

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 18TH

JULY, 2001 AT 11 A.M.

CONTINUATION OF EXAMINATION OF MICHAEL CULLEN BY

MR. GLEESON:

Q. MR. GLEESON: Mr. Cullen. I think you said yesterday,

Mr. Cullen, in the course of your evidence that you

regarded Mr. Phelan as a valuable customer of the bank?

A. Yes.

Q. And he was somebody that had a long association with

the bank by that stage, isn't that so?

A. Yes.

Q. And he was, I put it to you, a reliable and trusted

customer of the bank, having regard to that

association?

A. Absolutely.

Q. And he had put through a significant amount of

transactions involving significant amounts of money

with the bank?

A. Yes.

Q. And nothing had ever gone wrong with those transactions

from the bank's perspective?

A. Nothing.

Q. So when Mr. Healy was suggesting to you yesterday that

this was a loan arranged with some haste, can I suggest

to you that, whereas it may have been arranged quickly,

one of the factors involved in granting the loan was

the fact that you were dealing with a trusted and reliable customer of the bank, namely Aidan Phelan?

A. Undoubtedly.

Q. And, of course, ultimately we know that nothing went wrong with this transaction either, because the loan was repaid, isn't that so?

A. Yes.

Q. With all the interest that had accrued on that loan?

A. Yes.

Q. And I think the figures we are talking about are, the original loan facility was for $\pounds 420,000$ sterling and the amount that was repaid on the 21st March of this year was somewhat in excess of $\pounds 470,000$ sterling, isn't that correct?

A. Yes.

Q. So just to finish off on this topic, there was a profit made by the bank on this transaction, as with any other transaction of this kind?

A. Yes.

Q. Now, insofar as your evidence was, Mr. Cullen, yesterday, that you were told by Mr. Tunney that Denis O'Brien was aware of this transaction, Mr. Phelan will deny, when he comes to give evidence, that he ever said to Mr. Tunney that Denis O'Brien was aware of or connected with this transaction. Mr. Phelan is going to deny that he ever said anything to Mr. Tunney. Are you aware of that?

A. From his statement yes, I think I am aware I am aware of that, yes.

Q. And I understand that Mr. Tunney, likewise, is going to say that Mr. Phelan never told him that Denis O'Brien was aware of this transaction?

A. I am not aware of that.

Q. You are not aware of that. So I must put it to you, Mr. Cullen, that if Mr. Tunney, as you say, did, in fact, say to you that Denis O'Brien was aware of this transaction, it couldn't have been on the basis of anything that Mr. Phelan had said to him?

A. Mr. Gleeson, I gave evidence of what was told to me. It's I think it's perhaps more appropriate to put that question to Mr. Tunney. Mr. Tunney mentioned to me at the application stage that Mr. O'Brien was aware of the transaction. He did not indicate to me specifically who had mentioned it to him but, obviously, because Aidan Phelan had introduced the transaction, I took it to mean Aidan Phelan. The only direct contact that I had with Mr. Phelan in terms of him indicating that it was a Denis O'Brien transaction was subsequently on the 28th February, a year and two months after the loan.

Q. So at the time you assumed that it was Mr. Phelan who had communicated that to Mr. Tunney?

A. I did. I didn't give it much thought in the sense that I was told that Mr. O'Brien was aware of it. I didn't

give it much thought, Mr. Gleeson.

Q. But you never queried Mr. Phelan about this at the time?

A. I had no contact with Mr. Phelan so I didn't query it with him.

Q. Now, you already agreed with me that Mr. Phelan had significant business dealings with the bank and am I right in saying that some of those dealings were on behalf of Mr. O'Brien?

A. They were.

Q. So would it be fair to say that as far as the bank was concerned, Mr. Phelan and Mr. O'Brien were commonly associated with one another?

A. Yes.

Q. So wouldn't it have been relatively easy for someone in the bank to assume that because Mr. Phelan had been involved in obtaining this loan, that somehow or other Mr. O'Brien may have had an involvement as well?

A. That would be an easy assumption for people to take.

Q. And if no queries were made at the time of Mr. Phelan, then it was an assumption which could easily have been made and have been maintained within the bank?

A. Yes.

Q. Now, I think yesterday you also said that one of the reasons why Mr. O'Brien was never contacted in relation to this matter was that he was not, in effect, the customer and you felt it wouldn't have been appropriate

to contact him merely because his name was mentioned,

isn't that right?

A. Yes, yes.

Q. And would you have been concerned about confidentiality in relation to a customer's business?

A. Yes.

Q. But if when sanctioning the credit for this loan, you were told that Denis O'Brien was aware of the transaction and you derived comfort from that, did that not relieve you of your duty of confidentiality?

A. No.

Q. I see. Well, when you went to Mr. O'Brien in March of this year, you didn't feel burdened by a duty of confidentiality?

A. Excuse me, Mr. Gleeson, I didn't go to Mr. O'Brien in March, Mr. O'Brien rang me.

Q. Well, did Mr. Tunney tell you that he had made inquiry of Mr. O'Brien?

A. Mr. Tunney mentioned he had a meeting with Mr. O'Brien.

Q. And Mr. Tunney was still associated with the bank at that stage, isn't that right?

A. He is a non-executive director of one of our sister companies, yes.

Q. So in making that contact he was acting in his capacity as a representative of the bank?

A. I don't think so, Mr. Gleeson. He was I don't think so.

Q. Well, in what capacity was he making the contact?

A. I think that would be more appropriate to ask of Mr. Tunney, but if I could indicate, Mr. Tunney I spoke to Mr. Tunney on the Tuesday night indicating in relation to a transaction which we had now confirmation at that stage, that Mr. Phelan had written to the bank and was the bearer, that the directors of the company were not who that Mr. Lowry was a director of the Catclaus company, had indicated to Mr. Tunney, who happened to be in close association with Mr. O'Brien, and that the circumstances surrounding the case were such that again it was potentially a very interesting case and that I made it clear to Michael the importance of the situation and Michael then met Denis O'Brien.

Q. Now, can I just ask you about Mr. Daly, Mr. Cullen?

He was, of course, the person designated as the guarantor for this loan, isn't that correct?

A. In the credit approval and the facility letter, yes.

Q. He was the guarantor?

A. He was to be the guarantor.

Q. So isn't it correct to put it that he was, from the bank's perspective, the person standing behind this transaction?

A. Yes.

Q. And so there would be no need to look to anybody else at that stage because you had, if the documentation was completed, you had your guarantor, isn't that right?

A. Absolutely.

Q. Now, can I ask you to refer to a document at page 23 of the book that we looked at yesterday. It's a letter from Mr. Vaughan of the 20th December?

A. Sorry, Mr. Gleeson, what page?

Q. It's page 23. It's a letter from Christopher Vaughan of the 20th December, 1999 to Mr. Tunney?

A. Yes, I have it.

Q. And this is the letter in which he confirms that he acts on behalf of Catclause and he confirms the details of his client account, where the money was to go, isn't that right?

A. Yes.

Q. And he says at the bottom of the page "I confirm that on completion Catclause Limited will have a good and marketable title to the property and I will deal with the stamping registration." Over the page he says "I am not sure if the bank wishes to register a charge against the property. If so, please send the completed charge form to me and I will arrange for it to be both filed at Companies House and registered simultaneously with the transfer."

Now, isn't that Mr. Vaughan offering to register a charge against the property if the bank so wished?

A. It is, it can be interpreted as that. The letter predates the facility letter and, therefore, it does

indicate what his intentions would be and it would be, you know, in terms of the facility letter, one would like to see a stronger commitment from the solicitor that he was actually acting. He is indicating what he will be doing.

Q. Well, did you ever take him up on this offer?

A. The - from a personal viewpoint?

Q. No, from the bank's viewpoint?

A. From the bank's viewpoint I think evidence will be given by Michael Tunney that, verbally, he did request the solicitor to take up the charge.

Q. Well, that may well be and we'll have to await what Mr. Tunney has to say about that. But what I am asking you, Mr. Vaughan is here, a solicitor, saying 'If you send the completed charge form to me I will arrange to file it'. Now, was that ever done?

A. The charge was never, was not filed. Whether the information was sent, I understand and I do feel, Mr. Gleeson, you know, I am perhaps preempting something and I am not a hundred percent sure until the evidence is given, that Michael Tunney will indicate that, verbally, he requested the solicitor to take up the charge and therefore whatever information would have been required to take it up, we should have been sending or the solicitor should have had it.

Q. Yes, but whatever may have happened subsequently, the charge was never filed, of course, as we know, isn't

that so?

A. Yes.

Q. But yet the bank is on notice from an early stage that Mr. Phelan's solicitor was offering to register a charge?

A. Yes.

Q. Now, can I ask you to turn to Mr. Vaughan's letter of the 25th October of 2000. I am just trying to find that in the book. Page 67. Sorry, page 66, I think.

I think 66 and 67 are the same letter but 67 has a handwritten notation on it. So perhaps we could look at that because it appears to be the complete in

that letter, Mr. Cullen, this is a letter from Christopher Vaughan to Georgina Keane in the bank.

Can you just remind us what was her position in the bank?

A. Georgina Keane was an executive reporting to Eddie Byrne ^ responsible and at that stage the loan facility was being monitored and administered by the Private Banking side.

Q. Now, in that letter, in paragraph 3, Mr. Vaughan says "No charges are registered against the property but I write to confirm that I am holding the land certificate strictly to the order of Investec Bank and that any monies received following the sale of this property will be sent to Investec Bank after the deductions of solicitors' and agents' fees only in relation to that

sale." Isn't that correct?

A. Yes.

Q. So can I just put it to you that from that point on you had the comfort of knowing that the deeds were being held to the order of the bank, isn't that so?

A. Yes.

Q. And you had the comfort of knowing that you were dealing with a reliable and trusted customer of the bank?

A. Yes.

Q. So although there was no security as envisaged in the original facility letter, here was Mr. Vaughan explaining the position to you and, I suggest, satisfying you that the position was adequate from the bank's point of view?

A. From a credit viewpoint, I think, Mr. Gleeson, I have said from, really, the incident, it really caused me not an awful lot of concern, from a credit viewpoint.

This letter alleviated to a great extent the concerns.

The technical concern, I suppose, on the third paragraph the technical concern on the third paragraph relates, although they will hold the funds and send them for our account, from a strictly banking viewpoint we would need to be absolutely clear that the funds could then be used for the repayment of the facility. But in terms of a comfort factor, dealing with a client, we were having now the solicitor, direct

contact with the solicitor and that the funds could be disbursed, the property was being held for our account, gave us considerable credit comfort.

Q. Yes, and can you just confirm that handwritten notation? Where did that emanate from?

A. That I understand to be Mr. Tony Morland's writing.

Q. I see. But from your perspective, in any event, this letter did give you that degree of comfort in relation to the entire matter?

A. Gave us significantly more comfort.

Q. So that even when we come to the later part of this saga in March of this year, you knew that you were dealing with a customer that you could trust and you knew that the deeds to the property were safe and were being held to the order of the bank?

A. We did. The difficulty, and why I wanted to point out the particular reference on the third paragraph, the later information that we got increased the importance that we would have confirmation that the funds that we would receive for the property could be used to repay the facility that we had advanced. A technical point, Mr. Gleeson, but an important point as we moved into sort of February/March.

Q. We will come to that. I will come back to that period in a moment. Could I ask you to turn to another document written in the year 2000, and it's on page 62 and it's a letter from, again from Georgina Keane to

Aidan Phelan. Do you see that letter, Mr. Cullen?

A. I do.

Q. Now, this is a letter again to Aidan Phelan and it's setting out the amount of the loan and explains that the facility has expired. But that again is a letter from the bank acknowledging that the repayment, in effect, has to come from Mr. Phelan, isn't that right?

A. Not quite. It's indicating that Mr. Phelan is the contact. The reference is to Catclause.

Q. I see. Well, can I just ask you in relation to Catclause, this was obviously looked into by the people in the bank at a later stage, isn't that right?

A. Yes.

Q. And I think one of the people who looked into it was a person called Tania Wilson?

A. Yes.

Q. Now, can you just clarify what her role was in this investigation?

A. Tania Wilson is in our Risk Department. She reports to Mr. Tony Morland.

Q. And when you say 'Risk Department' can you just explain what that means?

A. Just to explain the, sort of, division of duties in terms of, loan officers deal with the clients and advance the facilities, the Credit Department/Risk Department monitor the risk. So to the extent that a case becomes in arrears, you have, really, both people

pursuing it, one independent of the people who advanced the facility. So Tania is the independent person pursuing it from a risk viewpoint, now that it has become an issue, just confirming that, you know, division of duties, everything is in order.

Q. She would have had authority within the bank to conduct an independent review of this loan?

A. Yes.

Q. Now, can I ask you to turn to page 93 of the book, please. It looks like an e-mail from Tania Wilson to Eddie Byrne and Tony Morland and it's dated 23rd February, 2001.

A. Yes.

Q. Now, there is Ms. Wilson stating to Eddie Byrne and Tony Morland "To update you on the current position, Catclause Limited was intended to be the Holding Company for the property at Cheadle." And then in line 2: "Aidan Phelan is behind the transaction." Now, can I just pause there. That is a clear statement from Tania Wilson that it is Mr. Phelan's transaction, isn't that right?

A. Yes.

Q. And that is in line with your understanding of it at that stage?

A. Yes.

Q. And so there is no question of anyone else being behind the transaction?

A. Legally there has never been any question other than that is the situation.

Q. But Mr. Cullen, you have told me that Tania Wilson was the person who had authority to conduct an independent review of this loan within the bank and here she is making an unequivocal statement "Aidan Phelan is behind the transaction." Isn't that right?

A. Yes.

Q. And if there was any doubt about qualification of that, would you not have expected that to be said?

A. But, Mr. Gleeson, what Tania is saying is what she is saying, she is not saying any more than that, is that legally that is the situation as we have now come to establish.

Q. Well,

A. she is

Q. Unfortunately she doesn't say that. She doesn't put in that qualification. She is saying 'This is the update, Aidan Phelan is behind the transaction', in simple English, isn't that right?

A. That is right.

Q. So it's not a question of 'legally' or anything else.

It's a simple statement of fact as she saw it.

A. Yes.

Q. And did anyone disagree with that, to your knowledge?

When that e-mail was received, did anyone write back to

her and say, 'Look, you have got this wrong'?

A. No. Sorry - nobody wrote back to contradict what Tania had said.

Q. Just the last line of that memo before we go into the PS, it says "Eversheds have confirmed that it is not so unusual for his solicitor to be listed as the registered owner (in his capacity as trustee)." Isn't that right?

A. Yes.

Q. "PS: Tell Nicola not to waste her time looking for money-laundering on Catclause as they no longer exist." Now, that is also, I suggest to you, a clear statement that as far as her inquiries had run, Catclause no longer existed?

A. Yes.

Q. Now, in relation to Mr. Lowry's involvement in this, I have to put to you firstly, Mr. Cullen, and you may not be able to comment on this, but Mr. Phelan's evidence will be that he told Michael Tunney right from the start of Mr. Lowry's involvement in this transaction.

Now, were you aware of this?

A. No.

Q. Are you aware of the fact that Mr. Tunney met with Mr. Lowry in August of 1999?

A. Subsequently Mr. Tunney mentioned that he had met with Mr. Lowry.

Q. When did he tell you that?

A. If I March/April, this year.

Q. And did he tell what was discussed at that meeting?

A. Yeah, he summarised what was discussed at that meeting to me.

Q. And can you tell me what his summary of that was?

A. His summary was that he had met Mr. Lowry and that it was to do with Mr. Lowry's own company and there was some discussions about it and that was the only thing discussed. What was specifically not discussed was this facility.

Q. So by August of 1999, in any event, we can now take it that Mr. Tunney of the bank had established a personal contact with Michael Lowry?

A. I believe that to be the case.

Q. Now, are you aware of the fact that Mr. Tunney telephoned Mr. Daly, the proposed guarantor?

A. Yes.

Q. And are you aware of the fact that Mr. Daly's only connection with this transaction appears to have been his acquaintance with Michael Lowry?

A. I wouldn't have been until I read the documentation in the Tribunal.

Q. Well, this is something that I will obviously have to take up with Mr. Tunney but it does establish that Mr. Tunney had not only met Mr. Lowry previously, but then he, after this transaction or in connection with this transaction, he telephoned the guarantor who was known personally to Mr. Lowry, isn't that right?

A. Yes.

Q. Now, I just wanted to there is a letter, Mr. Chairman, which wasn't in the Tribunal's book. It's just for the sake of completeness. I think the underlying documents are, in fact, in the book. It's simply a cover sheet with a faxed letter dated 17th December of 1999. I have already handed a copy of this cover sheet to the other parties and it's a letter from Mr. Phelan to Mr. Tunney. Mr. Cullen, I don't know whether you have had an opportunity to see this document. (Document handed to witness.) So perhaps I can read it through to you.

It's a letter dated the 17th December, 1999 from AP Consulting to Michael Tunney and it's "Re Catclause Limited". And it says "Dear Michael,

I attach the following in relation to the above company.

1. The company is called Catclause Limited, a company registered in the UK with a company number of 3763107. The registered office is old Church Chambers, 23 Sandhill Road, Saint James, Northampton.
2. Letter from Bank of Ireland.
3. Auctioneer letter.
4. Statement of net worth of Guarantor.

5. Routing instructions for funds.

I will be on the mobile if you require further details." And it's signed by Mr. Phelan.

Now, I think those documents were the documents which were included in the credit application which you and Mr. Tunney sent over to London, isn't that correct?

A. Mr. Tunney sent over.

Q. Mr. Tunney sent over. But it was the application you had signed?

A. Yes.

CHAIRMAN: Is the auctioneer's letter that's referred to at 3, Mr. Gleeson, the reference to the document signed by Mr. Easton?

Q. MR. GLEESON: I presume it is. It would follow that that is the letter. Now, that letter in paragraph 1, Mr. Cullen, doesn't that say that the company is called Catclause Limited and it gives the registered office and the number of the company.

A. Yes.

Q. And you know sorry, you knew, you say, from the 27th February of this year, that Catclause was a company of which Mr. Lowry was a director?

A. Yes.

Q. And you didn't know before then?

A. That Mr. Lowry was a director?

Q. Yes.

A. I didn't.

Q. Isn't it clear from the companies search which we looked at yesterday that Mr. Lowry, and I think his daughter, were directors of this company?

A. Yes.

Q. And can I ask you why didn't the bank obtain a companies search before February of this year?

A. The bank didn't get a company search in that because the people who we were dealing with were highly regarded and well-known to the bank. A board resolution had been sent out and signed by two people, Mr. Aidan Phelan and Ms. Helen Malone, confirming they were directors. So because the client was well-known to the bank, the absolute detail of looking for company search wasn't carried out.

Q. Yes, I can understand that. But do you agree with me that the fact of Mr. Lowry being a director of Catclause is a fact that was ascertainable on a public record in the United Kingdom, isn't that so?

A. Absolutely.

Q. And can I suggest to you that if there was really an attempt to conceal Mr. Lowry's involvement, surely one would have obtained a shelf company that did not have his name as a director and so recorded in a public record?

A. Absolutely.

Q. Now, there is just one point of clarification arising out of that and it arises out of yesterday's transcript. It's at question 187 when Mr. Healy was putting a question to you and it's at page 74 of yesterday's transcript and he says "So now you knew something fairly significant in terms of the original transaction envisaged in this case. You knew that the original borrower in this case was envisaged as Mr. Michael Lowry and Ms. Lorraine Lowry." You answered "I knew or we had been told that there was a company called Catclause where the information we had been given was incorrect." You went on to elaborate on that. Just in relation to that, the original borrower was not, of course, Michael Lowry and Lorraine Lowry, isn't that so?

A. It was never Mr. Lowry or Lorraine Lowry. It was Catclause.

Q. Now, can I take you on to the memo of the meeting of the 28th February, which I think is on page 96. This document was prepared by whom, Mr. Cullen?

A. Mr. Tony Morland.

Q. Now, the first thing I must put to you is that Mr. Phelan will say in evidence that he doesn't recall saying that this was a Denis O'Brien transaction. I am just suggesting to you that, therefore, it was never said at that meeting?

A. I have, in evidence and through the statement, said

that it was said. That is my firm recollection and

that is my evidence, that it was said.

Q. But didn't the bank know from its own inquiries that Tania Wilson had concluded that this was an Aidan Phelan transaction?

A. Absolutely, from a credit viewpoint.

Q. Well, surely, Mr. Cullen if that statement was made, you should have taken Mr. Phelan up on this and said, 'Not so, this is an Aidan Phelan transaction. You are the customer'.

A. From a credit viewpoint, Mr. Gleeson, as you see from the note, what we were saying is we wanted to establish clearly, unequivocally who was the credit counter party behind it. This meeting was held on the 28th February. On the 27th February we had indications of Mr. Lowry and Ms. Lorraine Lowry. The one name we did not want to hear on the 28th February was Mr. Denis O'Brien's name because it was not relevant from a credit viewpoint. That is why I am clearly recalling that the name was mentioned.

Q. But Mr. Cullen, yesterday you agreed with me that there was no reference, for almost a year after this loan was granted, to Mr. O'Brien's name, in any document in the bank, isn't that so?

A. Yes.

Q. And as far as you were concerned, the only reference verbally to Mr. O'Brien was some reference that

Mr. Tunney had made that he was 'aware of' the transaction?

A. Yes.

Q. Which Mr. Phelan is going to say didn't come from him?

A. You have said yes.

Q. If this statement was made to you, I put it to you you should surely have challenged Mr. Phelan about this?

A. Mr. Gleeson, I don't see it that way and we didn't.

Q. I see. Well, can I ask you this: Mr. Lowry's name doesn't appear on this note at all?

A. It does not.

Q. And I think you said in evidence yesterday that, in answer to Mr. Healy, that you found it strange that Mr. Phelan didn't mention Mr. Lowry's name at this meeting?

A. I don't recall that Mr. Gleeson, but if you and therefore I don't recall it.

Q. Sorry, I may have got that wrong. I think what you said was that you were asked was it not strange that Mr. Phelan didn't mention Mr. Lowry's involvement at this meeting?

A. I think the meeting I was referring to was the meeting of the Friday when I had a meeting with Mr. Aidan Phelan, separately by myself. At this stage, just to confirm, just to put it in context, the 28th February, we indicated to Mr. Phelan that we had information. We didn't indicate what that information was because

the purpose frankly was that we were hopeful there was some explanation and that, having raised the issue, that our information was now different, that an explanation, innocent or whatever, just would be forthcoming, and that was the issue. We were not seeking to link anybody with anybody else. We were not trying to be detectives. We wanted to make Mr. Phelan aware that there was information that had been given to us that was now inconsistent with the information we had got from the company search. So to give Mr. Phelan an opportunity to reflect and respond on that.

Q. Surely if you were giving Mr. Phelan an opportunity to reflect and respond, you would have put to him the obvious question: 'Mr. Lowry is involved in this company' and asked for an explanation of that?

A. On the 27th we got verbal we were treading on a very difficult situation, we did not want anybody jumping to any conclusions whatsoever, so by raising we took the view that to raise it, to indicate that we had information of the directors that was different than the information that we had been given, we'd give Mr. Phelan an opportunity to respond before people go off at lengths and jump to conclusions.

Q. But you were asking him, in effect, to clarify the position and you withheld important information that you had obtained in the course of that exercise?

A. Mr. Gleeson, I would say, we didn't withhold the

information. We indicated we had information in respect of the directors. Remember, we had it only verbally, we hadn't it confirmed, and it was confirmed the following day. So we gave information in respect of a company that Mr. Phelan had indicated he was a director of a company and we had indicated that our information on who the directors of that particular company was different than the information that had been given to us.

Q. And is that something that was said at the meeting?

A. Words to that effect, yes.

Q. Well, perhaps you could just show me in the note where that is recorded?

A. If I can just have a quick look at the note? The second part, in the second last paragraph of the second last dot. It says "The bank informed AP that certain information had come to their attention that brought into question the validity of certain of the documentation held by the bank. AP promised to get a list of the directors and the particulars then to the bank, though he did think that the company had since been dissolved."

Q. Well, it looks there as if the bank's statement to Mr. Phelan is that their attention was brought into question sorry, that they had information which brought into the question the validity of certain of the documentation held by the bank. That doesn't put

to Mr. Phelan what you have now said you put to him.

A. I think, as I said, the words to that effect. I think the following sentence, when you read it, the fact that we were talking about directors gives you a reasonable understanding that it was in relation to directors that we had information on.

Q. But isn't that a critical part of this interview, if you say you put to Mr. Phelan that you had information about the identity of the directors of this company and that that was something that he should reflect upon and respond to? It's not stated in the memo, Mr. Cullen?

A. Mr. Gleeson, I contend that that section conveys the type of or what was discussed at the meeting and that we had indicated that we had information of the directors.

Q. Why didn't you put it straight to Mr. Phelan, 'Look, we have information that Mr. Lowry was involved in this'?

A. As I said, Mr. Gleeson, on the 27th February we got the information. We hadn't it absolutely confirmed. When we would hear of a politician's name, in particular Mr. Lowry, we would tread, very, very, very carefully and it is not willy-nilly that we would put it to someone. We put it to Mr. Phelan, a valuable customer, that this was the case and, frankly, the intention behind that was that following on from that, that we would get what would be an innocent explanation or an explanation that would have satisfied everybody.

Q. Did somebody advise you that you shouldn't put this obvious question to Mr. Phelan at that meeting?

A. We had no legal advice on that particular point.

Q. But at that stage from Mr. Phelan's perspective, and this will be his evidence, Mr. Lowry wasn't involved in the transaction any more. So if you had asked him the question he would have been able to tell you that.

Mr. Phelan told Mr. Tunney in January of 2000 that Catclause was no longer going to be used in this transaction. Are you aware of that?

A. Sorry, Mr. Gleeson, I lost concentration there.

Q. Mr. Phelan will say that he told Mr. Tunney of the bank that Catclause was effectively out of the equation, as far as this transaction was concerned, in January of 2000.

A. I am not aware of that information.

Q. And I think on the same day you had a meeting with Mr. Tunney himself?

A. We did.

Q. And did you put to Mr. Tunney at that meeting the information that you had obtained the day before from the Companies Office in the United Kingdom?

A. We handled the meeting with Mr. Tunney on the same basis as we handled the meeting with Mr. Phelan. For the same reasons.

Q. So he didn't get the full picture either?

A. No.

Q. And would it be fair to conclude that, not having put the full picture to Mr. Phelan, that he was still under the impression that this was simply just a credit problem?

A. At this stage it was only a credit problem. We had information and we had no reason to believe at this stage that the information and the explanation that would be forthcoming, that would come from us raising this, would lead us anywhere particularly once we had got the information. But we had reason to raise the issue so as to get an explanation without being presumptuous about what the answer would be. So at this stage, very clearly, it's the credit issue and we have now raised for the first time the situation that we have information on file which is different.

Q. And just to follow on from that, can we look at the letter of the 1st March, which is on the following page, Mr. Cullen. That is the letter from Christopher Vaughan to Mr. Morland in the bank. Do you have that letter?

A. I do.

Q. Now, on the second page of that letter, he says in the first paragraph "I understand that the change of identity of the purchaser has caused compliance difficulties within the bank. Aidan Phelan has therefore instructed me to write to you to confirm that the property is to be held strictly to the order of

Catclause Limited and that the property should be transferred into the name of Catclause limited at the earlier possible moment. Once this transfer has taken place it should regularise the position as far as the bank as funder of the purchaser of the property is concerned."

Now, that letter written on Mr. Phelan's instructions, I say, is based upon his understanding of that meeting, namely that you were still talking about a credit problem, a compliance problem, isn't that right?

A. That's exactly as I have said in answer to your previous question.

Q. So you can't have been surprised then when you got this letter from Mr. Vaughan because what, in fact, Mr. Vaughan is suggesting is that to bring the bank's own file into compliance the original borrower, Catclause, should be the transferee of the property?

A. We weren't surprised to get the letter because Mr. Phelan had indicated that he would get Mr. Vaughan to write to us. However, the contents of the letter did surprise us.

Q. Well, how did the contents can you just tell me how did the contents of letter surprise you?

A. Because we knew at that stage that Catclause had been struck off.

Q. Yes, but you didn't know whether Mr. Phelan was aware of that or not?

A. I think our note of the 28th February indicates that he feels it was struck off.

Q. And his evidence

A. But it did surprise us that the solicitor involved, Mr. Vaughan, didn't know it was struck off.

Q. I think you said yesterday that you indicated that it would be strange for such a letter to be written unless he was unaware that it had been, in fact, struck off, isn't that right?

A. I don't think I said that, Mr. Gleeson, yesterday.

Q. Because you see, if you had put the matter squarely to Mr. Phelan on the 28th February, then there would have been no question of Catclause being given this profile in the letter of the 1st March, isn't that so?

A. Not quite, Mr. Gleeson. The meeting of the 28th February is trying to establish beyond a shadow of a doubt on the credit side who the borrower was because we were getting information from a third party's solicitor which we felt was economical with information. So it's not a question of reversing into a position. What we wanted was to establish the position. This letter was concentrating on a compliance issue in terms of reversing into a particular position, in other words, 'Let's get Catclause'. We wanted to establish what was the exact position. There was a property out there. It was owned by somebody. We wanted confirmation to that

effect, clearly, who was the borrower? And then we would sort out the issues.

Q. Well, now, that is something that you put to Mr. Phelan, I think, at the meeting of the 2nd March in the Conrad, isn't that right?

A. Very more clearly than obviously I was able to do it prior to that.

Q. And so it was quite clear to Mr. Phelan, I suggest, for the first time on the 2nd March, that the bank did not want Catclause to be involved in this transaction?

A. I suppose, Mr. Gleeson, I can't agree with that. It wasn't a question of whether we wanted Catclause to be involved or not. We wanted to establish what were the facts of the situation at this particular time.

Q. you see

A. and if it had have been Catclause, so be it. If it was Aidan Phelan, so be it. But we were finding it very difficult to establish through the solicitor who had accepted the funds. We had heard he had confirmed that he was holding the property to the order of somebody, Aidan Phelan or Catclause and/or Catclause that was not sufficient. So we wanted to establish the fact at that particular time.

Q. But of course you knew all along that the deeds were being held by Mr. Vaughan to the order of the bank, isn't that right?

A. We knew that sorry, the deeds are being held to

the are being held in that I think he has confirmed that the funds in respect of the transaction will be paid to the bank but again, that is not sufficient because we could end up with a situation where the funds come into the bank but not we can't, as I said, indicated previously, be absolutely certain if we accept those funds that they are in return for the facility that we have advanced. So we are trying to tie people down, very clearly, at this stage.

Q. And I think the letter of the 5th March was exactly the letter that you wanted to see from Mr. Phelan, isn't that right?

A. From a credit viewpoint, yes.

Q. It fitted the bill exactly, as far as you were concerned?

A. From where I sat, yes.

Q. You see, Mr. Phelan will say that at the meeting of the 2nd March, you, in effect, told him that he should put that into a letter to you to satisfy the bank. That's what he will say?

A. And I would agree that that is a very clear yes. I had a very clear and frank discussion with Aidan Phelan on that day and I asked, from a credit viewpoint I very clearly outlined to Aidan what I required.

Q. And he will say that you discussed the content of this letter with him so that there was no doubt as to what letter he should write to you?

A. I am not I only discussed the content of the letter at that particular meeting, Mr. Gleeson. I didn't further discuss it with him.

Q. But of course at this stage, again you say you didn't know of the contact between Mr. Phelan and Mr. Tunney in January of 2000 when Mr. Phelan indicated that Mr. Lowry and Catclaus were no longer going to be involved in this transaction?

A. I didn't.

Q. And the key to that decision, Mr. Phelan will say in evidence, is when the guarantor, Mr. Daly, decided for his own reasons not to complete the guarantee to the satisfaction of the bank?

A. If that is to be said.

Q. Thank you, Mr. Cullen.

A. Thank you, Mr. Gleeson

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Just a few questions. Mr. Cullen, I appear for Mr. Michael Tunney and there are just a few questions I would like to ask you in relation to the evidence which you have given over the past day and a half to the Tribunal.

Firstly, insofar as the bank was concerned, that's GE Capital Woodchester bank, that is a bank that has undergone, in the past, a number of different

ownerships, is that correct?

A. Yes.

Q. I think it started life back in the early 1990s and went through two, if not three, changes of ownerships or having a different association or involvement with different organisations, is that correct?

A. Yes.

Q. I think originally it was part of the Woodchester Group and then there was an involvement of Credit Lyonnaise and then subsequently an involvement of GE Capital and then ultimately taken over by Investec, is that correct?

A. Yes.

Q. Were you involved through all of these changes and all of these ownerships?

A. Maybe not all of them. I became involved when it was Woodchester Credit Lyonnaise Bank, which was July 1995.

Q. At that time, in July 1995, Michael Tunney was working for the bank and had been working since about 1991, you were aware of that?

A. Yes.

Q. And I think you worked from 1995 through to Mr. Tunney's departure in late 1999 or early 2000, very closely with Mr. Tunney throughout this period?

A. Yes.

Q. And Mr. Tunney is well-known to you. You enjoyed a good working relationship throughout that period, would

that be correct?

A. Yes.

Q. And he was, if not the most senior corporate lending manager, certainly one of the most senior corporate lending managers within the bank, would that be correct?

A. I would have regarded Michael as the most senior.

Q. And he reported to you as managing director but there was no person who intervened between you and he from a reporting standpoint, would that be correct?

A. That is correct.

Q. Now, insofar as the various changes of ownership were concerned, I take it whenever a bank is taken over, it's not something that happens overnight. There is invariably a period of time which elapses, due diligence is carried out, licences have to be transferred and such matters, is that correct?

A. Yes.

Q. And would it be also true to say that when an organisation changes ownership, that there very often can be, what I might describe as cultural differences in relation to the operation or the manner in which an organisation is run?

A. Yes.

Q. I take it the approach of Irish owners would differ somewhat from the ownership of and by a French company or, for that matter, an English or a South African

entity, would that be correct?

A. Or, I would like to say, even between Irish companies.

Q. And in banking terms, particularly in the area of Corporate and Private Banking where large amounts of money are being lent, the relationship between the customer and the particular bank is extremely important?

A. Yes.

Q. And, of course, from a banking point of view you will want to be secured in as many ways as you wish to be secured but you tend not to lend to persons that you don't trust, regardless of the security, would that be a fair statement?

A. Yes.

Q. And in relation to the particular customer who came to the bank in December of 1999, that's Mr. Aidan Phelan, he would have been one of the most trusted, respected and well-known customers of the bank, going back a number of years?

A. - yes.

Q. - throughout the various ownerships. He didn't just become a customer of the bank, for example, in 1999?

A. He was a valuable customer for a number of years.

Q. And therefore one's approach in dealing with a valuable customer from your perspective and from Mr. Tunney's perspective would differ from your approach where you had an approach from somebody who was being introduced

to the bank for the first time whom you didn't know?

A. Yes.

Q. And insofar as the Investec personnel were concerned and at this stage in December '99, the takeover had not been completed, isn't that correct?

A. The effective legal takeover hadn't taken place.

Q. And that didn't, in fact, take place until April of 2000. I think there is a typographical error in your statement. It refers to April 2001 but, in fact, it was April 2000, is that correct?

A. April 2000.

Q. And the significance of that April 2000 date was that it was only from that date that Investec became fully legally responsible for the loan portfolio which was, up until that point, on the books of GE Capital Woodchester bank?

A. Yes.

Q. And therefore, at any time up until April of 2000, Investec presumably could have walked from the transaction and decided either not to proceed or not to take over any particular loan, is that correct?

A. On the exact date, they had a final call on the facilities they would or would not take over.

Q. And therefore, until April of 2000, it was open to Investec to say in respect of any particular loan, 'Sorry, we don't want that particular loan on our books going forward'?

A. Yes.

Q. And that, of course, had a bearing in relation to any loan facilities that were negotiated prior to April of 2000?

A. Yes.

Q. And although it may well be the case that formal approval for the particular Catclause loan was not given by Investec in December of 1999, that didn't necessarily have any potential adverse impact upon Investec because they could have decided not to take it and continue it on their loan book?

A. Yes.

Q. You, for your part, in December of 1999 were happy to approve the loan to Catclause Limited based upon the information that was relayed to you by Mr. Tunney, isn't that correct?

A. Yes.

Q. And you, for your part, at that stage and at no stage, I take it, thereafter, regarded the loan as being anything other than a loan to Catclause with which Mr. Phelan was associated, or at least up until sometime in maybe February of 2001, would that be correct?

A. Yes.

Q. And from a credit point of view, as opposed to a documentation point of view, would I be correct in understanding that you didn't lose any nights' sleep

from a credit point of view in relation to this particular loan?

A. On a personal viewpoint, I think I have reiterated it a number of times, this particular loan from a credit viewpoint did not cause me concern until very late in the day.

Q. And insofar as you did have concerns, they were concerns that the documentation wasn't in order and that, as matters were investigated, there seemed to be discrepancies between what you had been told or understood and what you were finding out?

A. Yes.

Q. And would it also be true to say, not to be unfair to what I am describing as 'the Investec people', because you are now Investec, is that correct, and since April of 2000, you are wearing an Investec hat as opposed to a GE Capital Woodchester Bank hat?

A. Yes.

Q. But in fairness to what I would describe as 'the Investec people', to your new owners, they could understandably have been less comfortable in circumstances where they did not know and couldn't have been expected to know the person with whom the bank was dealing, namely Mr. Phelan?

A. Yes.

Q. And insofar as the Investec people, if I can refer to them as that, are concerned, Mr. Phelan would be a new

customer as far as they are concerned?

A. Yes, but would have been briefed on the history.

Q. Yes, but they themselves would have had no dealings, and couldn't have been expected to have any personal dealings in respect of Mr. Phelan?

A. Yes.

Q. And would it also be fair to say that had there not been a takeover of GE Capital Woodchester Bank in '99 and 2000, there would have been less concerns, even from a documentation point of view, than if Investec had taken over?

A. I think that might be doing a disservice to the bank.

I think the documentation would ordinarily have been handled a while after the event and would be followed through and people would have followed it through. I think less concern about it but in terms of the same concerns would have been raised on the 31st July when the facility became outstanding and it was established, or it might have been established earlier. So lesser concerns, yes, but I wouldn't want to indicate that, you know the corporate banking people would follow-up on documentation.

Q. And I think it is accepted that the documentation wasn't all that it could have been or should have been in this case. But would I be correct in understanding from your evidence that that was not something which was desirable but something that came about perhaps by

virtue of the trust and reliance that was placed upon your good customer, Mr. Phelan?

A. Sorry, Mr. Shipsey, I just lost the train of your question.

Q. If the person who was seeking to borrow $\frac{1}{2}$ £420,000 sterling in December, '99 was a total stranger to you and to the bank, it is less likely that it would have been gone through in the couple of days that it seems to have gone through for Mr. Phelan?

A. In answer, yes, he was a valuable customer, it was handled quickly.

Q. And there is nothing unusual or extraordinary about handling a banking transaction of this size for a good customer in swift order?

A. In swift yes, there is nothing unusual in doing that.

Q. And insofar as there was to be a guarantor, a Mr. Daly, if I understood your evidence correctly, your surprise at Mr. Daly's involvement was not because Mr. Daly himself was involved, but as to why it was necessary to have an involvement of Mr. Daly when Mr. Phelan was borrowing what you didn't regard as a particularly large amount of money for Mr. Phelan, would that be correct?

A. That was my surprise.

Q. And

A. it was a mild surprise but, to be fair, a

transaction of that size, that Mr. Phelan needed somebody else to become involved without him, perhaps more directly, taking either funding more of the facility himself, more of the purchase of the amount himself.

Q. Surprised that he might be sharing it with anybody else, would that be correct?

A. Yes.

Q. And however, where a guarantor was suggested and where additional security from a high net worth individual like Mr. Daly was proposed, it's not something the bank ordinarily turns down?

A. No.

Q. If you are offered additional security as a banker you don't turn it down, would that be correct and fair?

A. Yes.

Q. You have stated in your evidence and have explained that shortly after this transaction, Mr. Tunney started to work part-time for the bank in the period up to April, isn't that correct?

A. Yes.

Q. And I don't think did he work at all after the completion of the take-over by Investec in April?

A. No.

Q. Mr. Tunney, however, had signalled his desire to go out on his own and to leave the bank sometime prior, in fact, to the Investec involvement, isn't that correct?

A. Yes, he had.

Q. You knew of his desire to go out into business on his own before that time?

A. Yes, I did.

Q. And he was asked, in fact, maybe by you or maybe by Investec I am not sure, but requested to stay on through the transition period because it was obviously in the interests of GE Capital Woodchester Bank that there would be continuity in the interregnum period, would that be correct?

A. Yes.

Q. And he did everything from the perspective of assisting the bank, that is GE Capital Woodchester Bank, that you, as managing director, required of him during that period?

A. A point of clarification; I was not Managing Director of GE Capital, I was Treasury Director.

Q. I am sorry, Treasury Director?

A. But yes, he did everything that was required.

Q. And notwithstanding the fact that he was no longer an employee of the bank after April of 2000, he continued, when asked, to involve himself in relation to this transaction but also in relation to other matters that he had been dealing with prior to his departure, would that be correct?

A. Yes.

Q. And do I understand from what you have said that he

gave the fullest possible cooperation to you and did whatever was asked of him at all times?

A. Yes.

Q. Now, you have also made it clear, Mr. Cullen, that on the 1st March of 2001 when you informed Mr. Tunney of the fact that you and Investec had become aware of the fact that Mr. Lowry and his daughter were directors of the company, you recall and you say in your statement that Mr. Tunney was shocked with this?

A. Yes.

Q. I take it the shock that you saw in Mr. Tunney was reflected in your own position when you became aware of this fact?

A. Yes.

Q. And there was nothing exceptional about the end of February of 2001 or the beginning of March 2001 which led both you and Mr. Tunney to be shocked at the discovery that Mr. Lowry and his daughter were directors of this company. In other words, if you had found out that information in January of 2001, you would have been shocked or at any time, I take it, throughout 2000 or indeed in 1999, you would have been shocked?

A. Yes.

Q. And there is no possibility, therefore, from your perspective, that Mr. Lowry's name could have been mentioned prior to the end of February of 2001 and you

wouldn't have noticed it or you would have ignored it,
would that be correct?

A. Just to be absolutely if the name was mentioned at any time, that would obviously be information that would be very, very surprising. So it was never mentioned.

Q. Now, I think you have fairly stated, and Mr. Tunney doesn't disagree with you at all, in relation to your understanding of the connection and the reference that was being made to Mr. Denis O'Brien. It was known to you and to Mr. Tunney and as Mr. Gleeson has put it to you, that Mr. Phelan carried out a lot of work for Mr. O'Brien. That was known to you?

A. Yes.

Q. And insofar as the bank was concerned, there were many transactions where Mr. Phelan had been acting either with or for Mr. O'Brien and transactions where he had been acting on his own account?

A. Yes.

Q. And would I be correct in understanding from you, and it certainly will be Mr. Tunney's evidence, that at no time did you not know whether Mr. Phelan was acting on his own account as opposed to acting on Mr. O'Brien's account? In other words, at all times you knew who the customer was in the bank?

A. Yes.

Q. And it will certainly be Mr. Tunney's evidence, and

seems to be your evidence insofar as this transaction is concerned, although there was reference to Mr. O'Brien either being aware of it or being behind it, that at no time, in your understanding, was Mr. O'Brien the customer of the bank in this transaction?

A. That is correct.

Q. When, on the 26th February of 2001, you contacted Mr. Phelan leading up to the meeting on the 28th February of 2001, you say that you intended not to involve Michael Tunney in the meeting. Would I be correct in understanding that your decision not to involve Mr. Tunney was that Mr. Tunney had been acting or assisting as intermediary, he no longer being an employee of the bank, and you wanted to meet with Mr. Phelan personally as banker to customer, would that be correct?

A. Yes.

Q. There was no other reason for not involving Mr. Tunney in that meeting?

A. Other than, to be clear, just to indicate to Mr. Phelan that the relationships were now moving and that, I suppose, going without Mr. Tunney was to indicate the seriousness of where we are.

Q. Because you had had a meeting in January of 2001 attended by Mr. Tunney and Mr. Phelan and I take it from your perspective, you weren't getting the response were Mr. Phelan that you would have wished, would that

be correct?

A. Yes.

Q. It was to emphasise, I suppose, a change in the bank's attitude and the seriousness with which they were taking the matter?

A. Yes, that Mr. Phelan had a more personal relationship with Mr. Tunney, mine was not as personal, though I was, you know, I know Aidan Phelan.

Q. When you telephoned Mr. Tunney on, I think the 12th or the 13th March, he was on holidays, on a skiing holiday, isn't that correct?

A. Yes.

Q. You contacted him on his mobile or at his hotel or do you recall?

A. I presume it was on his mobile.

Q. And the initiation of that contact was from your end, isn't that correct?

A. Yes.

Q. I take it you knew, or did you know, that Mr. Tunney was away on holidays at that time?

A. I did.

Q. You were presumably talking with him in the days before he went on holiday, or do you recall?

A. I think I may have spoken to him previously. I happened to be away the previous week myself so it was unlikely I think the last I spoke to him was maybe March the 5th, the Monday, March 5th, until that

particular day.

Q. And, again you are not suggesting otherwise, but Mr. Tunney responded to your call, which was a request, I suggest to you, for Mr. Tunney's assistance in relation to what was now becoming more serious, would that be fair?

A. Yes.

Q. And nothing that was done by Mr. Tunney in response to your telephone call to him, in France I think it was, was other than what you would have expected him to do in response to your call?

A. Yes.

Q. And he moved very quickly and promptly to try and, as it were, get further to the bottom of matters?

A. Yes.

Q. And offered to cut short his holiday and to return to Ireland immediately if that's what you wanted, isn't that correct?

A. Yes.

Q. And when he made contact, because I think you knew he was in France and part of a party of which Mr. O'Brien was party, you were aware of that?

A. I was aware he was in a party with Mr. O'Brien.

Q. And so when he came back to you or spoke to you on the second occasion, I think on the 12th March, there was no surprise from your perspective that he would have spoken with Mr. O'Brien?

A. None.

Q. It wasn't, as it were, a fortuitous bumping into Mr. O'Brien in France by Mr. Tunney. You knew Mr. O'Brien was there in the same party as Mr. Tunney?

A. Yes.

Q. And I think as you have made it clear, you, from the bank's perspective, were looking for explanations and hoping to get the explanations from Mr. Phelan in relation to the transaction?

A. Yes.

Q. Thank you.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY.

Q. MR. HEALY: There are one or two matters. It might be preferable to get rid of them now so we can tackle another witness in the afternoon. Can I just clarify firstly, Mr. Cullen, one or two matters concerning the file in this case and the point at which you became aware that the original file was not available?

A. Mr. Healy, I'd have to go through the exact date I think there is a memo somewhere that says that somebody is looking for the file and that was the first time.

Now, if you are asking me to put a range of the dates,

I would I would place it somewhere between, I suppose, August and, maybe latest, October, of last year.

Q. Do you know from anything you have learnt in the course

of the investigation carried out in the bank whether a file was, in fact, definitely created in this case?

A. We have confirmation from the person responsible for opening files and she is adamant a file was opened.

Q. And where would those files have been kept?

A. They would be kept in the unit, in the lending unit, the Corporate Banking Unit.

Q. So are they kept independently of any personal files officials of the bank might keep, such as Mr. Tunney, yourself or anybody else for that matter?

A. Yes.

Q. And the person who generated or created the file then is aware that a file was create in that location in the bank?

A. Yes.

Q. Now, in answer to Mr. Gleeson I think you were or rather Mr. Gleeson asked you whether it was an easy assumption for people to make that if Mr. Aidan Phelan was involved in some matter in the bank, Mr. Denis O'Brien was connected with it. I just want to know whether in answering that question, you had in mind someone like Mr. Michael Tunney who would have been familiar with Mr. O'Brien's affairs?

A. No. I had in mind people, perhaps not the more senior people or specifically the people dealing with each individual case, I was speaking generally, I thought that was in response to Mr. Gleeson's question,

generally, in terms of the generality of people within a bank, within the bank who hadn't specific responsibility for whatever case was being discussed.

Q. Now, you recall that you said yesterday and you have repeatedly stated today, that what the bank were seeking to do in February and March of this year was to find out what this transaction involved from the beginning to the end, both from the credit and from the reputational perspective, isn't that right?

A. Yes.

Q. You wanted to get the whole story?

A. Yes.

Q. Who was involved from the beginning right up to the end. And you wanted to get you wanted to find out who was involved in a general sense, not just simply who your customer was?

A. Not quite the same. I mean, my primary responsibility in the bank was, in fact, the credit side of it, to get I mean we had a loan outstanding. I suppose our overriding viewpoint was that we were hopeful that, having got the credit out of the way, the rest would slip away and that explanations would be forthcoming. So we weren't, as I mentioned yesterday, coming into this presumptuous on anything, acting as detectives. From our viewpoint, we had a credit issue, we want it had resolved and the other issue, the reputational side, we were going to a length that would be

reasonable, from our viewpoint, to establish, but we weren't going to go into a detective mode to establish beyond a shadow of a doubt the A to Z. Once we could be satisfied that everything could, from a reputation side, be put to bed, we would leave it at that.

Q. As you said yourself, you weren't anxious to see connections between Mr. O'Brien's name and Mr. Lowry's name on your files or in your bank when they couldn't be explained satisfactorily?

A. No.

Q. Now, I think it's been suggested to you in evidence this morning by Mr. Gleeson and by Mr. Shipsey on behalf of their respective clients that Mr. Phelan was the person who was borrowing this money from the beginning to the end, is that correct, is that your understanding or is it your understanding?

A. Mr. Phelan introduced the transaction. The company was Catclause, guaranteed by Mr. Daly. It would have been my understanding, if I was present, that Mr. Phelan was the interested party in Catclause.

Q. Just so I can the Tribunal will understand what exactly is being said you brought to Mr. Phelan's attention in March of this year your knowledge, your then-confirmed knowledge that Mr. Lowry was a director of Catclause, or had been a director of Catclause while it was still in existence?

A. Yes. That is on the specific that would be on the

2nd March.

Q. Yes, on the 2nd March. You asked him a question without providing him with that information on the 28th March at a time when you were anxious to give him an opportunity of explaining everything to you as he understood it and without your jumping to any conclusions about who might or might not have been involved?

A. On the 28th February.

Q. But on the 2nd March, as you say, did you say to him, 'We know that Mr. Michael Lowry was a director of this company'.

A. Words to that effect.

Q. And you received a letter, I think, on I forget what day now, was it the 5th March, from Mr. Phelan in which he described this transaction from the very outset as being a transaction that he was setting up for himself through a vehicle which he called Catclause, isn't that right?

A. Yes.

Q. It's on the monitor. "When I entered into the transaction to purchase the above property it was intended that the purchase would be undertaken through a limited company, Catclause, and it was assumed that I would be appointed a director of this company.

However, it was subsequently decided that I would hold the property personally and complete the amended

documentation."

And I think his solicitor wrote you a letter on the 1st March, I think, in which he said 'There is a problem here about the identity of the purchaser. That's all. You originally thought it was Catclause. We decided not to go in the name of Catclause, we will go back to Catclause now, if that's what you want', words to that effect, I think?

A. Yes.

Q. Now, I just want to read out to you a section from Mr. Phelan's statement. It's at page 7 of Mr. Phelan's statement, just to ascertain whether any of the information contained in that statement was provided to you at that time.

Paragraph 7: "In September of 1999 Mr. Lowry told me that he had identified an attractive property in the United Kingdom. However, he indicated to me that he would have difficulty arranging loan facilities to complete the purchase. I offered to assist him in securing such a loan facility. In this regard, I had a good and longstanding relationship with GE Capital Woodchester Bank through Mr. Tunney and had in the past engaged in numerous very large banking transactions with that bank. I agreed to approach GE Capital Woodchester Bank for loan finance on behalf of Mr. Lowry or a corporate vehicle of his. Mr. Vaughan

had obtained a company, Catclause, for Mr. Lowry and it was proposed that Catclause would be the borrower and the purchaser of the property. In this transaction it was envisaged that Mr. Lowry would be the principal with he and his daughter Lorraine Lowry appointed directors of Catclause Limited. The shareholders were personnel from a company formation agency. The contract to purchase the property was signed by Catclause Limited."

Now, did Mr. Phelan tell you any of that when you spoke to him in March?

A. No. But I would want to emphasise that the reference on the 2nd March in my meeting, while the name 'Mr. Lowry' was discussed, it was, as I think I said yesterday, it was the subject not to be discussed. I wanted the credit side. I didn't, as I say, want to it wasn't my job to pursue relationships. But this element in terms of where this impacts the credit side of the transaction, no.

Q. But whether you talk about the credit side or the reputational side, the fact is that Mr. Lowry's name was mentioned on the 2nd March.

A. Yes.

Q. On the 28th March you had said to Mr. Phelan that you were unhappy or Mr. Morland, I think, yourself and another official had said to Mr. Phelan that there are inconsistencies between the documentation the bank

had and information they had concerning who was involved in this transaction, isn't that right?

A. Yes.

Q. And I don't think you were I think this was a serious conversation. You said yourself you were anxious to make sure that the conversation had an impact on Mr. Phelan, isn't that right?

A. Yes.

Q. And none of this information was vouchsafed to you at that time by Mr. Phelan?

A. That is true.

Q. And indeed at no time, would I be correct in saying, that you were informed of what is contained in this paragraph?

A. That is true.

Q. And if, in fact, you had been informed of that at that time it would have been a reason for even greater concern, wouldn't it?

A. Absolutely.

Q. The money that was used to make this purchase was sent by your bank to the client account of Mr. Christopher Vaughan, solicitor?

A. Yes.

Q. At a time when Mr. Vaughan, I think, said he was acting for Catclause?

A. Yes.

Q. And at a time when the directors of Catclause were

Mr. Lowry and his daughter?

A. We now understand that to be the case.

Q. And if you ally those facts with what is contained in

Paragraph 7 of Mr. Phelan's letter, doesn't it seem

that the money that you lent was lent effectively to

Mr. Lowry?

A. It was, I hasten to say, it was lent to Catclause.

Q. I understand that, but insofar as the bank would surely

look behind any company to the people running the

company, it was

A. It appears the owner the bank just to be

absolutely clear the money was disbursed to

Mr. Vaughan's client account and, obviously, for

Catclause. It has turned out

Q. I understand all of that but if you ally that to

what is contained in this paragraph where Mr. Phelan

explains that he was the person who offered to assist

in securing a loan facility for Mr. Lowry, that the

person who was taking this loan, Day 1, with the

assistance of Mr. Phelan and perhaps Mr. O'Brien, it's

not clear until all of this evidence has been examined,

was Mr. Lowry, isn't that right?

A. Yes.

Q. Thank you.

CHAIRMAN: Just on foot of what Mr. Shipsey asked you,

Mr. Cullen, in relation to the connection with

Mr. Phelan when the proposition was first brought to your attention at the end of 1999 and the possible, or what you understood to be the awareness of Mr. O'Brien, would I be correct in thinking that without those factors, the proposal was one that would have failed very many of the tests that a prudent banker would apply? What was sought was immediate financing on a hundred percent basis for a speculative venture in the north of England, secured by an ostensible person of high asset worth who was unknown to you, and further, by a charge over the property at a stage when you hadn't had an opportunity to examine the overall feasibility of the venture?

A. Sir, there would be very few clients within the bank who we would have acted in this way for. You are talking about maybe 20 clients. But there would be other clients.

CHAIRMAN: but without that factor, banking caution would have taken over in the first instance.

A. Yes.

CHAIRMAN: So you would have either have declined or examined a great deal ^ more critically the proposition?

A. Yes, Sir.

CHAIRMAN: Just on the other matter that Mr. Shipsey raised with you when I think you accepted from him that

it would have been possible in the course of the takeover over ensuing months by Investec for the new principal to have declined any loan that was bargained in the interregnum, I think in practice, obviously the parties sought to avoid that type of scenario and sought to devise an orderly takeover of the loan book.

A. Yes

CHAIRMAN: And that presumably was the basis upon which Mr. Wohlman and Mr. Morland and others expressed their misgivings.

A. Yes.

CHAIRMAN: They were going to go along with it but perhaps with some reluctance but they wanted further inquiries and examinations made?

A. I think that's a very fair comment.

CHAIRMAN: Very good. Thank you for your evidence.

MR. SHIPSEY: Sir, just arising out of the first of your two questions there which related to something I had put to him, I think there might be a degree of, perhaps confusion is too strong a word, but if I could just ask a question arising out of that which you have put to the witness. Insofar as it related to what I had put to him.

CHAIRMAN: Well, in general terms, I prefer that be

done by Mr. Healy. On this occasion, if it's one question, Mr. Shipsey, I'll perhaps deviate from the rule.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR.

SHIPSEY:

Q. If you remember the first matter put to you by the Chairman in relation to the awareness that Denis O'Brien's name was mentioned to you, if I understood your evidence correctly earlier on, the decision to grant this loan was because of Mr. Phelan's involvement and not because you were told that Denis O'Brien was aware of it, is that correct or not correct?

A. I think people are getting confused. The decision in terms of the, the actual, ultimately the credit was decided because we had a specific charge on a property and we were going to be guaranteed by a high net worth individual, Mr. Daly. The added comfort factor was that the specific special purpose vehicle was an Aidan Phelan special purpose vehicle. In other words, he was driving it.

Q. But not because Mr. O'Brien's name was mentioned?

A. The credit approval was never given on that basis.

CHAIRMAN: I think yourself, you had some effective potential extra comfort but it didn't strictly influence the decision; that was by virtue of Mr. Phelan's involvement?

A. Yes.

CHAIRMAN: Thank you for your assistance then. We will take up Mr. Wohlman's evidence on resumption at five to two.

THE WITNESS THEN WITHDREW.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.55 P.M.:

MR. COUGHLAN: Mr. Ian Wohlman, please.

IAN WOHLMAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Wohlman, I think you prepared a memorandum of proposed evidence for the assistance of the Tribunal, isn't that correct, a statement?

A. Sorry, a statement, yes.

Q. And do you have that with you?

A. I think it's in one of these here, yes.

Q. Tab 3 in the book. And I think there are also documents, some of which you were involved in, and the others I think which you are familiar with. Now, Mr. Wohlman, I think you informed the Tribunal that you are a director of Investec Bank (UK) Limited and that your main responsibilities are Head of UK Group Credit and Risk Management, is that correct?

A. That is correct, yes.

Q. And I think on the 22nd December, 1999 you received a memorandum and credit application for Catclause Limited from Mr. Michael Tunney?

A. Correct.

Q. I think at that time the business which is now the Irish branch of IB (UK) was owned by GE Capital Woodchester Bank and that Investec had agreed to purchase the business and in the interim period, prior to legal completion, it was agreed that Investec would also approve new credit applications to ensure they met its own risk appetite?

A. Correct.

Q. Now, can I take it that this didn't apply to every single loan, but perhaps those over a certain threshold?

A. I think there was a local discretionary limit at the time, so it would have been the larger facilities that would have come to us, I think probably in excess of $\pounds 200,000$ English.

Q. Now recollect I think the credit application in question, that is the Catclause application, appears to be for 100% finance for the acquisition of a property known as St. Columbas Church, Handforth, Manchester at a consideration of $\pounds 420,000$. Security was to be a first charge over the property and the personal guarantee of a John Daly, who was not an existing customer, is that correct?

A. That's correct.

Q. Now, I think the application was considered by Investec Bank (UK) and declined on the basis proposed on the 23rd December, 1999, is that correct?

A. Correct.

Q. And a memorandum was issued to Michael Tunney to that effect on that date, that is 23rd December?

A. Correct.

Q. I think you informed the Tribunal that you were advised subsequent to this memorandum by Michael Cullen that Woodchester had already committed on the facility and you advised that, if that was the case, Investec Bank (UK) would wish the facility to be rebanked quickly, and preferably before completion of the acquisition?

A. Correct.

Q. Now, if I could just deal I think you next became involved in the matter around December of 2000, is that correct?

A. When you say 'next' - after this credit application?

Q. Yes, after the credit application.

A. I'll take your word on the date. I'll have to check the file.

Q. If we just deal with the documents first of all. I think it was being handled at the Dublin end thereafter and it came under Mr. Morland's area of responsibility?

A. Correct.

Q. Once the loan fell due, isn't that correct?

A. Yes.

Q. Now, I think the documents which were sent to you or were they sent to you by Mr. Tunney by way of fax on the 22nd December, 1999?

A. Yes, they were.

Q. I think the first document is I know the numbering is faint is document number 1 and that is a fax to you from Mr. Tunney, isn't that correct?

A. Yes.

Q. And it reads "Ian, enclosing a credit proposal for Catclause Limited signed off by both Michael Cullen and myself. Tony Morland has not signed off as the front page was not prepared at the time he reviewed the credit with me. His only issue was that more detail be obtained on the net worth of John Daly. This has since been obtained and Tony will be attaching his signature on his return to the office. I will call you later today to discuss. Many thanks. Michael Tunney."

Now, can you remember what documents accompanied that fax?

A. Yes. I think for the aid of ease here, if you look at the top of the documents, the first document that you have just said, it has page 1/8, so the documents that came with that are 1 to 8/8. So I think it's those documents came terminated with the one that's got 8/8 on it, which for the Tribunal's assistance is the one that says 'Certificate of Incorporation'

Q. Certificate of Incorporation.

A. So those documents include the memo were the ones that came to you.

Q. For your consideration. Now, there are some handwritten notes on document number 1, isn't that correct?

A. There is.

Q. I think that's your writing?

A. Correct.

Q. Now, just for the assistance of the Tribunal, on the left-hand side there is "No way" - exclamation mark and that's underlined?

A. Yes.

Q. Then under that there is a date, the 23rd December, 1999 and could you just read what is written under that?

A. It says "Discussed AT" that's the initial of Alan Tapnack who is the Chief Executive Officer of the bank who is ultimately my boss with Investec. And we discussed this credit application, as we would do, and then we said 'We need supporting security', say for the guarantee that was being given. It's put forward that the guarantee should be unsupported as the credit application stands. We said we wanted some supporting security for the guarantee, say for 50% of the value of the loan.

Q. What type of security would you be talking about there?

Would you be talking about cash-back security or something of that nature?

A. I think it's bank security can be on a whole raft of things. It could be a charge over another property, it could be a charge over cash, it could be a charge over a life policy with its surrender value, it could be a charge over stocks and shares. There are many things that would form acceptable security in support of the guarantee.

Q. So having discussed this with your immediate boss, your consideration of this as a banker was that you needed not just a guarantee but you needed some form of security in respect of it?

A. Correct.

Q. Now then, if you go heading towards the right-hand side of the page, you read "2 and a half percent". Then "A half percent" and then "Not a client at present. Six months, excellent reputation."

A. Yeah.

Q. Does that note relate to the discussion you were having with your own boss?

A. Some relates to that and some relates to a telephone conversation that I had with Michael Tunney regarding this. So the "Not a client at present" was finding out whether the guarantor was a client at present. And the answer to that was 'No'. I know you are not on page 2, but if we turn to page 2, I have underlined "John Daly"

and I found out also, it says there "Owns BCE Developments" so to find a little bit more background, that came from that conversation. And the "Excellent reputation" there relates to a comment made about Mr. Daly and the conduct of his business, BCE Developments.

Q. And who said that to you?

A. That was Mr. Tunney when I had the conversation with him about the credit application.

Q. And you understood that that related to Mr. John Daly?

A. Yes.

Q. Well, can I take it you were aware that from the documents, or it was reported to you in fact by Mr. Tunney, that 'Not a client at present', isn't that correct?

A. That's correct, that's Mr. Daly.

Q. And I think 'Six months' must be related to the length of loan, would that be correct?

A. I think we were, if we were going to help, we wanted some additional security, maybe a shorter term for the loan, I can't remember the original period that was asked for.

Q. Mr. Tunney informed you then that Mr. Daly had an excellent reputation?

A. Yes.

Q. Did you understand by that that Mr. Tunney knew Mr. Daly or knew of him?

A. I didn't ask that question but I guess he must have

based his comment on some information he had.

Q. Well, do you know whether it was based on the documentation which was being made available to you, which included a bank reference, a statement from Mr. Daly's accountants, isn't that correct?

A. That is there. I would take it I mean, probably you'd have to ask Mr. Tunney, but I would say based on that and maybe his other knowledge as well. You'd have to ask Mr. Tunney that. I'd be speculating.

Q. Now, can I just ask you as a banker and the way this was presented to you, what was your understanding of who was behind Catclause Limited, which was the applicant for this facility?

A. Okay. Now, I would have thought the applicant behind Catclause was Mr. Daly. Now, I have no evidence to show that at the time of the credit application but I thought that because it's not normal that people who aren't beneficial owners or directors of a company would guarantee a company. So I would suggest that he was probably involved with Catclause, was my understanding.

Q. And that would have been your normal understanding in the conduct of a wide range of bank business?

A. Correct.

Q. Now, I take it that if Mr. Tunney's judgement of Mr. Daly having an excellent reputation was based on the documents which were sent to you, you are perfectly

capable of making that judgement yourself as well, of course, isn't that correct?

A. I think so, in terms of net worth, but probably about the way they have conducted themselves, no. So I when I say 'Excellent reputation', as I say, you'd have to ask Mr. Tunney. But I think he is alluding to the way he has conducted himself. I think net worth is just reputation.

Q. Do I understand that it was your view and the view of your superior in the UK that you were not prepared to sanction this on the basis which it was presented?

A. Correct.

Q. And is it am I correct in understanding that what you would have required as a prudent banker in the situation, was more security, perhaps another half percent charge because of what was involved, is that correct?

A. Correct, yes.

Q. And because the person was not an existing client or a client whom you had dealt with regularly previously.

And can I also take it that you had, or you were suggesting that you might also have an interest or receive something out of the ultimate proceeds of the sale if they were over and above what the place had been bought for in terms of a reasonable profit?

A. The way we would approach when you say 'A prudent banker', I think banks have different risk appetites,

what suits your books and your own risk appetites. If we were providing a hundred percent finance we would look for return beyond normal interest rates and margins. The answer to that is 'Yes'.

Q. Now, when you sent or when you informed Dublin that you were not prepared to grant the facility, how was that conveyed to Dublin?

A. Well, that was conveyed in the fax which is, I think, document I am having a little bit of difficulty reading the page numbers but I think it's 10.

Q. Yes. And that was for the attention of Mr. Michael Tunney. It was dated 23rd December, 1999 and it was from you?

A. Correct.

Q. And it reads "Further to our conversation I have spoken to Alan Tapnack and confirmed the following: This is a transaction that we would not entertain unless the client was an existing customer well-known to us and had a previous track record with us in this type of transaction. Even then, at 100% finance, we would expect a minimum fee and 10% of the uplift in value of any planning gain.

We would not approve the deal as presented and ask that tangible security, such as a charge over some of his investment portfolio, be obtained for at least 50% of the value of the loan to support the client's

guarantee. We would also require a 1% fee for the six months, with a view to renegotiating this had the property not been disposed of in that time." And you tell Mr. Tunney that you have left a message to that effect on his voice mail, is that correct?

A. Correct.

Q. Now, I think when you sent this, you were unaware that the facility had been accepted and, in fact, the monies had been drawn down?

A. Correct.

Q. Now, Christmas intervened then, obviously, of that year. Did you receive any response to that particular fax before Christmas, either verbally or in written form?

A. Not that I am aware of that it was before Christmas but around Christmas I did speak to, as it says in my statement, Mr. Cullen, who had said that we were committed on the I couldn't swear to the exact date that that was.

Q. You say in your statement around late December 2000 you were made aware that the sorry, I beg your pardon, if I go back you were advised subsequent to the memorandum of the 23rd by Michael Cullen that Woodchester had already committed on the facility and you advised that if that were the case, Investec Bank (UK) would wish the facility to be rebanked quickly and preferably before completion of the acquisition. What

do you mean by 'rebanked'? Is that that the loan would be taken over by some other institution?

A. The question of whether this is a good or bad loan is a judgement call and whether it suits the risk appetite of the bank concerned. It wasn't to our liking. As the gentleman over there explained, that we had considered to buy this company, GE Capital Woodchester, or the assets and liabilities of it, and we were looking for this facility not to be there when we completed it because it wasn't within our own risk appetite.

Q. Based on your own criteria?

A. Based on our own criteria, yes.

Q. And what was the upshot of the discussion you had with Mr. Cullen on that occasion when you indicated that you would like it to be rebanked?

A. The local management, that would be Mr. Cullen, and I guess he had spoken to other people there, said it could be rebanked or repaid within that timeframe.

Q. When you say, do you mean within the timeframe for repayment of the original facility or within the timeframe?

A. prior to us completing on the transaction.

Q. was it prior to you completing well, your statement says 'Preferably before completion of the acquisition'.

A. Sorry, yes, 'Transaction' there, I am referring to the

transaction, the acquisition to buy GE Capital

Woodchester.

Q. I beg your pardon. I see. Now, did you have any particular involvement in this particular loan up to the time it fell due and matters moved along in the autumn and winter of 200?

A. No, other than at completion, which I think was April, the loan was still outstanding in the books of GE Capital that we were buying. We did make a decision on that based on the original credit application. We weren't keen on it but to stop a transaction or exclude this for $\text{€}1\frac{1}{2}420,000$ which wasn't a large transaction, and bearing in mind the assurances given by local management, we did complete the transaction with this loan as part of the book.

Q. You decided to take it on at that stage?

A. Yes.

Q. Now, I think around December of 2000 you were made aware that the facility had not been repaid and was not within the terms of the facility letter which had been issued to Catclause Limited, is that correct?

A. Yes.

Q. And I think over the following period you were to learn from staff within the Dublin office that whilst the funds had been remitted to the solicitor acting, Christopher Vaughan, to purchase the property, no charge over the property had been taken. Nor, it

appeared, had any guarantee from John Daly been obtained, is that correct?

A. Correct.

Q. I think the inquiries of the Dublin staff showed that the property was held in the name of Mr. and Mrs.

Vaughan rather than in the name of Catclause Limited, is that correct?

A. Correct.

Q. And on inquiry this was explained as being a trust arrangement but the trust deed was not provided. You were being informed of all of this?

A. Correct.

Q. And I think it was also noticed that Aidan Phelan, who had accepted the facility letter as a director of Catclause Limited, was not registered at Company House as a director of that company, is that correct?

A. Correct.

Q. The directors of Catclause Limited were shown at Company House to be Lorraine Lowry and Michael Lowry and the company had filed a notice to be dissolved, is that correct?

A. Correct.

Q. Now, I think to protect Investec Bank (UK)'s position you requested a caution be registered against the subject property and this was effected by Investec Bank (UK)'s lawyers, Messrs. Eversheds and this was done on the 8th March 2001?

A. Yes.

Q. The circumstances around this transaction appeared to be unusual and after a discussion with Michael Cullen, Head of the Irish bank, and Tony Morland, Head of Credit, Irish bank it was agreed that you would approach the Central Bank with your findings and concerns and this meeting was arranged for the 12th March, 2001, is that correct?

A. Correct.

Q. Now, if I could just go back and deal with a few of the matters which had come to your attention and which result in yourself, Mr. Cullen and Mr. Morland taking the decision that you should approach the Central Bank of Ireland.

In the first instance, the facility was not repaid on the due date, which would have been July of 2000?

A. Yeah, I mean, that's a fact. I don't think that's one that would lead us to go to the Central Bank, but it's a fact.

Q. Of course not. And, in fact, on the evidence which has been given by Mr. Cullen, the way it was dealt with at that time was there was a follow-up made, the bank was continuing to earn interest on the particular loan and that assurances were being given to bank staff by Mr. Phelan that the property was in the process of being sold or there were steps being taken and it didn't seem to cause any great concern from a credit

point of view, or from any point of view at that stage,
that appears to be the situation, would you agree?

A. That appears to be correct, yeah.

Q. It was when matters or investigations progressed
further and it was discovered that the property was
registered in the name of Mr. and Mrs. Vaughan and that
the interests of the bank were not noted at all that
real concern began, is that correct?

A. That is correct.

Q. And what view did you form at that stage, whether it be
right or wrong, when you saw that the property was
registered in the name of the solicitors and not in the
name of the original borrower, Catclause Limited?

A. Well, we didn't actually have a view. It's highly
unusual and the result of that was to try and seek
further inquiry from the solicitor as to why that was
the case. But that, sort of, really didn't get
satisfactory answers to why that was the case. On the
one hand, it's not unusual for a solicitor to enter
into a trust arrangement, but it's not normal and if
they do enter into a trust arrangement for a client,
it's usually well documented

Q. the next step I will come to. It might not be
unusual for the property to be registered in the name
of the solicitor in trust for a client. What is your
experience in the UK in dealing with such a situation?

Would it be usual to have a trust deed or some

documentation showing this?

A. It would be the norm that you had a trust deed.

Q. It would be the norm?

A. Yes.

Q. And I think the documents here that we have been through yesterday show that when Mr. Cullen and Mr. Morland spoke to Mr. Phelan, at page 96, on the 28th February 2001, I think it was Mr. Phelan, when the matter was brought up by the bank, indicated that he would attempt to get the trust deed from the solicitor.

If you go to under the heading "Security" and the second point "On the property itself, the bank informed Aidan Phelan that it had been brought to their attention that the property was registered ^ to Christopher Vaughan, the solicitor to Catclause, and his wife and that the bank were finding it extremely difficult to extract information from Christopher Vaughan in relation to this deal. The bank also informed Aidan Phelan that they had requested Christopher Vaughan to forward the title deeds and a copy of the trust deed to their lawyers in Cardiff."

You were anxious to see the trust deed, is that correct, at that stage?

A. Yes.

Q. Now, the note goes on "Aidan Phelan informed the bank that Christopher Vaughan had been instructed not to

reveal any information relating to matters concerning Aidan Phelan or Denis O'Brien without instruction from the principals themselves. He acted for Denis O'Brien on property transactions in the UK such as the Doncaster Rovers transaction, where confidentiality and privacy was required. Aidan Phelan would instruct him to cooperate with the bank on this matter. When asked by the bank whether Aidan Phelan was prepared to disclose whom the other party to the trust deed was, Aidan Phelan declined to do so stating that 'He never lied to his bankers'. He would get for the bank a copy of the trust deed by Friday, 2nd March, 2001."

So, can I take it that it was your understanding by what was said here that the bank would get sight of the trust deed or get a copy of the trust deed?

A. If I read that, it was, yes. This is a note of another meeting that I wasn't party to.

Q. But I take it that you were being informed of how matters were progressing?

A. I certainly would have expected one by that date, yes.

Q. Now, I think, in fact, you never saw any documentation in relation to a trust here, did you?

A. Correct.

Q. And was that a matter of concern?

A. Yes.

Q. I think around this time also, information was becoming available to the bank as to who the directors of

Catclause were, isn't that correct?

A. Correct.

Q. And I think you were informed that one of the directors, Mr. Michael Lowry, was an Irish parliamentarian and had been a minister and that there had been some link in the press to Mr. Denis O'Brien, isn't that correct?

A. Correct.

Q. I don't think you knew who Mr. Lowry was yourself at the time?

A. Correct.

Q. When all of these matters came to your attention, was it as a result of the mention of an Irish parliamentarian, the name of Mr. Denis O'Brien, and reported links through the press comment and the fact that information which you had sought was not coming to you readily, were these the factors which motivated you going to the Central Bank?

A. That, in addition to the fact that the executed documentation had been done by someone that we couldn't prove was acting sorry was acting as an officer of the company but wasn't actually registered as an officer of the company, being Mr. Phelan.

Q. Now, I think you came over to Dublin to attend the meeting with the Central Bank on the 12th March, isn't that correct?

A. That is correct.

Q. You brought these matters to the attention of the officials of the Central Bank?

A. Correct.

Q. And I think ultimately as a result of the advice you received from the Central Bank, because you had a concern in relation to client confidentiality, or customer confidentiality?

A. we had concerns about that. I couldn't say that was the advice from the Central Bank about that, more taking our own advice with our legal advisers on that matter.

Q. But I think you were advised by the Central Bank to bring these matters to the attention of this Tribunal, isn't that correct?

A. I think their comments were along the lines that seeing them didn't absolve us from any responsibility we may have to go to the Tribunal and then we took advice on that point.

Q. Now, I think over a few days prior to your meeting in the Central Bank you had endeavoured to contact Michael Tunney on his mobile phone, is that correct?

A. Correct.

Q. And you understood he was out of the country. I think, in fact, that was the situation?

A. Correct.

Q. I think the reason you wished to contact him was to improve your understanding of the circumstances

surrounding the granting of the loan, is that correct?

A. Correct.

Q. Primarily, you wished to know who was the borrower and beneficial owner, why funds were remitted without full security being in place and what instructions had been given to Christopher Vaughan?

A. Correct.

Q. Now, I think Mr. Tunney made contact with you on the 12th March, 2001 and you made a file note of that conversation, isn't that correct?

A. Correct.

Q. And you had a further conversation with him on the 13th March by telephone and you made a note of that conversation, isn't that correct?

A. Correct.

Q. Now, I think after a further discussion with Michael Cullen and your legal advisers, the decision was made by Investec Bank (UK) to approach the Tribunal and the approach was made on the 18th April, 2001 18th March, I beg your pardon, 18th March?

A. Correct.

Q. In fact, it may have even been the 16th. And the Catclause Limited facility was repaid on the 21st March, 2001 and, as far as you were aware, the property remains with Investec Bank (UK)'s caution registered against it, to the best of your knowledge anyway?

A. To the best of my knowledge, yes.

Q. Now, if we could just turn now to the two notes you made of your conversations with Mr. Tunney.

A. I think the first note is at document 118, the typed note, is that correct? I am struggling a little bit with the faintness of the page numbers on this. I have got it here now. This is the one that heads up 'file note'

Q. "Telephone conversation between IRW and Michael Tunney 12th March 2001 at around" the note is '9.15 to 9.45'. And the note reads "Michael Tunney had been trying to contact me and telephoned me at Investec's office in Dublin. Michael Cullen initially took the call and passed it me. Tony Morland and Eddie Byrne were also present with Michael Cullen in the same room.

I asked Michael Tunney why he had sent the money to purchase the Manchester property for Catclause without instructing a lawyer to take security and ensuring it was in place. He said he had verbally instructed Christopher Vaughan that the facility to purchase the property was in the name of Catclause and a legal charge over the property should be taken. As the deeds were held to the bank's order, he felt the position was protected. He confirmed that Aidan Phelan had executed documents as a director of Catclause Limited and that Aidan Phelan had made the arrangements to borrow the money. He also stated that we should not worry about

the credit as Denis was behind it. Asked who Denis was, he confirmed it was Denis O'Brien with whom the bank already had dealings.

He went on to say that Aidan Phelan confirmed he would sort all documentation out and ensure the bank was repaid. He stated that Aidan Phelan's attention to documentation was not good and that Aidan Phelan had understood our requirements.

He confirmed that Catclause was the borrower and purchaser. "I informed him that Aidan Phelan was not a director of Catclause but a Mr. and Mrs. Lowry were.

He said he now appreciated that but Aidan Phelan would ensure we were repaid."

He believed Aidan Phelan had written to the bank to that effect. I stated I had not seen the letter but would obtain a copy and come back to him as to what Aidan Phelan was saying.

Michael Tunney seems to focus on the credit risk and not the reputational risk if there was a confirmed link between Denis O'Brien and Mr. Lowry."

Now, I think you made that note, and does it record reasonably accurately the conversation you had with Mr. Tunney on the telephone that day?

A. It does.

Q. Now, I think we'll just go to the next note you made,

which was a telephone conversation you had with Mr. Tunney at 7.30pm on the 13th March of 2001. Were you back in London by this time?

A. I was in the car park at Chealington Station at the time.

Q. You received this on your mobile phone?

A. Yes.

Q. And I think it reads "Michael Tunney telephoned as he was concerned the position regarding Catclause was escalating and he felt responsible to find resolution to questions that had been asked.

He was contemplating returning from the French Alps, where he was skiing, to contact Aidan Phelan and his solicitor to obtain clarity and review files. I advised that it was his judgement if he felt he should return but any efforts to seek answers to questions raised of Aidan Phelan or his lawyer would be appreciate. I also stated it would not be appropriate to review Investec Bank (UK)'s files or represent that he was working for Investec Bank (UK) as he was not employed by that company. I advised that I was concerned that he had stated that Denis O'Brien was behind the transaction and that one of the directors of Catclause was Lowry, an Irish MP linked to Denis O'Brien in the Irish Press, allegedly. He stated that Aidan Phelan had told him Denis O'Brien was behind the

transaction. I informed Michael Tunney that I would be writing to him to seek written response on a number of points from him. We would also be writing to Aidan Phelan and Christopher Vaughan to answer questions."

Now, again you say you were in the car in the car park in the station, you got the mobile phone call and you made this note in the car, is that correct?

A. No, I went from the station in my car to home where I made the notes in my day book.

Q. And does it, to your recollection, represent reasonably the telephone conversation?

A. It does.

Q. Now, you informed Mr. Phelan or Mr. Tunney when he told you he would return to discuss the matter with Mr. Phelan and his solicitor, you advised him that was his judgement if he felt he should return but any efforts to seek answers to questions raised by Aidan Phelan or his lawyer would be appreciated.

A. 'Raised of'.

Q. Sorry raised of Aidan Phelan.

A. If you look at other correspondence from other people, there are things being raised by lawyers, questions that we are not getting much answer to at that point in time. So any assistance he could give would be appreciated.

Q. What question do you believe you needed clarification on at that stage?

A. I think really the things you have stated in the beginning. I mean, we don't really then have a clear understanding of who was the purchaser, beneficial owner, why the charge wasn't taken over the property, why was Mr. Daly guaranteeing it, executed a guarantee but then not in full, whose name was the property now in, why did the lawyer not have a trust deed, a number of unanswered questions. There is probably others, if I could cast my mind a little bit longer, but that there wasn't any at that time conclusive answer to any of those points.

Q. Now, who did you understand to be Aidan Phelan's lawyer at that time? Was it Mr. Vaughan?

A. Mr. Vaughan in relation, I think, to this transaction, yes, but that point I am not clear on whether that was him in relation to this transaction, I would guess, yeah.

Q. Do you know if Mr. Phelan was written to to raise questions of him?

A. At the time I don't know. I think I have seen other correspondence subsequent to that that have been forwarded to the Irish branch to know that there had been some correspondence with the lawyers and I believe Mr. Phelan as well, I'd have to refer to the documents here.

Q. These are the documents we have already been through?

A. Yes. I think there is other ones at a later date, they

are in the file here that I have seen, letters that were sent both to the lawyer and I believe Mr. Phelan as well and letters received from Mr. Phelan.

Q. Now, of your own knowledge, you didn't know who Mr. Lowry was until that information was brought to your attention and was explained to you. Did you know who Mr. Denis O'Brien was until it was explained to you either?

A. I knew of Mr. O'Brien because I had seen his picture in the paper in Ireland before. I had done business here so I was aware who he was, and in Ireland, yes.

Q. Thank you very much, Mr. Wohlman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GLEESON:

Q. MR. GLEESON: Yes, Sir, just one or two matters. Mr. Wohlman, can I just go back to the beginning, and that is document 1, that is the credit application which you received from Mr. Tunney, isn't that right?

A. I think document 1 is the covering memorandum and document 2 is the application, yes.

Q. And it also records the conversation that you had with Mr. Tunney, I think on the day after the 23rd, isn't that right?

A. The day after the 23rd?

Q. I think on the bottom left-hand corner of that document Mr. Coughlan has taken through, your first of all the words "No way" and then the "23/12/99" that just

to clarify it, is that a note of a discussion you had with Mr. Tunney or is it a note you had of a discussion with Mr. some gentleman in the bank in London?

A. If we could clarify all the notes on here. Some are made as I have read the credit application myself for the first time. Some are then made as a result of a conversation I had with Mr. Tapnack over the telephone, and the one that's dated 23rd December, the one going down there, is the one in relation to the discussion with Mr. Tunney. So some comments on here is notes of mine on my own credit file as I have gone through the credit application, others are conversations and the 23rd December, just for absolute clarity, is the conversation with Mr. Tapnack.

Q. I think you didn't at that stage know that the loan had in fact been disbursed?

A. That's a hundred percent correct.

Q. Nor did you know that the security under the facility letter was to be a charge on the property and a guarantee from a Mr. John Daly?

A. We did know that because it says that's what proposed in the credit application. Whether we held it or not, I didn't know, but that was certainly the basis of the credit application.

Q. But you do accept, I take it, that as far as the bank in Dublin was concerned, they had agreed to make a loan on certain terms?

A. Yes.

Q. And those terms were terms that you clearly didn't approve of, isn't that right?

A. Correct, yes.

Q. But they were nonetheless terms that were agreed to by the personnel in the bank in Dublin, isn't that so?

A. They have issued a letter. I think the missing ingredient for me on that point is under what operations sorry how they were operating under GE Capital Woodchester's powers of authority. Certainly a letter has gone out signed by two individuals. I cannot speak here as to whether they were or not empowered by GE Capital to send the letter out. That's obviously for somebody else to comment on.

Q. Yes, but isn't it clear from the facility letter itself that the loan had been made on certain terms which had been issued from the bank in Dublin?

A. After the events, it's very clear, yes.

Q. And those terms were issued on the basis of a judgement made by the personnel in the bank in Dublin?

A. I guess so.

Q. And presumably you will agree with me it was a judgement made on the basis, inter alia, of their knowledge of Mr. Aidan Phelan?

A. Why would I know that? How would I be able to comment on that because that has not been made available to me?

Q. Well, I think you have heard the evidence this morning

of Mr. Cullen that Mr. Phelan was a trusted customer of the bank, isn't that right?

A. I have heard that this morning, yes.

Q. Now, can I ask you in relation to that conversation you had with Mr. Tunney, did he mention Mr. O'Brien's name in the course of that conversation?

A. No.

Q. Sorry?

A. No. This is the one about the credit application we are talking about?

Q. Yes.

A. No, he didn't.

Q. And in April of 2000 when the loan again came up for consideration, was his name mentioned to you?

A. No.

Q. Now, at that stage you, I think, were somewhat annoyed that this loan had been sanctioned by the Dublin bank without having gone through your vetting procedure, would that be correct?

A. I think it has gone through our vetting procedure and we have declined it so I am annoyed we declined the loan but still made the loan.

Q. And did you make your position about the loan known to the personnel in the bank in Dublin at that stage?

A. Mr. Cullen and I had a conversation about that.

Q. And were you made aware at that stage of the terms of the loan?

A. That had been made?

Q. Yes.

A. Once the loan was made, in all the time up in the, the later correspondence that I was aware from Dublin branch, I assume the loan had been drawn on the terms of the facility letter and credit application.

Q. And there was no mention of Mr. O'Brien either, in April then, of 2000?

A. No.

Q. And if the bank had regarded Mr. O'Brien's name as an important element in this transaction, would you not have expected to be told about that, particularly if you were dissatisfied with the way the loan had been sanctioned?

A. I would have said that both should have come forward because I had learned, after the event again, that Mr. Phelan appears to be connected to this and Mr. O'Brien, if he was connected, I would have expected his name to be mentioned as well, yes.

Q. And I think you will agree with me that there is no documentary record of Mr. O'Brien's involvement?

A. I would agree with that.

Q. Doesn't that suggest to you that he wasn't involved at all?

A. I can't see or hear that he is involved with it. I can only go on the involvement of the later conversations.

Q. So you are relying entirely on a conversation, on a

conversation you had with Mr. Tunney, or two conversations you had with Mr. Tunney in March of 2001?

A. When you say 'relying upon', in what context?

Q. In relation to Mr. O'Brien's connection in this matter?

A. I am relying on those, that that's his statement that he was behind it, yes.

Q. Now, I must put to you at this stage Mr. Phelan's evidence will be that he never told Mr. Tunney of a Denis O'Brien connection with this transaction. And I must suggest to you that if there was such a connection, surely it is something that would have been recorded before February or March of 2001?

A. I can't answer that question

CHAIRMAN: He can only deal with the first part of it. It's plainly comment, Mr. Gleeson.

Q. MR. GLEESON: Well, can I put it to you this way, when you wrote your letter of, I think it's document number 10, the 23rd December, to Michael Tunney, that is the letter in which you are setting out the criteria that you would apply to this loan?

A. Correct.

Q. Isn't that right?

A. That is correct.

Q. Can I put this to you, that having received that letter, would you not expect Mr. Tunney to give you every comfort that he thought he had in relation to

this matter?

A. Can I answer that question in this way; we are saying that we don't want to do the loan. If the people did not agree with that, they would come back and make representation. The fact is no representation was made. So we assumed that the loan was not going ahead. Now, I agree with you that if there was a dialogue from the account manager in Dublin, Michael Tunney, to push the loan further, he would have come with that information. But as far as I am concerned, when that memorandum was sent, that was the end of the matter because the loan wasn't proceeding. You have to remember that it's subsequently we learnt the loan had been made prior to the date of the application anyway.

Q. Yes, I appreciate that. But just to clarify your answer to the question; you agree with me that if that you would have expected Mr. Tunney to go back to you if you had some comfort from somebody like Mr. O'Brien, you would have expected him to go back to you at that stage?

A. If they wanted the loan to proceed and he wanted to strengthen the case, the answer to that is 'Yes'.

Q. Now, I think you also said that you had a discussion with Mr. Tunney about Mr. Daly, that he was mentioned in the course of your discussion, is that right?

A. He was indeed, yes, when we spoke about the original credit application, yes.

Q. And can you just recall, if you can, what discussion you had with Mr. Tunney about Mr. Daly?

A. Okay. From my notes at the time, he said that he owned a company, I think it's called BCE Developments. I am doing this from memory because I am just trying to look for my note on the credit application if I could find it here. If you look at page, I think it's 2 of the document 2, that John Daly owns BCE Developments. If we then go onto the letter, I think from the accountants, it says has a minimum net asset value of 5 million, he does, and that is 4 million of investment properties in BCE developments, and I think a net worth of BCE of $\frac{1}{2}$ million there as well. That's how his worth comes about.

Q. So are you saying, Mr. Wohlman, that what Mr. Tunney told you about Mr. Daly was essentially reflected in these documents, is that your recollection?

A. That he was an experienced property person and that he had

Q. sorry that he was an experienced what?

A. a property, property advance is being applied for, Mr. Daly is a guarantor, again, I assume was somewhere involved as a beneficial owner of the company, was experienced in his field and had an excellent reputation at doing that sort of thing, which was a sort of case made for why this was a good credit.

Q. So that would appear to indicate that Mr. Tunney did

indeed have some knowledge of Mr. Daly?

A. I would say, yes.

Q. And that was the impression that was conveyed to you?

A. Yes.

Q. Did he indicate to you whether or not he had had a discussion with Mr. Daly at that point?

A. I can't recall that.

Q. Now, can I take you forward then to, I think you told Mr. Coughlan that in relation to the trust arrangement that the solicitors were holding the deeds, I think you said that that was not a common arrangement.

A. It's not in my experience, it's not common in a normal commercial transaction for the solicitors to hold the documents or the deeds in trust, but it's not unheard of.

Q. It's not unheard of?

A. But normally if it is held in trust by solicitors, would one see evidence by a trust deed for the protection of all parties, particularly the solicitor, I would say.

CHAIRMAN: There has been some reference from Eversheds of Cardiff to it being 'Not wholly unusual'.

A. Correct, it's not wholly unusual.

Q. MR. GLEESON: I think that's on page 93. They said "Eversheds have confirmed that it's not unusual for his solicitor to be listed as the registered owner (in his

capacity as trustee.)" So whilst accepting your reservation about the absence of trust documentation, the fact that the solicitors were registered as owners that, in itself wouldn't necessarily be a cause for concern?

A. I think I have to put that in context, if I may, if I think about my career in banking, which goes about 25 years. I think I have seen this on two occasions. So whilst it's not unheard of, because it can happen for circumstances, I would say it's not the normal course of events in banking. You would normally see the property purchased in the name of the person who was buying it, charged by that person and the deeds registered in that person or corporate's name when I say 'Person'.

Q. We know here that the deeds were, in fact, being held by Christopher Vaughan to the order of the bank?

A. We have correspondence to that effect, yes.

Q. So that would have been given you some comfort about the credit risk on this loan?

A. I don't think it necessarily helps the credit risk. It helps the security risk.

Q. The security risk, yes.

A. But again, not watertight as a prudent banker would want in deeds being held to order, only because that doesn't stop third party claim.

Q. So clearly in an ideal world you would want to have all

the documentation executed the way it should be executed, isn't that right?

A. Absolutely, yes.

Q. But you have heard Mr. Cullen say this morning that one of the factors that he relied upon was the knowledge and history that the bank had with Mr. Aidan Phelan, that he had been involved in many transactions involving significant amounts of money and that none of them had ever gone wrong and that must surely be a factor of some significance in any banker/customer relationship?

A. I think it would be but I don't think it overrides taking the proper security, irrespective of the relationship you have with the client, that you don't take the security in the manner which a prudent banker would expect it.

Q. Now, can I ask you in relation to the conversations that you had with Mr. Tunney on the 12th and 13th March, just to put those in context. Am I correct in thinking that at that stage, by the stage you had your conversation on the 12th March, a decision had been taken by the bank to approach the Central Bank in relation to this matter?

A. I think that's probably the case. I'd just have to check the dates here because I can't recall exactly when we went to the Central Bank. I know it's in here, I just can't recall it in my mind.

Q. To be fair, I think the evidence was a decision was taken on or about the 12th. I don't know whether it was before or after your conversation, but

A. I don't either, but

Q. Well, clearly there had been discussion within the bank about this matter leading up to the 12th March, isn't that so?

A. Yes.

Q. And that explains in part your involvement at that stage?

A. As opposed to being when you say 'my involvement at that stage'?

Q. Your involvement in terms of speaking directly to Mr. Tunney. This had become, from your perspective, a serious matter?

A. It had become a serious credit risk, yes.

Q. And do you think Mr. Tunney was aware of how serious the matter had become from the bank's point of view?

A. I hope he had from the fact of the lack of the documents that we should have had, the lack of answers and the lack of executed legal charge etc., so I hope you must ask him as to how urgent on that he felt.

Q. Well, the reference by Mr. Tunney to what Mr. Phelan had told him in relation to this matter, those references, are you aware these were the first recorded references of Mr. Tunney stating that?

A. my two

Q. on the file?

A. My two file notes?

Q. Yes.

A. I wasn't aware of that.

Q. You weren't aware of that. Were you aware that Mr. Tunney had met with Michael Lowry before this loan was granted in August 1999?

A. No.

Q. Can I just ask you in relation to the second of the file notes, and that's I think on page it's the note of the it's 121, I think. Just in relation to the final part of that page, Mr. Wohlman. You say "He stated that Aidan Phelan had told him Denis O'Brien was behind the transaction." I take it you never had a conversation with Aidan Phelan?

A. I wouldn't know Aidan Phelan if I saw him in the street.

Q. So this was something this was reported speech as far as you were concerned, isn't that right?

A. Yes.

Q. And can I just ask you finally, further up that page you say to Mr. Tunney "I also stated it would not be appropriate to review IB (UK)'s file or represent that he was working for IB (UK) as he was not employed by that company." Why did you feel it necessary to say that?

A. I felt it necessary to say that because he is not an employee of the bank. I think as not being an employee of the bank, he should be viewing the client's file.

There is a customer confidentiality issue and

Q. surely he knew he wasn't an employee of the IB (UK)?

A. Yes.

Q. Were you concerned at that stage that Mr. Tunney was in some way responsible for having caused this difficulty?

A. When you say the difficulty, I think that the difficulty stems in terms of the credit, the letters that had gone out and the securities not taken. I think Mr. Tunney by his efforts to help resolve some of these questions felt some responsibility for the position the bank was in.

Q. And, of course, as we know, the loan was ultimately repaid on the 21st March, isn't that right?

A. That's correct.

Q. So can I suggest to you that Mr. Phelan met his obligation under this loan, having told the bank that he was going to take responsibility for it?

A. At a subsequent event, if he assumed that, he did. But I think at the outset that he wasn't prepared to assume responsibility for the loan the way it was represented and drawn. If you say he was the source of repayment, I would agree with you.

Q. Thank you, Mr. Wohlman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Wohlman, I appear for Mr. Tunney. I have just a few questions for you. Can you tell us when Investec first agreed to take over GE Capital Woodchester Bank?

A. I am afraid I can't. The reason I can't is that there was another gentleman involved in the transaction earlier on and then I picked up the completion of it afterwards and I can't with any certainty say when that was agreed. Maybe others here can help on that date because I can't recall it.

Q. When you say 'Another gentleman', another gentleman within Investec?

A. He used to be our employee. When he left

CHAIRMAN: I think Mr. Clarke

MR. CLARKE: if it's of any help, I understand, Sir, that it was June 1st, 1999.

Q. MR. SHIPSEY: And you took up the running, as it were, sometime in around when?

A. It was sort of towards the completion side of that, so we completed in the April, so it was just prior to, probably let's say the three months prior to April when we completed.

Q. And not that we need all the detail of it, but presumably either a letter of intent or some contract

to buy the shares or the assets of GE Capital

Woodchester Bank was signed in June of 1999 with a closing date for April of 2000, would that be roughly right?

A. Again, a letter was entered into. I don't want to mislead anybody on the exact date that would have been entered into. Again I don't want to mislead and say it was definitely that date because regulatory authority had to be granted, legal process had to be gone through, I don't think it was done in such a way there was an exact date.

Q. You didn't know, for example, in June '99 that it was going to be April of 2000?

A. Correct.

Q. It was when everything, all the preconditions from Investec's point of view were satisfied that you would complete the transaction?

A. And from GE Capital's point of view, yes.

Q. And it was going to be involve Investec getting a banking licence to operate in Ireland as well or to acquire the GE Capital Woodchester Bank licence?

A. At first it was going to be looked on on that basis but it wasn't done on that basis. Can I just explain that the business in Ireland is a branch of the business in the UK and there is a system whereby you can open a branch under what we call a 'passport arrangement' because we are all in the EEC, so we didn't actually

acquire the banking licence, we acquired the assets and liabilities of that business.

Q. You got an Irish passport, in other words, for operating here, is that correct?

A. Yes, we have a European passport, as any bank in Ireland would as well. You can open a branch of your own bank in Europe.

Q. And as Mr. Cullen has described it, there was obviously some arrangement worked out for the interregnum between June of '99 and April of 2000 and as also Mr. Cullen explained it, this particular transaction, if it wasn't the first transaction, it was one of the first transactions whereby there was an expectation that it would receive credit approval from GE Capital Woodchester Bank, the vendor, and also from the intending purchaser, Investec, isn't that correct?

A. That is correct.

Q. Now, that particular arrangement, are you aware was that written down anywhere as to what happened or what was to happen?

A. It is documented, yes. There was agreed names forgive me because I can't remember who they were who could approve on either side the credit, to say whether the credit was acceptable for both parties, and I was one of the people on the Investec Bank side that had that authority.

Q. And when the sale was eventually closed in April of

2000, at that stage Investec had the power to decide which of the items on the loan portfolio of GE Capital Woodchester Bank it would take and which it wouldn't?

A. Not quite as clear as that because we had done due diligence and the ones that we were happy with when we did due diligence, we were duty bound to take. The grey area is these loans that are sanctioned in the interim period, as you say, where we both had to sign.

On the basis that GE wanted to do it and we didn't want to do it, they would take the loans on to their own books after that. If we were both happy and we put our names on it, it would be on our account.

Q. We don't need to go into the full detail of it, but it wasn't an all or nothing transaction. It, you could adopt something of an a la carte approach to the acquisition of the loan book of GE Capital Woodchester Bank?

A. I am saying again 'No', because we had agreed certain assets we would take. Any assets we would agree we liked the credit quality, there is only one asset that's been dealt with in that period, there were other assets, once we said 'yes' to the asset or 'yes' on the due diligence, it wasn't an a la carte approach, we were taking them on completion.

Q. But those that you, presumably, in the interregnum period, had agreed to sanction, you didn't have the option to refuse those because you had agreed them?

A. Correct.

Q. But would I be correct in saying that where you hadn't given approval, you were not obliged to take them over?

A. Correct.

Q. And insofar as this particular loan was concerned, come April of 2000 you were not obliged to take it over?

A. Correct.

Q. And I take it, and it would appear to follow from that, that a decision was taken in April 2000 to take this loan on to your books?

A. Correct.

Q. And in April of 2000 you knew more, or at least had the opportunity to know more than you knew in December of '99?

A. If we'd have picked this loan out to do more work on, yes, but I think you have to just look at it on this basis, that it's a loan that's drawn in our book which handled a credit application a certain way and was represented in a certain way as the security that we should have. And we did take it on trust, because that was the agreement, that the facility drawn was as represented in the documentation. So we did not do a further inquiry because we believed we had a charge over the property from the company and a guarantee from Mr. Daly and we have gone through all the relevant parties to that transaction, being Catclaus and Mr. Daly as guarantor.

Q. And when you took the decision to write a memo in December of 1999, to Mr. Tunney I think it is, if you go to page 10 and page 11, I think they are both, the body of the document is the same, is that correct?

A. It is. Page 11 is just showing that it was actually sent by fax and received, because it's tested okay.

Q. And on the second paragraph there "This is a transaction that we would not entertain unless the client was an existing customer, well-known to us and had previous track record with us in this type of transaction."

A. Correct.

Q. That reflects and represents what you have described as the Investec appetite for loans, is that correct?

A. That's correct.

Q. And so if the particular transaction, in fact, was with a client who was an existing customer, well-known with a previous track record, your appetite in Investec was no different than the GE Capital Woodchester Bank appetite, would that be correct?

A. I am assuming that I can't assume what their risk appetite is but I would say that it's one that we would consider if the client has got a track record.

But again then, at a hundred percent finance, as I say, we would expect some sort of uplift in the returns.

But

Q. the distinction I am just drawing is where you don't

know the client you look for much more than just a bigger fee and 10% of the uplift?

A. Correct.

Q. Whereas if it's a good client of yours and, obviously I assume that in Investec Bank (UK) you have blue chip clients who you would look at favourably if they had a known track record, and you don't look for all the security that you might look for or make all the checks that you might make if you didn't know the client?

A. Checks I mean you'd have to say something about them, if we are talking about checks in terms of clients if we know them, no. If we are talking about checks in terms of what they are buying and the security, of course.

Q. But not in relation to the client?

A. No, because we have a track record.

Q. And as it transpires, therefore, your concern and your suggestion of not knowing the client or the suggestion is that it would be turned down because you didn't know the client or that he wasn't an existing customer, you are focusing on Mr. Daly in this context?

A. Absolutely right.

Q. And that's based, of course, on your understanding that Mr. Daly is the principal behind Catclause, again on a further understanding or assumption that you don't give a guarantee for the liabilities of a limited liability company unless you have got some connection with it?

A. Correct.

Q. And you now know that that's not the position insofar as Mr. Daly is concerned?

A. Correct.

Q. And so if you could put yourself into Mr. Cullen's position, or Mr. Tunney's position, in December of '99 when they know Mr. Phelan and know Mr. Phelan is a good customer of the bank and they have a proposal from him in relation to a property transaction, that situation and circumstances seems to meet the second part of your letter to Mr. Tunney?

A. Yes, it's represented in that way because then you would expect to see that Mr. Phelan as a guarantor under those circumstances.

Q. This is the 23rd December, '99, you are writing to Mr. Tunney. Did you know that Mr. Tunney was going on a three day working week for GE Capital Woodchester Bank from this time on or not?

A. I was not aware of that. I had phoned him previously to try and speak to him and as it says in my note 'Diverted to his voice mail where I left a message' I wasn't aware of that but I guess there would be other people within the bank who would pick up his duties in his absence.

Q. And in circumstances where GE Capital Woodchester Bank had already advanced the money two days before this, there is not a hell of a lot of point in coming back to

Investec afterwards looking for approval for that which has already gone?

A. I think it is because and that's why there was a later phone call because, remember, that advance is not agreed by us. It now forms part of the portfolio and under the terms of the transaction, as you summarised there, we are not duty bound to take it. So either it's going to remain with GE or representation has to be made for us to take it at completion.

Q. It follows therefore, does it not, that subsequent to the 23rd March and prior to the 2nd April of 2000, some further assurances must have been given to you or to Investec by somebody within GE Capital Woodchester Bank to persuade you to take it on to your books?

A. I think I would answer that in this way, if I may: That this is one loan in relation to a whole transaction.

We were not dealing at that time with all the facts that are being presented here today. And on the security that was shown and the guarantee of the individual, being Mr. Daly in this case, and the representation from local management that it could be rebanked or repaid, then in terms of the whole transaction to make it a clean sale, we were happy to take it.

Q. Your involvement after December of '99 seems to stop, as it were, until sometime late in 2000.

A. Until there was some irregularities with the loan, yes.

Q. That wouldn't be surprising, you are based in Gresham Street in London and you wouldn't expect to hear in relation to every transaction going on in Dublin, is that correct?

A. That's correct. We have a local credit and risk management function within the Dublin operation now.

Q. Headed up by Mr. Morland, is that right?

A. Correct.

Q. Your first attempt to contact Michael Tunney personally after this exchange of communication in December '99 is sometime in March of 2001, is that correct?

A. It's around the time of those two telephone conversations, yes.

Q. And I take it you were aware or had been made aware of Mr. Tunney's continuing efforts to help and assist the bank prior to March of 2001?

A. Yes.

Q. You had been made aware of that presumably by Mr. Morland and by Mr. Cullen?

A. Correct.

Q. And in the conversations you had with him on the 12th and 13th, the first one at least was where he contacted you by mobile phone from France, I think, is that correct?

A. I can't say what phone he was on, because I was in the office.

Q. But he was on holidays or he was away?

A. He was away, yes.

Q. And he contacted you?

A. Yes.

Q. Thank you.

CHAIRMAN: I think there's been probably more than enough said about this, Mr. Wohlman, but just so that I am absolutely clear; your actual decision to affirm the transaction, despite the aspects that, perhaps understandably, made you unhappy about the manner in which it had been entered into, was that taken on the actual takeover date early in 2000, in April or thereabouts, or had you decided to go with it in the early months of the year?

A. We made the decision to take it as part of the portfolio we took.

CHAIRMAN: yes.

A. at that time. It wasn't it was the only account that we would have been unhappy about because all the others had gone through a different process and for one account it was decided to complete with that account.

CHAIRMAN: It was a relatively conservative amount and it wasn't worth spoiling the ship for that particular amount?

A. Correct.

CHAIRMAN: Thank you very much for your attendance,

Mr. Wohlman.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Anthony Morland, please.

ANTHONY MORLAND, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Morland, I think you were also one of
the executives of Investec Bank who had an association
with this facility and I think from the time it was
initially granted in December of 1999 up till last
March, isn't that correct?

A. That is correct.

Q. And I think you furnished the Tribunal with a statement
of your proposed evidence and I wonder if you have a
copy of that in the witness-box with you?

A. I do.

Q. Now, what I propose that I do, Mr. Morland, is to take
you through that statement. In the course of that I
may raise one or two matters with you by way of
clarification and also refer you to some of the
documents which have already been opened in the course
of the evidence over the last two days and I wonder if
you have a set of the numbered documents also in the
witness-box with you?

A. I do.

Q. Now, in your statement you say that you have been an

employee of the Investec Group since June of 1991 and in September of 1999 you moved to Dublin to help facilitate the transition of the assets and liabilities of GE Capital Woodchester Bank, along with certain subsidiaries, to the Investec group. You say that for the following six months your role was to help with the establishment of a risk management division within the new Investec entity and, as an authorised credit signatory for Investec, in the sign off of any deals proposed by GE Capital Woodchester. You say that you were based at the Gandon Capital Markets offices in Dublin, is that correct?

A. That is correct.

Q. Now, you say there that you were one of the authorised credit signatories for Investec in the sign off of deals proposed by Woodchester. I think you are not thereby suggesting that you were the person who was entitled to authorise the approval of loans on behalf of Investec (UK) in the course of this interregnum period of which we are hearing, is that correct?

A. During that period, Investec had to have two authorised signatories of Investec had to approve all credit applications if they wanted to take the loan with them when they purchased the assets on the 2nd April. I was one of those signatories. There were four of us although. There had to be two on every application.

Q. So there had to be two for each application?

A. Two Investec signatures, correct.

Q. So that in the case of this particular credit application that we have been hearing evidence of, had Investec UK approved the application, what would have been required would have been two Investec signatures on the application?

A. That is correct. There was there were four people who were allocated with that task, of which I was one and Mr. Wohlman was also one.

Q. And were you the only person based in Dublin who was authorised with that task?

A. Correct. During that time I was still employed by Investec. I was never employed by GE Capital. I was still an Investec employee. However, I was the only Investec employee here at that time.

Q. Now, you go on to say in your statement that your first knowledge of the loan to Catclause Limited was during December of 1999, at which time you were one of Investec's three co-signatories on credit applications to GE Capital Woodchester. "I was contacted by Mr. Michael Tunney, who told me of what Mr. Tunney described as a proposed Denis O'Brien transaction."

^ you refer to that in quotes "involving the purchase of a property in Manchester. Mr. Tunney said that the transaction had introduced to the bank by Mr. Aidan Phelan. Mr. Tunney outlined what was

proposed. I recall telling Mr. Tunney that Investec would require, among other things, independent verification of the means of the guarantor in the transaction, Mr. John Daly. I had no further part in the credit process for this transaction as I was away on study leave at the time and subsequently took leave over the Christmas break." Is that correct?

A. That is correct.

Q. Now, I think that you say in your statement that you were informed of this matter by Mr. Michael Tunney?

A. That is correct.

Q. Did you have any discussions about it with any other bank other figures other than Mr. Tunney?

A. No.

Q. Did you have any discussions at all with Mr. Cullen about the facility that was proposed?

A. No.

Q. Now you say in your statement that Mr. Tunney explained to you what was being proposed and do I take it that the information that was furnished to you is that which was set out in the credit committee form? And I think that's the document in the documents at document number

2. I think that sets out what was proposed was a sterling loan of £20,000 to Catclause Limited, which was a special purpose company established specifically to acquire the property in Manchester, that the facility would be fully repaid by the 31st July, 2000,

the security would be a first legal mortgage over the property and that there would also be a guarantee of Mr. John Daly for the principal amount and interest outstanding. Does that summarise the information which was provided to you at the time by Mr. Tunney?

A. No, it doesn't. If I may just explain. I was actually away on study leave for most of December. I came into the office, at which stage I had a discussion with Mr. Tunney in connection with what the credit appetite of Investec and what Investec would require in terms of a proposed property transaction in the UK. So he did tell me about the proposed guarantee of Mr. Daly and the first legal mortgage. However, I would not have known the details of the site, the exact amount of money, the exact name of the counter party.

Q. I see. So you were not

A. the fee, the rate, etc.. It was more of a fact-finding discussion. I did have a discussion with him and I did tell him what my requirements were.

Q. I see. So, in fact, he was not furnishing you with this information with a view to you signing off on the form which he forwarded to Mr. Wohlman on the 22nd December, is that correct?

A. Correct. The discussions had taken place during the week leading up to the 17th December. I was away on leave the following week.

Q. And do you recall did these discussions take place on

the 17th or on an earlier date?

A. I would have assumed it was on an earlier date.

Q. And I take it, therefore, also that the documents, the references and so forth which were sent to Mr. Wohlman on the 22nd December were not available to you when you were discussing the matter with Mr. Tunney?

A. I think Mr. Phelan has provided a document to the Tribunal this morning which showed the documents came in on the 17th. I doubt whether I would have seen those.

Q. You doubt whether you would have seen those?

A. Correct.

Q. You say in your statement that Mr. Tunney described the transaction as a proposed, and you say, in quotes, "Denis O'Brien transaction2.

A. That is correct.

Q. Now, what did you understand Mr. Tunney to mean when he indicated that to you?

A. Mr. Tunney had told me that, I think it was a proposal for the purchase of a property for Denis O'Brien.

However, Denis O'Brien did not want his name associated with the transaction because it was the purchase of a

property from a religious order in the United Kingdom.

That is how the reference to a 'Denis O'Brien

transaction' came about. He then went on to discuss

the details in terms of the first legal mortgage and

the guarantee of a high net worth individual, to which

I gave what I would expect to see in terms of the ability of the principals to perform this transaction.

Q. So can I just take you through that slowly, Mr. Morland? You are saying that Mr. Tunney told you that it was a proposal for the purchase of a property for Denis O'Brien?

A. Correct.

Q. That he further stated that Denis O'Brien did not want his name associated with the transaction because it was the purchase of a property from a religious order in the United Kingdom?

A. That is correct.

Q. You state that this is how the reference to a 'Denis O'Brien transaction' came about?

A. That is correct.

Q. At the time that Mr. Tunney was discussing this with you, did you have any knowledge of Mr. O'Brien?

A. I knew of Mr. O'Brien. I had met him once in the company of Mr. Tunney at a luncheon. I did not know, however, the standing of Mr. O'Brien in the community or the net worth of Mr. O'Brien other than we did have deals with certain of his companies on our books, of which I had done a due diligence on.

Q. So at the time, on the basis of what you are saying, would it be fair to say that it was your understanding that Mr. Denis O'Brien was the beneficiary of the company, Catclause?

A. Correct, but that would not have meant that much to me.

Q. It wouldn't have meant that much to you? I can appreciate that. But your understanding, nonetheless, it was Mr. O'Brien was the beneficiary of Catclause?

A. I wouldn't have known about Catclause at that time.

Q. I see. At that stage

A. I did not know who was going to purchase the property or in what company's name or I didn't have that information.

Q. Yes, I understand what you mean. You did not know at the time that it was proposed that this special purpose company be used as a vehicle to acquire the property, is that what you are saying?

A. Correct.

Q. I see. So it was your understanding, again just to summarise it so that we are clear about it, that it was the purchase of a property for Mr. O'Brien but that he did not want his name associated with the transaction because it was a purchase from a religious order in the UK?

A. I don't know if it was because it was a purchase of a property from a religious order, but that it was the purchase of a property from a religious order.

Q. That wasn't necessarily said to you as an explanation for why he didn't want his name associated with it?

A. No, I am just saying he didn't want his name associated with it and the transaction was the purchase of a

property from a religious order in the UK.

Q. Did you make any inquiries of Mr. Tunney at the time as to why Mr. O'Brien might not have wanted his name associated with this transaction?

A. No, there could have been any number of reasons.

Q. In your own mind had you thought of what the reason might have been or had you any views as to what that mean might be?

A. No, it would have been of little concern to me.

Q. I see. I think Mr. Tunney also indicated to you that the transaction would be secured by a guarantee from a person of high net wealth, is that correct?

A. That is correct.

Q. And I think what you are saying is that Mr. Tunney was discussing that with you with a view to ascertaining what Investec Bank's requirements might be with regard to the guarantee?

A. That is correct.

Q. I think you have stated yourself that you felt that in addition to the guarantee Investec Bank (UK) would want the guarantee to be secured?

A. No, I didn't say that.

Q. Well, could you indicate

A. I think Mr. Wohlman said that.

Q. Could you indicate what your indication was?

A. I think what I said to Mr. Tunney was that we would need verification of the net worth of the high net

worth individual. There were other issues, such as the experience of the person, because it was a proposed property development transaction, and in terms of his character, certain documentation was there so we could check all the risks, not necessarily what the credit risks were, but in terms of could the transaction conclude on time, there were a lot of requests that I had made.

Q. Now, when Mr. Tunney forwarded the fax to Mr. Wohlman, that's the document at number 1, he stated to Mr. Wohlman that you had not signed off as the front page was not prepared at the time you reviewed the credit with him, that your only issue was that more detail be obtained on the net worth statement of Mr. Daly and that this had since been obtained and that you would be attaching your signature on your return to the office. Was that your understanding of the matter at the time when you discussed it with Mr. Tunney?

A. Not at all. I don't necessarily have to sign off on the documents. Somebody else could have signed off on the deal.

Q. Was there any discussion with you that when the information you had indicated would be required became available, that you would then be prepared or willing to sign off on the deal?

A. No, I would have reviewed the credit in its entirety at that time. So, it would not be a piecemeal, that I

would sign off on each single bit of the information.

Q. You would want to consider the whole matter in its entirety?

A. Correct.

Q. Now, you go on in your statement to say that your next involvement with this transaction was during the final negotiations in purchase of the business of the GE Capital by Investec during the weekend of the 1st and 2nd April. You state at that time the fact that Investec had turned down the Catclause Limited credit application was raised amongst the Investec people present and reassurances were received that the bank was not at a credit risk for the deal as the principal behind the transaction was of undisputed creditworthiness.

Now, there is just one matter I want to refer you to prior to your reference to the negotiations in April of 2000, Mr. Morland, and that's just the contents of an e-mail which you forwarded to Mr. Wohlman on the 22nd February last. I think you will find that at page 86 of the documents. And this was one of the documents which is referred to in the course of Mr. Cullen's evidence yesterday?

A. Sorry, which page?

Q. Page 86. Now, I don't want to go through the entire document with you, we may return to it, but could I just take you directly to the second bullet point.

You state that "No credit" referring to the Catclause loan I wonder do you have a copy of it there?

A. I do.

Q. You state that "No credit approval was ever received. No facility letter was ever assigned and the security was never perfected." You state that "When I spoke to Michael Tunney/Michael Cullen about this in January 2000 and they told me that they had lined up alternative financing so this was a bridge as cash had to flow. I doubt whether ML" we took it that you meant money-laundering by that, is that correct?

A. That's correct.

Q. "That money laundering was done either way." So it appears from that e-mail that you did have a conversation with Mr. Tunney and Mr. Cullen in relation to this facility when you returned from your study leave in January of 2000. Do you recall that conversation, Mr. Morland?

A. I do. Just two points on that. My statement is actually is actually incorrect, obviously, because I had had a discussion with certain parties in January of that year on my return. That was a discussion with Michael Tunney, I don't necessarily know if Michael Cullen was there but I do believe the conversation was also with Mr. Ian Wohlman in connection with the fact that money had been lent but Investec had not

authorised it. Now, this was not unusual in its own right. Investec did not have to authorise the transactions, so if GE decided they wanted to lend money, they are perfectly entitled to do so. So my discussions here are in connection with, that GE would have to find alternate financing by April. And my discussion was that Investec hadn't signed it off, to which Mr. Tunney had I do remember correctly there was something in connection with telephone conversations they had been trying to speak to Mr. Wohlman over the Christmas period but he had been unavailable. The money had been lent but this, however, would only be an short term bridging facility. They would arrange, if required, if pressed for the facility to be rebanked.

Q. I see. So that in the event that Investec did not take that over as part of GE Capital Woodchester's loan book the following April, it was a matter that GE Capital would have to rebank as bridging facility?

A. Correct, GE did not have to get authorisation for loans. I do mention that no facility letter was ever signed. That is also factually incorrect.

Q. I think we know now that the facility letter was signed?

A. Yeah.

Q. Now, you state that "The deal matured on the 31st July, 2000. However, the first time that the arrears account

would have been brought to the attention of senior management would have been in September 2000, month end report detailing arrears transactions greater than one month old. This coincides with the exchange of correspondence between the lending division responsible for ensuring repayment, management and my own department from October 2000 onwards when it was brought to my attention that security had not been taken and that the credit file was missing".

A. That is correct.

Q. Now, I think we have already heard evidence of and we have seen much of the documentation dealing with the events which occurred from September, I think, to early January of last year, and I think the documents indicate that in October of last year the bank was informed that the property had been sold for, I think in or around 1.1 million, and that the bank would have been paid out of the sale proceeds. And then I think subsequent to that, the bank received, on the 25th October, an undertaking from Mr. Phelan's solicitor, Mr. Christopher Vaughan, that the title deeds would be held to the order of the bank, isn't that correct?

A. That is correct.

Q. I think that document is on page 66 of the handwritten or of the documents and I think there is one copy of that document which has a handwritten entry in your writing. If I can just refer you to that. In fact, I

think it's the next page that has your handwritten entry, that's page 67 in the documents. You have been able to locate that?

A. I have that page.

Q. Now, I think you could whether you can or cannot confirm that this was the first time the bank were in receipt of any undertaking in relation to this property?

A. No, there was a letter dated 20th December, 1999 when the solicitor concerned had told us that Catclause, who was to be our counter party, would receive good and marketable title to the property. So that to me would indicate, to some regard, that the bank was going to receive that we were going to receive legal charge over the property to whom we'd lent the money for the party to whom we'd lent the money.

Q. But that letter didn't contain an express solicitor's undertaking, did it?

A. No, what it did ask us for was instructions with regard to taking charge. So I would have assumed a solicitor knew of our intentions at that stage and he would not have acted any other way.

Q. I see. But your first written undertaking to apply the funds in payment to the bank, I think, was the 25th October, 2000?

A. Correct. That was to transfer the proceeds to ourselves.

Q. Yes.

A. However, it was not enough to distinguish the loan in our books. All it did was enable Investec to receive the proceeds in the sale of the property.

Q. I see. And it seems that you had a concern that there should be confirmation that the proceeds could be used to discharge the outstanding debt?

A. That is correct.

Q. Now, I think in or around mid-December, you were advised that this sale, which was proposed at 1.1 million, was not proceeding, isn't that correct?

A. I am not sure whether it was the middle of November or December itself.

Q. I think it was around that time anyway?

A. Correct, that the deal had fallen through.

Q. I see. I think you understood that the property was again being placed on the market, I think with Chestertons, who were estate agents in Manchester, is that correct?

A. That is correct.

Q. Now, you state in your Memorandum of Evidence that during January and February 2001, you initiated and investigation into the transaction from a security viewpoint. Numerous discussions were had with, and requests made of, the lawyer for Catclause Limited, Christopher Vaughan solicitors, in an attempt to clarify information for your records and to rebuild a

credit file for the transaction. A search of the UK Land Registry was performed on your behalf by the bank's UK lawyers, Eversheds in Cardiff. "This disclosed to us for the first time that the property had been registered in the name of the solicitor, Mr. Vaughan, and his wife and not the counter party to our deal". I think that information ^ became available to you sometime in and around the 22nd February last?

A. I think that's the date, I am not sure.

Q. Further inquiries of Company House in London performed by Investec London on your behalf revealed facts that were inconsistent with the information held on your operations files, namely that the directors of Catclause Limited were not Mr. Aidan Phelan and Ms. Helen Malone, as had been reported to the bank at the time of the application. It was also brought to your attention that an application had been made in September 2000 to have the company struck off the Companies Register and that the company had been dissolved in February 2001. Is that correct?

A. That is correct.

Q. You say that this was the first time you had been made aware that Mr. Michael Lowry and his daughter were the actual directors of Catclause. Subsequent inquiries to Companies House in London directed by Investec, Dublin confirmed this fact, is that correct?

A. That is correct.

Q. You state that a meeting had been arranged between Mr. Phelan, Mr. Cullen and yourself at Mr. Phelan's offices on the 28th February, 2001, the purpose of which was to follow-up on a previous meeting held between Mr. Phelan, Mr. Cullen and Mr. Tunney to have all the conflicting issues cleared up and to have the arrears regularised with some urgency. Is that correct?

A. That is correct.

Q. You state that Mr. Cullen and you then followed this up with a meeting with Mr. Tunney at which you emphasised the problems we were having with the facility. Is that correct?

A. Correct.

Q. Can I just refer you to the memo of the meeting of the 28th February which is at page 96 in the documents.

Now, I think we have heard that this memo was prepared by you of what occurred at the meeting?

A. That is correct.

Q. And did you prepare this memo shortly after the completion of the meeting?

A. I did. I think it was that evening or the following day.

Q. That evening or the following day. I take it that you prepared the typewritten note from handwritten notes which you took in the course of the meeting?

A. I took notes during the meeting, yes.

Q. And can you confirm that this is, on the basis of your own recollection of the meeting, a reasonably accurate note of what transpired?

A. To the best of my recollection it is accurate.

Q. And I take it you would agree with Mr. Michael Cullen's evidence that the purpose of the meeting was that the bank wanted to know for whom Mr. Vaughan was holding the property in trust and that they wanted to know who the beneficiaries of the properties were, in any form. Would you agree that was the purpose of the meeting?

A. I think the overriding purpose of the meeting was to have our money repaid, to find out who our credit counter party was, that was the purpose when the meeting had initially been set up.

Q. Can I just refer you to three matters which are referred to in your note? Firstly you say, and just the first bullet point in the note, "Aidan Phelan apologised for not attending to the bank's request to formalise this facility. However, stated that from a credit viewpoint the bank had nothing to be unduly concerned with as this was a DOB transaction and he would ensure the bank was looked after. Aidan Phelan would do everything necessary to sort out the bank's documentational problems."

Now, Mr. Gleeson has suggested to Mr. Cullen in his

examination this morning that Mr. Phelan has no recollection of ever stating that this was a Denis O'Brien transaction in the course of that meeting.

Could you indicate what your recollection is regarding what you have recorded about that?

A. My recollection is as stated there in the document.

Aidan Phelan said to the bank that this was a Denis O'Brien transaction and we had nothing to worry about.

Q. And are you absolutely certain on the basis of your own memory that that was said by Mr. Phelan?

A. From the best of my recollection I am not sure of the exact words but to the best of my recollection that is what he said and that was the intention of what he said.

Q. Or words to that effect?

A. Words to that effect. That is correct.

Q. In the months that have passed from December of 1999 to the end of February of 2001 when this meeting took place, had your understanding of Mr. O'Brien's involvement in this transaction undergone any change?

A. No.

Q. If I could refer you then to the second bullet point and the heading "Security". It's recorded "When asked by the bank whether Aidan Phelan was prepared to disclose whom the other party to the trust deed was, Aidan Phelan declined to do so stating that he "Never lied to his bankers". He would get for the bank a copy

of the trust deed by Friday, 2nd March 2001."

By 'the other party' there, I assume that you were referring to the beneficiary of the trust deed?

A. That is correct.

Q. I think you can confirm that prior to that the bank had directly requested Mr. Vaughan to furnish the bank with a copy of the trust deed, is that correct?

A. We did that after we had found out that the property was actually registered in his name.

Q. That was on the 22nd February?

A. Correct.

Q. So that was probably about a week prior to this meeting, is that correct?

A. That is correct, that is the first time that we found out that the property was not physically registered in our counter party's names.

Q. "Mr. Phelan stated that he would ensure that the bank would receive a copy of the trust deed by the following Friday, 2nd March, 2001"?

A. That is correct.

Q. I take it you can also confirm that the bank did not receive that by the following Friday, or indeed at any time subsequent to the 2nd March?

A. Despite numerous requests, we have never received it.

Q. I see. Then finally in your statement you say that you did not disclose during that meeting that you believed that Mr. Lowry was a director of Catclause

Limited. However, at both meetings, you were informed that Mr. O'Brien stood behind the transaction. Later that day you informed Mr. Wohlman of the problems you were having with the loan.

A. That is correct.

Q. Now, I think subsequent to that meeting, you had no further direct involvement with Mr. Phelan or Mr. Tunney in relation to this matter, is that correct?

A. ^ correct. I did have a telephone conversation with Mr. Phelan on the Friday, 2nd March.

Q. Friday 2nd March. And what was the import of that conversation?

A. He had promised to us a letter detailing all the specifics. He also promised to us a whole load of documentation by that Friday. He phoned me to say that the document was not ready, that he would be speaking to Mr. Tunney about the letter and that I should expect the letter on Monday. He was not leaving for Canada that weekend anymore. He was leaving, I believe, Monday night and he would get the letter to me on Monday morning.

Q. And, in fact, I think you did receive a letter, in fairness, from Mr. Phelan on the 5th March, isn't that correct?

A. Correct, but I had been expecting it on the 2nd as he had promised, hence the phone call to myself.

Q. In fact, I think the letter of the 5th March fell far

short, perhaps, of what you were expecting to receive from Mr. Phelan, would that be fair to say?

A. That would be fair.

Q. There is no information whatsoever in the letter about any directors of the company or the composition of Catclause, isn't that the case?

A. I think the purpose of the letter had been to identify the credit counter party to the bank which was, as I said, our main purpose for the meeting.

Q. I see. Nor, indeed, is there any reference, I think, in the letter to the trust deed or the furnishing of the trust deed, isn't that correct?

A. I believe that to be the case.

Q. Thank you very much.

MR. SHIPSEY: Sir, before Mr. Gleeson starts to cross-examine, if he wishes to cross-examine, I would be concerned if Mr. Gleeson finished that I would not start my cross-examination today. The evidence given by Mr. Morland to this Tribunal is materially different than the statement that was furnished to us in that there is a suggestion of a more detailed conversation with my client in December of 1999 which I have no prior knowledge of and I would wish to take my client's instructions in relation to that.

CHAIRMAN: Well, I might take issue with you saying it's materially different. There certainly have been

some aspects that were not included in the initial statement and if you were of a view that, in fairness, you wanted to confer with your client, perhaps even with certain colleagues, then given that it's already five to four and it's scarcely feasible to conclude the witness in the remaining time, I think I'll take the view that it's best concluded in the morning. Are you actually still based in Dublin Mr. Morland?

A. I am, I live here.

CHAIRMAN: Well then, if it's not inconvenient to you, I think we will defer the remainder of your evidence until eleven o'clock in the morning, if you please.

MR. GLEESON: Sorry, Mr. Chairman before we conclude today there is one other matter arising out of Mr. Morland's evidence. He referred to handwritten notes of this meeting from which he prepared this memorandum. Now, I would like to know if those notes are available, because this is clearly an important meeting and, if they are available, I would like to be furnished with a copy of these notes.

CHAIRMAN: Well, we might as well find out now the position, Mr. Gleeson.

A. I don't have those notes.

CHAIRMAN: You simply dictated them after you had had your handwritten notes from the meeting and destroyed

or otherwise disposed of the handwritten notes?

A. That is correct. I have already searched my documentation for any notes that I may have, which solicitors did ask me to provide if I had them, and I told them that I don't have them.

CHAIRMAN: What's your usual practice in drawing up a memorandum of a meeting? Do you do it simply by making a handwritten note and then dictating?

A. That is correct. I would normally write the notes down in a day book, probably destroy them once I type them up. There is no need to keep them.

CHAIRMAN: You have searched for them, in any event, and you don't feel anything further can be achieved overnight?

A. Correct.

CHAIRMAN: Very well. We will address the position in the morning. Eleven o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 19TH JULY 2001 AT 11 A.M.