

1 apply in some particular case is not a justification for
2 watering down the test.

3 THE PRESIDENT: Yes.

4 LORD GRABINER: And that is very important in my submission.

5 THE PRESIDENT: Yes.

6 LORD GRABINER: One can well understand the frustration, so
7 to speak, of a suspicious tribunal or a regulator if
8 there were an absence of evidential material, and the
9 frustration of having a sense that something fishy has
10 gone on here and there is plenty of smoke and we cannot
11 really get to the bottom of it, and we are then
12 confronted with the proposition that the test has to be
13 satisfied. It is a strong and compelling test.

14 THE PRESIDENT: Yes.

15 LORD GRABINER: And on that basis any reasonable uncertainty
16 or any lack of conviction, so to speak, without wishing
17 to cause any pun, enables apparent wrongdoers to get
18 off, is not very attractive.

19 In my submission that does not arise in this case
20 and the reason it does not arise is a very important
21 point on this case. The reason it does not arise is it
22 is not one of those cases where you do not have access
23 to the smoke filled room. Nor is it one of those cases
24 where there is absolutely no immediate piece of paper
25 that is relevant.

1 THE PRESIDENT: Yes.

2 LORD GRABINER: With the exception of Mr Sharpe, for
3 example, just in relation to Manchester United, the
4 8th June meeting, you have actually had evidence from
5 the persons who were party to the conversation. And you
6 are in a position to make a judgment about their
7 evidence. And in my submission the strong and
8 compelling test is entirely appropriate in a case like
9 that. If you had not had any of them before you that
10 would have been a different matter but that is not the
11 case.

12 So what I do say is that when you are examining or
13 applying, I should say, that formula to this particular
14 case in the context, for example, of that issue, the
15 Manchester United issue, one of the points you have to
16 be very careful of -- can I just put my cards frankly on
17 the table?

18 THE PRESIDENT: Yes. Of course.

19 LORD GRABINER: Because I do not believe in having this sort
20 of argument except on a very frank basis, because what
21 we do not want is for you to give a decision on some
22 basis we did not anticipate. And if there is something
23 that concerns you, then it is better that we do debate
24 it so we have a full chance of making our position
25 clear.

1 My submission is that the differences between these
2 witnesses are so fundamental that you really have to
3 come to a judgment about their integrity as witnesses,
4 not necessarily with a view to concluding that X was
5 lying or whatever, but whether in all the circumstances
6 you really can rely upon the quality of the recollection
7 of the particular witness.

8 If you are confronted with a witness who has
9 actually given a number of versions of a very tiny
10 episode and that many years have gone by, in theory,
11 I suppose, it would be possible to pick one damaging
12 version. You could say, "Well, Mr Ronnie gave four
13 versions, we accept one of them".

14 THE PRESIDENT: Are we talking about Manchester United now?

15 LORD GRABINER: For example. Let me just get my mind round
16 this. I am talking about the 2000 soccer. He is not
17 really relevant to Manchester United is he, it is
18 hearsay knowledge.

19 Take the position of, for example, Mr Ashley then in
20 that context, so that you come to the view that for
21 a whole variety of reasons, which we have set out in the
22 document, I hope very clearly and fully, you think he is
23 actually a very unreliable person, an unreliable
24 witness. Poor memory of events, an ability to even
25 quite honestly gloss on the history.

1 Let me just give you a simple example: suppose the
2 position were, as we respectfully suggest it was, that
3 Mr Whelan made it very plain first of all that he would
4 not do a deal at £45, and secondly, that he was
5 resentful of the fact that he found himself in this
6 embarrassing situation and decided to leave the meeting
7 and that one of the things he said as he was leaving was
8 "You know, and everyone here knows, and everyone outside
9 knows that we never go out at above £40".

10 When Mr Ashley comes to give evidence he says
11 "Mr Whelan said JJB will go out at 39.99." That is what
12 I call a gloss on what was actually said. That is an
13 entirely understandable gloss with the passage of years,
14 but it is an inaccurate characterisation of the
15 conversation.

16 If you come to the view that our version, or I
17 should say more accurately Mr Whelan's version, of what
18 took place is accurate, in other words, that he was
19 angry at finding himself in a compromising situation, he
20 rejected Mr Hughes' proposal and departed with
21 Mr Sharpe, then in my submission that is a very clear
22 case. You do not get into any discussion, or not any
23 serious discussion in your minds, about strong and
24 compelling.

25 You come to the conclusion on that example that

1 Mr Whelan's evidence was right and you believe him. End
2 of case.

3 If, on the other hand, you get to a point in the
4 discussion when you are asking yourself the question:
5 well, what was actually said? In my submission you have
6 to have a sense that satisfies strong and compelling,
7 that Mr Whelan did say "We will sell at 39.99" and that
8 that was meant to be and was understood to be in effect
9 an agreement which is what is alleged that that is what
10 would be done.

11 Again, what I am suggesting is that if you think it
12 is possible that Mr Ashley's evidence was a gloss, and
13 I put it no higher than that for these purposes, then in
14 my submission we are entitled to be acquitted of that
15 charge.

16 I actually put my case much higher than that and
17 I am not the sort of person who normally puts his case
18 too high because there is no point in doing it. You do
19 not have to take on a bigger burden than you need.

20 The truth is that Mr Ashley was a rotten witness and
21 if you think that we are right about that, when you get
22 into a discussion in the privacy of your room and you
23 are deliberating over these questions, the fact that you
24 conclude, if you do, as we suggest, that he was a rotten
25 witness and it makes you feel, deep down, that the

1 evidence is not strong and compelling, therefore JJB
2 ought to be acquitted.

3 That is the way that I would respectfully invite you
4 to approach this matter. What I would suggest is
5 difficult in a case like this is for you to be able to,
6 and I put it in a rather inelegant way, trip between the
7 tulips. In other words, to pick little bits of the
8 evidence in order to produce a coherent whole. That is
9 a perfectly permissible way of going about things, but
10 it may not be a realistic way of going about things if
11 your substantive view is that a key witness or a pair of
12 witnesses on some issue are simply not reliable enough.

13 If they are not, in my submission it is not
14 a legitimate exercise to trip between the tulips.
15 Because although things are not black and white in life,
16 when you are dealing with very serious allegations and
17 you do get a strong sense, as I urge you to have
18 achieved, I am bound to say nothing I say now would
19 affect this, because you must have formed your own
20 judgment as you watch these witnesses as to what you
21 thought of them, but if you did get a strong sense that
22 Mr Ashley on the matters that were relevant was not
23 a reliable witness or that Mr Ronnie equally was a very
24 poor witness indeed, then that ought to have a very,
25 very important impact upon your overall thinking about

1 the rights and wrongs of any particular charge.

2 So strong and compelling is the right test. In my
3 submission it can be applied in a case like this. You
4 have seen the witnesses and there are one or two
5 incidents or parts of the case where there is actually
6 some contemporaneous material that helps to guide you
7 and enables you to make a check or an assessment of the
8 quality of the evidence that you have had and I have
9 given you the examples. We actually have the document
10 which records the 24th May agreement, we actually have
11 the monthly management reports of Umbro, things of that
12 kind which do shed quite a lot of light on what was
13 going on there.

14 So that is what I would say about that.

15 THE PRESIDENT: It may be that we do need to come back,
16 perhaps in a sort of almost examination paper type way,
17 at some point as to what it is that the OFT does
18 actually have to prove in order to give rise to
19 a concerted practice. I think one of the possible keys
20 to the strong and compelling evidence test is strong and
21 compelling evidence of what exactly?

22 LORD GRABINER: Precisely.

23 THE PRESIDENT: One can think of a number of different
24 scenarios. I will not take time now in elaborating them
25 all, but at one end of the spectrum you have, or you

1 might have -- I am not talking about this case and
2 nothing, of course, we say in this kind of exchange
3 should give rise to any attempt to read between the
4 lines because at this stage we are genuinely attempting
5 to analyse it correctly. At one end of the spectrum you
6 may simply have evidence that competitors who do not
7 normally adopt the same price have met and, following
8 that meeting, they adopted the same price. That may be
9 all the evidence you have.

10 LORD GRABINER: Yes.

11 THE PRESIDENT: Query: what if any legal inference are you
12 permitted to draw or what analysis do you bring to bear
13 on that situation?

14 At the other end of the spectrum you may have
15 evidence, hypothetically speaking, of a certain amount
16 of discussion as to what prices would be and what
17 people's intentions were. Somewhere in the middle you
18 have a grey area, somebody may say something or not,
19 somebody may reply or not and somebody may say something
20 intending, or not, but somebody else might act on it, or
21 say what they were going to do but mentally saying to
22 themselves "Well, I am not committing myself to doing
23 that, or necessarily expecting somebody else to act on
24 it" but somebody else does act on it. All those kind of
25 combinations are around.

1 In this area of the law I am not now speaking
2 particularly of this specific case, it is going to be of
3 some importance I think for the tribunal applying the
4 European jurisprudence that we are obliged to apply, to
5 come out with some fairly clear indications of what is
6 permissible and what is not and where the line is
7 crossed.

8 LORD GRABINER: Could I urge one rather basic thought upon
9 you, if I may?

10 THE PRESIDENT: Of course.

11 LORD GRABINER: In the context of that question. That is
12 this: that a good rule of thumb in my respectful
13 submission in this law business is to approach the facts
14 first and to try to get some order out of apparent
15 chaos, and to try to get a chronological understanding
16 of exactly what passed, and that is well possible in
17 this case. And that if you, as I am sure you will, make
18 a very determined effort to find the factual sequence
19 the legal analysis will take care of itself. That may
20 be a simplistic proposition but it is a fundamental
21 truth in my submission.

22 It would be very, very easy to start that debate at
23 the wrong end and to identify, as indeed you just have,
24 quite rightly, the kinds of problems that might arise in
25 this kind of enquiry, but the point about this case is

1 that you are in a position, having heard all the
2 evidence that you have, to come to a carefully reasoned
3 judgment on what happened factually.

4 THE PRESIDENT: Yes.

5 LORD GRABINER: And if you do that exercise, as I know you
6 will meticulously, my submission is that the potential
7 legal problems for the most part will disappear.

8 THE PRESIDENT: Yes.

9 LORD GRABINER: I mean, just to take one of your examples at
10 one end of the spectrum was the case where you have no
11 material at all but the parties after a certain moment
12 in time all act together in a certain way.

13 THE PRESIDENT: Yes.

14 LORD GRABINER: If there were no other evidence at all apart
15 from the fact that they had had a meeting, then that
16 might well be enough. One could imagine a situation
17 where that could be enough, definitely. I mean, the
18 mere fact, for example, that no one tried to put forward
19 any explanation for what had happened would itself be
20 a very damaging fact which you would be perfectly
21 entitled to take into account.

22 THE PRESIDENT: Yes.

23 LORD GRABINER: But what has happened here is that there is
24 an explanation for all of these matters, both factually
25 and in terms of behaviour. For example, it will be

1 urged upon you, no doubt, that we did not always go out
2 at 39.99; see West Ham.

3 The evidence yesterday, for example, absolutely blew
4 that to smithereens, in my submission. We saw West Ham
5 for what it really was. I speak as a Spurs supporter --
6 and we have our own problems -- but in no way
7 disparaging of West Ham.

8 But it is obviously an example, at the far extreme,
9 and nothing to do with the central issues in the case.
10 It is an isolated example. One suspects that the other
11 two, I think there were three suggestions, one suspects
12 the other two come into the same category.

13 THE PRESIDENT: Yes.

14 LORD GRABINER: You have received evidence, not only from my
15 side so to speak, but also from, so to speak,
16 prosecution witnesses that 39.99 was what we did. That
17 is what we told the City. That is what people expected
18 we would do. So there is a plausible reasonable
19 explanation in front of you for that behaviour
20 independently of impropriety.

21 In my submission that is a --

22 THE PRESIDENT: A plausible alternative explanation.

23 LORD GRABINER: It is a plausible alternative explanation.

24 Of course, whether you believe it is another matter.

25 You are entitled to say "I do not believe them. I think

1 they all told lies" and so on, but what I am submitting
2 is that there is a perfectly good context and you have
3 seen the witnesses, they have not been afraid to come to
4 the witness box. They have given you the evidence.
5 They have been cross-examined, up hill and down dale,
6 for days on end, it could not have been more exhaustive
7 or if I may say so, sitting from where I was sitting,
8 more exhausting and you have my sympathy on that as well
9 because you have sat and listened very politely, a lot
10 more politely than I would have done, I am bound to say,
11 and every hare was chased, and at the end of the day you
12 really are, actually, in a much more advantageous
13 position than the example you gave me on the far end of
14 the spectrum to come to a judgment about the facts.
15 That is what I would urge you to do.

16 THE PRESIDENT: This is now my second point really: if we
17 take what you have been saying about the facts and, in
18 particular, about the point of contemporaneous
19 documents, could we just glance for a moment at the main
20 management report which is at tab 27 of E1, part 1. It
21 is marked at page 230C in my bundle.

22 LORD GRABINER: Yes, I have that in front of me.

23 THE PRESIDENT: This is one of the earliest contemporary
24 documents that we actually have and it is either the
25 document, or the kind of document that you submit to us

1 is likely to contain what you submit is the unvarnished
2 truth, and the fifth paragraph down which begins "There
3 has been a major step forward in the retail price of
4 England the launch of Manchester United" et cetera,
5 recites that:

6 "JJB, Sports Soccer, First Sport, JD Sports and
7 Allsports have all agreed to retail their adult shirts
8 at £39.99."

9 That is said to have occurred following a month of
10 dialogue with all the above accounts.

11 LORD GRABINER: Yes.

12 THE PRESIDENT: That is written, as it were, in tempore
13 non suspecto, if I may use latin.

14 LORD GRABINER: I am very happy to hear it as well.

15 THE PRESIDENT: Why should we not, in assessing the
16 evidence, say to ourselves: well, is there any reason
17 not to take this contemporaneous document at face value?

18 LORD GRABINER: We know that you should not take it at face
19 value. The reason we know that is that we know that the
20 author was Mr Ronnie. We know that he was not a party
21 to the meeting. We know that he was-

22 THE PRESIDENT: We are not talking about -- well -- I think
23 we have to break it down into England and Manchester
24 United.

25 LORD GRABINER: Forgive me, you are absolutely right.

1 Forgive me. But the point -- yes, absolutely. But he
2 was certainly the author of this because this is part of
3 a monthly report that he produced, as you see from
4 page 231.

5 We also know that he has given the different
6 versions of this agreement and those versions are
7 fundamentally different. For example, he said I think
8 in his third --

9 THE PRESIDENT: Yes, we know your submissions on the various
10 versions.

11 LORD GRABINER: And this is part of the discussion I suppose
12 about whether it is permissible to pick a version that
13 produces a certain result and ignore the other versions.
14 The suggestion I think you are making is: well, why
15 should we not pick the version that is closest in time?

16 THE PRESIDENT: Why do we need a version at all? Why can we
17 not say this is evidence and here it is?

18 LORD GRABINER: But you have also had the benefit of
19 Mr Ronnie's evidence and you have had the ability to
20 hear what he has to say on the subject, and what you
21 have learnt from his evidence is that he disagrees with
22 this version that is written down here and then you say
23 to yourselves: well, what motivation would he have for
24 disagreeing with it or not being prepared to support it,
25 which he does not.

1 He has no motivation to say anything in our favour.
2 He has every motivation to pot us. I mean, the whole of
3 his evidence is directed towards injuring or damaging
4 our position. He lines up with Mr Ashley. He now works
5 for Sports Soccer and he is antagonistic to our
6 position. But he specifically disavows the suggestion
7 that there was an agreement to which JJB was party and
8 the current state of the case, certainly on the pleaded
9 basis, is, as you know, that there was information
10 provided after the event to us and that is the extent of
11 the case against us according to him.

12 THE PRESIDENT: In your submission, what motive would
13 Mr Ronnie have had for misrepresenting the position in
14 this monthly report of June 2000?

15 LORD GRABINER: One just does not know what the internal
16 politics would have been at the reading end of the
17 story. The trouble is that it is quite impossible to
18 discern what these characters are up to at all times in
19 the story and what I would have submitted is this: why
20 should he have been so determined fundamentally to
21 change his position, which he plainly has been? Why?
22 What is the reason for that?

23 The reason is that he is no longer prepared to stand
24 by this. Why? If he were in our pocket one might
25 understand an argument but he is not and no one is

1 suggesting that. He is not prepared to stand by what he
2 said here and the OFT is not prepared to stand by what
3 he said here either. They put their case on a different
4 basis now.

5 That, in my submission, means that you cannot go
6 behind what they are saying is the case. No doubt it
7 will now be changed yet again. I say that in
8 anticipation of what may happen when Mr Morris gets to
9 his feet, but the case that we have to meet here is not
10 the case spelt out here.

11 THE PRESIDENT: I think we will leave that point there for
12 the time being.

13 LORD GRABINER: Yes.

14 THE PRESIDENT: Can I make one other point, which is
15 a matter also --

16 LORD GRABINER: Could I just add one other point?

17 THE PRESIDENT: Yes, of course.

18 LORD GRABINER: This is not a document to which we had any
19 input. This is purely internal to Umbro at the relevant
20 time and to Mr Ronnie.

21 THE PRESIDENT: Yes.

22 LORD GRABINER: And you have obviously got to assess the
23 quality of all that against your view of Mr Ronnie as
24 a witness as well, and the mere fact -- I am not going
25 so far as to say and I certainly do not say, that the

1 mere fact he wrote it down at the time makes it true or
2 more likely to be true. That is not what I am saying.
3 I put it rather differently. For example, in relation
4 to the issues about so-called pressure, the fact that
5 you do not find any reference in this material to
6 pressure suggests that the suggestion of pressure now
7 being made is not to be taken seriously.

8 But one really does have to ask oneself, I am
9 repeating myself and I apologise, but one really does
10 have to ask oneself the question: why should Mr Ronnie
11 not now be prepared to support what apparently is said
12 there? On the face of it there is no explanation except
13 that even he, and certainly the OFT, are not prepared to
14 support it. So in those circumstances in my submission
15 it would be entirely inappropriate for this tribunal to
16 reach that conclusion. You will remember that passage,
17 I think it is in the third witness statement where he
18 goes out of his way specifically to disavow any such
19 agreement.

20 THE PRESIDENT: I think it is the fourth witness statement.

21 LORD GRABINER: It is the fourth Ronnie. Sorry,
22 I interrupted you.

23 THE PRESIDENT: No, thank you very much, Lord Grabiner. Our
24 last, I think at this stage it is an observation, but it
25 is something which we as a tribunal have discussed, and

1 which Mr Colgate in particular is concerned about, is
2 your appendix describing the production of the various
3 witness statements, which we are quite sure is an
4 accurate description of what has happened.

5 LORD GRABINER: Yes.

6 THE PRESIDENT: What we are just wondering to ourselves is
7 this: we have had, as it were, as a result of the
8 hazards of litigation, a series of witness statements
9 produced by Mr Ronnie and criticism has been made, and
10 will no doubt continue to be made, of the differences
11 between the various witness statements.

12 LORD GRABINER: Yes.

13 THE PRESIDENT: Your schedule indicates that in particular
14 on or around 12th July 2002 there are apparently some
15 previous signed witness statements by Mr Russell,
16 Mr Sharpe and Mr Whelan, which seem to have been later
17 amended in some form or other. We are just wondering
18 whether the situation that has arisen is one of
19 completed quality, as it were, between the parties.

20 LORD GRABINER: First of all, can I just get instructions?

21 THE PRESIDENT: Yes. (Pause).

22 LORD GRABINER: Can I say this: that there were some signed
23 on that day and then I think there were separate ones
24 submitted in August and signed. Those documents,
25 the July ones, are in the Manchester office and we have

1 not looked at those. I cannot standing here tell you
2 whether or not there are any differences between the
3 two. They may be the same but I do not know what the
4 reason is for the two sets of signings. But one thing
5 is clear and that is that the 12th July signed ones were
6 never submitted in evidence and they are privileged
7 documents and for that reason they have never been used
8 and for that reason are irrelevant for the purposes of
9 this tribunal, and the reason that we have spelt it out
10 is simply so that you could understand the story.

11 THE PRESIDENT: Yes.

12 LORD GRABINER: If I can sort of step back from this
13 a little bit. What concerns us about this is that
14 Mr Colgate and/or the tribunal might have come to a view
15 or even a provisional view that Mr Whelan's recollection
16 about the process which was adopted for the production
17 of his witness statements, that his memory of that
18 process was deficient and that that might make you feel
19 that he was not a reliable witness and that, for
20 example, he gave very good and clear evidence, I would
21 certainly submit, and patently honest evidence, but when
22 you get to that bit of the story you say to yourself:
23 well, he cannot be right about that. So what effect
24 does that have on my thinking about the rest of his
25 evidence? That is the kind of thought process.

1 And when that point came on the table, not as a
2 result of anything suggested by my friend but from the
3 tribunal, we felt it was necessary to respond to that
4 and I think I said so in the course of argument several
5 days ago. I said that we would look into the background
6 circumstances in which the statements were produced and
7 we would provide you with the detail and, if necessary,
8 we would put it into a form of a statement and present
9 it in evidence, or I would submit it and you might be
10 prepared to take it from me. I am quite prepared to put
11 it in the form of a statement and I am quite prepared,
12 if necessary, for those instructing me or
13 a representative of them to give oral testimony about it
14 if there is any challenge to any of this material.

15 The point that I am concerned to get across in this
16 bit of the story is that when Mr Whelan said in a very
17 convincing way "Well, I sat there and I dictated this
18 stuff myself" he did sit there and he did dictate stuff,
19 but that was not a dictation process that led to the
20 production of the initial statements, as we have
21 explained.

22 THE PRESIDENT: Yes.

23 LORD GRABINER: And that the process is actually quite
24 a complicated process done over a long period of time.
25 In that process, as we know, certainly as lawyers we

1 understand that there is a process of taking
2 instructions: the preparation of a statement, the
3 drafting of the statement, the corrections to the
4 statement and eventually the signing off of
5 the statement. It is not unusual for a signed document
6 to stay on the solicitor's file and never end up in the
7 court. It happens all the time. And all of that is
8 done behind the curtain of privilege. That we are all
9 very familiar with and there is nothing suspicious about
10 that or improper or wrong about it.

11 THE PRESIDENT: No.

12 LORD GRABINER: What matters is that in due course
13 statements were presented to the tribunal and they are
14 all available and we have seen them on the court record
15 and cross-examination has been conducted off the back of
16 them.

17 The fact that these gentlemen did make statements
18 which were signed statements but which are privileged
19 documents is neither here nor there. You are entitled
20 to an explanation of that, absolutely, but you are not
21 entitled to the documents and I must confess I have
22 myself not even seen them and I do not know what is in
23 them. I do not myself know what differences, if any,
24 there are between those that were signed in July and
25 those that were signed in August, if any. But they are

1 really not relevant in my submission.

2 The object of the exercise is certainly not to waive
3 any privilege and in effect to extend the length of this
4 hearing by having Mr Whelan back for further
5 cross-examination about any differences there may be in
6 respect of documents which are not before the tribunal
7 for good reason.

8 THE PRESIDENT: I think -- yes.

9 LORD GRABINER: Could I add just one point actually and that
10 is this: that the law is very well established that no
11 inference is to be drawn from the fact that a claim to
12 privilege is made. It is not permissible for a tribunal
13 to draw any adverse inference from the fact of a claim
14 to privilege.

15 THE PRESIDENT: I think at this stage, Lord Grabiner,
16 subject to anything Mr Morris submits, the position that
17 you have outlined is correct. I think all we were
18 concerned to point out is that a situation has arisen
19 largely as a result of orders the tribunal has itself
20 made in which various previous statements by Mr Ronnie,
21 the first two of which at least were not relied on in
22 the decision, have been or have become part of the
23 proceedings and a great deal of hay has been made of the
24 fact that he has put forward a number of versions.

25 LORD GRABINER: I see.

1 THE PRESIDENT: And we now notice and it is very helpful to
2 have it drawn to our attention. No one is suggesting
3 there is any impropriety of any kind that there are
4 apparently some previous statements made by witnesses
5 for JJB and we note that fact.

6 LORD GRABINER: I understand. Can I just --

7 THE PRESIDENT: It is nothing to do with privilege or
8 anything.

9 LORD GRABINER: I understand. I just want to make this
10 point. Can I just give you an analogy? These are not
11 criminal proceedings but they are penalty proceedings.

12 THE PRESIDENT: You probably have all kinds of privileges
13 that you can legitimately assert.

14 LORD GRABINER: You see, if you have a prosecution at the
15 Old Bailey -- this happens all the time of course and is
16 the subject of great public debate at the moment -- you
17 get a previous inconsistent statement which has been
18 produced by a key prosecution witness which is concealed
19 by the prosecution or for whatever reason never comes
20 out and then subsequently comes out, and there is
21 a great hullabaloo, quite rightly, because at the end of
22 the day the prosecution must prove its case.

23 THE PRESIDENT: Yes.

24 LORD GRABINER: And there is this piece of paper sitting
25 there -- in theory the defendant is entitled to sit

1 there and say nothing.

2 THE PRESIDENT: And the defence is in a different position.

3 LORD GRABINER: Absolutely. And the prosecution sits on
4 some previous inconsistent statement and then it is
5 revealed and counsel for the defendant rightly complains
6 that if he had had that opportunity, he could have
7 presented that alternative way of putting it and the
8 jury might have said, "Oh well, we do not believe this
9 person", and rightly so, because the burden is firmly on
10 the prosecution.

11 THE PRESIDENT: That is why you have got out of the tribunal
12 the orders that you have got in the course of these
13 proceedings.

14 LORD GRABINER: Absolutely. Those are the rules of the
15 game.

16 THE PRESIDENT: Yes.

17 LORD GRABINER: That is the game and those are the rules.

18 But what I do not want the tribunal to think, I am very
19 concerned that you should not think or that you should
20 proceed on any assumption that involves some point in
21 your mind that there has been some unfairness here or
22 that there is not a level playing field because on the
23 rules of this game the level playing field has been
24 achieved. The rules of this game involve doing what we
25 have done. We have not done anything that is

1 illegitimate or inappropriate and we have complied with
2 the ordinary rules of privilege, as indeed my friend
3 has. I do not know what advice he has given to the OFT
4 and I am not entitled to know it. He might have told
5 them that they have got a hopeless case but we are never
6 going to know that. There might be drafts of witness
7 statements that were prepared for Mr Ronnie which might
8 say all sorts of things. He might even, for all I know,
9 have signed one of them. I have not the faintest idea
10 but I have no right to know that and I will not ask for
11 it and if I were to do so my learned friend would say
12 "privilege, and I am not going to provide it to you".

13 And in those circumstances you must not assume from
14 the fact that we have put a sort of microscope on this
15 particular point that there is any sort of unfairness
16 because, first of all, you do not know the totality of
17 the picture. I do not know it and nor does my learned
18 friend, but between us we would all know it. But that
19 is not how we conduct litigation. And what I am talking
20 about now is standard stuff in all law courts, but it is
21 particularly important perhaps in a case where there are
22 penalty proceedings in place which is what these
23 proceedings are.

24 THE PRESIDENT: Rest assured, Lord Gribner, we will direct
25 ourselves appropriately on the point.

1 LORD GRABINER: I do not have any doubt about that and I do
2 apologise for apparently trying to teach you all to suck
3 eggs because that is not my purpose but I am concerned
4 that there should not be any misunderstanding about
5 points like this because they are very fundamental and
6 one could easily go off on the wrong tack.

7 THE PRESIDENT: Yes, thank you very much.

8 Yes, Mr West-Knights, it is your turn now. Unless,
9 Mr Morris, do you want to come back on anything?

10 MR MORRIS: On that topic, I would like to give it some
11 consideration. We would, however, endorse the points
12 you have made. The first point is, of course, that
13 Ronnie 1 and 2 were never really intended and were not
14 relied upon. They came out because of the disclosure
15 orders in respect of leniency and I should also remind
16 you that Ronnie 1 was not even a signed statement. We
17 do say there is an element of fairness and level playing
18 field here in comparing previous statements. Much is
19 made and will be made no doubt for the rest of the day
20 about all the various inconsistencies. It is of course
21 a matter for Lord Grabiner to decide what he wishes to
22 do in respect of privilege. I would like to reserve my
23 position and would not necessarily accept that in the
24 circumstances of this case, particularly in
25 circumstances where this explanation has been proffered

1 by JJB in response to questions by Mr Colgate concerning
2 the similarities of the evidence, but I do not accept
3 the proposition that we are not entitled to comment on
4 the fact that those statements are not being offered to
5 the tribunal.

6 THE PRESIDENT: Let us leave it there.

7 LORD GRABINER: That is quite an important point and I said
8 a little earlier that there is House of Lords authority
9 on the point and I was not just saying that. There is.
10 To my knowledge there is a decision I think in around
11 1904 in the House of Lords which makes precisely the
12 point that adverse comment cannot be invited on a claim
13 to privilege and I will produce that authority to the
14 tribunal.

15 THE PRESIDENT: Yes.

16 MR MORRIS: Sir, you have my points.

17 THE PRESIDENT: Thank you.

18 MR MORRIS: This was an explanation proffered by JJB.

19 THE PRESIDENT: Yes.

20 MR MORRIS: I am grateful, thank you.

21 THE PRESIDENT: Mr West-Knights?

22 MR WEST-KNIGHTS: Sir.

23 THE PRESIDENT: Have you got the document you were waiting
24 for earlier?

25 MR WEST-KNIGHTS: Yes. I was just going to say speaking for

1 myself I do not actually know how one does suck eggs,
2 but there it is.

3 The position is that at the moment the LiveNote will
4 have to be shut down in order for me to get it because
5 my learned junior brought my laptop in after we started,
6 because he had been in my chambers, causing the document
7 we had been waiting for to be printed out. I would be
8 very grateful if I could have a general period of about
9 seven or eight minutes in order to regroup, get the
10 documents sorted out and get myself connected up.

11 I will finish today, whatever else happens.

12 THE PRESIDENT: Shall we take our morning break now and
13 resume at say 11.25.

14 MR WEST-KNIGHTS: I would be most grateful, thank you, sir.

15 (11.17 am)

16 (A short break)

17 (11.25 am)

18 Closing submissions by MR WEST-KNIGHTS

19 MR WEST-KNIGHTS: May it please you, sir, and gentlemen, it
20 is now for me to close the case on behalf of Allsports.
21 I am about to hand up a surprising amount of paper. The
22 first tranche is four little packets, one each. These
23 are the proffered schedule of cross-referencing between
24 the various Ronnie statements to which we have added
25 a further column for what was said in cross-examination.

1 You have two each. The reason is, and I hope it is
2 a footer on each page, a header, whichever, it is
3 a footer on this one, that one is marked "Electronic
4 Transcript References" and the other one is the
5 manuscript references.

6 THE PRESIDENT: Thank you, Mr West-Knights.

7 MR WEST-KNIGHTS: I will now hand up, if I may,
8 a chronology, four chronologies. They contain no
9 references to the transcripts beyond the occasional RXX,
10 which is Ronnie cross-examination, but it is intended
11 simply as a summary of the events in chronological
12 order. I will canter through that briefly, I think,
13 after I have dealt with the other document which is our
14 closing submissions. This is the electronic
15 transcript's version only and thanks to the immense hard
16 work of Mr Trainor of Addleshaw's, who is responsible
17 for doing the duplicate versions for the reference to
18 the other one, we will shortly be handing in
19 a manuscript version of that document as well.

20 THE PRESIDENT: Thank you very much.

21 MR WEST-KNIGHTS: Which will be equally clearly marked.

22 THE PRESIDENT: We are extremely grateful for all that hard
23 work.

24 MR WEST-KNIGHTS: I am very grateful to you for saying that.
25 So am I.

1 THE PRESIDENT: We really mean that. It is a great deal of
2 work. Thank you very much indeed.

3 MR WEST-KNIGHTS: When I said last night jokingly, well not
4 particularly jokingly, I gave instructions that work
5 continued until it was done, that those instructions
6 were followed.

7 THE PRESIDENT: I am sure it has gone on very late indeed.

8 MR WEST-KNIGHTS: Sir, before I start, and I am going to run
9 through this document, which is also in tabular form, of
10 the closing submissions on the hearing of liability.
11 I think it might be helpful, but tell me if I am wrong
12 about this, if I were to, as it were, pick up from the
13 questions that you were asking Lord Grabiner and just
14 deal with each of those in turn.

15 First, so far as the Napp test is concerned, you
16 made a specific reference in the same context to the
17 difficulty in cartel cases and in particular the
18 significance which one knows is placed on documents,
19 because frankly the position is taken that you do not
20 usually find the smoking gun. If you have something
21 which looks like a smoking gun you attach considerable
22 significance to it, and I am conscious that there is
23 some emerging jurisprudence on that in any event.

24 THE PRESIDENT: Yes.

25 MR WEST-KNIGHTS: The Napp test is, of course, a formula but

1 it has, as its roots, a recently re-stated principle in
2 the House of Lords by Lord Bingham, the reference to
3 which I will come because it is in our written
4 submissions, it is the divisional court. It is the Lord
5 Chief Justice sitting in what is now called the
6 administrative court.

7 THE PRESIDENT: Bingham CJ as he then was.

8 MR WEST-KNIGHTS: Yes. To the effect that the difference
9 between the civil burden of proof in situations such as
10 this and the criminal burden of proof is illusory. But
11 it is not unique to proceedings such as this.

12 THE PRESIDENT: It is a difficult area. There is a lot of
13 case law.

14 MR WEST-KNIGHTS: But the difficulty, if I may say so, is
15 not confined to this area because you will be equally
16 aware that in cases of, for instance, civil fraud there
17 is very rarely a document disclosed on discovery,
18 because if it is disclosed usually the case blows up and
19 settles, which is the contemporaneous record by the
20 fraudster of what it is he is about.

21 THE PRESIDENT: Yes.

22 MR WEST-KNIGHTS: But if occasionally there is a document
23 which appears to smell of fraud, then plainly the courts
24 are accustomed to giving to that document such
25 significance as it merits in the light of all the

1 evidence. Breach of fiduciary duty is a similar area
2 where this arises.

3 If I may just pick up something that Lord Grabiner
4 said. Strong and compelling is the nature of the
5 evidence that is required to drive you to the requisite
6 decision, and so far as these proceedings are concerned,
7 of course at the administrative stage there is no
8 process for testing.

9 THE PRESIDENT: Yes.

10 MR WEST-KNIGHTS: And it may be that the office is justified
11 in regarding as compelling or strong material which
12 appears in, as it were, strong statements, strongly
13 worded statements, be they written representations or be
14 they actual witness statements which contain, as it
15 were, statements of the absolute, and those statements
16 of the absolute are untested and, as we have seen over
17 the past two weeks, strong statements disappear when
18 tested sometimes. Statements which have the flavour of
19 A acquire the flavour of B once the person who gave the
20 statement is questioned about them, as I am told, made
21 by the tribunal itself in Clamour v The Office of Fair
22 Trading last September. Do not quiz me on that one,
23 please, at this stage.

24 THE PRESIDENT: You will give us the reference at some
25 point, Mr Peretz?

1 MR WEST-KNIGHTS: He may. I have some sympathy for
2 Mr Peretz. He is a very able man and he has been
3 sitting here mutish for two and a bit weeks. It may be
4 sensible for both of us to address you on the law
5 briefly on Friday, and as to the law I entirely echo
6 what Lord Gribiner said, if I may. Again, speaking from
7 my own limited experience, when I see the beginning of
8 a civil case that I am trying I used to spend a lot of
9 time thinking "Oh my God, I do not know the answer to
10 this one" and looking up the law on every possible
11 hypothetical outcome. I am bound to say my experience
12 is that once I have made the decision on the facts
13 99 per cent of those potential hypotheses disappear and
14 in the end frequently there is no question of law at all
15 or the law is simply common ground. Plainly there is
16 a question of law but there may end up being no issue.

17 In this case I am going to start by saying just
18 compare the demeanour in the witness box of for instance
19 Mr Guest --

20 THE PRESIDENT: Yes.

21 MR WEST-KNIGHTS: -- with Messrs Ronnie and Ashley. Guest,
22 I venture to suggest and submit, was a responsive,
23 intelligent man who sought to answer every question that
24 was posed of him. Ronnie, apart from the obvious lies
25 which he told and I will direct your attention to those,

1 in the witness box spent a considerable amount of his
2 time trying to work out where I was going, as did
3 Mr Ashley. Neither of those witnesses was responsive,
4 neither of those witnesses was, in my submission, in the
5 end trying to help.

6 If I could say something to each of you directly.
7 This tribunal is an unusual body for those of us who
8 practice elsewhere but each of you brings to these
9 proceedings some part of a juror's function plainly.
10 For the businessmen, whether you be engaged in the
11 processing of food or the development of property or the
12 creation of food at an earlier stage, and whether you be
13 based in the south east of England or the Midlands, what
14 I invite you to bring to this case is business sense
15 which includes something that you have each of you done,
16 all of your working lives, which is work out who is
17 telling the truth, who is trying to sell you a pup, who
18 is trying to help you personally. I sit there, I am
19 Mr Prosser: is this man trying to help me get to the
20 right decision or not? In my submission if you pose the
21 question in that way there is a clear and marked
22 contrast between Ronnie and Ashley on the one hand and
23 Guest, Hughes and Whelan on the other. I also think
24 that in the end both Fellone and Prothero were trying to
25 help you but that was in marked contrast to some things

1 that they had previously said.

2 You, sir, come to this -- the president, if I may --
3 with the oft stated proposition that you assume that
4 people are trying to help. That is a good start point
5 in life, but in this case we are going to have to grip
6 with fact which is that there are in life some good
7 people and some bad people and you have had some bad
8 'uns here.

9 Picking up the points further, I am going to deal in
10 detail with the memoranda of 9th June obviously because
11 they fall within the category of the apparent smoking
12 gun, obviously if the tribunal so paints them and they
13 require to be dealt with and I will not, as it were,
14 duck that in my way and indeed would welcome any
15 questions on those.

16 I would just like to sweep up privilege if I may. I
17 am surprised to hear Mr Morris say he wants to reserve
18 his position on this. At the first case management
19 conference you will recall that I floated the
20 possibility that if further statements were going to be
21 taken from Messrs Ashley and Ronnie we should have, as
22 it were, a video on the proceedings so that we could see
23 exactly what went on, how many iterations their drafts
24 went through, what it was they said before their drafts
25 were tweaked, to which the resounding answer came back:

1 legal professional privilege. An entirely appropriate
2 answer. At any rate, one firmly advanced by the Office.

3 We do not know whether Ronnie 4 and Ashley 1 and 2
4 are the same as any previous iteration of Ronnie 4,
5 Ashley 1 and 2 and we are not entitled to know. We are
6 not entitled to know how those statements came into
7 existence, who put what questions to whom, who drafted
8 the paragraph in question. It is all behind the cloak.

9 It would be monstrous of me to suggest that because
10 the Office will not reveal the process whereby those
11 statements were created, and indeed objected to it prior
12 to taking them, that there was something fishy going on
13 and that they would want to do something that was
14 illegitimate. But that is precisely the inference which
15 in the end Mr Morris, if he does not reconsider his
16 position further, will be inviting you to make which is
17 monstrous and wrong.

18 The Ronnie statements were deployed, that is the
19 fundamental difference, but there is an additional
20 fundamental difference of course which is that they were
21 created and deployed under pain of criminal procedure;
22 whereas any internal draft, and I speak for JJB because
23 I have not the slightest idea what the situation is at
24 my end, and I am not going to ask and that is the end of
25 it, were simply internal documents being knocked around

1 between a client and a solicitor which may contain
2 inaccuracies or not for all sorts of reasons. They get
3 sorted. It is as simple as that.

4 So as far as Mr Hughes' diary is concerned this is
5 a point that you did ask me to deal with yesterday, and
6 let me deal with that now: it first came into the
7 possession of those instructing me shortly after the
8 decision was published and before our defence. A notice
9 of appeal, I am sorry. I still cannot quite get the
10 terminology right.

11 THE PRESIDENT: Yes, after the decision.

12 MR WEST-KNIGHTS: So it must therefore have been in the
13 month of September.

14 THE PRESIDENT: But appeal launched.

15 MR WEST-KNIGHTS: I can tell you further that the marker pen
16 obliterations were done by Mr Hughes shortly before
17 that.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: But in the knowledge that material was
20 being added over the solicitors.

21 THE PRESIDENT: Are you distinguishing between the marker
22 pen obliterations and the other obliterations?

23 MR WEST-KNIGHTS: I am; those obliterations which were on
24 the face of it intended to be obliterations as opposed
25 to scrubbing things out. It is of course not immaterial

1 both that Mr Hughes could of course have destroyed the
2 document altogether, could have simply told the
3 solicitors it did not exist any more. He did not do
4 that.

5 He was told if the document was put into their
6 possession then there would be no question of his, as it
7 were, editing the use to which it might be put, and my
8 instructions are and his evidence was that that which
9 was obliterated in that way was the product of
10 embarrassment. That is to say, the material referring
11 to potential further calls to Ashley, as to which his
12 evidence is, he was deeply embarrassed and the notion
13 that he might be looking for a buyer in the shape of
14 Ashley. The other being the references to his having
15 been drinking excessively and one or two other personal
16 things that we just have not looked at.

17 THE PRESIDENT: Yes. There is I think a reference in
18 Allsports' submissions to the OFT at one point which is
19 to the general effect that Mr Hughes is a man who lives
20 by his diary and there is no reference in the diary to
21 something.

22 MR WEST-KNIGHTS: There was a reference to the diary. As I
23 understand it, that came in the term client instructions
24 rather than by looking at the diary itself. It may have
25 included some photocopies of some pages. I cannot I am

1 afraid at the moment resurrect that but I did ask about
2 that some time ago and was told, as it were, that
3 material had come from Allsports and it may be that that
4 little bit, as it were, was simply lifting something
5 that Allsports had told the solicitors.

6 At any rate at that stage there is no question that
7 Addleshaw's, or their predecessors, whatever they were
8 called, did not then have the original diary in their
9 possession.

10 THE PRESIDENT: Yes.

11 MR WEST-KNIGHTS: And, as I say, Mr Hughes is content for
12 you to know that, as I say, the felt-tip obliterations
13 were done by him knowing that the diary was going into
14 the domain of litigation and that he chose to make those
15 obliterations at that stage.

16 THE PRESIDENT: Yes.

17 MR WEST-KNIGHTS: I need to tell you two more things. First
18 of course is that the one which everybody is shouting
19 about, which is the page about the sports trade cartel
20 was not efficiently obliterated. It remained visible.
21 The person who picked it up was the person who read the
22 diary for the first time after it came into the
23 solicitor's possession and it was immediately
24 transcribed. And that transcription --

25 THE PRESIDENT: That is not a felt-tip obliteration.

1 MR WEST-KNIGHTS: That is not a felt-tip, absolutely not.

2 THE PRESIDENT: That is an obliteration at an earlier stage.

3 MR WEST-KNIGHTS: It has been scrubbed out at an earlier
4 stage. I cannot assist you further with that. He does
5 not know when it was and he was not questioned about it
6 in a way that elicited any answers. So whatever answers
7 the OFT got, presumably, they are content with.

8 But the fact is that those words remained legible.
9 It did not take a forensic scientist. It took my
10 instructing solicitor who read those words and
11 immediately had all of the apparently relevant pages of
12 the diary transcribed.

13 The other thing about that is that Mr Hughes's own
14 witness statement volunteers that there are additional
15 entries in the diary relating to Michael Ashley. So it
16 is in the witness statement, paragraph 120 of his second
17 witness statement.

18 THE PRESIDENT: Thank you.

19 MR WEST-KNIGHTS: So there are no bones about that much. To
20 the extent that he might have had a guilty conscience
21 about any of that destruction, he volunteered not only
22 to the solicitors but to this tribunal, the existence of
23 those entries because he says so in his witness
24 statement.

25 THE PRESIDENT: You mean the further entries?

1 MR WEST-KNIGHTS: Further to the ones which are specifically
2 dealt with by way of transcription and dealt with him in
3 his witness statement, ie the ones which, no doubt due
4 to public expense, were uncovered by the forensic
5 laboratory at the back end of February.

6 I think I am about to give evidence, at least on
7 behalf of my instructing solicitor, which may not be
8 appropriate. I may have a word with Mr Morris and see
9 whether he thinks it is appropriate for me to tell you
10 that extra fact.

11 I will be looking with you at the main monthly
12 management report briefly, but two things we need to be
13 reminded of -- and this is back to the legal framework
14 in which this is put.

15 The case in the decision is legally wholly
16 uncontroversial because the case in the decision is that
17 on the day there was an agreement.

18 THE PRESIDENT: Which are we talking about, the England
19 Agreement or the MU Agreement?

20 MR WEST-KNIGHTS: I beg your pardon, I am talking about
21 Manchester United. I will come back to England in
22 a minute because actually the analysis is not
23 dissimilar.

24 THE PRESIDENT: Yes.

25 MR WEST-KNIGHTS: So the decision holds that there is an

1 agreement. Now you do not need any law for that, apart
2 from statutes to say that such agreements are lawful and
3 it is. So there is positive averment that they agreed
4 39.99 all round.

5 THE PRESIDENT: Yes, I think the decision makes it clear
6 when it uses the word "agreement" it incorporates the
7 idea of concerted practice.

8 MR WEST-KNIGHTS: The Office was very careful always to use
9 agreement or concerted practice in every possible
10 context, even in the context of the England Agreement
11 where they had no case beyond actual agreement, but they
12 do use those words. The particulars of the agreement or
13 concerted practice were that these four gentlemen, these
14 three parties, sat down on that day and agreed a price.
15 That is what the decision says.

16 In the defence, there is advanced a slightly
17 alternative case which is price information exchange.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: You have been posing to Lord Gribner the
20 theoretical question: when does a concerted practice
21 become a concerted practice? If I may venture to
22 suggest the answer here: it is not any more law than we
23 have already floated, which is that there are two
24 possibilities under Dyestuffs and the Cement case that
25 if that price information exchange took place with an

1 antecedent motive then that is, as a matter of
2 principle, leg one of the Cement case. That is to say
3 it is tainted prior to the moment of receipt, or at the
4 moment of receipt.

5 THE PRESIDENT: Tainted, did you say?

6 MR WEST-KNIGHTS: Tainted, yes. The mere exchange of
7 information in a vacuum, we have already established,
8 simply leads you to ask the question: what was the
9 context? So there is in the defence this lesser case --
10 as I think you remarked at an earlier stage in the
11 proceedings in another context -- that there was price
12 information exchange reduction of uncertainty sufficient
13 to be material and tainted with either the antecedent
14 motive or the motive at the time.

15 What is not advanced at any stage by the Office,
16 even now, is the second alternative leg of the Cement
17 case, namely that having received that information for
18 whatever purpose and in whatever context, they then went
19 on and used it, which is the accepted part of the Cement
20 case. No cross-examination has taken place of any
21 material witness as to this, and in the case of my
22 witnesses including Mr Patrick, whom they chose not to
23 cross-examine at all, they made no use of that
24 information. It was disregarded. There has been no
25 challenge to any of that. So we are not in a legal

1 vacuum here and I think it is not just a question of
2 when does a concerted practice become a concerted
3 practice. We have the Cement basis to focus on and as
4 I keep saying it is the high point in terms of
5 liability. Either there is an agreement and that is the
6 case in the decision, there was a consensus, a meeting
7 or minds, or they say there was material price
8 information exchanged, tainted by the antecedent
9 conduct. But they have no case on its subsequent use.

10 If I can remind you of the two limbs of the Cement
11 case. It is in paragraph 1849; the material sentence
12 being:

13 "The condition is met where one competitor discloses
14 its future intentions or conduct on the market to
15 another when the latter requests it..."

16 Which is here -- that is the shorthand for, as it
17 were, the antecedent context:

18 "...or at the very least accepts it."

19 In the Lafrage case, of course, the acceptance was
20 its circulation and plain reliance amongst a wide
21 section of the company on the knowledge that they would
22 not be moving in on the French market.

23 The monthly management report then. I just want to
24 say this very briefly. First, the purpose of my
25 cross-examination of Mr Ronnie as to its date was to

1 establish that there is no reasonable basis upon which
2 anybody could conclude that the monthly management
3 report for May has, in fact, anything to do with the
4 Manchester United agreement. It cannot have done. The
5 last word on the subject was that Mr Ronnie, when he
6 thought I might be able to prove that he was at the
7 Chiltern Hotel that night, said he either left the
8 office after this long, late meeting with Ashley and
9 went home or he went down to London with Ashley. I say
10 London -- Dunstable with Ashley.

11 We have all the evidence as to the previous
12 statements which he had made about this and it is in the
13 schedule, I will not weary you with it, but the
14 progression is: Ronnie starts off by telling the Office
15 that the May monthly management report was only to do
16 with the Manchester United Agreement, an agreement from
17 which Umbro were hoping to distance themselves because
18 they could characterise it as the retailers having
19 sorted it out amongst themselves.

20 It then developed into being both MU and England,
21 but the Office, in the person of Mr Walker-Smith
22 initially, asked some pretty canny questions and they
23 included: if this is MU only or principally, how did you
24 know that JD and First Sports had signed up for this?

25 Now Mr Ronnie came out with a number of different

1 explanations over the period. His final explanation in
2 writing was, Ronnie 3: that I must have been, indeed
3 I was, told by Ashley at the crucial meeting on
4 8th March, after the helicopter day, that Hughes had
5 said that he would roll it out to JD and First Sports.

6 The problem with that explanation, apart from its
7 being the fourth, is Mr Ashley's written representations
8 were again as a result of specific questioning from the
9 Office: can you help us with how JD and First Sports
10 became involved in the Manchester United Agreement? To
11 which the answer is: no, I cannot. I have no
12 information about it one way or the other.

13 I am reminded that what Mr Hughes told me was, in
14 fact, the answer to a specific question posed by the
15 Office in that letter that we looked at several times in
16 various contexts at A1, 13, 647. You will not need the
17 reference at this stage because this is all covered in
18 the Ronnie schedule. Page 11 deals with that.

19 In fact, the development was that Ronnie 1 gave an
20 explanation, Ronnie 2 gave a slightly different
21 explanation, the letter gave yet a third. Of course, at
22 that stage, hovering around was the date of this
23 document and Mr Ronnie would not pin himself down. He
24 said "My diary does not help me."

25 My submission is that his diary did help him

1 plainly, that all of the underlying reports were in by
2 5th June and he has it in his diary to write this thing
3 on the afternoon of 7th June and the morning of
4 8th June. It is in his diary, "9.30, monthly report."
5 We have the front page printed out probably on the
6 8th June. He did not exhibit the page with the date on
7 it. He may have foreseen that there was some problem
8 coming out with the date, because how would he have had
9 time to whizz the Manchester United Agreement into
10 a monthly management report which, on the face of it,
11 was done and dusted on the working day of 8th June? So
12 he was only saying early June in those statements.

13 Ronnie 3, of course, is silent about the monthly
14 management reports one way or another in this aspect.
15 Then in Ronnie 4 suddenly: well, I think I did it on the
16 evening of 8th June after my meeting with Ashley. But
17 in the witness box, when his mind was taken off that and
18 I asked him what he did after his meeting with Ashley,
19 all that has gone. He either went home or he went to
20 Dunstable. It is as plain as a pikestaff on the
21 evidence that that report was probably drafted before
22 the meeting with Ashley. Therefore, there is no warrant
23 for saying that it actually refers to the Manchester
24 United Agreement at all.

25 If you are in doubt about that, just look again: how

1 can he say that JD and First Sports were party to that
2 agreement when, as at 8th June, they were not? Nobody
3 knows that process and certainly Ashley did not know
4 that process because he says that when he spoke to
5 Ronnie on 8th June, it did not include any information
6 from Hughes as to how JD and First Sports would be in
7 this. That is a problem, as I say, with the Office, who
8 at an early stage posed some really good questions and
9 gave rise to some wriggling. Eventually, in my
10 submission, the position is clear: whatever the May
11 monthly report is about, it is not about the Manchester
12 United Agreement. That makes further sense in its own
13 context.

14 I am going to slow down a bit.

15 THE PRESIDENT: I have slightly lost you, Mr West-Knights.

16 MR WEST-KNIGHTS: Thank you for saying that because I will
17 try and find you on the way back.

18 THE PRESIDENT: The May management report, even if written
19 before the meeting actually took place, seems to
20 envisage an agreement about Manchester United.

21 MR WEST-KNIGHTS: That actually comes back to my syntax
22 point.

23 THE PRESIDENT: Possibly in anticipation or acknowledgement
24 that.

25 MR WEST-KNIGHTS: Where do you obtain that information from?

1 THE PRESIDENT: The document refers to "Manchester United".

2 MR WEST-KNIGHTS: Yes, absolutely.

3 THE PRESIDENT: What is the explanation for that?

4 MR WEST-KNIGHTS: The syntax goes wrong, as everybody

5 accepts. There is a word missing or as I venture to

6 suggest a punctuation point. Good news in relation to

7 the England shirt/the Manchester United launch. All of

8 the witnesses have said that what happened in respect of

9 the England shirt was an important marker, particularly

10 for Manchester United, in respect of what might happen

11 with the MU shirt. If Ronnie can get Ashley to go up to

12 39.99 on the England shirt, which interestingly he

13 definitely had by the date of the monthly management

14 report because Ashley's price goes up on 2nd/3rd June

15 and the monthly management report is drafted somewhere

16 probably on the 7th and 8th June, it is good news for

17 the Manchester United launch.

18 You will remember that part of this context was that

19 on 25th May, and we will look at the document briefly if

20 we have to and I certainly am going to do this in

21 chronological order, MU had written to Umbro saying: we

22 have the following moans -- but Kitbag and Debenhams,

23 never mind them -- we know this is not strictly your

24 part of the ship, but we see that Sports Soccer are

25 discounting the Liverpool shirt, do you know what their

1 intentions are?

2 In other words, if Ashley goes up on England, that
3 fills Umbro with confidence that the MU position will be
4 the same. Indeed, we still do not know what grounds for
5 confidence there existed between Umbro and Sports Soccer
6 because we are still left in the dark about the true
7 nature of the arrangements between them and the true
8 nature of the quid pro quo, which was undoubtedly given
9 on each occasion that a price was fixed.

10 THE PRESIDENT: So we read the reference to Manchester
11 United as an expression of confidence.

12 MR WEST-KNIGHTS: Can I just dig it out. I have been doing
13 this without looking at it and I perhaps ought not to
14 be. E1, tab 27, page 230, says Mr Peretz with
15 confidence. Let us take it in bite sized lumps:

16 "UK sales spent the last two weeks of May trying to
17 force England Licensed product into not only the
18 independents but also the major account base."

19 Pausing there, I found Mr Guest's opinion on that
20 attitude instructive:

21 "Allsports were the main issue, having committed to
22 orders, in the region of 1 million for April and May,
23 they were still holding back on a booking-in date. This
24 has now been resolved and Allsports will have taken
25 75 per cent of the outstanding amount by 12th June

1 2000."

2 I am going to pause there and go slightly off topic
3 to say that yesterday this was put to Mr Guest, grossly
4 unfairly, on the footing that Allsports had in June
5 decided to do the booking-in after Ashley's price had
6 gone up. There is no warrant for that whatever. This
7 is the May monthly report.

8 There is no suggestion anywhere to be found, no
9 evidential basis, that this did not happen in May. The
10 preceding report, you will recall, remarked on the poor
11 weather but said that Allsports were booking in
12 mid/late May. Some time during May this was resolved
13 such that the outstanding amount, or 75 per cent of the
14 outstanding amount, would be delivered by 12th June.
15 You will remember -- although again that page was
16 excluded from the so-called cross-examination bundle,
17 when extracts from this report were put in -- that the
18 evidence was that the sales by Sports Soccer in May of
19 the England shirt had been good.

20 THE PRESIDENT: Sales by Allsports?

21 MR WEST-KNIGHTS: I beg your pardon, yes, I will get shot
22 for that. Yes, my clients. The significant feature
23 about May, we know, is that for its entirety, now that
24 Mr Ronnie finally accepts that it is possible that he
25 was wrong about the date of the 26th May, we know that

1 whatever else was happening Ashley was discounting the
2 England shirt throughout the entire month of May and
3 a little beyond.

4 JD Sports, for whatever effect that may or may not
5 have had on my clients, were doing a promotion which
6 latterly became England shirt at 39.99 plus the £10 cap,
7 but had previously been that the England shirt was
8 reduced and if you spent more than X pounds you got
9 a cap as well. There is no evidence before you as to
10 when it changed from cap and discount on the England
11 shirt to just cap, unless it would simply be the pricing
12 schedule that it happened on 3rd June. You have of
13 course JD's explanation for that somewhere in the
14 papers, for what it is worth.

15 There is, therefore, no warrant for suggesting that
16 Allsports' booking-in of these shirts had any connection
17 whatever with a cessation of discounting by anybody.
18 That was just wrong and unfair.

19 The next line:

20 "Other accounts that are holding back on firm
21 bookings until after the first England game [so they
22 really are not chancing their arm at all] are
23 First Sport, Lillywhites, [now, as we know, owned by
24 Mr Ashley] Champion...."

25 As I said that is not confidential.

1 THE PRESIDENT: But not at the time, I think.

2 MR WEST-KNIGHTS: Not at the time, no:

3 "...Champion [which of course is Debenhams] and
4 other independent accounts."

5 Nobody has suggested there is anything sinister in
6 the conduct of Lillywhites, for instance, in those
7 bookings. It is simply a matter, as all the rest of the
8 evidence has shown, of ordinary commerce.

9 There has been a major step forward in the retail
10 price of England, and I venture to suggest stroke launch
11 of Manchester United. There are various alternative
12 propositions. Another one has been put before me, which
13 is the word "for" might go in respect of my theoretical
14 forward slash. But, at any rate, there is a kind of
15 mental stop there which needs to be filled with
16 something, but not much.

17 So let us just proceed on the footing for a moment
18 that this is a recital of the so-called England
19 Agreement. I am going to suggest that what probably
20 happened is this: the deal was struck with Ashley in
21 March and in April and in May, but particularly on
22 24th May. No issue about that. A deal was struck that
23 he would go out on the England shirt at 39.99 for the
24 duration of the tournament -- I do not think there is
25 a difficulty about that -- and, interestingly, the MU

1 shirt for 60 days.

2 THE PRESIDENT: Sixty days was the Nike rule or something to
3 that effect.

4 MR WEST-KNIGHTS: So it is said. It was a bit of
5 price-fixing, it is said, that was habitually imposed by
6 Nike. I will not weary you with the evidence about that
7 from Mr Ronnie, it is in our schedule. At one stage he
8 went so far as to say that the 24th May reference to
9 other replica was a reference to an agreement by Ashley,
10 or I think he said it was a proposal by Ashley, to price
11 all replica except Umbro at full price for 60 days,
12 which was plainly eye wash.

13 Coming back to this. That day we know Ashley said,
14 as part of whatever deal he had with Ronnie, that he
15 would put his prices up immediately, the following day.

16 THE PRESIDENT: This is 24th May he said that.

17 MR WEST-KNIGHTS: Yes.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: On 25th May, Ronnie is back in the office
20 and of course Fellone is around the place. They may
21 indeed have discussed between themselves -- communicated
22 with people about some result. Guest told you with
23 frankness that if Ronnie had obtained such an agreement,
24 he would have expected somebody from Umbro to have
25 called him. He said so. He said "but they didn't". So

1 I do not know where that leaves this agreement. I am
2 going to answer that question now.

3 So Ronnie and Fellone are together on the 25th and
4 they are pleased with themselves because Fellone does
5 not know the ins and outs of what happened at that
6 meeting. He was not there and what quid pro quos there
7 were, we simply do not know. We do not know who at
8 Umbro knew what about these arrangements with Ronnie.
9 Oh dear though, you see Fellone has a job to do which it
10 is now said is different from Ronnie's although right
11 until Ronnie 4, of course, they were doing the same
12 thing, which was procuring agreement as the decision
13 finds.

14 Fellone we know, we can see from the documents in
15 the chronology, is busy bullying Debenhams who resist.
16 There is eventually something quite close to a punch-up,
17 as you will see from the chronology, where Debenhams'
18 Mr Ryman fumes in to see Mr Fellone and says he is not
19 having it and if there is any more of this he will not
20 deal with Umbro at all. Good for him.

21 We also know they were in the process of bullying
22 JD Sports about the cap promotion, which was being
23 treated as a discount. That is initially Fellone
24 territory but it gets handed over to the heavy,
25 Mr Ronnie, who eventually has the telephone call that

1 you have a note of in your papers of 24th July which
2 makes very ugly reading indeed, where Mr Bohn (?)
3 eventually said "I will see you in court and if I get
4 hold of any of these damn shirts I am going to sell them
5 at a fiver each just to get one back on you".

6 We know the reality of JD Sports is that they were
7 put on P-stop, that is to say full block on their
8 account from, guess when, the date of this report or the
9 supposed date of this report until the 18th August.

10 THE PRESIDENT: From 8th June.

11 MR WEST-KNIGHTS: To 18th August. Again, it is in the
12 schedule and the information is given in Ronnie 2.

13 There are three very long pages all about this in Ronnie
14 2, which simply disappear when we get to Ronnie 3. So
15 if we had not had the leniency material, we would never
16 have known about this.

17 THE PRESIDENT: Yes.

18 MR WEST-KNIGHTS: He told you without, if I may say so, the
19 slightest hint of remorse that the purpose was to punish
20 JD, he says, for two things: insufficient support of the
21 brand, which he later described as brand development,
22 and the continued discounting by the use of the cap.
23 Not only did they plainly lose the bulk of the sales
24 that they might have made of the Manchester United shirt
25 but their credibility was damaged because replica shirt

1 is a must-have.

2 The P-stop came off the account on the 18th, but the
3 evidence appears to show, to be fair to Umbro, that the
4 deliveries of the Manchester United shirts to JD, for
5 some curious reason, appear to have occurred on
6 12th August. So they got them 12 days late. How long
7 it would take them to process those deliveries through
8 their warehouse, et cetera, and price the stuff up, I do
9 not know.

10 At any rate, what we have so far is that Ronnie and
11 Fellone are together on the 25th and Ronnie, if he
12 thinks it was a result, may have said he thought he got
13 a result to Fellone. Of course, the next thing that
14 happens is that Ronnie finds out that Ashley has broken
15 the deal. He does not put his prices up on 25th May.

16 THE PRESIDENT: Just remind me where the agreement to put
17 them up the following day is to be found.

18 MR WEST-KNIGHTS: Ronnie's cross-examination. It is in the
19 Ronnie schedule, and if I fall over the reference I will
20 give it to you again. It is there in our closing. That
21 came from him, not as a result of me putting it to him,
22 I simply asked what the nature of the agreement was and
23 whether the agreement had been to put the price up
24 immediately. He said yes, the following day.

25 So what we have, then, is Ronnie knows, Fellone may

1 not, that Ashley has broken the agreement. So what have
2 we got? Another Ashley renegeing, another Ashley lie.
3 Ashley's statements say that his skill, apart from being
4 good at distribution and sourcing, was promising people
5 that he would do things and then not doing them. Making
6 enough noise, he says, to acquire the product. Now
7 I venture to suggest in those cases he is talking about
8 other manufacturers because that is not the relationship
9 between Ronnie and Ashley. You may remember the answer
10 to Lord Grabiner's questions about whether Mr Ronnie
11 would have told Mr Ashley to do anything in the sense of
12 his being a senior employer and Mr Ashley being a junior
13 one and he said no. Then Lord Grabiner said:

14 "Question: That is not the relationship now, is
15 it?"

16 "Answer: No.

17 "Question: And that was not the relationship you
18 had then?"

19 "Answer: Absolutely not."

20 We know from the papers that Phil Fellone is doing
21 at least some part of his stuff and, as I say, we can
22 see the conversations he had with Debenhams. He said he
23 had a conversation with John Lewis and we know he had
24 a considerable amount of contact with JD Sports.

25 THE PRESIDENT: So we know, or we can assume, that Fellone,

1 at least, is doing a ring around.

2 MR WEST-KNIGHTS: He is doing it for a different purpose.

3 The original matrix as at the moment of the decision
4 certainly, was that they were doing the same job. They
5 were each simply ringing up other retailers to get them
6 to agree. It is now said -- not by Mr Fellone, only by
7 Mr Ronnie, Mr Fellone's statements have not changed --
8 that Mr Ronnie was engaged in a distinctly different job
9 in respect of JJB and Allsports, which was celebrating
10 the result and warning them off that they should not
11 discount.

12 THE PRESIDENT: But no one seems to be putting in issue
13 Mr Fellone's honesty or reliability?

14 MR WEST-KNIGHTS: No, I do not have a problem with
15 Mr Fellone's reliability on this and that is why I did
16 not cross-examine him where he says, "Ronnie and
17 I discussed calling the other retailers."

18 I certainly do not shy away from the fact that it
19 may be that Ronnie intended, well Ronnie probably did
20 intend to call, because he got a result. I cannot shy
21 away from that when my secondary principal witness and
22 a man of absolute probity, I would venture to suggest,
23 Mr Guest, says, "If he had this result I would have
24 expected him to ring me".

25 He was building himself into a bit of a corner

1 because he then went on to say "But he didn't, so I do
2 not know where that leaves the agreement" which
3 everybody seems to accept happened.

4 The answer is, of course, that it was not a result
5 any more. It is still in Umbro's interests to bully
6 those people who had been discounting and that is what
7 Phil Fellone -- I say bully, it became bullying later
8 on, but it is certainly leaning on -- and actually
9 I think, for I quite liked Phil Fellone, from what I
10 could see of him, he is not very subtle with Debenhams.
11 He tells Debenhams at a pretty early stage "You are not
12 going to get any product from us unless you step into
13 line" and as I say that resulted in a stand up row
14 between him and Ryman.

15 But you see if Ronnie's function is simply to
16 celebrate, he has nothing to celebrate. What is he
17 going to do? He is going to ring up Allsports and say
18 "I will tell you the good news: Ashley has put his
19 prices up", no, he has not.

20 Where does that take him? His evidence is that
21 Ashley frequently made promises and broke them;
22 illusory, not worth the paper they are written on
23 et cetera, that is Ronnie's evidence. What he says in
24 Ronnie 4 is "I rang the retailers because I had the
25 guarantee." That is plainly a lie, because it ain't

1 a guarantee when you already know that Ashley has
2 reneged on the deal.

3 The other aspect of this; he is not going to ring up
4 Allsports to say "oh look you had better make sure you
5 do not discount" because we never do. There was not,
6 going back to my proverbial snowball, a snowball's
7 chance in hell of Allsports selling this at anything
8 other than 39.99, unless it thought it could get 45 quid
9 for it, but that is not in the matrix here.

10 So what do you write down when you are reporting to
11 the troops at a time when it has come good for Umbro,
12 because this report cannot have been written before
13 about the 5th June because that is the last date on any
14 of the underlying papers in Mr Ronnie's package, and we
15 went through that with him. It would be illogical to
16 assume it was written over the weekend of the
17 3rd/4th June, because nobody seems to work in this
18 industry over the weekend. That takes us to the 5th, by
19 which time of course the result is known. All of
20 Ashley's windows have changed pursuant to the phone
21 calls that he had with Ronnie and his area managers on
22 Friday 2nd June, late in the evening.

23 So by the time this is written, he has done it with
24 the one person who matters; Ashley. This is actually,
25 of course, in one sense misleading in another way

1 because at the time when this is written, JD Sports were
2 still hanging on to the cap promotion. Whatever they
3 had had done to the price we know that JD Sports refused
4 to back off on the cap promotion. Certainly they must
5 have been refusing it on 8th June because that is the
6 start date for the P-stop.

7 THE PRESIDENT: Yes.

8 MR WEST-KNIGHTS: Now, who do you know is bound to go out at
9 39.99 on a premium product England shirt, finally, as
10 the evidence has gone, interest in the tournament has
11 finally picked up, they are in the A bundle, a stack of
12 very boring photocopies of the front and back pages of
13 the red tops starting I think at the end of May and
14 running on for about a week. They are full of
15 speculation about England and Euro 2000. Finally the
16 nation's enthusiasm however briefly it was to be
17 satisfied, had been fired. On any referencing system
18 the cross-examination of Mr Ronnie, which led to the
19 promise to put them up the following day, is Day 6,
20 page 102.

21 Who do you know on a premium product like this is
22 going to go out at 39.99? Indeed, it is much better
23 than that. If you write this on the 5th June --

24 THE PRESIDENT: It is not a question of precisely going out
25 at because it is already on sale.

1 MR WEST-KNIGHTS: I agree. I was about to modify that, but
2 it makes my position even easier. Let us assume that
3 this document is written on 5th, 6th or the 7th, or
4 indeed on the morning of 8th June. What is out there in
5 the market? Fact, JJB is at 39.99. Allsports is at
6 39.99. In each of those two cases, they had been for
7 some considerable time, in the case of JJB, and in the
8 case of Allsports they ain't never been nothing
9 different.

10 First Sport, it is a fact; JD Sports, it is a fact
11 except that we just quietly do not mention the
12 difficulty about the cap. It is the easiest thing in
13 the world to say "they have all agreed" where it may
14 simply be that Fellone had got agreement out of some of
15 the others. But of course Mr Ronnie had not been in
16 a position to telephone Allsports at any material time.
17 It is not until the evening of 2nd June when, if you
18 would believe it, he is in a tennis tournament, and we
19 will come back to that, he does not know until then that
20 Ashley is going to come good. He does know throughout
21 the week, starting on 25th May that Ashley has gone
22 back. The alleged date for this telephone call is some
23 time in the week of the 30th May, Tuesday, 30th May, the
24 29th having been a bank holiday Monday.

25 So all through that week until the Friday evening

1 this remains a failure. What does Mr Ronnie do when he
2 leaves the tennis club, if you believe that he was
3 there? He does not telephone anybody at Allsports and
4 he did not do so on the Saturday because that is the end
5 of the time that the OFT put on the possibility of the
6 phone calls having been made. 30th they say to the
7 2nd June. Previously they said it was the 25th to
8 2nd June. Mr Ronnie could not, or would not, put a date
9 on it at all.

10 This rather conveniently did not emerge at all in
11 any of the earlier Ronnies because he had, despite the
12 memorability of the tennis tournament, asserted firmly
13 that he remembered clearly the price going up because he
14 was telephoned by Ashley's people on Friday, 26th May.
15 But of course he was wrong about that. But that was the
16 matrix of his original statements.

17 So it all just breaks down once Ronnie says --

18 THE PRESIDENT: I cannot remember offhand whether he said he
19 played tennis every Friday, or whether it was this
20 particular Friday he was playing tennis.

21 MR WEST-KNIGHTS: It depends in what context you are asking
22 me that. He does say in general he tends to play tennis
23 on a Friday afternoon. He did not ally tennis in his
24 original statements, or indeed in any of his statements,
25 to the making of the Ashley area manager phone calls.

1 He simply says, if you look at it and it is on the
2 schedule, in the first iterations that "I remember
3 clearly it was a Friday because he got his people to
4 ring me up." I think it might have been said that he
5 was out to dinner, I cannot remember, but the point
6 is -- here we are. This is Ronnie 3, paragraph 31,
7 witness bundle 3, page 225:

8 "On Friday 26th May 2000 Sports Soccer increased the
9 price of the England shirts to £40. I remember this
10 because Mike Ashley made every area manager call me on
11 the Friday night to confirm the price of the shirts.
12 I had a lot of messages from Sports Soccer area managers
13 on my mobile phone."

14 Which is the one of the reasons why I was quite keen
15 to ask him if he were playing tennis, how come the
16 2nd June and not 26th May? At any rate, his original
17 matrix was one that did not involve this problem which
18 was that at all material times when this telephone call
19 was said to have taken place, it was not a result at
20 all.

21 That all just fits together. As does this document.
22 Materially they have the awkward squad in their flock
23 into the pen but it is just easier, instead of saying
24 "well we have had a partial success with JD supports but
25 there is still a bit of a pickle on the cap. First

1 Sport has gone up and we are not entirely sure whether
2 that was a result of any pressure we put on them, but we
3 tried jolly hard. Sports Soccer has gone up. Oops,
4 I am not going to tell you about that because we do not
5 talk about the licensing arrangements and the monthly
6 management reports for some reason. That is all as a
7 result of my jolly good clever work. And of course JJB
8 and Sports Soccer have gone on doing what they always
9 did."

10 That is a rather complicated way of putting it.

11 THE PRESIDENT: Did you mean JJB and Allsports?

12 MR WEST-KNIGHTS: Did I say Sports Soccer again? I am
13 sorry, but thank you.

14 THE PRESIDENT: It is all these sports confusing you.

15 MR WEST-KNIGHTS: I may have to call them George or --

16 MR MORRIS: Call them socks.

17 MR WEST-KNIGHTS: I will call them socks and shorts. This
18 is Mr Ronnie's beat. This is the troops' rallying cry.
19 He is proud that these arrangements have settled down.
20 He is, either in shorthand or by way of a piece of mild
21 dishonesty, flattening it out and everybody is agreed.

22 It is obvious that we did not agree any damn thing,
23 why? Partly because the Office has expressly abandoned
24 its case that we did. We had a lot of moan about this.
25 This why we have had to face the pressure case, which

1 has probably doubled the length of this hearing. The
2 Office has expressly resiled from the suggestion that we
3 agreed to go at 39.99. It is their case that we did not
4 and the same applies to JJB. So the Office's case must
5 be that this statement is untrue. Of course it is, but
6 mildly. As I say, it is just easier to say everybody is
7 at 39.99. Again, the next sentence reinforces this:

8 "This is following England being sold at various
9 retail prices through April and May..." et cetera et
10 cetera.

11 Again, it is reinforced by the next line let us get
12 real about this line. It only has one meaning:

13 "Following a month of dialogue with all the above
14 accounts..."

15 Pause to brush own lapel, big oneself up.

16 THE PRESIDENT: Yes with all the above accounts?

17 MR WEST-KNIGHTS: Yes, absolutely, that is what he says. It
18 is not the Office's case that any dialogue with JJB or
19 Allsports in the preceding month led to either of those
20 two companies agreeing anything. That is the case which
21 they have abandoned. That is the case which was in the
22 decision. That is the case which I have won:

23 "Following a month of dialogue with the all the
24 above accounts [this is a statement of pride] Umbro
25 cannot allow our statement product to be discounted".

1 That is a rallying cry to the troops. This is
2 Ronnie saying "I have done the business for you guys. I
3 have done the business for Umbro. This is our statement
4 product and nobody messes with it." It is a bit like
5 those revolting baseball caps one used to get in Texas
6 to stop people littering, "Do not mess with Texas."
7 That is a very bold and proud statement and it just fits
8 with the whole tone and ethos of this page.

9 There is a separate point, of course, where he
10 really gets into his stride now, "Oh and what is more,
11 there are going to be meetings with JD Sports and
12 First Sports". So not only does he kick them into line
13 on the England shirt, he is really going to town now "we
14 will tell JD Sports and First Sport that unless Umbro
15 are now supported against other product categories, they
16 will not get the MU shirt, "We as a business cannot
17 allow these three accounts to buy licence product and
18 nothing else".

19 This is motivational stuff.

20 THE PRESIDENT: What are the three accounts you are
21 referring to there?

22 MR WEST-KNIGHTS: We have been there and I will do it in as
23 little detail as is necessary, but you will recall the
24 cross-examination. I assumed that Mr Ronnie was going
25 to say that it was a slip for two. Oh no. I personally

1 submit that he was lying, in fact, when he said what he
2 said. What he said was that you need to re-read the
3 penultimate paragraph of this "Friends, Romans and
4 countrymen" speech to the troops:

5 "It has also been decided that meetings will take
6 now place with [Allsports needs to be inserted there],
7 JD Sports and First Sport" and that unless they come on
8 to line on branded they ain't going to get MU.

9 The only thing that Mr Ronnie was remotely offended
10 about, it would appear, was that I overstepped the
11 position, to see what would happen, to suggest that it
12 was in Umbro's mind at that stage to put a P-stop on us
13 as well. He asked "Where do you get that from" and the
14 answer is: I did not have it from anywhere. He then
15 went on say except that a decision had been made that
16 unless we fell into line with branded, we would be
17 treated like JD Sports and First Sport.

18 We do not know what happened to First Sport.
19 Perhaps they had their arm twisted to put up some money
20 for some branded. We do know what happened to JD. As
21 I say, Mr Ronnie is entirely unrepentant about the fact
22 he may have cost that company hundreds of thousands of
23 pounds, if not millions of pounds. Who knows how long
24 the commercial effect of the damage to their reputation
25 will have lasted, when thousands of prospective

1 purchases of Manchester United and other kit will have
2 gone into their stores to be told "We ain't got none".

3 I suppose they could try and say "Well, we sold out,
4 "But the shirt has only been out three days." Do not
5 let us forget that JD Sports was described by
6 Michael Guest as "the retailer". The retailer that
7 Umbro would most like to be with. They have the best
8 retailing operation. They have the best shops. They
9 have the best kit. They have the best performance
10 brands. And they cannot even do a Manchester United
11 shirt. Who knows how much that cost them?

12 So before I leave this document, we submit that it
13 is not -- first, it makes no reference to Manchester
14 United and cannot sensibly in the chronological sequence
15 of events. As I say, Ronnie simply cannot deal with the
16 MU aspect of: well, how come you were able to report
17 that JD Sports and First Sports have been involved? You
18 cannot. He gives umpteen different answers and he ends
19 up with one in a cul-de-sac because Ashley will not have
20 it.

21 So this is just about England. Written at a time
22 when everybody knows what the prices are, because they
23 have gone up, and helping himself to a little bit of
24 a pat on the back. The main point I must come back to
25 on that line, is that it is the Office's case that no

1 such agreement was reached with Allsports or JJB. Their
2 case now is that we were given information as to
3 Sports Soccer's intentions. We were not, for obvious
4 and good reason. Of course leaving out of account
5 completely, just for this purpose, that Mr Ronnie had no
6 answer to any of the questions: that would have been
7 a good moment to tell us, would it not? Starting with
8 the day after, the 25th May, when both Ronnie and, oddly
9 enough, Phil Fellone are both at the golf day. My
10 impression had been that Ronnie arrived late but he said
11 he played golf. But he was there for dinner and he was
12 there afterwards and he add a quiet word with
13 David Hughes on the question of setting up a meeting to
14 talk about the MU shirt.

15 Michael Guest, lunch, 31st May. I am concentrating
16 now on the things which happened during the alleged
17 period of this phone call. He has no recollection of
18 that conversation at all. Yet one would have thought
19 that the conversation would have included handing over
20 of information or the discussion of its having been
21 handed over. But of course what information is there to
22 hand over? I had a talk with Ashley and he said he was
23 going to put his prices up on 25th May and he did not.

24 As at every single day on which this phone call is
25 alleged to have taken place, Ronnie did not know what

1 Ashley was going to do. "He did put his prices up
2 later" says Ronnie. Yes, but he had not. He had broken
3 the promise. So on every single material day when this
4 phone call was alleged to have taken place, all that
5 Ronnie knows that he has told you about is that
6 Sports Soccer have again reneged on a promise.

7 That is so far short of being compelling and strong
8 evidence of that which is alleged that you need not
9 trouble yourself with the law. I say that, of course,
10 without derogating from my primary position which is
11 that we should not have been fighting that at all.

12 I am afraid I have probably done a third of my
13 written submissions in a roundabout way by looking at
14 this document, but those are my submissions and
15 I venture to suggest that there is, in the end, nothing
16 sinister or clever about anything I have just said. It
17 just plain fits.

18 Before I leave this document, can I invite -- is
19 there anybody sitting there who has any niggling doubt
20 on any aspect of it? If the answer is no -- I am not
21 taking it that you may not later, but if there is
22 anything now.

23 THE PRESIDENT: No, I think you just go on for the moment,

24 Mr West-Knights.

25 MR WEST-KNIGHTS: Thank you. We may have barked up the

1 wrong tree at an earlier stage, of course, by suggesting
2 that this report may have been exaggerated for the
3 consumption of others. We still do not know. But of
4 course Mr Corbige --

5 THE PRESIDENT: I thought that is what you were suggesting;
6 that it was a rallying cry to the troops.

7 MR WEST-KNIGHTS: I am sorry, externally. The original
8 pleaded suggestion was that this had been written for
9 the consumption of the higher ups, the Mr McGuigans, the
10 shareholders and so on. No, this is quite a separate
11 point about what other eye Mr Ronnie had out. Plainly
12 the thrust of this is that this is a downward and
13 lateral rallying cry. It is plainly not intended for
14 publication in the News of the World.

15 THE PRESIDENT: I do not think it went down to people like
16 Mr May, did it?

17 MR WEST-KNIGHTS: We do not know under what circumstances --

18 THE PRESIDENT: Just on the basis --

19 MR WEST-KNIGHTS: Mr May said he never saw these, that bit.

20 THE PRESIDENT: Yes.

21 MR WEST-KNIGHTS: So it is at middle management level.

22 THE PRESIDENT: It may not matter very much.

23 MR WEST-KNIGHTS: It is written for somebody.

24 THE PRESIDENT: We assume the distribution list is the
25 distribution list on the front.

1 MR WEST-KNIGHTS: Yes. There is a whole bunch of people in
2 this organisation who we simply have not focussed on,
3 plainly. There is a whole bunch of stuff in these
4 monthly management reports which has nothing to do with
5 Mr Ronnie's end of the business. In principle these are
6 going to -- well, Shay Boyd is one of the people copied
7 in. We happen to know he is one of their marketeers.
8 David Baxter, he is Mr Footwear. He does not come under
9 Mr Ronnie's purview, but Prothero, Preston, Monaghams,
10 the chief financial officer, Corbige, who is both a
11 shareholder and had at least been the link with Doughty
12 Hanson. Mr McGuigan, and lots of other people who were
13 just in the business. Paul Masters; I think he does the
14 credit reconciliations where lots of Sports Soccer
15 mentions come. Et cetera. But it is written for
16 somebody. It probably does not matter whether it is
17 written, as it were, to impress the outsiders, or to gee
18 up the troops within. I am not just focussing on the
19 question that this was for external or higher
20 consumption. As I say, it plainly was not for the News
21 of the World because, unless you are very naive, it
22 contains the admission of criminal offence. What now
23 would be a criminal offence, what would then have been
24 simply unlawful conduct as Mr Ronnie knew. He accepts.
25 I find this extraordinary. Not only did Ashley tell

1 him, as Ashley says he did, he but he made internal
2 inquires at Umbro at the time: did I ought to be doing
3 this? No. It is illegal. Of course he knew it was
4 illegal because Umbro was one of the people who sent out
5 that hypocritical letter, as Mr Ronnie accepted it was,
6 in 1999.

7 So to that extent, this is a little tiny bit of
8 a walk on the wild side. This really is geeing up the
9 troops, "we are talking all these steps". Why?
10 "Because Umbro cannot allow our..." note, not its, our
11 "...statement product to be discounted."

12 If this had been a speech, it would have been a very
13 rousing one. I would have left the troops feeling that
14 Umbro was safely on course to be what Umbro wanted to
15 be, which was the Nike of the piece. Able to sell its
16 kit at a premium price, or at premium volumes, because
17 of the added perceived value, I think is the neutral
18 expression. This fits 100 per cent with the whole of
19 the Umbro ethos as it has emerged and, if I may say so,
20 with the rest of the monthly management reports, which
21 we will be inviting you to read. They are littered with
22 aspiration to be a brand, comparison with other brands,
23 irritations that Nike are doing jolly well on
24 a particular product, even though it is not a very good
25 product, simply the punters buy it because it has Nike

1 on it. Retail prices are absolutely everything in the
2 market. Indeed, at the beginning of the year Umbro
3 just -- well at the beginning of the documents, it is
4 clear that Umbro are acknowledging to Manchester United
5 that they have not hacked it as a brand and they have
6 a lot of work to do. I will be showing you the
7 references to those documents.

8 So my submission is: this document merits a good
9 long look and that, far from proving anything against
10 Allsports, it is plainly what I have described it as.
11 If it were evidence of anything, which it is not, it
12 would be evidence of a case which the Office expressly
13 disavows. For what it is worth, of course, Ronnie would
14 have you believe that the purpose of the monthly
15 management reports was to report good news. I do not
16 have to rely upon that because this is plainly written
17 in a "yippee, we have done the business" style.

18 I had not intended to spend anything like as long on
19 that as I have, but it will speed the process up.
20 I think if I could ask you to take up the closing
21 submissions, sir, I am going to whizz through. I am
22 going to do, probably much less elegantly, something
23 similar to what my Lord Lord Grabiner did yesterday,
24 which is just to alight on certain points.

25 We have not referred to the decision much, as we say

1 here, but at least we were the first people to cause it
2 to be opened; if you recall the two references to the
3 Umbro penalty being both aggravated and mitigated by the
4 pressure from, guess who, Manchester United and JJB, but
5 not of course us.

6 I have made the point about the OFT's case being
7 a moving target. Ronnie's story changed. So does the
8 OFT's case and in defence in the end it had to accept
9 that it was punting a completely different case, indeed,
10 three completely different cases: pressure only,
11 pressure leading to the phone call and in some choate
12 way an informing phone call only. It is for those
13 reasons, and for no other reasons, that it has been
14 necessary for me and Mr Peretz to have worked so hard to
15 prepare and then ultimately do the cross-examination on
16 this question of pressure.

17 We say, without apology or qualification, over the
18 page that it is reasonably -- it must be taken that the
19 pressure was abandoned. You have seen the underlying
20 evidence. You have seen that the Office held in very
21 low regard the reliability of Umbro witnesses and indeed
22 Sports Soccer. It is equally plain that the Office
23 decided that it was not going to run its pressure case
24 against us. It is pure speculation to say: well it
25 decided it was easier just to go ahead on an agreement

1 because after all they had the pressure case against JJB
2 and materially it was the same, except a lot less. We
3 either featured as "other retailers" or there was a bit
4 of JJB and Allsports underneath would be given
5 particulars of simply JJB conduct.

6 So there it is. The Office has invited you to
7 speculate that it was not abandoned but it was parked.
8 But, at any rate, it did not feature. That was before
9 the Office had any understanding of the
10 Sports Soccer/Umbro relationship. I say here without
11 apology that the Office never gave it a thought and they
12 were just as much in the dark as we were, except they
13 had the materials.

14 I want to make it clear that I make no criticism of
15 the Office as an organisation. It discharges an
16 immensely important public function on many fronts.
17 Without the Office there would be crooks out there
18 fleecing the public in any number of ways, but as
19 a fact, in this case, perhaps through a want of
20 resources, perhaps through a want of organisation of the
21 documents, they simply did not pick up on the fact that
22 by the time we get to the three round of statements,
23 there is no sign of the licensing arrangements, or any
24 of the underlying arrangements, between Ashley and
25 Ronnie. There is a reference en passant in the

1 Sports Soccer written representations, but it does not
2 stick out like the Earl of Marlborough's monument. All
3 of the Umbro's statements had had this material
4 expressly excised. I do not mean redacted. I mean not
5 there.

6 THE PRESIDENT: There is some -- in one of the Ronnie
7 statements, is there not a passage that says "this
8 relationship began in 1999" and there are about three or
9 four paragraphs?

10 MR WEST-KNIGHTS: Ronnie 2.

11 THE PRESIDENT: It is Ronnie 2, is it?

12 MR WEST-KNIGHTS: Yes. There is nothing in Ronnie 3 that
13 needed to be redacted because of the licensing
14 arrangements, because there was nothing about them in
15 it.

16 THE PRESIDENT: And Ronnie 1 and 2 we were told at an
17 earlier stage had been put on one side --

18 MR WEST-KNIGHTS: What it looks as if --

19 THE PRESIDENT: -- and forgotten about.

20 MR WEST-KNIGHTS: The explanation given at the time was that
21 Mr Walker-Smith was saying: whatever else happens, I
22 will not be doing a further thing on this. We keep the
23 leniency part and the investigative part separate. He
24 also said that the Office will not rely against you on
25 these statements.

1 I am bound to say it looks as if there was a change
2 of personnel or something, but for one reason -- it may
3 be that the investigating person was not subjectively
4 conscious of the contents of Ronnies 1 and 2. We just
5 do not know. That again would be speculation.
6 Globally, as it were, the Office had it. I do not think
7 there is anything in law which would have precluded the
8 Office using information in those statements as
9 a springboard for further investigation. They have
10 knowledge from these statements that might have
11 implicated -- let us just pick a complete bogus example.
12 The Bobo brand. If the Bobo brand had been fingered in
13 some way in Ronnies 1 and 2, there would be nothing to
14 stop the Office sniffing around the Bobo brand to find
15 out for itself whether or not any of those allegations
16 were justified.

17 At any rate, by the time we get -- I am not doing
18 this on a fault basis. It is a fact basis.

19 THE PRESIDENT: The Office obviously had, and has, very
20 difficult situations to confront.

21 MR WEST-KNIGHTS: I personally think, for what it is worth,
22 that the Office is required to discharge a function that
23 it is impossible to do; to be the investigator and the
24 prosecutor and the decider is an appallingly onerous
25 task to place on any public body. I am bound to say my

1 own view for what it is worth -- nothing -- is that that
2 needs to be reviewed. It is a very unhappy position.

3 THE PRESIDENT: That is another topic, Mr West-Knights.

4 MR WEST-KNIGHTS: It is indeed. As I say, I am not being
5 critical of the Office in any way. None of this is
6 ad hominem. But it discharges a function which is
7 appallingly difficult by reason of structure, if nothing
8 else, in terms of what it has to do. But for whatever
9 reason, the Office had all this information. After all,
10 the statements may have gone, but the documents did not.
11 You may have a different perspective on this, because
12 I rather feel that the tribunal has, at all material
13 times, had unredacted copies of everything. If that is
14 right, you glance your eye across a page and you have
15 read it. To you it is part of the matrix.

16 THE PRESIDENT: I think the only time we have read
17 information that was redacted was when we had to decide
18 what was going to be disclosed. That was so we were in
19 exactly -- I think we are in exactly the same position
20 as everybody else on that.

21 MR WEST-KNIGHTS: Of course the Office has copies of this
22 stuff open. If the pressure case went for good cause
23 below a fortiori once it appears entirely clear that the
24 whole suggestion of Ronnie and Umbro steam rolling
25 poor little Mr Ashley because of the big stick they

1 could wave just completely disappears.

2 The tribunal has frequently expressed its doubt as
3 to relevance of this and that is plainly the result of
4 a failing on my part, certainly, to get the message
5 across. The chain of events is said to be: pressure by
6 us on Umbro, who then reluctantly but by reason of that,
7 we might use the word intolerable, pressure felt itself
8 obliged in turn to place what Ashley described as
9 intolerable pressure on him. The worst kind of, as it
10 were, mixed horizontal and vertical cartelisation.

11 One element of that completely disappears in our
12 submission. The arrangements between Ashley and Umbro,
13 albeit that Ashley may have seen a disadvantage to him
14 on one side of the balance sheet, were plainly
15 consensual. He tells you at one stage and, in my
16 submission, in desperation that you do not even get
17 through the door with these people unless you start off
18 by agreeing to their price-fixing demands. We have seen
19 the note of 24th May, finally, in its unredacted form.
20 Where do we find the price-fixing arrangements?
21 Sandwiched neatly in the middle of all of the discussion
22 about the licensing agreements, rearranging targets,
23 deciding who is going to invoice whom and when, the
24 discussion about keeping in line, that is to say,
25 regular buying and selling accounting, quite separate

1 from these other arrangements. It would be ideal for
2 Mr Ashley, no doubt, if he could pursue and have his way
3 in every single way possible. That he could have all
4 these arrangements with Umbro and a supply of 100,000
5 shirts a week and sell them for 20 quid. Umbro were not
6 prepared to allow that. It is as simple as that. It
7 was not ideal for him. When he says he was obliged to,
8 well he was reluctant but he agreed and he agreed
9 because he had an awful lot of other stuff going on with
10 Umbro.

11 It is remarkable that, notwithstanding the
12 cross-examination -- the length of which was certainly
13 criticised by the Office -- by me in respect of both
14 Ronnie and Ashley, on no occasion did it pop out that
15 Ashley had done a job lot with Umbro in late 1999 of 8
16 to £10 million worth of kit. We know what Mr Ashley's
17 perception is of the appropriate profit margin for
18 apparel and it is, at the very least, times two and
19 a half. That was the deal that he struck later, we say
20 later, we do not know when, with Umbro.

21 So that means that that translates into at least,
22 especially if he was getting this cheap, at least
23 £30 million worth of turnover in his business. The
24 turnover of Sports Soccer in 1999 was less than 300,000.
25 The best we can do is probably about 270,000. Of course

1 we have no idea what its turnover was prior to
2 1st May 1999 because incredibly, although it looks as if
3 it was a business doing a quarter of a billion pounds
4 a year, that was Michael Wallace Ashley sole prop
5 trading as Sports Soccer and he only --

6 THE PRESIDENT: So it was not incorporated before
7 1st May 1999?

8 MR WEST-KNIGHTS: Correct. It was incorporated on 1st May
9 1999 as usual into the name of some company called
10 Bunkum Bink Limited which then changed its name to
11 Sports Soccer limited.

12 THE PRESIDENT: And that turnover figure is the figure in
13 some statutory accounts filed somewhere?

14 MR WEST-KNIGHTS: That is the first set of statutory
15 accounts. Actually, it was not called Sports Soccer, it
16 was called Sports and Soccer, which is why all the old
17 boys still call it that.

18 THE PRESIDENT: A number of people still refer to it as
19 such.

20 MR WEST-KNIGHTS: In fact there is a list of Ashley's
21 directorships. It looks as though he had lots of little
22 companies -- all with Sports and Soccer or Sports and
23 Ski -- dotted around the place. When they were
24 consolidated is not a matter which I have investigated.

25 THE PRESIDENT: I think I should just say at this point,

1 Mr West-Knights, we are not completely clear in our own
2 minds whether, and to what extent, we should rely on, or
3 take account of, that last bit of information from Umbro
4 about the stock purchase in 1999 which is expressed in
5 terms -- as far as we can recollect, sort of terms and
6 a document that has other errors in it and is obviously
7 fairly hastily prepared --

8 MR WEST-KNIGHTS: Can I just add to the matrix?

9 I understand where you are coming from.

10 THE PRESIDENT: -- I have not quite finished -- and which
11 has not been, so far at least, the subject of any kind
12 of witness evidence or testing.

13 MR WEST-KNIGHTS: I apologise for speaking across you. I
14 thought you had finished.

15 THE PRESIDENT: Sorry, it is probably my fault for pausing
16 at the wrong moment.

17 MR WEST-KNIGHTS: You do not do that. Ronnie did. You will
18 remember that Ronnie did. I once cross-examined a
19 witness in Mandarin through an interpreter for three
20 days. He had hold of this trick. He would finish an
21 answer, wait for the interpreter to do the business and
22 he would wait until I opened my mouth, then he would
23 carry on in Cantonese. I mentioned it expressly during
24 the course of my cross-examination, and Mr Ronnie was
25 helping himself to plenty of that. He had finished

1 plenty of times.

2 But let me come back to this: the document from
3 Umbro says in respect of the respective turnover figures
4 for 1999 and 2000 two things: first, that the figures
5 were skewed because of the huge purchase in 1999, which
6 they say not only accounts for some of the turnover in
7 1999, but depressed the turnover in 2000 because he had
8 this stuff to sell. But they also go on to say: and of
9 course the turnover in 2000 was also affected by the
10 impending licence agreement. I would not mind asking
11 a few questions about that one.

12 Now, let us assume then that the answer that comes
13 from Umbro is --

14 THE PRESIDENT: The turnover in 1999.

15 MR WEST-KNIGHTS: No, 2000. This is in the fax that we did
16 not see. What it says is this:

17 "A large quantity of this excess stock was sold to
18 Sports World in late 1999. As a consequence..."

19 The only reason why I think this is significant --
20 well there are several reasons -- but in late 1999, it
21 is always a handy time to do things if you have a
22 calendar account year:

23 "As a consequence in 2000, Sports World requirement
24 to purchase branded apparel in particular from Umbro
25 decreased as they themselves were holding a large amount

1 of stock. Although I have not been able to get an exact
2 figure in the timescale, the amount of stock in question
3 is believed to be in the region of 8 to 10 million.
4 Also in 2000 the licence arrangements to allow Sports
5 World to source their own branded apparel products were
6 being evolved and consequently the amount of branded
7 apparel that would need to be purchased from Umbro in
8 2000 would have been scaled back."

9 It is not a likely proposition. The licence
10 arrangements led to a quantity of product being produced
11 and sold in 2001. What you need in the year 2000 is
12 enough branded apparel to sell, or as much branded
13 apparel as you think you can sell, in the year 2000. It
14 is logical that if you bought a job lot at the end of
15 1999, then you have satisfied some part of what it is
16 you may need in 2000. What does not satisfy what you
17 may need in 2000 is some stuff that you are not, by
18 choice, going to make until 2001.

19 Let us come back to your proposition, if may sir,
20 which is that the information in the Umbro fax and the
21 other questions should somehow be disregarded or not
22 taken into account. If that is right, what we are left
23 with is Sports Soccer's turnover in 1999 being
24 36 million unexplained; Sports Soccer's real turnover in
25 the year 2000, said to be real, 15 million, unexplained;

1 Sports Soccer's bookings for January 2001, in addition
2 to all of the foregoing -- indeed in addition to PLA
3 affected figure of 60 million for 2000 -- bingo,
4 45 million already in for January 01.

5 THE PRESIDENT: I think the 60 million is not in the PLA.

6 MR WEST-KNIGHTS: When I say PLA -- it was a phrase which I
7 decided to use pursuant to the licence agreement. It
8 stops me saying bogus, or you and I having a fight about
9 whether it is to be treated as real or not. Do you see
10 what I mean?

11 THE PRESIDENT: But it is not in the --

12 MR WEST-KNIGHTS: It is not in the Profit and Loss account.

13 I beg your pardon. I was not using it in that sense.

14 60 million is the figure which is affected by the
15 licence agreement grossing up.

16 THE PRESIDENT: Yes.

17 MR WEST-KNIGHTS: And in addition in January 01 there is
18 booked in, according to the management reports,
19 45 million to which Umbro say they are unable to give
20 you any breakdown as to how much of that is pursuant to
21 the licence agreement and how much of that is real. But
22 that is what you are left with if you ignore what you
23 have been told by Umbro.

24 It being close to lunch, I am going to make my
25 submission on this. It is quite plain that, whether

1 Umbro pickle can I just have a final word on the monthly
2 management report of May, a document which we all regard
3 as being interesting.

4 You will recall that it contains, and you picked me
5 up on it, sir, this question of after a month of
6 dialogue with the above accounts.

7 THE PRESIDENT: Yes.

8 MR WEST-KNIGHTS: Two things, one of which is obvious, which
9 is that there plainly had been dialogue between Umbro
10 and my clients in that as in every other month. What is
11 more interesting perhaps is this: that meeting note was
12 in fact the source of a great deal of the OFT's
13 difficulties at the investigative stage in respect of
14 Umbro's evidence. You may recall that in the toing and
15 froing as to leniency, the letters and the discussions
16 really centre on the fact that the Office cannot really
17 make sense of what Ronnie is saying against the
18 contemporaneous documents, and in particular that note.

19 But there was something missing they thought, and
20 indeed on some occasions they expressed what was
21 missing, but the game they would not allow Umbro to play
22 was, "You tell us what is wrong we will fix it". Quite
23 correctly the Office said "Oh no, you tell us what you
24 know."

25 One thing we do know from the evidence of Mr Ronnie

1 is this: whatever that month, and it is a month of
2 dialogue they say -- they do not say months -- a month
3 of dialogue since the last management report. One thing
4 we know about that period is that it included no
5 pressure, not even on Ronnie's definition of the word,
6 from Allsports at all. He told you that in terms.

7 Now, we know that there was an agreement in April
8 between Ronnie and Ashley to fix both the English shirt
9 price and the MU shirt price and the key question is:
10 what happened between then and 24th May?

11 First, it was pressure from everybody and then it
12 was pressure from JJB and Allsports. Pressure from
13 Allsports has now expressly gone. But what else was
14 there in that period, in terms of the evidence? There
15 were two things. The first version was dealing with the
16 email of the 17th April -- oops -- 01.

17 Now due to the incompetent scanning of the documents
18 the one version of that email which I put to Mr Ronnie
19 was the one in the E bundles and, quite properly, the
20 tribunal raised the question through channels: is that
21 the state it was in at the time, is there any room for
22 mistake? I passed to the referendaire a much better
23 version. Somewhere in these papers, and they all
24 eventually derived from the one that was originally
25 scanned by the director's staff, there is a perfect

1 version, in other words even their scanning at first
2 instance. The one that I was able to pass to Mark
3 Jeffcott was by no means the best copy we have and the
4 original is as plain as a pikestaff, it is as if you had
5 typed it out yourself.

6 But at any rate, even if he had made an innocent
7 mistake you do not construct a wholly false memory
8 around a document. If it does not fit you look and say
9 "This looks like it was to do with this, but no, that
10 was not the sequence of events."

11 So that went because of course the bish was spotted,
12 not least by the Office again, Mr Walker-Smith picked
13 this up, and his staff, at the meeting of 26th February.
14 By which time of course Ronnies 1 and 2 had been
15 prepared.

16 So what do we get next? We get, as it were, the
17 continuum from 10th April, whatever the date was,
18 the April price-fixing occasion and the May price-fixing
19 occasion.

20 What do we get next? The only other fill-in is the
21 shirt lorry being turned around. That is riddled with
22 difficulty. You will recall not only that it is in
23 absolute flat contradiction to Ashley's recollection
24 that it was post a Manchester United launch and it
25 involved a Manchester United shirt, but also that the

1 Ronnie version was confirmed in writing by Umbro as
2 being his dates, April, but a Manchester United shirt.

3 One thing we do know from the papers in the case is
4 that Umbro gave themselves a big fat pat on the back for
5 having for the first time ever delivered 100 per cent of
6 a statement product to its key accounts, not only on
7 time but early. And we know that the date of the first
8 recipients of the Manchester United shirt getting any
9 was 28th June.

10 Incidentally, that fact fits precisely what Mr Guest
11 told you yesterday in evidence, which was that from time
12 to time Allsports would, as it were, overbook in the
13 expectation of being chiselled down. And that is
14 confirmed because the Umbro report congratulates itself
15 on having delivered 100 per cent, a first for Umbro.

16 So what we have in respect of this key period
17 leading up to 24th May is nothing of any value until you
18 are finally told by Ronnie that in that intervening
19 period whatever else was going on no pressure from
20 Allsports, not even on his definition. Although of
21 course pressure as he finally accepted from me meant any
22 action taken by any retailer, however lawful and for
23 whatever reason, which may be disadvantageous as
24 a matter of fact to Umbro, whether connected with
25 discounting or not.

1 What do we do about the financials?

2 THE PRESIDENT: I had one question on the management note we
3 are talking about.

4 MR WEST-KNIGHTS: Good, page 230 at E127.

5 THE PRESIDENT: I do not think we need turn it up.

6 MR WEST-KNIGHTS: No.

7 THE PRESIDENT: It is just to be clearer as to what your
8 understanding is of the situation because I think you
9 said more than once that the Office's case was that no
10 such agreement as the kind recorded in the note was in
11 fact reached.

12 MR WEST-KNIGHTS: Yes. That is the case they abandoned.

13 THE PRESIDENT: What I just wanted to establish was what in
14 fact they had abandoned and to go over that ground very
15 briefly so that I can relate what we are actually saying
16 now to the decision and to the pleadings.

17 MR WEST-KNIGHTS: Golly.

18 THE PRESIDENT: I have got -- you may want to come back to
19 it. Just let me say what I have to say and then we will
20 see where we are. This topic of the England Agreement
21 is dealt with in paragraphs 412 through to 416 of the
22 decision and then later when we get to the OFT's
23 conclusions at 426 through to 437.

24 MR WEST-KNIGHTS: And you might just factor in that right at
25 the back there is a chronology, a two page chronology,

1 attached to the decision which has in for that period:
2 agreement.

3 THE PRESIDENT: Yes.

4 MR WEST-KNIGHTS: We have then got the amended defence which
5 was quite considerably discussed at various
6 interlocutory stages, which is Allsports' pleadings file
7 2 at tab B, and as I have understood the amended
8 defence, and I may have got hold of the wrong end of the
9 stick, the OFT has in that defence modified the content
10 of the alleged phone call.

11 MR WEST-KNIGHTS: Yes.

12 THE PRESIDENT: But has continued to maintain, and I am
13 looking at paragraph 21E (ii).

14 MR WEST-KNIGHTS: That is the no phone call case allegedly.

15 THE PRESIDENT: That even if there was no phone call there
16 is quite a lot of other evidence sufficient to establish
17 that Allsports was a party to an agreement or concerted
18 practice, and they refer back to the matters dealt with
19 at paragraphs 9A, 3 to 7 above, which include among
20 other things the management report that we are
21 discussing.

22 MR WEST-KNIGHTS: That is hopelessly diffuse. That cannot
23 be alleging an agreement.

24 THE PRESIDENT: I want to be clear what it is you think.

25 MR WEST-KNIGHTS: They also in that same paragraph, in their

1 inclusive way in which this document was drafted in an
2 attempt to avoid embarrassment involved in the
3 abandonment of this case and, and his various diary
4 entries about "discounting the prices, including
5 specifically the England shirt", an entry which is made
6 on 5th June.

7 THE PRESIDENT: Just to concentrate on the point I want to
8 be clear about, I am not clear yet that the OFT has, as
9 it were, abandoned reliance on the wording of that
10 management report as part of the case against Allsports.

11 MR WEST-KNIGHTS: In which case I despair not with you but
12 with the OFT.

13 THE PRESIDENT: Can you just help me as to what you think
14 the situation is?

15 MR WEST-KNIGHTS: Yes, we made a striking out application
16 lasting a whole day, hotly contested on the footing they
17 had abandoned the England Agreement. The answer came
18 back: yes, we have, but we are entitled to run these
19 alternative cases because inter alia they are either
20 based on a phone call or we have the pressure case which
21 either means that the lesser phone call will do or it
22 will stand on its own two foot. There has been no
23 question of them saying: we have not abandoned any
24 question of agreement because they would have said that.
25 They have not attempted to rely -- let us have a look --

1 THE PRESIDENT: I was only just reminding myself of
2 paragraph 21E (ii) of the amended defence.

3 MR WEST-KNIGHTS: They are weasel words and that is why we
4 asked for further and better particulars of the case
5 which was being run.

6 THE PRESIDENT: You did indeed get those further and better
7 particulars.

8 MR WEST-KNIGHTS: We did.

9 THE PRESIDENT: And what I have not done which I should have
10 done is check those particulars.

11 MR WEST-KNIGHTS: They do come out again I suppose looking
12 at this. Paragraph 3 of the further and better
13 particulars:

14 "Even if the tribunal is not satisfied that the
15 specific phone call from Mr Ronnie towards Allsports
16 took place, nonetheless there is evidence to establish
17 that Allsports was party to a concerted practice trade
18 agreement in relation to the price of the England
19 shirt."

20 MR MORRIS: Could you tell me what you are reading from?
21 I am reading from your further and better
22 particulars; I am surprised you do not recognise them.
23 Paragraph 1.3 .

24 And the particulars under paragrah 21E (i):
25 "I do not detect any reference to reliance upon the

1 meeting note of 25th May."

2 That is an apallingly oblique way of putting it.

3 THE PRESIDENT: I am on the last page, 4th February:

4 "Allsports particpates in an agreement that even
5 absent a specific phone call under paragraph 21E (ii)
6 matters relied on the matters listed in paragraphs 3.1
7 and 3 above."

8 MR WEST-KNIGHTS: So 3.1 is (a) the factual context:

9 "All the evidence of prior complaints and pressures
10 listed in paragraph 2" which all excludes the monthly
11 management report.

12 THE PRESIDENT: Then:

13 "The alignment of prices."

14 MR WEST-KNIGHTS: So they rely upon 3.1 which does not take
15 you to that and the propensity of Hughes, who admitted
16 at a certain time, propensity of Hughes, to behave in an
17 uncompetitive way.

18 What they are trying to put together is that simply
19 if other people agreed you were party to it by reason
20 of, as it were, wanting to procure that agreement.

21 Just to draw back, hence all the evidence about
22 pressure, but the alternative, no phone call allegation,
23 is that we in putting pressure on Umbro contributed
24 significantly to Umbro's putting pressure on
25 Sports Soccer which resulted in the price-fixing

1 arrangements between Umbro and Sports Soccer.

2 But I can tell you with absolute clarity that the
3 Office does not, even however widely it tried to put its
4 case, does not suggest that we ourselves by speech, if
5 you like, agreed anything with Umbro as to our price.
6 The allegation, because of course that was the very tack
7 we took in the notice of appeal: what are we doing
8 agreeing anything with these herberts when they would
9 not ring us up to ask us to agree to do something which
10 we always did anyway. That was the point that was made.

11 Then in the defence it is accepted, some curious
12 expression is used that Mr Ronnie has, I cannot
13 remember -- it was very elegant. It is probably worth
14 turning it up, but that Mr Ronnie has not quite refined
15 his position. Or is it clarified? Page 11 of the
16 defence which is under tab 1 in this bundle. I am
17 sorry, it is the amended defence of course:

18 "As regards the England Agreement, (a) the phone
19 call from Ronnie to Allsports was made either to Mr
20 Guest or Mr Hughes in the working week commencing
21 Tuesday, 30th May. In any event the precise date need
22 not be determined. In the case of Allsports and JJB
23 Mr Ronnie has now clarified..."

24 That was an amusing expression for a statement which
25 says: I did not, quotes, and then quotes his previous

1 statement, unquotes, but rather did this:

2 "... that the telephone calls he made after the
3 meeting on 24th May and before 2nd/3rd June were made to
4 inform those retailers of the fact that in response to
5 Allsports and JJB pressures and complaints Umbro had
6 managed to contain Sports Soccer's agreement to increase
7 its prices. Mr Ronnie warned Allsports and JJB not
8 themselves to discount."

9 I have made my point on that:

10 "Sports Soccer would use any excuse not to abide by
11 its agreement. Accordingly, to this limited extent the
12 OFT's findings insofar as they refer to assurances given
13 by Allsports are not adhered to".

14 So I think it is a twofold case: you procured the
15 pressure on Sports Soccer, or you were a pressuriser and
16 received with open arms in the Cement case sense the
17 good news that the pressure had been successful.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: Sorry, it just took me a while to claw
20 back to that position.

21 THE PRESIDENT: Yes.

22 MR WEST-KNIGHTS: I am grateful to you for raising it and
23 I say again, it is infinitely more useful for us as
24 appellants to know if there is something troubling
25 anybody, to deal with it rather than for it to remain

1 a problem.

2 THE PRESIDENT: We cannot necessarily keep everything in our
3 heads all the time.

4 MR WEST-KNIGHTS: Plainly not. Not even the Court of Appeal
5 can do that, and I say that advisedly, but increasingly
6 appeals are run on a Socratic basis which I personally
7 prefer.

8 THE PRESIDENT: Yes.

9 MR WEST-KNIGHTS: What do what do we do about the Umbro
10 situation?

11 THE PRESIDENT: Yes.

12 MR WEST-KNIGHTS: Let us forget flotation because I think
13 that is just speculative and way off. We only know that
14 they apparently at some stage anticipated doing so. So
15 it is to do with this case.

16 Umbro has sought and obtained 40 per cent off for
17 cooperation. It is also appealing. In my submission it
18 is as plain as a pikestaff that both Sports Soccer, by
19 which I mean Ashley, and Umbro started off by giving you
20 not very helpful information. Since then we do not know
21 what Sports Soccer's position would be because only
22 Umbro are being asked the questions but of course they
23 have recourse to Sports Soccer at any time for help with
24 the answers if they need it.

25 It is plain that the answers which you have been

1 given are inadequate and false in some respects. You
2 asked for a very clear, a very clear question as to what
3 was the difference between the turnovers in these
4 respective years and why, and you have been fed a lot of
5 gobbledegook, nothing new in the answers you have been
6 given except this allegation suddenly that there was £8
7 or £10 million of single business done between Ashley
8 and Umbro at the end of 1999, which as I say is
9 a convenient time for a transaction to occur where the
10 recipient company has a calendar year end.

11 THE PRESIDENT: Yes.

12 MR WEST-KNIGHTS: It looks very much to us, and we do not
13 know the half of it, as though there were successive
14 arrangements entered into by Umbro with Ashley which
15 enabled them lawfully or otherwise to improve the state
16 of their accounts. Notwithstanding that, as I shall
17 show you in the chronology, Umbro made a marginal profit
18 on paper for the 13 months to the end of 1999, 13 months
19 because they were following the re-financing and plainly
20 they have changed the accounting period. They made
21 a profit of £281,000 off the top. But they also had
22 dividend obligations to their preference shareholders,
23 financing by Doughty Hanson no doubt, of some 3-odd
24 million which plainly had to go back into reserve, but
25 so far as the books were concerned made a net loss of

1 2.6 million. That is notwithstanding the injection of
2 money by Ashley.

3 As I say, in respect of the parcel of goods about
4 which my clients so far have detected no information in
5 the market place that such a parcel of goods existed,
6 and Guest has told you if it had been around he would
7 have expected to be offered at least part of it.

8 Of course if it does exist and nobody knew about it
9 except Ashley then that does give the lie to the
10 suggestion that there was nothing particularly close
11 between Umbro and Sports Soccer until this fantastically
12 slithery date at which the licence agreements are said
13 to come into effect. When it suits Umbro they say:
14 well, of course they would have been affecting their
15 prospective buying even for 2000, but when you try and
16 press the button as to when these arrangements were
17 binding they say it is not until 2002, which is
18 obviously nonsense as payments were made in the year
19 2000.

20 We know that Ashley paid £6 million-odd
21 in September 2000 and a further tranche of
22 6.825 million, which grossed up is just a shade over
23 8 million exactly, which matches what the management
24 accounts say, in June of the following year.

25 It would appear that the grossed up product of both

1 of those sums were inserted into the management figures
2 for 2000 and they say that 12 million, an unexplained
3 figure of 12 million-odd, 12,612,000, was allocated in
4 the 2000 accounts for Umbro under the rubric of other
5 operating income.

6 What is slightly odd is I spent some time yesterday,
7 you would think I had better things to do, looking at
8 the Umbro International accounts for the same period and
9 they slavishly do have notes in the accounts to explain
10 every line of other sources of income, breaking it down
11 by royalties, investment income from third countries and
12 so forth.

13 So at the very least we know that Umbro booked
14 12.612 million into its 2000 accounts as a result of
15 these arrangements with Ashley. And what is the result
16 for Umbro? For that year they made a thumping great
17 loss before the 4 million-odd obligation to pay their
18 dividend warrant-bearing preference shareholders.
19 I think the loss of 6.3 million is an allowable loss
20 because of course they would have to amortise the
21 goodwill which is not taken as being liable against tax
22 for all purposes.

23 So that is the position, that there are these two
24 injections of money from Ashley but for which it appears
25 that Umbro would have been in very serious trouble. It

1 made a loss for the account period 2001.
2 Notwithstanding the further payment made by Ashley
3 and/or the booking in for that account period of
4 £46 million worth of branded turnover, almost all of
5 which looks as if it was what I have called bogus or
6 pursuant to the licence arrangement because 45 million
7 of it appears miraculously in January 01, and the answer
8 which Umbro gives you as to the question: how much of
9 that is real business? We are unable to break this down
10 in any way, it is contemptuous, and I think I probably
11 mean that with a capital C. You have been, in the
12 vernacular, blown a raspberry by Umbro insofar as they
13 think they can get away with it.

14 The upshot for these proceedings is that now you
15 must assume that we are right because you have nothing
16 to contradict it and the two parties who are in
17 a position to contradict it have expressly chosen not
18 to. As I said, advisedly before lunch, and I was not in
19 any way endeavouring to be theatrical, if you do, as you
20 are bound to in my submission, come to the view that
21 Umbro are stonewalling you on those arrangements they
22 deserve to lose every penny of their discount on their
23 fine, and they must know that. So whatever it is that
24 is going on between Umbro and Ashley and the accounts is
25 worth at least £4 million to conceal.

1 In addition, the contemptuous way in which the
2 questioning of the tribunal has been treated has
3 deprived my clients and JJB's clients of cross-examining
4 on any proper basis any of the witnesses for the Office.
5 It must be assumed that Ronnie and Ashley are both lying
6 about the arrangements because there is plenty more to
7 come that we do not know about otherwise we would have
8 been told it. We know quite a lot. We think we know
9 quite a lot. At least we prised out the passage of
10 certain sums of money, but whatever the truth is you are
11 not being told it. So there must be more.

12 So the position in these proceedings is, as I say in
13 writing our submissions, the classic position of any
14 litigant which is disadvantaged by the deliberate
15 non-disclosure of information by an opposing party,
16 which is that all inferences which can be drawn in
17 favour of the innocent party affected by the
18 non-disclosure must be drawn. It is as simple as that.

19 Civil litigation has grown with two cardinal rules:
20 one is that a failure properly to give disclosure is the
21 cardinal sin. It remains the only rule under CPR. Let
22 me rephrase that. It was under the Rules of the Supreme
23 Court the only rule of the Supreme Court which contained
24 an express power of contempt punishment. The only one.
25 It was spelt out in order 32, rule 17, whatever it was,

1 because discovery is at the heart of civil litigation.

2 In addition, the rules, the common law rules are
3 that under no circumstances is anybody to benefit from
4 non-disclosure, which is why we have the presumption
5 which I mentioned, the inferential presumption. It
6 follows as a matter of logic. They say X about this.
7 You will not show them the documents, whether that is
8 right or not one way or the other. Unless you produce
9 the documents we can assume that they are right when
10 they say X about this. It is as simple as that. It is
11 a long answer to a short question but those are my
12 submissions.

13 THE PRESIDENT: So your position is that we should just
14 leave it where it is and draw the inferences you invite
15 us to draw?

16 MR WEST-KNIGHTS: I would say that with mildly less
17 confidence if I thought that if you were to ask a few
18 more questions you would get anywhere, but the
19 experience has been that the asking of a particular
20 question gets as limited a particular answer, if any, as
21 anybody thinks they can get away with.

22 Umbro is reading the transcript of this case. Do
23 not be under any misapprehensions. The reason why you
24 got that fax on Friday morning cannot solely have been
25 a conversation between Mr Morris and Miss Roseveare on

1 Thursday. They get sent the transcripts. They know
2 what is going on in this case. They read the criticisms
3 that are made in here day after day after day and they
4 just choose not to be here. I may say that the same
5 applies to Sports World. If Cameron McKenna were here
6 I would surprised to hear it.

7 MR MORRIS: They are not even a party, to be fair to Sports
8 World.

9 MR WEST-KNIGHTS: To be fair to Sports World.

10 MR MORRIS: They have not been asked the questions either.

11 MR WEST-KNIGHTS: Which of course I have been. They
12 specifically applied to have observer status so that
13 they could be present to assist the tribunal with
14 matters within their particular knowledge. Do you
15 remember that? That was the specific basis. In fact,
16 their reason for attempting to intervene was that they
17 would have a take on the underlying facts in the case
18 which the Office may not be able of itself to deal with.

19 You very properly, gentlemen, turned them down on
20 that, but it was the basis of your permission for them
21 to be observers, and what do they do when the tribunal
22 and the Office might reasonably be supposed to need to
23 have a take on this case which the Office cannot itself
24 give, they go away.

25 I am sorry, do not interrupt me, Stephen. If you

1 want to reply, do it tomorrow.

2 MR MORRIS: I would with respect like to reply on this
3 issue, sir. On that particular point about Sports World
4 there have been no further requests from the tribunal to
5 Sports World and no suggestion that they have not
6 answered requests that have been sent to them. That is
7 the first submission. I do not know, sir, if you would
8 like to hear me on the question of what you should do
9 about this.

10 MR WEST-KNIGHTS: Tomorrow.

11 MR MORRIS: It may be a discrete matter which the tribunal
12 might wish to consider now so of course I am entirely in
13 the tribunal's hands.

14 THE PRESIDENT: I think we will let Mr West-Knights get to
15 the end of his submissions.

16 MR MORRIS: Can I put down one marker on the point?

17 THE PRESIDENT: Yes.

18 MR MORRIS: I do not necessarily disagree with the line that
19 is being suggested to you but in my respectful
20 submission it is vital that the precise inferences which
21 are being sought to be drawn are clearly stipulated by
22 Allsports from -- the inference is to be drawn from the
23 apparent lack of completeness in the information being
24 put forward.

25 Now of course we know the general proposition which

1 is to do with the balance of power, but there may be
2 further inferences, statements, propositions which
3 Allsports and JJB are putting forward to the tribunal to
4 be drawn from the so-called failure of Umbro adequately
5 to respond and I cannot deny the fact that some of those
6 responses plainly cannot be correct but it would assist,
7 I think, perhaps the tribunal and indeed ourselves as to
8 the proper course if those inferences could be made
9 crystal clear. Thank you.

10 THE PRESIDENT: Right. We have the transcript,
11 Mr West-Knights. I think we have got the general thrust
12 of your argument. If there is at some stage some
13 specific summary of the inferences you invite us to draw
14 on this point it might be useful to have it drawn
15 together in one place.

16 MR WEST-KNIGHTS: That Ronnie and Ashley are as bent as
17 a three bob note. That is it. I am sorry, if you want
18 a concise inference to be drawn.

19 THE PRESIDENT: I am just making a note, yes.

20 MR WEST-KNIGHTS: Plainly I could say that in slightly more
21 Olympian language.

22 THE PRESIDENT: No, it is perfectly all right as it is.

23 MR WEST-KNIGHTS: There is one aspect of this which my
24 learned friend did not mention. Sorry, I was not being
25 flippant, that is the bottom line.

1 THE PRESIDENT: It is a very serious --

2 MR WEST-KNIGHTS: It is a very serious situation which has
3 arisen, sir, which is that information has been
4 requested about some very sensible and reasonable but
5 curious things apparently going on. It emerges somewhat
6 at the last minute, so far as we are concerned, that
7 there are all these licensing arrangements. It is as
8 plain as a pikestaff that Umbro have taken into their
9 books for 2000 £12 million of it and still made a big
10 fat loss. Mr Ashley has explained that these contracts
11 were deeply lucrative to him. He found it surprising,
12 as he said, that Umbro had gone so far as to admit to
13 him their financial difficulties. There is an immense
14 closeness between the two of them.

15 My own personal bet, as usual for only £8, would be
16 that there is something deeply suspicious about the
17 Umbro account but that is not the point about this case.
18 The point about this case is that they have chosen --
19 and I say "they" advisedly, I will come back to it --
20 they have chosen not to dispel the enormous cloud of
21 doubt which hangs over these arrangements deliberately.

22 THE PRESIDENT: The question for the tribunal, and I think
23 it is a question for the tribunal rather than the
24 parties, is whether we can leave things as they are or
25 whether we pursue it. If we pursue it further we have

1 probably now got beyond the stage of simply asking
2 another set of questions. We have probably got to the
3 stage where we need somebody to make a witness statement
4 containing a statement of truth.

5 MR WEST-KNIGHTS: Knowing that he will be cross-examined on
6 it.

7 THE PRESIDENT: Explaining what this is all about and
8 exposing them to cross-examination, a process that could
9 not be completed and it would be unwise to complete it
10 before this set of submissions finishes but would arrive
11 at some point in the near-ish future. It would be
12 circulated to the parties and would if necessary be the
13 subject of a further mini-hearing insofar as it remained
14 relevant and people wished to go into it.

15 MR WEST-KNIGHTS: It would require in addition to be
16 worthwhile now a degree of documentary back up to any
17 assertion which was made.

18 THE PRESIDENT: Yes, it would.

19 MR WEST-KNIGHTS: Let me make my position clear: I have
20 closed my case. I have closed my case with great
21 reluctance. I have been saying throughout that I want
22 the opportunity to ask Mr Ronnie and Mr Ashley questions
23 about this during the course of the hearing, and Umbro
24 and Sports Soccer knew perfectly well from Day 2 that
25 that was your aim as well. They have deliberately

1 frustrated that process and it cannot be undone. The
2 trial is over.

3 THE PRESIDENT: I think it is a mistake to regard this part
4 of the hearing as a trial.

5 MR WEST-KNIGHTS: I have closed my case, sir.

6 THE PRESIDENT: Well, the tribunal has not closed its
7 receptiveness to further submissions and does not do so
8 until it has actually got to the stage when it has
9 actually written its judgment. It is not how this
10 works. There may be further things that for one reason
11 or another we have not been able to cover in the hearing
12 that we still need to cover.

13 MR WEST-KNIGHTS: If we are going to do this at all it would
14 need to be done, and --

15 THE PRESIDENT: I am not saying that we necessarily are
16 going to do it or we should do it.

17 MR WEST-KNIGHTS: Let us track through and see what would
18 actually happen.

19 THE PRESIDENT: Yes.

20 MR WEST-KNIGHTS: You get a statement from X, the chief
21 financial officer, whatever, you tell him in terms that
22 any assertion he makes needs to be backed up with some
23 documentary evidence. You want to see the underlying
24 management information about it in relation to the
25 relevant years. You might want to see the draft

1 accounts that went to the auditors, all that. You might
2 want to see all sorts of things.

3 You will then get that answer. Something here does
4 not work because there is a dislocation in terms of the
5 numbers. We would then need to see whether the
6 documents that had been given were sufficient or whether
7 there were others that would necessarily need to be seen
8 in order to get the lie of the land, discovery on the
9 subject. Eventually then we would need to cross-examine
10 the person concerned: you, me, whoever.

11 Then depending upon the outcome of that questioning
12 we would then have to have Ronnie and Ashley back. It
13 is another whole fortnight.

14 THE PRESIDENT: We might. Those things are all things one
15 cannot rule out at this stage.

16 MR WEST-KNIGHTS: But, sir --

17 THE PRESIDENT: Just let me finish, Mr West-Knights. The
18 other obvious consideration in our minds as well as
19 yours I am sure, is that we are actually engaged in
20 determining the legality of the decision.

21 MR WEST-KNIGHTS: Yes, so we are.

22 THE PRESIDENT: And this is a collateral issue.

23 MR WEST-KNIGHTS: It really is not. You really must get
24 that out of your head, if I may say so with the greatest
25 of respect. The decision is flawed by the failure of

1 the OFT. I say it neutrally. They knew nothing about
2 this, they say.

3 THE PRESIDENT: There are two ways of looking at it. Either
4 it is in some sense or other collateral and/or something
5 that the tribunal does not have to decide, or it is, as
6 you, I think, now submit something that is central.

7 MR WEST-KNIGHTS: And always have submitted, yes.

8 THE PRESIDENT: If it is central then it is perhaps not
9 satisfactory that the tribunal just leaves it where it
10 is.

11 MR WEST-KNIGHTS: I see where you are coming from and I know
12 that my learned friend Mr Hoskins looks as though he is
13 going to pop if I do not let him speak but he can wait
14 for 30 seconds.

15 Umbro and Sports Soccer knew from Tuesday what you
16 wanted. When Mr Morris says Sports Soccer have done
17 nothing wrong that is poppycock because the information
18 they gave you was extremely limited and they too get the
19 transcripts of these proceedings and they too know that
20 a discussion is taking place which has, as its overt
21 substratum, dodgy dealings between Sports World and
22 Umbro or, and it may be different, Sports World and
23 Mr Ronnie. They have made a deliberate choice not to
24 assist you further, notwithstanding the ostensible
25 reason for their wanting to intervene and their actual

1 reason for being observers.

2 You, as a tribunal, may want to get to the bottom of
3 this. We are appealing parties. We have finally
4 obtained information that significantly affects the
5 whole matrix of fact which, therefore, undermines the
6 decision quite apart from the new evidence which has
7 been given. And they have got themselves into a pickle
8 on this occasion because they are having to rely upon
9 former co-defendants who turned Queen's evidence, as it
10 were, the Office's witnesses have declined to assist the
11 tribunal.

12 There comes a point where the hearing has to come to
13 an end, where the grotesque expense to which my clients
14 have been put in fighting this appeal, this is not
15 critical of you, but it is a jolly expensive business
16 fighting your way through a 480-paragraph decision which
17 is diffuse et cetera et cetera et cetera, and have
18 leading counsel and deeply expert junior counsel and
19 first rate solicitors and so forth. We have had enough.
20 We have done our bit, we say, and if the Office's
21 witnesses choose to rot you up then you are perfectly
22 entitled to have whatever enquiry you want but we have
23 finished.

24 That is a quick way of letting Mr Hoskins see if he
25 wants to say anything.

1 THE PRESIDENT: Yes, Mr Hoskins?

2 MR HOSKINS: Sir, there are two aspects to this debate.

3 THE PRESIDENT: Only two?

4 MR HOSKINS: I want to make it simple so, yes. One is
5 a procedural one and one is a substantive one. On the
6 procedural one I have to say, and I say this having
7 taken instructions, that we are appalled by the
8 suggestion that we envisage another round of
9 cross-examination. The reason why I say that is very
10 simple. Umbro and indeed Sports Soccer have known the
11 position since well before Day 1 that this information
12 was being sought and they have had a number of occasions
13 upon which they could come clean. They have chosen not
14 to. The suggestion now is that they are given a further
15 chance, a further cross-examination takes place or
16 whatever.

17 My procedural point is a simple one: if one were to
18 elongate the proceedings in that way then the benefit of
19 the last two weeks, which is still horribly fresh in our
20 minds, will be lost. Our submission is that really one
21 should strike while the iron is hot. We have had a lot
22 of evidence. It is a lot to take in. Simply to
23 elongate the matter by a month or two months, because
24 the reality is that that is probably what it will be
25 because of the Easter vacation, is not acceptable

1 because we will all lose the benefit of the last two
2 weeks.

3 That is the procedural point. The substantive point
4 is this: the relevance of this issue goes to the
5 question of the ability of Umbro to put pressure on
6 Sports Soccer. You will have seen from our written
7 submissions that there are two limbs to the pressure
8 case. Did JJB put pressure on Umbro? Could Umbro have
9 put pressure on Sports Soccer?

10 What is perfectly clear is that Sports Soccer and
11 Umbro had, have a very close relationship and it is not
12 a normal relationship. It is not the sort of
13 relationship that JJB has with Umbro. It is not the
14 sort of relationship that Allsports has with Umbro. It
15 is also clear that for whatever reason Umbro certainly,
16 and perhaps Sports Soccer, have attempted or have not
17 desired to give the tribunal a full picture. So it is
18 quite easy on the substance. They have an abnormally
19 close relationship. There is something further they
20 want to hide about it and our submission is that
21 Mr Morris wants a list of inferences.

22 It is very easy. It is not quite as dramatic as
23 Mr West-Knights's inference but the relationship between
24 Umbro and Sports Soccer was so close that the contention
25 that Umbro could put pressure on Sports Soccer is not

1 made out. That is as far as we put it. That is as high
2 as we have to put it and to carry on endlessly trying to
3 force Umbro and Sports World to cough up real truth in
4 our submission does not take us anywhere because we are
5 already where we want to be. That was all I wanted to
6 say.

7 THE PRESIDENT: Thank you very much, Mr Hoskins. I think,
8 Mr Morris, you had better have your shot now.

9 MR MORRIS: You will be surprised to hear that broadly we
10 are in agreement with what Mr Hoskins just said.

11 MR WEST-KNIGHTS: And me, I am with him.

12 MR MORRIS: Good. Great, I will sit down then.

13 THE PRESIDENT: Perish the thought that you might agree, Mr
14 West-Knights.

15 MR MORRIS: As a broad proposition, sir, we think it is not
16 appropriate to extend these proceedings.

17 THE PRESIDENT: Yes.

18 MR MORRIS: For the purpose of getting to the bottom,
19 whatever the bottom is, of very detailed specific issues
20 about specific amounts of money and what was in the
21 accounts.

22 We are also grateful for the indication of the
23 inferences that are to be drawn just given by JJB. That
24 is what we see this issue, these matters go to.

25 THE PRESIDENT: Yes.

1 MR MORRIS: The question of the balance of power and the
2 question of whether Umbro were able to put pressure on
3 Sports Soccer.

4 THE PRESIDENT: Yes.

5 MR MORRIS: We may or may not agree as to the degree to
6 which the information given has been accurate or
7 inaccurate and we can have argument about that, but we
8 are prepared to meet that point on the basis of the
9 information that is currently before the tribunal. So
10 we would suggest that that is what this issue is about
11 and what these matters go to, and we do think it would
12 be a disproportionate use of this process to go further.

13 THE PRESIDENT: What about Mr West-Knights's point that the
14 party that is arguably disadvantaged by non-disclosure
15 should have all favourable inferences drawn in his
16 favour?

17 MR MORRIS: That depends on the inference that is to be
18 drawn. If the inference to be drawn is what Mr Hoskins
19 says, which is Umbro could not put pressure on
20 Sports Soccer, then we have arguments to meet that
21 proposition. And those arguments are ones which we will
22 make during the course of tomorrow but we are happy to
23 make those arguments.

24 THE PRESIDENT: But how do we assess those arguments without
25 a full picture of the financial arrangements?

1 MR MORRIS: Because if the proposition that is put forward
2 is that, for example, Sports Soccer were providing
3 financial support for Umbro, or that in some way the
4 balance of financial, the financial relationship was
5 such that it was favourable to Sports Soccer rather than
6 Umbro, we nevertheless can submit and the tribunal can
7 find that that is not relevant to the particular issues
8 in this case, namely did Umbro and Sports Soccer agree
9 to fix prices and why did they agree to fix prices and
10 why did what happened happen?

11 For example, why did Mr Ashley go to the OFT? Why
12 did Mr Ashley, a committed discounter, agree to fix
13 prices? And we are happy to fight the case on the basis
14 of the propositions that have been put forward by JJB in
15 their submissions.

16 THE PRESIDENT: So you are happy to fight the case on the
17 information that we have basically.

18 MR MORRIS: Yes, we will --

19 THE PRESIDENT: With all the loose ends that appear to be
20 there.

21 MR MORRIS: We think in the circumstances that is the best
22 way for the tribunal to go forward. We think that as
23 far as you go further, sir, then it does become
24 a collateral issue.

25 Can I just make one other observation: the general

1 proposition that Ashley and Ronnie are as bent as a nine
2 bob bit.

3 MR WEST-KNIGHTS: Three bob note.

4 THE PRESIDENT: I wrote down a three bob note.

5 MR MORRIS: Where I come from it was a nine bob bit.

6 THE PRESIDENT: Okay, a certain amount of flippancy is
7 allowed in these proceedings but it is not at all a
8 flippant situation. It is very, very serious indeed.

9 MR MORRIS: It is not, sir. But I would like to remind you,
10 sir, that it is rather difficult for that inference to
11 be drawn against Mr Ronnie when at the moment the party
12 who is apparently not giving the information is Umbro,
13 the company, which Mr Ronnie has not been with for the
14 last year. It is just an observation on that
15 proposition. But we would suggest that the battleground
16 for this issue is the battleground of the ability of
17 Umbro to put pressure on Sports Soccer, or put it
18 another way: the background to why Umbro agreed with
19 Sports Soccer or Sports Soccer agreed with Umbro to fix
20 prices. That is the central issue to which this may be
21 relevant.

22 THE PRESIDENT: If I have understood Mr West-Knights
23 correctly it is also not without relevance to our
24 assessment of the credibility of the witnesses.

25 MR WEST-KNIGHTS: Plainly what I am saying, sir, in respect

1 of credibility is this: that you must assume that Ronnie
2 and Ashley are hiding something from you. Now that is
3 a necessary assumption to be drawn from what has
4 occurred. There has not been the slightest pressure
5 from Umbro, for instance, that we have asked Mr Ronnie
6 and he has not helped us on this. We do not know what
7 Umbro is doing with Mr Ronnie; they may be talking to
8 him about this all the time, but the fact is that the
9 evidence given by both Ashley and Ronnie has not shed
10 a single drop of light on this and did not lead even to
11 the volunteering of the £8 to £10 million.

12 THE PRESIDENT: The other aspect as far as the tribunal is
13 concerned, although admittedly not of direct concern to
14 JJB and Allsports, is that we still have to deal with
15 Umbro's appeal

16 MR WEST-KNIGHTS: If I may say, sir, that is separate but
17 yes, you have. I think we are broadly agreed on the
18 effect on these proceedings, save that I do say that it
19 goes to credibility as well.

20 THE PRESIDENT: And let us Mr Morris finish now.

21 MR MORRIS: On the question of credibility, sir, the real
22 beef that is being made at the moment is the apparent
23 inability of Umbro to give full answers or clear answer
24 to the question of Umbro.

25 MR WEST-KNIGHTS: Inability?

1 MR MORRIS: I am being as neutral as I can.

2 THE PRESIDENT: The inference that ought to be drawn is that
3 they are attempting to hide something from the tribunal.

4 MR MORRIS: Umbro might be, sir, but Chris Ronnie is not at
5 Umbro.

6 THE PRESIDENT: You distinguish between Chris Ronnie and
7 Umbro?

8 MR MORRIS: Absolutely. He has got no input in providing
9 this information and I would be very surprised indeed if
10 this exchange of correspondence between this tribunal
11 and Umbro is even involving Mr Ronnie at all. Now, what
12 Mr Ronnie said in the witness box is another matter but
13 the real beef of Mr West-Knights's complaint at the
14 moment is: good heavens, Umbro are dragging their feet.
15 They have something to hide. Therefore you have to tar
16 Chris Ronnie with that brush. That in our submission is
17 a complete --

18 THE PRESIDENT: It does not follow.

19 MR MORRIS: It is a non sequitur, and Mr Ashley at
20 Sports Soccer did reply. It may or may not be the case
21 that Mr West-Knights takes the view as to the adequacy
22 of that reply but there is no question in this case at
23 present that there have been further questions from the
24 tribunal to Sports Soccer seeking information which has
25 not been responded to.

1 The real beef at the moment, as far as I can
2 understand it, is Umbro explaining their accounts.
3 Umbro is a company with which Mr Ronnie has no
4 connection and has had no connection for a year and
5 I doubt very much, given their relations, they would be
6 even talking at the moment. So insofar as an inference
7 is sought to be drawn as to Mr Ronnie's credibility
8 because of Umbro's claimed apparent failure to respond
9 to these requests, we suggest and submit very forcefully
10 that that is a non-permissible inference.

11 MR WEST-KNIGHTS: I think my learned friend must know
12 something that we do not because he has just told you
13 that he doubts very much from what he knows that Umbro
14 are talking to Mr Ronnie. The evidence that Mr Ronnie
15 gave was that he parted company -- when the dispute
16 which subsisted during his garden leave was resolved it
17 was resolved amicably. There has been not a shred of
18 evidence from Mr Ronnie that he is in any sense at
19 loggerheads with Umbro. He made an outburst which JJB
20 have dealt with in their submissions. That does not
21 alter the fact this his sworn testimony was that
22 whatever the content of the dispute during the course of
23 his garden leave was it was resolved with them parting
24 on good terms.

25 I acknowledge the force that it cannot necessarily

1 be taken that Umbro's reluctance fastens on Mr Ronnie
2 but then I do not know why it should be inferred that
3 Mr Ronnie is ignorant of the passage of discussion
4 between us. Much of it did not take place in camera.
5 Much of it took place during week one and you will
6 recall that Mr Ronnie was vociferous in his complaint
7 that he had had to sit through all of this stuff for the
8 whole of week one, and he did.

9 The simple situation is this: there is
10 a relationship of unwholly closeness between
11 Sports Soccer and Umbro at the material times. The full
12 extent of which nobody appears willing to divulge,
13 volunteer or explain.

14 THE PRESIDENT: I think probably we just ought to park this
15 part of the discussion where it is.

16 MR WEST-KNIGHTS: I would be only too glad to have the
17 opportunity to develop my submissions.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: Can I just suggest this: at the back of
20 your minds there may be, as a tribunal, a feeling that
21 whatever the position is interparties this ought not to
22 be the end of the matter as in terms of if you think you
23 are being mucked about that is not acceptable. That is
24 a matter which the tribunal is perfectly entitled to and
25 may be bound to pursue itself with Umbro quite

1 separately from any information that is required or
2 necessary in the matrix of these proceedings.

3 Where it fits on the appeal thing: well, Umbro
4 cannot be insensible to the fact that you have already
5 said in open court that one of the reasons why you
6 regard it as sensible for the appeals all to be heard
7 together is that matters may emerge in the course of
8 these proceedings which would be germane to Umbro's
9 appeal. They know that and still they choose not to be
10 here.

11 THE PRESIDENT: Right.

12 MR WEST-KNIGHTS: So I need I think to modify the vulgarism
13 about Ronnie and Ashley.

14 THE PRESIDENT: Your submission is that we should not rely
15 on their credibility.

16 MR WEST-KNIGHTS: When judging their credibility you should
17 take into account their failure to tell you anything
18 about these arrangements. That is a much kinder way of
19 putting it than the vulgarism which I employed. I do
20 submit that both of them fall within the category which
21 I so vulgarly described, but not only for those reasons.
22 They are developed in my submissions if I go and make
23 them. So I shall do that now.

24 THE PRESIDENT: You have submitted that they are not honest
25 witnesses.

1 MR WEST-KNIGHTS: I have. I certainly have. And I will
2 indeed make that good in my written submissions.
3 THE PRESIDENT: That is how we understand your submissions.
4 MR WEST-KNIGHTS: Certainly. But of course simply because
5 one party says of another party's witness that that
6 witness is on occasions dishonest does not, as it were,
7 preclude, if the tribunal were to come to the view that
8 they were merely grossly unreliable -- it is a serious
9 charge to say lie. The first time the word "lie" was
10 used in these proceedings was in interlocutory
11 discussions between the panel and myself about what it
12 was that I sought to make of the assertion that Ashley
13 said that his business was diminishing by 30 to
14 40 per cent a year. I cannot remember how it was we
15 came to have a dialogue about it before I did it but we
16 did, and I told you then that my submission would be and
17 I would attempt to make it good in cross-examination
18 that that was a lie, and I venture to suggest that
19 I made good that proposition when I cross-examined
20 Mr Ashley because I shall be submitting to you that what
21 he was telling you about that was plainly untrue.

22 But the mere fact that one makes the serious charge
23 does not debar the tribunal from at any moment simply
24 thinking: I do not need to go that far. I do not rely
25 on that witness's evidence as being reliable. But it is

1 right that if we --

2 THE PRESIDENT: There is a whole range of possibilities, is
3 there not?

4 MR WEST-KNIGHTS: Of course, but I am not disqualified from
5 the lesser range if I think it appropriate, responsibly
6 as leading counsel, to say that our submission is that
7 that series of answers was rankly dishonest. There are
8 passages in the evidence of both Ashley and Ronnie which
9 are undoubtedly true. There are passages in the witness
10 statements of both of them which we rely upon in our
11 chronology to fix the certain key events. There are
12 passages in their evidence where they are plainly
13 probably just mistaken and there are passages in their
14 evidence where they are deliberately attempting to
15 deceive.

16 THE PRESIDENT: That submission, as you make it, is
17 a submission that you need to make good on the basis of
18 matters that you are going to draw to our attention.

19 MR WEST-KNIGHTS: The shape of this document, because it is
20 plain that I am going to have trouble getting through
21 it, is that it is divided up into bits but it has at the
22 end a chapter called "Pointers" and there are identified
23 specifically the references for where we say that a lie
24 was told: either that a lie said outside court was
25 proven to be such in court, or where the witness was

1 actually lying in court.

2 I could take one example. If you buy any of that
3 stuff about the tennis tournament then your threshold
4 for credibility and mine are different. In one sense it
5 is curious that we spent eight pages about something
6 which had never appeared before. But the more he went
7 on the more incredible it became and it was plainly and
8 flatly nonsense.

9 I am going to try and whizz through this because if
10 this document, which in truth I have not actually seen
11 in this form ever before, has any function it needs to
12 be better than me leaving here at the end of today and
13 saying "Ah, I can now pick up a list of the things
14 I missed."

15 So I am going to try and whizz through it and then
16 I promised myself that I would spend half an hour on the
17 chronology at the end because, and I say this somewhere
18 here -- and again this is not an attack on the Office
19 but is a fact. The way in which hitherto the Office
20 collects up its documents and indexes them, for want of
21 a better word, is antithetical to the discovery --

22 THE PRESIDENT: But there are clearly a lot of issues.

23 MR WEST-KNIGHTS: I am happy and indeed I have spoken to
24 Mr Brindley about this and no doubt will again, to say
25 candidly, that I would dare say the Office has learnt

1 a lot from this process already and it needs to. It is
2 discharging an important public function, but the one
3 thing it has never been able to do or at least has not
4 done, and no doubt will in the future, is make sure
5 there is a system for a chronological run of documents,
6 and then if documents come in that fit within
7 a chronology then they have to be interleaved and
8 somebody keeps a running list of those documents, or
9 perhaps a summary of their contents, and then as the
10 investigation grows so does their appreciation of what
11 is actually happening on the ground. The first thing
12 and the last thing that any member of the bar does, you
13 included I fancy, is chronology.

14 THE PRESIDENT: Let us get on with the submissions.

15 MR WEST-KNIGHTS: That is why I want to take you through the
16 chronology and I have got to page 2 of my 29 page
17 submission.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: And on the basis of -- that is two hours
20 a page so ...

21 New pressure case should not be allowed in this
22 appeal. We have dealt with this. Nor should Mr May's
23 evidence. I remind you that is technically still on the
24 table, the objection to Mr May's evidence, although we
25 do not actually make a fuss about that because what we

1 say about it is that the sting of Mr May's evidence
2 evaporated completely when he went into the witness box.
3 That submission is there made as is the reference to the
4 transcript.

5 The Manchester United Agreement: the decision is
6 very simple on this. They say "we actually agreed £40
7 at that meeting, full stop. And there is no mention of
8 any alternative price information case in the decision.
9 There is in the defence a fallback case of the reduction
10 of uncertainty, and again I hope in my submissions this
11 morning, as it were, adding the wrinkle to
12 Lord Grabiner's consensus point has fixed the various
13 options into their legal pigeon holes.

14 What we would say even on the OFT's case is that any
15 information which we acquired about JJB's pricing was so
16 de minimis as to be negligible, that is to say literally
17 negligible, it did not amount to an infringement even if
18 JJB, as it were, assured us they would price at 39.99.
19 We knew they were going. They were always going to and
20 they did.

21 The OFT's position generally: I have remarked
22 briefly on the uncomfortable position that they are in.
23 It is an uncomfortable position to be calling what were
24 in effect co-defendants below and indeed relying upon
25 witnesses as being witnesses of truth when you yourself

1 have criticised the quality of their evidence at every
2 stage of the proceedings.

3 The references are all there given. But it is of
4 course a fact that the Office regarded Ronnie's evidence
5 at every stage, Ronnie's evidence in particular, as
6 unsatisfactory. Ronnie 1, Ronnie 2, the meeting of
7 26th February broke up because in its attempt to
8 cross-examine the witnesses the OFT came to the
9 conclusion they were just wasting their time and that
10 the Umbro people were not even trying to help. You will
11 find that in Christiane Kent's witness statement, as you
12 will find also in her witness statement the fact that
13 when she broke the news to Umbro's lawyers they were not
14 exactly shattered. In other words they were not at all
15 surprised by the conclusion to which the Office had
16 come.

17 And not only did the Office regard Ashley's evidence
18 or Ashley's assertions, because there was no statement
19 from him, as vague or unhelpful, plainly some of his
20 material is expressly rejected in the decision itself,
21 at the top of page 3.

22 Mr Peretz has de-West-Knighted this piece of paper
23 up to a point, but I see it still says "Read 26, 202 for
24 all sorts of other nonsense". That is West-Knights for
25 "Please read the Lovells note of the leniency hearing

1 and bear in mind what you now know about the factual
2 matrix and compare it with the parts that the Umbro
3 witnesses were there attempting to sell the Office."

4 Compelling evidence, high standard, more likely than
5 not is way too low: in the right-hand column there you
6 will see the citation of the Chief Constable of Avon and
7 Somerset and the words of the then Lord Chief Justice,
8 Lord Bingham. I am satisfied morally that when you
9 consider the evidence here you may not be able to
10 imagine or define what compelling and strong evidence is
11 up to the Napp or Avon standard but you will see it when
12 you get there.

13 Unsatisfactory state in which we find ourselves: we
14 have just, I think, down that. I have dealt with the
15 question of non-disclosure. It was curious that we just
16 made a small observation in our defence -- is this
17 a 16 page affidavit from Umbro, by any chance?

18 THE PRESIDENT: No, it is just B against the Avon and
19 Somerset Constabulary which we will look at in due
20 course.

21 MR WEST-KNIGHTS: Thank you very much. It is paragraph 31.

22 THE PRESIDENT: Yes, do not trouble now. We have thrashed
23 the Umbro point.

24 MR WEST-KNIGHTS: We have made the point -- of course we
25 were completely ignorant of this at the time of our

1 defence. We did make a passing reference to the
2 selective distribution policy and light heartedly I say
3 little did we know how selective the distribution
4 policies were. I appreciate that is not literally
5 correct.

6 We say the whole case and indeed the decision, and
7 this is somewhere where we have parted company briefly
8 before. The decision is necessarily flawed by the
9 absence of a proper analysis of the balance of power.
10 It cannot conceivably be maintained to a compelling
11 standard that Umbro forced Ashley to do anything.
12 Ashley did what he pleased and there was undoubtedly
13 a quid pro quo for whatever he chose to do. We would
14 suspect that Ashley will have obtained from Umbro by way
15 of whatever leverage he had more than adequate
16 compensation for his no doubt expressed reluctance to
17 fix prices. Ashley is a highly competent businessman.
18 Ashley is a very rich man, a man who is actually not
19 very happy for people to know how rich he is. He will
20 not have bowled over or bowed down to anybody. He will
21 have down at these meetings what he judged to be in his
22 best interests which of course will have included
23 bleating endlessly about the appalling effect on his
24 business of having to price replica at full price
25 because that is a part of the negotiating process

1 between him and Umbro.

2 Just as a preliminary, you have said on a number of
3 occasions, waving behind you at the enormous waste of
4 paper which much of the bundles have turned out to be,
5 that you intend to read everything.

6 THE PRESIDENT: Have I said that?

7 MR WEST-KNIGHTS: Yes.

8 THE PRESIDENT: I think I have, yes.

9 MR WEST-KNIGHTS: At any rate what we say is -- you may like
10 this one: do not. It would be wrong to do so.

11 THE PRESIDENT: Yes.

12 MR WEST-KNIGHTS: It would take away the whole purpose of
13 the Office being required to give further and better
14 particulars of its case and limiting its reliance on
15 certain documents and passages. It would render otiose
16 the whole process of the trial process of testing
17 evidence if you were to dip in and out of other
18 documents to which no party has referred and which no
19 party seeks you to rely on because you do not know the
20 context in which it appears. You may read "Snoggins 5"
21 and think: wow, that is important stuff. Not knowing
22 that when you get to a reference in an OFT document, 16
23 bundles away, that of course what happened on 16th March
24 it is accepted was completely wrong, you might not even
25 know that that was a reference back to Snoggins 5, so

1 please do not regard yourselves as either obliged or
2 indeed wise to read beyond the narrow confines of the
3 documents to which the parties have invited your
4 attention.

5 But do, please, and this is the invitation,
6 particularly re-read my witness statements. It is
7 a function of no evidence-in-chief that the spotlight
8 falls on the parts which are challenged. The nice thing
9 about the parts which are not challenged is that you can
10 take them to be true or at least if not true accepted as
11 fact in the matrix of this case. Let me take a tiny
12 example. Mr Hughes faced criticism for having learnt
13 from Mr Knight on 9th June that Mr Knight intended to do
14 dual pricing. He is in fact accused of passing on to
15 Mr Knight the fact, as it is alleged, of the agreement
16 of the 8th June in relation to the Manchester United
17 shirt. Mr Knight's statement is unchallenged. He says
18 that he did not pass on information about dual pricing
19 and that Hughes had a conversation with him which did
20 not report any agreement at all as having been made on
21 8th June.

22 There is an example of a piece of evidence which you
23 can take as being accepted. There is a good deal in the
24 witness statements of all parties no doubt, but I pray
25 in aid particularly my clients, which did not come under

1 the spotlight because it was not looked at with the same
2 vigour. For instance, the fact that Mr Hughes
3 volunteered in his witness statement that there were
4 other entries in his diary which related to Mr Ashley
5 other than those, that is to say, which his statement
6 specifically addressed but which had been transcribed.
7 There is a lot of good stuff in those statements which
8 will need to be looked at, as I say, again, but with
9 care.

10 We also invite you to read all of the monthly
11 management reports certainly for the year 2000, the
12 purpose being that you will see littered throughout
13 them -- and to give you the references would be too
14 onerous and worthless -- two things in particular:
15 Umbro's keen interest in itself as a brand, and secondly
16 the very very keen interest which it took at all
17 material times in all retail pricing. It makes sense.
18 In 1999 Umbro is a mildly wounded creature that has had
19 a shot of new life by reason of capital injection but it
20 is plain from the documents it had lost credibility in
21 the marketplace. It is desperate to be a brand and
22 then, when a brand, to be a bigger brand.

23 If the market prices of its goods are low, it is
24 possibly because nobody wants to buy Umbro's stuff,
25 which is bad news for Umbro. If, on the other hand,

1 people are buying Umbro's stuff at their recommended
2 retail price because that is how they think and they are
3 achieving sell-through at their recommended retail
4 price, it makes them confident that retailers will want
5 to buy their stuff. If they sell it to a retailer who
6 cannot sell it on, the retailer will not buy any more
7 and it is an indication that other retailers will not
8 buy any. So they have a keen interest in the state of
9 the market for their goods. It speaks for itself, as
10 does frankly the PriceWaterhouse Cooper report given
11 only shortly before the Office conducting its
12 investigation in 1999 made plain that high retail prices
13 were good for Umbro, low retail prices were bad, the
14 assumption being that the Office's investigation would
15 result in a reduction of retail price all round which we
16 know did not happen.

17 On this question of pressure, if I can throw this
18 in -- I am not sure if it is in skeleton -- we know that
19 there was price fixing between the clubs and the
20 manufacturers because the OFT so decided in 1999.

21 Just moving on. There is a short apology there for
22 not having used cross-examination bundles.

23 THE PRESIDENT: We have read that.

24 MR WEST-KNIGHTS: I am grateful. Pressure, there must be
25 drawn a distinction between a number of different things

1 all of which which have come under this capsule.
2 Expressing dismay is not pressure. Not is complaining.
3 You need to have both the intent and the power for
4 something to happen as the result of your saying things
5 for it to become something which is legally material.

6 THE PRESIDENT: Yes.

7 MR WEST-KNIGHTS: We now know what Mr Ronnie meant or how
8 wide an expression pressure was when Mr Ronnie used it.
9 I have used this expression before, but there it is and
10 there is the reference to the cross-examination.
11 Anything that a retailer does, for whatever reason,
12 however lawful, that is mildly disadvantageous.

13 So let us take it that we are entitled to cancel
14 10 per cent of our order for Celtic. Celtic are bottom
15 of the league, nobody wants to buy them. We lawfully
16 cancel them for no purpose other than simple ordinary
17 business and that puts pressure on Umbro, as Mr Ronnie
18 would say, because it is inconvenient for them. They
19 have to try and sell their shirts somewhere else, or
20 they might make a loss on them. So he makes no
21 connection between the expression pressure and anything
22 improper or connected with discounting or price-fixing
23 or anything else.

24 There then follows a list of these things which
25 Mr Ronnie did not like people doing which came under

1 that original rubric. We cite in particular at length
2 the business about the Celtic shirt because that was an
3 example of pressure which he gave. It had at nearly the
4 end of it the sting that maybe Allsports would be in
5 breach of contract but Umbro would not dare sue because
6 of the comeback. Even that evaporated because he
7 acknowledged that the only instance he could give was
8 one within the contractual entitlement of Allsports to
9 alter its orders as being the quid pro quo for the long
10 league time.

11 THE PRESIDENT: I have got down to the bottom of page 5.

12 MR WEST-KNIGHTS: I am grateful. We see Mr Fellone, I hope,
13 now just in effect -- nothing sinister -- we would say
14 broadly, in respect of Fellone, evaporated. And he had
15 said in terms of course there had been no shenanigans in
16 connection with the Manchester United shirt or England
17 shirts by Allsports, so whatever he was talking about is
18 not material to this case.

19 We had already cited the shin guards business in the
20 January monthly management report at the bottom of
21 page 5 and you will remember yesterday that somehow the
22 words "shirts" was inserted in the course of
23 questioning. That does not say shirts in the relevant
24 report. It simply says that Allsports are reluctant to
25 do the shin guards and some other thing because of

1 Sports Soccer's prices.

2 Sports Soccer may be getting its shin guards for
3 rather less than us. It has lower overheads than us. A
4 decision was made plainly by Allsports to say we cannot
5 do your shin guards because of the price at which
6 Sports Soccer are doing theirs. End of story. Nothing
7 sinister. They may not even be Umbro's shin guards that
8 Sports Soccer are doing cheap. There may be no brand
9 relevance to a shin guard. There probably is not. It
10 is a utilitarian device that is covered by a sock.

11 Guest explanation, top of page 6. I have already
12 made the point that that is 100 per cent confirmed by
13 the Umbro reports. Many of the pressure examples turn
14 out not to be us but, if anyone, allegedly JJB, I am not
15 trampling on them, but it is a fact as you go through
16 these examples that either all retailers suddenly does
17 not include us or the JJB and Allsports suddenly does
18 not include us or on questioning it is only JJB. We do
19 not subscribe to the truth of the allegation in respect
20 of JJB but on any view we have always been also-rans to
21 the case against them.

22 Need to track the developments of pressure case in
23 Ronnie's statement. I invite you to read this with care
24 in conjunction with the schedule which you have in
25 respect of Ronnie's statements. It is a carefully

1 produced document crafted by my learned friend
2 Mr Peretz, it includes the cross-examination and is done
3 topic by topic along the lines as set out in Ronnie 3
4 but I do need to remind you of course notwithstanding
5 what Mr Morris said about the leniency statements the
6 office specifically relies upon certain paragraphs of
7 Ronnie 2 which, bless them, do not even find their way
8 into Ronnie 3.

9 THE PRESIDENT: Yes.

10 MR WEST-KNIGHTS: So if I could ask you to undertake that
11 exercise. It would be a lengthy one for me to go
12 through.

13 Then at the top of page 7 we have the business which
14 led to a certain amount of fuss. The decision says that
15 one of the factors would have been Umbro's unwillingness
16 to implicate its customers. We met that in the notice
17 of appeal. Mr Ronnie had nothing to say about it in his
18 witness statement. The only evidence that there was in
19 respect of this was dragged out of Mr Ronnie in
20 re-examination. The fact is that it makes all the sense
21 in the world for Umbro to have blamed the other
22 retailers and they did, big time. And we say falsely.

23 Part of that falsehood is that of course they were
24 not under any pressure from us in any more sense than
25 they were having to pressure Ashley to do it. Whatever

1 they told Ashley, of course, as has been acknowledged by
2 some of the witnesses, the easiest way to apply pressure
3 to somebody is to blame it on a third party. And, by
4 the way, if you are going to finger a third party who is
5 a retailer, you have to pick one who is not a discounter
6 otherwise your bluff would be called and you would look
7 silly.

8 But it is a fact that Ashley's statements do not
9 mention us. The Office specifically asked Ashley, "Who
10 were the people who Ronnie said were putting the
11 pressure on you?" Answer came back: "I have no specific
12 recollection of Allsports ever having been mentioned".
13 So even if Ronnie was, understandably -- in the same way
14 as Ashley would bleat to Ronnie about the appalling pain
15 to him of losing his volumes on licenced kit, Ronnie
16 would undoubtedly be fibbing and saying, "Of course it
17 is not us. I would love to be able to help you but it
18 is these horrible retailers" or "it is Manchester
19 United" or "it is everybody else". That is a technique
20 that people use and it is common ground in this case
21 between Ashley and Ronnie that there is habitual telling
22 of lies on both sides.

23 Not a happy situation, I am bound to say. Many of
24 us do conduct our business lives without telling lies
25 and do not expect to be lied to by the people we are

1 discussing things with, unless you are buying a kitchen
2 from a door to door salesman when you know that every
3 word is untrue. But in the ordinary run of business we
4 do not tell lies, so it is not to be taken lightly or
5 irrelevantly, if I may say so, that this is a demi monde
6 where lying between the respected parties is
7 commonplace. In my submission that leads to an erosion
8 of respect for the truth and makes it more rather than
9 less likely that the people concerned are telling the
10 truth.

11 Do you mind a change of voice? My learned friend
12 Mr Peretz has told me that he has made an appalling
13 series of omissions and errors that he would like to
14 address you about briefly. It is a short point. There
15 are some reference things you might like to correct.

16 THE PRESIDENT: We will probably have a break about 3.20
17 Mr Peretz.

18 MR PERETZ: I hope it will not take five minutes. As we are
19 are on pages 7 and 8 I might as well quickly do them
20 now. On page 7 the reference to Day 4, page 23 about
21 halfway down on the right should be Day 5, page 24; and
22 the reference to Day 4 in the box below that should also
23 be to Day 5, page 21.

24 THE PRESIDENT: Okay.

25 MR PERETZ: Then over the page on page 8 there is a big box

1 in the middle. Unfortunately the lines have got out of
2 sync on the right a bit. The first entry on the
3 right-hand side should be Day 5, pages 45-46.

4 THE PRESIDENT: Should they all go up one line?

5 MR PERETZ: The error starts about where it says "but",
6 about halfway down. The reference which at the moment
7 says Day 6, page 57, line 22 should actually be Day 5,
8 page 57, line 22 and that relates to:

9 "No, Ronnie said that he regarded Allsports as in
10 the same group as JD and First Sport."

11 So actually it is a little way down the page.

12 Day 6, it should be Day 5, page 57, line 22. The
13 one above is I think right. It should be Day 5, I am
14 told.

15 Then the final two references on the right-hand
16 column in that box, they both should be shifted down, so
17 the reference "they are in the position to put pressure
18 on Umbro if they do a lot of business with Umbro" is
19 unfortunately a wrong reference. It should be Day 5,
20 page 59, line 8.

21 THE PRESIDENT: Yes.

22 MR PERETZ: Which currently reads Day 6, page 58. It should
23 be Day 5, page 59 and that is where he says they are in
24 a position to put pressure on Umbro.

25 And then the final correction. Day 6, page 157 to

1 particularly draw our attention to so we can get through
2 it in an efficient way.

3 MR WEST-KNIGHTS: Yes. Let me tell you what plan A is.

4 THE PRESIDENT: Yes.

5 MR WEST-KNIGHTS: Recognising always that sometimes plan B
6 comes into existence. It is my intention to do exactly
7 that in respect of this document and I am grateful to
8 you for the undertaking which, of course, is not
9 required, and finish that exercise by half past four,
10 and in the process to dwell on the memorandum of
11 9th June for as long as is necessary.

12 I then propose to the spend half an hour whizzing
13 through the chronology because you have never had
14 a chronological appreciation afforded to you, otherwise
15 than from: first, the chronology in the decision; and
16 second, the very helpful chronology provided by the
17 Office in its opening but which does not, as it were,
18 mesh in all of the stuff that we have learnt since then.

19 But, thank you, sir, I will do what I can and if
20 I pause from time to time it is simply because if I had
21 the proverbial extra half an hour this morning, I would
22 have yellow highlighted this myself.

23 THE PRESIDENT: Yes, of course. We understand entirely.

24 MR WEST-KNIGHTS: I am still on page 7.

25 THE PRESIDENT: Yes.

1 MR WEST-KNIGHTS: It is important, this is an important
2 point, this business about the capacity of Allsports to
3 place pressure upon Umbro. It is, as recited here under
4 that bold heading:

5 "It started off with the special position of us in
6 respect of Manchester United's official retailer."

7 Then that disappeared and in Ronnie 4 it became:

8 "(a) top account and (b) because they are vulnerable
9 to us because of branded product."

10 The short answer to official retailer is that you
11 can now see (a) that that has gone and (b) that we are
12 a minnow here. We have no idea what the Vodafone/Sharp
13 arrangement is, but it is top of the tree. We do know
14 that Nike, who supplanted Umbro, albeit for a slightly
15 different arrangement, paid a sum in excess of
16 100 million for their rights for five years, and we do
17 know that Allsports pays 250,000 or did, 250,000 a year,
18 for whatever it got.

19 For the most part what it got was advertising at the
20 ground, on the boards. That is the evidence. It also,
21 I could tell you, had the use of a suite from time to
22 time for the purposes of watching matches and no doubt
23 corporate hospitality. Six seats. No doubt valuable
24 but quite a lot -- that already uses up quite a lot of
25 the £250,000. In other words, "we do not pay much but

1 we already get quite a lot for it." There is no
2 question of our being, as it were, in the pocket.

3 The top three, let us have a look at this. There
4 was a gross exaggeration by Ronnie that was completely
5 incapable of being explained. Namely the assertion that
6 most of our stores had a store within the store. He
7 tried to that fix that on Mr Guest but that would be
8 ridiculous. Their own documents show that we had
9 planned for 25 and stalled at 20. You have heard the
10 reasons by Mr Hughes, cogently expressed, that it was
11 a commercial disaster. That was not challenged.

12 I have dealt with Jaffa Cakes over the page. This
13 is quite important. The idea that we might have been
14 the source of the complaint about the Sky shopping
15 channel absolutely gives the lie to the supposed special
16 relationship because we would, of course, have had
17 a quiet word in our friend's Manchester United
18 shell-like, and said "What are you up to?" rather than
19 going through the intermediary of the alleged junior
20 partner, Umbro, in respect of a promotion that they had
21 nothing to do with.

22 THE PRESIDENT: Yes.

23 MR WEST-KNIGHTS: But of course the substance of that is
24 again completely evaporated. It turned out to be later
25 hearsay where Mr Prothero cannot even accurately

1 identify who it was who told him, or indeed, who it was,
2 hand on heart, that person told him was the source of
3 the complaint. Although Mr Prothero would not have it,
4 bless him, I venture to suggest that the letter of
5 13th July speaks for itself:

6 "If Allsports finds out about this you are in
7 trouble", is not consistent with Allsports having known
8 about it.

9 In addition, there was, I put to him I hope fairly,
10 a particular paragraph as to the percentages,
11 60 per cent of which JJB alone is 24 as a grotesque
12 piece of spinning. I think I said it was a nasty piece
13 of spinning. It plainly was, because the underlying
14 figures, he accepted, were 24 per cent for JJB,
15 32 per cent for Allsports and 4 odd per cent for us.
16 But of course, in addition to those figures initially
17 having been redacted all together, when they became
18 clear you are still left with 60 per cent of which JJB
19 alone had 24. He also accepted -- I have done it again,
20 24 per cent for JJB, 32 per cent for Sports Soccer and
21 4.5 per cent for us. I am going to call Allsports "us"
22 from now on and I hope that is permissible.

23 Now, as to branded product of course we know now
24 that our turnover with Umbro was only 1.5. We are
25 specifically not listed in the January monthly

1 management reports as an account that Umbro is concerned
2 to grow. They are over-reliant on the top two which is
3 JJB and Ashley, and the four accounts that they do list
4 as targets for further development are Giles, JD,
5 First Sport and Hargreaves, not us. The references
6 there have now been corrected and indeed of course
7 Ronnie told us he put us in the same bracket as JJD and
8 First Sport as being non-supporters of the brand.

9 So it came down to this, the bold quotation there
10 and indeed I summarised to it him later as damned if you
11 do and damned if you do not, and he accepted that.

12 So the overall proposition, even disregarding the
13 width of Ronnie's definition of pressure, is that any
14 retailer, however small, is in a position to exert
15 intolerable pressure on Umbro, because if it is tiny it
16 is because they might want to the grow it, and if it is
17 big it is because they are already there. Which is
18 plainly grasping at any reason to finger us as being
19 a potential source of pressure.

20 You will recall the evidence which Ronnie finally
21 gave about that May monthly management report which,
22 I myself submit, was plainly untrue. It was entirely
23 inconsistent with Phil Fellone's view of the position,
24 namely that we were growing as partnership, indeed it
25 was completely confirmed by Hughes and Guest,

1 cooperating with him on the Champions and Pro-Training
2 products as one would expect.

3 But the steel is there visible, as is the power.
4 Plainly Ronnie was prepared to treat us like a minnow in
5 his evidence, and plainly when push comes to shove, as
6 I put it to him, Umbro, vis à vis the retailers such as
7 us have the whip hand and why? Because replica is
8 a must have. Even then they are prepared to risk
9 destroying the business of a third party merely by way
10 of punishment and I mean JD Sports having their
11 Manchester United supplies cut off. I put it to him
12 fair and square I hope that Umbro has the whip hand in
13 that relationship.

14 So in truth, the pyramid of power goes the other way
15 from that which is painted both in the decision and by
16 the Office.

17 Sports Soccer appears to have the whip hand over
18 Umbro, particularly if, as appears that may be the case,
19 that it has connived with Umbro in paying monies that
20 Umbro then put into sets of accounts for the purpose of
21 making their figures look better. If that happened in
22 1999 then Ashley is in charge of 2000, overwhelmingly.
23 He has Umbro by the parts that other beers cannot reach.

24 Mr Guest, I say again, I submit was a good witness.
25 He was trying to help you and, in my submission, did.

1 He was candid. That does not mean to say he gabbled, he
2 was careful to give the right answer but he was not
3 forever looking ahead to see what the point was. He
4 answered you fairly and frankly. He says here that he
5 "did not believe", I think the expression is he knew, as
6 he put it, that Umbro had no power to affect retail
7 pricing. Of course what Mr Guest did not know then, and
8 certainly did not know at the time of making his
9 statement, was precisely the relationship between Umbro
10 and Sports Soccer. It is plain that Umbro and
11 Sports Soccer can negotiate between themselves whatever
12 they wish. Indeed, he described it as laughable that
13 Allsports could be regarded as being in a position to
14 threaten Umbro.

15 Umbro plainly has been interest in maintaining its
16 own retail prices. I say again, the May monthly
17 management report, we cannot allow our statement product
18 to be discounted and each of the witnesses accepted that
19 bastardised is a concept well known inside Umbro, and it
20 is part of its pattern of thinking. Particularly in
21 respect of the statement product where there is a third
22 party licensor involved with its own interest in its
23 image not being bastardised. Particularly Manchester
24 United which, in addition to being a large organisation,
25 is, unlike the FA, a commercial organisation. As we

1 know from the evidence, then at the peak of its power.
2 Having down the treble in 1999 and being on the stock
3 market at a shade over a billion pounds. It is
4 a monster organisation.

5 We have set out there the evidence that was accepted
6 by Mr Fellone and Mr May in relation to branding and the
7 interest, and of course, the OFT decided that they had
8 such an interest.

9 It is plain, if I could take you briefly at page 10,
10 and this may impact on Manchester United's appeal and,
11 c'est la vie, it is a plain fact that such evidence as
12 there is in the contemporaneous documents of pressure
13 comes from Manchester United. The Umbro witnesses
14 accepted that the Manchester United letter of 25th May
15 about kit bag, Debenhams and Sports Soccer was not
16 subtle. It is a blatant requirement to bring
17 Sports Soccer into line on the Manchester United shirt.
18 Of course little did Manchester United know how easy
19 that might be. It is simply a question of coming to an
20 arrangement with Mr Ashley if, of course, they are
21 prepared to pay the right price because in the end
22 Mr Ashley can say "no".

23 You will remember that his being encouraged to the
24 increase his replica was something he welcomed,
25 apparently at precisely the same time when replica

1 represented a crucifixion to his business. Those two
2 cannot sit together. Something there is not right. I
3 was expecting him to reject the Ronnie story, that
4 Ronnie had helped him in, and in particular, with
5 replica. Because it would not fit his detestation of
6 any reliance on replica because of the price-fixing
7 implications and the appalling damage that he said it
8 did to his business. But he did accept it and he meant
9 to and there was no satisfactorily explanation for those
10 two things running in tandem.

11 Page 10, but quickly, again; the complete absence of
12 documentary evidence of pressure is significant. The
13 Umbro reports are frank enough to boast about
14 price-fixing. And indeed to boast in a slightly
15 exaggerated way for the purposes of troop rallying.
16 Where are the reports from the sales people on the
17 ground?

18 As usual -- "I cannot sell this product because ..."
19 Any salesman who cannot sell a product is going to come
20 up with a reason. Especially if the reason is a true
21 one, "I cannot sell shin guards because Allsports say
22 that we are doing too much discounting with
23 Sports Soccer". Allsports will not support us on brands
24 because we are not taking enough effort on licensed
25 shirts." Especially as the salesman of brands may well

1 be the different person from the salesman on licensed,
2 as indeed the buyers are.

3 But they would explain themselves. They would say,
4 even if it was not true probably. But against all that
5 you have not been shown one single file note written by
6 Mr May. You have not been shown one single file note by
7 Mr Brian. The reason we know is clear, because in the
8 course of its investigations Umbro, Fellone and Ronnie,
9 in particular, quizzed the NAMS, the national area
10 managers, and looked in their files and got them to look
11 in their files and to fish out anything that might
12 assist Umbro to lay off the blame. And let us assume,
13 at this stage, it was a genuine attempt to find out what
14 was going on. Nothing was found.

15 Mr May does not mention in this case until after the
16 OFT had served its defence. He is not mentioned in the
17 decision. He is not mentioned apart from in the monthly
18 management reports neutrally as being a reporter. He
19 does not feature in the pressure case until the amended
20 defence, until the OFT took the opportunity, we say
21 legitimately, to try and hang him on the peg of Michelle
22 Charnock. You have heard his evidence that he was,
23 I venture to say, very surprised in the end that his
24 dealings had been characterised as pressure. And that
25 is consistent, he says of what he told the investigation

1 at the time.

2 It is not insignificant that Mr May has got the
3 start of pressure as -- complaints rather, after the JD
4 cap promotion. Nobody liked the JD cap promotion, but
5 the people who liked it least were Umbro. It was
6 accepted that the conversation that might well have
7 taken place with Mr Guest over lunch, on 31st May, would
8 have been along the lines of:

9 "Don't suppose you are happy about that?"

10 "Damn right we are not."

11 "Don't worry, we will try and do something about
12 it."

13 Moving on. Guest to Gourlay letter. The evidence
14 given by Guest on that was sensible and cogent and it
15 fits the reply. Remember the reply that we all thought
16 was another copy of the letter going out. Mr Guest has
17 no axe to grind here, he does not work for us anymore.
18 He did not even work for us the second time round, he
19 told you he had made enough money. He was only prepared
20 to do it on his own terms. He now appears to be as
21 happy as Larry working in California and Italy for FILA
22 and he owes us nothing.

23 In addition, of course he is a friend of both
24 Fellone and Ronnie and it must be less than easy,
25 especially if you are just an independent neutral, to

1 volunteer the opinion of somebody you have known for
2 over 20 years if you think he is not the best person to
3 go to if you want someone to tell the truth. That is
4 a telling judgment by a man who, I submit, was palpably
5 honest.

6 Golf day. You have a list there of the relevant
7 witness statements. You will remember that the alleged
8 embarrassment caused to Umbro as a result of this has
9 wobbled all over the place and then finally settled on
10 a late basis on something to do with its being
11 a criticism of Umbro. But then we are back to
12 Phil Fellone, his principal embarrassment was the
13 blurring out of the wrong number of the shirts which
14 had, of course, been the embarrassment according to the
15 Ronnie, until such time as this was beefed up later on.

16 JD cap promotion. I hope that the position on that
17 is crystal clear in your minds from the evidence. Umbro
18 it was who did not like it, and of course it was a
19 subject of conversation. It was not very surprising.
20 In fact, the evidence appears to show that it was not an
21 admiral cap but that does not matter. Everybody's
22 perception at the time was that it was. Who is going to
23 be most upset about that? The other brand name, that is
24 to say Umbro.

25 The 12nd June meeting. Again, we have got the JD

1 cap rearing its ugly head but Ronnie accepted that Umbro
2 were independently extremely unhappy about this; the
3 mixture of two brand names on their flagship product.
4 Fellone agreed with that and Ronnie accepted that
5 Hughes, in raising this matter, was asking a fair
6 question as part of a conversation. I remind you that
7 the change of emphasis between Ronnie 2 and Ronnie 3
8 where Ronnie 2 ended with "but my primary concern was
9 the brand confusion", that is simply removed in
10 Ronnie 3. That is wicked.

11 At the very best it is grossly careless. What was
12 curious was that Mr Ronnie did not recognise that or say
13 "yes, I distance myself from that change. I regret that
14 it takes place and the sense of what I intended was
15 Ronnie 2" but he was not prepared to help you about
16 that.

17 The reference to the Manchester United contract, in
18 the 26th February, there is no question of it being
19 raised as a threat, merely a prediction or indeed
20 a statement of known fact. It is reported to
21 Mr McGuigan as a comment, until we get to McGuigan 3
22 where someone has taken Mr McGuigan's statement and made
23 that into a threat for the first time. It is quite
24 plain from the cross-examination of Ronnie that Hughes
25 was simply offering a view which was both correct and,

1 as it turned out, accurate.

2 THE PRESIDENT: That reference on page 14 to the 26/2/02

3 meeting is --

4 MR WEST-KNIGHTS: That is the leniency cross-examination of

5 Ronnie.

6 THE PRESIDENT: That is the leniency meeting.

7 MR WEST-KNIGHTS: Yes.

8 THE PRESIDENT: Thank you.

9 MR WEST-KNIGHTS: And the reference U2 is of course the

10 Umbro appeal bundle.

11 THE PRESIDENT: Yes.

12 MR WEST-KNIGHTS: Hughes complained about, first of all,

13 discounting in the -- these bold ones are all the

14 particulars which the OFT have given. That plainly

15 goes. Ronnie could not even put a date on that between

16 1999 and 2001. Roundly denied by Mr Hughes. No

17 evidence of it in any of the pricing schedules and that

18 must simply disappear. Certainly on the basis of

19 anything required to be compelling.

20 The complaint allegedly about the free autograph

21 ball on the Manchester United Sky Open Channel, gone.

22 A later possible statement, possibly by Ronnie or

23 Fellone, to Prothero but no he cannot even put his hand

24 on his heart as to who it was they mentioned. Unlikely,

25 we say in the extreme, that it would have been us in any

1 event. But is it not interesting that an Umbro witness
2 is prepared to think it might be us? That is what takes
3 away a good deal of the special relationship.

4 Ring around. I have done largely I think this but
5 it will come up again in the chronology. Plainly, and
6 this is a quotation from the OFT skeleton liability at
7 15. This is the way the OFT puts its case in its
8 skeleton. This is worth a quick look because this is
9 it:

10 "The undisputed fact that a price fixing was
11 reached." Yes, on terms.

12 "The phone calls made by Mr Fellone in particular to
13 those who were out of kilter."

14 Yes. Good reason for those, as I said earlier:

15 "Hughes direct discussion with Knight of Blacks and
16 Allsports' concern about the JD Hat-trick promotion."

17 That is out of sync as a matter of chronology
18 because that is the 2nd June and the OFT do this quite
19 a lot, no doubt accidentally, because this is, they say,
20 the evidence about that ring around.

21 Over the page, Hughes's diary entry:

22 "Agree Man U and England prices."

23 Again that is out of sync because that is 5th June
24 but I will come back to that because it is quite
25 interesting. On 5th June David Hughes seems not to know

1 that a deal has been struck already with Ashley on the
2 England shirt. I will come back to that. In my
3 submission that is a very important pointer to
4 Mr Hughes' honesty.

5 JJB's pressure it is said, this is the OFT skeleton
6 still, and the Umbro May 2000 monthly management report
7 which we say is just a list with safety pillars in
8 there. They do rely upon that document it seems as
9 evidence of, as it were, the ring around, but of course
10 the ring around now is the passage of information and
11 not the making of an agreement. That is clear.

12 That is it. There is not anything left in there
13 that is not JJB. And they rely upon the simultaneous
14 price increases. We did not do anything with our prices
15 at any time. We just plough our own furrow. We price
16 at 39.99 whatever anybody is doing. And the evidence is
17 that in May of that year, I am sorry to keep saying this
18 but it is terribly important, we were selling just fine.
19 So not only does Ronnie say that we were not doing
20 anything adverse to Umbro in respect of this. There is
21 no reason why we should have been. We were selling fine
22 in May. During, as it were, the run up to the
23 tournament when Sports Soccer are going out at whatever
24 their discounted price was, and JD Sports are not only
25 knocking the price down but giving a cap.

1 In case this is not anywhere else, Day 6, page 70 is
2 where Ronnie accepted that any pressure that was being
3 applied between the April price-fixing meeting and
4 the May price-fixing meeting did not come from us. So
5 we cannot have been causative of the price-fixing which
6 the OFT would like to fix us with vicariously on their
7 alternative case.

8 Briefly the history of the ring around allegation: I
9 have the last correction to make to the referencing
10 there. Under Day 4 in the box "history of ring around",
11 each of those page numbers needs to be reduced by 1. So
12 it is Day 4, page 180 to page 181.

13 THE PRESIDENT: Thank you.

14 MR WEST-KNIGHTS: It re-emerged for the first time in the
15 26th February meeting, and Mr Ronnie accepted that it
16 was the product of an invitation question. That is
17 extraordinary of itself. Do not let us just glip over
18 that. Not a breath about the supposed ring around in
19 any guise in any statement made by Umbro for the
20 purposes of obtaining leniency. Notwithstanding the
21 enormous work that was done and the diligence of
22 Miss Roseveare and Mr McGuigan and whoever else was in
23 charge of these investigations in the period between the
24 raid and latterly the service of the Section 26 notice
25 and the production of these draft and then final

1 statements in February 02. It is a long period. And
2 you will remember the evidence as to the disruption at
3 Umbro House in Cheadle and the searching through files
4 and so forth.

5 Ronnie 4 gave you particulars notwithstanding that
6 Umbro had previously formally said by letter that they
7 could not, and of course their particulars which are not
8 only additional but different. Mr Ronnie had no good
9 answer for the multiple occasions upon which it would
10 have been a good moment to tell us but then of course
11 the problem was that it was not a result and he was not
12 able to explain or deal with that either.

13 The phone call changes because Mr Ronnie reads our
14 notice of appeal. That is not insignificant either. He
15 changes his case after he has seen our attack on his.
16 We rubbished Ronnie 3 in the notice of appeal because
17 that was the foundation for the decision. He then comes
18 up with a different version.

19 Then when asked about it Mr Ronnie tried to pretend
20 that Ronnie 3 and 4 were the same. You will remember,
21 I hope, that passage of cross-examination where I put to
22 him both the sentences that he had excised from his
23 witness statement, firstly as a sentence and secondly as
24 a sentence with "not" in it and he purported to accept
25 them both and say that they were the same.

1 There is no mention by Ashley of any pre-condition
2 anywhere, as a matter of common sense.

3 THE PRESIDENT: The pre-condition being reassurance from
4 other --

5 MR WEST-KNIGHTS: Not necessarily reassurance down as far as
6 he never says "I said to Ronnie that if anybody else
7 broke ranks I would go straight back down again", but
8 that may be an inference you would logically draw from
9 Ashley depending upon what the quid pro quo is between
10 him and Ronnie for the arrangement.

11 But certainly there is no evidence from him at all
12 as to a requirement for reassurances from retailers but
13 I suppose it might be said that Ronnie would go and
14 check that anyway, but not from us because we do not
15 discount and at this stage I venture to suggest it would
16 be widely known that JJB were not going to either. This
17 is the first new -- sorry, we are talking about England
18 here. England in Euro 2000. It was anticipated that
19 there is going to be massive demand for this shirt and
20 there was. It was anticipated that eventually there
21 would be massive red top interest in this tournament and
22 there was.

23 The next question is a brief one: what is special
24 about 24th May? The answer is nothing as far as
25 price-fixing is concerned. There was supposedly an

1 arrangement in March. There was another one in April.
2 Ronnie tried to tell you that May was different because
3 of this email. Then turning the shirt round. All of
4 that must be regarded as deeply suspect and indeed
5 plainly wrong. Of course we now know that there is
6 something different about 24th May because the
7 price-fixing arrangement comes slap bang in the middle
8 of discussions about the licensing arrangements, not at
9 the top. Mr Ashley blurted out: you do not understand.
10 You do not get through a door unless you get
11 a price-fixing. Other chat coming out of that. I ape
12 that deliberately because that is what he said.

13 So what we find in this note which was not intended
14 that anybody should ever look at is that the
15 price-fixing comes at the bottom of page 2 of 3. When I
16 say "LA" in this document it means licensing agreement.

17 THE PRESIDENT: Yes.

18 MR WEST-KNIGHTS: Ronnie says that Ashley would always, as
19 it were, posture that if anybody else broke ranks he
20 would go down with them. There was no ring around on
21 any other alleged occasion or indeed admitted occasion
22 of price fixing in March or April or any other time.
23 What it is that Ronnie purports to say is special about
24 the 24th May for a wholly unexplained reason is "I rang
25 him up because I had a guarantee." That is the word he

1 uses "a guarantee". But of course a guarantee which was
2 broken. In fact, Ronnie claimed in the witness box that
3 he would tell JJB and Allsports at any time that
4 Sports Soccer increased its prices but of course the
5 ring around is pitched at a time before Sports Soccer
6 did so. There is no reference in the note of the
7 meeting to any breaking ranks if anybody else did.
8 Simply he says "If I go out at High Street price I need
9 a change of target." And he got one.

10 Change of target of course was completely excised in
11 the public statements because it involved referring to
12 the deals between Umbro and Ronnie so we did not know
13 anything about that. But it is quite important, if you
14 are telling a story and you leave bits out the story
15 changes because the matrix of reasoning changes.

16 The 24th May meeting, whatever else it was, was
17 friendly because as Mr Ronnie's diary shows and as he
18 accepted in evidence he spent the evening in the a pub
19 with the Sports Soccer team watching a football match on
20 the television. We have made the point about nobody
21 would need to ring us up even if that was expected, and
22 any examples given by Ashley are solely relating to JD.
23 Because they might be perceived to be the people who
24 might break ranks because of the cap promotions and
25 their antecedent reductions in prices. There is nothing

1 special about this except the alleged result which of
2 course it was not.

3 At the bottom of the page what is odd about this
4 result in addition is that Manchester United wrote on
5 25th May blatantly saying: what are you doing about
6 Sports Soccer's pricing? If they are going to knock
7 down Liverpool what are they going to do with our shirt?

8 How long did it take Umbro to reply? They did not
9 do anything in respect of Manchester United's letter
10 until 6th June, in the meantime there having been
11 a meeting between Ronnie, Prothero and Fellone on what
12 is plainly the same subject, the heading "Premium
13 Product", which is the expression used by MU in its
14 letter of complaint.

15 On 6th June they do refer to a conversation but it
16 plainly cannot have been that they were rung around
17 before they wrote their fax, and indeed they cannot have
18 been told about the ring around during that period
19 because the reply goes back very anodyne and simply,
20 interestingly enough, only refers to assurances from JJB
21 and Sports Soccer. They do not need an assurance from
22 JJB so that just may be a bit of fluff. They have
23 certainly got a deal with Sports Soccer, but whatever
24 else happens they do not mention us. Nor interestingly
25 is it suggested by anybody "Well, we did not need to

1 tell Manchester United because we told their trusted
2 lieutenants, Allsports". Not a suggestion.

3 So again, we venture to suggest, the reason why
4 Manchester United were told nothing -- because that
5 would have been we say Ronnie's province -- cannot have
6 been Marsh's because he was not told about these deals,
7 and it appears that Prothero was not told about this
8 deal either, curiously, so prima facie it would be
9 Ronnie. And of course he knows that it is a failed deal
10 so he does not ring them either, but by 6th June of
11 course Sports Soccer has fallen into line so it is safe
12 to report back to Manchester United.

13 That is page 18. I reminded you at the top of
14 page 19 that Ronnie's original account fixed the upping
15 of the price of 26th May, which enabled them a certain
16 latitude, which of course disappeared when he told the
17 truth about the arrangement with Ashley which was that
18 he would go up the following day.

19 This tennis tournament is mentioned there. I will
20 say no more about it. I have made my submission. It
21 is, as I say, conscientiously made that that was pure
22 fiction. It plainly is pure fiction in the context of
23 the statement it was written about which plainly asserts
24 that the reason why he now thinks it is possible that he
25 cocked up the date is because he got Sports Soccer to

1 get their phone records out. He told you that he had
2 come up with this recollection about the tennis
3 tournament whilst he was writing his statement but he
4 did not put it in.

5 Whatever else Mr Ronnie did as a result of those
6 telephone calls from Mr Ashley's area managers, itself
7 an important pointer to the balance of power I venture
8 to suggest. Who is winding who up here? Ashley is
9 winding up Ronnie. If he was frightened of Ronnie which
10 he plainly was not he would not do it. It is no good
11 for him to say, which he did not, "Well, I had got my
12 shirts by then so I was all right" because there is
13 always the threat of the next lot. What you do not do
14 if you have a crocodile in front of you is poke it with
15 a stick, but if you have a small animal and you are of
16 a cruel disposition then you might whack it and that is
17 the relationship between these two.

18 The Manchester United/England shirts lorry is
19 complete nonsense somewhere along the line. It may
20 simply be that it never happened. And that the truth is
21 that Ashley and Ronnie decided to add various similitude
22 to their precious story that they would say that a shirt
23 lorry had been turned around.

24 Perhaps it was. We know that the credit control
25 department at Umbro finally got irritated -- this is, as

1 it were, the real life people in early January 01 --
2 with the fact that Sports Soccer were 1.9 million adrift
3 on their normal account. And somebody sent a stiff
4 email saying "You have a Manchester United shirt due
5 next Friday. If we do not have this account cleared by
6 then we are stopping it."

7 We do not know what happened but the best lie is
8 told around the truth and the best alibi is told about
9 a real occasion, but just like any false alibi the
10 problem is when did it happen? And that is where
11 alibi-givers always get tripped up in cross-examination
12 because they can describe an event but they cannot
13 explain why it is they are certain they it happened on
14 a relevant date. A date which is ex hypothesi otherwise
15 unexceptional. And that is where these two have gone
16 wrong. They have not fixed the date between them.
17 Indeed, they now contradict each other absolutely as to
18 that date.

19 One of them is plum wrong. I would venture to
20 suggest it is Ronnie because it is yet another bit of
21 wrong between April and May 00, he having blown it
22 totally with the wrong year's email. He then replaces
23 it with this lorry, which of course is all part of the
24 smoke screen because we know that there is not
25 a pressure situation between Umbro and Sports Soccer.

1 Not in the sense of Umbro being able to crush
2 Sports Soccer's will.

3 THE PRESIDENT: And your explanation for Mr Ashley being
4 apparently willing to put up the price for MU.

5 MR WEST-KNIGHTS: MU? I am on England at the minute.

6 THE PRESIDENT: Or England is --

7 MR WEST-KNIGHTS: He gets a quid pro quo. Umbro want the
8 price up. It is their statement product. They do not
9 want England or Manchester United regarding them as
10 incompetent or devaluing what they do. Umbro wants to
11 be a brand. Umbro, let me remind you, cannot allow our
12 statement product to be discounted.

13 THE PRESIDENT: Umbro wants all that but why does Mr Ashley
14 fall in line with them?

15 MR WEST-KNIGHTS: Because he gets a deal as a result of it.
16 I expect he levered the best deal out of them he could:
17 if you want me to do this, fine. I am not happy about
18 it, it cost me money, now what are you going to do in
19 return? As I said earlier, it is not ideal for
20 Mr Ashley but it depends what he gets back.

21 THE PRESIDENT: And there is the whole saga of the licensing
22 deal and whatever.

23 MR WEST-KNIGHTS: Yes. He does not strike you as a victim,
24 does he, in the witness box? He does not strike me as
25 a man who would not do anything without thinking

1 carefully what is good for Sports Soccer, what is good
2 for Ashley. If in the end it was intolerable to him he
3 would have told Umbro to take a running jump
4 particularly as he is only involved, he says, in
5 licencing licence kit very recent at Umbro's request.
6 I mean it is just it is eye wash.

7 I have dealt with the May monthly management report.
8 This is page 20. There is no corroboration from the
9 ring around to be had from of course Phil Fellone for
10 the reasons I have explained, which is they may well
11 have had a discussion that he would phone some people
12 and Ronnie said "Well, I will phone the others", because
13 as Michael Guest told you, if they had a result Ronnie
14 might well have volunteered that information to us, not
15 because we had been putting any pressure on anybody but
16 it just would have been something to boast about. It
17 would probably have been good news for Allsports.
18 Nobody denies that, but that does not make us part of
19 a cartel. At any rate, the explanation of course falls
20 away when it ceases to be a result which it was at all
21 material times.

22 There was a bit of blurting by Mr Ashley that maybe
23 his phone call of 2nd June on his mobile was to tell
24 Hughes about the price rise. You must just put that out
25 of your minds; it was just a gratuitous piece of

1 nonsense. His considered evidence on that, he himself
2 remarks it is entirely consistent with Hughes' evidence,
3 namely that Hughes telephoned Ashley's mobile and got
4 another man who said that Ashley was out of the country
5 and Ashley says "Yes, that is probably the occasion when
6 Nevitt was using my telephone for the purposes of
7 calling them to fix the pricing going up and that,
8 therefore, Nevitt will have answered my telephone and
9 given an excuse and run off."

10 So that is just a piece of fluff and nonsense. At
11 any rate it has never been said before and it is not
12 part of the OFT's case.

13 It is a fact just before we leave page 20, above MU
14 Agreement, that loads of other people sold this shirt at
15 39.99, for what it is worth.

16 Manchester United Agreement: we take it as read on
17 the evidence that from 16th May Mr Hughes was pretty
18 irritated by the Predator boot debacle, particularly it
19 would appear as he was being clobbered on a price
20 promise on the footing of Sports Soccer not in fact
21 having the stock to sell but having a couple on the
22 shelf, and indeed it may be that Mr Guest's gloss is not
23 a bad one that in order to up their targets it would not
24 have been beyond a few of the sales staff to knock
25 things out cheaply.

1 It must be borne in mind that there had already been
2 a Manchester United Agreement with Ashley in April.
3 There was a Manchester United Agreement with Ashley
4 in May, 60 days. There was a Manchester United
5 Agreement with Ashley in July, 60 days. There was
6 another Manchester United with Ashley in July, 60 days.
7 The last two agreements, as found by the OFT, took place
8 on 18th and 24th July. Ronnie 4 says, after describing
9 those two meetings, "As a result of those meetings
10 Sports Soccer launched at 39.99".

11 It is the meetings of the 18th and 24th July finally
12 which made Ashley go out at full price. No doubt for
13 the quid pro quo. I have done a bit of fiddling with
14 the numbers in this document which I will not take you
15 to but the idea that it is crippling to Ashley to have
16 to sell at full price, even if he is only turning over
17 a third, in comparison with the sums of money he is
18 talking about with Umbro, is small beer.

19 Sixty days, let me tell you one thing which is
20 absolutely missing from everybody's account of the
21 Manchester United helicopter day, and by everybody
22 I mean Ashley and Ronnie: the duration. As a fact
23 Ashley did stay at full price on the MU shirt for 60
24 days. The 60 day agreements were April, May, July,
25 July. What Ashley subsequently did, therefore, cannot

1 be tied to anything which happened on 8th June. There
2 is no doubt that Hughes set up this meeting for the
3 purpose of the discussion of a cartel more widely than
4 a Manchester United shirt. Just for your note at the
5 top there, Mr Hughes could and would have said that
6 Ronnie had been told that the issues would be wide but
7 he was taken to the wrong paragraph of his witness
8 statement. You can look that up for yourself.

9 Hughes did not want an agreement at £40. He wanted
10 an agreement at £45 or even £50. That is not
11 challenged. I have done the May monthly management
12 report. I hope you will find that the probability is
13 that it cannot have included anything to do with the
14 Manchester United Agreement so-called because of the
15 circumstances surrounding the date of its creation.
16 And, in particular, the involvement of JD and First
17 Sports as to which no proper explanation has ever been
18 given.

19 Why did Ashley go? That was one of the questions we
20 posed. He is not a victim. We remind you of course
21 that in respect of the meeting after the event between
22 Ronnie and Ashley there had been something pencilled in
23 and the evidence was that Ashley told Ronnie to move it.
24 Ashley told Ronnie to move it. Who is in charge here?
25 You have further evidence in that block which was

1 extracted, I think, by my Lord Grabiner as to the
2 relationship as to whether it was equivalent to an
3 employee relationship and the answer came: absolutely
4 not. And I have mentioned the wind up.

5 Intolerable pressure, I have dealt with that. We
6 have wholly incomplete information about that except we
7 know that it was close, the relationship, and very big.
8 It is worth noting though additionally to that that
9 Mr Ashley has got his finger even at this stage in an
10 enormous number of pies. This is a part of whether he
11 is a victim or not and part of whether he is finding it
12 difficult to source goods. He has sourcing at the top
13 end of the range where it is too fancy to sell in
14 a Sports Soccer shop but doubtless sold elsewhere, and
15 he has sourcing at the bottom end of the range where it
16 is non-fancy enough even for Sports Soccer. These
17 arrangements were completely secret and very lucrative.

18 We conclude and submit that Mr Ashley was in
19 a position to go along to this meeting for amusement's
20 sake and to destabilise. He had nothing to lose and
21 everything to gain. He wanted to meet Whelan. You may
22 have noticed from his statements that he actually did
23 not give a flying fox as to whether he saw Mr Hughes.
24 He wanted to meet Dave Whelan and he did. And you have
25 the evidence of Mr Hughes on this. It came from his

1 note that he wrote at 2 o'clock in the morning. The
2 fact is he says he just had a thought and wrote it down.
3 It was not a bad thought, was it? He was pickling. Why
4 did Ashley behave the way that he did? And he ventures
5 a proposition which we submit rang true, that Ashley's
6 behaviour was curious, it was not explicable in any
7 logical way. But if he was actually on top of the game
8 he knew he had got Umbro where he wanted them, he knew
9 that he had got all these sources of supply, he knew
10 that he was getting these deals with the licensed kit,
11 licensing in the other sense, the licence arrangements.
12 He knew he was on a 2.5 divide deal with absolutely
13 everything so he was getting his kit cheaper than
14 anybody else. He goes along to see these guys. He does
15 not need to agree anything.

16 The single thing, what happened at this meeting?
17 There has been some conflicting evidence. But the OFT
18 was not able to do a line of cross-examination that led
19 anybody from the hostility and difficulty and the
20 weirdness at the beginning of the meeting to an
21 agreement, because if you try and picture it it does not
22 work.

23 Why and how would Ashley say at any stage "Okay,
24 I promise that I will price this shirt at 39.99"? It
25 does not fit. And it is significant that Mr Morris did

1 not try and pull any witness through the process of
2 arriving at that point. It was simply put that an
3 agreement had been reached.

4 If you think about it, how would it have come about?
5 Mr Ashley was not going to suddenly burst into tears:
6 leave me alone, I can't do it for £40. He came out with
7 some sort of tirade it would appear about not belonging
8 and everybody being horrid to him. Do you think that
9 was genuine? Do you think he was in a state of
10 collapse? Do you think he felt overborne by these
11 people? Do you think he made them a promise? No,
12 I venture to suggest that the much more likely thing,
13 but we do not need to go anywhere like that far, is that
14 Ashley said nothing about his pricing or "I am going to
15 do what I want."

16 He had nothing to lose. All he has to do at tops is
17 to go back to Ronnie and either say "Done the business"
18 or tell the truth. We do not know. It is in Ronnie's
19 interests to go round saying that Ashley has agreed to
20 go up. Ronnie may have known something that we do not.
21 Ronnie did get him to go up subsequently on terms that
22 we do not know enough about. You say: why did he go up?
23 I suppose the ultimate answer is that we do not know
24 fully but you cannot bite the process that poor Mr
25 Ashley was being steam-rollered by the Umbro giant.

1 Three days after the appalling necessity on
2 Mr Ashley to risk crippling his entire business because
3 of the intolerable pressure placed upon him by Umbro,
4 and he has to price his Manchester United shirts at
5 39.99, he writes to the Office of Fair Trading about
6 something else.

7 I have a slight feeling, and we submit this is
8 possible, that he actually did not intend to finger
9 Umbro at all. That just popped out in a conversation.
10 He after all spent most of his time telling you that
11 Umbro were the least bad of all of the big wholesalers
12 and that Reebok and Nike and everybody else were much
13 nastier. A sentiment echoed by Ronnie; whenever Ronnie
14 was actually pinned back into illegal behaviour his
15 mantra was: I was not as bad as or I was only doing the
16 same as Nike and so forth.

17 Let us deal with the memoranda of 9th June. I say
18 here on page 23, we say here, first, you will have
19 formed the judgment of Mr Hughes, whatever else, that he
20 is a highly intelligent man. That cannot be denied. He
21 has had three years in which to come up with a lie which
22 fits. One of the lies that he might have told you was
23 that he was confident that Sports Soccer would go up to
24 39.99 for the Manchester United shirt because bingo, to
25 slightly everybody's surprise, he was going out full

1 price on England but he did not say that. He could
2 easily have said it but he did not. It would have saved
3 him a lot of anguish if he had said that but it would it
4 would appear, have been a lie because he tells you he
5 did not know that Ashley was pricing England at 39.99.

6 You might say "Ah well, he could not say that he
7 knew about England because he had got this entry in his
8 diary about Manchester United and England" but he did
9 not have a good explanation for that either. In
10 substitution for it he kept telling you that England was
11 not on his radar and yet there its was "plus England" in
12 his diary. He has had such a long time to come up with
13 the perfect fib.

14 What we submit is that in a funny way -- he having
15 told you that he was not quite sure what cartel meant he
16 could have bent that answer into saying, "Perhaps it was
17 a trade association". You asked him a question that
18 might have given him that to latch on to. No, he did
19 not do that. He was frank about what he meant. He was
20 not quite sure about the meaning of cartel but he knew
21 perfectly well that it had unlawful overtones about it.

22 It is true, and Mr Guest told you, that whatever
23 David had written to him about contacting Ashley and JJB
24 he would not have done so in a thousand years so that
25 was quite a good judgment call.

1 Mr Guest told you that if David Hughes had told him
2 what to do about pricing he would have been irritated
3 and, I am bound to say, he would have treated it as
4 a breach of their understanding and would have told
5 David to get stuffed or in fact since he was in hospital
6 said nothing but done the opposite thing.

7 The memorandum which is significant, plainly, and it
8 is treated by the OFT as a smoking gun is the first of
9 the two. I have already told you that JJB were priced
10 at 39.99. The evidence on that may be in the end that
11 Hughes had not told anybody that thing. He just wrote
12 it down. But what we do know is that he had not told
13 Guest and Patrick, Patrick says not, and his evidence is
14 wholly unchallenged. He had not told Guest after the
15 meeting of 8th June because notwithstanding the
16 assistance of landline telephones in America I venture
17 to suggest that Mr Guest was persuasive when he said,
18 "If I am in California I am not ringing the bloody
19 office", or words to that effect. If it were dead easy
20 he might have done it on his mobile it appears, but they
21 had a practice not to but at any rate they did not have
22 tripan mobiles so they did not work in the USA at that
23 time.

24 The next bit is and Sports Soccer will do that also
25 is of course disjunctive from the first statement. It

1 is a very curious sentence that one. The sources of
2 information appear to be different. They do not roll
3 together. He has given you the explanation which was
4 that he was trying to stiffen the backbone of those
5 people whom he was trying to direct without appearing to
6 direct.

7 As I say, he has had plenty of time and he has far
8 more than enough brains to have cooked up the story
9 about these memoranda which would have fitted around.
10 He has given you the story which he has given you. He
11 has stuck with it. I venture to suggest that the reason
12 for this is that Mr Hughes is telling you the truth. If
13 you have to judge his evidence against that of Ashley
14 I would be appalled to think that you started from the
15 premise that they are equally likely to be telling the
16 truth in general.

17 It is part of these cases but not only these cases
18 and it has been mentioned already today, that it is easy
19 to lie orally about evidence in a document, a fair
20 point. You are going to have to ask yourselves whether
21 Mr Hughes was lying or not and you will have to decide
22 that he was lying in the explanation which he gave you
23 about that memorandum. It is not perfectly phrased and
24 it does not perfectly convey what he is trying to do.
25 It is not irrelevant that those memoranda were dictated

1 shortly before he knew that he was going to go into
2 hospital, yet again, for a back operation from which,
3 for all he knew, he would never work again. He had been
4 in desperate pain he has told you. He had been drinking
5 heavily he has told you. That is a pretty poor
6 combination when it comes to judgment as to what to
7 write.

8 But in the end how would Ashley have agreed at that
9 meeting to go to £40? It does not fit. There is no way
10 through to the end. What is persuasive about that
11 meeting is that it came to an abrupt end. If it had
12 resulted in agreement there is no reason why it should
13 have come to an abrupt end, sandwiches remaining uneaten
14 in the kitchen. Of course this meeting took place in
15 the study, at least everybody says so except Ronnie who
16 says that Ashley reported to him it had taken place in
17 the kitchen. It may not matter but it is a small thing.

18 An abrupt ending is one which is consonant with
19 discord not accord. How do you get to the agreement?
20 Why, what psychological mechanics were in operation?
21 What was the dynamic that ended with Ashley saying
22 "yes"? Why should he? He did not. It is as simple as
23 that.

24 Plainly the Office wants to put a question mark over
25 Mr Whelan's evidence because what they are going to say

1 to you is: he was dead certain about everything
2 including the genesis of his witness statement and if he
3 is dead certain about that and wrong it could be dead
4 certain the other thing and wrong. There is difference
5 between wrong and being completely dishonest.

6 Mr Whelan's evidence was: no deal. Mr Hughes's evidence
7 was: no deal, particularly of course when Mr Hughes was
8 looking for some different deal.

9 We were given the run around on Mr Hughes's diary
10 entries about phoning Ashley's subsequently. So what?
11 What was the purpose of those questions? It has never
12 been any part of the Office's case that there was any
13 subsequent contact between the two of them. There was
14 no evidence from their witness, Mr Ashley, that there
15 was any subsequent contact between the two of them and
16 the explanation which is given by David Hughes in my
17 respectful submission rings true. And it fits the
18 pattern of expunging with black felt-tip pen those
19 things which embarrassed him, drunkenness, I say
20 drunkenness but drinking too much does not necessarily
21 mean drunkenness, and the connection between his
22 business and Ashley.

23 Here is another point as to why he is not a liar:
24 I fed him the opportunity to say that because it would
25 have been a good opening gambit when picking up the

1 phone to Ashley a couple of months later: Manchester
2 United launch wanted to have a word with you about that
3 before going straight into the question of buying the
4 business, he accepted that that would have been the
5 opening gambit but did not latch on it to and say, "That
6 is the way I wrote it down in my diary" although
7 objectively we suggest that is a perfectly sensible
8 explanation, but he would not have it from me. He was
9 a bright enough bloke to take the hint. If he had been
10 dishonestly motivated, he would have worked out that
11 somehow he was being offered a lifeline and he would
12 have grabbed it. Of course he did not do that.

13 An unfair point is made about Mr Hughes' statement
14 that he never thought it would become necessary to
15 explain those words to a wider audience and that
16 suggested: if I had known they would have been I would
17 not have written these damning words. The other side of
18 that is: I would have expressed myself very much more
19 clearly had I thought that clever lawyers were going to
20 pick all over this.

21 It is a very bad point to say that there is no point
22 in telling your juniors that, indeed, collateral equals
23 in one sense, that a deal has been reached because they
24 will find out soon enough that it has not. They would
25 not because they would not know until 1st August if it

1 were the case that Ashley had not agreed and was going
2 out cheap, by which time the machine would have been in
3 motion for Allsports to go out at full price or dual
4 pricing, which is the suggestion, on 1st August. Now
5 that machine could have been reversed but Hughes took
6 the view that if they went out at full price on
7 1st August they would be all right. "We price", though
8 he had some expression for it, I cannot remember he had
9 some neat acronym, but their principle is they do not
10 care what other people do and "we are going out full
11 price". They would have gone out on full price on
12 1st August as a result of his memo or dual pricing if he
13 had had his way and if it had been a success, they would
14 have stayed there.

15 So that is a thoroughly bad point. The fact that
16 Ashley did go out at full price on 1st August is no
17 evidence at all that this was agreed on 8th June because
18 we know and the Office has found that it was agreed on
19 two further occasions in July and they are found as
20 specific infringements. As I remind you, Ronnie 4 says
21 after dealing with the 18th July and 24th July meetings:
22 as a result of those meetings Sports Soccer went out at
23 39.99.

24 I have set out on page 24 what we say in the rest of
25 this. Page 25, you have to read of course the evidence

1 of both Hughes and Knight on the question of that phone
2 call to Knight on 9th June.

3 There is no documentary evidence of this agreement
4 that you can safely rely upon. The May monthly
5 management report is not, as we say, evidence of the
6 Manchester United so-called agreement. It does not work
7 and the first ever reference to such an agreement of
8 course is Prothero's letter to Manchester United on
9 13th July which contains an admitted exaggeration. We
10 even went so far as to get into the same X, Y and Z to
11 agree this. But of course that is second-hand
12 information and he was not there. Who knows what Ashley
13 told Ronnie? Who knows what Ronnie told him?

14 It is not to be overlooked that this is an even more
15 premium product than any other Manchester United shirt
16 launch. First new sponsor for 18 years. That does not
17 sound very exciting but what it does mean is that
18 anybody with the previous iteration has out of date
19 written literally across his front because it has the
20 wrong sponsor's name on it and it would appear that in
21 the milieu which we are discussing having the wrong
22 sponsor on the shirt is a no no, that the up to date
23 replica kit is a must have for the lad about town and
24 that the demand was expected to be immense. It was
25 also, it is acknowledged widely, a very high quality

1 product. It could reasonably have been expected to sell
2 like hot cakes at so-called full price and, indeed, it
3 did. Beckham. I am instructed to say Beckham.

4 THE PRESIDENT: We have your submission on that point.

5 MR WEST-KNIGHTS: I am obliged. At any rate those are my
6 instructions. I pass over -- it is page 26.

7 THE PRESIDENT: I think we have got to the pointers now.

8 MR WEST-KNIGHTS: Yes, thank you. And then I have got to do
9 the chronology. There is no avoiding that. It is
10 essential.

11 THE PRESIDENT: Do you want us to just read the pointers to
12 ourselves?

13 MR WEST-KNIGHTS: I wonder if you would do that and I will
14 do likewise. I have seen these before but not quite in
15 this form and stop at anything I regard as exciting.
16 (Pause).

17 THE PRESIDENT: The hour is moving on. I think we will
18 just skim it very quickly now and then read it overnight
19 in a more leisurely way.

20 MR WEST-KNIGHTS: Yes.

21 THE PRESIDENT: But those are all indications that you say
22 are in the evidence that suggests why we cannot rely at
23 all on Mr Ronnie's evidence or Mr Ashley's evidence?

24 MR WEST-KNIGHTS: Yes.

25 THE PRESIDENT: That is very helpful.

1 MR WEST-KNIGHTS: That is of course in addition to the
2 Ronnie schedule which is a separate document to this.

3 THE PRESIDENT: Yes.

4 MR WEST-KNIGHTS: Now, chronology. I am going to slide
5 across this real fast because it contains more
6 references than it needs but it was derived from a much
7 more visible document. Some of this speaks for itself
8 but some of it does not, so I am going to literally
9 rabbit through this and please stop me if I am going
10 through this too quickly.

11 The history of this goes back a long way, on 24th
12 March as early as. DB incidentally means decision
13 bundle, and if I just put OFT in the right-hand column
14 it is in the Office's original chronology attached to
15 the decision. In fact, that was the original genesis of
16 this document. I took the electronic copy of their
17 chronology and gradually added in the facts.

18 There is early discussion in March 1999 between
19 Manchester United and Umbro on the question of devaluing
20 the shirt because there was a proposition for there to
21 be a lower quality shirt and Manchester United left its
22 requirements in no uncertain terms. Indeed, that is
23 what they say.

24 We then get the launch of the kits which became
25 those in Euro 2000. There is a complaint in April 1999

1 about the 42.99 price point which was then extant and we
2 then come to the letter from Guest to Gourlay which we
3 have dealt with in extenso. The England kit is
4 launched on 23rd April which, as we know, not
5 coincidentally, no doubt, was the date of the Umbro
6 rebirth and a few days later the date of the
7 incorporation of Ashley. Wherever it says here "example
8 of public knowledge of JJB less than £40 policy" it is
9 either a Reuters or an agent press or some kind of
10 statement in the City press relating to the JJB's
11 policy, and there are a number of those sprinkled around
12 at A1.13.

13 Umbro then replied to Guest, as we know, giving it
14 a generic knockdown in WFP but not one specific to us.
15 Manchester United cancelled in August 1999 5,000 shirts
16 because of the cost price and described themselves as
17 a highly disgruntled licensor. So the tension between
18 MU and Umbro is longstanding.

19 We then get the first proposal to Sports Soccer
20 about these licensing arrangements as early as
21 26th July 1999. Where that fits anything you have been
22 told is just another one of those conundrums where we
23 currently sit, but the target for the year 2000 was
24 25 million including 9.1 million core which appears to
25 be the then code for the licence agreement arrangements.

1 We then have the assurances given by clubs and Umbro
2 about not price-fixing, discussions about Asda coming
3 into the picture. Late 1999, I have added in the
4 transaction allegedly conducted between Ashley and Umbro
5 which is said to account for part of the 36 million
6 turnover. Of course that still leaves between 28 and
7 26 million real turnover contrasted with the 15 real
8 turnover which is why you have this guff in my
9 submission from Umbro that somehow the prospective
10 arrival of the burning arrangements under the licence
11 agreement would have reduced Ashley's buying in 2000.
12 That does not make a lot of sense. Certainly it
13 requires to be explained but it is necessary because the
14 8 to 10 million job lot does not cover the difference in
15 turnover. Of course it is possible that it was
16 fantastically cheap and it actually represented £50 or
17 £60 million worth of goods, but if that were the case
18 that would indicate a degree of warmth between Umbro and
19 Sports Soccer at an even earlier stage than we had
20 thought, and I have set out the results for Umbro in
21 1999 there.

22 And under 2000 there are generic background facts
23 which are derived either from witness statements or
24 submissions or from the decision.

25 I have identified the various monthly management

1 reports and set out what is in them. I will not weary
2 you with those but move on to, I think, perhaps
3 the March monthly management report on page 5 where you
4 will remember that at that time the interaction between
5 Allsports and Umbro by a level, if I can use that
6 expression, is limited due to handover, so there is no
7 feedback coming there. And Allsports has launched its
8 new look and is hoping for 25 stalls within stores to be
9 in place by the end of April but, as you will see, that
10 did not come to fruition.

11 On 7th April, this is the very important letter from
12 Umbro to Sports Soccer which effectively the draft of
13 the licensing agreement, presigned by Umbro, you will
14 recall, in the shape of Ronnie, and we know that in that
15 same month we have the first formalised infringement
16 finding as to a price-fixing arrangement relating not of
17 course only to England but also to Manchester United.
18 Of course what I have done in the process of trying to
19 speed up, if I can just go back to page 5, above the
20 monthly management report for March I have reminded you
21 that at an unknown date in March, that is query, query
22 300, according to Ronnie's live evidence there was an
23 even earlier price-fixing arrangement between
24 Sports Soccer and Umbro relating to the England shirt.

25 I then have bits of background here. After

1 the April agreement, not insignificant of course, that
2 there was an April price-fixing arrangement between
3 Sports Soccer and Umbro which is found proven on the
4 very same month when the first draft of the licensing
5 agreement comes through. Of course the records of
6 the April agreement show that it was only for all
7 licenced kit but Umbro have always said it was just
8 Manchester United. They were in that regard disbelieved
9 by the Office. MU and England. I am not sure where
10 that is taking us.

11 Then we get, according to Mr Ronnie, the threat by
12 JJB of the cancellation of an order. That has been
13 dealt with. And in any event, that is JJB only.

14 At some stage he says between April agreement and
15 the May agreement all this business about the shirts
16 which you can I think safely regard as wrong. But he
17 does say no pressure from us, but he does say again,
18 brand new in cross-examination there was some agreement
19 before he went to see Ashley on 24th May expressly
20 between Umbro and JJB and Allsports to fix the price at
21 39.99. That is pure fiction. If it had been even
22 remotely true, it would have surfaced a way long time
23 before cross-examination. Of course we can see where he
24 has been infected by it, is that Ashley says that Ronnie
25 turned up and said, "The other retailers have agreed; I

1 want you to conform". How much of anything you are told
2 that passed between these two at this time you can
3 believe is not worth discussing but he has latched on to
4 that.

5 The April monthly management report records that
6 Sports Soccer has agreed to sell all licenced kit at
7 40.30, so that is another frank recording of an unlawful
8 arrangement but not coupled with the slightest breath of
9 a suggestion that it was as the result of some third
10 party doing so which you might expect, if not there
11 elsewhere.

12 It is of course in the April report which shows that
13 Allsports sales had been affected by bad weather, and
14 that the Celtic shirt sales were low because of Celtic
15 not playing frightfully good football.

16 We then scrap our price promise on 16th May after
17 what I have called the predator debacle. On the 18th is
18 the date on Ronnie's bit of the April management report
19 recording that April had been another difficult month.
20 "UK sales team still up against the barrier of JJB and
21 Sports Soccer from the rest of key accounts." I am not
22 quite sure what that means but the point is that JJB and
23 Sports Soccer are stratospheric compared with everybody
24 else.

25 There it is that they celebrate that it is

1 a fantastic achievement that JJB, Manchester United and
2 Allsports will get a 100 per cent of their orders for
3 the MU shirt which is the Guest corroboration point.

4 We move into territory which you might have thought
5 would have sparked off Mr Ronnie's recollection of the
6 sequence of events because over the long weekend of the
7 19th to the 22nd May Umbro moved its offices to Cheadle.

8 What else happens in that brief timespan? On
9 22nd May, it appears, JD started its hat trick
10 promotion. Mr Bohn's witness statement says the 15th,
11 but we have the actual promotional material in our
12 bundle which was attached to letters sent by JD in
13 response to specific questions by the Office in very
14 much the same way as the Office sought specific
15 information from Umbro and Sports Soccer. I have added
16 in there that the evidence is that Ronnie and Fellone
17 spoke to JD several times about the cap promotion
18 telling them to stop and that JD refused and that Umbro
19 threatened, and I have added there "did" withhold the
20 shirts.

21 According to Debenhams written representations
22 Fellone rings Rynam of Debenhams on or about 22nd May.
23 We do not know where Debenhams got that from but I fancy
24 that Mr Ryman had a diary. Asks Debenhams to increase
25 the prices as other retailers had agreed to do. He of

1 course has a third-hand perspective on any of this, but
2 it does appear to pre-date it, the 24th May agreement.

3 Ronnie's first day in the new office is on 23rd May
4 and on 24th he makes his notes for the forthcoming
5 meeting with Allsports, and I have underlined that
6 because notwithstanding a dozens requests of that deeply
7 important document it has manuscript notes on it which
8 are wholly illegible. Umbro has said we do not have
9 a better copy to which I say bosh because ours is at
10 least a fifth generation copy and the excuse as to the
11 original is that it is archived. "And we have tried
12 very hard to help you at every possible turn." At any
13 rate, the agenda includes England prices and a whole
14 bunch of other stuff to do with the licensing agreement.

15 Ronnie's diary shows him meeting Ashley at 16.00.
16 They do meet and it is accepted that there was
17 a price-fixing arrangement there, both as to England and
18 as to Manchester United for 60 days.

19 So I have set out there, as it were, the OFT version
20 and then Ronnie's evidence and we know, as I say, it was
21 jovial because Ronnie stayed night somewhere near Milton
22 Keynes. This is not challenged and he came back in the
23 morning. We have Attfield's note. That is that key
24 document with all of the arrangements about the
25 licensing and so forth.

1 So the Office then described that as the Euro 2000
2 agreement spanning the period 25th to 2nd June because
3 of course the decision has not caught up with, because
4 you cannot change the decision however hard Mr Morris
5 and his colleagues would like to try, they are still in
6 Ronnie 3 mode which was: there ain't no date for this
7 phone call. We ain't got the person who it was made to,
8 and of course it led to an agreement. This is why
9 I asked you to look at the OFT's chronology because this
10 is where this is lifted from, the back of the decision,
11 wherever it says OFA.

12 25th July -- this is the new information -- that is
13 the day on which Mr Ashley was due to put up his prices
14 but did not. Ronnie had stayed in Milton Keynes
15 overnight and he is back in Stockport about midday.
16 Fellone said he was aware of the discussions about the
17 England shirt and he had been told that Sports Soccer
18 had agreed to go up to £40 as long as England stayed in
19 but would discount if others did it in that time.
20 "Therefore," he said, "Ronnie and I telephoned major
21 retailers." Of course he does not know and does not
22 purport to know that Ronnie in fact did. He simply can
23 tell you about what he did and I have already dealt with
24 that en passant. We will deal with it in a little more
25 detail.

1 At the same time, Manchester United, plainly unaware
2 of the result of the preceding day, send that fax which
3 particularly complains about Sports Soccer's current
4 pricing on Liverpool and asking: what are you going to
5 do about this? In effect, it bodes ill for the
6 Manchester United launch.

7 That day of course is the golf day so Ronnie is back
8 in the Office and back out to the golf day, during the
9 course of which he has every opportunity to tell
10 Mr Hughes or Mr Guest the good news but does not.

11 I remind you that the 26th May was the original date
12 fixed by Ronnie as the date that the Sports Soccer shirt
13 went up but he was wrong about that too. Ronnie sends
14 a very nice bread and butter on the 26th thanking Hughes
15 for the golf day. Of course Ronnie also not only got
16 the date of the price going up wrong but misplaced this
17 business about all these phone calls, notwithstanding
18 that in his diary for that day he has recorded the
19 dinner engagement with Steve and Sue at the Italian
20 restaurant, the name of which I cannot read and never
21 extracted from him.

22 If there was any ever any truth in a belief that he
23 had been playing tell tennis at some trophy and that he
24 had to scratch because of these intolerable phone calls,
25 it would have been displaced by the reminder that on

1 that evening he was not anywhere near the Mere Golf
2 Club. He was in some Italian restaurant with two other
3 people, and indeed possibly his wife.

4 Some of this is just gratuitous cleverness on our
5 part. We have the England warm-up against Brazil as
6 part of the background. There is a note in Ronnie's
7 diary to get some seats. We then have the bank holiday
8 weekend.

9 That takes us to the 30th where we know that
10 David Hughes noted to himself to ring Whelan and Ashley
11 about the Manchester United shirt prices. There is
12 another football match. Ronnie has lunch with
13 Michael Guest. "Tell him about the result why not.
14 Oops, no good excuse." Reason: there is not one because
15 Ashley is still discounting merrily away.

16 We then have a further telephone conversation with
17 Mr Fellone and Mr Ryman and the reference to that is
18 over the page because there is a fax exchanged between
19 them. Recorded in an internal Nike report that we
20 looked at quickly that as at 2nd June the trade
21 generally still had this jersey off price, so it is
22 public knowledge inter alia that Sports Soccer is not
23 going up to full price.

24 We then have both the diaries of 2nd June recording
25 the same appointment at 10.30. It seems to have been

1 a relatively short one if Ronnie kept his 11 o'clock
2 appointment, and they spoke. We then get the report by
3 Ronnie to McGuigan as to what Hughes is said to have
4 said about Manchester United, described all round as
5 a comment until McGuigan 3, but the evidence speaks for
6 itself in our submission: that, as it turn out, Hughes
7 was guessing but he did not guess wrong and it was not
8 pressure.

9 There is then a fax from Fellone to Rymans which
10 bluntly says: "I need to speak to you about this right
11 now." He is setting up Debenhams for a punching. The
12 Office then say on 2nd/3rd June the Euro pricing
13 increase took place, so they seem to have disregarded
14 Mr Ronnie's view that it was 26th and taken it off the
15 pricing schedules, as indeed Mr Ronnie could at any
16 time. So it appears that his firm recollection was the
17 26th May, notwithstanding whatever it was in his diary.

18 We then get this rubbish about the tournament and
19 that takes us beyond the period during which it is
20 alleged that this phone call was made because it cannot
21 work. He will not make the phone call until the prices
22 go up. The prices do not go up until Friday, Saturday.
23 He does not work Saturday, Sunday. By Monday it is
24 common knowledge. But he does not aver or even suggest
25 that it might have been as late as 5th June, but what

1 would that have availed anybody?

2 Ronnie rang up Allsports to tell them something they
3 already knew because that is the only thing that could
4 ever have happened, but even that did not.

5 Ronnie is then on the case on 5th June about the JD
6 cap, according to both Ronnie and Fellone. Ronnie then
7 passes round some phone numbers. We then get the Hughes
8 diary entry agreements to Manchester United and England
9 price with everyone including Mike Ashley. He did the
10 best he could with that. He did not endeavour to lie to
11 you. He did not make up a story. He did not start
12 rabbiting. He did not change the subject. He did not
13 have a great explanation for it. He is bright enough
14 and as has had long enough to come up with practically
15 anything but he was unable to assist you with plus
16 England and not very much with everyone including Mike
17 Ashley, although plainly he had in mind at some stage
18 a rather wider enterprise than merely one meeting.

19 But at any rate, it does not fit because plainly the
20 England price was already then at full price all round.
21 That is a matter of fact, and there has not been the
22 slightest suggestion that David Hughes after this date
23 or indeed before it himself contacted anybody to arrange
24 a non-discounting of the England shirt. It is just no
25 part of the OFT's case. This is just chaff.

1 The price promise cancellation then goes out on the
2 6th. There is that meeting that I told you about in
3 relation plainly to the Manchester United complaint, the
4 meeting in the middle of the day on the 6th and later on
5 that day Umbro fax back to Manchester United and what do
6 they say? "We have subsequently received assurances
7 from Sports Soccer and JJB." They are fibbing about
8 JJB. They are absolutely right about Sports Soccer but
9 they do not mention me. Why not? Because they did not
10 receive any assurance from me. If they had told
11 Manchester United that they had received an assurance
12 from me Manchester United would have said, "This is
13 poppycock". We know enough about this market to know
14 that the one group of people who do not discount our
15 shirt is our official retailer.

16 But Umbro do seek the assistance of Manchester
17 United in relation to Debenhams as being their retail
18 partner and the evidence of Mr Marsh is that when he
19 wrote this he was unaware of the ring around. The
20 Office took that with a pinch of salt and I invite you
21 to do likewise.

22 But whichever way it works out, whether he knew
23 about it or not he does not name us. If he is just
24 basing himself on general chatter it does not include
25 us.

1 We then have Mr Hughes' diary reminding himself
2 about these meetings, Ronnie's diary, specifically
3 referring to the monthly report on both the 7th and
4 8th June, and then we get the May monthly report, the
5 first page of which we have done in extenso. But do
6 not let us forget that the May report included that
7 Allsports England sales had been good.

8 This is a busy day. Fellone rings Ryman, threatens
9 him -- this is Debenhams -- asks him to put the price up
10 and he refuses. He follows it up with a fax telling him
11 bluntly that he is not going to get the Manchester
12 United shirt and "You had better call me". Mr Hughes'
13 diary has the arrangements of collecting Mike Ashley
14 from Macclesfield and the sandwiches never featured and
15 his subsequent appointment with his consultant.

16 The same day -- Umbro are seriously busy here. This
17 is when the stock goes on the JD account. Then there is
18 the meeting and then Mr Hughes goes to the surgeon.
19 That is how the OFT recorded it and we have Mr Ashley's
20 account of the meeting with Ronnie afterwards. I have
21 noted there to remind you that Mr Ronnie's diary did
22 have it in arrangements for him to go down to London
23 which would plainly be superseded when Ashley told him
24 to move the meeting. What remains unexpunged is the
25 Chiltern Hotel dinner and the journey back.

1 And you will recall Ronnie 4: I did the management
2 report after I had spoken to Ashley. Rubbish. It was
3 a long meeting. He either went home. He was not even
4 certain when he thought I could prove that he had been
5 in the Chiltern Hotel what had happened, and in the end
6 he has no recollection at all. It is a fact from the
7 evidence that Prothero was not told about the so-called
8 Manchester United Agreement for some time, nor Marsh.
9 That is an odd one. He is Mr Manchester United.

10 It is on the following day that Mr Ryman turns up at
11 Umbro and gives Fellone a seriously hard time and
12 effectively tells Umbro to take a running jump.

13 We then get our internal memoranda, which we have
14 looked at, and the accepted call from Mr Hughes to
15 Knight but for that you must look at Knight's statement
16 which is unchallenged.

17 We then have Mr Hughes' second back operation and
18 a certain amount of footballing stuff here. Note that
19 Mr Ronnie's diary has got him meeting Sports Soccer and
20 watching the football with them. Again, they are very
21 close and he gave you the evidence that Ronnie had been
22 at the game with Ashley and Nevitt and it was on the
23 plane back that Ashley says he is going back down to 20.
24 No comment oddly enough from Ronnie on that beyond the
25 fact of it.

1 Ron stays overnight. So it is all very chummy. It
2 is not contested that Whelan mentioned the helicopter
3 day at the board meeting. It is not contested what it
4 is that Roger Lane-Smith says about that.

5 We then get more meetings though between Umbro and
6 Sports Soccer. Umbro on the 28th or 29th asked for
7 Sports Soccer to go up on the England shirt. They do
8 not agree. There is a reference there to JD that we
9 have never bottomed. There is something about
10 Sports Soccer taking over the JD order book at some
11 stage. It may be linked to the cancellation of the
12 p-stop or rather the imposition of the p-stop, we do not
13 know.

14 As we move into July we have a further meeting
15 between Umbro and Sports Soccer on 3rd July about the
16 licensing arrangements and an unsuccessful attempt by
17 Umbro to get Ashley to go up on his price or, as
18 properly more said, the negotiation did not result in
19 his putting his price up at that stage.

20 There is then some calls, again, to the JD people.
21 There is a meeting with the JD people. There is then on
22 the 13th the first of the July agreements with Ashley to
23 put the price up. Then we get the 13th July fax to
24 Manchester United where the boast of course is
25 a precursor to getting them to stop or querying this

1 football promotion and, as I have discussed with
2 Mr Prothero, he was very relieved. He managed to pitch
3 this just right, liberally blaming third parties and
4 being very ginger about it but he got the right result
5 and Manchester United reacted appropriately from his
6 point of view.

7 We then get the June monthly management report.
8 Again, congratulating themselves on having delivered
9 100 per cent of all of the initial order, a first for
10 Umbro. It is the 18th July which is the first new
11 agreement between Sports Soccer. This is not very
12 exciting but it is important. Why? There is a recorded
13 agreement here that Ashley will price the Manchester
14 United shirt at full price for 60 days.

15 The note of course of that meeting includes material
16 to do with the licensing agreement. It looks then as if
17 Ronnie and Ashley, at least Ronnie and some of these
18 Sports Soccer team were abroad on holiday together in
19 Portugal. And on their return, on 24th July we have
20 another agreement to fix the Manchester United home
21 shirt price. And there is a note of that meeting: home
22 stay 40.30. That is a confirmation of the agreement
23 made on 13th July.

24 There is then on 24th July -- I do not know if you
25 have read the note of this -- it is a verbatim

1 transcript of the conversation between Ronnie and Bohn
2 where it is plainly, a fiery one. It is the: see you in
3 court ending up with: I will find some of these and sell
4 them for a fiver just to get my own back.

5 THE PRESIDENT: Yes.

6 MR WEST-KNIGHTS: There is then a reference in I think a
7 Sports Soccer representation to huge pressure there,
8 Kappa on Sports Soccer to put Blackburn out at £40 or no
9 delivery. This is days before the crippling requirement
10 to put Manchester United out at full price. May
11 I remind you that on that launch date Sports Soccer met
12 Umbro and came to an arrangement about the third
13 Manchester United shirt at £30. Again, there is
14 reference in that note to material connected with the
15 licence agreement.

16 Then there is Ronnie paragraph 77. Just let me
17 remind you again. As discussed at these meetings,
18 Sports Soccer went at home 40, 30, away at 22 for the
19 third shirt. They must be references to the meetings of
20 13th and 18th July because they are the first references
21 to the prices of 30 and 22 for the third shirt. That is
22 Ronnie's own evidence.

23 THE PRESIDENT: Is it the 18th and 24th?

24 MR WEST-KNIGHTS: Yes, I am sorry, I have done that twice
25 now. It may be a Freudian slip but my goodness me it

1 was a useful one. That is the truth because that is why
2 Ashley went out at full price because it was sorted out
3 in July. Indeed, it is not really surprising in the end
4 the operative agreement with Ashley on the England shirt
5 was 24th May because it is not very far from the moment
6 critique which appears to be common ground that the
7 moment critique would be the weekend of the 2nd,
8 3rd June, ie a week before the tournament actually
9 started when the hike would be running full pelt
10 especially, as I understand, when England are playing
11 football anticipation is sometimes more valuable than
12 the real thing.

13 So here we have the operative agreements in respect
14 to the Manchester United shirts being made within the
15 same proximate timescale, close to the launch. Ashley
16 will say and do anything we know when he is available to
17 do so and anything that he says miles away from any
18 event is no doubt accurately described as illusory.
19 That is if we know anything like the truth about the
20 relationship between these two. That may all be eye
21 wash too.

22 The trouble with these underlying arrangements is we
23 just do not know how much of this is rubbish, but in any
24 event what does seem to fit is that for whatever reason
25 they would finally sit down and say, "Come on, stop

1 messaging about. We actually need you to undertake to go
2 out full price on the Manchester United" or just he
3 agrees to do it. It has already been part and parcel of
4 some earlier deal because of course it was expressly
5 discussed at the 24th May which seems to be a key
6 occasion in respect of the licensing arrangements. So
7 they just remind him: we paid for that one. Now is the
8 time to perform.

9 THE PRESIDENT: Do you want to take five minutes in the
10 morning to finish?

11 MR WEST-KNIGHTS: Bless you. That would be far better.
12 I am very grateful. I will not be very long.

13 MR MORRIS: I have a couple of points I would like to raise
14 briefly.

15 Timing, you have seen I have been junior-less today.
16 They are at the coalface working away. From our point
17 of view it would be preferable, particularly given the
18 amount of material we have been provided with today, if
19 we could in fact start after lunch tomorrow and do what
20 Lord Grabiner did which was to have as much in writing
21 as possible and to not spend a day but to spend an hour
22 or two hours sort of just running through it quickly
23 stopping off along the way and also dealing with any
24 questions that you, the tribunal, may have in the course
25 of the afternoon. Of course I am entirely in your

1 hands, sir. You may feel that is not the best way.
2 I would if I started at 2 o'clock endeavour to finish by
3 4.30 at the latest. It would just give us more time to
4 digest and put everything together in the form of a --
5 we hope we are going to have a pretty cogent document
6 but it would certainly help us to do that if we could
7 have those extra few hours. I am entirely in your
8 hands.

9 The second matter I would raise is just to flag up
10 on the issue about the Umbro information and where we
11 are going on that. I might want to at this stage in the
12 light of what was said this afternoon about inferences
13 we might want to revisit that in the morning on our
14 final position on that, but the first point is the point
15 about timetable tomorrow.

16 THE PRESIDENT: Yes. I think, Mr Morris, we are not
17 unsympathetic to the suggestion. The question is which
18 way round we do it. I have the impression that
19 Mr West-Knights would be not averse to having a few more
20 minutes just to finish off and to round up and to have
21 a bit of reflection, but we have had a lot of
22 information now so we could do one or two things. We
23 could start tomorrow at 10.30 and allow Mr West-Knights
24 to finish at 10 to 11 or some time like that or we could
25 start at say 12. 30 and allow Mr West-Knights to finish

1 break for lunch at one o'clock and start your case at
2 2 o'clock.

3 MR MORRIS: The latter probably I would marginally prefer.
4 Depending on timing I might even suggest that we start
5 at 2 and allow Mr West-Knights 20 minutes to start at
6 2 o'clock. But it depends -- I mean if Mr West-Knights
7 was to start tomorrow at half past 10 and then we
8 adjourn --

9 THE PRESIDENT: Everyone has to come down and go away again.

10 MR MORRIS: Exactly.

11 MR WEST-KNIGHTS: I am sorry, the silence indicates that
12 I am thinking. I was actually going to suggest this:
13 that I did start at half past 10. I could usefully be
14 more than 20 minutes, and I do not mean an hour but I
15 have been gabbling and you are very kind to have, as it
16 were, afforded me the attention to sort myself out.
17 I would welcome, if the tribunal were in a position to
18 absorb more of the information overnight than it has
19 done so today, the opportunity that was afforded to my
20 learned friend Lord Grabiner after I had finished
21 gabbling in the morning to see whether there was
22 anything troubling you, for all I know, about the memos
23 of 9th June. I would welcome any amount of questions on
24 those because the more you ask me questions the more I
25 can give you input on those things. There it is.

1 MR WEST-KNIGHTS: 12 o'clock would give me time to finish
2 and for you to ask me some questions.

3 THE PRESIDENT: I think our collective view at the moment is
4 we try and start at 12 tomorrow.

5 MR WEST-KNIGHTS: That is fine.

6 THE PRESIDENT: That does not necessarily mean we need
7 necessarily take the whole time until one o'clock to
8 finish off Allsports but that gives you a little bit
9 more time --

10 MR WEST-KNIGHTS: In case I have buried some nuggets.

11 THE PRESIDENT: -- to reflect and so and be in a position to
12 make a final address and complete your address and give
13 us a little bit of time to think. But I think we have
14 now got so much detail at the moment I am not sure we
15 are going to have a great many points to raise. That
16 means you can be sure of kicking off at 2 and we will
17 use that early part of the morning to do our respective
18 tasks as we can.

19 MR MORRIS: Very well. I may in advance offer my apologies
20 if I am not here at 12. Somebody will be here and sir,
21 you have on board my second point which is just we would
22 like to revisit the position about Umbro and
23 Sports Soccer and the inference which is sought to be
24 drawn by Mr West-Knights which we think is a difficult
25 issue and a serious issue.

1 The fact is if we do come here and then break we all
2 have to come here and go away again but I am bound to
3 say I personally have come to think of this building as
4 relatively close to where we all work. For those who
5 work in Grays Inn it is five minutes. For those of us
6 who work in the Temple it is five minutes but also
7 a taxi. I do not find it very onerous moving backwards
8 and forwards. You gentlemen, will be here in any event
9 and have plenty to be getting on with and thinking about
10 so you will not be fallow even if the court is not in
11 fact in session between say half past 11 and half past
12 12 or even 2 o'clock, so I would actually prefer that we
13 cracked off.

14 MR MORRIS: I would favour the alternative. I mean I need
15 to get on. I have a lot of work to do between now and
16 when I get on my feet. To break that up, which would
17 involve for one of us at least to be here while
18 Mr West-Knights was on his feet for another hour, to
19 then go back again, the intermediary of half past 12
20 start for Mr West-Knights might be the best solution we
21 would suggest. It is just a matter of physicality. It
22 is a matter of getting a full run and then being able to
23 be ready to present. I really am hoping that I am going
24 to be short orally because I would like to present as
25 much in writing and of course we are in your hands, sir.

1 THE PRESIDENT: We think we share your view that it is
2 certainly a serious issue.

3 MR MORRIS: It is a serious inference, put it that way.

4 THE PRESIDENT: We are assuming that you will produce
5 a document tomorrow and make some submissions and then
6 on Friday morning, presumably, there will be the last
7 round from JJB and Allsports.

8 MR MORRIS: How much is entirely dependent in what is in my
9 learned friend's document.

10 THE PRESIDENT: We will see how that goes.

11 MR WEST-KNIGHTS: I think the word "briefly" featured in
12 a letter from the tribunal.

13 THE PRESIDENT: I think it did. If we can get through by
14 lunchtime on Friday so much the better but if we cannot
15 we cannot.

16 (5.15 pm)

17 (The hearing adjourned until the following day at 12. 00 pm)

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