

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 27TH JULY

2001 AT 11 A.M:

MS. O'BRIEN: Sir, there will be a short witness taken

now before Mr. O'Connor resumes his evidence.

Mr. Michael O'Leary, please.

MICHAEL O'LEARY, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MS. O'BRIEN.

Q. MS. O'BRIEN: Thank you Mr. O'Leary. Mr. O' Leary, I

think you are one of the four executors of the late

Mr. David Austin, is that correct?

A. That is correct.

Q. And I think Mr. Austin died in early February of 1998,

is that correct?

A. I think it was November.

Q. Oh, early November, I apologise, early November of

1998?

A. Correct.

Q. And I think you have provided the Tribunal with a

memorandum of the evidence which you are in a position

to give and I wonder if you have a copy of that in the

witness-box with you?

A. I do have a copy of it here, yes.

Q. And just to put your evidence in context, Mr. O' Leary,

I think you can confirm that the Tribunal has asked you

to give evidence in relation to the knowledge of the

executors regarding the arrangements on foot of which

Mr. Austin appears to have provided i;½147,000 to

Mr. Lowry, I think that's the context of your evidence?

A. That is correct.

Q. It is the executors' knowledge of that arrangement?

A. The lack of that knowledge, I would say.

Q. Indeed. If I just take you through your memorandum, I

may then ask you one or two questions by way of

clarification.

You have stated that the executors of David Austin,

deceased, were not aware of the payment made by

Mr. Austin to Mr. Lowry in October, 1996. The

executors have not been furnished at any time with a

copy of the acknowledgment dated 24th October, 1996

signed by Mr. Lowry. The executors subsequently became

aware of the payment as a result of correspondence from

the Tribunal and when the matter came into the public

domain as a result of reports which appeared in the

newspapers, is that correct?

A. That is correct.

Q. You further state that Mr. Walter Beatty, who I think

is the solicitor acting for the estate, has informed

the executors that the firm of Vincent and Beatty

solicitors did not know of the payment made by

Mr. Austin to Mr. Lowry in October, 1996 or of the

acknowledgment dated the 24th October, 1996, is that

correct?

A. That is correct.

Q. You further state that Mr. Walter Beatty has also informed you and your co-executors that Mrs. Maureen Austin told him that neither she nor Mr. Austin's accountants knew anything of these transactions and that no other firm of solicitors acted for Mr. Austin at that time, is that correct?

A. That is correct.

Q. Now, in your memorandum, Mr. O' Leary, you refer to an acknowledgment dated 24th October of 1996 and I think you have a copy of the original of that acknowledgment which was furnished to the Tribunal by Mr. Lowry and perhaps I can just hand that up to you. (Document handed to witness). And there is a copy of it also on the screen and there is a screen to your right hand side?

A. Okay.

Q. I think as you said you have the original there before you, and can you confirm that apart from the dating, the 24th October 1996, and what appears to be Mr. Lowry's signature, that the document is in the late Mr. Austin's handwriting?

A. Yes, it is.

Q. Now, I think just to read it out. The document says: "I, Michael Lowry, of Finnsbury House, Ballsbridge, Dublin, Republic of Ireland, acknowledge that I received on the 18th October 1996 from David FT Austin

of 109 Flood Street, London, SW3 S1 England, the sum of
i;½147,000 by way of loan bearing interest at the lending
rate of the Irish Permanent Building Society, such
interest to accrue annually and to be repaid on the
date of repayment of the said loan, which I undertake
to repay on the 18th October 2001 or on the sale of the
property known as 43 Carysfort Avenue, Blackrock,
County Dublin, Republic of Ireland, whichever shall be
the earlier." And is dated 24th October, 1996. On the
left is Michael Lowry's name, which appears to be in
Mr. Austin's handwriting, is that correct?

A. Yes, it is.

Q. Then Mr. Lowry's signature. And I think at the very
foot of the document is Mr. Austin's own signature, is
that correct?

A. That's correct.

Q. So I think, in fact, what it appears to provide for is
an acknowledgment by Mr. Lowry that he has received
these monies on what appears to be a bullet loan to be
repaid sometime in the future but not later than
October, 2001?

A. (Witness nods).

Q. I think you can confirm, Mr. O'Leary, that a copy of
this document was not within the papers of Mr. Austin
that were made available to you after he died?

A. That is correct.

Q. Now, from the documents which have been made available

to the Tribunal by you as executors, and indeed a large quantity have been, and from the will that was left by Mr. Austin, the impression that the Tribunal has is that Mr. Austin left his estate in an ordered way, would that be correct?

A. David knew that he was dying for two years before he died, obviously, and he had plenty of time to get his affairs into order.

Q. And I take it there was no difficulty, without going into any details whatsoever regarding the estate or the administration, I take it that you had no difficulty in discharging your obligations in administering the estate?

A. None whatever.

Q. And I take it, I think you have known Mr. Austin or had been a close friend of Mr. Austin for a very large number of years, Mr. O' Leary, is that correct?

A. David was a neighbour of mine and I have known him for more than 25 years.

Q. And I take it that the orderly way in which he left his estate would have reflected the way in which he conducted his own affairs during his lifetime, would that be fair to say?

A. Very fair to say.

Q. Now, I think the Tribunal has heard evidence that, and you have indicated it yourself just earlier, that Mr. Austin was ill for a number of years prior to his

death?

A. That's correct.

Q. And I think he probably was diagnosed prior to October of 1996, would that be so?

A. That would be right.

Q. Would it be reasonable to assume that in October of 1996 he was actually undergoing some form of treatment for his disorder?

A. That is correct.

Q. So that, I suppose, in October of 1996, no more than any of us, but perhaps more in his case, there might have been some uncertainty as to his prospects for survival for a further five years to October, 2001?

A. It was quite clear to David in October '96 that he wouldn't be around for too long.

Q. Are you somewhat surprised, given your knowledge of him, your close knowledge of him, and given the condition from which he was suffering, that he doesn't appear to have informed his wife, his solicitor, his accountants, or indeed you as his executors, of the fact that he had this arrangement with Mr. Lowry?

A. Well, I have spoken to my other executors and to Mrs. Austin about this and, in my case in particular, we had no idea about this.

Q. And are you somewhat surprised that you didn't, bearing in mind the time in October, '96 when, as you say, Mr. Austin was very unwell, he would have had concerns

as to his prospects for surviving for a further five years, in fact for a lesser time, and also bearing in mind, I suppose, that during the currency of this arrangement, the three and a half months, they were turbulent times for Mr. Lowry, and bearing all those things in mind, are you surprised that he didn't share this with any of you?

A. Well, I only learnt of these matters from the newspapers so I was quite surprised.

Q. I see. Thank you very much, Mr. O'Leary.

CHAIRMAN: Has anybody got any questions they wish to raise? Mr. O'Donnell?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL.

Q. MR. O'DONNELL: Mr. O'Leary, I represent Mr. Lowry.

Can I just ask you about the handwritten document you have identified and please confirm to me the portions of it that are in the handwriting of the late Mr. Austin?

A. The bulk of it with the exception of the date and Michael Lowry's signature are in David's handwriting.

Q. And the word "Dated" is in Mr. Austin's signature - or handwriting - is that right?

A. Well,

Q. It does appear to be there is a difference there?

A. It would appear to me that it is.

Q. And the words "Michael Lowry" on the left-hand side of the page with an arrow would appear to be in Mr. Austin's writing?

A. I am not an expert in handwriting but, generally speaking, that letter was written by David Austin.

Q. And it would appear then that it was prepared by Mr. Austin in its entirety with blanks left for the date and a signature of Michael Lowry, which was indicated - the location of which was to be indicated by an arrow?

A. It would appear to me like that.

Q. And that would be consistent with Mr. Austin preparing the document and having it sent or sending it to Mr. Lowry for execution?

A. That would be fair.

Q. Now, you were - you are an executor of the estate of Mr. Austin and you took up the administration of his estate sometime after November, 1988?

A. Correct.

Q. And you told Ms. O'Brien that his affairs were in good order because he was a man who knew that he was likely to die soon and had organised his estate for administration, as it were?

A. Correct.

Q. And the task you had, along with your other executors, was the further administration - to carry out to tidy up his affairs, those matters which were left to

be done after he died, isn't that right?

A. Correct.

Q. And this loan to Mr. Lowry in October, 1996 had been repaid by him in February, 1997, isn't that right?

A. I don't know.

Q. Well, we know and the Tribunal knows that monies were paid back into Mr. Austin's account on the 5th February, 1997 and if that be the case

A. - I had nothing to do with Mr. Austin affairs in 1997.

Q. That's the point I am coming to, Mr. O' Leary. But if you accept from me, and accept if the Tribunal or anyone else disagrees they can say so, that monies were repaid to Mr. Austin in February, 1997 - 5th February, '97 by Mr. Lowry, then there would be no there would be nothing for you to do, or any executor or administrator to do, in November, 1998 in relation to the recovery of this money, if that

A. - that would sound right.

Q. Thank you, Mr. O' Leary.

CHAIRMAN: Mr. O'Leary, apart from what we have heard of the transaction in relation to the $\frac{1}{2}$ 147,000, did the papers that you received have any reference to a sale of Mr. Austin's Spanish residence?

A. No, nothing whatever to do with the sale of the house in Spain.

CHAIRMAN: So whether or not the two be related, from

the papers you were given as executor and what you have been able to deal with, together with your co-executors and Mr. Beatty as your solicitor, there was nothing in relation to any of these matters relating to the approximately i;½150,000 transaction.

A. You are correct.

CHAIRMAN: Thank you very much for attending at short notice indeed, Mr. O'Leary and I am obliged also to Mr. Walter Beatty for his very prompt attention to a considerable number of queries in recent times relating to Mr. Austin's estate.

THE WITNESS THEN WITHDREW.

CONTINUATION OF EXAMINATION OF MR. O'CONNOR BY
MR. HEALY:

Q. MR. HEALY: Thank you, Mr. O'Connor. Did you see the document that was on the overhead projector a minute ago?

A. I did.

Q. When was the first time you ever saw that document?

A. The first time I saw that document was sometime either at the beginning of April this year or in the last few days of March, I can't recollect exactly.

Q. How did it come to your attention?

A. It was given to me by Michael Lowry.

Q. And when was the first time you ever heard of any of

the matters referred to in that document?

A. That was the first time.

Q. And you heard Mr. O'Donnell ask the last witness about the, what he called the repayment of that loan in February of 1997: When was the first time you ever heard of that?

A. The same time.

Q. I see. You remember giving evidence yesterday about the dealings that you had with Mr. Lowry's business, I'll put it that way, in, I think it was mid-1996, I'll get the exact date that you said around May of 1996, you were dealing with Mr. Lowry's affairs. Can you tell me how much time you devoted, or maybe you weren't the only person involved, your firm devoted to those affairs at that time?

A. I believe from looking at my files that the first contact would have been made in, kind of May, mid-May '96. So initially it was, if you like, could best be described as 'going in cold'. So what we did was preparing management I am trying to put time on this for you probably three days initially and then, in effect, a day, two days a month for the rest of that year but not me all the time. I believe I had kind of opted out of it in September/October and one of my colleagues had taken it over.

Q. I see. Did your involvement with these difficulties involve contact with other firms of accountants or

bankers or other third parties?

A. Not before December '96.

Q. Did you have any you had no contact with banks then?

A. No.

Q. Or other firms of accountants acting for other businesses that might be connected with Mr. Lowry's business?

A. It's possible that to prepare the initial set of management accounts for the four months to April '96, that we possibly had to get a trial balance from Oliver Freaney and Co., that's possible but perhaps the trial balance was maintained or the nominal ledger was maintained on the system in the company, I can't recall.

Q. Can you identify or can you recall what the trading difficulties, I think that you mention in your statement, were?

A. I can. This will just take a few minutes. As outlined in the McCracken Report, there was a certain type of relationship between Dunnes Stores and Garuda and it effectively changed from, I think, 1993, when Bernard Dunne, late in that year I gather, ceased to be Chairman or Executive Chairman of Dunnes Stores Group. So there was a period in which there was a lack of, if you like, communication, for a while between the company and Dunnes Stores. But in January of 1996 a person who was employed by the company prepared a

submission to Dunnes Stores which, in effect, was, again going back to McCracken Tribunal terminology 'a balancing-up' and the result of that balancing-up was that it covered a period up to December '95 and it resulted in an invoice being raised by Garuda in March '96 for, in total, approximately $\frac{1}{2}$ 100,000, I think the Tribunal have that invoice, including VAT and that, if you like, balanced the situation to December of 1995 and then we were into 1996, the period I was involved in. So do you want me to elaborate further than that or?

Q. it seems that outside contact was limited then to, if you like, contact between Garuda or Streamline, if you like, and Dunnes Stores or contact between you and Oliver Freaney, Dunnes Stores' accountants, would that be right?

A. That was the limitation.

Q. I just want to clarify two things about your earlier evidence and in doing so I want to mention two aspects of that evidence. Firstly, when you gave evidence on an earlier occasion, I think you indicated that you first dealt with Mr. Lowry's affairs from the end of 1996. I'll just remind you of the evidence you gave.

It's Book 22, the 22nd June, 1999. I think I was asking you the following: "Question: And you have been assisting Mr. Lowry as his accountant, both in dealing with his own business and personal and financial

affairs and in dealing with responses to this Tribunal,
isn't that right?

"Answer: That's correct.

"Question: And I think you have a significant
understanding of the workings of the Tribunal, having
assisted Mr. Lowry in dealing with responses to queries
from the McCracken Tribunal in the course of the
proceedings of that Tribunal, isn't that right?

"Answer: That is correct.

"Question: And your initial involvement with Mr. Lowry
was from December of 1996, which was around the time
that controversy developed which ultimately led to that
Tribunal." Do you recall giving that answer?

A. I do, yeah.

Q. That's not quite accurate in the light of the
information that you have now provided, is that right?

A. I actually think it is. Could I just read a transcript
for just one second, please? I think there is a bit of
confusion here. I think it's correct. If I could just
read it for one second.

Q. I will give you my copy?

A. Just one quick read and I'll be able to clarify it for
you.

A. Reading that, just to clarify it again, during the
period from May '96 to the beginning of December '96,
the work I was involved in was on behalf of Garuda
Limited and not reporting to Michael Lowry, but to the

board, including a managing director, at that time. My involvement then with Michael Lowry commenced in December '96 when his trouble started. So I think that's what I was saying - or am I correct? I have only had a quick look at it but in other words, I had no involvement with Michael Lowry's personal affairs whatever until December '96.

Q. I see.

CHAIRMAN: Well, you are making the distinction that he was a serving cabinet minister at the time?

A. Absolutely, Mr. Chairman. And, like, as we did monthly management accounts, they were sent to his brother Pat, who was the managing director, and we dealt with the account staff down there. We never dealt, actually, with Michael Lowry. Sorry, does that clarify it? I am sorry if I misled the previous time but I have a clear recollection of that period.

Q. MR. HEALY: Your involvement in the work that you and your firm did in mid-1996 was at the behest of Mr. Lowry, isn't that correct?

A. Correct.

Q. And during that work did you have dealings with Mr. Lowry?

A. No, not in relation I mean, just a friendship, that's all. No business relationship

Q. I don't mean that, but did you have occasion to meet

Mr. Lowry in connection with carrying out that work for Garuda?

A. No.

Q. You had no dealings with Mr. Lowry at all?

A. No, I didn't, no.

Q. I see. And as you confirmed to me yesterday, Mr. Lowry did not enlighten you as to the true nature of his relationship with Dunnes Stores and you only found out about that after the McCracken Tribunal commenced its work, is that right?

A. That is the point you were referring to yesterday, that's correct, yeah. Sorry, can I just explain? The job we were doing, it was like a self-defined job. You didn't need anyone to define it. Like, to put it in street language, it was to tidy up the act, get management accounts going, get a focus on profitability.

Q. Well, now, what, apart from dealing with one or two matters raised by Mr. Phelan, the main thing I want to do in relation to any queries I have for you, Mr. O'Connor, is to ascertain the extent to which you, as Mr. Lowry's agent and as his financial adviser and as the accountant to his businesses, was made aware by Mr. Lowry of the full extent of his business and financial affairs. I think there can be no doubt - if necessary, and I don't imagine you'd want me to do so - but if necessary we can go through the transcript where

I think Mr. O'Donnell and you yourself made it clear to the Tribunal that you were provided - or instructed by Mr. Lowry - to provide the Tribunal with every piece of information there was concerning his affairs, isn't that right?

A. That's correct.

Q. And that involved you making, as you said yesterday, inquiries of banks and inquiries of Mr. Lowry himself, obviously, to deal with the information you got from the banks, is that right?

A. That's correct.

Q. And in the course of your evidence on the last time that you gave evidence, or maybe the first time you gave evidence, it was made clear to the Tribunal, I think in the course of your evidence and in the course of examination by Mr. O'Donnell, that you had instructions from Mr. Lowry to make sure that there was no stone unturned in endeavouring to afford the Tribunal access to information concerning Mr. Lowry's affairs?

A. That's correct.

Q. In the course of your evidence, I think it was on that day I mentioned earlier, Day 22, I am not going to go into the details of it, you referred to difficulties you had in building up a picture of Mr. Lowry's affairs prior to 1998 and how it was easier to deal with the period post 1992?

A. I recollect that evidence actually, yeah.

Q. And obviously by the time you commenced this work at the end of 1996, you were at least able to rely on people's memories in relation to any queries you had concerning recent events or events that were then recent, isn't that right?

A. The only thing that evidence referred to was, and I think there is memory now but I think actually Mr. O'Donnell might have cross-examined me on it, was that bank records were very difficult to get going back over a period of time, you know, kind of, I think what we were saying was that prior to 1994, you know, there was a scarcity of documents available from the bank. But I agree with what you are saying.

Q. And in addition to bringing the Tribunal up to 1996, the time that Mr. Lowry ceased to have any involvement in government, you also provided the Tribunal with further information concerning Mr. Lowry's activities in the period post 1996, isn't that right?

A. That's correct.

Q. And in the course of your evidence you mentioned in particular, I think, queries that you were able to deal with concerning a company called Abbeygreen Consulting, isn't that right?

A. That's correct.

Q. A company that was incorporated on the 16th November of 1998; that's your own evidence?

A. Then that's fine, yeah.

Q. In giving evidence to this Tribunal, Mr. Lowry himself, at page 59 of day 25, stated that he instructed you, Denis O'Connor, to go to Allied Irish Banks as his agent to find out exactly where any monies that were yours were held in the bank; and that was in connection with dealings that Mr. Lowry had with State agencies and with the Revenue and I take it that that evidence given by Mr. Lowry would be consistent with your own recollection of receiving similar instructions?

A. Sorry, I can't recall that one, the Revenue, did you say the Revenue Commissioners?

Q. Yes.

A. Sorry, yeah, that's correct.

Q. And other State agencies

A. That's correct.

Q. And other State agencies as well?

A. That's correct.

Q. Now, you have given evidence that you had dealings with Mr. Phelan in connection with the mobile phone, as we mentioned yesterday, and you have now provided the Tribunal with some documentation in connection with that mobile phone issue. You say that you made contact with Mr. Phelan and you asked Mr. Phelan to arrange for a mobile phone and you explained to him that Mr. Lowry wished to maintain confidentiality. I think you told me yesterday that you I can't remember whether you

said you didn't recall or that you didn't tell

Mr. Lowry that you were making contact with Mr. Aidan Phelan.

A. Yeah, the question you asked me was 'Did I get Mr. Lowry's permission to divulge his name to Mr. Phelan?' and I replied that I hadn't.

Q. Did Mr. Lowry know that this is how you were going about getting a phone for him in such a way as to keep his connection with the phone line confidential?

A. He knew subsequent to me getting it.

Q. But did you oh he knew subsequent to you getting it?

A. Yeah.

Q. So after you got the phone, you said, 'This is what I have done, I know this accountant called Aidan Phelan and I have had dealings with him and I arranged to get the phone, it's in his name, but you can make the calls on it'?

A. You are right. I didn't exactly have dealings with Aidan Phelan. I was just socially friendly with Aidan Phelan. But I explained it to Mr. Lowry after he got the phone, You know, immediately after more or less the same time.

Q. At that stage did you know of Mr. Phelan's association with Mr. O'Brien or ESAT?

A. I actually didn't.

Q. You presumably knew after the newspaper publicity concerning the matter?

A. Yeah, I wouldn't have been aware of the significance of it at the time at all.

Q. There was a meeting, according to Mr. Phelan, attended by you and Michael Lowry concerning that publicity, is that right?

A. Yeah, after the publicity, that's correct.

Q. And do you recall where that meeting was held?

A. I can't, but I would have assumed it had to be my office. In other words, I knew where my office was.

Michael Lowry knew where it was, so it was the obvious place.

Q. Can we take it then that at that meeting and after that newspaper publicity, both you and Mr. Lowry were well aware of Mr. Phelan's association with Mr. O'Brien?

A. Absolutely.

Q. Now, you have provided the Tribunal with bills or - telephone bills or invoices from Eircell in connection with this phone. It's virtually impossible to decipher them on the overhead projector.

A. Yeah, and they are bad copies I had as well, unfortunately.

Q. In any case the first bill is for mobile phone number 087 2332252?

A. Correct.

Q. And it's for the period from the 4th December, 1996, between rental and telephone calls up to the 31st January of 1997, it's for a total inclusive of VAT, of

i;½410.67?

A. That's correct, yeah.

Q. And it's addressed to Mr. Aidan Phelan, Brian Phelan & Company, Orchard House, Clonskeagh, Dublin 14?

A. That's correct.

Q. It's just about possible to decipher that?

A. Yes, that's correct.

Q. The next document that you provided to the Tribunal is a copy of a cheque written by Mr. Lowry

A. Well, actually it's written by me and signed by Mr. Lowry.

Q. signed by Mr. Lowry in favour of Eircell.

A. That's correct.

Q. You retrieved these documents from your own files, is that right?

A. I actually kept them at the time because of the actual media controversy.

Q. And was that one of the reasons why Eircell were paid and not Mr. Aidan Phelan? You will see that the cheque is made out to Eircell and not to Aidan Phelan even though the bill is addressed to Aidan Phelan?

A. Oh yes, correct.

Q. This would further avoid any connection, or further connection, between Mr. Phelan and Mr. Lowry. I am not suggesting there was anything improper in that

A. I think what it was to do I don't know what date this article was, I can't recall, if that's what I

mean, to me if I made the cheque out to Aidan Phelan, and I am not saying he would or he wouldn't, but that just adds time to paying the bill. The quickest way to pay any bill is direct to the source. So that would be the way I would certainly operate, just pay the account, get on with it. So that would have been certainly my way of thinking about any bill.

Q. And you gave that bill to Mr. Lowry to be signed or that cheque to Mr. Lowry to be signed by him?

A. My recollection is I rang him and said 'Look, there is a bill in for the mobile' and he either gave me or sent me a blank cheque signed by him and I just filled it in.

Q. And then you have also provided the Tribunal with another document, which I think may be the next bill on that account, is that right?

A. No. That's if you recall, yesterday I said that sometime around the publicity or when we sorry, when we became aware that the media had got the number, as I said, I then went to, if you like, plan B. So that's the that I actually think I don't particularly want the number put up on the screen but I think that's the mobile phone he might still have to this day. If I could just

Q. It's 087-2323 I am sorry, but you were, you don't want it?

A. I'll have to get another mobile phone. Sorry, that is

it, yeah, so in effect, as I stated yesterday, Matrix Management, to whom the account is made out, is one of the BBT group of companies. So I then got it as the account of Matrix Management and I put my own name down as the user name. I am a director of that company and then I actually think it's paid by direct debit out of the Matrix Management account and then the bill is sent on to Michael Lowry and Matrix Management is refunded. To this day that practice continues.

Q. I think the number has come up on the television monitors even though it's not on the overhead projector. So if you could remove the document from the screen altogether because there seems to be a different screen size on the monitors to what's on the overhead projector.

A. So I haven't checked it up to date, but I know that that is the practice that has continued to this day.

Q. And the other, if we go back to the first Eircell invoice for a moment?

A. Okay.

Q. Do you notice that that doesn't have any user name on it?

A. I noticed that when I got a copy of them the other night, yeah.

Q. It may be this is a question Mr. Phelan may be able to answer, or Eircell; can you throw any light why there is no reference to the user name?

A. Absolutely not. Actually the reason, I think it was on direct debit, now, in hindsight, I think the mobile phone companies at that time were trying to get as many people to pay by direct debit sorry, particularly when it was a limited company, that was the issue. If it was a limited company they were obviously more cautious about the creditworthiness than rather if it was an individual in their own name. That's my recollection anyway.

Q. Now, you are aware from the evidence of Mr. Phelan that he was involved in a joint venture with Mr. Lowry?

A. This is the UK one?

Q. Yes.

A. Yeah.

Q. And you are also aware that he was involved in another capacity in connection with what has come to be known as the 'Cheadle transaction'?

A. I am, yeah.

Q. It would appear that Mr. Phelan and Mr. Lowry were dealing with one another in connection with those two ventures, at least from April of 1999 onwards, up until sometime in 2001 at least, according to the evidence so far?

A. That's correct.

Q. Now, if we go back to 1996 for a moment. You had dealings with Mr. Phelan or you had dealings with Mr. Lowry in connection with his trading difficulties

in 1996. In 1999, I think you had further you had a further involvement with Mr. Lowry concerning trading problems or difficulties his company was having, is that right? You may have had dealings all through those years sorry 1997 you had further dealings with Mr. Lowry which also involved a proposal to either sell his company or merge it with another company or engage in some other arrangement with another company that would assist his company in the difficulties it was encountering having regard to its somewhat strained relationships with Dunnes Stores, isn't that right?

A. Yeah. I mean from kind of early '97 Michael Lowry himself had formed a view that because of what had happened

Q. I am aware of the background to it. But the dealings involved Mr. Aidan Phelan, isn't that right?

A. One of them.

Q. One of them. Well, what dealing did you have that involved Aidan Phelan?

A. Sometime in around, you know this is I know when it got to it but I presume around April, March/April, I'd say of 1997, I met Aidan Phelan socially and he just asked me how was Michael Lowry getting on, like everyone asked at that time. So I said 'Grand'. And he said 'How is his business?'. I said, 'Well, to be frank about it we are seeking some sort of strategic alliance of some description for the company' and, you

know, I'd say it was certainly over a drink or something, it was as casual as that. And then he came back to me, I'd say within two, three weeks, and said, 'I might have something that might be of interest to Michael Lowry's company'. This would have been still the same period, April '97.

Q. And do you recall any further dealings with Mr. Lowry or with Mr. Phelan rather and his firm in connection with a proposed joint venture with Masser Hammond?

A. Yeah, I obviously advised Michael Lowry about it at the time and I said, you know, just after Aidan Phelan came back to me, I said 'Look, do I pursue this?' and he said 'Yeah'. So I reverted to Aidan Phelan and told him I had spoken to Michael Lowry about it and he asked me would I come and meet a David O'Keefe who was, I think, the Managing Director of Masser Hammond, which I did. I believe that was in May of 1997 and sorry, to answer your question, I met David O'Keefe in Aidan Phelan's office with Aidan Phelan. I mean, I came on my own with financial data and that, but Aidan Phelan sat in on the meeting, introduced me to David O'Keefe and in effect I spent the meeting discussing the scenario with David O'Keefe and I believe that was in May of 1997.

Q. And when did that whole when did the potential for such a relationship with Masser Hammond peter out, do

you recall?

A. You see, I don't know what the the end of that meeting was that David O'Keefe expressed an interest and he wanted to do a site visit and inspect the whole thing and I know that within, kind of a week, he went to Thurles and, for the life of me, can't remember, but I believe I attended that meeting in Thurles. I think I did. I must have. And I brought him around and then Michael Lowry came along later, introduced him. Now, at that time, I was, if you like, up to my tonsils with the McCracken Tribunal and I completely opted out of it and I know the discussion and conversation and meetings continued between David O'Keefe, Aidan Phelan and Michael Lowry but - I know they petered out but how long they went on I wasn't interested at the time, I just had more pressing things.

Q. But there can be no doubt but that Mr. Lowry was well aware from the beginning that it was through Aidan Phelan that these discussions were initiated, and as I think you have just now indicated, it was with Mr. Aidan Phelan that he ultimately continued them to the point where they petered out, whenever that was?

A. That I was my understanding.

Q. Were you aware that Mr. Phelan had raised an invoice inclusive of VAT for some €24,840 in respect of his services?

A. Not until recently, in the last two months, three

months.

Q. Did you pay that invoice?

A. Did I pay it? No, I didn't even know about it.

Q. You knew nothing about it?

A. No.

Q. And the invoice wasn't sent to you?

A. No. Actually, in fact, to this day, I have never even checked whether it was paid by the company or Michael Lowry. I can do that for you. If it was paid by the company, the firm of which I am a partner would have picked it up doing an audit. But I have never actually checked it so I don't know.

Q. Whether it was paid by Mr. Lowry or by his company it would have been a legitimate expense of the company, wouldn't it?

A. Well, first I can't recall the invoice but was it made out to Michael Lowry or to Garuda?

Q. I can't recall?

A. If it was made out to Michael Lowry it can't be a legitimate expense of

Q. Leave aside how the invoice was made out it was for services rendered, wasn't it, to the company, presumably to effect some improvement in the company's finances?

A. If it was a legitimate trading expense it's allowable to the company, deducted by the company and nothing improper with it.

Q. But you never heard about it anyway?

A. I was never aware of it until in the last these sittings.

Q. Then you had no further involvement with Mr. Phelan either on your own initiative or on Mr. Lowry's instructions until earlier this year, is that right?

A. Not till March of this year.

Q. Apart from assisting Mr. Lowry in connection with providing information to the Tribunal, your firm has continued to act for Mr. Lowry in relation to his business affairs, isn't that right?

A. Yeah. As I think my statement said, we became we were appointed auditors in July, '97 and I think we still continued to do interim managing accounts, not necessarily monthly, but they may be quarterly or six monthly, I am not sure.

Q. And you have continued to be Mr. Lowry's only personal financial accountant and financial adviser?

A. Yeah. To some extent in our office there is a, if you want to call it a 'Chinese wall'. I don't really pay much attention to the company business. One of my colleagues does that.

Q. In any case it's your firm which fulfils both roles?

A. Absolutely.

Q. Were you under the impression at all times that you, or your firm, had all of Mr. Lowry's business, let me put it that way?

A. Yeah, I would have been under that impression, yeah.

Q. And that even if you didn't have all of his business, you knew of all of his business because you were dealing on his behalf with the Revenue and you were dealing on the company's behalf with the Revenue?

A. That would be fair, yeah.

Q. You now know from the evidence that Mr. Lowry was dealing with Mr. Aidan Phelan during 1997 in connection with at least three matters, isn't that right? The first matter is the Mansfield property. Then there is the Cheadle property?

A. Yeah.

Q. And isn't it also true there was a meeting with Mr. Michael Tunney in the Radisson Hotel at which Mr. Phelan, Mr. Aidan Phelan appears to have been in attendance?

A. Yeah.

Q. And at which there was some discussions concerning Mr. Lowry's overall financial position?

A. I wasn't aware of any of those three matters.

Q. And the proposal that Mr. Lowry might dispose of all of his assets, put all of his financial problems behind him, if you like, and start again, was one you had never heard of?

A. Not that particular proposal, no.

Q. And you were not aware then of Mr. Tunney's involvement in providing some advice to Mr. Lowry at Mr. Phelan's

instigation?

A. I wasn't aware of that.

Q. In the ordinary way where two accountants are dealing with the one client's affairs, perhaps even dealing with different aspects of the one client's affairs, would you expect that there would be some contact between them?

A. I am afraid that's not always the case, right?

Q. Yes.

A. Sometimes you'll have accountants dealing with your client, maybe in the expectation that they might become their client rather than your client, you know, I mean these things happen out there. Also, like, I am certainly without their knowledge, yeah, I'd have to agree, that wouldn't be common, right, you are talking about the knowledge of each other.

Q. Yes.

A. It wouldn't be common but it wouldn't be unique.

Q. Apart from any ambition the other or each of the accountants might have to get all of the client's business, assuming that neither accountant had any such ambition, would you expect that there would be some contact between them?

A. You would, yeah.

Q. Apart from the obvious question in this case of, or the obvious issue of providing you with access to all of the information you needed to deal with Mr. Lowry's

affairs in connection with various State agencies,

isn't that right?

A. Sorry, can you just repeat that?

Q. There is the obvious need for a connection in this case, in that you were representing Mr. Lowry in Tribunals with the Revenue and elsewhere and you were represented as having access to all relevant information, it was an obvious need for a relationship between you and his other business or accountancy advisers?

A. Or I agree with you, certainly the knowledge of it, I agree, though.

Q. And I take it, though, that in the accountancy professions, as in other professions, there is a sort of a grapevine where members of the same profession in different firms would nevertheless have a reasonable idea of who their respective clients were and even to some limited extent of what they were doing on behalf of their respective clients?

A. I have to think about that one. I mean

Q. Well, I think you mentioned yesterday that you were well aware of Mr. Phelan's involvement with a phone distributor, weren't you?

A. Correct, but that wasn't picked up from within

Q. wasn't it?

A. what - the terminology you have just described. If you recall I said that was picked up in the context

that we had a client who was a phone distributor. So it was off our own client phone distributor that I picked that knowledge up, rather than accountant to accountant. So I just as you ask me the question cold, I don't want to say 'Yes' because it doesn't spring to mind, the way you put it; or am I answering your question?

Q. I accept that's your answer.

The dealings that you had with Mr. Phelan in 1997 commenced, you say, sometime in the early part of that year?

A. Yeah I had

Q. the Masser Hammond

A. I had two physical points of contact with Aidan Phelan in 1997. The first one was the meeting in our offices post the phone media episode and the second one was when I met David O'Keefe with Aidan Phelan in Aidan Phelan's offices. They were the two physical obviously there are phone calls around both those.

Q. And you recall that a moment ago you told me that you also went to a site visit and at that site visit you had some dealings with Mr. David O'Keefe but that after that site visit, because of your commitments to the Tribunal, you think that Mr. Lowry, Mr. Phelan and Mr. O'Keefe or whatever, took the matter up between themselves until the point where it ultimately petered out?

A. I am certain that they took the matter up. I am just not clear I know it petered out but I just I was just not interested, to be honest.

Q. I understand. But do you think that Mr. Phelan was aware of your involvement with the Tribunal at that time, from anything you said to him?

A. I forget I think that the public sittings of McCracken were in the summer or on May/June of that year, I can't recall. Now, I can't recall just how much of all this was public. I can't remember did McCracken do all the sittings in one go. I just can't recall sitting here so I can't put back in time what was in the media, if you like. But anyone that knew me would have known that Michael Lowry was preparing for McCracken and that I was preparing the workings for the McCracken Tribunal. Just the dates of sittings and that I can't recall, you know, I can't recall what was in the public attention at that moment in time.

Q. Now, in your statement you say that you were not aware of Catclause Limited or of John Daly until March, 2001.

You say that neither you nor your firm had any knowledge of the Catclause property transaction. You say that as regards John Daly, neither yourself nor your firm were aware of him prior to March, 2001 and that you did not act for him or act in relation to this matter, meaning I presume, the Catclause property transaction.

A. Correct.

Q. Had you ever heard of Mr. Christopher Vaughan?

A. No.

Q. Or Mr. Kevin Phelan?

A. Kevin Phelan, as I explained yesterday

Q. You said you'd come back to it we said we'd come back to it?

A. Well, it would take me some it would be difficult to get the timing of this right but, as I said, I have a client who has extensive property interests in Ireland and in the last five or six years in the UK, and it's house building, you know, first time user house building, so certainly I extensively look after his UK interests, if you like, I am over there regularly. But I think Ken Phelan came into it somewhere. I just can't recall when.

Q. Did you ever meet Kevin Phelan?

A. Oh, I did.

Q. Prior to your any contact you may have had with him in connection with this Tribunal?

A. No.

Q. Prior to that you had never met him?

A. I had met him once before all of this arose and I just can't put but it was completely unconnected. I actually became aware through it that he was actively involved this is how I came across it in, I presume, both acquiring land with building potential;

that part of it, I didn't have an involvement in; but

trying to sell it to house builders, yes, it came up

some way, I just can't

Q. Was that in connection with work you were doing for another client?

A. Oh absolutely, yeah.

Q. Was Mr. Phelan aware of your association with Mr. Lowry?

A. No.

Q. You had according to Mr. Aidan Phelan, there was a meeting this year in the Regency Airport Hotel attended by Mr. Christopher Vaughan, Mr. Michael Lowry, Mr. Aidan Phelan and yourself, is that right?

A. Just give me the names again.

Q. Mr. Christopher Vaughan?

A. He was there.

Q. Mr. Aidan Phelan?

A. He was there.

Q. Mr. Michael Lowry?

A. He was there.

Q. Mr. Kevin Phelan was perhaps not present with those individuals at the meeting but was in another room at the same time as the meeting you had with Mr. Vaughan, Mr. Phelan and Mr. Lowry?

A. Well, I wouldn't have actually put it that way. I would have said he attended the meeting because it was in and out.

Q. Did he attend the meeting physically?

A. Oh he did, yeah.

Q. Physically in the same room?

A. Correct.

Q. And was there anybody else at the meeting other than those individuals?

A. Helen Malone was at that meeting as well.

Q. I see. And what prompted the holding of that meeting?

A. You see, I was abroad in the week commencing, I was in America in the week commencing can I just look at, just a calendar here and I can give you the dates of this very easy?

Q. Work away.

A. I was abroad in America from I went out on the 12th March and while I was there Michael Lowry had arranged contact with me through my office. Let's call it the 'Investec issue' had become live sometime during that week so I arrived back in Ireland on the 16th March and that morning and met Michael Lowry and spent the day trying to this was my first in-depth knowledge of all these transactions so I spent a day, in effect, trying to understand what was going on and I suppose didn't really succeed and, in fact, on that evening I believe I made contact with the Tribunal on Michael Lowry's behalf and relayed the message that we were aware of this but I still was nowhere so post that then, the following week, obviously I am coming to this

cold so I am trying to get an understanding of what's going on, and as I have said before, Michael Lowry wouldn't be the best man for maintaining records, so, you know, giving him a hard time, he ended up saying 'Look, the best thing to do is we'll arrange a meeting of all the people involved' and as a result of that, the meeting was held, I believe, in the Regency, I think it's called the Regency Airport Hotel, on the 27th March. Yeah, 27th March, that was the meeting.

Q. And do you recall at that meeting the capacity in which Mr. Christopher Vaughan was introduced?

A. Christopher Vaughan, if you like, was introduced as the professional, the solicitor that was aware of all the activity relating to both transactions. At this meeting I was aware of both transactions.

Q. Did you understand the role of Catclaus in these transactions?

A. Well, until that day I really was having difficulty understanding anything. So that meeting was about getting me I suppose, in fairness, the meeting was about me getting an understanding from Michael Lowry's perspective of what had gone on.

Q. What was your understanding, firstly before that meeting, from Mr. Michael Lowry as to what dealings he had with with Woodchester Bank and Mr. Aidan Phelan?

A. With Woodchester Bank, I believe the only references if you could just picture it, there's

been a lot of meetings between then and now, and listening to a lot of evidence here, my recollection would be that the items for discussion as regards Woodchester Bank would be, certainly he had told me about meeting Michael Tunney in the Radisson now, this is between the 16th and the 27th that Woodchester had lent the money to Catclaus. I was told about Catclaus at this stage. In fact, I think I did a search that week after I came back, on Catclaus a Companies Office search myself which I sent in to the Tribunal

Q. Could I just stop you

A. that would be the limit of the knowledge, I think, on Woodchester, I think, at that

Q. so I just want to be clear about this. Before this meeting, from what Mr. Lowry told you he had dealings with Woodchester in connection with the purchase of property, is that right?

A. Correct.

Q. And do I understand you to say, and I want you to be careful about this, that those dealings were instituted or connected with a meeting in the Radisson Hotel with Mr. Michael Tunney?

A. He must have made that connection because why would he tell me in the context of what I considered like, at this particular moment in time, the focus, from my perspective, would have been preparing a submission to

the Tribunal, including a statement from Michael Lowry.

So that would have been my focus. I wouldn't be interested in side issues. So, yes, it must have been told to me in that context, that it was related some way or another to the Catclause - let's call it.

Q. Up to that time had you ever heard the name 'Michael Tunney'?

A. No, sorry, no.

Q. Do I understand your evidence to be that it was from Michael Lowry that you first heard that name?

A. Indeed.

Q. So before the meeting with Mr. Vaughan was it your understanding that Mr. Lowry was involved in borrowing money from Woodchester, that Mr. Tunney was involved and that there was a company called Catclause that was going to take the borrowing?

A. Yeah. Well, obviously I was also you are correct in those but I'd mean I had also been apprised of Aidan Phelan's role as well.

Q. That's what I am going to come to. Leave aside the, ultimately fairly involved, ramifications of the property deal and the banking relationship. I am concerned with the bare bones of it as they were first relayed to you by Mr. Lowry?

A. Okay.

Q. What did he tell you about Mr. Phelan's role in the bare bones of the banking relationship before your

meeting with Mr. Vaughan?

A. Okay, in the bare-bones of the banking relationship, that Aidan Phelan had organised the loan facility, if you like, in Woodchester.

Q. And that was it?

A. That was it. I mean, Michael Lowry's attitude to me was 'Let's have the meeting, let's get everyone together and then you can get all the information you require'.

Q. I am just curious about one thing, that you had, and it seems to me quite properly, had a meeting with Mr. Vaughan, Mr. Phelan, Ms. Helen Malone, Mr. Kevin Phelan. Did you make any approach to Investec or Woodchester Bank

A. No.

Q. Or whichever name you want to call it?

A. No.

Q. Was there any reason why you didn't approach them to find out the true nature of Mr. Lowry's relationship with the bank?

A. Well, up to the meeting on the 27th I had no idea anyway. I mean, literally I was trying to get a picture on all of this. But I would have no first of all I would have no reason to doubt at that stage that what Michael Lowry was telling was me was the truth and, secondly, I am sure Investec/GE Capital Woodchester would say 'Who am I?'.

Q. Well, you were, up to then, an individual who had been charged by Mr. Lowry with getting information concerning his financial affairs and one of the sources of that information, as you have confirmed in evidence before to this and the McCracken Tribunal, were the banks with which Mr. Lowry dealt, isn't that right?

A. That's right.

Q. Applying that same methodology, wasn't Investec Bank likely to be the most useful first port of call in the state of ignorance you were in when this matter was first brought to your attention?

A. If you recall, I said on the 16th March I contacted the Tribunal, so obviously on that date I was aware don't ask me if it was Michael Lowry that this matter was coming to the Tribunal from either Investec/Central Bank. So I wasn't going to interfere in that process, that's for certain.

Q. I understand that. But you were trying to understand what Mr. Lowry's relationship with the bank was.

A. Well, I was going to find out eventually anyway. It didn't matter. Like, it had happened, whatever had happened, the Tribunal were aware of it. So whatever relationship he had with the bank was going to come out anyway, you know?

Q. And up to that time your understanding of Mr. Lowry's relationship with the bank was that it was instituted as a result of a meeting with Mr. Tunney in the

Radisson Hotel?

A. Yeah, that's putting a narrow definition on it. As I said, I understood from Michael Lowry that the meeting, this meeting in the Radisson Hotel had some bearing on it and that Aidan Phelan had a central role in organising the financing from the bank, that was my understanding.

Q. You were presumably surprised to learn that all of the things that you were told about at the meeting in the Regency Airport Hotel had occurred during the years 1999, 2000 and 2001 without you knowing anything about it?

A. Yeah.

Q. That would be an understatement?

A. Yeah, you wouldn't like to hear what I really said. I mean, I was a bit

Q. At that meeting that you had in the Regency Airport Hotel, I take it that the issues that were arising in Investec were brought to your attention?

A. Well, all I was really aware of was that my knowledge going into the meeting, I think, was that the UK management of Investec I mean this is just had become aware of a file or something through due diligence that linked Michael Lowry and Denis O'Brien some way with this transaction and that they had either gone to the Central Bank or whatever, and it was, I think, had been reported to the Tribunal. I mean, that

would be, I think the context that would be within
the same context of the phone call I made on the 16th.
That would have been my understanding.

Q. From anything Mr. Aidan Phelan said to you at that
meeting did you become aware that he had had meetings
with Investec Bank in which Mr. O'Brien's name was
mentioned?

A. I became aware that he had meetings with Investec but
not that Mr. O'Brien's name had been mentioned.

Q. Did you know from Mr. Phelan that Investec Bank were
concerned about the connection with Mr. O'Brien - or a
potential connection with Mr. O'Brien?

A. I did.

Q. So Mr. Lowry was aware of that as of that moment as
well?

A. - correct.

Q. - at that meeting. And there can be no doubt that
Mr. Lowry was aware from sometime in early 1997 that
Mr. Phelan was associated with ESAT and with Mr. Denis
O'Brien and had been described as his, as ESAT's money
man, in any case?

A. That's correct.

Q. Perhaps a description with which Mr. Phelan would not
agree. But he did agree that he was Mr. O'Brien's
money man?

A. That's correct.

Q. And I think there could be no doubt that in the period

1999, 2000, Mr. Lowry would have been well aware, as a result of, I suppose, newspaper controversy in general, of Mr. Phelan's association with Mr. O'Brien?

A. Well, I would take it that it was the ongoing association I don't think anything arose in '99 in media terms, I don't think so, but he was aware of it from '97.

Q. When you spoke to Mr. Lowry, had he had any contact with Woodchester Bank around the time when I say when you spoke to Mr. Lowry in March of this year

A. I don't believe he did. He certainly didn't I don't believe he did. He didn't convey to me that he had.

Q. All of these difficulties arose initially in Woodchester, isn't that right?

A. That's my understanding now, yes.

Q. You received no correspondence from Woodchester Bank in connection with Mr. Lowry's affairs at any time?

A. No.

Q. And you received

A. sorry, sorry, I think his car may be leased from Woodchester, you know, or office, I wouldn't have paid much attention, but that would have been the only thing. Nothing in connection with these matters.

Q. You think his car may have been leased from Woodchester. And when do you think that lease was put in place?

A. My recollection now is that one would have been put in place in January of 1997 and - assuming both were with Woodchester - and one in January '00.

Q. And do you know with whom Mr. Lowry dealt with in Woodchester with these leases?

A. I believe it was either Limerick or Waterford office. You know, you are talking about a leasing transaction which would be completely different from the areas that the Tribunal are homing in on.

Q. You were aware then that Mr. Lowry was dealing with Woodchester Bank in connection with, what I may call, an unimportant matter of leasing his car?

A. That's correct.

Q. And he knew you were aware of that but he never alerted you to the fact that he had dealings with Woodchester in connection with a loan?

A. That's correct.

Q. Now, there were various opportunities for Mr. Lowry to bring all of these matters to your attention as his adviser, not just in connection with the work of the Tribunal, but in connection with his own activities, isn't that right? You have just mentioned one of them, the fact that he had some dealings with Woodchester?

A. Correct.

Q. Where his Revenue affairs were concerned, you were never informed in 1996 when you were first dealing with this matter, of his relationship with Irish Nationwide

(Isle of Man) although you were informed of his relationship with Irish Nationwide in Dublin?

A. Correct.

Q. You were aware that Mr. Lowry was dealing with Mr. Aidan Phelan in 1997 in connection with the Masser Hammond matter but you were not informed by Mr. Lowry in 1999 that he was, once again, dealing with Mr. Phelan in connection with a number of property transactions?

A. Correct.

Q. Mr. Phelan made no contact with you during 1999 although you were known to him to be Mr. Lowry's own accountant, isn't that right?

A. Correct.

Q. You were not aware of the fact that Mr. Lowry apparently received an invoice from Mr. Phelan for near ½5,000 worth of professional services?

A. Correct.

Q. And you were not aware of Mr. Lowry's, what we have been told was a, loan transaction with Mr. David Austin in 1996?

A. Correct.

Q. Although you were aware, as you said, that he had raised money in connection with another aspect of his finances, the purchase of Carysfort, around the same time in 1996?

A. Correct.

Q. And you were not aware that he had used your firm's address to represent himself in a banking transaction with Irish Nationwide (Isle of Man)?

A. Correct.

Q. Thank you.

CHAIRMAN: Mr. McGonigal?

MR. MCGONIGAL: No questions.

CHAIRMAN: Mr. Gleeson?

MR. GLEESON: No questions.

CHAIRMAN: Mr. O'Donnell.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Mr. O'Connor, you said firstly that you first that you had a personal relationship with Mr. Lowry going back to about 1986 in Tipperary hurling?

A. That's correct.

Q. And your firm became involved with his business in late 1996, mid to late 1996, because it was experiencing some trading difficulties?

A. That's correct.

Q. And you were the contact point between Mr. Lowry and your firm and you then, and your firm then took over the business - or went down to Thurles to look over the

business, put matters in order?

A. That's correct.

Q. Was it the case that the firm was experiencing trading difficulties in 1996?

A. It was, yes.

Q. I think your firm were responsible for the production of the balance sheet and accounts for the year end 1996, is that right?

A. The year ended 31st December, that's correct, '96, yeah.

Q. I don't pretend to understand these matters fully, Mr. O'Connor, but I think from a balance sheet, for example, you can see at the end of the year something called the 'net asset value' of a company, being what the company is worth, as it were, if you wanted to sell it or buy it?

A. Correct.

Q. And what was the net asset value of that company at the end of 1996?

A. I don't have the accounts with me now but recollection would be somewhere around $\frac{1}{2}$ 40,000.

Q. Now, and I think that was fundamentally the result of the fact that the company was dependent on one large customer and that the margins in respect of that customer were extremely tight?

A. Correct.

Q. Now, and that was obviously a continuing problem or

situation, as far as the company was concerned?

A. Correct.

Q. Now, I think you have told the Tribunal fairly that you were not told of the transaction part of it, which

Mr. Healy has dealt with, between Mr. David Austin and

Michael Lowry between October 1996 and February 1997?

A. Correct.

Q. Who told you of that transaction and when?

A. Michael Lowry told me of it and it was around the beginning of April this year.

Q. And I think that arose, Mr. O'Connor, if I am right, in the context of the issue of the English property

transactions arising and being perhaps the subject of

Tribunal inquiry in the first place in private session,

or in private investigation, and perhaps in public

session?

A. It certainly arose in the context of a lot of activity with the Tribunal at the time, yes.

Q. And in the context of that Mr. Lowry brought it to your attention, is that right?

A. That's correct.

Q. And you immediately brought it to the attention of the Tribunal, isn't that right?

A. Well, I did within around ten days. I was actually out of the country quite a lot at that time.

Q. And so the source from which the Tribunal, and it's accepted the Tribunal was not told of this before - at

any stage before - but the source, ultimate source
from which the Tribunal first learnt of this
transaction, the David Austin loan, was ultimately from
Mr. Lowry, through you?

A. Correct.

Q. Now, I think you also said that you took over
Mr. Lowry's personal affairs or you dealt with you
took over them and you dealt with them as an
accountant, is that right?

A. Sorry, I dealt with them.

Q. As an accountant?

A. Correct.

Q. And you did that firstly in the course of preparation
for the McCracken Tribunal and subsequently this
Tribunal?

A. Correct.

Q. And without going into details, if one were to describe
documentation being in 'apple pie order' as 10 on a
scale, where would you have put Mr. Lowry's personal
affairs in terms of organisation and being in apple pie
order?

A. On a high rating of 10 and a low rating of zero?

Q. Yes?

A. His organisation of his own affairs?

Q. Yes.

A. Zero.

Q. Now, in relation to the mobile phone matter and your

dealings in that regard. That was in late 1996, early 1997 and it was, as you say, a matter of some urgency because Mr. Lowry, having lost his ministerial position, had lost everything that went with that and had to secure for himself a new mobile phone?

A. Correct.

Q. And the particular position was that being the epicentre of considerable media attention at that time, is that he wanted to maintain confidentiality?

A. Correct.

Q. Or obtain some confidentiality?

A. Correct.

Q. What was the value of such a mobile phone around that time?

A. Somewhere between $\text{€}20$ and $\text{€}25$.

Q. And whose idea was it to go and approach Aidan Phelan in respect of that mobile phone?

A. Mine.

Q. And was that suggested to you by Michael Lowry or by Aidan Phelan?

A. No.

Q. And the reason why the mobile phones were, particularly at that time, had such a low acquisition value is because they didn't come just as a phone, they came with an obligation to sign up for a year to a service provider?

A. Correct.

Q. They were heavily subsidised by that service provider?

A. Well, by the only service provider at the time.

Q. And that service provider was Eircell?

A. Correct.

Q. Who were particularly keen at that stage to sign up as many subscribers as possible and to tie them down for a year for the following year because that was the year during which its competitor ESAT was going to be launched?

A. It was going to be live within months, yes.

Q. And would you agree with me, Mr. O'Connor, that it would be a particularly peculiar thing for Mr. Denis O'Brien to do, to try and provide a free mobile phone that would have connected Mr. Lowry for a year to his proposed competitor, Eircell?

A. Fairly silly all right.

Q. When you had dealings on Mr. Lowry's behalf just coming back to that mobile phone matter that achieved some considerable tabloid media publicity in the media aftermath in January 1997?

A. I believe it was January '97, yes.

Q. It was subsequently investigated by this Tribunal and generating more publicity?

A. Correct.

Q. It was a matter you were involved in. You were the conduit, you were the person who sourced that phone and there were a number of places you could have sourced

it?

A. Correct.

Q. Would you agree, Mr. O'Connor, it appears to be a little more than a ball of smoke when one looks at it?

A. It's not the first mobile phone I have organised, it's not the last. It's got so much media speculation it defies belief.

Q. Can I ask you finally in relation to your dealings on Mr. Lowry's behalf with Mr. Phelan in relation to a firm who I think Mr. Phelan represented - or a client of his, Masser Hammond.

A. Yeah.

Q. I think Masser Hammond's main business is they provide large scale equipment in the catering area for

A. - yeah, my understanding of Masser Hammond is they wouldn't be, if you like, competitors of Michael Lowry's company. They would be compatible with it. In other words, it's a link-on.

Q. I think they would be perceived to be, in business terms, synergy between the large scale refrigeration business and the large scale catering equipment?

A. That's correct.

Q. And they were an existing client of Mr. Phelan?

A. I understand they were, there was certainly some connection.

Q. And they expressed genuine interest in the prospect of a, what might be grandly called a 'strategic alliance'?

A. I mean, yes, I mean the first meeting with David O'Keefe certainly lasted for a few hours and he certainly spent a day in Thurles and I believe I was there for most of that day as well.

Q. And I think ultimately that client has got nothing to do, as I understand it, with Mr. O'Brien or any of his business interests?

A. I don't believe so.

Q. They went off and did a similar type of deal with a different company?

A. Yeah, we now understand they did a similar type scenario, i.e., a strategic alliance, if you like, with a company in the North of Ireland.

Q. But a similar type of deal, as it were?

A. Correct.

Q. With the position that Streamline was going to fill being filled by another similar company?

A. Correct.

Q. I think you say that was only one of a number of matters investigated by Mr. Lowry on behalf of Streamline with a view to broadening its customer base, improving its business position?

A. Yeah, I was concerned - actively involved in one other and I am vaguely aware of others - but actively in one.

Q. And that those the one that you were actively involved in, did that proceed far beyond the initial discussions?

A. It did. I don't want to give the name of that company, but there was quite a lot of investigation. Their executive team certainly spent time in our office with me and with my colleague, who was the audit partner of Streamline and there was meetings with Michael Lowry as well.

Q. And did that, for the sake of clarity, that particular contact, and I don't want to invade the privacy of that company or any other company, had nothing to do with Mr. Aidan Phelan or Mr. Denis O'Brien or ESAT or anyone else?

A. Absolutely not.

Q. And I think you said that you were particularly aware of that transaction but that there were other companies which to which approaches were also made?

A. There were certainly other discussions because I am aware from one of my partners that he did spend there were occasions he would spend time preparing a package for Michael Lowry based on company values and financial data like that.

Q. And finally, Mr. O'Connor, I think that both for the purposes of your attempting to gather together financial information in relation to Mr. Lowry's affairs for these tribunals, and indeed for the Tribunal's own inquiry, Mr. Lowry provided to you a waiver in respect of any accounts held by him in any country and that that was provided to the Tribunal?

A. That's correct.

Q. Thank you, Mr. O'Connor.

MR. HEALY: One or two small matters arising out of that, Mr. O'Connor.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. HEALY:

Q. MR. HEALY: You never told the the Tribunal about this phone transaction?

A. Correct.

Q. That was first brought to the attention of the Tribunal by Mr. Phelan yesterday?

A. Just to clarify that again. I am amazed at the intensity of, certainly speculation the Tribunal are certainly entitled to investigate it. My record with the Tribunal is one of total compliance and if I was aware that that was an issue, you'd have had it long ago. I didn't consider it a material issue, I am afraid, and I apologise if it was a material issue.

Q. I appreciate that. You were asked about one other two other matters. The first one was the net asset value of Mr. Lowry's business at the time the trading difficulties you described were being experienced, and it was put at $\frac{1}{2}$ 40,000, is that right?

A. Well, as I said

Q. is that the evidence that was given a moment ago?

A. Yeah, but it was also the evidence that I don't have

the accounts with me. The Tribunal have those accounts. If I could see them I could give an accurate

Q. isn't it, in fact, the case that the net asset value was $\frac{1}{2}$ 40,000 because the company was being conducted in such a way as to show a poor bottom line, if you like, because most of the profit was coming from the activities that were being described that were described and were ultimately the subject matter of an investigation by the McCracken Tribunal?

A. as I said

Q. is that right or not?

A. It's not. But if I could explain why it's not right?

As I said in my evidence earlier, the markup period was agreed to the 31st December, 1995. The invoice was issued in March '96 and paid in '96. So, in effect, for the year 1996, as you put it, Garuda was trading on its own and it continued to do that from there on in.

So for the year '96 the arrangements with Dunnes Stores were broken. They broke at December '95.

Q. But the problem with the trading difficulties the company had was due to the fact that the arrangement described in the McCracken Tribunal was not being continued, isn't that right, or couldn't be continued?

A. Sorry

Q. could we just clarify one matter? Garuda was run on a very tight basis during the period while Mr. Lowry

enjoyed a cordial relationship with the Dunne company,

isn't that right?

A. Correct.

Q. And the whole purpose of his dealings with them was to

show very little profit in Garuda and to take the

profit in another way, isn't that right?

A. Correct.

Q. If you look at Garuda standing alone it would not

appear to be a very profitable, or at least a terribly

attractive company, isn't that right?

A. At which period in time?

Q. Yes.

A. At which period?

Q. At any period?

A. Not today, that's not true today.

Q. Not today? All right. Well, today it's being

conducted on a proper footing, is that right?

A. Correct, yeah.

Q. At the time that it was experiencing these trading

difficulties and was showing a net asset value of

£40,000. That was, I think, in the interregnum between

the period when it was not being conducted properly and

the period today when it is being conducted properly,

is that right?

A. Sorry, there was no interregnum. It went from it

had the arrangement, as you quite rightly describe,

with Dunnes Stores. It ceased on the 31st December,

1995 and from that date forward the company has continued to trade on a stand-alone basis, exactly as it is trading today. I am not trying to be difficult here but that is the fact of the matter.

Q. And was there any change in the prices charged by Garuda from that time onwards?

A. Absolutely.

Q. There were massive changes?

A. Yes.

Q. To reflect the fact that a wholly improper relationship had been conducted prior to that, isn't that right?

A. If you want to put it that way, Mr. Healy. I mean, my attitude is you are right but it also reflected profitability from there on in. I mean, you know, we are arguing about words here.

Q. The profitability consisted in the money Mr. Lowry was getting as a result of his own arrangements with Mr. Dunne?

A. Yes.

Q. Not in the company itself.

A. Correct.

Q. And one other matter; I think you were asked by Mr. O'Donnell a moment ago to put a figure between zero and ten on Mr. Lowry's attention to paperwork and you put it at zero?

A. Correct.

Q. You are not suggesting that it was Mr. Lowry's zero

attention to paperwork which in any way precluded him from bringing all of the matters I have been discussing with you to your attention?

A. Correct.

Q. Thank you.

CHAIRMAN: Thanks, Mr. O'Connor, for your attendance.

THE WITNESS THEN WITHDREW.

CHAIRMAN: There is a witness, I see, from the Irish Nationwide in attendance, Mr. Coughlan. I am also conscious that one potential remaining witness is also in attendance. Perhaps, Mr. Coughlan, if you are dealing with Mr. Fingleton, Mr. Healy and the rest of the legal team might examine the feasibility of what may or may not be done in relation to the one possible remaining witness?

MR. COUGHLAN: I'll take Mr. Fingleton so, Sir.

MR. WATCHORN: My name is Brendan Watchorn. I have been instructed on behalf of Irish Nationwide Building Society by Sheena Townley the in-house solicitor and I have been requested to seek representation before the Tribunal for the purpose of this evidence.

CHAIRMAN: Well perhaps I will defer a decision as to whether or not the involvement of the Society justifies limited representation for the time being, but I will

proceed and if there is something that you may want to raise or clarify, I certainly won't deprive you of that opportunity. I am just a little bit concerned about making undue proliferation of representation orders.

MR. WATCHORN: Thank you very much, Mr. Chairman.

MICHAEL FINGLETON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Fingleton, I think you have provided a statement for the assistance of the Tribunal, isn't that correct?

A. That's correct.

Q. And I take it you have it with you there?

A. That's correct.

Q. The Tribunal was seeking information from you and your assistance about monies advanced by your Society to Mr. Lowry for the purchase of premises at 43 Careysfort Avenue, Blackrock, isn't that right?

A. That's correct.

Q. I think you have informed the Tribunal that you are the Managing Director of Irish Nationwide Building Society and you have held that position since the early 1970s.

A. That's correct.

Q. I think you have informed the Tribunal that you received a phone call from Mr. Lowry towards the end of August, 1996. He asked if he could see you to discuss the purchase of a property?

A. Correct.

Q. I think you arranged to meet him, as far as you can recall, the day following the phone call and then you say that you have encapsulated the details of a meeting in a handwritten memorandum on the mortgage file, a copy of which you attach, and which was already in the possession

A. that's correct, yes.

Q. I'll come and deal with that in a moment.

A. Okay.

Q. I think you informed the Tribunal that the facility granted by you to Mr. Lowry to purchase the property in Blackrock was done on a normal commercial basis within your competence and authority and processed in the normal way in the Society, is that correct?

A. That's correct.

Q. Mr. Lowry informed you that he had the funds available to carry out the necessary renovations?

A. That's correct.

Q. The loan and this was the loan for the purchase of the property of $\text{€}200,000$ was advanced on the 4th September, 1996 on normal commercial terms, is that correct?

A. Correct.

Q. I think you have informed the Tribunal that you further wish to state that you first met Mr. Lowry in the late 1980s at a GAA function in Hayes' Hotel in Thurles,

which was sponsored by the Irish Nationwide Building Society. You believe that he was then Chairman of the County Board. In the interim period, you would have met him on a number occasions, mostly at social events. Neither you nor the Society ever had any dealings or meetings with Mr. Lowry in his capacity as a Dail deputy or a government minister. I think you had no knowledge of Mr. Lowry's account in the Isle of Man. Neither did you have any knowledge of Mr. Austin's involvement in this account. The first time you became aware of it was when the Society received a letter from the Tribunal dated 25th April, 2001. You had no further knowledge in relation to Mr. Lowry's account, other than what has been disclosed in the media and the documentation furnished in correspondence between the Society, Irish Nationwide (Isle of Man) and the Tribunal itself, is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that you are a named director of the Irish Nationwide (Isle of Man) Limited, which is a separate and distinct legal entity incorporated and operated under the laws of the Isle of Man and regulated by the Financial Supervision Commission of the Isle of Man, but you only attended the first three meetings of the bank. The alternate director, Mr. Stan Purcell, who is an Executive Director of Irish Nationwide Building Society, has

attended all meetings in the interim period.

A. That's correct.

Q. Now, if we just go to the handwritten note you made of the meeting you had with Mr. Lowry. And I think this, you believe, encapsulates what was discussed at the meeting between yourself and himself?

A. Yes, that's my recollection.

Q. And I think the note is headed "Michael Lowry - Minister." Then, is that - the property is described, "Property 43 Carysfort Avenue." The price, 200K, is that correct?

A. Correct.

Q. The loan - "200K needed. Work done, funds available from own resources for this." Is that correct?

A. Correct, yes.

Q. Can I take it what you were recording there was what Mr. Lowry was telling you?

A. What Mr. Lowry was telling me, yes.

Q. And then information you would need then "Income. Dail/minister salary, 65K." Then "Wife, around 20K." That was from the business?

A. Yes, from the business, as I recall.

Q. "Owns Streamline Enterprises. Major customer Dunnes Stores. Income (director's) - from company, 20K"

A. 'Director's fees' I would imagine. "Bungalow for sale at Holycross." That was his original house, I think.

A. That was the house he said he had for sale.

Q. And "Value i;½75,000. No mortgage. Primary residence."

Is it

A. "Principal residence".

Q. "At Glenrea, Holycross, estimated value, i;½350,000.

Mortgage i;½120,000 to Irish Permanent." Is that right?

A. That's right.

Q. "Needs funds quickly to complete sale." Then "Donal

Gahan, solicitor." Then over there is a note headed

"Tony" is that to somebody

A. That's the Advances Manager, yes.

Q. It reads "Michael Lowry - the Minister is buying a

house at 43 Carysfort Avenue for i;½200,000. He requires

the full i;½200,000 by way of mortgage facility. Donal

Gahan, solicitor will give necessary undertakings etc.

There is a time-urgency on this matter. You might deal

with this as a priority. The loan is 100% but it is

well within the Minister's capacity and the property

has excellent potential. He has the funds to renovate

it etc.. I will talk to you tomorrow on the matter."

And I think then the matters went through the usual

process. There was a valuer's report

A. - processed in the normal way, yeah.

Q. - valuer's report obtained for the file

A. The insurance policies.

Q. The Society was happy in relation to the valuation?

A. Yes.

Q. Insurance policies were effected?

A. Yes.

Q. And all matters of that nature. And I think you were happy that Mr. Lowry was in a position to service the particular loan which the Society was affording to him?

A. Yes.

Q. And you were happy that the society was well secured in relation to the property had potential?

A. Absolutely, we thought the property was an excellent well located and had a great potential for appreciation.

Q. Yes, of course. And can I just take it you were aware that he already had a mortgage, I think on his principal residence in Holycross?

A. Correct.

Q. But I think you were also aware that there was a special facility or arrangement available to ministers who came from outside Dublin?

A. Yes, I knew that there was a special arrangement. I wasn't quite sure the total extent of it but I knew it was substantial.

Q. You knew in general terms that the ministers coming from outside?

A. yes, I knew that from

Q. would get substantial tax relief, isn't that right?

A. Correct.

Q. on a mortgage?

A. Correct.

Q. You didn't know the full extent. You didn't know it was full relief?

A. I knew it was very substantial but I didn't know the detail of it and how it was effected.

Q. So you were happy both in relation to the security on the property itself and the ability of the minister to particularly having this particular facility available?

A. Yes, I was satisfied.

Q. Now, I think Mr. Lowry informed you, as we can see from the first page your note, that at the top where the property is described and the loan that's needed and he informed you that work needed to be done on the property, isn't that correct?

A. Correct.

Q. And I think from your note it appears that he also informed you that he had funds available from his own resources for this, isn't that correct?

A. That's correct.

Q. And you conveyed that information to Tony?

A. Yes, I put it in the note.

Q. Can you remember what he actually told you about the funds that were available to him?

A. He just said he had the funds available and what I understand that to mean, he had this house that he was selling for $\frac{1}{2}$ 75,000, he said, and to understand in my

own mind that that made a part of it. He didn't specify in specific terms what the funds were. I just assumed that this was funds that he either was selling the house for 75,000 or he could raise more money on his own house.

Q. But he didn't go into any detail?

A. No.

Q. And you didn't ask him?

A. I didn't ask him.

Q. Would you normally ask somebody for that type of information?

A. It would be normally checked out in the normal way with the Advances Department, you know, but I assume that what he was telling me was correct and the assets appeared to be there. If the assets were there as said, well then I'd have no problem that he could raise this money and the $\frac{1}{2}$ 75,000 was being realised from the sale of the house and, as I said, he could have raised some further funds from, there was plenty of equity in his house in Tipperary, his main principal residence, so I didn't inquire any more.

Q. And he didn't inform you any more?

A. He didn't inform me, no.

Q. But it was, perhaps it's just a little matter on the note. You record that funds are available for renovatons, I think?

A. Well, that's

Q. That he has the funds?

A. I accepted he had the funds.

Q. You believed he had the funds?

A. I believed he had the funds, yeah, or could get the funds, if you like.

Q. Well, what was it?

A. Well, I believed he had the funds, you know. Otherwise he wouldn't have said it.

Q. Now, I think, I think information was brought to your attention by Irish Nationwide (Isle of Man) Limited by the Tribunal, isn't that correct?

A. Yes, by the Tribunal.

Q. And it related to an account which Mr. Michael Lowry had with Irish Nationwide (Isle of Man), isn't that correct?

A. Correct.

Q. And I think Irish Nationwide (Isle of Man) on receipt of a waiver from both Mr. Lowry and the executors of the estate of the late Mr. David Austin, made documentation available to the Tribunal, isn't that correct?

A. That's correct.

Q. What is the Irish Nationwide (Isle of Man)?

A. It's an independent bank.

Q. It's a bank?

A. It's a bank.

Q. Has it got a banking licence?

A. It has a banking licence in the Isle of Man and it is incorporated in the Isle of Man. It is totally independent and separate from Irish Nationwide Building Society in Dublin and the centre of control is in the Isle of Man. It's run by the board of the Isle of Man and the majority of the directors have to be Isle of Man residents. The management have to be Isle of Man residents and it's vital for its status that the control rests solely in the Isle of Man and not with the Irish Nationwide Building Society in Dublin.

Q. Who owns it?

A. We own it.

Q. A hundred percent?

A. Irish Nationwide own it 100%.

Q. You are the 100% holders?

A. Correct.

Q. And does it deposit its funds with you in Dublin?

A. Yes.

Q. All of them?

A. Yes, it deposits all of our funds. We may have some in the UK but the majority of the funds would be deposited in Dublin.

Q. So are you aware that the Irish Nationwide, Isle of Man, I think you are a director although you haven't attended board meetings?

A. I am a named director, yes.

Q. And how many other directors from the Society are on

the board of the Irish Nationwide?

A. There was one other director. There was two other directors from Irish Nationwide in Dublin and three directors from the Isle of Man.

Q. And who chairs it? Who is the Chairman of the board?

A. The Chairman of the board up to the end of, was it April, would be Irish Nationwide - was an Irish Nationwide director, Irish Nationwide Building Society director.

Q. Who was that, yourself?

A. Donal O'Connor - Peter O'Connor who retired.

Q. So he was the Chairman

A. Of the Isle of Man.

Q. Was

A. He was the Chairman of the Society as well.

Q. So it was a common chairman, the Society and the bank in the Isle of Man?

A. Correct, yeah.

Q. Now, I think you were aware that both Mr. Lowry and the executors of the estate of Mr. Austin not only provided waivers in respect of documents being provided by Irish Nationwide (Isle of Man) but also have provided waivers to permit Mr. Carl Tunney (sic) of the Isle of Man Tully to discuss matters with the Tribunal and to attend and give evidence, isn't that correct?

A. That's correct, yes.

Q. And are you aware that Mr. Carl Tully or, or his

superiors, have informed the Tribunal that Mr. Tully will not be made available to give evidence to the Tribunal?

A. Yes.

Q. Was that a decision of the board?

A. Which board?

Q. The board of Irish Nationwide (Isle of Man)?

A. Yes, it was discussed at the board of the Isle of Man,

I believe. Because the Irish Nationwide Building

Society in Dublin has a policy of cooperating with all

tribunals and we took legal advice and we made our

views known to the Isle of Man through the Secretary,

Mr. Purcell, and the director, an alternate director in

the Isle of Man, that we wished full cooperation to be

given to the Tribunal. They took their own legal

advice and, as you know, you are in correspondence with

the Isle of Man, they agreed to give you written

replies to your letters or any queries you would have.

And more recently, Mr. Crellan, who is now the Chairman

of the Isle of Man, has agreed to attend the Tribunal,

if necessary, if required. And that's where it lies,.

But we - our legal advice was that while we could

recommend that they cooperate, we could not compel and

if we did compel, or were seen to compel and to use our

muscle, then the control of the Isle of Man could very

well shift to Dublin and that would prejudice and

undermine, or could undermine our status as an offshore

bank with the particular benefits that accrue to that status in the Isle of Man. It could be attacked very successfully by Revenue in Dublin.

Q. By the Revenue?

A. By the Revenue, yes.

Q. So this is a Revenue matter?

A. Or by anybody else that may wish to do so.

Q. I just want to be clear about this, Mr. Fingleton; as far as you were concerned, and the Society is concerned, you would wish Mr. Tully to come and give evidence?

A. We would wish that the Isle of Man would cooperate fully with the Tribunal. That's the position of the Society.

Q. And the Society owns this bank?

A. The owes society owns the bank, yes, but it does not control the bank.

Q. I'll just deal with this now, if I may, stage by stage. The recommendation that the Society's board members have made to the bank is that Mr. Tully should come and give evidence, isn't that correct?

A. Yes, that they should cooperate fully with the Tribunal, that's what it is.

Q. Come and give evidence if necessary?

A. Yes , well

Q. If necessary?

A. That would be cooperating with the Tribunal.

Q. The view taken by whom, the other directors, the non-society directors, is that Mr. Tully should not come and give evidence, is that correct?

A. Well, the board have obviously taken an independent view and they obviously feel it is not necessary, that they have already sent you all the documentation, that it's clear that the money was invested by Mr. Austin, it was clear it was invested into an account for Mr. Lowry, it was clear that it was withdrawn on the instructions of Mr. Lowry and it was clear that it was repatriated to an account controlled by Mr. Austin. And that's they feel they have cooperated fully with the Tribunal and they have also answered fully all the questions put to them by the Tribunal. I think this is what the view is.

Q. Is that the issue?

A. No, it's not the issue. I don't know what's the issue with them but they are acting as independent people in control of the board of Isle of Man. That's what it is.

Q. Is it your understanding that the board of Irish Nationwide Building Society or the Irish Nationwide (Isle of Man) Limited has set themselves up to the Tribunal as saying they are satisfied with what they have done in relation to the Tribunal's business?

A. They are just looking at it from their own point of view more likely, but that's where it lies, you know.

Q. Just explain this to me, Mr. Fingleton.

Mr. Lowry has said that he has no difficulty with a witness coming from the Isle of Man, isn't that right?

A. Correct.

Q. The executors of the late Mr. Austin's estate have said the same thing, isn't that right?

A. I don't know what Mr. Lowry has indicated that he has no objection to any information being supplied from anywhere. I presume that's what Mr. Lowry has said.

Q. And Mr. Austin's executors have no difficulty?

A. Correct.

Q. This isn't a question of compellability. Why is Irish Nationwide Building Society (Isle of Man) refusing to cooperate and assist this Tribunal when the individuals involved in this particular transaction have consented to them coming? Why are they refusing to cooperate?

A. I cannot answer that question but I presume Mr. Crellan will answer that question. He has agreed to appear. He is the Chairman now of the Isle of Man board and he has agreed to come to Dublin to appear before this Tribunal if you so desire.

Q. So the Chairman of the board is prepared to come to the Tribunal but the executive dealing with the affair, Mr. Carl Tully, is not being permitted to come?

A. That is a matter for the board of the Isle of Man.

Q. You are a member of that board

A. They are totally independent.

Q. You are a member of that board?

A. I am a named member of the board.

Q. Just be very clear about this, Mr. Fingleton; the board of Irish Nationwide (Isle of Man) Limited is refusing to cooperate with this Tribunal, isn't that correct?

A. Well, that's if you say so.

Q. Isn't that the situation?

A. No, I don't believe that they are refusing to cooperate but they feel they have cooperated to a sufficient degree to enable you to

Q. they are setting themselves as the Tribunal so?

A. All I know is I don't know all I know is that the board of the Irish Nationwide Building Society have requested that they fully cooperate. We have got our legal advice and they have got legal advice and they are taking an independent view and they are entitled, apparently, under their structure and their status to do so and there it lies. And that's why, I think, that that question that you have put to me would be better put to the Chairman of the Isle of Man, who would speak for the Isle of Man bank, which is an independent entity.

Q. Can I ask this, Mr. Fingleton; the Society here in Dublin has no difficulty in providing witnesses to the Tribunal?

A. Absolutely not.

Q. And the Society here in Dublin is very happy with how

it transacts its business and can be open and frank, provided they are either compelled by order or have the consent of a client to give evidence in respect of their affairs, isn't that right?

A. That's quite true.

Q. You are familiar I know you are not familiar with the day-to-day running of the bank in the Isle of Man, but as a director you would have a broad understanding of the operation in the Isle of Man, isn't that correct?

A. Yeah, I would have a broad understanding.

Q. Is there anything about the running of the affairs of the bank in the Isle of Man which would not enable a witness with the consent of the customer to come and give evidence about the operation of matters in the Isle of Man?

A. I don't know. That's a matter for the Isle of Man and it's a matter for the board of the Isle of Man.

Q. Is there anything you know that would

A. no.

Q. that would preclude them?

A. Absolutely not.

Q. Thank you.

CHAIRMAN: Anybody got anything to ask of Mr. Fingleton?

Mr. Fingleton, when you were having your conversation

with Mr. Lowry in which he sought the facility, it does not appear from your handwritten note there was any discussion of the dual abode allowance that Mr. Coughlan questioned you about.

A. No, there wasn't. I didn't put it in the note because it wasn't discussed.

CHAIRMAN: So he simply didn't make you aware one way or the other as to it being a further positive, as regards the credit risk, that he would have this considerable facility given to serving government ministers from the Revenue.

A. That's correct.

CHAIRMAN: It's something you only know independently of your own knowledge?

A. I knew independently, yes.

CHAIRMAN: And I don't want to put anecdotal matters, Mr. Fingleton, but am I right in recalling a recent RTE programme, that the results of the Isle of Man body have been significantly successful as regards deposits and assets and increase of them in very recent years, in fact the top of whatever chart arose?

A. I think we have been successful, yes, in the Isle of Man, but not in the the way, I think I would like to say, that the purpose of the Isle of Man, as it has evolved, is to source sterling deposits for lending,

ongoing lending in the UK. That's the sole purpose of it. The principal purpose of it.

CHAIRMAN: I am obliged for your attendance today, Mr. Fingleton, but whatever may or may not happen on foot of this, I would be obliged if you would please transmit to your colleagues on the board of the Isle of Man entity my keen disappointment that it has not to date proved feasible to accede to our reasonable requests, as I believe them to be, in a more fulsome fashion.

A. I will pass on your comments, your Honour.

CHAIRMAN: So be it.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Well, all that potentially remains was the aspect I requested to you inquire about. It seems that Ms. Malone may have been in attendance.

MR. HEALY: She is here and she wasn't here earlier this morning and I have discussed the matter with her counsel. While she has provided the Tribunal with a certain amount of information, it will be clear from the evidence given by Mr. Phelan over the past few days that a considerable amount of further investigation would be appropriate and a number of further inquiries ought to be addressed to Ms. Malone arising out of that evidence. And I think it would be preferable if all of

her evidence could be given together from the Tribunal's point of view, and I think all together she has also indicated from her own point of view.

Certainly the information she has made available might be able to add to the body of evidence given to date.

It would be preferable, I think, if further inquiries based on Mr. Phelan's evidence could be carried out before she enters the witness-box.

CHAIRMAN: Yes. Well, that will leave that the possibility of two witnesses based outside the jurisdiction, and of course the evidence of Mr. Michael Lowry himself, in relation to this particular aspect.

And in those circumstances, I think then, Mr. Healy, the appropriate course is to adjourn until a date to be finalised in September, which of course is not to say that there will not be further extensive inquiries on the other aspects that will be dealt with on resumption, being pursued in the meantime. The usual form of communication will be given as regards a September resumption. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.