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1 Tuesday, 23rd March 2004

2 (10.00 am)

3 THE PRESIDENT: Good morning, Mr West-Knights.

4 MR WEST-KNIGHTS: May it please you, sir. I understand it
5 to be common ground that the initial business is to have
6 a quick look at Umbro's note before Mr Guest.

7 THE PRESIDENT: I think we would prefer to get on with
8 the evidence, actually.

9 MR WEST-KNIGHTS: At some stage a decision is going to have
10 to be made about what to do about Umbro's response,
11 which is both inadequate and self-contradictory and
12 gives rise to ... well, you will have recognised that
13 although the fax came in at 8.45 on Friday, we did not
14 see it until last night. Umbro now say that Mr Ashley
15 paid them 10 million, or thereabouts, for some so-called
16 old stock in 1999, at the time of which we did not have
17 any prior indication of there being a specially close
18 relationship between the two, which they say is a reason
19 for the difference in real turnover of 36 million in
20 1999 and 15 million in the year 2000.

21 So while I acknowledge the necessity for getting on
22 with the evidence, this piece of paper has completely
23 frustrated the purpose of the tribunal's question.

24 I daresay you have had some time to go through their
25 answers. I have, and have compared them with the bare

1 facts which are recited in your questions, in particular
2 in respect of question 10, which is complete eye wash.
3 There is one completely inaccurate answer at 5: yes
4 should be no. Then we are referred to this facsimile,
5 and indeed this whole thing is premised on the fact that
6 the so-called answers 1-11 -- response to Allsports'
7 queries -- has plainly been treated as another niggles
8 from the wasp of Allsports rather than questions
9 generated by the tribunal.

10 But the fact is that so far our enquiries have
11 revealed no evidence whatsoever of anybody being aware
12 of Umbro having a major pocket, never mind £10 million
13 worth, of stock touted on the market in 1999.

14 The evidence so far has been that the relationship
15 between Ronnie and Ashley was business only in 1999 and
16 did not become social until 2000 and their relationship
17 started in 1999.

18 Here we have what has all the hallmarks of
19 an advance injection of cash into Umbro, kindly, by
20 Sports Soccer in 1999 followed by a massive injection of
21 cash, at least an accountable set of figures, whether it
22 was legitimately accounted or not, for the year 2000 and
23 so on and so forth.

24 All of which puts Mr Ashley so far in the driving
25 seat that it is impossible to imagine the relationship

1 which has previously been painted.

2 It is entirely a matter for you, sir, when we go
3 through these questions and answers, of course, but if
4 you have had the opportunity to look at them with any
5 care, they are contemptuous with a small C if not a big
6 one. At any rate, in respect of the 10 million in 1999,
7 so far off the scale of anybody's perception of the
8 relationship between these two parties in 1999 that I am
9 surprised that they simply -- it is all frightfully
10 simple.

11 At any rate, the answers which you have been given
12 to your question 10 are wholly upside down and
13 completely unhelpful and the rest of it; you just get
14 the mantra. Apart from that information, which is
15 either wrong or staggering, you have been told nothing
16 new.

17 It is entirely a matter for you, plainly, how we
18 deal with this.

19 THE PRESIDENT: Mr Morris, do you have any observations?

20 MR WEST-KNIGHTS: I think Mr Morris is slightly hampered:

21 he has only just received the questions and the answers
22 for some reason.

23 MR MORRIS: I will obviously look at it over

24 the adjournment. I suspect that our position is that it
25 has gone far enough and the tribunal has to take a view

1 as to the purpose of going further and where this takes
2 the case. I think everybody knows the argument being
3 made by Allsports. Whether further enquiry will take
4 the matter further is a matter for the tribunal.
5 Obviously, sir, if you are concerned we will address it.

6 THE PRESIDENT: I think the view we take at the moment is
7 that there are, on the face of Umbro's answers, at least
8 two that are wrong, as Mr West-Knights points out;
9 number 5 and number 10. One is beginning, perhaps, to
10 divine a little more closely what exactly the management
11 accounts were driving at, but it is still somewhat
12 mysterious.

13 The point which we have no view on at the moment is
14 how far it is useful to pursue this further. I think,
15 at the moment, we do not particularly want to debate
16 that point now, this minute, but to have a think about
17 it and see where we get to.

18 MR MORRIS: Yes.

19 MR WEST-KNIGHTS: I am entirely happy with that, sir. If I
20 may say so, it took me a little time to sit down, absorb
21 and cross refer -- unpick 10 for a start, because one
22 assumes that when one sees an answer like this it must
23 be right, have a quick look --

24 THE PRESIDENT: Whoever answered number 10 simply had hold
25 of the wrong end of the stick.

1 MR WEST-KNIGHTS: Indeed, then you realise that they are
2 upside down in terms of logic.

3 I might also draw attention to 8, the last sentence
4 thereof. The word that I have in my mind starts with
5 BO, but happily it is bosh.

6 It is plainly possible. But, as I would suggest,
7 the answer is plainly on his face. It is all bogus, it
8 is all advance booking, because the whole year only has
9 bookings according to the later management accounts, in
10 respect of branded apparel, of 46 million.

11 What we have is a sequential shuffling forward into
12 Umbro's books massive sums of money, either paid or owed
13 by Ashley, now starting in 1999.

14 If it is to happen in 1999 -- as I say we have no
15 evidence yet of the existence even of this pocket of
16 stock. It certainly was not offered to anybody at
17 Allsports and there was not even, on my client's
18 instructions, any market chatter about it, at a time
19 when on the evidence so far there was as yet no special
20 relationship with Sports Soccer and Umbro.

21 Indeed, if you believe the evidence, no binding
22 arrangement was made until 2002. What now appears is
23 that Ashley has propped up Umbro in terms of cash right
24 from the word go and Umbro is mortgaging its future in
25 this way. That puts Ashley not just in the driving

1 seat, but driving all the horses.

2 THE PRESIDENT: I think the best thing, Mr West-Knights, is
3 probably to leave it there --

4 MR WEST-KNIGHTS: I will be content if that is the picture
5 that we all have.

6 THE PRESIDENT: I am not sure it is the picture that we
7 necessarily have, but we just need to reflect on what we
8 need to do further.

9 MR WEST-KNIGHTS: I understand, particularly as my learned
10 friend Mr Morris for some reason was left off the
11 distribution list on the faxes last night and they did
12 not receive this material. In fact, the first sight
13 they had of it was when we leant them ours this morning;
14 both the questions and the answers.

15 I am sorry the fax got lost in the wash on Friday.
16 That figure of 8 to 10 million, which has been with this
17 billing since before the opening of play on Friday, is
18 one that we could have chased down a little more but we
19 have not.

20 MR MORRIS: Sir, on that last point about when the Office
21 did and did not get it, can I correct the position. As
22 I understand it, the tribunal did fax it to the Office
23 but to a different number in the Office and it did not
24 come to the attention of the relevant people. I just
25 want to make sure nothing is said about the what the

1 tribunal has done.

2 MR WEST-KNIGHTS: There has been many a slip made recently.

3 I accidentally emailed everyone in the world our closing
4 submissions this morning, but everybody has been very
5 sweet about it and said it was an obvious breach of
6 privilege on my part and they have undertaken to destroy
7 them for the time being.

8 Without more ado, sir, there is Mr Guest.

9 There is an objection to some opening evidence I was
10 going to ask him to give. (indicating). To me, I am
11 afraid this falls into the same social category as
12 people who wear shell suits. This, I understand it, is
13 the jersey of Real Madrid. It is one currently on sale
14 in the shops and by my clients. What I was going to ask
15 Mr Guest to do was simply to explain the process whereby
16 my clients affix prices. In other words, what
17 the mechanism is in their distribution system, in
18 principle, for how they price up their products
19 physically. I thought that might be helpful background.
20 It is objected to by the Office. If the objection is
21 sustained, I am not going to go overboard about it, but
22 it is a short point which amounts simply to explaining
23 how it is that the price labels come to be there, where
24 they are fixed and by whom.

25 THE PRESIDENT: Are we sure that this description actually

1 relates to 2000?

2 MR WEST-KNIGHTS: It does relate to 2000, that I have
3 checked expressly.

4 THE PRESIDENT: I have an impression that something of the
5 kind is in evidence somewhere. It maybe just
6 a description in an earlier document.

7 MR WEST-KNIGHTS: There is some generic description tucked
8 away and not in the materials which have come to
9 the forefront. Mr Hughes was saying something about it
10 in respect of the period between 8th June and
11 1st August --

12 THE PRESIDENT: You want him to deal with pricing.

13 MR WEST-KNIGHTS: That is the thing. It is not desperately
14 controversial, I would hope, but it is new and I need
15 your leave for it.

16 MR MORRIS: Sir, this is a point that could have been raised
17 earlier. We have not seen any evidence and do not know
18 what will be said. We would suggest it is not something
19 that has come out any of the cross-examination or the
20 development of the case that has arisen in the course of
21 evidence. We really see no purpose in that evidence
22 being adduced, sir.

23 Obviously, if the tribunal is interested then
24 the tribunal will hear it. Obviously if matters arise
25 that have arisen in the course of the evidence and that

1 is something which has been addressed in
2 examination-in-chief, then we can obviously not object.
3 In this case we think this is something which could and
4 should have been done a lot earlier.

5 MR WEST-KNIGHTS: I take that all on the chin. It is
6 marginal in the sense that it is partially new. In my
7 respectful submission it would be marginally artificial
8 to cut it out. It is a piece of information which is
9 not very controversial. It just gives you a little more
10 of the picture as to what happens.

11 MR MORRIS: Sir, if we were told now specifically exactly
12 what they wanted it for, for what proposition, that
13 might help us know whether we would be unfairly
14 prejudiced by --

15 MR WEST-KNIGHTS: I am happy to do that. I will give the
16 evidence --

17 THE PRESIDENT: Then maybe it can be admitted or something.

18 MR WEST-KNIGHTS: This is just a paradigm, but I am told it
19 is a paradigm which is applicable as in 2000. There are
20 a number of ways in which the shirts get the labels
21 which contain the prices. The perfect way is at
22 the factory. That did not occur in respect of this
23 shirt or we think the material shirts in the year 2000.

24 What happens is they come in and they go to
25 the warehouse. At the warehouse the labels are

1 attached, including the label which is on the front here
2 which has a sticky barcode and the retail price being
3 sought for the item.

4 In order to dual price -- well, one of
5 the difficulties about dual pricing is that
6 the warehouse has, say, 10,000 of these things.
7 The mechanism is that they are treated identically, so
8 you have 10,000 of them with these labels on and they
9 just go out on the lorries when they come in for
10 distribution amongst the system.

11 If you are going to do dual pricing, you somehow
12 have to separate out in the warehouse two parcels of the
13 same product and have them priced differently in
14 the warehouse, which apparently is so much of a pain
15 that it is not worth doing.

16 There is a local way of doing it, which is that if
17 the prices are all marked up, as this one is --
18 the current retail price of this lovely item is £40 --
19 then what can be done in the shop, although this is
20 deeply painful, is that somebody goes around with
21 an obliterator -- if you are reducing an item, you could
22 use a pen, because nobody minds the price going down,
23 but if you do it with a biro and put the price up to
24 £50, the punter is not very happy. So it could be
25 physically obliterated in the shop and effectively

1 over-labelled with the new price. But you would have to
2 do that manually shirt by shirt, which again is
3 something that Allsports just did not do.

4 THE PRESIDENT: If you are putting it up, you mean?

5 MR WEST-KNIGHTS: If you are putting it up. If you are
6 putting it down, in principle, you still have to do
7 something but you do not have to do quite the same --

8 THE PRESIDENT: If you are putting it down, you can just
9 cross it off.

10 MR WEST-KNIGHTS: Absolutely right. Then you re-programme
11 the barcode in the machinery so that this barcode, which
12 reflects simply this item, comes up with a different
13 price.

14 That is simply the purpose of doing that exercise;
15 to show what the mechanics are in respect of
16 the paradigm shirt. I hope it is not controversial.

17 But we actually have not seen, as a fact, any of
18 the allegedly offending price labels. Of course in our
19 case they would always say what this one says, which is
20 £40. Today as then.

21 THE PRESIDENT: Well, that is what he wants to tell us
22 Mr Morris. He has told us now.

23 MR MORRIS: Can we leave it there, sir.

24 THE PRESIDENT: Yes. This is your statement of what you say
25 the facts are.

1 MR WEST-KNIGHTS: Absolutely right. It is a pity Mr Guest
2 was not in here because he could just nod and say yes.

3 THE PRESIDENT: Can you just say: Mr Guest, have I correctly
4 described it. Let us get on.

5 (10.20 am)

6 MR MICHAEL GUEST (sworn)

7 THE PRESIDENT: Good morning, Mr Guest. Do take a seat if
8 you would like to. Thank you for coming back this
9 morning.

10 A. Thank you.

11 Examination-in-chief by MR WEST-KNIGHTS

12 Q. Mr Guest, could you please be shown witness bundle 1.
13 Could you turn please to tab G and if you could move
14 your way through to page 280.

15 You may have heard me say this to Mr Hughes,
16 Mr Guest: can you park yourself so that you are facing
17 the tribunal, that will encourage you, as it were, to
18 bond with them rather than who is questioning you.

19 At page 280 to pages 284H is an eight-page
20 document -- no, it is not. Can I take you to 284,
21 280-284.

22 A. Five pages.

23 Q. Does your signature appear on page 284?

24 A. Not on this one, unfortunately.

25 THE PRESIDENT: Not on mine either.

1 MR WEST-KNIGHTS: Nor mine.

2 MR MORRIS: Sir, I have a photocopy following 284 of
3 the actual signed version.

4 MR WEST-KNIGHTS: I do not.

5 MR MORRIS: It has a 243 on the bottom of it. I am sure
6 Mr Guest will be able to identify where it came from.

7 THE PRESIDENT: We had better have signed versions in our
8 files.

9 MR WEST-KNIGHTS: I am sorry, sir, I assumed it was a fault
10 only in my bundle. I can tell you that physically
11 the page which Mr Morris has just passed me is identical
12 in every respect to the page 284 which you have, save
13 that it appears to bear what I am now going to ask
14 a non-leading question about. (Handed).

15 Whose signature is that, Mr Guest?

16 A. It is a very distinctive signature and it belongs to me.
17 It is dated 30th September 2003.

18 Q. Just looking back over pages 280 to 284, do you
19 recognise this document?

20 A. Yes, I recognise it as a document that I read on
21 the train this morning coming down and the one which
22 I originally signed.

23 Q. Thank you. Is it, on the issues which it addresses,
24 the truth, the whole truth and nothing but the truth?

25 A. Exactly.

1 Q. Can I ask you to turn to page 284H, which is, I hope,
2 an eight-page document. Whose signature is that at
3 284H?

4 A. That is the same, that is mine.

5 Q. Are you familiar with this document?

6 A. Yes, 20th February 2004.

7 Q. Have you read it recently?

8 A. This morning.

9 Q. Thank you. Is that statement, on the issues which it
10 addresses, the truth, the whole truth and nothing but
11 the truth?

12 A. Indeed.

13 Q. Thank you. I think you have also read the witness
14 statements of Michelle Charnock; is that correct?

15 A. That is correct.

16 Q. When did you last read those?

17 A. Today.

18 Q. What is your view on their truth or otherwise?

19 A. They are true.

20 Q. Plainly some of the material within those statements is
21 not within your personal knowledge. Are you able to
22 assist the tribunal with those matters?

23 A. I am more than happy to try to help.

24 Q. Is there anything you have read there that rings true or
25 untrue?

1 A. Yes, I should say based on the information that I have,
2 all of it is true.

3 Q. Just for the record, would you give the tribunal your
4 full name and address?

5 A. My full name is Michael Guest. My address is
6 24 Whalley Road, Wilpshire, which is just outside
7 Blackburn in Lancashire.

8 Q. You had two periods of employment at Allsports. What
9 was the duration of the first one?

10 A. I joined Allsports in 1988 and I left at the back end of
11 1996. I then rejoined Allsports in 1998 and left last
12 year, July 2003.

13 Q. What were you doing between 1996 and 1998?

14 A. I worked for a rival company. I was head of buying for
15 JD Sports in Manchester.

16 Q. And you stayed in that employment throughout the
17 interregnum?

18 A. No, I set up a separate business. I opened an outlet
19 retail business. I was responsible for a brand new
20 business which opened stores quite quickly in outlet
21 villages around the UK, which was a very interesting way
22 to make money. But actually I did not enjoy the kind of
23 work we were doing. Ultimately David Hughes called me
24 in the car and kind of pleaded with me to come back to
25 Allsports. I will not go into the details but he was

1 very anxious that I should rejoin Allsports. At that
2 point in time, it put me in quite a powerful position.

3 Q. In what respect?

4 A. Well, in as much as I could negotiate my own terms.
5 I went back, I did not need the job, I did not need
6 the money, so it put me in quite a strong position when
7 I came to meet with David and determine exactly how we
8 should take this thing forward.

9 Q. What were your terms so far as material?

10 A. Essentially I did not want too much involvement. I was
11 quite happy to make --

12 Q. By you or by him?

13 A. By him. I had known David for a long time. I first met
14 him -- I can remember almost like it was yesterday
15 the day we first met: at Old Trafford cricket ground in
16 1983. The reason I was so clear about this was because
17 he made such an impact on me. At that time, the sports
18 trade was a different environment to the way it is now
19 and obviously there were no major players. You know,
20 David Whelan and David Makin; these guys were around but
21 the biggest retailer probably only had a handful of
22 stores.

23 I think at the time David Hughes maybe had five or
24 six stores. So even though he was big at the time,
25 he was absolutely tiny compared to the way things have

1 developed now. But he had some very interesting
2 opinions. He had a different outlook on the industry,
3 he was very ambitious, very determined. He made quite
4 an impact on me.

5 Funnily enough, it was one of those things
6 chemistry-wise that I was attracted towards him. I
7 thought he had a lot of great ideas, I thought he was
8 very aggressive. I thought he was going to make a lot
9 of money. I was not wrong.

10 Q. Going back to the terms you wanted to discuss, as it
11 were wanting to go back on your own terms, you said that
12 you did not want him to be involved very much?

13 A. Yes, I think if you look at David's record, he had
14 recruited quite a lot of people and ultimately what he
15 did was kind of dictate strategy and policy and that was
16 not the way I wanted to be employed. I certainly wanted
17 to make a difference. I wanted to make some decisions.
18 And if he just wanted a sycophant, I was not the right
19 person for that job.

20 Q. Did you have a conversation with him along those lines?

21 A. Exactly.

22 Q. What was the upshot?

23 A. The upshot was that when I joined I pretty much got all
24 my own way in terms of direction, in terms of selection,
25 in terms of recruitment. So I had quite a powerful

1 position, which was obvious because I was in a strong
2 negotiating situation when I returned.

3 Q. Who had the final word on pricing?

4 A. Me. I think interestingly enough, coincidentally, when
5 I came in on Friday I did see David Hughes, obviously,
6 when I was waiting to give evidence. I watched David
7 and I think he made reference to that point. There was
8 no way he could tell me what to price things for because
9 we already had an agreement that ultimately the
10 responsibility was mine. I had to make the choices and
11 if I was going to be accountable, I had to decide. I
12 was not happy to just let him dip in and out of the
13 business. If he wanted to do the buying, that was fine,
14 but do it all. Do not just get involved in selected
15 items, you know, come and do the buying and I will go
16 and work somewhere else, I was quite happy for that.
17 Otherwise I would decide and I would make the choices.

18 Q. Why bark yourself if you are paying me to do it?

19 A. "There is no point in keeping a dog and barking
20 yourself" was probably the phrase I used in one of
21 our meetings.

22 Q. I am going to ask you one specific question about
23 paragraph 21 of your second witness statement, if I may,
24 page 284F. It is internally page 6 of that statement.

25 There is a sentence halfway through this paragraph

1 beginning:

2 "I did point out that if ..."

3 A. Which paragraph?

4 Q. Paragraph 21.

5 THE PRESIDENT: Just have a read of paragraph 21, Mr Guest.

6 MR WEST-KNIGHTS: I am going to ask you a question about

7 this sentence as neutrally as I can. It has two

8 possible meanings at least.

9 MR MORRIS: Sir, with respect --

10 MR WEST-KNIGHTS: No. This question has been specifically

11 put by my learned friend to other witnesses on the basis

12 that it has meaning A. I do not know what the witness's

13 answer will be, that I promise you, as to whether it has

14 meaning A or meaning B. I am going to ask him which of

15 the two he thinks it is.

16 This sentence reads:

17 "I did point out that if the Umbro brand became

18 devalued as a result of discounting, that could have

19 an impact on Umbro's and our desire to push the Umbro

20 brand up-market."

21 That part of the sentence has two possible meanings.

22 One is that discounting could have an effect on your

23 keenness or inclination to put the product up-market.

24 Or it could mean that discounting could have an effect

25 on the plan to put the thing up-market.

1 Do you understand the distinction?

2 A. Not clearly.

3 THE PRESIDENT: I think it might be better, Mr West-Knights,
4 for this to be gone over in cross-examination.

5 MR WEST-KNIGHTS: He may not be going to ask this question,
6 of course, because my learned friend has assumed answer
7 A, which is the one he wants.

8 THE PRESIDENT: I think he can deal with it in
9 cross-examination.

10 MR WEST-KNIGHTS: The tribunal can help, perhaps, at
11 an appropriate stage.

12 THE PRESIDENT: At some later stage if necessary, yes. Let
13 us leave it there.

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

15 Are you now in a position, Mr Guest, where you have
16 your mind, as it were, back into the events that you are
17 talking about?

18 A. Since last Friday I have been focused on the events of
19 this time and place, yes.

20 Q. Right. Lastly, what is your current employment, please?

21 A. I am currently employed by FILA International who are a
22 global Italian sports brand and my job is to liaise
23 between the international offices in America, Italy and
24 the United Kingdom. I am called the brand director and
25 it means working with those various offices to build

1 the brand in this country.

2 Q. Thank you. I was talking about the price labels and
3 that shirt. Did I get it right?

4 A. Essentially. In terms of the logistics. The way
5 the thing worked at that point in time, and it does not
6 necessarily work that way today, is that all
7 the products are delivered to a central warehouse for
8 distribution and currently they are on one SKU so that
9 shirt has one barcode number.

10 Q. What is a SKU?

11 A. It is an Americanism. A SKU is a Stock Keeping Unit,
12 which is referred to by a barcode. So if you wanted to
13 dual price, the easiest way to do it would be to have
14 more than one barcode, so you would have one for each
15 price point. There is an alternative way which was
16 described which means you can do it locally, whereby
17 you can apply the price ticket at the store.

18 My perspective -- I do not know whether you are
19 interested in my views on dual pricing -- but I did have
20 quite strong views on dual pricing. It was not just the
21 logistics that put me off. I did not like the logistics
22 because obviously it is a nightmare for the warehouse,
23 but I think it is more fundamental than that. I believe
24 you have to have a trust with your better customers, and
25 I certainly did not like the idea that ultimately people

1 in some parts of the country could be charged more than
2 people in other parts of the country through no fault of
3 their own. I think if you have good customers, you
4 should treat them with respect. The idea that you could
5 sell it cheaply in one store, for me, meant you could
6 sell it cheaply in all your stores, if you chose to do
7 that.

8 The other thing about these prices is we could
9 adjust them within 24 hours anyway. Right across
10 the universe we could go from one price to another
11 within a day, so these things were not set in stone.
12 Ultimately we reserved the right to change them
13 instantly.

14 MR WEST-KNIGHTS: Thank you.

15 THE PRESIDENT: Mr Morris.

16 (10.35 am)

17 Cross-examination by MR MORRIS

18 Q. We have a cross-examination bundle for Mr Guest which
19 we will be looking at in due course.

20 Mr Guest, essentially we will be looking at the big
21 bundle which is where your witness statements are and
22 the little bundle is what I call the cross-examination
23 bundle. We may also from time to time go to other
24 bundles and they will be handed up to you as you go
25 along.

1 As you just said you are currently the UK Brand
2 Director of FILA?
3 A. That is correct.
4 Q. FILA are a sportswear manufacturer, or certainly they
5 are a sportswear brand?
6 A. FILA are one of the biggest brands in the world.
7 Q. In your current role, do you have dealings with the UK
8 sports retailers?
9 A. I have a relationship with all the major sports
10 accounts, including all the people we have mentioned;
11 Allsports, JJB, Sports Soccer, everyone.
12 Q. I want to start off by asking you some questions about
13 your own involvement in the OFT investigation into
14 replica kits. I am going to ask you to cast your mind
15 back to the series of dates. I am going to run through
16 those dates with you briefly.
17 Allsports was raided by the OFT at the end of
18 August 2001; you probably remember that?
19 A. Yes.
20 Q. Then in October 2001 Allsports received a notice from
21 the OFT asking it to provide information and documents,
22 and on 2nd November 2001 Allsports responded to that
23 notice by providing those written materials. Do you
24 have a recollection of that?
25 A. Yes.

1 Q. Can you recall whether you were personally asked at that
2 time, this is October/November 2001, to provide any
3 input for the information that was provided to
4 the Office?

5 A. I was not present at the time of the raid, but I think
6 probably at a later time I would have been questioned,
7 yes.

8 Q. But you have no specific recollection of
9 October/November 2001 and providing information then?

10 A. In what respect? Do you have any more details?

11 Q. Well, I am taking you through a number of stages. There
12 was a later stage in May 2002 and what I am asking you
13 is whether, when Allsports were providing information to
14 the Office, you can recall whether you were being asked
15 questions and being asked to provide information?

16 A. I cannot recall the details of the specifics, but
17 without question I would have been involved due to the
18 nature of my employment and the fact I was head of
19 buying.

20 Q. Thank you. Then we move forward to May 2002 when
21 Allsports received the Rule 14 notice from the OFT, I do
22 not know if you remember that?

23 A. Yes.

24 Q. That is a document in which the Office sets out its
25 preliminary conclusions.

1 Allsports responded to that by putting in a document
2 called "Written Representations on the Rule 14 Notice"?

3 A. Right.

4 Q. I do not know if you remember that document?

5 A. It would not really be my area, in all honesty, I have
6 no real expertise. I would have thought that probably
7 it is more likely to have been responded to by
8 David Hughes, who was the chairman, the biggest
9 shareholder, and obviously the secretary at the time.
10 So it would not really come under my jurisdiction.

11 Q. Can we just look at volume C2, tab 11. That is
12 Allsports' written representations. I do not know if
13 you recall having seen that at the time? It is quite
14 a lengthy document.

15 A. No, it is not the area of the investigation that I would
16 really be involved in. I think I would be more inclined
17 to be involved in specifics and relationships.

18 Q. If you go to page 476 of that bundle.

19 A. Okay.

20 Q. On the left-hand side is a number which is answering
21 a paragraph number in the Office of Fair Trading's
22 notice. This is a response to a number of matters. If
23 you go four lines down, it says:

24 "The expression of Allsports' own policy in relation
25 to discounting, in an unrelated letter written some

1 eighteen months previously (April 1999), does not
2 provide any evidence of the purpose of the meeting in
3 October 2000 or of the matters to be discussed between
4 Mr P Fellone of Umbro and Mr M Guest of Allsports."

5 That is a reference to your letter to Mr Gourlay in
6 April 1999 with which you will be familiar?

7 A. Indeed.

8 Q. Then it goes on to say:

9 "As to the expression of concern as to what was
10 happening to Umbro products, [that is in that letter]
11 that is no more than the expression of a commercial view
12 by a company that plainly has a legitimate interest in
13 the brand of the products that it sells and a concern to
14 see that its supplier does what it can (within the law)
15 to maintain the quality of that brand."

16 That is a comment on the letter that you wrote in
17 April 1999?

18 A. That is correct.

19 Q. My question for you is: do you recall whether that
20 comment made in this document was based on information
21 that you would have provided to Addleshaws?

22 A. Without question that is the case, yes. Ultimately,
23 whilst I did not prepare this document -- I was not
24 involved in the production of this document --
25 I certainly provided some information, and that is part

1 of it.

2 Q. Thank you. The next stage in the sequence of events is
3 that Allsports was offered the opportunity to attend
4 an oral hearing at the Office of Fair Trading?

5 A. Mm-hm.

6 Q. And Allsports decided not to attend. Do you recall
7 that?

8 A. Again, that is not a decision that would be made by me.
9 That would be a decision made by others.

10 Q. And you were not involved in that decision?

11 A. No, I was not privy to all these things because my
12 responsibilities on a day-to-day basis were more
13 inclined to running the business profitably. We had
14 people who were probably better placed than me to deal
15 with these matters.

16 Q. Then in November 2002 there was a further Rule 14 notice
17 and in January 2003 there was a further written response
18 from Allsports. That was -- that is a document -- that
19 is C5, tab 60. I think it is a different file.

20 A. It must be.

21 Q. It is a similar document to the previous document. But
22 this is now provided in January 2003?

23 A. Okay.

24 Q. And the question that I have is: is it right that at
25 that stage you would have also provided information

1 which they used in their written representations?

2 A. Indeed.

3 Q. If you go to C5, page 1754, you will see in
4 the middle -- I do not know if you have got the page --
5 at 60 this is in fact dealing with the question of
6 the England Agreement:

7 "Having verified the position with David Hughes and
8 Michael Guest, Allsports denies ..."

9 So it is plain that you had given information there
10 for that response to be given?

11 A. I would agree with that.

12 THE PRESIDENT: When you said the England Agreement,
13 Mr Morris, I think you meant the Manchester United
14 Agreement.

15 MR MORRIS: No, I think actually, sir, just for your note,
16 paragraph 60 is at C450, 1638. Paragraph 60 in the
17 supplementary Rule 14 deals with the phone calls and
18 the England Agreement.

19 THE PRESIDENT: I see.

20 MR MORRIS: Just to complete the timetable. The OFT
21 published its final decision last summer on 1st August,
22 then on 1st October 2003 Allsports lodged its appeal.

23 A. Indeed.

24 It is kind of interesting because obviously I had
25 parted company with Allsports at that time so I was not

1 really watching the case that closely. I actually spent
2 the best part of the summer in California so I was a
3 long way away from it. I was not involved in any of
4 those events, I only picked it up on the internet. I
5 was not privy to any of those discussions, or the
6 announcements, or --

7 THE PRESIDENT: You had left in July.

8 A. I had left in July and I did not start with FILA until
9 1st September and the time in between I stayed in
10 California, in Nevada, so I was well out of it. I was
11 not in touch with the UK at that time.

12 MR MORRIS: Finally on this topic, Mr Guest, I would like to
13 ask you about your first witness statement and how that
14 was prepared. If we go to your witness statement in
15 the main witness bundle at page 280. You have already
16 been shown this statement.

17 A. Yes.

18 Q. My question for you is: can you remember how this
19 document was prepared?

20 A. I do not really understand the question.

21 Q. Did you write it, did you dictate it, did you give
22 information to a solicitor who came with a draft?

23 A. I gave information. It is essentially my words. This
24 is a statement, I did not write it down longhand, but
25 I dictated.

1 The terminology and the phrases used in this are not
2 anybody else's words other than mine.

3 Q. Can you remember when the process of ... let me go back
4 a stage. You gave the words and presumably there would
5 be a final draft prepared?

6 A. Yes, which was modified and ultimately signed by me.

7 Q. Can you remember when the process of producing a draft
8 statement took place?

9 A. Yes. I cannot remember the days, but I can remember
10 the meetings.

11 Q. Roughly in time?

12 A. Well, I cannot remember on this particular case because
13 it does not even have a signature or a date on it. I do
14 not know the relevance of it.

15 Q. What I am going to suggest to you is that this process
16 of preparing the draft took place before you left
17 Allsports in July 2003.

18 A. Oh, definitely, without question.

19 Q. Can you remember how long before?

20 A. No, the two things are not related. Me leaving
21 Allsports has absolutely nothing to do with this, but
22 obviously I could not have done it at any other time
23 other than before I left Allsports. I was not around
24 afterwards.

25 Unlike David Hughes I never kept diaries. I keep

1 diaries for 12 months and that is it. I never saw
2 a reason to keep diaries beyond that because essentially
3 it made no difference, because that is history. All I
4 did is: certain days I would meet with Adidas, certain
5 days I would meet with Nike and other times I would meet
6 with Umbro. It did not really make a difference to me
7 what days I met with them. Ultimately, you know,
8 the business was the business.

9 Q. The process started with the raid in August 2001; can
10 you recall how soon after that you would have been doing
11 the work for this witness statement?

12 A. No.

13 Q. In fact, if we just look at the witness statement, just
14 for a moment, if you look at paragraph 1 you describe
15 the fact that you had left Allsports in that paragraph.

16 "I left Allsports on 11th July ..."

17 A. Yes.

18 Q. In fact, in the rest of the witness statement from
19 paragraphs 2 onwards you use the terminology "we" and
20 "Allsports". So if you go to paragraph 2 in line 3 it
21 reads:

22 "Obviously since then we have done quite a lot of
23 work, we have re-branded the business ..."

24 That suggests that in fact paragraph 1 may have been
25 added to after you left, to add in fact that you had

1 left by the time you finalised it?

2 A. I think the document had probably been compiled before
3 I left, but I think maybe I had one additional meeting
4 in Manchester with Addleshaws before leaving
5 the business. So maybe that has been inserted at some
6 point later, but I am certainly happy with the contents.

7 In fact, that is definitely true. Between leaving
8 Allsports and leaving for California, I did have
9 a meeting in Manchester, one meeting, in their offices
10 in the city centre.

11 Q. When did you go to California?

12 A. I guess probably around 1st August. So it must have
13 been pretty much the last week in July.

14 Q. So you must then have signed the statement later, it
15 must have been sent back to you for signature at a later
16 date?

17 A. Yes.

18 MR WEST-KNIGHTS: I can volunteer a date if it would assist
19 my learned friend.

20 THE PRESIDENT: Let us go on for the time being,
21 Mr West-Knights.

22 MR MORRIS: We have heard this morning that -- I had
23 a period of nine months, but it may have been slightly
24 longer. Apart from the period in 1997 when you were
25 elsewhere, you were employed by Allsports for a period

1 of 15 years?

2 A. That is true.

3 Q. And throughout that period David Hughes was the chairman
4 and made board director?

5 A. I do not think he was quite the chairman when I arrived
6 initially. When I first arrived at the business in
7 1988, David was everything. He did the buying, he did
8 everything. You know, he had only just got to the point
9 of delegation. I think at that stage he had about 20
10 stores, so he was not the chairman then, because they
11 did not have a chairman. He was like the managing
12 director.

13 Q. He was in charge effectively?

14 A. He has always been in charge due to the fact that he
15 owns the majority share of the business.

16 Q. And you left Allsports in July 2003 because of a
17 difference of opinion?

18 A. Yes, I think the press release said we had a different
19 vision for the future, which I think, listening to what
20 David was saying on Friday afternoon, might be related
21 to the fact that maybe I was thinking more strategically
22 and long-term, whereas David might have been making more
23 short-term considerations with a view to ultimately
24 selling the business.

25 Q. Do you have any outstanding financial matters with

1 Allsports?

2 A. No.

3 Q. David Patrick was appointed as Chief Executive in
4 March 2000?

5 A. That is right.

6 Q. And he also left in January 2003?

7 A. That is true.

8 Q. In your role as buying and marketing director, you had
9 charge of the day-to-day running of the buying side of
10 the business?

11 A. Buying and marketing. I was the buying and marketing
12 director at the time.

13 Q. And you were the main point of contact with your
14 suppliers, including Umbro?

15 A. Yes, I was exclusively the main point, yes.

16 Q. But Mr Hughes was involved in the day-to-day running of
17 the company?

18 A. Yes, it was very exceptional for David to be involved.
19 This was a kind of unique scenario. Obviously I had
20 explained the situation when I returned to the business
21 and I had been quite clear in terms of what I expected
22 from David and pretty much that is what had happened
23 until such time as we came across this incident, which
24 was totally out of character and totally went against
25 the agreement that I thought we had. I think maybe it

1 was possibly motivated by the fact that he was not well
2 and maybe he was not seeing things as clearly as he
3 could have seen them. We certainly had a difference of
4 opinion on those matters, without question.

5 Q. When was that? Later?

6 A. No, it was about the time of the golf day, for instance.

7 Q. Yes. But it is fair to say, is it not, that Mr Hughes
8 took the view that he, ultimately, called the shots?

9 A. I think he is right to take that view in some respects,
10 but he did not call the shots when it came to pricing
11 individual products. I think he made that crystal clear
12 on Friday that that was my responsibility. Ultimately,
13 I took the view that you cannot isolate individual
14 products. You either take total responsibility for
15 the buying or you let somebody else take total
16 responsibility. You cannot do both, even when you are a
17 chairman. Now they wanted me to work there because --
18 if he wanted to make the decisions that was fine, but if
19 he wanted to do that I would have to work somewhere
20 else, unfortunately.

21 Q. It is fair to say that he would come to marketing
22 meetings and express his views quite strongly?

23 A. I think it is fair to say that he is quite opinionated,
24 but I think it is also fair to say that I am not
25 a sycophant. I think it is also fair that I would

1 probably take the view that I would almost fall out with
2 him just for the sake of it, just to prove a point.
3 Whether that is good for my long term employment
4 prospects I do not know, but I did it anyway because
5 I thought we had an agreement and I think that
6 ultimately I did not want to be a sycophant. I had seen
7 what had gone on in the business, he had recruited
8 certain people. Steve Richards came in as managing
9 director, did exactly what he was told and ultimately
10 got sacked for it. Mike Donnelly came in as managing
11 director, did exactly what he was told and got sacked
12 for it. The third guy came in, David Patrick, did
13 exactly what he was told and it cost him his job. So
14 when I finally got appointed as joint managing director,
15 I took a different view. I did not mind being
16 accountable, but I wanted to be responsible and I wanted
17 to make the decisions. Obviously I did not last too
18 long in the job because we could not agree to agree; we
19 could only agree to disagree.

20 Q. So the outcome for you was the same as with the others?

21 A. But I do not mind, because at least I have some dignity.
22 It was not that I had made the decisions and failed. It
23 was that I was not being allowed to make the decisions.
24 Therefore I was quite happy to walk away from it having
25 at least some credibility and some dignity because I was

1 not prepared to compromise.

2 Q. Can I move on to your relations with people at Umbro.

3 In the period 1999-2001 you had close relationships
4 with a number of people at Umbro?

5 A. That is true.

6 Q. In some cases these were and remained long-standing
7 personal as well as business relationships?

8 A. It is interesting, actually, because it is not just down
9 to my relationships, but I think I refer to, it is also
10 that my wife used to be a buyer in the sports goods
11 industry. In fact, she has worked with Chris Ronnie and
12 Phil Fellone at different times so as a family we are
13 quite close to these people. It is in my statement that
14 Phil Fellone is the godfather of my eldest son and we
15 also had a christening this weekend for my youngest son
16 and Phil was also in attendance. He is about to get
17 married in a few weeks' time. I will not be going to
18 ceremony in Barbados, but I will be going to the UK
19 version, and I will be going to have a drink with him in
20 advance. We have known each other for a long time, it
21 pre-dates Umbro, we knew him at Adidas, we knew him when
22 he worked for Diadora and the same applies to Chris
23 Ronnie. Chris Ronnie has had more jobs than you can
24 imagine. He changed his job, on average, about every
25 two years. Throughout that period, I have been a social

1 friend of his. I like his company, I think he is
2 an interesting fellow, I think he is good fun to be
3 around and I make no apologies for that.

4 Q. Yes, and you say in your witness statement that you have
5 been travelling companions and room mates at trade shows
6 across the world?

7 A. Forever. I can name lots of brands that Chris has
8 worked for. Over that time we have always retained
9 a friendship. We have played tennis and squash and I am
10 friends with his brother. We are all pals.

11 Q. Yes. David Hughes had also known Chris Ronnie for many
12 years, had he not?

13 A. David has known Chris for longer than I have, probably.
14 I first came across Chris Ronnie in 1983 which is when
15 I joined the sports industry. I started work for Mitre
16 in 1983 and had five years there. At that point in time
17 I came to know Chris and his brother, Andrew.

18 Q. From your knowledge, David Hughes would have met and
19 talked with Chris Ronnie in a business context?

20 A. I think it was more to do with sport, honestly. I think
21 it is in David's testimony that he actually sponsored
22 Chris. Chris was an outstanding squash player a long
23 time ago. He is not quite so good these days. He is
24 still a good player, he is just not quite as mobile as
25 he used to be. He probably weighs about twice as much

1 as he did when he first started playing, but he was
2 a county standard player and he still hits the ball like
3 a county standard squash player. So for that I think
4 David spent an awful lot of time with him but it was
5 more to do with squash and maybe tennis and probably
6 less to do -- more social and friendship based than
7 business based.

8 Q. Do you recall how often they will have spoken or met in
9 a business context?

10 A. I do not think they would meet that often in a business
11 context, certainly not in the second phase of my
12 employment because David really -- I had agreed when I
13 went back to take a more back seat role in the business.

14 Q. And speaking as opposed to meeting?

15 A. I could not legislate for that. I think they belonged
16 to the same squash and tennis club in Alderley Edge so
17 they could have chance meetings maybe on a weekly basis
18 but I do not know how often they actually met.

19 Q. It is possible that in those conversations they would
20 have talked business as well as --

21 A. I think it is unlikely knowing David. He is not -- he
22 has clear demarcation lines in his life. He is very
23 rigid in terms of what he does and what he does not do;
24 he has these ideas, he works short hours, he talks
25 business during those hours and then he is essentially

1 off-duty. I think he is quite clear in terms of
2 dividing what he sees as his business life and his
3 private life.

4 Q. Thank you. Can we move on and look at replica kit in
5 general.

6 Both customers and retailers are able to keep
7 a close eye on comparative pricing of retailers, are
8 they not?

9 A. It is in the public domain, so it is not difficult. If
10 you walk down the High Street, you tend to see all the
11 retailers at all the major national retail chains and
12 all you have to do is walk into the store to find out
13 what the pricing policy is.

14 Q. Allsports kept a careful eye on the price of its
15 competitors?

16 A. Yes, we did. It was not purely about price, we had
17 an interest in other things as well: the brands that
18 other retailers were offering, the range of products
19 they were offering, the marketing activities. So we
20 kept an eye on other retailers for more than one reason,
21 it is fair to say.

22 Q. But including price as well?

23 A. Yes, as part of the overall consideration.

24 Q. Your view in 1999-2000 was that the demand for replica
25 kit was relatively static?

1 A. Yes, I would say so.

2 Q. Assuming demand was static, it would follow that if a
3 competitor managed to sell more replica kit because of a
4 discounting campaign, that would mean that somebody else
5 would be selling less?

6 A. Yes, I think it is also -- no, that is illogical.
7 I think it is more relevant to say that what you could
8 do, and what has been proven since, is that by reducing
9 the prices substantially you could change the size of
10 the universe, therefore more people would buy them
11 because more people could afford to buy them. For
12 instance, if a shirt is retailing at £25 a lot more
13 people can find £25 than can find £40. So I think you
14 change the dynamics. I think it is not quite as simple
15 as that. It is not a finite demand, I think it is
16 supply and demand and once you start tampering with
17 price, you change the whole picture.

18 Q. What I am suggesting to you is that if someone ran
19 a discounting campaign, that would take business away
20 from a person who did not run a discounting campaign?

21 A. It would not necessarily. Again I am not trying to be
22 argumentative, but again that is not totally logical.
23 Ultimately there is a finite amount of product out
24 there. What you might be talking about there is rate of
25 sale, because ultimately we did not reduce our shirts

1 and we sold them all. So it might mean that it took us,
2 I do not know, three months rather than three weeks, but
3 ultimately we sold them all. So therefore ... I do not
4 understand what you are trying to say.

5 Q. I am suggesting to you that Allsports would be concerned
6 about discounting by other retailers because it would
7 affect your sales volumes.

8 A. I think in the longer term that obviously true and
9 correct. In the short term, it does not necessarily
10 follow. It is one of those things you cannot -- it is
11 not like turning on a tap, you cannot get supplies of
12 these products overnight, you need to order them six
13 months in advance. If you were going to embark on such
14 a discounting strategy, you would have to make your mind
15 up a long time before, or alternatively you would be
16 sold out within days, which is what happened last time
17 Sports Soccer launched an England shirt.

18 Q. I think if you go to your second witness statement at
19 paragraph 14, this is 284D. I presume everybody is
20 numbered 284A, B, C rather than 285?

21 THE PRESIDENT: Yes, we have 284D.

22 MR MORRIS: You say there:

23 "I will have mentioned that Sports Soccer's
24 discounting was affecting market conditions, our rate of
25 sale and the amount of money we made."

1 THE PRESIDENT: Paragraph 14.

2 A. Yes, I have that.

3 MR WEST-KNIGHTS: Can we have the whole sentence?

4 MR MORRIS: If you want to read the whole sentence, I am
5 just getting you to confirm that -- you say:
6 "... in order to support our case that better price
7 terms should be offered to Allsports in order to protect
8 our margins."
9 What I am suggesting to you is that it was volumes
10 rather than margins which was the concern?

11 A. No, what I am considering is that from my perspective
12 I was responsible for the whole picture: stock level,
13 sales, margin. Ultimately what I was paid to do was to
14 represent Allsports' interests, so whilst I could not
15 control what was going on in the market place,
16 obviously, what I could do was to try to negotiate
17 better prices. I think what I tried to do was
18 a legitimate tactic and I do not think it is
19 unreasonable to say: if you are going to sell these
20 products for less, we would prefer to buy them for less.

21 Q. Can I just ask you about that. How would it affect your
22 margins if somebody else was discounting?

23 A. At that point in time the price promises -- well, there
24 are two things. One, if the price promise is effective
25 then obviously we have to match other people's prices by

1 definition and if it is not, and then we decide for
2 whatever reason, which is my prerogative, to match those
3 prices, our margins are affected.

4 Q. Can we leave the price promise to one side for a moment,
5 we will come back to it. On the second proposition
6 I thought it was Allsports' position that it did not
7 discount in response?

8 A. Those decisions were really down to me, at least in
9 theory, because that was my choice.

10 Q. I am asking you: when another retailer discounted, did
11 Allsports respond by discounting? And by discounting
12 I mean bringing the marked price down.

13 A. We reserve the right to do that but ultimately it would
14 not be my preferred option. You see, what we have to
15 do -- what we are trying to do is to sell this product
16 for as much as we can, which is not unreasonable or
17 unlawful. We were trying to make a profit, we employed
18 a lot of people, we had a lot of costs and I had to make
19 a call based on stock availability and rates of sale.

20 As a principle, I think we have all made it quite
21 clear that we are not in the discount business. My view
22 on life is that there is no point in picking a fight
23 unless you can win. In all honesty we could never beat
24 Mike Ashley and Dave Whelan on price, never, they are
25 too good.

1 Q. Can I ask you specifically, did you ever discount in
2 response in relation to replica kit?

3 A. I think you will probably find at the end of the life of
4 a kit we probably would, but certainly prior to that we
5 never had. I do not think there is any precedent for
6 Allsports being aggressive on price.

7 Q. So, if you did not discount, other than end of life,
8 then the question of margin would not arise, would it?

9 A. Well, it would with price points. Ultimately it is
10 going to affect us because we are not an island. There
11 comes a point in time when we cannot -- you know, we got
12 away with it in the early days because there was a
13 finite amount of supply in the market place. I also
14 think that nobody really knew what the full potential
15 was at these lower prices. So they never bought
16 the stock to do justice to those price points. So
17 ultimately we managed to get away with it but I knew the
18 clock was ticking. I knew at some point in time we
19 would have to deal with the bigger issue, and the bigger
20 issue was: did we want to be in football licensed
21 product or did we not, because we could see the
22 direction in which it was going. The last England shirt
23 launched at £25 at retail, which is essentially
24 the trade price plus VAT. So we had to make a decision,
25 we had to make a choice: did we want to compete in that

1 marketplace or did we want to invest our money
2 elsewhere?

3 Q. Can I suggest to you another reason for Allsports'
4 concern about discounting: that it would adversely
5 affect your reputation in the market. If discounting
6 brought market prices down and Allsports did not follow,
7 customers would perceive Allsports to be expensive?

8 A. I think that is one way of looking at it. Certainly it
9 goes without saying that any time a big football kit
10 launch took place, for instance when Manchester United
11 went on sale, it attracted quite a lot of media
12 attention. So it would be in the papers, it would be on
13 TV, it would be on the radio and there is a story there,
14 which is normally: look how expensive these things are,
15 I have three kids and I have to buy them all the shirt
16 and shorts and socks. That was normal. That is what
17 happened. Certainly I would not have wanted to be named
18 as the most expensive retailer on the High Street.
19 I think it is fair to say that we were aware of that.

20 David Hughes make take the opinion that any
21 publicity is good publicity, but that is not necessarily
22 the view that I take. In this particular case, it is
23 probably publicity I could live without.

24 Q. Can I move on to the question of Umbro's own branded
25 products. You call them in your witness statement

1 non-licence products --

2 A. We call them branded products actually. Licensed and
3 branded is what we call them.

4 Q. I will try to use the term "branded" but at various
5 stages in your witness statement you call them
6 non-licensed --

7 A. It is the same thing.

8 Q. Can I ask you to turn to paragraphs 4 and 5 of your
9 second witness statement, which is at 284B. I am going
10 to read it:

11 "In 1999-2000 Allsports was involved in a lot of
12 development with Umbro outside replica kit. We had
13 developed a retro vintage range called Choice of
14 Champions, eg high quality cotton T-shirts and
15 subsequently developed a range which is performance
16 linked called the Pro-Training collection, for example
17 high quality woven outwear garments such as jackets.

18 "So we were investing a lot of time and effort into
19 the Umbro brand. We did not just take what we wanted
20 from Umbro. We put a lot of things back into
21 the relationship. There was far more to the
22 relationship than just Selling England and Manchester
23 United shirts."

24 Then in paragraph 5 you deal with paragraph 7 of
25 Mr Ronnie's fourth statement. You say:

1 "Paragraph 7 says that in 1999/2000 Umbro wanted
2 retailers to stock a wide range of Umbro products,
3 including Umbro branded items as well as licensed
4 product. Allsports encouraged that strategy and as
5 mentioned above invested heavily in developing
6 aspirational sub-brands such as Choice of Champions and
7 the Pro-Training Collection which subsequently competed
8 with high specification products from Adidas and Nike,
9 often endorsed by leading sports personalities."

10 So we are talking about the period 1999-2000 there?

11 A. I am not talking specifically about those two dates
12 because I am not exactly clear at this point in time,
13 sat right here, what those dates were. I do know that
14 there were two massive projects based on the interests
15 of a partnership, because I think that it is important
16 that rather than just take what you need, you have to
17 give something back. So, certainly it may well be
18 that -- the exact timings I am not going to say right
19 now because I am not sure of from this position.

20 Q. Paragraph 4 of your witness statement does say in
21 1999/2000 Allsports was involved in a lot of
22 development.

23 A. Yes, we did -- in fact, that may relate to Choice of
24 Champions, probably. I think the Pro-Performance came
25 later.

1 Q. Allsports was actively involved in working together with
2 Umbro in developing these new products?

3 A. They were concepts I took to Umbro. Let us be honest,
4 it is clear that we did have close relationships with
5 the individuals concerned and we did want to have
6 a business with them. It was a lot easier for me to
7 deal with Phil Fellone and Chris Ronnie than it was to
8 deal with the management of somewhere like Nike. These
9 guys were known to me, they were close to me, they would
10 react to our requests. So there was a lot to be said
11 for having that kind of relationship.

12 Q. I presume, given his hands on approach to management,
13 Mr Hughes would have been aware at the time of these two
14 projects?

15 A. He was certainly aware of them because they appear on
16 our documents in the business from day one. I think at
17 one of the conferences, I explained what was happening
18 to all our staff. We used to have an annual conference
19 and about 300-plus people would turn up and we would
20 outline our plans and strategies going forward.
21 I certainly remember doing a short video presentation on
22 the Choice of Champions.

23 So I think David would certainly have been aware of
24 those investments.

25 Q. Can you turn to paragraph 13 of that witness statement.

1 You go on to deal with this cooperation with Umbro in
2 that paragraph. You say at page 284D:

3 "When at my instigation Allsports began working with
4 Umbro to develop aspirational non-licence products in
5 the first place, Umbro had assured me that they would
6 protect their brand image and move it up-market. Phil
7 and Chris assured me that they could protect their
8 licensed product which was, frankly, an important source
9 of funding to help with the development of
10 the non-licensed product. I would not have bothered
11 spending the time and money on Umbro had Umbro not told
12 me they would protect their brand image. Umbro knew
13 from the outset that there was a relationship between
14 the licensed and non-licensed products and Umbro did not
15 need me to remind them that if Allsports' margins
16 collapsed on licensed products it would have an effect
17 on the funds available to support its non-licensed
18 products. Umbro did not need me to tell them that
19 discounting Umbro replica kits devalued its brand and
20 therefore affected the value of its non-licensed
21 products."

22 Now I would like to look at that paragraph in
23 a little more detail and take it in stages.

24 First, you refer there to protecting the brand image
25 in the early bit of the paragraph. That means not

1 devaluing the brand, does it not?

2 A. In my opinion that is exactly what it means.

3 Q. One of the ways in which the Umbro brand would be
4 devalued would be by the discounting of its statement
5 product, replica kit?

6 A. That is my view of the world.

7 Q. So, when you say that Phil and Chris assured you that
8 they would protect their brand image and protect their
9 licensed product, they were assuring you that they would
10 protect their product from discounting?

11 A. I think it is no secret that we would have preferred
12 prices to stay at the levels they were at. Obviously
13 I think certain people in the Umbro organisation would
14 have preferred that too. Phil Fellone is one,
15 Martin Prothero is another, and probably even at that
16 time Chris Ronnie may have felt that way, but I cannot
17 speak for those people.

18 I only know that from Allsports' perspective we kind
19 of liked things the way they were.

20 Q. Yes. When you say: Umbro assured me they would protect
21 their brand image, that assurance is that they would
22 protect it from discounting?

23 A. I did not say that, and to be honest I could not have
24 said that because I did not know that.

25 All I could say is that ultimately I had to decide

1 where we spent our money. I was in control of the
2 Allsports budget so I could decide to spend the money
3 with Umbro or somebody else. At that point in time,
4 I was deciding to spend it with Umbro, but that is not
5 to say in the future I might not change my opinion.

6 Q. You go on to say that had they not given you such an
7 assurance, you would not have bothered spending the time
8 and money on Umbro?

9 A. What I am saying essentially is that we did have
10 choices. Lots of people wanted to work with Allsports
11 because we had a unique position in the marketplace. I
12 chose to work with Umbro because I thought we had a
13 relationship and a partnership and so long as that
14 partnership functioned from both perspectives it would
15 continue.

16 Q. What I am suggesting to you is that they knew, Umbro,
17 and you knew at the time, that if discounting on replica
18 kit was allowed to happen that would adversely affect
19 Allsports' funding for non-licensed products?

20 A. I think it is no secret that had the prices collapsed on
21 replica there would be no good reason why they should
22 support the Umbro brand.

23 Q. Can I just take you back to that assurance. You refer
24 in paragraph 13:

25 "... Umbro assured me they would protect their brand

1 image."

2 That was an assurance given by Umbro to you?

3 A. I think it is hard to know, to be honest. Umbro could
4 be Phil Fellone, Umbro could be Chris Ronnie --

5 Q. You say in the next sentence:

6 "Phil and Chris assured me that they could protect
7 their licensed product."

8 A. I think at that point in time the way it worked is that
9 we were happy to develop and expand on our product
10 range, we were happy to buy footwear from Umbro, we were
11 happy to buy these new concepts. In all honesty we were
12 not obligated by any of those things. These were things
13 we did as part of a partnership to build the Umbro
14 brand. I could not control anyone else's pricing.

15 Q. That assurance you understood to be an assurance that
16 they would do what they could not to allow discounting?

17 A. I think they knew the views of David Hughes and everyone
18 else at Allsports, that we liked prices to be the way
19 they were. Ultimately -- as the times proved, it was
20 certainly beyond our jurisdiction and beyond our control
21 ultimately. The bigger retailers can decide whatever
22 they want to price.

23 All I would say is when they had made those
24 decisions, we could choose how we spent and invested our
25 money.

1 Q. But both parties understood that for you, Allsports, to
2 make funds available for non-licensed, you needed their
3 assurance about licensed?

4 A. I did not really need assurances, I needed the support.
5 I knew I could not have assurances because there are no
6 real assurances. We had a real and working
7 relationship. I cannot control anybody's prices other
8 than Allsports.

9 Q. I understand that, but your evidence here is that they
10 did give you such an assurance?

11 A. At that point in time we were working together. They
12 were doing certain things for me and I was doing certain
13 things for them. What we were doing for them was
14 spending a lot more money than we needed to on Umbro
15 branded product, which was really important to them
16 because, obviously, the replica business is quite
17 expensive. You have to buy contracts. It is not easy.
18 It is very competitive. Obviously they made a lot more
19 money selling branded product than they did licensed
20 product at that time.

21 Q. You said that you were spending a lot more money than
22 you needed to on Umbro branded product, which was really
23 important to them. Important to Umbro?

24 A. At that time.

25 Q. Why was it important to Umbro?

1 A. For the reasons I have just outlined. Obviously they
2 made more margin on that. Also, if you imagine
3 a scenario where their business is purely about licensed
4 product and then they go and lose the Manchester United
5 contract to Nike and then they lose the England contract
6 to Adidas, say, for instance, they essentially have no
7 business, because whatever business they had just went.
8 It is a very fickle business if the only business
9 you have is licensed because you do not own those
10 assets, somebody else does.

11 Q. They needed to move into non-licensed product?

12 A. They needed to have a brand relevance and a brand
13 presence beyond licensed, otherwise all their eggs were
14 in the one basket that they did not control. So
15 strategically it did make sense for them to get outside
16 licensed.

17 Q. You deal with the impact of discounting replica kit on
18 non-licensed products a little more in paragraph 21 of
19 your statement. I think this is the statement which my
20 learned friend took you to earlier. This is at
21 page 284F. The middle sentence:

22 "When I discussed other retailers' discounting with
23 Phil, I did point out that if the Umbro brand became
24 devalued as a result of discounting, that could have
25 an impact on Umbro's and our desire to push the brand

1 up-market."

2 When you there refer to pushing the Umbro brand
3 up-market, you are referring to the promotion of Umbro
4 non-licensed products?

5 A. That is true.

6 Q. And what you are saying here is that if there was
7 discounting by other retailers that would affect
8 Allsports' willingness actively to support Umbro in
9 relation to branded?

10 A. What I am trying to be throughout this statement is
11 honest. I am trying to tell it the way it was. I am
12 trying to be as honest as I can, for want of a better
13 description. It might not read fantastically well, but
14 it is the reality. So therefore the reality was that
15 obviously we wanted to work with Umbro, there was no
16 question about that, we wanted to support non-licensed
17 product and we wanted to be in a true partnership.

18 Obviously, as I said before, we were not an island.
19 We were exposed to other things going on with Umbro
20 which meant that their products were being discounted on
21 a daily basis and actually, one thing contradicts
22 the other. It is a problem. We wanted to pitch Umbro
23 at the top end of the marketplace. Umbro had decided
24 that they were going to have relationships with other
25 people which pitched them at the bottom of the

1 marketplace so, ultimately, you cannot be both things.

2 They have to make a choice, and ultimately we had to
3 make a choice.

4 Q. I understand that. What I am suggesting to you is that
5 if Umbro had chosen to go down the lower end of market,
6 that would, at the time, have affected Allsports'
7 willingness, or desire as you put it here, to actively
8 support Umbro at the higher end?

9 A. That is inevitable.

10 Q. What is more, you made that position of Allsports known
11 to Phil Fellone, did you not?

12 A. Yes, sure, yes.

13 Q. Can I look in a little more detail at your contacts with
14 Mr Fellone and Mr Ronnie. You had strong business
15 relationships with a number of people and in particular
16 them.

17 If you go to paragraph 9 of your second witness
18 statement, at page 284B, you start off at the bottom of
19 paragraph 9:

20 "I do not remember making any complaints to
21 Chris ... My telephone conversations with Chris were
22 pretty much social. In a business context I used to
23 meet with both him and Phil once or twice a year over a
24 sandwich lunch to discuss recent developments in
25 the industry."

1 Now, in fact your meetings and discussions with
2 Mr Ronnie were slightly more frequent than once or twice
3 a year?

4 A. Not on a business agenda, no.

5 Q. I am going to put some figures to you and you can agree
6 or disagree and if need be we may have to go to Mr
7 Ronnie's diaries. According to Mr Ronnie's diaries, in
8 2000 you had at least four lunchtime or afternoon
9 meetings and three early morning meetings and in
10 2001 you had about 10 or 11 lunchtime or afternoon
11 meetings, and one early morning meeting. Those are
12 taken from the diary extracts of Mr Ronnie in
13 the bundle. I am going to ask you whether you would
14 like to comment on that?

15 A. I have to say I am very surprised if you are saying it
16 was like a monthly event. It certainly does not strike
17 me as being that frequent.

18 Q. But four lunchtime meetings; maybe it is a quarterly
19 event?

20 A. I would have said probably a bi-annual or quarterly
21 event. You have to remember that Chris had worked for
22 lots of businesses and I had been around for a long
23 time, so we kind of knew a lot of people. We used to
24 talk more about the personalities and who was leaving
25 who and who was doing what. It was really more about

1 the industry. A lot of it was gossip to be honest
2 because that is the nature of Chris's character. That
3 is what he likes most.

4 Q. You are not suggesting that the figures I have given you
5 are wrong?

6 A. No, I would not dispute them. All I am saying is that
7 in terms of their significance, a lot of them would not
8 be that relevant. We very rarely discussed serious
9 business because ultimately that was not Chris's job.
10 I think I realised at the time that Chris's priorities
11 were not with Allsports. I think he had other
12 interests. I had he made close contact with Mike Ashley
13 and I obviously think the JJB thing was very important
14 to him.

15 I do not think we were massively high up his list of
16 priorities if I am being candid about it. I think the
17 reason he came to see me was probably more social than
18 business. Obviously he is a salesman so he would like
19 to sell us more stuff, but I think he empathised with
20 the choices we were confronted with. I think he knew
21 that my sentiments in terms of what my priorities were
22 because -- since I re-branded in 1999, we had recruited
23 a lot more, I think David always uses the word
24 "aspirational", but more expensive, more performance,
25 more technical brands. People like Helly Hansen, Animal

1 and Timberland had come into our business.

2 By definition, to use your point from earlier, the
3 more money we spent with these people, the less funding
4 was available for the other guys. So the sports brands
5 were being kind of displaced. Certainly in my thinking.
6 It might not exactly be David Hughes's view of
7 the world, but at that point in time I was choosing to
8 spend the money away from traditional sports brands,
9 which was the direct opposite to what people like Mike
10 Ashley were doing.

11 THE PRESIDENT: Mr Morris, I think we will try to break at
12 around 25 past.

13 MR MORRIS: I am grateful. I think I can get a couple of
14 questions in.

15 Given the closeness of your relationship with
16 Chris Ronnie and Phil Fellone, there was no real
17 distinction between the personal and the business
18 aspects of your relationship, was there? There is no
19 reason why something said in a social setting might not
20 be relevant to business?

21 A. Whilst I am not quite as clear in terms of demarcation
22 as somebody like David Hughes, I still think I am
23 probably more inclined to do the business in the office.

24 Q. I suggest to you that for example in your private
25 conversations with Phil Fellone you will have talked

1 about business. If you go to paragraph 12 of your
2 witness statement, at 284D, you are talking about
3 the extent to which you were complaining or not
4 complaining. You say:

5 "I would have been more likely to have had a moan to
6 Phil than Chris but privately to make him aware of the
7 obvious conflict between selling discounted licensed
8 product yet trying to promote Umbro as an aspirational
9 brand."

10 What I am suggesting there is that you will have
11 talked business with the two of them, perhaps in a
12 social setting, as well as at a formal lunch meeting?

13 A. I think I would be barking up the wrong tree with Phil,
14 because ultimately Phil would not be empowered to make
15 those kinds of decisions. Phil was really Chris's
16 right-hand man but ultimately it would be Chris Ronnie
17 or Peter McGuigan who would make the final decisions.
18 Phil was kind of the salesman. He was a salesman really
19 responsible for the JJB business and the Allsports
20 business. I do not think he had particularly close
21 links with the Sports Soccer business.

22 MR MORRIS: Sir, that would be a convenient moment for me.

23 THE PRESIDENT: Yes, very well. We will take a break until
24 just after half past.

25 Please do not discuss the evidence with anybody else

1 while you are giving evidence.

2 (11.25 am)

3 (A short break)

4 (11.33 am)

5 MR MORRIS: Mr Guest, can we go back to your second witness
6 statement and look at paragraph 10, at page 284C. You
7 say:

8 "It is inconceivable that we did not discuss
9 Sports Soccer, as this was big news at the time and
10 could not be avoided. I may well have mentioned that
11 I was not happy with the way in which Sports Soccer was
12 discounting replica shirts and that they were affecting
13 our margins because of our price promise. However, this
14 was not the reason for the meetings. I would not
15 categorise anything I said in those meetings as
16 complaints or necessarily even a moan; they were
17 observations. My strongly felt personal view was that
18 replica shirts are a highly desirable quality product
19 that represented value for money at traditional price
20 points. I felt they were being devalued by Sports
21 Soccer's discounting and that they did not need to be
22 reduced in price as demand was exceeding supply."

23 So there you are expressing your view to Umbro about
24 other retailers' discounting practices.

25 A. Historically the evidence would support my point of

1 view, to say that whatever we bought we managed to sell
2 it at the full price. Therefore the logical conclusion
3 would be that there was no good reason to sell them for
4 any less than that. It was not a personal opinion, it
5 was actually based on facts.

6 Q. But my question to you was that you were there
7 expressing your views to Umbro about other retailers'
8 discounting practices?

9 A. I think "inevitable" is the word I used so ... okay,
10 fine. I obviously must have referred to it at some
11 point in time. But I did say an observation, I think
12 was the word I used.

13 Q. Yes. As far as you were aware at that time there was no
14 internal allsports policy of not even mentioning
15 competitors' prices to Umbro?

16 A. Well, no. To be honest, certainly from a personal
17 perspective I was not fully familiar with the law, I did
18 not exactly know what was and was not acceptable.
19 I think that was not just me but probably other people
20 in the business. Ignorance, whilst it might not
21 constitute a defence, was the reality of the suggestion.
22 We certainly were not attempting to break any laws; that
23 is a fact.

24 Q. No, I was not suggesting you were. I was asking, as far
25 as you were aware there was no internal policy within

1 Allsports not even to mention prices to Umbro?

2 A. That is correct.

3 Q. If you look at paragraph 10 you say -- well, first of
4 all Sports Soccer and its discounting was big news; that
5 is right, is it not?

6 A. You have to consider the sports goods industry.
7 The retail industry in the UK had been established over
8 time. I came into it in the 80s, David came into it in
9 the 70s and things had been pretty much the same for
10 some time. So what was happening is that certain
11 conventions had been challenged and things were becoming
12 different to the way they had traditionally been.

13 Q. You then go on to say that the price promise affected
14 your margins, and I said I would come back to the price
15 promise. But the price promise did not automatically
16 lead to a reduction in the marked prices, did it?

17 A. No, the two things are not necessarily linked. One of
18 the unfortunate things from my perspective, I never
19 actually got a report which isolated price promise, so
20 I never really knew the impact of it. I knew that there
21 was a price promise, I knew that it affected our margins
22 but I could never really quantify it because at that
23 point in time that information was not available as
24 a separate report. So that made it difficult for me to
25 be objective because I did not know the scale of

1 the problem. I knew there was a problem but I did not
2 know what it constituted.

3 Q. Just so we are clear, the way the price promise worked
4 is it only applied to an individual customer as and when
5 they came into the store and said they had seen the
6 product cheaper elsewhere?

7 A. That is the theory but in reality it might not have
8 worked just like that. Say I am the manager of a store
9 in Liverpool for argument's sake and say I am paid on
10 commission on the performance of the store, I might want
11 to sell a lot of stuff. I am not really concerned with
12 margin at that point because I am the store manager.
13 I am more concerned with my own personal well-being. So
14 I might stand at the front door and say to everybody who
15 walked through the door: you can have an England shirt
16 today for £25. I cannot legislate for that because
17 I was not present in all those stores. There are 300
18 stores.

19 It was wide open to abuse, and that was one of
20 the reasons why I was fundamentally opposed to it.
21 I did not like the fact that it was a crutch to
22 the salespeople. I think it was wide open to abuse. In
23 reality I think it was the tip of an iceberg. I think
24 the fact that people should demand it is one thing,
25 the way you described, but in reality I would be

1 surprised if our people did not proactively use it to
2 gain additional sales.

3 Q. But you had at the time no information as to the extent
4 that that was going on?

5 A. It would be impossible to check. There is no way you
6 could say that these were genuine price promises or
7 something that been proactively engineered by people in
8 the store.

9 Q. You will recall the Predator boot example. But you had
10 no explanation at the time as to how many people had
11 invoked the price promise in relation to the Predator
12 boot?

13 A. The same thing could have happened. If the Predator
14 boot is the hottest product in the industry and our guy
15 is standing at the door pleading the fellow to come in,
16 looking at this boot and saying, "Is this the new
17 David Beckham boot?" The guy could easily say, "Yes, it
18 is. If you want to buy it for £75, whatever
19 Sports Soccer's price is, I can sell it you that today."
20 So I think the situation was a lot worse than we
21 imagine. I think the price promise was a major
22 liability and I honestly believe our retail staff abused
23 it.

24 Q. The price promise was abandoned with effect from
25 6th June 2000?

1 A. I would have abandoned it sooner. In fact I never
2 believed in it. Ultimately we did have it for a long
3 time. It was only when we sensed it had become
4 a liability that we ditched it. As soon as it came on
5 the agenda we dropped it almost immediately. There was
6 not much of a debate. We were all pretty clear that we
7 wanted it out of the business because we wanted to be in
8 control of our own destiny, we did not need other people
9 setting our price points, we thought that we were
10 experienced enough to determine our own prices.

11 Q. The fact that the price promise was abandoned on
12 6th June did not put a stop to Allsports' concerns about
13 Sports Soccer's discounting?

14 A. No, it did not really. Obviously I have already
15 explained that it was down to me personally making
16 the calls. I did consider being the cheapest. At one
17 point in time it did cross my mind I might want to go
18 out and use it as a loss leader. That was my
19 prerogative. I could have done that. Having considered
20 it I decided not to do that.

21 Q. Can I take you to paragraph 11 of your second witness
22 statement where you say at 284C that effectively you
23 would not have asked Umbro to stop Sports Soccer's
24 discounting. You say:

25 "I never asked Chris or Phil to get Sports Soccer to

1 stop discounting either expressly or impliedly. If
2 I was going to say anything to them about Sports
3 Soccer's discounting, which I did not, it would have
4 been to ask Umbro not to supply Sports Soccer at all.
5 But I did not do so because it would have been pointless
6 for the following reasons:

7 "(a) that option would have been obvious to Umbro;

8 "(b) in practice this would only have altered the
9 pattern of distribution and not the amount of product
10 sold. At that time I thought wrongly that the demand
11 for replica kit was static so it hardly mattered to
12 Umbro which retailer sold it, Umbro would still get its
13 wholesale price;

14 "(c) in any event I would not have said such a thing
15 because I knew based on conversations I had with Phil
16 and Martin Prothero that it would have no effect on
17 Chris or Umbro's approach to Sports Soccer's."

18 Pausing there for a moment, you there seek to draw
19 a distinction between asking Umbro to get Sports Soccer
20 to stop discounting and asking them to stop supplies to
21 Sports Soccer. You say: I would not have asked them to
22 do the former but if I had done anything it would have
23 been the latter?

24 A. In the light of discussions this morning it would have
25 been absolutely ridiculous to talk about not supplying

1 Sports Soccer having just agreed that we had just taken
2 £10 million worth of clearance product. I did not
3 realise the extent of the relationship at that point in
4 time. As well as all the points I have made there is
5 another more underlying point that actually
6 Sports Soccer and Umbro were already in bed at that
7 time.

8 Q. That is something that you were not aware of --

9 A. No, that is what I am saying. I am making
10 the additional point on top of the points I have already
11 made.

12 Q. You say that what you would have done if you wanted to
13 do so was to ask them not to supply --

14 A. Yes. In the event it would have been a ridiculous thing
15 to say --

16 Q. If you had asked them that, the whole point of Umbro
17 stopping supplies to Sports Soccer would be that that
18 would have been a way to stop Sports Soccer
19 discounting --

20 A. It is an option for a brand in terms of controlling
21 the price to control the distribution, obviously.
22 I realised that.

23 Q. You say it would have been pointless in ... but what
24 I will suggest to you is that if that had happened at
25 the time, the stopping of supplies, Sports Soccer would

1 not have thought so, would they? If they had had
2 supplies of replica kit at key selling prices stopped it
3 would have been a matter of great concern to Sports
4 Soccer.

5 A. Indeed, and it would not have guaranteed the market
6 price. Because Sports Soccer are not the only business
7 that reserves the right to set the price at whatever
8 level they want. This could have been somebody else,
9 JJB, Allsports, anyone.

10 Ultimately the fact that Mike Ashley has reduced
11 prices, he has not got an exclusive monopoly on that,
12 anyone can do it. It is the easiest thing in the world
13 to sell things cheaply.

14 Q. What I am suggesting to you is that there would have
15 been a point where Sports Soccer would have regarded
16 that as a very serious matter if supplies had been
17 stopped?

18 A. I am sure they would. The reason ultimately why I did
19 not want to get into the price war was because
20 I realised that no matter how cheaply I cut the prices
21 somebody else would cut them even further and ultimately
22 it would have just been a war that we could not win.
23 Ultimately we would end up selling the things for less
24 than we bought them for, and that does not constitute
25 good business.

1 Q. From paragraph 11 it is plain that you did in fact go so
2 far as to suggest to Umbro the possibility of Umbro
3 stopping supplies to Sports Soccer. Because you say,
4 effectively: based on conversations I had with Phil and
5 Martin Prothero it would have had no effect on Chris's
6 or Umbro's approach?

7 A. I do not think I would have said it really for anything
8 other than my own entertainment because I think it is
9 one of those things that would never happen. So there
10 was no way that I could deliver that situation. I knew
11 that there was no way in a million years that Umbro
12 would not supply Sports Soccer, so I said probably more
13 tongue in cheek than any other way. I certainly did not
14 believe for a minute that he would take my advice on
15 that score.

16 Q. But you raised the possibility with Phil and Martin --

17 A. I am not sure it was in all seriousness.

18 Q. Can we turn to an example of you expressing your
19 strongly held views about discounting to Umbro. That is
20 the letter that you wrote on 20th April 1999, and that
21 is in the cross-examination bundle, which is the smaller
22 bundle, at tab 10.

23 Just to set the context for this letter, and
24 you will obviously tell me if I have got it wrong, this
25 is in April 1999, at the time of the launch of

1 the England home shirt, which was the one that was
2 eventually in question for Euro 2000?

3 A. Yes, it has the heading "England Contract" and obviously
4 refers to that particular item.

5 Q. It is a letter to Mr Gourlay, who was then at Umbro:

6 "Dear Ron. Re England contract. Further to several
7 meetings regarding the pricing of replica kits in
8 general and more specifically the imminent England
9 launch I feel it is important to clarify Allsports'
10 position:

11 "1. We are opposed to discounting as a matter of
12 policy. What you are allowing to happen to your
13 products is not in the long-term interest of the brand
14 or the category.

15 "2. Allsports operate a price promise and we are
16 obligated to match our competitors' offer.

17 "3. If the new prices are to be dictated by
18 a specific retailer it would be right to compensate
19 Allsports to allow us to achieve our normal margin.

20 "4. We have reduced the quantities of our order
21 solely because you have failed to authorise the
22 appropriate credit adjustment. As I explained at
23 length, we are happy to run the full quantity from the
24 official order as long as the original in-take margin is
25 maintained at the new market prices."

1 And then in paragraph 5 you indicate the quantities
2 that you will take. And then in 6 you say:

3 "The balance outstanding from order 1342 is to be
4 held in your warehouse until the end of May at which
5 time we will review the situation and cancel the
6 balances if necessary."

7 If you go to your first witness statement back in
8 the other bundle at paragraphs 3 and 4, this is
9 pages 280-281, you say at paragraph 3:

10 "At the time I wrote my letter to Mr Gourlay on
11 20th April Allsports was still at the difficult stage of
12 reinventing itself. I do not believe anything specific
13 prompted the writing of the letter, I think I wrote it
14 because I wanted to get better terms from Umbro. There
15 was increasing discounting of sportswear and I thought
16 there might be a price war. My intention was to get
17 a better discount retrospectively if possible and
18 an appropriate credit adjustment to protect our margin
19 and thereby protect Allsports' profitability and
20 business interest. Allsports did eventually get
21 a better deal, albeit not one involving retrospective
22 discounts ..."

23 In paragraph 4 you say:

24 "In my letter I make reference to Allsports' price
25 promise. Umbro, as did anyone who walked into our

1 stores at the time, knew we had one. It was no secret,
2 we had had it for many years. It was also no secret
3 that we were not discounters ... we chose not to be
4 a discounter. I was not telling Umbro anything it and
5 the marketplace did not already know; I was simply
6 asking Umbro to give us better terms to protect our
7 margin.

8 When I say that what Umbro was allowing to happen to
9 its products was not in the long-term interests of
10 the brand or the category I meant that we believed that
11 these were highly desirable products that represented
12 value for money at the traditional price points. This
13 view would tend to be supported by the significant
14 levels of sales we experienced."

15 I am going to put four points to you.

16 First you say that you do not believe that anything
17 specific prompted the writing of the letter, but it is
18 clear that you had just had meetings on the price of
19 the replica kit?

20 A. I think I wanted to formalise our position to clarify
21 the situation. Obviously this was a catalyst to say:
22 this is what we believe in. I do not think it was new
23 news. Most of the stuff in there had been knocked
24 around for while and was common knowledge to most in
25 the loop. Umbro knew my views on pricing because they

1 had known me for a long time.

2 A lot of my views were not actually my views because
3 a lot of my views had come from David Hughes and been
4 passed down. I was kind of representing his interests
5 at the time.

6 I think that for Allsports to have a different
7 perspective is not wrong. I think ultimately different
8 retailers have got a different business model, and ours
9 was not to be a discounter.

10 Q. What I am suggesting to you is that what prompted you to
11 write that letter at that time was the pricing of
12 the England shirt at launch on 23rd April 1999.

13 A. What I need to do is to formalise some discussions I had
14 been having with Chris Ronnie: look, whilst we do not
15 want to get involved in cancellations at this stage we
16 do reserve the right to control the delivery scheduling.
17 I think it is two different things. I think if you are
18 saying we are happy to take the product, we will take it
19 when it suits us is kind of different to saying: we do
20 not want the product and you can cancel it.

21 I was trying to find a solution and I was trying to
22 justify my salary by making sure that Allsports
23 profitability was protected so if we could not get the
24 sales at the price that we wanted, ultimately we were
25 compensated in terms of making sure we bought them for

1 a better price and therefore our margin was protected
2 anyway.

3 Q. You were never going to discount that shirt, were you?

4 A. Never say never.

5 Q. At that time, launch time, in that crucial --

6 A. No, I cannot say that. I can say that within 24 hours
7 I had the option to discount it. That was a choice that
8 I would take based on the evidence at the time.

9 Q. It was the pricing by others at that time that was
10 the issue?

11 A. I think I mentioned earlier that if I wanted to be
12 I could be the cheapest in the marketplace --

13 Q. Sorry, can you answer the question I put to you: your
14 concern at the time was the pricing of the England shirt
15 by others? If you look at the first sentence regarding
16 the pricing of replica kit and if you also look at
17 paragraph 3 if the new prices are to be dictated by
18 a specific retailer ...

19 My suggestion to you is that what caused you to
20 write that letter was the pricing of the England shirt
21 by others at that time.

22 A. I think the reason for the letter was just to clarify
23 for everyone's benefit, including David Hughes who got
24 a copy of that letter I can see, is that David Hughes
25 and everybody at Umbro knew exactly what the sentiments

1 of the Allsports business were; and more importantly to
2 communicate the fact that we were not prepared to take
3 the initial order in. So it was a formalisation of
4 what we had discussed to say that -- it is very unusual
5 this, it is actually a unique letter because we did not
6 run our business based on correspondence. I probably
7 wrote like one or two letters a year. The reason I did
8 it was because I thought it was important. You are
9 probably right, it was prompted by pricing.

10 Q. Thank you. Pricing by others?

11 A. Yes, exactly. It does refer to that. The reason I am
12 trying to maintain our margins was because people were
13 playing with the retail prices.

14 Q. The second point I want to put to you is this.

15 Paragraph 1 contains a general statement of Allsports'
16 attitude to discounting by other retailers, does it not:

17 "We are opposed to discounting as a matter of
18 policy. What you are allowing to happen to your
19 products is not in the long-term interests of
20 the brand ..." --

21 A. That is true. That is our right as a private business,
22 to see the world how we chose. I do not think having
23 a view on whether you like or do not like discounting is
24 wrong.

25 Q. I was not saying right or wrong, I was just putting

1 the question to you that it was a general statement
2 of --

3 A. I think David Hughes made that quite clear too.

4 Q. Thirdly, prior to 20th April as is made plain by
5 paragraph 4 of the letter, you Allsports had reduced
6 the quantities of orders for the new England shirt. --

7 A. If that -- sorry?

8 Q. Sorry, yes or no?

9 A. Yes.

10 Q. As appears from paragraph 6 of the letter, over
11 the page, you left open the question of whether
12 the balance would be reinstated?

13 A. It is all to do with the timeline. I think you do
14 understand that we actually placed orders six or seven
15 months ahead of the product being delivered. At that
16 point based on the price we expect to sell them we have
17 to quantify and justify the rate of sale. Therefore, if
18 the price changes we can expect the rate of sale to
19 change. That is the reason for the adjustment in terms
20 of delivery scheduling.

21 Q. Paragraph 6 effectively leaves open the question of
22 whether you will take the rest?

23 A. As I understand it we took everything.

24 Q. You did, as events turned out. What I am suggesting to
25 you is that at that time of writing that letter

1 the question was left open as to whether you would take
2 the balance?

3 A. Yes, that is exactly the case, yes.

4 Q. Thank you. The final point I wanted to ask you about
5 this letter, and again I am going to put it to you as
6 a suggestion and you can agree or disagree. The letter
7 suggests to Umbro at least implicitly that they, Umbro,
8 should not allow other retailers to discount.

9 A. I think we were arriving at a point in time where we had
10 probably arrived at the watershed in terms of football
11 replica. I think we had to determine what our future
12 strategy might be. At this point in time essentially
13 I am playing for time because I did not know the answer
14 to that question. I think we are trying to make sure we
15 do not get all the stock, which is the one thing as
16 a retailer it is important you do not do. Essentially
17 I am trying to communication our views to Allsports and
18 keep ourselves some breathing space until we determine
19 what is the right course of action for the future.

20 Q. If you look at paragraph 1 again you say what you,
21 Umbro, are allowing to happen. That is a statement of
22 your disapproval --

23 A. I think in an ideal world we made it clear that we would
24 have preferred things to stay where they were and for
25 most retailers to conform to what were essentially

1 recommended retail prices. That would be our preferred
2 option.

3 Q. Yes. And you were complaining or you were expressing
4 a view there in paragraph 3 about prices being
5 dictated -- if you go to paragraph 3 -- dictated by
6 a specific retailer. It is on the first page of
7 the letter, paragraph 3 of the letter. You say --

8 A. Yes, fine, yes.

9 Q. "If the new prices are to be dictated by a specific
10 retailer ..."

11 A. I think this is exactly what I am paid to do. I think
12 David Hughes hired me with a view to make sure that
13 the business remained profitable and we make the right
14 kind of noises to our suppliers and we negotiated
15 aggressively and we bought the best possible price. This
16 to me seemed a lever that we could use to negotiate even
17 better prices. I think it is a fair tactic from
18 Allsports' perspective to try and use whatever means
19 we can to try to make sure we buy as competitively as we
20 can.

21 Q. But it was not just about getting better prices was it?
22 Because --

23 A. That would have done the trick. Ultimately what we are
24 talking about is a relationship between the selling
25 price and the buying price, and if that relationship

1 stayed the same in all honesty it would not have hurt me
2 to sell at a lower price.

3 Q. You did not generally do that for replica?

4 A. We did not generally do it but it is not to say it could
5 never happen.

6 Q. But you wanted to keep prices up --

7 A. I think there is no secret to the fact that we would
8 have preferred prices -- I do not think we are arguing
9 that point whatsoever.

10 Q. No, thank you. If you turn over the page to tab 12,
11 you will see Umbro's response. This is on 26th April
12 from Mr Gourlay to yourself. You will see the first two
13 paragraphs:

14 "Further to your recent letter and several meetings
15 between you, Peter Draper and myself, I feel it equally
16 important that I clarify Umbro's position regarding
17 the above subject. I am fully aware that allsports
18 operate a price promise and are obligated to match your
19 competitors' offers.

20 "However, I would like to stress that we only offer
21 guidance on retail pricing."

22 My question there is: that indicates, does it not,
23 that Umbro certainly interpreted your letter as
24 a request that Umbro should do something about retail
25 pricing?

1 A. Obviously suggested retail price is only ever guidance.
2 It cannot be anything else by definition.

3 Q. What he is saying there I would suggest is that he is
4 telling you he cannot take steps to force retailers to
5 price at a particular level, he cannot take control.

6 A. I think I already knew that.

7 Q. Thank you. Can we move on more generally to look at
8 the question of cancellation and reduction of orders.

9 Again I am going to ask you a question and ask you
10 to agree or disagree. Allsports did reduce or
11 reschedule orders of replica kit and did so as a result
12 of the discounting practices of others?

13 A. No. You see, I find this offensive. Because I am kind
14 of proud of the way the Allsports business ran, I think
15 we were efficient and our forecasting was accurate.
16 I think in terms of the reputation of our business
17 compared to other people's businesses I do not think we
18 actually did all that much cancelling. I think this is
19 a very unique situation as regards rescheduling. And
20 I do want to differentiate between rescheduling and
21 cancelling because the two things are not the same.

22 Q. I will come to that in a moment and I see that you have
23 made that distinction. I am going to put another
24 proposition to you and I will take you to the evidence
25 in a moment.

1 In your evidence you say that if another retailer
2 was discounting that would affect Allsports' volume of
3 sales; that stock would move more slowly and as a result
4 you would reduce or reschedule forward orders. Is that
5 a fair summary of your evidence?

6 A. That is possible, yes. Obviously I would have to review
7 each individual case on its merits because the mechanic
8 of this, the thing is really dependent on supply and
9 demand. So without knowing how much product was in
10 the marketplace and how many people wanted to buy
11 the product it was impossible to know before the event
12 what those dynamics would be.

13 Q. All I am suggesting is that if another retailer was
14 discounting that would effect those dynamics?

15 A. Yes, it would. There is no question about that.

16 Q. You also accept that if the rescheduling was being
17 caused by Sports Soccer discounting you would have told
18 Umbro of that as being the reason for rescheduling?

19 A. We are not obligated to give any reasons.

20 Q. I was not suggesting you were obligated, I was
21 suggesting as a matter of fact --

22 A. I think it is a simplification. I do not believe that
23 those two things are directly linked.

24 Q. Can I take you to paragraph 19 of your second witness
25 statement, 284E at the bottom. You say:

1 "On the rare occasion we did reschedule we were
2 under no obligation to explain. But if Umbro asked for
3 an explanation ...", missing out the bit in brackets:

4 "... I would have told them anyway. If
5 the rescheduling was due to slower sales ... caused by
6 Sports Soccer discounting since the date of the original
7 order I would have said so if that was the honest
8 explanation. I saw no reason why I should not just tell
9 them."

10 A. I could never isolate individual specifics because
11 I think at that time Sports Soccer did not have so many
12 stores. So I think the bigger picture would be that it
13 probably suited Allsports not to take in all that stuff
14 at once. I do not think it is directly down to the
15 Sports Soccer consideration, to be honest.

16 Q. You say there that if it was due to slower sales caused
17 by Sports Soccer discounting then you would have said
18 so?

19 A. Yes, I would be happy to say so but I do not think that
20 is the case because I think there is an financial
21 implication. I am looking at demand, I am looking at
22 timing. We have to make priorities. There might have
23 been lots of other things I would have preferred to
24 bring in at that point in time.

25 If I have only got a limited capacity and a limited

1 amount of money and I need to make some choices, and it
2 may be that ... spend the money on some other products
3 I could sell, football items, tennis racquets et cetera,
4 luggage. Ultimately I think to say it is down to
5 somebody else's pricing is probably
6 an oversimplification and probably incorrect.

7 Q. If Sports Soccer had been discounting, let us take
8 for example in the lead-up to Euro 2000, before they had
9 been discounting, you have accepted that that would have
10 affected your rate of sale.

11 A. That is what I said, yes, but in actual fact it has not
12 always worked out that way. If all of a sudden you put
13 a ridiculous price on these products then the rate of
14 sale is phenomenal, and it is a rate of sale that no one
15 can sustain because obviously the stock levels are not
16 appropriate. So within a week we are probably the only
17 people that have any stock. So the whole thing is
18 like ... nobody knows really. You cannot guarantee what
19 is going to happen because you just do not know what
20 the volumes are, and I certainly did not know what
21 the other people were buying. It is like playing cards,
22 you do not know what the other people have got.

23 Q. You say at paragraph 19 of your statement:

24 "Demand for replica kit has never fallen away, and
25 we would eventually take in the stock and sell it."

1 That is not what you were saying in your letter to
2 Mr Gourlay in April 1999.

3 A. I do not think I am infallible. If I was given my time
4 over again I would probably review my situation on this
5 because I think history has taught us something that we
6 did not know at this point in time, that the universe
7 for football replica kit is totally transformed by
8 pricing. I did not know that because there was no
9 precedent for it, we had never seen it, we had never
10 seen people going out there at essentially trade prices
11 before, this is new territory. We have got to
12 a situation now where everything has changed and with
13 all due respect there was no possible way that I could
14 have known that or anybody else could have known.

15 Q. Just to remind you of what you said to Mr Gourlay in
16 April 1999, in that letter you reduced the quantity of
17 the order and you threatened cancellation of
18 the balance. It was not a matter of taking it later; it
19 was the suggestion that you would not take the balance
20 at all. Paragraph 6 of your letter.

21 A. Paragraph 6:

22 "The balance outstanding ... at which time ...
23 review the situation and cancel the balance ..."

24 Q. Paragraph 4:

25 "We have reduced the quantities of our order solely

1 because ... we are happy to land the full quantity as
2 long as ..."

3 In 6 you say you leave open the question that you
4 may cancel.

5 A. That is true.

6 Q. In fact, as indicated in that letter, the real position
7 was that the orders would be reinstated if discounting
8 stopped?

9 A. I was trying to do what I was being paid to do
10 essentially, which was represent Allsports' interests.
11 I was trying to use the information available to me to
12 negotiate a better price.

13 Obviously threatening cancellations is not a bad way
14 to go about that, especially if they believe that you
15 mean it. So it was definitely my intention to
16 communicate the message that I was serious. In
17 the event we took in all the stock.

18 Q. Can I just take you to what Mr Fellone said about this.
19 In the big bundle at page 266, paragraph 19. After
20 the first sentence, in line 3, Mr Fellone says:

21 "In the past they [Allsports] have cancelled orders
22 on the forward order book on the ground that the rate of
23 sale of these products had decreased due to
24 Sports Soccer's discounting prices, and therefore they
25 no longer wanted the product unless Sports Soccer

1 increased the price. We would then be left with excess
2 stock."

3 That is the position broadly is not it?

4 A. I disagree one hundred per cent with that statement.
5 I would like to see the evidence, I would like to see
6 all these mythical cancellations because I am pretty
7 sure that we did not actually get involved in cancelling
8 anything like 10 per cent of the total orders. That is
9 my recollection. Phil is entitled to his point of view
10 but I would like to see the documentary evidence that
11 supports that theory.

12 Q. Let us turn to cancellation rather than rescheduling of
13 an order in general terms. As you just said,
14 cancellation is different from rescheduling, is it not?

15 A. Two totally different things.

16 Q. You would and could cancel an order -- and I include in
17 cancel reduce, reduce but not reinstate -- whether for
18 replica kit or for branded goods for a number of
19 reasons?

20 A. Sure.

21 Q. Late delivery?

22 A. Yes.

23 Q. Poor quality?

24 A. Yes.

25 Q. Or because sales had not met the forecast?

1 A. That is possible.

2 Q. If you look at paragraph 20 of your second statement,
3 which is on page 284F, you say:

4 "The rescheduling or cancellation of branded
5 product ..."

6 I do not know if you are with me?

7 A. No, I am not.

8 Q. The second statement, 284F, near the back, Mr Guest.

9 A. Okay.

10 Q. "The rescheduling or cancellation of branded product was
11 no more frequent than the licensed product. The only
12 reason for us to cancel would be for either late
13 delivery or poor quality.

14 "Allsports was known as the least likely to cancel
15 an order as we had the most accurate forecasts and were
16 well managed on the buying side."

17 Leaving to one side late delivery and poor quality,
18 it was also the case that if sales did not meet forecast
19 that would be a reason to cancel?

20 A. Yes.

21 Q. And sales might not meet forecast because of the effect
22 of discounting on the market?

23 A. That is a possibility. But in reality it did not always
24 work that way. You are right to think that logically
25 that would be the case but the evidence tends to

1 contradict that. Because actually what happened is that
2 every time people reduced them their rate of sale
3 exceeded expectation. So ultimately we turned out to be
4 the only people left with any stock. When you own all
5 the stock you determine what the prices are. You are
6 right in theory but in practice you are probably not
7 quite so right.

8 Q. You go on in paragraph 21 of your statement to say -- at
9 the end you are dealing with questions of underlying
10 threats. Chris Ronnie is referring in Ronnie 4 to
11 an underlying threat. You then go on to the sentence
12 we have already considered about your desired to push
13 the brand up-market. And then you say: we were not big
14 enough to threaten Umbro, and Phil and Chris did not
15 feel in any way threatened by your observation?

16 A. I think it is laughable that they should be threatened
17 by Allsports because the point is that if they did not
18 sell the jerseys to use they would sell them to somebody
19 else because ultimately the number of people wanting to
20 buy either England or Manchester United jerseys were not
21 determined by whether Allsports carried that in stock.

22 If you went into any town in England and wanted to
23 buy an England jersey and maybe you could not find it in
24 Allsports there would be plenty of other places where
25 you could find it. So I think Umbro were secure in

1 the knowledge that their sales would not be affected by
2 any decision that we took.

3 Q. Let us leave aside the question of threats, I do not
4 want to talk about threats. I want to put this to you.
5 It would have been in Umbro's interest to keep Allsports
6 happy, would it not?

7 A. I think probably more for personal reasons than business
8 reasons. I think the fact that we were all good
9 friends, had known each other for a long time, had
10 a really good relationship business-wise and socially,
11 I think that was probably more a relevant situation.
12 I think ultimately the amount of business we did was not
13 earth shattering because in all honesty those sales
14 would happen whether Allsports supported Umbro or not.

15 Q. I will come back to that in a moment. At that time
16 Allsports was still the second largest national
17 sportswear retailer?

18 A. No.

19 Q. It was not?

20 A. No. The second largest, never?

21 Q. Let us look at tab 7 of your cross-examination bundle.

22 A. On a good day we might be fourth or fifth, but it never
23 got up to the heady heights of second.

24 Q. This is a Mintel report. If you go to the second page,
25 page 64 in the bottom right corner, down to the second

1 bullet point about a third of the way down this is
2 a summary of rankings by outlets:

3 "Allsports is firmly established in second place
4 although it faces increased competition from Blacks ..."

5 If you go to the bottom of the page you will see
6 the 1999 figures for Allsports in terms of turnover
7 which is the second, and by 2000 they had been overtaken
8 by Blacks and JD. In terms of the number of retail
9 outlets at the time it was the second largest.

10 A. We certainly had a lot of stores but in general
11 they were small stores. Tiny stores. Our average
12 square footage is probably close to 1,500 feet which is
13 nothing compared to the superstores that JJB and Sports
14 Soccer run. Counting doors is probably not
15 the solution.

16 Q. But loss of Allsports' business would have been
17 a significant matter to Umbro, would it not, at
18 the time?

19 A. I think it is transferable.

20 Q. Well, you said earlier and you agreed, in fact you
21 emphasised that at that time Umbro was trying to build
22 up its business on the non-licensed side, the branded
23 side?

24 A. I think there are two things. I think financially we
25 were not that important but I think strategically we

1 would be more important. Because we would be the only
2 partners who were prepared to invest in making Umbro
3 a more performance and technical brand, something that
4 Umbro were desperately keen to do. So we probably had
5 some strategical relevance but in terms of cash, forget
6 it.

7 Q. That is the point I am making. You said the strategic
8 relevance. Earlier you made the point that Umbro really
9 wanted to shift away from replica into branded because
10 they were over-dependent on replica?

11 A. Yes. Obviously in an ideal world they would like to
12 sell expensive merchandise. We were the best partners
13 to help them do that.

14 Q. You were. So Allsports were a very important player in
15 that aspect of their strategy?

16 A. Yes.

17 Q. We can see that at the time Umbro itself perceived
18 the holding back on orders by Allsports as a serious
19 issue?

20 A. They seemed to be desperate for sales at the time.
21 I got the impression that they were desperate for cash,
22 for sales. They struggled to finance a lot of
23 the business in the early days. --

24 THE PRESIDENT: Sorry, I missed that, Mr Guest.

25 A. I said they had cashflow issues, all the time they were

1 pressing for us to take deliveries. They were under
2 pressure because I think they had not gotten the means
3 to support the business that they were in.

4 What happened a lot prior to this period is that
5 ultimately we might order for instance a Celtic jersey
6 and we might order 10,000 shirts for argument's sake and
7 then come the launch day we might get 2,000 shirts, we
8 might get 20 per cent of what we ordered. Those
9 allocations were what were normal at that point in time.
10 And that was in my view down to the lack of finance.

11 This is prior to the management buy-out.

12 MR MORRIS: That is different thing, that is the holding
13 back. You are suggesting there that that is Umbro not
14 being able --

15 A. I am suggesting that there was a finance issue with
16 Umbro.

17 Q. If you go to tab 13 -- my suggestion is that in fact
18 Allsports did hold back on orders if sales were not
19 going as well as might be expected, and that that was
20 something which was a worry and a concern for Umbro?

21 A. I think the relationship between Allsports and all its
22 suppliers, not just Umbro, was probably closer in many
23 ways than many of the other retailers. I think you have
24 probably read in the evidence that we did supply all our
25 major partners with stock and sales information. At any

1 given time they would know exactly what stock we had
2 bought and sold, what our week's cover was, what
3 the margins were. We had a totally transparent
4 relationship which was one of a kind. Nobody else did
5 that.

6 In terms of our openness and our commitment to
7 the partnership I think we were in a class of our own.
8 I think whatever I could tell them they already knew
9 because they were privy to the same information I was.

10 Q. Could you look at tab 13, which is the Umbro monthly
11 management report for May 2002 which we have seen
12 before. I would like you to go to the fourth page in
13 that tab, the one headed "Monthly Report", the fourth
14 page in after that page. If you go down you will see it
15 says:

16 "UK Sales spend the last two weeks of may trying to
17 force England licensed product into not only
18 the independents but also the major account base.
19 Allsports were the main issue. Having committed to
20 orders in the region of 1 million for April and
21 May they were still holding back on a booking-in date.
22 This has now been resolved and Allsports will have taken
23 75 per cent of the outstanding amount by 12th June."

24 The proposition I am asking you to agree or disagree
25 with is that Umbro perceived holding back on orders by

1 Allsports as a serious issue at the time?

2 A. I think there is a clue in the language. I think
3 the fact that Umbro were trying to force does not sound
4 to me like the rhetoric of a partnership, it sounds to
5 me like they were short of cash. Why would they try to
6 force on to us stuff that we did not need? It is not
7 logical. If we are talking about a delay of a few weeks
8 or a few days ... this is crazy. We are going to buy
9 the stuff and pay for the stuff, what is the issue?

10 All they are trying to do is make specific sales
11 targets. They are stepping outside the partnership and
12 they are using terminology like "trying to force". To
13 me they should be trying to work with us, which is
14 exactly what we were trying to do with them. That is
15 why we shared all the key information on a weekly basis.

16 Q. Whether it was for cash reasons or otherwise -- you
17 suggest it was a cashflow problem -- all I am suggesting
18 to you is that if you did hold back that caused Umbro
19 a problem?

20 A. It is possible that it could have caused Umbro a problem
21 but it was not the reason for not taking it in. I was
22 deliberately trying to cause any problems, I was trying
23 to work with Umbro but it is a two-way street. I work
24 with them and they work with us and we have to make
25 choices for our business, and the choices I make are

1 what is right for the Allsports business. By deferring
2 this for a short time it meant that I could bring other
3 products into the business so it was the right thing
4 from an Allsports' point of view.

5 Q. I was not questioning Allsports' motivation for doing
6 it, I was merely suggesting to you that Umbro saw that
7 as a problem at the time, the holding back?

8 A. Yes, I think they did.

9 Q. And Umbro also saw a direct connection between
10 Sports Soccer's discounting and the declining to place
11 orders for non-licensed products. I will take you -- if
12 you go over the page to tab 14 you will see a further
13 monthly report -- this is January 2000. If you go to
14 the third page of that management report, this is
15 Mr Richards's trading report, dealing with Allsports.

16 At the bottom of that page it has 37C in
17 the right-hand corner, and it says:

18 "We await glove order from Allsports who are still
19 refusing to support us on shin guards and luggage.
20 The main reason is Sports Soccer prices."

21 A. This is a document which obviously is not written by
22 me --

23 Q. I understand that.

24 A. It is written by a guy called Chris Richards. I cannot
25 comment on his views. I do not think those two

1 things -- it might be his point of view which he is
2 entitled to, but I do not think we actually said we will
3 not buy goalkeeping gloves unless Sports Soccer sell
4 replica shirts at full price. I do not think we ever
5 said that. Certainly I never said it.

6 Q. But he saw a direct connection between the two?

7 A. I think he is a salesman, I think he is under pressure
8 and I think he is trying to make it look right, and I
9 think that is the easiest way to do it. If he does not
10 have the order, it might be any one of a number of
11 reasons, but ultimately the simplest one would be to
12 suggest that it was in some way linked to somebody
13 else's shirt prices. Which I do not believe.

14 Q. Thank you. Can I move on and ask you some questions
15 about Ms Charnock and her evidence. Again I am going to
16 put some propositions or suggestions to you and ask you
17 if you agree.

18 First of all, area managers would pass comments to
19 Michelle Charnock about discounts being offered by other
20 retailers?

21 A. Michelle would be the point of contact for the retail
22 business. She would field all the phone calls.

23 What the people in the stores do is feel very sorry
24 for themselves. If somebody else has a product cheaper
25 than they have it they do not understand why that should

1 be; their expectations are quite high really.

2 Q. You agree that they would be passing comments about
3 discounting?

4 A. They certainly would not contact me so I think Michelle
5 would be ...

6 Q. And her main point of contact at Umbro would be Mr May?

7 A. Yes.

8 Q. And she would talk about prices with him, about
9 promotions and discounts offered by other retailers
10 including Sports Soccer?

11 A. I do not think so in all honesty. I think Michelle --
12 obviously she is not here to speak for herself but she
13 is a very junior employee. The idea that Michelle was
14 actually running this department is slightly misleading.
15 Michelle was really more of an administrator. She had
16 worked her way up. She had done well, she had been
17 loyal to the business, she had worked as a store manager
18 and she had done a very good job. She knew
19 an incredible amount about football. She knew
20 everything there is to know about football and probably
21 still does, and ultimately the idea that she ran the
22 department is probably misleading.

23 Q. I was not suggesting she was running the department --

24 A. No, what I am saying is that she would take those calls.

25 Q. And what I am going to put to you again is that she

1 would talk to Mr May about prices and about promotions
2 and discounts offered by other retailers including
3 Sports Soccer?

4 A. It was not Michelle's job to do that.

5 Q. I am asking you whether she would do that?

6 A. I was not privy to those conversations.

7 Q. If you go to paragraph 7 of her witness statement, at
8 219 -- earlier today you said you had read her statement
9 and you broadly agreed with what she said?

10 A. Yes.

11 Q. If you go to the second page of her witness statement --
12 I do not know how it is numbered. 219B. If it is not
13 paginated it is the second page of the second statement.

14 She says there:

15 "I did however on occasions speak to him
16 [Mr May] about promotions or discounts being run by our
17 competitors."

18 That is paragraph 7, at the top of the page.

19 "When I did so it was to ask how it was that our
20 competitors were able to offer such low prices and to
21 see if he would tell me how such promotions affected
22 sales. His response was that they could cut prices
23 because they worked on lower profit margins. I do not
24 know whether I referred to Sports Soccer during such
25 conversations but since they were becoming more

1 prominent at that time I accept that I probably did."

2 A. I think it is a ridiculously naive question to ask.

3 I think the answer is obvious to anyone, you know, you

4 run these promotions by taking a reduced margin so I am

5 kind of surprised she is wasting the company's time by

6 asking such a dumb question.

7 Q. But she did do it?

8 A. Well, she probably did -- in fact, yes, I am saying she

9 did do it. But she did not do it because I told her to

10 do it, she did it on her own initiative.

11 Q. It is likely, is it not, that Mr May would pass those

12 comments up the line to his boss, Mr Fellone?

13 A. Probable.

14 Q. And you would be speaking to Mr Fellone generally about

15 other retailers discounting?

16 A. Certainly I would not be asking questions like: how do

17 retailers manage to reduce prices, because the answer is

18 pretty obvious. You either buy better or you work on a

19 smaller margin, expected to sell a high volume. There

20 is not any mystery there, I think I know how it works.

21 Q. And you yourself would have conversations with Miss

22 Charnock about prices in the market, and also about

23 the impact of those prices on Allsports' sales

24 performance?

25 A. I have to say it was not on the top of our agenda. Let

1 me try to put it into some perspective: we were not
2 obsessed by pricing because ultimately there are a lot
3 of other elements to our business, and more often than
4 not, certainly in this timeframe, we were selling
5 virtually everything we bought anyway. We did not spend
6 all our time discussing pricing. I think I knew in all
7 honesty that at some point in time it would become an
8 issue but at that point -- it was one of those things.
9 While there are things going on in the marketplace it
10 was not really a high priority for us because at this
11 point in time we were still managing to sell most of our
12 products for the prices we wanted to sell them for.

13 Q. But you did have conversations with Miss Charnock about
14 prices in the market?

15 A. Well, the way it worked was that I would meet all the
16 buyers twice a week, so on Monday we would review
17 the previous week's sales and on Tuesday we would talk
18 about store visits and order signing. So there is no
19 question that during those conversations all aspects of
20 our business would be discussed.

21 Q. And you would also discuss the impact of prices upon
22 Allsports' sales performance?

23 A. That was evident on Monday when we would look at and
24 review the previous week's sales. What you cannot do is
25 know exactly what the impact of those elements are. The

1 facts are we bought so many, sold so many, got so many
2 left. I could not say what the varying factors and the
3 influence of the individual factors were, I only knew
4 the whole story.

5 Q. If somebody was discounting at the time you would know
6 that?

7 A. Yes, but you have to remember we are a national business
8 and we traded in something like 300 locations, maybe
9 Sports Soccer had 70 stores, I do not know. Ultimately
10 the vast majority of our stores were nowhere
11 near Sports Soccer, nowhere near.

12 Q. In the course of your conversations with Ms Charnock, it
13 is likely she would have passed on the comments?

14 A. To say that we did not discuss it would be wrong.

15 Q. Thank you. Can I ask you one further question about
16 Ms Charnock. She was not involved in the buying side as
17 far as pricing was concerned, but she was relatively
18 senior in terms of picking product range, types of
19 product and volumes to purchase?

20 A. In theory she was; in practice she was not. When you
21 come to make a decision about how many England jerseys
22 you buy or Manchester United, you do not ask the office
23 junior. With all due respect to Michelle, that decision
24 would have come ultimately from me because I am the guy
25 responsible for buying and marketing, so what we do is

1 we look at the evidence available to us, we look at
2 historical information, review the marketplace, take
3 into account all the factors including price, and it
4 would not be Michelle who would decide.

5 Q. I understand that you were obviously in a more senior
6 position and --

7 A. I sign the orders ultimately.

8 Q. What I am suggesting to you is that to characterise
9 Michelle Charnock as some sort of junior booking clerk
10 is not strictly a fair description?

11 A. Not a million miles from the truth.

12 Q. But she had come up through the ranks, she had been
13 store manager, she was receiving reports from store
14 managers via area managers --

15 A. There was nobody more junior in the organisation than
16 Michelle. She was at the entry level of the buying
17 department.

18 Q. Even though Mr Hughes describes her as the one whose job
19 it was to pick the trends, take a view on what we will
20 sell and where, and the volumes to purchase?

21 A. In all honesty that is building her part up. I do not
22 think David really knew how the day-to-day business
23 operated. He was the chairman. I think he worked a few
24 hours a day, he passed through my office on occasions.
25 In terms of the daily running of the business: the

1 Monday morning meetings, the Tuesday order signing
2 meetings. He never attended any of those meetings so
3 I would not think he would be the placed individual to
4 say how the buying department was run.

5 Q. Can I now turn to the events of May and June 2000. Can
6 I ask you first of all how well you remember now those
7 events of four years ago?

8 A. I remember it reasonably well. I was in Holland for
9 Euro 2000 as a guest of Nike. I kind of remember what
10 was going on. I certainly remember the tournament.

11 Q. And the period immediately prior to that?

12 A. Yes, I remember the way the sales panned out.

13 Q. At that time, Sports Soccer, I am now talking April/May
14 2000, were discounting the England home replica shirt to
15 32.99?

16 A. Sure.

17 Q. And that discounting was something that Allsports did
18 not like in the lead-up to a key selling period.

19 A. We did not have to like it, did we?

20 Q. Well, you had to live with it. But I am suggesting to
21 you that you did not like it. It was a key selling
22 period?

23 A. I do not think I have made a secret of this all along.
24 We did not like it but we had to deal with it.

25 Q. And it would have been consistent with what you have

1 been saying in your second witness statement, that you
2 would have mentioned the fact that you did not like it
3 to Phil Fellone or Chris Ronnie?

4 A. I think I would have made it known to them that I did
5 not like it, but I do not think I would have to because
6 they knew me well enough by now to know what my views
7 were.

8 Q. I want to ask you about Allsports' own sales of that
9 shirt at that time, and I want you to concentrate on
10 the period before June 2000. April and May first of
11 all. I am not asking you about the overall outcome of
12 the sales --

13 A. No.

14 Q. I am going to do this by way of putting three
15 propositions to you rather than to take you all the way
16 through the material if I can.

17 First, as far as Allsports' own sales of the England
18 shirt in the period before Euro 2000 was concerned,
19 the position was that during April and May 2000
20 Allsports did not book in all its orders already placed?

21 A. Underachieved.

22 Q. There is a yes to the question?

23 A. Yes. Against our sales forecast we did not sell enough.

24 Q. Secondly, the reason you did not book the orders in was
25 because your current stocks were high and higher than

1 expected?

2 A. Yes, for the answer given to question one.

3 Q. Thirdly, that was internally -- I think you have given
4 the answer -- that was because the sales had been slower
5 than expected?

6 A. Yes. Slightly more complicated than that, if I am being
7 honest. The reason I am puzzled is that what we have
8 done is landed a significant amount of stock. In fact,
9 we probably landed more stock than we actually needed.

10 Whilst the numbers we had bought in total were based
11 on our anticipated sales over the total period, it is
12 right to say that the initial sales were disappointing,
13 but if you look at the overall situation one of
14 the problems we had had in the past and what made buying
15 replica exceptionally difficult was that until the day
16 of the launch you did not realise exactly what
17 proportion of your order you would receive. So there
18 was a kind of double bluff going on. Sometimes you had
19 to order more than you thought you needed to get what
20 you needed. Historically there had been some
21 discrepancies; it was not always the case that you
22 actually received one hundred per cent of what you
23 ordered.

24 So there was a kind of like an element of surprise
25 in all this. You did not know for sure that you were

1 going to receive your order complete.

2 So we tended -- we took a policy decision that we
3 would try and land as much stock, and own the stock,
4 because obviously if you own the stock you are in
5 control, so normally we would land one hundred per cent
6 of the stock -- we would try to land
7 one hundred per cent of the stock.

8 Q. Two points on this, this was not a launch for
9 the England shirt at the time --

10 A. It was a launch at the outset, obviously.

11 Q. That was a year before; I am talking about the period
12 leading up to Euro 2000.

13 A. Right, okay.

14 Q. The second point I put to you is this: this was not
15 a question of you not getting what you had ordered, it
16 was a question of you taking it more slowly?

17 A. Yes, I think that is a legitimate option that was
18 available to us.

19 Q. And one of the reasons for those slower sales -- again
20 I am talking about April and May, not June -- and
21 the delay in taking deliveries would have been the major
22 discounting campaign by Sports Soccer?

23 A. I do not think you can say that because even I do not
24 know that, so how you can know it for sure I do not
25 know.

1 It might be a consideration, it might be one factor
2 amongst a number of factors. It might be that the level
3 of interest in the team did not appear until
4 the tournament got underway.

5 Q. We also know that once Sports Soccer and the other
6 retailers went back up to 39.99 on the 2nd and
7 3rd June you were then able thereafter to take in most
8 of what you had ordered?

9 A. Yes, but you are isolating the facts, you are not
10 actually looking at the whole thing in context because
11 it may well have been that the day that Sports Soccer
12 went up to 39.99 they had got no stock, it may well have
13 been that the day Sports Soccer went up to 39.99 the
14 tournament was about to make some impact. There may be
15 other considerations apart from the single issue of
16 price. It is quite possible.

17 Q. As a matter of fact, after 2nd and 3rd June you did take
18 in most of your stock?

19 A. We did.

20 Q. Thank you. Some questions about the JD promotion.

21 JD was also running a promotion which applied to
22 the England shirt at that time towards the end of
23 May 2000, the hat-trick promotion; you remember that?

24 A. Who can forget it?

25 Q. And it was the giving away of a free Admiral hat with

1 the England shirt. Mr Hughes and Mr Patrick were most
2 concerned about the effect of that promotion on the
3 England shirt, were they not?

4 A. I cannot speak for Mr Patrick. I think David was aware
5 of it. I do not think he was particularly concerned --
6 I am trying to cast my mind back to Friday when he
7 discussed it, but I think that he acknowledged it and I
8 think he was aware of it, but I think like me he would
9 not be overly concerned because in all honesty JD were
10 not a serious player in the replica business.

11 Q. Mr Hughes was sufficiently concerned to call Mr Knight
12 of Blacks about it, was he not?

13 A. He certainly had a conversation with Tom Knight on that
14 particular subject. I think there was a reason: I think
15 he wanted to ask if it was a national promotion, if
16 I recall correctly.

17 Q. That was one of the reasons.

18 A. Yes. Obviously I cannot speak for David, but in all
19 honesty I would say that the JD thing was not a red
20 herring but it certainly is not a big event or
21 a significant event in the overall scheme of things in
22 my opinion.

23 Q. What I am going to suggest to you is that you too were
24 concerned about that promotion and you let Chris Ronnie
25 know of your concerns?

1 A. I think it is unprecedented. I think we were entering
2 into a kind of new territory. I do not think it had
3 ever been done before on an England jersey. Obviously
4 it was a gift with purchase which was discussed on
5 Friday. The perceived value is £10. There you can
6 suggest that the jersey was being sold for £30,
7 possibly.

8 Q. Yes, yes. It was a goods with purchase promotion?

9 A. Yes.

10 Q. And as such it is akin to a discount --

11 A. It is better than a discount because what you finish up
12 doing is putting the same amount of money in the till so
13 you still get £40.

14 Q. But it would be used by a retailer to compete where
15 somebody else might be discounting. It is
16 an alternative way of competing?

17 A. It is a different way of offering an incentive.

18 Q. If we look briefly at what you say about this, first in
19 your first witness statement at paragraph 5 at page 281.
20 This is really for completeness, Mr Guest. I will just
21 take you through what you said. You say there, in
22 paragraph 5 in the middle of the page:

23 "I remember the JD promotion ... It did not concern
24 me and I did not contact Chris Ronnie to ask what Umbro
25 were going to do about getting the promotion stopped."

1 Then if you go over I think quite fairly the point
2 was put back to you because you re-read what Chris
3 Ronnie had said, and in your second statement you expand
4 a bit on what happened as far as that was concerned, and
5 that is paragraph 28 and I think you will find that at
6 page 284G. You say there:

7 "I have looked again at what I said about this
8 issue in my first witness statement and have little to
9 add. JD Sports was at that time withdrawing from
10 replica kit and would not have had large volumes of
11 stock. They were not a significant player. I was
12 surprised that they gave an Admiral product away with
13 the shirt and not an Umbro one ..."

14 That was the first bit of surprise, because it is
15 a competing brand:

16 "... and surprised by the promotion in itself
17 because JD Sports was what I call an aspirational
18 retailer which means that they did not compete by
19 discounting but by offering quality products with
20 an attractive image in a quality environment. This
21 promotion was a new development. I did not phone Chris
22 about this, however, it was raised at a lunch meeting
23 with Chris and Phil at around that time. I raised it
24 because I wanted to know if Umbro was trying to bring
25 JD Sports back into the replica kit market despite

1 JD Sports never really having supported the Umbro brand.

2 "If it turned out that Umbro was [bringing JD Sports
3 back in] then I would have to think about how to react
4 to that. In the event I got the impression that JD
5 Sports was using the promotion to promote Footfall and
6 was not unduly concerned."

7 A. This is really interesting, actually, because you asked
8 me earlier about the relationship between Allsports and
9 Umbro in terms of more aspirational product, in terms of
10 Choice of Champions.

11 As it stood at the time, Allsports would be the only
12 alternative. Now if they were to bring JD back into
13 the picture they would have more than one option and at
14 that point this would become relevant because JD's have
15 been out of replica for a long time. I know these
16 things because I was head of buying at JD's and at that
17 point in time (inaudible) per cent of the turnover was
18 football licensed merchandise.

19 They had deliberately the decision to move away from
20 it. This was kind of an interesting development. JD
21 had not been in football replica for a long, long time.

22 This was obviously not done in association with
23 Umbro. I do not think for a minute that Umbro were
24 privy to it until after the event. That is the reason
25 they had used an Admiral cap and not an Umbro cap. Had

1 they used an Umbro cap then Umbro would have known about
2 it. I think they were as surprised as anybody.

3 Q. What you are saying there is that you thought that JD as
4 another aspirational retailer would want to push
5 the brand up and you thought: how could that sit if they
6 were coming in replica with an offer?

7 A. I think that maybe -- I think that Chris Ronnie probably
8 wanted -- everybody wanted a relationship with JD
9 because they are a cool retailer, they are a very good
10 retailer. Brands need to have partners like JD because
11 you cannot just build a business on price, you need to
12 have some other assets, and you do not get those other
13 assets, with all due respect, from the people that
14 we have been talking about this morning. JD's, they are
15 the smartest, they have the highest standards, they have
16 the best merchandising and brand mix. They are the kind
17 of people that Umbro would like be knocking around with,
18 so they were trying to persuade them to be partners and
19 obviously Chris was trying to get them interested in
20 replica, and ultimately probably trying to get them
21 interested in brand products as well.

22 Q. You say that you were surprised by the promotion itself,
23 and you would accept that?

24 A. Sure.

25 Q. You then say in your statement that depending on Umbro's

1 response you would have had to think about how to react.

2 Now my question for you is this: how might you have
3 reacted if Umbro had been trying to bring JD back into
4 replica kit?

5 A. I would have probably reacted by making sure that all
6 the projects that we had originated, like Pro-Training
7 and Choice of Champions, probably never saw the light of
8 day again. They already had two alternatives at
9 the value end so they could either work with Sports
10 Soccer and JJB. I think what they were trying to do is
11 create two alternatives at the top end so they could
12 either work with Allsports or JJD's, which is perfectly
13 legitimate and exactly what I would be trying to do in
14 their position.

15 Q. We know that JD's promotion on the England shirt as far
16 as the shirt was concerned ended on 3rd June. I can
17 show you the evidence on that. Do you recall that being
18 the case?

19 A. I can believe that.

20 Q. The promotion as regards its application to the shirt
21 ended on 3rd June?

22 A. Right.

23 Q. The reference is Mr Bowen's witness statement at
24 paragraph 26, witness bundle 1 at page 193.

25 A. I have no reason to dispute that.

1 Q. You say you expressed your surprise to Chris and Phil at
2 a lunch meeting around that time. What I am going to
3 suggest to you is that that lunch meeting was likely to
4 take place on Wednesday 31st May?

5 A. It is possible.

6 Q. And Mr Ronnie's diary records that you had a meeting
7 with him on that date?

8 A. I have no reason to dispute that.

9 Q. The JD promotion as you have just said was an example of
10 a goods with purchase promotion by another retailer, and
11 you also agreed that such a promotion was a way of
12 competing with discounting by others.

13 Just as you were concerned about the JD hat
14 promotion, I would imagine that you would have been
15 equally concerned about any similar goods with purchase
16 promotion offered by another retailer at a key selling
17 period with respect to replica?

18 A. I prefer -- if I had to choose between the two I would
19 actually prefer a gift with purchase because at least
20 the product retains its original value.

21 Q. You were concerned enough about the JD promotion to
22 raise it --

23 A. I do not know whether I was concerned enough. I think
24 it is my job to be aware of the information. I think
25 what I need to do is to establish the facts. I do not

1 think I was concerned enough. I think I was aware of it
2 really.

3 Q. It is likely that if a goods with purchase promotion for
4 the new Manchester United shirt launched in August
5 2000 had been offered by another retailer you would have
6 taken the same line as you took on the JD promotion, in
7 other words sufficiently concerned however strong you
8 expressed --

9 A. I do not know if I can say that because ultimately that
10 was the route we decided to take at Allsports. In
11 the end we promoted shirts at the recommended retail
12 price and offered incentives to people to buy them which
13 were gifts with purchase, so we gave away watches and
14 sun glasses, all kinds of things. That was our
15 preferred option. Out of the two, knocking lumps off
16 the price or giving people another incentive buy
17 the shirt from Allsports, we chose the alternative of
18 gift with purchase.

19 Q. You were not doing that in relation to either
20 the England shirt or the Manchester United shirt --

21 A. No, no, I am saying ultimately.

22 Q. Later, April 2003 on the new England --

23 A. I think that was the first time.

24 Q. All I am suggesting to you is that there is a similar
25 goods with purchase promotion, but in respect of

1 the Manchester United shirt launched in August 2000 it
2 is likely that you would have taken the same view of
3 that as you did of the JD promotion?

4 A. Yes.

5 Q. Yes. Now in fact such a promotion was offered in
6 respect of the Manchester United shirt?

7 A. Mm-hm.

8 Q. Because it was Manchester United itself that offered
9 a free autographed football with a Manchester United
10 shirt when it started retailing the shirt through its
11 own Sky TV shopping channel. Do you remember that?

12 A. No, I have obviously read something in Martin Prothero's
13 evidence that relates to it but I certainly had
14 knowledge of it prior to that.

15 Q. So you would not have been aware of it at the time?

16 A. We have to put this into context, because ultimately
17 the Manchester United retail thing, certainly
18 the internet at that time was virtually irrelevant.
19 I was concerned with what JJB's did. I was concerned
20 with what Sports Soccer did. I was not concerned with
21 Manchester United's website.

22 Q. It was not on the website, it was the TV shopping
23 channel?

24 A. I did not even know about the TV shopping channel, to be
25 honest.

1 Q. I am suggesting to you if you had been aware at the time
2 there is no reason why you would not have raised it
3 with --

4 A. It would not have been of significant importance to get
5 excited about, really.

6 Q. Can I deal with Sports Soccer's agreement with Umbro on
7 the price of the England shirt in May 2000. We now know
8 that on 24th May 2000 Umbro got an agreement for Sports
9 Soccer to raise its price for the England shirt to
10 39.99?

11 A. If you say so.

12 Q. The proposition is that on 24th May Umbro got
13 an agreement from Sports Soccer that Sports Soccer would
14 raise its prices for the England shirt to 39.99 for so
15 long as England remained in Euro 2000.

16 A. I will take your word for that because obviously I was
17 not involved in any such discussions.

18 Q. It is fair to say that in your witness statement you
19 deny that you agreed with Umbro that Allsports would not
20 discount the England shirt. I can take you to your
21 witness statement.

22 A. I do not think I have to agree anything. In all honesty
23 I do not think it was ever in our plan -- we are not
24 discounters, I think I have made that point on more than
25 one occasion.

1 Q. If you go to paragraph 20 of your witness statement, at
2 page 284.

3 "I understand that Umbro says that Allsports and
4 other retailers had all agreed to re-sell Umbro adult at
5 39.99. I do not know whether Umbro entered into any
6 agreement, it certainly did not with Allsports. I have
7 never had any discussion about it with Umbro or any
8 other retailer. I understand it is alleged by
9 Chris Ronnie that he telephoned Allsports and they
10 agreed not to discount. He certainly did not discuss
11 with me; I would have remembered it and I would never
12 have had such a conversation. It would have stood out
13 as extremely odd."

14 So your evidence is that you deny that you agreed
15 with Umbro that Allsports would not discount the England
16 shirt?

17 A. The statement I have made in paragraph 20 is a true and
18 correct record of the fact.

19 Q. Yes. I want to explore a slightly different
20 possibility. Mr Ronnie says that sometime between
21 30th May and 2nd June he told someone at Allsports about
22 the Sports Soccer agreement and he did so in a telephone
23 call. You are aware that that is what Mr Ronnie's
24 evidence is?

25 A. Yes. I have to say that -- obviously I have known

1 Chris Ronnie for a long time and I do like him a lot.
2 But I do not think he is the most likely fellow to be
3 telling the truth all the time.

4 Q. Your views on Mr Ronnie are perhaps not matters for
5 the tribunal. It is a matter for the tribunal to
6 decide.

7 THE PRESIDENT: Go on, Mr Morris.

8 MR MORRIS: I am just telling you what he says and you are
9 aware that he says that.

10 A. I think it is incredibly vague to say he had a
11 conversation with a party unknown. If he had spoken to
12 me he should say: I spoke to Michael Guest. If he spoke
13 to David Hughes et cetera. This is like a red letter
14 day. If he has this agreement and he wants to ring
15 Allsports it is something he would not forget.

16 It would either be myself or David Hughes, and he
17 did not ring David Hughes for sure and he did not ring
18 me for sure. There is no one else left he could have
19 possibly spoken to.

20 Q. He says in his witness statement at paragraph 25 -- in
21 paragraph 24 he talks about the phone call. In
22 paragraph 25 he says:

23 "I cannot now remember exactly who I spoke to at
24 Allsports. My instinct tells me I would have spoken to
25 Michael Guest as he was more involved with the day to

1 day running of the replica kit business within
2 Allsports."

3 A. I do not know how he can remember who he spoke to
4 because I think he did not speak to anybody.

5 Q. I think we can probably put that bundle ... perhaps
6 leave it there for the moment and put it to one side.
7 Go to the cross-examination bundle, the thinner bundle,
8 tab 9. This is Mr Ronnie's diary. If you go to
9 31st May 2000, which is about four pages in, you will
10 see there: 31st, 12 o'clock Michael Guest.

11 So it appears that on 31st May 2000 you had
12 a lunchtime meeting with Mr Ronnie?

13 A. That is right.

14 Q. Can you remember now what you discussed at the meeting?

15 A. No.

16 Q. As at that date Sports Soccer discounting was big news,
17 was it not?

18 A. Yes.

19 Q. And the key selling period for Euro 2000 was less than
20 a week away?

21 A. Yes, I am not exactly sure of the tournament date but
22 I think --

23 Q. I think it starts on the 10th but the key selling period
24 would be not just the tournament, it would be the days
25 leading up to it.

1 A. Yes, historically. In this particular case we know when
2 the key selling periods were and it was not at this
3 point in time, it was a bit later.

4 Q. In the two weeks that followed.

5 The fact that Umbro had managed to get Sports Soccer
6 to agree not to discount was quite a result for Umbro,
7 was it not?

8 A. It was a massive result for them I assume.

9 Q. And it was something that you, Allsports, would have
10 been interested in knowing?

11 A. In Chris's evidence he refers to a phone call. He does
12 not say he came to my office to tell me about it.

13 Q. I was asking about the proposition that Allsports would
14 have been interested in knowing about that massive
15 result?

16 A. Yes, if it is such a big deal I am sure he would have
17 mentioned it.

18 Q. You are sure he would have mentioned it?

19 A. Would have mentioned it, but in reality he did not.

20 What I am saying is that if there was an agreement,
21 and he is adamant that there was an agreement, then he
22 would tell us about it, but in reality he did not tell
23 us about it so therefore the question I have is was
24 there ever an agreement?

25 Q. Well, you can take it from me that there was

1 an agreement. It is not in dispute as to whether there
2 was an agreement on 24th May. You have just said you
3 cannot remember exactly what was said at the lunch?

4 A. In May, I do not know. In May it may well have been
5 about deliveries and scheduling and all those kinds of
6 things. I think I have made it clear that Umbro were
7 desperate to get deliveries in to Allsports. It may
8 have been just a regular routine review. Certainly on
9 the eve of a tournament it would make sense to be
10 discussing the performance of the main replica kit.

11 Q. If Chris Ronnie had mentioned this to you, just assume
12 he had --

13 A. It is not possible.

14 Q. But let us assume he had --

15 A. It is not something that I could forget. It is such
16 a big event that if he mentioned it to I would have
17 known about it.

18 Q. We have your evidence that you say he did not. But I am
19 going to ask you to answer a question on the assumption
20 that he had mentioned it to you.

21 THE PRESIDENT: Can you put it on a different assumption,
22 because he is saying that he did not mention it.

23 MR MORRIS: I am exploring the suggestion given in evidence
24 that it would have been an "odd thing for him to have
25 told me". I am suggesting to the witness that it would

1 not have been an odd thing for him to have told him.

2 THE PRESIDENT: You can make that suggestion without asking
3 him to make that assumption.

4 MR MORRIS: I will put it this way: it would not have struck
5 you as odd for him to tell you that he had got
6 Sports Soccer to agree to go to 39.99?

7 A. It would have struck me as odd.

8 Q. I am suggesting to you that it would have struck you as
9 odd.

10 A. I do not believe for a minute that Chris Ronnie has got
11 or had the authority to speak for Mike Ashley, because
12 I think the evidence is that Mike Ashley is a loose
13 cannon, Mike Ashley makes his own mind up and does not
14 actually respond to prompting. He is his own man.

15 Q. That is a different question, and you may well have
16 thought: well, I will believe that when I see it.

17 A. I do not think you can make any agreements. I think
18 ultimately he had reserved his right to change his
19 pricing structure depending which side of the bed he got
20 out of.

21 Q. So he was not to be trusted if had made an agreement?

22 A. I do not think it is worth the paper it is written on
23 anyway if he had made an agreement.

24 Q. You said a moment ago: yes, if it is such a big deal
25 I am sure he would have mentioned it.

1 A. Mm-hm.

2 Q. And I am suggesting to you that on that basis it would
3 not have struck you as odd?

4 A. I do not understand -- I do not understand what it
5 means, to be honest. It is one of those things that you
6 could not guarantee. Whatever Chris tells me I do not
7 believe that Chris speaks for Sports Soccer.

8 Q. In paragraph 20 of your first witness statement you say:
9 "It would have stuck out as extremely odd and
10 I would have remembered it."

11 This is at page 284. In that paragraph what you are
12 talking about is Allsports agreeing to go to 39.99:

13 "I understand it is alleged by Chris Ronnie that he
14 telephoned me and Allsports agreed not to discount. I
15 would have remembered it if we had ever had such a
16 conversation. It would have stood out as extremely odd
17 and I would have remembered it."

18 What you are saying would have been odd there was
19 the suggestion that he was asking Allsports to agree?

20 A. I am saying it is a ridiculous question because in the
21 history of the business Allsports had never discounted a
22 replica shirt so he did not need to have the
23 conversation because he knew the answer.

24 Q. I understand that, but what I am saying is that the fact
25 of him telling you about Sports Soccer would not have

1 been odd.

2 A. Yes, I am just saying that whenever he told me I could
3 not have believed it anyway.

4 Q. Very well. Can we move on briefly, and this is the
5 final topic so I might be five or ten minutes. I know
6 that everyone is anxious to proceed and if I could have
7 five or ten minutes.

8 I want to ask you briefly about the 8th June 200
9 meeting and the Manchester United shirts. I would like
10 you to go on to paragraph 1 of your first statement
11 which you will find at page 283.

12 You ask yourself the question at paragraph 17: was I
13 influenced by the indication that JJB and Sports Soccer
14 were planning to sell at 39.99?

15 Just to set the context, you will recall that we are
16 talking about the two memoranda that you received that
17 were written by Mr Hughes on 9th June:

18 "JJB had always maintained its position that it
19 would not sell above £40 so the memo was not
20 illuminating in that respect ... so there was no serious
21 question of JJB selling at less than 39.99."

22 A. I could not guarantee that obviously. It is my opinion
23 but it is only an opinion.

24 Q. I will just read on then I will ask you two or three
25 short questions:

1 "As for Sports Soccer this was interesting, but
2 Sports Soccer's pricing never affected Allsports'
3 approach."
4 A. That was true at the time.
5 Q. Assuming no agreement was made on 8th June,
6 Sports Soccer would be likely to discount the Manchester
7 United shirt at launch on 1st August 2000, would they
8 not?
9 A. That was their prerogative, yes.
10 Q. That was a likelihood as far as you knew at the time?
11 A. I think it was probably likely, yes.
12 Q. Secondly, if Sports Soccer discounted on
13 1st August there was a high risk that JJB would at
14 the very least match the discounted price?
15 A. Yes, it was a possibility. It was a likelihood, to be
16 honest. Certainly -- more than likely I should say.
17 Q. So you could only assume that JJB would go out at 39.99
18 if Sports Soccer did not discount at launch?
19 A. I am just trying to figure it out. What happens in
20 this -- right now what happens is that people actually
21 show their hand before the launch so you will see
22 posters in stores but I think at this point in time that
23 did not happen, so until day 1 came I do not think
24 people knew exactly what other people were going to sell
25 the shirt for, so yes, okay.

1 Q. So the answer to my question was yes?

2 A. For what it is worth that is what I would assume, that
3 JJB would start at 39.99. But certainly I have got no
4 guarantees and again David Whelan is capable of
5 surprising all of us.

6 MR WEST-KNIGHTS: I wonder if the actual proposition could
7 be put again for a clear answer.

8 MR MORRIS: You also say in paragraph 17 --

9 THE PRESIDENT: Are you putting it again?

10 MR MORRIS: I was not going to. Unless you would like me
11 to, sir.

12 The proposition is that you would only assume that
13 JJB would go out at 39.99 if Sports Soccer did not
14 discount?

15 A. I can only assume that to be the case.

16 Q. Yes?

17 A. Yes.

18 Q. Yes was your answer.

19 Can I ask you very briefly about what else you say
20 in paragraph 17. You say that JJB had made it plain
21 that they would not sell above £40.

22 A. Which meant they reserved the right to sell for less
23 than that.

24 Q. Yes, but we know in fact that in the summer of 2000 JJB
25 did sell another kit, the West Ham away kit, at launch

1 at 44.99.

2 A. You are telling me something that I was not particularly
3 aware of.

4 Q. Indeed Allsports also sold that kit at 44.99 at that
5 time.

6 A. Yes, but that is of no relevance really apart from
7 the fact to say that there is an exception that proves
8 every rule. It is not relevant really.

9 Q. If you look at paragraph 18C of your first statement on
10 that same page, you say, talking about the Manchester
11 United shirt:

12 "I did not believe that this particular product
13 justified attempting to attain a price above £40. That
14 was a barrier that it would take a very special shirt to
15 break through. It follows that had the shirt been of
16 better quality I may have been prepared to price it at
17 a higher level."

18 You are not suggesting, are you, that the West Ham
19 away shirt at that time was such a very special shirt?

20 A. No, it is a different thing, it is apples and pears
21 because the West Ham shirt has no interest to anybody
22 else other than West Ham supporters, which is
23 unfortunately a small group of people. So you have
24 something that is kind of relatively expensive and
25 ultimately does not count for a lot of sales. They are

1 two different things. It is an inconvenience, is
2 West Ham. Manchester United and England are the real
3 opportunities for retailers to make some profit.

4 Q. I am suggesting it is a real possibility that they might
5 go higher than 39.99?

6 A. No.

7 Q. You mentioned the England away kit to be launched on
8 31st March of this year -- that is next year.

9 THE PRESIDENT: Are we on Manchester United?

10 MR MORRIS: I have finished on Manchester United; I have one
11 supplemental question.

12 The England away kit is to be launched on
13 31st March and I think you mentioned it earlier.

14 Are you aware of the price currently being offered
15 by Allsports for that shirt on pre-order?

16 A. I guess -- I stand to be corrected but I think it is
17 £35, is it not?

18 Q. That is our information, yes.

19 A. I do not work for Allsports so your information is as
20 good as mine at this point in time.

21 MR MORRIS: Sir, we do have information that that is the
22 case and I am sure it will not be disputed.

23 Sir, that completes my cross-examination.

24 THE PRESIDENT: Thank you very much. We will resume then at
25 ten past two.

1 Please do not discuss your evidence, Mr Guest.

2 A. Okay.

3 (1.05 pm)

4 (The short adjournment)

5 (2.10 pm)

6 THE PRESIDENT: I think Mr Colgate has a question for
7 the witness.

8 Questions by the Tribunal

9 MR COLGATE: I just want to ask you a couple of questions
10 around the time of June 2000, when you went to
11 California with Mr Patrick.

12 A. That is correct.

13 MR COLGATE: Tell me when you think you went to California.

14 A. I think it was probably five days, between the 7th and
15 the 12th.

16 MR COLGATE: While you were abroad would it be your practice
17 to telephone regularly --

18 A. In those days, which is not that long ago, we did not
19 actually use tri-band telephones, so when we were in the
20 US we would not be in contact with the office. So I can
21 safely say that I never had a conversation with
22 the office at that time because there were no means to
23 do it. The other consideration was the time different,
24 which is like eight hours, so doing business with
25 California is not ideal.

1 I know for sure that I did not speak to David
2 because it was not normally the practice when we were
3 not in the office to have a dialogue. Certainly when
4 travelling in the US we would never speak or
5 communicate.

6 MR COLGATE: They do have landlines, by the way, in
7 California!

8 A. I know that.

9 MR COLGATE: Mr Hughes wrote two memos, both dated
10 9th June 2000. In the first one he starts off by
11 saying -- it is the one at tab 9, addressed to you and
12 Mr Patrick.

13 A. It is addressed to David Patrick with a copy to myself
14 and Michael --

15 MR COLGATE: Yes. He says: I have already told you that JJB
16 are going.

17 A. I guess he is talking to David Patrick at that point.

18 MR COLGATE: Do you have a recollection of Mr Patrick saying
19 anything to you?

20 A. I had not discussed it with David Patrick. I think that
21 is who he is talking to in that memo, rather than me.

22 MR COLGATE: I was more interested in when you were out in
23 California --

24 A. No, I do not recall that conversation. As I say, I was
25 here on Friday afternoon and I heard what Mr Hughes had

1 to say. My understanding of this is the only way --
2 certainly the conversation never took place while
3 we were in America. I can only assume that if the
4 conversation happened, which is what David said on
5 Friday, it must have happened before we left. But
6 I cannot say for sure that he did.

7 MR COLGATE: When you got back into the office you were
8 picking up your correspondence and you saw
9 the hardcopies of these memos, can you recall any
10 reaction or response?

11 A. Yes, I think it is -- again obviously I listened to
12 the dialogue on Friday afternoon and I was very
13 interested in what David had to say about these memos,
14 I found it entertaining in all honesty. I do not know
15 that I have the ability to read between the lines, I can
16 only read what is in the memo, I can read the words, but
17 I cannot get any ulterior motive for writing the memo.

18 As far as I am concerned it is part of a bigger
19 discussion which I alluded to earlier, to say that
20 ultimately it is my personal responsibility to determine
21 the pricing strategy and structure of Allsports'
22 products. If David had wanted to tell me what to do
23 that is what he would have done. But I would not have
24 taken kindly to it, I would have probably argued the
25 point, saying: it is not for you to determine individual

1 prices, you are the chairman of the business, I am
2 the buying director, I am responsible for stock and
3 sales and margins, so if you want to do this maybe you
4 want to do my job for me.

5 He knows my view. I am aggressive, there is no
6 question about that, and I would have taken
7 an aggressive line on this. He did not instruct us to
8 do anything. He made some information available to us
9 which was not even new information in all honesty, it
10 was stuff we already knew.

11 So I am not really entirely certain of the purpose
12 of these memos. What I believe is that in all honesty
13 David was not seeing things as clearly previously,
14 I think he was under pressure, I think he was not will.
15 I think these memos to me are not good memos.

16 MR COLGATE: Are you that reaction you just mentioned you
17 had when you saw this memo?

18 A. I was irritated by the memos.

19 MR COLGATE: Not putting it any stronger than that.

20 A. No. Can I comment on the second one, which is where he
21 gave two telephone numbers. If those two people had
22 been the last two people on the earth alive I would not
23 have rung any of them. I had no intention ever of
24 contacting either David Whelan or Mike Ashley. Never,
25 ever, ever. The thought never even crossed my mind, and

1 David Hughes knows that.

2 My view on this is it is a sign of weakness. If you
3 go over to these guys you have got a problem. There is
4 no way that I would have ever made contact with them.

5 MR COLGATE: Thank you very much.

6 MR WEST-KNIGHTS: On a scale of 0, completely normal, to 10,
7 absolutely extraordinary, where do you put these memos?

8 A. It depends on the criteria.

9 Q. The frequency of these kinds of memos?

10 A. These are unusual memos are unusual times. What
11 David Hughes is getting involved in is unprecedented and
12 very unusual. There is no way that normally we would
13 receive this type of memo. There is a different type of
14 memo that came on a daily basis, like a newspaper,
15 something called a rapid response memo which is totally
16 different and he asked for certain things to be done and
17 gives a timeline for those things to be completed.

18 These are observations and opinion, and I think it is
19 pretty clear that they are not necessarily my opinion.

20 Q. On a scale of 0-10 are they usual for Hughes or odd for
21 Hughes?

22 A. They are very odd. Very odd. If 10 is odd, they are
23 10.

24 Q. Were you aware in 1999 of any surplus stock being
25 available for sale by Umbro?

1 A. Not until this morning.

2 Q. If surplus stock had been available for sale by Umbro in
3 1999, would you have expected Allsports to have heard
4 about it or have been offered any part of it?

5 A. I think on the scale you discussed earlier it would make
6 sense that maybe more than one retailer was involved
7 rather than just to do a deal with a single partner.

8 THE PRESIDENT: Does this strictly speaking arise out of
9 cross-examination?

10 MR WEST-KNIGHTS: Yes, it does, he gave an answer in
11 relation to it, but I will stop there.

12 Can I ask you to go to tab 14 of
13 the cross-examination bundle, please, to the page that
14 has 37C in the corner in particular.

15 A. Yes.

16 Q. You were asked questions about the information under
17 the heading "Equipment" at the bottom of that page. Is
18 there anything in that page or in your recollection that
19 makes you think that the reference to the main reason
20 for Allsports' prices has anything to do with
21 Sports Soccer's shirt prices?

22 A. Sorry, can you repeat the question?

23 Q. Yes. Is there anything on that page or from your
24 recollection that makes you think that the reference to
25 the main reason for Allsports not supporting on shin

1 guards and luggage was Sport Soccer's shirts prices?

2 A. I think it is illogical to conclude that that was
3 the reason, so in my opinion I do not think that those
4 two things are linked. Our support on accessories is
5 not linked directly to Sports Soccer's replica shirt
6 pricing policy.

7 Q. You mentioned in your cross-examination the kinds of
8 meetings that you had with your buying clerks and
9 others, and you mentioned on two occasions that Tuesday
10 was an occasion of order-signing. Would you expand on
11 that, please?

12 A. Yes, the entire Allsports business ran on routine. It
13 is kind of a timetable, like a school timetable: Monday
14 afternoon you had double physics. We had the same kind
15 of running order.

16 On Monday would be a review of the previous week's
17 sales. So we would read all our reports and have a full
18 line-by-line review of each individual buyer. So
19 I would see the menswear buyer, the womenswear,
20 the kidswear buyer, replica buyer, so I would go through
21 a single line-by-line report. On Tuesday we always did
22 the order signing and we always did the marketing
23 meetings. On Wednesday we would be out in stores.

24 So the whole thing was run by consign to routine.

25 Q. What do you mean by order signing?

1 A. Because of the nature of the business, because of my
2 accountability and responsibility, I took it on myself,
3 and indeed I was instructed by David Hughes that I had
4 to personally sign every single contract that came into
5 the business. So apart from holidays and things,
6 I would sign every purchase order that left
7 the business. Nothing was ordered without my approval.
8 I would know what the product, margin, value was, and it
9 was my job to be accountable for all those individual
10 elements. So I had to personally endorse every single
11 contract.

12 Q. Would you turn to tab 12 of the cross-examination
13 bundle, and just read that letter through, please, part
14 of which was put to you?

15 A. Okay.

16 Q. The evidence which you gave to the tribunal was that
17 the purpose of your letter out that we looked at earlier
18 was to obtain a better discount or wholesale price from
19 the vendor as a result of your statements?

20 A. That is correct.

21 Q. What was the result?

22 A. We got improved trading terms.

23 Q. Is paragraph 3 an accurate reflection of the improved
24 trading terms to which you refer?

25 A. Sorry?

1 THE PRESIDENT: Which letter are we looking at?

2 MR WEST-KNIGHTS: I am looking at tab 12, which is the same
3 document we have just been looking at, which is Umbro's
4 response --

5 THE PRESIDENT: I am sorry, tab 12 in my bundle is
6 Mr Guest's letter.

7 A. Yes, the same as mine.

8 MR WEST-KNIGHTS: No, it is not -- mine has HC/01 at
9 the top.

10 LORD GRABINER: I am sorry, it is Umbro's response.

11 MR WEST-KNIGHTS: I have done exactly the same myself. It
12 is Mr Gourlay's reply.

13 Does paragraph 3 reflect the improved trading terms
14 that you have just referred to?

15 A. Not really, no. I think it does improve our buying
16 prices, so obviously there is some progress being made,
17 but it was not the essence of what I was trying to
18 achieve. What he is talking about there is something
19 that is not specifically exclusive to Allsports. When
20 you start messing with things like WSP that would
21 benefit everyone. My interest was more the selfish
22 thing because obviously I wanted to agree better trading
23 terms, which ultimately we did as well.

24 So there are two things there: (1) Umbro changing
25 their wholesale price; (2) Allsports negotiating better

1 trading terms.

2 Q. Did you get better trading terms in addition to what is
3 written here?

4 A. Since then we have done, yes.

5 Q. In terms of percentage off or what?

6 A. Exactly.

7 Q. The "or what" makes it not a leading question.

8 You expressed a forceful opinion about Mr Ronnie.

9 How long have you known him for you to form that
10 judgment about him?

11 A. I have known him for a long time. I first came across
12 him in the early 80s. I came into the industry in 1983
13 and I have virtually known Chris all of that time, so it
14 is over 20 years.

15 MR WEST-KNIGHTS: Thank you. I have no further questions.

16 THE PRESIDENT: Thank you very much, Mr Guest, for coming
17 along to give your evidence.

18 A. Thank you.

19 (2.25 pm)

20 (The witness withdrew)

21 MR WEST-KNIGHTS: May I say, sir, that it may be that
22 the question which I asked in respect of the 10 million
23 only partially arose out of cross-examination but I had
24 asked my learned friend Mr Morris to seek such
25 information from Mr Guest as he could get about it and

1 he did not. There is a source of knowledge for us to
2 add to the pot of the limited source of information
3 which we have.

4 I do not want to get in my learned friend
5 Lord Grabiner's way, but there remains the question of
6 what to do about the numbers. But having flagged that
7 up I am in your hands.

8 THE PRESIDENT: We have not had a chance to consider it
9 further as a tribunal. We will consider it at close of
10 play today. It is not unlikely that we may want to
11 clarify one or two things that Umbro says. As you and
12 others have pointed out, there probably is some law of
13 diminishing returns in trying to dig further into this
14 aspect.

15 MR WEST-KNIGHTS: I have absolute sympathy. We will say
16 more in due course, doubtless, but your request for
17 knowledge has not been met with the passage of
18 information.

19 Sir, that is my case.

20 LORD GRABINER: May it please you, sir. I would like if
21 I may to make our closing submissions.

22 Can I tell you the way I would like to go about
23 doing this. First of all I would like to make what
24 I will call some headline points. And then when I have
25 dealt with those, and there are very few of them, what

1 I am going to do is produce quite an extensive written
2 document that we have prepared; it is about
3 50 pages long, and it covers every issue, we believe.
4 I am going to show you the structure of that document.
5 Then I am really in your hands.

6 I suspect that rather than have me stand here, so to
7 speak, taking you through it in detail -- I will
8 certainly take you through it in brief outline -- you
9 might find it much more comfortable to take the document
10 away and read it for yourselves. My guess is that that
11 will certainly take the rest of the day. It may be that
12 the way to deal with it is that if you have matters you
13 want to put to me I can deal with those first thing
14 tomorrow or I can simply say that I will test
15 the tribunal on the document at 10 o'clock in
16 the morning or something like that. That might be
17 another way of doing it.

18 That is the way that I would like to go about it.
19 I think you will probably find it a more helpful way of
20 dealing with the problem.

21 Against that background can I make a few of these
22 headline points, and you will forgive me if one or two
23 of them are rather basic, and I am certainly not in
24 the business of trying to teach any of you to suck eggs
25 but I do want to make the points because they are

1 important.

2 Closing submissions by LORD GRABINER

3 LORD GRABINER: First of all, this is a basic point but it
4 is fundamental. The applicable test in a case like this
5 is taken from your decision in Napp Pharmaceutical
6 Holdings. It is to the following effect. In order to
7 succeed, the OFT must satisfy this tribunal:

8 "... on the basis of strong and compelling evidence,
9 taking account of the seriousness of what is alleged
10 that the infringement is duly proved."

11 And that in that process JJB is entitled to
12 the presumption of innocence and to any reasonable doubt
13 that there may be. I know that those words are
14 imprinted on the president's heart, he having composed
15 them.

16 THE PRESIDENT: The tribunal composed them, Lord Grabiner.

17 LORD GRABINER: I am sure they did, I am sure they did.

18 THE PRESIDENT: It is nonetheless the civil standard.

19 LORD GRABINER: I would have said it was rather stronger
20 than the civil standard myself, strong and compelling
21 evidence, but I think that we all know what it means.

22 THE PRESIDENT: Yes.

23 LORD GRABINER: This is an appeal on the merits. The burden
24 of proof is on the OFT, and you must look at
25 the position of each appellant separately, having regard

1 of course to the totality of the relevant evidence.

2 The next point is this, that the appeal is
3 essentially a factual debate. You will recall that at
4 the very first CMC we submitted that this appeal is
5 essentially about facts, and in the event we think that
6 that is not now going to be a controversial statement.

7 One of the valuable aspects, if I may say so, of
8 this jurisdiction is that you have a legally qualified
9 chairman sitting with two distinguished persons who
10 bring their own business and commercial backgrounds to
11 bear on the problem. In my submission that is
12 especially important where the matters in issue involve
13 the need to resolve factual disputes. It is very
14 important indeed that you apply your common sense to
15 that exercise, because that is one of the reasons that
16 you are here. You have to make an assessment of fact
17 and also an assessment of the calibre and quality of
18 the witnesses who have been presented before you.

19 The next headline point is this. Apart from
20 the OFT, all the players in this story have admitted
21 their wrongdoing. That is to say, with the exception of
22 JJB. The wrongdoing consists of price-fixing or
23 attempted price-fixing. And the reason I make that
24 point is because it is important that we should not be
25 tarred with that brush, neither insinuation nor guilt by

1 association have any standing in this debate.

2 The tribunal should be wary of any submission which
3 might point in that direction.

4 I have asked myself this question, and I am going to
5 answer it now as part of this headline discussion: what
6 is left of the case against JJB?

7 In my submission three of the four charges against
8 JJB are in complete tatters. In a nutshell I want to
9 identify them and explain why I say that. We develop
10 the detailed arguments in the written submissions, and
11 if necessary I can address them or say something more
12 about them.

13 First of all, in relation to the charge concerning
14 the England Euro 2000 agreement, the OFT case depends
15 upon two elements. The first element is whether
16 Mr Ronnie, having obtained an agreement from
17 Sports Soccer as to its pricing of England shirts, then
18 telephoned someone at JJB to inform them of that
19 agreement. Mr Ronnie gave no less than four different
20 versions of events. The new version, the fourth
21 version, was given by him when I cross-examined him.
22 This version, you will remember, was the supposed
23 agreement made prior to 24th May, and it was
24 an agreement made according to him on this occasion with
25 JJB as to its retail prices.

1 Now, that version did not even match the one put
2 forward in the Amended Defence, which specifically
3 disavowed any price-fixing agreement involving JJB in
4 terms; it specifically disavowed it off the back I think
5 of his own then recent witness statement in which he
6 himself disavowed such an agreement.

7 Mr Ronnie's muddled evidence on this element fell,
8 in our submission, woefully short of the strong and
9 compelling standard. In essence that is the reason why
10 that charge is not sustainable.

11 The second element is whether JJB exerted unlawful
12 pressure on Umbro in relation to Sports Soccer's
13 pricing. The evidence of both Mr Ronnie and Mr Fellone
14 was that nothing was explicitly stated, and you will
15 remember that they both gave evidence to that effect.
16 Mr Ronnie went so far as to suggest that any action
17 taken by a retailer for whatever legitimate purpose and
18 however lawful was pressure on Umbro. You will
19 appreciate that Mr Ronnie's misuse of the word
20 "pressure" in this special context leads directly to
21 what we suggest is really an overblown charge made
22 against JJB under this heading.

23 The word "pressure" is tossed about, but it is quite
24 important to understand what that word means. It means
25 unlawful pressure, and nothing will do.

1 This is an example of some oral evidence which can
2 be tested by reference to some contemporaneous documents
3 which were in part authored by Mr Ronnie himself.
4 Sometimes all you have is a witness. There is no real
5 way to test the genuineness or accuracy of his
6 recollection. But occasionally you can do that if there
7 is some contemporaneous document by which you can test
8 the quality of his recollection.

9 You find no reference in Mr Ronnie's monthly reports
10 or the reports of Mr Bryant, who was the Umbro person
11 directly responsible for the JJB account, to pressure of
12 any kind whatsoever. Mr Ronnie even suggested that
13 the reports only said positive things. I am sure
14 you will remember that piece of evidence. This was
15 nonsense, and Mr Ronnie knew it.

16 Those are essentially the points that I wanted to
17 make in relation to the England Euro 2000 agreement.
18 For those reasons, which as I say are put forward in
19 very concise terms, we say that the charge must fall
20 away.

21 Can I next say something about the second of
22 the three which we say are in tatters, and that is
23 the so-called Continuation Agreement.

24 The OFT's focal point of the case is
25 the cancellation by JJB of the order for 40,000

1 Manchester United centenary shirts. This was the second
2 tranche of two orders each of 40,000 totalling 80,000 in
3 all.

4 In cross-examination Mr Ronnie and Mr Fellone
5 confirmed JJB's case in every material respect.
6 They were so to speak, and without putting it
7 offensively, witnesses for the prosecution. JJB's
8 decision to cancel was entirely justified on commercial
9 grounds. The solution to the dispute which Mr Ronnie
10 claimed credit for was in the commercial interests of
11 both the parties. In our submission, this whole episode
12 had nothing whatever to do with price-fixing at all.
13 That essentially is the point in relation to
14 the Continuation Agreement. The important point there
15 is that what might otherwise have turned out to be
16 the critical evidence against JJB turns out to be
17 evidence which is essentially JJB's case.

18 If I can turn next to the England Direct Agreement,
19 because that is the third one that we say has no
20 substance.

21 There are some factual differences, and I will show
22 you in due course and you will see from our written
23 submission what those factual differences are; we
24 identify them quite precisely. In our submission those
25 factual differences are quite beside the point.

1 The essential points are not contested, and they are
2 these.

3 First of all, it was Mr Smith of the FA, and not
4 JJB, who suggested that Sportsetail should peg its
5 prices to those of JJB. As I say, that is not
6 a contested fact.

7 Secondly, in a telephone call on or about
8 11th February 2000 Mr Russell of JJB made it clear to
9 Mr Marsh of Umbro that JJB did not wish to proceed with
10 the proposal that had been previously discussed.

11 Now, any suggestion by the OFT that JJB was only
12 saying no to part of the arrangement is, with great
13 respect, ridiculous. Mr Marsh himself acknowledged in
14 an internal email that JJB was "out of the loop"; and
15 you will perhaps remember that reference in
16 the document. When Alison Eaves of Sportsetail asked
17 JJB for information relating to its retail prices, JJB
18 refused to provide any such information.

19 Now, if JJB had been a party to any price-pegging
20 agreement it would clearly have responded to that
21 request for information, and it did not.

22 So those are the three charges which in our
23 respectful submission should simply go.

24 Now, the remaining charge should go as well. But
25 there is more to it and it is more complicated. That is

1 the Manchester United charge, and that is what I want to
2 speak to now, if I may, for a few moments.

3 Now, I do not want you to imagine that because I am
4 putting it into this category I was thereby elevating it
5 to something of more worth, because it is not. As
6 I say, it is a complex factual inquiry that you will
7 have to address for yourselves in due course. It
8 involves certain clashes of evidence between Mr Hughes,
9 Mr Whelan and Mr Ashley, all of whom were present at the
10 8th June meeting at Mr Hughes's house. There are just
11 a few points I wish to make.

12 The first point is that it is clear, we say, that
13 Mr Whelan did not know that Mr Ashley would be at
14 the meeting. Mr Hughes admitted that he knew in advance
15 that Mr Whelan did not like Mr Ashley. And you will
16 remember when I cross-examined Mr Hughes about that.
17 Therefore, it would have jeopardised his plan -- and
18 I emphasise the fact that it was Mr Hughes's own plan to
19 call this meeting with a view to trying to secure
20 an agreement about a retail price around £45.

21 If he would have let it be known to Mr Whelan that
22 Mr Ashley would be there, given that he knew that he did
23 not like Mr Ashley, then if this had been communicated
24 in advance there was a risk that Mr Whelan simply would
25 not appear. Mr Hughes's understanding of the attitude

1 or view that was held by Mr Whelan of Mr Hughes was
2 confirmed by the interesting passage in the witness
3 statement of Mr Hughes which I then questioned him about
4 when we got to cross-examination. When Mr Whelan saw
5 Mr Ashley, according to Mr Hughes, his body language
6 showed that he -- and I quote the word from his proof --
7 "despised him". That is a very strong word; and it is
8 a very important point because it confirmed Mr Hughes's
9 suspicion and it came obviously as no surprise to him.
10 So we do say, step 1, he would not have communicated to
11 Mr Whelan the fact that Mr Ashley was going to be there.

12 The second point is that Mr Whelan did not know in
13 advance what the purpose of the meeting was. Now, this
14 was confirmed also by Mr Hughes's witness statement and
15 then again when I came to cross-examine him about it.
16 He said in his statement that Mr Whelan looked
17 "quizzical". Again it was a very odd word in
18 the witness statement and it jumped out of the page at
19 you. And he described his understanding of what was
20 going on at Mr Hughes's end of the story. He was
21 quizzical because he was surprised to see Mr Ashley and
22 he was quizzical because he was astonished at
23 the subject-matter of the conversation.

24 Mr Hughes indicated that in the light of his ill
25 health it was -- which he said was well known, he said

1 it was well known in the trade -- that it was entirely
2 possible that Mr Whelan believed that he had been
3 invited to Mr Hughes's house because Mr Hughes was
4 thinking of selling Allsports.

5 The third point is this: it is common ground that
6 Mr Hughes held up the Manchester United shirt and he
7 said that it should be retailed at £45. It is also
8 common ground that this was rejected outright by
9 Mr Whelan. Mr Whelan made it plain that he was not
10 prepared to participate in any price-fixing agreement,
11 and he referred to JJB's well-known practice not to sell
12 shirts above £40.

13 The fourth point is that it is only Mr Ashley who
14 alleges that there was an agreement to price at 39.99.
15 This is denied by all the other attendees at
16 the meeting. Mr Whelan's account has been consistent
17 throughout; Mr Ashley's story has fluctuated wildly, and
18 we deal with that in great deal in the submission.

19 Given those fluctuations Mr Ashley's evidence cannot
20 in our submission be said to be strong and compelling in
21 relation to this issue.

22 The fifth point, which is the final headline point
23 under this heading, is the point about the JJB board
24 meeting. The board meeting was on 27th June, which is
25 about two to three weeks after the 8th June meeting, and

1 we know that Mr Whelan reported the facts of
2 the 8th June meeting to the 27th June JJB board meeting,
3 and it was a report to the whole board of JJB.

4 Now, if Mr Whelan had entered into an unlawful
5 price-fixing agreement at the 8th June meeting it is in
6 our submission inconceivable that he would have reported
7 the fact that that meeting had taken place. That is
8 the first thing. Secondly, or still less, I would say
9 that he would have agreed that Mr Lane-Smith, who is
10 both a director of JJB and the senior partner of DLA, he
11 would have agreed that Mr Lane-Smith should make
12 a report, a written note of fact of that report.

13 The fact that Mr Lane-Smith subsequently forgot to
14 make a file note does not alter the strength of this
15 point. The OFT has not challenged Mr Lane-Smith's
16 evidence that his failure to make a note was due to
17 a simple oversight on his part. So the working
18 assumption here is and must be that he was telling
19 the truth, Mr Whelan was telling the truth, that he had
20 come to the meeting and told the meeting what had passed
21 and he was anticipating that his solicitor would prepare
22 a note and the note would be kept. All of that is
23 entirely inconsistent with the assertion or charge
24 or allegation that the agreement was made.

25 Those are really the headline points in relation to

1 the Manchester United charge. Again, for the reasons
2 that we will come to in more detail, but essentially
3 those are the headline points, we submit that that
4 charge should be dismissed as well.

5 Those are all the points I wanted to make.

6 We have prepared these submissions. Perhaps I can
7 hand up copies. The tribunal have them in a binder.

8 Could I show you the structure of the document and
9 then we can see where we are. We start off with just
10 explaining how our referencing system works, and we put
11 in bold and in square brackets -- when we say T1 that is
12 transcript Day 1 and a page reference. We give very
13 precise transcript references throughout which will
14 carry you, I should say, to the daily transcript that
15 we have been working from, which I hope corresponds with
16 yours. We have been using the written transcript
17 version, four pages on one; do you use that or do you
18 use the one page to one page?

19 THE PRESIDENT: I have asked the support staff to make sure
20 we are all working from the same transcript.

21 LORD GRABINER: Hopefully it will be all right. We have
22 been very careful and meticulous about references so
23 they should be exactly accurate.

24 We say something on the bottom of the first
25 page about the standard of proof, strong and compelling

1 evidence. We say what our primary contention is. Where
2 we bold some expression in a paragraph it is just to
3 catch your eye to give you an indication of what is
4 going to be in the paragraph or what the essence of
5 the paragraph is.

6 What we have done is to go into what you might call
7 pen pictures or pen picture portraits of the key
8 witnesses. We take each of the witnesses, starting with
9 Mr Ronnie on page 3 because he is the key witness as far
10 as we are concerned, and we make a submission as to what
11 we suggest is the view you should take of him as
12 a witness. We say he was not an impressive witnesses,
13 his ability to recall events in a reliable and accurate
14 way was poor. We then say he gave four versions of
15 the charge concerning the England Euro 2000 shirt.

16 Essentially what we are doing here is to point to
17 bits of the evidence which shed light upon the calibre
18 of the person and the quality of the person as a witness
19 and his ability to recall events. We then say something
20 about the relationship between Mr Ronnie and Mr Ashley.
21 Lower down there we give examples, as I say, from
22 different parts of the case which shed light on the view
23 that you should take in our submission of his testimony.

24 You can see that it goes for several pages, and it
25 ends at the foot of page 6. I have simply made a note

1 to myself of the point made by Mr Guest just before
2 lunch today which might be worth adding if you would at
3 the foot of page 6. It was quite an interesting
4 observation and I think it came from somebody who had
5 known Mr Ronnie and worked with him for 20 years.

6 I quote from the transcript from this morning:

7 "... not the most likely fellow to be telling
8 the truth all the time."

9 That was a fairly awful indictment of anybody but it
10 was obviously a statement of the truth, and you might
11 like to bear that in mind when you are coming to a view
12 about Mr Ronnie's evidence in the context of the charges
13 made against JJB. The reference on the transcript today
14 was about page 97, but it may not come out to that at
15 the end of the day. It was said at 12.50 today.

16 At page 7 we start a pen picture of Mr Ashley. As
17 we suggest there, he is an intelligent person,
18 a successful businessman, forceful, articulate, and
19 I would certainly emphasise the next few words:
20 superficially plausible. We would invite you to view
21 him in that way. Again we give some examples, little
22 indications through the evidence, of why his evidence is
23 not reliable. And so on. That goes through to page 9.

24 We then say something about Mr Fellone, and we
25 indicate the areas where his evidence is rather

1 important. And we then say something about Mr Whelan,
2 which starts at page 11. We have analysed Mr Whelan's
3 evidence in quite a lot of detail, because, of course,
4 he is a key witness particularly in relation to
5 the Manchester United shirts affair. We anticipate that
6 the OFT is likely to make some play of what he had to
7 say about the conversations with Mr McGuigan, that he
8 said he had not had conversations with Mr McGuigan. You
9 see this on page 12:

10 "On behalf of the OFT it might be said that
11 the exchanges in cross-examination of Mr Whelan in
12 relation to his conversations with Mr McGuigan show that
13 he is to be treated as an unreliable witness. It might
14 also be suggested in the light of Mr Colgate's questions
15 to Mr Whelan that as a witness Mr Whelan did not have
16 a reliable recollection of the manner in which his first
17 witness statement was produced, in particular that it
18 might have been prepared in conjunction with Mr Sharpe
19 and for that reason may not be accurate."

20 We address the question of the McGuigan exchange
21 three lines from the end of that long paragraph in
22 the middle of the page:

23 "In this case, particularly in the light of ..."

24 The word "the" should not be there before Mr Hughes.

25 In the next paragraph we refer to an annex to

1 the submissions. Pausing there, you will remember that
2 I told you that we were causing some enquiries to be
3 made as to the way in which the witness statements were
4 prepared. Those instructing me have prepared that
5 annex, and we have annexed it to the document, which
6 sets out the process whereby the statements were
7 obtained.

8 We summarise the position here. If I can just go
9 through this paragraph with you at the foot of page 12:

10 "As to the second point, Mr Colgate drew Mr Whelan's
11 attention to the fact that there were similarities of
12 language between paragraph 28 of his first statement and
13 paragraph 30 of Mr Sharpe's statement. The process
14 which was ..."

15 And there is an example of a transcript reference:
16 T8/188/191. Sometimes we give line numbers if
17 necessary:

18 "The process which was in fact adopted in relation
19 to the production of these two statements is described
20 in the annex prepared following enquiries by DLA of its
21 Manchester and London offices. As explained in the
22 annex, the first Whelan and Sharpe statements were the
23 result of separate interviews conducted by the same
24 solicitor at DLA with these two gentlemen.
25 The solicitor then prepared the first drafts of both

1 statements. This is the obvious explanation for
2 the similarity of language to be found in
3 the statements.

4 "The annex also explains that in relation to his
5 later witness statements Mr Whelan did indeed produce
6 dictated and type-written note which were sent to DLA
7 which explains his error that his first statement was
8 the direct result of his own dictated notes. It is
9 accepted that Mr Whelan was mistaken about the procedure
10 actually adopted. He is not a solicitor; he is a busy,
11 successful businessman. He would not have been familiar
12 with the legal process which lead to what eventually his
13 signed witness statements and he should not be
14 criticised for that.

15 "The linguistic similarities between the paragraphs
16 referred to in the Whelan and Sharpe statements are not
17 central to the matters which fall to be decided in these
18 appeals, and if there had been any collusion between
19 them it would surely have been on points of major
20 importance. Which clearly did not occur."

21 So you will be able to look at that and come to
22 a view about the issue, but we have identified I hope
23 very plainly what the issue is, and I hope also
24 accurately.

25 Then at the end of his oral evidence Mr Whelan was

1 asked a number of further questions by Mr Colgate, and
2 what we have done is to deal with each of those
3 questions in this part of our submission. I will not go
4 through them now, and we also say something briefly
5 about Mr Hughes on page 17.

6 We then turn address the question of the OFT's case
7 on pressure, which starts on page 18. We have asked
8 ourselves two questions on this:

9 "The OFT contends that JJB put pressure on Umbro
10 which in turn put pressure on Sports Soccer."

11 So we have dealt with each of those issues. First
12 of all, alleged pressure by JJB on Umbro, which is
13 the subject-matter of pages 18, 19, to the top of
14 page 20. Then we ask ourselves the second question:
15 alleged pressure by Umbro on Sports Soccer.

16 Perhaps I could just make a small addition to
17 the dates there. You can see about 10 or 12 lines down
18 that Umbro needed financing and Sports Soccer --

19 THE PRESIDENT: What page are we on?

20 LORD GRABINER: I am sorry, page 20. This is in
21 the section "Alleged Pressure by Umbro on
22 Sports Soccer". Umbro needed financing and
23 Sports Soccer provided it to the tune of many millions
24 of pounds over 2000 and 2001, and my understanding is
25 that the further material that has just been adduced

1 suggests I think -- and I may be wrong and I am a bit on
2 hearsay evidence here -- that there is a further figure
3 of £10 million in 1999, £8-£10 million in respect of
4 1999. Perhaps that could just be added in in
5 manuscript. We deal with that issue over the next few
6 pages, down to and including page 25. If you do allow
7 yourselves, as I am sure you will, just a very careful,
8 quiet read of this stuff, certainly I am satisfied that
9 you will get a good flavour of what our case is and
10 I would respectfully suggest what the correct answers
11 are to the questions that are put before you.

12 We then turn to deal with the charges, and that
13 starts at page 26. We take each of the charges in turn
14 and we do a detailed analysis of the charge and
15 the answer that we make to each charge. So pages 26-31
16 deal with the Euro 2000 charge. The Manchester United
17 Agreement, page 32 onwards, addressing all the issues
18 that arise. You will see from page 34 what were
19 the arrangements for the making of the meeting. Did
20 Mr Whelan know, page 35, that Mr Ashley would be
21 present? A point I have briefly adverted to already but
22 we do it in more detail there. The fact that Mr Whelan
23 rejected the proposal; page 36. The fact that there was
24 no agreement, as we submit, to 39.99; page 37.

25 If you could go to page 39, I just want to add one

1 or two points orally here. If you look at page 39,
2 the context of the paragraph, if you look at
3 the penultimate paragraph on page 39 -- actually
4 the antepenultimate paragraph is the one that deals with
5 the two internal Allsports memoranda that by coincidence
6 we had reference to earlier today.

7 Perhaps we can have a look at those paragraphs now
8 if it is convenient, especially as Mr Guest's evidence
9 is in our minds. I wonder if I could ask you to take
10 the memorandum file; it is the Hughes cross-examination
11 bundle. If you have tab 9 in front of you that would
12 perhaps be helpful. If you could just go across to
13 the first break on page 39 of our submission.

14 The third point we say concerns the two internal
15 Allsports memoranda of 9th June written by Mr Hughes
16 which were both sent to Mr Patrick and Mr Guest. As to
17 the one at tab 39, there is no basis for concluding that
18 it evidences any unlawful agreement on the part of JJB.
19 The evidence is very plain that Mr Hughes knew that
20 JJB's regular practice was to launch at 39.99. He was
21 making a statement of the obvious which was known to
22 everyone in the market. The first sentence of this
23 memorandum is also consistent with the evidence of
24 Mr Hughes and Mr Whelan as to what happened at the
25 meeting on 8th June and which led Mr Whelan and

1 Mr Sharpe to leave when they did.

2 The other point about the tab 39 memorandum --

3 Pausing there actually. When it says:

4 "I have already told you that JJB are going out at
5 39.99", that was a statement of well-known fact.

6 The other point about tab 39 --

7 THE PRESIDENT: You mean it was a statement of well-known
8 fact as distinct from a statement made in the course of
9 the meeting on 8th June?

10 LORD GRABINER: As opposed to an agreement made in
11 the course of the 8th June meeting or even a statement
12 made, yes, I would go so far as to say that, in
13 the course of the 8th June meeting, certainly.

14 THE PRESIDENT: I do not want to interrupt your flow,
15 Lord Grabiner, but at some point we may need to explore
16 a little what one means by some of these expressions:
17 agreement and concerted practice, on various different
18 hypotheses; whether a statement was made or not, and if
19 it was made and you are just talking about a statement
20 being made, whether and in what circumstances something
21 called a concerted practice may or may not have come
22 into existence.

23 LORD GRABINER: We have that point in our submission but
24 I am glad you made the point and I will deal with it now
25 while I am on my feet. I think we come to it on the

1 next page actually. Sir, it is in the logical position.

2 The other point about the tab 39 memorandum is that
3 when Mr Hughes says: I have already told you that JJB
4 are going out at 39.99, the implication is that he had
5 had an earlier conversation with Mr Patrick and/or Mr
6 Guest on the subject. We know that they had both gone
7 to California on Wednesday, 7th June, that is before
8 the 8th June meeting. A fair inference we submit is
9 that any conversation between Mr Hughes and Messrs
10 Patrick and/or Guest in relation to JJB took place
11 before the 8th June meeting."

12 I would invite you to insert there a note for
13 yourselves that takes account of Mr Guest's evidence
14 today. If I can give you first of all a couple of
15 references. His witness statement is in file 1 at
16 page 282 and dealt with at paragraphs 11-17. And then
17 he gave some evidence in response to questions from
18 Mr Colgate immediately after lunch today which came up
19 at pages 106 and 107 of today's transcript.

20 I think the thrust of his points was that this was
21 first of all a pre-triband mobile world that he was in
22 at the time; he did fairly acknowledge that there was
23 a landline but I think he was anxious to make it clear
24 it was not actually something he thought of doing when
25 he was in California, given the time difference. And it

1 may be that you formed the view that he was rather his
2 own man and was not interested in communicating much
3 with the office. Anyway, you will, I am sure, take
4 account of his evidence on that.

5 Looking across at the document itself, of course
6 documents like this are not designed like parliamentary
7 statutes, but there are probably two or three ways in
8 which you could construe that first sentence:

9 "I have already told you that JJB are going at 39.99
10 on 1st August on adult sizes and Sports Soccer will also
11 do that."

12 First of all, "I have already told you that JJB are
13 going at 39.99" -- the words "already told you", one way
14 of construing it is to say that that simply refers to
15 JJB.

16 Another way of construing it in theory, is I have
17 already told you everything that is in the balance of
18 the sentence. You might think that is a bit of
19 an unnatural construction, I do not know, because of
20 the words "and Sports Soccer will also do that", which
21 does not seem as if it falls into quite the same
22 category as the first part of the sentence.

23 A possibility of course is that I have told you that
24 JJB are going at 39.99: we all know that this is what
25 they do, I have told you that and you know that.

1 Another possibility is that the second half of
2 the sentence is the result of what happened on 8th June.
3 I do not know.

4 What we do know about 8th June, and it is not for me
5 to cast aspersions or get involved in this debate, is
6 that Mr Whelan and his son-in-law left that meeting and
7 they left the meeting before Mr Hughes and Mr Ashley.
8 We do not know what happened.

9 The other perhaps rather important point is that
10 these gentlemen left and went off on the 7th June, ie
11 before the 8th June meeting, to California. So "I have
12 already told you" must have meant before 7th June, ie
13 before the meeting.

14 Perhaps I should just go on to the second one, it is
15 dealt with in the next paragraph:

16 "As to the memorandum at tab 40 in which Mr Hughes
17 says 'In my absence you should continue any necessary
18 dialogue with JJB and Sports Soccer', there are two
19 obvious comments we would make. If contrary to JJB's
20 case it made an agreement on the 8th June meeting it is
21 difficult to understand what further dialogue was
22 necessary, the terms of the agreement were simple and
23 not susceptible of any discussion. It is also the case
24 that although Mr Hughes's diary is full of subsequent
25 references to the need for him to have telephone

1 conversations with Mr Ashley, there are no similar
2 entries for Mr Whelan or JJB."

3 Then we go on to deal with the fourth point in that
4 context, which is the board meeting. I would like you,
5 if you would, to read that to yourselves.

6 To come back to the point put to me by
7 the president, we deal with that at the foot of page 40:

8 "Mr Whelan did not state that JJB would price the MU
9 home shirt at 39.99.

10 "The OFT contends that not only did Mr Whelan state
11 at the 8 June meeting that JJB would not price above
12 £40, also that he stated that JJB would price the
13 Manchester United home shirt at 39.99 at launch. This
14 contention is unsustainable in the light of Mr Whelan's
15 evidence, which we then referred to Mr Hughes and
16 Mr Ashley.

17 "When cross-examined by JJB, Mr Hughes said that
18 following the meeting he believed that JJB would sell at
19 39.99 because he knew that that was what JJB always did.
20 His belief was 'absolutely not because of anything that
21 Mr Whelan said at the meeting'. Mr Ashley confirmed in
22 cross-examination that he knew JJB's general policy was
23 to launch adult shirts at 39.99. Mr Ashley is the only
24 person who was present at the meeting whose evidence
25 belatedly implicates JJB in the price-fixing agreement,

1 and there are a number of points to be made in relation
2 to his evidence."

3 Perhaps I can carry on because we come to the point
4 that you were making to me in a moment here:

5 "There are various versions of the story which do
6 accord with the evidence of Mr Whelan and which would
7 provide a wholly innocent explanation from JJB's point
8 of view. For example, it is now common ground that
9 the meeting began with a proposal from Mr Hughes along
10 the lines that there should be an agreement at 44.99.
11 And this point is a strong corroboration of Mr Whelan's
12 evidence. Given Mr Ashley's poor recollection, the most
13 obvious explanation for his apparent conviction that an
14 agreement was reached at 39.99 is that he was adamant
15 that those were his instructions from Mr Ronnie as to
16 what it was he was supposed to get out of the meeting.

17 The other factor is that he knew, and this was
18 common knowledge in the trade, that JJB's regular
19 business practice was to launch at 39.99. The evidence
20 that Mr Ashley gave at the hearing is entirely
21 consistent with him glossing what took place at a single
22 meeting nearly four years earlier. He admitted that he
23 could not remember exactly what had been said at
24 the meeting. Given the different ways in which he has
25 told this story, there is absolutely no reason to accept

1 this version rather than any of the others, and by
2 parity of reasoning every justification for treating
3 the evidence he gave as being insufficiently compelling
4 or not sufficiently reliable given the seriousness of
5 the charge. If the tribunal believes that Mr Whelan's
6 explanation may well be the correct one, the charge
7 should be dismissed. Again this is a good example of
8 a piece of evidence which is insufficiently compelling.

9 The other possible explanation is that there was a
10 simple misunderstanding between the parties. On Mr
11 Whelan's and Mr Hughes's evidence there were no
12 consensus between the parties, and with the passage of
13 time it is not possible with a sufficient degree of
14 certainty to exclude the possibility that Mr Ashley got
15 the wrong end of the stick and left the meeting
16 believing that an agreement had been reached when in
17 truth there was no agreement at all. This was because
18 the response by Mr Whelan to Mr Hughes was a rejection
19 of the proposal and was not of itself an offer, still
20 less an agreement, to price at 39.99. At this distance
21 in time there cannot be a sufficient degree of certainty
22 that Mr Ashley is right and Mr Whelan is wrong."

23 The image that I would like you to carry away if you
24 would in connection with this little bit of the story is
25 the sort of question that would have been posed, I am

1 sure, to your Lordship just as it was posed to me and
2 others in the room, which would have consisted of
3 saying: I want these sold at 44.99, no, you know that we
4 never sell above £40. Now, there is no consensus there;
5 there is no agreement in any sense of the word at all.
6 It is a rejection of a proposal.

7 If you then take the next step, which is what
8 the OFT has done and discerned from that rejection
9 response an offer which is then accepted you are into
10 new territory. That essentially is the debate, and it
11 really depends upon the view you take of the nature of
12 that meeting and the exchanges which were the subject
13 of evidence of all the people who attended:

14 "In an endeavour to try to salvage something from
15 this charge the OFT takes the alternative or subsidiary
16 position that the mere mention by JJB of its consistent
17 pricing policy at the 8th June meeting itself
18 constituted a concerted practice for the purposes of
19 chapter 1. The flaw in this argument is that it fails
20 to take account of the fact that there must be consensus
21 in order to sustain this charge: 'There must be a mental
22 consensus whereby practical co-operation is knowingly
23 substituted for competition, however the consensus need
24 not be achieved verbally and can come about by direct or
25 indirect contact between the parties. The hypothesis

1 which applies in respect of this alternative way of
2 putting the case is that there never was an agreement in
3 the primary form contended for. Without consensus there
4 can be no concerted practice and the OFT's way of
5 putting the case does not take account of this. In
6 order words if the primary case falls, the subsidiary
7 case falls as well."

8 In his opening, Mr Morris concentrated on what he
9 called "An elimination or a reduction in uncertainty on
10 the part of one or more of the competitors as to their
11 pricing intentions". That is the way he put it. The
12 criticism of this formulation in our submission is that
13 it fails to take account of the fundamental requirement
14 of consensus. And the OFT concentrates on what it would
15 call the objective consequences of contact between
16 competitors, whereas we would emphasise the need in law
17 to satisfy the requirement that there be a knowing
18 consensus between the relevant parties.

19 May I say this also: Mr Morris's approach might have
20 some force if this were a case where we did not have any
21 primary evidence, but we actually have testimony from
22 the people who were at the meeting. This kind of thing
23 is done normally in a smoke-filled room and you never
24 get the witnesses at all. Here you have had
25 the witnesses and you can come to a judgment about that

1 for yourselves. But consensus must not be ignored and
2 the sleight of hand, and I do not mean that in any way
3 offensively because we are all in the business of
4 sleight of hand, at least they are on the other side of
5 the room -- the sleight of hand, or the flaw perhaps
6 more accurately is the way I would put it, is
7 the omission of the requirement of consensus and
8 the concentration on the objective position. You have
9 to bear in mind the importance for the need for
10 consensus.

11 THE PRESIDENT: It is just possible that we may need to look
12 at one or two authorities to say exactly what
13 the parameters of the concerted practice are.

14 LORD GRABINER: We have dealt with this in our skeleton
15 argument and we have identified I think the relevant
16 authorities. I am sure that you are right.

17 THE PRESIDENT: Yes.

18 LORD GRABINER: I would much prefer, though, that you were
19 satisfied on the evidence before you started getting
20 into the authorities because it is a question of what
21 was said and the inferences that are to be drawn from
22 what was said and the substance of the thing on fact.

23 In my submission this is not a case about law at
24 all; this is a case about facts and about your view of
25 these witnesses.

1 THE PRESIDENT: Yes.

2 LORD GRABINER: Page 43 deals with the Continuation

3 Agreement and makes the arguments that we rely upon in
4 relation to that agreement. Then page 46 briefly,
5 because it is only a short point, not really susceptible
6 of much by way of argument or debate because the facts
7 are very plain indeed, the England Direct Agreement,
8 46-48.

9 The appendix you can see sets out the timetable in
10 two and a half pages of the process whereby
11 the statements were obtained, including the point about
12 Mr Whelan. You will remember that he gave some evidence
13 about having dictated his statement; I am sure you will
14 remember that.

15 THE PRESIDENT: Yes.

16 LORD GRABINER: If you look at the foot of page 50,
17 the solicitors say:

18 "David Whelan is mistaken in so far as he suggests
19 that the statement as provided to the OFT or
20 the tribunal were produced independently of JJB. He is,
21 however, correct in suggesting that he did produce notes
22 dictated by him dealing with aspects of the case and he
23 may be under the impression that these notes became his
24 statements. Lengthy notes about 22 pages in total were
25 produced by David Whelan during the appeal stage after

1 the time when the original statements were submitted to
2 the OFT. It is not entirely clear from the file when
3 these were first sent as the compliment slip covering
4 them is undated, but the latest the majority of these
5 were sent is 22nd September, as indicated by way of
6 a faxed version of 19 pages of these notes."

7 And the notes deal with specific paragraphs and
8 findings in the OFT's decision and were used in the
9 background preparation for the notice of appeal and
10 the general preparation of JJB's appeal and
11 the preparation of the witness statements. So that is
12 the factual position which gave rise to the background.

13 The only other point I wanted to make is in
14 the third paragraph of the first page of this document,
15 which is that we repeat our submissions made in our
16 skeleton argument, but we have not reproduced them in
17 this document. So in the ideal world you would read
18 these submissions in conjunction with our skeleton
19 argument, and we respectfully invite you to do so.

20 For my part, unless there are any questions arising
21 out of what I have been saying so far, for my part what
22 I would respectfully invite you to do is to rise now,
23 take this document away, and we could resume in
24 the morning. If there are questions that you would like
25 to put to me, I will endeavour to answer them for you.

1 That would probably be the most valuable use of time.

2 THE PRESIDENT: Yes, thank you, Lord Grabiner. I have one
3 question that is, as it were, floating around in
4 the back of my mind and I am not yet sure if it is
5 a relevant question or not.

6 What, if any, weight should we attach to the various
7 statements attributed to, made by or concerning
8 Mr Sharpe? Perhaps that is not a question one can ask
9 in the abstract, but it is a feature of the evidence
10 that unfortunately for all the reasons that we
11 understand Mr Sharpe is not able to tell us about.

12 LORD GRABINER: Well Mr Sharpe made a statement, and it is
13 a piece of evidence in the case. It has less weight,
14 I suppose, than evidence would have if the maker had
15 been available for and had been cross-examined.

16 THE PRESIDENT: Yes.

17 LORD GRABINER: As to how much weight you attribute to it,
18 I think it is a matter for you. It would be entirely
19 inappropriate to ignore it. It would be entirely
20 permissible to take it into account and possibly even to
21 give it significant weight, particularly if it was
22 corroborated by other evidence that you were satisfied
23 with.

24 If you take the view, for example, that you agree
25 with what one or two witnesses said in respect of some

1 particular issue and Mr Sharpe was saying the same thing
2 then you would be comfortable that Mr Sharpe
3 corroborated them, they corroborated Mr Sharpe, and you
4 would feel comfortable with what Mr Sharpe had to say.

5 THE PRESIDENT: Yes.

6 LORD GRABINER: I am told also, and I am grateful, that
7 Mr Sharpe made the one statement and he made it to
8 the OFT; it was not a statement made for the purposes of
9 this appeal. He had already passed away by then.

10 I suppose one might say a statement is a statement
11 is a statement, and whoever he was making it for it was
12 intended to be and was supposed to be the truth,
13 the whole truth and nothing but the truth.

14 I do not know if that answers your question. It
15 certainly has more value than, say, a statement from
16 somebody that refuses to attend. I do invite your
17 attention to it, his evidence for example in relation to
18 the Manchester United Agreement is important and
19 central, and is itself corroborated in important
20 respects by other witnesses including Mr Ashley.

21 We deal where appropriate in those submissions -- we
22 identify Mr Sharpe's witness statement where he does say
23 something which is relevant to the particular point in
24 issue. You can see how relevant it is to the global
25 picture in relation to that charge and how what he has

1 to say on the subject is reflected by what others have
2 to say.

3 So in practice I think it will be easy to come to
4 a judgment about that.

5 THE PRESIDENT: Yes, we think that is a convenient source,
6 Lord Grabiner.

7 LORD GRABINER: May I say that the object of the exercise as
8 far as we are concerned is to make sure that we have got
9 across to you anything that may be giving you any cause
10 for concern. So I do welcome and engage with you,
11 however you want to do it, we have sought to engage
12 the debate in the document.

13 THE PRESIDENT: Yes. I can see Mr Morris rises.

14 MR MORRIS: Sir, I have no comment on the way the matter is
15 being proceeded with, that seems fine to us.

16 We now have in the appendix which we have just seen
17 for the first time the explanation for how the witness
18 statements were prepared in response to Mr Colgate's
19 questions. That is something which we would like to
20 consider overnight, particularly in view of the very
21 firm evidence that was given by Mr Whelan about that
22 which is now said to be mistaken at page 190, Day 8.

23 Although we do not make this application now we
24 would suggest that if JJB or DLA were able to have
25 available, if need be, the notes of the interviews with

1 Mr Sharpe and Mr Whelan on 5th June and 18th June 2002,
2 that may be a matter which we would wish to invite the
3 tribunal to see.

4 LORD GRABINER: The answer is no. They are privileged
5 documents, they are not available. Privilege has not
6 been waived.

7 There is a limit to this enterprise. It is
8 appalling in my humble opinion that this case has lasted
9 as long as it has, and that the cross-examination
10 exercise that we have had to sit through has taken as
11 long as it has. But I am certainly not going to open
12 that up because the implication is that we now have to
13 go back on all the witnesses or bring back Mr Whelan and
14 start cross-examining him about drafts of his witness
15 statements. That is not the object of the exercise.

16 The object of the exercise is to give an explanation
17 from my instructing solicitors as to the mechanism that
18 was adopted for the preparation of the witness
19 statements. The position is clear: if my friend wants
20 to cross-examine my instructing solicitor I will tender
21 him for that purpose.

22 THE PRESIDENT: I think we are not hearing an application at
23 the moment.

24 MR MORRIS: It is something which we may wish to consider
25 overnight. It is a matter which has been proffered by

1 DLA.

2 THE PRESIDENT: We will consider it tomorrow if it arises.

3 Mr West-Knights, I have one question in the back of
4 my mind which I think bears on Allsports. I do not know
5 whether it is either relevant or whether you can help me
6 on it. It is: when exactly (a) was Mr Hughes's diary
7 passed across to your instructing solicitors; (b) when
8 was the first time that the OFT had sight of that diary?

9 MR WEST-KNIGHTS: I cannot remember the answer to question
10 one. The answer to question two is shortly after
11 the production of our defence. They had it at
12 the beginning of December and they waited until
13 23rd February to send it for forensic examination.

14 I cannot remember the answer to the first question,
15 if I knew it. It is as simple as that. If that is
16 troubling you or you would like to know the answer to
17 the question I will procure it for you.

18 Sir, can I just indicate what our position is going
19 to be tomorrow. We have a document in draft which is in
20 this form. It is not a wall of text. It is very much
21 more in points with specific references on each occasion
22 either to the evidence in question or to
23 the transcripts. Broadly speaking it follows
24 the pattern overall: pressure, England Agreement,
25 Manchester United Agreement -- and then pointers, which

1 we are currently calling fibs.

2 Pointers to specific instances of a witness going
3 wrong and specific instances of a witness going right.
4 That is the pattern that this document will follow.

5 My intention is not to read at you from it but to
6 take you, as it were, across it. I too would welcome to
7 be quizzed on any aspect which is causing the tribunal
8 doubt or where clarification is required or which simply
9 is not covered, which is always a possibility.

10 How long we take over this is really a question of
11 how long it takes me to skim over it and pick up
12 the highlighted points. In one or two places we have
13 quoted the key cross-examination, whatever, to make good
14 the submission which is there.

15 The other document we will be handing in is probably
16 ready now but I will not trouble you with it now. It
17 looks like this (indicating). It is an analysis as we
18 promised during the course of the case of the
19 development of Mr Ronnie's witness statements showing
20 where they have changed and showing where bits that had
21 existed in previous iterations have disappeared.
22 In addition, oral evidence material to the points in it.

23 It does not go through it in paragraph order; it
24 goes through in topic order I think based on Ronnie 3,
25 which was a relatively topical or topically oriented

1 witness statement.

2 Last, I have mentioned from time to time the
3 importance in this case of a chronology. I have moaned
4 occasionally that I have not been able to tax either
5 Mr Ronnie or Mr Ashley, as it were, on a chronological
6 sequence of events because that would have been part of
7 the financials exercise because the question is: what is
8 the significance of that bit there or that bit there?

9 I have been trying to sanitise this, which is my own
10 personal chronology of all of the documents in the case,
11 which it would not be appropriate for anybody but me to
12 read because it contains my comments to me about stuff.

13 I am trying to sanitise this but I may not have
14 finished that task by the morning. If that is right,
15 I will offer you with respect if I may a choice between
16 my running, as it were, an oral chronology off this
17 document but without written backup at this stage or
18 whether it would help for me to put in -- perhaps if
19 I can do it tomorrow evening, I will not finish it this
20 evening -- I say sanitised, I have a lot of references
21 which have been superseded. I will tidy this up. It
22 will concentrate on the period April to ... it may not
23 even go as far as August, it may only go mid-April to
24 mid-June. It will pick up the odd bit in March, but
25 the key period is April, May and early June.

1 One more thing. There is a slight problem with
2 the transcript. I will explain what it is. It has
3 nothing to do with single pages or four-style pages.

4 Somebody, and we do not know who it was, requested
5 of Smith Bernal during week 1 that the in camera bits of
6 the transcripts should be published separately from
7 the open court bits. That means that the electronic
8 page references in all of our machines at the moment do
9 not match the printed references on any day where there
10 has been an in camera event, for obvious reasons,
11 because the in camera bit ceases to exist it simply
12 becomes that much text and the page numbering is altered
13 accordingly.

14 We have done all of our references at the moment by
15 searching through the LiveNote as one is intended to and
16 generating reports and inserting the product of those
17 reports into our closing submissions --

18 THE PRESIDENT: Are you working on the same set of
19 transcripts that JJB has been working on?

20 MR WEST-KNIGHTS: No, we have not been working on the paper
21 ones. The purpose of LiveNote is that you can
22 manipulate the electronic text.

23 THE PRESIDENT: Mr Hoskins got up on Friday and made a plea
24 that everybody should work on the same transcript.

25 MR WEST-KNIGHTS: I know, but this was not a pickle of which

1 we were aware at that stage. This question of the in
2 camera page numbering changes I was not subjectively
3 aware of at that time. We had only just had produced at
4 that stage something called "Complete". Those are
5 the ones that match our referencing.

6 The probability is that the best way we can help you
7 is overnight, so far as possible, to get those
8 references brought into the shape of your transcripts.
9 There is no automatic way of doing that.

10 THE PRESIDENT: Just do your best.

11 MR WEST-KNIGHTS: I may need to just issue a health warning
12 tomorrow if I may, so we may submit the document so that
13 you can run through it and see the arguments, but we may
14 need to resubmit it if we have not quite finished doing
15 the re-referencing which is currently underway.

16 MR MORRIS: Sir, just for your information we are working
17 off the manuscript as suggested by Lord Grabiner.

18 MR WEST-KNIGHTS: It does not find favour with me but I
19 understand it has been floated through channels.
20 The alternative is for me, as I sing out the references
21 as we get to any references on the current piece of
22 paper, the tribunal can be looking at their screens,
23 because those references will work electronically. The
24 problem is that the electronics do not match the print.
25 It is something I suspect that we will all not forget in

1 the future, that if you tinker with the printed version
2 you do so at the certainty of dislocating it from
3 the electronic one.

4 THE PRESIDENT: I am sure for the purposes of you explaining
5 it to us we can manage one way or another. For
6 the purposes of having a final version of your
7 submissions, if they can be conformed across transcript
8 references.

9 MR WEST-KNIGHTS: The process is underway as I speak.

10 THE PRESIDENT: Please do not feel you have to stay up
11 overnight to do it.

12 MR WEST-KNIGHTS: I am sorry you said that as I have given
13 instructions that whoever it is who is doing it is to
14 stay up all night, happy in the knowledge that it is not
15 me!

16 THE PRESIDENT: Juniors work all night without sustenance!

17 MR WEST-KNIGHTS: What extraordinary people they are.

18 LORD GRABINER: But look what they become!

19 THE PRESIDENT: I think we will rise now. I think we can
20 conveniently resume at 10.30 tomorrow.

21 MR WEST-KNIGHTS: I said to Mr Morris who asked me, or his
22 junior, my learned friend John Turner, how long am I
23 going to be tomorrow, and the answer is as long as
24 a piece of string. I will not under any circumstances
25 exceed the day unless we become involved with dialogue

1 which is helpful and consensual. I may be less than
2 half that, I simply do not know.

3 MR MORRIS: Sir, can I give one further indication in
4 the light of that indication. Our position is that we
5 would much prefer to start clean on Thursday morning.
6 If we finish at 2 o'clock or 3 o'clock tomorrow that
7 time can be usefully used. We will endeavour to use
8 the same approach as Lord Grabiner, by having as good
9 a written document as we can and then walking through
10 it. That is the way we see it at the moment.

11 THE PRESIDENT: Yes. I think the only thing I would say,
12 again without deep reflection, is that although you are
13 understandably encouraging us to quiz you on your
14 submissions, in a case which depends very much on facts,
15 there is a great deal of mental collating of various
16 bits of evidence that one has to do before one can
17 usefully pose any questions. I am not particularly
18 promising any quiz tomorrow.

19 LORD GRABINER: I understand that. That is why we collated
20 it for you.

21 THE PRESIDENT: Thank you very much.

22 MR WEST-KNIGHTS: But on the subject of quiz I did miss the
23 great line, which is that unlike Sellers and Yateman
24 we are required here to write on both sides of
25 the paper.

1 THE PRESIDENT: Thank you very much, we will say 10.30
2 tomorrow.
3 (3.45 pm)
4 (The hearing adjourned until 10.30 am the following day)
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21
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24
25

INDEX

PAGE

MR MICHAEL GUEST (sworn) 12

 Examination-in-chief by MR WEST-KNIGHTS .. 12

 Cross-examination by MR MORRIS 22

 Questions by the Tribunal 132

Closing submissions by LORD GRABINER 144

