

TRIBUNAL OF INQUIRY

(PAYMENTS TO MESSRS CHARLES HAUGHEY AND MICHAEL LOWRY)

DAY 150

Appointed by instrument of An Taoiseach dated

26th day of September 1997

pursuant to the

Tribunals of Inquiry (Evidence) Acts 1921 and 1979

TRANSCRIPT OF PROCEEDINGS HELD IN DUBLIN CASTLE

BEFORE MR. JUSTICE MICHAEL MORIARTY (CHAIRMAN),

ON FRIDAY, 31ST OCTOBER 1997, AND FOLLOWING DAYS:

TRANSCRIPT OF PROCEEDINGS ON THURSDAY, 1ST NOVEMBER, 2001:

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan SC

Mr. Jerry Healy SC

Ms. Jacqueline O'Brien BL

Instructed by: John Davis

Solicitor

FOR MICHAEL LOWRY: Mr. Donal O'Donnell SC

Mr. David Barniville BL

Instructed by: Kelly Noone & Co.

Solicitors

FOR MICHAEL TUNNEY: Hugh Garvey

Solicitor

LK Shields & Co.

FOR AIDAN PHELAN: Mr. John Gleeson SC

Instructed by: A & L Goodbody

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

WITNESS: EXAMINATION:Q. NO:

MICHAEL LOWRY Mr. Healy 1 - 447

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 11TH

NOVEMBER, 2001 AT 11 AM.

CONTINUATION OF EXAMINATION OF MR. LOWRY BY MR. HEALY:

Q. MR. HEALY: Mr. Lowry, yesterday we were discussing

your Dail statement, but you will recall that I

couldn't find some of the relevant pages of the

McCracken Tribunal in which the statement was referred

to. Now, since then I have had a look at the statement

itself, and I have had a look at the sections of the

McCracken Tribunal in which it's referred to. Can you

tell me when you resigned as a minister?

A. November 1996, the end of November.

Q. And you made a statement on the 19th of December of

1996?

A. Yes.

Q. Now, the statement was mentioned over a lengthy period

of time, I think some 20-odd or 25 pages of the

McCracken Tribunal on day 10. I am just giving you a

copy of the transcript of day 10.

Now, at the time of that statement, you had four

offshore accounts, isn't that right?

A. At the time of which statement?

Q. Of the Dail statement.

A. I don't at that particular time?

Q. Yes.

A. Yes, I had offshore accounts.

Q. You had an offshore account in Allied Irish Banks in the Channel Islands. You had an offshore account with Rae Brothers, and you had an offshore account with Bank of Ireland in the Isle of Man, and then you had an offshore account with the Irish Nationwide in the Isle of Man.

Now, the offshore accounts that were revealed and which were the subject of the McCracken Tribunal were the three accounts that I mentioned firstly, the AIB account in the Channel Islands and the Rae Brothers account in the Isle of Man and the bank of Ireland account in the Isle of Man. Isn't that right?

A. Mm-hmm.

Q. Now, at page 35 of the McCracken Report, day 10, I think Mr. McCullough was suggesting to you that putting money into offshore accounts in the Channel Islands and in the Isle of Man was an arrangement whereby Mr. Dunne could make monies available to you in a secret and undisclosed fashion, and you disagreed with that strongly. Isn't that right?

A. Correct.

Q. And then Mr. McCullough brought you on to discuss what you had stated in the Dail. And while various parts of

the statement may have been mentioned, I think the major portion of it was just the section we mentioned yesterday, which was to my according to my record of the statement, and I have the Dail record of it. I can give you a copy if it's of any value.

A. Okay.

(Document handed to witness.)

Q. It's a record of the Dail debates, volume 473, 19th December, 1996, personal statement by a member. And in the fifth paragraph, you refer to how difficult you found it to make the statement. And then you go on to describe your career in business, your career in politics. And on page 6 of the transcript I have of the statement, you say: "I did not make any secret of the fact that Dunnes Stores paid me for professional services, by way of assistance towards my house. If someone were trying to hide income, would he or she not be more likely to put it in an offshore account?"

You said to Mr. McCullough in the course of the McCracken Tribunal, as you said to this Tribunal yesterday, that what you were saying you said badly, or you put across badly, isn't that right?

A. Correct.

Q. Now then, Mr. McCullough, I think at page 42, took you to the end of the Dail statement, where I think on the last few lines you said: "In conclusion, let me assure all members that what they have heard is the truth.

Plain but not simple. I thank them for their

attention."

And at page 42 of the transcript, at question 172, Mr.

McCullough said: "It wasn't all the truth, though, was

it?" And you said: "I made mistakes regarding it,

and, I have admitted those mistakes. And as I said

already, I have been the subject of intense criticism

since that."

Now, Mr. McCullough then went on to examine you, not in

the context of any accountability you might have to the

Dail, because you have corrected that yourself, but in

the context of the contrast that he says that you drew

between building a house and therefore putting any

wealth you had on display, and on the other hand, if

you wished to hide money, putting it into an offshore

account.

And at page 43, he said at question 175: "You are

aware that you had $\text{€}1/225,000$ in the Bank of Ireland in

the Isle of Man; you were aware, I suggest to you, that

you had $\text{€}1/240,000$ sterling in the Badgeworth account in

the Isle of Man earning interest. And you were aware

that you had $\text{€}1/234,000$, at least, in the Allied Irish

Banks in Channel Islands, all of which was Dunnes

Stores money which was being paid to you. You made no

reference to any of those payments, Mr. Lowry."

And you answered: "I didn't, because as far as I was

concerned, as far as I was concerned, Mr. McCullough, I

was, as I said I went into the Dail, I repeat, with the express purpose of addressing the contents of the Price Waterhouse Report."

Mr. McCullough went on: "You didn't even do that. In fact, as Judge Buchanan in his Interim Report, he dealt with the $\text{€}50,000$, the $\text{€}6,000$," and you answered: "The Price Waterhouse Report, as it referred to me and as could I explain to you, Mr. McCullough, the Price Waterhouse Report was commissioned by Dunnes Stores."

"Question: We all know that.

"Answer: Well, maybe some people don't know. Since all of my detailed affairs are the subject of elaboration, maybe I should also put some perspective on it. The Price Waterhouse Report was commissioned by Dunnes Stores. I do not know what the Terms of Reference of that Report were. I am still not sure today of what the Terms of Reference were. The Price Waterhouse inquired into obviously into various payments that had been made on behalf of Dunnes Stores. Some of those payments were in respect of my business and to Michael Lowry personally. I was never given the opportunity, and I regret very much, and I resent very much the fact that while others had ample opportunity to state their position, I was never afforded that opportunity to address the Price Waterhouse report. It has referred to me. Had I been afforded that opportunity, I would have been able to tell the Price Waterhouse people

I would have been able to tell them what the payments were for and why they were given to me. And because that didn't happen, my name was included in that report, and then it was leaked, and when it was leaked and it became presented in the fashion that it was presented, it meant that I could never properly explain the background to it. That is why I am at this Tribunal, and that is why this Tribunal is taking place today.

"Question: Mr. Lowry, well, Mr. Lowry, I have to say " Then you interjected: "I went into the Dail, I went into the Dail, Mr. McCullough, I went into the Dail to address what I knew of the Price Waterhouse Report. I did not go into the Dail with a view of going through each and every item and every transaction that I ever had with Dunnes Stores or Mr. Ben Dunne.

"Question: Mr. Lowry, it's certainly clear, or seems clear to me you certainly feel that you are a victim in all of this, but isn't it perfectly clear, Mr. Lowry, you brought all this on your own head?

And you say: "Mr. McCullough, I have learned the lessons of a lifetime. I have paid a high price for those lessons, and I am prepared first of all to amend whatever mistakes have been made, to tidy up my affairs, to above all, if I can, to protect my business and secure the ongoing employment of my employees. Those are my two priorities at the moment. Yes, I have

made mistakes, and I would I don't feel a victim, I just know what has happened. I also know that I made my own contribution to my own misfortune. I accept that. I also believe, Mr. McCullough, that rarely in the history of politics in the State has anybody paid such a high price or been ridiculed and been subjected to such sustained, prolonged criticism. I have admitted my mistakes. I am prepared to pay the price for those mistakes. All I want to do is do one thing, apart from the two measures I have already outlined. I want to re-establish my political integrity. I want to make it clear through this Tribunal that my relationship with Ben Dunne was totally business, was commercially orientated, and had absolutely nothing to do with politics or political favours."

Mr. McCullough then went on, and eventually the transcript gets closer to the question of to the questions he was asking surrounding the preparation of the statement. And at page 47, you say, question 184, and your answer I don't want to go into all that went before.

"Could I finalise Mr. Chairman's question to me? Mr. Chairman, it has taken me it has taken me and it has taken me and my professional advisers months to provide the kind of detail that the Tribunal has here now. I wouldn't have had it at my finger tips at that kind of notice. And what I did state in the what I did state

at the end of my statement to the Dail, I stated clearly, because it was being mooted at the time that I would cooperate fully with any further investigation into my business affairs by way of any inquiry, and I have done that."

Then you were asked, question 185: "Mr. Lowry, could I just bring to you this point then. You have explained to us why you have offered an explanation as to why you didn't tell the Dail about any of the other payments which were made, is that right, you were only dealing with certain payments?"

You say: "Yes. I was dealing with the monies, Mr. McCullough, that came into the public domain."

Then at page 48, Mr. McCullough again quotes the part of the statement which I have quoted: Your statement that you didn't make any secret of the fact that Dunnes Stores paid you for professional services by way of assistance towards your house, and your statement that if someone was trying to hide income, wouldn't he or she be more likely to put it into an offshore account.

You went on to say that your choice of words and language was bad and that the message that you wanted to convey had not been properly or adequately conveyed.

Then Mr. McCullough, on page 50, question 195, comes back to the actual presentation of the statement. Page 50, question 195. And this statement covers a lot of the information I would want to or this part of the

transcript covers a lot of the information I would want to elicit, so I am going to go through the next few pages in some detail.

Mr. McCullough says at question 195:

"If someone were trying to hide income, would he or she not be more likely to put it in an offshore account?

The last thing such a person would do would be spend it on a very obvious structure of bricks and mortar for all the world to see. It allows me and I presume many other genuine people to put their businesses on a sure footing"; you were contrasting there, Mr. Lowry, the openness of building the house, buying and constructing the house with hiding income in an offshore account."

You say: "I didn't hide income in an offshore account.

I didn't hide income or I didn't deliberately conceal anything. And, Mr. McCullough, there has been various interpretations put on that. I can't say any more than I have said, that I didn't deliberately do anything such as has been suggested to me. I may have worded that statement, or my advisers, or whoever assisted me with it "

Then you were asked: "Did you write the statement?"

And you answered: "I did not see the significance of it.

"Question: Did you write the statement?

"Answer: Yes, with the assistance of my advisers.

"Question: Was it written down?

"Answer: What do you mean, "was it written down"?"

"Question: Was there a typed script from which you read or a handwritten script from which you read?"

"Answer: Yes.

"Question: Is the statement which has been published, and which you have a copy there before you, is that the form in which it was written?"

"Answer: What do you mean by "was it the form in which it was written?"

"Question: The paragraph I have just read out to you now, which you delivered in the Dail

"Answer: Yes.

"Question: Was the script of that statement which you read to the Dail, did it contain that paragraph as I have read it to you?"

"Answer: I have already, I mean, I am not disputing what was in the statement. I'm accepting that everything there is nothing, there is nothing that statement is common knowledge. That statement has got wide circulation. That statement has been in full, that statement has been in full printed in practically every newspaper in Ireland."

Judge McCracken intervened: "No, Mr. Lowry, what you are being asked is rather different. Mr. McCullough is asking when you read it out to the Dail, did you read it out exactly the words that had been prepared in advance, I think "

And you answered: "I obviously did."

Then Mr. McCullough said: "You seemed to indicate earlier, Mr. Lowry, that the words were badly chosen or that they didn't convey what they intended to convey.

Somebody sat down with you and worked out precisely what you were going to say in relation to those very serious matters. You, or somebody on your behalf, presumably with your acquiescence, wrote that sentence down; isn't that right?

"Answer: Not wrote that statement down, wrote that statement out in its entirety.

"Question: It was this sentence "If someone were trying to hide income, would he or she not be more likely to put it in an offshore account?"

And you answered: "You are asking me the same question in a different way; it was deliberately phrased that way. I am telling you it was not." I think, in fairness to you, you must have probably meant there, it wasn't deliberately phrased in that way. I think there must be a mistake in the transcript. Though the way I read it it's probably naturally the way you said it.

"You are asking me the same question in a different way. It was not (sic) deliberately phrased that way. I am telling you it was not. I am telling you that the full statement was written, was written in sincerity.

It was delivered in the way it was written, and the meaning that I wished to convey for that, which has

been misconstrued, and I can understand why it was misconstrued. I accepted whatever criticism has been levelled at me in regard to that. I was saying in a poor way, I was saying that I was hiding nothing in regard to the house, and I think that is pretty evident from the evidence that has been given to date to the Tribunal, and what I have already said myself, that as far as I was concerned, the house was and is a perfectly legitimate commercial transaction. It is unfinished business with Dunnes Stores, and I am looking forward to having that finalised.

"Question: Did you have one adviser or more than one adviser dealing with that statement?

"Answer: One or more advisers? I didn't count them, but I would have a couple of advisers.

"Question: Would you have to count them; would you? There would be more than one?

"Answer: No, I wouldn't have to count them.

"Question: How many were there?

"Answer: I don't see what relevance that has.

"Question: It is relevant to the care that went into the making of the statement and its preparation. I suggest to you, Mr. Lowry, you were seeking to suggest, as I understand it, that that sentence does not properly or adequately convey the true meaning which you intended to convey. I just want to explore how that happened and how it could be that you and your

adviser or advisers could have put such a sentence in the statement referring specifically to offshore accounts unless you were intending in some way to make a point about offshore accounts.

"Answer: I refute categorically the inference in your question, and the inference in your question is the same you put to me already: Was this deliberately done? I refute categorically and I state emphatically that that was not the case. I didn't even I didn't even understand the significance of that until such time as my Dail statement was delivered and one or two days after it was highlighted. It was totally inadvertent, and as I have already said, I accept whatever responsibilities are with me for that.

"Question: Mr. Lowry, when you were sitting down with your advisers to prepare the statement, and when it was being drafted or being discussed, and when possibly somebody suggested to you, 'Let's put this sentence in', did it occur to you to say, 'Perhaps we'd better not. I have some offshore accounts. I shouldn't make any reference to them at all.'?"

"Answer: I didn't see it in that context. I didn't see it in that light because the kind of suspicion that you are attempting to build about the statement simply didn't exist at the time. I was trying to give the view of it as I saw it.

"Question: Would it not occur to you or did it not

occur to your advisers that in putting that sentence into the statement, you were giving the impression to anybody reading it that Mr. Lowry certainly didn't have an offshore bank account then because he wouldn't have made that reference if he had?

"Answer: Mr. McCullough, I knew I had an offshore bank account and in that knowledge I wasn't going, wasn't going to portray it as you were saying it. I didn't do that. I am telling you that it was inadvertent, and I have already said that it was expressed in such a way that could convey the impression that you are to create. What I am saying to you, that that was not what was on my mind at that particular time or at any time.

"Question: But

"Answer: What I was trying to convey, and what I wanted to repeat it, what I was trying to convey and conveyed badly was that the house was there for everyone to see, and that the transaction is as open as could you get. It was there in bricks and mortar for anybody to see. I was hiding nothing in regard to the house because I had nothing to hide, and I still don't have anything to hide in regard to the house.

"Question: But it could hardly have been inadvertent, Mr. Lowry. It was a considered sentence, I suggest to you, making a particular point as to the contrast between building a house and doing something in a bank

account offshore in which income could be hidden, and that was the point that that sentence was seeking to make, I suggest to you. It was hardly put in that inadvertently.

"Answer: It was conveyed inadvertently. That is the impression you got from it and others got from it. I could see why they would take that impression from it. I am telling you and saying to you under oath today, under oath I am saying to you that was not the impression I was conveying. I had nothing to hide.

"Question: Why didn't you say, then, when you were reading the statement, 'By the way, I do, in actual fact, have some money in an offshore bank account, but I am not hiding it'? Why didn't you say that?

"Answer: I am already after saying to you I phrased it badly. Maybe I should have phrased it in hindsight, I wouldn't have phrased it that way.

"Question: Did it occur to you when you were reading it to the Dail

"Answer: Mr. McCullough, you have never been in the Dail, and when you stand up in the Dail I was in the Dail under extreme and intense pressure, as I have been ever since, and you don't look at three words ahead of you. I read it as it was, as I had it in my hand. I wouldn't have the time to stand back and to look at a paragraph and say, 'Well, maybe I should change that,' standing on my feet.'

"Question: Had you not read it before you went into the Dail?

"Answer: Mr.

"Question: Did you not read it before you went into the Dail?

"Answer: I did read a statement before I went into the Dail at short notice before I went into the Dail because the statement, Mr. McCullough, the statement I was trying assimilate facts and information. I finished that statement at approximately half four, 4:40 a.m. That was the time I finished it, and the reason it took so long is I tried to get it as word perfect as I could. I obviously didn't get it word perfect for everybody. I did get 99.9 percent of it, as you admit yourself, Mr. McCullough, in your questions to me. I did get it 99.9 percent right.

"Question: So far as it went?

"Answer: I did make a mistake. I have already said that I made a mistake. I have accepted that mistake.

What more can I do?

"Question: The news of all that "

Mr. O'Donnell interjected: "Before Mr. McCullough asks another question, can I inquire to the relevance of this in regards to the Terms of Reference apart from scoring points off this witness? It is not an inquiry into what he said in the Dail. It is an inquiry into the payments made to him. I just wonder what the

relevance of this is now, at this stage.

Judge McCracken then said: "Mr. O'Donnell, it is an inquiry, amongst other things, for the motives made for the payments paid by Mr. Dunne and the motives of your client in receiving those payments. And the fact that he did not reveal those payments to the Dail is very, very relevant.

"Mr. O'Donnell: He has already been asked for a day questions about his motives. You have said, Sir, fairly in respect of the motives or alleged motive of political favouritism, that there is absolutely no evidence in that regard. I am wondering what the purpose of this continued cross-examination as to what he said in the Dail is.

Judge McCracken said: "Because it may be relevant as to whether he had other motives for not disclosing.

"Mr. O'Donnell: He has already been asked those questions, Sir.

"Judge McCracken: He is being asked at the moment in respect of one particular paragraph, but which incidentally, he brought up himself.

"Mr. O'Donnell: I appreciate that.

"Judge McCracken: Out of order, if you like, in the order of the sequence of questions.

"Mr. O'Donnell: I appreciate that. That is why I waited some time for Mr. McCullough to perhaps finish his questions in that regard.

"The Chairman: I think it is relevant. You have probably got as far as you are going to get. It seems to me it is very relevant.

"Mr. McCullough: If I might ask one or two other questions?

"Chairman: In relation to the statement about offshore accounts in relation to his Dail statement?

"Mr. McCullough: I want to ask some questions about the context of why the statement was made. The news of all these matters, Mr. Lowry, I think broke on the 30th November; would that be about right? These matters came to light and the statement was made on the 19th December. So you had the best part of three weeks to think about what you were going to have to say to the Dail, and to think about it fairly carefully. I suggest to you it was not necessarily something that you had to sit down to do in the early hours of the morning shortly before delivering the statement. Isn't that right?

"Answer: I very much differ with you. The context in which the statement was made was that I was a minister. I was a minister in probably the biggest ministry and the busiest ministry in government. I was also president of the European Council of Ministers. I was president of the European Council of Ministers for Transport Energy and Communications. There was no person as busy or busier than I was in political

circles at that particular time. I wanted to discharge my responsibilities and functions in that regard first before I concentrated my attention on preparing that statement.

"Question: What was the date that you resigned as minister?

"Answer: I am not quite sure. It was sometime in December, I think.

"Question: Was it sometime before the making of the statement?

"Answer: Yes.

"Question: So you had some time when you were no longer a minister when you could concentrate on making a statement?

"Answer: I would also have to say to you, Mr. McCullough, you have never had to resign as a minister. It does take time to recover on a personal level before you can get your thoughts together to see where you will go next.

"Question: I see. Just one final point about the sentence. I suggest to you, Mr. Lowry, it doesn't follow from the fact that you bought a house and refurbished it, that it was plain to the world that this was done with Mr. Dunne's money. The mere fact of buying a house and extending it wasn't giving an indication to the world that you had been paid by Mr. Dunne income that you were not seeking to hide and it

was there for all to see. You didn't tell anyone that Mr. Dunne's money was being used to buy the house and refurbish it."

You go on to say you did tell people, friends of yours and so on.

Now, the reason I am going over that, Mr. Lowry, is this: So that you will understand the context in which I want to raise it with you is that this Tribunal is obliged to look at payments to politicians and the circumstances in which those payments are made, and one of the circumstances the Tribunal regards as relevant in the context of its Terms of Reference is the fact that a payment may have been concealed, may have been hidden, may not have come to light for any reason, may have been kept from a Tribunal or from a person's advisers over a lengthy period of time. And in particular, where monies in a politician's bank account are found to be in an offshore account, it is pertinent to inquire whether putting the money in the offshore account was a circumstance which ought to be taken into account in evaluating the manner in which the funds came into the account.

Now, you said in evidence to the McCracken Tribunal that you had an amount of assistance in preparing this statement, isn't that right?

A. Yes.

Q. And you said that at the time that you made the

statement, you knew you had offshore accounts?

A. Yes.

Q. Presumably you didn't tell your advisers that you had offshore accounts, or otherwise they would have told you not to put that statement into your Dail address, isn't that right?

A. Incorrect.

Q. I am sorry, they did know you had offshore accounts?

A. Yes.

Q. I see. Did they know well, I know the answer to this question, I suppose, from some of your advisers.

Your accountant, Mr. O'Connor, and the advisers with you at this Tribunal, were not aware that you had an offshore account in the Irish Nationwide, isn't that right?

A. There was no discussion on the detail of any account that I had here at home or abroad.

Q. I thought you told me that they did know you had offshore accounts?

A. They did.

Q. There must have been some discussion of them?

A. No, just a general discussion: Where were my funds?

And I explained that I had offshore accounts, and I believe I had accounts at home. What you have to understand, Mr. Healy, is that this statement was not an outline of my financial affairs. This was a statement in response to a political situation, and it

was also in terms of the contribution that I made in that statement towards explaining my finances, was confined to the payments that were already publicised in the Price Waterhouse report. I confined my address on financial matters to those specific payments because those payments were in the public domain through the leaking of the Price Waterhouse report. I did not go beyond that.

Q. I didn't ask you I am not asking you about that. I am simply asking you, did your advisers at the time know that you had four offshore accounts?

A. Yes.

Q. Four offshore accounts?

A. They knew I had offshore accounts. There was no specific discussion on them.

Q. They knew you had offshore accounts in general?

A. Yes.

Q. So they didn't know you had the three offshore accounts I mentioned earlier, Channel Islands and two in the Isle of Man; they knew just generally you had offshore accounts?

A. Yes.

Q. Did they know that the money you had got from Ben Dunne was in those three offshore accounts?

A. There was no discussion on that.

Q. Did they know it?

A. I can't recall whether they did or not. There was no

discussion on it.

Q. Wouldn't it be surprising if they knew it?

A. Would?

Q. Wouldn't it be surprising if they thought you had money you had got from Ben Dunne in these three offshore accounts, Isle of Man and Channel Islands?

A. No, they knew that some of that money was in offshore accounts, but they wouldn't have been there was no discussion in relation to my finances.

Q. I don't want to know was there discussion. We will get along much faster if you tell me what I am asking you.

Did they know from you, what

A. I can't tell what you want to hear. I am telling you the fact of it. Number 1, we had no discussion.

Number 2, they had no detail. They just knew in general terms that I had offshore accounts. There was no discussion on it. There was no detail. There was no need for it because I wasn't addressing my financial affairs in the Dail.

Q. All right. So they knew you had offshore accounts in general?

A. Yes.

Q. In the course of all of the work you did with those advisers during the whole period of the McCracken Tribunal, presumably they learned not only that you had offshore accounts, but that Ben Dunne money was in those offshore accounts?

A. All those accounts were addressed at the McCracken Tribunal in that manner, yes.

Q. No, I just want to get the answer to my question.

Presumably during the McCracken Tribunal your advisers, in the course of preparing for the Tribunal, became aware that the offshore accounts that you had in the Channel Islands and the two in the Isle of Man contained Ben Dunne money?

A. Yes, because they were relevant to that Tribunal.

Q. Yes. When you came to prepare for this Tribunal, we know that you didn't tell those advisers about the offshore account you had in the Irish Nationwide?

A. Mm-hmm.

Q. We do know that you told your advisers that they were to assist the Tribunal to get to the bottom of your entire financial affairs, isn't that right?

A. That's correct.

Q. And you were able to tell your advisers about certain things. You didn't know every detail of your financial affairs, but there were certain things you knew anyway.

From McCracken, you knew you had three you knew you had four offshore accounts, and you told them about three, isn't that right?

A. I told them I didn't tell them anything.

Effectively what happened was my accountants had access to all of my financial affairs, and in that process, they were identifying payments that were relevant to

the McCracken Tribunal. And those

Q. But you knew, in any case

A. And those accounts that were relevant were obviously disclosed and were dealt with at the McCracken Tribunal. They were the subject of McCracken's report, and I was criticised in that report for the manner in which those accounts were dealt with. I accepted that criticism, and I have attempted to resolve that situation since.

Q. Wasn't it, as you said, a lesson you learnt, both in relation to your Dail statement and the evidence you gave to the McCracken Tribunal, that you should provide your advisers and a Tribunal inquiring into your affairs with all of the information concerning your financial affairs; you shouldn't leave a Tribunal or your advisers in a situation where they only have half the picture?

A. That's not correct. I have never left anybody with half the picture. I have been forthcoming with the information. I have already gone to great lengths yesterday to explain to you, Mr. Healy, that the account that you are referring to

Q. What was the lesson that you learnt, then?

A. The lesson that I actually learnt, Mr. Healy in relation to my Dail statement? Is that what you are referring to?

Q. Yes.

A. The lesson I learnt in my Dail statement was I got conflicting advice in relation to the Dail statement.

First of all, I had no obligation to make a Dail statement, and if I wished to make a statement, it could have been a one-line statement or it could have been a three-hour statement. The lesson that I learned, Mr. Healy, was that I should have confined it to approximately two lines, because no matter what I put in my Dail statement, I was going to be accused of omitting something.

We set out the parameters within which I would make the statement. We confined the statement as much as we could. The statement was never intended, never intended to be a broad sweep of my financial affairs. It wasn't that, and it wasn't intended to be that.

Q. No, but unfortunately, as you say yourself, inadvertently, as you say yourself, you used the expression that if somebody wanted to hide money, they'd put it in an offshore account?

A. Mm-hmm.

Q. Now, at the time that you made that statement if somebody wanted to hide income, they'd put it in an offshore account?

A. Mr. Healy

Q. I am saying you said that. Your own view is that you shouldn't have said it, but you did say it?

A. Pardon?

Q. You shouldn't have had said it, but you did say it. It was a mistake?

A. Yes. I have already explained my position in relation to that. This matter after I made that Dail statement, this became a matter of controversy, and much has been written, much has been said in regard to that particular comment, and yes, that particular comment did get me into trouble. I regret the fact that it was made, and there is nothing I can do about it. I can't undo it. I already explained to you yesterday the intent that I had in making that statement.

Q. When you were making that statement, you had in your filing cabinet at home a document or documents concerning an offshore account which you had just opened in the Isle of Man, isn't that right?

A. That's correct.

Q. And I think you say that the statement caused you an awful lot of trouble. You say it was carried in every newspaper in Ireland, you think, isn't that right?

A. That's correct.

Q. And anyone reading the statement would form the impression, which you say you understood, that somebody might use an offshore account to hide money; that wasn't what you intended, but you understood that somebody might construe the statement in that way. Isn't that right?

A. That would have been a mistake in construction you could put on it, yes.

Q. But you understood how people could arrive at that construction?

A. That's the way it was presented by the media.

Q. I think that's what you said in evidence to Judge McCracken.

A. That was the way it was presented, but that's not the way it was meant.

Q. Yes, but all I am concerned about is the fact that people might form that impression of it and your evidence to Judge McCracken that you could understand that they might form that impression but that they would be wrong.

A. Mm-hmm.

Q. Now, at the time that you made that statement, and at the time that it was carried in every, as you say, almost every newspaper in Ireland, you and Mr. David Austin had just taken part in a transaction to open an offshore account in the Isle of Man?

A. That's correct.

Q. And presumably David Austin must have seen this statement as well and must have become aware of the controversy about the choice of language or the choice of words that you had made?

A. I am sure he read it, the same as everybody else did.

Q. And did you not discuss your reference to offshore

accounts in the context of the offshore account that

you had just opened?

A. No. The emphasis at that stage was on the McCracken

Report and the findings of the Dunnes Stores money.

Q. There was no McCracken Report at that time. You had

made the statement to the Dail.

A. The statements in the Dail, I should say. The Price

Waterhouse report money.

Q. Yes, but you had made a statement to the Dail. You had

made a statement. Everybody was reading it and

wondering what you meant when you said if you wanted to

hide income you'd put in an offshore account. And you

never discussed that with David Austin. He never said

to you 'Look, Michael, we'd better close that offshore

account; it's not a good idea'?

A. Never. Because the money from David Austin was a loan.

It was not a payment, it was not a gift, and we

wouldn't be looking neither he nor I would be

looking at it in the context which you are trying to

put it. There was nothing there is nothing wrong

with the transaction. It was a simple matter of a loan

which, as I have already said to you, the document is

in place and that particular loan has been repaid. So

it was never looked at in the light that you are

talking about.

Q. But surely, being an astute man, Mr. Austin would have

recognised, as I am sure you recognised, that people

were misconstruing the words you had chosen?

A. Mr. Austin wasn't concerned about it.

Q. I see. Did you discuss it?

A. At least he never discussed it with me

Q. I am just wondering how you knew he wasn't concerned

A. Obviously, if he was concerned, he would have come to me about it, but he didn't.

Q. Did you discuss your statement at all?

A. With?

Q. David Austin.

A. No, David Austin had absolutely no role or function or contribution to the making of that statement.

Q. But after the statement was made, you didn't discuss the public controversy it caused, no?

A. No.

Q. I find that surprising, that someone as close to you as that, a close and trusted friend who was involved in activities that you didn't disclose to other people, not even to your own accountant, wouldn't have discussed something as controversial as this statement with you.

A. Because, Mr. Healy, there was nothing mysterious or sinister about the dealings that I had with David Austin. There was no need to discuss them in the manner or in the way that you are trying to suggest. Any of the discussions I had with David Austin in relation to that statement would have been in general

terms about the politics. David Austin at that stage would have been more concerned for my well-being and for my future rather than what anybody was saying about me in the papers or anywhere else.

Q. Now, shortly after that, within about a year, as we know, the Terms of Reference of this Tribunal were approved in the Dail. And one of the Terms of Reference, Term of Reference (f), is as follows: "The Tribunal was required to inquire urgently into and report to the Clerk of the Dail and make such findings and recommendations as it sees fit in relation to the following definite matters of urgent public importance: Term of Reference (f), the Terms of Reference go on: "The source of any funds held in the Bank of Ireland, Thurles branch, Thurles, Co. Tipperary; the Allied Irish Bank in the Channel Islands; the Allied Irish Bank, Dame Street, Dublin; the Bank of Ireland (Isle of Man) Limited in the Isle of Man; the Irish Permanent Building Society, Patrick Street branch, Cork or Rae Brothers (Isle of Man) Limited in accounts for the benefit or in the name of Mr. Lowry or any person who holds or has held ministerial office or in any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr. Lowry or for the benefit or in the name of a connected person within the meaning of the Ethics in Public Office Act 1995 or for the benefit or in the name of any company opened or

controlled by Mr. Lowry."

Now, you presumably read that paragraph in the Terms of Reference?

A. Terms of Reference of it?

Q. This Tribunal.

A. My advisers would have read it, and I would have been yes, aware of it.

Q. Well, you voted on it to begin with.

A. I actually didn't.

Q. Didn't you? I see.

Under that particular section of the Terms of Reference, the Tribunal is obliged to look at the sources of monies in bank accounts held in your name or for your benefit. And a number of bank accounts are identified, isn't that right?

A. That's correct.

Q. Including three offshore bank accounts, isn't that right?

A. Correct.

Q. And then any other bank account discovered to be for your benefit, isn't that right?

A. Mm-hmm, correct.

Q. Now the Irish Nationwide (Isle of Man) bank account you had was a bank account in your name, isn't that right?

A. That's correct.

Q. And at the time that these Terms of Reference were published, it was one that you had closed just a few

months before, isn't that right?

A. That's correct.

Q. And wasn't it as plain as a pikestaff that that was a bank account that the Tribunal might be interested in?

A. I didn't give it any consideration, on the basis that as far as I was concerned, this account was a loan facility which wasn't functional, which I didn't use, which I didn't benefit from, and I simply didn't think it was relevant, and it was overlooked.

Q. Mr. Lowry, during all the time that you have been dealing with this Tribunal and during the time that you were dealing with the McCracken Tribunal, you have had the assistance of extremely skilful lawyers, accountants, and other advisers, isn't that right?

A. I would accept that.

Q. And you are telling me that you'd prefer your own opinion as to what this section of the Terms of Reference means to asking your advisers whether your opinion was the right one or not?

A. Mr. Healy, that is the factual position, that I made a decision in my mind, correctly or incorrectly, that the matter was not relevant on the basis that it was concluded, finalised, that I hadn't availed of it, that I didn't use it, and that I didn't benefit from it. And in respect of that, Mr. Healy, you referred earlier to discovery powers.

Q. Well, I may not, but go on anyway. You proceed, if you

want to say something about it.

A. If you want to ask me a further question

Q. Well, the first point I want to make to you is that that Term of Reference is fairly clear, and I'd have to suggest to you that any person, not even a skilled person, a legally skilled person reading that Term of Reference, would know that it included a bank account that you held in the Isle of Man?

A. Well, first of all, I can say in response to that, obviously I didn't look at the Terms of Reference in detail.

Q. Are you seriously telling me

A. Pardon?

Q. you didn't look at the Terms of Reference?

A. Me personally?

Q. Yes.

A. No, I did not look at the Terms of Reference in details. I would be broadly aware, obviously, of the Terms of Reference for the Tribunal and what I can say quite clearly to you. I cannot say any more than I have said to you, that I formed the opinion, for the reasons that I previously stated, that it wasn't relevant.

Q. Mr. Lowry, you didn't read the Terms of Reference?

A. Pardon?

Q. You didn't read the Terms of Reference?

A. I said I was aware of them in general terms. I

wouldn't have gone through them in detail, no.

Q. So without reading the Terms of Reference, only being generally aware of them, you formed an opinion that an account that you had in Irish Nationwide couldn't be relevant to the Terms of Reference?

A. I didn't give it as far as I was concerned, it wasn't a payment. It wasn't a gift. It wasn't something that I used. It wasn't something that I availed of. And for that reason, yes, I formed the opinion, a personal opinion, that it wasn't relevant.

Q. But I am going to give you an opportunity now, Mr. Lowry, six years down the road, to look at this Term of Reference again and to read it slowly with me so that perhaps for the first time in six years in four years, sorry you can examine this Term of Reference.

A. Mr. Healy, I have already

Q. No, no; I want you to do it with me.

A. I have already said to you you are missing the point that I have already made over the last number of days.

I did realise that it became relevant, and when it did become relevant I actually disclosed it to the Tribunal. It was disclosed personally by me to the Tribunal when I considered it became relevant.

Q. Do you understand, as I said at the outset, or don't you understand that what the Tribunal is looking at is why this account wasn't brought to its attention by you, by your advisers, by Mr. David Austin

A. Because

Q. just a moment over the period of time up to when you did in fact come into the Tribunal and tell the Tribunal about it?

The Tribunal wants to know why that happened and whether that nondisclosure or concealment of that account is something which ought to be taken into account in examining the circumstances in which money was paid to you by Mr. Austin.

Now

A. Sorry, could I answer you, Mr. Healy? Could I answer that question? I strongly reject I strongly reject your efforts to put it to me that I concealed this account. I did not conceal this account, and you are well aware, Mr. Healy, you are well aware, Mr. Healy, that you received all of the assistance you required from me or asked of me in respect of waivers. You are also well aware, Mr. Healy, that on the 7th November, on the 7th November you were in contact, through the Tribunal or on behalf of the Tribunal, with the Irish Nationwide. I didn't do anything to limit your powers. I didn't do anything to obstruct your powers. And when you had that trawl over, I was asked whether or not it was okay if you could retain and use the documentation and the information that you had. I was not aware of any of what response you had got from any institution at that stage. I only became aware of that

last week, towards the end of last week.

So you cannot say, Mr. Healy, it is totally wrong it is totally wrong to say that I deliberately did anything. I have already said that I didn't think it relevant

Q. I haven't asked you if you did something deliberately wrong. If you listen more carefully to the questions I am putting to you, I can get an answer from you, and we can proceed more quickly. I wasn't suggesting that you concealed anything. I was trying to help you to answer the questions I am putting to you by telling you, or by giving you an idea of the context in which the Tribunal was looking at these matters. And what I wanted to explain to you, so you would understand the questions I am putting to you, is that the Tribunal has to look at the circumstances in which money is paid to you; and that included in those circumstances, the Tribunal regards the fact that a payment was not disclosed by you or by your advisers or by Mr. Austin, and it has to decide whether there was concealment or whether there was some other casual nondisclosure or whether the nondisclosure is something that's credible or not. I am simply putting that to you so you will understand the questions I am going to put to you.

Now, I am going to start again by looking at the Terms of Reference, because I am quite frankly amazed

MR. O'DONNELL: I think Mr. Healy should perhaps be

more careful in the way he puts these matters to Mr.

Lowry. I am somewhat concerned about the suggestion that he wants to know why it wasn't brought to the attention of the Tribunal by advisers and whether there was concealment. If there is a suggestion that there was concealment of this matter by any of Mr. Lowry's advisers, that should be made very clear and explicit, and it can be dealt with.

CHAIRMAN: We never said that at any stage.

MR. O'DONNELL: You will appreciate my concern at the way in which the matter was put, because Mr. Healy asked on a number of occasions why he said the Tribunal wanted to know why this had not been disclosed by Mr. Lowry's advisers and wanted to inquire whether there was any concealment. That's why I am asking the matter to be put precisely.

It's very invidious, I have to say, Sir, that questions are raised as to the dealings between Mr. Lowry and a generic group of advisers, particularly where those involve lawyers and matters of legal professional privilege. It's invidious because it casts a cloud over the advisers and yet puts causes a problem for them between them and their client, because it creates a perception that they would want to distance themselves from their client in order to make it clear that there is no cloud hanging over them. That's why I didn't raise the matter. And I don't think it's unduly

sensitive, but if it is, I apologise. But I think

that's a matter that should be made

CHAIRMAN: Lest there be the slightest doubt about it,

Mr. O'Donnell, you and your professional colleagues

acting for Mr. Lowry can rest assured that the Tribunal

has at no stage even surmised, let alone stated, that

there could have been the slightest suppression or

unprofessional conduct in relation to all dealings with

Mr. Lowry. Equally, I am sensitive to the fact that

legal professional privilege remains a matter to which

regard must be had; and as I understand it, the context

of Mr. Healy's questions in this regard is solely as to

whether or not a disclosure was made in the course of

dealings at various stages on the part of Mr. Lowry

with professional advisers, and if not, the reasons for

such nondisclosure.

Be assured utterly there isn't the slightest suggestion

of anything other than the highest professional

standards being maintained by you and your colleagues,

and other than the specific facts as to what may or may

not have been disclosed, the Tribunal does not propose

to go into matters that would of course be covered by

privilege, such as advice given and the like.

MR. O'DONNELL: Thank you, Sir.

Q. MR. HEALY: I think we have in fact heard evidence,

haven't we, Mr. Lowry, from one of your advisers, and I

think we have received correspondence from the others,

that the first they ever knew about this account in the Channel Islands or in Irish Nationwide in the Isle of Man was sometime in April of this year?

A. This account, Mr. Healy

Q. No, is that right or wrong, in fairness to your advisers?

A. Just to make it quite clear, Mr. Healy, to make it quite clear, and to spare the Tribunal time

Q. It's not clear to me. Did they know

A. I'll make it quite clear to you if you afford me the opportunity. The account was a personal transaction between David Austin and I. It was a short time; it was approximately three months. I did not discuss it with my advisers simply because I didn't see its relevance. It wasn't a gift. It wasn't a payment. It was a loan, and it was repaid. My advisers didn't know about it for that reason. I didn't discuss it with others for that reason, because it was a personal, private transaction which was honoured in full. I did not conceal it, simply because I gave you unfettered access to every other account.

I did disclose the account, and I have to repeat, I did disclose the account. I accept I accept that it would have been better for the Tribunal and it would have been better for me had it been disclosed earlier, but this account did not, and my transaction with David Austin did not take on a relevance to me until the

property was brought to my attention and the Telenor payments, which was much, much later. That's when it took on a significance to me, and as soon as that significance came about and it became relevant, I personally disclosed it to the Tribunal. And in the meantime, in the meantime, there was no effort whatsoever by me or my advisers to in any way limit the powers that the Tribunal had to approach any institution. And in that process, this Tribunal did approach the Irish Nationwide, did ask them about any accounts that I had, either in Ireland or offshore.

And I am to this day not aware of what response you received, but I do know that a communication was made by this Tribunal.

Q. Would you criticise the Irish Nationwide for not providing the Tribunal with information about your offshore account?

A. Yes, I would. If the Tribunal made contact with them

Q. But you told me they did. No, you have just told me

A. The Tribunal did make contact with the Irish Nationwide. My understanding is that that contact, and I am sure you have the letter on your file, where you wrote a detailed letter to the Tribunal or to the Irish Nationwide Building Society, and in that letter, the Tribunal asked the Irish Nationwide Building Society to disclose to them any accounts in the name of

Michael Lowry either in Ireland, in any branch inside or outside the country. That letter was written by this Tribunal.

Q. I don't think the Irish Nationwide regards its Isle of Man bank as a branch of the Irish Nationwide.

A. You obviously did.

Q. No, but I don't think they do. Do you?

A. Pardon?

Q. Do you?

A. I don't know.

Q. Do you regard the Irish Nationwide in the Isle of Man as a branch of the Irish Nationwide in Dublin?

A. I never gave it any thought, but

Q. Do you now regard it?

A. I would have seen

Q. Do you now regard it as a branch of the Irish Nationwide?

A. I would have seen the Irish Nationwide the Irish Nationwide, wherever it is, I would have seen it as the one entity.

Q. You would?

A. Yes.

Q. Would you regard the branch in the Isle of Man as a part of the Irish operation?

A. Well, by virtue of saying it's a branch. You are after referring to the Isle of Man as a branch.

Q. No.

A. You did.

Q. Listen to what I'm saying. Would you regard the Irish Nationwide bank, or branch, whatever you want to call it, in the Isle of Man as simply part of the whole Irish Nationwide operation in Ireland?

A. I would say it's under the one umbrella, certainly.

Q. Would you say the same about the Bank of Ireland in the Isle of Man?

A. Yes.

Q. Would you say the same about Allied Irish Banks

A. Yes.

Q. So there is really no difference between an offshore bank and an onshore bank?

A. No, they operate

Q. You were minister for what was it; the name changes so often DTC for one and a half years. You were a politician since 1987, is that right?

A. Yes.

Q. You are a businessman since whenever you started in business in your own, sometime in the eighties. And you would regard an offshore bank in the Channel Islands or an offshore bank in the Isle of Man or an offshore bank in the Cayman Islands with an association with the Bank of Ireland in Ireland or Allied Irish Banks as simply one and the same bank?

A. Yes, and I have reason to believe that when we were doing discovery ourselves, initially, when we wrote to

the Allied Irish Banks and looked for a discovery in relation to all of my transactions, that obviously they responded, AIB, Bank of Ireland responded with details of all my accounts in every institution, outside the country as well as in it.

Q. I wasn't aware of that. Is that correct?

A. That's my understanding.

Q. I see.

And when the Irish Nationwide responded with information about your bank accounts, you were privy to that information as well, weren't you?

A. No, I wasn't.

Q. Were you not provided by the Tribunal with copies of some of the Irish Nationwide material we got in June of 1999?

A. I am not aware of the detail of it.

Q. Wasn't the information provided to your solicitors at the time?

A. It could have been. I am sure it was.

Q. Isn't it a wonder you didn't say at that time, 'Look, there is an account here. I have only opened it a year ago. I have some of the documents at home myself. I closed it a few months ago'?

A. Because of the fact

Q. You never thought about that?

A. It wasn't relevant to me on the basis the account wasn't functional. I never used the money in the

account. It was a loan. It had been repaid. As I said, in the context of what we are looking at, it wasn't a payment or it wasn't a gift.

I have already said, Mr. Healy, that in hindsight, and because of the developments which I was unaware of, I did not become aware of the David Austin developments until the middle of this year. And when it became relevant and when David Austin's name came up in the context of that and you asked me about the property transaction, I saw a relevance at that stage, and I voluntarily disclosed it.

Q. Now, the question I was asking you before we went off on that digression is whether I am right, as I believe I am, that your lawyers were told nothing about this account by you until April of this year; and the answer is yes.

A. Yes, I have already said to you, not just my I did not consult or discuss it with any of my advisers on the basis that in my mind, I had forgotten about it.

It wasn't relevant, to the extent that it was done and dusted. It was an account that was closed. I never used it. And for that reason, I didn't see its relevance. I didn't benefit from it. I didn't use it.

Q. Now, if you look at the terms of reference and I'll get you a hard copy if necessary. It's on the overhead projector.

If you go to the first page, if you go to the paragraph

that begins "Resolves": "Resolves that it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Acts 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) Amendment Act 1979, to inquire urgently into and report to the Clerk of the Dail and to make such findings and recommendations as it sees fit in relation to the following definite matters of urgent public importance."

We go on to the Term of Reference that first deals with you, Term of Reference (e): "Whether any substantial payments were made directly or indirectly to Mr. Michael Lowry, whether or not used to discharge monies or debts due by Mr. Lowry or due by any company with which he was associated or due by any connected person to Mr. Lowry within the meaning of the Ethics and Public Office Act 1995 or discharged at his direction during any period when he held public office in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with any public office held by him or had the potential to influence him in the discharge of such office.

(f): The source of any money held in the Bank of Ireland, Thurles branch, Thurles, County Tipperary" and I have been through the banks.

Now, you had an account in the Irish Nationwide in the Isle of Man. And this may be the first time you have

read Term of Reference (f) carefully, but you know now that your account in the Irish Nationwide in the Isle of Man comes within Term of Reference (f), doesn't it?

A. Yes.

Q. And you know that the Tribunal had an obligation to inquire into the source of money held in that account, isn't that right?

A. Yes.

Q. And as far as you were concerned, that was an open, upfront, fully disclosable account, and what's more, it only contained a loan, isn't that right?

A. That's correct.

Q. Very simple to explain it?

A. Yes.

Q. As far as you were concerned, the money in it wasn't tainted by any impropriety whatsoever?

A. None whatsoever.

Q. Then why didn't you bring it to the attention of the Tribunal expressly, or of your advisers, and simply say to them, 'Yes, I have an account. Yes, it's in the Isle of Man. It's an Irish Nationwide account. It's in my name but Butler Brophy is the address, but you needn't worry about it, it's simply a commercial loan'?

A. The first answer or the first point of that is yes, I did bring it to the attention of the Tribunal, and yes, I regret the fact that I didn't bring it earlier.

I have no more to say on it, Mr. Healy. I mean, I have

said what I can say on it. I have already said to the Tribunal over the last number of days that it would have been better for the Tribunal and for myself, but I wasn't aware of the circumstances that were unfolding. I accept now that I should have. I have already done that at this Tribunal.

Q. Now, sometime after the litigation between the Tribunal and Mr. Haughey, litigation with which you say you have some familiarity in your evidence earlier, the Tribunal wrote to your solicitors pointing out that "Term of Reference (f) applied to any money ever held in the accounts for the benefit of Mr. Lowry or any money in any other account discovered by the Tribunal to be for the benefit or in the name of Mr. Lowry."

Now, that applies to any money. Not just income, not just gifts; any money of any kind. So you have no doubt that the account you now have no doubt that the account was within the Tribunal's Terms of Reference?

A. I have already accepted. I have already accepted that the that, and by virtue of disclosing it at the time that I did, I accept that it is within the Terms of Reference of the Tribunal. I have never disputed that.

What I am saying to you is at the time, I didn't think it relevant. When I did consider it to be relevant, I voluntarily disclosed it. And I regret the fact that I didn't do it earlier. I can't make it any clearer than

that.

Q. Sorry, I didn't catch the last thing.

A. I said I am being specific about my understanding of it.

Q. But that was an understanding that you kept to yourself. You never read the Terms of Reference, so you weren't absolutely sure what they contained, isn't that right?

A. In general terms, and in my mind this I didn't consider this within the Terms of Reference. Not so much even within the Terms of Reference, I didn't consider it relevant, on base that I say it was a transaction which existed for approximately three months, and I had honoured the terms of it, repaid the money involved, including the interest.

And for the final time, I wish to say, Mr. Chairman, that I can't add any more to it other than to say that I regret the fact I didn't bring it earlier. I apologise if I have inconvenienced anybody. It wasn't my intention. I did not in any way or did any of my advisers in any way attempt to limit the scope of the Tribunal's discovery powers.

So, I mean, what more can I do? I have done what I have done. I can't undo it.

Q. Did you say a moment ago that the account took on a significance in the context of the Investec and Telenor matters?

A. No. It took on at the same time as the Telenor issue and the property came up. It took on a relevance.

CHAIRMAN: The house, I think, was referred to by Mr. Lowry.

Q. MR. HEALY: What significance did it take on?

A. It took on a significance in that I met with my advisers when you wrote to me about the property, the two properties in the UK. I could not understand how they came within the Terms of Reference of this Tribunal, on the basis that it was after 1996. These properties took place much later. And in a review of the Terms of Reference with my advisers to ascertain whether or not those properties were within the Terms of Reference, we went, at that stage, through the Terms of Reference; and at that stage, I asked my advisers, two of my advisers, I asked them, "Well," I said, "if that's within the Terms of Reference, and reading these Terms of Reference, then my loan with David Austin is probably within them." And they said, "It is within it."

And at that stage, I asked them to voluntarily disclose it. We gave you complete access to the documentation that I had and handed over anything that I had in respect of that. That was in I think April.

Q. What was it about the Investec matter that made you think that the David Austin transaction would be within

the Terms of Reference?

A. Because on the 14th, I was contacted by Mr. Aidan Phelan, who was a partner of mine at that stage in a property transaction. He had said to me that the who was on to him that his bank, his bank had been on to him to say that an issue had arisen in respect of a loan which was being referred by the Central Bank to the Tribunal.

The following day I sat down with my advisers to figure out how this could impact on me. And you are aware yourself, the impact was that somebody mistakenly, and I underline "mistakenly", connected Aidan Phelan, Denis O'Brien and me in the one property transaction. That of course is not true. It was false. However, it led to the Tribunal having to investigate those two property transactions.

I personally could not understand how the property transaction could come within the remit of the Tribunal. I rang my advisers. I made arrangements to meet. We went through it. That was the first time that I ever actually sat down and went through the Terms of Reference in detail, and in going through the Terms of Reference, I said to my adviser, I said, "Well, if that's within it, then this other thing, years ago with David Austin, could come under the Terms of Reference."

The day after, he rang the office of the Tribunal and

said that we would cooperate fully in any investigation, and we voluntarily disclosed all of the information at our disposal, and we are at the stage now where we are at, in that they are being publicly investigated.

Q. The point about the Investec matters is that they occurred post 1996. Is that your point?

A. That was my yes, my point well, no matter when it would be

Q. No, but is that the point?

A. Within the Tribunal's Terms of Reference, there is no reason why, in my view, that the Tribunal would have any interest or any purpose in investigating those property transactions, because they have absolutely nothing to do with my role as a public representative.

There is nothing untoward in them. They are straightforward property transactions that I became involved in in a perfectly legitimate commercial manner.

Q. What I want to know is what made you think they weren't relevant? Because they were post '96, is it?

A. Yes. My understanding is that the Tribunal's Terms of Reference concludes at the December of '96.

Q. Right. But that was the reason you thought they weren't relevant; there was no other reason?

A. The main reason, obviously, is that I couldn't understand, why would anybody want to investigate them?

They were perfectly normal transactions. Why would anybody be interested in investigating a straightforward property transaction?

Q. But the David Austin matter was a 1996 matter.

A. Which one?

Q. Well, which one are you talking about?

A. Which one are you asking me about?

Q. I am asking you, which one are you talking about? Is there more than one?

A. No, what are you asking me about? You wrote

Q. I am asking about the David Austin transaction.

A. You wrote to me the Tribunal wrote to me

Q. I just want to know, is there more than one David Austin transaction? Answer my question: Is there more than that one David Austin transaction?

A. You have already examined me on the Telenor issue

Q. I am not going to ask you the question again

A. Yes, there is the Telenor issue and the issue of the loan. Those are the issues you have asked me on at this Tribunal in connection with David Austin. You have given a couple of days on it at this stage.

Q. Is there anything with David Austin other than the Telenor loan?

A. No. And I have already written to you and responded to your queries in that way.

Q. I want to go back to the David Austin loan. That was a 1996 loan, so

A. Yes.

Q. so therefore, that had there was no question of that being, in your view, outside the threshold, as you saw it, of Tribunal inquiries?

A. And we disclosed

Q. No, but at the original time, at the time in 1997 when the Tribunal was set up, there was no there could be no doubt that a 1996 transaction would be within the Tribunal's terms of reference?

A. I didn't know it at the time, but I now know it because of the fact that David Austin became central to

Q. Nothing to do with David Austin. I am talking about the timing. You said to the Tribunal that the 1999, 2000, 1998, whatever dates they were, Investec transactions were outside of the Tribunal's Terms of Reference in your mind, in your mind, because they were post '96. What I am asking you is, why didn't you think that the David Austin transaction, or the one that I am talking about, which is the loan, was within the Terms of Reference? Because there can be no doubt in anyone's mind that that was a 1996 transaction.

A. I asked my advisers when I discussed

Q. I am not asking about that time. In 1997

A. I didn't in my mind, it had no relevance or importance, on the basis that it was a short-term transaction. It was a loan, and it had been repaid.

How many more times can I say it?

Q. So as far as you were concerned, a 1996 transaction that was short-term and that was a loan didn't come within the Terms of Reference?

A. I never in my mind, it didn't. I accept now that it did. And when when I asked for the advice on it and was given the advice that it should be disclosed, I did disclose it voluntarily. And I am already after saying I should have done it sooner. I regret the fact that I didn't do it sooner.

Q. I have to suggest to you, Mr. Lowry, that a conclusion one could reach about this, or reasonably reach, is that while you brought three offshore accounts to the attention of your advisers and to the attention of the McCracken Tribunal, you didn't bring this offshore account to the attention of this Tribunal or to the attention of your advisers until April of this year because it was connected with David Austin.

A. Are you putting that question to me?

Q. Mm-hmm.

A. That's absolute and total nonsense. That is not the reason. I have explained the reason, and the reason was one of relevancy. Whether I was right or wrong, that was the decision I made.

Q. But relevancy based on your own views, not on your lawyers' views?

A. Exactly.

Q. And relevancy based on your own views without reading

the Terms of Reference?

A. When I read the Terms of Reference

Q. No, no, relevancy based on your own views in 1997 and 1998 and 1999 and 2000, based on your own views without reading the terms of reference?

A. I didn't ever read the terms of reference. I was aware of them in broad outline. As soon as I did find it necessary or my advisers found it necessary to read the Terms of Reference, I reacted accordingly and voluntarily disclosed.

Q. And can I suggest to you that the reason that you didn't bring it to the attention of your advisers during that period of time was because you didn't want them to know that you had an account in the Irish Nationwide in the Isle of Man?

A. There was nothing to know, Mr. Healy. It was a straightforward legitimate transaction which had been concluded. The money was never used, and it was repaid.

Q. And you didn't want them to know in particular you didn't want Mr. O'Connor to know, because Mr. O'Connor would be giving evidence, and he wouldn't be able to give evidence without disclosing the fact that you had an Irish Nationwide account in the Isle of Man?

A. That is a completely false assumption.

Q. And isn't that why, when Mr. O'Connor was giving evidence about your Irish Nationwide account and you

sat there listening to him give that evidence, you didn't tell him afterwards, "You know, there is another Irish Nationwide account in the Isle of Man", because you knew that if you told him that, you'd have to tell him about David Austin?

A. That is not correct. I had nothing to hide about either the loan or David Austin. I didn't see any relevance in it. As I said, it was a three-and-a-half-month loan. It had been repaid. I never used it or benefited from it. In that context. I didn't see its relevance. Subsequently, I did recognise its relevance, and immediately I did, I disclosed it to the Tribunal.

Q. Just about the documents that you produced to the Tribunal yesterday, I think there is one of them I didn't clarify. The first document of October of 1986, the document dated 24th October of 1986; we were discussing that, and we got diverted.

Now, when the Tribunal got these documents, they were together in a plastic cover. And as I say, they are both on two ordinary sheets of plain A4 paper, like computer paper or photocopier paper; they are not on headed paper. And the letter that's written to you is in fact simply folded over on a piece of A4 paper.

Now, these were the two documents that you always had in your file, is that right?

A. That's my understanding. Whatever was passed to you

Q. Were the only two documents you had

A. The plastic folder that you have, I assume, would be out of my advisers' office. I don't ever recall putting those letters into a plastic folder.

Q. And they were in a personal folder in your own files, isn't that right?

A. They were within files in my own personal files, yes.

Q. And was it you stapled them together, or had they always been stapled?

A. I have no recollection whether I stapled them.

Q. This was the document you always had from the 24th October of 1996?

A. That document or copy of that document, I am not sure what I had.

Q. That's what I am trying to clarify. You left Mr. Austin's house

A. Whatever document was discovered to the Tribunal

Q. was the document that you would have had?

A. Was the document I would have had.

Q. When you left Mr. Austin's house, this would have been the document that you had?

A. I presume so, yes, I presume it was.

Q. Well, this was the document you gave the Tribunal.

A. Yes, so I presume it's the document that I had.

Q. Well, the Tribunal has no other document except the document you had, so can we take it for certain that that is the document you left?

A. Yes, it's obviously the document.

Q. That's the document that you left David Austin's house with?

A. I presume it is, if that's the document that's discovered.

Q. There can be absolutely no doubt about it. It's the fact that you are saying 'I presume it is'

A. Pardon?

Q. Is there any doubt about it?

A. About the document?

Q. Yes.

A. It's a long time ago. I don't recollect the document.

But if you are saying it's the document, it's the document.

Q. Well, it's you who produced the document, Mr. Lowry. I am anxious to be absolutely clear in my understanding of it: This is the document that you gave the Tribunal. There is no doubt about that. The document you gave the Tribunal is the one that was in your file.

Is there any doubt about that?

A. What are you asking me? Is that the document that I signed?

Q. Is that the document that was in your file?

A. I presume it is. If it's discovered to the Tribunal, I presume it is. Maybe I am not sure if I had a copy of that document, but if that document has been discovered to the Tribunal, that is the document.

Q. I want you to be very careful about this, now, Mr. Lowry. You gave the Tribunal a document. That is the document you gave the Tribunal.

A. I am not sure whatever I gave to my advisers, I probably that document would have been copied a couple of times. My advisers, whatever they put in on my behalf is what's with the Tribunal.

Q. Well, this is the document the Tribunal got from Mr. Kelly, a careful solicitor, who sent these two documents to the Tribunal. Now, that is you only gave Mr. Kelly this document and no other document?

A. Unless unless I had a copy of it. I am not sure.

Q. Did you have a copy of it?

A. I probably did have a copy. Of course I would have had a copy of it.

Q. Why?

A. Because I would have given a copy to Denis O'Connor, I would have given a copy to Mr. Kelly, I would have held a copy myself.

Q. At the time that you brought it to your solicitor, you think, copies might have been made, one for you, one for Mr. O'Connor, one for whoever?

A. Well, the usual with documents, that somebody would have copied the documents, I presume.

Q. Well, can we just go back a step further, then? Before you went to your advisers, you only had two documents concerning this matter in your file?

A. I would have had copies of them, obviously. I wasn't going to give documents to anybody unless I had copies of them.

Q. When did you make the copies?

A. I presume I would have made them I could have made them at any time. I could have made them any time in the last six years. I don't know when I made the copies of them.

Q. Why would you have made copies of these documents at any time in the last four years?

A. Why not? If you have documentation and you want to retain something, you'd obviously copy it.

Q. Let's go through it. Do you remember making copies?

A. Specifically I can't, but it wouldn't be unusual for me to make copies of something that I had in my personal file.

Q. Why would you make a copy of this document?

A. Why would I make a copy of it?

Q. Yes, of this particular document.

A. Why would anybody make a copy of any particular document? You retain a copy or you copy it for your own use.

Q. What use would you have had in 2000 for a copy? What use would you have had in that year for a copy of this document?

A. What use would I have had for a copy?

Q. Mm-hmm.

A. For whatever use you may require it.

Q. What use would you have had? I can't think of any use at all.

A. For?

Q. A copy of this document in the year 2000.

A. In the year 2000?

Q. Or '99 or '98 or '97?

A. Or any year.

Q. Just those three years?

A. Mr. Healy, I can't understand anybody my understanding is if you have a document and you copy it, you copy it for whatever use you require it for. I have no specific I am sure I copied that document, but I have no specific reason as to why I may have copied the document. If you'd asked me you know, what's the purpose of your question? What are you asking me.

Q. The purpose of my question is very simple, Mr. Lowry.

Why would you make a copy? You, a person who pays no attention to paperwork, why would you make a copy of a document relating to a transaction that was over and done, done and dusted with, long forgotten, I think you told us a moment ago, why would you make a copy of that document? What conceivable purpose could you have for making a copy of it?

A. It could be many purposes.

Q. Name one.

A. Well, if you want to retain a copy of a document, for instance, in my office, in files, I would have a copy of documents. I could have them on three files. I could have one in my secretary's office, I could have one in my own office.

Q. I'd like to know, what files? It would be of huge interest to the Tribunal to know what different files copies of this document would be on.

A. I presume there is a copy of that document still in my office. I presume there is a copy of that document in my accountant's office. I presume there is a copy of that document in my legal office.

Q. Yes. That's easy to understand. But I am not talking about the copies that would have been made at the time that you brought this document to the attention of your legal advisers. I have told you before, we are leaving that out of the account. We are not talking about that period. It's perfectly understandable that copies would have been made at that time. I am talking about the time before you brought it to the attention of your legal advisers. And I have taken a period like 2000 or

A. I think, Mr. Healy, the most natural thing for anybody to do is, if you have a document, is to copy it. You know, if you have a document and the document you need the document, of course you keep it, and you copy it. I don't know how many copies of that document I

have. There could be another copy of that document in my office, I don't know. And I don't know when it was copied. If you are saying that you are asking me, why would I copy the document? First of all, I am saying it is very possible that I did copy the document. Secondly, I have no specific reason like, I can't say why I copied a document, other than why does anybody copy a document other than to retain it?

Q. Somebody copies a document for a specific purpose, usually. Nobody would go to the trouble of copying a document except for a specific purpose.

A. Obviously to retain it.

Q. But you already had the document.

A. But supposing your document if you lose your document my understanding is, if somebody copies an item, they copy it to retain.

Q. What would have mattered if you lost it?

A. Of course it would matter to me. This is my personal documents.

Q. Would it matter? This was a done-and-dusted deal. It wasn't of relevance to a Tribunal. It wasn't of relevance to your legal advisers. It wasn't of relevance to your accountants, to your tax agents. It was of relevance to nobody, according to you. Why would you keep it, and why would you photocopy it?

A. Simply because it's a record of the transaction which was finalised and concluded. I think it's perfectly

understandable that anybody would keep a record of it.

Q. And anyone, you think, would do that?

A. Pardon?

Q. You think that's normal for anyone?

A. I would, actually, yes.

Q. Isn't it strange that Mr. Austin didn't do it?

A. Well, that's whatever way he did his business.

Q. But sure, you told me it's the most natural thing in

the world. It's something anybody would do. Mr.

Austin, you told me yesterday, was a very careful

businessman. Very astute, capable of drafting

quasi-legal documents?

A. He was all of that.

Q. Why didn't he keep a copy of it?

A. How do I know he didn't keep a copy of it?

Q. According to all of the evidence, he hasn't got a copy

of it in his papers.

A. Maybe it is there; maybe someone has found it. I can't

say what's in David Austin's administration or his

possession; I simply don't know. I never asked anybody

to know whether or not he had a copy of it.

Q. His solicitors, his executors, his accountant, his wife

have all informed the Tribunal that there is no record

of this transaction, and certainly no copy of either of

these documents, in his papers.

A. So what I mean, I can't comment on what he had

retained or what he hadn't retained, but I am sure,

over a lifetime, that people make different choices in

terms of

Q. We'll go back to when the documents were created, then.

According to your evidence, you went out to Salthill

and you collected you went out to Salthill. You met

Mr. Austin in his house. There was nobody else

present, and he presented you with this document?

A. Yes.

Q. And just this document?

A. He presented me with whatever with the document,

yes.

Q. Let's be clear about it. This document?

A. That document, yes.

Q. And there and then, you signed that document, according to your evidence?

A. No, I may not have signed it there and then. I am not

quite sure that I signed it there and then. I

certainly got the document there and then. It was

prepared. I could have taken the document with me and

signed it; I am not sure.

Q. So you think you could have taken it with you and signed it some other time?

A. It's possible that I did that; I am not sure. It's six

years ago, so I am not sure of the precise detail of

it. I certainly

Q. You took it away with you and you signed it?

A. Mr. Healy, I am not sure precisely what when you get

down to the detail of it, I am not sure precisely. All I know is that I certainly got the document from David Austin, that the document was subsequently agreed by us in principle, and that yes, that is my signature on the document, and I presume that that is David Austin's. Because my recollection is that and my recollection is, and I could be wrong, is that David had it signed.

Q. Did this definitely happen in Salthill?

A. That is the best of my recollection I certainly collected the document at some stage in Salthill; I have no doubt about that.

Q. And would you have dated it the day you signed it?

A. I am not sure.

Q. You hardly dated it one day, put it in your pocket in your filing cabinet or made a copy of it, whatever, and came along and signed it another day? Or did you?

A. It's possible that I did. It's possible that I took the document with me. I don't know. I can't be precise about the detail of the document. What I am saying is the document was agreed by us over the phone, principally. David would have said "It's prepared".

My recollection of it is that I certainly collected the document from him, and my understanding of it is that that is the document. Now, as to the copies that I have of it, I am sure I have copies of it.

Q. So you collected the document, to the best of your recollection; you took it away with you without signing

it; you put the date on it, you are not sure that you put the date and the signature on it on the same day.

A. I can't be certain, but I can't be certain.

Q. Well

A. Pardon?

Q. You may not be able to be absolutely certain. Is that likely to be something you did? Is it likely you would have signed it and dated it at different times?

A. No. I would say that I probably took away the document or I signed the document. I am not sure Mr. Healy, I can't be any more precise than that. I don't recollect I recognise the document. I know that the document is the document that we agreed. As to the precise details of it, I don't have any better recollection than that.

Q. Do you think that David Austin simply made out the document just before you arrived?

A. I couldn't say. I'd say he could have made it out anywhere. It wasn't a kind of a document that you need necessarily have done there and then. I don't know when he prepared it.

Q. What I mean is that you discussed it, you say, mainly over the phone. Did I infer from what you were saying that you discussed most of the terms of it over the phone, but there were one or two to be sorted out when you got to his house?

A. No. I think the document was wherever I collected

the document

Q. Was all there?

A. It should have been there, yes.

Q. So when you got to his house, he wasn't writing it out.

He gave you the piece of paper there and then?

A. I am not I don't recollect exactly, but I know it was David that prepared the document. It was David Austin that drew up the document. David Austin prepared the document.

Q. And to the best of your knowledge, you didn't sign anything there and then?

A. I can't say for definite. I don't recall when.

Q. Which is more likely? That you signed something there, or that you signed something in your own home or your office when you took it away with you?

A. I can't say for definite. Once David had signed the document, I presume I wasn't concerned about my own signature once David had signed the document.

Q. Was that your attitude to it? "Look, he has signed it; as far as I am concerned, that's good enough for me"?

A. I don't know. I am giving you what I am saying to you is I don't have precise recollection of it. This is I have been to David Austin's place on numerous occasions. I have had numerous discussions and conversations with him. I can't be precise about the detail. What I am saying is that there was a document between us which reflected the loan that we had. I

signed it and he signed it. As to precise timing of that, I can't I just can't fully recollect.

Q. But because you can't fully recollect, is that because you have some bit of a doubt in your own mind that you may have signed it on the spot? You are not sure of that; you think you may have signed it somewhere else?

A. I am not sure yes, I can't be certain whether I actually took the document with me and signed it or whether I signed it there and then.

Q. And you think yourself that as far as you were concerned, your attitude was that "As long as David Austin has signed it, that's all that matters to me; I will take the document away with me and sort it out later on"?

A. Once David Austin had my signature once we had agreement I'll put it to you this way: I don't think signatures were even once we had the principle agreed, and it was down in writing, I think the signatures didn't matter, to that extent, once we knew precisely what our agreement between us was. That was the main consideration, obviously, for me and for him.

Q. What mattered to you was getting his signature on the document?

A. Pardon?

Q. What mattered to you was getting his signature on the document?

A. No, it didn't matter. What mattered to me was getting

a document which reflected the agreement we had. It isn't even a matter there was a big as far as David was concerned and I was concerned, we both trusted each other. It was his suggestion that we put some document between us, and he drew up the document.

Q. And the whole purpose of the document, as far as you were concerned, was not to make you legally liable to him or anything like that; because you felt absolutely honour bound to pay him back anyway, there was no question of needing a document to make you do that? Is that right?

A. Obviously there was trust between us, and certainly it was my intention and I honoured my intention to observe the conditions under which the loan was given, and the loan was repaid.

Q. But as far as you were concerned, I understood your attitude to be that as far as you were concerned, it didn't matter whether anything was signed. "We simply had a lot of trust between us, and therefore I was going to pay him back, and this was just to describe the transaction"?

A. No. I would say that I was more comfortable and I am sure David was more comfortable that we had a document in place to reflect the agreement that we had.

Q. But if you had this document, the original of this document, and David Austin didn't have the original of it, what use is it to him? It was he needed the

legal document, not you.

A. I am not saying that David Austin didn't have a document. You are saying that you haven't found the document in his papers. That's not to say that he didn't have a document.

Q. But this is the document that he signed.

A. Yes, but

Q. And we got that from you.

A. Mm-hmm. But who is to say that David Austin hasn't got a copy of that document in some of his private files or papers?

Q. Even if he had a copy of it, you had the original of it.

A. What's the difference?

Q. The document upon which Mr. Austin might wish to rely is a signed copy, signed by you and him?

A. Mm-hmm.

Q. But you are not sure that you signed it there and then at all. If you took this document away with you

A. David Austin would most definitely have had a copy of that document at some stage. Whether it was that day, the week after, or when, I don't know.

Q. Mr. Lowry, just listen for a minute. If you took this document away with you and didn't sign it, Mr. Austin didn't have either a signed copy of the document or even a copy with your signature on it. Do you understand?

A. I am absolutely certain that David Austin had a copy of that document. I am absolutely certain that David Austin would have had a copy of that document, either there and then or at a later stage, but David Austin certainly had a copy of that document.

Q. Let's take this more slowly now. You are absolutely certain, there is one thing you are absolutely certain about, that David Austin had a copy of this precise document?

A. Yes, I am positive.

Q. When was that copy made?

A. When was that copy made? I don't know. I don't recollect.

Q. Was it made by him, or was it made by you?

A. I am not sure. I don't know.

Q. How can you be certain of it?

A. Because I know that David Austin had because he referred to the agreement that we had in place. So he David Austin was well aware that I had a copy that I had the document and he had the document.

Q. You told me a moment ago that you are not sure I gave you every opportunity to indicate to me what was the most likely events that occurred at the time you met with David Austin about this document, and you still said you were not sure whether you signed it and dated it there and then, or whether you signed it there

and dated it some other time, or whether you took it away with you, signed it on one occasion, and dated it on another occasion. So you do not know?

A. I cannot, Mr. Healy, be precise. But I know from the transaction we had that David Austin certainly would have had a copy of that document. I would have made it my business or he would have made it his business to have a copy of it.

Q. Can I just go one step further now. If he had a copy of that document, he can only have had a copy of it after it was dated by you and after it was signed by you, isn't that right?

A. He'd have had a copy, yes, either there or then I am not sure when it was copied. What I am saying to you is I don't recollect when I actually gave Mr. Austin the document, but I am sure Mr. Austin would have had a copy of the document which was in my possession.

Q. Mr. Austin had to get a copy of this document, and it was not signed in his house in Salthill at the time he gave it to you

A. I don't know if if, yes

Q. Just listen. If that was the case, then what would have had to happen was this: You'd have had to take the document away, you'd have had to sign it, and you'd have had to date it. Isn't that right? And then you would have had to photocopy it, and then you would have had to give him a copy. Isn't that right?

A. Yes, Mr. Austin would have had a copy of it.

Q. No, no, you would have had to give him that copy, and you would have had to photocopy that document.

A. What I am saying to you, Mr. Healy, is this: I cannot be precise. I don't know whether I signed that document on the day that I was there or and that it was copied there and then or whether I took it away, signed it, and at a later stage give him a copy of it. I can't say for definite. I can't be any more precise than that. I can't say for definite.

Q. And you can't be precise that it happened in Salthill?

A. I am certain that at some stage I had been to Salthill on numerous occasions to visit David Austin, and it is my recollection, to the best of my recollection, yes, it was at Salthill, it was either it was at Salthill; that's to the best of my recollection.

Q. Is it possible that this document was put together sometime in 1996 and backdated to 1996 backdated to the 24th October 1996?

A. Definitely not. Definitely not.

Q. You see, Mr. Lowry, if the money that Mr. Austin put into your bank account was not by way of a loan, it would be very easy to turn it into or to give it the appearance of a loan by preparing a document like this, wouldn't it?

A. It was a loan, Mr. Healy. And the terms of the loan

were set out, and it was operated as a loan, and it was returned it was returned in conjunction with the ceasing of the property transaction. It was structured in such a way to match the requirement that I had at the time. The requirement he had at the time was the refurbishment of the house, and I have gone into that in detail with you. And the loan was repaid at that stage, when I discontinued with the house, when I sold the house.

Q. Do you think that the photocopy that you might have made of this document after you brought it back was connected with giving a copy to David Austin?

A. I can't say for definite.

Q. Well, is that a purpose for which a photocopy might have been made?

A. It's one of the possibilities.

Q. And why would David Austin want a photocopy of that agreement and not a signed original?

A. David Austin the agreement was in place. The agreement was between us. I have no recollection of when it was copied or who copied it. All I know is that I have given you what was in my possession and to the best of my knowledge, David Austin would have had a copy of that documentation.

Q. And although you felt more comfortable having a document like this, and you think he felt more comfortable because it put your arrangements on a

formal footing

A. Yes.

Q. He nevertheless didn't ask you to sign it there and then and take away the original himself?

A. I don't recall him doing that. I don't recall him doing that. I don't have a precise recollection of it.

Q. You see, Mr. Lowry, Mr. Austin was a businessman, as you were. And I think it would be natural between two businessmen, and I don't think there is anyone who'd reasonably take a different view, that it would be natural between two businessmen, where one businessman makes a personal loan out of friendship to another man, to have an acknowledgment purely for good order, I suppose, if you like, between two friends. And if you wanted such an acknowledgment, it would be like a receipt for all the world, for money that you gave somebody, a receipt combined with an undertaking to return the money.

Now, if you wanted that, wouldn't you simply give your friend a document saying that he had received money from you and that he intended to pay it back? You'd ask him to sign it, and then you'd get it back from him and put it into your file; isn't that what would normally happen?

A. I am quite satisfied.

Q. Let's take it step by step. Isn't that what would normally happen?

A. Yes.

Q. Now, in this case, if Mr. Austin gave you money as a loan, as you say he did, and he wanted for the sake of good order a receipt from you and an undertaking for you to pay it back, wouldn't he ask you, "Would you sign that, please, Michael?" And when you'd signed it, he'd simply take it and put it into his file?

A. It's possible that he did, and it's possible that when he sent me back I can't recollect; it's all it's possible that when the note for repayment came back, that he sent me the original. I simply don't remember. I don't remember.

Q. Are you now saying that you got this document with this document? (Indicating.)

A. No, I am not. I am saying it's possible that he did; I am not sure whether or not he did. What I am saying to you is there was a document between us. The precise nature of when the signing took place, or what have you, I do not recall, but all I know is that I had that document in my possession. I am sure it was copied, and I discovered it to the Tribunal. And that document is the document which reflected the agreement that I had with him and which was agreed by both of us.

Q. What is important about this document is that it's Mr. Austin should have had it and not you, and if you had it

A. I don't see, Mr. Healy, the difference between Mr.

Austin having a copy of it or the original. And it's possible it is possible; I don't remember it is very possible that Mr. Austin gave me back the original document. I don't remember. It is possible. I don't remember. I don't know the precise details of it.

CHAIRMAN: Yes. I think it's five to one, so we'll adjourn until ten past two. Thank you, Mr. Lowry.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.10 P.M.:

CONTINUATION OF EXAMINATION OF MR. LOWRY BY MR. HEALY:

Q. MR. HEALY: Mr. Lowry, I now want to draw to your attention a number of documents that were mentioned in evidence in the course of the evidence mainly of Aidan Phelan and Mr. Denis O'Brien. And I think what I'll do is, in fairness to you, is I should take you through the documents first so you'll understand them.

The first document is a copy of an Investec or Woodchester Bank statement now, this is called Investec, because the document was produced presumably off a computer or word processor in May of 2001, but in fact refers to a much earlier period, in 1996. In 1996 this company was in fact known as Woodchester Bank but is now known as Investec.

This is an account of Radio Investments, RINV; that's a company controlled by Mr. Denis O'Brien. You will see that most of the information on the account has been blanked out because it's not relevant to the matters

the Tribunal is inquiring into, but you'll see that on what the Tribunal has been given in evidence was the 4th July of 1996, there was a withdrawal from this then Woodchester account to AIB in Dublin of $\text{€}1/2407,000$.

Can you see that?

A. Yes.

Q. Now, the next document I want to refer you to is an account of Mr. Aidan Phelan in the Isle of Man. It's in an offshore bank, AIB (Isle of Man).

(Document handed to witness.)

This is an account about which I think both Mr. O'Brien and Mr. Aidan Phelan gave evidence. On the top left-hand corner you can see Mr. Aidan Phelan's name.

Underneath that in fact, and not shown on your copy but shown on the original, is the address Mr. Phelan gave, and that was 32 Pitcher's Way, Hyannis, Massachusetts, USA.

Now, if you look at the entry for the 10th July of 1996, one of the items on that day is a cheque in favour of David Austin issued on the 10th July, 1996, for $\text{€}1/2100,000$.

A. Yeah.

Q. I am just slightly confused by the differences in what's on the screen and what I have in front of me, because I have the full document in front of me, and it makes references to a number of other people.

If you see the entry of $\text{€}1/2105,000$, that entry comprises

a number of different items on the left-hand side.

There are in fact three or four items. One of those items is a $\text{€}150,000$ IR cheque in favour of David Austin.

It's not very clear on the overhead projector, but it may be clearer in the hard copy you have. But I am reading out from a very good copy. It says "IR $\text{€}150,000$ cheque in favour of David Austin". That's part of the whole $\text{€}105,000$. Can you see that entry?

A. Not yet.

(Document handed to witness.)

Q. Now, you have had these documents before, Mr. Lowry, but I am just taking you through them, and I am giving you copies of them to make it easier for you to look at them. But your advisers have had these documents for some considerable time; for months.

Now, do you understand what I was saying, or do you want me to go through it again?

A. No, continue.

Q. So the first item, as I said, I mentioned to you was a debit of $\text{€}105,000$, which includes, as the legend on the documentation shows, a cheque issued to David Austin in the sum of $\text{€}150,000$. And that cheque I can just give to you now. We have a copy of that cheque.

(Document handed to witness.)

As you can see, it's dated 10th July, 1996. That cheque was produced to the Tribunal by Bank of Ireland (Jersey) on the instructions of the executors to the

Estate of David Austin and Mrs. Austin.

Now, if we could go back to the bank statement again.

And if you look further down the bank statement, on the

19th July, do you see that in 1996, there is a legend

which reads "TT to Bank of Ireland (Jersey) account

David Austin plus IR£35,000 charge." And then the

debit is £135,000. Sorry, £100,035.

So what was actually transferred to Mr. Austin's

account was £100,000, and the 35 pounds is simply the

charge for carrying out that transaction.

Now, that account of Mr. Phelan's which is on the

overhead projector was opened, according to the

evidence of Mr. Phelan and Mr. O'Brien, was opened by

Mr. Phelan to receive Mr. Denis O'Brien's money. And

it was opened at the request of Mr. Denis O'Brien. And

the £407,000 that I mentioned a moment ago, which was

deposited from the Mr. O'Brien controlled account in

Woodchester in Dublin, comes into this account. And

can you see it coming in there on the "Credit" column?

If we can just point it out on the overhead projector.

£407,000, and that came into the account on the 10th

July 1996. Do you understand those transactions?

A. Yes. As you have outlined them, yeah.

Q. Now, the next document I want to come to is another

document that was provided to the Tribunal by Mrs.

Austin and by the executors of the Estate of the late

Mr. David Austin by way of a direction to Bank of

Ireland (Jersey).

(Document handed to witness.)

This is a joint account of the late Mr. David Austin and Mrs. Maureen Austin. And this account seems to have been opened for the purpose of receiving the $\text{€}150,000$ that was paid by Mr. O'Brien through Mr. Phelan's account in the manner I have just described.

And the first two items on this account, on the credit side, are the sum of $\text{€}100,000$ credited to the account on the 26th July, 1996, by way of a Swift transfer from AIB (Jersey), and secondly, a credit of $\text{€}50,000$ from another account of Mr. Austin's, 66064, and that is the account into which the $\text{€}50,000$ cheque was lodged. It appears that the lodgment to that account, 66064 may have been mistaken.

Now, if you look down the "Debit" column of that account, you will see that the first debit to the account, the first debit to the account is $\text{€}147,000$.

That debit was on the 16th October of 1996, by way of a cheque in favour of Mr. David Austin to his home address. Do you see that?

A. Yeah.

Q. Now, as you can see on the credit side of the account, up to that point in time, the only movements were the credit into the account of $\text{€}150,000$ from Mr. O'Brien and the addition of some interest, so that the money that was used to fund the cheque that was made out in

favour of Mr. Austin on the 16th October, 1996, is in fact the money that had been transmitted to this account by Mr. Denis O'Brien.

That money, that is £147,000 cheque, was the cheque that was used to open your account in Irish Nationwide Building Society's bank in the Isle of Man.

So now you can see that it would appear that the same money that was used by Mr. O'Brien to transfer to Mr. Austin's account was the money that was used to open your account in the Isle of Man; do you see that?

A. I see the opening of that account, yes.

Q. No, but do you see

A. Or the transfer.

Q. Do you see that it would appear that it was the same money that left Mr. O'Brien's account that effectively ended up in your account?

A. I don't accept that.

Q. No, but do you see that it appears that may have been the case?

A. Pardon?

Q. Do you not agree that it was Mr. O'Brien's money, which left his account in Dublin, which went into an account controlled by Mr. Phelan in the Isle of Man, and then which went into Mr. Austin's account in Jersey and then went back to your account in the Isle of Man? Do you see that?

A. I know nothing about that transaction other than the

fact that I was a recipient of the loan from David

Austin. I know nothing about Mr. O'Brien or Mr.

Phelan's transactions.

Q. I know, and you have said that many times. But don't

you see that it was that the money that went into

your account was the money that left Mr. O'Brien's

account?

A. Did you get an explanation from either of the two

previous witnesses in relation to what that money was

for? That might assist me.

Q. Well, do you have any explanation for it, firstly?

A. None. It is not I am not familiar with any

transaction between either the late Mr. David Austin

and Denis O'Brien or Mr. Aidan Phelan and Denis

O'Brien. That is matters for themselves, and I am sure

that there is as has been I think given in evidence

here, they have outlined the reason why such a

transaction took place. That's my understanding of it.

But I am not familiar with it. I didn't know about it.

Q. Wasn't it around this time that Mr. Austin said to you,

"Look, I'll provide you with the money to refurbish the

house in Carysfort"?

A. Yes, I suppose it would be around that time.

Q. And it was around that time that he got money from Mr.

O'Brien?

A. For what purpose?

Q. According to the evidence we have heard, Mr. O'Brien

says that he bought an apartment from Mr. Austin at this time.

A. I think it's very important to remind me of that evidence and because I know nothing about the transaction as you are attempting to outline it to me.

Q. Are you seriously telling this Tribunal you haven't heard that explanation before for this transaction?

A. I have heard it in evidence here, but it's important to put it to me in evidence, I would imagine.

Q. Well, you are here to answer the questions, Mr. Lowry. You have heard this before?

A. Yes, I have heard the explanation that has been given for it and obviously it's a matter for the Tribunal to make a decision on that.

Q. I just want to take you through the money trail. You see, what you have here is a conversation between you and Mr. Austin, according to you, in which Mr. Austin promised to give you money by way of a loan to refurbish your house, and at approximately the same time, Mr. Austin gets $\text{€}150,000$ from Mr. O'Brien and uses that $\text{€}150,000$ to put into an offshore account in your name. And the explanation the Tribunal has been given is that all these events are merely coincidental.

A. And you are saying that this purchase or that the sale of the property is coincidental?

Q. Well, the events, according to the evidence the Tribunal has been given, occurred at the same time.

A. So what you are saying if I could I think what you are trying to say to me is that this that there was are you saying there is a sale of a property here involved in this?

Q. Well, this is what the Tribunal has been told, that there was a sale of a property in Spain, or Portugal

A. That's my understanding as well.

Q. Yes. And that the proceeds of that sale were paid

A. To the owner of the property, which is Mr. Austin. And you are now speaking about Mr. Austin's account, and you are speaking about Mr. Austin's money.

Q. Yes. Yes. That money went to Mr. Austin.

A. For payment for an apartment?

Q. Yes.

A. That's perfectly understandable, that if he sold his apartment he would get paid for it, and the money would end up, obviously, in his account.

Q. And was that the first time you heard about the sale of this apartment, in evidence here?

A. I didn't at that particular time?

Q. No, no, I think you said a moment ago that the first time you heard about the sale of this apartment

A. The first time I heard about the sale of the apartment to Denis O'Brien was in evidence to this Tribunal.

David Austin had told me, at some stage or other, that he had disposed of a property, a residential property in Spain and a residential property in London.

Q. When did he tell you that?

A. Pardon?

Q. When did he tell you that?

A. I don't know. A good a long time before he died.

Q. Well, were you in Ireland when he told you? Were you in France when he told you?

A. I was in his company. In Ireland, I would think. I haven't been to Moujean in France, where he lives.

Q. Well, have you ever been to France to meet him?

A. With David Austin?

Q. Yeah.

A. No, I never had the opportunity to. I was invited on several occasions but didn't actually have the time to go.

Q. Right. So while he was in France you merely contacted him by telephone?

A. Pardon?

Q. While he was in France you merely made contact with him by telephone?

A. Yeah, mainly on the telephone. I already gave that in evidence

Q. If it was mainly on the telephone, was there some other way you were in contact with him while he was in France?

A. Some other way I was in contact with him?

Q. Yes.

A. On the telephone. I hadn't been to France to meet him.

Q. Just to be clear about it, your only contact with him in France was on the telephone?

A. Yes.

Q. And to come back to it, then: When do you think you discussed this sale of properties?

A. I never discussed the sale of the property with him.

It was a casual conversation at some stage or other.

If I am not I think around the same time Mr. Conroy

also said to me that he had heard that David was

selling some of his properties. The conversation that

I had with Mr. Austin in relation to the disposal of

his residential property in London, and I think it was

in the one that you are referring to in Spain, I

never had any detailed discussion with him. All I know

is that he sold properties, and the reason that he had

mentioned to me as part of a conversation was that his

wife was happier to spend more time in the south of

France and that they weren't using the other properties

as much as they had previously done, and for that

reason, they were they didn't require them. The

detail of it, I wouldn't have any idea of.

Q. But you did know that Mr. Austin had a house or an apartment in Spain?

A. Yes, I was aware of that.

Q. And while you were aware he had sold property, and he was one of your closest friends, he never told you,

"Look, I have sold my apartment in Spain"?

A. Pardon?

Q. He never told you he had sold his apartment in Spain?

A. Yes, he did. I am already after saying to you

Q. I understood you to say that you learned he had sold properties. Did he actually say, "Look, I have sold my apartment in Spain"?

A. Yes, he did.

Q. Sorry, I misunderstood you. When do you think he told you that? Was it before you bought your house in Carysfort, or after it?

A. I don't know. It's years ago. I don't I can't recall that kind of detail.

Q. And he didn't tell you that he had sold it to Mr. Denis O'Brien?

A. Absolutely not. The first I heard of Denis O'Brien purchasing, that he was the specific purchaser I knew that the apartment had been sold, because he had mentioned it to me, and it meant nothing to me. It was just a casual conversation where he said to me that and it may be I think they were at different times. But I do know that he had made a conscientious decision years ago, it's certainly years ago, that these properties were more than he required, and that Mo Austin, his wife, had friends down in the south of France, and that's where she was happiest when she was outside of Ireland. That's the only conversation I had with David in relation to properties.

Q. Mr. Denis O'Brien, as you know, has, I suppose, occupied the position of one of Ireland's most high-profile businessmen since he was successful in winning the second GSM licence with ESAT Digifone, isn't that right? Isn't that right?

A. Sorry, would you repeat the question?

Q. Mr. Denis O'Brien has been one of Ireland's most high-profile businessmen since he was successful in winning the second GSM licence with ESAT Digifone.

A. Are you asking me a question?

Q. Would you agree with that?

A. I would agree with that.

Q. He was also quite a close acquaintance of Mr. David Austin, according to the evidence. Are you aware of that?

A. I was I wasn't aware I was aware that David Austin was particularly friendly with his father, not that I had such a close friendship with Denis Junior.

Q. According to Mr. O'Brien, Mr. Austin was a friend of his, of Denis O'Brien Junior, as you put it.

A. Well, I accept that.

Q. Were you aware of that?

A. No, not to the extent that I wouldn't be aware. I knew that they knew each other, and that they were friendly, but not to the extent that you are saying. I never had any indication that Denis O'Brien and David Austin were close friends.

Q. They seemed to have been fairly close friends, judging from the evidence that we have had heard at this Tribunal, isn't that right?

A. If you have heard all the evidence.

Q. I am just surprised that you wouldn't be aware that Mr. Austin was very close friends with one of Ireland's most high-profile businessmen.

A. I have already said that from my knowledge, the friendship with Denis O'Brien was with Denis O'Brien Senior. David often mentioned Denis O'Brien Senior in discussions on the basis of their previous relationship; I think it was with the Jefferson Smurfit Group or some subsidiary of it.

Q. And at this time you were having discussions with a number of people concerning the purchase of a new house, but very close and confidential discussions with Mr. Austin to which a number of your other friends and advisers were not privy, about how you would fund the refurbishment, and at that time Mr. Austin never told you that he himself was selling property, and that he was not just selling it to anybody, he was selling his flat to Denis O'Brien, one of the biggest businessmen in the country, a man in the news every day of the week, a man with whom your name had been linked quite, I suppose from your point of view, in a congratulatory way because you were the minister in place at the time that he got the licence.

A. David Austin mentioned to me that he had at various times, I would think there were at least two occasions, of his intention to spend more time down in the south of France, particularly at the request of his wife, Mo. David Austin, at some stage or other when, I do not recall did say to me that he had sold properties at different times. I am not aware and was not aware of the identity of the purchaser of the Spanish property until such time it was given in evidence here at this Tribunal.

May I also say to this day, to this day, I do not know who bought or purchased from David his residential property in London. I would think that those matters were private and confidential to himself and his wife and family. There was no need to discuss it with me. I certainly didn't ask him. And in actual fact, since this was raised I mentioned to my other friend, Frank Conroy, who also gave evidence to this Tribunal, and I asked him had David asked him told him who purchased the properties, and he said no, he just told him that he had sold them.

Q. So he didn't tell his other friend

A. There was nothing unusual about him not telling anybody.

Q. Oh, I quite agree. I mean, it would hardly be of any interest to any friend of mine or any interest to any friend of any individual who bought his property,

unless the person who bought his property was some, I suppose, some individual who was in the news, like Mr. O'Brien was.

A. David

Q. That would be a matter of some interest, wouldn't it?

A. Not at all. You are getting David completely wrong.

David was meeting O'Briens every day of the week. The personality that David had David Austin knew every businessman, medium, large, in not just in Ireland, but throughout Europe and America. Denis O'Brien would be another successful businessman to David Austin.

David Austin wasn't the kind of a man to go out, from the suggestion that you are making to me, and brag to me or anybody else.

Q. I never said he bragged.

A. That's the inference that he sold the house to Denis O'Brien. That would mean nothing to David.

Q. Let's stop flying kites.

A. You are flying them.

Q. Did David Austin tell you he sold his house to Denis O'Brien, a person with whom you had dealt, a person that was close to him, close to Aidan Phelan?

A. Am I surprised?

Q. Yeah.

A. No, I am not. It was his personal private business.

Q. Now, the way he did it, the way he bought this property or the way he sold this property in Spain, if he sold

it, but the way he did it was he got money from Mr. O'Brien, from a company in I think from a Netherlands company, with an account in Dublin to send money to the Isle of Man for that money to go to the Channel Islands and for that money then to come back to an account in your name. Doesn't it seem the most roundabout way to pay for anything?

A. The first part of your question, you put an "if" in it. My understanding is that the evidence the Tribunal was given, that first of all you will accept

Q. No, I am asking you to answer the question.

A. Yes

Q. Answer the question: Was it a roundabout way to pay the money for a simple transaction like buying a little apartment down in the south of Spain?

A. How Denis O'Brien conducted

Q. Was it an unusual and roundabout way

A. How Denis O'Brien conducted his financial affairs, how he paid for property that he purchased, that is Denis O'Brien's business. It has nothing to do with me. And how David Austin received it has nothing to do with me.

Q. You see, that's the problem, Mr. Lowry, it does

A. Now that I have answered your question, you also said if he sold a property. My understanding from the evidence given is that he did sell a property. Now, I certainly know that David Austin had a property to sell, and he did say to me that he had sold a property.

As to who he sold it to, I do not know.

Q. But you don't remember when he said that to you?

A. Years ago.

Q. Well, years ago he is dead since 1998. When did he tell you?

A. I would much further back than that, I would think.

Q. Was it 1997?

A. I can't be precise. I don't know; I don't remember.

It wasn't something that was an issue with me. It meant nothing to me, other than that David had an intent to spend more time in the south of France.

Selling the house in Spain meant nothing to me. The only message that I had got from it at that particular stage was that he was definitely going to spend more time in the south of France, and the reason for that is that his wife was happiest down there.

Q. Are you concerned, even now, are you concerned that David Austin, if he sold this flat, because we have never heard from David Austin, if he sold it, are you concerned that he used that money to put into an offshore account in your name?

A. Why would I be concerned?

Q. You are not concerned?

A. Why would I be concerned? When you say, Mr. Healy I am sure that you are well capable it's very possible to check, is that property in the ownership of Mr. O'Brien or Mr. Austin? You are saying if he sold it.

My understanding is that the property is in the possession of Denis O'Brien since that time.

Q. Are you concerned that Mr. Denis O'Brien's money used to pay for a flat in Spain was then put into your account in the Isle of Man? Are you concerned about the appearance of that?

A. I am not concerned, because whatever you wish to make out of it, it's you are weaving you are attempting to weave a web of intrigue that simply does not exist.

Q. It's the web of intrigue that has drawn my attention, Mr. Lowry. I am grateful you put it that way. Because let's go through it again.

You have an account in the Irish Nationwide set up in October of 1996 in which you are described as a company director, and you do not give a home address, a Dublin address, but the address of your accountants; you provide in the instructions to the bank accounts that there are to be there is to be no correspondence with that address except on request. You do not tell, and you do not have the permission or authority of the accountants concerned to use their name in this way.

At around the same time, a Netherlands company in Dublin, or sorry, a Netherlands company controlled by Mr. Denis O'Brien with an account in a Dublin bank, sends money to the Isle of Man to an account opened for that express purpose and for no other purpose than to

receive this money in the Isle of Man in the name of Mr. Aidan Phelan, who lives in Dublin, but with an address in the United States. That money is then transferred to an offshore account in Jersey. The selfsame money is then turned around and routed back up to the Isle of Man to the account that has been set up in your name.

Now, that's a web of intrigue, I think, in any man's language, Mr. Lowry. Would you agree with that?

A. I think you should conclude it by also saying that in the middle of that, there was a property transaction which was paid for, and I think you should also take it a step further and recognise that the only the only the only dealings I had in relation to this account which you have put before me was with Mr. David Austin by way of a loan which you will see going back into that account as credit. It was a loan given to me. I was not aware of where David Austin got his money. I was not aware of any property transaction that David Austin had with Denis O'Brien. So how could I be aware of that? I am only aware of that now since this Tribunal started.

Q. There was no property transaction at that time?

A. Pardon?

Q. There was no property transaction at that time?

A. I am not aware of it. I understand that's the evidence, there was a property transaction.

Q. You misunderstood the evidence. What the Tribunal has found evidence on is documentary evidence of a property transaction where the documentary evidence came into existence between 1998, the end of 1998, and I think the year 2000 May 2001. So in 1996, Mr. Austin was in fact living in the apartment, according to the evidence, and stayed on in it. He had signed no documents selling it; no title had changed hands. All that had happened was the web of intrigue, as you put it, involving all those money transactions going around in an enormous circle when, if anybody wanted to do what the evidence has suggested, or the evidence or what has in evidence been suggested to us, was to hand over $\text{€}150,000$ across the counter or in a cheque in Dublin or Spain or anywhere else for an apartment on the one hand and to hand you $\text{€}147,000$ in Dublin to put into an account in Dublin to enable you to do your refurbishment. Those two simple things never occurred. What we had was a round-the-houses set of transactions to carry out what, if the evidence is correct, was a very simple thing. That's the problem the Tribunal has.

A. Well, I do not have a problem to the extent that I had one dealing, and that was with Mr. David Austin. I am not aware of the background to it. I am sure the at least reading from what I have read through the media in respect of this, the scenario that you are putting

about the house property has already been contested vigorously by my understanding is that there was a transaction in relation to the house. I wasn't aware of it.

Q. Mm-hmm.

A. The only transaction that I had, I had no connection, no discussions, no knowledge whatsoever of any transaction, financial transaction between Mr. David Austin and Mr. O'Brien. The only transaction that I had was with Mr. David Austin by way of a loan, and that loan was repaid with interest.

Q. By the time the loan was repaid with interest, as you put it, all hell had broken loose, in the sense that revelations were made about you in the media. You had resigned your position. You had made a personal statement in the Dail, and you had alluded in that statement to the ESAT Digifone success in the second GSM licence. So that at that time, your name was being connected, according to you, by people wrongfully, I suppose, in the media, with Mr. Denis O'Brien's name?

A. My name has been connected with Mr. Denis O'Brien for, I suppose, six years now. And let me say, it has been connected with me in an unfair way. I have never had any financial dealings or any financial contact with Mr. Denis O'Brien. I am not aware of any of Mr. O'Brien's financial transactions with other people, and as far as I am concerned, those are matters for Mr.

Denis O'Brien and those that he dealt with. I can only speak for myself.

Q. Now, at the time that those events occurred in 1996, Mr. Austin was still alive. He was alive during all of 1997, and he was alive until November of 1998. And during all of that period, he was aware that connections were being made between your name and Mr. O'Brien's name. Isn't that right?

A. Anyone living in Ireland would know that there was a lot of debate and discussion.

Q. But we know that Mr. Austin was involved in matters in which your name is being linked to Mr. Denis O'Brien's name because he was involved in dealings with the IPO of ESAT Telecom and he was involved in the Fine Gael Telenor inquiry. So he was well aware of these connections being made.

Don't you think, or are you surprised that he didn't warn you and say, "Look, Michael, you know, the money that I got for you came from Denis O'Brien. Maybe you should be aware of what's happening here in case you are exposed to some unfair comment." Did he ever say anything like that to you?

A. He never mentioned anything like that. He obviously wasn't concerned, and the reason he obviously wasn't concerned is because he had nothing to be concerned about. I never had any communication with Mr. David Austin. So, I mean, if you take that theory further,

you could go through every item in Mr. Austin's account for the last whatever number of years you wish and make an association with me because that money came from somebody. I had no connection whatsoever with Mr.

Q. There are no connections?

A. I had no connections.

Q. But there are no other connections in the account?

A. I am sure somebody or other, you could pick another name that I possibly would know that David Austin would have had a financial transaction with.

Q. Could you enlighten me and tell us, is there other potential

A. I never had access to Mr. Austin's accounts. I know nothing about Mr. Austin's accounts, no more than I know anything about Mr. Denis O'Brien's account.

Q. Maybe you'd help me. Did you receive any other money from Mr. David Austin other than the

A. No, never.

Q. There is no other transaction in his accounts relating to you, is that right?

A. Correct.

Q. Then the Tribunal is only interested in the ones that are related to you. It's the only one we have been able to find.

A. The point I am just drawing the analogy that you could select some other name that David Austin had

business dealings with maybe like Mr. Conroy, maybe like somebody that he worked with, what have you that I would also know.

Q. The Tribunal didn't select anyone's name, Mr. Lowry.

The Tribunal hasn't selected anyone's name. What the Tribunal did was to examine a bank account which showed transactions which led to an account in your name.

That's what the Tribunal has done.

A. And I have explained I have explained the background and the circumstances to which that account was opened, and you will notice which hasn't been as yet highlighted, that I presume the credit on that statement is the 148, which is the loan repayment.

Q. I am going to come to it. If we go to the David Austin account and we go to the other big transaction on that day, or on that account on that page, it's the biggest credit to the account after the two movements I have mentioned. And if you go further down the credit side, you will see it: "i;½148,816.93, source, 12th February, 1996, source of funds by Swift per INBS (Isle of Man)."

And that is in fact the transfer back of the money from INBS to Mr. Austin's account.

Now, do you remember the two documents we were discussing before lunch, the letter from David Austin and the other document, which I'll call the receipt and the promise to repay?

A. Yes.

Q. I think you were saying to me before lunch that it's possible that when you received the letter from David Austin acknowledging that you had repaid the money, that it's possible that the receipt came with it. Is that right?

A. You asked me a number of questions. I could not be precise because I didn't have recall of it, and that was one of the possibilities that was put up.

Q. Well, is it merely a possibility, or do you think it's something that might have happened?

A. I have already said I cannot recall the precise details of it.

Q. Because in one sense, if that document was a receipt, and if it was a receipt that you didn't take away with you from Mr. Austin's house, but one that he kept, I suppose it would be reasonable, after the money had gone back into his account, for him to have no further interest in it. Isn't that right?

A. I can't speculate on what exactly on what has happened; that's pure conjecture. I can't speak for David Austin.

Q. If you borrow money from somebody, and you give them a receipt and a promise to repay, and they hold on to that receipt, and then a few months later you decide to repay the money and the money goes back into the lender's account, the lender wouldn't have any more interest or use for the receipt, isn't that right?

A. I think it would be common manners to acknowledge it and to do it. And David Austin was certainly a type of individual who would do that.

Q. No, but if he sent you back the receipt, the receipt and promise to repay, that document that you say was produced to you by Mr. Austin in Dublin. Or are we at cross-purposes, are we?

A. No, I understand you.

Q. There are two documents. There is a letter, and there is a receipt, okay?

A. It's the receipt you are speaking about?

Q. The receipt is the document that has your signature and Mr. Austin's signature.

A. Mm-hmm.

Q. And it's the document

CHAIRMAN: It's probably safer to call it "the agreement".

Q. MR. HEALY: Yes, the agreement, if you like, that has your signature and Mr. Austin's signature. You think that it's possible that that document came to you under cover of a letter from Mr. David Austin, is that right?

A. I didn't say that. I said it was a possibility. I didn't say I think that. As I have already said on a number of occasions to you this morning, I cannot recall the precise details of either of those documents.

Q. You see, what I am trying to explore, Mr. Lowry, is the

fact that Mr. Austin's papers contain no trace of the agreement. You appear to have the original. And he doesn't have any trace of it at all.

Now, I am suggesting that if the possibility you mentioned was a real one, or a realistic one, then it mightn't be unlikely that Mr. Austin, having got the money back into his account, would write to you and would say, "Thank you very much for sending the money back to my account", and he would enclose the agreement because he would have no further use for it because he wouldn't have to enforce it any more; wouldn't that be right?

A. What I am saying is that obviously it's a possibility.

I cannot recall precisely what happened. I just don't know the exact details of it. It is a long time ago.

All I do know for certain is that we had an agreement in place and that I honoured the terms of the agreement and that the money was refunded with interest, as is shown in the statement that you put before me.

Q. However the document came into existence, the agreement was done and dusted, as you put it, by February; he had got the money back; you weren't going ahead with the refurbishment. The whole thing had disappeared, according to you?

A. I am not yes, it disappeared to the extent that I gave you the background and the reasons why I did not proceed with the work.

Q. Of all the documents that one might retain, why would you retain this document, seeing as the agreement was done and dusted, as you put it?

A. I am not the best record keeper, but I can tell you I do obviously keep some documentation. That is one of the documents I have. I also, in the course of the last six years, provided a substantial amount of personal documentation to this Tribunal and to the previous Tribunal.

The difficulty that I had is that I wasn't able to put them in order, and that's why I had to bring in my advisers to put them in order and to put them into sequence and to put entries and withdrawals into sequence.

Q. Would you regard this as personal documentation?

A. Yes, I would.

Q. Because the Tribunal only got bank statements from you.

The Tribunal never got this document or the file from which it came until April of 2001.

A. Because as I have explained for

Q. I just want to make it clear. We got no other personal documents from you.

A. I have explained the reasons why.

Q. And again I wonder, was this document kept so that you could be sure that if one asked you about the account, that you could explain that the account was a loan?

A. No.

Q. That wasn't a reason for keeping it?

A. No.

Q. Then why keep it at all so? Of all the documents that you don't seem to have kept, why did you keep this one?

A. Why does anybody keep a document? I retained the document. It was a document I simply retained. I had no purpose for retaining it. Not the motive you are ascribing to me.

Q. What motive am I ascribing to you?

A. You are saying I deliberately retained the document for some ulterior reason.

Q. No, I didn't say it was retained for ulterior reason.

I said, did you retain it in case somebody might ask a question about why you got $\frac{1}{2}$ 147,000 in an offshore account?

A. My answer to that is definitely no.

Q. And the document, if it were suggested to you that the document was created by David Austin for that purpose, you'd reject it?

A. I would take serious objection to that, both on my own behalf and on behalf of the late David Austin, whose anniversary occurs today.

Q. Well, the Tribunal has heard evidence, as you know, that Mr. Austin has generated documents before to give transactions a certain appearance which was not in accordance with reality. You know that?

A. I am not aware of that. If it's a matter for the

Tribunal to

Q. You are aware of that. Didn't I mention those documents to you at the outset of the evidence?

A. I think all of that documentation I am certainly not going to pass a slur on the name of David Austin or on the memory of David Austin. As far as I am concerned personally, I knew David Austin, and I know David Austin to be a decent, honourable man.

Q. Who did raise

A. Pardon?

Q. Who did raise a false invoice?

A. I am not in a position to judge who raised an invoice, where it came from, whether it was false or not.

That's a matter for the honourable Chairman to make a decision on.

CHAIRMAN: Mr. Lowry just one thing, whilst it's in my mind, Mr. Healy I have noted clearly your evidence that the name of Mr. O'Brien was not mentioned to you at any stage in the context of having been the purchaser of the Spanish property, and I have noted that fully.

You have stated that Mr. Austin made a number of observations to you. He first of all said at least once that partly due to his wife's wishes to spend more time in their south of France premises, they were thinking of selling both Spain and London. And I think you then said, at a particular point, he said, "Well, I

am after selling the Spanish apartment", isn't that correct?

A. That's correct, Mr. Moriarty.

CHAIRMAN: Could that latter conversation have been at the time of or in the context of his coming up with the idea of loaning you the money for refurbishing Blackrock?

A. No. The two were never connected. David Austin I understood David Austin to be a man of independent wealth. For that reason, I didn't discuss his finances with him or what money he had or what was available to him. We never had a discussion in relation to a detailed discussion in relation to the disposal of either property. It was just in passing that he mentioned that he was going to dispose of the residential property in London. Which of them went first, I don't know to this day. I still don't know I didn't know, Mr. Chairman, that Denis O'Brien was the owner of the property in Spain. All I knew was that he had that David had sold it.

CHAIRMAN: All I am wondering, Mr. Lowry, is because the events as regards the sale of the property and the loan advance to you were so close in time, could it have been that Mr. Austin, when he raised the suggestion of advancing you a loan to refurbish Carysfort Avenue, that he may have done it in the context of saying "I happen to be fairly flush; I have

sold the apartment"?

A. Obviously it's a possibility. But he never communicated that to me. He never said anything to me about it. He just said "Look, I have the funds to assist you in relation to this project. I am willing to do it." He volunteered the loan. There was no discussion as to the background of where the money was coming from. You know, as far as I am concerned, I dealt with David Austin. David Austin gave me a loan of his money.

CHAIRMAN: Thank you.

Q. MR. HEALY: Just on that point, Mr. Lowry, and you can see the difficulty the Tribunal has, that all these events are so closely connected in time, but on that point, the account in Jersey that received the $\$150,000$ was opened at that time and appears to have been opened, therefore, for that purpose. Do you follow me? So Mr. Austin opened an account at that time to receive the $\$150,000$ when he already had other money?

A. So what are you asking me?

Q. Well, can you see the difficulty from the Tribunal's point of view? Put yourself in the position of the Tribunal. The Tribunal sees an account being opened by a wealthy man to receive money from Mr. Denis O'Brien, and uses money from that account to put into an account in your name in another offshore location. Can't you see that there are there is an invitation to make

connections between those events?

A. I am sure, and you have accepted the invitation. But you know, I cannot tell you why David Austin ordered his financial affairs in this way.

Q. But to take up the Sole Member's question, if Mr. Austin was an independently wealthy man, as you say he was, he had many other accounts from which he would have or could have paid you this money?

A. I have no indication of that.

Q. Well, you told it's you have told the Tribunal he was independently wealthy.

A. My perception of David Austin was that he was an independently wealthy man. I didn't ask David Austin you know, I didn't ask David Austin where and what account he was dealing with. That was his business. It had nothing to do with me. There was no discussion whatsoever in relation to it. I have already given you the detail of the lead-in to the loan.

Q. Can we just come back to that, to the lead-in to the loan. If Mr. Austin was getting money into an account and opening an account specially to receive money for the sale of an apartment, and if it was the plan then to make a money available to you, isn't it amazing he wouldn't have said, "Look, I have had a bit of luck; I am just going to make $\frac{1}{2}$ 150,000 from the sale of my apartment. I'll open a special account and transfer it

to you. I don't need it at the moment. I have plenty of other money." Isn't it amazing that a conversation like that didn't take place?

A. I am amazed that if he said "I have a bit of luck." He hadn't luck. David Austin disposed of a valuable asset, and he got the market price of the asset he disposed of. I wouldn't consider that luck. I would consider that a business transaction.

Q. You see, that's another problem the Tribunal has, that there is no evidence that it was a business transaction, because the business end of it doesn't seem to have been attended to until years later.

A. That's a matter between the Tribunal and Mr. O'Brien and Mr. Austin. It has nothing to do with me.

Q. Well, it could have something to do with you; isn't that possible?

A. I had no knowledge of that transaction. I was not aware of it. The first I have heard of that transaction was the particular transaction you are talking about is at this Tribunal.

Q. Now, I have described to you already the web of transactions that ultimately led to the money going into your account in the Isle of Man. But that web started off in Woodchester in Dublin, and as I said to you earlier, it's the extent to which transactions may have either have been hidden, whether intentionally or not, that the Tribunal is looking into here.

And do you remember yesterday that you mentioned that you were satisfied from the evidence that you had heard that a very intensive inquiry had been carried out at the time of the flotation of ESAT Telecom

A. Yes.

Q. into potential payments to you, and that none were found to have been made. Remember that?

A. I do. I do recall it very well.

Q. Well, the evidence the Tribunal has heard is that the individuals involved in that inspection did not in fact look at the Woodchester account from which this $\frac{1}{2}$ 407,000 had moved.

A. Sorry, I have lost you, what

Q. You were talking yesterday about how satisfied you were that an inquiry had been carried out at the time of the flotation of ESAT Telecom to see whether any payments had moved from Mr. Denis O'Brien to you.

A. What I said yesterday was that they had carried out an inquiry and that they were satisfied.

Q. Yes.

A. There is a difference between I be satisfied why would I need to be satisfied? I had nothing to worry about.

Q. I think what I was saying was that you were satisfied that they had said they were satisfied.

A. That would be correct.

Q. What that inquiry entailed was looking at drawings or

debits to accounts of Mr. O'Brien where those drawings or debits exceeded $\frac{1}{2}$ 25,000. They didn't have they didn't have till eternity to do it, so they put in a threshold of 25,000.

A. Are you now referring to some internal inquiry in ESAT or wherever it was?

Q. The inquiry that was conducted at the time of the launch. The inquiry that you referred to yesterday. So what they did was they asked Mr. Aidan Aidan Phelan to assist them with this inquiry, and they asked a number of other people to assist them, and they examined transactions over $\frac{1}{2}$ 25,000 on Mr. O'Brien's account. But the one account that they did not look at was this account from which $\frac{1}{2}$ 407,000 went in the manner I have just described. Now, I want to simply give you an opportunity of understanding that evidence.

That evidence suggests that at the time, in 1997, somebody may not have wished to draw to the attention of the people involved in the flotation that there was a transaction whereby money went to the Isle of Man, then to the Channel Islands and back to the Isle of Man, into an account in your name, because that might have disclosed a potential payment from Mr. O'Brien to you. You understand that?

A. There was never any payment from Mr. O'Brien to me, because

Q. Can you understand that?

A. Excuse me.

Q. Can you understand that?

A. No, no

Q. Can you understand my question?

A. I understand what you are saying, and I totally refute and reject what you are saying. If I ever received a payment from Mr. O'Brien, it would be in my account and I would know about it. I never received any payment from Mr. O'Brien.

And if you wanted to put that question in terms of internal inquiries or the conduct of an internal investigation, please put them to the people concerned, because I know nothing about them.

Q. Well, the question was put, Mr. Lowry, and the Tribunal has not received so far any very enlightening answers as to why that particular account and that transaction was not revealed in the course of that inquiry.

A. Well, that is a matter between you and the Tribunal. I can't comment on it, Mr. Healy. I don't know about it.

Q. You must understand that it's another circumstance, or potential circumstance the Tribunal could look into, and I want to give you an opportunity of commenting on it, and I think you have commented on it.

Now, Mr. Austin was also involved in that inquiry, as you know from the evidence, I take it, because he didn't tell you at the time, according to your evidence, isn't that right?

A. Which transaction?

Q. Mr. Austin was also involved in the inquiry carried out at the time of the ESAT Telecom flotation. He never told you about it.

A. I wasn't aware of any

Q. Now, have you been following the evidence given by Mr. O'Brien and Mr. Barry Maloney concerning the other matter or concerning other aspects of the inquiry that was conducted at the time of the ESAT Telecom launch, and particularly the fact that statements were made by Mr. O'Brien that he gave money to two politicians, one of whom was you.

A. Which conversation are you referring to?

Q. Well, I'll do it as slowly as you like. And I mean, I appreciate

A. I haven't read the transcripts. I have just followed the media reports.

Q. I understand that. All right. Well, just so that you understand precisely what I am saying.

Evidence has been given by Mr. Barry Maloney, who was the first person to draw this to the attention of the Tribunal, that in September or November of 1996, Mr. Denis O'Brien was having a conversation with him, and Mr. O'Brien said to him that he had made two payments of $\frac{1}{2}$ 100,000 each, and that one of those payments was made to Mr. Michael Lowry.

Now, that's the issue I am talking about. I am going

to go on now. You are aware of that?

A. Yes, this is the run on the mountain.

Q. The run or the office. There is a dispute between them as to where it happened, but they don't dispute that it did happen.

A. Well, in my knowledge, it was this conversation is supposed to have taken place during a run on the mountain.

Q. How do you know that?

A. Because I read it. That was the inference that was the that's how it was described in the newspaper comments.

Q. I see. I see. Well, if it's of any assistance to you to know, Mr. Maloney says that it happened in an office; Mr. O'Brien says that it happened on a run.

A. Well, what I can say what I can say in relation to it, if it happened if it was said to happen in an office, it didn't happen, because it never happened; and if it happened on the mountain, it wasn't it was bull on the mountain, because it never happened. I never had any discussion with either Denis O'Brien or Barry Maloney in connection with funds for me or anybody else.

Q. No, no, I think there may be some misunderstanding now.

What both Mr. O'Brien and Mr. Maloney have said and let's be clear about this: Neither Mr. O'Brien nor Mr. Maloney would have any axe to grind against you;

wouldn't that be right?

A. Certainly they shouldn't. I have never done anything to them.

Q. You haven't. They were both two individuals who became enormously successful in the telephone business and acquired substantial wealth, as they both informed the Tribunal in evidence, arising out of the way they successfully ran that business.

Mr. Maloney is not saying he had a discussion with you.

Mr. O'Brien is not saying he had a discussion with you.

What Mr. Maloney and Mr. O'Brien is saying is they had

a discussion with one another. There is a dispute

between them as to where the discussion occurred. Mr.

Maloney says it was in an office, and Mr. O'Brien says

it was on a run. But they both agree that they had the

discussion. And they both agree that Mr. Maloney

said or Mr. O'Brien said to Mr. Maloney that he had

made two payments of $\frac{1}{2}$ 100,000. Mr. Maloney says that

Mr. O'Brien said to him that one of those payments was

to you. Mr. O'Brien says he can't think whether he

mentioned your name or not, but he agrees that you were

the name that was in his mind and that it was obvious

that your name was the one Mr. Maloney would assume as

the person to whom the payment of $\frac{1}{2}$ 100,000 was made.

Now, Mr. O'Brien has also given evidence to the

Tribunal that yes, he made that statement, and yes, it

was on his mind to make a payment to you

A. Sorry, could you repeat that?

Q. Mr. O'Brien has also stated that yes, he did make a statement, and yes, it was in his mind to actually make a payment to you, but that he didn't make any payment to you; that while he said he made a payment, he hadn't in fact done it at all. That while he said he made a payment, the truth was that he only thought about making a payment and didn't actually make it. All right? That's his evidence. Summarising it, but I think that's the main gist of it.

Now, Mr. Maloney has said that some time later, closer to the IPO in 1997, he was approached by Mr. O'Brien, and Mr. O'Brien says, Mr. O'Brien said to him, according to Mr. Maloney, "I just want to assure you I didn't make those payments. You needn't worry yourself about it; I am just telling you the payment that I intended to make to Michael Lowry never went through."

And then at a later point, in another discussion between them, according to Mr. Maloney, Mr. O'Brien said, "What I didn't tell you was that I was going to make this payment, but it got stuck with an intermediary."

At a later point he said that the term "intermediary" meant Woodchester Bank.

Now, if what Mr. O'Brien was saying to Mr. Maloney was true when he said that he had made a payment to you, then that payment would have been made at some time

prior to September/November of 1996. Did you have any contact with Mr. O'Brien in that period, September in that period, sorry, prior to September/November of 1996?

A. What year?

Q. 1996.

A. I have no recollection I certainly can I you have put a lot of detail there in front of me, and I think I am entitled to the opportunity to respond to what first of all is a conversation that I was not privy to, a conversation that is supposed to have taken place and which was made public and came to my knowledge for the first time during evidence here at the Tribunal.

I want to say that I have never had any discussion whatsoever with Mr. Denis O'Brien about a payment. Never. Not at the time you are referring to now, in '96 or '95, at any stage did I ever have a discussion with Denis O'Brien about monies for me or payments to me. I have never sought money from Denis O'Brien. I have never received money from Denis O'Brien. And if Denis O'Brien has some thoughts about doing something, I am not responsible for his bad thoughts, his good thoughts, or his indifferent thoughts. I was I had no knowledge of that conversation. I had no knowledge of any momentary flash that maybe he was going to give me money. It never I knew nothing about this, and I

certainly never received money from Denis O'Brien. And it was never discussed with me at any stage by either Denis O'Brien or by Barry Maloney.

And what annoyed me intensely was the fact that this discussion was taking place within the company. I wasn't contacted. I wasn't consulted. I wasn't asked by anybody, either Denis O'Brien, Barry Maloney, anyone in ESAT, or anyone in Digifone. And I take strong objection to the fact that my name was bandied about internally at those meetings in such a damaging and hurtful way. I was not aware of it.

And I am saying clearly, I had absolutely nothing to do with that particular discussion. I knew nothing about it until it became public here at this Tribunal. And for the umpteenth time I am saying I did not receive this so-called supposed $\frac{1}{2}$ 100,000 which was, my understanding is, discussed on this run on the mountain. As I said already, it's bull on the mountain. I knew nothing about it. Nothing about it.

Q. Just to take you up on one point you mention there. You say you resent and you take strong exception to the fact that your name was bandied about at these meetings without anyone telling you about it or ringing you up and saying "What do you say to this?"

Well, just to leave the $\frac{1}{2}$ 100,000 aside for the moment, your name was also being bandied about in connection with the Telenor/ESAT \$50,000 payment. And your close

friend, Mr. David Austin, was involved in the whole matter. Do you not take strong exception to the fact that he never told you about it?

A. I take you can go through, if you start with David Austin

Q. Would you agree with that?

A. There was other people there who I would have expected would have discussed it with me. I had close friends within the Fine Gael Party who didn't discuss it with me. There were people in ESAT, there were people in Digifone. Nobody discussed that issue with me. And the reason they didn't was because it wasn't relevant to me. I had no dealings with it.

Q. Well, why would you take strong exception

A. I had no involvement in it.

Q. Why would you take strong exception so? You have just told me that the reason he didn't discuss it with you was because you had no dealings. How could you take strong exception or resent them not discussing with you? Which are you saying?

A. With which?

Q. With you.

A. That they didn't discuss it with me?

Q. Yeah.

A. I am referring to the $\text{€}100,000$

Q. I am not referring to the $\text{€}100,000$. We are at cross-purposes.

A. Telenor

Q. We are at cross-purposes. I am referring to the fact that leave the $\frac{1}{2}$ 100,000 aside. Your name is being bandied about in relation to the Telenor/ESAT \$50,000 payment, and one of the people involved in the bandying about of your name was David Austin.

A. Yes, you put that question to me yesterday. And I said I was surprised that he hadn't mentioned it to me and he didn't mention it to me.

Q. I know you said that. But you have used stronger language now. You said you take strong exception

A. No, I used stronger language in connection with the discussion in relation to the $\frac{1}{2}$ 100,000. In relation to the Telenor, you asked me a direct question yesterday, and you are asking me again today. I gave you the same answer as I gave you yesterday, which is the truthful answer, that is that I was surprised that David Austin didn't discuss it with me. I was surprised that Jim Miley, the General Secretary of Fine Gael, didn't discuss it with me, and I was surprised that John Bruton, who is a friend of mine, didn't discuss it with me.

Q. We'll go back to the $\frac{1}{2}$ 100,000 payment. Or rather, in fairness to you, I should say, the statement that there had been a $\frac{1}{2}$ 100,000 payment, and that Mr. O'Brien, as he said himself, subsequently thought better of making any such payment.

Now, you say that you had no discussion with Mr.

O'Brien about any such payment, or any payment at all, or any money of any kind.

A. No.

Q. Does that include any discussion with anybody else connected with Mr. O'Brien, any agent of his, any associate of his, or any affiliate of his?

A. In what terms?

Q. In terms of the $\frac{1}{2}$ 100,000 or any other sum of money?

A. $\frac{1}{2}$ 100,000 from Denis O'Brien or this has never been discussed with me by anybody, Denis O'Brien or anybody else or anybody connected with him or on his behalf or associated with him. Certainly not.

Q. Leave the question of discussion out of it. I think the Tribunal asked you a question in a letter had you ever received $\frac{1}{2}$ 100,000 from Mr. O'Brien, directly or indirectly, and you have responded to that by saying no, isn't that right?

A. Exactly.

Q. And "directly or indirectly" would include money that went in the way I have just described, and you would say that's not money that you received from Denis O'Brien. Isn't that right?

A. I never received money from Denis O'Brien can I say it again: I never received money from Denis O'Brien, directly or indirectly. I had no dealings with Denis O'Brien or anybody on his behalf in connection with

funds.

Q. There is just one more point I should in connection with that that I should put to you, that I am reminded I should put to you.

According to the statements that were made by Mr. Denis O'Brien, he made a payment to you; but subsequently he said it never went through, and then he amplified on that and said it got stuck with an intermediary. Now, the money that I have described

A. This is your you are coming back now to the discussion that has taken place between Mr. Barry Maloney and Mr. O'Brien?

Q. Yes, yes. The money that I was describing a moment ago that David Austin loaned to you, according to your evidence, came to you in or around October of 1996, isn't that right?

A. Yes.

Q. It was promised to you, I think, much earlier, isn't that right?

A. No. Just the discussions had taken place just previously what would I say? The house in around the same time.

Q. But you bought the house in July, didn't you?

A. Pardon?

Q. You bought the house in July?

A. I did, but you will recall yesterday in evidence I told you at one stage I had intended to use the funds that

were available to me. That did not become possible, and then I told you that I had discussions with David Austin very close to the time the transaction took place.

Q. Yes. That is close to July. August, maybe?

A. No, no, you have the dates. Close to the end October, whatever time it was.

Q. Well, when was it? I understood from your evidence yesterday that you had the discussion with Mr. Austin around the time that you bought the house, because it was clear from the discussion you had with Mick Holly that this house would have to be refurbished, and you were discussing let me just put my understanding you were discussing this with Mr. Holly and Mr. Austin, discussing it with both of them together, and the decision was that you'd go ahead and do it up. And then you had a private discussion with Mr. Austin, and he said to you that he would fund it by way of a loan, isn't that right?

A. If you'd allow me to check?

Q. Yes, yes, take your time.

A. Sorry, I don't have the on my file here could I ask, Mr. Chairman, if I could have some assistance?

Q. Be under no hurry; take all the time in the world.

A. Yes, on the 17th July, I agreed to purchase Carysfort. In September of that year, '96, I drew down a mortgage. And then the loan facility was not made available to me

in July. It was made available to me in October. On the 21st October.

Q. Which loan facility now do you mean?

A. David Austin's loan facility.

Q. Yes. I am aware

A. That's the date you were referring to it as July.

It was actually October.

Q. I am aware of that, and I am making that distinction.

I am aware that the money came to you in October.

Sure, haven't we just put the bank accounts on the overhead projector. I know that the money went into the account in October of 1996. Don't we know that the agreement that you produced is dated October? I understood from your evidence yesterday that the agreement that you made with Mr. or the discussions you had with Mr. Austin about providing this money took place sometime after you bought the house, because you knew at that stage that you were going to have to refurbish it.

A. We initially as I outlined to you yesterday, the initial discussions took place with Mick Holly, the late Mick Holly, in relation to the requirement that was there to put the house in an acceptable condition and standard. In other words, the house had to be refurbished. And as you will see from the as has been already pointed out, that requirement was there. Mick Holly then did his costings, did his details and

what have you, and came back to us in relation to that figure.

And it was at that stage that David Austin and I had our discussions. I can't be precise as to what day or when we had it, but we had that's the sequence of events.

Q. Okay. So you had your discussions with him, then, sometime after you bought the house and sometime before the arrangements were finalised with Mick Holly, but closer to the time that you actually finalised with Mick Holly, which would be closer to September?

A. I would have had discussions with him in or around that time. I can't be precise about the detail of it, but that would have been the sequence of events.

Q. Mm-hmm. Up to that time you say you were going to use money you had in the Channel Islands, is that right?

A. Pardon?

Q. Up to that time you were going to use money you had in the Channel Islands?

A. Yes, I gave evidence to the effect that I had an account, and as I stated yesterday, I didn't use that particular monies for reasons that I have given you.

Q. And did you tell Mr. O'Connor, your accountant who was going to be handling this, that you were going to use the Channel Islands money?

A. I had no discussion with Mr. O'Connor about that. Mr. O'Connor wasn't dealing with that particular aspect of

my affairs. He wasn't involved in my personal finances at that particular stage.

Q. Well, who was going to operate the administration of the funds from the Channel Islands?

A. It was my intention as I told you yesterday, the reason why the address of the accountancy company was put on it was that I had intended to ask Denis O'Connor to administer the funds required, architect's certificates, invoices, and all the details involved with subcontractors and the contractor. It was my intention to ask him to administer that, and that's the reason why the accountancy firm's name was put on it.

Q. I know that.

A. And the reason that was put on it, Mr. Healy, was because Denis O'Connor was working for me at that particular time not for me, actually, but for the company, on management accounts. He hadn't done anything in relation to my personal finances.

Q. Well, I wasn't asking you about the account in the Irish Nationwide. What I am asking you about is, how were you going to administer the account in the Channel Islands?

A. Which?

Q. You bought the house in July. The only money you were going to use to refurbish it between then and when you opened the Nationwide account in the Isle of Man was the money you had in the Channel Islands, isn't that

right?

A. How do you mean? How was I going to administer it?

Q. How were you going to operate getting the money in the Channel Islands? Who was going to handle the whole transaction with you?

A. I discussed that with David Austin. I informed him that I had that money available to me.

Q. But how were you going to bring it back and forth? Who was going to run the whole thing for you?

A. Well, I have to be careful as to what I say in relation to that particular fund. And yes, that was a difficulty

Q. Why do you have to be careful?

A. There was a complication in relation to it. For the reasons that you criticised me this morning and for which I was criticised by the McCracken Tribunal, that that money was offshore. There was a difficulty in relation to compliance with it. I had been heavily criticised for it since that, and so, you know, you did criticise me already for that this morning, so that is the reason.

Q. Well, I'd just like to pursue that. I don't understand that. I wasn't criticising you.

A. Pardon?

Q. I wasn't criticising you. I was trying to work out what you meant by certain words you used in a statement in the Dail. I just want to pursue what you said to me

now.

You say there were circumstances why you couldn't use that account in the Channel Islands. I don't understand that. Perhaps you'd just expand on that for me.

A. I don't think it's fair to ask me to do it in this forum. But under duress, and under the possibility of incriminating myself, I will tell you in respect of the Tribunal. The reality is that it was the reality is that it was an offshore account. The reality is that it was not a tax-compliant account because I had outstanding difficulties to resolve with Mr. Ben Dunne. Had I had the opportunity to resolve those outstanding difficulties, that particular account would have been rectified, and any tax implication involved in it would have been resolved, and that information was David and I discussed that particular aspect of it, and for that reason I didn't use that particular money, because I was waiting for all the issues outstanding with Ben Dunne resolved before I did anything with the money.

Q. So do I understand you, then, that you said to David Austin something along these lines: "I have money. It's offshore. But I have tax problems. I don't want to use that money because " well, for starters, you'd have to tell whoever was administering the account that it was money that had tax problems attached to it coming from an offshore entity. And David Austin said

to you, "Well, I'll set up an account for you, and I'll loan you the money in the Isle of Man, and it will be perfectly tax compliant"?

A. No, before also, with that with the issue of the tax complication, there was also the issue which I referred to also when you asked me the first question, and that was that there was a family and personal reason also. And we discussed the various options that I had, and it was arising from that discussion that David Austin volunteered to provide me with a loan, and I accepted the loan. And in due course the loan was repaid.

Q. You knew you had those tax problems from the time you bought the house, isn't that right?

A. Pardon?

Q. You knew those problems that you have described existed from the moment that you bought the house.

A. I hadn't focused on it. It was something that I hadn't considered. It was when it came to, as you know, all of this the purchase of the house was done at short notice. So and I didn't have that kind of lead-in time to focus and to give it attention. What I had, I didn't have what I had was, Mr. Healy, and you read extensively from McCracken's report today. In the evidence to the McCracken Tribunal this account was discussed, as were the other offshore accounts. And during the course of that cross-examination, and in

direct evidence, I stated clearly that my difficulty in relation to tax was because of my dealings with Mr. Ben Dunne and the unorthodox way in which he did business with me. And unfortunately, at this date, at this particular date that we are speaking about in terms of the money now, the outstanding issues that I had with Mr. Dunne had not been resolved. It was still my hope that they would be resolved. And that's the time-frame which we are speaking in.

Q. And you told all of this to David Austin?

A. Yes.

Q. Had you been to Mr. Michael Fingleton before you spoke to David Austin?

A. Had I been to Mr. Michael Fingleton before I spoke to David Austin? I would have had in the first instance, Mick Holly would have had advised me yes, David Austin would have known that I had purchased a house. He wouldn't have been aware that I had been with Michael Fingleton at that stage in relation to the mortgage on the house.

Q. Why? Wouldn't that be one thing you'd surely have told him?

A. Pardon?

Q. Isn't that one of the things you'd surely have told him?

A. I have already explained to you the lead-in and the circumstances of it. I discussed a property in Dublin

with a number of people. David was one of the people who encouraged me to purchase

Q. I want to know when you had the discussion you have described a moment ago with David Austin. The discussion which you disclosed

A. I don't recall precisely.

Q. Had you had that discussion with him before you went into organise your loan with Michael Fingleton?

A. Sorry, no, the loan at this stage the discussion that I had with David was subsequent to I receiving the mortgage from the Irish Nationwide Building Society.

Q. Right. How long subsequent?

A. I would say a matter of

Q. days, hours, weeks? Which was it? Did you go in you got your loan fairly quickly. You went and spoke to Mr. Fingleton directly himself, who is the top man in the organisation. I presume he told you that "There'd be no problems with this. We are satisfied with your earning power", and so on. So you left him, and as far as you were concerned, subject to I suppose a surveyor's report, you had a mortgage. So all of that happened sometime; when, do you think?

A. It would have been the discussion that I had with David after that would have been there'd be a good gap in between.

Q. Would there?

A. Yes. I was quite busy at the time, and once the house

was purchased and I had the mortgage, I didn't actually concentrate on the refurbishment until I was coming under pressure from Mick Holly as to what I wanted to do, so it would have been a considerable time later.

Q. You got your quote from Mick Holly on the 2nd September, I think?

A. Yes.

Q. At that stage you had already had your loan for weeks and weeks.

A. Mick Holly

Q. August is hardly the busiest month. One of the few not-too busy months in a politician's life. I am not saying you don't ever have a busy month, but not the busiest?

A. It may not be busy in the legal circles. In politics, the month of August is probably one of the busiest we'd have. In that month of August, I keep referring back to the fact when you say that I had time to do this, that, and the other. The reality is, in that month of August, is that I was extremely busy. And a glance at my ministerial diary will show that I gave most of my time out of the country. I was attending bilateral meetings with ministers. It was attending Council of Europe meetings. I was extremely busy, and at home, when I was at home, we had

Q. You weren't so busy you couldn't go and visit Mr. Fingleton?

A. Obviously you need some time for yourself. I mean, Mr. Healy, I was able to you know, do the normal functions in life as well, like. I am not

Q. You didn't apply for a loan by going into a building society or getting your secretary to go in and get a form or getting your solicitor to go through it. You went and you made the time to leave your office to go and devote some of your extremely valuable time to a perfectly ordinary meeting with basically a building society to get a loan of money.

A. Yes. And the reason

Q. So you weren't that busy?

A. The reason I went to Mr. Fingleton was for the reason I knew him; I knew he was in a position to make quick decisions. And the meetings that I had with Michael Fingleton in relation to the loan, I can assure you, they didn't take a lot of time. We completed the forms. He knew about the property. He had the property valued, and the mortgage was given.

Q. Fairly quickly?

A. Very quickly.

MR. HEALY: I think that might be an appropriate time to rise, Sir, unless you have some other ideas. I know you want to sit earlier tomorrow morning.

CHAIRMAN: Is it desirable that we try and start a little earlier tomorrow?

MR. HEALY: I think it might be preferable to stick

with the eleven o'clock start. I can't see any huge value or anything being achieved by an earlier start.

CHAIRMAN: The realities plainly we are making some progress, and the reality is that matters may proceed into Tuesday.

MR. HEALY: Yes.

CHAIRMAN: Well, if it were the case that we could terminate matters by adding on an extra hour tomorrow, I'd certainly do that; but whilst I think matters will conclude relatively early next week, and we won't be able to sit on Monday because of another Tribunal commitment, I think it's probably preferable we make it eleven o'clock tomorrow. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 2ND NOVEMBER, 2001 AT 11 A.M.