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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 to 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 turnover, 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)