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1 Wednesday, 10th March 2004

2 (10.30 am)

3 MR MORRIS: Can I raise three matters of housekeeping.

4 First, on timetable. We have had the opportunity to
5 speak and it looks as though we have a broadly agreed
6 position. My learned friends will, no doubt, add their
7 comments. Can I just tell you what our thinking
8 currently is.

9 The likelihood is that today and tomorrow will be
10 spent concluding the evidence of Mr Ashley and on
11 the evidence of Mr Ronnie. That takes us to Friday, and
12 there are then three further witnesses who are to be
13 cross-examined by the appellants, who are
14 Messrs Prothero, Fellone and May.

15 My understanding from the indications given to me by
16 my learned friends is that that is achievable on Friday
17 and with a bit of latitude, even, I suppose -- not that
18 I am suggesting it -- there may be a bit of spare, a bit
19 of slack there.

20 It has then been thought that the next witness will
21 be Mr Whelan. Allowing for that bit of slack, it was
22 proposed to start with Mr Whelan on Monday, 15th.

23 Because of timing and, in particular, because of
24 Mr Preston who cannot be available until Tuesday, or
25 indeed only on Tuesday, I am not sure of the distinction

1 on that, and Mr Guest, who cannot be available until
2 Wednesday, essentially Monday, Tuesday and Wednesday,
3 one way or the other, will be for the remaining
4 witnesses. I have not actually worked out the mechanics
5 of that.

6 There was, perhaps, an issue about when Mr Hughes
7 would come and at what time, given that he has a morning
8 requirement, but I am assuming subject to comments from
9 those on my right that that is achievable.

10 THE CHAIRMAN: So finish the witnesses by the end of
11 Wednesday, 17th March.

12 MR MORRIS: Yes. We all then think that there should be at
13 least one day's pause for regrouping, particularly
14 since, on the previous timetable, there would have been
15 a weekend plus a day for preparation of submissions. We
16 would suggest that Thursday 18th, at least, would be
17 a pause for regrouping day, if not more.

18 Essentially then we have closing submissions either
19 on Friday 19th, Monday 22nd, Tuesday 23rd and then reply
20 on Wednesday, 24th.

21 THE CHAIRMAN: I have more or less promised Umbro to hear
22 their penalty appeal on the afternoon of Friday, 19th.

23 MR MORRIS: Can I come to that, sir. With that timetable,
24 leaving aside the penalty appeals for the moment,
25 I think we on this side of the room, subject to any

1 instructions -- I do not have formal instructions, but
2 I know that the two appellants are very much of the view
3 that actually the penalty appeals, in the circumstances
4 which have arisen, should go over. My learned friends
5 will address you on that. I mean go over to
6 post-judgment, with matters being concluded by written
7 submission only, subject to any oral addition as
8 necessary.

9 That does leave the position of the Umbro appeal.
10 If it were the case that the tribunal took -- I am now
11 instructed that the OFT is also happy for the penalty
12 appeals to go over.

13 THE CHAIRMAN: Are you including the Manchester United
14 appeal?

15 MR MORRIS: I am, and the appeals of the two appellants on
16 liability.

17 If it were the case that the three penalty appeals,
18 assuming that they exist as three at that time, go over
19 then we would submit that the Umbro penalty appeal
20 should go over as well.

21 We are fully aware of the indication given to Umbro.
22 Unfortunately, I have not managed to speak to
23 Miss Roseveare about this and I do not know if she is
24 coming; somebody will take instructions in a moment.

25 We would say that, first of all, it is sensible for

1 the Umbro penalty appeal to be dealt with with
2 the others; and we would also say, as a matter of
3 putting our case together, to interrupt in the middle of
4 preparations when we are still on liability to deal with
5 the Umbro appeal, obviously it is doable but we would
6 prefer not to.

7 That, at the moment, is the thinking on this side of
8 the table. Subject to anything else you would wish to
9 ask me, I would perhaps invite my learned friends to
10 make their observations.

11 THE CHAIRMAN: From your point of view, you are content for
12 the penalty appeals to go over?

13 MR MORRIS: Given the events which have happened, yes.

14 THE CHAIRMAN: It does not sound a very enthusiastic
15 consent.

16 MR MORRIS: We see now that it is sensible. We are further
17 down the line. We are two or three days behind,
18 we hoped that we could do it in the time available. Now
19 we feel it would be more difficult. In a way, we think
20 the penalty appeals are relatively short in any event;
21 much of it has been done in writing. Subject,
22 obviously, to the views of the two appellants on
23 the right.

24 THE CHAIRMAN: Very well. Let us see where we are.
25 Lord Grabiner?

1 LORD GRABINER: Sir, can I deal with the penalty point
2 first. Our position on that is, given the delay that
3 has already accumulated, it would be sensible to defer
4 the penalty appeals until after you have rendered your
5 decision.

6 THE CHAIRMAN: Yes.

7 LORD GRABINER: The particular advantage of that is that we
8 would be addressing the actuality of your decision and
9 not a variety of hypotheticals, which is always
10 extremely difficult. From an advocate's point of view,
11 and indeed from a common sense point of view, it is much
12 better to be addressing you on that issue in a real
13 context, namely your reasoned decision, so we know what
14 your views are about the rights and wrongs of particular
15 charges and people's behaviour and so on. Then to make
16 an address to you on penalty actually becomes a much
17 easier exercise and a more real exercise.

18 The other point is that it may be possible, in those
19 circumstances, if it were thought to be appropriate to
20 deal with the penalty appeals in writing, if there are
21 any, without the need for further court time, which is
22 a desirable thing. It will save time and probably cost.

23 So far as the Umbro penalty is concerned, we do not
24 have any strong view about that one way or the other.
25 If there are tribunal commitments to Umbro, then there

1 are tribunal commitments to Umbro, and if Umbro wants to
2 proceed and does not want to do it on this alternative
3 basis, that is really a matter between them and, if I
4 may say so, the tribunal and possibly also the OFT.

5 A suitable time to deal with that in order to
6 maximise the use of the time we have might, for example,
7 be Friday week. Because I think what we are looking at
8 at the moment is the possibility of the Thursday and
9 Friday not being taken up with time on the liability
10 issues.

11 So if you were going to devote, say, half a day to
12 dealing with the Umbro penalty appeal, that might be
13 a very good moment to slip that in.

14 THE CHAIRMAN: At the moment, that is the day that has been
15 promised to them; the afternoon of Friday 19th.

16 LORD GRABINER: It might be a convenient way, because it
17 involves doing exactly what we anticipated would be
18 done.

19 THE CHAIRMAN: That appeal has already been fully argued in
20 writing, so it is quite a short matter.

21 LORD GRABINER: We are very content with that, it is not
22 a problem.

23 So far as the evidence is concerned, first of all,
24 I want to make the point about Mr Preston. He is
25 available to come tomorrow. That is not realistic at

1 the moment unless we interpose him, which is not thought
2 to be desirable.

3 The only other time he can come is next Tuesday,
4 because he has to come from Holland, and we have no way
5 of making him come here and we want him to be here. On
6 the Tuesday, I am instructed that the only time he can
7 be available is Tuesday afternoon. So what I am asking
8 for is some sort of guarantee that that is when he will
9 be heard. Whatever the state of play is on that day,
10 can we ensure that Mr Preston is dealt with on Tuesday
11 afternoon.

12 So far as the balance of the cross-examinations is
13 concerned, it may be that my learned friend is a little
14 optimistic about his expectations of what we can finish
15 off this week and in particular whether he expects to
16 get any spare time on Friday. The reason I have a note
17 of caution there is because these things are tending to
18 take rather longer than we had anticipated.

19 Also we still have not yet, as far as I am aware,
20 received any of the statements from the other side that
21 we talked about at the close of yesterday. We do not
22 know what is going to be involved there in terms of
23 further cross-examination of Mr Ashley and any further
24 cross-examination of Mr Ronnie, if the time comes when
25 we need to consider that material and then decide what

1 more time, if any, we want.

2 So it is certainly obvious that Mr Ronnie is
3 the most substantial of the rest of the witnesses. As
4 far as we are concerned, Messrs Prothero and May; there
5 is nothing from us at all, so we are not concerned about
6 them as witnesses. I think to my friend that is another
7 matter. Mr Fellone we do not expect, as far as we are
8 concerned at any rate, to be a very lengthy experience,
9 maybe an hour or two, absolute maximum. We do not know
10 at the moment precisely how long Mr Ronnie is going to
11 take. I anticipate being able to start with him today
12 and I am confident that if I start before lunch I will
13 be finished with him today.

14 Unless I can assist you further, those are my
15 points.

16 THE CHAIRMAN: Thank you, Lord Grabiner.

17 MR WEST-KNIGHTS: Our position is broadly the same. From
18 our point of view, there is perhaps more work to do with
19 Mr Ronnie, because if you are, as it were, mentioned at
20 the fringe, then the work is involved, as it were, to
21 getting yourself unmentioned altogether. You will be
22 aware that Mr Ronnie has made four witness statements.
23 It will be part of my duty and task to look at some of
24 the underlying inconsistencies and some of that may take
25 time.

1 I am assuming, I do not know why, that Mr Ronnie
2 will be a responsive witness; if not, it may as long as
3 some of the questions have taken so far.

4 I have a small fly to put in the ointment, but I do
5 not think it is actually going to change the overall
6 matrix. I am now told that Mr Guest's movements are --
7 when somebody rather carelessly said he was going to be
8 in the States between the 12th and 16th, that was, as it
9 were, his business pattern. He leaves such that he will
10 arrive on Wednesday 17th in the morning at Manchester.
11 So he would not, I think, sensibly be available on
12 Wednesday. If he were to be called on Thursday, he
13 would, I imagine, not be a very long witness for
14 the Office, but there is it is.

15 That would not impinge in any way on what, in my
16 submission, is a very sensible notion; that we regroup
17 on Friday of next week with a view to being in a
18 position to start clean on Monday with submissions all
19 round, having been afforded the opportunity to look at
20 the transcripts and pick up the points which need to be
21 made in closing.

22 Far be it from me to trespass on anybody else's
23 territory; we have no view on the timing of the Umbro
24 appeal save, in principle, that it may be easier for the
25 tribunal to deal with all of the appeals at once. In

1 principle, if the Manchester United appeal and the Umbro
2 appeal were to be heard together, that would appear to
3 be logical. The tribunal would be more likely to
4 address its minds to consistency and parity when it is
5 considering them both at the same time. We know that if
6 you sentence somebody in trickles --

7 THE CHAIRMAN: We are not going to rule on the penalty
8 appeal, it is just a question of when we have
9 the hearing.

10 MR WEST-KNIGHTS: Indeed. I had rather overlooked the fact
11 that you would probably reserve the judgement on that.
12 Having said that, if there is going to be a pause for
13 the parties on Friday week and the Umbro appeal is
14 taking place, then it is not a pause for whoever on the
15 Office's side is involved in the Umbro appeal.

16 Apart from that, we support the suggestion that has
17 been made. Indeed, it is one I think that we made last
18 week, that if worst came to worst, that would be plan B.
19 It seems to us, in fact, there are considerable
20 advantages in plan B, namely that if both of
21 the appellants are in fact acquitted, then there will be
22 no requirement for an appeal in respect of them; but if
23 there is any requirement to address, as my learned
24 friend Lord Grabiner says, it can be addressed on
25 the precise basis upon which the tribunal has found that

1 the appeal should not succeed and consequently will not
2 waste a lot of time on hypotheses and ranges.

3 Plainly, however, until such time as we see whatever
4 bits of paper are to emanate from Sports Soccer and
5 Umbro, and I hope that is going to be this morning,
6 we cannot tell for how much longer we will need
7 Messrs Ashley or Ronnie in addition to any
8 cross-examination which will take place.

9 I will try my best to finish Mr Ronnie tomorrow, but
10 there is actually some slightly complicated underlying
11 stuff -- it may move swiftly --

12 THE CHAIRMAN: It is impossible to be firm in these
13 forecasts, Mr West-Knights, we know that.

14 MR WEST-KNIGHTS: I am grateful to you, sir.

15 MR MORRIS: Sir, can I make two observations, or deal with
16 two matters. First, my learned friends indicated there
17 may be some slippage with Mr Ronnie and the like and
18 there may be a need to call Mr Ronnie and Mr Ashley
19 back. Can I make it known to the tribunal that
20 Mr Prothero, if at all possible, must be dealt with on
21 Friday because of his business commitments. Mr May,
22 also, I understand can only be here on Friday, he has
23 a commitment the following week as well.

24 I would hope that even if there is run-over in
25 relation to Mr Ronnie and Mr Ashley, nevertheless in

1 the light of the indications given by my learned friends
2 there will be no problem there. Those behind me have
3 instructed me that if Mr May and Mr Prothero cannot be
4 dealt with on Friday, there will be problems.

5 The second point is that as far as the Umbro penalty
6 appeal is concerned, I am arguing against myself in
7 the sense that I have instructions from Mr Roseveare
8 that Mr Green has availability in early April and early
9 May, but that it is still Umbro's preference to get it
10 over and done with on 19th March. It is, however,
11 the Office's preference for that not to happen for this
12 reason: the way the timetable is going now, we have
13 the pause for regrouping day on the Friday, which my
14 learned friends have the benefit of, but which we will
15 have to use, if it is in the morning or afternoon -- it
16 may not be very long, but nevertheless we will have to
17 switch our attention to dealing with the wholly discrete
18 matter of the Umbro penalty appeal. We would suggest
19 that, in fairness, the pause for regrouping should be
20 equal, and the availability of time to prepare
21 submissions and to go through the transcripts and
22 the like should be equal across the board.

23 You have heard what my learned friend
24 Lord Grabiner's preference was, you have heard slightly
25 the opposite view from Mr West-Knights. It is a matter

1 for you, but the OFT's submission is that, in fairness,
2 the Umbro penalty appeal can and should go over with
3 the other appeals.

4 THE CHAIRMAN: Yes. Just looking ahead, I will make
5 a comment which may be entirely hypothetical and may
6 envisage circumstances which may never arise. One would
7 not want to run the risk of some kind of appeal against
8 a judgement of the tribunal on liability, being appealed
9 before we got to penalty. We would, in any event, wish
10 to deal with the penalties if they ever arose -- they
11 may never arise, but if they did we would want to avoid
12 a situation in which we were being invited to give
13 permission to appeal on liability, as it were, before
14 we had dealt with penalty. I am not necessarily
15 expecting a reaction to that point, but that is
16 a situation we would wish to avoid.

17 LORD GRABINER: This is of course entirely hypothetical, as
18 we know.

19 THE CHAIRMAN: Yes absolutely.

20 LORD GRABINER: Our response to that would be that that is
21 obvious common sense, if I may say so. If you needed
22 any kind of assurance that we would, so to speak, wait
23 to consider the whole position --

24 THE CHAIRMAN: Yes. It may not be sensible, one would
25 imagine, from any prospective appellant's point of

1 view -- you would want to know what the penalty
2 situation was before you took a decision on any further
3 appeal.

4 LORD GRABINER: Absolutely, I agree.

5 MR WEST-KNIGHTS: I agree as well.

6 (10.48 am)

7 THE PRESIDENT: We think we should proceed as follows.

8 Let us continue with the evidence of Mr Ashley and
9 Mr Ronnie, Mr Ashley today and then start Mr Ronnie.
10 Let us do our best if we can to finish the main OFT
11 witnesses on Friday, including in particular Mr May and
12 Mr Prothero. If Mr Fellone has to go over to Monday,
13 he will have to go over to Monday, but we will do our
14 very best to get through on Friday, but obviously no
15 promises or guarantees can be given at this stage.

16 We will then try to start on this timetable with
17 Mr Whelan on Monday, 15th March; and we will do our best
18 to fit in Mr Preston whatever the state of play is at
19 that stage on the afternoon of Tuesday, 16th March, in
20 the hope of finishing the remaining witnesses on
21 Wednesday, 17th March or perhaps Thursday, 18th March.

22 We are inclined to take the view at present that
23 the three main penalty appeals -- leaving aside for
24 the moment the Umbro appeal -- should go over. That
25 would mean as far as the main appellants are concerned

1 that we will have a pause at the end of the evidence
2 which we hope will be by the end of Thursday 18th,
3 we will have a pause on Friday 19th, and we will start
4 the submissions on Monday 22nd on this timetable.

5 That leaves open for the time being whether or not
6 we deal with the Umbro submissions on penalty at
7 the presently-fixed time on Friday, 19th March 2004. As
8 of this moment we would just like to reserve our
9 position on that until Umbro has had a chance to
10 consider its position further, because we have not yet
11 heard directly from Umbro on that.

12 I think what we would like to hear, not now but
13 perhaps at the end of today, from Umbro is how they feel
14 about that and what the availability of their counsel
15 would be were the Umbro appeals to go over to the other
16 appeals.

17 In relation to the Umbro appeal and indeed
18 the Manchester United appeal, we have the impression
19 that quite a lot has been pretty fully argued in writing
20 already, so it is not a very lengthy oral hearing in
21 either case. In fact, we might be able to do it in
22 writing altogether. Let us leave that point over for
23 the time being.

24 If Miss Roseveare would be good enough to get
25 a letter or a message to the tribunal during the course

1 of today as to Umbro's final position on that point,
2 we will consider it further. Perhaps even agreement can
3 be reached between Umbro and the OFT.

4 MR MORRIS: Can I raise two other housekeeping matters.

5 I have been asked by Sports World in particular to raise
6 the question of the reading-out in open court of
7 the material which has previously been indicated amber
8 or pink, not to be read out.

9 Sports World are most concerned about this. Through
10 me they ask whether it could be possible for all
11 counsel, including myself, to remember the rules, to try
12 to make sure at any stage when we are about to get to
13 a passage which is so marked not to read it out, and
14 also to alert the witness not to do so.

15 Further, it would be helpful as we get to such
16 a document for either counsel or the tribunal itself --
17 in fact, for the tribunal itself -- to remind
18 the witness, who is, remember, acting under a degree of
19 constraint in his position, to pause for a moment and
20 think if he thinks he is going to be saying something
21 which he might consider ought not to be said in open
22 court. There was a good deal of consternation arising
23 out of yesterday and the fact that certain documents
24 were being read out, and I would urge that upon the
25 tribunal.

1 The second matter is the position in relation to
2 the statements. My understanding is that
3 the Sports World note on the Umbro/Sports Soccer
4 agreement is in an advanced state of preparation; it is
5 not as I understand it finalised, but it will be soon,
6 and I do not really have a time. I imagine during
7 the course of today, it may be sooner, I do not know.
8 It is in an advanced state of preparation.

9 All I know about the Umbro notice is that that is
10 being worked on. That is where we are, and I can
11 perhaps give you more information precisely in relation
12 to that during the lunchtime adjournment. But they are
13 basically both in hand.

14 LORD GRABINER: Sir, my learned friend's second point,
15 the sooner we get the material the quicker we will be
16 able to prepare. We are in the hands of those preparing
17 the documents.

18 I certainly have tried my best to respect
19 the confidentiality, and I have no doubt that my learned
20 friend Mr West-Knights has as well.

21 Secondly, it must not be underestimated that this
22 material is of fundamental importance to the ultimate
23 decision in this case, in our submission. If there is
24 any balancing exercise to be undertaken here it involves
25 looking at Sports Soccer's concern about its

1 confidentiality and our concern to make sure that all
2 relevant details are before the tribunal to enable it to
3 come to a proper and just judgment in this case.

4 If there is a conflict between those two principles,
5 there is no doubt whatever in my respectful submission
6 which side it comes down on. It is right and proper
7 that these matters are being investigated, and it is
8 right and proper that they will in due course be
9 considered and dealt with in your judgment.

10 If that means in some respects Sports Soccer's
11 concern about its confidence being made public, so be
12 it, that is the price that one has to pay in order to
13 achieve the result.

14 That said, we are trying our best.

15 THE PRESIDENT: Yes.

16 MR WEST-KNIGHTS: I am bound to say that I am mildly
17 surprised to hear the observation being made by
18 the Office this morning. There was a period very early
19 on yesterday when there were some references, we marked
20 them and thereafter we expressly dealt -- and in
21 camera -- with those things which it was decided were
22 confidential, and the only blurting out even in camera
23 came not from either myself or Lord Grabiner.

24 THE PRESIDENT: In camera it is less of a problem. I think
25 all we can do is try to be as careful as we can. It is

1 not very easy always for the tribunal to spot in advance
2 exactly when we are trespassing on delicate ground, and
3 even if we are about to trespass on delicate ground, it
4 is sometimes quite difficult to interrupt the flow of
5 cross-examination in order to deal with
6 the confidentiality point. We will have to see how we
7 get on, but we will do our best, Mr Morris. It is a
8 very difficult situation, I can understand both points
9 of view.

10 MR MORRIS: I fully recognise that, sir. This is not
11 a complaint by the Office itself; it is a plea to all to
12 try to observe the regime which has been decided upon.

13 THE PRESIDENT: We will all do our best. Can we now resume?

14 Mr Ashley, if you would be kind enough.

15 (11.00 am)

16 MR ASHLEY (continued)

17 Cross-examination by MR WEST-KNIGHTS (continued)

18 Q. We had been looking at that receipt of 7th September.

19 I am not going to go back to that, the transcript will
20 reflect what the witness said about it on both
21 occasions.

22 I am going to go back to Mr Ronnie's support of your
23 business. You remember that we had a look at
24 a paragraph of his --

25 THE PRESIDENT: Which volume are we on?

1 MR WEST-KNIGHTS: Since the relevant redaction is
2 immaterial, it is witness bundle 3, R-Z, running
3 pagination 109. Paragraph 99, the first sentence of
4 the paragraph.

5 THE PRESIDENT: "I became more involved ..."

6 MR WEST-KNIGHTS: Yes.

7 Just have another look at paragraph 99, and
8 the first sentence of paragraph 100. I have no doubt
9 you remember. We looked at this yesterday and I asked
10 you whether you recognised the truth of it, and you said
11 yes.

12 THE PRESIDENT: Just give him a moment to glance back.

13 A. Yes.

14 Q. You remember saying that you agreed with this passage,
15 and you explained about authenticity?

16 A. That is correct.

17 Q. Now, the case which you make before the tribunal is that
18 the pressure that Umbro put on you in respect of replica
19 kit was intolerable?

20 A. Forced. Yes.

21 Q. We will look at it if you want to, but you have
22 described it as intolerable pressure?

23 A. Okay.

24 Q. And this business of having to go out on full price of
25 replica kit was immensely damaging to your business on

1 every occasion it happened?

2 A. That is correct.

3 Q. Having looked back at paragraph 99, before Mr Ronnie

4 became involved in assisting you in early 2000, you had

5 the replica kit at the back of the store throughout

6 the year?

7 A. Not always, no.

8 Q. Before Mr Ronnie became involved in helping you in early

9 2000 you were selling less replica kit than you did

10 afterwards?

11 A. Selling less ...?

12 Q. This is the first sentence of paragraph 100, Mr Ashley.

13 It is not rocket science.

14 A. I will say yes, then.

15 Q. Could you explain to the tribunal this: you are

16 voluntarily, and at the suggestion of Mr Ronnie in early

17 2000, seeking to increase the profile of what had been

18 previously a low profile, part of your activity, namely

19 replica kit?

20 A. That is correct.

21 Q. At the same time, that is to say, in early 2000,

22 the replica kit comes with the sting that

23 the price-fixing will wreck your business?

24 A. Yes.

25 Q. So it appears to us, Mr Ashley, that what you were

1 doing, if paragraph 99 and a bit of 100 are true, was
2 taking on a huge problem voluntarily, putting your head
3 in the noose voluntarily?

4 A. No, forced. That is why I used the word "forced". Do
5 you want me to explain it a little bit better?

6 THE PRESIDENT: We would like to understand it.

7 A. It is true that we did not -- what is the word --
8 promote replica as strongly as some other products. It
9 is correct that the more product you bring to the front
10 of the store, it increases the sales of that product.
11 So it is true to say that if you have a shirt at 39.99
12 at the back of the store and a shirt at 39.99 at
13 the front of the store, you would still sell more
14 shirts. That is basically what Mr Ronnie was getting me
15 to do.

16 Putting my head in a noose, if I have to be 39.99
17 anyway, it is better to be at the front than the back.
18 That is it. I was in that position anyway.

19 The ultimate solution is to have them at the front of
20 the store at £30, and it is happy days. That is what
21 I was trying to get to at the end of the day.

22 THE PRESIDENT: Thank you.

23 MR WEST-KNIGHTS: It does not appear to us from paragraph 99
24 although you have repeatedly said elsewhere that replica
25 kit is a must have, that before your involvement with

1 Mr Ronnie in early 2000 you in fact regarded it as
2 a must have.

3 A. You would say certain replica shirts have always been
4 a must have for an authentic sports shop.

5 THE PRESIDENT: What are the principal ones that are must
6 haves?

7 A. Probably Manchester United, England, Liverpool. What
8 you would know as the big teams.

9 THE PRESIDENT: Thank you.

10 MR WEST-KNIGHTS: "The assistance that we provided
11 Sports Soccer was successful and during 2000 the sales
12 of replica kit in Sports Soccer increased."

13 A. As I said, if you take a 39.99 shirt from the back and
14 you bring it to the front, it will increase.

15 THE PRESIDENT: Yes.

16 MR WEST-KNIGHTS: So previously your sales of replica kit
17 were very low?

18 A. Whatever they were, they would increase if they came to
19 the front --

20 Q. Previously your sales of replica kit were very low?

21 A. Relative to how many we could sell when they were at £30
22 they were absolutely minuscule.

23 Q. I do not understand that answer. Would you say it
24 again?

25 A. Yes. Because if you see how much replica we now sell

1 because they agreed we could discount it, I agree
2 they were very, very low.

3 Q. I am not asking you that, as you understand, Mr Ashley.
4 Before early 2000, the amount of replica kit that you
5 sold was very low?

6 A. In whose opinion?

7 Q. Answer the question, please.

8 A. No, because it is judgmental. I would say in comparison
9 to JD our sales were still reasonable; in comparison to
10 other sports retailers, they were very low.

11 Q. The sales of replica kit increased during early 2000 and
12 therefore they were lower before Mr Ronnie became
13 involved in assisting you with this stuff; correct?

14 A. Replica kit you cannot define as one thing. If you
15 say -- if it is a non-tournament year, you would sell
16 more in a tournament year than a non-tournament year.
17 If Manchester United win the European Champions League,
18 even possibly at the back you could sell more than if
19 you had them and they went down to Division 1 at the
20 front. So it is not a simple yes or no answer.

21 Q. You were not really in the replica market before early
22 2000?

23 A. Nothing like we are today, no.

24 Q. Nothing like you were after Mr Ronnie's help?

25 A. I still put to you that we would be a reasonable force

1 in replica in the late -- what was it? -- 1986, was it?
2 Italia 86, was it? We did very well with replica in
3 Italia 86 because we were allowed to reduce it, and we
4 sold the shirts at £22.50 and we sold tons of them.

5 THE PRESIDENT: You are talking about 1986?

6 A. 1986, was that --

7 MR WEST-KNIGHTS: The aficionados say 1990.

8 A. 1990, there you are, so my memory is not brilliant.

9 THE PRESIDENT: How would you describe your position in
10 the replica kit sector at the end of 1999 and
11 the beginning of 2000 relative to other sports
12 retailers?

13 A. Relative to the main replica kit seller, which is JJB,
14 that is the main one, our market share was very small.
15 It was not something that we majored on. Because at
16 that time, the price maintenance was stopping us with
17 our normal policy of what we would sell at to pile it
18 high and sell 'em cheap. So it was not as significant
19 for us around that sort of time.

20 MR WEST-KNIGHTS: That sort of time being when?

21 THE PRESIDENT: 1999, and I think the beginning of 2000.

22 MR WEST-KNIGHTS: I am going to ask the question again.

23 You were not really in the replica kit market until
24 after whenever early 2000 is?

25 A. We were in the replica kit market. I just tried to give

1 you an example of 1990. We are not in it to please, it
2 is relative. For our size and the amount of stores, we
3 would still have a reasonable replica kit market if you
4 measured it by value.

5 Q. Yes, but by proportion, very small?

6 THE PRESIDENT: What he said, and I think it is fairly
7 clear, is that he was very small relative to JJB, he had
8 some presence in the market but not a great one. Partly
9 because -- at least, the witness mentioned the fact that
10 because of the price maintenance in the market it was
11 not one where they were particularly active.

12 A. Not a market leader in that segment.

13 MR WEST-KNIGHTS: And hence Mr Ronnie's description of
14 saying:

15 "I knew that this would also help Sports Soccer in
16 entering into the replica kit market and improve their
17 chances of building a range of replica kit."

18 A. We were already in the market, so entering into it is
19 again -- Sports Soccer is seen when -- it is in a market
20 is normally to be the leader in the market, relative to
21 its size.

22 So per store, if you took it on a per store basis
23 not a total basis, a Sports Soccer store will take
24 between -- around two and a half times what
25 an equivalent competitor would do in an equivalent

1 store. Therefore, by store basis we are normally
2 the market leaders in the product categories that
3 we are, for want of a better word, attacking.

4 LORD GRABINER: Your case is that the pressure on you was
5 intolerable because of your absolute dependence on
6 replica kit and it being a must have. That was not
7 the case before early 2000, was it?

8 A. Certain replica kits are a must have for a sports shop.

9 Go in a sports shop and they have not got a new
10 Manchester United strip, it is not very good. if you
11 have not got an England strip in the England tournament,
12 it is not very good.

13 Q. It is at the back of the shop, it is not something that
14 you promote yourself as having -- it is not something
15 you rely upon in any way as part of your marketing?

16 A. We were of the belief that we should not be promoting a
17 product that did not represent our normal value. Ie, if
18 we were not allowed to sell it at 25 per cent off, we
19 should not be promoting it. Mr Ronnie had a different
20 view. He thought we should promote it at the front of
21 the shop anyway.

22 Q. And you followed that view?

23 A. We did follow what Mr Ronnie recommended, yes.

24 Q. So my point is that I would like you to explain, please,
25 to the tribunal, why you are simultaneously increasing

1 your reliance on and need for replica kit at exactly
2 the time when the terms attached to reliance on that kit
3 are intolerable and oppressive and damaging to your
4 business?

5 A. Because we had no other choice. We did not put our neck
6 in the noose; we had no choice.

7 Q. The obvious choice --

8 A. If Mr Ronnie had said, "Please stand on one leg and hop
9 up and down otherwise I am not going to give you any
10 replica", I would have stood up on the spot, hopped up
11 and down and asked him if I could have had some replica.

12 Q. Oh I see. So this paragraph 99 and 100 is not help from
13 Umbro, this is the product of more intolerable pressure?

14 A. It is not intolerable pressure, it is what Mr Ronnie
15 recommended we did. As I said, we obviously had not
16 done it, otherwise we would have already done it, so we
17 followed what Mr Ronnie recommended.

18 Q. Why?

19 A. Because Mr Ronnie recommended it, so we followed it.

20 Q. Why?

21 A. Why did we follow it?

22 Q. Yes.

23 A. I do not know. Why do I get up in the morning?
24 Probably because we thought it was a good idea to listen
25 to what he was saying and he may have a point. I cannot

1 really answer that. I mean, it is ... I cannot.

2 THE PRESIDENT: This lack of choice you are referring to,
3 just to go over it again -- I am very slow -- just so
4 that I am absolutely clear in my head, why do you have
5 no choice? What are you referring to?

6 A. I am referring to the price, the choice of 39.99. There
7 is no doubt that we had no part in, nor would ever want
8 to charge 39.99 ever if we had an opportunity to
9 discount.

10 THE PRESIDENT: So you are doing something you do not want
11 to do.

12 A. Correct.

13 THE PRESIDENT: And you are saying you had no choice but to
14 do it.

15 A. Correct.

16 THE PRESIDENT: But why do you have no choice but to do it?

17 A. If I had discounted the product I would not have had
18 the deliveries, and the sports trade orders the product
19 six months in advance.

20 If, for example, you had a shirt launched today but
21 I had ordered it six months ago and I discounted it
22 today, the next delivery that came in -- not necessarily
23 on that shirt but on the next new shirt or another
24 shirt -- the fact was that we would only have got
25 a dozen shirts.

1 This was proven by the fact when the lorry was
2 turned round, when we had only discounted the shorts and
3 the socks. These were not idle threats, these were real
4 and proved to be the case.

5

6 THE PRESIDENT: The example of the lorry, is that a
7 particular example?

8 A. It is a particular example that we only reduced
9 the shorts and socks, we even did the shirt at 39.99,
10 and they still turned the delivery around literally from
11 the warehouse doors.

12 THE PRESIDENT: We will be coming to the lorry.

13 MR WEST-KNIGHTS: Will we?

14 Let me come back to the question that I was in fact
15 asking you, Mr Ashley. Mr Ronnie suggested/recommended
16 that you increase the profile of your replica shirts?

17 A. He suggested that we brought them to the front of
18 the store to sell, yes.

19 Q. Why did you follow that recommendation?

20 A. Because Mr Ronnie recommended it.

21 Q. That is where I was asking you why. Why simply because
22 Mr Ronnie recommends it did you do it? As you said
23 yesterday, brands always know they have a retail, the
24 retailers think they know how to brand. Why follow
25 Mr Ronnie's recommendation simply because it was

1 Mr Ronnie's recommendation?

2 A. We would also have followed the recommendation,
3 for example, had Nike made it to us, Reebok or Adidas.
4 To a certain extent, we have to be led by the brands on
5 what they recommend re-merchandising is good for their
6 brands and how they like to see the stores. That is
7 a fact. Yes?

8 Q. Why follow that recommendation? You are not being
9 forced in any way to do so, are you?

10 A. Was I forced to put the product at the front of
11 the store? No.

12 Q. Were you forced to increase generally the profile of the
13 replica part of your business?

14 A. Forced to do that, no. That is not the same as the
15 price.

16 Q. But it came at the obvious and simultaneous -- that
17 means at the same time -- price of only being available
18 on terms which were ruinous to your business?

19 A. Ruinous in the point of view we had to go at £39.99, or
20 ruinous if we had not done it, we might not have been
21 supplied at all.

22 Q. You agree that he recommended that you promote replica
23 shirts more?

24 A. Yes, yes, I agree he did that, yes.

25 Q. He assisted you in entering into the replica market and

1 improving your chance of having a range of replica kit?

2 A. If you put the product at the front of the store,
3 you will become more profile in replica, yes.

4 Q. At the very same time, upping your profile in replica
5 gave you the intense and intolerable problem of having
6 to price it at 39.99 which suddenly became ruinous to
7 your business? Do you see what I am getting at, Mr
8 Ashley?

9 A. No, because it is a double-edged sword. What it
10 actually does is when we get into the replica business
11 and we do not stick to the retails and it is at
12 the front of the store, it became absolutely tremendous.
13 Some of the volumes were ten times what we were --

14 Q. What are we talking about, which timing?

15 A. When we were able to get replica and reduce it.

16 Q. Prior to early 2000, replica was asleep at the back of
17 the store?

18 A. What do you mean it was asleep? I do not want to blurt
19 anything out? Do you mean it was merchandised at
20 the back of the store or it was in a sleeping bag?

21 Q. You are here to assist the tribunal, Mr Ashley --

22 A. Asleep?

23 THE PRESIDENT: I think the witness is doing his best,

24 Mr West-Knights.

25 MR WEST-KNIGHTS: Do you?

1 THE PRESIDENT: The suggestion that was being made was that
2 you were not promoting replica and it was asleep in that
3 sense.

4 A. It is just merchandising the soccer area at the back of
5 the store. It is not asleep, it is not in the stock
6 room, it is just not at the front of the store. It is
7 not our main punch as you come in the store.

8 To try to say it was asleep is just insulting.

9 MR WEST-KNIGHTS: I have no intention of insulting you,
10 Mr Ashley. I am going to put this to you one more time,
11 and then we will go to something else. I am going to
12 suggest to you that it would be complete madness for
13 you, under no compulsion at all, to increase your
14 profile for and reliance on replica kit at the very same
15 time as you are being placed under intolerable pressure
16 to price it in a way which ruins your business.

17 A. Okay. Let us go to it once again so we are all totally
18 clear. The 39.99 product, even though it is 39.99,
19 still sold better than what we sell at the front. If we
20 then had other parts of that replica business,
21 for example, shorts and socks that we could reduce that
22 also go with the replica or previous season's kit that
23 we were allowed to clear, those volumes were fantastic.
24 So there is no confusion.

25 Q. Let us try something else. The chairman mentioned

1 the shirts being turned around, the lorry; yes?

2 A. Absolutely.

3 Q. The Manchester United lorry?

4 A. Yes, I think it was a Manchester United lorry, yes.

5 Q. Let us have a look and see what you say about it.

6 A. Okay.

7 Q. If you turn to the witness bundle which contains your
8 witness statement, volume 1, and start with internal
9 page 63.

10 The whole of this oral transcript is relied upon
11 against Allsports indiscriminately. In other words
12 everything Mr Ashley said here is, as it were, attested
13 to and relied upon.

14 Now, Mr Ashley, I am just going to ask you to have
15 a glance at page 63, at the bottom there. Do you see
16 from lines 30 onwards -- if you would just like to read
17 them and over the page to the end of your little answer
18 to Ms Kent. (Pause).

19 THE PRESIDENT: This is the witness on 11th July 2002?

20 MR WEST-KNIGHTS: Yes, sir, that is right, thank you. So it
21 follows the Rule 14 notice and the written
22 representation.

23 A. Right, okay.

24 Q. I just want to see if I have this right, Mr Ashley.

25 What you are saying is that there was a lorry-load of

1 Manchester United shirts on its way to you and in fact
2 was just about to be unloaded -- you have one single
3 distribution centre, have you?

4 A. That is correct, it is Dunstable.

5 Q. It was turned around by the supplier until you had
6 agreed to charge the correct price. Over the page, at
7 64:

8 "They physically somehow -- I do not know how they
9 did it -- got the driver on the phone or whatever they
10 did, said 'Okay, they are not going to charge the
11 correct price, we have it by our source'. How they ever
12 knew what price I was going to charge, I do not know."

13 So this happened, you think, as it were, before
14 Man U shirts went on sale?

15 A. It is not actually the shirts that are the problem here.

16 Q. All right, but when you say "how they ever knew what
17 price I was going to charge, I do not know", of course
18 if this stuff was in the shops they would know what
19 price you were charging. So this is the supplier
20 finding out what price you were going to charge; is that
21 right? Just have a look at it, the top of page 64.
22 I do not want to mislead you, Mr Ashley.

23 Are you with me, Mr Ashley? I read you as saying
24 that the complaint was that somebody had given
25 the supplier information about what you were going to

1 charge?

2 A. I presume they did not know what we were going to charge
3 because we had not priced the goods yet.

4 Q. Are you agreeing with me?

5 A. Not particularly.

6 Q. Just read the sentence at the top, lines 5 and 6 at
7 the top of page 64.

8 A. Okay.

9 Q. Do you see what I mean?

10 A. What are you exactly saying? I am not being difficult.

11 Q. I am asking you to confirm that what it was that
12 triggered this turn-around of the lorry was somebody
13 telling the supplier what you were going to charge for
14 something, not what you were already charging. Do you
15 see what I mean? Because you express surprise that
16 anybody would know what you were going to charge. Just
17 have a look.

18 A. I accept what you say.

19 Q. I do not want you to accept what I say, I want you to
20 agree with me. These are your words. If you do not
21 agree with me, say so.

22 A. Right.

23 Q. Yes.

24 A. I am very nervous about agreeing with you, I have to be
25 totally honest.

1 Q. So we have noticed.

2 A. I do not want to blurt anything out.

3 Q. This is the first time that the Manchester United lorry
4 had come up at all?

5 THE PRESIDENT: Are we moving away from the lorry, because
6 I do not really have the background to this lorry in my
7 head yet.

8 MR WEST-KNIGHTS: No, and for good reason.
9 Over the page. This is the first time that you had
10 mentioned it in any statement made to the OFT, and that
11 may be one of the reasons why the tribunal do not have a
12 handle on the lorry.

13 A. If you say so, yes.

14 MR WEST-KNIGHTS: I do not say so, Mr Ashley. Look back at
15 the sentences I have just asked you to read.

16 A. You say it is the first time I said it to the OFT. I do
17 not know if it is the first time.

18 Q. Just have a look and see what you said in July 2002 on
19 page 64, lines 7, 8 and 9.

20 A. They turned the lorry away?

21 Q. Read on.

22 THE PRESIDENT: It says:
23 "I think you have got that. I think we have told
24 you that. We have not told you that [question mark].
25 We have never told you that. [Miss Kent: No]."

1 A. "I think you have got that. I think we have told you
2 that. We have not told you that? We have never told
3 you that".

4 THE PRESIDENT: And Miss Kent says no.
5

6 A. Yes. So I am obviously unsure whether I have told them
7 or not. That is how it reads to me --

8 THE PRESIDENT: How does it read to you?

9 A. "I think you have got that. You have not got that? We
10 have never told you that." I think that is what it
11 is -- I am trying to read in --

12 Q. Okay.

13 THE PRESIDENT: That is what he said at the time.

14 MR WEST-KNIGHTS: What you were trying to say was that
15 you were surprised to learn that you had never told them
16 before. You thought you had, had you?

17 A. I cannot remember back then.

18 Q. Look on the same page --

19 A. I seem to ... I cannot say what I ...

20 Q. What is the problem, Mr Ashley?

21 A. It seems like a different language.

22 Q. What does?

23 A. The way we seem to communicate, it seems like a totally
24 different language. Blurting out ...

25 Q. The same page, line 20.

1 A. (Pause). Okay, there we are. That explains it. To
2 me, that explains it absolutely clearly.

3 Q. Good. As I suggested to you, you thought you had told
4 them but it turned out you had not.

5 Now, the question about that lorry -- there are
6 a number of further references I do not need to trouble
7 you with, but it comes up again in the course of your
8 discussions with the OFT, and indeed you explain I think
9 that it has something to do with shorts and socks being
10 discounted rather than the shirts themselves?

11 A. That is correct.

12 Q. If you just go to page 69, I think you will see yourself
13 saying that.

14 A. Okay.

15 Q. If you go down to lines 30-31, or if you take it up from
16 line 23. This is where you set out the whole of your
17 recollection about the Manchester United agreement,
18 so-called?

19 THE PRESIDENT: You might like to start at line 8, I think,
20 Mr Ashley, and read all the way down to the bottom of
21 the page.

22 A. (Pause). That is correct.

23 Q. The reason why the lorry was turned round was that it
24 had a load of Manchester United shirts in it and you had
25 discounted the Man U socks and shorts.

1 A. The socks and shorts.

2 Q. So you had one delivery of the Man U shirts but it is
3 the second one which gets turned around?

4 A. I do not know if it is the second or the third or
5 the fourth, it is a delivery that gets turned round.
6 I do not know which sequence of deliveries this
7 particular lorry is.

8 Q. Just look again at lines 27 onwards, can we:
9 "We got in the most tremendous trouble [I am reading
10 this out, Mr Ashley, but it is not in any sense
11 confidential] still when we launched the kit ..."
12 This is Manchester United?

13 A. Yes.

14 Q. Listen to this:
15 "We did the shirt as we had to at £39.99 but we
16 discounted the shorts and the socks. So Umbro said that
17 is not what we agreed, therefore you cannot have your
18 next delivery. And that is when on the next delivery,
19 I think you will find, that the lorry gets turned away
20 because we discounted the shorts and the socks."
21 So the point is that it looks like you got one
22 delivery, you did the shirt but you discounted the other
23 stuff, and they turned round the next delivery, yes?

24 A. I am not sure.

25 Q. You read it, Mr Ashley, and tell us what you were

1 saying.

2 A. I will tell you what I was trying to describe, if you
3 like. I was trying to describe the fact that we had
4 discounted Manchester United shorts and socks and
5 the delivery was somehow turned away from our warehouse
6 at Dunstable because of this. That is what I am trying
7 to say.

8 Q. Fine. So the position is that at the time this Man U
9 lorry gets turned round, you already have
10 the Manchester United stuff in your shops?

11 A. What date is this? What date is this lorry? If this
12 lorry is after the launch, I must have already had
13 the stuff. Therefore it must be a second delivery.

14 Q. Just indulge me, will you Mr Ashley. Just read it again
15 from line 23 onwards, and you tell us the date. (Pause).

16 A. Okay, I have that. What is the question?

17 Q. You tell us, was the shirt turned round before or after
18 the launch by you of the Manchester United kit?

19 A. Was the shirt turned round?

20 Q. Was the lorry with the shirts turned round before or
21 after the launch by you of the Manchester United kit?

22 A. I would think that must be after the launch.

23 Q. It must be, must it not --

24 A. It reads that way to me, I agree with you.

25 Q. So you got the socks and shorts in the shop, but

1 the problem arises because they spot that you are doing
2 the other stuff at a discount and only doing the shirt
3 at full price; yes?

4 A. Yes. They could have also found out what we had been
5 wanting to charge possibly off our system. It is
6 possible.

7 Q. I am not particularly troubled about that aspect of it.
8 "We did the shirt as we had to at 39.99 but we
9 discounted the socks and shorts:

10 "So this is taking place after the launch, which was
11 1st August?

12 A. If you say so, I cannot remember now.

13 Q. You cannot remember, Mr Ashley?

14 A. No, I do not remember when every kit is launched, no.
15 Steady on.

16 Q. We understood this particular launch to be massively
17 memorable because it was the last shirt that would have
18 the old major sponsors on it, Vodafone, and it was
19 a very, very major event in the football calendar so far
20 as replica kit was concerned.

21 A. August 1st I do not specifically remember.

22 Q. It is the first new sponsor for 18 years. This shirt is
23 for the very first time in 18 years going to have
24 the name of the new sponsor on it?

25 A. What if it was August 5th, would I have known that?

1 Around August, I accept. Do I remember it was
2 August 1st? No. I do not remember it was August 1st.
3 Q. But you remember it was August, do you?
4 A. I remember because you have just reminded me. It could
5 have been July for me.
6 THE PRESIDENT: Yes, Mr Morris?
7 MR MORRIS: Sir, can I just make one observation: this
8 matter is also dealt with by Mr Ashley --
9 MR WEST-KNIGHTS: Sit down, please --
10 THE PRESIDENT: Mr West-Knights, please.
11 MR WEST-KNIGHTS: I am sorry. My learned friend is
12 trespassing.
13 MR MORRIS: I am hesitant to do so. The witness is having
14 difficulty recollecting. It is fair that the tribunal
15 should be aware that this matter --
16 MR WEST-KNIGHTS: This is re-examination, I am sorry. This
17 is impermissible. If my learned friend wants to have a
18 quiet word with me and I am barking up the wrong tree,
19 he may do that. But he may not feed to the witness
20 something which is perfectly properly to be put in
21 re-examination.
22 THE PRESIDENT: I think, Mr West-Knights, this is not a test
23 of memory, this is cross-examination.
24 MR WEST-KNIGHTS: No, it is a test of credibility. I am
25 very happy -- particularly as it is exactly the right

1 moment for the shorthand writer's fingers to be relieved
2 of falling off -- to suggest if I may with respect that
3 we rise. And I will find out what it is Mr Morris wants
4 to put, and make a decision as to whether it is
5 appropriate for him to interrupt the cross-examination
6 of this witness at this time.

7 I am sorry to cut across you, sir, and it is right
8 that you did, of course, say, "Yes, Mr Morris".

9 THE PRESIDENT: Mr Morris was rising to his feet.

10 MR WEST-KNIGHTS: Of course. So it is rather difficult to
11 say no. But it does appear that I need to know what it
12 is he is about to say. I am cross-examining a witness
13 put forward by him. He has no business standing up and
14 saying, "In fairness to the witness, X, Y and Z." That
15 is for re-examination.

16 THE PRESIDENT: It very much depends on the circumstances.

17 MR WEST-KNIGHTS: Anyway, we will find out what they are, if
18 I may.

19 THE PRESIDENT: I think it probably is a good idea to rise
20 for a moment.

21 Mr Ashley, we will rise for ten minutes. It is
22 particularly important, if you would not mind, if you
23 would not speak to anybody until we resume?

24 A. I will sit here.

25 THE PRESIDENT: Thank you.

1 (11.40 am)

2 (A short break)

3 (11.50 am)

4 THE PRESIDENT: Yes, Mr West-Knights.

5 MR WEST-KNIGHTS: As anticipated, sir, and gentlemen,

6 Mr Morris is not going to interrupt.

7 I think we were on running pagination page 69. Do
8 not worry about the exact date, Mr Ashley, but it was
9 after the launch?

10 A. The lorries being turned away after the launch?

11 Q. Yes.

12 A. I do not deal with these matters specifically myself.

13 I might not even have been in the country at the time.

14 I am not the buyer. Yes? I am making -- I am
15 telling you what happened. We discounted the shirts and
16 the socks, or intended to discount the shirts and
17 the socks, therefore the lorry got turned away. Because
18 you will confuse me now. I do not even think Umbro
19 denied that a lorry got turned away.

20 Q. When you were telling the Office this at page 69, was it
21 something that you knew or was it something that was
22 more likely that somebody else would know, like
23 Mr Forsey?

24 A. The man with the best understanding of this would be
25 Mr Nevitt, because he was the buyer director.

1 Q. He was not at this meeting and it is you telling the OFT
2 about it, so was it something within your own knowledge?

3 A. Yes, because I had been told about it. I was not
4 physically there at the warehouse doors when the lorry
5 turned up, no. I may have been in the building, I may
6 not have been in the building, I may not have even been
7 in the country.

8 Q. Nobody is suggesting you would need to be. What stuck
9 in your mind here and what you are telling the Office --
10 I would not expect you to be at the distribution centre,
11 Mr Ashley; you have this and a large number of other
12 businesses to run, have you not?

13 A. The office is at the distribution centre.

14 Q. At any rate, what registered with you was:
15 "We got in the most tremendous trouble, still, when
16 we launched the kit. [and listen to this] We did the
17 shirt, as we had to, at full price but we discounted
18 the shorts and the socks, and Umbro said that is not
19 what we agreed, therefore you cannot have your next
20 delivery."
21 That is what stuck in your mind?

22 A. Yes, yes.

23 Q. You did the shirt and you did not do the socks and
24 the shorts. That is what wound them up and that is what
25 made them turn around the lorry with the

1 Manchester United shirts?

2 A. That is correct.

3 Q. So it is some time after the launch date, whenever it
4 was? It must be.

5 A. If we have put on our order -- we put on our copy orders
6 what we intend to charge for the product. I am not
7 saying this happened but it is a possibility that
8 therefore they could see what we intended to charge for
9 the shorts and the socks. You keep saying it is about
10 the launch.

11 If, for example, they get a copy order of product
12 from us, they can see what we intend to charge. So
13 whether or not it is after the 1st August, or whatever
14 date it is, or before, I do not know. Whatever
15 happened, the lorry got turned around, either because we
16 did discount the shorts and the socks or we intended to
17 discount the shorts and the socks. I keep repeating
18 the same thing.

19 Q. Just bear with me, Mr Ashley:

20 "We got in the most tremendous trouble, still, when
21 we launched the kit..."

22 Umbro, unhappy with you for not discounting the
23 shorts and socks, said: You cannot have your next
24 delivery.

25 It was the next delivery that you thought was turned

1 around. So you had one lot of Manchester United stuff,
2 you launched it and it was the second delivery that was
3 turned around?

4 A. There is a grid with what we charged and when. There is
5 a grid with it on. It has been given to the Office
6 before. There is a grid of what was charged at what
7 price and on what date.

8 Q. As a matter of fact?

9 A. As a matter of fact. If you look at the grid that will
10 tell us.

11 Q. You did not charge anything for the Manchester United
12 shirts, socks or shorts until after launch date?

13 A. On our copy orders we would mark what we were intending
14 to do.

15 Q. What does the grid you are talking about have to do with
16 it?

17 A. The grid will say whether or not at launch the shorts
18 and the socks were reduced. That is all I am saying.
19 It will tell you for a fact.

20 Q. Let us assume for the minute that it does --

21 A. Okay, fine, I do not have it in front me yet.

22 Q. On 1st August it will say whatever price you charged for
23 the shorts and the shirts and the socks?

24 A. Correct.

25 Q. Let us assume that it shows the shirt at 39.99 and

1 the other stuff at whatever price is the discounted
2 price you ran it out at.

3 A. I would think that would be the case, yes.

4 Q. I am going to assume you are right about that.

5 A. Okay.

6 Q. That would only tell us what you were actually selling
7 the products for from 1st August onwards?

8 A. Yes, yes.

9 Q. Right. So it is all plain, is it not, from this, your
10 recollection is that this happened after you got
11 the shorts and the shirts and the socks in the stores.
12 That is all, it is not rocket science?

13 A. Yes, okay, so long as it matches the grid, fine.

14 Q. I think it does, if it makes you feel any easier
15 Mr Ashley. I am not going to suddenly wave the grid at
16 you and say: no, no you never discounted the shorts and
17 the socks?

18 A. But did we discount the shorts and the socks; it would
19 be very interesting to know.

20 THE PRESIDENT: We will check it, Mr Ashley.

21 MR WEST-KNIGHTS: All you are worried about is where I am
22 going, is it not?

23 A. I am extremely worried, because I do not know where any
24 of this is going, honestly.

25 Q. I just want to finish looking at the references out of

1 entire fairness to you, Mr Ashley, about this shirt.
2 I acknowledge that you have some difficulty remembering
3 exactly when -- as you said, 1st August, 5th August.
4 I do not have a problem with that. All right?
5 A. Yes, the summer.
6 Q. Indeed, if you move on to page 86 in that same bundle --
7 we will not be looking at any other bundle -- this is
8 a clarification of what you had said the first time
9 round about this thing, ie that somehow somebody had
10 found out what you were going to charge. This is said
11 to be a clarification of pages 19-20 which we looked at
12 first. That was the bit where the Office said you had
13 never told them about this before?
14 A. And we had told them before, had we?
15 Q. No, nobody is suggesting that you had. What your
16 solicitor is trying to do is to clarify what you said in
17 that passage. If you want to flick back to page 63,
18 keeping a finger in page 86. It is the bit at
19 the bottom of page 63 and over the top to page 64. Just
20 have a re-read of that. (Pause).
21 A. Yes. What am I reading now?
22 Q. If I were you I would read down to the end of line 9
23 because that is what the passage that we are going to
24 look at is about.
25 A. I have read from the bottom of 63, from 28 down --

1 Q. Read over to page 64, line 9, because that is
2 the passage that we are going to talk about. (Pause).

3 A. Okay, I am reading 19-20, yes.

4 Q. Before we read page 86, just to remind ourselves, whilst
5 you were talking to the OFT in the bits we have been
6 looking at, you were sitting there with Mr Forsey, were
7 you not?

8 A. Yes.

9 Q. And he interjected from time to time during the course
10 of those exchanges, and occasionally you would turn
11 round and say: that is right, is it not Dave?

12 A. That is correct.

13 Q. And he would say yes, or no, or he would qualify
14 whatever you were saying?

15 A. Absolutely.

16 Q. So he was listening to what you were saying?

17 A. Yes.

18 Q. You were there as a team?

19 A. Yes, fortunately I can remember that.

20 Q. This is what was said on your behalf at page 86:
21 "Mr Ashley refers to an incident ..."
22 This is all underlined, sir, so it is specifically
23 relied upon against us:
24 "... lorry loaded with Umbro and Manchester United
25 shirts as ordered by Umbro to cease mid-delivery turned

1 back. Neither Mr Ashley nor Mr Forsey can recall
2 precisely when this occurred, although it is indicated
3 by Mr Ashley at lines 28 to 37 of page 25 [which is the
4 second lot we were looking at] they suspect this may
5 have occurred following a meeting between Sports Soccer,
6 Allsports and JJB on 8th June. This is because they
7 recalled that subsequent to that meeting there was
8 a dispute as to what had been agreed at that meeting.
9 Mr Ashley agreed to price at Umbro's recommended price
10 only the MU home shirt, did not agree to the recommended
11 price for the other products. This caused some dispute
12 as Umbro believed that Sports Soccer had agreed to
13 implement recommended retail prices for all products.
14 Sports Soccer think this is probably the reason for
15 the lorry being ordered to turn back.

16 "Mr Forsey and Mr Ashley ..."

17 So your solicitors have come back and asked you both
18 about this?

19 A. (Indicates assent).

20 Q. "... can recall that an Umbro lorry arrived at
21 Sports Soccer's premises to deliver an order of what
22 they recalled to be Manchester United replica shirts and
23 probably other product. The lorry was opened and
24 the unloading of the products commenced. Meanwhile,
25 however, Umbro was in telephone contact with

1 Sports Soccer putting considerable pressure on
2 Sports Soccer to price the products at its full RRP.
3 Sports Soccer resisted this, and the result was that
4 Umbro immediately contacted the lorry driver, told him
5 to reload the delivered products and told him to depart
6 from Sports Soccer's premises. This took place. Only
7 when Sports Soccer later agreed to price the goods at
8 Umbro's desired pricing level did the lorry return to
9 deliver the full order.

10 "Mr Ashley confirmed here that there would have been
11 other instances of Sports Soccer's being pressed hard to
12 accept an RRP, of which the Manchester United lorry
13 story is such a graphic instance."

14 A. One hundred per cent correct.

15 Q. Let us not get too upset about the date in particular,
16 but it is definitely after 8th June?

17 A. Yes, yes, yes.

18 Q. And maybe after the launch?

19 A. We accept that, yes.

20 Q. That is all I need, thank you very much. There is
21 a further reference to page 87 we have just had a look
22 at. I want to pick up page 111.

23 This is your solicitors responding to a set of
24 preliminary findings by the Office of Fair Trading.
25 What they have done is produce a little grid; on

1 the left-hand side is a reference to a paragraph number
2 of what it is that the Office is saying; in the next
3 column is your solicitors' summary of what it is
4 the Office is saying; the right-hand side column is you,
5 Sports Soccer. Okay?

6 Do you remember seeing this document before?

7 A. Not specifically, no.

8 Q. When you say not specifically, do you have any
9 recollection of seeing this document before?

10 A. I would have seen this document before, yes. How about
11 that?

12 Q. In what circumstances, do you think?

13 A. Let me just go to the beginning of the document to start
14 with.

15 Q. The document itself starts at bundle page 94; do
16 you see? There is a formal heading, "From
17 Cameron McKenna".

18 A. Okay.

19 Q. Yes.

20 A. So we could have seen this maybe when McKennas visited
21 us at Dunstable or when we visited McKennas. There have
22 been lots of documents and lots of meetings. I cannot
23 be specific.

24 Q. This is dated 19th January 2003, which is 15 months ago,
25 so that is when you think you saw it?

1 A. Probably. I accept that is when I saw it, yes.

2 Q. It is the kind of thing you would check, is it not?

3 A. What do you mean, the kind of thing I would check?

4 Q. These are your representations written by your
5 solicitors --

6 A. Yes, yes.

7 Q. You would not have sent them to the OFT without saying
8 we had better check it --

9 A. No, no. Nobody is trying to say that.

10 Q. You do not have any recollection of seeing this document
11 since then, one way or the other?

12 A. One way or the other, no. I probably must have done,
13 because I must have read this file twice now.

14 Q. When?

15 A. Well, I read it in the bath once on a Sunday. Now when
16 was that ...? I read it in the bath ... I would like to
17 say it was around January.

18 THE PRESIDENT: January of this year?

19 A. January of this year. These sorts of documents. They
20 give you huge great big files and it is, you know ...

21 THE PRESIDENT: Did you mean this year or last year?

22 A. This year.

23 MR WEST-KNIGHTS: Okay.

24 This is the last bit in here that I want to ask you
25 about the lorry being turned around: page 111. What

1 the Office of Fair Trading apparently did in
2 footnote 57, and we can go to the document if we need
3 to, it says in the left-hand column -- this is what your
4 solicitors are answering. This is their summary of what
5 the Office has so far said:

6 "Sports Soccer is of the view that it did alter its
7 retail prices on the MU home shorts, socks and infant
8 kits following Umbro's threats, including non-delivery
9 of stock. However, it is stated by the Office that
10 Sports Soccer's records of retail prices for
11 the relevant product do not support this."

12 So what the Office is saying is that you say you
13 changed your other prices as a result of this, but
14 according to your records it did not happen?

15 A. Okay.

16 Q. Now the answer is on the right-hand column:

17 "The discrepancy is likely to have arisen as
18 a result of Sports Soccer failing to change its pricing
19 records."

20 A. Okay.

21 Q. Your pricing records, of course, would be the records
22 that had been provided to the OFT that produced that
23 grid that you were talking about?

24 A. Yes.

25 Q. So it is the record of what you actually charged

1 day-to-day, when you go out at full price, when you
2 discount, when you discount again, that is what we are
3 talking about?

4 A. Yes.

5 Q. The first answer is: if the records do not show it, it
6 is because we did not keep our records up to date?

7 A. Okay, fair enough.

8 Q. "Sports Soccer believes the events were as follows: it
9 launched the MU home shorts and socks at discounted
10 prices."

11 A. Good.

12 Q. "As set out in paragraph 57, Umbro objected to
13 Sports Soccer discounting such products and stated that
14 Sports Soccer had previously agreed to sell all products
15 at High Street prices ..."

16 That is the row that you were talking about: what
17 was and was not said on 8th June:

18 "... it made this clear to Sports Soccer in
19 a telephone call. At the same time a lorry arrived at
20 Sports Soccer's premises to unload a delivery of MU home
21 kit products. Sport's Soccer believes this was the
22 second delivery of such products. It had been able to
23 obtain a first delivery and launch such products at
24 discounted prices. Umbro ordered the lorry to turn back
25 and return to its depot. Only when Sports Soccer agreed

1 to change its pricing on all their new home products did
2 the lorry return. The information provided previously
3 to the Office was compiled from manual records.

4 Sports Soccer believes that these manual records failed
5 to show that Sports Soccer increased the price of the MU
6 home socks and shorts shortly after launch."

7 Okay, do you have all that?

8 A. Okay.

9 Q. This is the solicitors actually sitting down and working
10 it out properly, not just somebody verbally at
11 a meeting. This shows that the lorry turn-around of
12 the MU shirts was shortly after the launch of
13 the selling of those shirts in August. Just have
14 another look at it, Mr Ashley, and see if you agree with
15 me.

16 A. It appears that way, yes.

17 Q. There is no room for anything else, is there, Mr Ashley?

18 A. I do not know.

19 Q. You read it again. I want you to be able to tell me
20 that it is certain that what is being said here is that
21 this happened between the launch of selling by you and
22 shortly afterwards.

23 A. Right. (Pause). It starts off:

24 "Sports Soccer believes that the events were as
25 follows ..."

1 It does not say that we were certain, it says that
2 we believe.

3 Q. This is on the basis of Sports Soccer's belief at
4 the time of this document; okay?

5 A. Correct.

6 Q. Take it all with a bracket. After that, it is
7 definitely saying that the turn-around of the MU shorts
8 was between launch and shortly afterwards. Just check
9 it again, Mr Ashley.

10 A. (Pause).

11 THE PRESIDENT: If you go some way down that right-hand
12 column, Mr Ashley, you get to another sentence that
13 begins:

14 "Sports Soccer believes ..."

15 And that is the sentence you need to read as well.

16 A. Yes, okay. I accept that then.

17 MR WEST-KNIGHTS: Thank you.

18 A. The real person you would need for this is the buyer.

19 Q. I expect the buyer was consulted before the answers to
20 the representations were given.

21 A. I was just trying to shed some light on it, I should not
22 have said, I am sorry.

23 THE PRESIDENT: The buyer in this case being ...?

24 A. Sean Nevitt, if it helps.

25 MR WEST-KNIGHTS: But the solicitors are bound to have asked

1 you about all this, and if you needed to say I am not
2 sure about this you had better check with Nevitt, you
3 would have said that, would you not?

4 A. I would have done, yes.

5 Q. So the chances are they did check with Nevitt, we just
6 do not know?

7 A. I cannot be certain, I would have thought so.

8 Q. But if you were being asked serious, important questions
9 about something like this and you did not know
10 the answer, obviously you would say: I am not the right
11 boy to ask; talk to the buyer?

12 A. I would say: to the best of my understanding this is
13 what happened.

14 Q. But if you were in any doubt, you would say: do not ask
15 me, ask Nevitt.

16 A. I would not say if I was in any doubt. I would say: to
17 the best of my knowledge, or as far as I can remember,
18 or -- as I always say -- I cannot be
19 one hundred per cent sure, but this is what I think
20 happened. That is how I speak. If I said I was
21 one hundred per cent sure, then I would have put "I was
22 one hundred per cent sure".

23 Q. I am going to move on to a new topic, which will be
24 brief, Mr Ashley. Do I need to remind you or show you
25 any of the things that you said to the OFT about

1 the fact that you run your business very much on
2 a paper-free basis; you do not write a lot of letters,
3 you do not write stuff down, it is all in your head?
4 A. Me, personally, I do not tend to write very much down,
5 no.
6 Q. But you are pretty hands-on in Sports Soccer?
7 A. In different departments of it at different times, yes.
8 I am also, people would say, pretty ... what is
9 the word? How can I describe it? I will give people
10 a lot of autonomy also.
11 Q. You have to have a handle on what people are supposed to
12 be doing?
13 A. I would have a reasonable go at it, yes.
14 Q. It is not just Sports Soccer, of course: you have a lot
15 of other businesses?
16 A. Correct.
17 Q. Did you see The Mail on Sunday? I do not want to be
18 vulgar, did you see their rich list on Sunday?
19 A. No.
20 Q. Did you hear about it?
21 A. Unfortunately, yes.
22 Q. Now, nobody is going to treat any of these numbers as
23 gospel, but you are in at 465 million, are you not?
24 THE PRESIDENT: What does this exactly have to do with
25 the events of 2000 and 2001, Mr West-Knights?

1 MR WEST-KNIGHTS: I will explain in due course. I am not
2 going to ask any more about that.

3 A. I had sex on Saturday night as well; I was not very
4 good.

5 THE PRESIDENT: It is reported in the press that Mr Ashley
6 has a certain amount of money.

7 MR WEST-KNIGHTS: It is public knowledge, it is not
8 a confidential figure. It is 465 million, it may be
9 wrong.

10 THE PRESIDENT: I am not at the moment sure what this has to
11 do with the case.

12 MR WEST-KNIGHTS: I will make it clear in due course.

13 THE PRESIDENT: Thank you.

14 MR WEST-KNIGHTS: My question is this: you personally deal
15 with a lot of your business affairs without writing
16 stuff down?

17 A. That is correct.

18 Q. That means that you have to have a good memory for stuff
19 that matters?

20 A. No, that means I have to have good people around me.
21 The success of Sports World is built on a team of people
22 who have been there around 18 years, 20 years, 16 years;
23 the main core of people is virtually the people we
24 started the business with. The bloke who is the MD was
25 the first ever Saturday kid. So it is a team of people,

1 we work together. We have different strengths and
2 different weaknesses. Writing down things, writing
3 letters, is not one of mine.

4 Q. I am not criticising you for one moment, Mr Ashley;
5 I admire the capacity.

6 The next question is: do I need to show you any
7 material that tends to show that in your relationship
8 with the large manufacturers it is part and parcel of
9 your daily life that you tell lies to each other about
10 stuff?

11 A. I think that is true.

12 Q. Thank you very much. I am just going to suggest very
13 briefly to you something about the helicopter day, which
14 is what we call it, the helicopter day?

15 A. Okay, fine.

16 Q. It is one of the things that was memorable to you, is it
17 not, that somebody arrived in a helicopter?

18 A. Steady on, I am not a child.

19 Q. Well I am not a child either, but people do not usually
20 end up in my garden arriving in helicopters.

21 A. You are going to hate this, but they do in mine.

22 Q. I do not hate it at all, Mr Ashley, it is a very helpful
23 piece of information.

24 The other thing was that you were quite interested
25 in meeting Dave Whelan.

1 A. Yes.

2 Q. All you had to do in respect of that meeting was at some
3 stage tell Mr Ronnie that you had made some agreement,
4 was it not?

5 A. All I had to do was what, sorry?

6 Q. Tell Mr Ronnie that you had made some agreement?

7 A. All I had to do at that meeting was tell Mr Ronnie?

8 Q. Yes.

9 A. At that meeting -- Mr Ronnie was not at the meeting.

10 Q. No. Did you meet Mr Ronnie after the meeting, quite
11 soon after the meeting?

12 A. Yes.

13 Q. Straight away?

14 A. Yes.

15 Q. Can you remember how you got from David Hughes's house
16 to wherever it was where you met Mr Ronnie?

17 A. I went by train.

18 Q. Sorry, forgive me, we know that you went by train to get
19 to Mr Hughes's house.

20 A. Yes.

21 Q. And then after?

22 A. Yes, I went by train.

23 Q. To?

24 A. Whichever one it is, Stockport or Macclesfield,
25 whichever it is. Whichever is the Umbro stop.

1 Q. How did you get to the station, do you remember?

2 A. Mr Hughes took me.

3 Q. Mr Hughes took you from his house?

4 A. Yes.

5 Q. It does not matter which station it was, you might

6 remember, was it his local one?

7 A. I would not know which one it was, wherever it was.

8 Q. From there you went by train to wherever it is that is

9 convenient to Umbro's offices?

10 A. Yes.

11 Q. How long did you spend with Mr Ronnie?

12 A. Oh, that is going to be a little difficult for me to

13 remember.

14 Q. Approximately?

15 A. That is also difficult for me to remember. If you

16 imagine, I must meet Mr Ronnie at least once every two

17 weeks, so I will not remember how much time I spent with

18 him. We would spend whatever time we needed to. Maybe

19 it was one or two hours, maybe it was five or six hours.

20 It just depends how long and what we would be discussing

21 at the time.

22 Q. If I get the answer "I do not know", that tells us that

23 you are not sure?

24 A. Yes, I am not sure.

25 Q. At any rate, do you have any specific recollection of

1 that meeting at all?

2 A. (Pause).

3 Q. Or was it just another meeting with Mr Ronnie?

4 A. Yes -- I could not say I exactly said this --

5 Q. Again, ish?

6 A. I remember it roughly because it was a reasonably

7 important meeting in the chain of meetings.

8 Q. And it was important because?

9 A. Because I had just been at David Hughes's house and met

10 David Hughes, Duncan Sharpe and Dave Whelan.

11 Q. And the meeting with those people was something that

12 stuck in your mind?

13 A. Yes, that stuck in my mind, I agree.

14 Q. Do you have any recollection -- did you go down to

15 London that evening with Mr Ronnie? Was there some

16 Sports Soccer thing happening that evening? Can you

17 help us? Just try and help, Mr Ashley.

18 This meeting with Mr Ronnie sticks in your mind

19 because it was on the day that you met, particularly,

20 Mr Whelan for the first time. You saw Ronnie, you went

21 on the train to his office. How did you get from

22 the train station to his office, by the way, did you get

23 a taxi or something?

24 A. I cannot recall. I cannot recall. I am trying to

25 say -- can I recall how I got there? Sometimes I would

1 be picked up by Umbro's drivers, sometimes I would get
2 in a taxi, sometimes I would be met by Mr Ronnie. For
3 me to say: I remember, he picked me up, or the driver
4 picked me up, or I got a taxi on that occasion, I cannot
5 remember that far back.

6 Q. From where?

7 A. It is either Stockport or Macclesfield I get off at, or
8 sometimes the centre of Manchester depending on where we
9 are meeting. If we are going to Umbro's offices -- it
10 depends where we are going and what we are doing.

11 It is not just Mr Ronnie I meet with Umbro by
12 the way, as well. It is like, Mr Nevitt, the
13 account-handlers. It is not just him and I, there is
14 a whole infrastructure of people meeting to do this.
15 This probably sticks in my mind slightly more because it
16 is just me. I physically do not buy the replica shirts,
17 I do not raise the orders. I do not physically do it.

18 Q. I think Umbro's main office is in Cheadle?

19 A. Yes.

20 Q. It is not a part of the north I know anything about.

21 Which is the train station for Cheadle?

22 A. I think the normal one is Stockport, although, as I say,
23 sometimes I get off at Macclesfield and sometimes I go
24 into central Manchester for different reasons.

25 Q. Wherever it was, Mr Hughes dropped you off at

1 the station, you got on the train to whichever it was,
2 and then you got picked up maybe, or you got a taxi, you
3 cannot remember?

4 A. I cannot be specific, I am sorry.

5 Q. Just help us with whether you can recall that that
6 meeting led to you going back down to London with
7 Mr Ronnie?

8 A. I definitely cannot recall that, one way or the other.

9 Q. I have to put this to you because it is our case,
10 although it has already been suggested. What you say in
11 your witness statement Mr Hughes did not say is exactly
12 what you did say, that you went to that meeting and
13 after seeing in the flesh Messrs Whelan and Hughes you
14 did not agree anything, you told them that you were
15 going to do whatever you wanted, you might go out at 32
16 quid, you will decide on the day?

17 A. That is absolute crap. There was absolutely no doubt
18 whatsoever that we agreed to charge 39.99 for the Man U
19 home league shirt.

20 Q. Why?

21 A. Because the reality is that that is what I charged for
22 it. What is undisputed is that I make more money
23 charging less, selling higher volumes. So why on earth
24 would I want to charge 39.99 unless I was forced to?

25 Q. That, as you well know, is not an answer to my question.

1 Why on 8th June in David Hughes's study did you agree
2 39.99?

3 A. To secure delivery of the Manchester United replica kit.

4 Q. You did not need to do any such thing. You had another
5 meeting with Mr Ronnie on 18th July --

6 A. I did not need to do --

7 Q. And another meeting with Mr Ronnie on 24th July?

8 A. Sorry, did you say I did not need to do any such thing?

9 Q. Yes.

10 A. I tell you, if I had not, I would have had a dozen
11 shirts delivered if I was lucky.

12 Q. No, because what you do is you go back and tell Ronnie
13 that you have done the business. It is another lie.

14 A. Another lie? Steady.

15 Q. You have told us that the relationships between you and
16 the major manufacturers involves the telling of lies on
17 these sorts of things on both sides.

18 A. On both sides, yes. When they say my shop is not
19 suitable, I believe that to be a lie.

20 Q. When you tell them that there has been a mistake by
21 the person doing the labelling, or a mistake by your
22 buying department, which accounts for why some of these
23 are at £28 and not £39.99, that is a lie too?

24 A. That is correct.

25 Q. That is what I mean by another lie?

1 A. Okay.

2 Q. That is all you need to do, go back to Mr Ronnie and
3 say: all squared off?

4 A. And then what? I go and reduce them?

5 Q. You do not make any promise to Whelan and Hughes, that
6 is the point, you agreed with Ronnie --

7 A. Do not be ridiculous, of course I did. That is what
8 I was there for.

9 Q. But why? Who were you frightened of?

10 A. I was frightened of not getting my delivery of shirts.

11 Q. So all you had to do was to persuade Mr Ronnie that
12 you had done the business?

13 A. No, because what would happen is: if I agreed with
14 Mr Hughes, Mr Whelan and Mr Sharpe that I was going to
15 be 39.99 and I then did not, you would find it would not
16 only be my Umbro relationship that would be affected, it
17 would be others.

18 Q. But the point is that neither of those things happened.
19 You did not go out at a discount because you were
20 subjected to the intolerable pressure of Umbro. That
21 included meetings you had with them in April, at which
22 you agreed to price the shirt at £40, May, at which you
23 agreed to price the shirt at £40, 18th July, at which
24 you agreed to price the shirt at £40 and 24th July, at
25 which you agreed to charge £40 for the shirt. Correct?

1 A. I cannot be correct about those dates --

2 Q. They are the dates of several of the infringements of
3 which you stand and will remain convicted?

4 A. If that is documentary fact, it is fact. I agree --

5 Q. You are not aware of it?

6 A. I am not aware of it. I am going to do the same thing
7 with the dates again. I do not want to just say yes
8 because you have asked me if I can remember those dates
9 sitting here now. How am I supposed to remember those?

10 THE PRESIDENT: You do not have to remember the specific
11 dates.

12 A. I keep saying the same thing. In principle, if you say
13 that is what it says, then fine. Yes?

14 MR WEST-KNIGHTS: The April agreement, the May agreement,
15 the 1st July agreement, the 2nd July agreement, they do
16 not ring any bells with you?

17 A. Specifically -- you are talking about specifics again.
18 You are talking about when -- you will have to give me
19 the dates. I will have to write it down. I do not
20 normally write things down but for you, my friend,
21 I will do it.

22 THE PRESIDENT: I do not think the particular dates are
23 actually in dispute, Mr West-Knights.

24 MR WEST-KNIGHTS: It is my habit never to interrupt a
25 witness. It is as plain as a pikestaff that the dates

1 are not in dispute. But I am not going to stop this
2 witness from doing whatever he thinks is an appropriate
3 way for dealing with the tribunal.

4 THE PRESIDENT: Mr Ashley, as far as the tribunal is
5 concerned, I do not think you need to try to recall
6 specific dates at the moment.

7 A. Perfect!

8 THE PRESIDENT: Did I understand you to be suggesting to
9 the witness that he was coming under intolerable
10 pressure from Umbro at this stage?

11 MR WEST-KNIGHTS: No, I am reminding the witness that his
12 excuse for putting his prices up is --

13 THE PRESIDENT: I am just trying to clarify what is being
14 put to him.

15 MR WEST-KNIGHTS: You have said that you had been placed
16 under intolerable pressure by Umbro, and the Office has
17 found that you made agreements with Umbro as to
18 the price of the MU shirt on four separate occasions.
19 Do you accept that?

20 A. Okay, fine.

21 Q. Right. Let us try again. Why did you agree on
22 8th June, as you say, to put the price up?

23 A. Because I had to. I had no choice. Why would I even
24 go? What, to see a helicopter land?

25 Q. You did not know there was going to be a helicopter

1 landing.

2 A. No, to be honest, I do not think I did. I did not give
3 it any thought at all how Mr Whelan and Mr Sharpe would
4 arrive.

5 Q. You wanted to meet Mr Whelan in particular, you wanted
6 to see the old guard, you wanted to meet them
7 face-to-face?

8 A. We -- absolutely -- where are you going now? I wanted
9 to see Mr Whelan? Can I just say no?

10 THE PRESIDENT: If that is your answer, that is your answer.

11 A. No.

12 MR WEST-KNIGHTS: You were, even in the middle of 2000,
13 supremely confident as to where your business was going.

14 A. No. What on earth makes you say I was supremely
15 confident in the middle of 2000 where my business was
16 going, when the whole market was getting more and more
17 price-rigged, which absolutely does not suit a
18 discounter? What do you mean supremely confident?
19 Where do you get that from?

20 Q. And there was no way that you were remotely intimidated
21 by, or frightened of, either Messrs Whelan or Hughes?

22 A. I would accept that Mr Hughes is not an intimidating
23 man, I would not quite say the same of Mr Whelan.

24 Q. But you were not, in fact, either intimidated by, or
25 frightened of him, were you?

1 A. I would be more frightened of Mr Whelan because of the
2 power that he has within the industry.

3 Q. You were not, in fact, intimidated by him or frightened
4 by him?

5 A. I just said that I would have been a lot more than
6 I am now, because he is not allowed to price fix now.

7 He had the power to ensure that we would not get
8 product from brands. That is what I was at that meeting
9 for. That is the kind of power he exerted in
10 the industry.

11 Q. None of that is true, is it, Mr Ashley?

12 A. Oh!

13 THE PRESIDENT: Can I just get the witness's answer to that
14 question.

15 A. I would like to say all of that is true.

16 THE PRESIDENT: Thank you.

17 MR WEST-KNIGHTS: The meeting with Mr Ronnie straight away,
18 are you sure that happened on the same day?

19 A. I think so, yes.

20 Q. That was not my question. Are you sure it happened on
21 the same day?

22 A. Yes, because Mr Hughes dropped me at the train station.

23 Q. As he would have done if you were going back to London?

24 A. No, the reason is I am pretty certain, as certain as
25 I can be, that I headed north on that train.

1 Q. Whereas otherwise you would have gone south?

2 A. Yes.

3 Q. In the other direction, if you were going back to

4 London?

5 A. Yes. I am pretty certain I headed north. I do not see

6 why, if I was having a meeting with Mr Ronnie,

7 particularly I would head south to have a meeting when

8 he was based up there. I do not particularly see

9 the reason I would have done that.

10 Q. If you had a meeting with Mr Ronnie, you would plainly

11 go to wherever Mr Ronnie was?

12 A. I would have thought so, yes.

13 Q. Are you sure about this lorry getting turned around

14 because of your failure to do some disputed deal on

15 prices? Are you sure it happened?

16 A. I think you will find even Umbro recognise or admit or

17 whatever that it happened.

18 Q. At any rate, your answer is you are certain that it

19 happened in response to matters to do with price-fixing?

20 A. Yes.

21 Q. And no question of it being muddled up with any supplier

22 turning round a shirt because you had blown your credit

23 limit?

24 A. No.

25 Q. Did that ever happen?

1 A. Did a supplier ever turn round a lorry because we had
2 ever blown our credit limit? I would say that
3 99.999 per cent I can be certain that that has never
4 happened.

5 You have to understand that I do not take in
6 the deliveries. I would not -- I can be pretty certain
7 that I would not even particularly know of instances of
8 lorries getting turned around unless it was, shall we
9 say, faulty goods or maybe they arrived at the wrong
10 time or missed their slot. I mean, lorries do get
11 turned around, I will accept that, but I do not think it
12 has ever been for credit limit, no.

13 Q. Before I leave the question of pressure finally, subject
14 to the financial information, was the pressure which you
15 say was put on to you by Umbro --

16 A. And other brands.

17 Q. This case is about Umbro, but it is helpful to be
18 reminded that Nike and everybody else did it.

19 A. Absolutely.

20 Q. Not Nike because they do not supply you?

21 A. No, Nike, yes.

22 Q. They were supplying you in 2000, were they?

23 A. In 2000, Nike would have been supplying us, yes.

24 They had cut us off previously.

25 Q. Just focus on Umbro for the moment because that is what

1 this is about. The pressure on you, did it get more in
2 the year 2001 compared with 2000 or did it get less?

3 A. I can absolutely categorically state that after the OFT
4 did their raid --

5 Q. No, I am not talking about that. I think you
6 understand. Prior to the OFT's public involvement.

7 A. Halfway through 2001 I think you will find is when it
8 is. So there is a difference in 2001, and all I can say
9 is that after the OFT raid in Umbro's defence there was
10 virtually -- again, let us go 99 per cent --

11 Q. I am going to interrupt you, Mr Ashley --

12 THE PRESIDENT: I think we are interested in the period
13 before the raid --

14 A. You are saying --

15 THE PRESIDENT: I think the question being put is: as
16 compared with 2000, did the pressure get worse in
17 the period of 2001 before the OFT's raid?

18 A. I think from when Umbro took over or bought
19 the business, the current Umbro, the pressure steadily
20 built, but not as a straight line but in peaks and
21 troughs. According to, as I understand from them,
22 the amount of pressure that they were being put under.

23 MR WEST-KNIGHTS: Never mind what you understood from them,
24 I am asking you about the pressure which they put on
25 you. Was it more intense in the first half of 2001 than

1 it had been in 2000, or less?

2 A. Was it more intense? Yes, I think as I say it was not
3 a straight-up line but it was nevertheless an increasing
4 line. Therefore the answer is yes, I suppose, but ...
5 yes.

6 Q. But you say that in respect of the increasing pressure
7 in 2001, because of the growth of your business, you had
8 a much stronger bargaining position and you were able to
9 resist it better?

10 A. In 2001?

11 Q. Yes.

12 A. Where do I say that, where are we talking about?

13 Q. Is that right or not, before we look at anything you
14 said before?

15 A. In 2001 the balance of power is not so one-sided; is
16 that what you are saying? Sorry, could you repeat
17 the question?

18 Q. How did you respond to the pressure as 2001 went
19 through -- this period of intensified pressure?

20 A. No, no. I said slow-build. That is what I said, I did
21 not say intensified pressure in 2001, I said it peaked
22 and troughed but as a process it was --

23 Q. Was the pressure intensified in 2001 or not?

24 A. To the best of my recollection now, as I say, from
25 the moment Umbro bought the business the pressure

1 gradually increased.

2 Q. Okay. Can we just turn back to your witness statement,
3 please, Mr Ashley, to page 115 of the running printed
4 numbers. Do you have that, Mr Ashley?

5 A. Yes.

6 Q. We are back in the grid exercise, so we have looked at
7 the front cover of this, it is the same document that
8 we have looked at with the columns in it. It is
9 the passage in the big block on the right-hand side, and
10 it is the last third or a quarter of the second long
11 bullet point, starting with the words:

12 "Despite intensified pressure from Umbro in 2001,
13 Sports Soccer increasingly pursued its own policy. It
14 was able to do this as a result of the growth in its
15 business, particularly in the volume of Umbro products
16 sold, which gave it a much stronger bargaining position
17 with Umbro than it had previously held."

18 A. Okay.

19 Q. If you would just go to 118. In the box with the number
20 104 in the left-hand column, the first sentence reads:

21 "As indicated above, pressure by Umbro became very
22 intense in 2001."

23 A. Okay.

24 Q. Now, why were you so reluctant to tell us the truth when
25 I asked you whether the pressure became more intense in

1 2001 compared with 2000?

2 A. I have told the truth. I think that just absolutely
3 states what I said just previously.

4 Q. Now, whatever the pressure from Umbro, if you have
5 a strong bargaining position you can resist it?

6 A. Do not be ridiculous. No.

7 Q. What was --

8 A. If I could have resisted I would have done, I would have
9 sold tons more product, I would have made tons more
10 money. It does not pay me to be full RRP. That is
11 undisputed, would you not agree?

12 Q. If you have increased bargaining power, you are
13 increasingly able to pursue your own policy?

14 A. (Pause).

15 Q. Or do you say that is a ridiculous proposition?

16 A. It is not a ridiculous proposition but, again, it is all
17 relative to the particular instance, the product and
18 the circumstance. Maybe at that particular time, I did
19 not have to do the backpack at full price for back to
20 school. Maybe my power has emphasised that on that
21 particular product line I have now not had to be full
22 price.

23 Q. What do you mean by "now"?

24 A. Now as in then. In 2001, maybe product outside of
25 replica that they had previously been able to pressure

1 me to sell at full RRP I was now able to discount. I am
2 trying to give you an example.

3 Q. As a general proposition, if because of the growth of
4 your business and the amount of business that you do
5 with Umbro increases that gives you a stronger
6 bargaining position which enables you increasingly to go
7 your own way?

8 A. I have told you on dozens of occasions replica is like
9 a separate business.

10 Q. So the business about you having an increasing part of
11 the balance of power with Umbro is completely irrelevant
12 to replica, is it?

13 A. It is not completely irrelevant, but replica is regarded
14 as a separate business. There must come a point in time
15 where we would be strong enough hopefully to be able to
16 resist them. We were not at that point then. We are
17 certainly at that point now.

18 Q. You were in 2001, you say, increasingly able to pursue
19 your own policies?

20 A. Yes. I have given you an example of a product which is
21 called the Italia backpack which we, up to that point,
22 I believe had to charge full RRP for, and there are
23 other Umbro-sensitive products outside of replica at
24 that time that they were insisting we were full price
25 for. Either Michael Owen football boots or Alan Shearer

1 football boots, or whichever it is, certain leading edge
2 performance products that Umbro were insisting
3 previously that we would have to be full price for; as
4 the balance of power changed, more and more of those
5 products we were able to discount.

6 I cannot be precise about the product and the date,
7 sorry.

8 Q. You felt confident enough to go to the Office and blow
9 the whistle on Umbro in March 2001?

10 A. I had already felt confident enough to go and blow
11 the whistle on everybody previous to that. I went to
12 see Mr Durrant, whenever it was, two years before then,
13 whenever.

14 Q. Thank you.

15 A. And that is not confident as in power. As I say, I had
16 already been two years previous.

17 Q. That is what I am putting to you, confident as in power.

18 A. No.

19 Q. You went to the OFT when you decided --

20 A. No.

21 Q. -- that on balance it would favour you commercially to
22 do so?

23 A. I went to the OFT in 1999 when I would have had very
24 little -- I cannot remember if it was 1999, I should not
25 say 1999. When I first went to the Office to complain

1 to Mr Durrant, whenever that was, I certainly did not
2 have a balance of power with anybody. If I did not soon
3 start to get the price-fixing stopped, I could see that
4 we would have no business at all. And we would actually
5 be put out of business.

6 Q. That plainly was not the case in 2000?

7 A. It plainly was the case in 2000. What you do not
8 understand is that the branded business was a very small
9 part of our business in 2000 because we were under RRP
10 restraints. Therefore, brands like Donnay, we had to
11 sell vast amounts of our own product.

12 Q. This is about licensed product, which you sold very
13 little of in the beginning of 2000?

14 A. Because if we have to charge the full RRP we do not do
15 the big volumes. It is the same answer again and again.

16 Q. Do not let us go round in circles, Mr Ashley. By
17 March 2001 you were specifically fingering Umbro?

18 A. By March 2001 I was not specifically fingering Umbro,
19 thank you very much. I think it was Kappa
20 I specifically fingered with the tapes.

21 Q. In March 2001 there was a meeting with the OFT --

22 A. I mentioned all brands.

23 Q. -- at which the details were said to be wrong. You
24 referred to a meeting organised by Umbro between you,
25 Whelan and Hughes?

1 A. Yes, I specifically mentioned a meeting between those
2 people.

3 Q. So that was the balloon going up as far as Umbro was
4 concerned, was it not?

5 A. Yes, fine. But I also mentioned other brands as well,
6 I did not keep it to Umbro. I mentioned Nike, Reebok,
7 Adidas. I also say that Umbro, in that statement, as
8 I recall, were not the worst offenders but were maybe
9 the weakest of the big four.

10 Q. They are the ones in respect of whom you give a specific
11 example, and that led to all this?

12 A. They were the ones, in my opinion, from what I had been
13 led to believe, were the ones who were being put under
14 the most pressure by other retailers.

15 Q. You were perfectly capable of blowing the whistle to
16 the Office in the middle of 2000. But the fact is that
17 you wanted to acquire and retain the rights on all
18 the other deals that you were doing with Umbro, and you
19 did not want to jeopardise that at that time?

20 A. You are absolutely barking mad. I have never heard such
21 crap in all my life, I apologise to the tribunal. But,
22 honestly, where are we going now? The deals you asked
23 me about in 2000 and 2001, I said yesterday it is 2001,
24 the end of. There virtually were no deals in 2000.
25 I have said that yesterday.

1 Because you mentioned 2001, after the raid, even,
2 when the price-fixing stopped, most of those
3 conversations are taking place in the second half of
4 2001, in which case this case had been blown apart
5 because the OFT had done their raids. And that did, for
6 the OFT, for the record, for the press, absolutely bring
7 the sports trade into line. They soon packed it in
8 then.

9 Q. It did not wreck your dealings with Umbro over
10 the licensing agreement?

11 A. Why should it? Why on earth should it?

12 Q. And you worked out that it probably would not anyway?

13 A. I did not work out anything.

14 Q. You did not work out anything, Mr Ashley?

15 A. I did not think: well, by going to the OFT, it is going
16 to wreck my Umbro licence.

17 Q. No, I think you worked out that if you did go to the OFT
18 it would not wreck the Umbro licence, and you were
19 right.

20 A. I had already paid.

21 Q. Some money, you say?

22 A. I think I had already paid the 12 million, had I not?
23 I think so. I think from what we said I paid the first
24 half in September and the second half in June or
25 something. I think so. We can check.

1 Maybe the second payment was done after the OFT.
2 There is no guarantee when you go to the OFT at that
3 time with these sorts of things that they would have
4 been able to take any action. Do not forget, I had been
5 complaining for quite a long time. So this was not a:
6 right, that is it ... you know.

7 Q. You complained when it was commercially expedient for
8 you to do so?

9 A. No, I complained also when it was not. I have actually
10 been complaining about price maintenance for about
11 12 years. I actually went to see my MP back in about
12 1990 and complained about retail price maintenance then.
13 I am an addict against retail price maintenance. You
14 can look that up in the thing. I have written to
15 ministers, I have consistently complained about retail
16 price maintenance in the sports trade. I am
17 a discounter.

18 Q. We will leave that last part to the financial
19 re-examination of your affairs Mr Ashley, but I will be
20 putting it to you that when it is expedient to you
21 you are quite happy to engage in retail price
22 maintenance, but we will park that one.

23 A. No.

24 Q. The last question. The answer may be a straight no.
25 Apart from the sums of money that you pay, as it were,

1 for ordinary in-line trade and the sums of money you say
2 you paid in respect of the royalty, whatever it is, have
3 you given any other money or lent money or given support
4 to Umbro financially in any way since the management
5 buy-out?

6 A. Let us go to the question and try to break it down
7 a little bit for me.

8 Q. Guarantees on letters of credit, loans, assurances of
9 continued trading, that sort of thing?

10 A. Yes.

11 Q. Thank you. Can we break that down as to when and what,
12 please?

13 A. I cannot tell you that, sitting here now.

14 Q. Ish?

15 A. Ish. Which one would you like to start with at the top
16 of the list first?

17 Q. I do not know what the list contains, Mr Ashley,
18 you start at the top of your list.

19 A. I do not have a list.

20 Q. You said yes. Now what were you saying "yes" in respect
21 of?

22 A. Absolutely any, you said, and I must say that there
23 probably must be something, so I said yes.

24 Q. Okay. What did you have in mind?

25 A. I have not got anything specifically in mind.

1 Q. You said yes, why did you say yes?

2 A. Because I would have done something to support Umbro,
3 yes, I may have paid an account early for them. I do
4 that with all brands. All of them. All brands.

5 THE PRESIDENT: Just a moment. There may be
6 a confidentiality issue here, Mr West-Knights.

7 MR WEST-KNIGHTS: We cannot tell unless Mr Ashley tells us
8 that there is.

9 A. In that case there is.

10 Q. There we go.

11 A. I am not going in-camera again, am I? Oh, no.

12 MR WEST-KNIGHTS: I am in your hands as to the most
13 convenient way of dealing with this. If we were to go
14 into camera now, if you think that is the most
15 appropriate course, we might only need to be there for
16 five minutes. It may be that the witness would like to
17 have a think about it over lunch as to exactly what it
18 is he was referring to when he said yes and then I will
19 not have to drag it out of him and he can come back at
20 2 o'clock and tell us about it.

21 MR MORRIS: I think the latter option, let us stop now.

22 MR WEST-KNIGHTS: I am entirely happy with that.

23 THE PRESIDENT: I think it might be convenient to adjourn at
24 this point. What is the position about the witness
25 possibly refreshing his memory on these kinds of issues?

1 MR WEST-KNIGHTS: I think all he needs to do is have a
2 think. I am not sure what else you might be suggesting,
3 sir?

4 THE PRESIDENT: There may be records that he might want to
5 be reminded of, I do not know.

6 MR WEST-KNIGHTS: Let us see how we get on, if I might say
7 so. It is not customary for a witness to leave the box
8 to refresh his memory.

9 THE PRESIDENT: Mr Ashley, we will adjourn now. I want you
10 to think quite hard about this last interchange, in what
11 respects you may have helped Umbro. Principally I think
12 we are talking about 1999/2000/2001, that sort of
13 period.

14 MR WEST-KNIGHTS: I am principally interested in 1999/2000,
15 but there are other parties present who have
16 a legitimate interest in 2001.

17 THE PRESIDENT: Yes. So see what you can remember.

18 A. Okay.

19 THE PRESIDENT: When we start again, I then need to ask you
20 whether you are happy to discuss this in open court or
21 whether you would like to discuss it in camera.

22 A. Okay. I do not think I have a problem with 2000.

23 THE PRESIDENT: Do not go into it now, but I think we will
24 wait until after the adjournment.

25 MR WEST-KNIGHTS: Thank you, sir, that is very helpful.

1 THE PRESIDENT: Okay. Thank you very much.

2 (1.00 pm)

3 (The short adjournment)

4 (2.00 pm)

5 THE PRESIDENT: Yes, Mr Morris.

6 MR MORRIS: Sir, may it please you. Can I bring you
7 up-to-date about the position with the two statements or
8 papers. You should have before you a two-page statement
9 prepared by Sports World. I understand that both of my
10 learned friends have been provided with copies of that
11 too.

12 The current position in relation to Umbro is that
13 Miss Roseveare is engaged in preparing it, but she
14 believes that it will not be ready until tomorrow
15 lunchtime at the earliest.

16 That is where we are in relation to those two
17 papers.

18 THE PRESIDENT: Yes.

19 MR MORRIS: The question again arises as to where we go in
20 relation to that, particularly as far as Mr Ashley is
21 concerned.

22 It is our submission, largely made at the behest of
23 Sports World itself and their legal advisors, that
24 Mr Ashley's evidence should be completed now whilst he
25 remains in the witness-box. This is now the third day.

1 He is not able to communicate with the rest of his team
2 about the business, and he has been in the witness-box
3 for a long time. It really would be unsatisfactory were
4 he to be stood down now to be recalled, most
5 particularly in circumstances where there may be
6 a suggestion that he could not speak to anybody in
7 the meantime.

8 It is my suggestion in the first instance that any
9 matters arising out of the Sports World paper can be put
10 to him whilst he is giving evidence now. I have not
11 discussed this with my learned friends; they will no
12 doubt have something to say about it. Mr Ashley has
13 been giving evidence for quite some time, regretfully.

14 THE PRESIDENT: Thank you, Mr Morris. Let us see where
15 we are.

16 MR WEST-KNIGHTS: As I understood it, the regime which
17 the tribunal had already indicated it intended to follow
18 was that when it had the information from the two
19 respective parties as to what the true position was, we
20 would move on in respect to what we call the financial
21 matters. We are not in that position, it is as simple
22 as that.

23 I do not know if you have had the opportunity of
24 seeing the piece of paper that has been produced on
25 behalf of Sports World International.

1 THE PRESIDENT: It was on our desk as we came in, and
2 we have done nothing more than glance at it.
3 MR WEST-KNIGHTS: If you were to do more than glance at it,
4 you would derive from it practically nothing in terms of
5 useful information. I contains a number of statements
6 of the obvious which we already know. It does not
7 contain any chronological run of how what happened
8 happened and when. It includes some numbers which
9 are -- again, I could have done this as a piece of
10 guesswork in three minutes. I am not criticising those
11 who have done it, but it is wholly uninformative and
12 there is no way we can move forward on the basis of this
13 piece of paper. If I were to ask you three gentlemen to
14 read this piece of paper and ask you if it was clear,
15 the answer would be no.

16 The next thing that we do need -- and I regret this
17 is taking so long but that is out of our hands -- is
18 the Umbro piece of paper. I am bound to say I would
19 have hoped for a better piece of paper from
20 Sports World. The fact is that we are not in
21 the position that we agreed we would be in before we
22 went into the parked financial matters.

23 THE PRESIDENT: What do you suggest, Mr West-Knights?

24 MR WEST-KNIGHTS: No better than we have always suggested,
25 which is that there will need to be a recall of

1 Mr Ashley and if necessary, if he has finished,
2 Mr Ronnie, if necessary, to deal with those matters as
3 to which as yet the tribunal has not had an explanation
4 of from Sports World and Umbro.

5 For my part, I have never understood it to be part
6 of the purdah of any witness that he cannot talk to
7 anybody about anything. The injunction is not to
8 discuss their evidence with any person. In other words,
9 the fact that Mr Ashley is apt to be recalled as
10 a witness does not affect the running of his business
11 one jot. There is no question of his not being able to
12 speak to his team. Presumably he would be speaking to
13 his team here broadly in connection with this case. But
14 even here he is perfectly entitled to talk to anyone he
15 wants, provided he takes the sensible precaution perhaps
16 of being overheard so nobody could suggest that anything
17 improper was going on. If he needs to talk to who is
18 here from Sports World about some deal or meeting, he is
19 perfectly at liberty to do so.

20 We had, I had understood, already reached
21 the position where we had all agreed that it was
22 necessary to have clarity on these arrangements before
23 they were delved into further with the witnesses; we are
24 not there. If we are not going to get there before it
25 sounds at the earliest tomorrow lunchtime it necessarily

1 follows that Mr Ashley will have to be recalled.

2 THE PRESIDENT: Well, now, you had some cross-examination on
3 financial matters prepared, apparently --

4 MR WEST-KNIGHTS: Yes, de bene esse, as it were. I think
5 when I prepared the materials in respect of
6 the financials it was prior to the emergence of
7 the prospect of an explanation, that is to say a piece
8 of paper or two clean pieces of paper for the tribunal.

9 THE PRESIDENT: I will tell you what is frankly going
10 through my mind as a first reaction: if you are saying
11 that this document that we have received from
12 Sports World does not actually take matters further, we
13 may not necessarily be able to rely on a document from
14 Umbro taking matters further.

15 MR WEST-KNIGHTS: Umbro are likely to know more about it
16 because they are talking to their own documents.

17 THE PRESIDENT: If you were able and felt comfortable with
18 carrying on with your cross-examination, getting as far
19 as you could, the more that we can, as it were, get out
20 of the way while Mr Ashley is here, one could see
21 a possible advantage in it.

22 MR WEST-KNIGHTS: I can understand that there would be
23 an advantage in that. I am reluctant to be discuss
24 the evidence we have so far had in the presence of
25 the witness. He is still under oath and he is going to

1 be cross-examined further regardless.

2 Doing it as neutrally as I can, my own estimation
3 was that the answers that I got from the witness were so
4 unresponsive in terms of the passage of information that
5 I had no more firm information with those answers than
6 I started off with, and therefore I cannot take it any
7 further sensibly with him without some firm information.
8 I would simply be speculating. I regret that answer.
9 It is in fact the same position that we had been
10 adopting, all of us -- once the suggestion came from
11 the tribunal that it was really hopeless to do this in
12 a vacuum, and the vacuum remains to an extent. There is
13 no reason to suppose that the Umbro piece of paper will
14 not help us materially because principally it is their
15 document and they have them to look at. I do not know
16 who it is that Sports World have been able to take
17 instructions from; it has not included Mr Ashley.

18 THE PRESIDENT: Yes.

19 MR WEST-KNIGHTS: It may be, and I say this off-the-cuff --
20 and particularly if Lord Grabiner says it is daft he may
21 turn out to be right -- it may be that once this round
22 is finished it might be necessary for Mr Ashley's
23 version of these events to go down as the Sports World
24 version of these events. It does not seem to me that so
25 far they have been able to extract any sense out of

1 a chronological run as to when what started happening in
2 relation to other things.

3 The straight answer to your question, would it be
4 fruitful for me to continue on the financial matters
5 with Mr Ashley with the state of matters as they are, is
6 no for the reasons that we canvassed the day before
7 yesterday.

8 THE PRESIDENT: Lord Grabiner, what is your position?

9 LORD GRABINER: My understanding was that we would be
10 getting something in writing both from Umbro and
11 Sports Soccer and in the light of those materials we
12 would decide what, if any, further cross-examination was
13 necessary. The assumption in what I have just said is
14 that it may be that no further cross-examination may be
15 necessary. I would have thought that the best thing to
16 do would be to wait for the further piece of paper and
17 then to make a judgment about that. Because there may
18 be something in the other piece of paper which affects
19 this witness, because in theory it is the other side of
20 what is in this piece of paper. If so, we had better
21 wait before deciding what questions we need to ask.

22 My suggestion is that my friend should finish, my
23 learned friend should re-examine if he has any
24 re-examination and we should get on another witness.

25 THE PRESIDENT: What do you say, Mr Morris?

1 MR MORRIS: I cannot really resist that. I think that is
2 the way we have to go. Subject obviously to -- there is
3 the question of Mr Ashley talking or not talking about
4 that subject-matter. If he is not going to finish
5 today, he would want to be released from the tribunal
6 and recalled if necessary at some appropriate time.

7 THE PRESIDENT: Mr Ashley, are you planning to be out of
8 the country over the next ten days or so?

9 THE WITNESS: No.

10 THE PRESIDENT: If we needed you to come back you would be
11 able to come back?

12 THE WITNESS: Yes.

13 THE PRESIDENT: In that case, we had better carry on in so
14 far as you think you can go on now, Mr West-Knights, and
15 stop when you think you should stop.

16 MR WEST-KNIGHTS: We are now in the position that we had
17 been shortly after 1 o'clock, which is that Mr Ashley
18 has been invited to spend part of an hour considering
19 the answer to my question, and in the course of
20 considering that, to what extent he can answer it
21 otherwise than in camera. That is where we are.

22 THE PRESIDENT: Yes, we asked you to think over one or two
23 things, Mr Ashley. If we break the question down into
24 1999, 2000 and 2001, would you like us to go into camera
25 for your answer to the question or are you able to

1 answer it without going into camera?

2 THE WITNESS: I am able to answer it without going into
3 camera.

4 MR MORRIS: Sir, I hesitate to intervene at this stage.
5 I have had a request from Umbro in relation to this
6 matter that such answers may contain information which
7 they are not happy to be dealt with in open court.

8 So it may be, given that perhaps it is not matters
9 that people need to take instructions on, that
10 the safest course would be to go into camera about these
11 matters.

12 MR WEST-KNIGHTS: I do not oppose that.

13 THE PRESIDENT: Then I think we had better follow
14 the prudent course. In the light of that request,
15 I think we do need to clear the court.

16 If members of the public who are not part of
17 the legal teams of the parties could kindly withdraw.

18 (2.13 pm)

19 (Proceedings in camera)

20 (2.40 pm)

21 (Proceedings in open court)

22 THE PRESIDENT: Yes, Mr Morris.

23 (2.40 pm)

24 Re-examination by MR MORRIS

25 Q. Mr Ashley, you will be pleased to hear that I have very

1 few questions in re-examination for you.

2 A. Delighted.

3 Q. You have been asked many questions over the last three

4 days by Lord Grabiner and Mr West-Knights about

5 the balance of power between Umbro and Sports Soccer in

6 2000 and a suggested link between on the one hand

7 the agreement on prices on replica kit and on the other

8 hand Umbro/Sports Soccer's licensing agreement dealing

9 with sourced products?

10 A. Correct.

11 Q. Now, you say that you wanted to discount replica kit at

12 all times but only priced at 39.99 when you were forced

13 to do so by Umbro?

14 A. One hundred per cent correct.

15 MR WEST-KNIGHTS: If I have ever heard a leading question,

16 that was it.

17 THE PRESIDENT: I think all he has done is state what

18 the witness has actually said.

19 MR WEST-KNIGHTS: I know what a leading question is, and

20 that was one, with respect. I just do that as a warning

21 shot.

22 MR MORRIS: That was not even a question. That was laying

23 the foundation for the question which is about to come.

24 THE PRESIDENT: If you preface what you say by saying, "You

25 have said in evidence so and so", that is a statement,

1 is it not, Mr West-Knights?

2 MR WEST-KNIGHTS: It is not the business of counsel to make
3 statements; we ask questions. I am sorry, I am not
4 going to fall out with you over the meaning of a leading
5 question. If that was not one, then let there be none.

6 MR MORRIS: I am slightly surprised at my learned friend's
7 interjection on my first question in the light of his
8 interjection this morning.

9 When Mr Ronnie came to you in, say, May 2000 and
10 insisted that Sports Soccer --

11 LORD GRABINER: Now, if I may say so, that is entirely
12 inappropriate, whatever one may say about the first
13 question.

14 MR WEST-KNIGHTS: And that is why I did it the first time
15 because I thought that was going to happen.

16 THE PRESIDENT: Let us sort this out, Mr Morris. In
17 re-examination you have to go slowly and carefully. Did
18 Mr Ronnie come to see you et cetera? You cannot put
19 words into the witness's mouth.

20 MR MORRIS: I am attempting -- I can go back to the
21 transcript and find the references. I am trying to
22 summarise the evidence that has already been given but I
23 will not put it that way.

24 THE PRESIDENT: Try to put it as neutrally as you can. If
25 you need to go back to the express transcript, you may

1 do so.

2 MR MORRIS: Did Mr Ronnie ask you --

3 MR WEST-KNIGHTS: Any question that starts with "did you" is
4 going to get the answerer into trouble.

5 LORD GRABINER: This is litigation for five-year olds. Any
6 question that starts with the words, "Did Mr Ronnie do
7 this, that or the other" is ex hypothesi a leading
8 question. If my friend wants to swap places with
9 the witness and give evidence, we are very happy to hear
10 it, but it is not terribly helpful to you.

11 MR MORRIS: When Mr Ronnie discussed replica kit with you
12 what did he ask you to do?

13 A. To put the price up.

14 Q. When he asked you to do that, why could you not have
15 told Mr Ronnie --

16 A. Sorry, I have to laugh, I am sorry. I am a five-year
17 old, I know, but I think your questions are even worse
18 but that is my problem. I have to be allowed to laugh,
19 because I think it is very funny.

20 Sorry, tribunal, I have to laugh, I have gone.
21 After three days I have completely collapsed!

22 MR MORRIS: The tribunal asked you on several occasions what
23 the nature of threat was.

24 LORD GRABINER: Sir, really. Does one really need to
25 continue to protest? Any answer to that question is

1 utterly valueless, in my submission.

2 THE PRESIDENT: Well, we have had a lot of evidence so far,
3 Mr Morris. In the course of cross-examination a lot of
4 questions have been asked about why this witness did or
5 did not do what he says he did or did not do. I am not
6 sure it is particularly useful at this stage.

7 MR MORRIS: Very well, I will move on to my next question,
8 which will be taken directly from the transcript of this
9 morning. Page 76, line 4. This was the discussion
10 concerning the meeting of --

11 THE PRESIDENT: Just a moment, we have to get there.

12 MR MORRIS: This was the discussion concerning the meeting
13 with the OFT.

14 THE PRESIDENT: Page 76, yes.

15 MR MORRIS: Line 1-3, it starts:

16 "They are the ones in respect of whom you gave
17 a specific example ..."

18 I am just reading back the transcript:

19 "They are the ones in respect of whom ..."

20 That was a question. Line 4 is an answer, it says:

21 "They were the ones being put under the most
22 pressure by --"

23 THE PRESIDENT: Hang on. I am trying to find the passage.

24 The question is:

25 "They are the ones in respect of whom you give

1 a specific example, and that led to all this?"

2 That is in relation to the question that suggested
3 that Umbro was the weakest of the four.

4 MR MORRIS: Yes. And the answer given was:

5 "They were the ones being put under the most
6 pressure by other retailers."

7 And my question to Mr Ashley is: what had you heard
8 about the pressure upon Umbro by other retailers?

9 THE PRESIDENT: Yes.

10 A. We had heard from Umbro that unless they forced us to
11 put our price up to the RRP of 39.99, for example,
12 the other main customers would be cancelling off
13 non-replica product and potentially reducing their
14 replica orders as well; and that these threats were very
15 real and therefore we absolutely had to charge 39.99,
16 because we would not be able to take all the product
17 that they cancelled. They were real threats according
18 to Umbro.

19 MR MORRIS: Who did you hear that from?

20 A. Various people from Umbro: Mr Attfield, Mr Ronnie -- did
21 I hear it directly from Peter McGuigan? I cannot
22 remember basically the people we came into contact with.

23 LORD GRABINER: Sir, can I say this, and I apologise for
24 being so very basic about this.

25 The function of re-examination is to go back over

1 matters which were the subject of cross-examination.

2 THE PRESIDENT: Yes.

3 LORD GRABINER: I do not believe that this question was

4 a matter that was raised by either counsel on this side

5 of the room in cross-examination.

6 THE PRESIDENT: The matter being ...?

7 LORD GRABINER: What has been picked out here is something

8 said by Mr Ashley; it does not arise out of

9 the cross-examination at all.

10 MR MORRIS: It was an answer to a question in

11 cross-examination, explaining why Umbro in particular

12 had been mentioned.

13 THE PRESIDENT: I think in terms of re-examination counsel

14 is entitled to elucidate an answer that was made in

15 cross-examination. I would have thought that that

16 question probably did arise out of cross-examination,

17 Lord Grabiner, looking back at the transcript.

18 Yes, Mr Morris.

19 MR WEST-KNIGHTS: Sorry, if you will forgive me, I would

20 like to have a moment to look back at this before

21 dealing with what you have just said.

22 THE PRESIDENT: Yes.

23 MR WEST-KNIGHTS: This cross-examination is very simply

24 putting to Mr Ashley that by a certain date, certainly

25 March of 2001, he had specifically identified

1 an occasion of pressure as being Umbro. None of this
2 cross-examination has to do with anything said by Umbro
3 to Mr Ashley; none of this cross-examination has
4 anything to do with anything said by Umbro about third
5 parties. It is simply collecting a reference to Umbro
6 and hanging on it an inappropriate and impermissible
7 line of alleged re-examination.

8 Had this set of questions been about challenging
9 the fact that if the witness said he had been told by
10 Mr Ronnie X, Y and Z and I challenged whether he had
11 been told that, that would hang here, but it does not.
12 This is nothing to do with all of that. This is simply
13 pointing out to Mr Ashley that although Kappa was
14 the ostensible nub of his complaint in August 2000, by
15 the time he was in front of the Office in March 2001
16 he was in fact fingering Umbro because he mentioned
17 helicopter day.

18 That is a yard and a half away from anything to do
19 with this purported re-examination.

20 THE PRESIDENT: I think there had been a great deal of
21 suggestion in the course of cross-examination at this
22 point and other points that Mr Ashley was not really
23 being put under pressure by Umbro at all; if anything,
24 the relationship was an evenly-based relationship in
25 the course of which various agreements including

1 the alleged infringing agreement were made.

2 MR WEST-KNIGHTS: And he has given evidence about the nature
3 of the pressure, namely the threat to withdraw his
4 supplies of product either directly or collaterally. It
5 has nothing to do with now suddenly causing this witness
6 to give evidence anew about a whole different topic.

7 THE PRESIDENT: We will reflect on the question and
8 the answer, Mr West-Knights, but I think for the moment
9 we had better go on.

10 MR WEST-KNIGHTS: I am sorry, no. Because --

11 THE PRESIDENT: What do you suggest we do?

12 MR WEST-KNIGHTS: Stop him asking these questions. That is
13 the purpose of the tribunal: if improper questions are
14 being asked they are stopped.

15 THE WITNESS: A bit like the Sunday magazine.

16 THE PRESIDENT: This question has been asked, and I am far
17 from persuaded that it is an improper question. Let us
18 see what the next question is and then we can discuss
19 the next question.

20 MR MORRIS: The next question is a reference to page 66 of
21 the transcript, the bottom of page 65, line 25,
22 the start of page 66, line 1, where Mr West-Knights was
23 asking the witness about whether he was or was not
24 intimidated by Mr Whelan.

25 THE PRESIDENT: Yes.

1 MR MORRIS: The question was: you were not intimidated by
2 him? And the answer was: I just said that I would have
3 been a lot more then than now because he is not allowed
4 to price-fix now. He had the power to ensure that we
5 would not get product from brands.

6 My question is: why did you believe that he had
7 the power to ensure that "we would not get product from
8 brands"?

9 I am assuming from the silence to the right that
10 the witness is allowed to give the answer.

11 MR WEST-KNIGHTS: No, you can take it from me that I am
12 checking the transcript.

13 THE PRESIDENT: I have it in front of me:

14 "Question: You were not intimidated by him?"

15 MR WEST-KNIGHTS: He is talking about his question now.

16 Mr Morris is trying to suggest to the tribunal that the
17 question which he is currently trying to pose to this
18 witness is: why did Mr Whelan have the power to
19 intimidate?

20 THE PRESIDENT: Well --

21 MR MORRIS: What was the basis for your statement,
22 Mr Ashley, that you considered that he had the power to
23 ensure that "we would not get product from brands"?

24 THE PRESIDENT: If I can put it as neutrally as possible,
25 let us see if I have it right, Mr West-Knights.

1 The witness said of Mr Whelan: he had the power to
2 ensure that we -- that is Sports Soccer -- would not get
3 product from brands. And the question that Mr Morris
4 wants to put to this witness is: why did you say that?
5 MR WEST-KNIGHTS: That is an entirely different question
6 from one that we have been debating. I am bound to say
7 for my own part that for the moment he is entitled to
8 ask the question which he now asks, but it is a wholly
9 different question based on a wholly different premise.
10 THE PRESIDENT: Well, that is the question that I understood
11 Mr Morris wanted to ask.
12 MR WEST-KNIGHTS: That is the question which he just now
13 decided he wanted to ask but was not the question as he
14 represented to you he wanted to ask before.
15 THE PRESIDENT: Let us ask the question in the way I put it.
16 Why did you say, Mr Ashley, that Mr Whelan had
17 the power to ensure that "we would not get product from
18 brands"?
19 A. Basically because -- it is the same answer as before.
20 JJB have the power with brands to threaten to cancel
21 product and reduce orders if brands are not seen -- or
22 I should say the Umbro brand was not seen to be taking
23 some action in ensuring that I did not undercut them on
24 the RRP's of the product.
25 So to explain it, so he had the power by a back door

1 mechanism for want of a better word: if I did not charge
2 the full price, he would then -- he was substantially
3 bigger than me with Umbro on in-line and replica
4 product, therefore he would be able to -- we have
5 examples of him cancelling product, we have examples of
6 realities where Umbro brought product to us and said:
7 because of your discounting we have been left with this
8 product and you will have to help us out.

9 So we had working examples of it previously
10 happening, and that is what we were told the reasons
11 were. And then we were, shall we say, put under --
12 encouraged that that product was something we were
13 responsible for, and we then would take in that product,
14 even if we did not make a profit on it particularly --
15 but then to sell that product. That is how the whole
16 pressure thing came. I did not go to the OFT for fun.

17 THE PRESIDENT: Mr Morris, we do not need to go over ground
18 that we have already gone over.

19 MR MORRIS: I am grateful, and I take on board your
20 comments, sir.

21 You were also asked by Mr West-Knights about whether
22 you expected to see a helicopter at Mr Hughes's house;
23 this is page 65, lines 3-5, and you answered:

24 "I did not give it any thought at all how Mr Whelan
25 and Mr Sharpe would arrive."

1 When travelling to the meeting who did you expect to
2 see at Mr Hughes's house?

3 A. Mr Hughes ... I am not going to get this wrong. Who did
4 I expect to see? I expected to see David Hughes because
5 he had phoned me. I expected to see Dave Whelan. I am
6 not sure whether or not I expected to see Mr Sharpe
7 there as well. I am not sure.

8 Q. Thank you. Why did you expect to see Mr Whelan?

9 A. Because I had been told he would be there.

10 Q. Thank you. In the course of cross-examination by
11 Lord Grabiner you were asked in some detail about what
12 Mr Whelan had said at the meeting on 8th June.

13 Lord Grabiner then questioned you about the precise
14 words used by Mr Whelan at that meeting. Can I ask you
15 to look at Mr Hughes's statement --

16 THE PRESIDENT: Just a moment. Was this something that was
17 put to the witness in the course of cross-examination?

18 MR WEST-KNIGHTS: Sir, one thing we do not do in
19 examination-in-chief or re-examination is put things to
20 people. So my learned friend had better go very
21 carefully on this one. I do not know what he is going
22 to do next.

23 LORD GRABINER: What he is going to do, as one who has been
24 through this exercise many, many times in the past,
25 though never against this particular opponent, is he is

1 going to show the witness somebody else's evidence and
2 ask him to comment on it and see whether he agrees with
3 it or not and thereby make it part of his evidence.
4 That is a wholly impermissible exercise.

5 What he can do is to ask him about the answer he
6 gave to me and ask him to elucidate it. What he cannot
7 do through somebody else's witness statement is to
8 invite the witness to improve his own recollection of
9 his evidence.

10 MR MORRIS: I will not take the witness to Mr Hughes's
11 statement. The purpose of my question was directed to
12 this: in the course of being asked about Mr Whelan's --

13 THE PRESIDENT: Where are you in the transcript, Mr Morris?

14 MR MORRIS: I do not have the transcript. It is Day 1 --

15 LORD GRABINER: For example, page 99 I suspect is at least
16 part of the discussion.

17 MR MORRIS: Page 102 I have in mind.

18 THE PRESIDENT: We are on Day 1 now.

19 MR MORRIS: Page 102, where Lord Grabiner took the witness
20 to paragraphs 21-35 of his own witness statement. At
21 104 there is the statement that this is in response to
22 Mr Hughes's own statement --

23 LORD GRABINER: That was the chairman who said that, not me.

24 MR MORRIS: Yes. And then 107 where you, sir, indicated
25 that the witness might wish to be taken to his full

1 evidence. And Lord Grabiner said that was a matter for
2 submission. The question I want to ask is I want to ask
3 Mr Ashley to give his best recollection, having been
4 asked about the words of Mr Whelan at that meeting, his
5 best recollection now of the full scope of what was said
6 at that time at the meeting.

7 THE PRESIDENT: On this I think, Mr Morris, we have
8 Mr Ashley's witness statement --

9 MR MORRIS: Very well.

10 THE PRESIDENT: -- we have had cross-examination on it,
11 he has answered questions in cross-examination. I think
12 we perhaps ought to leave that particular topic there.

13 MR MORRIS: Very well. Can we look at page 101 of Day 1.

14 THE PRESIDENT: Yes.

15 MR MORRIS: Line 2. The witness says:

16 "Because I know what the outcome of the meeting was,
17 so I am absolutely certain that there was an agreed
18 price of 39.99."

19 THE PRESIDENT: We have had this several times; is it
20 necessary to go over it again?

21 MR MORRIS: Can I ask the question, which I have not asked
22 yet. The question is: how can you say now that you must
23 have been certain about JJB's pricing intentions?

24 A. Because he said so at the time at the meeting. It was
25 absolutely crystal-clear at that meeting the price I had

1 to be for the Man United shirt was 39.99 for the adult
2 shirt at launch. I am under oath and I will put my
3 kids' life on the fact. Is that strong enough for you?
4 Q. I would like to ask one further question on that if
5 I may. If Mr Whelan had left you in doubt --
6 THE PRESIDENT: Do you really need to ask further questions
7 on this, Mr Morris?
8 THE WITNESS: I have put my kids' life on it, that is
9 enough, I am good.
10 THE PRESIDENT: We do not need to spend time picking out
11 particular things that are already in evidence.
12 MR MORRIS: I understand that. I am trying to elucidate
13 this answer.
14 THE PRESIDENT: That answer was pretty clear. I do not
15 think we need any elucidation.
16 MR MORRIS: I want to ask you about the England Euro 2000
17 agreement.
18 THE PRESIDENT: Transcript reference?
19 MR MORRIS: I want to ask about memory recollection. At
20 page 59 of the transcript -- it is to do with the order
21 of events. Page 85 of Day 1.
22 THE PRESIDENT: Yes.
23 MR MORRIS: And the answer was:
24 "What would have happened on the 24th was that we
25 would have had to agree to the higher price --~"

1 THE PRESIDENT: Sorry, where are you?

2 MR MORRIS: Line 65, sir.

3 THE PRESIDENT: Let us see what the context is.

4 MR MORRIS: We were dealing with the meeting of 24th May and
5 the questions of 2000 about the orders of events,
6 the relationship between any exchanges between
7 Sports Soccer and Umbro and exchanges between Umbro and
8 other retailers.

9 THE PRESIDENT: Yes.

10 MR MORRIS: The answer was:
11 "We would not have done the higher price had we not
12 been further pressured by Mr Ronnie."

13 THE PRESIDENT: Hang on. That is where?

14 MR WEST-KNIGHTS: Line 19.

15 THE PRESIDENT: Thank you. Sorry, Mr Morris,
16 the page again?

17 MR MORRIS: I was on page 85. At page 86 there is
18 an interjection from you, sir, at line 8 about the order
19 of events.

20 THE PRESIDENT: Yes.

21 MR MORRIS: And my question is to Mr Ashley: why is it that
22 you have particularly remembered the events which led up
23 to the increase in prices in the England shirt?

24 A. Okay?

25 THE PRESIDENT: I am not quite sure what the question ...

1 how does that arise out of what we are discussing at
2 the moment?

3 MR MORRIS: I am trying to invite the witness to give
4 elucidation on the sequence of events relevant to
5 the sequence set out in 16-18; I am asking him whether
6 he has any particular memory which might help
7 elucidate --

8 THE PRESIDENT: Can you ask him what was the sequence of
9 events or what the sequence of events was?

10 MR WEST-KNIGHTS: Nobody has challenged this witness's
11 capacity to recall what happened on 24th May.

12 LORD GRABINER: Sir, can I say this: the context of these
13 exchanges I think was very, very simple. I was
14 suggesting to the witness that he had put forward two
15 quite distinct stories. He had said on one occasion
16 that an agreement had already been made to which
17 they were being invited to participate. Then there is
18 a quite distinct story which was that at the meeting in
19 the May 24th record of the meeting a new agreement was
20 being made for the first time, there was not
21 a pre-existing agreement, but this was a new bargain
22 being made between Sports Soccer and Umbro.

23 Those were the two points I was putting to him and
24 asking him to explain the discrepancy.

25 That was the context of the cross-examination.

1 MR MORRIS: Can I respond. If you go to line 16,
2 the witness says:
3 "They are absolutely linked."
4 Can I ask the witness why --
5 THE PRESIDENT: You can ask him what he meant by that.
6 MR MORRIS: On what did he say they were absolutely linked?
7 Can he see a copy of the transcript?
8 MR WEST-KNIGHTS: I do not suppose you have the slightest
9 idea what this is about, Mr Ashley.
10 I am not teaching anybody to suck eggs, but this is
11 ostensibly a question to Mr Ashley and he does not have
12 the document in front of him.
13 THE PRESIDENT: I realise that, Mr West-Knights.
14 You have to explain to him what the background was,
15 Mr Morris.
16 MR MORRIS: We will hand the transcript up. (Handed).
17 THE WITNESS: Okay, give me a second to read it. (Pause).
18 Q. If you go back to page 83, we have line 15 --
19 A. Sorry --
20 Q. We are talking about May 2000 --
21 A. You will have to bear with me. I am there, yes:
22 "So that involves the proposition ..."
23 Q. Yes:
24 "So that involves the proposition that an agreement
25 had already been reached and that Mr Ronnie was trying

1 to get you to join into the agreement; do
2 you understand?

3 "Answer: Yes.

4 "Question: As I understood the position,
5 the agreement that we are talking about was actually
6 made on 24th May?

7 "Answer: Yes.

8 "Question: Do you not think there is any
9 inconsistency between those two positions?"

10 Further down in 84, the question is:

11 "What you had told the OFT was that Mr Ronnie had
12 made agreements with other retailers, and then I think
13 was getting you to accede or to come into the same
14 agreement. That I think is the thrust of what you say
15 in paragraph 10."

16 If you recall, paragraph 10 is the note of your
17 meeting with the OFT?

18 A. Okay.

19 Q. You say:

20 "Okay, yes, I accept that.

21 "Question: But is that consistent with your having
22 made a specific agreement on 24th May with Umbro that
23 the price would be fixed accordingly?

24 "Answer: Yes. When I make an agreement with Umbro,
25 so that we are crystal clear on this, I have to make it

1 as I keep saying on a daily or weekly or whatever basis.
2 But that does not mean I will stick to it. Because I am
3 not -- it is not an agreement; it is me being forced to
4 do it. So there is a big difference.

5 So if you agree a price maintenance with me or force
6 me to do something, that does not necessarily mean that
7 I will carry it out. Because there is -- it is not
8 financially sensible for me to carry it out, therefore
9 I try not to instigate what I am forced to agree."

10 LORD GRABINER: Just read my next question.

11 MR MORRIS: "If you could just concentrate on my question.

12 I know that I am a bit long-winded, for which
13 I apologise, and you do not need to nod at that!

14 What I want to try to get at is the apparent
15 disconnect, I would suggest, between what you say on
16 page 9, the substance of which is that Mr Ronnie made
17 a deal with other retailers and then asked you to join
18 in. That is the way you originally put it on the OFT?

19 "Answer: That is correct.

20 "Question: When you go to page 137, for example, in
21 the same bundle, you say nothing about that at all.

22 What you say is:

23 "I attended a meeting on Wednesday
24 24th May 2000 with Mr Nevitt at which we agreed to raise
25 the price of the England home shirts to 39.99."

1 So what I am suggesting, you see, is that these are
2 two quite distinct stories that are being suggested?

3 "Answer: Yes, and they are absolutely linked."

4 My question for you is -- have I been reading too
5 quickly for you?

6 A. Probably. But do not do it again, please.

7 Q. My question to you is: why did you say that the two are
8 absolutely linked?

9 A. Because they are absolutely linked. The agreement on
10 what we now know is Wednesday 24th May and me putting up
11 the price of the England shirts is because of exactly
12 what I have said: even though I had told Mr Ronnie and
13 agreed with Mr Ronnie that I would put the price up,
14 there is no guarantee that I would actually do that. So
15 to ensure that I did this there was a series of
16 telephone calls where I had to, as usual -- not as
17 usual -- assure people including other retailers that
18 I would be putting the shirts to 39.99. That happened
19 on a Friday night. That is the reason I remember it,
20 otherwise I probably would not have done particularly.
21 And we had to phone -- first of all I had to phone
22 Mr Forsey, who had to phone the area managers, who had
23 to phone the shop managers.

24 I think I spoke to Mr Knight on that occasion of
25 Blacks. I think I might have spoken to David Hughes of

1 Allsports; I might not have done, I cannot really
2 remember. Basically I had to give verbal assurances and
3 the product had to be put up overnight for the next
4 morning. So they are linked in that way.

5 Q. When where you when you made those phone calls?

6 A. I was actually in the ... I was actually in a pub in
7 Dudley at the time, at the train station.

8 MR MORRIS: I think I have no further questions.

9 THE PRESIDENT: Thank you, Mr Morris.

10 I think we have finally finished, Mr Ashley, for
11 the time being. Thank you for the past three days.

12 A. No problem.

13 (The witness withdrew)

14 MR WEST-KNIGHTS: I do not want to be the mother hen of
15 the piece, but it is just over halfway through
16 the afternoon and I am thinking of the shorthand writer.

17 THE PRESIDENT: Thank you for reminding me, Mr West-Knights.

18 We will rise for a few minutes.

19 (3.20 pm)

20 (A short break)

21 (3.30 pm)

22 MR MORRIS: Could I invite Mr Ronnie to enter
23 the witness-box, please.

24 THE PRESIDENT: Yes, Mr Ronnie.

25

1 MR CHRISTOPHER RONNIE (sworn)

2 THE PRESIDENT: Do sit down, Mr Ronnie.

3 THE WITNESS: Thank you.

4 THE PRESIDENT: I do not think you have been asked to look
5 at anything just yet; you will be in a moment.

6 Examination-in-chief by MR MORRIS

7 Q. Could you tell the tribunal your full name, please?

8 A. Christopher Ronnie.

9 Q. You are currently a board member of
10 Sports World International?

11 A. Yes.

12 Q. In the course of the OFT investigation and in the course
13 of these proceedings you have provided a number of
14 witness statements. I do not know if you have the third
15 of the witness statement files. It is file 3, R-Z.
16 Could you go to page 219 of that bundle, which should be
17 behind tab "Ronnie 3"?

18 A. Yes.

19 Q. Can you confirm that that was the statement you provided
20 to the Office of Fair Trading in July of 2002? If you
21 go to page 236.

22 A. Yes, that is correct.

23 Q. Is that your signature at the foot of the page?

24 A. Yes.

25 Q. Could you then go over the page to page 237. Can you

1 confirm that that is the first witness statement that
2 you provided for these appeal proceedings?

3 A. Yes, that is correct.

4 Q. If you go to page 244, again can you confirm that that
5 is your signature?

6 A. Yes.

7 THE PRESIDENT: Thank you.

8 MR MORRIS: And then if you go to the next tab you will see
9 a further statement headed "Second Witness Statement of
10 Christopher Ronnie", and that I think is commonly
11 referred to as Ronnie 5. Can you confirm that that is
12 the second witness statement that you provided for these
13 appeal proceedings.

14 A. Yes, that is correct.

15 Q. Can you then go to page 249 and just confirm that that
16 is your signature?

17 A. Yes.

18 Q. And can you finally confirm that the contents of those
19 three witness statements are your evidence before this
20 tribunal?

21 A. Yes, I can.

22 Q. I want to ask you one or two questions, just to set some
23 background. Can you tell the tribunal something about
24 your background in the sports industry, when you started
25 and how you got to where you are today?

1 A. I started in the industry a long time ago. Having
2 played squash for a living I then went into sports
3 retail and then eventually on to the manufacturing side
4 of the industry.

5 Q. Can you remember the date that you were at Umbro from?

6 A. April 1999. I think it was around 24th/26th April to
7 the best of my recollection.

8 THE PRESIDENT: Until when, Mr Ronnie?

9 A. Until February 7th 2003.

10 THE PRESIDENT: Yes.

11 MR MORRIS: And now you are at Sports World International.
12 Can you tell the tribunal what your current position at
13 Sports World International is and what it involves?

14 A. My role is Business Development Director, which is
15 working with our key suppliers, Nike, Adidas and Reebok
16 in particular, and also working on the branded side on
17 the brands that we as Sports World currently own.

18 Q. In 1999 there was a management buy-out at Umbro. Can
19 you tell us something about that management buy-out and
20 your role in it?

21 A. Myself and Peter McGuigan approached an individual
22 called Mark Corbage in 1998 with a view to the possible
23 acquisition of Umbro International from Stone
24 Manufacturing.

25 Mark Corbage was previously an investment banker who

1 was very well connected within the venture capital
2 banking sector in the UK and also in Europe.

3 Q. Once the management buy-out had happened, what was your
4 position and role in Umbro?

5 A. My position was Chief Operating Officer, and my role was
6 really to handle UK sales, product development and
7 sourcing of the product for the Umbro brand.

8 Q. And you were a shareholder in the company?

9 A. Yes, the order of shareholders really was Doughty
10 Hanson, who had a majority of the shares,
11 Peter McGuigan, then Mark Corbage and then myself. The
12 other shareholders were in the management team.

13 Q. Can I ask you to consider the period 1999-2001 and
14 explain to the tribunal a little bit more about the
15 management structure at Umbro; who did what job and who
16 reported to who. The cast of characters?

17 A. Yes, the chief executive was Peter McGuigan. He headed
18 up what we called the management board, which was made
19 up of himself, around the end of 1999 an individual
20 called Mark Monaghan who joined as Chief Financial
21 Officer, Martin Prothero who was in charge of
22 all marketing for the brand internationally and sports
23 marketing.

24 THE PRESIDENT: Just a little slower, if you could,
25 Mr Ronnie.

1 A. Sorry. At the time there was a gentleman called
2 Steve Preston who had been acting CEO during
3 the acquisition process for Umbro International and
4 Stone Manufacturing.

5 His responsibility then changed to head of
6 international, as it was called, which was dealing with
7 licensees around the international network.

8 THE PRESIDENT: Yes.

9 MR MORRIS: Can you just explain the division between the UK
10 business and the international side, what the dividing
11 line was and what the different parts of the business
12 were?

13 A. The UK was run as a separate entity, a separate business
14 to the rest of Umbro in as far as we had our own P&L,
15 we had our own management team looking after the UK.
16 International had their own team who would look after
17 licensees: Steve Preston, who headed up international,
18 myself, Mark Corbage, and Mr Monaghan reported to
19 the chief executive.

20 Q. Could you tell us what, if any, Mr McGuigan's role was
21 as far as the UK side of the business was concerned?

22 A. As I mentioned, Peter McGuigan was the chief executive
23 and I reported as the COO in to Mr McGuigan. I would
24 update him and obviously keep him involved on a day to
25 day basis as to the running of the UK business where

1 necessary.

2 Q. Could you then describe a little bit below you
3 Mr Fellone and the account managers, how they fitted in
4 the structure there?

5 A. Phil Fellone was the sales director for the UK. Below
6 Phil we had a number of key account managers:
7 Lee Attfield for Sports Soccer, as they were called at
8 the time; a gentleman called Phil Bryant for JJB;
9 Anthony May for Allsports, JD and certain mail order
10 companies. Underneath those guys there would be
11 salesforce area managers who would run various
12 territories throughout the UK.

13 THE PRESIDENT: Yes.

14 MR MORRIS: Could the witness be provided with the Umbro
15 pleadings bundle, volume 2, the yellow file. Umbro
16 file 2, and tab C, and the tabs are written slightly
17 horizontally.

18 THE PRESIDENT: This is a document headed "Reply"?

19 MR MORRIS: It is, yes. It is not paginated, I am afraid.
20 But if you go beyond the reply, sir, after page 10 there
21 is an annex and then there is a document headed "Meeting
22 Between OFT and Umbro on Tuesday 26th February 2002".

23 THE PRESIDENT: Yes.

24 MR MORRIS: These are the notes of a meeting -- I do not
25 know if the witness is with me at the moment, this is in

1 tab C. These are notes of a meeting between the OFT and
2 Umbro on Tuesday 26th February 2002 which Mr Ronnie
3 attended. I would like the witness to read
4 paragraphs 8-11 on pages 2 and 3 and paragraphs 14 and
5 15 on page 3.

6 THE PRESIDENT: Sorry, 8-11 on page 2 and 3?

7 MR MORRIS: And then paragraphs 14-15. This records what
8 Mr Ronnie said at that meeting. Could you read those
9 paragraphs, please? CK is Ms Kent and CR is you.

10 A. "CK said that she understood that the England ..."

11 Q. Yes, that is where you start reading, you do not need to
12 read it aloud. If you could read paragraphs 8, 9, 10,
13 11, 14 and 15. (Pause).

14 A. Yes.

15 Q. Is that as far as you can recall an accurate record of
16 what was said at that meeting?

17 A. Yes.

18 Q. As far as you can recall, does that record reflect your
19 recollection?

20 A. Yes, it does.

21 MR MORRIS: Thank you, Mr Ronnie.

22 (3.50 pm)

23 THE PRESIDENT: Mr Ronnie, I think probably there are some
24 questions first of all from counsel for JJB.

25 Cross-examination by LORD GRABINER

1 Q. Mr Ronnie, can I ask you this. In answer to some
2 questions from Mr Morris a few minutes ago, you said
3 that you left Umbro in I think February 2003?
4 A. Yes.
5 Q. You were then the COO of Umbro?
6 A. Yes.
7 Q. Reporting to the chief executive, Mr McGuigan?
8 A. Yes.
9 Q. Why did you leave Umbro?
10 A. The explanation that was given to me by the chief
11 executive was that he felt our relationship was not
12 the same as it had been through the course of
13 the acquisition over the last 12 months in his view; and
14 that the company would not be renewing my service
15 contract.
16 Q. Was that because of deals that you had done with
17 Mr Ashley of Sports Soccer --
18 A. No.
19 Q. -- that had come to Mr McGuigan's attention?
20 A. No.
21 Q. Nothing to do with that?
22 A. No.
23 Q. And that issue never arose between you and Mr McGuigan
24 as a justification for the termination of your
25 employment?

1 A. No.

2 Q. Did you leave the company immediately or was there
3 a period of notice for you to serve?

4 A. There was a period of notice for me to serve.

5 Q. Did you serve the notice or did you work, as we say in
6 modern parlance, on garden leave?

7 A. I worked on garden leave.

8 Q. For how long?

9 A. From February 7th to August 30th.

10 Q. And that is why there was a delay between leaving Umbro
11 and joining Sports Soccer, which I think you did in
12 September?

13 A. Correct.

14 Q. What is the position you have in Sports Soccer or that
15 you took in September?

16 A. Business development director.

17 Q. At what stage did you make an agreement with Mr Ashley
18 that you would join Sports Soccer?

19 A. (Pause). Officially, after my garden leave had
20 finished, when we sat down and discussed the role.

21 Q. And unofficially?

22 A. There had been a number of conversations during
23 the course of the garden leave where we talked about
24 the future, as I talked with other people about what
25 the future would hold.

1 Q. So in effect Mr Ashley was saying: well, when your
2 garden leave comes to an end there is a job for you at
3 Sports Soccer?

4 A. He did not exactly say that, no.

5 Q. But he gave you to believe that that was the position or
6 might be the position?

7 A. He gave me to understand that that might be
8 the position, as did a number of other people within
9 the industry, with other companies.

10 Q. Of course, you know Mr Ashley very well?

11 A. Yes.

12 Q. How long have you known him for?

13 A. On a business basis since May 1999.

14 Q. And on a social basis?

15 A. Around 2000.

16 Q. In your capacity as the COO at Umbro, you did many deals
17 with Mr Ashley?

18 A. I dealt with Mr Ashley on a business basis on
19 a day-to-day basis as I would with any other major
20 retailer, as I did with JJB and Allsports.

21 Q. So you might speak to him most days of the speak?

22 A. Depending what time of the year it was, as I would speak
23 most days of the week to, as I said, JJB and Allsports.

24 Q. And what about face-to-face meetings, would you have
25 those frequently with Mr Ashley?

1 A. Around key times within the calendar year, I would say
2 once a fortnight.

3 Q. Now I want -- sir, can I say that it might be helpful if
4 you have the cross-examination bundle. You remember
5 that we used it in relation to Mr Ashley?

6 THE PRESIDENT: Yes.

7 LORD GRABINER: It is, I think, a white volume. I think
8 the witness as well. If you have a white volume over
9 there, Mr Ronnie, a white bundle which on the front of
10 it will say something about a cross-examination bundle.

11 A. Yes.

12 MR WEST-KNIGHTS: I have a faint recollection that the third
13 one was a different colour, indeed that it was black.

14 THE PRESIDENT: Mr Prosser and I will share.

15 LORD GRABINER: There is another one coming.
16 And the other bundle that it is probably helpful to
17 have handy is the witness statements file 3.

18 THE PRESIDENT: Yes.

19 LORD GRABINER: And similarly for Mr Ronnie. You can put
20 away that yellow bundle because I do not think I will be
21 going to that.

22 Now, Mr Ronnie, could I invite your attention to
23 I think it is tab 3 in the cross-examination bundle.
24 You will see a document there which is an Umbro file
25 note recording the events of a meeting of 24th May; do

1 you see that?

2 A. Yes.

3 Q. First of all, whose writing is that?

4 A. Lee Attfield, the key account manager for Sports Soccer.

5 Q. The note records a meeting attended by Mr Ashley and

6 Mr Nevitt from Sports Soccer, and you and Mr Monaghan

7 I think both from Umbro.

8 A. Yes.

9 Q. And obviously Mr Attfield as well who was making

10 the note but did not bother to put himself down as

11 attending.

12 You remember the meeting?

13 A. Yes.

14 Q. Have you looked at this note recently?

15 A. Not recently, no.

16 Q. Now just looking at the second page, 273, you can see

17 that below the intended dates there are a few lines that

18 are concerned with what we have been calling

19 the price-fixing agreement. Is that an accurate record

20 of the agreement that was made as far as you can say

21 from your memory on 24th May between the persons who are

22 party of that meeting?

23 THE PRESIDENT: I think you need to ask the witness just to

24 read that bit.

25 LORD GRABINER: I will read it out to you:

1 "Sports Soccer agreed to increase the price of
2 England home and away kits for a set period of 60 days
3 to maintain the price of licensed kits, including
4 goalkeepers and infant kit. Mr Ashley, MA, stated that
5 by matching the High Street price would mean a reduction
6 in his buying within the category and therefore
7 the target of 6 million may not be achieved."

8 So far as you can remember, is that an accurate
9 record of what was agreed at the meeting?

10 A. As far as I can remember, yes.

11 Q. JJB was not represented at the meeting?

12 A. JJB would never attend a Sports Soccer meeting, as
13 Sports Soccer would never attend a JJB meeting.

14 Q. They were never invited to attend?

15 A. It does not happen in the industry with any brand.

16 Q. This was a private discussion between Umbro and
17 Sports Soccer?

18 A. Yes.

19 Q. Now, in connection with these proceedings -- and you can
20 put away that bundle for the moment.

21 In connection with these proceedings you have made
22 five witness statements, four of which bear upon
23 the matters that I want to ask you about. That is
24 right, is it not?

25 A. Yes.

1 Q. Just one question, which is rather technical, perhaps it
2 should have been asked already but I am going to ask it
3 of you now. Are those statements full and frank and
4 truthful of your evidence?

5 A. Yes.

6 Q. Or, as we say, the truth, the whole truth and nothing
7 but the truth?

8 A. To the best of my recollection through the various
9 events, yes.

10 Q. We also know that in the course of your performance of
11 your task as the COO you made monthly reports, one of
12 which was made in early June in respect of the month of
13 May 2000 which itself makes reference to the Euro 2000
14 shirts. I am going to come to that document in due
15 course, but do you remember that?

16 A. Yes.

17 Q. And it was your regular practice to produce these
18 monthly reports?

19 A. Yes.

20 Q. Now, I am going to show you the relevant parts in so far
21 as they are relevant to the various different charges
22 that are made in this case of all of those documents,
23 and I am going to invite your attention to them.

24 Before doing so, I am going to suggest to you in
25 summary form what we say comes out of those documents,

1 and I am going to invite you to agree or disagree with
2 what I suggest. Do you understand?

3 A. Yes.

4 Q. It may shorten matters.

5 First of all, when you analyse those pieces of paper
6 what is revealed are three different versions of what
7 happened following the 24th May meeting with Mr Ashley.
8 All I am concerned with is dealings with JJB, so my
9 first suggestion to you is that you have actually given
10 three quite distinct versions of the story. And I am
11 talking now only about the England Euro 2000 agreement,
12 which is what these questions are directed at.

13 A. As I said each time I have given my evidence, it has
14 been to the best of my recollection of the events at
15 the time.

16 Q. I am not for the moment disputing that. What I am
17 suggesting is that if you look at them carefully they do
18 reveal three distinct versions.

19 Now, do you appreciate that or do you agree with
20 that or disagree with that?

21 A. I would say that each time I sat down, like anything
22 when you are going back over a period of time, new
23 things come to mind, as they did there.

24 Q. So you are saying that as the process goes on there
25 might be additional matters that are shown, and this is

1 because for some reason or another your memory has been
2 jogged and your recollection has improved; is that your
3 point?

4 A. Yes.

5 Q. I am not taking these versions in any particular order,
6 but as I say I will show you the underlying material.

7 One version is that you reached an agreement in
8 a telephone conversation with someone at JJB in relation
9 to their retail prices for England shirts, up to and
10 including -- up to and during, I should say,
11 the Euro 2000 soccer competition.

12 The suggestion you make is that this agreement with
13 JJB post-dated the 24th May meeting, but you never put
14 a date on it; and, moreover, you never identify
15 the person at JJB with whom you made the agreement. So
16 that is I think the totality of the version that I want
17 to show you now. Okay?

18 A. Okay.

19 Q. Now, we can derive that from your May monthly management
20 report, which is in tab 2 of that cross-examination
21 bundle, the white one, I think. This is in E1. Tab 27,
22 page 227 is where the report starts; it is for May 2000.
23 I am going to ask you about the mechanism for these
24 management reports and how they worked and how you got
25 them and all the rest of it at a separate point. I just

1 want to concentrate for the moment on this first version
2 that I put to you.

3 If you look at page 230 --

4 A. Are you referring to the May monthly report?

5 Q. Yes, it is the May monthly report, May 2000. Page 227
6 is where it starts.

7 THE PRESIDENT: Are we in the white bundle?

8 LORD GRABINER: In the white bundle, tab 2. Do you have
9 that in front of you?

10 A. I have the report but not in the description of
11 the bundles you gave me.

12 Q. It is the same document but it is in two bundles. It is
13 just a handy way of showing you the material.

14 So you have a document, do you, that says
15 "Management Reports, May 2000"?

16 A. Yes.

17 Q. And it may have a number in the bottom right-hand corner
18 of 227; does it?

19 A. No.

20 Q. Do not worry about that. If you go to the fourth page,
21 which is headed "Monthly Report", that is the first
22 page of a three-page report which comes from you; do
23 you see that?

24 A. Yes.

25 Q. In the fifth paragraph, counting the sentence at

1 the beginning as the first paragraph, it says:

2 "There has been a major step forward in the retail
3 price of England, the launch of Manchester United. JJB,
4 Sports Soccer, First Sport, JD Sports and Allsports have
5 all agreed to retail their adult shirts at 39.99. This
6 is following England being sold at various retail prices
7 through April and May, ranging from 24.99 to 29.99,
8 32.99, or 32.99 with a free 9.99 cap at JD Sports.
9 Following a month of dialogue with all the above
10 accounts, Umbro cannot allow our statement product to be
11 discounted."

12 So that is, so to speak, the first record that you
13 make. You are talking -- well, the thing really speaks
14 for itself. They have all agreed to retail their adult
15 shirts at 39.99.

16 Now if you look at your third witness statement,
17 which is in file 3 at page 226?

18 A. Yes.

19 Q. If you look at paragraphs 32 and 33 at the top of
20 the page, you say:

21 "Mike Ashley had stated in the 24th May meeting that
22 if any other retailer discounted the England shirts he
23 would follow suit. Phil Fellone and I therefore phoned
24 the major retailers to ask them to agree to maintain
25 prices on the England home kit during the Euro 2000

1 tournament. I telephoned JJB and Allsports, Phil
2 telephoned JD Sports, Debenhams, First Sport and John
3 Lewis. JJB and Allsports agreed, and I understand that
4 the other retailers contacted by Phil Fellone agreed,
5 with the exception of JD Sports' promotion of
6 the England shirt and Debenhams which refused to
7 withdraw the England kit from its blue cross sales."

8 So that is what I call the first version of
9 the explanations that you have provided. Perhaps
10 I should just repeat what I say the first version was,
11 for you to comment if you wish.

12 You reached an agreement in a telephone conversation
13 with someone at JJB in relation to their retail prices
14 for England shirts up to and including the Euro 2000
15 soccer competition. The suggestion you make is that
16 this agreement with JJB post-dated the 24th May meeting
17 but you never put a date on it; moreover you never
18 identified the person at JJB with whom you made
19 the agreement.

20 Is there anything inaccurate of my summary -- and it
21 is my summary -- of the two documents that I have just
22 shown you?

23 A. No.

24 Q. Now if we can then go to what I would call the second
25 version, and I will summarise the second version to you.

1 You informed Duncan Sharpe of JJB -- that is
2 the late Duncan Sharpe -- in a telephone conversation
3 that Sports Soccer had given Umbro a price guarantee.
4 However, according to this version, no agreement was
5 entered into with JJB, and you did not -- and I am
6 quoting directly from a witness statement of yours that
7 I am going to show you in a minute -- you:

8 "... did not ask JJB to agree to maintain prices on
9 the England home kit."

10 So that is my summary, and I am now going to show
11 you the material that supports that summary. If you
12 look at your fourth statement, which is in the witness
13 statement file 3 at page 243, and look at
14 paragraph 27 -- do you have that in front of you,
15 Mr Ronnie?

16 A. Sorry, which paragraph?

17 Q. Paragraph 27 at the foot of the page; do you have that?

18 A. Yes.

19 Q. You say:

20 "So far as I was concerned, the task I had to carry
21 out was somewhat different from Phil Fellone's as
22 described in paragraph 28 below. I did not ring
23 Allsports and JJB ..."

24 And then this quote is taken directly from
25 a previous witness statement of yours:

1 "... I did not ring Allsports and JJB to ask them to
2 agree to maintain prices on the England home kit. There
3 was no need to extract any formal agreement from those
4 particular retailers as they both were pricing at 39.99
5 anyway. The purpose of the call to them was to inform
6 them that Umbro had got a guarantee from Sports Soccer.
7 I warned them not to undercut the 39.99 price as
8 Sports Soccer would use any excuse for retaliation.
9 Once Sports Soccer had agreed that price and these other
10 retailers, JJB and Allsports, had been told this, they
11 would not go below it."

12 That I think is the totality of it. If I can just
13 read back my summary of that and again could you tell me
14 if you disagree with the summary.

15 You informed Duncan Sharpe of JJB in a telephone
16 conversation that Sports Soccer had given Umbro a price
17 guarantee. However, according to this version no
18 agreement -- and I emphasise that obviously -- was
19 entered into with JJB and you did not ask JJB to agree
20 to maintain prices on the England home kit.

21 Is that a fair and accurate summary of what you say
22 in paragraph 27?

23 A. To give you some background to that --

24 Q. No, I do not want any background. I want to know if
25 the question I have just asked you has force or not.

1 Was my summary to you then an accurate summary of what
2 you say in paragraph 27? If you want to give some
3 further explanation after that, I will be happy to ask
4 you to do so.

5 A. No.

6 Q. It is not an accurate summary. What is there in
7 paragraph 27 that was not fairly reflected in my summary
8 to you just a moment ago?

9 A. Because with JJB in particular and Duncan Sharpe
10 I already knew that he would go out at 39.99, and with
11 Allsports through conversations with Michael Guest,
12 the buying director, I knew that they would go out at
13 39.99 as well, because those two particular accounts
14 would not have discounted the product.

15 Q. Not because --

16 A. Sorry --

17 Q. Sorry, you continue. I interrupted, and I think you had
18 not quite finished?

19 A. I had not finished.

20 Q. You carry on, then?

21 A. They had made it clear to myself and Phil Fellone,
22 the sales director, that they would always stay at
23 39.99.

24 But JJB in particular were always conscious of being
25 more expensive on the High Street in replica than

1 Sports Soccer and they did not want that situation to
2 happen.

3 Q. Have you finished now?

4 A. Yes.

5 Q. The point you are making is that you knew that that was
6 JJB's standard practice?

7 A. To be at 39.99?

8 Q. Yes.

9 A. Yes.

10 Q. You are not suggesting that there was any agreement on
11 their part as a result of specific discussion and
12 agreement that they would stick at 39.99 beyond that
13 being their regular practice, as you understood it to
14 be, and indeed I think as the market understood it to
15 be?

16 A. That is not the case, no.

17 Q. Perhaps you would explain that answer?

18 A. What would happen with JJB is that if Sports Soccer
19 for example were going to go out at £35, JJB would go
20 out at £34 to ensure that they were cheaper on
21 the High Street than Sports Soccer, and then it would
22 just be a snowball effect, as you can see from the main
23 management report, where the price of that product was
24 ranging between 24.99 to 32.99 with a free cap given
25 away.

1 Q. What you are describing here is the possible effect of
2 Sports Soccer discounting in the marketplace on
3 the behaviour of competitor retailers such as JJB?

4 A. Yes.

5 Q. What you are not addressing is the point I am asking you
6 about, which is simply this, and I think you have agreed
7 with me: that there was no specific agreement extracted
8 from JJB that they would do their 39.99 agreement?

9 A. There was an agreement in place with JJB, because we
10 discussed it through quite a period of time, that they
11 would go out at 39.99, otherwise how would I know they
12 retailed the product at 39.99?

13 Q. Because I think you just told us a moment ago that you
14 knew and everybody else knew that this is how JJB
15 conducted its business?

16 A. But I can be product specific there and say that we knew
17 as a team within Umbro that JJB would retail at 39.99
18 because we had had conversations around that product,
19 and it had been agreed between JJB and between Umbro
20 that they would retail that product for 39.99.

21 Q. So now you are retracting the second sentence of
22 paragraph 27, are you:

23 "I did not ring Allsports and JJB to ask them to
24 agree to maintain prices on the England home kit."

25 Either you did or you did not?

1 A. I absolutely did ring them.

2 Q. You did? To do what, to maintain prices on the kit?

3 A. I rang them to confirm that the price would be 39.99, as
4 we had previously discussed.

5 Q. Can you square that answer with your second sentence in
6 paragraph 27:

7 "I did not ring Allsports and JJB ..."

8 And then you are actually quoting back to us
9 a sentence from your previous witness statement --

10 THE PRESIDENT: Perhaps he should glance at the next
11 sentence and the following sentence of paragraph 27.
12 Two lines further on we get to something that says:

13 "The purpose of the call ..."

14 A. Yes, thank you.

15 LORD GRABINER: So what is your answer?

16 A. The purpose of the call was, as this says, to guarantee
17 that Sports Soccer were going to retail at 39.99.
18 Because Umbro had got that guarantee.

19 Q. But I think the point you are making is -- and correct
20 me if I am wrong -- that because JJB Sports was known to
21 do the business at 39.99, that was your expectation of
22 would they would then do?

23 A. Only if Sports Soccer went out at 39.99. If
24 Sports Soccer, as I mentioned earlier, had retailed
25 the product at £35, JJB would most certainly have gone

1 out at £34.

2 Q. I do not understand why, then, it was necessary for you
3 to tell them at all. If you went out at 35 then
4 a certain result would follow, and if you went out at
5 39.99 another result would follow. So what was
6 the purpose in calling them at all?

7 A. Because we as Umbro could not afford for Sports Soccer
8 to go out at anything less than 39.99 because of all
9 the problems that it would create and had created in
10 the past with JJB Sports, First Sport, Allsports,
11 JD Sports.

12 Q. Who could not afford to go out? Sports Soccer?

13 A. Umbro could not afford for Sports Soccer to discount
14 the product.

15 Q. Right. So if you could not, why was it necessary ...
16 I will come back to that question; I am going to park it
17 for a second.

18 Why was it necessary for you to communicate that
19 fact to JJB? If you had made a deal with Sports Soccer
20 and Sports Soccer kept to the deal, why was it necessary
21 to communicate that fact to JJB? According to you,
22 the only reason for JJB to reduce its own prices would
23 be if Sports Soccer discounted, and then it would
24 retaliate?

25 A. It was necessary for me, as Umbro, to go back to those

1 two accounts as Phil Fellone and myself had been
2 involved in a lot of dialogue with the accounts through
3 a period of time to ensure that JJB were clear on
4 the understanding, and Allsports, that we were trying to
5 control Sports Soccer as far as price was concerned,
6 because it was key to us that we were seen by
7 the accounts to be trying to control Sports Soccer at
8 price and work with Sports Soccer on the retail price.

9 Q. As I understand your evidence, and correct me if I am
10 wrong, if Sports Soccer retailed at 39.99 in accordance
11 with the agreement that you had made with them, there
12 would not be any problem, because your expectation is
13 and would have been that JJB would equally have sold at
14 39.99 in accordance with its regular policy. The facts
15 would speak for themselves. You could go into any
16 Sports Soccer shop and you could tell on sight what
17 the price was that they were selling this particular
18 product at.

19 A. I totally agree with you if you are a consumer. But if
20 you were at Umbro at the time and you were trying to
21 work with JJB and Allsports, the only way that we could
22 guarantee that Sports Soccer would be at a price, and
23 we were asked this very clearly on a number of
24 occasions, both Phil Fellone and myself, by other
25 retailers: what price will Sports Soccer retail this

1 for?

2 So rather than walk into the store at point of
3 launch, it was key to us, and the pressure that we were
4 being put under by the major accounts and the continuous
5 dialogue that we were having with them, that we informed
6 them as early as possible to let them know that
7 Sports Soccer would be going out at 39.99.

8 Q. Why was it damaging to Umbro if Sports Soccer
9 discounted?

10 A. Because there was always an underlying threat that it
11 would affect Umbro's other parts of the business, which
12 were branded apparel, footwear and equipment, that
13 orders would be cancelled or there would be an effect on
14 our business with those accounts.

15 Q. Was there a fear that if there was pressure coming back
16 from retailers that you would be forced to cut your own
17 margins?

18 A. No, our margins were never affected because we sold at
19 a certain wholesale price and we knew that we had locked
20 down a margin return based on that wholesale price.

21 Q. But suppose the retailers said: we do not understand how
22 it is possible for Mr Ashley to discount at this level,
23 and if you cannot give us some explanation we want
24 better terms from you in order to enable us to earn a
25 suitable margin for ourselves. Is that not the kind of

1 conversation that would have followed?

2 A. No.

3 Q. And that was not your concern in the slightest?

4 A. No.

5 Q. You are much happier in any event if everyone sells at
6 39.99?

7 A. At the time, yes.

8 Q. Can we go to what I call the third version. I will
9 summarise the version to you in the usual way. You do
10 not refer to any telephone conversation with anyone at
11 JJB either to obtain their agreement to maintain prices
12 on the England kit or to inform them of the agreement
13 that you had made with Sports Soccer on 24th May. That
14 is the summary, and we get that from a couple of places:
15 your first statement, which you will find in file 3 at
16 page 7.

17 THE PRESIDENT: If we keep to normal hours today,
18 Lord Grabiner, we have about another 5 minutes or so.
19 I do not want to interrupt your train of thought or
20 flow.

21 LORD GRABINER: I am grateful.

22 I think this is a statement that was never signed,
23 and I think you should know that. The last page of this
24 document has a space for you to sign but you did not
25 sign it so I draw that to your attention; do

1 you understand?

2 A. Yes, thank you.

3 Q. If you look at paragraphs 33-39, you say:

4 "On 24th May Messrs Attfield, Monaghan and
5 I attended a meeting with Ashley and Nevitt. We
6 discussed the retail price of the England home and away
7 shirt. Sports Soccer agreed to increase the price of
8 these and also the goalkeepers' and infants kits for 60
9 days ..."

10 So that really is confirmatory of the manuscript
11 note that I showed you?

12 A. (Indicates assent).

13 Q. I want to get your nod on the transcript; I have,
14 thank you.

15 A. You have.

16 Q. "Exhibit CR10 is the agenda I prepared for a meeting to
17 be held with Sports Soccer on 24th May. We wanted to
18 ensure that the price of England home shirts stayed
19 stable until England had played Germany at Euro 2000
20 because Sports Soccer was selling the shirt at
21 a discount, and we were getting pressure from other
22 retailers, especially JJB and Allsports. During the
23 meeting Mike Ashley explained that by increasing
24 the price of the shirts it would mean that he would not
25 be able to order as many products, and the target of 6

1 millions of business would be unlikely to be met. The
2 target is an internal target set for Sports Soccer.
3 Sports Soccer continued to sell the shirts at £40 until
4 21st June 2000. On Friday 26th May Sports Soccer
5 increased the price of the England shirts to £40.
6 I remember this because Mike Ashley made every area
7 manager call me on the Friday night to confirm the price
8 of the shirts. I had a lot of messages from Sports
9 Soccer area managers on my mobile telephone.

10 "On 20th June England played Romania and lost.
11 I attended the game with Mike Ashley and Sean Nevitt of
12 Sports Soccer and Lee Attfield. On the plane on the way
13 back from the game he told me, 'Right, that is it, we
14 will go to £20 on the England shirts.' I made no
15 comment. England had been knocked out, this meant that
16 Sports Soccer wanted to sell the shirts as quickly as
17 possible in a clearance. We had a lot of our accounts
18 on as soon as that happened to complain. Sports Soccer
19 kept the price of the shirts at £20 until the stock was
20 sold out ..."

21 And so on to the end of that paragraph. You can
22 perhaps just read that to yourself.

23 And then if you go to page 92 in the same bundle,
24 this is what I call your second witness statement.
25 The relevant passage here starts at paragraph 17:

1 "There has been a major step forward in the retail
2 price of England and the launch of Manchester United
3 [the sentence should read there has been a major step
4 forward with the retailers with regard to
5 Manchester United home kit, this is a welcome
6 development following the problems we faced from
7 retailers as regards the retail price of England kit.
8 Umbro have been receiving an incredible amount of
9 pressure and complaints from retailers complaining about
10 the pricing practices of their competitors in respect of
11 England replica kit.

12 And then you refer to further paragraphs for
13 an explanation of the complaints:

14 "I have been informed by Mike Ashley and David
15 Hughes that Mike Ashley of Sports Soccer and Dave Whelan
16 and Duncan Sharpe of JJB and David Hughes of Allsports
17 had taken a major step forward and met to agree between
18 themselves a retail price of 39.99 for the next MU
19 replica shirt to be launched. I understood the
20 retailers had independently agreed between themselves on
21 the retail price of the MU adult home shirt."

22 Sir, I am not going to finish the exercise in just
23 a couple of minutes. I am happy to continue. I am
24 really in your hands, actually, and I have some
25 questions arising out of this.

1 THE PRESIDENT: Would you prefer to continue?

2 LORD GRABINER: I really do not mind, actually. I do not
3 want to rush it --

4 THE PRESIDENT: My feeling is that it would be better taken
5 slowly in the morning.

6 LORD GRABINER: I think that is right, and I am sorry to
7 have started that exercise without being able to finish.

8 THE PRESIDENT: No, it was sensible. It has set the scene.

9 LORD GRABINER: I will carry on showing these references,
10 and there are a few, then carry on in the morning.

11 THE PRESIDENT: We are going to break off there, Mr Ronnie.

12 MR WEST-KNIGHTS: Again, mother hen. Purdah warning.

13 THE PRESIDENT: Thank you very much for your solicitude!

14 Mr Ronnie, we have a very strict rule that once
15 a witness has started to give evidence they must not
16 discuss their evidence with anybody else, either
17 the evidence already given or your evidence. I want
18 your promise, please, to the tribunal that you will
19 observe that rule overnight, and in particular from our
20 point of view it would be extremely desirable if I may
21 say so that you should not have any conversations
22 overnight with Mr Ashley certainly about anything that
23 has been said in evidence and preferably about anything
24 at all. Do you understand?

25 A. Yes.

1 THE PRESIDENT: Is that agreed?

2 A. Yes.

3 THE PRESIDENT: Thank you.

4 MR ASHLEY: Could I just say happy birthday.

5 THE WITNESS: Thank you.

6 THE PRESIDENT: Just before we rise -- thank you, Mr Ronnie,
7 you can perhaps go to the back of the court while
8 I discuss the timetable with the parties for one moment.
9 (4.30 pm)

10 (The witness withdrew)

11 THE PRESIDENT: In relation to the timetable, I for my part
12 just wanted to signal that I had overlooked the fact
13 that on Monday 22nd March there is a memorial service
14 for a member of the tribunal which in my official
15 capacity I would prefer to attend. However, if we left
16 that Monday blank -- I think it would only be on
17 the understanding that we had a pretty good idea that
18 we were going to finish that week the argument on
19 liability. You might want to think about that overnight
20 to see if that affects the timetable.

21 MR WEST-KNIGHTS: Can I respectfully make a suggestion: if
22 the tribunal could sit, say, at 10.25, parties only,
23 without any live witness being present and perhaps
24 in camera, we could have a slightly more frank
25 discussion about timetable than might otherwise be

1 the case.

2 THE PRESIDENT: Yes. I suggested hopefully yesterday 10.15
3 and nobody wanted to sit at 10.15, but it is sometimes
4 convenient to sit a few minutes early so that we can
5 deal with housekeeping matters without cutting into the
6 time we have for the hearing.

7 MR WEST-KNIGHTS: One of the advantages of the tribunal
8 website is we can remind you that you are giving
9 judgment at 9.30 until 10.15 in the morning.

10 THE PRESIDENT: It is in fact at 9.45 but we are simply
11 giving judgment, not doing anything else. There will be
12 no consequential applications to deal with. So we would
13 be in a position I hope to start this case at 10.15 if
14 that were convenient to everybody.

15 MR WEST-KNIGHTS: My suggestion was simply this: if we were
16 here a little earlier we could use the time to discuss
17 matters in the absence of the witness.

18 MR MORRIS: I have no objection to 10.15, sir.

19 THE PRESIDENT: Then let us shoot for 10.15. Thank you very
20 much.

21 (4.35 pm)

22 (The hearing adjourned until 10.15 the following day)

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