

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 26TH JULY,  
2001 AT 11 A.M.

CONTINUATION OF EXAMINATION OF AIDAN PHELAN BY  
MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Phelan, I wonder if we could  
continue dealing with the note of the meeting held on  
the 28th February, 2001, if that's all right with you.

I think if we continue do you agree with the note  
when it records that after dealing with the reference  
to the Denis O'Brien matter which you dealt with  
yesterday, the note continues: "Aidan Phelan would do  
everything necessary to sort out the bank's  
documentation problems." Did you give that indication  
to Mr. Morland and Mr. Cullen?

A. Yes, and that was in the context of the compliance  
concerns that were mentioned.

Q. Yes. Now, the note then continues: "When asked why the  
transaction had not closed and the loan repaid, Aidan  
Phelan informed the bank that other business events had  
taken precedence over this matter." Do you remember  
informing Mr. Cullen and Mr. Morland of that?

A. Yes, and that was in the context of my proprietorial  
interest in the transaction, that I hadn't had time to  
sell the property. I have always said consistently  
that I saw the loan being repaid from the sale of the  
property.

Q. Just to be clear about this, whoever was behind this transaction, the underlying basis of the transaction was effectively that this was to be a bullet loan, in effect, turn the property over, hopefully make a profit, repay the bank out of the sale of the property, isn't that that was the underlying business transaction or intention at least?

A. The underlying business intention was it was a short term loan.

Q. With the hope of achieving that particular end, wasn't it? That the property could be turned around, a profit would be made, the bank would be paid off in reasonably short

A. I think that's fair, yes.

Q. Now, dealing with the matter of security, I take it you do remember you must have discussed the matter of security with Mr. Morland and Mr. Cullen at this meeting?

A. Yes.

Q. And it's recorded by Mr. Morland: "Aidan Phelan inquired as to whether the bank still required the guarantee of John Daly. The bank said it did not think so and asked how he had become involved in the transaction in the first instance. Aidan Phelan stated that 'They were only trying to help Michael Tunney out from a credit viewpoint to enable the transaction to be banked in the first instance'." Do you remember using

those words or words to that effect?

A. I remember Daly's name coming up. At this stage in the meeting I became concerned that Michael Tunney had been excluded and I was receiving serious mixed signals and I was trying to go through the meeting as if they were acquiring Catclause Limited. It was clear from what they said to me that Catclause Limited, they hadn't been informed that Catclause Limited was gone and they had serious compliance concerns.

Q. When you say and I'll come back to deal with it and allow you deal with it when you say you were getting mixed signals, was the mixed signals you were getting, one signal from Mr. Tunney, is that correct, and another signal from these two gentlemen at this meeting?

A. Yes.

Q. Now, the note continues: On the property itself, the bank informed Aidan Phelan that it had been brought to their attention that the property was registered into Christopher Vaughan's and his wife names and that they were finding it extremely difficult to extract information from Christopher Vaughan in relation to this deal and it was noted that Christopher Vaughan was Catclause's solicitor. Do you remember being told that by Mr. Cullen and/or Mr. Morland?

A. I don't remember them saying that they were finding it difficult to extract information.

Q. Right. Do you remember them saying that they were a bit surprised or concerned that the property of registered in the name of Mr. and Mrs. Vaughan?

A. Yes.

Q. Now, the note continues: "The bank also informed Aidan Phelan that they had requested Christopher Vaughan to forward the title deeds and a copy of the trust deed to their lawyers in Cardiff." That was to Eversheds, I think?

A. Yes.

Q. I think you did know, even by the time this meeting took place, that Eversheds were in contact with Mr. Vaughan?

A. Yes, I believe so.

Q. Now the note then continues: "Aidan Phelan informed the bank that Christopher Vaughan had been instructed not to reveal any information relating to matters concerning Aidan Phelan or Denis O'Brien without instructions from the principals themselves.

He" that being Mr. Vaughan - "acted for Denis

O'Brien on property transactions in the UK such as the Doncaster Rovers transaction where confidentiality and privacy were required. Aidan Phelan would instruct him to cooperate with the bank in this matter." Do you remember informing Mr. Cullen and Mr. Morland of that?

A. I remember discussing confidentiality and that Christopher would act under instructions from his

client.

Q. Do you remember making reference to yourself and Denis O'Brien?

A. I don't specifically remember the Doncaster/Denis O'Brien thing coming up but, you know, I will accept it was said.

Q. You accept it must have, because the information was only the information they could have got from you or somebody

A. I accept it's probably likely. I just can't see how it was relevant to the meeting, but

Q. Well, I suppose its relevance may well be related to the fact this they were indicating that they were having difficulty in getting information from Mr. Vaughan and you would have informed him that Mr. Vaughan was not to disclose information about you or Denis O'Brien without direct instructions?

A. Yeah, I am at odds to understand how they were having difficulty getting information from Christopher Vaughan.

Q. Right, well we'll just continue with the note

A. I'd just like to clarify that. I just think that Christopher Vaughan, he wrote to the bank after the loan started looking for charge documentation. It was never forwarded. You know, I don't think he ever he never didn't reply to any communication he had from the bank, in my experience of the file.

Q. Right. And looking at the file, and you have had the opportunity of looking at the file with the benefit of hindsight, just like the Tribunal has, isn't that correct, and that's your view of the documentation on the file?

A. Hindsight is a very big point to me in all of these proceedings.

Q. It's very important to the Tribunal as well.

A. Yes.

Q. And I'll come to deal with Mr. Vaughan's correspondence in a moment and you can point out where you feel that Mr. Vaughan was being cooperative and helpful and furnishing all the appropriate information to the bank, which is your view, is that correct?

A. Well, my view is based on my conversation with Christopher. I didn't study his correspondence in detail. He informed me, you know, that

Q. all right, it's based on what you were being told by Mr. Vaughan?

A. Yes.

Q. Yes, right. Now, I take it you did inform Mr. Cullen and Mr. Morland that you would instruct Mr. Vaughan to cooperate with him in this matter?

A. I did, yes. I was - in an effort to allay their concerns I said that I would instruct Christopher Vaughan - they seemed to be anxious to have Catclaus Limited reinstated and their file put back into

compliance shape.

Q. I take it you could understand their concern as well when they informed you that it was a matter of some concern to them that the property was registered in the name of Mr. and Mrs. Vaughan and their interest, in effect, wasn't noted?

A. As far as I am aware Christopher informed the bank that he was holding the property to their order.

Q. Yes. But

A. is that not

Q. On the register?

A. Yes on the register.

Q. When the search was done, it was just baldly in the name of Mr. and Mrs. Vaughan?

A. I accept that. He had correspondence

Q. This caused them some concern and they indicated that to you?

A. I accept that, yes.

Q. Now, the note continues: "When asked by the bank when Aidan Phelan was prepared to disclose whom the other party to the trust deed was, Aidan Phelan declined to do so, stating he "Never lied to his bankers". He would get the bank a copy of the trust deed by Friday 2nd March, 2001." Do you remember that particular conversation?

A. Would I remember that is something I would say.

Q. Now

A. Now, I would add that they made reference to a trust deed. I assumed it wasn't the main focus of my work, this particular transaction. But I assumed when they made reference to it that they had some information that there was a trust deed in existence. I now know that such a document didn't exist.

Q. But you did inform them that you would get the trust deed for them?

A. Yes. But as we'll see, events overtook my follow-up on that.

Q. Yes, I know. But there was no trust deed?

A. There was no trust deed. I assumed when they brought up the fact there was a trust deed, or their view was that there was a trust deed, I assumed there must be a trust deed so naturally I offered to get a copy of the trust deed.

Q. Well, I think you know from a letter which was written by Mr. Vaughan where he informed the bank that he and his wife were holding the property as bare Trustees. He informed the bank also that he didn't have a copy of the trust deed in his possession at the time?

A. I am aware of this, yes.

Q. Isn't that right?

A. Yes.

Q. So that is information which was being conveyed to the bank by Mr. Vaughan?

A. I accept this.

Q. And I suppose, not unreasonably, if one was told that solicitors were holding property in trust for somebody and made reference to a trust, that bankers or anyone dealing with the solicitor would expect a trust deed to be in existence?

A. I fully accept that but just addressing my reference in the meeting, my reference in the meeting was an attempt to cooperate with the bank in achieving their objective of filling up their compliance information. When they brought up the fact of the trust deed, I naturally assumed there was one in existence.

Q. Why?

A. Because they seemed be aware that there was one.

Q. From a letter

A. I am not sure how they came to that view

Q. By a letter written by Mr. Vaughan?

A. Yes.

Q. Who was acting on your instructions, it would appear, in relation to these matters?

A. Yes.

Q. Are you sure there was never a trust deed?

A. I have never seen a trust deed.

Q. Are you sure there was never a trust deed?

A. I am sure.

Q. You are sure there was never a trust deed?

A. I am a hundred percent sure.

Q. What did you mean by using the expression "Never lied

to his bankers" when they asked who was the other party to the trust?

A. It's a principle I have had with banks that I generally have always followed and it's been successful, I don't I tell them the position as it is and that's an expression I would have used.

Q. I can understand that you would

A. it's carried me a fair distance down the road.

Q. That you wouldn't lie to a bank when you are conducting business with them, of course, and that's what you'd expect. You are a professional man who would be in the way of practice of dealing with banks on behalf of clients and personally and of course you wouldn't lie to a bank, isn't that correct?

A. Yes.

Q. But what was being asked here was the bank were asking who the other party to the trust deed was. They had been informed by Christopher Vaughan that he and his wife were the Trustees and what they were looking for was who was the beneficiary? Who were Mr. and Mrs. Vaughan holding the property for, isn't that right?

A. Correct.

Q. And that's all they asked you, 'Who was the other party to the trust deed?' Leave aside whether a trust deed existed or not. Mr.. Vaughan had stated that he and his wife were the Trustees and what the bank wanted to know was who was the beneficiary?

A. That's correct.

Q. I take it there was no difficulty in you understanding that?

A. No.

Q. And at this stage why didn't you just say to them, 'Look, Christopher Vaughan is holding the property for me'?

A. Because they were clearly of the opinion that Catclause Limited was still on their loan book and whereas I knew that it shouldn't be on the loan book and accept that the documentation was never followed up.

Q. I can understand that

A. therefore I was looking at it as a situation that Michael Tunney, who was my contact, was excluded specifically from the meeting and they are going down this road where they believe that Catclause Limited was still the borrower on their loan book. Okay, I was trying to be evasive.

Q. You were being evasive?

A. Yes, in relation to that matter I was being evasive and I said 'As soon as I get out of this meeting I better contact Michael Tunney and find out what is going on in the bank between the different parties'.

Q. Right. Now, I don't want to cause any controversy with you, but would you accept that, in fact, in this case, you did lie to the bankers by way of omission?

A. Being evasive and I don't accept that, no. I think

being evasive, I said 'I am not telling them'. By way of omission - you could stretch it, but I would disagree. I think when you are doing business with banks, I think there is a difference between, you know, lying to them and being evasive about a matter until you check it further to suit one other director and another wing of the bank. You have to accept you have to accept there is a human dimension here. I did business with Michael Tunney for a long time. Morland, I had never seen him before. He appeared out of the blue, uninvited, to the meeting. I was taken by surprise. I was quite relaxed and casual at the meeting. I wasn't particularly I was trying to, as you would do with these type of meetings, just saying 'Okay, what's your story? Tell me your story'.

Half-way into the meeting I said 'This is not the script as I know it' and I was being evasive and I was trying to say 'Look, I need to talk to Michael Tunney to understand why I am getting these mixed signals'.

Q. Well, what was the mixed signal you were getting?

A. The mixed signal was I was fully sure that Michael Tunney knew I had taken over the loan. I accept we didn't follow-up on proper documentation and sort out and get Catclause Limited off the loan book and put me into place or, at least, as was suggested, you know, me take over the Catclause company, or whatever the case, but tidy up the documentation. I knew I was I was

fully sure that Michael Tunney was aware that I was the party to the loan and not Catclause Limited. And the mixed signals were that these people were unaware of that, clearly unaware of that.

Q. They were clearly unaware of it, isn't that correct?

A. Yes.

Q. And what they were trying to do was get to the bottom of the situation. If I continue the note for a moment:

"The bank asked for a copy of the valuation marketing report which had been prepared on the property by Chestertons in the UK. Aidan Phelan informed the bank that he only had a poor quality fax copy and would arrange for a letter copy to be sent to the bank."

A. Yes.

Q. That's fairly routine sort of matter, the valuation on the property?

A. I mentioned yesterday in evidence that as part of the thing when I took over, when I clarified that Michael Lowry was unable to dispose of the property and pay back my loan, Christopher introduced me to Chestertons to try and sell the property.

Q. Yes. And then the note continues: "The bank informed Aidan Phelan that certain information had come to their attention that brought into question the validity of certain of the documentation held by the bank." Do you remember them telling you that?

A. Not particularly.

Q. "Aidan Phelan promised to get a list of the directors and the particulars of them to the bank, although he did think that the company had since been dissolved."

Do you remember telling them that?

A. I remember mentioning the fact that I thought the company was dissolved.

Q. Well, did you also inform them, as is noted here, that you would get them a list of the directors of the company?

A. Yes.

Q. And the note continues: "The bank asked that Aidan Phelan prepare a statement for the bank relating to this transaction and how it had come about and what were the intentions of the owners of the property. Aidan Phelan promised to have all the required information to the bank by Friday 2nd March 2001 as he was going to the Isle of Man and then to Canada at the end of the week. The bank at no time indicated to Aidan Phelan that they were aware of whom the registered directors of Catclause were as we had no confirmation as yet from Companies House in the United Kingdom."

Now, at this meeting on the 28th you had had a telephone conversation, was it the previous evening, with Michael Tunney?

A. Either, yeah, earlier that day or previous very

Q. Before the meeting?

A. Yeah.

Q. And had you also had a meeting earlier in February sorry a telephone conversation with Michael Tunney earlier in February where the loan had been discussed?

A. It's possible. I don't recall. I recall phoning Michael Tunney when I was told he was specifically when Michael Cullen arranged the meeting with me and specifically excluded him. I don't remember the earlier call with Michael but, you know, I spoke to him fairly regularly.

Q. To Michael Tunney?

A. Yeah.

Q. Now, the conversation you had with Mr. Tunney prior to this meeting, what was said?

A. I said 'Michael' I informed him that Michael Cullen was coming to meet me about the loan and I said, you know, 'Are you not coming?'. And he said 'He just wants to check it out for himself'. That broadly was the tenor of the conversation. I don't specifically remember anything else. He was not concerned that Cullen, Michael Cullen was coming to the meeting alone and specifically excluding Michael Tunney. He wasn't concerned.

Q. Was it a usual or unusual event for the for any bank to come to your office to discuss a facility rather than you going to the bank?

A. With okay, I wouldn't call them the fringe banks but with the smaller banks, the like of Anglo, Equity, Woodchester, you know, Investec, it wouldn't be unusual for them to visit me. It wouldn't be unusual, I'd say.

Q. It would be, I suppose, the experience and the view of most people dealing with the main commercial the main banks, that for a bank to come to you, it's a fairly serious step, isn't it?

A. No, I wouldn't agree. It tends to be in the smaller banks the personal relationships are stronger and it tends to be that little bit less formal.

Q. I see. I was just talking about the bigger banks?

A. In the bigger banks, yeah

Q. It would be a fairly drastic step?

A. A drastic step.

Q. Or unusual at least?

A. It possibly would be.

Q. How often had Mr. Tunney come to your office to discuss facilities?

A. He would have come fairly regularly.

Q. He would have come fairly regularly?

A. Yeah. I am just thinking in terms of when I I visited his office, he visited mine, it wasn't particularly unusual.

Q. Mr. Cullen was Mr. Tunney's superior in effect?

A. He was the Chief Executive.

Q. Had Mr. Cullen ever come to your office prior to this?

A. He had, yes.

Q. In relation to discussing a facility?

A. Yes.

Q. And did he come with Mr. Tunney?

A. He did.

Q. Had he ever come on his own?

A. No.

Q. Or was it ever arranged?

A. No, he never came on his own.

Q. And this was the first time that this type of meeting was arranged?

A. Yes.

Q. That the Chief Executive Officer was coming himself?

A. Yes.

Q. Now, if, as you have given evidence, that when this particular arrangement was introduced to the bank by you, that is on behalf of Michael Lowry, that you informed Mr. Tunney of the true nature of the arrangement, as far as you were concerned the bank were in possession of the full picture relating to the loan, isn't that correct, that it was for Mr. Michael Lowry, in effect?

A. As far as I am concerned, yes.

Q. And is there any reason why you shouldn't have said that to Mr. Cullen at this particular meeting 'Look, I know the documents may be in a bit of a mess but you understand and you know what the true situation is,

that this was a Michael Lowry facility. Unfortunately something seemed to go wrong with the guarantor and I, in effect, have taken over the whole matter.'?

A. No, there was no reason I didn't say that except for the fact that they started into the whole compliance side of Catclause Limited.

Q. Yes, but that, as you saw it, related to getting the file right, didn't it?

A. Yes.

Q. And I am sure, as an experienced practitioner dealing with the chief executive of a bank, that was something that could have been sorted out if it was just a question of getting the file right?

A. Yes, I accept that.

Q. There was no great difficulty. He mightn't have been too impressed by the state of affairs but it was something that could have been sorted out if it was just the paperwork, isn't that right?

A. Yes.

Q. Why didn't you tell Mr. Cullen at that meeting that Mr. Lowry was the person behind this transaction initially?

A. Because I was aware that Catclause Limited at that stage was still on their books.

Q. I understand that, that they believed that Catclause Limited was still on their books, and was on their books. Why didn't you just say 'That's Michael Lowry's

company' and just explain what happened?

A. Whatever way the atmosphere of the meeting went, I just didn't think it was appropriate to go down that road.

Q. Wasn't it the simple thing to do?

A. It was simple but I felt it was not appropriate.

Q. And wouldn't it have sorted the whole matter out?

A. It would have sorted out the matter and, as you will see, the following day I contacted Michael Cullen and explained, met him and explained the position.

Q. This was, I think, on the 1st, was it, you met Michael Cullen?

A. It was either the 1st or the 2nd.

Q. I think it may have been the Friday and it may have been the 2nd.

A. Yeah, it was the 1st or 2nd. The meeting was on the 28th, which was the Wednesday.

Q. And was it you asked for that meeting? I understood Mr. Cullen in his evidence that he made the arrangement to see you. It may be unimportant?

A. Well, I have I went as far as checking my phone records on this and I could have arranged the meeting. He could have arranged the meeting. But we certainly met.

Q. Yes, there is no doubt about that?

A. I offered to meet him and he suggested we meet, as he described it, 'half-way', which he was going to Rathmines and he offered to meet in the Conrad Hotel

and we met there.

Q. You met in the Conrad Hotel?

A. And he was going to China that evening and he asked me to talk him through. After the meeting was over, I knew there was serious mixed signals within

Q. Did Mr. Cullen not inform you at that meeting as to the his confirmed understanding of who was behind Catclause and that it was Michael Lowry? Didn't he tell you that at that meeting?

A. He probably did. What he said to me actually was that, he said 'We don't want to know about Catclause Limited'. And I explained to him the situation. And he said 'Why don't you put that in writing?' and he described the contents of the letter which I wrote, which is in direct conflict to the letter of - Christopher Vaughan's letter of the 1st March where I asked or requested Christopher to reinstate documentation for Catclause Limited.

Q. Your letter is the letter of the 5th March, 2001, is that correct?

A. Yes.

Q. If we just deal with Mr. Vaughan's letter first of all, of the 1st March, 2001. Do you have that? It's page 97 and it's a letter to Mr. Morland. Had you asked Mr. Vaughan to send this letter to Mr. Morland on the 28th?

A. I had, yes.

Q. After the meeting?

A. Yeah, yes.

Q. Right. And you discussed the matter with Mr. Vaughan before he sent the letter, isn't that right, I take it?

A. Yes.

Q. And you knew when Mr. Vaughan was being instructed to send this letter, that the bank wanted to know who was behind Catclause, isn't that correct? They wanted to know who the directors were?

A. Yes.

Q. Now, Mr. Vaughan's letter reads:

"I refer to the telephone conversation we had on the 28th February 2001 as to the above property. I subsequently had a telephone conversation with Aidan Phelan with regard to the same matter.

The history of this transaction is that I was instructed to act in respect of the acquisition of this property and a limited liability company called Catclause Limited was set up as the vehicle to acquire the property.

There were various delays following the exchange of contracts on the 9th September, 1999 and actual completion on the 21st December 1999. It should have taken place on the 30th November, 1999.

By the time it had been decided that Catclause Limited was an inappropriate vehicle to acquire the property

and I was instructed that the property should be held in the names of myself and my partner as bare Trustees for Aidan Phelan.

The advance of i;½420,000 from your predecessor, GE Capital Bank, was received into my solicitor client account by bank transfer on the 21st December, 1999 and was immediately utilised to complete the purchase of the property.

Subsequently, following the registration of the property, the land certificate was held by me strictly to the order of your predecessor's, GE Capital Bank and subsequently to yourselves.

I understand that the change of identity of the purchaser has caused compliance difficulties within the bank.

Aidan Phelan has, however, instructed me to write to you to confirm that the property is to be held strictly to the order of Catclause Limited and that the property should be transferred into the name of Catclause Limited at the earliest possible moment.

Once this transfer has taken place it should regularise the position so far as the bank as funder of the purchase of the property is concerned.

You did ask me for details of Catclause Limited. I

have now had an opportunity to look at my files and I discovered that all the documentation I had relating to this company had been passed to Aidan Phelan's English accountants. I am therefore unable to assist you on that particular point.

However, you may regard this letter as my irrevocable undertaking to hold the Land Certificate to the order of yourselves as funders. I confirm that my partner and myself are Trustees of the property for the benefit of Aidan Phelan and/or Catclause Limited and, when requested, will arrange for the transfer of the property into the name of Catclause Limited as registered proprietor.

When we spoke on the telephone yesterday you mentioned the difficulty that the bank had in that the money had been sent to me to acquire the property in the name of Catclause Limited. Whilst I appreciate the bank's position, so far as I was aware, the bank was fully aware of what was happening. I did not have any written instruction whatsoever from the bank to the effect that the property had to be placed in the name of Catclause Limited. If I had received such written instructions, then obviously I would have needed to seek a variation of those instructions prior to completion."

Now, the final paragraph is a matter which only, I suppose, Mr. Vaughan could respond to and the Tribunal received a letter this morning from Mr. Vaughan informing the Tribunal that he would not be prepared to give evidence at the Tribunal. Are you aware you were aware that Mr. Vaughan would not

A. I am aware he was reluctant to but I would add that it was our desire that he would attend the Tribunal and give evidence and we have given all the relevant waivers for him to do that.

Q. So far as you were concerned, you have no difficulty with Mr. Vaughan giving evidence

A. No difficulty.

Q. and you give all the appropriate waivers?

A. And we are anxious to try still to persuade him to attend. I feel that it may, you know, be we may be able to get him to attend.

Q. Very good.

A. I think it would be helpful.

Q. But, in any event, I take it you would accept there are elements of this letter which, of course, are completely accurate in that the exchange of contracts took place in September 1999. There was an actual completion on the 21st December and a previous completion date had passed by, isn't that correct? I think you know that now?

A. Yeah, I accept that.

Q. And you know that the money had been advanced by the bank and it had been paid into Mr. Vaughan's client account and the money had been used to complete the sale, the purchase of this particular property, isn't that right?

A. Yes.

Q. Now, if you go to the fourth paragraph of the letter sorry, the second paragraph sorry, the second paragraph in the first instance: "The history of this transaction is that I was instructed to act in respect of the acquisition of this property and a limited company called Catclause limited was set up as the vehicle to acquire the property."

Now, in the first place, Mr. Vaughan does not indicate who he was instructed by, isn't that correct, to the bank?

A. Yes.

Q. In fact he was instructed by Mr. Lowry, wasn't he?

A. Yes, yeah.

Q. Now, secondly in relation to that paragraph, and it may be just a slight quibble, but Catclause Limited was a shelf company which had been in existence prior to the acquisition of the property, isn't that correct?

A. Yeah, I think it was in existence since June '99. I think the beginning.

Q. Now, then the next paragraph goes - that is accurate. Then the fourth paragraph: "By that time, it had been

decided that Catclause Limited was an inappropriate vehicle to acquire the property and I was instructed that the property should be held in the names of myself and my partner as bare Trustees for Aidan Phelan." Do you see that particular paragraph?

A. Yes.

Q. Now, do we take it that on completion ?

A. I think that's confusing to me, that paragraph. 'By that time' - what does that mean?

Q. Because the previous paragraph deals with, with the exchange of contracts, the actual completion date being the 21st December, 1999, a completion date of the 30th November having been passed. Now, would you agree

A. I actually noticed that paragraph is confusing. I noticed that before

Q. It seems to indicate that at the date of completion it had been decided that Catclause was not the appropriate vehicle?

A. I don't think he is putting the situation clearly as we know it.

Q. But wouldn't you agree that what should have been said to the bank, that subsequent to completion it was decided that Catclause was not the appropriate vehicle?

A. I think that would have been clearer, it would have been clearer as to what the bank were told .

Q. But the money that came from the bank, I think you would have some familiarity with solicitors' client

accounts?

A. Yes.

Q. The money that came from the bank should only have gone into Mr. Phelan's client account in the name of Catclause Limited, isn't that correct?

A. To Mr. Phelan?

Q. Sorry, to Mr. Vaughan's client account, should have been designated as being the money of Catclause Limited in Mr. Vaughan's client account?

A. That would be the normal situation, yes. If he had an account set up for Catclause Limited.

Q. Whether it went into his client account generally it should be accounted for as being

A. it should have been designated.

Q. It should be designated, isn't that correct?

A. Yes.

Q. Now, I think Mr. Phelan or I beg your pardon, I keep saying that Mr. Vaughan had received monies into his client account which would have been designated for you and Mr. Lowry. I am thinking particularly in relation to the Mansfield money?

A. Yes.

Q. Do you know how this money was treated in Mr. Vaughan's client account?

A. No.

Q. But as far as you were concerned, as of the 21st December, the person responsible for that particular

money was Michael Lowry, isn't that correct?

A. Catclause Limited.

Q. Yes, well Michael Lowry, it was it was a corporate vehicle being used by Michael Lowry, isn't that correct?

A. Yes.

Q. Who was behind the company in real terms.

A. Yes.

Q. And that should also have been very clear to Mr. Vaughan, isn't that correct?

A. It should have been, yes.

Q. Now, as far as you are concerned, Mr. Vaughan is your agent, isn't that correct?

A. Yes.

Q. Would you not agree that this particular paragraph is, at the very least, unclear as to what the true position was, if not downright misleading the bank?

A. I don't think well, I can't comment for Mr. Vaughan but

Q. but he wrote this letter

A. it's not clear.

Q. he wrote this letter as your agent, you having discussed the matter with him. It's very clear that this letter is being written on your instructions?

A. Yes.

Q. Isn't that right?

A. I accept that.

Q. Now, do you know how Mr. Vaughan came to register the property in the name of himself and his wife?

A. How he did it?

Q. Yes.

A. No, I wouldn't be familiar how he did it.

Q. Now, if you go over the page in the letter to the second paragraph headed "Aidan Phelan has therefore instructed me to write to you to confirm that the property is to be held strictly to the order of Catclause Limited and that the property should be transferred into the name of Catclause Limited at the earliest possible moment. Once this transfer has taken place it should regularise the position so far as the bank, as funder of the purchase of the property, is concerned."

Now, instructions had been given to remove Catclause from the register, hadn't it, many months previously?

A. In September, actually.

Q. In September of 2000?

A. 2000.

Q. And the paperwork for that was carried out by your accountants in England, isn't that correct?

A. Yes.

Q. On the instructions of Helen Malone?

A. I believe so, yes.

Q. So it was known to you when this letter was written,

that instructions had been given to have Catclause removed from the register, isn't that correct?

A. Yes. I was concurrently checking to see could we reinstate Catclause Limited and when the letter was being written I received mixed signals sorry in relation to the when I think I think we have some documentation. When we initially contacted the accountants Morton and Thornton, they informed me that this was in somewhat of a state of limbo. We now know that it actually wasn't struck off at that time.

Q. That it was?

A. No, it hadn't been.

Q. When?

A. When that letter was written.

Q. When was it struck off?

A. I believe sometime after like, we are talking days.

Q. Yes, that's what we are talking about, we are talking about days here?

A. Yes.

Q. The process had begun?

A. Certainly the process had begun. The letter was written in the spirit of trying to rectify what we perceived as a compliance problem. I mean, I saw it as simple as that.

Q. You saw it as simple as that. But as of this, the date of this letter, even if you saw it in terms of being a compliance problem, Catclause Limited, if it continued

to exist as a corporate vehicle or could have been reinstated, it was still Michael Lowry's company, wasn't it?

A. Yes, but obviously that would change as it was reinstated.

Q. Now, Mr. Vaughan goes on to say that the bank asked him for details of Catclause Limited and I think you had also indicated to Mr. Cullen and Mr. Morland at the meeting of the 28th that you would get information about the company, the list of directors?

A. Yes.

Q. "I have now had an opportunity to look at my files and I discover that all documentation I had relating to this company had been passed to Aidan Phelan's English accountants. I am therefore unable to assist you on that particular point." Now, can there be any doubt but that Mr. Vaughan knew that Mr. Lowry and Ms. Lorraine Lowry's were the directors of this company when he wrote this letter?

A. He could have had doubt.

Q. He could have had doubt. Did you tell him?

A. No, I didn't discuss it with him.

Q. Why not?

A. I just didn't discuss it with him.

Q. But Mr. Phelan, you had told the bank that you would get the information about who the directors of the company were, isn't that right?

A. Yes.

Q. And are you seriously suggesting that after the meeting of the 28th you had a discussion with Mr. Vaughan - and he was writing about this very matter to the bank - and you did not discuss the matter with him?

A. No, I didn't discuss it with him. I saw the Vaughan letter as an attempt to commence the rectification or the revival of Catclause Limited.

Q. To rewrite the record, would you agree?

A. No, revival.

Q. But

A. Like, when a company is struck off or sent for strike off, it can be revived, it's not rewriting the records. It's reviving it.

Q. It's rewriting the record in terms of there is no reference in this letter to Mr. Lowry, isn't that right?

A. I accept that.

Q. You knew that Mr. Lowry was the director of this, isn't that right?

A. Absolutely.

Q. It seemed clear to you that Mr. Cullen and Mr. Morland did not know what the true history of the situation was, isn't that right?

A. I accept that.

Q. Mr. Vaughan had this was a shelf company Mr. Vaughan had obtained?

A. Yes.

Q. Mr. Lowry was his client?

A. Was his client.

Q. Yes, at the time, and Mr. Vaughan knew that Mr. Lowry was a director of this company, isn't that right?

A. I knew he had been a director of it.

Q. That he was?

A. Yes, I accept that.

Q. Yes. And are you seriously suggesting to the Tribunal that you did not discuss this matter with Mr. Vaughan

A. yes, I am.

Q. when you knew he was going to write to the bank about it?

A. Yes.

Q. Wasn't it designed to mislead the bank?

A. No.

Q. And to remove or not to make any references to Michael Lowry?

A. I accept there are no references in the letter to Michael Lowry. Christopher Vaughan would have had the same view as I had, that Michael Lowry was no longer involved in this transaction since January 2000. It wouldn't spring to his mind.

Q. Mr. Vaughan has informed the bank, and now, Mr. Phelan, Mr. Vaughan is a solicitor, you are an accountant, dealing with the bank. This isn't a question of any

loose language. The second paragraph of this letter is

Mr. Vaughan purporting to give the history of this

transaction, isn't that right, and there is no

reference to Michael Lowry at all, isn't that right?

A. I accept there is no reference in the letter to Michael

Lowry.

Q. And there is no reference to the fact that Mr. Lowry is

no longer involved in the matter since January or

February of the year 2000?

A. No, there is no reference.

Q. And there is no reference to the fact that Mr. Daly,

not only did not comply in documentary terms with the

guarantee, but refused to give the guarantee, is there?

A. There is no reference to Daly.

Q. In fact, would you not agree, Mr. Phelan, that this

letter is completely misleading as to the true history

of this transaction?

A. I think there are gaps. I don't think it's completely

misleading. I think there are some gaps.

Q. I see. Now, you met with Mr. Michael Cullen then on the

2nd March, which was the day after this letter was

written, isn't that right?

A. Yes.

Q. And at that meeting Mr. Cullen told you that he knew

that Michael Lowry was behind Catclause, isn't that

right?

A. Yes, initially.

Q. What did you say to him?

A. I described the history of the situation briefly. I

just said 'It's my loan as and from early in January, 2000, early in 2000'.

Q. Now, I think

A. He said to me that 'We don't want to know about Catclause Limited' and, you know, 'Can you reflect what the true position is?' And he described I spoke to him about what had happened and he described the letter I should write to the bank.

Q. He described the letter that you should write to the bank?

A. Yes, he dictated it.

Q. He dictated?

A. Yeah.

Q. Word for word?

A. More or less word for word.

Q. Was it written down?

A. I wrote it down.

Q. Do you have that note?

A. I don't. I don't really keep rough notes. I just type up.

Q. All right. But is the letter more or less as was dictated by Mr. Cullen?

A. More or less as dictated. I think it would be I don't think he could disagree, that that wasn't the position.

Q. Right. Well, we'll just look at the letter so?

A. When I sent that letter into unfortunately Michael Cullen had left for China when I sent it into Tony Morland I telephoned him, like, five or six times, to confirm that he got the letter and, you know, he had accepted that I had now rectified what the situation was.

Q. Just let's look at the letter so for a moment. It's addressed to Mr. Morland and it reads:

"Dear Tony.

I refer to our meeting at my office on Wednesday 28th February last in relation to the loan outstanding on the above property.

When I entered into the transaction to purchase the above property it was intended that the purchase be undertaken through a limited company Catclause Limited, and it was assumed that I would be appointed a director of this company. However, it was subsequently decided that I would hold the property personally and complete the amended documentation.

Unfortunately, this was not done and I apologise to the bank for the shortfall in the documentation.

I can assure you that at all times - that the deeds of the property were held to the order of the bank and I understand my solicitor Christopher Vaughan has

confirmed that this was and continues to be the position.

I will complete the outstanding documentation in order to reflect the correct position, including the security documentation outstanding. Appropriate confirmation as to my net worth can be provided if required.

I further undertake to meet the bank within four weeks to discuss the repayment of the facility. If you require me to meet with you today to complete the documentation, I will be available.

Finally, I apologise for the inconvenience caused for the shortcomings in this matter."

Now, was there anybody else present when Mr. Cullen dictated that letter to you?

A. No.

Q. And did you draw Mr. Cullen's attention, when he informed you that they now knew that Mr. Lowry was behind Catclouse, did you draw Mr. Cullen' attention to the fact that Mr. Lowry had initially been involved in the matter and had been taken out of the matter, as far as you were concerned, in January or February of the year 2000?

A. I believe so. Whether I specifically said the length of time he was in it or whatever

Q. whatever the length of time, but you had informed

him that you had taken it over at some stage?

A. I think I ran through the Daly guarantee, from memory yes, okay.

Q. And I take it you would accept that this particular letter does not truly reflect the situation at all?

A. Absolutely, absolutely.

Q. And was that what was decided between yourself and Mr. Cullen?

A. That's what Mr. Cullen wanted in the letter.

Q. Now, when you met with Mr. Cullen on the 2nd March and the contents of this letter were indicated to you, I take it Mr. Cullen was quite concerned about the fact that Michael Lowry's name had come up?

A. He was.

Q. And I take it he also expressed concern that it came up in the context of you and that references may have been made to Denis O'Brien?

A. No. His main concern was that the bank would never have lent money to a Michael Lowry company. He was more that was more the context.

Q. Purely in terms of the strength of Mr. Lowry as a businessman or

A. Purely on the strength of his reputation.

Q. Political?

A. His controversial situation.

Q. And would you agree that the purpose of this letter was to keep Mr. Lowry's name out of the matter?

A. I think Investec wanted it kept out of the matter.

Q. Well, Mr. Cullen indicated that to you?

A. Yeah, well he dictated the letter.

Q. The effect of which was to put you as being the person involved in this transaction from its inception, isn't that right?

A. Correct.

Q. Now, I think Mr. Tunney gave evidence of a discussion with you sometime in the middle of February, 2001, this was before the meeting with Mr. Cullen and Mr. Morland and I know you may not remember any specific conversation you may have had - you may have had a number of conversations with him - but in this conversation he was informing you that the bank wanted the matter cleared up. He was probably cajoling you, what were you going to do about it? Do you remember Mr. Cullen intervening with you in that spirit on that occasion?

A. Mr. Tunney or

Q. I beg your pardon, Mr. Tunney?

A. No. As I think I suggested in evidence, that a lot of the documentation that I have discovered since I got the evidence from the Tribunal, were news to me. There was obviously significant concerns within the bank about this particular transaction. There were a lot of e-mails. One particular one described somebody being at their wits end.

Q. I think that was Mr. Morland and he was dealing with the matter from his side of the house, the security side.

A. Another one

Q. Or the risk management?

A. describes that somebody is afraid of their own shadow or doesn't trust their own shadow.

Q. That's at the very end before they go to the Central Bank?

A. To me when I saw you know, I had no sense that there was such internal disagreement within the bank. It was certainly never conveyed to me, the level of disquiet.

What I am saying is that, you know, just going back to your question in relation to Michael Tunney in the early February meeting, that I don't believe Michael Tunney ever infused a sense of urgency into this transaction, this facility to me.

Q. Well, Mr. Tunney gave evidence that you informed him, when he was making inquiries of you about sorting out this facility, that Denis O'Brien was behind it, behind you, behind the credit or the transaction or something of that nature.

MR. GLEESON: I think perhaps the reference in the transcript should be put to the witness because that seems to be a very wide question. And in fairness to the witness I think he should be shown exactly what evidence Mr. Coughlan is relying upon here.

MR. COUGHLAN: I am not relying on any evidence, Sir, I am inquiring. I am just asking Mr.

MR. GLEESON: I understood your question was predicated upon what Mr. Tunney had said. I may be wrong in that, but if it is, then it seems appropriate that the transcript reference should be put to the witness.

Q. MR. COUGHLAN I'll do that in a moment to keep Mr. Gleeson happy but just for the moment; do you remember having any discussion with Mr. Tunney where you referred to Mr. O'Brien?

A. No. Certainly, I mean, Mr. O'Brien's name came up regularly in terms of discussions with Mr. Tunney. It would be natural and normal.

Q. Did it ever come up in the context of this loan?

A. Not in relation to Catclause.

Q. So Mr. Tunney is totally wrong about that?

A. Yes.

Q. And again, we better get this clear and out into the open, it's the sort of thing in relation to this particular transaction that somebody, I suggest to you, could not be mistaken about?

A. I am aware, unfortunately, that Michael Tunney's evidence is in direct conflict to mine.

Q. Had you had any discussion with Mr. Tunney before you

met with Mr. Cullen on the 2nd March?

A. I possibly had. I certainly had a discussion with Michael Tunney after I met with Michael Cullen, when I showed him the letter that I was going to write to Tony Morland. I am not sure whether I met I could have met Michael Tunney before the meeting. I certainly met him either before or after that meeting.

Q. That was the meeting which you had with Mr. Cullen on the 2nd March?

A. Yeah.

Q. Now, by that time, of course, Mr. Cullen has given evidence that he had informed Mr. Tunney that they were unhappy with the situation and that he should check matters out himself?

A. just I am not sure

Q. on the 28th, first of all on the 28th after the meeting with you, Mr. Cullen gave evidence of having a meeting with Mr. Tunney and informing him that he should check matters out, that they were unhappy with the situation, that the documentation was appeared to be in conflict with information which was now becoming available to them, isn't that right?

A. Yes, yes.

Q. Did you have a discussion with Mr. Tunney about that?

A. I had a discussion with him about that. I proposed to meet with Michael Cullen to talk through the situation.

Q. Right.

A. What exactly the situation was and what it should be.

Q. Well, did you ask him, because you were somewhat concerned at the meeting of the 28th that there were mixed signals and it was becoming apparent to you that Mr. Cullen and Mr. Morland were not aware of matters you had informed Mr. Tunney about, isn't that right?

A. I am sorry, could you say that again?

Q. I think you have told us here in evidence that you were concerned at the meeting on the 28th that there were mixed signals.

A. Yes.

Q. That you believed that you had told Mr. Tunney certain things and that he knew about these matters, such as Mr. Lowry's involvement in the matter, that you were taking over the facility, isn't that right?

A. Yes.

Q. And that it became apparent to you during the course of the meeting on the 28th that Mr. Cullen and Mr. Morland were unaware of that, isn't that right?

A. Yes.

Q. Now, did you discuss the matter with Mr. Tunney after your meeting with Mr. Cullen and Mr. Morland to find out from him what was going on?

A. I did. I met Michael Tunney at some stage.

Q. You met Michael Tunney?

A. I am not sure of the precise sequence of events. They are all very close together but I certainly met him

between the 28th and the 2nd, you know, I might have met him on the 1st or 2nd. I might have spoken to him on the phone. He certainly came to my office between me sending the letter to Morland and the 28th February.

Q. I can understand and I can see nothing wrong with you you have said that you were being evasive at the meeting because you wanted to inquire into the matter further yourself?

A. Mmm.

Q. And the most logical thing would be to contact Michael Tunney and say 'What is going on here? I have had a meeting with these two men, they don't seem to know what I told you'.

A. Yes.

Q. Did you have a meeting of that sort?

A. I had either a meeting or a telephone call.

Q. And what did you say to each other?

A. Well, I said I would have told Michael Tunney that 'It appears there is significant confusion in relation to where this facility is sitting in your loan book'.

Q. Mm-hmm.

A. Now, I have to accept that both myself and Michael Tunney, him internally in the bank and me as now the promoter of this facility, didn't take steps to tidy up matters. Michael used to describe the thing as 'sitting', you know, he has it sitting in his loan book somewhere. I said 'Well, you know, this is, you know,

obviously of significant concern to the bank and I propose to meet Michael Cullen to talk him through what the history of it is'.

Q. Right.

A. What the correct position should be.

Q. But you see, what did Mr. Tunney say to you? Did he

A. he thought it was a good idea that I do that.

Q. Did you discuss the question of who the directors of Catclaus were?

A. I discussed the question that, you know, this had been a Michael Lowry company. Michael Tunney my position is that Michael Tunney knew this from the outset and it wasn't a surprise to him when we

Q. right.

A. whenever it came up.

MR. SHIPSEY: Sir, could I just make the point in that regard? This was not put to Mr. Tunney at any stage in relation to this meeting in March as to what was said by Mr. Phelan.

MR. COUGHLAN: Mr. Tunney we can, as Mr. Shipsey knows the procedure here

CHAIRMAN: If it becomes necessary, Mr. Shipsey, we will certainly give an opportunity of recall if any substantive matter requires to be put in fairness.

Q. MR. COUGHLAN: Did Mr. Tunney express any surprise to

you about the meeting you were going to have with

Michael Cullen on his own on the 2nd March?

A. Not I can't remember him being particularly surprised. Michael is quite commercial. He thought it was a good idea to put the matter to bed. Now, that's my memory of

Q. could you say or

A. could I just say that this is a very significant event now. It's within the, obviously the inquiries of the Tribunal, this all happened over a few days. It was a facility that wasn't tidied properly and, like, my recall, I remember meeting, you know, Cullen. I remember the 28th meeting.

Q. Yes.

A. You know, my recall in relation to what I said to Michael Tunney or what he said to me is not I am really speculating which is probably not fair to put that into the record.

Q. Let's be clear about this, because it is a significant issue in the context of the Tribunal and

A. I am just really, I am qualifying, I am just trying to assist giving evidence properly and accurately.

Q. I appreciate that and I think you understand the position quite clearly. Mr. Tunney has informed the Tribunal that he was shocked when he found out that Michael Lowry was behind Catclaus and he says that he

believed that he was misled by you. Now, did he, at any time you were discussing matters with him, express shock, horror, indicate surprise or anything that you can recollect?

A. No, I never remember any sense of shock.

Q. And you are saying that, and let's be clear about this, that from day one that you had informed Michael Tunney that Michael Lowry was behind this matter?

A. Correct.

Q. There can be no question then of Mr. Tunney being shocked in any subsequent discussion he had?

A. If he was shocked it wasn't about the revelation of Michael Lowry.

Q. Could he have been shocked at the fact that people inside in the bank had now discovered that Michael Lowry was behind the matter and they knew nothing about it up to this?

A. He could have been but I couldn't it appears to me that the bank widely didn't know of Michael Lowry's involvement.

Q. Michael Lowry's involvement caused the bank to go to the Central Bank, isn't that right? This was a major issue, isn't that right?

A. Yes.

Q. And would you agree with me that the letter sent by Mr. Christopher Vaughan on the 1st March, 2001 to the bank, which omits any reference to Michael Lowry, and

the letter sent by you on the 5th March, 2001, which you have informed the Tribunal you were instructed to send by Mr. Cullen, omits any reference to Michael Lowry and purports to suggest that you were the person involved in this transaction from day one?

A. That's what the bank wanted me to write and I wrote it.

Q. So that in the bank's documents, there would be no reference to Michael Lowry, isn't that correct, on

A. That's what the bank wanted.

Q. When you sent the letter of the 5th March what was your understanding of matters?

A. My understanding of matters was that the documentation required to reflect the correct position, as I understood it, would be put in place.

Q. And what documentation did you understand would be put in place?

A. A fresh facility letter.

Q. A fresh facility letter?

A. Yes.

Q. Naming you as the borrower?

A. Yes.

Q. That didn't happen?

A. No.

Q. Do you know why?

A. I can only assume that Michael Cullen's direction to me wasn't the direction that the bank wished to follow.

I went to Canada there for a week or so. When I

returned I understood it was a matter that had been referred to the Central Bank and subsequently to the Tribunal.

Q. When were you informed that the bank was going to the Central Bank?

A. I think I returned from Canada in or around the 13th or 14th March I think the 14th March, sometime around that time.

Q. Were you told that they had gone to the Central Bank at that stage?

A. No, I was told that they had taken legal advice.

Michael Tunney rang me.

Q. Michael Tunney rang you?

A. Yes.

Q. And told you what?

A. He told me that he had come back from a vacation to meet with senior management in the bank and he informed me that I should seek independent legal advice, that the matter had become serious and I should get legal advice, that it was likely that it would be referred to the Central Bank and he didn't say an awful lot more than that. And I retained William Fry for some time and I issued a statement with them, which I think was sent in to the Tribunal.

Q. That was a speaking note which was prepared for Mr. Owen O'Connell to come to the Tribunal in conjunction with a solicitor from McCann Fitzgerald

acting on behalf of Investec Bank, isn't that correct?

A. That's right.

Q. Now, if I may turn to something else for a moment,

Mr. Phelan, the joint venture agreement which you

entered into with Mr. Lowry, and I think this is

probably behind your own statement at tab 5. I think

it's at appendix 3.

A. I have it, yes.

Q. Who drafted the agreement?

A. Christopher Vaughan.

Q. And who furnished him with the terms of the agreement?

A. I described the position, you know, that we wanted to

enter into this joint venture property project.

Q. Yes?

A. I would have given him, loosely, the terms of it. He

put the legal-speak on it.

Q. So can I take it that Mr. Vaughan was acting for both

parties?

A. Yes.

Q. Both you and Mr. Lowry?

A. Yes. I would have been driving this particular

initiative as the major shareholder or participator.

Q. Now, at clause 3, under the heading 'Financial' it sets

out that the shares should be 90% to you and 10% to

Mr. Lowry, isn't that correct?

A. Yes.

Q. And then it continues "Subject to a performance-related

incentive payable to Michael Lowry which, from time to time, shall be agreed between the promoters."

A. Yes.

Q. What type of discussion had you got with Mr. Lowry as to what the performance-related incentive might be?

A. Well, in this particular one in Mansfield, I mean, the agreement was written around Mansfield, he was looking to participate at a higher level of equity because he reckoned that he had "Found the deal" through Kevin Phelan and initially he wanted to have a higher, like, a carried interest. I would put more money up and he would follow and you know, drive the deal.

Q. Yes, I can understand that he had something to do which might be described as a performance?

A. This is a deal that one of the things that attracted me about this deal was that I wouldn't have to get involved in any kind of day to day involvement. And he would, with Kevin Phelan, pursue the initiative and

Q. I am just trying to ascertain from you what type of incentive payment was envisaged?

A. Well, it was more of a carried share.

Q. I beg your pardon?

A. What I am saying is that if the property which we bought for  $\frac{1}{2}$ 250,000 got the planning and was worth, say, for example, 2 million, and it was sold he would, depending on the timeframe and everything else, he

would get a disproportionate share of the profit.

Q. Was there any loose understanding between you and Mr. Lowry as to what that might be?

A. The loose understanding was that we might go back to the 75/25 type of arrangement. We had some discussion in relation to that earlier on.

Q. Right. Did you inform Mr. Vaughan of the type of discussion yourself and Mr. Lowry had about this or

A. It was a commercial discussion. He wouldn't really. I told him though, you know, I gave him the 90/10 split.

Q. Yes, I can see that. And who was going to make the decision about what the bonus would be?

A. Well, I was the principal partner. I would have made the decision. I mean, it's not unusual to be involved in commercial deals with, if the parties get on, you know, they sit down and work out, if there is good news, how the cake would be cut.

Q. What if there was dispute? How would that be resolved?

A. Yes, well, I don't know whether the agreement actually addresses that. I think there is an Arbitration Clause.

Q. Well, I am just trying to understand myself what guide would an arbitrator have, even if there is an Arbitration Clause, what guide would an arbitrator have in relation to this?

A. Not a lot. I am sorry, I am a bit

Q. on the question of the performance-related incentive. There is nothing in the agreement itself which

A. no.

Q. would assist anyone?

A. No.

Q. Well, doesn't it look like you were running this whole particular project and that Mr. Lowry was going to get a benefit out of it, isn't that right?

A. What the agreement sought to conceive was that the equity split was in direct proportion to the money injected.

Q. Yes, I can understand that?

A. in equity.

Q. Yes, I can understand that. You put up 90% and he put up 10% in relation to that?

A. The agreement tried to address it was done, it's not the most rigorous agreement on earth. It's a small document and it was done to reflect you know, I do a lot of business on a handshake and if I like somebody, get on with them, trust them, I am inclined to I don't necessarily go into major documentation and that's the spirit in which the agreement was reached.

Q. And that was your view of Mr. Lowry, was it?

A. Yes, I think Mr. Lowry is a decent man. He is not a leper or an Aids victim. I think he deserves a chance to do business.

Q. I presume a leper and an Aids victim do as well?

A. Sorry, that was uncalled for. I apologise for that.

Q. Yes, of course. On this particular transaction then, that's the Mansfield transaction?

A. Yes.

Q. The money that was used, of course, was all offshore, to the extent it was out of Ireland?

A. Money was used offshore

Q. It came out of Credit Suisse First Boston?

A. It came out of England. I mean 'offshore' has a connotation.

Q. I am not using it in the sense that was an offshore

A. it has a definitive connotation. It suggests it's seedy or some way improper. A lot of offshore references take on that. I'd just like to clarify that

Q. yes, of course. But in the context of this particular transaction the money came out of Credit Suisse First Boston in London, isn't that right?

A. Correct.

Q. Into a solicitor's account in England?

A. Correct, yes.

Q. And the property was in the name of Michael Lowry, isn't that right?

A. Yes.

Q. Notwithstanding that you were the 90% shareholder in the transaction?

A. Yes.

Q. And I think did Mr. Vaughan advise you to register a caution?

A. He did advise me of that.

Q. And was that done?

A. It wasn't.

Q. It wasn't done.

A. As I said, I do a lot of business on a handshake. I'll do less in future.

Q. Now, the money that was used, you have furnished, and I think Mr. O'Brien has as well, two memoranda, isn't that correct?

A. Yes.

Q. Appendix 4. And the first one was dated the 22nd December, '98 and it's "Re success fees" and it reads:

"Dear Denis, following our meeting earlier today.

I think we have opened it already. I think that the second paragraph, "The two major projects I worked on for the year was the acquisition of Planal S.A. and my continuing role in Versatel. Versatel continued the high-yield offering in May last year raising \$225 million US and just completed a tack-on high-yield offering in November raising a further \$150 million US.

As you know from the EGM earlier this month, the company intends to do a further high-yield offering earlier next year leading to an IPO in the second or third quarter.

I have drawn little or no fees from the above project and it was agreed, particularly in relation to Versatel, that when you have liquidity in your stock, it will be a percentage fee.

Although not cast-in stone, I will receive a success fee if Versatel goes public at a price range of \$10 to \$12 dollars per share. This will mean that your stake will be worth \$40 to \$50 million. As agreed, I will receive a fee as you realise your investment and sell your stock. This fee is agreed at 3% up to maximum of \$1.5 million US."

And that's signed by Mr. O'Brien, isn't that correct, as being agreed?

A. Yes.

Q. So the terms have been agreed there that you will receive a success fee if Versatel goes public at a price of \$10 to \$12 , isn't that right, per share?

A. Yes.

Q. You are looking for 3%, but it's to be up to a maximum of \$1.5 million US. I take it that if the share price is higher than that, you are limiting it to \$1.5 million US, although it might be less than 3%, would that be a correct understanding of the situation?

A. Yes.

Q. And this was on the 22nd December, '98, is that right?

A. That's right.

Q. Now, how did this go to Mr. O'Brien?

A. Sorry?

Q. How did it go to Mr. O'Brien? How was it sent to Mr. O'Brien?

A. I would have handed it to him at a meeting.

Q. Handed to him at a meeting?

A. Or given it to him at a meeting.

Q. And how did it come back to you?

A. I can't I think it came back in an envelope, probably, to me. He used to send, like, any he used to have an envelope for me with any stuff that he wanted me to look at or it probably came back as part of a bundle of documents. My office is just a few doors you know, on the same road, so his PA probably would come down to me with an envelope of documents.

Q. Well, in December of '98, were you still in Clonskeagh or had you moved?

A. Actually I was still in Clonskeagh.

Q. You were still in Clonskeagh?

A. Yeah.

Q. Were you still in partnership with your brother in Clonskeagh as of that date?

A. No, no, not at that time.

Q. You were not at that date?

A. No.

Q. And were you able to ascertain when you commenced practice under your own style and title of Aidan Phelan

Consulting?

A. Yes, I have the dates here.

Q. When was that?

A. I originally set up AP Consulting in May '97. I overlapped with my brother. I ceased as a partner with Brian Phelan & Company in 31/12/97 and joined Helen Malone as a partner in November '98.

Q. Right. When did Versatel go public?

A. July '99.

Q. And at what price per share?

A. 10.51.

Q. And you had an agreement in existence that you would be due a success fee up to maximum of 1.5 million, isn't that correct?

A. That's right.

Q. Did you ever receive that success fee?

A. No.

Q. I beg your pardon when did you say it went public, again?

A. July '99.

Q. July '99?

A. Yeah.

Q. And you still haven't received any success fee?

A. No.

Q. Have you asked for it?

A. I have. I mean, Denis hasn't got any additional liquidity in his stock. I mean, from July '99 into

early 2000 he was locked up in the normal lock-up clauses in the agreement, in the underwriting agreement and there was a secondary offering done. He didn't release any equity in the secondary offering which was done, probably April 2000. I mean, our rights as shareholders, as promoters of Versatel were we could only release our stock into the market at certain times and we had a right can I explain the deal?

Q. Yes, indeed?

A. We had part of the reason I got the advance in the fees was that I negotiated the Settlement Agreement.

Denis was in dispute with the other promoters of Versatel, which were one of which was a former ESAT start-up person. There was a dispute going on and I negotiated a Settlement Agreement which ensured we got additional stock for Versatel. It was all part of a package, a settlement package which I negotiated. We also got various benefits heading into the IPO, one of which was a right to sell 50% of our stock outside the normal lock-up provision when the lock-up provisions fell away we had a preferential right to sell 50% of our stock ahead of the other shareholders. And Denis didn't he never took liquidity out in the market.

Q. But was that of concern to you in this regard? What you were talking about here was fees, isn't that correct?

A. Yeah. The trigger, though, was liquidity so I needed

to get him to get him to sell his stock in order to trigger the balance of my fees. The stock price, unfortunately, I mean it peaked in around March 2000 at 76 and it started to slide and everybody saw a recovery. Denis was waiting and waiting for the recovery and then the tech. Market thing collapsed and today it's a dollar and change so he is sitting there with a lot of stock and, I mean, arguably he could want to get that fee back from me.

Q. Well, when the 300,000 was drawn there was no IPO?

A. No, but I had

Q. and the price hadn't even been fixed for the IPO?

A. No, the price target, the price talk was available.

Q. I understand price talk but as I understood from the discussions in relation to the IPO of ESAT Telecom, the price is fixed at the time of the IPO, isn't that correct?

A. Actually fixed and in the order book.

Q. And that yes, that depends on what happens on the roadshow, isn't that correct?

A. Market conditions, the roadshow, the selling of the story.

Q. How things appear, isn't that right?

A. Yes.

Q. But nevertheless, Mr. O'Brien was prepared to consent to you drawing down  $\frac{1}{2}$ 300,000 in advance against an IPO which hadn't taken place?

A. No, but I had done more or less the Settlement

Agreement. I delivered substantial added value.

Q. Was that a separate is this a separate fee so?

A. No, it's part of the it was a reason why I could persuade him to give me an advance.

Q. Was there any invoice in relation to this?

A. No. I wouldn't issue an invoice until the final fee was done.

Q. Until the final fee was done. And were you had you got signing rights on this account?

A. I had.

Q. And who else had signing rights on the account?

A. Helen Malone.

Q. And were you the only two they had signing rights on the account?

A. Technically Denis O'Brien as well.

Q. But was he a named signatory on the account?

A. It would be unlikely that he wouldn't be, but I mean I haven't seen the mandate. It would be unusual if he wasn't, given that it was his loan account.

Q. Did you have signing rights on all Mr. O'Brien's personal accounts?

A. I couldn't say all of them, no. No, I didn't. I am sure of that, yes.

Q. On how many of them?

A. I can't say really, I can't say. Like, his personal accounts, I may have had signing rights on some of his

accounts. I'd have to check it. I don't know. I mean

he has personal accounts.

Q. Now, this second memorandum which deals with the advance of fees, did you ever record that anywhere other than in this particular memorandum?

A. Sorry, what do you mean by 'recorded'?

Q. Did you record it anywhere else?

A. No.

Q. On the 7th May, 1999, you raised an invoice with Mr. Michael Lowry in respect of professional fees, isn't that correct?

A. Yes.

Q. Can you tell us when that was paid now?

A. I can't tell when it was paid but I can check it at lunch time.

Q. Right. And was that the only time you charged a fee to Mr. Michael Lowry?

A. Yes.

Q. So the only record that you have in relation to the drawing of  $\text{€}1/2300,000$  on Mr. O'Brien's account in Credit Suisse First National Bank is these two memoranda, is that correct?

A. That's correct.

Q. And do you know if it's recorded in any records of any companies of Mr. O'Brien, other than in this form?

A. I don't know, but I doubt it.

Q. You doubt it. That's unusual, isn't it?

A. No, not for Denis O'Brien.

Q. No, but for you as an accountant?

A. Not particularly unusual.

Q. It's not unusual?

A. Well, I suppose I would normally it's unusual for me to get advance fees.

Q. No, but I mean what I am asking you, isn't it unusual not to have some form of records other than just two memoranda?

A. Normally what I would have is an invoice.

Q. Hmm?

A. Normally what I would have is an invoice. I didn't invoice this payment as it was an advance. Really, on a fee, you had to be determined

Q. Pardon?

A. On a fee you had to be determined, depending on the criteria, you know, the Versatel trigger.

Q. And this second memorandum dated 25/3/1999, do you know how you gave that to Mr. O'Brien?

A. I would have given it to him I used to have regular meetings sometime around that or left it for him.

In his office he has he would have a folder for me and I'd pick stuff up and leave stuff for him.

Q. And do you know how it came to you from Mr. O'Brien?

A. Probably came back in the same form or he handed it to me at a meeting or Denis O'Brien I don't know whether I have ever had a letter from him. We didn't

do business that way, in a formal way.

Q. When Mr. O'Brien said it was okay to make a drawing on a Credit Suisse First Bank account in the amount of  $\frac{1}{2}$ 300,000, was that the only Credit Suisse bank account that existed, the one in London?

A. I believe that there was a CS First Boston account, his facility originated it was the only one he had at that time, yeah, yes.

Q. And it related to personal affairs rather than Versatel's affairs, isn't that right?

A. Well, it was what do you mean 'personal'?

Q. It wasn't a bank account in which he received or expended anything on behalf of Versatel?

A. He never received anything

Q. Or expended anything?

A. He expended when his initial investment into Versatel was done

Q. From that account?

A. No, that account wasn't open then. Some years earlier.

I think it was in December '96 he invested in Versatel.

I think that was done from probably Woodchester at that time.

Q. And as of this time, the 25th March, 1999, were there accounts of Mr. O'Brien's in this country?

A. March '99 I am sure there was, yes, I am sure.

Q. And there was no reason why money couldn't have been drawn out of one of those accounts, was there?

A. Well, I'd have to check the balances. There wouldn't be a particular reason.

Q. There wouldn't be a particular reason?

A. No.

CHAIRMAN: It's just ten to one.

MR. COUGHLAN: I just have to move on to the share matter Sir, so perhaps after lunch?

CHAIRMAN: I think we will leave that until five past two. And perhaps just to clarify the sequence; I think the appropriate sequence after lunch would be Mr. Shipsey, Mr. McGonigal, Mr. Barniville and then lastly, Mr. Gleeson, assuming practitioners do seek to exercise that entitlement. Five past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:05 P.M.:

CONTINUATION OF EXAMINATION OF MR. AIDAN PHELAN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Phelan, if I could turn now to a memorandum of information which was provided by you in relation to the purchase of shares for the late Mr. David Austin in ESAT Telecom.

A. Yes.

Q. And I think Mr. O'Brien has already given evidence about this. But the first purchase was for \$50,000

worth of shares, isn't that correct?

A. In the

Q. It was 150,000, 100,000 in coming from Mr. Austin himself and 50,000 from Mr. O'Brien, isn't that right?

A. Yes.

Q. And I think you have informed the Tribunal that in relation to the credit of \$50,000 to the account of the late Mr. David Austin with Donaldson Lufkin and Jenrette in February of 1998, Mr. Denis O'Brien provided this money, as due to an oversight he neglected to obtain as promised an allocation of shares for the late Mr. Austin under the friends and family programme. This was a percentage of shares set aside for friends and family and associates of promoters and is generally 50% of the total number of shares floated in the offering, is that correct

A. Yes.

Q. when the IPO of ESAT Telecom took place in November, 1997. These funds correspond to the share price differential between the price at the IPO and the price at February 1998.

Now, did you carry out this particular transaction for Mr. O'Brien on behalf of Mr. Austin?

A. I transferred the the purchase of the shares?

Q. Yes.

A. No, I don't believe so. No, I didn't.

Q. Do you know how it was done?

A. It would have the person in DLJ dealing with it, I'd say Mr. O'Brien must have dealt with it himself, yes.

Q. And how would it have been done so?

A. By telephone.

Q. Just by telephone?

A. Yeah.

Q. And the transfer would take place, shares attributed to Mr. Austin and Mr. O'Brien's account being debited, the same amount, was it?

A. Sorry, what's the point?

Q. I just want to know how was this done? How were the shares purchased? Where did the money come from, do you know?

A. Well, I know that David paid \$100,000 and O'Brien transferred \$50,000.

Q. Right.

A. To the David Austin account.

Q. Now, I think another significant transaction took place on Mr. Austin's account with Donaldson Lufkin and Jenrette, isn't that correct?

A. That's correct.

Q. And that was September, 1998 I think, isn't that correct?

A. Yes.

Q. And there was, I think if you can just assist me

there, 295 yes it seems to be \$295,250.40 worth of shares purchased, is that correct?

A. Yes. It was actually a purchase of 12,000 shares.

That was the money put in to pay for it.

Q. Right. And where did that money come from?

A. That came from, I believe, Credit Suisse First Boston.

A. .

Q. Right, and did you carry out that transaction?

A. I carried out the transfer of the money on the instructions of Denis O'Brien.

Q. And what instructions did you have, do you remember?

A. I remember, I would probably have gotten a call from DLJ, the person in DLJ dealing with the account and asked me to pay for that number of shares, to transfer the equivalent money.

Q. To pay for that number of shares?

A. Yes.

Q. In respect of Mr. Austin's account?

A. Yes.

Q. And when you carried out this transaction, you understood that you were doing it on behalf of Mr. O'Brien to purchase shares for Mr. Austin, is that correct?

A. Yes.

Q. And prior to that I think there were 6,000 shares 6,600 shares in Mr. Austin name in the account, isn't that correct?

A. That's correct.

Q. These 12,000 were added and after that there were 18,600 shares in Mr. Austin account, isn't that right?

A. That's right, yes.

Q. And I take it that you understood your instructions and you complied with your instructions?

A. I understood my instructions in relation to the transfer of the money to the Austin account.

Q. To the Austin account?

A. And complied with it.

Q. So you had no doubt that you had instructions to transfer that sum of money to the Austin account, having received this information from the brokers, is that correct?

A. Yes, I would have probably had a call from brokers to transfer the money, as opposed directly from O'Brien.

I would have checked it with Denis.

Q. You would have checked it with Denis before you did it?

A. Yes.

Q. So you have no doubt that the money, on your instructions, the money was to go to Mr. Austin's account?

A. No doubt.

Q. And I think at the final statement which has been made available to the Tribunal from DLJ, through the solicitors acting for the estate of Mr. Austin, as of the 30th October, 1998, which was two days before

Mr. Austin's death, the shares were still in the account and they amounted to 18,600 shares, isn't that correct?

A. Yes, that's correct on the wall in front of you on a piece of paper.

Q. Do you know what happened to the shares after Mr. Austin's death?

A. I believe they were transferred to the account of Noel Walsh.

Q. Right.

A. I understand, Mr. Coughlan, that Walter Beatty is as you know I am an executor to that as well I understand that Walter Beatty is corresponding with DLJ in the matter and it appears there was an error in how these shares ended up in the Austin account and

Q. this is what you are being informed by DLJ?

A. No, I am being informed by DLJ, they are talking to me and they are talking to Walter Beatty about trying to resolve this matter and as yet I think they will be coming back with a full reply in relation to the matter.

Q. The only thing you can be of assistance to the Tribunal until further information comes to hand is that you received a request from DLJ to transfer monies to Mr. Austin's account to pay, or to purchase 12,000 shares?

A. Correct.

Q. You would have checked that with Mr. O'Brien, is that correct?

A. I would have yes, I would have checked that, yes, I would.

Q. So there was no mistake on your side?

A. No. I did not make the mistake in relation to where I was transferring the money.

Q. And there can be little doubt that when you checked with Mr. O'Brien, he knew that the money was going into Mr. Austin's account?

A. I would take it he did. It's a fair sum of money .

Q. Now, the account Mr. Austin's account gives the address as being the offices of, I think, Brian Phelan & Company, isn't that correct?

A. That's right.

Q. And was that the address which Mr. Austin used at all times in relation to these particular shares?

A. I believe so, yes.

Q. Now, do you know was it after Mr. Austin's death that shares were moved out of this account?

A. I believe it was.

Q. To the best of your knowledge?

A. To the best of my knowledge.

Q. They were certainly there at the account period which ended two days before he died?

A. I believe that DLJ will give the explanation.

Q. I just want to be clear about this; can you just

confirm neither you nor any of the other executors or Mr. Beatty gave any instructions to DLJ to sell or move any of these shares out of this account?

A. Correct.

Q. Now, one or two small matters, if I could just turn to. And you may wish to look at the document, but the first letter which Mr. Christopher Vaughan sent to Woodchester at the time of the facility for the purchase of the Cheadle property. It's the letter dated 20th December, 1999, I think. This is where he confirms who is acting for, giving the information about his client account and matters of that nature.

Do you remember that letter?

A. Yes.

Q. It's the letter dated 20th December, 1999. It's copied to Helen Malone of AP Consulting, did you notice that?

A. I did.

Q. Page 23 and 24.

A. That's the letter to Michael Tunney, is it?

Q. Yes.

A. Yes, I see that.

Q. Referring to the telephone conversation. We have dealt with the letter before. It's dealing with his client account and matters of that nature. But it's CC to Helen Malone of AP consulting, do you see that at the end of the letter?

A. I see that.

Q. It doesn't appear, on the face of it anyway, to have been copied to Mr. Lowry, does it?

A. On the face of it, no.

Q. But remember, that as you understood the situation and as Mr. Vaughan understood the situation, Mr. Michael Lowry was the client and Catclaus was the vehicle for the purchase of this property, isn't that correct?

A. Correct, yes.

Q. Did you ever bring Mr. Lowry to the premises of Woodchester?

A. I don't believe so, no.

Q. And when Mr. Tunney met Mr. Lowry it was outside the premises, wasn't it? It was in the Radisson Hotel?

A. Yes.

Q. And it wasn't in connection with the loan?

A. I don't believe the loan was no, it was prior to the transaction.

Q. So Mr. Tunney never actually met Mr. Lowry in Woodchester, to the best of your knowledge?

A. To the best of my knowledge, no.

Q. Or anywhere else in connection with the loan, to the best of your knowledge?

A. I couldn't say for definite.

Q. But to the best of your knowledge?

A. To the best of my knowledge. I know Michael Lowry and Michael Tunney had conversations on the telephone about this matter.

Q. I see. And who told you that?

A. Michael Tunney told me.

Q. When was that?

A. I met him actually it was just before Christmas.

Q. The Christmas that the loan was made available?

A. Yeah, yeah.

Q. He told you that he had spoken to Michael Lowry on the phone?

A. Yes, he did.

Q. About what did he say?

A. He said 'He is putting pressure on me to close the facility'.

Q. So you had a conversation with Mr. Tunney. Did he ring you about this specifically or was it some social contact?

A. It was a social I think it was in the Shelbourne Hotel.

Q. Around Christmas?

A. Yes.

Q. It must have been before this before the 21st anyway, would you think?

A. It could have been the Friday evening or the likely the Friday evening or the Monday.

Q. Likely the Friday evening, that would have been the 17th

A. It could have been the Monday, I can't recall.

Q. What did Mr. Tunney say to you?

A. He just said something along the lines of 'Michael is badgering me or annoying me to get this thing complete' - I mean 'Christopher' you know, everybody was under pressure to see the facility done. Christopher was holding off the vendors.

Q. Doesn't it appear, Mr. Phelan, that money may have got stuck with an intermediary, and I am talking about Mr. David Austin from what we now know, and that your involvement with Mr. Lowry was to assist Mr. Lowry because money had got stuck with the intermediary previously, doesn't that look like the situation?

A. It doesn't look like that at all to me. Mr. Austin was a friend of Denis O'Brien's. Are you talking about the house purchase?

Q. Yes.

A. No. I am very happy that Mr. O'Brien bought a house from David Austin and the paperwork was not processed in a timely fashion.

Q. What I am saying to you is doesn't it look like that money got stuck with the intermediary and something had to be done and paperwork was sorted out subsequently, but that Mr. Lowry continued to need assistance and that is why you got involved with him in relation to these transactions.

A. No, it doesn't look like that to me. It doesn't at all.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY.

Q. MR. SHIPSEY: Mr. Phelan, I appear for Mr. Michael Tunney, who is a man that you have known for a good number of years, isn't that correct?

A. Correct.

Q. I think you have had a relationship with him from his days in Woodchester Bank, going back to about 1991, would that be correct?

A. Yes.

Q. And I think, although you may not have been here yourself, you will have heard that he informed the Tribunal of being engaged in a large number of banking transactions where you were the customer. Are you aware of that?

A. Yes.

Q. And that's true, isn't it?

A. As the customer or representing other people?

Q. Well, both as a customer in your own right and as representing other people?

A. Not so many in my own right just a technical point not so many in nigh own right but quite a bit for clients.

Q. And you would have acted for Mr. O'Brien in dealing with Woodchester Bank over the years, isn't that correct?

A. That's correct.

Q. And I take it in all of your dealings with Mr. Tunney, he would have been the principal person in Woodchester Bank that you were dealing with?

A. Ostensibly, yes.

Q. When you say 'ostensibly'?

A. There were others but.

Q. He was the principal relationship manager with you?

A. He was the principal, yes.

Q. And if you were likely to want to speak to somebody in the bank about a loan on your own behalf or on behalf of a client it's more likely than not that you would have gone to Mr. Tunney?

A. Yes.

Q. And do I take it you consider that you enjoyed a good relationship, a good banking relationship with Mr. Tunney throughout those years?

A. I did.

Q. And would you say that Mr. Tunney was most helpful and facilitated you and facilitated clients for whom you acted over those years?

A. I would.

Q. I am not sure whether you can recall, but was there ever a loan application in which you were personally involved turned down by Mr. Tunney or Woodchester Bank in all the time you were dealing

A. Not that I can recall.

Q. And you would have been aware that you would have been

held in high regard by Woodchester Bank and by

Mr. Tunney as a customer?

A. I would, yes.

Q. There are now, in fact, two issues where you are in direct conflict with Mr. Tunney in relation to the evidence he has given to this Tribunal. There is a conflict between you as to whether you informed him or made any reference or mention to Mr. Lowry in December of 1999, isn't that correct?

A. That's correct.

Q. And there is a conflict between you as to whether in February of this year, 2001, you made any reference to Denis O'Brien in the course of conversation with Mr. Tunney concerning this transaction?

A. Could you just say that date again, sorry? the second?

Q. You are in conflict with Mr. Tunney insofar as he says you made reference to Mr. O'Brien

A. yes, I am.

Q. in February of 2001, and you say that never happened, isn't that correct?

A. Yes.

Q. And apart from those two items there are no other items of conflict between what Mr. Tunney says, that you are aware of?

A. I haven't reviewed all Michael Tunney's evidence and, you know, insofar as that my recollection of what's

been said today wouldn't be very sharp in relation to the detail on what Michael has said, but certainly the issue of the early date at the setting of the transaction and the mentioning of Lowry, we are in conflict on that. We are in conflict on the February meeting and the fact that Michael was shocked - quote - "shocked". We are in conflict on that.

Q. Well, no, the "shocked" referred to a meeting in which you weren't present. It was on the 1st March of 2001?

A. Well, I am just addressing a possible follow-up conversation or meeting following that meeting.

Q. And insofar as just that follow-up conversation is concerned, that's not a matter you addressed in your statement to the Tribunal, isn't that correct?

A. I doubt it, I haven't I'd need to review my statement, but I doubt it.

Q. And insofar as an answer you just gave to Mr. Coughlan a few moments ago, where you made reference to some discussion with Mr. Tunney in the Shelbourne bar, that's not a matter that you have ever mentioned in a statement or before, would that be correct?

A. That's correct.

Q. And presumably you are recalling this now for the first time in relation to this incident, would that be correct?

A. Yes. I would add that the reason I have recalled it is I was chatting to my partner and she was actually there

at the meeting and we just recalled it, you know, it came up.

Q. Now, insofar as there is documentary evidence to support your contention in relation to the two principal items of conflict, namely, your informing Mr. Tunney of the involvement of Mr. Lowry and your discussing with him or mentioning Mr. O'Brien's name in February of 2001. If we take just the first of those two conflicts. Would you agree with me that there is not one shred of documentary evidence to support your contention that Mr. Lowry's name was mentioned in December of 1999?

A. I wouldn't agree. He was a registered director of the company at that time. That's documentary evidence. He would have been on the register.

Q. Apart from the fact that Mr. Lowry was on the register of directors, if a search had been conducted, can you point to any other piece of documentary evidence which supports your contention of an awareness on the part of Mr. Tunney or Woodchester Bank in December of 1999?

A. In December? No.

Q. And indeed, if you take it from December of '99 down to March of 2001, is there any item of documentary evidence which would indicate an awareness on the part of Mr. Tunney or Woodchester Bank that Mr. Lowry was behind Catcluse or involved in this transaction?

A. No.

Q. Insofar as the second issue is concerned, namely a conversation sometime in February of 2001 at which Mr. Tunney recalls you referring to Mr. O'Brien in connection with standing behind you in relation to this transaction. That's something that you disagree with?

A. It is.

Q. And insofar as there is any contemporaneous record or near-contemporaneous record of you having used or mentioned Mr. O'Brien in connection with the transaction there is, in fact, some documentary evidence in the form of Mr. Morland's note of the meeting of the 28th February?

A. Yes.

Q. And that, if it is true, is at least suggestive that you did mention Mr. O'Brien's name in connection with the transaction?

A. If it's true, yes, it's suggestive.

Q. And you don't recall, I think is to your recollection, you don't recall saying it at that time?

A. Yes.

Q. Now, would it be fair to assume that your recollection of what transpired in February or March of this year is likely to be better than your recollection of what transpired in December of 1999?

A. That's fair.

Q. And in circumstances where you say you don't recall referring to Mr. O'Brien on the 28th February with

Mr. Cullen and Mr. Morland, and you don't recall making reference to Mr. O'Brien in a conversation with Mr. Tunney in February of 2001, it is less likely that you would not remember what you said or didn't say in February of 2001 by comparison with what you may have said or not said in December of 1999?

A. I don't agree necessarily with that. The transaction was, at the time was, you know, a last minute transaction and demanded a certain amount of attention.

Q. And insofar as it was, as you say, a last minute transaction and done in, I think you used the word

A. banking wise

Q. from the banking end of it, isn't it more likely in such circumstances that where there was urgency from a banking perspective, that you would have done everything to try to ensure that the loan was obtained from Woodchester Bank?

A. I would have, yes, I would have done what I could to get the transaction complete.

Q. Because although it is your evidence that the company that was the vehicle for this was a Michael Lowry company, and I think in your statement you say you identified and discussed the matter with Mr. Tunney including the shareholders in Catclause, namely Mr. Lowry and his daughter, and in your evidence yesterday you referred to Mr. Lowry as the promoter of Catclause, isn't that correct?

A. Yes.

Q. And you know there is a difference between a shareholder and a director of a company?

A. Yes, I am aware of that.

Q. And there can be a difference between a promoter and a shareholder of a company?

A. Yes.

Q. And in none of your statements made to this Tribunal, written statements made to the Tribunal, aren't I correct in saying that at no stage that you say that you informed Mr. Tunney that Mr. Lowry was a director of this company?

A. I'd have to check that. I think there was some typographical error somewhere where I think we described him as a shareholder where we meant director sorry, I don't mean to

Q. And did you correct that with the Tribunal?

A. I think I believe we did. I believe we did.

Q. In your statement you say, "When I discussed the matter with Mr. Tunney including the shareholders in Catclaus, namely Mr. Lowry and his daughter."

A. Mr. Shipsey, I think we did correct that. That was supposed to mean 'director'.

Q. Because it was not the case that Mr. Lowry was registered as the shareholder, isn't that right?

A. That's right.

Q. the original subscribers

A. were still there.

Q. Now, I take it that was corrected before you gave evidence yesterday?

A. I'd have to check. The statement, I think, was corrected.

Q. I take it that that statement was corrected, if it was corrected, before you gave evidence yesterday?

A. I take it it was, yeah.

Q. And then I would just like to ask you why, in the context of your evidence yesterday, you referred to Mr. Lowry as being the promoter of the company if what you meant to say was he was a director of the company?

A. Well, a promoter to me would mean that he was albeit the shares were still held in the company formation nominees, that in time he would take the shares, so he was promoting the venture.

Q. And when you use the expression 'promoter' you want to convey the impression that you are referring to him as

A. owner.

Q. as owner and as director as well, or is it something separate than director?

A. I wouldn't have drawn a big distinction in a small private company, closed company, between the two.

Q. You had, of course, something personally to lose if this transaction in December did not proceed, isn't that correct?

A. That's correct.

Q. And that was not disclosed to Mr. Tunney?

A. No.

Q. There was no suggestion

A. there was no suggestion I was losing the deposit.

Q. there was no suggestion that almost  $\frac{1}{2}$ 50,000 sterling of a deposit which had come from the  $\frac{1}{2}$ 300,000 that you had advanced for the earlier property transaction, was going to be lost?

A. No.

Q. And if we look at the letter from your solicitors of the 1st March of 2001 where they are explaining the transaction, there is reference to a closing date of the 30th November of 1999?

A. That's correct.

Q. And I take it you are somewhat familiar with property transactions and are aware that in circumstances, deposits can be forfeited and you were worried about this particular deposit being forfeited, I take it?

A. I was.

Q. And there is probably therefore, some significance in the fact that this transaction was completed and had to be completed on the 21st December of 1999, being three weeks from the closing date?

A. Yes, I think there was a notice to complete served, from memory.

Q. Or a provision in the contract that time was to be of

the essence and it would expire three weeks from the closing date?

A. Probably, yes, yeah.

Q. And therefore if Woodchester Bank didn't advance the loan to Catclause by the 21st December, you were going to lose  $\frac{1}{2}$ 50,000 sterling?

A. That's correct.

Q. You personally were going to lose  $\frac{1}{2}$ 50,000 sterling?

A. Likely, yes.

Q. You were a much more bankable proposition, as far as Woodchester Bank was concerned, than Mr. Lowry, wouldn't that be the case?

A. Yes.

Q. Would it be fair to say that it would have been most unlikely that Woodchester Bank would have lent money to Mr. Lowry? In fact, that's what you were told by Mr. Cullen in February or March of 2001, isn't that correct?

A. That's correct.

Q. And, therefore, the disclosure by you of an involvement of Mr. Lowry would have made it less likely that a loan would have been provided by Woodchester at all, and certainly not in the hurried manner in which it was provided in this instance, would that be fair?

A. It would be fair.

Q. And isn't it possible, Mr. Phelan, knowing Mr. Tunney as you do of course a number of things are possible

but isn't it possible that your recollection is incorrect and whilst you are trying to do your best now, 16, 17, 18 months later, but isn't it possible that you forgot at the time to mention Mr. Lowry's connection with Catclause?

A. It's not possible.

Q. It's alternatively possible that you may have mentioned it and Mr. Tunney may not have heard it or had regard to it?

A. I think he probably heard it, in fairness.

Q. And you say it is, however, impossible that you didn't mention it?

A. It is impossible.

Q. And if we look at everything that was said and done by you subsequent to December of 1999, would you agree with me that insofar as you're concerned and down until the time when Mr. Cullen tells you in March of 2001 of the bank's awareness of Mr. Lowry's connection with Catclause, that not only did you not ever say that Mr. Lowry was involved in the transaction, isn't that correct?

A. Yes, I didn't regard him as being involved beyond mid-January 2000.

Q. And when you were asked specifically in relation to directors, as to who the directors of Catclause were, not only did you not say it, but you refused to give that information, isn't that correct?

A. I didn't refuse to give the information.

Q. You just didn't give it, is that correct?

A. I didn't give it.

Q. And you see, what I don't quite understand, if it is the case and your evidence is to be believed, there was no reason why, in telling Mr. Tunney of Mr. Lowry's connection with Catclause, that in so telling him, you were telling Woodchester Bank, isn't that correct?

A. That's fair.

Q. And therefore, if Woodchester Bank, in the form of Mr. Tunney knows, there is no reason to believe that the other individuals in the bank didn't know of Mr. Lowry's involvement?

A. There is no reason to believe that.

Q. And yet when you are asked and being pressed in relation to Catclause, you never say "I told Michael Tunney, Michael Tunney knew about this" - or - "You, the bank, must have been aware of it because I disclosed it at the outset" isn't that correct?

A. As I explained earlier, that particular meeting was had particularly excluded Michael Tunney, who was my contact, and I was just nervous about what the situation was in relation to what information the bank had or what they perceived the deal to be the loan, where it stood in their loan book.

Q. But why were you nervous if there was no secret about Mr. Lowry's involvement?

A. the shape

Q. What had you possibly to be nervous about?

A. I felt that the fact that Michael Tunney was excluded from the meeting and I knew that they were the two gentlemen, Mr. Cullen and Mr. Morland were looking for Catclause Limited and all the compliance information in relation to it. It struck me that there was something radically awry in terms of where the account stood in its loan book. It's difficult to describe what an atmosphere at a meeting, how it develops.

Q. But you knew that Mr. Tunney had left Woodchester Bank the previous year, in April of 2000?

A. I didn't know that.

Q. Are you saying you didn't know that?

A. I knew he was still associated I knew he was still a director of the bank. I wasn't sure whether Michael always described his role that 'He had some clients that he was still looking after'.

Q. But you knew he wasn't an employee of the bank?

A. No, I didn't. It wasn't something we would have discussed. I still saw him as being part of Woodchester and GE Capital.

Q. Are you saying he didn't know that Investec had taken over Woodchester in April of 2000?

A. No, I knew over the period that there was, Investec were taking over the company.

Q. Isn't it also the case though, Mr. Phelan, that there were very many attempts by the Investec people through the late summer and into the autumn of 2000, to regularise the loan situation?

A. I don't believe there was much correspondence.

Q. I am not talking about correspondence. But weren't you being phoned and contacted by Investec from when the loan was due for repayment at the end of July?

A. As I said earlier, I had no contact from Investec in relation to the credit aspect of the loan until I requested a letter on the 17th August to bring to a meeting in Jurys to try and get the property sold. I had no contact. That was at my volition. I requested that letter.

Q. But by the 17th August the loan is only overdue

A. yeah, by a month or so.

Q. by 17 days, isn't that correct?

A. Yeah.

Q. But I am talking about from that time onwards, wasn't there quite considerable contact between Investec - or attempts by Investec to contact you and to get you to regularise the situation?

A. There may have been some phone calls.

Q. A lot of phone calls, Mr. Phelan?

A. I don't know how many phone calls. But generally, financial institutions write to you if they have a problem.

Q. And are you suggesting that because there wasn't letters, they didn't regard it as a problem?

A. I am suggesting that until I saw the book of evidence from Investec, I didn't realise the level of disquiet that existed in the bank. It certainly was never conveyed to me until very late in the day.

Q. Now, around about December of '99 you sent some documents to Mr. Tunney, isn't that correct? And I think although it wasn't in the book, a copy of a fax cover sheet dated 17th December from you to Mr. Tunney has been presented, in which you send five documents giving Mr. Tunney certain details in relation to the company, isn't that correct?

A. Yes, I know the document.

Q. And it suggests, does it not, that this is the first time in which documentary evidence is being given to Mr. Tunney in connection with this transaction?

A. It suggests that, yes.

Q. That he wouldn't and didn't have any documentary detail prior to this?

A. That would appear to be correct.

Q. And if you look at item 3 there, auctioneer letter, do you have a copy of that auctioneer letter? It's page 6 of the booklet which, I think, the Tribunal has prepared.

A. 3rd December, 1999, the Eastham letter.

Q. Yes. If you just look, there is the remains of several

fax banner heads on this, isn't that correct?

A. Yes.

Q. But I think the one from your office is the one third down. You can just make out. 17th December, 1999.

10.0 something I wonder could it shall put on the monitor. It's document 06. And it appears to be page

5 I think it's page 5 of 8, would that be correct?

Would that appear to be correct?

A. It appears to be correct, yeah.

Q. And then above the 17th December, there is "The 22nd December, '99, Woodchester Bank." And that seems and appears to be the date that Mr. Tunney sends this across to Mr. Wohlman. Maybe you are not aware and weren't here for that evidence, but this is sent on Mr. Tunney to Investec?

A. Yeah.

Q. If you go above that, on my copy at least, what appears to be the 28/2/01, a fax from Investec Bank Risk. Do you see that at the very top? It's cut almost in half but you can just make out the date on the top. It looks like the bottom of the 28/2/01 at 10-something, giving a fax number with Investec Bank Risk, do you see that?

A. Well, not particularly, but I mean, I accept it as being

Q. Now, do you know where the original of that letter is, Mr. Phelan?

A. No, I don't.

Q. You see, the person to whom that letter is addressed has been removed from the fax, which is sent by your office to Woodchester Bank?

A. I see that, yes.

Q. And the body of the letter from Mr. Eastham, the managing director says "Further to our telephone conversation, I confirm I have now received architect's drawings for the proposed developments of the site.

This development is based on the existing footprint."

Then it goes on, "Once instructed by yourselves we will apply to the Planning Authority and progress the obtaining of relevant permissions, which I assess should take approximately two months." Do you see that, in the body of the letter?

A. Yes, indeed.

Q. The letter seems to be addressed to the promoter of this development, wouldn't that appear to be the case?

A. Yes, it would be.

Q. Is there a fair chance, Mr. Phelan, that that letter was addressed to Mr. Michael Lowry?

A. I got that letter from Michael Lowry.

Q. and

A. he faxed it to me.

Q. Why is Mr. Lowry's name removed from this letter?

A. You'll have to put that question to him. I mean, that's the way he sent it to me. It's only since this

process commenced I even noticed that.

Q. You see, all the other letters that are faxed referring to Mr. Daly and referring to the references from the bank and from his accountants, all of those are complete and there is no attempt being made to obscure any portion of the letter. Would you accept that to be the case?

A. I accept that.

Q. But in the case of this letter there is an attempt by somebody to obscure the identity of the addressee?

A. It would appear that way, yes.

Q. And insofar as that is so, somebody didn't want somebody to know who the addressee was?

A. You could take that meaning from that.

Q. And it certainly is suggestive, at least, of an attempt at the time that this transaction is being negotiated, not to disclose the full picture in relation to Mr. Lowry's involvement, if that's whose name originally appeared on that?

A. Well, I know I got that from Michael Lowry, that letter. I would assume I don't know how it looks in that condition.

Q. And you see, if your evidence is correct, there was and is no reason for Mr. Lowry's name to be removed from this letter?

A. No, there is no reason.

Q. And there is no reason in relation to the fourth of the

fax banner heads there, which appears to obscure the telephone number that appears where the 'From' is blank and then 'To' - what appears to be 00 353 and then it's impossible to make out the number in circumstances where the numbers appear to have been either interfered with or written over?

A. Certainly on my copy you can read it.

Q. Which number is that?

A. It seems to be 00 353 504 23349.

Q. And what copy are you looking at?

A. It's just the copy in my file. You see, I think you have a copy that might have gone backwards and forwards through the Investec system.

Q. And is there any indication as to who that letter is from on yours?

A. From or to?

Q. From?

A. From? Well, that number is 0504 so I take it it's from Michael Lowry. I'd say it's a fax number.

Q. But if you just move over where it says "From" on this?

A. Yeah, there is nothing on it.

Q. It's suggestive that if there was something there, that that also also been removed, isn't that correct? In other words, if that says 'From the fax of Michael Lowry' or 'From Michael Lowry', that that also has been removed?

A. I mean, there is nothing beside who it's from. It's

very difficult for me obviously it's from, it's from

Eastham and to

Q. no, Mr. Phelan, if that number which you have called

out, which I can't read on my copy, is a Tipperary

number, the 'From' would be well, I suppose it could

be from

A. It says 'From Eastham'.

Q. ECL, is that correct?

A. Yes.

Q. But that's at least how you got the letter, the

condition it was in when you got it, is that correct?

A. That's correct.

Q. You have made reference in the course of your evidence

today to a discussion with Mr. Tunney in the Shelbourne

Hotel in December. Now, I don't - and haven't had -

an opportunity to take Mr. Tunney's instructions in

relation to that, but in relation to a discussion which

you think you had with him in March, early March of

this year, you initially, in response to Mr. Coughlan,

indicated that you had again informed Mr. Tunney of

Mr. Lowry's involvement and I think subsequently you

resiled somewhat from that position and you said you

couldn't really remember what you said, would that be

correct?

A. I'd have to hear the transcript again. I am just

getting a bit tired at this stage of the day.

Q. I think you said I'd be speculating in relation to

what I said', do you recall?

A. Yes, it seems

Q. you see, I have to suggest to you, and I have taken instructions from Mr. Tunney that he, if he is to be recalled, will say that he has no recollection and doesn't believe you made any reference to Mr. Lowry in March of this year, but since you are only speculating, you can't say whether you said it or not, is that correct?

A. I am only speculating that it would be obvious his name would have come up.

Q. Would you agree with me or go with me to this extent, that if you did inform Mr. Tunney in December of '99 that Mr. Lowry was the promoter or shareholder or director of the company behind this transaction, that it would be very strange for Mr. Tunney in presenting that to the bank to make reference to an awareness on the part of Mr. O'Brien?

A. It would have been strange.

Q. And the fact that Mr. Tunney accepts that he mentioned an awareness on the part of Mr. O'Brien in December of '99, does that not support and suggest a lack of awareness on his part of the involvement of Mr. Lowry?

A. It would support it would support that view.

Q. And if Mr. Tunney is correct that you make reference to Mr. O'Brien's support for you, or standing behind you in February, and if Mr. Morland and Mr. Cullen are

correct as to what you said in February the 28th, that would make it understandable and consistent that Mr. Tunney should express shock as reported by Mr. Cullen and himself on the 1st March of 2001 when he becomes aware for the first time of Mr. Lowry's connection with this transaction. That would be consistent?

A. It would be consistent, but I have to return to the fact that when the loan was set up Catclause Limited was had as its directors Lorraine Lowry and Michael Lowry and I spoke to Michael Tunney about the promoters/shareholders, directors, people behind the transaction.

Q. there is no doubt but that they were

A. I mean, I have to bring you back there because, you know, when you are actually applying for a loan, you know who is behind the transaction. There is no doubt you don't have a doubt about it. I just, like with all the rest of the stuff, I have to bring you back there.

Q. Would you agree with me, Mr. Phelan, that insofar as everything you did subsequent to December of '99, it is inconsistent with you having disclosed Mr. Lowry's connection with this transaction?

A. I would agree with that.

Q. You would?

A. I think that, you know, as stated, the paperwork in

this for this loan is far from ideal. It's very bad.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GLEESON:

Q. MR. GLEESON: Just a number of questions. In relation to this property, Mr. Phelan, the Cheadle property, since January, 2000 has Mr. Lowry asserted any claim to an interest in the property?

A. No.

Q. Has he asserted any claim to an interest in the proceeds of the sale of the property, if and when it comes to be sold?

A. No, he hasn't.

Q. Now, I am going to deal with a small number of matters, not necessarily in chronological sequence or in order of importance.

I want to ask you again about the file note of Mr. Owen O'Connell, dated 6th November of 1997. That is the file note of the conversation you had with him in relation to his inquiry as to whether there were other significant accounts. Now, can you just remind us where were you when that phone conversation took place?

A. That's the 6th November?

Q. Yes.

A. I was in New York.

Q. And have you any recollection as to what time of the day that phone call was made?

A. I don't. I am sure it was I don't, no, I don't have a recollection.

Q. But given the time difference, isn't it likely that it was in the afternoon rather than the morning?

A. It was likely that it was in the evening, yeah.

Q. Now, in relation to the inquiry made to you by Mr. O'Connell, can I just ask you when was the IPO due to commence?

A. To price?

Q. Yes.

A. It would have priced at the close of business on the next day, the 7th.

Q. So

A. So around about five o'clock.

Q. Am I correct in thinking that the opportunity for inquiries to be made in response to that request from Mr. O'Connell was a limited opportunity?

A. It was.

Q. And in fact, you are talking about a number of hours rather than days at that stage, isn't that correct?

A. You are.

Q. And Mr. O'Connell of course, was aware of that, as the person making the inquiry?

A. He would.

Q. And in any event, I think it's correct to say that you answered his inquiry in the course of the same telephone conversation?

A. It is correct.

Q. And did he suggest to you that you should go off and make other inquiries?

A. No.

Q. Now, at that time, did you know that David Austin had made a payment to Michael Lowry?

A. No.

Q. When did you first find out that Mr. Austin made the payment to Mr. Lowry of, I think  $\frac{1}{2}$ 147,000?

A. In the course of the evidence presented to the Tribunal, which is in the last two or three months.

Q. Now, can I go back to another matter, that is Mr. Vaughan's letter of the 20th December of 1999 in relation to the Cheadle property. It's at page 23 of the booklet of documents that the Tribunal has prepared and in that letter Mr. Vaughan says this is his letter to Michael Tunney in paragraph 4 "I think that you may have a copy of my letter of the 14th December, 1999 to AP Consulting but, if not, my bank details are." And he goes on to give the details.

Now, I want to refer to that letter, which was a letter which was furnished to the Tribunal. It's a letter dated it is the letter dated 14th December, 1999.

Now, that is a letter, I think, sent by Mr. Vaughan to you and Ms. Helen Malone, is that correct?

A. Yes.

Q. And I think it reads it's headed 'Michael Lowry' and it reads:

"Dear Aidan/Helen.

I had not appreciated until yesterday - Monday 13th December in the morning, that you were involved in this matter at all.

I understand Michael Lowry has given you the relevant figures but I am in desperate need of the funds today before 2 p.m. so that I can complete the purchase of this property.

I will not concern you with the history of this transaction but contracts were exchanged on the 14th September for completion on or before 30th November.

A completion notice has been served which meant that if completion did not take place on the 13th December, the deposit paid could be forfeited. I have managed to persuade the Seller's solicitors to extend completion for an extra day but I do not think they will be very enthusiastic about extending it even further.

My bank details are Co-operative Bank plc, Northampton branch." And he gives the sort code. "Christopher Vaughan Solicitor Client Account number" - and he gives the number - "Michael and Kevin have had all the completion statements etc., but if you want any further

information, please telephone me." And it's signed Christopher Vaughan."

Now, that is the letter that Mr. Vaughan is referring to in his later letter to the bank, isn't that correct?

A. Yes.

Q. And so he was under the impression that Mr. Tunney may have got that letter when he sent the letter of the 20th December, isn't that what his second letter states?

A. Yeah, yes.

Q. So as far as Mr. Vaughan was concerned, doesn't that indicate that he wasn't making any secret of the fact that Michael Lowry was involved in the matter?

A. Yes.

Q. Now, can I also ask you in relation can I also deal with this handwritten document? This is the document, Sir, that we had some discussion about the other day.

It's

CHAIRMAN: I'll let you put it, Mr. Gleeson, but I have obviously indicated its inherent infirmities.

MR. GLEESON: I was merely going to ask Mr. Phelan could he identify the handwriting on that letter.

CHAIRMAN: All right.

Q. MR. GLEESON: Perhaps if I am afraid I don't have extra copies at this stage: I think we have it on the

screen. But in any event, I have a spare copy,

Mr. Phelan. (Document handed to witness.) Now, can you tell the Tribunal do you know whose handwriting that is?

A. It's Christopher Vaughan's handwriting.

Q. Now, this document, I think, was recording or purporting to record a conversation which Mr. Vaughan had with 'Michael T', isn't that what it says? It says 'Michael T'?

A. It says 'Michael T'.

Q. And it also says 'Saint Columbas'. And it goes on to say "QAP now is to be owner of this site but MGE" mortgage "to bank. Do we have forms which could be used? I will be in Dublin early Feb. Perhaps we could meet. Tried AP - out."

Now, I think you have given evidence that in January you informed Mr. Tunney that Catclause was no longer to be involved in this transaction, isn't that right?

A. That's correct.

Q. And I think you have indicated that the reason for that was that the guarantor was no longer prepared to execute the guarantee?

A. That's correct.

Q. Now, I think you are aware of the fact that Mr. Vaughan has had a meeting with the Tribunal, isn't that correct?

A. I am.

Q. And you have given evidence that you have asked Mr. Vaughan to attend before this Tribunal to give evidence?

A. I have, yes.

Q. And he has, so far at least, declined to come?

A. He declined after he met, you know, the Tribunal team.

Q. Are you saying that it is since he came over here for the meeting that he has declined to come back, is that your evidence?

A. Yes.

Q. Now Mr. Shipsey referred to some conflicts of evidence which you had with Mr. Tunney. I think there is one additional conflict and that is you recall that when Mr. Daly was giving his evidence he gave evidence that Mr. Tunney telephoned him and Mr. Daly asked him 'Where did you get my number?' And he said 'From Michael Lowry'. And Mr. Tunney has given a different version of that. He said that he got Mr. Daly's phone number from you?

A. Yes, I

Q. What do you say to that?

A. I don't recall giving Michael Tunney Daly's number.

Q. Well,

A. I mean, I know Daly rang me. I don't think I ever had his number.

Q. Are you satisfied that Mr. Tunney was aware of

Mr. Lowry's involvement in this matter?

A. I am.

Q. Can I ask you in relation to the meeting of the 28th February of this year; you have given evidence in response to Mr. Coughlan this morning that you didn't, you didn't yourself raise at that meeting the fact that Michael Lowry was a director of this company?

A. Correct, I didn't.

Q. Did either of the executives from the bank tell you that they had received information that Mr. Lowry was a director of the company?

A. No, they didn't.

Q. So it was never put to you at that meeting that Mr. Lowry had an involvement in the company, notwithstanding the fact that a company search appears to have been carried out on the previous day by the bank?

A. No, it was never disclosed - or never brought up.

Q. Thank you, Mr. Phelan.

CHAIRMAN: Just whilst you are dealing with your client, Mr. Gleeson, without in any way seeking any evidence on it, can you give any assistance to the Tribunal as to any efforts that your solicitor may have made to persuade Mr. Vaughan to attend? Has contact been made?

MR. GLEESON: No, contact has been made only directly by

Mr. Phelan himself.

CHAIRMAN: I see, very good. There may be some last questions by Mr. Coughlan. Just while I think of it, Mr. Phelan, would you please, when you conclude your evidence, be good enough to give Mr. Davis, the Tribunal solicitor, your copy of the English auctioneer, Mr. Eastham's message, because it may be helpful?

A. Certainly.

THE WITNESS WAS FURTHER EXAMINED BY MR. COUGHLAN.

Q. MR. COUGHLAN: Just in relation to yourself and Mr. Tunney, may I ask you this; it would appear from the evidence you have given this morning that on the meeting you had with Mr. Cullen on the 2nd March a form of a letter was dictated to you to be sent to the bank which, in effect, removed Mr. Lowry from the transaction, isn't that correct?

A. That's what he wanted. That's what Cullen asked, you know

Q. That's the evidence you have given and we have to hear Mr. Cullen on that point yet. But that's the effect of what happened, isn't it?

A. That's the effect, yes.

Q. And that was the effect of the letter of the 5th. So can I take it that you were prepared on that occasion, as you say at the instigation of Mr. Cullen, to ensure

that Mr. Lowry was removed from the transaction, as far as you were, you and the bank were concerned?

A. That's what he requested me to do, to solve their compliance problem.

Q. Was there any such discussion or agreement or arrangement between yourself and Mr. Tunney to ensure that Mr. Lowry's name did not appear in the bank?

A. No.

Q. At any stage?

A. No.

CHAIRMAN: Very good. Thank you for your assistance, Mr. Phelan. Then, that concludes your testimony. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Denis O'Connor please.

MR. O'DONNELL: Just a formality. I would apply on behalf of Mr. O'Connor for limited representation, should it arise, which I hope it won't.

CHAIRMAN: Well I'll leave it open, Mr. O'Donnell, on a basis that since Mr. O'Connor is still, in effect, as I understand it, accountant to Mr. Lowry, I'll leave it open as being within the rubric of the existing limited or the representation.

MR. O'DONNELL: Very good, Sir.

MR. HEALY: Mr. O'Connor is already sworn.

CHAIRMAN: That's right, from some two years ago, I think, Mr. O'Connor.

MR. DENIS O'CONNOR, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY.

Q. MR. HEALY: Thank you, Mr. O'Connor. You have provided the Tribunal with some further information in response to a recent request for assistance. I think you have provided the Tribunal with an additional statement and I hope you have a copy of that with you?

A. I don't but I am comfortable to go ahead with it, whatever it is.

Q. You say that you are a partner in Brophy Butler Thornton, Chartered Accountants and Registered Auditors. You say that you: "First met Mr. Michael Lowry in late 1986 in the context of Tipperary hurling when he was Chairman of the Tipperary County Board. It was very much a social friendship. Sometime in or around May of 1996 he mentioned to me that it had been brought to his notice that the company, Garuda Limited, in which he was a shareholder, may have been experiencing trading difficulties and would you mind contacting his brother who was running it to ascertain the position." You say you did this with a colleague and that you set up a system for preparing regular

management accounts. You say, in short, "This information was required to ascertain the regular trading position and from there specific areas were examined in detail. "We continue to assist with the preparation of the same and check their accuracy and make recommendations. We were appointed auditors in July of 1997." You say that: "In late 1996 I was asked by Michael Lowry to examine his personal financial transactions." And this led on to you preparing the financial submissions for both the McCracken Tribunal of Inquiry and the Moriarty Tribunal of Inquiry and then you go on to address a number of specific areas.

Before I go on to those specific areas could I just ask you one or two questions about the part of your statement I have read out?

Your first contact, you say, with Mr. Lowry was in the context of Tipperary hurling and the GAA in Tipperary, is that right?

A. That's correct.

Q. And as you say it was very much a social friendship?

A. Correct.

Q. You became involved professionally in May of 1996 in connection with his company, Garuda?

A. Correct.

Q. Which he informed you was experiencing trading

difficulties?

A. Correct.

Q. Garuda is the company which trades as Streamline

Refrigeration - or Enterprises - I am not sure?

A. Streamline Enterprises.

Q. Streamline Enterprises. You were appointed auditors to

Garuda T/A Streamline Enterprises, in July of 1997.

By July of 1997 the McCracken Tribunal had, I think, in

fact, perhaps completed its sittings, is that right?

A. That was part of the difficulty, I think. I recollect

that the request to have us appointed auditors was in

1997, kind of early, but clearance from the previous

agents was subject, I think, to the issue of the

McCracken Report. There was some delay anyway but

Q. I am not really concerned with those details. What

I am more concerned about is the fact that your

appointment was sometime after the sittings of the

McCracken Tribunal, although you may have assisted in a

professional capacity in providing what I'll call

'accountancy expertise' in the course of the McCracken

Tribunal as well?

A. To Michael Lowry personally as distinct from the

company.

Q. Of course.

A. Yeah.

Q. We needn't rehearse the information that came into the

public domain. Just prior to and in the course of the

sittings of the McCracken Tribunal concerning the operation of Mr. Lowry's personal affairs and the operation of his company Garuda T/A Streamline Enterprises Limited.

A. okay.

Q. would I be right in saying that when you became involved in advising in connection with Garuda's trading difficulties in 1996 you were not informed of all of those facts which subsequently came into the public domain in 1997 in connection with the operation of Mr. Lowry's business activities?

A. You mean the content of the McCracken Report?

Q. Yes.

A. No, I wasn't aware.

Q. You were not aware that Garuda and Streamline Enterprises was, in fact, operated in the way which was outlined in the course of the evidence given at and in the course of the report of the McCracken Tribunal?

A. Yeah, I think you referred to the content of it. I was aware of the relationship between Dunnes and Garuda, obviously, but not the subject matter that, you know, the matters that became part of the schedule of the McCracken Report.

Q. Lest there be any doubt about it, when you were brought in to advise in connection with Garuda in 1996, were you aware of the somewhat unusual, and I think perhaps we can say, irregular arrangement operated by

Mr. Dunne and Mr. Lowry in connection with the business activities of Garuda?

A. No.

Q. None of that was brought to your attention in 1996?

A. No.

Q. All of that was news to you in 1997?

A. When I became aware of it, yeah, in preparation for the McCracken Report, yeah.

Q. So that you were advising at the request of Mr. Lowry at a time when he was a minister and therefore, he was out of the company and his brother was running it. You were advising but you were not brought fully in the picture in connection with Mr. Lowry's affairs?

A. Yeah, but just to be clear, when I was doing the work in 1996 it was to the board of Garuda that I reported and it was not to Michael Lowry.

Q. I accept all of that. But it was Mr. Lowry who brought the matter to your attention?

A. Correct.

Q. And isn't it fair to say it was Mr. Lowry brought you in?

A. Correct.

Q. And isn't it fair to say it was his company?

A. That I went into, correct.

Q. Now, you were asked to deal with a number of matters in connection with information that has come to the attention of the Tribunal in the last few months. And

firstly you were asked to deal with the information you had concerning and Isle of Man Irish Nationwide Limited account, number 023/01/001505. That is an account which was opened in the Isle of Man for Mr. Lowry and into which, as we have heard in evidence, substantial sums of money were deposited in 1996. And you say, "I became aware of this transaction in early April, 2001 when Michael Lowry advised me of the background and queried whether, in the context of recent correspondence from the Tribunal reference the Telenor payment, it came within the terms of reference. My reaction was that it did but there was a time difficulty in getting a narrative prepared for the Tribunal as I was out of the country for two different periods of time in that month."

You say that sometime in the week ending April 20th, Michael Lowry, his solicitor and yourself finalised Michael Lowry's statement on the matter. You say "I had a prearranged meeting with the Tribunal on April 25th and handed over Michael Lowry's statement on that date." Later on the same day Michael Lowry requested the Irish Nationwide (Isle of Man) to fax the file details to your office. Upon receipt of those file details, you immediately had them sent by courier to the Tribunal. You then go on to make a number of specific points.

You say, "I was unaware of this account or of its financial transactions until the month prior to my statement." Which is, I suppose, April of this year?

A. No, I actually think the statement I was looking at that just before I came up I think the statement is May but I am not sure of that. But it's April I am referring to.

Q. You say "I became aware that my office address was used on the application to open the account on April 25th." You say that your fellow partners and yourself have confirmed this to the Tribunal by way of a letter dated April 30th, 2001.

I might just put that information on the overhead projector. The document on the overhead projector was a document that was firstly made available to you and then made available by you, I think, to the Tribunal, is that right?

A. That's correct.

Q. This is the document which Michael Lowry directed Irish Nationwide (Isle of Man) to fax to your office and which your office then faxed to the Tribunal and we see in this document, it describes the account applicant as 'Michael A Lowry'. The address is Brophy Thornton - not the full name of your firm - bracket (Private and confidential) - close bracket. Then 26, The Gables, Foxrock, County Dublin. Underneath that "Registered

address as above." Underneath that "Correspondence address as above." Underneath that "Daytime telephone number. No correspondence except on request."

Underneath that "Nationality: Irish." And next to that "Occupation: Company Director."

And if you just go to the bottom of the page then, there is, I think, some more information for office usage which has been filled out. It's stamped the 10th December, it's not yet quite clear when the document was actually generated but in any case if we could just go to the reference in the document to your firm, that is the address of your firm, 26 The Gables, isn't that right?

A. I think that is actually 'The Gables', rather than 26.

Q. I see, I follow.

A. That is the address.

Q. The address is, I see, just the gables?

A. But it's Dublin 18 rather than County Dublin.

Q. I follow. Did you give Mr. Lowry any authority to use your firm's address as his address for the purposes of opening this account?

A. No.

Q. And as you say, your partners have confirmed to the Tribunal by letter that they didn't either?

A. Correct.

Q. And not only did you give no authority, can you tell the Tribunal whether you were ever informed of this by

Mr. Lowry after he had done it?

A. No.

Q. And the same goes for your partners?

A. Correct.

Q. At that particular time, sometime in 1996, you had done some work for Mr. Lowry in connection with Garuda, is that right, the work that you have described in your statement?

A. Correct.

Q. Was that the only work you had done for him?

A. In '96?

Q. Yes.

A. Yeah, in '96, we had have first got involved around May of '96 and I think that I might have opted out a bit and one of my colleagues continued it through '96 and then obviously in late '96 when Mr. Lowry's difficulties arose I started working towards

Q. this is, when you say 'Late '96' do you mean around November/December '96?

A. Well, December.

Q. You say that you became aware of this transaction in April of 2001 when Michael Lowry advised you of the background and queried whether, in the context of recent correspondence from the Tribunal, reference the Telenor payment, it came within the Terms of Reference. Can you recall whether that was before or after the Tribunal brought any matters concerning this account or

Mr. Austin's involvement in the Carysfort transaction to your attention?

A. No. This information was discussed before we had any inquiries from the Tribunal vis-a-vis this account.

Obviously Carysfort had been discussed before.

Q. I appreciate that.

CHAIRMAN: Well, Carysfort was touched upon in your evidence two years ago, Mr. O'Connell.

A. I believe it was, Chairman.

CHAIRMAN: And effectively, what you are saying is that matters largely went into abeyance until April of this year, that Mr. Lowry came to you seeking your advices in relation to this new aspect.

A. Correct. We had been actively involved on the Revenue aspect as well just prior to that.

Q. MR. HEALY: Now, your initial involvement with Mr. Lowry, as you say, was in connection with his request to help out in relation to the trading difficulties the company was experiencing in 1996. You then became involved in assisting him in providing accountancy expertise in connection with the various inquiries that came into being in late '96 and have been going on until this day, isn't that right?

A. Correct.

Q. In connection with those inquiries, I think Mr. Lowry has given evidence that he has provided you, as his

accountants, and he has instructed his accountants and his advisers to provide the Tribunal, this Tribunal, and presumably any other Tribunal of Inquiry, with all the information at his disposal concerning any matter into which any of the Tribunals might wish to inquire, isn't that right?

A. Correct.

Q. Now, I appreciate that to some extent this may be a somewhat painful matter for you because you have become involved so intimately in advising him over a protracted period of time. Did your initial advices to Mr. Lowry include or embrace any of the public statements or Dail statements he made in 1996 or since then?

A. I certainly was involved, you know, you have got to go back to this, to December '96. There were lawyers, accountants, everyone involved. So I certainly was present for the drafting of his Dail statement of '96.

Q. At that time he was represented by I think a different firm of solicitors, is that right?

A. Correct.

Q. And his solicitors, his counsel, his accountants or any other financial or other advisers, were assisting him in preparing a statement for the Dail?

A. Yeah, but not everybody. You know, there were a lot of people involved because there was the attitude at the time was that McCracken Tribunal had not been

established but that there was certainly going to be, at least, inquiries and there was also obviously the issue of the Revenue Commissioners. So a lot of issues were being faced at the one time by a lot of different advisers but you couldn't group the advisers as being one.

Q. I understand that. I think we have heard evidence already that sometime in, I think it would probably be November of 1996, Messrs. Freaneys at one point, and maybe another firm of accountants, were also involved in dealing with Mr. Lowry's tax affairs, is that right?

A. Yeah, well, in effect, up to December '96, Messrs. Freaney and Co. were auditors to Garuda and were, to put it simply, the tax agent for Michael Lowry, Esquire up to that date. Now, throughout the period until we were appointed auditors, Freaneys would have been the auditors, but in early December '96 another firm of accountants took on, if you like, the taxation issue.

Q. Was that Ernst & Young?

A. Correct.

Q. For a short period of time?

A. For, certainly a year, a year and a half possibly, certainly a year.

Q. And we have heard from other evidence that was given at the Tribunal, but given in a very truncated form because it was envisaged the matter would have to be taken up at a later point, that there were a number of

disputes between Mr. Lowry and the Revenue

Commissioners about the statements of his account, amounts of his income, the profits he was making from his business and so forth?

A. His 'accounts' might be the wrong phraseology because he, personally, did not prepare accounts.

Q. I understand. The state of his accounts?

A. The state - yeah, fine.

Q. There was also an issue that arose, I think it was canvassed with one of the Revenue witnesses at earlier sittings of the Tribunal this year, but the issue that arose was as to whether Mr. Lowry was entitled to assist, that he'd made a voluntary disclosure of his affairs, isn't that right?

A. I recall that issue.

Q. That, and a number of substantive issues were, if you like, put back in the course of the Tribunal's sittings earlier this year?

A. Correct.

Q. Now, from the information that has been provided to the Tribunal and from information that you provided to the Tribunal, it would appear that this account was opened sometime this Isle of Man was opened sometime in October of 1996?

A. Correct.

Q. And that a substantial deposit of, I think nearly £150,000, was made to the account sometime in the

middle of October of 1996?

A. i;½147,000 Irish.

Q. Would it be the 18th October?

A. I don't have the documents but I believe it was sometime between the 12th and the 18th. That's my recollection.

Q. In any case, in the middle of October?

A. Yeah, correct.

Q. And you are aware that Mr. Lowry made a statement in the Dail in which he asserted that if he wished to hide any money he would have opened an offshore account in which to put it.

MR. O'DONNELL: With respect, Sir, if I could just question whether this is a proper matter for Mr. Healy to investigate. This is a matter that has previously arisen. As I understand, under Article 15.13 no member of the Houses of the Oireachtas can be questioned or called to account in respect of utterances made within the House of Oireachtas. That has arisen previously, I believe, and I don't think it can be done directly of the member or indirectly of his accountant, Sir. And I think it's indeed I think you have already ruled upon that, Sir.

CHAIRMAN: Well

MR. HEALY: I am not anxious to press the point, Sir.

The point I wish to make, and I am happy to leave that matter hanging in the air, it doesn't concern me, is to deal with evidence given by Mr. O'Connor - and I hasten to add, quite clearly in good faith - concerning the enormous efforts that were made by accountants and the instructions given to them as to what information they were at liberty to provide to the Tribunal or to gather and so forth. That's all I am seeking to do and if Mr. I wouldn't wish to make the concession to the proposition that is relied on by Mr. O'Donnell but I am happy to leave it and to press on.

CHAIRMAN: Well, it seems to be something of a moot debate, Mr. O'Donnell. Obviously it's a matter that's in the public record and the Tribunal, like any citizen in the country, can read what may have been said by any politician in the national assembly and well, insofar as it may be putting Mr. O'Connor in a somewhat invidious position, I think we can probably proceed on the more general lines that Mr. Healy envisages.

Q. MR. HEALY: Now, when you first gave evidence, in fact, Mr. O'Connor, to the Tribunal, you were endeavouring to provide the Tribunal with the benefit of a vast amount of work which you had taken and most of which was of huge assistance to the Tribunal in endeavouring to unravel payments to or lodgements to Mr. Lowry's various accounts, isn't that right?

A. That's correct.

Q. And I think in the course of that evidence, at Book 22, page 63, you were asked by Mr. O'Donnell, I think "And one other thing, Mr. O'Connor, I think you have been engaged in a constant process on Mr. Lowry's behalf and express instructions in gathering information, in gathering this information for the Tribunal and cooperating with the Tribunal to provide, to bring the inquiry this far, as it were." And I think your answer "Correct." Mr. O'Donnell then went on to ask you, "I think that, you know, is it fair to say that you have been in contact with the Tribunal on Mr. Lowry's behalf since, initially late 1997 and that your task has been firstly to identify all figures and subsequently to narrow down, as you have been able to do, to narrow down to date any remaining outstanding queries?" Do you recall that evidence?

A. I would agree that would have been my evidence, yeah.

Q. And I think you gave evidence in relation to a number of accounts that had been opened by Mr. Lowry in connection with his various affairs and I think you gave evidence and Mr. Lowry gave evidence to the effect that he had instructed you at all times to provide all his financial information to the Tribunal, is that right?

A. That's my recollection of my evidence - and of his - sorry.

Q. And I take it that you, for your part, understood at all times that you were being provided by Mr. Lowry with all of his financial information, or at least access to it, is that right?

A. That's right.

Q. And I think you understood that you were being provided with access to all of the bank accounts that Mr. Lowry had, is that right?

A. Correct. Just so as we are clear on that, he didn't actually give me all the bank accounts. As you know, I had to we had to track them down through a method of

Q. I understand that. What he did was he pointed you in the direction of certain banks. You were given access to those banks on foot of waivers and so forth and you accumulated the information in that way?

A. That's correct.

Q. And, for instance, one of the things that you mentioned in the course of your evidence on Day 22, on the 22nd June, 1999, which was a few months before the transactions we have been dealing with in evidence today, at page 23, you were dealing with an Irish Nationwide Building Society account opened in September of 1996 in connection with the purchase of Carysfort.

A. That's correct.

Q. So can I take it that you were provided with that information by Mr. Lowry, that the funds for the

purchase of Carysfort came from the Irish Nationwide Building Society?

A. I am not being difficult, I actually don't know how I came across the information, but it was public knowledge when I was doing my investigations, say in early '97, but I am happy to say that he provided me with the information, you know.

Q. And at the time that you gave that evidence and during the time that you were preparing for it and after you gave that evidence, did Mr. Lowry mention anything to you about any other funds he had to enable him to carry out refurbishment works on Careysfort?

A. No.

Q. Specifically did he draw to your attention the fact that he had an account in the Isle of Man?

A. No.

Q. And that that account was set up around the same time as the Irish Nationwide mortgage account was set up?

A. No.

Q. At the time that you gave that evidence, you were also asked about an account, an account which you brought to the attention of the Tribunal, in Allied Irish Banks (Channel Islands limited) Do you remember the evidence given in relation to an Allied Irish Banks account in the Channel Islands?

A. In general terms, yeah.

Q. There was an amount of evidence given concerning how

Mr. Lowry opened that account and how he transmitted the money to the account, do you remember that?

A. I recall it now, yeah.

Q. And one of the issues which arose was how he came to go to Allied Irish Banks in O'Connell Street from the Dame Street branch where he was working to process this transaction, isn't that right?

A. That's correct.

Q. At the time that you were preparing to give this evidence, or after your evidence, did Mr. Lowry draw to your attention the fact that he had another offshore account in the Isle of Man?

A. No.

Q. That evidence took some considerable time, didn't it?

A. That's my recollection, yeah.

Q. There were a number of witnesses, you gave evidence, a number of bank officials gave evidence. Your evidence merely set the scene by providing what I'll call the raw accountancy information, isn't that right?

A. That's right.

Q. And then there were a number of bank witnesses and Mr. Lowry himself gave evidence?

A. That's correct.

Q. And can I take it that just as you were told nothing at that time about the Isle of Man account, you were also told nothing about Mr. David Austin's involvement in that account or his involvement, whatever it may have

been, in connection with the monies provided for that account?

A. Correct.

Q. At the time that Mr. Lowry, and indeed that you were giving that evidence in 1999, it would appear from the evidence that Mr. Lowry was soon to be involved in the transactions which have been referred to as the Cheadle and Mansfield transactions referred to in evidence over the past few days?

A. The question is?

Q. Well, do you agree with that, first?

A. Yes.

Q. And again I am, I fully appreciate this may be somewhat painful for you because presumably you had every reason to believe that you were being provided with all of the relevant information you needed. At no time during your intensive involvement as an adviser to Mr. Lowry, during that period were you informed of these transactions?

A. Correct.

Q. Had you ever heard of Mr. Kevin Phelan?

A. I might have, totally unrelated to this. I just you see, you are going back in hindsight so it's hard to differentiate on a time basis, but I would have a client who is a major property person both here and in the UK and I just have a feeling that

Q. Well, I am not obviously interested in your other

clients for the moment?

A. but as regards this, no.

Q. Now, I am going to come back to this again and it may be that I won't get it all done today, but you had some involvement or some dealings with Mr. Aidan Phelan, isn't that right?

A. That's correct.

Q. On Mr. Lowry's behalf?

A. Yeah, just yeah, okay, we can clarify it as we go along.

Q. I may need to expand on that and I may need to put it in a wider context but for the moment, you may have had some dealings and Mr. Lowry would certainly have been aware that you had had dealings on his behalf with Mr. Aidan Phelan?

A. Yeah, we can clarify it as we go along.

Q. But at this time, in 1999, Mr. Lowry never informed you that he was dealing with Mr. Phelan in connection with property?

A. Correct.

Q. In England?

A. That's correct.

Q. In the available time, I am not going to be able to go through the rest of your statement today and deal with the other matters. Maybe we will just deal with one matter, to give you an opportunity of dealing with it while it is presumably fresh in your memory. Do you

recall the evidence that was given by Mr. Aidan Phelan concerning dealings he had with you regarding the provision of a mobile phone for Mr. Michael Lowry?

A. I do.

Q. The evidence that Mr. Phelan has given is that Mr. is that you were aware that he, Aidan Phelan, acted for a company called MCJ, that MCJ were in the business of distributing phones?

A. That's correct.

Q. That you contacted Mr. Phelan to know would he get a phone for Mr. Lowry and that you wanted the phone confidential. Now, if that doesn't summarise the evidence, you can correct me?

A. That summarizes his evidence. But I'd have a different interpretation on the whole story, in fact, but there are just significant points.

Q. Do you want to tell the Tribunal now what your interpretation or your evidence is in relation to the matter?

A. Yeah, I'd welcome that opportunity.

As you read out earlier, I maintained a friendship Michael Lowry from 1986 rightup. So throughout that friendship I would have been aware of the kind of media issues that arose whilst he was still a minister. I am talking about CIE and various other controversies. So when you lose office, you tend to as a minister, you lose everything within, kind of, five hours. So

uppermost in his mind at the time was not actually anonymity, but rather to maintain privacy from media intrusion. And on that basis, he knew that our firm, I think he knew it anyway, had a client who would be similar to MCJ, in other words, they were big at the time, mobile phone distributors and only for Eircell, because they were the only people in existence at that time, so could I organise one that would protect the fact that he was the user. So initially I was going to go to our own distributor and then I thought that would raise issues because he could start wondering why I needed two, having already got one there, so from all that connection of people trying to get the, trying to maintain I am actually quite familiar with because of our own client people trying to maintain the distributorship for Eircell and also trying to acquire one for Digifone when they came on-line in 1997, there was a lot of kind of conferences, dinners and so on and so on so I was aware, because a staff member in our clientm and the client himself, the guy behind the company, were very friendly with the principal in MCJ and from that contact, I was aware of Aidan Phelan's involvement. So, rightly or wrongly, I said 'This is how I will get a phone where it will protect the fact that Michael Lowry is the user'. So on that basis, I contacted Aidan and I asked him to set it up that way. Now, just on the concept of free phones. It's hard to

think back three years from today but, in those days, phones were given out ten a penny. The ad said 'Buy a bag of coal, get a free phone' because the principle was that Eircell were giving large rebates to the distributors for every phone every customer that came on-line and, in fact, that rebate got bigger depending on volume usage by the new user, and the big trick at the time was get them signed up for twelve months and then, like, this is a marketing thing between Digifone and Eircell, not my business, but that was the way it went. Unfortunately, because of the circumstances which Mr. Phelan outlined yesterday, it became a public matter. Once that happened we cancelled that number and I sat down and said 'How do I get around this problem?' So what I did was, in one of our companies, as you are aware, our firm would be a partnership, as distinct from a limited company, but we have a limited company and I went to my distributor at that stage, organising the name of the limited company, put my name down as the principal user and from that day to this, that company pays the bill and Michael Lowry refunds it each time we pay it. So I did not expect this evidence to come up yesterday. So I obviously went out to my office last night and I was hoping that I wouldn't be called till tomorrow so I could give you the documentation I had brought in, so would it be better if you saw it first and we can refer

to it in the morning or will I refer to it now?

Q. Yes, we can deal with it that way. Maybe you can just clarify one or two aspects

A. sorry for being long-winded but it was easier to tell it to you that way.

Q. You were anxious to, as you say, achieve confidentiality, not anonymity?

A. He was.

Q. Well, Michael

A. Lowry.

Q. Lowry was and you were anxious to achieve that for him?

A. That was his request and I was anxious to achieve it for him.

Q. And that was Mr. Phelan's understanding of it as well.

In fairness, he understood that the requirement was for confidentiality, isn't that right?

A. Yeah, but in a particular aspect. Not like, this number at this time, as I said to you earlier, we had numerous professionals, everyone hanging out of the Michael Lowry scenario. Everyone had his number. It was just he was trying to restrict it from the media.

That's what the attempt was. Or that's certainly as I understood it.

Q. That's what he informed you in any case?

A. Correct.

Q. But you were nevertheless prepared to inform Mr. Phelan

of this, if you like, to disclose to Mr. Phelan

Mr. Lowry's desire for confidentiality?

A. Well, his name was going on the line on the phone that he was getting, Mr. Phelan, so therefore it was only right and proper that he knew the context. If he had a problem with it all he had to do was say it and then I went elsewhere.

Q. But was Mr. Lowry aware that you were prepared to disclose to a third party, Mr. Aidan Phelan, the nature of Mr. Lowry's desire for confidentiality?

A. I actually don't think so but I wasn't prepared to use my name with Aidan Phelan without him understanding where I was coming from.

Q. But why did you feel that you could repose a confidence like this in Mr. Aidan Phelan who wasn't, after all, as far as you were concerned, I take it, a political or a business associate or supporter of Mr. Lowry?

A. Because I had known Mr. Lowry for ten years. We were very good friends. Obviously you could say we got to know one another a lot better in the interim. And my belief, rightly or wrongly, was that he would have no problem with that. He would understand where it was coming from.

Q. Did Mr. Phelan say anything to you about any potential, if you like, negative implications that might arise from his becoming involved with Mr. Michael Lowry?

A. No.

Q. Having regard to the public controversy surrounding Mr. Lowry's name at that time?

A. No.

Q. You are aware that subsequently the newspapers were very quick to make controversial and speculative connections between Mr. Phelan's association with Mr. O'Brien and Mr. Lowry, isn't that right?

A. Yeah, but even then and now, like, I am not being smart when I say, if Mr. Lowry goes for a swim, it gets the front page, so, no big deal.

Q. This wasn't as simple as that. He had a phone free from Mr. Aidan Phelan, who had a close association with Mr. Denis O'Brien, who had just received a very valuable licence as a result of a competition conducted by Mr. Lowry, isn't that right?

A. Well, you see, my first problem with this, and this is all over the media today, I do not understand where the free phone comes in. I actually don't.

Q. Mr. Lowry didn't pay anything for it in the beginning in any case?

A. But as I said earlier, they were throwing them out with bags of coal at the time. You see, at that time

Q. did he pay his bills at that time?

A. That's what I was hoping to give you before I got up in evidence.

Q. We'll certainly take your word for it?

A. I have it down here. I can prove it.

Q. I don't want the matter hanging out there. Did he pay the bills from the beginning?

A. Yes.

Q. Did you think you might adjourn at this stage?

CHAIRMAN: Unless you felt for balance there was something you feel Mr. O'Connor may prefer himself to have an opportunity to check his documents on this aspect and we will conclude your evidence tomorrow morning starting at eleven o'clock, Mr. O'Connor. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
FRIDAY, 27TH JULY, 2001 AT 11AM.