

THE TRIBUNAL RESUMED ON WEDNESDAY, THE 6TH OF JUNE, 2007,

AT 10:30 A.M. AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MR. DENIS O'BRIEN JUNIOR BY

MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: I wonder do you have the book, book number 1, the document book, that is 82?

A. 82.

Q. We were just towards the end of that yesterday. Now, what I want to come to ultimately, is the letter which Messrs.

Fry's received from Woodcock's containing certain

documents, one of them being a fax which had been sent to

Mr. Aidan Phelan in 1999 which contained the ML reference.

You know that particular document, I will come to it in due course.

A. Yes.

Q. I just wanted to ask you if you were aware that your father had asked Mr. Owen O'Connell or Mr. Owen O'Sullivan, or whoever was dealing with the matter, in any event, in

William Fry's, to seek some sort of an account or narrative

from Mr. Kevin Phelan concerning Doncaster Rovers. I think

his view was that it might be helpful in respect of the

litigation which of the then in being between Dinard and

Westferry. Were you generally aware that your father was adopting that approach?

A. I was generally aware that he was handling the dispute and the whole mediation

Q. Yes.

A. that was going to take some months afterwards.

Q. Yes. But were you aware that he was anxious, in the first instance at least, to get some sort of a narrative from

Kevin Phelan because Kevin Phelan was the person who

A. At the time, I didn't, but I subsequently know why he wanted to do that.

Q. Right. Kevin Phelan was the one who had negotiated with Messrs. Weaver and Richardson isn't that correct on the purchase of the shares?

A. From what I understand, yes.

Q. From what you understand. And your father asked Messrs.

William Fry's, look, could you get a narrative from him.

At one stage, he wondered whether it would be a condition that he would give evidence, but I don't think that was necessarily pursued. These were just matters which were being explored by him, isn't that correct, that you are now aware of?

A. Well, what I am now aware of is that they wanted to get a narrative from Kevin Phelan because if Kevin Phelan was going to change his mind on certain details

Q. Yes.

A. if he was called as a witness in a court case, well, then, we wanted to know what his views were on the date of when we were settling

Q. I understand, you wanted to know what he might say?

A. Correct.

Q. And consider whether he would be or would not be an

appropriate witness in any litigation which you were involved. Nothing unusual about that?

A. I don't think so.

Q. No. And what happened then was, and if you go behind tab 69, this is a letter from Messrs. Woodcock, who were Mr. Kevin Phelan's solicitors.

A. Yes, I have it.

Q. You have that letter. Now, they thank Messrs. William Fry's for their fax dated 4th of June, attached to which was a letter dated the 21st of June, 2002.

"We understand that your client is prepared to authorise you to issue the correspondence dated the 21st of June 2002, subject to you first of all receiving a narrative account of our client's position regarding the negotiations leading up to the conclusion of a deal and the subsequent and ongoing dispute with Dinard Trading."

Now, the correspondence to be released was, in fact, I think, the settlement document, but that is

"The reality is, as you appreciate, our client is anxious to bring matters to a conclusion. Terms of settlement, however, have to be satisfactory to both sides. Our client previously put forward a proposal which has been rejected by your most recent correspondence."

"To avoid any confusion, we would identify therefore at this stage that there are no concluded terms of settlement in this matter. The purpose of this correspondence is to see if it is possible to negotiate terms."

"The first issue, therefore, to assess is whether our client is in a position to provide the narrative that you have requested. There are two separate issues to the narrative:

"1. Negotiations leading up to the conclusion of the deal.

"2. The dispute with Dinard Trading Limited.

"Dealing with the first issue, our client is in a position to be able to provide a narrative as he was directly involved in relation to these negotiations. We would make it clear, however, that these negotiations were very intense negotiations over a nine-month period. There is a substantial volume of documentation to evidence the negotiations which could run to several lever-arch files.

For our client to be able to review all of this documentation and to prepare a narrative (bearing in mind the length of time the negotiations go back) would be a very substantial exercise.

"We would envisage that it would take our client the best part of a week to prepare a narrative and that during this period of time we would need assistance from the writer to enable the same to be concluded. As you appreciate, our client is busy on other projects and does not wish to spend this length of time unless it is wholly necessary.

"Further, as you appreciate, our client would not wish to incur the expense of having to do this if it was not wholly necessary. Due to the difficulties, therefore, in the preparation of the narrative, would you please clarify the

precise reasons as to why this is needed. Christopher

Vaughan was the solicitor who was instructed in relation to the negotiation and conclusion of the deal in this matter and no doubt he would be able to provide you with his file on the basis that he was instructed by Westferry Limited (currently your client). Please revert to us on this.

"Secondly, our client was not in any way involved in the ongoing dispute with Dinard Trading. Our client has no precise knowledge as to the nature of this ongoing dispute.

We believe it would be helpful if it is that our client was to let you have sight of correspondence that was sent by him to Aidan Phelan of Brian Phelan & Company, Chartered Accountants, recording the position as of the 21st of November, 1998, some 13 weeks after the project had commenced. This identifies at that stage the difficulties that our client was having in this matter with Aidan Phelan. We further attach correspondence from our client to Aidan Phelan recording the outcome of the meeting on the 9th of August 1999. This identifies at point 1 that Aidan Phelan was to deal directly with Andy White in relation to all matters in relation to the joint venture. In essence, this, therefore, meant that any issue relating to payments being made out of the retention fund would fall directly upon Aidan Phelan, and from that day on our client ceased to have any direct involvement whatsoever with the retention fund or Dinard Trading. If it is that you wish to raise specific questions, therefore, in relation to the

dispute, would you please let us have those as at the moment our client can add nothing further in relation to the general request that you have made.

"With regard to the possibility of a settlement as a whole, if it is that you are saying that it is a condition precedent that your client must receive a narrative account of the position as stated above, then we look forward to hearing from you in relation to the issues that have been raised by us. If your client, however, is prepared to make an offer to our client to settle ongoing matters without it being a condition precedent that a narrative account must be received, then please let us know the precise terms of your client's offer. Upon receipt of an offer, we will then take our client's instructions.

"We trust our client's position is clear. Should you require clarification, however, on any issue, then please do not hesitate to contact the writer."

Now, were you aware that this letter had been received at the time?

A. No.

Q. The letter raises two issues, I think, isn't that correct: That a narrative is now being sought before matters will be settled between Westferry and Mr. Kevin Phelan, and Mr. Kevin Phelan is pointing out that he can provide a narrative in respect of the period of time that he was actively engaged in respect of the negotiation of the deal but that that would take could take a long time, could

be costly and would probably require legal assistance, that is the first point he made, I think, is that correct?

A. It looks that way, yes.

Q. And the second point he made was that from a certain period of time, soon after the commencement of the project, that is soon after the shares had been purchased in Doncaster Rovers by Westferry, that effectively he was not involved with Dinard and that Mr. Aidan Phelan or other people instructed by Mr. Aidan Phelan were dealing with him, that seems to be the two points he is making?

A. That is what he is saying, yes.

Q. That is what he is saying. And as evidence of that second point, he sent or enclosed certain correspondence or communications between himself and Mr. Aidan Phelan, isn't that correct?

A. It's all part of tab 69?

Q. That is all part of tab 69. You can take it that we have had evidence from those are the documents that were

A. Yes.

Q. And one of the documents which is the final document in this book, was a fax from Mr. Kevin Phelan to Mr. Aidan Phelan dated the 11 August, 1999. And the first heading was "Doncaster Project," and he goes on to set out various matters in relation to it, the joint venture, McAlpine, matters of that nature. If you go over to the second page, then, he deals with:

"3. Retention fund.

4. Outstanding expenses.

5. Altrincham.

"Kevin Phelan to prepare a report on this project for Aidan Phelan."

Could I just ask you, did you ever have any involvement with Altrincham, to your knowledge?

A. No, I don't

Q. No.

A. What is Altrincham?

Q. That is what I wonder, yes.

A. No.

Q. No.

A. I hope it's not another football club.

Q. I don't know, I don't know. "6. Luton." 7 then and this was the matter which caused difficulty inside in William Fry's it was "ML - Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan."

Now, were you aware at the time that this correspondence had been received?

A. No.

Q. I think if we go to the next I think it's book 83, the continuation of these documents now.

A. Are you finished with this fax, then? Are you finished with this fax or can I get rid of this book?

Q. Oh, yes, yes, you can put it away for the moment, yes. Or you can hold on to it. Perhaps this might be an appropriate time to ask you, because it might be helpful to

the Tribunal; we proceed with the documents. I think you said in evidence yesterday that you now do not believe that the ML referred to in the fax is Michael Lowry.

"From recent inquiries, I believe the ML refers to a Mike Lloyd, a person involved in the property business in Doncaster for about 25 years."

A. It's Mick, he is known as 'Mick', apparently.

Q. Mick, I see. "Recent press reports suggest that Mr. Mick Lloyd has been involved in property ventures with Kevin Phelan. I have been aware of no correspondence between the Tribunal and Mr. Lloyd."

Now, could you help the Tribunal and indicate the recent inquiries you made which caused you to believe that the ML referred to is Mick Lloyd?

A. Well, one of my colleagues actually got in contact with Murray Lloyd. I mean there is a number of different ways you could look at this, I actual actually who this is,

OK? It's either Michael Lowry, a reference to Michael Lowry, it's a reference to another person, Mick Lloyd, who is involved in this company called Lazarus Properties, Murray Lloyd who is a direct member of DTZ, which are property agents in Doncaster, that I understand from reading the material, he was involved in acting for Asda or B&Q, in the early days about talking about buying the site.

Either the other alternative it could be a false document. When I was looking at this, certainly the ML is out of line with the rest of the, if you look at all the

other points they are in a straight line. It's very difficult or nearly impossible to actually get it out of line with a computer. It could be a property known as ML or else it could be a reference to money-laundering. But I suppose underpinning all of this, the best person to ask is actually Kevin Phelan because he wrote this note or sent this fax to to Aidan Phelan.

Q. Yes.

A. So, I mean, the other aspects to this is that if you look at the note, the first two, three, four points deals with Doncaster.

Q. Yes.

A. So why would this out-of-line point not be included as a fifth point

Q. Yes.

A. rather than a seventh point? So those are my observations on this document.

Q. Yes.

A. I think it could be Mick Lloyd because he is a significant player. He also has a close knowledge of the planning process surrounding Doncaster Borough Council and he is also a fellow director and this is anecdotal, I don't have any evidence of this that he is a director with Kevin Phelan in some ventures.

Q. Right. And I understand all the points you make. So you you posit a number of different options, ranging from Michael Lowry, money-laundering, Mick Lloyd, Murray

Lloyd?

A. False document.

Q. False document?

A. A property known as ML.

Q. A property known as ML. I understand. Now, can I ask you, because you have given sworn evidence now

A. Thank you for reminding me of that.

Q. that you made recent inquiries, you made recent inquiries, and all I am asking you is to

A. Why are you reminding me, Mr. Coughlan, about sworn evidence? Did you think I am lying or something?

Q. Don't take it in that way, don't, don't, please.

A. Please, let's keep everything on an even keel this morning.

Q. Please, Mr. O'Brien, I didn't mean that in any pejorative way.

A. Thank you.

Q. Now, what I want to ask you is, could you just identify the inquiries you made whereby you say that you believe that the ML refers to a Mick Lloyd, all I asked you was could you identify the inquiries?

A. One of my colleagues, Tom Reynolds, on bank holiday Monday, where there was no bank holiday in the United Kingdom, rang DTZ in Doncaster

Q. Yes.

A. and I believe spoke to a man called Murray Lloyd.

Q. Yes.

A. Asked him whether he was involved in Doncaster Rovers

Football Club, said that there was some reference to a documentation document, where it said ML. Unprompted, he said that that is probably Mick Lloyd.

Q. So that is the inquiry?

A. That is the inquiry.

Q. All right. That is fine. Now

A. I was not there for the conversation, but that is what he reported back.

Q. Oh, no, no, sorry, I have no reason to doubt that Mr. Reynolds did attend that Mr. Reynolds told so that is the inquiry. Now, to continue with that portion of your evidence, and I think it's correct and there is no difficulty in dealing with it. I think there were press reports which may have indicated some dealings or involvement between Mr. Kevin Phelan and a Mr. Mick Lloyd or

A. Apparently, there was some article, but I have not seen it.

Q. Yes, OK. And can I take it that it is because of what Mr. Reynolds told you that you now do not believe that the ML referred to in the fax is Michael Lowry?

A. Well, I never believed it in the first place when I read this document because I knew Michael Lowry was not involved in Doncaster Rovers.

Q. No, I understand that point, and I understand the point you are making. But it's the reference, the ML reference here in this particular document, you say that you now believe that the ML does not refer to and does that relate to

the inquiry which Mr. Reynolds made of DTZ on bank holiday Monday?

A. Well, it certainly leads all roads to that it's Mick Lloyd, particularly when, unprompted, Mr. Murray Lloyd, when asked this a document about Doncaster Rovers where reference is made of ML, he immediately, unprompted, said, "That is Mick Lloyd of Lazarus Properties".

Q. I see. Now, as far as you were concerned, had you ever heard of the involvement of a Mr. Mick Lloyd with Doncaster Rovers?

A. Never.

Q. Had Mr. Aidan Phelan ever said to you that there was a Mick Lloyd involved in Doncaster Rovers?

A. I don't remember.

Q. Because if we just continue with the documentation for a moment.

A. Which tab?

Q. I will just come to it now. I won't be opening every single one of those; they have all been opened on a number of occasions with various witnesses. But if I go to tab 71, you can see that that is a reply from Messrs. William Fry, Solicitors, to Woodcock & Sons, Mr. Kevin Phelan's solicitors, concerning the letter, thanking them for the letter. "With the letter fax you enclosed a fax from your client to Aidan Phelan dated the 11th of August, 1999.

As a prerequisite to being able to take this matter any further, can you please clarify who the ML referred to at 7

is?

"Subject to getting that clarification, our client simply requires a narrative signed by your client as outlined in our letter of the 4th of July, 2002. That narrative should recite who retained your client, from whom your client took instructions, to whom he reported, a general description of the project followed by some broad chronological description of significant events. A broad indication of the time and expenses incurred to back up the invoices furnished should also be included.

"While we appreciate that this will involve some time and input from your client, we don't believe it should necessitate the amount of work you suggest in your letter of the 28th of June 2002 and our client's position is that the settlement figure proposed would include and cover any costs or expenses your client might incur in preparing the narrative."

Now, you can see there that your solicitors were seeking clarification in respect of the ML reference.

And the next document that I might just ask you to turn to is behind tab 75. And this is a note of Mr. Owen

O'Connell's in William Fry's and he notes: 1. A letter to be sent to your father, I think, was his evidence.

These are the matters he is discussing.

"You are now put on inquiry by Woodcock. Must make inquiries. Discussed Owen O'Connell proper inquiries are Woodcock as already. Denis O'Connor as already plus

follow up who is ML Lloyd, plus what is his connection?

DOB - no Michael Lowry connection. Who is Michael Lloyd?

Aware difficulties and regretting them, but matters on record and must be resolved."

Now, the introduction of the reference to a possibility that the ML was Mick Lloyd or Michael Lloyd or whatever Lloyd it was, seems to have come from Mr. Denis O'Connor.

That is the evidence so far. Were you aware of that at that time?

A. No.

Q. And Mr. Aidan Phelan I think in his evidence informed the Tribunal he didn't know who he was, Mick Lloyd, and you didn't either, at that time?

A. No.

Q. One of the matters which was detailed inside in Messrs. William Fry's in relation to carrying out the inquiry which they felt they were now on notice to make, was to ask you did you know anything about a Mick Lloyd. Do you ever remember such an inquiry being made of you?

A. I actually don't, no.

Q. Now, there was a series of letters exchanged between Messrs. William Fry's and Messrs. Woodcock's at that time dealing with the prospect of arriving at a settlement with Mr. Kevin Phelan. Were you aware that that was going on at that time in, say, June, July the summer of 2002?

A. No, I know my father was dealing with two issues, the timing I wouldn't know. I now know the timing.

Q. No, I understand that.

A. Yes.

Q. I am trying to get your evidence about what you might have known at the time yourself?

A. I mean, this is this is small this is a small transaction.

Q. Yes.

A. A small matter, but an important matter, obviously, in the context of the investment but I completely left it to my father.

Q. Right.

A. I mean, he would have been well capable, and it's proven that he could handle something like this easily.

Q. Yes. And in his evidence he said that when he saw this ML reference he immediately formed the view that it was a reference to Michael Lowry and that he believed that whoever had sent this, namely Mr. Kevin Phelan, was, he wondered whether he was engaging in blackmail and that he was a dishonourable or dishonest person, in his mind, in relation to this. Did he ever convey any of that feeling to you at the time?

A. He mentioned something after the retention dispute.

Q. That that was that was after the mediation?

A. I don't believe he mentioned it at that time.

Q. At that time. Right. Now, in any event, as you weren't au fait at the time with the correspondence that was going on, I am not going to open it, it's been opened on numerous

occasions, but it ultimately ended up in a situation where Messrs. Woodcock, on behalf of Mr. Kevin Phelan, informed your solicitors that the ML reference was a reference to Michael Lowry but that it related to a different property transaction. I think you are aware of that now?

A. Well, from what I understand from my legal team, is that there was a verbal conversation to say, first of all, they were maintaining it was Mick Lloyd and then they changed that

Q. Yes.

A. to Michael Lowry.

Q. Yes.

A. In relation to Mansfield or Cheadle, one of them.

Q. Yes. In relation to another property transaction other than Doncaster?

A. Yes, correct.

Q. Mr. Owen O'Connell now, were you aware of that at the time?

A. No.

Q. When did you become aware that this inquiry had been carried out?

A. When I got all these books.

Q. Well, did you know before that?

A. I don't believe so, no.

Q. Did Mr. did nobody in Messrs. William Fry's inform you or make inquiries of you that there was a worrying ML reference that needed to be considered because of ongoing

obligations to make disclosure to the Tribunal?

A. I don't think so. Now, I mean, I could be wrong but I don't believe so.

Q. All right.

A. I mean if they only if they mentioned this to me I would have asked for everything and read everything.

Q. And as far as you were concerned, Mr. Kevin Phelan had no bad feeling or ill will towards you?

A. I actually don't know whether he did. I never met the man.

Q. Yes, you had never met the man?

A. I wasn't close to the situation so I don't know.

Q. Right. Now, just one other matter, if I may deal with in relation to the ML document. You say that at the time that you instituted Judicial Review proceedings against the Tribunal dealing with this Doncaster matter, that the reason that the documents that we are discussing here now were not disclosed was because you knew that Michael Lowry had no involvement in Doncaster Rovers Football Club and I think perhaps, more significantly, you say that you had no recollection of this document at the time of the institute of Judicial Review proceedings, William Fry was not representing Westferry at that time, those papers had been sent to LK Shields approximately one year earlier and you say to suggest that you or your legal team deliberately withheld a document from the Tribunal makes no sense, given that they have manifestly always provided all documents to the Tribunal without redaction or any hiding behind claims

to privilege, even when it was open to you to make such a claim.

So can I take it that when you issued the proceedings, you personally were unaware of these particular documents, would that be

A. That's correct.

Q. And it is correct to say, I think, that Messrs. William Fry's were not representing Westferry in a certain respect and that the papers had been passed on to Messrs. LK Shields. I think Messrs. LK Shields represented Westferry and your father in its dealings with the Tribunal, isn't that correct?

A. Yes.

Q. And Messrs. William Fry's represented Westferry and perhaps you but Westferry in the Judicial Review proceedings, isn't that correct?

A. That's correct.

Q. These papers had been given to Messrs. LK Shields?

A. I only know what I have been told and that is that all the papers were delivered down to LK Shields.

Q. Yes. Do you know why that was? Can you help the Tribunal?

A. How do you mean?

Q. Why Messrs. LK Shields and began dealing with Westferry with the Tribunal on behalf of Westferry with the Tribunal and the papers were sent to them?

A. Because William Fry were acting for me.

Q. Yes. But you were Westferry, isn't that right?

A. No, I was Denis O'Brien in the Tribunal so Fry's were acting for me dealing with this Tribunal.

Q. Yes. So Westferry was to be represented by

A. Separately.

Q. Only separately in terms of solicitor, though, isn't that correct?

A. Yes, we have a common counsel, yes.

Q. Do you remember that decision being taken by you?

A. No.

Q. Now, were you aware at the time let me just continue on $\text{€}150,000$ was paid to Mr. Kevin Phelan, I think you know that, are the is that right?

A. I am aware now, yes.

Q. Were you aware of that at the time?

A. I don't believe so, no.

Q. Right. Were you aware at the time that negotiations or discussions were taking place with Mr. Kevin Phelan that the Tribunal was around that time conducting inquiries into what was known as a long-form and short-form letter, that is a letter which appeared to indicate

A. The 12 minute letter? The 12 minute letter when you brought me back from my holidays?

Q. Yes. Were you aware at that time that that was around the time that this discussion was going on with Kevin Phelan?

A. No, I don't think so.

Q. Now, evidence has been given by Mr. Owen O'Connell before this Tribunal, and I just want your view on something he

said, that he did not advise you or your father to bring the matter to the Tribunal although he was not himself happy with the responses that he had received in respect of the inquiries he had made because and he put forward two positions why he didn't give that advice: One is perhaps not a matter for you at all, and it was this; that if he gave you the advice it was advice that you could not reject. But as regards you and your father, he offered this view: That he was also of the view that it was advice that neither you or your father wanted to receive. It's on the second point I want to ask you?

A. It sounds very complicated from a legal point of view.

Q. All right. No, we will take it it's really the second point I just want to he said, first of all and it is from a legal point of view and I am not asking you to comment on it one, that if he gave the advice it was advice that he was of the view you could not reject, once he had given the advice, but the second point is one I wanted to get your view on, that he felt that it was advice that neither you or your father would have wished to receive; in other words, bring the matter to the Tribunal.

Do you wish to comment?

A. I am not familiar with Mr. O'Connell's evidence, I haven't

Q. Right.

A. any knowledge of what he said.

Q. What I am asking you, and I want to afford you the

opportunity; did you if you had received advice to bring this matter to the Tribunal had you ever expressed anything or given any indication to Mr. O'Connell or any of your solicitors that you were reluctant to receive advice to bring matters to the Tribunal, is really what?

A. I don't remember any of this.

Q. Right. All right.

MR. MCGONIGAL: Not only that, but there was never any such suggestion put to any solicitor by put to Mr. O'Connell that that that Mr. O'Brien had ever expressed Senior or Junior had ever expressed such a view.

MR. COUGHLAN: No, and I am not suggesting what I was trying to elicit from Mr. O'Brien was afford him an opportunity. This was a view expressed by Mr. O'Connell and I wanted to get Mr. O'Brien's view about that. That is all. This is not any allegation made against Mr. O'Brien. Now, if we continue, and we then move into, after matters are completed with Mr. Kevin Phelan, into the mediation phase, isn't that correct, that is the dispute between Westferry and Dinard?

A. Sometime afterwards.

Q. That was in the summer, summer into the autumn or into the early autumn of that year, isn't that correct?

A. Yes.

Q. Now, once again, Mr. Denis O'Connor appeared to get involved or had some involvement in relation to this particular dispute, and we have heard evidence from

Mr. O'Connor and your father and Mr. Aidan Phelan and others about that. Did you know about that at the time?

A. No, I mean, no whether he was involved in?

Q. Yes, that he was

A. No.

Q. Were you aware that mediation had been set up in London to attempt to resolve the dispute between Dinard

A. Yes, I think so, yes.

Q. Did you have any involvement yourself in that?

A. No.

Q. Now, the document did your father tell you anything after it?

A. Yes, he did.

Q. He had had difficulties with Messrs. Richardson and Weaver I think, isn't that correct?

A. Yes, he did, yes.

Q. Yes. And I think your father by this time, according to his evidence, I think, he received the famous letter dated the 25th of September of 1998, that is the Christopher Vaughan letter to Michael Lowry, I think sometime around the 24th of September or the 25th of September of that year. Did you know anything about that letter prior to that?

A. No. What I remember about that is my father rang me after the mediation and said there is some letter saying that Michael Lowry's involved in Doncaster.

Q. Yes. A letter from Christopher Vaughan?

A. Yes.

Q. He may not have mentioned that

A. I don't think he did, but it's now a famous letter.

Q. It's now a famous letter. Now, Christopher Vaughan was Doncaster Rovers' solicitor, isn't that correct, and your solicitor?

A. Yes.

Q. Did you ask Christopher Vaughan about this letter yourself, do you remember at this time?

A. I had one conversation with Christopher Vaughan, I know that. But I don't know whether the letter was raised, I don't believe so.

Q. Right. So you don't believe that you ever asked him yourself directly about that letter?

A. I don't believe so, no.

Q. And am I correct in understanding your evidence as and of yesterday that Mr. Christopher Vaughan continues to be Doncaster Rovers' solicitor?

A. Yes, he is, yes.

Q. And is paid fees by you?

A. That's correct, yes.

Q. And has had dealings with a Mr. John Ryall of your office, isn't that correct?

A. On and off, yes.

Q. On and off over the years in relation to his dealings with this Tribunal, isn't that correct?

A. I believe so. Now, I mean, again

Q. Yes, yes. He briefs Mr. Ryall I accept that you may not and that he is paid fees out of your office - I know you are not involved in the day-to-day aspect of that - in respect of his dealings with the Tribunal, isn't that correct?

A. Well, he was spending a lot of time replying to queries of the Tribunal so somebody had to pay him.

Q. Yes. But you have never asked him about the letter of the 25th of September?

A. I had one conversation in '04, I think, but I am not sure whether I actually don't remember whether anything I think the nature of that conversation was to get him to actually come and give evidence at this Tribunal.

Q. Yes. Now, I think you are aware that Mr. Vaughan, over a long period of time, would not come to give evidence to the Tribunal, that is in respect of previous property transactions, I am not talking about Doncaster at this stage? You may have forgotten but that information has generally

A. I know when I asked him to come for this he wouldn't come.

Q. He wouldn't come.

A. I think there are reasons that he I think we have mentioned them yesterday.

Q. Yes. And I think he informed the Tribunal at the beginning of this here, and I think your own legal advisors had contact with him as well, that he was minded to come but then changed his mind, isn't that correct?

A. It appears that way.

Q. Yes. And the only way the Tribunal could compel somebody is if they are within the jurisdiction of the Tribunal, of course, isn't that correct? I think you would be generally aware of that?

A. Yes, I would, yes. I don't mean to upset you, Mr. Coughlan, but I think there are reasons in Mr. Vaughan's mind why he won't come here and that was because of the private meetings and the inaccuracy of what was discussed at that time

Q. Right.

A. when it was actually given in note form back to him.

Q. Right. And the way the Tribunal, as I suppose you would be generally aware, would enforce the attendance of a witness would be to serve a witness summons on them and then to take whatever proceedings or steps were necessary to secure the attendance of a witness, isn't that right? If the witness isn't coming voluntarily that is?

A. If they are in the country.

Q. Yes.

A. But he did come over to see you, didn't he?

Q. This was many years ago he came to see us, yes. And I think you were informed, through your legal advisors, that Mr. Vaughan was in this country on the afternoon of the 9th of March until lunchtime on the 10th of March of this year, isn't that correct? Your legal advisors were so informed by Mr. Vaughan, in any event. Were you aware of that?

A. The 9th of March and 10th of March.

Q. This year?

A. I don't ever remember them telling me that.

Q. Sorry, that is Westferry's legal advisors, Messrs. LK Shields were informed of that? You weren't aware of that?

A. I don't remember them telling me that.

Q. And, of course, if the Tribunal had been informed of that, the Tribunal would have been in a position, of course, to serve a witness summons on Mr. Vaughan and take whatever steps were necessary?

A. I don't know.

Q. You don't know. All right. You weren't made aware of that?

A. I didn't know you wanted to serve a witness summons on him.

Q. Mr. O'Brien, as you have always said, you wanted Mr. Vaughan and we wanted Mr. Vaughan, that is why we wanted to in any event, you weren't aware, anyway?

A. Well, you know, you have got to look at it this way from his point of view; he is an eminent solicitor in Northampton, he was President of the Society of Notaries, he is a very credible man. He got very upset

Q. Yes.

A. by the way he was dealt with by this Tribunal, and that is a fact.

Q. I see.

A. And we can't change that, unfortunately.

Q. No.

A. And I am sure you have a different view, but that is his view.

Q. I am not expressing any view. Lawyers put up with the rough and the smooth, that is the way of life, Mr. O'Brien, and that is the business that we engage in, but I am not getting into a dispute with you about it. You were not aware or you had not been informed by your legal advisors that they had been informed by Mr. Vaughan that he was in this country at a time when it would have been possible for the Tribunal to serve a witness summons on him?

A. I didn't know about that.

Q. Now, subsequent to the mediation and the resolution of the dispute between Westferry and Dinard, I think your father made a complaint to the City of London Police, isn't that correct?

A. Yes.

Q. And I think that you, at some stage, had witness statements, or draft witness statements, of your father's, isn't that correct?

A. He may have shown them to me, yes.

Q. Did you have them for a period of time? Look, I am not trying to catch you out. There is a reference here and I will come to it, Ms. Collard was looking for instructions in relation to progressing the matter, and I think she was informed by

A. What tab is that?

Q. I will get it. I think it's by tab 148. There is a

whole series of e-mails there between

A. 148.

Q. I will just explain who they are from between Ruth Collard, either to John Ryall or Sandra Ruttle in your office, looking for nothing much turns on the actual e-mails themselves, a series of e-mails?

A. Is it me or my father?

Q. I think if you

A. I have it.

Q. It's the very last one. It's from Sandra to Ruth, do you see that? The very last e-mail. I needn't go through the whole chain of e-mails?

A. I don't think it could be me.

Q. I see. "I spoke with John last night. Denis O'Brien Junior has the draft statement and he is on holidays until 20th August - therefore, unfortunately, you will be unable to bring the statement with you to the meeting"

A. We don't have this.

Q. Pardon?

A. We don't have this. Is this what you sent to us? We don't have it.

Q. Well, do you want time to consider it? They are e-mails from your office. Do you want time to consider it? I don't think anything much turns on it. I will give you a copy. If you want time to consider it. I don't think anything much turns on it, Mr. O'Brien.

A. Why do we not have it, though, Mr. Coughlan?

Q. Sorry?

A. Why do we not have this?

Q. You do.

A. No, we don't, we don't have all of it.

Q. I beg your pardon, Mr. O'Brien, I am not trying to have an argue with you. You do and they are your documents in any event?

A. Take that and have a look at it and show me where it is.

This is distributed by you.

Q. Sorry, Mr. O'Brien, they are your documents. I am just about to ask you a question. If you want time to consider it, fine.

A. No, but we did not receive this from the Tribunal.

Q. I am instructed that you did, but in any event, look

A. Well, none of us have it.

Q. Let's not have is a row about it. Let's look at the document and see if you can deal with it now. If you can't, we will look at it another time.

Just let me explain what it is. It's Ruth Collard is looking for statements for the purpose of progressing the complaint. She is communicating with either John Ryall or Sandra Ruttle in your office or your father's office in relation to that. You can see that, looking for and it ends up on the final page, then, where Sandra you can see that there, just the top of the final one, it's dated the 7th of July, 2003, at 9:18:46:

"re police complaint.

"Good morning, Ruth.

"I spoke with John last night. Denis O'Brien Junior has the draft statement and he is on holidays until 20th August - therefore, unfortunately, you will be unable to bring the statement with you to the meeting this afternoon.

If you do have any further queries, please do not hesitate to contact me as John is due to call me again this morning on a separate matter.

"Kind regards,

"Sandra."

I just wanted to ask you, that seems to be an inquiry which Sandra Ruttle has made of John Ryall and has informed her that you have the draft statement. That is what that states?

A. Yes. And the context

Q. I just wanted to ask you, is it correct that you did or you saw the draft statements?

A. I mean, if she says that I have a copy of the statement, then I have it.

Q. Yes.

A. At least I think I do, but

Q. I don't think there is anything I just wanted to ask you. Now, if you go to sorry, could I just ask you; as regards the making of the complaint to the City of London Police, did you have any involvement in that decision being made by your father?

A. No, I think my father came to that decision himself. He

was very upset

Q. Yes.

A. the way the mediation was came about and what happened at the mediation.

Q. Yes. Now, you might look at behind tab 124. Do you have that? It's an attendance note of Ruth Collard's on your father. She received a call from your father and John Ryall.

"Denis O'Brien thanks Ruth Collard for her letter regarding the blackmail complaint which he said had been extremely helpful. He said that the first point he would like to make was that the letter he had received had not been directly from Richardson or Weaver but had come from Denis O'Connor."

That is the Christopher Vaughan 25th of September letter.

"Denis O'Connor had informed him that he had got the letter via Richardson from Kevin Phelan. Denis O'Brien said at the time that he had been trying to figure out Denis O'Connor and had to be friendly to him."

Now, did your father tell you anything like that at the time?

A. No.

Q. No. All right. "Denis O'Brien said the question was where we went from here. Ruth Collard said she thought the option was open to them to make a formal complaint. She was not very optimistic about the prospects of a successful prosecution, however, as it seemed to her it was difficult

from the point of view of the evidence. She was not sure how interested the police would be. Denis O'Brien said he would like to make a complaint and that he would like Ruth Collard to remain as his solicitor for that purpose. Ruth Collard suggested that she drafted something. Ruth Collard said that she would like a copy of the letter which had been sent to Denis O'Brien prior to the mediation. Denis O'Brien said he was not sure that he wanted to pursue the Irish complaint at the moment as it might prove embarrassing for Denis O'Connor and for Michael Lowry. He felt that he would like to pursue the complaint relating to London and then, at least, if this came up during the Tribunal at any time in the future, he could say that he had already reported the matter to the police."

"Ruth Collard said she would draft something."

Did you have any involvement

A. No.

Q. with your father in relation to the decision to pursue the matter in London rather than making a complaint on the basis of the information which was then available against Denis O'Connor?

A. Nothing, no, whatsoever.

Q. Do you know why or did you have any discussion with your father as to why he would be concerned about embarrassing Denis O'Connor and Michael Lowry?

A. No.

Q. Now, if you go to tab number 125. A letter was sent to

Christopher Vaughan by Mr. Vanderpump of Westferry Limited?

A. Mm-hmm.

Q. And it was dated 17th October, 2002. And again, to explain: This is Mr. Vanderpump had no involvement in the day-to-day affairs of Westferry, but he was technically the person responsible in relation to the company, isn't that right, in the Isle of Man?

A. Well, he is a director of it.

Q. Yes, and

A. But, you know, he would have known everything about Westferry.

Q. Well, if we just look at the letter.

"It has come to our attention during the mediation of the dispute between Dinard Trading Limited and Shelter Trust Anstalt that certain correspondence from your office suggested that Mr. Michael Lowry has or had a shareholding in Westferry Limited or indeed was involved in the negotiation on the completion of the purchase of Doncaster Rovers Football Club Limited.

"We wish to advise you that the sole shareholder in Westferry Limited is Walbrook Trustees (IOM) Limited in its capacity as the trustees of the Wellington Trust. The beneficiaries of the Wellington Trust are Mr. Denis O'Brien and his family and no other party was or is involved.

"We would be grateful if you will confirm in writing that this is also your full and complete understanding of the matter.

"We look forward to hearing from you."

So he sent that to Mr. Vaughan, isn't that correct?

A. From Mr. Vanderpump, yes.

Q. Mr. Vanderpump sent it to Mr. Vaughan. And were you aware of that?

A. No. I have read this documentation, I read in preparation for this, but I didn't know there was a letter from

Q. Mr. Vanderpump?

A. Vanderpump to Mr. Vaughan.

Q. Right. And then if you go over the sorry, behind tab 127. This is a document which the Tribunal received from the file of Mr. Christopher Vaughan which sorry, I beg your pardon, this is a document which was exhibited in the proceedings, I think, which you took against the which you commenced against the Tribunal, and it is a document of Mr. Christopher Vaughan's which was not sent to Mr. Vanderpump, but Mr. Christopher Vaughan I think was then and still is Doncaster Rovers' and your solicitor in respect of it. So if we just look at it. It said:

"Dear Mr. Vanderpump,

"Thank you for your letter of 17th October. I now fully understand the structure of Westferry Limited, as set out in your letter.

"You should be aware that I do not have any of the documentation relating to the acquisition of DRFC by Westferry, save for the original lease and some copies of various property documentation. However, I am quite

positive in my mind that Kevin Phelan represented himself on a number of occasions as having an interest in Westferry Limited and, and you will no doubt recall that he was maintaining that situation in August 2001. I now understand that Kevin Phelan did not have any interest in Westferry whatsoever.

"I do, however, enclose a copy of a letter from me to Michael Lowry dated 25th September 1998 together with a file note as to how that letter came into my possession.

"What I can state quite categorically is that before I met Michael Lowry for the first time on the 24th of September I had absolutely no knowledge that he might have been involved in the acquisition of DRFC and you will see that in that letter I explained to him some of the future problems facing the acquisition of the club, and with the thought that he might have some influence, I set them out in that letter. Suffice it to say that none of those matters were resolved by Michael Lowry.

"I do not think that I misunderstood his comments to me that he was involved in DRFC, but in hindsight I must put it down to some sort of political ego that he was trying to attach his name to what appears to be a successful venture.

"I would however reiterate that so far as I was aware throughout the whole of the negotiations with the DRFC acquisition, Michael Lowry was never, ever involved in giving me any instructions.

"I am not sure whether you are aware but in

October/November 1998 I was sacked by Kevin Phelan from having any further involvement in the matter, as he had instructed other solicitors, Messrs. Betesh Fox in Manchester.

"At a later date sometime in early 1999, I was re-instructed to try and sort out various matters as Betesh Fox and Kevin Phelan had fallen out."

Now, I think you became aware of this document at least around the time of the proceedings, or maybe you didn't?

A. I actually don't remember.

Q. It was exhibited in your affidavit but I don't know if you necessarily read every document because there were many, many volumes of documents, but that is not a criticism?

A. Fine.

Q. Right.

A. OK.

Q. But you can take it that that document was exhibited with your affidavit, all right? And what it seems to be and this is your own solicitor, Mr. Christopher Vaughan, now, and wouldn't it appear to be the situation that what he is saying here, and that which gave rise to the letter of the 25th of September, 1998, that Michael Lowry represented to him that he had an involvement in Doncaster Rovers Football Club, isn't that clearly what Mr. Vaughan appears to be?

A. Initially, yes.

Q. And what he goes on to say then is that he hadn't seen

Michael Lowry anywhere in his involvement in the negotiations, isn't that right?

A. Yes.

Q. In that he never gave him instructions?

A. Correct.

Q. Now, I take it you have no reason to doubt Mr. Christopher Vaughan?

A. On which?

Q. When he asserted that Michael Lowry said something to him which caused him to form the view that Mr. Lowry had an involvement in Doncaster Rovers and, therefore, caused him to write the famous letter of the 25th of September, 1998?

You have no sorry Mr. Vaughan said the reason he wrote the letter of the 25th of September, 1998 and nobody is suggesting that that is a forgery or anything of that nature was "because Michael Lowry told me that he was involved in Doncaster Rovers", isn't that right? That is

A. That is what he believed, but then he was corrected or he corrected himself, I don't know.

Q. Sorry, that is what I am trying to come to, that is what I am trying to come to, and I take your point; it wasn't a mistake that Christopher Vaughan made. The word "mistake" is being used all the time. It wasn't a mistake, as far as you can see, that Christopher Vaughan made. Michael Lowry, according to Christopher Vaughan in any event, said something to him which caused him to form that view?

A. I mean, I don't know what Mr. Vaughan has said but

Q. - No, sorry?

A. I mean, it's clear that he made a mistake and then he corrected it, so

Q. Where do you say there is the mistake? I am not saying that what is in the letter isn't correct or incorrect; I am trying to ascertain the mistake. He is your solicitor, now, and he has prepared this particular draft of a letter?

A. Is it a draft?

Q. Yes, it is. He didn't send this to Mr. Vanderpump. You exhibited this particular document in your High Court proceedings?

A. I have a copy where there is headed nope paper on it.

Q. Interesting. Anyway. It's the same letter.

A. Mr. Coughlan, I am not going to speculate. I think you have got to direct the questions to Mr. Vanderpump and Mr. Vaughan, or Mr. Vaughan in particular in this case, because I don't know what way what was on his mind.

Q. Mr. O'Brien, you took you commenced High Court proceedings in relation to this Tribunal, isn't that correct?

A. A couple of them.

Q. Yes. Sorry, one was to seek an order quashing the decision of the Tribunal to conduct public inquiries in respect of Doncaster Rovers, you can take it from me you did, right? Another set of proceedings related to the question of Mr. Michael Andersen and Mr. Peter Bacon, isn't that right?

So those were the two sets of proceedings. In the proceedings relating to Doncaster Rovers, you swore an affidavit I know affidavits are prepared by lawyers but you swore an affidavit and you exhibited a whole load of documents?

A. That's correct.

Q. Your documents, that is what you exhibited?

A. Well they are now our documents because you have them and we have them.

Q. Your documents?

A. Yes.

Q. What I am asking you about is one of your documents which you exhibited in High Court proceedings. That is what I am asking you about now?

A. This is 21 October, yes.

Q. Yes. All I am trying to inquire about is this: Doesn't it appear clear that Mr. Christopher Vaughan must have been told something which caused him to write the famous letter of the 25th of September 1998 about Michael Lowry's total involvement; it wasn't something he just dreamt up?

A. Not necessarily. I mean he could have misunderstood it. But you would have to ask him. I mean, how could he have made that mistake when it's clearly clearly it's not true.

Q. Sorry, Mr. O'Brien, you exhibited a document in the High Court as being one of your documents which stated that he did not misunderstand Mr. Michael Lowry and what he said,

isn't that right?

A. He is relating it to political ego.

Q. Yes. Look, let's be clear about this: This may or may not affect you. Michael Lowry could have said something?

A. Listen, Mr. Coughlan, I know this doesn't affect me because Michael Lowry was never involved in any of this.

Q. Sorry, I am asking you, do you have any reason to doubt Mr. Christopher Vaughan? You exhibited this document

A. Well, I would doubt Mr. Christopher Vaughan because he's made a mistake before.

MR. MCGONIGAL: Well, I am not sure what that question means, Mr. Chairman. Mr. O'Brien has already indicated that he would like to ask Mr. Vaughan about these matters if Mr. Vaughan was to give evidence. That is the first thing. The second thing is that the Tribunal had an opportunity of asking these questions of Mr. Vaughan in their session with him in London and

MR. COUGHLAN: That is absolutely incorrect. These documents sorry, that is an incorrect statement. These documents were not available and were not made available to this Tribunal until proceedings commenced.

MR. MCGONIGAL: It seems to me strange that we are asking Mr. O'Brien about draft documents upon which there has been no evidence and which Mr. Coughlan is suggesting to Mr. O'Brien that it may or may not help him. We are a long way removed from trying to understand the issue in this Tribunal, which is supposed to be whether or not Mr. Lowry

was involved. There has been no definition of involvement.

There has been no evidence in relation to his involvement.

Mr. Coughlan has been picking at bits of correspondence, bits of documents, none of which show any involvement.

CHAIRMAN: Well, they have an unhappy tendency to crop up from time to time, Mr. McGonigal, and the Tribunal is compelled to investigate. I am not going to press this matter.

MR. MCGONIGAL: Mr. Chairman, if they have an unhappy occurrence of appearing from time to time, it's also significant that where there is also where there is a happy occasion of matters in favour of Mr. O'Brien turning up, that they seem to be just overlooked completely in evidence.

CHAIRMAN: Well, that is another day's work.

MR. MCGONIGAL: It's today's work, Mr. Chairman.

CHAIRMAN: Let's continue.

A. The other thing, Chairman, could I just make a comment here, is the word "involved" is an interesting word because we are discussing Doncaster Rovers here in this room.

Everybody now in this room is involved in Doncaster Rovers, if we really define it that way because, you know, Michael Lowry supposedly was in a room when Doncaster Rovers was discussed. And that made him involved. So I mean, it just seals, the whole thing just seems so tenuous.

CHAIRMAN: Well, that is just one matter that perhaps Mr. Coughlan may be coming to, I am not sure, Mr. O'Brien,

but does it seem to you that there might have been any possibility of an involvement on the part of Mr. Lowry at some very early stage that was way before, and independent of, any involvement on your part?

A. I don't believe so, Chairman. I mean, from what I have read and what I have heard, absolutely not. I mean, he clearly was not involved in any act or part in this transaction, and that is the frustrating thing for me is, you know, and the cost of all of this, and the Tribunal has to make its inquiries, and I understand that, but it I suppose my statement captures it yesterday. There is no point in going back over there.

CHAIRMAN: All right. Proceed.

Q. MR. COUGHLAN: I am inquiring about this

A. I know that.

Q. And contrary to what My Friend may think, this is something

I am inquiring, which I am inquiring along the grounds

the lines of I think being favourable to you, because

Mr. Christopher Vaughan, on the very question you raised

there, gives one definition of involvement of what

involvement might mean. Attempting a politician

attempting to attach his name to a successful venture, for

example, that is one.

A. It certainly wasn't successful, Mr. Coughlan.

Q. No, but that is one. There is a definition. You see

A. But you know, the thing is this: it's all hair-splitting,

this. I mean, we can sieve through every word and every

letter and everybody takes a different interpretation of e-mails, letters, everything, every document, but where does it all get us at the end of the day? Because I am here to give evidence. But what a waste of time it is for you, Mr. Coughlan, and me, because there is nothing in this

Q. Yes.

A. which shows that Michael Lowry had an equity or financial interest or any benefit in Doncaster Rovers.

Q. And I understand that is the evidence you are giving, Mr. O'Brien?

A. OK.

Q. What I am looking at here is, and there can be no doubt that on legal documentation, Westferry, Walbrook Trust, you and your family interests, are all very clearly specified, isn't that correct? There is no doubt about that?

A. Are you saying there is something else?

Q. No, I am not?

A. OK.

Q. But I am saying that there are a number of documents, and this was at the kernel of the case in the High Court and the Supreme Court, isn't that right, there are a number of documents which make reference to Michael Lowry's involvement in Doncaster Rovers, isn't that right? We have been looking at them, and in fact you have very helpfully identified them?

A. Well they could be Mick Lloyd, it's all a matter of

opinion.

Q. But you very helpfully identified them yourself in your

A. Statement.

Q. in your statement or in your evidence yesterday. You identified them where references are made to Michael Lowry in relation to Doncaster Rovers.

1. Letter of the 25th of September, 1998, from Christopher Vaughan to Michael Lowry. That is the one we have been discussing.

2. Fax of the 11th of August, 1999, from Kevin Phelan to Aidan Phelan.

3. Letter of the 30th of August, 2000, from Kevin Phelan to Aidan Phelan.

4. Letter of the 4th of March, 2002, from Kevin Phelan to the Institute of Chartered Accountants, the same thing.

5. Ruth Collard's attendance of the 10th of September, 2002. Which I will just come to in a moment. That is where she had a meeting with Mr. Denis O'Connor and the reference is made there.

6. Letter of the 23rd October, 2002, from Christopher Vaughan to Peter Vanderpump.

Now, what the Tribunal is looking for, and what this inquiry is about, is assistance in understanding how, as you have identified on six different occasions and documents, a reference is made to Michael Lowry's involvement with Doncaster Rovers. Can you assist the Tribunal as to how these references

A. Well, you have asked me about every one of them, have you, except for the Collard one, number 5.

Q. Yes.

A. So this is number 6, so

Q. It's not, this is what I was asking you first of all, it's number 6 is the Peter Vanderpump, we have looked at that. That relates back to Christopher Vaughan's letter of the 25th of September 1998. We have looked at the Kevin Phelan fax to Aidan Phelan on the 11th of August, 1999.

But I will deal with the others in detail if you wish, but in general, first of all, can you assist the Tribunal how these continuous references arise in documentation, in some instances emanating from your own solicitor,

Mr. Christopher Vaughan

A. Which he corrected.

Q. and from Mr. Kevin Phelan who was the man who negotiated the purchase of the shareholding in Doncaster Rovers and in a document created by Ms. Ruth Collard, again your solicitor, that is Westferry's solicitor? Can you help the Tribunal

A. Will we deal with that one, the Ruth Collard one.

Q. Yes?

A. because it's actually the one that shows how I won't use the word, but how crazy this is, OK?

Q. Mm-hmm.

A. Which tab is that? We will have a look at it, if you are ready?

Q. Yes, indeed. 108. Do you have it?

A. Yes, yes.

Q. What what point do you

A. If you look at the bottom of the page there, second-last paragraph.

Q. Yes. "Denis O'Connor said the upshot of all his discussions..."?

A. Yes. On the bottom left, it says: "Ruth Collard asked how they could cause any embarrassment to Michael Lowry as, so far as she was aware, he had no connection to the proceedings. Denis O'Connor said ML did have a connection and that he had been in the room when discussions took place." And I suppose it's my original point, 10, 15 minutes ago; everybody in this room now has a connection to Doncaster Rovers because everybody in this room was there when we discussed Doncaster Rovers. But that doesn't mean that somebody has a financial interest. Anybody in this room, how could you say they have a finance or benefit or they are a shareholder or they have some participation of some nature?

Q. Mm-hmm.

A. So that is, in my view, far-fetched.

Q. I see.

A. And a waste of time, Mr. Coughlan. I know we are always going to disagree.

Q. That is as far as you can assist the Tribunal so, that it's far-fetched?

A. Yes.

Q. Right?

A. And then if you look at her evidence when you went to see her, what more could she have said to say that Mr. Lowry was not involved. And you know, strangely, to me, you thought that she was going to be the star witness for the Tribunal. You actually paid her $\frac{1}{2}$ 350 an hour to give that evidence. Another waste of money and time.

Q. I see. And that is your view?

A. That is my view, unfortunately, sadly.

Q. Yes. Yes. And I take your point in your explanation when you say that everybody in this room now has an involvement in the broadest sense with Doncaster Rovers because they were all present whilst this is being discussed. But can you assist the Tribunal in this regard: How the solicitor your solicitor, or indeed any solicitor, could form the view or write a letter to anyone in this room talking about that they hadn't understood their total involvement?

A. Sure solicitors make mistakes every day of the week, senior counsel make mistakes, judges make mistakes, business people make mistakes. Nobody is infallible.

CHAIRMAN: (Inaudible)... make mistakes, judges,

Mr. O'Brien.

A. Everybody makes mistakes.

Q. MR. COUGHLAN: But you can't point to anything or you can't assist the Tribunal I am sorry, you can't assist the

Tribunal as to what you say Mr. Vaughan's mistake was based on?

A. I wasn't there, unfortunately. We wouldn't be here today if I was there.

Q. Coming to the complaint which was made to the London Metropolitan Police, I think you are aware that your father prepared a number of statements in that he amended statements made?

A. I now know that there was a number of statements but at the time I didn't know.

Q. You didn't know?

A. No.

Q. And I think in the first statement there is a reference to Mr. Denis O'Connor which may not have been

A. I don't know.

Q. You don't know.

A. I mean, if Sandra Ruttle says that she sent me a copy of it down in Portugal, maybe she did. I mean, I know I read a statement, I am not sure when I read it, but that is as much as I know.

Q. Right. Did you have any discussion with your father or with anybody else about amending the statement?

A. No.

Q. Because the amended statement, I think you now know, lays different emphasis on the role of Mr. Denis O'Connor than the first statement, isn't that correct?

A. I have not compared the statements. I know my father gave

evidence about some there was a draft document, then changed.

Q. Yes. And were you aware that the first statement was furnished to the Tribunal by Messrs. William Fry's?

A. Is this the affidavit I signed?

Q. No, no, no, no, not your affidavit?

A. With the documents?

Q. No, no. It was your father's first statement was furnished to the Tribunal by Messrs. William Fry's, are you aware of it?

A. If you tell me they did they must have if it relates to Doncaster.

Q. And were you aware that your father and Messrs. William Fry's received information or advice from Miss Ruth Collard in relation to the attitude of the City of London Police to giving documents to this Tribunal?

A. No, I don't know anything about that. I mean, I have read all this, all the documents you gave me but...

Q. And you didn't know, you may know now, you didn't know that your father amended those particular letters you had received from Ruth Collard and asked her to send them in the amended form. You weren't aware of that?

A. I am not aware of that.

Q. Essentially, the effect was, of the amendment, the first documents or letters, indicated that the City of London Police had no difficulty with the Tribunal receiving documents and essentially the effect of the amended letters

was that it could be suggested that there was concern by the City of London Police. That is in general terms. You weren't aware of any of that?

A. I don't know.

Q. Returning to a Mr. Vanderpump-related issue. If you go to tab 131, you can see that this is a letter to

Mr. Vanderpump dated the 23rd of October:

"Dear Mr. Vanderpump,

"Thank you very much for your letter of the 17th of October. I completely understand what you are saying as to the beneficial ownership of Westferry Limited.

"As you are aware, I do not have any of the documentation in my possession relating to the acquisition of Doncaster Rovers Football Club (DRFC) by Westferry Limited as all this paperwork is with Peter Carter-Ruck & Partners. I do have the original Lease of the football ground and copies of various other property related documents, to which I will refer later on in this letter.

"Therefore, my comments in the next paragraph are purely from my memory.

"I am quite convinced that during the course of the acquisition of DRFC by Westferry, Kevin Phelan maintained to me that he was beneficial owner of a trust called the 'Grebe Trust' and also that he had a beneficial interest in Westferry. I am also sure that he made representation to me that to the effect that Michael Lowry was also involved in the Glebe Trust.

"I have to say that at no time during the acquisition of DRFC by Westferry did Michael Lowry have any input into the process, nor later following completion. I do not know if you are aware, but shortly after completion I was sacked by Kevin Phelan and who then took the whole matter to Betesh Fox in Manchester. At a later date I was re-engaged to try and sort out the retentions.

"As you are probably aware from Kate McMillan of Peter Carter-Ruck & Partners, I have been visited by Mr. Weaver and I enclose herewith a copy of a letter dated 25th September 1998 and a copy of my file note on Friday 18th October and a copy of an earlier letter of the 19th February 2002."

And then he goes on to deal with the future of DRFC, and I don't think we need to go into that.

Do you know if you were aware of that particular letter at the time that around the time it was written in October?

A. No. Chairman, can we take a break?

CHAIRMAN: If you want to take ten minutes.

THE TRIBUNAL ADJOURNED BRIEFLY AND THEN RESUMED AS FOLLOWS:

Q. MR. COUGHLAN: I am more or less finished, Mr. O'Brien.

A. OK.

Q. Just two matters if I could just you have told us that you had no personal involvement in the day-to-day affairs of Doncaster Rovers?

A. That's correct.

Q. That in the initial phase of the matter being brought to

you through Mr. Aidan Phelan, that Mr. Kevin Phelan carried out the negotiations, as far as you know now, with Messrs. Richardson and Weaver?

A. That's correct.

Q. And that Mr. Christopher Vaughan was the solicitor then and continues to be, apart from a short period where Mr. Kevin Phelan purported to dismiss him, as being the solicitor for Doncaster Rovers Football Club at the time, isn't that right? You can take it that, more or less

A. I don't believe we ever got a bill from Baxter, or whatever they are called, in Manchester or Betesh.

Q. Yes, Betesh, yes, yes. And that Mr. Aidan Phelan and that Mr. Aidan Phelan represented you or was your agent for the purpose of carrying out the affairs in relation to Doncaster Rovers?

A. Up until my father, yes.

Q. Up until your father took over. Now, Mr. Aidan Phelan has told us that he couldn't help us with the fax from Mr. Kevin Phelan of 1999 where the ML reference occurs. You know the particular fax which

A. I don't know what Mr. Phelan told you, but I am aware this is the fax of 1999 yes, I am aware of the fax but I don't know what Aidan Phelan said.

Q. And that the reference to ML in the context of that particular fax couldn't have related to any other property transactions that he was involved with with Michael Lowry, you can take it from me he said that. Now, Mr. Kevin

Phelan and Mr. Christopher Vaughan, who were involved at different times and to a varying degree in relation to the affairs of Doncaster Rovers on a day-to-day basis, have caused documents to be created which do make a reference to an involvement of Mr. Lowry, doesn't that appear to be the situation?

A. Well, Mr. Vaughan in this September 1998 letter which we have discussed at length, mistakenly

Q. And subsequently in his dealings with Mr. Vanderpump?

A. But all of them, you know, all of them have given all these examples of ML and when you look at your own evidence which you received on Commission, the correspondence, letters back and forth, none of them have said that Michael Lowry was involved in Doncaster Rovers.

Q. And Ms. Ruth Collard, another one of your solicitors well, I use that Westferry's solicitors

A. Well, she is our solicitor.

Q. Yes.

A. Your solicitor and my solicitor now.

Q. has a reference to Michael Lowry, isn't that right, in the context of Doncaster Rovers?

A. This is all about being involved in he was in the room and all that nonsense.

Q. The Denis O'Connor attendance. And they all had a greater involvement than you, isn't that correct, in dealing with Doncaster Rovers?

A. It seems that way, yes, definitely.

Q. There is only one final matter then that the Tribunal will need to take up the inquiries with the person that Mr. Reynolds made inquiries of to see if anything arises in relation to those particular inquiries.

A. Can I ask you why you didn't do that?

Q. Sorry, we didn't know, you have brought it to our attention and we are very grateful to you?

A. No, no, there was references to Mick Lloyd or MI Lloyd

Q. Yes.

A. in documents. I mean, there would have been a basic thing to do, it could have cut off a lot of waste of time.

Q. And you say that it was Mick Lloyd?

A. Pardon?

Q. You say

A. It was one of the explanations that you could give.

Q. Well, we understand that and we will take up that inquiry.

Thank you very much indeed.

CHAIRMAN: There has, Mr. O'Brien, been quite a lot of additional work done on matters that I ruled it wouldn't be fair to have put to you.

A. Thank you.

CHAIRMAN: Mr. McGonigal?

A. Just before we finish on this, I don't know, I mean, we I mean, I would like to say, Chairman, I am the 12th witness here and nobody has said that Michael Lowry in evidence has been involved in Doncaster Rovers, and I hope that that is not forgotten when this report is written -

and all of these things are tenuous where people say "involved" and for the life of me, I don't understand how we have got this far that we have moved this into a public environment at such expense to me personally, because I had to launch a Judicial Review. And these hearings, I mean, when you total it all up, four/five million, there is no change out of it, and that is the frustrating thing, and you probably don't see that, but I actually feel that this is seriously flawed, the whole process.

CHAIRMAN: That has been noted by me, Mr. O'Brien.

THE WITNESS WAS EXAMINED BY MR. McGONIGAL AS FOLLOWS:

Q. MR. McGONIGAL: Mr. O'Brien, just a couple of things. The Tribunal, and you, in your statement, have highlighted the items where Michael Lowry has been referred to and they are on page 10 of your statement and they have been dealt with, but what I want to just briefly write into the record, that if you take the letter of the 25th of September September 1998, and the letter of the 23rd of October, 2002, both of which were from Christopher Vaughan, one to Michael Lowry and the other to Peter Vanderpump, but they deal with the same meeting of September 1998; Christopher Vaughan, on the 6th of March, 2003, wrote, to the Tribunal of Inquiry, a long letter of explanation in relation to that meeting and explaining how he had appeared to make an error and that Lowry was not involved, and that is in the records of the Tribunal?

A. I am aware of that, yes.

Q. In relation to Kevin Phelan, you have you also, in relation to Christopher Vaughan, have the transcript of the interview which the Tribunal had with Mr. Vaughan where, on two occasions, and again you have referred to them in your statement on page 12, where he appeared to be indicating that Mr. Lowry had no involvement?

A. That's correct, there is two I have included in my statement here two quotations

Q. Yes.

A. from Mr. Vaughan.

Q. Now, in relation to Kevin Phelan, Kevin Phelan has also written on the 17th of August, 2004, to the Tribunal solicitor, indicating that "In respect of your reference to Michael Lowry and Doncaster Rovers Football Club I confirm all my dealings with Aidan Phelan. I further stress that Michael Lowry had no hand, act or part in the transaction."

A. That's correct, yes.

Q. So that in respect of those pie references, whatever one might say about the reference to Michael Lowry being involved, there is a corresponding document showing that Michael Lowry had no involvement?

A. Yes, that is true.

Q. And Mr. Coughlan has drawn your attention to the Ruth Collard memo, and that, in a sense, is different to the Christopher Vaughan letter of the 25th of September, because what Ruth Collard is doing is recording a conversation or information which she received from Denis

O'Connor?

A. That's correct.

Q. And she has given her own evidence in relation to her view, which again you have referred to in your statement and her view was that he had no involvement, and the same for Kate McMillan?

A. This quotation is in my statement in that regard, yes.

Q. Well did you say two things really in relation to the evidence in relation to Doncaster Rovers: You say, first of all, that all of the people that have come before this Tribunal and have given evidence have established, so far as you are concerned, beyond yea or nay, that Michael Lowry had no involvement in Doncaster Rovers?

A. That is absolutely correct.

Q. Equally, you say that in respect of those people who have appeared to make the allegation but have not come to give evidence, that they also have given evidence or contra statements where they say that Michael Lowry had no involvement?

A. That is the position, yes.

Q. And your sort of primary position, Mr. O'Brien, is that you are the owner of this property?

A. Quite definitely.

Q. You have financed the property?

A. Yes, I have.

Q. None of the people who acted for you, your father, Aidan Phelan, have ever said to you that Michael Lowry was in any

way involved in this property?

A. None of them.

Q. Or in any of the negotiations?

A. Not at any time.

Q. So that so far as you are concerned, you cannot understand any allegation or suggestion that Michael Lowry was involved in this?

A. Quite definitely.

Q. And no evidence, in your opinion, has been put before you to suggest the contrary?

A. Sadly, none whatsoever.

Q. Now, there is another matter that I want to touch on. It's dealt with in your statement on page 13, and it's under the title "Hiding Evidence". I just want to go through a number of the matters dealt with there. And the first is in relation to Mrs. Austin. I think you became aware as a result of communications that there had been a meeting between the Tribunal and Mrs. Austin in relation to the Spanish property, two meetings?

A. Yes.

Q. And one of them the first was on the 22nd of May, 2001, and the second was on the 24th of October of 2002.

A. That's correct.

Q. And I think you had made available to you transcripts of that meeting by Vincent & Beatty solicitors, who were solicitors to Mrs. Austin at the time?

A. That's correct.

Q. And have you got a copy of it?

A. I have them here.

Q. "Transcription of handwritten notes of Walter Beatty (prepared on the 9th of March, 2007) of the handwritten notes taken by Walter Beatty on the 22nd of May, 2001, at a meeting which took place in Dublin Castle between Jackie O'Brien, BL, John Davis, Solicitor to the Tribunal, Maureen Austin and Walter Beatty.

"Jackie O'Brien raised David Austin's friendships with Michael Lowry and Conroy.

"Maureen Austin said she was not sure when David and Michael became friendly. It was a peripheral friendship.

Michael Lowry had said it was very close. They met at dinners re Smurfit. They were friends so was Conroy.

David was a long time friend of Conroy. Swimming brought

about an old connection with Denis O'Brien in the years

1995 or 1996. Denis rang to know how David was. In Spain,

it was Lowry and Conroy who came to see him. No mention

ever of dinner. I know nothing of New York Fund Raising

dinner or how it was organised. I was in London. David

brought back navy tee shirts. I do not remember anything

in detail. I was a corporate wife. I don't remember

anything about Telenor payment. If he mentioned it, it

would have gone in one ear and out the other. I know

nothing about a joint account except Baggot Street was

there for running the house.

"Aidan Phelan was an accountant and got a good sense of

humour. Aidan Phelan was not as close as the other executors. David met Aidan through Denis O'Brien. Aidan was not part of the Michael Lowry set.

"Spain was acquired 13 years ago. David loved golf and I loved tennis. David went in August or September with the lads. It was very suitable for a cholestrocery bag. Spain was sold in 1996. I know it was sold to Denis who wanted to buy it for his parents. There was a company who owned it, Tokay. There was a lawyer, Richard Poe, an American, who went back. He looked after properties. The complex for Spanish property was Alloa Peblo.

"In October 1996 David's health was OK. I don't recall any meeting with Michael Lowry. David was meticulous about dates and he may have spent time in September 1996. I don't know about Michael Lowry buying the house. David didn't tell me. Somebody else mentioned the house in Carryfort Avenue. Never mentioned Irish Nationwide nor Michael Fingleton to me or any acquaintances there. In 1997 Ned Ryan in London mentioned Dr. Crown's Cheerio treatment. Judy Hayes told me about the Cheerio treatment in Nice. In August he had..."

Now, the part at the bottom of the page: "The lawyers for the Tribunal then said 'There is no point in calling Mrs. Austin and they thanked her for coming'."

Now, what is of concern to you was the top of the second page where she refers to the Spanish property?

A. Correct.

Q. And what is your view in relation to that?

A. Well, I am surprised that you know, this wasn't put to me and the notes of this meeting were not put to me, and furthermore, I think on one of the dates of both these notes, there was a very damaging Opening Statement done by the Tribunal and it was either before or after, I am not sure whether this meeting was before the Opening Statement or afterwards.

Q. About the same time. This is material which you believe supports the evidence which you gave?

A. That is correct.

Q. And it was only through your own inquiries that you became aware of it?

A. Well, I saw how this Tribunal was behaving and I made my own inquiries.

Q. In the second document, second transcript, on the second page, is the bit that I want to draw your attention to, the last paragraph:

"Jackie O'Brien then went on to the golf club membership in the Spanish golf club and she also mentioned the sale of the apartment in Spain and she said that although things started in 1998, they had only now received papers which showed that the final title matters were put in order in late 2000 or early 2001. Maureen Austin didn't have any comment to make in relation to that. She did say that the membership was separate from the ownership of the apartment. She was asked what was the last time herself

and David were in Spain and she said she thought they were there in 1996 but that David could have been there on his own playing golf on another occasion. She said that she was more interested in France and buying an apartment there and eventually they bought one in Moujons. She said that David loved golf and wanted to keep the membership of the Spanish golf club. He had bought it from the Cassidy family and it was very difficult to get the deal to go through and because of that he wasn't keen on selling it. He also wanted to have it there for the time of the Ryder Cup, which was played in 1997. Jackie O'Brien said was the membership valuable," and they discussed that.

Next paragraph: "Discussion then took place on the sale of the Spanish apartment. Jackie O'Brien said that they were puzzled that nothing happened until about January 1998.

Maureen Austin said as far as I know Denis O'Brien was paying all of the overheads and I cleared out all my personal belongings I think before the Ryder Cup. I know it was a cold day. It could have been after the Ryder Cup but I didn't want to leave my clothes there I think for the Ryder Cup. Jackie O'Brien said Denis O'Brien had bought it for his parents but they had never gone there since he had bought it. Maureen said at the time that Denis bought it he was not that involved in Portugal. Maureen said she could let the Tribunal know when she cleared out her personal effects from the Spanish apartment and they asked her would she do this and she said she would and she is to

send in that date to Vincent & Beatty."

Now, again you see that as supporting the evidence which you gave to this Tribunal in relation to the Spanish property?

A. Yes, I do.

Q. And you draw the Tribunal's attention to the existence of that and the fact that it does support?

A. Yes, I do.

Q. Now, in the other matters, if I just go through them on page 13, Mr. O'Brien, the letter of the 14th of September 95 by has already been dealt with by Mr. Lowry in his evidence and the Gannt sheet, but what is of concern what is of concern to you in relation to those documents is what?

A. Well, the Tribunal had this when they were interviewing the civil servants.

Q. Mm-hmm?

A. So, again, days and days and days of evidence, it was a waste of money, a waste of time on this whole issue of an advantage to Esat Digifone that the process was accelerated, in other words the announcement of the winner of the licence, and it just was untrue. I think that I still do not understand why this would not have been made available to us but also, the civil servants at that time.

It's a serious piece of documentation and how anybody could not that you know, to hide that or prevent it from going to the people who were being questioned as witnesses, is

just beyond belief. Ironically, this memo says that the licence will be announced on the 25th of October, or words to that effect, when it was.

Q. These documents show that there had been a time limit set at the beginning of the competition and it had not been breached or accelerated?

A. That is true.

Q. And the next matter then is the details of the Tribunal's interaction with Mr. Bacon, and that has been dealt with, and also the Tribunal's with Mr. Andersen and Persona.

A. Well, it's my firm view that it was engineered that Mr. Andersen would never come, because if you write to a person and say to them that their work is flawed, certainly, straightaway, their hackles are going to be up. And there is a very interesting letter, I think it's the letter of the 26th of March, 2003, I think we should look at.

Q. Yes.

A. And I will read it to you if you like. It's a letter to Ms. Carol Plunkett

Q. Acting for AMI?

A. They are the solicitors, she is the solicitor to AMI when this whole when Mr. Andersen was contacted by the Tribunal he sought the advice of a solicitor. I don't know why he had to do that, but obviously he obviously wanted to protect himself. And I read, "Dear Mrs. Plunkett" and this is from the Tribunal, Mr. John Davis:

"Dear Mrs. Plunkett,

"I refer to recent correspondence.

"I am writing once again to seek your client's assistance in this matter. The Tribunal has had an opportunity of further examining the AMI Report relied on in the course of the GSM2 licensing process in Ireland. From the Tribunal's current reading of the Report, it would appear that much of the analysis is unsatisfactory. Moreover, the Tribunal has obtained some expert assistance for the purpose of scrutinising the report and this has confirmed the Tribunal's tentative view that the report appears to be flawed in a number of ways and indeed may contain a number of seriously fundamental flaws.

"The Tribunal is anxious that your client, AMI/Merkantidata, should be afforded a full opportunity of responding to any queries concerning the report and, in particular, in circumstances in which conclusions may be reached which may reflect poorly on the authors of the report.

"I would be obliged, therefore, if you could ascertain whether your clients are prepared to reconsider their decision not to assist the Tribunal."

Now, my view is that this letter prejudices the most important witness in this whole module, the GSM module, without him having an opportunity of giving evidence, and if I was him receiving this letter, I would be seriously concerned that this was a 'ready-up', to use an

expression, in the sense that the Tribunal never wanted him to come and they were creating a situation where they were heavily criticising, which would actually lead him to have major concerns about the inquiry and how it was being conducted.

Q. Mm-hmm. In relation to the licence, the persons who were significant in relation to it, apart from the civil servants, were Michael Andersen and his team from AMI?

A. That's right.

Q. And this Tribunal has not had the benefit of any of those people?

A. They have been frightened from coming, from a legal point of view, because you have Persona, you have a number of the people who didn't win this licence who have instigated legal proceedings.

Q. And in which they could become involved if they appeared in Ireland?

A. Correct.

Q. And I think you have drawn attention in your statement to the paragraph to the quotation from Mr. Andersen's report where he says that your application was the best by far that he had ever seen?

A. That's correct. Mr. Andersen has judged 120 licence competitions around the world.

Q. Mm-hmm. The other matter that I want to deal with, Mr. O'Brien, is the Tribunal's dealing with Advent International.

A. Mr. Bacon as well.

Q. Yes, I will come back to Mr. Bacon?

A. Yes, Advent, yes.

Q. And I think what is of concern to you here, if I just turn it up, it relates to the document

A. I have it.

Q. Do you have it, Mr. O'Brien?

A. I do, indeed, yes.

Q. The first document is a document which is headed on the top left "Advent International Qualifying Memorandum." And attached to that is a background document, and I think there is an aspect of that that you wish to draw the chairman's attention to?

A. Well I think there is a number of aspects. First of all, I was put through tortuous days of questioning about the financial capability of Communicorp to take up their shareholding in Esat Digifone, and I still do not understand why Advent were not brought and asked or contacted and asked for their documentation, and they were only asked for this when I completed my evidence when I had completed my evidence. They should have the Tribunal should have also invited Mr. Prelz to give evidence, which he probably would have done. But when this document when the documentation was sought from the Tribunal, it's clear in this documentation, in black and white, and I will read one quotation: "It is important to point out that the basis of underwriting this deal lies, in

the largest part, in the comparable valuations."

This is a paper to the investment committee of Advent International, a major venture capitalist, with 1.4 billion dollars of investments, and this was from Massimo Prelz, the investment director who handled Advent's investment in Communicorp. And this proves that my evidence was 100 percent correct, but it never, ever saw the light of day in this Tribunal, and, for that reason, I am absolutely, very upset, Mr. McGonigal.

Q. That is at page 6, just to get the quotation right?

A. Correct.

Q. And it's the second-last paragraph?

A. Correct.

Q. Attached to that is other documents in relation to it but perhaps most importantly is the fax from Esat Telecom which is dated the week before the

A. That's right.

Q. interview is to take place.

A. Well, it was it was yes.

Q. And that is a fax from you to Massimo Prelz?

A. That's correct. It was before the bid was actually going in. The bid was delayed originally from the end of June for, I think, four weeks.

Q. Now, you are not aware, other than the fact that these documents have come to the Tribunal from Advent, you haven't seen any correspondence between Advent and the Tribunal?

A. No, I haven't.

Q. Or are you aware of any inquiries having been made of Massimo Prelz in relation to this aspect of the licence?

A. Not that I am aware of, no.

Q. And you are completely satisfied that not only does the documentation support the evidence that you have given, but that, also, Massimo Prelz, if invited, would support completely and utterly your evidence in relation to it?

A. I don't see how he could not.

Q. And would be in a position to explain exactly what had happened in relation to Advent International at that time?

A. Of course he would, that is his paper.

Q. Yes. Now, you wanted to deal also with Mr. Bacon, Peter Bacon. And we have set out in tabulated form, I think, the Tribunal's dealings with Mr. Bacon.

A. Yes, there was first meeting on 28th of November 2002, the Tribunal has stated that no records or notes of this meeting have been kept by the Tribunal. What I don't understand, if you hire somebody to examine somebody else's work well then they must have a Terms of Reference. If you go to a meeting and then there is no notes of meetings kept, I find that very, very strange, as to what when the Tribunal met Mr. Bacon as to what they were asking him to do, because it ended up costing nearly $\frac{1}{2}$ 100,000.

Q. The position, so far as you are concerned, is that a person was engaged who was believed to be an expert by the Tribunal in relation to the matter in which he was asked

being asked to advise. That fact was not disclosed at the time of the engagement, and the report was only disclosed at a very late stage after a number of witnesses had been put through severe questioning in relation to the way the methodology used by them in the competition?

A. Well I believe all of the civil servants who gave evidence here for days and weeks and months, straddling I think two calendar years, that none of them knew the line of questioning was coming from a report that had been written by Peter Bacon. Now, I am not aware of any licensing process for a mobile phone licence in particular that Mr. Bacon has ever been involved in anywhere in the world. I am aware that Mr. Bacon is an economist and wrote reports on housing inflation in this country some years ago, but what expertise he has to come in and judge the work of a man and his team that have done 120 applications all over the world certainly is it's very, very strange, and I don't know how anybody could rely on Peter Bacon to assess Mr. Andersen's work.

Q. Yes.

A. It's also dangerous, because if you look at the letters here, it states, in a letter of the 31st of March, 2003, it says: "The notes also record Peter Bacon as stating 'Everything points to Andersen being manipulated. He was pushed around'."

Now, we have never had an opportunity to cross-examine Mr. Bacon. We have written repeatedly to the Tribunal

asking whether Mr. Bacon is being called or not, and suddenly Mr. Bacon's view of the world is being put to civil servants and, very unfairly, they have not had an opportunity to see Mr. Bacon's report and the contents of it.

Q. Mm-hmm. And it relates to the Andersen point and a matter upon which you have now made a complaint to the European Court of Human Rights?

A. That's correct.

Q. And that complaint was made in November of 2007?

A. That's correct.

Q. 6, I beg your pardon, 2006, and you are still awaiting a reply from them in relation to that?

A. I have no reply yet, no.

Q. Yes. Now, the other matter then is in relation to Per Simonsen; when he gave evidence before the Tribunal he indicated at the end of his evidence that he was in a position to give a name to the Tribunal as being the person who received faxes from him at Esat?

A. That's right.

Q. And the Tribunal indicated that they would follow that up with him and you have heard nothing since in relation to that?

A. No. I find it a little bit unusual why he, in private, could give a name of a person but not when he is giving evidence here at the Tribunal.

Q. Now, you believe it may have been followed up with an

individual in Esat Telecom, but you have seen no confirmation one way or the other of a statement

A. I don't believe it was followed up.

Q. You don't believe it was followed up. I see. And that is in the transcript, I think, of the 15th of June, 2001, which we have. Just finally, Mr. O'Brien, you have been involved with this Tribunal for the last eight years in aspects of the licence and aspects of your personal financial dealings. Dealing with the licence, so far as you are concerned, that licence was fairly won on your good application because it was the best application?

A. Quite definitely. People have forgotten that, though.

Q. And in relation to the financial suggestion that you had any given any money to Michael Lowry so far as you are concerned, that is an absolute nonsense?

A. It's totally untrue.

Q. In relation to both winning the licence and/or rewarding him for you getting the licence?

A. On both counts.

Q. Has the workings of this Tribunal impacted on you on your other business affairs?

A. Well, there isn't an a day or a week that goes by that I get something from the Tribunal or a query from my solicitors that I have to deal with.

Q. But apart from that has there been an adverse publicity reaction used by others?

A. My competitors have used it, Cable & Wireless in the

Caribbean have used the workings of the Tribunal and have leaked, you know, bits and pieces of evidence to actually call into question my integrity.

Q. So that while we have been sitting here in Dublin Castle for the last, on and off for the last eight years, this Tribunal has impacted on your business affairs internationally and nationally in a way which you never envisaged at the time, at the beginning of this Tribunal being set up, and you never expected would happen?

A. This is gone on and on and on and on, and I have repeatedly asked you, Mr. McGonigal, when is this all going to end, and you would say to me, "Hopefully it will end in the next six months," but every six months has turned into another six months, another year. And people overseas, when you try and explain to them what this Tribunal is all about, about a licence that was granted in 1995, certainly they are amazed how justice is handled in this country, that somebody can win a licence on behalf of their company and in 2007 to be still be asking and answering still be answering questions about it.

Q. Mm-hmm. And as you say in your statement, even when this report vindicates your position, that will not get the publicity or media attention that will resolve or pay back the damage that has already been done?

A. Well, how could it when you have opening statements that are clearly untrue and they are dealt with in the media, splashed all over the place, double pages in business

pages, and then you have to come in, years later, like from 2003 to 2007, four years later, to try and clear up the matter, I don't think that reflects very good on the systems we have in this country. And furthermore, I would actually say the most disappointing and the most hurtful thing about this has been the behaviour of the Tribunal when my daughter was born six years ago and the way this Tribunal sought my wife's medical records.

Q. Thanks, Mr. O'Brien.

CHAIRMAN: And insofar as a report can be produced, as you would say, after too much delay, Mr. O'Brien, I take it you would wish to do everything that would assist in expediting the limited remaining stages of having that report made available?

A. As I have always done, Chairman, yes.

CHAIRMAN: Thank you.

A. Thank you.

THE WITNESS THEN WITHDREW.

CHAIRMAN: It occurs to me, Mr. Coughlan, that is it feasible to take the reading - it's quite lengthy - in the afternoon? From recollection, it's something in the nature of 160 pages.

MR. COUGHLAN: I think in the morning, Sir.

MR. MCGONIGAL: I don't know if there is a procedure for this, but I would be happy to allow the transcript to be taken as read. I think there are circumstances where that can be done, and if you feel it is appropriate to do it, I

am happy to allow that to be done to save the necessity of reading it in public.

MR. COUGHLAN: It's up to Mr. O'Connor and Mr. Lowry, perhaps, and the public interest well, I accept the point made by My Friend. It would be very helpful if we could do that.

MR. McGONIGAL: It can be released on video in the normal way as evidence. I am quite happy to accept that.

CHAIRMAN: Well, I will put an announcement in the usual format tonight as to whether or not it's necessary to sit tomorrow. Contact will be made with the other persons involved. If it is possible to abridge procedures, it means that, apart from those persons who already, of course, have copies, that the members of the media and others with a bona fide interest will, of course, be furnished with the appropriate transcripts. Very good. Thank you.

MR. McGONIGAL: May it please you.

CHAIRMAN: Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED.