

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 26TH JUNE

2001 AT 11AM.

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN BY

MR. COUGHLAN:

MR. McGONIGAL: There is just one small matter
Chairman, in relation to yesterday's transcript. I am
not quite sure what way you are operating in relation
to the transcripts, but on page 86 of the transcript,
there was an answer which I think given which I
think is inaccurate. It's page 86, yes 456. The
question was,

"And Mr. David Austin was also entered the equation at
that stage. And the answer was, "Well, I was around"

I think there should be a "not." I think in fact he
said, "I wasn't."

CHAIRMAN: Very good, Mr. McGonigal. I think everyone
is agreed on that and I will amend accordingly by
inserting a negative on the reply to question 456 of
yesterday.

MR. McGONIGAL: The only other matter, Mr. Chairman, I
want to briefly mention, is a matter which I have had
discussions with you about before in relation to
Tribunals and the examination of witnesses. But there
is an impression, rightly or wrongly, which one can get
from aspects of the Tribunal that to some extent, the

questioning by Mr. Coughlan is veering from the line of inquisitorial to adversarial, and I suppose the best example really from yesterday was the 'can't recall' 'didn't mention' episode where Mr. O'Brien asked for the transcript and it seemed to me that we were straying into the adversarial.

Now, I didn't mention it yesterday because I didn't like to interrupt what was happening, but I do think it's appropriate to bring it to your attention that there is an adversarial element coming into some of the questioning and if one compares it with some of the other examinations that have taken place already in this Tribunal, there seems to be a marked difference in the robustness to which Mr. O'Brien is being the way in which Mr. O'Brien is being approached as against some other people. I just mention that.

CHAIRMAN: I'll bear what you say in mind, Mr. McGonigal. As of now, it does not seem to me that the questioning of your client by Mr. Coughlan has strayed into realms that is either wrong, inappropriate or discourteous. Mr. Coughlan.

Q. MR. COUGHLAN: Just so you have no doubt, Mr. O'Brien, and to allay any fears that Mr. McGonigal has, my function is to ask you questions in the course of this inquiry in a wide ranging and on occasions, perhaps,

robust manner and that is the way the Tribunal would deal with all witnesses, but we hope in a courteous way.

Now, I think yesterday, at the end of the day, and I appreciate it was a long day, at page 117 of the transcript, I think when I was asking you about the purchase of the house from Mr. David Austin, the house in Spain, do you remember that? Page 117 in the transcript.

A. Yes.

Q. Now, I think if you there is a series of questions, perhaps we'll start there at question 642.

"Question: When did you inform this Tribunal of how the payment was made to Mr. David Austin?

"Answer: Of which payment now, to buy the house?

"Question: The 1/2 150,000.

"Answer: After there was a press report that Michael Lowry had received a loan in October or November of 1997. October, '96, I don't know, '96, I think it was.

Question: You informed this Tribunal that money came out of the Isle of Man to pay Mr. David Austin

Answer: No. Let's be very clear here. I read or listened to RTE. I think it was Charlie Bird who broke a story that David Austin had borrowed money or lent money to Michael Lowry. I wrote in a letter to this Tribunal within a day or two to say, "I bought a house off David Austin."

Question: Yes.

Answer: Because I want to be totally up front with that.

Question: Yes.

Answer: And I was up front.

Question: You told this Tribunal that you had bought a house from David Austin?

Answer: Yes.

Question: When did you inform this Tribunal that the source of the money to pay for this house came out of an offshore account in the Isle of Man?

Answer: I'd say it was in the last few days.

Question: Yes. As a result of queries being raised with you by the Tribunal, isn't that right?

Answer: And we have been totally cooperative and you know that.

Question: And you hadn't disclosed that to this Tribunal until the matter was

Answer: I didn't know that myself until I made the investigation.

Question: I see. I see. So you did not know that $\frac{1}{2}$ 100,000 and the $\frac{1}{2}$ 50,000 had been paid to Mr. Austin out of an account of the Isle of Man until a few days ago, is that right?

Answer: Well, I was running a public company. I could not tell you precisely all the banking arrangements that I had. I was working 14 hours a day. When this

conversation arose on the 6th November, 1997, I wasn't part of the conversation.

Question: I thought a few moments ago you told us that you knew an account had been set up in the Isle of Man in the summer of 1996 because Mr. Austin wished to be paid from an offshore source, is that right?

Answer: I said that yes, but I don't know where it was. I mean, I didn't know whether it was Jersey, Isle of Man or Guernsey.

Question: Fine. You didn't know whether it was Isle of Man, Jersey, Guernsey. But you knew it was an offshore account?

Answer: I knew that David Austin wanted to be paid from an offshore account.

Question: In the summer of 1996?

Answer: In June '96.

Question: Whatever. And you knew where the money came from to pay for that?

Answer: No, I didn't - I mean, I didn't until I looked at this in the last two or three weeks. I know I bought the house, but where precisely the money came from, I don't know.

Question: Mr. O'Brien, you didn't know where the money came from?

Answer: Look, it's very easy. I you know, that's why you have an accountant and you have a bookkeeper. They know what accounts pay for what things. I didn't

know precisely. Like, I am trying to be honest with you. And I am sure you don't know where your credit card bill is paid or which account it comes out of.

People sometimes don't get into that detail. I didn't.

Question: I see. So you did know that in the summer of 1996 that Mr. Austin was paid $\frac{1}{2}$ 150,000 from an offshore source?

Answer: Yes. That's what

Question: From an account of yours or an account held for the benefit of you, if I can put it in as broadly as that, is that right?

Answer: I didn't know the precise description of the account but it was probably

Question: But it was for your benefit, at least?

Answer: Yes.

Question: Nobody informed the director of ESAT Telecom of that, isn't that right?

Answer: Not as far as I know."

Now, I don't think I need to go into the rest of the transcript at the moment, but I just wish to bring you back now to page 117. You say that as a result of seeing or reading or listening to a broadcast which Mr. Charlie Bird had made on RTE concerning money lent to Mr. Michael Lowry by David Austin, you say that within a couple of days you informed the Tribunal that

you had bought a house from David Austin, isn't that correct?

A. That's what I said.

Q. And isn't that correct?

A. Well, I went through the files of correspondence and obviously there is a lot of correspondence between the Tribunal and my lawyers. I understand that we wrote a letter on the 16th and we also had a meeting as well with the Tribunal where we mentioned and wrote in the letter about the house, and I don't know when precisely the Charlie Bird story broke.

Q. Well, I am going to deal with that now, and I'll ask you to comment on it. When did you think that that story broke, first of all?

A. Sometime the first week in May.

Q. And I think that a meeting had been arranged between you, your lawyers and the Tribunal's lawyers, I think for I think eight o'clock on the 4th May, isn't that correct?

A. Yeah, that was the day we made an offer for Eircom. We had to cancel the meeting.

Q. I think that previous evening your counsel contacted the Tribunal and informed them of the difficulties about the meeting and the meeting was cancelled, isn't that correct?

A. Yes.

Q. Now, I think on that evening, which was the 3rd May of

2001, RTE carried a story on its nine o'clock news,

isn't that

A. I am not sure precisely what date, but I know there was a there was a news bulletin where Charlie Bird was alleging that there was a loan.

Q. And I am just going to give you a transcript of that now and I'll explain exactly

A. It was quite a libellous broadcast because it had newspaper pictures of me and Michael Lowry. I wasn't particularly happy with it and I was actually concerned about it.

Q. I am just going to give you the transcript of that particular news broadcast and I'll explain what happened on that evening.

(Document handed to witness.)

And I will

MR. MCGONIGAL: I should say, Mr. Chairman, this is only now being furnished. I had normally understood that material which the Tribunal were relying on would be furnished to the witness in advance of the sittings.

It may well be that Mr. O'Brien is able to deal with this material, but I would like to make it clear that this material is only now being furnished.

A. Chairman, I am happy to deal as best as I can. Maybe we can come back to it

CHAIRMAN: I can't see there is any great degree of

surprise. The events are very recent. If Mr. O'Brien encounters a difficulty, of course, I'll be prepared to defer it and to consider any aspect he wishes to consider.

Q. MR. COUGHLAN: The reason I am bringing it to your attention, Mr. O'Brien, is because you raised the issue yourself yesterday evening.

A. I mentioned that Charlie Bird broke the story. I didn't talk about a bulletin that I am being handed now.

Q. No, Mr. O'Brien, you raised the issue of Mr. Bird's story and your response in relation to it. That's why I am referring to it now and I'll just explain to you.

A. Okay.

Q. Sometime after five o'clock on the evening of the 3rd May, 2001, the Tribunal was contacted and was informed that there was the likelihood of a story running on the Six O'clock News of RTE television that would make reference to Mr. Michael Lowry and a loan for Mr. David Austin.

The Tribunal made contact with solicitors for RTE and informed them that they were concerned about such a story being run, because delicate inquiries were being conducted by the Tribunal and the Tribunal was not anxious for any information to get into the public domain whilst these delicate inquiries were continuing. RTE did not run the story at six o'clock but informed

the Tribunal that they would run with the story at nine o'clock unless they are restrained by way of a High Court injunction. They very properly sent to the Tribunal a copy of the transcript of the intended story to enable the Tribunal to consider the legal implications.

In any event, the Tribunal, for legal and practical reasons, did not consider that an injunction was feasible and in those circumstances, the broadcast took place at nine o'clock. This is the transcript of what occurred on the broadcast at nine o'clock and the Tribunal monitored that and there was no departure from this transcript.

Now, it reads:

"RTE News has learned that when the former Fine Gael minister, Michael Lowry, appears before the Moriarty Tribunal in the coming weeks, he will have to answer questions relating to a previously publicly unknown offshore account controlled by him."

At this stage, the Tribunal had not informed anyone of this.

"RTE news understands that there was at one stage upwards of $\frac{1}{2}$ 150,000 in the Isle of Man account and that it was set up at the time he was a government minister.

Our chief news correspondent, Charlie Bird.

Michael Lowry is due back in Dublin Castle in the coming weeks. He last gave evidence to the Moriarty Tribunal in the summer of 1999. Now with this Tribunal coming towards an end of its work, they are looking at actions of both Charles Haughey and Michael Lowry while they were in government. They have now turned their attention to whether political favours were given in return for monies received.

The McCracken Tribunal, which sat in 1997, looked at the payments from Ben Dunne to Michael Lowry. These totalled around $\text{€}150,000$ plus $\text{€}395,000$ to contractors for the refurnishment of Mr. Lowry's home at Holycross, County Tipperary.

The McCracken Tribunal found there was no political impropriety on the part of Mr. Lowry, but now, RTE News understands that Mr. Lowry will be questioned for the first time about a loan of around $\text{€}150,000$ from the former Jefferson Smurfit executive, David Austin.

Financial sources have told RTE news that what appears to have been a short term loan to Mr. Lowry while he was a government minister was paid into an offshore account in the Isle of Man.

It appears that the loan was paid back with interest within a few months.

Mr. Austin, who lived in Jersey up until the time of his death a few years ago, was the conduit for the \$50,000 donation to Fine Gael from Telenor, the Norwegian State telecommunications company which was a partner in ESAT Digifone.

David Austin was a long time supporter and fundraiser for Fine Gael.

The Fine Gael Party eventually ordered the money to be returned to Telenor and this was the subject of political controversy earlier this year.

It is also known that Mr. Lowry was a close personal friend of Mr. Austin for many years."

To camera.

So when Michael Lowry returns to Dublin Castle in the coming weeks, he will have further tough questions to answer in relation to this publicly undeclared offshore account. But this afternoon Mr. Lowry refused to comment on the affairs saying he has and continues to cooperate fully with the Tribunal.

Charlie Bird, RTE News."

Now, was it that particular broadcast

A. Probably was.

Q. that you saw?

A. Yeah.

Q. Now, I think I will now turn to correspondence which occurred between your solicitors, Messrs. William Fry, and the Tribunal.

(Documents handed to witness.)

Now, if you go to the first letter in the book of correspondence, it's dated 16th May. I am not going to refer to the first two pages, because they deal with other matters which are unconnected with this issue.

A. Okay.

Q. And if you go to the third page, it reads:

"In case it may be of assistance to the Tribunal, our client can confirm in the context of a close friendship between the Austin and O'Brien families, that in April/May of 1996, when David Austin was terminally ill, our client agreed to purchase a house owned by David Austin in Spain. The purchase price was originally agreed at IR£165,000, but it was reduced to IR£150,000 to enable David Austin avail of the house until after the Ryder Cup in Spain in 1997."

Then it reads that you are available for an agreed meeting. Because the meeting of the 4th had been

A. I think we had a meeting that day. You called my solicitor and you suggested a meeting the following day and then my solicitor I said to my solicitor, let's go right down now, and it was a private meeting.

Q. That was on the 16th?

A. Yeah.

Q. It was the date of the letter.

A. I think it was anyway.

Q. That's correct. Now, that is the response to the RTE broadcast you are referring to, is that right?

A. I believe it is.

Q. Now, firstly, may I ask you, Mr. O'Brien, before I continue with the rest of the correspondence, why did you make a connection between the broadcast of Mr. Charlie Bird and the purchase by you of a house from Mr. David Austin?

A. Because the broadcast talked about $\text{€}150,000$ and I knew that I had bought a house from David Austin and I just felt the best thing would be to actually bring this to the attention of the Tribunal. I wasn't sure whether the story was true or not and I think in the following week it was confirmed and then basically we wrote into the Tribunal and met the Tribunal.

Q. By whom was it confirmed the following week?

A. Well, it was confirmed in the press and I think Michael Lowry and I am going on just recollection confirmed in the newspapers with some sort of a statement, that he had borrowed money from David Austin.

Q. What connection did that make for you between your purchase of the house in Spain from Mr. Austin and Mr. Lowry getting a loan from Mr. Austin?

A. Well, I was concerned that I had bought a house from Mr. Austin and then sometime later in the year he had given a loan to Mr. Lowry.

Now, first of all, I never knew about the loan. I only knew about the house that I bought and I was concerned about it and that's why I raised the issue.

Q. Now, as of the 16th May, you knew that you had bought a house from Mr. David Austin. I know you knew previously.

A. I knew well before that well, I knew in June, or well, when I first May

Q. Of 1996?

A. Yeah.

Q. Now, if I go to the next letter from the Tribunal to your solicitors which is dated 17th May, and I won't be referring to all of this letter because it raises other matters as well which are not relevant to this line of inquiry at the moment.

And it reads:

"Dear Mr. O' Sullivan.

Thank you for your statement produced by your client in response to the Tribunal's various requests for assistance.

While the Tribunal is satisfied that the Statement contains sufficient information to enable the Tribunal

to determine whether or not to proceed in public sittings, as part of the continued investigative aspect of its work, I will be obliged following further assistance, the request for which arises from a review of the statement and the other material to hand concerning your client.

1. The Tribunal wishes to obtain copies of all documents in your client's power, possession or procurement including the file of the Solicitor who acted on his behalf in connection with the purchase by your client from Mr. David Austin of a property in Spain in April/May, 1996. Such documents should include all banking documents in connection with the funding of the acquisition and the manner of payment."

Now, that is the only matter I wish to refer to in that letter, because other matters are taken up as well.

A. Okay.

Q. Now, I think by letter dated 18th May, your solicitors respond:.

"Dear Mr. Davis.

I have received your letter of the 17th May and I am endeavouring to deal with your queries and assemble copies of all the documents requested. Though the matter is being attended to as quickly as possible, at this stage I would not be able to meet your close of business deadline for today. I will call you on

Monday morning to confirm what we will be able to deliver to you on Monday."

Yours sincerely."

Then on the 28th May, 2001, your solicitors wrote to the Tribunal.

"Dear Mr. Davis.

We refer to your letter of the 17th May, 2001 requesting documents to further assist the Tribunal in its investigations, and in this reply, adopt the paragraph numbering used in your letter. We also apologise for the delay in responding due mainly to difficulties tracking down documents on the issues requested.

1. We are instructed as follows:-

During the summer of 1996, Denis O'Brien agreed to purchase from David Austin a holiday home in Spain with the intention of making it available to his parents who frequently holidayed in Spain.

We are instructed that the Spanish property is located at Aloha Pueblo 145, Nueva Andalucia, Marbella, and is owned by a company called Tokey Investments Limited, a company registered in Gibraltar. Tokey has 100 issued shares, 99 of which are held by Finnsbury Holdings Limited. The other shares held by Finnsbury Nominees Limited. The property was purchased for $\frac{1}{2}$ 150,000 in

August of 1996. We are also instructed that the sale was effected by transferring the beneficial interest in the shares held by the Finnsbury companies to an Isle of Man trust called Walbrook Trustees, Isle of Man Limited, which holds the shares for the benefit of Denis O'Brien. No Solicitors were retained by either side, the sale being effected by a simple transfer of the beneficial ownership of the shares. Tokey is administered in Gibraltar by Valmet Limited - a company secretarial service.

By July of 1996, Denis O'Brien had to make payments totalling $\text{€}407,000$ approximately to a number of individuals, one of whom was David Austin as payment for the holiday home. He was due a director's loan from RINV, a subsidiary within the Communicorp Radio Group. Communicorp Group was owned by Mr. O'Brien and was not part of ESAT Telecom Group, having de-merged in June, 1996.

In order to meet the pending payments, repayment of the director's loan was made in the sum of $\text{€}352,000$, together with an additional payment of $\text{€}55,000$.

Mr. O'Brien instructed Mr. Phelan to draw the $\text{€}47,000$ from RINV, and to arrange its disbursement to those entitled, including Mr. Austin. The payment to Mr. Austin was made in two instalments; the first of

€150,000 was made in early July of 1996 and the second, €100,000 of made in mid-July 1996. A copy title deed showing Tokey Investments Limited as being registered owner is awaited and will be forwarded to you on receipt. Copies of the relevant declarations of trust are enclosed."

I think that's the relevant matter in relation to that particular part.

Now, the Tribunal responded by letter dated 29th May, 2001.

"Dear Mr. O' Sullivan.

I refer to your letter of today's date under reference" which is given in response to mine of the 17th May last.

"The Tribunal has reviewed the documents and information provided by your client and I will propose dealing with the Tribunal's further queries in the same order as the numbered paragraphs used in both letters: -

1. The Tribunal has noted the structure of the ownership of the property in Spain. It appears from your reply that the sale is effected by the transfer of a beneficial interest of the shares held in Tokey Investments by the two Finnsbury companies. The Tribunal wishes to know whether there was any

documentary assignment of the beneficial interest in those shares, and if so, wishes to obtain a copy of such assignment or correspondence containing such assignment. The Tribunal also wishes to obtain copies of all instructions furnished by your client to the Finnsbury Companies or to Valmet Limited, together with any correspondence received by your client from any of these companies in connection with the transfer of the beneficial ownership in the shares. The Tribunal further wishes to know when and in what circumstances your client was furnished with the Declarations of Trust executed by Finnsbury companies and dated 12th August, 1996.

The Tribunal notes that the beneficial interest in the shares was transferred to Walbrook Trustees, Isle of Man Limited of Grover House, 66/67 Athol Street, Douglas, Isle of Man. It appears that Walbrook executed declarations of trust in favour of your client, and it appears these declarations were only executed on the 15th May last. In the first instance the Tribunal wishes to obtain details as to your client's involvement with Walbrook Trustees Isle of Man Limited, and in particular, whether this is a nominee holding company of a bank or financial institution or whether it is a company operating in connection with a private trust of which your client or any nominee on

his behalf is a founder, settlor, trustee or beneficiary.

The Tribunal also wishes to obtain copies of all correspondence in your client's power, possession or procurement in connection with the Declaration of Trust of Walbrook Trustees dated 15th May last, and further wishes to obtain a Waiver of Confidentiality from your client addressed to Walbrook Trustees authorising the Company to provide the Tribunal with documents and information regarding the beneficial ownership of the shares in Tokey Investments Limited.

You have informed the Tribunal that in July, 1996 your client had to make payments totalling i£½407,000 to a number of individuals, including the payment to the late Mr. Austin. You might kindly let me have some details of other payments which your client was obliged to make, including the identities of payees and the purposes for which the payments were made. It appears from the information provided that your client was due director's loans from RINV, a subsidiary of Communicorp, and in order to make the payments, the director's loan was repaid in the sum of i£½352,000, together with an additional payment of i£½55,000.

The Tribunal will be obliged if your client would provide the following further assistance to the Tribunal regarding this matter:

(i) the Tribunal wishes to obtain copies of all documents in the power, possession or procurement of your client or of RINV in connection with the director's loan of £352,000 and the status of the additional payment of £55,000.

(ii) the Tribunal wishes to know from what bank account these payments were debited, and also wishes to obtain copies of the relevant account statements and instructions furnished regarding the transfer of the funds for the late Mr. Austin.

(iii) the Tribunal further wishes to obtain copies of the records of RINV, showing the manner in which these payments were journalised and copies of the accounts of RINV showing the manner in which the payments were treated in the accounts.

The Tribunal notes that the payment to Mr. Austin was made in two instalments, one of £50,000 made in early July of 1996, and the second for £100,000 made in mid-July of 1996. The Tribunal wishes to obtain a narrative account from your client as to why the payments were made in two tranches over such a short period of time."

That's the relevant portion of that letter.

Now, I think by letter dated 11th June, your solicitors

replied as follows:

"Dear Mr. Davis,

We refer to your letter of the 29th May, 2001 responding to our letter of the 28th May. In this reply we are retaining the paragraph numbers used in previous correspondence.

1. We are instructed that in April or May, 1996, David Austin first mentioned to Denis O'Brien, that he was anxious to dispose of his Spanish property and an apartment in London before he died. Denis O'Brien had had in his mind for sometime to buy a holiday home for his parents in Spain. After some initial discussions, David Austin and Denis O'Brien agreed a price of $\text{€}165,000$, but shortly afterwards, David Austin reverted to Denis O'Brien saying that he had a strong desire to attend the Ryder Cup which was to be held in Valdarama, Spain in the autumn of 1997. He asked that the sale proceed, that he be allowed to retain occupation of the house until after the Ryder Cup, and this was agreed in return for a reduction of the price to $\text{€}150,000$.

The $\text{€}250,000$ payment made in early July of 1996 was made and a time when agreement in principle to purchase had been reached and to evidence a commitment. The balancing payment of $\text{€}100,000$ paid shortly after the price was finalised.

David Austin was looking after the transfer of ownership in 1996, and initially arranged for Declarations of Trust to be executed by the Finnsbury companies in of Walbrook copies enclosed. Completion of transfer was subsequently delayed because documentation was misplaced by David Austin. Denis O'Brien had no documents regarding the purchase other than the August, 1996 and May 2001 Declarations of Trust we have already furnished to you.

We now enclose the correspondence regarding the transfer of ownership and the balance of our client's own file which relates to the maintaining of the property. We have written to Walbrook Trustees Limited and requested Walbrook to provide us with copies of both their files and Valmet files on the Spanish property. We will forward that information to you when received.

Walbrook Trustees (Isle of Man) Limited is a professional trustee corporation and a wholly owned subsidiary of Deloitte & Touche in Isle of Man.

We understand that the Declarations of Trust are dated May 2001, because it was at that time that Walbrook established, in response to queries from our client, this company couldn't find executed declarations of trust from the relevant time. However, we understand

that they were satisfied from their file that Denis O'Brien is the beneficial owner and, therefore, executed the declarations, copies of which were furnished to you to complete their file.

We enclose a Waiver of Confidentiality from Denis O'Brien addressed to Walbrook Trustees authorising Walbrook to provide you with the documents and information regarding beneficial ownership of the shares in Tokey Investment Limited.

Inquiries are still being made in relation to the breakdown of 1/2 407,000, amount withdrawn from the RINV Woodchester account, and we will revert to you in relation to it when we are in a position to do so."

I think that ends the relevant portion of that letter.

I think your solicitors then wrote to the Tribunal by letter dated 13th June, 2001.

"Dear Mr. Davis.

We refer to our letter of the 11th June, 2001 enclosing documentation relating to the Spanish property and on other issues. Again, we are using the paragraph numbering originally used in your letter of the 17th May.

1. We enclose:-

(i) Tokey Investments file as provided to your client by Valmet in Gibraltar. While the fax head on the

file documentation is dated 11 June, 2001 - the fax was only received by our client today, 12th June 2001.

(ii) Tokey Investment Limited file as provided to our client by Walbrook Trustees, Isle of Man limited."

Now, I think that's all that's relevant in that letter.

The Tribunal then wrote to your solicitors on the 18th June, 2001.

"Dear Mr. O' Sullivan,

I refer to recent correspondence regarding the funding by your client of payments made to the late Mr. David Austin in 1996.

There are two matters on which the Tribunal wishes to secure your client's assistance as a matter of urgency.

1. I note that you have requested Walbrook Trustees Isle of Man limited to furnish you with their file in relation to the acquisition of the shares in Tokey Investments Limited. The Tribunal is anxious to obtain a copy of their file as a matter of some urgency. While I note that your client waived confidentiality in relation to these documents, as you are already in the process of obtaining the documents, it is probably preferable that the documents be obtained through you rather than directly by the Tribunal. You might kindly let me know, preferably by

return, when you expect the documents to be available.

2. I note that inquiries are still will go made in relation to the breakdown of the $\text{€}407,000$ amount withdrawn from the RINV Woodchester account. This is a matter which the Tribunal raised with you on the 29th May last, which is now over two weeks ago and again, you might let me know by return when you expect to be in a position to provide the information and documents sought. In addition, the Tribunal wishes to obtain details and documents pertaining to the transfer of fund from RINV to the late Mr. Austin including details of all bank accounts which were credited or debited in the course of the transmission. In this regard, you might also kindly provide the Tribunal with a Waiver to enable the Tribunal to make inquiries of and seek documents from Mr. Aidan Phelan who appears to have been directly involved in the transmission of the funds in question.

As this is a matter of some urgency and as a lengthy period of time has already elapsed since the Tribunal's initial request, you might kindly telephone me on receipt of this letter to indicate when the Tribunal can expect to receive the outstanding information and documents and to confirm your client's agreement to providing a waiver to Mr. Aidan Phelan in favour of the Tribunal."

Now, I think that by letter dated 22nd June, 2001 I beg your pardon, there is a copy of a letter which the Tribunal, I am sorry, it's not in that book Mr. O'Brien, I am just going to refer you to a paragraph of it, sent to your solicitors, on the 21st June, 2001.

I just wish to refer to just to one paragraph of it.

"Dear Mr. O'Connell,

I refer to previous correspondence. I note that the Tribunal has not yet received the documents and information referred to in my letter of the 18th June last some of which have been outstanding since the 22nd May. You will be aware that it is the Tribunal's preference that its dealings with persons should be on a voluntary and cooperative basis. This is why we are depending on the Tribunal receiving reasonably prompt responses to its question for assistance. In the absence of receipt by close of business tomorrow of the documents and information relating to the funds made available to your client by RINV in July 1996 to enable him, inter alia, to make payments of $\text{€}150,000$ to the late Mr. Austin, the Tribunal would intend raising this matter with him in the course of evidence and considering whether it is necessary for the purpose of its functions to make an order for the production of documents against your client."

Now, your solicitors wrote to the Tribunal by letter dated 22nd June, at the close of business, I think, on Friday 22nd June, in any event, the letter reads:

"Dear Mr. Davis,

I refer to your letter of the 22nd May 2001. My reply to the 11th and 13th June, 2001 and to your letter of the 18th June, 2001.

In your letter of the 29 May, 2001, you sought details of the payments totalling $\text{€}407,000$ made by our client in July 1996. We are instructed that those payments are as follows:" I am only going to refer to one.

"David Austin, $\text{€}150,000$."

If we could just move to the paragraph then "The payments totalling $\text{€}150,000$ to David Austin were in respect of the purchase of his Spanish property." Then we can exclude the other matters. And if we go to the second paragraph on the next page please, and if we just exclude the top paragraph.

"We are instructed that Mr. O'Brien requested Aidan Phelan to open a special purpose account with the AIB in the Isle of Man for the purpose of making these payments. Our client did not retain any payment instructions or other records in relation to these payments.

We enclose a copy of the RINV nominal account in respect of Denis O'Brien loan account showing an opening balance of £462,106.11 as at the 1st January 1996 and a part repayment of the 3rd July, 1996 of £352,000. That part repayment, along with the £55,000 withdrawal is reflected in the nominal account for the Woodchester call deposit account entry for the 3rd July 1996 - copy Woodchester call deposit nominal account also enclosed. The £55,000 payment from the RINV bank account, which was aggregated with £352,000 represented a refund of fundraising and other expenses incurred for and on behalf of ESAT Holdings Limited.

We also enclose a note of the Investec (formerly Woodchester) statement in respect of the RINV account showing the £407,000 withdrawal.

Also enclosed as requested a waiver of confidentiality in your favour in respect of Aidan Phelan's involvement in respect of the payments to David Austin for the Spanish property.

In your letter of the 18th June you requested a copy of the Walbrook Trustees Isle of Man file in relation to the acquisition of the shares in Tokey Investments Limited. In our conversation on the 19th June, you acknowledged that you had received the file and with my letter of the 13th June 2001.

Yours sincerely,

Owen O'Sullivan."

There were enclosures with that letter, and the first enclosure is the nominal account of RINV, isn't that correct?

A. Is that a question to me?

Q. Yes, isn't that correct?

A. Yeah, it says nominal account

Q. And that's Radio Investments

A. RINV, yeah.

Q. And it's an account with Woodchester Bank in Dublin, isn't that correct?

A. Correct.

Q. And this nominal account, if we just go to the relevant portion please, records a credit to you of i_1/2352,000, isn't that correct, and then others, i_1/255,000, which was drawings, isn't that correct?

A. Yeah.

Q. And that is the total of 407. And then over on the nominal account, on the loan account, you see the details of the debit to you of i_1/2352,000.

A. Yeah, it's the repayment of my loan to the company. Or part repayment.

Q. And then the next enclosure is a statement from Investec bank, formerly Woodchester, of the account of Radio Investment NV and it shows and I just can't get the exact date, but you can see 3rd July, I think it is, withdrawal to AIB Dublin, i_1/2407,000, the

value date is given as the 3rd July. And that represents the withdrawal to an account in Allied Irish Banks in Dublin, isn't that correct, of that amount?

A. We forwarded it

Q. I'll just deal with that. Now, I'll come back to that in a moment, I just want to complete I think the date of that statement is the 23rd May, 2001, isn't that correct?

A. Yeah, that's when it was sought, yeah.

Q. No, that's the date, that's the date on the statement, 23rd May, 2001.

A. Yeah, I see that.

Q. Now, the correspondence continues, and this is the final letter, because inquiries are still continuing. The correspondence continues, a letter from the Tribunal dated 25th June, 2001.

"Dear Mr. O' Sullivan,

Thank you for your letter of Friday last, 22nd June.

The Tribunal has noted the application of the funds withdrawn from the RINV account. Arising from the information provided from your client, the Tribunal is anxious to secure your client's further assistance as follows:

1. It appears from the copy Statement of the RINV account with Woodchester Bank that a sum of $i\frac{1}{2}$ 407,000

was withdrawn from the account on the 3rd July, 1996, and was transferred to an account at AIB Dublin. You have stated in your letter that your client requested Mr. Aidan Phelan to open a special purpose account with Allied Irish Bank in the Isle of Man for the purpose of making the relevant payments. The Tribunal wishes to obtain the following documents which should be available to your client from AIB:-

- (a) Copy statement of the AIB account to which the funds were transferred.
- (b) Copy of the AIB Isle of Man account opened for the purpose of making the payments.
- (c) Copies of statements of any other account or accounts into which or through which the funds, or any part of the funds, were lodged or channelled.
- (d) Copies of all instructions provided to Allied Irish Banks at any branch in relation to these funds including their lodgment to any account and their ultimate application by way of the payments to the persons listed on the first page of your letter under reply."

Now, I think I don't wish to deal with items number 2, 3, 4 and 5 in the letter. They deal with other people. This is an inquiry directed towards Mr. Austin at the moment. I don't want to involve the other people.

A. Okay.

Q. And the letter finishes: "The Tribunal wishes to obtain these documents as a matter of utmost urgency.

You will appreciate that the Tribunal's queries regarding these payments have been outstanding for some very considerable time and in the circumstances, I would ask you to let me hear from you regarding this matter by no later than close of business on Wednesday, 27th July, 2001."

If I could go back Mr. O'Brien, to the statement, the bank statement for Radio Investment NV, the Investec statement, which was formerly

A. Which tab is that?

Q. Sorry, I beg your pardon, it's at tab 9 and it is the second enclosure with the letter from your solicitors to the Tribunal. In fact, it should be the last page in the tab.

Now, what is the structure of Radio Investments Limited? Who owns it?

A. Radio Investments NV, I think, was set up in 1991 to hold overseas radio assets.

Q. On behalf of whom?

A. The shareholders of the company and the shareholders have changed over the last nine/ten years.

Q. And who were the initial shareholders?

A. Oh, there was a collection of people who originally

invested in the company and then I think they were bought out in 1994.

Q. By whom?

A. By me, and then I am not sure precisely what I think I have the controlling interest now in RINV.

Q. And in 1996, did you also have the controlling interest?

A. Well, in 1996 it was a complicated de-merger structure took place, because ESAT Telecom was in the telecommunications business owned by a top company call Communicorp on one hand and then it had radio assets in the other. And when we did a placing of shares with five or six US institutions in May 1996, we raised $\frac{1}{2}$ million, the company was de-merged and basically the radio business went back to me. So Radio Investments now, or subsequently became controlled by me. The loan that I made is that in July, if I recall rightly, in July, 1995, ESAT needed further funding and myself and my other shareholders, which was Avent, lent the money at that time and this was the repayment of that money plus interest, would have been a year and a bit later.

Q. In 1997, sorry, in 1996, did you have the controlling interest in this company?

A. Only after it was de-merged.

Q. Was this transaction after the company was de-merged?

A. I believe it was, yes.

Q. And what was your controlling interest?

A. I don't know. I'd have to go back, but it was more than 50%.

Q. Was it more than 50%?

A. Absolutely, yes.

Q. Was it significantly more than 50%?

A. 70, 80, 90, I am not sure.

Q. Very good. Was it 90%?

A. I can check and I'll come back to you tomorrow.

Q. Well, who were the other was there another shareholder?

A. I'd have to check precisely because the shareholding changed a number of times. Initially we raised a small amount of money. Then Avent put more money in, so

Q. But this was after the de-merger now.

A. After the de-merger, certainly I owned the largest the lion's share of it.

Q. Who was the other shareholder or shareholders in it?

A. I think it would have been very small.

Q. Who were they?

A. I actually don't know.

Q. You don't know who the other shareholders in this company were?

A. I'd have to go and check. I didn't think we would be dealing with Radio Investments this morning.

Q. Are you telling the Tribunal as of now you do not know

who the other shareholders in this company were, at that time?

A. Well, you are asking me a question that I am not prepared for this morning, because you gave me this book of evidence fifteen/twenty minutes ago. If you had given it to me last night, I would have gone through this and who owned what share in what company.

Q. Mr. O'Brien, you furnished us with this information. Your solicitor furnished us with this information on Friday at the close of business last. You furnished us with this information. Now, I am asking you

MR. McGONIGAL: Mr. Chairman, it's also fair to point out that so far as Mr. O'Brien and his legal advisers are concerned, is that the Tribunal is continuing its inquiries in relation to this matter. It was not, so far as we were concerned, part of the agenda for today or coming up for today. And I think Mr. O'Brien is quite entitled to make the point that if he had been forewarned of this, he could have checked the detail that Mr. Coughlan is now seeking and if the Tribunal had written to ask for the information, I am quite certain it could easily have been granted or given and if he had been asked for a waiver he could have got one of those too.

CHAIRMAN: I am content that any of the information as to the make-up of the shareholders can be deferred and

give Mr. O'Brien and opportunity to check that.

MR. COUGHLAN: I will be coming with Mr. O'Brien as to the date the information was obtained the correspondence the Tribunal had with him and the opportunity Mr. O'Brien has had to bring these to the attention of the Tribunal in the last number of weeks and the fact that it was only brought to the attention of the Tribunal last Friday. Just in case Mr. O'Brien or Mr. McGonigal is in any doubt.

MR. MCGONIGAL: I am not. Just if that is in the form of a letter Mr. Coughlan has sent to me, if it is, I will take it in that spirit. Normally the Tribunal corresponds politely through their solicitors. But if he wants to deal with it in this way, so be it.

CHAIRMAN: Let's proceed.

MR. COUGHLAN: Yes, we'll proceed as lawyers should proceed.

MR. MCGONIGAL: Sorry?

MR. COUGHLAN: We'll proceed as lawyers should proceed.

A. Where are we on to now?

Q. You had the controlling shareholding interest

A. We are back to Radio Investments again, okay.

Q. Who had signing rights in relation to the account of

this company, bank account of this company?

A. I actually don't know. I mean, it's the same question that you asked me three minutes ago where I said I'd be very happy to get for you the information.

Q. You informed the Tribunal that you instructed Mr. Aidan Phelan to withdraw money from this account, isn't that correct?

A. That's right, yes.

Q. Did Mr. Aidan Phelan have signing rights on this account?

A. I actually don't know. It could have been the financial controller of the company or another director of the company.

Q. Did Mr. Phelan have the authority to give a direction to anyone who had signing rights on this account?

A. If a direction came from me to him, people probably wouldn't question the staff wouldn't question necessarily

Q. Because that was the role Mr. Phelan fulfilled in your life, that if he indicated to anybody that he was acting on your instructions and your behalf?

A. Sometimes people would check, yes, they would.

Q. You would expect the staff and the bank to act on his instructions?

A. Well, not the staff, but the financial controller or financial director of the company.

Q. Now, this information was obtained for the attention of

Mr. Paddy Halpenny, South Block, The Malt House, Grand Canal Quay, Dublin 2, and the statement is dated 23rd May, 2001. Who is Mr. Paddy Halpenny?

A. He is in charge of the radio businesses that I own or partly own.

Q. That you own?

A. Partly own in some cases, I have other partners.

Q. And this information has been available to Radio Investments Limited from sometime around the 23rd May, last, isn't that correct?

A. The statement is dated 23rd. When he received it, I don't know, but I would expect that it would be in around it's not faxed, so it probably would have been posted, so it could be within three days. Where are we going?

Q. I am just asking you when it was received, Mr. O'Brien. I am not going anywhere.

A. I can only guess. You'd have to ask Mr. Halpenny. I am trying to be helpful.

Q. Very good. And when was this information put into the possession of your legal advisers?

A. You'd have to ask Mr. Halpenny that. I don't know.

Q. You don't know?

A. No.

Q. Although there was serious correspondence taking place between your legal advisers and the Tribunal requesting such information, you don't know, is that right?

A. Well, there is a multitude of correspondence and all of it is dealt with in a very serious manner.

Q. You don't know though?

A. No. I don't look at every piece of documentation that you are looking for, Mr. Coughlan, from me. But we'll find it for you, when it was received.

Q. Just bear with me for a while, Mr. O'Brien.

A. No problem.

Q. By letter dated 28th May, 2001 - and I'll just go back to it - from your solicitors.

A. What tab is that?

Q. It's at tab number 4. Do you have it?

A. Yes, I do, yeah.

Q. It's the letter dated 28th May from your solicitors.

The first page deals with the property and Mr. Austin and then if you go to the top of the second page. "By July of 1996, Denis O'Brien had to make payments totalling $\text{€}407,000$ approximately to a number of individuals, one of whom was David Austin, as payment for the holiday home. He was due a director's loan from RINV, a subsidiary within the Communicorp Radio Group. Communicorp is owned by Mr. O'Brien and is not part of ESAT Telecom Group, having de-merged in June of 1996. In order to meet the pending payment, repayment of the director's loan was made in the sum of $\text{€}352,000$ together with an additional payment of $\text{€}55,000$.

Mr. O'Brien instructed Mr. Phelan to draw the $\text{€}407,000$

from RINV and to arrange its disbursement to those entitled, including Mr. Austin."

The payment to Mr. Austin was made in two instalments the first of i;½50,000 was made in early July of 1996 and the second i;½100,000 of maid in mid-July 1996."

Now, where did that information come from, Mr. O'Brien, to allow that letter to be written?

A. Well

MR. MCGONIGAL: Mr. Chairman, if it's of any assistance, I am not quite sure why Mr. Coughlan is asking Mr. O'Brien about correspondence written by the solicitors on behalf of Mr. O'Brien. If Mr. Coughlan wishes to get details in relation to that, I would have thought that the best person to ask was the writer of the letter. I am quite certain that Mr. O' Sullivan will be able to deal with those matters.

I am not sure what the focus or purpose of this questioning is at this stage.

MR. COUGHLAN: Sir, I am inquiring. One assumes as a lawyer, that when a solicitor writes on behalf of a client, he is writing on the instructions of the client and the information so provided or somebody on behalf of the client. I have asked Mr. O'Brien where the information came from to enable this letter to be

written to the Tribunal, if the information which is contained in the - annexed to the letter which was received last Friday, was not available.

MR. McGONIGAL: I have no difficulty with Mr. Coughlan inquiring. I wouldn't dream of stopping his inquiries, but I would have thought that his inquiries would have some relevance to the issues which we are supposed to be dealing with. Now this aspect of the matter is not the Tribunal has not completed its inquiries and they are ongoing. And I, quite frankly, do not understand why Mr. Coughlan has plucked this out of his vast array of files and decided to ask Mr. O'Brien questions about it without any notice, without any documentation and expect him to have all the answers.

Now, the person who wrote these letters, Mr. O'Sullivan, would be available and can give all of the answers from all of the people on Mr. O'Brien's team who have been assisting him in relation to getting these inquiries done. So if there is some meat to what Mr. Coughlan wants to ask, let him ask it. If there is to meat, can we get on to something that is relevant?

CHAIRMAN: If questions were being put by Mr. Coughlan on some matter of internal legal minutiae, of course I would uphold such an objection. It appears that what

is being asked is a potentially significant and crucial matter and if Mr. O'Brien is in a position to assist, I believe he should reply.

A. Can I comment please?

MR. COUGHLAN: Yes indeed.

A. Chairman, I didn't get notice of this coming up today.

I'll try to the best of my recollection, but to ask me what shareholdings I had in various companies I am involved in a lot of companies and I wouldn't know precisely what shareholdings; the question as to who, when, or what who got the statement, when it was received? I actually wouldn't have a clue. So, I am trying to be helpful, but I equally am confused as to where we are going.

Q. Mr. O'Brien, let me just make it very clear to you so that you and Mr. McGonigal can understand. You asserted yesterday that you brought matters to the attention of the Tribunal for the purpose of being of assistance to the Tribunal in response to a broadcast made by Mr. Charlie Bird?

A. And we did.

Q. Now, Mr. O'Brien, I am taking you

A. We did.

Q. through the correspondence and I am asking for your comments in relation to information which was furnished to the Tribunal, when it was furnished to the Tribunal,

and why it wasn't furnished at an earlier stage.

That's what I am asking you about, Mr. O'Brien, so you can have no doubt of the line of questioning. Do you understand?

A. We disclosed the purchase of the house on the 16th May.

We are now talking about something these letters that are going down towards the 25th June, which I have, I am now reading for the first time as such and you are asking me questions about it.

Q. Let me just get this very clear, Mr. O'Brien. You are saying that you are unaware of the correspondence between would you listen to the question please, Mr. O'Brien that you are unaware of the correspondence between your solicitors and the Tribunal?

A. I never said that. You keep putting words in my mouth. I never said that.

Q. What are you saying?

A. Could we go back and look at the transcript?

MR. MCGONIGAL: What he said was in relation to the letter of the 25th June. Now, I really do not understand why this correspondence is being dealt with in this way. I want to submit very strongly that what is now being done is unfair and oppressive.

Mr. Coughlan has isolated one aspect of this correspondence which was dealt with between May and June, has taken that totally out of the context of all of the other questions and issues. It must have been

clear to Mr. Coughlan it must be clear to Mr. Coughlan that there are a number of people assisting Mr. O'Brien in relation to getting evidence and other material while he was also doing his other business. If these matters are of such importance to the Tribunal, then I would submit that the proper way for the Tribunal to deal with it in the initial phase was to correspond and ask for the information as to when these statements became available, so contact could be made, in the first instance, with Mr. Halpenny and to anyone else involved in the getting those statements.

CHAIRMAN: I thank you, Mr. McGonigal. As I understand it, the question is in relation to a passage of the letter from Mr. O'Connell of the 28th May in relation to an averment in that or a statement that Mr. O'Brien instructed Mr. Phelan to have certain dealings in relation to the $\text{€}407,000$. That is a question I have allowed and I will be obliged if the business was proceeded with.

MR. MCGONIGAL: That letter was written by the Tribunal to Mr. O'Connell and not to Mr. O' Sullivan who was the person dealing with all of the other correspondence, the Tribunal will have noted.

CHAIRMAN: I'd be grateful if you would allow the

evidence to proceed, Mr. McGonigal. Thank you.

Q. MR. COUGHLAN: Now, Mr. O'Brien

A. You better start with the question again because I am confused.

Q. You do not look at every piece of correspondence, is that correct?

A. This is where are you now?

Q. Is it correct?

A. I'd like to go back to what I said in the transcript.

Q. "Question: You don't know though.

Answer: No, I don't look at every piece of documentation that you are looking for, Mr. Coughlan from me."

A. But I didn't say my solicitors. You see

Q. So you are familiar with this correspondence?

A. It's getting adversarial now - this. Like, you are trying to twist words. I said I don't look at every piece of documentation, which is true. But you are trying to say that I don't look at all documentation from my solicitor. Now, you have got to be fair to me. I never said what you are trying to say that I did say.

Q. Mr. O'Brien, did you read this correspondence?

A. Of course if you had asked me the question properly, I would have said, "Of course I did".

Q. I asked you a question about the correspondence, Mr. O'Brien, and it was in response to that you said you

don't look at every document. Now

A. But you are trying to make out that I don't read legal correspondence. This is very serious stuff.

Q. Yes, very serious stuff, Mr. O'Brien. That's why I am asking you about it.

A. Good.

Q. Very serious stuff. And I asked you, by letter dated 28th May, you, through your solicitors, have informed the Tribunal do you see that on the second page?

A. I have a letter dated 28th May. It says, "Dear Mr. Davis, we refer to your letter, 17th May."

Q. I am asking you to go to the second page of that.

A. Yes.

Q. Would you read that paragraph please.

A. "By July of 1996 Denis O'Brien had to make payments totalling $\text{€}407,000$ approximately to a number of individuals, one of whom was David Austin, as payment for the holiday home. He was due a director's loan from RINV, a subsidiary within the Communicorp Radio Group. Communicorp is owned by Mr. O'Brien and is not part of ESAT Telecom Group, having de-merged in June of 1996. In order to meet the pending payment, repayment of the director's loan was made in the sum of $\text{€}352,000$ together with an additional payment of $\text{€}55,000$. Will I read on?"

Q. Yes.

A. "Mr. O'Brien instructed Mr. Phelan to draw the

£407,000 from Radio Investments and to arrange its disbursement to those entitled, including Mr. Austin.

The payment to Mr. Austin was made in two instalments, the first of £50,000 was made in early July, 1996 and the second £100,000 of made in mid-July 1996."

Q. Now, did you know that information did you have that information when your solicitors replied to the Tribunal by letter dated 28th May, 2001?

A. I am going to look at the 28th May and just see. What tab is that?

Q. You have just been reading from it.

A. Oh this is the same letter, okay. Did I know that information? We have about four or five people working full-time and getting the information for the Tribunal. So I would have read this letter and checked whether obviously this is the statement of the facts and then the letter would have gone to the Tribunal.

Q. So you would have

A. To the best of our ability.

Q. You had that information?

A. I would have checked it.

Q. You had that information so?

A. On the 28th May? Yes, the letter was written on the 28th May.

Q. And you knew about it a long time previously, didn't you, back in 1996 where the money was coming from to

pay Mr. Austin, isn't that right?

A. No, I didn't.

Q. You didn't

A. How do you make that out?

Q. You didn't know that you had instructed Mr. Phelan to withdraw $i\frac{1}{2}$ 407,000 and to make payments in 1996?

A. As I explained I think yesterday maybe we should get the transcript, because we finished on this point yesterday. This was in relation to Mr. O'Connell's file note, if I remember rightly, dated either 30th or the week

Q. It was the 6th November I think?

A. Was it the 6th?

Q. It was the 6th, 7th or 8th it was November of 1997.

A. Where you were asking me if I could recollect you asked me why was this not mentioned in the context of the inquiries, wasn't that right?

Q. Yes.

A. And I have to go through this now I have so much material here. What tab is that?

Q. What tab is what, Mr. O'Brien?

A. The tab that you were examining me on yesterday which is in relation to this. You are trying to tie it back to that, are you?

Q. I am not trying to tie it back to anything, Mr. O'Brien. You were the one who said you wanted to refer to the transcript. Now what do you want to

refer to in the transcript?

A. You were asking me questions about the letter of the 28th and did I know of that information in June or no, at the time of the IPO, is that right?

Q. No, at the time that you purchased the house from Mr. Austin.

A. I know I purchased the house.

Q. Yes.

A. And I know how I paid the money now.

Q. You didn't know at the time?

A. At the time I knew that I paid Mr. Austin a sum of $\frac{1}{2}$ 150,000. But which bank account it came from or how it was financed, I wasn't involved in the conversation between Mr. O'Connell and Mr. Phelan on the 6th May, if that's the date that you mentioned.

Q. I am not concerned about that at all. You are now saying that you did not know out of which account Mr. Austin was paid?

A. Well, you pointed out to me yesterday that it came from the Isle of Man. And I think I corrected you, because you talked about two amounts of money and they came from different banks and I explained to you now that we have gone through the material of the accounts, that the money came out of one account and that was the AIB Isle of Man account. I said in the transcript, I believe, that I wasn't sure it was my account or an NV account. It transpired it was set up as a special

purpose account for receiving this shareholder's loan, the remittance back and then the disbursements that were made subsequently.

Q. Sorry, you were saying - I am just trying to be clear about this, Mr. O'Brien, that in the summer of 1996 you did not know where the money came from to pay Mr. Austin?

A. If you'd asked me in July or August of 1996 "how did you pay for the Spanish property that you bought?" I would have been able to tell you. But sixteen months later, precisely how it was paid, what account it came out of, it would have been a very difficult thing to remember that long.

Q. I am asking you whether you remembered it now and I asked you in the summer of 1996 you knew where the money came out of?

A. I probably would have remembered vague details that yes, how the money that I had been repaid a shareholder's loan, yeah.

Q. And that it was from RINV?

A. Yeah, well the loan originally was to them and they were repaying the money back.

Q. And their account was in Woodchester, isn't that correct?

A. Yes. Radio Investments is a Dutch company, NV was set up for the purposes of double taxation agreements that were in existence in the early nineties with

countries such as the Czech Republic, Hungary, which we were doing business. If we had remitted profits we would have been double-taxed. It was a way of making sure that the tax planning was properly done.

Q. RINV had a bank account in Woodchester, isn't that right?

A. That's right.

Q. And you knew that?

A. At the time, I don't know whether I had known that or not.

Q. I see. Well we can check

A. I thought we had an account in Mitz Peron(?) in fact.

Q. You didn't know that RINV had an account in Woodchester?

A. If you had asked me just to answer the question fully if you had asked me what companies that I am involved in have bank accounts and where they are, I would find it difficult to give you the answer without investigating it.

Q. Are you saying that you did not know in the summer of 1996 that RINV had its account with Woodchester Bank?

A. I actually can't recall whether I knew at the time or not.

Q. I see. Was it RINV's main bank, have you determined?

A. It is now.

Q. Was it in 1996?

A. I don't know.

Q. After the de-merger?

A. I actually don't know.

Q. You don't know. Now, in your response, through your solicitor, on the 28th May of this year, you informed the Tribunal of the drawings from RINV, and your instructions to Mr. Phelan, isn't that correct? Isn't that right?

A. I will just get my folder back up here. 28th, yes.

Q. Were you aware that the withdrawal from the account of RINV was to Allied Irish Banks, Dublin?

A. When we wrote this letter, I actually don't remember whether we knew at that stage. We knew money we had investigated obviously the loan was repaid and then we were trying to establish where the money went to.

Q. I am asking you, did you know when that letter was written, that it had gone to Allied Irish Banks in Dublin?

A. If we enclosed the statement, we would have known, but I am not sure whether the statement was enclosed at the time, but I think the statement back here

Q. Is dated 23rd May, 2001.

A. That's right, yes. But it doesn't say where the money went to, does it?

Q. If you look at the statement

A. AIB to Dublin, yeah.

Q. Withdrawal to AIB Dublin.

A. Yeah. It doesn't say Isle of Man. It probably was

cleared through AIB.

Q. I know it doesn't say the Isle of Man. I asked you a question, did you know when this letter was written on the 28th May

A. I don't remember

Q. that the withdrawal from the RINV account was to Allied Irish Banks in Dublin?

A. I don't know, I don't remember.

Q. You don't remember. Now, last Friday the statement of the RINV account was furnished to the Tribunal showing a withdrawal to Allied Irish Banks, Dublin, isn't that correct?

A. What tab are we on?

Q. Tab 9.

A. This is the ledger?

Q. After the ledger.

A. Yeah.

Q. When do you believe you saw it?

A. That statement?

Q. Yes.

A. I actually don't remember when I saw it.

Q. You don't remember. Well, I think we can check this with Investec as to when the statement was furnished.

A. Well, I have no reason why if it's dated 23rd May, when they sent it, they would have sent it within a couple of days or they would have sent it that day.

It would be worth finding out.

Q. Now, the first time that you informed the Tribunal, through your solicitors, was by letter 22nd June, 2001, that you requested if you go to the second page of that letter

A. What tab is that?

Q. It's at tab number 9, Mr. O'Brien. "We are instructed that Mr. O'Brien requested Aidan Phelan to open a special purpose account with the Allied Irish Bank in the Isle of Man for the purpose of making these payments. Our client did not retain any payment instructions or other records in relation to these payments."

Do you see that?

A. Yes, I do.

Q. Isn't that right?

A. Yeah. That's the second paragraph.

Q. Yes. And that is the first time that you have brought it to the attention of the Tribunal that Mr. Phelan was instructed to open a special purpose account in the Isle of Man for the purpose of making the payments, isn't that right?

A. When you asked how did we pay for the house? Basically there was a number of people that went off investigating all my bank accounts to track which account it came out of, or how the money was paid. So that took a fair amount of work to do and we gave you the information when we had the AIB Isle of Man

information.

Q. Mr. O'Brien, this information has been furnished to the Tribunal after the last Opening Statement and when your lawyers had sight of Mr. David Austin's bank statements showing the sources into Mr. Austin's bank statements, isn't that correct?

A. I don't remember seeing the evidence, but I am sure if you are saying that you gave my lawyers the bank accounts, I wouldn't doubt that. But did I look at the bank accounts? Probably not.

Q. It was in fact drawn to the attention it was brought to the attention of your lawyers on the 15th June and subsequently Mr. Austin's bank accounts, which the legend on the bank accounts shows the source of the monies into his account.

A. And we wrote to you on the 16th May and told you we bought a house. Then you wrote us back and said find out how the house was paid for and that's taken some time to find out, which account the money came from and how it was paid.

Q. Mr. O'Brien, what I am suggesting to you is that at least of the 28th May, there was information available in the form of the bank statement from Investec and the nominal ledger from RINV, that that was available and that that information was not brought to the attention of the Tribunal.

A. We have given you the information as we have got it,

okay? We didn't have the AIB bank account in the Isle of Man at the time.

Q. I know you didn't.

A. At the time. So whether we do or not now, I don't know

Q. Do you have it now?

A. I don't know whether we do or not. I don't believe so.

Q. You had a statement from Investec showing a withdrawal from RINV's account to Allied Irish Banks in Dublin, isn't that correct?

A. We did, but we didn't know precisely whether that was the money that was used to buy the house.

Q. But all the money was withdrawn to Allied Irish Banks in Dublin - the whole $\text{€}407,000$.

A. Then we had to track the 407, what it was used for. And if there was a clean 150, okay, you could have said that could have been the house.

Q. But you were asked for all payments that were represented by the $\text{€}407,000$.

A. That's what we have been trying to give you.

Q. But

A. That's what we gave you.

Q. Did you make any inquiries of Mr. Aidan Phelan?

A. Yes, we did, yes.

Q. When?

A. Well, as soon as the correspondence came in he was

asked how the house was paid for? And he you know, I think he said he couldn't remember, that he'd have to go and look, so my accountants, he looked and everybody went looking for the payment.

Q. When was that?

A. Over the period of correspondence from the 17th May.

Q. From the 17th May?

A. Well, yeah, you wrote a letter I mean, I am reading this in sequence for the first time, but if I am right, you wrote us a letter after the disclosure that we bought the house after Charlie Bird giving information that there had been a loan. So yeah, "The Tribunal wishes to obtain copies within your client's power, possession or procurement ... such documents to include banking documents and how the acquisition was funded."

Q. But you did make inquiries of Mr. Aidan Phelan?

A. We started.

Q. You started with Mr. Aidan Phelan?

A. No. We started to make inquiries and look at all the bank accounts.

Q. And when did you make an inquiry of Mr. Aidan Phelan?

A. I don't know what day of the week the 17th was, but it would have been within a couple of days or that day, the next day, I don't know.

Q. Mr. Aidan Phelan, apart altogether from his role as accountant and financial adviser to you, is also one of

the executors of Mr. David Austin's estate, isn't that correct?

A. That is correct, yes. He was very friendly with Mr. Austin.

Q. And as a result of the inquiries you made of Mr. Phelan, what was his response?

A. He'd have to go and look into the matter.

Q. And when did he come back to you?

A. Well, he would have come back he would have also discussed with Mr. Halpenny who obviously had some of the information. He would have gone backwards and forwards looking for the information to try and find out, narrow it down.

Q. What did he tell you?

A. Eventually, at the end of it all, he told me that there was a repayment of a shareholder's loan from RINV and that money then was put into a special purpose account and that money then was used to make disbursements.

Q. Did he tell you anything else?

A. In what context?

Q. About the inquiries that were being made?

A. I can't recall. I mean, I have had plenty of conversations with him; whether he told me anything, I don't remember.

Q. Did he tell you that inquiries had been raised with him through the solicitors for the estate of Mr. Austin at the same time?

A. No.

Q. Did he tell you that he was reasonably sure as of the 19th May, 2001, at least, that the $\text{€}100,000$ and the $\text{€}50,000$ in the account of David Austin in the Bank of Ireland branch in Jersey was in relation to the sale of his house in Marbella?

A. You see, he has his own inquiries with the Tribunal and he has his own legal team. Whether he told me about some account I doubt if he'd have broken that confidence. In fact, I don't believe he told me.

Q. There was no difficulty here. There were queries being made to try and identify sources of monies in the account of Mr. Austin?

A. But he

Q. I am asking you

A. He is an executor.

Q. Yes.

A. He wouldn't discuss Mr. Austin's accounts or will with me.

Q. And are you giving sworn evidence that Mr. Phelan was not in a position to say to you, as of the 19th May, 2001 that he was reasonably sure that the lodgements referred to in the account of Mr. Austin in July and August of 1996 of $\text{€}100,000$ and $\text{€}50,000$ are in relation to the sale of David's house in Marbella. He didn't tell you that?

A. I don't recall him telling me anything like that.

Q. He never told you that?

A. No.

Q. When all these inquiries are going on?

A. Everybody is being inquired to. He is subject to the Tribunal. He has his team. He is trying to handle the inquiries. I am trying to handle mine. It seems to me I have a lot more people working on it than he does.

Q. He didn't tell you that?

A. I don't believe he did.

Q. He didn't tell you it?

A. I am answering the question, I don't believe he did.

Q. Very good. Now, in 1997, when Mr. Owen O'Connell was carrying out his inquiries for the purpose of making as much information as possible available to the directors of the board of ESAT Telecom, and he was informed that Woodchester was the bank to make inquiries, was in respect of your accounts.

A. And AIB.

Q. And AIB?

A. Well, it's in his notes. He checked other bank accounts.

Q. Did you inform Mr. O'Connell, for the purpose of carrying out those inquiries, that there was an account in the name of a company, Radio Investments NV, with that bank and that substantial payments had been made to you by way of a refund of a director's loan the

previous year?

A. I wasn't party to the conversation, as I explained yesterday. I was in the middle of a roadshow. In fact, I was either, I think it was I was in Stanford at the time, New York and Stanford. Mr. O'Connell had a conversation with Mr. Phelan about accounts, I wasn't part of the conversation. So I don't know. All I can look at is his notes and see what his notes say.

Q. Did you inform Mr. O'Connell yourself of the existence of this account?

A. These inquiries were going on independent of me. My instruction was to my bookkeeper and to Aidan Phelan, and I also said to Owen O'Connell you can look at any account you want.

Q. Did you inform Mr. O'Connell of this account?

A. He knew that I mean, he was the solicitor to Radio Investments and ESAT. We looked at the companies if you look at the companies that were looked at, I think KPMG looked at ESAT Telecom and looked at ESAT Digifone, or maybe just looked at Telecom, I am not sure, but KPMG looked at those companies and then my personal accounts were looked at as well and statements were received and I think there was seven or eight different accounts in Woodchester. But to look at a corporate account, and I was involved in lots of companies at the time, whether the investigation went that far, I don't know. I don't

believe it did.

Q. Did you I'll ask you the question again: did you inform Mr. O'Connell that he should look in that account?

A. I don't remember having a conversation with Mr. O'Connell going through lists of accounts that should be looked at or not.

Q. I see. Did you leave that to Mr. Phelan?

A. I left that yes, I did. Mr. Phelan was the person that was asked to do this item on the 'to do' list in the IPO.

Q. Would you have left that particular matter to Mr. Phelan, that he would liaise with Mr. O'Connell in relation to accounts?

A. No, no, Mr. Phelan would and also Ms. Foley as well.

Q. It would be one or other of those or both?

A. It was a joint effort I think.

Q. It was a joint effort. And can you be certain that you impressed upon them that this was a significant matter and that they must render all possible assistance to Mr. O'Connell?

A. Sure everybody knew it was a significant matter. I mean, the IPO the directors wanted to check whether there had been any payments to Michael Lowry. And they went off and checked the accounts.

Q. And did Ms. Foley and Mr. Phelan know that that was the purpose for which the accounts were being checked?

A. I believe they did. And ultimately the report was negative.

Q. Of course it was, Mr. O'Brien, because this particular sum of money was never disclosed, isn't that right?

A. But there was no payment to Mr. Lowry.

Q. Mr. O'Brien, Mr. O'Connell was looking for payments over $\frac{1}{2}$ 100,000, $\frac{1}{2}$ 100,000 or lower sums of money - just bear with me, Mr. O'Brien. That's what he was looking for. He was not directed to this and this is something he would have had to look at.

A. No. It was a company repayment of a shareholder's loan 16 months previously. The account was closed within a short period it was opened and closed within probably four/five weeks, that's as far as I know. We have to get the evidence on that.

Q. And $\frac{1}{2}$ 150,000 of that went to Mr. David Austin from an offshore account, isn't that correct?

A. That is correct and I described

Q. In two tranches?

A. Pardon?

Q. In two tranches.

A. One was a deposit well ultimately it got so delayed in through the clearing system that it landed the same time as the TT for the 100,000.

Q. And at the inquiries leading up to the IPO, Mr. Austin's name emerged in circumstances whereby inquiries had to be made, isn't that correct?

A. On the basis of Fine Gael's request for a donation.

Q. Sorry, from the point of view of the lawyers and the other directors of the companies, inquiries had to be made in relation to this matter?

A. Sure everybody knew that I was a friend of David Austin, so...

Q. And this information was not available to Mr. O'Connell or to your fellow directors of ESAT Telecom or ESAT Digifone, isn't that correct?

A. I didn't conduct the inquiry. But certainly all the details of my active open accounts were put before Mr. O'Connell, as far as I am aware. But I wasn't there for the conversation.

Q. Isn't that the problem, Mr. O'Brien, your active open accounts

A. I don't see a problem.

Q. Isn't that the problem

A. You see a problem. I don't see the problem.

Q. Isn't that the problem, Mr. O'Brien, your active open accounts, to use your own words?

A. Well, from the age of twelve I have had accounts. I opened a bank account when I was twelve; that account could have lasted four or five years. I closed that.

Now, should Mr. O'Connell have gone back to AIB Rathgar where I had opened that account at twelve years of age? Maybe he should have. But did he

Q. Mr. O'Brien, I am engaged in serious work here, not

facetious work. I am not suggesting that

A. I am being very serious

Q. that Mr. O'Connell should be going back to look at accounts when you were twelve years of age. Here was a matter

A. I am being serious as well

Q. Here was a matter which had been raised, the name of Mr. Austin had been raised in the course of the inquiry leading to the IPO. And the Mr. O'Brien

A. I am listening

Q. The information of $\text{€}150,000$ going to Mr. Austin was not disclosed to Mr. O'Connell or to your fellow directors, isn't that right?

A. I bought a house from Mr. David Austin, okay?

Q. Yes.

A. The board knew most of the board knew that I was very friendly if you look at the notes, everybody knew that I was friendly with David Austin. Why would I have necessarily disclosed every piece of business that I have ever done with David Austin in the context of a Fine Gael donation?

Q. So are you saying that you didn't know about it? You consciously chose not to disclose it or it wasn't disclosed for some other reason?

A. It wasn't an issue.

Q. It wasn't an issue?

A. It wasn't an issue.

Q. It became a very big issue for you when Mr. Charlie Bird broadcast on television

A. Why are you turning around to the gallery in this case?

Q. that a loan was made to by Mr. Austin to Mr. Lowry, it became a very big issue for you then Mr. O'Brien?

A. It didn't become a big issue. If your question is if it did become a big issue, it didn't become a big issue.

Q. And no big issue now?

A. No big issue now, because I wrote to you straight away because I know how the Tribunal would think. They would assay 1 and 1 is equal to 20 and I knew that was dangerous.

Q. You knew that in advance and that is why you wrote to the Tribunal; is that what you are saying, Mr. O'Brien? Are you saying that the way the Tribunal conducts its business is to say that 1 and 1 is 20? Is that what you are saying? Is that your understanding of how the Tribunal conducts its business?

A. In investigations your role is to look at everything and sometimes people may put things together in their own mind at one particular time which may lead them to come to a particular view. And I felt, at the time, rather than you looking, looking and looking for more information from me, that I thought the best way to handle this would be to go up front and say, "I bought this house" when I saw that Mr. Bird had some sort of a

story that Mr. Lowry had received a loan from David Austin, because I was not aware of that.

Q. Mr. O'Brien, I am asking you a question: are you saying that it is your understanding of how the Tribunal conducts its business that when they add 1 and 1, they get 20? Is that what you are saying?

A. Sometimes that could be the impression that I get as I come through the door here and also by the questioning which can be very adversarial.

Q. I see. Did you know that David Austin was a close friend of Michael Lowry's?

A. I knew that he knew him, but I didn't know they were close close friends.

Q. And can I take it so that it was because you were concerned that if the Tribunal kept asking questions, they would find out about the payment for the property in Spain to Mr. Austin and that that would cause some sort of difficulty for you?

A. No. As I answered the question or your what I said to you before, I wanted to be up-front and help the Tribunal. Let's be very clear, Mr. Coughlan, 80 percent of the information in all those files has come from my side. Everybody else has hidden behind privilege. I have said I am giving everything to the Tribunal because I have nothing to hide.

Q. Now, Mr. O'Brien, I'll stop and challenge you in relation to that matter.

A. Maybe it's 70 percent, is it?

Q. I'll stop and challenge you in relation to that matter and in respect of any other persons who may be giving evidence before this Tribunal. Other people have been of assistance to the Tribunal, Mr. O'Brien.

A. Of course they have.

Q. And their good names should not be taken by anybody

A. Who took their good names?

Q. in any wild way in the witness-box.

A. Who took their good name, Mr. Coughlan?

Q. And isn't it so, Mr. O'Brien, and I'll be coming back

to deal with the accounts in a moment, isn't it so Mr.

O'Brien that it wasn't until the matter arose as a

result of Mr. Bird's broadcast, that you, in the first

instance, told the Tribunal that you had bought a house

from Mr. Austin and you gave the Tribunal no further

information in relation to that until queries were

raised? Isn't that a fact?

A. You see, this is where I mean, this is unbelievable,

because

Q. Is that a fact or is it not?

A. Am I being punished now for being up-front?

Q. Is that a fact?

A. No, I think you are wrong. I think you are wrong.

Let's take up the question because you have jumbled, as

usual, the questions. Would you please give me the

questions in the order that you want them answered.

Q. I asked you a very simple question.

A. Didn't you asked me three questions in one?

Q. I said it wasn't until after Mr. Bird's broadcast that you informed the Tribunal

A. That's right, I have already said that.

Q. that you bought a house and you gave no further information until the Tribunal continued to query you about it?

A. That's not

Q. Is that right?

A. Let's read the letter.

Q. No, Mr. O'Brien. Mr. O'Brien, is that right?

A. I am allowed to go through my evidence.

CHAIRMAN: Will you answer the question? It's coming up to lunch

MR. COUGHLAN: Answer the question.

A. I am looking forward to lunch too.

CHAIRMAN: I'd be grateful, Mr. O'Brien, accusations such as accusing Mr. Coughlan of turning around and playing to the gallery

A. He has done it three or four times.

CHAIRMAN: are particularly inappropriate. I won't put up with it.

A. It's not nice for me either.

CHAIRMAN: I appreciate that.

A. It's as if he wants to show everybody there is some big deal here.

CHAIRMAN: Will you keep the histrionic evidence out of it. We'll take this last matter and adjourn for lunch.

A. Could you repeat the question?

Q. MR. COUGHLAN: After Mr. Bird's broadcast, you had informed the Tribunal you had purchased a house from Mr. Austin?

A. We wrote a letter on the 16th May describing that we brought the house. It was originally agreed for 165,000 but it was reduced to 150,000 to enable David Austin to avail of the house. You then wrote a letter back

Q. Which was just bear with me for a moment, which was some fifteen days after the broadcast, isn't that right? Is that?

A. You see what I did explain to you, I wanted to know he made the broadcast, but I don't believe necessarily everything that is broadcast. And in the following period, I don't know when it was, Mr. Lowry then issued a statement. We didn't see the statement, but we look it that basically it was true. And at that stage, I said to my solicitors, "look, we had bought this house. I own this house and Mr. Lowry

seems to have received a loan. The Tribunal will be interested that I bought this house and we should go straight away and tell them what it was about." You then wrote back to me on the 17th looking for information. And then we went off and got the information.

Q. Mr. O'Brien, isn't it correct that the only thing you disclosed to the Tribunal was that you had purchased a house from Mr. Austin and that it wasn't until the Tribunal raised queries with you that we ultimately find the Investec bank statement being delivered to the Tribunal last Friday evening at the close of business?

A. Well, what you are trying to paint out I told you that I bought the house, but I never disclosed on the 16th exactly how I paid for the house. But I have been helping you ever since and I am now giving you the information.

Q. Is that an appropriate time?

CHAIRMAN: Ten past two. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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

MR. COUGHLAN: Mr. O'Brien, I wonder could you go to the book of documents, that's the statement of Mr. O'Connell, with Mr. O'Connell's notes in them, please.

A. Sure.

Q. And could I ask you to go to tab 19. Do you have that?

A. Yes, I do.

Q. Now, that's Mr. O'Connell's note which reads: it's dated 6th November, 1997, and it's following "Latham & Watkins call, Aidan Phelan." Do you have that?

A. Yes, I do.

Q. And "no other significant accounts house accounts (pays household expenses).

UK account for salary, AIB (from Communicorp). Could get statements. i;½11,000 per month, transfer to Irish accounts; also runs credit cards." And I think this was in the context of Mr. O'Connell inquiring of Mr. Phelan of any other accounts, significant accounts, isn't that correct?

A. I think so. Obviously I wasn't part of the conversation, but it looks as if it is.

Q. Now, do you see reference there to AIB (from Communicorp)?

A. Yes.

Q. What AIB account is that?

A. There is a standing order from, I think it is Communicorp, to AIB account and that then is used to pay household bills, transfer to some Irish accounts and also my credit cards at that time.

Q. I see. Is that an Irish AIB account?

A. No. That would be my AIB account in Bruton Street.

Q. In London?

A. Yeah. That's now Berkley Square.

Q. Right. Now, the AIB account to which the $\text{£}407,000$ -
to which the money from Woodchester, the RINV money
from Woodchester - went to, where was that?

A. That was in the Isle of Man.

Q. Well, I think first of all it went to an account in
Dublin, didn't it, according to the legend in
Woodchester at least?

A. I wouldn't be totally precise in this but I think if
you transfer money from an Irish account, whether it be
Woodchester or anyone else, and it is an AIB account
anywhere in the world, it would go through their
International Centre.

Q. It would have to go through Dublin it would have to
go to, probably an AIB bank-owned bank account?

A. It would be the AIB clearing system.

Q. Yes. If we could then go back to the notes on the
inquisition which occurred on the 4th November?

A. That is tab?

Q. I'll just find the tab for you?

A. I think it's 4, is it?

Q. It's tab 12. I am dealing with Mr. O'Connell's notes
in the first instance and we can run quickly through
Mr. Halpenny's notes then if necessary.

A. Fine.

Q. I think we had completed the first page of those notes

and those questions which were put to you by

Mr. Kealey, isn't that correct, yesterday?

A. He was the I don't know how you'd describe them.

Q. He was asking the questions?

A. He was the guy in charge.

Q. Now, if you go to page 2 of the notes and opposite

'DOB', these are believe two -100K to you know who?

100K to 2.

How would Barry Moloney have known one was to Michael

Lowry?" Then what looks like a response by you: "May

be assumption - easy to make - but second totally

exaggeration."

A. It is sequential. I think it is sequential.

Q. Does that seem like a response?

A. It could be.

Q. "Throwaway remark to get Barry Moloney to pay the other people."

A. I think that probably would have been me.

Q. "Barry Moloney response. Denis O'Brien don't want to know." That's the response that you are giving to

Mr. Kealey, is it, is that that was Barry Moloney's

response, 'don't want to know' or words to that effect?

A. I am not sure that that is Mr. Moloney speaking, but it does seem logical that it was him.

Q. Whether it was your memory that he said it at the time of the run or in the office or whether it was

information that you subsequently ^gleaned as a result

of matters, there is a response and by the time this inquisition was occurring everyone knew that the response that Barry Moloney was giving was 'don't want to know' or words to that effect, isn't that right?

A. I think you are right, yes.

Q. And Mr. Kealey then asked MK, "Why didn't you say 'it's only a joke'?"

Denis O'Brien: No, not a serious conversation. Social context. Only tried to outdo the other." Isn't that right?

A. "One try to"

Q. "One try to outdo the other.

A. Yes.

Q. So Mr. Kealey is posing the question that I pose and everyone poses; why didn't you say to Barry Maloney when he said he didn't want to know, that he didn't appear to be taking it as a joke, why didn't you say, 'It's only a joke, I am only winding you up, Barry'?

A. You see, I don't recall him saying, "I don't want to know" so I think these notes were written after a number of different conversations between all the parties. So there was no need for me to say 'Barry, I was only joking' because I felt that he, having known me for so long, knew that I was only pulling his leg.

Q. Now, the next question or the next reference is to Michael Kealey so it's probably a question he is putting and it relates back to an answer that you may

have given previously "Maybe assumption, easy to make, but second totally exaggeration." Then Mr. Kealey asks. "Public controversy at time of licence, was that reason for assumption?" Or words to that effect.

We know that this is not a verbatim transcript of what he asked.

A. Mm-hmm.

Q. That would seem to be the appropriate type of question to ask, wouldn't it, if it was an assumption, "Was there public controversy around the time of the licence, was that the reason for the assumption?"

A. I am not sure what he refers to, what was his assumption at that stage.

Q. Then, what looks again is that "ML," Michael Lowry, "house of cards started to collapse, 29th November."

That seems like a question being put by Mr. Kealey to you, isn't that correct?

A. Yeah. And I think that is in or around the time that Michael Lowry resigned or was asked to resign.

Q. Or that the story started to appear about him in the newspapers, around the end of November, would that seem right?

A. And then, but I think there was a good few stories before that, but major stories around 29th.

Q. Then there is a response, "Denis O'Brien: Everyone knew Michael Lowry's business in difficulty."

A. That could have been what I said, yes.

Q. "Close in time to discussion. Did 29th November information give pause for thought?" What appears like an answer, "I had no idea of problems, don't know Michael Lowry well enough for him to share a problem with me." Then it goes on, "Barry Moloney error re 1st September 1997 conversation. (DOB married 29 Aug)".

This is trying to fix a time for the conversation?

A. That's right.

Q. Then "I didn't actually do it thank God. I know you must be concerned." That seems like a response you gave?

A. Yeah, at some stage from, I think the 8th October or the, 8th, 13th, 14th, 23rd, somewhere before this conversation this inquisition anyway.

Q. This occurred at either the meetings with Mr. Moloney on his own or the meetings with Mr. Moloney or Mr. Walsh or some subsequent meetings involving some other directors?

A. I don't know precisely when it was but it was in the period of October/November.

Q. And then again, "Gave answer re helping out ML, deciding to make payment, but never did so "saw sense" comment." Then there is, "Frequent conversations with ML but no promise or understanding re licence." Then "MK asking in mind?" Then "MK giving a summary". Michael Kealey gives a summary?

A. Yes, that's right. As best as unfortunately I

didn't write them myself, but these seem to be covering what the issues were.

Q. Yes. Now then, the matter seems to be taken up with AJ, which is Mr. Johansen.

A. Yeah. And that's my recollection that at that time I just went off the call.

Q. You weren't participating in the meeting after that?

A. No.

Q. And did anyone bring it to your attention what had been discussed at the meeting after that, even in summary form?

A. They may have told me, look, you know, after you went off they are talking about the Telenor/Fine Gael donation, but nothing like the detail that is here.

Q. Perhaps we'll just go through it because it is Mr. O'Connell's note.

A. This is I think this note is Mr. O'Brien, Kevin O'Brien, for Kilroy's, interviewing, I think Kealey was finished and he didn't continue.

Q. Yes. He was in on the other issue, on the conversation?

A. Yeah, they had somebody independent for me and then Mr. Johansen was interviewed by his lawyer then.

Q. Then what seems to be "Arve Johansen: DOB and BM came to Oslo before Christmas 1995, topic BM contract.

Hectic morning. Came from Stockholm. Leave early

PM. DOB took AJ and (maybe Knut too). Knut - was there

partly involved. Mentioned a dinner, just that the feeling was as good corporate citizens, should show appreciation, give signal were satisfied with performance - only as a gratuity - no promise or buying favours, just good thing to do. Fundraising for party. 25K per Co., ESAT and Telenor. AJ said okay if DOB thinks right thing to do, will take at face value."

Then KOB: "Meaning ESAT Digifone, good corporate citizens.

Arve Johansen: That was context. Our only involvement in Ireland associated with Digifone in business because of good decision by politicians. No connection to licence after award (good while). Atmosphere - we are very happy and should share it.

KOB: If essentially ESAT gratitude why didn't they do it?

Arve Johansen: Because ESAT had made contribution, (5K here and there) and there had been a big fuss, better to come Norway. Gave DFTA," that's Mr. Austin's "name and phone number. 11 December DOB called and asked him to call DFTA that day. Phone number in Dublin..

Arve Johansen going to Budapest. Called "Monday 3-4" (on post-it) or 4.25. Trust was very open. Not any feeling of sensitive or difficult matter. Very straightforward.

DFTA - good thing to do. Appreciated by party, fairly

standard. Can't recall reference to NY discussion.

Was general understanding. Mechanics of payment then discussed. On AJ note, that reference to conversation J Bruton, DOB (Michael Lowry name mentioned) by way of explanation. Recognised as general contribution, (that is Inter-Party fund). DFTA gave account number. AJ problems paying out without invoice. DFTA offered invoice for "consultancy fee". AJ - okay. DFTA gave impression this very standard."

That reference there seems to be the contents of the post-it note as we have seen in evidence here, isn't that correct?

A. Yes, that's right, it looks that way.

Q. "Meeting Barry and Denis Friday 8th December. (AJ found entry).

Knut" I believe that's a reference to Mr. Knut Digerund intervening at this stage.

A. It is, yeah.

Q. "Suggestion could arrange meeting John Bruton.

AJ - yes, (i.e. by way of being clear that money went to party).

Then invoice arrived - handled normally in Telenor system. Several attempts to expedite payments.

(Telenor late) and was chased through Denis.

A. Well, obviously I have a completely different view to these notes, but anyway...

Q. "Via Bank of Ireland Jersey Limited. DFTA complained

to DOB who rang Telenor. Letter then after payment from DFTA apologised for chasing." That seems to be a reference to the letter of acknowledgment that we have seen here in evidence where reference is not made to Fine Gael or any particular politicians, but the people for whom the money was intended were grateful?

A. I think in this case, Mr. Coughlan, if I had been on this call, obviously I would have had a different view of the account that Mr. Johansen gave to his solicitor. But obviously these are notes that are taken from the conversation, but there is no obviously if I had been there, I would have corrected Mr. Johansen on his sequence of events.

Q. Then there is "Per DOB" I don't think that is an actual reference to you being present, "And Barry Moloney conversation, 8th December. No discussion re reimbursement.

Barry Moloney: I there re employment - no discussion."

That was correct. There was no discussion by Mr. Moloney?

A. I think in my evidence before I explained Barry Moloney was not part of the meeting at the end of the meeting.

Q. "Arve Johansen: Yes. Re reimbursement, still 8th December, DOB offered it as "right" for Telenor and ESAT to bear payment equally. Discussion of Digifone involvement. Per Simonson involved in mechanics. Seems agreement to settle as start-up cost for

Digifone. Knut and Denis arranged Peter O'Donoghue to reimburse. AJ understands put into lump sum for start-up, entire amount reimbursed as "consultancy fees". All letterheads were DFTA not Fine Gael. No reference to Fine Gael. Letter should be on Knut file. If not, doesn't know where to look, but will try. Fine Gael not mentioned in correspondence.

DC:" That I think is a reference to one of the directors, is that right, Mr. Callanan?

A. He was the ESAT Telecom representative on board.

Q. "Money could have gone to ML.

Arve Johansen: We didn't think too much about this recent concern that we were the "intermediary"." We'll come back to the notes, how the intermediary entered the discussions.

"Barry Moloney: DFTA and Michael Lowry are close personal friends.

Arve Johansen: Yes, this could be put in a bad light.

OOC: Any contact with DFTA after letter acknowledging payment.

Arve Johansen: No.

"No" on Arve Johansen's note is JSG." That's the Smurfit Group number in Clonskeagh.

A. Yes.

Q. Then "Agreement in subsequent discussion that any participant in meeting who was questioned in a general way at the Tribunal would have to reveal 50K

contribution."

So that seems to have been a discussion amongst the directors who were present?

A. I wasn't present but it seems to me that they did discuss that

Q. If anyone was asked about it in a general way at the Tribunal that they would have to reveal the 50K contribution. Isn't that right?

A. It looks that way, yes.

Q. "DFTA letter refers invoice for consultancy work in 1995 "as agreed with Denis O'Brien". Account Bank of Ireland Jersey. NB 1995 year in which licence awarded. JF" that's a reference to Mr. Fortune?

A. Yes.

Q. "As political contribution, it doesn't look right even if it flowed back into Fine Gael".

Seek evidence from DFTA of payment to FG.

KD concerned to see that the "Americans" have full information." I think that's the underwriters, is that right?

A. Yes.

Q. "AJ seeking payment by Telenor to possible promise of payment by DOB, i.e. if money went to ML.

John Callanan reminder that DOB gave assurance, no promise made, but remarked that appearance would be very damaging.

JF: Situation needs further investigation, including

direct contact with DFTA. How likely before Thursday?

Knut Digerund: Yes, then assurances from Fine Gael even then might not be satisfied.

Michael Kealey: Whether Barry Moloney wants to add anything to DOB responses?

Barry Moloney: Re date of meeting on honeymoon.

Meetings were two months before he went away.

Discussions beginning October 8th to 23rd, (five separate discussions)." These were the discussion that is took place in November he is referring to here I think, isn't that right?

A. Could be, yes.

Q. "Always third party intermediary; 23rd October was first mention of Woodchester. Barry Moloney still uneasy as a result.

Michael Walsh - no recollection of intermediary reference on the 13th October.

Barry Moloney - location of meeting. DOB was frustrated with me for not paying money. Barry Moloney seeking invoices etc.. Did run most Sundays and shot the breeze, but very clear this was not one of those discussions. Had regular meetings. First reference to two x 100K payments was in context of complaints about payments per bid. Would not have occurred in context of run. Clear 2 x 100K payments mentioned. One to Michael Lowry, other never mentioned. "Third party intermediary" consistently

used. Woodchester first referred to on 23rd October.

Knut Digerund: What happening re ESAT?

DC and LB: All going ahead, letter has gone to Denis.

John Fortune wouldn't have concluded investigation by

Thursday" sorry, I beg your pardon, that should be

"All going ahead, letter have gone to directors," it

should read. "JF, wouldn't have concluded

investigations by Thursday. E.g. DFTA. He needing to

retrieve records. Would take time. Telenor directors

wouldn't have concluded before next week. MW: Telenor

directors unlikely ever to finalise position re Barry

Moloney, DOB conversation.

KOB: Yes, but will decide on other situation (next

week). First matters is for directors generally.

Second is for Telenor.

Michael Walsh: No, second matter is for full board.

Michael Walsh nervous about Telenor talking alone to

David Austin; as Denis O'Brien talked to collectively,

so should David Austin."

Then there is legal professional privilege claim.

Then the note continues "Apparently AJ and KD have

"made documents available to Kilroy's" re 50K,

OOC should make available to board as well." Then

there is legal advice on which privilege is claimed.

Now, I think just so that we cover the notes that are

available at the moment in relation to this particular

meeting on this day, we should perhaps go to

Mr. Halpenny's notes, because he was the solicitor who was actually present at the meeting also?

A. I think both of them were present, were they not?

Q. I think Mr. O'Connell was present by telephone and

A. okay, was he? Fine.

Q. I think the we have other notes which have become available which will be circulate in due course, but I just want these are notes of other people who participated in the meeting. I just want to deal with Mr. Halpenny's notes if I may.

Now, Mr. Halpenny records L Buckley, B Maloney, K Digerund, J Fortune, M Walsh, F Armstrong, K O'Brien, T Lang, M Kealey and GFH. Gerry Halpenny.

Then, "FA," that's Fergus Armstrong.

"Options.

DC: Need to see through the process to the conclusion.

Not an option to stop the process now. Prospectus.

Possible addition of disclosures, penalty $\frac{1}{2}$ million per month." That related to something else altogether.

It's nothing to do with these issues. That relates to a technical matter?

A. It's the roll out, yeah.

Q. There is another reference. "Interconnect". That's another technical matter that we don't need.

"Coverage - sites there."

A. The government were going to charge us for a DCS 1,800 frequencies.

Q. If we go to bottom of the page. "Issue of the contribution transaction. Conference call." I beg your pardon, before that, "KD: Concerned that ESAT Digifone Limited directors might have liability.

E.g. coverage point.

Issue of the contribution transaction. Conference call.

M Kealey.

DOB - bank accounts, details of the accounts to show that no payment made? Specific payment in? - no.

Personal accounts? Yes.

DOB/Barry Moloney October 1996 running, twisted ankle,

Sunday 17th November 1997 or 20th October or 3rd

November. Context of payment of consultancy fees incurred on the bid. Bonuses payable as success fees.

Repeatedly asked Barry Moloney to pay PJ Mara etc..

Licence had been awarded a year earlier. Nature of remarks? Light-hearted, knew Barry Moloney for 20 years, nothing sacred. What was said precisely

not able to specifically remember - to get Barry

Moloney to pay, said that 2 x 100K paid - other 100K?

How Barry Moloney assumes what he did? Simple

assumption nothing actually paid; question re who

would get one? Throwaway remark - Barry Moloney not

sure whether to pay people. Barry Moloney response -

did not want to know. Not his company no
response from DOB that joke? very close, talked
about lots of things, not serious.

Public controversy re award of GSM in the context of
that comment made? ESAT Digifone won the licence fair
and square publicity re ML this since then

Denis O'Brien and all knew that company in trouble
well-known before." I think that's a reference to

Mr. Lowry's company?

A. Could be, yeah.

Q. It's your response. "DOB concern re minister troubles
in public domain? Clarify with Barry Moloney? Never
even thought about it throwaway remark.

Barry Moloney point re other conversation Monday
25th August, 1997, update meeting.

Then 1 September 1997 Denis O'Brien wedding 29th Aug,
not around. 8th October 1997, Malt House, 23rd October
1997.

Barry Moloney remark re conversation Denis
O'Brien didn't do it.

DOB had thought about it had lots of cash.

Minister under pressure, company gone down felt
that minister always very fair in dealing with ESAT
Telecom licence, I presume.

A. Mmm, yeah.

Q. Or ESAT Telecom Limited. Whatever.

A. Yeah.

Q. "Decided to give 100K but then decided not a good idea nothing ever said to minister, never knew that DOB planning to do anything. DOB generous person, help people in trouble etc.. Frequent contacts with minister re issues DDI auto dialers etc. etc., but no favours sought.

17th November 1996, had in mind to help minister out yes but not then done. Earmarked? Not specifically set aside in Woodchester, "doubled for effect" not double the amount but two amounts change of mind, 29 November 1996 publicity considered doing it while still a minister? Minister took very reasonable view and was fair to ESAT but decided that should not do would be stupid thing to do, although did have the thought.

DOB serious issue for him, had the thought did not follow through on it.

DD" that's a reference to one of the directors, Mr. Desmond?

A. Dermot Desmond.

Q. "Accept word of DOB.

Consequence of emergence of the actual possibility

had minister got the licence in his control?

Independent company did the report and recommended the licence and then went to Cabinet

as long as licence not influenced, DD happy re the

IPO from ESAT Digifone Limited perspective ignore

personal agenda. IIU happy that no action taken to undermine the licence. All other shareholders do the same and cross indemnity from each to the others.

DD left.

Minister position, company problems, DOB thought, no action taken intermediary why not bank, never left the bank. Obvious that intermediary meant bank. Decided to change mind. Two possible ways that action could be misconstrued. 1, imply that L obtained by virtue of" "licence obtained by virtue of it.

2. Ongoing dealings influenced influenced by both of these.

T Lang" who is a solicitor I think on behalf of Telenor, isn't that correct?

A. Yeah.

Q. "Telenor suggest that" sorry "Telenor - suggest that Telenor make contributions of party political nature. Dinner in New York \$25,000 each. Thought about going to it, but decided against due to possibility of it being misconstrued.

Spoke to Arve about it.

Indicated that 5K cap DOB cap since last election."

I think that must be a reference to the

A. Donations

Q. To political parties under the legislation, yeah.

"Did not discuss with AJ.

Only suggestion re who to contact talked to

fundraiser D Austin. Backers to meet J Bruton. Give

AJ David Austin's phone number? Yes.

Indicate any advantage in this? No.

AJ never met DA.

Knowledge re method of payment no.

KOB cash-back to Telenor through ESAT Digifone? How

did it happen? Telenor paid David Austin, then paid

back by ESAT Digifone. Who did Telenor pay on behalf

of? Denis O'Brien asked AJ if prepared to do said

yes. John Callanan paid by Telenor re consultancy

services invoice. Address in Chelsea, paid to Jersey.

Arve Johansen meeting re Barry Moloney service

contract. Barry Moloney Denis O'Brien and Arve

Johansen. Denis O'Brien took AJ aside at the end of

the meeting mentioned that dinner to be held

should go as good corporate citizens. Show that

satisfied with way the process had been handled,

entirely gratuitous. Saw no connection with the

licence. Had already been awarded. ESAT already

made various small contributions.

Prefer that Telenor do it. AJ agreed.

David Austin phone number, called him, no sensitivity

at all. Comfort that all normal, nothing unusual.

Mention of the dinner. Not able to recollect but AJ

"had that picture in mind".

Refer to conversation between JB and DOB.

Michael Lowry maybe mentioned, would be recognised as general contribution to the Party.

Bank account number.

AJ said that problem to do without invoice. Okay to send invoice consultancy fee? Agreed that okay.

"Quite standard". AJ not certain how these items dealt with. Could have been clearer? Probably should have asked more questions. Understood that not extraordinary.

Said that could arrange meeting with JB whenever necessary. JB to thank AJ.

Invoice arrived, paid in the normal way. It was paid late. Chased up by DA. Chased DOB and DOB chased Telenor. Reimbursement? Not discussed. Barry Moloney not involved in this at all. Idea that ESAT and Telenor go \$25,000 each but Telenor has to pay both and get back from ESAT Digifone? Treated as start-up cost in ESAT Digifone, effectively 50/50, due to the shareholding.

John Fortune letter from DA to FG, all DFTA, not Fine Gael, all DFTA. FG never mentioned, no proof that went to Fine Gael. Who did it go to? Ability to make something of this. No further contact with David Austin after the letter, only spoke once from Budapest.

Tribunal Tribunal not relevant if went to FG as political contribution. Problem would be if all or

part did not go to Fine Gael itself need to speak

to DA contact with DA, how to expedite.

Fergus Armstrong letter. DOB response to questions.

Barry Maloney two months before DOB left on holidays.

Then October 8 October 23rd, five sessions, all discussions re third party intermediary Woodchester?

Michael Walsh no recollection of mention of intermediary. Denis O'Brien frustrated re BOM reluctance to make certain payments.

Barry Moloney not discussion while running, took place in Malt House. First time re payment in context of outstanding bills in the office. One to minister, other not stated. "Third party intermediary", used consistently.

TL will take till next week. Michael Walsh: Not possible to finally conclude re DOB issue." that's Mr. Lang.

Then "Mr. GFH" that's Mr. Halpenny "approach to DA."

Now, I think those were the notes of the meeting which occurred on the 6th

A. Sorry, can I just point out that I, like the other notes, left after my interview or my questioning, on this one as well?

Q. I think they are two sets of notes of the same meeting?

A. That's right. They are very similar.

Q. Now, I think that an issue must have arisen in the course of the questioning being conducted by Mr. Kealey about this thought you had of making a payment to Mr. Lowry, isn't that correct?

A. Yes. He asked me yes, he kind of questioned my mind at the bottom of page 2 of Mr. O'Connell's notes or which notes will we use?

Q. We can use either.

A. Okay.

Q. We can use Mr. O'Connell's in the first instance. I think on the second page there seems to be a series of questions directed at you by Mr. Kealey about this thought or this intention of yours to make a payment to Mr. Lowry, isn't that correct?

A. That's right, yes.

Q. And I think both sets of notes indicate that you responded that Mr. Lowry's business was in some difficulty, isn't that right?

A. I think so, yes.

Q. Now, that must clearly have been an indication that Mr. Lowry's business was in difficulty when you had this intention and that you knew about it, isn't that right?

A. There was as far as I can remember, I mean, there was press reports that his business was not in a good position, in difficulties.

Q. Which business was that now?

A. It's the refrigeration company.

Q. Refrigeration business. And when do you say that there were press reports indicating that, that first came to your attention?

A. I am not sure whether it's press reports or not, but somehow I had a feeling that there was something wrong, that he had some difficulties with his company.

Q. Well, how I just need to ask you Mr. O'Brien, how did you come to that view that that would have been acted on your mind to enable you to form the intention of helping him out or looking after him or whatever the situation was?

A. Well, the matter was on my mind only for a brief period of time. It was in around the run time. So I can't remember where I would have picked it up. It could have been in the media, though. I mean, there was an awful lot of articles written about Michael Lowry at that time.

Q. And about difficulties that his company had?

A. I don't recall a specific article but I could have got the impression, yes.

Q. And had you discussed it with anyone else, this question?

A. No.

Q. Had you discussed anything with Mr. Lowry about this?

A. Absolutely not.

Q. Had you discussed anything with Mr. David Austin about

this?

A. Definitely not.

Q. Had you discussed anything with Mr. Aidan Phelan about

this?

A. No.

Q. Had you discussed it with anyone in Woodchester?

A. No, definitely not.

Q. Particularly Mr. Tully, I think, is that

correct Tunney Mr. Tunney of Woodchester?

A. No, definitely not.

Q. So can we take it then that if you hadn't discussed it

with anyone who would have brought it to your attention

it must have been information you gleaned from some

public source, namely the press?

A. Yeah, or else somebody would have said to me 'your man's business is in difficulty'.

Q. Who might have said that to you? Who would have been close enough to say that to you?

A. I don't remember. All I knew I had an impression, Mr. Coughlan, that his business was in difficulty.

Q. Because correct me if I am wrong, and I may be wrong

about this, but that Mr. Kealey here seems to be

identifying that Mr. Lowry's house of cards appeared to

collapse around the 29th November, that is towards the

end of November of 1996, there were articles in the

press, perhaps concerning himself and some association

with Mr. Dunne or Dunnes Stores.

A. I think obviously somebody wrote somebody else wrote these notes but probably what that person was trying to get across was that he was under pressure politically, in every way. There was some talk about Dunne as well and things were collapsing all around him.

Q. And this was yes, but if you just look at the note and correct me if I am wrong, but what Mr. Kealey seems to be identifying, and he perhaps had looked at the situation, that there must have been some problem around the end of November, appears to be around the 29th November, that Mr. Lowry's house of cards started to collapse.

A. I think he resigned at the end of November, if I remember rightly.

Q. So you believe that it was prior to the timing of the run, as you have described it, that there were press reports of Mr. Lowry's difficulties and of Mr. Lowry's business being in difficulty?

A. The run, you know, my understanding, my recollection is that the run was on the 17th.

Q. Yes.

A. And then he lost his job, I think, at the end of November. But I couldn't be precise on that.

Q. We can fix the date when he resigned as a minister, that's easy enough to deal with. What I am anxious to know at the moment is, here, if it was in your mind

that Mr. Lowry's business was in difficulty, first of all, when did that information come to you, and secondly, how did it come to you?

A. It would have been the time of the run or somebody could have said to me 'your man's business is in difficulty or'

Q. Well, who could have said that to you?

A. It could have been anybody. But I actually don't remember who said it to me but I had the impression at the time that there was something wrong with his business.

Q. And can I take it that if you formed an intention that you were going to earmark, in your own mind, $\frac{1}{2}$ 100,000, not a small sum of money.

A. Mmm.

Q. That it would have to this information would have had to be conveyed to you by somebody responsible, somebody who knew what he was talking about at least?

A. Well, I am not sure whether it was in the media or somebody saying it to me. It was either one or the other or both.

Q. I understand the difficulty but you will understand that I am trying to inquire as to what prompted this intention. And was it from the media or was it somebody said something to you?

A. It could be both or one or the other, I am not sure. I actually don't remember.

Q. Well, who could have said something to you a responsible person saying something to you whom you could trust as having sufficient knowledge of Mr. Lowry's affairs to impart that information to you?

A. I wouldn't know anybody that would know what Michael Lowry's affairs were at that time.

Q. You knew Mr. Austin of course?

A. I did, yes.

Q. And there is reference in these notes of it being imparted, not by you but by somebody at the meeting, that Michael Lowry and David Austin were friends, isn't that right?

A. I think that's a quote from Barry Moloney.

Q. From Barry Moloney, yes.

A. Yes.

Q. Yes, it's on the fourth page of these notes. "Barry Moloney, DFTA and Michael Lowry are close personal friends" and that particular note is a reference to a portion of the meeting which was inquiring into the political contribution, isn't that right?

A. That's right, yeah.

Q. Now, if, if there were no reports in the media at the time you formed this intention we can exclude that as being the source, can we?

A. Well, just to clarify, like, I either read about it and there were loads of articles at the time about Michael Lowry or else somebody had said it to me.

Q. That is prior to the 17th November which is the date

A. yeah.

Q. you put on the conversation. You know Mr. Moloney

puts a different date but I am not quibbling with you

about that. Just taking your own date at the moment,

the 17th November; prior to the 17th November, you

believe that there were a number of articles in the

newspapers concerning Michael Lowry and the

difficulties he was having?

A. Well, as explained yesterday, I had a brief thought to

help him and then I decided against it.

Q. Yes, I understand that Mr. O'Brien

A. But it was around the time of the run which, in my

diary, is the 17th November and that's what I think I

was really trying to explain to my inquisitor at the

time.

Q. Well, he was he seemed to be honing in on this issue

as well, because he seems to be saying that "Michael

Lowry's house of cards starting to collapse 29th

November." Now, allowing for a day or two in relation

to that but I take it that Mr. Kealey was probably in

possession of whatever public information was available

to him at the time when he asked that question.

A. That could be an assumption of what was on his mind,

yes.

Q. And Denis O'Brien: Everyone knew Michael Lowry's

business in difficulty. Close in time in discussion.

Did 29th November information give pause for thought?

I had no idea problems, don't know Michael Lowry well enough for him to share a problem with me."

What I am trying to find out from you now is, you informed your fellow directors here that everyone knew that Michael Lowry's business was in difficulties, what I am trying to find out from you is how did you have that view?

A. Well, as I was trying to just explain to you, I either knew that from the media or somebody had said it to me.

Q. Can we take it so that if there were no reports in the media prior to the 17th November of 1997 about Michael Lowry being in difficulties, that somebody must have said it to you?

A. Well, I am just I want to go back to my statement. I said "Meanwhile Michael Lowry was under attack politically and in the media someone told me his company was..." And I will paraphrase 'in trouble'.

Q. I understand what I understand the note I think. And whilst it's not a verbatim account, it is a good note of the main points which were being discussed at the meeting.

A. Yeah, it was, yeah.

Q. Now, what I am trying to establish here is, if there were no reports in the media prior to the 17th November, 1997, somebody had to tell you that Michael

Lowry's company was in difficulty, isn't that right?

A. Well, what I will have to do is get a search done of all the media in say, November October/November up until the period he resigned.

Q. Could it be, and I wasn't present and I am just asking you now, could it be that the way the note is here and it appears to be posed in the form of a question, "Close in time to discussion" and what looks like a question "did 29th November information give pause for thought?" That seems to be a question being put by Mr. Kealey that something, some news or something happened on the 29th November and was it that that gave pause for thought in relation to giving effect to your intention?

A. I am actually not sure what you mean I am just trying to put that in the context of him trying to ask the question. You know, he is probably saying, I could be wrong though, the run is close in time to his resignation.

Q. Now, if you go, if you could please, to Mr. Halpenny's notes, and page 2 of the Mr. Halpenny's notes sorry, page 3 of Mr. Halpenny's notes please, at the top of the page. Mr. Halpenny's note reads "Public controversy re award of GSM? In that context that comment made? ESAT Digifone won the licence fair and square. Publicity re this since then Denis O'Brien all knew that company in

trouble well-known before Denis O'Brien concerned re
minister troubles in public domain? Clarify with
Barry Moloney? Never thought about it, throwaway
remark."

Now, if you skip the next portion of the note and go
then, BM: "Remark re conversation Denis O'Brien
didn't do it Denis O'Brien had thought about it
had a lot of cash minister under pressure
company gone down. Felt that minister always fair in
dealings with ESAT Telecom Limited. Decided to give
100K, but then decided not a good idea nothing ever
said to minister never knew that Denis O'Brien
planning to do anything DOB generous person, help
people in trouble etc.. Frequent contacts with
minister re issues DDI, auto dialers etc. etc., but
no favours sought. 17th November 1996 had in mind to
help minister out yes, but not then done.

Earmarked? Not specifically set aside in Woodchester.
"Doubled for effect". Not double the amount in one,
but two amounts. Change of mind 29th November
1996 publicity.

Considered doing it while still a minister?

Minister took very reasonable view and was fair to ESAT
but decided that should not do it, would be stupid
thing to do although did have the thought."

Now, if Mr. Halpenny's note of what is said is correct,

it seems to be there is a change of mind on the 29th November 1996 because of publicity. Doesn't that seem to be so?

A. Well, there is two different sets of notes here so I don't know who is right. They are both pretty competent people to write notes of the conversation because I was the one being interviewed. But I think in the context of the inquiry that, you know, that the board is making I mean, you couldn't realistically say that all notes are going to be consistent.

Q. I accept that.

A. There will always be semantical differences. But I think when you look at the board and look at the legal team, they were trying to get to the bottom of this and trying to get an accurate account. So maybe the two of them arrived at the same position but maybe they had different notes.

Q. Well, whilst the notes don't read the same, they are recording the same set of facts?

A. One seems to be more Q and A than the other, but maybe

Q. Yes. But there can be little doubt that both notes capture the fact that publicity surrounded Mr. Lowry on the 29th November of 1996. That's what both notes seem to capture.

A. Well, yeah, they do, but I think Mr. O'Connell's 'house of cards started to collapse, on the 29th November,'

that's, I think, when everybody knows, I think it was around then that he lost his ministerial seat.

Q. Now, there seems to be a question posed by Mr. Kealey in Mr. O'Connell's note "Did 29 November information give pause for thought?"

A. In Owen's note?

Q. In Mr. O'Connell's note.

A. Yeah, it says here "I had no ideas of his problem, didn't know Michael Lowry well enough to share a problem with me"

Q. Doesn't it appear, and correct me if I am wrong, that Michael Kealey was canvassing with you for how long you had retained the intention or the thought?

A. Maybe you could take that interpretation but I am not so sure that's the right one.

Q. So it would appear, would it not, from the notes at least and what was being asked of you in November of 1997, that the view of the people present, the fellow directors and the lawyers, was that the publicity which affected Mr. Lowry seems to have occurred around 29th November 1997?

A. I think also the directors wanted to know what was on my mind.

Q. Yes, I understand that

A. And to the best of my ability I was trying to explain to them. I knew the guy was in difficulty and he also had political difficulties as well and it was on my

mind for a very brief period of time and then I said to myself, 'no way, I am not going to do it'.

Q. Well, what I am trying to identify at present, Mr. O'Brien, is your knowledge of his difficulties.

Because if the publicity which affected Mr. Lowry occurred around the 29th November, that could not have been information which was available to you at the time of the run on the 17th November to enable you to have the intention, for no matter what period of time you had the intention?

A. Well, I think I'd need to go and look at the newspapers that were covering his problems at the time.

Q. Very good.

A. And see what is in that to try and put it in the context.

Q. Mm-hmm. And the other way you could have been informed that Mr. Lowry had difficulties, that is that his company had difficulties, if there was no publicity surrounding it, is that somebody would have told you?

A. Somebody could have said but that could have been bar room talk as well.

Q. But it would appear from these notes also that it was the publicity which caused you to pause and to change your mind, would you agree?

A. I don't know where you

Q. not to make the payment?

A. I don't know where you get that from.

Q. If you look at the question as posed by Mr. Kealey:

"Did 29 November information give pause for thought?"

Do you see that?

A. And I answered "I had no idea of problems. Don't know

Michael Lowry well enough for him to share a problem

with me." So I don't see how that answer would

Q. Put that in the context of the previous answer where

you said that "Everybody knew Michael Lowry's business

in difficulty."

A. But everybody I think I am reading these notes, I am

interpreting them in one way, other people will

interpret them

Q. I am just asking you because you were present and

you were the one answering the questions and I am

looking for your assistance in that regard?

A. I know that but I hope you understand that I am relying

on these notes which I think are reasonably accurate,

and I was a teleconference at four in the morning. I

probably wasn't as alert as probably I should have

been, given the time.

Q. Do you believe that if the matter was in the media,

that the extent, the financial extent of Mr. Lowry's

difficulties would have been public?

A. Given the inquisitive nature of the media it wouldn't

surprise me if he had details about his company not

being as profitable or in loss-making or whatever it

was at the time.

Q. And if somebody mentioned to you that the company was in difficulty do you believe that person would have mentioned the financial extent to which it was in difficulty, if it was in difficulty?

A. Well, again, I don't know who mentioned it to me, so they could or they could not.

Q. Well, what was your understanding, that the company was in debt, is that right?

A. Again, I am not sure, Mr. Coughlan, what I knew at that time. I am trying to remember and help this process.

Q. Yes, I know, I appreciate that?

A. It's a long time ago in real terms.

Q. Yes. Did you believe that there were creditors of this company?

A. I don't know.

Q. Did you have any basis for knowing yourself the extent to what difficulty the company could have been in financially?

A. No. I mean, absolutely, no, I didn't.

Q. How did you fix on a figure of $\frac{1}{2}$ 100,000 in your own mind, so, as being a figure which was appropriate to assist the minister in the difficulties which his company was having?

A. I actually don't know how I got to the number of 100 but my impression was, from what somebody told me or I read in the media, that his business was in difficulty and given the size of the business, $\frac{1}{2}$ 100,000 probably

was a figure that could have been required to help him in his business. 'I don't know' is the answer.

Q. So is it your understanding, so, that you just, of your own volition, arrived at a figure of $\frac{1}{2}$ 100,000?

A. Well, as I explained to you yesterday, I had a thought, and that was to help him out with his company and I decided against that pretty quickly and I know you asked me yesterday 'was it on the day, was it the next day?' I am not sure but I know this much; it was around the time of the run when I said it to Barry in a joking manner.

Q. Now, I think if we could just clarify matters which occurred on the run. As seems clear from the response to questions you gave Mr. Kealey on the 4th November, 1997, you certainly had it in your mind on the run that you would make a payment of $\frac{1}{2}$ 100,000 to Mr. Lowry, isn't that correct?

A. I think that's what I was explaining to you yesterday, yeah.

Q. The spoof element in it is that you informed Mr. Maloney that you had made the payment, isn't that right, and you doubled it for effect?

A. Yeah, it was the psychological

Q. yes, I just want to clarify that the spoof element was that you had already made it. And you doubled it for effect, isn't that right, that was the spoof element?

A. Yeah.

Q. You had the intention to pay him at the time?

A. Well, there was no first payment or second payment, so there was no 100 or 200.

Q. I am just asking you, you had the intention to pay him?

A. Yeah, I think I have said that, yes.

Q. And is there any reason in those circumstances why you wouldn't have mentioned the name 'Michael Lowry'?

A. Clearly I have said it my evidence that I didn't mention his name.

Q. I am asking you is there any reason why you wouldn't have?

A. Well,

Q. if you had the intention?

A. I don't see why I would.

Q. I see. Now, you left the meeting, that is you departed by telephone conversation after Mr. Kealey had questioned you, is that right?

A. Yes.

Q. And then the meeting continued into a discussion or an inquisition in relation to what has been described as the political contribution, isn't that right?

A. Well, subsequently I learn that's what Mr. Johansen was talking about.

Q. And when did you find out the detail of that?

A. I actually don't remember. I mean, I could have been told that day or the next day. I was on the west

coast. There is eight hour time difference between Dublin. I was going to my first call, which was an hour away. I had a call at half eight so I was probably in the car at seven and then I had I was booked up for the day to make all these presentations so I am not so sure I would have had a chance to talk to anybody in Dublin after that day.

Q. That day?

A. But what I do learn when I look at the evidence is the detailed nature of the questioning that Mr. Johansen got and also the fact that it wasn't Mr. Kealey.

Q. But was the content of the examination of Mr. Johansen brought to your attention?

A. I don't think so. I mean, everybody was racing at that time.

Q. Ever?

A. Pardon?

Q. Was it ever brought to your attention?

A. Well, when I read this for the first time I was quite surprised by it and then when I look at the statements of Mr. Johansen, I mean, the contents and the points are very similar to the meeting.

Q. Did Mr. O'Connell not bring the matter to your attention, even briefly?

A. I don't believe he did. I don't think so anyway.

Q. Because you were a member of the board of ESAT Telecom, isn't that correct?

A. That's right.

Q. And certain steps had to be taken to enable the board of ESAT Telecom to express themselves as being satisfied with matters to allow the IPO to proceed within a few days of that, isn't that correct?

A. I want to be clear on this one because this is a very important point, is that throughout the investigation the board met without me and, in fact, the final decision on the IPO, when the board made it, I wasn't present.

Q. You weren't present?

A. No.

Q. I know you weren't present. You were in America?

A. No, no, I wasn't even present by conference call because I had absented myself. I was the person who made the remark, the professional advisers were looking and investigating and I absented myself from all the conversations of the board as far as I can remember.

Q. So you believe that before the board met you had no knowledge of what had transpired in the inquisition of Mr. Johansen?

A. Well, you see, I don't know I wasn't in on the last board meeting, which I think was the night before or on the day of the IPO when they decided 'let's go, we are very happy with the investigation and its findings'.

So I wasn't there. So if the Telenor and the Arve Johansen cross-examination by Kilroy and Company was

discussed, I am not sure. I don't remember somebody saying.

Q. But what did emerge during the course of the examination of Mr. Johansen and I am not going into any differences between you and Mr. Johansen at the moment, but what did emerge was Mr. David Austin, isn't that correct?

A. It was a request to get a letter to confirm that the Fine Gael donation went into their account.

Q. Yes. Mr. Austin

A. That's the famous letter.

Q. Mr. Austin's involvement became an issue, didn't it?

A. It was a letter. All I remember is I was told 'we've got to get a letter' and somebody was despatched.

Q. The issue was whether it had gone to Fine Gael at all because there was some concern because it had gone to Mr. Austin and Fine Gael weren't mentioned, that it may not have gone to Fine Gael, isn't that the issue?

A. Well, I now read these notes. I wasn't part of the conversation, but somebody asked the question 'check that Fine Gael had received the money'. And

Q. That was why the matter was brought to the attention of the board in the first instance because Telenor, it would appear, isn't that right, and it was the matter which was the subject matter of inquiry also, 'can we be sure that this money went to Fine Gael because we have no document showing Fine Gael on it'. All

dealings were with Mr. Austin. That was the issue.

A. Yeah, it was a list of 'to do' things, I think, that came out of one of the meetings.

Q. And arising out of what transpired on the 4th November, one of the matters which had to be attended to was getting a letter from Mr. Austin?

A. Yeah. I didn't really involve myself in it but I knew somebody would go and get a letter. I didn't see it was particularly a big deal about it.

Q. And to enable the board to arrive at a decision, a number of matters had to be attended to. One was, I think, an affidavit had to be obtained from you, isn't that correct?

A. Yes.

Q. To the effect that nothing wrong had occurred in relation to the obtaining of the licence. I am just paraphrasing it now but that is

A. it was all-encompassing and I signed that in the US, in New York, I think, on the 6th, in Davis Pope's office and it dealt with everything. It was a composite.

Q. What also had to be done was there had to be a check of your bank accounts in Woodchester, isn't that right?

A. That's as far as well, it's part of Owen O'Connell's investigation that started on the 1st November.

Q. Because, I think, isn't it correct that Mr. O'Connell had to go to the board and lay the matters out for them

which they should consider in arriving at a decision in relation to the IPO?

A. He went to the board, and I was not present for obvious reasons, and as far as I know he gave a verbal report on it maybe he could have also given a letter of some sort as well and the board considered that.

Q. As we understand matters, what Mr. O'Connell did was that the board had to make a decision in relation to this matter?

A. Well, yeah, I mean everybody the decision was bouncing about the IPO. Some people felt it was an ESAT Digifone decision. Other people felt that it was an ESAT Telecom decision and ultimately, probably the board of ESAT Telecom probably made the decision.

Q. Would have to make the decision?

A. Yeah.

Q. And Mr. O'Connell's function was to lay the matters before them which should be taken into account by them in arriving at their decision in relation to the IPO.

They had to be

A. It was like laying out clinical evidence, basically)

Q. Now, what Mr. O'Connell did not have to hand was information that money had moved from the RINV account, ultimately to the Isle of Man and that out of that particular amount of money, which was $\frac{1}{2}$ 407,000, two payments went into an account of Mr. David Austin's in Jersey; one was for $\frac{1}{2}$ 100,000 and one was for $\frac{1}{2}$ 50,000.

He didn't have that information when he was going to the board, isn't that correct?

A. No, he didn't, no.

Q. He was not in the position to inform the board of this fact which would have enabled the board to make an inquiry of Mr. Austin, isn't that correct?

A. Well, as I explained this morning, it was the repayment of a shareholder's loan so it was a corporate situation, not a personal one. The account was opened sixteen months previously. It was closed and there was nothing on deposit. So it was either an oversight by somebody who was working on it or else somebody just had forgotten about it and felt that it wasn't relevant. I mean, three things really. There could be a fourth as well, but...

Q. We can deal with all those in due course in the inquiry, Mr. O'Brien, but I just want to ask you at the moment; Mr. O'Connell didn't have this piece of information to lay before the board for its consideration, that out of an account which was for your benefit, if I can describe it as that, in the Isle of Man?

A. somebody was repaying me a loan, yeah.

Q. that there were two payments made to Mr. David Austin, one for $\frac{1}{2}$ 100,000 and one for $\frac{1}{2}$ 50,000?

A. And then there was, I think, about seven other payments as well.

Q. I am not dealing with those other payments at the moment. It's because Mr. O'Connell had been present at all of the meetings by telephone on the 4th November and was aware of the name 'David Austin' and the circumstances whereby it arose. Now, he went to the board and he couldn't lay this piece of information before them because he didn't have it. I think you accept that?

A. Yeah. I mean, from his note of the 6th November it looks as if it wasn't but he was going through active accounts at the time.

Q. All I am just saying to you at the moment is do you accept that he didn't have the information and he was not in a position to lay this before the board for its consideration?

A. He didn't have the information but he may not have covered the criteria under which the requests for the accounts were made in the first place.

Q. Well, when you say, and perhaps I don't want it to be suggested that I am putting words into your mouth, Mr. O'Brien but the accounts furnished to Mr. O'Connell from Woodchester which you have described as 'active accounts' were accounts for the period 1996.

A. No. I think it was '95/'96.

Q. '95 and '96?

A. Because I think my bookkeeper gave an analysis but I think there was also a mention there of accounts from

1995, if I recall rightly.

Q. What was furnished to Mr. O'Connell was accounts for

A. what tab are you on?

Q. It's at, tab 9 is the it's a letter dated 4th

November, 1997 and it reads "To whom it may concern, we confirm that Denis O'Brien" it gives your address.

Do you have it in my format?

A. Yeah.

Q. You can see that there Woodchester are, I think, either Mr. Phelan or Ms. Ann Foley obtained this for Mr.

O'Connell.

A. It covers ten accounts.

Q. It's covering ten accounts for the two-year period prior to the 4th November, 1997.

A. Yeah, it covers '95 as well a bit.

Q. That's right. Now, isn't that right?

A. '97 as well. Yeah.

Q. So what he was looking at was for, as best he could, accounts for '95, '96 and into 1997 to see if he could identify a sum of $\text{£}100,000$ or

A. thereabouts.

Q. and any other sums of money that might give rise to $\text{£}100,000$ or thereabouts, isn't that right? That was the exercise in which he was engaged upon?

A. I just said to the people concerned 'look at everything.

Q. These were the active accounts he was looking at, isn't

that right?

A. This was my main personal account.

Q. These were the active accounts.

A. Personal.

Q. Yes. When you are talking about active accounts, and

I don't want us to be at cross-purposes, but 'active'

in Mr. O'Connell's context was active over the period

of his inquiry, '95, '96 and '97, isn't that right?

A. Well, he didn't look through, as far as I can see from

the evidence, Mr. O'Connell did not his brief was

not to look at all the business accounts that I had and

the company accounts that I had, apart from ESAT

Telecom.

Q. Where did he obtain that brief from?

A. Well, he would have got the brief well I don't know

where he got the brief from but it could have been from

the meeting of the 4th or it could have been from a

previous meeting of the board of ESAT Telecom when I

wasn't present. But when they sought permission

the investigators I gave them a blanket, I just

said 'look at all the accounts'.

Q. Yes, because I would have expected that if Mr.

O'Connell was going before the board in relation to a

very important matter that he wouldn't be turning a

blind eye to anything?

A. No. And Woodies Woodchester was my, 80 percent of

everything, I'd say, went through there.

Q. All I am trying to establish at the moment is this, that you do accept that when he went to the board he did not have the information about the money going to Mr. Austin?

A. What I think happened there was that Mr. O'Connell was doing a thorough investigation and basically it was in a very timecompressed period and I am not sure what criteria he used, whether he said to Aidan Phelan or my bookkeeper 'give me all of the accounts, give me the most active accounts, give me accounts that he had closed or other people had held money or transferred money on your behalf'. I am not sure how wide-ranging the whole investigation was because at this stage, I was on the west coast of America.

Q. Well, all I am asking you at the moment is that when he went to the board, he did not have this information, because anyone knowing Mr. O'Connell would know that if he had this information it's information which he would have laid before the board.

A. Well, I think he did leave I am not sure whether he copied the board on this information and the statements on the nine or ten accounts.

Q. Oh, no. I understand that he would have examined the accounts that he did examine and that that would have been information which he would have brought to the board of course. But he did not have the information about the money going from the account in the Isle of

Man to Mr. David Austin. He did not have that information when he went to the board?

A. It would have come out of a corporate account into somebody else's account that was only opened to make the nine or ten payments that were due at the time.

Q. I am not having any difficulty understanding that, Mr. O'Brien. I am asking you; do you accept that when Mr. O'Connell went to the board he did not have the information that there were two payments made to Mr. David Austin out of an account in the Isle of Man, one for £100,000 and one for £50,000? He didn't have that information?

A. He didn't have the information but that was not any purposeful thing, Mr. Coughlan.

Q. So when the board came to consider the matter, bearing in mind that board members had been present at the inquisition of the 4th November, for both parts of the inquisition, the one of you relating to the conversation of Mr. Moloney and the second part, the inquisition of Mr. Johansen relating to the contribution, the political contribution, they and Mr. O'Connell knew that Mr. David Austin had some relevance to their considerations?

A. Who knew that?

Q. The board members?

A. Well,

Q. and Mr. O'Connell.

A. To be very honest, like, nobody really thought I know the Tribunal is taking this very seriously but when we were doing our IPO the Telenor donation was not a very big issue. And I know in your eyes you think it is and probably

Q. Mr. O'Brien I am not even addressing that. I am not suggesting that it's a big issue to you at the moment.

What I am asking you about here is the fact that leave aside whether it's a big issue or not, the fact is that the people present, that is the directors and the legal advisers' view, that the name David Austin had some relevance to their considerations?

A. Our board? In a minor way. I mean, not a serious way.

Q. Well, they sought a letter from Mr. Austin?

A. Well, no, ESAT Digifone did, not ESAT Telecom. There was two boards. There was ESAT Telecom, which was doing the IPO, and there was ESAT Digifone. ESAT Digifone sought the letter, not ESAT Telecom's board, and ESAT Telecom's board was the ultimate board that made the decision to pull the trigger and do the IPO.

Q. And you are saying at that ESAT Telecom board did not have the letter from Mr. Austin for its consideration in arriving at the decision to go ahead with the IPO?

A. As I explained, for obviously very appropriate reasons, I wasn't present at that meeting. I don't know what was

presented to the board.

Q. As I understand it, it was either Mr. Aidan Phelan or Mr. Paul Connolly who approached Mr. David Austin for the letter, is that correct?

A. Yeah. I think there may have been a misunderstanding from previous evidence that somebody might have flown from America or something like that.

Q. No.

A. But no, my understanding is that one of them phoned David Austin and asked him for a letter and it was on a long list of 'to do' things that people were working on as we were going around the United States.

Q. And these were people who were involved in the promotion of the company in preparation for the IPO?

A. They were on the roadshow, yeah.

Q. And are you saying that it was not a matter of interest to the board of ESAT Telecom that there would be confirmation sought from Mr. David Austin?

A. I didn't say that but I don't think it exercised their minds too much.

Q. Well, because Mr. O'Connell did not have the information of two payments to Mr. Austin from an account in the Isle of Man, they were not in a position to consider whether a further inquiry should have been made by Mr. of Mr. Austin as to what the purpose was of these two payments, isn't that correct?

A. Well, I think you may be looking at this the wrong way.

Is that they didn't like, if you look at my account in 1996, they didn't ask me why I put €25,000 in the Dublin seed capital fund or why I bought a site for a house in Portugal. So the board wouldn't have asked me, even if it had been listed, the fact that I had bought a house from David Austin.

Q. No, I understand what you say there, that the board would have no interest in you buying a house in Portugal or anything of that nature but here the name 'David Austin' would have been coming up again when he had been the subject matter of some contribution by board members, both of ESAT Digifone and ESAT Telecom previously. You think not?

A. No. Because I mean, the board one of the board was a former colleague of David Austin's. Three or four of the board knew David Austin very, very well, were friends of his. They knew I was a friend of his. So I can't see it.

Q. And did they know that Michael Lowry was a friend of Mr. Austin's?

A. I think certainly Barry Moloney said that he was a friend of his but I don't know whether they would or not.

Q. And if an inquiry had been directed to Mr. Austin at the time of the IPO the information which might have been obtained from him was?

A. that I had bought a house.

Q. Yes. And as we now know, there was other information available if the matter had been pursued and it would have been seen that an account opened with two payments, an account of Mr. Austin's opened with two payments, the first one was the $\text{€}100,000$ going in, the second one was the $\text{€}50,000$ going in, it having been credited to another account of Mr. Austin's in the Bank of Ireland (Jersey) and that out of that, $\text{€}147,000$ was paid?

A. I think that in my mind, that could be '1 and 1 equals 20', if you roll it out that way. But the mere fact what you are really saying is if the board of ESAT Telecom knew that David Austin was being asked for a letter to confirm that Fine Gael received monies or a donation, then why didn't the board ask whether Denis O'Brien bought a house off him? It's a little bit far-fetched.

Q. The board were not prepared to accept your word at face value because they wanted your bank accounts examined, isn't that right?

A. Excuse me, Mr. Coughlan, they looked for the bank account but they accepted my word ultimately and I signed an affidavit. So

Q. They accepted your word ultimately, they having required an affidavit and

A. But you just said a minute ago that they weren't accepting

Q. they didn't accept your word at face value in the first instance?

A. They ultimately did.

Q. They ultimately did, you having furnished an affidavit and given access to bank accounts, isn't that right?

A. Well, I don't want to fight with you, but you are saying to me the board didn't accept my word

Q. at face value?

A. and I am saying 'well, they actually did', but

Q. at face value

A. but they also looked, and I offered to show them my bank accounts and any other things that they wanted to look at.

Q. They wanted to look at they wanted them looked at. They didn't want to look at them, they wanted your bank accounts looked at by somebody responsible?

A. They wanted KPMG to look as well.

Q. They wanted KPMG to give a result of their audits, isn't that right, and they wanted an affidavit from you?

A. Sorry, I offered to give an affidavit and they sought and I offered to give an affidavit and then everybody else wrote letters to each other.

Q. Nobody else was asked for an affidavit?

A. No, that's correct.

Q. I am not making a big issue of it, Mr. O'Brien. I am just saying that at face value they didn't accept your

word, they wanted some insurance?

A. Well, do you know what, do you know where that affidavit came from? One of my directors, who was an American, wanted an affidavit. The rest of the board didn't. And I said, 'listen, this is no problem, I'll give the affidavit'.

Q. Now, if they had been permitted to make inquiries of Mr. Austin they would have been in a position, if he would have allowed access to his bank account, to see that $\frac{1}{2}$ 147,000 odd was paid out of the two payments of 100,000 and 50,000 which had come from you to him.

A. Well, I am not privy to the way the accounts are but you are saying that I bought a house and that same money went out in a loan to Mr. Lowry many months later. Now, was it the same 150, I don't know?

Q. It was exactly the same money that went out

A. Well, was there no other money ?

Q. It was the same money that went out and it went out, $\frac{1}{2}$ 147,000 went out I think we did furnish you with the bank statements in question. Maybe you haven't seen them or did you?

A. I don't know. I am trying to read all the stuff but maybe I missed that one.

Q. It's at divider number 1 on book 29 A.

A. You can summarise maybe, if I can help you.

Q. We will put it up on the monitor. Mr. O'Connell can give you a hard copy. (Document handed to witness.)

If you go to the second page.

Now, do you see that this is the opening balance on this account?

A. No, it has 139,000.

Q. No, Mr. O'Brien, are you on the second page? It is account 66064, number 4.

A. Yeah.

Q. Do you see that?

A. Yeah, two sheets of it.

Q. You have got one sheet of that account. The other is another account.

A. Is it? Okay.

Q. Now, you see there is an opening balance this account opens with a payment into the account on the 26th July, 1996, "SWIFT received per AIB Jersey, 19th 1996, i;½100,000." Do you see that?

A. Yeah, that would have been the TT from the Isle of Man account.

Q. On the 7th August, 1996 "Source of funds from account 66064, number 2, GB at rate of 0.9746, i;½50,000." Do you see that?

A. Yeah.

Q. I'll explain how it came into this account. It was first of all lodged to Mr. Austin's sterling account, which, if you go forward to the page, you will see.

A. Yeah.

Q. And then it was debited it went in, first of all, on

the 29th July, do you see 51,303.10?

A. Yeah.

Q. It's then debited, and that's in sterling, remember, and it's converted back into Irish and that's $\text{€}50,000$, and that goes back into the this number 4 account. So the opening of this account was, first of all, to receive the payment of $\text{€}100,000$ and then the payment of $\text{€}50,000$. Do you see that, the number 4 account?

A. Yeah.

Q. Now, the next two items on the account, if I may just show, are the application of interest to the account.

The first one is 425.75. The next one is $\text{€}568.53$.

And then on the 16th October. I know there is a hole punched through it but you can take it from me it's the 16th October, 1996 "repaid by cheque IFO Mr. David Austin to home address, $\text{€}147,000$."

Now, what Mr. Austin did there was he obtained a draft from the bank made payable to himself, understand me?

A. Yes.

Q. And then it is debited from this account and it was that draft which was used to open endorsed and used to open the account in Mr. Lowry's name in the Isle of Man. So that's the paper trail in relation to it.

MR. MCGONIGAL: I think Mr. Coughlan should go to the February '97 entry as well, Mr. Chairman.

A. Explain 'the paper trail'?

Q. MR. COUGHLAN: Yes, the money comes back in in February of 1997. Sorry, I am very grateful to my Friend for drawing that to my attention. Because you see that comes back in?

A. Where?

Q. On the 12th February, 1997, i.e. 148,816 coming back in from the Irish Nationwide Building Society (Isle of Man) do you see that?

A. Yeah.

Q. Now, that was in February of 1997. Now, I am just saying that if that information had been available to the board in November of 1997, they might have to have received some caution or warning or advice in taking into account matters for their consideration, references to intermediary, third party and getting stuck. Now, I won't ask you to deal with it today?

A. I'd like to deal with it before we go.

Q. Very good. Because we will go into the, all of the notes of Mr. Barry Moloney's then?

A. What I'd like to just say here is, first of all, I bought a house, all right? You are showing me accounts where Mr. Lowry received a loan from Mr. Austin. Now, I raised this on the 16th May, the fact that I had bought a house, when I heard that Mr. Lowry had received a loan. So I think I need to put that into context. And secondly, if you are asking the question 'if the board, hypothetically, had

known about this?'. I don't believe that they would have had a problem because of my explanation, and that is, I bought a house and money went to Mr. Austin.

Q. I am not asking you whether the board would have a problem. I was saying the board were not able to consider this matter in the light of other facts which had been brought to their attention. That's all I am saying to you, Mr. O'Brien, isn't that right?

A. I am not so sure it is right.

Q. I see.

CHAIRMAN: It's just on four, Mr. Coughlan. It's been a long day for Mr. O'Brien. It's probably fair that we adjourn now till eleven o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 27TH JUNE 2001 AT 11AM.