

THE TRIBUNAL RESUMED ON FRIDAY, 9TH MARCH, 2007,

AS FOLLOWS:

JOHN RYALL CONTINUED TO BE EXAMINED BY MS. O'BRIEN

AS FOLLOWS:

CHAIRMAN: Ms. O'Brien. Mr. Ryall.

Q. MS. O'BRIEN: Good morning, Mr. Ryall. Thank you very much.

A. Morning.

Q. Last evening, Mr. Ryall, we were just looking at some correspondence from Christopher Vaughan to you, dating from May to August 2003, and also, then, resuming in May of 2004. And you can recall that that correspondence consisted of letters from Mr. Vaughan forwarding to you copies of correspondence from the Tribunal which the Tribunal in which the Tribunal had raised inquiries with Mr. Vaughan in the course of its private inquiries and also copies of draft letters that he proposed to forward to the Tribunal in response, and also seeking your instructions.

Now, we had got to the letter dated the 10 August 2004, but before I return to that Mr. Ryall, I wonder if you wouldn't mind if I could just refer you to two letters that are not actually in the witness book, but are in the are in the yellow book, book 2, and that is Tribunal book 28/2/83.

It's the yellow book you were looking at yesterday. I wonder do you have one with you in the witness box?

A. No.

Q. If not, we will pass one up to you. Again it's just

correspondence from Mr. Vaughan addressed to you. And if I could ask you if you wouldn't mind, turning to the document behind tab 137 in that book?

A. Yes, mm-hmm.

Q. Do you see that?

A. I do, yes.

Q. It's dated 31 March 2003, it's from Mr. Vaughan to you:

"Dear John,

"As I mentioned to you in my letter of 11th of February, I would bill in respect of work done at the end of the month.

"I am aware from our discussions in Doncaster that certain pieces of correspondence can sometimes prove to cause problems and, therefore, my bill has no narrative.

"The two areas that the bill covers are:

"1. The work done with you in respect of the Doncaster project both at and following the meeting in Doncaster, and

"2. Tribunal work which Aidan and I have been dealing with. I will not go into any details but you can no doubt speak to him and he will explain what has occurred over the last two months."

You see that there?

A. I do, yes.

Q. Dated 31st March. Now, in that letter he has referred to correspondence as sometimes proving to cause problems, and he has indicated that you would be aware from your discussions with him in Doncaster of that matter. Can you recall what those discussions were and what correspondence

he was you were referring to when you had those

discussions?

A. He was referring to the letter of to Michael Lowry of the

25th of September.

Q. Right. And was it only that letter that was being

discussed at the time?

A. Yes.

Q. And there, he is forwarding you a bill and he is indicating

that the bill covers I will just come back to that in a

moment. He is saying that the work done with you in

respect of the Doncaster project itself and also Tribunal

work with Aidan "which Aidan and I have been dealing

with. I will not go into any details but you can no doubt

speak to him and he will explain what has occurred over the

last two months."

Now, that seems to suggest that you were in contact with

Mr. Aidan Phelan relation to this matter in the early

months of 2003, you see that?

A. Yes.

Q. And do you recall discussing with Mr. Aidan Phelan what

that Tribunal work was that he had an involvement with

Mr. Christopher Vaughan in?

A. I understand that Mr. Vaughan wanted to get his files back

from Carter-Ruck so that he could respond to the letters

that the Tribunal had sent to him.

Q. And why would Mr. Aidan Phelan need to be involved in that?

A. Because he obviously had also got a letter and he wanted to

be able to respond, as well.

Q. So they were both considering how they should respond to the Tribunal, is that right?

A. I think Mr. Phelan wanted to refresh his memory about the transaction, because obviously he hadn't been involved for some time on it.

Q. I see. And in fact, at that time, between in the three months prior to 31st of March 2003, the inquiries which the Tribunal was making of Mr. Christopher Vaughan related to the letter of the 25th of September of 1998?

A. That's right, yes.

Q. That letter having featured in an article in The Irish Times in January of 2003?

A. Yes, that's right, yes.

Q. And it was that work, therefore, that Mr. Aidan Phelan was involved in with Mr. Christopher Vaughan?

A. I understand, yes.

Q. Can I just ask you, there, you will see in the second paragraph of the letter when Mr. Vaughan refers to "pieces of correspondence" that have caused problems in the past. He is referring to it in the plural, which would seem to suggest that it wasn't just the letter of the 25th of September of 1998 which you discussed in Doncaster and the problems that could cause; but other items of correspondence. Do you see that?

A. I see that, yes, but from my point of view the only document we referred to in our discussions in Doncaster was

the letter that we had included in with the police complaint.

Q. He didn't mention any other letters in relation to

A. No.

Q. to the Cheadle project or indeed the Mansfield project?

A. No, he did not.

Q. Were you aware of those difficulties that had arisen in relation to correspondence regarding the Cheadle project at that time?

A. I certainly was aware at some stage because I know we did include those letters with the police complaint at one stage. But as to when that was I can't be sure, but it was included as one of the exhibits to the police complaint at a later stage.

Q. I'm sorry, I wonder are we at cross-purposes. What correspondence now is included as an exhibit with the police complaint?

A. There was some different versions of letters, I think, in relation to some release properties.

Q. I see. With the police complaint?

A. I believe so. I think it was included with one of the exhibits. It was certainly given to Carter-Ruck, anyway.

Q. And was that your statement?

A. No, it may not be the information was certainly given to Carter-Ruck.

Q. I see.

A. It may have been to do with Mr. Vaughan's I can't quite

remember but I know I did get copies of letters from William Fry which had been and gave them to Carter-Ruck.

Q. And how many letters were there, do you remember?

A. I don't know, two or three, or something like that.

Q. Two or three letters?

A. I can't remember, but there were certainly some letters.

Q. Were they the long form/short form letters which the Tribunal had heard evidence in July of 2002?

A. I suspect they were, yes. I think it was they were certainly letters that were already in the public domain.

Q. And were there any others letters that weren't in the public domain?

A. I don't believe so, no.

Q. And I am just trying to understand what the relevance was of those other letters to the police complaint, the long form/short form letters. What was the relevance of those letters to the police complaint or the police inquiry, do you know?

A. I think it was certainly it must have been in response to a request for information from the police. I really can't recall at this stage but all I know is that I did contact William Fry and got copies of them and gave them to Carter-Ruck.

Q. Right. Now, if I can just turn ask to you turn over to flag 140 in the same book, there is another letter about three months later, 11th of July 2003, again from Mr. Vaughan to you:

"Dear John,

"It was agreed that I would submit fee notes on a three-monthly basis on the amount of work that I had been involved in over that period.

"As before, I will be very happy to give you a detailed breakdown if you require, but I have been involved both in DRFC matter and in respect of the Tribunal. Unfortunately, it does seem as though there may be more work on this front to come.

"Yours sincerely,

Christopher Vaughan"

And he enclosed a fee note with that, also, on the 11th of July?

A. That's right, yes.

Q. In relation to all of those fee notes would it correct to say that the process of arranging to have them paid was that you would submit them to Mr. David Sykes?

A. That's right, yes.

Q. And was it Mr. Sykes then who would arrange to have them paid?

A. That's right, yes.

Q. All of this correspondence that you received from Mr. Christopher Vaughan, presumably you kept on a file, is that right, in your Doncaster file?

A. Yes, I would have, yes.

Q. And to this day you would have retained that file?

A. I would imagine so, yes, mm-hmm.

Q. Now, if we can just go back to the other book that we were looking at yesterday. That is Book 79 and we were looking at the letter of the 10th of August which is behind subdivider P of Divider 6B.

Sorry, we will just try and get a it's a letter of the 10 August. In any event I will read it out to you again:

"Dear John,

"I refer to our recent telephone conversation as to this.

I understand the Tribunal is now on holiday for the whole of August. Just so there is no misunderstanding between us, under no circumstances will I appear either formally or informally before the Tribunal or its officers until such time as we have discussed the purpose of my appearing before the Tribunal in further detail.

"This is not because I would in any way want to mislead or confuse the Tribunal, but as we have discussed on several occasions previously, my contemporaneous knowledge of the various people involved in the acquisition of the St. Columba's Church site in Cheadle, the land at Mansfield and the shares in Doncaster Rovers Football Club Limited is vastly different from my current knowledge of these people and their reasons obtained from a variety of different sources.

"It is very difficult to try and restrict the parameters of my knowledge to that which was current at the time that the three transactions were taking place without having that knowledge supplemented by the subsequent information given

to me.

"I have copied the files that the Tribunal has already seen in relation to the acquisition of St. Columba's Church and the land at Mansfield and given copies to my solicitor, Duncan Needham. I have also copied all the correspondence that I had with the Tribunal, Peter Carter-Ruck, yourselves and Michael Lowry's office and have passed that on to Duncan Needham as well so that he is aware of the whole background to this matter. I will also spent time with him, briefing him as to the background and told him to look at the Tribunal's website. If you type my name into most search engines it immediately links me to the Tribunal. I am, therefore, enclosing a note of my charges which relate purely to this matter up to today's date."

And that was his letter to you on the 10th of August.

Now, I just want to ask you in relation to that letter, Mr. Ryall. You see that what Mr. Vaughan was saying to you is that he did not want to mislead the Tribunal but that his "contemporaneous knowledge of the various people involved in the acquisition of St. Columba's site in Cheadle, the land at Mansfield and the shares in Doncaster Rovers Football Club was vastly different from his current knowledge of those people involved and their reasons obtained from a variety of different sources".

And he said that he had discussed that with you on "several previous occasions". You see that?

A. Mm-hmm.

Q. And that seems to be his expression of what was his then concern regarding meeting the Tribunal and being interviewed regarding the three transactions. Do you see that?

A. Mm-hmm.

Q. Now, from your several discussions with Mr. Vaughan with regard to that matter, can you tell me who the variety of different sources were from whom he had acquired his current knowledge of those three transaction?

A. I think we actually went through this letter yesterday and I said to you that the only discussions that I had with him was in relation to the Doncaster project.

Q. Yes. Well then in relation to the Doncaster project, it's limit it to that then for a moment. Who were the people from which he had obtained?

A. He didn't tell me.

Q. His current knowledge?

A. He didn't tell me.

Q. He didn't tell you?

A. No.

Q. Well, who had he been dealing with now, Mr. Ryall, from whom he could have obtained that knowledge?

A. I would have thought he really dealt with Aidan Phelan. He dealt with Kevin Phelan, he dealt with me.

Q. Yes. Did he deal with anybody else?

A. Not that I am aware of, no.

Q. So Aidan Phelan, Kevin Phelan and you?

A. Mm-hmm.

Q. Now, I think from what you have said and it's clear from the documents, you didn't get involved in this matter until maybe June of 2002, isn't that right?

A. That's right, yes.

Q. So I take it you'd agree with me that you really wouldn't have been in a position to advance his knowledge regarding the people involved in the transaction, as the transaction occurred, back in 1998?

A. Yes.

Q. So it must have been either Mr. Aidan Phelan or Mr. Kevin Phelan?

A. Probably, yes. Mm-hmm.

Q. Now, can I just ask you to go over the page to the next tab, which is a letter again from Mr. Vaughan enclosing a copy letter of the Tribunal and a copy of his reply. It's dated the 20th of August. He has enclosed a letter from the Tribunal of the 17 August:

"Dear Mr. Vaughan,

"Thank you for your letter of 28th of July last in which I note the dates on which your solicitor, Mr. Duncan Needham, is available. I note also that you are available for all of these dates but that you have a personal difficulty on 1st September.

"I confirm that members of the Tribunal legal team would be anxious to meet with you and your solicitor on Thursday 2nd September next. It would probably be more convenient to

arrange the meeting in London and if you could let me know the time at which it would be convenient for you both to attend, I will myself arrange rooms at the Law Society in Chancery Lane and I will also organise the attendance of a stenographer. Subject to your own views, I would suggest that it might be convenient for all round to commence the meeting at 2 p.m. in the afternoon."

And then enclosed with that was his letter of the 20th of August:

"Dear Mr. Heneghan,

"I have your letter of the 17th of August which arrived on the 19th. I tried to speak to you on the telephone but I was told you were away until Monday.

"Unfortunately, Duncan Needham, my solicitor, is unavailable on Tuesday 2nd September.

"The only dates that are available now in September are 9th, 13th, 14th, 20th or 22nd.

"Personally, I would prefer not the 9th, but if absolutely essential, I could make that day available.

"Perhaps we could speak on the telephone about this matter because I think it would be quicker and easier than dealing with it by correspondence."

You see that?

A. Mm-hmm.

Q. So there is Mr. Vaughan keeping you up-to-date on arrangements to meet members of the Tribunal legal team in London and indicating keeping you up-to-date as to the

dates on which that meeting might take place?

A. That's correct.

Q. And you would have put that on your file, presumably, as well?

A. We would have, yes, mm-hmm.

Q. Now, if you go over the page, there is

A. Well, I don't know whether he sent me this letter, actually. Does it say that?

Q. Well, there is a fax cover sheet you see?

A. Sorry, sorry, yes.

Q. Then if you go over the page again to tab R. It's a letter dated 23rd of August 2004, again from Mr. Vaughan to you:

"Dear John,

"I spoke on the telephone this morning to Michael Heneghan, Solicitor to the Tribunal.

"We have agreed that a meeting will take place at 2 p.m. on Thursday, 9th September 2004, at the Law Society's Hall in Chancery Lane, London.

"Those present will be me and my solicitor, Duncan Needham.

From the Tribunal there will be Michael Heneghan, John Coughlan, SC, and Jerry Healy, SC.

"I think the Tribunal were slightly annoyed that we could not meet on the 2nd September 2004, but unfortunately, unbeknown to me, Duncan Needham has had to change his holiday plans and was going to be away on that day.

"What I have agreed with Duncan is to spend Tuesday 7th September 2004 going through the various files with him.

"I wonder if you or anybody from the Westferry legal team want to be present either on the 7th September 2004, or what might be more convenient would be to meet in London in the morning on the 9th September 2004 before we attend before the Tribunal members.

"I enclose a draft of a letter I would like to send to Mr. Heneghan. Could you please let me have your comments on it, if any."

And with that he has enclosed a draft letter of 23rd of August 2004 on which he has asked for your comments, if any:

"Dear Mr. Heneghan,

"I refer to our telephone conversation of this morning, and confirm that I will be attending a meeting on Thursday 9th September 2004 at the Law Society's hall, Chancery Lane, London, at 2 p.m.

"I understand that you will be present, together with two members of counsel, John Coughlan, SC, and Jerry Healy, SC.

I will attend with my solicitor, Duncan Needham.

"It would be helpful if you would let me know in advance what documents you would like me to bring to the meeting.

"I am also conscious that I have not answered your letters of the 14th of May and the 13th July last. Presumably the points raised in those letters can be dealt with at the meeting.

"If there are any other specific points you require clarification of, it may be helpful if you could give me

advance notice, so I can try and research the files so that the relevant information can be given to you at the meeting without undue delay."

And that was furnished to you for your comments. It's a fairly straightforward - I think - letter from Mr. Vaughan to the Tribunal confirming the arrangements for the private meeting.

So if we just turn back then to the letter 23rd of August to you as opposed to the draft letter which Mr. Vaughan proposed sending the Tribunal.

A. Mm-hmm.

Q. You have that there?

A. Yes.

Q. Yes. So in that letter Mr. Ryall, Mr. Vaughan is telling you, firstly, the date and time of the arrangements for him to meet with the Tribunal legal team in London in the course of its private work. 2 p.m. on Thursday the 9th September, isn't that right?

A. That's right, yes.

Q. And he is telling you the location of the meeting?

A. Mm-hmm.

Q. He is also telling you who is going to be there on behalf of the Tribunal, Mr. Healy and Mr. Coughlan and the then Tribunal's solicitor, Mr. Michael Heneghan, isn't that right?

A. That's correct.

Q. He is also telling you that he has arranged to meet with

his own solicitor on the Tuesday prior to the meeting, the 7th of September, to go through the various files with him, isn't that right?

A. Mm-hmm.

Q. And he has invited members of your legal team to that meeting and if that is not convenient, he has invited members of your legal team, of Westferry's legal team, to meet him the morning of the 9th of September prior to his arrangement to meet with members of the Tribunal legal team at 2 o'clock on that day, isn't that right?

A. That's right, yes.

Q. Can you tell me, did members of Westferry's legal team meet with Mr. Vaughan prior to his meeting with the Tribunal legal team?

A. No.

Q. Why is that?

A. I didn't ask them to.

Q. You didn't ask them to?

A. No, and I didn't attend either, so...

Q. I see. Was this your decision Mr. Ryall?

A. It was yes.

Q. Your decision and nobody else's?

A. Yes, mm-hmm. As I think I told you yesterday he was writing to me and I didn't regard it as my role to give him instructions.

Q. Even though he clearly considered it your role to give him instructions, isn't that right?

A. He did, yes. But I think I explained that to you yesterday, that he assumed as he was our solicitor that he should get instructions from us but that was not my view of this, that he was dealing with the Tribunal so he should make his own decision.

Q. Why didn't you ever write to him and tell him that "You are dealing with the Tribunal, the Tribunal is looking to you for assistance, you mustn't be" if you just bear with me for a moment - "you should not be asking me for instructions"? Why didn't you write him a letter in those terms if that was the position?

A. Because I think we were I suppose we were encouraging him to cooperate with the Tribunal and obviously if he had kept us informed at least we knew what was going on and could say at least, "please go to this meeting".

Q. So you would know what was going on if he kept you informed?

A. Yes mm-hmm.

Q. And of course you put all of these in a file in your office, isn't that right?

A. Yes.

Q. And that is in Island Capital?

A. It is, yes.

Q. And where are the offices of Island Capital?

A. In the 6th floor of Grand Canal Quay.

Q. In the Malt House?

A. No, the Malt House is a separate building.

Q. A separate building? Is that in the same area that

Mr. O'Brien Senior's office is?

A. It is, yes.

Q. And what Mr. Sykes, is his office near you?

A. It is, yes.

Q. And Mr. O'Brien Junior, what about his office?

A. It would be in the same building, yes.

Q. Who did you tell about the meeting, Mr. Ryall?

A. I think I told William Fry, I think, you will actually, but I can't remember now.

Q. Well, were William Fry Westferry's solicitors at that stage?

A. No, but they were Mr. O'Brien's solicitors.

Q. Right. Did you tell Westferry's solicitors, LK Shields?

A. I don't believe so.

Q. Right.

A. I can't recall now but I don't believe so.

Q. You told Mr. O'Brien's solicitors, William Fry?

A. Yes.

Q. And who were you dealing with in William Fry?

A. I would have thought I told Owen O'Sullivan but I can't be sure.

Q. Right. Is there anybody else that you dealt with in William Fry other than Owen O'Sullivan?

A. I don't think so, no.

Q. Now, if you just go over to Divider T, I think you can skip over S. S is just the Tribunal's letter to Mr. Vaughan

enclosing books in anticipation of the commencement of its public sittings for the following week, I think scheduled for the 15th of September and in the event didn't proceed in until the 16th of September. And here on the 14th of September there is another letter from Mr. Vaughan to you:

"Dear John,

"I refer to our telephone conversation of yesterday afternoon and I enclosed herewith a copy letter that has been sent to me, dated 10th September 2004 by the Tribunal of Inquiry.

"Accompanying the letter is a ring binder containing evidence and information to be presented to the Tribunal.

"If you need to see the binder please, let me know, but on the basis of our telephone conversation it would seem as though you have the same binder already.

"Late yesterday afternoon I had a fax from William Fry, Solicitors, acting on behalf of Denis O'Brien Junior. I subsequently spoke to Tom Reynolds at William Fry who wanted a copy of my file relating to my dealings with the Tribunal.

"Because of the size of it I have copied it and sent it to him today by DHL, although I did fax about 40 pages through to him late yesterday afternoon.

"I have now worked out my costs relating to my attendance before the Tribunal last Thursday. Could you tell me how I should deal with this?"

You see that?

A. Mm-hmm.

Q. How did he deal with his costs for meeting with the Tribunal in London?

A. I believe he sent us a bill for both his own costs and for Mr. Needham's.

Q. Yes. And did you pay that?

A. We did, yes.

Q. Were you aware that the Tribunal had made it clear to Mr. Vaughan that it was quite happy to meet his personal costs and his legal costs in connection with that meeting in London?

A. I don't believe so, no.

Q. Right. Now, can I just ask you to refer back, again, to the yellow document book. There is just one last document I want to refer you to in that book. Again, it's towards the back of the book. And it's document 144. And this time it's a letter from Mr. Vaughan to William Fry. It's the same date as the letter that we have just written out read out to you?

A. Mm-hmm.

Q. It's your reference "Owen O'Sullivan/Tom Reynolds" and in fact he had referred to you in his letter of the same date to the contact he had received from William Fry on the 14th of September:

"Dear Sirs,

"The Moriarty Inquiry and Denis O'Brien Junior.

"I refer to your letter of 13th of September and the

telephone conversation I had with Tom Reynolds yesterday afternoon.

"I have faxed through some of my file to you late yesterday afternoon. Unfortunately, I was not able to be in the office to check that the fax went through to you, and looking at the number of pages and the fax receipt, I am conscious that some pages did not seem to go through to you.

"However, I have photocopied the whole of my file so far as it relates to the Tribunal, which is enclosed herewith, and is being sent to you by DHL.

"As I explained on the telephone to Tom Reynolds, I attended before Mr. John Coughlan, SC, and Jerry Healy, SC, together with Michael Heneghan, the Solicitor to the Tribunal, on Thursday last, 9th September. I was assisted by my solicitor, Duncan Needham - you will see correspondence from him in the files which accompany this letter.

"At my instance, a firm called Marten Walsh Cherer of 27 Cursitor Street, London, EC4A 1LT, telephone no, sent one of their reporters - Michael S. Thear. They did promise me a copy of the transcript by Monday 13th September, but, to date, it has not arrived.

"I strongly suspect that because the Tribunal requested the transcript, it will be sent to them and then only to me as an afterthought!

"I hope that the correspondence from the two files is

self-explanatory. If there are any points that I can answer, please do not hesitate to contact me.

"Your client Denis O'Brien spoke to me personally on the telephone prior to my attending before the Tribunal in London, and said that any bill should be sent to him, together with that of Duncan Needham, my solicitor.

"I am arranging for my costs together with the work that I have done in conjunction with the file being sent to you, to be sent to John Ryall at Denis O'Brien's office."

You see that?

A. Yes, I do, yes.

Q. And from that letter I think it's clear that Mr. O'Brien spoke to Mr. Vaughan before he attended the meeting with the Tribunal in London at 2 p.m. on the 9th of September, isn't that right?

A. That's right, yes.

Q. Were you aware that Mr. O'Brien had telephoned Mr. Vaughan?

A. I think so, yes.

Q. You were?

A. Yes.

Q. Were you there when he telephoned Mr. Vaughan?

A. No I wasn't but I think I had told him that Mr. Vaughan was meeting the Tribunal so he was aware that that meeting was taking place.

Q. I see. So Mr. O'Brien was aware at all times that Mr. Vaughan was meeting with the Tribunal on the 9th September the Tribunal legal team?

A. I believe so. Well, he certainly was aware that there was a meeting taking place. He may not have been quite aware of the exact date of it but he was certainly aware that a meeting had been arranged for early September.

Q. The position had been from January of 2003 that Denis O'Brien had met Christopher Vaughan's fees, legal fees and costs for inquiries made of him by the Tribunal in relation to Doncaster, is that right?

A. That's right, yes.

Q. Why would he have needed to ring Mr. Vaughan to tell him that not alone would he meet his costs, that he would meet his solicitor's costs prior to the meeting of the 9th of September?

A. I don't know why he felt it necessary to do that but he may have well felt that he just wanted to make sure that Mr. Vaughan was aware that all his costs would be paid.

Q. Right. To your knowledge had Mr. O'Brien ever had any dealings with Mr. Vaughan prior to that telephone call?

A. I don't think so, no.

Q. So this was the first time Mr. O'Brien ever contacted him, Mr. Vaughan, personally himself?

A. I think so, yes.

Q. I see.

CHAIRMAN: Obviously you are talking about Mr. O'Brien Senior?

A. No. This is Mr. O'Brien Junior.

MS. O'BRIEN: Now, Mr. Ryall, just the couple of documents

that were provided to you before we sat this morning at 10:30 and I think they are just taken probably from your own files in relation to the work that you were doing on Doncaster.

And do you have those there?

A. I do, yes, mm-hmm.

Q. Now I am just not quite sure the documents I am working from are in the same order, so if you just bear with me for a moment. Yes. If I just ask you to look at the first document. This is the directors' report on Doncaster Rovers Football Club Limited for the year ended 31st May 2001?

A. Mm-hmm.

Q. And you see it's signed by you as Secretary and it was approved by the Board on the 18th of December 2002?

A. That's right.

Q. Could you just tell me, who would have prepared that report?

A. Craig Tallents.

Q. Craig Tallents. It says:

"The directors present their report and the financial statements for the year ended 31st May 2001.

"Principal activities:

"The principal activity of the company continued to be that of owning a football ground."

Of course, by then, the actual club had been sold to Patienceform so it was just really the ground itself was

the club's business or the Limited Company's business?

A. That's right.

Q. "Directors:

"The directors who served during the year and their beneficial interests in the Company's issued share capital were:

"Aidan Phelan (resigned 31/10/2002)." And he had no A or B shares.

"John Ryall (appointed 16/10/2002)." And again, without any beneficial interest in the issued share capital of the company."

And then "D. Sykes (appointed 16/10/2002)." And again, with no beneficial interest in any of the A or B shares in the company.

"The report of the directors has been prepared in accordance with the special provisions of Part VII of the Companies Acts, 1985, relating to small companies.

"This report was approved by the Board on 18th December 2002 and signed on its behalf" by you.

And that records that, in fact, Aidan Phelan was a director of the limited company up to the 31st of October 2002, isn't that right?

A. That's right, yes.

Q. So although he had, if you like, passed the baton over to you, to an extent, earlier in that year, he did actually stay on as a director to the end of October of 2002?

A. That's right, yes.

Q. And you and Mr. David Sykes were appointed directors on the 16th of October 2002 and I think you were also appointed Secretary?

A. That's right, yes.

Q. That was on Mr. Christopher Vaughan's resignation as Secretary?

A. Yes, I am not 100 percent certain.

Q. Well, I think Mr. Christopher Vaughan was Secretary up to that date?

A. Date, yes.

Q. So it must have been on his resignation that you were appointed?

A. Yes.

Q. You can leave the next document. Then the document following, which is a file note

A. Yes.

Q. of a meeting which you had with Mr. Aidan Phelan, signed by you.

"File note.

"Meeting with Aidan Phelan.

"David Sykes and John Ryall met with Aidan Phelan to discuss the investment in Doncaster Rovers held through Westferry and the possibility of putting a loan back in place secured against this investment.

"Aidan outlined the background to the deal and outlined what the main assets of the club are: namely, two leases, one over the football club (65 years) and the second over

the carpark (8 years to run) but there is an automatic right to renew in respect of this lease. He confirmed that the business of the football club had been sold to a third party.

"Aidan also explained the rationale for the purchase and the development potential of the site. He also gave a brief update on the current attitude of the local council to the plans and to discussions with potential partners. He undertook to revert to us for a more detailed discussion over the next number of weeks.

"He advised that the point of contact was a solicitor, Christopher Vaughan. He rang Mr. Vaughan in my presence and indicated that I would be in touch."

Now, on although that note isn't actually dated, Mr. Ryall, on your file, it appears to have been created sometime before June of 2002?

A. Yes, I think it dates back to 2001.

Q. You think it dates back as early as 2001?

A. Yes.

Q. I hadn't realised that your involvement in Doncaster had arisen as early as 2001?

A. I think the background to this is that this was around the time of the Eircom deal and we were putting some financing in place.

Q. I see.

A. And we were looking to see if we could use the Doncaster property as security for a loan.

Q. Right. Right. And Mr. Phelan telephoned I think Mr. Vaughan in your presence and indicated that you would be in touch with him?

A. I think so. I actually had forgotten about this conversation. I think it related to we were going to use the shares in the club as security and we wanted to know the whereabouts of the share certs.

Q. I see. And was that ever progressed, the use of the shares as security?

A. I think it was, yes.

Q. So would you have proceeded

A. I think, afterwards, the lawyers would have dealt with it because they would have obviously drafted the security documents.

Q. But what I am trying to get at or tease out with you is would you have been in touch with Mr. Vaughan?

A. Once I confirmed where that he held the share certs, I would have put the lawyers in touch with him.

Q. I see. I see. Now, if you go over the page, then, let me just check that it's in the correct order in the documents that you have. It should be:

"File note.

"Subject: Westferry/Doncaster" yes, "Note of meeting of the 27th of June, 2002.

Subject: Westferry/Doncaster Rovers grounds.

Date: 27th June, 2002.

"Note of meeting.

"Aidan Phelan and I met with Mike Clynch on 26th June 2002.

"The purpose of the meeting was twofold. Firstly, Mike Clynch provided a brief history of the site and explained the reasons behind the failure of the first proposal for the site. Secondly, he provided an update on recent developments and then discussed the need to finalise the option agreement as soon as possible.

"History of the site.

"Mike Clynch is a former official with Doncaster City Council and has been involved in a number of regeneration projects in Doncaster. He explained that when Westferry acquired its shareholding in Doncaster Rovers in 1998, several events conspired to stop the retail development plan for the site, which had been the rationale for the acquisition of the site in the first place."

He then referred to "Out of Town Shopping Centres".

Then "Ownership": "The previous owners of Doncaster have had a checkered history."

And then "Corruption in the City Council."

And then on a heading: "Recent Developments:

"Certain developments have taken place which would appear to improve the chances of developing the site."

And he goes on just to outline there the City Council had produced a plan. Doncaster racecourse, which was opposite, was also subject to a development plan. The City Council had plans to build a bus corridor and the City Council had allocated  $\frac{1}{2}$  million in 2002 to begin plans for the

construction of a local community stadium."

Then, below that: "Mike Clynch had been retained by Aidan to produced a proposal for the development of the football ground site. Mike Clynch also works for a long-established local building company, Strata. This company had expressed an interest in acquiring the site and has done some preliminary work on developing plans for the site in conjunction with Mike Clynch. DOB met with Mike Clynch in November 2001 and went through the general plans for the site and agreed in principle to enter into an option agreement with Strata whereby Strata would commence the planning process and would be given an option to acquire the site. It is believed that a locally-based applicant would have a much better chance of obtaining favourable planning decision.

"Mike is keen to finalise the terms of the options agreement. A first draft has been prepared so that Strata can then commit to putting resources in place to prepare the detailed application.

"The main points of contention in the option agreement are," and he sets those out, 1, 2 and 3.

"It was agreed that we would let Strata's lawyers have our thoughts on these three issues by Tuesday/Wednesday of next week and we indicated that we were committed to agreeing the option agreement as soon as possible and would hope to have it agreed by Friday 6th July.

"We then visited the site of the new stadium and drove

around the general environs of the football grounds. The main impression is that a good deal of regeneration is taking place in the city. EU funds have been made available to fund part of these works."

And that looks like your file note of a meeting that you had

A. That's right, yes.

Q. just judging from the way you prepare a file note from the documents?

A. That's right, yes. That is the meeting I think we explained yesterday that I went to meet Mike Clynch with Aidan Phelan in June so that is the result of that meeting.

Q. Yes. And that in Doncaster?

A. Mm-hmm.

Q. And that was on the 26th of June 2002?

A. Yes.

Q. So you were getting fairly involved in all of the detail at that stage?

A. Yes.

Q. Now, let me just see what the next document is here. Yes, the next document is another file note of a telephone conversation which you had with Aidan Phelan on the 3rd of July 2002:

"I spoke with Aidan Phelan on the following items:

"1. The retention re the claims for warranties, i.e. 1/2 440,000.

"2. The amount due of i.e. 1/2 250,000 in relation to the original purchase price.

"3. The status of the leases."

And you then had a detailed discussion, I think, in relation to each of those items which would have pertained to the litigation which was then pending between Dinard and Westferry, isn't that right?

A. That's right, yes.

Q. So you were really dealing with Aidan Phelan on two fronts at that stage in late June and early July, both in relation to the development side of the Doncaster project and also in relation to the litigation?

A. That's right, yes, mm-hmm.

Q. Then if I could ask you to go on to the note of a meeting then on the 22nd of July of 2002. Again, I think it's your note, isn't that right?

A. Yes.

Q. 22nd of July.

"Subject: Westferry/Doncaster Rovers grounds.

"22nd July, 2002.

"Note of meeting.

"Mr. O'Brien and John Ryall met with Aidan Phelan to discuss future strategy in relation to Doncaster."

Then there is the legal proceedings.

"Some discussion took place on the issue of the warranty retention and the 250,000 still due under the original contract. Aidan outlined the history to how the retention had arisen and on his efforts to bring this to a conclusion, including his offer to accept binding

arbitration. Dinard had not accepted this offer and have issued legal proceedings. It would appear that they now accept that this course of action is expensive and have subsequently agreed to mediation.

"In terms of the strength of Westferry's case, Aidan believes that a good portion of the retention funds should be retained but he would have less confidence in the  $\frac{1}{2}$ 250,000 payment.

"We have incurred approximately  $\frac{1}{2}$ 100,000 already and Aidan agreed to ascertain what the likely costs would be going forward assuming that the mediation process is continued.

"Mr. O'Brien wondered if there was any merit in seeking to settle this case given the level of fees incurred. Aidan felt that whilst we had intended to lodge funds into court had the legal process continued, our legal advice at this point in time was that, given that a mediation process was now in train, such a course of action was not now appropriate.

It was agreed, therefore, to let the mediation process continue."

And that was a meeting with Mr. Phelan on the 22nd July 2002, really in relation to the litigation?

A. That's right, yes.

Q. And Mr. O'Brien was present there, presumably it was Mr. O'Brien Junior?

A. No, Mr. O'Brien Senior.

Q. Are you quite certain about that?

A. Certain, yes.

Q. It's just it's unusual if it was Mr. O'Brien Senior that would not be?

A. The reason that because I if it was Mr. O'Brien Junior I would have referred to him as DOB.

Q. I see. All right. Yes. Now

A. Because if you see over the page, there is a reference to

Q. Yes, yes, I have that in my documents.

"Option Agreement, Sale of Property."

And then you go on to discuss that:

"Mr. O'Brien advised Aidan that he did not wish to enter into a three-year option on the site but would rather seek to sell the site in its current state. To this end, he indicated that he wanted to involve John Mulcahy and Jones Lang La Salle to establish if it was possible to sell the site in its present state.

"Aidan advised that he felt some obligation to Mike Clynch given earlier discussions that Clynch had with DOB and felt therefore that he needed to be upfront with Mike Clynch on what our current thinking was. Mr. O'Brien indicated that if Clynch could get planning within a short time-frame he would stay with Clynch and the local developer. However, Aidan advised that this was not possible.

"It was agreed that Aidan would be upfront with Clynch and that he would make contact with John Mulcahy to get his view on the prospects for a quick sale.

"Subsequent to the meeting, Mr. O'Brien had a further discussion with Aidan. It was agreed that the monthly retainer arrangement with Mike Clynch (i.e. 1/2600 per month) should cease forthwith. Secondly, Aidan will provide any relevant information on the site to John Mulcahy. An initial meeting with John Mulcahy had been arranged for Friday 26th of July."

So Mr. Aidan Phelan is still fairly heavily involved in all of this?

A. Yes, it's a sort of a handover situation here.

Q. Yes.

A. So we are trying to get familiar with the case so that we can take it on.

Q. He was clearly the person from whom you were going to be able to get all of the detailed information that you needed to have in order to proceed and to progress matters, is that right?

A. That's right, yes.

Q. And of course, Mr. O'Brien Senior would have been in the same position as you; he needed to be briefed by Mr. Aidan Phelan?

A. Yes, mm-hmm.

Q. Just the document over the page is headed, "Doncaster Rovers Football Club Limited," and again, it seems to be a briefing document of some sort and there is a note, a handwritten note on the top of it, "copy of note gone to John Mulcahy ." Was this a note that you prepared?

A. It is, yes.

Q. It's a note that you prepared?

A. Yes.

Q. And that was based on the information that you'd obtained from Mr. Phelan?

A. Yes.

Q. Now, the next document is a letter from you to Mike Clynch and you will see that you were arranging a meeting with Mike Clynch and Strata development for Wednesday the 7th of August. Do you see that?

A. Yes, yes. That meeting actually never went ahead.

Q. So Mr. Phelan was still involved, certainly as of the 7th of August?

A. No, I I think actually this meeting, Aidan may have arranged that a meeting would take place, but I don't think he was actually going to attend it.

Q. I see. I see. You were going to attend it yourself?

A. Yes, yes.

Q. Would Mr. O'Brien Senior have been at that meeting that you were arranging or not?

A. I don't think it was intended that he would be there but as I said, the meeting did not actually go ahead.

Q. Right. Right. And we see then over the page there is a fax from Mike Clynch and this time he is sending the fax to you and to Helen Madden on the 23rd of August, so it looks as if, perhaps, Mr. Aidan Phelan is stepping aside?

A. Yes.

Q. Around the early part of August or the mid-part of August.

A. I think part of the overlap would have been that I think

I actually probably was on holidays in the middle of July,

so I wasn't actually here.

Q. Now, would it be correct to think for us to assume that

Mr. Aidan Phelan really was available to you during all

that time that you were reading into and being briefed

on

A. Yes, he would have said

Q. the Doncaster

A. "If you wanted to clarify anything, give us a shout," yes.

Q. Yes. And you had fairly intensive dealings with him, you

were going to meetings with him in Doncaster, you were

attending meetings with him in Dublin, he was

A. No. I wouldn't call it intensive.

Q. Regular?

A. We had one meeting in Dublin, we had one meeting in

Doncaster and a couple of phone calls. I wouldn't have

called it that intensive.

Q. Yes. But you were still in touch with him on a fairly

regular basis in relation to it?

A. For that 4 to 5 week period, yes, yes.

Q. Yes. Now, the final document, just in this booklet of

documents, is an e-mail it seems to be from Denis

O'Brien to Denis O'Brien Senior and to David Sykes, it's

dated the 5th of September 2002 and it's cc'ed to you, as

well. You see that?

A. That's right, yes.

Q. And "Importance: High.

Sensitivity: Confidential.

"Dear Dad and David,

"I met with Mike Clynych today on a very quick visit to Doncaster. He is a charming guy and seems to have a lot of knowledge regarding the planning difficulties that we face in Doncaster. He himself resigned as a planning officer from the city about 12 months ago and he has been on a modest retainer with us which Aidan Phelan agreed (circa  $\text{€}1/2300$  per month)

"Mike explained that he was getting a little disillusioned about the project as he had started a number of" I am not sure what that is "with the Council to see if he could get them to support a mixed residential development for the site. In the intervening period, he had not heard much from Aidan and has not been paid since last March. Mike has also put forward a suggestion that we would consider giving an option to a local building firm for the site with a fixed price of  $\text{€}1/24$  million. I told Mike that the length of the option, i.e. 3 years, and the fact that it was only  $\text{€}1/23$  million was not very interesting.

"There are a number of problems with the site, the first one being that the lease of the carpark at the front of the grounds will expire within two years and it is going to be difficult to get the Council to renew this lease. It is complicated also by the fact that it is used for bus

parking for Doncaster Rovers, which is across the road.

"The original intention when it was sold to Aidan by Kevin Phelan was that the whole site could be used by Asda as a new supermarket and Mike told me that this was going to be totally impossible as the Council has already said that they would receive an application but not recommended it.

"I left Mike with the following action points:

"Mike would be paid up-to-date on his retainer. David Sykes and John Ryall should visit Doncaster to meet with Mike and make recommendations as to what we should do.

"Christopher Vaughan should also attend this meeting as he knows the terms of the lease inside out and would be invaluable in giving a legal viewpoint, e.g. there was a letter for the Chief Executive at Doncaster City Council saying that he would support a proposal from us within reason, et cetera, et cetera.

"I told Mike that there was no upside to us giving anyone an option over three years at a fixed payment of 4 million. If that was the case, I would prefer to sit on the land for 10 years. The grounds would be an eyesore for the Council and sooner or later they would give us planning permission.

"Instead, I suggested that we would consider making a planning application before Christmas and wait six months to get a result. Mike mentioned to me that there is a local architect working on a plan no-foal-no-fee basis, plus, for a modest amount of money, we could increase the value of the site dramatically. It is going to be

difficult to reach a conclusion on this without you visiting the site and getting a feel for it yourself."

"Kind regards," and that is from Denis O'Brien.

So we see that Mr. O'Brien himself became involved with this on the 5th of September?

A. Yes.

Q. And he met Mr. Clynch in Doncaster on that date?

A. That's right, yes.

Q. And he then reported what had happened to his father and to David Sykes, to whom you reported?

A. That's right, yes.

Q. Did you take your instructions in relation to all of this, Mr. Ryall, from Mr. Sykes?

A. Well, we would have at that stage, it would have been really from Mr. O'Brien because he was Mr. O'Brien Senior because he was.

Q. Right. And when Mr. O'Brien Senior stepped out of the matter because as far as he was concerned he was only really brought in to deal with the Kevin Phelan dispute?

A. Yes.

Q. And the Dinard litigation it was then Mr. Sykes, is it?

A. It's Mr. Sykes, yes, mm-hmm.

Q. Thank you very much.

CHAIRMAN: Any questions from other counsel?

Mr. O'Donnell?

THE WITNESS WAS EXAMINED BY MR. O'DONNELL AS FOLLOWS:

Q. MR. O'DONNELL: Mr. Ryall, good morning. I appear on

object of half Mr. Lowry and Mr. O'Connor and I want to ask you just a few questions about this matter. I think you said that you became employed with, if I might call it, the O'Brien interests in 2001?

A. That's right, yes.

Q. And that you are by profession a chartered accountant, is that correct?

A. That's correct, yes.

Q. And prior to 2001 had you any involvement with the were you employed by any other part of the O'Brien

A. No, no.

Q. interest. So you were coming to this as a new job, is that right?

A. Yes, that's right, yes.

Q. And in the middle of 2002 you were asked to take on the management of the Doncaster project, is that right?

A. That's right, yes.

Q. And that involved two things: What we have seen the attempt to develop the property on the one hand?

A. Mm-hmm.

Q. And I suppose in the short-term the management of a messy legal dispute about the retention monies between Dinard and Westferry?

A. That's right, yes.

Q. And we know that in the course of the mediation issues arose, which have been the subject of discussion and investigation at this Tribunal. But in the period between

when you became involved in the middle of 2002 and the incident at the mediation, did you familiarise yourself with the business of Doncaster Rovers and the transaction that was involved?

A. Yes, I did, yes.

Q. And the transaction that was obviously the subject matter of the dispute?

A. Dispute, yes.

Q. And in doing so, did you come across any document that showed or indicated or suggested that Mr. Lowry had a legal interest or any other or any equitable interest in the land?

A. No.

Q. Did anyone tell you that Mr. Lowry had an interest the lands during that period?

A. No.

Q. Did anyone suggest to you that he had any connection with the project or the land or the transaction?

A. No, no.

Q. Did you come across any document that suggested he had any such involvement?

A. No, no.

Q. Did anyone say to you that this was a particularly sensitive project from the point of view of Mr. O'Brien or the O'Brien interests?

A. No.

Q. Did you come across anything that suggested to you that the

project or the dispute was in any way unusual?

A. No. No.

Q. And as I say, you were somebody who was just coming into the O'Brien business in 2001, and being put in charge of the management of these matters in 2002?

A. Yes, that's right, yes.

Q. Now, can I ask you just to look at one document in the second book of Tribunal documents at behind tab 101.

It's an e-mail that you sent to Ms. Collard on the 3rd of September.

A. Yes.

Q. Do you have that?

A. Yes.

Q. And in that e-mail you tell Ms. Collard that Mr. O'Connor is going to meet her and you tell her that Mr. O'Connor is not representing either Westferry or Dinard, but may be able to assist in resolving matters?

A. That's correct, yes.

Q. And I think subsequently on the that is a message which we know did not go to Craig Tallents directly?

A. Mm-hmm.

Q. Isn't that right?

A. I think so, yes.

Q. Yes. And on the 16th of September, Mr. Tallents meets you and you are discussing all the issues in relation to the dispute and the role of Mr. O'Connor comes up and as I understand it, and perhaps you can confirm this, you tell

Mr. Tallents on the 16th of September precisely what you have told Ms. Collard on the 3rd of September, isn't that right?

A. That's right, it also would have been said by Mr. O'Brien Senior.

Q. Yes. And Mr. Tallents, who was unaware of that, becomes somewhat concerned because he has had the meeting with Mr. O'Connor, thinking that Mr. O'Connor's role was different than he was representing Westferry, and he quite correctly communicates his concerns to the person with whom he is dealing, that is Ms. Collard, and Ms. Collard also becomes concerned

A. That's right, yes.

Q. and recommends to Mr. O'Brien or gets back in touch with you and Mr. O'Brien and discovers and I think you have said in your statement, that you confirmed to her what you had e-mailed to her on the 3rd of September?

A. That's right, yes.

Q. And nothing had changed in relation to Mr. O'Connor's role?

A. No, no.

Q. The only thing that had occurred was that Mr. Tallents had, understandably become concerned because of his misunderstanding?

A. Mm-hmm.

Q. Had communicated that to Ms. Collard, who appeared to have forgotten the the instructions that you had given or the information you had given her on the 3rd of September?

A. That's right, yes.

Q. And that, in a sense, resolved itself. Mr. O'Connor was no longer involved and save in one respect: That I think it was being suggested to you that Ms. Collard believed she had somehow in the intervening time been instructed that Mr. O'Connor's role was to represent Westferry?

A. That is what she seemed to get that impression yes.

Q. But there does not appear to be any document that would support that?

A. No, no.

Q. And you were her direct point of contact?

A. That's right, yes.

Q. You didn't change your instructions?

A. No.

Q. You said exactly the same thing to Ms. Collard as you had said to as you would then have said to Mr. Tallents?

A. Mm-hmm.

Q. Isn't that right?

A. That's right, yes.

Q. And looking at all this, in so much as we ever have to look at it by far the most likely explanation is that, perhaps quite understandably, Ms. Collard forgot what had been said to her on the 3rd of September and made a mistake, perhaps on learning from Mr. Tallents that he was concerned and he was under this misapprehension?

A. Sorry, I don't quite follow?

Q. Isn't that a much more likely and more plausible

explanation of the little kerfuffle that arose, rather than that between the 3rd of September and the 16th of September you or Westferry changed their position?

A. Oh, yes, certainly, yes, yes. There was no change in our instructions.

Q. As I say, the most likely and plausible thing is that Ms. Collard and that is not to reflect on her professionalism at all but the most likely explanation is that she simply got it wrong?

A. Yes.

Q. Thank you, Mr. Ryall. Thank you.

THE WITNESS WAS EXAMINED BY MR. McGONIGAL AS FOLLOWS:

Q. MR. McGONIGAL: Mr. Ryall, just a couple of matters of clarification. Ms. O'Brien asked you yesterday about the 135,000 finder's fee and the employer's national insurance contribution of 10,000-odd. I think that, in fact, was is dealt with in the contract document at 634?

A. That's right, yes.

Q. And it says that "Upon completion, pay the vendor's solicitors as aforesaid 135,000 plus a sum equal to the employer's national insurance contribution fund remuneration." I think you are aware of that?

A. That's right, yes, it was part of the contract.

Q. And the vendor's solicitors at that time I think were Reg Ashworth & Company, and they were acting for Dinard?

A. That's right, mm-hmm.

Q. And that sum of 135,000, I don't think was part of the

retention fund?

A. It was not, no.

Q. So it would have been paid with the purchase price?

A. To the vendor's solicitors, yes.

Q. Yes. The other thing that I just wanted to clarify was at

document 137, which is the letter of the 31st of March

2003, Ms. O'Brien drew your attention to the paragraph:

"I am aware from our discussions in Doncaster that certain

pieces of correspondence can sometimes prove to cause

problems and, therefore, my bill..."

And you gave the explanation about documents. And I think

there is correspondence of November 2002 from you to

from you Owen O'Sullivan, which was sent on, then, to

Carter-Ruck on the same date. The correspondence I think

they are referring to is the short-form long form

correspondence and they are on the Tribunal's files?

A. Yes.

Q. I think that is the correspondence?

A. I understood that the documents that Mr. O'Sullivan gave

were had been presented to the Tribunal previously, yes.

Q. And that is where they are to be found?

A. Mm-hmm.

Q. Thanks, Mr. Ryall.

A. Thank you.

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

Q. MS. O'BRIEN: Just three short matters, Mr. Ryall.

Mr. Ryall, Mr. O'Donnell asked you whether there was

anything to suggest to you in the project or the litigation that the project or the dispute was unusual. You remember that?

A. Mm-hmm, yes.

Q. And you answered no?

A. Yes.

Q. Can you tell me what other litigation you have ever been involved in in which there were two apparent instances of possible blackmail?

A. No, I think the question he asked was at that stage sorry, that is my answer to him is that when I got involved. Obviously when we attended the mediation the dispute became extremely different but in the period when I joined Island Capital to the meeting, setting up the meeting for Mr. O'Connor to attend with Ruth Collard, there was nothing to suggest that the litigation was in any way unusual.

Q. Nobody had told you, of course, about the difficulties regarding the reference to Michael Lowry in the fax of August of '99?

A. I wasn't in the context of the Kevin Phelan dispute.

Q. You weren't aware of that at that stage?

A. No.

Q. Nor were you aware when you went to the mediation of the letter of the 25th of September 1998, were you?

A. Not until that Thursday afternoon that there was a

Q. Yes. Nor were you aware that that letter had been received

by Mr. Denis O'Brien Senior prior to going to London to attend the mediation?

A. Yes, that's correct, I wasn't aware.

Q. Now, I think you also, in response to Mr. O'Donnell, indicated that you gave Mr. Craig Tallents the same explanation in relation to Mr. Denis O'Connor's capacity as you had to Ms. Ruth Collard in your e-mail of the 3rd of September to Ruth Collard in which you'd very carefully said that Mr. O'Connor was not acting on behalf of Westferry and he was not acting on behalf of Dinard, isn't that right?

A. Yes, I think I said, as I think I said yesterday, that comment was actually made by Mr. O'Brien at the meeting, not by me.

Q. Yes.

A. So he would have advised Mr. Tallents of the role that Mr. O'Connor was playing.

Q. Yes. It was Mr. O'Brien Senior?

A. Yes, Mr. O'Brien Senior.

Q. At the meeting of the 16th of September?

A. Yes.

Q. But matters went a little further with Mr. Tallents than they had gone with Ms. Collard in terms of her e-mail because Mr. Tallents was asked what he thought Mr. O'Connor was trying to get out of it, isn't that right?

A. That's right, yes.

Q. And then finally in relation to Ms. Collard's understanding

of Mr. Denis O'Connor's capacity and the capacity in which he was attending the meeting, I think you agreed with Mr. O'Donnell that the most likely explanation is that she had forgotten on the 10th of September the contents of your e-mail of the 3rd of September, isn't that right?

A. Well that would appear to be.

MR. O'DONNELL: Just before Mr. Ryall answers that question. I don't think that question was directed to what her state of mind was on the 10th of September; in fact, it was directed to her state of mind on the 16th of September, when Mr. Tallents rings her.

MS. O'BRIEN: I think in her statement she makes it quite clear, Sir, that her understanding between the 3rd and the 10th of September must have altered.

Well, let's take it on the 16th of September then and her understanding then and I think you agreed with Mr. O'Donnell, therefore, that she must have forgotten the contents of the fax of the e-mail of the 3rd of September on the 16th of September?

A. Well, that would seem to be the

Q. Did you never think of writing to her to say that she must have forgotten that?

A. But I wasn't aware that at that time that she had misunderstood.

Q. She made it very clear to you in her letter, didn't she, of the 17th of September?

A. But I had had a conversation with her the previous day when

I told when I reiterated that Mr. O'Connor was acting as an intermediary, not on behalf of Westferry.

Q. Yes. But in her letter of the 17th of September that she then wrote to you with her advice, where she advised that, in her view, it would be preferable that the meeting didn't proceed. She made it perfectly clear in that letter that when she met Mr. O'Connor her understanding was different, didn't she?

A. She did, yes.

Q. And did you not think of writing back to her to say?

A. But I had already told her the previous day, so I didn't believe there was a need to do so.

Q. Thanks, Mr. Ryall.

CHAIRMAN: Thank you, Mr. Ryall.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Aidan Phelan, please.

MR. AIDAN PHELAN, PREVIOUSLY SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Good morning, Mr. Phelan. Thank you for attending again. Of course you are already sworn from earlier occasions here and I am sorry you had to alter your problems from yesterday.

A. No problem. Thanks.

Q. MR. COUGHLAN: Good morning, Mr. Phelan. How are you?

A. Morning.

Q. I think if we look at Tribunal book 62, revised book 62 for the moment. I think you were initially asked about matters

relating to Doncaster and your involvement in that back in 2003 in the first instance and you gave certain responses which were incorporated into a form of memorandum at that time. And then there is a supplemental memorandum provided by you on the 5th of July 2004. So I will give you those to begin with and I think you understand the procedure that we'll go through those in the first instance and then we will come back to ask some other questions, is that all right?

A. Fine.

Q. OK. You can see it's at tab 4A there.

A. Yes.

Q. And it's a memorandum of information provided by you and you provided to the Tribunal with this information in response to queries raised by the Tribunal on 13th of January 2003. And I think the first question that you were asked at the time was the circumstances in which the opportunity to acquire Doncaster Rovers Football Club came to your attention and you informed the Tribunal that it was Kevin Phelan who approached you with this project in January or February of 1998, is that correct?

A. Correct, yes.

Q. And then you were asked the circumstances in which you retained the services of Mr. Kevin Phelan and Mr. Christopher Vaughan, the solicitor, and you informed the Tribunal that in light of this, you requested Mr. Kevin Phelan to oversee a due diligence in relation to the

project and Mr. Kevin Phelan recommended using Mr. Christopher Vaughan, the solicitor in Northampton for the project, is that correct?

A. Yes, correct.

Q. I think you were asked for details of all your dealings between you and Mr. Denis O'Brien regarding the acquisition and development of the project and you informed the Tribunal that you approached Mr. Denis O'Brien, informing him of the project, in broad terms, the deal involved the acquisition of the shares in Doncaster Rovers Football Club (DRFC) which owned the lease on the site in Belle Vue Doncaster comprising of approximately seven acres.

Doncaster Council were anxious to relocate the football club to a new site at Lakeside, Doncaster, because of health and safety and traffic issues. The return of the project was driven by the development of the site for retail purposes which was supported by the Council.

Mr. Denis O'Brien was interested in the project and put up  $\pounds 700,000$  sterling as a deposit in March of 1998, the transaction was finally closed in August of 1998, I think that's correct, isn't that right?

A. Yes.

Q. Then you were asked for details of it the negotiations regarding the acquisition and development of the project. And you informed the Tribunal that it was Mr. Kevin Phelan who negotiated the purchase price with the previous owners. You and Mr. Kevin Phelan met with the developers after the

closing and eventually agreed with Alfred McAlpine Special Projects to take a role in the development side of the project.

I think you were then asked for details of the manner in which the acquisition was structured through an Isle of Man company and the purpose for which the acquisition was structured in this manner and you informed the Tribunal that you understood that it was felt that, given the media interest in football clubs generally, and the emotive support from supporters' clubs for grounds from supporters' clubs for grounds, that it was wiser to hold the investment through an Isle of Man company?

I think you were then asked for your knowledge of all persons or entities who hold, or who have held at any time, any beneficial interest of whatsoever nature in the property. And you informed the Tribunal that, to your knowledge, the only beneficial owner of the project was Mr. Denis O'Brien.

And I think you were then asked the manner in which the acquisition or development of the property was funded, and insofar as it was funded otherwise than by bank borrowings you were asked for details of the funds employed in relation to it and you informed the Tribunal that the project was part funded by bank borrowings and you have no further details in relation to this matter.

I think you were then asked for your knowledge of a letter dated 25th September 1998 from Mr. Christopher Vaughan to

Mr. Michael Lowry, including the date on which you first became aware of the letter and the source of your awareness of the details of his dealings with Mr. Christopher Vaughan and Mr. Kevin Phelan, Mr. Michael Lowry, Mr. Denis O'Brien are, or any other person whatsoever in connection with the letter and you informed the Tribunal that you had no knowledge of the letter of 25 September 1998 until contacted by Denis O'Brien in September 2002.

That is the letter with the to Mr. Michael Lowry from Mr. Vaughan. I don't want to read through it again.

A. I am very familiar with it.

Q. Were there references made I wasn't aware of your total involvement in the Doncaster matter.

A. I am very familiar with it.

Q. You know the letter?

A. Yes.

Q. I think you then, if you go behind the next tab, 4B. You provided this information in July of 2004 and I think you were first of all generally asked for details of all your dealings with Mr. Kevin Phelan prior to January 1998 whether commercial or otherwise, and you informed the Tribunal that you had no dealings with Kevin Phelan prior to January 1998 whether commercial or otherwise.

I think you were then asked for details of your dealings with Christopher Vaughan prior to the DRFC project whether commercial or otherwise and you informed the Tribunal that Mr. Christopher Vaughan was introduced to you by Mr. Kevin

Phelan . Accordingly, Mr. Kevin Phelan you had no dealings with Mr. Vaughan prior to the DRFC project. Mr. Kevin Phelan introduced the Litan project at approximately the same time which you believe did predate the DRFC project by a short while, approximately a month. You were asked for your knowledge of any dealings or contacts between Mr. Kevin Phelan and Mr. Michael Lowry whether commercial or otherwise either prior to or from January 1998 to September 1998, and you said that you had no knowledge of any dealings between Mr. Kevin Phelan and Mr. Lowry during the period through January 1998 to September 1998 or before January 1998.

I think you were asked your dealings or details of dealings or contacts between you and Mr. Michael Lowry from the date on which the DRFC project was first brought to your attention by Mr. Kevin Phelan in September and September 1998, and in particular including any dealings or contacts between or concerning the DRFC project. And you informed the Tribunal that you had no dealings whatsoever with Michael Lowry in relation to Doncaster Rovers.

You were asked whether you had knowledge, direct or indirect, that Mr. Michael Lowry was aware of the following:

1. You your or Mr. Denis O'Brien's interest in the DRFC project.
2. The conclusion of a share purchase agreement in April 1998.

3. The completion of a share purchase agreement in August 1998.

4. Any delays in the conclusion of the share purchase agreement or in the completion of the purchase.

And in response to those you have informed the Tribunal that you were not aware that Mr. Lowry had any knowledge of the Doncaster project and you do not believe that he did so.

I think you were asked for your knowledge, direct or indirect, of any dealings or contacts between Mr. Michael Lowry and any other person whatsoever in connection with the DRFC project and you have informed the Tribunal that you were not aware of any contact between Mr. Lowry and anyone connected with the Doncaster project.

I think then turning to events in September 1998, you were asked for your knowledge of Mr. Lowry's visit to the UK of meetings, contacts or dealings between Mr. Lowry and Mr. Vaughan and/or Mr. Kevin Phelan in September 1998. And you have informed the Tribunal that you have already informed the Tribunal that you had no knowledge of the meeting arranged for September 1998.

The letter of the 23rd of September 1998 which was on the face of it, addressed to you, did not carry the correct fax number and you did not receive it.

That was a letter, and we will come I don't want to go into these in great detail. That was the letter containing the agenda for a proposed meeting, isn't that correct?

A. No. Well, there is a couple of letters.

Q. Yes.

A. Around the same time. There was one of the 23rd of September.

Q. Yes.

A. Which contained the agenda.

Q. Yes.

A. And there was one I didn't get. I eventually got the one of the 23rd, a hard copy of it.

Q. Yes.

A. Which was supposedly, he was trying to fax it to me.

Q. Yes.

A. And then there was a letter to me of the 25th which I have subsequently learned of

Q. Right.

A. which talks about discussions with Michael Lowry which I didn't receive at all.

Q. Right. OK. Well we will clarify that?

A. And then there is the letter to Michael Lowry. So there is three letters.

Q. I thought this was just the agenda letter?

A. No. I received a hard copy of the agenda on my file by post subsequent to the meeting, obviously.

Q. All right.

A. OK.

Q. I think you were then asked were you aware of any such visit or any such meeting, contacts or dealings, either at

the time or subsequently, and detail of your understanding of the purpose of such visit, meeting, contract or dealings, details of all meetings between Mr. Aidan Phelan and Mr. Lowry in connection with or arising from Mr. Lowry's visit to the UK or any meetings, contacts or dealings which Mr. Lowry had with Mr. Vaughan and/or Mr. Kevin Phelan and including all details relating to any proposed arrangements for Mr. Aidan Phelan to attend a meeting with Mr. Vaughan in connection with the DRFC project. You were asked for details of all dealings between you and any person whatsoever in relation to Mr. Lowry's visit to the UK or any matter arising from that visit.

And I think in relation to those particular queries, you informed the Tribunal that you were subsequently informed by Mr. Christopher Vaughan that the meeting in September 1998 was arranged by Mr. Kevin Phelan. Mr. Vaughan understood that it was to discuss the Doncaster Rovers project and therefore assumed that Mr. Phelan would be in attendance. That is you, I think, that reference to Mr. Phelan there?

A. Mm-hmm.

Q. The letter of 25th September 1998 to Mr. Lowry was not brought to your attention at the time and indeed you were unaware of it until Mr. Denis O'Brien brought it to your attention in September 2002, is that correct?

A. Correct, yes.

Q. Now, I think you were asked about the visit of Mr. Denis O'Connor to the UK in late 2001, and you were asked whether you had any knowledge of Mr. Denis O'Connor's visit to the UK in late summer 2001 when Mr. O'Connor met Mr. Kevin Phelan in the course of inspecting various properties in which Mr. Michael Lowry had an interest and was also shown the Doncaster Rovers site by Mr. Kevin Phelan. Whether such knowledge on the part of Mr. Aidan Phelan was contemporaneous with or subsequent to such visit. And then you were asked for the source and you were asked for details of your dealings with or any person in connection with or arising from Mr. O'Connor's visit and you have informed the Tribunal you were unaware that Mr. O'Connor travelled to the UK to look at Mr. Lowry's property interest. You are not aware that Mr. O'Connor viewed the Doncaster properties and you were surprised by this contention.

Now, you were then asked for the circumstances attendant on you ceasing to act for Mr. Denis O'Brien in relation to the DRFC project, and you were asked the approximate date on which you ceased to act on behalf of Mr. Denis O'Brien in relation to the DRFC project, the circumstances in which you ceased to act in relation to the project, the approximate date on which you returned all files and documents to Mr. O'Brien, the identity of all persons with whom you had any dealings or contacts of whatsoever nature in relation to the DRFC project subsequent to the date on

which you ceased to act as Mr. O'Brien's agent. And you informed the Tribunal that you ceased to act in relation to the Doncaster Rovers property for and on behalf of Mr. Denis O'Brien Junior in or around June 2002 and returned the files at this time.

You had, in fact, left Ireland in February 2002. Between February 2002 and June 2002, you had a distant relationship only with the file. You were not you were now concentrating your business interests abroad and it was no longer appropriate that would you continue to act for Denis O'Brien in this matter or any other matter. You cannot recall precisely what conversations you may have had with Mr. O'Brien and his staff subsequent to that date, but you believe that you had incidental discussions regarding commercial matters and points arising from the warranty claims.

I think you were then asked about contact between Mr. Denis O'Connor and Mr. Denis O'Brien Senior in May/June of 2002, and you have informed the Tribunal that you had no knowledge of Mr. Denis O'Brien Senior's dealings with Mr. Denis O'Connor. Is that correct?

A. Mm-hmm. Yes.

Q. And you had no knowledge of any matter which prompted Mr. O'Brien Senior to make contact with Mr. O'Connor in relation to the DRFC project or if I can put it the other way if, it transpired that it was Mr. O'Connor made the contact with Mr. O'Brien Senior, your evidence would be

that you had no knowledge of any such contact at all, is

that correct?

A. Yes.

Q. Now, if we go to page 5 of this particular memorandum, you

were asked for your knowledge of any rumours that may have

been circulating in relation to Mr. Lowry's involvement in

the DRFC project either at that time or at any other time,

and the source and sources of such rumours, and you were

asked for details of all details, discussions or contacts

which you may have had with any person at any time in

relation to such rumours. And you have informed the

Tribunal that you had no knowledge of the alleged rumours

linking Mr. Lowry with the DRFC project. There were no

dealings discussions or contacts had by Mr. Phelan with any

person in relation to such rumours.

You were asked for your knowledge, direct or indirect, of

any further contact between Mr. O'Brien Senior and

Mr. O'Connor prior to the mediation of the dispute between

Dinard Limited and Westferry Limited in September 2002 or

with any other person as a result of Mr. O'Brien Senior's

contact with Mr. O'Connor. And you informed the Tribunal

that you had no knowledge of any further contact between

Mr. O'Brien Senior, had with Mr. O'Connor prior to the

mediation or with any person as a result of this contact

with Mr. O'Connor.

I think you were asked then at 6 about contacts between

Mr. O'Brien Senior and Mr. Denis O'Connor in relation to

the dispute between Dinard Limited and Westferry in August and September of 2002, and you informed the Tribunal that you had no knowledge of any contact between Mr. O'Brien Senior and Mr. O'Connor in relation to the DRFC project in August and September 2002.

You were then asked for your knowledge as of August/September 2002 of all contacts between Mr. O'Connor and Mr. Kevin Phelan, and you have informed the Tribunal that you had no knowledge of any contact between Mr. O'Connor and Mr. Kevin Phelan during this period or the same period.

You were then asked whether, to your knowledge, you had sorry, whether you had any knowledge that Mr. O'Connor had been trying to sort out on Mr. Denis O'Brien's behalf the position with Kevin Phelan as recorded in the attendance of Ms. Ruth Collard on Mr. O'Connor dated 10th of September 2002 and if so details of your knowledge, direct or indirect, of all steps taken or efforts made by Mr. O'Connor to resolve matters and you have informed the Tribunal that you had no knowledge of any attempt made by Mr. O'Connor to sort out, on Denis O'Brien's behalf, the position with Kevin Phelan.

Now, I will be going into it in due course, because time has moved on since this particular information was sought from you, because at the time the Tribunal did not have, in its possession, a file of Messrs. William Fry's dealing with the dispute with Kevin Phelan, so I'll ask you about

that and I think you have been asked and we will come to deal with that in a letter in due course, OK?

A. Yes.

Q. Now, I think you were then asked for your knowledge, direct or indirect, whether Mr. O'Connor had been asked to meet with Ken Richardson and/or Mark Weaver and, if so, your knowledge, direct or indirect, of a meeting that had apparently been arranged at the request of Mr. O'Brien or Mr. O'Brien Senior initially in Manchester and then in Dublin as recorded in Ruth Collard's attendance, and you have said that you have no knowledge of any proposed meeting between Mr. O'Connor and Mr. Richardson. Again time has moved on and we have had evidence here from Mr. O'Brien Senior and Mr. Ryall about Mr. O'Connor arranging to have a meeting with these two individuals for the purpose of seeing if the dispute could be settled between them but on the advice of Ms. Ruth Collard Mr. O'Brien Senior instructed Mr. O'Connor or informed Mr. O'Connor that the meeting should not go ahead. But you had no knowledge of those particular dealings?

A. No.

Q. I think you were then asked of your knowledge of Mr. Michael Lowry's connection with the proceedings as apparently attributed to him by Mr. O'Connor as recorded in his Ruth Collard's attendance and you said that you had no knowledge of any connection of Mr. Michael Lowry with these matters.

I think you were then asked for your knowledge of Mr. Michael Lowry's apparent attendance at discussions which had taken place between Mr. Kevin Phelan and Mr. Ken Richardson regarding the lease as apparently referred to by Mr. O'Connor and recorded in Ms. Collard's attendance and you have informed the Tribunal that you have no knowledge of Mr. Lowry's apparent attendance at discussions with Mr. Kevin Phelan and Mr. Richardson.

I think you were then asked for your knowledge of any arrangements made for a meeting between Mr. O'Connor and Mr. Weaver and Mr. Richardson and why such a meeting did not, in any event, proceed and you have no knowledge of this. This was the matter which Mr. O'Brien Senior has given evidence about.

I think you were then asked for details of the contact between you and Mr. Denis O'Brien in September 2002 in relation to the letter of the 25th September 1998. In particular you were asked to clarify whether such contact was made by Mr. O'Brien Senior or Mr. O'Brien and should also indicate the purpose of the contact and you said that you were contacted by telephone by Mr. O'Brien Senior in relation to the letter of the 25th of September 1998 in approximately September 2002, and you spoke to Mr. Vaughan about the letter. The letter explained that there had been the latter explained that there had been a misunderstanding, the details of which accorded with what he has now, apparently, explained to the Tribunal. You did

discuss the matter with Mr. O'Brien Junior at about the same time as he was naturally concerned as he had been implicated as being connected to this matter when he had, in fact, no knowledge of the events.

I think you were then asked for details of any further contact between you and any person whatsoever or steps taken by you on foot of such contact with Mr. Denis O'Brien in September 2002 in relation to the letter of the 25th of September 1998 and you said that other than as set out at H above you had no further contact with anyone relation to the letter.

I think you were then asked for information about the dispute between Mr. Kevin Phelan and Westferry Limited or its representatives. And you have informed the Tribunal sorry, I will just briefly run through. Details of the dispute between Westferry and Mr. Kevin Phelan to include when the dispute arose and to what it related. You were asked when the dispute was resolved and the terms in which it was resolved. And you were asked if the resolution of the dispute involved the making of any payment or compensation for or for the benefit of Mr. Kevin Phelan, the amount of such payment or compensation, the manner in which it was paid and the source or sources of the funds which were utilised.

You were asked for your knowledge, direct or indirect, of the identity of the intermediary to whom Mr. O'Brien Senior apparently referred to in the conversation with Ms. Ruth

Collard on the 20th of June 2004 as recorded in her attendance of that date.

You were asked for the identity of all representatives of Westferry or persons in whatsoever capacity who were involved directly or indirectly in the resolution of the dispute with Mr. Kevin Phelan.

And you were asked for your knowledge, direct or indirect, of the role if any of Mr. Denis O'Connor in the resolution of the dispute and in each instance you were asked to identify the source or sources ever the knowledge and you informed the Tribunal that whereas you had some contact with Carter-Ruck regarding the Doncaster Rovers property, that was and was aware of Mr. Kevin Phelan had an issue regarding fees you had no involvement in it.

In other words and we will come to that again; there is an attendance, I think, of Ruth Collard in Carter-Ruck.

You furnished information about the negotiations and the persona involved leading up to the purchase of the shares in Doncaster Rovers football club, isn't that correct? You had some contact with Ms. Ruth Collard? This is dealing with the claim which Dinard had brought against Westferry?

A. Yes.

Q. And the counter-claim which was being

A. Yes, I certainly was at a meeting with counsel in London and I attended her office maybe once or twice.

Q. Yes.

A. Yes.

Q. That related to the dispute with which Dinard's claim?

A. The warranty.

Q. Yes. I think you were then asked about dealings between Mr. Denis O'Connor and Mr. Christopher Vaughan. And I think we can deal with this shortly without reading out all the questions at the moment. You had no knowledge of any dealings between Mr. O'Connor and Mr. Christopher Vaughan of any, isn't that correct?

A. Mm-hmm. Yes.

Q. I think you were asked, then, about contacts between Mr. Denis O'Brien Senior and Mr. Denis O'Connor subsequent to the resolution of the dispute between Dinard Limited and Westferry, and you say that you were unaware of any dealings between Mr. O'Brien and Mr. O'Connor about any prospective purchaser for DRFC. You didn't know of any contact between those two individuals?

A. No.

Q. You were asked for your you were asked, I think, whether you had any knowledge of the details of any negotiation, contacts or dealings between Mr. Denis O'Brien Senior or Westferry or their respective representatives and any party or parties identified or introduced by Mr. Denis O'Connor as having an interest in acquiring DRFC. And you have informed the Tribunal that you were unaware of any negotiations, contacts or dealings between Mr. O'Brien Senior or Westferry or their respective representatives and any party or parties identified or introduced by

Mr. O'Connor as having an interest in acquiring DRFC.

You knew nothing of these matters, if they happened.

You then informed the Tribunal that you discussed the confusion surrounding the meeting in September 1998 with Mr. Christopher Vaughan when Mr. Denis O'Brien brought this matter to your attention in September 2002 but confirmed to you as follows:

Christopher Vaughan had in September 1998 been attempting to set up a meeting with you to follow on issues arising from the DRFC deal which was closed in August of 1998.

When you therefore contacted him with a view to setting up a meeting with Michael Lowry for the purpose of discussing the Mansfield project, Mr. Christopher Vaughan assumed that Mr. Aidan Phelan would have attended the meeting arranged by Mr. Kevin Phelan.

He attempted to fax a copy of the agenda of the meeting to Aidan Phelan, but had fixed the incorrect fax number to that. Mr. Phelan, accordingly, had no idea that the meeting was taking place or what its contents was to be.

During the course of the meeting, Mr. Phelan was told Mr. Vaughan raised some DRFC issues with Kevin Phelan and Michael Lowry gave the impression erroneously that he was involved. Christopher Vaughan, accordingly, wrote to him on the 25th of September. A copy of this letter was not faxed to Mr. Phelan but a copy of this letter was not faxed to Mr. Phelan but it again had the incorrect fax number on it. Kevin Phelan when he saw the terms of the

letter of 25th of September informed Christopher Vaughan that Michael Lowry had misrepresented the position regarding his involvement in DRFC and confirmed that he did in fact have no such involvement. The letter addressed to Aidan Phelan was, therefore, never sent to him.

Sometime around September 2002 when the issue surfaced Denis O'Brien informed Mr. Phelan that Messrs. Richardson and Weaver had obtained a copy of the letter which, as is stated above, was based on an incorrect premise and they attempted to use it during the course of the mediation with Westferry Limited. As Mr. Phelan understands it

Mr. O'Connor persuaded Denis O'Brien Senior that he was in a position to sort out the dispute between Westferry and Richardson. Mr. O'Brien Senior agreed with the offer of assistance. It is clear that any knowledge Mr. Phelan now has was acquired subsequent to the events and is entirely secondhand. So you are looking and giving a view in relation to it?

A. Yes.

Q. On information

A. Yes, in retrospect it was, yes.

Q. Could I just ask you when you made contact with Mr. Christopher Vaughan about the letter the 25th of September letter, the 1998 letter?

A. When I made contact with him by phone in September '02.

Q. Yes, I know?

A. When Denis O'Brien Senior rang me I made contact with him

and asked him about it.

Q. Did you get a copy of it from Denis O'Brien Senior?

A. No, no.

Q. And what did Denis O'Brien Senior say to you?

A. He said that "I have a letter here that has been sent to me"

Q. Yes.

A. Christopher Vaughan's letter of the 25th of September '98 saying that Michael Lowry had an involvement in the Doncaster Rovers project.

Q. Yes.

A. And I said, "It's wrong. I will ring Christopher Vaughan and find out what is going on."

Q. Yes.

A. I called Christopher and he said that was written in error.

Q. Well, could we just take it solely. I know that you say was the outcome of the meeting but it must have started off with you saying that a letter you wrote a letter which said that Michael Lowry had an involvement in the Doncaster Rovers?

A. Yes.

Q. Or words to that effect, is that correct?

A. Yes.

Q. And did he say, "yes, he had"?

A. Yes. He said he had.

Q. He had. And did he tell you how it came to into being or how it came to be written?

A. He said it was as a result of a conversation he had with Michael Lowry where he had misunderstood the position.

Q. No, just could you just tell us exactly now what he said. What did he say Michael Lowry said which he then misunderstood?

A. He didn't go into great detail. He just said he had formed a view that Michael Lowry was involved subsequent to a conversation with him. He went you know, going from his office to Leicester or somewhere.

Q. Yes.

A. In a car journey.

Q. Yes.

A. And he said he had formed the view that Michael Lowry was involved as a result of the conversation.

Q. Yes.

A. And he subsequently wrote to him. Kevin Phelan informed him that it was a misunderstanding.

Q. I think the words here and I just want to ask you here, I think what you and this is fairly detailed, now, what you have informed the Tribunal here. You go into great detail. Are you sure when you spoke to Mr. Christopher Vaughan that you hadn't received a copy of the letter from Mr. O'Brien?

A. Positive. Positive.

Q. Would there be any reason why you shouldn't have; you were making an inquiry?

A. Well, I was on the road.

Q. You were on the road?

A. Yes, I was travelling.

Q. OK. Fair enough?

A. And you know, you have got to interpret this against the background of my knowledge.

Q. Yes.

A. And my knowledge is that I have never heard of Michael Lowry being involved in Doncaster Rovers project. It was preposterous. So whatever kind of conversation arose, it was entirely misunderstanding. I accepted that.

Q. I just want to establish, first and we will go into your knowledge in detail in relation to matters, Mr. Phelan, particularly in relation to what your understanding of who might have been behind, for example, the Glebe Trust or did you have any knowledge of that?

A. No. No. I subsequently had knowledge of it.

Q. Sorry, did you have any knowledge at the time?

A. No.

Q. And isn't it correct that the understanding which you had in relation to this particular transaction, this particular transaction, the Doncaster Rovers transaction, was that Mr. Kevin Phelan and/or Glebe Trust were to enjoy the benefit of 40 percent of the profit on the transaction by virtue of bringing the transaction or bringing the deal to you, isn't that right?

A. My understanding was that Kevin Phelan had a shelf company, called Westferry.

Q. Yes.

A. Because of the fact that this vehicle was used to negotiate the deal and I mean in particular negotiate with the Council, it was it made sense, and this was confirmed by Mike Clynych in the Council, that we maintain the company.

Q. Mm-hmm.

A. The name, and he transferred as far as I was concerned, it was a shelf company.

Q. Mm-hmm?

A. At the time the share transfer was done from whoever the formation agent was their nominees, directly into our ownership or Denis O'Brien's ownership.

Q. Yes.

A. So the Glebe Trust never came into it.

Q. No.

A. I mean a shelf company is a very standard

Q. Sorry, would you listen to the question I asked you Mr. Phelan?

A. OK.

Q. Wasn't it part of the deal that whatever was being used, that the Kevin Phelan side was to enjoy a 40 percent of the profit that was to be made on the transaction, isn't that right?

A. Kevin Phelan, yes - was entitled to 40 percent.

Q. And are you aware that Mr. Kevin Phelan, according to the documents which have been which were produced in High Court proceedings here by Mr. Denis O'Brien, and which we

have looked at in evidence here during the course of this Tribunal's business in the last few days, show that there was correspondence between Mr. Christopher Vaughan and a Mr. Vanderpump do you know who Mr. Vanderpump is

A. I do.

Q. where he indicated that Kevin Phelan had represented to him that Mr. Michael Lowry had an interest in the Glebe Trust. Are you aware of that?

A. I am.

Q. And are you aware that when Westferry settled its dispute with Mr. Kevin Phelan in the summer of 2002, that they paid  $\frac{1}{2}$ 150,000 in full and final satisfaction of fees due, the entitlement to 40 percent profit on the transaction and that, in doing that particular settlement, Westferry settled with Kevin Phelan, others and the Glebe Trust. Are you aware of that?

A. I am aware there was a settlement, yes.

Q. No, I asked you were you aware that it involved a settlement with the Glebe Trust?

A. No.

Q. Right. OK. Now, if we get back, now, and we will take it in detail, if I might, Mr. Phelan

A. Sure.

Q. about what exactly transpired between you and Christopher Vaughan. What did you say to him and I don't expect you to be word-perfect in fairness?

A. In fairness it is September 2002.

Q. I know that but you very quickly jumped in Mr. Phelan to give a very quick explanation in relation to it. I now want to deal with it in detail. Now, you say that when Mr. Kevin Phelan this is an account given by Mr. Christopher Vaughan that he said that he attempted to fax a copy of the agenda of the meeting to Mr. Aidan Phelan, but affixed the incorrect fax number to that. That seems to be so.

"Mr. Phelan, accordingly, had no idea that the meeting was taking place or what its content was to be".

That seems to be the case, as well.

"During the course of the meeting, Mr. Phelan was told by Mr. Vaughan told Mr. Vaughan raised some DRFC issues with Mr. Kevin Phelan and Michael Lowry gave the impression" now, "erroneously" is added, but what did he say that Michael Lowry said that gave him the impression that he was involved?

A. I mean, I think Christopher Vaughan said that Michael Lowry Christopher Vaughan said that he was trying to set up a meeting with me.

Q. Yes.

A. And Michael Lowry said to him, "Give me the outstanding stuff. Send it to me and I will progress it," something to that effect.

Q. Well, now, that is interesting and a new piece of information and we might just tease it out. He said that Michael Lowry said, he was trying to set up a meeting with

you and he said?

A. No. Christopher Vaughan said to Michael Lowry.

Q. Christopher Vaughan said sorry, you say that Christopher Vaughan said to Michael Lowry that he was trying to set up a meeting with you, I understand that. And from what you heard from Christopher Vaughan, he said to that you Michael Lowry said, "give it to me" or "send it to me and I will sort it out," is that right?

A. Yes.

Q. And did he say that he had given them stuff?

A. He did, yeah.

Q. Yes.

A. I mean this is the subsequent like when I investigated this matter when this letter ultimately emerged.

Q. Yes.

A. I went and met Christopher.

Q. Now, just to continue on. Now, you say here that the letter wasn't sent, I take your point about that. It wasn't faxed on to you. And you then say that:

"Kevin Phelan, when he saw the terms of the letter of the 25th of September, informed Christopher Vaughan that Michael Lowry had misrepresented the position regarding his involvement in DRFC."

Now, where did you get that piece of information from?

A. That is what Christopher Vaughan said to me.

Q. That Kevin Phelan had said to him that "Michael Lowry had misrepresented the position regarding his involvement"?

Again, that is what Michael Lowry that is

A. That is what Christopher Vaughan said to me.

Q. So you must have been then left with the clear impression that Michael Lowry had said something at that meeting to say that he had an involvement isn't that right?

A. Well somewhere between the meeting and the car journey, he had said something to Christopher Vaughan to give him the impression he was involved in it. But I mean I wasn't at the meeting.

Q. I appreciate that. But you were carrying out an inquiry afterwards and that is all I am asking for, for your assistance in relation to what Christopher Vaughan, because I am just trying to understand, if we can, from all the information we could get, what happened?

A. Sure. Sure.

Q. So Christopher Vaughan told you when you were inquiring of him that Kevin Phelan told him that Michael Lowry had misrepresented the position at the meeting or his involvement or words to that effect?

A. Something yeah, yeah, like that.

Q. All right. Did you, at this stage, make any contact with Michael Lowry?

A. No.

Q. Why not?

A. Well, you know, I was out of the project, I didn't feel the need to.

Q. You were somebody who had a fairly complete knowledge of

matters which had arisen way back from the time that an inquiry had been conducted at the time of the IPO, isn't that right?

A. Sorry, could you just develop that a bit?

Q. Yes, any suggestion that there was a contact between Michael Lowry and Denis O'Brien was one that had to be looked at, isn't that right, from way back?

A. Way back, yeah.

Q. OK. And you had been involved in such inquiries way back, isn't that right?

A. Yes. That is the '97?

Q. Yes, yes, isn't that right?

A. Yes, yes.

Q. And did you contact or did you advise Mr. O'Brien that Michael Lowry should be contacted about this because, as you say, you had been informed by the solicitor that he had got the impression and that Kevin Phelan had told him, the solicitor, that Michael Lowry had misrepresented the extent or his involvement and this was extremely sensitive, wasn't it, because Michael Lowry, according to a solicitor, was representing himself as being involved in a Denis O'Brien project, isn't that right?

A. Yes.

Q. And I take your point, that you were now out of it. But you were a partner of Michael Lowry's in other property transactions, at the time?

A. Well, yeah. At the time, quite a minority, 10 percent

Q. Yes.

A. Mansfield. But I didn't like, it was up to the O'Briens to satisfy themselves with Christopher Vaughan, not up to me.

Q. I take your point. I take your point. But you have no doubt from the conversation that you had with Christopher Vaughan as a result of being contacted by Mr. O'Brien Senior about this matter, that he did say to you that he had formed the impression from something Michael Lowry had said and that Kevin Phelan had told him that Michael Lowry had misrepresented his involvement in Doncaster Rovers, you have no doubt about that?

A. No doubt.

Q. Now, you say that in September 2002, when the issue surfaced, that Denis O'Brien, is that Denis O'Brien Senior or Mr. Denis O'Brien Junior? It's usual to refer to the senior person as

A. OK, Senior was the one who contacted me initially.

Q. Yes. And who informed you that Messrs. Richardson and Weaver had obtained a copy of the letter?

A. I can't remember who informed me. I am not actually sure whether we just surmised it was them, because they produced it, I think, ultimately at the arbitration or the mediation meeting.

Q. Yes.

A. So I think initially I didn't know where it came from.

Q. Yes.

A. When Denis Senior spoke to me, I didn't know where it came to from but subsequent I think to the mediation Richardson and Weaver produced the letter to Denis O'Brien Senior.

Q. I think you might be mistaken there?

A. Well I may be, I don't know.

Q. According to his evidence and I know you weren't involved at the mediation, I think they indicated that they had it or had sight of it, I think, at the meeting?

A. Fine, OK.

Q. I think his evidence was that, some days prior to it, he had received it from the fax machine of Messrs. Brophy Thornton Butler. I think that it had come that route?

A. Yes, yes.

Q. He might not have gone into that detail with you?

A. I am sure Denis O'Brien Senior is correct in what he says.

I wasn't there.

Q. Yes, you weren't there. But you didn't go into it in that detail, or did somebody tell you that something else had happened, that is what I was just wondering?

A. No, no, no, whatever way I became like, it was at the mediation meeting that I think I certainly had the view that Richardson and Weaver had the letter.

Q. Right.

A. And I suppose, by implication, they must have sent it to Butler Brophy Thornton.

Q. Mm-hmm. Right. All right. Now, Mr. Vaughan told you that he had, well obviously you were inquiring about the letter,

that he had given documents, isn't that right, to Michael

Lowry?

A. Yeah, I think he enclosed a kind of a closing statement.

Q. A completion statement?

A. A completion statement.

Q. In relation to Doncaster, with the letter?

A. Yes.

Q. And he told you that?

A. Yeah.

Q. And he told you that he had given this to Michael Lowry?

A. He either told me or it was on the letter, the face of the

letter. One way or the other.

Q. But he told you that he had given these to

A. Yes.

Q. So if he gave them to Mr. Michael Lowry and the letter, did

you have any discussion with him or anybody else as to how

Messrs. Weaver and Richardson could have either sight of or

a copy of the letter? Did anyone discuss that with you?

A. No, but I didn't discuss it with anybody, how they came

to have it.

Q. Can I take it that you have no reason to doubt but that

Mr. Lowry did get the letter and the documents from

Mr. Vaughan, you have no reason to doubt it?

A. I have no reason to doubt it, correct.

Q. Your purpose in making the inquiry was to say,

"Christopher, you're wrong," or words to that effect, isn't

that right? I am not saying there is anything wrong with

that. I am saying that that was the purpose of your inquiry or your contact with Christopher?

A. Yes.

Q. Yes. Perhaps Christopher Vaughan, I referred to him just as Christopher but it's Christopher Vaughan.

Now, if we just get back for a moment, so, to January and February January/February of 1998. You say that this is a project which was brought to you by Kevin Phelan, isn't that correct?

A. Yes.

Q. And I think you say that you didn't know Kevin Phelan before that or if you did, it related to one small or one other transaction?

A. Yes, yeah, the Luton project and the Doncaster Rovers project kind of happened one I don't know I think the Luton project came to me first.

Q. Yes.

A. Probably a month or something before the

Q. Right.

A. before the Doncaster project.

Q. Right. And how did Kevin Phelan come to you or know you?

I am not trying to catch you out here; I can

A. To be honest, I have to say

Q. You have informed the Tribunal that you were introduced to him by your brother, I think, isn't that right? I am not trying to catch you out. Your brother has informed the Tribunal I think you informed or that you introduced

Kevin Phelan to him. I am not making a big issue; I just want to know

A. Yeah, well, my brother has one view. I have another view.

So we actually disagree on where he came from. But I mean...

Q. I know. I just put that there. I am not trying to catch anybody out or

A. We are actually, both of us, genuinely confused at this stage where he emerged from.

Q. Yes. And at this time, what was your relationship, if any, with Michael Lowry, around this time now, January/February of 1998?

A. I didn't really have a relationship with him.

Q. At that time?

A. No. Like, I never met Michael Lowry during the course of the licence process or anything.

Q. Ah yes, that was way back in 1995, 1996. No, I know that. But he had left office at the end of 1996. Do you remember that?

A. Yes.

Q. And I think

A. I mean I think I have given evidence about the phone

Q. About the phone. Denis O'Connor made contact with you, isn't that right, about getting a phone?

A. Yeah, I was representing a few of the retail agents.

Q. Yes.

A. And I have given evidence on that before.

Q. Yes, you have, you have?

A. So to that extent

Q. And but had you met him socially at that time or?

A. No, I had met him I met him at the launch of the Esat business.

Q. Yes, I know?

A. At the Point Depot.

Q. Yes.

A. I don't believe I met him socially.

Q. You did subsequently become reasonably friendly, and socialised with him?

A. Yes, yes.

Q. So you can't help us where Kevin Phelan came from, so, at this stage or who introduced him?

A. I can't.

Q. No. Now, what did he say to you in, broad terms, when he came?

A. About the Doncaster?

Q. Yes.

A. He had said that he had been involved in a previous transaction, I think it was Hull City Football Club where they had done a relocation, similar project, moving the club to a new ground and developing and I didn't go into that in great detail and he said he had this opportunity.

So I liked it.

Q. Yes.

A. And I went over and met the council and they were a key

player in the whole commercial aspect of the transaction, and they were they wanted to relocate the ground to the lake site, the new site at Lakeside. They wanted to clean up Belle Vue because it's opposite the racecourse and the conference centre and they wanted it to be to move.

There was a health and safety issue, bus corridors. There were lots of reasons why the economic planners at the Council wanted to move the club.

Q. Mm-hmm.

A. They ultimately gave me a letter of support saying that they would back a planning consent. The other aspects to the deal, I met with Asda who were a key player in the development of the site. I formed a view that it was a good project and there was various valuations on the development value of the ground, you know, and that was more or less the commercial rationale for getting involved in the project.

Q. Yes.

A. I mean, there was a land value of about seven-and-three-quarter million and I think they had offers from one or two agents, you know, obviously if the planning consent was forthcoming.

Q. Yes.

A. So, I mean, I saw it as being a nine-month project.

Q. Right.

A. Which I turned out to be wrong.

Q. Yes, yes.

A. So I formed the view it was a deal to be done.

Q. Right. And the deal was what, to purchase well to purchase land. It ended up purchasing the shares in Doncaster Rovers Football Club is the way it was done?

A. Yes.

Q. And you must have had some discussions with Kevin Phelan that he'd get 40 percent of the profit on the transaction is that correct?

A. Yes, on the basis that he ran ran the project right through.

Q. That he ran the project?

A. Right through to the

Q. And worked his way worked in getting the planning permission, right through to getting the planning permission, isn't it?

A. Yes.

Q. Now, just before we break for lunch, could I just ask you one thing because I can't understand it, and perhaps you can help us. Mr. McGonigal I asked Mr. Ryall, I think, and Mr. O'Brien Senior as to the  $\frac{1}{2}$ 135,000 finder's fee plus  $\frac{1}{2}$ 10,000 social national insurance, and the contract provides that that is paid to the vendor's solicitor, isn't that correct?

A. I know the  $\frac{1}{2}$ 135, I am not sure about the 10, the 10,000.

Q. It seems to be all part of the one.

A. I know

Q. Maybe I am wrong.

A. There was a finder's fee of 135 paid.

Q. And to who was the finder?

A. Michael Cambridge.

Q. And who was he?

A. He was the guy who introduced the project to Kevin Phelan.

Q. Right.

A. He subsequently approached me back in 2002 and nothing came of it. He was trying to oh, he had been in America, or something, he came back to me and said, "I can unload this for you. I believe you are having trouble with it. If you can sell it, go ahead."

Q. Right.

A. And I never heard from him again really after that.

Q. And did you meet him?

A. No.

Q. You never met him?

A. No.

Q. And it was Mr. Kevin Phelan informed you that there was this Mr. Michael Cambridge, is that correct?

A. Yes, he was also the guy who was involved in the Hull project.

Q. I see.

A. He brought that opportunity to Kevin. I didn't go into much detail in relation to him, but...

Q. Right. All right.

A. I possibly have a business card belonging to the guy. I might be able to dig it up.

Q. I don't think you need concern yourself at the moment.

A. Right.

MR. COUGHLAN: I might leave it there.

CHAIRMAN: 2 o'clock, Mr. Phelan, if that suits you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. AIDAN PHELAN CONTINUED TO BE EXAMINED BY MR. COUGHLAN

AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. Phelan, I am going to ask to you

look just at a few documents. I am not going to go into

them in great detail but it's document book number 1, the

yellow books. Do you have you may not have them in

yellow form, but it's document book number 1. It's book

82. We will give you a book.

A. Thanks.

Q. I will put them up for the moment, all right. Behind tab

number 3, that is you can see there that all it is is

it's the Certificate of Incorporation of Westferry. Do you

see that?

A. Yes.

Q. It's a company. 23rd of October 1997 in the Isle of Man.

And you can see that there is a declaration of trust for

Westferry and Charterhouse Corporate Services Limited are

indicated as nominees and trustees of Glebe Trust. Do you

see that?

A. I do, yes.

Q. Yes. I am not going to read we don't need to read

through

A. I am familiar with these type of documents.

Q. So we can pass on. So that is the way it's proceeding, isn't it, at the moment? And then I think the position is that Mr. Kevin Phelan arranged for the establishment of Glebe Trust and the incorporation of Westferry, isn't that correct?

A. Yes.

Q. Now, if we then go to the document number I think it's 5A, isn't that right? That is the share purchase agreement. And that is signed on behalf of Westferry by Mr. Christopher Vaughan, the solicitor, isn't that correct?

A. It was, yes.

Q. Yes. And that was on the 8th of May of 1998, isn't that right?

A. Yeah. This is Ashworth's copy. We would have his copy, he would have our copy.

Q. That seems to be

A. Yes.

Q. You would be more familiar with this sort of thing than I would be?

A. Ashworths - he was the guy acting for.

Q. Dinard?

A. Dinard. So they would have our copy.

Q. They would have your copy. It would have been signed by Christopher Vaughan on behalf of Westferry?

A. Yes.

Q. Now, as of that particular date, that is the 8th of May 1998, you or should I say the O'Brien interest had paid I think  $\frac{1}{2}$ 700,000 in respect of the deposit, isn't that right?

A. Yes.

Q. Which, of course, Westferry, the Glebe Trust would be responsible for or represent or affect your interest or the O'Brien interest in the property, isn't that right?

A. Westferry Limited?

Q. Westferry?

A. Yeah.

Q. Yes. Now, the I think the contract, the completion was on the 18th of August of 1998, isn't that correct?

A. Mm-hmm, mm-hmm, yes.

Q. When the O'Brien trust, if I can put it that way, or the O'Brien interest took over Westferry, isn't that right?

A. Yes.

Q. Up to that time, subject to the  $\frac{1}{2}$ 700,000 deposit interest, up to the taking over of Westferry by the O'Brien interest, it was the Glebe Trust, isn't that correct?

A. Well, Westferry.

Q. which owned Westferry or the interest in Westferry?

A. Yes.

Q. You would be better at this than I would be and it's very helpful to get your help on this sort of thing. You would be used to this sort of transaction, isn't that right?

A. I am used to the transaction, yes. Just the idea of the Glebe Trust, I would never have seen documentation in

relation to who the declarations of trust were being held

for. Just to understand that

Q. At the time?

A. Until now, until now.

Q. Of course, you didn't have access to Westferry's files in the Isle of Man, is that correct?

A. I didn't have access to Charterhouse's files.

Q. Did you have access to the Westferry files in the Isle of Man?

A. Well, ultimately I would have had access to them when we took over the

Q. When you took over?

A. Yes.

Q. Now, did you ever did you attend at Doncaster around the time of the completion of the contract at all?

A. Yeah. I was there, more or less I was there for the closing.

Q. And was that the 18th of August 1998?

A. Yes, mm-hmm.

Q. And was that a Saturday?

A. I actually don't know. I don't think so.

Q. Could I ask you this

A. No, well

Q. Was it around the time of their first home game in the Conference?

A. It was, yeah, yeah.

Q. Right.

A. That wouldn't have been a Saturday, though. I don't we can check it.

Q. It could be another day.

A. Yeah.

Q. But were you at the opening match?

A. I was.

Q. And who else was at the match that you can remember, that you can remember now?

A. Well, John Ryan, the owner; possibly, Christopher Vaughan might have been there; a few other directors, and what have you. I was in the directors' box.

Q. And was Mr. Kevin Phelan there?

A. I'd say he was, yes, probably.

Q. Do you remember if Mr. Michael Lowry was there?

A. No.

Q. You don't remember?

A. I didn't see him there.

Q. You didn't see him there?

A. No.

Q. All right. Now, if you go behind tab number 4, this is a letter which your solicitor sent. I am using this as just a form of memorandum of yours at the moment, this letter.

And if we just do you see it there, from Messrs. A&L

Goodbody's? And it's responding to a letter of the

Tribunal, the 13th of January 2003:

"1. It was Kevin Phelan who approached Mr. Aidan Phelan with this project in January or February of 1998."

That is your evidence and that is what you

And then it continues:

"In the light of this" that is the approach "you requested Mr. Phelan to oversee a due diligence in relation to the project and he recommended using Christopher Vaughan as solicitor to the project." You say that "Mr. Aidan Phelan approached Denis O'Brien informing him of the project. In broad terms, the deal involved the acquisition of the shares in Doncaster Rovers Football Club which owned the lease on a site in Belle Vue, Doncaster, comprising of approximately 7 acres, Doncaster Council were anxious to relocate the football club to a new site in Lakelands, Doncaster, because of health and safety and traffic issues. In turn, the project was driven by the development of the site for retail purposes which was supported by the Council. Denis O'Brien was interested in the project and put up put i;½700,000 down as a deposit in March of 1998. The transaction was finally closed in August of 1998. It was Mr. Kevin Phelan who negotiated the price with the previous owners. Mr. Aidan Phelan and Mr. Kevin Phelan met with developers after the closing and eventually agreed with Alfred McAlpine, Special Project, to take a role in the development side of the project."

Now and then:

"Mr. Phelan understands that it was felt that, given the media interest in football clubs generally, and the emotive support from supporters' clubs for grounds that it was

wiser to hold the investment through an Isle of Man company." Mr. Aidan Phelan's knowledge to Mr. Aidan Phelan knowledge, the only beneficial owner of the project was Denis O'Brien.

"To Mr. Phelan's knowledge, the project was funded by bank borrowings. He has no further details in relation to the matter."

You had no knowledge of the letter of the 25th of September until contacted by Denis O'Brien in September of 2002; you had no files or documents in your possession in relation to the project and all files were returned to Mr. O'Brien when he ceased to act on Mr. O'Brien's behalf; and you have no knowledge of the complaints that were made to the police in England or matters of that nature?

A. At the time.

Q. At the time?

A. No, not at the time.

Q. Now, as you say, to your knowledge Mr. Denis O'Brien was the beneficial owner of the project?

A. Yes.

Q. Subject, of course, to the 40% of the profits which turned on the project belonging or as you understood, at that time you said to belong to Mr. Kevin Phelan?

A. Yes.

Q. Depending on its success?

A. Yes.

Q. So, as far as you were aware, Mr. Kevin Phelan had an

interest in the project, there is no doubt about that,

isn't that right?

A. An interest in the profit, the outcome. He had no equity interest.

Q. Let's just he had an interest in the project

A. The only reason I am saying that is that Ruth Collard mixed up equity with return in her note.

Q. Right. All right. Well, I will look at that in due course, but I just wanted to try and clear my mind about this. He had an interest in the project. He had an interest in the outcome of the project?

A. Yes, yes.

Q. And he had an interest in the successful outcome of the project.

A. Yes.

Q. As far as you were concerned?

A. Yes.

Q. And I think he did communicate with you about the project, isn't that right?

A. Yes.

Q. He asked to you do certain things, isn't that right?

A. Yes.

Q. And things seemed to be moving along, and I mean in terms of your relationship with Mr. Kevin Phelan, now - I am not talking about the project itself, but things seemed to be moving along in a normal business way, didn't they?

A. Yes.

Q. And would I be correct in thinking that the relationship between yourself and Kevin Phelan, at least anyway, seemed to have deteriorated at some stage?

A. Yes.

Q. Now, trying to put a date on it or trying to put a time on it, it seems to be after you gave evidence to this Tribunal in the first instance in relation to the Mansfield/Cheadle matters. I am not talking about the long form/short form letters now; I am talking about on the first occasion that you gave evidence, it seems to have been after that, doesn't it?

A. OK. Our relationship, when I got involved with McAlpine Special Projects as the development partner, Kevin ceased to have an executive role in the project.

Q. Yes.

A. He became disappointed after that.

Q. Mm-hmm.

A. You are right in saying when I gave evidence here in 2001 our relationship deteriorated to the next level.

Q. Yes. And I am just trying to identify certain things and trying to understand what was happening or what may have happened. You were critical of his I want to put this as delicately you were critical of his management of certain projects, isn't that right, when you gave evidence here?

A. Yes.

Q. And he was annoyed about that, I think, wasn't he?

A. Yes.

Q. And things were not moving thereafter on the Doncaster project, isn't that right?

A. Well, long before that, quite shortly after we got we closed the sale, the purchase of the shares, the Council welshed on their commitment.

Q. Yes.

A. And there were internal difficulties within the Council, to do with expense fraud, and it became the "Dongate" sort of episode.

Q. Yes.

A. And really, the commitment from the Council dissipated completely. Nobody would make decisions.

Q. Yes. That was to get a commercial development, an Asda-type or

A. To support the

Q. A shopping centre or town centre type development?

A. Yes.

Q. But the relationship between yourself and Kevin Phelan deteriorated at that stage, no?

A. It hadn't well, I talked in terms of it deteriorated when McAlpine's got involved. He felt disappointed that he wasn't allowed take the project forward.

Q. I see. And when would that have been, approximately?

A. I'd say early '99.

Q. Early '99?

A. Kind of late '98. I think the stuff on file from

McAlpine's letters

Q. Yes, but I am just trying to get a feel for what was happening. But you continued to have a reasonable business relationship, would that be fair to say?

A. Yeah, it was by agreement that he stepped down and when we recognised the scale of the task ahead.

Q. Yes. So would it be fair to say, so, that we'll take it in two stages. In terms of finding the project, bringing the project to you and up to the time of the completion of the purchase of the shares in Doncaster Rovers Football Club Limited in 1998, Kevin Phelan was active? He was the active person, would that be a fair way of describing him?

A. He was the most active person.

Q. The most active person. And then you say that, soon after that, perhaps late 1998 or early 1999, you took over the active role, would that be a fair way of putting it?

A. Yes. Yes.

Q. And if he described things that way subsequently, he would be describing it correctly, wouldn't he?

A. I guess so, yes, yes.

Q. Now, whilst you were the lead in the dealings of the affairs of the project, there was consideration being given to the fact that a difficulty had arisen on the planning side or as you have described yourself the Council wels hed one thing on what you understood was a commitment or

A. Yes.

Q. And there was also the question of the football club

itself, isn't that right; there were matters to be taken into account?

A. It took a while to sort that out.

Q. Yes. And in the contract, as would be normal in such a situation, there was a money was retained pending certain matters to be sorted out between the parties, and also, there was the question of a  $\frac{1}{2}$ 250,000 extra payment in relation to a lease in respect of a carpark, isn't that right?

A. Yes.

Q. And you had some involvement in the sorting out of matters in relation to the football club and there was a belief, I suppose, on your side that that was costing certain monies on your side, which should be taken into account when one looked at the retention fund at the end of the day. Would that be reasonable way of putting it?

A. Yes.

Q. Now, during this period, were you in contact with Dinard?

A. No.

Q. Or was there

A. OK, Craig Tallents, as you know, got involved in helping us.

Q. Yes.

A. address the warranty issues.

Q. Yes.

A. To that extent, the only time I spoke to Dinard or their representatives was when I got a call from Mark Weaver.

Q. Yes.

A. one day, and I suggested, I offered him a couple of options, binding arbitration, negotiated settlement between accountants or, you know, litigation.

Q. Yes.

A. And you know, he appeared reasonable but he never came back to me on it.

Q. Mm-hmm. And?

A. There may have been a few it really wasn't until we got into the litigation with Peter Carter-Ruck, which Dinard promoted the litigation.

Q. Yes, they commenced proceedings against you?

A. Yes, yes.

Q. That was in 2001. I think it was it was June, July 2001 or around that time. But was there any, apart from you say that contact with Mark Weaver where you offered the three options of binding arbitration, negotiated settlement or litigation, all reasonable to sort out the dispute, had you been coming under any real pressure from Dinard to resolve the outstanding matters in relation to the retention fund?

A. No. I think Richardson was indisposed at the time.

Q. Yes. Yes.

A. And wasn't really instructing anybody.

Q. Yes.

A. I think I think Craig Tallents might have met with representatives to try and finalise matters and it just went nowhere.

Q. Yes. All right, so you didn't feel any pressure, either, to order the release of any retention money or pay over the  $\frac{1}{2}$ 250,000 on the lease, either, did you at that time?

A. No, no.

Q. I am not suggesting that anyone should be rushed into, I know that a businessman might, might?

A. I am not casting aspersions on Craig Tallents, but initially he gave a very bullish view of our strength in the in the outcome of negotiations.

Q. Yes.

A. Which became less strong as time went by.

Q. Yes, yes. I suppose, to be fair to him, you are looking at it as an accountant. I suppose he took an accountant's view of things, and lawyers might have taken a different view, at the end of the day, but that is fair enough.

A. Certainly Mr. Lord, the QC, took a very different view.

Q. Yes. Now, turning now to Kevin Phelan. Were you having much contact with Kevin Phelan in relation to the project?

A. Not a huge amount of contact with him. He'd write to me now and again about it.

Q. Yes.

A. He was becoming more disappointed with the progress.

Q. Yes.

A. And I mean, we were all disappointed, I mean.

Q. And again, put yes, you were all disappointed and putting it in the context, you were disappointed that things hadn't developed as you had hoped they would and as

you say turn it over, a 9 or 12 month project which is what you had hoped and he appeared to be disappointed that things weren't moving along which would enable him, I suppose, to obtain what he thought he might get out of the project, as far as

A. He felt that being removed from the project had created the problem, which was his view of life.

Q. Yes. That he would have moved it better than you were moving it?

A. Absolutely, yes.

Q. And that was what was going on, isn't that right, that type of communication?

A. It was, yes.

Q. Now, you left the project in the summer of 2002, isn't that right?

A. Yes.

Q. And Mr. Denis O'Brien Senior has told us that he took it over, is that correct?

A. Yes.

Q. Now, do you know why the change took place?

A. Of responsibility?

Q. Yes.

A. Well I'd left Ireland in April '02, February '02.

Q. Yes.

A. So it made sense; I mean, Denis had appointed new staff.

Q. Yes.

A. And it made sense for them to take over his affairs.

Q. Yes.

A. It's as simple as that.

Q. It wasn't seen as any slowness on your part to bring the matter to completion or anything of that nature, that it wasn't going anywhere?

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

Q. All right. But as far as you understand things. Now, I think or maybe you don't know, but I just can I ask you to look behind tab 12 for the moment? It's a letter to you from Christopher Vaughan. I think you know the letter, don't you?

A. I do, yes.

Q. And I think the final he enclosed a completion of financial statement for your consideration. And "The most important issue in returning Westferry Limited into a 'shelf company' with no assets as soon as possible in accordance with paragraph 5 of my letter of 23rd August, 1998."

Now I think we know subsequently this information came to the attention of Messrs. Weaver and Richardson, isn't that right?

A. Yes.

Q. And that seems to cause an explosion, would that be a fair way of putting it?

A. Certainly it arose in possibly in the litigation. I am not sure.

Q. Yes. Because am I correct in understanding or your

understanding of their position, was that they thought that somebody was trying to remove access to the retention money, effectively?

A. Mm-hmm.

Q. And the  $\frac{1}{2}$ 250,000?

A. Yes.

Q. Yes. Now, when you handed over the project to Mr. O'Brien Senior, I take it you would have, and we have seen certain documents, that you would have briefed Mr. O'Brien Senior and I think Mr. John Ryall, at least, about matters, isn't that right?

A. Yes.

Q. And subsequently, in relation to the litigation, you made yourself available to their London solicitors to enable them to have an understanding about the claim and the counter claim, isn't that right?

A. Yes.

Q. Now, I think when you handed over, Mr. O'Brien said that you told him that you know Kevin Phelan obviously there was no profit turning on the deal at this stage?

A. Yeah, the 40% profit share dissipated into nothing. I mean, it became obvious that he was getting his 40% for delivering this was an informal arrangement, delivering the project within 9 to 12 months. It became obvious to everybody it was a long-term project.

Q. But he was looking for 150-odd thousand, isn't that right, also?

A. Well I know that now.

Q. Yes. And you did you inform Mr. O'Brien of that at the time?

A. No.

Q. But when you were handling the project, you had not formed the view or received an indication from Mr. Kevin Phelan that he was owed  $\frac{1}{2}$ 150,000, were you or were you?

A. I can't say for sure, I can't say that for sure. He may have written a letter to me at one stage demanding fees.

Q. Well, there is if we just go to if you go behind 27 you can see there is a letter from Denis O'Connor?

A. Yes.

Q. to you dated the 18th of July 2001, isn't that right?

A. Yes.

Q. And behind that is a draft undertaking and behind that is a letter to you from Kevin Phelan, a draft letter to you?

A. Yes.

Q. And behind that is various invoices, do you see that?

A. Yes, yes.

Q. Now, do you remember getting these?

A. I think so, yes.

Q. Yes. Right. And if we just go past the letter from BBT and right through to the invoice. You can see there the first invoice is dated August 2000, and it's:

"Fees for Altrincham project as per attached schedule."

That is 45,000. That is not Doncaster, of course.

And then if you go over, there is:

"Date: May 2001.

Invoice 1123: 149,200.

Invoice 919: 45,000.

Funds received: 38,000.

Balance: 156,200."

And then if you go over, then, the next page, there is fees in regard of Doncaster, 1998, they amount to 86,000; 1999, amount to 40,000; 2000, 23,200, 149200 - 150,000, approximately.

Did you ever receive those, do you know?

A. I believe I did, yeah.

Q. You believe?

A. Yes.

Q. And did you understand them to be owing?

A. No.

Q. OK.

A. I think I gave evidence before that at the meeting in the Regency Hotel, I discussed fees with Kevin Phelan.

Q. Yes.

A. And I remember at the time the only fees he was due were in relation to expenses which were 5,000, which I paid him.

Q. Right.

A. As far as I was concerned, he, you know,

Q. As far as you concerned you discharged everything you felt that was owing to him?

A. Yes, and as far as I was concerned that, you know, he was working on the Doncaster project for profit, profit-share.

Q. Yes.

A. And I disregarded this particular invoice. If you look at the date, that is May 2001.

Q. Yes.

A. I think my meeting in the Regency was March 2001.

Q. Yes.

A. So two months later I get this invoice. Now, whether I passed this on to Denis O'Brien Senior, I can't recollect.

Q. All right. Let's just take it your understanding of the project was this: That you had a side agreement with Kevin Phelan?

A. Mm-hmm.

Q. That he'd get 40% of the profit on the project but he was on the same hazard as your side were in respect of turning a profit on the project, is that correct?

A. Mm-hmm. Yes.

Q. And that there was no suggestion that there was any agreement that he would be paid any fees for time spent in moving the project along, that ultimately his pay was going to be the profit?

A. That was my understanding.

Q. That was your and you were the one who dealt with him, is that correct?

A. Yes.

Q. All right. That being so, it seems improbable that you could have said to anybody that he was that there was 150-odd thousand due and owing to him?

A. Yes.

Q. All right. Now, if you go behind tab number 36, you can see that Mr. Kevin Phelan wrote to you by letter dated 12th of September 2001, and he said:

"I am disappointed but not surprised that you have failed to respond to my letter of August 27th, 2001. I am currently preparing a letter to the Moriarty Tribunal outlining my concerns regarding the transcript of your evidence. I intend to withdraw all correspondence and documents forwarded by me and by others on my behalf to the Moriarty Tribunal. I believe this action to be necessary because you have failed to return my documents as requested.

"I reserve the right to make a formal complaint to the Institute of Chartered Accountants in Ireland regarding you and your firm."

Now, in due course, he did make a complaint, isn't that right

A. Yes.

Q. against you, your brother and the firm?

A. Yes.

Q. Did you give him any documents after the receipt of that letter?

A. No, that is an entirely vexatious letter.

Q. All right.

A. There is no substance to it.

Q. All right.

A. And the complaint was equally vexatious.

Q. Yes. I will come to that and give you your opportunity

A. OK, I am just

Q. to deal with it?

A. I had no documents belonging to him.

Q. You had no documents?

A. And I think my solicitors wrote to him on that basis.

Q. Yes. If you go to the next document behind tab 38, a letter dated 14th September, 2001 and it reads:

"I have decided to write this letter as a result of two telephone conversations I had with Mr. Michael Lowry. As you are aware, Mr. Denis O'Connor is currently endeavouring to assist in resolving outstanding issues regarding various projects. I understand that you are satisfied with his involvement and you approve of his endeavours. Michael Lowry has given me the impression that in some way you feel disadvantaged in these negotiations. I must ask you to confirm by return if you feel in any way disadvantaged in these negotiations. I have written to you regarding another matter which must deal with which must deal at this time with at this time. The matter I refer to has nothing to do with me. I did not involve myself in that matter. I will be pleased to resolve the issue with Denis, if possible. However, if you feel that negotiations are in any way difficult for you, I would ask that you inform me immediately."

I just want to ask you can you throw any light on the

content of this particular letter?

A. No. It's totally vague, I have no idea what he is talking about.

Q. Well, was Mr. Denis O'Connor

A. Sorry, that part.

Q. That part?

A. Yes. In relation to Denis O'Connor, he, following I think that meeting in the Regency Hotel, where I believe is the first time Denis O'Connor became aware of any of these property projects

Q. Yes.

A. he, I have since learned, went off to England, to the UK, to look at the various sites involved.

Q. Yes.

A. And he promoted himself as an arbitrator for Kevin Phelan to recover fees which, after all, he had confirmed he wasn't due.

Q. Yes.

A. And I said Denis O'Connor approached me with these with sort of a settlement document, saying that Phelan Kevin Phelan could sell the two various properties and would be paid various fees if he did it. Now, I said to Denis O'Connor, "Look, you know, if he wants to do that, he has a three- to six-month window in which to do it". Like, I acceded to it. I said, "OK, but I am not getting involved with him. If he can come back with buyers for those prices, I will pay him appropriate fees." And Denis

O'Connor went followed this initiative for a period of time, and eventually, I think, went as far as signing up on my behalf some kind of cobbled-together agreements which my solicitors wrote to him and confirmed that he wasn't entitled to act as my agent. I was acquiescing to his effort.

Q. Yes. I know, and in fairness to Mr. O'Connor, Mr. O'Connor has informed the Tribunal that he travelled to England to look at certain properties in which Mr. Lowry was involved in?

A. Yes.

Q. And those were as we know, Mansfield and Cheadle?

A. Yes.

Q. He has also informed the Tribunal that he viewed those in the company of Mr. Kevin Phelan. I think you know this?

A. Yes, I do.

Q. And that Mr. Kevin Phelan, on that visit, took him to view the Doncaster site, as well?

A. I am aware of this, yes.

Q. You are aware of that. And it was at this time, around this time that Mr. O'Connor or sorry, that Mr. O'Connor, as you say, came to you with invoices or documents in relation to a claim which Mr. Kevin Phelan was making?

A. Yes.

Q. For fees?

A. For there were fees driven against achieving sales prices. Fees and profit.

Q. Of which of which properties, though?

A. The two, the two.

Q. Mansfield and Cheadle?

A. Nothing to do with Doncaster, it was the other.

Q. Mansfield and Cheadle?

A. Mansfield and Cheadle, yes.

Q. Well, of course, we have heard all the evidence about Mansfield and Cheadle, and your involvement in them and Mr. Lowry's involvement in them, isn't that correct?

A. Yes.

Q. And Mr. O'Connor was Mr. Lowry's accountant or agent in relation to matters, yes.

A. Yes.

Q. And we have also heard the evidence of the meeting at the Regency Airport Hotel, where Mr. O'Connor was put in the frame for the first time about property transactions involving Mr. Lowry, isn't that correct?

A. Yes.

Q. And was Doncaster discussed at that meeting in the Regency?

A. I can't recollect.

Q. Did Mr. Kevin Phelan claim fees from you in respect of Doncaster at that time?

A. No.

Q. in the Regency Airport. He I thought you said that 5,000 was due and you paid him?

A. Oh sorry, apart from the 5,000. I thought you were referring to the invoices.

Q. No, no. The invoices arrive after that meeting, isn't that right?

A. Yes.

Q. But was he saying he was due fees for Doncaster?

A. No.

Q. at that time?

A. He wasn't saying he was due fees.

Q. He wasn't saying he was due fees?

A. No.

Q. But expenses?

A. Expenses, yes.

Q. Expenses. In respect of Doncaster?

A. We didn't it break down.

Q. You didn't break down?

A. I didn't break down where his expenses were coming from.

Q. I see. Just to try and get this clear - the expenses that you saw that he was entitled to and that you were prepared to pay him was in respect of everything he had done, is that for all properties, the 5,000?

A. Yes.

Q. Very good. Now, you say that if we go over the next document. Is this the form of the agreement you say that at the next tab, sorry, I beg your pardon. Tab 39?

A. 39.

Q. 39.

A. Oh, yes. Yes.

Q. And we see there "Terms and Conditions":

"This agreement refers solely to the site at Mansfield and will be known as the Mansfield agreement.

"Denis O'Connor will represent and has the authority to represent Aidan Phelan and Michael Lowry as to this agreement.

"Kevin Phelan is due no fee in respect of this transaction and he further warrants that he is not committed to any other fees including, in particular, but not limited to John Eastham.

"Aidan Phelan and Michael Lowry warrant that they have no claims against this transaction.

"Kevin Phelan has no claims against Aidan Phelan or Michael Lowry in respect of this agreement or site transaction.

"Any such claims or actions, implied or otherwise, are regarded as settled upon signing this agreement.

"Aidan Phelan and Michael Lowry have no claims against Kevin Phelan in respect of this agreement or site transaction.

"Any such claim or actions, implied or otherwise, are regarded as settled upon the signing of this agreement.

"Currency is in pounds sterling.

"Upon signing of this agreement Kevin Phelan will introduce Denis O'Connor to the purchaser. At all times, from signing of contract, all communications will be through Denis O'Connor.

"All funds will be transferred to the vendors' benefit by instruction of Denis O'Connor.

"The vendors are Aidan Phelan (90%) and Michael Lowry (10%).

"The agreement:

"Kevin Phelan will sell the site unconditionally for i£½375,000 to the purchaser identified by him. Contracts will be exchanged by Monday 22nd October 2001 with payment of 10% deposit.

"The contract for sale will be completed by Friday December 21st, 2001.

"The contract for sale will specify that, if the completion date is not met, the vendors have the option of charging daily interest with annual rate of 8%.

"Kevin Phelan undertakes to recruit a solicitor to represent the vendor at the cost of Kevin Phelan.

"Upon completion, the vendors to receive i£½300,000 without deduction - the balance of funds on hand will be the property of Kevin Phelan.

"If this agreement is not completed by December 21, 2001, Kevin Phelan will relinquish exclusive right to sell the property. Kevin Phelan will receive agreed fee of i£½50,000 fixed due upon completion of sale."

And it's signed by Kevin Phelan and by Denis O'Connor on the 19th of September 2001, is that right?

I suppose you can't help us, can you, as to whether that was the date that Mr. O'Connor went to see the properties in the UK?

A. No, this was after.

Q. It was after that, you think?

A. Yeah, these agreements were after that date.

Q. Yes.

A. I think it would have been shortly after the Regency meeting, he went over to the UK.

Q. Right. If you go then to behind tab 40, it's a light-form agreement, isn't that right, in relation to

A. Handforth, yes.

Q. Cheadle.

A. Yes.

Q. Well, you said that you have told us you can see he is signing on your behalf and on behalf of Michael Lowry, I think, isn't that right?

A. Mm-hmm.

Q. Or sorry, on the Cheadle document, he is signing on your behalf solely, isn't that right, Denis O'Connor?

A. Yes, yes.

Q. And can I take it that he had your authority?

A. He did not have my authority.

Q. He did not have your authority?

A. No.

Q. I see?

A. And I think my solicitor wrote to him on that basis.

Q. That was in January, I think, of 2002, your solicitors wrote, is that right? Some five months later? You can't be sure?

A. I don't know why there was a delay, you know, but

Q. The 9th of January it's at tab 42:

"Dear Denis,

"You will recall that I spoke to you prior to Christmas"

sorry, in fairness, this person has spoken to him before

Christmas about the matter "in relation to this matter,

and you confirmed that you have not sought to and do not

represent any interest of Aidan Phelan or Helen Malone in

relation to any property. You confirmed that any

discussions you were having in relation to Kevin Phelan

were not on their behalf.

"Notwithstanding this, Mr. Phelan continues to harass my

clients with correspondence and accordingly I have been

instructed to write to him in terms of the attached."

Now, if you go over, it's the page, it's from Gillygooley

Road, it's Mr. Kevin Phelan.

A. Page 41, is it?

Q. Yes, it's it's just behind that. That is dated 9th of

January 2002:

"We act for Mr. Aidan Phelan and Ms. Helen Malone."

You can see the it's sent on to him.

A. Yes.

Q. "Correspondence directed to our clients with regard to

these issues is entirely misplaced. Mr. Denis O'Connor has

not, does not and will not act on behalf or in any way

represent my aforesaid clients in respect of any property

in which either or both of them has an interest.

"Mr. O'Connor has confirmed that he agrees this to be the

position.

"Neither Mr. Phelan nor Ms. Malone have any document, original copy or otherwise, which belongs to you.

"Any suggestion that there can be any action against our client, whether in relation to the failure to produce documents or indeed on any of the other grounds whatsoever, will be entirely rejected.

"We note your reference to the Moriarty Tribunal. Our clients have cooperated fully with this Tribunal and have furnished all relevant documents to them. It is entirely a matter for yourself as to what you tell the Tribunal. In the unlikely event that you believe it necessary to continue correspondence in this regard, please note that this should be directed to this firm and not directly to our clients."

So Ms. Preston is informing Mr. Phelan of the same matters as she informed Mr. O'Connor about, and she goes further in relation to the Tribunal and asked that correspondence be with her and not directly to you in future, isn't that right?

A. Yes, yes.

Q. Now, if you go to tab 43, you can see that is the top copy or it's a copy of the top copy that Ms. Preston has sent.

But behind that, you will find there's a letter dated the 3rd of January addressed to you.

A. Yes.

Q. And "Re missing file documents":

"We refer to our previous correspondence dated August 27th 2001, September 12th 2001, September 14th 2001 and November 12th 2001.

"We are concerned that Mr. Denis O'Connor has ceased to be involved in resolving various matters involving you and others. Mr. O'Connor has assured us that you and Helen Malone would return our original files and documents. We must now inform you and Helen Malone that we will rely on our copy documents in all future actions against you because you have failed to return the originals.

"We must inform the Moriarty Tribunal as we are being pressed on this issue."

Do you know anything about

A. No.

Q. that? You had no original documents?

A. I had no documents belonging to this man, whatsoever.

Q. Right. If you go back to tab 27, my colleagues are directing me. This is a letter from Denis O'Connor dated 18th June 2001 to you?

A. Yes.

Q. "Further to Kevin Phelan's fax some time ago I had arranged to meet him, as you know, in my office last Saturday afternoon.

"When I arrived, the first thing I picked up from my fax was an agenda and I attach a copy of same.

"I then explained to Kevin that I was under time pressure and we moved on.

"Agenda: Copy enclosed.

"Letter, June 15th addressed to you.

"I was asked to pass on the enclosed to you. You might note that I advised him that

a) I knew nothing of the Doncaster site and advised that I could not help on it unless specifically requested.

b) As to Handforth and Mansfield, I expressed amazement that he purported to be a 40% beneficial owner.

Eventually, he agreed that he was not the 40% beneficial owner, but rather, that he was entitled to 40% of the net profit.

"I told him that this was the first I was aware of same.

However, I did say that my understanding was that either you or Michael wanted to cover costs at this stage as a priority. I outlined that the current net cost on the sites was in the order of £525,000" - that is Cheadle.

"£300,000, Mansfield."

"I put it to him that he had an obligation to dispose of these sites - however, he did not have exclusivity as time was essential.

"He is to fax me such a proposal by the end of this week.

"Altrincham.

"This means nothing to me, which Kevin agrees. He is claiming fees of £45,000. I enclose a raft of correspondence which he gave me to pass on.

"Doncaster.

"He is claiming fees of £156,000 in relation to the same as

per enclosed statement, plus one fee note.

"Again (and he accepts this) it is nothing to do with me.

"Fees. I passed on your cheque to him.

"General. I am anxious (at Michael Lowry's request) to complete the deals he was involved in. I know this was your objective also. I will help in any way I can but Kevin's attitude was hostile and no remorse for deals which did not materialise.

"If I can help on the other projects, please let me know - I will help if I can. Kevin is now saying he is not talking to you but may deal with me.

"He also discussed this retention problem in Doncaster and agrees that a claim by the vendor of  $\frac{1}{2}$ 250,000 relating to a lease on a carpark is spurious. I may be able to progress settling some of the of this dispute if I knew the analysis of the purchasers' claim,  $\frac{1}{2}$ 480,000. However, it is up to you.

"I will help in any way I can in what is becoming a hostile and tense atmosphere, but my priority is to get Mansfield sorted and to get Handforth finalised (moral obligation)."

Now, did you receive that and that is with the contained with that was the invoice in respect of Doncaster, isn't that correct?

A. Mm-hmm.

Q. And you say that no such fees were ever agreed and no such fees were ever due?

A. No. And this 40% thing is nonsense.

Q. On the Mansfield and Cheadle?

A. This is all new information.

Q. All right.

A. At the time, sorry.

Q. Yes. At the time. If you go to just behind that letter of Mr. O'Connor's, the second document. It seems to be an office copy of a letter from Mr. Kevin Phelan to you dated the 30th August 2000, which was enclosed as the raft of documents?

A. Yes.

Q. "Further to our discussion with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting, we have now" sorry.

"Mr. Aidan Phelan,

AP Consulting,

16 Clanwilliam Terrace,

Grand Canal Quay,

Dublin 2.

30th August 2000.

"Dear Aidan,

"Re Doncaster/Altrincham/Luton projects.

"Further to our discussion with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting, we have not had time to reflect on those discussions and also consider the letter received from Christopher Vaughan dated 18th August 2000.

We are extremely disappointed that you have failed to reply

to our recent correspondence or make any contact with Gameplan. You agreed to keep us informed on progress regarding the Doncaster project. We are concerned but not surprised that our so-called 'development partners' are describing the Doncaster property as a 'pup' which is what I expected from people who have a serious conflict of interest and have ulterior motives. At a meeting in your office on 11th of April 2000, the Chairman of Stannifer, a reputable profit developer, described the site as the 'best site in Doncaster' and Gameplan agree with his assertion. "In our opinion, the Doncaster project remains an extremely good opportunity. However, since Gameplan were requested to allow others to manage the project, little progress has been achieved. In the period since others have taken control, Westferry have managed to lose credibility by not continuing the momentum which Gameplan had established over the previous period.

"At this point, we are unwilling to accept the current position and request payment of our previously agreed fees and costs, or alternatively, allow Gameplan to take back the management of the project. Gameplan have worked extremely hard on the projects listed above in good faith and we believe that we have been treated very unfairly. We also enclose an invoice for the fees agreed for your new project at our meeting on the 9th of February 1999, together with the schedule of our involvement. We enclose an invoice for the Altrincham project and a schedule of our

involvement.

"We believe the fee for the project is reasonable considering the time and effort involved. We trust you clearly understand our position."

Now, first of all, was there a meeting on the 11th April 2000 with Stannifer?

A. There was a meeting with Stannifer, yes, at some stage. I have no reason to think it wasn't on that date.

Q. And the letter seems to be about Doncaster, doesn't it? Tagged on at the end are expenses or invoices in relation to Luton and Altrincham?

A. Yes, it is about Doncaster, but when he says at the top there "Further to our discussions with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting," there is a minute of that meeting and that was about the two projects that Michael was involved in, Michael Lowry.

Q. Mm-hmm.

A. What he is actually doing here, he would have fallen for some criticism after that meeting because I obviously had some harsh words with Michael Lowry and said Kevin has not performed on these two projects. That is why the minute was taken. And he is returning serve. He is sort of saying, "OK, you are giving out to me for these two projects; I am giving out to you because of the progress in relation to" like, my progress, Aidan Phelan's progress, in relation to Doncaster.

Q. Yes.

A. So, like, when he talks about discussions with Michael Lowry, he is referring to the subject of a different meeting. Do you follow my point?

Q. I do. You are saying that

A. We had a meeting on the 17th of August in Jury's.

Q. That was the one that Ms. Helen Malone took the note of it?

A. Correct, Christopher Vaughan Michael Lowry, myself.

Q. Yes.

A. Sorry, I am just saying that this letter is a bit misleading. It appears when he starts off there saying

Q. Sorry, could I just I take the point you are making here is this: You balled him out of it over the Mansfield and Cheadle project, isn't that correct?

A. Yes.

Q. And you were saying that he is now returning the serve, as you put it?

A. Yes.

Q. And and tried to give you one back in relation to Doncaster?

A. Correct, yes.

Q. Yes.

A. That is exactly.

Q. Now but it says:

"Further to our discussions with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting" so "we have now had time to reflect on those discussions and also consider the letter received from Christopher

Vaughan dated 18 August 2001."

So it's "Further to our discussions with Christopher Vaughan and Michael Lowry following your 17th of August 2000 meeting."

A. Yes.

Q. Now, that meeting, you say, that was the one with Christopher Vaughan, Michael Lowry, yourself and Ms. Malone taking a note, is that correct?

A. Correct.

Q. And I can understand that at that meeting you would discuss Mansfield and Cheadle, because you had a common interest?

A. Correct.

Q. But what is being suggested here is that what is being conveyed to him, that there was a discussion about Doncaster at that meeting, as well. Isn't that what the the way the letter reads?

A. Yeah, well the minute that was taken of the meeting, there was no discussion of Doncaster. I just I find this letter misleading.

Q. Well, what he is talking about is that he had discussions with Christopher Vaughan and Michael Lowry?

A. Yes.

Q. And he says "our discussions"; is that discussions involving you, him, Michael Lowry and Christopher Vaughan?

A. I certainly had no discussions with him after that meeting. I was putting the I told Michael Lowry he had to get him moving.

CHAIRMAN: He seems to be referring to himself as Gameplan?

A. Yes, Gameplan he used Gameplan and himself some of the time.

CHAIRMAN: Yes.

MR. COUGHLAN: Now, I think the Tribunal drew your attention to this particular matter in October the 11th October 2005. Are you aware of that?

A. Well, I am not really aware. I am sure if it's

Q. We do.

A. Yes.

Q. And we didn't the first response we received in relation to it is here, now, you understand?

A. I didn't realise that.

Q. All right.

A. I thought we had answered everything.

Q. All right. Now, if you see the reference to the meeting with Stannifer?

A. Yes.

Q. Did that meeting, as it's described here, take place in your office?

A. Yes.

Q. And who was present at it?

A. Myself, probably there was a few fellows from Stannifer there.

Q. Yes.

A. And possibly Helen Malone.

Q. Yes.

A. Kevin Phelan.

Q. Anybody else?

A. No.

Q. Definitely not?

A. Well definitely not that I can remember, anyway.

Q. Well, I want to be very careful about this because I am just asking questions about it at the moment as to who was present at this meeting. Obviously the chairman of Stannifer well sorry, it mightn't have been the Chairman of but somebody from Stannifer was there isn't that right, can you remember the name of that person?

A. No.

Q. All right. Well I suppose it's a matter we can check with Stannifer. And just to be clear and to be as fair to everybody as we can possibly be, I suppose if somebody isn't allowed to complete a project, as Kevin Phelan wasn't being allowed to complete it, you had taken over, isn't that correct and he was complaining about things not moving along as it might have if Gameplan had kept control of it, did you think that there might be any entitlement to any payment if he wasn't allowed to complete the project there?

A. I didn't form an opinion on it.

Q. You didn't. You were of the view he wasn't entitled to anything and he was paid his expenses?

A. I think it should be said it was with his agreement he withdrew from the project because of McAlpine's experience, at the time he agreed it.

Q. Yes.

A. Because McAlpine had experience on the stadia side.

Q. Yes.

A. And on the development side.

Q. Right.

A. And you know, we all agreed that the Council had let us down.

Q. Yes.

A. So it was with his agreement he stepped aside.

Q. Was there a specific agreement sorry?

A. No, verbal.

Q. Stepped aside in the management of the project you mean?

A. Yes.

Q. I get your point. Now, well, from all you have said, so far, can we take it that by the time you handed over the project to Mr. O'Brien Senior, you were of the view that Kevin Phelan was not entitled to anything, as far as you were concerned?

A. Yes.

Q. All right. 44 behind tab 44, Mr. Phelan. It's the 16th of January 2002. I think this is Mr. Kevin Phelan has been informed that Mr. John Mulcahy had been appointed by Westferry. And he says:

"I am happy to meet with you when convenient to ascertain the basis of fees which you may be claiming in connection with the above property."

Do you see that?

A. I do.

Q. Did you give any such instructions to Mr. John Mulcahy?

A. No.

Q. Where could instructions have come from? Mr. Ryall, perhaps?

A. Possibly, possibly.

Q. Sorry, it was read out this morning. I think it was Mr. Ryall who would

A. John Ryall, OK.

Q. Like Mr. O'Brien Senior, can I take it you would not have informed Mr. John Ryall that Mr. Kevin Phelan was entitled to any fees arising out of Doncaster? You wouldn't have given that advice?

A. No - well, I've stated my position.

Q. Yes, yes. If we go to tab number 46, I think this is the first time that Mr. Christopher Vaughan has written to you on the 19th of February 2002, and this is appears to be Mark Weaver's first visit to Mr. Christopher Vaughan, isn't that correct?

"On Monday lunchtime 18th February at about 1:45 our receptionist telephoned me to say that a person called Mark Weaver was at our reception and if I had a few minutes to spare him he would like to talk to me. She then added it was Mark Weaver formerly of Doncaster Rovers Football Club.

"He had no appointment and I had neither met nor spoken to him before - but I thought that it would be interesting to speak to him.

"I then spoke to Mark Weaver for about 20 minutes alone.

"He wanted to talk about Doncaster Rovers Football Club, the current court action between Westferry and Richardson, and Kevin Phelan.

"At the end of the meeting I discovered that he was apparently en route to Milton Keynes to talk to someone called Kerry Dixon - who I think used to play for Chelsea - about football in Milton Keynes. It would appear therefore that he had not made a special journey to come and see me.

"Even as I dictate this letter, I am not totally sure why he did come to see me, save that I think he wants to try and arrange a meeting between what he refers to as his side of the court action relating to the  $\frac{1}{2}$ 250,000 retention money to take place with our side to see if there is any way that this matter can be resolved, as the costs are becoming unrealistic.

"I explained to him that I no longer had any involvement in the court action whatsoever and I had no knowledge of it at all, other than that Peter Carter-Ruck & Partners were acting on behalf of Westferry."

You hadn't, of course, appointed Peter Carter-Ruck in relation to those matters; it was Mr. Tallents who had

A. Yes, yes.

Q. "I said that, so far as I was aware, Craig Tallents was the right person to discuss this proposal with, to which he replied that he had met Craig at Leicester Forest East Service Station once, and Craig had a totally unrealistic

view of what the claim was all about and that the instructions that Craig had received were totally wrong and misguided and that anyway Craig had been sacked (apparently)."

I think that is reference to a purported dismissal by Mr. Kevin Phelan?

A. Yes, yes.

Q. "Mark Weaver then produced to me a letter dated 23rd of August 1998 which was written by me to Paul May and Kevin Phelan with a copy to yourself setting out the situation about the completion of the purchase of DRFC by Westferry.

That letter also contained the paragraph from me suggesting that Westferry reduce itself to a shell so as to avoid having to pay the  $\frac{1}{2}$ 250,000 to Mr. Richardson. That paragraph had been highlighted in the letter, with ink crosses in the margins.

"I asked Mark Weaver where the letter had come from and he told me that it had been sent to him anonymously, together with another letter which he was not prepared to show me.

He said it was up to me to form any own conclusion as to who had sent the letter to him. I said that this was a confidential letter to my clients and that he should not have a copy of it at all.

"He then said that he assumed that the two letters had come from Kevin Phelan. He then went on to explain that he did not know on whose side Kevin Phelan was in the court action. Apparently, Peter Carter-Ruck & Partners have

named him as a witness for Westferry, but then he hinted that Kevin Phelan had been assisting them with the court case.

"He then said that he must have met Kevin Phelan 200-plus times during the last three years, and always found him very difficult to follow as to whether he was telling the truth or not about a particular set of facts.

"I then asked him to confirm to me that he had not been sent to talk to me by Kevin Phelan and he said that he quite definitely had not.

"Up to that point, I felt that Mark Weaver's reasons to come to see me were quite genuine and that he wanted to see some form of meaningful dialogue to resolve the current court proceedings between Richardson and Westferry, which both sides were finding difficult because of the presence of Kevin Phelan, and the escalating costs.

"Mark Weaver then went on to say some things which then made me wonder whether he had actually been sent to see me by Kevin Phelan to try and put some pressure on you and your colleagues in Ireland.

"The points that he mentioned were as follows:

"1. He told me that he had received a copy of my letter of the 23rd August 1998 on Monday last, 11th February 2002, yet he then told me that he had shown it to Reg Ashworth who had told him that it was interesting to read but it was actually inadmissible as evidence - I am not a litigation lawyer but I had assumed that it would be inadmissible as

it is a private letter from me to my clients.

"He then went on to say that their barrister had looked at the letter and said that Richardson could launch a private prosecution against Paul May and Kevin Phelan because they had suggested in the letter a fraud to deprive Richardson of the  $\frac{1}{2}$ €250,000 which was rightly his. This statement simply did not ring true. I had previously stressed to him that I had no involvement whatsoever in the Westferry/Richardson court case.

"However, he seemed to know that I still acted for Paul May, and now I wonder whether the statement about their barrister stating that a private prosecution for fraud could be launched was meant to send me off to Paul May, who is a current client of mine, to ask him to put some sort of pressure on.

"I have not spoken or discussed the matter with Paul May and currently have no intention of so doing.

"2. He then said that a reporter from The Irish Times called Callum Keena had recently tracked him down to his home in Stockport and had asked him a lot of questions about Michael Lowry. Mark Weaver told me that he told this reporter that he had never ever heard of Michael Lowry and that so, far as he was aware, Michael Lowry had absolutely nothing to do with DRFC.

"He then went on to say the same reporter had also spoken to Reg Ashworth, who apparently was non-committal.

"Mark Weaver then went on to talk about another letter that

had also been sent to him anonymously and which he would not show to me but which apparently was written by me and indicated that Michael Lowry was involved in DRFC and that both letters, the one on 23rd August 1998 and the one that I had not seen, were the in the possession of Callum Keena, amongst other documents, and that the reporter was trying to make out some sort of case to prove that Michael Lowry had lied on oath at the Tribunal about his involvement in DRFC.

"3. He then said that Callum Keena had told him about the Walbrook Trust (a name I have never heard before) which apparently connected Michael Lowry to DRFC. There was no comment I could make on this as I simply had no knowledge.

"It seemed to me that Mark Weaver, whom I had always understood to be a football manager of rather modest ability and Mr. Richardson's 'chief runner' had suddenly become incredibly well-informed about the Moriarty Tribunal. He also spoke about Denis O'Brien and the fact that he now knew that he was the owner of DRFC and that he would not want to be involved in any form of litigation.

"We then talked a little more about the  $\text{€}1/2250,000$  which was, of course, payment for the missing car park lease. He said that there was no underhand dealing whatsoever by Richardson, it was the Council who had hidden the existence of the lease, which I found rather hard to believe.

"He obviously finds Kevin Phelan an extremely difficult person to get on with, who is very volatile in his views

and behaviour and, interestingly enough, told me that Kevin had telephoned him on no less than four times on Christmas Eve, ranting and raving about not being paid by Richardson.

"I did not tell him that he had also tried to telephone me on Christmas Eve.

"I do not really know what you are going to do with the information contained in this letter, but obviously I have to report it to you.

"My initial thoughts were that Mark Weaver was a perfectly genuine individual who was trying to help Richardson in the court action and happened to be passing through Northampton at lunchtime and thought it would be a good idea to come and find me with a view to suggesting some sort of meeting between the two sides in the litigation over the  $\frac{1}{2}$ 250,000.

On the other hand, I found his knowledge of the Moriarty Tribunal and the veiled threats to Michael Lowry that Callum Keena had a lot of information which the Tribunal would be interested in and suggesting that there could be some form of private prosecution against Paul May, to be slightly threatening.

"On balance, I think it more than likely that Kevin Phelan was somehow behind this visit than not.

"Yours sincerely,

CV Vaughan."

So he is reporting everything to you, he doesn't know what you are going to do with the information. What did you do with the information?

A. Well, first of all, I had a number of letters from this fellow, Mark Weaver.

Q. Yes.

A. And they were so crazy that I wouldn't have taken anything he said seriously.

Q. Yes.

A. I mean, I got incredible letters from him as did Vanderpump, Peter Vanderpump. Like, the content of this letter, I wouldn't have been put any mass on it at all.

Q. No, I know you may not have but what did you do with it?

A. I did nothing with it.

Q. Did you tell anybody about it?

A. No.

Q. You didn't tell anybody in Westferry about it?

A. I don't believe so. I think I did speak to Denis O'Brien Senior at some stage about a visit. I think this guy had a couple of visits.

Q. Yes.

A. Weaver. Now, whether it was this visit or another visit, I can't remember.

Q. Right.

A. You see, at that time I suppose Denis O'Brien Senior wasn't involved.

Q. He was well, this was February 2002; he came in he says a little bit later?

A. Yes.

Q. But it looks as if you were moving out of the country

around this time, would that be fair to say?

A. Yes.

Q. Was Mr. Ryall perhaps dealing with anything?

A. Yeah, I don't believe I don't know whether I spoke to John Ryall about this.

Q. Yes.

A. But certainly, I wouldn't have taken anything Weaver had to say I wouldn't have put any mass at all on it.

Q. No, it's not so much what he is saying, and I understand entirely reporting accounts of various things or discussions with various people, but there were two interesting, perhaps, pieces of information in it. One, he knew the contents of the letter of the 23rd of August which was the one which seemed to?

A. Suggest.

Q. excite them, that Westferry was going to be turned into a shell company, isn't that right?

A. Can I just say that they were not my instructions.

Christopher Vaughan developed this

Q. No, I am

A. idea himself.

Q. I understand the point and I am not criticising you or suggesting that you were trying to do anything of the sort

A. Yes.

Q. do you understand me?

A. Yes.

Q. But just looking at the other side, they seemed to get excited about it?

A. Well, I can understand why.

Q. Yes, yes. But they seem to have the information, they seem to have a letter that was coming from inside?

A. Yes.

Q. your position, a letter of your solicitors, isn't that right?

A. Yes.

Q. And then they also or he also seemed to make reference to another letter which made reference to Michael Lowry having some involvement with Doncaster, isn't that right?

A. Yes.

Q. Those were the two significant matters in there.

A. But can I just say that the letter they referred to, the 23rd of August '98, was not written to me.

Q. No.

A. So it wasn't unusual that somebody like Paul May - I am not saying Paul May gave it to them, but if it was a letter written to me, I would be more troubled by the content of the letter. Do you follow my point?

Q. I take your point, I take your point. But nonetheless, I suppose you could be or it was Westferry's information, I suppose? It was being sent to you, but it was Westferry's information, wasn't it?

A. Yes.

Q. And it looked, on the face of it, at least, anyway,

relevant to the litigation in some way, isn't that right?

A. Yes.

Q. To the Dinard/Westferry litigation?

A. Yes.

Q. And do you think, in those circumstances, that you would have passed on that information?

A. I'd say probably not.

Q. I see. And there had been hearings in this Tribunal, isn't that correct, on the very issue of whether there was an involvement involving Mr. O'Brien and Mr. Lowry, isn't that right, the in relation to

A. Can you just explain that, sorry?

Q. Well, had you given evidence at the Tribunal at this stage?

A. Yes, I had.

Q. And the evidence related, or the inquiries that were being conducted were in relation to property transactions, isn't that correct?

A. Yes.

Q. And what the relationships were in those property transactions, isn't that correct?

A. Yes, yes.

Q. And a matter that was being inquired into in the course of those inquiries was whether there was any relationship between Mr. Lowry and Mr. O'Brien, isn't that right

A. Yes.

Q. in relation to those property transactions?

A. Yes.

Q. This is shorthand now, that I am giving it to you in this form. And here, a matter was being raised here that there may have been in existence a letter which indicated that Michael Lowry had some connection with Doncaster which you understood to be a purely Denis O'Brien transaction, isn't that right?

A. Yes.

Q. And did you bring that to anybody else's attention at that stage?

A. I don't believe so, I don't believe so. I come back to the fact that this was Mark Weaver speaking.

Q. Yes, I understand that

A. There was no

Q. and I understand your reasoning. But it was Christopher Vaughan I am sorry, sorry. Yes, please do?

A. No, if you take Mark Weaver's comments as being passed on by Christopher Vaughan

Q. Yes.

A. Christopher is, a conduit for this guy's comments.

Q. Yes, that is true.

A. And if you saw some of the other letters - I don't know how many you have seen by this guy

Q. Yes, we have seen a number.

A. I scanned over that letter very quickly. I wouldn't have taken anything he had to say seriously.

Q. Well, I can understand, I can understand, because there is a lot of information being imparted in that letter which

one might or might not take seriously, depending on one's state of knowledge of the affairs. But what did appear to be accurate was this: that he did produce a letter of Mr. Christopher Vaughan's, isn't that correct

A. Yes.

Q. dated 23rd of August 1998, which had a relevance to the litigation?

A. Yes.

Q. It was a Westferry document.

A. It was.

Q. Westferry. Now, so I take it, and I know the reason you have stated, that you didn't feel as concerned as if it had been a document which had been addressed to you and might have got out of your possession, but it did show that there was a piece of information in existence, isn't that correct?

A. Well he is saying that.

Q. That is an objective piece of information, isn't that right, that he showed me this letter, it's my letter, and it's the letter of the 23rd of and he also went on to say, didn't he, that there was another letter in existence which linked Michael Lowry to the Doncaster project, isn't that right?

A. Yes.

Q. Did you get on to Christopher Vaughan and say what letter could he be talking about?

A. No.

Q. You didn't make any inquiries?

A. I can't remember making any inquiries of Christopher Vaughan.

Q. Did you make any inquiries of anybody?

A. No.

Q. And you say you didn't bring this information to anybody else's attention?

A. I don't believe so.

Q. In fact, the letter, the second letter that has been referred to, that is the letter that indicated that there may have been an involvement between Mr. that Mr. Lowry had an involvement in Doncaster, must have been the letter which subsequently, as you understood it, came to light prior to the mediation and as you understood it, at the mediation, isn't that right?

A. I think that is fair to say, yes.

Q. And when you received this letter from Mr. Vaughan, did you talk to him at all between that and, say, June of that year when you were assisting Messrs. Peter Carter-Ruck in the preparation for the case? Did you have any discussion with him.

A. I am sorry, I'm I can't say really what discussions I would have had with Christopher Vaughan.

Q. But if you had asked

A. Probably not many discussions, because the project was very much the only thing active about the project at the time was the litigation.

Q. Yes. You were unaware of the Kevin Phelan matter being handled inside

A. Yes.

Q. by Mr. O'Brien Senior and Mr. Ryall, is that right?

A. Yes.

Q. And they never kept you informed of that at all?

A. No.

Q. In fact, they didn't ask you anything when something arose, am I correct?

A. Correct.

Q. Now, of course, if you had made an inquiry of Mr. Vaughan at this stage about, "What is the second letter nonsense" as you saw it "about?", you would have received the response that you subsequently received when you made inquiries after Mr. Denis O'Brien Senior brought it to your attention, isn't that correct?

A. Yes.

Q. Or you should have at least, anyway?

A. Yes.

Q. Sorry, I beg your pardon. In fairness, sorry, I just want to I think you may have brought it to somebody's attention, without being aware of it now. But it looks as if it looks as if you brought it to the attention of Messrs. Peter Carter-Ruck & Partners. It must have been in the process of assisting in the preparation of the litigation. I will just put up I will put up a facsimile transmission sent which seems to have been

sent by you. I think we might have a copy. I will just hand you a hard copy at the moment. I will put it up there. Book 81A, behind Divider D. Do you see the fax there?

A. Yes, yes, that is my

Q. That is you, and you are sending it to Carter-Ruck, isn't that right?

A. Yes.

Q. And you attach

"1. A letter from Mark Weaver to Ned Carroll (a former partner of mine in a chartered accounting practice which I resigned from in December 1997). He had no connection with the transaction and it is very concerning when matters which are the subject of litigation are being sent out to unrelated parties."

That is the first one.

And then the second one is a letter from Christopher Vaughan, Solicitor, documenting a meeting he had with Mark Weaver.

"I hope you can read the Mark Weaver letter. But in any case, I will have copies for our meeting on Wednesday morning next."

So it looks as if you sent one which was a direct correspondence from Mark Weaver to the former colleague of yours and you sent that Christopher Vaughan letter to Carter-Ruck

A. Yes, there is three letters.

Q. in the litigation, isn't that right?

A. Mm-hmm. Sorry, you will appreciate I am operating from memory.

Q. I do, I do.

A. Yes.

Q. I am not being I am not being critical. I want to be fair to you, I am not being critical; I am bringing it to your attention, because it did seem to have relevance in the litigation, the matter, and you did send it to Carter-Ruck?

A. Yes.

Q. Yes. Now, it looks, from that fax, that you were going to discuss it at a meeting the following Wednesday morning, where you were going to assist. Were you the it's difficult to who on the Westferry side was taking the lead in relation to the preparation for the litigation?

A. Well up to my I was up to the point I sort of may not June.

Q. Up to June?

A. Yeah. I would have been talking to Ruth Collard.

Q. Yes.

A. And I would have been taking the lead on it.

Q. Right. All right. I am going to turn, for a moment, to revised book 62. It's behind the statement of Ms. Ruth Collard, the solicitor.

A. I have it. Thanks.

Q. I hope I am right about this. Oh, I beg your pardon, the

documents are in book 63. Sorry, the documents are in book 63 that I am going to refer to. If I can find them now.

Is that right? I just want to look at two attendances of your meetings with Ruth Collard, one and I am just trying to find them at the moment. I am sorry about that.

This is book 80, yes, book 80, yes. That is the book I am in. And I will get the tab now. Book 80, tab 1A. Behind tab behind tab small (a). It should be a yellow one.

A. Oh, yes, yes. Just under 1C there?

Q. Yes.

A. Yes.

Q. This is the first one is the 29th August 2001. I think that would be after proceedings were issued against you, would that be correct?

A. Yes.

Q. Yes. And there was a meeting between "Ruth Collard, Kate McMillan, Aidan Phelan and Craig Tallents at Carter-Ruck's boardroom prior to your conference with counsel, Richard Lord. Craig Tallents explained that Kevin Phelan had been alleging that Craig Tallents and Peter Carter-Ruck were not instructed to represent Westferry and that he was the only person who could give instructions on behalf of Westferry. Craig Tallents explained that he had to spend much of the previous day reassuring his senior partner that he was instructed by Westferry.

"Aidan Phelan said that Westferry was owned by the Wellington Trust and not by Kevin Phelan. Kevin Phelan did

not have the authority to act for Westferry as he was now apparently claiming. Aidan Phelan said he would get rid of Westferry if necessary."

He was Kevin Phelan had purported to sack Craig Tallents at one stage, isn't that right? And you were saying,

"Look, he has no instructions in relation to this matter"

A. Correct.

Q. "and I will sort it out"?

A. Yes.

Q. "Ruth Collard made clear that the issue must be resolved if Carter-Ruck were to continue.

"Aidan Phelan explained that Kevin Phelan had been employed as a site finder. Aidan Phelan had agreed with Kevin Phelan that he was to have a quantum merit fee in relation to the find at Doncaster Rovers Football Club. This agreement was never put in writing. Aidan Phelan explained to explained Kevin Phelan was to receive what is called a 'sweet equity fee'"

A. "Sweat".

Q. "'sweet equity fee'," I beg your pardon. There are very few sweet equities, I suppose. "A 'sweet equity fee', which meant that he would be paid when DRFCL was sold.

Aidan Phelan said that Kevin Phelan would get no more than 40% of the sale proceeds. Aidan Phelan said that he was very unhappy with Kevin Phelan. Kevin Phelan had been supposed to sort out the retention monies, which he had not

done. Aidan Phelan said that Kevin Phelan was now trying to cause trouble so that Aidan Phelan would write him a cheque. Aidan Phelan said that he had told the press that Kevin Phelan had not delivered. His comments had been misquoted by the press." Would that be

A. Just one correction on that.

Q. All right.

A. I mentioned this earlier, it's about the yes, 40% of the sales proceeds. She just took that wrong, you know? That would be giving him equity.

Q. Yes.

A. OK, I just want to make that point.

Q. Yes.

A. OK, it's important.

Q. Yes. But that was the type of discussion that was being had at the time?

A. Yes.

Q. That is fair enough.

A. Yes.

Q. Now, your fax of the 11th of March which enclosed the letter from Christopher Vaughan, do you remember whether you had a meeting the following Wednesday with Peter Carter-Ruck or whether it occurred sometime later?

A. I don't remember. When was that? The following Wednesday.

It would be unusual if I didn't have a meeting, because I had probably the flight booked, being that close to

Q. Yes, yes.

A. But I can't say I definitely had it.

Q. OK. It may be somewhere. It may be somewhere. Well, something I will probably have to come back to again, but behind (c), you see there is, just following that, (a) to (c), there is an attendance note again of Ruth Collard:

"Aidan Phelan apologised for not reverting to Ruth Collard before." That is dated the 24th of June 2002.

"He had been away in the Canaries. Ruth Collard asked where he was now and he said that he was in Dublin and was about to sort out payment of Ruth Collard's outstanding invoices."

This is just in relation to their fees. And I don't think we need

A. No.

Q. Now, if we go to the second paragraph:

"Aidan Phelan said he had messages that Ruth Collard wanted to contact him about a payment to Kevin Phelan. He had not yet spoken to Denis O'Brien about this. Ruth Collard said she had received telephone calls first from Sandra Ruttle and then Denis O'Brien. Not really knowing what their involvement was, she had been a little wary about speaking to them. Aidan Phelan said that DOB was behind Westferry. In fact, he was the principal shareholder. Aidan Phelan was a shareholder as well and ran the company for Denis O'Brien. Sandra Ruttle ran Denis O'Brien's financial affairs. Denis O'Brien was an extremely wealthy man having sold his company to BT for" whatever it was "i½2.9

billion.

"Ruth Collard asked about the payment to Kevin Phelan.

Aidan Phelan said that Kevin Phelan had been persistently been asking for a fee and had, as Ruth Collard knew, been making trouble in the litigation. Ruth Collard said she was aware of this. What concerned her was whether any settlement with Kevin Phelan had anything to do with him being a witness, either for our side or for theirs. Ruth Collard said that any such arrangement would be a criminal offence. Aidan Phelan said that there was no question of this. They were simply paying him a fee to go away. Aidan Phelan said that he personally was against this and against any negotiations with Kevin Phelan but Denis O'Brien had wanted to sort the matter out. Ruth Collard said Denis O'Brien had mentioned something to her about Kevin Phelan being a witness which had concerned her. She reiterated that any payment connected with this would be a criminal offence and contempt of court.

"Aidan Phelan said he understood this and would make the point to Denis O'Brien in no uncertain terms. He would revert to Ruth Collard later on today."

Do you remember that?

A. I do.

Q. What were you telling her there?

A. Well, I was telling her that basically, I suppose, like as I have said consistently, I didn't believe I mean Kevin Phelan was sending me these invoices which were completely

out of.

Q. I know that?

A. my understanding of it.

Q. Yes. You were you didn't believe there was anything owing. You hadn't advised you had been running the project?

A. Yes.

Q. You hadn't advised anybody that there was anything owing, isn't that correct?

A. Yes.

Q. And as far as you were concerned, Kevin Phelan was not entitled to anything?

A. Yes.

Q. But it looks as if you must have been aware that somebody was going to pay him money?

A. Well, around about that time, I was aware that he, you know, that there was talk about him getting fees.

Q. Who did you hear that from?

A. Probably either John Ryall or Denis O'Brien Senior.

Q. Yes.

A. But I had no involvement as I said.

Q. Sorry, I understand entirely, Mr. Phelan, and I know your position. You had been running the show. You said he wasn't entitled to anything.

A. Yes.

Q. You had paid him what you considered his legitimate expenses in relation to anything?

A. Yes.

Q. And you had not consented to Mr. Denis O'Connor signing any agreement on your behalf or binding you in relation to Mansfield or Cheadle, isn't that correct?

A. Correct.

Q. Now, Ms. Collard was obviously concerned, I suppose as any solicitor might be concerned, of a suggestion being made that money was being paid to a witness, isn't that correct?

A. Any person would be concerned.

Q. Any person

A. Yes, you need not be a solicitor to know that.

Q. To understand. I understand. And what she notes here is your understanding of matters, that there was no suggestion of paying somebody to be a witness in the case, but that a fee was simply be paid being paid to him to go away.

You must have heard that somewhere, mustn't you?

A. Yeah, well, it's my words. It's sounds like something I would say.

Q. Yes, it does, yes.

A. I have no reason to disagree with the note.

Q. Yes. But you must have heard that from somebody, that "We need to get rid of Kevin Phelan and we will pay him something to go away"?

A. Well, I can't say I heard it, but I certainly formed that view.

Q. But you must have been informed that money was going to be paid to him?

A. I probably got wind of it, yeah. Yeah. But I just want to reiterate my position. I didn't believe he was due fees.

Q. And I know and I accept that entirely?

A. OK.

Q. And that seems to be sorry, that seems to be how you kept the file on your side, if I could put it that way, yes?

A. Yes. You can't stop a guy sending you invoices.

Q. I agree, I am not suggesting that. And you had never told anybody that he was due money?

A. No.

Q. When you say you got wind of it, I am sorry to have to press you on this, it is fairly important?

A. Yeah, well probably in a conversation with one of the team, i.e. John Ryall or Denis O'Brien Senior, they were talking they were saying, you know, "William Fry are talking about expenses and fees".

Q. Yes. Right. Now sorry, I am looking at the wrong book now. Around the time that you had received the letter from Christopher Vaughan, I think Mr. Kevin Phelan I think am I correct is it in March 2002, wrote to the Institute of Chartered Accountants, isn't that right?

A. Yes.

Q. And he made a complaint about you, your brother and your firm. That was then, of course, withdrawn, and I am not going to necessarily be ventilating such a complaint, but you were of the view that this was a mischievous complaint,

isn't that right?

A. Yes.

Q. Did you request Denis O'Connor to act in any way as intermediary, agent, or in any other capacity in resolving the complaint which Kevin Phelan had made against you, your brother or the firm?

A. No.

Q. To the best of your knowledge, did your brother?

A. My brother had some dealings with Denis O'Connor in relation to it.

Q. I see.

A. To the best of my knowledge.

Q. But you don't know what they are?

A. No. I was out of the firm for five years at this stage.

Q. Yes, yes. At the time that the complaint was made, did you have any knowledge of that?

A. When he made the complaint?

Q. No, I know you know he made the complaint?

A. Yes.

Q. But did you have any knowledge that Denis O'Connor had any involvement?

A. No.

Q. at that time?

A. No.

Q. Or that your brother had any involvement with Denis O'Connor at that time, to the best of your knowledge?

A. No.

Q. Now, I don't want to go through the complaint but I want to look at a passage in the letter, and it's the second paragraph which reads:

"We have been instructed in the past on two projects by the above firm. We have also had instructions from the firm through Mr. Aidan Phelan, who confirmed that he was acting as agent for Mr. Denis O'Brien and another in respect of four other projects: Mansfield site, Handforth site, Altrincham Football Club and Doncaster Rovers Football Club. We were informed that fees in relation to the four projects outlined above would be discharged. Agreements to confirm this position were signed in September 2001. Bryan Phelan & Company has failed to make payments of outstanding fees in relation to the two other projects, despite undertakings to discharge our account and despite being furnished with invoices and statements."

Now, you see the reference there which he makes that he had been instructed where you had confirmed that you were "acting as agent for Denis O'Brien and another in respect of four other projects: Mansfield site, Handforth site, Altrincham club and Doncaster Rovers."

Now, you don't know how or why anybody became involved in dealing with Kevin Phelan on your behalf at least, anyway?

A. No, no, what I said earlier, Denis O'Connor are you talking about the Denis O'Connor?

Q. Yes.

A. agreement he put together.

Q. No, no. I know about the Denis O'Connor agreement. You said he had no authority to sign in relation to those?

A. Yes.

Q. And the complaint is that you are not honouring an agreement?

A. Yes, which I had never entered into.

Q. Yes.

A. OK.

Q. But the reference there is made that you had acted as agent and confirmed you had acted as agent for four other projects, for Mr. Denis O'Brien, and that those projects were Mansfield, Handforth, Altrincham and Doncaster Rovers. Those that is what he says in the complaint, isn't that right?

A. Yes, yes.

Q. But in relation to the resolution of that complaint against you, or your firm, you didn't authorise anybody to act, did you?

A. No.

Q. And just to confirm that at the time you were unaware that Denis O'Connor may have had any involvement in relation to the resolution of that complaint.

A. I was unaware at the time, yeah.

Q. You have become aware, isn't that correct?

A. I have become aware.

MR. COUGHLAN: I won't be finished for some time yet, Sir, so I don't think there will be any reasonable prospect of

having

CHAIRMAN: Well, it may shorten matters if we defer.

Mr. Phelan, I am very sorry that it is necessary to trouble you one day next week. I hoped we would conclude today, but despite these matters being long and somewhat of antiquity, they are still important to the Tribunal and to people who are involved in it, and I do guarantee to you that it will, whatever hours we have to sit, it will conclude in one further day next week.

MR. COUGHLAN: Mr. Phelan is not available until next Thursday, Sir.

A. Sorry about that, but I gave up this week.

CHAIRMAN: You made yourself available.

MR. COUGHLAN: We put you out yesterday, Mr. Phelan. I think that is reasonable.

CHAIRMAN: Very good. There seems no alternative to that, Mr. Gleeson. I don't think it's fair to anybody to try to

MR. GLEESON: Yes, certainly. Do I take it then that we will be resuming with Mr. Phelan on Thursday?

CHAIRMAN: Oh, yes, whatever is involved, and I will make it half ten, just to preclude any risk of any matters going unduly late. Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED.