

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1279/1/12/17

Victoria House,
Bloomsbury Place,
London WC1A 2EB

10 May 2018-25 May 2018

Before:

MR ANDREW LENON QC
(Chairman)

(Sitting as a Tribunal in England and Wales)

BETWEEN:

PING EUROPE LIMITED

Appellant

- and -

COMPETITION AND MARKETS AUTHORITY

Respondent

MR ROBERT O'DONOGHUE QC (Instructed by **K&L Gates LLP**) appeared on behalf of the Appellant

MS MARIE DEMETRIOU QC appeared on behalf of the Respondent

1 Thursday, 17 May 2018

2 (10.30 am)

3 (Proceedings delayed)

4 (10.40 am)

5 MS DEMETRIOU: Good morning.

6 THE CHAIRMAN: Good morning.

7 MS DEMETRIOU: The CMA calls Mr Patani.

8 MR NIHAR PATANI (affirmed)

9 Examination-in-chief by MS DEMETRIOU

10 MS DEMETRIOU: Sit down, Mr Patani. You will be given
11 a copy of your witness statement now. Could you please
12 go to the final page of the witness statement, page 8?
13 Do you have that? Is that your signature there?

14 A. Yes, it is.

15 Q. Is there anything in this witness statement that you
16 would like to change or clarify?

17 A. Yes, just one point, which was on 19.

18 Q. Paragraph 19?

19 A. Paragraph 19. I'd given an approximate percentage of
20 sales for custom fit for in-store which is 5 per cent.
21 What I feel is that it's higher than that. It's
22 probably about 15 per cent, so 85 per cent would be for
23 the online site.

24 Q. So that 95 per cent figure needs to be changed to
25 "85 per cent". Subject to that, Mr Patani, are you

1 satisfied that the contents of your statement are true
2 to the best of your knowledge and belief?

3 A. Yes, I am.

4 MS DEMETRIOU: Mr Patani, wait there. Mr O'Donoghue will
5 have some questions for you.

6 Cross-examination by MR O'DONOGHUE

7 MR O'DONOGHUE: Mr Patani, good morning.

8 A. Good morning.

9 Q. Just to sketch out your credentials. So you're
10 a director of Fairway Of Course Limited and that is
11 a company that trades as "Golf Online"; correct?

12 A. Yes.

13 Q. And that comprises an online platform for sales and
14 a bricks and mortar store --

15 A. Yes.

16 Q. -- in Stanmore?

17 A. That's right.

18 Q. Are you a golf professional?

19 A. I'm not a golf professional.

20 Q. Have you ever undertaken a PGA course or any form of
21 accreditation?

22 A. No, I haven't.

23 Q. Do you actually play golf?

24 A. At the moment I don't. I used to play a few years ago,
25 yes.

1 Q. As a matter of interest, have you ever been custom
2 fitted?

3 A. Yes, at our store.

4 Q. In your own store?

5 A. Yes.

6 Q. I think it's fair to say that the extent of your
7 expertise on golf is more on the retail side than on the
8 technical side.

9 A. Yes, I'm not a club fitter.

10 Q. Now, I also understand you're a director of a number of
11 other companies. I have done some searches. So the
12 ones I found are Honeypot Development Limited, which is
13 a building company --

14 A. Yes.

15 Q. -- Five Star Assets Limited which is a holding
16 company --

17 A. Yes.

18 Q. -- Nisaru Investments Limited --

19 A. Yes.

20 Q. -- Bagaso Limited --

21 A. Yes.

22 Q. -- and Woodfield Court Residential Management Limited.

23 A. Yes.

24 Q. Finally, you're a partner in Fairways Properties UK LLP?

25 A. That's right.

1 Q. So I think it's fair to say you have fingers in a number
2 of different pies and your golf business is one of
3 a number of things that are of interest to you as
4 a businessman?

5 A. The golf business is of -- my main primary business.
6 The others are as an investment business.

7 Q. As I understand it, these are largely family-run
8 businesses.

9 A. It is a family-run business, yes.

10 Q. I sympathise. I have four larger brothers. The idea of
11 going into business with them is terrifying.

12 Now, going back to Golf Online, you say in your
13 statement that you oversee the day-to-day running of the
14 business with three other directors. As a matter of
15 interest, who are those directors?

16 A. They are all my cousins, brothers.

17 Q. Are any of them PGA professionals?

18 A. No, they are not.

19 Q. Have any of them undertaken any form of PGA or other
20 golf accreditation?

21 A. No.

22 Q. Now, if you go to paragraph 6 of your statement, we have
23 some figures. Now, these are confidential so I won't
24 read them out if you won't, but it is fair to say that
25 the figure in the second-last line -- I mean, the

1 Golf Online platform is a very substantial business on
2 any view.

3 A. Yes.

4 Q. This business has grown from scratch over a short period
5 of time and its growth has been impressive, hasn't it?

6 A. Yes.

7 Q. We see, for example, in the same paragraph that you
8 employ, I think, up to 20 people in a London warehouse
9 depot to deal with online sales.

10 A. Including the shop staff.

11 Q. Now, if we can just bring up your website, please.

12 Mr Patani, this should come up on the screen in front of
13 you.

14 A. Oh, sorry.

15 Q. If it doesn't, please let me know.

16 Now, one of the things I found on Google when
17 I searched for this link is that the banner comes up as
18 "UK's leading online golf retailer". Is that something
19 that rings a bell with you?

20 A. Yeah, we are a prominent online retailer.

21 Q. So we see, for example -- there on the bottom left we
22 see a photograph. I assume that's the depot or the
23 warehouse.

24 A. It is of our warehouse in Stanmore.

25 Q. We see what looked like large quantities of clubs

1 getting ready to be shipped.

2 A. It's -- yes, it's a storage area where we store the
3 products.

4 Q. Now, in terms of your role in the business -- so if we
5 can go back to paragraph 7 of your statement -- in the
6 last sentence you say:

7 "I am not personally involved in conducting the
8 custom fitting services that we offer, but as a director,
9 I know what services we provide and am from time to
10 time also involved in that aspect of the business."

11 Now, I was slightly confused. You said to me
12 earlier that you are not personally involved in the
13 activity of custom fitting; correct?

14 A. Yes.

15 Q. So can you help us understand what you mean by you're
16 involved in that aspect of the business?

17 A. Right, so in regards to that -- so, yes, I'm not a club
18 fitter, I don't conduct any club fittings myself, but
19 I will look -- the staff will be employed who does the
20 club fitting. In terms of the equipment, they need, if
21 they need fitting carts we will get them from various
22 manufacturers, that part of the business. When they
23 wanted to install their -- the launch monitors, I was
24 also involved with them to discuss what sort of
25 specification equipment they require, and that -- yes,

1 in that way, I mean, all as a director.

2 Q. Is it fair to say, therefore, that it's more in terms of
3 initial logistics and set-up rather than day-to-day
4 running?

5 A. Yes, I mean, I don't custom fit customers, so, yes, just
6 to make sure that they have got the right facility to do
7 that.

8 Q. We can pick this up at paragraph 11 of your statement,
9 where you say:

10 "I am familiar with the hardware we stock, although
11 I am not involved in selling clubs to customers on
12 a day-to-day basis."

13 Now, as I understand it, you make two points there:
14 one, the point you just made, which is that you're not
15 personally involved in custom fitting on the technical
16 side, but I think you're also saying here that, in terms
17 of the sale of clubs more generally, that is also not
18 something you're involved in on a day-to-day basis. Is
19 that fair?

20 A. So I don't run our store on a day-to-day basis.
21 I oversee the running of the store.

22 Q. That is fair. You go on to say:

23 "We do have staff who have experience in fitting [...] custom
24 fit clubs."

25 Can you tell the court how many staff?

1 A. For custom fitting we have got two person --

2 Q. Two people.

3 A. -- two people at the Stanmore store.

4 Q. I presume they are PGA professionals.

5 A. They are not PGA professionals, but they have got
6 adequate experience in custom fitting. They have been
7 doing it for a few years now.

8 Q. Where were they trained as a matter of interest?

9 A. They have been trained by the manufacturers. They have
10 had experience all the years from the previous shop
11 where they used to work -- yes.

12 Q. Now, you also say in paragraph 11 that, "They", being
13 these two guys, "have informed me that fitting a Ping
14 club is similar to fitting other brands of clubs". So
15 you personally cannot speak to that. That's what they
16 have told you; correct?

17 A. Yes.

18 Q. And I assume, therefore, you haven't yourself checked
19 whether that's true or not? For example, so Ping has
20 an 80-page fitting manual. I assume you haven't had the
21 occasion to read that?

22 A. No, I've not seen the Ping custom fit manual.

23 Q. Now, at paragraph 14 you make a number of remarks about
24 different brands and you say, for example, that Srixon
25 and Titleist are "higher" brands. Now, as I understand it

1 from your evidence this morning, that is more of
2 a commercial perspective than a technical perspective.

3 Is that fair to say?

4 A. Sorry, I didn't understand that.

5 Q. Well, you say in paragraph 14:

6 "Srixon and Titleist are 'higher' brands; that is, they
7 offer [more] customisable options for better players with
8 lower handicaps."

9 That is not something to which you can speak
10 personally. I would suggest it's either a commercial
11 remark or it's a remark which has come from your fitting
12 people. Is that a fair remark?

13 A. What I meant was that in those brands, Srixon and
14 Titleist, we do see higher volume of custom equipment
15 being sold. Srixon and Titleist, from my experience,
16 is -- they make clubs which are probably for
17 lower-handicap golfers who would want to have themselves
18 a custom fitted set.

19 Q. Again, to be clear, that is something the fitters have
20 told you or that is something you know independently?

21 A. The fitters have also told me and I've also seen the
22 trend of the sales we do.

23 Q. Now, you go on to say in the same paragraph:

24 "These players tend to want to purchase custom fit
25 clubs more often, rather than standard options, and

1 would stick with a brand that has the options that they
2 need."

3 Again, the same question: that information, that
4 comes from your fitters or is that something to which
5 you can directly testify?

6 A. So, again, the same thing, that our fitters have also
7 advised us and I monitor the sales for all the brands,
8 and from that I've seen that we have got a higher
9 percentage of custom equipment from them.

10 Q. You're not saying, as I take it, that, for example, Ping
11 has less custom options than Srixon or Titleist; you're
12 not saying that, as I understand it.

13 A. With Ping, I'm not completely familiar with all the
14 custom options, so, yes.

15 Q. Because you do understand that it's Ping's case that it
16 has more customisable options than any other
17 manufacturer; are you aware of that?

18 A. From what I've been told by my fitters is that Ping does
19 have -- if you could break it down into hardware, that
20 in irons, yes, they do have more options than the other
21 brands, but the other hardware, drivers, fairways,
22 hybrids, et cetera, is again very similar, yes.

23 Q. Again, I think it's fair to say that the information
24 you're giving is second-hand, this is something which
25 others have told you?

1 A. I am familiar with the equipment that we sell, although,
2 as I said, I'm not a technical person in terms of
3 fitting. So, yes, I do consult with my staff and am
4 familiar with the products that we sell.

5 Q. Now, to move on to a slightly different topic, is it
6 your evidence that the making of a selection of a club
7 from online drop-down menus is itself a custom fitting?

8 A. The drop-down menu that we offer on the website is the
9 specs that the customer can select to build the custom
10 set or the custom club that they want, so, yes,
11 that's -- the drop-down gives you all the various
12 specifications or the changes in the club that they may
13 require.

14 Q. So I think you're saying -- but correct me if I am
15 wrong -- that selecting the drop-menus is not itself
16 a custom fitting.

17 A. That itself is not a custom fit, no. What it is is that
18 ordering a custom set or a custom equipment.

19 Q. Because I think, to be clear, it is accepted by everyone
20 in these proceedings that you cannot be custom fit
21 online. Do you accept that?

22 A. You cannot physically be custom fitted online.

23 Q. Now, if we can turn to paragraph 9 of your statement,
24 please, three lines from the bottom you say:

25 "Custom fit clubs have the full suite of

1 customisable options that are available from each
2 manufacturer."

3 I take it from this statement that what you are
4 saying is that you have the full suite of customisable
5 options that are available from each manufacturer.

6 A. Not entirely. What I'm trying to say is that -- what
7 a custom fit club is that where a customer can order
8 different options, different specifications, away from
9 the standard specification. What we do have is fitting
10 carts with different -- different changes of --
11 different heads with different customisable options that
12 we can use to fit out a customer.

13 Q. To be clear, I am talking more about this context in
14 online drop-menus.

15 A. Okay.

16 Q. Are you saying in paragraph 9 that your website has the
17 full suite of customisable options that are available
18 from each manufacturer?

19 A. So for the manufacturers that we do offer custom
20 options, the website would -- the drop-down would show
21 the different options that they can select.

22 Q. All of them?

23 A. I believe the majority. We may have missed out -- but,
24 yeah, the majority would be there.

25 Q. And, to be clear, you do not include Ping in those set

1 of manufacturers because Ping doesn't offer that
2 facility; correct?

3 A. We don't stock Ping so that's why we haven't got Ping
4 listed.

5 Q. Now, let's just test that. If we take a club, the
6 Titleist SM7 -- it's a wedge club -- and just to make
7 you aware, Mr Patani, the reason I focused on this club
8 is that it's a club mentioned in Mr Lines' witness
9 statement at paragraph 23. If we can just have a look
10 at your website, please. Sorry, if we can start with
11 Mr Lines' website for the club I mentioned.

12 So this is the Golf Support website. Are you
13 familiar with that website?

14 A. Yes, I am.

15 Q. If we click on the "Buy custom" button on the right,
16 please, and then click on "Shaft", we get a staggering
17 number of options for "Shaft", so there are 125.

18 Now, if we look at the same club on your website,
19 please -- it will come up in a different screen. (Pause)

20 Again, if we can scroll down and click on "Shaft",
21 there we see 49 options compared to the 125 we saw on
22 Mr Lines' website. Is that an example of the indication
23 you gave that you don't always carry the full suite of
24 customisable options for all clubs and all
25 manufacturers?

1 A. When I had a -- it was a very quick glance at the
2 Golf Support website --

3 Q. Take your time. If you want to go back, by all means.
4 I want to be fair to you. I'm not here to trick you.

5 A. From what I saw -- if you can just open it on the next
6 window -- they've got a different way of listing all the
7 shaft options. I think in the drop-down they give the
8 brand or the make of the shaft with all the flexes
9 available for that shaft in the same listing, whereas
10 we've got a listing for the shaft separately and then
11 a second drop-down for the flex of the club, meaning
12 regular, stiff, whatever that they would buy, so that's
13 why maybe the options appearing on Golf Support appear
14 to be higher.

15 Q. So your point is it's a different system of
16 classification?

17 A. No, it is just the format, how they show -- their
18 drop-down in terms of the different shafts they can
19 select is slightly different to what we offer.

20 Q. And do you agree that from a consumer perspective there
21 is a risk that this is confusing?

22 A. Not really. The consumer would know what shaft they
23 want and they can scroll down and select -- on our
24 website they select the brand type and in the next
25 option they select the flex of the club -- of the shaft.

1 Q. Wouldn't it depend to some extent on how well informed
2 he or she is?

3 A. Sorry, I didn't get that, sir.

4 Q. Wouldn't that depend on how well informed the consumer
5 in question is?

6 A. Our assumption would be that the customer knows the
7 custom option that they want and from that they would
8 select the options that's available from our website.

9 Q. We will come back to that. I'm not sure I entirely
10 agree, but we will come back to that.

11 Now, continuing with custom fitting, if we go to
12 paragraph 12 of your statement, please, you say that:

13 "Custom fit clubs are an important and growing part
14 of our business."

15 Then you go on to give the figures of the quite
16 significant growth in those sales. The figures are
17 confidential, but we can see that it has gone up more
18 than fivefold in a short period of time.

19 Now, to be clear, as I understand it, here we're
20 talking about all sales of custom fit clubs; in other
21 words, both online and in-store.

22 A. Yes.

23 Q. We can pick this up, I think, at 19, which is the figure
24 you have just corrected. I think what we now understand
25 from this morning is that the split is very heavily

1 weighted in favour of online sales, albeit less than it,
2 was compared to in-store sales.

3 A. Yes.

4 Q. Then at paragraph 20, you say that:

5 "selling custom fit clubs online provides us with
6 a way of reaching new customers and doing so outside of
7 business hours."

8 Correct?

9 A. Yes.

10 Q. Then at 21 you attribute the significant growth in your
11 online sales of custom fit clubs to investments in your
12 website. You say:

13 "it makes it easier for customers to purchase custom
14 fit clubs online."

15 So the point I think you're making here is that it
16 is investments in the website which has driven, in your
17 view, sales of custom fit clubs online.

18 A. We definitely invested quite a lot in our website to
19 make it user-friendly for our customers to buy all the
20 equipment, including custom fit equipment. But
21 specifically in regards to custom fit, yes, one
22 investment in the website has been significant, but we
23 also invested in our staff and in-store to fit out with
24 a launch monitors facility, fitting carts. So we have
25 invested in-store as well to offer the custom fitting

1 service. Both of that together has helped us increase
2 the sales.

3 Q. That is fair, but I think we can see from paragraph 19
4 that the investments in the website have paid great
5 dividends. The exponential growth comes from online in
6 your business?

7 A. I would say both, in-store and online.

8 Q. Well, the proportions are strikingly different, I would
9 suggest.

10 A. The percentage, yes. Our online sales is much stronger
11 than in-store, but in terms of the net value of the
12 sales we do in-store, it's still significantly a good
13 number compared to a lot of normal bricks and mortar
14 stores.

15 Q. At the moment that is one store in Stanmore?

16 A. Yes, one store in Stanmore and we've got another one in
17 Oxford, Hadden Hill.

18 Q. Now, if we go back to your website, please, I'd like to
19 consider how your attitude to custom fitting is
20 reflected on your website. So, again, the screen should
21 come up. I, as a new consumer -- this is my first port
22 of call when I get to your website. I am going to
23 assume, for the purposes of these questions, that I'm
24 an inexperienced golfer, coming to your website for the
25 first time.

- 1 Now, if, for example, I were looking for Titleist
2 irons, there are two possibilities. So the first is
3 that I would click on "Clubs" --
- 4 A. Oh, "Categories", "Department", and under that you can
5 click -- yes.
- 6 Q. Yes, thank you. So I click on "Clubs" and then "Irons"
7 and then on the "Titleist brand" box on the left-hand
8 side I can select a club there. So that's one
9 possibility; correct?
- 10 A. The Titleist irons, yes.
- 11 Q. Now, the other possibility I have is -- you will see the
12 paler text on the top saying "Custom fitting". We will
13 come back to that. Let's suppose for now that I don't
14 notice that banner and I just want to get my irons, so
15 I would just click on "Clubs" and then on "Irons" and
16 then, for example, we can bring up the Titleist AP2. So
17 you see that?
- 18 A. Yes.
- 19 Q. So I bring that up and then I'm given an option to
20 custom fit or build and I click on that. Now, the first
21 striking thing is that, although I'm directed to custom
22 building, I'm not given any message about custom fitting
23 at this stage. You accept that?
- 24 A. Yes.
- 25 Q. I'm also not told at this stage that I should get

1 a custom fitting to avoid purchasing the wrong product.

2 A. Yes, at this stage you're not shown that.

3 Q. All I am invited to do is to populate a series of
4 drop-menus; correct?

5 A. Yes.

6 Q. Now, do you accept that if, in this situation, I'm
7 an inexperienced golfer, I may rightly or wrongly
8 imagine that when I'm choosing these custom build
9 drop-down boxes that I'm getting a custom fit? Do you
10 think that is a possibility?

11 A. It can be a possibility, but our view is that somebody
12 ordering, for example, this specific set of irons and
13 going to "Custom build", they would be fairly familiar
14 or would be familiar with what specs they want and based
15 on that they would be placing an order.

16 Q. That is fair. That's a slightly different point which
17 I will come back to. But sticking with my example, if
18 I'm an inexperienced golfer and suppose I end up in this
19 part of the website, isn't there a real risk that, in
20 populating these menus, I think wrongly that I'm getting
21 custom fitting?

22 A. Again, my view would be that a customer wanted to
23 purchase -- whether experienced or inexperienced -- if
24 they are looking for an equipment specifically and
25 select to go -- to choose custom build clubs, then they

1 would know or they should know what specs they want
2 otherwise they could -- they would select a standard
3 option.

4 Q. Don't you think the use of the words "custom build",
5 "custom fit", is potentially misleading in this context?

6 A. Not entirely. What we are showing is "custom build" and
7 showing you the options that we can offer to build is
8 that based on the consumer requirement.

9 Q. Now, if we go back to the page, again, same club, and we
10 activate any one of the drop-down menus -- it doesn't
11 matter. Now, let's assume I haven't obtained
12 a face-to-face custom fit. In that situation there is
13 a distinct possibility that I would simply be guessing
14 individual specifications other than right- or
15 left-hand?

16 A. Yes, if you don't know your specifications then, yes, it
17 would be the customer deciding or choosing what they
18 want, yes.

19 Q. At this stage you don't even ask the consumer whether
20 they have had custom fit, do you?

21 A. No, we don't, but there -- I mean, yes, at this moment
22 we don't ask.

23 Q. You also don't require them to tick a box that they have
24 had a custom fit?

25 A. No, we don't have that requirement.

1 Q. Isn't the reality that you actually have no way of
2 knowing whether they have been custom fit or not and
3 therefore whether they have been guessing or not? You
4 don't actually know. You're assuming they're not, but
5 you don't actually know. You're guessing they're not
6 guessing?

7 A. Yes, a customer placing an order for custom -- we
8 wouldn't know whether they have been fitted or not. We
9 would -- yes -- assume that they know what specs they
10 want. I mean, these are high-value equipment and they
11 wouldn't just guess in terms of what they want.

12 Q. Now, I don't wish to be rude, but you're a businessman
13 in this for profit and I would also suggest to you that
14 you don't actually care whether they're custom fit or
15 not. A sale is a sale.

16 A. Sale is important and we do try and offer the best
17 service we can, so, like all businesses, yes, we were
18 trying to offer the best options to the customers to
19 make sure that they're happy with what we offer,
20 including the price and the service and -- all the
21 different options.

22 Q. We will come back to the question of returns, but
23 sticking with the point, you are aware, for example,
24 that a number of retailers who undertake custom fitting
25 do not make available the custom fit specifications to

1 the consumer? You're aware of that?

2 A. I'm not completely aware, but it may be a case where you
3 are -- not everybody gives out their specification.

4 Q. Let's have a look at one example. It's in bundle D3,
5 please.

6 So you're obviously aware of American Golf. This is
7 Mr Mahon's statement of American Golf. If you turn to
8 paragraph 24 of his statement, about two lines in he
9 says:

10 "However, we [American Golf] do not provide
11 customers with fitting data unless they place an order
12 on the same day."

13 Now, you are aware that American Golf is about
14 25 per cent of the retail market. That sounds plausible
15 to you?

16 A. Again, I'm not aware of the exact numbers, but they are
17 a significant retailer in the country.

18 Q. They're the biggest; no?

19 A. Yes.

20 Q. If a quarter of their customers who have been custom fit
21 have no specifications, then there is every risk, isn't
22 there, that they may be browsing on your website and
23 guessing?

24 A. I mean, as I said earlier that -- anyone buying iron
25 equipment and specifically going to the "Custom build"

1 option on our website, we would assume that they're not
2 guessing, but they know what they require.

3 Q. Now, Mr Lines who will give evidence next. He also
4 doesn't hand out specifications unless his customers
5 specifically ask. So, again, if you have a consumer who
6 was fitted with him, without specifications, he or she
7 will almost certainly be guessing. Do you see that?

8 A. I'm not aware whether they give out the specifications
9 or not, but I say it again that anyone ordering from our
10 website, we would assume that they know their
11 specifications, they want -- it is a large purchase that
12 they're making.

13 Q. Again, it's an assumption?

14 A. Yes.

15 Q. Now, can we look at what the complainant says about this
16 please. It's in F2/105. Now, Mr Patani, we need to be
17 careful as some of this is redacted. All I want to show
18 you is paragraph 31, if you can just be given that page.
19 The bit I'd like to show him actually is redacted.

20 (Pause)

21 Mr Patani, there is a sensitivity with this document
22 and unfortunately I can't show it to you, but I think
23 everybody else has it so if I'm reading incorrectly, you
24 will be told.

25 A. Sorry, which paragraph?

1 Q. So there was a complaint to the CMA, as you know, and
2 the complainant gave a witness statement to the CMA
3 which contains information that unfortunately you can't
4 see, but I am going to read you out a short extract with
5 the CMA's permission just to put this point.

6 MS DEMETRIOU: Can I just double-check? (Pause).

7 We have checked. You can read out those words.

8 MR O'DONOGHUE: Thank you. The complainant says:

9 "Customers are [...] free to purchase clubs at [a certain
10 place] without going through a fitting process. This
11 happens quite regularly. In fact, many golfers know
12 exactly what they are looking for. [redacted]."

14 Now, I will be exploring this with a witness later
15 today, but the point I want to put to you is that,
16 according to the complainant, the research on
17 specifications, at least in part, comes from research by
18 the consumers on the internet; in other words, not
19 necessarily from having specifications from a proper
20 custom fit.

21 Now, if that is the case, if people are rooting
22 around in blogs and other advice websites trying to
23 cobble together their specifications, I would suggest to
24 you that the incidence of guessing is quite a bit higher
25 than you're assuming.

1 A. I mean, from what we know, customers do research online
2 in today's day and age in terms of equipment that they
3 may want, the reviews regarding the equipment. Other
4 manufacturers have got components listed which would
5 give out specifications, et cetera. But, again, if they
6 are ordering something on our website as a custom build,
7 I'd still say that we would assume that they know what
8 specs they want. They may have done a research, they
9 may have had specifications. The researches probably do
10 enhance to make sure that whatever specs that they want
11 are based on the technical information that they get
12 online.

13 Q. Let me just press you on that. So I'm not making
14 a point about general research. I'm making a more
15 specific point, which is: if you do not physically have
16 your specifications following an in-store dynamic
17 face-to-face custom fit, but instead you're trying to
18 piece the specifications together through independent
19 internet research, I'd suggest to you it is highly
20 unlikely and certainly is a substantial risk that the
21 consumer will effectively end up guessing. That is not
22 a substitute for having a proper set of specifications.
23 Do you agree with that?

24 A. To have a dynamic face-to-face fitting is -- yes, there

1 in person with a good club-fitter fitting you out, yes.

2 Q. So, to be clear, browsing around the internet on blogs
3 trying to independently arrive at specifications without
4 a custom fitting, you accept that is a sub-optimal
5 outcome for the consumer? There is a risk that that
6 consumer will end up with the wrong set of clubs?

7 A. I mean, customers may already have specifications from
8 their previous fitting, either from their -- the
9 previous -- if they bought, for example, a set of irons
10 and they're looking to add one or two clubs onto it,
11 then they may already have the specifications and, based
12 on that, if they order, then there isn't an issue
13 ordering.

14 Q. That is fair. That's a slightly different point. I am
15 focusing on the example where the consumer has no
16 existing or previous specifications and is browsing
17 around the internet, trying to independently piece them
18 together. You accept, don't you, that that is quite
19 likely to result in something which is effectively
20 guesswork --

21 A. Yes.

22 Q. -- or at least a risk?

23 A. Yes, there is a risk of that.

24 Q. Now, you are also aware, I assume, that a number of
25 manufacturers offer online software tools to assist to

1 some extent with issues of fitting. So, for example,
2 Ping has a software product called "nFlight" which can
3 be used online to assist with certain aspects of
4 fitting.

5 A. I have seen that briefly, not in detail.

6 Q. Well, can I show you a statement from Dr Wood, who is
7 an engineer at Ping, please. This is in B2, tab 3.
8 Mr Patani, it's paragraph 38, internal page 10. (Pause)

9 I think I won't read out the numbers, but subject to
10 that we should be fine.

11 Mr Patani, this is the nFlight product I mentioned.
12 Perhaps if you can quickly skim through the paragraph.

13 A. Sorry, which paragraph?

14 Q. 38, and then I have a couple of questions.

15 A. 38. (Pause)

16 I've gone through it. It's a lot of details,
17 but ...

18 Q. That's engineering. But it's quite a simple point. So
19 you just agreed with me that if the consumer is
20 independently, through blogs or other internet research,
21 piecing together his or her specifications without
22 having any custom fit specifications, there is a risk of
23 picking the wrong club.

24 The second point I want to put to you in this
25 context is that, even if the consumer on the internet is

1 using some of these software tools to assist the process
2 of fitting -- you see the figure in yellow on the
3 second-last line -- it is extremely likely that, even
4 with that extra facility, the software, the consumer
5 will get it badly wrong. You see that?

6 A. In the second-last line -- I mean, I can see it on the
7 statement here.

8 Q. You see a figure in yellow, yes.

9 So the basic point being made here is that, if you
10 use the software to assist with fitting and then have
11 a full dynamic face-to-face custom fitting, the level of
12 correspondence between the nFlight recommendation for
13 club fit and the dynamic fit is virtually night and day.
14 You see that point?

15 A. Yes, I mean, I can see on the statement what he has
16 stated is -- it's materially less, yes.

17 Q. Again, if I go on your website -- and this is all I have
18 done -- and I populate the drop-down menus, it is
19 extremely likely I will get it badly wrong?

20 A. I mean, if someone is guessing their specifications,
21 then, yes, they would -- there's a good possibility that
22 they wouldn't get it right. Our assumption is they
23 would know what specs they want and, based on that, they
24 would place an order for their custom clubs.

25 Q. This is a slightly different point. This is not where

1 someone is purely guessing; this is where someone has
2 used an online manufacturer fitting tool to get some
3 information. The point is, even in this situation, it
4 is effectively no better than guesswork. It's
5 a slightly different point.

6 A. I don't know. My view would be slightly different --
7 yes, this wouldn't give you the complete custom fit
8 experience that -- if that's what the golfer is looking
9 for, but, again, I would say that different type of
10 products would have a slightly different requirement.
11 Example, for irons, I would say a full dynamic custom
12 fitting is definitely bringing more optimal results, but
13 if you're buying something like a hybrid or a fairway,
14 it may not be -- from my experience it may not be as
15 relevant.

16 Q. As I understand it, you don't dispute the basic point we
17 made?

18 A. That if you've not been properly dynamically fitted
19 then, yes, you wouldn't know your exact specification.

20 Q. Now, let's assume for whatever reason the customer has
21 picked the wrong clubs using your drop-down menus, do
22 you offer a money-back guarantee?

23 A. On custom clubs we don't offer a money-back guarantee.
24 As part of our returns policy that's not our standard
25 policy, but on case-by-case basis we either do offer

1 a good customer service and, for whatever reason,
2 whether it's clubs or anything else, if a customer is
3 not happy with what they have purchased, then on
4 a case-by-case basis we're happy to review and look at
5 it.

6 Q. Let's unpack that a bit. So assume I'm a consumer who
7 has independently done some research and that I admit to
8 you that I have essentially guessed my specifications by
9 doing independent internet research, is your position
10 that, as a matter of contract, me having guessed, you
11 would still give me a money-back guarantee?

12 A. No, we don't offer a money-back guarantee.

13 Q. So the general position is that there is no return,
14 there would be a discretionary exception, and the point
15 I'm putting to you is that that exception, if it were
16 made at all, would not cover a situation where I had
17 guessed because it would be my own tough luck. That's
18 the point.

19 A. The policy is the same whether they buy a custom club
20 in-store, in our store, after going through a dynamic
21 fitting process with our trained staff or if they buy
22 online, that once you've ordered the custom club -- as
23 a standard policy, yes, we don't offer money back, but
24 if the customer is unhappy, whether in-store or online, on
25 a case-by-case basis we will review what is required

1 and, based on that, make the decision.

2 Q. But, I mean, it's not exactly good for the game of golf
3 if someone has an ill fitting set of clubs that they
4 can't give back. It's bad for him or her and it's bad
5 for the brand.

6 A. If they're unhappy and if they come to us and explain to
7 us what it is, we're happy to consider that. But if you
8 say as a blanket rule that they bought something and
9 they just say they want to return it for a refund, then
10 maybe not.

11 Q. It would be purely discretionary?

12 A. Discretionary, yes.

13 Q. Are you aware that Ping, with its custom fit clubs,
14 offers a full returns policy as matters stand today?

15 A. I'm not aware of that.

16 Q. Now, if we can go back to your website on a slightly
17 different point, please. Do you see at the bottom -- so
18 one of the issues we have discussed in this case is the
19 question of convenience. We see at the bottom of the
20 page, "Your order can take an average of two or three
21 weeks to manufacture" -- I think that's a mistake --
22 "and we will despatch your order on the following
23 working day after receipt". Now, that's not exactly
24 convenient, is it? Ping, for example, has a 48-hour
25 turnaround following receipt of the order. This is two

1 to three weeks.

2 A. Okay, from my experience different manufacturers have
3 got different lead times to build custom sets. For the
4 moment we are not dealing with -- we aren't selling Ping
5 so I'm not aware of what that time is in delivering the
6 goods to us, but with the other brands that we are
7 working with, as an average they will take about,
8 I would say, seven/eight working days and then we take
9 in the courier time for the goods to get to us,
10 et cetera. So just on the safer side we have mentioned
11 two to three weeks, but realistically, as soon as we get
12 an order, we place with the manufacturer; as soon as we
13 get a delivery we send it to that customer. So
14 sometimes the turnaround can be in a few days or it can
15 take a few weeks. And there are cases we have
16 experienced where manufacturers are out of some of the
17 components that they have and there is a delay in
18 getting the clubs to us. So, I mean, this is just as
19 an indication that two to three weeks is something that
20 they should wait.

21 Q. Well, I appreciate it's outside your control, but if the
22 Ping number is correct -- let's assume that -- in that
23 situation it's actually more convenient to go to the
24 store and order from Ping than to order online.

25 A. I would say it would be the same. I mean, if we want to

1 sell Ping equipment online and Ping has got a 48-hour
2 delivery time -- so as soon as we get the clubs, we
3 deliver to them or they collect it from the store.

4 Q. Now, going back to your statement at paragraph 25,
5 please, tab 7. (Pause)

6 It's the point, Mr Patani, about real-time support.
7 So you make the point there that you trialled an online
8 chat facility and found that the telephone and email
9 were preferred methods of contact. Can you assist
10 the Tribunal as to why that was a failure?

11 A. From the beginning the main way of communication with us
12 has been by email and phone. I think a few years ago we
13 did try online chat, a way for customers to get to us.
14 We didn't see it working in the positive way for our
15 customers and also for our company because mainly the
16 inquiries that we were getting was to do with their
17 orders that they had already placed in terms of them
18 following up with the couriers, delays in deliveries or
19 very general sort of inquiries. We were not getting any
20 specific equipment-related or sale-related inquiries
21 from that, so we said that we would go back to the phone
22 and emails. But, I mean, we were -- every year we keep
23 reviewing to see what improvements we can make on our
24 website.

25 Q. Is it fair to say that the online chat facility requires

1 one or more human beings for the periods that it is open
2 and that is more expensive than simply dealing with
3 something by email?

4 A. Online chat and telephone is similar that, yes, you
5 would need a person at the other end immediately to
6 respond to.

7 Q. But the online chat is typically a higher cost?

8 A. I'm not familiar with the costings, but it wasn't
9 serving the purpose because consumers could call us,
10 which is very similar to an online chat.

11 Q. Now, if we look at paragraph 27 of your statement, you
12 make the point that you don't get many complaints about
13 fitting and therefore you assume that everybody is happy
14 with their fit. Now, we had a look on your website to
15 check that point and I want to put to you a number of
16 examples of situations where there have been complaints
17 about the fitment of clubs.

18 If they can be handed to you, please. (Handed).

19 So, Mr Patani, there are half a dozen examples here
20 that we have found without great difficulty. So, for
21 example, if you flick on to the third page, it says:

22 "Misleading description and poor customer service."

23 Do you see that?

24 A. Third page, yes.

25 Q. It says:

1 "I saw a picture of a club I have been looking for
2 on a Golf Online website. It was described as a Wilson
3 ... [and so on]. It was priced fairly so I ordered it. It
4 arrived reasonably promptly, but when I opened the box
5 I was disappointed to see that it was left-handed.
6 I looked back at the website and whilst the
7 photograph and description was of a right-handed club,
8 the small print below and my email confirmation did in
9 fact state that it was left-handed."

10 Now, this may have been a mistake by the consumer.
11 On the next page, page 5:

12 "I ordered a custom 4 iron from Mizuno via
13 Golf Online, unfortunately it arrived with an error
14 regarding the grip. I required extra tape, but it
15 arrived standard."

16 Then on page 6:

17 "I ordered from Golf Online, back in April, three
18 Cleveland wedges. Custom shafts that had to be ordered
19 direct from Cleveland. Due to the heads being in back
20 order, I was advised I'd be waiting until June for
21 the clubs."

22 Then further down, about halfway:

23 "Today I received my wedges, after waiting
24 three months. [...] I was delighted, until I opened the box of
25 the three wedges all the grips were wrong, which

1 I knew before receiving. Two of the clubs are the right
2 heads, but both of those have the worst-fitted grips
3 you're ever likely to see on a golf club, twisted and
4 totally misaligned."

5 Now, I don't want to labour this point, but it will
6 inevitably be the case that with a staggering amount of
7 customisable options on your website, things may well go
8 wrong. You accept that?

9 A. I mean, I'm looking at these examples very briefly in
10 front of me and in them what I can sort of see is that
11 possibly the error has been from the manufacturer's side
12 because we would have ordered the specification exactly
13 as how the customer would have placed the order and
14 maybe the manufacturers made an error -- even if there
15 are delays in delivering -- I mean, we are not
16 a manufacturer. We -- any orders we get, we would have
17 placed with the manufacturer and rely on their delivery
18 times and if they are a component short, we are -- it's
19 out of our control. So, I mean, from what I can see,
20 probably these complaints are based around similar
21 issues.

22 MR O'DONOGHUE: Sir, would that be a convenient time?

23 THE CHAIRMAN: Yes.

24 (11.38 am)

25 (A short break)

1 (11.49 am)

2 MR O'DONOGHUE: Mr Patani, one follow-up question to what we
3 were discussing. You may not know the answer, but for
4 the complaints we identified, do you know if the
5 customers in question actually received returns or not?
6 It may not be a fair question.

7 A. I wouldn't be aware -- I mean, I just read, just on
8 page 6, the bottom part of that just now and that word
9 from our customer service has indicated that, "Yes, we
10 are happy to offer you a refund or a replacement".

11 Q. I see that. That is fair. A different question, and
12 I think you more or less accepted that your business is
13 one of the largest, if not the largest, online golf
14 retailers in the country. Do you know, in terms of
15 individual consumers who have purchased clubs since the
16 site was set up, is that in the hundreds of thousands?
17 It must be a big number.

18 A. Our -- I don't know the exact number, but our database
19 is, yes, over 100,000 customers.

20 Q. Thank you. Now, if we can go back to your website
21 again. We are back on "Custom fitting". So this is the
22 banner I showed you earlier on. So if we click on
23 "Custom fitting" on the top right, we then get a series
24 of messages. Of course you're not Ping account-holders
25 so Ping doesn't appear.

1 So it starts with the heading "Custom fitting",
2 which all looks good. Then if we scroll down, we see
3 three tabs, one saying what it means, the middle one
4 saying "Get fitted in-store" and then "Get fitted
5 online".

6 You would presumably agree that someone who is
7 already on the internet, on your website, is more likely
8 in this context to opt for the "online" button, in other
9 words the one on the right; that's presumably why
10 they're on the internet in the first place?

11 A. Yes but, I mean, I would say most of them is online, but
12 we do get inquiries for the store from the website as
13 well because we do advertise our store.

14 Q. But the majority will go to online?

15 A. Online.

16 Q. So let's click on that and see what happens. We're now
17 asked to "Get in touch for custom fit requirements" or
18 the second option is "Build your custom clubs online".

19 Now, let's assume for these purposes I do not have
20 a custom fit, so I will click on the "Build your own
21 clubs online", which takes us to here -- so we're back
22 in the products page we saw before --

23 A. Yes.

24 Q. -- again. It's the same point I put to you before the
25 break, which is that by doing these clicks, I haven't

1 been custom fitted online. All I have done is look back
2 to a series of products that have drop-down menus that
3 I can choose customisable options.

4 A. But if you go back to the original page, "Get fitted
5 online" --

6 Q. Yes.

7 A. -- and underneath "Online custom fitting", we have
8 stated, "Therefore if you know your specifications, just
9 click on the custom fit form below and we will contact
10 you". Basically what we are saying is that if they know
11 their specifications then, yes, they can build the club
12 or they can order the club with the specifications that
13 they know.

14 Q. That is fair, but the situation I am putting to you is
15 if I don't know my specifications and I click on this
16 icon.

17 A. Okay.

18 Q. Now, in that situation I think you have agreed that
19 I'm not -- I haven't been custom fit and I'm not being
20 custom fit online. All I am choosing is a series of
21 drop-down menus and customisable options.

22 A. Yes, we wouldn't know if you have been custom fitted or
23 not.

24 Q. Now, moving on to a different topic --

25 THE CHAIRMAN: Sorry, can I just be clear? What's that

1 intended to mean, that second sentence, "Therefore if
2 you know your specifications, just click on the custom
3 fit form below ..."? Which one?

4 A. Sorry, yes -- okay, maybe it's not -- but it's basically
5 the second tab where, if they know their specification,
6 they click onto the green tab where they can then order
7 their custom spec. So the first one is to get in touch
8 with us or, if they know their specs, then they go to
9 the second, the green one.

10 MR O'DONOGHUE: Again, if I don't have those specifications,
11 my instinct would be to say, "Well, I had better get
12 custom fit online". That's the point I'm putting to
13 you.

14 A. Well, if you don't know the specifications, then, as
15 I said earlier, that -- yes, then you wouldn't be
16 ordering or you wouldn't be ordering the right spec
17 that's meant for you. If you don't know the specs or
18 you don't have the specs, then, yes, it wouldn't help
19 you.

20 Q. Now, I want to move on to a different topic. If you can
21 go to bundle B1, please. Mr Patani, this is the fitting
22 manual for Ping which I mentioned to you before. It's
23 a very long document. I'm not going to take you through
24 it. But what I would like you to do is turn to page 3,
25 please, tab F.

1 A. F. Page 8?

2 Q. Page 3.

3 A. 3, sorry.

4 Q. If you can quickly skim that. So you see a picture of
5 Karsten Solheim. Now, Mr Patani, you are aware that in
6 the same way as you run a series of family companies,
7 that Ping is itself a family-run company?

8 A. It's a family-run company, yes.

9 Q. It builds on the legacy of Karsten Solheim, who
10 effectively invented the custom fitting of golf clubs.
11 So that is the ethos of the brand and the ethos of the
12 Solheim family. You understand that?

13 A. I mean, I'm not -- I don't know the full history behind
14 the Ping equipment but, I mean, I know he's the founder.

15 Q. And he was a pioneer in custom fitting. You know that?

16 A. I'm not -- as I say, I don't know the full history.

17 Q. Well, you might read that some time. Now, if we turn
18 to J in the same bundle -- so, again, you're not a Ping
19 account-holder so you won't have received this letter.
20 This is a letter by Ping to its account-holders. If you
21 can look about two-thirds of the way down, Mr Clark, who
22 is the managing director -- he talks about the dynamic
23 face-to-face fitting policy and he says:

24 "We want all clubs to be sold using face-to-face
25 dynamic custom fitting ...", and so on.

1 He then says:

2 "To some of you this may sound restrictive in these
3 difficult times and will result in fewer sales for Ping.
4 However, it emphasises our commitment to our core
5 philosophies and demonstrates that the quality of what
6 we do is more important than the quantity. It is
7 a commitment for the long-term strength of the brand and
8 we believe that the vast majority of our customers
9 understand and support these policies, and we thank you
10 for that support."

11 Now, as a businessman, Mr Patani, does it strike you
12 as surprising that a company says, "Through a commitment
13 to custom fitting and not selling online, we may
14 actually sell less products, but that is to support
15 long-term integrity and quality of the brand"? So it is
16 the difference between short term profit and a long-term
17 strategy. You understand that, I assume?

18 A. Not entirely, so if you just want to repeat what you're
19 asking.

20 Q. Let me put it a different way: it is possible by selling
21 online that you could perhaps increase some short-term
22 volume, but that comes at the expense of quality and
23 therefore there is a trade-off between the long term and
24 the short term, and Ping's strategy is to focus on
25 quality and the long term through custom fitting based

1 on face-to-face dynamic fitting. You understand that?

2 A. It wouldn't necessarily mean that just by offering
3 custom options -- custom Ping options online, that would
4 have a different -- a loss in sales or an increase in
5 sales. It is the customer's choice -- this is what
6 I would say -- customer's choice of where they want to
7 buy their Ping equipment, online or in-store.

8 Q. But you do understand that Ping has a different
9 philosophy, which is to maximise club quality for each
10 individual through face-to-face custom fitting. What
11 Mr Clark is saying here is that if that comes at the
12 expense of short-term sales, then so be it.

13 A. That's what Mr Clark is saying here.

14 Q. Now, it's also fair to say that your business model is
15 philosophically a bit different. You want to keep your
16 costs as low as possible, you want to maximise volume,
17 of course you want to keep the customer happy, but it is
18 a somewhat different way of competing. Do you agree
19 with that?

20 A. I would say it's very similar to any business. Any
21 business wants to keep their optimum cost or the lowest
22 cost possible to increase sales. I would say, as any
23 businessman, that the aim is to have maximum sales or
24 whatever, (Inaudible) can issue, and offer the best
25 customer service.

1 Q. Thank you. Now, I want to move to a slightly different
2 topic. So I put to you, Mr Patani, the point that
3 Ping's philosophy is built around maximising dynamic
4 face-to-face custom fitting. What I want you to do is
5 to think for a moment of how this works from Ping's
6 perspective. So the first point I think is an obvious
7 one, which is I think you accept that face-to-face
8 custom fitting can only really occur in a physical
9 bricks and mortar shop.

10 A. Yes, full dynamic fitting centre in person.

11 Q. So, in other words, if people using your website wish to
12 have had a dynamic face-to-face custom fitting, that has
13 to have happened either in your bricks and mortar shop
14 or another retailer's?

15 A. True.

16 Q. Now, if the bricks and mortar shop in question, whether
17 it's your shop in Stanmore or some other one, has gone
18 through the process of custom fitting that takes up to
19 an hour, that is a cost to the business concerned --

20 A. Yes.

21 Q. -- and a number of businesses offer custom fitting
22 either for free or at a heavily subsidised rate.

23 A. I mean, we are not charging at the moment for custom
24 fitting. I don't know. Some retailers charge, some
25 don't.

1 Q. Some do, some don't. So American Golf, like you, offers
2 free custom fitting. Some have a charge, typically
3 subsidised.

4 Now, you have a very large and profitable online
5 business which effectively can support the shop in
6 Stanmore; correct?

7 A. Our online business is a high volume, but also the
8 in-store business, the bricks and mortar business, on
9 its own right is quite a significant business. It may
10 be a small percentage of our total volume, but in terms
11 of other bricks and mortar stores we would be pretty
12 significant, I would say.

13 Q. Now, can you imagine the situation of a small on-course
14 bricks and mortar shop, say, with a turnover annually of
15 about £10,000. If that bricks and mortar shop has to
16 undertake the custom fitting at no charge or
17 a subsidised charge and then loses the sale to a website
18 like yours, you will understand the concern from their
19 perspective, won't you? They have spent an hour of time
20 and money effectively at a loss and have nothing to show
21 for it.

22 A. Not entirely. I mean, I have stated that if a customer
23 goes into a store to have a dynamic custom fitting, then
24 the store has the opportunity to complete that sale.
25 They are -- the shop is with the customer and they can

1 close the sale if they do it right or both of them are
2 happy -- the customer is happy. If, for whatever
3 reason, the customer doesn't decide to buy from that
4 store, then we don't have control over that.

5 Q. Let's assume that for whatever reason they decide not to
6 buy from that bricks and mortar store and they go online
7 to a website like yours, you will understand that over
8 time that dynamic is not sustainable for a very small
9 business?

10 A. No, if they conduct their -- my view is if they conduct
11 their business properly and if they keep their customers
12 happy, then they should have a sustainable business.

13 Q. But if their hit rates in terms of fitting and sales is
14 affected by online sales, then it becomes more marginal;
15 you agree with that?

16 A. Well, there is definitely competition and they need to
17 investigate within their business why that sale has not
18 been concluded. I mean, from our experience, customers
19 who come to our store to get fitted, the majority of
20 them do end up with a purchase. So if there's a store
21 which continuously doesn't get an order out of the
22 custom fit, then they need to look at their policy.

23 Q. If that occurred -- let's assume it has -- that would
24 also affect their ability to offer custom fitting
25 services in the first place?

- 1 A. Meaning if the store doesn't get orders or ...?
- 2 Q. It becomes marginal.
- 3 A. I mean, that would all depend on the business that
4 they're running, whether they can sustain a custom fit
5 business or not.
- 6 Q. Are you aware that the majority of Ping's
7 account-holders are very small businesses with less than
8 £10,000 of turnover?
- 9 A. I'm not aware of them. All I know is that they do have
10 a large number of retailers in the UK.
- 11 Q. Now, if that is the case -- and let's assume that's
12 correct -- you do understand that enormous online
13 platforms like yours -- and I'm not criticising you --
14 are potentially a lethal threat to their existence and
15 in particular to their ability to conduct custom
16 fitting?
- 17 A. I would say it comes down to competition -- like stores
18 have got the competition maybe from other stores in the
19 area or an online retailer; likewise, us online
20 retailers also have competition from stores and other
21 larger -- much larger online retailers. So it is
22 competition in the business or all competition in the
23 business.
- 24 Q. But on your website, which has, I think you said, more
25 than 100,000 sales, if not more than that --

1 A. 100,000 is the database that we've got. Sorry.

2 Q. Yes. There are only two possibilities: one which
3 I think is the one which you rely on, which is that
4 people have been custom fitted somewhere else and make
5 the sale with you and that must be the majority of your
6 sales. That seems to be what you indicated.

7 A. We would assume that they had been custom fitted either
8 at another store or from the manufacturer directly or
9 they have already had equipment ordered with that same
10 spec and they want to add additional clubs to that set.

11 Q. So you are benefiting from the fitting work of other
12 people?

13 A. I mean, if they order from us, then there would be
14 a customer's choice or a reason why they've decided to
15 order with us and not go back to the store where they
16 got custom fit.

17 Q. Now one final point: you say at paragraph 21 that
18 Golf Online invests -- let's have a look at 21. So you
19 set out the investments in your website, paragraph 21 --
20 sorry, it's confidential figure. You see the number?
21 So you have given a number since its inception and then
22 an annual number. Going back to my example of the
23 £10,000 per annum on-course retailer, the level of
24 investment you set out there would be completely
25 unsustainable for them?

1 MS DEMETRIOU: Can I just rise to ask for clarification
2 about the £10,000 because, if it's the figure that has
3 been spoken about several times in these proceedings,
4 that £10,000 doesn't relate to overall revenue but to
5 Ping-only revenue, which is a quite different point. So
6 I was happy to let it go, but if the witness is being
7 asked to make a comparison, then that does become
8 important.

9 MR O'DONOGHUE: Well, nothing turns on it. I'm very happy
10 to make that clear. Nothing turns on it. Whether it's
11 absolute or Ping, I'm putting the point in both
12 respects.

13 So let's assume there is an on-course retailer who
14 has either a total turnover of £10,000 or only does
15 £10,000 with Ping. Do you accept that the levels of
16 investments you have made in your online platform for
17 them would be extremely difficult, if not impossible?

18 A. I mean, I would say if someone has a total turnover of
19 £10,000, then as a business it's very difficult for them
20 to sustain in the first place. In terms of what
21 investments we do, I mean, that's up to the individual
22 companies. When we started as a business, yes, our
23 volumes were also much smaller and as we grew, we
24 invested, and that's how we have grown our business. So
25 it's not that some --our turnover that we had acquired

1 from somewhere. It was from the beginning how we
2 started our business.

3 Q. That is fair, but there is an important difference. If
4 a number of these account-holders are effectively a shop
5 on a golf course, that is not an e-commerce platform.
6 That is essentially an adjunct to a club. With respect,
7 they are not tooled up to be the next Amazon of this
8 world. They have a different function. Do you see that
9 difference?

10 A. I mean, it's up to the individual's shop what their
11 aspirations are and how they want to grow -- I mean what
12 areas they want to grow.

13 Q. Of course, but if the club is owned by its membership
14 and the membership is not constituted to become the next
15 Amazon, then they have a different model. They have
16 an inherent limitation. You see that?

17 A. That would be their choice, yes.

18 MR O'DONOGHUE: Sir, I have no further questions.

19 Re-examination by MS DEMETRIOU

20 MS DEMETRIOU: Mr Patani, I only have one question for you.

21 Early on in the cross-examination of Mr O'Donoghue, the
22 questions he asked you, he showed you your website --

23 A. Yes.

24 Q. -- and he pointed out that on the sales page you didn't,
25 for example, have a tick-box which required a consumer

1 to confirm that they had already had a custom fitting
2 and he made a number of other points about the fact that
3 you didn't prominently explain the benefits of custom
4 fitting on your website.

5 The question I want to ask you is that, if
6 Ping were, in the future, to authorise you as
7 a Ping-authorised account-holder and if Ping were to
8 authorise you to sell its clubs online and required you
9 to make those types of changes, to introduce a tick-box
10 and a further prominence on your website for the
11 benefits of custom fitting, are those things you would
12 consider doing?

13 A. We can consider, yes.

14 THE CHAIRMAN: Thank you very much, Mr Patani.

15 MS DEMETRIOU: The CMA now calls Mr John Lines.

16 MR JOHN LINES (affirmed)

17 Examination-in-chief by MS DEMETRIOU

18 MS DEMETRIOU: Mr Lines, do sit down. You will be given
19 a copy of your statement now. (Handed)

20 So you should have the statement and the exhibit
21 separately. So the statement itself, so "First witness
22 statement of John Lines", if you go through to the final
23 page, page 10 on the back -- that's it -- is that your
24 signature there?

25 A. It is.

1 Q. Is there anything in the statement that you would like
2 to clarify or change?

3 A. I have two changes, please. I have two staff which are
4 both PGA professionals which have since left since
5 I created the statement first.

6 Q. I'm just trying to find the reference. So is that
7 paragraph 18 where you talk about two in-house staff?

8 A. It's the head of IT in paragraph 18 --

9 Q. Yes.

10 A. -- and --

11 Q. Is it 32?

12 A. -- paragraph 32, yes.

13 Q. So the change is that you have now two fewer staff or
14 one --

15 A. No, the same level of staff; just two PGA professionals
16 replaced with non-PGA professionals.

17 Q. I see. Subject to that, you are satisfied that the
18 contents of your statement are true to the best of your
19 knowledge and belief?

20 A. Yes, I am.

21 MS DEMETRIOU: Thank you. Wait there, Mr Lines.

22 Mr O'Donoghue will ask some questions.

23 Cross-examination by MR O'DONOGHUE

24 MR O'DONOGHUE: Mr Lines, just on that point, why did you
25 get rid of two PGA professionals?

- 1 A. I didn't.
- 2 Q. What happened then?
- 3 A. They left on their own accord.
- 4 Q. But you haven't yet replaced them?
- 5 A. Sorry?
- 6 Q. You haven't yet replaced them, as I understand it.
- 7 A. Yes.
- 8 Q. You have? Thank you. But you have replaced them with
9 non-PGA staff, as I understand it.
- 10 A. Correct.
- 11 Q. That's my question. Why did you have a need for two PGA
12 staff and you no longer have that need?
- 13 A. The first one, there wasn't a need for PGA staff. He
14 came to me after he left Direct Golf and he asked me for
15 a job and said he could create a position for himself.
16 He's been with me for two years. We paid him a lower
17 sum so it was inevitable that he would leave. The
18 second gentleman that was with me, he's been with me for
19 15 years, since we started, and that was quite a shock
20 that he left.
- 21 Q. Now, if we go to your statement starting at
22 paragraph 11. It is bundle D, tab 9. So the figures
23 are confidential, but it is fair to say that your online
24 business first of all is extremely large and, second, is
25 virtually all of your business; correct?

- 1 A. I would say that the bricks and mortar business is also
2 extremely large within its field.
- 3 Q. But is loss-making, as you say.
- 4 A. Yes.
- 5 Q. So, in other words, if you didn't sell online, it would
6 be a loss-making business?
- 7 A. Correct.
- 8 Q. The online part of your business is essential?
- 9 A. It is indeed, yes.
- 10 Q. Now, given the confidential figure there, the online
11 business must be among the largest online golf retailers
12 in the country; is that correct?
- 13 A. I think so.
- 14 Q. Now, turn to paragraph 31. Again, there are some
15 further confidential figures. A couple of questions.
16 First of all, on any view, these figures are extremely
17 substantial. Do you agree with that?
- 18 A. It's relative to the business sizes, so ...
- 19 Q. Sure, but these are big sums of money?
- 20 A. They are for myself, yes.
- 21 Q. Is the reference to each month the sum there? Is that
22 correct?
- 23 A. It is.
- 24 Q. So that is a very big sum per month to cover.
- 25 A. Yes.

1 Q. Now, because these costs are substantial, you are
2 presumably, as a businessman, keen to reduce those costs
3 as much as possible and maintain your margin.

4 A. That would be a sensible business decision, yes.

5 Q. We see, for example, at paragraph 36, that one of the
6 things you do to discourage time-wasters is you charge
7 something for custom fitting, albeit not the full cost.

8 A. Yes, we do, yes.

9 Q. Now, do you accept, given that the fitting is
10 a subsidised cost and given the cost base of your online
11 business, that if more of your customers undertook
12 custom fitting in-store, the business would become
13 relatively less profitable?

14 A. Can you explain that again, please?

15 Q. Well, you say at 36 that the custom fitting as a service
16 is essentially a subsidised one. You're not charging
17 the full cost.

18 A. The full -- sorry, the full cost of what?

19 Q. Well, the cost of having the fitter, the other costs of
20 the store. You're not charging the full cost of the fitting as
21 a fee for fitting. So the cost to you of offering the
22 fitting is not reflected in the £15 charge or the £35
23 charge you impose. So you say:

24 "[This] charge does not cover the costs of the
25 fitting."

1 A. It depends upon time. If it goes over the
2 professional's hourly rate, then of course it wouldn't
3 cover his costs, yes.

4 Q. You say that the charge does not cover the costs of the
5 fitting.

6 A. Typically.

7 Q. So, in other words, each custom fitting is costing you
8 money?

9 A. Not if we make the sale, no.

10 Q. Let me put it another way: if you sell a club without
11 a custom fitting on the website, that is typically more
12 profitable to your company because you don't incur the
13 cost of the custom fitting.

14 A. We would incur cost in other areas: the building of the
15 pages, for example, yes, so ...

16 Q. But they would be less on average?

17 A. No.

18 Q. Now, if we go to paragraph 16 of your statement, please,
19 you say there, about halfway down:

20 "there is not much difference between the way in
21 which the major brands promote custom fitting."

22 And you say:

23 "they all have dedicated national fitting centres",
24 for example.

25 Now, do you include Ping in that statement?

- 1 A. I do know that Ping's got a fitting centre at
2 Gainsborough, but I didn't include it in this statement,
3 no.
- 4 Q. But are you saying that there was no difference between
5 Ping and the other major brands in terms of how they
6 promote custom fitting?
- 7 A. I couldn't reflect on that because I don't know Ping's.
8 I'm making reference to the companies that I deal with.
- 9 Q. So you're offering no opinion on whether and to what
10 extent Ping promotes custom fitting?
- 11 A. Correct.
- 12 Q. Now, you are aware that the reason we have these
13 proceedings at all is that Ping, uniquely among the
14 manufacturers, has an internet policy that does not
15 permit the checking out of golf clubs online. You're
16 aware of that obviously.
- 17 A. Very much so, yes.
- 18 Q. That is a critical difference, I would suggest, between
19 how Ping promotes its products and how all other
20 manufacturers promote their product. You accept that?
- 21 A. That is an obvious difference, yes.
- 22 Q. Now, if we can have a look at your website. If this is
23 going too quickly, please stop me. Take your time.
24 I'm not here to trick you. If you want time to read
25 something, stop me.

1 A. Thank you.

2 Q. So this is your "Home" page. Now, again, a similar
3 exercise to what I put to Mr Patani while you were here.
4 So let's assume I'm an inexperienced golfer who is keen
5 to buy, say, a set of irons, so let's click on "Irons"
6 and we see this page. Then where you see the bold,
7 "Golf clubs steel irons" at the top, it says:

8 "Choosing the right irons can dramatically improve
9 your game and help you become a more rounded player.
10 Inferior or poor-quality irons can seriously affect your
11 performance and upset your game."

12 Now, at this stage I wouldn't necessarily think that
13 that message had anything to do with custom fitting,
14 would I?

15 A. No.

16 Q. It reads a bit like a sales pitch. Now, if we
17 scroll down, do you see where it says "Here at
18 Golf Support ...", it says:

19 " ... we guarantee to offer the best selection of
20 steel irons for novices, advanced and professional
21 golfers alike.

22 "We can offer you irons from high end brands such as
23 Callaway/Cobra/Wilson/Srixon/Mizuno and TaylorMade."

24 So again nothing here which gives me any message to
25 do with custom fitting.

1 A. Yes, correct. Yes.

2 Q. Then if you read the next paragraph:

3 "We also offer a complete custom fitting."

4 If you can read that to yourself. (Pause)

5 So it is fair to say that there is some reference to
6 custom fit in this paragraph, but it doesn't say, for
7 example, that buying without a custom fit is likely to
8 result in selecting the wrong club, does it?

9 A. It doesn't, but I'd also point out that having the
10 correct -- a custom fit doesn't guarantee that you
11 will end up with the right golf club.

12 Q. Well, that is fair.

13 A. Very.

14 Q. It's fair. Sticking with this, it also doesn't say that
15 having a custom fit will at least generally, if not
16 virtually always, lead to significant improvements in
17 a golfer's game, does it?

18 A. I wouldn't generalise on that.

19 Q. We will come to that. We disagree on that. It doesn't
20 say that guessing your specifications is no substitute
21 for a proper custom fitting, does it?

22 A. Could you repeat that, please?

23 Q. It doesn't say that attempting to guess your custom fit
24 specifications is no substitute for a proper
25 face-to-face custom fitting?

1 A. It doesn't, but I wouldn't expect any golfers to guess
2 at the volume and the price.

3 Q. We will come to that. That is fair. Now, by contrast,
4 if we go to paragraph 20 of your statement, in the
5 second line you do say there that custom fitting is
6 an important part of finding the right club for each
7 individual. Don't you think at this stage on your
8 website it would have been useful to have a message
9 along those clear lines?

10 A. What you will find on the website is we have dedicated
11 pages, so the "golf steel irons" is a search term that
12 we try and achieve within Google. So we have dedicated
13 pages that talk about -- if you scroll up, you can see
14 on the left-hand side -- that talk about custom fit
15 products.

16 Q. We will come to those. But sticking with this for now,
17 which is when I click on "Steel irons", this is the
18 first thing I'm shown about custom fitting and it
19 doesn't, for example, contain the clear message that you
20 set out in paragraph 20 of your statement. Do you agree
21 with that?

22 A. Yes.

23 Q. Now, let's say I've digested this message and then
24 I click on the first club I see, which is a Wilson club
25 on the left, and at this stage I may be content to say

1 that I'm right-handed and there is -- one shaft option
2 is offered and only one set option is available, despite
3 the fact that there is a drop-down box. Do you see
4 that? I could, therefore, leave everything else as
5 standard and I can click on "Add to basket" on the right
6 and check it out, can't I?

7 A. Yes, you can.

8 Q. But at no stage am I asked whether or not I have had
9 a custom fitting; correct?

10 A. Correct.

11 Q. Is that because you assume that everyone visiting your
12 website has already had a custom fitting?

13 A. I don't believe it's my responsibility or an assumption
14 to make that people have had a custom fitting. I could
15 flick it back to the "Buy" option, which is a standard
16 set of irons, all of which is made up of a shaft length,
17 a grip, a lie angle, so they're all custom options in
18 themselves.

19 I could go down the line of a golf ball, so a golf
20 ball has different performances. So where does it stop?
21 Do I stop people playing with a golf ball and say that
22 they can't play with a golf ball until they have had
23 a custom fit? So I can't make those assumptions. All
24 I can do is offer what's available from the
25 manufacturer.

1 Q. But there are two points: first of all you don't even
2 ask and, second, you have no way of knowing; correct?

3 A. Correct.

4 Q. Now, if we go back to paragraph 20 -- I think it's the
5 point you touched on -- you say:

6 "On the Golfsupport website, there is a dedicated
7 page which sets out the benefits of custom fitting."

8 So let's go back to the homepage. So this is what
9 I am presented with to start with and I need to scroll
10 quite a way down to the bottom to try and locate the
11 reference to custom fitting; right? You will see it's
12 at the bottom left, right next to your privacy policy
13 and your cookie policy, so it's not easy to find, is it?

14 A. Sorry. I think when people are looking for custom
15 fitting, they will search within Google. So the
16 navigation on a website is not the most looked-at area,
17 so people typically find things within the Google
18 platform, rather than the website. But that could be
19 improved, yes.

20 Q. Let's assume I've directly navigated, it's not easy to
21 find custom fitting on this page?

22 A. Okay.

23 Q. Now, let's suppose I have found it next to the privacy
24 policy and I click on that. Now, I think this is the
25 page you were referring to. Again -- well, why don't

1 you quickly have a look at it first? I'm sure you're
2 familiar with it. (Pause)

3 Again -- this is the dedicated custom fit page -- it
4 doesn't say that buying without a custom fit is likely
5 to result in you selecting the wrong clubs, does it?

6 A. I can't make that assumption.

7 Q. It doesn't say it.

8 A. It doesn't, no.

9 Q. It doesn't even say that custom fitting is an important
10 part of choosing the right club for every individual,
11 does it?

12 A. It also doesn't say that "You must go to an authorised
13 expert", rather than making a reference to a PGA
14 professional that's -- the assumption is that they can
15 fit golf clubs, which is what you have made.

16 Q. You say in paragraph 20, as we have seen, that custom
17 fitting is an important part of finding the right club
18 for each individual and that clearly correct message is
19 not set out on your dedicated custom fit page; in other
20 words --

21 A. I think the page makes good reference to say -- it tells
22 customers that we recommend custom fitting.

23 Q. It doesn't say that if the customer hasn't had a custom
24 fit, they should come in to their preferred local store
25 to have that done.

1 A. It would be very difficult to recommend that because of
2 what I've just said. I'm an advanced PGA professional,
3 so a higher-graded PGA professional. The assumption is
4 that a PGA professional can fit golf clubs. So I can't
5 send customers to a PGA establishment because I don't
6 know who -- which of those have got the correct
7 equipment, launch monitors and the right facilities to
8 fit golf clubs, so I couldn't make that recommendation.

9 Q. Come on, Mr Lines, you know the point I'm making. It's
10 nothing to do with that. It's a simpler point, that it
11 doesn't point out the benefits of custom fitting, the
12 dangers of not being custom fitted and the need to be
13 custom fitted by an appropriate trained person on your
14 dedicated custom fit website.

15 A. The first thing it says under "The facts", "Custom
16 fitting will benefit everyone".

17 Q. Now, if we go back to paragraph 20 of your statement,
18 the second half, you say:

19 "This is reinforced through our interactive sales
20 services."

21 You go on to say that you don't use this to advise
22 a customer on which custom fit clubs to buy and instead
23 you say that the interactive service is to advise on the
24 benefits of custom fitting.

25 Now, is that a reference to the page we have just

1 seen or is there some other interactive service which
2 I have missed?

3 A. No, if -- the reference to a telephone call or an email
4 would be if a customer calls and asks about custom
5 fitting. We would always ask them to find -- seek
6 a qualified local fitter or to be very careful with who
7 they choose.

8 Q. But the website doesn't actually say that.

9 A. I would have to re-read it.

10 Q. Please do. (Pause)

11 A. Okay.

12 Q. Now, sticking with custom fitting --

13 A. Sorry.

14 Q. Sorry. Forgive me.

15 A. It's perhaps not worded correctly, but it makes
16 references to the requirements of "a highly
17 qualified individual to assess your swing who is
18 a non-commissioned based ..." -- non-commission based
19 is very important, therefore unbiased.

20 Q. That is fair, but there is no phone number and there is
21 no other specific recommendation as to how this is done
22 interactively. Where, for example, do I find this
23 telephone number to call?

24 A. The telephone number is on -- in many, many areas of the
25 website.

1 Q. So it's the general number?

2 A. Yes.

3 Q. Now, if you go back to paragraph 21 of your statement,
4 you say in the second and third lines:

5 "it is obvious that you need to know your
6 specifications to buy a custom fit club online."

7 I take it from that that you think that it would be
8 a bad thing if you were guessing --

9 A. Yes.

10 Q. -- because it is highly likely, except by coincidence,
11 that you would end up choosing the wrong club.

12 A. Within the specifications of golf clubs, there isn't --
13 there isn't one golf club, one shaft, that's going to
14 fit. So we're not looking for a needle in a haystack.
15 We're looking for an optimum. And having had 25 years
16 in the industry and working with lots of fellow golf
17 professionals, lots of friends that play golf, they will
18 not guess. They need to know.

19 Q. We will come to that and I don't accept that. We will
20 come to that.

21 Now, you also accept, as I understand it, that it is
22 impossible to undertake a dynamic face-to-face custom
23 fitting in an online environment.

24 A. Correct.

25 Q. I think it follows from the two statements you have made

1 and from being a professional yourself that selecting
2 a golf club using drop-down menus is not the same thing
3 as undertaking a custom fit.

4 A. No, it's not.

5 Q. It would therefore be quite wrong to say that a custom
6 fitting can be replaced by giving consumers a series of
7 drop-down menus?

8 A. No, it cannot, no. They're two different things.

9 Q. If we now turn to your own custom fitting rates. This
10 is in the exhibit to your statement.

11 MS DEMETRIOU: It's the other document that you have there.

12 MR O'DONOGHUE: This is confidential to you, as I understand
13 it.

14 A. I don't mind.

15 Q. You're happy with -- okay. Well, that's helpful. Thank
16 you.

17 A. No problem.

18 Q. So, as I understand it, in the second table on this page
19 you're setting out the number of clubs you have sold by
20 way of custom fit.

21 A. Yes -- sorry. Yes.

22 Q. And for the benefit of the Tribunal, we can see that for
23 each year there are two tables. One relates to sales of
24 standard golf clubs and one relates to what you call
25 "custom fit golf clubs".

1 A. Yes.

2 Q. Correct?

3 A. Yes.

4 Q. Again, for the Tribunal's help, do you accept that when
5 it comes to your custom fitting levels, the figures that
6 the Tribunal needs to focus on are the figures that
7 appear under the red word "Custom" in brackets?

8 A. Yes.

9 Q. If we look at the table -- so let's take 2015, which is
10 on the second page. Do you have that?

11 A. Yes.

12 Q. Let's, for example, look at Titleist. So we see that
13 ten people were custom fitted in your shop for
14 Titleist's irons, for example. Do you see that?

15 A. I do.

16 Q. So it's the figure in brackets after "22" for
17 the Tribunal's note.

18 We see that 12 people bought online and clicked
19 through on the drop-down boxes.

20 A. No, 22.

21 Q. Yes. Well -- so with Titleist you sold 22 sets of
22 irons, 12 online and 10 custom fit; correct?

23 A. No. That was 22 online and 10 in-store.

24 Q. Okay.

25 A. I may be wrong with that, actually. Sorry.

1 Q. I think it is wrong --

2 A. Yes, I could be wrong with that. It's been some time
3 since I did that. So that's the amount from it.

4 Q. Let's look at paragraph 14 of your statement where it
5 explains it -- the methodology, rather. I think it must
6 be wrong. (Pause)

7 Are you happy with that?

8 A. Yes.

9 Q. Thank you. So if these are the figures, then -- so
10 we need to add to that obviously the 99 Titleist sets of
11 irons bought in total, so 96 online and three in your
12 shop, which gives a total of 121. Are you happy with
13 that?

14 A. Sorry, we're adding -- yes, we're adding the two
15 together, okay.

16 Q. Yes. If we take a custom fit in-store rate of ten, that
17 works out at about 8 per cent, 10 as a percentage of
18 121.

19 A. Okay.

20 Q. So you understand, Mr Lines, that Ping is a company
21 which is heavily focused on face-to-face custom fitting
22 in-store and among its retailers there is a very high
23 percentage of custom fitting of Ping clubs. It's in
24 the -- more than 80 per cent. You would understand from
25 Ping's perspective that there would be a concern about

1 a company who was achieving an in-store custom fit rate
2 of about 8 per cent. You understand that?

3 A. You've compared the 8 per cent to the total business.

4 Q. Yes.

5 A. You haven't compared it to the total number of sales
6 within the store.

7 Q. Well, these are still sales and you have no idea whether
8 the online sales are custom fit or not. You assume they
9 are, but you don't actually know.

10 A. Sorry, I didn't understand that question.

11 Q. Well, you make the point that if one simply looks at the
12 in-store rate and ignores the online sales, then the
13 rate is higher and that must be right. But in relation
14 to your online sales, you don't actually know what
15 proportion of those were custom fit or not. You're
16 assuming it was all or most, but you don't actually
17 know.

18 A. It shows you there with the figures, if I'm
19 understanding the question correctly. So the Titleist
20 irons sold in store was 13 for the year, of which ten
21 were custom fit.

22 Q. Well, that is fair, but what I am trying to understand
23 is, if you add online sales and in-store sales, given
24 that you cannot be certain that any of your online sales
25 followed a custom fitting -- you assume they do -- the

1 custom fit percentage may well be extremely low.

2 A. I wouldn't make an assumption that the customer's had
3 a custom fitting. We've just -- we've made it available
4 for the options. It takes them back to the guessing.
5 I don't believe that a customer would guess.

6 Q. Now, continuing with the numbers, if we look, say, for
7 example, at 2016, again at Titleist, we see that
8 14 people got custom fitted in-store and 238 purchased
9 online. Take 14 from 252. Then if you go back to the
10 first page, another 47 standard sets were purchased
11 without what you would call a custom fit and that's 43
12 online and four in-store. So that works out at
13 14 people out of 299 sets sold that were actually custom
14 fit, at least in your store. Do you accept that?

15 A. Yes.

16 Q. So about 5 per cent. I mean, it's only two years, but
17 that actually suggests, given that the 2015 figure was
18 8 per cent, that your custom fit rate seems to be
19 falling.

20 A. Would it not suggest that custom fit is more desirable
21 online?

22 Q. Well, that assumes crucially -- we will come to this --
23 that those who purchase online have in fact been custom
24 fit. We will come to that.

25 So turning to the point of specification, if we go

1 back to 21 of your statement, please. So we saw this.
2 You say, "it is obvious that you need to know your
3 specifications", and you say, "there are so many options
4 that I do not believe customers would guess ...", and
5 so on.

6 Now, let's take the case of someone who logs onto
7 your website and decides to try the "Custom fit" button
8 for themselves online using the drop-down boxes, you
9 actually have no way of knowing whether they are
10 guessing, do you?

11 A. We don't. However, I'm pretty sure we would find out
12 through the Trustpilot reviews or a phone call
13 afterwards.

14 Q. To be clear, they aren't even asked to indicate whether
15 they have been custom fit or not.

16 A. No, that's right.

17 Q. Now, I am going to put the same point to you as I put to
18 Mr Patani, which is the complainant's comment on
19 internet research. If you can be handed F2/105, please,
20 paragraph 31. (Pause)

21 So there the point is made that:

22 "Customers are free to purchase clubs at [a certain
23 place] without going through a fitting process. This
24 happens quite regularly. In fact, many golfers know
25 exactly what they are looking for. [redacted]

1 ."

2 Now, you do accept, I take it, that research on the
3 internet is in no way a substitute for a full dynamic
4 face-to-face custom fitting?

5 A. They're two different things. Research is research and
6 a custom fitting is actually implementing it.

7 Q. So you agree with me?

8 A. No, I think it's just a different thing -- two different
9 things.

10 Q. Well, let me put it another way: if people are trying to
11 work out their specifications without having been
12 dynamically custom fit through independent research on
13 the internet, you agree that that is not a substitute
14 for a dynamic face-to-face custom fitting?

15 A. I do.

16 Q. Now, let's take the case of someone who is of normal
17 height, but who has a disability of some sort, so
18 suppose they have an arthritic hand, for example, and
19 I am custom fitted and it is found that I would benefit
20 from a slightly thicker grip to reduce the impact on my
21 hand, now, simply by looking at the order you couldn't
22 tell that that was the explanation for my choice of
23 grip, could you?

24 A. Sorry, I'm trying to understand ... could you ask me in
25 a different way, please?

1 Q. Well, there may be features of a particular order, for
2 example, I order an extra-thick grip, and simply by
3 looking at that order on your website, you simply don't
4 know whether or not I have been custom fit; so in other
5 words, the feature I have selected, which may seem to
6 you unusual, may be entirely deliberate. There is no
7 way of knowing this simply by looking at the order?

8 A. Yes, that's right. Yes.

9 Q. To give a more general example, if somebody chooses
10 "Standard" for all of the drop-down boxes, you also
11 could not tell whether the customer was guessing or not;
12 correct?

13 A. That's correct.

14 Q. Now, in relation to your sales, Mr Lines, if we can pick
15 this up at paragraph 30, you raise the dreaded topic of
16 Brexit, which has ruined many a good dinner party, and
17 you estimate that over half of your online sales are
18 from the rest of the EU. Now, if you have a large body
19 of business from outside the United Kingdom, you
20 literally have no idea whether or not they have been
21 custom fit; correct?

22 A. It's the same as the UK, yes -- the same question you've
23 asked me, it's the same.

24 Q. At least in the UK you would be able to understand
25 whether there are even fitting facilities in the

1 vicinity of the customer. In relation to European
2 orders it would be very difficult, if not impossible,
3 for you to even understand whether there is any fitting
4 in the vicinity of that customer; correct?

5 A. That's for the consumer to make his own decision.

6 Q. There is no verification. That's the point.

7 A. Is it not for the consumer to make his own decision as
8 to whether he wants to have a fitting or whether he can
9 find a fitter that is qualified enough to do it?

10 Q. You say that, but, for example, on the American Golf
11 website, when it comes to Ping, the consumer is advised
12 in clear terms that these should be custom fit and there
13 is an icon to book a free custom fitting. So there is
14 a difference, I would suggest.

15 A. American Golf -- would that be the case if Ping weren't
16 to have this policy?

17 Q. Possibly not. That's a different point. Now, you are
18 aware, for example, that American Golf, which conducts
19 1,200 custom fittings per week, doesn't hand out its
20 specifications. Two points: first of all, if any of
21 American Golf's customers are then purchasing on your
22 website, it must follow that they do not have their
23 specifications by definition?

24 A. Can you repeat that in a different way, please?

25 Q. So American Golf has a policy of not handing out custom

1 fit specifications following a dynamic face-to-face
2 custom fitting. Now, if that is the case and the
3 consumer goes on your website and was an American Golf
4 customer who had been through custom fitting, if they're
5 inputting specifications, they must by definition be
6 guessing because they don't physically have the
7 specification sheet.

8 A. It depends on whether they can remember the
9 specifications from the fitting.

10 Q. These are pretty complicated. These are not easy things
11 to remember.

12 A. No, they're not.

13 Q. Your evidence is that from memory one can remember each
14 and every one of the specifications for a full club set?

15 A. It's very possible, yes.

16 Q. So how many numbers are we talking about?

17 A. You would be talking about the length of the golf club,
18 the lie angle, the grip thickness and the shaft.

19 Q. For how many clubs?

20 A. They're all the same. So if it was a set of irons, it
21 doesn't change per iron -- it's for a set of irons, so
22 you would have to remember probably four or five things.

23 Q. What about wedges and drivers?

24 A. Wedges would be the same and drivers would be even
25 easier.

1 Q. And putters?

2 A. Putters would be easier.

3 Q. It's a lot of numbers, Mr Lines.

4 A. It's not.

5 Q. So your evidence is that people can guess quite
6 successfully?

7 A. No, I'm not suggesting that they would guess. I'm not
8 suggesting that at all. I'm suggesting that they could
9 remember if they don't get the piece of paper.

10 Q. I suggest to you, Mr Lines, that that is inherently
11 unlikely.

12 A. Okay.

13 Q. We also see on the same point, paragraph 35 of your
14 evidence, that in your single store in Mansfield you
15 also do not hand out specifications unless the customer
16 specifically requests them; correct?

17 A. Yes.

18 Q. So, again, it must follow that if someone has a custom
19 fitting in your store and goes online to attempt to buy
20 a set of clubs, they will not have a set of
21 specifications to do so?

22 A. Unless they can remember them. We have an expert
23 fitter, a dedicated fitter, so I would fully expect my
24 fitter to clinch the sale there and then and most often
25 than not he does.

1 Q. That is fair, but I am talking about a situation where
2 for some reason he doesn't, then the consumer doesn't
3 have the specifications and tries to go online, subject
4 to your point about the memory test, they would not have
5 a set of specifications with which to do that; correct?

6 A. Correct, but I would suggest that most people can
7 remember four things.

8 Q. I will come back to that.

9 Sir, I see the time. I am about to move on to
10 something else.

11 THE CHAIRMAN: Mr Lines, you shouldn't discuss your evidence
12 with anybody over the lunch-break.

13 (1.00 pm)

14 (The luncheon adjournment)

15 (2.00 pm)

16 MR O'DONOGHUE: Mr Lines, I want to go back to something you
17 mentioned before lunch which is -- your evidence is that
18 because you only need to remember four things, everybody
19 knows their specifications.

20 Now, the first point is, if you go to your statement
21 at 35, you say that your company refuses to hand out its
22 specifications. Now, if everybody can remember their
23 specifications, why do you refuse to hand them out?

24 A. We don't refuse to hand them out.

25 Q. You say, that unless the customer asks, you will refuse to

1 hand them out.

2 A. We would have made the sale by then, so we make the sale
3 there and then. So unless -- if we make the sale,
4 there's no need to give them out.

5 Q. What we're interested is when you haven't made a sale,
6 you then say you would not give the specifications.

7 A. No.

8 Q. Correct?

9 A. No.

10 Q. Let's look at what it says:

11 "We [will] always provide a copy of the specifications
12 if a customer asks for one."

13 Now if the customer doesn't ask for one, in that
14 case why would you refuse if the customer can remember
15 them anyway? It doesn't make any sense.

16 A. I haven't said that I would refuse. If they asked for
17 it, we would give them to them. There is no such thing
18 as a refusal there.

19 Q. Now, let's look at another point. So you mention four
20 things. I have discussed this with the Ping technical
21 people over lunch.

22 Now, in terms of irons, on our list we have "Model
23 number", "Grip", "Grip size", "Grip model", "Shaft",
24 "Shaft model", "Shaft flex", "Shaft length", "Stepping",
25 "Cushin", "Set make-up", "Swing weight", "Lie angle" and

1 "Loft". Now that's at least 14 different variables.
2 For wedges, it is all of the same, perhaps different lie
3 angles. For drivers, it is "Model", "Loft", "Shaft",
4 "Shaft flex", "Shaft length", "Shaft model" and "Grip",
5 and, of course, with fairway woods and hybrids, which
6 can be different to drivers.

7 I would suggest on that basis alone it is clear
8 we're talking about potentially dozens and dozens of
9 potential combinations. Are you seriously suggesting
10 that someone would remember from a conversation at
11 a fitting that level of detail? It's completely
12 incredible, isn't it?

13 A. Swing weighting we do not do so -- I mean, if you want
14 to go back to the irons, we can talk about the irons
15 again.

16 Q. Well, Ping does swing weight, for example. We are
17 interested in Ping --

18 A. Okay, but I was talking about our situation.

19 Q. Do you disagree in relation to irons that there are at
20 least up to 14 different combinations?

21 A. Can you bear with me? I'll just go through it.

22 Q. I can give them to you again: "Model", "Grip", "Size of
23 grip", "Model of grip", "Shaft model", "Shaft flex",
24 "Shaft length", "Shaft stepping", "Shaft cushin", "Set
25 make-up", "Swing weight", "Lie angle", which includes

1 the colour code for Ping, and "Loft". I make that at
2 least 14.

3 A. Yeah, I think some of those can be broken down and
4 combined, to be fair.

5 Q. And the same for wedges?

6 A. Yes.

7 Q. And would you like to revise your evidence that all you
8 need to remember, therefore, is four things? That is
9 clearly not the case, certainly for Ping.

10 A. I can combine "Shaft" with "Shaft length" with "Type",
11 so I can combine some of those quite easily.

12 Q. That's not four, Mr Lines, is it?

13 A. It was -- it could be four. We could have four.

14 Q. It could be 14 just for irons.

15 A. Yes, it could, yes.

16 Q. Now, a final point. If you turn to Mr Clark's evidence
17 at B1/1, paragraph 64.

18 I won't read out the numbers, but I'm happy to show
19 the witness.

20 Mr Lines, do you see there that based on Ping's data
21 there are many tens of thousands of unique combinations
22 of clubs actually ordered and fitted by Ping?

23 Now, again, if there are tens of thousands of
24 potential, unique, one-off combinations, how on earth is
25 someone supposed to remember unique numbers like this?

1 It's not possible, is it?

2 A. I believe there are 9 billion options with the SM6
3 wedge, so, you know, we could be quite extreme in
4 remembering things.

5 Q. We're talking about unique numbers. That's the point.

6 A. Yes.

7 Q. It is not very likely that someone is going to remember
8 a number that exists only once; no?

9 A. In my experience, yes, it is.

10 Q. Now, it is interesting, Mr Lines, you're quick to pick
11 up on this point, but of course it's not a point you
12 make in your evidence, that you need to remember four
13 things.

14 A. Sorry?

15 Q. I'm suggesting to you that your point about remembering
16 only four things is opportunistic and incorrect.

17 A. It was a suggestion to yourself when we were discussing
18 it. So going back to what I looked at with our custom
19 fit specifications and when I look at situations that
20 have happened with friends in the past -- as an example,
21 we would have -- I've had friends that have been for
22 custom fits in our shop and we have not found any
23 benefit, so no benefit to a new golf club, for example.
24 So we would refuse to sell them a golf club.

25 What they will do -- and I get it quite often -- is

1 that they will say, "Well, I've gone away and I've
2 bought it online", because they wanted just the latest
3 and greatest. It's not that there's a benefit to the
4 golf club, but some customers just want the latest and
5 greatest golf club.

6 Q. You're not suggesting, are you, that there is no benefit
7 to custom fitting?

8 A. There can be benefits, but there are not always
9 benefits.

10 Q. You say in your statement that it is important that
11 customers are custom fitted.

12 A. Yes.

13 Q. Is it important or is it not?

14 A. I believe so, yes.

15 Q. Now, let's look at a different point. If you go to
16 paragraph 35 of your statement, please, you make the
17 point there that:

18 "approximately 20 per cent of players who have been
19 fitted leave without purchasing clubs on the day."

20 Do you see that?

21 A. Yes.

22 Q. You say that the:

23 "majority of them do come back to us and make
24 a purchase at a later time."

25 So I take it from that that what you mean is that

1 80 per cent buy on the spot and something like half come
2 back quite quickly, so around 90 per cent, you say, is
3 the conversion rate; correct?

4 A. I've said 80 per cent would buy.

5 Q. You say two things. You say 80 per cent would and
6 a majority of them come back to make a purchase at
7 a later time, so that suggests it's higher than 80.

8 A. Yes.

9 Q. So 90 per cent of people who have undertaken custom
10 fitting in your shops end up buying from you. That's
11 what you say?

12 A. Yes.

13 Q. More or less. If we can look at the complainant's
14 witness statement, which is in D5, at paragraph 14,
15 there's a figure -- not confidential -- so there a very
16 similar figure of 90 per cent is given.

17 Now if we go back to the figures we saw before lunch
18 in relation to your custom fit rates and sales -- it's
19 in the exhibit, the two tables. Do you remember that?
20 Now, as a matter of interest, do you have any reason to
21 suppose that the conversion rates in the market
22 generally are that different?

23 A. I couldn't really comment on that. I would hope that
24 people who have invested in fitting systems would also
25 invest in the knowledge, but I couldn't comment. I've

1 got possibly something that may well be relevant, so
2 there was a comment -- may I mention a different witness
3 statement or not -- just a comment on another witness
4 statement that suggested that they saw at least two
5 people back in their store that had the wrong golf clubs
6 purchased online. So I thought long and hard about that
7 with our store. Our store's been there for nine years
8 and we have never experienced that. But what we have
9 experienced is golfers coming back in who have had
10 fittings at local golf courses and golf clubs that have
11 been fit incorrectly.

12 Q. I will come back to that. That's a fair point.

13 Sticking with the data, so if we go to the exhibit
14 tables we saw before lunch, if we look, say, at 2016 --
15 let's stick with Titleist irons. Do you have that?

16 A. Yes.

17 Q. So we had 14 people fitted in-store, 238 people bought
18 online, and we get that by subtracting 14 from 252. If
19 we go back over the page, another 47 sets -- do you see
20 at the top in the second column? -- were bought without
21 even what you would call a "custom fitting", so that's
22 43 online and four in-store. So we have 14 people
23 custom fit in-store out of a total of 299, which is
24 about 5 per cent.

25 Now, if your conversion rate of fittings to sales

1 and the complainant's conversion rate of fittings to
2 sales is about 90 per cent, where are these hundreds of
3 people coming from? Can you explain that to
4 the Tribunal?

5 A. Well, I think, if I'm understanding correctly, I think
6 you're confusing the total versus the sales within the
7 store.

8 Q. No. I'm making a different point, which is that you
9 say, of the sales within the store, you have
10 a 90 per cent conversion rate. If one compares the
11 sales within the store to your total sales, including
12 online, the ratio is about 5 per cent to 95 per cent.
13 Now, if your conversion rate in-store is, as you say,
14 90 per cent, where are these hundreds of other people
15 coming from?

16 A. Right. Okay. Yes, I don't know.

17 Q. Isn't it obvious? They haven't been custom fit.

18 A. That would be an assumption.

19 Q. Well, if the conversion rate is 90 per cent, as you say,
20 there is a tiny 10 per cent cohort that could purchase
21 online who have had a dynamic custom fitting and, based
22 on your numbers alone, you have hundreds of people
23 buying online. I would suggest it is clear from your
24 own numbers that those people cannot have been custom
25 fit.

1 MS DEMETRIOU: Sir, I'm sorry to rise, but out of fairness
2 to the witness, I think Mr O'Donoghue is including the
3 standard-fit numbers, which is not the relevant figure
4 to include.

5 MR O'DONOGHUE: I don't agree with that because a standard
6 set of clubs may equally be the result of a custom
7 fitting. That is in principle possible.

8 Now, subject to that clarification, which is fair,
9 where are these hundreds of people coming from if your
10 conversion rate is so high?

11 A. I'm sorry, I'm not understanding the question at all.
12 You will have to re-explain it.

13 Q. Well, based on your numbers in this annex, you have
14 a very small number of people being custom fit in your
15 store; correct? So in the Titleist example we saw
16 a total of 14 people --

17 A. Are we comparing this to my entire business or to the
18 store business?

19 Q. No, of the people who are custom fit in your store, you
20 have total sales of 14, and your evidence is that
21 90 per cent of those -- that is your conversion rate
22 in-store. Now, if we then look at your non-store sales,
23 which are close to 300, and if your conversion rate
24 in-store is 10 per cent, where are these hundreds of
25 other people coming from?

1 A. I'm still not understanding the question. We have -- we
2 have the in-store figures and then we have the sales
3 online so I'm not really understanding the question.
4 I'm sorry.

5 Q. The sales online are about 95 per cent to 5 per cent.

6 A. Yes.

7 Q. If your conversion rate on the 5 per cent is, as you
8 say, close to 90 per cent --

9 A. Yes.

10 Q. -- that leaves a tiny number of people who have been
11 custom fit and who could, then, purchase online. Yet,
12 when we look at your online sales, it is of the order of
13 hundreds, so where are these people coming from? The
14 point I am putting to you is that they cannot possibly
15 have been custom fit.

16 MS DEMETRIOU: Sir, again, I think this is unfair. It may
17 be that they haven't been custom fit by this witness,
18 but it's an unfair -- the question is being put in
19 an unfair way. Even I find it difficult to follow.

20 MR O'DONOGHUE: I don't think it is. I have given you the
21 conversion rate for you, the conversion rate for the
22 complainant, and I have suggested to you that there is
23 no reason to suppose conversion rates for anyone else
24 are different. Now, assume that's true -- Ms Demetriou
25 can make her points -- where are the hundreds of people

1 buying online from you coming from?

2 A. I still don't understand the question or what relevance
3 it's got. They could have been customers from anywhere.

4 Q. If the conversion rate is as high as 90 per cent --

5 A. In-store.

6 Q. -- in-store, they cannot come from store sales which
7 have not been converted. Therefore there must be people
8 who by and large have not been custom fit.

9 A. I'm sorry, I don't follow that at all.

10 THE CHAIRMAN: That's pre-supposing the 90 per cent is
11 typical --

12 MR O'DONOGHUE: Sir, yes. I will deal with that in
13 submissions. But all the evidence we have seen in this
14 case is that the conversion rate is extremely high and
15 there isn't really much evidence to the contrary. Sir,
16 that is fair. I take that point.

17 THE CHAIRMAN: I think the point that is being put,
18 Mr Lines, is that, according to your witness statement,
19 there are very few people who leave without having
20 converted from a custom fit.

21 A. Yes.

22 THE CHAIRMAN: So the people that come online are
23 necessarily or by implication not likely to be people
24 who had a custom fit in a store from you.

25 A. Yes, sorry -- yes, I understand. I understand that. So

1 the assumption would be that they have not had a fitting
2 because the person that had done the fitting would have
3 clinched the sale.

4 THE CHAIRMAN: Exactly.

5 A. My retort to that, in all fairness, is going back to the
6 PGA professional standpoint that they stand behind, so
7 perhaps it's that they have been to one of the
8 1,253 accounts that are supposedly qualified to fit golf
9 clubs that actually haven't done a good job.

10 MR O'DONOGHUE: Now, Mr Lines, on a different topic the
11 question returns: what happens on your website when
12 someone using your drop-down menus selects the wrong
13 clubs? You say at paragraph 28 that you have a returns
14 policy. Do you have that, Mr Lines?

15 A. Yes.

16 Q. 28?

17 A. Yes.

18 Q. If we can go to your website, please. It's the seventh
19 bullet point on the page. It starts with "Once ..."
20 Do you see that? It's the second line:

21 "Once any custom fit ..."

22 A. Yes.

23 Q. So it says:

24 "Once any custom fit order is received and the order
25 is placed with our suppliers, the customer has no legal

1 right to cancellation. At our discretion we may
2 consider if goods are able to be resold after
3 a cancellation [fee], however, this would incur
4 a 20 per cent restocking fee."

5 Then your terms and conditions also appear on this
6 page, if you scroll down, and you see under the heading
7 "What are the next steps?" it says:

8 "Please note: We do not accept returns for any
9 custom fit items unless they were faulty when delivered."

10 So if it is the case -- and let's assume that this
11 is possible -- that a consumer is guessing
12 specifications and has chosen the wrong clubs, you will
13 not accept a return in those circumstances. That's your
14 contractual position.

15 A. There's a conflict of information on the site there,
16 yes. So if that does happen, we would accept, where
17 possible. So the manufacturers typically wouldn't take
18 back custom products, but it would be our burden as
19 a retailer. It's one of the things that we could
20 potentially do for the customers. We can first-off try
21 and cancel a product if it's in time, but if it's not in
22 time and it's under build, then we would have to take
23 the product. So the customer would typically take the
24 product, if it ever happens -- not that I can remember
25 it's happened -- we would either take it back and try

1 and sell it on their behalf so they don't lose any money
2 or do what we can to help the customer.

3 Q. Again, it's all discretionary; no contractual right?

4 A. Correct, yes.

5 Q. Again, the same point I put to Mr Patani: you are aware
6 that Ping has a 100 per cent returns policy for custom
7 fit clubs?

8 A. Could you elaborate on that, please, because that's very
9 interesting.

10 Q. Well, if a set of clubs is subject to a dynamic
11 face-to-face custom fitting and there is any difficulty
12 with the clubs as ordered and fitted, Ping will, free of
13 charge, take back and refit any or all of the clubs
14 concerned.

15 A. And if the club is not possible to be refit?

16 Q. Then it will be replaced.

17 A. Okay.

18 Q. Are you aware of that?

19 A. No, no, but I think that's something that's worth
20 bringing up with manufacturers as well because, if that
21 was the case, then I think they've got nothing to worry
22 about with online sales because that's a really good
23 sales point for the guys in-store and for myself, if
24 I had an account.

25 Q. So if consumers going on your website end up guessing

1 their specifications and getting it wrong, it's Ping's
2 problem; is that what you're saying?

3 A. No, that's what you have just told me.

4 Q. I am asking you.

5 A. I wouldn't see it as the manufacturer's problem because
6 it's our problem at the moment. What you have just said
7 is you've passed it to Ping.

8 Q. But your policy is not to give a return.

9 A. Sorry?

10 Q. Your policy is not to give a return in those
11 circumstances.

12 A. Well, no, actually, the bottom line isn't correct. So
13 we would take it back, with a restocking fee if needs
14 be, or we would do our best so the customer hasn't lost
15 any money at all.

16 Q. How long has this policy been on your website?

17 A. I don't know.

18 Q. You have had an incorrect critical policy on your
19 website for an undetermined period of time?

20 A. Yes. However, I would say that we don't get custom fit
21 issues and things that are coming back to us, so ...

22 Q. Again, Mr Lines, I think there is an opportunistic
23 element of your evidence, if I may say so.

24 Now, to come back to a point you made, you make the
25 point that you have had few complaints in relation to

1 refunds for custom fit clubs and you seem to have spent
2 some time reading other evidence on this point. That's
3 what you said; correct?

4 A. I have read --

5 Q. You referred to another witness statement.

6 A. Yes.

7 Q. Do you remember which one?

8 A. I think it was Mr Clarke's -- was it David Clarke?

9 I beg your pardon.

10 Q. Let's look at that. It's B2 and it's tab 7. This time
11 it's paragraph 8. So he's saying if they're unhappy
12 with the product, whereas with golf clubs bought online
13 this is a common occurrence.

14 Then we can pick up the same point in Mr Sims'
15 witness statement in tab 6, paragraph 17. So about four
16 lines down he says:

17 "We often have customers that come into the store
18 who have bought clubs online that are completely wrong
19 for them."

20 Mr Challis, in tab 8, paragraph 16, says:

21 "We see a number of customers (about two a week)
22 coming into the store who have bought the wrong clubs
23 online."

24 Now, the point I am putting to you, Mr Lines, is
25 that it may well be that consumers are not complaining

1 to you about misfit custom fit clubs on your website in
2 part, I would suggest, because there is no returns
3 policy. What is happening instead is that other
4 retailers are being left to deal with complaints from
5 clubs bought online from elsewhere. Do you agree with
6 that?

7 A. No, I don't. I think -- I think the three witnesses you
8 have have got a very vested interest in their bricks and
9 mortar stores. I know the turnovers of the bricks and
10 mortar stores so -- we also have a bricks and mortar
11 store which has a good turnover -- it's not at their
12 level. It's a good turnover -- and we don't experience
13 that situation at all. As I brought up beforehand --
14 and I was incorrect in saying that it was a -- perhaps
15 it's an incorrect custom fitting. It's not fair to say
16 that to fellow professionals. Custom fittings could be
17 incorrect or it could be a different opinion of a custom
18 fit because there is not one golf club in the 9 billion
19 that suits the individual; there could be five or six or
20 many different points. So I think we go down the line
21 of looking at a golfer that can change his swing -- he's
22 having golf lessons, for example -- or if he's got
23 stronger or weaker, then golf clubs change. So it would
24 be unfair to say it's a wrong custom fit; it's
25 a different opinion of a custom fit.

- 1 Q. But you're not suggesting their evidence is untrue, are
2 you?
- 3 A. Sorry?
- 4 Q. You're not suggesting their evidence is untrue? You say
5 "vested interest".
- 6 A. No, I'm saying it's a different opinion. It's not my
7 opinion.
- 8 Q. What do you mean by "vested interest"?
- 9 A. "Vested interest" for ...?
- 10 Q. It was your words.
- 11 A. "Vested interest" for ...?
- 12 Q. What do you mean by that?
- 13 A. They have large bricks and mortar stores so it's ideal
14 for them to come into store for the fittings rather than
15 online because they haven't developed their online
16 situation yet.
- 17 Q. You're not suggesting they have made up this evidence,
18 are you?
- 19 A. Sorry?
- 20 Q. You're not suggesting they have made up this evidence
21 about complaints about misfitting clubs?
- 22 A. Oh, no, no. That's their opinion.
- 23 Q. The point I am putting to you is that it seems in their
24 evidence that they're getting returns from online
25 purchases made elsewhere that they then have to correct.

1 What I am suggesting to you is one of the sources of
2 that may well be misfit clubs from your website.

3 A. Not in my experience. I would experience the same thing
4 in-store as well and I haven't.

5 Q. Now, a few final points: your own website does not have
6 a live chat facility; is that correct?

7 A. It is, yes.

8 Q. Is that because it is too expensive to offer?

9 A. No.

10 Q. Why not, then?

11 A. We haven't chosen to develop a live chat -- for no
12 reason. We have telephones available and email
13 available, so ...

14 MR O'DONOGHUE: Sir, I have no further questions.

15 Re-examination by MS DEMETRIOU

16 MS DEMETRIOU: Mr Lines, I just have a very few questions
17 for you.

18 Can we please bring up the Golf Support website
19 again, the homepage? Now, some of the first questions
20 that were put to you related to how custom fitting is
21 shown on your website.

22 A. Yes.

23 Q. You were taken to the "Golf clubs" tab at the top,
24 I think, and then you were asked a variety of questions
25 about what comes up in relation to custom fitting when

1 you click that tab. I just want to show you another tab
2 which is the "Custom fit". So if we click on "Golf
3 clubs" first -- so I think what you were taken to is --
4 under that tab there is a list which shows --

5 A. It was taking the golf steel irons.

6 Q. Exactly. Now if we go along there, we see "Custom fit
7 golf clubs", so if we check -- say, let's go, to --
8 I don't know -- Mizuno, just to pick one of the
9 manufacturers -- so this is specifically "Custom fit
10 golf clubs", and if we go through to that page and if we
11 scroll down, what we see there are a number of -- it
12 says:

13 "All online Mizuno fitting options are available
14 here at Golf Support."

15 Then if we scroll down further, I think we will find
16 further information about custom fitting. So in your
17 view, Mr Lines, is it relevant in terms of getting
18 a complete picture of how custom fitting is depicted --
19 would it be relevant for the Tribunal to look at the
20 "Custom fit" tab that I am just taking you to now as
21 well as the parts of the website Mr O'Donoghue took you
22 to?

23 A. It's certainly more relevant, yeah. There are certain
24 pages that we built with a view of trying to drive
25 business in-store. So the first page that Mr O'Donoghue

1 used was the "Custom fit" page and that's pretty much
2 dedicated to try and drive the customers into the store,
3 local business.

4 These "Custom fit" pages have been designed with
5 a view of Google search terms -- cogent Google search
6 terms; very important.

7 Q. Another point which was put to you is that you don't
8 have, for example, a box which can be ticked for
9 a customer to confirm that they have had a custom
10 fitting. Now, let's imagine that Ping sold its clubs
11 online and let's imagine that it authorised you to sell
12 its clubs online, but Ping said, "Well, we need you to
13 make some changes to your website to include that kind
14 of tick-box", is that something you would give
15 consideration to if it meant that you could become
16 a Ping retailer?

17 A. We're making changes every day, so improvements are
18 non-stop with the retail business. So we would do what
19 is required to benefit ourselves and the manufacturers.

20 Q. Then can we just go back -- sorry -- to that page? So
21 if we go back to the "Home" page and then if we go to --
22 can we bring up -- I'm sorry -- the "Golf clubs" page
23 that you went to. So I think if we go to "Golf clubs"
24 at the top and "Irons" --

25 A. "Steel irons".

1 Q. It was "Steel irons" -- and then can we pick a brand, so
2 let's pick Titleist -- or let's go to one of these, so
3 can we go to the Callaway Rogue X golf iron, for
4 example, the second one here. Then if we scroll down so
5 we can see -- if we can go to "Buy custom", please. So
6 we see there that there are a number of different
7 variables. There is "Hand" which is "Right-handed" and
8 "Left-handed", there is "Shaft", "Club length", "Lie
9 angle", "Grips" and "Size".

10 Mr O'Donoghue asked you just after lunch -- he was
11 asking you about your evidence, which was to the effect
12 that somebody who had been custom fit but didn't have
13 their specifications on a sheet of paper might be able
14 to remember the specifications. He said to you that --
15 I think he described it as somebody needing to remember
16 dozens and dozens of specifications. Now, can you
17 explain by reference to this precisely what it is that
18 someone would have to remember?

19 A. Yes. Sorry, can you see the page as well?

20 THE CHAIRMAN: Yes.

21 A. So it would depend on a custom fitting as to whether the
22 customer had ended up with a standard set because, when
23 you flick over to "Buy", standard set is still made up
24 of specifications, so that may well be standard length,
25 standard grip, standard shaft, so stock shaft, and the

1 make-up of the set, which may well be five to
2 pitching wedge. So that was the reference I was
3 making. Of course I acknowledge there are certain golf
4 clubs that carry more options. So that was my reference
5 to potentially four or five.

6 MS DEMETRIOU: Now, in relation to -- if we click on
7 "Shaft" -- and we can just see one there, so that's
8 a shaft that is mentioned.

9 A. Yes.

10 Q. Now, just so that the Tribunal understands,
11 Mr O'Donoghue said that there are a number of variables
12 that go into the shaft and they might include things
13 like the curbing and the weight and the shaft stepping;
14 yes? Are they part and parcel of -- do they determine
15 which of these shaft models is selected, so are they
16 catered for by selecting one of these?

17 A. I'm smiling because, even though I've been in the
18 industry 25 years, there are things in there -- I don't
19 know what "curbing" is.

20 Q. Neither do I.

21 A. Never heard of it, so perhaps that -- there was one
22 other there.

23 Q. I think some of them were curbing, weight and stepping.

24 MR O'DONOGHUE: I didn't mention "curbing".

25 MS DEMETRIOU: Cushing?

1 A. Cushin I believe is a -- it's a -- it's something that's
2 inside the shaft that takes the vibration out if you hit
3 the -- so that wouldn't be relevant. That would be part
4 of the shaft, I think.

5 Q. So if one is to pick one of these shafts, would that in
6 itself -- so if you were to remember that you needed
7 a Project X stepless 5.5 steel -- so is it the case that
8 lots of these variables would be within that shaft?

9 A. That's combined -- that was my reference to combining it
10 within one, yes.

11 Q. I see. Now, the final question I have relates to the
12 annex, the exhibit to your witness statement and the
13 figures, so if you can just get this up. It's not
14 a question about the figures, it's just to put the
15 figures into context because you were asked a number of
16 questions about these figures; do you remember? It's
17 this table (Indicated), this table here. Exactly.

18 Now, that says at the top:

19 "Total business [...] of hardware excluding putters."

20 Now, just in relation to that, is it equally
21 important to --

22 MR DORAN: Ms Demetriou, I have forgotten where that tab is.

23 MS DEMETRIOU: I'm so sorry. That's tab 10 of bundle D.

24 MR DORAN: D.

25 MS DEMETRIOU: Exactly. So that's just the exhibit behind

1 this witness's statement.

2 So the heading is "Hardware excluding putters", and
3 I'm just interested to know why you have excluded
4 putters. So is it equally important to custom fit irons
5 and putters or is it more important to custom fit one
6 rather than the other?

7 A. That's -- if you read everything in the magazines,
8 putting is more than half the game, so it's very, very
9 important, and if you speak to a putting manufacturer,
10 then putting is important. But there are few of the
11 manufacturers that retail putters that offer putting
12 custom fit options that we can present. Having said
13 that, we have presented the Titleist Scotty Cameron
14 putters, I think early last year, as a custom option
15 online and that's proved very, very fruitful, so -- I'm
16 not sure if that answers your question.

17 Q. No, that's very clear. Thank you. I do not have any
18 further questions. Thank you very much, Mr Lines.

19 THE CHAIRMAN: Thank you very much, Mr Lines.

20 A. Thank you.

21 MR O'DONOGHUE: Sir, there is another hiatus because of the
22 complainant. I think we're going to try and have
23 a turnaround in 15 minutes.

24 MS DEMETRIOU: I think as long as everybody in court
25 that's not meant to be here can commit to leaving the

1 building within 15 minutes, that should be sufficient.

2 THE CHAIRMAN: All right. Well, there is no particular rush

3 as far as the Tribunal is concerned.

4 MR O'DONOGHUE: Shall we say 3 o'clock to be safe?

5 THE CHAIRMAN: Yes.

6 (2.40 pm)

7 (A short break)

8 (End of open session)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

MR NIHAR PATANI (affirmed)	1
Examination-in-chief by MS DEMETRIOU	1
Cross-examination by MR O'DONOGHUE	2
Re-examination by MS DEMETRIOU	50
MR JOHN LINES (affirmed)	51
Examination-in-chief by MS DEMETRIOU	51
Cross-examination by MR O'DONOGHUE	52
Re-examination by MS DEMETRIOU	97
(End of open session)	104

