

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 20TH OF
JULY, 2001 AT 11 A.M:

CONTINUATION OF EXAMINATION OF MICHAEL TUNNEY BY MR.
HEALY:

Q. MR. HEALY: Thank you, Mr. Tunney.

Just one other matter in connection with the dealings
you had with Mr. Malone and Mr. Lowry in 1999. Just
firstly if I could ask you whether at that time - when
I say at that time, I mean at any time in 1999 - when
you had your meetings with Mr. Lowry and Mr. Phelan,
would you have given Mr. Lowry a loan of money in a
hurry, or at least quickly, in the way that money was
made available in this case, for this project?

A. I hadn't considered it.

Q. But if he came to you, would he have got money that
quickly?

A. Well, it wasn't on the agenda, so

Q. But isn't it reasonable to assume that you wouldn't
without somebody standing over him or saying, 'look, I
can assure you this man will pay,' and so on?

A. Well, somebody like Mr. Lowry, you would obviously need
to consider it carefully and it hadn't entered the
equation at all.

Q. You knew that he was in some difficulty in terms of his
financial situation, he was under a lot of pressure?

A. Yes.

Q. At the meeting that you had in the summer with Mr. Phelan and Mr. Lowry, did you recall whether Mr. Phelan shared your view as to how Mr. Lowry should conduct his affairs, i.e. should get rid of his assets, such as they were, and start something else?

A. He didn't express a view.

Q. And at that meeting was there any reference, I think I may have asked you that yesterday, but I want to ask you again, whether there was any reference to any alternative way Mr. Lowry might, or alternative course he might adopt with a view to getting monies, such as going into the property market?

A. No.

Q. The reason I ask you that is documentation has been made available to the Tribunal by Mr. Phelan, which would indicate that Mr. Lowry was in communication with agents in England concerning this property in May, June and July of 1999.

A. It wasn't discussed at all. There was no property discussion whatsoever.

Q. I now want to come to the fact which has become clear from the evidence to date, that there are a number of different and conflicting accounts given by officials of the bank concerning the nature of and the people involved in this transaction. You'd agree with that, that there has been conflicting evidence to date?

A. Yes.

Q. Or conflicting statements, let's put it that way.

A. Yes.

Q. Mr. Cullen has said that he was aware of a loan application introduced by Mr. Aidan Phelan, and that he became aware of this application as a result of some communication from you. I take it, you'd agree with that part of his evidence in any case?

A. I don't recollect the conversation with Mr. Cullen but he has - if he has it there, it is correct.

Q. The loan, certainly, even on your account of who the parties involved were, was one which was initiated with you?

A. Correct.

Q. And it involved the generation of some paperwork and you were involved in the generation of that paperwork?

A. Yes.

Q. And that paperwork involved a signature by Mr. Cullen and by Mr. Morland?

A. Mm-hmm.

Q. And that signature was put on it as a result of you bringing the paperwork to those two individuals?

A. Yes.

Q. Because, I think it was part of the agreement that the paperwork had to be signed off, if you like, both on the GE Capital side and on the Investec side because this was in the interregnum, if you like?

A. Yes.

Q. So if Mr. Cullen was aware of the transaction, it seems reasonable that it must have been as a result of something you said to him?

A. Absolutely.

Q. And his understanding is that it involved a loan of $\frac{1}{2}$ 420,000 Sterling for the purchase of a property in Manchester, that the borrower was to be a company called Catclause?

A. Mm-hmm.

Q. Again, I take it, you would agree that so far as the bare bones of the transaction was concerned, that was on the face of it - that is something which, on the face of it, is something you'd agree with?

A. Mm-hmm.

Q. So there is no conflict between you as to what was being discussed, so far as those facts are concerned?

A. Mm-hmm.

Q. Mr. Cullen says that he was not aware of any Michael Lowry connection with this transaction, or of any Michael Lowry connection with Catclause.

A. Yes.

Q. At that time, in 1999, what was your position?

A. My position was this was an Aidan Phelan transaction, full stop.

Q. You knew nothing of any Michael Lowry involvement in it?

A. No.

Q. And you did not know that Catclause was a Michael Lowry vehicle?

A. No.

Q. In the ordinary way, if a borrower or a customer of the bank wished to take a loan in the name of some corporate vehicle, some special purpose vehicle, or any corporate vehicle for that matter, would the bank, if they knew the customer well, check out, if you like, or run a check on the corporate vehicle?

A. I can never recollect it happening during my banking lifetime.

Q. You would assume that the person who came with the proposition and referred to a corporate vehicle was associated with or owned the corporate vehicle?

A. Correct.

Q. And was that your assumption in this case?

A. Absolutely.

Q. Now, one of the things you've said is that the credit approval in this case, or the credit approval was sought in this case on the basis of the proposition brought by Mr. Phelan, but that Mr. Phelan volunteered to you a guarantor.

A. Yes.

Q. Mr. Cullen says that credit approval was sought on the basis that the bank would be provided with a guarantee of a high net worth individual.

A. Mm-hmm.

Q. That is, presumably, based on conversations he had with you?

A. Mm-hmm.

Q. As far as he was concerned, the transaction on its face involved a company called Catclause borrowing $\frac{1}{2}$ 420,000 supported by or to be supported by the guarantee of a high net worth individual. That was his understanding of the proposition in its bare sense. Your view of it is that it was an Aidan Phelan loan that he happened to be taking through a corporate vehicle?

A. It was, yes, an Aidan Phelan vehicle, yes.

Q. Your perspective on it, which you put in very simple terms yesterday, was that you looked at this proposition on the basis that it involved, firstly, Aidan Phelan, he was your first port of call, if you like, the first person you relied on?

A. Absolutely.

Q. Next you relied on the property, and if Aidan Phelan didn't ultimately come right, then you relied on the guarantor.

Mr. Cullen has said that you informed him that Denis O'Brien was aware of this transaction and he said that by that he meant probably that Mr. O'Brien may or may not - may or may not have had some interest in the transaction?

A. Would you mind repeating that.

Q. I certainly will. Mr. Cullen has firstly stated that you told him that Mr. Denis O'Brien was aware of the transaction. Now, just to assist you in that, by using that expression, Mr. Cullen indicated that he understood that to mean probably, that Mr. Denis O'Brien may or may not have had some interest in the transaction. If we can just take it in two stages there?

A. Okay.

Q. Firstly, do you agree that you told Mr. Cullen that Mr. Denis O'Brien was aware of the transaction?

A. I have no recollection of that, but if Michael has it in his statement, it must be correct. You know, in hindsight one of the things I would say is that Denis O'Brien's name should not have been mentioned in association with this transaction. And I would have to put my hands up about that because certainly from my perspective, having the name of Denis O'Brien there wouldn't have done any harm to the transaction.

Q. Right. So are you saying to me that his name should not have been mentioned, but that it could have been mentioned?

A. Absolutely.

Q. If Mr. Cullen says it was mentioned, is it likely that it probably was mentioned?

A. Anything that Mr. Cullen would have said would have come from me.

Q. And you are saying that if you did say that and if Mr. Cullen says you said it, it probably happened - you shouldn't have said it?

A. Correct.

Q. Does that mean that you made it up, if you said it?

A. In terms of the association between both Aidan Phelan and Denis O'Brien, obviously they were there were close associations between them and the reflection of the Denis O'Brien name did no harm in terms of a credit.

Q. Mm-hmm.

A. So

Q. Mr. Cullen himself said that, that he saw the transaction in the bare terms, but that the use of Mr. O'Brien's name gave him extra comfort, as did the use of Mr. Phelan's name, which was how he saw Mr. Phelan's association with the transaction

A. Yes. But, you know, at all times, this was seen as, in my view, as an Aidan Phelan deal, property transaction.

Q. But why would you use Mr. O'Brien's name to lend support to or to in some way improve the impression a particular transaction might have on a colleague?

A. As I have said, it shouldn't have been used, but it certainly wouldn't have had any negative impact and probably had a positive impact on consideration of any credit.

Q. I fully agree with that. Obviously, if I go to any

bank with any transaction, Mr. O'Brien is an extremely wealthy and successful businessman and if I said 'I want to borrow 1 million, Mr. O'Brien is aware of this,' it might impress the bank manager. But if it wasn't true, why would I say - why would anyone say it if it wasn't true?

A. Well, as I saw it, his name wasn't part of the application, it wasn't part of the transaction.

Q. Why would you mention his name if there was no truth in any involvement he had

A. You must remember that in the case of Aidan Phelan, a lot of his strength was because of this link he had with Denis O'Brien and the income from it, and that gave him a lot of support. So it supported in terms of our credit as well. You know, I am looking to Aidan Phelan as a relationship lend. I've got to look at his financial worth.

Q. I still don't quite understand what you are saying, Mr. Tunney. Are you telling me that if Mr. Phelan had a proposition in the bank to get a loan, that you would, in support of that proposition, say that Mr. O'Brien was aware of it or supported it, even though you had no reason to say that, there was no basis for saying that?

A. I don't recollect the conversation I had with Michael Cullen on that point, but it would never have been anything along the lines of Denis O'Brien supporting

this transaction at all. But what I would have done, you know, his name would have been linked and I wouldn't have discouraged that linking.

Q. Well, now, are you saying his name would have been linked by somebody else and that then you would have taken it up and not discouraged it?

A. No.

Q. Well, what do you mean by saying "his name would have been linked and I wouldn't have discouraged that linking"?

A. Sorry, say that again, please.

Q. What you said was "His name would have been linked and I wouldn't have discouraged that linking."

A. Yes. You know, having the name there with the transaction would not have done it any - would have not have done it any harm.

Q. What I want to get at is how did Mr. O'Brien's name get there with the transaction, to use your words?

A. Because we would have done a lot of business with both the parties and they would both be seen as good names.

Q. Aren't there only two people who could have mentioned Mr. O'Brien's name in this context, either you or Mr. Phelan?

A. Absolutely.

Q. Well, did Mr. Phelan mention Mr. O'Brien's name to you, and did you then relay that piece of information to Mr. Cullen?

A. No, he didn't. Aidan Phelan did not.

Q. So, if Mr. Phelan didn't mention it, can I take it

Mr. Cullen didn't mention it?

A. Mr. Cullen didn't mention it?

Q. Didn't mention Mr. O'Brien's name.

A. No.

Q. The only person who could have mentioned it was you?

A. Absolutely.

Q. But are you telling me, I want to be absolutely clear

about this, that you would have mentioned Mr. O'Brien's

name without Mr. O'Brien's authority and knowing,

knowing for certain this was not a Denis O'Brien

transaction?

A. Well, Mr. O'Brien's name would have been so linked that

it would not be difficult to link the two together.

Q. I am sorry. I just have to go over that again,

Mr. Tunney. I am finding it hard to understand what

you mean. You say, "Well, Mr. O'Brien's name would

have been so linked that it would not be difficult to

link the two together."

A. Yes, in terms

Q. Can you explain that to me?

A. Basically, we have done a lot of business with

Mr. O'Brien.

Q. Yes.

A. We have done quite a bit of business with Mr. Phelan.

Q. Yes.

A. Both very valuable clients.

Q. Yes.

A. You have got here a Mr. Phelan transaction.

Q. Yes.

A. And Mr. O'Brien's name would naturally never be far away, even though this is a completely independent transaction.

Q. Mm-hmm.

A. And I wouldn't have discouraged the use of Mr. O'Brien's name in support of that. So I have to put my hands up about that.

Q. Are you saying, when you say, "I have to put my hands up," that you misled Mr. Cullen?

A. No, I don't believe I did, because the transaction is as it is purported to be, which is an Aidan Phelan transaction.

Q. To which, according to Mr. Cullen, Mr. O'Brien's name added some comfort?

A. Mm-hmm.

Q. So if Mr. Cullen formed that impression and he formed it as a result of something you said to him and you say you shouldn't have said that to him, are you saying that you misled or do you agree that you misled Mr. Cullen?

A. What I am saying is that it should add comfort because Aidan Phelan earned a lot of his income from Denis O'Brien.

Q. I want to stop you there for a minute, please,

Mr. Tunney. You say you should not have used

Mr. O'Brien's name. Can we -

A. I should not have used Mr. O'Brien's name.

Q. Why should you not have used it?

A. Because he was not in this transaction.

Q. And having used it, Mr. Cullen genuinely formed the

impression that Mr. O'Brien was in this transaction,

isn't that right?

A. No, I think what Mr. Cullen says was that he was aware

of it.

Q. Yes. And from that he took, as you have indicated a

moment ago he was entitled to take, some extra comfort?

A. Probably took some extra comfort from it.

Q. And you shouldn't have used Mr. O'Brien's name in that

way because Mr. O'Brien had no connection, according to

you, with this transaction?

A. Mr. O'Brien had no connection with this transaction.

Q. All I am saying is it would appear that Mr. Cullen was

being misled.

CHAIRMAN: It has appeared from the evidence so far

this week, Mr. Tunney, that Mr. Phelan dealt with the

bank, both on behalf of Mr. O'Brien and separately in

his own right, and that those are two different

situations, are they not?

A. They are different situations, Sir, yes.

CHAIRMAN: Did it not seem part of your duty to your colleague to make it clear which of those situations was arising?

A. It was clear, Sir, in the sense that this is an Aidan Phelan transaction. It was clear.

CHAIRMAN: Yes.

Q. MR. HEALY: The question I asked you, Mr. Tunney, is whether Mr. Cullen was being misled?

A. I don't believe he was being misled, because he understood it was an Aidan Phelan transaction.

Q. I see. But we'll have to come back to it at a later point. But that's your evidence at the moment; as far as you were concerned, you used Mr. O'Brien's name, you shouldn't have used it, but in using it, you were not misleading anybody else who relied on it?

A. No.

Q. I see. Now, I think this matter came up again on the 28th - came up on a number of occasions, but it certainly came up in quite a serious way - came up again with Mr. Cullen in February of 2001. I think you are aware that Mr. Cullen gave evidence that in February of 2001 he met with Mr. Phelan and he discussed this loan with him

A. Yes.

Q. at Mr. Phelan's offices. You are aware of that evidence?

A. I am.

Q. And you are aware that a note has been produced in evidence of what transpired in the course of that conversation which was attended not only by Mr. Cullen and Mr. Phelan, but also by Mr. Tony Morland?

A. Yes.

Q. And you are aware that Mr. Morland has given evidence that Mr. Phelan stated to him that from a credit point of view, the bank had nothing to be unduly concerned about as this was a Denis O'Brien transaction. And that was Mr. Phelan's statement, according to Mr. Morland. You are aware of that evidence?

A. Yes.

Q. And I think you are aware that Mr. Cullen said that on that same day, or the next day, I'm sorry, he met with you?

A. Yes, that's right. And he met me on that same day with Tony Morland.

Q. I am sorry, you are absolutely right. I'll go back to that. On the 28th of February, Mr. Morland and Mr. Cullen met Mr. Phelan in his offices. They also met you in the Radisson Hotel on that date, isn't that right?

A. Yes.

Q. And at that meeting, I think Mr. Cullen and Mr. Morland indicated that they were concerned, they were concerned, in particular, about inconsistencies between

the documentation that had been produced in support of the loan application and what they believed were possibly the true facts and they encouraged - sorry, they asked you about the directors of Catclause and you said you believed that Aidan Phelan was a director, do you agree with that?

A. Yes.

Q. And that they then encouraged you to check up on that situation?

A. Yes.

Q. Do you recall whether you did anything to check up on it?

A. Well, I put a call in to Aidan Phelan at the time. I did not get a response to that. And then Michael Cullen met me the following evening to tell me

Q. When you say you didn't get a response, do you mean there was no answer, or that you didn't

A. He wasn't available.

Q. I see. And on the following day you met Mr. Cullen and he indicated to you that Michael Lowry and his daughter, his niece, I am not sure, were directors of the company?

A. Yes.

Q. And he said that you were shocked at that.

A. Mm-hmm.

Q. And were you shocked?

A. Absolutely. Absolutely.

Q. What shocked you about it?

A. Because the Lowreys were involved, having been told absolutely nothing about this at all, you know. It's a very different situation.

Q. And at that time you knew that Michael Lowry's name was a controversial one, you would have known that even in 1999, a very controversial name in Irish society?

A. Mm-hmm.

Q. I think you said that you would contact Aidan Phelan. Do you recall saying that?

A. Yes.

Q. Do you recall contacting Aidan Phelan?

A. This is

Q. After the meeting with

A. I didn't contact him.

Q. You didn't contact him after the meeting with Michael Cullen?

A. Yes. I didn't make any contact with him.

Q. Wouldn't he have been the first person you would have been likely to contact after that meeting, having regard to what you had just been told about the nature of the transaction?

A. On the 28th?

Q. The 29th, the 30th.

A. Okay. Well, on the 29th

Q. The 1st, in fact -

A. Sorry, I beg your pardon, the 29th, the 1st. On the

28th, as I said, I tried to contact Aidan Phelan, I didn't get him. On the 29th, at that stage, the Investec team were running with that and they were trying to get other information and it was not for me to contact Aidan Phelan at that stage. So given

Q. Why wasn't it for you to contact him? You were the person who was now in a situation where you were learning something which was completely at variance with what you understood to be the true position.

A. Yes. The seriousness of the situation was such that, basically, Michael Cullen, Tony Morland were getting legal advice and were trying to seek answers and they should get those answers. Bear in mind, I was not a full-time employee of the bank.

Q. I understand that. You were still a director of the bank?

A. Correct.

Q. Perhaps in an even more important position than you were as an employee.

A. Yes.

Q. You are absolutely certain then, that you did not contact Aidan Phelan after that discussion with Mr. Cullen on the 1st of March?

A. I am certain, yes.

Q. Do you remember that you had a telephone call with Mr. Wohlman?

A. I do.

Q. On the 12th of March?

A. I do.

Q. And are you aware of the evidence Mr. Wohlman has given concerning that telephone call?

A. I am.

Q. I can refer you to page 118 of the book of documents. And you'll see his note of the telephone call.

Now, you say that you didn't go to Mr. Phelan after the meeting of the 1st with Mr. Cullen.

A. Mm-hmm.

Q. Had you had any meeting with Mr. Cullen between that time and the time of Mr. Wohlman's phone conversation with you on the 12th of March?

A. Not that I am aware, because I went away - I was travelling after that, so I did - I left the country on the 7th.

Q. Mm-hmm.

A. And then I returned on the 14th.

Q. I see. Can we just go through Mr. Morland's note of the telephone call - Mr. Wohlman's note of the telephone call?

A. Yes.

Q. You see it says: "Telephone conversation between IRW and Michael Tunney 12th March, 2001 at approximately 9:15-9:45.

Michael Tunney has been trying to contact me and

telephoned me at Investec's offices in Dublin. Michael Cullen initially took the call and passed it to me. Tony Morland and Eddie Byrne were also present with Michael Cullen in the same room.

I asked Michael Tunney why he had sent the money to purchase the Manchester property for Catclause without instructing a lawyer to take security and ensuring it was in place. He said he had verbally instructed Christopher Vaughn that the facility to purchase the property was in the name of Catclause and a legal charge over the property should be taken. As the deeds were held to the bank's order, he felt the position was protected".

Firstly, do you agree that Mr. Wohlman asked you why the money had been sent without instructing the lawyer to take security or to ensure that it was in place?

A. He did ask me that.

Q. And was that your response, that you had verbally instructed Christopher Vaughn that the facility to purchase the property was in the name of Catclause and that a legal charge over the property should be taken?

A. Yes.

Q. And you go on to say: "As the deeds were held to the bank's order, you felt the position was protected".

A. Mm-hmm.

Q. Isn't it correct that the deeds were not actually

formally held to the bank's order until much, much later in the transaction, when Mr. Vaughn wrote a letter to that effect?

A. That's correct.

Q. But his initial response to you was not to hold the deeds to your order.

A. I had asked him, as I say, verbally to take security.

Q. Did you ever follow up on it?

A. No, I didn't, for reasons that I had explained to you.

Q. Because you saw Aidan Phelan as, if you like, as the person you were dealing with?

A. Absolutely, and, you know, I was in the process of leaving the bank and there was a lot of things going on at that particular time.

Q. Isn't it true that - and you'd be experienced in this - in the ordinary way when a bank makes money available to a client and the money is sent to the bank's solicitor, it's sent on the understanding that the bank's solicitor will undertake to hold - firstly, to purchase the property and to hold the deeds of the property to the order of the bank?

A. Mm-hmm.

Q. Isn't that so?

A. Not always the case, but generally the case, yes.

Q. It would be almost unique for a solicitor not to be asked to do that and indeed not to do it, wouldn't that be right?

A. Would you mind, please, repeating it?

Q. Wouldn't it be almost unique for a solicitor not to be asked to indicate if he was being given money on behalf of a client to purchase property, wouldn't it be almost unique that he wouldn't be asked to undertake to hold the deeds of that property to the order of the bank?

A. Well, in his letter to us he pointed out in that letter that he would hold good and marketable title to Catclause -

Q. I don't think he said that. If by that you mean that he would hold good and marketable title to the order of Investec Bank, I don't think he said that.

A. No, he said it to Catclause, he didn't say it to the bank. I accept that.

Q. You know what a solicitor's undertaking is, don't you?

A. Yes, I do.

Q. It's the link in any chain between a bank and a customer where the provision of money is concerned to purchase property, isn't it?

A. Mm-hmm.

Q. There is hardly a property transaction, as I said a moment ago, in which a solicitor's undertaking isn't the first link in the relationship between the customer and the bank once the money is drawn down?

A. Mm-hmm.

Q. All I am saying is you didn't get that undertaking in this case?

A. No.

Q. In any case, Mr. Wohlman goes on: "He confirmed that Aidan Phelan had executed documents as a director of Catclause Limited and that Aidan Phelan had made the arrangements to borrow the money. He also stated that we should not worry about the credit as Denis was behind it. Asked who Denis was, he confirmed it was Denis O'Brien with whom the bank already had dealings."

Do you agree that you said that?

A. I did.

Q. What did you mean when you said "Denis was behind the credit"?

A. When I had been talking to Aidan Phelan during the February time, he had indicated that "Denis was behind me" and he had, you know, "Denis is there". He had made a couple of references and that was what I was referring to. So the terms of the exact detail of it, you'll need to speak to Aidan directly.

Q. We'll just check that and go more slowly now.

Where were you when this telephone conversation took place?

A. Which telephone conversation?

Q. Well, this telephone conversation of the 13th of March 2001.

A. I was in France.

Q. On the 12th of March you were in France? You were on a

skiing holiday? You were with Mr. O'Brien?

A. Correct. We were actually in the same party, as opposed to being with him.

Q. I appreciate that, but you were presumably meeting one another recreationally every day or every second day?

A. Yes, we were.

Q. Before you made this telephone call, had you spoken to Denis O'Brien about this issue?

A. Before I made this phone call?

Q. Yes.

A. No.

Q. You had discussed it with Aidan Phelan?

A. About?

Q. You told me a moment ago you had discussed this matter with Aidan Phelan in February?

A. I had, yes.

Q. In February?

A. Yes. Absolutely.

Q. When in February had you discussed it with him?

A. It was during the middle of February. I don't have an exact date.

Q. And what did you say to him in the middle of February about this transaction?

A. Well, you see, what was - Michael Cullen and myself had had a meeting with Aidan in January to try and get things sorted out. And basically not a lot was getting done, so I had indicated to Aidan that he had to get

his house in order and that he needed to do it quickly, as everybody was losing patience with this particular transaction.

Q. Yes. What did Aidan Phelan say to you which led you to believe that Mr. O'Brien was in some way behind this transaction?

A. Well, what he said was that, you know, "don't worry about it, I'll get it all sorted out." And then "Denis is there behind me."

Q. So Denis O'Brien was behind this transaction?

A. You'll have to ask Aidan Phelan.

Q. But you had no difficulty in telling Mr. Wohlman that Denis O'Brien

A. I was passing on what had been given to me.

Q. You knew this was quite a serious matter for Mr. Phelan at the time - at this time, isn't that right?

A. Mm-hmm.

Q. Here you had a situation where you now knew that Mr. Michael Lowry's name was being mentioned in the course or in connection with a transaction where his name, as far as you could see, had not been mentioned at the inception of the transaction, isn't that right?

A. Correct.

Q. And you had been operating under the impression that this was a purely Aidan Phelan transaction and you were now learning that Mr. Lowry was in on it from the very beginning. And in addition, you were now told that

Denis O'Brien was behind it.

A. No. What he said was "Denis O'Brien is behind me".

Q. Yes. You were told, in the middle of February by

Mr. Phelan, that Denis O'Brien was behind him?

A. Mm-hmm.

Q. That's what you are now saying?

A. Mm-hmm.

Q. And at the end of February, or the beginning of March,

you learned that the transaction involved Michael

Lowry. So now you have potentially a situation where

Denis O'Brien might be seen to be behind Michael Lowry.

A. Mm-hmm.

Q. Wasn't that, surely, a red light set of connections to anyone?

A. I think in terms of what Aidan Phelan is saying, you are going to ask Aidan directly.

Q. I am asking you what you thought when those links must have been made in your own head, what did you think?

A. I saw it not as Denis O'Brien being involved in the transaction. I saw it as being something completely different.

Q. Did you discuss it with Denis O'Brien when you were on holiday with him?

A. After I got a phone call from Michael Cullen the following day?

Q. No, before you rang Ian Wohlman.

A. No, I did not.

Q. So before you rang Ian Wohlman, you knew that Mr. O'Brien was in some way connected with this transaction, isn't that right?

A. No, that's not what I am saying.

Q. I'm sorry, you were told he was connected?

A. What I was saying was that Aidan Phelan had told me "Denis is behind me."

Q. Yes.

A. Now, what that interpretation is, you have to ask Aidan.

Q. What did you interpret it to mean?

A. I interpreted it to mean Aidan Phelan trying to give some comfort when he was being put under the pressure.

Q. Did you believe Aidan Phelan that Denis O'Brien was behind him in relation to this transaction?

A. I had lost a lot of confidence in what I was being told on this particular transaction because it was going nowhere.

Q. Why did you lose confidence about what you were being told?

A. Because we now were 13 months into the transaction, 14 months into the transaction and nothing had been regularised.

Q. Why did you tell Mr. Wohlman not to worry about the transaction?

A. Because I believed that it would ultimately get sorted out.

Q. But you just told me a moment ago you lost complete confidence in the transaction?

A. In the ability to pull it together. I still had, you know, faith in Mr. Phelan that he would sort it out.

Q. You had no faith in Mr. Phelan a moment ago, and now you have faith in him. Which is it, Mr. Tunney?

A. No, in terms of getting the transaction sorted out, getting all the documentation. The documentation wasn't flowing anywhere.

Q. You had a meeting with Mr. Tunney - sorry, with Mr. Phelan in February. He told you "Denis O'Brien was behind me." I asked you did you believe that? You told me you were losing confidence in Mr. Phelan. I am going to ask you again: did you believe Mr. Phelan that Denis O'Brien was behind him?

A. What I said was that Aidan Phelan had told me that Denis O'Brien was behind him. And that's what it was.

Q. Did you believe him?

A. I don't know.

Q. You see, Mr. Tunney, a lot of people seem to have been very ready to use Mr. O'Brien's name in connection with this transaction from 1999 to 2001. And they seem to be very anxious to distance themselves from Mr. O'Brien in this Tribunal where the transaction is concerned. I want to get an answer from you as to whether you did or did not believe Mr. Phelan when he said to you, "Mr. O'Brien is behind me in this transaction."?

A. I don't believe Denis O'Brien was behind this

transaction.

Q. I see. You don't believe Denis O'Brien was behind it?

A. No.

Q. So now you had a telephone call with Mr. Wohlman some

few weeks later in which you said to him, "Aidan Phelan

had executed documents as a director of Catclause

Limited and Aidan Phelan had made the arrangements to

borrow the money." And you said "we" meaning Investec,

"should not worry about the credit, as Denis was behind

it," meaning Denis O'Brien.

Now, you said that to Mr. Wohlman, isn't that right?

A. Correct.

Q. Did you tell him a lie, in other words?

A. No, I did not.

Q. Well, then, what did you mean by telling him, "Denis

O'Brien was behind the transaction" when you told me a

moment ago

MR. SHIPSEY: Sorry, Sir, the word is the 'credit', not

the 'transaction' and the witness has been at pains to

draw that distinction, that he is saying Mr. Phelan

told him Mr. O'Brien was behind him, not the

transaction

MR. HEALY: Mr. Tunney, we can stay here until the cows

come home, but I want to know from you precisely.

CHAIRMAN: Mr. Shipsey, I have noted it as Mr. Tunney saying that "Denis is behind me." There have been a number of references. I think we'll proceed and give you an opportunity to clarify in due course.

MR. SHIPSEY: Thank you.

Q. MR. HEALY: So there will be no doubt about it, we'll go over it, the two events, again.

You said to Mr. Wohlman that "Investec should not worry about the credit, as Denis was behind it," meaning Denis O'Brien?

A. Mm-hmm.

Q. When you said that to Mr. Wohlman, did you believe Denis O'Brien was behind the credit?

A. No, I don't believe he was behind the credit.

Q. So when you said that to Mr. Wohlman, you were telling him a lie?

A. No, I don't believe I was. I believe that Denis O'Brien, as it was portrayed to me, was behind Aidan Phelan. In terms of the exact interpretation of, you know, what Aidan Phelan was saying to me, you have to ask Aidan Phelan.

Q. No, I am asking what you thought Mr. Phelan meant, because you went on and relayed some information to somebody else based on what Mr. Phelan said to you.

And to me, Mr. Tunney, and I am sure to almost anyone who has heard you, there seems to be a complete

contradiction between the two things you've just said to this Tribunal. You said you did not believe Mr. Phelan or you did not believe that Mr. O'Brien was behind this credit, and yet you did tell Mr. Wohlman that was the case, and you tell me that was not a lie?

A. Absolutely.

Q. Well, perhaps you'd like to explain to me how that could be the case, that it wouldn't be a lie to tell somebody something you didn't believe in?

A. What I am saying here is that Aidan Phelan had told me that Denis O'Brien was behind him, and that is what I have reflected.

Q. Did you tell Mr. Wohlman that they should not worry about the credit?

A. Yes, I did.

Q. Did you tell him that the reason they shouldn't worry about it was because Denis was behind it?

A. I don't recollect.

Q. Now, Mr. Tunney, this is making it very difficult for the Tribunal. You've had these documents for some considerable time.

A. Sure.

Q. You've had opportunity to have private meetings with members of the Tribunal legal team. You've come in here to give evidence. You've agreed that this document contained the contents or the notes of the contents of your telephone call, and you are now

telling me that you don't recollect something that's contained in the note after the bones of half an hour cross-examination or re-examination about it. Is that right?

A. Sir, would you mind repeating that, Mr. Healy?

Q. Yes, I will. You've had an opportunity to have had a private meeting with members of the Tribunal legal team. That's right, isn't it?

A. Yes.

Q. You've come in here to give evidence?

A. Yes.

Q. You've agreed that this document contained the contents or the notes of the contents of your telephone call with Mr. Wohlman?

A. Yes.

Q. And you are now telling me and this Tribunal that you don't recollect something that's contained in the note and which you agreed a moment ago was a correct account of what you said to Mr. Wohlman, that you don't recollect saying it, is what you are now telling me?

A. I beg your pardon. I think we are at cross purposes.

In terms of what Ian Wohlman has written here, I am happy about what he has written.

Q. You don't believe Mr. O'Brien was ever behind this transaction, this credit, this loan, whatever you call it, isn't that right?

A. I don't.

Q. You did tell Mr. Wohlman that he was behind this credit, isn't that right?

A. Here?

Q. Yes.

A. Yes.

Q. You told Mr. Wohlman that he needn't worry because Mr. O'Brien was behind this credit, isn't that right?

A. Well, quite clearly it's said there, yes.

Q. Yes. Well, if you didn't believe it and you did say it, weren't you telling a lie?

A. No, I don't believe so. I believe that we are looking at this from a different perspective. I believed that where the support would have come to Aidan Phelan would have been through Denis O'Brien, if necessary. But, to be honest, you are going to have to speak to Aidan Phelan about that. It was Aidan Phelan who threw up that point.

Q. Mr. Tunney, I have given you opportunity after opportunity to deal with what I think are perfectly reasonable questions about this note. I am going to come back to it later, but I am going to pass from it now because I don't think you've taken any of those opportunities.

On that night or on that day, rather, the 12th, you continued to have your - you continued with your activities, whatever you were doing, skiing in France?

A. Mm-hmm.

Q. After the conversation you had with Mr. Wohlman, did you discuss with Mr. O'Brien what Mr. Wohlman had said to you and what you had said to him?

A. No.

Q. You never told Mr. O'Brien about it?

A. No.

Q. His name had been used in that conversation and you didn't tell him about it?

A. No.

Q. I see. On the following day you had a telephone call, two telephone calls with Michael Cullen, is that right?

A. Correct.

Q. You also had a telephone call with Mr. Wohlman on the following day?

A. Yes.

Q. Between the two telephone calls that you had with Mr. Cullen, I think you met Mr. Denis O'Brien?

A. Mm-hmm.

Q. Is that right?

A. I did. I did.

Q. The note I have of the conversation says that you met Mr. Denis O'Brien to update him on the situation. Is that right?

A. Mm-hmm.

Q. And did you update Mr. O'Brien on the situation?

A. I spoke to him for the first time about it.

Q. Yes.

A. And I outlined, in broad terms, the transaction.

Q. Mm-hmm.

A. And he was less than happy.

Q. What did you tell him the situation was?

A. I told him that, basically, the transaction had been done which involved the purchase of property involving Aidan, where a name had come out involving a politician.

Q. Mm-hmm.

A. And that his name had been mentioned in connection with it.

Q. Did you tell him the politician was Michael Lowry?

A. I did, yes.

Q. Okay. And is that all you told him?

A. I kept it very short.

Q. Did you tell him that you had used his name in connection with the transaction?

A. Not that I recollect.

Q. You said he was less than happy with it. Maybe you'll just tell me, what did he say?

A. He was very unhappy with it.

Q. What did he say?

A. Basically, he said that he was shocked about it, that he had nothing to do with it and would find out more about it. But at that stage, he knew nothing about it.

Q. You told Mr. O'Brien, in the course of his skiing

holiday, that you had learned that his name was being mentioned in connection with a loan transaction which you thought was Aidan Phelan's but which seemed to be connected to Michael Lowry? Is that what you told him?

A. Yes.

Q. Roughly?

A. Mm-hmm.

Q. That would be a fairly horrific piece of information to get on your holidays, wouldn't it?

A. Mm-hmm.

Q. If you had, yourself, been the subject of controversy concerning any possible links between you or your companies and Michael Lowry and the granting of a second GSM licence, isn't that right?

A. Yes.

Q. And Mr. O'Brien said to you, "I'll have to look into it." That's all?

A. Oh, no, he didn't - like, he was not happy at all and the result of which was he said he was going to contact Michael Cullen.

Q. Yes.

A. And speak to him.

Q. Did he say he was going to contact Aidan Phelan?

A. I don't recall.

Q. Did you tell him that Aidan Phelan had told you that Denis O'Brien was behind him in connection with this transaction?

A. Would you mind repeating that question?

Q. Did you tell Mr. O'Brien that Mr. Phelan had told you that Mr. O'Brien was behind him, behind Aidan Phelan, in this transaction?

A. I don't recollect, to be honest.

Q. Surely, on the basis of what you had been told, it was Aidan Phelan who was making the links, isn't that right?

A. Mm-hmm.

Q. Aidan Phelan was the person who introduced a transaction to you?

A. Yes.

Q. Which involved Michael Lowry and, according to you, didn't mention Michael Lowry?

A. Mm-hmm.

Q. And Aidan Phelan was the person who told you that Denis O'Brien was behind him in the transaction.

A. Mm-hmm.

Q. Did you not say that to Mr. O'Brien?

A. I told him that it was an Aidan Phelan transaction.

Q. Mr. O'Brien surely wanted to know how had his name got connected with this transaction and who had connected it with it?

A. Of course.

Q. And surely you knew that that was how the connections were being made?

A. Through Aidan Phelan?

Q. Yes.

A. Yes.

Q. And did you not explain that to Mr. O'Brien?

A. Well, I would have taken him down through the transaction in overview terms.

Q. Did he tell you he was behind Aidan Phelan in this transaction at that time?

A. Oh, no.

Q. Did he tell you he wasn't behind Aidan Phelan?

A. Absolutely. He said he had nothing to do with it, in very clear terms.

Q. Why didn't you get on to Mr. Wohlman, Mr. Cullen, Mr. Morland, or any of the other people involved in this, and say, "I have just been told that Denis O'Brien is not behind this credit. He is not behind this transaction, he is not behind Aidan Phelan."?

A. Well, I did have a conversation afterwards - well, I knew, first of all, that Denis was going to be calling Michael Cullen, which I understand he did do, and I did speak subsequently - what I was planning on doing was coming back at that stage because I knew at that stage that there was quite a bit to be done here. And that's where I was coming from.

Q. Well, let's just go to the note of the other conversation you had with Mr. Wohlman on that day, the same day, the 13th.

A. Mm-hmm.

Q. I think you should be familiar with the handwritten note Mr. Wohlman made of that conversation.

A. Yes.

Q. Which he says: "MT telephoned us he was concerned the position regarding Catclause was escalating and he felt reputationally responsible to find resolutions to questions that had been asked.

He was contemplating returning from the French Alps, where he was skiing, to contact Aidan Phelan and his solicitor to obtain clarity and review files. I advised that it was his judgment if he felt he should return, but any efforts to seek answers to questions raised of Aidan Phelan or his solicitor would be appreciated. I also stated it would not be appropriate to review Investec Bank (UK) files or represent that he was working for Investec Bank (UK) as he was not employed by that company."

Do you agree that that was the content of the conversation up to that point?

A. Yes.

Q. "I advised that I was concerned that he had stated Denis O'Brien was behind this transaction and that one of the directors of Catclause was Lowry, an Irish MP linked to Denis O'Brien in the Irish press, allegedly."

I presume it means allegedly linked to Denis O'Brien in the Irish press. And you say he stated that Aidan

Phelan had told you Denis O'Brien was behind the transaction?

A. Mm-hmm.

Q. So you are now saying that it's not that you knew from anything Mr. O'Brien or from any other information you had that Mr. O'Brien was behind the transaction, but that Mr. Phelan had stated Mr. O'Brien was behind the transaction?

A. Mm-hmm.

Q. Is that correct?

A. Correct.

Q. Did you say to Mr. Wohlman at that point, "This is a disaster from a credit point of view because Denis O'Brien is not behind Mr. Phelan, he is not behind the transaction and he is not behind the credit"?

A. I didn't say anything to him.

Q. Surely that was something you were bound to say to him after what you had told him a few days earlier, a day earlier?

A. Well, in terms of what I had repeated to him, was that I had told him that it was Aidan Phelan who told me this and

Q. Sorry. You didn't repeat that to him. That's the first time you told him that Aidan Phelan had told you that Mr. O'Brien was behind it.

A. No, I would have always said that Aidan Phelan

Q. No, no, no, Mr. Tunney. That's not what you've told

this Tribunal, and that's not what you told

Mr. Wohlman, according to the notes. And that's why

Mr. Wohlman was concerned. He was concerned that you

had stated Mr. O'Brien was behind it, and you corrected

him and you said, no, Aidan Phelan had told you Denis

O'Brien was behind it. That's the first time you said

that to Mr. Wohlman, isn't that right?

A. Sorry, I have always - any time I have used to Ian

Wohlman, Denis O'Brien's name, I would have always have

said that it came through Aidan Phelan.

Q. Did you tell Mr. Wohlman that there was now a problem?

A. I didn't, no.

Q. And wasn't that what you should have told him, having

told him earlier that he needn't worry about the

credit?

A. I believe, at the end of the day, from a credit

perspective, it would have got sorted out.

Q. By who?

A. Aidan Phelan.

Q. You had earlier said it would be sorted out because

Mr. O'Brien was behind it.

A. No I didn't.

Q. I see. You are saying you didn't say that?

A. No, I think that's a wrong interpretation of what I

said.

Q. Is it?

A. Yes. That is a wrong interpretation of what I said .

Q. You never said anything like that?

A. No. Denis O'Brien was never behind this transaction.

I've always said that.

Q. Yes. You have always said that?

A. Mm-hmm, in terms of what I am telling you.

Q. But you did say to Mr. Wohlman that he was behind it?

A. Yes, I said it to Mr. Wohlman, but that that was given to me by Aidan Phelan.

Q. When you told Mr. Wohlman on the 13th that it was Aidan Phelan who had said to you that Mr. O'Brien was behind this transaction, did you tell him that Denis O'Brien was furious, was not behind the transaction, and wouldn't stand behind it or behind Aidan Phelan?

A. I don't remember, to be honest.

Q. You don't remember telling him that?

A. No, I don't remember.

Q. Is it something you would have told

A. Because there were a lot of things happening at the time, so there was a lot of sequence of events.

Q. The only thing that was happening, as far as I can see, Mr. Tunney, is that Mr. O'Brien's name was being mentioned in connection with this transaction and it was causing an awful lot of problems and a lot of worry and concern in the bank, isn't that right? Isn't that the big thing that was happening?

A. It was causing concern, yes.

Q. And it was probably causing concern from Mr. O'Brien as

well, isn't that right?

A. Yes.

Q. And why didn't you say to Mr. Wohlman, "Denis O'Brien has nothing to do with this, had nothing to do with this and will have nothing to do with it and does not want to have his name involved in it, good, bad or indifferent."?

A. I was - thought Aidan Phelan would have told him.

Q. Are you familiar with the evidence given by Mr. Morland to the Tribunal?

A. I am.

Q. Mr. Morland gave - Mr. Morland gave evidence on Wednesday, the 18th and on Thursday the 19th. And in the course of his evidence on the 18th - I'll get you a copy of the transcript, at page 105, he gave evidence concerning dealings he had with you at the inception of this transaction. I think Mr. Garvey has given you a copy. Is that right?

A. Yes.

Q. If you go to page 105. Maybe, in fact, if you go to page 104. At the bottom of that page.

Question 454, Ms. O'Brien, I think, is examining Mr. Morland.

"Question: Now, I think that you say in your statement that you were informed of this matter by Mr. Michael Tunney?

Answer: That is correct.

Question: Did you have any discussions about it with any other bank figures other than Mr. Tunney?

Answer: No.

Question: Did you have any discussions at all with Mr. Cullen about the facility that was proposed?

Answer: No."

Question: Now, you say in your statement that Mr. Tunney explained to you -"

A. Sorry.

Q. I'm sorry, we'll go back to page 104, day 133. Have you got that?

A. Okay.

Q. Go to question 454, line 26. Have you got that?

A. Yes.

Q. "Question: Now, I think that you say in your statement that you were informed of this matter by Mr. Michael Tunney?

Answer: That is correct.

Question: Did you have any discussions about it with any other bank figures other than Mr. Tunney?

Answer: No.

Question: Did you have any discussions at all with Mr. Cullen about the facility that was proposed?

Answer: No.

Question: Now you say in your statement that Mr. Tunney explained to you what was being proposed and do I take

it that the information that was furnished to you is that which was set out in the credit committee form? And I think that's the document in the documents at document number 2. I think that sets out what was proposed was a Sterling loan of £420,000 to Catclouse Limited, which was a special purpose company established specifically to acquire the property in Manchester, that the facility would be fully repaid by the 31st July, 2000, the security would be a first legal mortgage over the property and that there would also be a guarantee of Mr. John Daly for the principal amount and interest outstanding. Does that summarise the information which was provided to you at the time by Mr. Tunney?

Answer: No, it doesn't. If I may just explain. I was actually away on study leave for most of December. I came into the office, at which stage I had a discussion with Mr. Tunney in connection with what the credit appetite of Investec and what Investec would require in terms of a proposed property transaction in the UK. So he did tell me about the proposed guarantee of Mr. Daly and the first legal mortgage. However, I would not have known the details of the site, the exact amount of money, the exact name of the counterparty.

Question: I see. So you were not

Answer: the fee, the rate, etc.. It was more of a fact-finding discussion. I did have a discussion with

him and did I tell him what my requirements were.

Question: I see. So, in fact, he was not furnishing you with this information with a view to you signing off on the form which he forwarded to Mr. Wohlman on the 22nd of December, is that correct?

Answer: Correct. The discussions had taken place during the week leading up to the 17th December. I was away on leave the following week.

Question: And do you recall did these discussions take place on the 17th or on an earlier date?

Answer: I would have assumed that it was on an earlier date.

Question: And I take it, therefore, also that the documents, the references and so forth which were sent to Mr. Wohlman on the 22nd December were not available to you when you were discussing the matter with Mr. Tunney?

Answer: I think Mr. Phelan has provided a document to the Tribunal this morning which showed the documents came in on the 17th. I doubt whether I would have seen those.

Question: You doubt whether you would have seen those?

Answer: Correct.

Question: You say in your statement that Mr. Tunney described the transaction as a proposed, and you say "Denis O'Brien transaction"?

Answer: That is correct.

Question: Now, what do you understand Mr. Tunney to mean when he indicated that to you?

Answer: Mr. Tunney had told me that I think it was a proposal for the purchase of a property for Denis O'Brien. However, Denis O'Brien did not want his name associated with the transaction because it was the purchase of a property from a religious order in the United Kingdom. That is how the reference to a Denis O'Brien transaction came about. He then went on to discuss the details in terms of the first legal mortgage and the guarantee of a high net worth individual, to which I gave what I would expect to see in terms of the ability of the principals to perform this transaction.

Question: So can I just take you through that slowly, Mr. Morland? You are saying that Mr. Tunney told you that it was a proposal for the purchase of a property for Denis O'Brien?

Answer: Correct.

Question: That he further stated that Denis O'Brien did not want his name associated with the transaction because it was the purchase of a property from a religious order in the United Kingdom?

Answer: That is correct.

Question: You state that this is how the reference to a Denis O'Brien transaction came about?

Answer: That is correct.

Question: At the time that Mr. Tunney was discussing this with you, did you have any knowledge of Mr. O'Brien?

Answer: I knew of Mr. O'Brien. I had met him once in the company of Mr. Tunney at a luncheon. I did not know, however, the standing of Mr. O'Brien in the community or the net worth of Mr. O'Brien other than we did have deals with certain of his companies on our books, of which I had done a due diligence on."

Now, firstly, do you agree that you had a discussion with Mr. Morland about this loan proposal?

A. I did.

Q. And do you agree with him that the discussion was in connection with what the credit appetite of Investec was and what Investec would require in terms of the proposed property transaction in the UK?

A. Yes.

Q. And does the reference to a credit appetite mean how enthusiastic Investec would be or what they would require in terms of formalities to interest them in a transaction?

A. Mm-hmm.

Q. And that you told him about a proposed guarantee of a Mr. Daly and also about a first legal mortgage or charge or whatever?

A. Yes.

Q. And did you tell him that this was a Denis O'Brien

transaction?

A. I don't believe that I did.

Q. I see. And did you tell him that it was a proposal for the purchase of a property for Denis O'Brien, but that Denis O'Brien did not want his name associated with the transaction?

A. I wouldn't have said that.

Q. You wouldn't have said that?

A. No.

Q. At another point in his evidence, I think, Mr. Morland said that it was his understanding that Mr. O'Brien would not or could not, he wasn't sure which, have his name associated with the transaction. Did you ever say anything to that effect or like that to Mr. Morland?

A. No, I have no recollection of that at all.

Q. Did you ever say anything to Mr. Morland that could have given him that impression?

A. Not that I am aware of. The only issue, I say, is that we obviously would have had a lot of discussion around about both of the individuals, so maybe it was a misunderstanding.

Q. About both of the individuals. What individuals?

A. Both O'Brien and Phelan.

Q. You had a lot of discussion about them in general, or a lot of discussion about them in connection with this transaction?

A. In general.

Q. In general?

A. Yes.

Q. Now, I've only had the opportunity of seeing

Mr. Morland give evidence.

A. Mm-hmm.

Q. But would you agree with me that he seems to be a very careful banking executive?

A. Absolutely.

Q. And that he's very careful in his choice of words?

A. Mm-hmm.

Q. And can you think of anything you said in the course of

this transaction that he could have misunderstood as

meaning a) that it was a Denis O'Brien transaction; b)

that it was for the purchase of a property by Denis

O'Brien or c) that Mr. O'Brien's name would not or

could not be used in connection with it?

A. I don't understand how that linkage could be made.

Q. When Mr. Morland was giving evidence, he was examined

by Mr. Shipsey on your behalf and it was put to

Mr. Morland that Mr. Morland could have misunderstood

what you said.

A. Mm-hmm.

Q. Can you think of anything you could have said that

Mr. Morland would have misunderstood to mean what he

stated in his evidence?

A. You know, I would not have given any impression, in my view, that O'Brien was involved.

Q. You did say that Mr. Cullen was probably correct when he said that he was informed by you, although you said you shouldn't have said it that Mr. O'Brien was aware of the transaction, isn't that right?

A. Mm-hmm.

Q. Could you have used a similar expression when talking to Mr. Morland?

A. I could well have.

Q. If you said to Mr. Morland, "Mr. O'Brien is aware of the transaction" do you think Mr. Morland could have misunderstood that to mean that Mr. O'Brien was involved in the purchase of this property and that his name would not or could not be used realistically, could he have misunderstood a simple expression like that to mean

A. Well, he has misunderstood.

Q. I see. You are certain he has misunderstood something?

A. Mm-hmm.

Q. What has he misunderstood then?

A. Well, O'Brien is not involved in this transaction.

Q. Mr. Morland is not a person who would have been very familiar with Irish politics or Irish affairs in general.

A. No.

Q. And in 1999 he certainly wasn't, because he had only just begun to acquaint himself with this country.

A. Yes.

Q. How could he form the impression from something you said, that Mr. O'Brien was involved in this transaction, if he didn't know anything about Mr. O'Brien or Mr. O'Brien's profile in this country?

A. He would have known a little bit about him, based on what he was saying yesterday. And I would have helped him along, you know, in terms of, you know, anything that he would say in terms of the credit, that would have been me and my discussing of it.

Q. You said you would have helped him along?

A. Yes, in terms of I would have been explaining the credit.

Q. Yes. You see, Mr. Tunney, we are in the situation at the moment where your evidence is concerned, where it would appear from what you've told the Tribunal that Mr. Cullen probably didn't misunderstand you, but that you said something you shouldn't have said, but that Mr. Wohlman appears to have misunderstood you, Mr. Morland seems to have misunderstood you. Is there some strange pattern of misunderstanding that's beginning to develop here? How could all of these experienced banking executives have misunderstood what you said to mean, that Mr. O'Brien was involved in this transaction, if you never said it?

A. Well, I never said he was involved in the transaction.

Q. And you never used any words to that effect?

A. No.

Q. You'd agree with me that in 1999 Mr. Morland would have had no reason whatsoever to impute any involvement to Mr. O'Brien in this transaction?

A. No.

Q. He didn't know Mr. O'Brien?

A. No.

Q. Mr. Morland has no axe to grind against Mr. O'Brien or you or Mr. Lowry or Mr. Phelan or anyone?

A. None whatever.

Q. By February or March of 2001, the last thing that Mr. Cullen, Mr. Wohlman or Mr. Morland would have wanted to hear was that an Irish politician, a minister who was involved in very serious controversies was connected with Mr. O'Brien in their bank, isn't that right?

A. Correct.

Q. How could they have formed the impression that you told them, all three of them, that you told them that Mr. O'Brien was behind this transaction or behind this credit?

A. In terms of the - at the latter stage, I informed them and that was advice, as I said to you, that came from Aidan Phelan.

Q. That's what you are now saying to me.

A. That's what I did say.

Q. That's not what you said at the time, according to the notes which you agreed with.

A. Well, it's written down here on Ian Wohlman's note of 121, of the 13th of the 3rd, that he stated that Aidan Phelan had told him DOB

Q. That's absolutely right, Mr. Tunney. I am going to come back to those three notes, as I said I would, immediately after lunch. If you think it's appropriate to rise now, Sir.

CHAIRMAN: Very good. We'll resume at ten to two. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH:

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.50PM:

CONTINUATION OF EXAMINATION OF MICHAEL TUNNEY BY MR. HEALY:

Q. MR. HEALY: Mr. Tunney, this morning before the lunch time adjournment we were talking about what you had said to Mr. Wohlman and to Mr. Cullen and to Mr. Morland in 2000, concerning this matter, 2001, sorry. I just want to deal specifically with some of the things Mr. Morland said about the discussions he had with you in 2001.

Mr. Morland, in evidence, was asked if he could remember I am sorry, I will give you the relevant transcript in a moment. Mr. Morland was asked in evidence if he could recall when he first referred to,

in his own mind in other words, if he made a note of it or recorded it, when he first referred to the transaction as being a Denis O'Brien transaction, whether internally within the bank or otherwise. Do you have a copy of the transcript, Day 134, yesterday's transcript? If you could go to page 55. And if you could go to page 55.

A. Yes.

Q. Line 8. In fact, it might make more sense if you went to the previous page, page 54, line 28, question 249:

"Question: I see. Could I just ask you also, in relation to your statement which is at divider 2 and the reference in it to Mr. Tunney's description of the transaction as a 'Denis O'Brien transaction'. I think in reply to Mr. Gleeson you stated that this was the first occasion in which you had recorded that matter in writing. And could I just ask you, can you recall when you first referred to the transaction as being a 'Denis O'Brien transaction' whether internally within the bank or otherwise?

Answer: I can't remember the exact dates. I do remember having many conversations, even with Mr. Tunney to this regard.

Question: And can you place at all in time when those conversations occurred, without being precise as to date?

Answer: Well, obviously there is the December date of

'99.

Question: December of '99, that's your initial discussion?

Answer: My initial discussion. I am not sure whether we discussed it in January of 2000. I wouldn't have thought so because, at that stage, to me, it was irrelevant to the loan. I did have a discussion with Mr. Tunney this year. I remember one conversation with him in the corridor of Investec when I told him that Mr. Wohlman had been looking for him when it was raised.

Question: And that was during the course of this year, 2001?

Answer: Correct. I informed Mr. Tunney that Ian Wohlman had been trying to get hold of him, and I think subsequent to that there were many there were two phone calls between the parties concerned. I also remember a conversation with him in the boardroom of Gandon at around the same time and I also remember a discussion in the boardroom in one of the rooms of our solicitors when Mr. Tunney returned from his skiing trip.

Question: And can I just take each of those instances in turn. Can you tell me, first of all you say that you informed Mr. Tunney that Mr. Wohlman had tried to get hold of him, and you think subsequent to that that there were two phone calls between the parties

concerned. Now, when you informed Mr. Tunney of that, can you recall around and about when that occurred?

"Answer: I don't know the exact date. I think Mr. Tunney was in the building at the time for a presentation by our Private Banking Division.

Question: I see.

Answer: I stopped him in the corridor and told him that Mr. Wohlman was trying to get hold of him. I do not know the date, but I can find out though.

Question: And on each of those three occasions, can you indicate what you said to Mr. Tunney?

Answer: I said to Mr. Tunney that Mr. Wohlman was looking for him, and it was getting rather urgent. He said to me, he asked me, "did Ian realise that this was a Denis O'Brien transaction?" which I said I did know that sorry, which I said he did know that.

Question: So Mr. Tunney asked you whether Mr. Wohlman realised whether this was a Denis O'Brien transaction?

Answer: Correct.

Question: That was the occasion in the corridor?

Answer: Correct.

Question: I think you then said that subsequently there was a meeting in the boardroom of Gandon, is that correct?

Answer: That is correct.

Question: And when approximately did that meeting occur, and again we don't expect you to be specific as

to the date?

Answer: I think this was prior to, prior to us going to the Moriarty Tribunal.

Question: So it would have been in early March of this year?

Answer: It would have been within the days leading up to

Question: And can you tell me what Mr. Tunney said to you on that occasion?

Answer: He told me that Aidan Phelan had told him that this was a Denis O'Brien transaction.

Question: And was there anybody else present at that meeting in the boardroom at Gandon?

Answer: I think Mr. Cullen was there. I can't say precisely."

Now, if I can ask you to look at page 56 specifically, and line 10, and I think Mr. Morland is saying,

"I don't know the exact date. I think Mr. Tunney was in the building at the time for a presentation by our Private Banking Division." Mr. Morland is referring to a conversation he had with you in which it was stated that this transaction was a Denis O'Brien transaction, and Ms. Jacqueline O'Brien was trying to find out the date of that meeting.

Now, firstly, do you recall meeting Mr. Morland in a corridor in Investec?

A. I don't, to be honest.

Q. At or around the time of a Private Banking Division presentation?

A. I recollect the Private Banking Division presentation, I can't even remember what it was about, but I don't recollect any particular conversation as such.

Q. Now, the Tribunal has been informed by Investec, and having asked Mr. Morland about this through his solicitor since he gave this evidence, whether he could identify the date, and the Tribunal has been informed that the date was the 27th February of this year.

A. Mm-hmm.

Q. Now, you were in Ireland at that time, isn't that right?

A. So far as I am aware. So far as I am aware.

Q. We know that, in fact, you had a meeting with Mr. Cullen on the 28th and you also met him on the 1st March.

A. Mm-hmm.

Q. So what Mr. Morland is saying, that on that date he told you that Mr. Wohlman was looking for him and that it was getting rather urgent. Do you remember him telling you that?

A. I don't.

Q. Do you remember Mr. Morland telling you at all that Mr. Wohlman was looking for you?

A. I don't.

Q. It is true that Mr. Wohlman was trying to contact you, isn't that right?

A. That's right, that's correct.

Q. Do you remember whether in connection with Mr. Wohlman's desire to get in contact with you, or in connection with anything else at all around this time, you said to Mr. Morland, "Did Ian realise that this was a Denis O'Brien transaction?"

A. Well, I don't recollect the conversation, so but, I couldn't I wouldn't have said it in that manner.

Q. You couldn't have, you wouldn't have said it in that manner?

A. Yeah. Yes. Sorry.

Q. Now, none of this happened a very long time ago, Mr. Tunney, isn't that right?

A. That's right.

Q. We are simply talking about a few months ago?

A. That's right.

Q. Are you saying that firstly you don't recall such a meeting with Mr. Morland, is that right?

A. I don't recall the discussion, no.

Q. Would you accept that if Mr. Morland says the conversation occurred, it must have occurred?

A. If Mr. Morland says a conversation occurred, it must have occurred, yes, I would accept that.

Q. Would you accept, if Mr. Morland says that you said to him, "Did Ian realise that this was a Denis O'Brien

transaction?" that you said that to Mr. Morland?

A. I would my view on that would be that if I was referring to it in that manner, I was referring it in the manner of I told you about this morning.

Q. What do you mean by that?

A. That Denis O'Brien was behind Aidan Phelan, as I explained to you this morning.

Q. So you think you might have said to Mr. Morland, "Denis O'Brien is behind Aidan Phelan"?

A. Yes.

Q. And by that, what would you mean, or what would you have meant?

A. That he is behind him in the sense of he provides a lot of his income, he is there as support, and he is there to help him out, but not as part of this specific transaction. This is an Aidan Phelan transaction.

Q. By that did you mean that Mr. Wohlman should have realised that Mr. O'Brien was behind Mr. Phelan and that there was no need to worry about this transaction?

A. It gave an added comfort.

Q. Well, how did you know that Mr. Phelan had Mr. O'Brien behind him in relation to this transaction?

A. Because Mr. Phelan told me so.

Q. But I don't think you had any confidence in Mr. Phelan telling you that, is that right?

A. I think there are two issues here. What I said earlier was that I didn't have confidence in the transaction

being sorted out, in other words, the documentation

being sorted out. I had not lost my confidence in

Aidan Phelan.

Q. I see. Well, you said that to me, Mr. Tunney, in response to questions I was asking you about the use of the expression "Mr. O'Brien was behind this transaction," and you said that it was Aidan Phelan that had told you that. And I asked you whether you believed Aidan Phelan, and you said you had no confidence or you were beginning to lose confidence in what you were being told about this transaction, isn't that right?

A. Yes. And what I meant by that was the documentation aspects of that, getting it done, because so much time had passed by in trying to get it resolved.

Q. Why didn't you say that to me this morning? Why didn't you say to me "I had no confidence in what I was being told about this transaction, meaning I had no confidence in the documentation, but I had full confidence in what Mr. Phelan told me about Mr. O'Brien being behind him in this transaction"?

A. So far as I can recollect, I did say I had confidence in Aidan Phelan repaying the facility.

Q. Did you believe Aidan Phelan when he told you Mr. O'Brien was behind this transaction?

A. Behind him? Yes.

Q. In relation to this transaction?

A. Denis O'Brien is not involved in this transaction, as I see it.

Q. You are a banker, not a philosopher, Mr. Tunney?

A. Yes.

Q. You know when people use language in the way it's being used in this case, that what was intended to be conveyed by the expression "Mr. O'Brien is behind me," or "Denis is behind me" or "Denis O'Brien is behind this transaction" or "behind this credit," it means he is going to support it, isn't that right?

A. The credit here I see as being Aidan Phelan, and it was he was going to be supported.

Q. Mr. Phelan was going to be supported?

A. Yes.

Q. By whom?

A. By Mr. O'Brien.

Q. You were certain of that?

A. That was my feeling, and that came from Aidan Phelan.

Q. Now let's get clear about this: You are now saying that you were certain of that, or sorry, that you got a feeling you had a feeling, only a feeling that Mr. O'Brien was behind this transaction, behind Aidan Phelan in this transaction, to use the words you are now using, is that right?

A. Can you repeat that please, Mr. Healy.

Q. I am only using your words. You tell me. I'll try again. Tell me again what you thought Mr. Phelan

meant when he said Denis O'Brien was behind this

transaction?

A. I believe what was meant by that was that Denis is behind Aidan Phelan in the capacity of, as I mentioned, income and being there if he had a problem in a global sense, not relating to this specific transaction.

Q. Now, Mr. Wohlman is an experienced banker.

Mr. Morland is an experienced banker. Mr. Cullen is

an experienced banker. How did they all get the

impression that I have got from the documentation that

Mr. O'Brien was behind this transaction? How did they

all get that impression from what you said to them,

when, in fact, you meant something different all

together?

A. No, I don't think they have got that

Q. I see.

A. impression. You don't think they have got what

impression.

A. I think what you are saying there is the three bankers

have got the impression Denis O'Brien is behind this

transaction.

Q. Yes.

A. I don't see that they did get that impression, all of

them. Tony Morland may have got that impression, but

when you look back at Ian Wohlman, he had not got that

impression.

Q. All right. We'll go back to Mr. Wohlman's note again,

not for the first, second or third time. Mr. Wohlman says in his note at page 118 of the book, he says "He" meaning you "Confirmed that Aidan Phelan had executed the documents as a director of Catclause Limited and that Aidan Phelan had made the arrangements to borrow the money. He also stated that we should not worry about the credit as Denis was behind it.

Asked who Denis was, he confirmed it was Denis O'Brien with whom the bank had already had dealings." I am just going to go over that sentence again.

A. Yeah.

Q. "He also stated that we should not worry about the credit as Denis O'Brien was behind it" is what you really say, isn't that right?

A. Mm-hmm, and 'credit' there is Aidan Phelan.

Q. I see. And it's this credit, not any other credit, not any global credit, it's this credit, is that right?

A. In the sense that it comes down to this, but

Q. Oh, I see. So you weren't saying that Denis O'Brien is behind Aidan Phelan in a global sense, you were saying he is behind him in relation to this credit, but because he is behind him in a global sense, it comes down to meaning that Denis O'Brien is supporting Aidan Phelan in relation to this loan?

A. What I am saying is that Denis O'Brien was a good friend of Aidan Phelan's, longstanding business colleague, and that he would support him if there was a

need, whether it be on a number of different issues.

And he already did support him from the perspective of he was a generator of his income. That is what I am saying.

Q. Did you have any worry about the political or wider implications of this at this time?

A. Yes, absolutely.

Q. You were fully aware of the political or wider implications of it?

A. Mm-hmm.

Q. You were aware that connections between Mr. O'Brien and Mr. Lowry were, as we said this morning, dangerous connections that could cause a lot of speculation?

A. Yes.

Q. Maybe unfair speculation?

A. Yes.

Q. There can be no doubt that a connection between Mr. O'Brien and Mr. Lowry could lead to this Tribunal, isn't that right?

A. Yes.

Q. Didn't Mr. Morland make a note that Michael Cullen had said to you, "It doesn't take a genius to realise that this is reportable to the big M and that the bank was under tremendous pressure to sort it out"?

A. That's right.

Q. And why didn't you say to Mr. Cullen, Mr. Morland and Mr. Wohlman, "Look, there is no connection here between

Mr. O'Brien and Mr. Lowry that would be reportable to the Tribunal, because Mr. O'Brien had no hand, act or part in this transaction, and when I used his name in connection with it, I meant that he was globally behind Mr. Phelan"? Why didn't you say that?

A. I had been saying that Mr. O'Brien is not involved.

Q. When did you say that? "Mr. O'Brien was not involved," when did you say that?

A. Well, certainly it's in my when I met with you in private, I said it.

Q. Yes.

A. I cannot recall when I previously said it.

Q. It doesn't seem that you said it in those terms to Mr. Wohlman or Mr. Cullen or Mr. Morland, isn't that right? Isn't that right?

A. Yeah, I don't

Q. Wouldn't that have been music to their ears, if a close business, if you like, associate of Mr. O'Brien and Mr. Phelan, in that you were dealing with them for years, if you had said to them, "Mr. O'Brien has no connection or association with this," wouldn't that have been what they wanted to hear?

A. Yes, but I have made that clear.

Q. And if they said it, wouldn't they have noted it?

A. What they have noted is all the facts.

Q. They were worried about the reputation of their bank?

A. Of course, and they have noted all of the facts leading

up to that

Q. And they never noted that fact that you told them that Mr. O'Brien had nothing to do with this, Mr. Tunney.

Isn't it the case that they didn't report it because you didn't say it? Isn't that right?

A. They didn't report it because

Q. They didn't note it, they didn't record it, because you didn't say it, isn't that right?

A. I had actually now, you see, we are back to the original point here, and that is that I have always viewed this as an Aidan Phelan facility, and I do not view it as a Denis O'Brien facility, and I have always seen it that way. So I actually don't see that there is a change

Q. I see.

A. What is happening now is the name has been mentioned at the, particularly, the back half, the last month, and you are now importing that.

Q. I am now importing what?

A. The name in the sense that 'why haven't I disclosed that he wasn't involved?' I have been saying that he isn't involved.

Q. It's very simple. 'Mr. O'Brien isn't involved in this.' As you said, it's a perfectly simple statement.

Why is it nowhere in the notes of conversations that

Mr. Morland, Mr. Cullen and Mr. Wohlman had with you?

Why isn't it there? I mean, is there any reason why

they wouldn't note that?

A. I can't answer for them.

Q. I see. Are you saying, on oath, that you said that to them, that you said to them, "Mr. Denis O'Brien is not involved in this"?

A. I don't recollect.

Q. A moment ago you said, "I have been saying that he isn't involved," and you are now telling me you don't recollect saying he wasn't involved.

A. Sorry, Mr. Healy, what I have been saying all along is, in my view, quite consistent, in that this is an Aidan Phelan facility.

Q. Saying this is an Aidan Phelan is not saying Denis O'Brien has nothing to do with this, having regard to the wider implications, don't you know that, Mr. Tunney?

A. I do know that.

Q. You are an intelligent and experienced man holding very high positions in business life in this city.

A. Mmm.

Q. You know that the words you use are going to have an impact on people, and you know that if you wanted to have an impact on any of the people involved in this, so as to put their minds at rest that Mr. O'Brien was not involved in it, the very least you could have said was "Mr. O'Brien is not involved in this." And you didn't say it, isn't that right?

A. Mr. Healy, all the dealings on this from inception have been with Aidan Phelan. When the facility got in to difficulty, the person the bank went to was Aidan Phelan. Right up to the very end it has always been dealt with with Aidan Phelan. Denis O'Brien has at no stage of this, until the very last day, been discussed with about this facility.

Q. What do you mean by that, Denis O'Brien

A. Until my conversation with Denis O'Brien on March 13th, nobody from the bank, as I am aware, had discussed this facility with him, and my view is that

Q. Sorry, can I just stop you there. How do you know of this?

A. How do I know?

Q. How do you know that nobody discussed this facility with Mr. Denis O'Brien until you brought it up with him?

A. That's what I believe to be the case.

Q. How do you know? Did you ask Mr. O'Brien that?

A. No, just from speaking to my colleagues, that nobody had spoken to him about it.

Q. How do you know? Do you know whether Mr. Lowry spoke to him about it?

A. I have no idea. No, I am talking from the bank's perspective.

Q. I see. Nobody in the bank spoke with Mr. O'Brien about it?

A. Yeah, so far as I am aware.

Q. Mm-hmm.

A. I certainly didn't.

Q. But if somebody was speaking with Mr. Phelan, he is the person in many cases you could speak to, you would speak to about Mr. O'Brien's affairs, isn't that right?

A. Yes.

Q. And all of the information we have from the evidence that Mr. O'Brien's name was mentioned in connection with this matter comes from you, and you say all of the information you have comes from Mr. Phelan, isn't that right?

A. Yes.

Q. And isn't that a perfectly normal channel through which information about Mr. O'Brien's affairs might come?

A. Absolutely.

Q. Have you ever done dealings for Mr. O'Brien, where Mr. O'Brien, as do indeed many people, might desire in connection with any business dealings where Mr. O'Brien might not want his name used or mentioned?

A. Not so far as I am aware.

Q. Have you been involved in funding any of Mr. O'Brien's English ventures, property ventures when I say you, I mean Woodchester.

A. None that spring to mind. No, again not so far as I am aware.

Q. In the documentation that has been opened in connection

with this matter, there is a reference by

Mr. Christopher Vaughan, or there is a reference to a conversation, sorry, with Mr. Phelan, where Mr. Phelan mentioned that Mr. Christopher Vaughan was not at liberty to mention Mr. Phelan's name or Mr. O'Brien's name in connection with certain matters, including, for instance, a matter connected with Doncaster Rovers?

A. Mm-hmm.

Q. Did you know anything about a Doncaster Rovers deal?

A. Yes. I think we may have financed that. I am not sure.

Q. You think Woodchester may have financed it?

A. May have, yeah.

Q. I presume we can get access to the file to see

A. Absolutely.

Q. whether they involved themselves?

A. Yeah.

Q. Did you ever have dealings with Christopher Vaughan in connection with any affairs of Mr. O'Brien?

A. No.

Q. Insofar as you have any recollection of dealing with Doncaster Rovers, who did you deal with, Mr. Phelan or Mr. O'Brien?

A. I don't recollect dealing with Doncaster Rovers

Q. I am not suggesting that you were dealing with Doncaster Rovers. Insofar as you may have had any dealings with a Doncaster Rovers deal or raising money

for such a deal, who did you deal with, or can you recall whom you would have dealt with, Mr. Phelan or Mr. O'Brien?

A. I don't recall any dealings with Doncaster Rovers.

Q. But you think that the bank may have been involved in funding it?

A. They may well have been involved in it, yes. The name just rings a bell.

Q. I see. Do you remember discussing this matter with Mr. Morland just before, sometime shortly before Investec Bank came to the Tribunal with it, which was sometime in March, I think, in the boardroom?

A. I don't. There were many discussions around that particular point in time, so any specific I don't.

Q. But Mr. Morland's memory of those discussions is that you continued to refer to Mr. O'Brien's connection with it. I'll put it no more strongly than that.

A. Yeah, I don't remember the discussion about it.

Q. You see, it seems, Mr. Tunney, that it's only after you had discussed this matter with Mr. O'Brien that you first made it clear that it was Mr. Phelan who told you that Mr. O'Brien was behind the transaction?

A. Sorry, would you please repeat that, Mr. Healy?

Q. It seems that it was only after you had discussed this matter with Mr. O'Brien, which was on the

A. 13th March.

Q. Sorry, on the 13th March, on the 12th March or the 13th

March, I think, on the 13th March, that there is any record of you indicating that it was Mr. Phelan who had stated to you that Mr. O'Brien was involved, and not that you knew of your own knowledge that Mr. O'Brien was involved. Could that be right?

A. No.

Q. It couldn't be?

A. No.

Q. Now, I referred you yesterday to a section of Mr. Phelan's statement to the Tribunal in which he refers to this transaction. Remember that?

A. Yes.

Q. I think Section 7 of his statement, where Mr. Phelan said that he made it clear to you in the beginning that this was a Michael Lowry transaction, and you said there was no Michael Lowry connection with this transaction, as far as you were concerned, not a scintilla of a connection?

A. Yeah.

Q. And one of the things Mr. Phelan has said is that when he discussed the matter with you, it transpired that a suitable guarantor would be required to support the application?

A. Mm-hmm.

Q. Which seems to suggest that it was you who raised this issue with him and not the other way round?

A. No, my view is that it was quite the opposite way

around, in that he brought a guarantor to me.

Q. I understand that's what you said yesterday. But could I just ask you whether you mightn't be wrong in the sequence of events. Do you recall that this morning, when I mentioned to you what Mr. Morland had said concerning your discussion with him about Investec's appetite for credit?

A. Mmm.

Q. You agreed with me that what you were canvassing was, you know, how enthusiastic Investec were for credit or credit of a certain kind, and what they would require in order to interest them in a particular loan or proposal. Could it be that you had a discussion with Mr. Morland in which he indicated to you or may have indicated to you, "You better get a guarantor to support this," and that you then said to Mr. Phelan, "You'll need a guarantor for this"?

A. I don't believe so.

Q. I see. And I suppose that's because, on your evidence, you wouldn't be looking for a guarantor for Mr. Phelan unless he volunteered one, you had so much confidence in him at the time?

A. Yes. I had a lot of confidence in him, and then we also had the property as well, and so the guarantor was the added comfort.

Q. He says, in any case, that he was going to provide a guarantee, volunteer it?

A. Mm-hmm, yes. And in the normal course of a banking transaction such as this, I would have taken the view that I was very happy with Aidan Phelan's credit risk.

Q. I understand that, and you said that already, it was Mr. Phelan you looked to, then the property, and the guarantee was an added bonus that he had offered to you; you wouldn't look a gift horse in the mouth, and you took it?

A. Yes.

Q. Now, would I not be right in thinking that if somebody comes to a banker with a proposal and is a person in whom the banker has confidence, and the proposal is also a proposal in which the banker has confidence, and the borrower also suggested a guarantee, that you'd simply take the guarantee at face value? Do you understand me?

A. You are suggesting without doing all the checks and all of the other things?

Q. Correct.

A. We would always, as a matter of course, check out somebody, particularly that we didn't know, particularly as we were being offered a guarantee here and that would be the normal course.

Q. But if you were being offered the guarantee, if it was being volunteered to you, why would you bother checking it go out? It was pure icing on the cake, as far as you were concerned?

A. It was icing on the cake, but it would make good common sense in bank practice to check it out, and that would always be the way. Just as much as, you know, if anybody was involved in a loan facility, you'd always talk to them.

Q. But in this case, this wasn't something you yourself would have required. It came by way of a voluntary initiative from Mr. Phelan, according to your evidence, and I am just puzzled that you would go to the trouble of checking out the guarantor.

A. Well, the guarantee was going to be part of the credit application, so if you are going to be making a credit application to any Credit Committee, you will always need backup on the people who are involved.

Q. Now, is there any reason why, if you felt it necessary to check out Mr. Daly, why you didn't check out the company?

A. Because I viewed that as Aidan Phelan's company. I knew Aidan Phelan, had no difficulty there at all.

Q. And you didn't know this man at all?

A. No.

Q. You made contact with Mr. Daly, is that right?

A. That's correct, I had one phone call with Mr. Daly.

Q. Did you keep a note of that phone call?

A. I did not.

Q. And what was the purpose of the phone call?

A. The purpose of my phone call was to discover who

Mr. Daly was, and basically find out a bit about him.

Q. And how did you get his how did you make contact with him?

A. I made contact with him by phone, and the number was provided to me by Aidan Phelan.

Q. Were you here yesterday when Mr. Daly gave evidence that

A. I was.

Q. you contacted him by telephone, he certainly thought on one occasion, maybe two?

A. Yes, I contacted him once.

Q. And he said that when you contacted him, you stated that you were ringing in connection with Michael Lowry?

A. I did not. I indicated to him that I had been put in contact with him by Aidan Phelan.

Q. And you asked him how long he knew Michael Lowry, that's according to his evidence?

A. I did not.

Q. What did you ask him?

A. There was no mention of Michael Lowry whatsoever.

Q. Did you ask him how long he knew Aidan Phelan?

A. I asked him what his relationship was, and basically he explained to me that he was a property developer and he was looking at this scheme in the UK.

Q. Surely, as in the case of any guarantor, you'd want to know whether the guarantor knew the person whose debt was being guaranteed?

A. The reason that Aidan Phelan was bringing him, was he was a property developer and he had expertise in this area.

Q. What did his expertise in the property area have to do with a guarantee?

A. Because they were buying a site.

Q. But you were interested in his capacity to pay a loan if somebody didn't pay it, isn't that right?

A. That as well, but he was getting involved in some way in the transaction.

Q. How was Mr. Daly's skill or experience as a property developer relevant to whether he could pay on a loan or not?

A. Because he was coming in to the transaction, as I understood it. He was going to be part of the transaction in some shape or form.

Q. By that you mean he was actually going to have an interest in the party?

A. Some type of interest. We did not know what that was.

Q. And did you tell your partners that, that he was going to have an interest in the property? When I say your partners, your colleagues that, that Mr. Daly was going to have an interest in the property?

A. Well, we all knew that it was an interest that we hadn't pried into at all. Again, we looked to Aidan Phelan.

Q. And you certainly didn't ask him how long he knew Aidan

Phelan?

A. No, so far as I am aware, no.

Q. Wouldn't that be a normal question you'd ask a guarantor whom you had never met before?

A. Yes. Well, what I focused on was on the kinds of activities he was involved in, how long he had been involved in them, and what he was doing, and he referred to house building that he was undertaking at that particular time and other building that he had done in the past.

Q. Mr. Daly said that you asked him how long he knew Michael Lowry?

A. Incorrect.

Q. You certainly never asked him how long he knew Michael Lowry, and you didn't ask him how long he knew Aidan Phelan?

A. Not so far as I am aware. I could well have asked him that, I am just not aware.

Q. And if you had asked him that, he'd have said "I don't know him at all," isn't that right, because as far as we know, they didn't know one another?

A. So far as I now know, yes.

Q. You got documents from Mr. Daly, isn't that right?

A. Yes.

Q. Where did the documents come from?

A. Aidan Phelan, I understand. It was all organised through him.

Q. And these were to back up the loan application?

A. Yes.

Q. The credit application that you were sending to Investec for Investec, as opposed to Woodchester to stand over it?

A. Yes.

Q. And you got a guarantee from him?

A. From John Daly?

Q. Yes.

A. Mm-hmm.

Q. You heard the evidence of Mr. Daly yesterday that he had no interest in this transaction at all?

A. Yes.

Q. The guarantee, in any case, came in a standard, or was sent in a fairly standard form, is that right?

A. Correct.

Q. Who did you send it to?

A. Aidan Phelan.

Q. Why did you send it to Mr. Phelan?

A. Because he was the one who asked for all the documentation.

Q. And you asked him

A. And he would look after its completion.

Q. So you gave him the original guarantee?

A. Yes.

Q. And you asked him to get the original guarantee signed?

A. Yes.

Q. We now know that it wasn't signed, isn't that right?

A. That's right.

Q. Sorry, we now know, sorry, that it was signed, but only on a fax copy, isn't that right?

A. That's right.

Q. And not witnessed, and that the bank weren't happy with that?

A. Yeah.

Q. And I think you told me yesterday you didn't become aware of those problems until sometime in August of 2000?

A. That's right.

Q. So nobody told you that this guarantee was not satisfactory?

A. The original had not been signed, yes, and it was only later, then we discovered that it was never going to be signed, that John Daly had pulled out.

Q. That's what I am going to come to. It's not simply that Mr. Daly didn't sign it or have it witnessed, Mr. Daly ultimately refused to guarantee anything, isn't that right?

A. That's right.

Q. When did you find that out?

A. When I got the Tribunal's statement.

Q. Up until then you didn't know that he had actually refused to sign the guarantee?

A. No, I had no idea.

Q. Would you have taken any view of that, the fact that one of the parties to the transaction, not simply a guarantor, but a party had refused to sign a guarantee he had promised to sign?

A. Yes, obviously it is preferable to get your guarantee, but again, in this particular case, I was primarily looking to Aidan Phelan before I left the bank, and then obviously it was handled by other people subsequently, and they took their own view about that.

Q. And you left the bank sometime in

A. At the end of March I left the bank.

Q. And up to then nobody had said to you, "Mr. Daly is refusing to sign this guarantee"?

A. No, I had not been told that at all.

Q. And had you been told that, would it have had an impact on you?

A. Well, we would have, I am sure, and I am only surmising now, probably looked for something else, or may well have taken a view that we didn't need it, which obviously subsequently was the case.

Q. Mm-hmm. Mr. Phelan certainly never told you that the guarantee wouldn't be forthcoming?

A. No.

Q. And you certainly, obviously on your own evidence, never put him under any pressure to get this guarantee tidied up?

A. No.

Q. In Section 10 of his statement, Mr. Phelan says do you have a copy of his statement?

A. Yes, I do.

Q. "Subsequent to the drawdown of the loan, it transpired that Mr. Daly's guarantee was incomplete. It would appear that it had not been properly witnessed. At the request of GE Capital Woodchester Bank I requested Mr. Lowry to have Mr. Daly sign an original guarantee and have it properly witnessed. By this time, approximately mid-January, however, Mr. Daly had changed his mind and was not willing to sign another guarantee. This, it will be appreciated, left me in an embarrassing position, as I felt that he had encouraged GE Capital Woodchester to proceed with the transaction and they were now without appropriate security. I made my position very clear to Mr. Lowry, expressing my embarrassment to him. Mr. Lowry had no alternative proposals as a suitable guarantor and, accordingly, I felt that I had no option on a moral basis, but to become personally responsible to the bank in respect of it. I felt that I should do this in light of the long relationship, both personal and business, with Michael Tunney and GE Capital Woodchester. In these circumstances, Mr. Vaughan was instructed to hold the property in trust for myself. I told Mr. Tunney of this development, and he was indifferent to it. The property was from that date,

therefore, held by Mr. Vaughan and his wife as Trustees for myself. As a tidy-up measure at a meeting in August, 2000, with Mr. Vaughan it was agreed that Catclause would be struck off the register. As will be seen, this was in fact not done until a few days prior to the 28th February, 2001."

Now, Mr. Phelan states that he told you about this development, the fact that the guarantor would not provide a guarantee

MR. SHIPSEY: Sir, I am not sure that's what the statement says. This development is referring to the change in the previous sentence. I am not sure that's quite correct.

CHAIRMAN: Well, let me just see the

MR. SHIPSEY: The statement says, "In these circumstances, Mr. Vaughan was instructed to hold the property in trust for myself. I told Mr. Tunney of this development and he was indifferent to it."

That certainly suggests, on the basis of that statement, that this development refers to the instructions.

Q. MR. HEALY: We'll let Mr. Tunney explain that.

Perhaps you will explain what you understood by that?

A. What I understood by that was the change in the Catclause situation.

Q. Meaning?

A. Meaning that Aidan Phelan had mentioned to me at some stage already in the year that they were thinking of restructuring the deal, a short conversation, but I didn't hear any follow-up of it ever since.

Q. That was, of course, a piece of waffle, wasn't it, if Mr. Phelan's statement is correct, isn't that right?

A. What's a piece of waffle?

Q. Mr. Phelan has stated that this was a Mr. Lowry transaction.

A. As far as we were concerned, it was not. The name was never mentioned.

Q. And he was stating that when Mr. Lowry's guarantor wouldn't provide the guarantee, that he had to take over the transaction himself. Now, that is the development that occurred, according to Mr. Phelan.

Did he tell you that?

A. No. As far as we were concerned, Aidan Phelan was the person involved. Catclause was the company and John Daly was the guarantor. As far as I had not heard about the guarantee disappearing.

Q. I see.

A. What I had heard about, was that Catclause may need to be restructured.

Q. I see.

A. And that was not followed up, as far as I was concerned.

Q. But you were told that Mr. Phelan, according to Mr. Phelan's evidence, he told you that he was becoming involved and not the corporate vehicle because Mr. Lowry

A. We wouldn't have seen it that way. We would have seen it that oh, sorry. I beg your pardon. I see the point that you are making.

Q. I am not talking about your evidence, Mr. Tunney. From the point of view of the evidence that Mr. Phelan is going to give, he will say that was a Michael Lowry transaction from the very beginning, but now it became an Aidan Phelan transaction. If that's correct, wouldn't you have been expected to be informed of that?

A. Absolutely.

Q. It may have made a huge difference, wouldn't it, in the view you'd have taken of the transaction?

A. It would have made it a lot simpler.

Q. A lot simpler, of course it would, if you originally thought it was a Michael Lowry transaction?

A. We didn't think it was originally a Michael Lowry transaction.

Q. Yes, I appreciate that.

I don't think there is anything else I want to take up with you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GLEESON.

Q. MR. GLEESON: Mr. Tunney, can I just ask you a general question to start with. I think it's fair to say that Mr. Phelan was a very good customer of the bank over the years?

A. Absolutely.

Q. And I think you had a lot of dealings with him, both in a personal capacity and in a corporate capacity?

A. Yes.

Q. In the sense that Mr. Phelan had transactions personally and for corporate purposes, isn't that right?

A. Yes.

Q. And I think we have heard that he had transactions in which he acted for Mr. O'Brien and transactions in which he wasn't acting for Mr. O'Brien?

A. That's right.

Q. Isn't that right?

A. Yes.

Q. And I think it was a successful relationship that you had with Mr. Phelan?

A. Very successful.

Q. And I think you recall Mr. Cullen's evidence that none of the transactions involving Mr. Phelan went wrong or caused any difficulty?

A. That's right.

Q. And I think you were somebody who had frequent contact

with Mr. Phelan, isn't that right?

A. That's right.

Q. He was the person in the bank that you sorry, you were the person in the bank that he would have gone to if he had a banking requirement and if he thought that Woodchester would be in a position to assist; you were the point of contact, isn't that right?

A. That's right.

Q. Now, can I ask you in relation to just to begin chronologically, the meeting that you had with Mr. Phelan and Mr. Michael Lowry in the summer of 1999?

A. Mm-hmm.

Q. Can you put a date on that meeting, Mr. Tunney? I am not asking you for a precise date, just an approximate date.

A. July/August.

Q. July/August. And do you recall where this meeting took place?

A. I think it was the Radisson Hotel I think it was the Radisson.

Q. And was it a meeting can you recall, was it a meeting that took place during a working day?

A. Yes.

Q. Can you remember what time approximately the meeting took place?

A. No.

Q. Now, I think in answer to Mr. Healy, you indicated that

you were attending this meeting not as an executive of the bank, but in a personal capacity in some way.

A. I was attending the meeting because Aidan had asked me to attend and I knew him well.

Q. But presumably, the reason you were asked to attend the meeting was because you were an experienced banker?

A. Yes.

Q. So you were attending the meeting in a professional capacity?

A. Mm-hmm.

Q. And you were there presumably to offer the benefit of your professional experience, if you could?

A. Yes.

Q. And I think you told the Tribunal that the discussion at that meeting ranged through Mr. Lowry's personal financial situation and the difficulties that he was in?

A. Correct.

Q. And were you asked for your advice as to how he might get out of those difficulties or improve his situation?

A. Mm-hmm, yes, that was discussed.

Q. And can you I think you told Mr. Healy that your advice, in summary, was to make a settlement?

A. Mmm, yes.

Q. Can you just elaborate on what you meant by that?

A. What I meant was that he had some assets, he had a company, he had a lot of difficulties and just said,

there is no point in continuing on if you could do a settlement, just get rid of everything and start again.

Q. How do you mean "get rid of everything"? Can you just explain what you mean by that?

A. Yes. In other words, for the amount of difficulty he was having, money wasn't worth anything, and if it took everything just to settle everything, that was the best approach. Life is more important than that. He was a man under serious stress.

Q. Was there any discussion of any business proposals at that meeting?

A. No.

Q. Even of a tentative kind?

A. No.

Q. I see. But I think you did say to Mr. Healy that you came away from that meeting with the view that certainly Woodchester wasn't going to be overly anxious about giving Mr. Lowry a loan?

A. That's right.

Q. I think what you said, in fact, at page 123 of yesterday's transcript was, "We actually would not have been providing any assistance because there was nothing there that we would have provided assistance to"?

A. Yes.

Q. So you wouldn't have relished the prospect of having to persuade your colleagues in Woodchester that Mr. Lowry should get a loan?

A. It would have been a tough job, not having faced into that issue, but it would have been a tough job.

Q. And I think after that meeting you mentioned that you and Mr. Phelan did discuss Mr. Lowry's situation in some casual context?

A. When you say we discussed Mr. Lowry's situation, no, we didn't have a discussion about Lowry at all, other than Aidan was telling me that he was going to be meeting him again, so there was no content.

Q. I see. So he would just have said to you, "I am meeting Mr. Lowry," is that all he would have said?

A. It was a casual we were just having a casual chat over a drink.

Q. I appreciate that it was a casual chat, but it's important just to understand the context of this, Mr. Tunney. You had had a meeting, I suppose one might describe it as the type of introductory meeting that one might have with a new client, if it ever came to that?

A. It was in my view, it wasn't going to come to that.

Q. Yes. But after that meeting, there was a casual reference to him from time to time; would that be fair?

A. On this one occasion.

Q. Just one occasion?

A. Yeah, he may have mentioned him at other times, I don't recollect specifically, you know, so because I met Aidan regularly, we regularly had some drinks together.

Q. Now, coming up to the loan transaction, December, 1999.

Mr. Phelan approached you for the purpose of obtaining a facility, isn't that right?

A. Correct.

Q. And you may not recall, but I think Mr. Phelan had said that this meeting took place in his office. Do you recall that?

A. I don't recall it.

Q. You don't?

A. No.

Q. But I think you knew where his office was in Clonskeagh?

A. I know his office very well. I don't think he was in Clonskeagh at that stage, he was in Clonwilliam.

Q. And you would have been a frequent visitor to those premises?

A. Very frequent.

Q. Now, you have given evidence, Mr. Tunney, that Mr. Phelan offered a guarantee?

A. Mm-hmm.

Q. In connection with this transaction?

A. Yes.

Q. Now, I must straight away say to you that that is not Mr. Phelan's recollection of what happened. He will say that he didn't, in fact, offer to procure a guarantee.

A. Well, I am not aware of any other circumstance that's

different to my own.

Q. You see, can I ask you this: In your dealings with Mr. Phelan up to this point in the bank, had there ever been a third party guarantee in relation to any transaction initiated by Mr. Phelan?

A. I am not aware.

Q. Yes. Well, that certainly accords with Mr. Phelan's recollection, so that the suggestion, from whatever source it came, of a third party guarantee in this case was a new departure in your relationship. Would you agree with that?

A. Well, I would say that Mr. Phelan brought this to me.

Q. I appreciate that, but

A. So ...

Q. The fact that there was going to be a guarantee from somebody who was not involved or was not beneficially involved in the transaction was a new departure; it had never happened before?

A. No, I had never taken a third party guarantee before, but in the manner in which you are describing it, I disagree.

Q. Well, can you just clarify in what way you disagree with the manner I have described it? What have I said?

A. I am saying it was Mr. Phelan brought the guarantor to me.

Q. Mr. Phelan will say that that is not so, and I just

want you to look at the documents that were produced by the bank at that time. If you could firstly turn to page 2, I think it is, of the book of documents I am sorry, it's page 14 that I am looking at. It's the facility letter itself, Mr. Tunney.

A. Page 12 or page 14?

Q. It's page 14. I think that's where the facility letter refers to the security, isn't that right?

A. Oh, sorry.

Q. Do you see under paragraph 9 is headed "Security"?

A. Yes, I do.

Q. Now, that reads, "The facility, all interest thereon and all other sums payable to the bank in respect of the facility shall be secured in a manner satisfactory to the bank and its legal advisers as follows:"

And it refers to, firstly, the mortgage, and secondly, an unconditional guarantee of John Daly for all principal and interest outstanding.

Now, isn't that doesn't that mean that the bank is laying down as a mandatory requirement that there would be a guarantee? Isn't that so?

A. Well, that was what was offered.

Q. But the facility you are offering the facility on the basis that there shall be the following security; in other words, the bank is saying, "We must have a guarantee"?

A. No. What this letter is written as a result of is a conversation that we had with Aidan Phelan, and it is setting out the terms as were agreed between us.

Q. You see

A. And what we are using in that security section is standard banking language.

Q. Yes, I appreciate that, but isn't that, in fact, consistent with the bank requiring the borrower to give a guarantee?

A. Well, it was what was offered, so we are putting it in there.

Q. I see. Can I ask you to turn to page 1. This is a fax from yourself to Mr. Wohlman, and it says "Enclosing a credit proposal for Catclause Limited signed off by both Michael Cullen and myself. Tony Morland has not signed off as the front page was not prepared at the time he reviewed the credit with me. His only issue was that more detail be obtained on the net worth statement of John Daly."

Now, there is the bank, as it were, imposing a particular requirement in relation to this guarantee, isn't that right? There is a check being required in relation to the guarantee?

A. In terms of the construction of this particular transaction, the guarantee was offered, and therefore, we would look for the information on it.

Q. Well, can I ask you this: Why do you think Mr. if you are correct in your evidence that the guarantee was being offered by Mr. Phelan, you have already agreed with me that never before in any transaction involving Mr. Phelan was there a third party guarantor. Why do you think he was offering a third party guarantor in this case?

A. Because, as it had been explained to me, John Daly was a property developer and had some knowledge to bring in this particular area.

Q. But

A. And he was part of the transaction, although we had no information on that.

Q. Yes, but this was an Aidan Phelan transaction, according to your understanding of it?

A. Correct.

Q. And you had never been required to have a third party guarantee from in an Aidan Phelan transaction?

A. Mm-hmm.

Q. So why surely, it struck you as being most unusual that Mr. Phelan would offer a guarantee?

A. Mm-hmm

Q. Wasn't that unusual?

A. Not necessarily, no, because Aidan Phelan structured facilities for many people and that was his business, and so Aidan came to us with many transactions over the years in various shapes and forms, and the one thing I

would say to you, Mr. Gleeson, is that no two facilities are the same.

Q. But surely, in your experience as a banker, isn't somebody seeking funds going to try to negotiate the best possible deal or terms with the bank?

A. Absolutely.

Q. And if that means not providing a guarantee, aren't you going to accept the facility without a guarantee?

A. The fact we were offered a guarantee, as bankers we will take it.

Q. I see. You see, what I am suggesting to you, Mr. Tunney, is that this was a very unusual item for Mr. Phelan to be offering to you, if he offered it to you, and his evidence will be that the bank, that you, in fact, required the guarantee, but either way, it was very unusual. And he will say that his understanding of the requirement was because Mr. Lowry was involved in the transaction. Do you agree with that?

A. I completely disagree.

Q. And what Mr. Phelan will say at that meeting held in his office in December, 1999, he told you very clearly that Michael Lowry was involved in this transaction?

A. That's incorrect.

Q. Now, in relation to the guarantor, the proposed guarantor, Mr. Daly, I think you have already answered Mr. Healy. You have heard what Mr. Daly said yesterday?

A. Yes, I did.

Q. Mr. Daly gave evidence that he received a phone call from you, isn't that right?

A. That's correct.

Q. And you had never spoken to Mr. Daly before, had you?

Did you know who Mr. Daly was?

A. No, I didn't, other than what Aidan Phelan had told me.

Q. And how did you introduce yourself to Mr. Daly when you rang him?

A. I introduced myself as being from the bank and that it was Aidan Phelan who asked me to get in contact with him. And he knew immediately who I was. He was expecting the call.

Q. But you know, or do you know that Mr. Daly's only point of contact with this transaction was because he was a friend of Mr. Lowry's?

A. I know that now. I didn't know it then.

Q. You didn't know it then?

A. No.

Q. Did you ask Mr. Daly what he was guaranteeing or what he understood he was going to be guaranteeing?

A. Mr. Daly knew what he was guaranteeing.

Q. What was he guaranteeing?

A. He knew he was guaranteeing a loan facility to buy a property in the UK.

Q. Did he know who was going to be getting the loan?

A. A company called Catclause, and he was working with

Aidan Phelan on it.

Q. So he mentioned Catclause to you, did he?

A. Specifically by name, I don't remember, but he knew it was going to be a company vehicle.

Q. You see, from Mr. Daly's evidence, his evidence was that he was going to provide this guarantee as a favour to Mr. Lowry, isn't that right?

A. That's what I heard him say.

Q. And is it conceivable that you, as the banker initiating this loan, could have had a conversation with Mr. Daly without any mention being made of Michael Lowry? Is that conceivable?

A. Michael Lowry was not discussed in the conversation at all.

Q. I see. So are you saying on oath, Mr. Tunney, that you never discussed anything to do with this transaction with Michael Lowry?

A. Absolutely.

Q. Well, we'll have to wait to see what Mr. Lowry has to say about that.

And Mr. Phelan will say that not only did he tell you Mr. Lowry was involved in this transaction, but he will say that, in effect, you were doing him a favour by obtaining this loan facility. What do you say to that, Mr. Tunney?

A. Absolutely incorrect.

Q. I see.

A. The name "Lowry" didn't feature at all at any stage, full stop.

Q. And can I suggest to you this: That Mr. Lowry, Aidan Phelan will say, was getting this loan as a favour because your relationship was such with Mr. Phelan that he was able to ask you for a facility of this kind, even though you might not have wanted Woodchester to give Mr. Lowry any such facility, and that that is why the guarantee was there?

A. Mr. Lowry was not involved as far as I was concerned, full stop.

Q. You see, you have already told us this afternoon that you would have had great difficulty in persuading anyone in the bank to give Mr. Lowry a facility?

A. Correct.

Q. And that explains why, for the first time ever, there was going to be a guarantee to support this loan. Do you accept that?

A. Could you make that point again please, Mr. Gleeson?

Q. Yes. The fact that there was going to be a guarantee of an Aidan Phelan transaction, as you saw it, it was the first time ever that that happened, and the reason why that happened is because this was a facility which you were giving to Mr. Phelan for Mr. Lowry?

A. Absolutely incorrect.

Q. I see. You see, there is really no other explanation, having regard to your long relationship without any

such security, as to why security would be part and parcel of this loan transaction at this stage. Is there any other explanation for it? Sorry, I didn't hear your answer.

A. Sorry, I beg your pardon. As far as I am concerned, Daly was brought to me by Aidan Phelan, and that's the bottom line, and it was an Aidan Phelan transaction.

Q. Now, just in relation to Mr. Lowry's involvement, can I just put one related question to you. You say that you didn't know he was a director of Catclause until this was revealed to you, I think, towards the end of February, would that be correct, or was it sometime in March?

A. It was 1st March. 1st March.

Q. But of course we know that if anybody had bothered to do a company search in the United Kingdom, they would have immediately found Mr. Lowry's name on the register of Catclause Limited as a director. You accept that, I presume?

A. If we had done a search, we would have seen the name, but as we have pointed out, because it was Aidan Phelan, a good relationship, longstanding, we did not do that search.

Q. And if anyone had wanted to conceal Mr. Lowry's involvement in this transaction, the last thing they would have done would have been to use a company of which he was a director on the record; do you agree

with that?

A. That's true.

Q. Now, can I ask you in relation to Mr. O'Brien. I have to confess that I am somewhat confused myself as to the state of the overall evidence in relation to this topic. But as I understand it, you are saying that if you made references to Mr. O'Brien in December of 1999, it wasn't because he had any involvement with this transaction, but because you were mentioning him in some general context, isn't that right?

A. That's correct.

Q. And your evidence is very firmly to the effect that Mr. O'Brien had nothing at all to do with this transaction?

A. That's correct.

Q. Well, why was it necessary to mention his name, if he had nothing to do with it?

A. Because in terms of Mr. O'Brien, using a name like that certainly would do no harm. It was an added ingredient, but was not fundamental to the underlying credit.

Q. But this was an Aidan Phelan transaction.

A. Correct.

Q. And you were dealing with a customer that had never before required a third party guarantee, had a completely successful track record with the bank, so why was it necessary to mention Mr. O'Brien's name at

all?

A. It certainly helped the credit along in some small way, but in terms of the overall, Aidan was a very yes, I would agree with you, he has a very good, strong credit.

Q. Does that not suggest that you were concerned in some way about this transaction that led you to mention his name, even at the very start?

A. No, I was not concerned about the transaction because I had a lot of faith in Aidan Phelan, as I have mentioned.

Q. Why was it necessary to say something which you knew not to be correct, namely, that Mr. O'Brien had an involvement in this transaction?

A. Basically it was helping the process through, because everybody knew Denis O'Brien and it would have helped the process.

Q. But it wasn't necessary. On your own evidence, it wasn't necessary because Mr. Phelan was heading the transaction?

A. Well, I did use it and as I have said, I put my hands up in terms of using it.

Q. I accept that.

A. I don't think there is any issue there.

Q. You see, Mr. Tunney, that happened in December of '99.

At the very start of this transaction you mention

Mr. O'Brien's name, knowing that you shouldn't have

mentioned it?

A. Mm-hmm.

Q. And I accept that you are being candid about this, but that wasn't the only occasion that this happened. It happened again in February and March of this year, and it happened again in this year, when the bank was in a state of some panic about this transaction, isn't that right?

A. I don't know if I'd use the word "panic," but I wasn't

Q. There was a state of high alert about this transaction this year?

A. Mm-hmm.

Q. And I think that is the next occasion upon which you saw fit to mention Mr. O'Brien's name?

A. Mm-hmm.

Q. Isn't that correct, Mr. Tunney?

A. Mm-hmm.

Q. So that when things were getting sticky in relation to this transaction, outcomes Mr. O'Brien's name?

A. As I pointed out, the reason Mr. O'Brien's name came out was because it was mentioned to me by Aidan Phelan.

Q. Well, now, Mr. Phelan will say that he never said that to you.

A. I have seen that in his evidence, or in his statement.

Q. And he is absolutely clear about that as well, that he never said that Mr. O'Brien was involved in this

transaction. And do you accept that there isn't a single document in the bank which supports any involvement of Mr. O'Brien in this transaction?

A. There is no document in the bank that supports the involvement of Mr. O'Brien.

Q. I think you yourself have repeated several times here today that Mr. O'Brien was never involved in this transaction?

A. That's right.

Q. So how then do you say that this is what Mr. Phelan told you in February of this year?

A. Because it was he who mentioned it to me.

Q. And did you say to him did you not say to him immediately, "But that is nonsense. Denis O'Brien has nothing to do with this"? Did you not say that to him?

A. Well, the point I made during the day was that Denis O'Brien is behind Aidan Phelan.

Q. Well, I am not quite sure what you mean by saying "Denis O'Brien is behind Aidan Phelan." I don't really know what that means.

A. What I mean is that he is behind Aidan Phelan, the person.

Q. Well, we are getting in to a very loose form of terminology here, Mr. Tunney. If one person is behind another, what does that mean to a banker? Does it have some special meaning?

A. Well, what it means, in the way that I am saying it, is here you have somebody who is a generator of income for Mr. Phelan and also is a well-known supporter of him.

Q. But if this was said to you, beyond I don't accept that it was said to you, but if Mr. Phelan did say this to you in February of this year, how could you have given any credence to that suggestion, any at all, because your evidence consistently has been Mr. O'Brien has nothing to do with this transaction?

A. Mm-hmm.

Q. So how could this have how could this have formed any type of credible explanation for what was going on, when your consistent opinion was that it was wrong?

A. Mm-hmm.

Q. Do you understand the point I am putting to you, Mr. Tunney?

A. I am relaying back what it is that was said to me, in that Aidan Phelan is the person who raised that.

Q. Well, I mean, it's one thing to relay back what somebody else says, but you are not just a mere conduit, you had a long relationship with Mr. Phelan and with Mr. O'Brien. Here was a statement, you say, was being made to you. Surely, you are in a position to assess the merit of that statement and to make to exercise a professional judgement and not simply relay it?

A. Well, I believe I was exercising that professional

judgement.

Q. In simply relaying it without giving your own judgement on the merit of it?

A. Well, basically in terms of what Aidan Phelan was telling me, I have relayed today what my view of that was.

Q. You see, I must suggest to you, Mr. Tunney, that your recollection of this is not accurate, and that

Mr. Phelan will say very clearly that he never said

Mr. O'Brien was involved in any shape or form with this

transaction. And I must also put it to you that there

is no mention of Denis O'Brien at all in the statement

that you furnished to the Tribunal. I think you are

aware of that, are you, Mr. Tunney?

A. I am aware of that.

Q. And if that is something which you believe was important, wouldn't it have been in your statement?

A. Well, the reason Denis O'Brien is not in my statement

is that I did not see this as a Denis O'Brien

transaction.

Q. Yes, precisely. So that when somebody like Mr. Phelan

said it to you, you should immediately have challenged

him and said, "Look, this doesn't add up at all. This

is not my understanding of the situation at all."

And can I just put it to you, in relation to the two

conversations that are recorded by Mr. Wohlman, I think

we have been through these in great detail, the 12th and the 13th March. Can I just put this in context, Mr. Tunney. On the 12th March, this matter, I think in the bank anyway, had been the subject of a decision to refer it to the Central Bank and in turn to this Tribunal. I think you are aware of that?

A. Mm-hmm, that's right.

Q. And you were being contacted by a senior person in the bank, Mr. Wohlman, isn't that right?

A. That's right.

Q. And he thought it so urgent that he was ringing you on a skiing holiday to find out more information about this matter, isn't that right?

A. Mm-hmm.

Q. And you were the person who had initiated this loan at the very outset?

A. Yes.

Q. You must have felt responsible as the person in the bank who had initiated this, what was now a problem within the bank, did you?

A. I did.

Q. I am sure you did. And can I suggest to you that the references that you make in these notes to Mr. O'Brien were perhaps understandable, references intended to protect your position in relation to this transaction?

A. I don't understand what you mean by "protect your position".

Q. What I mean by that is that you were trying to respectablise (sic) this transaction by trying to connect it to Mr. O'Brien when things were going very wrong, as the bank saw it?

A. I disagree.

Q. I see.

Q. Now, can I ask you in relation to Catclause. I think you have seen that Mr. Phelan Mr. Healy brought this to your attention Mr. Phelan will say that in January of 2000, when Mr. Daly backed off the execution of the guarantee, he reported this development to you. Now, I think you did say that you had some contact with Mr. Phelan in that period?

A. I did, yes.

Q. And you referred to, I think, the restructuring of the loan?

A. That's right. I had one brief discussion with him and it didn't get raised again.

Q. Can you explain what you mean by a reference to the restructuring of the loan at this stage?

A. He indicated that he mightn't be using Catclause as the vehicle for going forward, that he might be using either himself or some vehicle going forward, but it was merely advising me that that was the way he was thinking. Nothing happened.

Q. So he told you that he mightn't be using Catclause, is that what you recollect?

A. Yes.

Q. Well, just to be fair to you, Mr. Phelan will say that he told you that the guarantor had backed off and that Catclause was no longer going to be used in this transaction.

A. There was no mention of the guarantor.

Q. There was no mention of the guarantor?

A. No, no mention of the guarantor.

Q. I see. Did you have a conversation with Christopher Vaughan at this stage, the solicitor who was dealing with the matter in England?

A. I don't recollect.

Q. You don't recollect?

A. No.

Q. I want to hand in a document. I don't know that it is a document which, in fact, was produced by the Tribunal yesterday. I don't know if everybody has a copy of this, Sir. It's a handwritten undated document I think we'll be able to identify its provenance. Does Mr. Tunney have a copy of this document? (Document handed to witness.)

Now, I think, in fact, it would be fair if we also handed out a letter, and I have copies of this it's a letter which was in Mr. Phelan's file to the Tribunal, although I don't think it's in the book of correspondence. It's a letter from Mr. Vaughan to Mr. Phelan dated 11th January, 2000. And it is in

the, I think it is in the possession of the Tribunal,
but it's in the book, I am told Ms. O'Brien tells me
it's in the book it's at divider 5. Yes, it's one
of the documents, I think, that accompanies
Mr. Phelan's statement. I think we all have
copies does everybody have a loose copy of this
document that I have handed out? I think it will be
preferable if we went to the letter first, because
it I think it helps to explain the handwritten note.

That's the letter. You will see it on the screen,
Mr. Tunney. It's a letter dated 11th January, 2000,
to Mr. Phelan and it's from Christopher Vaughan, and it
says:

"Dear Aidan,

Further to our telephone conversation I am writing to
confirm completion of St. Columbas Church took place on
the 21st December 1999, and I enclose a copy of the
completion statement. The handwritten notes at the end
are my workings out of the interest that had to be
paid.

Following the decision that Catclause Limited is no
longer the purchasing vehicle, the purchase is to be
registered in the names of myself and my wife who is
also a solicitor, as bear Trustees.

I have spoken to Michael Tunney in respect of the

transaction and I would like to meet you when I come to Dublin for the Notaries Conference. I will be staying in the Fitzwilliam Hotel."

I think you did speak to Mr. Vaughan, if that note is correct, Mr. Tunney. Does that

A. I have no recollection of it, but

Q. I see. Well the handwritten document appears to be headed "Michael T, St. Columbas," and it reads "AP now is to be owner of this site but mortgage to bank.

Do we have forms which could be used? I will be in Dublin early Feb, perhaps we could meet. Tried AP out." That appears to be, on the basis of the letter from Mr. Vaughan, Mr. Tunney, that appears to be a note of a conversation with you. Can you recollect whether you had such a conversation

MR. HEALY: I think it might be only fair if Mr. Gleeson would point out to this witness that Mr. Vaughan has not as yet agreed to give evidence, and in fact has not responded to any requests, recent requests from the Tribunal to do so.

CHAIRMAN: It's an aspect I was going to raise at some stage, Mr. Gleeson. Obviously Mr. Vaughan was your servant or agent for significant portions of the transaction that we are concerned with, and whilst I appreciate he is not compellable as an officer of the Court of the neighbouring jurisdiction, it is a matter

that I would have expected your good offices, in addition to the considerable number of requests that have been made by the Tribunal solicitor, that he attend and assist in the investigation.

MR. GLEESON: Yes, Sir. Well, I don't know whether I should respond at the moment in relation to that matter. I am aware that the Tribunal has been in contact with Mr. Vaughan, but certainly it's not within Mr. Phelan's power to compel the attendance of Mr. Vaughan, as is well-known. And

MR. HEALY: Mr. Phelan has of course provided a full waiver.

MR. GLEESON: And we have, in fact, invited Mr. Vaughan to come, so beyond that, there isn't much more that Mr. Phelan can do.

CHAIRMAN: Well, this purports to be a handwritten note compiled by Mr. Vaughan.

MR. GLEESON: Yes, it is

CHAIRMAN: It's not satisfactory, obviously, and certainly it wouldn't be acceptable in a court of law.

Is this the only document you are proposing to put emanating from Mr. Vaughan?

MR. GLEESON: Of this kind it is, Sir.

CHAIRMAN: Well, of any kind, I think, Mr. Gleeson

MR. GLEESON: Well, if I could just explain myself,

Sir. Obviously there is correspondence from

Mr. Vaughan in the Tribunal's own book of documentation

which the Tribunal itself is relying upon, and that is

perhaps understandable, and they are documents which

went to other people giving evidence here. I accept

that this document is subject to the infirmities that

you have just described, and I am in the Tribunal's

hands as to what I can or cannot do

CHAIRMAN: Having embarked on it, I'll let you put this

document. You appreciate that it's something I won't

be disposed to extend to any indeterminate number of

memos.

MR. GLEESON: I accept that, Sir.

MR. SHIPSEY: Just in relation to that, there is

another document which is in the Tribunal's book which

refers to a completion statement, and there is

reference in the letter of the 11th January to the

completion statement. And I think, for completeness,

if reference is going to be made to the letter and to

this document, it might be fair to the witness also to

have him shown the completion statement, which refers

to "Completion statement Aidan Phelan Catclaus

Limited."

MR. GLEESON: I have no difficulty doing that.

Q. Now, you don't recall this conversation, Mr. Tunney; hasn't that been your evidence?

A. I don't, no.

Q. But, in any event, you know that Mr. Phelan took over the transaction personally, isn't that right?

A. No. We always looked at Aidan Phelan, and then Catclause. In terms of Catclause going out of the picture, as far as we were concerned as a bank, it had not gone out of the picture.

Q. I see. So your understanding was that Catclause was still in the picture up to what

A. Right up to the end. It was there right up to the very end, and that, you know, in terms of this particular issue, if it was raised, it was certainly never followed through.

Q. Well, it is what you are now saying is, of course, inconsistent with the memo that we have just looked at.

I appreciate that it is not the most ideal form of document to be producing at this Tribunal, but I think you will accept, at least, that it is inconsistent with the evidence you have just given. I am not going to put it any further.

CHAIRMAN: I mean, obviously, Mr. Gleeson, elementary rules of fair procedure necessitate that oral testimony

prevail over an entirely unproven memorandum.

MR. GLEESON: Yes, I accept that.

Q. And I think you are aware that Mr. Phelan will say he took over the loan because of your long association, and he felt that he had a duty to ensure that this loan was taken over by him, having regard to that association and out of loyalty to you. That will be his evidence, Mr. Tunney.

A. Well, we are not aware of the loan being taken over.

Q. Well, I think you are aware that he repaid the loan ultimately?

A. Oh, absolutely. Oh, no, there is no question of that, he did.

Q. If you were looking back on this transaction, although a lot of the documentation was never put in place and it was, I think to use a neutral term, an untidy piece of banking, Mr. Phelan did ultimately pay it off and

A. That's true

Q. And all of the interest that had accumulated?

A. That is true.

Q. I just wanted to clarify another thing, Mr. Tunney. I am not quite clear what your evidence is in relation to when you became aware that the guarantee had not been provided or was not going to be available to the bank.

A. I was aware that the guarantee had not been provided the original guarantee had not been provided after the summer of 2000.

CHAIRMAN: I think August was the

Q. MR. GLEESON: August of 2000.

A. And in terms, then, of John Daly not giving it, I discovered that from the Tribunal evidence, or from his statement to the Tribunal.

Q. Well, when you discovered in the summer of 2000 that the guarantee hadn't been provided, did you reflect upon what that might mean in terms of the overall transaction?

A. From what sense?

Q. Well, in the sense that it was a requirement of the bank that there would be a guarantee?

A. Yes.

Q. And by the summer of 2000, the loan was due to be repaid, I think by the end of July?

A. That's right.

Q. And having found out that the guarantee hadn't come through, did that cause you to reflect in any way about the bank's position on this loan?

A. I know it was certainly an issue that exercised the bank's mind, and it was something that we gave thought to, but subsequent to that, as you will recall from other evidence given, it was decided that we were comfortable with the risk of Aidan Phelan.

Q. Just to clarify what Mr. Phelan's evidence will be in relation to that. For the final time, he will say

that in January 2000 he told you that the guarantee that the guarantor was backing off, that Catclause were no longer going to be in the equation, and that he was going to take over the loan. I know you don't accept that, but I am just putting to you what his evidence will be on that.

A. That's right.

Q. He will say that that was in the course of a conversation he had with you at that time, and that you were indifferent to the fact that Catclause was dropping out of the equation. He will say it didn't cause you any worry.

A. It wouldn't have caused me any worry if a new proposal was properly structured and it all made sense. And that was not followed through on.

Q. Thank you, Mr. Tunney.

CHAIRMAN: I understand some questions may be addressed on behalf of Mr. O'Brien. It's late to start that particular aspect. Mr. Barniville, if you have some limited number of matters to raise, how long do you anticipate?

MR. BARNIVILLE: I would say two or three minutes. I have a very, very short number of questions

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARNIVILLE:

Q. MR. BARNIVILLE: Mr. Tunney, I appear for Mr. Lowry,

and there is just one issue I wanted to raise with you,
and that concerned your telephone conversation with
Mr. Daly. When do you say that telephone conversation
took place?

A. Just before Christmas.

Q. In December, 1999?

A. Yeah.

Q. And I have to put to you what Mr. Lowry's evidence in
relation to that conversation will be. Mr. Lowry
says, Mr. Tunney, that you telephoned Mr. Lowry and
that you asked him for financial details concerning
Mr. Daly. Do you accept that?

A. That's incorrect.

Q. And Mr. Lowry will say that he told you that rather
than being caught in the middle, that you should
telephone Mr. Daly yourself. Do you accept that?

A. I do not.

Q. And that Mr. Lowry will say that he gave you Mr. Daly's
telephone number?

A. That's incorrect. Aidan Phelan gave me Mr. Daly's
telephone number.

Q. And in turn it appears that you telephoned Mr. Daly.
Now, do you accept, Mr. Tunney, that if that is
correct, it indicates that you were well aware of
Mr. Lowry's involvement in the transaction?

A. It's not correct.

Q. If it's correct?

A. It is not correct.

Q. Thank you.

CHAIRMAN: Very good. We will have to conclude your evidence then, Mr. Tunney, to the start of next week.

I understand, Mr. Healy, that what is proposed is that one witness who has to travel for the hearing is to attend on Monday morning

MR. HEALY: I think it was envisaged as well that Mr. Tunney could come back on Monday afternoon. I think that

CHAIRMAN: I think it is envisaged, and that Mr. Phelan's evidence will commence not before eleven o'clock on Tuesday morning, and that Monday will be the fresh witness, one other short witness and the balance of Mr. Tunney's evidence.

Very good then. We will sit then on that basis on Monday at eleven o'clock.

In conclusion, may I just say, I have deliberately relaxed appreciably the constraints on cross-examination which have been utilised with reasonable effectiveness for the vast preponderance of Tribunal sittings, since we embarked upon public hearings. I do this because I am conscious that apart from the matters being inquired into, there are people

of significance in the city's commercial life whose reputations do have to be carefully looked to. At the same time, whilst I am anxious to maintain proper and fair procedures, I am equally keen that we do make the maximum of despatch in the course of next week in, if at all possible, seeking to finalise the remaining evidence on this particular issue. And whilst I do not, with any relish, envisage having to curtail particular cross-examinations or invoke any additional cost jurisdictions, I will hope that it may be possible that we can make marginally greater despatch in the course of next week's hearing.

Very good. Monday at eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL MONDAY, 30TH JULY
2001 AT 11AM.