

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, THE 23RD DAY
OF JULY, 2001 AT 11 A.M.:

MR. HEALY: Mr. Dermot Desmond, please.

MR. HOGAN: Just before Mr. Desmond enters the witness
box, might I just mention two matters. First,
Mr. Desmond would like to thank the Tribunal for
facilitating him in this regard. Secondly, Sir, you
recall that we have got a ground of limited
representation from the Tribunal already but that
concerns other aspects and modules of the Tribunal and
just to be on the safe side, I am respectfully asking
that the grant of limited representation be extended to
this module, insofar as that's necessary.

CHAIRMAN: I doubt if it needs an order, Mr. Hogan. I
think when you and your solicitor, or he is here, and
he has cooperated with the Tribunal in providing a
statement for today's evidence, I think it necessarily
follows from that that the existing limited
representation extends to these aspects.

MR. HOGAN: I am very much obliged, Sir.

CHAIRMAN: Thank you for your further attendance,
Mr. Desmond, please sit down. You, of course, are
already sworn.

DERMOT DESMOND, PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Mr. Desmond, do you have a copy of the Memorandum of Evidence?

A. I do.

Q. Now, as I am sure you are aware, the Tribunal's interest in what you have to say in connection with this aspect of the Tribunal's work extends from the fact that there were, essentially, and you can agree or disagree as you wish, three partners or main shareholders in the ESAT Digifone consortium, namely, Denis O'Brien, Telenor and your company, IIU?

A. Correct.

Q. And we have heard from Mr. Arve Johansen, indeed maybe again, and we have heard from Mr. O'Brien and you are the third partner, if you like, in the co-venture.

You say that you were a shareholder in ESAT Digifone through the company IIU Nominees Limited and you were also a director on the board of the company with Michael Walsh on behalf of IIU Nominees Limited. But all of IIU's shares were held for you, is that correct?

A. Yes.

Q. I first heard of Barry Maloney's concerns that Denis O'Brien may have made a payment to Michael Lowry after Michael Walsh met with Denis O'Brien and Barry Maloney on the 13th of October 1997. I was extremely surprised that Barry Maloney had not brought this matter to the

attention of the board when the issue first arose. I asked Michael Walsh to find out what happened and to ensure that ESAT Digifone and its board were fully protected and indemnified. Whilst I initially had some involvement in this matter, it was mainly dealt with by Michael Walsh on behalf of IIU Nominees, who would have kept me apprised of developments."

You go on to say: "I did not keep records or notes of any of my meetings and telephone conversations at the time and cannot recall specific details. I read Michael Walsh's statement and I confirm that it reflects my understanding of what happened insofar as IIU Nominees Limited's involvement is concerned.

I cannot recall the specific detail of telephone conversations with Barry Maloney but I have read his handwritten notes of telephone conversations on the 14th and the 17th of October 1997 and I do not dispute the general contents of his notes.

When this matter first arose, I was extremely concerned that ESAT Digifone would be fully protected. I was satisfied with the investigations that were carried out at the time and the steps taken on foot of those investigations. I first became aware"

CHAIRMAN: Slower, Mr. Healy. I know we have statements.

MR. HEALY: "I first became aware of the payment of \$50,000 by Telenor to David Austin on behalf of Fine Gael in October of 1997. I would have been informed of the detail of it by Michael Walsh. I did not know that Telenor had approached the Fine Gael party until Fine Gael returned the cheque to Telenor and Telenor sent the cheque to ESAT Digifone in March of 1998."

If I could just ask you to look at the second last paragraph of your Memorandum of Evidence, Mr. Desmond, when you say that "When this matter first arose, I was extremely concerned that ESAT Digifone would be fully protected and I was satisfied with the investigations that were carried out at the time and the steps taken on foot of those investigations."

Now, the two issues that arose at that time, or the two main issues that arose at that time with which the Tribunal is concerned are the \$50,000 payment and the remarks made by Mr. O'Brien to Mr. Maloney concerning two payments of $\frac{1}{2}$ 100,000, isn't that right?

A. I was only aware of one payment of $\frac{1}{2}$ 100,000.

Q. Were you aware of remarks made by Mr. O'Brien that he had made two payments?

A. I don't recall it.

Q. This comes as a surprise to me. I am not trying to trap you or anything, but are you not aware that the issue that arose at the time concerned remarks made by

Mr. O'Brien to Mr. Maloney to the following effect: "I had to make two payments of $\$100,000$ each, one to Michael Lowry."

A. That might have been the case, but it was in my head it was $\$100,000$ but I didn't know whether it was one or two payments and I always understood it was one payment.

Q. To this day were you not aware that there were two payments involved?

A. No.

Q. Is that not a matter of some concern to you that there was this fairly, I suppose, tension-filled time in 1997, when this matter was being investigated and you weren't aware that the statement made by Mr. Maloney concerned Mr. O'Brien's having stated that he made two payments?

A. I was aware of the allegation that Barry Maloney's allegation that Denis had said that he had made - he had made a payment of - made a payment of $\$100,000$. I didn't know it was two payments.

Q. I see. Just to deal with one other aspect of this. You are aware that Mr. Maloney stated that he had had a conversation with Mr. O'Brien and there is no dispute about that, Mr. O'Brien agrees that he had the conversation?

A. Absolutely.

Q. And then that conversation took place in 1996. We

won't go into the precise dating of it in '96. Then in '97, again we won't go into the precise dating, the matter came up again.

A. Mm-hmm.

Q. And at that point a further complication arose, in that according to Mr. Maloney, Mr. O'Brien stated that he had intended to make a payment, but that the payment had got stuck with an intermediary and again I think there is no dispute about that, although there may be some slight dispute about the use of the word "intermediary"?

A. Mm-hmm.

Q. Subsequently, Mr. O'Brien said that the intermediary, in this case with whom the payment got stuck, was Woodchester Bank?

A. Mm-hmm.

Q. And he made it clear that while he had intended to make the payment, he never actually made it. His explanation being that it got stuck with an intermediary?

A. Yes.

Q. You are aware that that seems to be the common ground between himself and Mr. Maloney as to what had happened?

A. Yes.

Q. He also says that the remarks he made to Mr. Maloney were made after he had decided not to make the payment,

but that he nevertheless made them in some form of or as some kind of bravado to cajoling Mr. Maloney into making payments to, such payments to a number of individuals. Are you aware of that?

A. Yes.

MR. HOGAN: Just one - I am not sure that I heard Mr. Healy correctly, but - and the witness may possibly have been confused by what Mr. Healy had to say. I trust Mr. Healy is making it plain that the suggestion was of a $\$100,000$ payment to Michael Lowry, there was only one such payment. Just to be clear.

CHAIRMAN: Well, it might be well that we just do finalise that yes.

Q. MR. HEALY: From the evidence that you've given already, Mr. Desmond, you couldn't have been under any impression other than that there was a $\$100,000$ payment to Michael Lowry involved, because you weren't aware until today that there was a second payment, isn't that right?

A. Yes.

MR. HOGAN: Again, just to be absolutely clear, Mr. Healy might make it plain that there was only a suggestion of one $\$100,000$ payment to Mr. Lowry.

CHAIRMAN: I think that is perfectly clear, all right,

Mr. Hogan. I'm sure you can resolve these matters if you come to examine in due course.

MR. HOGAN: I apologise.

CHAIRMAN: Yes.

Q. MR. HEALY: As I understand it from the evidence that has already been given, and we don't need to go into it all in detail, your review of this is that you either believed Denis O'Brien or you didn't, is that right?

In other words, the issue for the people involved was do you believe Denis O'Brien or don't you believe him?

A. Well, I think the first thing is to put it in context, when this allegation was made. This allegation was made at a time that ESAT Telecom were planning an IPO.

Q. Mm-hmm.

A. And also a delegation was made a year previous, prior to this. And I felt right from the outset there was quite a lot of tension between Denis O'Brien and Barry Maloney, it erupted on a number of occasions at the board, and I felt that it was opportunistic of Barry to raise this at this stage. Why didn't he raise it if he was concerned about it in the interests of all stakeholders? Why didn't he raise it in his previous but again we sought legal advice and there was certain recommendations made to carry out investigations by the accountants into payments by Digifone, and we followed that advice and then as there

was no evidence to contradict that, that's when I

accepted Denis's word .

Q. The investigations that were carried out were, I think,

Barry Maloney checked the Digifone accounts and KPMG

may also have carried out some checks, is that right?

A. Yes.

Q. There was a cheque, then, into dealings on

Mr. O'Brien's Woodchester accounts, isn't that right?

A. That's my understanding.

Q. Those checks were designed to scrutinise movements on

the Woodchester accounts above a certain threshold, I

think $\frac{1}{2}$ 25,000?

A. Yes.

Q. The idea being that you would catch a payment of

$\frac{1}{2}$ 100,000 or a number of payments of $\frac{1}{2}$ 25,000 to one

person where in the aggregate they came to $\frac{1}{2}$ 100,000.

And you were aware that both the ESAT Digifone board

and the ESAT Telecom board were, to some extent, in the

case of some directors, to a lesser extent in the case

of other directors, dependent on the result of these

investigations?

A. Well, certainly if the investigations turned up

payments, you know, they would support the allegation,

then therefore we would have to carry it further.

Q. I just want to get clear one thing, in fairness to

Mr. Maloney, Mr. Desmond. I don't think it's an

allegation. There has been no dispute, as far as I am aware, that the remarks reported by Mr. Maloney were, in substance, made, isn't that right?

A. Yes.

Q. So what the board were investigating was Mr. O'Brien's version of events, isn't that right?

A. But Mr. O'Brien has said, told us, and confirmed in writing, that he didn't make any such payment. It was bravado, it was to spur Barry on to making his success payments.

Q. I think there may be some confusion, Mr. Desmond. Mr. O'Brien stated that he did intend to make the payment. He said he went so far as to take certain steps, but that the payment got stuck with an intermediary. Do you understand that?

A. Yes.

Q. So his version of events was, "Yes, I did intend to make the payment. Yes, I did something about it but it got stuck with an intermediary and it never actually went through, it never went beyond that." And he then said the intermediary was Woodchester.

Now, that, it seems to me, was the version of events that was being investigated by ESAT and - ESAT Digifone and ESAT Telecom. Were you aware of that?

A. Well, first of all, I said in my statement, I didn't attend very many meetings.

Q. Yes.

A. The key element in relation to Barry Maloney was I asked Barry did he believe was payment made, and he said no. That's one. Second of all, is that there was no evidence to support a payment being made to Lowry and thirdly, Denis confirmed he didn't make any payments. Now we are investigating something where the person that heard Denis's words on this famous run, confirmed that he didn't believe a payment was made. Denis confirmed in writing that a payment wasn't made and that there was no support from any investigation by solicitors or the accountants that any payment had been made.

Q. But it would appear that some steps were taken to make a payment?

A. I don't know.

Q. Well, Mr. O'Brien said that he went so far as to involve an intermediary whom he described as Woodchester and that the payment got stuck with Woodchester. You are aware of that?

A. I am aware of that.

Q. And I assume that - it seems to me from the evidence, that what Mr. Maloney was saying, was that he accepted that explanation that the payment didn't get beyond Woodchester, or whoever the intermediary was?

A. Mm-hmm.

Q. But do you recall a concern at the time that Mr. O'Brien's explanation that the intermediary was

Woodchester was a somewhat unusual one?

A. I don't recall.

Q. Would you not agree if you described a payment as being stuck with an intermediary, in the ordinary way, that wouldn't mean it got stuck with a bank, your own bank?

A. Well, your initial interpretation is an individual.

Q. Or an entity?

A. Or some entity.

Q. Somebody that you give something to to give to somebody else, or somebody that you involved to intervene in a transaction and to take it on to another stage. Isn't that right?

A. I was never focusing on the word 'intermediary'. I was focusing on whether a payment had been made or not. And was there a payment made on behalf of Digifone, ESAT Digifone?

Q. Mm-hmm. There doesn't seem to be any doubt but that when it was - when the payment was contemplated by Mr. O'Brien, that he was contemplating helping Mr. Lowry out because he felt Mr. Lowry had done the right thing, had acted fairly in relation to the second GSM licence, isn't that right?

A. That's pure speculation. I wouldn't comment on that.

Q. Well, I think that's what he stated himself?

A. Well, I don't know, I didn't hear him say that.

Q. Could there be any doubt but that was the connection, the troublesome connection between a payment of this

kind and the flotation of ESAT Telecom?

A. Well, I was absolutely certain at the time, as I am now, that Mr. Lowry could not have influenced the granting of the licence.

Q. I see. Were you aware that the investigation carried out in Woodchester was not as complete as it should have been?

A. I didn't go into the process of the investigation.

Q. Would you be concerned if you learned that at the time there was a substantial movement of around £400,000 out of a Woodchester account controlled by Mr. O'Brien at this time, which did not come up in the investigation?

A. Well, they indicated that the investigation wasn't completed. That's all I could comment

Q. Isn't that something which, if you'd been aware of at the time, would have caused some concern to you?

A. Well, I would have asked for it to be investigated and if it was relevant -

Q. Sorry?

A. I would have asked for it to be investigated.

Q. Yes.

A. And if it was - if it was relevant, well then maybe I would have been concerned. If I wasn't, naturally I would have dismissed it.

Q. Of course. But if you had asked for it to be investigated and you subsequently found out that this payment had been made but you hadn't been made aware of

it, and the other directors hadn't been made aware of it, would that give you some concern about the nature of the investigation?

A. Again, we are talking theoretical basis.

Q. No, we are not. This is a fact.

A. Okay. Are you saying it was concealed purposely?

Q. I don't know.

A. Well, I don't know. Therefore, I can't comment on it.

If it was concealed purposely, well then I would have a certain view. If it was something that was an oversight, well then - and that's another matter.

Q. Absolutely. So if there was this other payment, then obviously it stands to reason you would have wanted it or the other directors would have wanted it examined and scrutinised to see was it one that gave rise to any queries or concern. But in addition, as you say, you'd want to know was this oversight accidental, was it because somebody in the bank didn't carry out as wide a check as they should, or was somebody aware of this and did they, in fact, fail to or omit to bring it to the attention of the board? That, in itself, would be an important factor, wouldn't it?

A. Yes.

Q. You say that you only became aware of the \$50,000 payment, the Telenor \$50,000 payment in October, around the time of the - the same time as the $\frac{1}{2}$ 100,000 investigation was being carried out?

A. To the best of my understanding, that's the case, yes.

Q. And you were aware at that time, presumably, that the account that was given of this transaction, or this payment, was that a Mr. David Austin was the person with whom Telenor made contact on the instructions of Mr. O'Brien. David Austin received the money, put it into an account of his in the Channel Islands and, according to him, he subsequently sent it on to Fine Gael. That was the explanation that was given?

A. Yes.

Q. You were not aware at that time that it had, in fact, remained in David Austin's account for well over a year?

A. No.

Q. And you were not aware at that time that it did not go into Fine Gael as a Telenor payment, as an ESAT Digifone, as an ESAT Telecom, or as any other kind of payment, but only as a payment from David Austin, you were not aware of that -

A. Correct.

Q. And if you had been aware of those things, would they have given you at least a concern that this matter required more investigation?

A. Well, I didn't know - I wasn't part of the payment. We weren't advised of the payment at that period.

Q. Yes.

A. We didn't know the circumstances of how the payment was

directed or routed through. My only concern would be that if it ended up at Fine Gael, whatever circuitous route, it didn't really matter to me.

Q. So even if you had learned at the time that it had gone to David Austin, had stayed in his account for a year and a bit and had then gone to Fine Gael under a different name, it wouldn't have worried you?

A. No.

Q. And if you had also learned that, in fact, David Austin had been told by John Bruton, the leader of Fine Gael, that he didn't want the money, but he had nevertheless put it into Fine Gael under an assumed name, would that have concerned you?

A. I had no concern if there was a political contribution being made on behalf of Telenor and then reimbursed by ESAT Digifone, and it's for Fine Gael to accept or not accept it.

Q. But it was a political contribution that was being made in a concealed way and by a concealed route, isn't that right?

A. I wasn't aware at the time -

Q. Of course you weren't. All I am saying, if you were aware, isn't that a further thing that you'd have wanted investigated?

A. Well, I'd have said if I knew at the time, well, just send them the cheque directly out of the Digifone account. Why go a circuitous route? Like, I haven't

been able to talk to - unfortunately, talk to David Austin, but - so I don't know the reason - the background. But my concern at the time, when I heard about it, did Fine Gael get the \$50,000? And I was told that they did, because they returned the money. So if they returned - if they are returning something, they received it.

Q. I think you are getting two times mixed up, Mr. Desmond. That is true, you found that out in 1998, but in 1997, at the time of the IPO, there was no query addressed to Fine Gael. Do you understand me?

A. Okay.

Q. At the time of the IPO, the very question that you would have wanted answered - did Fine Gael get the money? I can well understand that if you were told, 'yes, Fine Gael got the money, they have given us the receipt,' you mightn't ask another question -

A. I can't, because I haven't specialised in this subject. I have kept out of this area. But the only questions I did ask at the time was that, you know, simple things: let's get confirmation that they received the money.

Q. Well, you are asking the question or you did ask the question then, Mr. Desmond?

A. I am absolutely sure I did ask the question.

Q. I am not criticising you at all. It's the question the Tribunal has been asking, why wouldn't somebody have picked up the telephone and said, 'look, we've mislaid

a receipt and we can't find a receipt, could you tell us or confirm to us that you got a payment from Telenor of \$50,000 or from ESAT or anybody connected with \$50,000' and that might have solved all the problem, wouldn't it? In fact, that is not what was done.

Mr. Austin was approached and Mr. Austin provided a statement to the effect that he had paid the money to Fine Gael, but in that statement he did not alert the people involved in the IPO to the fact that John Bruton had told him he didn't want it, that it was in his account for a year and a bit, and that when he did put it in, he put it in under a false name, under his own name, when in fact it was a Telenor or an ESAT contribution. Now, those are facts that were not brought to your attention at the time.

A. Mm-hmm.

Q. And the simple question that you wanted answered was never addressed, isn't that right - did Fine Gael get the money? And what I am suggesting is that - I think I am right in saying your answer would be, at that time that would have been the investigation you'd have wanted carried out, or anybody, into getting to the bottom of this quickly, would have wanted carried out, isn't that right?

A. Yes.

Q. At that time, the $\frac{1}{2}$ 400,000 movement from Woodchester that I mentioned a moment ago, included a movement of

€150,000 to David Austin, who was the same person who was involved in the Fine Gael transaction. If you were aware of that, is that not also something you'd have wanted, at least to be clarified before you exposed yourself in the IPO?

A. Well, I would have - I would have asked for David Austin's confirmation that monies had been paid to Michael Lowry. That's all I could have expected.

Q. But at the very least, you'd have taken that step?

A. Well, I would - it would be an obvious thing to look at.

Q. Now, you, I think, yourself and Michael Walsh, took the step of insisting that the three parties, if you like, in ESAT Digifone would write cross letters to one another confirming that they had done nothing which could imperil the licence, isn't that right?

A. Yes.

Q. Now, from Mr. Maloney's point of view, he was aware at this time that - or he was concerned at this time that an intermediary was involved in all of this who might not have been Woodchester, that some other person was aware of all of this. Isn't that right? That was one of his concerns.

A. That's my understanding.

Q. And if somebody else was aware of this or possibly aware of it, or potentially aware of it, that person would have been aware of an attempt to make a payment

to Mr. Lowry, isn't that right, and an attempt to make a payment to Mr. Lowry is something that could have affected the licence, isn't that right?

A. It certainly - that's a question - I don't believe, as I said earlier on, I don't believe that Mr. Lowry could ever affect the licence or affect Digifone, and that was confirmed at the time by Barry Maloney. We would have a strong view.

Now, again - so I can't believe that a payment, therefore, to Mr. Lowry could have affected a licence, but I believe Mr. Lowry didn't have the power. But it certainly would have tainted the public perception of the independence of granting the licence.

Q. It certainly would have had that effect?

A. Yes.

Q. And for any minister or member of the government, even if he didn't have something in his power, to give the impression he had something in his power in return for money would itself be a dangerous and tainting act, wouldn't it?

A. It would.

Q. Now, Mr. Lowry, and this something we'll come into greater detail later on, did, of course, have the power to actually grant the licence, isn't that right? He was the minister who formally granted the licence, isn't that correct?

A. Yes.

Q. And the licence process, if I can call it that, was in two stages. Firstly, you have the competition, which resulted in a recommendation to the Minister, and then the minister entered into negotiations with the winner of the competition who got this recommendation and took a further, I forget, six months or so before he was able to issue a formal licence to that winner, isn't that right?

A. Yes.

Q. So the Minister's department was involved in that process in two phases. Firstly, in a competition which was conducted by the Department, with the assistance of, and major involvement of an independent consultant, isn't that right?

A. Yes.

Q. But the second part of the process involved much closer contact with the Department alone, isn't that right?

A. The negotiation of the licence?

Q. Yes.

A. Yes.

Q. So the Minister did have a greater role in that, isn't that right?

A. Again, I didn't participate in that process.

Q. I appreciate that. I am just saying you are aware of it?

A. Well, the Department, naturally, are going to be

involved in the civil servants.

Q. Thanks, Mr. Desmond.

CHAIRMAN: Mr. McGonigal, anything you want to raise?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Just one matter, Mr. Desmond. In December of '96, I think, Mr. Maloney handed in a resignation to the company. Can you recollect that event?

A. I can't.

Q. And at that time I think you, on behalf of the company, were involved in trying to resolve it?

A. Yes I can.

Q. Was that a significant moment for the company at that particular time?

A. Yes.

Q. And so far as picking a moment was concerned, had Mr. Maloney picked a good time to put pressure on the company?

A. It was a period where Digifone were raising funds to finance the capital expenditure programme and naturally, therefore, the bank would be concerned if there was a resignation of a chief executive of the caliber and of the capabilities of Barry Maloney.

Q. Now, I think in his evidence Mr. Maloney indicated that he resigned because he wanted to preserve a friendship with Mr. O'Brien and that was his main reason. Would

you have any view on that?

A. My recollection of - the two principal reasons could be - I didn't meet with him and discuss with him and didn't try to induce him to come back to run on an interregnum basis, Digifone. The two reasons, one was that he was concerned that Digifone was going to be run as a separate entity away from ESAT Telecom. And we shared the same thing, because we were shareholders of ESAT Digifone and not ESAT Telecom so we had no interest. So we said we would ensure that independence, as we always had. And a second then was that he had difficulty, he felt that the package that he agreed with John Callaghan was being renegeed on and he wanted to get that clarified and implemented. He felt the spirit of that agreement wasn't being honoured.

Q. In hindsight, Mr. Desmond, assume for a moment that Mr. Maloney had believed there was some substance in the conversation which he had had on the run with Mr. O'Brien, would you have considered that, that is December '96, as having been an appropriate time to have raised that issue at that time?

A. I would.

Q. Thanks, Mr. Desmond.

CHAIRMAN: Mr. Ftizsimons.

MR. FITZSIMONS: Just one minor matter.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Desmond, I am not sure whether it was a slip of the tongue, but when you were asked about the \$50,000 contribution, you used the words "that contribution was made on behalf of Telenor and later reimbursed by ESAT Digifone." You are aware of the fact that there is a dispute between Mr. O'Brien and Telenor as to the process or the basis for this contribution. Telenor contend that they made the contribution at Mr. O'Brien's behest on behalf of ESAT Digifone.

A. I am aware of that but as we were shareholders of ESAT Digifone, I would have thought that Telenor would have also communicated with us that they were going to make the payment and ask for our approval that that payment be made.

Q. Do I take it, then, this was not a slip of the tongue when you said that the contribution was made on behalf of Telenor?

A. Well, in the first instance, it was Telenor took - made a payment themselves directly without communicating with the others, but all the other shareholders of ESAT Digifone -

Q. Were you aware of the fact that Telenor made the payment, but your phrase was that 'the payment was made on behalf of Telenor'. Was that not a slip of the

tongue?

A. No.

Q. In other words, you have decided in your own mind the dispute between Mr. O'Brien and Telenor

A. Well, the answer is yes.

Q. When did Mr. O'Brien first contact you as a fellow shareholder to tell you that he had procured this contribution for the Fine Gael party?

A. I don't know when we were advised about this \$50,000 contribution. I think it was that same period we were advised - October '97.

Q. Yes. You seem to have some complaint about Telenor not telling you about it. The evidence does establish that the initiator of this contribution was Mr. O'Brien.

There is no doubt about that, on the evidence to date, no doubt whatsoever, and do you have any complaint over the fact that your fellow shareholder, Mr. O'Brien, did not tell you about this contribution?

A. I do - I have a complaint with Denis O'Brien -

Q. Do you have a complaint with Denis O'Brien?

A. And with Telenor, yes.

Q. And Telenor. Why, therefore, if you have a complaint in respect of each of them, should your complaint about Telenor not telling you be a basis for your deciding that this payment was made on behalf of Telenor?

A. Because Telenor's - I used the word - because Telenor, initially my understanding was they paid the funds

directly from their own account. It was the Telenor account that paid the monies to Fine Gael in the first instance.

Q. That's quite a different thing from the payment being made on behalf of Telenor. They physically made the payment, but it's a different matter to say that that payment for that simple reason was made on behalf of Telenor, isn't it?

A. Well

Q. Isn't it?

A. No, I disagree.

Q. So you have decided in your own mind. I see. How much money did your company make out of this entire exercise?

A. Over 100 million.

Q. Who brought you into the project?

A. Denis O'Brien.

Q. So you are sticking by him?

A. Pardon? Yes, I am sticking by Denis O'Brien.

CHAIRMAN: Yes.

MR. HOGAN: Sorry. I thought Mr. Fitzsimons was finished.

Q. MR. FITZSIMONS: Your complaint is that you weren't told about it as a shareholder at the time, isn't that so?

A. Yes.

Q. When did you become a shareholder?

A. In - well, effectively we became - we signed a Shareholders Agreement probably in - I think it was in 1996, but we were acting as shareholders in 1995, since August 1995, when we joined the consortium.

Q. So you weren't a shareholder until May, 1996?

A. We were effectively all shareholders - we had assumed the bidding liability, the bidding costs in 1995.

Q. But you weren't a shareholder till May, 1996?

A. My understanding, nobody was a shareholder until May, 1996 because we didn't sign the agreement until May 1996 when the licence was granted.

Q. Yes. And you are aware that as shareholders you had a duty of good faith to each other?

A. Yes.

Q. And you accept then, that Denis O'Brien broke his duty of good faith to you when he did not tell you about this contribution and/or of the fact that he initiated it?

A. Well, I think -

Q. Do you? Do you? Answer the question. It's a simple question.

A. I am going to answer if you let me.

Q. Sorry.

A. If you let me, I'll answer.

Q. Well it's a very simple yes or no answer, Mr. Desmond.

A. No, it's as shareholder in ESAT Digifone, that

payment of \$50,000 to Fine Gael was a sensitive issue, I would have considered, and I expect both shareholders to advise me of that.

Q. You accept that Mr. Denis O'Brien broke his duty of good faith to you when he failed to tell you of that as a fellow shareholder?

A. And in the same manner as Telenor.

Q. Don't worry about Telenor. Just deal with Mr. Denis O'Brien.

MR. HOGAN: I think the witness is entitled to answer the question.

CHAIRMAN: I'll see that he has that opportunity, Mr. Hogan.

Just before Mr. Hogan raises any further matters with you, Mr. Desmond, it might be useful if I just clear up a couple of aspects at this stage, rather than leaving it to Mr. Healy.

You seem to indicate in your last response, Mr. Desmond, that by and large you would go along with the recent evidence of Mr. John Callaghan, that despite the controversy as to who may have actually made the \$50,000 payment to Fine Gael, it was an insensitive time for anybody associated with the successful consortium to be seen to be paying a political party?

A. Correct.

CHAIRMAN: Yes. The only other thing I wanted to clarify with you was on foot of Mr. McGonigal's questions about the circumstances of Mr. Maloney's resignation over Christmas, that resulted in certain negotiations. I think evidence that we heard two weeks ago indicated you had become involved in negotiations and you had made a proposal of a $\frac{1}{2}$ 250,000 payment for a comparatively limited further period of on-going engagement as chief executive officer by Mr. Maloney. Do you recall that as being correct?

A. I do, indeed.

CHAIRMAN: And the one aspect that perhaps was left slightly up in the air was, was that intended effectively a once and for all severance payment to deal with his on-going association and that after that, his options or other entitlements would be awarded, or was it solely in relation to that further period of remuneration?

A. It was solely for that period of remuneration because we wanted to get - have time to get a chief executive and time to be able to close the bond deal that we were doing in Digifone.

CHAIRMAN: Yes. And as it transpired, he didn't accept that. He went back, I think, without prejudice, so to speak, and eventually then you did come to an arrangement by way of a compromise on the options, and

-

A. Which we fully supported.

CHAIRMAN: Yes. Mr. Hogan?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. HOGAN:

Q. MR. HOGAN: Mr. Desmond, just a number of matters. Can you just - can we go through the steps that were taken, largely at your instigation, that Michael Walsh, at the end of October, '97 and early November, '97 to investigate whether, in fact, an alleged 100,000 payment had been made.

I think I am right in saying that an affidavit from Mr. O'Brien was procured, isn't that so?

A. Yes.

Q. Secondly, Mr. Healy has already referred to this, there were various shareholder letters confirming that no steps had been taken by any of the shareholders to do anything that was improper as far as the award of the licence was concerned?

A. Yes.

Q. And again, I think, that was at your instigation?

A. Yes.

Q. And there were investigations carried out by Woodchester, I'll come back to that in a moment, but there were such investigations and there were, I think, also investigations carried out by KPMG, isn't that so?

A. Yes.

Q. And you - as a result of all of these investigations, legal advice was obtained on behalf of ESAT Digifone, isn't that so?

A. Yes.

Q. And as a result of that legal advice, you were, I think, everybody concerned was satisfied that it was safe to proceed and that there was no - there did not appear to be any veracity in the statement that 100,000 payment had been made by Mr. O'Brien to Mr. Lowry?

A. Yes.

Q. Can I just come back to the Woodchester investigations.

I think I am right in saying that Woodchester Bank provided, at the request of various shareholders, a detailed bank statement showing all payments above $\frac{1}{2}$ 25,000 from Denis O'Brien accounts?

A. That's my recollection.

Q. And I think I am right in saying that nothing emerged from that particular investigation of the bank statements?

A. That's what we were so informed.

Q. And you had no reason to believe that there were any other payments from Woodchester other than those that were detailed in the bank statements?

A. Yes.

Q. And Mr. Healy has referred to the fact that recent

evidence given by other parties before this Tribunal has disclosed, or apparently disclosed that the investigations may not - conducted by Woodchester may not have been as complete as you had understood them to be in '97 and there may possibly have been other payments or payments out of the Denis O'Brien's Woodchester accounts which were not brought to your attention in '97?

A. Yes.

Q. And did you have any knowledge of this in 1997?

A. Absolutely not.

Q. And am I correct in saying that the first that you had heard of any of this is insofar as you have been following the media commentary on the Tribunal?

A. Yes.

Q. Returning to the events of end of October, '97 and early November, '97. Can you tell me what was the position of Barry Maloney after these various inquiries and investigations have been made?

A. He accepted there was no payment made.

Q. Looking back, Mr. Desmond, do you think that there is anything more that the various shareholders could have done at the end of October, '97 and early November, '97?

A. I think we took all reasonable action under professional legal advice.

Q. Thank you very much, Mr. Desmond.

CHAIRMAN: Anything in conclusion, Mr. Healy?

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR.

HEALY:

Q. MR. HEALY: Just one or two small matters.

I want to clarify one answer you gave a minute ago, Mr. Desmond, in response to Mr. Hogan. You said you took legal advice and as a result of that legal advice - that legal advice, as I understood it, you were saying was to the effect that there was no veracity in the suggestion that there had been a payment of $\text{€}100,000$ by Mr. O'Brien to Mr. Lowry. Is that right?

A. There was no evidence to support -

Q. There was no evidence. As I understand it from the evidence already given by a number of other witnesses, including Mr. Owen O'Connell, the legal advisers were not themselves judging the facts of this situation at all. The facts of it were being judged by you and your co-directors, isn't that right?

A. But we did get advice - we, ourselves, IIU, we took legal advice on what our responsibilities were to all stakeholders.

Q. Do you mean that you took legal advice independently of the advice taken by ESAT Digifone?

A. Yes.

Q. ESAT Digifone got advice from Mr. Fergus Armstrong?

A. Yes.

Q. You took advice independently of that advice from somebody else altogether?

A. Yes.

Q. I don't think the Tribunal was aware of that?

A. We - our solicitor, we communicated and consulted with our solicitor on what our responsibilities were.

Q. So that there is no mistake, who was your solicitor?

A. Neville O'Byrne.

Q. In William Fry?

A. Yes.

Q. Who were the solicitors to the issue, isn't that right?

A. Yes.

Q. So as a result of the advice you got, you took certain steps, is that right?

A. Correct.

Q. But I don't think your solicitors ever judged the truth or accuracy or credibility of what the investigation turned up. They merely advised you as to the steps you should take, is that right?

A. I think what - the important thing is they advised on what steps we should take, the steps that protected the company and protected the shareholders and we acted accordingly. At the end of the day, we, you know, as directors, we take - as shareholders, we take the decision.

Q. Of course.

A. You get advice, but ultimately the power rests with the shareholders and the directors.

Q. Mm-hmm. I accept that. It's just that I understood from your evidence that legal advisers judge the veracity of these matters.

A. No.

Q. That's fine. You said that you did all that could be done, and you do agree that steps were taken on legal advice at the time. There were, however, time constraints, isn't that right, unless you were going to defer the IPO -

A. There was ESAT Telecom time constraints.

Q. Yes. And the steps that were taken, were I suppose, all that could be taken in the time available, unless ESAT Telecom deferred their IPO?

A. I don't know what other action we would have taken at the time. I don't think there is any other - time did not prevent us from taking additional action.

Q. I see. Time does seem to have or something, if it wasn't time, then, as you say, something does seem to have prevented the people involved from going to Fine Gael to get a simple receipt for the \$50,000 payment.

A. Well, my understanding, you know, again, I didn't have the records and I wasn't - I was involved sparsely in the whole process, but my understanding is that was being looked for. That was one of the things we asked for straight off. It was very simple: if you want to

clarify this payment, get evidence from Fine Gael that they got the money.

Q. I certainly formed that impression from reading the notes, Mr. Desmond, that there were a number of people insisting that we should go to Fine Gael but that wasn't done. I am suggesting to you that that is one of the things that could have been done. Maybe you weren't aware it hadn't been done, that could have been done to clarify matters at the time.

A. Again, I can't - I assume that that was being done.

Q. If it had been done, in fact, you would have learned something that might have caused some concern to you, because you'd have been told there is no \$50,000 payment. That would have caused a lot of concern at the time, wouldn't it?

A. Yes.

MR. HOGAN: Can I just raise one or two points arising out of what Mr. Healy said.

CHAIRMAN: Well, it's not my preference, Mr. Hogan, but if it's going to be literally within two minutes, obviously it will be - it will be getting to a form of table tennis.

MR. HOGAN: I beg your pardon, Sir, and I am grateful for your indulgence.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. HOGAN:

Q. MR. HOGAN: Just, Mr. Desmond, one or two things arising out of what Mr. Healy has said. Were your legal advisers satisfied in 1997 that you had taken all prudent steps that a shareholder would to investigate this matter?

A. Yes.

Q. And secondly, the - what was your understanding in - when you were first told of the Telenor payment, what was your understanding as to who had received it?

A. Fine Gael.

Q. Thank you.

CHAIRMAN: Thanks very much for your further attendance, Mr. Desmond.

A. Thank you.

MR. HEALY: It's two o'clock for the next witness, as indicated, Sir.

CHAIRMAN: I think there is one short witness and then we'll be concluding the witness we heard in the course of the latter part of last week. All right. Very good, thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH:

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 P.M.:

CHAIRMAN: Mr. Healy, I think the short witness that I had referred to has had to be referred due to

availability difficulties. So the business of the afternoon will you resuming and concluding the evidence of Mr. Michael Tunney.

MR. HEALY: That's correct.

MR. McGONIGAL: I appreciate the facility, Mr. Chairman, but I have no questions.

CHAIRMAN: Well then, Mr. Shipsey, it's your own witness.

THE WITNESS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Tunney, just at the outset for the purpose of clarification, I think you are and remain a director of Investec Gandon Limited?

A. Correct.

Q. But not the Irish branch of Investec Bank (UK) Limited?

A. That's correct.

Q. I think Investec Gandon Limited is responsible for, is concerned with the non-banking aspects of the Investec business in Ireland, is that correct?

A. Yes.

Q. Now, you have described your banking experience and you were with AIB and you then had banking experience through the 1990s with Woodchester

A. Joined Woodchester in 1991.

Q. Then through the various ownerships which Woodchester went through during the nineties?

A. Yes.

Q. And I think you met with and had a private meeting with the Tribunal when requested to do so, I think by Investec, and I think you were at that stage attending the meeting with the Tribunal with the Investec lawyers, is that correct?

A. Correct.

Q. And you made a statement then, as a result of a request from the Tribunal, which is the statement that Mr. Healy took you through at the beginning of your evidence, isn't that correct?

A. Correct.

Q. And I think you have also had made available to you the statements of other persons connected or who have given statements in connection with this $\frac{1}{2}$ 420,000 sterling loan, is that right?

A. Yes.

Q. You have had Mr. Cullen's statement, Mr. Morland, Mr. Wohlman, Mr. Aidan Phelan, Mr. Michael Lowry's and then also Mr. John Daly's, is that correct?

A. Yes, correct.

Q. And I think there is also, you have a statement of Mr. Denis O'Brien and also Mr. Denis O'Connor, but they haven't given evidence yet on this, nor has Mr. Lowry, is that correct?

A. Correct.

Q. And is it your understanding that the other persons

that I have mentioned concerned with this 1/2420,000 loan have similarly received copies of your statement and also the statements of the other persons that I have named?

A. Yes.

Q. And I take it when you got this booklet from the Tribunal with the statements, you had regard to the various statements that were being made, I suggest, with particular relevance to statements made in respect of your position, is that correct?

A. Yes.

Q. And insofar as the statement of Mr. Michael Lowry is concerned, was there anything in the statement of Michael Lowry which suggested any telephone contact with you in December in connection with this loan?

A. No.

Q. Insofar as Mr. Daly is concerned, was there any reference or suggestion in Mr. Daly's statement that he had any contact with you in connection with his guarantee?

A. No.

Q. There was something in Mr. Phelan's statements where reference was made to him having told you something, and made some reference to Mr. Michael Lowry and Ms. Lorraine Lowry, isn't that correct?

A. That's correct.

Q. And we'll come to the detail of that in a little while.

Now, you have been cross-examined on Friday by Mr. Gleeson for Mr. Phelan, and as I understand the evidence that's going to be given by Mr. Phelan in this matter, is that he will say, and it's in direct contradiction to your evidence, that he informed you about Mr. Lowry's involvement and connection with this transaction, isn't that correct?

A. That's correct.

Q. There is no suggestion, however, being made that either at Mr. Phelan's suggestion or at your suggestion that there was to be anything secret about Mr. Lowry's involvement. Insofar as Mr. Phelan's statement is concerned, and insofar as you have been cross-examined, it was not a matter which was to be kept quiet, as far as Mr. Phelan was concerned, is that correct?

A. Absolutely correct, yes.

Q. And therefore in telling you, if Mr. Phelan is correct that he told you about Mr. Lowry's involvement, there was no reason whatsoever why you wouldn't relay that to your colleagues within the bank?

A. No reason at all.

Q. Now, this particular transaction in December of 1999, where you were requested by Mr. Phelan to lend $\frac{1}{2}$ 420,000 sterling to Catclause, there was some urgency in connection with this, isn't that correct?

A. That's correct.

Q. I think, as you have explained it in your statement and in your direct evidence, you were informed that the deal was likely to be lost or another purchaser was waiting to buy if the deal wasn't concluded, is that correct?

A. That's correct.

Q. Now, the loan was, in fact, processed in and with considerable speed, isn't that right?

A. Yes.

Q. Was there anything exceptional or unusual about that, in the context of a loan being made to Mr. Phelan?

A. No. If he needed a fast response, we gave him a fast response because he was a very good customer.

Q. And the willingness of you or Woodchester Bank at the time to give a fast response, would that be would I be correct in understanding that would be predicated upon the person looking for the loan being somebody who is an existing customer or somebody whom you have had dealings with?

A. Absolutely.

Q. Would it have been processed in that manner for somebody who was not a previous customer of the bank?

A. No, generally not. I don't know of any circumstances where that would be the case.

Q. Now, you have been here obviously for the evidence of Mr. Cullen and Mr. Morland and Mr. Wohlman. Insofar as Mr. Cullen's understanding of the transaction from

the outset is concerned, and indeed down until sometime in late February of 2001, do you take issue or do you disagree with the accuracy of Mr. Cullen's understanding of this transaction?

A. No.

Q. Insofar as Mr. Morland is concerned, Mr. Morland relates his recollection of a short conversation with you in December, and has stated that insofar as words were used, all he can remember is a reference to, and you put it in quotes in his statement, a "Denis O'Brien transaction". You were here for that evidence?

A. I was, yes.

Q. And insofar as his understanding of the position is concerned, and insofar as Mr. Wohlman's understanding of the position is concerned, do you agree with their understanding or not in relation to the transaction?

A. No.

Q. And do you, insofar as either Mr. Morland or Wohlman is concerned, do you understand from your perspective and from what you informed them, how they could have a different understanding

A. Yes.

Q. of your position? Now, subsequent to December of '99, you went, effectively, on a three day a week with the bank, is that correct?

A. That is correct.

Q. You had been working full-time up until Christmas of

'99?

A. That is correct.

Q. And you were starting to prepare for your departure and setting up in business on your own?

A. Yes.

Q. Which started, I think, in April of 2000?

A. Yes.

Q. You, however, I take it, had continuing dealings with Mr. Phelan throughout 2000 we know both in relation to this particular transaction, but were there also dealings with Mr. Phelan on other matters?

A. There were, yes.

Q. Insofar as this transaction is concerned, we certainly are aware from the evidence that's been given of some contact between you in January of 2000, again sometime in August of 2000, shortly after the loan was due for repayment, in January of 2001, and in February of 2001.

Now, on any of these occasions did Mr. Phelan say or suggest to you or tell you or remind you, "Michael, I told you about Michael Lowry at the outset of this transaction"?

A. No.

Q. Did he ever say anything to you that would lead you to believe that Mr. Lowry had any involvement with this transaction?

A. No.

Q. Now, this particular loan of $i\frac{1}{2}$ 420,000 was a short term

facility to last until the end of July of 2000, isn't that correct?

A. Mmm.

Q. And we know it wasn't repaid in July and that it wasn't, in fact, repaid until March of this year.

There was, however, no interest being paid on the original $\frac{1}{2}$ 420,000 at any stage, isn't that correct?

A. Correct.

Q. So it was a loan which was accumulating interest from its inception and in respect of which no payment whatsoever was made until it was cleared in March of 2001?

A. Correct.

Q. Now, in your experience as a banker, is that a type of loan and the situation in relation to that loan which would be of greater concern to a bank, regardless of their customer, than in respect of a loan in which perhaps at least interest was being paid?

A. A loan where you'd be rolling up interest, you'd want to know what your exit is, but you'd also want to know the calibre of the customer. So the customer calibre is the most important thing of all.

Q. And, I take it, that it's not surprising that after July of 2000, that the anxiety of Investec Bank was increasing in circumstances where the documentation wasn't in order and where the interest was being rolled over with no payments; would that be correct?

A. Correct.

Q. And Mr. Cullen and Mr. Morland, and I think also Mr. Wohlman, have said that you obviously provided assistance to them throughout 2000 and in the period afterwards, but if I just take you on, then, into 2001, you had a number of conversations in March of 2001 with Mr. Wohlman, and you also, I think, had a conversation with Mr. Morland, or he relates a conversation that you had with him. Insofar as there was any reference by you to any involvement or awareness on the part of Denis O'Brien and insofar as you relayed this to either Mr. Wohlman or Mr. Cullen or Mr. Morland, where did you obtain that information?

A. Aidan Phelan.

Q. Is there anything that you told either of those three gentlemen concerning Mr. O'Brien in 2001 which did not come from Aidan Phelan?

A. Nothing.

Q. Now, I think you are aware of a meeting which took place on the 28th February of 2001?

A. Yes.

Q. Attended by Mr. Phelan, Mr. Morland and Mr. Cullen?

A. Yes.

Q. But which you were not present for and didn't have any knowledge of that meeting, presumably, until you obtained some information from Mr. Cullen or Mr. Morland after the meeting; would that be correct?

A. Correct, yes.

Q. And I think you have had occasion to look at that record taken by Mr. Morland of that meeting?

A. Yes.

Q. And you are aware that in the second paragraph there is reference to Mr. Phelan stating that "the bank had nothing to be unduly concerned with, as this was a DOB transaction and he would ensure the bank was looked after." Was that anything different than what Mr. Phelan had informed you in February of 2001?

A. Sorry, Mr. Shipsey, would you mind repeating that please.

Q. Mr. Phelan is quoted as having stated to Mr. Morland and Mr. Cullen that "The bank had nothing to be duly concerned with, as this was a DOB transaction and he would ensure the bank was looked after." My question to you, was that anything different, insofar as Mr. Phelan is reported as having said that to Mr. Morland and Mr. Cullen, was that anything different to what he was telling you in February of 2001?

A. What Aidan Phelan was telling me in February of 2001 that Denis O'Brien was supporting him, he was behind him, but was not specifically involved in this transaction.

Q. Now, after the meeting of the 28th February, I think you agree that you were informed by Mr. Cullen on the 1st March that the bank learnt, or had just learnt that

the directors of Catclause were Michael Lowry and

Lorraine Lowry, is that correct?

A. That is correct.

Q. And Mr. Cullen reports you as having been shocked in

relation to this. Could you tell us what your

feelings were when you discovered that information,

apart from what Mr. Cullen has reported, of the shock

that you that he reported?

A. I couldn't believe the information, I couldn't believe

his involvement, and the second thing was just the

letdown of discovering that he was involved and not

having known about it from day one.

Q. And who did you feel let down by?

A. Obviously, the person who arranged the loan facility.

Q. And that's Aidan Phelan?

A. Aidan Phelan, mmm.

Q. After the 1st March, were you aware of Mr. Cullen's

further attempts to extract information from

Mr. Phelan?

A. I was, yes.

Q. And you, I think, shortly after the 1st March, on about

the 6th or so or 7th March, went on holidays, is that

correct?

A. I did, yes.

Q. And you had a telephone conversation, which Mr. Healy

has examined you in relation to, on the 13th March with

Mr. Wohlman, isn't that correct?

A. That is correct.

Q. But you also had two telephone conversations with Mr. Cullen on the same day?

A. That's correct.

Q. And it's not really clear what order those telephone conversations took place in, but we do know that you had two conversations with Mr. Cullen; one initially initiated by Mr. Cullen when he phoned you on your mobile phone, is that correct?

A. That's correct.

Q. And you have heard Mr. Cullen's evidence in relation to that, and is there anything you disagree about, what he has said in relation to that first conversation?

A. No.

Q. And you agree that in response to that telephone conversation, you went and spoke to Mr. O'Brien?

A. Yes, I did.

Q. And I think you have relayed something of the sense of Mr. O'Brien's reaction to that, is that correct?

A. That's correct.

Q. And after speaking with Mr. O'Brien, you phoned Mr. Cullen back, isn't that correct?

A. That is correct.

Q. And Mr. Cullen reports you as having informed him of Mr. O'Brien's reaction; indeed, Mr. O'Brien's strong reaction?

A. Yes.

Q. And is there anything about what Mr. Cullen says transpired in that second telephone conversation that you disagree with?

A. No.

Q. And then you also had a telephone conversation with Mr. Wohlman on the same evening?

A. Correct.

Q. When you were speaking to Mr. Cullen, you were speaking to the head of the Irish branch of Investec UK, is that correct?

A. Exactly.

Q. Were you aware that Mr. Cullen and Mr. Morland and Mr. Wohlman were in constant contact and communication in relation to this matter?

A. Yes, they were.

Q. When, on the 1st March of 2001, you are informed by Mr. Cullen of the shareholding sorry, of the directors of Catclause, did it strike you or were you aware that this was something that Mr. Cullen and the Investec branch in Ireland regarded as a very serious and delicate matter?

A. Absolutely.

Q. And were you aware that Mr. Cullen, insofar as the Irish branch was concerned, was the person who was looking after trying to find out the information?

A. Exactly, yes.

THE WITNESS WAS FURTHER EXAMINED FURTHER AS FOLLOWS BY

MR. HEALY:

Q. MR. HEALY: Mr. Tunney, would you agree that there seems to be a considerable amount of confusion concerning this transaction from your evidence and the evidence of a number of other bank officials who have dealt with the matter?

A. I would, yes.

Q. You are aware that all of this material stems from the Tribunal's obligation to examine evidence of what may be or what may appear to be links between Denis O'Brien and Michael Lowry?

A. Yes.

Q. And that examination in the context, or where your evidence is concerned, is being conducted in the context of a loan to purchase a property in England?

A. Yes.

Q. In December of 1999, you could presumably see the potential relevance of any links between Mr. O'Brien and Mr. Lowry to the overall inquiry that is being conducted by the Tribunal?

A. Mm-hmm, yes.

Q. Now, the mere fact of a connection between Mr. O'Brien and Mr. Lowry wouldn't necessarily mean that anything wrong or improper was going on?

A. Not necessarily.

Q. But if a benefit was being conferred on Mr. Lowry or

some assistance was being given to Mr. Lowry by Mr. O'Brien, meant it would at least be legitimate to inquire whether that was connected with any favour or decision made by Mr. Lowry that had benefited

Mr. O'Brien. Would you agree with that?

A. Yes.

Q. If the transaction that you have been trying to unravel for us and the other witnesses have been trying to unravel for us over the past few days had been conducted openly, with Mr. O'Brien's name on the paperwork and Mr. Lowry's name on the paperwork, that would be a factor the Tribunal would want to take into account in examining or forming a judgement on the transaction, isn't that right?

A. Yes.

Q. And likewise, if the transaction was conducted in such a way as to conceal the involvement of, say, Mr. O'Brien, that would be a factor, and perhaps a negative factor, wouldn't that be right?

A. Yes.

Q. Likewise, if Mr. O'Brien's name had been used and Mr. Lowry's name had not been used, again that would be a factor, and perhaps a negative factor?

A. Mm-hmm.

Q. So you understand, therefore, the focus of the Tribunal's inquiry over the last few days?

A. Yes.

Q. Your evidence in relation to this inquiry is that you did mention that it had a connection with Mr. Denis O'Brien, or you did mention a connection with Mr. Denis O'Brien at a time when you shouldn't have mentioned any connection with Mr. Denis O'Brien, is that right?

A. That's right.

Q. You indicated to Mr. Cullen something concerning a connection with Mr. O'Brien in relation to the credit or the transaction, whichever way you want to put it, that was not correct. It was not true. Isn't that right?

A. That's right.

Q. And Mr. O'Brien had not authorised you to use his name in connection with the transaction, even if he wasn't himself involved in the loan, would that be right?

A. That's right.

Q. So Mr. O'Brien had given you no authority to use his name and was not, in fact, according to you, involved in this transaction, good, bad or indifferent, supporting it in any way at all?

A. That's right.

Q. He wasn't even aware of it?

A. That's right.

Q. When was the first time that you told Mr. O'Brien that you had used his name in this way without his permission?

A. I don't think I have actually told him.

Q. You haven't actually told him?

A. No.

Q. The evidence that has been given to the Tribunal is that you were shocked when you first heard of Mr. Lowry's involvement in this matter.

A. That's correct.

Q. Why should you have been shocked? What was the shocking aspect of being told about Mr. Lowry's involvement?

A. Mr. Lowry's involvement.

Q. The mere fact of it?

A. Yes.

Q. But why would the mere fact of Mr. Lowry's involvement be shocking?

A. Because I wasn't expecting his name to pop out from anywhere.

Q. Are you sure that you weren't shocked because you perceived a potential link between Mr. Lowry's name and Mr. O'Brien's name?

A. I am certain.

Q. You are, of course, you do accept that the people with whom you were dealing with in Investec were under the impression, from your own evidence, from the information you were given, they were under the impression you would say falsely that Mr. O'Brien was involved, isn't that right?

A. I would say I certainly helped that view, yeah.

Q. So when the name "Michael Lowry" was mentioned or brought to your attention, it would have been brought to your attention by people who were under the impression that Mr. O'Brien was also involved ?

A. Somewhat.

Q. And wasn't that the really shocking aspect of the whole thing?

A. The fact that Mr. Lowry was involved at all was the shocking aspect.

Q. If the Tribunal is to accept your evidence that Michael Lowry was not mentioned in connection with this transaction, but was, in fact, the borrower, that would mean that Mr. Aidan Phelan had misled you, isn't that right?

A. Correct.

Q. Not only had he misled you, he had concealed the true identity of the borrower from you in order to get a loan from you?

A. Correct.

Q. He told you a lie in order to get a loan?

A. He didn't disclose the full facts. (Nodding).

Q. Can you think of any reason, or have you thought of any reason why Mr. Phelan would not mention Mr. Lowry's name to you?

A. No, other than it would make it more difficult to get the loan.

Q. That would be an even more reprehensible thing to do,

wouldn't it, because he would be foisting you with a borrower who was much, much weaker than the borrower you thought you had, isn't that right?

A. Well, the whole way through this transaction, Mr. Healy, we had been under the impression that our client completely and utterly was Aidan Phelan, so we were looking to Aidan Phelan for repayment.

Q. Could you just answer my question: Mr. Phelan, if your evidence is to be accepted, was not merely telling you a lie about the transaction, he was not merely telling you a lie about the identity of the transaction for all you knew Mr. Phelan could have told you a lie and he could have told you he was borrowing money for Catclause, but Catclause might have been owned by Paul Getty, that would hardly have affected creditworthiness of the transaction?

A. Yes.

Q. But, in fact, according to your evidence, you think he may have withheld the name or concealed the name of Mr. Lowry so as to get a loan he wouldn't otherwise get; isn't that your evidence?

A. It may well have been the case, yes.

Q. That means, if that were true, that Mr. Phelan was not just telling you a lie about the identity of the borrower, he was leaving you holding the baby with a very unsatisfactory borrower, isn't that right?

A. Potentially, yes.

Q. Which was not just to tell you a lie, it was to pull a fast one on you, isn't that right?

A. Potentially.

Q. And when you were told by Mr. Cullen, I think, and Mr. Morland, was it Mr. Cullen and Mr. Morland first told you about the involvement of Mr. Lowry? I think it was, is that right?

A. It was Michael Cullen on his own.

Q. Michael Cullen on his own. I beg your pardon. Yes that's right.

A. Yes.

Q. Isn't it strange that you wouldn't have said to him, there and then, "This is appalling, Aidan Phelan has told me lies again and again about this transaction. He represented it as his own transaction. He never told me it was a Michael Lowry's transaction."

A. Well, in fact, we had a subsequent discussion after Michael told me about another matter, and the amount of that matter that I took in was so small that I had to ring Michael afterwards and apologise to him because I was in such a state of shock.

Q. I can well understand that. But isn't it a wonder there is no note here kept by Mr. Cullen or Mr. Morland or Mr. Wohlman which says "Michael Tunney was misled and deceived by Aidan Phelan. The bank is in this situation because it was deceived by somebody." Isn't it strange that you never seemed to have communicated

that to anyone in the course of the final days of

February or the first two weeks of March?

A. I do remember expressing my shock.

Q. You may have expressed your shock, but surely you would have said, "Look, I am not responsible for this. I was actually misled. Somebody told me a lie here."

A. Normally I am quite calm about things and people express things in different ways, and that would be the way I would have expressed it, and I did express it.

Q. In this case, you were dealing with a situation where the executives of Investec had the impression that Mr. O'Brien was involved, and now that Mr. Lowry was involved, which was a somewhat alarming situation, isn't that right?

A. It was a situation for concern, yes.

Q. And of all the notes we have seen taken, there seems to be no note to the effect, no note at all to the effect that you were misled by Mr. Phelan, isn't that right?

A. There is no note there to that effect.

Q. You went on holiday on the 1st March, which was the day after you received this very shocking piece of information, isn't that right?

A. No, I didn't. I went on the 7th.

Q. I beg your pardon. A week after you received this information?

A. Yes.

Q. You went on holiday with Mr. O'Brien and some other

people?

A. Absolutely.

Q. And do I understand

A. Sorry, I didn't go on holiday with him. We happened to be in the same town together. We were in different hotels, but in the same group organised by different people.

Q. I see. But you met Mr. O'Brien on holiday?

A. Yes, I did.

Q. Had you reasonably regular contact with him on holiday?

A. Yes, I had.

Q. And do I understand your evidence that you did not discuss this matter with him?

A. Until the 13th, yes, that's correct.

Q. So you went on your holidays burdened with the information that Investec Bank were under the impression that Denis O'Brien was behind a transaction which involved Mr. Michael Lowry and the borrowing of some $\frac{1}{2}$ 420,000 to buy a property in England, and you never told Denis O'Brien that?

A. I think one of the things that Tony Morland brought out in his evidence quite strongly was the fact that there was need for absolute caution, to make sure we established all the facts before we did anything. And that was paramount in our mind.

Q. What facts needed to be established when you went away on your holiday?

A. Well, Michael Cullen had met with Aidan Phelan on the 2nd in the Conrad Hotel, and he had given him a list of things that he was to receive from him, and he was handling that line of inquiry.

Q. And Mr. Phelan wrote a letter to him in which he asserted that this was his transaction and nobody else's transaction, isn't that right?

A. That's correct.

Q. So Mr. Phelan was getting all his beans in a row, if you like, in terms of the paperwork, isn't that right?

A. It looks like that.

Q. But that didn't effect the underlying facts, the reputational risk, as Investec have put it?

A. Mm-hmm.

Q. That a representation was created that Mr. O'Brien was involved in a transaction with which Mr. Lowry was also connected, and you never brought that or saw fit to bring that to Mr. Denis O'Brien's attention?

A. No.

Q. And you want the Tribunal to accept that the first time you brought it to his attention was when Mr. Cullen rang you?

A. Correct.

Q. And what did Mr. Cullen tell you which prompted you to bring it to Mr. O'Brien's attention at that late stage?

A. Well, we spoke about the difficulties, the problems that had arisen, and it had got to a stage where it was

necessary; we were talking about the big 'M' and Central Bank of Ireland, and that it was necessary to speak to him at this stage, and I did.

Q. You have told the Tribunal, I think in evidence already, that the first time you heard about the absence of a guarantor was in August, 2000, and the first time you heard that the guarantor had declined to become involved was at the time of the Tribunal, is that right?

A. Correct.

Q. So now, according to your evidence then, Mr. Phelan not only misled you about the true nature of the transaction, he also misled you about the fact that the guarantor and indeed a person whom you thought was involved in the transaction had declined to become involved, is that right?

A. He had declined to become involved, yes.

Q. Even though the money had been drawn down?

A. Yes.

Q. And can you again offer any reason as to why Mr. Phelan would conceal that information from you?

A. I have no idea.

Q. Wasn't that surely germane to the understanding that you had of the transaction? If you leave Catclaus out of it, you thought Mr. Phelan was involved and another high net worth individual was involved?

A. That is correct.

Q. And this high net worth individual had merely not signed a guarantee, he had said, "I will have nothing to do with this guarantee," meaning, presumably, "I will have nothing to do with this transaction."

A. Mm-hmm.

Q. And again would you regard that as the type of behaviour you'd expect from Aidan Phelan?

A. Well, it was unusual, and when the bank discovered it and they looked at the transaction, they decided that they wouldn't seek the guarantee, as it subsequently turned out. That credit decision was made by my colleagues after I had left.

Q. When was that?

A. It was made sometime later in the year.

Q. Which year?

A. 2000.

Q. Even though you and your colleagues thought that Mr. Daly was involved and one of your colleagues thought that he was the borrower?

A. Mm-hmm, that's right.

Q. So you were happy to allow that degree of either confusion or concealment to continue?

A. Not at all.

Q. Well, wasn't there a degree of concealment? The fact that Mr. Daly would not was not prepared to become involved was concealed from you and your fellow executives?

A. It could have been, but equally on the other side it could well have been - you know, we didn't handle it as well as we may have handled it, so we didn't follow it up as assiduously as we would normally have done any other credit, and that was because of the changes that were taking place.

Q. And is that perhaps because your colleagues were still under the impression that Mr. O'Brien was involved?

A. No, this was an Aidan Phelan facility, and everybody saw it as that.

Q. But you had told Mr. Cullen that Mr. O'Brien was involved or was aware of it?

A. He got no, he got some comfort from that, but he saw Aidan Phelan as being the main person, and in all the subsequent contact that was made, it was Aidan Phelan who that contact was with, even when it got into difficulty.

Q. Did you tell Mr. Cullen, "Look, I misled you. Denis O'Brien is not involved in this. He has nothing to do with it." Did you tell him that, when problems arose in August, 2000?

A. No, I didn't.

Q. You didn't. You allowed him to continue under the impression he had formed at the time this loan was taken out?

A. But we had all been of the view and still were, and the more we got on into this credit, that this was an Aidan

Phelan credit. It always was.

Q. The purpose of this inquiry is to try and resolve confusion, Mr. Tunney. You are telling me that you were aware that you had told somebody something which was not true in relation to how this transaction was first, if you like, brought to the bank, and you never alerted anyone to that misrepresentation, we'll call it?

A. I don't think anybody was under any different view in terms of they all saw it as being Aidan Phelan.

Q. I see. You were asked by Mr. Shipsey about the conflict between your evidence and the evidence of Mr. Morland, Mr. Wohlman and Mr. Cullen, and in particular, the fact that Mr. Wohlman, Mr. Morland and Mr. Cullen at previous occasions in 1999, when the loan was taken out, and if you add Mr. Wohlman, in 2000, when the investigations were carried out, were under the impression that Mr. O'Brien was involved as a result of what they believed you to have said, and you say that they had a different understanding to you.

Is that right?

A. I believe Michael Cullen had a similar understanding to me. Tony Morland, I believe, had a different understanding.

Q. Well, can we get that cleared. In the year 2001, when the inquiries were being conducted, what was your understanding that you say you shared with Mr. Cullen?

A. Well, I believe that both of us looked at it from an Aidan Phelan loan perspective, whereas Tony Morland had a different perspective, which, as I have said to you, I believed to have been mistaken.

Q. Are you saying that Mr. Cullen was not of the impression in 2000 that this was that you had stated that this was a Denis O'Brien transaction?

A. I had stated that, but he didn't attach a lot of value to that. He saw Aidan Phelan as being the principal involved in this particular transaction.

Q. But Mr. Wohlman and Mr. Morland formed the impression that you had stated that Mr. O'Brien was behind it?

A. No. Mr. Wohlman the first time that Mr. Wohlman heard anything about the Denis O'Brien name was in March of 2001.

Q. Yes, that's right. And on that occasion, as a result of a phone call with you

A. Exactly.

Q. You told him he shouldn't worry about it, as Denis was behind it.

A. Exactly. Denis was behind the credit, which was Aidan Phelan.

Q. That's your way of putting it. As I understand from his evidence, he understood that Denis O'Brien stood behind the loan. It was Mr. O'Brien who was behind this loan, but that wasn't true, isn't that right?

A. That's not correct. Mr. O'Brien is not behind this

loan.

Q. But Mr. Wohlman had the impression that you told him it was?

A. The credit, which was Aidan Phelan, and Denis O'Brien was behind him. And that's what I said.

Q. Even though you knew, you knew yourself that Mr. O'Brien didn't even know about this transaction?

A. Mm-hmm.

Q. Isn't that right?

A. Mm-hmm.

Q. And yet you were happy to say he was behind it?

A. He was behind no, he was behind Aidan Phelan in the global sense, as I have explained all along.

Q. He was behind Aidan Phelan in a global sense, even though on the 13th March, you, Mr. Wohlman, Mr. Morland, Mr. Cullen and Mr. Phelan knew that Mr. Lowry was connected with this transaction, and you were prepared to accept at that stage that Mr. O'Brien was behind Mr. Phelan in connection with a transaction with which Mr. Lowry was involved. Is that your evidence?

A. No, it is not.

Q. Well, then, perhaps you'd like to tell me again what you mean by saying that Mr. O'Brien was behind Mr. Phelan in the global sense?

A. Mr. O'Brien, as I have said before to the Tribunal, basically was behind Aidan Phelan as a supporter. He

was a big income generator for him, and that was the role in which he fulfilled. He was not specifically involved in this transaction.

Q. Assuming that Mr. Lowry was involved in this transaction from the outset.

A. Yes.

Q. Which you now know, but which on your evidence you say you did not know at the time.

A. That's right.

Q. Are you saying to this Tribunal that you told your fellow executives in March, 2000, that Mr. O'Brien was going to give Mr. Phelan a dig out, if push came to shove, in relation to a Michael Lowry transaction?

A. Well, the Michael Lowry transaction only came up on the 1st March, which was news to us.

Q. This is the 12th March?

A. Yes.

Q. On the 12th March, according to Mr. Wohlman, you say that you said that the bank should not worry about the credit, as Denis O'Brien was behind it. You say to the Tribunal that what that means is that Denis O'Brien was behind Aidan Phelan. You say that that is what you meant at the time you were speaking to Mr. Wohlman. Accepting your evidence for the moment, doesn't that mean that you were telling Mr. Wohlman that Mr. Denis O'Brien was going to stand behind Mr. Aidan Phelan in relation to a loan of approximately

half a million pounds Irish for a loan with which

Mr. Lowry was connected?

A. Any time that I use

Q. Is that what you were saying? Is that what you were saying?

A. Would you repeat it, please?

Q. You said to Mr. Wohlman in on the 12th March, 2001,

that the bank should not worry about the credit, as

Denis was behind it. You explained that to mean that,

according to you, in any case, what you were seeking to

convey was that Denis O'Brien was globally behind

Mr. Phelan. And what I am asking you is that doesn't

that mean that you were telling the bank that Denis

O'Brien was prepared to stand behind Mr. Phelan in a

global way, but in relation to a transaction with which

Mr. Lowry was involved?

A. I don't see it as that way. I see Denis O'Brien standing behind Aidan Phelan as a supporter in a global way, without any specific transaction being intended and in the way you are construing it at the moment.

Q. Was this a completely meaningless thing to say then?

A. It's a support, which was what it was meant to be at the time.

Q. A support for who and for what?

A. To explain to Ian Wohlman

Q. To explain what to him, Mr. Tunney? This is extremely confusing. You were talking about a loan of $i\frac{1}{2}$ 420,000.

A. Mm-hmm.

Q. Were you explaining that and explaining what support there was for that?

A. I was explaining to Ian Wohlman that in terms of Aidan Phelan, and he is described there as the credit, that Denis was behind him.

Q. That's your answer?

A. Yes.

Q. At the outset of your examination this afternoon by Mr. Shipsey, you were taken through the various documents provided to you by the Tribunal, statements of Mr. Phelan, Mr. Morland, Mr. Wohlman, Mr. Cullen and so on.

A. Yes.

Q. And you were also informed that, or it was drawn to your attention that there was no reference in Mr. Lowry's statement to material that was mentioned to you in evidence last Friday, is that right?

A. Yes.

Q. But in your statement to the Tribunal, you didn't tell the Tribunal either, did you, that you had told Mr. Cullen of Mr. O'Brien's, we'll call it, involvement, and that in telling Mr. Cullen that, you had told him something that was not true, isn't that right?

A. But I don't see that Mr. O'Brien has an involvement.

Q. Precisely, but you were aware Mr. Cullen was under the

impression that he had an involvement from something that was said by you, isn't that right?

A. Yes, but I would see that as being a very minor point.

Q. I see. I wish I could agree with you, Mr. Tunney.

You also indicated in evidence to Mr. Shipsey a moment ago that you gave a fast response in this case to Mr. Phelan because of his track record?

A. Absolutely.

Q. In giving that fast response, Investec had not been given an opportunity to give their, make their input beforehand, isn't that right?

A. That's correct.

Q. And were you happy to put Investec in that position, I know they weren't totally committed, without giving them an opportunity, for instance, of dealing with the potential involvement of a third party whom you didn't know, namely, Mr. Daly?

A. I was happy that well, for starters, I had a lot of, an awful lot of lending experience, I had been in this position before, and in the normal commercial world I was happy to deal with that particular issue. I was also happy that over time that I could solve any outstanding issues, given the connections that were there. And I think the fact that it was taken over as part of the takeover is an indication in itself of that.

Q. Finally, the position with regard to your evidence and

Mr. Phelan's evidence is that you both appear to have, according to the evidence, and in some cases you agree, you both appear to have used Mr. O'Brien's name in connection with this deal, isn't that right?

A. Yes.

Q. But you both now say that Mr. O'Brien had nothing whatsoever to do with it?

A. He never had anything to do with it, yes.

Q. Even though his name was used on a number of occasions in connection with it once it hit the rocks?

A. The name was used in the very beginning by me and it was used in a, what I would consider to be a peripheral manner, and everybody looked to Aidan as being the main person to borrow the money, and it was only later on, then, when the name was used by Aidan Phelan, that it was raised again, I think fifteen months later.

Q. And on the second occasion when it was used by Mr. Phelan fifteen months later, did you believe him that Mr. O'Brien would stand behind this transaction given it's a Michael Lowry transaction?

A. Standing behind him.

Q. No, did you believe he'd stand behind him, even knowing of this potential transaction?

A. I don't know. Obviously, we have never gone down that road. Mr. Phelan paid it off himself.

Q. Did you believe Mr. Phelan, that Mr. O'Brien would be prepared to stand behind Mr. Phelan in relation to a

transaction which involved Mr. Lowry? Did you really believe that?

A. I don't know. That hasn't been tested because when he told me that, we knew nothing about the involvement

Q. We are not talking about testing. This is in a credit sense?

A. What we were talking about, I was told this in the middle of February by Aidan Phelan. We were looking at this as an Aidan Phelan transaction, so the question certainly wasn't asked.

Q. I am asking you, and you know well what I am asking you, Mr. Tunney, but we have gone around the houses so many times here. You know well that I am asking you about the time after you became aware of Mr. Lowry's involvement in this. You told Mr. Wohlman, in your last recorded telephone call with him, that Aidan Phelan had told you that Denis O'Brien stood behind this transaction.

A. Stood behind him, not behind the transaction.

Q. Well, that was Mr. Wohlman's view of it. You are saying that what it means was that Mr. O'Brien stood behind Mr. Phelan, and are you now telling this Tribunal that you believed Mr. Phelan when he said to you, "Mr. O'Brien stands behind me in relation to this transaction," knowing that Mr. Lowry was involved?

A. I believe that Denis O'Brien was standing behind Aidan Phelan in the global sense, and I don't know what would

have happened in relation to this specific transaction.

Q. Are you saying the answer to my question is no, you didn't believe?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Did you think of saying to your fellow executives, "Look, I don't know if we can believe this or not"?

A. Believe, sorry

Q. Believe Mr. Phelan when he said to you that Denis O'Brien was behind him?

A. No, I didn't.

Q. Why did you not say to your fellow executives, "Aidan Phelan has told me that Denis O'Brien is behind him, globally, but I am not sure whether I believe it or not"?

A. I didn't see any reason to raise it as an issue.

Q. Why not?

A. Because when I spoke as I have said to you, when I spoke to Aidan Phelan in February, there was no Michael Lowry issue there.

Q. I am not talking about February, Mr. Tunney. We can shorten this if you listen to what I am saying.

Attend to what I am saying. In March, when you were aware of the Michael Lowry connection, are you telling this Tribunal that you believed Aidan Phelan when he told you that Denis O'Brien was standing behind him

globally, but knowing that one of the transactions he was involved in concerned Michael Lowry?

A. There is no doubt that Michael Lowry's involvement would have given Denis O'Brien great difficulty.

Q. So, therefore, can I take it you didn't believe him?

A. Knowing what he said to me in February, Mr. Healy, I did believe him.

Q. You did believe him in February?

A. Absolutely, but with the coming out of that name, obviously

Q. It made a huge difference?

A. It does make a huge difference, there is no doubt about that.

Q. Okay. Well, wouldn't it have been an obvious thing to say, then, to Mr. Wohlman, "Look, Michael Lowry's name being involved in this makes a huge difference. There could be a problem here because Denis O'Brien will not stand behind Aidan Phelan if he knows there is a Michael Lowry connection, or he may not stand behind him"?

A. We didn't have that sort of discussion, between the time it came out and the time of that phone call.

Q. You did have that sort of discussion, because you told him that he needn't worry about the credit?

A. Yes, absolutely.

Q. But sure haven't you just agreed with me that it was a cause for worry?

A. Only to the extent that the name had come out after Aidan Phelan had told me in the February time.

Q. Thank you, Mr. Tunney.

CHAIRMAN: Mr. Clarke, I omitted to offer you the opportunity.

MR. CLARKE: I only have one very brief question for Mr. Tunney.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CLARKE:

Q. MR. CLARKE: Mr. Tunney, yesterday morning Mr. Healy was asking you where, in the circumstances where you were dealing with an established client, would you have carried out company searches or compliance things or matters of that kind. Am I right in thinking that the bank's ordinary practice in this sort of circumstance, and where you were taking security, as you intended obviously to take here, would have been to rely upon the solicitors whom you were instructing for the purpose of carrying out that kind of work?

A. Absolutely.

Q. Thank you.

CHAIRMAN: And obviously the question of carrying out a search, albeit with solicitors as Mr. Clarke suggests, would arise if there was a default?

A. Correct, yes.

CHAIRMAN: As regards the eventual discharge of the debt in March of this year, Mr. Tunney, are you aware of your own knowledge as to whether this followed upon a successful sale for redevelopment of the site for commercial purposes or whether Mr. Phelan may have discharged the debt himself?

A. I don't know if the site has been sold, Sir, but I understand, and it's only my understanding, that Aidan Phelan discharged it from his own resources.

CHAIRMAN: I don't want to reiterate any of the matters that Mr. Healy put to you, but you appreciate, Mr. Tunney, I am anxious to be fair to you and to all the witnesses who have, in the testimony of the last week or so, provided some very strange and troubling differences in testimony, and one matter that in particular concerns me is the situation that obtained on the skiing holiday after the 13th March. You state on that occasion you had been aware, since you left approximately a week previously from Dublin for the holiday in company with a group including Mr. O'Brien, of the difficulty that had emerged with the discovery of Mr. Lowry and Ms. Lorraine Lowry as directors of Catclause?

A. Yes.

CHAIRMAN: And you only discussed it with Mr. O'Brien on the 13th?

A. Absolutely. And sorry, Sir, that goes back to again a point Tony Morland's, Mr. Morland's evidence where it was very important that we did all our checks before we had any discussions with anyone about this particular transaction, and it was only after the phone call with Mr. Cullen, did I speak with Mr. O'Brien.

CHAIRMAN: But taking your global connotation of the O'Brien involvement, which I freely acknowledge is not the easiest of concepts for me, when you had the discussion with Mr. O'Brien, you, in effect, communicated to us last Friday that he, in colloquial terms, almost went ballistic.

A. I think that would be a fairly accurate description, Sir.

CHAIRMAN: Whether or not it was the global connotation as regards your colleagues back in Dublin, it was plain that the appraisal of a potential link between Mr. O'Brien and Mr. Lowry had been found deeply troubling by them and indeed by you.

A. Yes.

CHAIRMAN: It does puzzle me, Mr. Tunney, why, given the importance of it, you did not very promptly get on your mobile to communicate to them that Mr. O'Brien is adamant that he had no involvement.

A. After the 13th?

CHAIRMAN: After you had your discussion with Mr. O'Brien, yes.

A. I rang Mr. Cullen after that, and I advised him after that that Mr. O'Brien would be contacting him about it, and I let Mr. Cullen know what Mr. O'Brien's views were.

CHAIRMAN: What did you specifically tell him?

A. I told him that he was less than happy with it. He had no involvement whatsoever with the transaction, and he would be ringing him directly to indicate that to him as well.

CHAIRMAN: And had you any preliminary discussions with Mr. O'Brien, even though not broaching the topic fully on the week of the start of the holiday?

A. No, I didn't. Because we had decided that we wanted to check everything before we made the next step.

CHAIRMAN: Thank you Mr. Tunney.

MR. SHIPSEY: Sorry, Sir, just in relation to that last question, there is also reference to it on page 119 of the book where Mr. Morland prepares a note and makes reference to Mr. Tunney being skiing and having brought it to Mr. O'Brien's attention. I think also Mr. Cullen gave evidence in relation to that last question that you raised.

CHAIRMAN: I'll note that, Mr. Shipsey. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: My colleagues tell me there was some suggestion of a twelve o'clock start tomorrow. I am not sure. I wasn't aware of that. Perhaps leave it at eleven. I am not aware of any difficulties arising

CHAIRMAN: Well, Mr. Gleeson, I think it's your witness and I anticipate that he will be available?

MR. GLEESON: Yes, we are anxious to start it.

CHAIRMAN: I am anxious to make as much headway as possible. Very good. Eleven o'clock tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
TUESDAY, 24TH JULY, 2001 AT 11AM.