

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 16TH

OCTOBER, 2001 AT 11 AM:

MR. COUGHLAN: I should say from the outset, Sir, that there will only be one witness this morning, and we'll be recommencing in the morning with a series of witnesses over the next couple of days then.

CHAIRMAN: And I think this in part reflects that arrangements have had to be made to have witnesses attend from Scandinavia.

MR. COUGHLAN: That's correct, Sir. And the witness today is Ms. Helen Malone.

HELEN MALONE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

MR. GLEESON: Just before Mr. Coughlan takes up this witness, Sir, I just wish to apply for representation on behalf of Ms. Malone on the usual terms.

CHAIRMAN: Yes. Well, I think, Mr. Gleeson, it's clear that Ms. Malone is entitled to limited representation on the usual basis that I have indicated, I think, on numerous occasions. I'm diffident about making a needless proliferation of representation orders, and I think perhaps the most sensible way to approach the position is if I amend your initial order in favour of Mr. Phelan and make a

limited order in favour of AP Consulting which effectively will cover Mr. Phelan and Ms. Malone. I can't see any difficulty about that.

MR. GLEESON: Thank you, Sir.

Q. MR. COUGHLAN: Now, Ms. Malone, I think you provided a statement of proposed evidence for the assistance of the Tribunal, isn't that correct?

A. Yes, I did.

Q. Do you have it with you in the witness-box?

A. Yes, I have. Just a moment.

Q. Now, what I propose doing is taking you through the station and then perhaps returning to the documents which accompany the statement and perhaps deal with one or two of those as we go along; is that all right?

A. Okay.

Q. I think in the statement you inform the Tribunal that you are currently a partner of Aidan Phelan in the firm AP Consulting. You have run your own business since 1993 providing a corporate secretarial service, in the main, to various clients. At that time, Brian Phelan & Associates, which was the partnership in which Mr. Aidan Phelan was then a partner, was a client of yours, is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that in late August/early September 1997, you were asked by Aidan

Phelan to do some part-time work for him as he was now operating his own business, is that correct?

A. That's right.

Q. One of the outstanding issues which he asked you to deal with was the transfer of shares in a company registered in Gibraltar, Tokey Investments. In December 1997, Mr. Phelan gave you a deed of transfer and a letter of instructions which was signed by Mr. David Austin but not properly completed, is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that you redrafted the documentation together with the letter of indemnity which Mr. Perera had forwarded to Mr. Phelan on the 1st December, 1997, is that correct?

A. Correct.

Q. Mr. Austin signed the documentation, and these were forwarded by you to Mr. Perera on the 7th January, 1998, is that correct?

A. Correct.

Q. Now, I think you have informed the Tribunal that you have been advised by Mr. Phelan that Valmet, which is a corporate services provider, should hold the shares in trust for Walbrook Trustees, a Deloitte & Touche trust company, which in turn would hold the shares in trust for Mr. Denis O'Brien, is that correct?

A. (Nods head.)

Q. I think you were informed at this juncture by Mr. Phelan that in fact the property had been purchased in 1996, but the paperwork had not been completed as Mr. Austin could not find the original declaration of trust, and new declarations could not issue until these were found or indemnities completed by Mr. Austin, is that correct?

A. Correct.

Q. During the course of one of your telephone conversations with Mr. Perera, he, Mr. Perera, explained to you that he had acted for Mr. Austin since the property was purchased in 1988 and had been advised by him in 1996 that he had sold the property to a friend, being Mr. O'Brien. You had not originally realised that Mr. Perera acted for Mr. Austin, is that correct?

A. Correct.

Q. Now, turning to the Mansfield property transaction or deal, I think you have informed the Tribunal that you believe that you received an instruction from Mr. Aidan Phelan to transfer $\frac{1}{2}$ 300,000 from Mr. Denis O'Brien's Credit Suisse First Boston account to the client account of Christopher Vaughan, who was acting for Mr. Phelan in respect of the purchase of his property. Is that correct?

A. Yes.

Q. You believe you faxed the instructions to Credit Suisse

First Boston with the routing instructions, is that

correct?

A. Correct.

Q. Mr. Phelan then asked you to prepare a joint venture agreement between himself and Michael Lowry in respect of the property transaction in Mansfield, is that

correct?

A. Yes.

Q. You advised him that he should have a lawyer do this, and in due course, Mr. Vaughan sent you a disk from which you downloaded the joint venture agreement which the Tribunal has, is that correct?

A. Yes.

Q. You printed this off and witnessed both signatures to it, is that correct?

A. Correct.

Q. Turning to the Cheadle property and the company Catclause, I think you have informed the Tribunal that in late December 1997, Mr. Phelan asked your advice as to whether it was possible to sign resolutions on behalf of directors of a company, Catclause Limited, who were, at that particular time, unavailable. You advised him that it would be possible to do so if you were appointed alternate directors by the board. You understood that verbal approval by the board had been given to both Mr. Phelan and yourself to act as alternative directors and joint secretary, and on that

basis, you were prepared to sign the resolution with regard to the opening of the bank account with Woodchester Bank, is that correct?

A. Correct.

Q. Two Forms 288 were signed by Mr. Phelan and yourself but were not filed because after Christmas, when you approached Mr. Phelan as to the position with regard to this matter, he advised you that the company was no longer in a position to take the loan because the guarantor had not signed the guarantee, is that correct?

A. (Nods head.)

Q. I think you were subsequently asked to attend a meeting on the 17th August, 2000, at which Mr. Lowry, Mr. Vaughan and Mr. Phelan attended. You were asked to take minutes of this meeting. Essentially, this was your only role in relation to the meeting, but you can recall that it was put to Mr. Lowry and accepted by him that he had a moral obligation to see that the bank was discharged, as Mr. Phelan felt he had an exposure to the bank as no guarantor had in fact materialised.

I think you have informed the Tribunal that you had been asked whether you had any recollection of the meeting in the Radisson Hotel. I think that is a meeting which Mr. Tunney from the bank, Mr. Lowry and Mr. Phelan attended, isn't that correct?

A. That's correct.

Q. At lunchtime, some lunchtime in the Radisson Hotel?

A. (Nods head.)

Q. I think you have informed the Tribunal that you confirm that you have no specific recollection of this meeting and played no role in it. You are able to recall only who attended, is that correct?

A. Correct.

Q. And I think you have informed the Tribunal that having been asked by the Tribunal to give details of your knowledge, direct or indirect, of any financial dealings involving Mr. Phelan, the late Mr. Austin, Mr. Denis O'Brien, and Mr. Michael Lowry, and you say that save for the above, you have some recollection of being asked by Mr. O'Brien to help Mr. Austin to open an account in Donaldson Lufkin & Jenrette for the purpose of holding his shares in ESAT Telecom. As with all your involvement with these issues, the subject matter of the Tribunal's inquiries, you acted purely in a secretarial function and did not render any advice, is that correct?

A. That's correct, yeah.

Q. Now, if we might return first of all to the question of the house in Spain, in the first instance. And I think you have a bundle of documents, do you?

A. Yes, I do.

Q. And I think those documents are stamped, are they,

Ms. Helen Malone, document number 1, and 2, and so on,
at the bottom, do you see that?

A. Yes.

Q. And I think that prior to September of 1997, Mr.
Phelan practiced in partnership with his brother, isn't
that correct?

A. Yes, I understand he had a period where he was on his
own before

Q. In the same office, in the same space?

A. Yeah.

Q. And you ran a corporate secretarial service, is that
correct?

A. Yes, I did.

Q. And you provided services for that particular practice,
Mr. Phelan's practice, I presume along with many other
smaller practices?

A. Exactly, yes.

Q. And in September of 1997, Mr. Phelan, who was now
emerging on his own in practice, asked you to carry out
certain secretarial corporation secretarial
functions on his behalf, is that correct?

A. Well, he requested that I help him with some of his
work, yes.

Q. And what did he actually say to you about this
particular transaction?

A. From memory, in September, he mentioned it to me. He
didn't specifically ask me to do anything. It was a

list of items that had to be done. But he didn't specifically ask me to do anything in September.

Q. He didn't specifically ask you to do anything in September?

A. Not in September. It was later on.

Q. It was later on?

A. Yes.

Q. But he had a list of items, I presume, for many lines or a number of clients?

A. Yes, there was a huge backlog when I started working with him.

Q. And could you say I am not asking you specifically how many listed items there were, but were there a page or two of listed items, or

A. A huge backlog.

Q. A huge backlog?

A. Yeah.

Q. And what did he can you recollect what he said to you about this particular matter, or did he say anything?

A. I can't specifically recollect what he said, but he from memory, he mentioned that Mr. O'Brien had bought a house

Q. I am sorry, I am having slight difficulty in hearing you. I wonder, could you keep your voice up?

A. Sorry. He mentioned that Mr. O'Brien had bought a house from a Mr. Austin and that paperwork needed to

be tidied up, and he was to contact some people; I think either a solicitor or the corporate services provider.

Q. Right. Now, when do you recollect first having any dealings with the particular transaction?

A. It would have been December '97.

Q. And how did that happen?

A. Mr. Phelan gave me two documents which had been signed by David Austin.

Q. And what did he ask you to do?

A. Well, he asked me to send them on to Mr. Perera. He had already spoken to Mr. Perera at that stage.

Q. He had already spoken to Mr. Perera?

A. Yes.

Q. And did you do that?

A. No, I didn't. Because the documents weren't completed properly, and there was also a document missing. The letter of indemnity was missing. So I retyped everything, and we had them re-signed.

Q. You retyped everything?

A. Yes.

Q. And you had them

A. Re-signed by Mr. Austin.

Q. Where was that done?

A. We went out to his apartment in Salthill.

Q. Did you actually see Mr. Austin on that occasion?

A. No, I didn't.

Q. You didn't see him?

A. I didn't see him no, no.

Q. Mr. Austin was quite ill at that time?

A. He was, yeah.

Q. He had had, as we know, probably chemotherapy or something

A. Yes.

Q. That, I think, was around January of '98, was it?

A. I think it was just after Christmas, yeah.

Q. And once you had the documents signed by Mr. Austin, did you then send them to Mr. Perera?

A. That's correct, yes.

Q. Now, did you have any discussion with Mr. Perera?

A. I recall having a conversation, but I don't remember exactly when. It would have been sometime in January.

Q. Of 1998?

A. Of 1998, yes.

Q. And what was the nature of the discussion?

A. He was describing he was very familiar with the history of the transaction. I was actually very unfamiliar with it, so he was telling me basically of his conversations with Mr. Austin. I am sorry, I can't exactly remember what he said.

Q. You can't remember exactly?

A. Not exactly, but he was familiar. I remember he was familiar with the transaction, and he had acted for Mr. Austin.

Q. He had acted for Mr. Austin in the original purchase back in 1988, isn't that correct?

A. Exactly, mm-hmm.

Q. Did he say anything to you about anything after 1988 that you can recollect?

A. Sorry, I don't understand.

Q. Did he say anything about what transpired after 1988, after the place had been purchased by Mr. Austin?

A. Not particularly, no. You mean between '98 and '88 and '96, is it?

Q. Yes.

A. No, I don't recall anything.

Q. What did he say about 1996?

A. Well, I don't recall him actually saying 1996, but he was familiar that he had conversations with Mr. Austin sometime previously about selling the property.

Q. Of his intention to sell the property, was it?

A. Well, I can't remember exactly what he said.

Q. Because if we go to document number 1, if you wouldn't mind, and it's a file note, it appears to be a file note of Mr. Perera's, isn't that correct? I think that's what we understand it to be. And he says that in this file note that he had a telephone conversation with David Austin, who explained to him that due to ill health, he was considering selling the property in Spain owned by Tokey by way of transfer of beneficial ownership in Tokey.

"At present he was still unsure as to the vehicle to be used for the ownership but he said he would keep me informed with developments.

"He said that the purchaser was a friend of his and that he would be staying on in the house for a while longer.

"He asked for details of the procedure to be followed, and I explained that he would have to return the Declarations of Trust which had been issued to him originally and that these would have to be cancelled and new ones issued to the new owners. A deed of transfer of beneficial ownership would also have to be executed.

"Mr. Austin said that he could not remember where the declarations of trust were kept but would try and locate them and would revert to me."

Was that the form, to the best of your recollection, that the conversation took between yourself and Mr. Perera?

A. That would have been the general form.

Q. Just in paragraph 4 of your statement, and I am not holding you to this specifically, you say that during the course of one of your telephone conversations with Mr. Perera, "he explained to me that he had acted for Mr. Austin since the property was purchased in 1988

and had been advised by him in 1996 that he had sold the property to a friend (being Mr. O'Brien)."

A. Yes, that was the impression he gave me.

Q. That was the impression you got?

A. Mm-hmm.

Q. Did he use the name Mr. O'Brien at that stage, or is it just something that you

A. I am sorry, I can't recall.

Q. Right. Are you sure that he said that he had sold the property? It seems to be at slight variance with Mr. Perera's own memorandum, that what Mr. Austin had explained to him, that he had an intention to sell the property.

A. Well, the impression I got was that he had sold the property. That's what he gave me the impression.

Q. Just because there may be just some confusion over this, can I take it that you don't actually remember the details of the conversation?

A. Not exactly. It's four years ago; sorry.

Q. And would you take it that Mr. Perera's memorandum or note to his own file probably reflects the true situation that was conveyed to you by Mr. Perera?

A. Possibly.

Q. Sorry?

A. Probably.

Q. Probably?

A. Mmm.

Q. Now, I think you have seen document number 2, isn't that correct?

A. That's correct.

Q. Again, it's a file note, Plaintiff Perera's, where he records that "He had a telephone conversation with David Austin, who informed me that his health had deteriorated, and he was now seriously ill.

He confirmed that he had looked for the declarations of trust everywhere in his various residences but could not find them.

I said I would need a letter of indemnity for lost certificate. He suggested that he would ask the purchaser's accountant in Dublin to deal with me and get the necessary paperwork sorted out.

Mr. Austin said I would hear from the accountant in due course."

Now, it was after that that Mr. Phelan mentioned something to you, isn't that correct?

A. Yes, it would have been.

Q. Now, the document number 3 is a letter from Mr. Perera, I think, isn't that correct?

A. It's a fax, yes.

Q. It's a fax, yes. Yes, you are correct, it's a fax.

And it's "Re Tokey Investments Limited," dated 10th December, 1997. And it reads: "Dear Mr. Phelan,

further to our telephone conversation of yesterday, I now attach a draft letter of instruction to be signed by Mr. David Austin.

I would also require a letter of reference on yourself from either a bank, lawyer or chartered accountant as per the terms of the attached draft.

I also await receipt of the letter of indemnity of lost certificate." And it's signed by Mr. Perera.

Now, was that dealt with by you? Did you receive that letter, or that fax?

A. Well, Mr. Phelan would have received it.

Q. Would he have given it to you for dealing?

A. Yes sorry, can I correct that, actually?

Q. Yes, indeed.

A. He probably wouldn't have given me that fax. He probably what he did give me was signed the actual fax that you have attached to that wasn't the fax that was received in our office. The fax that you have attached is the actual one you got from, I guess, Mr. Perera's file.

Q. Oh yes, yes, but you would have had a fax similar to that?

A. It's similar to this, but it's not exactly the same.

But the fax that was received on the 10th December wouldn't have had Walbrook Trustees. If you look at

the attachment of the fax, I am sorry, document 4.

Q. Yes.

A. It was a draft letter that came over from Mr. Perera.

Q. Yes. I see. What you are saying is that if we go to document number 4, the Walbrook Trustees (Isle of Man) Limited would have been blank, is that what you

A. Yes.

Q. In the draft that came from Mr. Perera, you would have included Walbrook Trustees in the document?

A. In fact, Mr. Phelan, the one he gave me back initially in December was incorrect. When I said it was incomplete, that's what was wrong. The Walbrook Trustees wasn't enclosed on it.

Q. It was just blank, was it?

A. Yeah. So that's why I had to have it retyped.

Q. Right. Now, this particular document, and can I understand that it is a copy of sorry, this was a draft sent by Mr. Perera with a fax, is that correct?

A. Yes.

Q. Of course Mr. Perera would not have included Walbrook Trustees; he wouldn't have known that at that stage. Isn't that correct?

A. No.

Q. That would have been typed up by you or somebody on your behalf on Mr. Phelan's instructions, isn't that right?

A. That's correct.

Q. The information about Walbrook Trustees would have been given to you by Mr. Phelan, I presume; would that be correct?

A. That's correct, yes.

Q. And then that was signed by Mr. Austin, isn't that correct?

A. That's correct, yes.

Q. It is undated, and that's understandable in terms of it being a draft or being sent by Mr. Perera. Can you tell us whether that was signed in January as well?

A. This document?

Q. Yes.

A. This particular document was, yes.

Q. Right. Now, the document number 5 is a letter from you to Mr. Perera with a number of enclosures, isn't that correct?

A. That's correct.

Q. And that was sent, dated 7th January, 1998. I take it it was sent around the same time, was it?

A. Yes.

Q. And this would have been after yourself and Mr. Phelan went to see Mr. Austin, and Mr. Phelan got Mr. Austin to sign various documents; isn't that correct?

A. That's correct, yes.

Q. And you're writing to Mr. Perera, and you're telling him that you now enclose the following documents duly signed:

1. Letter of indemnity.
2. Deed of transfer.
3. Letter of instruction.

Isn't that correct?

A. That's correct.

Q. You are informing him that the beneficial owner is a trust registered in the Isle of Man and administered by Walbrook Trustees (Isle of Man) Limited, and the contact is Mr. Chris Tushingham, and you give the phone number if he requires any reference, isn't that correct?

A. (Nods head.)

Q. Now, the letter of indemnity, which is document number 6, and the deed of transfer, which is document number 7 (Trustees) and the letter of instructions is document number 8, is that correct?

A. That's correct, yes.

Q. Now, these were all signed by Mr. Austin after Christmas, probably in January of 1998, is that correct?

A. That's correct, yes.

Q. Now, may I ask you this question. You witnessed the deed of transfer, isn't that correct?

A. That's correct.

Q. And the letter of indemnity?

A. Yes.

Q. It's only a small point, and I am not making a big issue of it, but it was Mr. Phelan who actually got Mr. Austin to sign the documents, isn't it?

A. That's correct, yes.

Q. Do you know why they weren't witnessed by Mr. Phelan as opposed to you?

A. Mr. Phelan just handed me the documents, and I witnessed them as a matter of course. Technically I shouldn't have.

Q. Now, I think document number 9, then, is Mr. Perera, I think I suppose it's a fax again, is it, from Mr. Perera?

A. Yes.

Q. It's dated 9th January, and he writes to you, and he thanks you for your letter with the enclosures of the 7th January. And he now listed what we need to do:

"1. Revoke power of attorney issued on the 19th January 1988 to Mr. David Austin.

2. Issue new deeds of trust in favour of Walbrook Trustees (Isle of Man) Limited. I understood from my conversations with Mr. Phelan that our nominee shareholders would continue as registered shareholders.

Should I send the new deeds to you or to Mr. Chris Tushingam at Walbrook Trustees?

3. Should I invoice your firm for our fees, or should I invoice Walbrook Trustees?

Please note at present there is an amount outstanding

of \$514.75 as per attached copy printout.

"I look forward to hearing from you with your comments."

Now, do you know what the \$514.75 charge was? Were they outstanding service charges, or additive fees, or

A. Most probably I don't know.

Q. Very good. And then you respond to Mr. Perera, and you ask him to send the new deeds to Mr. Tushingham and an invoice for any outstanding fees, isn't that correct?

A. That's correct, yes.

Q. You say, "Your nominee shareholders will continue as registered shareholders as per your fax. Aidan Phelan will contact to you to discuss the date of the deed of trust as Mr. Austin was actually paid for the property in July 1996.

Thank you for your prompt attention."

Now, just in relation to this particular matter, the dating of the deed of trust. We know from Mr. Phelan that he must have spoken to Mr. Perera and informed him that it should date from 1996, I think, isn't that correct?

A. That's correct, yes.

Q. Did you have any discussion with Mr. Phelan about this

particular matter? Did you ask him what date should be on the deed of trust?

A. From the documents, I would presume that he must have mentioned something to me between my letter and the letter coming back, sorry, on the 9th January, 1998, and when I wrote the letter on the 21st January.

Q. You must have had some discussion because the dating of the deed of trust would have been an issue, wouldn't it?

A. It must have been, yes.

Q. Now, in the ordinary course of events, can I take it in your dealing with these sort of matters the dating of the deed of trust would be from around the time that this particular transaction was going on, wouldn't it?

A. Sorry?

Q. The dating of the deed of trust, in the normal course of events, would be a date around the time the various transactions you were conducting were going on?

A. It should have been, yeah, on the date.

Q. That would be the usual, wouldn't it, from your experience?

A. In trust deeds?

Q. Yes.

A. Yes.

Q. It was an issue here because the date was backdated, isn't that correct, to sorry, the middle of 1996 or something?

A. It was an issue sorry?

Q. It was only an issue because of what Mr. Phelan told you, that it needed to be backdated to July, I think it was, August of 1996?

A. It wasn't a big issue for me.

Q. No.

A. He said that the property had been paid for in 1996, so obviously he must have had a discussion with Mr. Perera about it, and Mr. Perera agreed, obviously, from the documents presented.

Q. To allow the backdating of the deed.

A. Mmm.

Q. Did that strike you as being unusual or anything?

A. Not particularly. In the company secretarial world, there was lots of occasions where he was asked to tidy up issues after the event. So it wouldn't have been particularly unusual for me.

Q. Well, would it strike you as being unusual for property to be paid for and not transferred for nigh on 18 months?

A. Well, I would have never dealt with property before.

Q. Now, I think in document number 11, Mr. Perera writes to Mr. Tushingam at Walbrook Trustees, and he encloses the original declaration of trust issued in favour of that trust company, isn't that correct?

A. Yes, it appears so.

Q. Now, on the question of the dating of the transfer of

the deed of trust, can I take it that up to that time, when Mr. Phelan discussed with Mr. Perera the question of when the property had been paid for, you were the one who was dealing with Mr. Perera the whole time, is that correct, insofar as there were dealings?

A. Concerning the documentation, I probably, yes.

Q. Do you know why you weren't asked to contact Mr. Perera about the question of the dating of the document?

A. No. Mr. Phelan said he'd contact him. He didn't ask me to contact him.

Q. Now, I think document number 12, Mr. Perera faxes you, isn't that correct?

A. Mr. Barry House.

Q. I am sorry, I beg your pardon. Mr. Barry House faxed you, isn't that correct?

A. That's correct, yes.

Q. He says, "Further to your telephone call of this afternoon regarding the above company, please find attached certified copies of the following documents.

1. Declaration of trust for 99 shares in favour of Walbrook Trustees.
2. Declaration of trust for 1 share in favour of Walbrook Trustees.
3. Share certificate number 3.
4. Share certificate number 4.

I have also as requested attached statement of account.

Please contact me should you require any further detail."

Now, what telephone conversation do you remember having with Mr. House, and what was the purpose of it?

A. The purpose would have been, I think now, I can't be sure on this, but Mr. Phelan probably asked me to confirm that it had been done because possibly, if he was doing a balance sheet for Mr. O'Brien, he would have confirmation that the property was in his name.

This was a year later, so I can only surmise; I can't actually remember why I asked him for the documents.

Q. You think there was a balance sheet being prepared?

A. Probably.

Q. Can you remember that?

A. I can't remember exactly, no, I am sorry.

Q. You may be correct. It's just that we haven't seen any balance sheet. You may be correct. I am not saying you are not. But can you remember whether a balance sheet was being prepared?

A. Well, I would have thought that Mr. Phelan would be preparing a balance sheet for Mr. O'Brien regularly, so it was an asset, I presume.

Sorry, can I just clarify something?

Q. Yes.

A. Those documents that you have attached are not exactly what I got either in that

Q. I know that. I was going to perhaps if you deal with it. In fact what you got, I think document number 14 and 15, isn't that correct?

A. That's correct, with two share certificates, yes.

Q. 14 and 16, I think, isn't that correct, you got with the two share certificates?

A. That's correct, yes.

Q. And you got those documents when?

A. March '99.

Q. In March of '99. Now, these particular documents which you received purport to have the common seal affixed on the 20th August, 1996, isn't that correct?

A. That's correct, yes.

Q. Again, that is not the actual case, is it?

A. Well, it wouldn't appear to be, from the correspondence.

Q. There is no doubt about it?

A. No.

Q. And in fact, when do you believe that the seal was affixed to them?

A. Well, I never spoke to Mr. Perera exactly, but I would gather, looking at the documents, it was sometime between the 21st January and the 4th February.

Q. Of '98?

A. '98, yes.

Q. Now, I think you have seen documents which are documents number 15 sorry, I beg your pardon, documents number 13 and 15, which are declarations of trust, isn't that correct?

A. Yes.

Q. And we obtained those from Mr. O'Brien?

A. I don't know.

Q. I am telling you we obtained those from Mr. O'Brien, through Mr. O'Brien's solicitors. Did you ever see those declarations of trust before they were brought to your attention by the Tribunal?

A. No, not until the private session here.

Q. That's what I mean, when you started dealing with the Tribunal. And those are the declarations of trust to give effect to the transaction, isn't that correct?

A. Well, they give effect to Mr. O'Brien owning the property, yes, if that's what you mean.

Q. So Mr. O'Brien owning the property. That's what I mean.

When I refer to "the transaction", what is being what I am talking about is that the transaction of Mr. O' Austin's property going to Mr. O'Brien, that it is these declarations of trust which give effect to that, isn't that correct?

A. The date of the 15th May, 2001.

Q. And they are not dated until the 15th May, 2001.

A. I don't know why they weren't dated until the 15th May.

Q. Were you asked to do anything in the intervening period in relation to these declarations of trust at all?

A. (Shakes head).

Q. Yourself?

A. No.

Q. And I appreciate you are not a lawyer, but until they were executed, Mr. O'Brien couldn't establish a documentary trail in respect of title to the property, isn't that correct?

A. I am surprised they weren't dated until the 15th May, 2001. I would have thought they should have been dated sometime in February '98, but...

Q. Well, does it surprise you, assuming that they are correct when they say they are dated May of 2001, are you surprised that they were left outstanding for that period of time, from February of 1998 to May of 2001?

A. Well, I don't know what was happening in the intervening period, so obviously they should have been done before then.

Q. Well, if we just go back to September of 1997, when you went to help Mr. Phelan because he had a backlog of administrative work.

A. Mm-hmm.

Q. This was identified to you as one of the matters that he wanted cleaned up, isn't that correct

A. Yes.

Q. on behalf of his client.

And you set about from December into January and February December '97 into January and February of 1998 doing that particular work, isn't that correct?

A. That's correct, yes.

Q. And can I take it that you understood that you were getting it all in order?

A. The documents from Mr. Perera, yes.

Q. The documentation?

A. Yes.

Q. And it would now appear that documentation wasn't finally completed or got in order until May of 2001, isn't that correct?

A. That's correct, yes.

Q. Does it surprise you, when your particular task was to get the documentation in order, that these particular declarations of trust were not executed until May of 2001?

A. Well, I wasn't asked to deal with Walbrook Trustees personally, so...

Q. But what I am really asking you is this: It was impressed upon you that Mr. Phelan had to get a backlog of work sorted out, isn't that right, when you came to assist him in September of 1997?

A. Yes, he asked me to help him, yes.

Q. And can I take it that you set about that task diligently in trying to sort out all of the backlog, to

the best of your ability?

A. To the best of my ability, yes.

Q. And you would be relying on instructions in relation to that from Mr. Phelan, isn't that right?

A. That's right, yes.

Q. And this was an outstanding matter, that the documentation needed to be sorted out?

A. Yes.

Q. Does it surprise you that you didn't or were not asked to sort it all out?

A. Well, I don't know if there were declarations of trust which were lost by Walbrook or whether they were never done. I don't know that.

Q. Did you ask anyone

A. No.

Q. when you saw these?

A. Anyone in Mr. O'Brien's office?

Q. Did you ask anyone in Mr. O'Brien's office? Did you ask anyone? Did you ask Mr. Phelan?

A. No.

Q. And it doesn't come as a surprise to you that the documentation that you set about sorting out was not sorted out?

A. Well, I wasn't particularly concerned, no.

Q. It doesn't surprise you?

A. Sorry, I don't understand.

Q. Well, do you think that it is is it normal that when

you are asked to provide a corporate secretarial service, and you are asked to sort out a file, in effect, isn't that correct, to get the paperwork right in this file would be

A. Mm-hmm.

Q. That you didn't sort out the paperwork on the file?

A. I don't see it like that. I see that it was Walbrook's when they received the documentation from Mr. Perera, it was their responsibility to make sure that the correct declarations of trust were completed for Mr. O'Brien. I didn't feel it was my responsibility to double-check that they were doing their work.

Q. Well, are you surprised you didn't receive them?

A. Well, I didn't probably didn't ask for them. I can't remember. I obviously asked for them in '99.

Q. When?

A. I must have asked for them in '99 sorry, are you talking about Mr. Perera or Mr.

Q. I am talking about the declarations of trust which are dated May 2001, executed by Mr. O'Brien.

A. No, I obviously didn't ask Walbrook for declarations of trust, because I don't have any copies on file.

Q. And that was from February of 1998 to May of 2001, the documentary trail wasn't there, isn't that correct?

A. That's correct.

Q. So for some five years after the property for some

five years from the time Mr. Phelan informed

Mr. Perera that the property was paid for, which was back in 1996, the documentary trail was not completed, isn't that correct?

A. That's correct, yes.

Q. And you believe that in all of that time, Mr. Phelan would have been preparing balance sheets on behalf of Mr. O'Brien?

A. Yes, well, for a period of time. I don't know exactly when.

Q. And this was an asset from sometime in 1996, on the documents that are being presented now, isn't that correct?

A. Yes.

Q. August of 1996.

Now, just if I might run through just a few documents that are not included in these bundles. I think it's documents which relate to the payment of service charges and expenses in respect of the property.

(Documents handed to witness.)

Now, in fact they work from back to front, I think.

And the first document is a letter to Mr. Tushingam from Mr. Perera in May of 1998. Do you see that?

A. Yes.

Q. And he says, "I refer to the above matter and in particular to the question of our unpaid fees.

"I enclose copy printout from our system and copy invoice.

"I will welcome an early settlement."

It's for £664.75. That was in May of 1998. Do you remember anything about that?

A. Sorry, I don't.

Q. Then there was a facsimile to you from Mr. Perera, I think, of the 11th June of sorry, I beg your pardon, the 20th August, 1998. Do you see that?

A. Yes.

Q. And it reads, "Dear Ms. Malone:

"With reference to the above-named company, please be informed that the sum of £816.73 is outstanding.

I wrote to Mr. Tushingam at Walbrook on the 29th May 1998 but to date have received no reply.

I will be grateful if you could please intervene in order to have our fees settled."

Do you remember receiving that?

A. Well, I must have. I don't specifically remember.

Q. And then there is a letter from Walbrook dated 10th September, 1998, to Mr. Perera, and it says: "Further to your letter to Mr. Tushingam, please find a check enclosed for the sum of £816.73 to settle outstanding fees for the above company.

Should you have any queries, please do not hesitate to contact me."

Do you remember making any contact with Mr. Tushingham in relation to that, seeing as Mr. Perera asked you to intervene?

A. I probably did; I can't remember. I am sorry.

Q. Do you know where the funds, i.e. £16.73, might have come from?

A. No.

Q. Did you know that Mr. Perera had been paid?

A. I am sorry, this is the first time I have had a look at these, so I can't exactly remember.

Q. Right. Okay.

A. So... I suppose if he hadn't been paid, he would have contacted again.

Q. Yes, well, if we just deal with the documents, and I appreciate that you haven't had time to study the documents in any great detail.

The next document then is a fax to you, again from Valmet, from Mr. Perera or it's to Brian Phelan & Company. It's addressed to you, "Dear Ms. Malone". It's dated 14th May, 1999: "You have assisted me in the past for obtaining payment for the above company.

Our invoice to Mr. Tushingham at Walbrook" he refers to "our invoices go to Mr. Tushingham. Could you

please ask him to arrange payment of our invoice dated 30th October 1998, invoice number" and he gives it "for i;½458, which remains outstanding."

And he sends you a copy.

If you go over the page.

Do you remember receiving such a facsimile from Mr. Perera?

A. I have a general memory of him ringing me to get fees paid, to intervene in fees paid.

Q. I beg your pardon?

A. I have a general memory.

Q. A general memory

A. I can't specifically remember each document I got there.

Q. I appreciate that. But you do have some general memory of intervening with Walbrook to get fees paid to Mr. Perera, do you?

A. Yes.

Q. And do you know where the funds came from?

A. From Walbrook. I don't know where the funds in Walbrook came from; is that what you mean?

Q. Yes.

A. No.

Q. Well, how did you intervene? Did you ring Mr. Tushingam up?

A. I must have rang Mr. Tushingam, yes.

Q. And what would you have said to him, do you think?

A. I can't remember, I am sorry. I obviously asked him would he mind was there some difficulty with paying it, and if there wasn't, could he pay him.

Q. Would he ask for money to pay it?

A. From me?

Q. Yeah, from

A. No. I didn't deal with Mr. O'Brien's financial affairs.

Q. Would he ask you to inquire of Mr. Phelan?

A. I don't recall him saying that, no.

Q. You were a signatory on some of Mr. O'Brien's accounts, isn't that right, yourself?

A. I have signatory on Mr. O'Brien's CSFB account.

Q. Sorry?

A. His CS Credit Suisse First Boston account.

Q. So you did deal with some financial matters, didn't you?

A. Only on the instructions of Mr. Phelan.

Q. I accept that you wouldn't go writing cheques on Mr. O'Brien's account without appropriate instructions, but you did you did have responsibility, and you did have signing rights, isn't that correct?

A. I was never instructed by Mr. O'Brien to transfer any funds. I only transferred funds when Mr. Phelan wasn't in the country and when he asked me to do it.

Q. Yes.

A. So I wouldn't have general knowledge

Q. When you received these particular communications from

Mr. Perera looking for fees, they are modest enough

sums. Would you have gone to Mr. Phelan?

A. Possibly. I actually can't remember.

Q. I think there are a number of enclosures which are in

the form of invoices. If you go to if you go

forward, four documents forward, there is a letter

dated 29th May, 1998, which is addressed to Mr.

Tushingam at Walbrook, isn't that correct? And there

is reference to the question of unpaid fees and

Mr. Perera encloses a printout of copy invoices, and he

looks for early settlement in the sum of £2664.00, and

that includes a number of invoices which makes

reference to the general management of the company's

statutory affairs for the period ending November, 1997.

And there is a breakdown in respect of that. Did you

know anything about those particular transactions or

documents?

A. No.

Q. Well, if you go two documents forward, then, you see

that there is a fax transmission from Walbrook to you

from Mr. Adam Beighton, dated 27th August, 1998, and he

encloses a fax dated 11th August which he has received

and a statement from Valmet, and he encloses a copy,

and he seeks your authorisation for payment as soon as

possible. Do you see that?

A. Yes.

Q. Do you remember receiving such a document?

A. I must have, yes.

Q. And what's the question of asking you to authorise payment?

A. He probably asked me to discuss it with Mr. Phelan, since he knew he was his financial adviser at this time.

Q. Well, what he perhaps I am misunderstanding this particular fax transmission. He is asking, "Please could you authorise payment as soon as possible."

Do you know where the funds were held to pay these particular fees?

A. No, I didn't. I wasn't his financial adviser. It was Mr. Phelan who was the financial adviser.

Q. I understand that, Ms. Malone. I am asking you, you were asked to authorise payment. I can understand that you would have to seek information, perhaps, from Mr. Phelan.

A. Mm-hmm.

Q. Did you speak to Mr. Phelan about these matters?

A. I am sure I did, yes.

Q. Did you?

A. Well, yes.

Q. What would you have said to him?

A. Well, I would have asked him to authorise payment.

Q. And where would the money come from?

A. Well, that wasn't my I don't know.

Q. But what were you going to say to Mr. Beighton? You were going to respond to Mr. Beighton, weren't you, or Walbrook? What were you going to say to them?

A. Well, Mr. Phelan obviously had to respond to him.

Q. Because the following documents the next document over is again from Mr. Beighton, and he informs you of the fact that "we are being chased by Valmet to pay their invoice for i£1/2664.00, and I would be grateful if you could authorise payment of this invoice."

You must have received that, you accept that?

A. I must have, yes.

Q. And then the next document we have is a document dated 10th September, 1998, which is from Walbrook to Mr. Perera in Valmet, and he says "Further to your letters to Mr. Tushingam, please find enclosed a check for the sum of i£1/2816.73 to settle the outstanding fees for the above company."

So Walbrook must have received funds, isn't that correct, or an authorisation on Walbrook-held funds, would that be correct?

A. It looks like that, yes.

Q. Well, what was it?

A. Well, obviously they had, either, funds. I didn't give them funds, and I didn't I don't know anything

about it.

Q. You know nothing about this?

A. Well, I know that I would have discussed it with Mr. Phelan.

Q. What would you have said to him?

A. I would have said, "Is it okay for Walbrook to pay these fees?" And he would obviously have to get on to them, because I don't know what authority I could have given them.

Q. Ms. Malone, these have been addressed to you. I am just trying to understand what was going on here.

They are addressed to you, and your authority is being sought to pay these fees, isn't that correct?

A. Yes.

Q. Now, the fees were paid. We can see that, that fees were paid?

A. Mm-hmm.

Q. So we can take it that Walbrook must have had authority to pay the fees if they sought authority and then paid them, isn't that correct?

A. That's correct, yes.

Q. You received various faxes from Walbrook, isn't that correct?

A. Yes.

Q. You must have communicated back to Walbrook that the fees should be paid, is that correct?

A. Well, either me or Mr. Phelan, yes. They would have

seen

Q. Which was it?

MR. GLEESON: Sorry, could I intervene here? Ms. Malone got a list of documents from the Tribunal, and we were told that these were the documents that she was going to be examined on. Now, in the course of her evidence this morning, she is handed a fresh bundle of documents that she is trying to do her best on, and I think it's unfair for Mr. Coughlan to harass the witness in this way. She is doing the best she can. Now, if she had been given perhaps more time to deal with these documents, I could understand him getting frustrated that she is not able to give accurate or correct answers when she clearly doesn't know what happened. But I think Mr. Coughlan should bear in mind that these documents have been thrust upon her, and she is doing the best she can in the circumstances.

CHAIRMAN: Well, we are not going to have harassment, and I don't think that's what's taking place, Mr. Gleeson. The witness is simply being asked for her best recall, and I bear in mind, as does Mr. Coughlan, that some natural infirmity of recollection in the context of the documents having only been proffered to her this morning is understandable. We are simply trying to elicit the general course of dealings in relation to these

particular fees and expenses.

Q. MR. COUGHLAN: Now, do you accept that you must have authorised Walbrook to make these payments?

A. I can't remember authorising Walbrook to authorise these payments. But they would have seen me as being an assistant to Mr. Phelan.

Q. Very good. So if you didn't authorise them, Mr. Phelan must have authorised them?

A. He had to.

Q. He had to?

A. Yes.

Q. And is that what happened?

A. I am sorry, Sir, I can't remember exactly. I would say, yes, he probably did.

Q. You would say he probably did?

A. Yes.

Q. Very good. And you don't know where the funds came from?

A. No, I wasn't. I am not an accountant, and I didn't deal with his financial affairs.

Q. You don't have to be an accountant to know where funds come from.

A. Sorry, I don't know where the funds came from.

Q. You don't know where the funds came from?

A. No.

Q. Now, the next document is a letter from a Spanish

lawyer, and it's to Brian Phelan & Company. It's for your attention, isn't that correct?

A. That's correct.

Q. And it's dated 19th November, 1999. And it says, "Dear Ms. Malone.

In relation to the financial year ending 1999, please note the tax assessment for the company" of the reference "including our professional fees amount to I think it's 289,250 pesetas. Then it sets it out:

"Please send us the above-mentioned amount by means of cheque payable to Senor Diaz, addressed to our office, or should you prefer, by bank transfer to our account number." And he gives the routing instructions.

"Please note that if payment of this tax is not effected within this due term, a penalty by way of fine will be levied."

So this firm are looking for payment of money for the purpose of paying Spanish tax, I presume, on the property?

A. Yes.

Q. Spanish property tax.

CHAIRMAN: Does this, Ms. Malone, reflect a change in the Spanish law, which I believe to have come into effect around about 1999, in which the Spanish tax authorities were seeking to recoup somewhat more off property owners who used Gibraltar and other offshore

vehicles?

A. I am sorry, I am not an expert.

CHAIRMAN: If you don't know, by all means.

Q. MR. COUGHLAN: Do you remember receiving that?

A. I can't specifically recall, but obviously I must have,
yes.

Q. Do you know how it was dealt with?

A. I don't.

Q. You don't?

A. No.

Q. You have no recollection of how it was dealt with?

A. No, sorry, there was thousands of documents went
through my hands. I can't remember each one. I
don't remember that.

Q. You can't remember that?

A. No.

Q. Would you have brought this to the attention of
Mr. Phelan?

A. Yes.

Q. But you have no recollection of routing money or
sending a cheque in respect of Spanish property tax?

A. No.

Q. Have you ever sent money in respect of Spanish property
tax in respect of any property?

A. I don't not that I can recall, no.

Q. Never?

A. Not that I can recall, no.

Q. Well, I want to be clear about this, Ms. Malone, now.

Is it that you may have and you don't recall, or that you didn't?

A. In respect of any property over the last 20 years that I have worked?

Q. No, in respect of any Spanish property since nineteen ninety we'll take it from the date you were asked, you say, to deal with this matter, in 1997/1998.

A. No, I don't recall, no. No.

Q. You didn't?

A. No.

Q. And the final two documents, then, are it's a letter dated 17th May, 2001, from Valmet to Mr. Tushingham of Walbrook Trustees or corporate services, and they enclose again some invoices in respect of outstanding fees to Valmet. Do you know anything about those?

A. At this point, we were doing no work for Mr. O'Brien, so I don't know how I don't know anything about these documents.

Q. You don't know anything about those documents?

A. No. If I got documents, I would simply have passed them over to his new people.

Q. And who were they?

A. I beg your pardon?

Q. Who were the new people?

A. Do you want me to name them in Denis O'Brien's office?

Q. Sorry, it's employees of Mr. O'Brien, is it?

A. Yes.

Q. Employees of Mr. O'Brien.

Turning to the Mansfield property, Ms. Malone, you were instrumental in routing $\$300,000$ from the account of Mr. Denis O'Brien in Credit Suisse First Boston to the client account of Mr. Christopher Vaughan, isn't that correct?

A. I believe I was, yes.

Q. And who told you to do that?

A. Mr. Phelan.

Q. Do you remember that?

A. Yes.

Q. What did he say to you?

A. Well, he asked me to send 300,000 from Credit Suisse First Boston to Mr. Vaughan's client account.

Q. And that was all at that time, you just got instructions to do that?

A. Well, he obviously wasn't in the office, because

Q. Yes, he could have done it himself?

A. Himself, yes.

Q. And did you know anything about why this money was being paid to Mr. Vaughan's client account when you were given the instructions?

A. No.

Q. When you received a disk from Mr. Vaughan, you say you

downloaded from that disk a document which is a joint venture agreement between Mr. Phelan and Mr. Lowry, isn't that correct?

A. That's correct, yes.

Q. Did you know anything about that, other than downloading it and having it typed up?

A. Well, Mr. Phelan had previously asked me would I do a simple joint venture agreement between himself and Michael Lowry. And I didn't feel I was qualified to do that, so I told him he should get a solicitor to do it.

Q. And you came into possession of it then when? Mr. Vaughan or sorry, Mr. Vaughan sent you a disk, or a disk arrived in the office. You took this joint venture agreement off it, is that correct?

A. Yes, I printed it off.

Q. You printed it off. And it was signed by Mr. Phelan and Mr. Lowry, isn't that correct?

A. That's correct, yes.

Q. And it was witnessed by you?

A. That's correct.

Q. Did that occur in Mr. Phelan's office?

A. Yes.

Q. And did you type in the date?

A. I think I did, yes.

Q. At the beginning of the document?

A. Yes.

Q. And when did you type up the document?

A. On the day.

Q. And when was the document signed and witnessed?

A. The 30th, is it?

Q. Do you know when it was signed?

A. If I could see the top of the document again?

Q. Yes, it's the 30th April is typed in.

A. Yes, it would have been that day.

Q. Do you remember that?

A. Yes, it was that day.

Q. Do you remember it?

A. Well, I remember typing in the date, so I would have done it on the day that they were there.

Q. And do you remember witnessing the signatures? You actually were present when the signatures were

A. Witnessed the signatures, yes.

Q. I know it was signed. I am asking you, were you there when it was signed?

A. Oh I was, yes.

Q. You remember that?

A. Yes.

Q. And what time of the day was it?

A. I think it was evening

Q. Was it morning, afternoon, or evening, I mean?

A. I think it was in the evening time.

Q. In the evening?

A. Yes.

Q. After work hours?

A. I think it was either after or five or six or something like that.

Q. And were there any other members of staff present?

A. Not that I remember, no.

Q. There were no other members of staff present?

A. Staff of Brian Phelan & Company, is it?

Q. Yeah.

A. No, no.

Q. And were the only people present Mr. Lowry, you yourself, and Mr. Phelan?

A. Yes.

Q. Were you involved in arranging for Mr. Lowry to attend, or did Mr. Phelan make that arrangement himself?

A. No, I had no contact with Mr. Lowry.

Q. Did you ever have any contact with Mr. Lowry?

A. No, at that time?

Q. Yes.

A. No. I think I was introduced to him once, but I had no contact.

Q. Until this particular transaction became an issue of recent times that is, following on Investec going to the Central Bank and matters being dealt with at the Tribunal did you have any further involvement or knowledge of what went on in relation to that particular property?

A. No.

Q. Now, turning to the Cheadle property and the company Catclause. I think you have informed the Tribunal that in late December 1999, Mr. Phelan asked your advice as to whether it was possible to sign a resolution on behalf of directors of the company Catclause Limited, who were at that particular time unavailable, is that correct?

A. That's correct, yes.

Q. What exactly did he say to you?

A. Well, I told him if we had the authority of the directors

Q. No, what did he say to you?

A. What did he say to me?

Q. First of all.

A. Well, he told me that documentation had to be signed urgently and that the directors weren't available.

Q. Mm-hmm?

A. And could he sign as a director.

Q. As a director?

A. I said, "Well, as an alternate director, you could sign." And he said, "if they had authority of the board?" So he went away, and he presumably checked with Mr. Lowry, because he told me that yes, we had authority to sign, and would I sign some documentation which the bank had given.

Q. Yes. And you signed?

A. Yes.

Q. And when did the issue arise again?

A. Sorry, what issue?

Q. About signing these documents. Which were the bank's documents, weren't they? The facility letter, the loan documents.

A. Yes.

Q. Isn't that correct? What happened then? You signed. What happened then, after that?

A. Well, I don't know. I presume they were given to the bank.

Q. As regards yourself, what happened, Ms. Malone? Did you have any further discussion with anybody? Did anybody have a discussion with you?

A. That week?

Q. Whenever.

A. Not until January, after Christmas.

Q. After Christmas, January?

A. Mm-hmm.

Q. What happened?

A. Well, I had completed some forms for the Companies Office, and when I approached Mr. Phelan, he told me there was some difficulty with the guarantor. And I think he said just to hold off. And he came back either the next day and said the whole thing had fallen through, that they weren't using the company any more, that the guarantor hadn't signed some document.

Q. So was it your belief that the loan had not been taken?

A. In the company name.

Q. No, that the loan had not been taken?

A. No, I knew that the money had been transferred, but that it wasn't in the company name.

Q. How did you know the money had been transferred?

A. Because it was transferred the next day, as far as I understand.

Q. Who told you that?

A. Mr. Phelan. I think Mr. Vaughan may have been on to me. I am not sure.

Q. So you signed documents.

A. Mm-hmm.

Q. Believing that you had been authorised by the board as being an alternate director, and that there would ultimately be a resolution of the company to rectify that position, is that correct?

A. That's correct, yes.

Q. And you knew those documents had gone to a bank?

A. Yes.

Q. And you knew that monies had been drawn down on foot of these documents, isn't that correct?

A. That's correct, yes.

Q. And as far as you were concerned, your name was now penned to documents in a bank, and money had been advanced in respect of them, is that correct?

A. That's correct, yes.

Q. And can I take it from your experience in your work,

you would have known that if the money had been drawn down the next day, that the money was drawn down on foot of the documents which were furnished to the bank?

A. Yes.

Q. And those documents sought and accepted a facility in respect of a company called Catclause Limited, isn't that correct?

A. That's correct.

Q. So you knew that money was lent to a company called Catclause Limited, isn't that correct?

A. Yes.

Q. And Mr. Phelan spoke to you in January and said some difficulty had arisen in respect of the guarantor?

A. That's correct.

Q. Did you know anything about the guarantor?

A. I actually had a conversation with him. I don't know when; it must have been that day. I simply picked up a phone

Q. With whom? With the guarantor?

A. Yes, a Mr. Daly.

Q. What day was that?

A. I am not sure if it was a Friday or the Monday.

Q. Was this before the money was drawn down or after the money was drawn down?

A. It would have been before.

Q. Before the money was drawn down?

A. Yeah.

Q. Right. And what transpired in that telephone conversation?

A. Well, he just said that he was trying to get a document through on the fax. I think he was I don't know where he was, but he was having difficulty getting a document through.

Q. He was having difficulty getting a document through?

A. Yeah. I think he thought I was I just picked up the phone. He didn't ask for me. I never met him.

I simply picked up the phone answered the phone in the office.

Q. And was that document the faxed guarantee that we have seen at the Tribunal?

A. Yes, it was.

Q. And that was the only conversation you had with him, was it?

A. Yes. I had never heard or met him.

Q. Never heard or met him?

A. No.

Q. Now after Christmas, when Mr. Phelan told you something had transpired in respect of the guarantor, what did he say to you?

A. Well, effectively he told me that the loan was no longer in the company name.

Q. He told you the loan was no longer in the company name?

A. Yes.

Q. What did you understand that to mean?

A. I understood it to mean that the bank were no longer relying on those documents, that they were drawing up a new set of documents.

Q. That's what you understood?

A. Yes.

Q. And were you completely unaware that the documents continued to exist in the bank?

A. Yes.

Q. Was it your belief that these documents had been either replaced or destroyed; that they were no longer being relied on by the bank?

A. Absolutely, yes.

Q. Who gave you to believe that?

A. Mr. Phelan.

Q. And when did you become aware that there was a problem in respect of this particular loan?

A. Well, when it was brought to the Tribunal.

Q. That was the first time you were

A. That they were relying on those documents?

Q. Yes.

A. Yes. I after a meeting that he had had with Mr.

Cullen, I understand, and Mr. Morland in February,

2001, he mentioned to me that there seemed to be some confusion internally in the bank regarding this

company, and he asked me, had the company been struck

off? And I told him I didn't know. I told him to

check with the accountants in the UK, and I also asked

him, would he clarify the matter with the bank, because I was concerned.

Q. It must have been causing some concern for you?

A. It was, yeah. So he said he would, and he told me later that he had met with Mr. Cullen and that he had drafted a letter and I understand sent a letter to Mr. Cullen confirming the position as I understood it to be from 2000, January 2000.

Q. That you were no longer in the frame?

A. Absolutely.

Q. Yourself?

A. Yeah.

Q. Now, when you signed the documents as an alternate director at the request of Mr. Phelan?

A. Yes.

Q. Can I take it that you understood that the company was a vehicle for Mr. Lowry? Isn't that correct?

A. I knew it was Mr. Lowry

Q. Mr. Lowry's company. And can I take it that when you were informed in January or February of the following the drawdown of the money, or in January, that there was a difficulty with the guarantor and the loan was no longer in the name of the company, that was your belief, isn't that correct?

A. That's correct, yes.

Q. So can I take it, therefore, that it was your belief that the loan was Mr. Lowry's loan?

A. No. Well, Mr. Phelan told me that he was assuming responsibility for the loan; I didn't query as to whether he was actually taking over the loan. I didn't get involved. He just told me that the company was no longer being used.

Q. Well, when you agreed to sign the documents originally

A. Mm-hmm.

Q. did you know that this was a Mr. Lowry transaction, the purchase of that property?

A. Yes, well I knew he was a director of this company that was taking the loan.

Q. What else did you know?

A. I knew he was a director, so I assumed it was his transaction.

Q. Yes. And the money was being obtained for Mr. Lowry, isn't that correct or for the company, Mr. Lowry's company?

A. That was my understanding, yes.

Q. And the property was being purchased by Mr. Lowry's company?

A. Well, I wasn't involved with the actual purchase of any property, but

Q. I understand that, but is that what you understood?

A. Yes, I had a general knowledge of the case.

Q. Perfectly reasonable and natural. And therefore, when there was difficulty with the guarantor and the loan,

as you believed, was not being taken in the name of the company, can I take it that it was your belief and general knowledge that Mr. Lowry it was Mr. Lowry's transaction, nonetheless?

A. I don't quite understand your question.

Q. This transaction was Mr. Lowry's transaction. It wasn't Mr. Phelan who was buying any property in England, this particular

A. Back in December, no, no, I didn't take it that it was Mr. Phelan's, no.

Q. You took it it was Mr. Lowry's? Perfectly reasonable?

A. Mm-hmm.

Q. And can I take it in January, you had no reason not to believe, perfectly reasonably, that it was still Mr. Lowry, but you were not still in the frame because the company was not taking the loan?

A. My understanding would have been that at that stage, Mr. Phelan just wanted the property sold to pay the bank back, rather than it be an ongoing transaction in anybody's in Mr. Lowry's name or I don't know, but that was my general perception.

Q. Why?

A. I beg your pardon?

Q. Why?

A. Well, he wasn't happy that

Q. Why wasn't he happy?

A. He wasn't happy that he had to he was embarrassed

with the bank, and he assumed responsibility for the loan.

Q. Did he tell you all this?

A. Well, he mentioned it to me, yes, when I questioned him on the documentation for the Companies Office.

Q. I can understand you questioning him about the documentation, because you had signed a document and monies had been advanced, isn't that right?

A. That's correct, yes.

Q. There can be little doubt that in those circumstances you'd have certain concern, isn't that right?

A. (Nods head).

Q. Did you pursue the matter with Mr. Phelan well, if the company wasn't taking it, was Mr. Lowry taking it?

A. No.

Q. It didn't occur to you it didn't occur to you to ask that question?

A. No, it wasn't my business.

Q. Did you make any inquiries of the bank yourself?

A. I had no relationship with the bank.

Q. But in any event, as far as you were concerned, matters were sorted out?

A. Yes.

Q. And nobody told you anything until, when was it, February or March of 2001, when Mr. Phelan had a number of meetings with Mr. Morland and Mr. Cullen, is that right?

A. That's correct.

Q. And nothing had been said to you in the intervening year or thereabouts?

A. Well, there was a meeting in August which I was asked to attend to take notes.

Q. Yes. That's August 2000?

A. Yes, and the company did come up at that meeting. At that stage, I am not sure whether it was Mr. Vaughan or Mr. Lowry produced some documents from the Companies Office in the UK.

Q. Yes?

A. Addressed to Catclause. And he asked for my advice as to what he should do, so I asked him, was the company trading? Did it have normal questions any assets or liabilities? And he said no, and I said, "Well, you should have it struck off, then, because it will cost money to maintain it." And he asked me, would I get the form Mr. Lowry asked me would I get the form to strike it off.

Q. I think document number 26 are your typed-up copy notes of that meeting, is that correct?

A. That's correct.

Q. It deals with a number of transactions. What we are concerned about here is the St. Columba's Church, isn't that right?

A. That's right.

Q. It was acquired in December, 1999 sorry, first of

all, present at the meeting were Michael Lowry, isn't that correct?

A. Yes.

Q. Christopher Vaughan, the solicitor?

A. Yes.

Q. The man who will not come and give evidence at this Tribunal, at the moment. Aidan Phelan?

A. Yes.

Q. And you?

A. That's correct, yes.

Q. Where was that meeting held?

A. Jury's, I think.

Q. Who arranged it?

A. Mr. Phelan, or I presume Mr. Phelan.

Q. And it's headed "UK Property ML". I take it that stands for Michael Lowry, does it?

A. Yes.

Q. And "Hilltop Farm" is referred to, and that's the Mansfield property, we know that, isn't that correct?

A. Yes, I understand that.

Q. And that was registered in the name of Michael Lowry, and it was financed by the partnership investment Aidan Phelan, isn't that correct?

A. Yes.

Q. And then the action to be taken "Michael Lowry to hold as trustee." Was there a discussion taking place which allowed you to make these notes?

A. Yes.

Q. And Mr. Vaughan, Mr. Lowry and Mr. Phelan were discussing the matters, is that correct?

A. They were discussing the matter. I was simply taking some short notes, yeah.

Q. Why were you asked to be present?

A. Aidan asked me to be present to take some notes, because he wanted to put some pressure on Mr. Lowry.

Q. Solicitors are normally fairly thorough notetakers, aren't they, at meetings?

A. Well, I don't know.

Q. You don't know?

A. Well, I am not a solicitor, so I don't know.

Q. Have you ever had dealings with solicitors?

A. Yes.

Q. Do you notice that they are always taking notes when they are at meetings?

A. Yes.

Q. But you were asked to be present as the notetaker when there was a solicitor present at the meeting?

A. Yes, Mr. Phelan asked me to do that.

Q. So whatever discussion took place about Hilltop Farm, it was decided that the action to be taken was that Michael Lowry was to hold as trustee, isn't that correct?

A. Yes, that appears to be the case, yes.

Q. And then turning to the Cheadle property, again, it was

acquired in December 1999. The cost was given as
£445,000 sterling. The registered owner was
Christopher Vaughan as trustee, financed by Investec.
Loan from Partnership £44,000; that was the deposit,
do you remember that, on the property?

A. Well, I was just taking notes at this meeting.

Q. Was that something that was said, so that allowed to
you make that loan?

A. The loan?

Q. No, no, loan from Partnership for 44.5K. We know it
came out from a balance of a client account of Mr.
Vaughan's. Was that said, "Loan from partnership"?

A. It must have been if I wrote it down.

Q. Then "the original loan, £20,000. Balance
outstanding as of the 16th August, £44,000.

Action.

Aidan Phelan obtain copy from Michael Lowry letter of
offer from developers in relation to the site.

Planning application to be submitted within three
weeks. Christopher Vaughan to arrange to strike off
Catclause cheque." Do you remember all that being
discussed?

A. Yes.

CHAIRMAN: Mr. Coughlan, you have a certain amount more
to cover. There may be some questions from other
representatives. I think it's probably the best
course to give the witness a break for lunch, and we'll

conclude your evidence this afternoon, Ms. Malone, at two o'clock, if that suits you. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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

CONTINUATION OF EXAMINATION OF MS. HELEN MALONE BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Ms. Malone, I think we were dealing with the note you made of the discussion which centred around the St. Columba's Church, the Cheadle/Catclaus property, at the meeting of the 17th August, 2000, and I think that again the four people who were named at the top were present for the discussion in relation to this property, isn't that correct?

A. That's right, yes.

Q. And the action to be taken was that Aidan Phelan was to obtain a copy from Michael Lowry of letter of offer from developers in relation to the site, isn't that correct?

A. Yes.

Q. Planning application to be submitted within three weeks, isn't that correct?

A. Actually, if you don't mind thanks yes.

Q. And then I have a hard copy, if it's of any assistance

A. No, I have it somewhere.

Q. "Christopher Vaughan to arrange strike-off of Catclause and check." Obviously something had to be checked out.

Was Catclause struck off or had to be arranged for, is that right?

A. Well, I actually did that. I did the strike-off of Catclause.

Q. You did the strike-off?

A. Yes.

Q. Did you instruct Mr. Phelan's English accountants to strike off Catclause?

A. I asked him for a form, and I sent the form to Mr. Lowry. He signed it, and I think I am not quite sure, but I think he sent it back to me, and I sent it on. But it certainly was sent on, and they filed it.

Q. So you arranged for that, in any event. You got the form, you got Mr. Lowry to sign it, and his daughter, and you got that sent either through the accountants, because it would appear that this wasn't arranged through Mr. Christopher Vaughan, is that correct?

A. No, it wasn't.

Q. And all of this discussion took place between the three people named at the top, with you keeping a note?

A. That's correct, yes.

Q. In relation to UK properties of Michael Lowry, isn't that right?

A. That's correct.

Q. Now, I think when Investec brought this matter to the

attention of the Central Bank, and then on whatever advice they received from the Central Bank, they brought the matter to the Tribunal, I think you had at least one meeting, if not two meetings, in respect of this particular transaction, isn't that correct?

A. I am sorry?

Q. With Mr. Christopher Vaughan being present, was there one in the Regency hotel, Mr. Vaughan flew over?

A. This year, yes.

Q. This year, since the matter was brought to the attention of the Tribunal or around the time the matter was brought to the attention of the Tribunal?

A. That's right.

Q. Investec having informed Mr. Phelan of their concerns in relation to the matter, isn't that correct?

A. That's correct, yes.

Q. I think one was there was a meeting in the Regency Airport Hotel, is that correct?

A. Yes.

Q. Do you remember being at that?

A. Yes.

Q. Who else was present, to the best of your recollection?

A. Mr. Phelan, Mr. Vaughan came in later on. Mr. Lowry and Kevin Phelan was in the hotel, but he was I think they were in another room. He was only briefly in the room with me.

Q. Right.

A. Oh, and Denis O'Connor.

Q. I think that's correct. Mr. Phelan has told us that.

And what was your recollection was the purpose of that meeting?

A. That meeting was advising I think Denis O'Connor wasn't aware of the situation, and he was being briefed, basically.

Q. He was being briefed. And what was your function?

Was it to assist in the briefing, or was it to keep a note, or

A. Well, yes, I mean, I was at a prior meeting, I think, on the 15th March; that was the first time first meeting.

Q. Who was present at the first meeting?

A. Again there was Aidan Phelan, Mr. Lowry, and Mr. Vaughan again came in briefly, and I think Kevin Phelan was there briefly, but I am actually not sure of that.

Q. Where was that meeting? In Dublin, was it?

A. Yeah, it was in our offices.

Q. In your offices?

A. And the purpose of that ,really of briefing me and everybody concerned, really, as to

Q. The first meeting was where you got a full view of the situation?

A. Exactly, yeah.

Q. And what were you briefed on?

A. Well, I was trying to understand how this matter had come before the Tribunal. So I was basically getting a history well, I think we were all getting a history of what had happened, because I was certainly very confused, and I think everyone was.

Q. And who was briefing you? Was it Mr. Vaughan?

A. Well, I knew nothing about it, so it was Mr. Phelan, Mr. Lowry, and Mr. Vaughan were basically discussing matters.

Q. Mr. Phelan, Mr. Lowry, and Mr. Vaughan?

A. Yeah.

Q. And the second meeting, then, was to brief Mr. O'Connor, who was Mr. Lowry's accountant, who knew nothing at all about these matters up to that?

A. Well, it was my understanding he didn't know anything.

Q. And he has given that evidence, and it seems to be the view that he didn't know, so it was to brief him in relation to the matters, isn't that right?

A. Yes.

Q. Now, at the first meeting when you were briefed, were you surprised to see the way things had unfolded?

A. Very much, yeah.

Q. Because if I understand your evidence correctly, as of the time that the loan was drawn down, you believed that a company called Catclause, a vehicle being used by Mr. Lowry, was buying property in the UK, isn't that right?

A. That's right, yes.

Q. You were then told the following January, which was a month later

A. I wasn't actually

Q. A couple of weeks later?

A. It was only a few days, really, because Christmas

Q. Intervened?

A. Yeah.

Q. You were told that Catclause was not being used for the purpose of taking the loan, and it was being sorted out some other way?

A. That's correct.

Q. You were still of the belief that Mr. Lowry was purchasing property in the United Kingdom, isn't that right?

A. I actually didn't see it like that. I saw it as, there was a property there. I didn't query as to who actually owned it or how it was registered. And the impression I got at the time was that the property needed to be sold as soon as possible to pay the loan back.

Q. What was your understanding, that it was Mr. Lowry's property? Is that right?

A. I actually didn't ask. To be honest, I don't know.

Q. I appreciate you may not have asked, but what was the state of your belief?

A. I thought it was Aidan Phelan's property at that stage.

Q. You thought it was Aidan Phelan's property?

A. Mmm.

Q. Why did you think that?

A. Well, he said he was responsible for the loan, so... I didn't investigate it in detail. He told me that Catclause was no longer there.

Q. I understand that. You attended a meeting on the 17th August, 2000, when Mr. Phelan, Mr. Lowry, Christopher Vaughan were present, and you took a note of that meeting, isn't that correct?

A. That's correct, yes.

Q. And the note is headed "UK Property, Michael Lowry", isn't that right? "ML"?

A. Yes.

Q. And you record two particular property transactions that are being discussed in the context of Mr. Lowry's property, isn't that right?

A. That's right.

Q. One is the Mansfield property, Hilltop Farm, and the other is the St. Columba's Church, the Cheadle property, the vehicle which Catclause was initially intended for, isn't that right?

A. Yes.

Q. And that was discussed in the context of Mr. Lowry's property, isn't that right?

A. The second property?

Q. Yes.

A. Well, I thought Mr. Lowry was involved, certainly, in the first property and that Aidan Phelan told me that he, Mr. Lowry, was helping him to sell the property or I won't say helping him, but he was under some moral obligation, as far as Aidan was concerned, to help him to sell that property.

Q. When did you hear that? Because that is a phrase that has been used by Mr. Phelan when he spoke to us and gave evidence to the Tribunal. When did you hear this discussion of a moral obligation?

A. I don't know when I heard it.

Q. Is it since matters came to a head?

A. Well, it's very difficult to say now what I

Q. What transpired before you were briefed on the matter when it came to the Tribunal, and what you have learned since; I can understand that. I can understand that.

But can I take it that at the time, because it would appear that you took a note of property transactions concerning Mr. Michael Lowry in August, 2000, and you have this recorded as being one of the properties under the heading "UK Property, Michael Lowry", isn't that right?

A. Well, that's what's there, yes.

Q. Can I take it you find it hard to distinguish when you would have gathered the information or been made aware that Mr. Phelan believed that Mr. Lowry had a moral obligation in respect of the outstanding loan?

A. That's probably true, yes.

Q. Thank you very much indeed.

Sorry, I had just forgotten, there is one matter I would like to deal with. You dealt with it at the end of your statement you prepared for the Tribunal, in that you have some recollection of being asked by Mr. O'Brien, that's Mr. Denis O'Brien, to help Mr. Austin, that's Mr. David Austin, to open an account in Donaldson Lufkin & Jenrette, DLJ, who are New York brokers, isn't that correct?

A. That's correct, yes.

Q. What do you remember about that?

A. Well, I was replying there to a question which you asked me directly: Did I have any dealings with Mr. Austin? Mr. O'Brien did ring me at some stage, I presume when the account was opened, so it would have been I stand corrected now, but I think it was around September no, sorry, January/February '98, was it? Yeah, would I help David Austin open an account with DLJ.

Q. With DLJ?

A. Mm-hmm.

Q. And did you?

A. Yes, I got some account-opening forms, and I think I gave them to Aidan to have them signed, because I wouldn't have posted them to Mr. Austin because he was

he had an apartment in Dublin, but he was moving around a lot, and he was also ill. So I probably gave them to Mr. Phelan.

Q. When you say he was moving around, he was moving around specifically around this time in relation to treatment he was receiving for his cancer, in France and in London?

A. I don't know that, but I presume that would be correct, yes.

Q. So you got a phone call from Mr. O'Brien, you've got to assist Mr. Austin. You got some account-opening forms. Did you have to fill anything out in them?

A. No.

Q. Did you have them signed?

A. No, I would just have sent the forms sorry, I may have put the address down, because our address, Orchard House, was being used as a correspondence address. I actually don't know if I put that address down or not, but I wouldn't have put any other information down.

Q. When you say that your address was used as a correspondence address

A. Yes.

Q. who made that arrangement?

A. Well, I presume Aidan I don't remember Denis asking me could he use our address. It must have been a conversation that Aidan had with either I presume with Mr. Austin.

Q. And do you remember then you perhaps typed in your office address as being the address for the account?

A. Perhaps.

Q. Perhaps?

A. Perhaps, yeah, but I wouldn't have filled in any of the other details on the form because I wouldn't have known.

Q. What type of details? Would they be sort of credit-type details, or bank accounts, or references?

A. From memory, there is maybe two or three forms to open an account. I think one is a foreign status form and the other is, if you have an account in the state already, I think you have to tick off boxes and say what your net worth is. Now, from memory that's so I wouldn't have known I didn't fill in I definitely didn't fill in any of that.

Q. And do you remember sending the forms to DLJ?

A. I think I did. I am sorry I think I did, yes, I think they came back to our office, and I probably sent them on to DLJ.

Q. Did you have any involvement or knowledge of any movements which took place on that account in respect of share dealings?

A. No.

Q. Did you handle any correspondence in respect of any share dealings?

A. I could well have done, in that our office was being

used, as I said, as a correspondence address, so

statements would probably have come in, did come in

Q. And what happened to them?

A. I used to put them into an envelope.

Q. And do what with them?

A. Aidan would take them to Mr. Austin whenever he met

him. I didn't examine them or discuss I never spoke

to Mr. Austin, so...

Q. Pardon?

A. I never spoke to Mr. Austin.

Q. You have never spoken to Mr. Austin?

A. No.

Q. And did you ever convey any instructions on the

account?

A. No.

Q. Never?

A. No, no. I just literally sent the account-opening

forms.

Q. And as statements came in, you would have put them in

an envelope for Mr. Phelan?

A. Either I would have or a secretary, whoever.

Q. Yes, I can understand that. But you never issued any

instructions on Mr. Austin's behalf?

A. Oh no.

Q. On the account?

A. No, no.

Q. And can I take it you were never asked to give any

instructions or to forward any instructions on

Mr. Austin's behalf?

A. No, I had no authority

Q. Or to forward any instructions on Mr. Austin's behalf?

A. I don't recall it.

Q. Did you ever do that?

A. I don't recall it. I could well have passed on, or my secretary could have.

Q. Passed on what?

A. Instructions. I don't know.

Q. You don't know that?

A. No I don't, I don't know that I don't recall I don't remember passing on instructions to Mr. Austin.

Q. You don't remember passing on any instructions on behalf of Mr. Austin?

A. On behalf of Mr. Austin?

Q. On behalf of Mr. Austin to DLJ?

A. No, no. Sorry, no.

Q. You are clear about that? You never did that?

A. Well, I don't remember doing it.

Q. Now, I think you are aware that there are inquiries being made at the moment about instructions which were received by DLJ purporting to be from Mr. Austin which resulted in transfer out of his account of 12,000 ESAT Telecom shares to another account holder after his death; did you have any dealings with that at all?

A. No.

Q. Thank you, Ms. Malone.

CHAIRMAN: Just maybe a few concluding questions,

Mr. McGonigal.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

MR. MCGONIGAL: There is just one small matter I want to clear up, Mr. Chairman.

Q. Just in relation to the trust documents, Ms. Malone, if you go to either 15 or 13 of your own documents; I suppose you should really go to 14 first.

These are the trust documents which were effective in relation to the property in Spain, and the document on page document 14, which I think is probably the first one to look at.

That is a document from Finsbury Nominees Limited to Walbrook Trustees Limited. And Finsbury Nominees Limited I think were they were Mr. Austin's trustee company, if you like?

A. Yes. Through Valmet, yes.

Q. And they were transferring to Walbrook Trustees (Isle of Man) Limited, which were Mr. O'Brien's trustee company?

A. Yes.

Q. And your function was simply to transfer it to Walbrook Trustees?

A. Yes.

Q. After that, it became Mr. O'Brien's responsibility?

A. Yes.

Q. Or the Trustees, his Trustees' responsibility?

A. That's my view, yes.

Q. Thanks.

CHAIRMAN: Mr. Gleeson?

MR. GLEESON: I have no questions.

CHAIRMAN: Thank you very much for your assistance,

Ms. Malone.

I think that is the sole witness today and that there will be further evidence tomorrow at 11 o'clock. There is one matter then later in the week.

It may be desirable I give some advance notice to persons attending, either professionally or otherwise, I think, we were notified yesterday by the Department of An Taoiseach that there is a very substantial governmental conference in these premises generally on Thursday, in the afternoon, with considerable security ramifications; and as a result of discussions, it appears the only feasible way in which we can conduct the intended public hearing is by making an early start and finishing early, probably something from 9.30 until approaching 2 o'clock. And I'll give notice to finalise those arrangements to persons involved

tomorrow. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 17TH OCTOBER, 2001, AT 11 AM.