

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 12TH JULY

2001 AT 11 A.M.:

MR. HEALY: Mr. Leslie Buckley, please.

MR. MURPHY: Morning, Sir, my name is Frank Murphy, Gleeson McGrath Baldwin. I represent Mr. Buckley and I would like to, if I may Sir, apply for limited representation while Mr. Buckley is giving his evidence, in the usual terms.

CHAIRMAN: Very good. Well, Mr. Murphy, I think I had indicated yesterday to a previous witness that whilst the Tribunal has felt is necessary in pursuing these important issues to pursue matters with considerable particularity with relevant directors at the time of the events in issue, it, on one view is rather hard to see how matters potentially critical of Mr. Buckley could arise so as to necessitate full legal representation, or even a limited grant, but in the context of my being aware that Mr. Buckley has cooperated with the Tribunal already and subject to the usual caveat, that effectively I am indicating no guarantees or warranties as regards any awards of costs, I will accede to limited representation on the basis you propose.

MR. MURPHY: I am obliged to you, Sir.

LESLIE BUCKLEY, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. HEALY:

Q. You provided the Tribunal with a Memorandum of Evidence
or a statement in response to a number of queries
addressed to you by the solicitor for the Tribunal,
isn't that right?

A. That's correct.

Q. You were a director of ESAT Telecom, isn't that right?

A. That's correct, Mr. Healy.

Q. And you were also a director of ESAT Digifone, isn't
that correct?

A. That's correct.

Q. Were you a director of any other ESAT affiliates or
associated companies?

A. I was a director of a number of other affiliated
companies.

Q. I see.

A. There was quite a list of them.

Q. Are you have you got a continuing association with
ESAT Telecom or ESAT Digifone?

A. No, I resigned in August of last year.

Q. Was that around the time of the take-over by BT or

A. it was after the takeover by BT.

Q. You say in your statement, and I think you have a copy
of it with you, do you?

A. I do.

Q. This statement is made at the request of the Tribunal.

You say "I deal with the questions in the letter of the 29th May 2001 in the same numerical orders as follows."

Now the first question raised by Mr. Davis is as follows: You were asked to provide a full account of what transpired at any meeting at which the matter of the $\frac{1}{2}$ 100,000 payment to Mr. Lowry was raised by Mr. Maloney, or any other person, giving details of all of the persons in attendance at any such meeting and details of what transpired at any such meeting, whether in connection with this payment or any related matter or otherwise.

And your response is "The meeting I believe is referred to was a meeting of directors and advisers of ESAT Digifone Limited and ESAT Telecom group Plc held on the 4th November of 1997 prior to the issue of the ESAT Telecom Prospectus. The people attending that meeting included Dermot Desmond, Michael Walsh, Knut Digerud, John Fortune, John Callaghan and myself and, by telephone, Denis O'Brien and Arve Johansen. The following lawyers were also present at the meeting: Fergus Armstrong and Michael Kealey of McCann Fitzgerald, Kevin O'Brien and Anthony Lang of Kilroy's, Gerry Halpenny of William Fry and Owen O'Connell of William Fry by telephone. Prior to the meeting on the 4th November, 1997 I was present for a conference on the 20th October at the offices of IIU.

Denis O'Brien and Arve Johansen attended by phone and Denis O'Brien explained the circumstances surrounding his initial conversation with Barry Maloney saying that it was part of a wind-up in the course of trying to put some pressure on Barry Maloney to pay expenses that arose out of the bid process.

In that conference call it was agreed that the maximum protection was required in the contest of the IPO, it was agreed that Denis O'Brien would provide a letter confirming that no payment whatsoever had been made to Michael Lowry or anyone else. It was also agreed that John Callaghan would talk to KPMG and get confirmation from them that they were satisfied with the accounts and that Barry Maloney would confirm that there was nothing in Digifone's books which would provide cause for concern.

You also say, going back in time that you attended a board meeting on the 23rd October of 1997 at IIU offices that was attended by Messrs. Johansen, Busch, Digerud, Fortune on behalf of Telenor, Denis O'Brien, John Callaghan and yourself on behalf of Telecom, Barry Maloney on behalf of Digifone, Michael Walsh and Dermot Desmond on the behalf of IIU, and Fergus Armstrong of McCann Fitzgerald.

In the context of a discussion on so-called 'success

payments', Denis O'Brien stated that in order to put pressure on Barry Maloney to make them he had said to Barry Maloney that he, Denis O'Brien, had paid two sums of $\text{€}100,000$ each but that that was said only to put pressure on Barry Maloney to pay the success fees and that no such payment or payments of any kind had, in fact, been made.

At a follow-up board meeting of ESAT Digifone on the 30th October it was agreed that the matter would be referred to Owen O'Connell, legal adviser to ESAT Telecom Group. John Callaghan and Aidan Phelan and I went to see Owen O'Connell after the meeting to inform him of the allegations made by Barry Maloney and to discuss the steps that needed to be taken. It was agreed that a question and answer session be held and conducted by lawyers to establish the facts.

This took place at the meeting on the 4th November at IIU and the purpose of that meeting was to investigate by means of a question and answer session the facts surrounding certain payments made by Denis O'Brien to Barry Maloney sorry the fact surrounding certain statements made by Denis O'Brien to Barry Maloney concerning payments of $\text{€}200,000$. At the end of the questioning session I was fully satisfied with the answers provided by Denis O'Brien and I believed that no payment was, in fact, made to Michael Lowry or

anybody else. Consequently I supported the IPO."

You then go on to question 2 but you say that you have already dealt with that, and that was details of all the steps taken, inquiries made or actions of whatever nature in response to this information.

Query number 3 involved details of any responses by Mr. O'Brien to the suggestion that he had made a statement that he had made such a payment and you say "As previously stated in reply to number 1 above, Denis O'Brien acknowledged that he had made such a statement but stated that he had not, in fact, made any such payment whatsoever.

I was not aware of any other steps or any other actions taken at any time by the boards of ESAT Digifone and ESAT Telecom or any individuals connected with the boards, with a view to clarifying this matter with Mr. Lowry. I knew that Denis O'Brien was endeavouring to get Barry Maloney to pay what appears to have become known as 'success payments'. I was aware that Denis O'Brien had made a commitment to certain people but I didn't know all their identities. I am not aware of any indirect payments or any other payments howsoever characterised. The question of the \$50,000 US was brought up in the conference call of the 20th October above referred to. The question of the US \$50,000 payment to Fine Gael was also raised at the meeting of

the 4th November 1997. It had come up at previous meetings. I cannot recollect exactly who raised the question of the payment at the 4th November meeting or the earlier meetings."

You go on to say "Detailed consideration was given to the disclosure of both these matters in the Prospectus and legal advice was taken in relation to it."

You are then asked about the insertion or the reference in the Prospectus to public controversy concerning the licence and you were asked for your full knowledge, direct or indirect, as to what prompted the insertion in the Prospectus of the contents of the paragraph entitled "Importance of ESAT Digifone licence" and you say "Paragraph 16 was inserted in the Prospectus on foot of legal advice following the public controversy surrounding the granting of the licence and the possibility that this may be investigated by the Moriarty Tribunal which was about to be established."

Just on that last point, because I think you may be one of the people who can assist the Tribunal in relation to the references in the Prospectus to public controversy, you are familiar with paragraph 16 of the prospectus, are you?

A. Reasonably familiar, yes.

Q. I think we have heard reference in the course of these

sittings to various drafts of the Prospectus that were produced from time to time. You'd be familiar with these various drafts, would you?

A. Just reasonably familiar, not very familiar.

Q. In one of the drafts there was a reference to the government's plan to set up a Tribunal and in the final draft there was a reference to the government having established a Tribunal. So there must have been discussion between the directors, or the people responsible for the Prospectus, of this matter at a fairly early stage in the planning of the IPO?

A. Mr. Healy, my recollection is that the red herring, which is the initial booklet, the wording in the red herring and the final wording in the Prospectus, from my recollection the wording didn't vary very much.

Q. I understand that. But I think in the red herring there may have been a reference to the government's plan to set up a Tribunal but that by the time the final draft of the Prospectus was published the government had, in fact, set up the Tribunal, so I think that was recorded?

A. Yes, yes.

Q. Do you recall having any discussion with anybody or any discussion on the board of ESAT Telecom concerning whether this should be put in the Prospectus or not?

A. I don't remember the details of that. I don't recall.

Q. You don't remember the details?

A. No.

Q. But I take it it must have been discussed at some stage?

A. Yes, there must have been a discussion.

Q. Well, hopefully we'll get copies of the minutes of ESAT Telecom's board meetings. Can you remember if it was mentioned at ESAT Telecom board meetings?

A. I can't, no.

Q. I just want to try to understand when you first became aware of the issues that are being that are referred to in your statement and I want to describe them as two issues. Firstly, the issue of the 2 x 1/2 100,000 and secondly, the issue of the \$50,000 US. You know what I am talking about when I describe them in that way?

A. Yes.

Q. If we could deal firstly with the issue of the 1/2 100,000. From your statement we know that the matter was mentioned at a meeting that you attended at the offices of IIU on the 20th October.

A. That's correct.

Q. And at that meeting Mr. O'Brien provided an explanation of the circumstances surrounding what you describe as his initial conversation with Barry Maloney, isn't that right?

A. That's correct.

Q. Now, at that meeting, what you were told was,

presumably, that Mr. Maloney had stated that Mr. O'Brien had stated to him that he had made two payments of $\frac{1}{2}$ 100,000, one to Michael Lowry, and that there had been further references to those payments in 1997, in August or July or sometime. There is doubt about when they were referred to in 1997, but sometime toward the latter part of the summer or the beginning of the autumn of 1997. And then Mr. O'Brien's response or explanation in the course of the meeting was that it was a wind-up. Now, was that the first time that you had ever heard about these statements?

A. It was the first time that I had heard of the $\frac{1}{2}$ 100,000 payment.

Q. Just to clarify. Had you heard of the \$50,000 payment before that?

A. I think I had heard some comment prior to that in relation to the \$50,000.

Q. We can come back to that at a later point.

A. Yes.

Q. So when you went to that meeting this was news to you?

A. It was indeed.

Q. The matter was then mentioned again at a meeting of the 23rd October of 1997 at the offices of IIU attended by, I think, an even larger group of people than had been in attendance, either in person or by phone, at the meeting of the 20th, isn't that right?

A. That's correct.

Q. And at that meeting I think I can fairly say the whole thing was, up to a point in any case, thrashed out.

You heard Barry Maloney's side, you heard Denis O'Brien's side, isn't that right?

A. Yes.

Q. And at that meeting, I think you were told about the details of the various discussions, including the references to the involvement of an intermediary, isn't that right?

A. At that meeting, yes, I heard of an intermediary.

Q. And I think at that meeting you would have heard references to the expression or a similar expression to 'got stuck with an intermediary'?

A. Yes.

Q. And am I right that those expressions were used in the following context: Barry Maloney said that Denis O'Brien had made a statement to him in 1996 that he had referred to that statement in 1997 and that he had said, 'Look, I didn't make any payment to Michael Lowry' and then that at a later point Denis O'Brien had said to him, 'I didn't make any payment, I intended to make a payment, but it didn't go through. It got stuck with an intermediary'. I think on Denis O'Brien's side, what Denis O'Brien said was the money was in Woodchester and Woodchester was the intermediary, is that right?

A. That's correct.

Q. So after that meeting, I think there was an agreement to have a question and answer session, as you put it, some people have called it an inquisition or a quizzing of Denis O'Brien, and that was held on the 4th November and the idea of that quizzing was to, in some way, try to clarify the position or get as much information as possible concerning what had actually happened.

So if we can get these meetings together or put them in some kind of chronological order. You had a meeting on the 20th which was the first time that you had heard of the $\frac{1}{2}$ 100,000. You might have heard of the \$50,000 payment sometime slightly earlier?

A. Yes, Mr. Healy.

Q. You then had a meeting on the 23rd when the matter was discussed more comprehensively, would that be fair?

A. Yes.

Q. Now, we know there were further meetings but I think, what I want to know is; what discussions did you have concerning the matter after the 23rd with Mr. O'Brien, with lawyers or with anyone else?

A. I had a meeting with Denis O'Brien on Saturday morning, the 25th November. He was at that stage, I was acting CEO of ESAT Telecom and he had been in Europe for a period prior to the 25th and we both met in the Tara Towers Hotel to discuss various issues in relation to the business.

Q. And in the course of that discussion you discussed the

statement that had been made by Mr. Maloney?

A. Yes. It came up, I suppose, in the context of a wider discussion regarding Barry Maloney.

Q. A wider discussion regarding Barry Maloney?

A. Mm-hmm.

Q. I see. And what was the what was it that prompted the wider discussion regarding Barry Maloney?

A. Well, Barry Maloney had not raised this issue for a twelve-month period and, you know, Denis and myself were quite confused and concerned and we felt that Barry Maloney was endeavouring to stop the IPO and this had shades of Barry Maloney's resignation in December '96 when ESAT Telecom was doing a 25 million syndication and ESAT Telecom was doing a bond issue and I must say, Mr. Healy, I felt that the actions of the CEO of ESAT Digifone were, to say the least, irresponsible at that stage.

Q. In the course of that meeting that you had with Mr. O'Brien, apart from discussing what you felt was Barry Maloney's irresponsible behaviour bringing up the matter, did you discuss the circumstances of what had happened in 1996 with Mr. O'Brien?

A. Can you explain how you mean by 'circumstances'?

Q. Did you discuss the question of what Denis O'Brien said in 1996?

A. To Barry Maloney?

Q. Mm-hmm.

A. Yes. Knowing Denis had said that he was out for a run with Barry and that he had, had asked Barry to make those success payments, have them to be paid, he had, as I understand, written to him about it and Denis is the type of person that would then try and persuade him in a kind of a fairly jocose type of way and - if he could try and get those payments made - and I think one has to know and recognise the personality of the individuals, actually, and Denis is somebody who all the time mixes his fun with business and of all the business people that I have worked with over the last 30 years, he is the one person that does that very successfully, and it was to me, very characteristic of how Denis would have been putting pressure on somebody who he had known on a personal basis for a long time and he wouldn't have been very direct with him. He would have been trying to persuade him to make those payments.

Q. But I take it that at that meeting that you had with Mr. O'Brien on the 25th he didn't say - or he didn't deny - that he had made those statements to Barry Maloney?

A. He didn't deny he had made those statements but he did state that he hadn't said that a $\frac{1}{2}$ 100,000 payment was made to Michael Lowry.

Q. He said that to you at the meeting of the 25th?

A. Yes, of the 25th, that he didn't use the word "Michael

Lowry".

Q. So at the meeting of the 25th, as far as you were concerned Denis O'Brien was saying "I did make two statements about having made two $\frac{1}{2}$ 100,000 payments to Barry Maloney, but I never mentioned Michael Lowry"?

A. Yes.

Q. What would be wrong with making a statement that you had made two $\frac{1}{2}$ 100,000 payments to people as success payments? Would there be anything wrong with that ?

A. But he said he hadn't made those payments and

Q. no, he said he had intended to make them?

A. He had intended to make the payments and that they got stuck at Woodchester.

Q. But can I just get this clear; had you any doubt in your mind at any time in the course of all of these discussions about whether Mr. O'Brien had stated or had intended to make a payment to Michael Lowry?

A. After the meeting of the 23rd October I was assured that Denis O'Brien had not made those payments.

Q. I am not asking you that, I am saying; were you in any doubt at any time that Mr. O'Brien had either stated that he intended to make a payment to somebody or had intended, in fact, to make a payment to Michael Lowry?

A. Denis O'Brien had made the statement that he had intended to make the payments.

Q. And that it was his intention to make one of them to Michael Lowry?

A. It was his intention to make one of them to Michael Lowry because of the difficulties that Michael Lowry was in at the time.

Q. Did he say that to you at the meeting on the 25th?

A. I can't recall.

Q. After the meeting of the 25th October with Mr. O'Brien himself, I think you were present at a meeting with the solicitors for ESAT Telecom, Messrs. William Fry, on the 30th October, is that right?

A. That's correct.

Q. I think you attended that meeting with Mr. John Callaghan, Mr. Aidan Phelan, is that right?

A. No. There was an ESAT Digifone board meeting held on the 30th.

Q. Was there? I wasn't aware of that?

A. There was an ESAT Digifone meeting. Whether it was a board meeting or not.

Q. an ESAT Digifone meeting?

A. ESAT Digifone meeting or board meeting held on the 30th and after that we were asked at that meeting to inform Owen O'Connell of Fry's of the events.

Q. I see. I wasn't aware of that meeting. Who was

CHAIRMAN: It was in Mr. Buckley's statement, in fact, Mr. Healy, in fairness to him.

A. I think it's in my statement.

Q. MR. HEALY: I am sorry. I am saying I wasn't aware of

it I certainly wasn't aware it was in your

statement?

A. Mr. Healy, it's in my statement.

Q. Can you tell me where that meeting was again? Did you say it was in IIU?

A. It was in IIU. It's in the last paragraph of my statement on the first page.

Q. You were under an impression, in any case, that it was a board meeting?

A. Yes, a board meeting. It states that at a follow-up board meeting on the 30th October

Q. Yes, you are quite right. Can you just help me with your recollection of that meeting? Who was present at that meeting of the 30th October?

A. I can't remember. I can't remember all the individuals.

Q. Well, you were present, Mr. Callaghan was present.

A. Yeah, and I know that some lawyers were present as well.

Q. Was Mr. Walsh present?

A. I am sure he was but at this stage I can't say yes.

Q. Do you recall whether Mr. Armstrong was present?

A. Mr. Armstrong was present, I can recall that.

Q. Were any of the Telenor directors present, can you recall?

A. I am sure they were, but I can't recall, Mr. Healy.

Q. I see. Can you just bear with me for a moment,

Mr. Buckley, I am trying to see whether this is

referred to

A. Okay.

Q. Even if you can't remember who was present, in any case

I presume that this issue was being discussed at that

meeting?

A. Yes.

Q. Do you recall if Mr. Maloney was present at that

meeting?

A. I don't.

Q. Or Mr. O'Brien?

A. I don't think Mr. O'Brien was at the meeting.

Q. He mightn't have been there in person but do you recall

if he was there by conference call?

A. I can't recall.

Q. After the meeting you say that, in any case, yourself,

Mr. John Callaghan and Mr. Aidan Phelan went to William

Frys, solicitors?

A. Yes.

Q. Mr. Callaghan was a common director of ESAT Telecom and

ESAT Digifone, isn't that right?

A. Yes.

Q. Mr. Phelan, what was his role?

A. Well, Mr. Phelan was going to the States with the

roadshow team and that was the reason why Aidan Phelan

would have been brought along to that meeting. You

must remember, Mr. Healy, that I was acting CEO of the

business of ESAT Telecom. I was involved mainly in the whole operations end of it and minding the house. I wasn't involved in the roadshow and Aidan Phelan was involved with that team.

Q. But what requirement was there for Mr. Phelan to go to the meetings? What was his involvement with ESAT Telecom?

A. Because he was part of the roadshow team and my recollection is that it would have been useful for him to be involved with John Callaghan and myself in the briefing of Owen O'Connell.

Q. So it was important that he would be up to speed, if you like, with issues that were now being considered. These were, after all, very serious issues, could have a huge impact on the IPO?

A. Absolutely.

Q. He was, I suppose would I be right in thinking that he was the person who was in Dublin and also in the United States going over and back?

A. Yes.

Q. Was he the link man, in other words, if you like, between what was happening at the Dublin end, the practical end, running the business and, at the same time, trying to cope with this issue and the roadshow that was running in the States?

A. Mr. Healy, I was the person that was running the business at base here.

Q. But was he the link with what you were doing here and what was happening in the States?

A. He was just part of the roadshow team and, you know, would have been one of a number of people that I would have been in contact with.

Q. am I right

A. whether you'd call him the link man, I don't know.

Q. I appreciate that. I am just wondering why, if I am right in thinking he wasn't a director, why he was present at the meeting?

A. Because we thought because he was going on the roadshow and was going to be part of the team, I am sure we felt that it would be useful for him to be along at the meeting.

Q. Would he have been present as an invited guest at the board meeting of ESAT Digifone that you had been at on that day?

A. No.

Q. So before you went to this meeting with Mr. O'Connell, you had to bring him up to speed, presumably, as to what was happening?

A. Presumably.

Q. So going to the meeting he would have been aware of some of the things, at least, that you were going to be telling Mr. O'Connell about?

A. Yes, I think so.

Q. Now, Mr. O'Connell made a note of that meeting and I

would have been furnished with copies of his documentation, I think, but you can also see a copy of his note on the monitor, can you see that?

(Document handed to witness)

Can you tell me, Mr. Buckley, whether at the back of the handwritten note of those meetings you have typed pages with a typescript of the handwriting?

A. Yes, I have that.

Q. Oh, you have. Can you find the note of the meeting of the 30th October with the word "Memo" at the top "From: OOC - client ESAT - matter IPO."

Underneath that "JC, LB, OOC here" do you see that?

A. Yes.

Q. The first note is "Asking questions possibly before communicating formally to ESAT Telecom board and underwriters - next Tuesday - Dublin - Denis O'Brien by videoconference - inquisitor from McCann Fitzgerald - no comment, opinion or judgement - not Fergus Armstrong himself."

I think that was a reference to the decision that had been made to have the question and answer session or the inquisition on the following 4th?

A. Yes, 4th November.

Q. Underneath that there is a note "KD consumed with rage - pull IPO - over and over." Did somebody say that at the meeting?

A. Who is 'KD'?

Q. 'KD' is Knut Digerud.

A. I can't recollect that he made that statement.

Q. Do you recall if he was at the meeting of the 30th in the board meeting as you call it of ESAT Digifone?

A. I can't recall. I don't have the details of who was at it.

Q. Do you recall him or anyone else on the Telenor side being very annoyed?

A. I recall that there was concern but who was expressing that concern, I can't recall.

Q. Mr. O'Connell has made a fairly careful note. He is a very careful man and the note he has made is "KD consumed with rage" suggests somebody was very annoyed. And only you, John Callaghan, or Aidan Phelan could have told him that at this meeting?

A. I have to accept that if this is written here, Knut Digerud must have been very annoyed.

Q. I appreciate that. I am just wondering is that as a result of anything you saw or you observed or any meeting you were at?

A. It was probably as a result of the meeting that he had just come from.

Q. Next it says "Letter from ESAT Digifone board to Chairman of ESAT Telecom re concerns on Prospectus." There is a reference to a technical matter which we

needn't dwell on.

Next item, number 3, under the heading "Payments. Denis O'Brien/BM discussion and FG." So the two items, one is Denis O'Brien/BM discussion and the other item is FG. Then there is a reference to "intermediary? - Woodchester? Other 100,000." Then there is a reference to the "payment stuck" etc. per FA letter."

Now, do you remember a discussion at that point about any reference to the intermediary or the involvement of an intermediary?

A. Mr. Healy, I don't remember the detail of that meeting.

I remember the meeting, I remember us briefing Owen O'Connell, but whether the word 'intermediary' or 'Woodchester' was used, I cannot remember.

Q. I understand.

A. I can't recall.

Q. If we just go on to the end of the note for a moment, just so that you will understand the note that Mr.

O'Connell kept of the meeting. He goes on to say "Arve checking re FG money. Inquiry of David Austin?

John Callaghan, Telenor insisted and John Callaghan/Leslie Buckley agreed to consult

WF" William Fry "per Fergus Armstrong - common directors." Underneath that there is a note "Statement from Woodchester definitely needed." That's a reference to Woodchester as an intermediary,

presumably. Then there is a note, a reference then to these two issues. "Payments made - getting stuck. Denis reference in board meeting to Woodchester as intermediary. Had thought about making payment but choose not to do it. This per John Callaghan.

Michael Lowry no expectation of payment. Never any discussion." A reference to the second $\frac{1}{2}$ 100,000. A reference to a process of further investigation. Then there are time deadlines mentioned. "Prospectus being issued Tuesday week, printed Monday week. Owen O'Connell letter held to Monday. Owen O'Connell to consider the matter on Friday - to consult the Chairman on Saturday and to write to the board on Monday." Then a reference to "John O'Connell notification" that's some other information which needn't concern us in detail.

In any case, by that time doesn't it look from the note made by ESAT Telecom's solicitor that the issues that were being considered were; a statement had been made that there was an intention to make a payment; there was an involvement of an intermediary; the intermediary seemed to be Woodchester; and the question was how could these matters be investigated by the board?

Would that be fair?

A. That would be correct.

Q. So then after that you had the meeting of the

30th you had the meeting of the 4th November. Then I think there was also a meeting of the 5th November of the directors of ESAT Telecom and then the Prospectus was issued?

A. Yes.

Q. Isn't that right? Now, if I could go back to the very beginning and to how this matter developed. You learnt firstly on the 20th of what this was all about for the first time in relation to the two (X) $\frac{1}{2}$ 100,000 payments?

A. Yes.

Q. Now, if it was true that Mr. O'Brien had said this, and if it was true that he had done it, it would have been an extremely serious matter, isn't that right?

A. Absolutely.

Q. But Mr. O'Brien said, and I think Mr. Maloney agreed that Mr. O'Brien had said, he didn't do it, isn't that right?

A. That's correct.

Q. But then a further issue developed because Mr. O'Brien said that he intended to do it, isn't that right?

A. That's correct.

Q. Now, Mr. Maloney said that Mr. O'Brien had stated to him that he intended to do it but the money never got through because it got stuck with an intermediary.

You are aware that that was what Mr. Maloney had said?

A. Yes.

Q. And on the other side of the equation, if you like, Mr. O'Brien said "Well, if there was an intermediary, it was Woodchester." Did you accept what Mr. O'Brien had said at that meeting?

A. At the meeting of the 23rd?

Q. Yes.

A. Yes, I did.

Q. So as far as you were concerned at the meeting of the 23rd the difficulty that you now had was that Mr. O'Brien said he had intended to make a payment, he had gone some way toward achieving that or bringing that about but that the payment got stuck and where it got stuck was in Woodchester?

A. Yes. And at my meeting on the 25th Denis O'Brien again confirmed that.

Q. He confirmed that to you again?

A. Yes.

Q. He said to you the payment had got as far as Woodchester but had never got beyond that?

A. Exactly.

Q. Did he tell you anything else about what had happened in Woodchester or how he had stopped the payment?

A. No.

Q. That was still a matter for concern, wasn't it?

A. Yes, it was.

Q. And so you decided at that point and the other directors decided they would investigate Mr. O'Brien's

explanation?

A. Quite right.

Q. Now, Mr. Maloney had said that the intermediary, he felt, was an individual or some other entity, isn't that right?

A. Yes.

Q. Not a bank?

A. As I understand it, yes.

Q. Were you concerned about that?

A. No, because Denis clearly said that his interpretation of 'intermediary' was Woodchester and certainly on the morning of the 25th if Denis had even used the word 'intermediary' with me I would have really questioned it. But he didn't. He explained that it was Woodchester.

Q. Well, maybe you'd just go over that for me. What exactly did he say on the 25th then?

A. That the payment got stuck in Woodchester.

Q. Why would somebody say a payment got stuck in Woodchester?

A. That was Denis uses very flowery language at times and that was the phraseology he used.

Q. But did you not wonder about that phraseology?

A. I didn't. I accepted that, you know, it remained in Woodchester.

Q. If I was trying to pay a debt and somebody else was waiting for me to pay it and they rang me up and they

say, "Where is the money you owe me?" And I said, "Well the money is after getting stuck in the bank" don't you think they'd say to me "What do you mean 'got stuck in the bank'?"

A. I certainly accepted

Q. what does it mean?

A. that it didn't move from Woodchester.

Q. But what does how can money get stuck in a bank?

A. My interpretation of it is that it remained there,

Mr. Healy.

Q. If you put a stop on a cheque, would you say the money got stuck in a bank?

A. knowing Denis O'Brien

Q. I am asking you.

A. I'd use different phraseology.

Q. Wouldn't that be a very strange way to describe a decision you made not to make a payment?

A. Not necessarily so.

Q. To say to somebody "Well, it got stuck in a bank." To this day you don't know what he meant by it, do you?

A. I don't.

Q. So you went and signed off on an IPO without knowing what Denis O'Brien meant by "Got stuck in a bank"?

A. My clear understanding what Denis O'Brien meant was that the payment didn't go beyond Woodchester and I accepted that.

Q. But you never queried Mr. O'Brien as to why he used

that expression "Got stuck"?

A. No, I didn't, Mr. Healy.

Q. Could I suggest to you that there is hardly any reasonable person who wouldn't have queried how anyone could use language like that?

A. I think there are, actually, Mr. Healy. I think if you know the character and know the person then, you know, Denis it's quite characteristic of Denis to use that type of terminology.

Q. At the meeting on the 30th October it's clear that the solicitor was identifying the problems that he would need to address in order to assist in dealing with this matter, isn't that right?

A. Yes.

Q. And we know from the solicitor's notes, and he has made many other notes, all of which I think you have seen, we know that he was concerned about the expression "Payment got stuck"?

A. Yes.

Q. Now, the solicitor was the solicitor to Mr. O'Brien for a long, long time, isn't that right?

A. That's correct.

Q. And presumably knew him as well as you did?

A. Presumably.

Q. And he was he didn't think this was, clearly from his note, a normal way of describing how a payment would not be made by a bank. What words would you use

to describe the situation that Mr. O'Brien described to you?

A. That the payment wasn't made, the payment remained in the bank or but you know,

Q. I think we have put it, in fairness, Mr. Buckley, is the way most people would say, "Look, I didn't make it" or Mr. O'Brien said he had earmarked money in the bank.

We are jumping on to a later date now, isn't that right, on to the 4th?

A. Mm-hmm.

Q. And you might well say "I earmarked money in the bank. I put it aside but I never made the payment." Again the type of explanation you have just given, isn't that the sort of language you'd use?

A. Yes, but I think, Mr. Healy, and I am repeating myself here, Denis O'Brien uses that type of language on a very regular basis and that is the style of the person.

Q. In any case, going back to the meeting of the 30th, yourself, Mr. Callaghan and Mr. Phelan presumably went through these matters in some detail at that stage?

A. Yes.

Q. You had your own view about what Mr. O'Brien meant and what the words he used meant, but the matter was discussed in some detail at this meeting?

A. Yes.

Q. And Mr. Callaghan and Mr. Phelan were, presumably, well aware of what the issues were in relation to

'intermediary', 'Woodchester', 'payment getting stuck'?

A. They were aware of the conversations that had taken place.

Q. And at that meeting you recall Mr. O'Connell's note that definitely a statement was required from Woodchester?

A. Yes.

Q. So presumably there was some discussion and the result of that discussion was 'Well, there is one way we can find out a bit more about this and that is by going to Woodchester and see can we get some information from them', isn't that right?

A. Yes.

Q. And the idea was that if you got information from them that money had not moved, well that would provide you with some more comfort?

A. Yes.

Q. Maybe you didn't need the comfort but maybe other people did. Can you recall whether after that meeting you remained of the view that there was no problem that the payment had never been made?

A. I think so, Mr. Healy, but it was certainly again further confirmed at the meeting of the 4th November.

Q. Now, at the meeting of the 4th November there was still no statement from Woodchester, isn't that right?

A. I can't recollect that, I can't remember.

Q. Well, I think that's right, in any case.

A. Okay.

Q. So presumably a number of the people present at that meeting, at that board meeting were not satisfied to accept the explanation without clarification from Woodchester?

A. Possibly. I can't remember the timing of that.

Q. Do you remember Mr. O'Brien's explanation which he had made I think he referred to on the 20th and maybe again at the meeting of the 4th that this was a bit of bravado, a joke or a wind-up, using those three words to describe

A. yes.

Q. his response, that it was a jovial affair? Now, you recall you will be aware that Mr. Maloney has given evidence that he understood that Mr. O'Brien had been serious at all times?

A. Yes, that's my understanding.

Q. If you accepted what Mr. O'Brien said, do I take it, therefore, that you accept that Mr. O'Brien had an intention to make a payment, that he took some steps to make that payment and that the payment never got beyond Woodchester?

A. Yes.

Q. And that there was no other intermediary involved other than the bank?

A. Yes.

Q. And there must have been some time, I suppose, between

when he made up his mind to make the payment and when the payment got stuck or when the payment got stopped or whatever other step was taken so that it didn't leave Woodchester? Presumably there must have been some time. There is some debate about how long there was.

A. Yes.

Q. If you accepted that explanation, did you also accept the remark Mr. O'Brien made that the whole thing was a wind up?

A. Yeah, because in actual fact Denis is quite a wind-up merchant and just knowing the individual, it is the type of thing he would say.

Q. So Mr. O'Brien himself has given evidence that he is very glad he didn't make this payment. I think he said at one of the meetings, "Thank God I didn't go ahead with it", isn't that right?

A. Yes.

Q. It would have been a disaster, wouldn't it?

A. It would have been very serious, absolutely.

Q. So if Mr. O'Brien did all of these things and then made a joke about it, wasn't he making a joke about something very serious? Did you ever wonder about that?

A. If the payment had been made, yes, it would have been very serious.

Q. No, but if he had intended to make the payment and had

gone so far as to take some steps, even to the extent of earmarking the money in a bank and then stopping it or not going ahead with it, do you think that was something that Mr. O'Brien would have made a joke about?

A. I think that Denis, at the time that he was speaking with Barry in November '96, was, in his style, trying to put pressure on him to make success payments.

Q. By saying "I bribed a government minister"?

A. As I understand it, he didn't say that, Mr. Healy.

Q. But, sure, if he didn't say that, what was the point of the discussion at all?

A. Pardon?

Q. Sure, if he didn't say that, what was the point in the discussion at all?

A. He said that he had made payments of $\frac{1}{2}$ 100,000 and the interpretation was that one of them was to Mr. Lowry.

Q. But he never disputed that interpretation, isn't that right? Mr. O'Brien has never disputed that interpretation?

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. In fact Mr. O'Brien has said the only person he could have had in mind or that Mr. Maloney could have had in mind was Mr. Lowry, isn't that right?

A. That's correct.

Q. So there is hardly any difference between saying it and not saying it if both people involved knew that Mr. Lowry was being referred to, isn't that right?

A. I am just saying what I know and my understanding

Q. but what you know is that Denis O'Brien was prepared to make a joke about saying he had bribed a government minister. It doesn't matter whether he used Mr.

Lowry's name or not, Mr. Lowry was the man he had in mind and he assumed Mr. Maloney knew that?

A. Yes.

Q. Just after you had got a licence. The discussion took place sometime in 1996, October/November?

A. October, yeah.

Q. You got the licence in May of 1996 Digifone got the licence.

A. Digifone got the licence in

Q. Just to clarify it. Digifone won the competition in October of '95. There was then a period of about six months or so while the terms of the licence were being negotiated and all of the conditions that Digifone had to comply with were being complied with and the licence was formally granted, I think, in May of '96?

A. Yes.

Q. So the licence had been granted formally a few months before that?

A. Yes.

Q. And you had no difficulty in accepting Mr. O'Brien

joking about something like that?

A. Knowing the guy, I hadn't.

Q. Now, in your statement you say that after the meeting of the 4th November you were fully satisfied with the answers provided by Denis O'Brien and you believed that no payment was, in fact, made to Mr. Lowry or anybody else?

A. That's correct.

Q. I just want to, I don't want to trap you, I just want you to understand precisely what I understand that to mean; that this was after the question and answer session; in the question and answer session Mr. O'Brien said, I think, I am subject to correction, that he had earmarked money in Woodchester; that Woodchester was the only intermediary and, as I understand it, it was decided as a result of that question and answer session, and indeed I think at the meeting with Mr. O'Connell as well, that clarification would be obtained from Woodchester?

A. I remember that at a meeting clarification was required from Woodchester. I can't remember whether that took place on the 4th November.

Q. Can you remember whether you relied on that clarification, whether it was a matter of importance for you or whether you didn't need it at all?

A. I think it was helpful supporting evidence.

Q. Helpful supporting evidence. It supported Mr.

O'Brien's explanation of what had happened, is that the way you looked at it?

A. No, it just helped me to further satisfy myself that

Q. I understand so you are saying that you believed Mr. O'Brien on the 4th when he said it went to Woodchester, it didn't go beyond Woodchester. You know that further steps were being taken to get clarification from Woodchester. That was just further comfort for you?

A. Exactly.

Q. Would I be right in saying that there were other people at the meeting for whom it was a matter of perhaps more importance?

A. Possibly so, yes.

Q. Do you recall the confirmation being obtained from Woodchester or at least a report of the confirmation having been obtained?

A. I recall that we got confirmation, but I cannot recall the timing of it.

Q. There was a meeting of the board of directors of ESAT Telecom at which you were present, on the 5th, am I right?

A. That's correct.

Q. And the purpose of that meeting was to enable Mr. O'Connell to relay to all of the directors at that meeting the result of the question and answer session, isn't that right?

A. Yes.

Q. To identify the issues and to indicate what information was now available to enable the directors to deal with those issues, would that be fair?

A. Yes.

Q. You had been at the question and answer session so you knew a lot of what Mr. O'Connell was saying. Mr. Callaghan had been at it as well, isn't that right?

A. Yes.

Q. Was Mr. O'Brien present either by conference call or in person at the meeting of the 5th, do you recall?

A. As I recall he wasn't.

Q. But can you remember it?

A. My recollection is that he was on conference call, that's my recollection.

Q. I see.

A. but that prior to that meeting John Callaghan had been asked, I think on the 28th October, to inform the board members of ESAT Telecom individually of events. And that would have taken place over a number of days because some people were in the States. And on the 4th November Owen O'Connell had sent out briefing notes by fax to all the board members.

Q. I see. So you think that in or around the 28th Mr. Callaghan had been asked to informally tell the directors of ESAT Telecom what was happening?

A. Yes.

Q. So they would have had an idea of what was happening?

A. That's my recollection.

Q. On the 30th you had the meeting with the solicitor, Mr. O'Connell?

A. Yes.

Q. There was the meeting of the 4th where you gathered information and Mr. O'Connell's briefing notes, you say, is that right, were given to the directors prior to the meeting of the 5th?

A. Yeah, the notes of the events were circulated to the board members by fax on the 4th, as I recollect it.

Q. So that when they came to the meeting of the 5th they had been aware of the whole thing for about a week, informally, and they were now being formally brought up to date?

A. Yes. All of them wouldn't have been informed on the 28th because, just the very logistics, I can't remember exactly how, but it would have taken a couple of days commencing on the 28th and I can't remember when John Callaghan would have finished that but it would have presumably taken a few days.

Q. I understand. And at this meeting of the 5th Mr. O'Connell presumably informed the board of the result of the question and answer session and also the result of the inquiries that had been put in place in connection with both the \$50,000 and the two (X) $\frac{1}{2}$ 100,000 payments, isn't that right?

A. That's my recollection.

Q. And one of those steps being taken was to obtain information from Woodchester?

A. If that was one of the steps at that board meeting, yes.

Q. It seems to have been a very important step

A. I thought, in actual fact, that one it was one of the steps that had been agreed prior to the 4th November.

Q. Yes, I understand that. You may have discussed it prior to the 4th. It was certainly mentioned at the 4th. But by the 5th, I am saying that you probably had some information from Woodchester?

A. I can't remember that.

Q. Do you recall yourself getting any comfort from Woodchester information? Do you recall what it was?

A. I can recall the event. I can't recall the timing

Q. Don't worry about the timing.

A. Yes, I am sure I would have got some comfort.

Q. What do you recall?

A. I recall there was a decision to get confirmation from Woodchester.

Q. What was the result of that decision? Do you recall the information that was made available by Woodchester?

A. That they were confirming that no money went from Woodchester but I actually can't recall reading that.

I can't recall that.

Q. You may not remember the details of it but if I could

just remind you of it you may then remember it. I think there was a discussion about getting information from Woodchester of transfers out of Mr. O'Brien's accounts in the order of 50,000 or 25,000 or whatever, do you remember that? So somebody was going to look at Mr. O'Brien's accounts in Woodchester and see what 50,000 or 25,000 ^ movements. They weren't going to check everything. They might be there forever?

A. I remember that.

Q. You remember that?

A. I remember that.

Q. You remember Mr. O'Brien saying 'All my accounts are in Woodchester. Woodchester is the place to go to find the information'?

A. Yes, yes.

Q. Right. And so I think you will agreed with me, some people were probably more dependent on that information than you. For you it was simply a further bit of comfort?

A. Yes.

Q. So that it gave further comfort to you that Mr. O'Brien's explanation that if there had been money that there had been money earmarked in Woodchester but that it had never left Woodchester in the form of a $\frac{1}{2}$ 100,000 payment to Mr. Lowry?

A. Yes.

Q. Or that any $\frac{1}{2}$ 100,000 payment had left other than ones

that could be explained as business payments or personal payments?

A. Yes.

Q. Now, you weren't aware at that time, I think, that there had been a payment of $\frac{1}{2}$ 400,000, which included payments very close to $\frac{1}{2}$ 100,000, to certain individuals, is that right?

A. I wasn't aware of any of those payments.

Q. Because that information has only become available since. I think Mr. O'Brien was asked about it in the witness-box.

A. Mm-hmm.

Q. And none of the other board members were aware of that information, isn't that right?

A. I can't speak for them, but

Q. can I take it that if they had been they would have said it at the board meeting?

A. Presumably.

Q. I presume nobody at the board meeting would have gone ahead if this additional information had been made available to them. Mr. O'Connell doesn't mention it, in any case?

A. I think that would be correct.

Q. It would have affected your own view, wouldn't it, because you wouldn't have had the additional comfort you wanted? You might still have believed Mr. O'Brien but there would have been another problem, wouldn't

there?

A. Yes, there'd be another issue, yeah.

Q. Now, if I could just go back to the 50,000 payment and the other 100,000 payment. No steps were taken to pursue any further queries in relation to the other 100,000 payment, is that right?

A. That's correct.

Q. Can you remember why you yourself didn't want any further steps taken in relation to it?

A. Because I just accepted that Denis had exaggerated the statement by, instead of '100' he said '200' and I accepted that statement.

Q. In relation to the \$50,000, the question was; had this money gone to the Fine Gael Party? Isn't that right?

A. Yes.

Q. And do you recall how that question was answered?

A. Yeah, there was a request to obtain a letter from David Austin confirming that the payment was made to Fine Gael.

Q. Before the meeting everybody knew that David Austin had got the money, isn't that right?

A. Yes.

Q. And before the meeting there was no reason to believe that David Austin hadn't transmitted it to Fine Gael, isn't that right?

A. Yes, I think so, yes.

Q. The letter from David Austin simply confirmed what you

already knew, that

A. my memory is we wanted to confirm that that 50,000 had been paid to Fine Gael and not Michael Lowry.

Q. Do you remember any discussion about whether you'd go to Fine Gael itself to get that confirmation?

A. I don't, actually, no.

Q. Wouldn't that have been the simpler solution than to trouble a very sick man?

A. It may have been, but

Q. I am just wondering why that roundabout way of finding out something was chosen instead of the simpler method of simply going down to Fine Gael and saying 'Look, we have lost our receipt' - or something - 'Can you give us a receipt for that \$50,000? We need it for the accountants'. Nobody need mention any worries or troubles you had about it.

A. That wasn't the way we decided to do it. We were told that the payment was made by David Austin to Fine Gael and we wanted to confirm that that's exactly what had happened.

Q. Mr. Austin said that he paid the money to Fine Gael. Did you see his note?

A. Yes. He wrote stating that he had made that payment to Fine Gael.

Q. Do you remember seeing the note at the time before the IPO went out?

A. Yeah, I think I saw it, yes.

Q. Wouldn't you have had to see that, surely, to satisfy yourself that the money had gone to Fine Gael?

A. Yeah. Well, either I was told that, yes, that note had come or else I saw it but, I actually can't remember, but I know that we had requested that note and I would have been either informed that we had received it or else I saw it. I can't actually remember which.

Q. You now know that, in fact, what had happened was something different altogether, isn't that right?

A. How do you mean?

Q. Well, Mr. Austin didn't pass the money on to Fine Gael immediately, isn't that right?

A. Yes, there was some delay I understand.

Q. In fact, the money went into an offshore account in Jersey, isn't that right?

A. Yes.

Q. And it didn't go to Fine Gael for a year and two or three months, isn't that right?

A. Yeah, I think so, yes.

Q. And it now appears that, in fact, if you had checked with Fine Gael at that time they wouldn't have known what you were talking about?

A. Possibly so.

Q. But they had no record of any payment from Telenor or ESAT Digifone?

A. Mm-hmm.

Q. And indeed if you had checked with Fine Gael you might

have found out that John Bruton had said he didn't want this payment at all. Those are all fairly disturbing facts, aren't they? I know you only have them now?

A. Yes, it's only very recently I've become aware.

Q. It's disturbing that a political contribution goes to an offshore account and stays there for a year and a bit. I am not suggesting that Mr. Austin took one halfpenny of this money but it stayed there for over a year. That's disturbing?

A. Yes.

Q. And it's disturbing that the payment couldn't go in under Telenor's name or ESAT Digifone's name because the Party leader didn't want it. So instead the Party was duped into thinking that it was Mr. Austin's own contribution?

A. As I understand it now, yes.

Q. When Mr. Austin wrote that letter, he knew all those facts, isn't that right?

A. So I understand.

Q. He knew the money had gone to an offshore account, he knew Mr. Bruton didn't want it and he knew that it went to Fine Gael a year and three months later under an assumed or a different name isn't that right?

A. Yes.

Q. Do you wonder even now why Mr. Austin didn't tell you all of that in 1997?

A. I have really no idea why he didn't.

Q. It would have affected your decision, wouldn't it? If you had learnt all of that in 1997 it would have been fairly surprising information?

A. It would have been.

Q. Do you recall whether anyone in particular wanted to take the David Austin route or the Fine Gael route?

A. I can't recall.

Q. Would you agree with me that if somebody else knew what David Austin knew then they would be more anxious to go the David Austin route than the Fine Gael route?

A. I can't recall any debate as to whether it would be Fine Gael route or David Austin route.

Q. There must have been some debate because we do see it mentioned in the notes?

A. as to whether Fine Gael or

Q. or David Austin

A. Okay, I accept that.

Q. But would you agree with me that if somebody else knew what David Austin knew they wouldn't have been anxious to go the Fine Gael route, isn't that right, if they didn't want the board to know about these facts?

A. Possibly, yes.

Q. And isn't it almost certainly the case if you didn't want the board to know about these things and you knew about them?

A. Mm-hmm, yes.

Q. It wouldn't have been a very clever thing to do to go

to Fine Gael? Just one final matter: After your discussion of the 25th with Mr. O'Brien you were concerned about, I think what you said was something that recalled the events of 1996 at the time of Mr. Maloney's resignation and you felt that Mr. Maloney was behaving irresponsibly?

A. Yes.

Q. In what way did you think he was being irresponsible?

A. Because he was aware of the discussion. He hadn't brought it to the attention of the board until October '97. He was aware of the discussion from October/November '96 and both ESAT Digifone and ESAT Telecom were at a fundraising stage and, in my view, that was a matter that should have been raised at a much earlier stage. And it was fairly characteristic of Barry Maloney, because at any fundraising periods in relation to ESAT Telecom, he was not helpful, to say the least, in providing information.

Q. But bringing it up at this stage in this form was something you regarded as completely irresponsible?

A. I felt that he was just doing everything to try and stop the IPO.

Q. But why would he be doing that?

A. Because he had resigned the previous December. He had left his resignation on the table for up to two months while he negotiated increased share options, which eventually resulted in him getting $i\frac{1}{2}$ 40 million and it

would have been, I suggest, in his interest to have delayed the IPO of ESAT Telecom until after the Tribunal, where everything was washed out and that, at that stage, ESAT Digifone would have been in a much firmer position and would have been able to do an IPO of itself.

Q. How long did he stay in position as Managing Director after that time?

A. After which time?

Q. After the IPO of ESAT Telecom?

A. He was Chief Executive of

Q. Chief Executive, I beg your pardon?

A. He was Chief Executive of ESAT Digifone up to about three months ago.

Q. He was Chief Executive during all the time that you were there?

A. Yes.

Q. Did you discuss the view you took of Mr. Maloney with any other director, other than Mr. Denis O'Brien?

A. I think I may have discussed it with my other fellow director from ESAT Telecom, John Callaghan.

Q. Did you bring that view to the notice of any of the other directors of ESAT Digifone?

A. I can't remember. We may have - or I may have - I can't remember.

Q. Why was it you took no step to remove Mr. Maloney between November of 1997 and 20001? You didn't take any

steps, isn't that right?

A. No, we didn't, no.

Q. This was a man who had behaved irresponsibly, according to you, for personal reasons?

A. Yes.

Q. And you never took any step to remove him?

A. As far as I was concerned he had, at each time that we were doing funding, played brinkmanship and, you know, that was an irresponsible way of doing business.

Q. Why did you keep him in position?

A. It was not a necessary way of doing it.

Q. Why did you keep him in position then?

A. Because we had lots of other issues in running ESAT Telecom and ESAT Digifone and we were a 49% shareholder in ESAT Digifone.

Q. And that would have prevented you from raising a matter as important as this, a managing director that was going to play brinkmanship at every time?

A. It wouldn't have prevented us.

Q. But you didn't?

A. No, we didn't.

Q. Did you seriously hold the view that you have just told the Tribunal here, that he had behaved irresponsibly and was doing it all the time?

A. Yes.

Q. You seriously held that view?

A. I seriously held that view.

Q. And you are telling me you took no step whatsoever, as a responsible director yourself, to do anything about it?

A. That's correct. There were lots of other issues in relation to ESAT Telecom.

Q. Wasn't that surely a hugely important issue I am talking about ESAT Digifone wasn't this a hugely important issue?

A. Yes, it was an important issue.

Q. Was Mr. Maloney doing things that were damaging to ESAT Telecom or things that were damaging to ESAT Digifone?

A. Well, to me that was damaging to, mainly to ESAT Telecom.

Q. Did Mr. Maloney have a duty to ESAT Telecom?

A. He had a duty to ESAT Digifone, and to the entire group, as Chief Executive of ESAT Digifone.

Q. Did he have a duty to ESAT Digifone to conduct its affairs in a way that wouldn't harm ESAT Telecom?

A. Yes.

Q. He did, as far as you were concerned. Was that his primary duty?

A. That would have been his primary duty.

Q. I see. You are seriously saying that the Chief Executive of ESAT Digifone had a primary duty to ESAT Telecom?

A. No, no. His primary duty, of course, was to ESAT Digifone. Sorry, if you want to repeat that question?

Q. If he was behaving irresponsibly, can you tell me now that you regarded his behaviour as irresponsible as Chief Executive of ESAT Digifone?

A. Yes, I did. In that regard, yes.

Q. And you took no step whatsoever to do anything about it, nor did your fellow director?

A. That's correct.

Q. Nor did Mr. Denis O'Brien, who was also a director and Chairman, isn't that right?

A. Yes.

Q. None of the three of you did it?

A. Yes.

Q. Could that be because you didn't really think he was behaving irresponsibly, just that he was behaving in a way that didn't suit you?

A. Would I not state here that he was, in my view, behaving irresponsibly if I didn't think so.

Q. Of course, if the IPO of ESAT Telecom did not go ahead, then obviously the people interested in that IPO wouldn't have made substantial profits either, isn't that right? That would include your fellow directors, Mr. O'Brien and anyone else, isn't that right?

A. Yeah, that's correct.

Q. Thanks very much.

CHAIRMAN: Mr. Fitzsimons?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. Sorry, just a couple of questions, Mr. Buckley. I am referring to the notes of the meetings prepared by Kilroy's in relation to the meetings of the 4th November and the 5th November and at page 41 of the notes relating to the 4th November, you, and I am just quoting "LB raised the issue as to how to deal with David Austin. The question whether this should be dealt with by ESAT Telecom, ESAT Digifone or Telenor was discussed." Do you remember raising that?

A. Sorry, I am just trying to get

Q. It's at page 41 of the Kilroy's notes of the meeting of the 4th November?

A. Yes.

Q. Do you remember raising that?

MR. MCGONIGAL: There is just one matter, Mr. Chairman. I don't know if it's correct for me to draw it to your attention. At the top of that page it would appear as if somebody may have left the meeting.

CHAIRMAN: We'll try and get that statement, or that page of the notes, on the monitor.

MR. FITZSIMONS: At the top of the page, we'll deal with Mr. McGonigal's point. "At this point LB and FA had left the meeting separately." And then down the page it says "LB raised the issue as to how to deal with David Austin. The question whether this should be

dealt with by ESAT Telecom, ESAT Digifone or Telenor was discussed." Do you remember raising that.

A. I actually don't.

Q. Very well. And then at the bottom of the page "LB was asked whether or not any of this information had been shared with the underwriters and LB confirmed there had been no opportunity to do it." Do you recall leaving the meeting at some stage and coming back?

A. I don't, sorry.

Q. Very well. Page 43 then of the same minutes. "Owen O'Connell confirmed that he was willing to try but that Haughton Fry would not communicate lightly with David Austin." Do you remember hearing that being said?

A. I don't actually. I remember reading it since but I don't remember.

Q. Going to the meeting of the 5th page 3 of the meeting of the 5th November, if we could have that up, please. Do you have that page in front of you, the 5th November?

A. I don't, I just have the 4th November.

Q. Okay. We'll get you the 5th November now. I think you can confirm, just to deal with the meeting of the 4th November, that would have lasted quite a long time. It commenced, according to the minutes?

A. It was a lengthy meeting, yes.

Q. Were you there at the end of the meeting? Do you recall it finishing?

A. I don't.

Q. But it was a long meeting?

A. Yeah, it was a lengthy meeting.

Q. Here we are again 24 hours later, on the 5th November, this meeting commenced, I think, at 4.15 according to the minutes.

A. Yes.

Q. Now, if you just go to page 3. "LB explained that in relation to the political contribution issue an intermediary had contacted David Austin and had spoken to him." Now, this is you raising this matter. Who was the intermediary who contacted David Austin between the 4th and the 5th November?

A. My memory is that that was Aidan Phelan.

Q. Aidan Phelan?

A. Yes.

Q. And who spoke to Aidan Phelan to ask him to do this?

A. I know that I spoke with him at one stage.

Q. You spoke

A. I can't remember whether I asked him to do it but I remember that there was a number of things that needed to be done and I contacted Aidan Phelan and asked him had he received a letter from David Austin.

Q. Well, now this is before Aidan Phelan wasn't at the meeting of the 4th November, isn't that right?

A. That's right.

Q. But somebody had to ask him to get a letter. Who asked

him to get the letter?

A. That's the point I am making. I can't remember whether I asked him to get that letter or whether it was somebody else asked him.

Q. It's a pretty simple I mean you just can't remember?

A. I can't remember. I do remember contacting him at some stage and saying 'Have you received that letter?'?

Q. Yes, okay. It goes on "David FT Austin is currently resident in France and explained that David FT Austin ... explained that we, ESAT Digifone are to obtain a letter from that person, David FT Austin, that he received a donation for a dinner function and that he subsequently transferred the funds to the Fine Gael Party. LB pointed out that he had hoped that he would have the letter for the meeting today but that perhaps it would come through during that meeting." So you were the one who was hoping to have the letter, isn't that right?

A. Yeah, yeah, it must have been, yes.

Q. So we can take it then you are the one that asked him for the letter?

A. I absolutely can't remember whether I asked him, whether I initiated it or whether it was somebody else, but, as I say, I do remember at some stage during that process talking to Aidan Phelan and asking him had he the letter.

Q. Then we go on, the next sentence "LB then asked whether he had explained the position fully and Gerry Halpenny" and then there is a privilege claim.

Who were you asking as to whether you had explained the position fully? Because you are referring to the previous paragraph. Who were you asking that question of?

A. I don't know.

Q. Well, I mean

A. I know it's written here but I don't know who I was asking that question.

Q. But why would you ask the question unless someone else at the meeting knew about what had happened between the 4th and the 5th, between David Austin and yourself?

A. Between David Austin and what?

Q. And yourself?

A. Sorry, nothing happened between David Austin and myself.

Q. You spoke to him and you had a conversation

A. With David Austin?

Q. Yes?

A. I never spoke with David Austin. No, no, let's be very clear, I never spoke with David Austin.

Q. I am sorry, Mr. Buckley, I misled you there, I am sorry, it's my mistake. Who else at the meeting knew about what you had described in the previous paragraph?

A. I presume everybody else at the meeting was aware that

we were we had requested to get a letter from David Austin confirming that he had sent money to Fine Gael.

Q. So everyone was aware that an intermediary had contacted David Austin in the previous 24 hours and knew who the intermediary was and knew that you had spoken

A. sorry just what date? Just a moment, please what date is this?

Q. That's the 5th November. You had raised the issue at the meeting of the 4th November 'What should we do?' and here on the 5th November, you are explaining what was done 24 hours later and then you ask whether you had explained the position fully, which indicates that somebody else at least at the meeting must have known about what had happened in this regard during the previous 24 hours and you were checking with them to see whether you had given a full explanation?

A. Possibly so, yes.

Q. Mmm?

A. Possibly

Q. But you can't remember who the other person or persons were?

A. I can't.

Q. Very well. Thanks.

MR. HEALY: Just one matter so that we don't have to call Mr. Buckley back this afternoon, Sir. Just to

clarify one matter

CHAIRMAN: Sorry Mr. McGonigal

MR. MCGONIGAL: I just wanted to ask one or two small questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL.

Q. MR. MCGONIGAL: Just one question, Mr. Buckley, in relation to the discussion about the resignation. The Chairman raised a question yesterday in relation to it. At the time of Mr. Maloney's resignation in December of 1996 Mr. Desmond went to him and offered him the sum of $\text{€}250,000$ as an inducement to work for a period of 7 weeks and Mr. Maloney didn't accept. If he had accepted the $\text{€}250,000$, what would have been the position?

A. My recollection of the events was that Dermot Desmond had asked Barry Maloney to stay on for a 7 week period, 6 or 7 week period, and he would have received $\text{€}250,000$, but then he would resign and would be gone and he would have consequently lost his share options.

Q. So, in fact, what I think happened is that he left, he went back to work but left his suspension on the table and only removed it in February of '97 after the option situation had been negotiated again?

A. Absolutely.

Q. Now, the only other matter I wanted to ask you about

was Mr. Healy asked you about taking steps to have Barry Maloney removed from the board of ESAT Digifone because of your view that he was irresponsible. What was the make-up of the board at that time, can you recollect?

A. There was a period where it was 40/40/20. I think it went to 45/45/10 and then it was 49/49/1.

Q. That's the shareholding. But as far as the board is concerned, am I right in thinking that there were eight directors on ESAT Digifone?

A. Eight.

Q. Maybe I should say eight voting directors and one non-voting. I think Barry was on the board as a non-voting director?

A. Including Barry it would have been eight.

Q. Was that three directors from ESAT Telecom, two directors from IIU and three directors from Telenor?

A. There was three from ESAT Telecom, including Denis O'Brien as Chairman, there was three from Telenor and two from IIU.

Q. And then Barry as a non-voter?

A. Barry as a non-voter.

Q. And to remove him would have required a majority of the board?

A. Exactly, yeah.

CHAIRMAN: Mr. Murphy, any matters you wish to raise with your clients?

MR. MURPHY: No questions, Sir.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR.

HEALY:

Q. Just a couple of small matters. Just in relation to that latter point. Mr. Maloney isn't here, Mr. Buckley.

You could have accepted Mr. Maloney's resignation during all the period it had been left on the table, couldn't you?

A. Yes, we could have.

Q. So you could have accepted it up to February and you'd have been rid of Mr. Maloney?

A. Except that we were it would have been very difficult because we were fundraising for both ESAT Telecom and ESAT Digifone

Q. But the fundraising would have been over by that stage, wouldn't it?

A. No, my recollection is that that was going on in January/February of '97 and it would have been very difficult to fundraise without a Chief Executive of ESAT Digifone.

Q. I see. You say your subsequent problem in getting rid of him is that you were only three directors on the board, is that right?

A. Yes, that would have been quite a difficult

Q. Do I take it therefore that the other five directors

would have been against you?

A. Possibly.

Q. You assumed that the Telenor directors would have been
would have been against you and you assumed that the
IIU directors would have been against you?

A. We certainly assumed that the Telenor directors would
have been against us.

Q. That means that three would have been against you and
not the IIU?

A. at least.

Q. and not the IIU directors?

A. I don't know. We didn't put it to the test.

Q. So you don't know whether you could or could not have
disposed of Mr. Maloney's services after that?

A. I suggest it could have been difficult.

Q. But you never even tried?

A. Because we had only three votes.

Q. So 60% of the board would not have shared your view?

A. we didn't put it to the test.

Q. would that be right? You didn't put it to the test
for obvious reasons.

A. What do you mean 'obvious reasons'.

Q. That you didn't think you could get the other 60% of
the board to agree with you?

A. It would have been difficult.

Q. Did you know David Austin yourself?

A. I worked in the Smurfit organisation many years ago and

David Austin was at a more senior level than me and I would have been acquainted with him.

Q. Did you have any discussion with him concerning this payment at any time?

A. No.

Q. Why was Mr. Phelan chosen as an intermediary?

A. I don't know. I think he knew him for quite some period but I don't know exactly why.

Q. Who gave Mr. Phelan his instructions in the sense of who told him what it was the meeting had decided should be done?

A. As I said earlier, I can't remember. What we wanted what the request from the board was that we would need a letter from David Austin as to whether he actually sent the money directly to Fine Gael or not. Whether I did it or whether it was one of my colleagues, I can't remember. I do remember ringing Aidan Phelan and asking him had he received such a letter.

Q. I am just wondering why, if you knew David Austin from your previous involvement with Smurfit, why you weren't the person chosen to do it?

A. I had left Smurfits in 1986/'87.

Q. Had you had contact with Mr. Austin in the meantime?

A. I don't think I ever. I might have met him at a race meeting.

Q. I understand. You were the contact, if you like, on

the ESAT Telecom/Denis O'Brien side who was dealing with this, judging from the minutes that Mr. Fitzsimons refers to?

A. From an ESAT Telecom point of view that was something that was required and I pursued it with Aidan Phelan, but whether I initiated it with Aidan Phelan, I can't remember.

Q. Can you remember drawing it up with Mr. O'Brien himself?

A. How do you mean 'drawing it up'?

Q. Asking Mr. O'Brien about it?

A. I can't, because he would have been in the States at the time, but I can't remember. Maybe I did.

Q. Mr. Phelan was in the States as well?

A. Mm-hmm. I can't remember.

Q. Do you remember trying to find somebody to make this inquiry of Mr. Austin?

A. No, I can't.

Q. Thanks very much, Mr. Buckley.

CHAIRMAN: Thanks for your attendance, Mr. Buckley.

It's five to one. There is one witness for the afternoon and while I anticipate he will be of lesser duration than Mr. Buckley, it's not feasible to embark on that now. We'll take up matters at five past two. Thanks.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.05 P.M.:

MR. HEALY: Mr. John Callaghan please.

JOHN CALLAGHAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Thank you Mr. Callaghan. You, I think, should have with you a copy of a memorandum of your intended evidence?

A. Mm-hmm.

Q. Before I go through what's contained in your memorandum can you let me know, firstly, whether you are still associated with either ESAT Telecom or ESAT Digifone?

A. I am not.

Q. And when did you cease to be associated

A. on the 10th April, 2000.

Q. And did you resign from all positions in ESAT Digifone and ESAT Telecom as at that stage?

A. Yes, that's right.

Q. Were you associated with any other companies involved with or affiliated to or subsidiaries of ESAT Telecom or ESAT Digifone, if they had any?

A. I was a director of ESAT Telecom Communications from December '94, of ESAT Digifone from June '95. There was a reconstruction in the group in the middle of, I think it was '96, and I became a director of what then became a holding company called ESAT Group. And I

remained a director of these three companies until the 10th April. I was also a director of what was really a dormant company set up in the UK to apply for a licence over there. Nothing ever happened and the company never did anything and I resigned from that also on the 10th April.

Q. And when you ceased to have any association with ESAT Telecom and ESAT Digifone in 2000, can you tell me was that in connection with any of the takeovers of or part takeovers of shareholdings in that company, ESAT Digifone?

A. Yes, it was directly related to the acquisition of the group and its subsidiaries by BT.

Q. In your statement you say that "In the period coming up to the public flotation of ESAT Telecom in November of 1997, directors of ESAT Digifone were concerned about their responsibilities in relation to information in the ESAT Telecom Prospectus in this context. At a meeting of ESAT Digifone directors on the 20th October, 1997 Mr. Barry Maloney related certain comments made to him by Mr. Denis O'Brien. He informed directors that in the autumn of 1996 ESAT Digifone was under pressure from Mr. O'Brien to make payments to various individuals who had worked on the bid for the mobile phone licence. Mr. Maloney complained that there appeared to be no end to these and in response, Mr. O'Brien said something like "You think you have

problems, I have had to pay out 200,000, 100,000 of which was to Mr. Lowry."

Mr. O'Brien subsequently told him that he did not make such a payment. Mr. Maloney said he believed that no improper payment was actually made but he felt an obligation to inform his fellow directors of the comment in the light of the upcoming public flotation.

Mr. O'Brien explained the situation as follows: During 1996 Mr. Maloney and he regularly went running. On one such occasion Mr. Maloney complained about invoices received by ESAT Digifone for amounts due to consultants involved in the licence bid. Mr. O'Brien wanted ESAT Digifone to pay the bills as, if not, ESAT Telecom would have to do so. In an effort to force the issue, he made a comment along the lines outlined by Mr. Maloney. However, he did not, in fact, make any such payment to Mr. Lowry or anyone else.

Subsequently he assured Mr. Maloney of this fact.

There followed, through the two week period leading up to the ESAT Telecom flotation on the 7th November, a number of meetings of ESAT Digifone directors with the company solicitors, McCann Fitzgerald. During these meetings Mr. Arve Johansen brought up for the first time the political subscription to Fine Gael. He explained that in December of 1995 Mr. O'Brien had asked him if Telenor would support a Fine Gael

fundraising event in New York. Mr. O'Brien introduced him to Mr. David Austin, who was responsible for this event, and Telenor paid \$50,000 for two tables at a fundraising dinner. Nobody from Telenor went to the dinner. To make the transaction acceptable for payment by Telenor, it was styled as a consultancy fee. The \$50,000 was paid to a bank account in Jersey in Mr. Austin's name. Telenor subsequently charged the 50,000 to ESAT Digifone.

Under the advice of the company solicitors, the ESAT Digifone directors carried out an investigation of these matters. This included interrogation of the individuals involved, Messrs., O'Brien, Maloney and Johansen. The directors concluded that nothing had occurred that would damage the integrity of the licence. They informed the board of ESAT Telecom of the issues that had been raised. The directors of ESAT Telecom met with that company's legal advisers and the legal advisers to the underwriters on the 5th November to consider the matters put to them by the directors of ESAT Digifone. After lengthy and detailed discussion they also concluded that nothing had occurred that would damage the integrity of the licence. Certain documents and formal assurances were asked for, including an affidavit from Mr. O'Brien.

On the following day the ESAT Digifone directors met

and were informed of the outcome of the ESAT Telecom board meeting. Each ESAT Digifone director confirmed that he was now comfortable with regard to the two issues and with the wording, insofar as it related to ESAT Digifone, to be included in the ESAT Telecom Prospectus.

As the directors of both ESAT Telecom and ESAT Digifone had satisfied themselves in relation to Mr. O'Brien's comment to Mr. Maloney and the Fine Gael contribution, disclosing them in the Prospectus did not arise. I believe that the paragraphs under the heading "Importance of ESAT Digifone licence" were inserted because of the public controversy at the time. An earlier draft dated 14th October, 1997 before the two issues discussed above were raised, included under that heading much of the wording that was in the final Prospectus.

Much later, I believe it was in March, 1998, an ESAT Digifone board meeting was informed by Mr. O'Brien that Fine Gael had given Telenor a bank draft repaying the contribution to the fundraising dinner and Telenor had passed it on to ESAT Digifone. The board decided that the bank draft should not be accepted by ESAT Digifone. I do not know of any steps or actions taken with a view to clarifying with Mr. Lowry the comment made by Mr. O'Brien to Mr. Maloney and I have no knowledge of any

success fees paid in connection with the application for the second GSM licence."

Now, can I just clarify with you, Mr. Callaghan, when you first became aware of these two issues? If we could deal with them one at a time, I suppose. Let's take the two $\frac{1}{2}$ 100,000 payments first. Can you recall when you first became aware of that?

A. Yes. It was on the 19th October, a Sunday. Denis O'Brien called by my home and gave me a brief summary of the issues that had been raised by Barry Maloney and talked about or told me of a meeting the following Monday morning which was to be held in IIU.

Q. That's the meeting that we have been

A. on the 20th October.

Q. we have been told is the meeting of the shareholders of IIU as opposed to the meeting of the 23rd not IIU of ESAT Digifone?

A. These are described as different times in different ways. It was the directors of ESAT Digifone that met at that time, I presume it is fair to say they met in their capacity as owners, I mean, but I don't see the distinction really.

Q. Neither do I, Mr. Callaghan. I am simply using that nomenclature because it's the one that's been used to date. In any case Mr. - when Mr. O'Brien came to you he was providing you with some information to, if you

like, forearm you, and indeed quite properly so, for the meeting on the following day?

A. That's correct.

Q. What did he tell you at that meeting?

A. I can't remember. All of these things tend to telescope into each other. But my recollection is that he merely told me, you know, in a very general way, that he had made these comments to Barry whilst out running and that Barry had now raised them at this point and was concerned about them, I think particularly in the context of the upcoming IPO, which had been a matter of discussion among ESAT directors prior to this because there were concerns about how they might be portrayed in the IPO document regardless of all of this other stuff.

Q. Maybe you'd just explain that to me: What had been discussed by ESAT?

A. In ESAT the IPO was the IPO, obviously, of ESAT Telecom. But in the process of going through the process of floating the company it had to include a great deal of information relevant to ESAT Digifone, which was an important asset, and there were concerns on the part of directors of ESAT Digifone as to how the information relating to their company might be portrayed in the IPO document and they, indeed, were looking for protections to ensure that what was said wouldn't in any way rebound on them at some stage. So

it had been an issue prior to Barry Maloney raising this particular point.

Q. What I am concerned about is what had been an issue?

I can understand that the directors of ESAT Digifone were concerned that they shouldn't assume any liabilities for statements contained in the ESAT Telecom Prospectus but was there concern about any potential liability in the context of the issue of the $\text{€}100,000$?

A. no, no

Q. payments prior to the 20th?

A. The first part of your comment describes correctly what the issue was.

Q. So the $\text{€}100,000$ payments didn't become a part of that concern until the 20th?

A. Correct.

Q. Now, you say that Mr. O'Brien told you about it on the 19th. Did you keep any note of your meeting of the 19th?

A. No, I haven't, I have no contemporaneous notes and what I have is really very, very flimsy. It doesn't say anything about it's just reflection on it. It says nothing about what was actually said.

Q. I see. So going to the meeting of the 20th, you had the impression that Mr. Maloney was bringing to the attention of the board of ESAT Digifone the statements that had been made to him by Mr. O'Brien a year

earlier, according to Mr. O'Brien, in the course of a run?

A. Correct.

Q. At that stage did Mr. O'Brien, in the course of your meeting on the 19th, say anything to you about whether the statements were true or not or what they meant?

A. My memory is that he said something like, "Look, this is all kind of a ball of smoke. There is no substance to the thing at all" and, you know, "But we have got to go through it because Barry has raised it." That sort of comment, that there was no substance to the thing at all.

Q. There was then the meeting of the 20th at which I think Mr. O'Brien, as far as we can see from the evidence to date, gave his side of the story, I think; would that be a fair way of putting it?

A. Correct.

Q. After that there was another meeting on the 23rd when the thing was thrashed out in greater detail?

A. That is correct.

Q. There was then a discussion with solicitors for ESAT Telecom on the 30th October, is that right, at which I think you were present with Mr. Buckley and Mr. Phelan?

A. Yes, correct.

Q. During which these issues were now being canvassed with Mr. Owen O'Connell and some attempt was being made to identify what were the problem areas?

A. That is correct.

Q. Is that right? And ultimately it was envisaged that these problem areas would be tackled at a question and answer session on the 4th November?

A. Correct.

Q. Now

A. that decision had been made at the meeting on the morning of the 30th October prior to going to see Owen O'Connell.

Q. That was an ESAT Digifone meeting?

A. correct.

Q. as far as you were concerned?

A. It was a meeting of the directors of ESAT Digifone at which our solicitors were present.

Q. I understand. Now, there were no, as far as we can see, because of the strange way these meetings were described, there are no minutes of any of these meetings, I don't know were you aware of that until now, that there were no minutes of the meeting of the 20th, 23rd or 30th?

A. I am aware of that, yes.

Q. Mr. Maloney had one version of what had happened in the course of the 1996 discussion and also what had happened in the course of subsequent discussions in 1997. There were some differences between his version and Mr. O'Brien's version but am I correct in saying that they both agreed that Mr. O'Brien had said that he

paid $\frac{1}{2}$ 100,000 in two tranches, that one of those $\frac{1}{2}$ 100,000's was for Michael Lowry, there was a dispute as to whether his name was mentioned but they both agreed that one of the $\frac{1}{2}$ 100,000's was for Michael Lowry?

A. That's correct. I should say at this point I have no awareness of that particular dispute but that's probably because I came to it late at the 20th. By the time I was looking at it Michael Lowry was quite clearly in the frame. So I wasn't aware of that particular difference. The only difference I was aware of as between the two of them was one said it was done whilst out on a run, the other thought it happened whilst at a meeting, and that was the only difference that I was aware of at the time. But the other difference, presumably, did exist but it wasn't something I was aware of.

Q. In any case, as you say, correctly, by the time of the 20th, 23rd and certainly the 4th discussions, there was a degree of unanimity that Mr. O'Brien had said, or if he hasn't actually said it, he had implied that he had paid $\frac{1}{2}$ 100,000 to Michael Lowry. He said he had not done that. It was agreed that he had said to Barry Maloney in 1997 that he hadn't done it? Mr. Barry Maloney said, however, that Mr. O'Brien had indicated to him that he had intended to do it but that he never went through with it and that while he had involved an

intermediary, the money got stuck with the intermediary.

A. That is correct.

Q. I think again there was a degree of unanimity on all of that?

A. Correct.

Q. Where they parted company, then, was when Mr. O'Brien said Woodchester was the intermediary and Mr. Maloney said it was his clear impression that Woodchester was or that the intermediary was some person or some other entity rather than merely a bank. Would that be right?

A. That is correct.

Q. So the issues, if you like, between the two of them were (1) had there been some intervention by an intermediary other than a bank or was Woodchester the only intermediary, isn't that right?

A. That would be an issue, yes.

Q. Now, I don't know if that issue was ever actually tackled in terms of any further inquiries, but one matter that was tackled was what was meant by the expression "Payment got stuck," but I am not sure there was any resolution of it. What did you understand by the expression 'payment got stuck'?

A. It is an unusual expression, as you quite rightly said this morning. Well, it was explained to us, and I must say I did accept it, that what was meant was that

this money had been kept on deposit with the particular bank and that it just had never travelled from that particular point. It was, if you like, stuck in the sense that it didn't move.

Q. So you accepted that the expression "Payment stuck" which, while not one you would have used, or perhaps not anyone would have used, meant that the money never left the bank?

A. Correct.

Q. Now, am I not right that there was no further examination of Mr. Maloney's statement that an entity other than Woodchester was involved, that the directors decided to run with the Woodchester explanation and to see could they investigate it?

A. Mr. Maloney's view was an impression. If he had given us any indication of any kind as to what he thought it was instead of what we were told it was, then clearly we would have had to look into that. But he just gave a general impression that he thought 'intermediary' meant something other than the bank. So, you know, in those circumstances, you know, what does one do?

Q. I understand the difficulty you had but just in fairness to Mr. Maloney, it wasn't Mr. Maloney mentioned a bank to begin with. Mr. Maloney was simply informed that there was an intermediary, wasn't that right?

A. Correct.

Q. No bank was mentioned to Mr. Maloney to begin with?

A. Correct.

Q. The suggestion that the intermediary was a bank was only made, I think, on the 23rd for the first time?

A. Yes.

Q. The second big meeting, if I can put it that way?

A. That is correct.

Q. And if I am right in summarising what Mr. Maloney has said in the various notes of the various meetings and in his evidence, what concerned him was the reference to an intermediary. That was a legitimate concern, wasn't it?

A. Oh, yes, obviously, yes.

Q. And the explanation provided was that the intermediary was a bank?

A. Correct.

Q. So what I'm saying is that you and the other ESAT Digifone directors went along with this explanation that 'intermediary' meant a bank?

A. Correct.

Q. Now, would you agree with me that just as the expression 'payment got stuck' is an unusual one to describe what Mr. O'Brien intended to convey, the reference to an intermediary or the explanation for an intermediary as a bank is a somewhat unusual one, isn't it?

A. Well, not to be pedantic about it, but the expression

'financial intermediary' is used continually for banks.

Q. I don't think we use it in our ordinary daily parlance?

A. I did notice going through the papers given to me yesterday that Arve Johansen referred to Telenor as being an intermediary in the Fine Gael issue. So the word is one that apparently applied to Telenor and applies to Woodchester in this particular case and I am not clear to what Barry Maloney thought it applied.

But 'intermediary', presumably, is someone who comes between two parties.

Q. Yes. And is that what Telenor were describing themselves as?

A. Yes.

Q. They say they were the intermediary between

A. correct.

Q. ESAT Digifone, or Mr. O'Brien - whichever way you look at it - and Fine Gael. I think this morning we were talking about Mr. Phelan being an intermediary between the Digifone or Telecom directors and Mr. Austin. An intermediary is a person who comes between two people. But I don't think anyone describes a bank as an intermediary in that sense unless their job is to come between two people for a specific purpose, isn't that right? You don't refer to your bank

A. it is not a word I would use in common everyday use, that is true.

Q. If you were paying one of your bills you wouldn't say "I'll use an intermediary to pay it", meaning the bank?

A. It's not a word I would use in probably any circumstances.

Q. I simply want to just clarify with you that you'd agree with what I think the normal impression of any ordinary person would be, that to use 'intermediary' as or to explain an intermediary as a bank would be an unusual explanation. I agree it's the explanation you were faced with?

A. Yes.

Q. Just in fairness to Mr. Maloney, that was all he had to go on, the fact that he had been given an unusual explanation, isn't that right?

A. Correct.

Q. And you'd agree with that, that it was an unusual explanation, although one which was accepted?

A. Correct.

Q. So that explanation was accepted and then it was decided to investigate it?

A. I am sorry when you said 'accepted' I thought you meant subsequent to the investigation. I don't think we accepted anything until we went through a process.

Q. I follow.

A. You know? I am awfully sorry, I thought you meant that initially it was accepted.

Q. Maybe I'll clarify. What you are saying, I think the

type of language I used a while ago, you were prepared to run with the Woodchester explanation, subject to the Woodchester investigation, to see whether money had come out of it or had not come out of it

A. I'm prepared to describe it as we set about examining the veracity of that statement in whatever way we thought it was appropriate in terms of evidence.

Q. And were you therefore one of the group of people involved in both the ESAT Digifone and the ESAT Telecom meetings who were anxious to get to the bottom of the Woodchester link, if I can put it that way?

A. Absolutely.

Q. And this was a key part of satisfying yourselves, I am not saying that you were trying to satisfy yourself that what you were being told was right, but satisfying yourselves that in the time scale available you could take every reasonable step to investigate the matter?

A. Correct.

Q. So I think at the meeting with Mr. O'Connell - and Mr. O'Connell has identified these issues quite well in his various notes - it was decided that you'd get some statement from or information from Woodchester?

A. Correct.

Q. Now if we could just jump on to the meeting of the 4th November. At that meeting the matter was thrashed out again, in front of lawyers on this occasion, and it was decided that, I think, you'd await the Woodchester

information as presumably confirming no payments which had been earmarked by Mr. O'Brien had gone to Mr. Lowry, or directly or indirectly to Mr. Lowry?

A. That is right.

Q. And do you understand the thresholds that were set for carrying out this investigation?

A. Yes, at $\text{€}1/225,000$.

Q. I think initially somebody may have suggested a larger threshold but eventually you decided to go for 25,000.

The idea was to check $\text{€}1/225,000$ payments to any individual, or any payments in the aggregate which might amount to $\text{€}1/225,000$ to any individual, isn't that right?

A. Mm-hmm.

Q. And that, it was hoped, would capture $\text{€}1/2100,000$ to an individual, whether it went in the form of one tranche or several tranches, isn't that correct?

A. That is correct.

Q. Now, this matter was discussed with Mr. O'Connell initially, I think, at a meeting between yourself, Mr. O'Connell and Mr. Buckley on the 30th October.

A. Yes.

Q. And Mr. Phelan, whom we know ultimately carried out the investigation, was present at that meeting and presumably had some briefing from you and Mr. Buckley beforehand?

A. Well, I didn't brief him. I can say that for certain.

In fact, I was actually a little surprised when because I didn't remember that he was actually there, to tell you the truth, but if Mr. O'Connell says he was there, he certainly was.

Q. Can you remember how long that meeting took?

A. I suspect I can't remember exactly but I suspect it would have taken about an hour or so because we would have, the intention was to sit with Mr. O'Connell and go through each of the issues as we now knew them, line by line as it were, and give him all of the details that were available to us. So I suspect it would have taken about an hour or so to do that, maybe longer.

Q. You are familiar with Mr. O'Connell's note of that meeting. You have seen that, haven't you?

A. I have seen that. I only saw it last night but

Q. I understand. But you can see, in any case, that he ^ identified the issues that I was mentioning here ^ both with you and Mr. Buckley this morning?

A. Yes.

Q. Can you now recall why Mr. Phelan, who wasn't in fact a director of ESAT Digifone, was at the meeting?

A. I have had the opportunity to think about it this morning and I really can't. I suspect the answer given by Mr. Buckley is probably the right answer but I genuinely can't remember why. As I say, I can't even actually remember that he was there.

Q. Well, in any case we know from earlier evidence and

from what Mr. Buckley confirmed to us this morning, that Mr. Phelan was involved in, we'll put it, the IPO matters in Ireland and he was involved in IPO matters in the States and we also know from the evidence of Mr. O'Brien and from information that became available in the course of the documents provided to the Tribunal, that he was involved with Mr. O'Brien's finances as well. So I suppose he was an obvious person?

A. correct.

Q. to be brought into the loop in relation to this.

Now, this was very sensitive information, isn't that right?

A. That is right.

Q. And obviously it wasn't information that was going to be made available to anybody, to all and sundry, so Mr. Phelan was being brought into this confidential loop where this information was concerned, isn't that right?

A. That's right.

Q. Eventually we know that an investigation was carried out and Woodchester provided information. Did you actually ever see the Woodchester information?

A. I certainly don't have it on file and I honestly can't remember looking at it. I've a vague recollection of seeing some sort of schedules but I do know that the confirmation was strong in relation to it but I haven't got it on file and I couldn't actually remember the

document itself.

Q. But you do recall that you were anxious to get this information. I think it was still awaited by the 4th but by the 5th I think you must have had it?

A. That is right.

Q. And it was to the effect that there were no payments out of Woodchester?

A. That is correct.

Q. And I think in relying on that you were relying on what Mr. O'Brien told you about Woodchester being his main bank?

A. Correct.

Q. Now, as I think I mentioned to Mr. Buckley this morning, you weren't aware that, in fact, there had been substantial, a $\frac{1}{2}$ 400,000 disbursement out of that bank which was not part of the investigation?

A. Exactly. I knew nothing of that.

Q. And I'd be right in thinking that you'd have wanted to know about that if you were aware of it at the time?

A. Absolutely.

Q. Now, in relation to the other issue that was exercising your mind up to the 5th, i.e., the \$50,000 payment to Fine Gael, you were present, I presume, this morning when I was asking Mr. Buckley about this, and one of the concerns that I think anyone looking at it would have, and this will be obvious from all of the evidence to date, is why Fine Gael wasn't approached to provide

the confirmation that you all needed, which was 'Did Fine Gael get this money?' Can you recall yourself whether you had any concern about that?

A. Well, I had time to reflect on it over lunch and the questions you asked Mr. Buckley so I have an advantage on him, perhaps. But it, I believe and I am trying to put myself back at the time the way in which political parties solicit contributions is through their fundraising committees. That is the proper way. Indeed any other way usually ends up, probably ends up before a Tribunal like this. The appropriate way to solicit contributions is through the fundraising committee. The Party itself tries to keep itself separate from it, for obvious reasons. And it seemed to me, consequentially, that the correct way to establish what actually happened is to go back the proper, formal route through which the request was made in the first place.

Q. to go to Mr.

A. yeah, that is the process through which political parties raise their funds and it seems to me to be, I know I would have felt this at the time, that the appropriate person to go to is the people who have been given the responsibility by the Party for the fundraising. That is, if you like, the channel through which the approach is made. And it seems to me, and it seems now to be the appropriate way in which to

respond.

Q. That seems perfectly reasonable and I wouldn't have any difficulty with that if I were in the ordinary way seeking to establish the whereabouts of or the route taken by a fund. But in this case wasn't there a problem in that what was exercising your minds was this money went into an offshore account and you were wondering did it really go to Fine Gael if it went into an offshore account, or did it go somewhere else or where did it go? Now, you knew it had gone to Mr. Austin, isn't that right?

A. Correct.

Q. Did you know Mr. Austin?

A. I had met him but I couldn't say I knew him. I had met him.

Q. What you wanted to know was had it definitely gone into Fine Gael and not into someone else's pocket?

A. Correct.

Q. So while I can understand the point you made about political party fundraising a moment ago, at some point all that would have to give way to establishing whether the political party actually got the money that was being channelled to it through various committees, or whatever way you want to look at it, isn't that right?

A. Correct.

Q. You see, you'll remember that I was mentioning to Mr. Buckley this morning that you got a letter from

Mr. Austin that said he'd given the money to Fine Gael?

A. That's right.

Q. And that was correct, he had. But he didn't say that he had given the money to Fine Gael as a David Austin contribution and he didn't say that Fine Gael knew nothing about the contribution from Telenor and he didn't say that he had held the contribution for a year and three months.

A. He didn't say any of those things, that's correct.

Q. And he didn't say that Mr. John Bruton had said 'We do not want this contribution'?

A. He did not any of those things to us.

Q. What I am trying to say, and of course I have the benefit of hindsight, is whether you recall, and I think one or two people did mention that it would be more helpful to go to Fine Gael, isn't that right? Do you remember any discussion

A. I remember that coming up. I am not I really couldn't pinpoint who or in what circumstances it was said but I remember, you know, in the context of 'What do we do about this?' it certainly would have been raised as a possibility or a suggestion.

Q. And would you agree with Mr. Buckley when he agreed with me this morning that, of course if somebody knew everything Mr. Austin knew, that person wouldn't want the board of ESAT Digifone or ESAT Telecom going to Fine Gael, would they, if they wanted the IPO to go

through smoothly?

A. I really I mean, I don't know what Mr. Austin knew.

Q. Well, you do know he knew all those things?

A. Sorry?

Q. He knew all those things, didn't he? ^ you said you didn't know what Mr. Austin knew. I just want to clarify this?

A. I took Mr. Austin's letter at the time. There are ways in which this can be interpreted, I would have thought.

He makes it clear that he passed the money on to Fine Gael. He doesn't say he sent it to Mount Street or whatever the Head Office is or Bank of Ireland. He said he passed it on. It is quite conceivable to me that he, in his capacity as trustee, could well see that lodging that money to an account in Jersey was passing it on to Fine Gael. He is the Chairman of the fundraising committee. He has an account for Fine Gael. He puts into I don't know the vagaries of accounting within Fine Gael but it is quite obvious to me that he could well give that letter and give it with honesty believing that he had put it into an account, which was in essence a trustee account for Fine Gael.

Q. in an offshore

A. absolutely, an offshore account.

Q. That wouldn't surprise you?

A. I am surprised about nothing in the way political

parties raise their money.

Q. In 1997, would that surprise you?

A. I would be surprised about nothing in the way political parties raise their money.

Q. I am suggesting that you are being a little bit indulgent there, Mr. Callaghan.

A. I am sorry.

Q. In 1995 we had been through the Beef Tribunal, we had been through a lot of public controversy concerning contributions to political parties. Are you saying that you wouldn't be surprised or you weren't surprised at that time that a political party kept its funds in an offshore account?

A. I am sorry if I was flippant when I tried to answer that question. I was surprised and I was disappointed that we had got involved in something that had this kind of characteristic to it.

Q. I can understand that. All I am trying to clarify is who knew what and when? You didn't know everything Mr. Austin knew, isn't that right?

A. I don't know what Mr. Austin knew.

Q. But we do know that Mr. Austin knew that the money had gone into an offshore account. We do know Mr. Austin knew it had been there for a year and three months. We do know David Austin knew Mr. Bruton said 'I don't want it'. We do know that Mr. Austin had said he sent it to Fine Gael and never said it was a Telenor or ESAT

contribution. He knew all of that. You didn't know

it?

A. I didn't know it and much of it I don't know now.

Q. You know now. What I am saying is if you had learned

that at the time in 1997 I think you might have been

very concerned to go ahead with your IPO on the

following Monday morning, was it, or whatever,

Wednesday morning, whatever morning it was?

A. If the matters you have outlined were put to me and my

fellow directors in 1997 as you put them, they would

have been matters that would have had to be settled,

sorted out and we would want to be satisfied on before

we would proceed with an IPO.

Q. And you would have had one day to do it at that stage.

You got the letter on the 6th. The Prospectus was

published on the 7th?

A. That's right.

Q. I won't even ask you whether it would have had to be

pulled. It would have been a very, very serious

problem on the afternoon of the 6th?

A. Oh, absolutely.

Q. And all I am suggesting is that we know that Mr. Austin

must have known these things because he was involved in

them. If anybody else knew of them, if anybody else

knew of these matters, he wouldn't have wanted anyone

on the ESAT Telecom board going to Fine Gael to check

out whether this contribution had been received?

A. I can't say that. I took Mr. Austin's letter at its face value. He is a responsible person given this particular responsibility by Fine Gael. He explains what he has done. The fact that I was going to use an expression I shouldn't the fact that it stayed in a particular bank account for a particular period of time is obviously important and we would have liked to know it but I suspect, had we gone into it, that it would have been interesting to know why that did happen. Maybe it happened for reasons that are quite legitimate and didn't make it a foreign item for Fine Gael at all. I don't know. The one thing we do know is that Fine Gael gave us it back. So, I must assume it got to Fine Gael at some stage.

Q. Fine Gael gave it back when they found out who had given it, isn't that the problem?

A. But the point we are establishing is 'Did they get it?'.

Q. You were trying to establish did they get it?

A. Correct.

Q. But you never established that because they never got a contribution that said 'This is a Telenor contribution, this is an ESAT Digifone contribution'. What they got was a contribution that said 'This is a David Austin contribution'.

A. Well, you are telling me that but the internal machinations in Fine Gael, I do not know. What I do

know is that David Austin got the cheque from us for Fine Gael. He told us that he was putting it into a Fine Gael account. I take, at face value, that he believed he was putting it into a Fine Gael account. How he subsequently described it to Fine Gael, I don't know.

Q. It was his personal bank account.

A. I believe he put it in a trustee capacity but I don't know, I don't know the internal accounting in Fine Gael.

Q. Do you think it was very responsible of Mr. Austin not to give you the full facts when he wrote that letter?

A. I can't put myself in his shoes, honestly. I just can't put myself in his shoes.

Q. If you knew those facts, the facts that I have just recounted to you, do you think you would have had a duty to tell anybody who asked you about this contribution about them?

A. I wonder if, God be good to him, David Austin were here today, he would be actually agreeing with those facts.

Q. Mr. Austin is not here today because unfortunately, as you say, he is dead. But he didn't die until 1998 and this Tribunal was in operation for about a year at that time. And none of this information was available to the Tribunal and Mr. Austin couldn't be asked about anything in connection with it after November of 1998.

Isn't that quite a serious matter in the context of the

work the Tribunal is doing, that we, as you correctly point out, don't have Mr. Austin here? A lot of people knew all of these things, isn't that right? A lot of people knew all of these things between 1995, December, and 1998, November, when Mr. Austin died? You knew about it. Telenor knew about it.

A. Are we referring now to the 50,000 contribution

Q. And the 100,000?

A. And the 100,000.

Q. All of these things. Mr. Austin seems to be involved in both?

A. Sorry, I thought when you said that you were referring to knowing about the things that went on down in Jersey.

Q. You see, here you were faced with a situation where there was a reference in your Prospectus to public controversy concerning the second GSM licence. The second GSM licence was, effectively, the major asset in the ESAT Telecom IPO, wasn't it?

A. It was a major asset.

Q. A the major asset, I suppose, let's be realistic. Are you saying you'd have gone to the market if you didn't have it?

A. I don't know that. I honestly don't know.

Q. All right, that's your answer, you don't know it?

A. It would have been a different company, but I don't know that.

Q. And here you had a political contribution solicited, as far as the evidence goes, some short few days after the grant, after the winning of the competition, and hidden for almost another two years and you don't think that's a serious matter in the context of the contents of page 16 of the Prospectus? It's an enormously serious matter, isn't it?

A. At the time we had one issue to concern us. We had two issues, I suppose, in relation to this. I thought it was most unwise of Fine Gael to approach the people who had been concerned about the getting of the licence, most unwise. I believed it was even more unwise for people who had been concerned with the getting of the licence to give it. Having given it, the real question that we had to address was did it go to Fine Gael, because we wanted to be satisfied it didn't go to anywhere other than that and we were comfortable in our own minds that a political subscription is a political subscription, that it had no connotations in terms of the relationship between Fine Gael and if any between Fine Gael and ESAT. In other words, we had to be satisfied that it was, in fact, a legitimate political subscription, injudicious or otherwise. That's what it was.

Q. And what I am saying is when you were seeking to satisfy yourself on those matters you did not have anything like 100% of the true story?

A. You have listed items that we have become aware of since. That is true. The degree to which they would have influenced us, I don't know at the time. But we did have what we thought was sufficient information to make our judgement and we made it.

Q. I am not for one moment doubting that with the information you had you satisfied yourself genuinely that there was no implications, I think as you put it, for the validity of the licence in the payment that had been made. But you were doing that on the understanding that this was a political payment that may have gone to an offshore account but that had gone to Fine Gael?

A. Correct.

Q. You did not know the things that I have just told you about now?

A. The delay?

Q. Yes, and the fact that the leader of the Party said 'I don't want it'.

A. I didn't know that

Q. And I am saying that these are hugely serious matters which would have had implications for the validity of the licence and would, at the very least, have warranted a very significant investigation on the 6th November of 1997?

A. I have to say that I don't know how we would have viewed the delay. We would have found out why this was

delayed, did we want it kept there? did we want it kept there to earn interest, whatever, I don't know, I don't know why the delay was and I therefore cannot say how it would have affected our judgement. There is no doubt in our mind if John Bruton had said 'We don't want it' we would have taken it back, probably, at that stage.

Q. Can I ask you this; if you thought somebody was trying to keep that information from you, would you have taken a very serious view of matters?

A. If I thought someone was trying to keep, deliberately mislead us by keeping information that he thought was necessary to our understanding of the issues, I would consider that a serious matter.

Q. And would you agree with me that that information was necessary to your understanding of matters?

A. I really genuinely cannot say how David Austin thought of, in particular, the delay and I don't know, honestly don't know obviously John Bruton hadn't said to him 'I don't know want it' at the time he was writing to us.

Q. Leave Mr. Austin out of it. Objectively, do you agree with me that these matters were relevant to the discussions that you were having objectively?

A. Of course they are relevant. The degree to which they would influence our discussions are relevant. I really cannot say.

Q. Can I simply put it this way, and I am going give you and your co-directors the benefit of the doubt; if you thought it was relevant to try to find out had this payment gone to Fine Gael, with the information that you did have you'd have been horrified if you knew the full facts? If you acted the way you acted with the limited information you did have, then I think I'd be giving you the benefit of the doubt if I said you would have been horrified if you knew the true story?

A. I would be wrong if I didn't say I don't know that. I don't know how our examination or investigation of the delay would have worked out, what answer we would have got to that. And my understanding is that John Bruton's desire not to get it arose sometime certainly after this letter was received. In other words

Q. No, no?

A. Did it not? Okay.

Q. Maybe just so that we are not at cross-purposes, and I want to make sure you have an opportunity of answering the questions, Mr. Bruton's evidence is that he was contacted by Mr. Austin, I think in February of 1996 and that in February, towards the end of February 1996, he said 'I don't want that contribution'?

A. Okay. Well, that's serious.

Q. Now, just one or two other small matters. I quite understand that you were dealing with a situation where you were trying to form a view about things within a

short period of time. Do you recall whether you were fully satisfied in relation to all of these matters by the 6th?

A. Yes.

Q. You were?

A. Yes.

Q. You didn't think that any further investigation was required?

A. Correct.

Q. Do I take it therefore that you accepted Mr. O'Brien's explanation that having originally had an intention to benefit Mr. Lowry, having had that for however long, as I said to Mr. Buckley, there was some discussion about how long he had it, having subsequently not decided to do it and the payment having got stuck with an intermediary, he then mentioned it to Mr. Maloney in a wind-up or a bravado or a jokey fashion and that he referred to another $\frac{1}{2}$ 100,000 payment for effect; you accepted all of that?

A. I did.

Q. And you accepted that Mr. Maloney, in taking it seriously, had made a misjudgement?

A. I am sorry?

Q. Had Mr. Maloney misjudged the situation in 1996 and failed to appreciate it was all a joke?

A. Mr. Maloney told us from the outset that he believed no payment had taken place. I believe that there was no

difference of opinion between the two people as to what was said and I am absolutely satisfied that Mr. Maloney was satisfied that no payment actually took place.

The concern that Barry Maloney had was, as a director of the company he believed there was information that he had that he should share, and he used that word, with his fellow directors. He was concerned that he should harbour this kind of information without sharing it with his fellow directors but he made it very clear from the outset, and certainly at the finish, that although all of these events took place, he was satisfied no payment was made. Indeed, I should say, as a director of ESAT Digifone, he had to, on the final meeting, make such a statement. He was obliged, as each director was, to state categorically that they were satisfied with the position that we found ourselves in.

Q. But he, I don't think at any time, accepted he didn't at any time accept that the original remarks had been made to him in jest, isn't that right? Is that right? Let's get it clear about that. Mr. Maloney never accepted that this was a joke on the side of the hill or whatever it happened?

A. I always understood the remark that it was made in jest, not that Denis O'Brien was telling jokes, but that he made a remark in jocose fashion, in a light way, I always understood that to be what Denis O'Brien

was saying.

Q. But Mr. O'Brien didn't accept that Mr. or Mr. Maloney didn't accept that. Mr. Maloney took it seriously?

A. He didn't think it was light, yeah.

Q. So although you had some information about one of the $\frac{1}{2}$ 100,000 payments and Mr. O'Brien's explanation, I am suggesting to you that you must have been satisfied that he had mentioned the whole matter as a joke and that the second $\frac{1}{2}$ 100,000 payment was simply part of the joke or the wind-up?

A. I find this expression difficult because my understanding all the time was that Denis O'Brien, in an attempt to get Barry Maloney to pay certain items which Barry was slow to pay, bought up this issue in a jocose way. He didn't tell funny stories. He brought it up in a light, jocose manner was my understanding of the way in which the -

Q. what he has told the Tribunal was he told a lie. He said 'I told a lie to Mr. Maloney' and that he did it as a wind-up. Mr. Maloney apparently didn't take it as a wind-up. Now

A. Well, he didn't I am sorry, he certainly didn't take it seriously at that point.

Q. According to the evidence, he said he did?

A. Why didn't he tell his fellow directors?

Q. He didn't.

A. Okay.

Q. I agree. He should have, I am sure. He says that he still had concerns especially because of the reference to an intermediary even after the meeting. Now, he accepted that no payment had been made. Can you say whether you still had concerns because of the reference to an intermediary after the 7th November?

A. No.

Q. Have you heard Mr. Buckley's views this morning that these matters were brought up by Mr. Maloney as part of a pattern of brinkmanship from 1996 onwards? Did you share that view?

A. I don't know what Barry Maloney's motivation was. It wasn't I certainly didn't feel as strongly about I didn't feel at all about that issue in the way in which a number of my other directors felt.

Q. Thanks very much, Mr. Callaghan.

CHAIRMAN: I'll just check, Mr. Callaghan, if one or two other legal practitioners may wish to put one or two brief matters to you. Mr. Fitzsimons?

MR. FITZSIMONS: Mr. Chairman I have a couple of questions.

MR. FITZSIMONS: Just before I ask them, it arises out of the matters that Mr. Healy put to the witness in relation to Mr. Bruton's evidence. He put it to the

witness on a number of occasions that Mr. Bruton said "I don't want it". Now, my recollection of Mr. Bruton's evidence is that Mr. Bruton didn't know that there was a contribution, so he could never have said "I don't want it." Mr. Bruton gave evidence on day 118. He was cross-examined by or examined by Mr. Coughlan questions 229 to 309 and as there seems to be a little bit of confusion, it may be helpful to get the transcript up. However, perhaps I can give my recollection of events.

Mr. Bruton was contacted by Mr. David Austin by telephone on the 24th February, 1996, lunch on the previous day having been cancelled. In the course of the conversation Mr. Austin told Mr. Bruton that there were monies available from ESAT Digifone. Mr. Bruton said, well, he wasn't interested in funds from that source, but also used the phrase which he repeated a number of times in his evidence "Leave it where it is." Now, if Mr. Bruton did know of the \$50,000 contribution and said 'Leave it where it is', well, it explains everything. Mr. Austin left it where it is and then paid the money into the Party at a convenient time when

CHAIRMAN: I think you are right, Mr. Fitzsimons. I think Mr. Bruton did also say he interpreted the information as meaning it was still under the donor's

control, effectively entirely, when Mr. Austin conveyed that in a telephone call.

MR. FITZSIMONS: The Tribunal can investigate that.

You have the transcript. Very well.

Maybe we can proceed then Chairman, you are aware of the issue on the way on the point that was put.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS.

Q. Mr. Callaghan, I take it if you, as a director, had been told that the Party leader of Fine Gael had said 'Park that contribution for a while and then pay it in later' and you were told it was paid in, that would have been sufficient for your purpose?

A. Yes.

Q. Political parties, as you said, do extraordinary things when it comes to fundraising. Perhaps things are changing, of course, in the current climate, thanks to the Tribunals et al. And of course at the time of the meeting of November, 1997 the monies had been paid in some six months previously. We know that now.

Now, in your statement, memorandum of intended evidence, there is just one sentence that I just would like to raise with you, though I am sure there is an explanation for it. The bottom of the first page there is a sentence "Telenor subsequently charged the 50,000 to ESAT Digifone." Now, that's framed in very strict

accountancy terms. That statement doesn't appear in any document as in this manner but do I take it from what you have told us earlier, you only got the relevant documents and memoranda of meetings last evening?

A. Mm-hmm.

Q. And I take it, having read them, you would now be aware of the fact that at the meeting of the 4th November, that there was discussion about this, for example, in Kilroy's memorandum at page 31 sorry, page 26 first of all, this is Denis O'Brien talking "It was agreed that ESAT Digifone was to reimburse for this payment." And then at page 31 at the top Mr. Johansen said "I was told that Telenor would be reimbursed by ESAT." Now, the way you have put it in this one sentence it sounds as if Telenor subsequently charged ESAT without any prior agreement. Had you not taken into account the evidence of the prior agreements when you put it that way?

A. No. Maybe it's an expression that maybe it is an accountancy expression. All I am trying to say is that subsequently Telenor invoiced, if that's the right way of putting it, ESAT Digifone, or included within its invoices this particular amount and it ended up being paid by ESAT Digifone. That's what I was trying to convey.

Q. You don't recall any dispute or controversy or any

questioning arising at any stage thereafter about the liability of ESAT Digifone for that payment?

A. The problem that I, and I believe others had at the time, was that if the approach by Fine Gael was injudicious, it applied it was injudicious to all or any of the participants. It didn't really concern us greatly which one, was it Telenor, IIU, ESAT Digifone, ESAT, Denis O'Brien, Dermot Desmond, Arve Johansen? Approaching anyone or any combination was a flaw, was the fault and as far as we were concerned, we didn't really care who said what to whom to do it, or indeed which company ended up paying it because, in principle it didn't really matter whether it was ESAT Digifone paid it, Telenor paid it, Dermot Desmond paid it. In principle any of the people concerned with the licence paying it were, as it were, in the same position as any of the others. So, so far as we were concerned, all this talk about who said what to whom, really never kind of came on to our horizon. It wasn't something of great interest to us, and indeed where the eventual payment, you know, payment by somebody who invoiced somebody, who invoiced somebody, didn't particularly bother us and the only concern I had was that when it eventually ended up in ESAT Digifone that it should be described properly in the books as a political contribution. That's the only concern I had. I had no concern about the fact that it came from there because

coming from there was no different, in my book, than coming from any one of the other participants.

Q. I fully appreciate that. I think you may have misheard my question. My question was a simple one relating to, if you like, the accountancy approach to the payment.

You never heard of any person querying or objecting to the fact, to the fact that ESAT Digifone had paid this \$50,000?

A. No.

Q. Thank you.

CHAIRMAN: Thanks, Mr. Fitzsimons.

MR. HEALY: I think I should say, if it's of some assistance to Mr. Fitzsimons, and I'll come to his question as soon as I identify it, on page 118 of the transcript it's day 118, question 229, I think.

MR. FITZSIMONS: I can help My Friend. Mr. Coughlan examined Mr. Bruton from questions 229 to 309. I cross-examined 310 to 314 and Mr. Coughlan then 315 to 320. If that's

MR. HEALY: I know that in response to question 295, Mr. Bruton said "About the journey that this money had undertaken. Once I heard that David Austin and the amount - or not the amount, because I wasn't aware of the amount - but once I heard of David Austin and ESAT or ESAT interests I did recall the conversation that I

had had and I immediately suggested that this money should be given back because, to my mind particularly, I felt that there had been something of a sleight of hand insofar as my clear message to David Austin was that that money should not be paid to Fine Gael and my understanding was that if there was any question of that donor paying to Fine Gael, that I would be approached about it again. I wasn't. And I was upset to discover that, in fact, that had been circumvented by the method of a personal donation in the name of someone other than the original source of the donation." That is Mr. Bruton referring to looking back over the whole transaction at the time he became aware of what actually happened in May of 1997 when what purported to be a Telenor or ESAT contribution was paid in the name of David Austin.

CHAIRMAN: Well, I think, Mr. Healy, one is putting to the witness a hypothesis and when there are shades of grey that require careful examination, it's probably

MR. HEALY: I am not putting anything to the witness. I am simply trying to assist Mr. Fitzsimons, or indeed putting the record from the point of view of Mr. Bruton's assertions as clearly as I think they should be put.

CHAIRMAN: Yes. Thank you very much indeed for your

cooperation and assistance for the Tribunal,

Mr. Callaghan.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the available witness today.

Tomorrow at eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

FRIDAY, 13TH JULY 2001 AT 11 A.M.