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IN THE COMPETITION

APPEAL TRIBUNAL

Case No. 1188/1/1/11

Victoria House,
Bloomsbury Place,
London WC1A 2EB

18 May 2012

Before:

LORD CARLILE OF BERRIEW CBE QC
MARGOT DALY
CLARE POTTER

Sitting as a Tribunal in England and Wales

BETWEEN:

(1) **TESCO STORES LTD**
(2) **TESCO HOLDINGS LTD**
(3) **TESCO PLC**

Appellants

– v –

OFFICE OF FAIR TRADING

Respondent

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HEARING (DAY :)

APPEARANCES

Ms. Dinah Rose QC, Ms. Maya Lester and Mr. Daniel Piccinin (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Appellant.

Mr. Stephen Morris QC, Ms. Kassie Smith, Mr. Thomas Raphael and Ms. Josephine Davies (instructed by the General Counsel, Office of Fair Trading) appeared on behalf of the Respondent.

1 Friday, 18 May 2012

2 (7.15 am)

3 **LORD CARLILE:** Good morning. It's nice and cosy in here

4 anyway.

5 Is that Ms Oldershaw?

6 **THE WITNESS:** Yes.

7 **LORD CARLILE:** My name is Alex Carlile and I'm the chair of

8 the Tribunal. Can you see my two colleagues on either

9 side of me?

10 **THE WITNESS:** I can, yes.

11 **LORD CARLILE:** On my right Ms Daly and on my left Ms Potter.

12 We're the Tribunal.

13 Can I start by saying to you that we hope very much

14 that your husband is feeling better and we completely

15 understand the problem that led to you returning to

16 New Zealand, so you have and your husband has our

17 warmest good wishes.

18 **THE WITNESS:** Thank you very much.

19 **LORD CARLILE:** It's now 7.15 in the morning in London which

20 means it's 8.15 in the evening in Rotorua.

21 **THE WITNESS:** Yes.

22 **LORD CARLILE:** So tell us if you get exhausted. We are

23 going to have breaks.

24 **THE WITNESS:** Sorry, it's 6.15.

25 **LORD CARLILE:** 6.15, I'm sorry. We're going to have breaks

1 but we will be sitting until about 1.15 London time,
2 okay? But we will have breaks.

3 The Tribunal is being transcribed as it occurs so in
4 fact I have a transcript in front of me, it's called
5 LiveNote, and we have to give the LiveNote technicians
6 breaks because it's very hard word.

7 Now, we're going to start by asking you to take an
8 oath. Do you wish to take a religious oath or do you
9 wish to take a secular affirmation?

10 **THE WITNESS:** I'll take a religious oath, please.

11 **LORD CARLILE:** In that case, can we arrange for Ms Oldershaw
12 to be sworn, please.

13 MS LISA OLDERSHAW (sworn)

14 **LORD CARLILE:** Thank you very much. You're now going to see
15 Miss Rose, Queen's Counsel who appears on behalf of
16 Tesco.

17 Examination-in-chief by MISS ROSE

18 **MISS ROSE:** Ms Oldershaw, do you have in front of you
19 a bundle marked appeal bundle 2A?

20 **A.** Yes.

21 **Q.** Can I ask you to take it up and turn in it to tab I
22 [Magnum], which is quite near the front, after various
23 numbered tabs.

24 **A.** Okay.

25 **Q.** Do you have there a document that's headed "First

-
- 1 Witness Statement of Lisa Oldershaw"?
- 2 **A.** Yes.
- 3 **Q.** Can I ask you to turn to the end of that document, is
- 4 that your signature?
- 5 **A.** Yes, it is.
- 6 **Q.** Are the contents of this statement true?
- 7 **A.** They are, yes.
- 8 **Q.** Can I ask you now to turn to the next tab, tab J
- 9 [Magnum], do you have there a document headed "Second
- 10 Witness Statement of Lisa Oldershaw"?
- 11 **A.** Yes.
- 12 **Q.** If you go to the end of that, it's a much longer
- 13 document, page 59 [Magnum], is that your signature?
- 14 **A.** Yes.
- 15 **Q.** Are the contents of this statement true?
- 16 **A.** Yes.
- 17 **Q.** If we can put that bundle away for a minute and take up
- 18 appeal bundle 2B, if you go to the front of that bundle,
- 19 do you have tab J1 [Magnum]?
- 20 **A.** Yes.
- 21 **Q.** Do you have there a document headed "Third Witness
- 22 Statement of Lisa Oldershaw"?
- 23 **A.** Yes.
- 24 **Q.** If you go to the end of that, is that your signature on
- 25 page 9 [Magnum]?

1 Now, you worked for Tesco for about 12 years.

2 That's right, isn't it?

3 **A.** Yes.

4 **Q.** In 2007, you and your family moved to New Zealand where
5 you now live and work?

6 **A.** That's correct, yes.

7 **Q.** Going back to your time at Tesco, in 1999 you moved into
8 buying?

9 **A.** Yes.

10 **Q.** And from about April 1999 to November 2000 you were
11 a buyer in the continental meats and cheese team?

12 **A.** Yes.

13 **Q.** Then from November 2000 to June 2001, you were a buyer
14 in the butter, spreads and margarine team?

15 **A.** Correct, yes.

16 **Q.** Were you involved in other grocery sectors in that role,
17 other than butter, spreads and margarine, or was it
18 just -- when you were in that role, were you confined to
19 butter, spreads and margarine?

20 **A.** It was butter, spreads and margarine.

21 **Q.** Then from June 2001 to February 2004, you were the
22 senior buying manager for cheese?

23 **A.** Yes.

24 **Q.** Then after February 2004, you moved within Tesco into
25 nonfood products?

1 **A.** That's correct, yes.

2 **Q.** Now, when you were the senior buying manager for cheese,
3 your immediate boss was Rob Hirst?

4 **A.** Yes, Rob was the category manager of dairy.

5 **Q.** At that time, from 2002, Rob Hirst reported to
6 John Scouler who was the category director for dairy?

7 **A.** Yes.

8 **Q.** And then John Scouler reported to Dido Harding?

9 **A.** Yes.

10 **Q.** And she was the commercial director for dairy?

11 **A.** Not just for dairy, for -- I think it was for fresh
12 food.

13 **Q.** And then Dido Harding reported to John Gildersleeve who
14 was Tesco's commercial and trading director?

15 **A.** Yes.

16 **Q.** He, as I understand it, was on the main board of
17 Tesco plc at the time?

18 **A.** Yes, he was.

19 **Q.** Now, on dairy products, the persons who took the
20 ultimate overall decisions then were John Gildersleeve
21 and Dido Harding?

22 (Pause)

23 **LORD CARLILE:** Are you hearing Mr Morris?

24 **A.** Yes, I am, yes.

25 **MR MORRIS:** Can I try the question again?

1 **LORD CARLILE:** Put that question again, please, Mr Morris.

2 **MR MORRIS:** On dairy products, the persons who took the
3 overall ultimate decisions were John Gildersleeve and
4 Dido Harding?

5 **A.** I'm not too clear what you mean by "ultimate decisions".

6 **Q.** The decisions that were taken -- the commercial strategy
7 for the dairy sector for Tesco's dairy business, rather
8 than the day-to-day decisions.

9 **A.** I suppose they set overall strategies with John Scouler.

10 **Q.** Very well. Then at various places in your witness
11 statement you refer to something called "Tesco's dairy
12 team"?

13 **A.** Yes.

14 **Q.** In addition to yourself, Rob Hirst and John Scouler, who
15 else was in that team?

16 **A.** It would have included the butters and fats buyer, the
17 continental cheese buyer, the cream buyer and all
18 support staff who supported those buyers in their role.
19 There were also marketeers who were responsible for
20 dairy products and technical managers who were
21 responsible for dairy products also.

22 **Q.** And approximately how many people would have then been
23 within the team?

24 **A.** I can't remember exactly but approximately 15 to 20.

25 **Q.** Now, you had day-to-day contact with both Rob Hirst and

1 John Scouler?

2 **A.** I had day-to-day contact with Rob, probably less with
3 John.

4 **Q.** At paragraph 41 of your witness statement [Magnum], and
5 I won't take you to it, you say that in deciding, in
6 particular, whether to accept a cost price increase you
7 would seek guidance from Rob Hirst in the first place.

8 **A.** If I felt I needed guidance, yes.

9 **Q.** And then sometimes you might speak to John Scouler about
10 it?

11 **A.** Yes.

12 **Q.** Now, you were responsible for the main cheeses, British
13 cheese?

14 **A.** That's correct, yes.

15 **Q.** And they represented the substantial majority of Tesco's
16 cheese business?

17 **A.** Yes.

18 **Q.** As you've just told us, there were buyers for other
19 cheeses?

20 **A.** There was another buyer for continental cheese and there
21 was another -- a junior buyer role for what we call
22 processed cheese, things likes Dairylea and slices.

23 **Q.** Alain Guilpain was the buyer for continental cheeses, is
24 that right?

25 **A.** I believe so at that time, yes.

1 Q. Who was the junior buyer for the processed cheeses?

2 A. It was a young graduate called -- his first name was
3 Chris and I can't remember his surname at the moment,
4 sorry.

5 Q. You say that in 2002 you had weekly dairy team meetings?

6 A. Yes.

7 Q. Did they take place on a regular day of the week?

8 A. I think it was on a Monday and they were in
9 John Scouler's office.

10 Q. Apart from yourself and John Scouler and, presumably,
11 Rob Hirst, who else from the team would attend those
12 weekly meetings?

13 A. All the other buyers of the other dairy categories, and
14 occasionally some technical representatives, senior
15 technical representatives --

16 Q. So perhaps --

17 A. -- of the dairy categories.

18 Q. So perhaps six, seven, eight people?

19 A. Yes.

20 Q. I just want to ask you some questions about the cheese
21 business.

22 Would you agree that cheese is a much more complex
23 product than liquid milk from a commercial point of
24 view?

25 A. Yes, there are a lot more products and variants, yes.

-
- 1 Q. And there are a number of different ways of categorising
2 those products, isn't there? Perhaps I can explain.
3 There are different ways of breaking it down. There was
4 branded and own label?
- 5 A. Yes.
- 6 Q. Branded cheese is cheese bearing the brand of the
7 processor?
- 8 A. Yes, or the processor's chosen name.
- 9 Q. Own label was cheese bearing Tesco's brand?
- 10 A. That's correct, yes.
- 11 Q. Or in the case, obviously, of other retailers the brand
12 of Sainsbury's would have their own label as well?
- 13 A. Yes.
- 14 Q. There is pre-packed and there is deli?
- 15 A. Yes.
- 16 Q. Pre-packed was packed by the processor?
- 17 A. Yes.
- 18 Q. And deli was cut, wrapped and priced in the supermarket
19 at the deli counter?
- 20 A. Yes.
- 21 Q. We know that pre-pack could be cut by the processor in
22 either random weight or fixed weight?
- 23 A. It could have been but, for Tesco, at the time it was
24 all random weight.
- 25 Q. For Tesco own label?

1 **A.** Own label, yes.

2 **Q.** But the branded pre-pack that you purchased would, in
3 certain circumstances, be fixed weight?

4 **A.** The majority of branded products were fixed weight, yes.

5 **Q.** Then there are distinctions based on quality from the
6 cheapest to the most expensive?

7 **A.** Yes. So Tesco operated, we had Value and then we had
8 what we call Tesco Standard. It didn't say "Standard"
9 on it, it just had the Tesco logo. Then we had Tesco
10 named creameries and Tesco Finest.

11 **Q.** Thank you, that was my next question.

12 **A.** Sorry.

13 **Q.** No, that's fine. It's paragraph 21 [Magnum] of your
14 witness statement.

15 Broadly, the prices for those four categories would
16 reflect the quality, presumably?

17 **A.** Yes, broadly.

18 **Q.** So the range of prices for each category would increase
19 as you went up in quality?

20 **A.** Yes, so Finest would be more expensive than Value.

21 **Q.** And Tesco Value was Tesco's economy range and the
22 cheapest of those lines?

23 **A.** Yes.

24 **Q.** Tesco Value represented a significant proportion of
25 Tesco's cheese business at that time?

1 **A.** Yes.

2 **Q.** About 20 per cent, would that be a -- I think I've seen
3 a figure of about 20 per cent --

4 **A.** Okay.

5 **Q.** -- as a ball park.

6 **A.** As an estimate, yes, a ball park figure, yes.

7 **Q.** When you set your prices for the various categories,
8 I presume you would bear in mind differentials between
9 those quality categories?

10 **A.** Yes. I mean, your Value cheese would always be cheaper
11 than your Standard cheese.

12 **Q.** From a brand and price positioning perspective for
13 Tesco, it was important that Tesco Value represented
14 Tesco's best offer to the consumer?

15 **A.** Yes.

16 **Q.** So, for example, if you were considering raising prices
17 for Tesco Value, it is likely that you would at the same
18 time be considering raising prices for the other
19 categories?

20 **A.** You had to ensure that the pricing hierarchy made sense
21 to customers, yes.

22 **Q.** Thank you.

23 Now, in addition to categories of cheese, you also
24 refer to something called a cheese line in your witness
25 statement. When you refer to an individual cheese line,

1 you are referring to one individual product
2 characterised by its cheese type, its strength, its
3 quality, whether it's branded or own label, and even
4 down to its pack size?

5 **A.** Yes, that's correct.

6 **Q.** So, for example, Cathedral City mature cheddar
7 200 grammes was one line, and Cathedral City mature
8 cheddar 600 grammes was another cheese line?

9 **A.** Yes.

10 **Q.** Those Cathedral City were supplied by Dairy Crest?

11 **A.** Yes.

12 **Q.** Those two examples I've just given you are examples of
13 branded pre-pack fixed weight?

14 **A.** They are, yes.

15 **Q.** At paragraph 9(e) of your witness statement, you refer
16 to English Davidstow extra mature. If we just turn to
17 paragraph 9(e), it's on page 4 of your statement
18 [Magnum]. I'm looking at tab J of that bundle I think
19 you're in.

20 You say:

21 "A cheese line is a unique product. For example,
22 Tesco English Davidstow extra mature small is
23 a different cheese line to Tesco English Davidstow extra
24 mature medium due to the different pack size."

25 It makes the same points I've just made. But that

1 is an example of a Tesco own label pre-pack random
2 weight?

3 **A.** Yes.

4 **Q.** There were also branded random weight, so McLelland's
5 Isle of Arran Traditional Scottish mature is an example
6 of a branded random weight cheese line?

7 **A.** Yes.

8 **Q.** Each cheese line had a unique Tesco number referred to
9 as a TPNB?

10 **A.** Yes, that's right.

11 **Q.** Which I think stands for Tesco product number but you
12 may be able to correct me?

13 **A.** I think it's Tesco base -- that they meant base, Tesco
14 product number, base number.

15 **Q.** Thank you.

16 At the relevant time, you handled over 200 cheese
17 lines?

18 **A.** Yes.

19 **Q.** I think you say 226 in your witness statement, and they
20 had a total sales value of £212 million?

21 **A.** Yes, at that time, yes.

22 **Q.** The most important lines for you were the Tesco Value
23 lines and the Tesco Standard own label lines?

24 **A.** They were the biggest selling lines, yes.

25 **Q.** You bought the cheeses from different processors?

1 **A.** Yes.

2 **Q.** And, as I understand it, Dairy Crest at the time was the
3 largest or the second largest supplier of cheese to
4 Tesco, I don't know if you can recall?

5 **A.** They were certainly one of the largest.

6 **Q.** I think the other candidate I had is Kerrygold?

7 **A.** Kerrygold, yes.

8 **Q.** As you say, handling the cheese business was complex and
9 that was because of the number of different lines and
10 the variety of suppliers?

11 **A.** Yes.

12 **Q.** Now, at paragraph 35 of your witness statement, you
13 refer to a category of fixed weight pre-pack known as
14 PMPs, price marked packs. At the bottom of
15 paragraph 35, I am on page 12 [Magnum], at the bottom of
16 that page you say:

17 "For some fixed weight cheese products, the retail
18 price is printed on the back as well as being displayed
19 on the shelf in store. These are known as price marked
20 packs."

21 PMPs usually only occurred when a fixed weight
22 product was on promotion?

23 **A.** They typically appeared on promotion but they could also
24 be on the pack outside a promotion as well if the
25 supplier -- if the producer wanted to highlight the

1 price. So it wasn't necessarily a reduced price, it was
2 just the highlight of the existing price.

3 Q. It would be fair to say that PMPs represented only
4 a small proportion of the fixed weight pre-packs that
5 you sold at the time?

6 A. Yes.

7 Q. At the time Tesco was the largest supermarket retailer,
8 that's right, isn't it?

9 A. Yes.

10 Q. As far as cheese was concerned, in 2002 and 2003, Tesco
11 was by far the largest purchaser of cheese?

12 A. Yes.

13 Q. Now, at paragraph 22 of your witness statement [Magnum],
14 and I won't take you to it, you say that Tesco purchased
15 twice as much as any other major retailer. We can look
16 at it if you would prefer. Yes, the last sentence of
17 paragraph 22.

18 A. Yes, I believe approximately twice as much, yes.

19 Q. Do you have any idea or can you recall the volume of
20 cheese which Tesco bought and sold every year? The
21 volume.

22 A. I can't recall, sorry.

23 Q. Can I suggest a figure to you and see if it sounds
24 right? My understanding is that they were supplying in
25 the region of 80 to 90,000 tonnes a year. Does that

1 sound about right?

2 **A.** I can't recall, sorry.

3 **Q.** Now, Tesco's main competitors at the time were Asda,
4 Sainsbury's and later on Morrisons started to come into
5 the picture?

6 **A.** Yes.

7 **Q.** Is that a fair representation? Okay.

8 Now, I want to just ask you a couple of questions
9 about another topic.

10 You were involved in this case during the stage when
11 the Office of Fair Trading were investigating it, that's
12 right, isn't it?

13 **A.** I believe so, yes.

14 **Q.** Miss Rose took you to your first statement that you made
15 on 18 November 2009. That is at tab I [Magnum], just
16 before -- in the same bundle.

17 **A.** Yes.

18 **Q.** You made that statement in November 2009 and that was
19 made in the course of the Office of Fair Trading's
20 investigation?

21 **A.** Yes.

22 **Q.** Can I just summarise the contents of that first witness
23 statement. What happened was this, Tesco prepared
24 a response to a document called a statement of
25 objections in November 2007, and you get that from

1 paragraph 2 of your witness statement [Magnum]:

2 "At Tesco's request I reviewed a certain number of
3 paragraphs in the statement of objections."

4 Then in the second sentence of paragraph 2 of your
5 first witness statement, you say:

6 "In November 2007 I reviewed certain paragraphs in
7 Tesco's response to the statement of objections which
8 contained information within my knowledge."

9 **A.** Yes, that's what it says.

10 **Q.** Then in November 2009 -- sorry, at that time, in
11 paragraph 3 of that statement [Magnum], you say that you
12 concluded, presumably in November 2007 -- I'm looking
13 back to the first page of tab I, paragraph 3:

14 "I concluded that, to the best of my knowledge, the
15 paragraphs that contain information within my knowledge
16 are true to the best of my knowledge and belief."

17 So what you did in November 2007 is you reviewed
18 that response and you confirmed the truth insofar as it
19 related to matters that you knew about?

20 **A.** Yes.

21 **Q.** Then in November 2009 Tesco prepared a second document
22 called their response to the supplementary statement of
23 objections, and we see that at paragraph 5 [Magnum]. If
24 you turn over the page, paragraph 5, this is now two
25 years later.

1 **A.** Sorry, I'm not sure where we are.

2 **Q.** Okay, I'm in your first witness statement, I think
3 you --

4 **A.** Paragraph 5.

5 **Q.** Over the page, paragraph 5, and I'm referring you to
6 a document that is called "Tesco's Response to the SSO".

7 **A.** Yes, I've got it.

8 **Q.** We have two stages: November 2007, there was the first
9 Tesco document which you reviewed, and then two years
10 later in November 2009, Tesco prepared a second document
11 which is referred to in the first sentence of
12 paragraph 5 as the SSO response?

13 **A.** Okay.

14 **Q.** Yes, I'm just taking it in stages, it's partly to do
15 with the link as well so I'm trying to break it down.

16 What happened in November 2009 is you looked again
17 at the 2007 response, and you can see that from
18 paragraph 4 [Magnum]. That's right, isn't it? At
19 paragraph 4 you say:

20 "For the purposes of this statement [which is the
21 statement made in November 2009] I have reviewed those
22 paragraphs in the SO response again."

23 So you looked at the first document again, and at
24 the end of that paragraph, paragraph 4, it says:

25 "My conclusion is unchanged."

1 **A.** Yes.

2 **Q.** So in November 2009 you confirmed what you had said two
3 years ago, that what was in the first response was
4 correct as far as the contents related to matters that
5 you knew about?

6 **A.** Yes.

7 **Q.** Then, in 2009, you then at the same time read and
8 considered those parts of the response to the SSO, which
9 is the first sentence of paragraph 5, and you confirmed
10 that, to the extent that matters were within your
11 knowledge -- this is the last sentence of paragraph 5
12 [Magnum]:

13 "I confirm that the parts of the SSO response
14 containing information within my knowledge are true to
15 the best of my knowledge and belief."

16 That's right, isn't it?

17 **A.** Yes.

18 **Q.** Thank you.

19 I just want to ask you a couple of questions about
20 competition law. At paragraph 40 of your second witness
21 statement, so if you turn over to tab J in that same
22 bundle, if you go to paragraph 40 [Magnum], you say:

23 "Tesco had a competition law compliance policy at
24 the time and all buyers received compliance training.
25 I cannot remember exactly when I received this training

1 but I recall I was trained in the key issues to watch
2 out for and we then had regular refreshers."

3 So you had received training but at that stage you
4 couldn't recall when that training took place. That's
5 right, isn't it?

6 **A.** That's correct, yes.

7 **Q.** But, in fact, in the light of further enquiry, you've
8 been asked again about this and you recall that you
9 attended training on the Competition Act in around 2000?

10 **A.** When I was in butters and spreads probably, yes.

11 **Q.** The reference for that -- have you got the pleadings
12 bundle?

13 Does somebody have the pleadings bundle there?

14 If you go to tab 10 of that bundle, page 7 of
15 tab 10, it's at the bottom, it's paragraph 39 [Magnum].
16 This is a request by the Office of Fair Trading to Tesco
17 which Tesco answer. The question was:

18 "Give the dates on which or the frequency with which
19 training, whether initial or by way of refreshers, was
20 delivered to..."

21 Then it says "Lisa Oldershaw".

22 And paragraph 39 says, the second sentence of
23 paragraph 39 is the one I'm referring to:

24 "Lisa Oldershaw recalls attending training on the
25 Competition Act 1998 around 2000."

1 The last sentence of the page.

2 **A.** Yes, it says that, yes.

3 **Q.** Then, whilst we're there, you subsequently received
4 further training on the Enterprise Act three years later
5 on 28 May 2003. You see that from the first sentence of
6 paragraph 39 which says -- I'm on the same page, at the
7 bottom of the same paragraph:

8 "Tesco's internal records indicate that
9 Lisa Oldershaw attended the Enterprise Act 2002 training
10 on..."

11 And then it's 28 May 2003 for you.

12 **LORD CARLILE:** I suppose that we should look at
13 paragraph 37(b) at the same time for completeness.

14 **MR MORRIS:** Yes, thank you.

15 If you look at paragraph 37(b) [Magnum], this is
16 probably in order to refresh your memory. In
17 paragraph 37, Tesco explains the different training,
18 compliance training programmes it had, and 37(b) refers
19 to the Enterprise Act 2002 training which happened in
20 2003. That was a subsequent training, and that refers
21 to:

22 "The primary purpose of this training was to retrain
23 all food and nonfood buyers on the impact of competition
24 law on their buying and pricing practices in the light
25 of the introduction of the Enterprise Act 2002."

1 Then it explains all the attachments. But it is
2 that subsequent training in relation to the new
3 legislation that is then being referred to as the
4 training that you received in May 2003?

5 **A.** That's what it says here, yes.

6 **Q.** Thank you. You can put that bundle away now, thank you.

7 I want to ask you some questions about your position
8 and your relations with the processors. As the senior
9 buyer you dealt with Tesco suppliers, the processors?

10 **A.** On cheese, yes.

11 **Q.** The role of senior buyer for cheese is an important
12 role, both --

13 **A.** It is, yes.

14 **Q.** Both from Tesco's point of view and from the processor's
15 point of view?

16 **A.** Yes.

17 **Q.** You were the main interface with the processor on a day
18 to day --

19 **A.** For cheese, yes, I was the main contact through Tesco.

20 **Q.** You agreed -- it was you who agreed cost price changes?

21 **A.** Yes.

22 **Q.** And it was you who set retail prices?

23 **A.** Yes.

24 **Q.** As far as the processors were concerned, this made you
25 a very important person?

1 **A.** Yes.

2 **Q.** It was, therefore, important for you to build up a good
3 relationship with your suppliers?

4 **A.** Yes.

5 **Q.** I would have thought it was also important for each of
6 your suppliers to build up a good relationship with the
7 retailers who purchased their products? It's
8 a statement of the obvious, but from their point of view
9 it was very important that they had a good relationship
10 with the retailers generally?

11 **A.** Yes.

12 **Q.** That would be particularly so in the case of Tesco?

13 **A.** Yes, we were the major player. Most suppliers wanted to
14 supply Tesco with product, yes.

15 **Q.** In general, the processors would come to you for
16 meetings rather than the other way round?

17 **A.** Mainly they would come to Tesco head office, yes.

18 **Q.** So if I may be slightly flippant, you might say you were
19 the mountain and the processors were Muhammad?

20 **A.** Well, they had one account to manage, I had many
21 suppliers to manage, so it was just more efficient that
22 way.

23 **Q.** But I would suggest that that also reflected the fact
24 that Tesco had the bargaining power in the relationship?

25 **A.** We certainly had the strength.

1 Q. Would you just give me a moment. (Pause)

2 I'm just looking to see what Mr Reeves said in his
3 evidence. If I can read to you, this is Day 5, page 51,
4 people don't need to turn it up, at line 18 to 20. He
5 said that:

6 "... [the] retailers had more power in negotiations,
7 in price negotiations, than processors do."

8 Would you agree with that?

9 A. On the whole, yes, I probably would agree with that.

10 Q. It would be very rare indeed for a processor to refuse
11 to supply Tesco with any particular line?

12 A. It did happen but it wasn't a common thing.

13 Q. It was rare, I would suggest?

14 A. Yes.

15 Q. At the time the top five suppliers of cheese to Tesco,
16 see if you agree with me, were Kerrygold, Dairy Crest,
17 McLelland, North Downs and Kraft?

18 A. It feels about right, yes.

19 Q. Butlers and -- I don't know whether you pronounce
20 Joseph Heler as "heller" or "heeler"?

21 A. "Heeler".

22 Q. Butlers and Joseph Heler were main suppliers of
23 territorial and regional cheeses to Tesco at the time?

24 A. Yes.

25 Q. Glanbia -- I don't know whether at the time you referred

1 to them as Glanbia or The Cheese Company?

2 **A.** I dealt with neither so I didn't refer to them at all.

3 **Q.** Yes, my question was they weren't suppliers but they did
4 supply other major retailers, didn't they?

5 **A.** I believe so, yes.

6 **Q.** As far as Dairy Crest is concerned, you've already said
7 it was one of the two most -- largest suppliers. From
8 Dairy Crest's point of view, Tesco was Dairy Crest's
9 most important customer for cheese, would you agree with
10 that?

11 **A.** I presume so, yes. Yes.

12 **Q.** Within its organisation, Dairy Crest had a specific
13 Tesco business unit?

14 **A.** Yes, the Tesco business unit was -- I suppose you would
15 build up a closer relationship with that supplier
16 because they were so large within your category.

17 **Q.** In your witness statement you say that Dairy Crest
18 supplied 83 cheese lines to Tesco at the time?

19 **A.** Okay.

20 **Q.** McLelland was a cheese supplier of growing importance at
21 this time? I'm talking about 2002.

22 **A.** Yes, they were -- their brand was getting very
23 successful.

24 **Q.** But as far as -- I'll put the question again.

25 McLelland, however, didn't have a specific Tesco

1 business unit, did it? It didn't have a dedicated team
2 dealing just with Tesco?

3 **A.** They had a dedicated account manager.

4 **Q.** But its salespeople covered both Tesco and other
5 accounts, that's right, isn't it?

6 **A.** I believe Tom Ferguson just covered Tesco at the time.

7 **Q.** Is that right? Mr Irvine's evidence that he gave to the
8 Tribunal yesterday was that Mr Ferguson dealt with Tesco
9 and other main retailers.

10 **A.** Okay.

11 **Q.** Did you know that at the time?

12 **A.** I was under the impression Tom Ferguson dealt with
13 Tesco -- the Tesco account. Because it was so large,
14 usually you just had one single account manager.

15 **Q.** Did you ever visit McLelland's offices in Glasgow?

16 **A.** I believe I've been there once.

17 **Q.** Do you recall the office layout?

18 **A.** No.

19 **Q.** How big an office was it? Was it a big organisation?

20 **A.** What do you define as big, sorry?

21 **Q.** I'm asking, what was your recollection of your visit?
22 Can you recall going to the offices?

23 **A.** Vaguely. Not really, no.

24 **Q.** And you don't recall an open plan office, a small
25 operation?

1 **A.** I can't recall what the offices were like, sorry.

2 **Q.** McLelland supplied 72 lines to Tesco in 2002, that's
3 what you say in your witness statement?

4 **A.** Okay.

5 **Q.** The lines it supplied included its own McLelland branded
6 lines?

7 You're nodding.

8 **A.** Yes.

9 **Q.** It's only for the transcript.

10 Tesco's own label lines?

11 **A.** Yes.

12 **Q.** And it also supplied some Tesco Value lines?

13 **A.** Yes.

14 **Q.** Tesco accounted for about 30 per cent of McLelland's
15 sales at the time?

16 **A.** Okay.

17 **Q.** Around the end of August in 2002, Tesco announced a new
18 deal with McLelland in which you were to double your
19 supply for McLelland to 8,000 tonnes a year. Do you
20 recall that?

21 **A.** Vaguely, yes.

22 **Q.** If you would like to go to the document bundle, which is
23 the yellow bundle, which should be near you, and go to
24 tab 4A [Magnum]. That is an inter-office memorandum and
25 I'm not going to it for that reason. If you go over the

1 page you will see some press cuttings. I'm just drawing
2 this to your attention to refresh your memory about what
3 was happening at McLelland at the time.

4 There is an article there headed "Tesco to double
5 its orders with cheese company". If you go to the first
6 column, second paragraph:

7 "Under this new deal, the Tesco supermarket group is
8 to more than double its Scottish cheese orders to nearly
9 8,000 tonnes a year from McLelland of Glasgow. This
10 will result in nearly 205 of hard cheeses supplied to
11 the group's 730 stores across Britain coming from
12 McLelland, which has a sizeable stake in Scotland's five
13 major creameries."

14 Then if you go to the next column, there's a quote
15 from you:

16 "'This investment is great news for McLelland and
17 Scottish farmers', said Lisa Rowbottom, Tesco's cheese
18 buyer, yesterday. 'The cheese supplied by McLelland has
19 proved really popular with customers across the UK and
20 we are selling more than ever before'."

21 Do you now recall that doubling of orders in
22 August 2002?

23 **A.** Yes.

24 **Q.** So they were becoming more important and more
25 significant for Tesco at the time?

1 **A.** Yes.

2 **Q.** And for McLelland, clearly Tesco was a very important
3 customer?

4 **A.** Yes.

5 **Q.** I would like to ask you some questions about your
6 contacts within the processors. Your main contact with
7 Dairy Crest was with Neil Arthey?

8 **A.** Yes.

9 **Q.** You say you had built up a relationship of trust with
10 Neil Arthey and the rest of the Dairy Crest Tesco team
11 or business unit?

12 **A.** Yes.

13 **Q.** Your main relationship with McLelland in 2002 was with
14 Tom Ferguson?

15 **A.** Yes.

16 **Q.** And you had a good working relationship with him?

17 **A.** Yes.

18 **Q.** You liked him?

19 **A.** Yes.

20 **Q.** You found him to be professional?

21 **A.** Yes, he had great experience in the dairy industry.

22 **Q.** You say that you considered him to be a seasoned market
23 observer?

24 **A.** Yes, because he'd been in the dairy industry for quite
25 a while.

1 Q. You'll be pleased to know that Mr Ferguson felt the same
2 way about you. At paragraph 5 of his witness statement
3 [Magnum], he says that the two of you had a healthy
4 working relationship. It's fair to say then, isn't it,
5 that you had built up a relationship of respect and
6 trust with Tom Ferguson?

7 A. As with most of my supplier base, yes.

8 Q. Then in 2003, Tom Ferguson had been promoted by then and
9 he was dealing -- I think he was called national account
10 controller by 2003?

11 A. Yes.

12 Q. Presumably he was then clearly dealing with more than
13 just you, is that right?

14 A. Yes, and -- yes, and we didn't really deal on
15 a day-to-day basis as we had done before.

16 Q. Stuart Meikle then managed the Tesco account?

17 A. Yes, he became the account manager.

18 Q. But you say in your evidence that, even then, you would
19 still go back to Mr Ferguson on issues from time to
20 time?

21 A. On occasion, yes.

22 Q. Can I just ask you how you worked at Tesco. You
23 obviously worked closely with your colleagues within the
24 dairy team?

25 A. Yes.

1 Q. In the normal course of your work, you would have had
2 exchanges with the members of your team?

3 A. Yes.

4 Q. Can you tell us a little bit about the layout of your
5 offices at Cheshunt?

6 A. Our offices were mainly open plan with three quarter
7 height screens between offices, so it was mainly buyers'
8 desks in a row with a three quarter screen between each,
9 almost like little open-fronted cells.

10 Q. There was a screen for each of you but the team were all
11 within the same open plan office?

12 A. Yes.

13 Q. Was Rob Hirst within that open plan area?

14 A. Yes. Rob's office -- well, Rob's desk was next to mine
15 with a panel in between, and John Scouler had his own --
16 John Scouler wasn't in the open plan part, he had
17 a sealed office in the corner.

18 Q. Sort of round the outside perhaps? I'm envisaging --

19 A. Just round the corner in an L-shape.

20 Q. How did you work as a team? Did you work in face to
21 face meetings, did you work by email? How did you
22 communicate with each other mainly?

23 A. We had the weekly buyers meeting, which was a more sort
24 of formal meeting of everybody, and then mainly it was
25 just conversation.

1 **Q.** But, presumably, you certainly prepared at times
2 detailed documents such as pricing spreadsheets; that's
3 right, isn't it?

4 **A.** Yes, I needed that to be able to do my work, yes.

5 **Q.** And presumably you communicated those between you by
6 email?

7 **A.** On occasions, yes.

8 **Q.** You also communicated externally with your opposite
9 numbers at suppliers by email?

10 **A.** Not my personal documents but, yes, I did communicate by
11 email with suppliers, yes.

12 **Q.** In the periods of autumn 2002 and the autumn of 2003,
13 did you follow your normal practice of email
14 communications both to the extent that you emailed
15 within the team and to the extent that you emailed to
16 the processors, would you say?

17 **A.** I can't think that anything was out of the ordinary
18 during those times in terms of communication.

19 **Q.** But it was a very hectic time, certainly 2002 was a very
20 hectic time for you and the dairy team, that's right,
21 isn't it?

22 **A.** Yes.

23 **Q.** It appears, however, that not very much was put into
24 writing at the time internally? So there's very few
25 emails, for example, passing between you and the team at

1 the time in September to November 2002?

2 **LORD CARLILE:** Do you mean there were fewer than at
3 a previous time?

4 **MR MORRIS:** I'm just saying there were very few. No, it's
5 an absolute statement.

6 The question I'm asking you is it appears that
7 there's not very much in writing, and the question
8 I have is, is that because you didn't put much in
9 writing between you and Rob Hirst and John Scouler and
10 the rest of your dairy team?

11 **A.** As I said previously --

12 **LORD CARLILE:** Sorry, just a moment, please. Thank you,
13 Ms Oldershaw.

14 Does it matter? If there is an allegation that
15 there was a deliberate reduction in the number of emails
16 then the question is significant. But if there were few
17 emails where does that take us, Mr Morris?

18 **MR MORRIS:** The question is seeking to have an understanding
19 about why there were so few emails.

20 **LORD CARLILE:** Let's get on, but you'll understand my point
21 I'm sure.

22 **MR MORRIS:** I do understand your point entirely.

23 The first question is, there were very few, and it
24 really is to explain why there were so few emails?

25 **A.** As I've said previously, we communicated verbally

1 because we were sat inches apart.

2 Q. Very well.

3 Can I move on to the subject of key performance
4 indicators.

5 A. Yes.

6 Q. These were measures for your own personal performance,
7 that's right, isn't it, KPIs?

8 A. Yes, everybody who works within Tesco has a set of KPIs
9 that they're measured against.

10 Q. In fact, as you say, you lived and died by your KPIs?

11 A. I did, yes.

12 Q. One of these, and a very important one, was the
13 percentage margin KPI?

14 A. Yes. Sales, percentage margin and cash profit were very
15 important to Tesco.

16 Q. And to you because it was one of your targets?

17 A. Definitely, yes.

18 Q. Percentage margin is the margin between retail price and
19 cost price expressed as a percentage of retail price?

20 A. For a product it is, but when -- I was also measured as
21 my total category, so Lisa Oldershaw as a total. So it
22 would also include any other monies you brought into
23 that whole pot with other deals, and that would increase
24 your percentage margins. So it was more than just costs
25 and retails.

1 Q. On each particular -- I'll ask as a starting point: what
2 is meant by percentage margin in respect of any
3 particular product is the margin between the retail and
4 the cost expressed as a percentage of the retail price?

5 A. Yes, on an individual line, yes.

6 Q. You were then expected to achieve an overall percentage
7 margin of 35 per cent across all cheese lines?

8 A. All cheese lines total, but that did not mean each
9 cheese line had to sit at 35 per cent.

10 Q. Yes.

11 Another of your KPIs was maintaining compliance with
12 Tesco's basket policy?

13 A. Yes.

14 Q. Can I just ask you a few questions about that basket
15 policy. There was a notional basket of products
16 containing a substantial number of Tesco's most
17 significant grocery lines?

18 A. Correct.

19 Q. The basket policy was that, on those product lines
20 within the basket, Tesco would not be more expensive
21 than its cheapest competitor?

22 A. That's correct, yes.

23 Q. Your suppliers knew of the existence of your basket
24 policy?

25 A. Yes.

1 Q. You knew at the time that other main retailers also had
2 a basket policy?

3 A. Yes, at that time it was a very price-competitive
4 environment.

5 Q. You say in your witness statement at paragraph 13
6 [Magnum] that the top 200 to 300 of cheese lines were
7 within the basket?

8 A. Yes, the majority of lines, apart from very niche lines,
9 were in the basket, and that basket was growing every
10 week.

11 Q. Can I ask you to go to paragraph 14 of your witness
12 statement, which is at J -- volume 2A, pink spine, J, at
13 page 5 [Magnum]. You there set out -- discuss your
14 basket policy, and you say in the middle of that
15 paragraph:

16 "If Tesco was more expensive than the cheapest of
17 our leading competitors for a product, I was expected to
18 reduce the Tesco retail price to match the competitors
19 within a set timeframe."

20 Are you following me?

21 A. Yes.

22 Q. In the next sentence:

23 "The duration of this tolerance period has changed
24 over time, but in 2002 and 2003 I believe it was two
25 weeks."

1 **A.** Yes, around two weeks, yes.

2 **Q.** I'm going to put to you a couple of other propositions
3 about the basket policy and then I'll take you to the
4 document if I need to. The position is, however, that
5 on some lines you could only be out of line for
6 24 hours. That's the first proposition. I don't know
7 if you recall that?

8 **A.** That's not my recollection at this time.

9 **Q.** Okay. Then I will take you to the -- would you go to
10 volume 6, this is now pink file volume 6, tab 1E. It's
11 a document entitled "Price Policy". If you go to the
12 third page [Magnum], you will see "Policy", and the
13 third bullet in the left-hand column refers to the
14 two-week period.

15 Have you got that, left-hand column?

16 **A.** Yes.

17 **Q.** If you then go over the page, you've got something
18 called the "Top 100 lines and Grocer 33 lines". It
19 says:

20 "The top 100 selling lines in the basket and Grocer
21 33 lines must be matched immediately within 24 hours.
22 The two-week rule does not apply on those lines."

23 **MISS ROSE:** May I just intervene at this point. I think the
24 witness ought to be notified of the date of this
25 document. If you look in the index, you will see it is

1 from January 2004.

2 **MR MORRIS:** That's helpful. I'm told that this document
3 is January 2004.

4 Your recollection is, is it, that there wasn't
5 a 24-hour -- the top 100 lines were not on 24-hour at
6 the time, is that right?

7 **A.** Yes, I wasn't aware of any 24-hour reaction period.

8 **Q.** Okay. Would you just give me a moment.

9 (Pause)

10 Can I ask you to go to the pleadings bundle, tab 9.

11 If you go to the second page of tab 9 [Magnum], this

12 document -- the OFT ask Tesco about the pricing policy

13 and what was in the basket. This is Tesco's response to

14 that request and this was in February of this year. At

15 paragraph 1.5 it says the following:

16 "A copy of Tesco's pricing policy which Tesco
17 believes is dated January 2004 and broadly reflects the
18 pricing policy that was in operation at the relevant
19 time in 2002, 2003, is attached at annex 1E."

20 So the suggestion there is that, in fact, the
21 document I have just taken you to broadly reflected the
22 policy that was in operation at the time we were talking
23 about, 2002. Does that help to jog your memory as to
24 whether there was a 24-hour line?

25 **A.** I cannot recall a 24-hour reaction period. However as

1 time went on, and certainly after my time in cheese, you
2 know, the basket policy did get tighter and tighter and
3 new stipulations were brought in. But in 2002 and 2003,
4 I cannot recall a 24-hour reaction period.

5 Q. Thank you. Can I just ask you to go back to
6 paragraph 14 of your witness statement, so we're back
7 now in bundle 2A and we're at page 5 [Magnum]. At the
8 bottom of that page, you explain what the basket policy
9 meant after the two-week period. You then say:

10 "If the Tesco price was lower than the cheapest
11 competing product, I was not expected to match --"

12 Actually, if I may, I'll go back above, sorry. I'm
13 now on line 5 or line 6:

14 "If Tesco was more expensive than the cheapest of
15 our leading competitors for a product, I was expected to
16 reduce Tesco retail price to match within a set
17 timeframe."

18 Then if we miss a couple of sentences:

19 "If the Tesco price was lower than the cheapest
20 competing product, I was not expected to increase my
21 price to match it but I could choose to do so. I would
22 often, but not always, choose to do so because that
23 would allow me to improve my percentage margin, which
24 was one of my KPIs, whilst still complying with the
25 basket policy. That would subsidise my other cheese

1 lines."

2 So if I can summarise the evidence there, the
3 position is you could not increase your retail price on
4 any particular cheese line in the basket if that made
5 Tesco more expensive on that line, that's right, isn't
6 it?

7 **A.** I could be out of line, ie I could be more expensive
8 than my competitors for two weeks; you were allowed or,
9 you know, you had two weeks where you could be out of
10 line.

11 **Q.** Yes --

12 **A.** So I could be more expensive than one of my competitors
13 for up to two weeks.

14 **Q.** But nevertheless you had -- the basket policy
15 constrained your ability to move up for any longer than
16 that period, you couldn't do it for any longer?

17 **A.** For any longer than two weeks I would have some
18 questions to answer internally, yes.

19 **Q.** Yes, there would be an out of line report probably?

20 **A.** Yes, there would, yes.

21 **Q.** But the basket policy did not lay down any requirement
22 that you should increase your prices in line with your
23 competitors, did it?

24 **A.** It didn't, but you weren't penalised if you did move up,
25 and it meant that you were overachieving on your KPIs or

1 it helped you achieve your KPIs. So very rarely did
2 buyers look a gift horse in the mouth and not increase
3 their prices to match.

4 **Q.** It's not your evidence, you don't say that you nearly
5 always did, you say "often but not always".

6 Your evidence in paragraph 14 [Magnum] is not that
7 it would be the exception that you wouldn't go up, you
8 had a discretion?

9 **A.** Yes, I did have a discretion.

10 **Q.** Your evidence is that you would "often but not always"
11 choose to go up?

12 **A.** Yes, that's what I just said.

13 **Q.** Yes. Well, it's not. You said rarely you would choose
14 not to, but it wasn't the normal practice to go up?

15 **A.** It depended where you were sitting in terms of achieving
16 your KPIs. If you were missing your KPIs then you would
17 rarely not move up, but if you were okay and you deemed
18 a sales opportunity for keeping it down, you would
19 perhaps keep it down. It depended, there wasn't one
20 rule to this.

21 **Q.** Yes, you might in certain circumstances choose to
22 undercut your competitors?

23 **A.** You might do, yes.

24 **Q.** At paragraph 20 in your witness statement, you explain
25 the obvious tension between your percentage margin KPI

1 and your basket policy KPI. Perhaps we can read
2 paragraph 20 [Magnum]:

3 "The basket policy created significant pressure on
4 margins. If the instore retail price of the equivalent
5 Tesco product was more expensive than that of the
6 cheapest leading competitor, I was required to reduce my
7 retail price accordingly irrespective of the cost price.
8 I would normally try to negotiate a better cost price
9 with the relevant supplier as otherwise I would suffer
10 a significant loss of margin by reducing the retail
11 price to match the cheapest competitor. Given the
12 volume of sales on my largest cheese lines, a small
13 change in margin could mean millions of pounds of lost
14 profit over a year. Equally, any cost price I agreed
15 with my suppliers had an immediate impact on my margins
16 unless I could also increase the retail price, but my
17 ability to obtain the higher retail price was
18 constrained by the basket policy which might force me to
19 reduce my retail price if I was out of line. The
20 pressure on retail margins created by the basket policy
21 meant that I would normally try to resist a cost price
22 increase for as long as possible."

23 So the position was this, on the one hand the effect
24 of your margin KPI would be that, in general, you would
25 not accept a cost price increase unless you could raise

1 your retail price?

2 **A.** I would only accept a cost price increase if I felt the
3 cost price increase was justified.

4 **Q.** But that wasn't the question. Let's assume it was
5 justified. I'm looking at the effect of the margin KPI.
6 Let's assume that the supplier convinced you that he had
7 good reasons, you would still at the very least be very
8 reluctant to increase -- accept that cost price increase
9 unless you could raise your retail price, that's right,
10 isn't it?

11 **A.** You would always hope to get back your margin by
12 increasing retails but there were other options and
13 other things you had to bring into play if this wasn't
14 possible. Quite often, at this time, it wasn't possible
15 to realise your margin back by increasing retails
16 because of the basket. So part of a buyer's role was
17 not just cost and retail price management, there were
18 also lots of other negotiations, lots of other deals,
19 overriders, volume incentives with suppliers that
20 brought money into that central pot to prop up your
21 percentage margin in such a case as you just described.

22 **Q.** In paragraph 20 of your witness statement [Magnum], you
23 say:

24 "Given the volume of sales on my largest cheese
25 lines, a small change in margin could mean millions of

1 pounds of lost profit over a year."

2 **A.** That's correct, yes.

3 **Q.** So you would be extremely reluctant to accept a cost
4 price increase unless you could also raise your retail
5 price?

6 **A.** You would hope you could raise your retail price but, as
7 I said, you didn't just rely on cost and retail prices.
8 You had -- I had a buy for less plan which mapped out my
9 year and the millions of pounds worth of deals I would
10 bring in to the central pot every year.

11 **Q.** Then can I just ask you about the effect of the basket
12 policy on your decisions. If the product fell within
13 the basket, your ability to raise your retail price was
14 constrained if the other retailers didn't raise their
15 prices too?

16 **A.** I could raise my retail price to whatever level I wanted
17 for a couple of weeks and still be in line with the
18 policy.

19 **Q.** So you're suggesting that you'd raise it for two weeks,
20 and then what would happen if the other retailers didn't
21 raise their prices?

22 **A.** Then I would have to be competitive within the market
23 and comply with the policy and match the cheapest
24 competitor.

25 **Q.** By that time --

1 **A.** On retail.

2 **Q.** By that time you've already accepted a cost price
3 increase?

4 **A.** Yes.

5 **Q.** So you come back down and you lose millions of pounds on
6 your lost margin?

7 **A.** On paper you lose millions of pounds but then you bring
8 in your millions of pounds worth of other deals to shore
9 up that margin. The other deals are not related to
10 retail price, they're related to volumes, marketing
11 budgets and various other things.

12 **Q.** But you say in this witness statement at paragraph 20
13 that the basket policy created a significant pressure on
14 your margins.

15 **A.** Yes.

16 **Q.** You then say that:

17 "The pressure on margins created by the basket
18 policy meant that [you] would try to resist a cost price
19 increase."

20 **A.** Yes, you didn't want to actively lose money, but there
21 were ways of, if it did happen, because the cost price
22 was justified and you had -- you couldn't get the retail
23 you wanted in the market because all your competitors
24 were in store at a different price, then there were
25 other ways of shoring up that margin.

1 **LORD CARLILE:** Mr Morris, my colleague Ms Daly would like to
2 ask a question, I think.

3 **MS DALY:** Ms Oldershaw, I'm going to ask you a question
4 about the KPIs and the weighting. I'm familiar with
5 a number of KPI structures and they can be very
6 complicated and two metrics can be actually in conflict,
7 and it sounds a little bit to me like that was going on.

8 In a world where you had to choose one in
9 a prioritisation, was matching a competitor's price for
10 consumer retail prices more important than managing
11 margin?

12 **A.** For Tesco, yes.

13 **MS DALY:** Thank you.

14 **A.** Yes.

15 **MR MORRIS:** Can I just ask you this, in the years when you
16 were senior buyer, and apart from the events of autumn
17 2002, by which I'm referring to September to November,
18 and autumn 2003, on how many other occasions did you
19 accept a cost price increase for cheese?

20 **A.** I can't recall.

21 **Q.** Did you accept any cost price increase for cheese on the
22 cheese supplied to you by McLelland?

23 **A.** I can't recall, sorry.

24 **Q.** Can I tell you what Mr Irvine said about this yesterday.
25 He said, and this is Day 7, page 85, line 5:

1 "We haven't managed to get a price rise for five
2 years previous to this and we were constantly running
3 into problems with the supermarkets."

4 Would you agree that McLelland had not managed to
5 get a cost price increase for five years?

6 **A.** I can't recall them asking for one but it doesn't mean
7 it didn't happen, but I just can't recall, apart from
8 this autumn as you've described.

9 **Q.** What I'm suggesting to you is that, in fact, in your
10 time, you talk about cost price increases, but in your
11 time when you were senior buyer cheese cost prices were
12 decreasing, not increasing. I'm suggesting to you that
13 you did not accept any cost price increases from your
14 suppliers during that period?

15 **A.** I can't recall specific events but I would think it very
16 unlikely that no cost price increases went through. The
17 buyers could and did justify cost price increases with
18 increases in fuel costs and various other costs. What
19 my job was to do as a buyer was to try and negotiate
20 that cost price down, so maybe look at other ways of
21 negating that cost. It may have been increased case
22 sizes which meant they spent less on cardboard and
23 various other options.

24 **LORD CARLILE:** We'll stop at 8.35 for 20 minutes.

25 **MR MORRIS:** In your second witness statement you give

1 a general description of your experience of this process
2 of negotiating. You say, and now I'm talking about what
3 you describe as normal negotiations, you would negotiate
4 with each particular processor individually. That's
5 right, isn't it?

6 **A.** Yes.

7 **Q.** And you would do it at a particular time of the year?

8 **A.** Are you referring to cost price increases?

9 **Q.** I'm talking about paragraph 29 of your witness
10 statement. Perhaps you would like to turn to that, on
11 page 10 [Magnum].

12 For nonbulk cheese -- I'm not talking about the, and
13 in 28 you describe Dairy Crest and McLelland -- you
14 would hold individual negotiations about specific
15 product lines or groups of products with the relevant
16 supplier within the framework of the annual business
17 plan?

18 **A.** 29 is referring to an annual business plan. It wouldn't
19 have been at line level detail so it would have been
20 talking about total McLelland or total Dairy Crest.

21 **Q.** No, 29, you talk about the framework of the business
22 plan, but you then say:

23 "I would hold individual negotiations within that
24 framework on specific product lines or groups of
25 products with the --"

1 **A.** Can you point me to the paragraph, please?

2 **Q.** 29, I'm still at 29.

3 **LORD CARLILE:** Page 10.

4 **MR MORRIS:** Left-hand side, page 10.

5 **LORD CARLILE:** Does she have the right document?

6 **MR MORRIS:** It's your witness statement.

7 **A.** Yes. (Inaudible).

8 **Q.** Yes. As I understand it, that paragraph refers -- if
9 you go forward to 42, perhaps this explains it better,
10 I'm now on page 14 [Magnum]:

11 "The process for negotiating differed depending on
12 whether I was buying cheese in bulk [and we're not
13 talking about bulk here] in which case I would put out
14 a tender. Cost prices would change after each tender,
15 they might go up or down."

16 Then the next sentence:

17 "For nonbulk cheese I would conduct individual
18 negotiations about specific product lines or groups of
19 products with the relevant supplier. I would negotiate
20 an annual business plan with each supplier which was not
21 a contractual document but set a framework for our
22 relationship in the forthcoming financial year."

23 My understanding is you had an annual business plan
24 with each supplier and then you conducted negotiations
25 on specific lines or groups of lines within that

1 framework?

2 **A.** No, I would conduct individual negotiations about
3 specific product lines or groups of products with the
4 relevant supplier when it came up. It wasn't at a set
5 period every year, it was just as and when.

6 **Q.** That's --

7 **A.** The annual business plan was a set time every year, for
8 the start of the financial year.

9 **Q.** Yes, and then, once that's set, you have individual
10 negotiations on individual lines?

11 **A.** During the course of the year, yes.

12 **Q.** Yes. I think we're probably not disagreeing.

13 **A.** Okay.

14 **Q.** I think that's what I suggested to you.

15 **A.** Fine.

16 **Q.** Those negotiations with the different processors would
17 take place at different times of the year. You might be
18 negotiating with Dairy Crest on some lines in February
19 and with McLelland on other lines in March?

20 **A.** Yes, it did depend on the situation. For example, if
21 there was a national fuel price hike at the same time,
22 you would perhaps expect them at around the same
23 time-ish. But usually they were at different times.

24 **MR MORRIS:** Is that a convenient moment?

25 **LORD CARLILE:** Yes, thank you.

1 for a promotion it would affect the volumes --

2 **Q.** But if it were --

3 **A.** -- so I -- sorry ...

4 **Q.** No, I'll -- promotions, yes. If it were not on
5 promotion there would be no need to tell the processor
6 of a change in a retail price you intended to make to
7 a fixed weight line?

8 **A.** No.

9 **Q.** And if it were not on promotion, there would be no need
10 to tell the processor of any change in retail price in
11 respect of deli cheese?

12 **A.** No.

13 **Q.** Can I now turn to the events of autumn 2002, and these
14 are the events that you describe from paragraph 56
15 onwards of your witness statement [Magnum]. I'd take
16 you to it briefly, but that's just where you introduce
17 the events of 2002. This is the period when you were
18 heavily involved in the £200 per tonne price increase in
19 respect of all your cheese lines, that's right, isn't
20 it?

21 **A.** Yes.

22 **Q.** I would imagine that this was a particularly busy time
23 for you and the rest of the dairy team?

24 **A.** Yes, it was.

25 **Q.** So if we go to paragraph 63 of your witness statement

1 [Magnum], you say:

2 "This period of negotiations with my cheese
3 suppliers was different from the usual cost price
4 negotiations because my suppliers were, on this
5 occasion, all requesting the same cost price increase,
6 £200 per tonne, which they said they would pass straight
7 through to the dairy farmers."

8 So it wasn't a normal period --

9 **A.** No, it wasn't.

10 **Q.** At paragraph 65, you refer to, and I'm now looking --
11 I won't read the whole paragraph, but if you go to the
12 top of page 23 [Magnum] you refer to the fact that
13 pressure was beginning to mount internally?

14 **A.** Yes.

15 **Q.** In paragraph 103(b) [Magnum], on the right-hand side,
16 about seven or eight lines down in subparagraph (b), you
17 say:

18 "I was in frequent contact with Neil Arthey at the
19 time to negotiate the cost price increase. Suppliers
20 would ring me all the time during cost price
21 negotiations. They would bombard me with calls and
22 emails to try to persuade me to accept the cost price
23 increase.

24 "This email ..."

25 And you're referring to an email of 21 October which

1 we will come back to:

2 "This email shows how desperate Dairy Crest was to
3 get the cost price increase through. I recall that
4 Neil Arthey was ringing me practically every day at this
5 point."

6 So it was a period of particular busyness for you?

7 **A.** It was, yes.

8 **Q.** And you will remember it as such, no doubt?

9 **A.** Yes.

10 **Q.** Now, Mr Hirst was involved in the day-to-day discussions
11 in this period between September and November, wasn't
12 he?

13 **A.** Yes, not as much as I was but, yes, he was involved,
14 yes.

15 **Q.** Presumably, you were seeking guidance from him on it, on
16 these issues, at the time?

17 **A.** I was keeping him informed, yes.

18 **Q.** I suggest to you that, in the course of all your hard
19 work in that period, you must have been in constant
20 touch with him? He was in the next -- he was sitting
21 next to you?

22 **A.** We sat next to each other, yes.

23 **Q.** Presumably you must have been discussing this? This was
24 the big thing on your agenda at the time?

25 **A.** If we spoke, we probably spoke of this but, you know,

1 Rob Hirst also had his own category to manage. But,
2 yes, we were speaking about it, yes.

3 Q. I would suggest that it was more than just casual
4 speaking; this was the big thing on your agenda at that
5 time, wasn't it?

6 A. It was the big thing on my agenda, yes.

7 Q. And he was your boss, immediate boss?

8 A. Yes.

9 Q. You must have been speaking to him about it not just
10 casually but actually regularly, every day?

11 A. I updated him daily, yes, probably.

12 Q. Can we just turn to the background to these events. The
13 position was this: for some considerable time, farmers
14 had been complaining persistently about the low prices
15 they were receiving for their raw milk; that's right?

16 A. Yes.

17 Q. In particular, an organisation called Farmers for Action
18 were prepared to take militant action?

19 A. Yes, I think we had some depots blockaded.

20 Q. You were aware of the pressure being placed on
21 suppliers, that's the processors, and on the retailers,
22 to help the UK farmers in respect of their farmgate
23 price?

24 A. Yes.

25 Q. That had been going on for some time, it wasn't just in

1 2002, was it?

2 **A.** No, tensions had been building for a while.

3 **Q.** In the summer of 2002, the farmers continued to complain
4 and the pressure built up?

5 **A.** Yes.

6 **Q.** As you say, there were blockades of processor depots and
7 of retailer depots?

8 **A.** Yes.

9 **Q.** The blockades of the processor depots were aimed at
10 disrupting the supplies to the major supermarkets?

11 **A.** I think so, yes.

12 **Q.** A number of Tesco depots were blockaded, I think you've
13 just said?

14 **A.** Yes.

15 **Q.** These disruptions were a matter of utmost concern for
16 Tesco at the time?

17 **A.** Yes, they were a concern, yes.

18 **Q.** They were costing Tesco very substantial sums of money,
19 weren't they?

20 **A.** I don't have access to the figures so I can't clarify
21 that but I suspect so, yes.

22 **Q.** Tesco as a company needed to get the farmers off their
23 backs?

24 **A.** Yes.

25 **Q.** Now, we know that on September 3, 2002, that was

1 a Tuesday, your chief executive Terry Leahy met with the
2 president of the NFU, Ben Gill?

3 A. Okay.

4 Q. Were you aware of that meeting in advance of it
5 happening?

6 A. I don't recall, no, I don't think so.

7 Q. Then we have, on 3 and 4 September, Tesco made some
8 public announcements, didn't they?

9 A. Yes, I believe so.

10 Q. Were you aware of those announcements at the time?

11 A. I would have been briefed on them.

12 Q. If you go to document bundle 1, which is the
13 yellow-spined file, and then if you go to tab 6
14 [Magnum], we have the first press release on 3 September
15 recording the fact that Terry Leahy today met with
16 Ben Gill:

17 "The meeting was a useful opportunity..."

18 Then:

19 "Following the meeting, Tesco director
20 John Gildersleeve said:

21 "'It is clear that British dairy farmers are
22 currently struggling in a difficult and complex market.
23 Tesco is committed to helping those farmers get through
24 this and we believe that there is a strong case for them
25 to receive a significant price increase in the

1 forthcoming negotiations with processors'."

2 Then further down it refers to cheese in particular:

3 "Whilst Tesco cannot directly deliver this price
4 increase we can help to create a more sustainable
5 industry [I'm in the middle of the page now,
6 Ms Oldershaw]... We are already working hard to bring
7 this about by ..."

8 It gives a number of examples, and it refers to
9 "increasing the amount of British cheese we sell".

10 Then over the page at tab 7 [Magnum] you have
11 a second press release which is on the next day. Here
12 John Gildersleeve says publicly:

13 "Although we cannot determine the price paid to
14 farmers, we are today calling on all milk processors to
15 pay them [that's the farmers] at least two pence per
16 litre more because of the need to sustain the UK dairy
17 industry."

18 So the position is that, at that time, your senior
19 executives, the very top executives, made a public
20 commitment to support the farmers, didn't they?

21 **A.** Yes.

22 **Q.** That commitment took the form of calling publicly for
23 the processors to pay all farmers an additional
24 2p per litre for their raw milk?

25 **A.** Yes, that's what it says here, yes.

1 Q. At the time of those announcements, Dido Harding,
2 John Scouler and Rob Hirst were on a business trip to
3 America, do you remember that?

4 A. Not in detail, no.

5 Q. But you knew about this call for the farmers to be paid
6 2p per litre more at that time, didn't you?

7 A. We would have been briefed on it, yes.

8 Q. Well, yes, and you say in paragraph 59 of your witness
9 statement [Magnum], I'm back in the pink bundle and I'm
10 at page 21.

11 A. Yes.

12 Q. The second half of that:

13 "I believe I found out about the announcement from
14 Rob Hirst in the weekly meeting of the Tesco dairy
15 team."

16 That meeting took place on Friday, 6 September
17 because Rob Hirst and John Scouler were in America until
18 the Thursday, so you'll take it from me it was on the
19 Friday, the 6th?

20 A. I can't recall the date of the meeting.

21 Q. But you're not suggesting I'm wrong about that?

22 A. I'm not suggesting -- I can't confirm either way.

23 I don't know the date of the meeting.

24 Q. Your evidence is:

25 "I found out about the announcement in the weekly

1 meeting of the Tesco dairy team."

2 And I'm putting to you that that meeting was on
3 Friday, 6 September?

4 **A.** And I can't confirm that because I can't remember, I'm
5 sorry.

6 **Q.** By the time of that meeting, you realised then that as
7 far as liquid milk was concerned Tesco would be paying
8 an increased cost price to the processors, is that
9 right? So you've had the announcement that the raw --
10 there's going to be payment to the farmers of
11 2p per litre and at that -- you heard about that at the
12 Tesco dairy team meeting and you realised then that, as
13 far as liquid milk was concerned, Tesco would be paying
14 an increased cost price to the processors?

15 **A.** Well, the processors would probably ask for 2p a litre
16 from Tesco. I don't -- I wasn't involved enough in the
17 milk side of things. My role was in cheese.

18 **Q.** Shall we see what you say at paragraph 59 [Magnum]. You
19 say:

20 "I understood this to mean that Tesco would pay its
21 milk processors a higher cost price for the liquid milk
22 it purchased."

23 So you did recall that when you wrote this witness
24 statement?

25 **A.** Yes, but it didn't mean that -- 2p a litre from that

1 date.

2 Q. That wasn't my question.

3 A. Okay.

4 Q. My question was that, as at the meeting on 6 September,
5 you realised then that, as far as liquid milk was
6 concerned, Tesco would be paying an increased cost to
7 the processors?

8 A. Yes.

9 Q. Thank you. But 2p per litre on fresh liquid milk alone
10 would not be enough to meet the objective of paying
11 2p per litre more on the farmgate price paid to all
12 farmers, would it?

13 A. No, because not all milk is consumed as liquid.

14 Q. Yes. To meet the objective called for by your senior
15 executives, the initiative would have to cover other
16 dairy products made from the farmers' raw milk?

17 A. Yes.

18 Q. That included cheese?

19 A. Yes.

20 Q. If the processors were unwilling to absorb the
21 2p per litre that they were going to pay to the farmers,
22 that would mean an increase in the price you paid for
23 cheese and other dairy products?

24 A. If the suppliers paid the milk producers -- basically,
25 if their costs went up, then they would be asking me for

1 a cost price increase, yes.

2 **Q.** Yes, and if they were unwilling to absorb the
3 2p per litre, in other words they pay 2p per litre to
4 the farmers, but if they are not prepared to take a hit
5 on their margins, that would mean an increase in the
6 price you would be paying for cheese?

7 **A.** Yes.

8 **Q.** You realised this at the time, very early in September,
9 didn't you?

10 **A.** Yes.

11 **Q.** At paragraph 62 of your witness statement [Magnum], you
12 say:

13 "When I heard that Tesco had agreed to pay more for
14 the liquid milk it purchased [so that's 6 September]
15 I assumed that my cheese suppliers would eventually
16 approach me to try to negotiate a higher cost price on
17 the basis that they needed to pay more for their primary
18 ingredient, raw milk."

19 That's the bottom of the page, page 21.

20 **A.** Yes, I agree to that. I don't necessarily agree that
21 the date was 6 September because I can't remember.

22 **Q.** Apart from the date, I would suggest to you that having
23 said and accepted, when you found out about the
24 announcement at paragraph 59 about the public
25 announcement, that you realised there was going to be an

1 increase in the liquid milk price, when you say in
2 paragraph 62:

3 "When I heard that Tesco had agreed to pay more...
4 I assumed that my cheese suppliers would eventually
5 approach me."

6 In other words, in relation to a cost price
7 increase.

8 What I'm suggesting to you is that, at the point
9 that you heard that Tesco had agreed to pay more for
10 liquid milk, you realised that there would eventually be
11 a request for a higher cheese cost price?

12 **A.** Yes.

13 **Q.** Then you say at paragraph 65 of your witness statement
14 that the public pledge for the farmers to be paid more
15 caused a tension between the senior management and the
16 rest of your dairy team. If you go to paragraph 65
17 [Magnum]:

18 "There was a tension between the pledge by senior
19 management to support the farmers and the position of
20 the dairy team. We were the ones with the KPIs to meet
21 which would not be possible if we simply accepted a cost
22 price without justification."

23 So what I'm suggesting to you is that this put you
24 and the dairy team in a difficult position?

25 **A.** Yes.

1 Q. Then what happened is that you resisted, and then you
2 say, in 65, at the bottom of the page:

3 "It was only when people more senior than John
4 became uncomfortable with the situation and the pressure
5 began to mount internally that John felt the time had
6 come and told me I must accept."

7 When you're referring there to senior staff, who are
8 you referring to?

9 A. Whoever John reported into and above.

10 Q. Who would that have been?

11 A. Well, according to the hierarchy you went through at the
12 beginning, Dido Harding and John Gildersleeve and then
13 Terry Leahy.

14 Q. But I imagine that you didn't know all the time what
15 senior management were doing and saying about this
16 issue?

17 A. No.

18 Q. So the next event is that, on 9 September, Tesco raised
19 its prices for -- retail prices for liquid milk. That's
20 right, isn't it?

21 A. Sorry, I don't have the dates for the liquid milk
22 increase.

23 Q. Do you recall Tesco raising its prices for -- retail
24 prices for liquid milk shortly after you finding out
25 about the public announcement?

1 **A.** I'm not clear on the time line but I know Tesco did
2 raise its prices on liquid milk.

3 **Q.** Yes. As you just accepted, that increase would not be
4 enough to enable all the farmers to get the
5 2p per litre; that's right, isn't it?

6 **A.** No, it wouldn't at the farmgate, yes.

7 **Q.** That's because a large proportion of the raw milk is
8 processed into products other than milk?

9 **A.** Correct.

10 **Q.** But an increase in prices for cheese and other dairy
11 products would, if passed back to the farmers, allow the
12 farmers to receive much closer to that 2p per litre?

13 **A.** Yes, the more products that were made from milk that had
14 a cost price increase, yes, the more would go to the
15 farmgate.

16 **Q.** 2p per litre of raw milk equates to £200 per tonne of
17 cheese?

18 **A.** Yes, roughly.

19 **Q.** That is the cost price increase which, in fact, your
20 processors then asked you for?

21 **A.** Yes.

22 **Q.** At the end of that week -- and I obviously have a lot
23 greater grasp of the detail of what days of the week
24 were what, but at the end of that week, on the Friday,
25 that was 13 September, there was a meeting between Tesco

1 and its dairy process suppliers and farmer and farmer
2 representatives, you will be familiar with that meeting?

3 A. Is this the Heathrow Airport meeting?

4 Q. That's the meeting, yes, the Heathrow Airport. You
5 didn't attend that meeting though?

6 A. No.

7 Q. But you were aware of it at the time?

8 A. Yes.

9 Q. It was Rob Hirst and John Scouler who attended that
10 meeting on behalf of Tesco?

11 A. Yes.

12 Q. As far as you are aware, had there been similar meetings
13 like that before?

14 A. Yes, I believe it was a regular thing they put in place,
15 to start meeting with the farmers and the processors.

16 Q. Yes. Rob Hirst told you about the meeting shortly
17 afterwards?

18 A. The feedback from the meeting?

19 Q. Yes.

20 A. Yes.

21 Q. You say at paragraph 73 of your witness statement, if
22 you would go to that at page 25 [Magnum]:

23 "At this point, however, no decision had been taken
24 within the dairy team that Tesco would accept a cost
25 price increase on cheese."

1 **A.** Yes, I hadn't agreed with any supplier that I would take
2 a cost price increase on cheese at that time.

3 **Q.** But it is the case, isn't it, that as a result of what
4 he told you about the meeting, you knew that it was his
5 view that Tesco would be paying a cost price increase to
6 the processors?

7 **A.** Inevitably, we knew that eventually the suppliers would
8 ask for a cost price increase, yes.

9 **Q.** Not just that they would ask for one but that you would
10 be paying them?

11 **A.** Yes.

12 **Q.** You can see that at paragraph 72 of your witness
13 statement at the end, at the top of page 25 [Magnum],
14 where it says:

15 "Rob told me that as a result of the meeting he felt
16 it would be difficult for Tesco to tell the farmers that
17 they would not pay its suppliers any more for the cheese
18 it bought."

19 At paragraph 73, you go on to say:

20 "The processors would have to justify the request
21 for a cost price increase."

22 That's right, isn't it?

23 **A.** Yes.

24 **Q.** But that statement doesn't make any sense, does it? You
25 already knew full well what the justification for that

1 particular cost price increase was?

2 A. Yes, I did.

3 Q. It was not a question of them explaining to you that

4 there had been a particular increase in their fuel costs

5 or their raw materials, was it?

6 A. No, it was a different approach, yes.

7 Q. And it was the -- what it was was the 2p per litre to be

8 paid to the farmers?

9 A. Yes.

10 Q. That was the very thing that your own senior management

11 had called for less than two weeks earlier?

12 A. Yes.

13 Q. So you simply could not have responded to the processors

14 that the cost price was not justified?

15 A. I had various questions around cheese maturity and cost

16 price increases and the justification was just part of

17 a natural process to delay the cost price increase as

18 long as I could.

19 Q. Yes, but you never went to other processors and said,

20 "What's this £200 per tonne about?", did you?

21 A. They provided justification of it; even though I knew,

22 they provided a normal briefing of why they would want

23 it and how they would give it back to farmers.

24 Q. That's how it would be passed back, but the reason for

25 the increase being asked for was absolutely plain from

1 the outset, wasn't it?

2 **A.** Yes.

3 **Q.** The next event I want to take you to in a moment is
4 a document that we all have come to call the Dairy Crest
5 briefing document. Before I do so, I'd like to just ask
6 you some general questions about the situation that you
7 were then in following the Tesco Dairy Supply Group
8 meeting, around about the middle of September.

9 You say that the announcements made by the senior
10 management had put you and the rest of the dairy team in
11 a difficult position. That's right, isn't it?

12 **A.** Yes.

13 **Q.** The difficulty was how were you to achieve the
14 2p per litre increase and at the same time maintain
15 compliance with your own KPIs on margin and basket
16 policy?

17 **A.** Yes, it was how we made everything balance, was the
18 challenge.

19 **Q.** You knew early on, and certainly following the Dairy
20 Supply Group meeting, that there was going to be or
21 would have to be a cost price increase for cheese?

22 **A.** Yes.

23 **Q.** That would be a cost price increase across all your
24 cheese lines?

25 **A.** All our British cheese lines.

1 Q. Yes, all your British cheese lines.

2 A. Yes.

3 Q. Not just one or two products?

4 A. No, it was a lot of products.

5 Q. And not just one particular processor?

6 A. No, across a number of suppliers.

7 Q. As far as you were concerned, in all the discussions
8 that you had with the processors that followed, there
9 was never any suggestion by you that the processors
10 should absorb this 2p per litre which your bosses had
11 called for?

12 A. Not that I can recall, no.

13 Q. The only way you could meet these differing demands, on
14 the one hand your margin, KPIs and your basket policy,
15 and on the other hand the public commitment by your
16 senior executives, was if there was an across-the-board
17 increase in retail prices by Tesco and its main
18 competitors?

19 A. That's not actually the case because, as I described
20 before, there's other money you can bring into the mix
21 to support any margin loss.

22 Q. Well, shall we look at this a little bit more closely.
23 Faced with an across-the-board cost price increase of
24 £200 per tonne on all lines and for all processors, you
25 had three options broadly. If I may, I'll give you the

1 three options and then we'll look at them each.

2 The first option is you could decline to increase
3 your retail prices at all; the second option is you
4 could increase your retail prices without knowing
5 whether your competitors would also increase their
6 retail prices; the third option is you could increase
7 your retail prices once you knew or had a degree of
8 confidence that your competitors' retail prices -- would
9 increase their retail prices too. Would you agree that
10 those were the options?

11 **A.** They're three options, yes. Yes.

12 **Q.** So if we look at the first option, in general, you were
13 not going to accept a cost price increase across all
14 your lines without being able to increase your retail
15 prices?

16 **A.** No. I mean, if you buy it for more you need to sell it
17 for more, is the ideal.

18 **Q.** Mr Reeves' evidence was that by this time a cost price
19 increase without a retail price increase would just not
20 happen?

21 **A.** Yes.

22 **Q.** In fact, you say at paragraph 66 of your witness
23 statement [Magnum], in the middle sentence:

24 "I could not afford to accept this cost price
25 increase without increasing Tesco's retail prices to

1 protect my margin."

2 That's right, isn't it?

3 **A.** Yes.

4 **Q.** In fact, without going back, if you had accepted the
5 cost price increase of this size in respect of all your
6 products, without a retail price increase, it would have
7 cost your company millions of pounds?

8 **A.** Yes.

9 **Q.** I can't do the maths because I don't know precisely how
10 many tonnes of cheese you were selling at the time, but
11 I suspect you were selling tens of thousands of tonnes
12 of cheese, and at £200 per tonne that soon adds up to
13 millions?

14 **A.** Yes.

15 **Q.** As regards the second option, which is the option of you
16 raising your retail prices and raising them first, at
17 paragraph 64 of your witness statement [Magnum] you say
18 in the second sentence:

19 "I didn't feel under any internal pressure to accept
20 a cost price increase when it was first requested and
21 I did not want Tesco to be the first retailer to put up
22 its prices."

23 So you weren't going to move your retail prices up
24 first?

25 **A.** It wouldn't be my preferred option, to be the most

1 expensive in the market, no.

2 Q. That's because, if you accepted the cost price increase
3 and then put up your retail prices without knowing what
4 the other retailers were going to do, that was very
5 risky for you to do, wasn't it?

6 A. In terms of?

7 Q. Well, in terms of you would either be out of line with
8 your competitors on all your products, because we're
9 talking about everything now, that's one option, and you
10 would lose volumes and you would have the basket policy,
11 that's right, isn't it? I'm talking about the option of
12 accepting the cost price increase of £200 per tonne and
13 putting your retail prices up without knowing what the
14 others were going to do.

15 A. I had to be competitive on retails despite the cost
16 price, that was our basket policy.

17 Q. Yes. If you went up first and the others didn't follow,
18 you would have to reduce your retail prices back down
19 again within the time --

20 A. Yes, within the timeframe, yes, correct.

21 Q. At that point, you would stand to lose millions in lost
22 margin?

23 A. Yes, if you're looking at the cost/retail dynamic, yes.

24 Q. So it follows that you would not agree to accept the
25 £200 per tonne cost price increase across the board

1 without knowing or at least having the comfort that your
2 competitor retailers would also increase their retail
3 prices, that's right, isn't it?

4 **A.** At the end of the day, as you've seen, I didn't have
5 a choice on cost price increases.

6 **Q.** No, but what I'm suggesting to you -- I've gone through
7 the three options and we've ruled out options one and
8 two. I'm suggesting to you that your only option was --
9 that you could only accept the £200 per tonne cost price
10 increase if you knew or could have sufficient confidence
11 that your competitor retailers were also going to raise
12 their retail prices as well?

13 **LORD CARLILE:** Mr Morris, to be fair to the witness, I think
14 Ms Oldershaw did not accept that they were "the" three
15 options, she accepted that they were three options. So
16 I don't think it's fair to put a question to her on the
17 basis that these options exclude any others.

18 **MR MORRIS:** Perhaps Ms Oldershaw can tell us what the other
19 options were in this situation, with the across the
20 board £200 per tonne cost price increase?

21 **A.** The other option is to look at the whole picture, not
22 just a product cost and retail price. So it was very
23 clear that we would eventually have to take the cost
24 price increase. It was Tesco's commitment to the
25 farmers and the processors.

1 How I then managed my margin would be, hopefully
2 we'd be able to get it back in retail price increases,
3 but there are other, as I said, there are other monies
4 that I held within my category that could help bridge
5 any gap.

6 So it was more a combination, it wasn't as clean cut
7 between cost and retails as you're perhaps alluding to.

8 **Q.** What other monies are you talking about?

9 **A.** We had monies from -- I used to buy bulk cheese tenders,
10 so we would make, you know, substantial amounts from
11 those tenders. There were various other tenders for
12 products during the year. We had volume incentives with
13 suppliers. There were lots of different amounts of
14 money coming in during the year into my category which
15 were to be used in eventualities where, you know, you
16 were under margin pressure, that could help prop up that
17 margin.

18 **Q.** There's no reference to any of this in your witness
19 evidence, is there?

20 **MISS ROSE:** That is untrue, sir, with due respect.

21 **A.** Yes, it refers to the buy for less plan.

22 **LORD CARLILE:** Wait a moment, Ms Oldershaw.

23 Miss Rose?

24 **MISS ROSE:** That is not correct, it's paragraph 14 of her
25 third witness statement [Magnum].

1 **MR MORRIS:** Can I come back to that?

2 **MISS ROSE:** Sorry, I think in fairness, since it was put
3 then it ought --

4 **LORD CARLILE:** Yes, as long as the questions are put on
5 a fair basis, which is why I intervened.

6 **MR MORRIS:** Can I ask a different question then. Are you
7 suggesting that these extra monies would make up the
8 millions of pounds that would be the gap, if you
9 accepted a cost price increase without raising your
10 retail prices?

11 **A.** They would bridge some of the gap but there would be
12 a retail price increase needed, or we'd at least have to
13 try.

14 **Q.** Yes, thank you.

15 At various places in your evidence, you say that you
16 could not be confident about what your competitor
17 retailers would do until you saw evidence that they had
18 actually moved in store?

19 **A.** Yes, I wouldn't know what retailers were at until they
20 were in store, yes.

21 **Q.** You wouldn't know what they were at, but you wouldn't
22 feel confident that you would know what they were going
23 to do until you saw it in store?

24 **A.** I don't understand the question, sorry.

25 **LORD CARLILE:** Put it again.

1 **MR MORRIS:** I'm putting to you that your evidence is that
2 you could not be confident about what your competitor
3 retailers were going to do -- and I'm talking about the
4 £200 per tonne cost price increase -- you could not be
5 confident about what they would do until you saw
6 evidence that their prices had actually increased in
7 store?

8 **LORD CARLILE:** Did you hear the question?

9 **A.** Yes, I heard the question. I'm just confused by the
10 question.

11 **LORD CARLILE:** Can I simplify it, I hope correctly.

12 **A.** Yes.

13 **LORD CARLILE:** You would not know for sure that Asda had put
14 up the price of a particular cheese until someone went
15 into an Asda store and saw the cheese at that increased
16 price on the shelf, is that right?

17 **A.** Correct, yes.

18 **LORD CARLILE:** That's the question, isn't it, Mr Morris,
19 more or less?

20 **MR MORRIS:** It was a question, but I was asking about her
21 degree of confidence as to what would happen.

22 If we go to paragraph 67 of your witness statement
23 [Magnum], we're dealing with the provision of
24 information about what might happen in the future, and
25 we're dealing with your suggestion that this is

1 speculative information. I'm just setting the
2 background for 67. The last sentence of paragraph 67 is
3 this:

4 "My response to emails of this kind [that is, emails
5 from processors telling you what competitors were going
6 to do] was to tell the supplier that I would wait until
7 I could see the increase in store at the relevant
8 retailer before making any decision."

9 That's right, isn't it?

10 **A.** Well, I would need to see a retail in store before
11 I matched it to the basket policy.

12 **Q.** I'm asking about, when you took your decision, about you
13 would wait until you saw the increase in store before
14 you made any decision on your retail pricing?

15 **A.** Sorry, I'm really confused by your question.

16 **Q.** Okay, I'll put the question again.

17 Paragraph 67 of your witness statement says the
18 following -- perhaps I should read the whole paragraph
19 so that you can see --

20 **LORD CARLILE:** Maybe she can read it to herself. She has it
21 in front of her.

22 **MR MORRIS:** Yes, if you read the paragraph to yourself
23 first.

24 (Pause)

25 **A.** That refers to me just taking stock of the market before

1 setting my retails, in line with the basket policy.

2 Q. Yes, and your evidence is that you would wait to see,
3 you wouldn't take a decision until you could see the
4 increase in store?

5 A. Yes, I wouldn't act on any speculative information I'd
6 receive.

7 Q. No, that wasn't my question. My question was, your
8 evidence to this Tribunal is that you would not take
9 a decision until you could see the increase in store?

10 A. I still might not take an increase if I saw an increase
11 in store. It's just information to...

12 Q. Let me put it another way. Your evidence is that, until
13 you saw the evidence of an in-store increase, you would
14 not accept the £200 per tonne cost price increase, or
15 decide to --

16 A. That's incorrect. That's not correct.

17 Q. That's not your evidence?

18 A. I was told eventually to take the £200 per tonne cost
19 price increase --

20 Q. Yes, before --

21 A. -- despite what was happening in competitor stores.

22 Q. Yes, and at the same time you would not have accepted
23 that cost price increase unless you yourself, Tesco, had
24 decided to increase your retail prices?

25 A. We would take the cost price increase and increase the

1 retails, yes, and then see how the market responded and
2 then have to realign our prices accordingly.

3 **Q.** The fact is that in the autumn of 2002 you, Tesco, did
4 accept the £200 per tonne cost price increase and take
5 a decision to increase your retail prices and tell the
6 processors that you'd done so before you had in-store
7 evidence that the competitors had moved. In-store
8 evidence?

9 **A.** I believe so, yes.

10 **Q.** Most particularly, by 30 October, you had made this
11 decision well before retail price increases of your
12 competitors were in store?

13 **A.** On the cost price change?

14 **Q.** No, both decisions.

15 **A.** On 30 September I had made a plan for cost price
16 increases but I hadn't finalised all the retail prices.

17 **Q.** 30 October.

18 **A.** September.

19 **Q.** I was talking about 30 October, we may be at
20 cross-purposes.

21 I'm just looking at the transcript, Ms Oldershaw.

22 You have just said a moment ago -- this is my question:

23 "The fact is that, in the autumn of 2002, you ...

24 did accept the cost price increase and take a decision
25 to increase your retail prices and tell the processors

1 you'd done so before you had in-store evidence ..."

2 And you said:

3 "... yes."

4 My suggestion to you, and we'll come back to it
5 later, is that by 30 October you had decided -- you were
6 told to accept the cost price increase and at the same
7 time the decision to increase retail prices had been
8 made, and that happened before there was any evidence of
9 competitors moving in store.

10 **A.** I would have taken -- on the 30th, I believe I took the
11 cost price decision and communicated that with
12 suppliers. I would then need to have spoken to the
13 suppliers about relevant stock levels before I then gave
14 them the retail prices to mark the pack.

15 **Q.** I'll come back to it when we get there in due course,
16 when we get to the events of October.

17 Can I now move on to the document called the
18 Dairy Crest briefing document. Before we get to the
19 document, perhaps I can just put to you -- I'm not going
20 to go to any document bundle just yet, I'm just going to
21 put to you some of the background to see if you can
22 agree that.

23 Following the Tesco Dairy Supply Group meeting,
24 Dairy Crest immediately set about putting together
25 a proposal; would you agree with that?

-
- 1 **A.** I would think so, yes.
- 2 **Q.** That proposal was aimed to get more money back to the
3 farmers by seeking an industry-wide increase in prices
4 for butter, cream and cheese?
- 5 **A.** Yes, on the basis of milk content, yes.
- 6 **Q.** 2p per litre translates to £200 per tonne of cheese --
- 7 **A.** Yes.
- 8 **Q.** You've already agreed that. Dairy Crest's proposal was
9 for a price increase of £200 per tonne?
- 10 **A.** Yes.
- 11 **Q.** The proposal, in general terms, became known as the £200
12 per tonne plan, didn't it?
- 13 **A.** The £200 per tonne initiative I believe we referred to
14 it more as.
- 15 **Q.** You called it the £200 per tonne plan, didn't you?
- 16 **A.** I can't recall.
- 17 **Q.** Can you go to document bundle 1 at tab 64 [Magnum], this
18 is an email to your husband, and I'm not going to go
19 into it in great detail. If you go to the second page
20 of that document, this is your internal Word document,
21 and the title is "Cheese £200 per tonne plan"?
- 22 **A.** Yes, this was my plan.
- 23 **Q.** Yes, but that's what you called it?
- 24 **A.** This document is my plan, yes.
- 25 **Q.** That's the title you gave it.

1 Then if you go over to 66 [Magnum], we have got an
2 email from you at the same time with the subject in the
3 subject line "£200 a tonne". What I'm suggesting to you
4 is that the shorthand that everybody and you were using
5 in this initiative was "£200 per tonne plan", "£200 per
6 tonne price increase"?

7 **A.** I don't recall using "£200 per tonne plan" as a regular
8 phrase.

9 **Q.** So why did you put it on that document that you referred
10 to?

11 **A.** Because a document is a plan. The document is a plan --

12 **Q.** And it is a plan --

13 **A.** -- of how I was going to implement the cost ...

14 **Q.** Implement the cost price increase?

15 **A.** The cost and retail changes, yes.

16 **Q.** That had come from, initially, the Dairy Crest proposal?

17 **A.** Well, they were the first ones to ask for the cost price
18 increase, yes.

19 **Q.** Yes, and others then asked as well, didn't they?

20 **A.** Yes.

21 **Q.** Going back to where we are in time, which was towards
22 the end of September, you became heavily involved in the
23 proposal, that's right, isn't it, the Dairy Crest
24 proposal?

25 **A.** Yes.

1 Q. Dairy Crest circulated that proposal to all the main
2 retailers, including Tesco?

3 A. I believe so now from this investigation, yes.

4 Q. I'll come back to that in a moment.

5 Are you saying you didn't know at the time that it
6 had been circulated to others?

7 A. I presume from the wording but I had no confirmation.

8 Q. Yes, so at the time you worked on the assumption that it
9 had been circulated to everyone else?

10 A. It looked like quite a generalised document.

11 Q. Yes. That document, as we know, came to be known as --
12 well, we have perhaps -- it's come to be known as the
13 Dairy Crest briefing document and, at paragraph 75 of
14 your witness statement [Magnum], you say that you now
15 understand that it was circulated:

16 "I now understand that Dairy Crest sent the same
17 briefing document."

18 Then at paragraph 78, if you'd go over the page
19 [Magnum], you say that at the time you took it to mean
20 that it had probably been sent to other retailers?

21 A. Yes, but I couldn't confirm at that time. Like I said,
22 it was a very kind of general document.

23 Q. Now, in fact, it was given to Sainsbury's on
24 19 September and it was sent to Asda and Safeway on
25 20 September, and Tesco received a proposal by

1 23 September at the latest. That's right, isn't it?

2 If you go to the document bundle at 1, tab 25
3 [Magnum], this is an email from Colin Beaumont to
4 Rob Hirst, your boss, and that's dated 23 September:

5 "Following our conversation on Friday I can confirm
6 that Dairy Crest are to increase prices on cheese,
7 packet butter and cream with effect from [redacted] October. We
8 are fully committed to passing on revenue gained from
9 this increase to our supply farmers. The attached
10 document clarifies all the issues associated with the
11 increase. I will contact you tomorrow."

12 Then over the page, you will see what is referred to
13 as the Dairy Crest briefing document.

14 So we know that Tesco received it on the 23rd.
15 Colin Beaumont sent it to your immediate boss,
16 Rob Hirst, that's right, isn't it?

17 **A.** Yes.

18 **Q.** If you go over the page, over to tab 26 [Magnum], you
19 will see a letter dated the same date from Neil Arthey,
20 who was your opposite number, this time to Chris Rigby
21 who was butter, spreads and something else -- butter and
22 spreads?

23 **A.** Fats.

24 **Q.** Fats. It was sent to him on the same day and it appears
25 that, in fact, there had been an approach by Dairy Crest

1 to Tesco earlier than that Monday, the 23rd, because we
2 see that if you go back to tab 25 [Magnum], you will
3 see:

4 "Following our conversation on Friday ..."

5 That's the first sentence of Mr Beaumont's email to
6 Mr Hirst.

7 **A.** Yes.

8 **Q.** So it looks, doesn't it, as though Mr Beaumont spoke to
9 Mr Hirst about the issue on the Friday before?

10 **A.** That's what it seems from this, yes.

11 **Q.** Were you aware of the conversation at the time?

12 **A.** Not that I can recall.

13 **Q.** Yes, okay.

14 At paragraph 74 of your witness statement [Magnum],
15 in the last but one sentence -- the last sentence, you
16 say:

17 "I believe I also received a copy of the proposal
18 from Dairy Crest."

19 **A.** Yes.

20 **Q.** So it's likely that you did receive one yourself as
21 well?

22 **A.** Yes, it is, yes.

23 **Q.** The reason that's likely is because, if Neil Arthey sent
24 it to Chris Rigby, he probably also sent it to you?

25 **A.** Yes, I'm the cream buyer, and anybody else, yes.

1 Q. Yes. Now, you discussed the proposal with Rob Hirst at
2 the time, you say in paragraph 74. It was highly
3 unusual, wasn't it?

4 A. Yes, it was unusual for everyone to receive the same
5 cost price increase for the same reason, yes.

6 Q. For all products?

7 A. Yes.

8 Q. Across the industry?

9 A. Yes.

10 Q. I'll go to the document in a moment. What Dairy Crest
11 was doing was proposing to you and all the other major
12 retailers an increase of £200 per tonne?

13 A. Correct, yes.

14 Q. As I think you have accepted, in the face of such a cost
15 price increase, you would be looking to raise your
16 retail prices, of this magnitude across all products?

17 A. Yes.

18 Q. Because you assumed that other retailers would be in the
19 same position?

20 A. Yes.

21 Q. At the time Dairy Crest knew that the retailers wouldn't
22 accept a cost price increase of £200 per tonne unless
23 the retailers at the same time also increased their
24 retail prices?

25 A. They probably thought it more than likely, it would be

1 very unusual if no retails increased, but they couldn't
2 have known for sure.

3 **Q.** What I'm suggesting to you is that this proposal was
4 a proposal by Dairy Crest for an increase in cost and
5 retail prices?

6 **A.** That's not how I interpreted it. To me, this is
7 a document from Dairy Crest requesting the £200 per
8 tonne cost price increase. They do mention retails but
9 retails are none of their business. Retails are the
10 retailers' business.

11 **Q.** Your evidence, at paragraph 77 of your witness statement
12 [Magnum], is as follows:

13 "The OFT concludes in the decision that the
14 Dairy Crest briefing document is a proposal for
15 market-wide cheese retail price increases. This is not
16 my understanding of the Dairy Crest briefing document.
17 I understood this to be Dairy Crest's first formal
18 request for a higher cost price for the cheese it
19 supplied which it justified as a means of addressing the
20 difficulties faced by the UK dairy farmers."

21 So your evidence is both at the time and now that
22 you understand this document to be a request for a cost
23 price increase?

24 **A.** Yes.

25 **Q.** But, in fact I'm going to put to you, or I put to you

1 that in fact it is clear that Dairy Crest was proposing
2 a cost price increase and suggesting a retail price
3 increase at the same time?

4 **A.** They can suggest but it is none of their business. It's
5 not their remit.

6 **Q.** That's not the question I'm asking you. I'm asking you
7 as to your understanding of what the proposal is, not
8 about whether it was proper for them to propose or
9 whether you would accept it. I'm asking you about your
10 understanding of what the proposal encompassed?

11 **A.** The proposal to me is for a cost price increase.

12 **Q.** Now, we know in fact that what Dairy Crest actually had
13 in mind in its proposal was an increase for cost and for
14 retail?

15 **MISS ROSE:** Sir, I'm not sure we do know that for a fact.

16 **LORD CARLILE:** What is the basis for suggesting that
17 Dairy Crest accept it was a proposal for a retail price
18 increase?

19 **MR MORRIS:** I'm trying to deal with the proposition in
20 Ms Oldershaw's evidence, not only as to what she
21 understood then, but she now still says that she
22 understands it to be a proposal for retail prices, and
23 I would wish to --

24 **A.** Cost prices.

25 **LORD CARLILE:** Can I be clear as to whether the Tribunal

1 understands it correctly.

2 Ms Oldershaw, I understand you to be saying that the
3 Dairy Crest proposal was a proposal for cost price
4 increases of £200 per tonne, and your evidence so far is
5 that retail prices were none of their business though it
6 might have been reasonable to expect an increase in
7 retail prices.

8 Is that a fair summary of what you're saying?

9 **A.** Yes. Yes.

10 **LORD CARLILE:** Right.

11 **MR MORRIS:** What I wish to put to the witness is that it is
12 apparent from the document that it was more than
13 a proposal for cost price but it was also a proposal for
14 retail price.

15 **LORD CARLILE:** Well then you had better show her which part
16 of the document you say justifies that question.

17 **MR MORRIS:** I'm going to.

18 **LORD CARLILE:** Wait for the next question, Ms Oldershaw.

19 **MR MORRIS:** Can we then look at the document at tab 25
20 [Magnum]. So what we have, and I'm on the second page
21 of tab 25, the title is "Dairy Product Price Increase",
22 do you see that?

23 **A.** Yes.

24 **Q.** That doesn't say "cost price", does it, it just says
25 "price"?

1 **A.** It does say "price" but suppliers only dealt with cost
2 prices.

3 **Q.** Okay. Then we go down the page and it's discussions of
4 the background. Then butter pricing -- under "Cheese":
5 "We propose to increase all Dairy Crest supplied
6 cheeses by £200 per tonne."

7 Do you have that?

8 **A.** Yes.

9 **Q.** That is a reference --

10 **MISS ROSE:** I think in fairness the witness should be shown
11 the paragraph headed "Objective".

12 **MR MORRIS:** With respect, sir, I make take my questions in
13 order. If there's a matter which I haven't referred to
14 in a document then Miss Rose can refer to it in
15 re-examination.

16 **LORD CARLILE:** Let's find out, shall we, first.

17 Ms Oldershaw, have you read this document recently
18 or would you like to read it through quickly before any
19 more questions are put about it?

20 **A.** Can I just take a couple of minutes to read it, please?

21 **LORD CARLILE:** Yes. You take your time to read it.

22 Sit down if you want to, Mr Morris.

23 Tell us when you're ready.

24 **A.** Okay, thank you.

25 (Pause)

1 **LORD CARLILE:** Okay?

2 **A.** Thank you, yes.

3 **LORD CARLILE:** Mr Morris?

4 **MR MORRIS:** Can I just, before I take you to the detail, put
5 to you what I am asking you. I am putting to you that,
6 in this document, Dairy Crest were proposing not only
7 a cost price increase but a retail price increase? Do
8 you agree?

9 **A.** My -- no. This document to me reads they are proposing
10 a cost price increase and they have an understanding
11 that, for a cost price increase, retailers would
12 probably have to increase their retails, and they've
13 given their view on where they think not retails should
14 be, but they've commented on cash margin maintenance.

15 **Q.** Yes, and they are suggesting that there will be a retail
16 price increase? I'm not saying that Tesco agreed to it,
17 I'm asking you what this document, on its face, is
18 proposing? What's coming from Dairy Crest?

19 **A.** A cost price increase with an acknowledgement that the
20 retailers will probably have to increase retails.

21 **Q.** Yes.

22 **A.** Not a proposal, an acknowledgement.

23 **Q.** Right, perhaps we're now arguing about words.

24 I would put it to you that it is at the very least
25 a suggestion of retail price increases?

1 **A.** That's your suggestion.

2 **Q.** Okay, you don't accept that.

3 Can I just take you to particular items on the
4 document. If you first of all go to "UK Sourced Dairy
5 Products Versus Imports", bottom of the first page:

6 "We are seeking to address an immediate problem in
7 farming today. If however we jointly ["we jointly"]
8 change the competitive set of British dairy products
9 versus imports, damage would be done to this initiative.
10 We ask that you bear this in mind when considering your
11 retail pricing decisions."

12 My first question is "jointly" is referring to
13 Dairy Crest and Tesco, isn't it?

14 **A.** Yes.

15 **Q.** Secondly, "the competitive set" is a reference to the
16 competitive position in the retail market?

17 **A.** As I wasn't the author I can't fully comment on that.

18 **Q.** It obviously -- in the next sentence it says:

19 "... when considering your retail pricing
20 decisions."

21 And "the competitive set of British dairy products
22 versus imports" is a reference to competition in the
23 retail market, isn't it?

24 **A.** I read that more as competition between British and
25 foreign cheese.

1 Q. Yes, retail prices.

2 A. Not retail prices. Where you purchase -- if I brought
3 in a lot more foreign offshore cheese, it would then
4 affect the British cheese market.

5 Q. Yes, and it would affect it at the retail level because
6 the risk is that if retail prices are raised too much,
7 customers will switch to buying imported cheese, that's
8 retail customers, such as Irish cheddar?

9 A. Potentially some customers buy the cheapest product,
10 yes.

11 Q. Yes, retail customers.

12 A. Sorry, can you re-ask the question?

13 Q. Yes, the question is that this reference to "the
14 competitive set" is a reference to the competitive
15 position in the retail market as between British cheeses
16 and imported cheese, in particular Irish cheese?

17 A. As I said before, I can't fully comment on this
18 paragraph because I wasn't the author so I don't know
19 what they exactly meant behind it.

20 Q. Okay. Can I put to you what Mr Reeves said about this
21 paragraph, and I'll put it to you as slow as I can.

22 For the reference, this is on Day 5, page 65 over to
23 page 66. He was asked about this particular paragraph
24 and it was read to him as I have read it to you. The
25 question was:

1 "So in effect you were asking the retailers here to
2 restrain their retail price increases?"

3 He says:

4 "Not necessarily, no. We were asking them not to
5 price British cheese uncompetitively. What we didn't
6 want to happen was that all the retail prices of British
7 cheese moved and the retail prices of Irish cheese
8 didn't move and therefore consumers switched to cheaper
9 Irish cheddar."

10 So he is saying that this paragraph is a concern
11 that, if retail prices of cheese moved too much, or
12 moved and Irish cheese didn't, consumers would switch to
13 Irish cheddar?

14 **A.** Well, as he was probably the author of the document,
15 that's probably what he intended it to mean.

16 **Q.** But you don't understand it that way?

17 **A.** No, it's not as clear to me, no, as Mr Reeves --

18 **Q.** What else could it mean?

19 **A.** It could mean about buying more foreign cheese because
20 it would be at a cheaper price, in terms of buying it
21 from different suppliers, South African, Australian,
22 Irish cheese, which would mean we would therefore buy
23 less British cheese off Dairy Crest which would be
24 something that they would not want to happen.

25 **Q.** He says:

1 "Please bear it in mind when considering your retail
2 pricing decisions."

3 Anyway, you don't agree with Mr Reeves?

4 **A.** I interpret that as where I buy my cheese from.

5 **Q.** Okay. Let's move on in the document and look at the
6 heading "Timing", which is on the opposite side
7 [Magnum]. If you've got that, third bullet point on the
8 right-hand side?

9 **A.** Yes.

10 **Q.** "We have promised to pay our farmers all revenue
11 recovered from the market from the date RSPs and costs
12 have moved."

13 RSPs is a clear reference to retail prices, isn't
14 it?

15 **A.** Yes.

16 **Q.** What is being considered there in that paragraph of the
17 document is a market move in retail selling prices as
18 well as cost prices?

19 **A.** Which would be the norm.

20 **Q.** Yes, but --

21 **A.** For any cost price increase, the retails would move
22 virtually the same day or the day after.

23 **Q.** That would be the norm for any cost price increase?

24 **A.** Not any, it would be the norm.

25 **Q.** Well, that's what you just said. You just said it would

1 be the norm for any cost price increase.

2 Now, in that sentence, Dairy Crest is clearly
3 envisaging that the move that they are referring to, and
4 that would be made, would be a move on retail and cost
5 prices, isn't it?

6 **A.** Sorry, can you just say that again, please?

7 **Q.** That sentence refers to the word "moved", yes? The last
8 word of that sentence has the word "moved"?

9 **A.** "... costs have moved", yes.

10 **Q.** So in that sentence Dairy Crest were envisaging a move.
11 My question is, is that move that was being envisaged
12 a move on retail as well as cost prices, in that
13 sentence?

14 **A.** Their concerns are for cost and they've surmised that
15 retails will move at the same time, as they usually do.

16 **Q.** Yes, so the answer to my question is that, in that
17 sentence, Dairy Crest was envisaging a move on retail?

18 **A.** A move on costs and therefore a move on retail, yes.

19 **Q.** Yes, on both?

20 **A.** Yes.

21 **Q.** That move that they refer to is the same move in the
22 market as is referred to higher up the page at the top
23 of that page?

24 I'll read that paragraph to you, if I may, "Raw Milk
25 Pricing Effect":

1 "If we are successful in persuading the market to
2 move [those are the words I'm asking you to perhaps
3 alright on], the resultant revenue gained will enable us
4 to increase raw milk prices in total between 1.0 and
5 1.5ppl."

6 My question is that that move in the market, "the
7 market to move", is the same move and is a move on
8 retail as well as cost?

9 **A.** When I read it, my interpretation of that paragraph is
10 relating to the move on cost from Dairy Crest.

11 **Q.** So you say that whilst the move in the heading "Timing"
12 is a move on retail and cost, when they say -- that's at
13 the bottom of the page -- you say that Dairy Crest is
14 contemplating a different move in the top of the page,
15 "If we are successful in persuading the market to move"?

16 **A.** Yes, because they've not -- if they don't specify it's
17 what concerns them, which is cost.

18 **Q.** Okay. Now, let's look at the heading "Transparency".
19 Under the heading "Transparency", you've read it
20 through, Dairy Crest was suggesting to you and to all
21 retailers that they should only increase retail prices
22 by an amount that would maintain the retailers' cash
23 margin and not by an amount which would maintain
24 percentage margin. That's right, isn't it?

25 **A.** That's what that says, yes.

1 **Q.** Now, leaving to one side the amount of the increase,
2 whether it's cash or percentage, this is clearly
3 a suggestion that there should be a retail price
4 increase of some amount?

5 **A.** For me, it's a realisation that there will be a retail
6 price increase because there has been a cost price
7 increase.

8 **Q.** Right, so it's a realisation. Dairy Crest understand
9 that the cost price increase can't happen unless there's
10 a retail price increase?

11 **A.** Not that it can't happen. It's unlikely to happen
12 without a retail price increase.

13 **Q.** But they're working on the assumption that there will be
14 a retail price increase.

15 In this paragraph they are recommending to each of
16 the retailers that the retail price increase should be
17 restrained?

18 **A.** That's how that reads, yes.

19 **Q.** Now, can I just explore with you for a moment the
20 rationale behind the cash margin maintenance
21 recommendation. It had two advantages from
22 Dairy Crest's point of view, didn't it? The first is --

23 **A.** I believe so.

24 **Q.** The first is that, and this comes in the last -- in the
25 second sentence of the first part:

1 "Percentage margin maintenance will only create
2 accusations of profiteering."

3 If the retailers only increase by cash, in order to
4 maintain cash margin, it would ensure that the retailers
5 would not be profiting from the 2p per litre increase
6 paid to the farmers?

7 **A.** Yes, so it equates -- if you just passed the pure milk
8 price increase through to the pack of cheeses, it's 20p
9 per kilo of cheese, and that is what they refer to as
10 cash. That is cash margin maintenance.

11 **Q.** Yes, and there was a risk, this is the risk that
12 Dairy Crest perceived, that in other words if you, the
13 retailers, increased to maintain your percentage margin,
14 not all of that increase would then go back to the
15 farmers, and the farmers might complain that you were
16 profiteering or profiting unduly from the overall
17 increase?

18 **A.** Or Dairy Crest were profiteering.

19 **Q.** Well, is that right, because we're talking about --
20 we're not talking about their margins, we're talking
21 about your margins here. We're talking percentage
22 margins --

23 **A.** But the farmer could never be sure what price
24 Dairy Crest were charging.

25 **Q.** No, but the purpose --

1 **A.** As long as they got their 2p per litre.

2 **Q.** Yes, if you read the next sentence in the second
3 paragraph under "Transparency":

4 "It is clearly vital that neither retailer or
5 processor is seen to benefit from this process in margin
6 terms."

7 **A.** That's what it says, yes.

8 **Q.** So you were right to point out that the -- that there
9 should be no undue profiting by the processors but,
10 equally, if I might put it this way, I was right to
11 point out that there should be seen to be no undue
12 profiting by the retailers either?

13 **A.** Yes, that was their view, yes.

14 **Q.** Yes, and that's what this reference to the difference
15 between cash margin maintenance and percentage margin
16 maintenance is about, isn't it?

17 **A.** Yes.

18 **Q.** The second aspect of the margin point is this, this is
19 headed "Transparency", this paragraph, isn't it?

20 **A.** Yes.

21 **Q.** The most public way -- the reference to transparency is
22 a need for the farmers to be able to see that the prices
23 were increasing?

24 **A.** The price of milk increasing you mean?

25 **Q.** No, the reference to transparency is that -- it's

1 a reference to the farmers being able to see increases
2 in retail prices so they could see that the action was
3 being taken in the market to ensure that they were going
4 to get the 2p per litre?

5 **A.** If retailers hadn't increased retail prices, and the
6 farmers were still getting 2p per litre more for their
7 milk, I think they'd still be quite happy.

8 **Q.** Yes, but that would take a while to filter through,
9 wouldn't it?

10 **LORD CARLILE:** Well, Ms Oldershaw, I see your hesitation.
11 I suppose that, if the farmers had seen that the
12 supermarkets were increasing their prices more than the
13 equivalent of 2p per litre, they'd have been pretty
14 angry about it. Is that the point you're trying to
15 make?

16 **MR MORRIS:** No, it's not.

17 **A.** Yes, I mean if they'd seen it higher then, yes, they
18 would have been angry. But if they'd seen the cheese
19 prices increase by only the equivalent of 1p per litre,
20 I would think they would just keep quiet and take
21 their 2p.

22 **LORD CARLILE:** Yes, that's how I understood her reaction,
23 Mr Morris, and it is at least an available
24 interpretation from the document.

25 Mr Gill would have taken his 2p per litre to his

1 farmers and said, "I've won a great victory" and happily
2 gone home, which is what he did on the evidence.

3 **MISS ROSE:** That was also Mr Reeves' evidence.

4 **LORD CARLILE:** Yes, thank you.

5 Let's go on.

6 **MR MORRIS:** The point I'm making is this, that the blockades
7 were happening, or they were anticipated, we were
8 leading up to Christmas, and a very immediate way for
9 the farmers to see that they were going to be getting
10 their 2p per litre was if they could see a retail price
11 increase in the shops?

12 **A.** No, they'd see it from -- they deal with the suppliers
13 so they would have negotiated their milk price payments
14 with the suppliers. It's not necessarily when they saw
15 it in the supermarket they knew they were going to get
16 it.

17 **Q.** Mr Reeves said when he was asked about this, he was
18 asked:

19 "... [this] would ensure transparency. Farmers
20 could see that the prices were going up."

21 That was the question.

22 Mr Reeves said:

23 "The farmers would see the change in retail price in
24 store. They would then get a schedule from us ...
25 showing that from customer A we've received £200

1 a tonne."

2 What I'm suggesting to you, yes, of course they
3 would eventually see it, but the urgency was alleviated
4 by seeing a retail price increase in the stores?

5 **A.** I don't agree.

6 **Q.** Okay. For the reference to the transcript, that's Day
7 5, page 66.

8 **MISS ROSE:** Sir, again, I'm sorry, but what's been put there
9 is not an accurate reflection of Mr Reeves' evidence and
10 I would ask the Tribunal to look at Day 5 --

11 **MR MORRIS:** Yes, I will read --

12 **LORD CARLILE:** One at a time.

13 **MISS ROSE:** Day 5, pages 81 to 82, where it was put to him:

14 "To ensure the farmers get off your backs you need
15 to see an increase in retail prices for cheese, is that
16 right?"

17 He replied:

18 "No, we don't need to see an increase in the retail
19 prices, we need to see an increase in the price of milk.
20 That's what farmers wanted. They didn't much care what
21 retail prices were, they didn't want retailers to be
22 profiteering, but what they wanted was more for their
23 milk."

24 **LORD CARLILE:** I understood from that evidence that the
25 reality of the situation is that once the price increase

1 at the farmgate has been increased, the farmer gets
2 what's normally known as a milk cheque every month from
3 the first month of the increase, so the farmer knows he
4 or she is getting the extra 2p per litre and that's the
5 evidence the farmer needs. But if I'm wrong, I'm sure
6 it will be put.

7 **MR MORRIS:** Can I move on to what you say about the
8 Dairy Crest briefing document in paragraphs 79 and 80 of
9 your witness statement.

10 **LORD CARLILE:** We'll have a break in about five minutes for
11 ten minutes, or whenever you --

12 **MR MORRIS:** Yes, if I could get to the end of this little
13 section.

14 Can I ask you -- perhaps the best way is for you to
15 read through to yourself paragraphs 79 and 80 of your
16 witness statement and then I'll ask you a couple of
17 questions.

18 (Pause)

19 **A.** I've read 79 and 80.

20 **Q.** I'm going to summarise what is said there and see if you
21 will agree.

22 Your evidence there is that, in the Dairy Crest
23 briefing document, Dairy Crest made inappropriate
24 suggestions about retail prices which you ignored?

25 **A.** It was inappropriate of them to mention retails because

1 it's the retailers' domain, not for suppliers to comment
2 on.

3 **Q.** Your evidence is, in paragraph 79 [Magnum], you
4 recognise that the reference to margins, cash margin,
5 was a reference to retail prices, and you say:

6 "I thought it was inappropriate of Dairy Crest to
7 suggest this."

8 They're not just mentioning it --

9 **A.** In terms it was none of -- that retails were none of
10 their business.

11 **Q.** So your evidence is that they did make suggestions about
12 retail prices but it was inappropriate?

13 **A.** They reference them in the document, yes, as we've seen.

14 **Q.** I'm going to put to you that the fact that you thought
15 they were inappropriate is not relevant because you
16 accept in those paragraphs of your witness statement
17 that Dairy Crest was making suggestions and proposals
18 concerning retail prices?

19 **A.** Sorry, I'm confused by that question.

20 **Q.** All right, I'll put it another way.

21 Leaving to one side the question of whether or not
22 it was appropriate for Dairy Crest to be doing so, the
23 fact is that in the Dairy Crest briefing document
24 Dairy Crest was putting forward a proposal which
25 included suggestions in relation to retail prices?

1 **A.** Yes. They talked about retail prices, yes.

2 **Q.** And you knew that at the time?

3 **A.** Yes, I read the letters "RSP" in the document, it's
4 a reference to retail price.

5 **Q.** Yes.

6 That may be a convenient moment.

7 **LORD CARLILE:** Yes.

8 Ms Oldershaw, we're going to have a ten-minute break
9 again to give the LiveNote team a rest.

10 **A.** Okay, thank you.

11 **MISS ROSE:** Can I ask one question. I would just like to
12 know whether Ms Oldershaw is feeling tired, how she's
13 feeling given the lateness of the hour, and is she all
14 right.

15 **LORD CARLILE:** That's a fair question.

16 It's 9.30 now in New Zealand. How are you feeling?
17 Are you all right?

18 **A.** Probably okay after a break.

19 **LORD CARLILE:** We'll have a quarter of an hour to give you
20 the opportunity to have a glass of water, make a phone
21 call if you want to, but don't discuss your evidence
22 with anyone.

23 **A.** No, I won't. Thank you.

24 **LORD CARLILE:** Thank you.

25 (10.32 am)

1 (A short break)

2 (10.47 am)

3 **MR MORRIS:** I'm going to move on from the Dairy Crest
4 briefing document now.

5 I'm checking that you're hearing me because of the
6 delay.

7 **A.** Okay.

8 **Q.** That was 23 September and, following 23 September, you
9 then had a number of meetings with Dairy Crest?

10 **A.** Yes.

11 **Q.** The purpose of those meetings was to work out the detail
12 of implementing the £200 per tonne cost price increase?

13 **A.** Eventually, yes, and it was a delaying tactic really to
14 drag it out as long as possible.

15 **Q.** Can you remember roughly how many meetings you had in
16 this period?

17 **A.** No, I can't, sorry.

18 **Q.** Was most of your contact by meeting or by phone?

19 **A.** The majority of contact would have been by phone.

20 **Q.** Can you recall yourself attending any meetings with
21 Mr Beaumont of Dairy Crest?

22 **A.** Not that I can recall.

23 **Q.** There were also, at the same time, contacts and
24 discussions between Tesco and Dairy Crest at other
25 levels of seniority; other than you talking to

1 Mr Arthey, there were other contacts at different
2 levels --

3 **A.** Most probably.

4 **Q.** Yes.

5 **A.** Most probably.

6 **Q.** And you would not necessarily have been involved in all
7 those contacts?

8 **A.** No, not necessarily.

9 **Q.** So you wouldn't be aware of whether Mr Scouler met with
10 Mr Allen of Dairy Crest and Mr Beaumont on 25 September?

11 **A.** No.

12 **Q.** Can I ask you a couple more questions about cash margin
13 maintenance and percentage margin maintenance.

14 Your normal practice when making a retail price
15 increase consequent upon a cost price increase would be
16 to maintain your percentage margin?

17 **A.** Yes.

18 **Q.** And maintaining cash margin only meant that your
19 percentage margin on that particular product would
20 decline?

21 **A.** Yes, correct.

22 **Q.** So the suggestion made by Dairy Crest in the Dairy Crest
23 briefing document, and in relation to the £200 per tonne
24 cost price increase, that you and other retailers should
25 maintain cash margin only was an unusual suggestion?

1 **A.** I didn't really discuss retail positioning with
2 suppliers so I suppose it was unusual that they were
3 mentioning it, yes.

4 **Q.** Yes. And it applied -- the suggestion applied to all
5 cheese lines, the cash margin suggestion?

6 **A.** Fine.

7 **Q.** And that would have been a concern for you as far as
8 your percentage margin KPI was concerned?

9 **A.** Which is why I always aimed for percentage margin.

10 **Q.** Yes. What I'm suggesting to you is that -- and you
11 properly and fairly pointed out earlier, and also in
12 answer to questions, that your KPI was about the average
13 across the board?

14 **A.** Yes.

15 **Q.** If you had only increased by cash margin, to maintain
16 cash margin, across all the products, that would have
17 affected your average percentage margin across all
18 lines?

19 **A.** Yes, it would have done, yes.

20 **Q.** I'm going to look at some documents now. In
21 paragraphs 84 to 91 [Magnum], and don't go there at the
22 moment, you comment upon three particular documents
23 recording events which you were not directly involved
24 in. You can see that from the heading "The Asda and
25 Dairy Crest meeting note dated 27 September", and that's

1 the first of those documents.

2 Perhaps at this stage we can have open your witness
3 statement at around 85 and 86 [Magnum], and at the same
4 time we can have a look at document 32 in bundle 1 of
5 the document bundles which is the yellow spine [Magnum].

6 **A.** Does it say "Industry Pricing - Proposed Action Plan"?

7 **Q.** That's the one, and perhaps in line with previous
8 practice you might want to take a moment just to read
9 that document. If I can help you and remind you, this
10 is recording a meeting between Dairy Crest and Asda on
11 27 September 2002.

12 (Pause)

13 **A.** Okay.

14 **Q.** Thank you. The particular passage I wish to draw your
15 attention to is about, well, near the bottom of the page
16 "Mechanics - Cheese". You'll see:

17 "Latest position is that JS/Tesco have agreed to
18 move all sectors."

19 In your witness statement at paragraph 85 [Magnum],
20 you say, this is the first sentence:

21 "Exhibit LO/1, tab 13 [which is this same document]
22 notes 'Latest position is that JS/Tesco have agreed to
23 move all sectors', from which the OFT concludes that
24 Tesco have told Dairy Crest on or before 27 September
25 that it would raise retail prices."

1 Then you say:

2 "That is not correct."

3 So your evidence is that despite the clear terms of
4 that email, by that date Tesco had not told Dairy Crest
5 that it would raise retail prices?

6 **A.** Not by 27 September, I hadn't told -- communicated with
7 any supplier about cost or retail prices.

8 **Q.** Yes, but that's the point. The point is that, in fact,
9 what you mean by your evidence is that you personally
10 had not told anybody by 27 September?

11 **A.** I was the one responsible for changing costs and retail
12 prices on cheese and, no, I hadn't told anybody by that
13 date.

14 **Q.** But you cannot be sure that there was no approach from
15 someone at Dairy Crest to one of your colleagues before
16 that date?

17 **A.** No, I can't, but then my colleagues don't have direct
18 responsibility for costs and retail pricing on cheese.

19 **Q.** We know, don't we, that Colin Beaumont states that he
20 had a discussion with your boss, Rob Hirst, on Friday,
21 the 20th?

22 **A.** Yes.

23 **Q.** We also can see from that same document that it looks as
24 though -- this is document 1/25, perhaps you would just
25 like to flick back, in the email?

1 **A.** 125?

2 **Q.** Sorry, it's my terminology, it's tab 25. I shouldn't
3 keep saying 1/25 because I'm distinguishing between the
4 two bundles.

5 The document bundle that you have in front of you,
6 the yellow, it's tab 25 [Magnum].

7 **A.** Yes, I've got the email.

8 **Q.** We see at the end of that:

9 "I will contact you tomorrow... to discuss any
10 questions which you may have."

11 So we can see that it looks as though there was
12 a discussion between Mr Beaumont and Mr Hirst on
13 24 September?

14 **A.** Yes, from this email.

15 **Q.** You cannot say that there had been no agreement in
16 principle by those more senior to you that Tesco was
17 going to move all sectors?

18 **A.** No, I can't, because I wasn't privy to all the meetings.

19 **Q.** In fact, you had already agreed that by 23 September
20 Rob Hirst had told you that, in principle, there was
21 going to be a cost price increase?

22 **A.** Yes.

23 **Q.** Okay. If we go back to document 32 [Magnum], in the
24 middle of that document you will see -- if you could
25 just bear with me -- you will see it says:

1 "It is proposed that the cheese sector moves on the
2 20th October."

3 You say that that is a reference to cost price
4 increases only, is that right?

5 **A.** Well, if it's from a supplier to a retailer, in my book,
6 it's about cost prices, yes.

7 **Q.** Okay. If we then read the next sentence:

8 "Catch will be needed in the middle ground accounts
9 and the management of labels ... will need closely
10 monitoring."

11 Management of labels and stocks would only have to
12 be done if retail prices were being considered; that's
13 right, isn't it?

14 **A.** Yes, that's right, yes.

15 **Q.** This is a reference to the issue arising on random
16 weight products where the retail price is put on the
17 labels by the processor?

18 **A.** Sorry, I missed that question.

19 **Q.** The reference there to management -- you just agreed
20 that the management of labels and stocks would only have
21 to be done if retail prices were being considered. What
22 I then put to you is that that is referring to the issue
23 that arises on random weight products when there is
24 a price increase because in that circumstance the retail
25 price is put on the label by the processor and the

1 processor needs to be notified of that change?

2 **A.** Any price change, yes, up or down.

3 **Q.** If the cheese sector moves which are being referred to
4 in this section of this document was confined only to
5 cost price increases, there would simply be no need to
6 consider any issue about managing labels and stocks,
7 would there?

8 **A.** Presumably not but, again, I'm not the author of the
9 document so I don't know what was going through this
10 person's mind as he was writing or she was writing the
11 email.

12 **Q.** No, but that didn't stop you from offering your view
13 about that sentence, "cheese sector moved", in
14 paragraph 86 of your witness statement.

15 In paragraph 86 of your witness statement [Magnum]
16 you say, the first sentence:

17 "... indicates that Dairy Crest was proposing that
18 the cheese sector moved, by which I understand that
19 Dairy Crest hoped the cost price increase would take
20 effect from that date."

21 What I'm suggesting to you is that it is clear from
22 that document that what is being referred to is a retail
23 price move as well as a cost price move, because of the
24 reference to the --

25 **A.** Because that's what suppliers have always seen, a cost

1 price and a retail price move.

2 **Q.** Yes, and all I'm suggesting to you is that the reference
3 to management of labels and stocks makes it clear that
4 the move that was being considered would include
5 a retail price move as well as a cost price move?

6 **A.** Which we've already agreed, yes.

7 **Q.** Can I then take you to the document before which is
8 document 1/31 -- sorry, tab 31 [Magnum]. I must delete
9 all the 1s from my notes, I'll do that at the next
10 adjournment.

11 This is a document, just so that you know where
12 we're going, that you comment upon at paragraph 89 of
13 your witness statement [Magnum]. This is a document
14 which you've seen before. If you would like to take
15 a moment just to cast your eye over it, just to refresh
16 your memory.

17 (Pause)

18 I wouldn't suggest you read over the page, the first
19 page is probably ample.

20 **A.** Okay.

21 **Q.** What we're really looking at is the sentence -- this is
22 an internal document from Glanbia. Colin Stump, who was
23 the chief executive of Glanbia, was making a note and he
24 was recording developments in the initiative. You will
25 see that he refers to a move in retail cheese prices.

1 Then he says, this is before you get to the box
2 section:

3 "DFB called to say Tesco would move if Asda moved."

4 At paragraph 89 of your witness statement [Magnum],
5 you say:

6 "I believe that this comment was simply speculation
7 by DFB."

8 **A.** Yes, I do.

9 **Q.** The reason you give for that evidence is that you
10 personally had not made any decisions or communicated
11 with the suppliers, nor with DFB?

12 **A.** I didn't know DFB, and if this comes from Glanbia,
13 I never dealt with Glanbia. So I ...

14 **Q.** But, again, you have no idea what others might have been
15 saying to DFB at the time, do you?

16 **A.** No.

17 **Q.** So your evidence cannot be -- all your evidence is that
18 you haven't said anything?

19 **A.** Correct. I can only account for myself, yes.

20 **Q.** If we then go to a document two over at tab 33 [Magnum],
21 this is Colin Stump's second note, this is two days
22 later. If perhaps I could ask you to read paragraph 2
23 which is records a conversation that Colin Stump had had
24 with Alastair Irvine:

25 "I had a further lengthy discussion..."

1 (Pause)

2 **A.** Sorry, yes.

3 **Q.** This records, in the second line, that Mr Irvine has
4 told Mr Stump that "Tesco will go if one other major
5 player moves".

6 At paragraph 90 of your witness statement, the first
7 paragraph on page 30 [Magnum], about six lines down, you
8 say:

9 "I believe that this comment is bravado and
10 guesswork by McLelland."

11 That's your evidence?

12 **A.** Yes.

13 **Q.** The reason you give for that statement is that you
14 personally had not given McLelland any indications as to
15 whether you would accept cost price increases?

16 **A.** That's correct, yes.

17 **Q.** Because in your witness statement, you see, the sentence
18 above:

19 "I had not given McLelland any indication as to
20 whether I would accept a cost price increase or under
21 what circumstances, as can be seen from the document.
22 I had also made no decisions about cheese retail
23 prices."

24 **A.** Yes, "I" as a cheese buyer, yes.

25 **Q.** But you have no idea at all what others might have been

1 saying at the time to Mr Irvine or anyone else at
2 McLelland?

3 **A.** No.

4 **Q.** Someone else at Tesco might have been speaking to
5 McLelland at that time?

6 **A.** Possibly, yes. But no one else at Tesco was responsible
7 for changing costs and retail on cheese.

8 **Q.** On a detailed level, but as a matter of a statement of
9 policy as to what Tesco were minded to do, those other
10 people would certainly be in a position to say that?

11 **A.** Most probably, yes.

12 **Q.** Amongst the people who may have been talking to
13 McLelland at the time were Mr Scouler and Mr Hirst?

14 **A.** Potentially, yes.

15 **Q.** We know that there was the Dairy Supply Group meeting on
16 13 September at which Mr Hirst and Mr Scouler led for
17 Tesco? That's right, isn't it?

18 **A.** Yes.

19 **Q.** We know that Mr Ferguson and Mr McGregor attended that
20 meeting, of McLellands?

21 **A.** I don't know the other attendees.

22 **Q.** Yes. Then at paragraph 90 [Magnum] you say -- you
23 suggest, and this is at the end of paragraph 90, that
24 because McLelland knew about Tesco's basket policy,
25 McLelland would have known that if another major

1 retailer raised its prices, you would probably decide to
2 raise your retail prices?

3 **A.** Yes, that's what I say, yes.

4 **Q.** But the fact is the basket policy wasn't concerned with
5 Tesco's prices being lower than those of its
6 competitors; it was concerned with Tesco's prices being
7 higher than those competitors?

8 **A.** No, but I was concerned with my KPIs, to make as much
9 percentage margin as possible. So if I had a chance to
10 raise a retail by staying in line with the policy, then
11 I would maybe take it.

12 **Q.** But raising your retails was not staying in line with
13 your policy?

14 **A.** It was not going outside the policy.

15 **Q.** No, but the point is, I put to you, that McLelland's
16 knowledge about your price basket policy told them
17 nothing about what Tesco would do if another retailer
18 raised its prices?

19 **A.** I think they've been in the industry long enough in the
20 retail market to know what would happen.

21 **Q.** Can we turn now to the period from 27 September. In the
22 period from 27 September to 11 October, which was
23 a Friday, you continued your busy negotiations about the
24 £200 per tonne proposal with Dairy Crest and other
25 processors?

1 **A.** Yes.

2 **Q.** So we're now moving from the 27th.

3 I would suggest to you that by 1 October, we've
4 looked at Dairy Crest, but I would suggest that by
5 1 October, contacts and discussions with McLelland had
6 also started at that point in time?

7 **A.** I can't really recall an exact date.

8 **Q.** If you go to document 34 [Magnum], this is a letter that
9 you may not have looked at before because it's not sent
10 to you. It's from Tom Ferguson and it's to
11 Sarah Mackenzie at Sainsbury's, who I imagine was your
12 equivalent at Sainsbury's. What it says is:

13 "Following on from our discussions I have attached
14 the price increases on cheese that will result from the
15 recent market movements on milk pricing. It is our
16 intention to pass this increase on milk through to our
17 suppliers, and we will work with you to ensure there is
18 transparency in this process. We intend to move the
19 cost... across the board for the reasons we discussed.

20 "We will action this during October and will work on
21 agreeing a date with you."

22 In order perhaps to cut it short, what I'm going to
23 suggest to you is that you would have received a similar
24 letter at the same time?

25 **A.** Potentially but I can't confirm. I can't remember if I

1 did or not.

2 **Q.** I can say to you that Mr Ferguson in his evidence, when
3 he was taken to this letter, did say that he sent all
4 the retailers a similar letter at that time. You've
5 got --

6 **A.** Well, then I would have received it.

7 **Q.** Thank you.

8 We then move on to the week commencing 14 October
9 and in that week you discussed in more detail the way in
10 which the £200 per tonne increase was going to work and
11 how Tesco was going to participate. Is that a fair
12 summary? Perhaps I need to take you to the documents in
13 a moment, you might need refreshing.

14 **A.** Yes, please.

15 **Q.** Yes. You were involved in discussions with Dairy Crest
16 and Mr Arthey, we see that from document 51 [Magnum].
17 Document 51 is an email. At this stage you're beginning
18 to get detailed suggested prices, that's right, isn't
19 it? If you look at the email and then you go over the
20 page, you'll see some spreadsheets with suggested
21 prices?

22 **A.** The prices are -- what I asked the suppliers to do is
23 run a formulaic spreadsheet to apply -- to show me, to
24 save me some time, what the price would look like if
25 I cash margin maintained based on the current retail,

1 and what the margin -- the retail price would look like
2 if I percentage margin maintained. That's what Neil
3 sent me here.

4 **Q.** Yes, and that was on the 18th, which was the Wednesday.

5 **A.** Yes.

6 **Q.** Sorry, the 18th was the Friday, I apologise. You would
7 have been having discussions with him a few days
8 previously to that, you would have asked him for this?

9 **A.** Yes. Probably, yes.

10 **Q.** You were also having discussions in the course of that
11 week with McLelland and Mr Ferguson?

12 **A.** Probably. Quite possibly.

13 **Q.** Yes. In the same week Dairy Crest, McLelland and
14 Glanbia were holding discussions with other retailers
15 about the £200 per tonne proposal?

16 **A.** If you tell me, yes.

17 **Q.** You would have been aware of that at the time, would
18 you?

19 **A.** It wouldn't be something I was conscious about, no.
20 I probably wouldn't have -- I would be that busy
21 I wasn't thinking about who else had meetings anywhere
22 else. I was concentrating on my -- all the work I had
23 to do. So I don't know if they had meetings or not.

24 **Q.** I can understand that but, since we know that this
25 proposal was for an industry-wide -- and it had gone to

1 other retailers, the likelihood -- well, we know that it
2 happened. I would suggest that you would have been
3 aware that similar discussions were going on with other
4 retailers at the same time?

5 I'll perhaps put the question again. I'm suggesting
6 to you that at the time you knew that McLelland and
7 Dairy Crest were having similar discussions about this
8 £200 per tonne cost increase with other retailers?

9 **A.** At the time I was busy negotiating with my suppliers,
10 managing hundreds of cheese lines for my retailers and my
11 costs. I had better things to worry about than where my
12 suppliers were going outside their meetings with me.
13 I can't confirm what my thoughts were about their
14 meetings at that time.

15 **Q.** Are you suggesting that you weren't aware or that you
16 were aware that those discussions were going on?

17 **A.** I knew there were discussions with all retailers to pay
18 more for cheese. I don't know whether that week was
19 full of meetings for McLellands and Dairy Crest.
20 Generally, yes, I knew that all retailers were being
21 asked for a cost price increase. I certainly don't know
22 everybody's meeting schedule.

23 **Q.** Yes, and you knew because it was an industry-wide
24 proposal for £200 per tonne cost price increase?

25 **A.** Yes.

1 **Q.** Can I just summarise the contents of your discussion
2 with Mr Ferguson during this week. I'll put the
3 propositions to you and then we'll look at the document.

4 In your discussions with Mr Ferguson, he told you
5 that other retailers were confirming that they were
6 going to raise prices to protect cash margin rather than
7 percentage margin, is that right?

8 **A.** Can you show me the email to refresh, please?

9 **Q.** I'll do that in a moment. If you perhaps go to document
10 52 [Magnum], perhaps take a second to read that. That's
11 an email of 21 October 2002, so that's the following
12 Monday.

13 **LORD CARLILE:** I think perhaps Ms Oldershaw should read that
14 to herself and then you should put the question again.

15 **MR MORRIS:** Yes.

16 (Pause)

17 **A.** Okay.

18 **Q.** The question was that, in your discussions in the
19 previous week with Mr Ferguson, he told you that other
20 retailers were confirming that they would raise prices
21 to protect cash margin rather than percentage margin?

22 **A.** Yes, that's what he's put here, yes. That's what he's
23 put in this email.

24 **Q.** Yes, and you've no reason to suggest that that's not an
25 accurate record of what you had been discussing with him

1 the previous week?

2 **A.** I don't ever recall talking about other retailers,
3 whether they were going cash or percentage. I knew what
4 I needed to do to maintain my KPIs and deliver on my
5 KPIs.

6 **Q.** So you don't accept that you did discuss, in the course
7 of that week -- well, let's go back a little bit. Do
8 you accept that there was a discussion between you and
9 Mr Ferguson in that last week, the previous week?

10 **A.** I would have spoken to him. I don't know about
11 a discussion, I can't recall the details but, yes,
12 I would have spoken to him. I was speaking to the
13 suppliers a lot at this time.

14 **Q.** My next question then is, do you accept that in the
15 course of speaking, he told you that others were saying
16 that they were going to protect cash margin on this
17 occasion but not percentage margin?

18 **A.** As he's reiterated it here, I would have expected that's
19 the point he put across, yes.

20 **MR MORRIS:** Just forgive me a moment.

21 **LORD CARLILE:** Yes, fine.

22 **MR MORRIS:** That indication about whether others were going
23 to go with cash margin maintenance or percentage margin
24 maintenance was very relevant information from your
25 point of view, wasn't it?

1 **A.** Relevant in terms of what?

2 **Q.** Your decision -- you were being -- we know at this time,
3 you've just said, that Mr Arthey was giving you the
4 options of cash and percentage, seeing what the two
5 looked like. That's right, isn't it?

6 **A.** Yes, the spreadsheet he ran for me gave me a view of
7 what retail prices would look like at both points, yes.

8 **Q.** And you presumably had a decision to make as to which
9 you would go with?

10 **A.** I didn't just adopt one formulaic calculation, I needed
11 to bring a lot of things into play: my KPIs, whether the
12 price points looked right, whether I had the hierarchy
13 in there. So it wasn't case of saying I'm going to go
14 for cash margin or I'm going to go for percentage
15 margin, it was a basis for then to tweak all of my
16 retails.

17 **Q.** Yes, I've seen that you've obviously put that in your
18 witness statement and I'm not seeking to contradict you,
19 but it is the case, as I think you accepted a few
20 moments ago, that if you only went by -- I'll put it
21 again.

22 The cash margin maintenance was unusual?

23 **A.** For me, yes.

24 **Q.** It was a big decision for you as to whether you went
25 with cash margin maintenance as requested by Dairy Crest

1 or not?

2 **A.** What I did in terms of retail pricing based on the cost
3 price increase, you're quite correct, it was a huge
4 decision and had huge implications and, therefore,
5 I would never take any supplier's say-so on what they
6 thought I should do. I had to make my best judgment
7 based on what I had to personally achieve for Tesco.

8 **Q.** Yes.

9 **A.** In terms of my KPIs.

10 **Q.** We'll come to that in a minute.

11 **A.** So I wasn't going to go on supplier's opinion as
12 a dictate as to what I should do.

13 **Q.** But nevertheless, if you knew for sure that all other
14 retailers were all going to raise by cash margin
15 maintenance alone, all of them, that's across the board,
16 that would be very relevant information for your
17 decision as to what you were going to do?

18 **A.** Not really, because what would it matter if I went for
19 percentage margin maintenance or higher, and tested the
20 market for a couple of weeks to see if other retailers
21 thought, oh, Tesco are this amount higher, we'll raise
22 our prices? I had that flexibility in the basket.

23 **Q.** You're suggesting, are you, that it didn't matter what
24 the others were going to do, that you, let's say, wanted
25 to go percentage margin maintenance on everything, you

1 knew that everybody else was going to go cash margin
2 maintenance, and you would raise your prices to be out
3 of line across the board for two weeks, that was an
4 option, was it?

5 **A.** It was an option, yes.

6 **Q.** It was? And if you'd done that, what would have
7 happened? If nobody else had moved?

8 **A.** Then I would have had to move my prices back to be
9 competitive within the market and in compliance with the
10 basket policy after the two-week period.

11 **Q.** But by that time you'd already accepted the cost price
12 increase from all your processors?

13 **A.** Yes.

14 **Q.** How would that have looked? You would have come down
15 and taken an enormous hit on your margins?

16 **A.** Yes but, as I explained before, there's more money
17 available than just the cost/retail price relationship.
18 This is where that money would have been used to prop it
19 up, or we would have gone through John Scouler and the
20 main board and asked for some margin relief. There are
21 various ways of going about it.

22 If Tesco had committed to the £200 per tonne, then
23 that's what we had to put through eventually, whatever
24 the retail prices would have settled at. We would
25 have -- my job as a buyer was then to manage that margin

1 by whatever --

2 Q. I'm trying to understand this. You would have gone to
3 the processors, in respect of all of whom you had just
4 accepted a £200 per tonne cost increase?

5 A. Yes.

6 Q. And said, "Sorry chaps, change of mind, I am --"

7 A. No, not at all. I'd have never gone back on the cost.
8 If you accept a cost price increase, that's fine, you
9 would never go back on it. But what I'm saying is there
10 were other monies coming in to my cheese category to
11 help bridge any gaps in percentage margin lost from
12 price investment.

13 Q. Where were those other monies coming from?

14 A. As I explained before, there are various volume rebates,
15 negotiations on various tenders. I used to buy bulk
16 cheese from all around the world and make substantial
17 amounts of money. There were various places and it's
18 all in the buy for less plan that I put together at the
19 beginning of the year.

20 Q. Yes.

21 A. So I knew we would be under price pressure. Obviously
22 I didn't foresee the £200 per tonne, but every year you
23 would make a plan for different monies to come in each
24 month to help prop up either my category or sometimes,
25 if I was doing fine, it would go to John Scouler's total

1 category.

2 **Q.** So you're not suggesting that these other means of
3 recouping were going to come from the processors?

4 **A.** They do -- a lot of them do come from the processors but
5 it's not -- it's things like taking costs out of their
6 business. It wouldn't be going back on the cost price
7 increase for milk, it would be looking at other
8 initiatives to --

9 **Q.** So you're suggesting that, in this scenario, you would
10 go back to the processors and say, "I've accepted your
11 £200 per tonne cost price increase, are there other ways
12 that we can make up the difference?"

13 **A.** These are the conversations we would have every year
14 when we set the business plan, as we talked about
15 before. So it wouldn't just be reactionary, we would be
16 proactive. So we would be talking to suppliers about
17 how we could take costs out of the business, what would
18 make things more efficient so we could get the volume
19 rebates, you know, do we need to range cheese more
20 widely so they get more volume and we get more rebate?
21 So it wasn't a knee-jerk reaction, this is preplanned at
22 the beginning of every year.

23 **Q.** So these monies you're talking about now are already in
24 the system, they're already in the annual plan?

25 **A.** Yes, a lot of them, yes.

1 **Q.** So you've worked out where your position is, including
2 those monies, before we get to the £200 per tonne cost
3 price increase, is that right?

4 **A.** Yes, so I would work out what my deficit might be if
5 I went for cash margin maintenance and how much money
6 I had in the wider pot. This all came into play. This
7 was my job.

8 **Q.** In the decision you take, at the time that you accept
9 the cost price increase of £200 per tonne, you've
10 already factored in these other monies? I'm trying to
11 understand how this gets you out of jail, if I can put
12 it that way. I'm trying to understand, in the scenario
13 we're talking about, where you go above everybody else
14 and you realise you have to come back down, where you're
15 going to make the difference up. Either you're talking
16 about money that's already budgeted for, in which case
17 it doesn't help you; or you're talking about some other
18 form of alleviation after you come back down again. Now
19 which of those two is it?

20 **A.** It's a combination of both. And at the end of the day,
21 yes, my ultimate objective is to hit percentage margin.
22 You know, buyers did miss and luckily enough I didn't
23 miss. I still delivered after this £200 per tonne cost
24 increase but, you know, I could have missed margin.

25 **Q.** What I'm suggesting to you is that there was no way that

1 if you'd just accepted that you would not go back and
2 seek to renegotiate with the processors, very fairly
3 said by you that you wouldn't do that --

4 **A.** Yes.

5 **Q.** What I'm suggesting to you, if you went back to the
6 processors and said "I'm going to stick with the £200
7 per tonne cost increase but I'm having to come back
8 down, I'm taking a big hit on my margins as a result,
9 because the difference is 200, can you give me some
10 other alleviation"? The processors would have said,
11 "Hang on a minute, that's going to eat into our
12 2p per litre that we have to pay back to the farmers"?

13 **A.** Not if they look at their value chain. There are other
14 ways of taking money out of businesses. For example,
15 a supplier may deliver to our depot seven days a week.
16 We might come up with an agreement where they only
17 deliver to us three days a week, it cuts down their
18 transport costs. Payment terms are another thing we
19 negotiated, different payment terms, free up cash within
20 businesses. There are a whole array of negotiation
21 tools that a buyer can use to make a supplier more
22 profitable so that they can reduce their cost prices.

23 **Q.** One can see that perhaps on individual lines with
24 individual suppliers that you're negotiating
25 individually, but this situation was completely

1 different. Here we are talking about £200 per tonne on
2 every line of cheese that, in this hypothetical scenario
3 I'm discussing with you, you have accepted to pay. That
4 is a cost of millions for you, isn't it?

5 **A.** Yes.

6 **Q.** I'm suggesting to you that this idea that you could
7 alleviate that by changing your terms of payment or
8 other elements of cost adjustment is actually not
9 credible?

10 **A.** It's not an idea, it's actually what happens in the
11 buying world. It is our buy for less plan. There are
12 millions, millions and millions of pounds come back into
13 the category as income from other streams through some
14 of the things I've just explained to you. Yes,
15 potentially, if I didn't increase retails at all, it
16 potentially wouldn't have bridged the whole gap but it
17 would have gone some way to bridging it.

18 **Q.** But that was already in the system, wasn't it? The buy
19 for less plan was the annual plan?

20 **A.** But it's not already -- what do you mean by already in
21 the system? Can you clarify please?

22 **Q.** When you do your calculations, when you get to middle of
23 October 2002 and you're doing your calculations as to
24 what you can and can't afford, when you then -- you've
25 got all your budget presumably for the year in your

1 plan, you then immediately, on top of that, you have
2 £200 per tonne on all your cheese to be refactored into
3 your plan? That's right, isn't it? So all the --

4 **A.** Yes, but you've got deals landing every month and these
5 deals are annualised through the year.

6 **Q.** Can I just go back to what you were discussing with
7 Mr Ferguson. That's document 52, is the reminder,
8 because document 52 is in fact what you received from
9 him the following Monday [Magnum]. I'm trying to talk
10 about your discussions.

11 I'm going to suggest to you that another thing that
12 Mr Ferguson told you about was that he told you that
13 others, in particular Sainsbury's, would move other
14 cheeses on 4 November for pre-pack and 11 November for
15 deli.

16 **A.** I read that as he's confirming the dates I've given him:

17 "We will need to discuss this as time develops...

18 "The timescales are as we proposed.

19 "... 4th of November ... and the 11th
20 of November..."

21 I read that as that refers to the Tesco changes, not
22 all the retailers.

23 **Q.** If you would turn back to 47 [Magnum], perhaps you would
24 like to take a moment to read that document too. This
25 is an internal email from Mr Ferguson to Mr McGregor

1 reporting what Sarah Mackenzie had told him.

2 (Pause)

3 **A.** Okay.

4 **Q.** What we see from that, we can see that he had been told
5 three things. He had been told that Seriously Strong
6 pre-pack -- this is Sainsbury's Seriously Strong
7 pre-pack -- would move costs and retails on the 21st,
8 Sainsbury own label and pre-pack brands would move on
9 the 4th and deli would move on the 11th.

10 So we know that, by the time he spoke to you let's
11 say on 17th or 18th in that week, he had that
12 information about Sainsbury's proposals or plans?

13 **A.** Yes, that would seem to be true, yes.

14 **Q.** At that stage, when you had the discussion, he along
15 with other processors was desperately keen to achieve
16 the across-the-board price increases, weren't they?

17 **A.** Yes, they were, yes.

18 **Q.** That was because they wanted to get the farmers off
19 their backs?

20 **A.** Yes.

21 **Q.** They were putting you under pressure and trying to get
22 you to agree to these increases in waves at different
23 dates?

24 **A.** I created a staggered plan for Tesco because I couldn't
25 manage the whole price change on one day, and this is

1 where I believe these dates come. Yes, they are the
2 same as in that email, but these dates come from my
3 staggered plan.

4 **Q.** Can I go back to the question I asked you. The question
5 was simply this, the processors, including Mr Ferguson
6 and McLelland, were putting you under pressure to try to
7 get you to agree to these increases?

8 **A.** Yes.

9 **Q.** We know that he had this information about Sainsbury's,
10 you've agreed that he did?

11 **A.** Yes, from that email, yes.

12 **Q.** He had, therefore, every reason to pass on to you all
13 the information which was by then in his possession?

14 **A.** I believe this is our agreement, mine -- Tesco and
15 McLelland's agreement on dates to move.

16 **Q.** I'll come back if I may to that sentence in a moment and
17 ask you about that particular issue about whose dates
18 they were, but I just want to ask you a more general
19 question.

20 You have accepted, first of all, that he had this
21 information about Sainsbury's -- I call them wave dates
22 because in some of the documents these increases at
23 different times are referred to as waves. You may or
24 may not have used that term at the time and I hope
25 you'll allow me to use them just as a shorthand. But

1 when I talk about the word "waves", I'm talking about
2 Sainsbury's first move was around the 21st/22nd, then
3 there was a move on the 4th, then the 11th, then the
4 18th, and we'll come to that in a moment. So when I use
5 the word "waves" I'm talking about different cheeses or
6 categories moving at different weeks.

7 You have accepted that he had the information about
8 Sainsbury's waves at that time that you spoke in that
9 week. What I'm suggesting to you is that he had every
10 reason to pass on to you that information?

11 **A.** And what would his reason be?

12 **Q.** I'll give you my answer if you answer my question.

13 **LORD CARLILE:** Do we need much more than that he did pass on
14 the information?

15 **MR MORRIS:** Well, I can suggest to the witness that he did
16 pass it on. I think the witness is -- I'll put that.

17 Do you accept that in your conversation he passed
18 that information on to you?

19 **A.** About 4 and 11 November?

20 **Q.** About Sainsbury's waves. If you go back --

21 **A.** No, the dates -- I'm maintaining that the dates here are
22 the dates Tom and I had discussed for the Tesco moves.

23 **Q.** I understand that.

24 **A.** The 4th and the 11th.

25 **Q.** I understand that. If you go back to document 47

1 [Magnum] --

2 **A.** Yes, the dates are the same.

3 **Q.** Yes, and I'm suggesting to you, regardless of -- I'll
4 come back to 52 in a moment. I'm suggesting to you that
5 in the conversation you had with him, as well as him
6 telling you about other retailers maintaining cash
7 margin, he told you that Sainsbury's were going to move
8 pre-pack on the 4th and deli on the 11th?

9 **A.** I can't confirm that, because I believe that the dates
10 in here are the dates I discussed with Tom Ferguson of
11 McLellands for the moves on Tesco pre-pack and Tesco
12 deli lines.

13 **Q.** So you're saying that he didn't tell you?

14 **LORD CARLILE:** I don't think she is saying that, Mr Morris.

15 It's quite plain that the document at page (sic) 52
16 wasn't written by Tacitus, by a grammatical expert,
17 because we can see the first sentence of the second
18 paragraph starts with an "Ie", which seems to refer back
19 to the previous paragraph, and it's possible that
20 "Sainsbury are" should start a new paragraph. So both
21 propositions may be right.

22 **MR MORRIS:** I'm not at the moment necessarily asking for the
23 interpretation of those words in the email. I'm asking
24 a question about what was said in the conversation,
25 about whether, given that the witness has accepted that

1 there was a conversation, that cash margin maintenance
2 was referred to in that conversation, I'm asking -- and
3 given that the witness has also accepted that
4 Tom Ferguson, by the time of that conversation, knew
5 what was in document 47, whether or not she recalls
6 whether Tom Ferguson mentioned Sainsbury's waves on the
7 4th and the 11th. I think there are three answers --

8 **A.** I don't recall, no.

9 **Q.** You don't recall.

10 Let's look at the point about 52 now, if I may
11 [Magnum]. Your evidence now is that these are Tesco's
12 proposed waves of the 4th and the 11th?

13 **A.** Yes, that's what I believe it to be, yes.

14 **Q.** Is this McLelland's proposal for Tesco's planned moves
15 or your proposal for your planned moves?

16 **A.** It would be my proposal for the Tesco cheese category
17 moves.

18 **Q.** Could you look at the appeal bundle, this is pink
19 bundle 4, before we open it. Can I ask you to open it
20 in a moment -- I'll take you to the document in
21 a moment.

22 What I'm going to put to you is that this
23 explanation, that this is Tesco's -- in the response to
24 the statement of objections you were not as clear as
25 your recollection now is. If you go to tab T of

1 document -- of bundle 4, this is the response to the
2 statement of objections, and I want to go to page 122.
3 I don't know if you've got it, it's paragraph 5.71
4 [Magnum].

5 Now, this is a paragraph that you have verified as
6 being something within your knowledge in your first
7 witness statement. You say, or it says:

8 "It is unclear whether the reference to 4 November
9 for pre-pack and 11 November for deli relates to
10 information which Tesco had legitimately provided to
11 McLelland about its anticipated move dates or to
12 information which McLelland had in relation to
13 Sainsbury's intentions."

14 So your recollection then, this is in 2007, is that
15 you weren't clear as to which it was. That's right,
16 isn't it?

17 **A.** That's what it says there, yes.

18 **Q.** And that's a paragraph you verified as being correct?

19 **A.** Okay.

20 **Q.** Now you say it doesn't refer to information which
21 McLelland had in relation to Sainsbury's intentions, so
22 your evidence is different now, is it?

23 **A.** It's not different, it's just... I believe it to be the
24 information I communicated to Tom Ferguson.

25 **Q.** Why were you telling Tom Ferguson about your deli

1 prices?

2 **A.** Because he needed to change the cost prices on his
3 system.

4 **Q.** This is a reference to retail prices, isn't it?

5 **A.** Well, Tom wouldn't need to know retail prices on deli.

6 **Q.** Precisely. It is a reference to retail prices, isn't
7 it?

8 **A.** No, not necessarily.

9 **Q.** The whole of the email is talking about retail prices,
10 the email at 52. It's not talking about cost prices.

11 **A.** £200 per tonne recovery refers to cost price.

12 **Q.** Yes, and then we have got:

13 "As we discussed last week, other parties are
14 confirming they will protect cash margin, not
15 percentage..."

16 That's retail. Then the final sentence, it's about
17 retail, and you're suggesting to me that the middle
18 sentence is, for some unexplained reason, just about
19 cost prices?

20 **A.** It's not unexplained. The beginning starts off about
21 cost prices. It's about cost prices and retail prices.
22 Suppliers had to update both in their system.

23 **Q.** Are you now telling the Tribunal that, by this date, you
24 had -- Tesco had made a decision that it was going to
25 move or was considering moving deli on 11 November?

1 **A.** It was probably a date I had in mind but was not
2 definitely confirmed. I can't be any more clear than
3 that.

4 **Q.** I'm going to suggest to you that nowhere in the
5 documents is there any record of a proposal that Tesco
6 was proposing to move deli on 11 November.

7 **A.** Can I refer back and check on my £200 per tonne plan
8 Word document, please? Just as a reference.

9 **Q.** Yes, it's document 64 [Magnum].

10 Just for everybody's benefit, if you pause there,
11 Ms Oldershaw, I'm addressing the Tribunal here for
12 a moment.

13 Document 64, can I just explain for a moment ...

14 **LORD CARLILE:** This is Lisa's own plan.

15 **MR MORRIS:** Yes. You have the first two documents, which is
16 what we call the Word document. If you go to the first
17 page, I'm going to take a moment to explain to everybody
18 so that we're all speaking from the same sheet.

19 **LORD CARLILE:** Are you following this, Ms Oldershaw? We're
20 looking at the document in tab 64, and Mr Morris is just
21 explaining something to us so just listen carefully.

22 **MR MORRIS:** And to you, Ms Oldershaw. It's just so we're
23 all speaking...

24 The first page of that document is the email itself
25 and that shows two attachments to it, doesn't it?

1 I'm just going right to the beginning of tab 64,
2 before you get to the schedules, Ms Oldershaw. If you
3 just go to the front page of the document.

4 What you have then is the email to your husband, or
5 your then to be husband, I think -- could you go back
6 a page to the first page of that tab, is that the email?

7 **A.** Yes.

8 **Q.** That shows two attachments, doesn't it? It shows the
9 Word document and an Excel document, just in the little
10 icons.

11 **A.** Yes.

12 **Q.** Then you go over the page, you have two pages, and
13 that's what I call the Word document, yes?

14 **A.** Yes.

15 **Q.** Just those two pages. Then this is where it gets
16 a little bit confusing. Then we have a series of pages
17 which are spreadsheets, and I hope, following it
18 through, that the first -- before you get to a blue
19 divider sheet, which I hope the Tribunal has now got as
20 well, you get a thing which says "paginated 64 soft copy
21 in colour".

22 Before you get there, you've got about ten pages of
23 print-off, and those ten pages were the original pages
24 inserted into the bundle when the appeal was put in and
25 they show a series of spreadsheets. What has happened

1 (12.14 pm)

2 **MR MORRIS:** I was just trying to explain for the benefit of
3 everybody how document 64 works. If you go to -- we can
4 perhaps miss out the pages before the blue because they
5 are an earlier version. Once the blue tab starts, this
6 is a more accurate representation of what is in the soft
7 document.

8 **LORD CARLILE:** And the pages are numbered?

9 **MR MORRIS:** The pages are numbered, thank you.

10 Pages 1 to 3 is the first tab on the spreadsheet and
11 that is headed by supplier, are you following me?

12 **A.** Yes, I follow you now.

13 **Q.** Then I've got a pink sheet, and this is page 5, this is
14 tab 2, and that is then in landscape and that runs from
15 page 5 to page 13 and that's headed by date, on page 5.

16 Then we get to tab 3 of the spreadsheet, which is at
17 page 15, and that's just headed "Tab 3, sheet 1".

18 That's just one page or two, 15 and 16.

19 I'm trying to talk, Ms Oldershaw, both to the
20 Tribunal and yourself, so if anybody is not following
21 me, please call out.

22 Then we have the next pink sheet and we have tab 4
23 which runs from 17 to 29, and that's cheese price. It
24 may be that, if you wish to, in due course you can
25 explain, but essentially we have -- at the first tab we

1 have a portrait document and then we have three further
2 tabs of landscape document.

3 As I understand it, Ms Oldershaw, after the blue
4 divider, you have the four different subsections divided
5 by the pink, these are the same information organised in
6 a different way, or largely the same information. So
7 tab 1 is by supplier, tab 2 is by date. I'm not sure
8 I fully understand --

9 **A.** Yes.

10 **Q.** But it's basically the same information off the same
11 spreadsheet organised in a different way?

12 **A.** Yes.

13 **Q.** I'm very grateful.

14 **MISS ROSE:** Can I just add, sir, just for the sake of
15 clarity, that the document in this form is not a hard
16 copy that existed at the time but, as I understand it,
17 has been extracted by the OFT within the last couple of
18 weeks from the Excel spreadsheet on the computer, but
19 this is not a hard copy document that belonged to
20 Ms Oldershaw.

21 **MR MORRIS:** Certainly, if I can add by way of clarification,
22 we do not know whether the document that comes before
23 the blue, which was the one that Tesco put in the
24 bundle, was also a hard copy which existed at the time.
25 Perhaps you can clarify that in due course.

1 All we did is, because we believe that the pages
2 before the blue are not complete, and because we weren't
3 sure they were in the right order, that we actually
4 asked for the soft copy from Freshfields, and
5 Freshfields very kindly provided it to us and we have
6 then printed it off. No doubt Freshfields can clarify,
7 or Ms Oldershaw can clarify, whether the document that
8 is before the blue is a hard copy that existed at the
9 time or whether it was subsequently printed off for the
10 purposes of these proceedings.

11 I am assuming that it was the latter but I'm not
12 sure whether I'm -- because what we have is the email,
13 but I don't know the answer to that. I'm not sure it
14 matters.

15 **A.** I can't clarify.

16 **Q.** No.

17 Now, the reason we got there, and that was -- is
18 because you said, I think, in answer to a question about
19 the deli price on 11 November, and whether 11 November
20 was a date for Tesco's deli move, you wanted to look at
21 document 64 [Magnum].

22 **A.** Yes.

23 **Q.** I don't know whether, having looked at that, there's
24 anything you particularly wish to show the Tribunal?

25 **A.** No, because on this document, the date against deli is

1 17 November, on this plan.

2 Q. If you go back to document 51A [Magnum], same bundle,
3 51A.

4 A. Sorry, yes.

5 Q. This is a document called "Price Move Update", it is
6 a McLelland document, and it is one that I think you
7 have commented on in your witness summary, which was
8 your most recent evidence, and you will see there, at
9 the top of the page, it records Sainsbury's position.
10 That's right, isn't it?

11 A. Yes.

12 Q. That broadly matches what is in document 47 [Magnum],
13 and perhaps just turn to 47 a moment. Keep your hand in
14 51A. That mirrors, not exactly, that reflects what has
15 been the information that McLelland have got by that
16 time, some time after 16 October, about Sainsbury's.

17 Then we have information recorded about Tesco, don't
18 we? Then it says:

19 "Tesco will probably commence moves from [REDACTED],
20 staggered across brand [and] own label.

21 "Want to maintain percentage margin."

22 There is no reference there to deli on 11 November?

23 A. No, there's not.

24 Q. As I said, and my point that I put to you, was, in fact,
25 there is no document, as far as I am aware, which

1 suggests that you were suggesting a move of the 11th by
2 Tesco on deli?

3 **A.** Not that I can confirm with documents, no.

4 **Q.** If it had been the case, and I'll come back to this in
5 a moment, in 51A, if it had been the case that prior to
6 21 October you had told Tom Ferguson, for whatever
7 reason, that you were going to move deli on the 11th he
8 would have recorded it, or somebody at McLelland would
9 have recorded it in this document?

10 **MISS ROSE:** I'm sorry, I don't think that was put to
11 Mr Ferguson.

12 **MR MORRIS:** It wasn't put to Mr Ferguson because it's never
13 been suggested by anybody, other than now, Ms Oldershaw,
14 that the deli...

15 **A.** What is the date of this document?

16 **Q.** We don't know but --

17 **A.** 51A?

18 **Q.** I would suggest that it is after 16 October because it
19 matches -- it must be after 16 October because it
20 matches the information in the 16 October -- on or
21 around then. It's the same information.

22 You are saying that, in your conversation with
23 Mr Ferguson, in the week of the 14th, let's say 16 to
24 18 October, you had told him that you would move 4th on
25 pre-pack and 11th on deli. That's right, isn't it?

1 **A.** Yes, that's what I said.

2 **Q.** I'm suggesting to you that you hadn't told him that
3 because, if you had, it would have been recorded in
4 document 51A?

5 **A.** I can't confirm.

6 **Q.** Okay.

7 **A.** I didn't write the document.

8 **Q.** I'm suggesting to you that when you thought about this
9 for the first time, when assisting Tesco to write their
10 response to the statement of objections, you put forward
11 two alternatives as to what the reference in document 52
12 was, and I'm suggesting to you that, actually, the true
13 position, as you recognised then was a possibility, is
14 that this refers to information which McLelland had in
15 relation to Sainsbury's intentions?

16 **A.** Sorry, can you rephrase -- can you just ask the
17 question...

18 **Q.** Yes.

19 We're talking about the document 52 [Magnum] and
20 what bit of the conversation it is referring to. So if
21 we go back to 52:

22 "The timescales are as we proposed, 4 of November
23 for pre-pack and 11 of November for deli."

24 You have that sentence?

25 **A.** Yes.

-
- 1 **Q.** I am suggesting to you that that is a reference to
2 Sainsbury's waves, not Tesco's?
- 3 **A.** There is still a possibility that, at this time, the
4 11th stood for deli and the time slipped a week.
- 5 **Q.** You can't point to anything that indicates that you had,
6 by then, told Tom Ferguson that you were proposing the
7 11th for deli?
- 8 **A.** No, I can't show you anything, no.
- 9 **Q.** Your initial response to this was that you weren't sure,
10 it was unclear. By "your initial response", I'm talking
11 about that document. I'm suggesting to you that it is
12 unlikely that you've become more clear in the four years
13 that have elapsed or five years that have elapsed since
14 this document was put together?
- 15 **A.** Fine.
- 16 **Q.** Now, just whilst we're on document 51A, if you go back
17 there a moment [Magnum], you had a conversation with
18 Mr Ferguson in that week and in that conversation you
19 did give Tom Ferguson an indication as to your position
20 that you would probably commence moves on 4 November but
21 that at that stage you wanted to maintain percentage
22 margin. When I refer to that, I'm referring to the
23 middle section of document 51A.
- 24 **A.** I can't confirm what I -- I can't remember what I said
25 to him and it's obviously not clear to him as he's put

1 "probably".

2 Q. Yes, and I'm suggesting to you that the source of that
3 information that is recorded there, even though it's
4 "probably" and even though it may or may not be definite
5 or indefinite, but the source of that information was
6 you?

7 A. I can't confirm.

8 Q. It's likely, isn't it?

9 A. Yes, quoting times to move on Tesco products, it's
10 likely to be me, yes, but I can't confirm.

11 Q. Thank you.

12 **MISS ROSE:** Sir, can I just put it on the record that
13 Mr Ferguson was asked about this email.

14 **MR MORRIS:** Page 42/13.

15 **MISS ROSE:** It's Day 6 and it's pages 57 down to 60.

16 **LORD CARLILE:** Hold on, Day 6. Yes, pages?

17 **MISS ROSE:** If you look particularly at pages 57 down to 60
18 where questions were put to him, particularly about the
19 dates, but what was not put to him was that he had
20 a conversation with Lisa in the week before 21 October
21 where it was suggested he had passed on Sainsbury's
22 dates to her.

23 **LORD CARLILE:** Yes, that seems to be right from a quick read
24 of it. Day 6, page 57.

25 **MR MORRIS:** I'm a little bit uncomfortable about dealing

1 with this in the middle of cross-examination but if
2 I can just have a moment.

3 (Pause)

4 **LORD CARLILE:** There's a passage at page 52, lines 13 to 16,
5 I may be taking it out of context but I just note that
6 I marked it at the time.

7 **MR MORRIS:** Can I just refer you to 6/42 and 43.

8 **LORD CARLILE:** Pages 42 and 43.

9 **MR MORRIS:** I think this is Ms Smith going through 51A. If
10 you go to 43, we're dealing with Sainsbury's, I'm at
11 43/[12].

12 "Yes, [they would] be referring to ... maintain cash
13 margin ..."

14 Then 14:

15 "Okay. So under the heading 'Tesco' --" are you
16 following me, sir?

17 **LORD CARLILE:** Yes.

18 **MR MORRIS:** "[Tesco] will probably commence move from [REDACTED]
19 [REDACTED] staggered across Brand/Own label.

20 "Want to maintain percentage margin."

21 That's the passage I'm now referring to.

22 "Question: Now, again this was information that
23 McLelland had obtained from Tesco, from their
24 discussions with Tesco?

25 "Answer: That would be an assessment at that

1 particular position in time.

2 "Question: You were Tesco account manager at the
3 time, weren't you?

4 "Answer: Yes.

5 "Question: We've established that you were talking
6 to Lisa Oldershaw most days, is that right, or a number
7 of times a week?

8 "Answer: It would be regular conversations, yes.

9 "Question: You say in your witness summary that you
10 understood this document to record McLelland's then
11 understanding of the changing position becoming apparent
12 from its discussions with retailers, and I'm asking you
13 to confirm that the most likely source of this
14 information under the heading 'Tesco' was from Tesco?

15 "Answer: I would say that was the source, yes."

16 **LORD CARLILE:** We need to go on probably to 45, line 2,
17 don't we?

18 **MR MORRIS:** Yes, but that is discussions with Asda.

19 "That [was] the assessment of the market position at
20 the time", is that the line you're referring to, sir?

21 **LORD CARLILE:** No. My understanding of the passage that
22 follows is there's then a reference to the passage
23 relating to Asda.

24 **MR MORRIS:** Yes.

25 **LORD CARLILE:** Then we return, around about line 20, to the

1 discussion -- no, it's Asda, you're right. Sorry.

2 **MISS ROSE:** The point is, as I've confirmed, that it was
3 never put to Mr Ferguson that he had had a conversation
4 with Lisa in the week before 21 October where he had
5 given her information about the dates on which
6 Sainsbury's was proposing to move its lines.

7 **MR MORRIS:** Sir, can we take that point on -- we will look
8 at that. My recollection is it was put. It was put.

9 **LORD CARLILE:** Let's try and get on with the
10 cross-examination because of the way in which we're
11 doing it.

12 **MR MORRIS:** Yes, I'm grateful but we will come back with
13 a reference on that.

14 Let's go back to document 52, if we may [Magnum].
15 If we now look at the email at 52 again, you will see,
16 Ms Oldershaw, that the first two sentences of that email
17 refer to the spreadsheet which is attached. That's
18 right, isn't it?

19 **A.** Yes.

20 **Q.** That spreadsheet, without going into it in great detail,
21 is something that Tom Ferguson was providing to you and
22 he calls it his "control document", I think. If you
23 look on the back of the email, at the top, "Tesco
24 control document 21 October", yes?

25 **A.** Okay, yes.

1 Q. Neil Arthey was doing this to help you and Tom Ferguson
2 was doing it to help you?

3 A. Yes.

4 Q. He was giving you the options of cash or percentage just
5 in the way that Neil Arthey was?

6 A. Yes.

7 Q. We may come back to that spreadsheet in due course but
8 that's what that is. Those are his suggestions.

9 We've already seen that, in this email, when we move
10 on to the third sentence, that there are then the three
11 pieces of information. The first is confirming cash
12 margin rather than percentage margin, and you see that
13 in the third sentence. I'm back at the email now, yes?
14 Secondly, we have the sentence about the 4th and the
15 11th and, thirdly, he gives you updated information that
16 Sainsbury's would increase -- are confirming that:

17 "... the new retails on Branded pre-pack will be in
18 place Tuesday this week."

19 That's right, isn't it?

20 A. That's what it says, yes.

21 Q. Now, in your witness statement at paragraph 94
22 [Magnum] -- would you like to read paragraph 94 of your
23 witness statement to yourself?

24 (Pause)

25 Perhaps tell me when you have finished reading it.

1 **A.** Okay.

2 **Q.** You now accept, don't you, that the information about
3 Sainsbury's in that email had been obtained by
4 Mr Ferguson from Sainsbury's at the time? Because we've
5 seen document 47 [Magnum].

6 **A.** I now do, yes.

7 **Q.** Yes, that was my question.

8 **A.** But not at the time of reading this email.

9 **Q.** No, I understand that that's what your evidence will be,
10 or is.

11 You would accept too, now, that the information
12 about other retailers increasing by cash margin, what
13 I call the first piece of information in the email, had
14 also come from the other retailers? I'm asking you --

15 **A.** Not necessarily.

16 **Q.** Okay. Well, then let's go back to document 51A, shall
17 we, just for a second [Magnum]. I think this was
18 something that Mr Ferguson did confirm. If you go to
19 51A and you look under "Sainsbury", the last sentence,
20 are you following me?

21 **A.** Yes.

22 **Q.** "Intend to maintain cash margin"?

23 **A.** Yes.

24 **Q.** Then "Asda":

25 "No info ... but will probably maintain cash

1 position."

2 Then "Safeway":

3 "Intention is to maintain cash margin."

4 **A.** But this has not been written by the retailers. This
5 has been an interpretation of the supplier.

6 **Q.** That's the case. So you wouldn't accept now that this
7 information about increasing by cash rather than
8 percentage had come from the other retailers, even
9 though the email says "... other parties are
10 confirming..."?

11 **A.** Not necessarily, no.

12 **Q.** In any event, your evidence to this Tribunal is that at
13 the time, and I'm now putting you back to the actual
14 time, you thought that this information was speculation
15 by McLelland?

16 **A.** I did, yes.

17 **Q.** It never occurred to you that the source of the
18 information was in fact Sainsbury's? It didn't occur to
19 you, is that right?

20 **A.** Yes, that's right. It didn't occur to me.

21 **Q.** It never occurred to you. Now, this is a constant theme
22 in your evidence, isn't it, this point about
23 speculation? When I say theme --

24 **A.** Yes.

25 **Q.** Let's look at that generally for a few moments.

1 I think you've accepted that at the time Dairy Crest
2 and the other processors were desperate to get you to
3 accept the cost price increase?

4 **A.** Yes.

5 **Q.** They were doing the same thing with the other retailers?

6 **A.** I now know from reading the bundles, yes.

7 **Q.** Yes. At the time you knew that Dairy Crest and
8 McLelland were speaking to all the other retailers about
9 this £200 per tonne increase? Now, I put that to you
10 earlier and you weren't so sure but, actually, if you go
11 to paragraph 68 of your witness statement [Magnum],
12 something I had --

13 **A.** I wasn't too sure about the meeting dates on the
14 specific week you mentioned. I knew they would be
15 talking to other retailers about £200 per tonne.

16 **Q.** More than talking, they were equally desperately trying
17 to achieve it with them. Can I ask you to just look at
18 paragraph 68, your witness statement. It's the pink
19 volume, 2A.

20 **A.** Yes.

21 **Q.** You're dealing with Mr Reeves' statement and then you
22 say, at the bottom:

23 "I believed that my cheese suppliers were trying to
24 achieve an increase in the cost price for cheese across
25 all their retailers."

1 So they would not only be talking to you and be
2 desperate to get you to move, they were doing the same
3 with the others?

4 **A.** Yes.

5 **Q.** You also knew full well at that time that there was an
6 industry-wide proposal to raise prices across the board
7 by £200 per tonne?

8 **A.** Cost prices, yes.

9 **Q.** But you also knew, didn't you, that the other retailers
10 would only accept the cost price increase if they
11 increased their retail prices?

12 **A.** I didn't know for definite but it was likely that
13 anybody accepting a cost price increase would have to
14 increase the retails because they would be under similar
15 pressure from various KPIs and margins as Tesco was.

16 **Q.** You worked on the assumption that they would only accept
17 the cost price if they increased retail prices, didn't
18 you?

19 **A.** I wasn't really thinking about what assumptions they
20 were making. I was --

21 **Q.** I'm talking about your assumption that they would only
22 accept the cost price increase if they could increase
23 their retail prices?

24 **A.** I think my assumption would be that they would find it
25 hard to accept the cost price increase if a retail

1 didn't move.

2 **Q.** Okay. Let's see what you say in paragraph 66 of your
3 witness statement [Magnum]. You say there:

4 "I could not afford to accept this cost price
5 increase without increasing Tesco's retail prices to
6 protect my margin."

7 No reference there to anything about special deals.

8 Then you say:

9 "I assumed that Tesco's main competitors would be in
10 the same position."

11 So you did work on that assumption at the time?

12 **A.** Sorry, I think that is just what I've just said, that
13 they would find it hard to accept a cost price increase
14 if they didn't up the retails.

15 **Q.** "Hard" is -- anyway your evidence is at paragraph 66 as
16 to what you assumed. They couldn't afford to accept it,
17 not that they'd find it hard.

18 **MISS ROSE:** I'm sorry, but the first part of that sentence
19 must also be put which is:

20 "I could tell this was likely to happen anyway."

21 We can't really --

22 **LORD CARLILE:** She's said that a few times in her oral
23 evidence.

24 **MISS ROSE:** She has said it a few times. She has, sir, but
25 the suggestion that there's any difference between

1 paragraph 66 and her oral evidence is, with respect,
2 somewhat overblown.

3 **MR MORRIS:** Well, I was putting to the witness the basis
4 upon which -- of the witness' knowledge at the time and
5 the basis upon which she was working. There was an
6 assumption there.

7 Now, the processors knew broadly about your basket
8 policy to the extent that you could not go higher,
9 subject to the two-week gap, that the basket policy
10 restrained you raising prices without others raising,
11 the processors knew that? That's right, isn't it?

12 **A.** I couldn't be out of line for more than two weeks at
13 a higher price, yes.

14 **Q.** Yes, and what was happening was that the processors were
15 sending information to one retailer to show that
16 retailer that other retailers were going to move their
17 retail prices. That's right, isn't it?

18 **A.** That's the content of some of the emails, yes.

19 **Q.** You say that's speculation but that's what they were
20 doing.

21 Now, in his witness statement, Mr Ferguson says:

22 "Since the retailers wanted to avoid becoming
23 uncompetitive, they [the retailers] were very interested
24 in what other retailers were doing."

25 **A.** Yes, that's why we get suppliers to do in-store checks

1 for us on a weekly basis.

2 **Q.** What is more, each retailer was not only interested in
3 what their competitors were doing but they would know
4 that their competitors would also be interested in
5 knowing what they were doing? That's right, isn't it?

6 **A.** Yes, all retailers did themselves, or their suppliers
7 did, in-store checks of their competitors on a regular
8 basis.

9 **Q.** Never mind about in-store checks for the moment,
10 I understand that's the point you're making. I'm
11 talking about knowing what they were going to do, what
12 they were going to do. I'm going to suggest to you that
13 it was in the interests of each retailer to know what
14 their competitors were going to do and, equally, it was
15 in the interests of each retailer, particularly in these
16 circumstances, to ensure that its own intentions were
17 passed back to the other retailers?

18 **A.** I don't -- well, certainly I'll speak for myself. You
19 can never believe what a supplier tells you. The only
20 true test is when a retail price is in store and
21 I always had -- very much had a "believe it when I see
22 it" policy, in store.

23 **Q.** I'm asking you the question about whether you would be,
24 in those circumstances that were pertaining in
25 October 2002, I'm suggesting to you that each retailer

1 would be interested to know what the other retailer was
2 going to do?

3 **A.** I wasn't interested in speculation. It was a waste of
4 time and energy.

5 **Q.** Okay, let's assume it wasn't speculation. Let's assume
6 somebody gave you some information which was plainly and
7 clearly evidence as to what Sainsbury's was going to do
8 next week in relation to this --

9 **A.** But they didn't.

10 **Q.** No, I'm not asking -- I'm asking you whether you would
11 have been interested in knowing that at the time?

12 **A.** I don't quite know what you're asking. You're asking me
13 to just speculate about a situation that I've not been
14 in. Can you rephrase the question, please?

15 **Q.** Well, I'll ask the question again. It was a matter of
16 interest to you at the time to know what the other
17 retailers were going to do about their retail prices in
18 relation to this initiative?

19 **A.** No, not really because I know what I had to achieve and
20 I had to go and try and achieve percentage margin
21 maintenance because that's what my KPIs asked me to do.

22 **Q.** So your evidence is, is it, that given the basket
23 policy, which we've discussed, and given the pressure
24 that you were under from your senior managers to accept
25 these cost price increases, that if you had received

1 clear and unambiguous information that, for example,
2 Asda was going to raise its retail prices in a week's
3 time, you were entirely indifferent to that information?

4 **A.** Yes. Yes.

5 **Q.** So it was a matter of indifference. Why then were the
6 processors telling you all this?

7 **A.** Because I suppose they feel the more they try, the laws
8 of probability or whatever, they'll succeed at some
9 stage.

10 **Q.** But the truth is --

11 **A.** And they may have convinced some other retailers,
12 I don't know.

13 **Q.** The truth is, if it was a matter of supreme indifference
14 to you, they wouldn't have been telling you. They were
15 telling you because they thought it would influence your
16 decision?

17 **A.** But it didn't influence my decision.

18 **Q.** That's not the question that I'm asking. The question
19 I'm asking, and you've answered no, is that it was
20 a matter of indifference to you to know that Asda would
21 be going up the following week, that's your evidence?

22 **A.** Yes.

23 **Q.** I'm going to suggest to you that the only circumstance
24 in which you would ignore advance information that you
25 were receiving about your competitors' retail pricing

1 intentions was if that information was clearly unsound
2 or not credible?

3 **A.** Because you could never ascertain the difference, I took
4 the stance that everything was incredible. Noncredible.

5 **Q.** So if the position was that a processor like McLelland
6 had in fact received future pricing information about
7 another retailer, never mind -- they're not speculating,
8 had in fact received it, he would have wanted to pass
9 that information on to you, that's right, isn't it?

10 **A.** I can't speak for McLelland.

11 **Q.** Or Dairy Crest or anybody else?

12 **A.** Or Dairy Crest.

13 **Q.** But you say that it was in the processor's interest to
14 make these statements even when they didn't have the
15 information. That's right, isn't it?

16 **A.** It was just their positioning tools, the things they
17 used that they thought would maybe sway you to get what
18 they wanted.

19 **Q.** But why would they think it would sway you if it was
20 a matter of indifference to you?

21 **A.** I don't know. Perhaps it worked with other retailers,
22 I don't know why they chose to do it.

23 **Q.** Your evidence is that because, when they made these
24 statements -- because they would make these statements
25 even when they didn't have the actual information, you

1 couldn't rely on anything they told you?

2 **A.** I would never rely on anything that wasn't to do with
3 any retail information or possible future retail
4 information. That's why I always asked them, when they
5 did in-store checks, to photocopy receipts and send them
6 to me.

7 **Q.** But you were happy to accept the cost price increase and
8 the retail price increase on 30 October when you didn't
9 have the in-store information?

10 **A.** I wasn't happy to accept the cost price increase. I was
11 instructed from higher up in Tesco to then accept the
12 cost price increase at that time, yes. I would probably
13 have tried to drag it on even longer.

14 **LORD CARLILE:** Ms Oldershaw, you said a little earlier these
15 words:

16 "I would never rely on anything that wasn't to do
17 with any retail information or possible future retail
18 information."

19 How would you acquire future retail information in
20 a way that you could rely on it?

21 **A.** I couldn't, that's what I was referring to. Sorry.
22 I was referring to the email here.

23 **LORD CARLILE:** Yes. I was just puzzled by the words you
24 used, you see. Let me repeat them. What you actually
25 said, and we have a transcript of it:

1 "I would never rely on anything that wasn't to do
2 with any retail information or possible future retail
3 information."

4 That implies that there might be circumstances in
5 which you would rely on future retail information. Did
6 you mean to say that or not?

7 **A.** No, I didn't. I didn't. The only retail information
8 I would rely on was what was out in stores. That was
9 picked up on a price check by either my team or the
10 suppliers and verified by till receipts.

11 **LORD CARLILE:** Right. Thank you.

12 **MR MORRIS:** Now, I think your evidence is what they were
13 telling you was unreliable because it was the usual
14 speculation from them. That's right, isn't it?

15 It's just unreliable, this information?

16 **A.** Well, it probably was -- it might have been reliable, it
17 might have been unreliable, but I just assumed
18 everything was unreliable.

19 **Q.** But as regards some of the information, you would know
20 that the processor would in fact be in possession of
21 future retail pricing information, wouldn't you?

22 **A.** If they were packing random weight products for another
23 retailer, yes, they would need to know that information
24 prior to --

25 **Q.** Yes.

1 **A.** Yes.

2 **Q.** So certainly as regards that information, and if you
3 then -- if then McLelland or Dairy Crest said "X is
4 going to go up on random weight in a week's time", you
5 couldn't be sure that that information was necessarily
6 speculation?

7 **A.** Yes, possibly, it could be true, yes.

8 **Q.** So you didn't assume that all the information was
9 speculative?

10 **A.** I took everything as being speculative.

11 **Q.** Okay.

12 **A.** So I just applied a blanket approach. Because, you
13 know, it's such a waste of time to try and ascertain
14 what was true, what wasn't, there was no way of ever
15 knowing.

16 **Q.** Okay. I just want to explore with you the question of
17 why it would be in the interests of the processors to
18 make all this up, okay? You're suggesting -- you're
19 believing it's speculation, I want to now look at it
20 from the processors' point of view, to ask you the
21 question why would they make it up?

22 I think you've accepted earlier that it would be
23 fair to say that for Dairy Crest and McLelland, Tesco
24 was a very important customer?

25 **A.** Yes.

- 1 **Q.** Tesco had power in the bargaining relationship in
2 respect of those processors?
- 3 **A.** That, from what you've said, is how Dairy Crest viewed
4 the position.
- 5 **Q.** Yes, and you could always, in extreme circumstances,
6 say, "Well, we're not going to take any more cheese from
7 you", or "We're going to reduce the amount of cheese
8 that we take from you"?
- 9 **A.** We could, yes.
- 10 **Q.** So for processors and their account managers, it was
11 vital that they built up trust with you. You were
12 a very important person to them?
- 13 **A.** Yes. It was in everybody's benefit to have a good
14 working relationship, yes.
- 15 **Q.** I think you accepted much earlier that you had a good
16 trusting relationship with Mr Ferguson and Mr Arthey?
- 17 **A.** Yes.
- 18 **Q.** Given the power that you had to stop taking their
19 cheese, Mr Arthey and Mr Ferguson wouldn't want to
20 jeopardise that relationship of trust, would they?
- 21 **A.** No, I suppose not.
- 22 **Q.** So let's consider first the possibility of Mr Ferguson
23 or Mr Arthey providing you with wholly speculative
24 information as to what other retailers might be about to
25 do with their retail prices, okay? Let's say, for

1 example, Mr Ferguson, without any foundation whatsoever,
2 says to you, "Lisa, Sainsbury's are going to raise their
3 prices on own label next week", yes?

4 **A.** Yes.

5 **Q.** And you say that he was providing that information to
6 you to persuade you to move up on cost and retail? That
7 was his -- that's why he was doing it? You would agree,
8 wouldn't you?

9 **A.** Okay.

10 **Q.** Let's assume that you were in fact persuaded. You're
11 obviously telling us that you would never be persuaded,
12 but let's assume that you were persuaded, which is why
13 he's doing it, so he must think it's possible, and that
14 information turned out to be wrong. Okay?

15 So you were persuaded by the information and you
16 followed his speculation which, of course, you say
17 that's something you would never have done, but let's
18 assume you had done, and let's assume that information
19 about Sainsbury's on "own label next week" turned out to
20 be wrong. That, potentially, would cost you millions of
21 pounds, wouldn't it?

22 **A.** Yes.

23 **Q.** And you knew that at the time, that if you acted on it,
24 it would cost you millions of pounds?

25 I'm assuming you're agreeing with me, I hope you

1 are?

2 **A.** Yes.

3 **Q.** And Mr Ferguson must have also known that too, mustn't
4 he?

5 **A.** Yes.

6 **Q.** So if you -- in this hypothetical scenario, if you did
7 act on such information and it turned out to be wrong,
8 I would imagine that you might feel rather aggrieved
9 with Mr Ferguson and you might go back to him and
10 complain?

11 **A.** Which is exactly why I never placed myself in that
12 position. We would have just waited another week to see
13 if it actualised in store.

14 **Q.** I can understand that's what you're saying. I'm trying
15 to ask the question, why would they be giving you this
16 speculation? What I'm going to suggest to you is that
17 they wouldn't do it because he would know that if it
18 turned out to be wrong you would be on the phone saying
19 to him, "Tom, you're my longstanding mate, I've worked
20 with you for many years, but my God, that information
21 you gave me last week about Sainsbury's, boy, it turned
22 out to be wrong and now you've cost me millions of
23 pounds".

24 **A.** Sorry, is there a question?

25 **Q.** Yes, I'm suggesting in this scenario that you would be

1 rightly very cross with, or it would undermine your
2 relationship of trust with Tom Ferguson if he gave you
3 false information and you acted on it?

4 **A.** Yes, I suppose, in your scenario.

5 **Q.** Yes. And it would follow I think that, unless
6 Mr Ferguson had some basis in fact for his information,
7 his market intelligence, it would be a very risky thing
8 for him to do, to tell you something which he knew was
9 purely speculative, wouldn't it?

10 **A.** Presumably, yes.

11 **Q.** Then let's consider the possibility not merely of
12 Mr Ferguson speculating about what Sainsbury's were
13 going to do, but of him positively lying to you that he
14 had been told something about one of your competitors
15 when in fact he had been told no such thing.

16 So this is -- the first scenario was where he
17 doesn't know anything and he just speculates, and the
18 second situation is when he comes to you and he says,
19 "Sainsbury's have told me that they're going to move",
20 but Sainsbury's haven't told him.

21 Now, in that situation, once you discovered that it
22 wasn't true, that, I would suggest, would have
23 undermined your trust in Mr Ferguson all the more; not
24 only was he giving --

25 **A.** There was often situations of that type, where suppliers

1 would spiel things in emails and then it didn't actually
2 actualise and that is why I didn't take -- I didn't ever
3 get my fingers burnt, but that is why I never took what
4 they said as read.

5 **Q.** What I'm suggesting to you is that there would be no
6 reason for Mr Ferguson to go out of his way and make
7 something up and lie to you and tell you something which
8 was not true because it would -- it had the risk of
9 seriously undermining your very good relationship with
10 him?

11 **A.** But Tom did not control the retailers. The retailers
12 may have told him one thing and then changed their minds
13 at the last minute. It happens. So he may not have
14 intended to lie, but then retailers change their mind
15 and, in your scenario, what he had been told didn't
16 eventualise at the retailer.

17 **Q.** Mr Ferguson said, in his evidence at, I think -- yes, he
18 said this:

19 "The relationship --"

20 He was asked whether the relationship between
21 McLelland and Tesco was an important relationship and he
22 said:

23 "Yes, I would define it in that way."

24 Then he (sic) said:

25 "You wouldn't want to do anything to jeopardise that

1 relationship such as giving Tesco false information."

2 And he said:

3 "Absolutely, that's something we would not even
4 consider."

5 His evidence is that if he was telling you untruths
6 or speculating, he wouldn't even consider it because it
7 would undermine the relationship, and I'm putting to you
8 that that was the situation and you knew that to be the
9 situation?

10 **A.** My judgment call was that I could not rely on
11 information from suppliers. That was my judgment call
12 and the way I ran the Tesco cheese business.

13 **Q.** Very well. Let's go back then -- I was asking you
14 generally about speculation. Let's try to go back to
15 document 1/52 --

16 **MISS ROSE:** Sir, I don't know whether this might be a moment
17 at least to ask the witness if she feels able to
18 continue any longer because we are now after midnight.

19 **LORD CARLILE:** Thank you, Miss Rose.

20 I was planning to go on for about another ten
21 minutes but I know it's now midnight in New Zealand. If
22 you're feeling tired, we could stop now. It's up to
23 you?

24 **A.** I can do ten minutes but I'd be gracious of time out
25 after that, please.

1 **LORD CARLILE:** We'll do ten minutes and then we'll have
2 a weekend. Thank you.

3 **MR MORRIS:** Thank you, Ms Oldershaw.

4 In your witness statement at paragraph 96 [Magnum],
5 you are referring to document 52 -- I was just checking
6 that you were, that LO/17. You say, this is the middle
7 of the sentence:

8 "I had no confidence in these very unverified
9 assertions, and it did not even occur to me that this
10 was something I needed to reject."

11 We know that these were true statements based on
12 what he had been told, don't we?

13 **A.** From what you told me from Tom Ferguson's statement,
14 yes, it would seem they were true --

15 **Q.** And from document 47.

16 You knew that Ferguson would have been speaking to
17 Sainsbury's at that time, generally?

18 **A.** Generally, yes.

19 **Q.** What is more, in that email, Mr Ferguson is not merely
20 expressing his opinion that Sainsbury's will move, is
21 he? If we go to, for example, the last sentence, he is
22 saying to you that he has been told by Sainsbury's what
23 they are going to do on the retail price.

24 **A.** He is being told. They are confirming.

25 **Q.** My question was, he is telling you that he has been told

1 by Sainsbury's that they are going to move on branded
2 pre-pack on Tuesday this week?

3 **A.** Yes.

4 **Q.** So if in fact he had not been told that, that would have
5 been an untruth; that's right, isn't it?

6 **A.** Yes, I read everything as an untruth, as I've said, but
7 yes that would be the case.

8 **Q.** And he would have been found out the very next day,
9 wouldn't he? You would have found out the very next day
10 if it didn't move?

11 **A.** Yes, in store, yes.

12 **Q.** I would suggest to you that this information, far from
13 being speculation, was entirely credible. He was
14 telling you things about -- he was telling you,
15 following discussions earlier in the previous week, and
16 he was saying as regards fixed weight branded
17 Sainsbury's were going to move on the next day. That's
18 right, isn't it? That's what he was telling you?

19 **A.** Yes.

20 **Q.** I am going to suggest to you that it was because you
21 believed this information had come from Sainsbury's that
22 you subsequently decided to move your prices before the
23 subsequent waves of other retailers appeared in the
24 store?

25 **A.** That's not true. I did not believe at this time that

1 that had come from Sainsbury's.

2 **Q.** Given the terms of that email, you certainly could not
3 be sure that this information was only speculation,
4 could you?

5 **A.** I suppose if I analysed it, I couldn't be sure but
6 I took everything to be speculation.

7 **Q.** Are you saying to the Tribunal that at the time it never
8 occurred to you that this information had come from
9 Sainsbury's?

10 **A.** No, at the time it didn't, no.

11 **Q.** And, therefore, for you to have -- so you effectively
12 didn't believe that he had been told by Sainsbury's?

13 **A.** I mean, he may have been told by Sainsbury's, I can't
14 confirm that, but I'm sure Sainsbury's didn't intend me
15 to have the information.

16 **Q.** Well, we'll deal with that in due course, because I'm
17 suggesting to you that it must have occurred to you from
18 the terms of this email that this information had come
19 from Sainsbury's?

20 **A.** I don't believe it did, no. I can't remember sitting
21 and reading this on the exact day but... no, I didn't at
22 the time. We had so many positioning things from
23 suppliers constantly, I just overlooked most of them.

24 **MR MORRIS:** I think that's an appropriate moment.

25 **LORD CARLILE:** Right.

1 Ms Oldershaw, we're going to pause there. May the
2 Tribunal wish you and your family a good weekend.

3 **A.** Thank you.

4 **LORD CARLILE:** Could you return at the same time on Monday
5 evening your time.

6 **A.** I can, yes.

7 **LORD CARLILE:** We'll get up early to greet you.

8 **A.** Thank you very much.

9 **LORD CARLILE:** You can leave now. There may be a little bit
10 of housekeeping to do here.

11 **A.** Thank you.

12 **LORD CARLILE:** Right. Anything anyone wants to raise before
13 we adjourn for the weekend?

14 Quick, we'd better go before they think of
15 something!

16 Right, I hope everybody has a good weekend. We'll
17 resume here at 7 o'clock on Monday morning.

18 (1.10 pm)

19 (The hearing adjourned until
20 Monday, 21 May 2012 at 7.00 am)

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