

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 19TH JULY, 2001 AT 11AM.

TONY MORLAND WAS EXAMINED AS FOLLOWS BY MR. GLEESON:

CHAIRMAN: I think, Ms. O'Brien, you had concluded your initial examination of Mr. Morland and Mr. Gleeson.

Q. MR. GLEESON: Mr. Morland, just to take up on the last point that arose yesterday afternoon. I think you told us that you had handwritten notes of the meeting of the 28th February of this year, which you have since destroyed, isn't that right?

A. That is correct.

Q. And can you tell us when you destroyed those notes?

A. I would have taken down bullet points during the meeting, I would then type them up and throw away the handwritten notes.

Q. Well, can you tell us what relationship the bullet points have to the minute that you have prepared?

A. They would have been on the different points that were covered in the meeting.

Q. So if are you saying it's a comprehensive note of what was said, or is it a summary of what was said?

A. It would have been a summary of what was said.

Q. And I think you will agree with me it is generally important to keep handwritten notes of a meeting of that nature?

A. Not necessarily, Sir. I would have typed them up, which was my intention of making notes of the meeting for the file.

Q. So the important thing, from your point of view, is that you have a written record of the meeting?

A. That is correct.

Q. And can I just ask you what is your position in the bank?

A. I am head of the Credit and Risk Division within the Irish branch operation.

Q. And for how long have you been involved in Credit and Risk in the bank?

A. Within the Irish operation or within the Investec Group?

Q. Within the Investec Group.

A. For five years.

Q. Presumably, you are fully aware of the importance of keeping records of meetings, isn't that right?

A. That is correct. That is what I did.

Q. Sorry?

A. That is correct, and that is what I did.

Q. And presumably, you would agree that any important conversation that you have is something that should be permanently recorded, either in handwriting or in typed form?

A. For any external meeting, that is what I would have done, Sir.

Q. Can I suggest that that would extend to any internal communication also which was important?

A. Not necessarily, so, Sir.

Q. Because, the conversation which you say you had with Mr. Tunney at the start of this loan is not recorded anywhere, isn't that right?

A. That is correct.

Q. And you regard that as an important conversation, don't you?

A. No, I do not.

Q. You don't?

A. No. It was Mr. Tunney inquiring of me Investec's appetite, and how we would view a credit application that he was bringing to the bank. It was merely a discussion.

Q. No, I am asking you to focus, Mr. Morland, on the conversation which you say you had with Mr. Tunney in relation to Denis O'Brien's connection with this transaction.

A. I am, Sir, I am referring to that discussion.

Q. And you didn't regard that as an important conversation?

A. Not at the time, no. It was merely a discussion.

Q. I see. So it was not something that you thought warranted a written record of any kind?

A. That is correct.

Q. And therefore, it's not something that you ever thought

would be relied upon by the bank?

A. That's correct.

Q. And, in fact, I think it was your evidence yesterday that you told Mr. Tunney that it would be a requirement for credit approval that there would be an independent guarantor?

A. No, I did not say that. I think what I said, Sir, was that if there was to be a guarantor, we would need certain information on that guarantor. That is what I said, I believe.

Q. Yes. But the point being that there was a guarantor, which was one of the requirements for the loan, isn't that right?

A. Not necessarily.

Q. But we know that it was a requirement. It was in the facility letter.

A. That was what was offered to us, Sir.

Q. Yes, but you were part of the Dublin branch of the bank at that time?

A. We make many loans, Sir. There are not guarantees on all of those loans.

Q. I appreciate that, Mr. Morland. Let's take this in stages. You were part of the Dublin bank when this loan was made, isn't that so?

A. No, I was not. I was an employee of the UK operation based here in Dublin.

Q. Where were you spending your working day at that stage?

A. In the offices of Gandon.

Q. In Dublin?

A. Correct.

Q. Are they the same offices which dealt with this loan application?

A. That is correct.

Q. And which issued the loan?

A. Yes.

Q. So you were aware, therefore, that one of the terms of the loan, as issued, is that there was to be an independent guarantor?

A. I was not aware at the time that the loan was issued.

Q. But you are aware of it now, Mr. Morland?

A. I am very aware of it now.

Q. You were presumably very aware of it shortly afterwards, that this was one of the terms of the loan contract, isn't that so?

A. Correct.

Q. If there was any question of Mr. O'Brien standing behind this transaction, then, presumably, he would have been mentioned at that stage?

A. At which stage?

Q. At the stage when the loan was made.

A. I agreed with you there.

Q. Now, your next involvement was, I think, during the negotiations when the takeover by Investec was being finalised, isn't that right?

A. Correct.

Q. And at that stage there was some discussion about the fact that the loan had been given out before the credit application had gone to Investec in London?

A. Yes.

Q. And there was some dissatisfaction about that, isn't that right?

A. Correct.

Q. And there was no mention at that stage of Mr. O'Brien's connection or alleged connection?

A. There was not.

Q. And can I ask you to look at document, the document on page 83 of the book of documents. That is an email which you sent to Alan Byrne with a copy to Michael Cullen, and it reads "Alan" it's dated 12th February, 2001. It reads, "Alan, Michael Cullen met with Michael Tunney and Aidan Phelan with regards to this facility and they promised us heaven and earth to correct the facility, a copy of MC's e-mail detailed below - dated 19th January, 2001. I then spoke with Eddie again on Friday about this, and as you can see from his reply, we are getting nowhere - although, to be honest, I do not think it's high on the PB priority list... the meeting was three weeks ago, and we are still grappling around in the dark."

Before I go on to the next paragraph, what does "PB" mean?

A. Private banking.

Q. And what did you mean by saying "it wasn't my on the PB priority list"?

A. Private Banking are responsible for the client relationships within the bank. I did not believe that from my position as head of Credit and Risk, I did not think that Private Banking had the rectification of this loan high on the priority list.

Q. In plain English, does that mean that they weren't particularly worried about this loan?

A. I would think so, yes.

Q. Now, the next paragraph "I agreed with EB" is presumably Eddie Byrne, is it?

A. Yes.

Q. "That we would get the money laundering information in place before the credit application was done, but I am really at my wits end with this account, and other than recommend we make formal legal demand, I cannot suggest anything else (other than some draconian threats with regards new business)".

Now, you say there you are at your wits end with this account, and I have no reason to doubt that that is an accurate statement of how you felt at that time. But if you were at your wits end, surely that was the time to speak up and say "this is a Denis O'Brien transaction." If ever there was a time, Mr. Morland,

that was the time.

A. I think, perhaps, I should just put it in to context here in terms of my responsibility to the bank. I am head of the Credit and Risk Department. It is my responsibility for ensuring the negation of credit risks within the bank, all right. I honestly believe that other action could have been taken on this at the time, however, that is my own personal view, and it probably is a view that was not shared by some of my colleagues. They have the responsibility for the client relationships, and it's up to them to manage those relationships. I think my view, as head of Credit and Risk, is detailed there. It should be remembered - maybe, perhaps, I should point out, this was our second largest non-performing loan within the bank. It was past due. It was in default of the facility letter in many ways. So from my point of view, as head of Credit and Risk, I have a concern, I have a grave concern. However, the relationship with the client is always held at the front office end. They are the ones who had been in discussion with Aidan Phelan. They are the ones telling me, you know, who are purporting to the bank that this was going to be rectified.

So I think that is what is coming out in my email. I personally am at a wits end. However, I am not responsible for the client relationship, and there has

to be a commercial view taken on relationships within the bank.

Q. But, Mr. Morland, if you were in possession of information about which you gave evidence yesterday, that this was a Denis O'Brien transaction, I must suggest to you again, this was surely the time to speak up and be counted on this issue.

A. I would not agree with that.

Q. And you say, "I cannot suggest anything else," here you are, as a banker, reporting to Alan Byrne with a copy to Michael Cullen "I cannot suggest anything else." Surely, if you had that information which you say you retained throughout this period, that was the time to be suggesting it.

A. I think my suggestions were in connection to perfecting the security, the reconstruction of the credit file, performing searches, and all those types of details. As I have mentioned before, I do not hold the front office client relationship. Surely, it is the responsibility of the Private Banking to take up those factors.

Q. Very well. You did give evidence yesterday, in answer to Ms. O'Brien, that from the beginning to the end your understanding of this transaction throughout was that it was a Denis O'Brien transaction. I have to suggest to you that this email is utterly inconsistent with that evidence.

A. I would disagree.

Q. And can I ask you to look at the email on page 93, which again was sent to you from Tania Wilson. Now, in the second line of that email it says, "Aidan Phelan is behind the transaction." Now, that is Tania Wilson updating you on the current position, isn't that so?

A. This is in response to a telephone conversation between herself and Christopher Vaughan, that is correct.

Q. But the words she uses are "To update you on the current position, Aidan Phelan is behind the transaction." Now, when you received that believing, as you appear to believe, that this was a Denis O'Brien transaction, did you take it up with her?

A. No, I did not. That was not inconsistent with the legal position of our loan at that time. Aidan Phelan had purported to the bank that was a director of Catclause. There was nothing new in this to me from a legal viewpoint. That was the position. Aidan Phelan was the party behind the transaction. He was the director of Catclause, as purported to the bank.

Q. But it was utterly inconsistent with what you believed was the position throughout; that's what your evidence was yesterday?

A. My evidence yesterday was that Michael Tunney had told me that this was a Denis O'Brien transaction.

Q. When did you first commit that information to writing?

A. I am not sure.

Q. Well, can you give us an approximate date? Your statement, as furnished to the Tribunal, I think, is dated 11th May of this year in which you say that Mr. Tunney told you this. Now, that is, I think, at Tab 2 of this book, and it's your statement dated 11th May, 2001. So can I take it from that, that the first time you committed this information to writing was when you prepared this statement, is that correct?

A. No, it is not the first time I committed it to writing.

Q. Well, can you tell us when you first committed this to writing?

A. There were some internal briefing documents that were prepared prior to this during the early weeks of March.

Q. So that the first written record that you made of this information was after the matter had been reported to the Tribunal, is that correct?

A. My reference in the statement refers to the conversation with Michael Tunney. If you are asking me, is it the first time that I committed to writing that Michael Tunney had told me this is a Denis O'Brien transaction, then this is correct. It may not have been my first reference that this was a Denis O'Brien transaction, I do not know.

Q. And I think you now see that if it has the importance that you say it has, wouldn't it have been desirable to have a written record of it contemporaneously?

A. The fact that this was a Denis O'Brien transaction was

not important to me.

Q. Now, yesterday, I think, you also added to this statement, and you gave a more elaborate account of what you said was said to you in December, 1999, isn't that right?

A. Correct.

Q. And that was a conversation you say you had with Mr. Tunney, isn't that right?

A. Correct.

Q. And you didn't, I think, have any conversation with Mr. Phelan to that effect at that time?

A. December, 1999?

Q. Yes.

A. That is correct.

Q. And can I just ask you, this additional information that was produced yesterday, why wasn't that in your original statement?

A. At the time of - perhaps I'll just put it in context.

At the time of writing my statement, I was away on study leave for my final examinations, okay? At that stage I had received a request from Mr. Cullen to provide the Tribunal with a statement. Initially when I was introduced to this deal, I did not see the Denis O'Brien connection as important to this transaction.

I did not. And at the time of the making of the statement, I still did not see it as important to the credit risk, the legal credit risk to the transaction.

There was no intention to omit facts from my statement, that is merely the fact. Initially I did not see it as important, and I still do not see it as important.

Q. Sorry, you still don't see it as important?

A. At the time of making the statement, I did not see, from a legal risk, credit risk point of view.

Definitely, from a reputational point of view, there is a different slant on that, but, however, I was merely stating the facts as I saw them.

Q. Now, can I ask you to turn to document 23, please, page 23. This is Mr. Vaughan's letter to Mr. Tunney of the 20th December, 1999. And I just want to ask you to look at the second page of that letter, where Mr. Vaughan 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."

That is Mr. Vaughan, in effect, offering the charge to the bank, isn't that so?

A. If I remember correctly, this was prior to the credit approval. I think Mr. Vaughan - I think what you are saying is correct, he was offering a charge, however, it may have been, and from looking at the credit papers, it was a requirement of the Credit Committee.

Q. Yes. And was that offer ever followed up in response

to that letter?

A. From what I know afterwards, there was a telephone conversation where Mr. Tunney asked Mr. Vaughan to take security. It is not necessary for the bank to complete a form for the charge of the property.

Q. I appreciate that. Did anyone write to Mr. Vaughan from the bank saying, "Let's have the charge"?

A. Not to my knowledge.

Q. Isn't that a rather casual approach to a security requirement of this nature?

A. I don't know what the requirements of GE Capital were at the time. I cannot comment on that.

Q. Mr. Morland, you are an experienced banker with five years experience in credit. The bank didn't pursue the offer of a charge at this stage, and isn't that a rather casual way to treat a security requirement?

A. As I said, I think the bank did pursue it. Mr. Tunney did request Mr. Vaughan in a telephone conversation, to my knowledge, to take the charge.

Q. Yes, but you also agreed with me that nobody wrote to him saying, "Look, let's have the charge." Nobody put it formally to him in writing?

A. I think I said I don't know whether anybody wrote to Mr. Vaughan.

Q. Well, have you not consulted the file before giving evidence today?

A. I think there is evidence before the Tribunal that we

could not find the original client file or the original credit file.

Q. I see. All you can say is you don't know whether or not there was a letter written to Mr. Vaughan?

A. That is what I said.

Q. I see. Now, can I ask you to look at page 67, please.

That is the letter of Mr. Vaughan to Georgina Keane in Investec Bank of the 25th October, 2000. Now, I think you said that you were the person who made this notation on the right-hand side of the letter, is that right?

A. That is correct.

Q. And do I take it from that, that you weren't satisfied with the contents of this letter?

A. Correct.

Q. But would you not agree with me that when the solicitor is stating formally that he is holding the land certificate strictly to the order of the bank, that that surely alleviated your credit concern?

A. No.

Q. It didn't. So you are disagreeing with the evidence that Mr. Cullen has given to this Tribunal?

A. It is definitely a sense of comfort. However, legally it is not enough from a risk, credit and risk perspective, to hold that as security for a loan.

Q. Well, just to recall for you what Mr. Cullen said. He said, at page 9 of yesterday's transcript, that this

letter alleviated to a great extent his concern. You don't agree with that?

A. The comfort we take from it is that the deeds are being held to our order. However, at this stage, we knew that we had no formal charge. We had no guarantee. What we needed, from a risk management point of view, was that Mr. Vaughan confirmed to us that the people who have instructed him have informed him that the funds may be used to discharge our debt.

Q. So can you just answer the question, having given me that explanation. You don't agree with Mr. Cullen's analysis of this letter, is that right?

A. No, I think that is incorrect.

Q. Sorry?

A. I think that is incorrect.

Q. Are you saying that you do agree or you don't agree with Mr. Cullen's view of this letter?

A. Mr. Cullen's view I cannot speak for. He is head of the bank. He has to balance both the risk management and the commercial side of the business. I take comfort from it. I agree with that comment. I take comfort from his letter. However, what I needed was security. That is my job within the bank.

Q. Okay. Just to close off on this. If you are agreeing with his comment, his comment was that this letter alleviated to a great extent his concern. Are you agreeing?

MS. O'BRIEN: I think, in fairness to the witness, if Mr. Gleeson could read out precisely from the transcript what Mr. Cullen's reply to the question was, the entire of the answer, the answer to question number 45 at page 9 of the transcript.

CHAIRMAN: I wonder, is it really necessary, Mr. Gleeson, Ms. O'Brien? I mean, Mr. Gleeson, you have established that there was a difference in emphasis, at least, and that the English approach in general terms was somewhat more scathing, and that Mr. Cullen had placed particular reliance on the customer association of Mr. Phelan. I would have thought that's fairly common case by now.

Q. MR. GLEESON: Yes, sir, I am happy to move on from that.

I better stick to the transcript more closely in my future questions.

At page 111 of yesterday's transcript you were asked as follows:

"Question: 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 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, can I just ask you where you say that reassurances were received that the bank was not at a credit risk?

Who gave those reassurances?

A. I would believe that it was Michael Cullen. I don't believe Michael Tunney was there at the closing of the deal between GE and Investec.

Q. So it was Mr. Cullen who gave those reassurances?

A. Correct, as to the creditworthiness of Aidan Phelan.

Q. And can you recall anything about the detail of those reassurances?

A. I think it's what's stated there.

Q. I am sorry. What's stated there is that 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. You have nothing to add to that, have you?

A. No.

Q. Now, if I go two pages on in the transcript, it's at the very end of your answer at question 488, and I better read out the question and the answer. The question is:

""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?

Answer: 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 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 a short-term bridging facility.

They would arrange, if required, if pressed for the facility to be rebanked."

Now, in relation to that suggestion at the end, that they would arrange if pressed for the facility to be rebanked. Was that suggestion ever pressed, do you know?

A. Not from Investec's perspective, no.

Q. Now, I want to go on to the meeting of the 28th February, Mr. Morland. I think on the day before that meeting, the bank had received a companies search from the United Kingdom which showed Mr. Lowry as a director of Catclause Limited, isn't that so?

A. That is incorrect.

Q. Sorry?

A. That is incorrect.

Q. It's incorrect?

A. The day before that meeting we had received verbal confirmation from our London operation about the search that was revealing that a Mr. Lowry and a Ms. Lowry were the directors of the company.

Q. Can I ask you to turn to page 54 of the book of documents. That appears to be the first, or sorry, it's the second page of a fax. I am not sure where the first page of it is. It may be the previous page.

That appears to have a fax dated 28th February, but in any event, page 54, you will see on the top left-hand corner has a date, 27th February, 2001; time, 17.11.

Do you see that, Mr. Morland?

A. I do.

Q. Is that the date that this file was received in London?

A. That is correct.

Q. I see. And do you know when it was communicated to the bank in Dublin?

A. We received a phone call that evening.

Q. You received a phone call that evening?

A. Correct.

Q. And can you go to page 3 of that document sorry, it's the third page of the document. I think it's the fourth page of the fax. And that is page 56 of the book, and there you have the names of the directors, isn't that right?

A. Correct.

Q. And was that information conveyed to the bank in Dublin in the course of that phone call on the 27th February?

A. I believe so.

Q. Was it conveyed to you?

A. To Ms. Tania Wilson.

Q. Did she convey it to you?

A. No, she conveyed it to Mr. Eddie Byrne. I was away at college that evening.

Q. Right. When did you find out about this?

A. I received a phone call that evening from Mr. Cullen.

Q. And did he tell you that evening?

A. He told me that we had received a phone call from

London, that it was purported that Mr. Lowry and Lorraine Lowry were the directors of the company.

Q. When you say "purported", were you not told that these were the names that appeared on a company search on the Register of Companies? Was that not how the information was conveyed to you?

A. I am not sure I understand the question.

Q. The question is this: Did you know, when you were told about this search, that Mr. Lowry's name was on a public record on the register of companies in the United Kingdom?

A. Correct.

Q. So when you went into this meeting on the 28th February with Mr. Phelan and Mr. Cullen, you knew what the position was in relation to the directors of Catclause, as set out in this document?

A. What we knew was that a Mr. Lowry and a Ms. Lowry were purported to be the directors, okay. We had not, at that stage, received physical proof of that. We had not, at that stage, checked the addresses to ensure that the said Michael Lowry in the document was actually the Michael Lowry that I think are referring to, Sir. We had to do our own investigation, our own check. The people in London and Tania Wilson and myself, and to a certain extent myself, would not have known the significance of this.

Q. I appreciate you mightn't have known the significance

of it, but surely, if your colleagues in London had carried out a search in the Companies Office, you could rely on that information, could you not?

A. We could, but what we didn't know at that stage was that the said Michael Lowry in the document was the actual MP.

Q. I see. And could you not have consulted with one of your Irish colleagues, who would have been able to tell you immediately whether it was the same person or not?

A. Sir, as I said, what we wanted to do, the management of the Irish branch was to physically confirm that. I don't even believe Mr. Eddie Byrne or Mr. Michael Cullen would have known for sure, at the back of the message from Tania Wilson, that this Mr. Michael Lowry was the MP.

Q. But you don't know because you didn't ask them before you went to the meeting?

A. Sorry, I didn't ask who?

Q. You didn't ask Mr. Cullen or Mr. Byrne to confirm that before you met with Mr. Phelan on the 28th February?

A. I referred to the Irish management, I referred to Mr. Cullen and myself. Neither of us knew, I believe, for sure that this Mr. Michael Lowry was the member of parliament.

Q. Are you saying that Mr. Cullen didn't know whether this was the same Michael Lowry?

A. We could have inferred many things from what had come

over there. What we needed to do - we had performed our own search, which I think is shown in here that after that day of the 28th. We then took that information. We checked the address, the voters' roll and everything to confirm that Mr. Michael Lowry, who is purported to be the director of Catclause, was the said member of parliament. I think I said that.

Q. And is that the explanation you give for not putting this information to Mr. Phelan at the meeting?

A. It was very dangerous information that we had. We did not want to make any allegations. We wanted to be sure in our own mind exactly what the situation was.

Q. So you were asking Mr. Phelan to attend a meeting at which you weren't going to put the current information that you had to him, isn't that right?

A. We had asked Mr. Phelan to attend a meeting predominantly on the back the credit risk in the transaction. It had nothing to do with the reputational risk that was now coming to light.

Q. But you knew that this was at least potentially important at that stage, isn't that so?

A. Correct.

Q. And Mr. Phelan was a trusted customer of the bank, of longstanding?

A. Correct.

Q. I must suggest to you, Mr. Morland, that this was not a proper way to treat such a customer, to convene a

meeting and not put to him the information that you had.

A. Sir, I can only say that I would have thought that Aidan Phelan knew who the directors of Catclause were.

What we put to him was that certain information had come to our attention that put into disrepute some of the documentation that he had supplied to the bank, namely, who the directors of Catclause were. That is what he said to him, and he would have known at that stage who the directors were.

Q. But surely, surely, you should put to him the obvious question.

A. Sir, there is a lot of we were at reputational risk in this instance. We could not confirm anything. We had client confidentiality issues at play here. We could not put that allegation, as you so put it, to Mr. Phelan. We did not know for sure.

Q. Is it any wonder that Mr. Phelan then instructed his solicitor on 1st March to write a letter in which he said that Catclause was going to be the borrower. He was clearly under a misunderstanding, what you wanted out of that meeting, isn't that so?

A. I wouldn't know.

Q. You say it was a credit meeting primarily, is that right?

A. Correct.

Q. Mr. Vaughan's letter says that instructions were that

there was a compliance difficulty within the bank.

Can you explain what you understand by that?

A. No.

Q. You don't know what a compliance difficulty means?

A. Compliance means to me money laundering documentation, and all the documents that will go with that. If that is what he is referring to, we did ask for confirmation from Mr. Phelan of who the directors of Catclause were sorry, we told him that information had come into other possession, and he agreed and confirmed to us that he would get to us a list of the directors of Catclause.

Q. And I think on the 2nd March we have heard that there was another meeting with Mr. Phelan, I think with Mr. Cullen, isn't that right?

A. I believe so.

Q. Were you at that meeting, Mr. Morland?

A. No, Sir.

Q. But I think you gave evidence yesterday that the letter of the 5th March, which Mr. Phelan sent to the bank, and I am going to refer to the transcript reference, it's page 122 of the transcript sorry, page 121.

And it's question 525. And Ms. O'Brien puts to you:

"Question: And, in fact, I think you did receive a letter, in fairness, from Mr. Phelan on the 5th March, isn't that correct?"

Answer: Correct, but I had been expecting it on the 2nd, as he had promised, hence the phone call to myself.

Question: 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?

Answer: That would be fair.

Question: There is no information whatsoever in the letter about any directors of the company or the composition of Catclause, isn't that the case?

Answer: I think the purpose of letter had been to identify the credit counterparty to the bank which was, as I said, our main purpose for the meeting.

Question: 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?

Answer: I believe that to be the case."

So, your evidence was that this letter fell far short of what you were expecting to receive from Mr. Phelan, isn't that right?

A. Correct.

Q. But Mr. Cullen, I think, took a different view. Do you recall his evidence yesterday on that letter?

A. I think I do.

Q. Well, I'll just assist your recollection. On page 28 of the transcript, and it's question 125, and it's

Mr. Cullen being cross-examined:

"Question: 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?

Answer: From a credit viewpoint yes.

Question: It fitted the bill exactly, as far as fyou were concerned?

Answer: From where I sat, yes."

Now, from a credit viewpoint, Mr. Cullen seems to have been completely satisfied with the letter he got on the if we can take it up again, Mr. Morland, at question 125.

"Question: And in the letter of the 5th March was exactly the letter that you wanted to see from Mr. Phelan, isn't that right?

Answer. From a credit viewpoint, yes.

Question: If fitted the bill exactly as far as you were concerned?

Answer: From where I sat, yes."

I think from where you are sitting, your answer would be no, is that what you are saying?

A. Sorry, where is that? Sorry, I thought you were reading

Q. That's Mr. Cullen's evidence of yesterday. From his perspective, the letter was exactly what he required to hear from Mr. Phelan. But I think you are taking a

different view of that letter, isn't that right?

A. The intention of the meeting in the first instance had been from a credit risk perspective. So I can see what Mr. Cullen what we had at that stage is we had a credit counterparty. However, Mr. Phelan had promised to the bank many documents by Friday the 2nd.

What I am referring to is we had asked for all sorts of information, which had not been supplied to the bank.

That is my inference, that the letter fell far short, that I, from a credit risk perspective, was expecting to see.

Q. I think this perhaps underlines what the Chairman has drawn our attention to earlier this morning, that you were adopting a stricter approach to this matter than Mr. Cullen, isn't that so?

A. I am not sure.

Q. Very well. I have no more questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Morland, I appear for Mr. Tunney, I think you are aware, and I have just a few questions for you.

I'd like to start with your statement where you were saying that you were an employee of the Investec Group since June of 1991, and in September of, I think it's 1999, it's cut off in my copy, but I think in September

of '99 you moved to Dublin, is that correct?

A. Correct.

Q. Was that your first time coming to live in Dublin?

A. Coming to live in Dublin, yes. I had been here many times before.

Q. And you were, I think at that stage, the only Investec person or the only Investec employee based in Dublin at that time?

A. Correct.

Q. And is it the case that you were the only Investec employee from that period of time until the takeover was completed in April of the following year?

A. I think, yes.

Q. And then after April of 2000, those employees who transferred across from GE Capital Woodchester Bank, or from Gandon to Investec, became Investec employees?

A. That is correct.

Q. And would I understand your role as being the eyes and ears of Investec during the interregnum transition period?

A. I think my role was more of a facilitator in the establishment of the Credit and Risk Division within the Gandon operations. We were not purchasing the risk division of GE Capital Woodchester.

Q. I see. So you were going to have to set up your own Credit and Risk Division, is that correct?

A. Correct.

Q. And did you actually, in point of fact, take on some of the GE Capital people in the Credit and Risk Department of Investec after April?

A. Correct. I took over some of the responsibilities that Mr. Tunney had at that stage.

Q. And sorry, did you take over some of the employees from GE Capital Woodchester in April and employ them in Investec, or did you take on new staff?

A. No. There was a smooth transition at that stage. We took the people who were looking after some of the risk within GE, and they moved across to Investec under myself.

Q. And therefore, you came over here in September, and you are obviously trying to learn and get a feel or a handle for the Credit and Risk portfolio that Investec are contemplating taking over, would that be correct?

A. Correct. We had already done a due diligence exercise.

Q. And this opportunity for you to be there and to have a hands-on, as it were, involvement in the running of what was still GE Capital Woodchester Bank, albeit as an employee of Investec, was designed to smooth the transition between the ownership by GE Capital Woodchester and Investec, would that be correct?

A. Correct. GE did accommodate our requests at that stage.

Q. And so if you come over in September, by the time

December comes, you are not very long in the operation or working in Dublin, isn't that correct?

A. Not long at all, Sir.

Q. And you have mentioned also, I think, that during the month of December you were involved in study leave, and I think you mention also in March of 2001 that you are on study leave. You are obviously somebody who studies a lot?

A. As soon as I came over to Dublin, I had enrolled to write an MBA through UCD on a part-time basis. This did take up a lot of my time over the next two years.

Q. That's an evening course in UCD, is that correct?

A. Part-time course, correct.

Q. Now, if I can just ask you just to give some idea of the numbers of people working within the GE Capital Woodchester Bank operation, Dublin, with whom you would have been in contact from September of '99 onwards. Was it a large operation or a small operation?

A. I think there were 60 something employees at that stage.

Q. And in terms of those, with whom would you have most contact? I take it, you wouldn't have been dealing with all 60, there would have been some that you would have more dealings with than others?

A. Correct. I would have deferred a lot to Michael Tunney, and he had two employees working for him who came under my tutelage, as such, at that stage.

Q. And would it be fair to say that insofar as Mr. Tunney's position, he was working and doing some of the work that you were ultimately going to take over when Mr. Tunney departed?

A. Correct.

Q. And when you came in September, I take it, you were aware or became aware quite soon thereafter that Mr. Tunney was only staying for the interregnum period to ensure a smooth transition from the GE Capital Woodchester Bank point of view?

A. I was informed of that before I came to Dublin.

Q. You knew it before you arrived over?

A. Correct.

Q. And, as it were, Mr. Tunney was on the way out, and you were on the way in to perform some of the functions that he was going to perform?

A. Yeah. If I could just expand on that. Mr. Tunney was responsible, or certain of the people who were responsible for the risk management within the Gandon operation reported to Michael Tunney, so that function came under my control.

Q. And Mr. Tunney also, however, had a, what you describe as a front-end responsibility, in that he had certain clients with whom he dealt, is that correct?

A. Mr. Tunney was head of the Corporate Banking/Private Banking operation, correct.

Q. And that's not something that you have had an

involvement with or were intending to have an involvement with?

A. No, Sir.

Q. And would it be fair to say, it will certainly be Mr. Tunney's evidence that you and he worked very closely together and worked very well together for the period when you overlapped within the GE Capital/Investec operation?

A. Mr. Tunney did take me under his wing to a certain extent, yes.

Q. And you got on well with each other?

A. Got on extremely well.

Q. Now, if we just move on to the month of December when you had, I think what you described as a discussion with Mr. Tunney. It wasn't, as it were, a formal meeting or a formal credit approval meeting, would that be correct?

A. Correct.

Q. And insofar as that discussion was initiated, would I be correct in saying that it's certainly Mr. Tunney's recollection that that was a discussion initiated by Mr. Tunney with you?

A. Correct.

Q. You weren't in any sense coming to Mr. Tunney to look for information or to look for clarification or anything of that nature?

A. No, I was not.

Q. And would I be correct in understanding that the discussion was on a date in December, which you don't remember a precise date for, but you believe it was sometime prior to the 17th December, that it was a short discussion?

A. I would say approximately ten minutes or so.

Q. And can you remember whether it was a discussion on internal phone or bumping into each other in the corridor, or him dropping into your office or you into his office?

A. It was in Mr. Tunney's office.

Q. And, I take it, that this wasn't the only transaction or the only loan that Mr. Tunney had discussed with you; you had had other discussions with him about the portfolio of loans that came under Mr. Tunney's control? Would that be correct?

A. That is correct.

Q. And, I take it, in the course of your discussions on credit risk issues, there would have been, prior to this time, some discussion as to, I think what's been described as the respective appetites of the two banking organisations for risk in taking loans, is that correct?

A. Correct. I mean, I cannot speak for the exact appetite for Investec. We work on a consensus basis, so I can only tell you from a credit perspective what we would need to see.

Q. I appreciate it's from a credit, but you would have known what the Investec appetite was and what the requirements of Investec were from a credit risk point of view?

A. Correct.

Q. And you'd agree with, I think, Mr. Cullen and also Mr. Tunney that that varies from bank to bank?

A. Definitely.

Q. And it's not just, as I think Mr. Cullen pointed out to me, a difference of nationality between Irish, English, French and South Africans; it can differ within different banks in the same country, isn't that correct?

A. Correct.

Q. This short discussion that you had with Mr. Tunney in December of 1999 is not a discussion that at the time stuck out in your memory, or it's not something which you paid any particular great attention to at the time; would that be correct?

A. It was not very important, correct.

Q. And insofar as you recall any actual words being used by Mr. Tunney at that time, would I be correct in assuming that your recollection was that it was described as a proposed "Denis O'Brien transaction"?

A. Correct.

Q. And what I would suggest to you, that insofar as you understood the situation and understood the

transaction, you understood it as being a proposed Denis O'Brien transaction in circumstances where a corporate vehicle was going to be used for the acquisition and there was going to be, as I think it was explained to you, an independent third party guarantor. Would that be roughly correct?

A. If I can just make clear what the discussion was. You know, at the time I didn't see it as terribly important. However, you know, what I do remember is Mr. Tunney saying to me that this was a Denis O'Brien transaction. It was also indicated that Denis O'Brien's name would not be associated with the deal or was not to be I can't remember was not or would not be associated with the transaction. I clearly don't remember all of the words used, but that was definitely the intention of what the meeting, or what was said at the meeting. I don't know at that time if we knew which entity or which vehicle or which person would be buying the property, or should I say, taking the loan from the bank. To me that wasn't important.

Q. Well, could I ask you to say whether you'd agree with me or not that your understanding of what Mr. Tunney explained to you was as you recounted yesterday. You mentioned just a few moments ago that the intention of the words, but I take it what you mean by that is what you understood by the words were as you indicated yesterday, is that correct?

A. I mean, I may have taken inference from what was said, if that's what you are saying I said yesterday.

Correct.

Q. And would it be also fair to say or to suggest to you that you could have misunderstood the implications of what was said to you by Mr. Tunney in relation to reference to Mr. O'Brien?

A. I could have inferred it one way. There may well have been another explanation in Mr. Tunney's own mind as to what he was saying.

Q. And you see, I say this because similar words were used to Mr. Cullen in this connection at around the same time, and certainly Mr. Cullen's understanding seems to have been an understanding which is different than the understanding that you took from it, and different from the understanding and knowledge of Mr. Tunney and what Mr. Tunney wished to convey. Would you accept that that's possible?

A. That is possible.

Q. And would you also accept, and this is certainly not a criticism at all, but that you would not have been as aware as Mr. Cullen as to whom Mr. O'Brien was and who Mr. Phelan was and the connection or connections between Mr. O'Brien and Mr. Phelan? You couldn't be expected to?

A. I would not have had the corporate history that those individuals would have had.

Q. And whilst I think you said yesterday that you had heard or you were aware of Mr. O'Brien, and had met him, I think, once, was there any knowledge or awareness on your part of Mr. Phelan at this time in December of 1999?

A. Only what was on the books of Gandon at that time.

Q. You hadn't met Mr. Phelan?

A. The first time I met Mr. Phelan was in February of this year.

Q. And you could not, I take it, or I suggest to you have known and wouldn't be expected to know as much as Mr. Tunney, who was in a relationship with both Mr. Phelan and Mr. O'Brien, or know as much as Mr. Cullen knew in relation to those relationships?

A. Correct.

Q. And would you go as far with me as accepting that insofar as information was conveyed by Mr. Tunney, and it's for Mr. Tunney obviously to say what he conveyed and what he intended to convey, but insofar as an understanding of what was stated by Mr. Tunney is concerned, it is, on balance, more likely that Mr. Cullen's understanding would be closer to the, I don't want to say truth, but closer to the reality of the situation? Would you accept that that's, on balance, more likely? And that's no criticism of you, Mr. Morland.

A. I can only comment on what was said to me, which I

think I have said.

Q. But you accept, do you, that it's possible that you misunderstood it?

A. I am not sure I quite understand what I misunderstood.

Q. That you misunderstood that this was being represented to you as a Denis O'Brien transaction, which Mr. O'Brien did not want his name associated with?

A. The words "did not associate," I cannot confirm that was what was actually said. You know, what was clear in my own mind was that Mr. Tunney had said that this was a Denis O'Brien transaction, and it was indicated at that stage that Mr. O'Brien's name would not be associated, did not want his name. I don't recall the exact words. However, the intention of that, Mr. O'Brien's name would not be associated with the transaction.

Q. You see, if Mr. O'Brien's name was, as it were, dropped in connection with Mr. Phelan, and if Mr. O'Brien's name was better known to you, it is, I'd suggest to you, understandable that you could have understood from what was stated that Mr. O'Brien would not have wanted his name mentioned without that having been stated, isn't that fair?

A. Sorry, could you repeat that question?

Q. In circumstances where Mr. O'Brien's name and reputation is known to you, more so than Mr. Phelan's, and where Mr. O'Brien's name is mentioned in connection

with a transaction or with Mr. Phelan, it is perhaps understandable in such circumstances that you would have assumed that it was Mr. O'Brien who did not want his name mentioned in connection with this transaction, even if that wasn't stated?

A. Sorry, I am getting lost there. I think I have said

CHAIRMAN: It's not the easiest, Mr. Shipsey.

Q. MR. SHIPSEY: Very good. I'll try and simplify it then.

You don't remember Mr. Tunney saying "Denis O'Brien doesn't want his name associated with this transaction," isn't that correct?

A. That is correct.

Q. The only words that you recall are "This was a "Denis O'Brien transaction," isn't that correct?

A. Correct.

Q. Okay. After this short ten-minute discussion, you don't have any further involvement, even though your name appears on the Credit Committee approval, isn't that correct? On the sheet that's sent across to Mr. Wohlman, your name appears, but not your signature, isn't that right?

A. Correct.

Q. And from what Mr. Tunney said to Mr. Wohlman in that, in his covering letter to Mr. Wohlman, he understood

that your concern, from a credit risk point of view, was to ensure that further information was obtained on the independent guarantor?

A. I think Mr. Tunney's conversation with me was in connection with what would be required from a credit perspective for the application from an Investec point of view.

Q. But you have seen the facsimile letter that Mr. Tunney sent across to Mr. Wohlman, isn't that correct?

A. Correct, I have.

Q. That's on the 22nd December, when you are on full-time study leave in the week or a few days before Christmas, isn't that right?

A. I was on vacation, Sir, yes.

Q. And he says, "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 statement of John Daly. This has since been obtained, and Tony will be attaching his signature on his return to the office."

Now, that was clearly Mr. we can assume that that was Mr. Tunney's understanding of your position in relation to this, but he was, according to your understanding, incorrect in this understanding, and that wasn't your position, and he misunderstood your position, isn't that correct?

A. I think that is correct.

Q. When the information is forwarded by Mr. Tunney to Mr. Wohlman, Mr. Wohlman comes back and responds on the 23rd December, and insofar as Mr. Wohlman is concerned, if you look at the document on page 10 of the booklet, "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." Do you have that letter

A. The fax of the 23rd?

Q. Yes.

A. Correct.

Q. And just if you look at that second paragraph. It was certainly the case that Mr. Phelan was an existing customer well-known to the bank, with a previous track record?

A. Correct.

Q. And to that extent, if Mr. Wohlman, as I think he confirmed yesterday, understood that Mr. Daly had a more direct involvement as principal, he misunderstood what was the position insofar as this application was concerned?

A. There is no reference to Aidan Phelan in any of the documents forwarded to Ian Wohlman.

Q. But the reality was that the borrower was to be Catclause Limited, and the Letter of Offer was signed by Mr. Phelan holding himself out as a director of

Catclause?

A. Correct.

Q. So Mr. Tunney knows who the principal is, Mr. Wohlman might not have, and might not have been expected to, but to that extent Mr. Wohlman understandably misunderstands the true position, is that fair?

A. I think that is fair.

Q. When it comes to April of 2001, and when decisions are being made about whether or not to take this particular loan on to the Investec books, I think I am sorry.

2000, April 2000. You, I think, fairly stated that insofar as representations were made, they are likely to have been made by Mr. Cullen, and I don't think much turns on that in relation to what was stated and by whom in April of 2000. Would I be correct in stating, however, that in April of 2000, you had access to the books and records of GE Capital Woodchester Bank?

A. I had access to the records throughout my time there.

Q. And I know it is certainly the case that the file subsequently went missing. It doesn't seem as if at that stage the credit file or the loan file in respect of this loan was missing, or no suggestion that in April of 2000 the file was missing, isn't that correct?

A. I don't know when the file went missing.

Q. No, but there is no suggestion of it being missing at a time in April of 2000, when the transaction is closing?

A. Sorry, I agree with you.

Q. And it's, I'd suggest to you, fair to infer that you had it, or it was there, because if it wasn't there, it would have been more difficult to make an assessment as to whether to take over the loan or not, would that be fair; again, on the balance of probabilities, that if it was missing, you are more likely to have said something about the missing file at that time? It may not be certain, but it's more likely?

A. I had no reason to believe that the file was missing at that time.

Q. Mr. Tunney leaves the bank on the takeover in April 2000, but, as I think Mr. Cullen has said, maintains contact in relation to loans that he had been directly involved with, including this particular transaction, isn't that right, after April of 2000?

A. I think he maintains a relationship with the client. I don't think he maintains the loan.

Q. No, no, I don't mean I mean, he maintains contact and makes himself available to Investec after April of 2000.

A. Correct.

Q. And certainly, as far as Mr. Cullen is concerned, and I take it you would confirm, Mr. Tunney cooperated fully with Investec even after his departure?

A. Correct. I would still defer to Mr. Tunney in his role as non-executive in connection with any of the loans or the markets or anything like that to this day.

Q. And you are still in regular contact with him in relation to those matters?

A. I am.

Q. When it comes to 2001 and into February and March, were you at the meeting on the 1st March - I am not sure when Mr. Cullen tells Mr. Tunney of the awareness within Investec that Mr. Lowry and his daughter are directors of the company, Catclause Limited?

A. I was not present at that meeting.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Morland, I appear for Mr. O'Brien.

There are one or two matters you may be able to assist me on.

I understand from your evidence yesterday that you on occasion had dealt with Mr. O'Brien's business through some of his companies?

A. Not me personally. Are you talking about the corporate entity?

Q. I think so. I am referring to an answer which you gave yesterday at question 468, when you said you were asked about, "Did you know Mr. O'Brien?" And you said, "I knew of Mr. O'Brien, met him once in the company of Mr. Tunney at a luncheon. I did not know the standing of Mr. O'Brien in the community or the net worth of Mr. O'Brien, other than we did deals with

certain of his companies on our books, of which I had done due diligence on."

Do you remember that answer?

A. Correct.

Q. Am I right in understanding from that answer that you had, since you came to Investec Dublin, done due diligence on some of the transactions between Mr. O'Brien's companies and the bank?

A. Correct. As part of the purchase of the business from GE, Investec undertook, in June and July of '99, a due diligence exercise of which I was a member of that team. So I had been part of the exercise of due diligence of which the loans on the books would have been reviewed.

Q. And the loans on the books which were being reviewed by you, and the team with whom you were working, related in part to companies of which Mr. O'Brien was involved?

A. Correct.

Q. And what number of deals, transactions are we talking about?

A. We would have reviewed all the major relationships and exposures within the bank at that time.

Q. Can you give me some idea as to the number of transactions and the value of the transactions that we are talking about?

A. At this stage I cannot. I don't know what the value

of the transactions were, but they were

Q. I take it, that information can be got?

A. It can.

Q. Am I right in thinking that they may have been sizable transactions?

A. Correct. I think they were.

Q. And that there were a number of them?

A. Many different ones, yes.

Q. Many. And now, I just want to turn to another matter,

Mr. Morland. When you were answering questions from

Mr. Gleeson in relation to the information which you

got on the evening of the 27th February concerning the

directors who were registered in Catclause, if I

understood your evidence correctly, what you were

saying was that you were given this information, was

it, by Mr. Cullen?

A. Me personally or the bank?

Q. You personally.

A. Correct.

Q. And that Mr. Cullen was informing you that the

directors of Catclause were Michael Lowry and Lorraine

Lowry?

A. He was informing me that the directors were not as we

thought they were, and it was thought we had been

told the director was a certain Mr. Michael Lowry.

Q. And did he also mention Lorraine Lowry?

A. Not to my knowledge.

Q. As I understand it, you didn't know who these people were?

A. No. I had I think I would have known who Michael Lowry was, but I wouldn't have known anything about what had happened over the previous three years. I certainly did not know that the Moriarty Tribunal, for example, was looking into his affairs.

Q. When you say that you knew, you may have known who Michael Lowry was, do you mean by that that you may have recognised him as being the Irish TD?

A. Correct.

Q. And is that knowledge and information which came into your mind at the time that you were given this information by Mr. Cullen?

A. Correct. I think that was what had been inferred by Mr. Cullen to myself.

Q. So Mr. Cullen appeared to realise, when he was given these names by wherever he got the information, that the persons that you were talking about was probably Michael Lowry the TD?

A. It could well have been. It wasn't verified, however.

Q. Despite the fact that both you and Mr. Cullen had reached a tentative conclusion in relation to this, it was decided by either you or both of you not to reveal this information at the meeting the following day?

A. Correct.

Q. In describing this information, you used an expression

that you viewed it as very dangerous information?

A. We didn't want to make allegations at that stage.

Q. Can I ask you what you meant by "very dangerous information"?

A. If we were to make or infer any type of allegation and it turned out not to be the case, you know, we do have there is a certain reputational risk upon the bank at that stage. All we wanted to do was verify what the information was. We did not want to make any form of allegation.

Q. Before we get to the question of allegations, I am simply trying to understand what you meant when you used the expression "very dangerous information"?

A. The bank was open to extreme reputational risk at this stage.

Q. Because of the fact that Michael Lowry was registered as a director of Catclause, is that what I understand you to mean?

A. That, and the fact that in my own mind this was, as I said in my statement, a Denis O'Brien transaction, had been represented as a Denis O'Brien transaction.

Q. I understand. So what you are actually saying is that when you became aware that Michael Lowry was listed as a director on this occasion, that you saw it as very dangerous information because he was an Irish TD, and in your mind, there may have been an association with the Denis O'Brien transaction?

A. Correct.

Q. And because of that, you decided not to make any allegations to Mr. Phelan the next day?

A. No. What we did not want to do was put the information across to Mr. Phelan that we did not have verified ourselves, because it may be seen as some form of allegation. If he was using the words "Denis O'Brien is behind the transaction," we did not want to form any link at that meeting until we had the facts verified ourselves. We were worried, if I might go back, we were worried from a credit perspective. We wanted the loan repaid.

Q. I understand this difficulty between reputation and credit risk, but what I am trying to understand, Mr. Morland, is this: The information concerning the directors was information which was available to Investec from the 22nd December, when the transaction, the application was being made to the bank, isn't that right?

A. Correct.

Q. So that at that stage, when the application was made to the bank, as soon as the bank checked the directors of the company, they would be aware that Michael Lowry and Lorraine Lowry were the directors of Catclause?

A. I don't know what checks GE performed at that stage.

Q. But that's what they would have found out, whatever checks they carried out?

A. Correct.

Q. So am I right in understanding that the effect of your evidence is this: That as a result of a conversation which you had with Michael Tunney, that you believed that the transaction which Investec were being asked which Woodchester were being asked to finance was a Denis O'Brien transaction, which he didn't want to be associated with, but he was happy to put in the name of a company which Michael Lowry was a director of. Is that what I am to understand is the effect of your evidence?

A. I think my evidence is, I don't know if he did not want his name associated or that his name would not be associated with it.

Q. But in neither way

A. Other than that I would agree.

Q. If you take Denis O'Brien out of it, except the fact that you say it was a transaction of his, the result of that is that it was going into the company's name of which Michael Lowry was a director?

A. Correct.

Q. Thanks, Mr. Morland.

MR. CLARKE: A couple of very small items, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CLARKE:

Q. MR. CLARKE: Firstly, Mr. Morland, in relation to the evidence you have already given, it's a single question

on that. You have been asked by a couple of counsel involved about what the position of yourself and Mr. Cullen was immediately before this first meeting with Mr. Phelan which you have described. Do I understand you correctly to say that you had received, you indirectly, had received information as to the fact that Mr. Lowry and Ms. Lowry were directors of Catclause, you had received that orally at the time?

A. Correct.

Q. You didn't know, I take it, anything at all of Ms. Lowry, Ms. Lorraine Lowry; that didn't mean anything to you one way or another?

A. All I knew, it was Lorraine Lowry. I did not know who she was.

Q. And while obviously you recognised potentially the name of Mr. Michael Lowry as the person who has been discussed here, the name Michael Lowry might be quite a common one, as far as you are concerned?

A. Correct. I think that was the concern of the bank at the time.

Q. You did not know that it was this Michael Lowry, if I can describe it in that way?

Could I then move on to one other question, which doesn't relate to the examination that's already taken place at all, but rather to a matter that arose yesterday, and simply to confirm a point.

It was put to one or two witnesses, in particular Mr. Wohlman, questions were put as to the circumstances in which these matters generally were put to the Central Bank in the first instance, and thereafter to the Tribunal, and there has simply been some reportage this morning that that suggests that the decision to refer the matter to the Central Bank was a decision of the UK management, I suppose is the quickest way of putting it. Am I correct in thinking that, in fact, it was the Irish management of what was then Investec's initiation or decision to propose that the matter be put to the Central Bank?

A. Correct. The management of the Irish operation proposed to the board of directors in London, which Mr. Wohlman and Mr. Tapnack were both members, that we take up the matter with the Central Bank.

Q. Thank you. That's all, Sir.

MS. O'BRIEN: Just a few short matters.

THE WITNESS WAS FURTHER EXAMINED BY MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Morland, in replying to Mr. Shipsey regarding the contents of Mr. Tunney's fax to Mr. Wohlman. That's at page 1 of the book of documents. And if I can put it up on the screen again. I think you indicated that you agreed with Mr. Shipsey that Mr. Tunney may have misunderstood your position.

Could you indicate in what respects you believe that Mr. Tunney might have misunderstood your position arising out of the short discussion which you had sometime before the 17th December?

A. Mr. Tunney had asked me what would be required from an Investec credit risk appetite perspective. I gave him what I believed would be the information we would require. He may have taken that to have meant that I was giving a tacit approval to the loan. However, I would still have wanted to have reviewed all that documentation and information in its entirety before I actually put my name to it. He may have taken some form of comfort from what I told him and he had attained all that information.

Q. I see. So he may have misunderstood you in this way, and correct me if I am wrong, that having indicated that what would be required would be a net worth guarantor, that if such a guarantor was available, that you'd be prepared to give your approval to the facility?

A. I think Mr. Tunney had told me there would be a guarantor. What I had told him would be the type of information I would need to look at in respect of the loan, if that were the case, but it would not be the only thing. And I think there is other documentation provided to the Tribunal which would indicate what I would have asked for, in other words, what was the

value of the property, what was the character of the individual concerned, what was his means, what was his experience, stuff like that would have been part of that discussion. And I think that is what is borne out in the documentation that has been presented.

Q. I see. And you would want to have considered all of those matters in their entirety before you took a decision as to whether you would or would not lend your signature to the approval of the loan?

A. Correct. We would not do credit on a piecemeal basis.

Q. In response to Mr. Gleeson's examination, I think you indicated that when you prepared the typewritten note of the meeting of the 28th February, I think you will find that on page 96 of the book, that you would have prepared that typewritten note from handwritten notes which you took in the course of that meeting, and that the handwritten notes would have been in the form of bullet points, and that having prepared the typewritten note, you retained that note, but you did not retain the handwritten bullet points. And could you just indicate what the difference would have been between your handwritten bullet points and the typewritten note which you have retained?

A. I am not a fast writer in terms of and I don't take any shorthand down. What would have been on the handwritten notes would have been the salient features of the conversation, and then I would have, in my file

note, expressed what was actually said at the meeting.

Q. And you are quite satisfied, I think I asked you this already yesterday, and perhaps you could confirm again, that this is a reasonably accurate note of your recollection of what occurred in the course of that meeting?

A. Correct.

Q. Can I just refer you now to page 55 of the book of documents, and that was the fax, part of the fax of the Companies Office search against Catclause. Perhaps you can just assist the Tribunal in relation to the telephone number which appears at the top of the page of that fax. It's on page 55. And you will see there that the number is fax: 01-71-597-4234. And could you indicate whether, to your knowledge, that is a London code, 01-71, and a London telephone number, or a London fax number I should say?

A. Correct. 597 is the prefix for Investec in London.

Q. So that's the London telephone number.

You referred also to the credit file in the context of the negotiations which occurred in April, 2000, on the completion of the take-over of the assets of GE Capital Woodchester by Investec Bank. I think you indicated that you had no reason to believe that that credit file was not available at that time in April 2000.

A. Correct.

Q. What I want to simply ask you is this: Would you have

any would you have had any reason yourself in April 2000 to go and look for that file or to have access to that file?

A. I would have had access to it. We did not go looking for it.

Q. You would not have gone looking for it?

A. No, we did not.

Q. At that stage, I take it, the reason you wouldn't have is that there was no arrears due, and, in fact, the due date for that facility hadn't yet passed?

A. Correct. There was an interest payment due on the 31st March, that would have been the first action point on that loan.

Q. And in the course of the negotiations in the takeover, were you a party to those negotiations yourself?

A. I was a party to the closing of the weekend of the 1st, 2nd and 3rd April. I was not party to the negotiations between Investec and GE and Gandon with regards to the purchase back in June of '99.

Q. That was June of the previous year?

A. June '99, yes.

Q. But you were a party to the final negotiations over the early part of April?

A. Correct.

Q. And do you recall discussions that were had in relation to this loan to which Mr. Wohlman referred to in the course of his evidence yesterday?

A. Do I recall?

Q. Do you recall the discussions between Mr. Wohlman and possibly Mr. Cullen or other parties on behalf of GE Capital Woodchester in relation to this facility, and as to whether or not this facility and this loan would be included within the loan book as taken over by Investec?

A. Correct. It would have formed one of many issues which were raised by ourselves, ourselves being Investec, issues that needed to be sorted out during the final closing.

Q. And do you recall at that time whether the credit file, if you like, was tabled in the course of those discussions?

A. It was not.

Q. And do you yourself, or can you assist the Tribunal as to when you think that credit file ceased to be available, or when you ceased to have access to it?

A. The first that I was aware the file could not be located, which does not mean it was lost, but it could not be located, was in August.

Q. Was in August of last year?

A. August 2000.

Q. Can I just ask you also, in August of last year, can I take it that the reason that you required the file was because the loan was overdue?

A. I did not require the file. There is an e-mail as

part of the evidence produced, which asks the lady in private banking, who is looking after the loan, to please locate the loan.

Q. I see. Could I just ask you also, in relation to your statement which is at divider 2, and the reference in it to Mr. Tunney's description of the transaction as a "Denis O'Brien transaction". I think in reply to Mr. Gleeson you stated that this was the first occasion in which you had recorded that matter in writing. And could I just ask you, can you recall when you first referred to the transaction as being a Denis O'Brien transaction, whether internally within the bank or otherwise?

A. I can't remember the exact dates. I do remember having many conversations, even with Mr. Tunney to this regard.

Q. And can you place at all in time when those conversations occurred, without being precise as to date?

A. Well, obviously there is the December date of '99.

Q. December of 1999, that's your initial discussion?

A. My initial discussion. I am not sure whether we discussed it in January of 2000. I wouldn't have thought so, because at that stage, to me, it was irrelevant to the loan. I did have a discussion with Mr. Tunney this year, I remember one conversation with him in the corridor of Investec when I told him that

Mr. Wohlman had been looking for him when it was raised.

Q. And that was during the course of this year, 2001?

A. Correct. I informed Mr. Tunney that Ian Wohlman had been trying to get hold of him, and I think subsequent to that there were many there were two phone calls between the parties concerned. I also remember a conversation with him in the boardroom of Gandon at around the same time, and I also remember a discussion in the boardroom in one of the rooms of our solicitors, when Mr. Tunney returned from his skiing trip.

Q. And can I just take each of those instances in turn. Could you tell me, first of all you say that you informed Mr. Tunney that Mr. Wohlman had tried to get hold of him, and you think subsequent to that that there were two phone calls between the parties concerned. Now, when you informed Mr. Tunney of that, can you recall around and about when that occurred?

A. I don't know the exact date. I think Mr. Tunney was in the building at the time for a presentation by our Private Banking Division.

Q. I see.

A. I stopped him in the corridor and told him that Mr. Wohlman was trying to get hold of him. I do not know the date, but I can find out, though.

Q. And on each of those three occasions, can you indicate what you said to Mr. Tunney?

A. I said to Mr. Tunney that Mr. Wohlman was looking for him, and it was getting rather urgent. He said to me, he asked me, "Did Ian realise that this was a Denis O'Brien transaction?" Which I said he did know that.

Q. So Mr. Tunney asked you whether Mr. Wohlman realised whether this was a Denis O'Brien transaction?

A. Correct.

Q. That was the occasion in the corridor?

A. Correct.

Q. I think you then said that subsequently there was a meeting in the boardroom of Gandon, is that correct?

A. That is correct.

Q. And when approximately did that meeting occur, and again we don't expect you to be specific as to date?

A. I think this was prior to the, prior to us going to the Moriarty Tribunal.

Q. So it would have been in early March of this year?

A. It would have been within the days leading up to.

Q. And can you tell me what Mr. Tunney said to you on that occasion?

A. He told me that Aidan Phelan had told him that this was a Denis O'Brien transaction.

Q. And was there anybody else present at that meeting in the boardroom of Gandon?

A. I think Mr. Cullen was there. I can't say precisely.

Q. And then I think you say on one other occasion at the offices of your solicitors?

A. Correct.

Q. And can I just ask you one final matter in relation to what steps, if any, the bank might have been able to take in a transaction such as this against the person who was interested in a loan, but whose name was not associated with the loan in the event of a default.

As a banker, can you assist the Tribunal in relation to that?

A. I think it would have solely been moral persuasion, in terms of if we had suffered any form of credit loss, I don't think we would have allowed it to get to that stage.

Q. It would have been solely moral persuasion?

A. Correct.

Q. I think you can confirm it wouldn't have been open to the bank to take any steps of enforcement for a liability against a person such as that who was not a counterparty to the loan, or who had not provided any security

A. (Witness nodding).

Q. for the loan?

A. At all times we knew that Denis O'Brien, or I knew that Denis O'Brien was not a legal counterparty, and we had no recourse to him.

Q. Thank you, Mr. Morland.

CHAIRMAN: Just two short matters. In conclusion,

Mr. Morland, it has, I think, already emerged, and understandably so, that given your particular speciality in credit risk, you would have taken perhaps a more rigorous approach than Mr. Cullen as regards checking more precisely the security. Had you been dealing with the matter within your own discretion in December when it first arose, would you have had knowledge from your own experience of the UK market of how viable the proposal was to turn over a Manchester religious premises for commercial use, or would you have sought to have it evaluated by some area office?

A. We would have had our own views on the Manchester area.

However, in all of our deals, we would have got a professional valuation.

CHAIRMAN: Lastly, just going back to one of the documents that arose in your examination earlier this morning. It's, I think, at page 59, amongst the documents pertaining to the company searches. It's the application for striking off Catclause. Do you have that before you?

A. I do, Sir.

CHAIRMAN: It appears to be signed by at least purported signatures of Mr. Lowry and Ms. Lorraine Lowry, and is dated sometime in September, 2000, is that correct?

A. Correct

CHAIRMAN: And whilst I am not suggesting that much may turn on this, it appears to recite that the company had not been engaged in trading or doing business or activity except for the purpose of that striking off application within the three months previous, is that correct.

A. Correct.

THE CHAIRMAN: It does seem, from your knowledge of the transactions and the evidence that you have been present for the last three days, that in the months either side of that application, the loan had fallen due, there had been dealings on the part of the bank with both Mr. Phelan and with Mr. Vaughan, and that there was a proposal which finally did not come to fruition for a potential sale for 1.1 million.

A. Correct.

CHAIRMAN: Thank you for your assistance, Mr. Morland.

There seems little point in starting the next witness now, so we'll resume promptly at two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: Mr. John Daly.

JOHN DALY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY COUGHLAN:

CHAIRMAN: Thank you for attending, Mr. Daly, please sit down.

MR. COUGHLAN: Mr. Durcan wishes to make some applications.

MR. DURCAN: I make limited representation, please.

CHAIRMAN: And you are Mr. Sean Durkan.

MR. DURCAN: Sean Durkan of Michael Powell Solicitors.

CHAIRMAN: I think members of the Tribunal legal team would have made you aware of what I generally refer to as the usual terms, which means that in acceding to an application for limited representation, I am not necessarily giving any guarantees as to what may be in the eventual costs outcome, much as I wish to facilitate a former Tribunal associate, and on that basis I accede to what you seek.

MR. DURCAN: We live in hope.

CHAIRMAN: So be it.

Q. MR. COUGHLAN: Mr. Daly, I think you furnished a statement to the Tribunal, didn't you?

A. That's right.

Q. Do you have that with you in the box there?

A. I have, yes.

Q. I think you live in Kinsale, is that correct?

A. I live in Kinsale, yes.

Q. I think you've informed the Tribunal that in November 1999, you met Mr. Michael Lowry socially, is that correct?

A. Yes.

Q. And you informed the Tribunal that he acquainted you with a property transaction in the UK, and he looked for your advice, is that correct?

A. Oh, yes.

Q. I think he also asked you to go guarantor for him, which you agreed to do because it seemed to be a viable proposition, is that correct?

A. True.

Q. Subsequently you decided to buy a property in Dungarvan through your company, BCE Developments Limited, and you felt that when you were looking for a loan to buy that property, that an outstanding guarantee would not help and that is why you changed your mind and did not proceed with the guarantee?

A. It is so, yes.

Q. I think you had no further dealings in any way with the transaction, is that right?

A. Yes.

Q. I think you have known Michael Lowry socially for many years and that this is the only transaction in which you had, or more correctly speaking, nearly had, and in

dealings with him?

A. Yes.

Q. Now, Mr. Daly, can you tell us what Mr. Lowry said to you when you met him in November of 1999?

A. We were talking generally for about 10 or 15 minutes, when he brought up the subject of this thing that he had in Manchester and he asked my advice on it. And I gave him the advice that I gave him, that I thought it was a good project. And after another while he was saying to me that would I be willing to go guarantor on this thing. And I said I would, if he furnished me with the details.

Q. Right. Now, when you spoke to him in November, was he indicating to you that he was interested in going to get involved in the property deal, or that he was involved in the property deal. Can you remember?

A. He didn't say he was involved. He was saying he was interested, I think.

Q. I see.

A. As far as I can remember, yes.

Q. Right. And did he tell you how much money was involved in it?

A. Not at that particular moment.

Q. And what did he tell you the property was?

A. He told me it was a church, a church site in Manchester.

Q. A church site in Manchester?

A. Yes.

Q. Did he tell you what was hoped for in relation to this particular transaction?

A. Not - that's why I asked him to send me on some details, before I made up my mind what I'd do.

Q. And what details did he send you on?

A. He sent me the financial breakdown of the profit and loss account and all that type of thing

Q. Of what?

A. Of the project that was intended for the site.

Q. Do you have that?

A. Yes. Yes, I have that, my solicitor has it there.

Q. I see. When did he send you that?

A. That was when I asked him for the details of the site. That was on the details that he'd send on to me.

Q. When was that?

A. That was in December, I'd say - towards the end of November.

Q. Towards the end of November?

A. Yeah.

Q. And your solicitor has that document?

A. Yes, sir.

Q. Perhaps we can get that in a second, if that's all right.

Now, there was no suggestion that you were offered any of this deal, was there?

A. No. No.

Q. And apart from knowing Mr. Lowry socially, how well did you know him?

A. Well, I've known him for the last 10 or 12 years.

Q. Yes?

A. We have become very old friends.

Q. Right. And would you normally go guarantor in respect of a property deal in which you were not involved yourself?

A. No, but at that particular time, I would say, if I asked him to do the same for me, he'd have done it.

Q. Right. And in any event, you believed that he sent on details to you towards the end of November, is that right?

A. The end of November, yes.

Q. And what happened then?

A. What happened then? It went on for a while

Q. What went on for a while?

A. I didn't answer him back straight away.

Q. Right.

A. I just had those details in my possession for a while.

Q. Yes.

A. And then one day he rang me on the phone asking me would I sign the guarantee, and I did. I was on a journey between Enniscorthy and Dungarvan when I got the phone call.

Q. On your mobile phone?

A. On my mobile phone.

Q. When was that?

A. That was in December.

Q. What date in December?

A. I cannot recall it.

Q. What date in December?

A. Pardon?

Q. What date in December, do you think?

A. I'd say towards the end of December. I'm not sure.

Q. Now, you got a phone call from Mr. Lowry and he asked you what exactly?

A. He asked me to - would I sign the document which I had in my bag at the time.

Q. Which you had?

A. in my briefcase at that time.

Q. What document had you got in your briefcase?

A. He had already faxed on the guarantee form to me.

Q. When?

A. Between the first time I spoke to him and the second time.

Q. Was that - I am just trying to - try and put a date, if we can, on this, Mr. Daly. You spoke to him some time in November?

A. November, yes.

Q. He faxed on financial information to you about the transaction?

A. Yes, sir.

Q. Towards the end of November, is that right?

A. Around that time, I'd say, yes.

Q. Right. He then, or was it at the same time that the guarantee was sent?

A. Yes, the whole

Q. The guarantee came to you with a letter from Mr. Lowry?

A. As far as I can remember, yes.

Q. And you had that in your briefcase when Mr. Lowry rang you on your mobile phone?

A. That's right.

Q. And he asked you would you sign the guarantee?

A. That's right.

Q. And what did you say?

A. When I signed it?

Q. What did you say, first of all?

A. I had already told him that I thought the project was looking good.

Q. Yes.

A. And then when he asked me to sign it, because he was under pressure to get the thing out of the way, I signed the thing and faxed it off to him at his own - at the number he gave me to fax it to.

Q. Yes. Now, can I take it that - what number was that?

A. I haven't an idea. I just scribbled it down as he forwarded it on to me.

Q. I beg your pardon?

A. I haven't an idea what number it was. He just - he

just gave me a number, I was writing in my car, I wrote it down, and when I got to the next town, I faxed it from there.

Q. You faxed it from the next town?

A. Town, yes, which was Dungarvan.

Q. Dungarvan. And where did you fax it from?

A. I'm sure it was either the auctioneer that I was dealing with or some other place, but it was in Dungarvan, I'm certain.

Q. It was in Dungarvan you faxed it from?

A. Yeah.

Q. Now, if I could just get the sequence of events. Was that close to Christmas when you faxed

A. I'm sure it was.

Q. And you had no difficulty in doing that?

A. No.

Q. And then, I think, Christmas must have intervened - Christmas, up to the new year, and like most people, I suppose, you weren't engaged in any business during that period, would that be right?

A. No.

Q. You weren't?

A. No.

Q. And as far as you were concerned, you had gone guarantor for this particular transaction?

A. That's right.

Q. And you had no difficulty with that?

A. No.

Q. Because you believed it was a good deal and that your guarantee was safe, effectively?

A. That's right.

Q. And what was the next thing you heard?

A. The next thing I heard was - it was early in January sometime.

Q. Early in January.

A. When Michael Lowry rang me back.

Q. Yes.

A. And that he thought that the fax copy that I had sent wouldn't be good enough.

Q. Yes.

A. And would I - and would I sign the original.

Q. Yes. Yes.

A. So in the meantime I had changed my mind, because there was pressure on me from a new project that I was to start in Dungarvan and I would need all my resources to carry that through.

Q. When did you change your mind?

A. I was thinking about it over Christmas because I had my eye on this other project for quite a while.

Q. But you knew that you had signed the guarantee and you just told us you were happy with signing the guarantee, and you were safe about it because this was a good project, isn't that right?

A. That's right.

Q. When exactly did you change your mind?

A. I changed my mind, I would say, over the Christmas period.

Q. Did you ring Mr. Lowry and tell him?

A. No. I think it was just after Christmas I told him, or the new year.

Q. I think you told us it was when Mr. Lowry contacted you and said, "Look, the documentation isn't right. Would you sign the original?" that you then informed him that you wouldn't sign the guarantee, is that right?

A. That's what I mean, actually.

Q. Is that what happened?

A. Yeah.

Q. So if Mr. Lowry hadn't contacted you, as far as you were concerned, you were the guarantor for $\text{£}420,000$ Sterling in respect of a company called Catclause Limited, is that right?

A. That's right, with Mr. Lowry.

Q. You were the guarantor?

A. I was.

Q. And there was nothing you could have done about it?

A. No.

Q. So what was the changing of your mind about over the Christmas?

A. The changing of my mind is that I had this other project that I was going to do. It was a multi-million pound project in Dungarvan, it was coming up.

Q. Yes.

A. And it was coming up quicker than I thought.

Q. Yes.

A. And I knew I needed all my resources to carry that through.

Q. Yes. Yes. And what has that got to do with it?

A. It would mean that I'd - that to the bank manager, it wouldn't look too good if I did have half a million pounds worth of guarantees hanging around my neck.

Q. And tell me about the Dungarvan project, when did that start? When did you become interested in that?

A. I was interested in it in about - well, October I heard about it.

Q. Yes.

A. And it wasn't supposed to come up till about March.

Q. About March of the following year?

A. Yes.

Q. So you knew that by about March of the following year you'd have to get yourself in position to organise funding for it, is that correct?

A. That's correct.

Q. And was it in relation to that particular project that you went to the auctioneer's office in Dungarvan, where you faxed the guarantee to the number Mr. Lowry gave you?

A. That's right.

Q. So you were involved in discussions on that day with

the auctioneer, is that right?

A. Not on that day.

Q. On what day?

A. Previous to that. Not on that particular day, no.

Q. And what day were you told, or what were you told about the project in Dungarvan that gave you the impression it was coming up a bit faster than you believed it would?

A. With talks that I had with the auctioneer.

Q. When?

A. During - from about - from about the end of - the end of December.

Q. From the end of December. What date in December?

A. I couldn't tell you that. I don't know.

Q. Could you try, Mr. Daly?

A. Towards the end. I couldn't be specific.

Q. And what were those discussions?

A. He was just telling me that this thing could come on line quicker than he thought.

Q. Yes.

A. And it did.

Q. Come on line quicker; when did it come on line?

A. It came on line around the start of January.

Q. It came on line around the start of January?

A. Yes. Yes.

Q. So over Christmas you thought that it would be coming up around March, is that correct?

A. That's right.

Q. But towards the end of December when you started talking to the auctioneer, you believed now it could come on line quicker, is that right?

A. That's right.

Q. But you had begun to change your mind over the Christmas period before you discussed it with the auctioneer, is that right?

A. No, no, no.

Q. Sorry. Perhaps I misunderstood you. I thought you said that over the Christmas period you began to change your mind. Am I wrong in that?

A. No, you are right in that.

Q. I am right in that?

A. Yeah. But prior to that I had been talking with the auctioneer.

Q. Yes.

A. Who had told me that it was going to come on stream quicker than he thought.

Q. So was that before Christmas?

A. Yes.

Q. So it wasn't at the end of January?

A. Oh no, no, I never mentioned the end of January.

Q. Sorry, maybe I misunderstood you a moment ago there.

If I could just go through this again.

Before Christmas you were talking to the auctioneer?

A. That's right.

Q. When before Christmas?

A. Would you repeat that, please?

Q. When before Christmas of 1999 were you talking to the auctioneer?

A. Towards the end of December.

Q. No. Let's be clear now, Mr. Daly. You've already said towards the end of December.

A. Yes.

Q. You then told me that it was before Christmas you were talking to the auctioneer.

A. Would you repeat that again, please?

Q. Just to be clear, and I don't want to confuse you.

A. Right.

Q. Christmas, on the 25th of December

A. Yes.

Q. you said that over the Christmas period you began to change your mind.

A. That's right.

Q. You said that it was towards the end of December, which is after Christmas, or am I wrong about that, that you were in discussions with the auctioneer?

A. No, no. I regard Christmas as towards the end of December.

Q. I see. I see. Well, do you know what day you signed the guarantee?

A. I signed the guarantee, it must have been - was it December?

Q. There is no date on it. I am asking you. That's why I am looking for your assistance.

A. It was - I signed the guarantee on my journey between Enniscorthy and Dungarvan.

Q. And when was that?

A. It was either the end of November or the start of December, as far as I know.

Q. Was either the end of November or the start of December?

A. Yes.

Q. That you signed the guarantee.

And is that what you sent to the number Mr. Lowry gave you, the guarantee?

A. That's right. That's right.

Q. Anything else?

A. No, nothing else.

Q. You didn't send anything else?

A. No.

Q. Did you give any permission for information to be obtained about you?

A. Pardon?

Q. Did you give anybody permission to approach any financial institution or adviser to obtain information about you?

A. No, no, no.

Q. Did you send any other documentation about yourself?

A. No, no.

Q. Did you give any other documentation to Mr. Lowry about yourself?

A. Mr. Tunney had rang me in the meantime asking me about - he rang me either once or twice.

Q. Yes.

A. asking me to - he rang me one evening and explained who he was. And I asked him who gave him my number.

And he said Mr. Lowry.

Q. Yes.

A. And he was saying to me that - he was asking me what was I involved in and all that type of thing, and who my financial accountant was. And he - he mentioned that he would need some information from my accountant as to my financial standing and everything.

Q. I'll take this slowly now because - Mr. Tunney rang you one evening?

A. One evening, yes.

Q. Can you remember what time it was?

A. It was late in the evening, late in the afternoon, I think.

Q. Sorry, was it the afternoon? You were in business hours?

A. It was during business hours, yes.

Q. Where did he ring you?

A. On my mobile.

Q. On your mobile. And what did he say to you, if you can

remember, to the best you can?

A. He introduced himself.

Q. Yes.

A. And I was - I was surprised that he did ring me. And I asked him who gave him my number, what was - what was it all about?

Q. Yes.

A. So he told me he got my number from Michael Lowry.

Q. He said he got your number from Michael Lowry?

A. That's right.

Q. Right.

A. And that he needed some financial background on me.

Q. Yes.

A. And I think I gave him my accountant's number that day.

Q. Did you tell him where your main bank was?

A. I did.

Q. You did. And did you give him permission to seek information from those

A. He didn't ask me to look for information from my bank.

He wanted something from my accountant.

Q. Right. Now, did you know that your accountant provided some information to somebody anyway, because it seems

to be addressed "To whom it may concern"?

A. That's right.

Q. Did you see that at the time?

A. I rang - I rang my own accountant.

Q. Right.

A. And I told him about the phone call I had.

Q. Yes.

A. And he said he had no problem with furnishing that.

Q. He said he would have no problem furnishing that?

A. Yes.

Q. And you've seen that document, I think, is that right?

A. I have. I have.

Q. Now, do you have - that was on what date?

A. I don't - that was in November or December. There was two letters.

Q. There were two letters. There is one dated the 13th of December, 1999?

A. Yes.

Q. And that's "To whom it may concern" and it's re you.

It's document number 4. We'll put it on the screen there so that you can see it. Do you see it?

A. Yes.

Q. And it says: "We act as accountants and auditors for the above and confirm Mr. Daly has substantial capital and assets available and would have no difficulty in supporting the proposed property venture consisting of a 1.66 acre development site at St. Columbus Church, Handforth, Manchester. Should you require any further information, please do not hesitate to contact us.

Yours faithfully."

What does that mean, "that you would have no difficulty in supporting the proposed property venture"?

A. I would have no difficulty in covering my guarantee.

That's what I took from it.

Q. That's what you took from it?

A. Yes.

Q. I take it your accountants would have been reasonably aware of your business affairs?

A. Oh, yes.

Q. And can I take it that your accountants would have been reasonably aware as of the 13th of December of 1999, that you had an interest in some development or property transaction in Dungarvan coming up in the following year?

A. Yes, he would, I'd say.

Q. Coming up in March?

A. That's right. They hadn't too much information on that.

Q. And then there is a second document from your accountants and it's dated the 17th of December, 1999, and it reads: "We confirm that we act as accountants and tax advisers to the above. John Daly has been successfully involved in the property and construction industry for 35 years. He has numerous property holdings and development interests throughout Ireland. He has a minimum net asset value of $\text{€}1\frac{1}{2}$ million."

Did you get on to your accountants and ask them to send that to Mr. Tunney?

A. I thought well, first I told them to send any information that anybody rang about.

Q. Do you know why they sent two letters?

A. I don't.

Q. You don't?

A. No.

Q. Was Mr. Tunney in contact with you once or twice?

A. He was definitely once, I am not too sure about the second time.

Q. Did you ever tell Mr. Tunney to contact your accountants or give the name and telephone number of your accountants?

A. I am nearly certain I gave him the number.

Q. Of your accountant?

A. Yes.

Q. I think you have seen a letter signed by Mr. Dermot McHugh, the relations manager of Bank of Ireland.

That's South Mall, Cork, have you?

A. I haven't, no.

Q. You haven't seen that. And it's about you?

A. Yeah.

Q. You haven't seen it? Never?

A. No.

Q. All right.

MR. DURCAN: Mr. Chairman, we have not seen this either.

MR. COUGHLAN: I wonder if My Friend is correct. I understood these documents would have been sent to Mr. Daly's solicitors, but I'll check this.

Perhaps you'll look at the letter at the moment, because this letter has been opened in public, I believe, already, and it's a letter about you - first of all, is that your bank.

A. No, that's one -

Q. One of your banks?

A. Yes.

Q. Right. Do you know who Mr. Dermot McHugh is?

A. I do, yes.

Q. Did you have dealings with him?

A. Yes.

CHAIRMAN: Perhaps Mr. Davis might - for immediate purposes, subject Mr. McGonigal's solicitors kindly helped. Thank you.

Q. MR. COUGHLAN: Now, it's "To Whom It May Concern, re Mr. John Daly, 1 Charlesford House, Summer Cove, Kinsale, Co. Kerry." Is that you?

A. That's right.

Q. It reads: "Dear Sir/madam,

I understand from discussions with Mr. Daly that he is in the process of purchasing property in the UK for circa $\frac{1}{2}$ 417,000 Sterling.

I am familiar with Mr. Daly's overdraft financial position and in my opinion he would have no difficulty in obtaining finances for the proposed property purchase as noted above.

I trust the above is in order and if you have any queries, please do not hesitate to contact the undersigned.

Yours faithfully,
Dermot McHugh."

Do you know anything about that?

A. This is the first time I have seen it.

Q. Is it the first time that you knew anything about that you had an interest in purchasing property in the United Kingdom for $\frac{1}{2}$ 417,000?

A. No, this is the first time I have seen this particular letter.

Q. Right. What about the contents of the letter?

A. Or the contents of it.

Q. What?

A. Or the contents.

Q. You know nothing about the contents of this letter?

A. This is the first time I have seen it.

Q. So you, first of all, if we go through this - this is a bank you do business with, is it?

A. That's right.

Q. Mr. McHugh is a man you deal with in that bank, is that

right?

A. Yes.

Q. Was he your main contact with that bank?

A. Well, there are two or three people who I talked to.

Q. But he would be one of the main -

A. He would be one of the main.

Q. And did you ever authorise anyone to make inquiries of the Bank of Ireland about your affairs?

A. As far as I can remember, no.

Q. Did you yourself instruct the Bank of Ireland to make information available to anybody?

A. As far as I can remember, no.

Q. Did you ever have any interest or intention to purchase property in the United Kingdom for $\frac{1}{2}$ 417,000-odd Sterling or similar amount?

A. No, none whatsoever, no.

Q. You had no interest or intention?

A. No, my main attention was to go as guarantor.

Q. To go as guarantor?

A. Yes.

Q. Your main intention. Did you have another intention?

A. That was my only intention.

Q. It was your only intention?

A. Yes.

Q. Did you inform Mr. McHugh of the Bank of Ireland that you were in the process of purchasing property in the UK?

A. I don't think I did.

Q. You don't think you did?

A. I don't think I did.

Q. It would be unusual for Mr. McHugh to issue a letter concerning you which would be so inaccurate, would you agree?

A. I agree, yes.

Q. Now, the documents which have just been furnished by your solicitor to the Tribunal, and this isn't a criticism, which you say was the information which Mr. Lowry had sent to you about his proposed property transaction

A. That's right.

Q. arrived by letter dated the 9th of November, 1999, isn't that correct?

A. I think so.

Q. Well, I just have it here.

A. Yes.

Q. Perhaps it would be better if I just put it up on the screen, because we don't have any other further copies of it.

If we could just take it from the top. It's dated the 9th of November 1999. It's BCE Developments Limited, Courthouse Chambers, 27-29 Washington Street, County Cork, Eire.

That's where you carry on business from, isn't that

right, or your company?

A. That's right.

Q. And it's to your attention. And it reads:

"Dear Sir,

Re St. Columbus Church, Handforth, Manchester.

Further to discussions with my client, I take pleasure in enclosing details of the above site for your information and action.

As you can see from my site information sheet, the site extends to approximately 1.6 acres and has potential for a variety of uses.

I have provided development appraisals for three potential uses and trust these are of interest to you. However, should you require any further information, please do not hesitate to contact me."

What was your understanding of that letter when you received it?

A. That was a reply to the question I asked Michael Lowry.

Q. That was your understanding -

A. Furnish me with some details of what I was going to guarantee.

Q. On one reading of that letter, it would look that the agents here are sending information to somebody who might have an interest in the property, that is take an interest in the property. Would you agree that that is

a reading that could be put on that letter?

A. I disagree. I could take my own interpretation of it.

Q. You disagree. So you think that this information and

that letter was merely sent to you to enable you to

evaluate it for the purpose of providing a guarantee to

Mr. Lowry, is that correct?

A. That's right.

Q. Did you show that letter to anyone in the Bank of

Ireland?

A. No.

Q. Did you show that letter to your accountants?

A. No.

Q. Did you inform your accountants of the contents of the

documents which were sent to you?

A. No.

Q. You didn't?

A. No.

Q. Do you know how your accountants were in the position

to write a letter on the 13th of December, 1999 saying

that they act as accountants and auditor for you, and

that you would have no difficulty in supporting the

proposed property venture consisting of 1.66 acre

development site at St. Columbus Church, Handforth,

Manchester? Do you know how they got that information?

A. Would you repeat that again, please?

Q. Do you know where your accountants would have got the

information which they put in a letter of the 13th of

December, 1999 which reads: "We act as accountants and auditors for the above and confirm that Mr. Daly has substantial capital and assets available and would have no difficulty in supporting the proposed property venture consisting of 1.66 acre development site at St. Columbus Church, Handforth, Manchester."

Do you know where your accountants would have got that information?

A. Well, they got that from me verbally.

Q. Mr. Daly, you told me a moment ago, and I am just asking you, could you just think before you answer, you told me a moment ago that you did not inform him of the contents of the documentation you received -

A. The only content I informed him about was the amount of money.

Q. Yes.

A. That's all.

Q. But the point I am making here, Mr. Daly, is that your accountant seemed to know the location and the acreage involved in this development site. How did they know that?

A. Through a phone call.

Q. Through a phone call with whom?

A. From me.

Q. From you?

A. Yeah.

Q. So you told them about this?

A. I just told them verbally about it, yes, because I was spending most of my time up in Enniscorthy.

Q. Did you know, when you were asked for the guarantee, that the loan was proposed for a short period of time?

A. Short period, yes.

Q. Six months?

A. That's right.

Q. Yes. So you knew that you were not on risk for any considerable period beyond the time when you intended to take up the opportunity in Dungarvan, isn't that correct?

A. That's right.

Q. And as far as you were concerned, you were the guarantor until Mr. Lowry contacted you and informed you that the bank didn't - couldn't accept the fax that had been sent and they just wanted the matter regularised by signing the original, isn't that right?

A. Signing it, yeah.

Q. And notwithstanding that you believed you were the guarantor, you then told Mr. Lowry you wouldn't sign the original, isn't that correct?

A. That's right. I told him.

Q. Did you not believe that by doing that, that you left Mr. Lowry completely in the lurch?

A. No. I explained it to him first.

Q. Yes?

A. He was a bit annoyed about it.

Q. Understandably, perhaps.

A. That's right.

Q. Yes.

A. And then he saw my point.

Q. What point did he see?

A. The point that I had a multi-million pound development that I was looking at for about four or five months, and that was coming on stream fairly soon. And he told me he understood my point and carry on.

Q. And carry on?

A. Yeah.

Q. And you remain the best of friends to this day?

A. The best of friends to this day.

Q. To this day?

A. Yeah.

Q. Even though you were now leaving your very good friend in a position where he had no guarantor for the guts of a $\frac{1}{2}$ 500,000 Irish loan, isn't that right?

A. That's right.

Q. And did you know at that stage that the loan had been drawn down?

A. I didn't.

Q. And Mr. Lowry didn't tell you?

A. As far as I can remember, no.

Q. You mean to say that in the context of a discussion where he was understanding of your position, he didn't

make his position clear and inform you the money had been got from the bank?

A. No.

Q. That the difficulty here only related to the faxed guarantee.

A. Yes.

Q. He didn't tell you that?

A. No.

Q. And that there was now a huge difficulty in that what was going to be done was without a guarantor. Did he say any of these things to you?

A. In February I asked him if I was free of the guarantee.

Q. You knew you were, Mr. Daly?

A. But no, I still asked him.

Q. Why?

A. And he said that I was, that a Mr. Phelan had taken it over at that point.

Q. Mr. Daly, why would you have asked him, why would you have asked him in February if you were free of the guarantee? You knew at the beginning of January of the year 2000 that the fax that you had sent up was not acceptable to the bank, isn't that right?

A. That's right.

Q. You explained why you would not sign the guarantee?

A. That's right.

Q. Isn't that correct? Mr. Lowry said he accepted that?

A. That's right.

Q. So you now knew that you were not a guarantor, isn't that right?

A. That's right. That's right.

Q. Why would you then turn around and ask anybody the following month whether you were free of the guarantee, Mr. Daly?

A. It was during a conversation that it came up and I just said to him, "Am I not free of the guarantee totally?" And he said, "You are." He said Mr. Phelan had taken it over at that point.

Q. Had you signed many guarantees yourself in the past in respect of facilities which were made available to your own company or companies?

A. I have signed a lot of them.

Q. You have signed them over the years?

A. Yeah.

Q. And would it be your understanding of signing a guarantee that it would be dated?

A. It would.

Q. And would normally be witnessed?

A. That's right.

Q. And you knew this when you signed the fax document which was sent down to you by Mr. Lowry, isn't that right?

A. That's right.

Q. What did you think you were signing when you just signed a fax document which was undated and not

witnessed? What was your understanding of that, Mr.

Daly?

A. You mean now?

Q. Then.

A. Then: I was in a hurry back to Cork and I just stopped, signed it and sent it on. I didn't think of the -

Q. You what?

A. I didn't think about dates or witnesses or nothing else. I just signed it and went on, carried on with my journey.

Q. I know you did that.

A. Yeah.

Q. You did it in the offices of, you believe, in the offices of an auctioneer?

A. I believe so, yes.

Q. There were people around you that had witnessed your signature, weren't there?

A. In that office?

Q. Yes.

A. No.

Q. The auctioneer himself?

A. Well, he wasn't there.

Q. Any of his staff?

A. They were in one end of the office, I was at the other end on my own.

Q. Mr. Daly, come on now.

A. I didn't want them to know my business.

Q. What business?

A. Of

Q. All they were going to do was witness your signature.

A. But I didn't have a witness. I didn't witness it.

Q. Mr. Daly, I know you didn't witness it. I am saying to you you knew, from your experience, that what you do with the guarantee would be to date it, or perhaps somebody else would put in the date, but that your signature should be witnessed, isn't that right?

A. That's right.

Q. All somebody had to do was witness your signature. They would know nothing about your business, isn't that right?

A. That's right.

Q. They wouldn't have to read the document.

A. No, no.

Q. Now, you then faxed the document back to the number Mr. Lowry gave you?

A. That's right.

Q. Where is your copy?

A. My copy is back in Cork, I'd say.

Q. The original of this document is in Cork, is that right?

A. The first document I got is in Cork, yes.

Q. And that was sent to you, you believe, at the time this other documentation was sent to you, is that right?

A. I think so, yes.

Q. Where in Cork is it?

A. More than likely in one of my briefcases, either at home or in the office, because I had forgotten it until this came along.

Q. Did you tell Mr. Lowry that you still had the original of this document?

A. I didn't.

Q. You didn't?

A. No.

Q. Did Mr. Lowry bring any other document to you, the other guarantee that he wished to have signed?

A. No.

Q. He didn't?

A. No.

Q. So can I take it that at the time you faxed this document - is that what you were asked to do, or did you volunteer to do that?

A. No, I got a phone call asking me to sign the document and I got a number where I should fax it to.

Q. From Mr. Lowry?

A. And that's what I did.

Q. Right. Do you know was it a Dublin number or was it a country number

A. That, I don't know. I just scribbled it down as I was travelling on the road.

Q. What did you scribble it on?

A. On whatever bit of paper was nearest to me.

Q. And you happened to have this guarantee in your briefcase?

A. Yes.

Q. Why?

A. Just an idea - I carry a lot of stuff in my briefcase, but that was one of them.

Q. And it had been in your briefcase from the day it arrived with you?

A. I'd nearly say it was.

Q. And you were told by Mr. Lowry to fax it?

A. To fax it. He left the phone number for me to fax it and I faxed it.

Q. Did you say to him 'a fax won't be much good'?

A. I didn't say, Sir. I just did.

Q. Did any of you have a discussion that the original or hard copy would be sent on by post later?

A. No, we had no discussion like that.

Q. Now, the original, the document you had, of course, would have had your signature on it, isn't that right?

A. I believe so, yes.

Q. And will be provable as such. It was not a photocopy. You actually signed a document, isn't that right?

A. I signed a document, yes.

Q. Can you get that for us?

A. I hope that I can, because I thought the thing was dead and gone.

Q. When?

A. When - until such time as I got this notification to attend this Tribunal.

Q. When did you think it was dead and gone?

A. At the moment he told me that I no longer had a guarantee and that I was out of it.

Q. When was that?

A. That was back in January.

Q. In January?

A. Yes.

Q. So he told you in January of 2000 that you no longer had - you were no longer the guarantor, is that right?

A. In February he told me that.

Q. What did he tell you in January?

A. In January I told him that I would not sign the original, that I was backing out.

Q. Yeah.

A. So the for the simple reason that I had too many irons in the fire, as I explained to you, and I had too many commitments and I didn't want to go any further with it.

Q. Mr. Daly, if the suggestion was to be made to you that this was a complete and utter ready-up to create some sort of a paper transaction, what would your response to that be?

A. Would you repeat it please?

Q. If the suggestion were to be made to you that this was a complete and utter ready-up to create some sort of

paper trail of a transaction, what would your response to that be?

A. I believe in what Mr. Lowry told me, that it was genuine.

Q. And you, as an experienced businessman, used to signing guarantees, sent this off in the manner you did without indication that you'd send on the original, or been asked to do so, and then left your friend in the lurch by saying that you wouldn't sign it when the photocopy, when the photocopy wasn't acceptable at that stage to the bank - leave aside the other niceties the bank were looking for - the photocopy was not acceptable, you didn't say, "Well, the original is signed". You left your friend in the lurch, is that what you are saying?

A. That's right.

Q. And you've remained the best of friends since then?

A. Since then.

Q. So if a suggestion were to be made that this was just to fill up the paperwork for this transaction, well, how would you respond?

A. I'd say it wasn't true.

CHAIRMAN: There may be a number of other lawyers that may have one or two matters to raise with you, Mr.

Daly. Mr. Gleeson.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GLEESON:

Q. MR. GLEESON: Just briefly, Mr. Daly. I think you just

told the Tribunal that you had certainly one

conversation with Mr. Michael Tunney?

A. That's right.

Q. And did you know Mr. Tunney before that?

A. Never heard of him in my life, no.

Q. And how did he introduce himself when he phoned you?

A. Word for word, I can't be sure, but I asked him - I asked him how he got my number. That's the first thing I asked him.

Q. Yes.

A. And he told me he got it from Michael Lowry to contact me.

Q. Sorry?

A. He said he got it from Michael Lowry to contact me.

Q. Yes. And did he tell you in connection with what he was ringing you?

A. He was talking about a guarantee

Q. Yes?

A. that I had that Mr. Lowry told him about.

Q. It was the guarantee in relation to the proposed transaction in Manchester, is that right?

A. That's right.

Q. And was there any other discussion about Mr. Lowry in the course of that phone call?

A. I think he asked me how long I knew him.

Q. Yes.

A. And that type of thing.

Q. Well, can you tell us what your reply was when he asked you how long you knew Mr. Lowry?

A. I told him I had known him for years.

Q. Yes. Did he ask you anything else about Mr. Lowry?

A. Not really, no.

Q. Yes. And did you know that Mr. Tunney was from a bank in Dublin?

A. I did.

Q. Did you know which bank he was from?

A. At that time, no.

Q. No. And did you have any further discussion with him in the course of that phone call about the proposed transaction?

A. Not that I can remember.

Q. Yes. Thank you, Mr. Daly.

CHAIRMAN: Mr. Shipsey.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Daly, if I recall correctly, when originally asked you'd indicated you thought you had two conversations with Mr. Tunney?

A. That's right. One or two, I would say.

Q. I suggest to you you had one conversation with -

A. I definitely had one.

Q. And if Mr. Tunney states that he only had one conversation with you and that he is definite about

that, you'd accept that, would you?

A. I wouldn't be definite about it.

Q. And Mr. Tunney will say he had a conversation with you on the 17th of December. Do you recall the date when you had a conversation with him?

A. No, I couldn't recall the date, no.

Q. And if Mr. Tunney is correct in this, that there was only one conversation and your position is that you are certain that there was one, but that there might be two, but if he is right in relation to this and if it was on the 17th of December, you would accept that, would you, that it was on the 17th?

A. I would still have a doubt in my mind.

Q. You would have a doubt in your mind as to whether it was the 17th of December or you would have a doubt in your mind as to whether there was only one conversation?

A. I would have a doubt in my mind that it could be either one or two conversations. I don't know. I just can't recall it.

Q. Did you ever have any other dealings with Mr. Tunney?

A. No.

Q. Would you know Mr. Tunney if he walked in off the street into your house or office?

A. No.

Q. Now, you see, I would have to suggest to you that there was only one conversation and that it was on the 17th

of December. You don't accept that necessarily? You are not really sure

A. I am not sure of any date.

Q. And Mr. Tunney will say that insofar as he had your number, he had your number from Mr. Aidan Phelan.

A. Mr. Tunney remarked, when I asked him, that he had my number from Michael Lowry.

Q. You see, Mr. Tunney's recollection is in direct contradiction to you here, Mr. Daly. Could you be mistaken in this regard?

A. I don't think I was.

Q. You made a statement in this matter, isn't that correct, Mr. Daly?

A. Pardon?

Q. You made a statement for the purpose of this Tribunal.

A. I did.

Q. And you never said any of this in your statement to the Tribunal?

A. I never said any of what?

Q. You never made any reference to having any conversation, good, bad or indifferent with Mr. Tunney, isn't that correct?

A. I made reference in one of the forms that came out from the Tribunal that I had one or two conversations with Mr. Tunney.

Q. What forms are those, Mr. Daly?

A. My solicitor has them down there.

Q. But you made a statement to the Tribunal, which Mr. Coughlan has taken you through, isn't that correct?

A. There was nothing in my statement about talking to Mr. Tunney.

Q. Nothing whatsoever, no reference to him at all?

A. Not in that statement, no, but in previous correspondence there was.

Q. Now, if you just look at the letters or some of the letters that emanated from your accountants and from your bank, Mr. Daly, there is a letter from your accountants - in fact, two letters from your accountants, one dated the 13th of December of 1999, and the other dated the 17th of December of 1999.

Isn't that correct?

A. Yes. Yes.

Q. Would you accept that insofar as there is information contained in your accountants' letter, that your accountants must have obtained that information from you?

A. I would, in verbal form.

Q. And from nobody else? Your accountants wouldn't be giving out information on your behalf other than on your instructions?

A. That's right, yes.

Q. Now, the letter of the 13th of December 1999, we could assume, was written on the 13th of December of 1999, isn't that correct?

A. That, I don't know.

Q. And similarly, in relation to the letter of the 17th of December of 1999, it would be safe to assume that it's written on that date?

A. That, again, I don't know.

Q. You see, if Mr. Tunney is correct, Mr. Daly, and he only spoke to you once on the 17th of December of 1999, then Mr. Tunney couldn't have anything to do with the request for the document from your accountants on the 13th of December, 1999, isn't that correct?

A. I had two conversations with - one or two with Mr. Tunney. The dates of those conversations, I cannot date.

Q. I know you've said and you repeated you had one or two. But if Mr. Tunney is correct and there was only one conversation and it took place on the 17th of December, then the letter from your accountants of the 13th of December couldn't have come about as a result of any request from Mr. Tunney?

A. If that's true, yes.

Q. And isn't it possible, Mr. Daly, that you had conversations with other persons in respect of this transaction?

A. No. The only one I had verbal conversation with was my accountant.

Q. No, I am talking about persons looking for information from you. If your accountants are writing on the 13th

of December 1999, they have some information from you to write that letter, isn't that correct?

A. That's right, yes.

Q. And presumably that can only be because you were requested by somebody to provide that information?

A. That's right.

Q. And did Mr. Lowry ask you to provide this information or that it would be required?

A. Mr. Lowry told me that it would be required.

Q. And when did Mr. Lowry tell you it would be required?

A. I cannot put a date on that either.

Q. But presumably before Mr. Tunney speaks with you?

A. I doubt it. Again, I cannot recall that.

Q. Why would Mr. Lowry be asking you to provide information from your accountants after Mr. Tunney has asked you? Can you give any rational explanation for that?

A. I cannot. I cannot.

Q. Do you know, Mr. Daly, that the documents, including the letters, the two letters of the 13th and the 17th of December of 1999 from your accountants come to Mr. Tunney in the bank for the first time on the 17th of December? Did you know that?

A. No.

Q. And they come from Mr. Aidan Phelan?

A. I didn't know that either, no.

Q. Now, wouldn't that suggest, and that is the evidence

that's been heard and tendered in relation to these documents, that they come by way of a fax from Mr. Phelan; that somebody provides them not to Mr. Tunney in the first instance, but to Mr. Phelan before they are being sent on to the bank.

A. That, I cannot answer you, because I had nothing to do with them, typing or anything else.

Q. You may have had nothing to do with the typing, Mr. Daly, but you had certainly something to do with the request for the documentation?

A. Yeah, I requested it, but I cannot tell you the dates I requested them either.

Q. And the letter from your bank, which I think you've seen, of the 13th of December, the date is obscured in mine, but the 13th of December of 1999, it's addressed "To Whom It May Concern" isn't that right?

A. That's right.

Q. Now, would you not expect, if that comes as a request from Mr. Tunney, that it would be addressed to Mr. Tunney in the bank?

A. I would.

Q. And the fact that it's not addressed to Mr. Tunney, and that it's dated the 13th of December of 1999, does not that suggest that that request came from or originated from somebody other than Mr. Tunney?

A. That, I don't know, because Mr. Tunney never gave me his address or anything else when I was talking to him.

Q. You knew who you were talking to though, didn't you?

A. Well, he explained it.

Q. Do you know who the letters were sent to, Mr. Daly?

A. No.

Q. From your bank?

A. No, I don't.

Q. From your accountant?

A. No.

Q. Did you make inquiries, Mr. Daly, before coming to give evidence in this Tribunal?

A. I didn't.

Q. Did you have these documents sent to you before coming to this Tribunal?

A. I did.

Q. And why didn't you make any inquiries?

A. About who they were sent to?

Q. Yes?

A. Because maybe I don't have a legal mind or something like this, I don't know.

Q. And that's the only reason?

A. That's the only reason, yeah.

Q. Do you know what a fax banner is or a fax heading on a document is?

A. Not really, no.

Q. Do you know when you send a fax or, more importantly, when you receive a fax and it comes out on the other end?

A. Yes.

Q. It will indicate normally the date, the time, the fax, the identity of the person who is sending it and their number. You are familiar with that, aren't you?

A. I am, yes.

Q. And in respect of each of the documents that we've been referring to, that's the two letters from your accountants and the letter from the bank, there is an indication that they are being sent by fax on the 17th of December, 1999 at in or around 10:00 just after 10:00 in the morning.

A. Yes.

Q. And that's, of course, consistent with them having been faxed from Mr. Phelan's office to the bank on that date.

A. Right.

Q. Have you checked the documents?

A. I haven't checked them.

Q. to see if that's the case?

A. No.

Q. So however they come to be in Mr. Phelan's possession, somebody has made them available to Mr. Phelan in the first instance before they are sent on to the bank?

A. That, I can't answer.

Q. And doesn't that make it more likely, Mr. Daly, that Mr. Tunney's recollection of events is more accurate than your recollection, which you accept is not

definite in relation to two meetings?

A. I still have it in my mind that I had at least one, if not two.

Q. Yes. Well, you see, I am accepting there is at least one. It's the second meeting, the second telephone conversation, you are not sure about it?

A. No, I am doubtful on that one, I said.

Q. And Mr. Tunney is sure, and I'd have to suggest to you, in those circumstances, and would you not accept that it's more likely that you didn't have a second one with him?

A. No, I still think I had two, but I can't

Q. From whom did you get the guarantee, the blank guarantee?

A. That came to me from, I'm sure, Mr. Lowry. Mr. Lowry or Mr. Tunney, I don't know which of the two. I think it was Mr. Lowry.

Q. Well, you are not sure about this now, Mr. Daly?

A. I am not.

Q. I understood you were sure it was coming from Mr. Lowry.

A. I think it was from Mr. Lowry. I am not sure.

Q. Would it have come from somebody else?

A. I don't know. I don't know.

Q. With respect to you, Mr. Daly, you don't seem to recall very much with certainty about this particular matter.

Would that be correct?

A. You are dead right.

Q. And would it be unfair to you to suggest that your recollection is less than reliable in relation to this matter?

A. That, I couldn't tell you, but I can remember certain things, but I can't remember everything.

Q. You remember signing the guarantee, you remember faxing it?

A. That's right.

Q. You remember you still have the original, and then you remember discovering in January that the money has been advanced but that there is a difficulty with the guarantee which you have faxed to the bank. Is that correct?

A. I didn't know that the money had been advanced. Nobody told me that.

Q. I see. So in January, when you speak with Mr. Lowry, is your sworn evidence to this Tribunal you didn't know whether the money had been advanced?

A. No.

Q. And did you ever find out whether the money was advanced or not?

A. No.

Q. Why would you be, then, asking if you were on, as it were, the hook in respect of this particular guarantee?

A. Curiosity. I haven't a clue.

Q. You were curious about whether you are potentially

liable in relation to the guarantee but not whether any money is lent that might make you liable in respect of the guarantee. Is that what you are saying?

A. Say that again, please.

Q. You know what a guarantee is?

A. I certainly do.

Q. For there to be a liability on foot of a guarantee by you, there has to be somebody with a primary liability, somebody would have to be lent money, in this case Catclause Limited, for you to be liable?

A. That's right.

Q. And what I am suggesting to you, Mr. Daly, if you are inquiring as to whether your guarantee is live, or you could be liable in respect of your guarantee, there had to be a loan to Catclause. And you had to know this, or else you would have no worries, isn't that correct?

A. Yes.

Q. So I am suggesting to you that you did know that the money had been advanced in January of 2000?

A. I most certainly didn't.

Q. I am suggesting to you that insofar as your position is concerned, the money is advanced by the bank, but there is a technical defect in relation to your guarantee, and you take advantage of this. Isn't that correct?

A. If the original one had been genuine, witnessed and - I would have stood by it.

Q. But there was a technical glitch and you were happy to

take advantage of it?

A. I was. I was. I explained it to him and he was happy with it.

Q. Do you remember Mr. Tunney on the 17th of December asking you about your businesses?

A. He asked me some questions about them, yes.

Q. And about your experience in

A. Building

Q. development of property?

A. Development and building, yes.

Q. Thank you, Mr. Daly.

CHAIRMAN: Anything to raise, Mr. McGonigal?

MR. MCGONIGAL: No questions.

CHAIRMAN: In conclusion, Mr. Daly, when you first met Mr. Lowry, you'd been aware of his misfortunes, both politically and as regards other matters?

A. Yes.

CHAIRMAN: Did you have any concerns about taking on a potential half million liability.

A. Not really, no.

CHAIRMAN: Was it mainly friendship or -

A. Friendship, total friendship.

CHAIRMAN: Very good. Thank you for your attendance.

I beg your pardon, I meant to offer you an opportunity.

Very good. Thanks for your attendance.

MR. GLEESON: Before this witness goes, there is just one point in his evidence where he referred to previous correspondence, I think he said with the Tribunal, or it may have been with his solicitor, in which he referred to conversations with Mr. Tunney. I don't know if there is anything that needs to be explored further in relation to those documents, but if they are documents which

CHAIRMAN: Certainly, Mr. Gleeson, you make take it that

MR. COUGHLAN: Can I read out the paragraph? I'll read out the paragraph here.

CHAIRMAN: We'll get it clarified.

MR. COUGHLAN: Yes. I think the - it was a letter which was sent to your solicitors or to you dated the 10th of April, 2001. And the first question, I think you were asked, were details of all your involvements in the transaction, the transaction was outlined, isn't that correct? And I think your solicitors response to the Tribunal reads: "In November 1999, my client met Michael Lowry socially and Mr. Lowry acquainted my client with a property deal in which he (Mr. Lowry) was involved in the UK and sought my client's advice. My client asked him to give details to him. Having

received the details, my client met Mr. Lowry again.

Mr. Daly considered it to be a good deal and agreed to help Mr. Lowry by providing a guarantee to a bank on facilities borrowed subject to the bank having a first legal charge. The bank sought financial information and my client got his accountant to furnish this information, in fact. And Mr. Michael Tunney telephoned my client on a few occasions."

The other responses are not relevant in relation to those matters.

CHAIRMAN: Anything you want to raise on foot of that, Mr. Gleeson?

MR. GLEESON: No, Sir.

CHAIRMAN: Thank you for your attendance. Witness.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Michael Tunney, please.

MICHAEL TUNNEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

MR. HEALY: Thank you, Mr. Tunney.

Q. Do you have a copy of the statement you provided to the Tribunal?

A. I do, yes.

Q. In that statement you say that you joined Woodchester

Bank in 1991 as Head of Corporate Banking, and that in 1992 you were appointed Director of Corporate Banking of Woodchester Bank Limited, which subsequently became Woodchester Credit Lyonnais Limited and GE Capital Woodchester Bank. The corporate banking was transferred to Gandon Capital Markets which Woodchester acquired in 1995, and you became a director of Gandon Capital Markets. Gandon Capital Markets has since been acquired by the Investec Group.

You say that you've been asked by the Tribunal to provide a statement regarding facilities granted to Catclaus Limited in 1999 by GE Capital Woodchester Bank.

You say that in late December of 1999, you were approached as Director of Corporate Banking in Gandon Capital Markets by Mr. Aidan Phelan. He sought a loan facility of Sterling $\frac{1}{2}$ 420,000. He informed you that the purpose of this facility was to enable the purchase of a development site at St. Columbus Church, Handforth, Manchester. And you were informed that the property comprised a 1.66 acre development site. Is that right?

A. That's correct.

Q. You say Mr. Phelan was well known to you in December of 1999. He'd had a lengthy relationship with GE Capital Woodchester Bank/Gandon Capital Markets/Investec Bank,

(UK) Irish branch. What do you mean by that - with the bank that you were working in during all its various incarnations?

A. Exactly.

Q. You say that you first came into contact with Mr. Phelan through his relationship with Woodchester Bank. You say, Mr. Phelan informed you that the development site was to be acquired by a company called Catclause Limited. Mr. Phelan informed you that Catclause Limited was a special purpose company established specifically to acquire this development site. You were informed by Mr. Phelan that Catclause Limited intended to purchase the development site, obtain permission for the development of the site and subsequently dispose of the site. It was your understanding that Catclause Limited was a company which was owned or controlled by Mr. Phelan.

Mr. Phelan informed you that the facility he sought was required urgently to prevent the development site being lost to another unidentified, potential purchaser. You say that you were aware that previous transactions involving Mr. Phelan had occurred where facilities had been urgently required, and accordingly, were legal issues, for example, were resolved following the drawdown of funds. To the best of your knowledge and belief, all such transactions were completed to the

satisfaction of the bank.

Mr. Phelan informed you that a guarantee in respect of the facilities sought would be provided by a Mr. Daly.

You were informed that Mr. Daly was a property developer. You spoke to Mr. Daly on the telephone and he confirmed that he would provide a guarantee in respect of the facilities in question.

A Letter of Offer dated the 20th of December, 1999 setting out the terms of the facility was given to Mr. Phelan.

Was that the Facility Letter as we've heard it described in the evidence to date?

A. Yes.

Q. Mr. Phelan furnished me with a resolution of the directors of Catclause Limited together with a duly completed application form for the opening of an account in the name of Catclause Limited. The sum of £420,000 Sterling was transferred to the client account of Christopher Vaughan solicitor on the 21st of December, 1999. During the course of a telephone conversation with Mr. Vaughn, I recall asking him to put in place a charge in favour of the bank.

"The facilities were to have been repaid by the 31st of July, 2000. However, completion of the outstanding documentation proved to be slow following drawdown of

the facilities. This did not unduly concern me, as it was not unusual, in light of my past dealings with Mr. Phelan.

As and from the 31st of December of 1999, I reduced my activities on behalf of the bank to three days a week, as agreed some time previously. I ceased day-to-day activities on behalf of the bank toward the end of March, 2000, following the completion of the acquisition of Gandon Capital Markets by the Investec Group.

I remain a non-executive director of Investec Gandon Limited, formerly known as Gandon Capital Markets Limited."

You say that subsequently you were asked to and endeavoured to assist the bank in its endeavours to have this facility repaid. You say you now understand that the facilities in question were repaid earlier this year.

You did not become aware that Mr. Phelan was not a director of Catclause or learn the identities of the directors of Catclause until so informed by the bank in 2001.

Now, there are a lot of things that I need to go through with you, Mr. Tunney, arising out of the evidence of witnesses from Investec Bank, and also

arising out of the evidence given by Mr. Daly. And there are aspects of your statement I want to clarify as well. But before I do so, could I just get one thing clear in my mind. Is my understanding, as of this moment, correct that as far as you are concerned, you were making a loan to Aidan Phelan?

A. Correct.

Q. Forget about the corporate vehicles or anything like that for the moment.

A. Correct.

Q. That was the position when this matter was first broached with you, and that was the position right up to the time of the repayment of the loan?

A. Absolutely.

Q. Now, the loan was repaid earlier this year but that was, I think, only after the matter was brought to the attention of the Tribunal, is that right?

A. That's correct.

Q. You've been involved in Woodchester and its subsequent various incarnations since 1991. Prior to that were you working in banking?

A. I was. I have been approximately 30 years in banking. Prior to that I was in AIB for 20 years.

Q. Are you still involved in banking in any executive capacity?

A. No, I am not. I am in business outside of banking.

Q. During your time working in Woodchester, I think we've

heard from other witnesses that you formed an association with Mr. Denis O'Brien as a client of the bank?

A. Correct.

Q. And would you have been the person who dealt with Mr. O'Brien's dealings or business with the bank over the years that you worked there?

A. Generally, yes.

Q. Obviously you mightn't have dealt with all of the nitty-gritty, but were you the person who would have carried out the person-to-person or man-to-man negotiations or dealings with Mr. O'Brien?

A. Generally, yes.

Q. And did that include non-corporate as well as corporate matters?

A. Yes, it would include private banking as well as corporate.

Q. And am I right in thinking, from evidence given by other bankers in other aspects of the work of this Tribunal, that this was because you were effectively the relationship manager where this particular individual and his various corporate vehicles were concerned?

A. Correct.

Q. You say that you also knew Mr. Phelan through his dealings with the bank?

A. Yes.

Q. Am I right in thinking that Mr. Phelan would have had dealings with the bank in his capacity as an adviser to or in any other way assisting Mr. Denis O'Brien or one of his corporate vehicles?

A. He would have had facilities in his own right.

Q. Yes, I'll come to that in a minute. But did he have dealings with the bank on behalf of Mr. Denis O'Brien?

A. Yes, he did.

Q. Was he, in fact, the - would he have been the main individual that you would have dealt with on behalf of Mr. O'Brien in connection with Mr. O'Brien's affairs, other than Mr. O'Brien himself?

A. Yes.

Q. Am I right in thinking that, in fact, Mr. Phelan had signing rights on some of Mr. O'Brien's accounts? By that I mean maybe his own accounts, maybe his corporate accounts?

A. He had on some, yes.

Q. Did Mr. Phelan also have dealings with the bank in his own personal capacity?

A. Yes.

Q. And by that I mean accounts in his personal accounts or, perhaps, accounts of entities controlled by him or used by him in the course of his business activities?

A. Yes.

Q. And were those matters also dealt with by you?

A. Yes.

Q. Were you effectively again the individual in the bank who conducted the bank's relationship with Mr. Phelan?

A. Yes.

Q. So that your dealings with Mr. Phelan could consist of dealings with Mr. Phelan in his personal capacity or dealing with him as an agent of or an associate of Mr. Denis O'Brien?

A. Yes.

Q. And between the two of you, for a long period of time in any case, and I think we understand from other evidence that Mr. O'Brien may now have a much more, I suppose, I am not in any way wishing to cast any aspersion on Mr. Phelan's expertise, but he has a much larger, perhaps more structured financial team advising him now?

A. I don't know, because as I was leaving the bank, there was changes taking place. I believe so.

Q. Do you have any continuing business associations with either Mr. Phelan or Mr. O'Brien?

A. On a day-to-day basis, no, but I have a property investment which I have made which Aidan Phelan has also invested in that. But there are, I think, about 15 investors in that in total.

Q. Right.

A. And then I am an investor in a number of technology companies where Denis O'Brien's company E-Island or - no, sorry, Island Capital, his venture capital arm is

an investor.

Q. Do you remember or have you any knowledge of evidence given to this Tribunal over the past two weeks concerning controversies that arose in November of 1997 in connection with the IPO of ESAT Telecom, Mr. O'Brien's telecom vehicle?

A. I have read a bit about it. I wouldn't be fully up to speed on it at all.

Q. Are you aware that in the course of the evidence given in connection with that issue, that one of the questions which has arisen in 1997, November of 1997, was whether certain - whether movements of a certain size took place on Mr. O'Brien's accounts in Woodchester Bank. Have you heard of that evidence having been given?

A. I heard of something about it. I don't know anything about it.

Q. At the time were you involved, involved in any way in providing assistance to Mr. Phelan or Mr. O'Brien or the people running the IPO in relation to queries concerning movements on Mr. O'Brien's Woodchester accounts?

A. No.

Q. You say that in late December of 1999 you were approached as a Director of Corporate Banking by Mr. Aidan Phelan and that Mr. Phelan sought a loan of $\frac{1}{2}$ 420,000 Sterling.

A. Correct.

Q. Now, you are aware, I presume from some of the evidence you've heard or some of the questioning you've heard today, that Mr. Phelan asserts that he approached you on behalf of Mr. Michael Lowry?

A. I have heard that.

Q. You have been furnished with copies of Mr. Phelan's statement to this Tribunal, isn't that right?

A. Yes, I have.

Q. And if you have a book of documents in front of you, this particular statement is contained, I think, at leaf number 7 - leaf number 5, I'm sorry, I beg your pardon.

A. Yes.

Q. And the part of the statement that deals with this matter is contained in paragraph number 7. I presume you've read that paragraph already?

A. I have, yes.

Q. And in that paragraph Mr. Phelan says:

"Mr. Lowry.

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 a loan facility. In this regard, I had a good and long standing 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. Vaughn 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."

If you go on to paragraph number 8, Mr. Phelan says:

"When I discussed the matter with Mr. Tunney, including the shareholders in Catclause, namely Mr. Lowry and his daughter, it transpired that a suitable guarantor would be required to support the application. Mr. Lowry provided a personal guarantee from Mr. John Daly of Kinsale, Cork. This signed guarantee documentation was faxed to GE Capital Woodchester Bank on the 17th of December of 1999."

From the answer you gave me, I take it that you do not agree with one scintilla of that?

A. I do not.

Q. Mr. Phelan approached you to get a loan for himself?

A. Absolutely.

Q. He did not tell you he was trying to assist Mr. Lowry and his daughter?

A. Correct.

Q. He did not tell you that he was trying to persuade you to give them a loan?

A. Correct.

Q. He did not tell you, "I want to put in a good word for somebody."?

A. No.

Q. He did not tell you "Mr. Lowry has a good proposal, look, I think you should put it up and you know me, you have a lot of experience of dealing with me. I am telling you it's a good idea." It was nothing like that?

A. No.

Q. No reference of any kind, no form of support, no form of encouragement at all which involved giving a loan to Mr. Lowry?

A. There was no mention of "Lowry" at all.

Q. Mr. Phelan did say to you that he was using a corporate vehicle to do this?

A. Yes.

Q. Had you ever met Mr. Lowry prior to the date that this loan was drawn down?

A. I did. I met him in the summer of 1999, before the loan facility. I met him once. I met him in a hotel with

Aidan Phelan and his business partner, Helen Malone.

Q. And what was the purpose of that meeting?

A. He had a company, a refrigeration company, which was profitable but was under pressure, particularly because it had lost some business, in particular, the Dunnes Stores business, and he was looking at ways of extricating himself from that. Where my role came in was that I knew quite a few people in the business community who may well be interested in something like that, and basically could I be of any help there.

Also being discussed was his whole personal financial situation and the effects of everything that was going on around him. The bottom line on it was that my advice at that meeting, which was my only meeting ever with him, was just try and give everything away, to get a settlement - 'too much pressure on you. Get it done and get it gone'.

I was surprised just at the difficulty the man was in from every aspect.

Q. Are you saying that you advised him to sell up, get out and start something else?

A. Just try and do a deal with everybody, do a settlement, whatever, just get shot of everything and be gone. So that was my only meeting and that ended and that was it.

Q. At that meeting, how did, or what I should say is what

was Mr. Phelan's role in that meeting, as far as you were concerned?

A. He asked me to go to the meeting.

Q. And how did he represent to you the services or the role that he was performing in relation to Mr. Lowry's affairs?

A. Basically, he had a - he had this client and he was wondering if I could help him in some way.

Q. And before you went to meet him, you knew that - or at least you believed, from what Mr. Phelan had told you, that Mr. Lowry was his client and that his client was in trouble and he wanted some advice from an experienced banker?

A. Yes.

Q. As to how he should get out of this?

A. Correct.

Q. He wasn't coming to you for a loan at that time?

A. No, absolutely not. It was never on the agenda.

Q. So it wasn't really in your capacity as, if you like, an agent of Woodchester that you were meeting Mr. Lowry at that time?

A. No, unless I could marry him with one of our customers, to sell a business or something like that.

Q. I see. You had customers in similar business to his?

A. Not necessarily. But I would know people, quite a wide array of people in the business world.

Q. Was it because of your experience in the business world

or was it because - was it because of your experience in the business world in general and not your executive role in Woodchester that you were being asked to this meeting?

A. I don't know. I would say it was because of my close relationship with Aidan Phelan.

Q. In other words, if you had got involved in assisting or advising Mr. Lowry, is it Woodchester who would have been providing the assistance?

A. No, not at all.

Q. Would that have

A. We actually would not have been providing any assistance, because there was nothing there that we would have provided assistance to. It wasn't our

Q. I see. Even if after your discussion with Mr. Lowry you felt that there was something you could have done for him over and above telling him to get rid of everything, or even if in getting rid of everything you had clients who might have been interested in purchasing his business or parts of his business, is it Woodchester that would have been involved or would you personally have been involved?

A. I would solely have been an introducer to somebody else.

Q. Were you doing this, as it were, as a personal favour?

A. It was a favour.

Q. There was no question of any professional involvement

on your part?

A. No.

Q. Or on Woodchester's part?

A. None.

Q. You were not going to charge any fees for this?

A. No, absolutely not.

Q. And I think you said a moment ago that that was your only meeting with Mr. Lowry?

A. That was my only meeting with Mr. Lowry.

Q. And apart from that being your only meeting with Mr. Lowry, did Mr. Phelan bring up with you on any other occasion any other aspect of Mr. Lowry's business or affairs?

A. No.

Q. You weren't asked to involve yourself in any other business transaction concerning Mr. Lowry, apart from the one about which evidence has been given today and yesterday and the day before?

A. Absolutely. Aidan Phelan would occasionally have mentioned his name, but it wouldn't have been anything more than that.

Q. In what way?

A. Just in terms of who would be doing what for him or something like that. But that would be the sum total of it. There was no follow-on whatsoever.

Q. In terms of the work he would be doing for him, is it?

A. Yeah.

Q. What work had he mentioned he had been doing for him?

A. Just that he would be going off to see him and this sort of thing, so other than that, there was nothing.

Q. And how often do you recall that sort of remark being made by Mr. Phelan?

A. Not often, but just - I can remember once meeting him for a drink and he just mentioned it.

Q. Mentioned what? I have been to see Mr. Lowry, or I am going to see him?

A. No, he was going to be going to see him. He was sort of just mentioning it as a topic. That was all.

Q. And was this before or after this meeting that you had

A. That would have been after that meeting.

Q. in the summer of 1999? If Mr. Phelan, therefore, had mentioned Mr. Lowry to you, would it be your evidence that you would have known exactly who he was talking about at the material time?

A. Oh, yes. Yes.

Q. You had done deals for Mr. Phelan before this, quite successful ones?

A. Yes.

Q. And presumably he had involved himself not only in his own deals and brought those deals to a successful conclusion, but had also involved himself in Mr. O'Brien's affairs, and these hadn't caused trouble for you either?

A. Yes.

Q. So leaving aside whoever he was acting for, whether himself or Mr. O'Brien or anyone else, your experience of dealing with Mr. Phelan was that he would bring home the bacon, as it were, in terms of whatever you were asking him to do?

A. Absolutely, yes.

Q. He was also, I take it - I have no desire to pry into his personal affairs - but he was a man of financial substance himself?

A. Certainly, yes.

Q. In this case, he wasn't taking the loan, according to your evidence, in his own name; he was taking it in the name of Catclause, an English registered company?

A. Yes.

Q. And as far as you were concerned, that was his vehicle?

A. Correct.

Q. And you say that is at some stage in the course of the transaction, the question of a guarantee arose. Was it you who brought up that on your own initiative or as a result of something, if you like, coming from the Investec side at that time in terms of the type of security they would require for your transaction?

A. The guarantee of John Daly?

Q. Yes.

A. Yes, basically that in my discussions with Aidan Phelan, Aidan Phelan offered that to me. John Daly was

a guy who was sold to me as being a guy who has building experience, has done all of these kinds of projects before, knows what it's about.

Q. What I am trying to get at, really, is this: When you were doing the deal with Mr. Phelan and you said, "Look I'll provide you with the money," and they agreed on an interest rate or whatever, did you say to him, "Look, because it's a limited company we are going to have to have a guarantor."? Was it you who asked Mr. Phelan for the guarantor?

A. It was offered to me.

Q. So without you drawing it up at all, Mr. Phelan said, "I will provide you with a guarantor."

A. Yes.

Q. And had he not mentioned it, would you have sought a guarantor?

A. When we provided that loan, in my mind the order of things is Aidan Phelan, the property, and that individual guarantor. I have done, as I've said, quite a number of deals with Aidan over a number of years, some of them always haven't gone as well as others, and he has always repaid and he's always made good the bank. So from that perspective, I had absolutely no issues with him at all. And I was absolutely comfortable with him as a counterparty.

Q. In the other deals that you had done with Mr. Phelan in the past, had they involved borrowing by him where the

vehicle he proposed to use for the borrowing and for any related project was a corporate vehicle?

A. He has used corporate vehicles before, yes.

Q. Had you sought guarantees in those cases? If you can't remember, we can presumably check it.

A. Yes. I don't - certainly one I can think of. I don't think so.

Q. Yes. And is that because he didn't offer it and you didn't look for it?

A. Yes.

Q. Because you saw Mr. Phelan himself as the person that you were going to look to to make this

A. It was slightly different, the project we are looking at here today.

Q. Yes.

A. It was more corporate in nature and it had share capital put into it.

Q. I understand. There is a difference?

A. There is a difference there, yes. And maybe the difference would be, you've got an asset here with share capital in it.

Q. Still, you say that it was Mr. Phelan mentioned the question of a guarantor, not you?

A. Yes.

Q. Do you recall any discussion between you and any of your colleagues in GE Capital Woodchester concerning the provision of a guarantor?

A. I don't.

Q. You don't recall that anyone in the bank, anyone who discussed this and they would have been Mr. Cullen, Mr. Morland, mentioned to you that you should get - that the bank wanted a guarantor here?

A. I don't recollect any conversation on it, no.

Q. If the guarantee had not been provided at that early stage

A. Mm-hmm.

Q. would it have caused you a night's sleep, to lose a night's sleep, sorry.

A. Well, as it has been put in previous evidence, getting the guarantee of John Daly, a man who has significant net worth, who was well reported by his bank, by his accountants, that is of value. And banks are not accustomed to turning down security. So that was certainly material in the credit transaction, yes.

Q. Did it occur to you at all that there was something strange in Mr. Phelan, who was presumably an astute businessman himself, offering or volunteering to provide a guarantor?

A. No, because people will very often bring projects to you that includes guarantors or includes various types of security. So that would be the norm. Bear in mind that Aidan Phelan and his business, prior to being in his current business, he was in another accountancy business, he would have been arranging facilities for

people, so he would be well used to what banks would be looking for.

Q. But this guarantor was somebody completely unknown to you and to your bank.

A. Yes. And the comfort I took was that I knew Aidan Phelan.

Q. Yes, but you hadn't even heard of this man before. He meant absolutely nothing to you?

A. That's right. He was a bonus. As I say, I looked at Aidan first, the property second, the guarantee third.

Q. Yes.

A. And so from that perspective, each time I was diminishing my risk.

Q. If we can jump forward a little bit for a moment. Do you remember the guarantee not materialising, as it were?

A. I don't - I didn't realise there were all the difficulties about the guarantee at all. I hadn't heard that at all.

Q. When do you recall first hearing that there were difficulties with the guarantee?

A. I think it was in these statements here.

Q. Up till then you never knew there had been a difficulty with the guarantee?

A. Sorry?

Q. Up to the time you saw these statements, you weren't aware that there had been a difficulty with the

guarantee?

A. I knew that we hadn't got the guarantee, but I didn't realise that the guarantee, that John Daly had refused to give it back.

Q. Do you remember when you first became aware that the guarantee was not available? Leave aside the reasons why it wasn't becoming available.

A. I don't remember.

Q. Was it some time before you left the bank - left the bank in an executive capacity?

A. I don't remember.

Q. You say that the reason the guarantee wasn't made available is something you've only heard of now?

A. Mm-hmm.

Q. And I suppose you are saying, on the basis of the answer you made to my first question, that you weren't aware of Mr. Lowry's involvement of the guarantee?

A. No.

Q. Were you aware of the proposition that the guarantee was not regarded as reliable because it had merely been faxed to the bank, signed, but not witnessed or dated?

A. I was aware of that, yes.

Q. When did you become aware of that?

A. I think shortly after, and shortly after that and

Q. Shortly after what?

A. Shortly after the deal was done and Aidan Phelan was contacted to get the guarantee completed.

Q. When you say he was contacted, do you mean somebody else contacted him, a member of your staff?

A. I understand so.

Q. When you say you understand so, does that mean that you said, "Would you get somebody to chase that up" or do you believe somebody else chased it up independently of any instruction from you?

A. I would have got somebody to chase it up probably, yes.

Q. And do you recall what the result of that chasing up of the guarantee was?

A. Oh, well, nothing got done.

Q. Yes. When were you made aware that nothing had been achieved or nothing had got done?

A. That really only became an issue about I would say when the account became an arrears issue, to be honest.

Q. Would that be some time after August, I think?

A. Yeah. And the reason for that was when the facility was put in place, I was in the process of going - exiting from the business, because I had - for a long time I wanted to move out of the business because I wanted to get my own business up and running. But also the Investec takeover was in process and there were lots of changes taking place as well. And, for example, I was involved in the recruitment of people to replace me within the bank.

Q. Yes.

A. So the fact that Aidan Phelan was involved in the

transaction gave me a lot of comfort, I didn't have an issue with it and so it certainly wasn't on my radar screen.

Q. So can I take it, then, that it wasn't really until some time after July, certainly after August of 2000, that you became aware that this guarantee had never been put in place?

A. Yes, I think so. Yes.

Q. I am going to move on to another section of the material.

CHAIRMAN: It's probably appropriate that we start that fresh aspect tomorrow morning at 11:00 if that's suitable to you.

Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 20TH JULY, 2001 AT 11 A.M.