
24 or did he call you?

25 A. On the first occasion I do not recall. I think he did,

1 but I do not recall. We eventually hooked up. I also  
2 said to you that I think I must have spoken to him at  
3 least once more than that.

4 LORD GRABINER: So he sounds as if he broke the habit of a  
5 lifetime on that occasion.

6 A. No, I did not say that Duncan never returned calls, but  
7 he was in the habit of sometimes needing chasing more  
8 than once.

9 Q. Given your evidence here now, are you saying that you do  
10 have a clear recollection of Mr Sharpe calling you on  
11 that Tuesday afternoon, 6th June?

12 A. I did not say that.

13 Q. Are you saying that?

14 A. I said I could not remember.

15 Q. You cannot remember that?

16 A. Which of us ultimately made the call that caused us to  
17 hook up.

18 Q. Leaving aside the question of who initiated the  
19 conversation, are you saying that you have a clear  
20 recollection of that conversation, standing here now and  
21 giving your evidence to the tribunal?

22 A. Within those two or three days that started on Monday  
23 morning through to Wednesday afternoon, before that  
24 meeting on the Thursday I spoke to Duncan to set up this  
25 meeting.



1 Q. What I am suggesting is that without your diary entry  
2 you would not be able to say with a sufficient degree of  
3 satisfaction that you do remember that conversation?

4 A. The diary is of assistance.

5 Q. Do you even think it is possible that you spoke to  
6 Mr Whelan and not Mr Sharpe?

7 A. Over those three days?

8 Q. Yes.

9 A. I did not set up a meeting with David; I set it up with  
10 Duncan. It was rare for me to speak to either of them,  
11 and certainly for me to phone JJB in Wigan was more than  
12 rare: it was unheard of.

13 So that in the last ten or twelve years that would  
14 not have happened more than three or four times in  
15 total, for whatever reasons.

16 Q. Do you think it is also possible that whoever it was  
17 you had spoken to, whether it was Mr Sharpe as you say  
18 or whether it was Mr Whelan as I suggest, that you did  
19 not actually tell them, whoever it was, what the purpose  
20 of the meeting was? Is that possible?

21 A. I am confident that Duncan knew the meaning of  
22 the meeting, or reason for the meeting.

23 Q. Why?

24 A. Because I am confident that the purpose that I expressed  
25 for the meeting was that I was not happy with the price

1 war that was going on.  
2 Q. A few minutes earlier today -- page 181 on this  
3 transcript and I would invite people's attention to  
4 it -- I was asking you questions about your suggestion  
5 about this unpleasant reaction in the body language of  
6 Mr Whelan towards Mr Ashley. You remember that?  
7 A. I said I may have exaggerated it, yes.  
8 Q. You gave me an answer in that context at line 20 as  
9 follows, and I am going to read it to you and ask you to  
10 comment on it:  
11 "It might be more fair for me to say that I was  
12 expecting ... there was only me that knew the purpose of  
13 the meeting. I was aware that David Whelan by repute  
14 did not admire Mr Ashley. It is quite possible that  
15 I was expecting ..."  
16 A. Yes.  
17 Q. That answer appears to involve you saying that at  
18 the stage when Mr Whelan had already arrived at  
19 the meeting, you were the only one who knew what was  
20 the purpose of the meeting.  
21 A. Almost, but not quite.  
22 Q. Tell me more?  
23 A. Because I had explained to Duncan that I was not happy  
24 about the price war that was going on across a range of  
25 products. Neither Duncan nor JJB nor Mike Ashley

1 directly from me were aware of the fact that I also  
2 wanted to discuss the Manchester United shirt.

3 What I had become aware of subsequently is that  
4 Mike Ashley did know that it was about the Manchester  
5 United shirt because he had been in cahoots with  
6 Mr Ronnie.

7 I was intending to present it to them almost like  
8 a rabbit being pulled -- in fact, I did: I pulled it  
9 from behind a chair like a rabbit out of a hat.

10 Q. So what do we infer from your evidence? Are you saying  
11 that you did or did not tell Mr Sharpe in advance of  
12 the meeting that its purpose was to agree some  
13 price-fixing with Mr Ashley?

14 A. Absolutely not.

15 Q. You did not say that?

16 A. I did not say that.

17 Q. As you say, you did not even mention the shirt.

18 A. At no time.

19 Q. Could you look in your witness statement at paragraph 95  
20 which is in the bundle at I think 309. I am interested  
21 in showing you paragraph 95.

22 This is what you say, after you have set out your  
23 diary of events of the day:

24 "So we did not spend more than 20 minutes, if that,  
25 talking business. From the outset David Whelan looked

1 quizzical and Mike Ashley looked nervous. Both men sat  
2 opposite each other, glaring at each other, and  
3 the atmosphere was charged."

4 When you say that he looked quizzical do you mean  
5 that he seemed to be thrown by the fact that Mr Ashley  
6 was present? Is that the impression that you got?

7 A. That would be a reasonable impression.

8 Q. Did you get the impression that Mr Whelan may not have  
9 been aware what the meeting was going to be about?

10 A. I had not spoken to David. Duncan was who I had spoken  
11 to. I thought that David would know that we were there  
12 to talk about the price war that had been going on for  
13 quite a long time. That was the message that I had  
14 passed on to Duncan. I had not spoken to anybody about  
15 also introducing the subject of the Manchester United  
16 shirt.

17 Q. Can I put a possible scenario to you. Let us assume  
18 just for the sake of the question that your recollection  
19 is correct, and that it was Mr Sharpe to whom you spoke.  
20 So that is the basic assumption?

21 A. Yes.

22 Q. Can we make the further assumption that you told  
23 Mr Sharpe that Mr Ashley was going to be at the meeting?

24 A. Yes.

25 Q. It is possible, is it not, that Mr Sharpe never told

1 Mr Whelan about the conversation he had had with you,  
2 certainly not in any detail?

3 A. It is possible.

4 Q. And he must have said that you, Mr Hughes, wanted  
5 a meeting, but he might not have told him anything more  
6 than that?

7 A. Of course.

8 Q. That might explain the impression you got -- which again  
9 is quite a striking one -- that Mr Whelan's reaction was  
10 a quizzical one?

11 A. Yes, it might.

12 Q. Next I want to ask you about this, as to what was said  
13 by Mr Whelan at the 8th June meeting.

14 If you look at his first witness statement, which  
15 you find in file 3 at page 429, I want you to look at  
16 paragraph 3, if you would.

17 THE PRESIDENT: I am assuming, Lord Grabiner, that we have  
18 a reasonable chance of completing your cross-examination  
19 before tomorrow?

20 LORD GRABINER: Yes, we do. I assume it would be convenient  
21 for Mr Hughes, it would be for me, if we can bash on.  
22 I will be quick.

23 Mr West-Knights is very concerned about you, Mr  
24 Hughes, as indeed we all are. How are you feeling?

25 A. I am feeling fine, thank you very much.

1 THE PRESIDENT: I want you to signal to me --

2 A. If we can get through this today, Lord Grabiner's

3 questions, I will be happy.

4 LORD GRABINER: And by signal do not fall over!

5 Paragraph 30 says:

6 "I told David Hughes that JJB had on numerous

7 occasions stated publicly that the company would never

8 sell a replica shirt at a price of more than £40 and

9 moreover I was not willing to discuss retail price with

10 anyone. Duncan and I then left the meeting."

11 He said in evidence that when he held up

12 the shirt -- he said this I think yesterday -- that you

13 said that you felt that all retailers should sell it at

14 £45. Do you remember that exchange?

15 A. Yes, I do.

16 Q. And that is right, is it?

17 A. I think I may even have suggested £50.

18 Q. And he said that JJB had on numerous occasions publicly

19 stated that it would not sell a replica shirt at a price

20 of more than £40.

21 A. Without question. That was his point. He very

22 pointedly said that they had released information to

23 the City on numerous occasions, that they had told

24 analysts that their view was that £40 was the ceiling

25 for replica shirts.

1 Q. And he also said that he was not willing to discuss  
2 retail prices with anyone?

3 A. Yes. I think that was -- words along those lines, yes.

4 Q. Yes. At paragraph 31 of his statement -- I now want to  
5 show you Mr Sharpe's statement; this is file 3,  
6 page 399, in the same bundle -- just to show you what  
7 Mr Sharpe said on this subject. Do you have it?

8 A. Yes.

9 Q. "After an initial ten minutes was taken up with a tour  
10 of the house and pleasantries, David Hughes started  
11 talking about the price of the Manchester United replica  
12 kit and the need to agree some consensus over price. I  
13 understood he was suggesting the price should be over  
14 £40. David Whelan indicated that JJB did not want to be  
15 a party to any price-fixing agreement and we left, not  
16 before reiterating the fact that JJB's public policy was  
17 not to sell a shirt in excess of £40. What had happened  
18 at the meeting was reported to JJB's board on  
19 27th June."

20 I do not ask you to comment on the last sentence,  
21 but the rest of it, is that substantially accurate?

22 A. Yes.

23 Q. Could you look back at your own witness statement,  
24 file 1, page 311. I do apologise for jumping about.

25 If you look at paragraphs 103 -- perhaps you would

1 read that paragraph to yourself.

2 A. (Pause).

3 Q. When you have read that could you look at paragraph 108.

4 A. (Pause). Both those statements remain accurate.

5 Q. So having failed to get an agreement that everyone would

6 price at £45, I think is the thrust of what you are

7 saying there --

8 A. Yes.

9 Q. -- you knew I think that JJB would sell at 39.99 at

10 launch because that is exactly what it usually did?

11 A. My knowledge of what JJB did, always did, would

12 encourage me to believe that, yes.

13 Q. Not because of anything Mr Whelan said at the meeting --

14 A. Absolutely not.

15 Q. Because of your knowledge of the way that JJB behaved?

16 A. Yes.

17 Q. Could I ask you to look at paragraph 97 of your

18 statement on the previous page, 310. You give your

19 recollection of what Mr Whelan said at the meeting.

20 Essentially you say, I suggest, much the same as what

21 Mr Whelan and Mr Sharpe say happened, but you add

22 something else. You say:

23 "David Whelan then said something to the following

24 effect: manufacturers have been trying to push shirts

25 above £40 for some time; the RRP on the Manchester



1 United shirt is 42.99. As far as I am concerned 39.99  
2 is the right price for replica shirts, that has been our  
3 policy for quite some time and will continue to be it.

4 "I distinctly recall him saying something like  
5 'We have told the City that that is our price for  
6 replica shirts, and that is it'. David Whelan said  
7 he had told the City analysts that he would never sell  
8 of £40 and that was his time-honoured formula. I have  
9 seen this myself in the press and the prices are clearly  
10 visible from the shop window which my buyers and our  
11 directors do often look at."

12 Can I ask you this: in this bit of your witness  
13 statement you use words like "said something to the  
14 following effect, "as I have just drawn to your  
15 attention", and "distinctly recall him saying something  
16 like"?

17 A. Yes.

18 Q. Does that reflect the fact that you could not recall  
19 precisely what was said by Mr Whelan and you are just  
20 trying to convey the substance of what you think was  
21 said?

22 A. I cannot remember verbatim what went on in those 10 or  
23 15 minutes of a meeting. I have tried over a  
24 considerable period of time to collate accurately and  
25 reflect what was said but I cannot recall verbatim.

1           That gives the flavour of what was said.

2   LORD GRABINER: I understand, and I am very grateful to you.

3           I have no further questions.

4   THE PRESIDENT: Right, I think that completes the evidence

5           as far as tonight is concerned, Mr Hughes. So kindly

6           stand down from the witness-box. Are you happy to come

7           back tomorrow?

8   A. Absolutely fine.

9   THE PRESIDENT: I would have thought we would start at 10.30

10          for the evidence.

11   MR WEST-KNIGHTS: Yes, I would have thought. Plainly the

12          timetable has gone awry again, only this time with

13          rather more consequences than hitherto, because I would

14          guess that my learned friends between them, whichever

15          one is doing whichever, are not going to do both

16          witnesses tomorrow.

17   THE PRESIDENT: It does not look as if you will finish

18          tomorrow, Mr Morris, as far as I can see.

19   MR MORRIS: I have to say at the moment that I agree, rather

20          reluctantly. I would like very much, as everybody

21          would, to finish tomorrow. I will make the effort but

22          the way things are going and given the detail --

23   THE PRESIDENT: We then have to think about what is going to

24          happen on Monday, and we have to think a bit further

25          ahead about pauses, submissions, and all that sort of

1 thing. There are other cases on the tribunal's list so  
2 it is getting pretty difficult now, vis-a-vis  
3 the tribunal's list.

4 MR MORRIS: I understand. I am just contemplating whether  
5 it is possible, and I am thinking aloud here, that if  
6 we had an early start tomorrow, 9.30, and you were  
7 prepared to sit later, whether we could get through both  
8 Mr Hughes and Mr Guest.

9 THE PRESIDENT: I think it is (a) unlikely; (b) I would not  
10 want to take too many risks; (c) all the members of  
11 the tribunal live outside of London and we are entirely  
12 reliant on the train service which is not particularly  
13 reliable.

14 MR WEST-KNIGHTS: And if I may say so, with respect, (d) on  
15 any cogent view squeezing a quart into a pint pot,  
16 especially that quart, is (a) unrealistic and (b) it is  
17 not practical.

18 THE PRESIDENT: Absolutely. It was a helpful suggestion but  
19 it is not practical.

20 LORD GRABINER: The Bury document is as one would expect in  
21 the Allsports file, tab 12, page 523.

22 Can I mention one small point as well, and I  
23 apologise, but it is this: when a question is being  
24 asked off this day's transcript, off the screen, and  
25 a number is given and a reference is given, it does not

1           come out the same, it never will come out the same, in  
2           the final version. It is usually a few pages earlier,  
3           so people might be thrown by that.

4   THE PRESIDENT: We are aware of that. Thank you very much.

5   MR WEST-KNIGHTS: If it happens again, the best thing to do  
6           is to look at the clock because there are time stamps in  
7           the transcript every fifteen minutes.

8           Sir, it does not look as if we are going to finish  
9           the live evidence tomorrow. There seems to be no  
10          prospect.

11          The application which I have to make, and I mean  
12          that both in the future and the imperative, is a serious  
13          one.

14   THE PRESIDENT: We have now got some information that has  
15          come in in the last half-hour.

16   MR WEST-KNIGHTS: I will review the position overnight. But  
17          I would unhappy if we were to sit after 10 o'clock in  
18          terms of the risk to the timetable. Bluntly, if that  
19          information does not fit the bill and does not match  
20          such as we know then I will have a substantive  
21          application to make, effectively to stay these  
22          proceedings until such time as the information is made  
23          available.

24   MR MORRIS: Sir, all I can add as far as information is  
25          concerned on that is that a phone message has been left

1 with Miss Roseveare in the last hour or so and  
2 a detailed message was left informing her that  
3 the tribunal wished Umbro to be represented tomorrow  
4 morning and that we are still waiting for the document.  
5 Well you have now got the document, presumably. So  
6 the document she was supposed to be sending through  
7 I understand you have. She has been told that  
8 the tribunal might want to have representation from  
9 Umbro tomorrow.

10 That is as far as we can take it. We will make  
11 another phone call in a moment. We are doing our best.

12 THE PRESIDENT: I would have thought as far as tomorrow is  
13 concerned I thought at least provisionally we will sit  
14 at 10 o'clock to hear any applications there are at  
15 10 o'clock. That is on the assumption that Umbro is  
16 able to be represented at 10 o'clock, because I am very  
17 reluctant to hear a substantive application against them  
18 unless they are present.

19 MR WEST-KNIGHTS: If they are not present I will make the  
20 application against the OFT.

21 THE PRESIDENT: I am very reluctant to hear any application  
22 against the OFT that affects Umbro's documents without  
23 Umbro being available to be heard.

24 MR WEST-KNIGHTS: I understand the position, I am not trying  
25 to be difficult --

1 THE PRESIDENT: It may have to go over to a later day.

2 MR WEST-KNIGHTS: The longer this goes on, the less  
3 salvaging there is to be done.

4 THE PRESIDENT: In any event, I think we need to start  
5 Mr Hughes's evidence no later than 10.30, so that we can  
6 do our best to get poor Mr Hughes's evidence out of  
7 the way by the weekend.

8 MR WEST-KNIGHTS: The prospect of Mr Hughes not being  
9 finished tomorrow appals me.

10 THE PRESIDENT: We can sit a bit late tomorrow night but  
11 that is our provisional plan for tomorrow.

12 MR MORRIS: I do not know whether the tribunal has given any  
13 thought to further ahead. I know there are things on  
14 Monday and the like and where we are thinking even  
15 beyond next week. It might be helpful if the tribunal  
16 has an indication of its thinking, but maybe now is not  
17 the appropriate time.

18 LORD GRABINER: On that subject may I float a suggestion  
19 which is adopted in other courts, as the tribunal will  
20 know.

21 It is possible that one way of dealing with the  
22 closing submissions is that the parties should actually  
23 produce written submissions and then have limited  
24 speaking time, maybe two hours each or something like  
25 that. For my part, I would be quite happy with such

1 a scheme. It will shorten time, it will give  
2 the tribunal an opportunity to read the material and to  
3 put questions to the authors; it would also enable us,  
4 I suspect, to finish before the end of next week.

5 MR MORRIS: Sorry, is the suggestion that you would still  
6 finish by the end of next week by doing that?

7 LORD GRABINER: I would hope so, yes. If people were  
8 limited to a couple of hours each, and I just pluck that  
9 figure out of the air, then that may be a solution  
10 rather than have people have oral argument that you have  
11 to painstakingly note down all day long for example,  
12 whereas it would not be necessary to do that because  
13 you have it in a document which is then developed  
14 orally, or parts of it developed orally in the course of  
15 the submissions.

16 THE PRESIDENT: I think at the moment we have to consider  
17 this overnight.

18 The first problem is -- which I think only  
19 the tribunal can resolve -- whether we go on with  
20 Mr Guest's evidence on Monday, or whether we have  
21 a blank day because the tribunal has another commitment.  
22 That is the first problem.

23 The second problem is the state of the tribunal's  
24 own diary for next week, because this is not funnily  
25 enough the only case in the tribunal's calendar, and

1 I have to sort out various other parties and other  
2 hearings.

3 The final variable is how much time you would need  
4 to prepare what I anticipated would be written  
5 submissions anyway before we got to final submissions,  
6 at least something in writing.

7 MR WEST-KNIGHTS: I am an oralist, I was preparing  
8 a chronology but I was not expecting to do a full  
9 written submission.

10 THE PRESIDENT: And how much time you think you all need to  
11 do justice to your respective cases. We have had a lot  
12 of evidence, and sometimes it is useful for us to have  
13 a pause, re-read transcripts, orient ourselves, go over  
14 witness statements in the light of our subsequent  
15 knowledge before we get to a submissions stage.

16 One possibility, and of course this now collides  
17 with other people's diaries, is to have a pause after  
18 the evidence and to regroup at a later stage to be fixed  
19 when everybody is available.

20 MR MORRIS: I think from our point of view that idea of  
21 a pause with written submissions and short oral  
22 submissions was in fact one we did put forward a while  
23 back. As a matter of principle we would very much  
24 support it.

25 I think, subject to being tugged further, if we



1 cannot conclude the evidence on Monday then it seems to  
2 us to produce that sort of document with short  
3 submissions may be something which would lead to  
4 the conclusion that we would have a longer pause for  
5 regrouping along the lines that you have been  
6 considering and reconvene for two days at some  
7 appropriate moment slightly later.

8 I am saying that without any instructions from  
9 the people behind me and I would obviously want to  
10 reserve our position --

11 THE PRESIDENT: At the moment I think probably the most  
12 useful thing is for you to think about it all yourselves  
13 together as far as you can and we will think about it  
14 from our side having floated those suggestions and  
15 we will think again tomorrow about where we are.

16 MR MORRIS: Regarding Monday, is that a matter -- I had  
17 actually assumed that it was something which will take  
18 the whole of Monday.

19 THE PRESIDENT: Yes, I am afraid it does.

20 MR MORRIS: So it is not a half a day.

21 THE PRESIDENT: No, it is the whole day.

22 MR WEST-KNIGHTS: I just add one thing: we need to keep  
23 an eye on reality as well: Easter is approaching.  
24 I have two holidays booked --

25 THE PRESIDENT: We all have commitments and diary problems.

1 MR WEST-KNIGHTS: There it is, sir.

2           So far as tomorrow is concerned, 10 o'clock is  
3           the application. I will tell my learned friend what  
4           specific questions we are asking and the application is  
5           that unless we get that information virtually  
6           immediately, subject to what is in that fax, we will be  
7           to asking you to stay the proceedings. Too much time  
8           has slithered by and you will have to make a decision  
9           tomorrow inter alia as to whether Umbro is trying to  
10          help us or not.

11 THE PRESIDENT: We will sit at 10 o'clock for the witness  
12          and 10.30 for the evidence.

13           Mr Hughes, please do not discuss the case with  
14          anybody while you are giving your evidence.

15 (5.00 pm)

16 (The hearing adjourned until 10.00 am the following day)

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