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1 Tuesday, 9th March 2004

2 (10.15 am)

3 Housekeeping

4 THE PRESIDENT: Good morning, ladies and gentlemen. Before
5 we start there may be applications or comments from
6 the parties. But before we start, we the tribunal would
7 just like to revert for a moment to the discussion about
8 the arrangements between Umbro and Sports Soccer at
9 the relevant time.

10 It may be that we are not the only ones who have
11 been trying to sort out exactly what those arrangements
12 were. It seems to us, and I am somewhat
13 over-simplifying now, that we have about four documents
14 that trace what is apparently the evolution of these
15 arrangements, at least in outline.

16 There is a document of 7th April 2000 which appears
17 to be a sort of initial heads of agreement. There is
18 a later draft I think of 14th September 2000. There is
19 then something headed "Purchase Agreement" of around
20 February 2001. Finally, there is the executed agreement
21 of 30th August 2002.

22 Now it may be that cross-examination is not
23 a particularly efficient way of establishing primary
24 facts that may not at the end of the day be in dispute.
25 What we, the tribunal, would like to know in some easily

1 understood way is what precisely were the arrangements
2 that applied in 2000 and 2001 between Umbro and
3 Sports Soccer and what were the financial effects of
4 those arrangements in those years.

5 In particular, we would like to know what sales
6 under these arrangements were in fact made by
7 Sports Soccer and what cash was received by Umbro.
8 Further, in what ways, if any, did the final executed
9 agreement differ from the de facto arrangements that
10 were in fact in place during the relevant time.

11 Since all parties need to understand this, and
12 the tribunal eventually has to write a judgment, to
13 the extent that we can agree at least the fundamental
14 facts we think that would help matters go forward.

15 Would it therefore be possible -- and I think I have
16 to look at this stage primarily towards the OFT -- to
17 see whether an initial page or page and a half, say,
18 setting out the arrangements and their evolution could
19 be prepared and circulated and if possible agreed, so
20 that we all have a basic understanding of what it is
21 we are talking about. We can then begin to see whether
22 any of this is relevant to the case and, if so, to what
23 extent.

24 MR MORRIS: Sir, my initial observation on that is that
25 certainly we will do what we can to prepare something,

1 and we will be able to prepare something. Whether it
2 can be agreed I suspect is another matter. We can put
3 it forward and take instructions from Sports Soccer and
4 Sports World.

5 There is a slight problem which is that it may be
6 necessary for instructions -- I do not know the answer
7 to this, but it may be necessary for instructions to
8 come from Mr Ashley, who is currently in the witness-box
9 and who is unable for obvious reasons to be party to
10 those instructions, depending on the timing of this.

11 Certainly we can endeavour to do so with
12 Sports World's solicitors and with their other
13 executives. All I can say at this stage is that we will
14 do our best. One of the issues that arises is timing
15 for that document, particularly in the light of the fact
16 that Mr Ashley is currently being cross-examined.
17 I would imagine that that may be something, once
18 the document is produced, that my learned friends may
19 wish to explore further; they may not. It may be that
20 certain areas can at least be got out of the way. I am
21 in your hands as to the timing of it, but essentially
22 I am agreeing with you.

23 THE PRESIDENT: Let us see what the other parties say.

24 Lord Grabiner, do you see what we are driving at?

25 LORD GRABINER: I think I do because that is certainly what

1 our primary interest is, obviously, on this part of the
2 case. My questions yesterday and indeed this morning
3 will be, at least in part, driven towards finding some
4 answers to those questions, or some of them. If
5 a document can be produced, that would be extremely
6 helpful.

7 THE PRESIDENT: Yes.

8 LORD GRABINER: What I would prefer not to happen is that
9 any instructions are taken from Mr Ashley whilst he is
10 being cross-examined or from any person who is currently
11 intended to be a witness who has not yet come to
12 the witness-box. Otherwise such a document would be
13 extremely helpful. The only pity is that it has come so
14 late, but I do think it is important and I would agree
15 that is the right course.

16 MR WEST-KNIGHTS: We have a certain logistical difficulty
17 here. Both JJB and Allsports made clear in writing last
18 week the inferences currently being drawn from those
19 documents which were in our possession, which are not
20 limited and indeed did not include three out of the four
21 documents just mentioned. In fact, I think I would be
22 right in saying none of the four documents just
23 mentioned, because as of the middle of last week we did
24 not have them. We sought to put together a picture from
25 collateral sources, that is to say the recently redacted

1 management reports of Umbro which appear to show
2 turnover in the figures being bandied about yesterday,
3 and indeed include express comments to the effect that
4 this represents a dangerously high proportion of our
5 total turnover in this period; and there is also
6 reference in the management reports to the passage or
7 non-passage of money.

8 I would, if I may, add into your matrix of concern,
9 in terms of what did happen, there is in fact a fifth
10 document which represents a tolerably clear proposal.
11 It is before you, dated as early as 26th July 1999. It
12 is one of those documents attached to our supplementary
13 skeleton last week.

14 Plainly each of us -- and if I may say so,
15 particularly you, Sir, and Mr Colgate -- has
16 demonstrated by questioning a keen desire to understand
17 what is, in fact, going on. The trouble is this:
18 Mr Ashley is now in the witness-box to be cross-examined
19 both by my Lord Grabiner and subsequently by me today.
20 I am not proposing, as it were, to go to town on these
21 arrangements. The less time I have to waste on
22 determining what they were, the better.

23 The idea that the OFT would now seek to take
24 instructions surprises me. The arrangements between
25 Umbro and Sports Soccer have always been in their

1 possession.

2 THE PRESIDENT: The practical question is: what is the best
3 way forward given the situation that we are in.

4 MR WEST-KNIGHTS: I entirely agree with Lord Grabiner, if
5 I may say so, that plainly Mr Ashley must not be the
6 source of the answers to these questions, nor Mr Ronnie
7 for obvious reasons. How they are going to do it
8 otherwise, I simply do not know. When they are going to
9 do it, I also do not know. I do not want to
10 cross-examine Mr Ashley on a false basis, ie, that
11 documents needs to be in our possession and understood,
12 prior to going very much further. I should have thought
13 that would be right in respect of Lord Grabiner's
14 position. If he is proposing to put to Mr Ashley
15 questions about these arrangements, it can be for two
16 purposes. One is to put that which is agreed is
17 the case, and the other is to find out what happened.

18 The latter is a waste of space -- it may not be, but
19 it is not, as you say, the most effective way of
20 determining what happened.

21 THE PRESIDENT: I find it rather difficult to imagine that
22 there is actually much dispute about what the underlying
23 arrangements were. There may well be a dispute as to
24 what inferences you draw from the underlying
25 arrangements --

1 MR WEST-KNIGHTS: We just do not know. Partly because, and
2 I do not resile from this word on this occasion, because
3 now it is in evidence, these arrangements were expressly
4 kept secret. There is no express discussion of how they
5 came about or where they fitted Umbro in any of the
6 monthly management reports, they appear, as it were,
7 collaterally in discussion of turnover and indeed in
8 the credit reports. We have some information, but very
9 little.

10 THE PRESIDENT: If you do not want those principally
11 involved in the arrangements to help us to understand
12 what the arrangements were, other than via
13 the witness-box, I do not think we have much alternative
14 but to try and do it via the witness-box.

15 MR WEST-KNIGHTS: This has, as it were, come extempore. My
16 initial reaction is to agree with Lord Grabiner that it
17 would be unsatisfactory for Mr Ashley's
18 cross-examination to be broken off for the purposes of
19 asking him questions about this. Perhaps if we had a
20 few moments, we might decide that that was, in fact,
21 although highly unsatisfactory and subject to certain
22 cautions, the only way forward.

23 Would you give me a moment. (Pause).

24 I think I can assist you all. Our position jointly
25 is that we think it would be better to carry on quietly,

1 see how we go. If, at an appropriate moment, a piece of
2 paper could be produced, so be it. Plainly what you are
3 concerned with, if I may say so with respect to
4 the three of you, is you would rather not have to
5 determine what the arrangements were; it ought to be
6 a matter of your being told.

7 THE PRESIDENT: We do not want to spend time establishing
8 the arrangements in some inefficient way if they can
9 conveniently be explained very quickly.

10 MR WEST-KNIGHTS: What we are proposing is that we should
11 carry on, not ad nauseam in any sense on this topic --
12 it may be that the arrangements will actually drop into
13 place within a relatively short period. A piece of
14 paper can then be produced by the office as and when it
15 can take the appropriate instructions. After all,
16 Mr Ronnie does not work for Umbro any more, so there
17 must be somebody else at Umbro who knows about all of
18 this. Mr Ashley is the owner of Sports Soccer, so there
19 must be people who can assist in that regard apart from
20 those two.

21 What we do think, certainly I do, is that Mr Ashley
22 needs to be invited not to go to Kazakhstan for a month
23 as soon as he leaves the witness-box because it may be
24 necessary to review the position once that piece of
25 paper has emerged.

1 THE PRESIDENT: In relation to what we were suggesting, we
2 think it is also important that Umbro should be in this
3 particular loop as well.

4 MR MORRIS: Sir, that was my first of two points; Umbro
5 should be in the loop. Secondly, in our submission,
6 there is no reason at all why in the course of
7 preparation of such a document, if it can be done in
8 the next 12 or 24 hours, instructions should not be
9 taken from Mr Ronnie. Mr Ronnie is not currently in
10 the witness-box. He was the relevant person at Umbro at
11 the relevant time. This, in effect, would be no
12 different from producing, if asked, a further witness
13 statement from him on the issue. We would resist
14 the suggestion that Mr Ronnie cannot be asked about
15 those arrangements in the course of preparation. We
16 understand the position with Mr Ashley because he is
17 currently in the witness-box, and has been
18 cross-examined about it, but we do not see any reason
19 for a limitation in respect of Mr Ronnie.

20 THE PRESIDENT: What I would suggest for the moment is for
21 us to park the discussion there. See how you get on,
22 discuss with the appellants, if necessary, exactly whom
23 you need to talk to, consider amongst yourselves whom
24 you need to talk to. If there is an issue about
25 Mr Ronnie we will come back and rule on it later, but

1 see how you get on amongst yourselves in trying to help
2 the tribunal through.

3 MR MORRIS: I take your comments on board, sir, but given
4 the indication that has been given by my learned
5 friends, I am sure if I go across to them and say that
6 I would like to take instructions from Mr Ronnie,
7 the answer will be no. That may be something which
8 the tribunal has to rule on.

9 THE PRESIDENT: I think for the moment we should proceed
10 with Mr Ashley and come back to this point shortly.

11 MR MORRIS: Can I raise one other point of housekeeping.
12 Page 50 of the transcript of yesterday, Mr Green invited
13 the appellants to give an undertaking in respect of
14 the disposal.

15 THE PRESIDENT: We left that open.

16 MR MORRIS: Yes. Miss Roseveare has asked me to raise it
17 with you for the matter to be dealt with. It is
18 page 50, line 21 or 22, I believe.

19 THE PRESIDENT: It was my fault, Mr West-Knights, for not
20 dealing with this last night.

21 MR WEST-KNIGHTS: I am so sorry, what is the point?

22 THE PRESIDENT: The suggestion from Mr Green was in relation
23 to the executed agreement of 30th August 2002, that in
24 so far as you are holding unredacted versions of that
25 agreement you can keep them to the end of the hearing,

1 but give an undertaking to destroy them at the end,
2 unless there is any change in the interim as to what use
3 can be made of that document.

4 MR WEST-KNIGHTS: My solicitor is telling me that he has
5 been released by virtue of his having destroyed
6 the unredacted version, but I have one and I am not
7 giving it up for the minute. It may be that I can ask
8 for instructions since my solicitor thought it was all
9 over, that the document should be returned after
10 the conclusion of these proceedings which include -- let
11 us assume that there is just a tiny possibility that we
12 might be convicted of something very, very minor we may
13 appeal, and if we do we need the document.

14 THE PRESIDENT: I have your undertaking that you will keep
15 it personally in your own custody?

16 MR WEST-KNIGHTS: I am not accustomed to giving
17 undertakings. I will keep it.

18 THE PRESIDENT: Lord Grabiner, the same principle?

19 LORD GRABINER: Absolutely. All I would say on the point
20 a moment ago about taking instructions from Mr Ronnie is
21 that the impression one received, certainly from this
22 side of the room, yesterday was that my learned friend,
23 Mr Green, was able to get instructions from
24 Miss Roseveare more than adequately who, as I understood
25 it, negotiated the agreement. So the idea that it is

1 essential to go to Mr Ronnie in the first instance is
2 a bit surprising.

3 My Lord, subject to your position, I am happy to
4 continue with the cross-examination of Mr Ashley.

5 THE PRESIDENT: I think that is right. Mr Morris, get as
6 far as you can without Mr Ronnie.

7 MR MORRIS: Miss Roseveare was giving instructions because
8 she was involved in the drafting of it in 2002. Also,
9 it is the issue of 2000 and 2001 and Mr Ronnie was
10 central.

11 THE PRESIDENT: Sorry about that, Lord Grabiner.

12 LORD GRABINER: It is not possible to understand the ins and
13 outs of that agreement without understanding
14 the underlying nature of the business. But I will say
15 no more about it.

16 THE PRESIDENT: Thank you, Lord Grabiner.

17 Mr Ashley, sorry to have kept you waiting again.

18 (10.35 am)

19 MR ASHLEY (continued)

20 THE PRESIDENT: Good morning, take a seat. You are still
21 under oath, having taken the oath yesterday.

22 A. Yes, sir.

23 Cross-examination by LORD GRABINER (continued)

24 Q. Mr Ashley, you were telling us yesterday towards the end
25 of the day, and you gave an example of a retail sale of

1 £10, that that was an example of a sale by
2 Sports Soccer?
3 A. That is correct.
4 Q. And you divided it by 2.5 which produced 4?
5 A. Yes.
6 Q. Then you said: we would at that time in 2000 as I recall
7 pay them -- that is Umbro -- 30 per cent on the £4,
8 giving them £1.20?
9 A. That is correct.
10 Q. So that is essentially how it worked?
11 A. In 2000, yes. And the £10 is retail including VAT.
12 Just to make that clear.
13 Q. That is a retail price of Sports Soccer inclusive of
14 VAT?
15 A. The shop price, yes.
16 Q. If it was a VAT item?
17 A. If it was a VAT item, yes.
18 Q. That means the lower the Sports Soccer price, the less
19 money Umbro would get, because it would be 30 per cent
20 of a smaller figure?
21 A. That is correct, but you sell more volume. The lower
22 you sell --
23 Q. Just on the principle for the moment. I take your
24 point, which is that if you get increased volume they
25 get more money?

1 A. That is correct.

2 Q. But on the individual item, the return to them would
3 obviously be smaller because 30 per cent of a smaller
4 figure is less than 30 per cent of a bigger figure?

5 A. Yes, that is correct, yes.

6 Q. Now, Umbro had an incentive, I would suggest, to get you
7 to price goods as high as possible?

8 A. No, no, it is the opposite. The lower we sell it,
9 the more volume you do in it, therefore the more net
10 money they receive.

11 Q. So why would they want to get you not to discount goods?
12 Why would they make price-fixing agreements with you?

13 A. Because it is pressure -- they said it was pressure from
14 other retailers.

15 Q. That is the debate. I know that is what they say or
16 they say they say. But is not a more likely explanation
17 that the reason they wanted the price kept up is because
18 the money that you are paying to them on a 30 per cent
19 basis would be larger than it would be on a discounted
20 figure?

21 A. You have to understand that none of this -- I do not
22 know if everybody has this, but none of this is relevant
23 to replica. This whole licensing deal has nothing to do
24 with replica.

25 Q. We will come to that point.

1 A. So long as you understand.

2 Q. We will come to that. I am talking about the basic
3 principle, which is that a motivation in Umbro -- and
4 I will have to ask Mr Ronnie about this -- for keeping
5 your price higher than a discounted price would be to
6 increase the payment that you would be making to them
7 under these arrangements.

8 A. It is in reality exactly the opposite. The cheaper we
9 sell it, the more money Umbro receive --

10 Q. Provided you are -- sorry, please finish.

11 A. For example, if I took the extreme example of yesterday,
12 where I said if I sold a T-shirt for £2 I would probably
13 sell 10 million of them in a year, so their amount of
14 money would be huge off a T-shirt. So that does not
15 really work.

16 Q. So the assumption is that the cash that comes in to
17 Umbro must improve because by definition the effect of
18 discounting will be to increase your market share?

19 A. No, not my market share --

20 Q. The number of sales of those products that you have to
21 account to them for profit, or commission, whatever you
22 call it?

23 A. The volume outweighs the discounting from their point of
24 view on my licence. So they should really encourage me
25 to sell it as low as possible. If I was their only

1 customer, they should try to get me to sell it -- you
2 know --

3 Q. As cheaply as possible?

4 A. As cheaply as possible because they will receive their
5 money.

6 Q. If you were them, they would be saying to you: you
7 discount as much as you like?

8 A. If it was me running the brand and there was no price
9 maintenance or anything else, that is exactly what I
10 would like to do.

11 Q. You would quite like to own that brand, would you not?

12 A. I think that is true, that is correct.

13 Q. That is one of your purposes in this exercise, is it
14 not?

15 A. One of my purposes?

16 Q. You would quite like to own Umbro would you not?

17 A. I would quite like to own a lot of things. I would
18 quite like to own Nike as well, but I do not think I
19 will get there.

20 Q. I did not ask you that, just Umbro for the time being.
21 I mean, slowly, slowly catch the monkey, eventually you
22 might get Nike, but just at the moment Umbro is in your
23 sights, is it not?

24 A. Not at the wrong price.

25 Q. Well, no, obviously everything is a function of price.

1 But at the right price, Umbro would be within your
2 sights?

3 A. At the right price, that would be correct.

4 Q. And if you could undermine or damage their commercial
5 position, that might, of course, make the price rather
6 more attractive than would otherwise be the case?

7 A. No, I think you would find that would do more damage, so
8 it would not be worth what you would pay for it. You
9 cannot damage something and then own it.

10 Q. I am drawing a distinction between the business and
11 the underlying brands. If the business is in serious
12 financial difficulty but the brands are good, that is
13 usually a very good reason for an acquisition, is it
14 not, also at a right price?

15 A. But you would not do that by discounting a brand. That
16 would destroy it.

17 THE PRESIDENT: Are we back in 2000 and 2001?

18 LORD GRABINER: If you just bear with me, sir, I would be
19 very grateful. It is very relevant to an understanding
20 of what is going on in this story.

21 Could I ask you to go to tab 3, Mr Ashley, in
22 the little bundle that we were looking at yesterday,
23 which is attached to the supplementary skeleton. Tab 3
24 is a file note of 24th May.

25 You see an Umbro file note. We have looked at it

1 previously in the context of the recording of
2 the agreement on the second page; do you remember?

3 A. I do, yes.

4 Q. On the first page, which I want to draw to your
5 attention, it looks as if the licence arrangements were
6 either in place or certainly were in a very advanced
7 stage of negotiation, because there are a number of
8 references in the document which seem at first sight to
9 be referable to the licence arrangements.

10 If you look at the first sentence:

11 "Pre-production samples to be collected by LA [I
12 think that is Mr Attfield] and sent to D Smith for
13 inspection."

14 That looks as though it has something to do with
15 the licence arrangements, does it not?

16 A. That genuinely could be anything. I do not know what
17 that relates to.

18 Q. What about the sentence in the middle of the page:

19 "Payment of accounts is to be kept separate, in
20 line and direct ship."

21 A. That could be a volume discount where we buy off them in
22 containers. So if we buy football boots and we buy full
23 containers, that could be a direct ship.

24 Q. But is direct ship not a reference to products under
25 the licence agreement?

1 A. I would not have thought so at this time.

2 Q. What about in the second sentence:

3 "Second sample of bulk to be selected at random when

4 the container arrives at Sports Soccer."

5 A. Can I just tell you we did not bring in any product in

6 2000. Our burn for 2000 was nought.

7 THE PRESIDENT: Your what for 2000?

8 A. Burn or usage, whatever you want to talk about. You

9 asked me to go away and find it out, so we did not burn

10 any product up in the year 2000.

11 LORD GRABINER: But that is distinct from the existence of

12 the arrangements. In other words, were the arrangements

13 in place or being negotiated, apart from the question of

14 whether or not you took delivery of any product in that

15 period?

16 A. Yes. That is correct. You are correct.

17 MR MORRIS: Sir, may I just interrupt a moment. I hesitate

18 to do so, but I believe we are in one of those documents

19 upon which there is a reading-out embargo. I understand

20 it is an amber document.

21 LORD GRABINER: Not in relation to this, as far as I am

22 aware.

23 MR MORRIS: I apologise if that is not correct.

24 LORD GRABINER: I do not think I have transgressed, even on

25 a hypothetical basis.

1 MR WEST-KNIGHTS: We have these colour-coded. This one is
2 yellow, which means it was confidential but in
3 the format being used now, it is open.

4 LORD GRABINER: You see, all I am suggesting is that -- what
5 about on the second page, after the bit about
6 the description of the agreement having been made:
7 "Sports Soccer given permission to produce water
8 bottles, margin [there is a blank there] to Umbro, six
9 packed socks, highway shoe..."

10 That is all part of the licensing arrangement, is it
11 not?

12 A. I do not know that the licensing arrangement actually
13 existed in May.

14 Q. It may not have existed, but what I am suggesting it
15 looks like is a negotiation process in respect of what
16 became matters that ended up in the licence agreement?

17 A. Yes, I would accept that, that would be correct. We
18 would maybe -- for example, on these, they would quote
19 us a wholesale price and that is when we discovered the
20 gap between what we pay for a product and what they pay
21 for a product. For example, six packed socks, they may
22 say: we cannot give you that retail price, we cannot
23 give you the discount. And we would say: why not? If
24 we give you enough volume, why can you not do it? And
25 they might say: our cost price is too high and we might

1 have turned around and said: look, let us take some
2 examples. Well, the cost of this product, it only costs
3 that to make plus whatever you want for royalty, why can
4 you not do the volume discount? We do not understand.

5 I do not specifically remember doing it. I am
6 trying to give you an example of the flavour that might
7 have been there.

8 Q. Is it fair to say that the flavour of this document, or
9 those bits of it that I have shown you, suggest that
10 you were in a negotiation process for what became
11 the licence agreement?

12 A. It very much looks like that, that they are
13 the forerunners for that, yes.

14 Q. I showed you the bit on the second page which records
15 the price-fixing agreement, and I showed you, I think,
16 the first sentence:

17 "Sports Soccer agreed to increase the price of
18 England home and away kits."

19 You saw that yesterday; do you remember?

20 A. Sorry, I have lost the page.

21 Q. On the second page of that document, of the manuscript
22 document:

23 "Sports Soccer agreed to ..."

24 A. I have it, yes.

25 Q. That records the agreement made for the price-fixing in

1 relation to the home and away kits for England.

2 Mike Ashley stated that:

3 "... by matching the High Street price would mean a
4 reduction in his buying within the category, therefore
5 the target of 6 million may not be achieved."

6 If you just go on to the last four lines of the next
7 page, the third page, to create products and produce
8 orders, as it says:

9 "Sports Soccer were told about reduction in licence
10 target from [blank] to [blank] and the increase of
11 [blank] to branded total [blank] to compensate for
12 the loss of margin."

13 Again that looks like a reference to
14 the price-fixing agreement, does not it? Possibly also
15 the negotiation of the licensing agreement as well?

16 A. No, at that time we were doing all of our branded
17 business with Umbro themselves. I should say all --
18 I should not use the word "all". The vast majority of
19 the branded business is products outside of replica. So
20 that could have meant that they wanted us to sell more
21 in-line shoes or something like that. Still I would
22 think that is referring to products from them, but as I
23 say, I can only assume that is what it meant.

24 Q. I understand. The suggestion I am making is that it
25 looks as if the price-fixing agreement was part and

1 parcel of the overall commercial deal that was then
2 being discussed between the parties; do you understand?

3 A. The price-fixing on replica had nothing to do with
4 the licence, they were completely separate.

5 What I said earlier was quite interesting, because
6 I have not read this:

7 "MA stated that by matching the High Street price
8 would mean a reduction in his buying."

9 That counts as a point earlier. Whenever we put
10 the price up, it means a substantial drop in volume.

11 Q. Why is it that smack in the middle of this document,
12 which I think you accept does include references to
13 the licence agreement or the negotiation of it --

14 A. Yes, I do.

15 Q. -- you have this price-fixing agreement. It is very
16 difficult to understand that that was a distinct or
17 separate issue. What I am suggesting to you is that it
18 was actually part of an overall commercial deal that
19 you were making with Umbro?

20 A. No, they are distinctly separate, otherwise I would be
21 making licensed product.

22 Q. What I am suggesting is that the price-fixing agreement
23 is not driven by any pressure from JJB or Allsports at
24 all; it is simply part of the commercial deal for
25 the licence arrangements, it is a quid pro quo for

1 the licence arrangements; that is what I am suggesting?

2 A. You are suggesting that from who, from me?

3 Q. What I am suggesting is that there is a mutual --

4 a two-way arrangement being structured between you and

5 Umbro. First of all you wanted the licence agreement;

6 that we know?

7 A. We accept that, yes.

8 Q. Umbro wanted the price fixed. They wanted an agreement

9 with you about price-fixing on your retail price?

10 A. But why would Umbro want that?

11 Q. We will ask them about that, but they wanted that?

12 A. Okay, they definitely wanted that, that is for certain.

13 Q. What I am suggesting is very simply this: that was

14 the deal, that is the deal you did. And this document

15 demonstrates that very plainly, I suggest.

16 A. It does not. And you are completely wrong. Replica and

17 the licence are not linked.

18 Q. Can you give us any explanation as to why that document

19 shows that you personally made that price-fixing

20 agreement on that day, and it is inserted in a document

21 which I accept is not your document, dealing with

22 general matters concerning the licence arrangements

23 which you were then discussing?

24 A. You are asking me, sorry, exactly what?

25 Q. Can you explain or give us some explanation as to how it

1 came about that you made that price-fixing agreement --

2 A. In the middle of this document?

3 Q. Exactly.

4 A. Price-fixing, and I am going to be repetitive again,

5 never forget is a daily, weekly issue with the majority

6 of brands on the majority of products. So it is quite

7 normal for us to have price-fixing discussions, or

8 whatever you want to call them, with every brand -- not

9 every brand -- with most brands in most of the meetings

10 we have. It is a normal part of the vast majority of

11 conversations at this time in the sports industry in

12 the year 2000.

13 Q. You mean to fix prices --

14 A. Absolutely standard.

15 Q. -- illegally?

16 A. We probably spent more time on price-fixing than we did

17 on buying. That is the reason I went to the OFT in the

18 end.

19 Q. It is good to know the legislation has been passed,

20 I suppose?

21 A. For me it has been fantastic, I am delighted. Even

22 though I did get fined.

23 Q. But do you see the point about that document: it is not

24 just about a discussion as to whether or not you should

25 have some agreement, but it actually does record

1 an agreement?

2 A. On price-fixing, yes, I accept it records a price-fixing
3 agreement. My job was then to get out of it and not to
4 do it.

5 Q. Can we go to the next document, which is tab 4.

6 MR WEST-KNIGHTS: I apologise. I have misspoken myself to
7 the tribunal, for which I apologise. According to my
8 version of the JJB skeleton, the document of 24th May is
9 yellow, which is the code that we have used for
10 documents which were confidential but now are not.
11 The reason why it is, is that is a facsimiled copy of
12 JJB's skeleton of last week. I confirm what Mr Morris
13 said, which is that as regards matters in square
14 brackets, this document is pink. Which means, I think,
15 that we need to just mark the transcript from page 17
16 line 10 to where we are as being something which should
17 be reviewed before it is published on the internet.

18 THE PRESIDENT: We will review it. My recollection,
19 Mr West-Knights, is that this document, or parts of it,
20 did fall within the general reservation we made at
21 the end of one of the orders.

22 MR WEST-KNIGHTS: Yes, the only reason why I am standing up
23 is to say that I was relying upon yellow and I was
24 wrong.

25 THE PRESIDENT: That is very kind of you indeed. I did not

1 want to interrupt Lord Grabiner's cross-examination at
2 that point, so I allowed it to go ahead.

3 MR WEST-KNIGHTS: I have his permission to do it now. I am
4 grateful to you, sir, but anyway I apologise for that.

5 MR COLGATE: Lord Grabiner, do you mind if I clarify one
6 very small point while we are on this.

7 On this file note there are some words written at
8 the bottom which say:

9 "SN [Mr Nevitt] said that if Umbro cannot make
10 a blanked-out margin, but we will not manufacture
11 products unless we take a view to compromise our
12 margin..."

13 Having in mind this is an Umbro file note, could you
14 just for my purposes clarify: is "we" in that context
15 Umbro or Sports Soccer?

16 A. I will take a minute to read it.

17 That would be Sports Soccer --

18 THE PRESIDENT: It is a note made by Mr Attfield, we think.

19 A. Our margin would be Sports World's margin or
20 Sports Soccer's margin. So in other words Umbro's
21 margin is guaranteed, I think that is what that is
22 trying to say. Does that make sense?

23 MR COLGATE: Well, it is saying that Mr Nevitt accepts that
24 if Umbro cannot make this margin that we: Sports Soccer?

25 A. Yes, it would be Sports Soccer that would take any loss.

1 MR COLGATE: -- will not manufacture products unless we,
2 Sports Soccer, take you --

3 A. Correct. One hundred per cent, yes, Sports Soccer.

4 Q. Why I am asking that -- this is actually an Umbro file
5 note, so "we" could actually be taken as being Umbro.

6 A. No, no, it is definitely Sports Soccer, they get
7 a definite guaranteed margin.

8 MR COLGATE: Thank you.

9 LORD GRABINER: Mr Ashley, just looking further up the note
10 on that page, Mr Nevitt, in what I call the second
11 paragraph:

12 "SN is wanting all products, including licensed, to
13 fall into the formula of 2.2/2.5 ... the net net price
14 would be dictated using the following formula."

15 Is it right, is that your recollection, that
16 Mr Nevitt wanted all products including the replica kit
17 to come into that formula?

18 A. Yes, it is a different formula because this is off
19 the retail price. It is off Umbro's, what we would call
20 recommended -- RRP, ie 39.99. It is just a way of
21 saying instead of getting maybe X amount of discount, if
22 you do a formula off the retail price it works out as
23 slightly more discount. That is all it is.

24 Q. It is not clear whose selling price it is, is it?

25 A. It is to us. It is a file note, we know exactly what it

1 means.

2 Q. Well, it might be to you, but let us look at the note:

3 "Adult selling price divided by 2.5 equals net net
4 price. The problem arises as to who dictates
5 the selling price."

6 That is the key point, is it not?

7 A. The selling price is the industry standard 1.88 mark-up
8 of the trade price. So if a replica adult shirt is
9 21.30 trade, it is assumed that the 1.88 mark-up gives
10 it a 39.99 price point. Divide by the margin -- it is
11 a problem because I am not allowed to say it. But if
12 you do that that will give you the net price.

13 The question is: is that net price less than we are
14 currently paying with our normal discount? That is what
15 he is asking for.

16 He is basically trying to improve the terms slightly
17 and simplify the discounts. It is nothing more than
18 that.

19 Q. But the key issue was who was going to dictate
20 the selling price?

21 A. Umbro dictate the selling price by the trade price they
22 set.

23 Q. But when it says: "the problem arises as to who dictates
24 the selling price", that suggests that that is a matter
25 for negotiation, surely?

1 A. Sorry, what was that?

2 Q. Does that not suggest that that is a matter for
3 negotiation?

4 A. No, it is not a matter -- if it is 21.30, then it is
5 assumed that the retail price is 39.99. Every brand --
6 not every brand -- most brands, all major brands work on
7 exactly the same formulas.

8 Q. Why do you think the problem arises? According to you,
9 there is no problem because we know what the retail
10 price is.

11 A. Correct, that is why -- the problem is that it must be
12 more discount than we are currently getting, that is
13 all. If I could tell you the prices it would make my
14 life easier.

15 Q. That I can understand, but of course, everything would
16 be driven by whatever price was selected, surely?

17 A. Yes, but Umbro select those by the trade price. Do not
18 forget my discount. If I get, for example, 20 per cent
19 discount off Umbro, well 20 per cent off what? They
20 could put the trade price at £100, therefore I would pay
21 80. Everything is driven off the wholesale price, which
22 then generates the retail price. That is how the whole
23 sports trade works.

24 Q. But it does not work in your case because you do not do
25 it at that uplifted price, do you?

1 A. No, but my net price is still calculated on what
2 the assumed RRP is.

3 Q. Yes.

4 A. I would have loved this off my net selling price. It
5 would have been magnificent.

6 Q. Could you look at tab 5, which is the next page. Just
7 to try to understand the columns -- can we take Summit
8 sandal, which is the top item there with a sell price of
9 £18. Could you explain to us what those headings
10 represent on that example?

11 A. I think if we ... let me just have a quick look.

12 THE PRESIDENT: You mean the headings: products, sell price,
13 your costs, our costs, difference of quantity, sum of
14 difference and so on.

15 LORD GRABINER: Yes, exactly.

16 What is the sell price?

17 A. That is the retail price including VAT.

18 Q. Is that the actual retail price, or something else; an
19 RRP or something like that?

20 A. In that instance, I would think that is the actual
21 selling price.

22 Q. It is an actual selling price including, if appropriate,
23 VAT?

24 A. Yes, correct.

25 Q. What is "your cost"?

1 A. I would think that is what they are charging us.

2 Q. So Umbro sells to you for 9.82 and you sell at 18?

3 A. On that particular instance, I would think that is what

4 "your costs" means. Do not forget I did not write this,

5 I am just --

6 Q. Well, it is a Sports Soccer document.

7 THE PRESIDENT: Yes, from Mr Forsey this particular

8 document.

9 A. Yes, but I am just saying that looks -- I agree, I think

10 that is what it stands for.

11 THE PRESIDENT: As far as you can see looking at it.

12 A. Yes.

13 LORD GRABINER: So "your cost" is Umbro's charge to you.

14 What about "our cost"?

15 A. That appears to be on some of the products where they

16 have used the 2.5 formula that I talked about earlier.

17 There is the £10 going down to the £4.

18 Q. Yes, so if you divide 18 by 2.5 you get £7.20?

19 A. Yes.

20 Q. Then that produces a difference between the "your cost"

21 and "our cost" column of 2.62?

22 A. Correct.

23 Q. Someone then does a multiplication of the number of sets

24 or pairs of sandals, 240, times 2.62, which produces

25 the 628?

1 A. That is correct.

2 Q. So, what exactly is happening here?

3 A. I would think that is where we are getting them to give
4 us a credit note.

5 Q. So what is the purpose of that? Why are they giving you
6 a credit note?

7 A. I cannot tell you the specific reason in these specific
8 instances, but they have agreed to credit us down to our
9 2.5 formula on some of the items on that page.

10 If you look at --

11 Q. You see, for example, if you go to Forest shirts, which
12 I take to be Notts Forest, can we take that as
13 a separate example?

14 A. Yes.

15 Q. The sell price is your sell price including the VAT?

16 A. No, that is the full RRP.

17 Q. That is the full RRP, is it?

18 A. That is correct.

19 Q. So why is the sell price now an RRP price for Forest
20 shirts but not for the Summit sandals?

21 A. Why is the ...?

22 Q. I thought you said the Summit sandal was your sell price
23 including VAT?

24 A. Correct, but the Forest price is only used to work out
25 what net price we pay.

1 Q. Why is the same not true of the Summit sandal?

2 A. Because that is done on a 2.5 of the net selling price.

3 Q. So on the 39.99 there is a 2.5 division which produces

4 15.99?

5 A. I must say, you might as well not have bothered to blank

6 the other stuff out once you have said that. You have

7 now just told what the trade price of the replica shirts

8 is, but you might as well have not bothered.

9 Q. What about the answer to the question?

10 A. Fair enough, I am just telling you.

11 Q. I understand, I am grateful.

12 A. It is what it says on Lee Attfield's -- Lee's previous

13 page, where you said the 2.5, it relates back to that.

14 2.5 of the selling price is now £16. This is

15 the example I was telling you. This is where

16 Sean Nevitt has slightly more discount. He has managed

17 to get 84p more off, or 85p more off.

18 Q. So the effect of the division by 2.5 means that the "our

19 cost" figure is 85p lower than the "your cost" figure?

20 A. Correct.

21 Q. Then you get the credit note --

22 A. Of £461.

23 Q. -- with the multiplication producing that figure?

24 A. Correct.

25 Q. Would you be surprised to know that the full RRP price

1 for Forest shirts was not 39.99 at all at that time but
2 it was 42.99?

3 A. I would be very surprised at that.

4 Q. Let us just have a look at that, shall we. The tribunal
5 had these on Friday. I do not know where you put them
6 or whether you have them handy. Perhaps this can be
7 provided to the witness. (Handed).

8 If you need some more, we have copies.

9 If you go into that document to a page that looks
10 like that. Mine is unnumbered, it says "Umbro Licensed
11 Apparel, Third Quarter UK Price List."

12 THE PRESIDENT: I am not sure we know quite where this
13 document is to be found, Lord Grabiner.

14 LORD GRABINER: It is actually in the decision of the OFT in
15 paragraph 118. But I will show you the documents as
16 well. There is a page that is marked like this
17 (indicating). It is not the top page but a few
18 pages in.

19 THE PRESIDENT: Yes.

20 LORD GRABINER: If you go beyond that page, Mr Ashley, to
21 the fourth page from there at the top of
22 the page you will see, "Forest home jersey". On
23 the right-hand side, "RRP", and the relevant one is
24 the second entry, 42.99.

25 So the RRP was not 39.99 but 42.99. So it does look

1 as if the 39.99 was not an RRP figure, it was your sell
2 price figure, just as it was on the Summit sandal of
3 £18?

4 A. I think you will find, if you go to the sell price of
5 39.99, 16.84 is our standard price that we were
6 previously paying for 39.99.

7 So for the 16.84, which says "your cost", which is
8 what I was paying, was our standard price of 39.99.

9 Q. How do you get that figure, how do you know that?

10 A. You have to take 21.30 and try and take what were our
11 terms with Umbro at that time. If somebody has
12 a calculator and can try something like maybe
13 18 per cent or 19 per cent -- I do not know what it is.

14 Q. Your standard price payable was 21.30 and you got
15 a discount off that, did you?

16 A. Yes, and the net price equals 16.82.

17 Q. That is about 20 per cent off, slightly over
18 20 per cent?

19 A. Say we are on 21 per cent, something like that. So you
20 see it was never off, it was never off -- that is
21 our standard price of 39.99. It was never priced off
22 42.99, ever.

23 Q. But the "our cost" figure was not priced off the 42.99
24 either, it was priced off the 39.99?

25 A. Correct. As I said before, it relates off -- right,

1 okay. The retail price relates to what Umbro charge as
2 the wholesale price. That is how it works. That is
3 where the 16.84 comes from, therefore that equals off
4 the 21.30, which is 39.99 which is when you apply
5 the buyer's conditions that he has managed to get, or
6 wanted, or whatever, that then gave us a net price of
7 15.99.

8 Can I just say one thing. When you go through all
9 these examples -- to the panel -- you do realise what
10 you are getting me to say in every single instance. Any
11 confidentiality that you thought you may have or may not
12 have -- so long as none of this comes back to me because
13 I did sign a confidentiality agreement. As long as
14 everybody is comfortable with it --

15 THE PRESIDENT: Thank you for that point, Mr Ashley. But
16 I think we have to go with the flow for the moment.

17 The net result of that discussion is that you are
18 paying apparently as a result of the adoption of
19 the formula we have just been talking about. You are
20 paying Umbro 85p less for the shirts than you would
21 otherwise have been paying?

22 A. That is correct.

23 LORD GRABINER: And the way that is done is by paying you,
24 through this invoicing process, cash; is that the way it
25 is done?

1 A. Paying me cash ...? I am not totally sure I understand
2 that, sorry.

3 Q. How does all this work? How does it work out in
4 practice?

5 A. We order replica jerseys according to the RRP divided by
6 2.5.

7 Q. You see, it look as if you, Sports Soccer, were
8 rendering invoices to Umbro to reflect these
9 calculations?

10 A. What, asking for credit notes in other words; yes?

11 Q. You say in the letter, or Mr Forsey says:
12 "As discussed earlier with Mike, please find details
13 regarding the July 20 invoices showing our
14 calculations."

15 A. Yes.

16 Q. So what is the physical process, what is the result of
17 a document like this, or a summary document?

18 A. Umbro would end up giving us that credit note if we got
19 it.

20 Q. For £25,000?

21 A. Yes, absolutely.

22 Q. When would they have paid that?

23 A. I would have assumed it would be knocked off our next
24 payment run. I would assume that to be the case.

25 Q. Just going back to the document that reveals

1 the Notts Forest selling prices, the one I showed you,
2 this one --

3 A. Yes.

4 Q. Is it the position that your starting point is obviously
5 a special starting point, then?

6 A. I would not even know. I have never even seen
7 Notts Forest at 42.99. That is why I am very surprised
8 about it. Whether or not they ever charged any
9 other people those trade prices, I do not know.

10 Q. The wholesale selling price, for example, for that RRP
11 42 is 22-something, 22.90 it looks like?

12 A. Maybe they intended to charge people those prices and
13 they never did and they then launched it at 39.99. I
14 honestly do not know.

15 THE PRESIDENT: I seem to remember some discussion in
16 the decision at some point, Lord Grabiner, to
17 the general effect that High Street prices settled down
18 at 39.99 even though there were attempts by Umbro from
19 time to time to have RRP's above that.

20 LORD GRABINER: I think you may well be right.

21 MR COLGATE: Could I just clarify one small point. This
22 document we are looking at here; there is a column there
23 which says, "First dispatch to trade, last dispatch to
24 trade". In relation to the ones we are talking about,
25 it starts in July 2000 and finishes in May 2002.

1 But are you saying that the recommended retail
2 prices were the same throughout, so they were, in
3 September 2000, the prices that you had talked about?

4 A. I would have -- I would have thought so. Yes. I do not
5 remember them ever being above 39.99.

6 MR COLGATE: And the prices that you have referred to in
7 relation to this document are your actual selling
8 prices? Because these are the ones that you are taking
9 the credit notes for.

10 A. No, because the replica is not my actual selling price.
11 Because we have used 2.5 twice it is confusing people.
12 2.5 of a replica shirt gives us the net price of
13 the £16, where the price is set for us. 2.5 on our own
14 product is where we set the price -- it just happens to
15 both be 2.5.

16 So those Forest shirts I very, very, very much
17 doubt, unless we were put under enormous pressure, went
18 out at 39.99. I would have thought they went out nearer
19 £30 knowing us. I do not have our records here, but if
20 somebody looks them up, I will lay a pound that they did
21 not go out at 39.99. We might have had to have done for
22 the launch, but if we could have avoided it we would not
23 even have done it for the launch.

24 THE PRESIDENT: If I have just understood that last comment,
25 Mr Ashley, to go back to this little note from

1 Mr Forsey, in relation to the Summit sandal,
2 for example, which is not a replica product, and one or
3 two of the other things, like the shin pads and so
4 forth, what do we deduce; that sell price is your sell
5 price?

6 A. Yes, that is correct.

7 THE PRESIDENT: But in relation to the shirts, it is
8 the RRP?

9 A. One hundred per cent correct. I bet that Legion sandal
10 probably has a retail price of 12.99 or 14.99. As I
11 said yesterday, you will not see it on there but that is
12 already -- our selling price is already discounted.

13 You can see that the round pound ones are where we will
14 have already discounted them.

15 THE PRESIDENT: I see, so that is your discounted actual
16 selling price?

17 A. Absolutely correct.

18 THE PRESIDENT: Whereas the other, 39.99 is
19 the more precise--

20 A. The High Street price, if you want to call it that.
21 The RRP.

22 MR COLGATE: But it does give on the 2.5 your cost of 15.99,
23 does it not?

24 A. Yes, that is absolutely correct.

25 LORD GRABINER: Did you know that your competitors were

1 paying more than you were, paying 22.90 -- sorry,
2 getting they were getting the discount at 22.90?

3 A. When you say my competitors?

4 Q. JJB?

5 A. I very much doubt JJB were paying as much as 16.84.
6 I very much doubt it. We always assume they are bigger
7 than us, they get more terms than us. I actually do not
8 know what JJB pay for replica shirts, that is why I did
9 not want to say what I paid for replica shirts, but
10 there we are.

11 Q. Can you look at the two-page licence agreement, which
12 you will find -- I do not know where you will find it
13 actually. It is the 14th September agreement. Someone
14 has done some yellow highlighters on it, but perhaps
15 you can ignore those.

16 Have you seen this document before?

17 A. Give me a second. Have I signed it?

18 Q. No, no one has signed it.

19 A. Almost certainly, I do not remember it specifically, but
20 I have almost certainly seen it.

21 Q. Can you remember, was this the subject of negotiation in
22 the course of the year 2000?

23 A. Yes, it would have been.

24 Q. Can you remember when the discussions began?

25 A. Not specifically, no, sorry.

1 Q. Well, was it early in 2000 or the middle of 2000; does
2 that help?

3 A. I would have thought from what I just read that it was
4 starting around the middle of 2000, only from what
5 I just read. I do not specifically remember when we
6 started discussing it.

7 Q. Was this document ever signed?

8 A. I have just seen that it was not.

9 Q. This one is not, but was it ever signed?

10 A. I cannot tell you, I am sorry.

11 Q. If it was not signed, can you remember why it was not
12 signed?

13 A. Only because possibly it is an ongoing process and
14 we were ever changing it, either they wanted something
15 changed in it or we did. As I say, it is an ongoing
16 relationship, it is on a weekly basis.

17 Q. Clause 9, if you can look at that, says:

18 "All Sports Soccer retail prices to be agreed and
19 signed-off by Umbro at point of sealed sample."

20 A. Yes.

21 Q. On the face of it that refers to all your prices
22 including kit, replica kit?

23 A. I do not think that does mean replica kit, no. Because
24 we do not get sealed samples of replica kit. This means
25 like the T-shirts, the unlicensed product.

1 Q. It does say "all Sports Soccer retail prices", though,
2 does it not?

3 A. Yes, but I think you will find this is not written by
4 lawyers, when they say all, they know what they are
5 trying to say.

6 Q. If you look at the earlier provisions -- I do not think
7 it is appropriate for you and I to construe it as
8 lawyers, so to speak, I will do that in due course with
9 the tribunal. For example, clause 5 talks about
10 licensed textiles, equipment and luggage, and 6 talks
11 about branded footwear, and 7 talks about branded
12 equipment and luggage and 8 talks about football
13 footwear. But when you get to 9, it talks about all
14 Sports Soccer retail prices, which is why I was
15 suggesting to you that it did mean what it said?

16 A. No, it still does not mean what it says. I am sorry
17 about that.

18 Q. There is no need to apologise.

19 What about licensed textiles in clause 5. That
20 includes replica kit, does it not?

21 A. That is correct.

22 Q. So that does include replica kit?

23 A. Yes, the RRP divided by 2.5.

24 Q. Quite.

25 A. RRP to be decided by Umbro -- that is because Umbro set

1 the trade price, which sets the RRP, ie, 21.30 equals
2 39.99, we get 2.5 off the 39.99.

3 Q. So "licensed textiles" as an expression includes replica
4 kit?

5 A. Yes.

6 Q. If you look at paragraph 13 --

7 A. Hang on, I might have that wrong. Does licensed
8 textiles mean -- it might not mean that actually,
9 licensed textiles. Because that could be ... RRP -- no,
10 that ... licensed textiles -- let me get it
11 one hundred per cent correct.

12 No, that does not mean badged products; that means
13 clothing made under licence. That is what that means.
14 That is the £10 RRP. So that does not mean replica,
15 I am sorry.

16 Q. You seem to be embarrassed, Mr Ashley?

17 A. That is all right, I will live with it.

18 Q. You are blushing indeed.

19 A. Really?

20 Q. Yes.

21 A. All the girls say that!

22 I would like to think that I know what I am doing,
23 but I am obviously struggling on 14th September 2000.

24 Q. What is your position on this now?

25 A. My position on it now is I believed, if I follow the

1 chain of events, that "licensed textiles" refers to
2 non-badged products, ie non-replica kit. Again, as
3 I said earlier, because we use the 2.5 it is very easy
4 to get them confused.

5 Q. In due course we will have to make these arguments.
6 I am suggesting to you your first answer, which you
7 actually repeated and then explained in some detail was
8 the correct one; that licensed textiles here includes
9 replica kit?

10 A. It does not because I just read it correctly now. I
11 maybe should have taken some time to read the agreement
12 first before I answered, sorry about that.

13 Q. Could you look at paragraph 13:

14 "Sports Soccer to pay 2000 licensing agreement as
15 stated."

16 Then it makes provision for two dates:
17 15th September and 20th December in 2000; and two sums,
18 6,600,000 plus VAT, 6,690,000 plus VAT, which totals
19 13,290,000.

20 Now, tell us something about that clause, can you?

21 A. That is when they wanted payments for what we would call
22 the royalty burn or gross amount of product we are
23 allowed to produce, however you would like to describe
24 it.

25 Q. Just tell me in simple terms what was happening here

1 mechanically?

2 A. Mechanically we would be paying around 15th September

3 Umbro exactly that 6.6 million plus VAT. That would

4 then give us the rights to bring in whatever amount of

5 product that equated to at the 30 per cent royalty at

6 that time?

7 Q. And the same for 20th December?

8 A. That would be a further payment into the same pot, if

9 you like.

10 Q. So you are paying money upfront?

11 A. Yes.

12 Q. Unsecured?

13 A. Why did you think it is unsecured if I have the right to

14 make --

15 Q. Did you take any security for advancing that money?

16 A. The security is that I have the right to make that

17 product.

18 Q. That is the extent of your security?

19 A. It is more than enough.

20 Q. So you are comfortable with the fact that everything

21 else is within your own power, because you can go away

22 and manufacture --

23 A. Correct.

24 Q. -- you have paid and you can just do it as you will over

25 the coming years?

1 A. Correct, one hundred per cent.

2 Q. Why was it necessary to pay upfront in the way, rather
3 than on a basis of, so to speak, as and when required?

4 A. Because this is -- Umbro preferred the payment this way.

5 Q. And that was the deal?

6 A. Essentially, yes, that was part of the deal.

7 THE PRESIDENT: Lord Grabiner, when you get to a natural
8 break --

9 LORD GRABINER: That would be a good moment.

10 MR COLGATE: I have one question. There was a reference
11 made to 30 per cent; I am not sure I can see that in
12 this document.

13 LORD GRABINER: I think the witness said 30 per cent.
14 The answer is, I think, £20 million worth of goods,
15 adding both those figures together.

16 THE PRESIDENT: My only point is that this document does not
17 refer to 30 per cent.

18 LORD GRABINER: No, absolutely right. I think what
19 the witness was telling us was that what sat behind
20 those figures was his ability to produce a certain
21 quantity of goods.

22 A. That is correct, at the 30 per cent level then, and we
23 must come on to later why it goes down to 20, otherwise
24 the figures will not make sense.

25 Q. What is happening here is that Umbro is getting its

1 30 per cent?

2 A. Upfront.

3 Q. Upfront.

4 A. One hundred per cent correct.

5 Q. And you are able to produce goods and sell them that
6 represent the 30 per cent that you have paid to Umbro?

7 A. Correct.

8 THE PRESIDENT: Yes, Mr Morris.

9 MR MORRIS: Sir, if I could just raise the question of what
10 has happened in the course of the last half-hour in
11 relation to confidentiality. It is a matter which both
12 Umbro have instructed us that they are most concerned
13 about and it is a matter that the OFT would also have
14 views about.

15 We would hope that going forward at least,
16 the regime that was put in place under the order of this
17 tribunal would be followed and that care can be taken by
18 all concerned not to mention the sort of information
19 that has, in fact, been mentioned this morning, which as
20 Mr Ashley indicated, is of the variety that was
21 the concern in the first place.

22 THE PRESIDENT: Well, I take entirely your point, Mr Morris.
23 The obvious difficulty is that it is quite difficult to
24 proceed without discussing certain figures. That is
25 the situation that we are in. At this stage, I think

1 we can take precautions as regards the transcript and
2 any public document that results from these proceedings,
3 but it is difficult to keep a close control over
4 the actual course of what is now being said, apart from
5 exhorting all concerned to be careful about figures when
6 figures are being mentioned.

7 This particular figure is now quite an old figure,
8 and as far as we can tell from the documents we have, it
9 changes later on, as Mr Ashley just pointed out. It is
10 quite difficult to get a full picture without mentioning
11 the figure.

12 MR MORRIS: That was the percentage figure. But I think one
13 of the concerns that Mr Ashley raised was with the more
14 general terms that people were getting for replica.

15 I think that was the issue that was particularly
16 sensitive.

17 A. I think it is out now, fellas.

18 MR MORRIS: There we are. I raise it because --

19 THE PRESIDENT: The terms upon which Mr Ashley was buying?

20 A. I know it is not the time or the place, but could we get
21 the terms of the others, then it would be fair.

22 THE PRESIDENT: I think that is not possible. It is four
23 years ago now. It does not necessarily reflect
24 the terms you have at the moment, Mr Ashley. I am
25 treating this as historical information. I think it is

1 quite difficult to proceed other than on the basis that
2 we have the information that is there that is in
3 the history.

4 A. No problem.

5 THE PRESIDENT: I am sorry about that.

6 A. No problem.

7 MR WEST-KNIGHTS: I can tell Mr Ashley now, if it makes him
8 feel easier, that I will be putting it to him that
9 we were paying, at the material time, 20 per cent off
10 22.90.

11 A. That makes me feel rather good!

12 THE PRESIDENT: Let us take a short break.

13 (11.35 am)

14 (A short break)

15 (11.45 am)

16 THE PRESIDENT: How are we getting on, Lord Grabiner?

17 LORD GRABINER: I think we are getting on reasonably well.

18 But I think you are the only people in a position to
19 answer that question. I am getting there, and I am
20 quite close. If you bear in mind the fact that I did
21 not get the first quarter of an hour, my hour and a half
22 might well be spot on.

23 THE PRESIDENT: I am not putting you under any pressure, I

24 am simply --

25 LORD GRABINER: Mr Ashley, just one other point following on

1 from the matters we were discussing just before
2 the tribunal adjourned briefly. I was asking you why it
3 was that you felt comfortable with paying such a large
4 sum of money upfront to Umbro, and your position was,
5 and I asked you why you were able to do it without being
6 secured.

7 A. Yes.

8 Q. And the security I think you that you said that you had
9 was the ability to go away and manufacture goods to
10 the value of whatever, £20 million?

11 A. Yes.

12 Q. Suppose that Umbro's position worsened financially and
13 went into administration or some receiver was appointed
14 or something like that, what would have happened then to
15 the brand?

16 A. I think the 20 million is low. If it was 12 million --
17 it would be more like 40 million of turnover at cost
18 value of the 30 per cent --

19 Q. Whatever the figure is, it is a big figure?

20 A. Yes, it is a big figure.

21 Q. 20 for each lot of six million.

22 A. Exactly.

23 Q. So it is a big figure. Suppose there is some nightmare
24 scenario, a terrible disaster for Umbro. I suppose that
25 an administrator or liquidator or receiver, the first

1 person that he would come to talk to would be you?

2 A. Why would he come to me?

3 Q. He would come and talk to you because of your

4 manufacturing rights in respect of the Umbro brands.

5 The liquidator, for example, could not sell those rights

6 because of your prior rights?

7 A. (Pause).

8 Q. If he could, it would be a significant undervalue, would

9 it not?

10 A. I do not think you will find that that would stop him

11 selling the brand or not.

12 Q. No, I am not suggesting it would. What somebody might be

13 prepared to pay for the brand would be infected and

14 affected by your presence in the story?

15 A. They might be prepared to pay a lot more also, they

16 might love the deal.

17 Q. You would be a natural purchaser in those circumstances

18 is what I am suggesting.

19 A. I think in 2000 Umbro was a little bit out of our sights

20 in 2000, if I am totally honest. I think you are more

21 talking about in today's terms than you were then.

22 Umbro would be too big, it would be the size that

23 we were then.

24 Q. Have you tried to buy Umbro?

25 A. (Pause).

1 THE PRESIDENT: We need to be back in the circumstances of
2 2000 and 2001, do we not, Lord Grabiner?

3 LORD GRABINER: Well, let us confine it, then. Did you try
4 to buy Umbro in 2000?

5 A. No, I do not believe I did.

6 Q. You must know the answer to that question.

7 A. When you say "try to buy it", define "try to buy it".
8 Put a price or --

9 Q. Did you go to Umbro and offer to buy them out?

10 A. In 2000, definitely not.

11 Q. Did you go to Umbro shareholders and try to buy their
12 shares from them?

13 A. In 2000, I do not think so.

14 Q. Did you do it in 2001?

15 A. I actually think I did it in 1999, before the current
16 Umbro management bought it.

17 Q. You tried to buy it in 1999?

18 A. I think so, yes.

19 Q. And you were unsuccessful?

20 A. I did not try very hard. Umbro was for sale, people
21 knew it was for sale, so we were interested in buying
22 it. If you say, "did I actually try to buy it?", no,
23 I did not appoint a team of advisers or anything.

24 I have tried to buy lots and lots of things over
25 the years. But define "try".

1 Q. Could you look at the draft agreement. You saw
2 the two-page document that I showed you. If you look in
3 that little clip of documents, before the two pages
4 which are bent over by now I should think, you will find
5 what we have been calling a draft agreement.

6 A. This one? (indicating).

7 Q. No. Yes, that one. Yes, that is right, exactly.

8 If you go in about three pages, you will see it says
9 "Dated 2nd February 2001" and "2nd February" is crossed
10 out; is that the document you have, at the top of
11 the page?

12 THE PRESIDENT: It looks like that, Mr Ashley. (Indicating).

13 A. Yes, I have it.

14 LORD GRABINER: First of all, the copy we have is not
15 signed. Again, do you know, was this document or
16 something like it ever signed?

17 A. I do not think so.

18 Q. Can you tell us why it was not signed?

19 A. Again, it is the same as the earlier answer, I would
20 think, because there were always ongoing changes to it.

21 Q. Would I be right in assuming that the arrangements
22 between the parties, you and Umbro, operated in
23 accordance with the terms of this deal, albeit that it
24 was not a signed contract?

25 A. Reasonably. Because it was -- probably the reason it

1 was not signed was that it was perpetually being
2 refined. But essentially, yes. Not every specific
3 detail, but essentially yes. There were more things
4 that then changed in that this agreement substantially.

5 Q. Is that true also of the other agreement we looked at
6 which was not signed, the two-page document? That was
7 the 14th September 2000, this was February 2001?

8 A. That would be correct. There were substantial changes
9 going on with these documents.

10 Q. So they were being refined but they were a reflection in
11 broad terms or whatever of what was actually going on
12 between parties?

13 A. No, because the way it went on later, there were other
14 things in play substantially different from these.

15 Q. Just looking at clause 1, on page numbered 1, at
16 the foot of the page, you can see a definition of
17 "licensed apparel". It is not the same expression as
18 "licensed textiles", and you remember that was
19 the expression we saw before in the two-page document in
20 clause 5; do you remember?

21 A. Okay.

22 Q. This one is "licensed apparel" meaning apparel carrying
23 the trademarks, badge or logos of any Umbro sponsored
24 teams or properties et cetera.

25 That obviously includes replica kit, does it not?

1 A. Yes, absolutely.

2 Q. So the concept of licensed apparel under this agreement
3 included replica kit in any event? That is what it was
4 called?

5 A. Right, yes, I agree with that.

6 THE PRESIDENT: Are we quite sure about that, Lord Grabiner?

7 LORD GRABINER: I put that to the witness and that is his
8 answer. That is certainly what we say, yes.

9 THE PRESIDENT: There is a considerable confusion throughout
10 this case about the use of the word "licensed". Of
11 course, sometimes it refers to replica kit and is used
12 as distinct from "branded", which refers to things which
13 are under a licensing agreement but are not licensed.

14 A. That is correct, yes.

15 THE PRESIDENT: And sometimes not. Here we have the words
16 "licensed apparel" --

17 LORD GRABINER: As a defined term.

18 THE PRESIDENT: It is a defined term, meaning apparel
19 carrying the trademarks, badge or logos of any
20 Umbro sponsored teams or properties specified in
21 the price list.

22 LORD GRABINER: I am suggesting to the witness that that
23 must include replica kit.

24 A. I honestly think that does include replica kit.
25 I believe that is what it refers to. I will say, as it

1 gets confused with "licensed" as you just said, it does
2 get confusing when people talk about the licence.

3 Q. If you look at clause 4:

4 "The purchaser shall place minimum purchase orders
5 and pay for the products."

6 "Products" I think includes replica kit if you go
7 back to the meaning of "products". You see it says on
8 page 2 that "products" means collectively source
9 products, equipment, footwear and licensed apparel. So
10 since licensed apparel includes replica kit, the word
11 "products" includes replica kit; do you understand?

12 A. Can I just read --

13 Q. Sure.

14 A. You went to minimum purchase first?

15 Q. I started with the first line of clause 4:

16 "... minimum purchase orders and pay for
17 the products."

18 A. Okay, that has nothing to do with licensed products.
19 Because the agreement has nothing to do with licensed
20 products.

21 Q. What agreement has nothing to do with it?

22 A. The agreement has -- we have no agreement with Umbro re
23 licensed products, ie Manchester United/England teams.
24 We have no rights to produce it, we have nothing to
25 do -- the branded side of the business has nothing to do

1 with the replica side of the business.

2 Q. So why was it necessary to have a definition for
3 licensed apparel?

4 A. I would think they are trying to make sure that that is
5 absolutely specifically precluding me from doing it.

6 Q. Right --

7 A. I am only guessing, but --

8 Q. Let us just see --

9 A. Can I say in reality we have never made any product with
10 a badge on under our own licence.

11 Q. No, that is a separate point; I understand that.

12 A. Okay.

13 Q. Under licence you were not manufacturing replica kit?

14 A. No, we definitely -- under licence we were not
15 manufacturing replica kit.

16 Q. And I am not suggesting you were. All I am saying is
17 that this agreement regulated at least in part your
18 replica kit position as between Sports Soccer and Umbro.
19 And that is why there was a reference to replica kit,
20 albeit described as licensed apparel in this agreement?

21 A. Okay. Yes. Just defining that I am not allowed to do
22 it, yes, fine.

23 Q. If we look across at paragraph A of schedule 1, and if
24 you go forward in the document to page 9, paragraph A
25 gives you some minimum purchase figures and it includes

1 sourced products and licensed apparel and so on. It
2 then gives those figures, the nearly 60 million figure
3 that I think we saw yesterday and the 50 million figure,
4 albeit for different years, this is for 2000 and
5 2001 and not 2001/2002.

6 A. Yes.

7 Q. I think is another place where we find those figures.
8 These minimum purchase obligations, I suggest, included
9 for replica kit. Is that right?

10 A. I do not think you will find there are any.

11 Q. Is that not what the second entry in the block says in
12 A: licensed apparel at price list, 4.1 million for
13 2000 and 1.5 for 2001?

14 A. I just think you will find that was stating our overall
15 position. I do not think you will find -- I think those
16 orders were already in when this was written. This is
17 not a -- 1.5 million were probably orders from six
18 months previous that were already on the system.
19 Remember the sports trade has a six months futures
20 policy. So there is no minimums there. Calendar years,
21 dash dash dash dash, that shows it is not there. There
22 is no licensed business.

23 Q. If you go back to clause 4 of the agreement, which is
24 the provision that introduces that schedule:

25 "The purchaser shall place minimum purchase orders

1 and pay for the products during the respective calendar
2 years of the term of this agreement in accordance with
3 paragraph 5 of schedule 1, subject to the terms and
4 conditions of this agreement."

5 A. This is all about branded product; this is nothing to do
6 with replica. I would think for the avoidance of doubt
7 they listed currently what we had on the books for
8 replica, but there is no turnover for it, as you can
9 see.

10 Q. There is for 2000 and 2001?

11 A. This is in February, 2000 has already finished, and this
12 would be probably what we have already got coming in in
13 the year, part of 2001. I do not even think Umbro would
14 want us to go from 4.1 million down to 1.5. The two are
15 not linked.

16 Q. What about clause 7, which deals with the terms of
17 business for licensed apparel; do you see that? I am
18 not going to refer to the figures, but you can see them
19 for yourself. This is page 5, clause 7.

20 A. Yes.

21 Q. Trade terms:

22 "Footwear, equipment and licensed apparel shall be
23 supplied on the following trade terms."

24 A. Yes.

25 Q. And then the product is set out, the trade discount is

1 set out and the settlement discount is set out where
2 appropriate.

3 A. Yes.

4 Q. One of the items is for licensed apparel?

5 A. Yes.

6 Q. What is the difference between the trade discount and
7 the settlement discount, apart from a purely percentage
8 figure, how do they work?

9 A. I think you add the two together. So on trade discount
10 which means our total discount on footwear would be
11 28 per cent.

12 Q. You said the figure for me. That is for the record, but
13 carry on.

14 A. Therefore I will not explain the others then.

15 THE PRESIDENT: It is all right, Mr Ashley, do not --

16 LORD GRABINER: Do not rise to it.

17 THE PRESIDENT: Do not take any notice, just answer
18 the questions as you want to.

19 LORD GRABINER: Basically what you are saying is that both
20 figures should be added together, where there are two
21 figures, in order to produce what the discount figure
22 should be, and that is the agreement between
23 the parties.

24 A. Yes.

25 Q. What is the difference between a trade discount and

1 a settlement discount?

2 A. One is, in theory, a payment discount. So one is for --

3 ie what would be described as, believe it or not, early

4 settlement discount.

5 Q. So if you settle your account early or on time you get

6 a discount?

7 A. Basically, yes.

8 Q. And a trade discount?

9 A. It is your standard discount.

10 Q. Off the price?

11 A. Off their --

12 Q. Off their price?

13 A. Off their price, which is again a percentage of

14 the retail price.

15 Q. And that is another indication certainly I would suggest

16 that this agreement was designed to cover the whole of

17 your trading relationship, including licensed apparel,

18 ie including replica kit. And it looks as if whoever

19 drafted this document was trying encompass all your

20 business into it, albeit in draft form at that stage.

21 A. No, I do not believe that to be the case, because they

22 have not put forward any projections on page 9 that you

23 said. Minimum purchases -- well, if they are trying to

24 incorporate everything they would have put some volumes

25 in for 2002, 2003 and 2004. So it is not. It is just

1 trying on reflect currently where probably everything
2 was at that point.

3 MR COLGATE: Do we have in the bundle the Umbro price list
4 as defined by this agreement?

5 LORD GRABINER: We think that is the document that we were
6 looking at before the adjournment where we found
7 the Nottingham Forest figures earlier on today. There
8 were several pages, and that was the Umbro price list,
9 we think, when you asked some questions. Yes, exactly
10 that. You asked some questions, Mr Colgate, of
11 the witness about the period covered by the figures, and
12 I think that that is the document.

13 It is the only one I think that we have seen. We do
14 not think there is any other such document in
15 the papers.

16 MR COLGATE: It is just that the two appear to link
17 together, do they not?

18 LORD GRABINER: Absolutely, that is our position, yes.

19 Could you look back at page 9 of that document,
20 Mr Ashley, and perhaps you can tell us something about
21 the guaranteed royalty column or line in part B of
22 schedule 1?

23 A. Yes.

24 Q. Is that a statement of the sort of contemplated
25 guaranteed figure on your licensing arrangement that

1 you have been describing to us earlier today?

2 A. That is correct.

3 Q. So the figures for the years -- I do not think these

4 figures are confidential. We have already discussed

5 their predecessors in the other document. But the

6 13,425 is in respect of 2000, and that is in millions of

7 pounds?

8 A. Correct.

9 Q. And it is going forward with the figures that are set

10 out there?

11 A. That is correct.

12 Q. And the percentage to be applied is the one in the next

13 line below?

14 A. Yes, that is correct, yes.

15 Q. And so that figure represents that percentage of what

16 you can manufacture, basically?

17 A. Yes, that is correct.

18 Q. So it is contemplating a declining support mechanism, is

19 it?

20 A. Correct.

21 Q. Why is that?

22 A. Why is that? Probably because for us we want -- we do

23 not exactly know where the brand is going to go. Maybe,

24 for example, they could have lost Manchester United,

25 maybe they could have not re-signed Celtic, maybe they

1 would not have put the right product together or
2 the right brand marketing, whatever. We take the view:
3 your brand is strong now, but for us ... because it is
4 a minimum, only a minimum. A minimum for us will
5 decline rather than raise because our future is in your
6 hands, not the other way round.

7 Q. Was it also driven in part by Umbro's financial
8 predicament at that time? In other words were they
9 saying to you: we do need the cash, so what to do about
10 it? They might not have put it as crudely as that.

11 A. Umbro probably would. I do not think the decrease is
12 anything to do with that, that is nothing to do with
13 Umbro's position at that time. When you showed me
14 the figures yesterday, I do not think people in
15 the industry were as aware that Umbro possibly were not
16 making the profits. I think you will find our belief
17 was that Umbro, with us, was doing reasonably well and
18 quite a strong brand so we assumed that therefore Umbro
19 was doing quite well. If we are selling it well, we
20 assume the sports industry, the same customers, is also
21 selling it reasonably strongly.

22 Q. If you turn over the page to schedule 2, that appears to
23 provide for monthly payments or monthly invoices anyway?

24 A. Correct.

25 Q. Is that what was planned?

1 A. Is that what was planned? No, that was probably -- this
2 is probably a request from Umbro of how they would like
3 to see it. I would think that is probably one of
4 the reasons it was not signed.

5 Q. And --

6 A. Again, it is difficult to remember that far back on
7 this. I am more trying to give you reasons why,
8 I think.

9 THE PRESIDENT: That is fine. All you can do is tell us
10 what you remember now as you look at it.

11 LORD GRABINER: It says at the bottom there, I do not think
12 we have seen this letter:

13 "Amounts due under this licence at the 31st December
14 2000 will be settled as set out in the letter of
15 2nd February between Sports Soccer and Umbro."

16 Can you remember what that was about?

17 A. Not at all, sorry.

18 Q. Do you know if the monies for the year 2000 were in fact
19 paid?

20 A. 2000 was paid: the first 6 million was paid in
21 the September; the second 6 million was paid in
22 the following June.

23 Q. Why was that?

24 A. Why was there a delay in the second payment?

25 Q. Yes.

1 A. Probably because we were not happy with the terms.
2 Probably. Ie there would be -- say, for example, they
3 had not given us the right footwear product for us to
4 produce all the sign-offs -- do not forget, Umbro was
5 intrinsically designing this product as well, so we
6 cannot pay you the royalties unless you are going to
7 give us the product to make.

8 That could be it, I cannot remember specifically,
9 I am sorry.

10 Q. I understand. I want to go to another document, which
11 is an invoice from Umbro International addressed to
12 Sports Soccer. We produced this on Friday to
13 the tribunal, and we have copies for the witness and for
14 the tribunal in case you cannot readily lay your hands
15 on it.

16 THE PRESIDENT: I think we have it, but the witness needs
17 it.

18 LORD GRABINER: I do not know if you can help us with this,
19 Mr Ashley. It talks about a restricted licence for
20 the month of:

21 "... August is crossed out for September 2001 to
22 produce 6,060 at wholesale value of Umbro branded
23 product. Precise details of product and wholesale
24 values to be agreed by Umbro Chris Ronnie and
25 Sports Soccer Mike Ashley."

1 And then it gives a figure of 1,424,100 and that
2 goes all the way down to the bottom line as
3 the pro forma invoice total.

4 Can you tell us anything about this? It looks like
5 a prospective exercise as well.

6 THE PRESIDENT: I do not know if you can help us, you may
7 not be able to help us, Lord Grabiner, there seems to be
8 a date over on the left-hand side in the manuscript
9 which says the 20/07/02.

10 LORD GRABINER: That is what my copy says.

11 THE PRESIDENT: It also looks to be referring to
12 September 2001. So certainly at this stage it looks as
13 if we are somewhat after the events of 2000 that we are
14 principally concerned with.

15 LORD GRABINER: Yes, I cannot read the -- do you see it says
16 "invoice date"? I cannot read the typed-in date
17 underneath it. It looks like 30th July, maybe -- it
18 looks like 30/07/01 and the manuscript note, 2702, I am
19 afraid I cannot explain.

20 THE PRESIDENT: No.

21 LORD GRABINER: I just wonder if the witness can throw any
22 light on this.

23 What is the relationship between the 6,060 and
24 the 1,424; are you able to help us on that?

25 A. Is that 20 per cent plus VAT? I am guessing. If you

1 take 6,060 at 20 per cent and add the VAT on to that,
2 does it equal 1,424,100? I do not know.

3 Q. If it did, what would that tell you?

4 A. It is a 20 per cent royalty licence invoice.

5 Q. Is there any more you know about that that would help
6 us?

7 A. No, sorry, I generally do not do the accounts.

8 Q. There is just one more thing I want to ask you about,
9 and that is the new agreement, the current agreement,
10 the 24th August 2002 agreement.

11 A. Yes.

12 Q. I just want to ask you one or two questions about it.
13 It is a redacted copy. (Handed)

14 A. Thanks.

15 Q. Can I suggest this: a difference between this agreement
16 and the documents we have been looking at earlier this
17 morning is that this one contains as far as we can tell
18 no specific provision for replica kit. Is that right?

19 A. I have no idea. I have just seen it this second. If
20 you tell me there is nothing in here that says anything
21 about replica, then there is nothing in here about
22 replica. I have not read it -- I might have read it
23 then, but I certainly do not know what it says now.

24 Q. I think you signed this contract.

25 A. I am just saying that I cannot remember what is in it,

1 if you say there is nothing in it about replica
2 then there is nothing in it about replica.

3 Q. You did sign it on page 20; you and Mr Ronnie signed it
4 respectively for Sports Soccer and Umbro.

5 A. Yes.

6 Q. All I am suggesting to you is that we cannot find
7 anything in it about replica kit. As far as you can
8 tell us from your memory, if you like, was it intended
9 to regulate the replica kit business at all? We could
10 not find any reference to replica kit in the agreement.

11 A. I do not think any of these agreements have ever had
12 anything to do particularly with replica kit.

13 Q. But that is not true, is it? We looked at documents
14 a few minutes ago where replica kit is actually referred
15 to in one of the agreements. But this one does not
16 contain any reference to it?

17 A. It is referenced to it as in saying it is not supposed
18 to be in it. That is why that one previously said
19 restricted licence, and that royalty -- that is why
20 the invoice you just gave me said restricted licence.
21 It is restricted, ie it has nothing to do with replica
22 kit.

23 Q. Can I suggest that the reason it does not deal with
24 replica kit is because by the time you came to make this
25 agreement, the OFT was well on its way?

1 A. Nothing to do with the OFT inquiry at all, absolutely
2 not.

3 Q. And obviously you would not, in the light of
4 the inquiry, want to put, for example, a price-fixing
5 clause into the agreement, would you?

6 A. I am a person who reported everybody -- if
7 a price-fixing agreement had been in, I would have been
8 only too delighted to have handed it over and say: look
9 what I have been forced to do.

10 Q. Could you look at the penultimate page of the document,
11 schedule 5. Do you see that, page 43?

12 A. Yes.

13 Q. Can you just tell us what is your understanding of that
14 page?

15 A. (Pause).

16 Q. You see under 2001 and 2002, the two figures next to
17 the word "licensed", to the right of the word
18 "licensed", they are very close to the figures we saw
19 before but for slightly different years. Instead of
20 2000 and 2001 it is shown here as 2001 and 2002, but
21 otherwise the figures are exactly the same, are they
22 not?

23 A. Sorry, which figures are you going back to now? I am
24 sorry.

25 Q. If you go back to the draft agreement that we were

1 looking at earlier, and if you go to page 9 you can see
2 the minimum purchase figures in schedule 1A. You see
3 the total figures for 2000 and 2001?

4 A. You are talking about 44.8 and 44, yes.

5 Q. I am not. I am talking about the total figure at
6 the bottom.

7 THE PRESIDENT: Just go down to the bottom --

8 A. Okay, yes.

9 LORD GRABINER: Those two figures are very, very similar to
10 the two figures next to "licensed", are they not, for
11 2001 and 2002?

12 A. Yes, they are also quite --

13 Q. Is that by chance?

14 A. It is, because all you have to do is take out the other
15 totals. Of course they are, that is what I am supposed
16 to be doing in licensed product. It is because replica
17 is insignificant in the total. That is why they are
18 close, because replica has nothing to do with it.

19 Q. Going back to schedule 5, what is happening there is
20 what? That you have used up the figures you refer to
21 there for 2001 and 2002 next to the word "used", and
22 your total unused are the two figures that sit below?

23 A. That is correct.

24 Q. When you previously talked about the 30 per cent point,
25 I do not know what the current percentage is, but it is

1 on the same principle?

2 A. Yes.

3 Q. The principle is that you are free to go away and
4 manufacture, and you have an unused total still
5 available?

6 A. That is correct. That is correct.

7 Q. And you do not have to pay anything more for that;
8 you are free to go away and manufacture all of that?

9 A. Until we have used it up, that is correct.

10 Q. Could you just finally go to page 12 of the agreement,
11 where you will see there is a heading "Payment of
12 Royalty", above clause 6.1; do you see that?

13 A. Which clause?

14 Q. 6.1. (i) gives a figure, and (ii) gives a figure.

15 A. Yes.

16 Q. Just looking at (i), when was that money paid?

17 A. So it was 6 million in the September and 6 million in
18 the June ... 6 million in September 2000 and 6 million
19 in -- I think in June 2001.

20 Q. So that figure is a reference back to that?

21 A. Yes, it is, yes.

22 Q. And the other figure in (ii), that is in respect of
23 future business, is it?

24 A. Yes. It is not future business; future business is
25 the amount then being advanced in this agreement, that

1 is correct.

2 Q. You obviously felt sufficiently comfortable with your
3 relationship with Umbro that you were able to defer
4 the payment of the 6 million from December until
5 the following June 2001.

6 A. Sufficiently comfortable ...?

7 Q. Well, you were able to resist the payment obligation for
8 several months.

9 A. I would not know if I even resisted it, maybe we were
10 carrying on negotiating different stuff at that time.

11 I did not necessarily resist it, to be honest.

12 Q. Anyway, you did not pay it as you say until
13 the following June?

14 A. I accept that, yes.

15 LORD GRABINER: Thank you very much.

16 (12.20 pm)

17 MR COLGATE: Could I just clarify one thing on these
18 payments, please. The first document we looked at
19 totalled 13,290,000.

20 A. Yes.

21 MR COLGATE: And that looked as if it was paid in
22 September 2000.

23 A. Correct.

24 MR COLGATE: And one in December 2000. And you already said
25 to us that you actually paid 6 million in September and

1 6 million the following June.

2 A. Yes, give or take.

3 MR COLGATE: So, firstly, the amounts here had changed and

4 appear actually to reflect payments that are reflected

5 in the signed agreement?

6 A. That is correct.

7 MR COLGATE: Can you explain to us why those figures

8 changed?

9 A. Yes. When we initially did the deal at the 30 per cent

10 level that was for us only to supply our own chain with.

11 So Umbro made a margin of 30 per cent on our own

12 products that we sold through our own stores.

13 When the discount drops down to the 20 per cent

14 level, that is when we supply not only our own shops

15 with Umbro products but Umbro with Umbro products and

16 Umbro with our competitors' products.

17 So Umbro sell our competitors' product under their

18 labels that we make. That is why the reduction is from

19 30 to 20.

20 MR COLGATE: Which is reflected in --

21 A. The drop between 30 and 20, because we have this

22 manufacturing thing, you see.

23 THE PRESIDENT: That is reflected in the reduced royalty

24 finally paid.

25 A. Yes, so it goes 30 to 20 -- for example, in this room

1 would be a competitor with a brand such as Patrick, and
2 we would supply Patrick with the merchandise that would
3 go on to them. So in the scheme of things it paid them
4 to drop from 30 to 20, because they got the benefit of
5 doing all that business as well, that is the reason.

6 MR COLGATE: Does that mean the arrangements changed at some
7 point?

8 A. The arrangements and the negotiations would be a weekly,
9 monthly, ongoing, liquid thing up until the August with
10 the actual deal signed in 2002. It is one of those
11 things like a snowball. "We should make the product and
12 pay a fixed royalty because our source seems better than
13 yours"; "well if you want to do that, can you pay us
14 an advanced royalty then?"; "okay, we will look at doing
15 that"; "if we took it from this, why do we not make your
16 product for you as well, we can guarantee you a lower
17 selling price?".

18 So the relationship was built.

19 All this, I have to keep emphasising, has nothing to
20 do with replica.

21 THE PRESIDENT: Yes, we have understood that.

22 A. It is a normal trading relationship that I would have
23 with a lot of brands probably outside of Nike, Adidas
24 and to some extent Reebok. With most other brands
25 I will have these kinds of relationships.

1 THE PRESIDENT: Thank you.

2 MR COLGATE: The question I have still not resolved, and
3 I will pursue it later, is exactly what arrangements
4 were put into effect at different times?

5 A. That would be the real difficult one for me to say.
6 Okay, this one chained that one, which chained that one.
7 If you ask me can I remember exactly now, what the chain
8 is, I am struggling. That is why the paperwork, that
9 invoice, and that credit note and that thing, it is
10 the paperwork making the sort of progression through
11 the two or three years of that trading relationship over
12 that time. That is basically what it is.

13 MR COLGATE: Yes, thank you.

14 THE PRESIDENT: Yes, Mr West-Knights.
15 This is counsel for Allsports now, Mr Ashley.
16 (12.26 pm)

17 Cross-examination by MR WEST-KNIGHTS

18 MR WEST-KNIGHTS: On the last point -- I will try to keep
19 this simple -- when you are able to source at
20 20 per cent you pay Umbro 20 per cent of the price, of
21 that sourcing?

22 A. Yes.

23 Q. You sell it to Umbro or provide it to Umbro for onward
24 sale to other people and you sell it yourself?

25 A. At the 20 per cent?

1 Q. Yes.

2 A. Essentially, yes. I do not bring it in for Umbro; they
3 when they sell it on to their own customers bring
4 the product in but use my sourcing. This is not quite
5 the same.

6 Q. But take the example of the Patrick sock. You get it at
7 the sourced price, and you pay 20 per cent royalty to
8 Umbro.

9 A. Yes.

10 Q. Umbro get it at the same sourced price from the same
11 supplier --

12 A. No, they will have my margin built in at that point.

13 Q. Right, so they get it plus your 20 per cent?

14 A. Whatever I may be making. Mine is not fixed. When
15 I supply Umbro with other people's product, my margin
16 varies. They tell me a target price they wish to have
17 for the product. They might come with a Patrick
18 sweatshirt and say: we need to pay \$6 for this. I then
19 either take the order or do not take the order.

20 Q. So you sell it to Umbro for \$6 or something under \$6 if
21 you can?

22 A. As much as I possibly can.

23 Q. If you know that you can source it at \$4 --

24 A. I am happy.

25 Q. You will get it at \$4 --

1 A. No, it is Patrick, not my brand. I do not sell Patrick.

2 Q. You do not sell Patrick?

3 A. No.

4 Q. Are there any examples of products where you sell in
5 your shops and provide to Umbro for selling on to other
6 retailers?

7 A. Yes, Umbro.

8 Q. Right. So Umbro would come to you, would they, in
9 respect of an Umbro product, say a shin guard.

10 A. Shorts, good example, football shorts.

11 Q. I say shin guard because it is in the open document.

12 A. Shorts is better because I actually do not do their shin
13 guard.

14 Q. Umbro come to you and say, "can you source me a short
15 for less than US\$10?".

16 A. Yes.

17 Q. And you say to yourself, "certainly can, I am doing them
18 for 6"?

19 A. Yes.

20 Q. So they come into your shop for \$6 with Umbro on, but if
21 they go to Umbro, you no doubt charge them \$9.99,
22 whatever you can get.

23 A. That is it.

24 Q. And they put their margin on top and sell that on to
25 JJB, for the sake of argument?

1 A. Yes, absolutely. But they do not come into my shop at
2 the \$6. You have to get the chain right. It is
3 the retail less the 2.5 then Umbro get their 20 per cent
4 margin on that, and then the gap on the sourcing price
5 is what you are talking about, the savings.

6 Q. Yes, but there is a gap. So it is coming into your shop
7 less than it is going into Umbro, and it is going into
8 your shop a lot less than it is going into JJB?

9 A. Most certainly.

10 Q. These arrangements were all secret?

11 A. Well, they were, but I think we have done that in I
12 think.

13 Q. We are talking about what the market was doing in 1999
14 and 2000.

15 A. It was not doing any of that in 1999 and 2000.

16 Q. It was only occurring in 2001; is that right?

17 A. I think it might have only started occurring in 2002.

18 When I sign something in the September or make
19 the payment in the September, the reason there is no
20 burn is it takes six months to get the product here. So
21 in 2000 we did not bring in Umbro product, that is why
22 the actual burn is nil.

23 Q. We will come back to that, Mr Ashley, when we look at
24 some of the documents at the time.

25 I am going to read you a passage, if you want to

1 look at it, it is in a bundle which you will find marked
2 "Pink Documents Umbro" --

3 A. Which file are we in?

4 THE PRESIDENT: Which file are we in?

5 MR WEST-KNIGHTS: It is called "Pink Documents Umbro".

6 The tribunal ordered the parties to segregate
7 the confidential documents from the others. So it is
8 the confidential Umbro bundle.

9 THE PRESIDENT: We need to check.

10 MR WEST-KNIGHTS: The parties were specifically ordered to
11 keep these documents separately from all others in
12 a separate bundle. That is the regime that we have been
13 observing pursuant to the tribunal's order to that
14 effect.

15 When I say pink, I mean confidential. Perhaps
16 the Office can help us as to whether there is
17 a bundle for your use --

18 THE PRESIDENT: We have the various documents in various
19 forms but we have not assembled, as far as I know,
20 exactly the same file as you have in front of you.

21 MR WEST-KNIGHTS: Oh, I see. We have not, pursuant to
22 the tribunal's judgment, interleaved into the ordinary
23 bundles, the pink documents.

24 THE PRESIDENT: Neither have we. If you tell us what
25 the document is --

1 MR WEST-KNIGHTS: It is page 22 of Ronnie redacted.

2 It is page 109 in the running bundle.

3 THE PRESIDENT: That is in our witness statement file, and
4 it has square brackets around the confidential passage
5 to remind us that it is confidential.

6 MR WEST-KNIGHTS: I see, that is not a luxury that we have
7 been afforded. We have not interleaved because we were
8 told not to.

9 What I want to read to you, Mr Ashley, is
10 paragraph 99, do you have that now?

11 A. Yes.

12 Q. I am going to read it to you. This is Mr Ronnie
13 speaking:

14 "I became more involved with the relationship with
15 Sports Soccer in early 2000. I saw the opportunity to
16 help Sports Soccer to present products more effectively,
17 especially replica products. For example, Sports Soccer
18 would leave the replica kit at the back of the store
19 throughout the year. I wanted to help them make the
20 most of the opportunity with replica kit by moving kit
21 around the store at certain times of the year,
22 especially at launches, and by providing point of sale
23 material. I knew that this would also help
24 Sports Soccer in entering into the replica market, and
25 improve their chances of building a range of replica

1 kit, not only from Umbro but from other brands.

2 "The assistance that we provided Sports Soccer was
3 successful, and during 2000 the sales of replica kit
4 within Sports Soccer increased."

5 Just pausing there, do you recognise the truth of
6 that?

7 A. I do, actually, believe it or not.

8 Q. Yes?

9 A. Yes.

10 Q. Why were Umbro trying to help Sports Soccer build
11 a range of replica kit not only from Umbro, but from
12 other brands?

13 A. Okay, because if you want to be authentic in something,
14 if for example, Umbro wanted us to build a range of
15 Umbro soccer boots they need the other brands around it
16 to make it authentic. So to get Sports Soccer really
17 doing well in the replica market, it has to be
18 authentic. Therefore, they encourage you to stock your
19 brands with the other brands together ie brands like all
20 their football boots together because it makes you
21 a store of destination. That is how they see it. It
22 brings authenticity to what you are doing.

23 Q. Could we just unpack that a bit. What would be wrong
24 with just you having a prominent part of the store
25 containing Umbro branded product and not much else?

1 A. Because if you really want to build into an industry
2 into branded replica product you have to do it all
3 together to make the offer credible. If you went into
4 a shop and they just had a little replica was just at
5 the front, whichever brand it is, it is not credible.
6 Mr Ronnie's idea was, "come on, let us get into replica,
7 let us put replica at the front of the stores, let us
8 make you a credible offer of replica. This is how you
9 ought to do it".

10 Brands are always telling retailers how to retail,
11 and retailers are always telling brands how to manage
12 brands because they both think they know better.

13 Q. That is very helpful, because the next question I want
14 to ask you is about brands.

15 A. Yes.

16 Q. If I were to manufacture a T-shirt and put a squiggle on
17 it that nobody recognised and called it "Pog", it would
18 sell along with all the other T-shirts in the world,
19 Woolworths, whatever. It would have nothing special
20 about it, would it?

21 A. No, not particularly. I cannot think of anything --
22 mark anything for Pog.

23 Q. Branding is a way of getting people to think that
24 a product is worth money; that is the ultimate aim, is
25 it not, of branding?

1 A. The perceived value or whatever, adding value to
2 the product, whatever you want to call it.

3 Q. I am not being tricky, I am just asking for information.
4 Let us take Nike as an example, and I do use it only
5 as an example, simply as a paradigm -- a good example of
6 a famous brand.

7 A. I accept that.

8 Q. The way in which they make money is by getting some form
9 of image associated with the word "Nike", or better
10 still a simple logo, so that people want to buy it?

11 A. Yes, I accept that.

12 Q. 20 years ago half the fights that criminal courts were
13 involved in involved boys wearing Dolce and Gabbana,
14 that was a similar thing that people bought Dolce and
15 Gabbana because they recognised the name, and it was not
16 necessarily a reflection of their higher quality of
17 product, not necessarily?

18 A. Not necessarily, no.

19 Q. So the advantage of being a brand, like Chanel or Rolex,
20 is that people will pay top dollar if they perceive
21 the brand to be -- to use the marketing term -- sexy?

22 A. Some products, in some cases, yes. Some are functional,
23 some are a genuine performance product. So it is
24 again --squiggly T-shirts at 50 quid, it has to be sexy.

25 Q. Either a very sexy brand or a remarkable T-shirt?

1 A. Absolutely.

2 Q. But an athlete would say: "I wear this T-shirt because
3 it has sweat reduction properties" or something like
4 that?

5 A. I totally accept that.

6 Q. If I am a brand owner, what I am seeking is to get
7 the added income to me from people buying my product
8 because it is my brand.

9 A. That is correct.

10 Q. In the end that is the key to branding is it not? If
11 I took the Nike tick off a Nike shirt, and put it on and
12 somebody came along and gave it a good feel, the chances
13 are that they would be less likely to buy that one than
14 the identical shirt with the Nike tick on it at the same
15 price?

16 A. At the same price, correct.

17 Q. If I am seeking to become a brand, or I want to increase
18 my brand profile, I need two things: either a genuine
19 performance product, provided the word gets around that
20 it is a great product, or somehow the magical sexiness
21 that make people want to have it because it has the Nike
22 tick on it?

23 A. Okay.

24 Q. You want to get your name associated with being sexy?

25 A. Nike would say it is performance.

1 Q. You want to get your name associated with performance.
2 It may be, and I do not want to upset Nike in any way,
3 it may be that some of their polo shirts are in fact no
4 better than anybody else's polo shirts, but because
5 they have the Nike tick on them, they are associated
6 with a certain kind of lifestyle: slightly athletic,
7 functional, practical, serious player, that sort of
8 thing.

9 A. I accept that.

10 Q. The purpose of building a brand, therefore, is to
11 increase the attractiveness of your product, generally?

12 A. Or the perceived value, yep, the same thing.

13 Q. I do not think we disagree. Perceived value means
14 people think it is worth buying.

15 A. Yes, correct.

16 Q. The purpose underlying all of this is to increase
17 the profit margin on selling whatever the widget is.

18 A. Okay.

19 Q. In the end, if you have a successful brand you can stick
20 your logo on it and so long as you do not take
21 the mickey, people will buy more, and at a higher price,
22 of the particular widget in question.

23 A. Okay.

24 Q. That is right, is it not?

25 A. If you say so.

1 Q. I am asking you to agree or not agree with me what I am
2 suggesting about branding.

3 A. Yes, I totally agree with you. How about that?

4 Q. Thank you.

5 It follows, does it not, that a brand owner has
6 a particular interest in the way in which its products
7 are retailed?

8 A. Okay, yes.

9 Q. It wants to see them retailed well. It wants to see
10 them shown in the correct light, yes? Correct?

11 A. Correct. That is not always true either otherwise
12 nobody would supply Cost Co. You cannot make
13 these rules that you are making, there is a certain part
14 of the chain where that may be important and there is
15 a certain part of the chain where it is not. Cost-Co
16 they pass it up in cardboard boxes for that particular
17 retailer, they make it look absolutely awful as if it
18 has come out of the warehouse because that is
19 the product that fits that particular retail model.
20 Normally you are correct, but not always.

21 Q. I am talking about --

22 A. In most cases.

23 Q. I am talking about using the dreadful word which
24 permeates the papers in this case, the
25 word "aspirational" brands?

1 A. Okay.

2 THE PRESIDENT: It all depends on where you are trying to
3 position your brand in the market does it not?

4 MR WEST-KNIGHTS: Certainly. I am talking about brands like
5 Nike, Adidas --

6 A. Okay, that I accept. Yes.

7 Q. And Reebok, say?

8 A. Yes, aspirational brands, they see themselves as
9 aspirational brands, yes.

10 Q. Even I am more likely to buy a trainer because it has
11 Adidas on the side than one which is unbranded if they
12 are the same price, or I might pay a bit more for an
13 Adidas because I perceive it to be a better value
14 product.

15 A. Correct.

16 Q. If you are an aspirational brand then you do not want
17 the aspirational aspect of your brand to be devalued?

18 A. No.

19 Q. Just take Umbro for the moment.

20 A. Right.

21 Q. It was not a very sexy brand in 1999, was it?

22 A. It was not a very sexy brand in 1999? That is -- in
23 comparison to who? In comparison to Nike they all fail,
24 in comparison to Adidas they fail, in comparison to
25 Reebok they fail, in comparison to Dunlop Slazenger, it

1 was positively on fire!

2 Q. We will be looking at Umbro's own perception of its
3 position when it discusses itself with Manchester United
4 and others, perhaps with another witness. Umbro was
5 trying to position itself further up the market than
6 Dunlop Slazenger?

7 A. Yes.

8 Q. It was trying to move up the market?

9 A. Was Umbro trying to move up the market then? I think
10 Umbro was only mainly trying to establish some volume in
11 the market. I do not know if it was trying to move up
12 the market then or maintain its position then.

13 Q. We can look at some of the Umbro documents, it is
14 probably not very fair to show them to you. They seem
15 to show Umbro, as it were, comparing itself with Nike,
16 Adidas and Reebok --

17 A. Then they would need to move up. If that is all they
18 were comparing themselves with, they would need to move
19 up. There is no doubt about that.

20 Q. Just going up the food chain. A club like
21 Manchester United has its own brand and image?

22 A. They will say it is a brand. They will say it is
23 a brand --

24 Q. Yes, they would like it to be a brand?

25 A. Yes.

1 Q. And Umbro would like it to be a brand up there with
2 Nike, Reebok and Adidas, for the perceived advantage
3 that it gives?

4 A. I understand that, yes.

5 Q. No large football club at the launch of a shirt which
6 is an event -- say the Manchester United centenary shirt
7 which is not one with which Allsports are remotely
8 concerned -- if that is only ever knocked out
9 straightaway on day one at £5 a go on the grocer's
10 market stall, that would make Manchester United unhappy,
11 would it not? They would rather think their shirt is
12 an aspirational product.

13 A. Not necessarily, it depends what they are trying to
14 achieve. If Manchester United would like every kid in
15 the land to wear a Manchester United shirt the best
16 thing you can do is sell it as cheaply as possible. If
17 they want fans, for example, to come to games or
18 whatever, they might want fans to associate and live
19 with Manchester United for life. Therefore the lower
20 you bring the entry level the wider you spread the net.

21 Q. That is an alternative strategy, and not the one that
22 Manchester United appears to have adopted so far. You
23 know perfectly well that clubs like their shirts to go
24 out not at a price that devalues, as it were, their
25 perception of their brand?

1 A. I think that is probably true for football clubs that
2 like RRP. They do.

3 Q. I was using Manchester United as a paradigm. That would
4 go for any football club?

5 A. No, it would not go for any football club, like Reading.

6 Q. I know nothing of this Reading of which you speak,
7 Mr Ashley.

8 A. What they would love to see is loads of kids walking
9 around in their shirts and have Reading fans for life.
10 They do not care what price the shirts go out at
11 Reading.

12 Q. Is Reading a small club? I know nothing about it.

13 A. Nor do I, but it was a good example, was it not?

14 Q. It was a good example of a tiny club?

15 A. Yes --

16 Q. We are talking about the big clubs.

17 A. They can have totally different reasons. They can want
18 their fans because they can want their fans to come to
19 games. If you cannot fill your stadium, why make a few
20 dollars on shirts? My attitude would be try and get
21 your fan base built up for the next generation and fill
22 your stadiums first. That is what I would try and do.

23 Q. That is your strategy?

24 A. Yes.

25 Q. It is not, for instance, Arsenal's strategy or MU's

1 strategy?

2 A. I do not know if I can get into the brand strategies.

3 I do not know if Manchester United or whatever perceive

4 that the price that somebody sells a shirt at is not

5 already value. If they compared it to an American

6 football shirt for example, they can be \$270 for a game

7 shirt. So maybe Manchester United would perceive it is

8 good value. Where the brand position replica kit in

9 relation to clubs, that is hard for me to comment on.

10 Q. The general proposition you can accept: brands which are

11 aspirational, part of the purpose of the aspiration is

12 to sell the product for more?

13 A. Or sell more of the product.

14 Q. One or the other?

15 A. One or the other, yes.

16 Q. Mr Ronnie works for you now?

17 A. I never said unfortunately.

18 Q. I am not sure if I understood that.

19 A. That is all right, I am only joking.

20 Q. Mr Ronnie works for you now?

21 A. Yes.

22 Q. How do you feel about that?

23 A. How do I feel about it?

24 Q. Yes.

25 A. How do I feel about Mr Ronnie working for me? (Pause).

1 In some ways I am pleased; in some ways I am ...
2 I am ... I am not so pleased.

3 Q. Why?

4 A. Which one?

5 Q. Both.

6 A. In some ways I am pleased because I think he is quite
7 a talented guy with brands, he understands brands; he is
8 quite good at knowing where brands sit in the
9 marketplace, what target segments they should be
10 hitting. I quite respect Mr Ronnie's judgment on
11 brands.

12 Q. Yes.

13 A. And on the other side I probably -- I think it is
14 a little bit of a shame in the end that he has come to
15 work for us on brands, that maybe he is -- he is really
16 above the brands that he is currently looking after, if
17 you want.

18 Q. You mean he is under-employed?

19 A. It depends -- under-employed? Yes, he should be working
20 on bigger brands in my opinion than he is currently
21 working on. And that makes me a little sad for him.

22 Q. Do you know what he was doing between February 03 and
23 September 03 when he joined you?

24 A. (Pause).

25 Q. We are told by him that he left Umbro in February,

1 the next thing we are told is that he joined you in
2 September. Do you know what he was doing in between?
3 A. What he was doing in between? Some of the things I knew
4 what he was doing in between, yes.
5 Q. What, please?
6 A. He did claim he was painting the shed on a daily basis.
7 Q. So he was unemployed in that period; is that right?
8 A. Unemployed, no I do not think he was unemployed. From
9 what I gather he was in dispute with Umbro, I think.
10 THE PRESIDENT: Is this for this witness or is it for
11 Mr Ronnie?
12 MR WEST-KNIGHTS: Both of them, sir.
13 I am going to take you through the evidence upon
14 which the OFT relies in respect of the case against
15 Allsports and all of it in just a moment.
16 Can I ask you this before we go there. These
17 sourcing arrangements which you had with Umbro, did
18 you have similar sourcing relationships with other
19 brands in the United Kingdom?
20 A. Yes.
21 Q. Subject to anybody saying that this should not be
22 transcribed, which other brands?
23 A. No, I mean --
24 THE PRESIDENT: Do we have to have this?
25 MR WEST-KNIGHTS: Yes.

1 A. That is impossible.

2 Q. Are they the well-known ones?

3 A. They are brands.

4 THE PRESIDENT: If you can explain why you need to know,
5 Mr West-Knights, at the very most we might be persuaded
6 to let the witness to write it down, but we cannot
7 really allow the witness to be asked about his other
8 commercial relationships without good reason. We are
9 going back to 2000 and 2001 now.

10 MR WEST-KNIGHTS: Yes, I am talking about 2000 and 2001.

11 Did you have sourcing arrangements with or for any
12 of the famous brands?

13 A. It is impossible, this.

14 MR MORRIS: Sir, I really, at this stage, must intervene.
15 This is not -- I know the tribunal is aware of the
16 matter but if Mr West-Knights could please explain
17 the relevance of the question?

18 MR WEST-KNIGHTS: No, it is not the Office's business. It
19 might be yours.

20 THE PRESIDENT: What I think we might need to do if you
21 really want to pursue this, is to bring the public
22 hearing to a temporary close and explore it a little bit
23 further in camera. You are asking Mr Ashley at
24 the moment, details about his, Mr Ashley's, business,
25 which are commercially confidential to him.

1 MR WEST-KNIGHTS: I shall be comparing them with statements
2 which he volunteered about his own business in the
3 evidence which is relied upon by the Office against my
4 clients.

5 THE PRESIDENT: I think we need to go into it in a little
6 more detail, Mr West-Knights, to understand where this
7 is going --

8 MR WEST-KNIGHTS: I am not going to tell the witness where
9 this is going, with the greatest respect, because that
10 is to tell him the line of cross-examination that I am
11 about to pursue.

12 THE PRESIDENT: We need a good reason for Mr Ashley to be
13 asked about his other commercial relationships, and we
14 need to be clear that that has something to do with this
15 case.

16 MR WEST-KNIGHTS: I would not ask the question if it were
17 not.

18 THE PRESIDENT: I know you would not, but I think we need,
19 throughout this difficult question of confidentiality
20 we have to keep various balances and we have to keep an
21 eye on a number of interests.

22 MR WEST-KNIGHTS: I am quite lost whenever you say that,
23 with the greatest respect, sir. The Commercial Court
24 frequently has commercially sensitive information made
25 the subject -- it just occurs in the course of

1 cross-examination.

2 THE PRESIDENT: That may be so, but in this particular case
3 there is a statue, and there are provisions in
4 the Enterprise Act that we have to have regard to, as
5 does the Office.

6 MR WEST-KNIGHTS: I am entirely in your hands, sir.

7 THE PRESIDENT: What I think we had better do is we had
8 better bring the public hearing, at this stage, to
9 a close for the lunchtime adjournment. We had better
10 invite Mr Ashley, if he would be so kind, to retire as
11 well, and we need to have a little discussion about
12 where we go from here.

13 MR WEST-KNIGHTS: I am very happy about that.

14 THE PRESIDENT: We will stay here. If those who are not
15 legal advisers to the parties would kindly withdraw. If
16 you would withdraw, Mr Ashley, as well.

17 A. Yes.

18 THE PRESIDENT: And be kind enough to return at 2 o'clock
19 and not discuss the case with anybody in the meantime.

20 (1.00 pm)

21 (In camera proceedings)

22 (2.15 pm)

23 (Proceedings in open court)

24 MR MORRIS: That is an issue that I have a concern about as
25 well. I am not quite sure about the issue of Mr Guest

1 and what has happened in relation -- obviously
2 Mr West-Knights will be able to mention that.

3 Can I throw one other thing in the pot, and it is
4 this: Mr Prothero, one of the Umbro witnesses, is not
5 available next week at all. He is going to Brazil for
6 business. He has deliberately scheduled his trip to
7 Brazil around these proceedings so that he did not go
8 this week. I had indicated that him that I had hoped to
9 have him in by the end of the week.

10 He has indicated to me that if he were to have to
11 cancel the trip to Brazil, it would be a great
12 inconvenience and something that would have to be done
13 sooner rather than later. I am not even asking the
14 tribunal to contemplate that happening, but you should
15 be aware of his availability next week, sir.

16 MR WEST-KNIGHTS: I can remind you of the position of
17 Mr Guest. By reason of his having told us that he was
18 due to be in the United States of America from
19 the 12th to the 16th, we asked you to issue a witness
20 summons, and that has been served. It was hoped
21 according to the timetable that he would give evidence
22 on --

23 THE PRESIDENT: He was summonsed for Thursday.

24 MR WEST-KNIGHTS: That is Thursday 11th. He will be abroad
25 from Friday until the 16th, which is Tuesday, inclusive.

1 Again, I have no brief from Mr Guest, save that he
2 is a former employee of Allsports and a witness on our
3 behalf.

4 There it is, we will have to factor that in.

5 THE PRESIDENT: We will have to see where we are.

6 MR WEST-KNIGHTS: Ostensibly I have had ten minutes so far.

7 THE PRESIDENT: Yes, quite.

8 MR MORRIS: Obviously we will have to see how we go. But
9 certainly Mr Prothero would want to know, if there was
10 a risk of his going over to next week, he would want to
11 know that sooner rather than later. It affects lots of
12 other people's arrangements.

13 MR WEST-KNIGHTS: Is Mr Ashley still not here?

14 THE PRESIDENT: He is at the back.

15 LORD GRABINER: Whilst we are on the subject, can I mention
16 the position of Mr Preston. He is due for Thursday. He
17 is coming from Holland; he can be here on Thursday, not
18 Friday. But if he cannot be called on Thursday,
19 he cannot be here until the following Tuesday. We do
20 not want him to come over and not perform, so to speak.

21 THE PRESIDENT: It might be useful if at the end of the day
22 either the parties between themselves, or together with
23 the tribunal, have a discussion about the programme and
24 where we are.

25 MR MORRIS: Yes, I would support that, sir.

1 MR WEST-KNIGHTS: Entirely, of course.

2 THE PRESIDENT: Very well.

3 JUDGMENT

4 THE PRESIDENT: Just before the short adjournment, a point
5 arose as to how the tribunal should handle certain
6 questions that counsel for the appellant, Allsports,
7 intimated that he might wish to put to Mr Ashley, who is
8 at present giving evidence on behalf of the OFT.

9 The tribunal takes the view that pursuant to
10 schedule 4, paragraph 2(b), it should do its best to
11 protect:

12 "... confidential information, the disclosure of
13 which would or might in the tribunal's opinion
14 significantly harm the legitimate business interests of
15 the undertaking to which it relates", other than there
16 is a clear public interest in the defendants being
17 allowed to probe the case put forward by the OFT so long
18 as that is done in a way that is relevant to
19 the proceedings.

20 Rule 50 of the tribunal's rules provides that on
21 the hearing of any appeal:

22 "The hearing of any appeal should be in public
23 except as to any part where the tribunal is satisfied
24 that it will be considering information which is in its
25 opinion information of the kind referred to in

1 paragraph 1.2 of schedule 4 to the 2002 Act."

2 As far as we can see in this unsatisfactory
3 situation, if counsel for the appellants wish to ask
4 Mr Ashley further questions, and if the answers to those
5 questions might reveal the existence of commercial
6 information which might significantly harm
7 the legitimate business interests of Sports Soccer,
8 the only alternative available to the tribunal at this
9 stage is to go into camera for the purposes of dealing
10 with those questions.

11 In any event, the tribunal would wish to emphasise
12 that any questions that are asked need to be relevant to
13 the issues in the case; and even in the context of
14 an in camera hearing, it may be that the tribunal will
15 not necessarily allow questions that seem to
16 the tribunal to go beyond what is strictly necessary for
17 the purpose of disposing of the case.

18 The result I think of that ruling is that we will in
19 principle continue in open court so far as we can, but
20 we will need to go into camera once we start to
21 trespass, if we ever do, on commercially confidential
22 information within the meaning of paragraph 1.2(b) of
23 schedule 4 to the Act.

24 So I think, Mr West-Knights, let us go on as far as
25 we can. If it is difficult to go any further than we

1 already have, we had better go into camera now. In so
2 far as you are able to establish the points that you
3 want to establish without going into intimate detail,
4 perhaps we can continue in open court for the time
5 being.

6 MR WEST-KNIGHTS: I am halfway through asking the question
7 which gave rise to this pickle.

8 THE PRESIDENT: Yes.

9 MR WEST-KNIGHTS: It seems to me that the most efficacious
10 way to deal with this is for me to carry on asking that
11 question in camera because I am about to ask him about
12 four specific brands, which you may or may not think are
13 already in the domain. I do not know how far I will get
14 in open court.

15 Shall we see how we go?

16 THE PRESIDENT: Yes.

17 MR WEST-KNIGHTS: I will watch your hand and if at any
18 moment the hand goes up I will stop.

19 THE PRESIDENT: Yes. So you are inviting us now to go into
20 camera?

21 MR WEST-KNIGHTS: I was changing stance there. I was asking
22 questions in open court, I had reached the position of
23 mentioning some brands. If I were to confine myself in
24 the first instance to four brands which are already in
25 the area then I imagine that that would not require us

1 to go in camera.

2 THE PRESIDENT: No, I would not.

3 MR WEST-KNIGHTS: There is a fifth that I imagine would not
4 turn out to be I think difficult for Mr Ashley. Perhaps
5 Mr Ashley can indicate at any stage if he thinks it is
6 embarrassing. We can take it from that.

7 The true fact is that I do not have anybody to take
8 instructions from at this point in any event --

9 THE PRESIDENT: Because Mr Hughes has gone home.

10 MR WEST-KNIGHTS: And because Mr Whelan is not here either.

11 MR ASHLEY (resumed)

12 MR MORRIS: May I pick up on the point of inviting the
13 witness to indicate if there is any juncture where there
14 is a matter which he feels is of sensitivity, he should
15 say so and we will see where we go.

16 THE PRESIDENT: Mr Ashley, I do not know if you followed
17 that, but let me say it again to try clarify matters.

18 Mr West-Knights wants to ask you some questions;
19 some of those questions may touch on matters that are
20 still commercially sensitive from your point of view.
21 If we reach a point where we are satisfied that you are
22 being asked about confidential information which would
23 harm your business interests, we have the option of
24 going into camera, what the lawyers call in camera,
25 having a private session, which means that we clear out

1 all the public and it is just the lawyers, you and us.
2 If you feel that you might be embarrassed in answering
3 some of these questions, then that is what we will do in
4 the first instance; and in camera we will decide whether
5 you need to answer the question as put.

6 We want to protect your interests as best we can
7 while at the same time trying to see that they get their
8 opportunity.

9 A. I understand.

10 THE PRESIDENT: Yes, Mr West-Knights..

11 Cross-examination by MR WEST-KNIGHTS (resumed)

12 Q. I think you have already told us that you do have
13 sourcing arrangements in respect of some brands?

14 A. That is correct.

15 Q. Can we clear out of the way one group of brands first.

16 You are the proprietor or long-time owner of some brands
17 yourself?

18 A. That is correct.

19 Q. Will you identify those to the tribunal, please?

20 THE PRESIDENT: Does that give you a difficulty?

21 A. Again, not all of the brands I own are known to the
22 people I sell on to.

23 THE PRESIDENT: Tell us what is in the public domain.

24 A. In the public domain is Donnay.

25 MR WEST-KNIGHTS: Which was a Belgian manufacturer.

1 A. Dunlop Slazenger.

2 Q. I bet they are pleased about your view of their brand
3 image. But go on?

4 A. Lonsdale.

5 Q. Is that boxing connected?

6 A. That is the boxing brand, the one you know. I do not
7 think anything else has anything to do with what we are
8 talking about here.

9 Q. Are any of the brands about which we do not know
10 connected with apparel or kit to do with sports?

11 A. To do with sports, if you call walking --

12 Q. Do you sell them in your shop?

13 A. Karrimor for example --

14 Q. The rucksack maker?

15 A. Yes.

16 Q. Are there any other brands that you do not want to tell
17 us about that form part of the stuff that you sell in
18 your shops?

19 A. No, I do not think so.

20 Q. But you are the owner of other brands unbeknownst to
21 the rest of the trade that are sold by other people?

22 A. That is correct.

23 Q. In fields outside sports apparel?

24 A. Some are outside, yes.

25 Q. What about the ones that are in, why do you not sell

1 those?

2 A. They would probably be too top end for me, specialist or
3 something like that.

4 Q. You own them; why do you not sell them?

5 A. They could be too top end or too specialist.

6 Q. I do not understand either of those terms.

7 A. If I owned an ice pick brand, I would not sell that in
8 my stores --

9 Q. I understand specialist, all right. So there is a group
10 which is specialist, say mountaineering equipment?

11 A. To give you an example, if I had a very top end lady's
12 clothing brand that basically sold tracksuits for in
13 excess of £200 each, we would not sell those in
14 Sports World. We are "pile 'em high, sell 'em cheap",
15 so some of the brands do not fit in our category.

16 Q. So another aspect of your business is the selling
17 through others of high end branded stuff, some of which
18 is sporting related?

19 A. Correct, and some of them are low end brands which
20 actually are not good enough to come into Sports World.

21 Q. Pog, my hypothetical Pog T-shirt, the one at 50 pence
22 a go?

23 A. That is the one.

24 Q. So you have fingers in the top end, fingers in the pie
25 of your own business, which is pile 'em high, sell 'em

1 cheap up to a point, and there are those below even your
2 pile 'em high, sell 'em cheap which you also got
3 interested in?

4 A. That is correct.

5 Q. You have told us already that you have direct sourcing
6 arrangements in respect of brands that you do not own?

7 A. That is correct.

8 Q. I think you said some of them include some well-known
9 names?

10 A. That is correct.

11 THE PRESIDENT: I think we need to establish what time
12 we are talking about.

13 MR WEST-KNIGHTS: I am now asking about 2000 and 2001 or
14 things in prospect in 2000 and 2001.

15 A. In prospect is more difficult. The cricket brand --
16 I have a licence for Duncan Fearnley, but it has
17 absolutely no relevance at all --

18 Q. You do not sell cricket stuff?

19 A. I do sell cricket stuff. I have a licence for
20 Duncan Fearnley for cricket.

21 Q. That is a well-known brand to me, who likes and enjoys
22 cricket, but is not, as it were, exactly a household
23 name?

24 A. But the point is you just polished his business off,
25 because it will be very difficult for him now to go and

1 sell to other retailers.

2 Q. You mentioned it, I did not.

3 A. You keep going down the brand thing --

4 Q. You have been specifically invited not to allow me
5 extract from you anything which is embarrassing on
6 a commercial footing.

7 THE PRESIDENT: It is quite difficult for a lay witness in
8 this situation. We have to go a bit carefully.

9 MR WEST-KNIGHTS: Do you sell in your shops, Sports Soccer
10 shops --

11 THE PRESIDENT: In 2000/2001?

12 MR WEST-KNIGHTS: -- in 2000/2001 well-known brands where
13 you are the direct sourcer of the stuff that you sell?

14 A. Yes.

15 THE PRESIDENT: Was that so in 2000 and 2001?

16 A. Yes.

17 MR WEST-KNIGHTS: I do not think I can go any further
18 without going into camera.

19 THE PRESIDENT: Do you want us to go into camera?

20 MR WEST-KNIGHTS: I do not, but I do not think I can avoid
21 it.

22 A. I probably do not think you can avoid it either, if you
23 want me to say.

24 Q. You cannot say unless it is in private?

25 A. Some of the brands are in direct competition to Umbro.

1 If you keep going -- I was trying to give you a bad
2 example with the cricket one --

3 MR WEST-KNIGHTS: Unfortunately you gave us a real one.

4 Never mind. Now is obviously the time stop.

5 THE PRESIDENT: I think we will have to clear the court of
6 everybody except the legal advisers to the principal
7 parties.

8 (2.33 pm)

9 (In camera proceedings)

10 (2.45 pm)

11 (Proceedings in open court)

12 MR WEST-KNIGHTS: Mr Ashley, do you have the bundle which is
13 salmon coloured with your witness statement in it?

14 A. I have it.

15 Q. Just to understand what we are going to be looking at,
16 what has happened here is that they have been marshalled
17 together, a number of things that you are recorded as
18 having said during the course of the investigations by
19 the Office, you have gathered them all together in this
20 statement; is that right?

21 A. Yes, yes.

22 Q. And what you produced first is what is called your first
23 witness statement, and you read through all of these
24 materials before attaching them to your witness
25 statement?

1 A. Okay.

2 Q. Did you?

3 A. What materials are we talking about? Sorry.

4 Q. Let me go through it. The first witness statement of
5 Michael William James Wallace Ashley:

6 "In the schedule to the statement I identified and
7 collected together the materials provided to the Office
8 of Fair Trading in the course of its investigation which
9 can be taken collectively to represent my personal
10 evidence on the matters in issue in these appeals."

11 That does not sound like you, Mr Ashley. Those are
12 not your words, are they?

13 A. Oh, definitely not.

14 Q. The sense of them is intended to be that you are
15 collecting together this information and you are making
16 a statement to assert that the information in those bits
17 of paper is true?

18 A. That is correct.

19 Q. Except to the extent where you make an exception over
20 the page?

21 A. Okay.

22 Q. That is why I asked you, you therefore presumably read
23 through the stuff which is attached to this statement,
24 and then you asked me what that stuff was?

25 A. Yes.

1 Q. Do you not remember what that stuff is?

2 A. Not all the details of it, no.

3 Q. You know what it is in principle?

4 A. In principle, no problem.

5 Q. Right, what is it? It is everything that you said to

6 the Office?

7 A. Yes, fine, yes.

8 Q. And you read through that information, did you, to check

9 that it was true before making this statement?

10 A. Yes, absolutely.

11 Q. Except at paragraph 3 you say:

12 "Where I said things have subsequently been further

13 explained these of course should be read further to the

14 information." That is fair enough.

15 In paragraph 4 you make two clarifications, where

16 you say that in the meeting between Hughes, Whelan and

17 yourself you made a mistake because you should have

18 referred to the Manchester United shirt. And similarly

19 on 13th August you said that the arrangements in

20 relation to England were not made at a meeting, but when

21 Ronnie contacted you -- we will come back to that, okay?

22 And then there is a further clarification in

23 the documents themselves that you make about

24 Sports Soccer's written representations and

25 the retailers' meeting; yes?

1 A. Yes.

2 Q. So those are the particular corrections within
3 the documents you say. And then at 5:
4 "I would also like to correct a statement I made at
5 the oral hearing on 11th July ..."
6 Where you said that you had never met David Whelan
7 before and you say that you remembered sitting next to
8 him at a Reebok dinner or an event in America?
9 A. Correct.

10 Q. With the exception of that and the clarifications, what
11 we are now going to read is your sworn evidence?
12 A. That is correct.

13 Q. The first part of that is at page 5. Before we get
14 there we need to remind ourselves that you in fact
15 complained to the Office of Fair Trading on a number of
16 occasions during the late 1990s and in August 2000?
17 A. That is correct. The complaint in August 2000 was --
18 oh, to the --

19 Q. I said the Office of Fair Trading. Your complaints were
20 directed to the Department of Industry as well, I think
21 you wrote to a number of ministers.
22 A. That is correct, yes.

23 Q. In August 2000 you made a complaint to the authorities
24 in respect of the price-fixing activities in respect of
25 replica football kit?

1 A. Correct.

2 Q. And the object of your complaint was a company called
3 Kappa?

4 A. That is correct.

5 Q. Full stop. It was Kappa that you were complaining
6 about?

7 A. No, I was complaining about other things.

8 Q. I think you were offering them to opportunity to stay
9 and listen to telephone conversations which you taped
10 between yourself and representatives of Kappa or your
11 staff and representatives of Kappa?

12 A. Yes.

13 Q. I think it was Blackburn Rovers, the focus of your
14 complaint in relation to Kappa?

15 A. It was not Blackburn Rovers. It was whatever team Kappa
16 had at the time.

17 Q. The complaint that you made in August 2000 was a letter,
18 written by your operations director, David Forsey.

19 A. I cannot remember.

20 Q. Let us go through this meeting and pick up where you
21 start saying things. At paragraph 5 you say that you
22 accepted that Sports Soccer had entered into such
23 an agreement, that is to say a price-fixing agreement,
24 with FILA. Is that right?

25 A. Yes.

1 Q. And West Ham United had also exerted pressure on you not
2 to sell their shirts below the club's recommended retail
3 price?

4 A. Yes.

5 Q. And there was a discussion between you and the OFT about
6 the fact that West Ham and other Premier League clubs
7 had given undertakings to the Director General in 1999
8 that they would not engage in retail price maintenance?

9 A. Correct.

10 Q. Over the page you say that similar pressure had been
11 exerted on you by other manufacturers and clubs?

12 A. Yes.

13 Q. And you specifically identify Manchester United as being
14 a source of an insistence that you sell at
15 the recommended retail price?

16 A. Yes.

17 Q. And you went on to say that you had entered into
18 agreements with manufacturers to sell shirts and sport
19 clothing at minimum retail prices?

20 A. Correct.

21 Q. So you entered into these agreements with a lot of
22 people other than Umbro?

23 A. Yes.

24 Q. And who are those people apart from Umbro?

25 A. The vast majority of the sports trade.

1 Q. I see Mr Morris appears to have ...
2 I saw Mr Morris leaping to his feet; is he going to
3 speak or not?
4 MR MORRIS: I am not leaping for the moment.
5 MR WEST-KNIGHTS: All the names that we would be familiar
6 with; is that what it comes down to?
7 A. All the names -- the majority. I would always like to
8 say the majority. I would not say all. Somebody might
9 think of a name that is innocent, like Ulsport or
10 something like that that has done nothing wrong.
11 Q. I was not asking you about retailers, Mr Ashley, as you
12 well know. I was asking about manufacturers.
13 A. No, there is a brand called Ulsport. It is a brand.
14 Nothing to do with Allsports. There is a brand called
15 Ulsport, a big soccer brand out of Germany. Like
16 Reusch.
17 Q. You then went on to say that you had entered into
18 agreements with manufacturers to sell replica kits and
19 sports clothing at retail prices, and then you said that
20 the previous year you had entered a meeting with other
21 retailers -- I suppose Dave Wren and Dave Hyde is
22 a mistranscription by the Office, is it? You would not
23 have said Dave Wren or Dave Hyde?
24 A. No.
25 Q. But you did say England?

1 A. Yes.

2 Q. And you went on to say that the meeting had been
3 instigated by Mr Ronnie, whose company manufactured
4 England shirts?

5 A. Yes.

6 Q. Just explain how that came about? How did you come to
7 say England?

8 A. How did I come to say England?

9 Q. Yes. What colour do Manchester United play in?

10 A. Red.

11 Q. What colour do England play in? White?

12 A. When they are at home. When they are away it would be
13 red.

14 Q. How did you come to say England?

15 A. Because I would be describing what Umbro were making or
16 doing or whatever.

17 Q. No, what you said was that there was a meeting between
18 you and Whelan about the England shirt. How did you
19 come to say that?

20 A. It was a slip of the tongue and I should have said
21 Manchester United.

22 Q. Well, it was a slip of the tongue twice, and there is a
23 big difference between England and Man U, is there not?

24 A. Why is it twice?

25 Q. Because it says here:

1 "He attended a meeting with other retailers ... at
2 which they all agreed to retail the replica England
3 shirt ... Ashley said a meeting had been instigated by
4 Chris Ronnie ... company manufactured England shirts."
5 A. That is not twice; it is once.
6 Q. So it is just a slip of the tongue.
7 A. Very easily done.
8 MR MORRIS: Sir, if I may interject with this point, I do
9 wonder whether it is really a useful use of
10 the tribunal's time for Mr West-Knights to go over
11 precisely the same ground that has already been gone
12 over by Lord Grabiner about precisely the same
13 issue where the answer has already been given once in
14 relation to effectively the same question.
15 MR WEST-KNIGHTS: If my learned friend interrupts on a basis
16 which is ill-founded again I will have something to say.
17 And if he laughs at me again when I make such a
18 remark I will have something to say as well.
19 THE PRESIDENT: You are not, I think, obliged by any rule of
20 procedure to go over things that have already been gone
21 over---
22 MR WEST-KNIGHTS: I have no intention of doing everything
23 twice.
24 THE PRESIDENT: The tribunal is not at this stage
25 interfering with the cross-examination.

1 MR WEST-KNIGHTS: I am grateful to you. I promise you that
2 I have no intention of going over everything again. But
3 there are some things that build into a larger picture.

4 Mr Ashley, you then explained at paragraph 7 why
5 you were complaining on this particular occasion. Just
6 remind yourself about that. (Pause).

7 I will pick it up from the middle. You said:

8 "Sports Soccer was well-known for discounting and as
9 a result some manufacturers refused to supply you.
10 Manufacturers often claimed that your store's profiles
11 were incompatible with their distribution policy."

12 Presumably that is the standard fib, is it?

13 A. Yes.

14 Q. "Mike Ashley said he found such claims hard to believe
15 as his stores were some of the best in the UK."

16 You know they are saying, it is a lie that they
17 tell. It is just an excuse. They do not want to supply
18 you because you are going to knock it out cheap?

19 A. That is correct.

20 Q. And it has nothing to do with the state of your stores,
21 it is your policy they do not like?

22 A. Yes.

23 Q. You estimated that by the end of April 2001,
24 Sports Soccer would make a 50 million profit on
25 a turnover of about 360. However, you also estimated

1 that because you were finding it difficult to obtain
2 supplies, your business was shrinking by 30-40 per cent
3 a year?

4 A. Yes.

5 Q. Would you explain those two sentences, particularly
6 the last one?

7 A. Okay. It should say if we do not get supplies.

8 So if, for example --

9 Q. Keep going, you say if?

10 A. If, for example --

11 Q. I am sorry to interrupt you, Mr Ashley. That sentence
12 is somebody recording that you say something like this:

13 I estimate that because I am finding it difficult to
14 obtain suppliers my business is or has been shrinking by
15 30-40 per cent a year. That is what it says, is it?

16 A. I will answer that. You will find on this that Reebok
17 in 2000 stopped us from virtually 90-odd per cent of
18 the commercial range of their brand.

19 Q. Yes.

20 A. So that as a big part of our business is pretty
21 substantial.

22 Q. When did they stop that brand?

23 A. 2000.

24 Q. And when was it reinstated?

25 A. Now, you see, they never completely stop it and they

1 never completely reinstate it. What they then do is do
2 things like only let you have a few thousand Liverpool
3 shirts for the launch, so that would cause the business
4 to shrink by 30-40 per cent.

5 Q. Do you mean your business with them or your whole
6 turnover?

7 A. One would have a knock-on effect on the other. If
8 Reebok do it and get away with it and another brand will
9 do it and get away with it, then your offer will not be
10 credible, and sooner or later your business will shrink
11 30-40 per cent.

12 Q. Your assertion here is that your business is shrinking
13 by 30-40 per cent a year?

14 A. On things like Liverpool shirts, yes.

15 Q. 30-40 of what, the whole business? That is the
16 impression you have given.

17 A. I did not say the whole business, I said it has
18 a knock-on effect and that then affects the whole
19 business.

20 Q. What did you mean when you said to the Office:

21 "Because I am finding it difficult to obtain
22 supplies, my business is shrinking by 30-40 per cent a
23 year"?

24 A. Exactly what I said. With certain brands and certain
25 with products my business is shrinking 30-40 per cent

1 a year. If I previously could have ordered 20,000
2 Liverpool shirts and they only let me have 2,000 then my
3 business is shrinking by whatever percentage that is.
4 Because they are limiting the supply of the product that
5 I can sell. That is completely correct.

6 Q. Your business as a whole at this time was expanded, was
7 it not?

8 A. Yes. That is true, yes. It will not expand if we have
9 not got anything to sell.

10 Q. No, you are not saying that, you are saying because you
11 cannot get supplies your business is shrinking?

12 A. Yes, and I will keep saying it again. If brands supply
13 you two dozen shirts, your business will shrink, does
14 shrink and is shrinking, and you keep adding the words
15 "as a whole" all the time.

16 Q. That is what this sentence says, does it not?

17 A. It says business. It does not say "as a whole".

18 Q. "My business is shrinking by 30-40 per cent a year."
19 What do you understand that to mean?

20 A. In replica?

21 Q. What do you understand that to mean?

22 A. My business is shrinking 30-40 per cent a year, correct,
23 where it is difficult to obtain supplies.

24 Q. But overall the business was in fact expanding?

25 A. Yes.

1 Q. Sorry, Mr Ashley. Go on.

2 A. (Pause). No, no, I think you ought to go on. I am
3 trying to be helpful.

4 Q. You are plainly trying to give the impression here that
5 your business is in trouble because you cannot get
6 supplies because of retail price maintenance.

7 A. If we are called Sports Soccer and we are not allowed to
8 sell replica kit because we will not sell it at full
9 price, if we do then discount it and --

10 THE PRESIDENT: Hang on, Mr Ashley, we have to make a note
11 of this.

12 A. Sorry. Therefore the business is shrinking, for example
13 in that area 30-40 per cent alone -- I cannot explain
14 it. It is ...

15 THE PRESIDENT: That is all right.

16 A. Not really.

17 Q. Try again, Mr Ashley. Take a deep breath.

18 A. I will try to explain it with an example because that is
19 easier for me to do it. I will use Reebok and I will
20 use Liverpool shirts to the best of my memory.

21 If we could sell 20,000 Liverpool shirts and we only
22 got 2,000 because we refused to charge the full price,
23 our business in that area would be shrinking
24 80 per cent. That therefore causes a shrinking effect
25 across the whole business because the customers do not

1 come in, they do not buy the socks and the other
2 products that they would buy. That will cause our
3 business to shrink 30-40 per cent.

4 Q. Of what?

5 A. Of what?

6 THE PRESIDENT: When you say "our business", what business?

7 A. It could be the business related to soccer. It is not
8 necessarily the whole business. It does not have that
9 effect at day 1. It is like a compounding effect.
10 We are Sports Soccer and all of a sudden we do not have
11 any replica kits in the shop. It is a bit serious. It
12 is Kappa, it is FILA, it is Reebok, it is Umbro, it is
13 Nike. It is not a good score. This is causing our
14 business to shrink 30-40 per cent, we cannot get this
15 product in.

16 To me it is very clear.

17 Q. What business is reducing by 30-40 per cent? It is the
18 last time I will ask this question, Mr Ashley.

19 A. Exactly what I said. If a shop is taking £1 million and
20 we should normally get the turnover up to £1.2 million,
21 because we do not have all the replica product which
22 then, of course, causes the knock on effect, that store
23 only then takes £800,000, that is causing the business
24 to shrink.

25 Q. Yes, of that shop. But that did not happen, did it?

1 Overall your business went up?

2 A. Because I opened more stores.

3 Q. Not very many.

4 A. Very good. Do you think I got like growth then that

5 year?

6 Q. You told the OFT that your business was shrinking by

7 30-40 per cent; that was a lie, was it not, Mr Ashley?

8 A. Actually, I think that is absolutely correct, yes.

9 Q. Do you want to answer that question again, Mr Ashley?

10 A. It is to obtain supplies. It is about finding it

11 difficult to obtain supplies.

12 Q. And therefore your business is shrinking by --

13 A. It does not say "therefore". Sports Soccer's business

14 was shrinking between 30-40 per cent. I am just giving

15 you the Liverpool example. I can give you the Kappa

16 Blackburn example. We did not have a single shirt for

17 the launch. Please do not hold me up if it was not

18 Blackburn, but Kappa did not deliver a single shirt for

19 the launch.

20 Q. Yes, okay. Do you just want to read the sentence before

21 that and see if there is anything else you want to say

22 about this? The one that starts with, "Estimated by the

23 end of 2001, Sports Soccer will make a 50 million profit

24 on a turnover of about 360. However ... "

25 A. No.

1 Q. You do not read the sense of that as meaning that you
2 are estimating that your turnover is going to go down by
3 30-40 per cent out of 360 million?

4 A. What is it that you are saying there?

5 Q. You understood the question, Mr Ashley. Read those two
6 sentences.

7 A. (Pause). I will just repeat the answers I have said
8 before.

9 Q. I see.

10 THE PRESIDENT: I just want to clarify this to make sure it
11 is clear. What I think is being said, Mr Ashley, is
12 this: in that first sentence there you talk about having
13 a turnover of £360 million a year, which is apparently
14 the whole of the Sports Soccer turnover.

15 If you then look at the next sentence it says:
16 "The business was shrinking by 30-40 per cent
17 a year."

18 It is being suggested that you may have been saying
19 to the OFT that your business, ie the 360 million, was
20 shrinking by 30-40 per cent a year and that that was not
21 a true statement?

22 A. It is to do with the difficulty of obtaining supplies.
23 So if that is the case, if we cannot get that product,
24 that percentage kicks in.

25 THE PRESIDENT: So your answer, if I have noted it

1 correctly, is that the bit that is shrinking by
2 the 30-40 per cent a year is that part of the business
3 where you are finding it difficult to obtain supplies?
4 A. That is correct.
5 MR WEST-KNIGHTS: On the previous page, of course, you have
6 identified --
7 A. I have to say, though -- sorry, sorry.
8 I have to say it also does affect the other bits of
9 the business --
10 THE PRESIDENT: Because of the knock-on sales --
11 A. It is not just that. It is --
12 THE PRESIDENT: The whole standing as a credible retailer --
13 A. Correct, correct. Because you will turn round in
14 a minute and say replica is only x per cent of my
15 turnover, but it all the other -- if they cannot get
16 the England shirt, they do not come in and buy
17 the trainers and the rest of it. It is a snowball
18 effect.
19 MR WEST-KNIGHTS: So you are suggesting that if you do not
20 get supplies of replica kit, your business is shrinking
21 by 30-40 per cent a year overall?
22 A. If, I agree.
23 Q. But it was not?
24 A. I -- I got the kit, did I not?
25 Q. Yes.

1 A. One thing is for certain, I got the kit. I did that
2 because I agreed to pay the full RRP.

3 Q. You deal with paragraph 9 and say:
4 "Football club shops do not want discounting on
5 replica football shirts."
6 Do you see that in the first sentence?

7 A. Yes.

8 Q. That is why, because it undercuts their margin, is that
9 is? Or is it because they do not like to see their nice
10 new shirts with a rotten price tag on them?

11 A. I believe it to be a margin driven reason that they do
12 not like it to be discounted.

13 Q. Is that right? Okay.
14 You told the tribunal at paragraph 11 that you had
15 warned Mr Ronnie specifically about the illegality of
16 resale price maintenance.

17 A. Yes.

18 Q. Can you just help us a little bit with that. You have
19 told the tribunal already that you had had too many
20 conversations to count between yourself and Mr Ronnie or
21 other representatives of Umbro, shall we say, in
22 the period from March 2000 onwards?

23 A. And the rest of the industry, yes.

24 Q. During the course of those conversations, how frequently
25 did you remind Mr Ronnie of the illegality of what

1 he was trying to achieve?

2 A. I cannot remember how frequently I reminded him.

3 Q. Because it was very many or because you cannot remember

4 at all?

5 A. Can I just read 11?

6 Q. Yes. (Pause).

7 Okay, yes.

8 A. I would say I spoke to him on a, I think, reasonably

9 frequent basis, yes.

10 Q. Let us just break it up a tiny bit. You were only

11 dealing here with talking to Mr Ronnie on the phone?

12 A. No, no, no. That would be -- I could also tell him if

13 we had a meeting face-to-face.

14 Q. Just listen to the question. This first sentence is

15 only talking about talking to Mr Ronnie on the phone?

16 A. Yes, and I speak to Mr Ronnie on the phone as well, yes.

17 Q. You told the Office that you regularly spoke to

18 Mr Ronnie on the phone and warned him about

19 the illegality of insisting on resale price maintenance.

20 Your warnings, however, had not been heeded.

21 A. Absolutely correct.

22 Q. So you are only talking about talking to Mr Ronnie on

23 the phone. How frequently would you warn him about the

24 resale price maintenance? Every time he tried to drive

25 you to it?

1 A. Why do you say only on the phone?

2 Q. Because that is all you are talking about here.

3 A. I am saying I "regularly" speak to Chris Ronnie on
4 the phone, not I "only" speak to Chris Ronnie on
5 the phone.

6 Q. Very good. So you had regular meetings with him as
7 well.

8 A. Yes, yes, yes.

9 Q. How would it work? Every time he tries to back you into
10 a corner on resale price maintenance, you say "do
11 you not know that this is illegal"?

12 A. Not every time, no.

13 Q. How often?

14 A. On a reasonably regular basis.

15 Q. Yes, thank you. How frequently do you mean by that?

16 A. It would be -- let me try to think. How frequently do
17 I mean by that? How often would I say?

18 If I had to guess I would say ... (Pause).

19 THE PRESIDENT: If you cannot remember, Mr Ashley --

20 A. I actually cannot remember. I would not like to say
21 the majority or the minority of the times. I would not
22 like to say.

23 MR WEST-KNIGHTS: You have given us an answer, bless you,
24 Mr Ashley. It is reasonably frequently. I just
25 wondered what you meant by that.

1 A. I do not know if it is the majority or the minority of
2 times that we either met or spoke.

3 Q. Anyway, plenty more than once?

4 A. Oh, definitely.

5 Q. Right, okay. Why did you not do something about it,
6 like go to the Office, go to the DTI, about Umbro and
7 Mr Ronnie?

8 A. I think you will find that I could not have done much
9 more than go to the DTI more than I have done or written
10 or anything else.

11 Q. You had specific threats from Mr Ronnie, you tell us,
12 and you specifically told him: this is illegal?

13 A. Yes.

14 THE PRESIDENT: According to this he suggested that
15 Mr Ronnie himself should come and see the Office and go
16 into it.

17 MR WEST-KNIGHTS: This is 30th March 2001. The evidence
18 that this witness is giving at the moment is about
19 the conduct of Mr Ronnie in March 2000, over a year
20 previously.

21 THE PRESIDENT: Just remind me when the first complaint was,
22 Mr West-Knights?

23 MR WEST-KNIGHTS: The first complaint that mentions Umbro is
24 this one. And it was not triggered by an Umbro-specific
25 complaint, as you see from paragraph 1 of the OFT's

1 note. This is based upon a specific Kappa complaint
2 which was made in August 2000, two days after the
3 commencement of the so-called Manchester United
4 agreement.

5 A. But Kappa is related to my previous complaint to
6 the Office where I first went and they said: we have to
7 act, we have to have evidence. So Kappa is a result of
8 me previously going to the Office. So then, if you
9 like, the Kappa tapes are then complained about, which
10 then sets up a subsequent meeting, and this is me sort
11 of now again reiterating, if you like, the global
12 picture. That is what it is about.

13 MR COLGATE: Did you not complain on 3rd August 2000?

14 MR WEST-KNIGHTS: I am about to take the witness and
15 the tribunal to the letter in question, sir.

16 There are some blue bundles, sir. At least I hope
17 they are blue. That is the colour that we have adopted,
18 and those are documents generated by JJB and Allsports,
19 dark blue, and they comprise of -- as the estate agents
20 say -- a number of letters. If you go to E you should
21 find E1.

22 THE PRESIDENT: We have E1 in several parts.

23 MR MORRIS: Sir, it is E1, part 2. Tab 29 is the divider
24 between the two E1s.

25 MR WEST-KNIGHTS: My E1 is just E1. It is tab 52.

1 A. Okay.

2 Q. This is the complaint that you were talking about that
3 led eventually to your meeting we have just been looking
4 at, is it not?

5 A. No, there was another one before this where
6 I actually -- I think this is one where I went to see
7 Mr Durrant before this one. Let me just read it.
8 (Pause).

9 I believe I had already seen Mr Durrant in person
10 before this. I could be mistaken.

11 Q. Okay, but this was the letter that was sent about all
12 this?

13 A. Yes.

14 Q. And it is all about -- you include what you called three
15 hard disks. What was enclosed with this letter?

16 A. I presume what it says in the letter.

17 Q. What, three hard disks? That does not help me very
18 much.

19 THE PRESIDENT: Well, it says the disks are labelled in
20 the second paragraph, and should be listened to in a
21 certain sequence.

22 MR WEST-KNIGHTS: Yes, I am not familiar with a medium
23 called a disk that you listen to. I just wonder what
24 was included in this letter.

25 You knew about this letter, obviously. Mr Forsey

1 would not have written it without your permission, would
2 he?

3 A. No.

4 Q. Anyway, whatever they were, and you cannot help us with
5 that, these disks are labelled and they are a number of
6 phone calls between your man and their man on the
7 subject of Blackburn?

8 A. That is correct. It is Blackburn, then.

9 Q. "Also confirms Sports Soccer are prepared to be named in
10 any action brought against Kappa GB Ltd. I mentioned on
11 the phone the issue of price-fixing is even more
12 prevalent than this time last year. Virtually all
13 the brands and retailers in the sports industry are
14 involved. Obviously following the outcome in the Kappa
15 case we can certainly move on to our evidence relating
16 to other companies."

17 A. Yes.

18 Q. That is the letter which led to this meeting with
19 the OFT that we have been looking at. It starts:

20 "Purpose of meeting: OFT had requested the meeting
21 to discuss Sports Soccer's complaints about resale price
22 maintenance by the manufacturer of Kappa in the retail
23 of replica Blackburn Rovers football shirts."

24 A. Okay.

25 THE PRESIDENT: Just for our chronology, nothing happened

1 vis-a-vis the OFT between 3rd August 2000 and
2 30th March 2001, as far as we know?

3 MR WEST-KNIGHTS: As far as we know.

4 THE PRESIDENT: I was only going to say, Mr West-Knights,
5 that we might want to take a break at about 3.30 or so.

6 MR WEST-KNIGHTS: I am hoping that the momentum will have
7 increased.

8 THE PRESIDENT: I do not want to interrupt you. You tell me
9 when you are ready.

10 MR WEST-KNIGHTS: I am just a bit puzzled, and maybe you can
11 explain it to me. Here is a letter of complaint written
12 at your behest on 3rd August 2000. That was the thing
13 winding you up most at that stage, Kappa?

14 A. No, no, no, Kappa was not winding us up the most at that
15 stage, no.

16 Q. Why are they the focus of your complaint?

17 A. Because we have the tapes with Kappa, so we have a very,
18 very good example. That is why we sent the Kappa
19 because it was probably the best example that we had.
20 To be honest, if you had a similar thing with Nike, it
21 would be a very brave man that sent in Nike first.

22 Q. I see. Kappa are the people who are least likely to do
23 commercial harm if they find out about your complaint in
24 respect of them. Is that right?

25 A. Commercial harm to us, yes.

1 Q. You do what is best for Sports Soccer?

2 A. I do, that is correct.

3 Q. You do what is best for Mike Ashley's business?

4 A. That is right.

5 Q. In fingering Kappa rather than Nike, a great
6 consideration was they could not do that much harm to
7 you, Kappa?

8 A. That is correct.

9 Q. I think you say in this note that they only represent
10 0.5 per cent of your turnover. They are a minnow?

11 A. You are correct.

12 Q. If the Office had, of course, contacted Mr Ronnie, you
13 suggested at paragraph 11 that you could tip off
14 Mr Ronnie about your discussions with the OFT; yes?

15 A. Yes.

16 Q. And maybe he could come and have a word with them?

17 A. Yes.

18 Q. What would be the purpose of that?

19 A. What is my purpose for suggesting he does that?

20 Q. Yes.

21 A. So he stops doing it.

22 Q. But he stops doing it without getting him into trouble?

23 A. No, no.

24 Q. You do not want to drop Mr Ronnie in it, do you?

25 A. Did I want to drop Mr Ronnie in it and do I want to drop

1 Mr Ronnie in it? No.

2 Q. Okay.

3 A. I actually did not want to drop most of the people that
4 I dealt with in it, because a lot of people that I deal
5 with at that level are just following orders; it is not
6 them who make the policy decisions at the very top.

7 Q. At paragraph 12 you agreed to provide the Office with
8 recordings of other past telephone recordings; yes?

9 A. Yes.

10 Q. Did you do that?

11 A. I cannot remember.

12 Q. Really? You said that you would send OFT recordings of
13 similar future conversations?

14 A. If I said that, I presume that I sent them. I have no
15 idea. I would not physically do it anyway, personally.

16 Q. You would require somebody else to do it. It would not
17 be done without your authority; yes?

18 A. Mr Forsey, who was looking after this, would then
19 proceed to -- what can I say -- correspond or whatever
20 to what we had agreed to. So would I know every time he
21 wrote? No. Would I know every tape he sent? No.
22 Would I know everything he was doing regarding keeping
23 informed with the OFT? No. He would be following ...
24 this is what we are supposed to be doing. If we were
25 supposed to be sending them tapes, he would look after

1 it and hopefully make sure it was done.

2 Q. The bottom of paragraph 14:

3 "Sports Soccer also agreed to provide the OFT with
4 a list of replica football shirts manufacturers, the
5 clubs for whom they made such shirts and confirmation of
6 whether Sport Soccer had entered into resale price
7 maintenance agreements with any of those manufacturers."

8 Mr Forsey, if he was going to write a letter about
9 that, would have to get that information from you, would
10 he not?

11 A. No, absolutely not.

12 Q. Who would he get it from?

13 A. He would not get which club we had entered into
14 price-fixing agreements with from me. He knows how to
15 look up the information himself; it is very, very
16 simple. He can go on the system or he can go to
17 the buying director and very simply wherever we are
18 charging full price, that is because we have been forced
19 to charge full price.

20 Q. Forced?

21 A. Forced to. As you say, it costs me money, and I look
22 after Mike Ashley and Sports Soccer first so I do not
23 want to sell at full price. It is not in my interests
24 to sell at full price.

25 Q. I think we can agree on that, Mr Ashley, that it is not

1 in your interests to sell at full price as regards the
2 replica football kit. What I shall be suggesting to you
3 is that when you did enter into an agreement with Umbro
4 to fix the price it is because there was a quid pro quo
5 in it for you, that you negotiated something in it
6 in addition or in substitution for your margin?

7 A. Nothing -- they would nearly have to give me the shirts
8 to make up the loss that I make on lost sales and the
9 other related sales. You will not get anywhere near
10 that argument. It is so far-fetched as to be ludicrous.
11 We are a discounter. Pile them high and sell it cheap.
12 The amount of discount that I could get extra on
13 something would never, never, never, never replace
14 the volume of sales that I would lose and those
15 customers. Impossible.

16 Q. So the effect on your business, was it, of having to go
17 out, as you put it, at 39.99 --

18 A. Forced.

19 Q. -- for the Euro 2000 tournament was disastrous, was it?

20 A. Completely.

21 Q. And similarly in respect of Notts Forest?

22 A. Whenever we have to go out at full price it is
23 a disaster for us.

24 Q. And Celtic?

25 A. All the time, always.

1 Q. Manchester United?

2 A. Always.

3 Q. Chelsea?

4 A. Let us get it dead right. Whenever we do any product
5 replica full price, it damages our business. It damages
6 our reputation, it damages our business, it damages our
7 related sales. It is just for us not an option unless
8 we are absolutely forced. And the choice of having no
9 shirts or having to go full RRP, then of course we might
10 have to go full RRP because it is better than having
11 nothing at all, because that is the only choice we had.
12 We either had nothing -- okay, call me a liar, a dozen
13 shirts or something ridiculous, or a thousand Liverpool
14 or whatever, or in Kappa's case, none for the launch, or
15 you have to go 39.99.

16 Q. And yet the turnover of your business, I think, in
17 the year ending April 2000 was some 270 million?

18 A. Yes.

19 Q. And the turnover of your business in the year ending the
20 following year, 2001 April, had risen by some 60 million
21 to about 330 million; is that right?

22 A. Yes, if that is what is in the accounts, yes.

23 Q. That might be a convenient moment for the shorthand
24 writer?

25 THE PRESIDENT: Yes. We will rise until twenty to four.

1 The usual instructions, Mr Ashley.

2 (3.30 pm)

3 (A short break)

4 (3.40 pm)

5 MR WEST-KNIGHTS: The next event was that you went to see
6 the OFT again I think on 13th August, which is over
7 the page.

8 You have been asked a number of questions about this
9 document already. I just want to ask you this: who is
10 the manufacturer of the Predator boot --

11 Which, Mr West-Knights?

12 MR WEST-KNIGHTS: It is not on this piece of paper. At
13 paragraph 3 Mr Ashley makes a complaint about other
14 manufacturers refusing him specific products.

15 Do you see that at paragraph 3, Mr Ashley?

16 A. I am sorry, I am not on the right page.

17 THE PRESIDENT: Page 8.

18 A. I still have the Mr Durrant letter up, I am sorry.

19 THE PRESIDENT: Go back to the pink bundle.

20 A. Yes, I have it, page 8. Sorry.

21 MR WEST-KNIGHTS: At paragraph 3 you make a complaint that
22 you doubted that you would get the new boot worn at
23 the weekend by David Beckham.

24 A. Yes.

25 Q. Can you tell us, there was a boot I think that was

1 creating a lot of excitement in the year 2000 called
2 the Predator boot?

3 A. Yes.

4 Q. Who makes that?

5 A. Adidas.

6 Q. And you had supplies of that?

7 A. In the year 2000, limited, I would have thought.

8 Q. Just remind me, you are personally involved to
9 a considerable degree in the buying side of your
10 business?

11 A. No. No, no more than ... not particularly, no. Not
12 more than any other people in the sports trade I would
13 not have thought.

14 Q. You rather more than Mr Forsey?

15 A. Yes.

16 Q. So it says in paragraph 4:

17 "Sean Nevitt and Mike Ashley worked very closely
18 together on the buying side, whereas TF covered all
19 the other areas of the business with the exception of
20 IT."

21 A. Correct.

22 Q. You have been asked questions already about
23 paragraph 10. You said there that Mr Ronnie had turned
24 up and told you that the other retailers had already
25 agreed to do that shirt at 39.99, that is the England

1 shirt; yes?

2 A. Yes.

3 Q. As part of his persuasion of you that you should go to
4 39.99 as well?

5 A. Correct.

6 Q. Now, you told us that manufacturers are in the habit of
7 using excuses to supply or not to supply?

8 A. Correct.

9 Q. And indeed, you say that you too would use excuses to
10 not discount a product if you had an excuse to give to
11 discount a product?

12 A. Yes.

13 Q. And things said to you by the manufacturers you would
14 take sometimes as being untrue --

15 A. What, to refuse me supply?

16 Q. Yes.

17 A. Yes.

18 Q. Perhaps pressure being put on you, you say, to go to
19 full price. It is much easier for a manufacturer to
20 say: I am getting heat from somebody else, than to put
21 their hands up and say: the heat is coming from
22 themselves, is it not?

23 A. Is it much easier? That would have to be true, then.

24 Q. Why?

25 A. For example, if they said they were getting heat from

1 somebody else and that person then did not charge
2 the full price, they would look ridiculous, and that
3 would not be correct.

4 Q. If you are going to finger somebody as being the source
5 of heat, then that person had better be somebody who is
6 a non-discounter?

7 A. Yes, if you, to use your words, fingered somebody and
8 you said we have to then get from X, Y and Z and that is
9 why you have to come into line and you have to be full
10 price. If X, Y and Z did not then discount, you would
11 know that that person had not been telling you
12 the truth.

13 Q. The deal was that you agreed between you and Mr Ronnie
14 that you agreed, as it were, to do what everybody else
15 was doing?

16 A. Correct.

17 Q. Okay. And the pressure you say at paragraph 11 is that
18 if you will not do something in respect of replica
19 shirts they would threaten to cut you off in respect of
20 other types of product?

21 A. I will have to read paragraph 11. (Pause).

22 Okay.

23 Q. Why did you think the OFT would have a difficulty in
24 bringing home a case with the April 2001 shirt? It was
25 a shirt that you went out at full price on, was it not?

1 A. I cannot tell you without looking up the records.

2 Q. It is one of the findings in this case --

3 THE PRESIDENT: I am not sure it is against your clients,
4 though, Mr West-Knights.

5 MR WEST-KNIGHTS: No, but it is against him.

6 You sold the England relaunched shirt in 2001 at
7 full price when it went out for a short period?

8 A. When it went out -- I must not get the shirts wrong --

9 Q. I am talking about, as you would understand, April 2001,
10 it would be St George's Day 2001, it would be
11 the New England home shirt.

12 A. In April 2001 we were full price. The England new
13 home -- never been sold before?

14 Q. That is the one. You remember that April 1999 was the
15 England home shirt. It had a revival of popularity
16 because of Euro 2000 until England was knocked out, and
17 then the new home shirt came in on St George's Day 2001?

18 A. Okay, and we were full price on it?

19 Q. Yes.

20 A. Okay, fine.

21 Q. I wondered why you offered this observation to the OFT
22 that you thought they would struggle to bring a finding
23 on that?

24 A. Probably because they would not have any evidence.

25 Q. Except that whenever you go out at full price on

1 an Umbro product it is because Umbro had forced you to
2 do so?

3 A. I think you will find that that is not quite strong
4 enough evidence.

5 Q. You would be able to identify, would you not, why you
6 went out at full price on the 2001 shirt?

7 A. Yes, but I think again you will find that that is not
8 enough evidence. Do not forget that I had already
9 spoken to the OFT before and they required evidence, ie
10 had we listed every meeting we had had with Umbro, had
11 we made notes of every meeting. As I explained before,
12 I do not have a daybook and I do not make notes of every
13 meeting, therefore there was not enough that I could
14 give them other than to say: look, if we go out at 39.99
15 it is because we are being forced to, but you will
16 struggle like mad, because what can I say other than
17 that?

18 I did not have it in a signed document, I did not
19 have it on a tape.

20 Q. Right. What happened next in the sequence of events,
21 I think, is that at some stage there was a letter from
22 Mr Forsey that corrected some parts of the question
23 about which shirt it was that was dealt with on
24 8th June as it turned out to be.

25 And then the Office issued a Rule 14 notice, that is

1 to say, as it were, its preliminary findings on various
2 matters, and then your solicitors produced the document
3 which starts at page 13.

4 Have you read this document?

5 A. If I signed it I read it.

6 Q. You have not signed this document but you signed a
7 witness statement saying you had been through everything
8 and that this document was the truth, the whole truth
9 and nothing but the truth.

10 A. Therefore I read it.

11 Q. You do not remember reading it?

12 A. No.

13 Q. Mr Ashley, your witness statement is dated November of
14 last year, only a few months ago. Do you remember
15 reading this document?

16 A. I just said no. I do not remember specifically reading
17 this document, no.

18 Q. Well, did you?

19 A. Did I read it? If I signed it to say I had read it I
20 would have read it or I would not have signed it.

21 Q. Mr Ashley, forgive me. This is very recently. I do not
22 know how frequently it is you find yourself having to
23 read through documents.

24 A. How frequently do you think it is?

25 Q. Rarely.

1 A. Really? So what do I do with leases, then?

2 Q. Mr Ashley, this is not a lease, this is a set of
3 representations made on behalf of your company by
4 solicitors and in November you swore a witness statement
5 saying its contents were true. I fancied that in that
6 event you would remember reading it.

7 A. Not specifically, no.

8 MR MORRIS: Sir, may I just correct the record. It is
9 the passages underlined which are referred to in
10 Mr Ashley's statement.

11 THE PRESIDENT: His first statement of 28th November does
12 not actually refer to the passages underlined --

13 MR MORRIS: It does, sir, if I can explain. If you go to
14 paragraph 2 of that statement it says:

15 "In the schedule to this statement at Exhibit MJWAL
16 I identify and collect together materials which
17 represent my personal evidence."

18 If you go to the schedule at page 4:

19 "... copies of the relevant extracts of
20 the documents listed below, marked-up where necessary
21 with underlining or sidelining to show the relevant
22 passages attached."

23 If you go to paragraph 3 you see the written
24 representation which identifies both of the paragraphs,
25 and I understand that when you go to those paragraphs

1 you will find they are underlined.

2 THE PRESIDENT: Yes.

3 MR WEST-KNIGHTS: You tell us, Mr Ashley, did you read

4 the whole of the document or just the bits underlined?

5 A. I cannot specifically remember, sorry.

6 Q. Mr Ashley, it was only a couple of months ago.

7 A. What would you like me to say? Yes?

8 Q. I would like you to tell the truth --

9 THE PRESIDENT: You just tell the tribunal what you can

10 remember, Mr Ashley. You are talking to us, not to

11 Mr West-Knights.

12 A. I am sorry. I cannot specifically remember reading

13 this. But if I signed a witness statement to say that

14 I had, it means I would have done.

15 THE PRESIDENT: Thank you.

16 A. That is okay.

17 MR WEST-KNIGHTS: Are you in a position to tell me now that

18 you intended to say that everything attached to this

19 witness statement is true or just the bits underlined?

20 A. I will have to read it all to give you that answer.

21 Q. Do you know who did the underlining?

22 A. Not specifically, no.

23 Q. Was it underlined when you first got it to read?

24 A. I honestly cannot remember.

25 Q. Did you underline it?

1 A. Definitely not.

2 Q. Subject to looking through this overnight, sir, that may
3 shorten a few questions.

4 I am going to take it, unless you tell me that
5 I should not, Mr Ashley, for any reason, that these
6 representations were made to the Office with your
7 express authority.

8 A. I presume that is the case, yes.

9 Q. I am not asking you to presume anything. Did you
10 approve this document before it went to the Office of
11 Fair Trading?

12 A. Yes.

13 Q. You did you remember doing that, do you?

14 A. No, I do not remember doing that specifically, no.
15 I wish I did.

16 Q. I am going to pick up a small passage which has not been
17 underlined; it is at page 24. In the version you have
18 it may be that a large number of those lines have been
19 crossed out. Do you have that?

20 A. Yes.

21 Q. I apprehend, gentlemen, that yours are not; they are
22 simply square bracketed?

23 THE PRESIDENT: We have a square bracket version in ours.
24 You may put to the witness the complete version if
25 you want.

1 MR WEST-KNIGHTS: Yes, but he does not have it (Handed).

2 THE PRESIDENT: Mr Ashley, you are going to be asked to look
3 at 2.2.30, and you will see that there is a last
4 sentence that probably was not in the version that
5 you were looking at before because it was treated as
6 confidential at one time.

7 MR WEST-KNIGHTS: You first speak at 2.2.30 -- do you have
8 that?

9 A. Yes, I am just --

10 THE PRESIDENT: Just let him read it. He will not be
11 a moment, Mr West-Knights.

12 This is about what is called the balance of power
13 between Umbro and Sports Soccer

14 A. Okay.

15 MR WEST-KNIGHTS: Now, you have read those two paragraphs,
16 have you?

17 A. Okay.

18 Q. Have you read those two paragraphs, including 2.2.31?

19 A. No, I have not yet read 31. Do you want me to read that
20 as well?

21 THE PRESIDENT: Yes, please, Mr Ashley, 2.2.31 as well.
22 (Pause).

23 A. Okay, yes, I have read that.

24 THE PRESIDENT: Thank you.

25 MR WEST-KNIGHTS: This agreement led to something like half

1 of all of Umbro's turnover for the year 2000 being
2 attributable to you, Sports Soccer?

3 THE PRESIDENT: I think that is a question.

4 A. Okay. Booked turnover, yes, not actual physical
5 turnover, though, forward invoicing or whatever you want
6 to call it, not physically what happened in that year.
7 Again there were forward-funded payments.

8 MR COLGATE: Which year are we talking about?

9 MR WEST-KNIGHTS: 2000.

10 A. 2000. Again you talk about the turnover, but
11 the turnover was invoiced in that year but not actually
12 done in that year.

13 THE PRESIDENT: I think you told us earlier that the first
14 of the royalty payments was in December 2000.

15 MR WEST-KNIGHTS: September.

16 LORD GRABINER: September.

17 A. September.

18 THE PRESIDENT: And the next was in June 2001.

19 A. Correct.

20 THE PRESIDENT: And that in fact because of the six months'
21 delay in delivery, it did not actually burn any product,
22 as you described it, until the end of 2000.

23 A. Absolutely correct.

24 THE PRESIDENT: Yes.

25 A. So the turnover you are referring to is not in 2000 --

1 it is invoiced in 2000, but the turnover is not in
2 2000 --

3 THE PRESIDENT: So invoices have come in.

4 A. Yes, but no physical product has come in to match it.

5 THE PRESIDENT: And it has not been sold in the shops.

6 A. Yes.

7 MR WEST-KNIGHTS: So invoices had come in -- perhaps you
8 could explain that, invoices from whom against whom?
9 Who is charging whom for what?

10 A. As I understand it, Umbro invoiced in 2000.

11 Q. Invoiced you?

12 A. Invoiced me in September of 2000 or whatever. We are
13 paid in September of 2000 6 million, and then they
14 invoiced in the -- or we ended up paying in June of
15 the follow year the next 6 million. Although that is
16 future product to be brought in you are saying that that
17 turnover now equates to half of what Umbro declared in
18 their accounts in 2000 from what you have got. But
19 Umbro's declared accounts of 2000 is absolutely nothing
20 to do with me.

21 Q. How much business did you actually do with Umbro in
22 the year 2000?

23 A. Could you not ask Umbro?

24 Q. No, I am asking you, Mr Ashley.

25 A. How -- I ... I can maybe have a guess now, but I would

1 not know how much I did with Umbro in 2000. I do not
2 have it in front of me.

3 THE PRESIDENT: We may have other ways of establishing that
4 if it becomes important.

5 A. But nothing was brought in on the licence in 2000.

6 MR COLGATE: Do you mind if I interrupt?

7 MR WEST-KNIGHTS: No, I would be delighted, sir.

8 MR COLGATE: Thank you. You were asked a question that
9 you had an invoice in 2000 although no physical stock
10 was sold in 2000.

11 A. Yes.

12 MR COLGATE: What actually was invoiced in 2000?

13 A. It is a bit like that piece of paper I had earlier.
14 I think it is the right to make that product.

15 MR COLGATE: I am more interested in --

16 A. Outside of that product --

17 MR COLGATE: No, what was that invoice for?

18 A. The 6 million in September are you on about? It will
19 say restricted branded product, whatever it will say.

20 MR COLGATE: But it was the royalty?

21 A. It is the royalty, yes, the royalty amount, the amount
22 I owe Umbro, the net amount that Umbro receive.

23 MR COLGATE: So they invoiced you £6 million in respect of
24 royalty payable by Sports Soccer?

25 A. Yes, for future product, yes.

1 MR COLGATE: How does that then relate to Umbro's turnover?
2 A. In that year?
3 MR COLGATE: Yes.
4 A. I honestly do not know. Do you mean the gross turnover
5 or the net turnover?
6 MR COLGATE: I do not know, that is why I am asking.
7 A. Nor do I. Umbro's accounts, I generally do not read
8 them.
9 MR COLGATE: So the invoice was for 6 million.
10 A. Yes.
11 MR COLGATE: Can you recall if you got two invoices, because
12 you had a second one, did you not, later?
13 A. I can only recall now because I read the sheet earlier
14 today otherwise I would not have recalled it. I was
15 asked the question yesterday. I was told the answers
16 overnight, that is how I know them.
17 MR COLGATE: I think there is still in my mind anyway a lot
18 of questions that need to be asked about
19 the arrangements. I think the answer earlier was
20 slightly misleading in relation to the question you were
21 making, Mr West-Knights.
22 MR WEST-KNIGHTS: Sir, I think we have accidentally
23 trespassed back onto what we cannot deal with until we
24 have the statement of what the arrangements were, and
25 without going back into camera I do not think we can

1 continue with this line.

2 Look at that paragraph:

3 "Allow Sports Soccer to manufacturer and ..."

4 That is the licensing agreement:

5 "The terms of the agreement were favourable towards

6 Sports Soccer ..."

7 Pausing there, these agreements have been in

8 negotiation or discussion since I think at least

9 the middle of 1999.

10 A. Possibly, yes.

11 Q. You do not remember that?

12 A. When did Umbro actually buy the brand?

13 Q. It is not for me to answer questions, but I can tell you

14 that the effective date of the takeover was May 1999;

15 I think it may in fact have been 23rd April 1999,

16 because it was St George's Day?

17 A. So the discussions I would not have thought started

18 a month or a day after they bought the brand.

19 Q. You do not think so?

20 A. I do not think so.

21 Q. You were not discussing it with Mr Fellone in July 1999?

22 A. I think that is a bit quick, I think.

23 Q. But certainly the discussions were well underway at

24 the beginning of 2000?

25 A. I would have thought more by the middle of 2000. When

1 you are beginning to see that correspondence of around
2 24th May where it mentions the water bottle and the shoe
3 and the sock, that is when you begin to see the picture
4 build.

5 Q. Well, we will go to it tomorrow but I will be suggesting
6 to you that there was a detailed letter sent to you, in
7 fact signed on behalf of Umbro on 7th April 2000 and
8 that was preceded by a meeting on 20th March? Does that
9 ring any bells with you?

10 A. That is in 2000?

11 Q. Yes.

12 A. That is possible, I will accept that.

13 Q. Indeed I will be suggesting to you tomorrow that
14 the meeting held in April as a result of the first
15 detailed letter that we have seen discussing your
16 capacity to have these arrangements is the same meeting
17 at which you agreed with Umbro to increase the price of
18 the England shirt at some stage to 39.99 and to launch
19 the Manchester United shirt at 39.99.

20 Does that ring any bells with you?

21 A. Not specifically, no, but I get the general context.

22 Q. It was at the same meeting and at the same time as you
23 started to lay down the arrangements of the licensing
24 agreement as when you made the first agreement to fix
25 the price of the Manchester United shirt, and indeed

1 the England shirt, the April agreement, for which you
2 stand, and will remain to stand, convicted?

3 A. You cannot keep trying to link the replica shirt with
4 the ongoing licence. They are not related.

5 Q. I shall also suggest briefly, because we have been there
6 once already, that the next occasion on which these
7 licence agreement arrangements were discussed in detail
8 was on 24th May, which was the second occasion on which
9 you agreed to increase the price of the England kit and
10 of the Manchester United kit.

11 A. No.

12 Q. Sorry, what is no about what I just said?

13 A. It is not specifically -- they were not the -- the two
14 deals were not linked. They were -- replica is
15 an ongoing business, the licence is an ongoing business,
16 there was no particular line in the sand, there was not.
17 They were just ongoing.

18 Q. Business is business, is it not, Mr Ashley? If you sit
19 down at a meeting and you get some good and some bad, it
20 is connected together?

21 A. It does not mean they are linked.

22 Q. Even if at the same meeting your target with Umbro for
23 replica kit is expressly reduced?

24 A. My target ... Umbro kit ... expressly reduced ...?

25 THE PRESIDENT: If you want to make that point good,

1 you will have to go to the document.

2 MR WEST-KNIGHTS: We will have to, probably tomorrow. I was
3 just hoping it would trigger some recollection from the
4 witness.

5 THE PRESIDENT: It has been a long day for the witness.

6 A. Are you saying if I charge 39.99 it reduces the volume
7 I sell? Correct.

8 Q. Let us go on with this:

9 "The value to Sports Soccer of this agreement is to
10 enable Sports Soccer to stock a major sportswear brand
11 but at discounted prices, further enhancing its
12 reputation in the market as a low price but high quality
13 retailer."

14 Incidentally making you a lot more money. It is
15 very lucrative this arrangement for you, is it not?

16 A. Yes.

17 Q. It is all right, Mr Ashley, there are no tricks in any
18 of these questions. I am trying to get some answers.

19 As you said yesterday, one of the reasons why it
20 makes you a lot of money, although less than you would
21 like, is that you cannot charge as little as you would
22 like to for that sourced product, otherwise everybody
23 would know. That is what you told us?

24 A. Correct, yes, you are ... yes.

25 Q. "The turnover from the sale of these products is

1 significant to Sports Soccer."

2 What period are you talking about there?

3 A. I do not know. Turnover is significant to

4 Sports Soccer ... I do not know, I do not know what

5 I did in that time. What is this, 2001 we are on now?

6 THE PRESIDENT: This document is written in 2002.

7 A. Okay, so --

8 THE PRESIDENT: We are not clear, or at least I am not

9 clear, what period of time this actual passage is

10 relating to.

11 A. Nor am I.

12 THE PRESIDENT: It is written in the present tense.

13 MR WEST-KNIGHTS: It is prefaced by the first paragraph:

14 "It is not in Sports Soccer's interest to maintain

15 higher prices. It is not in Sports Soccer's commercial

16 interest to maintain the price of replica football kits

17 at such high levels, and during 1999 to 2001 it became

18 increasingly frustrated at the barriers put up by

19 the manufacturers."

20 What you are dealing with here is Umbro's capacity

21 to put pressure on you, pressure which you say is

22 intolerable, to force you to get a recommended retail

23 price?

24 A. Correct.

25 Q. Right. And you give two reasons in particular, because

1 you say at 2.29:

2 "To refuse to price according to manufacturers'
3 wishes and thus be without stock of key products was
4 commercially and financially not a viable option. Given
5 Sports Soccer's need to have a comprehensive and up to
6 date stock of replica football kit, particularly England
7 and the big teams, the balance of power in the supply
8 relationship very much favoured Umbro."

9 You go on to say:

10 "The balance of power ... further reinforced by
11 the terms of the licensing agreement in place with
12 Sports Soccer."

13 I want to ask you about the year 2000. The turnover
14 from the sale of these products is significant to
15 Sports Soccer. What period are you talking about then?

16 We do not yet know what turnover you have had if any
17 in these products.

18 A. I think we know I had -- I had turnover -- did we not
19 have the used figure in one of the documents earlier?

20 THE PRESIDENT: We did.

21 A. Yes.

22 MR WEST-KNIGHTS: What, 12 million in 2001?

23 A. 12 million in 2001, yes.

24 MR WEST-KNIGHTS: 3 per cent of your turnover.

25 A. 3 per cent of my turnover. Hang on just a second. Are

1 you sure when you quote Sports Soccer's turnover it is
2 just the retail part of the turnover you talk about when
3 you have my turnover? When you talk about my turnover
4 I do not know exactly which sport -- I do not know which
5 bit you are talking about.

6 Q. "The turnover from the sale of these products is
7 significant to Sports Soccer and the loss of this
8 arrangement would be a serious financial blow to
9 Sports Soccer."

10 A. Let us say the turnover on that was 12 million, and let
11 us assume that is a 2.5 mark-up, you are talking about
12 30 million of retail of extra sales. It could be me,
13 but I think that is significant.

14 Q. "Umbro has recognised the importance of this arrangement
15 to Sports Soccer and has exploited this to its advantage
16 by enforcing its pricing terms with respect to replica
17 football kit."

18 It was not doing that in 2000, was it?

19 A. What is that? What was it not doing? In 2000 Umbro was
20 absolutely forcing me to charge the full RRP on replica
21 kit.

22 Q. In 2000, I think you have told us, your turnover with
23 Umbro in respect of this licensing agreement was nil?

24 A. Correct. We have to get the word usage right.

25 Q. When was this agreement made actually legally binding?

1 A. I think it was something like August 2003 or 2002 or
2 whatever. When it actually gets signed, I think it is
3 in August 2002, I think.

4 Q. "The balance of power in Umbro's favour was further
5 reinforced by the terms of the licensing agreement."
6 But how did you come to be in a position to
7 negotiate such a favourable licensing agreement?

8 A. I have explained that I have a sourcing advantage that
9 Umbro do not possess. It is very simple: if I could not
10 source at vastly different rates to them, the licence
11 would be worthless.

12 Q. This licence has enormous value to Umbro, at least it
13 perceived so at the time, did it not?

14 A. I think Umbro needed that licence at that time, I agree
15 with that.

16 Q. So how does the existence of it affect the balance of
17 power adversely to you?

18 A. Because Umbro have the power whether or not to grant
19 the licence. They have the right to extend it now.

20 Q. They needed it, they needed the money.

21 A. You keep saying they needed the money. How do you know
22 they needed the money? Why do you keep saying Umbro
23 needed the money?

24 Q. Because as you told us yesterday they were commercially
25 unwise enough to have confided that fact to you?

1 A. Yesterday I think you will find that when you were
2 saying would I reveal that to somebody I said I would
3 not.

4 Q. They told you, you told my learned friend,
5 Lord Grabiner, that they were in financial difficulties.
6 He suggested to you that that was a rather unusual thing
7 for somebody in a commercial negotiation situation to
8 do, and you said: yes, I would not have told anybody in
9 that situation. You told the tribunal that you regarded
10 Umbro's confiding that information to you as both
11 unusual and unwise?

12 A. I agree I would not do it.

13 Q. But they did tell you it?

14 A. But you are talking about Umbro as if they are on their
15 last legs and they must exist, and there are certain
16 things they would not do for the money, otherwise why
17 did I not only pay them 10 per cent and make the burn
18 double what it was?

19 Q. Because, as I shall say tomorrow, in April and
20 May overall the arrangements between you were favourable
21 on both sides, such that you struck a deal?

22 A. Sorry, I do not understand the question.

23 THE PRESIDENT: Can I just ask a question at this point,
24 Mr West-Knights?

25 MR WEST-KNIGHTS: Thank you, please do.

1 THE PRESIDENT: You have told us several times, Mr Ashley,
2 that in 2000 Umbro was forcing you to charge RRP.
3 A. Correct.
4 THE PRESIDENT: Could you just tell us again how it was that
5 Umbro was in a position to force you to charge RRP?
6 A. Very simply. They threatened that we would not get
7 the supplies of the stock. If we did not charge full
8 RRP we were threatened with the fact that we would
9 probably get only a dozen shirts delivered. It is
10 totally what the conversation was about in 2000.
11 THE PRESIDENT: I think what is being suggested is that in
12 this relationship, as it were, the power was not all on
13 Umbro's side; you had a certain amount of power yourself
14 through the licensing agreement and so forth, so that it
15 was even stevens to a certain extent, and that you were
16 not under the pressure to charge RRP that this document
17 suggests. That is what is being suggested to you.
18 A. I can only keep repeating: if that was the case I would
19 have loved to have sold the shirts at discount and sold
20 vast quantities more, because that is the reality.
21 The cheaper we can sell the replica the more we make,
22 because the volume you sell is ridiculous when you can
23 discount it. Which is probably the best way of me
24 giving this tribunal examples when we come to it
25 tomorrow, which I try to avoid doing.

1 MR WEST-KNIGHTS: You really wanted this licensing
2 agreement -- I am sorry, sir.

3 MR COLGATE: I just wanted to get absolutely clear: you said
4 in 2000 you were not able to get the supply stock; are
5 we talking here of replica kit, non-replica kit or both?

6 A. The vast majority of the time replica kit is
7 the problem. If I could quantify it, probably 90
8 plus per cent of the price enforcement from Umbro was
9 around replica kit. They would have one or two other
10 key products in their main line that they would want to
11 protect. But the vast -- 90 per cent would be on
12 the replica price. Maybe they had an odd backpack that
13 did well with another customer that would not let me
14 discount, but the vast majority was replica.

15 MR COLGATE: So in 2000 that is where the pressure was
16 coming from?

17 A. Yes, the real pressure with Umbro was replica and -- I
18 am going to say it -- other brands had it more across
19 the board than Umbro did, I say in Umbro's defence.

20 THE PRESIDENT: What is being suggested is that it was not
21 quite like that; that the reason that you actually
22 agreed to go to RRP in 2000 was because you wanted
23 the other licensing agreement, and this was all part of
24 a package deal, as it were, in which you wanted to
25 further the commercial relationship between you and

1 Umbro and this was one aspect of that.

2 A. It is very frustrating for me because that is absolute
3 total nonsense. And I am under oath.

4 THE PRESIDENT: Yes, thank you.

5 Yes, Mr West-Knights?

6 MR WEST-KNIGHTS: So we are going to cross out in respect of
7 2000, are we, the supposed balance of power being made
8 worse by the licensing agreement?

9 A. (Pause).

10 THE PRESIDENT: I will put that question if I may, without
11 putting words in counsel's mouth, another way round: you
12 have been saying that you were forced by Umbro to price
13 at RRP and the question is whether Umbro had a further
14 hold over you as a result of the licensing agreement,
15 and whether that licensing agreement really did not play
16 much of a role in relation to replica kit pricing.

17 A. No, the further balance they had of the licence is just
18 like -- how can I describe it ...?

19 In my opinion, okay, it gave them more power, but it
20 is insignificant. Okay, I agree it adds more power. It
21 has to add something, but it is not significant.

22 THE PRESIDENT: It adds something.

23 A. Yes.

24 THE PRESIDENT: But not a great deal compared with their
25 general power to withhold supplies of replica kit?

1 A. In comparison it is, as I say, it might be a little bit
2 at the top, but nothing.

3 THE PRESIDENT: Thank you, I see. Sorry, Mr West-Knights.

4 MR WEST-KNIGHTS: I am very grateful. The last question on
5 this.

6 How do you explain a meeting which can
7 simultaneously contain discussion of the granting to you
8 of very favourable licensing terms and at the same time
9 your being subjected to intolerable pressure in respect
10 of retail prices?

11 How can those both happen at the same time?

12 A. Absolutely. As we went through yesterday, this is
13 a daily if not weekly occurrence. That is how the sport
14 trade operated, one hundred per cent. Part of your
15 discussions is the price and then, for want of a better
16 word, a lot of the other discussions then follow on
17 after that. If you do not agree to do the price,
18 the other discussions are very difficult to have.

19 Often with a brand the first thing they can ask
20 about is the price at those times. Their major concern
21 with us was never that we would cancel stock, never that
22 we would not pay for stock, never that we not pay for it
23 on time or we would not take delivery. Would we
24 discount it? Not the quantities we could sell
25 necessarily were not always a problem. It was would we

1 discount it?

2 Q. Before I leave this page, but I will have to come back
3 to it tomorrow, I am sorry to say, just deal with 2.245
4 for us would you:

5 "The invoice referred to in paragraph 111 ..."

6 I can tell you that the invoice referred to in
7 paragraph 111 is the one we have been looking at which
8 is your cost, our cost and so forth, which you said --

9 A. I am on the wrong page. Sorry, I have it.

10 Q. Do you remember you explained the invoice as saying it
11 was a credit after the event because this was to make up
12 the difference between 1.88 less your 20-odd per cent
13 and the new deal at the 2.5?

14 A. Okay.

15 Q. And that sets the evidence that you gave about that
16 invoice this morning?

17 A. Yes.

18 THE PRESIDENT: We are now talking about the Notts Forest
19 sandals?

20 MR WEST-KNIGHTS: Exactly, as I see the document.

21 A. I remember that.

22 Q. Just read what you said:

23 "The invoice referred to was not an invoice but was
24 correspondence relating to a disputed invoice."

25 What does that mean?

1 A. I have absolutely no idea. I am trying to follow where
2 you are. I have not read it; I will read it first.
3 (Pause).
4 Okay.

5 Q. Leave aside the last sentence for a moment. Why did you
6 say: this was not an invoice but was correspondence
7 related to a disputed invoice?

8 A. Because it is correspondence relating to a disputed
9 invoice.

10 Q. Explain that, please?

11 THE PRESIDENT: That is how I had perhaps incorrectly
12 understood it: it is a letter from Mr Forsey apparently
13 relating to an invoice that Umbro had sent which
14 they were contesting and resulted in a credit in favour
15 of Sports Soccer.

16 MR WEST-KNIGHTS: I can plainly check the note. My
17 understanding is that there was no question of
18 a dispute. What happened was that this was
19 an after-the-event cleaning-up, because they had been
20 charged mechanically the 1.88 less the percentage,
21 whereas in truth the arrangement was the 2.5 and this
22 was a balancing exercise.

23 THE PRESIDENT: Yes, so I have not understood what
24 the problem is at the moment.

25 MR WEST-KNIGHTS: It is not a dispute. There was no

1 evidence that this was disputed in any way. This was as
2 a result of the new arrangement.

3 THE PRESIDENT: The original invoice had been in some way
4 queried.

5 MR WEST-KNIGHTS: I will go on. Your cost and our cost
6 refers to the different prices that each party had
7 calculated after dividing the recommended price by 1.88
8 and after applying the relevant discount.

9 That is quite untrue in respect of the heading that
10 you put in, "our cost", is it not, because your
11 calculation was based on 2.5?

12 A. Can we get the piece of paper on this, to go through it?

13 THE PRESIDENT: I think we need to.

14 MR MORRIS: It can be found conveniently at JJB's skeleton.

15 THE PRESIDENT: If this is going to take long,
16 Mr West-Knights, I think we had better leave it until
17 tomorrow morning.

18 MR WEST-KNIGHTS: I am just hoping that he will accept my
19 proposition. But that has not so far been the result of
20 my questions.

21 THE PRESIDENT: Do we all have the document?

22 MR WEST-KNIGHTS: I hoped this was a simple proposition,
23 Mr Ashley. The evidence you gave about this document
24 was that the heading "our cost" is the sell
25 price -- yes? -- to which you have applied your divide

1 by 2.5.

2 A. Correct.

3 Q. So the heading "our cost" has nothing to do with

4 the 1.88 or any discount applied to 1.88; it is

5 the straight 2.5?

6 A. No, because it is not the case with the Forest shirts.

7 Q. In what respect? 39.99 divided by 2.5 is 16.

8 A. Yes, but that is off the -- we did this before. This is

9 the retail price, that is not necessarily what I sold

10 the product for.

11 Q. No, what I am asking you about is your statement here:

12 "Your cost and our cost refers to the different

13 prices that each parties had calculated after ...

14 applying the relevant discount."

15 You see, there is no reference to the actual terms

16 of the licensing arrangements or the 2.5 anywhere here.

17 A. This 1.88 is -- we are talking about Forest here.

18 The 1.88 is relevant to the Forest selling price.

19 Q. That is in your cost. But not in our cost. Our cost is

20 simply the sell price -- I am not for these purposes

21 interested in what whether it was a recommended retail

22 price, their price, your price, what kind of price it

23 was. It is a fact that our cost is simply 40 per cent

24 of the number in the sell price column.

25 A. Yes, that is -- yes, yes, okay.

1 Q. And that column has absolutely nothing to do with
2 the 1.88?

3 A. Yes, it absolutely has got something to do with
4 the 1.88, but go on.

5 Q. How?

6 A. We are going to do it again, I am going to tell you how
7 a replica shirt works. 39.99, 21.30 is worked off
8 a 1.88 margin.

9 Q. Yes. I am looking at the column marked "our cost".

10 A. OK, I accept that.

11 Q. That is simply taking the sell price and taking just 40
12 per cent of it

13 A. No, because the sell price is not necessarily the price
14 which we sold the replica at.

15 Q. The thing in the sell price column?

16 A. Yes, but so long as you do not turn round and say
17 I actually sold them at that, I am fine.

18 Q. I told you I am not interested in what that price is,
19 simply that the explanation that you gave about this
20 document conveniently forgot to mention the other
21 column is 2.5?

22 A. I conveniently forgot to mention it. I very much doubt
23 if I conveniently forgot to mention anything. If you
24 are going to try to say I get 2.5 on the selling price
25 of replica kits I shall have to ask for a credit note

1 immediately.

2 Q. Mr Ashley, it is not for you to try to anticipate what
3 I might want to do next, merely to answer the question
4 that you are being asked?

5 A. I am trying to understand where you are going.

6 THE PRESIDENT: People seem to be to some extent at
7 cross-purposes. I think it is easier probably to come
8 back to this tomorrow, Mr West-Knights.

9 MR WEST-KNIGHTS: I am sure you are right. Thank you very
10 much.

11 Housekeeping

12 THE PRESIDENT: Can you give us a broad forecast as to how
13 much longer you think you might be with Mr Ashley?

14 MR WEST-KNIGHTS: As a result of the sloth of this
15 afternoon, for which let us assume I shall take the
16 blame.

17 THE PRESIDENT: There is no blame being attributed to
18 anybody.

19 MR WEST-KNIGHTS: As a result of the lack of progress during
20 the course of this afternoon I am going to sit down with
21 Mr Peretz and see how we can reduce the number of
22 questions that I shall ask tomorrow, but how quickly
23 I get the answers to them is not a matter within my
24 control.

25 THE PRESIDENT: So we have at least some hope of finishing

1 in the morning as far as this witness is concerned?

2 MR WEST-KNIGHTS: No, I said that I would be until tomorrow
3 lunchtime before we lost time today. I hope not to go
4 beyond tomorrow lunchtime, but I can give no guarantee.

5 THE PRESIDENT: Perhaps we had better discuss where we are
6 with the witnesses.

7 MR MORRIS: Perhaps Mr Ashley might be invited to sit down.
8 I am sure he has had a long day.

9 THE PRESIDENT: Thank you very much, Mr Ashley. 10.15 again
10 tomorrow morning?

11 MR MORRIS: If it were the case that Mr West-Knights were to
12 conclude by tomorrow lunchtime, and on the assumption
13 that I will not be very long in re-examination, we are
14 I think on the timetable two days behind already, having
15 set for less than two days.

16 That obviously has ramifications for the timetable.
17 I have been scribbling and basically everything gets
18 moved down two days on the assumption that all the other
19 witnesses are going to be within the originally allotted
20 time.

21 If it were the case that what has happened so far
22 were to repeat itself then we are looking a lot further.

23 All I can say is that as far as I am concerned,
24 according to my estimate which I am pretty confident of
25 sticking to, obviously things arise and we all

1 understand that, but at the moment my estimate is that
2 we are two days behind.

3 I would ask firmly that efforts be made by my
4 learned friends, in particular Mr West-Knights, to
5 finish by tomorrow lunchtime if at all possible.
6 Otherwise we are just losing more than we are gaining
7 every day.

8 There is one other issue which I will come back to
9 in a moment, but I would like to discuss the proposition
10 that there is to be a paper to be produced on the
11 Umbo/Sports Soccer issue, because as I understood the
12 matter as it was left this morning it was not entirely
13 clear to me where we were going on that. I just thought
14 I would flag that up.

15 THE PRESIDENT: We will come back to that.

16 My impression is, and I may be quite wrong, that in
17 the light of the way things are going, it might be more
18 sensible to aim to have Mr Guest's evidence when he gets
19 back from America rather than before he goes. I will be
20 pleased to hear what anybody has to say about that.

21 There is a possible difficulty with Mr Prothero.

22 At the moment, as I understand it, Mr Guest is due
23 to fly out on Friday afternoon. Unless we are going to
24 interpose him, which I suppose we could do, it might be
25 more logical to deal with that when he gets back, just

1 accepting the fact that we are two days behind.

2 You do not necessarily have to make a decision now,
3 this minute, but we ought to be thinking about it.

4 MR MORRIS: When is Mr Guest back?

5 THE PRESIDENT: I understood he was back on Tuesday, but
6 whether it means he is back at 7 o'clock Tuesday morning
7 or...

8 MR WEST-KNIGHTS: Even if he is on the Tuesday red-eye,
9 he will not be going into the witness-box on Tuesday.

10 THE PRESIDENT: And the same presumably would be applicable
11 to Mr Preston, in the light of Lord Grabiner's remarks
12 earlier. If we are shifting forward, then he will be
13 Tuesday as well. Tuesday or beyond.

14 LORD GRABINER: He can either be Tuesday or I do not have
15 any objection to him being interposed on Thursday. I do
16 not know how long my learned friend will want with him
17 in cross-examination. He may be a short witness. It
18 looks as though he will be interposed in the course of
19 the evidence of Mr Ronnie and/or Fellone.

20 We need to know if he will be stood down because he
21 is coming from Holland.

22 THE PRESIDENT: I would suggest that if principal counsel
23 were able to have a few words together and come up with
24 some suggestions for the tribunal, from our point of
25 view that would be very helpful.

1 MR WEST-KNIGHTS: Can I factor this in: what has happened in
2 respect with Mr Ashley is likely to be replicated to
3 some degree with Mr Ronnie.

4 THE PRESIDENT: Yes. That would further suggest that we
5 might just allow things to move back, try to keep
6 the same order, but allow them to move back, rather than
7 try to rectify it by trying to interpose people.

8 MR MORRIS: In principle that is our initial reaction, we
9 would prefer not to interpose.

10 THE PRESIDENT: We need to be able to tell Messrs Guest,
11 Prothero, Preston and possibly Charnock when they might
12 be needed on the revised timetable.

13 I would like to have a better idea tomorrow morning
14 where you all think you are.

15 As far as the other matter is concerned, Mr Morris,
16 the piece of paper, it may have been a wholly
17 overoptimistic wish on our part --

18 MR MORRIS: We think it is a rather good idea.

19 THE PRESIDENT: -- to try to sort it out. Because it is
20 quite difficult to follow it with what we have.
21 Certainly on the tribunal's side, we are not at all
22 clear what weight we can give to various documents that
23 are described as drafts but are very often not signed by
24 anybody. It is rather hard to work out whether
25 they were just ideas or propositions or working

1 arrangements, or what they were. When we said this
2 morning that a piece of paper would help us, I looked
3 principally to you, as it were, as the sort of master of
4 ceremonies, or the most well-placed intermediary, to see
5 whether any progress could be made on such a document.

6 But I just do not know whether that is practical or not.

7 MR MORRIS: I think the position is this. The starting
8 position is that it would be possible -- and I am not at
9 the moment sure in terms of timing -- for those at
10 Sports World, other than Mr Ashley, in conjunction with
11 their legal advisers to put together something which is
12 their understanding of the arrangements in the time
13 period and like.

14 THE PRESIDENT: Yes. In conjunction with Umbro, or ...

15 MR MORRIS: When you say in conjunction with Umbro, of
16 course we are talking about 2000 and 2001.

17 THE PRESIDENT: Yes.

18 MR MORRIS: Miss Roseveare was not around at that time, she
19 understands the arrangements in 2002. The person on the
20 part of Umbro who best understands the arrangements in
21 2000 and 2001 is Mr Ronnie.

22 However, I have the difficulty that my learned
23 friends across the way here at the present time object
24 to him participating in that exercise. It will be my
25 submission that there can be no possible legitimate

1 objection for that because if it were a matter of
2 putting in a witness statement explaining it, he would
3 obviously be able to do so in advance of going into
4 the witness-box.

5 We would suggest that the most appropriate way would
6 be for that document to be prepared with his input. He
7 can be cross-examined on it once it is put in, if need
8 be.

9 That is our proposal. I cannot give you a timing.
10 If that proposal is accepted, I will take instructions
11 as to how quickly that can be done. Obviously it would
12 assist if it could be done overnight, and we will make
13 such efforts as we can to do it, but that really is
14 the position.

15 Indeed, in the light of what my learned friend
16 Mr West-Knights said, he I think was expressing
17 the desire that we should prepare such a document so
18 that it may cut short the cross-examination or, if not
19 that, at least enable him to focus it on points which he
20 takes issue with. That is really our position.

21 THE PRESIDENT: Let us see whether there is an objection to
22 Mr Ronnie participating in this exercise, or whether it
23 is thought to be a useful exercise at all.

24 LORD GRABINER: Our suggestion is that we think there would
25 be danger in what one might call a composite document

1 coming from the other side. We think that in an ideal
2 world, in order to try to get some purity in this
3 material, if we have not gone well past that exercise,
4 Sports World should produce its version of the story and
5 Umbro should produce its version of the story. Neither
6 side can tell the other side's story; they can only tell
7 their story.

8 In those circumstances, we would be quite content
9 for Mr Ronnie's instructions to be taken by Umbro's
10 solicitors, not, we would respectfully suggest, by the
11 OFT. Then in due course he can be cross-examined on
12 that part of the totality that is presented by him.

13 Similarly, it may be necessary to go back to
14 Mr Ashley in respect of the statement that they produced
15 from the Sports Soccer side of the story.

16 What we would object to is this exercise being
17 undertaken by the OFT; and still more we would object to
18 the exercise being undertaken on a composite basis.
19 Because they are, on the face of it, two different
20 stories which may or may not marry up or tie up.

21 THE PRESIDENT: As far as the Sports World side of things is
22 concerned, what is the suggestion? That it should be
23 Sports World's solicitors who do it, or Sports World's
24 solicitors plus the OFT who do it or what?

25 LORD GRABINER: On the face of it, Sports World's solicitor

1 ought to be able to get a very long way to this part of
2 the story. If there are areas that cannot be filled in
3 then it may be necessary to discuss the matter elsewhere
4 within Sports World, possibly even with Mr Ashley.

5 Why should the OFT, I ask rhetorically, be able to
6 contribute to this debate. It is only because of
7 the pressure from us that we even know anything about
8 this story, and it came to us last week.

9 The reason for the two days lost in this case is
10 because of the OFT's utter failure to produce this
11 material at an earlier stage than last week. What
12 we are concerned to do is to get to the truth.

13 The OFT has no more knowledge about this other than
14 hearsay, which is what you would expect. It seems that
15 many of these matters were never investigated at
16 the time they should have been.

17 So we are respectfully suggesting that, because both
18 of these parties have legal advisers independently of
19 the OFT, it would be entirely appropriate that their
20 respective stories should come through those two routes.

21 THE PRESIDENT: I am struggling for the moment with
22 a practical problem. The practical problem is that
23 we have had a lot of references to various documents.
24 It is not going to be helpful for Mr Ronnie or Mr Ashley
25 or Sports World to produce further explanation unless

1 they actually have the documents so they can tell us
2 what was going on at the relevant time.

3 LORD GRABINER: I agree, but we are talking about a very
4 small number of documents, which we are all very
5 familiar with; less than a dozen pieces of paper.

6 THE PRESIDENT: It is not necessarily the case that the
7 various solicitors, particularly Umbro's solicitors,
8 have these documents, or have seen them, or know very
9 much about it.

10 LORD GRABINER: I think most of them are actually Umbro
11 documents, are they not? The draft documentation, for
12 example -- they are both Umbro-sourced documents.

13 THE PRESIDENT: As far as the Umbro documents are concerned,
14 I am not sure whether one could make much progress --
15 I am simply thinking aloud for the moment because we are
16 as concerned as you are that we get to the truth of it
17 and that the appellants do not draw false inferences
18 from the documents and that the correct picture emerges
19 from the witness-box. We are all on the same wavelength
20 in that respect.

21 LORD GRABINER: Absolutely. There is no objection to
22 the documents we are concerned about being pulled
23 together by the OFT; that is not a problem. They can
24 produce a little file and the file can be provided to
25 both parties, then they can go away and do their

1 respective tasks.

2 THE PRESIDENT: If it were to be done by Umbro, or their
3 solicitors, I would have thought they would need
4 Mr Ronnie to tell them what was going on.

5 LORD GRABINER: And I said that we would not have any
6 objection to that.

7 THE PRESIDENT: From that point of view, what we are
8 effectively looking at is possibly a further witness
9 statement from Mr Ronnie that takes us through
10 the documents that we have so far seen, tries to put it
11 from Umbro's perspective as to what was going on -- this
12 is a factual description -- so that we have at least
13 some basis to operate on when we get to Mr Ronnie.

14 LORD GRABINER: Absolutely.

15 MR WEST-KNIGHTS: Could I just interject there. In addition
16 to those documents we have already seen, and these will
17 be documents familiar to Mr Ronnie, the monthly
18 management reports to be found in what we call the Umbro
19 pink bundle do now contain a large number of references,
20 particularly by the credit control department and also
21 the sales department, as to the state of account between
22 the parties and their respective turnovers.

23 So there is factual information there that will help
24 to remind him.

25 THE PRESIDENT: We have not even started to think about

1 that.

2 MR WEST-KNIGHTS: No, but Mr Ronnie does not need,
3 necessarily, to be confined to those documents which we
4 have happened, tentatively, to look at. There is other
5 material, not a great deal of it, but it is his own
6 material. He is the chief operating officer during the
7 particular period and he signs the monthly management
8 reports which contain this information, so it will not
9 be entirely new to him.

10 But there is further ammunition in there that helps
11 some of the picture, it will help him. It does not help
12 us much because we are finding it rather difficult to
13 put it together.

14 THE PRESIDENT: We need a certain amount of time for this to
15 happen; I do not want to rush it, I do not want people
16 trying to stay up until 2 o'clock in the morning trying
17 to remember what it is all about. I can see
18 Miss Roseveare's face falling at this prospect.

19 As far as Sports Soccer is concerned, I think you
20 said a moment ago, Mr Morris, that you thought that
21 Sports Soccer's solicitors and others from
22 Sports Soccer, other than Mr Ashley, could make a stab
23 at it. Mr Forsey is nodding; thank you Mr Forsey.

24 MR MORRIS: I am not suggesting that would be in a witness
25 statement.

1 THE PRESIDENT: But it would be in a document that --

2 MR MORRIS: I am also concerned about time. I am aware that

3 Mr Ronnie is not available this evening at all.

4 The idea, as Mr West-Knights said, of a wide-ranging

5 discovery exercise on the whole issue at this stage --

6 MR WEST-KNIGHTS: Sorry, that is a misrepresentation --

7 MR MORRIS: Please let me finish.

8 THE PRESIDENT: For the moment, the tribunal wants to stick

9 to the documents we have. We may have to have another

10 go at it when there are more documents. Let us deal

11 with what we have been discussing so far.

12 MR MORRIS: Stage 1, dealing with Sports Soccer. I am

13 instructed that they would be able to have a stab at

14 that overnight, and we will see where we are in

15 the morning on that.

16 I cannot say, as far as Mr Ronnie is concerned, what

17 the position is and whether or not there will be

18 a separate statement from him. Obviously, again, that

19 is a matter we can investigate.

20 I should, however, put on the record that the OFT

21 resists vigorously the criticisms just made by the

22 learned Lord Grabiner of its conduct in relation to this

23 matter. This matter has nothing to do -- this was

24 disclosed in December or January. These matters were

25 disclosed on a lawyers-only basis by the OFT then. It

1 has been available to their lawyers for a long time.

2 To suggest that this is in some way the OFT's fault
3 in relation to disclosure last week is a suggestion
4 which those behind me would resist very vigorously.

5 THE PRESIDENT: At the moment I do not know the position --
6 I think we appreciate the position of both parties on
7 this vexed issue, and we are looking to find solutions.

8 LORD GRABINER: Absolutely.

9 THE PRESIDENT: I would have thought a possible solution is
10 for the Sports Soccer side of it to proceed as has just
11 been suggested by Mr Morris, as between Sports Soccer's
12 solicitors and Mr Forsey on the one hand; and on
13 the other hand, if it is physically possible and
14 convenient to do it, with Umbro's solicitors and
15 Mr Ronnie on the other hand.

16 The only question is whether it can be done before
17 Mr Ronnie gives evidence.

18 LORD GRABINER: I was going to suggest this in that regard.
19 I could certainly and very easily make a discrete
20 exception to the cross-examination that I have prepared
21 for Mr Ronnie, so that I could reserve that portion of
22 it that deals with that relationship until after we have
23 seen his further statement. So that we could proceed
24 when we finish with Mr Ashley tomorrow to get on to
25 Mr Ronnie and deal with his cross-examination and then

1 defer that bit of the cross-examination, which is a very
2 discrete part of it, and which can be dealt with in
3 the light of the further statement.

4 THE PRESIDENT: One alternative, and I only throw it out as
5 a possibility, would be to reverse the order of
6 Mr Ronnie and Mr Fellone in order to give Mr Ronnie
7 a bit more time to complete the witness statement.

8 LORD GRABINER: I do not think it will help much because
9 I do not have a lot for Mr Fellone. I am anticipating
10 that for me, at any rate, he will be a short witness.

11 THE PRESIDENT: Or alternatively to defer starting Mr Ronnie
12 at all until a witness statement is available and
13 we have had time to look at it.

14 MR MORRIS: May I add one observation? There was one aspect
15 of my learned friend Lord Grabiner's remarks which were
16 helpful.

17 LORD GRABINER: Only one?

18 MR MORRIS: Only one. He did suggest that it may be helpful
19 if Mr Ashley was available to participate in
20 the preparation, with Mr Forsey, of the Sports Soccer
21 paper. Of course, we have the issue of him still being
22 in the witness-box. My learned friend Lord Grabiner did
23 suggest it. Those behind me are saying that it would be
24 helpful if he were available to work with Mr Forsey and
25 Mr Gunny to produce that paper and we would ask that

1 that could be done.

2 THE PRESIDENT: Right. Is that objected to?

3 LORD GRABINER: Yes, I think it is. Perhaps I should not
4 have said what I did. What I am concerned about, and,
5 with respect, I submit the tribunal should be concerned
6 about as well, is to try to secure the purity of
7 the evidence as much as possible. That is what we are
8 really concerned about. At the end of the day, we have
9 to test the validity of this material and you have to
10 come to a judgment about the quality of the evidence.
11 It is as simple as that.

12 The more you involve people who are actually giving
13 evidence, who know what the areas of the questioning are
14 and so on, the less credibility or quality can be
15 attributed to the material. It is in both sides'
16 interests that that is the case. It is not just from my
17 point of view, but it should be from their point of view
18 as well.

19 Otherwise I am simply going to say that it is not
20 material that you can reasonably rely upon. It is quite
21 simple.

22 On the other point, sir, that there might be some
23 value in deferring Ronnie, I must say that, for our
24 part, we would like to get on with it as quickly as
25 possible.

1 THE PRESIDENT: Absolutely, I think we would all like to get
2 on with it.

3 LORD GRABINER: If we could make a start with Mr Ronnie
4 tomorrow, that would be the most desirable way forward
5 and then we will just have to play it by ear. But
6 I will not trespass into that territory that is to be
7 the subject matter of his further statement until we
8 have received it and we have had a chance to look at it.

9 It will, hopefully shorten matters, because if it
10 answers questions that do not need to be investigated,
11 it will save court time.

12 MR WEST-KNIGHTS: I wonder if I might speak. I, too, will
13 try with Mr Ronnie to steer clear of those discrete
14 matters, but I say try to. If I were to say otherwise,
15 I would not be being faithful to what I meant when I
16 said last week that some of these matters are
17 inextricably linked.

18 For instance, when we look at the chronology of
19 these events, and I say this conscious that there are
20 witnesses present -- as you are already aware, there is
21 an significant overlap in respect of discussion of
22 matters A and matters B; indeed there is an identity of
23 occasion.

24 So, with the best will in the world, we will see how
25 far we go. There is plenty to do on Mr Ronnie that does

1 not touch this. Leaving aside those bits that do touch
2 this, it is mainly leaving aside the bits that really
3 matter.

4 I am prepared again, in the same spirit as my
5 learned friend Lord Grabiner, to do what we can to help.

6 THE PRESIDENT: I think the best we can do, Mr Morris, at
7 the moment is this.

8 As far as the Sports World/Sports Soccer side of
9 things is concerned, I think it is probably safer, at
10 this stage, if we do not involve Mr Ashley, and
11 Mr Forsey and his solicitors do their best to help us.

12 On that basis, what would be necessary, I think, is
13 for them to have either in a separate file, or made
14 available in some way, the principal documents that
15 we have been considering that help us to show how
16 the relationship developed, so they can explain how it
17 developed.

18 That is the Sports Soccer side of things. If
19 progress can be made overnight, or during the course of
20 the morning, so much the better.

21 As far as Mr Ronnie is concerned, and Umbro, I think
22 possibly with encouragement, but not involvement, by
23 the OFT, it would be helpful if Mr Ronnie could be
24 invited similarly to look at the various documents that
25 we have been discussing and if he can, within the time

1 available and without feeling under undue pressure,
2 prepare a short further statement elucidating
3 the underlying facts in a factual way. That would also
4 be helpful from our point of view.

5 With any luck, that will be available, if not before
6 we get to the disputed part of Mr Ronnie's evidence in
7 so far as it concerns these matters.

8 Do you see any overriding objection to that? Do you
9 want to take instructions or consult Umbro's
10 representatives at the back of the room?

11 MR MORRIS: In general, that seems a sensible way forward.

12 It may be necessary to have a discussion with Umbro's
13 legal representatives about the actual mechanics. I say
14 no more than that.

15 I understand what you are aiming to achieve.
16 We will report back tomorrow morning as far as Mr Ronnie
17 is concerned as to when and whether that can be
18 achieved.

19 LORD GRABINER: For the avoidance of doubt, and I apologise
20 for delaying the tribunal because I am very conscious of
21 the time, can we have an assurance that there will not
22 be any transfer of drafts between both solicitors in
23 coming to the final version of these two stories. We
24 want no mixture, or combination, or discussion, or
25 transfer of drafts between them. We want something that

1 comes one from each side, in its own form, without
2 communication between them. If I may say so, I do not
3 think that is an unreasonable request to make in view of
4 the present impasse that we have arrived at.

5 MR MORRIS: As far as we are concerned, we have no comment
6 on that.

7 THE PRESIDENT: As far as that is concerned, I think it is
8 information which has been asked for by the tribunal to
9 come from the respective parties to the tribunal
10 passing, en route, through the appellants and
11 the respondent. We would expect those two documents to
12 be prepared independently. I think that is
13 the underlying understanding upon which we,
14 the tribunal, are operating.

15 Whether they come to us as final documents, or
16 advanced drafts, or whatever; what the exact status is
17 of the document we finally receive is a bridge that we
18 cross later on. Let us hope it is as finalised as it
19 can be in the time available.

20 Having expressed a general aim, can we hopefully
21 leave it, as far as possible, to the parties to see how
22 far they can execute the aim we have ventured to suggest
23 we might shoot for. Thank you very much.

24 MR COLGATE: Do you mind if I add one very small point to
25 that?

1 One of the aspects that we have all been talking
2 about and considering are the cash and accounting
3 implications of those arrangements. I am assuming that
4 Mr Ronnie will be able to address those in
5 the preparation of the accounts for the years in
6 question, or whether he might need to refer to
7 accountants as well.

8 I make that point, because there is no point in
9 having a document that does not also cover
10 the accounting implications.

11 MR MORRIS: I, for my part, do not know the answer to that
12 question. One of the difficulties is that Mr Ronnie is
13 no longer employed by Umbro. Whether he is in
14 a position to answer that particular enquiry, I cannot
15 say now. We will obviously take on board your request
16 and if the answer is he cannot do it, we will ask Umbro
17 and see where we get. But we bear in mind your request,
18 sir.

19 MR WEST-KNIGHTS: It is me again.

20 THE PRESIDENT: Always a pleasure, Mr West-Knights.

21 MR WEST-KNIGHTS: It is always mutual. There are two clips
22 of documents. I am trying to help now with
23 the running-together of material.

24 JJB produced a supplementary skeleton which dealt
25 with an aspect of this matter; we produced

1 a supplementary skeleton which dealt slightly more with
2 the accounting aspect of this matter and appended
3 a dozen of the new pink documents to it. In addition
4 we have had the four or five draft agreements that came
5 in on Friday.

6 That, it seems to me, is the basis of the material
7 that they can speak to because we have made some guesses
8 on the accounting front, at least in one respect, that
9 they can specifically address.

10 Certainly, what I have in mind for the questioning
11 is the propriety, or at least the usualness, of booking
12 what appears to be neither real nor booked future trade
13 into a particular account period and where that leaves
14 that account period and the next one.

15 My reference earlier to the pink management reports
16 was not a reference to any document which is new, but it
17 is new in the sense that the tribunal has not yet seen
18 it.

19 As a fact, if anybody is having difficulty on
20 the Umbro side in particular remembering what actually
21 happened in terms of trade or the passage of money,
22 the Umbro confidential bundle has distributed throughout
23 it a relatively small number of pages for each relevant
24 month dealing with (a) the state of trade between
25 Sports Soccer and Umbro, and (b) the state of account.

1 So it is not suggesting for any second, as I am sure
2 Mr Morris understood, that there was any suggestion that
3 there be new disclosure at this stage. I was simply
4 endeavouring to alert him, for the benefit of the
5 tribunal, that there exists that separate pocket of
6 intelligence within a small compass which may assist, in
7 addition to the other three clips I have mentioned.

8 MR MORRIS: Sir, I have a slight concern about that in terms
9 of timing --

10 THE PRESIDENT: Let me cut you short if I may, Mr Morris.

11 I think our principal concern is to understand
12 the documents we have been discussing which, as
13 Mr Colgate points out, include the Umbro accounts for
14 the year 2000, one of the documents in the recent
15 confidential skeleton.

16 What Mr West-Knights is simply saying is that if
17 somebody who is dealing with this aspect wishes to
18 refresh their memory about the course of events in 2000,
19 there is material in those Umbro documents that may be
20 useful.

21 Now I do not think we can take it any further than
22 that at the moment.

23 Our principal concern is to understand, I think,
24 the contractual and trading arrangements between Umbro
25 and Sports Soccer; that is a first concern. We need at

1 some point to address the financial side of things as
2 well. We just have to see what can be done in the time
3 available.

4 MR MORRIS: I fully appreciate that, sir. Can I make one
5 observation on that.

6 The documents in relation to this issue are dotted
7 all over the place. There are some central documents
8 which we are all aware of, which are meeting notes of
9 14th September 2000, a draft agreement of February 2001,
10 the time agreement in 2002, something on 7th April 2000.

11 There is tab 4 and tab 5 of JJB's skeleton; there is
12 an invoice which my learned friend Lord Grabiner
13 produced.

14 MR WEST-KNIGHTS: There is my skeleton stuff.

15 MR MORRIS: There is then a raft of material in the back of
16 Mr West-Knights's skeleton. There may be other material
17 that they are referring to. I am not suggesting that
18 this is a disclosure exercise; what I am raising is
19 the ease of the task ahead for the people behind me,
20 particularly in circumstances where I am not going to
21 be -- or the OFT are not going to be principally
22 involved, in marshalling that material and going through
23 it and producing something sensible for the tribunal.

24 I would resist the suggestion at this stage that
25 there need to be anything more than effectively

1 an explanation of those principal documents with which
2 we have been concerned.

3 Of course, if there are other materials which my
4 learned friend Mr West-Knights is referring to, we would
5 ask that all the materials that they consider --
6 the materials they are referring to be collated together
7 and put in one place.

8 MR WEST-KNIGHTS: They are in the skeleton.

9 MR MORRIS: It is just the documents attached to your
10 skeleton and the documents attached to the JJB skeleton;
11 is that right?

12 LORD GRABINER: And the Friday material and the new
13 contract.

14 MR WEST-KNIGHTS: He is asking us to give particulars of
15 a void. I thought the position was clear. What
16 the tribunal needs and what we need is a candid and
17 clear explanation of what the deals were and what
18 happened as a result of them.

19 THE PRESIDENT: I think you have to do your best.

20 The core documents are the ones you have identified.

21 MR MORRIS: I am grateful, sir.

22 THE PRESIDENT: It may be there are other things we have to
23 pursue, and it may be at some later stage we simply have
24 to take a break of some sort to enable the ground work
25 to be laid in order to understand later documents.

1 Let us see how far we can get with those
2 core documents that have just been identified.

3 I think that is the best we can do for the time
4 being. Do we dare suggest 10.15 tomorrow morning?

5 LORD GRABINER: Starting at 10.15 is not going to help us,
6 sir.

7 THE PRESIDENT: Very well, let us say 10.30.

8 (5.15 pm)

9 (The hearing adjourned until 10.30 am the following day)

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