

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 25TH JULY

2001 AT 11AM.

CONTINUATION OF EXAMINATION OF AIDAN PHELAN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Phelan, I intend now dealing with

the statement which you furnished to the Tribunal which

is contained in book 30. This is the statement dealing

with when you first encountered Mr. Lowry and leading0

on to the property transactions. You know that

statement?

A. Yes.

Q. I think you have informed the Tribunal that you are an

accountant by profession and you are currently in

partnership with Helen Malone and that that partnership

is entitled AP Consulting with its offices as 16

Clanwilliam Terrace, Grand Canal, Dublin 2?

A. That's correct.

Q. I think you have informed the Tribunal that you first

encountered Mr. Lowry in February, 1997 when he was

introduced by his accountant, Denis O'Connor. You

recollect advising Mr. Lowry in relation to a possible

sale of his business to Masser Hammond and you attended

a number of meetings in that regard with him. I think

you have furnished the Tribunal with an invoice

furnished to Mr. Lowry in respect of these services in

the sum of i;¼4,000 plus VAT, and that is Appendix 1

attached to your statement, and that invoice is an invoice dated 7th May, 1999 and it's addressed to Mr. Lowry and it's to professional services rendered in respect of consultancy services for the period to the 31st March, 1999 and it's for £4,000 plus VAT?

A. Yes, correct.

Q. And does the tick mean that it was paid?

A. Yes, it was paid, yes. I am not sure what the tick means, but it was paid.

Q. Do you know when it was paid?

A. It was paid, yes.

Q. And when was that? Around the time of the invoice or?

A. probably I'd have to confirm that.

Q. Very good. Now, I think that you have informed the Tribunal that in or around March, 1999 Mr. Kevin Phelan, who is no relation of yours, who was known to both Mr. Lowry and yourself, independently informed you of Mr. Lowry's involvement in a hotel site in Mansfield, England, of two and a half acres with an additional option of 31 acres. He that's Mr. Kevin Phelan inquired as to whether you might have any interest in becoming involved in the project, is that correct?

A. Correct.

Q. At this stage Mr. Lowry had put down a deposit. A number of meetings were had with Mr. Lowry and you recall a meeting in early March where the possibility

of a joint venture on this and other sites was discussed with him. The original suggestion made by Mr. Lowry was that you would fund 75% of the purchase price and Mr. Lowry, having paid the deposit already, 25% of it. This was subsequently amended and an agreement reached whereby you would fund 90% of the project and Mr. Lowry 10%, is that correct?

A. Correct, yes.

Q. And I think in that regard, you have furnished the Tribunal with an agreement between yourself and Mr. Lowry. I think that's document number 3, is that correct?

A. That's correct, yes.

Q. In appendix 3?

A. Yeah.

Q. And that's, this joint venture agreement is made, 30th April, 1999 Aidan Phelan of Orchard House, No. 2 Clonskeagh Square, Dublin 2 (1) and Michael Lowry of Abbey Road, Thurles, County Tipperary, Eire (2) jointly referred it as 'the Promoters'.

IT IS AGREED as follows:

1.1. The Promoters shall carry on business together for the purpose of Property Development.

1.2. The Venture has already commenced and this Agreement has been entered into to regularise the position until it has terminated as provided in this

Agreement.

2. Neither promoter shall without the consent of the other.

2.1. Lend any Joint Venture money.

2.2. Release any debt due to the Venture.

2.3 Enter into any Contract for the sale or purchase of any property.

2.4 Enter into any borrowing or other arrangements with Mortgage Lenders or Bankers in respect of any Assets or prospective Assets of the Joint Venture.

2.5. Become Guarantor for any person.

3. Financial:

The profits and losses of the Venture shall belong to the promoters in the following shares.

(i) Aidan Phelan 90%.

(ii) Michael Lowry 10%.

Subject to a performance related incentive payable to Michael Lowry which, from time to time, shall be agreed between the promoters.

4. Termination:

The joint venture may be terminated by either Promoter giving to the other no less than three months notice in writing at any time. On termination, the assets would be divided between the Promoters by Agreement but in default of Agreement, to be determined by an expert appointed in default of Agreement by the President of the Institute of the Chartered Accountants of Ireland.

5. If any property is acquired under the terms of this Agreement but is acquired in or registered at Her Majesty's Land Registry in the name of one only of the Promoters, it shall be held subject to the terms of this Agreement.

IN WITNESS whereof the parties have hereunto signed this Agreement the day and the year first before given."

It's signed and witnessed by yourself and Mr. Lowry, isn't that correct?

A. Correct, yes.

Q. I'll come back to deal with that later, Mr. Phelan, if I may.

Now, I think your statement continues: The sterling $\frac{1}{2}$ 300,000 furnished by yourself in respect of the project was paid to Mr. Christopher Vaughan, solicitor acting on both of your behalf in England, is that correct?

A. Yes.

Q. It was drawn by yourself on an account in the name of Denis O'Brien with Credit Suisse First Boston in London, is that correct?

A. Yes.

Q. Your partnership, AP Consulting, had signing authority on this account because you provided extensive accounting services to Mr. O'Brien's business

interests, is that correct?

A. Yes.

Q. This money was owed by Mr. O'Brien to yourself in respect of various services rendered by yourself to Mr. O'Brien in your professional capacity, is that correct?

A. Yes.

Q. You have had a long and intense business relationship with Mr. O'Brien which dates back to late 1986/early 1987, is that correct?

A. Yes.

Q. This particular payment was an advance on a bonus in respect of considerable work done by yourself on behalf of Mr. O'Brien in respect of Mr. O'Brien's purchase of Quinta do Lago in Portugal and your working connection with Versatel. And I think you attach, at appendix 4, communications in the form of two agreed memoranda from yourself to Mr. O'Brien regarding the drawing down of £300,000 sterling in your favour, is that correct?

A. Yes.

Q. If we just look at that, those two documents for a moment. They are at appendix 4. And it's a memorandum to Denis O'Brien from you dated 22nd December, 1998 and it's reference is "success fee".

"Dear Denis,

Following our meeting earlier today in relation to a general review of projects of which I have been working

on, I have summarised our discussion as follows:

The two major projects I worked on for the year was the acquisition of Planal S.A. and my continuing role in Versatel. Versatel concluded the high-yield offering in May last raising US\$225 million and has just completed a tack-on high-yield offering in November raising a further US\$150 million. As you know from the EGM earlier this month, the Company intends to do further high-yield offering early next year leading to an IPO in the second or third quarter.

I have drawn little or no fees from the above projects and it was agreed, particularly in relation to Versatel, that when you have liquidity in your stock, it will be a percentage fee.

Although not cast in stone, I'll receive a success fee if Versatel goes public at a price range of \$10 to \$12 per share. This will mean that your stake will be worth \$40m to \$50m. As agreed, I will receive a fee as you realise your investment and you sell your stock. The fee is agreed at 3% up to a maximum of US \$1.5 million."

Then the second document is a memorandum to Denis O'Brien sorry, first of all I should say there is a handwritten note at the top of that first memorandum, isn't that correct?

A. Yeah.

Q. And I don't know what's at the top, 'Sally Ann' I presume that's Mr. O'Brien's personal assistant?

A. Yes.

Q. "Fax okay" - "sent fax" or something like that. "To Aidan from Denis O'Brien" and it's "Agreed" and it's signed by Mr. O'Brien, isn't that right?

A. That's right.

Q. And then the second memorandum is again one from you to Mr. O'Brien dated 25th March, 1999 and it's in relation to advance of fees.

"Denis,

As discussed on our call today, I am making a drawing today on the CSFB account in the amount of sterling £300,000. This is an advance against the Versatel fees." And in the top right-hand corner, "Aido ok DOB," is that correct?

A. Yes, correct.

Q. Now, I think your statement continues. With regard to the joint venture with Mr. Lowry, you confirm that at all times you were acting on your own behalf and not expressly or impliedly as a nominee for or in any way on behalf of Mr. O'Brien. Mr. O'Brien had no knowledge of this transaction, or indeed of the one which you will now describe, is that correct?

A. Correct.

Q. And I think you have informed the Tribunal that in

September, 1999, Mr. Lowry told you that he had identified an attractive property in the United Kingdom. However, he indicated to you that he would have difficulty arranging loan facilities to complete the purchase. You offered to assist him in securing such a loan facility. In this regard, you had a good and longstanding relationship with GE Capital Woodchester Bank through Mr. Tunney and had in the past engaged in numerous very large banking transactions with that bank. You agreed to approach GE Capital Woodchester Bank for loan finances on behalf of Mr. Lowry or a corporate vehicle of his.

Mr. Vaughan had obtained that's Mr. Vaughan the solicitor had obtained a company, Catclause Limited, for Mr. Lowry and it was proposed that Catclause would be the borrower and the purchaser of the property. In this transaction it was envisaged that Mr. Lowry would be the principal with he and his daughter, Lorraine Lowry, appointed directors of Catclause Limited. The shareholders were personnel from a company formation agency. The contract to purchase the property was signed by Catclause Limited, is that correct?

A. Correct, yes.

Q. I think you then informed the Tribunal that when you discussed the matter with Mr. Tunney of including the shareholders in Catclause, namely Mr. Lowry and his daughter, it transpired that a suitable guarantor would

be required to support the application. Mr. Lowry provided a personal guarantee from Mr. John Daly of Kinsale, Cork. This signed guarantee documentation was faxed to GE Capital Woodchester Bank on the 17th December, 1999. The loan and property transactions were completed on or about the 21st December, 1999. However, neither Mr. Lowry nor Ms. Lowry were available to sign the required resolution so "they authorised Helen Malone and I to sign as directors intending to formalise the matter shortly afterwards. This, however, was regrettably never done because by the time the forms were ready it had been decided not to proceed with the purchase in the name of Catclause Limited."

Is that correct?

A. Correct, yes.

Q. Then subsequent to the draw down 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, you requested Mr. Lowry to have Mr. Daly sign an original guarantee to have it properly witnessed etc.

By this time, which was approximately mid-January, however, Mr. Daly had changed his mind and was not willing to sign another guarantee. This, it would be appreciated, left you in an embarrassing position as you felt you had encouraged GE Capital Woodchester to proceed with the transaction and they were now without

appropriate security, is that correct?

A. Correct.

Q. You made your position very clear to Mr. Lowry, expressing your embarrassment to him. Mr. Lowry had no alternative proposals as a suitable guarantor and accordingly, you felt that you had no option on a moral basis but to become personally responsible to the bank in respect of it, is that correct?

A. Correct.

Q. You felt that you should do this in the light of a 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 you. You 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 you. 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. You were asked to meet Mr. Tony Morland and Mr. Michael Cullen of Investec on the 28th February, 2001, is that correct?

A. Correct.

Q. They were clearly concerned at the paperwork held by the bank in relation to this transaction. At the request of the bank, therefore, you instructed

Mr. Vaughan to confirm that he held the property to the order of Catclause which, as far as the bank's file was concerned, was the borrower. You understood they required this in order to rectify their file.

Accordingly, on your instructions, Mr. Vaughan wrote to the bank on the 1st March, 2001 stating "Aidan Phelan has therefore instructed me to write to you to you confirm that the property is to be held strictly to the order of Catclause Limited and that the property should be transferred into the name of Catclause Limited at the earliest possible moment."

The letter also confirmed Mr. Vaughan's irrevocable undertaking to hold the land certificate to the order of the bank as funders. At this juncture, you were not aware, and nor was Mr. Vaughan, that Catclause had, in fact, already been struck off the register some two or three days earlier.

In any event, you believe that Catclause could be reinstated in order to sort out what you perceived to be a compliance problem on the part of the bank. This was not the case and would have involved an application to the High Court in England. You then had a subsequent meeting with Mr. Michael Cullen of Investec Bank and he requested you now to write another letter, the form of which he described, "which I did on the 5th March, 2001 confirming that I held the property

personally, confirming that the deeds of the property were held to the order of the bank and undertaking to complete any outstanding documentation in order to reflect the correct position. Both of these letters were written at the request of the bank to facilitate a compliance problem for the bank." And you refer to these at appendix 5, attached to your statement, is that correct?

A. Yes.

Q. The first is a letter from Mr. Vaughan dated 1st March, 2001, isn't that correct?

A. Yes.

Q. And it reads it's to Investec and it reads:

"I refer to the telephone conversation we had on the 28th February, 2001 as to the above property. I subsequently held a telephone conversation with Aidan Phelan in regard to the same matter.

The history of this transaction is I was instructed to act in respect of the acquisition of this Property and a Limited Company called Catclause Limited was set up as the vehicle to acquire the Property.

There were various delays following the exchange of Contracts on the 9th September, 1999 and actual completion on the 21st December, 1999 - it should have taken place on the 30th November, 1999.

By that time, it had been decided that Catclause was an appropriate vehicle to acquire the Property and I was instructed that the Property should be held in the names of myself and my Partner as bare Trustees for Aidan Phelan.

The advance of i;½420,000 from your predecessors, GE Capital Bank, was received into my Solicitors Client Account by bank transfer on the 21st December, 1999 and was immediately utilised to complete the purchase of the Property.

Subsequently, following the registration of the Property, the Land Certificate was held by me strictly to the order of your predecessors GE Capital Bank, and subsequently to yourselves.

I understand that the change of identity of the Purchaser has caused compliance difficulties with The Bank.

Aidan Phelan has, therefore, instructed me to write to you to confirm that the Property is to be held strictly to the order of Catclause Limited and that the property should be transferred into the name of Catclause Limited at the earliest possible moment.

Once this transfer has taken place it should regularise the position so far as The Bank as Funder of the

purchase of the Property is concerned.

You did ask me for details of Catclause Limited. I have now had an opportunity to look at my files and I discover that all the documentation I had relating to this Company have been passed to Aidan Phelan's English Accountants. I am, therefore, unable to assist you on that particular point.

However, you may regard this letter as my irrevocable undertaking to hold the Land Certificate to the order of yourselves as Funders. I confirm that my Partner and myself are trustees of the Property for the benefit of Aidan Phelan and/or Catclause Limited and, when requested, will arrange for the transfer of the property into the name as Catclause Limited as Registered Proprietor.

When we spoke on the telephone yesterday you mentioned the difficulty that The Bank had in that the money had been sent to me to acquire the Property in the name of "Catclause Limited". Whilst I appreciate The Bank's position, insofar as I was aware, The Bank was fully aware of what was happening.

I did not have any written instructions whatsoever from The Bank to the effect that The Property had to be placed in the name of Catclause Limited. If I had received such written instructions then obviously I

would have needed to seek a variation of those instructions prior to Completion.

Yours sincerely,

Christopher Vaughan."

Then your letter to Mr. Morland is dated 5th March, 2001, isn't that correct?

A. Yes.

Q. And it reads:

"Dear Tony.

I refer to our meeting at my office on Wednesday 28th February last in relation to the loan outstanding on the above property.

When I entered into the transaction to purchase the above property, it was intended that the purchase be undertaken through a limited company, Catclause Limited, and it was assumed that I would be appointed a director of this company. However, it was subsequently decided that I would hold the property personally and complete the amended documentation.

Unfortunately, this was not done and I apologise to the bank for the shortfall in the documentation.

I can assure you that at all times the deeds of the property were held to the order of the bank and I understand my Solicitor Christopher Vaughan has

confirmed that this was and continues to be the position.

I will complete any outstanding documentation in order to reflect the correct position, including any security documentation outstanding. Appropriate confirmation as to my net worth can be provided, if required.

I further undertake to meet with the bank within four weeks to discuss repayment of this facility. If you require me to meet with you today to discuss documentation I will be available.

Finally, I apologise for the inconvenience caused by the shortcomings of this matter.

Yours sincerely,
Aidan Phelan."

I think, your statement then continues, you understand that certain officers of Investec, formerly GE Capital Woodchester Bank took the view that I had represented that Mr. Denis O'Brien stood behind the transaction at the meeting of the 28th February, 2001. This is not the case. I do not believe that I gave any assurance to the bank in this regard. Mr. O'Brien had no knowledge of this transaction. I did not offer him as a guarantor, nor did I have any authority to do so.

Then your final paragraph is "Notwithstanding the fact

that the property has not been sold, I have discharged the loan to Investec." I think that's correct?

A. Yes. Can I just make one very small comment? In paragraph 11 - 'I was asked to meet with Tony Morland and Michael Cullen'. Even though I made this statement, I was actually asked to meet with Michael Cullen, and Tony Morland came unannounced to the meeting. There is just a correction.

Q. Very good. Now, if we could return to the beginning of your statement. You say that you first encountered Mr. Lowry in February, 1997 when he was introduced by his accountant, Denis O'Connor, is that correct?

A. Yes.

Q. Could you tell us about that?

A. It arose out of, Denis O'Connor asked me to arrange a phone for Michael Lowry, a telephone, a mobile phone, which I did, and it turned into what happened was the papers printed an article on it and I met Michael as a result of that article.

Q. I see. Sorry - I am finding it difficult to hear you just at the moment. Could I just deal with that again. You said Mr. O'Connor contacted you and asked you to arrange for a mobile phone for Mr. Lowry, is that correct?

A. Correct.

Q. Just out of the blue?

A. Yes.

Q. And you agreed to arrange a mobile phone?

A. Yeah, I was acting for the biggest distributor of phones.

Q. Who was that?

A. It was called MCJ.

Q. Yes. And you provided a mobile phone?

A. I arranged a phone.

Q. You arranged the phone. What was the arrangement?

A. Like, I got him a phone.

Q. I beg your pardon?

A. I obtained a phone from my distributor and gave it to Denis for Michael Lowry.

Q. Just the handset?

A. The handset. And it was in my name, the phone was in my name.

Q. The phone was in your name?

A. Yeah.

Q. Why was that?

A. At that stage if you wanted to organise a phone that was live, with a number, you had to give your name as a credit reference.

Q. I understand that. When you go to get a mobile phone, and this was to open an account, it wasn't one of these pre-paid handsets, was it, that you put the card into?

A. No, it was an account.

Q. It was an account?

A. Yeah.

Q. And for that purpose you'd have to have identity, isn't that all of our experience, and you'd have to have for an account you'd have to have bills from two utilities, an ESB

A. - standard credit.

Q. - that standard credit sort of thing. And was this an 086 or and 087 phone?

A. It was an 087 phone 086 didn't come on line for quite a while after that.

Q. It didn't come on line until some time after that?

A. No, I don't believe I am not quite sure I think it was March '97 they launched.

Q. Right. And just to be clear about this: You were asked to provide a handset and did you also provide the account?

A. Initially, yes. The procedure was that I have done this for other people I acted for MCJ, they would connect me. I would supply the phone and then the account would be transferred over to whoever wanted the phone. Like

Q. And did that happen in this case?

A. I believe it did, yes.

Q. When?

A. Shortly after.

Q. Was it before the newspaper article?

A. No, after the newspaper article.

Q. After the newspaper article?

A. Yes, I would imagine after the newspaper article. I think what happened was that Michael Lowry lost his PIN number and contacted Eircell to be reconnected and he couldn't obviously substantiate that it was his phone because it was in my name, on my account with MCJ.

Q. And had you discharged some bill?

A. I paid no bills.

Q. Ever?

A. No, never. To my recollection I paid no bills.

Q. Sorry, I want to be clear about this now, I want to be very clear about this now, Mr. Phelan, and I want you to understand, because I have listened to you and you have a clear understanding of giving evidence and that you are under oath and you understand the distinction that you draw between indicating to the Tribunal that you have no recollection in relation to an incident and when you do have clear recollection you will either deny or assert it. Now, did you pay any bill?

A. I don't recall paying bills.

Q. You don't recall. Did you pay for the phone?

A. No.

Q. Who paid for the phone?

A. I believe MCJ would have given me the phone free. I would have to check out precisely details on that phone.

Q. Well, now, this happened this call came to you from Mr. O'Connor out of the blue, is that correct?

A. Yes, I knew Denis O'Connor.

Q. I know you knew Denis O'Connor but I am sure Denis O'Connor knows many people. What I am asking you is why should you receive a phone call to provide a phone for Mr. Lowry?

A. Denis knew that I was acting for MCJ. He was also acting for one of the distributors.

Q. One of the distributors?

A. Yes.

Q. You mean a distributor of telephones?

A. Yeah, a mobile phone distributor.

Q. And why approach you, so?

A. He said he didn't want to get his phone through his own distributor because he wanted it confidential for Michael Lowry. He asked me would I get a phone through my distributor.

Q. Right. I just want to be clear about this: There was no reason why Mr. Lowry, like the rest of us, couldn't have gone into a shop and entered into a transaction to get a handset and open an account with Eircell at the time, is that right?

A. That's correct.

Q. And having provided the why was there any or was there any discussion, I suppose I should ask first, between yourself and Mr. O'Connor why it should be done through your firm and that the account would be in your name? After all, it could have been done through Mr.

O'Connor's firm, couldn't it?

A. It could have been done yes, it could have been done by Mr. O'Connor's firm through MCJ. I suppose he asked me to do it because they were my clients.

Q. Because?

A. They were my clients, MCJ.

Q. So can I take it that all of the calls on that phone would have appeared before the newspaper article would have appeared on an account of which you were the account holder?

A. That would be correct.

Q. You or one of your companies?

A. No, it was

Q. you personally?

A. no, it was in my name personally.

Q. So, on the face of it anyone looking at it would believe it was your phone, isn't that correct?

A. That's correct.

Q. And if Mr. Lowry hadn't phoned Eircell in relation to his PIN number was there any arrangement or agreement that it would be transferred into his name at any stage?

A. Yes, I had an arrangement with Denis O'Connor that he would sort out and put a proper take it out of my name and put somebody else into place.

Q. Put somebody else, but not Mr. Lowry?

A. I took it I took it he wanted anonymity.

Q. Anonymity?

A. he wanted a phone.

Q. that wasn't traceable to him?

A. I assume that was the case. Otherwise he would have gone into a shop and ordered a phone.

Q. So did MCJ know that the phone was going to Mr. Lowry?

A. No.

Q. And who did they believe they were providing the handset to so? Was it to you?

A. They believed it was to me.

Q. And can I take it, whilst I can understand if you were acting for somebody, a friend or an associate may contact you to see if they could get a good deal on getting a phone, was this the only occasion on which a phone was obtained from MCJ free, if I could describe it that way, and an account opened in your name?

A. It probably was the only occasion.

Q. And I am not now prying or trying to I can perfectly understand where friends or family members or business associates may believe that you could get them a good deal on a handset and that would be done, but in those situations accounts would be opened in their own name, would they, or the line would be opened in their own name?

A. Yes. The only situation you would open one in your name is where you would want to give a present, a connected phone. I can't recall doing that for anyone

else.

Q. So can we take it so that you, effectively, gave the phone, free, to Mr. Lowry, isn't that correct, in the circumstance?

A. Probably, yes.

Q. Do you know did Mr. O'Connor understand that when he approached you that this would be the situation?

A. That it would be free?

Q. Yes.

A. I am not sure whether we even went into that.

Q. Well, was there any suggestion by him or offering to pay for it or to have the account looked after?

A. Certainly, you know, I would have never paid any telephone bills.

Q. Well, how soon after the telephone being supplied did the article appear in the paper?

A. Very shortly.

Q. So had any bill arrived?

A. A bill possibly arrived but I certainly didn't pay it.

I passed it on to Denis O'Connor.

Q. Do you know whether or not Mr. Lowry had any other mobile phone at the time?

A. I don't know.

Q. This was, you believe, perhaps when? In February or thereabouts?

A. I believe, yes, February of 1997.

Q. It was after Mr. there had been publicity about

Mr. Lowry's position and he had left office, isn't that correct?

A. That's correct.

Q. Was it around the time that the McCracken Tribunal was set up?

A. I think you said yesterday it was around that time.

Q. Around the 7th February, or thereabouts?

A. I think you said that yesterday, yeah.

Q. Was it around this time that this happened?

A. Well, it was in February '97/March '97. It was in the paper. I can't actually recollect when.

Q. Yes, all right. And what happened then? There was the controversy in the paper. What happened about the phone, first of all?

A. Denis O'Connor took sorted out the phone, the transfer of, you know, the ownership, the name. I think he transferred the ownership or else cancelled the number. It was either one or the other.

Q. Right. And was that your first dealing with Mr. Lowry?

A. It was the first time I met him.

Q. The first time you met him. Did you actually meet him at that time?

A. Yes.

Q. In what circumstance?

A. I just met him to see what went wrong here in I suppose he appeared in the paper and I just wanted to meet him, sort out what went wrong. It put me in the

public domain. And I just wanted to understand what had happened.

Q. And who was present at that meeting?

A. I believe Denis O'Connor and myself.

Q. And where did it take place?

A. Probably in Denis's office.

Q. And that would have been soon after we can check when the article appeared in the newspaper

A. Yeah, in or around that.

Q. In or around that time?

A. Certainly after the article.

Q. Now, was this the only transaction you had at this time involving Mr. Lowry?

A. Yes.

Q. What explanation was offered to you at the meeting with Mr. Lowry and Mr. O'Connor about the publicity?

A. Sorry, the explanation about the publicity?

Q. Yes.

A. How it arose?

Q. Yes.

A. The explanation was that he lost his PIN number and when he contacted Eircell somebody in Eircell obviously he attempted to reconnect or reactivate his phone and couldn't do so because he didn't have the right account details or the set up details whatever security queries they had he couldn't deal with.

Q. Right.

A. And, therefore, the person in Eircell obviously contacted the newspapers because, you know, it was unusual to have Michael Lowry calling him and trying to reconnect a phone that wasn't in his name and thought it was newsworthy.

Q. Yes. And your name came out in the wash, did it, in the newspaper?

A. Well, I would have been on the credit application in the and there was an article done in the paper.

Q. And did the article I am not being in any way disrespectful to you but at the time, do you think your name would have been in wide circulation?

A. I wouldn't have thought so, no. I have always been low profile.

Q. And did the article just make reference to you?

A. It made reference to Michael Lowry and me and

Q. and to anyone else?

A. I think my brother, possibly O'Brien. I think "O'Brien's moneyman gives phone to Lowry". It was in the Sunday World.

Q. And was it Mr. Lowry informed you that he had contacted Eircell? I take it it was Mr. Lowry told you that?

A. Yes.

Q. And what was how did the discussion proceed then?

A. There wasn't an awful lot of discussion. It was just I wasn't particularly happy about it but given

it was the Sunday World and not the serious newspapers,
it wasn't as upsetting as it might have been.

Q. Was there anything else discussed at that meeting at
that time?

A. No.

Q. Now, when did you next have any contact or dealings
with Mr. Lowry?

A. Sometime in the middle of '97, I would have met him,
you know, in relation to advice he was looking to do
something with his company.

Q. That's Streamline, his refrigeration company?

A. Yes, Streamline Enterprises.

Q. So you think that you first encountered Mr. Lowry in
February 1997, that related to the telephone, or the
mobile phone?

A. Yes.

Q. You then, a few months later, met Mr. Lowry again in
relation to his refrigeration business, is that
correct?

A. Yes.

Q. And how did you meet him?

A. Denis referred him to me in relation to

Q. That's Denis O'Connor?

A. Denis O'Connor sorry, yeah referred him to me in
relation to a client I had acted for and generally who
was an acquirer of business and active whether
there might be some possibility of mutual business,

take over.

Q. Was that a company of Masser Hammond?

A. Masser Hammond, yeah.

Q. What was discussed at these meetings?

A. Well, two things, the possibility of doing a joint venture between the two companies, whether Masser Hammond could combine with Streamline and create a bigger business, or whether Masser Hammond could take over Streamline and buy the share capital in Streamline and keep, at all times keep Michael Lowry involved in the business, try and maintain their contracts, and there was

Q. what was explained to you about Michael Lowry's business?

A. Just an over I had an overview of the business.

Not no great detail in relation to the business.

It was really the significance of the turnover and the contracts. I mean, it was primarily Dunnes Stores orientated. Obviously there was a lot of risk in terms of that side of it. He had also a number of initiatives that he didn't really have the wherewithal to pursue. There were a couple of supermarket groups coming into Ireland. One of them was Lidl, L-I-D-L, Lidl, I think a German low-cost operation and the idea was that Masser Hammond might take over those contracts as a combine. Also, to try and you know, maybe maintain the Dunnes Stores business which was under a

bit of pressure.

Q. Now, I take it that the first meeting and any subsequent meetings you had around this time in 1997 to discuss Mr. Lowry's business would have been in the context of the evidence which was emerging at the McCracken Tribunal of how Mr. Lowry was being paid by Dunnes Stores, or by Mr. Ben Dunne in particular, isn't that right?

A. No, there was no discussion of that side of the business.

Q. I am not asking about discussion. But I think you would have been aware of how matters were unfolding at the McCracken Tribunal?

A. I was aware of some of the matters. Do you mean commissions?

Q. Mmm?

A. Do you mean commissions?

Q. I don't want to go into great detail but the structure of the company, effectively, was that it would just about break even and that Mr. Lowry would be paid in another way by Mr. Dunne, do you remember that type of evidence?

A. I remember that type of evidence.

Q. Now, I think you provided did yourself and Mr. O'Connor provide joint advice in relation to that or did you take over giving advice to Mr. Lowry?

A. No, I think Denis was at a meeting, probably in my

office, at one stage. I took over trying to drive a relationship between Masser Hammond and Streamline.

Q. And were you provided with the accounts of Streamline?

A. Yeah, I don't believe I did any significant review of the accounts. The value was seen to be in the top line the turnover, sorry.

Q. In the what?

A. The turnover, the value of the contracts.

Q. The value of the contracts. And it wasn't of particular interest to you that the accounts were not necessarily reflecting the potential profitability of the company?

A. Not particularly significant to me at the time. I think that the managing director of Masser Hammond, David O'Keefe, had a very good understanding himself of what Streamline it's a narrow enough business sector he had a fairly good understanding of what the potential in the company was. I'll just say that there were various different times when this thing warmed up and cooled off. It didn't it happened initially in '97. It wasn't really until '98 before there was really any kind of serious attempt to try and make a deal between the two parties.

Q. But so from February you had your first encounter with Mr. Lowry in February in relation to the telephone. You then would have met him, perhaps a few times, later on in '97, would that be correct?

A. Correct.

Q. Summer of '97. You would have been involved in some discussions with him, one of them involving Mr. O'Connor, and you would have involved him in discussions with Mr. O'Keefe from Masser Hammond, is that correct?

A. Just don't hold me on the actual dates.

Q. I am not.

A. Okay. But over that period of time, like

Q. they were in '97. I am not holding to you actual dates?

A. In '97 and in '98, if that's important. It's just

Q. that's fine. Now, were these the fees, the only fees you charged Mr. Lowry?

A. Yes. In this type of transaction you tend to get a quantum meruit fee and really, I never had I never actually consummated a deal so and this was really just down to a token for time and so on. So it wasn't really directed at any specific piece of business.

Q. If the deal had gone ahead?

A. If the deal had gone ahead I would have got a bigger fee.

Q. Now, I am just somewhat curious, if I could just jump back to something we were talking about yesterday because the IPO of ESAT Telecom began to heat up in October/November of '97, isn't that correct?

A. That's right.

Q. Can you remember when Mr. O'Brien first formed the view that there would be an IPO of ESAT Telecom? I think it was probably, if I can assist you, early in '97, would that be correct?

A. Possibly I mean, there was a high-yield bond offering in January '97. Probably would have envisaged an equity offering sometime later.

Q. Around that time?

A. Yeah, it would probably be logical

Q. Now, by the time October of '97 arrived anyway, you became aware that Mr. Lowry's name was entering the picture and could have some detrimental effect on the IPO, isn't that correct?

A. Yes.

Q. And you yourself had provided some assistance to Mr. Lowry before that in the form of the telephone, isn't that correct?

A. Yes.

Q. And you were providing professional assistance, isn't that correct?

A. Yes.

Q. So Mr. Lowry was very much in your mind all this time?

A. He was.

Q. And you certainly understood the significance of Mr. Lowry in respect of ESAT Telecom or ESAT Digifone and any controversy which may surround that, isn't that correct?

A. Yes.

Q. Now, you continued, I think as you said, into 1998, having certain dealings with Mr. Lowry in relation to his business Streamline Enterprises with some hope that some deal might be put together, is that correct?

A. Yes.

Q. In any event, it didn't work out that way?

A. It didn't, no.

Q. Now, in 1997, were you still a partner with your brother in the practice of Brian Phelan?

A. It was come to the end of yes, I think I was still there. I was just about to

Q. yes and in 1997 into 1998 you commenced your practice as a sole trader from the same premises?

A. That's right.

Q. Now, I think you said yesterday that you were still in practice up to November 1998 under the style or title of Brian Phelan?

A. Yes.

Q. When do you think that you commenced your practice as a sole trader I know from the same premises?

A. Just let me think about this for a second. I think I commenced as a sole trader in November '97.

Q. You think you commenced

A. Yeah, '98 - year one, then '98 to '99.

Q. These are dates we can check.

A. I think November '97 I was a sole trader so my first

year end would be '98. I can check these dates and confirm them.

Q. All right. Well, can you just confirm that, and I don't want to know the full nature of your practice, but would Mr. O'Brien and his companies have constituted a significant part of your practice?

A. Of the Brian Phelan practice?

Q. Of your practice?

A. Oh, of my practice? A significant part, yes, but not probably 50% of it anyway.

Q. And the expression which was used by the newspaper, if they used the expression that you were Denis O'Brien's moneymen or something of that nature, would you have agreed or disagreed with that particular designation of yourself?

A. Well, it was actual 'ESAT moneymen'. I would have disagreed with that particular headline.

Q. Would you have agreed with 'ESAT moneymen'?

A. No.

Q. What about the Denis O'Brien moneymen?

A. That wasn't mentioned.

Q. But I am asking you now?

A. I would have agreed with that.

Q. Now, I think in or around March of 1999, you say that Mr. Kevin Phelan, who was no relation of yours, but he was known to both Mr. Lowry and to yourself, independently informed you of Mr. Lowry's involvement

in a hotel site in Mansfield, isn't that correct?

A. Yes.

Q. First of all, had you had any previous dealings with Mr. Kevin Phelan prior to March of 1999?

A. I had, yes.

Q. And what were those?

A. He found a property he knew I was active and looking for properties in the UK and he found me a property.

He showed me a number of properties. He found me one which I purchased.

Q. On your own?

A. With O'Brien.

Q. With Mr. Denis O'Brien?

A. With Denis O'Brien. That was in or around March '98.

Q. And when you say that what was the relationship between yourself and Mr. O'Brien in these property transactions?

A. Just one, this one. This one in Luton.

Q. Just one property transaction?

A. Yes.

Q. Was that a 50/50 relationship?

A. It was.

Q. And who handled it?

A. Christopher Vaughan, as a solicitor.

Q. As the solicitor. And did you handle the transaction?

A. I handled the transaction.

Q. And who provided the money?

A. The equity was provided by the equity capital was provided by O'Brien and myself, more or less in a 50/50 split and Equity Bank, which is part of the Bank of Scotland now, provided the loan.

Q. Right. So

A. And the price

Q. Pardon?

A. It was in around a $\frac{1}{2}$ 500,000 deal.

Q. And what was the date of that, do you remember?

A. In or around March '98.

Q. In around March of '98. And was there a corporate vehicle for that particular transaction?

A. Yes.

Q. And in whose name was the loan obtained?

A. In the name of the corporate vehicle.

Q. In the name of the corporate vehicle?

A. Yes.

Q. And did the bank know the bank providing the loan, did they know the purpose for which it was required?

A. Yes.

Q. And did they know the identity of the persons behind the corporate vehicle?

A. Yes.

Q. And who were they, as declared to the bank?

A. Well, can I make two points?

Q. Yes, indeed?

A. The owners as declared to the bank were Helen Malone

and myself. Helen was holding there were two issued shares and Helen was holding one in trust for O'Brien and the facility for the bank was jointly guaranteed by O'Brien and myself.

Q. I just, if I could be clear about this; who were the directors of the company?

A. Helen Malone and Aidan Phelan.

Q. Right. The company was formed, I take it, by Mr. Vaughan, was it?

A. I can't recall. Probably.

Q. It was probably a UK

A. or else we acquired it ourselves.

Q. Or you acquired it yourselves. And just to be clear about this, that on that transaction, a corporate vehicle was used - not unusual to use a corporate vehicle for the purchase of a property. The directors of that company were Ms. Helen Malone, who was she your partner by then or?

A. No, I don't believe she was my partner by then, possibly, possibly. I'll check these dates.

Q. Yes, indeed, but she was providing company secretarial services?

A. Yes.

Q. And you were the other director. And were you also the named shareholders in the company?

A. Yes.

Q. And Ms. Malone held her share in trust for Mr. O'Brien?

A. Yes.

Q. But Mr. O'Brien did not appear as being a shareholder or a director of the company, isn't that correct?

A. Correct.

Q. But what he was was a guarantor in respect of the loan which was obtained from the bank?

A. Yes.

Q. Were you also a guarantor?

A. Yes.

Q. And when you say 'guarantor', you mean formally signing

A. both of us formally signed the facilities. I think the initial guarantee I know we provided files to the Tribunal, I don't know whether you have discovered the documentation but I think you have the documentation in relation to the guarantees.

Q. Yes. Now, how did you come into contact with Mr. Kevin Phelan?

A. I think my brother introduced him to me. He in turn was introduced to another accountant colleague of ours and had some connection with the meat industry. I think that's how the connection was made.

Q. But you believe it was your brother introduced Kevin Phelan to you?

A. I believe it was, yes.

Q. And did you introduce him to Mr. O'Brien?

A. Kevin Phelan?

Q. Yes.

A. No.

Q. Apart from this property transaction involving Mr. O'Brien and yourself, in which Mr. Phelan had found a property for you, was there any other property transaction which Mr. O'Brien and yourself were involved in?

A. As shareholders?

Q. No, just involved in?

A. Involved in yes.

Q. And what was that?

A. I acted for a vehicle on behalf of Denis to acquire a football property in the UK.

Q. Did Mr. O'Brien was he a shareholder in that company?

A. Ultimately, yes.

Q. At the time the company was formed and the property of acquired was he a shareholder in the company named?

A. No, not named.

Q. And he wasn't an officer of the company either?

A. No, no.

Q. And who were the shareholders in that company, yourself and Ms. Malone perhaps?

A. Possibly, possibly. It's just one I'd have to check.

Q. Yes, indeed. Who provided the funds for it?

A. Anglo Irish initially and then that was replaced by Denis's own private equity.

Q. And then replaced by Mr. O'Brien's own private equity?

A. Yes.

Q. And do you know where that money came out of, Mr. O'Brien's own private equity what bank?

A. Probably came out of Woodchester.

Q. Right. And did you do

A. which was subsequently replaced by his own. If I could just explain that?

Q. Yes, indeed.

A. I may just correct that, actually, because I think Anglo put up the money and Denis repaid Anglo/, I am not sure whether there was any Woodchester connection at all in it.

Q. All right.

A. These are just matters that I'd have to just review.

Q. Yes, of course. And was Mr. Kevin Phelan, had he any involvement in that transaction involving the football grounds?

A. He was active at the due diligence stage. He helped appoint a firm of accountants to it was a share purchase transaction as opposed to an actual property pure the company owned the ground and Kevin was active in negotiating the price and he helped, you know, find a firm of accountants to do the due diligence on the company.

Q. And the vehicle then purchased the shares?

A. The vehicle purchased the shares in the company that

owned the ground.

Q. And who was the solicitor?

A. Christopher Vaughan.

Q. And how did you first meet Mr. Christopher Vaughan?

A. Kevin Phelan introduced him to me, I believe at the time of the Luton transaction.

Q. This is

A. or before, somewhere around early '98.

Q. Around early '98?

A. Yeah, yes.

Q. When you use the expression 'the Luton transaction', just to be clear about this, that is the property

transaction as opposed to the purchase of the shares in the football club?

A. Yes.

Q. And you believe that Mr. Phelan introduced sorry, you know Mr. Phelan introduced Mr. Vaughan as the solicitor, isn't that correct?

A. Yes.

Q. And you believe that that was sometime in early 1998?

A. I would say it was synonymous with the purchase of the Luton property. He was brought to the table.

Q. and I just want to Mr. Vaughan acted as solicitor in respect of that property transaction and also in respect of the football club transaction?

A. Correct.

Q. And did Mr. Vaughan know that Ms. Malone held the share

in the corporate vehicle, which was used to purchase the property in Luton, in trust for Mr. Denis O'Brien?

A. I would say not.

Q. You would say not?

A. No. He would have no reason to know it.

Q. Did Mr. Vaughan know of Mr. O'Brien's involvement in the purchase of the shares in the football club?

A. No.

Q. So Mr. Vaughan did not know anything about Mr. O'Brien or of his involvement in these matters?

A. Yes.

Q. Ever?

A. I believe that's correct unless he would have seen his name on the guarantee for the Equity Bank guarantee, which is a possibility, but I don't think it would have put any it wouldn't have been a name that would have meant anything to him.

Q. So did Mr. Kevin Phelan know that Mr. O'Brien was involved in these matters?

A. No.

Q. And when exactly did Mr. Kevin Phelan receive his introduction to you?

A. Sorry, to me?

Q. Yes.

A. Sometime before the Luton transaction. I can't be specific.

Q. Was that in 1997 that he was introduced to you in the

first instance?

A. It could have been, it could have been early '98 late '97/early '98. I think it's unlikely that I met him in late '97 because I was busy. I just can't I can't recall when.

Q. Were you looking for property in England or was Mr. Phelan looking for investors?

A. Mr. Phelan was looking for he was generally site-finding for people and trying to put properties and investors together and get a commission.

Q. So he was looking for investors, that was the way it came?

A. That's the way it came.

Q. And what he was doing was looking around to see if there was anyone interested in doing a property investment in England, I suppose, is that right?

A. Yes. He was yeah, yes, that's correct.

Q. And that's how you came together?

A. Yes.

Q. Now, where does Mr. Phelan do his business from?

A. He lives in Northern Ireland and I think he is based somewhere in Northampton. I have never been to his office.

Q. Do you continue to have business dealings with him?

A. No.

Q. When did those cease?

A. They ceased, probably they ceased middle of last year,

around about when it was clear there were problems in relation to he was making promises about, on the Cheadle transaction, for example, he was making promises about moving the property, selling it and they weren't being delivered. I became very frustrated with him.

Q. I just want to be clear; Mr. Kevin Phelan is Irish, isn't that right?

A. He is, yes.

Q. And I mean he is from the south of Ireland?

A. Yes.

Q. He has an address in the north of Ireland, isn't that right?

A. He lives in Omagh.

Q. And he carries on a business in Northampton, to the best of your knowledge?

A. To the best of my knowledge.

Q. Where did you meet him?

A. I met him in my office in Orchard House.

Q. And how many times would you have met him here?

A. In Ireland?

Q. Yes.

A. Often.

Q. Often?

A. Yeah.

Q. And would it be fair to say that he conducts a reasonable amount of business in Dublin?

A. He really never discussed any other of his business activities with me, so

Q. Were you able to form any impression as to whether or not he was looking for investors in Ireland?

A. Yes, I believe he was looking, he was trying to bring property opportunities to Irish investors, yes, I believe that's

Q. Well, would he be, from the time you were involved with him, would he have been here fairly regularly?

A. He was in the early part of that when I knew him he used to be here fairly regularly.

Q. Is Mr. Phelan owed any fees or money out of any of these transactions?

A. Yes, he is claiming he is owed fees.

Q. So there must be some element of contact, even if it's only by way of correspondence?

A. Well, I have had some correspondence from him in relation to fees, which I am in dispute.

Q. you are in dispute with him?

A. with him.

Q. And are there solicitors involved in this on Mr. Phelan's part?

A. No.

Q. Has he suggested litigation?

A. He has.

Q. Where? Here?

A. He has just general "I will contact my legal

advisers unless".

Q. Have you had any discussions with Mr. Phelan about his availability to attend to give evidence to this Tribunal?

A. No.

Q. For the purpose or even to assist the Tribunal in any way?

A. No.

Q. Has Mr. Phelan discussed the Tribunal with you?

A. He has discussed it with me, yes.

Q. And what has he said to you?

A. He specifically hasn't he talked to me about the whole it was really in connection with finding out detail in relation to why properties hadn't been sold. He said it was more the likely that I would have to defer to him and ask him again why he didn't do what he said he was going to do in relation to Cheadle in particular.

Q. But has he discussed the question of him assisting the Tribunal or attending to give evidence at the Tribunal or anything of that nature?

A. No.

Q. Have you met him since this matter has come to the attention of the Tribunal?

A. Yes.

Q. Where?

A. I met him in Dublin.

Q. When was that?

A. Probably in March, 2001.

Q. March 2001?

A. Yeah, in or around that.

Q. And how many times would you have had meetings with him?

A. One or two meetings.

Q. On the same day, or were they?

A. no, they were apart. He attended one meeting

Q. Who also

A. he came to a meeting and didn't he came with this architect. He didn't actually attend the meeting but he was in a separate room.

Q. Where was that?

A. It was in the Regency Airport Hotel.

Q. And who was at the meeting?

A. Denis O'Connor was there.

Q. Who else?

A. Helen Malone, Michael Lowry, myself and Christopher Vaughan.

Q. And had Mr. Phelan flown in from England to attend the meeting?

A. He either came down from the north or flew in from England.

Q. Had Mr. Vaughan flown in from England?

A. He did, yes.

Q. Was that around the 14th March of 2001?

A. It probably was.

Q. What was the purpose

A. I'd have to check.

Q. What was the purpose of the meeting?

A. The purpose of meeting was to try and understand, really from Denis O'Connor's point of view, because I think he really hadn't been aware that Michael had been involved in these property arrangements and he wanted to get familiar with why the whole thing had exploded and become a matter for the attention of the Tribunal, and really just to give him an explanation of what had happened. And it spilled into the whole idea of why the, particularly, the Cheadle property, hadn't been disposed of.

Q. But I think by this time, the time you had this meeting, I think you had some understanding that Investec intended to come to the Tribunal, isn't that correct?

A. I had, yes.

Q. And as far as you understood it, Mr. Denis O'Connor, who was Mr. Lowry's accountant, did not know about these property transactions, is that right?

A. That's my understanding of it, that's right.

Q. And the purpose of the meeting was to inform him of the situation?

A. Yeah. He was he wasn't happy.

Q. And Mr. Vaughan came in from England for that meeting?

A. He did.

Q. And Mr. Phelan either came from Omagh or from England to the meeting, is that correct?

A. Yes.

Q. But he didn't participate in it?

A. No.

Q. And what was he there for or what was it intended he be there for?

A. I suppose it was intended that he'd explained to Denis O'Connor exactly what these properties were, where they were and inform of any detail he needed to know about the underlying properties.

Q. Were there notes made at the meeting?

A. I didn't make notes.

Q. Did anyone else make notes?

A. I have no idea.

Q. Did you see anyone else making notes?

A. I am sure people made, scribbled down some notes. I didn't see it was more discussion than a note taking.

Q. I just want to be very clear, the purpose of this meeting was to enable Mr. Denis O'Connor obtain a full understanding in the matter. I just want to be clear about this as well; Mr. Vaughan was there to give factual information, isn't that right?

A. Yes.

Q. And Mr. Vaughan was able to make himself available for

that meeting, isn't that right?

A. He was.

Q. What notice did he get to attend the meeting?

A. Short notice.

Q. It must have been perhaps a day?

A. Yeah, probably a day or two.

Q. Are you aware that, as of the moment at least, Mr. Vaughan does not appear to be prepared to make himself available to give evidence to the Tribunal?

A. I am aware of that.

Q. And is that your understanding of the situation from him as well?

A. It is my yes.

Q. Were there any other meetings with Mr. Vaughan around this time?

A. Yeah, I think there was another meeting, one other meeting.

Q. Where was that?

A. In my office.

Q. In Dublin?

A. In Dublin.

Q. Can you remember roughly when that was?

A. I'd say both meetings were in March.

Q. And at the second meeting who was present?

A. Michael Lowry, there was some confusion I think in which meeting the Regency Hotel meeting I described, I am not sure of the dates, which was first or second.

Q. All right.

A. One meeting was Michael Lowry, Christopher Vaughan and myself and possibly Helen Malone.

Q. Mr. O'Connor wasn't present at that meeting?

A. No, he wasn't, no.

Q. And was that meeting in your office?

A. That was in my office.

Q. And what was the purpose of that meeting?

A. The purpose of the meeting was to understand the whole Investec problem and Michael was concerned that he had been pulled into the thing and we wanted, you know, to understand obviously the conflict of Christopher writing to the bank purporting that Investec was there and what the reality was, situation was, try and explain why those communications were being made.

Q. I'll go into those documents in a moment but, particularly Mr. Vaughan's letters

A. Yes.

Q. and Mr. Lowry was concerned that he had been pulled into the thing?

A. Yes.

Q. What did you understand him to mean by that?

A. Well, it was clear that Investec had discovered, in their view, that Michael Lowry, for the first time, was in the transaction.

Q. Yes.

A. I informed Michael of what Investec's problem was.

Q. Yes?

A. I tried to explain what the history of the transaction was and how it unfolded and why we were where we were.

Q. Right. And Mr. Vaughan was present to give factual information again?

A. Factual information.

Q. Were there any notes taken at that meeting?

A. No.

Q. Did Mr. Vaughan take any notes?

A. No, I don't believe so.

Q. At either meeting?

A. I don't believe so. It was just discussing the Investec situation and he had his file, he had his own correspondence file.

Q. He had his own correspondence file. And what was Mr. Lowry concerned about in terms of being drawn into something?

A. Well, I told him that Investec were saying that he was still involved in the transaction and they had first found out about it in or around February, actually the 27th February, that he was still there and I explained to him that this was going to be a problem and that I went back over the history of the transaction, what had happened and why it now had become a problem.

Q. And what was the problem?

A. The problem was that Investec were saying that his involvement in Catclause was hidden from them and, in

fact, that they regarded Catclause Limited as still being on their books, on their loan book and that was a problem.

Q. But there was a bigger problem, wasn't there?

A. Well, the bigger problem was the insinuations that were made by various people that Denis O'Brien was standing behind the transaction.

Q. That was the real problem, wasn't it?

A. Well, that was the real problem from Investec's point of view.

Q. Well, from the Tribunal's point of view as well and that was the matter that really that brought them to the Central Bank?

A. That's the matter that brought them to the Tribunal and the Central Bank.

Q. The other matter, as to whether it was Mr. Lowry was still involved in the transaction or whether it was somebody else, was more of a commercial matter?

A. Correct.

Q. And I take it you saw that and you could identify that as an issue, couldn't you, that the references to Mr. O'Brien and the view Investec were now taking about Mr. Lowry's involvement in the transaction, were significant issues?

A. I could see that, yes.

Q. And I take it you were able to explain that to Mr. Lowry, isn't that correct?

A. I didn't have to explain to him.

Q. He didn't need it explained to him?

A. No.

Q. He saw the significance?

A. Absolutely.

Q. And what did Mr. Lowry say, can you remember?

A. He was very unhappy.

Q. I understand that would be so, but can you remember what he actually said at the time?

A. I can't recall what he said but he said "How am I still connected to this transaction? How am I still involved in it? I am gone, Catclaus is gone."

Q. I don't think at that stage or had you paid off you had not paid off the loan at that stage?

A. No.

Q. And I think at that stage, when you discussed it with Mr. Lowry, it was not necessarily your own view that Mr. Lowry was gone, isn't that right?

A. It was my view he was gone.

Q. That was always your view?

A. Well, it was my view from January 2000 he was gone.

Q. That he was gone?

A. In terms of a participator, not in terms of having an involvement in selling the property, if I can draw the distinction.

Q. Yes, please.

A. I regarded if I go back to the beginning of the

transaction.

Q. Yes.

A. I agreed to arrange the loan in Investec for Catclause Limited, of which Michael and Lorraine Lowry were directors. When he failed to produce the Daly guarantee I stood in and took over the beneficial interest in the property. Now, the paperwork was never addressed properly and I held Michael still responsible for getting the loan paid off and, you know, about our meeting in August 2000 where we tried to really make a push and get the thing done. So I mean, I regarded him as having a moral responsibility to help get rid of this property. It wasn't a transaction I entered into by my own volition.

Q. But you understood that's what I wanted to ask you about even when you spoke to Mr. Lowry in March, 2001 this year as far as you were concerned, Mr. Lowry had a responsibility to assist in disposing of the property, isn't that correct?

A. No, that's not correct. After the August sorry after the August 2000 meeting I took, with Christopher Vaughan's assistance, when Michael made a last ditch effort to try and get rid of the property and sell it, and secured an offer, a 1.1 million offer which fell through, and that was the end of it as far as I was concerned. Christopher knew I was, you know, landed into this problem and he contacted an outfit called,

some surveyor, property surveyor, auctioneer company to try and move it on for me and I regarded Michael as no longer having the interest or the ability to be able to sell the property at that stage.

Q. Is that documented?

A. I think it may be documented.

Q. Did you tell Mr. Lowry that?

A. That he no, I didn't, no. I didn't actually specifically say it.

Q. Did you tell him that he was free from any responsibility?

A. I don't believe I put it to him, no.

Q. And up to that time if the property had sold and the bank had been paid off, I take it it was Mr. Lowry who would have taken the profit?

A. Absolutely not. I would have taken the profit.

Q. I see. So as and from January, 2000 you were the one who was going to take any profit in respect of that?

A. Yes.

Q. I see. And why should Mr. Lowry assist in the disposal of the property so?

A. Because he had landed me in a difficult position with GE Capital.

Q. What position had he landed you in?

A. I had to stand behind the loan.

Q. Yes, and you were going to take the profit on the transaction?

A. Yes.

Q. So what was the difficulty?

A. Well, it was a transaction I hadn't I wasn't interested in getting into, in the first place.

Q. I'll come back to that in a moment as well, if I may.

And in the first instance, your first involvement with Mr. Lowry in respect, or was it your first involvement with Mr. Lowry in respect of property, was the purchase of the hotel site in Mansfield, isn't that correct?

A. That's correct.

Q. And how did that come about?

A. That came about through Kevin Phelan, Ken Phelan suggesting to me that he had an opportunity in Mansfield, that he believed it was a very good opportunity and he talked to me about it and said Michael Lowry had was also involved and he really hadn't the ability to fund it. So I liked the look of the project and I got involved.

Q. You liked the look of the project?

A. Yes.

Q. And what was the project?

A. The Mansfield two and a half acre site - or two acre site. It was a hotel site, together with the option for the residential area of 31 acres.

Q. And you liked the project and you decided to get involved?

A. Yes.

Q. Did any alarm bell go off that perhaps this was dangerous?

A. No.

Q. None?

A. No.

Q. Are you serious, Mr. Phelan?

A. I am serious.

Q. And you knew, and you have admitted that you could have been described as 'Mr. O'Brien's moneyman'?

A. Yes.

Q. You knew Michael Lowry was about the most controversial figure Mr. O'Brien could be associated with, isn't that correct?

A. I did.

Q. And you consciously, for pure business purposes, considered this an appropriate thing for you to do?

A. I considered it appropriate, yes.

Q. And this was after you had sought to reverse a situation over something as small as a mobile telephone when there was a link between you and Mr. Lowry the year previously, is that right?

A. Yes.

Q. And for this particular project in Mansfield, you drew down $\frac{1}{2}$ 300,000 sterling out of Mr. Denis O'Brien's account with Credit Suisse First Boston?

A. Yes.

Q. Where you had signing rights?

A. Yes.

Q. And the property did not go into your name, did it?

A. No.

Q. It didn't go into anyone's name other than Mr. Lowry's name, isn't that right?

A. That's correct, yes.

Q. It went into Mr. Lowry's name. And, of course, there were no borrowings in respect of that particular property?

A. No borrowings.

Q. And the $\frac{1}{2}$ 300,000 drawn out of Mr. Denis O'Brien's account went into Mr. Christopher Vaughan's client account, isn't that correct?

A. Correct.

Q. And the property was purchased by Mr. Christopher Vaughan making the drawing on his own client account, isn't that right?

A. That's correct. It was closed. The closing was done.

Q. And there was no need for any corporate vehicle, there was no need for any guarantors, isn't that right?

A. Correct.

Q. But anyone looking at Mr. Lowry's situation would not have been able to identify where the money had come from, would they, if they went on a tracing exercise?

A. Looking at the property?

Q. Yes, and

A. No, they wouldn't, no.

Q. Now, what you then after that property was purchased, is that right?

A. yes.

Q. entered into an agreement with Mr. Lowry in relation to the transaction and any future transaction, is that correct?

A. Yes.

Q. And the purpose or the agreement was to the effect, after negotiation, that you would take 90% and Mr. Lowry would take 10%, is that correct?

A. That's correct.

Q. What other transaction formed part of that agreement?

A. No other transaction.

Q. No other transaction.

CHAIRMAN: It's nearly ten to one, Mr. Coughlan. If it suits, I think we'll adjourn until five past two.

Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.05 P.M.:

CONTINUATION OF EXAMINATION OF MR. PHELAN BY
MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Phelan, what's the position as regards the Mansfield property at present?

A. Presently it's still owned by the joint venture. We are trying to enhance the planning in relation to it.

Unfortunately I haven't had much time to devote to it.

But we are holding it with a view to getting additional planning, a residential side of it.

Q. And is the property still registered in the name of Mr. Lowry?

A. It is.

Q. Now, I wonder were you able to check over the lunch time, maybe you weren't, when you went into practice on your own?

A. Unfortunately I didn't over lunch time but I can certainly deal with it this afternoon.

Q. Yes, if just if somebody could make an inquiry, it would be helpful.

Now, turning to the Cheadle property?

A. Yes.

Q. I think after the purchase of the Mansfield property, there was some money left over out of the $\frac{1}{2}$ 300,000 which had been sent to Mr. Vaughan's client account, isn't that correct?

A. That's right.

Q. And what was your first knowledge of the Cheadle property?

A. Probably sometime in September of '99.

Q. 1999?

A. '99, yeah, when Michael Lowry mentioned to me that he had seen this site. This was another Kevin Phelan-introduced opportunity.

Q. Right.

A. And he discussed it with me. It was supposed to be well, he was offering it as another, a second opportunity for the joint venture.

Q. Mr. Lowry was or Mr. Mr. Lowry's was offering?

A. Mr. Lowry. Kevin Phelan wouldn't have been involved in our arrangement. He would have brought the property to Michael Lowry and he discussed it with me and I declined to participate.

Q. Why was that?

A. I just didn't like the shape of the project. I really didn't have time to get stuck into any detail on it.

Q. Had you been involved in any great detail in the Mansfield property?

A. Not great detail but the opportunity was the residential potential.

Q. And what did you not like about the Cheadle transaction?

A. I didn't like the fact that it had a planning designation. I think it's an H 1 designation, which is a place of worship or public assembly, or something in that general

Q. - you didn't like the look of that?

A. I didn't like the look of trying to revise the planning on that. I didn't think it was achievable. I did think that it was probably worth what was being paid for it but up-side was going to be long and difficult.

Q. And what was his reaction when you said you weren't interested in doing it as part of the joint venture?

A. He stated that he'd like to do it alone and I didn't particularly I said, 'Well, if you think it's that good, go ahead and do it on your own'.

Q. Right. So as a result of that discussion, what was your understanding?

A. My understanding was that he was going to go and do it on his own.

Q. And where was he going to get the money?

A. Well, he borrowed the deposit from the joint venture fund and he was either going to find another investor or try and raise capital, loan finance.

Q. So he effectively borrowed the money from he borrowed your money?

A. The residual money.

Q. The residual money, he borrowed that money from?

A. I think it was $\frac{1}{2}$ 44,500, yes.

Q. Was there any formality about that or was it just a nod to him, 'Look, go ahead'?

A. There was no documentation.

Q. Did you just say 'Go ahead and do it'?

A. I think I wrote to him, from memory or

Q. right.

A. I think I wrote to him from memory.

Q. So he paid the deposit; and when would that have been, perhaps September of 1999?

A. Perhaps September and there were yeah, perhaps September, 1999. Again, I can't be definitive on dates.

Q. And as far as you understood it then what was to happen?

A. What was to happen was, as far as I was concerned, I had no further interest in the project other than when he he said that he was going to raise the money to complete the transaction and went off to do that.

Q. Right. Now, do you know where he went?

A. Not particularly, no. The Irish Permanent comes to mind.

Q. You think he went to the Irish Permanent?

A. I think he went to the Irish Permanent or was attempting to raise a second mortgage on his property at Holycross.

Q. I see.

A. This is from memory. I didn't spend much time with him on this particular project until he couldn't secure the finance and asked my assistance.

Q. And was he came back to you then, when?

A. Probably very late November, early December. They had missed a closing. The date set for closing, I think, was the 30th November '99 and they had missed that. Or there might have been an earlier date and there was a second date for the 30th November '99. But they had missed, we'll say, the closing date and he ran the risk

of losing the deposit, which effectively was my money.

He was quite euphoric about the opportunity, at least being able to do it as a short term project, and

I well I assisted him in raising the machine from GE Capital.

Q. Why?

A. Well, the $\$44,500$ was going to be lost. He assured me, as did Phelan, that there was little or no commercial risk in the opportunity and they would turn it. So it changed the complexion from being a change of, you know, looking for residential use on this site, to being 'We will turn this property, we will sell the property within six months'.

Q. Right.

A. I was assured it would be disposed of within six months.

Q. And

A. And that's the case I presented to Woodchester.

Q. How did you, first of all, approach Woodchester?

A. Through Michael Tunney.

Q. Did you ring him?

A. I certainly I probably rang him and met him.

Q. Did you know Michael Tunney well?

A. I knew him extremely well.

Q. Was he a friend of yours?

A. Yes.

Q. I think he gave evidence here that in relation to your

affairs and Mr. Denis O'Brien's affairs, he was the contact person, would that be correct?

A. yes.

Q. in the bank. And for how long had you known him?

A. Several years. I did business with Woodchester since at least 1989. Michael Tunney wasn't probably there for the whole period, but.

Q. I think he came in 1990 or 1991 or something like that?

A. You know, I would have met him in or around that time.

Q. Did you socialize with him?

A. Not particularly, I went on one or two of the Gandon put on these ski trips for clients, I was on one or two of those, but other than that, the odd pint I suppose.

Q. Did Mr. O'Brien socialize with him?

A. The same, I would say, would carry for him. They tended to invite their clients on these ski outings, ten or twelve people, customers.

Q. And from the time that you became involved with Mr. O'Brien's affairs in the late 1980s, would you agree with Mr. O'Brien that Woodchester was his main financial backer during the nineties, perhaps up to the time of the IPO of ESAT Telecom?

A. I would agree, yeah, they were a significant backer, a significant backer. Anglo were also. Anglo Irish Bank were also a fairly significant backer.

Q. They were a fairly significant backer?

A. Yeah.

Q. and were

A. They were the principal bankers to him, personally.

Q. To him, personally?

A. Yes.

Q. And could I just ask you this; were Anglo, did they continue to be a backer of Mr. O'Brien's right up to the late nineties?

A. Yes.

Q. During 1997 even?

A. Anglo were, certainly did transactions with him in '96.

Q. In '96?

A. In '96 for sure.

Q. And did he have an account did he have accounts in Anglo in '96?

A. He had loan accounts, I believe.

Q. In Anglo?

A. Yes. '95/'96. And my recall of exact detail on when he moved around to various banks, it's difficult.

Q. but they were certainly

A. there is a relationship, there was a relationship with Anglo that went right through, I think, the nineties and they financed properties and did property transactions. They also did the football club initially and that would have been '98.

Q. I take it, I think we can take it that Mr. O'Connell

was not directed towards Anglo bank, was he, when he was carrying out his exercise on behalf of the board of ESAT Telecom?

A. I don't believe I wasn't aware of the terms of reference or the scope that was set for Mr. O'Connell.

A good deal of those meetings, I must add, although I was in the 22nd October, 30th October, there were a lot of meetings that I wasn't at, so the scope he was charged with investigating Denis O'Brien accounts in Woodchester, that was my understanding of it. Now, who decided and defined the Terms of Reference and the scope of the work he'd carry out and, you know, I wasn't aware of who actually prescribed.

Q. Could I just ask you this so, and I appreciate you were not instructing Mr. O'Connell as to what he should do. He was acting as solicitor to ESAT Telecom, isn't that correct, at that time?

A. Yes. But he was charged with the responsibility of carrying out with the queries.

Q. And, of course, he acted on his instructions?

A. He acted on his instructions.

Q. Which would be appropriate?

A. I am not sure who set those instructions.

Q. It would be appropriate for Mr. O'Connell to act on his instructions?

A. Absolutely. It would be appropriate.

Q. Did Mr. O'Brien have significant accounts in Anglo in

1996?

A. In '96?

Q. In '96?

A. I am trying to tie his accounts in with transactions.

Q. Right?

A. I would have to say that he certainly had loan finance from Anglo in or around '96. I can think of one particular transaction. Whether he had left I mean there was certainly a change of relationship that might have happened just about that time.

Q. All right?

A. And then he came back to Anglo again there was as you do business, falling out and then returning so I think certainly I can remember a transaction that Anglo definitely financed '95/'96 and that provoked a certain difference of, a parting of ways and he certainly returned again into Anglo again, so those times, you know

Q. Right. Now, I think you had a meeting with Mr. Tunney and Mr. Lowry and Ms. Malone in around August of 1999, is that correct?

A. That's correct.

Q. And that was before Mr. Lowry spoke to you about the Cheadle property?

A. That's correct.

Q. I think that meeting took place in the Radisson Hotel, is that correct?

A. Correct.

Q. And what was discussed at that meeting? First of all, who arranged it?

A. From memory, I believe I arranged it.

Q. What was the purpose of the meeting?

A. The purpose of the meeting was to talk generally about, to introduce Michael Lowry to Michael Tunney.

Q. Yes.

A. Michael Lowry was interested in because of his own particular problems emanating from the Dunnes Stores issues, he was anxious he had considerable Revenue exposure and he was interested in looking at ways of getting some liquidity out of his assets and we talked about, generally about the company.

Q. That was Streamline?

A. Yes.

Q. And

A. I can't recall a lot of the detail of that meeting particularly, it was an introductory meeting, but like, I saw Michael Tunney there as a person who would have wide-ranging contacts in the business sphere and also who had banking experience.

Q. Well, was the discussion around the difficulty that Mr. Lowry had in financial terms?

A. It was around it was more around how he might raise funding on his asset base.

Q. Mm-hmm?

A. Which was primarily, we were talking about the company.

Q. About the company?

A. Yes.

Q. And was it clear to you and to Mr. Tunney that

Mr. Lowry didn't have any money? He had assets?

A. It was clear he had assets but not ready capital available.

Q. Do you remember what Mr. Tunney said to him?

A. No.

Q. Mr. Tunney has given evidence that at this meeting or

lunch the advice he gave to Mr. Lowry was to sell up

everything and get out and start anew, do you remember that?

A. I don't remember that particular discussion. I just

have to put it into perspective. The meeting was a

lunch. It wasn't very formal. It was sitting around

having sandwiches, you know, I was pulling two people

together for discussion. I wasn't chairing the debate

or

Q. but I take it that at that time you were aware that

Mr. Lowry didn't have access to funds?

A. To ready cash.

Q. To ready cash?

A. Yes.

Q. And that would have been clear to Mr. Tunney as well,

wouldn't it?

A. I believe it would be, yes.

Q. And certainly when Mr. Lowry came to you in September about the Cheadle property, it was quite clear that he didn't have access to ready cash because the money being held by Mr. Vaughan in his client account was used to pay the deposit?

A. Yes.

Q. And it was also, I suppose, clear to you that Mr. Lowry was finding it difficult to get access to cash if he came back to you in December, the end of November/beginning of December informing you that he couldn't raise the money to complete the purchase of Cheadle and that the deposit was on risk?

A. I beg your pardon, I just lost my train.

Q. It was clear to you he was finding it difficult to get access to cash?

A. When he came back to me?

Q. Yes.

A. Yeah, absolutely.

Q. And in order to repay any loan that might be taken out, it would have to be done on the basis of turning over the transaction to produce something at the end rather than somebody being in a position to fund a loan over any long term; did that appear to you to be the situation?

A. Just for a point of clarification, are you saying did he have the ability to service the loan?

Q. Yes?

A. I believed that he could service the loan.

Q. You believed he could service the loan?

A. Yeah. I believed he could service the loan, yeah.

Q. Why did you believe that?

A. Well, I believed a loan of $\frac{1}{2}$ 400,000-odd you know, would be he would find it, you know, relatively doable.

It's not like the service interest payments, not capital repayments.

Q. You felt he was capable of doing that?

A. I felt he was capable of doing that. Now, I didn't have an in-depth knowledge of what he was being paid, you know, his earnings from TD and what he was being paid from the company, but I felt like 400,000 at 8% or 7% is doable for most people.

Q. Are you at a loss, so, why he had difficulty in raising the finances?

A. Well, at some stage he indicated that he had meaningful discussions with the Irish Permanent about raising the additional capital.

Q. But not on this property?

A. On his house.

Q. On his house?

A. Yeah.

Q. Did he ever attempt to, to your knowledge?

A. not to my knowledge.

Q. attempt to raise funds on this property?

A. I would I am not not to my knowledge, I am not

sure how he went about it.

Q. But you believe that he may you believe that he may have attempted to raise funds on his house in Holycross?

A. I believe he may have presented the transaction to an institution and part of the security may have been his house. Now, whether he was raising equity out of the house or using the house as collateral, I am unsure.

Q. So in December you contacted Michael Tunney, is that correct?

A. Yes.

Q. And what did you say to him?

A. I said 'I have this company, Catclause Limited, of which Michael Lowry is the promoter' and we discussed the transaction. I explained to him I gave him some detail this all happened in a fair hurry I gave him some detail, I think, on the property. I explained to him the transaction, that it was going to be a short-term facility and he said he'd look at it and came back and asked for the guarantor the John Daly guarantee.

Q. He came back and looked for a guarantee?

A. Yes.

Q. So if I could just take it slowly now. You made first contact with Mr. Tunney by telephone and/or you may have had a meeting with him, is that correct?

A. Yes.

Q. And when you spoke to him you told him that there was a company there was a property in England, is that right?

A. Yes.

Q. I suppose you'd have told him how much was being looked for, is that right?

A. Yes.

Q. You told him that there was a corporate vehicle called Catclause and that the promoter of this company was Michael Lowry?

A. Yes.

Q. And did you tell him over what period the finances were being sought or anything?

A. Yes.

Q. I take it you didn't tell him that a deposit had already been paid on the property, or did you?

A. I probably did.

Q. And did you tell him that you were on risk in relation to the deposit?

A. I doubt it, I doubt it.

Q. And what did he say?

A. He said he'd do it, he'd arrange the loan.

Q. He said he'd arrange the loan?

A. Yes.

Q. There and then to you?

A. No, I think there was he needed the independent surety. He needed a solid guarantor to make it

bankable. I think the view was that Michael Lowry's assets could be at risk in terms of his ability to be able to support a guarantee.

Q. Michael Lowry say that again to me?

A. Michael Lowry's assets, you know, if Michael Lowry put a personal guarantee behind the company, it wouldn't support I mean, it wouldn't support the loan application.

Q. Right. So he asked for an independent guarantor?

A. Yes.

Q. And what happened then?

A. I informed Michael Lowry that he needed a solid guarantor and he produced John Daly.

Q. Did you receive any documents from the bank?

A. I received an account-opening mandates, account-opening forms, resolutions to set up an account for Catclause and the guarantee.

Q. And what did you do with the guarantee?

A. The guarantee was faxed to John Daly.

Q. The guarantee was faxed to John Daly?

A. Yes. This all happened within days of the drawdown of the finance.

Q. So you think the guarantee was faxed to John Daly from your office?

A. I am unsure whether it was from my office or directly from Woodchester.

Q. Right. But you believe it was faxed?

A. I believe it was faxed to him.

Q. It was faxed?

A. Yes.

Q. Where was it faxed from, do you know?

A. Somewhere down in Cork and he signed it and faxed it back.

Q. Almost instantaneously?

A. I think almost instantaneously, I think.

Q. Were you present when the fax was received?

A. I spoke to Daly.

Q. Sorry yes, okay

A. I spoke to Daly in relation to the guarantee and I was travelling, he was down in Cork, he was travelling from one place to another and he sent the guarantee back by fax. There was some difficulty in finding a fax and sending it through.

Q. Well, was it faxed to him when he located a fax machine and faxed it back immediately, was that your understanding?

A. I think it was faxed to him at probably his office and he faxed it back, not from his office, somewhere in the course of his travel.

Q. On the same day?

A. Probably on the same day. I think he may have picked up the fax in his office. My recall of this is not totally clear. I do know that Daly got a fax.

Q. You know that Daly was sent a fax?

A. Was sent a fax of the guarantee.

Q. From Woodchester or from your office, you think, one or the other?

A. One or the other.

Q. You were present when it was sent?

A. I wasn't present when it was sent.

Q. You spoke to John Daly?

A. I spoke to John Daly.

Q. What discussion did you have with him?

A. The discussion was I explained to him what the guarantee was in relation to and I think, certainly I think Michael Tunney also spoke to him.

Q. And were you present when Michael Tunney spoke to him?

A. No.

Q. Can you recall the words which you used when you spoke to Mr. Daly, as best you can?

A. I can't recall it was more about logistics.

Q. About getting it back?

A. Getting it back and where to sign.

Q. And where was it sent to?

A. Well, I think it was sent to my office or Woodchester, again.

Q. So the original of the guarantee never left Woodchester, or at most, it would have gone to your office, depending on where Mr. Daly was sent the fax from, is that right?

A. The original guarantee came to my office and it was

given to Michael Lowry to perfect, sometime either just before Christmas or after Christmas.

Q. This was after the fax?

A. After the fax, yes. I mean, the bank relied upon the fax to get I mean, it wasn't a proper guarantee, it wasn't witnessed, but the bank relied on that to draw the money.

Q. It is kind of important, Mr. Phelan, because Mr. Daly has given evidence as well. The original guarantee obviously started off in Woodchester Bank, there can be no doubt about that?

A. Yes.

Q. You say that that was faxed to Mr. Daly, probably in his office or home or somewhere in Cork?

A. I believe that's the case. I don't think a hard copy was sent down to him.

Q. Yes?

A. I don't think so.

Q. And that he faxed back the fax which was sent to him, the faxed copy which was sent to him, having signed it, is that your understanding?

A. That's my understanding.

Q. And then after that was received, the original was given to you, was it, or given to Mr. Lowry?

A. It was given to Mr. Lowry. Whether by me or by Woodchester I think probably by me.

Q. By you. When was that?

A. That was either just probably after Christmas, realistically after Christmas because, I mean, the funds were drawn the 21st December and that was practically the end of the Christmas break for all practical purposes. So probably given to him very early in January.

Q. You think it was given to him early in January?

A. I think so.

Q. How was it given to him?

A. It was given to him by hand.

Q. By you?

A. Yes.

Q. In your office?

A. I believe so, yes.

Q. And what was he asked to do with it?

A. Go down to John Daly and get it properly signed and witnessed and return it.

Q. Now, when the document was faxed to Mr. Daly and faxed back, probably to your office because it seems to accompany a bundle of documents which were sent by fax from your office on the 17th December of 1999, isn't that correct?

A. Yes.

Q. It appears to anyway?

A. Yeah, I remember those documents.

Q. Did you realise that this wasn't a proper guarantee?

A. I didn't really focus on it at the time. I didn't

focus on it.

Q. Well, Mr. Phelan, now I think you would have experience in documentation?

A. I have experience in documentation.

Q. And all you had was a fax with a faxed signature on it, isn't that right?

A. That's right.

Q. Not witnessed?

A. Correct.

Q. Not dated, I think?

A. I don't think it was dated. I can't remember whether it was dated.

Q. And you just sent them over to Mr. Tunney in Woodchester, is that right?

A. Yes.

Q. What was the reaction?

A. The reaction was, I can't recall Michael Tunney saying that he was unhappy with the guarantee. I mean, the general shape of the debate, of the discussion, was that the paperwork was probably inadequate and we'd need to tidy it up but there was never any suggestion that, you know, Daly wasn't there, that he wasn't going to honour the guarantee.

Q. There was never any discussion with Mr. Tunney about that?

A. No, until, you know, the fact that he didn't, which followed the drawing down of the money in mid-January.

Q. Well, the money was drawn down

A. Sorry, the money was drawn down 21st December.

Q. On the 20th December?

A. 20th

Q. Sorry, I beg your pardon, it was drawn down on the 21st?

A. yes.

Q. of December and sent to Mr. Vaughan?

A. Correct, yes.

Q. And the sale was completed?

A. That's right, yes.

Q. In what name?

A. In the name of, I think it was in the name of Christopher Vaughan or Catclause Limited.

Q. Which?

A. I'd have to check that.

Q. And did you know anything about documents going to London to Investec?

A. No.

Q. Were you aware that Investec were in the process of acquiring some of the assets and liabilities of the bank?

A. I was aware that they were in some transitional period.

Q. But you were unaware that for Investec to take over something on GE Woodchester or Capital Woodchester's loan book that they would have to

approve it if it was over a certain figure, I think

it's 1/2 200,000 maybe?

A. I was unaware that have.

Q. Were you aware of the fact that Investec had rejected this particular

A. no, until the documents came out in the course of these inquiries I had no knowledge that the loan was unsanctioned.

Q. On the Investec side?

A. Well, on the Investec side I wasn't aware of that at all.

Q. And what was your next dealing with Mr. Tunney then after the money of drawn down on the 21st?

A. The next dealing I think was when I spoke to him about the Daly problem, that Daly wasn't

Q. Well, how did you give Mr. Lowry the original guarantee? How did that arise?

A. I got it from Woodchester and it was there. I mean, Michael must have asked me to get it signed and sorted.

Q. When would that have been?

A. It was probably just before the Christmas break, probably.

Q. What did you do?

A. Well, I gave it to Michael Lowry, as I said, probably just around then or shortly after Christmas. I never had any concern about the fact that the documentation was loose.

Q. No, I understand that.

A. I had that type of relationship. Can I just explain that I had a relationship with Woodchester that dated back a long time. It wasn't, you know, they would rely on my word in terms of things and I would follow and do what was to be done.

Q. I can understand that, yes. But I am just interested you would have got the original from Michael Tunney?

A. Yes.

Q. What did he say to you about it?

A. He said he would I'd have to get it signed I mean, the faxed copy, it was clear that the fax copy was not going to be sufficient. It was an indication that, together with John Daly's financial documentation.

Q. It was an indication?

A. An indication that Daly was there, he was real, he spoke to him on the phone.

Q. So do you think it was clear? You didn't focus on the fact that it wasn't dated or witnessed. Obviously somebody in the bank must have looked at it, isn't that right?

A. That's right.

Q. Before the money was drawn down?

A. That's right.

Q. And did anyone say anything to you before the money was

drawn down?

A. I can't recall, but I dealt with Michael Tunney exclusively.

Q. Michael Tunney exclusively?

A. No other official in the bank at that time.

Q. But you believe that you got the original from Michael Tunney?

A. I believe so, yes.

Q. So does that mean that it was faxed from Woodchester to Mr. Daly originally?

A. I can't say that, I can't say whether Michael gave me the original, I faxed it down to Daly. I just can't say. But it got to Daly, one way or the other.

Q. I know that, I know that, Mr. Phelan. I am more interested in the detail of how this transpired, at the moment. You were handed an original, you say, of the guarantee after Mr. Daly's fax was sent to Woodchester, isn't that right?

A. No, what I am saying is I am not sure whether I was given the original guarantee and I faxed it to Daly to expedite matters, or it was faxed from Woodchester the original was faxed from Woodchester to Daly. One way or the other, I ended up with the original guarantee.

Q. I am interested to know when, Mr. Phelan, I am interested to know when?

A. As I say, it was either just around the time of the

loan, the drawdown of the loan.

Q. Around the time of the drawdown

A. Yeah, whether I actually got it with the account-opening mandates or shortly after, I more than likely, probably got it before the money was drawn down, or synonymously with it.

Q. And that would have been so

A. we are talking 21st December.

Q. Well, are we? If you faxed it to Mr. Daly, you sent Mr. Daly's fax to the bank on the 17th December.

Would you agree or disagree with that?

A. I would agree.

Q. You would have sent the guarantee with the statement of the net worth of the guarantor, would you?

A. Yes, there was various documents attached to that fax.

Q. A bundle of documents, a letter from the Bank of Ireland, auctioneer's letter, routing instruction for fund, the name of the company, matters of that nature.

The guarantee would have gone to Woodchester from you so I mean Mr. Daly's faxed copy of it, is that right?

A. Accompanying that fax?

Q. Yes.

A. Well, if it's appended there

Q. no, I am asking you 'Did it?'. I'll show you maybe you'd have a better understanding really of what it means. (Document handed to witness) I am

just anxious to know at the moment?

A. It's not clearly appended on that, I think.

Q. No, I am asking you. I don't know?

A. It's not there.

Q. I am asking you?

A. It's not there.

Q. So did it go then?

A. Sorry, it went before the money was drawn down.

Q. The guarantee went before the

A. I believe it did, it went to Investec GE Capital.

The actual date I am sorry, I just can't recall

exactly when they got the guarantee from Daly.

Q. So do you think you also had the original before the money was drawn down?

A. I think I may have had it either very shortly before or synonymously with it.

Q. Can you remember when you spoke to Mr. Daly? When was it? Had you got the bundle of documents which would describe his net worth, the letter from the accountant and the letter from the bank?

A. When I spoke to him I probably had, yes.

Q. Do you remember?

A. Not clearly. This is all a matter of a couple of days.

Q. It's a very crucial couple of days that I have to inquire into, Mr. Phelan. That's why I have to keep asking you questions about it?

A. Yes.

Q. And

A. I am trying to assist you in every way but

Q. I appreciate that, but I am just trying to, if I can, get a proper understanding of the situation. How did you get the documents from Mr. Daly's accountant and from Mr. Daly's bank? Were they given to you by somebody?

A. I'd say they were faxed up to us.

Q. To your office, you think?

A. To my office, I'd say.

Q. I see. And when would that have been? It was before the 17th, obviously?

A. It must have been, or on that day. I am sure this fax if they were faxed to me I am sure there is markings on the

Q. we are having great difficulty in trying to decipher it. I am just looking for your assistance. You don't believe you had the guarantee that day so, do you?

A. I think that the guarantee was very I think that the guarantee was much closer to the drawdown of the money, I think.

Q. Let me just explain. The 17th was a Friday.

A. Yes.

Q. The money was drawn down

A. on the Tuesday then.

Q. on the Tuesday. Now, do you know had you any dealings with Mr. Tunney on the Monday or the Tuesday?

A. I can't recall. I remember speaking to Michael Tunney very close to the drawdown of the money.

Q. And were you keeping Mr. Lowry informed of the situation as well?

A. I was, yeah.

Q. And where was he?

A. He was around somewhere in Tipperary, I think. I spoke to him on the phone.

Q. And you believe he was in Tipperary?

A. I think so.

Q. Did you speak to him on the mobile phone or on the land-line?

A. I couldn't say which. I mean, I have both his numbers.

Q. And what was your discussion with Mr. Lowry about at this time?

A. He was anxious to know were we in a position to close.

Christopher Vaughan was pushing to close the transaction and he was anxious to know where we were and I was explaining to him we had to get this information together and send it to Woodchester.

Q. Send it to Woodchester. And you were assuring him there was no difficulty about the loan, I suppose, were you?

A. Yeah, I said 'It's going to happen'.

Q. You were sent other documentation by the bank, is that correct?

A. Account-opening mandates and resolutions, yeah.

Q. When was that?

A. I believe it was in or around the time of the drawdown.

Q. That's not of great assistance to me, Mr. Phelan.

Please, when was it?

A. I'd have to check my file and see exactly.

Q. Well, could you do that, please?

A. If I can just locate

MR. GLEESON: Perhaps if the witness could be shown which document he is meant to deal with at this point.

MR. COUGHLAN: The witness has just indicated which documents he is talking about.

CHAIRMAN: It's something if you need to have a look at, Mr. Phelan.

MR. GLEESON: He is doing the best he can and he is trying to assist the Tribunal. I don't think it's fair that he is being criticised about not being able to identify with absolute precision the dates of these documents. He is doing the best he can and I don't think it's fair that Mr. Coughlan is attempting to corner him this way.

CHAIRMAN: Well, I understand it to be fact-finding rather than criticism and he can take as much time as he wishes to check any documents that may be of assistance.

Q. MR. COUGHLAN: I think you know the documents,

Mr. Phelan?

A. I do, yeah.

Q. I think in relation to your own statement, they are

behind the facility letter, isn't that correct, letter

of application for the opening of accounts by a limited

company, isn't that right? And the other is the

resolution of Catclause Limited?

A. Yes, I have a copy.

Q. Now, I think the first document is a resolution, isn't

that correct?

A. I am just looking at the facility letter, I think.

Hold on a second.

Q. Right.

A. The first one I have 20th December, '99.

Q. Which is that, the resolution?

A. That's the facility describing the facility, the

purpose, drawdown, rate of interest, yeah.

Q. And then the facility, what we have is, is, we have a

copy of it?

A. Then the resolution.

Q. Do you have the original facility?

A. No, I just have these copies.

Q. It's the same as us?

A. I think the same documentation.

Q. And the facility letter is signed by Mr. Tunney on

behalf of the bank and by you, isn't that correct?

A. Yeah.

Q. And it's dated 20th December, 1999, isn't that right?

A. That's right, yeah.

Q. And then there is the resolution?

A. Yes.

Q. Which is to be printed on the letterhead of Catclause,
I presume that's just to be typed up on a computer?

A. Yeah.

Q. And that is dated the 20th December and it resolves or
it purports to suggest that there was a meeting of the
board of directors of Catclause Limited on the 20th
December, 1999, isn't that correct?

A. Yeah, that's correct.

Q. And it's signed by you as Chairman and Ms. Malone as
Secretary of the company and dated 20th December, is
that right?

A. That's right.

Q. And then there is the letter of application for the
opening of accounts by the limited liability company?

A. Yeah.

Q. And it's Catclause?

A. Yes.

Q. And the address of Catclause is given as 27/29
Washington Street, Cork, isn't that right?

A. It is, yeah.

Q. And it's signed by Ms. Malone as Secretary and then
also signed by you as Chairman, isn't that right?

A. That's right.

Q. And the specimen signatures then on the account are you and Ms. Malone, is that right?

A. Yeah, that's right.

Q. Now, when did you get those?

A. I must have got them on the 20th December.

Q. Why?

A. That's when it's dated.

Q. No, that's when they are dated and signed. I am just asking you when did you get them?

A. I can't say precisely. I mean I just can't say.

Q. Where were they signed?

A. They were signed in my office.

Q. And were they brought over you don't know when they were brought over, do you?

A. To Woodchester?

Q. To your office?

A. Oh, to my office? No, they may have been brought over before the 20th.

Q. They may have been?

A. Yes.

Q. Which would mean some day the previous week, isn't that right?

A. That's right.

Q. And I take it they'd just have been, you might have couriered them back to Woodchester or something like that?

A. Something like that.

Q. On the 20th?

A. I believe so, yeah. I mean, just looking at the documents, like, it says, like, the resolution is to accept the letter, the facility letter of the 20th.

It's addressed to the body of the resolution so the whole thing must have come in the one package, I think.

Q. Right, okay. Why did you sign the documents?

A. Because Michael Lowry and his daughter weren't available and I asked them to appoint us alternates.

Q. When?

A. On the day that we signed.

Q. So you rang Michael Lowry and asked him to appoint you as an alternate?

A. Yes.

Q. And Ms. Malone the same?

A. I asked him on behalf - that she be appointed an alternative for Lorraine Lowry.

Q. And what does that mean?

A. It means that we are appointed directors.

Q. Directors?

A. Yes, and Secretary.

Q. Did you ask that you be appointed Chairman?

A. No, a Chairman is the, one of the directors who chairs the meeting. It doesn't, to my knowledge, it doesn't have specific meaning. It's just the Chairman of that meeting when the resolution.

Q. just a Chairman of that meeting?

A. when the resolution is passed, yeah.

Q. I see. And does that have the same meaning, so, in relation to the letter for the opening of the account?

A. Yes. I mean, any of those any resolutions I think the opening of the account is a resolution as well, of the board. I think it's a resolution as well.

If we just examine it. Yes, it's effectively a letter of application it's effectively a resolution, I believe it to be.

Q. Now, I take it that you knew that Catclause was an English company, isn't that right?

A. Yes.

Q. And you knew the registered office of Catclause was Christopher Vaughan's office, didn't you?

A. Yes.

Q. And you knew that Mr. Daly's address in Cork for business purposes was the Courthouse Chambers, 27/29 Washington Street, Cork?

A. I did, yes.

Q. You knew it was where "Any notice, demand or request or any other communication required or permission to be given or made hereunder, shall be addressed or sent to the following."

A. That is correct.

Q. That is, "Care of Mr. John Daly, Courthouse Chambers." In Cork?

A. Yes.

Q. And was that your understanding when, when the letter of application for the opening of the account was to be made, that Catclaus was to be at that address and not the address of the company?

A. Well, the address of the company, just if I can just explain, the address of the company would have been, I believe that Christopher Vaughan had obtained the company originally for Michael Lowry and it's normal, any agent obtaining a company will use their office temporarily until he decides where the registered office is to be changed to. And I would be fairly certain that Michael Lowry, I said we need a registered office to set up an Irish address for communication, and he gave me that address and that's how I mean it wasn't until, obviously, this matter became, you know, important, I really focused on that particular detail but I'd imagine that's how, I'd be fairly certain that's how that address comes to be.

Q. Again, it's just another little detail, isn't it, that doesn't accord with the actual situation which pertained at the time?

A. Well, just on that point; I mean, Lowry is quite entitled to put the registered office of the company where he sees fit. Now, I mean, that was his decision, to decide to put it wherever he wanted to put it.

Q. Yes, I accept that.

A. That's all I can say on it.

Q. It's another little item, isn't it?

A. The documentation in relation to this loan was far from perfect.

Q. It was appalling, wasn't it?

A. It was appalling, I agree with that.

Q. It didn't disclose the true situation at all, sure it didn't? The documentation didn't disclose

A. I disagree with that.

Q. You disagree with that? All right, we'll deal with it so. The next matter that occurred then was that after the money was drawn down you gave the original to Mr. Lowry, of the guarantee; what happened next?

A. At some stage in the month of January, Michael Lowry got in touch with me. I think he met me.

Q. Mm-hmm?

A. I think he came to meet me. Some way it became clear to me that John Daly was not prepared to go forward and guarantee the loan.

Q. What did he say?

A. Lowry?

Q. Yes.

A. He said that John Daly had another opportunity and that he wasn't prepared to guarantee this loan. He had committed himself to doing something else.

Q. And what did you decide?

A. some property. Oh, sorry.

Q. What was decided?

A. What was decided was I would have to talk to Michael Tunney, which I did, and told him, you know, that Daly was not going to 'We are not going to be able to get the guarantee from Daly' and that I would take over the facility.

Q. You would take over the facility?

A. Yes.

Q. You told that to Mr. Tunney?

A. I did.

Q. And what did he say?

A. He said we just talked, we used language like 'Catclause is gone'.

Q. I want to be very careful now because I am going to have to put Mr. Tunney's position and we better not beat about the bush in relation to any of this. In respect of you informing Mr. Tunney that Mr. Lowry was involved in this at the outset, or at any time, he denies it and he effectively says that you misled him?

A. It's unfortunate. As you know, we are friends and it's unfortunate that we find ourselves in this position.

I am totally aware that his evidence is

Q. he is effectively calling you a liar?

A. It's directly contradicting.

Q. It's effectively calling you a liar?

A. I agree.

Q. We have to look at both sides of this situation now.

One or other is telling the truth about this, would you agree?

A. I agree.

Q. He says that you never told him that Michael Lowry was involved in this. You say you did. Is that right?

A. I did.

Q. He says you never told him in February that you were taking over the loan. What you did say was that there might be some restructuring needed in relation to Catclause, that it may not be the appropriate vehicle, or words to that effect, but not that you were taking over the loan?

A. That's a complexion you could put on the discussion, but I in my opinion, what I said was I was going to have to take over the facility.

Q. There is a big difference. Both of you are experienced people. Are you suggesting there to be an area of misunderstanding between you, that you informed him that you were taking over the loan and he says you never told him that?

A. Yeah, well that's when you cut it down to that point, I told him I was assuming responsibility for the loan.

Q. Did you inform him that you were taking over the loan from Michael Lowry?

A. From Michael Lowry?

Q. Yes.

A. Yes, I told him that the Catclause my recall on the debate was, or the discussion, was that Catclause Limited no longer could support the company, could no longer support this loan, that I would take over the responsibility for it. Now, sorry, can I just clarify that?

Q. Yes.

A. Within the knowledge that I was sure that Michael Tunney was fully aware that Michael Lowry was there from the outset as a director of the company. I would further add that the company I am experienced in relation to company matters and I'd recognise the shortcomings of the documentation, but I do know that when a company has directors they are totally transparent and discoverable by anybody who cares to look at the records. It can be done very simply.

Q. I understand.

A. You know, the suggestion that, you know, that Catclause Limited in some way masked the identity of its directors, I think is not correct.

Q. Well, can you understand, and I just want to put Mr. Tunney's position, can you understand that where a loan, or somebody was introduced by you or a bit of business was introduced by you

A. yes.

Q. and a corporate vehicle was being used, it would not be normal for it would not be normal for him to have

had a search carried out where you were involved?

A. I would agree with that but I would have assumed that anybody processing the documentation would do a search.

Q. But the money was drawn down, wasn't it, already?

A. Yes, but when you put together your client's file, a company search I would generally regard as fairly automatic.

Q. Now, what I want to be sure about now is, you are not just saying that Mr. Tunney should have known about this or could have ascertained it if a search was carried out, but that you actually told him. It's a completely different thing, isn't it? You told him?

A. I told him about Michael Lowry.

Q. So in those circumstances, as far as you were concerned, there was no need for a search, isn't that right?

A. Absolutely. It would be very high risk of me to offer Michael Lowry, a Michael Lowry company to Michael Tunney and not tell him he was doing business with Michael Lowry when, if a rudimentary search, which I would expect a bank to do, would turn around and say, 'You have misled me, you know, this promoter is somebody who', we'll say, 'a bank would like to know they were doing business with'. And I wouldn't put a relationship on the line in that way.

Q. Right. And as you say, it would be your understanding as somebody familiar with companies, that in dealing

with financial institutions or anyone on behalf of the company, that the usual situation is that the person you are dealing with would know who stood behind the company, in general terms, wouldn't that be?

A. In general terms, yeah.

Q. Wouldn't that be fair?

A. I think in general terms they would, yes.

Q. And would that be your experience of solicitors, in dealing with solicitors as well and solicitors dealing with financial institutions, that if there is a corporate vehicle being used like this, it is usual for solicitors to write letters in the form of "I act for Catclause Limited and on the instructions of Mr. Aidan Phelan" as we have seen some of the letters - "or Mr. Michael Lowry such and such is being done," wouldn't that be usual?

A. It would be usual for the solicitor to

Q. yes, so in dealing with the bank, the bank that provided the money for this particular transaction, to be dealing with the bank and to be talking about who the true identity of the company

A. I think there is a difference, yeah. In terms of a company, a limited company, it may or may not be the case a solicitor would know who the promoters of the company are. They would certainly know who the directors are and they would certainly have a contact director. I think

Q. Did Mr. Vaughan know that Mr. Lowry was behind this?

A. Absolutely.

Q. In all this correspondence with the bank, Mr. Vaughan makes no reference to Mr. Lowry, isn't that correct?

A. I think that's the case but he did I think Christopher arranged the company for Michael Lowry.

Q. Yes, he did. There is no doubt about that.

A. Yes.

Q. And if we look at the initial letters from Mr. Vaughan, which are not of any great significance, but he is writing to the bank, first of all, informing them of where his client account is and how the money should be sent to it.

A. Yes.

Q. Isn't that correct?

A. Yeah, I believe so, yeah.

Q. It's document number 23 in book 30. I think you may see it. It's a letter from Mr. Vaughan dated 20th December, 1999. It's addressed to Mr. Tunney and he refers to a telephone conversation which he had with Mr. Tunney on Friday 17th December when they discussed the matter.

He confirms that he acts on behalf of Catclause, who have exchanged contracts to purchase this site, which is registered with absolute title, and he gives the number.

"You confirm to me that the bank will be funding this purchase and will be sending me $\frac{1}{2}$ 420,000, being the balance of the purchase monies required.

I think that you may have a copy of my letter of the 14th December 1999 to Aidan Phelan Consulting but if not, my bank details are" and he gives the details.

"I confirm on completion, Catclause Limited will have a good and marketable title to the property and I will deal with the stamping and registration. I am not sure if the bank wishes to register a charge against the property. If so, please send the completed charge form to me and I will arrange for it to be both filed at Companies House and registered simultaneously with the transfer. If there is any further information required, please do not hesitate to contact me."

Now, interestingly enough, that letter is dated 20th December and it's faxed, it would appear, to Mr. Tunney in GE Capital Woodchester and as of the 27th it was known to Mr. Vaughan that the money was going to be made available, isn't that right?

A. Yes.

Q. I just wonder, Mr. Phelan, why it was necessary for you and Ms. Malone to sign the documentation and why Mr. Lowry couldn't have popped up from Tipperary, if he was in Tipperary, to sign the documentation. It was

known as of the previous Friday that the money was going to be made available, isn't that right, according to Mr. Vaughan anyway. You don't know why?

A. I don't know. I mean, I remember the thing was a rush. I don't know when we got the documentation, whether we were available on the Friday.

Q. No, I understand that things were a rush. I am just wondering why you and Ms. Malone had to sign the documents if it was known the money was drawn on the Tuesday 21st it was known as of Friday 17th December that the money would be available.

Mr. Vaughan, the solicitor had discussed the matter with Mr. Michael Tunney and knew it was coming. Why Mr. Lowry and/or his daughter were not available to make a short trip from Tipperary, perhaps on the Monday, to sign the documents you don't know why?

A. I don't know why. I think I mean the thing was a rush to expedite matters we acted as alternates.

Q. It transpired anyway that there was never a resolution of the company appointing you directors, was there?

A. I believe there wasn't a resolution.

Q. You know there wasn't?

A. I know there wasn't. I did speak to Michael Lowry about doing a resolution to ratify our appointment.

Q. And when was that?

A. Shortly after we did it, when we signed on his behalf.

Q. And what happened?

A. I didn't follow up on it.

Q. Why not?

A. Well, Christmas period, it got into January

Q. But there was a document now inside in the bank signed by you and Ms. Malone as directors of this company and there was no resolution of the company formally appointing you, isn't that right?

A. That is correct.

Q. And I am not suggesting that there had to be any enormous board meeting for that purpose. It would have been sufficient to draw up the documentation, it's just a resolution, and have it signed, convene a meeting with Mr. Lowry and his daughter and - just for them to sign it. Wasn't that was all that was necessary?

A. That's all that was necessary. It may very well have been an oversight not following up on that.

Q. Now, I think matters rested there until the loan became due, is that correct?

A. Yes, yes.

Q. And I think people in the bank started to make contact with you in the late summer of the year 2000, perhaps from August or there on, wanting to know what the situation was, isn't that correct?

A. That's not quite correct. What happened was that I was aware that I was responsible, I had taken over responsibility for this loan. I had kept Michael Tunney informed of what was happening.

Q. When?

A. Sometime before the loan I mean, we would have had conversations. I would have kept him up to date.

Q. Right?

A. I we had a meeting. I called a meeting in August of 2000 and I called Woodchester the day before that meeting and requested an up to date position in relation to the loan and they faxed me a letter, I think it's the 17th August, 2000.

Q. Giving you the position on the capital and interest, was it?

A. Yeah, the balance - the capital and interest. There is a line in the letter saying "As the loan is now due, please send your cheque." Now, I just stress that I drove that letter, the loan wasn't recalled by that letter. Effectively you could argue that it was recalled, given the line was in the letter. I got that letter to go to a meeting with Christopher Vaughan, Helen Malone and Michael Lowry for the purposes of telling Michael Lowry to get this property sold and repay my loan.

Q. Where was that meeting?

A. It was in Jurys in Dublin, Jurys Hotel.

Q. And the upshot of that was?

A. A promise to get action and I think shortly after that there was an offer came in from Thistlewood Estates which seemed we were getting some movement. But the

offer subsequently transpired to not really be there.

It was subject to obtaining planning permission or residential use on the site and, you know, that was no use.

Q. Now, had you you say that you told Mr. Tunney, and we have heard Mr. Tunney's evidence about February of the year 2000, that you were taking over the loan, isn't that correct?

A. Yes. I told him either earlier, either in January or February, that time, yeah.

Q. And did you tell Mr. Lowry the same thing?

A. Mm-hmm, yes.

Q. You told him you were taking over the loan?

A. I did.

Q. Now, you know that you wrote to Mr. Lowry on the 26th January, 2000, isn't that correct?

A. Yes.

Q. And it's the document perhaps I should if you take it in the documents after your own statement, after the facility letter I think, first of all, there is a letter dated 11th January, 2000, or it's a copy of a letter anyway, from Mr. Christopher Vaughan to you. And I think we obtained this particular letter from you, Mr. Phelan sorry, I beg your pardon, I think it was in Mr. Lowry's documents, I am sorry - this particular letter - the 11th January, 2000, this is the one addressed to you from Christopher Vaughan.

A. Right.

Q. Do you have that in your own documents, do you know?

A. I have copies anyway.

Q. Perhaps we can clarify how we happen to have what is a back copy of a letter. But anyway, it's

A. I have it, I have it, it's in my documents.

Q. It's in your documents, is it?

A. Yes.

Q. It says, "Further to our telephone conversation I am writing to confirm that the completion of Saint 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 the workings out of the interest that had to be paid.

Following the decision that Catclause Limited is no longer the purchasing vehicle, the property is to be registered in the name of myself and my wife, who is also a solicitor, as bare 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." He says where he is staying on the 15th and 16th February, and it's addressed to you. Do you remember getting that letter?

A. Yes, I do.

Q. Sorry, I think that is a copy from Mr. Vaughan's file, perhaps. I am just trying to understand how

A. yeah

Q. Do you have the original of that?

A. I do, yeah. Well, I have a copy here.

Q. But do you have one with a letterhead on it?

A. I do, yes.

Q. That's all right. I wonder could we see that, please?

Now, you wrote to Mr. Lowry by letter dated 26th

January, 2000, isn't that correct?

A. Yeah.

Q. And it's the next document sorry, I wonder for a

moment if I could just put up Mr. Vaughan's well

it's a copy of an original one with the letterhead on

it, please. There is no reference on that particular

letter, is there, that I see?

A. No reference?

Q. No reference.

A. No. I mean, specifically

Q. we'll come to a number of Mr. Vaughan's documents

which do not I take it in your dealings with

solicitors and fellow professionals it is more usual to

see a reference at the top indicating the solicitor

dealing with the matter, the client and the file? That

is the usual?

A. Yes.

Q. Now, I think you write to Mr. Lowry by letter dated

26th January, 2000.

A. Yes.

Q. And you say "Dear Michael.

It is now clear that you are not able to retain a replacement guarantor for John Daly. This places me in an extremely embarrassing position with Mick Tunney as I have given my word that this loan, which he arranged in hurry, would be sorted out.

As you know, Christopher has been instructed that Catclaus is gone and he is holding the property in trust until the loan is repaid

Although I am prepared to "backstop" the loan you have full responsibility to move the property as soon as possible."

Do you remember writing that?

A. Yes, I do.

Q. Two questions I'd like to ask you about that. Why was Catclaus gone?

A. I suppose because it was Michael's company.

Q. But there was no difficulty at all in just taking over the company, was there?

A. No, no.

Q. I am just

A. There wasn't a particular difficulty, no.

Q. Now, secondly, what did you mean by the expression "'backstop' the loan"?

A. I meant guarantee it, effectively, repay it, be

responsible for it.

Q. The first expression 'guarantee it' is probably more accurate, isn't it?

A. It's probably more accurate, yeah.

Q. And I would suggest to you that what you were talking about there to Mr. Lowry is that the loan is still his loan, isn't that right, but that you were prepared to guarantee it, isn't that right?

A. Yeah, well I didn't see it that way. I saw it as taking over the loan, the responsibility for it.

Q. Where do you say in that "Although I am prepared to backstop the loan, you have full responsibility to move the property as soon as possible." Isn't that correct?

A. That's correct.

Q. You say in the previous paragraph "As you know, Christopher has been instructed that Catclaus is gone and he is holding the property in trust for me until the loan is repaid."

A. Yes. What - my understanding of what I was trying to say was, 'Michael, this is my loan, I have to repay it in the event that this property isn't sold. You have the obligation to sell it, as was the case from the beginning. I want you to go and sell this as soon as possible so I can repay my loan'.

Q. Well, would you agree that it would not be unreasonable to interpret that particular letter as informing Mr. Lowry that what you are doing is, 'Look, I have to

guarantee it, the loan is yours, look after it'?

A. It wouldn't be unreasonable but that's not what my interpretation was.

Q. Right. And you have informed Mr. Lowry in that that "Christopher Vaughan has been instructed that Catclause is gone and he is holding the property in trust for me." Who instructed Mr. Christopher Vaughan to that effect?

A. I did.

Q. You did?

A. Mm-hmm.

Q. You were not his client in this transaction, isn't that correct?

A. That's correct.

Q. And you instructed him to do that?

A. I did.

Q. And he acted on those instructions?

A. He did.

Q. How could any solicitor do that, Mr. Phelan?

A. The I mean, Christopher is a sole practitioner. He knew me. He knew he was he knew the situation, the history of this transaction.

Q. Mr. Phelan?

A. Yes.

Q. Mr. Christopher Vaughan's client here was Mr. Michael Lowry in respect of this transaction, isn't that correct?

A. That's correct. Catclause Limited.

Q. Mr. Lowry in the first instance. He then used a corporate vehicle, Catclause Limited, isn't that correct?

A. Yes.

Q. His true client was Catclause Limited. Behind that was Mr. Lowry, isn't that right?

A. Correct.

Q. All you did was arrange a facility with the bank, isn't that right?

A. That's correct.

Q. How could Mr. Vaughan act on your instructions in relation to this transaction?

A. That's a good question. I suppose he knew the situation. He knew the fact that Michael couldn't stand behind the loan.

Q. But sure the only ones that could have given Mr. Vaughan instructions about this was Mr. Michael Lowry and Ms. Lorraine Lowry, isn't that correct?

A. That's correct.

Q. And there doesn't seem to be any sign of that there, does there?

A. There doesn't, no.

Q. And isn't a reasonable inference to be drawn from the second and third paragraphs of that letter is that Mr. Vaughan is holding the property in trust for you until the loan is repaid, in effect securing your

guarantee in respect of the loan, isn't that a reasonable inference?

A. That's an interpretation. It's not what I meant.

Q. It's not what you meant?

A. What I meant was that Michael Lowry was responsible for had an obligation to me to sell the property and have the loan repaid.

Q. Now, I think we move on then to, as you say, August of 2000, or perhaps before I do that, I should perhaps just draw your attention to a letter of yours dated 2nd November, 2000, to Mr. Lowry, and it reads:

"Dear Michael,

I had a very disturbing conversation with Christopher Vaughan concerning the Thistlewood deal which I understand has fallen away.

At our meeting in August you assured me that this deal would be completed as matter of urgency. This was presented as a 'quick turn' deal and the bank was supposed to be out within six months.

I have spoken to Mick Tunney and have assured him there would be action. I am on the hook with Tunney and I want Kevin and yourself to move this site immediately.

Call me and let me know what you intend doing."

Do you remember sending that in November?

A. Yes.

Q. So Mr. Lowry was still in the frame in November of the year 2000, was he?

A. He was still under yes, yeah.

Q. Now

A. in the frame can I just clarify what you mean by 'in the frame'? What I might mean by 'in the frame' is he had an obligation. He still had, had a continuing obligation to help me sell this property.

Q. That's what I am finding difficult to understand, Mr. Phelan: Why?

A. Well, I saw that he got me into it in the first place.

Q. I can understand that but leave aside whether Mr. Vaughan was entitled to do what he did - but as you understood matters, let me put it this way, as you understood matters as of January or February of the year 2000, you had taken over this loan?

A. Correct.

Q. As far as you were concerned Mr. Vaughan was holding the property for you, isn't that correct?

A. That's correct.

Q. And if and when the property was sold, if there was a loss on the property you were still going to have to repay the loan, isn't that right?

A. Yes.

Q. And you weren't looking to Mr. Lowry to make up any difference?

A. Yes.

Q. And if there was a profit on the property, the loan was going to be repaid and you were going to make the profit. That's as you saw it?

A. That's as I saw it.

Q. We won't get into any arguments?

A. I am not so sure about looking for the loss, the downsides. I mean, I would have held Michael responsible if there was a loss.

Q. You might have held him responsible but that wasn't in your mind. That's how you saw this. This was now yours?

A. I saw it as mine.

Q. Whether you wanted it or not?

A. Yes.

Q. And what responsibility do you say Mr. Lowry had to you?

A. Well, Kevin Phelan and Michael Lowry together sourced this property and this problem this property and I saw Kevin Phelan as, and Michael, as having a continuing obligation to assist in getting it sold.

Q. And Mr. Phelan, that's Mr. Kevin Phelan?

A. Yes.

Q. Was not involved in Mr. Daly entering the equation, was he?

A. No.

Q. So what responsibility could he have had for matters

going wrong, as you saw it?

A. Well, he found the property.

Q. That's all he did?

A. Yes.

Q. He suggested, I suppose, that there was

A. Well, he suggested it was an excellent opportunity and

brought Michael into it and I had other dealings with

Kevin that weren't going that well. And it was just

another problem that I saw Kevin had introduced into

this situation.

Q. And you felt that what other problem had Kevin

introduced into the situation? What problem had he

introduced here?

A. In this particular transaction, none, but in another

transaction involving the football club he had taken a

responsibility for, in the early days, for moving the

development opportunity forward and he hadn't

delivered. He also appointed the firm of

accountants - well, sourced the firm of accountants who

did the initial due diligence and it was far from

perfect. There were also some problems with the

vendors. There is some litigation outstanding in

relation to shareholders warranties and I held Kevin

responsible for he carried out the negotiation with

the original promoters of that particular project and

you can't separate projects. You just, you know, it's

a relationship issue and that relationship was under a

bit of strain.

Q. It's a very interesting phrase you use there, 'you can't separate projects', Mr. Phelan.

A. Well, with an introducer. If an introducer introduces two or three projects

Q. he didn't introduce any project to you here?

A. But he did in Luton and he did in the football.

Q. but he didn't here?

A. He introduced it to Lowry and it now became my problem and, as such, I held him responsible.

Q. I am trying to understand why Mr. Kevin Phelan, why you deem Mr. Kevin Phelan as having any responsibility or duty towards you here, moral or legal?

A. He found the opportunity for Michael and I suppose he persuaded him that it was

Q. but the problem here, as you saw it, was John Daly, wasn't it?

A. The problem in terms of the securing the guaranteeing of the loan and the security, the underpinning of the loan, was John Daly. The problem in relation to selling on the property was with Michael and his agent.

Q. Maybe I am failing to understand matters as well, Mr. Phelan, because if I go back to Mr. Daly, the bank proceeded without the guarantee, isn't that right?

A. Effectively, yes.

Q. So Mr. Daly wasn't even a problem, isn't that right?

A. I am not sure what you mean.

Q. To you he was the problem. But to the bank he wasn't a problem. They were proceeding with the loan, isn't that right?

A. Yes, in anticipation of getting the proper guarantee.

Q. In anticipation of getting paid when did they ever look for the guarantee?

A. Well, I believe that I mean, Michael Tunney must have looked for the guarantee.

Q. You believe he must have looked for it?

A. Yeah.

Q. It didn't come?

A. I beg your pardon?

Q. It didn't come?

A. No.

Q. And he said that, in fact, you proffered the guarantee originally. You don't agree with him about that, I take it?

A. No, I wouldn't proffer a guarantee for myself.

Q. Not for you - for Mr. Daly. You don't agree with Mr. Tunney about that either?

A. Can we just clarify exactly what you are saying there?

Q. Yes. You say that the bank looked for the guarantee and that Mr. Daly was obtained. Mr. Tunney says that did not happen, that when you introduced this facility, you proffered this guarantee. You don't agree, I know you don't agree?

A. I don't agree with it.

Q. I just want to afford you the opportunity of dealing with it. But as far as you were concerned, the problem here was Daly, wasn't he? He had welshed, as far as you were concerned?

A. As far as I was concerned that was the problem in relation to the finance. The problem in relation to selling the property continued to be the responsibility of Michael.

Q. But that's what I can't fathom. I cannot fathom that because you were going to take the profit, if there was any, you might have felt annoyed and you don't know what you would have done if there had been a loss.

You were accepting that the loan was yours. How was Michael Lowry involved in this at all from January or February of 2000?

A. Well, he had a moral obligation to get me, to get the property sold.

Q. He had a moral obligation to get the property sold?

A. Yeah. I assisted him in securing the finance and he couldn't provide the proper surety.

Q. But isn't that all more consistent, and Mr. Lowry's continued involvement, more consistent with your letter to him in January of 2000 where you said that you were prepared to backstop the loan and that Mr. Vaughan was holding the property in trust for you until the loan was repaid. That, in fact, you were effectively, in Mr. Lowry's eyes, putting yourself in the position of

Mr. Daly as guarantor?

A. That's a possible interpretation of that letter. It was not what I was saying to him.

Q. But isn't it the only interpretation, Mr. Phelan?

A. It's not my interpretation.

Q. Who owned the property who would have owned the property if the loan had been repaid at that time?

A. I would have.

Q. I see.

A. Sorry, hold on I saw the loan being repaid out of the sale of the property.

Q. Yes.

A. Categorically I never saw myself having to repay the loan.

Q. Right?

A. You know, I saw the loan being repaid out of the sale of the property.

Q. so who do you believe would have owned it

A. in the first and foremost. Whatever proceeds were left over were to my account.

Q. But that's not what you are saying here in this letter, are you, to Mr. Lowry? I don't want to labour the point but I just want to bring all of these matters to your attention, because the letter, I suggest to you, could only have the one interpretation; that you were effectively being the guarantor here?

A. No, I don't agree with that interpretation.

Q. Very good. Now, I think you attended a meeting on the 28th February of 2001 at your offices and present were Michael Cullen and Tony Morland from Investec, isn't that correct?

A. That's correct.

Q. Now, prior to that meeting, and I know there had been dealings with staff in the bank where inquiries were being made of you and you were informing them, based on information you were receiving, that there were attempts being made to dispose of the property and the loan would be repaid, isn't that correct?

A. Yes. Can I just say as well, that since I got the Tribunal papers from Investec, none of the disquiet that is present in the e-mails going backwards and forwards to various personnel, things like "I am at the end of my tether" and expressions of that nature, that was never made clear to me by Michael Tunney, that there was any such disquiet in the bank. It was also never made clear that the loan was unsanctioned by Investec.

Q. I take it you hadn't had any dealings with Mr. Morland yourself at that stage?

A. No.

Q. Did you know, through Mr. Vaughan, that there was some correspondence going on with Investec solicitors either?

A. I knew, yes.

Q. And you knew that Investec solicitors

A. is this the Eversheds?

Q. The Eversheds correspondence did you know that was going on? Did Mr. Vaughan keep you informed of that?

A. I'd be fairly sure he kept me informed that they were seeking confirmation about the security.

Q. And did it strike you as being somewhat serious that solicitors in England were corresponding with Mr. Vaughan about this matter?

A. Yes.

Q. And what did Mr. Vaughan say about it?

A. Mr. Vaughan was just I mean, I think he wrote originally seeking a charge document from Investec which was never sent to him.

Q. That was when the original facility was made available?

A. The original purchase, yeah, I think he refers to it in a letter.

Q. But what was he telling you about people being in contact with him from Eversheds, or did he tell you anything?

A. Well, I can't specifically remember what he told me about that particular correspondence.

Q. Well, did he tell you they were very concerned about the fact that the property was registered in the name of him and his wife?

A. Yes, yes, I remember this.

Q. Did he tell you that?

A. Yes.

Q. And what did he say to you about that?

A. Could I ask you what date are we dealing with there in the Eversheds, please?

Q. Yes, indeed. If you have the full book of documents

A. I actually have my own statements, yes, I am just trying to locate them.

Q. All right. Eversheds carry out a search and report to Investec on the 22nd February, 2001 that's document number 88, do you see that?

A. Okay. I just want to get the general shape of the date. I am happy enough with that, yeah.

Q. And they discover then that the property is registered in the name of a Christopher Vaughan and Deborah Vaughan?

A. Mmm.

Q. And contact must have been made with Christopher Vaughan because there is a letter dated 28th February, 2001 to Tania Wilson, which is document number 94, and he refers to the telephone conversation he had that morning with her and he encloses a copy of a letter he has sent by document exchange to Eversheds and he has not copied the enclosures referred to in the letter and the letter is dated 22nd February, 2001. It's document number 95.

"Dear Sirs.

I enclose a copy letter received by me from Tania Wilson of Investec.

I enclose a photocopy of the entries in the Land Certificate.

You will see from the Proprietorship Register that the property is held by myself and my wife as Trustees.

I do not currently have the Trust Deed in my possession.

Perhaps you would let me know what formal security Investec intend to take.

Obviously my wife and myself could not expose ourselves, as mere Trustees, to any personal liabilities under such Legal Charge, save for the payment of any net proceeds under a sale of the property."

Now, had you spoken to Mr. Vaughan before he sent this letter to Eversheds?

A. I am not sure. I am sure he would have checked with me to take instructions on it.

Q. Now, there is one particular phrase use in this letter where he informs the bank's solicitors that "Himself and his wife hold the property as Trustees" and he informs them that "I do not currently have the trust

deed in my possession."

A. Yes, and I am aware of that expression.

Q. Did you have any discussion with Mr. Vaughan about it?

A. No, I didn't. That arose again in the meeting of the 28th.

Q. Yes, it did.

A. And I think I offered to get the trust deed.

Q. Yes?

A. Thinking that there must be a trust deed.

Q. That's what one would think, yes?

A. Yes.

Q. Was there ever a trust deed?

A. No, I have never seen a trust deed.

Q. Were you ever told there was a trust deed?

A. No.

Q. Did Mr. Vaughan ever tell you that?

A. No.

Q. Can you understand why a solicitor would use the expression indicating that there was a trust deed in existence but not in his possession?

A. I can't understand it.

Q. Did you have any discussion with Mr. Vaughan about that

A. No. By the time

Q. at that time?

A. No.

Q. Did you have any discussion with Mr. Vaughan about it

since?

A. No.

Q. You have never discussed this particular matter with Mr. Vaughan?

A. No, I haven't. I mean, quite honestly since this whole thing I have just been assisting the Tribunal more or less since this time.

Q. But you have met Mr. Vaughan, haven't you?

A. I have met Mr. Vaughan.

Q. On a number of occasions, isn't that right?

A. Yes.

Q. And this is an issue which the Tribunal has taken up with you and Mr. Vaughan, isn't that correct?

A. That's correct.

Q. And you haven't discussed it?

A. No, I haven't discussed it with him.

Q. Now, at the meeting on the 28th February, 2001, at your office with Mr. Cullen and Mr. Morland - I think you have seen the note of that meeting, haven't you?

A. I have, yeah.

Q. And it reads "Aidan Phelan apologises for not attending to the bank's requests to formalise this facility.

However, stated that from a credit viewpoint the bank had nothing to be unduly concerned about as this was a Denis O'Brien transaction and he would ensure that the bank was looked after. Aidan Phelan would do everything necessary to sort out the bank's

documentation problems."

Now, do you remember that?

A. I remember the meeting. I was surprised by the file note when I saw it in evidence.

Q. You were surprised?

A. Yes.

Q. Well, let's go through what caused you surprise

A. If I could just tell you before we go through the file note. The meeting first of all was arranged by Michael Cullen.

Q. Yes.

A. He specifically said he wanted to exclude Michael Tunney from the meeting. I did call Michael Tunney, as he was my contact, and said to him "What's going on? Why is this happening?" And he said "Don't worry. It's not a problem. Michael wants to talk to you just about the Catclause situation.", as we called it. And the meeting was on the 28th February the meeting was from my point of view was a casual meeting. I wasn't expecting Tony Morland to come, and when he did arrive, I was, I felt slightly ambushed. I wasn't sure what was going on. I was I felt I was getting mixed signals from I thought Michael Tunney was well aware of the situation and these gentlemen were talking about the compliance issues and the credit issues and I felt a bit under pressure at that meeting. So my recall is scattered.

Q. Fair enough. What type of pressure did you feel under?

A. I felt under well, primarily credit pressure. I felt that Michael Tunney was excluded. I felt that the bank weren't up to speed on what I felt the situation was. Now, the documentation speaks for itself. It's very unsatisfactory.

Q. Well, you felt under pressure this day, you believe?

A. Yeah.

Q. So you are putting that forward as a reason why your recollection of events may not be very good for that day, is that right?

A. Yes.

Q. You are not suggesting for a moment that either Mr. Cullen or Mr. Morland would have manufactured anything for inclusion in this at this stage, are you?

A. I think elements of the file note are, I wouldn't agree with. I think that they already knew, for example, when they came to see me that Catclause Limited had contained Mr. Lowry and his daughter, they already had that information.

Q. They knew that from the day before?

A. Yes.

Q. That a Michael Lowry and a Lorraine Lowry yes?

A. Yes.

Q. You can now perhaps, with the benefit of hindsight, see why Mr. Tunney was excluded from the meeting. He was your contact, isn't that correct?

A. Correct.

Q. They were faced with a situation where some serious matters appeared to be arising for them, not just from a credit point of view, but from a reputational point of view, isn't that correct, as they said themselves?

A. A reputational point of view.

Q. They now see a politician, or somebody who may be, they weren't quite sure at that stage until they got the actual documentation the next day and checked the address and telephone number, but they now saw a politician involved in this. This is Mr. Cullen and Mr. Morland.

A. Yes.

Q. They went to you and they set out certain matters for your consideration, one was compliance?

A. - yes.

Q. - and the other was that they were getting information which seemed to be at variance with the information that was on the file, isn't that correct?

A. Yes.

Q. Would you agree that that was the general tenor of the meeting or the matters discussed?

A. The general tenor was more compliance orientated than credit.

Q. Perhaps we'll go through it so and see

CHAIRMAN: It's probably, Mr. Coughlan, it's just after

four, it's probably

Q. MR. COUGHLAN: If I could just deal with the first portion of it, Sir, and then I'll finish it. "Aidan Phelan apologises for not attending to the bank's requests to formalise this facility. However, stating from a credit viewpoint, the bank had nothing to be unduly concerned about as this was a Denis O'Brien transaction and he would ensure that the bank was looked after."

Now, do you accept that was said?

A. I don't recall saying that.

Q. Do you accept it was said?

A. I don't believe saying that it was a Denis O'Brien.

Q. do you accept ?

MR. GLEESON: he has answered the question. He has answered the question. He says he doesn't recall.

Q. MR. COUGHLAN: Do you accept it was said or are you suggesting that these men manufactured

A. I am not suggesting they manufactured but I am suggesting that had they sent me a copy of the file note after the meeting, I would have corrected the errors in it.

Q. That an error?

A. I believe it was an error, yes.

Q. You believe that was an error in their file note?

A. Yes.

Q. Could you understand how these two people could make such an error?

A. I believe that if Denis O'Brien's name was mentioned, which it could have been at that meeting, I was adjudged to have been to have acted for him for quite a number of years and I could understand how they might see me as being synonymous with him within the institution.

Q. The same sort of position Mr. Tunney was asserting here at the Tribunal; is that what you think was the position that these people had understood?

A. I think that the they could have misunderstood what I was saying at that meeting.

Q. Mr. Phelan

A. I think if they considered it serious, a serious situation, I think they should have clarified with me or at least sent me a copy of the file note and said 'This is a note of our meeting. Do you agree with what was said at the meeting?' and I would have corrected it.

Q. Yes, well let me put it to you this way, Mr. Phelan

A. I mean the Catclause loan wasn't dated 21 December, 2001, it was 1999. I would have corrected.

Q. the most significant thing here is the reference to this being a Denis O'Brien transaction and let's focus on that for a moment?

A. I am just saying there were other errors in the memo.

Q. We'll deal with it bit by bit. That was the most significant statement, isn't that right?

A. Yes.

Q. Dynamite, if correct? Dynamite?

A. If correct.

Q. Dynamite, if correct?

A. If correct.

Q. Dynamite. Absolutely dynamite, linking Lowry's name with Denis O'Brien, would you accept that?

A. It would be very serious.

Q. And the bank, and you are suggesting that the bank wished to put themselves in possession of this type of information which made them take steps to bring the matter to the attention of Central Bank and come to the Tribunal and have brought them into the ambit of the Terms of Reference of the Tribunal. Are you suggesting that that was in error entered by the bank or mistakenly entered or recorded by these people, is that what you are saying?

A. I am saying no, I am not. I am saying that I accept that the bank wouldn't have taken this onerous responsibility on themselves without believing that Denis O'Brien's name was mentioned within the bank. I think there was certainly internal problems within the bank. I didn't purport this to be Denis O'Brien's loan.

Q. Are you saying so that that record is at least inaccurate and at worst manufactured?

A. I am not saying it's manufactured but I am saying

Q. You are saying it's inaccurate?

A. Yes.

Q. Inaccurate?

A. Inaccurate.

Q. Although you have no recollection?

A. Well, I could never put Denis O'Brien forward without his permission. I have never put Denis O'Brien's name forward as a guarantor without him signing documentation.

Q. There is no suggestion of it being a guarantor here.

A Denis O'Brien transaction.

A. Well, we were talking to the bank about a loan.

Q. All right. Tomorrow morning, Sir?

CHAIRMAN: We will pursue the matter further at eleven o'clock tomorrow morning. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 26TH JULY, 2001 AT 11 A.M.