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1 Friday, 19th March 2004

2 (10.00 am)

3 THE PRESIDENT: Mr West-Knights, before you start can

4 I signal the tribunal's availability over the next
5 relevant period so that we can plan where we are going.

6 It is as follows. We would prefer not to sit next
7 Monday 22nd. That would involve, I think, finishing
8 the evidence on the 23rd. The tribunal is available on
9 the 24th and 25th, the Wednesday and the Thursday, with
10 some difficulty on the 26th, but that would mean moving
11 another case which I do not particularly want to move.
12 The tribunal is not available on Monday 29th March but
13 is available on Tuesday 30th. The tribunal is not
14 available on Wednesday 31st, but is available, with some
15 difficulty, on 1st April, Thursday, and Friday
16 2nd April. Thereafter we begin the run-up to Easter and
17 another set of problems begins to develop.

18 That is our immediate availability if it helps
19 people in any way with how they see the future
20 timetable.

21 MR WEST-KNIGHTS: May it please you, sir, gentlemen. Yes,
22 is the answer to your rhetorical question, it does. For
23 information, I am in the Court of Appeal on Wednesday,
24 the last day of March, the 31st.

25 THE PRESIDENT: That is fortunate from our point of view

1 because we are not available either that day.

2 MR WEST-KNIGHTS: Yes, but you are available the preceding
3 day. I may have to burn the candle at all three ends,
4 but there it is.

5 Sir, thank you. My immediate reaction is that that
6 broadly fits with the plan that Mr Peretz and I had,
7 which was to devote Saturday, Sunday and Monday to
8 the production of at least skeletal closing points which
9 would be a document to enable the tribunal to hear me
10 without doing too much writing, but would not be
11 a document which would stand on its own feet. Perhaps
12 we can come back to that.

13 Sir, I have a bit of business to do this morning.
14 First, may I ask whether there is in front of each
15 member of the tribunal a landscape piece of paper. It
16 has attached to in portrait two rather daunting looking
17 bits of paper that I do not propose to take the tribunal
18 to at the moment, but what I did yesterday evening was
19 to derive certain basic information from the documents
20 which are available to everybody and in particular Umbro
21 and Sports World.

22 I will come back to this piece of paper in a moment
23 if I may. Suffice it to say at this stage what I have
24 done -- I hope it is self-explanatory -- under 00
25 licence, 00 other and 00 all, you see in the reference

1 column U, that is information which was derived from the
2 piece of paper which Umbro lodged yesterday by facsimile
3 of their top five customers, and the first thing that
4 you will see is that, notwithstanding that we had made
5 it perfectly plain and we thought we were on common
6 ground here, that however you translate top five, we
7 expected to see JD Sports and Sports Soccer. Umbro, of
8 course, have taken this literalistically and having
9 objected to giving the Celtic figures, it appears that
10 on their view of the figures, the top five accounts are
11 JJB, Sports Soccer, Allsports, Celtic Club Shop and
12 Streetwise.

13 So the only five pieces of information we got from
14 Umbro are the 00 figures for the first five on my little
15 grid. You will see that across JJB I have put a tick.
16 Ie that squares with the information that we have in all
17 of the monthly management reports, that their turnover
18 in 00 total was that figure and it is marginally higher
19 than it had been in 1999.

20 If I can just skip Sports Soccer for a minute,
21 I have derived from the monthly management reports and
22 given the reference in each case to the first one where
23 these figures appear. They are quite frequent.
24 You will see for Allsports it has gone up slightly, but
25 where I put an X, the footnote, they have actually got

1 the figure wrong, according to their own books. It is
2 a slightly different figure, 5.56 or 5.57, not 5.59.

3 The footnote in respect of Celtic is a smaller
4 figure of 1.6 and Streetwise, curiously enough, in all
5 their documents the turnover in 00 was only 260,000.
6 But they have put them in at 1.5 and there is the top
7 five that they proffer.

8 I have come up with a few names myself: Argos,
9 JD Sports, First Sport, Chelsea, Hargreaves, Champion,
10 and the other figured at the bottom is Man U Club Shop
11 which was again provided by Umbro and was correct.

12 But the headline on this, apart from the obvious
13 failure to give the figures for JD Sports and
14 First Sport, which is where we were starting, is that
15 the Sports Soccer figure, said by Umbro to be the real
16 trading in 2000, is a figure of 14.9 million. It is not
17 a new figure because it appeared at the back of
18 the Umbro piece of paper that we had slightly earlier.

19 The figure for 1999 for Sports Soccer -- we do not
20 have a breakdown -- is just a shade under 36 million.

21 Every other figure on this piece of paper,
22 therefore, apart from those with a U next to them, have
23 been derived by me yesterday evening from the documents
24 we have.

25 The top five turnover figures that we were given by

1 Umbro yesterday evening has a total figure of
2 54.7 million turnover, which means that somewhere there
3 is an awful lot of other business being done by -- if
4 they are as small in the accounts as they appear to be,
5 200,000 or 300,000, they must have hundreds of other
6 customers, we do not know.

7 THE PRESIDENT: 58.7 is about 70 per cent of UK turnover.

8 MR WEST-KNIGHTS: It is 54.7 excluding Manchester United.
9 It is 58.7 including Manchester United. I had
10 subdivided it. That is taking the UK turnover from
11 the accounts.

12 THE PRESIDENT: On the basis of the accounts.

13 MR WEST-KNIGHTS: Yes. If I can pick this up to remind us
14 where we have been. It was on Friday, the day before
15 this hearing started, that the production of some new
16 documents gave rise to supplementary skeletons on
17 the part of both JJB and Allsports making the point that
18 at this stage the whole thing was absolutely as clear as
19 mud and on one view the hearing could not properly
20 proceed without full disclosure. At that hearing you
21 ordered the disclosure, on an incremental basis, of at
22 least the 2002 agreement if it turned out to be
23 different from those draft arrangements that you had
24 seen, and it was the case that those arrangements were
25 not the same and consequently the 2002 agreement was

1 proffered by Sports Soccer.

2 Umbro, you will recall, accused the Office and/or
3 Sports Soccer and/or everybody else of playing some form
4 of game and objected to the disclosure of that document
5 at all.

6 On Tuesday morning of the first week, that is to say
7 Day 2, you all took the view that the tribunal really
8 did need some form of understanding of the contractual
9 and trading arrangements between Sports Soccer. And
10 I quote there from the transcript of that first Tuesday.
11 You said that at some stage we are going to have to
12 address the financial side of things, but let us just
13 see what can be done in the meantime.

14 It was as plain as a pikestaff to everybody
15 concerned that what the tribunal wanted was the one-line
16 basic explanation of how does this fit together.
17 I described it as a candid and clear explanation of what
18 the deals were and what happened as a result of them.

19 On Wednesday at lunchtime we got the Sports World
20 piece of paper. If I could ask you to turn to that.
21 I do not have the slightest idea where it would be in
22 the papers, but if it is in the Umbro bit of paper, it
23 would be wise to find that too.

24 THE PRESIDENT: Yes.

25 MR WEST-KNIGHTS: You will see the Sports World piece of

1 paper says in terms, under arrangements in 2001:

2 "Sports World ... consisted only of Umbro regular
3 in-line business."

4 In other words, although they do not say so,
5 they were doing £36 million worth of real business,
6 which obviously involves the receipt, considering and
7 selling on of the equivalent amount of whatever
8 £36 million worth of what was mostly branded, you will
9 recall. Because the Ronnie position was that he was
10 interested in increasing in late 1999/2000 Sports World
11 licensed. They were not very good as licensed,
12 they were mostly doing branded.

13 Sports World say:

14 "By the second half of 2000 Sports World were
15 negotiating for a better wholesale price on its regular
16 in-line business. Sought to purchase larger volumes
17 direct from Umbro's factories. Referred to as direct
18 shipped at a better wholesale price, Sports World make
19 direct ship purchases towards the back end of 2000 and
20 into the first months of 2001."

21 That is not the licensing arrangements, note. This
22 is some interim deal about which Umbro are completely
23 silent. Because Sports World go on to say --

24 THE PRESIDENT: Hang on, I am just making a note.

25 MR WEST-KNIGHTS: Sports World go on to say:

1 "... considered there was further scope for
2 improving its buying terms and suggested to Umbro that
3 it produce products from its own factories."

4 This is why I say that paragraph 2 is an interim
5 stage before we get to the licensing arrangements:

6 "Sports World paid advance royalties for the rights
7 to use those products ... schedule 3 clearly defines
8 the product as Umbro branded apparel excluding replica
9 kit. In early 2001 Sports Soccer started no phase out
10 direct ship purchases and began to replace them ..."

11 So again there is an intermediate stage that we had
12 not heard a word about until then.

13 Then he goes into the formula for burn, saying that
14 12 million entitled them to sell £60 million worth at
15 wholesale prices.

16 Over the page is recorded the payment of an advance
17 royalty of 6.6 million on 16th September. That is
18 a figure which is consistent as between Sports World and
19 Umbro:

20 "No sales of branded apparel or footwear were in
21 fact made in 2000."

22 They mean pursuant to the licence.

23 THE PRESIDENT: Yes.

24 MR WEST-KNIGHTS: What we do know is that in contrast to
25 1999 that must mean that there has been a plummeting of

1 real business between Sports World and Umbro, which
2 cannot be right.

3 They say here:

4 "For the first four months of 2001 limited sales of
5 the stuff under the licensing agreement ..."

6 And they come up with a total figure of 15 million
7 for real trade in 2000 and 9 in 2001. Of course it
8 makes a bit of sense maybe in 2001 because in addition
9 to the 9 they have their own capacity and they say they
10 do burn licensed products, but it does not expressly
11 apply in 2000 or 1999.

12 THE PRESIDENT: That 15 million figure fits with the figures
13 we have.

14 MR WEST-KNIGHTS: It is consistent with the figure given on
15 the piece of paper and also the figure given in
16 the Umbro disquisition, which is the next document
17 I would ask you to look at.

18 That came in [not when it was asked for] on Monday
19 morning, seconds before the tribunal sat.

20 On Tuesday we got the piece of paper which may well
21 be attached to that which is a single sheet called
22 "Sports Soccer Turnover 2000", which breaks down
23 the Sports Soccer turnover for 2000 and purports to show
24 an analysis of other operating income.

25 Do you have that sheet?

1 THE PRESIDENT: Yes.

2 MR WEST-KNIGHTS: That was not attached to the document we
3 got on Monday, which had four pages, the fourth of which
4 was secret squirrel.

5 You will see there expressly the figure of
6 14.961 million and under the analysis of other operating
7 income they say that the Sports Soccer licence is
8 accounted for in the 2000 accounts at 12.6 million.

9 Going back to Umbro's piece of paper, there is some
10 general discussion of the agreements which does not help
11 anybody at all. It does not help me. And then we get
12 to a list of invoices raised on page 2. Do you have
13 that?

14 THE PRESIDENT: Yes.

15 MR WEST-KNIGHTS: Invoices 1 and 2 total 6.6 million.

16 Invoices 3, 4, 5 and 6 total 6.825 net.

17 They say over the page that on 20th September, and
18 that is a common figure between them and Sports World,
19 except that Sports World obviously looked at the bank
20 statement and had taken the clearance date, that 6.6 was
21 paid on 20th September and 6.825 was paid on
22 13th June 2001. You will see halfway down this page
23 that 2000 statutory accounts reported a figure of
24 26.1 million under the heading "Other Operating Income".
25 This section refers among other things to income

1 received by Umbro in this period. Umbro received
2 payment of invoices 1 and 2 in 2000 and the audited
3 statutory accounts reflect this income. Umbro also
4 received royalty income from numerous other licensees.

5 That is plainly a reference to money had in in
6 respect of invoices 1 and 2. What they are there saying
7 is that 6.6 million out of the 26 million has been
8 booked in as income because it was in the year 2000.
9 The figure that we get at the last page of 12.612 has no
10 source and is different from the one given in the blurb.
11 It is not the combination of any series of invoices that
12 we can detect. It does not fit.

13 THE PRESIDENT: The 12.612 is where?

14 MR WEST-KNIGHTS: On the single sheet of paper headed
15 "Sports Soccer Turnover 2000" which came in on Tuesday.
16 Analysis of operating income.

17 On the Monday morning we are told that
18 the 26.1 million refers inter alia to income received by
19 Umbro in this period, the word is underlined, saying
20 that Umbro received the payment of invoices 1 and 2 in
21 2000 and the accounts reflected this income at
22 6.6 million. Suddenly the figure has leapt to
23 12.612 million without explanation.

24 THE PRESIDENT: I think we were told that some or part of
25 invoices 3-6 had been included --

1 MR WEST-KNIGHTS: Yes, we were told that. But as a matter
2 of explanation it is a different explanation from
3 the one given on the Monday and as a matter of
4 accounting it is illegitimate.

5 THE PRESIDENT: It may or may not depending on whether it
6 has been invoiced or not.

7 MR WEST-KNIGHTS: No. If it has been invoiced in respect of
8 a curious future period and it has not been paid then
9 there is no basis for putting it into the year 2000.
10 Hence the explanation on that bit of paper which says
11 that the 2000 invoices reflected income, ie 6.6 million.
12 At any rate the explanation has changed or the numbers
13 have changed.

14 Now, we asked for the turnover figures of the top
15 five so we could see what was going on. And then we
16 noticed when I was going through the papers again that
17 14.4 plainly stuck out like a monument. That the notion
18 that the OFT had been proceeding on was that the
19 turnover, however derived, between Sports Soccer and
20 Umbro was actually 60 million. Now suddenly we are told
21 when they are asked: can you please divide out the real
22 from bogus, first we are given the supposed real figure
23 and no cogent explanation as to how the rest of it was
24 notionally or actually derived.

25 If I can ask you to turn over to the upright

1 page very briefly.

2 THE PRESIDENT: Your attempted reconciliation.

3 MR WEST-KNIGHTS: Indeed. All I have done here is have
4 a look and see in the 2000 management reports how
5 the Sports Soccer bookings were shown. In other words,
6 if they were tinkering along at a relatively low level
7 and suddenly go up by 12 million, that would be
8 consistent with somebody saying that is a notional --

9 THE PRESIDENT: It is just worth mentioning for what it is
10 worth that the management accounts seem to run on
11 bookings rather than on payments.

12 MR WEST-KNIGHTS: What they do is invoice/bookings, and at
13 the end of the year the total invoice/bookings is in
14 every case apart from Sports Soccer the same as
15 the reported turnover in the preceding year. I take
16 the point but actually it is marginal. They take
17 an invoice sum as being income for 2000 whether it is in
18 fact paid in 2000 or not, which is appropriate.

19 Give or take a few pence, the annual bookings figure
20 for each of the companies apart from Sports Soccer at
21 the end of the year -- JJB booked 39.37 against a target
22 of whatever.

23 THE PRESIDENT: That seems to be right.

24 MR WEST-KNIGHTS: That comes through. The next year it is
25 shown as their preceding year's turnover so there is no

1 dichotomy between the two.

2 What I have done in bold is simply show from month
3 to month what the Sports Soccer invoice/bookings are
4 shown as. They do not go up in lumps and bumps.
5 They are missing in places and redacted in others, but
6 they go up sequentially as if this was real trading. We
7 are missing the July, August and September.

8 THE PRESIDENT: The interesting one is December, is it not?
9 That gives you the year.

10 MR WEST-KNIGHTS: That gives you the year but it is slightly
11 more important than that. It does not go up in a
12 notional way: he has paid 6.6 million so we will book
13 a big round number to reflect that. None of these is
14 round numbers. The reason I have gone to three decimal
15 places here is that they are very, very particular and
16 precise and measured off against the budget for that
17 year target of a shade under 40 million.

18 THE PRESIDENT: It was not obvious at least to us that these
19 figures in the management accounts included any royalty
20 payments.

21 MR WEST-KNIGHTS: Plainly not. They looked like real
22 trading, and that was the basis upon which we approached
23 this case as soon as we got these figures and got our
24 clients instructions on them, which was a week or so
25 before the hearing.

1 For all I know, if I had got excited about all of
2 this in January I would have waited until March and
3 the client would have said: I am not paying for all this
4 work, we knew about this.

5 THE PRESIDENT: Never mind about the timing, it is all water
6 under the bridge.

7 MR WEST-KNIGHTS: If we go over the page, you will see that
8 during the course of 00 there was a payment of
9 6.6 million. I have underlined and emboldened that.

10 I have noted that although 6.6 million has been paid
11 and 6.825 is outstanding, the year-end accounts take in
12 12.612 which is une cherche margin. I have no idea
13 where that comes from. Over the page you have the
14 figures for the first half of 2001 which is where
15 I stopped.

16 Oddly, January, in addition to showing the
17 antecedent year's turnover, 59.639 million, starts with
18 bookings of £45,000,638 worth of stuff, which is already
19 90 per cent of the target for the following year?

20 THE PRESIDENT: Sorry, that is 45 point something?

21 MR WEST-KNIGHTS: It is that number there. £45,000,638, and
22 shown next to it is the turnover for the preceding year
23 which is proudly stated at 59.639 million which is, give
24 or take pennies, the turnover booked in at the end of
25 the preceding year. That is why I say give or take

1 pennies, the figure was 59.711, here is 59.639, there
2 were no doubt some credits or something.

3 And then curiously during 01 the figure is static or
4 drops for bookings. So we just do not know what is
5 going on in 01. The point is that the management
6 reports tell you nothing about the reality on
7 the ground --

8 THE PRESIDENT: It looks as if they might have taken in
9 a big chunk of bookings or pre-estimated sales at
10 the beginning and left it there.

11 MR WEST-KNIGHTS: The premise of this was that some of
12 the branded bookings for 00, 51 million, were bonus --

13 THE PRESIDENT: As yet unexplained.

14 MR WEST-KNIGHTS: No, I mean bogus. They were not sales of
15 product. They were 51 million pursuant to the licensing
16 arrangements -- I will call them PLA.

17 THE PRESIDENT: We are not even clear that that is right,
18 are we?

19 MR WEST-KNIGHTS: That is what they say. It is plainly not
20 right. If you add the 51 million to the actual
21 turnover, that gets to 66, which nobody has ever
22 suggested.

23 Let us just take it that there is 50PLA in the books
24 for 2000.

25 If you start off in January 2001 with another 45,

1 that is a total of 95PLA or unexplained.

2 THE PRESIDENT: The thing that was puzzling us, it may be

3 the point that you are making but in a more --

4 MR WEST-KNIGHTS: Comprehensible way?

5 THE PRESIDENT: What is the reconciliation between

6 the 15 million effectively in the figures we have just

7 been shown and the 59 million in the December 00

8 management accounts?

9 MR WEST-KNIGHTS: I just take that -- yes. I just take it

10 a tiny bit further: especially since the turnover in

11 1999 was 35.91; how come?

12 One thing we have not been told of is a catastrophic

13 dip in real trading between Sports Soccer and Umbro.

14 Far from it.

15 THE PRESIDENT: Yes, we do not know yet what the explanation

16 is.

17 MR WEST-KNIGHTS: No, we do not. And that is really where

18 I am and I am going to be quick now.

19 THE PRESIDENT: That is the basic question, is it not?

20 MR WEST-KNIGHTS: The basic question is how do these numbers

21 fit together? That has always been the basic question,

22 except I have turned it into conundrum 99, which will

23 not be a conundrum to Umbro and Sports Soccer because

24 they have known that figure all along. None of this is

25 news to them, it is only news for us.

1 What we say about that is bluntly this. You are
2 being held out of this information. We do not take
3 the view that Umbro are attempting to assist
4 the tribunal. Time has slithered by when relatively
5 simple information, the obvious relevance of which is
6 plain even to those semi-detached from the arrangements
7 between these two companies, and neither company saw fit
8 to put on one piece of paper a clear explanation of the
9 arrangements between them in the material period.

10 It is plain from the numbers that we have now seen
11 that somewhere in these pieces of paper and in
12 the arrangements a deception is being practised.

13 It would be, I think, impracticable for me now to
14 say: order these people to give a proper explanation,
15 because it is not going to happen in time. Umbro has
16 chosen -- and I use the word advisedly, they have
17 solicitors in addition to their in-house counsel -- not
18 to be here.

19 If you were to make an order they would no doubt
20 say, and no doubt the Office would say -- and this
21 I understand -- it will take some time. We would only
22 get the answer to some literalistic questions, no doubt,
23 and the moment will have passed.

24 There is no prospect now, it would appear, of
25 the tribunal having a proper explanation of these

1 arrangements.

2 The dichotomy between the reality and
3 the explanations is plain on its face. You only have to
4 look at one or two of the basic documents to see -- to
5 use the expression that I have used -- that none of this
6 fits.

7 I have put the reference, by the way, on that piece
8 of paper for the 51 million, the assertion that
9 the management accounts show 51 million under branded,
10 which never happened, ie which was PLA. That cannot be
11 right, because we are told also that the actual branded
12 was 10, and indeed the actual turnover was 15, and that
13 would give rise to an aggregate turnover of 66 in
14 the books which we have not seen.

15 Are you with me? You seem puzzled. Your way of
16 looking at things may be crude but it is clear, if I may
17 say so. So if I am not being clear, please say so. But
18 I have noted that contradiction on the piece of paper
19 also.

20 It seems to me unhelpful in the extreme that when we
21 ask for the top ten accounts, because we need to know
22 the shape, they insist on the top five and bingo, we do
23 not get the accounts we are interested in. We do get
24 Streetwise in substitution, but on the face of the
25 document Streetwise has been thrown in on a wholly

1 inaccurate basis. We had no information about
2 Streetwise whatsoever. It has only crept into this case
3 because it is said that in the year 2001 they did
4 a large one-off turnover in surplus shirts or whatever
5 it was.

6 THE PRESIDENT: Mr West-Knights, shall I tell you how
7 we were broadly looking at it as a problem?

8 MR WEST-KNIGHTS: That would be helpful.

9 THE PRESIDENT: We take the view that there are points that
10 we need to get to the bottom of and that the best way to
11 do it, at least in the first instance rather than, as it
12 were, making an order in the first instance, is for
13 the tribunal simply to pose some written questions to
14 Umbro bearing on the matters that we want to raise and
15 including some of the matters that you want to raise
16 with a view to getting, as it were, nearer to the bottom
17 of things.

18 As far as we can see, obviously all this has
19 a bearing on the case, but there are a lot of other
20 points in the case that we can be thinking about, in
21 particular the primary evidence. But there are things
22 that we probably need to, as it were, bottom-out, and
23 when we have got some answers to those questions, which
24 I think we are going to have to insist on having, we are
25 going to have to give the parties an opportunity to make

1 submissions to us about them.

2 There may be an innocent explanation, there may not.

3 We have no idea at the moment.

4 MR WEST-KNIGHTS: At this stage there cannot be an innocent
5 explanation for the misinformation that is --

6 THE PRESIDENT: Let us see how we get on. Umbro is,
7 strictly speaking, not a party to your appeal.

8 MR WEST-KNIGHTS: No, it is the Office, if I may say so, and
9 say this genuinely without criticism, who have now found
10 themselves in a position where they have put forward
11 witness statements creating by Umbro witnesses where
12 Umbro have made a policy decision to say nothing at all,
13 not even redacted, about the licence arrangements.
14 Consequently, the picture painted by those statements of
15 the relationship between Umbro and Sports Soccer is
16 absolutely false.

17 THE PRESIDENT: However it may have happened, we are
18 sympathetic with you to this extent: that there are some
19 things that we would like to get to the bottom of
20 further.

21 The way we propose to do it is by asking some
22 questions to Umbro, which I think could probably go out
23 to Umbro this evening, I think --

24 MR WEST-KNIGHTS: And indeed Sports World.

25 THE PRESIDENT: Sports World, partly as a result of

1 opposition earlier on, is not a party to any proceedings
2 at the moment.

3 MR WEST-KNIGHTS: You have the power under your rules to
4 make directions for the acquisition of information from
5 non-parties.

6 THE PRESIDENT: It is slightly tricky. I think in the first
7 instance we have in mind to ask Umbro some questions.

8 MR WEST-KNIGHTS: Umbro are not a party to this appeal.

9 THE PRESIDENT: Not a party to your appeal, but they are a
10 party to another appeal.

11 MR WEST-KNIGHTS: They are not a party to these proceedings.

12 THE PRESIDENT: We could join them to your proceedings and
13 treat them as a joint case for technical purposes.

14 MR WEST-KNIGHTS: Or make the order against them as
15 non-parties.

16 THE PRESIDENT: That would make them a party. They are more
17 directly concerned at the moment than Sports Soccer is.
18 We do need to bottom-out this.

19 MR WEST-KNIGHTS: There is no reason why Umbro, if they are
20 the only people who are the object of your direction,
21 cannot ask Sports World themselves if they need to
22 check.

23 THE PRESIDENT: That is a technical problem. That is how
24 I think we would like to leave this at the moment. What
25 we would like to do is to reflect on all this helpful

1 information. An enormous amount of work has been done
2 in getting it all together.

3 MR WEST-KNIGHTS: It is kind of you to say that. It took me
4 4 hours, even that relatively late at night. It is not
5 rocket science and it does not take a week. That is why
6 I am particularly drawing to your attention the abject
7 failure of Umbro to do anything similar. I am not an
8 accountant; I am not a bookkeeper. These are not my
9 documents, they have all three. Knowledge of
10 the documents and the personnel. But there it is.

11 I understand where you are coming from. We have,
12 however, slithered from the position where we were
13 hoping to cross-examine Ronnie and Ashley on the footing
14 that we knew what was going on basically. We have not.

15 You have expressed a preliminary view at some stage
16 that you were not persuaded of the necessity for doing
17 that. Let us make our position plain which is that it
18 goes to the heart of this case, because if
19 the arrangements between Sports Soccer and Umbro were
20 entirely consensual then everything to do with pressure
21 is eyewash, and similarly further back up the chain you
22 will know that every occasion of price-fixing which is
23 germane to this case is also an occasion on which there
24 are detailed discussions between Ashley and Ronnie on
25 the subject of these collateral arrangements. I hope

1 our position on that is clear.

2 We do say that on the face of it, as at now,
3 a deception is being practised on the tribunal and on
4 the parties and that the arrangements between these two
5 should be clear by now and they are not. It may be that
6 we will have to look again at the question of asking
7 Mr Ronnie and Mr Ashley questions as and when your
8 direction gives rise to information.

9 I started by saying, having yesterday spoken of
10 a stay, overnight I realised that the way in which this
11 information would trickle out is that we are not going
12 to get the proper picture in time. Unless we park
13 the whole proceedings for a month --

14 THE PRESIDENT: We do not want to park the whole
15 proceedings. But we do want to develop a procedure for
16 getting further to the bottom of it than we are at the
17 moment. I will see how we get on. Last resort, we have
18 powers of subpoena, powers to order documents, powers to
19 get people here, et cetera. Let us see how we go. That
20 is how we see it at the moment.

21 MR WEST-KNIGHTS: Understood. Please retain those bits of
22 paper. They are at least, if nothing else, a useful
23 aide-memoire as to where information is to be found.

24 THE PRESIDENT: They are, in the classic sense of the word,
25 work product. It is very helpful to have somebody do

1 that work.

2 MR WEST-KNIGHTS: I am grateful, sir.

3 THE PRESIDENT: Do you want to come back on that, Mr Morris?

4 MR MORRIS: Sir, I heard entirely what you said. I do not

5 know whether you have had any information from Umbro

6 this morning.

7 THE PRESIDENT: No.

8 MR MORRIS: Can I fill you in on the picture?

9 THE PRESIDENT: They are not here to defend themselves at

10 the moment.

11 MR MORRIS: I spoke to Miss Roseveare last night. She was

12 not in the Office, she is in the Office up north today.

13 She could not make it today. She had made enquiries of

14 Mr Green and Mr Green could not make it today. So she

15 was aware that this was going to be raised this morning

16 and she was unable to get representation before

17 the tribunal.

18 She did say that she would endeavour to write to

19 the tribunal before we started sitting this morning.

20 She has obviously not succeeded in that endeavour. She

21 is fully aware of the position. I imagine she might be

22 writing during the course of the day. We can also pass

23 on in due course what has been said. That is the

24 position as far as she is concerned.

25 THE PRESIDENT: We need to hold what the French would call

1 une instruction to get to the bottom of this particular
2 aspect of the case.

3 MR WEST-KNIGHTS: Mr Guest. I have again taken the liberty
4 of fiddling with the subpoena arrangements. I have
5 currently said not before 2 o'clock, but I am bound to
6 say that I have the feeling I should say 10 o'clock
7 Tuesday.

8 THE PRESIDENT: I think that is wise.

9 MR WEST-KNIGHTS: Until such time as l'instruction has taken
10 place, if it does, plainly we and the tribunal must
11 proceed on the footing that inferences, insofar as they
12 have to be drawn, must necessarily be drawn in a way
13 that is favourable to the appellants.

14 THE PRESIDENT: We will try not to draw any inferences until
15 we have got to the bottom of it but we will give
16 everybody the chance to comment when we have got as far
17 as we are going to get.

18 MR MORRIS: Sir, I was wondering whether we could have
19 five minutes.

20 THE PRESIDENT: Yes. Lord Grabiner.

21 LORD GRABINER: Sir, we are very anxious indeed to get on
22 with this. For example, in relation to the matters that
23 my learned friend has been addressing you on this
24 morning, our position is not quite as complex as his.
25 I mean, we respectfully agree with the broad criticisms

1 that he makes. We do not anticipate getting to
2 the bottom of this story within the foreseeable future.

3 Our contention, as you know, is that we will be
4 submitting that there is and was at the material times
5 a special relationship between Umbro and Sports Soccer,
6 and that the shenanigans, for want of a better word,
7 that have been going on in relation to these figures
8 merely confirms that.

9 If the position is that we do not get to the bottom
10 of it in time, we shall in any event be inviting you as
11 a tribunal to draw any necessary inference to support
12 the proposition that there was a special relationship.
13 And if it was not so that is precisely why they would
14 have been in a position to and would in fact have been
15 totally cooperative and would have produced the relevant
16 information in time for you to be able to take it into
17 account when coming to prepare your decision, and
18 certainly in time during the course of this hearing.

19 So, (a) I do not expect you to get to the bottom of
20 it; (b) I am frankly not concerned whether you do or not
21 because we have that argument and on the face of it
22 there is no answer to it, coupled with all the evidence
23 that you have heard already, and of course it is going
24 to be a part of our submission that there is simply no
25 substance whatever in the so-called pressure case,

1 because essentially it has disappeared. I will not
2 develop that, that is for final submissions.

3 On the separate question about timetable, is it
4 in effect being said by the Office that they are going
5 to be the rest of today with Mr Hughes? Because
6 the only justification for releasing the final witness
7 is that they are confident that that is the case.

8 If there is a chance that we could deal with
9 the final witness today then in my submission we should
10 be all doing our best to try to achieve that. Just
11 looking forward at the timetable that you indicated when
12 we started this morning, you have indicated that
13 Tuesday, Wednesday and Thursday of next week you would
14 be able to sit, the Friday was difficult but was
15 a possibility. In my submission we should be doing our
16 very best to try to complete this case next week.

17 For example, if we were to finish with the last
18 witness by, say, 12 o'clock on Tuesday, I believe
19 I could complete my submissions by close of business on
20 Tuesday.

21 THE PRESIDENT: You would anticipate making submissions
22 immediately after the close of evidence?

23 LORD GRABINER: Yes, I would, and I would do it.

24 On that basis it might actually be possible to
25 complete the case on the Friday, if you were willing,

1 notwithstanding the difficulties associated with
2 the Friday, to sit on the Friday.

3 THE PRESIDENT: Yes.

4 LORD GRABINER: I must say that I would respectfully urge
5 you to try to produce that result. Otherwise we are
6 going to go across into April -- incidentally
7 the 1st April date I see from my own portable diary
8 suggests that I have a hearing here in this competition
9 commission on a separate matter.

10 THE PRESIDENT: That is true. We would have to move that
11 particular fixture.

12 LORD GRABINER: That I understand. Also we run into dates
13 possibly -- I do not know about other people who might
14 be impacted by all of that.

15 The thrust of my point is that I do respectfully
16 submit that we ought all to be trying to produce
17 a result that this is finished by the end of next week.

18 THE PRESIDENT: Yes.

19 MR MORRIS: Can I say in respect of that that broadly we
20 agree with my learned friend Lord Grabiner. We would
21 like to achieve the same result. We will try to press
22 ahead and if there is a possibility of starting with
23 Mr Guest today, we will do everything we can to do so.

24 THE PRESIDENT: What do you think is realistic, Mr Morris?

25 MR MORRIS: It is realistic that I could be finished with

1 Mr Hughes by 3 o'clock/3.30.

2 THE PRESIDENT: 3 o'clock gives us an hour and a half.

3 MR MORRIS: We could get Mr Guest started and get Mr Guest
4 finished by Tuesday.

5 THE PRESIDENT: We might do the opposite of the Friday
6 afternoon rule and work a little later tonight if
7 the shorthand writers are agreeable.

8 MR MORRIS: We will do what we can and to some extent I will
9 bear that in mind and press on.

10 THE PRESIDENT: Let us see how we get on. Let us release
11 Mr Guest now until 2 o'clock.

12 MR WEST-KNIGHTS: Can I say that I entirely concur with what
13 has been said about my learned friend Lord Grabiner in
14 terms of timetable. In any view we will be ready to go
15 on Wednesday. If -- because we will just have parked
16 our last witness and plainly our witnesses are more
17 important to us than they are to Lord Grabiner -- if
18 the position arises that when I finish making my
19 submissions I find I have missed out one or two bits, it
20 may be appropriate within a relatively short space just
21 to pop in a few extra written ones, and if the OFT would
22 like to comment on them they can. If I could be allowed
23 that little safety net I would be very grateful.

24 THE PRESIDENT: Absolutely. Let us not rise for too long.
25 Let us return at ten to.

1 (10.45 am)

2 (A short break)

3 (10.50 am)

4 MR DAVID HUGHES (continued)

5 THE PRESIDENT: Good morning, Mr Hughes. You are still
6 under oath.

7 Cross-examination by MR MORRIS

8 Q. Good morning, Mr Hughes.

9 A. Good morning.

10 Q. We have some cross-examination bundles for this which
11 are about to be distributed. Perhaps if witness
12 bundle 1 could be got out for the witness.

13 Mr Hughes, you have there a thin bundle with
14 documents in it, and next to it is the bigger bundle,
15 and perhaps it is worth going straight to that at
16 page 290, which is the start of your main witness
17 statement. Not that I am going to go to it immediately,
18 but so that everybody is working off the same documents.

19 The page numbering is at the bottom centre.

20 A. Yes, I have that.

21 Q. Mr Hughes you are the chairman and founder of Allsports
22 Limited?

23 A. Yes I am.

24 Q. And you are also its major shareholder?

25 A. Yes.

1 Q. And unlike JJB, JD and Blacks, Allsports has remained a
2 private company?

3 A. That is correct.

4 Q. Between about 1997 and 1999 Allsports was the second
5 largest sports goods retailer after JJB in terms of
6 turnover?

7 A. I do not think that is correct.

8 Q. Between 1997 and 1999?

9 A. I am not sure that it is terribly important, but I do
10 not think it is actually correct.

11 Q. If you would go to tab 2 of the smaller bundle. This is
12 a Mintel report on sportswear retailing, and it has
13 turnover figures. If you go to tab 2 in the second
14 page, you will see a table of turnover rankings of major
15 specialist sports retailers. If you look at the years
16 1997-1999 --

17 A. Okay, I accept that. Clearly we fell away in 1999.

18 Q. Yes, I was going to come to that. You fell away in
19 2000. You see that you get overtaken by JD and Blacks?

20 A. Yes.

21 Q. By 2000 Allsports had about 240 stores across
22 the country?

23 A. At that time, yes.

24 Q. And those stores tended to be in town centres or high
25 streets rather than larger developments or out-of-town

1 stores?

2 A. Yes.

3 Q. And the stores were relatively small?

4 A. Compared to JJB and Sports Soccer, yes.

5 Q. I had a figure of an average size of about 1420 square
6 feet.

7 A. Between 1200 and 2000 square feet of retail space was
8 typical for our stores, sir.

9 THE PRESIDENT: Thank you.

10 MR MORRIS: As you just said, by 1999 and 2000 you were
11 facing increasing competition from Sports Soccer, JD and
12 Blacks.

13 A. Increased competition in the marketplace by a whole
14 range of retailers.

15 Q. As we saw a moment ago, their turnover, JD and Blacks
16 took over Allsports for the first time?

17 A. Yes.

18 Q. And it is fair to say that Allsports' financial
19 performance in 1999 and 2000 was suffering a downturn?

20 A. Yes.

21 Q. Can we just look at that Mintel report. It is
22 the fourth page in, page 72.

23 A. Okay.

24 Q. If you look at the first main paragraph, you go down
25 four lines:

1 "Trade interviews highlight Allsports' lack of
2 positioning as its major downfall. It continues to
3 cling onto a middle market where sport meets fashion,
4 which is increasingly being encroached on by those at
5 the discounting end of the market."

6 A. Which year is this?

7 Q. It is a report dated January 2002, looking back on what
8 has happened over previous years, 2000, 2001, 1999.

9 I am on page 72.

10 A. Fine, I agree.

11 Q. In the next paragraph, financial performance:

12 "Allsports had better operating margins in 1997,
13 albeit on a slightly lower turnover. Since then
14 turnover has increased by 35 per cent in comparison to
15 JJB's 407 per cent and operating margins have decreased
16 significantly."

17 A. Yes.

18 Q. "Turnover in 2001 was lower than in 1999 and Allsports
19 is taking a reactive stance in trying to defend its
20 market position."

21 You would not disagree with that?

22 A. Where are you?

23 Q. In the middle, under the words "financial performance",
24 above the figure 45.

25 A. By reactive, you mean we were trying to do something

1 about it?

2 Q. It is reporting there that you were taking a reactive
3 stance.

4 A. Not as in reactionary, but reactive.

5 THE PRESIDENT: You were reacting to your situation.

6 MR MORRIS: And then further down the page under the figures
7 you will see in the middle of that paragraph under
8 "source" in the second line:

9 "A sharp decline in profits over the past two years
10 led the company to put itself up for sale in June 2001."

11 Over the page at 73, the middle of the page, under
12 the heading "Strategic Evaluation":

13 "Allsports claims to be positioned at the point
14 where sportswear meets fashion."

15 In the next paragraph:

16 "Allsports has reasonably good representation on
17 the High Street, but with major sportswear retailers now
18 looking for larger out-of-town developments, Allsports
19 store portfolio is not as attractive as it would have
20 been a few years ago. Also, many retailers can no
21 longer afford the expense or the time that it takes to
22 integrate an existing portfolio into operations."

23 Well, what I am asking you is whether that is a fair
24 appraisal at that time?

25 A. Absolutely not. I have never seen it before. It is

1 the first time I have set eyes on it and I wholly
2 disagree with the whole of that. I can explain it if
3 you want.

4 1997 was an exceptional year for us, exceptional
5 from the point of view that we cornered the market in
6 a peculiarly profitable section. We secured access to
7 a fashion now described as Adidas three stripe, when
8 the old three stripes down the sleeve came back after
9 20 years. We were shipping in container-loads of the
10 stuff where it was gathering dust in Romania and
11 Czechoslovakia via Adidas legitimately, and earning
12 extraordinary margins on it. Things that were costing
13 us £5, we could sell for £30 in that year which
14 contributed to a monumental performance in 1997 that was
15 way in excess of what was our norm.

16 So 1997 and 1998, that was the reason for that
17 exceptional performance.

18 THE PRESIDENT: And what are things looking like in
19 1999/2000?

20 A. Clearly in 1999/2000 our profits fell away for a variety
21 of reasons. In my submission, my written statement, we
22 made it very clear that in the summer of 1999 we
23 underwent a complete re-branding and re-focusing
24 operation, that was presented to the trade and to my
25 team in September 1999. We had a new logo, a new style,

1 and we set out to secure a whole new range of brands as
2 trading partners than those with whom we had previously
3 traded because, very clearly, the statement that I made
4 at the time was that Allsports has unfortunately got
5 itself in the position of being a middle of the road
6 retailer, and if you stand in the middle of the road
7 you are going to get run over.

8 That was our slogan. Clearly we had the product
9 offer wrong, because we could not be a little guy with
10 small stores and compete effectively with JJB or
11 Sports Soccer.

12 MR MORRIS: Yes.

13 A. That process -- I will just remind you that
14 Marks & Spencer profits are still only half today of
15 what they were in 1997. Sometimes when you take a big
16 fall you do not climb back straight away. We are
17 climbing back.

18 Q. If you go to paragraph 15 of your witness statement,
19 this is the point you are making, page 392 of the big
20 bundle, this is where you describe the change in
21 direction?

22 A. Yes.

23 Q. If you go to the middle of that paragraph you will see:

24 "In September 1999 I hired a theatre at the Granada
25 Theme Park ... and made a speech to the effect that

1 Sports Soccer and JJB had seized the low value end of
2 the sports retailing market and Allsports found itself
3 in the middle of the road."

4 So there you are saying that it was JJB and
5 Sports Soccer, you could not compete with them at
6 the low end?

7 A. They were the dominant players at the low end, that is
8 quite clear.

9 Q. Thank you.

10 A. Fine.

11 Q. Can I move on and just ask you about your involvement in
12 the business?

13 A. Yes.

14 Q. In the period 1999-2001 you were involved in
15 the day-to-day running of the company?

16 A. No. I mean, I am not a non-executive chairman or
17 executive chairman, I am a chairman. I take whatever
18 time is necessary in any particular week or month to
19 make sure as far as possible that the business is on
20 track. That might occasionally be five whole days and
21 another week it might be two half days.

22 Q. You called the shots as far as running the business is
23 concerned?

24 A. Yes, I do.

25 Q. And you would impose your views on senior executives of

1 the company, at the time Mr Guest and Mr Patrick?

2 A. No, that is not true. Part of the problem that I know
3 you are going to come to is that dilemma that existed.
4 Historically, I have employed two chief executives from
5 outside the business of which Mr Patrick is the second,
6 Mr Richards, who no doubt will feature in your comments
7 was the first. Mr Richards, in this situation, of
8 Manchester United.

9 THE PRESIDENT: He went to Manchester United?

10 A. Yes. I recruited him for me to try to take a back seat.
11 That did not work out. I put it in a safe pair of hands
12 of my merchandising director to be managing director,
13 somebody who worked for me for 15 years. That nearly
14 killed him. He turned extremely grey in 12 months and
15 aged 10 years; it was not good for his health.

16 Then I set out to recruit David Patrick. It is
17 important to get the timescale right. In 1999
18 Michael Donnelly, my merchandising director and
19 long-term employee, was chief executive and very
20 definitely danced to my tune, he executed what I
21 requested.

22 It was obvious to me that I could not continue in
23 an executive role forever. Apart from anything else,
24 there is no pockets in shrouds and I was aware of the
25 new plan, so I recruited David Patrick.

1 THE PRESIDENT: When was that Mr Hughes?

2 A. He started in March 2000. The recruitment process began
3 in September 1999. In fact, the recruitment consultant
4 was present at the meeting of which we speak, ie
5 the Granada Theme Park. He was there for the purpose of
6 getting a flavour of the business.

7 So the process started in September 1999. I then
8 ruptured a disc in October. It put an extreme pressure
9 on me to find somebody. I recruited David Patrick as
10 a safe pair of hands, an industry-experienced executive.
11 When he joined both he and Michael Guest said to me:
12 you are not paying for two dogs to stand in the yard and
13 bark yourself. If you want us to do this job, you are
14 paying us the rate.

15 MR MORRIS: Mr Hughes, I hesitate to interrupt. I am sure
16 this is an interesting story but I am anxious to get
17 through the day.

18 I am suggesting to you that you would impose your
19 views on the senior executives?

20 A. Yes.

21 Q. And you did not find delegating easy, did you?

22 A. That is correct.

23 Q. Thank you. At times you needed to take over some of
24 the tasks which you thought your senior managers should
25 be carrying out?

1 A. I had input into all decision-making.

2 Q. And you even went so far as to contact competitors
3 personally to find out what was going on when you
4 thought your senior executives were not doing that?

5 A. I do not think I understand the question.

6 Q. You even went so far as to contact competitors
7 personally to find out what was going on?

8 A. I think the only person that I have ever contacted would
9 have been Tom Knight. I think that is all I said in my
10 statement.

11 Q. If you go to paragraph 75 of your witness statement at
12 page 305 --

13 A. Which paragraph?

14 Q. Paragraph 75. You say there:

15 "I telephoned Tom Knight to ask him because my own
16 staff, Michael Guest, did not tend to keep a close eye."

17 A. It was a fundamental plank of our policy. The key
18 acronym was "S.W.A.N", Sell What's Available Now. We
19 did not tolerate whingeing about competitor's prices.
20 That is our core philosophy. Our philosophy was to just
21 get on and do it.

22 Q. But you took it upon yourself to contact the competitor
23 when you thought that Mr Guest was not keeping a close
24 enough eye on the opposition?

25 A. No, I said that it was a fundamental plank of our policy

1 not to focus on what our competitors were doing.
2 Occasionally I would phone Tom Knight. In 20 years --
3 in 25 years I have probably spoken to Tom Knight on
4 issues like that half a dozen times.

5 Q. Okay well, we will come back in a moment to the extent
6 to which you were concerned about what your competitors
7 were doing. Can I then suggest to you that you
8 regularly attended, and effectively chaired, the weekly
9 marketing meetings throughout 2000, attended by Mr Guest
10 and Mr Patrick?

11 A. Yes.

12 Q. And you gave, at those meetings, directions both as to
13 strategy and as to items of detail?

14 A. Yes.

15 Q. Can I then turn to your and Allsports' retailing
16 philosophy. In the period we are talking about,
17 1999-2001, Allsports was an aspirational retailer
18 selling quality performance and status products?

19 A. It was seeking to be. It was changing and reinventing
20 itself. I do not think we have quite got there yet, but
21 we had started the process.

22 Q. And your strategy was aimed at maintaining margins?

23 A. Yes.

24 Q. And competing on price is not part of Allsports' retail
25 philosophy?

1 A. We try not to.

2 Q. And it was not a discount-driven business?

3 A. That is correct.

4 Q. And you were proud of that fact?

5 A. Yes.

6 Q. Can I ask you to go to paragraphs 61 and 62 of your
7 witness statement.

8 A. Which page is that, please?

9 Q. It is page 302.

10 A. Yes.

11 Q. Perhaps you would like to read that to yourself?

12 A. Paragraph 62?

13 Q. Paragraphs 61 and 62. (Pause).

14 A. Yes, I have read that.

15 Q. So it is fair to say that your view was that when
16 the customer wanted a particular product, say during
17 a key selling period, Allsports' policy was to put
18 the price up, the higher the demand, the higher
19 the price?

20 A. Yes.

21 Q. You say at 62:
22 "We are in the business of selling at the maximum
23 price we can obtain. It is important because this is
24 our approach to pricing."

25 A. Yes.

1 Q. In the particular case of replica kit, sales of replica
2 kit are in general very sensitive to price, are they
3 not?

4 A. One of the factors they are sensitive to is price.
5 A more important factor is success. Success of the team
6 that you are referring to. There have been some
7 references to some very dodgy teams during this
8 tribunal --

9 Q. Careful now!

10 A. We talked about Wimbledon and West Ham, I mean, we could
11 not give away at any price really. We have to be
12 realistic in this; there are some teams which are driven
13 because of mass support, ie Manchester United. There
14 are other teams where participation in a tournament, ie
15 England in Euro 2000, has a remarkable effect on
16 the overall level of sales. So price is far from being
17 the only factor. But it is a factor.

18 Q. Yes. If you go to witness bundle 3 at page 287. This
19 is a passage of what Mr Russell said about replica kit.

20 A. He said this yesterday?

21 Q. He said it in his witness statement. It is page 287,
22 witness bundle 3. It is the top of the page. It is
23 the sentence -- I do not know if you have it. Page 287?

24 A. Yes, I am there.

25 Q. At the top. Mr Russell says:

1 "The replica market is very price-sensitive and
2 sales will be significantly affected by a difference in
3 price of as little as £3 between retailers."

4 Do you agree with that?

5 A. No, I do not. I think we have already given some
6 examples. We have a different view of retailing. If
7 you want me to expand upon it at length I will do, but
8 we have a different view.

9 Q. You say that if somebody down the road cuts price, it
10 does not affect your volumes?

11 A. No, I did not say that. I said we have a different
12 view. We believe in our business that if a customer
13 walks through the door, our staff have a responsibility
14 and an obligation to make a proper approach and sell to
15 them, and that actually we compete for every pound we
16 take, not just with sports retailers, but with HMV
17 selling DVDs and Dixons selling electrical goods; we are
18 interested in getting hold of people's disposable
19 income, or our fair share of it.

20 Q. What I am suggesting to you is that if the chap down
21 the street cuts his price by £3 in relation to replica
22 kit that would have an effect on your volumes?

23 A. Clearly, if a customer comes in and is aware of what is
24 going on in that local market, they are going to tell
25 us. But surprisingly not nearly as many people as you

1 might think know of what is happening in a town or
2 a street.

3 Q. If he has seen it £3 cheaper down the road, he is
4 unlikely to come into your shop. He might see it in
5 the window --

6 A. It could well be true. However, we would take the view
7 that 80-90 per cent of people on the street would not be
8 doing that.

9 Q. Can we move on and can I ask you this: it is the case,
10 is it not, that Allsports kept a very careful eye on
11 the prices of its retailer competitors?

12 A. I think we have already agreed that that is not
13 the case.

14 Q. Well, can I take you to your witness statement -- if you
15 put that bundle down and go back to the main witness
16 statement bundle, bundle 1, and go to page 293, at
17 paragraph 14 you say there:

18 "I would become aware of competitors' discounting
19 activity often simply by Allsports employees noticing it
20 nearby their stores".

21 So that is discounting activity.

22 "Allsports regularly check the position not just on
23 price, but also for their product lines. Employees of
24 Allsports would inspect competitor stores. This would
25 in the main part be done by buyers. I would also carry

1 out store inspections on Wednesdays and I often learned
2 for myself what competitors priced at."

3 So you were keeping an eye on prices for replica
4 kit?

5 A. I do not think that was the question you asked the first
6 time. I think the question was more direct and of
7 the nature: did we keep a close watch? And I replied
8 that we did not. It is important --

9 Q. You kept an eye on it, even if it was not a close eye?

10 A. I normally in a good state of health would spend
11 Wednesday visiting stores in high streets and shopping
12 centres. It would be impossible not to be aware of what
13 windows you passed. So yes, of course.

14 But did we have a policy of regular price checking,
15 as for example John Lewis who employ I understand six or
16 eight persons to do nothing else but check prices? No.
17 Buyers, part of their obligation is to be in touch with
18 what is happening in retail. Clearly price is part of
19 that.

20 Q. Can I just take you to what Mr Patrick says about that;
21 file 2, page 261.

22 A. You have read my comments on Mr Patrick, obviously?

23 Q. I have.

24 A. So we will take them alongside any comments he might
25 make.

1 Q. He is giving evidence of his understanding of
2 the position as a matter of fact. At paragraph 22
3 Mr Patrick says:

4 "I never told Umbro or any other retailer what
5 Allsports' price for England shirts might be. If Sports
6 Soccer stopped discounting, and I do not remember
7 whether they did or not, I would have found it unusual
8 for them to sell at the £39.99 price point. And
9 I expect that if they had, I would have known about it,
10 given that we had four regional sales managers, a sales
11 director, 16 area managers and over 200 store managers
12 at the time, who would have been on the ground and seen
13 the other retailers' stores."

14 What he is suggesting there is that if somebody did
15 something unusual pricing wise, in particular
16 Sports Soccer, that information would have come to him
17 and it was being filtered through by those 220-odd
18 people effectively filtered back to him and you?

19 A. No, that is not what that is saying at all. I think
20 that is saying, read in context of that statement, that
21 he was unaware of any activity that was going on, and
22 that was surprising because you would imagine with
23 the 300 people out there, if there were some unusual
24 activity he would have been made aware.

25 But we had no policy whatsoever. Ron, our sales

1 director up to the point that he resigned in
2 August 2000, was absolutely charged with
3 the responsibility not ever to mention a competitor's
4 price.

5 Q. Ah, that is a different question, that is about
6 mentioning. The question I am on is whether you as
7 a company were keeping an eye on what the competition
8 was doing. In other words, whether you were at the time
9 finding out regularly what was happening in pricing and
10 in particular in relation to discounting?

11 A. No. There is a line management structure in Allsports
12 whereby a branch manager reports to an area manager, who
13 reports to a regional manager, who reports to Ron, our
14 sales director. That is the structure. We do not
15 transgress it. We do not take comments from area
16 managers into the buying office as a matter of course.
17 We do not take comments from branch managers. It has to
18 come through that structure; I mean, generally comments
19 about retailing.

20 However, there is a point you want to make and if
21 you want me to answer yes or no to something --

22 Q. The question I had was whether or not you kept a careful
23 eye on the prices of retail competitors, and I took you
24 to paragraph 14 of your own statement where you say:

25 "I would become aware of competitors' discounting

1 activity. Allsports regularly checked the position on
2 price [these are your own words] and you would carry out
3 store inspections where you often learned for yourself
4 what competitors priced at."

5 A. We were aware of prices, of course. I am not saying
6 that we operated in a void or in isolation, we were
7 aware of prices. But we did not have a practised
8 routine for establishing what the competition was doing.

9 Q. Why would you be interested in the pricing of
10 competitors?

11 A. Is there a paragraph that you are referring to?

12 Q. I am referring back to paragraph 14, where you say that
13 you were learning of competitors' discounting activity
14 and that you were regularly checking the competition.
15 This is your witness statement, paragraph 14.

16 The main bundle we are going to be working with is
17 bundle 1 of the witness statements, and it is your
18 witness statement. When I take you to another bundle,
19 it is probably better to close it up and put it away.

20 A. Okay. Where are we now going?

21 Q. Page 293 of bundle 1.

22 THE PRESIDENT: It we can avoid jumping between the bundles,
23 sir.

24 MR MORRIS: I am trying to do that, sir, as much as I can.

25 A. Which paragraph is that, please?

1 Q. Paragraph 14, which is the one I have already taken you
2 to:

3 "Allsports regularly check the competition on
4 price ..."

5 I am asking you: why would Allsports be regularly
6 checking the competition on price?

7 A. I think you are implying that "regularly checking" meant
8 some kind of formal structure and it was not like that
9 at all. The buyers' jobs, part of their job brief is to
10 spend two days a calendar month wandering round
11 the High Street seeing what was going on. That was their
12 brief, they had to be in touch. Clearly price is one
13 element of the total mix, so we were aware of prices.

14 Did we have a Monday morning or Friday morning
15 routine whereby we pulled together a schedule of
16 competitors' prices? Absolutely not, not ever.

17 Q. That was not the suggestion. When it says "regularly
18 checking", whether that happened two days a month --
19 I am asking the question: when they checked on price,
20 why were they checking on price?

21 A. Price is a factor in competition. In our business we
22 see retail as a two-horned animal. There is the retail
23 arm and the buying arm. Retail is retail and buyers
24 have the responsibility to put a product range into
25 their hands that is suitable ammunition for them.

1 So we would never encourage the retail staff to pass
2 comment about competitiveness, pricing or even range
3 the offer. But that did not mean that wearing my other
4 hat or wearing the other hat we were not always
5 encouraging our buyers to be completely in touch with
6 what was going on.

7 Q. But you cannot have been checking on price because you
8 wanted to meet discounting, can you?

9 A. We did not meet any discounting.

10 Q. No, so that would be one reason to check on price, to
11 see whether you needed to meet the price if there was
12 a discount, but in your case that was not the case?

13 A. You have not sought at any point in this investigation
14 to suggest that we did anything but march to the beat of
15 our own drum.

16 Q. I was trying to get to the reason why you were checking
17 on price. If you were not going to meet the price, it
18 did not matter to you.

19 A. It is important to know all the factors in the equation,
20 is it not?

21 THE PRESIDENT: I think that is the witness's answer to
22 the question, Mr Morris. I think we ought to try to
23 press on, if we can.

24 MR MORRIS: Yes, very well.

25 Can I go back to the question of store visits. You

1 keep a diary, as we know, and you explain about your
2 diary in your first witness statement. Can I take you
3 to paragraph 27 of your witness statement, which is at
4 page 296.

5 A. Yes.

6 Q. You say two-thirds of the way down:

7 "I keep a diary that comprises a set of to-do lists
8 which I tend to prepare in advance and I cross out an
9 item when it has been done, it ceases to be relevant or
10 if I have carried the action point forward to another
11 day."

12 A. Yes.

13 Q. So it was your standard practice to cross out items as
14 you went along?

15 A. Usually, yes.

16 Q. If you take up the small bundle now, which is
17 the thinner one, and go to XXB7.

18 THE PRESIDENT: Tab 7.

19 MR MORRIS: Sorry, it is my note, I call it XXB. It is
20 tab 7.

21 In tab 7 we have some photocopies of your diaries.

22 A. Yes.

23 Q. In fact, you will see, sir, that they start off being
24 black and white and later on in the bundle they are
25 colour copies. But that does not matter for present

1 purposes.

2 A. Okay.

3 Q. This is your diary and your handwriting?

4 A. Yes, it is. If you go to April 4, the first entry,
5 you will see on the left-hand side at the bottom:
6 "Plan helicopter day around stores with Ron DM
7 Weymouth".

8 Q. And that is one of your regular Wednesday store visit
9 trips?

10 A. Yes, which I mentioned yesterday.

11 Q. On subsequent Wednesdays, if you go over the page to 12
12 we see similar entries.

13 A. Sorry?

14 Q. 12th April, over the page, on the right-hand side,
15 you will see another:
16 "Out with RRDSP."

17 A. Yes.

18 Q. "Ashton --"

19 A. "New, Oldham; Warren Street, new; Manchester, three city
20 centre stores and Trafford."

21 Q. Each of those entries is crossed out with a wavy line in
22 accordance with your standard practice?

23 A. Yes.

24 Q. And you have accepted that when you were out during
25 those store visits you would look at what competitors

1 were pricing at, amongst the things that you looked at?
2 A. Actually, no. I would not take the time to go into
3 a store. Those days, if you look at that one, let us
4 just count them: seven stores. I spend, on average,
5 45-50 minutes in a store and travelling. I normally do
6 that when I am out around stores, but no, I do not
7 wander round looking at the competitors. I look at
8 the competitors -- like with the buyers, I will wander
9 round a shopping centre without going to our store, just
10 to take the flavour of retail.

11 So it would not be normal for me to enter
12 competitors' stores on those particular store visiting
13 days. But that is not to say that I do not go into
14 them.

15 Q. You say in your witness statement in the paragraph
16 we have just been looking at, paragraph 14 on page 293
17 again:

18 "I would also carry out store inspections on
19 Wednesday and I often learned for myself what
20 competitors priced at."

21 A. I agree.

22 Q. So you did find out --

23 A. I thought you said visiting competitors' stores; did
24 I mishear you?

25 Q. You say that you went on store visits --

1 A. Allsports store visits are simply seeing what is in
2 the window as I wander past.

3 Q. Fine. Thank you.

4 Can I move on to the question of discounting by
5 other retailers. You would agree that Sports Soccer has
6 always had a very different approach from your approach?

7 A. Yes.

8 Q. And as Mr Ashley himself has said, Sports Soccer retails
9 on a "pile 'em high, sell 'em cheap" model.

10 A. Did he say that?

11 Q. I think he said it in the course of his evidence; is
12 that a fair description?

13 A. I think that is a fair description.

14 Q. They seemed to cut the price of every new prestigious
15 product that was launched?

16 A. I said that.

17 Q. Yes.

18 A. Yes.

19 Q. And that business strategy proved very successful for
20 Sports Soccer, did it not?

21 A. I said that in relation to this period, that was not
22 always the case.

23 Q. I am talking about the period in question, 1999-2001.
24 And that business strategy proved very successful for
25 Sports Soccer, did it not?

1 A. We only became aware of that in the last 12 months when
2 they started to file accounts. Nobody knew it at
3 the time because until the last two years, I think,
4 he had not even formed himself into a limited company.
5 He was a sole owner trader until two years ago, so
6 nobody knew.

7 Q. No. In 2000 Sports Soccer overtook Allsports in terms
8 of turnover?

9 A. If that is the Mintel report, okay, I will accept that.

10 Q. With far fewer stores?

11 A. Far more square footage. The retail space that he had
12 was considerably more. Ten times the size. So that if
13 he only had the same number of stores he would have ten
14 times the square footage. He would need to only have 10
15 per cent of our stores to have more retail footage.

16 Q. In 1999-2000 JJB responded to Sports Soccer by following
17 Sports Soccer's prices or by undercutting them?

18 A. Sorry, I said that as well?

19 Q. I am asking you whether that is right.

20 A. I did say that.

21 Q. Yes.

22 THE PRESIDENT: So JJB responded?

23 MR MORRIS: JJB responded.

24 A. My general impression was that Sports Soccer would cut
25 a price, JJB would respond, as a general impression.

1 Although David Whelan would seem to get quite annoyed
2 and would then double trump, trump or double bluff. He
3 would always seem to open a new store with 20 or 30 per
4 cent off everything. For them, on price, clearly
5 they were trying to out-testosterone each other.

6 Q. Discounting by other retailers and those two in
7 particular was a problem for you, was it not?

8 A. I do not think so.

9 Q. You were neither able nor willing to match their prices.
10 You were certainly not willing to, you said?

11 A. Our stores were not big enough to pile it high and sell
12 it cheap.

13 Q. If you did not match their prices you would business and
14 lose credibility with your customers?

15 A. I explained 1997 and its exceptional profits on
16 the basis that we had some unique product that nobody
17 else had. That is very important in retailing, to get
18 differentiation, to have something that people want that
19 is different.

20 I explained that in 1999 we began a process of
21 re-branding. We decided in that period of 1998/1999
22 when there was a lot of price cutting going on that
23 clearly if we were selling the same product at a rather
24 higher price than Sports Soccer, there were enough
25 people who were aware of that, although not enough for

1 it not to be profitable and make sales, for it not to be
2 particularly good for our reputation.

3 So we decided to reposition with a different
4 portfolio of brands and a different product range.

5 Q. Fact from Allsports' point of view, the price war
6 between JJB and Sports Soccer was crippling, was it not?

7 A. No.

8 Q. Can I just take you to what you said in your written
9 representations to the Office, in the thin bundle?

10 A. Yes.

11 Q. Can I ask you first: you were involved in
12 the preparation of these written representations?

13 A. I am sorry?

14 Q. You were involved in the preparation --

15 THE PRESIDENT: Let him have a look at it.

16 A. You mean my written statement?

17 MR MORRIS: No.

18 THE PRESIDENT: Take him to the document.

19 MR MORRIS: If you go to tab 8. This is your company's
20 response. The first page is just the title document.

21 This is your company's response to what was called
22 the Rule 14 notice, which is the original Office of Fair
23 Trading notice giving you notice of the conclusions that
24 it was proposing to reach.

25 A. Okay.

1 Q. And your company responded to this. The first question
2 I have for you is to ask you whether you were involved
3 in the preparation of this document or not? And this is
4 only an extract from this document, we can show you
5 the whole document --

6 A. I would like to see the whole document. I would be
7 surprised if I was not. But I do not actually recall
8 having seen this before.

9 Q. C2, tab 11. Do you have the entire document now?

10 A. There is no signature. My reaction is that I have never
11 seen this document in my life before. But I would not
12 want to state that without checking with my lawyers.
13 I see who the contact numbers are on the last page, and
14 it certainly does not include me.

15 I think this is probably a standard legal response
16 churned off to keep the process moving.

17 THE PRESIDENT: Well, it is said to be your company's
18 official response to the Office of Fair Trading's
19 Rule 14 notice. The question is whether this response
20 was prepared with your knowledge and participation.

21 A. Sir, I cannot answer that right now. I am normally
22 pretty well briefed, but I do not recognise this
23 document.

24 THE PRESIDENT: That is the position, Mr Morris.

25 MR MORRIS: If you go to paragraph 6 on page 486 of that

1 document, it says at the end -- you have the contact
2 names. It says:

3 "This document has been prepared by Allsports ..."

4 Page 486, near the bottom, paragraph 6:

5 "This document has been prepared by Allsports with
6 the assistance of its legal advisors."

7 A. The question you had asked me was whether I had seen
8 the document.

9 Q. So it was not you?

10 A. I said -- I am really not trying to be difficult about
11 this, but I do not recall having seen this document.

12 Q. The point ... I am going back to the thinner bundle now,
13 if I may, if we can put that away, and I am going to
14 this extract. I am on the second page of that extract
15 in tab 8, at the bottom of the page, I am in tab 8 of
16 the thin bundle, on the second of those pages.

17 They are talking about the 8th June meeting and it
18 says there, referring to you:

19 "Mr Hughes wanted at that meeting to discuss
20 the then state of the market for replica kit, and in
21 particular a crippling price war that was then ranging."

22 A. Yes.

23 Q. My question for you is: from Allsports' point of view
24 the price war between JJB and Sports Soccer was
25 crippling?

1 A. This was not wholly about replica. That comment. It
2 was about a whole range of products.

3 Q. Well, we will get to one of those products in a moment.

4 A. It is a single adverb; it was not financially crippling
5 us, if that is what you mean. Is that what you mean?

6 THE PRESIDENT: What do you think this word "crippling"
7 meant or might have been intended to convey in this
8 document?

9 A. Sir, there is no doubt that in the spring of 2000 there
10 had been a number of prestigious product launches which
11 had been wholly unprofitable despite the aspiration and
12 the wish of the brand, the manufacturer and
13 the retailer, that they should be profitable. They were
14 wholly unprofitable.

15 Ready profits were sluicing down the drain. But
16 there is no doubt that that was going on at the time,
17 and there is no doubt that I was not happy about it.

18 THE PRESIDENT: Yes.

19 A. And I can give examples if you want them. Line by
20 line there were some very disappointing product launches
21 that should have been successful and profitable.

22 THE PRESIDENT: As a result of price competition?

23 A. Yes.

24 MR MORRIS: Can I take you to one of those examples, which
25 is the Predator boot, which you mention. If you look in

1 the other main bundle at --

2 THE PRESIDENT: We are going to break at twenty to,

3 Mr Morris.

4 MR MORRIS: On that basis, can we go to the Predator boot

5 after the break.

6 On that basis, Mr Hughes, perhaps you would like to

7 read paragraphs 46-48 of file 1, page 299.

8 THE PRESIDENT: "My concerns came to a head ..."

9 A. Yes.

10 MR MORRIS: If you would like to read 46-48.

11 A. I know those three paragraphs quite well.

12 Q. Yes. The Predator boot was a new high performance boot

13 launched by Adidas?

14 A. Yes.

15 Q. It is a David Beckham sort of --

16 A. Endorsement, yes.

17 Q. At the time it was launched you were on holiday?

18 A. Yes.

19 Q. And Sports Soccer sold that boot at launch at

20 a substantial discount?

21 A. Yes.

22 Q. And you returned from holiday on 15th May and discovered

23 Sports Soccer's discounting of the Predator boot?

24 A. Not initially. One of the functions for buyers in

25 the business on a Monday morning, we produce a report

1 called the buyer's guide which simply states everything
2 that has been sold the previous week, Sunday to
3 Saturday.

4 In reading that myself on the Monday I get to
5 football boots, Predator, and the sales looked
6 remarkably successful for the two weeks that I had been
7 away. I was delighted -- briefly -- because we had
8 virtually sold out way in excess of expectation.
9 The demand for that product massively exceeded
10 the forecasts that we had made for it.

11 So we had sold them out and I was rather pleased.
12 Until about an hour later it was pointed out to me that
13 we had not sold them at the recommended retail price, we
14 sold them all at £79.

15 Q. And that was because Sports Soccer had been discounting
16 the Predator boot?

17 A. It was.

18 Q. And that had had an adverse effect?

19 A. On the profitably on that line, yes.

20 Q. And this was -- just to place us in time -- this is in
21 the week before the Allsports Golf day and it is about
22 three weeks before the start of Euro 2000?

23 A. Yes.

24 Q. And you were particularly annoyed about Sports Soccer's
25 discounting of the Predator boot at that time?

1 A. That is well documented.

2 MR MORRIS: Sir, is that a convenient moment?

3 THE PRESIDENT: Yes. Just a last question from me,

4 Mr Hughes. Do I infer from this that your stores had

5 reduced their prices on Predator boots?

6 A. No, sir. What we operated at that time, and had for

7 a long, long time was a price match promise. They were

8 on our shelves at £120 a pair, the ticket in the window

9 was £120 a pair -- we had not sold every pair at £79 --

10 MR MORRIS: Ah!

11 A. We had sold a huge quantity of them at £79.

12 THE PRESIDENT: Because of the price promise?

13 A. Yes, I mean it is worth bearing in mind --a plank in our

14 philosophy is that Sports Soccer had only 80 or 90

15 stores at that time. I mean, you might correct me on

16 that.

17 MR MORRIS: No, that is absolutely right.

18 A. We had 240. There were an awful lot of towns that

19 we were represented in that Sports Soccer did not have

20 a store within 20 miles. So they would have sold at

21 £120 a pair in our stores.

22 Q. That last question would lead me to a further question

23 about the price promise.

24 You say in paragraph 48, the point you have just

25 been making:

1 "... but then I learned that because of the price
2 promise, instead of making £40 per pair gross profit on
3 them, we lost £5 per pair."

4 A. Yes.

5 Q. You say, just above that, that you sold 1,200 pairs in
6 two weekends?

7 A. I think they were probably launched on about the Tuesday
8 of the week that I was going on holiday. I would have
9 seen the buyer's guide report a week the following
10 Monday. So perhaps 12 days of trading.

11 Q. And you have just accepted that in fact you had made
12 a £5 loss on every pair of boots sold?

13 A. I am giving an example, no, I am not.

14 Q. The price promise -- the way I understand it -- is only
15 triggered when an individual customer comes into the
16 store and asks Allsports to match the price he has seen
17 elsewhere?

18 A. Yes.

19 Q. So it is most unlikely that the price promise would have
20 been invoked on every sale of that Predator boot?

21 A. Absolutely.

22 Q. Or indeed a large number of them?

23 A. No, it was on the majority of them.

24 Q. You know that, do you?

25 A. We sought the information from Mike Donnelly on the day.

1 It was very straightforward to extract that information,
2 yes.

3 Q. But you did not reduce the marked price across the
4 board?

5 A. Absolutely not. We continued to offer them at £120
6 a pair.

7 Q. One final question about the price promise; the price
8 promise was abandoned on 6th June, I think, 2000?

9 A. The decision to abandon it was made within 24 hours of
10 that information. I came back on the 15th to discover
11 that the Predator boot had been sold at a loss -- the
12 majority of them -- and at the marketing meeting the
13 next day we made the decision which is recorded, to
14 abandon the price promise, to consign it to the dustbin
15 of history. The logistic and operational reasons, in
16 planning terms, we put it into effect the week
17 the following Monday which was --

18 Q. I think your evidence is that it was 6th June.

19 A. I think that is right. Is the 6th June a Wednesday?

20 MR WEST-KNIGHTS: Yes.

21 THE PRESIDENT: I think it was a Tuesday.

22 A. Okay, we would tie it in with a change of window. But
23 the decision was made and recorded the following day.

24 MR MORRIS: Abandoning the price promise with effect from
25 6th June did not put a stop to Allsports' concerns about

1 Sports Soccer's discounting, did it?

2 A. It was a relieving process because we were no longer
3 going to give stock away. When it became implemented --
4 do you mean for that two weeks or --

5 Q. Perhaps --

6 THE PRESIDENT: I think we had better stop now, Mr Morris.

7 MR MORRIS: Yes, sir.

8 MR WEST-KNIGHTS: I am sorry for my intervention. You were
9 right, the 6th was a Tuesday.

10 THE PRESIDENT: Right, we will rise until just before 11.55.
11 (11.47 am)

12 (A short break)

13 (11.55 am)

14 THE PRESIDENT: Yes, Mr Morris.

15 MR MORRIS: Thank you, sir.

16 Mr Hughes, to round off the questions I was asking
17 you before the adjournment, I would like to ask you
18 this. In summary, was discounting of replica kit by
19 other retailers a big problem for Allsports?

20 A. No.

21 Q. Yet you were worried enough about price competition to
22 want to form a sports trade cartel, were you not?

23 A. There was the specific instance of the new Manchester
24 United shirt. There were two factors at play. One was
25 considerable confusion over the recommended retail price

1 which had been set by Umbro at £42.99. I think I have
2 made representation that this was a non-price from
3 a retailer viewpoint; once you have gone over 40, you
4 may as well go to 45, and once you have 45, you may as
5 well go to 50. Most retailers apply that.

6 So this shirt was being launched at 42.99 as
7 the recommended retail price, with a trade price of
8 22.90 for us, not Sports Soccer, and that was creating
9 uncertainty. I was certainly keen that it should be
10 sold at 44.99, even though we sold other replica, to be
11 competitive, at 39.99.

12 Just to put that in a perspective, we had on
13 order -- we had committed, four or five months earlier,
14 to 50,000 I think of the adult shirt. For something
15 that was going to be in high demand, I have admitted
16 that there was an extra £5 a shirt to be had, and 50,000
17 times £5 was a quarter of a million pounds.

18 Q. Can I take you to paragraph 80 of your witness statement
19 at page 306. There you are setting out your diary
20 entries for 5th June.

21 A. Yes.

22 Q. If you go down to paragraph 80, the diary entries are in
23 italics, and the fourth one says:

24 "Agree Manchester United with everyone including
25 Mike Ashley. I leave that aside."

1 A. Yes.

2 Q. That is talking about the Manchester United shirt?

3 A. Yes.

4 Q. If you go down further you say:

5 "Sports trade cartel arrange a meeting regularly.

6 This was a potential plan for the future. It was an

7 accurate description of what it was that I had in mind."

8 A. Yes, that is my statement.

9 Q. Leaving to one side the specific instance of

10 the Manchester United shirt, I am suggesting to you that

11 that indicates that you were worried enough about price

12 competition to want to form a sports trade cartel

13 generally, a regular meeting?

14 A. I had in mind at that time a regular discussion. There

15 was no forum in the industry, I think you are aware, or

16 it had fallen by the wayside. I certainly made that

17 note in my diary.

18 Can I just point out, Mr Morris, that this diary of

19 which we speak was willingly disclosed --

20 THE PRESIDENT: Yes, we have that point, Mr Hughes. What

21 did you have in mind -- when you said "the sports trade

22 cartel arrange a meeting regularly, it was an accurate

23 description of what it was I had in mind." could you in

24 your own words tell us what it was that you did have in

25 mind?

1 A. I felt that Sports Soccer's discounting and JJB's
2 response to their discounting was making my business
3 less profitable than it might otherwise be.

4 THE PRESIDENT: Yes.

5 A. I felt very strongly that highly desirable products at
6 launch -- that it was commercial madness to be giving
7 them away at cost. The Predator boot was an example.

8 THE PRESIDENT: So what was the solution that you had in
9 mind?

10 A. I had in mind a forum, a discussion.

11 THE PRESIDENT: To do what?

12 A. To discuss the nature of competing. It was a jotting
13 that weekend. I have made no -- no effort to obliterate
14 it.

15 I did have in mind that I wanted to get the two main
16 protagonists together for an open forum.

17 THE PRESIDENT: Yes. Yes, Mr Morris.

18 MR MORRIS: What did you understand by the word "cartel"?

19 A. Do you know, I do not think I understood what the word
20 "cartel" meant, actually. I realise that sounds pretty
21 ignorant.

22 It was just a word that I was familiar with. It had
23 certainly never appeared in my life before. Clearly
24 I know the full description or the full meaning of
25 the word subsequently. I had in mind at that time,

1 I have made clear in this statement, that I wanted to
2 talk at the time, an open forum and a discussion about
3 pricing amongst other issues.

4 Q. Can I just ask you one further question about that,
5 about the order of the words in your diary entry. At
6 paragraph 80 there it is not, in fact, quite accurately
7 set out. Because I think if you go to the diary
8 itself --

9 A. Can I have the diary, please?

10 Q. I do not have it. I am sure the diary is here. Perhaps
11 I can hand it up to the witness. (Handed)?

12 THE PRESIDENT: If it is being adduced it had better be
13 exhibited.

14 MR WEST-KNIGHTS: Can I just say, sir, the diary has not
15 been redacted for a great deal of personal information.
16 I would be very grateful if the formal position
17 ultimately was that those pages which have a post-it
18 note attached to them be formally exhibited, but
19 otherwise not.

20 THE PRESIDENT: Yes.

21 A. There is nothing in here that I would not wish to be
22 disclosed.

23 THE PRESIDENT: We are not in the slightest bit interested
24 in anything except the matter we are concerned with.

25 MR MORRIS: For the tribunal's assistance, if you go to

1 the small bundle, tab 7, and work through to June 5th in
2 colour, you will get a fairly good representation --
3 well, a reasonably good representation of what Mr Hughes
4 is about to look at.

5 THE PRESIDENT: Yes.

6 A. Monday, 5th June?

7 MR MORRIS: Yes, three entries up from the bottom. That is
8 the one I believe which says:

9 "Sports trade cartel arrange a meeting regularly."

10 A. Yes.

11 Q. And I think you can confirm that between the word
12 "cartel" and "arrange" there is a dash.

13 A. I cannot see that on this, but ...

14 Q. Anyway, the question I have is this. Let us take
15 an example. Let us assume you enjoyed playing poker.
16 You may or may not enjoy playing poker?

17 A. I do not know how to play joker.

18 Q. I do not either. You did not have a regular game and
19 you wanted to set up a regular game with a group of
20 friends. You might write in your diary something along
21 the lines: arrange regular card group game?

22 A. Yes.

23 Q. Let us assume that you already have a group of friends
24 that you already play poker rather intermittently and
25 you want to play more often, as a regular habit,

1 a fixture in the diary.

2 If that were the case you would write the words:
3 card club, arrange again regularly.

4 What I am suggesting to you is that if you were
5 wanting to set up a sports trade cartel, the more likely
6 wording in your diary would have been: arrange a sports
7 trade cartel to meet on a regular basis.

8 A. I think that is semantics in extremis. That is not
9 the case at all, it is nonsense.

10 Q. Very well, you did not do that. I am suggesting to you
11 that the words "sports trade cartel" there with
12 the words "arrange a meeting regularly" might lead to
13 the suggestion that there was already a sports trade
14 cartel and you wanted more regular meetings.

15 A. Absolutely not. There is no suggestion at any stage of
16 this investigation that I have ever spoken at any other
17 time to anybody nor that any of the other accused have
18 ever spoken to anybody. You have not produced any
19 evidence to suggest that.

20 Q. I am just inquiring as to the word order in the diary.

21 A. Fanciful is what I would describe it as.

22 Q. Very well.

23 THE PRESIDENT: On we go, Mr Morris.

24 MR WEST-KNIGHTS: If you are squinting, there are

25 transcriptions of each of these entries in the bundle

1 E4, interleaved between equally good copies of
2 the pages.

3 THE PRESIDENT: Very good. Yes, Mr Morris?

4 MR MORRIS: We were talking about the Predator boot and your
5 reaction to that.

6 A. Yes.

7 Q. What Sports Soccer did on the Predator boot was part of
8 an emerging trend at the time, was it not?

9 A. Yes.

10 Q. They were discounting premium products in every launch
11 and JJB would cut in response?

12 A. That was my view, yes.

13 Q. Yes. Can I now turn to the question of discussions
14 between Allsports and Umbro about discounting by other
15 retailers?

16 A. Yes.

17 Q. Can we look at your second witness statement which may
18 or may not be paginated. It is in the back of
19 the bundle, after 314, bundle 1. Page 314A and 314B?

20 A. I have those, my second witness statement, in response
21 to the information released two weeks ago.

22 Q. Well, it was certainly a witness statement signed in
23 February.

24 THE PRESIDENT: It was made on 19th February.

25 A. Sorry, sir, yes. Okay.

1 MR MORRIS: In paragraph 3 you are referring to Mr Ronnie's
2 witness statement that everybody has come to know as
3 Ronnie 4:

4 "At paragraphs 8 and 9 of Ronnie 4 Mr Ronnie states
5 that there was an underlying threat and perceived
6 pressure by Allsports if something was not done by Umbro
7 about the discounts offered by other retailers. These
8 were said to be in the form of withdrawing support for
9 Umbro as a brand and order cancellations, sudden
10 reductions in volumes ordered and perceived reluctance
11 to place orders in the future."

12 Then you go on to say:

13 "I am not aware of any conversations between
14 Allsports staff and Mr Ronnie or other Umbro staff to
15 that effect. I certainly had no conversations with
16 Mr Ronnie or anyone else at Umbro which in any way
17 resemble what Mr Ronnie is describing here. In fact,
18 with the exception of the golf day on 25th May 2000 and
19 my meeting with Mr Ronnie on 2nd June, which I have
20 dealt with in my first statement, I never discussed
21 other retailers' pricing at all in my conversations with
22 Mr Ronnie.

23 "I suppose it is possible that Mr Ronnie might be
24 referring to discussions with Allsports staff in which
25 Allsports asked for more favourable terms or postponed

1 deliveries. It would not surprise me if Allsports staff
2 referred to price competition from Sports Soccer as
3 a way of justifying demand to more favourable terms, or
4 possibly to explain a reduced or postponed delivery."

5 A. Yes.

6 Q. In those two paragraphs you deal with two separate
7 things; first with your own discussions with Umbro;
8 secondly with the discussions of other members of your
9 staff with Umbro?

10 A. Yes.

11 Q. Can we deal with the second of those first; discussions
12 with Umbro and Allsports' staff other than yourself, and
13 Mr Ronnie's suggestion that there might be withdrawal of
14 support for the brand if something was not done by Umbro
15 about the discounts offered by the retailers?

16 A. Yes.

17 Q. And you say that you were not aware of such discussions
18 having taken place? You say:

19 "I am not aware of any conversations between
20 Allsports staff and Mr Ronnie and Umbro staff to that
21 effect."

22 A. I have obviously seen the statements now of all of
23 the Allsports staff who made statements, and all of them
24 said that they never had any discussions on this basis.

25 Q. We will go to that in a moment. Given your hands-on

1 approach, it is likely, is it not, that if such
2 discussions had taken place you would have known about
3 it?

4 A. No. I have readily agreed that I chaired the marketing
5 meeting and had complete control of that; I chaired
6 the monthly management meeting. Those would be the two
7 main meetings, weekly and monthly, at which I was
8 completely hands-on. I had nil input usually in
9 the buying and selection process, save only perhaps
10 an annual trip to maybe Paris or New York where I might
11 buy some samples and say: that is interesting stuff, why
12 not follow that up?

13 I was not normally involved in negotiating terms --
14 I used to be, but not for a long time.

15 Q. Your evidence you said a moment ago was that no such
16 conversations went on between your staff and Umbro --

17 A. I think I said that I was not aware of any conversations
18 that went on.

19 Q. We now know that Mr Guest says that such discussions did
20 take place.

21 A. I am not aware of that.

22 Q. If we go in the same bundle to Mr Guest's second
23 statement. Again I am not sure about the pagination.
24 If you go to 285, and I do not know if it has been given
25 letters.

1 If you go to page 6 of that statement, which is
2 284F. This is Mr Guest's second statement. He is
3 referring to the same paragraph of Mr Ronnie. He says
4 at paragraph 21:

5 "In paragraph 8 of his statement Chris refers to
6 an underlying threat that Allsports and JJB would
7 withdraw support for Umbro as a brand in their stores if
8 Umbro did not do something about other retailers'
9 discounts. I deny that there was any such underlying
10 threat.

11 "When I discussed other retailers' discounting with
12 Phil Fellone, I did point out that if the Umbro brand
13 became devalued as a result of discounting, that could
14 have an impact on Umbro's and our desire to push
15 the Umbro brand up-market. That was obvious, it was not
16 a threat, it was just common sense and commercial
17 reality, we were not big enough to threaten."

18 There he is stating clearly that he did discuss with
19 Phil Fellone the discounting by other retailers.

20 A. I am not quite sure what the question is.

21 Q. The question I asked was: you have stated in your
22 witness statement --

23 A. That I was not aware.

24 Q. -- that you were not aware. You then said -- and
25 somebody will take me back to the transcript -- that it

1 was not going on at all, having read everything that had
2 been put in. I am suggesting to you that that is not
3 the case; Mr Guest was speaking to Mr Fellone about
4 the discounting by others.

5 A. And I disagree. I think we have recorded that at that
6 time we were doing work, I understand, with Umbro to
7 create a new more aspirational subsection of Umbro,
8 which was work in progress at the time, I think. My
9 reading of that paragraph is that Michael Guest -- and
10 he will be here this afternoon obviously to answer
11 directly -- Michael Guest would be saying that there is
12 not a logic in running with the hare and hunting with
13 the hounds.

14 Q. He is saying there that he did discuss other retailers'
15 discounting and that would affect your desire to assist
16 in pushing the Umbro brand up-market?

17 A. Me personally?

18 Q. Allsports.

19 A. I was not even aware at that time of this work that
20 he was doing with Umbro. It was not part of my brief.

21 Q. So you did not know that he was in discussions about
22 these products?

23 A. At that time, no. Not so far as I am aware. There were
24 massive areas of the buying responsibilities that I was
25 not aware of. I have already said today that both he

1 and David Patrick were very, very keen that I should
2 take a back seat.

3 Q. You were going to regular weekly marketing meetings?

4 A. Yes. That is not buying meetings, it has nothing to do
5 with product.

6 Q. The buying meetings took place every Tuesday immediately
7 after marketing meetings?

8 A. No, no. I went to the marketing meeting. I chaired
9 the marketing meeting which was regularly held at
10 9 o'clock or 10 o'clock on a Tuesday morning.

11 I think if you have a look in my diary you will not
12 see anything that says "buying meeting" in any of them.
13 (Indicating).

14 Q. I will take your word for it.

15 Can you go back to paragraph 4 of Mr Guest's second
16 statement, please, on page 284B of that same document.

17 It says there:

18 "In 1999/2000 Allsports was involved in a lot of
19 development with Umbro outside replica. We had
20 developed a retro-vintage range called Choice of
21 Champions, high-quality cotton T-shirts, and
22 subsequently developed a range which is performance
23 linked called the Pro-Training collection, high-quality
24 woven outwear garments such as jackets. So we were
25 investing a lot of time and effort into the Umbro brand.

1 We did not just take what we wanted from Umbro, we put
2 a lot of things back into the relationship."

3 Now, is it your evidence that you were not aware of
4 those developments as between Allsports and Umbro in
5 relation to those two ranges?

6 A. I did not see that retro range in any shape or form
7 until it turned up in store and I hated it. That is
8 another story! That should give you the answer.

9 Q. You were not aware of the development going on?

10 A. I do not recall ...

11 Q. Choice of Champions, Pro-Training?

12 A. No, I was aware that we were trying to change our image,
13 that we were looking to brands to do more up-market
14 things. We were doing that on a broad front.

15 Q. Yes.

16 A. I would not bet my life on a conversation ever being
17 made about whether you were doing something interesting
18 with Umbro. But I do recall not ever seeing that
19 product which is six or seven months later when it
20 actually turned up in store -- or in the warehouse to go
21 out to the stores on sale, was the first time I had seen
22 it because I hated it personally. Given my hands-on
23 approach, had I been involved, you might surmise that
24 I would have expressed that view at an earlier stage.

25 Q. I am sure you would. Assume for the moment that

1 you were aware of it -- you were certainly aware of
2 the desire to move things up-market.

3 A. Yes.

4 Q. This was a development with Umbro to produce a more
5 up-market product.

6 A. I am aware of that now.

7 Q. It is the case, is it not, that your view of that,
8 the success of that up-market product, will have been
9 affected by discounting on replica kit, Umbro replica
10 kit; the two did not go together, did they?

11 A. I say -- I do not think you can run with the hare and
12 hunt with the hounds.

13 Q. By which you mean?

14 A. By which I mean that there is not an obvious trading
15 logic in having a brand which is both discount and
16 apparently at the same time attempting to be
17 aspirational.

18 Q. If Umbro were discounting replica kit --

19 THE PRESIDENT: Do you mean Umbro?

20 MR MORRIS: Sports Soccer. If replica kit were being
21 discounted in the marketplace --

22 A. Did we think that was a good thing?

23 Q. That would make you less inclined to support the Umbro
24 brand in these aspirational products.

25 A. Yes, I think that would be true. I do not find any

1 problem with that.

2 Q. That is the thrust of what Mr Guest is saying in

3 paragraph 21.

4 A. Okay.

5 Q. Can I just first of all take you back to your first

6 witness statement at paragraph 10, which is on page 292.

7 A. Yes.

8 Q. You are there describing --

9 A. Which paragraph, please?

10 Q. Paragraph 10. You are there describing the separate

11 functions of picking the trends and buying stock from

12 those who negotiate the trading terms?

13 A. Yes. Generally speaking trading terms with every brand,

14 generally speaking, were negotiated by Michael Guest.

15 Q. He was in charge of that?

16 A. Yes. Occasionally we would use the good cop/bad cop

17 routine where he would get the best deal he could and

18 squeeze another 2 per cent out. As a general principle

19 buying terms were negotiated by Michael Guest.

20 Q. The other side, the picking trends of buying stock,

21 the range picking, who was in charge of that?

22 A. We are talking about the statement here, replica?

23 Q. Yes.

24 A. Forgive me, there are range pickers for every area of

25 the business. Michelle Charnock had been trained -- who

1 is a rabid Manchester City fan, seriously interested in
2 soccer and soccer fashion, which is why we recruited her
3 from the stores where she worked as a store manager, she
4 managed several of our stores over a long period of
5 years, but because of her passion for replica product we
6 recruited her into a junior responsibility and
7 ultimately -- I think she had only just joined then, she
8 has just recently left us. She did the job for about
9 four years. There was a growth in responsibility over
10 that period.

11 So it is not necessarily correct to assume that what
12 she did in April 2000 would be what she was doing in
13 February 2004.

14 Q. On that side, though, she was the main point of contact,
15 not only with negotiating terms, but the day-to-day --

16 A. Absolutely. She did stock allocations, she called off
17 stock. If we had stock on order with somebody like
18 Umbro, she would be responsible with Russell Wilson, our
19 buying controller for scheduling it to make sure that
20 our stocks did not get unnecessarily overloaded, pushing
21 back orders, occasionally cancelling orders, managing
22 the level of stock. She also had input into selection.

23 If Michelle said: God, that's sexy, that might
24 encourage us to order a few more than if she said: God,
25 that's not nice.

1 Q. I think you said at the bottom of page 10, one of her
2 jobs was to pick the trends, take a view on what was
3 sold well and where, and the volumes to purchase?

4 A. That is what it says there. She had partially that
5 responsibility.

6 More important in terms of volume was that we had
7 15 years of computerised records. We knew exactly what
8 volume sold in a previous year or in a previous launch
9 of any replica shirt and we tapped in the usual factors.

10 It is a bit like deciding what club to use on
11 the golf course. We apply all of those things to it.
12 Certainly she had an input.

13 Q. Thank you, that is helpful. She would speak to
14 Anthony May about promotions and discounts, would she
15 not?

16 A. I had never heard the name Anthony May until it arose in
17 the last three weeks. I had no idea, I had never even
18 heard the name until about three weeks ago.

19 Q. Can I take you back in the bundle to Ms Charnock's
20 second statement. Again I hope it is lettered; it is
21 after 219.

22 THE PRESIDENT: 219A.

23 MR MORRIS: I am grateful, sir. If you go to 219 and
24 working alphabetically, B.

25 You see in paragraph 7 she says:

1 "I did however on occasions speak to him
2 [Anthony May] about promotions or discounts being run by
3 our competitors. When I did so it was to ask how it was
4 that our competitors were able to offer such low prices
5 and to see if he would tell me how such promotions
6 affected sales. His response was that they could cut
7 prices because they worked on lower profit margins. I
8 do not know whether I referred to Sports Soccer during
9 such conversations but since they were becoming more
10 prominent at that time, I accept that I probably did."

11 So she is saying in 7 that she was speaking to
12 Anthony May about discounting by retailers or
13 promotions.

14 A. And clearly Anthony May was lying to her. Because they
15 were not working on lower margins; they were buying it
16 a damn sight cheaper than we were.

17 Q. Why do you say that? I am talking about replica kit
18 now.

19 A. We have established what Sports Soccer were buying
20 shirts at during the course of this tribunal, which is
21 considerably less than we were buying them at. So for
22 Anthony May to say it was about operating on lower
23 margins, it is complete nonsense.

24 Q. In paragraph 9 she also says that she would receive
25 comments from time to time from Allsports area managers

1 about the discounts being offered by our competitors:
2 "I did not raise their comments with Mr May or
3 Umbro, but I would tell them to use the price promise to
4 compete."
5 A. I told you that there was no mechanism at all in our
6 business for reporting prices.
7 Q. But you are not suggesting that that did not happen --
8 A. I employ 3,000 people. I cannot ever say that comments
9 were not made from one to the other on all sorts of
10 things.
11 Q. Very well. Can we move on to the second area, your own
12 discussions with Umbro and others about discounting.
13 Let us look at what you yourself were saying to Umbro.
14 A. Which page is this?
15 Q. I am going to come to a page.
16 By May 2000 your main concern was that
17 Sports Soccer's trend of discounting premium products on
18 launch would apply to the sales of the new Manchester
19 United shirt launched on --
20 A. Yes, it was a factor. The Beckham boot was what
21 precipitated it, but the next exciting big thing that
22 was coming up --
23 Q. What the Manchester United launch?
24 A. Yes.
25 Q. You accept on the golf day dinner and at your meeting

1 with Mr Ronnie on 2nd June that you did discuss
2 the pricing of other retailers?

3 A. I do not think the words "Sports Soccer" were actually
4 used. I do not think I ever suggested --

5 THE PRESIDENT: Do you want to break that down into golf day
6 and meeting?

7 MR MORRIS: Can I just take the witness to his own witness
8 statement, the second witness statement at paragraph 3.
9 That is at 314. You have already read it. It is on
10 the first page of the second witness statement, 314A.

11 A. Okay.

12 THE PRESIDENT: I think it is probably the last sentence
13 Mr Morris is going to.

14 MR MORRIS: It is, that is the one I am looking at.

15 THE PRESIDENT: What is the question, Mr Morris?

16 MR MORRIS: The first question is: at the golf day on
17 25th May you discussed other retailers' pricing?

18 A. I have made a very clear statement about what
19 I recollect of that golf day. I think I recollect
20 discussion of the Beckham boot launch.

21 Q. I am just asking you whether what you say in paragraph 3
22 of that statement is --

23 A. I am sorry, I am on page 314A.

24 Q. The last three lines:
25 "In fact, with the exception of the golf day on

1 25th May 2000 and with the exception of the meeting with
2 Mr Ronnie on 2nd June, I never discussed other
3 retailers' pricing at all in my conversations with
4 Mr Ronnie."

5 I am suggesting to you that that means that at
6 the golf day on 25th May you did discuss other
7 retailers' pricing with Mr Ronnie, amongst others?

8 A. I think I have said that -- I said to him that we were
9 going to have to get together to discuss that at some
10 point, yes.

11 Q. Yes. The second question was whether you also discussed
12 other retailers' pricing on 2nd June in your meeting
13 with Mr Ronnie?

14 A. I think the only issue there, if I recollect correctly,
15 was the information about the JD cap promotion.

16 THE PRESIDENT: I think, Mr Morris, you need to go back
17 through the first witness statement and go through
18 the golf day and the meeting.

19 MR MORRIS: If we go to 25th May. On the morning of
20 the golf day you had a meeting with Mr Richards at your
21 home, did you not?

22 A. Yes, I did.

23 Q. And you discussed the launch of the MU home kit at that
24 meeting?

25 A. Can I see the statement, please?

1 Q. 28 and 29 --

2 A. What page is this?

3 THE PRESIDENT: Page 300 in the same bundle, Mr Hughes.

4 MR MORRIS: It is actually page 296 I was on, sir, before we

5 got to the golf day. Paragraph 27 on page 296.

6 A. Yes.

7 Q. "I saw Steve Richards at my home on the morning of

8 the golf day."

9 And then paragraph 28:

10 "I do not remember the topic of others discounting

11 the Manchester United shirts being raised at this

12 meeting. There is no truth to the notion that

13 Man United place ... any pressure."

14 Paragraph 29:

15 "Although I do not remember him doing so, I would

16 accept that it is possible at that time Steve Richards

17 that could have asked me what Allsports pricing

18 intentions were with regard to ..."

19 A. Absolutely.

20 Q. So Manchester United shirt was discussed at that

21 meeting?

22 A. Yes, but it has to be seen in a very specific context,

23 which is the rest of that paragraph.

24 Q. Which is where you refer to their outlets, the Allsports

25 in-store arrangements, Manchester United outlets?

1 A. Yes.

2 THE PRESIDENT: You tell us what the context was, Mr Hughes.

3 A. In the summer of the previous year, 1999,
4 Manchester United had approached us, Peter Kenyon and
5 Steve Richards, with a proposal: they wanted to open
6 a global range of sports megastores. They had the one
7 at Old Trafford that was widely successful, they had
8 opened one in Dublin, and they are about to open one in
9 Tokyo, Japan.

10 They came to us with an initial proposal that said:
11 will you give over half of your space in
12 the Trafford Centre, which is a major shopping centre
13 adjacent to Old Trafford, create a Manchester United
14 store within store. It would look, for all purposes,
15 like a Manchester United operation. We will pay for
16 the store fit. We will pay all of the costs of setting
17 it up. You pay for the ongoing rental, rent,
18 electricity, operating.

19 That was drafted into an agreement and we did that
20 store first, in August 1999. And then very rapidly in
21 the Greater Manchester area we closed three or four
22 Allsports stores and converted them to Manchester United
23 stores, where they were quite small, one in Oldham, one
24 in Ashton-under-Lyme, one at the bottom end of
25 Market Street in Manchester. They were actually

1 standalone independent stores with a Manchester United
2 fascia.

3 THE PRESIDENT: They were actually your stores?

4 A. Yes. They were our stores. And we also had about
5 another 15 where we gave over a decent chunk of space
6 within stores to what looked like a Manchester United
7 store within store.

8 There was an agreement for that. We bought Umbro
9 branded product from Umbro in the normal way, and we
10 bought what was called Manchester United wholesale
11 called product, which was not Umbro branded but
12 Manchester United crest branded, from a variety of other
13 licensed manufacturers to fill that space in those
14 stores.

15 And it was spectacularly unsuccessful. It was
16 a disaster from day 1. Our Trafford Centre store where
17 we had concrete -- a wall partitioning the store -- it
18 still exists. One half was your regular Allsports
19 store, the other half was the Manchester United store
20 with two separate entrances. We were doing less than
21 half the cash take on the Manchester United half at only
22 two-thirds of the margin. It was a complete disaster
23 and it was up for review fairly soon.

24 That was the reason, the major reason for our
25 ongoing discussions with Manchester United. Clearly in

1 the course of those discussions it would be a complete
2 nonsense if there was a confusion about the recommended
3 retail which was 42.99, which was a non-price,
4 a complete confusion about that. It was clear that
5 Manchester United had hardly launched their website and
6 their megastore and all the operations that they managed
7 with different prices to the prices the products were
8 being offered, not just the replica kit being offered,
9 in the Manchester United branded stores.

10 THE PRESIDENT: So what was it that you were going to talk
11 to Steve Richards about?

12 A. The lack of success of the operation. It was costing us
13 a lot of money.

14 MR MORRIS: You discussed the launch of the Manchester
15 United kit at that meeting?

16 A. No, I said it is entirely possible that we did, I think.

17 Q. Can I just ask you some questions about that meeting?

18 You say it is possible that Mr Richards asked you
19 about your pricing intentions for the new Manchester
20 United shirt?

21 A. It is possible. I have not said that happened.

22 Q. No --

23 A. And I do not rule it out.

24 Q. And you also say that you do not recall whether

25 the topic of others discounting the Manchester United

1 shirt was discussed with Mr Richards; you say that in
2 paragraph 28.

3 A. That is correct.

4 Q. Yes. However, given your concerns at that time about
5 the effect of Sports Soccer's discounting upon
6 the launch of the Manchester United kit, if you were
7 discussing the price of the Manchester United shirt with
8 Mr Richards, your price, then it would make sense, would
9 it not, if the topic of the discounting of that shirt by
10 others had been discussed?

11 A. It could easily be an item on an agenda. But that was
12 not the purpose for the meeting.

13 Q. No, my question was not about the purpose of
14 the meeting. My question was about what was discussed
15 at that meeting and whether or not it would have made
16 sense if the topic of the discounting of that shirt by
17 other retailers would have arisen?

18 A. I have said that I do not recall that happening.

19 Q. And I am suggesting to you that it is likely that it was
20 discussed.

21 A. I do not recall that happening.

22 Q. Thank you. Can I move on to the golf day now. Perhaps
23 you would like to read to yourself paragraphs 52-56 of
24 your own statement, which is on page 300 and following?

25 A. Yes. Okay.

1 Q. My suggestion to you is that at that golf day dinner
2 you were telling Umbro and the other brands about your
3 concerns about discounting by other retailers.

4 A. Yes.

5 Q. Secondly, you were asking them to take steps to prevent
6 that discounting by other retailers.

7 A. I think there was a broad range of topics there.
8 I think I have spelt out at considerable length what
9 I recall of the discussions.

10 I think it is worth pointing out that whatever
11 I said came at the end of a dinner just before coffee.
12 I think I have also said and admitted that having not
13 played golf and been there that I certainly had a couple
14 of drinks and I was forthright in my opinions, yes.

15 Q. Your tongue was loosened, you say?

16 A. Yes, I do say that.

17 Q. The other thing you say in your evidence is that you
18 agree with Mr Draper's description of the meeting?

19 A. Did I not say "I cannot disagree"?

20 THE PRESIDENT: "I cannot disagree ..."

21 A. Which is different.

22 MR MORRIS: Can we briefly look at what Mr Ronnie says about
23 that meeting, witness file, file 3, Ronnie's third
24 statement, paragraph 36, page 226.

25 Page 226.

1 I would like you to pick it up at paragraph 36,
2 Mr Hughes. At the end of the second line:

3 "David Hughes stated that he was concerned about
4 licensed products, ie replica shirts, shorts and socks,
5 and the price at which they are sold. He wanted to know
6 what the brands who were represented by the people
7 around the table could do about the situation."

8 Do you agree with that account of what you said?

9 A. I have said that I do not recall on this occasion
10 exactly what I did say.

11 Q. But it is plain, is it not --

12 A. There was certainly -- I certainly expressed opinions.
13 I may even have used an expression that said, "I think
14 we are all going to hell in a hand cart".

15 THE PRESIDENT: "We are all going to hell in a hand cart."

16 A. It might have been an expression I used, sir, yes.

17 THE PRESIDENT: Yes, we have become used to expressions.

18 A. I am not denying that I expressed opinions about
19 the state of the sports industry.

20 I think what is worth pointing out is I really must
21 say: this was a very mixed bag on my table, there were
22 a lot of spear-carriers, a lot of very minor people and
23 a lot of different brands. Most importantly of all,
24 which is what I found most astonishing about this
25 allegation, is that my bank manager was sat on my

1 left-hand side. You are clearly not in business because
2 I cannot imagine anything less likely that I would do
3 apart from give you cash with the VAT man stood next to
4 me. I cannot imagine anything less likely that I would
5 do than to express myself in that way with a bank
6 manager on my left-hand side.

7 MR MORRIS: Can I ask you this question about what Mr Ronnie
8 says? Accepting that you cannot remember the precise
9 words used and given the circumstances, is what
10 Mr Ronnie says a fair description --

11 A. Which paragraph?

12 Q. The passage I just read to you, 36:

13 "David Hughes stated that he was concerned ..."

14 A. The first two sentences I think are absolute nonsense.
15 There is just no way that I used that expression --

16 Q. I understand that. I am asking about the next bit:

17 "David Hughes stated that he was concerned about
18 licensed products."

19 A. The issue that I started off with, if I remember
20 anything, was the Beckham boot.

21 THE PRESIDENT: That is the Predator boot.

22 A. Yes, sir, I am sorry.

23 MR MORRIS: My question is: is that a fair summary of
24 the gist of what you were saying? Just that
25 paragraph 36; I will come on to 38 in a moment.

1 A. I do not think my recollection was that there were no
2 explanations. It was not a forum. My bank manager was
3 sat next to me. I perhaps made an outspoken statement
4 that in hindsight I regret in view of his presence. But
5 there was certainly no forum with a view to them
6 replying. It is an invention.

7 Q. What is an invention?

8 A. The general gist was that the brands explained that
9 there was nothing they could do about the situation,
10 which is nonsense.

11 Q. I was talking about the previous sentence:

12 "David Hughes stated that he was concerned about
13 licensed products."

14 I am not asking you to recall precise words, I am
15 asking you to answer the question: is that a fair
16 summary of the gist of what you were saying?

17 A. It is an adequate summary.

18 Q. Thank you. You refer to the Predator boot. Do you
19 recall mentioning the Predator boot at the dinner?

20 A. No, I said that was the -- well, if I did, I will
21 rephrase it.

22 I said it is more likely because that was the thing
23 that I was seriously concerned about at the time. That
24 was the hot information. I was just back from holiday,
25 ten days.

1 Q. If you go to paragraph 56, you say that you were still
2 annoyed about it and it was still a hot topic.

3 A. Okay.

4 Q. So it is likely that you did mention it?

5 A. Yes, it is.

6 Q. And when you did it is likely, is it not, that you will
7 have mentioned the discounting of that boot at launch?
8 That was the thing that had ...

9 A. Yes.

10 Q. And it was discounting by Sports Soccer?

11 A. The company was not mentioned. Nobody says that, do
12 they? Do they?

13 Q. I am asking you whether you will have mentioned the fact
14 that it was the discounting at launch that caused you
15 the problems --

16 A. I am sorry, Mr Morris, I am reading paragraph 56 and it
17 is about Mr Kenyon.

18 Q. I am sorry, I have probably moved back to volume 1. If
19 you could keep volume 1 all the time. I am looking at
20 your witness statement at paragraph 56.

21 A. Okay. Right. Would you like me to read this?

22 THE PRESIDENT: Just read it through so you remind yourself,
23 paragraph 56. (Pause).

24 A. Okay.

25 MR MORRIS: What I am suggesting to you -- and I think you

1 agreed -- is that it is likely that you mentioned
2 the Predator boot.

3 A. Yes.

4 Q. Secondly, what you will have said about the Predator
5 boot will have been that it was the discounting of that
6 boot at launch which caused you problems?

7 A. Yes.

8 Q. And thirdly that that discounting was in fact
9 Sports Soccer's discounting that had caused the problem?

10 A. I think it was common knowledge, I think it was quite
11 careful not to say Sports Soccer. But I am not
12 absolutely sure.

13 Q. Well, I think we can move on from that. Can I then ask
14 you to go back to Mr Ronnie in bundle 3, paragraph 37.
15 He says at page 337, paragraph 37:

16 "The conversation moved from a general comment on
17 licensed products on to the Manchester United product
18 specifically."

19 A. Yes.

20 Q. "David Hughes mentioned that he had concerns about
21 the MUFC home shirt that was due for launch in
22 August being discounted at launch in particular by
23 Sports Soccer."

24 A. Yes, I disagree with that. I would agree with
25 everything except the "in particular by Sports Soccer".

1 THE PRESIDENT: Just the last five words you disagree with?

2 A. Yes, sir.

3 THE PRESIDENT: Thank you.

4 MR MORRIS: By that time we know that you were very
5 concerned about the launch price of the MU shirt;
6 I think you accepted that?

7 A. Yes.

8 Q. And Peter Draper thinks that you may have mentioned
9 the Manchester United or indeed the England products
10 when you addressed the brands at that dinner.

11 A. I do not recall that point being made anywhere before.
12 Have I missed that?

13 Q. Mr Draper says in bundle 1 at 239, paragraph 27.
14 "I do recall him referring to statement products
15 [meaning top branded products] in all range of
16 goods ..."

17 A. I could use that word easily, statement product.

18 Q. "... I vaguely recall that the David Beckham Adidas boot
19 was used as an example. I do not recall any MU product
20 specifically being mentioned, although MU or England
21 products might have been the example used by him when
22 addressing Umbro."

23 A. He does not say that at all. You just said that he said
24 that I had mentioned England. That is not what that
25 says.

1 Q. He says that he thinks you may have?

2 A. Which is quite different.

3 Q. I hoped I had framed it in that way.

4 Peter Draper suggests that you may have mentioned
5 Manchester United or indeed England products when
6 addressing the brands -- or when addressing Umbro in
7 fact he says.

8 A. Umbro was not addressed specifically.

9 It was a general observation to the table. I did
10 not speak at that table specifically to a brand as such.

11 Q. But it is possible, according to Mr Draper's account,
12 that you may have mentioned Manchester United or indeed
13 England products. And I am asking you whether you would
14 accept that it was possible that you had said that?

15 A. It is possible. It is quite likely that I mentioned
16 Manchester United product. I did not mention England
17 product.

18 Q. You can recall that now, can you?

19 A. I just do not think it was on my radar at that time.

20 Q. We will come back to that question a little later.

21 Can I move to the 2nd June meeting with Mr Ronnie.

22 THE PRESIDENT: Are we leaving the --

23 MR MORRIS: We are leaving the golf day dinner, unless there
24 is any other matter that the tribunal would wish me to
25 raise on that.

1 A. Where would you like me to look?

2 MR MORRIS: I am just waiting for the president.

3 THE PRESIDENT: Mr Hughes, can you paint a little picture
4 for us, because we were not there, as far as you
5 remember it now?

6 A. Yes, sir.

7 THE PRESIDENT: Did it continue, as it were, in an ordinary
8 way with the ebb and flow of conversation through
9 the courses until you got to coffee?

10 A. At my table?

11 THE PRESIDENT: Yes, at your table.

12 A. The tables were arranged on an ad hoc basis shortly
13 before the dinner began. There was no plan or pattern.
14 Save only my plan. I picked amusing and entertaining
15 people to be on my table at very short notice.
16 Peter Draper was to my right because I gave him access
17 to the microphone because he doubled up as MC, master of
18 ceremonies, for the evening.

19 There was a lot of conversation, a couple of hours'
20 eating and drinking and one or two -- I think I must
21 have got up and presented the prizes at some point. We
22 usually presented the prizes before people got too
23 tiddly, especially before I ... might ... not ... say
24 things. So certainly the prizes would have been
25 presented early enough.

1 THE PRESIDENT: Are there speeches and things?

2 A. Yes, speeches of welcome and thanks. It was only
3 our second event. We have now had five of them but that
4 was the second one. So clearly we were establishing --
5 learning the format. Although all of us had been to
6 other people's golf days, we had a fairly risque
7 comedian lined up as the highlight of the evening that
8 came at the end of proceedings, a blue comic, and it was
9 an ordinary -- it was an oblong table so some people --
10 normally in a dinner you like the table to be round so
11 you can access everybody. The golf club we were using
12 did not have that kind of table, so it was ten people,
13 five by five facing each other.

14 So clearly conversation was not possible with
15 everybody, if my memory serves me correctly.

16 THE PRESIDENT: When you got to the end of the dinner and
17 you were, as it were, having coffee --

18 A. It was at the end.

19 THE PRESIDENT: And this discussion about brands and
20 discounting and the difficulties sort of happened.

21 A. Yes.

22 THE PRESIDENT: Can you remember how this came about? Was
23 it something on your mind --

24 A. It was not a plan, something triggered it, I do not
25 know. There was obviously a comment and I picked up on

1 a comment and then developed a statement. It was not as
2 if the notion that I was waiting to pick the perfect
3 moment to drop this into the conversation -- that is
4 absolute nonsense. I do not remember the comment.

5 THE PRESIDENT: What you are telling us is that you sort of
6 got on to this topic?

7 A. Sir, I do not honestly remember. There is a little bit
8 of levity in the sense that yes, I had had some drinks,
9 I was not driving that night and I was not expecting
10 two years later to try to remember a conversation that
11 followed on from half a bottle of wine and a brandy and
12 a couple of beers.

13 That is the main reason that my memory is not as
14 lucid or clear about that evening. But the notion that
15 I would plan when I had had three or four drinks is just
16 nonsense.

17 MR MORRIS: I have a couple of questions on that point.

18 It appears that you specifically mentioned, in
19 the course of whatever it was that you were saying,
20 the number of Manchester United shirts that Allsports
21 had ordered for that launch.

22 If you could take bundle 3, Ronnie 3 at page 227,
23 paragraph 38. I think both -- I think Mr Fellone
24 mentioned this in his evidence too:

25 "David Hughes stated that he had ordered about

1 80,000 Manchester United home shirts for the launch in
2 August, in fact, he had only ordered about 50,000.
3 I was embarrassed that David Hughes mentioned this in
4 front of my competitors as I did not want them to know
5 how many shirts Allsports had ordered."

6 For the note, sir, and I do not propose to take
7 the witness to it, paragraph 23 of Mr Fellone 3 is
8 roughly to the same effect.

9 Do you recall mentioning the number of Manchester
10 United shirts?

11 A. I do not recall either of those numbers. In fact, I do
12 not believe that I would actually have known what
13 the number was.

14 Q. Mr Ronnie's recollection is that you mentioned it?

15 A. I would not deny that. I am not sure of
16 the significance --

17 Q. The significance is as follows. Could I then ask you to
18 go to Mr Draper's statement, which is back in your main
19 bundle, at page 329 of that file, paragraph 28 of
20 Mr Draper's second statement.

21 He says:

22 "I got the clear impression that David Hughes's
23 outburst was not spontaneous. The figures that he
24 employed in the course of his tirade showed that it was
25 well prepared. It lasted a good 10 minutes. It was

1 received initially in silence. My reaction and I think
2 the reaction of other guests was embarrassment."

3 And he goes on to say at the bottom:

4 "For example he revealed details of the numbers of
5 some items ordered, from each of them, information which
6 was obviously highly confidential."

7 What I am putting to you is first that you mentioned
8 specific numbers?

9 A. There is no reason for me to deny that. I will agree
10 with that.

11 Q. Secondly that you came to the dinner armed with those
12 specific numbers?

13 A. No. If I had come armed with the numbers why would
14 I have got them wrong?

15 Q. Peter Draper's impression was that the figures showed
16 that it was well prepared.

17 A. So why did I have them wrong?

18 Q. I am asking whether you agree or disagree.

19 A. I do not recall it happening like this. My statement is
20 my recollection.

21 Q. You have already stated in your witness statement that
22 you could not disagree with Mr Draper's description of
23 the meeting?

24 A. Yes. That is not the same as agreeing. I could not
25 disagree.

1 Q. So you are not disagreeing with paragraph 28?

2 A. I could not disagree with Peter Draper's statement.

3 Q. And Peter Draper's statement includes paragraph 28?

4 A. Yes.

5 MR MORRIS: Sir, I am going to move on to

6 the 2nd June meeting.

7 THE PRESIDENT: Do you want to break there, Mr Morris, and

8 we will resume at 2 o'clock.

9 How are we getting on?

10 MR MORRIS: Can I review it over the lunchtime, I am very

11 keen to finish as soon as I can. There is still

12 a reasonable amount to go through.

13 THE PRESIDENT: Now that we have said to Mr Guest to come,

14 you ought to get on to Mr Guest if possible.

15 MR MORRIS: It does partly depend -- obviously there are

16 central events. It does partly depend upon, for

17 example, going through the golf day, those sorts of

18 events which I am propose to go through,

19 the 2nd June meeting with Mr Ronnie before I turn to

20 8th June.

21 THE PRESIDENT: Well, you must put the case you feel you

22 must put.

23 MR MORRIS: I am grateful for that indication, sir.

24 THE PRESIDENT: 2 o'clock. No discussing your evidence,

25 Mr Hughes.

1 A. Certainly, sir.

2 (1.00 pm)

3 (The short adjournment)

4 (2.00 pm)

5 MR MORRIS: Mr Hughes, I am very conscious of your time
6 concerns, wishing to get through this afternoon.

7 What I am going to try to do in the course of my
8 questioning is put to you as far as I can a proposition
9 and I am going to ask you if you agree; if you do agree,
10 perhaps you could say so; if you do not agree you could
11 say so and add such comments as you have. I hope that
12 will be a way of moving things forward?

13 A. Fine.

14 Q. Can I start by asking you questions about your
15 involvement of the OFT investigation process, which
16 I think went effectively from August 2001 to
17 the decision in August 2003. I am just going to take
18 you through the stages very briefly.

19 Allsports was raided at the end of August 2001; you
20 probably remember that?

21 A. Yes.

22 Q. And there was something called a Section 26 notice,
23 which is a notice from the Office of Fair Trading asking
24 for Allsports to provide information and documents, and
25 that I think was dated 18th October 2001.

1 Do you remember that notice?

2 A. I think that was the document we were looking at this
3 morning, was it not?

4 Q. No, I am talking about the first request for information
5 where you, the company, were asked by the Office to
6 provide information?

7 A. At that stage, I think, John Davis, who was the deputy
8 chief executive who has subsequently retired, handled
9 all the administrative elements.

10 Q. Can you recall whether you were asked for any input at
11 that stage in the information that was provided?

12 A. Yes, I do recall. I was not asked to provide anything.

13 I was on holiday in Portugal on the day of the dawn
14 raid, so I was not present for that.

15 Q. That was August. Then we move to October. You say you
16 were not involved at that stage in October/November --
17 somebody will tell me the actual date when you gave your
18 response: 2nd November 2001, Allsports provided
19 information to the Office of Fair Trading.

20 And your answer to my question was that you were not
21 involved in that process?

22 A. That is right.

23 Q. Then we move on about six months to May 2002 to
24 something called the Rule 14 notice, which is the formal
25 notice from the Office of Fair Trading setting out

1 the Office of Fair Trading's preliminary conclusions in
2 detail; do you remember that document?

3 A. No, not correctly.

4 Q. Allsports then provided a detailed written response on
5 that Rule 14 notice, and that was the document I took
6 you to in the course of this morning and I am going to
7 take you to it again. It is in file C2.

8 The proposition that I have to put to you in respect
9 of that document is that you did provide detailed
10 information to your solicitors, which information was
11 contained in those representations?

12 A. Okay, yes.

13 Q. You accept that?

14 A. Yes.

15 Q. Then we reached the oral representations stage. Your
16 company was offered an opportunity after putting in
17 the written document to go to an oral hearing with
18 the Office of Fair Trading; do you remember that?

19 A. I do not actually remember the process, but I accept
20 that what you are saying is correct.

21 Q. And in fact Allsports did not take that opportunity, did
22 it?

23 A. I recall that, I think.

24 Q. Were you involved in that decision not to go to the oral
25 hearing?

1 A. Yes and no. We acted upon the advice -- our legal
2 advice.

3 Q. Fine, I am not going to ask you about that.

4 A. We did not make that decision, we were advised and that
5 was the decision suggested.

6 Q. But you remember that the decision was made not to?

7 A. Yes.

8 Q. Then in November 2002, there was a further notice from
9 the Office of Fair Trading, and that is called
10 the supplementary Rule 14 notice. Allsports, in
11 January 2003, then provided its written representations
12 on that document, and that is C5, tab 60 for the note.
13 My -- perhaps I will just take you to that document;
14 C5 --

15 A. Is that my main written statement?

16 Q. No, I will come to that in a moment. This is a similar
17 document to the document I showed you this morning. If
18 you look at the top, you will see supplementary Rule 14
19 notice, the title, and you will see:
20 "Written response of Allsports and Allsports Retail
21 to the supplementary Rule 14 notice."
22 A. Yes.

23 Q. And my question for you is -- I am asking you to confirm
24 that you provided detailed information to your
25 solicitors which information was then contained in those

1 written representations. Look through the document by
2 all means or flick through it to see if you recall that
3 that was the case. Can I take you to page 1749, at
4 the bottom you will see a number 46 in the left-hand
5 column?

6 A. Yes.

7 Q. Just to explain, each paragraph here responds to
8 a paragraph number in the document which the Office of
9 Fair Trading had sent to you, so this is responding to
10 paragraph 46?

11 A. Okay.

12 Q. And what it says there, if you go back to the bottom of
13 1749, it says:

14 "David Hughes believes that a loose, general
15 reference to meeting more often would at most have been
16 part of the initial exchange of pleasantries [talking
17 about the 8th June meeting] and was not a serious
18 comment. Allsports would point out that no follow-up
19 meeting was discussed. Any such meeting would have been
20 recorded in David Hughes's diary -- he is a man who
21 lives by his diary -- and there is no such record."

22 If you go over the page to 1751, opposite
23 paragraph 49, you will see:

24 "David Hughes accepts that a further meeting took
25 place between himself and Chris Ronnie but does not

1 recall discussing the matters which Chris Ronnie alleges
2 were discussed. David Hughes does not believe that he
3 ever threatened Umbro with non-renewal ..."

4 That is talking about the 2nd June meeting.

5 My question for you is: it is clear from that there,
6 is it not, that that information could only have come
7 from you, the information recorded in 46 and 49?

8 A. I would say so, yes.

9 Q. And you did provide detailed information to your
10 solicitors at that time?

11 A. Over the whole period we were constantly providing
12 information --

13 Q. Thank you. My final question in this area is this. You
14 just mentioned the witness statement -- if you put that
15 file away now. It is the one in bundle 1, the main one
16 we refer to.

17 A. Yes.

18 Q. Can you remember when you prepared your witness
19 statement?

20 A. I guess I can. It was ... there must have been four or
21 five drafts of it with my solicitor. I mean, initially
22 I think we had about six hours where Adam Aldred just
23 took recordings of asking me questions and my responses
24 as they flowed from me, that was for the first reading.
25 Then there were plenty of redrafts, I mean it was not

1 done in one go.

2 Q. Can you place a general date; are we talking about 2002,
3 2003?

4 A. I am sorry, I cannot, but I am sure you can check it
5 from my diary.

6 Q. The documents I have just shown you, the written
7 representations that were put in, can you recall
8 preparing a written statement around that time?

9 A. I am sorry, I cannot.

10 Q. Can you recall whether it was after the OFT's decision,
11 the decision being August of last year?

12 A. The final witness statement?

13 Q. No, when you started -- you just described the process
14 with Adam Aldred -- whether that process started after
15 the decision which was last August?

16 A. I am sorry, I cannot remember, but I could check.

17 Q. No, that is fine. That is fine.

18 THE PRESIDENT: And this statement is dated 30th September.

19 MR MORRIS: It is. I am aware of that, sir.

20 THE PRESIDENT: Does that help the witness to --

21 MR MORRIS: I can certainly take the witness to the date of
22 his signature. The witness was referring to his
23 statement earlier, and I what was enquiring was whether
24 the information had been provided, or the drafts had
25 been done, before or after the decision.

1 If you go to page 314 of that document you will see
2 that you signed it in September of last year?

3 A. Yes.

4 Q. My question was, really: when did you start the process
5 of the drafting of this witness statement?

6 A. I think Adam Aldred's first tape recording -- first of
7 all, the Manchester office of Addleshaws were involved,
8 Jonathan Davey, and then when it was clear that it
9 looked like it was proceeding, Adam Aldred became
10 involved from Leeds, because obviously we sought to get
11 the best possible advice. That would have been the
12 first occasion -- I am guessing, but I would have
13 thought within six months of the initial raid, the start
14 of the process.

15 Q. Thank you. Can I now move to the meeting of 2nd June.
16 Can we look at page 303 of that same bundle,
17 paragraph 68. I will read it if I may:

18 "I put together a plan after the May Bank Holiday.
19 My diary entry on 30 May 2000, which I probably added
20 over the previous weekend as an aide memoire was 'Phone
21 David Whelan/Mike Ashley -- Man Utd Shirt Price (get
22 number from Chris Ronnie)'."

23 "On 2nd June 2000, I met Chris Ronnie at 10.30 hours
24 at Allsports' office in Bredbury. As I have said,
25 the catalyst was the Man U shirt launch on 1st August.

1 The purpose of the meeting was to get Mike Ashley's
2 phone number, which I did not have (in fact, I was not
3 even sure where Sports Soccer were based). I knew Chris
4 would have it. I arranged a meeting because I thought
5 that if I just asked Chris for it out of the blue he
6 would have asked why, so I thought it easier to ask face
7 to face rather than on the telephone or get my PA to ask
8 him for it."

9 That is the background.

10 You must have spoken to Chris Ronnie before
11 the meeting on 2nd June in order to arrange that
12 meeting?

13 A. Yes.

14 Q. Given the entry in your diary, it is possible --
15 you have a diary entry of 30th May; it is possible that
16 you spoke to Chris Ronnie on 30th May, is it not, in
17 order to set up that meeting?

18 A. It certainly happened that week. I do not know what
19 day. But I accept I must have telephoned him.

20 Q. Yes, and it is possible it could have been on 30th May?

21 A. Okay, yes.

22 Q. You also say that the purpose of the meeting -- you say
23 here:

24 "The purpose of the meeting was to get the phone
25 number."

1 A. Yes.

2 Q. That is not what you told your solicitor back in
3 January of 2003, when the written representations were
4 prepared. Can I take you to C5 again, page 1751.

5 If you go to the bottom of the page it is talking
6 about this meeting. The penultimate paragraph of 1751
7 says:

8 "Allsports accepts that Mr Hughes obtained
9 Mike Ashley's telephone number from Chris Ronnie,
10 although it does not accept that this took place at
11 the meeting on 2nd June."

12 That is certainly what it says, yes.

13 Q. Yes. What I am suggesting to you is that the statement
14 that the purpose of the meeting was to get Mike Ashley's
15 phone number is a change in the story, and it is more
16 likely that you would have got Mike Ashley's telephone
17 number from Chris Ronnie other than at that meeting.

18 Can you recall now?

19 A. I do recall. The only reason for me -- it was unusual
20 to the point of unheard of for me to make an appointment
21 with Chris. Michael Guest dealt with him on a business
22 basis. There was only one reason. I mean, I may have
23 clad it in some other pleasantries but I wanted
24 Mike Ashley's telephone number.

25 Q. Yes. And I am suggesting to you that in fact you could

1 have got that number other than at that meeting?

2 A. But I did not.

3 Q. And there were in fact other purposes for that meeting?

4 A. No. That was the reason for the meeting. We may have

5 dressed it up in some other things -- I may have -- but

6 that was the reason for the meeting.

7 Q. Can we just look at the meeting, what happened at

8 the meeting. Again, I am going to try to do this by

9 a series of propositions

10 A. Where do you want me to go?

11 Q. If you keep your witness statement open at about 69, but

12 I am just going to ask you the propositions, if I may.

13 The first proposition I am going to put to you is

14 that, at that meeting, you told Chris Ronnie that

15 you were going to set up a meeting directly with

16 Mike Ashley and Dave Whelan as you had had enough of

17 their price wars?

18 A. Yes.

19 Q. Secondly, you repeated your concerns about

20 the discounting on launch during the previous seven to

21 eight months and you raised the Predator boot.

22 A. I accept that.

23 Q. Thirdly, you repeated your concern that the new MU shirt

24 would be discounted on launch, and you said that

25 a higher price of 44.99 was in everybody's interest.

1 A. (Pause).

2 Q. I am trying to ask you whether you can remember now if
3 that sounds right.

4 A. There would have been -- as it was only a few days since
5 I had seen him on the golf day, there would have been
6 a number of items discussed that related to that.

7 There are a couple of things that relate to that
8 meeting which I would like to draw attention to, which
9 are more than was contained in my original statement.

10 Q. Yes. I am --

11 THE PRESIDENT: Yes.

12 MR MORRIS: Very well.

13 THE PRESIDENT: What do you want to tell us, Mr Hughes?

14 A. Sir, I would accept that at some point in that meeting
15 I suggested to Mr Ronnie that it would be helpful if
16 the wholesale trade price of the Manchester United
17 shirt, if we actually put the price up on the wholesale
18 price. Because that would make a £44.99 trade price
19 recommended retail quite clear and understood.

20 THE PRESIDENT: Yes.

21 A. But the other thing that I said to him in all this
22 discussion about whether or not I could put pressure on
23 the Manchester United licence renewal was this: at that
24 time, Umbro were significantly superior to every other
25 brand in the successful launch of replica product. They

1 did the job right. If you ordered 50,000 shirts then
2 you got 50,000 shirts in time for the launch, as did
3 everybody else.

4 THE PRESIDENT: They were good at it?

5 A. Yes. And the company that were spectacularly bad at it
6 were Nike. The rumours that abounded at the time, and
7 they were rumours, were that Umbro were likely to lose
8 the contract to Nike. I was only privy to the same
9 rumours as everybody else in the industry.

10 But I now recall that there was trepidation about it
11 going to Nike. It was not in Allsports' or any other
12 retailer's interests that it went to Nike. If anything,
13 I was encouraging Mr Ronnie about getting the job done
14 right rather than placing a pressure or a threat upon
15 him.

16 MR MORRIS: Thank you. Can I ask you to read 72 and 73 and
17 I will put again a series of short propositions.

18 A. Yes. (Pause). I have read those two paragraphs.

19 Q. Thank you. The first proposition is that you criticised
20 Umbro for setting the RRP at 42.99?

21 A. Yes, I did.

22 Q. Secondly, you mentioned to Chris that you had been
23 speaking with Steven Richards from Manchester United
24 about the problems that that price caused?

25 A. (Pause). No, I did not say that. I said it was

1 possible because Chris Ronnie says that that happened.
2 But I do not recall that.

3 Q. Yes, you say it is possible --
4 A. Yes.

5 Q. And you suggested to Chris that discounting would not
6 help Umbro's chances of renewing its licence with
7 Manchester United?

8 A. It is entirely possible that that happened, yes. I have
9 not denied --

10 Q. You say: I probably did suggest that?
11 A. Yes, I agree.

12 Q. The renewal of the Manchester United licence was a big
13 commercial issue for Umbro, was it not, at that time?
14 A. Yes.

15 Q. And you must have known that it was?
16 A. Of course, yes.

17 Q. And you knew Mr Richards well and had spent the morning
18 of the golf day with him?

19 A. Since I sacked Mr Richards from his position as chief
20 executive or managing director of Allsports, I may have
21 had two or three conversations with him in the period up
22 to then about Peter Kenyon.

23 If you say I knew him well, he worked for me for 18
24 months; we never, ever socialised.

25 Q. You had a meeting with him on the morning of the golf

1 day and it was at your home, I think?

2 A. Yes.

3 Q. Thank you. Going back to the meeting with Mr Ronnie and
4 the renewal of the licence. It is likely that, given
5 that it was a big issue for Umbro, your mentioning
6 the renewal of the Manchester United licence would have
7 made Umbro feel a degree of pressure?

8 A. Absolutely not. First of all Steve Richards's position
9 in Manchester United was a grand title called Managing
10 Director (Merchandising). That means the retail
11 operation.

12 He had no input, influence or control whatsoever in
13 the negotiation of licences, absolutely zero. So me
14 speaking to him ... we were both minnows in that.

15 Q. So what other possible reason could you have had in
16 the course of that meeting for mentioning to
17 Chris Ronnie the renewal of the Manchester United
18 licence and the rumours that Umbro were not going to get
19 it?

20 A. I do not find this difficult. I met Chris for a meeting
21 of 15 or 20 minutes. More than one item was discussed.
22 I certainly do not deny that I said it was obviously
23 going to be in their interests to get this one right.
24 But to suggest that I had influence over it is just
25 a nonsense.

1 Q. To get this one right meaning ...?

2 A. It was going to be their last launch of a Manchester
3 United shirt before the contract was up for
4 renegotiation.

5 Q. What I suggest to you is that when you say "get this one
6 right" you mean for it to be launched and --

7 A. No, to do it successfully. It was not common -- it was
8 not common for every replica shirt at every launch to be
9 discounted. I do not think any evidence has been
10 presented that said one hundred per cent of the time,
11 since they had got into it, Sports Soccer always
12 discounted.

13 I think we have already heard evidence that says
14 that this was the first year that they were seriously
15 going into the market of replica.

16 So there was not like a massive experience; there
17 had been some experience.

18 Q. You were expressing your views about the price wars,
19 you were expressing your concerns about discounting on
20 launch of premium products --

21 A. Yes.

22 Q. -- you were suggesting that that would be a problem for
23 Umbro, discounting?

24 A. I said that I would have thought that they needed to do
25 it right, to do it successfully.

1 Q. And when you say "right" --

2 A. To the satisfaction of the club.

3 Q. Of the club?

4 A. Yes.

5 Q. And what did the club want at the time?

6 A. I cannot speak for Manchester United; I can only

7 surmise.

8 Q. I put it to you that the club wanted it not to be

9 discounted, did they not?

10 A. I would expect that to be the case. Was I privy to any

11 confidential information? Absolutely not.

12 Q. You said a moment ago that this was going to be their

13 last launch of a Manchester United shirt before

14 the contract was up for renegotiation?

15 A. That was my understanding.

16 Q. But there were in fact, were there not, other kits

17 coming in in the following year. Do you know when

18 the new contract would start from?

19 A. It was common knowledge that they had I think 16 months

20 to go. There was this shirt ... well, let me put

21 this ...

22 Yes, there was another shirt to come next year, that

23 is absolutely true. But given the lead times involved

24 from planning and originating a design through to that

25 arriving in store, and given the length of time ahead of

1 an actual negotiation before that negotiation would
2 begin, I am absolutely confident from my knowledge of
3 the industry that they would probably already have been
4 in negotiations to renew that contract.

5 And, as they would have been in negotiation, you
6 would expect that one or two other potential licensors
7 might also be in negotiation.

8 These things take a long time. They are put in
9 place well ahead of the actual start days.

10 Q. But how did you know --

11 A. I did not. Not with certainty.

12 Q. You knew nothing from your discussions with Manchester
13 United that the licence deal was coming up for renewal?

14 A. Absolutely -- absolutely nothing. Nothing.

15 Q. The other thing that happened at that meeting was this:
16 you spoke to Mr Knight, did you not?

17 A. Yes, I did.

18 Q. At the time JD was giving away a free cap with
19 the purchase of an England shirt?

20 A. I learn that information that morning.

21 Q. And you were concerned about that promotion, were you
22 not?

23 A. No, I was not, not concerned. I was surprised. I have
24 already said that I cannot recall whether Michael Guest,
25 my buying director, gave me that information that

1 morning or whether Chris Ronnie told me. But it was
2 information that I only learned in the few minutes
3 before I either met Chris Ronnie or in the course of
4 meeting him. I cannot recall that.

5 Q. You were concerned because you thought that that sort of
6 behaviour would encourage the general tendency of
7 Sports Soccer to discount?

8 A. It was unusual behaviour from JD, yes.

9 Q. And JJB might react and that might lead to another price
10 war?

11 A. I think I stated that --

12 Q. Yes, you say that in paragraph 74.

13 And you wanted to know more about the JD
14 promotion --

15 A. Yes.

16 Q. -- for example was it national or local?

17 A. Yes.

18 Q. So in the course of your meeting with Mr Ronnie, you
19 rang Tom Knight about the promotion?

20 A. Yes, I did.

21 Q. Tom Knight was at the time the manager of First Sport
22 and Blacks?

23 A. Managing director of First Sport, yes.

24 Q. And Blacks was a leading competitor of Allsports at the
25 time?

1 A. Under the facia of First Sport, it was a leading
2 competitor, yes.

3 Q. So at that meeting you were ringing one competitor to
4 discuss the pricing practices of another competitor?

5 A. Yes.

6 Q. And you asked Tom Knight if he had heard about the JD
7 promotion and whether it was local or national?

8 A. Yes.

9 Q. And you asked him how he was going to react to that
10 promotion, did you not?

11 A. I am not sure that I did, actually. Where did I say
12 that?

13 Q. I am asking you to recall. Did you ask him how he was
14 going to react to that promotion?

15 A. Right now I cannot recall what I said to Tom once I had
16 that information. Clearly I rang him to learn whether
17 it was a countrywide operation.

18 Q. Yes.

19 A. I think he told me that it was national, that it was
20 everywhere.

21 I do not think that I asked him if he was going to
22 react, at all.

23 Q. Can I just ask you --

24 A. May I just say one thing that was surprising about this
25 JD operation, sir?

1 I learnt in the course of that morning that this
2 baseball cap which was being offered was not an Umbro
3 cap; it was branded Admiral. Admiral is a competitor of
4 Umbro, and it was difficult to believe that Umbro would
5 be very happy if their shirt was having another branded
6 product given away with it. I think I even mentioned
7 that -- asked that.

8 Q. Can I ask you this: if you are calling competitor A to
9 ask competitor A for detail about a promotion or
10 discount being offered by another competitor, competitor
11 B, it is inconceivable, is it not, that you would not at
12 the same time ask the person you were speaking to what
13 he would be doing about the promotion, whether he would
14 be responding or not?

15 A. No, I think it is conceivable. I think I probably said
16 in my statement that we did not closely watch what
17 competitors were doing; we did watch, but not closely,
18 we did not have a system for doing it.

19 I was aware that Tom was much more alert or
20 concerned about that sort of thing than we were.
21 Therefore, I was confident that he would know whereas my
22 own team might very well not.

23 Q. Can I ask you to see what Mr Knight says about this:
24 bundle 2, page 82, paragraph 4.

25 I am going to read that:

1 "I recall David phoning me on or about
2 2nd June 2000 regarding the JD Sports promotion in
3 respect of the England kit being sold with a free cap.
4 I did not know Chris Ronnie was with him. He asked me
5 if I knew about it, which I did. He asked me if it was
6 a national promotion, and I said that I understood that
7 it was. He seemed irritated by this.

8 He asked me how First Sport was reacting to it.
9 I said that we were simply doing what was our clear
10 policy at the time, selling it at the 39.99 price."

11 So he said that you did ask him how he was going to
12 react.

13 A. Okay.

14 Q. And you say, in your statement in file 1 at page 305 --
15 you have seen this statement before. You say:

16 "I have no clear recollection of the rest of
17 the conversation, but I have been shown in draft
18 the statement of Tom Knight and what he sets out at
19 paragraph 4 may well be right."

20 A. Okay.

21 Q. So you have no reason to doubt his recollection?

22 A. I stand by that statement, what he says may well be
23 right.

24 Q. So according to Mr Knight you asked him what they were
25 going to do, and they told you that they were going to

1 carry on selling the England shirt at 39.99?

2 A. I can clearly see that that is what Mr Knight says.

3 Q. Mr Ronnie in his witness statement at paragraph 42,

4 bundle 3, page 228 -- I will take you to it quickly --

5 he says that you said the same thing. Page 228, file 3,

6 top of the page, the first paragraph:

7 "David Hughes asked whether First Sport would be

8 doing a similar promotion, and Tom Knight confirmed that

9 it would not."

10 A. Okay.

11 Q. So you were discussing with First Sport his price for

12 the England shirt, were you not?

13 A. I think we probably already knew his price.

14 Q. The question was: in the course of that conversation --

15 A. I asked him whether they were doing anything about

16 the JD promotion?

17 Q. Yes.

18 A. That is your question?

19 Q. No. The question is: in the course of that conversation

20 you were discussing with Mr Knight First Sport's price

21 for the England shirt.?

22 A. I am not sure that is the same thing as asking him

23 whether he was doing anything about JD promotion.

24 Q. Well, according to the evidence we have just been

25 through, you said: are you going to do anything about

1 the promotion? And he came back and said: no, I am
2 going to stick at 39.99?

3 A. Right.

4 Q. That is a discussion, and it is a discussion about his
5 price for the England shirt.

6 A. Okay, yes.

7 Q. Yes. Can I just take you to paragraph 33 of your
8 witness statement, which is at page 297 of volume 1.
9 I think we can put Mr Ronnie to one side in volume 3.

10 If you look at paragraph 33, you are saying here
11 with First Sport, at the bottom of the paragraph:

12 "We never discussed prices, except on the one
13 occasion as mentioned below regarding the Man U shirt
14 launch in August 2000."

15 The one occasion mentioned below is in fact your
16 conversation a week later on 9th June about Manchester
17 United?

18 A. Yes.

19 Q. So, in fact, in view of the conversation you had with
20 Mr Knight on 2nd June, your statement in paragraph 33 is
21 not accurate, is it?

22 A. I disagree. I think that I would still stand by
23 the statement that I did not discuss the price with
24 Tom Knight. I certainly asked him what he was going to
25 do about it, but that is not the same thing as saying,

1 "Are you going at 34.99 or are you going to cut it to
2 32.99?" There was no price discussed.

3 Q. But giving a free cap away with a shirt is effectively
4 a discount, is it not?

5 A. Well, the technical word for that in our business is
6 GWP, which is the abbreviation and acronym for Goods
7 With Purchase, sir.

8 Q. And that is a promotion?

9 A. It is a promotion.

10 Q. And it is used --

11 A. If I may finish. We recently -- you produced evidence
12 of a promotion of an Umbro branded pair of sunglasses in
13 the recent shirt launch where everybody else was doing
14 the shirt at £24 and £25 and we were doing the shirt at
15 full price, £40, with a free pair of sunglasses which
16 we had retailed at £20 for some time so that it was
17 a goods with purchase offer of £20.

18 We would not allege that we were selling the shirt
19 at £20 because we were giving away a £20 pair of
20 sunglasses.

21 Q. No.

22 A. So goods with purchase, the value of the purchase,
23 right, would not equate to a netting-off of the price.

24 Q. No, but goods with purchase is an alternative way of
25 competing with discounting?

1 A. Yes, it is, and it is something that we do quite a lot.
2 Q. Now?
3 A. Yes.
4 Q. Mr Ronnie says -- and this is paragraph 45, bundle 3,
5 page 228, at the end of the conversation with
6 Mr Knight -- that after the phone call you asked him
7 what Umbro were doing about the issue of the England
8 promotion being run by JD Sports and in response he told
9 you:
10 " ... we would have to tell JD Sports that they were
11 no longer a priority account, and that they might not be
12 getting product."
13 You do not deny that in your statement, do you?
14 A. I do not deny it. I do not recall that happening at
15 all.
16 Q. You have no recollection?
17 A. Of them telling -- of Chris Ronnie telling me that JD
18 would not get product? No.
19 Q. "David Hughes asked me what Umbro were doing about
20 the issue of the England promotion being run by
21 JD Sports. He did not explicitly threaten that if I did
22 not try to stop the promotion that Allsports would take
23 action against Umbro. However, I did believe that if
24 I did not do something then it would present a problem
25 regarding Umbro's relationship with Allsports and

1 potentially Manchester United."

2 A. Mr Morris, I think you will have gathered that I do
3 express opinions. If I had intended to say that, he
4 would say I said: David Hughes said to me. Not: he did
5 not explicitly threaten. If I was going to threaten
6 somebody, it is quite possible I would have expressed it
7 in words, not a subtle undertone.

8 Q. I am just putting this paragraph to you as to what Mr
9 Ronnie said and I am asking you to confirm or deny, from
10 the best of your recollection, as to whether he did say
11 that.

12 A. I do not recall him telling me that he would threaten
13 a sanction against JD Sports of not giving them product.
14 I do not recall that.

15 Q. Do you recall that you asked him what Umbro were going
16 to do about this promotion?

17 A. I do not recall that either, although I accept it is
18 quite possible that I did.

19 Q. Thank you. Can we now move on to the 8th June meeting.

20 Before we go into the detail of it, I would like to
21 ask you a couple of questions about your back problems
22 that you had been having in the year 2000.

23 As I understand it, and you will obviously fill in
24 the picture if I have the wrong --

25 THE PRESIDENT: If you feel at all embarrassed in any of

1 these questions --

2 A. I am not embarrassed at all, sir, there is nothing of

3 a sexual nature in this!

4 THE PRESIDENT: I do not think that was the suggestion.

5 A. In that case, I am not embarrassed.

6 MR MORRIS: I do not think you would be embarrassed anyway.

7 A. Probably not!

8 MR MORRIS: I am just trying to get the sequence of events

9 right, that is all.

10 A. What would you like me to tell you?

11 Q. Can I just put to you again -- you had a back operation

12 in February 2000?

13 A. Yes.

14 Q. You slipped your disc on the weekend of 3rd and

15 4th June?

16 A. Yes, for the second time.

17 Q. For the second time that year?

18 A. Yes, the original one was in November 1999.

19 Q. Thank you. You say that your chiropractor, first thing

20 on Monday morning after you slipped the disc -- you say

21 you saw the chiropractor --

22 A. And he declined to treat me.

23 Q. As a result of that you made an appointment -- you went

24 to see your neurosurgeon or you realised you had to go

25 and see your neurosurgeon?

1 A. I was pretty sure I had to anyway.

2 Q. And the earliest appointment with your neurosurgeon was

3 3.45 pm on 8th June, so it was in the afternoon after

4 the --

5 A. The neurosurgeon only saw private patients on

6 a Thursday.

7 Q. You went into hospital on 9th June?

8 A. The next day, yes.

9 Q. And you had the operation on 10th June?

10 A. On the Saturday, that is right.

11 Q. Thank you. It was after you had seen your chiropractor

12 on 5th June when he said he could not treat you that you

13 realised you had done something serious and might have

14 to go into hospital?

15 A. Yes.

16 Q. Before 5th June there was no prospect of any back

17 operation?

18 A. No. What was true, though, was clearly -- I was not

19 playing sport, I was still in some considerable

20 discomfort, and I did not play in my own golf day on

21 25th May. So ...

22 Q. Thank you.

23 You arranged the meeting expressly to get

24 Sports Soccer and JJB to stop the price war?

25 A. Yes. And to agree the price of the new Manchester

1 United shirt at launch I wanted to do that, yes.

2 Q. Can we look at your diary entries in the little
3 bundle at tab 7. We have seen this before; it is also
4 at paragraph 80 of your witness statement, the two
5 entries we have seen before. You say at tab 7, and
6 again it is crossed out but I do not think it is
7 disputed -- if you go to paragraph 80 of your witness
8 statement at the same time, which is on page 306 of
9 file 1, the two entries are:

10 "Agree Manchester United and England prices with
11 everyone including Mike Ashley."

12 "Sports trade cartel arrange a meeting regularly."

13 A. Yes.

14 Q. You underline I think in the diary the word "everyone".

15 A. I would need to see that.

16 THE PRESIDENT: Where are we, Mr Morris?

17 MR MORRIS: I have the diary open at 5 June, tab 7,
18 the colour copy.

19 A. Yes.

20 Q. And the word "everyone" is underlined?

21 THE PRESIDENT: We can only faintly see it.

22 A. It appears to be, yes.

23 MR MORRIS: Presumably you wanted to include all the other
24 retailers, like JJB, JD, Blacks as well as
25 Sports Soccer.

1 A. I suppose I could have said all but I did not. There
2 were only two players of significance other than
3 ourselves.

4 Q. So "everyone" is just JJB and Sports Soccer?

5 A. Yes.

6 Q. But it cannot be because you specifically mention
7 including Mike Ashley.

8 A. You said JJB and Sports Soccer.

9 Q. I am suggesting to you that you say; agree Manchester
10 United and England prices with everyone including
11 Mike Ashley?

12 A. These are just ... these are just jottings, notes,
13 aide-memoires that I put down. This is not specifically
14 detailed. It is not an agenda.

15 Q. What I am suggesting to you is that when you say
16 everyone include Mike Ashley, what that meant was all
17 the usual people and this time to include Mike Ashley?

18 A. There were not any usual people.

19 Q. Why otherwise would you put "including Mike Ashley"?

20 A. I cannot answer that except to say that there were no
21 other people or all the usual people. And there has
22 been no suggestion that there ever was.

23 Q. I am trying to ask you first of all why you have
24 included "agree England prices".

25 If it was just Mike Ashley and it was JJB it would

1 be: agree Manchester United price with JJB and
2 Mike Ashley?

3 A. This is not a detailed document for signing. These are
4 notes and jottings in my diary.

5 Q. I understand that. It is not a document, a contractual
6 document --

7 A. But you are implying that it is.

8 Q. I am not. I am trying to understand what was indicated,
9 what was in your mind when you wrote that down, what you
10 must have meant when you used the words "everyone
11 including Mike Ashley"?

12 A. There are only two players in the game. There are only
13 two players.

14 Q. I am suggesting to you that "everyone" was more than
15 just JJB?

16 A. That is not correct.

17 Q. If you then look at the coloured copy of this version,
18 or even the diary itself, the actual diary, I am going
19 to suggest to you that those two entries are heavily
20 crossed out.

21 A. Are we still on June 5th?

22 Q. Yes, the two entries at the bottom, the "agree
23 Manchester United" and "sports trade cartel". Would you
24 agree with me that they are in fact crossed out three
25 times: in blue biro, black biro and red biro?

1 A. Yes.

2 Q. And they are heavily crossed out so that it is difficult
3 to read? Was there any particular reason for that?

4 A. They are not obliterated with black felt-tip pen.

5 Q. No, that is true.

6 A. So rather less of an effort to obliterate them than some
7 other things you might draw attention to.

8 Q. I understand that.

9 A. So I do not think that --

10 Q. If you go up the page to Rebecca Stafford and the
11 Ferrari 360?

12 A. Was that absolutely necessary?

13 Q. I apologise. That is only crossed out with a single
14 line. On the one above, DP, what changes have you made.
15 I would suggest that the first crossings-out have been
16 in red on that page, and there were subsequent
17 crossings-out with other pens further down?

18 A. Yes.

19 Q. I am asking for the reason for those crossings-out.

20 A. The first thing to be said is that if you look through
21 the diary there are different colours of ink, whatever
22 pen was in my hand is what I used to strike out. So
23 the colour is of no significance whatsoever.

24 What is of significance to those is that I was
25 clearly seeking to make them illegible.

1 Q. Yes. And I am asking you why?

2 A. You would, would you not?

3 Q. Yes, I would.

4 THE PRESIDENT: Mr Hughes, what is the answer?

5 A. That is not a great comment to have fairly legibly

6 displayed, either of them.

7 MR MORRIS: When did you do that additional going-over with

8 the second and third pens?

9 A. I cannot answer that, I would have thought within

10 the next -- within ... within a couple of days of it.

11 Or in view of the fact that I went into hospital, within

12 a couple of weeks. Which is a different question from

13 the black felt-tipped pen.

14 Q. I am not asking about that; I am asking about this.

15 A. I would have thought fairly promptly.

16 Q. Contemporaneously, in June 2000?

17 A. I think so.

18 Q. Any reason why you would have done that?

19 A. I think we are clear that that would not be something

20 that I would want on the front page of the Evening News.

21 Q. Yes, I understand that.

22 A. Is that a satisfactory answer?

23 Q. You put it in your diary in the first place so I presume

24 you would not want it in the Evening News by writing it

25 in in the first place. What I am asking is what made

1 you suddenly realise that the Evening News might be
2 interested to cause you to go back over it again within
3 two or three days?

4 A. Why not read the sentence then I think it will be fairly
5 obvious. I am not quite sure what more I can answer.

6 Q. I will ask you one more time: was there something which
7 happened after you wrote it which then led you to go
8 back to your diary and say: hang on a minute, I had
9 better cross that out?

10 Can you recall?

11 A. In that week?

12 Q. Well, when you did it. I am suggesting that there must
13 have been something that made you go back --

14 A. I do not think it is an admirable note to have in your
15 diary.

16 Q. Well, I accept that, and I accept that is the answer
17 you have given. What I am asking you is: what was it
18 that caused you to realise that it was not admirable?

19 A. I do not think I can answer the question any further.
20 If you want to give me a proposition, yes or no, that
21 I can reply yes or no to, I will try. But I do not
22 think I can answer.

23 Q. The proposition is that somebody told you that it was
24 not a good thing to have in your diary: arrange sports
25 trade cartel?

1 A. I do not think I needed somebody else to tell me that.

2 Q. It was not a matter of somebody telling you that?

3 A. Absolutely not.

4 Q. So you knew it was not a good thing to have in your
5 diary?

6 A. I think we have already agreed that.

7 Q. So why did you put it in in the first place?

8 A. I have expressed clearly in my statement that that was
9 in my mind at the time, to seek to set up a meeting on
10 a regular basis.

11 Q. I understand that. What I am questioning you about is
12 this: you are saying now that you knew at the time that
13 it was not an admirable thing to have in your diary?

14 A. Yes.

15 Q. So what I am asking you is: even though you realised
16 it was not an admirable thing to have in your diary, you
17 nevertheless put it in your diary in the first place?

18 A. Yes.

19 Q. And some time later you thought: hang on a minute --

20 A. No.

21 Q. -- that is not a good thing to have in my diary?

22 A. As part of the general striking-out of every item that
23 appears in my diary when it has been dealt with,
24 I struck it out more comprehensively.

25 Q. Yes, you struck it out -- it is covered up much more

1 than the other entries.

2 A. We have agreed that already. We are talking about three
3 colours of ink.

4 Q. We will move on, Mr Hughes. Can I ask you to go to
5 paragraph 78 of your witness statement at 305?

6 A. Yes.

7 Q. You say:

8 "I left a message for Mike Ashley to call me, which
9 he did, either on Friday evening or Saturday evening
10 [the 2nd or the 3rd]. I took the call in my study,
11 the timing of the call was not convenient, I cannot
12 remember whether it was before or after I slipped
13 another disc in my back."

14 A. I do now recall. I slipped the disc the first time
15 getting into a sports car, getting into a low seat.

16 I remember now, during the course of this
17 proceeding, that which I had forgotten: I was offered
18 some comfort or support by my gardener in the immediate
19 aftermath of doing that; he did not work Saturdays so it
20 must have been Friday.

21 Q. It must have been Friday that you slipped the disc.

22 A. Yes.

23 Q. And it must have been Friday that you spoke to Mike
24 Ashley?

25 A. I would say that must be correct, but I am not sure. I

1 know I slipped on a Friday because it was my gardener
2 who was sympathetic and helpful.

3 Q. And then you say:

4 "I said I wanted him to come to a meeting with me
5 and David Whelan. I said the price war between the two
6 of them was a nonsense and had to stop. He agreed in
7 principle to meet."

8 A. Yes.

9 Q. My question first of all is this: Mike Ashley is and had
10 always been a committed discounter?

11 A. Yes.

12 Q. And you knew that then?

13 A. Yes.

14 Q. And here we have Mike Ashley agreeing to come to
15 a meeting with two of his main competitors, knowing that
16 the purpose of the meeting was to stop him discounting?

17 A. Yes.

18 Q. So what made you think then that Mike Ashley would agree
19 to come to such a meeting with such a purpose?

20 A. What made me think? Well, he agreed to come.

21 Q. Why would he agree to come if he is a committed
22 discounter?

23 A. I put the proposition to him that it would be useful to
24 have a discussion, and he agreed to come to that
25 meeting.

1 Q. But the discussion that you were putting to him was to
2 stop the discounting, it was not just: let us have
3 a chat?

4 A. Let us have a chat about the state of the industry,
5 about the marketplace. That was the discussion, yes.

6 Q. "I said that the price war between the two of them was
7 a nonsense and had to stop."

8 A. Yes.

9 Q. So he must have known that that meeting was going to be
10 a meeting to stop him discounting, amongst other
11 things --

12 A. To settle the war.

13 Q. To settle the war?

14 A. Yes.

15 Q. So I am asking you: what possible reason would
16 Mike Ashley have for coming up to such a meeting?
17 He had never met you before?

18 A. No.

19 Q. He was coming up from the south?

20 A. Yes.

21 Q. Specially?

22 A. Yes.

23 Q. So I am suggesting that there must have been some reason
24 for him to come?

25 A. I think I agree with that.

1 Q. What was it?

2 A. I think this tribunal has been extremely enlightening.
3 I think what I have learned here has practically blown
4 me away. Because I had no idea what was going on with
5 Mr Ashley and I think I do now.

6 I think that Mr Ashley knew from Mr Ronnie that
7 Manchester United would be on the agenda, the shirt.
8 Which David Whelan certainly did not. I did not know
9 that Mike Ashley knew that, because that is what I had
10 not wanted Chris Ronnie to do, and I did not know
11 they were so in bed together at the time. I thought
12 there was a far more arm's length and independent
13 arrangement.

14 So I think Mike Ashley knew three or four things.
15 I think he already knew damned well that he had
16 the lowest buying price in the industry, because he had
17 done the deal.

18 I think that he very probably knew exactly from
19 Chris Ronnie what my buying price was and JJB's buying
20 price was, they were so in bed.

21 THE PRESIDENT: Do you have some notes here, Mr Hughes?

22 A. Yes, I have.

23 THE PRESIDENT: When did you make those?

24 A. At 2 am this morning.

25 THE PRESIDENT: I see.

1 A. I think that he attended the meeting knowing that
2 the first rule of war is to destabilise the population.
3 That is what I think.

4 And I think that that goes a long way to explaining
5 his erratic behaviour which I have already stated.
6 I did say that I could not understand what he was going
7 on about, what he was doing, where the diatribe came
8 from about being the unloved, unwelcomed ...

9 I think it is easy to explain if you understand that
10 he has a different purpose from me or David Whelan or
11 Duncan in attending the meeting. I think he was going
12 to get a good chance to look straight into the eyes of
13 his main two competitors, and I think he was going to
14 get a chance to poke a stick at David Whelan.

15 That is what I think he did. I think his convoluted
16 and erratic diatribe was an exercise to convince me and
17 the other two that he was quite capable of doing
18 anything. That is what I think.

19 MR MORRIS: The reason was that Chris Ronnie wanted him to
20 attend, was it not?

21 MR WEST-KNIGHTS: Oh, that is speculation now.

22 THE PRESIDENT: Is that a question you are able to answer?

23 A. I cannot comment on that, sir.

24 MR MORRIS: But you had gone to Chris Ronnie and you had
25 told Chris Ronnie you wanted this meeting setting up?

1 A. I did not ask Chris Ronnie to set up the meeting.

2 Q. No, you told him you were going to set up the meeting?

3 A. Yes, I did. I did not say what for, I did not

4 specifically talk about Manchester United as far as

5 I recall. But I did say that I wanted to set up

6 a meeting.

7 I did not ask Chris Ronnie to set it up; I asked for

8 his phone number.

9 Q. But you asked Chris Ronnie, and Chris Ronnie knew

10 you were going to be talking about the Manchester United

11 shirt?

12 A. I had asked Chris Ronnie for a sample of the shirt, so,

13 yes, he would know.

14 Q. And you told Chris Ronnie about the meeting --

15 A. Not exclusively about that.

16 Q. Well ...

17 If you look back at paragraphs 67 and 68 of your

18 witness statement, it is absolutely plain, Mr Hughes,

19 that your purpose in setting up that meeting was to get

20 Mr Whelan and Mr Ashley in a room to agree the price for

21 the Manchester United shirt?

22 A. Yes. This is a paragraph that refers to all

23 the information surrounding Manchester United. So did

24 you say 67?

25 Q. 68, 69. 68 is your meeting with Mr Ronnie on 2nd June.

1 What I am suggesting to you is that at that meeting you
2 not only said that you wanted to set up another meeting
3 with the two, but the subject matter was the Manchester
4 United shirt and you asked Mr Ronnie for an actual copy
5 of the shirt?

6 A. Yes, I just said that to you.

7 Q. You agree.

8 A. But it was not exclusively that.

9 Q. Well, where do you say anything else?

10 A. (Pause).

11 Q. That was what the meeting was about?

12 MR WEST-KNIGHTS: Let him answer the question.

13 A. I am sorry, I misunderstood. I thought you were talking
14 about the meeting of the 8th. I apologise.

15 Do you want to phrase the we again, please, I am
16 sorry?

17 MR MORRIS: I am saying to you that the meeting of
18 8th June was from your point of view all about
19 the Manchester United shirt.

20 A. Not exclusively.

21 Q. Well, you have said in paragraph -- never mind about
22 what you communicated to anybody else --

23 A. I think you mean 2nd June.

24 Q. No, I am talking about the setting-up of the meeting
25 with Mr Ashley and Mr Whelan at your house. What

1 you had in mind, the plan that you put together was
2 a plan to set up a meeting about the Manchester United
3 shirt?

4 A. No. It was partly about that. I have said from
5 the outset that it was about stopping the blood spilling
6 all over the carpet.

7 Q. Paragraph 71 of your statement, and now we are talking
8 about 2nd June, your discussions with Chris Ronnie about
9 setting up this meeting. It was during the course of
10 this meeting that you had asked for the telephone
11 number, so you say, and you are about to set up this
12 meeting.

13 In paragraph 71 you say:

14 "I told Chris that I feared discounting of
15 the Manchester United shirt."

16 A. Yes.

17 Q. So you are telling him that you want to set up a meeting
18 with Mr Ashley and Mr Whelan; you are telling him that
19 you fear discounting of the Manchester United shirt?

20 A. Yes.

21 Q. You ask Mr Ronnie for a copy of the shirt?

22 A. Yes.

23 Q. To take to the meeting?

24 A. Yes.

25 Q. You are telling Mr Ronnie, are you not, that subject

1 matter of the meeting on the 8th June to be arranged
2 will be or at least will include the Manchester United
3 shirt.

4 A. Why not read the sentence before in conjunction with it?

5 THE PRESIDENT: I think he has already said that the purpose
6 of the meeting included the Manchester United shirt but
7 that was not the only thing.

8 MR MORRIS: My first question is: Mr Ronnie knew that as
9 a result of your meeting on 2nd June?

10 A. That the Manchester United shirt was an agenda item for
11 the meeting?

12 Q. Yes.

13 A. Yes.

14 Q. Can I go to paragraphs 81 and 82 of your witness
15 statement. We have discussed your conversation with
16 Mr Ashley about setting up the meeting, and I am now
17 going to refer you to the conversations with JJB from
18 their end about setting up the meeting.

19 THE PRESIDENT: We need to take a short break at some
20 convenient moment, Mr Morris. You have a few minutes
21 yet.

22 MR MORRIS: I will deal with this, if I may. 81 and 82:

23 "On Monday 5th June I tried to telephone Dave Whelan
24 in the morning but he was not around ..."

25 And then you describe some phone calls with

1 Mr Sharpe.

2 Perhaps you would read paragraph 82 to yourself.

3 A. (Pause). Yes.

4 Q. So the position is that you first phoned David Whelan?

5 A. Tried to phone.

6 Q. Yes, you tried to phone but you did not manage to

7 contact him?

8 A. That is right.

9 Q. You then try Duncan Sharpe and you do manage to speak to

10 him?

11 A. Yes.

12 Q. Presumably that was because as far as you were concerned

13 at that time they worked as a pair, and you only needed

14 to speak to one of them in order to set up the meeting

15 for both of them?

16 A. It was well known that Duncan had been promoted to his

17 position of chief executive. I felt confident that if

18 I spoke to Duncan a message would be relayed to David,

19 yes.

20 Q. Presumably you told Duncan that the invitation extended

21 to both of them?

22 A. I think that was a given.

23 Q. I want to ask you about what you told Duncan about

24 the purpose of the meeting. In your witness statement

25 at paragraph, line 4, you say:

1 "The purpose was to stop Sports Soccer and JJB
2 heavily discounting premium products on launch.
3 I probably said words to the effect ..."

4 Yesterday in your cross-examination by
5 Lord Grabiner, you said that the essence of what you had
6 told Duncan was that you were not happy with the price
7 war?

8 A. Yes.

9 Q. For the references, it is 198/6-13; 201/24-25. I think
10 it is at the latter reference that you say I am not
11 happy with the price war that is going on.

12 When you said to Duncan: I am not happy with
13 the price war that is going on, that can only have meant
14 that you wanted the discounting of Sports Soccer and JJB
15 to stop?

16 A. (Pause). I think that would mean that.

17 Q. Yes, thank you. One further question before we get to
18 the meeting itself.

19 Mike Ashley came up on the train from Luton
20 especially for the meeting, did he not?

21 A. Yes.

22 MR MORRIS: Sir, if that is a convenient moment?

23 THE PRESIDENT: Yes.

24 MR WEST-KNIGHTS: May I ask whether Mr Guest need stay?

25 THE PRESIDENT: How are we getting on, Mr Morris?

1 MR MORRIS: We are getting there, getting there. I would
2 have thought I will be another hour, maybe 40 minutes.

3 THE PRESIDENT: While we are out I am going to ask
4 Mr Jeffcott to ask the shorthand writers and others what
5 are the possibilities of going on a bit later tonight so
6 that we can decide whether it is worth asking Mr Guest
7 to stay.

8 Mr Guest, I am very sorry you have had to come down
9 today. These proceedings are not very predictable, as
10 you will have gathered. We have nearly reached you, but
11 not quite. I am sorry about that.

12 (3.10 pm)

13 (A short break)

14 (3.20 pm)

15 THE PRESIDENT: Yes, Mr Morris.

16 MR MORRIS: Mr Hughes, now at 8th June; page 309 of
17 volume 1, paragraph 94:

18 "When we got to my home [you and Mr Ashley]
19 I offered Mr Ashley a cup of tea ... We then went into
20 my study which is in a very private part of the house.
21 I cannot remember what if anything we spoke about, but
22 it was not about business.

23 "A few minutes later I heard David Whelan's
24 helicopter arriving, and we went out to meet him and
25 Duncan Sharpe. It was about a three minutes' walk away

1 from the study to the spot that the helicopter landed.
2 The timetable was something like the following ..."
3 THE PRESIDENT: We can read it, Mr Morris. Do we need to
4 read it all out?
5 MR MORRIS: I am just going to read a bit of it, sir.
6 You introduced Mike Ashley:
7 "... David Whelan's body language made no secret of
8 the fact ... I took the opportunity to show them round
9 en route ... this probably took five minutes or so."
10 So the four of you went on a walk round the house?
11 A. The ground floor, yes.
12 Q. Can you remember what sort of pleasantries might have
13 been said during that walk round of the house?
14 A. Not now. I had some elements outside the house that
15 were worthy of note as well. I had a Japanese water
16 garden that we needed to pass.
17 It was an ice-breaking exercise, I do not remember
18 specifically --
19 Q. But you walked partly inside and partly outside
20 the house?
21 A. Yes.
22 Q. Can you go to page 141 of that bundle, paragraph 28. It
23 says:
24 "Contrary to David Hughes ... I do not remember
25 failing to shake hands ..." --

1 THE PRESIDENT: This is Mr Ashley's witness statement.

2 MR MORRIS: Yes:

3 "If anything the meeting was quite jovial and
4 relaxed, with David Whelan remarking to David Hughes
5 that some things in his house must have cost a few bob."

6 A. He did say something along those lines, yes. You are
7 talking about "cost a few bob", not the whole paragraph?

8 Q. No, I am talking about the walk around and asking you
9 whether Mr Ashley's recollection of that bit about David
10 Whelan having made that remark --

11 A. Something like that.

12 Q. -- accords with your recollection?

13 A. Yes.

14 Q. Thank you. Now let us go to the meeting in the study
15 itself. You pulled the shirt out. I think you used
16 the phrase "rabbit out of a hat" yesterday?

17 A. Yes.

18 Q. If we go back to paragraph 97 of your witness statement,
19 which is at page 310 -- you have read this
20 paragraph before. It says:

21 "David Whelan said something to the following
22 effect ..."

23 And that paragraph was read to you yesterday. In
24 response to a question by Lord Grabiner, when you were
25 asked about that paragraph -- 210, I think, page 1 --

1 I think you said or agreed that that paragraph gives
2 the flavour of it.

3 A. Of that part of the meeting, yes.

4 Q. Of what Mr Whelan said in the study?

5 A. Yes.

6 Q. Now, there is one thing in that paragraph -- there is
7 one thing there that you and Ashley agree on about what
8 Mr Whelan said.

9 You say there, at line 2 at the end:

10 "As far as I am concerned 39.99 is the right price
11 for the replica shirts."

12 That is reporting what Mr Whelan has said?

13 A. Yes.

14 Q. Yes. Now, if you go back to 141 again -- and I really
15 should have been giving you instructions about using
16 your pen, but it is back to the same page of Mr Ashley's
17 second witness statement. Paragraph 31:

18 "David Whelan said words to the effect that
19 the right price is 39.99 and I am going to be charging
20 39.99."

21 So both you and Mr Ashley say that Mr Whelan said
22 words to the effect: the right price is 39.99?

23 A. He said a bit more than that, to be fair. He said more
24 than that.

25 Q. I accept that he said more than that, but I am focusing

1 on that particular thing.

2 I am suggesting to you that you both remember that
3 that phrase was used. I am suggesting to you that
4 because you both remember that it is likely that that
5 was the phrase used.

6 A. Well, I think he said -- he explained at length
7 yesterday -- that that was their declared pricing
8 policy, it was common knowledge, the City knew. There
9 were all sorts of additions -- it was not a bold, simple
10 statement that said we were going to do 39.99.

11 Because he also said, when Ashley was on about
12 making up his own mind and said £32, he made some
13 reference to: whatever you do I will beat it. I think
14 I made a reference to that.

15 Q. You did. I am not suggesting that whatever else you say
16 in your witness statement is not correct. What I am
17 suggesting is that you say that Mr Whelan said that
18 39.99 is the right price for replica shirts, and
19 Mr Ashley says the same thing?

20 A. Agrees that David Whelan said something along those
21 lines?

22 Q. Yes.

23 A. Yes.

24 Q. I am suggesting to you that since both of you ... Very
25 well.

1 Can I then move on to paragraph 99 of your witness
2 statement, back at 310. In paragraph 99 -- I am not
3 sure we have read this out, but certainly you can read
4 it to yourself. In summary you say what Mr Ashley said
5 and what you regard as a tirade?

6 A. Yes.

7 Q. We have all seen Mr Ashley in the witness-box over
8 the past couple of days, and it is right from what
9 we have seen of him that he is only going to have
10 a tirade if something prompted him?

11 A. I am not sure about that. Upon recollection I think
12 he had a considerable deal of control in what he was
13 saying.

14 Q. In the witness-box?

15 A. No, in my study.

16 Q. You say here that he came out with a tirade to
17 the effect that he was the pariah in the industry.

18 A. And it did not make sense to me and I did not understand
19 it because there was no logical pattern to what he was
20 saying. I tried to think through why that would be.

21 It certainly was a continuous stream, you know; it
22 was not distinct sentences. He was coming at it with
23 pace. With hindsight it may have been very well
24 organised, as I suggested earlier.

25 Q. Leaving aside that possibility, something must have

1 antagonised him, something must have happened in
2 the study to go off on such a tirade?

3 A. I asked him a question, I asked him why he had done with
4 the Predator what he had done. And then it came:
5 the volume.

6 That was the last question or statement that he
7 heard, from me, about the Predator. To the best of my
8 recollection.

9 Q. If you look at 98 it says:

10 "I then said something to the following effect:

11 David, I think it is worth at least £45."

12 That is you to Mr Whelan?

13 A. Yes.

14 Q. And Mr Whelan said:

15 "Dave, I do not bloody care."

16 A. I do remember that particular phrase very well, "I don't
17 bloody care." I do remember that very well.

18 Q. And then the tirade comes?

19 A. No.

20 THE PRESIDENT: No.

21 MR MORRIS: "... I then asked him why he put up the price of
22 the Predator boot and he came out with the tirade ..."

23 I accept that.

24 What I am suggesting to you is that it was not what
25 you said but what Mr Whelan said, or more accurately how

1 Mr Whelan was saying it, which got Mr Ashley going?

2 A. There may have been some element of that. He may have
3 been bottling it up, waiting for opportunity. He may
4 not have been pleased to be there.

5 Nobody was comfortable in that meeting.

6 Q. Yes. Can I ask you to go back to 141, Mr Ashley's
7 witness statement, because he explains -- I am going to
8 ask you about that. Paragraph 32, page 141.

9 We have dealt in paragraph 31 with the right price
10 being 39.99. Paragraph 32 says, Mr Ashley says:

11 "David Whelan stated quite clearly that the JJB
12 price was 39.99. He got quite heated and started
13 talking at me quite forcefully. He said to me words to
14 effect: the price of the shirt will be 39.99, son,
15 I understood this to cover the price of all
16 main retailers."

17 A. No, he did not say it like that. It did not happen like
18 that.

19 There was animosity, they were not comfortable in
20 each other's company. That seemed obvious to me.

21 Q. And the animosity was essentially between Mr Ashley and
22 Mr Whelan?

23 A. I do not think it was directed at me; I was merely
24 the facilitator, really.

25 Q. Yes, I understand that. What I am suggesting to you is

1 that as the temperature of Mr Whelan rose, as indicated
2 in paragraph 32, that in turn was the cause of
3 Mr Ashley's response about him being unloved.

4 A. It may have been an element of it. But, you know ...
5 the actual outburst came after I had asked him a direct
6 question about the Predator.

7 Q. Was there an element -- there is a reference there to
8 using the word "son". Was there an element of Mr Whelan
9 patronising Mr Ashley?

10 A. It could have been a bit of that, could have been.

11 Q. That would be consistent with the use of the word "son"?

12 A. I do not recall him saying "son", but, you know ...

13 Q. Yes. Can we then go to paragraph 100 of Mr Hughes's
14 statement.

15 What I am doing here is taking you to your statement
16 and going back to see at each stage what Mr Ashley said.

17 At paragraph 100, on page 311, you do say -- and
18 again you say ... three lines up:

19 "At about this time, it may have been in response to
20 Ashley's complaint that he was unloved, David Whelan
21 said to: you know there are a few of us in the north
22 that have been around for some time and know how this
23 business works. He did not use the word 'club'. David
24 was sabre-rattling, but Mike Ashley did not appear to be
25 intimidated."

1 What could that mean, about the people in the north
2 knowing how it works and Mike Ashley not knowing how it
3 works?

4 A. My reading of that was that David was telling
5 Mike Ashley to a degree that he was an upstart and David
6 was the old hand. There was an element, I felt, in
7 the body language or the aggression.

8 THE PRESIDENT: Yes.

9 A. I am sure he did not use the word "club" but actually
10 I thought it was a great line. I wished he had; I would
11 have remembered it.

12 But ... have I answered your question.

13 MR MORRIS: Well, I will ask another question.

14 What you say there is that the few of us up north --
15 this is Mr Whelan -- know how this business works.

16 My question is this: Mr Ashley's business was rather
17 successful; he seems to know how the sports retailing
18 business works?

19 A. That has become apparent later than this. He certainly
20 does.

21 Q. And he knew then that he was pretty successful, was
22 he not?

23 A. Nobody had his accounts at that time, as I said. Nobody
24 knew whether --

25 Q. But --

1 A. He was very successful, yes.

2 Q. But he was appearing to be successful just by
3 the numbers of outlets he was opening --

4 A. Absolutely, no problem.

5 Q. What exactly was it that Mr Ashley did not know that
6 the few of you in the north, according to Mr Whelan, did
7 know?

8 A. It was just, as I said, sabre-rattling, being
9 aggressive, "my nuts are bigger than your nuts", that is
10 what it was. It was that just sort of feeling,
11 Mike Ashley was the upstart.

12 Q. What was the reference to the people in the north
13 knowing something that the people in the south did not
14 know?

15 A. I do not know. I am only trying to reflect
16 accurately --

17 Q. I understand that.

18 A. -- what was said. You cannot ask me to get inside
19 David's mind and say what he was thinking.

20 That was pretty much what he said, not verbatim, but
21 that was the gist of it.

22 THE PRESIDENT: Yes.

23 MR MORRIS: You say that you came away from the meeting
24 knowing that JJB was going to launch the price at 39.99
25 unless Sports Soccer cut its price and started a price

1 war.

2 A. David restated his long-standing position. We knew from
3 time immemorial that that was the price. I certainly
4 was absolutely clear that I had persuaded him not one
5 jot he was not going to go above £40. That is perhaps
6 a better way of putting it.

7 Q. Paragraph 103 on page 311, five or six lines down, you
8 says:

9 "JJB would sell at 39.99 as it always did unless
10 Mike Ashley ... started a price war. But I had no idea
11 of what Sports Soccer would do."

12 A. That is right. Mike Ashley had threatened £32;
13 David Whelan had said: if you do that I will beat it,
14 son. That may have been when the word "son" came in in
15 the recollection.

16 Mike Ashley gave this very deliberately confused
17 opinion of what his policy was, which was that he would
18 do what he liked when he liked, if it suited his
19 purpose.

20 Q. That is not credible, is it, that you had no idea what
21 Sports Soccer would do?

22 A. I did not know what Sports Soccer would do.

23 Q. Mr Ashley knew before he travelled up that the price of
24 the meeting was the Manchester United launch?

25 A. I did not know that.

1 Q. No, but he knew.

2 A. I did not know that in this discussion.

3 Q. No, but he knew, we have established that he knew.

4 Why would Mike Ashley go all the way up north,
5 specifically at your and Umbro's request, to discuss
6 the price of the Manchester United shirt just to end it
7 by saying: I might sell at £32 if it suits me?

8 A. I thought I offered an explanation earlier. I thought
9 I suggested to you that he was being deliberately
10 subversive.

11 Q. Subversive in what way? How would that be subversive?
12 Perhaps without referring to your notes.

13 THE PRESIDENT: You refer back to your previous answers.

14 A. Yes, sir.

15 MR MORRIS: Moreover, your evidence now that Mike Ashley did
16 not agree to 39.99, that is what you said at the time,
17 is it?

18 A. I am not aware of any discrepancy.

19 Q. Let us just have a look at what you said; let us go to
20 the thin bundle; tab 9, an internal memorandum that you
21 wrote on the very next day after the meeting.

22 A. Oh, right. Yes.

23 Q. This is a -- I am going to just take you through it as
24 quickly as I can in terms of what is said.

25 A. Yes.

1 Q. Does everybody have it? It is a memo from you DH, to
2 Mr Patrick; CC, MG, Michael Guest; MD, Mike Donnelly?
3 A. Yes.
4 Q. And it is headed "Manchester United Replica Shirt
5 Launch, August 2000":
6 "I have already told you that JJB are going at 39.99
7 on 1st August in adult sizes ... and Sports Soccer will
8 also do that. After speaking to Tom Knight ... he went
9 on to say that he will be tactical in his pricing 39.99
10 where he is in proximity to a JJB or Sports Soccer and
11 42.99 elsewhere ..."
12 I will not read on.
13 On a literal reading of that memorandum you did know
14 that Sports Soccer would price at 39.99 at launch?
15 A. I agree completely, on a literal reading.
16 Q. If that was true then you had found that out at
17 the meeting on the day before?
18 A. I agree completely.
19 Q. Let us go to the second memorandum, which is on the same
20 day -- I know this is the time that you were about to go
21 in for your operation?
22 A. Yes.
23 Q. "Discussions about JJB and Sports Soccer."
24 A. Yes.
25 Q. "In my absence [presumably for your operation] you

1 should continue any necessary dialogue with JJB and
2 Sports Soccer. JJB's head office number is ... and
3 Mike Ashley only operates from his mobile which is ..."

4 A. Yes.

5 Q. What you now say, however, is that what you said in
6 those two memoranda was in fact false and deliberately
7 intended to mislead your two senior executives,
8 Mr Patrick and Mr Guest?

9 A. That is absolutely true, yes.

10 Q. Can we look at what you say, paragraphs 113-115.
11 They are quite long paragraphs, so perhaps I could
12 invite everybody to read those paragraphs, then I will
13 summarise what I say the effect of those paragraphs is.
14 (Pause).

15 A. I have read those.

16 Q. In summary, you will correct me if I am wrong, you say
17 that you wrote those two memoranda to pretend that some
18 positive information had come out of the meeting?

19 A. Yes.

20 Q. You wanted David Whelan Patrick and Michael Guest to
21 think that there would be no heavy discounting on
22 the Man United shirt and you wanted to persuade that
23 there was some hope of selling the shirt at £45?

24 A. Yes.

25 Q. That explanation makes no sense at all, does it?

1 A. Well, that is the instruction.

2 Q. Let us just look at what you say in a little more
3 detail.

4 Let us assume that as you say there was indeed no
5 consensus at the 8th June meeting and you had no idea
6 what price Sports Soccer would price at at launch?

7 A. Yes.

8 Q. So despite what you were telling Mr Patrick and
9 Mr Guest, you could not guarantee that there would be no
10 heavy discounting at launch?

11 A. That is correct.

12 Q. It follows further that if Sports Soccer were true to
13 form, they were going to discount at launch, were they
14 not, or there was a very high chance of it?

15 A. He certainly said that he would go at £32 if it suited
16 him.

17 Q. Yes. If there was heavy discounting by Sports Soccer,
18 JJB would follow?

19 A. Probably.

20 Q. Because of the very price war that you were trying to
21 stop?

22 A. Yes.

23 Q. And Allsports priced at 39.99 when in proximity with
24 Sports Soccer and JJB -- they would simply not make
25 sales, would they?

1 A. I think we have given lots of examples in the whole of
2 these written documents of why that is not true.

3 Q. It would have a massive impact on your sales?

4 A. We have given examples already of where we have sold out
5 at full price --

6 Q. Why were you trying to stop the price war in the first
7 place?

8 A. I really wanted it to be at £50. If we could. We were
9 buying 50,000 shirts, another £5 would have been
10 a quarter of a million of sales revenue, profit, pure
11 profit.

12 Q. If you did not stop the price war there was going to be
13 blood on the carpet?

14 A. There had been blood on the carpet.

15 Q. There had been, and you wanted to put a stop to it, and
16 there would be more blood on the carpet?

17 A. I have agreed to that.

18 Q. Yes. So I am suggesting to you that on this hypothesis
19 there is no agreement, heavy discounting would follow,
20 there would be a continuation of the price war and you
21 would suffer even more?

22 A. No. Because -- I have already explained to you about
23 the fact that a great number of our stores were not
24 actually in close proximity to Sports Soccer's; we have
25 talked about the numbers that overlapped. They only had

1 80 or 90 stores and some of them were more than 20 miles
2 from our nearest store.

3 This was actually going to be the biggest thing that
4 ever happened, so I was confident that demand would be
5 there at every level and that we would sell well at
6 launch --

7 Q. If you were confident that demand was going to be there
8 at level, this was the biggest launch, why are you
9 calling them in to get them to agree to stop the price
10 war?

11 A. I am not indifferent. There had been a price war all
12 year. We had already agreed that there was pressure on
13 us when there was heavy discounting. I wanted this to
14 be a successful, full-priced launch.

15 Q. Yes. Without that agreement it was going to be a less
16 than successful and not full-priced launch, was it not?

17 A. Without that agreement?

18 Q. Yes.

19 A. There was no agreement.

20 Q. Well, I am assuming at the moment that there is no
21 agreement on the basis of what you say and I am assuming
22 on the basis of this memorandum that if there was heavy
23 discounting Allsports would suffer?

24 A. I have tried to explain in the time that I have been in
25 the witness stand that Michael Guest and David Patrick

1 wanted to do different things to me in the business.
2 They wanted to be allowed to do their own thing, and
3 I was trying very strongly to influence them --
4 Q. Okay.
5 A. I am sorry.
6 Q. I interrupted your answer; carry on.
7 A. I wanted us to go preferably at £44.99.
8 Q. But the fact is that here you are writing a misleading
9 memorandum to Michael Guest and David Patrick to try to
10 get them to do something on pricing?
11 A. That is correct.
12 Q. On this assumption David Patrick and Michael Guest would
13 find out soon enough that there was no consensus, and
14 certainly by 1st August?
15 A. It has a lot to do with pricing at launch. We would be
16 getting posters and prices, pre-selling, taking
17 deposits. There is all sorts of activity that goes on
18 ahead of the actual launch. Getting shirts done with
19 Beckham's name on, or the stars.
20 A lot of this work we would be taking sales for
21 ahead of the actual launch date, therefore we wanted to
22 nail those sales, we wanted them in the bag -- all that
23 stuff I wanted to encourage to happen.
24 Q. But your concern would have been, as you say, that
25 Ashley would go to launch at £32, and Whelan or JJB

1 would react immediately at launch and beat that price,
2 and that is, in fact, partly what happened as we heard
3 yesterday in relation to England shirts in April 2003?

4 A. Yes. Except that we did not, we went out at full price
5 on that, we did not follow them down and we sold out.

6 Q. With a promotional offer?

7 A. No, no, no, no. You are getting the years mixed up.
8 That was the sunglasses last year. The two years we are
9 talking about we sold out at full price and made
10 a tenner a shirt more than we would have done. So we
11 operated that strategy before.

12 Q. What I suggest is this: the whole purpose of that
13 meeting was for there not to be discounting at launch?

14 A. Of Manchester United?

15 Q. Of Manchester United.

16 A. That was not the purpose of the meeting.

17 Q. As far as you were dealing with Manchester United shirt,
18 that was your concern: you wanted to stop the price war.
19 The price war had its most damage in the very first few
20 days at launch, with a lot of blood spilt?

21 A. I was concerned that we sold at the price that I wanted
22 to sell at rather than the price that our competitors
23 were offering. I knew that they were going to sell
24 a lots of shirts; it was important that we had the right
25 price on them.

1 Q. But that had nothing to do --

2 A. It had everything to do with it.

3 Q. So why then are you calling in Mr Ashley and Mr Whelan

4 to seek an agreement on the price of the Manchester

5 United shirt if you were indifferent to that?

6 A. I did not say I was indifferent to it. I said I knew we

7 would sell a lot of shirts on the full price.

8 The timing of the meeting, my seeking to create

9 the meeting, to put together the meeting, had more to do

10 with my dissatisfaction, the straw that broke

11 the camel's back in terms of the Predator boot.

12 Q. And you did not want to happen to the Manchester United

13 shirt what had happened to the Predator boot?

14 A. That is correct.

15 Q. And what had happened to the Predator boot was

16 substantial discounting by Sports Soccer --

17 A. Yes.

18 Q. -- which caused you on your account to suffer a loss of

19 £5 on every pair?

20 A. Yes.

21 Q. That was precisely the result that you were trying

22 avoid?

23 A. Yes.

24 Q. And that is why you had the meeting?

25 A. Yes.

1 Q. And the purpose of the meeting was that you did not want
2 either of them to discount at launch?

3 A. That was my intention in calling the meeting, yes.

4 Q. Yes.

5 A. Yes.

6 Q. So it makes no sense to write this memoranda saying
7 there has been no agreement, telling your executives to
8 raise the price when, on your story, if there was no
9 consensus there would be such heavy discounting on that
10 launch date that you would lose out again?

11 A. That sentence was a bit long for me. Would you repeat
12 it?

13 Q. I am suggesting that your account of why you wrote that
14 memorandum makes no sense.

15 A. It makes considerable sense to me.

16 Q. You are there instructing your senior executives to
17 price as a level in circumstances where there is likely
18 to be a price war between JJB and Sports Soccer at
19 a much lower level?

20 A. I did not know what was going to happen. What I was
21 going to ensure happened from Allsports' viewpoint was
22 that we did our normal thing and stuck to our guns.

23 Q. But if you were going to do your normal thing in any
24 event why have the meeting at all?

25 A. I think it is important to recognise that I had a new

1 chief executive who was far more wobbly-kneed, who had
2 far less bottle for retailing than I had this way.
3 Really the mistakes had been made or we had had
4 the problems early in his Allsports' career. He had
5 joined us in March and his inclinations were not my
6 inclinations.

7 Q. I am going to move on to the second memo in a moment.
8 You have already said that the purpose of the meeting
9 was to stop the discounting between JJB and
10 Sports Soccer.

11 A. Yes, ad nauseam.

12 Q. If you are now saying that they did not give a damn what
13 they priced at, that is entirely inconsistent with why
14 you set up the meeting in the first place?

15 A. I did not give a damn, but I have said to you that
16 David Patrick was far more weak-kneed than I was in most
17 of these matters, and I was determined that we should
18 hold our price.

19 Q. You did not need to have a meeting to do that?

20 A. The meeting -- are you talking about
21 the 8th June meeting?

22 Q. Yes. You did not need to have a meeting to seek to
23 agree prices to do that?

24 A. The meeting of 8th June I have said ad nauseam was on
25 a range of agenda items of which that was one. It did

1 not progress very far.

2 Q. I want to ask you about the second memorandum. Please

3 look at tab 10 --

4 MR COLGATE: Mr Morris, would you mind if I asked a question

5 on the memo?

6 MR MORRIS: By all means.

7 A. Yes, sir?

8 MR COLGATE: If you look at your statement, Mr Hughes, at

9 113 you say:

10 "Memos need to be understood in context. Mr Patrick

11 and Mr Guest were in California and non-contactable."

12 Do you see that?

13 A. Yes, sir.

14 MR COLGATE: If you now look at your memo, the one that

15 we have been talking about, it starts off by saying:

16 "I have already told you that JJB are going out at

17 39.99."

18 Yes?

19 Now those words imply to me that you would have

20 spoken to him on the telephone?

21 A. I had not spoken to him as far as I am aware.

22 MR COLGATE: How did you tell him then?

23 A. (Pause). The 8th June was a Wednesday. I think they

24 left on --

25 THE PRESIDENT: The 8th June was a Thursday.

1 A. I am sorry, sir. (Pause).

2 Sir, I cannot remember the answer to that. Or how

3 that was constructed.

4 MR COLGATE: Would you accept that based on that memo

5 the evidence would appear to show that you did speak to

6 them before you actually wrote the memo.

7 A. That says I have already told him, clearly it does.

8 Which implies speaking or writing. But I do not recall

9 speaking to him on the matter.

10 MR COLGATE: So you do not recall what you said.

11 A. I do not recall speaking to him, sir and I realise what

12 that says.

13 MR MORRIS: On that memo you went on to say:

14 "After speaking to Tom Knight this morning to

15 appraise him of that information, he then went on to

16 say ..."

17 Not only are you telling your executives what

18 happened, but you are saying that you told Tom Knight

19 that Sports Soccer would go out at 39.99?

20 A. Yes.

21 Q. Why did you say that in the memo?

22 A. Because Tom Knight had provided me with the answer to

23 the problem. It suited my purpose for them to believe

24 that 39.99 was going to be the price.

25 Q. There you are saying that you have told Tom Knight that

1 morning of the information.

2 A. That is what it says.

3 Q. That was true, was it not?

4 A. That I ...?

5 Q. That you had told Tom Knight that information?

6 A. No. I rang him to get a further opinion on what price
7 people were going to be launching at.

8 Q. Can we turn to the second memo.

9 In this memorandum you are making a positive
10 direction, directing Mr Patrick and Mr Guest to continue
11 any necessary dialogue?

12 A. Yes.

13 Q. Now, let us again look at the logic of what you are
14 saying, what you are now saying about this memorandum.

15 Assume, because this is your evidence, that there
16 has been no agreement on 8th June?

17 A. Yes.

18 Q. And assume that in fact David Patrick or Michael Guest
19 took you up on your invitation to ring, let us say,
20 Duncan Sharpe?

21 A. Yes.

22 Q. Right. Now, if one of them had rung Duncan Sharpe over
23 ensuing days as you are telling them to do while
24 you were in hospital then on your evidence Duncan Sharpe
25 would have turned round to Mr Guest and Mr Patrick and

1 said: I do not know what you are talking about; no
2 agreement was made as to the price at launch?

3 A. Yes.

4 Q. So Mr Guest -- let us assume it was Mr Guest who had
5 made that telephone call three or four days later --
6 would have found out there and there on 11th June that
7 your first memorandum was entirely untrue?

8 A. Yes.

9 Q. And your plan to mislead Mr Guest and Mr Patrick would
10 have been foiled immediately?

11 A. Yes.

12 Q. It makes no sense, does it. The suggestion --

13 A. The chances of David Patrick or Michael Guest phoning
14 either of those two gentlemen was nil.

15 Q. But it was a bit of a ... you are suggesting that they
16 should do it?

17 A. I know. But the chances were nil. When Michael Guest
18 gets here I am sure he will speak for himself, but I am
19 sure he will say that he has never, ever picked up
20 the telephone to either of those competitors.

21 Q. You are telling them to do so. There must be a chance
22 that they would for once in their lives follow your
23 instruction?

24 A. I thought I was doing an Alistair Campbell of a PR job,
25 that is what I thought I was doing --

1 THE PRESIDENT: What do you mean by that?

2 A. I thought I was putting a spin on the price that
3 I wanted to sell at without directly instructing them
4 and usurping their authority.

5 I know that Michael would have said that his overall
6 job was to deliver an overall margin in an overall year;
7 and that the pricing of a particular shirt or product
8 would be his tactical decision. That is what Michael
9 would have said, I am sure.

10 I take the different view that, provided we priced
11 at the top end and as expensively as we could, there was
12 a serious and measurable amount of money to be made on
13 this launch.

14 MR MORRIS: Can I take you back to my question of the logic
15 that you are saying there which I suggest makes no
16 sense.

17 If you are telling Mr Guest and Mr Patrick that
18 there is a cartel with a competitor when there is not in
19 fact any such cartel, you do not tell them to ring
20 the competitor in question, do you?

21 A. It seemed sensible at the time. You have to remember,
22 I was in extreme pain. Extreme pain. It seemed --

23 Q. But it makes --

24 A. It seemed smart at the time.

25 Q. But I am suggesting to you that it just does not add up?

1 A. It seemed to me to be a sensible strategy to persuade
2 them to go and price tactically at 44.99 and 39.99,
3 because that is what the memo says.

4 Q. I am suggesting to you that your explanation for these
5 memoranda which plainly record the fact that you knew
6 that Sports Soccer were going to price at 39.99, your
7 explanation that this was a deliberate plan to mislead
8 make no sense whatsoever?

9 A. And I disagree with you.

10 Q. I asked you about your conversation in the previous memo
11 with Mr Knight ...

12 Sorry, I am not going to ask that.

13 A question about the memoranda. When you wanted
14 something particularly to be done by Mr Guest or
15 Mr Patrick, you wrote one of your do it now memos, did
16 you not?

17 A. Mr Patrick was referring to a rapid response memo, which
18 had a deadline on it for a reply. So that if I memo'ed
19 him today about something that I wanted an answer on as
20 opposed to doing -- if I wanted it then I would say
21 "respond by 8 am on Monday morning".

22 A rapid response memo this is not.

23 Q. In fact this memo is not one of those memos?

24 A. That is true.

25 Q. You say that you wrote the memo in order to make them do

1 what you wanted them to do, because you could see no
2 other way of getting them to do that to strengthen your
3 resolve?

4 A. Yes.

5 Q. But you did not use one of your rapid response memos?

6 A. Rapid response memos have a different function. This
7 did not require action instantly. This shirt was not
8 coming in for probably another five or six weeks. It
9 would have to be tagged and priced. This was all some
10 distance ahead or some time ahead of the actions that
11 were going to be taken.

12 Q. Mr Patrick says, does he not, that this memo was not one
13 of those do it now types of memo?

14 A. I am not sure what you are referring to.

15 Q. Can I take you to witness statement bundle 2, page 265,
16 paragraph 46.

17 A. Okay.

18 Q. He says:

19 "Notwithstanding David's view, Michael Guest and
20 I took the decision during the meeting to stay at
21 the selling price all around the country. Memo was not
22 one of the do it now memos ... this was more of a memo
23 written for information with the final decision being
24 left to us."

25 A. Okay.

1 Q. But you are saying that you are writing this
2 deliberately misleading memo to make sure they do what
3 you wanted them to do?

4 A. To influence them. I have said that I am bending over
5 backwards to influence them without outright instructing
6 them.

7 Q. I am suggesting to you that if you were really seeking
8 to make them follow your instructions because they were
9 not as strong as you on the high price point, you would
10 have written one of your do it now memos?

11 A. No.

12 Q. Mr Hughes, your explanation in your witness statement
13 for these two memoranda is nonsense, is it not?

14 A. I do not think so.

15 Q. This explanation about the deliberately misleading
16 nature of the memoranda is that they were written
17 effectively as a lie -- you say so yourself?

18 A. Yes.

19 Q. To mislead your own senior executives. That information
20 has been given for the very first time when you wrote
21 your witness statement in September 2003?

22 A. Everything was given for the very first time then.

23 Q. You never mentioned anything about this in Allsports'
24 response to the Office of Fair Trading?

25 A. My response of September 2003 was my first response.

1 Q. That was your first witness statement response, but your
2 company has responded to these memoranda before, in
3 written representations presented to the Office of Fair
4 Trading, and those written representations are materials
5 which were produced based on information provided by
6 you.

7 Can I take you to C5, tab 60. This is your ... it
8 is, in fact, also in the little bundle, but I will take
9 it in C5 if people have that ready to hand. This is
10 cross-examination bundle 11.

11 THE PRESIDENT: Yes. It is better to go to the full
12 document, I think, Mr Morris.

13 MR MORRIS: It is 1752, this is a document I took you to
14 earlier, Mr Hughes.

15 A. Yes.

16 Q. You are responding to paragraph 51, or your company is
17 responding to paragraph 51 of the supplementary Rule 14
18 notice. And you are dealing with the 9th June
19 memorandum. It says:

20 "Allsports would assert that the memo of 9th June is
21 an internal document aimed at agreeing internally
22 a strategy of dual pricing which would address
23 principally the known strategy of JJB by making use of
24 known facility at the time ...

25 As regards Sports Soccer and the inconclusive nature

1 of the 8th June meeting, Allsports believes that
2 the view expressed in the note as to Sports Soccer's
3 strategy would have been guesswork."

4 A. Yes.

5 Q. Well, there is no mention there of the memoranda being
6 a device to deliberately mislead your executives, is
7 there?

8 A. Sorry, why does there need to be?

9 Q. Because that is a different explanation from
10 the explanation now being given by you in your witness
11 statement.

12 A. I do not think so. I think the overriding thrust of
13 memorandum 700 is to persuade them to tactically price.

14 Q. But there is nothing there, no reference there to
15 the fact of it being untrue.

16 Let me just ask you about your suggestion that it
17 was guesswork?

18 A. Yes.

19 Q. Let us assume there was no agreement, and let us assume
20 that at the time you wrote this memorandum you decided
21 to guess the price that Sports Soccer would go out at at
22 launch?

23 A. Yes.

24 Q. You would not have guessed 39.99, would you?

25 A. (Pause).

1 Q. On everything --

2 A. By that you mean that I would have -- you are not
3 putting words in my mouth -- that I would have expected
4 Sports Soccer to discount?

5 Q. Yes.

6 A. I have tried to explain to you that this was the biggest
7 thing that would ever happen in replica launches, and
8 that therefore there was profit to be made. I would
9 reasonably expect a good chance that Sports Soccer might
10 recognise that opportunity too.

11 Q. But knowing Mike Ashley as you do and did and assuming
12 that no agreement was made and assuming further at that
13 time that Mike Ashley had said: I am going to go at
14 32.99 --

15 A. No, he said he might: I will do what suits me.

16 Q. Yes. Your guess as to what Mike Ashley would have done
17 would have been that he would discount?

18 A. Yes.

19 Q. And so the suggestion that the 39.99 figure was merely
20 guesswork is simply wrong. That explanation does not
21 work either, does it, Mr Hughes?

22 A. I do not think I understand that.

23 Q. You say:

24 "The view expressed as to Sports Soccer's strategy
25 would have been guesswork."

1 So on that explanation you do not know that he is
2 going to go out at 39.99, and what you are saying there
3 is that that reference to 39.99 in that memorandum on
4 8th June was my best guess as to what Sports Soccer
5 would price at?

6 A. I think I said somewhere that I hoped that I had
7 influenced him, but I did not have any great hope that
8 I had done.

9 Q. You have agreed with me that your best guess that you
10 would have made would have been that he would discount?

11 A. If I had to bet my life on what he would do, I would
12 think that he would discount.

13 Q. If Mike Ashley -- you said earlier that he came to poke
14 a stick at David Whelan and destabilise the population?

15 A. Yes.

16 Q. If Mike Ashley came to the meeting to do that, how could
17 you know he would go out at 39.99?

18 A. I did not know that he would go out at 39.99.

19 Q. How could you even guess that he would?

20 A. I have tried to explain that I wanted to persuade my two
21 senior executives to price at the maximum where we
22 could. And that was my way of persuading them.

23 Q. The fact is that what you say in your first memorandum
24 shows quite clearly that you knew that Sports Soccer
25 would price at 39.99 on launch?

1 A. I disagree completely.

2 Q. And the only possible way out for you now is for you to
3 say that what you said in that memorandum was
4 a deliberate lie?

5 A. I agree that the line that I took was to mislead my
6 executives.

7 Q. What I am saying to you is that in fact what is recorded
8 in that memorandum is true, is it not?

9 A. No, it is not.

10 Q. Can I move on from there.

11 THE PRESIDENT: How are we getting on, Mr Morris?

12 MR MORRIS: We are getting there. It is difficult to say.
13 I am moving as fast as I can. Perhaps 25 minutes.

14 THE PRESIDENT: Let us press on, then.

15 MR MORRIS: I am trying to. Just one further question. At
16 page 158 of the transcript of this afternoon you said:
17 "We knew from time immemorial [talking about JJB's
18 price] that that was the price, 39.99. I knew he was
19 not going to go above £40."

20 A. That has been well documented throughout this tribunal.

21 Q. Yes, but the price war had been running earlier that
22 year and in the autumn of 1999 as well?

23 A. Yes.

24 Q. So your fear was that the two big players would discount
25 against each other at launch?

1 A. Yes.

2 Q. And for all you knew they both could have done that?

3 A. Yes.

4 Q. Thank you. Can I just go back to the second memo, where
5 you refer to a continuing dialogue with Sports Soccer.
6 Can I ask you to keep C5 open and look at the written
7 representations in response to the supplementary Rule 14
8 notice and at 1749, at the bottom of 1749 -- I think
9 actually we have been to the beginning of this
10 paragraph before this morning.

11 It says:

12 "I believe a loose general reference to a meeting
13 more often would at most have been part of the initial
14 exchange of pleasantries ... and was not a serious
15 comment. Allsports would point out that no follow-up
16 meeting was discussed. Any such meeting would have been
17 recorded in David Hughes's diary. He is a man who lives
18 by his diary, and there is no such record. Allsports
19 would reiterate that this meeting was a unique and
20 isolated event. No other such meeting took place, and
21 the OFT has not alleged that there was any other such
22 meeting or contact between those parties."

23 A. Yes.

24 Q. When you said a meeting there, did you mean a meeting in
25 the sense of a physical meeting or any kind of contact,

1 there was no follow-up meeting?

2 A. There was not any follow-up meeting.

3 Q. Nor any follow-up contact?

4 A. There was not any --

5 THE PRESIDENT: Is it suggested that there was, Mr Morris?

6 MR MORRIS: I am coming to that if I may, sir.

7 Did you subsequently phone or contact Mike Ashley?

8 A. After 8th June?

9 Q. No -- well, yes, after the 8th June, about

10 the Manchester United shirt?

11 A. No.

12 Q. Launch of the MU kit was on 1st August, was it not?

13 A. Yes.

14 Q. If you would like to go to the diary, and if

15 the tribunal would go to the thin cross-examination

16 bundle, at tab 7, and go to the entry for August 14th.

17 If the tribunal and everybody would keep their

18 thumbs at tab 12 of the same bundle.

19 A. Okay.

20 Q. What we have on August 14th is a series of entries with

21 various crossings-out, and we have some black marker pen

22 crossing out, and the second crossing out has writing

23 underneath it. If you go to tab 12 --

24 A. I agree that is what it says.

25 Q. It says:

1 "Phone Mike Ashley to review Man United launch and
2 other issues."
3 A. Yes.
4 Q. So in fact as at 14th August you were ringing, or at
5 least planning to ring --
6 A. Contemplating to ring.
7 Q. -- Mike Ashley two weeks after the Manchester United
8 launch?
9 A. Yes.
10 Q. And you say that the purpose of the launch was to review
11 the --
12 A. The purpose of the phone call.
13 Q. The purpose of the phone call was to review the MU
14 launch?
15 A. Well, it says something else, does it not?
16 Q. "and other issues"?
17 A. Yes.
18 Q. If as you say there was no consensus reached with
19 Mike Ashley at the 8th June meeting about the Manchester
20 United launch price there could be nothing to review,
21 could there?
22 A. There was nothing to review about that issue.
23 Q. Well, it says "review Manchester United launch"?
24 A. Yes, it does.
25 Q. What were you reviewing in relation to the Manchester

1 United launch?

2 A. Let me say firstly that Mr Ashley, the chief protagonist
3 in this, makes no suggestion that I ever contacted him
4 again at all subsequently. Mr Ashley does not allege
5 that I contacted him because I did not.

6 The purpose of that diary note initially was because
7 I was contemplating selling the business to Mike Ashley.
8 I had had a torrid time on every front, and it looked
9 like Mike Ashley was the only game in town.

10 So that is why I carefully couched the words "and
11 other issues".

12 You will be aware that there are six or seven
13 further references to Mike Ashley all the way through
14 the next six weeks to three or four days earlier than
15 September 29th. In your willingness to point out
16 Mr Ashley and his presence in my diary, what you omitted
17 to point out was September 23rd. You pointed it out but
18 you did not point out the reason for the meeting.

19 Q. Yes.

20 A. Because on Friday, 23rd September I will draw your
21 attention to Manchester United versus Chelsea, 11.30.
22 It is a guest list. Number one says Mike Ashley.

23 Because in that period of three or four days I had
24 had a brief conversation with Michael Guest, my buying
25 director, and I had said to him: maybe, you know, we

1 ought to be doing some business with Mr Ashley; he is
2 a bigger fish than we had previously been aware of.

3 I asked Mr Guest to contact Mr Ashley. We found out
4 that which we did not previously know, which was that
5 he was a Chelsea fan, and we invited him to the Chelsea
6 game. That is why he is number one on a list of six
7 people; there were six seats at the table.

8 Michael Guest to my recollection made that
9 invitation -- I cannot be absolutely sure -- Mr Ashley
10 was invited but either did not show on the day or cried
11 off with only an hour or two to go before the game on,
12 which was an 11.30 on Saturday morning. That is what it
13 was about.

14 Q. I hesitate to interrupt you but if we can just come back
15 to the point. It is not in issue that there are further
16 entries in your diary, 14 I believe, after that date and
17 up to 2nd October when you have the words "phone Michael
18 Ashley"?

19 A. Yes.

20 Q. That is entirely common ground. And it is also common
21 ground that there is a reference on
22 the 23rd September about the Manchester United/Chelsea
23 game; that is not in dispute.

24 What I am asking you to do is to go back to
25 the 14th September. I am suggesting to you that if

1 there had been no agreement reached on 8th June about
2 the Manchester United shirt launch price, there could
3 have been nothing to review on 14th August.

4 What I am suggesting to you is that the words
5 "review Manchester United launch" is a reference to
6 reviewing the agreement that had been made about
7 the price?

8 A. No, it was not. It was a code that was better than to
9 write: phone Mike Ashley and contemplate selling
10 the business. Which is something I would not really
11 want in my diary.

12 Q. I will not take you to them but all the other
13 references, the 14 of them, to Mike Ashley just say:
14 phone Mike Ashley?

15 A. I think I knew what the purpose was for phoning
16 Mike Ashley. Every time I nearly did it, I could not
17 quite -- I had not quite emotionally detached myself
18 enough from the business actually to be prepared to do
19 it. So I backed off every time.

20 THE PRESIDENT: So in the end you did not --

21 A. I never spoke to Mike Ashley at any time after
22 June 8th until I accidentally bumped into him in Dubai
23 at the end of October.

24 MR MORRIS: So are you suggesting that the words to review
25 Man United launch was code for selling the business to

1 him.

2 A. Yes.

3 Q. And the other issues?

4 A. The whole thing, Man United and other issues, it was

5 a code.

6 Q. It was just a code?

7 A. Yes.

8 Q. You did not use that code in any other diary entries

9 thereafter, did you.

10 A. I think that is a perfectly satisfactory answer.

11 Q. Why would you want to use a code? You did not use

12 a code with "arrange sports cartel" in the diary, did

13 you?

14 A. You have not asked why I blanked it out either.

15 Q. I have not.

16 A. I can tell you.

17 Q. Can you answer the question I asked you and then deal

18 with that?

19 A. Okay.

20 Q. Why would you wish to use a code when you were thinking

21 about selling the business --

22 A. I think this is an astonishingly naive question. I do

23 not think it is something I would put in the diary, I do

24 not think anybody would do that.

25 Q. You did not need to use a code; you could just put

1 "phone Mike Ashley"?

2 A. That was the intention of it.

3 Q. And you were not bothered initially about writing

4 "sports trade cartel" in the diary, were you --

5 A. And I never struck out "sports trade cartel" --

6 Q. You did three days later.

7 A. It was not obliterated.

8 Q. It was not obliterated but it was struck out three

9 times. Let us look at the reasons for the black marker.

10 The entry of 14th August and all those other entries,

11 and there are other entries as well, was an attempt to

12 make them deliberately illegible, was it not?

13 A. Yes.

14 Q. Why were you trying to conceal the 14th August entry

15 which refers expressly to "review Manchester United

16 launch" if no agreement had been reached?

17 A. I do not know how many times I have to answer

18 the question. I have told you three or four times

19 the reason for that.

20 THE PRESIDENT: Just tell the tribunal once more, Mr Hughes,

21 specifically in relation to 14th August.

22 A. It was a coded reference to make contact with

23 Mike Ashley to discuss the possible sale of the business

24 to him.

25 THE PRESIDENT: And the reason that you obliterated it

1 was ...?

2 A. Because, sir, there were two series of obliterations
3 that happened and they only concerned two issues.

4 One was the possible sale of the business to
5 Mike Ashley, which I think I obliterated. It occurs six
6 or seven times, though I will be corrected as to how
7 many times. The only other obliteration was to say "no
8 booze day". Because I was drinking heavily at the time
9 and there were four or five references striking out "no
10 booze day". Those two items I considered those nobody's
11 business but mine when I was about to hand in the diary
12 to my lawyers.

13 MR MORRIS: When did you obliterate those entries with the
14 marker pen?

15 A. Prior to handing the diary over to Adam Aldred.

16 Q. When did you hand the diary over?

17 A. Adam will advise about that. (Pause).

18 I cannot immediately remember. It is a matter of
19 record; I am sure it can be checked.

20 THE PRESIDENT: Do you recall whether it was after the OFT
21 decision?

22 A. Of September 2003?

23 THE PRESIDENT: Yes, the OFT decision was 1st August 2003.

24 A. Oh, it was way before then. Way before then.

25 Well, Adam will ...

1 THE PRESIDENT: We can no doubt confirm that.

2 MR MORRIS: Can I ask you about the code you say you used.

3 Why would you use the code "review MU launch" as being

4 code for possibly selling your business to Mike Ashley?

5 A. Because I had had a meeting with Mike Ashley about

6 pricing Man United. That is the only meeting that I had

7 had with him on that.

8 Q. On that --

9 A. When that subject was covered.

10 Q. What is the connection between that meeting and a desire

11 to sell your business to Mike Ashley?

12 A. I have told you, it was a code. It was a code. It made

13 sense to use those words, right? I had had a discussion

14 with him about Man United pricing. It seemed to me that

15 "Man United and other issues" was a nice little code.

16 You know, it prompted a thought.

17 Once the thought was prompted on a regular basis and

18 registered, I did not have to do it every time.

19 THE PRESIDENT: Yes.

20 MR MORRIS: I am going to move on now.

21 We know that you were very concerned about the price

22 of the Man United shirt due for launch on 1st August.

23 THE PRESIDENT: Where are we going now, Mr Morris?

24 MR WEST-KNIGHTS: Could Mr Guest go now, I should think he

25 is pretty disgruntled.

1 THE PRESIDENT: Let us hang on a moment, Mr West-Knights.

2 MR MORRIS: Just a few more questions and we will see where
3 we are going, if I may.

4 You were very concerned about the Manchester United
5 shirt due for launch, the pricing of it.

6 A. Yes.

7 Q. It was a premium product?

8 A. Yes.

9 Q. It was a key selling period?

10 A. Yes.

11 Q. It would sell very well in that key selling period?

12 A. Yes.

13 Q. And your concern was that if others discounted you would
14 lose volumes or it would in some way adversely affect
15 your business?

16 A. That was a possibility. But I have also said that we
17 had been very successful in standing our ground on price
18 and selling out. And that is what I was keen to do.

19 Q. It was nevertheless a concern for your business,
20 the price of the MU shirt?

21 A. I would not have called a meeting if it was not
22 a concern.

23 Q. Can we turn to the England kit of Euro 2000, and if we
24 go to your witness statement at paragraph 60-63 at
25 page 302.

1 You say:

2 "I was not paying any particular attention to our
3 competitors' prices on England shirts."

4 You might want to read 60 and 63. (Pause).

5 A. Yes.

6 Q. In summary, your evidence is that you were not concerned
7 about the price of the England shirts for the period
8 leading up to and during Euro 2000?

9 A. That is correct. We sold out.

10 Q. But if you were concerned about the Manchester United
11 kit price, it makes no sense that you would not be
12 equally concerned about the price of the England kit and
13 discounting at the time of the year in 2000?

14 A. The England shirt was not a new launch; it was not as
15 big a launch. Man United was something very special:
16 a whole new sponsor on a shirt. We were very
17 comfortable with our rate of sale of England shirts.

18 Q. But a major European football tournament is just as
19 significant a selling period as a launch date?

20 A. Yes, it is. And we have produced evidence from our
21 buying reports to show that we sold out at full price.

22 Q. Mr Whelan said in his evidence that England was a bigger
23 shirt than Manchester United?

24 A. I do not know about that. I do not know that he gave
25 that evidence and I am not actually sure what the ratio

1 is in our own business. They are both big.

2 Q. Let us just look at your apparent lack of concern in
3 a bit more detail.

4 From Allsports' business perspective Euro 2000 was
5 one of the three major sporting events of that year?

6 A. I am sorry, is this in the statement --

7 THE PRESIDENT: What is the question, Mr Morris?

8 MR MORRIS: The question is: Euro 2000 was one of the three
9 major sporting events; do you agree with that statement?

10 A. The Olympics would be the second one. Tell me what
11 the third is and I will agree to agree with you.

12 Q. From Allsports' perspective Euro 2000 was a very
13 important event?

14 A. Yes.

15 Q. And of those events Michael Guest said that he would
16 like to focus on Euro 2000 from a business perspective?

17 A. If there is somewhere I can read this --

18 Q. I am trying to save time by asking you to agree. It is
19 a very straightforward proposition?

20 A. Euro 2000 was very important to us.

21 Q. And for that reason sales of the England shirt in
22 the lead up to Euro 2000 were also important to you?

23 A. Yes.

24 Q. And the peak of the sale was expected to be the week
25 before the tournament began?

1 A. Is this somebody else's statement?

2 Q. I am asking you a question --

3 A. The peak is when the games start playing in my
4 experience, and I think the buyers say that.

5 Q. If you disagree please say so --

6 A. I do not have the facts in front of me, but I think
7 I disagree. I think the peak is the sort of three-week
8 period, the week immediately before and the first two
9 weeks of.

10 Q. In paragraph 60 of your witness statement for the record
11 you say:

12 "The peak of sales was yet to happen in the week
13 before the tournament was to begin and as press interest
14 was reaching a frenzy."

15 A. That is exactly what I have just said.

16 Q. As a result, you decided Allsports would run a special
17 promotional campaign from 17th May known as "All Summer
18 All England"; yes?

19 A. I do not remember that.

20 THE PRESIDENT: Where do we get that, Mr Morris?

21 MR MORRIS: If we go to tab 15 of the cross-examination
22 bundle. And tab 16. These are just examples of
23 the marketing minutes:

24 "all summer all England, 14th May."

25 That is a promotional word in your shops, is it not?

1 A. It is a plan. It might well have changed before we got
2 there, because that is 29th March. We changed
3 the marketing plans on a daily basis. So I would need
4 to check.

5 Q. But the broad proposition is that you were running
6 a special promotional campaign known as all summer all
7 England, and it centred on Euro 2000, and you will see
8 the reference to a subsidiary window display, dedicated
9 to all England, Beckham and Owen?

10 A. Okay, yes.

11 Q. There had been a lot of volatility in the price of the
12 England shirt since its launch April 1999.

13 A. (Pause).

14 Q. Do you agree with that?

15 A. I am not at all sure that I do. If you will give me
16 the reference ...

17 Q. The proposition is that Sports Soccer had discounted to
18 £28 in September 1999 and was selling it at £32 at
19 the start of April 2000.

20 A. I do not know. You are quoting things that I have not
21 said --

22 Q. I am asking you whether you can now recall that there
23 was a lot of volatility in the price of the England
24 shirt from its launch in April 1999 to the start of
25 April 2000?

1 A. There had certainly been discounting by Sports Soccer.
2 I cannot remember the prices and I cannot remember
3 the months. But there had been.
4 THE PRESIDENT: Mr Morris, just stop a moment.
5 Are you feeling all right, Mr Hughes?
6 A. I am perfectly well, sir. Physically I am fine.
7 THE PRESIDENT: I do not want you to feel that you have to
8 gallop, Mr Morris, and I think you were feeling that.
9 MR MORRIS: I was, sir.
10 THE PRESIDENT: Mr Guest, I think the moment has come to say
11 that we will not be able to get on to your evidence
12 tonight. I am sorry. It is probably of interest to you
13 to watch the proceedings anyway. We will need you again
14 early next week.
15 MR MORRIS: I am grateful for the galloping indication.
16 I will move down to a trot.
17 THE PRESIDENT: Well, perhaps a canter.
18 MR MORRIS: We were talking about the discounting of
19 the England shirt from its launch in April 1999 to April
20 2000 .
21 A. Yes.
22 Q. Sports Soccer had discounted and I was asking you to
23 agree with that as a general proposition?
24 A. I am not being difficult. I cannot agree that because
25 I have not looked at the facts closely enough. If you

1 want to present me with something and to say: this is
2 your report. Then I will probably agree it.

3 Q. It should be in everybody's tab 17. (Handed). There are
4 some representations; there is also a table.

5 THE PRESIDENT: No table with us.

6 MR MORRIS: I do apologise, sir. E3/98/10 for everybody's
7 record.

8 MR WEST-KNIGHTS: Now that we have looked for it, sir, it is
9 in fact at tab 1 of my learned friend's
10 cross-examination bundle.

11 THE PRESIDENT: Tab, 1, okay, we have found it.

12 MR MORRIS: No, it is not that one.

13 MR WEST-KNIGHTS: Oh, sorry.

14 MR MORRIS: Can we go back to E3/1968. It is not a very
15 clean copy. What we had hoped for, which we do have,
16 was a cleaner copy, but it has not found its way into
17 the bundles.

18 These are Sports Soccer's prices for the England
19 shirt. I am afraid this is where my eyesight lets me
20 down.

21 You will see from that in the middle big box, it is
22 the England home shirt first sold 19/4/99. The MRP at
23 that time was 49.99. Their sale price --

24 A. I do not agree that there was ever a 49.99 price for
25 England shirts, ever.

1 Q. The third sale price shows that they sold in April 1999
2 at £40. Then you will see that on 28th September 1999
3 they went down to £28. --

4 A. Sorry, I cannot see a 20th September in here.

5 THE PRESIDENT: It is very difficult to follow this, I am
6 afraid, Mr Morris.

7 MR MORRIS: I am just putting the proposition.

8 THE PRESIDENT: Well, we can make an effort.

9 MR WEST-KNIGHTS: I genuinely cannot read it.

10 MR MORRIS: The proposition is that it was first sold by
11 Sports Soccer on 19th April 1999 at £40. £49 is
12 the recommended price. The box first sell price is £40.

13 A. I can see that.

14 Q. There is then you will see a table, amended price,
15 a column, amended price. The first one is £28, and
16 against that is 28th September 1999 -- and then they go
17 to £39.99 on 2nd June?

18 A. Yes, I can see all of those figures.

19 Q. The proposition is that that is what was happening at
20 that time in relation to Sports Soccer's pricing of
21 England?

22 A. That is their internal documentation?

23 Q. It is what they have provided to the Office of Fair
24 Trading and you have no reason to think it is correct?

25 A. No.

1 Q. Blacks had also discounted the England shirt to £29.99
2 October 199, and they had also gone to £32.99?
3 A. Yes.
4 Q. At some point Blacks also discounted to £36.99 in their
5 stores in the south-east; do you remember that?
6 A. I remember the point being made. Yes, I do remember
7 that somewhere in the information, yes.
8 Q. You would have known about that, would you not, at
9 the time, if Blacks had discounted to £36.99 --
10 A. I think we made a reference that we did know about it
11 and were concerned about it, if I remember rightly.
12 Q. I am asking from your recollection now whether you can
13 remember Blacks discounting in the south-east stores?
14 A. I remember reading about it in the reports; I do not
15 remember it at the time.
16 Q. If that had happened, it is likely that you would have
17 discussed that with Chris Ronnie, is it not?
18 A. No.
19 Q. It is not likely?
20 A. Sorry, do you mean at the meeting of 2nd June?
21 Q. No, at any time. At the time that Blacks discounted to
22 36.99 in their stores in the south-east, my first
23 question is: it is likely that you would have known
24 about that?
25 A. I do not speak generally to Chris Ronnie about anything

1 in connection with business. With the exception of that
2 meeting of 2nd June and the setting-up of that meeting,
3 that was my own contact with Chris Ronnie so far as I am
4 aware.

5 Q. I am asking you whether you did discuss
6 Blacks' discounting of the England shirt in the
7 south-east stores with Chris Ronnie?

8 A. I do not think so.

9 Q. The discounting of the England shirt that was going on
10 at that stage -- and I have given you the Sports Soccer
11 and the Blacks position generally -- that discounting
12 would have had an effect on Allsports' volume of sales?

13 A. We sold out of that shirt before the end of
14 the tournament. We have given you the figures. We
15 produced our buyer's guide.

16 Q. Can you go to the cross-examination bundle 18. This is
17 a market minute of 10th April.

18 A. I have it.

19 Q. And we have the heading "All Summer All England", which
20 is again the same promotion?

21 A. Yes.

22 Q. And underneath that you have plan B:

23 "It was decided to have a contingency plan in case
24 we failed to make the budget."

25 A. Yes.

1 Q. " ... agreed to have a price for a generic promotion."
2 A. Yes.
3 Q. And you agreed to have posters printed on a provisional
4 basis for a price promotion of 50 per cent off to start
5 to 2nd May.
6 A. Yes.
7 Q. That would suggest --
8 A. That is not to do with England.
9 Q. This is the all summer all England --
10 A. I would rather read that as "All Summer". We were going
11 into a full price promotion, all summer, which if it
12 were not successful we might do something different. It
13 was nothing to do with England. England was a secondary
14 window at that time.
15 Q. Had you failed to make budget, that promotion would have
16 applied across the board?
17 A. It would not have applied to England or any replica
18 shirt during the course of June 2000.
19 Q. This is a 50 per cent off --
20 A. I understand what it is.
21 Q. And it would not have applied to any replica kit?
22 A. It would not have applied to any soccer replica kit
23 during the tournament.
24 Q. Very well. The next proposition is that discounting of
25 the England shirt did, in fact, have an effect on

1 Allsports' volume of sales?

2 THE PRESIDENT: Where do you want us to go?

3 MR MORRIS: I am asking the witness first to answer

4 the question.

5 A. I have told you that we were happy, we have recorded

6 many times that we were happy with the level of sales in

7 April and May and the joy in June while England were in

8 the tournament we effectively sold out and we did not

9 reduce the price of England I think until we were then

10 into an end of range cycle in October of that year.

11 Q. But that was at the end of the tournament, when England

12 came out of the tournament --

13 A. We did not reduce the price there.

14 Q. No, you did reduce your price, and you sold out in the

15 end. I am suggesting to you that the discounting that

16 was taking place in the lead-up before 2nd June was

17 having an effect on Allsports' volume of sales?

18 A. We did not change our price.

19 Q. You were holding back on orders for England shirts?

20 A. I think we have already documented that.

21 Q. You were holding back on orders for England shirts?

22 A. We were managing our stock coming in, yes.

23 Q. And you were doing that as late as 5th June?

24 A. I do not think I have given a statement to that nature.

25 That might well be possible.

1 Q. If you go to the Umbro monthly management report, which
2 is tab 19, and if you go to 233 first. You will see
3 that is written by Mr Masters, the financial control of
4 Umbro?

5 A. Yes.

6 Q. If you go to the previous page, you will see four
7 paragraphs down:

8 "Allsports account for the majority of the unshipped
9 England orders, approximately 1 million. Booking-in
10 dates have now been agreed for 75 per cent of
11 the outstanding value."

12 A. Yes.

13 Q. What I am suggesting to you there is that before that
14 stage when everybody went to 39.99 on 2nd June your rate
15 of sales was slow and you were not taking the orders in?

16 A. Not as high as expected, presumably.

17 Q. Yes, so it was having an impact on your volumes of
18 sales?

19 A. No, not as high as expected. Buying is a difficult art,
20 getting the numbers right. Forecasting is a difficult
21 art. And we have well documented that we made
22 cancellations, when our rate of sale on every other of
23 our business -- when the rate of sale did not come up to
24 expectation.

25 I have not seen this before, I have not been asked

1 to read it. It sounds to me as though we did a pretty
2 good job. It sounds to me like we took 75 per cent of
3 the balance of the order.

4 Q. By that time, 5th June --

5 A. The tournament had not started.

6 Q. No, the price was going to go up. What I am
7 suggesting --

8 A. You have to look at the buyer's guide for the last
9 Saturday in May and the first June to judge our sales to
10 make that call.

11 Q. I am suggesting to you that the rate of sale of
12 the England shirts was affected by discounting?

13 A. No.

14 Q. If you go to your witness statement at paragraph 71, you
15 state there, at page 304, that one of the things you
16 discussed with Chris Ronnie on 2nd June, other than
17 the usual pleasantries and the golf day and a general
18 chat -- you say you discussed the rate of sales of
19 England shirts?

20 A. Okay.

21 Q. And I am suggesting to you that the reason you were
22 discussing the rate of sale of England shirts was
23 because Sports Soccer was still discounting?

24 A. No.

25 Q. You have returned from holiday on the --

1 A. Can I say we have provided Umbro with a printout every
2 week with the rate of sale, as we did with all the major
3 suppliers. They knew very clearly without meeting up
4 with me. There was a lot of information provided to all
5 the suppliers about the rates of sale.

6 Q. On that very same day you telephoned Mr Ashley?

7 A. Just rephrase that question?

8 Q. On that very same day, 2nd June, you telephoned
9 Mr Ashley?

10 A. Well, we have agreed that. I got the number of
11 Chris Ronnie at the Friday meeting, and I phoned him.

12 Q. And that was wholly to do with the Man United agreement?

13 A. I do not know how many times we have to say this. That
14 was to set up the meeting to discuss blood on
15 the carpet.

16 Q. Very well. You return from holiday on 16th May, find
17 out what Sports Soccer have been doing in relation to
18 the Predator boot?

19 A. Yes.

20 Q. You must have known that there was a strong likelihood
21 that Sports Soccer would be discounting the England
22 shirt during Euro 2000?

23 A. They had a history of discounting all replica kits.

24 Q. I am suggesting to you that you for one would have been
25 pleased to know if Sports Soccer had decided not to

1 discount?

2 A. Yes.

3 Q. In fact Sports Soccer was selling the England shirt at
4 a discount until 2nd June, they implemented their change
5 overnight on 2nd June?

6 A. Yes.

7 Q. Prior to 2nd June, it is most unlikely that Mr Ronnie
8 would have told you that Sports Soccer was in fact
9 discounting, because it was not news, was it?

10 A. There was not any discussion about this on 2nd June.

11 Q. No, I am saying to you that it is very unlikely that
12 Mr Ronnie or anyone else at Umbro would have told you
13 that Sports Soccer in fact was discounting?

14 A. I organised the meeting with Chris Ronnie, I invited him
15 to come and see me. It was not the other way round.

16 Q. It is also the case that prior to that date neither
17 Chris Ronnie nor anyone at Umbro would have told you
18 that Sports Soccer had stopped discounting, would they?

19 A. I did not have conversations about this sort of thing
20 with anybody at any of the brands. It was not my job.

21 Q. So you did not speak to Chris Ronnie at all?

22 A. Oh, dear!

23 THE PRESIDENT: Where are we going, Mr Morris?

24 MR MORRIS: I am trying to deal with the question of
25 the England shirt, to deal with paragraph 59 of

1 the witness's statement at page 301, where he says:

2 "I definitely did not receive a call or any other
3 contact from Chris Ronnie or anyone else at Umbro some
4 time after 24thd May asking me to agree the retail price
5 of the England shirts. Nor do I have any reason to
6 think that David Patrick, Michael Guest or anyone else
7 at Allsports might have been contacted."

8 A. That is correct.

9 Q. "... our declared strategy was always to get
10 the maximum"?

11 A. That is correct.

12 Q. And then you say:

13 "Nor for that matter did Chris Ronnie or anyone else
14 at Umbro tell me ..." --

15 A. Sorry, you have lost me.

16 Q. The bottom of that paragraph, three lines up:

17 "Nor for that matter did Chris Ronnie or anyone else
18 at Umbro tell me that Sports Soccer was discounting or
19 had stopped discounting England shirts."

20 A. Yes.

21 Q. I am suggesting to you that what you say there is hardly
22 surprising, because nobody would ring you to tell you
23 that they were discounting. Because they were anyway.

24 I am talking about the period between 24th May and
25 2nd June 2000.

1 A. I do not understand the question.

2 THE PRESIDENT: Are you disputing this evidence, Mr Morris?

3 If you are you need to put to the witness what is in

4 dispute.

5 MR MORRIS: What I am suggesting is that what is said there

6 is not surprising; what is more likely is that someone

7 will have told you that Sports Soccer were going to stop

8 discounting.

9 A. Absolutely not. What I have put in paragraph 59 is

10 accurate.

11 Q. Did someone tell you that Sports Soccer was going to

12 tell you to stop discounting?

13 A. No.

14 Q. Let us briefly run through that.

15 First, you were speaking to Mr Ronnie about the rate

16 of sales of the England shirt?

17 A. Clearly I have said in that statement that when he came

18 in there was some discussion: how are the England shirts

19 going? Okay, still need a push. That kind of

20 conversation.

21 Q. Sports Soccer's discounting must have had an impact on

22 your sales.

23 A. Sport Soccer does not discuss and Mr Ronnie does not

24 allege that Sports Soccer discussed.

25 Q. I am asking you to agree or not agree with

1 the proposition that Sports Soccer's discounting before
2 2nd June must have had an impact on your rate of
3 sales --

4 THE PRESIDENT: We have had this question several times now,
5 Mr Morris. I think the witness has done his best to
6 answer it.

7 MR MORRIS: Can I go back to your diary entries for
8 5th June, which is cross-examination bundle tab 7. It
9 is the same entries as we have seen before, the agreed
10 Manchester United and the sports trade cartel.

11 Monday 5th June was the start of the week before
12 Euro 2000 started?

13 A. Yes.

14 Q. And on the same day Umbro was reporting that Allsports
15 was holding back on taking deliveries of the England
16 shirt?

17 A. I thought you just told me that we had agreed to take
18 three-quarters of them on 5th June. That is what you
19 said to me.

20 Q. The report was that they had been holding back --

21 THE PRESIDENT: And they then agreed to take three-quarters.

22 A. Yes.

23 MR MORRIS: Your diary reads:

24 "Agree Manchester United and England prices with
25 everyone including Mike Ashley".

1 Now in evidence earlier today you said that
2 the 8th June meeting was not exclusively concerned with
3 the Manchester United shirt?
4 A. That is right.
5 Q. What were the other issues on the agenda for
6 the 8th June meeting?
7 A. Have we not covered this?
8 THE PRESIDENT: I think we have been in depth over
9 the 8th June meeting now, Mr Morris. We have had
10 the Predator boot, the price war, Manchester United --
11 it is too late to go back over it again.
12 MR MORRIS: Sir, I am dealing with the entry in the diary --
13 THE PRESIDENT: Yes, well we have already been to this entry
14 in the diary.
15 MR MORRIS: I am suggesting to the witness that one of
16 the other issues must have been the England shirt
17 prices.
18 A. It absolutely was not an issue.
19 Q. Even though the diary says: agree Manchester United and
20 England prices?
21 A. Even though it says that. And nobody suggested it was.
22 Q. I am suggesting to you that that entry coupled with what
23 you have said in your evidence shows that the England
24 prices were "on your radar"?
25 MR WEST-KNIGHTS: None of this appears in the decision,

1 however relevant my learned friend may think it
2 otherwise.

3 THE PRESIDENT: The witness has denied the England price was
4 on his "radar", so I think the Office is entitled to
5 ask him about that.

6 A. England was not an issue. The England shirt was not
7 an issue for us. We were happy with the rate of sale,
8 we had not discounted it and we sold out, game set and
9 match.

10 MR MORRIS: So why did you want to agree the England price
11 as recorded in that diary entry?

12 A. I was going to construct some sort of agenda, things to
13 discuss. In the event that was not on the agenda.

14 Q. You wrote the diary entry over the weekend of 3rd and
15 4th June --

16 A. Probably.

17 Q. Yes, and at that time you did not know that
18 Sports Soccer had finally implemented the price change
19 back to 39.£99?

20 A. Absolutely not.

21 Q. So it was still a live issue?

22 A. It was not a live issue. I do not know how many times
23 I have to say it.

24 Q. Very well.

25 Over that weekend, the weekend when you wrote that

1 entry, the three main competitors, Sports Soccer, Blacks
2 and JD, did raise their prices?

3 A. I have been informed that that was the case. We were
4 not in any part of it with anybody. We were already at
5 that price, and there was not any seriously active
6 discounting that was affecting our business that
7 concerned us.

8 Q. I am suggesting to you that once that price went up over
9 that weekend you would have noticed and your company
10 would have noticed and you would have been provided with
11 the information that the price had gone up to 39.99?

12 A. By whom?

13 Q. I am asking you -- I am suggesting to you that you must
14 have known earlier that week that the price of
15 the England shirt had gone up to 39.99?

16 A. The week beginning June 5th?

17 Q. Yes.

18 A. No.

19 Q. You did not know. I am further suggesting to you that
20 once you knew that had happened by presumably the Monday
21 there was then no further need to agree England prices?

22 A. Absolutely not.

23 Q. So that whilst you continued with the reminders with
24 the Man U shirt in your diary there is no further
25 reminder in your diary about the price of the Manchester

1 United shirt?

2 A. I am sorry, are you talking about the MU reminders that
3 start August 14th?

4 Q. I am talking about the fact that on 6th June there are
5 references to getting hold of a copy of the Manchester
6 United shirt?

7 A. Yes, I wanted a copy of the shirt. To use a prop.
8 I put that in the statement.

9 Q. What I am suggesting is that when you wrote this diary
10 the shirt England was still a concern. On 5th June you
11 knew that the price had gone back up, and that is why it
12 was not discussed thereafter?

13 A. Absolutely not.

14 MR MORRIS: Sir, that does conclude my cross-examination.

15 I tried to do the best I could in the time.

16 (5.00 pm)

17 MR WEST-KNIGHTS: The first point is that it is not proper
18 to put in cross-examination material which is flatly
19 contrary to the evidence. I am going to tell you that
20 the May monthly management report --

21 THE PRESIDENT: Is this something for the witness?

22 MR WEST-KNIGHTS: It needs doing now. You have been shown
23 the wrong part of the May monthly management report.
24 Each of the witnesses has agreed that the sales by
25 Mr Hughes's company of the England shirt in May were

1 good. So the whole premise of that line of
2 cross-examination was false and misleading. And
3 the extract of the May monthly management report in
4 the cross-examination bundle was incomplete.

5 Re-examination by MR WEST-KNIGHTS

6 Q. Do you remember what the date was that Guest and Patrick
7 went to California?

8 A. I think it was a Wednesday.

9 Q. Of that same week?

10 A. I think it was the 7th.

11 Q. What activity does Allsports engage in between, say,
12 9th June and 1st August if there is a launch of a shirt
13 on 1st August?

14 A. Promotional activity?

15 Q. Any activity in relation to the Manchester United shirt.
16 What goes on in that period?

17 A. Oh, I see. Nothing that I am aware of that was related
18 to -- apart from producing posters and getting prices.
19 We put posters in store saying: advance orders, £10
20 deposit, get Beckham's 7 on the back of your shirt so
21 you can pick it up on the day. So we take deposits in
22 advance.

23 Q. Do those posters include the price at which the shirt
24 will be sold?

25 A. I am sorry?

1 Q. Do those posters include the price at which the shirt
2 will be sold?

3 A. Not normally, I do not think, I cannot remember.

4 Q. Can anyone else put Beckham on the shirt?

5 A. Any other retailer?

6 Q. Yes.

7 A. We specialise in it. We have a lot of printing machines
8 that most of the other competitors do not bother with.
9 In fact Sports Soccer and JJB often send customers to us
10 after selling the shirt for us to do the job of
11 printing. If you had spoken to Mr Ashley on
12 the telephone on or after 14th August how do you think
13 you might have started the conversation.

14 THE PRESIDENT: If you find it difficult to answer
15 the question --

16 A. No, no. I am present by a new question by my own
17 counsel ...

18 I think I would probably have asked him how
19 his Manchester United shirts had launched, to open the
20 conversation as the preamble.

21 MR WEST-KNIGHTS: Thank you. You gave evidence about
22 a conversation between yourself and Mr Ashley concerning
23 the Predator boot, and you used the word "volume" and
24 then you stopped.

25 A. Yes.

1 Q. How many Predator boots did Mike Ashley get, do
2 you know?

3 A. No, I do not know.

4 Q. Were you able to form any impression as to the number
5 which he had --

6 A. Yes, because in the meeting of June 8th he went out in
7 his tirade to say that he was never given enough; that
8 if he was given enough he would not discount them; and
9 that he would punish the suppliers if they
10 short-delivered to persuade them next time he would not.

11 Q. If he was short of stock how did that cause your price
12 promise to be triggered so frequently?

13 A. Because normally he would be left with an odd size.
14 A soccer room might be stocked in men's sizes from
15 6 through to 13, that might be typical. The volume
16 selling sizes are 8, 9 and 10, it is the normal
17 distribution in statistical terms, sir. Normally if you
18 sell out you are left with the 6 or the 13, because you
19 tend stock those even though you do not sell them, just
20 to offer the service.

21 So you would have a 12 or a 13. People would come
22 into the store, see the price. He could legitimately
23 advertise that he had them, because he had one pair, but
24 it was a non-saleable pair. Then they would come round
25 to us to buy the 8, 9 or 10 claiming that Sports Soccer

1 had them in stock. And we did not require it to be
2 the exact size to match our price promise.

3 Q. Was that a contributory factor to your feelings about
4 the mater?

5 A. Absolutely, yes.

6 MR WEST-KNIGHTS: I do not know why my learned friend is
7 giggling, but it seems to be a habit. I have no more
8 questions.

9 (5.10 pm)

10 Questions by the Panel

11 MR COLGATE: Just on your diary, are all the diary entries
12 in your handwriting?

13 A. Yes, I would say so.

14 MR COLGATE: In other words it is your personal diary?

15 A. Yes, it is. Nobody keeps my diary but me.

16 MR COLGATE: Where is your diary kept?

17 A. The current year one is kept in my drawer in my desk in
18 my office at Allsports. In 1989, for reasons that
19 escape me, I decided not to dispose of them. Maybe
20 I thought I was going to write ... I do not know.

21 Actually since 1989 I have kept at home
22 the redundant diaries. So I have them all.

23 THE PRESIDENT: Where was this diary kept?

24 A. At home with all the others.

25 MR COLGATE: But it is your personal diary and one that you

1 keep on you or in your desk?

2 A. It is only for my use. It does not include my -- well,
3 yes, it is business and social.

4 MR COLGATE: I am slightly curious why you would want to
5 write something in code?

6 A. Because if I lost it I would not want those words to be
7 visible, if I misplaced it ... anything.

8 I would not put down -- I think if I had a VD test
9 I would not put that down in my diary; I might put that
10 down in code, too.

11 MR COLGATE: Thank you very much, Mr Hughes.

12 THE PRESIDENT: Mr Hughes, I think we have actually reached
13 the end of your evidence.

14 A. Oh, am I dismissed, sir? Can I go home and not come
15 back on Tuesday?

16 THE PRESIDENT: That is a matter for you. Thank you very
17 much for your help; we appreciate it.

18 (5.10 pm)

19 (The witness withdrew)

20 MR WEST-KNIGHTS: Can I record my thanks for the patience of
21 Smith Bernal Wordwave for allowing that to be finished.

22 THE PRESIDENT: Just for your information, the tribunal has
23 sent some question to Umbro about the financial matter
24 and has asked for answers by 5 o'clock on Monday.
25 The answers will be circulated to parties.

1 MR WEST-KNIGHTS: May I ask whether the answers will be
2 going only to tribunal or whether they will be radiated
3 to the parties as soon as received?
4 THE PRESIDENT: I hope they will be circulated.
5 MR WEST-KNIGHTS: Sir, email would be the best way.
6 MR HOSKINS: Sir can I raise one matter which I think it
7 might save some confusion. In terms of transcripts
8 there are three versions that certainly have come to us:
9 the full page draft versions; the manuscript versions
10 that one gets on the evening or the next morning;
11 apparently there is another set of manuscript that has
12 just been produce.
13 Certainly for our part we have been working on
14 the manuscript that you get on the same day or the
15 morning after. It would be very helpful for us and
16 I hope for everybody else of we: (a) all worked off
17 the same version and (b) it was the version that we are
18 using.
19 MR COLGATE: I have actually asked the same question, if it
20 is any comfort to you.
21 MR MORRIS: Sir, I think that the third version which has
22 been referred to which has been recently circulated was
23 the first five days including the in camera proceedings,
24 instead of being separated.
25 I would endorse the suggestion of Mr Hoskins that we

1 all try to work off the first version of the minuscrit
2 that we got.

3 THE PRESIDENT: Can you make your that the tribunal is
4 informed the version you are using.

5 MR WEST-KNIGHTS: Assuming that you have been writing on the
6 transcripts that you get nightly, those are versions
7 that we are working on. I am proposing to file very
8 deeply somewhere the new version which the rest of us
9 only got last night, with last week re-jigged. It is
10 the ones that you get in the evenings with the in camera
11 sections separate, those are the sections we are all
12 working off; and they must be the versions you have been
13 working off if you have been working off them. Not
14 everybody marks their transcripts, there it is.

15 MR PERETZ: If you are using the LiveNote computer version,
16 it is the full version including the in camera sections
17 because it is continuous.

18 THE PRESIDENT: Just let us know definitively which version
19 everybody is working from and that we have the same one.
20 It will be 10.30 on Tuesday?

21 MR WEST-KNIGHTS: 10 o'clock, dare I say it? There have
22 been so many slips twixt cup and lip.

23 THE PRESIDENT: Yes.

24 MR WEST-KNIGHTS: Although we had a bit of a scrap about
25 whether we use Ms Charnock's statements or not, Mr Guest

1 expressly adopts and approves them. So that will maybe
2 be another layer that my learned friend has to deal
3 with.

4 THE PRESIDENT: 10 o'clock on Tuesday. Thank you very much,
5 Mr Hughes.

6 (5.15 pm)

7 (The hearing adjourned until 10.30 am,
8 on Tuesday, 23rd March 2004)