

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 12TH

OCTOBER, 2001 AT 10.30 AM:

MR. HEALY: Sir, with the exception of a few witnesses who will be dealing with aspects of the Terms of Reference concerned with Mr. Haughey, the evidence to be led at these sittings will take up where the Tribunal adjourned last July. The Tribunal had hoped to reconvene to deal with these matters at some point in the latter part of September, but due to difficulties in arranging for attendance of witnesses, the sittings have had to be put back.

During the adjourned sittings, evidence was given concerning a number of financial transactions with which certain individuals were associated, and as I indicated in the last two Opening Statements, what the Tribunal was seeking to do was to examine the connections between those financial transactions and the individuals associated or connected with them in the context of those Terms of Reference dealing with payments to Mr. Lowry. In other words, the evidence was concerned with the money trail so far as it concerned Mr. Lowry and the Tribunal's Terms of Reference.

Although these sittings will take up where the July sittings adjourned, some new information has come to hand, and I think it would be useful if that

information was put into context in terms of evidence that has already been led concerning these matters since, I think, sometime in late June.

I want to deal firstly with the \$50,000 Telenor/ESAT payment to Fine Gael. It will be recalled that the first witness to give evidence in relation to this matter was Mr. Arve Johansen, an executive of Telenor. In the course of his evidence, Mr. Johansen indicated that there were certain matters which he felt were covered by legal privilege and to which he did not wish to refer in the course of his evidence. The question of legal privilege arose in connection with a number of meetings held at the end of October and the beginning of November of 1997.

Now, as we know from the evidence that was led, mainly in July, the \$50,000 payment to Fine Gael was discussed fairly extensively at those meetings. The meetings were concerned with the impact that this payment might have and the impact that the disclosure of the nature of the payment might have on the then imminent IPO or public flotation of ESAT Telecom. ESAT Telecom is of course Mr. O'Brien's vehicle and was the entity through which his shareholding in ESAT Digifone was held.

Around that time, in October and November of 1997, there were other communications, that is to say, communications which did not occur in the course of

formal meetings, and these also raised questions of privilege. As we know, most of these difficulties concerning privilege have now been resolved. The Tribunal has had access to most of the documentary material, most of the solicitors' records and other records and minutes concerning these meetings, and that material has been mentioned extensively in the course of evidence given by other witnesses who were in attendance at those meetings, including, for instance, Mr. O'Brien, Mr. Barry Maloney, Mr. Dermot Desmond, Mr. Fortune, Mr. Callaghan, Mr. Leslie Buckley, and so on. Mr. Johansen will now have to be re-examined and some of the evidence he has already given will have to be revisited in the context of the records of those meetings and of course, in the context of evidence given by other individuals concerning what transpired at those meetings and concerning what is contained in the records of those meetings.

Mr. Johansen, in a number of statements made available to the Tribunal prior to its adjournment and also in September of this year, deals with further aspects of the \$50,000 payment to Fine Gael and certain aspects of the evidence given concerning statements made by Mr. Denis O'Brien to Mr. Barry Maloney, that he, Mr. Denis O'Brien, had paid  $\frac{1}{2}$ 100,000 to Mr. Michael Lowry and  $\frac{1}{2}$ 100,000 to another unnamed person.

I want to deal firstly with the \$50,000 payment to Fine Gael.

Mr. Johannson provided the Tribunal with a statement of the 11th June, 2001; this was after he had given evidence. That statement was provided in response to queries from the Tribunal concerning the shredding of Invoice Number 1000050, dated 11th January, 1996, for 316,000 Norwegian kroner. This was the invoice raised by Telenor and with which you will be familiar in respect of the payment of US \$50,000 to Mr. David Austin by way of a contribution to Fine Gael.

Mr. Johannson informed the Tribunal, in that statement of the 11th June, that he had instructed inquiries to be made of Mr. Jan Edward Thygesen, who was the Chief Executive of ESAT Digifone from early November 1995 to the 19th February of 1996, with a view to ascertaining what information Mr. Thygesen had concerning the invoice.

According to Mr. Johannson, and based on the information he had obtained, Mr. Thygesen was not involved in matters relating to the accounts. He went on to state that Mr. Thygesen had informed him that he was not aware of any Telenor seconded employee to ESAT Digifone being involved in the processing of invoices to ESAT Digifone and that, to the best of his

knowledge, the invoice would have been processed in the accounts department of ESAT Digifone, which was then managed by

Mr. Peter O'Donoghue, the then Chief Financial Officer of ESAT Digifone.

In his 11th June, 2001, statement, Mr. Johansen also referred to information relayed to him by Mr. Per Simonsen. It will be recalled that Mr. Simonsen's name had appeared on one of the invoices and that evidence had been given by Mr. Johansen concerning Mr. Simonsen's role in the matter.

In his statement of the 11th June, 2001, Mr. Johansen informed the Tribunal that having brought the matter up with Mr. Simonsen, he was informed that Mr. Simonsen had not communicated with Mr. Thygesen in relation to the invoice and that he corroborated Mr. Thygesen's statement in relation to it. At that stage, no further significant information was provided by Telenor or Mr. Johansen concerning the processing of invoices in the account between Telenor and ESAT Digifone.

In his 11th June, 2001, statement, Mr. Johansen also referred to evidence given by Mr. Denis O'Brien concerning discussions which took place between Telenor and ESAT Digifone in the period April and May of 1996 regarding the reimbursement of Telenor by ESAT in respect of this payment of US \$50,000. Mr. Johansen

informed the Tribunal that having taken up the matter with members of the Telenor negotiating team, Mr. Rolf Busch and Mr. Arthur Moran, solicitor, he believed that the matter had never been in issue in the negotiation of the Shareholders' Agreement, and that was what the parties were involved in April/May of 1996. And he goes on to say that he believes that there had been no suggestion, as had been asserted by Mr. O'Brien in evidence, that ESAT had been compelled or pressurised into reimbursing Telenor for the \$50,000 payment.

Mr. Johansen has now provided the Tribunal with a further statement, dated 18th September, 2001, dealing with other aspects of the circumstances in which the various different invoices concerning this \$50,000 payment were raised by Telenor. He has informed the Tribunal that his September statement deals with matters that he had been reminded of by Mr. Knut Digerud. Mr. Digerud is no longer an employee of Telenor, and according to Mr. Johansen, it had not been open to him to take the matter up with Mr. Digerud in or around the month of June at the time of his earlier statements.

In his September statement, he has referred the Tribunal, once again, to a letter from Mr. David Austin dated 14th December, 1995, addressed to him at Telenor and enclosing an invoice of the same date for

consultancy work for 1995. You will recall that this was the invoice that was generated for the purpose of enabling Telenor to make the payment. Mr. Johansen has already given evidence that he received this letter and invoice in or around the 18th or 19th December. He has now informed the Tribunal that having received the letter and the invoice, he showed them to Mr. Digerud and explained what they were.

At the time, he and Mr. Digerud were preparing for a board meeting of ESAT Digifone to be held in Dublin on the following day. He put the letter and the invoice in his briefcase to bring them with him to Dublin in order to show them to Mr. O'Brien for Mr. O'Brien's approval. He has also, in his recent statement, informed the Tribunal that at some point shortly before or during a break in the board meeting, he had a discussion with Mr. O'Brien in the room in which the board meeting was being held and that Mr. Digerud was present, although he did not participate in the discussion.

During the discussion, he says that he showed Mr. O'Brien the original letter and invoice that he had received from Mr. Austin, and he says that he informed Mr. O'Brien that he would arrange for Telenor to facilitate the payment of \$50,000. Mr. O'Brien made no reference to any such meeting in the course of his

evidence. It is of course fair to say that Mr. Johansen made no reference to any such meeting in the course of his evidence either, and it is also only fair to point out that the matter could not have been drawn to Mr. O'Brien's attention by the Tribunal, as the Tribunal had not, at the time of Mr. O'Brien's evidence, been made aware of the information which has now been provided by Mr. Johannson.

Mr. Johansen has stated that he informed Mr. O'Brien that Telenor would make the payment and that they would then invoice Digifone for an equivalent sum; that Mr. Johansen handed Mr. Digerud the David Austin invoice and letter and asked him to arrange to process the payment and to arrange for the reimbursement.

While the Tribunal initially had some difficulty in locating Mr. Digerud, he has now been located, with the assistance of Telenor, and he has provided the Tribunal with a statement. His statement deals with his knowledge of the circumstances in which Telenor agreed to make the payment in the first place, and also his knowledge of the manner in which the invoices were raised and his knowledge, such as it is, of the shredding of the invoices.

He has informed the Tribunal that he remembers that Mr. Denis O'Brien was in the offices of Telenor in Oslo on



the 8th December, 1995, and that on that date, he, Mr. O'Brien, requested a private meeting with Mr. Johannson. Mr. Digerud says that after the private meeting, Mr. Johansen confirmed to him that he had agreed, at the request of Mr. O'Brien, that Telenor would facilitate a political donation to a political party in Ireland, but he cannot remember if the name of the political party was mentioned at that time.

He was informed that although Telenor would fund the donation, it would be reimbursed by Digifone. He was told that these arrangements were being made so as to enable the donation to be kept confidential in Ireland. He has already informed the Tribunal that he was with Mr. Johansen in his office in Oslo on the afternoon or evening of the 19th December, 1995, preparing for the board meeting of Digifone to be held in Dublin on the following day. He says that Mr. Johansen showed him two documents at that time, namely, the letter from Mr. David Austin dated 14th December, 1995 and the invoice of the same date.

He says that he also recalls that during the board meeting in Dublin, Mr. Johansen showed the letter and invoice to Mr. O'Brien, and that while he did not participate in the discussion between Mr. O'Brien and Mr. Johansen, he recalls that after the discussion, Mr. Johansen handed the documents to him with

instructions to process the payment and the reimbursement.

He has informed the Tribunal that he wrote an instruction in Norwegian on the original letter approving the invoice and directing Mr. Per Simonsen, the project manager of the ESAT Digifone project, as to what should be done. From his statement, it would appear that he had no further involvement in the processing of the payment or in the generating of the various invoices culminating in the final invoice dated 27th March, 1996, which was issued in Irish pounds some 33,000 Irish pounds.

Mr. Johansen, in the more recent statements he has provided to the Tribunal, that is to say in the statements he has provided since he last gave evidence, has also dealt with the assertion by Mr. Denis O'Brien that he had made two payments of  $\text{€}100,000$ , one of which was made to Mr. Michael Lowry. Mr. Johansen has informed the Tribunal, and it will be recalled that he was not able to deal with these matters in the course of his evidence, but he has informed the Tribunal that, while he can not be certain, he believes that the first he heard of these statements by Mr. O'Brien was prior to a board meeting of ESAT Digifone on the 30th October of 1997.

When the matter was brought to his attention,

Mr. Johansen consulted with Mr. Digerud, and they were both concerned at the fact that the public flotation was proceeding, notwithstanding the existence of a matter which they considered to be of an extremely serious nature if it were shown to be true. They were particularly concerned that there was insufficient time within which to conduct an adequate inquiry, and it would appear that, at that time, Mr. Digerud felt that the IPO should have been suspended immediately.

Mr. Johansen will now be in a position to give evidence concerning the various records of the meetings which took place in October and November of 1997, but to which he felt he was unable to refer when he was last giving evidence because of questions of legal privilege which have now mainly been resolved.

I now want to deal with another matter which was mentioned in evidence before the Summer, and in relation to which further information has come to hand. This information concerns share transactions involving Mr. Denis O'Brien and the late Mr. David Austin.

It will be recalled that Mr. O'Brien gave evidence that he had been anxious to make provision for the late Mr. Austin as part of the Friends and Family Scheme operated at the time of the ESAT Telecom flotation. He informed the Tribunal that, due to an oversight, he had omitted to make his planned provision for Mr. Austin at

the time of the flotation, and it was not until February of 1998, some four months later, that he actually attended to the matter.

The shares in question were made available to Mr. Austin for the sum of \$100,000. In February of 1998, Mr. O'Brien had to pay some \$150,000 in order to buy the shares. However, because they would have been available to Mr. Austin at a discount as part of the Friends and Family Scheme, Mr. O'Brien funded the \$50,000 differential between what the shares would have been available at the time of the flotation and what they cost to purchase on the market in February of 1998.

This was one of the share transactions involving Mr. O'Brien and Mr. Austin in relation to which evidence was given before the Summer. But Mr. O'Brien also gave evidence concerning another share transaction which also appeared to involve Mr. Austin. This transaction involved share dealings which occurred in the latter part of 1998, that is to say, not in February, but towards the end of the year.

Mr. O'Brien gave evidence regarding the purchase of some 12,000 ESAT Telecom shares in September of 1998.

These shares were purchased through Donaldson Lufkin & Jenrette, a US firm associated with Credit Suisse First

Boston. This firm has been mentioned in evidence already and is sometimes referred to as DLJ.

It was centrally involved in the public flotation of ESAT Telcom.

It appears that the 12,000 shares were purchased for the account of Mr. David Austin. Mr. O'Brien gave evidence that the shares were in fact intended for the account of Mr. Noel Walshe, Mr. O'Brien's father-in-law. I am not sure whether he mentioned Mr. Walshe's name at the time, but that would have been in ease of Mr. Walsh. I am not suggesting that Mr. O'Brien was in any way trying to conceal the fact that the shares were, as he put it, intended for the account of Mr. Noel Walsh. Mr. O'Brien was saying that although the shares had been purchased in the name of Mr. Austin, this purchase was made in Mr. Austin's name in error. In evidence, Mr. O'Brien was uncertain as to whether this error occurred on the part of DLJ or on the part of Mr. Aidan Phelan, by whom, according to Mr. O'Brien, the funds were arranged to meet the purchase.

In the course of giving evidence concerning this matter, Mr. Aidan Phelan stated that he had arranged for the funds to be provided to finance the share purchase, but that it was his understanding that the shares had been purchased on the account of the late Mr. Austin, and what is more, that he would have

confirmed with Mr. O'Brien that the purchase was to be in Mr. Austin's name. Mr. O'Brien has given evidence that subsequently, in order to rectify the error, the shares were transferred from Mr. Austin's account to Mr. Walsh's account.

In evidence, Mr. Phelan indicated that neither he nor any of his co-executors of the estate of the late Mr. Austin, nor Mr. Walter Beatty, solicitor to the estate, gave any instructions to transfer these shares out of the late Mr. Austin's account. However, documents have just recently come to light suggesting that Mr. Phelan may have had an involvement, although it is not clear that he was aware that there had been an error as such.

This documentation was provided by DLJ to Mr. Walter Beatty, solicitor to the estate of the late Mr. David Austin, and has been provided or has been furnished by Mr. Beatty to the Tribunal. It includes a letter from Mr. Peter Muldowney of DLJ to Mr. Beatty, as solicitor to the estate, in which he refers to the shareholding and the change in the name of the holder of the shares.

Mr. Muldowney says to Mr. Beatty:

"Dear Mr. Beatty,

We refer to your letters of June 28th and August 21st."

Mr. Beatty had received correspondence from the Tribunal in which certain queries were raised

concerning these transactions, and he quite properly relayed these queries to DLJ, and it is to those queries that this letter from DLJ is addressed. What Mr. Muldowney of DLJ says is as follows:

1. "The holding of 12,000 ESAT shares remained in David Austin's account until November 16th, 1998, when we received a letter of authorisation (copy enclosed, dated October 13th, 1998) from David Austin to transfer the shares to the account for which they were originally intended.

2. "The documents we sent are the record of all transactions on Mr. Austin's account, including share dealings, share transfers and receipt/disbursement of funds and do not show supporting documentation authorising transfers on the account. When an error is discovered in an account, and particularly if some period of time has elapsed, we request a letter of authorisation from the account holder (copy enclosed) to permit us to rectify the error by transferring the shares to the proper account.

3. "As requested, we enclose copies of all documents held by DLJ in relation to the late Mr. Austin's account including all share dealings on the account, including the transfer of any shares into or out of the account, the receipt of funds on the account and the receipt of any instructions by or on behalf of Mr.

Austin in relation to all share dealings.

4. "We enclose a copy of the trade confirmation for the purchase of 12,000 ESAT shares in Mr. Austin's account and the letter of authorisation subsequently received from Mr. Austin to transfer the shares to the account for which they were originally intended. The error arose from a misunderstanding in verbal instructions given by Mr. Denis O'Brien to DLJ to purchase 12,000 ESAT shares for his father-in-law, Charles Walshe."

Mr. Charles Walshe and Mr. Noel Walshe are the same person. During the conversation both Mr. Austin's and Mr. Walshe's names were mentioned and in error DLJ bought the stock in the wrong account. He says:

5. "The 12,000 ESAT shares were transferred out of Mr. Austin's account on Mr. Austin's authority on November 16th, 1998. We requested and received a letter of authorisation from Mr. Austin dated (copy enclosed) dated October 13th, 1998, on November 16th, 1998, to transfer the shares to the party for whom they were originally intended."

Now, DLJ provided the Estate of Mr. Austin, as part of their response to the queries raised by Mr. Walter Beatty, with a number of documents, two of which only I want to refer at this stage. They concern Mr. Austin's share transactions on his account in October/November



of 1998.

The first of these documents is a letter dated 8th October, 1998, on unmarked notepaper addressed to DLJ.

And it states:

"Dear Sirs,

"Please transfer 6,600 ADSs of Esat Telecom Group plc from my account 22Y208238 to Maureen Austin's account at DLJ."

Then there is a number in manuscript of that account.

"I appreciate your prompt attention in this matter."

"Yours truly."

And it's signed "David FT Austin."

Now, I think at the top of that document, on the right-hand side, is a manuscript which appears to read "Done," then seems to be either "5/18" or "5118" it's not clear. The Tribunal is making inquiries into what this manuscript means.

Although the word "Done" appears on the top right-hand corner of this letter, the Tribunal has not yet been able to establish whether this instruction was in fact carried through, or if it was, whether it was carried through at the time. Because it appears that the executors of the Estate of the late David Austin were

under the impression, at the time of the swearing of the Inland Revenue affidavit in his Estate, that the instruction had not been carried through. This is because the Inland Revenue affidavit, containing a statement of the late Mr. Austin's assets at the time of his death, included the shares in question.

What is important to bear in mind in relation to this correspondence and the swearing of this Inland Revenue affidavit is that Mr. Austin died on the 1st November, 1998.

I want to come now to the letter I mentioned a moment ago or the other document I mentioned a moment ago.

This is again a letter on unmarked notepaper which appears to have been written by Mr. Austin on the 13th October. It again concerns a share transaction and involves DLJ, but this letter is not addressed to DLJ, as the last letter was, but rather is addressed to Mr. Aidan Phelan, Orchard House, Clonskeagh Square, Clonskeagh, Dublin 14. It says:

"Dear Aidan,

"Re Esat Telecom Group, plc.

"Further to our recent conversation, I would be obliged if you would request DLJ in New York to transfer my holding of 12,000 ADRs in the above company to Mr. Noel

Walshe, who I understand has an existing account. "

Then he, Mr. Austin, actually gives Mr. Walshe's account number with DLJ. He signs it off, "Thank you for your assistance," and it's signed "David Austin. "

Now, it would appear from the letter to which I referred a moment ago from DLJ, the letter from Mr. Muldowney, that Mr. Austin's letter of the 13th October, 1998, addressed to Mr. Phelan, did not reach DLJ until November 16th, 1998; and as I have said, by that date, Mr. Austin had been dead for some two weeks. And of course, by that stage, one assumes that only his Estate could have given instructions in relation to his affairs.

These additional documents have now been brought to the attention of Mr. Phelan in light of his earlier evidence, and he has informed the Tribunal that he has no recall in relation to receiving the letter of the 13th October, but that his office was used by David Austin as a mailing address for DLJ correspondence, and it is his belief that the letter of the 13th October, addressed to his office, was passed on to DLJ by his secretary.

The task for the Tribunal is to endeavour, so far as this is practicable, to establish the true nature of the transactions involving the 12,000 shares and to

endeavour to establish whether, in the light of the apparent conflict between Mr. O'Brien's evidence and Mr. Phelan's evidence, the purchase of these shares in Mr. Austin's name was in fact an error. On its face, the share transaction resulted in a benefit to Mr. Austin of some \$300,000, approximately. If the transaction was not in fact an erroneous one, the question which arises is as to what was intended by conferring a benefit of this kind on Mr. Austin and whether there are any other connections between such a transaction and other payments to Mr. Austin which appear to have links to Mr. Lowry. This transaction, or if you like, these two transactions, will be examined as part of the exercise mentioned by the Tribunal at the outset of this part of its inquiry involving the scrutiny of connections between a number of transactions, various individuals and their related associations with Mr. Lowry. Mr. Lowry's blanket denial of any such connection should be borne in mind, having regard to the fact that he has yet to give evidence to the Tribunal concerning these matters.

Now I want to shortly or briefly mention two other matters concerning firstly the evidence of Ms. Helen Malone, and secondly the dealings the Tribunal has had with Irish Nationwide (Isle of Man).

Ms. Helen Malone has provided the Tribunal with a

statement concerning her involvement in some of the financial transactions already mentioned in evidence at the Tribunal sittings. Ms. Malone is currently a partner of Mr. Aidan Phelan in the firm AP Consulting. While Ms. Malone appears to have had a role in the Mansfield transaction, in what is known as the Cheadle transaction, in the transfer of the ownership of a property owned by Mr. David Austin to Mr. Denis O'Brien, and in assisting Mr. Austin to open an account in DLJ for the purpose of holding his shares in ESAT Telecom from her statement, it would appear that she acted on instructions in relation to most of these matters, she appears, again from her statement, not to have been aware of the totality of the arrangements between the various individuals involved.

Now, I want to come to a matter concerning Irish Nationwide (Isle of Man). Irish Nationwide (Isle of Man) is a financial institution wholly owned by the Irish Nationwide Building Society in this jurisdiction. It would appear from evidence given at the Tribunal's last sittings that in fact, most of the assets of Irish Nationwide (Isle of Man) are invested in the Irish Nationwide Building Society in Dublin.

Irish Nationwide (Isle of Man) is an offshore financial institution in which Mr. Michael Lowry had an account from some time in late 1996. It is the account into

which Mr. David Austin paid the sum of £147,000 for Mr. Lowry's benefit. Mr. Lowry has asserted that that payment was of course by way of a loan, and furthermore has asserted that it was paid back to Mr. Austin in February of 1997.

The Tribunal has been in correspondence with Irish Nationwide (Isle of Man) in an effort to obtain information concerning the account opened by Mr. Austin and the dealings that both Mr. Austin and Mr. Lowry had with that financial institution.

The Tribunal has obtained a waiver of confidentiality from Mr. Lowry to enable the bank to deal with queries from the Tribunal; in other words, to relieve the bank of any duty of confidentiality they might have to their client which would prevent them from assisting the Tribunal. The Tribunal also obtained from the Estate of the late Mr. David Austin a waiver of confidentiality, to enable the bank to respond to queries and again, so as to avoid the bank having to act in breach of any duty of confidentiality it might have owed to Mr. Austin or to the Estate of Mr. Austin.

The bank provided the Tribunal with certain documentation and responded to certain queries concerning the account, but the Tribunal was anxious to obtain the evidence of officials of the bank who had dealt with the opening of the account, who had dealt

with Mr. Lowry's affairs, and who may have dealt with Mr. Austin.

Because of the centrality of this transaction, the opening of this account and the payment of this large sum of money into the account in the Tribunal's current inquiries, it was important that evidence would actually be given by these officials concerning these matters and that they would not merely provide the Tribunal with documentation, but that they would provide the Tribunal with information, and that that information would be available in the form of evidence testimony, in other words at the Tribunal sittings.

At the time of the commencement of the Tribunal sittings on the 22nd May, 2001, an Opening Statement was made in which reference was made to the dealings the Tribunal had with the Irish Nationwide (Isle of Man), and in that Opening Statement what was said was the following:

"The Tribunal has endeavoured to obtain the cooperation of Irish Nationwide (Isle of Man) and has sought the assistance of its parent company, Irish Nationwide Building Society in Dublin. It has, in addition, provided Irish Nationwide (Isle of Man) with a waiver from Mr. Lowry whereby the Isle of Man institution

would be at liberty to provide the Tribunal with any documents and any other information otherwise than in documentary form, including access to its officials to deal with the matter. The Tribunal has not, however, succeeded in persuading the officials of the bank, that is, the Isle of Man company, to come to Dublin to give evidence, and as of this moment, the Tribunal has been informed by Irish Nationwide (Isle of Man) that the officials will not be made available to the Tribunal to give evidence in Dublin or to assist the Tribunal with information. It will be borne in mind that as an offshore entity, they cannot be compelled under process of law to appear as witnesses. "

Now, I should say that the Tribunal has dealt with other foreign-based financial institutions, and where the relevant waivers were provided, those foreign-based financial institutions, or at least some of them, have provided the Tribunal with assistance, and it will be recalled, as in the case of Investec, provided the Tribunal with evidence, the evidence of witnesses who, because they were outside the jurisdiction, could not otherwise be compelled under process of law to appear as witnesses. It is well-known that the Tribunal has had difficulty in obtaining even documents, not to mention testimony, from offshore banks; in particular, from the Ansbacher Cayman Bank.



At the last sittings of the Tribunal, Mr. Michael Fingleton gave evidence, and in the course of his evidence, he was asked to explain, so far as he could, the difficulties the Isle of Man financial institutions had in providing witnesses to the Tribunal. It will be recalled that Mr. Fingleton is the managing director of the Irish Nationwide Building Society, and he is also a director of the Isle of Man company.

At page 72 of the transcript of the Tribunal's proceedings for day 140, the 27th July, 2001, Mr. Fingleton was asked: "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?"

Mr. Fingleton responded: "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. "

He was asked: "Is there anything you know that would " and his response was "No." I think Mr. Coughlan was questioning him, and went on to say "That would preclude them?" And he said "Absolutely not." He was then thanked for his evidence.

In the course of that evidence, Mr. Fingleton also indicated that there were many questions concerning the

Isle of Man bank that he was not able to respond to, but he indicated that there was a witness who would give evidence and would be able to answer those questions. And he named Mr. Crellin, an official of the Isle of Man bank. Mr. Crellin is in fact the Chairman of the Isle of Man bank.

Now, Mr. Crellin has indicated to the Tribunal that he is prepared to give evidence, but his availability does not mean that he will be able to give evidence at this time, and it is highly unlikely that the Tribunal will be dealing with these matters when he becomes available. If, in due course, it seems convenient to take his evidence when he becomes available, the Tribunal will do so, but the Tribunal obviously cannot wait around until Mr. Crellin is available in order to deal with these matters.

In a recent letter to the Tribunal, Irish Nationwide (Isle of Man) has taken issue with how the Tribunal has dealt with the bank. And in a letter of the 5th October, 2001, to Mr. John Davis, the solicitor to the Tribunal, Mr. Duncan Jones, operations director of Irish Nationwide (Isle of Man), says:

"I acknowledge receipt of your letter dated 26th September, 2001 last, to our Chairman, Mr. Crellin. Mr. Crellin, as has already been indicated to you, is now abroad and will not be returning until the times

indicated to you in his letter of the 21st September

last."

In that letter he had indicated he would be away on holiday for the whole of October but that he felt that a date in the second half of November or early December could be arranged to the convenience of the Tribunal and himself. The Tribunal indicated that it was not in a position to agree a date as remote as that and that it wouldn't be convenient.

Mr. Duncan Jones goes on: "We totally refute the suggestion that we have refused to cooperate with the Tribunal. We have discharged fully our obligations under Mr. Lowry's authorisation. The Tribunal has received copies of all our records relating to Mr. Lowry's account, and all your questions have been voluntarily answered in writing.

"As regards the press and television reports last May, Irish Nationwide (Isle of Man) Limited has no difficulty with the media because they were clearly misled. Page 39 of the transcript of the Tribunal's proceedings of the 22nd May record that Mr. Coughlan stated:

"The Tribunal has been informed by Irish Nationwide (Isle of Man) that the officials will not be made available to the Tribunal to give evidence in Dublin or

to assist the Tribunal with information."

"And this is clearly where the media were totally misled.

"Page 1 of the Irish Independent the next day, 23rd May 2001 reported that;

"Inquiry Lawyers said the Isle of Man branch of the INBS has refused to give any information or attend the Moriarty Tribunal in relation to the Lowry account."

Page twelve of the Irish Independent, 23rd May 2001, under Comment Curious Dealings stated:

"The Isle of Man branch of Irish Nationwide Building Society have refused to give the Moriarty Tribunal any information about a  $\text{€}147,000$  account held by Mr. Lowry."

Page thirteen of the Irish Independent of 23rd May 2001 stated in an article by Chris Mallon that:

"The Isle of Man branch of Irish Nationwide Building Society has refused to give any information..."

and in the same article it also stated that:

"Mr. John Coughlan SC, for the Tribunal, said that despite a waiver from Mr. Lowry, the Tribunal had been unable to get cooperation from the officials in the Isle of Man or to get them to come to Dublin."

On page six of the Irish Times dated 23rd May 2001 it

stated:

"Irish Nationwide Building Society, where Mr. Lowry held his Isle of Man account, had refused to allow officials from the Isle of Man company to give evidence to the Tribunal or to assist the Tribunal with information, Mr. Coughlan said."

These comments are all the more serious due to the fact that they were attributed to the lawyers of the Moriarty Tribunal and were consistent with the statement made by the Tribunal on page 39 of the transcript referred to above.

"We would now ask you once again to withdraw those statements, as they were factually incorrect and to redress the damage clearly done to both the bank and our parent.

"As regards the comments in the last paragraph of your letter, I would remind you that as residents of another State we do not find it acceptable to be written to in such a manner by a person from another jurisdiction."

Mr. Davis responded by letter of the 9th October, 2001:

"Dear Mr. Jones: I refer to your letter of the 5th October, 2001.

"You may rest assured that the Tribunal will arrange that the entire contents of your letter under reply will be read into the record of the Tribunal sittings.

"I note that you have not indicated in your letter under reply that there is any provision of the laws of the Isle of Man which would preclude your bank from assisting the Tribunal by making available officials of the bank to give evidence or to assist the Tribunal with information.

With regard to the contents of the newspaper articles and the attitude of your bank, please let me have responses to the following:

1. Whether (as I have requested in an earlier letter) your bank is prepared to allow officials of the bank to give evidence to the Tribunal and to assist the Tribunal with information.

2. Whether your bank has precluded any of its officials from attending the Tribunal to give information in connection with the accounts of Mr. Lowry and the late Mr. Austin, both of whom have provided you with the appropriate authorisations to do so.

"Referring to the final paragraph of my letter of the 26th September, you state that you do not find it acceptable to be written to in such a manner from another jurisdiction. Please note that what was contained in that paragraph was prompted by evidence given to the Tribunal by a director of your bank, Mr.

Michael Fingleton, on the 28th July, 2001. I enclose a copy of the transcript of day 140 of the Tribunal's proceedings. I would draw your attention to page 168 of the transcript, which records that Mr. Fingleton stated:

"And more recently, Mr. Crellin, who is now the Chairman of the Isle of Man, has agreed to attend to 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."

At page 69, Mr. Fingleton stated that "We would wish that the Isle of Man would cooperate fully with the Tribunal. That's the position of the Society."

He goes on in his letter to say: "You will see that in what follows on page 69 and 70, Mr. Fingleton appears to leave the question as to whether Mr. Tully" who is an official of the bank "would appear or whether he had the support of the Irish Nationwide (Isle of Man) Limited appearing, in some doubt. When asked why the Isle of Man bank was refusing to cooperate, he

stated at page 71 as follows: "I cannot answer that question, but I presume Mr. Crellin 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. "

Mr. Davis went on to say: "Please now let me know whether the Tribunal may in fact rely on what Mr. Fingleton said or whether the bank now wishes to resile from what he stated under oath in his evidence concerning the bank's willingness to assist, its desire to encourage its staff to appear, and Mr.Crellin's agreement to appear."

The Tribunal has not received any response to that letter, and the position as of this moment is that while the bank has indicated that it will provide the Tribunal with documentation, and while it is indicated that it will respond in writing to queries from the Tribunal, no witnesses other than Mr. Crellin, whose diary arrangements seem to make his appearance fairly remote, have been provided. None of the officials have been provided, and it would appear that the Tribunal will have to ultimately proceed to make whatever findings are open to it on the basis of the evidence to date.

CHAIRMAN: I think it was a Mr. Carl Tully who was the



person directly involved as a bank official.

MR. HEALY: Yes.

The two witnesses who will be giving evidence in relation to Mr. Haughey's affairs are Ms. Catherine Butler and possibly Mr. John Byrne.

CHAIRMAN: Well, before proceeding to evidence, I should make two brief observations. First of all, as is the usual practice in Opening Statements made prior to evidence adduced before the Tribunal, that statement is no more than an outline of the issues to be addressed and the general nature of intended testimony. It is not, in any sense, evidence in itself. The evidence actually tendered may to some limited degree differ from an Opening Statement. It may fall to be tested or be otherwise at variance with what is set forth in an outline.

And as I have said on a number of previous occasions, conclusions should not be drawn by anyone on the basis of Opening Statements. They are merely tendered in advance of evidence in the course of assisting the public and other persons present as to what will be dealt with in the course of forthcoming evidence.

The only other matter I would mention was, I think, implicit from Opening Statements made earlier in the

summer by you and Mr. Coughlan, and that is to the effect that at the conclusion of this phase of the Tribunal's inquiries, it will be proposed to take up such evidence as is felt relevant that pertains to the actual competition in its various phases in relation to the granting of the second mobile licence; and much of the confidential inquiry work that has been pursued in the course of the recess since our last sittings has been addressed to dealing with and seeking to distil the extremely large volume of documentation that has been presented from various sources to the Tribunal.

Very good. We'll seek to deal with one witness, I think, if possible, before the lunch adjournment.

PETER O'DONOGHUE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Mr.COUGHLAN: Mr. O'Donoghue, I think you have furnished a statement for the assistance of the Tribunal, isn't that correct?

A. That's correct.

Q. And you have it with you?

A. I have indeed.

Q. And I think you were also furnished by the Tribunal with statements or memoranda of proposed evidence of Mr. Johansen, Mr. Simonsen, and Mr. Thygesen, I think?

A. That's correct.

Q. Now, I think in your statement which was in response

to information sought by the Tribunal, isn't that

correct?

A. Mm-hmm.

Q. You stated first of all, in response to a query when you were asked for details of your role in the management of ESAT Digifone and in connection with the financial function of the company, you informed the Tribunal that you joined Communicorp Group Limited in February 1995 as Chief Financial Officer, is that correct?

A. That's correct.

Q. ESAT GSM Holdings Limited, the licence bid company was a subsidiary of Communicorp, is that correct?

A. Mm-hmm.

Q. In October 1995, the licence was awarded, and a new company, ESAT Digifone Limited, was set up to operate the mobile phone business, is that correct?

A. That's correct.

Q. A Colm Maloney, a contract accountant, was hired by ESAT Digifone to help with the day-to-day accounting matters, is that correct?

A. It is.

Q. Under the Shareholders' Agreement, Telenor was entitled to appoint the Chief Executive, and ESAT Telecom was entitled to appoint the Chairman, is that correct?

A. That's correct.

Q. From October 1995, Jan Edward Thygesen was ESAT

Digifone's Chief Executive Officer and was replaced by

Knut Digerund in February, 1996, is that correct?

A. I note from Jan Edward Thygesen's statement that it was actually November. I thought it was October.

Q. I see. You don't have any great quibble in relation to that?

A. Not at all.

Q. In late 1995 to May 1996, ESAT Digifone operated from a floor in Malt House, the headquarters of ESAT Telecom, is that correct?

A. That's correct.

Q. It was on a different floor?

A. It was on a different floor. It's the same building that 98FM, the radio station, ESAT Telecom and Digifone as a start-up company were all present in the same building.

Q. Now, I think you informed the Tribunal that from the 1st February, 1996, you were seconded for a three-month period to work for ESAT Digifone to concentrate on the raising of project financing, is that correct?

A. That's correct.

Q. Now, turning to the question of the invoices. You have informed the Tribunal that the Telenor invoices would have arrived at Malt House and would have been opened by whoever was responsible for opening and distributing the post, is that correct?

A. That's correct, but what I would add to that is I had

no recollection of ever seeing these invoices, so I

just applied the procedure to all invoices.

Q. Yes. If we deal with the procedure in the first instance?

A. Indeed.

Q. In the normal course, there was a post room, or somebody who had responsibility for receiving and opening the post and distributing it within the

A. Well, it was quite it was just an open office base, and the post would arrive in. There was a receptionist, and literally people were arriving day by day from Telenor. So it wasn't exactly a structured post room or an organisation in place. It was literally just a collection of people sitting around at various desks.

Q. Just to be clear about this now: ESAT Digifone was effectively at this stage a project, isn't that correct?

A. That's correct, mm-hmm.

Q. You had no formal structures in place?

A. No, it went from a bid company to an actual setup of a new company on the announcement of the licence. If it lost the licence, the bid company would have just come to an end and the project would have disbanded.

Q. Right. Now, so in this initial phase, you have informed the Tribunal that things were informal

A. Mm-hmm.

Q. In the way the business was run, is that right?

A. Informal and hectic.

Q. And hectic. And that anything that arrived by post will arrive at reception, would be opened and distributed, that was

A. Indeed, mm-hmm.

Q. Now, you have informed the Tribunal that the handwritten note of the 31st December showing the intercompany balance is in the writing of Colm Maloney.

I wonder if we just put that up, because that is that document that we referred to.

This is just a sheet of paper on which various matters are recorded, is that correct?

A. That's correct. It's the month-end balance between ESAT Digifone and related parties.

Q. And that is the month-end balance for the 31st December, 1995?

A. That's correct.

Q. When do you think that that would have been prepared?

A. I would imagine that was prepared in early January.

Q. Early January?

A. Mm-hmm.

Q. And what was the process for the preparation of this?

What did Mr. Maloney do or obtain into his possession for the purpose of making this initial note?

A. Really, it's a matter of control, trying to, at the end of each month when preparing accounts is just to

confirm intercompany balances or to make sure that all invoices were correctly recorded.

Q. This was described to us, when it was furnished by the company before the summer break, as a working paper

A. Indeed, it would support a set of accounts. It would be just one of the reconciliations prepared.

Q. And Mr. Maloney you recognise Mr. Maloney's writing, and you would have prepared this particular document?

A. Indeed. When the Tribunal sent me a copy of this, I didn't recognise it initially. So I contacted Mr. Maloney, faxed him a copy, and he confirmed it was his handwriting.

Q. Now, you will see from that document that there is recorded by Mr. Maloney and he must have had physically in his possession the first invoice which made reference to David Austin, and it was for 316,000 kronar, isn't that correct?

A. That's actually yeah, but he records it there in terms of Irish pounds.

Q. Yes, it's 31,600.

A. Indeed.

Q. Was that what he would do?

A. We would have been using an average exchange rate of about 10 kronar to the Irish pound at the time.

Q. By virtue of reference to David Austin, it would seem that Mr. Maloney must have had in his possession for the purpose of preparing this particular document,

anyway some document with reference to Mr. David

Austin on it?

A. Indeed. He would have had to have had some reference to a document, even though it seems from the evidence of Per Simonsen, which was only provided to me since I made that statement, that Per seems to say that invoice, under his instructions, was shredded the same day it was issued.

Q. In Dublin well, we'll come to what Mr. Simonsen says in a moment, and I'll give you an opportunity of dealing with that. But somebody in Dublin, which was Mr. Maloney, was making an entry for the purpose of preparing a trial balance sheet, or something of that nature, and it was for the year or for the period ended 31st December 1995. And he records that there is some invoice from Telenor or something due to Telenor, isn't that correct?

A. That's correct.

Q. By the company, and it relates to Mr. David Austin?

A. That's correct.

Q. Now, when invoices and I suppose we should perhaps just go on to explain at this stage, at this time, there was no money being exchanged between Telenor and Digifone, isn't that correct?

A. Absolutely no money. The company at the time was totally depending on advances from Telenor. And you can see, at the bottom of that statement here, that



Telenor Invest have an amount due of 100, that would have been 100 advanced by Telenor to the company to keep the day-to-day funding in place and to meet operating expenditure. No monies would really have been available to the company until such time as the licence was finally granted.

Q. And this is just recording the debt, effectively, what was due?

A. Indeed, mm-hmm.

Q. Now, for Mr. Maloney to receive a document to enable him to make that particular note, who do you think would have given it to him?

A. I would imagine he would have got that invoice from the receptionist. Like, it was an accounts invoice, and he was running the day-to-day accounting function of the company.

Q. Could you have given it to him?

A. I could possibly have given it to him, but I have no recollection. The name of the late David Austin didn't mean anything to me.

May I just add to that that at that time, the concern of the company was really arranging the project finance, which was for  $\frac{1}{2}$ 120 million, it was buying radio equipment. The settlement of an intercompany account, it was bottom of the list, because we didn't have the money even to settle the account.

Q. You didn't have any money. You were keeping a record at

this stage?

A. Indeed.

Q. I think you have informed the Tribunal that none of the invoices were paid at the time as ESAT Digifone was solely relying on short-term advances from Telenor to defray day-to-day operating costs, and as a matter of control, all invoices would have required the approval of the person responsible for the expenditure, signified by his initials, before being processed for payment?

A. Indeed.

Q. Now, that is before being processed for payment; is that before it's recorded?

A. I don't think the system was that formal. This was a situation where Colm Maloney would have recorded that in a statement to make sure there was a certain amount of control, that we didn't lose invoices that came in. But the matter of payment wouldn't have arisen until May of the following year.

Q. That's what I was just going to come to. The matter of payment really only arose at the time of the Shareholders' Agreement, isn't that correct?

A. Yeah

Q. When the running account was

A. When the licence was

Q. agreed?

A. When the licence was eventually awarded, that was the

condition that the shareholders had put in their names, capital and equity. At that stage we had cash and were in a position to pay creditors.

Q. I think you have informed the Tribunal that before approval for payment, they'd have to be signed off or initialled by somebody senior; and the reality is that they would have had probably have been signed off by the Chief Executive Officer?

A. Indeed. Like, we had basic controls in place. Before any invoice was settled, the person responsible for the expenditure would have to initial to approve it until we actually received the services or goods that we were paying for.

Now, an invoice like that, if you think of the three executives in the company at that stage was Jan Edward Thygesen, who was Chief Executive; Hans Mara, who was another Telenor employee, and he was head of the technical side of the business; and myself. So I would have known nothing about such a Telenor invoice, so I assume that when it was gone for payment, it would have gone to the Chief Executive.

Q. When it was going for payment?

A. For payment, indeed.

Q. And of course that didn't occur until May of 1996?

A. Indeed.

Q. And we know that in fact, it was part of an overall

reconciliation on a running account, isn't that

correct, at that time?

A. Indeed. What would have happened is that Telenor were supplying a lot of services and indeed equipment to the company, and they would have built up an account. And then, when the company was put in funds, it would have settled the account with Telenor.

Q. Now, I think you have informed the Tribunal that Denis O'Brien had no executive role on the financial side of ESAT Digifone, and there is no way in which he would have had an input into the manner in which the invoices were treated or requests made for substitute invoices, is that correct?

A. That's correct.

Q. Now, I think you informed the Tribunal that when you worked for ESAT Digifone, your relationship with Denis O'Brien was quite strained, as Denis perceived you as being too close to Telenor, is that correct?

A. That's correct.

Q. Now, I think you have informed the Tribunal that you were involved in the negotiation of the Shareholders' Agreement, and you do not recall that there was any issue over the running account between ESAT Digifone and Telenor. Amounts due to Telenor were settled from time to time, backed up with supporting invoices, initialled by the person responsible for the purchase?

A. That's correct.

Q. Now, what happened at the time of the Shareholders' Agreement is that there was a running account which was signed off on, isn't that correct?

A. Well, I'd make a distinction between the Shareholders' Agreement and the running account. The running account was something to do with the day-to-day operations of the company. While the Shareholders' Agreement was really a matter between the shareholders that dealt with things like the transfer of shares, the power of each shareholder, whatever, it didn't actually specifically cover the authorisation of payments of the day-to-day running accounts between either of the parties.

Q. Well, I think you have been furnished sorry, you are familiar and you have been furnished, I think, with the account, or the portion of the account dealing with this particular transaction, isn't that correct?

A. Indeed.

Q. And we can see that at the top of the account, the transaction is recorded and reversed, isn't that correct?

A. I don't actually have a copy of that.

Q. You can I can give you a hard copy, if it's of any assistance to you.

(Document handed to witness. )

Now, you see the invoice or voucher number 1000050, and

it's dated 31/12/1995, and it's recorded as being for 316,000 kronar?

A. I do.

Q. And that is then reversed, you can see that, by a voucher with the same 10,071 voucher dated 24th January, 1996, do you see the reversal?

A. I do indeed.

Q. That is effectively cancelled on the account, isn't that correct?

A. Mm-hmm.

Q. That was the bear with me for a moment an invoice which was in effect, the second invoice in relation to this particular transaction. You can take that as the case from me.

A. I think it actually is the first invoice.

Q. Are you sure?

A. The first invoice. Sorry, it's the way I have it ordered here, because the first invoice relates to it's dated 31/1/96, and then it's consultant

David FT Austin

Q. Sorry, you are correct.

A. And it's reversed in the account.

Q. And then the sum that appears in the account and is agreed is recorded then as part of a larger sum, do you see on the 30th June of 1996, "were informed", do you have that?

A. Yes, I can see there is an entry here. Its reference

is 8300483?

Q. That's correct.

A. Mm-hmm. Yes, there was a payment made on account, mm-hmm.

Q. Yes. And this sum was included in part of that larger sum; that is what the Tribunal has been informed.

A. Well, I don't have details that is, I can't actually see the sum

Q. You can take it that is what we have been informed.

A. Okay. I have no reason to believe otherwise.

Q. Now, you are correct in saying that the first matter which appears on the account relates to the first invoice, which is the one as recorded by Mr. Maloney on his working paper for the period ending 31st December, 1995, isn't that correct?

A. That's correct.

Q. But that transaction is reversed?

A. Was reversed, mm-hmm.

Q. Now, as no payment occurred here probably before probably until after the Shareholders' Agreement, because it appears to be a transaction which occurred on the 30th June of 1996, isn't that correct?

A. Mm-hmm.

Q. Can we take it that no documentation need have gone to any particular executive for the purpose of signing off or initialling off on, to permit payment?

A. That's correct.

Q. Now, you have been furnished with Mr. Thygesen's, Mr. Johansen's and Mr. Simonsen's statements I think, isn't that correct?

A. That's correct.

Q. And they will be coming to give evidence, but I suppose we might pay some attention to what Mr. Simonsen says, because he is the person in Telenor, he was the project manager for the ESAT Digifone project and he dealt with the matter on the Norwegian side in Norway, isn't that correct?

A. That's correct.

Q. And I think he has informed the Tribunal in his statement that Mr. Denis O'Brien made contact with him or he made contact with Mr. Denis O'Brien on two occasions, isn't that correct, in relation to this particular matter?

A. That's per his statement, but I don't have any knowledge of that.

Q. You have no knowledge of that?

A. No.

Q. And of course Mr. O'Brien has to be afforded an opportunity of commenting on what Mr. Simonsen has said in his statement and the evidence he will give next week, but what Mr. Simonsen what you now know from Mr. Simonsen's statement is he is going to say that Mr. O'Brien made contact with him in respect of the first invoice which made reference to Mr. David Austin and



informed him that he did not wish the name David Austin to appear on the transaction?

A. That's correct.

Q. Isn't that correct?

A. Mm-hmm.

Q. Did you have any discussion with Mr. O'Brien when the first invoice arrived?

A. Not at all.

Q. You had never any discussion with Mr. O'Brien at all about this particular transaction, Mr. David Austin or anything of that nature?

A. No. Last I would say last May Denis O'Brien rang me and he inquired did I know anything about these invoices because he made some statement like "they are accusing me of ripping up statements and invoices," so initially I said, "no, I don't have any knowledge of that but give me some time to think about it." So I rang him back the following day and I said, "No, I don't have any knowledge of it, but I would imagine any such invoices would have been settled as part of the initial bid costs of the company, not the ongoing operating costs of ESAT Digifone." But then when I saw the invoices, I was wrong.

Q. You were wrong, because you didn't remember, isn't that correct?

A. Indeed.

Q. Just in fairness to you and Mr. O'Brien, when Mr.

O'Brien made contact with you in May, and there was no reason why he shouldn't, it was when this matter had become an issue with the Tribunal, isn't that correct?

A. Indeed.

Q. That he was looking for assistance?

A. Mm-hmm.

Q. So can we take it to that the position as far as you can understand it so, as regards signing off on these particular invoices, that you were mistaken in your understanding as to how they would have been dealt with when you, first of all, spoke to Mr. O'Brien in that they did, or they were part of the running cost as opposed to being something which would have been settled prior to the bid costs being settled between the shareholders?

A. Yeah, that's correct, yeah.

Q. Thank you. Anything, Mr. Fitzsimons?

Mr. FITZSIMONS: A couple of questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY Mr. FITZSIMONS:

Q. Mr. FITZSIMONS: Mr. O'Donoghue, on day 122, page 4, Mr.

O'Brien stated, and I quote question 7: "It was Peter O'Donoghue who had dealt with the pretrading expenses,

it was he would have dealt with the issue as to ESAT

Digifone paying money to Telenor. "Can you comment on

the accuracy of that please?

A. No, you'd want to make a distinction between ESAT GSM

Holdings, which was the bid company, and ESAT Digifone which was the operating company, and these invoices were actually invoiced to the ESAT Digifone and not the original bid company.

Q. Yes, but he is saying that you dealt with the exchanges between, in financial terms, between ESAT Digifone and Telenor.

A. That's correct.

Q. He said, day 116, question 410 and 411, that "The negotiations leading to the Shareholders' Agreement went on two to three weeks and that the donation was described as a Fine Gael payment. " Now, you were involved in those negotiations, and do you recall I take it if you were involved as the Chief Financial Officer, you must have recalled the payment being described as such?

A. No. I have no recollection of that matter being discussed. I would have thought that the negotiations and the Shareholders' Agreement took five to six months, in fact. It was a very prolonged process and we had up to something like 16 or 18 different meetings trying to sort out the Shareholders' Agreement.

Q. Mr. O'Brien said, day 116, question 391, day 117, question 263, that Telenor made ESAT Digifone pay this \$50,000, we'll call it, during the negotiations. Do you have any recollection of an issue such as that arising in the

A. None whatsoever.

Q. the payment. A press release was published on behalf of Denis O'Brien in the Irish Times on the 6th March, 2001 referred to day 124, question 585 and in that press release, it was stated, I quote: "Telenor subsequently sought reimbursement from ESAT. The reimbursement was initially refused but after some months of discussion, it was finally paid to Telenor in or about April, 1996. "

Do you have any recollection of such an issue arising?

A. No, no.

Q. Now, you say in your statement that you had a strained relationship with Mr. O'Brien. My clients got the impression that at the early stages you had a very good relationship with Mr. O'Brien and we are talking about 1995, you even accompanied him to Norway on occasions, and into early 1996, but that later on, yes, they did observe some strains creeping into the relationship.

A. I always found Denis a difficult person to work for. He was a typical entrepreneur; he gave you a lot of responsibility and no authority.

Q. But do you agree in terms of the timing, my clients, as I say, feel that it was only sort of in towards the middle of 1996 that the relationship became strained; that up to that time, you had a very good working relationship with him?

A. No. I can remember issues between Denis and myself going back to October '95.

Q. Yes, very well.

Now, in relation to your function as Chief Financial Officer, of course you have indicated it was simply a project and things were fairly hectic at the time one can imagine the scene. But you, in that capacity, would have authority to sign off on bills, isn't that so?

A. Yes, I would have authority to sign off on, yes, expenditure that was under my control.

Q. And, in fact, my clients certainly got the impression that you were in charge of the preparation of the two monthly balances relating to the two monthly balances as between Telenor and Digifone through 1995 into 1996?

A. Mm-hmm.

Q. Now, just dealing with the three invoices. Mr. Simonsen, who will be giving evidence, deals with them, and I won't go into the detail of his evidence, but it's clear from his statement which you have read, that sorry, I'll start this again.

It was put to Mr. O'Brien incorrectly on day 124, question 452, that the invoice that was shredded was shredded on Dublin instructions. And we now know from Mr. Simonsen's statement that that was incorrect and

shouldn't have been put to Mr. O'Brien. We now know, in fact, that it was Mr. Simonsen directed that the first invoice was shredded, isn't that correct?

A. That's correct, according to his statement.

Q. According to his statement of course, and assuming that his statement is correct. And if it was shredded on the day upon which he believes it was shredded, it was shredded on the 3rd January, 1996. According to his statement?

A. According to his statement.

Q. So the handwritten document prepared by Mr. Maloney presenting the picture as of the 31st December, 1995 is correct in recording the figure it states?

A. That's correct.

Q. In other words, 316 kronar divided by 10?

A. Would give you that. The only query I would have with Per Simonsen's statement is it's quite unusual to invoice a company by fax, so the original must have gone somewhere as well. So maybe that found its way out in the post later on.

Q. Perhaps it did, that could be an explanation for it. As you say, things were hectic at the time and maybe corners were being cut. Now, if the first invoice was shredded, as it appears to have been, that explains why it's not in existence.

A. Mm-hmm.

Q. But the second invoice, and the credit note, that's the

invoice that was to replace it, they have not been found. Do you know what happened to them? Telenor have copies of them obviously, but ESAT apparently didn't have them?

A. No. I have no recollection of ever seeing them. I am surprised they wouldn't actually be on file, because there would be no reason why not to file them.

Q. And similarly, the invoice of the 27th March, that hasn't been turned up by ESAT either. Telenor of course have a copy of it.

A. That would surprise me, because I would imagine that was settled as part of this account settlement.

Q. Indeed the audit company auditors would have had to have it, isn't that so?

A. Indeed.

Q. And have the nature of the payment explained to them?

A. Mm-hmm.

Q. By whom?

A. By whom? The auditors? I don't know, I can never remember it being an issue with the auditors.

Q. Of course it wasn't an issue, it wasn't an issue because everybody agreed it would be paid, but I am sure they would ask maybe they wouldn't ask what it was. You tell me.

A. I had actually left the company before the audit was started.

Q. I see. Very well, you can't answer that then. Now,

just two little points, again assuming what Per Simonsen states is correct, he is going to say that it was Mr. O'Brien who contacted him regarding the first invoice and the name of David Austin on it?

A. Mm-hmm.

Q. And he is also going to say that Mr. O'Brien contacted him when the second invoice arrived and asked him to delay the invoice for four to six weeks and convert it into Irish pounds?

A. Mm-hmm.

Q. Now, assuming, for the purpose of my next question, that that evidence is correct and accurate and we say it is, it puts Mr. O'Brien in possession of invoices, isn't that so?

A. It puts him in possession of knowledge.

Q. Sorry?

A. It puts him in possession of knowledge of invoices. Whether he actually saw the hard copies or not, I don't know.

Q. But weren't you the person who was doing business with him in relation to invoices, being the Chief Financial Officer?

A. No. The as Chief Financial Officer of Digifone, I would have reported to the Chief Executive.

Q. Our clients got the impression that you were very close to him, as I say, during this period and that Mr. O'Brien involved himself in all aspects of the business



during this hectic early period?

A. He would have attempted to.

Q. Including the financial end of it and questions of expenditure. For example, the issue regarding fly-in-fly-out radio planner, do you remember that?

A. At one stage Denis had an issue in relation to the cost of Telenor personnel in that they weren't staying in Ireland long enough to add value to the project.

Q. So Mr. O'Brien was involving himself in the expenditure, to some extent at least, even though he was simply Chairman of ESAT Digifone?

A. It would be the nature of the individual.

Q. Your office was next door to his on the top floor of Malt House, isn't that so?

A. That's correct.

Q. And there was one other person there, Richard O'Toole, the company secretary; the three of you were there and to get to that, the Communicorp office, so to speak, the three of you, you had to go through 98FM?

A. Indeed.

Q. So the three of you were working together a lot of the time?

A. But I also maintained a desk on the ESAT Digifone floor as well.

Q. Well, in terms of the transaction we are talking about, the contribution payment, and assuming Mr. Simonsen is correct, it seems that Mr. O'Brien was aware of those

particular invoices coming in at the times they came in?

A. That's correct.

Q. And how could that have happened?

A. Well, according to Mr. Simonsen, he had a telephone conversation with Mr. O'Brien.

Q. That's right, yes, but Mr. O'Brien rang him?

A. Mm-hmm.

Q. So he must have been aware of the invoice when it came in, the first one. Can you help on that?

A. Well, I can't ever remember seeing the invoices, so I can never remember having a conversation with Denis O'Brien in fact on those invoices. Because that would have been a solely Digifone matter, if I discussed it with anyone, it would have been with the Chief Executive of Digifone at the time.

Q. Now, in relation to just to correct something I said two monthly reconciliations of expenditure. In fact they were monthly reconciliations, isn't that so?

A. I can't recall, but it would be normal practice for monthly reconciliations.

Q. And were you surprised at the absence at the end of January, 2001, of the \$50,000 contribution on the reconciliation because there was no invoice in being at that point in time? I mean you are the Chief Financial Officer.

A. Indeed.

Q. Did you ask anyone "where is it gone?" It was there on the 31st December, it's not there on the 31st January or indeed on the 28th February.

A. No, my focus would have been elsewhere. This turned out to be a \$200 million project. We were heavily involved in getting the company up and running on a day-to-day basis and month end statements, even though they were prepared, weren't probably top of our list.

Q. Did you ever divert invoices for the attention of Mr. O'Brien?

A. No.

Q. Sorry?

A. No. ESAT Digifone invoices for the attention of?

Q. You never requested Mr. O'Brien to look at an invoice?

A. No.

Q. Very well. And just to confirm for the record well I think Mr. Coughlan has dealt with the question of invoices and the timing. It wasn't until payment that issues arose in relation to them.

A. Mm-hmm.

Q. I think I am reminded that I mentioned the year 2001 instead of 1996 when speaking about the reconciliations. I just correct that for the record.

No more questions.

CHAIRMAN: Thanks, Mr.Fitzsimons. Mr.McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWS BY Mr.MCGONIGAL:

Q. MR. McGONIGAL: Mr. O'Donoghue, am I right in understanding that so far as you are concerned, you didn't see these invoices at any stage?

A. That's correct.

Q. And that so far as Mr. O'Brien is concerned, you neither discussed these invoices or any other invoices of ESAT Digifone with him, that you can recollect?

A. Yeah, that's my recollection.

Q. And that so far as you are concerned, if you were to discuss invoices within ESAT Digifone, you would have gone to the CEO?

A. If the matter related to the CEO. If it was a technical matter I would have gone to Hans Mara, or a personnel matter I would have gone to John Hennessy; it would have been in the confines of ESAT Digifone.

Q. As I understand you, within Malt House, you had a Communicorp office on the top floor?

A. Yeah, I had that until the 31st January, '96.

Q. And below that on a lower floor, you had an ESAT Digifone office?

A. An ESAT Digifone desk.

Q. Desk. As I understand it, the way the post operated coming into the Malt House, it came into some room down below where it was dealt with?

A. I can't recollect.

Q. Somewhere down below and was dealt with?

A. I imagine it probably came into reception.

Q. And by being dealt with, what I mean is, was it separated into the various companies and then despatched to the offices of the various companies within the building?

A. I can't recollect, but that would seem a sensible thing to do.

Q. In other words, that ESAT Digifone correspondence would have gone to ESAT Digifone desks, and Communicorp business would have gone to Communicorp, and 98FM would have gone to 98FM?

A. Indeed, mm-hmm.

Q. In that so far as these documents were concerned, if they were addressed to either ESAT Digifone or a person in ESAT Digifone, they would have gone to that desk?

A. That would be correct. We should look at these documents. According to Per Simonsen, they were faxed, so they would have arrived on the floor of the ESAT Digifone.

Q. Anyway?

A. Mm-hmm.

Q. And would then have been put on either your desk or

A. Colm Maloney's desk.

Q. And were you the only two people on that floor who could possibly have dealt with those invoices if they came in on that floor?

A. That's my recollection, yes.

Q. So that

A. We had another accountant at one stage, but I am not too sure when he joined the company.

Q. So that if those invoices came to ESAT Digifone either through fax or any other way, you would have anticipated, looking back on the procedure, that they would have gone to the ESAT Digifone desk?

A. Indeed.

Q. And that would have been manned by either you or Colm Maloney?

A. That's correct.

Q. You have no recollection of dealing with these invoices but apparently Colm Maloney had some dealings with them?

A. That's correct.

Q. Looking at the document that the Tribunal has produced, that's the handwritten document, that's a document of Mr. Maloney's which you think was created sometime in January of '96?

A. That's correct.

Q. You think it may have been early January, but not certain?

A. I would imagine we would have tried to close out the last month's account as soon as possible, so it probably would have been the first week in January.

Q. In relation to the entry concerning "Telenor Mobil re David Austin," what would that indicate to you?

A. Nothing at the time. It was just an expense of Telenor Mobil, who were the mobile operating arm of Telenor, looking for a payment in respect of David Austin, a consultancy payment.

Q. Would that mean an invoice may have come in from Telenor Mobil relating to some account in respect of David Austin?

A. Indeed.

Q. Insofar as the document has a date of the 31st December of 1995, would that seem to indicate that the document "Telenor Mobil re David Austin" would have had a date prior to the 31st December, 1995 on it?

A. Not necessarily.

Q. Could it have had a date post the 31st December, '95?

A. It could well have had.

Q. So the only thing you can say about it is that it would have had a date which predated the drawing up of that document?

A. That's correct.

Q. So far as the sum of  $\frac{1}{2} \times 31,600$  is concerned, am I right in understanding that you are assuming that that's 316,000 divided by 10?

A. That's correct.

Q. Am I to take it from that that you believe that the invoice that the writer of that document would have been looking at, would have been at an invoice with 316,000 written on it?

A. That's correct, because the intercompany account would have been drawn up on a what was material at the time, it didn't matter whether it was round pence or whatever, it was just in thousands per se.

Q. If the document that the person was looking at who drew that up had \$50,000, what would you have expected to find there?

A. I would have expected to find a different amount.

Q. Would you have had expected to see the US \$50,000?

A. No, no. I would have had expected to see the \$50,000 at the year end exchange rate or an approximation of the year end exchange rate.

Q. Now, in relation to the bottom half of that page, "intercompany payable, ESAT GSM Holdings creditor payments made by ESAT Digifone," then under that, "bid costs re bill. " What does "bid costs re bill" relate to?

A. That relates to all the costs incurred by the ESAT GSM Holdings, which was the bid company, and they would then, once the bid company was closed down, all the expenditure it had incurred would have been billed to Digifone. The amount there looks very close to the final amount, but I have a recollection that the final amount was about was very close to  $\frac{1}{2}$  million plus VAT which was brought up to 2.4 million.

Q. 1.99?

A. Okay.



Q. Something around that. That's just what I wanted to ask you about. The bid costs there appear to be in or about 1.98, 1.99 plus VAT?

A. Mm-hmm.

Q. Was that a figure which was agreed in December between the companies?

A. I can't recollect the timing of the agreement, but I would have worked with Per Simonsen on the cost incurred by ESAT Telecom and 98FM and he would have worked on the statement from Telenor as to the amount of costs involved and we would have agreed, eventually agreed the total amount of the bill but I can't remember was that exactly the 31st January or the 31st December.

Q. And would that have related to all the costs, including consultancy costs, that would have been attached to the bid costs?

A. Indeed.

Q. And when I say the bid costs, I am talking about the bid costs, as opposed to the roll-out costs?

A. Indeed, mm-hmm.

Q. And did it reflect an attempt by ESAT/Telenor to terminate the bid costs bill, if I can call it that?

A. Indeed.

Q. So that as of the date beyond that agreement, no costs relating to the bid costs could be recovered by either Telenor or ESAT unless by agreement?

A. Unless by agreement. I can't remember when the actual final, final bid costs were finalised because there was bits and pieces appearing out of the woodwork, as people had late invoices and whatever. But why it was important to have the bid costs correct is that there was going to be a third party shareholder and he was going to have to pick up his proportion of the bid costs.

Q. I gather that it may have been agreed sometime around the 15th December or the middle of December of '95.

A. I can't remember.

Q. And that was the figure which was subsequently reflected in the agreement in May '96?

A. I would imagine it was substantially agreed by December. If you look at the bid company would have closed out in October, so it would have had November, December, to pick up any late invoicing but there was always some straggling paperwork afterwards.

Q. Can I put it to you in this way Mr. O'Donoghue, that so far as consultancy costs relating to the bid process may have been presented after the date of this possible agreement, that it would have required a further agreement to get those paid?

A. Indeed.

Q. Because they were associated with the bid costs as opposed to what the company was now involved in, which was the roll-out costs?

A. That's correct.

Q. And on the face of it, this invoice for consultancy in December would appear to have been related, insofar as it related to anything, to the bid costs?

A. Well, it was an invoice that was invoiced to ESAT Digifone as opposed to ESAT GSM Holdings, they are two separate legal entities, so that's why it would have been recorded in the books of ESAT Digifone at the time and not in the books of ESAT GSM Holdings, mm-hmm.

Q. One thing: in relation to the appearance of an invoice, is that entered in any books when it comes in, or how is it recorded?

A. I would imagine at the time, I am just trying to recollect, is that the invoice would have gone into a folder, a leverarch folder and you have it split in two between paid invoices and unpaid invoices. It would have been as simple as that.

Q. Just one last question: in relation to the shredding of an invoice, on the basis that the invoices came to the ESAT Digifone desk, am I right in thinking that the only persons that could have, in a sense, authorised it at that desk would have been either yourself or Colm Maloney?

A. No. When I read the evidence there of Per Simonsen, he said he actually faxed it through and then he rang the office and instructed the invoice be shredded, that could well have been the receptionist. She may well

have not handed it around at that stage.

Q. So he could have spoken to the receptionist?

A. I would say he would have spoken to the receptionist, because for a telephone company, we had very few telephones on the floor, so I would imagine all the calls went into the receptionist on the Digifone floor.

Q. Thanks very much Mr. O'Donoghue.

CHAIRMAN: It seems the other legal representatives are somewhat remote from this, but if by any chance Mr. Gleeson or Mr. Clarke have anything to raise? It's merely a question.

Mr. Coughlan, have you anything in conclusion? Can we, accordingly, excuse Mr. O'Donoghue?

Thank you, Mr. O'Donoghue, for your assistance. The two remaining witnesses better be kept until a quarter past two. Very good.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2. 15 PM:

MR. HEALY: Mr. Michael Cullen, please.

MICHAEL CULLEN, ALREADY SWORN, WAS EXAMINED AS FOLLOWS  
BY MR. HEALY:

CHAIRMAN: Thank you very much for attending again, Mr. Cullen. You are of course already sworn.

MR. HEALY: Thank you, Mr. Cullen. You will recall that

the last time you gave evidence to the Tribunal, you were asked, as part of your evidence, to take the Tribunal through a number of documents concerning loans made by or facilities granted by Investec to a company known as Catclause, isn't that right?

A. I do.

Q. And one of the documents you were asked to comment on, or at least one of the issues that you addressed, was a letter of the 5th March of 2001 from Mr. Aidan Phelan, addressed to Mr. Tony Morland at Investec Bank (UK), 1, Harbourmaster Place, International Financial Services Centre, Dublin 1 just bear me for a minute, Mr. Cullen after you gave evidence at the Tribunal's last sittings, Mr. Cullen, Mr. Aidan Phelan gave evidence. And in his evidence, he too referred to the letter of the 5th March, 2001, that's now on the overhead projector. And in the course of that evidence, he referred to the circumstances in which that letter came to be written.

Now, those circumstances hadn't been dealt with in any detail in the course of your evidence, but in the course of Mr. Phelan's evidence there were extensive references to the letter, and those references were drawn to your attention, isn't that right?

A. Yes.

Q. And you were asked to comment on the evidence given by Mr. Phelan concerning the circumstances in which the

letter came to be written, isn't that right?

A. Yes.

Q. Now, I think what I should do, in order to put the additional information you have provided to the Tribunal in context, is that I should read out the relevant part of the evidence of Mr. Phelan. It's contained at the transcript of day 139 of the Tribunal's proceedings, for the 26th July, 2001.

In the course of the evidence for that day, at page 30 do you have a copy of that evidence?

A. I don't. I have read it, but I don't have it in front of me, Mr. Healy.

Q. We'll be able to get a copy for you, or put a copy on the overhead projector for you.

(Document handed to witness. )

If you go to page 30 of the transcript for that day?

A. Yes.

Q. Mr. Coughlan was examining Mr. Phelan with regard to a letter, not that Mr. Phelan had written, but that Mr. Christopher Vaughan had written to Investec Bank in which an attempt was made to describe the transaction that involved Catclause. And Mr. Coughlan was suggesting to Mr. Phelan that Mr. Christopher Vaughan had not given a very accurate account of the transaction.

Mr. Coughlan then went on to examine the letter that I think Mr. Phelan wrote on the 5th March. And if you go to I think if you go to page 31, I think, at question 165, Mr. Coughlan says: "I see. Now, you met with Mr. Michael Cullen then on the 2nd March, which was the day after this letter was written, isn't that right?"

That's a reference to the day after Mr. Christopher Vaughan's letter of the 1st March was written. And Mr. Phelan answered: "Yes. "

Mr. Coughlan asked: "And at that meeting Mr. Cullen told you that you knew Mr. Michael Lowry was behind Catclause, isn't that right?"

"Answer: Yes, initially. "

Then Mr. Coughlan asked: "What did you say to him?"

Mr. Phelan answered: "I described the history of the situation briefly. I just said, it's my loan as and from early in January, 2000, early in 2000. "

Mr. Coughlan said, "Now, I think "

Mr. Phelan said, "He said to me that we don't want to know about Catclause Limited, and you know and he quotes you, he says "Can you reflect what the true position is?" That's the end of the quotation.

Then Mr. Phelan goes on, "And he described I spoke to him about what had happened, and he described the letter I should write to the bank. "

Mr. Coughlan asked: "He described the letter that you should write to the bank?"

And Mr. Phelan answered, "Yes, he dictated it. "

Mr. Coughlan asked, "He dictated?"

Mr. Phelan answered, "Yeah. "

Mr. Coughlan asked, "Word for word?"

Mr. Phelan answered, "More or less, word for word. "

Mr. Coughlan asked, "Was it written down?"

Mr. Phelan says, "I wrote it down. "

Mr. Coughlan asked, "Did you have that note?"

Mr. Phelan says, "I don't, I don't really keep rough notes. I just type up. "

Mr. Coughlan asked, "All right, but is the letter more or less as was dictated by Mr. Cullen?"

Mr. Phelan answered, "More or less as dictated. I think it would be I don't think he could disagree that that wasn't the position. "

"Question: Right, well we'll just look at the letter so. "

Mr. Phelan then said, "When I sent that letter into unfortunately Michael Cullen had left for China when I sent it into Tony Morland, I telephoned him like five or six times to confirm that he got the letter, and, you know, he had accepted that I had now



rectified what the situation was.

"Question: Just let's look at the letter for a moment.

It's addressed to Mr. Morland, and it reads, "I refer to our meeting at our office on Wednesday 28th February last in relation to the loan outstanding on the above property.

"When I entered into the transaction to purchase the above property, it was intended that the purchase would be undertaken through a limited company, Catclause Limited, and it was assumed that I would be appointed a director of this company. However, it was subsequently decided that I would hold the property personally and complete the amended documentation. Unfortunately, this was not done, and I apologise to the bank for the shortfall in the documentation.

I can assure you that at all times, that the deeds of the property were held to the order of the bank, and I understand my solicitor, Christopher Vaughan, has confirmed that this was and continues to be the position.

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

I further undertake to meet with the bank within four

weeks to discuss the repayment of this facility. If you require me to meet with you today to complete documentation, I will be available.

Finally, I apologise for the inconvenience caused for the shortcomings in this matter. "

Then Mr. Coughlan asked, "Now, was there anybody else present when Mr. Cullen dictated the letter to you?"

"Answer: No.

"Question: And did you draw Mr. Cullen's attention, when he informed you that they now knew that Mr. Lowry was behind Catclause, did you draw Mr. Cullen's attention to the fact that Mr. Lowry had initially been involved in the matter and had been taken out of the matter as far, as you were concerned, in January or February, 2000?"

"Answer: I believe so. Whether I specifically said the length of time he was in it or whatever

"Question: Whatever length of time, but you had informed him that you had taken it over at some stage?"

"Answer: I think I ran through the daily guarantee from memory yes, okay.

"Question: And I take it you would accept that this particular letter does not truly reflect the situation at all?"

"Answer: Absolutely, absolutely.

"Question: And was that what was decided between

yourself and Mr. Cullen?

"Answer: That's what Mr. Cullen wanted in the letter.

"Question: Now, when you met with Mr. Cullen on the 2nd March and the contents of this letter were indicated to you, I take it that Mr. Cullen was quite concerned about the fact that Michael Lowry's name had come up?

"Answer: He was.

"Question: And I take it that he also expressed concern that it came up in the context of you, and that references may have been made to Denis O'Brien?

"Answer: No. His main concern was that the bank would never have lent money to a Michael Lowry company. He was more that was more the context.

"Question: Purely in terms of the strength of Mr. Lowry as a businessman or

"Answer: Purely on the strength of his reputation.

"Question: Political?

"Answer: His controversial situation.

"Question: And would you agree that the purpose of this letter was to keep Mr. Lowry's name out of the matter?

"Answer: I think Investec wanted it kept out of the matter.

"Question: Well, Mr. Cullen indicated that to you?

"Answer: Yeah, well, he dictated the letter.

"Question: The effect was to put you as being the

person involved in this transaction from its inception,

isn't that correct?

"Answer: Correct.

"Question: Now, I think Mr. Tunney gave evidence of...

this was before the meeting with Mr.Cullen and Mr.

Morland. I know you may not remember any specific

conversation you may have had, and you may have had a

number of conversations with him, but in this

conversation he was informing you that the bank wanted

the matter cleared up. He was probably was cajoling

you, what were you going to do about it? Do you

remember Mr. Cullen intervening with you in that spirit

on that occasion?

"Answer: Mr. Tunney, or

"Question: I beg your pardon; Mr. Tunney."

Then the rest of the evidence goes on to deal with

further dealings that occurred concerning this matter

up, I think, up to and including the 8th March. I may

have the precise date I may not have the precise

date at this moment.

Now, it was in the context of that evidence that I

think you have provided the Tribunal with a further

statement, would that be right?

A. Yes, Mr. Healy.

Q. You say "I have read the evidence of Mr. Phelan given

on day 139 of the evidence before the Tribunal and

relating to the meeting between me and him on the 2nd March, 2001. I have already described this meeting in the evidence I have given to the Tribunal, but I have been asked to comment upon evidence given by Mr. Phelan that at this meeting I effectively dictated the form of letter which he subsequently wrote to the bank dated 5th March, 2001.

Then you say, "I certainly said to Mr. Phelan that I wanted him to write me a letter expressing clearly what he accepted were his responsibilities in respect of this account and what security had been and would be held in respect of it. At our meeting I told him what points he should deal with, which were to include specifically who the borrower was, and I requested that he outline the history of the transaction based upon what he was then telling me was the position. I did not dictate the letter in the sense of telling him what words were to be used, and I do not actually recall telling him of any particular words which should or should not be used. I was precise in relation to the subject matter to be included in the letter but not in the form of words to be used. "

As I already said in evidence, at this meeting I was concerned that the bank should have a letter which established the credit position. I wanted to have a document upon which the bank could rely as expressing

what Mr. Phelan acknowledged to be his contractual responsibilities. I did not ask Mr. Phelan either to include or avoid any reference to Mr. Lowry. I understand that what may have been Mr. Lowry's involvement is important to the work of the Tribunal, but it was not relevant to my purpose in requiring the letter. I wish to have the relationship of Catclause to the transaction clarified that I was not concerned in this letter with the past ownership or control of Catclause.

As Mr. Phelan records, I commenced a journey to China later on the day of our meeting. I have a recollection that early on the morning of the following Monday, 5th March, when I was in Hong Kong, I received a telephone call on my mobile phone from Mr. Tunney inquiring as to how my meeting with Mr. Phelan went. So far as I can recall, I repeated to Mr. Tunney what I had already told Mr. Phelan I wished to have explained in his letter. My understanding was that Mr. Tunney was to discuss this with Mr. Phelan.

Now, in the course of his evidence, Mr. Phelan said, as you have indicated, that you had dictated the letter to him, and he went on to say "I don't think he could disagree that that wasn't the position. "

And you do disagree, isn't that right?

A. Mr. Healy, at the meeting with Mr. Phelan I was very clear in what I said, and Mr. Phelan took notes. I wanted an outline of the transaction. I wanted a statement that he was on-line, if he was on-line, and I wanted to know where the security position was. In the context of the definition of dictation, if "dictation" is that I, in some way, wrote the letter word for word, Mr. Phelan wrote it down, that is not what happened. But very clearly, I was very clear of the subject matter that I wanted Aidan Phelan to do to put down. And his letter of the 5th March, from my viewpoint, represented exactly, in terms of the points it was to cover, what I had asked him to cover.

Q. You asked Mr. Phelan to provide you with a letter setting out the history of the transaction, is that right?

A. The background or history of the transaction, yes.

Q. Leave aside for the moment whether you dictated the precise words. Would you agree with me, and indeed with the evidence given by Mr. Phelan, that the letter does not give an accurate account of the history of the transaction?

A. From the bank's viewpoint, we had on our file that we had lent that Catclause was the borrower. We knew from the 27th, or sometime in January/February, that Catclause was being wound up. In the context of the background of the transaction, we knew Catclause was no

longer the borrower.

So the background to the transaction as stated in Mr. Phelan's letter, closes that particular gap acknowledges for the first time to the bank that Catclause did not borrow the funds. Now, subsequently in a submission I think Mr. Phelan made to the Tribunal, he went on and enlarged on or expanded on the background of the transaction. He did not, at our meeting, expand in the detail that he expanded subsequently in the submission to the Tribunal, at that meeting. He did say that Catclause wasn't the borrower and that he himself was the borrower.

So in the context of the information given in the background, it was sufficient to close the gap. We were not looking for a blow-by-blow account of it. It was to close the gap, and then in the context of where the current position was, it was accepted in the letter of the 5th March, Mr. Aidan Phelan accepted that he was in fact the borrower or the beneficiary of the loan .

Q. We'll just leave aside for the moment the extent to which you differ from Mr. Phelan over what the result of the meeting was to be in other words, over what the letter was supposed to contain and can we just look at what the letter actually contains.

It says "I refer to our meeting at my office on Wednesday 28th February last in relation to the loan



outstanding on the above property. When I entered into the transaction to purchase the above property" and can I stop there? Don't we know Mr. Phelan wasn't purchasing this property initially?

A. We now know that, based on the evidence given not by ourselves but by other parties, that that is the case.

Q. Don't we know that it was Catclause the company, and didn't you know then, of which Mr. Lowry and his daughter were effectively the principals, were the purchaser of this property in the beginning?

A. The bank knew at that stage of the meeting that Mr. Lowry and Lorraine Lowry had been the registered directors of the company, and that Aidan Phelan was not a director of Catclause.

Q. And didn't the bank know that what was originally envisaged was a purchase of property by Catclause, a company of which Mr. Lowry and his daughter were the principals, and that therefore, Mr. Lowry and his daughter were the first purchasers of the property?

A. Mr. Healy, if I could just expand. Our information was we now knew that Catclause was not alive, was not the beneficiary of the facility, and we knew that we had been informed that Catclause we had lent funds or purported to lend funds to a company called Catclause.

Now, there could have been a genuine mistake in terms of what had happened. We weren't speculating on that.

What we wanted was an explanation of how we actually got ourselves into this position. So in terms of what was intended, prima facie, if we lent Catclause and that two of the directors were Mr. Lowry and Ms. Lorraine Lowry, so be it; but we were looking for information, because what we knew on the 2nd March was one thing sure, that Catclause was not the beneficiary.

Q. I think you told me the last time you gave evidence here, Mr. Cullen, that you had two concerns at this time, and the bank had two concerns, which were of equal importance. One was the question of the credit and who was going to be responsible for it; and the other was what you called not the credit risk, but the reputational risk, isn't that right?

A. Yes.

Q. Here was your bank involved in a transaction involving a former government minister who was the subject of a current Tribunal of Inquiry, and had been involved in inquiries carried out by a previous Tribunal of Inquiry, who seems to have been involved in a transaction in your bank and whose involvement was being hidden; isn't that the reputational risk from your bank's point of view?

A. Yes.

Q. Now, wouldn't you agree with me that that letter again hides the involvement of Mr. Lowry in that transaction inasmuch as it suggests that from the outset, not even

from the bank's involvement with the whole transaction but from the very outset, that it was Mr. Phelan who bought the property?

A. From the bank's viewpoint

Q. No, but isn't that what the letter says? Ignore the bank's view; isn't that what the letter says? Could we agree what the words say: "When I entered into the transaction"?

A. But when we received the letter, and the word "Catclause" is in the letter, we do not consider that therefore hiding anything, I beg, Mr. Healy. Because on our files at that stage, we knew that Mr. Lowry and Ms. Lorraine Lowry were involved in Catclause. So the reference to Catclause in the letter acknowledges that there was no from our viewpoint, that Catclause at that stage now means Mr. Lowry, Ms. Lorraine Lowry, so therefore we did not see the letter as attempting to hide anything. It probably didn't expand on it, but in the context of where we were, it indicated, and as I have said previously, I believe, when we became aware that Catclause had Mr. Lowry and Ms. Lorraine Lowry as directors, we advised our counsel of the situation, and we were seeking advice.

So I don't consider, because it's not referenced specifically, I don't consider it a question of hiding.

Once Catclause now, prior to that, prior to I think 27th February, we didn't know that Lorraine Lowry and

Mr. Lowry were directors.

Q. Could I just go on to the next part of that paragraph:

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

Could I suggest to you what that indicates, in the clearest and the most express terms, is that Mr. Phelan was going to take this property, which he purchased in the name of a company called Catclause Limited, and that subsequently it was decided that he, Mr. Phelan, would take it personally and not through a company. It was a very simple construction to put on a much more complex set of events, isn't that right?

A. I agree with your construction.

Q. And that in fact what that letter does is to suggest that this was a Mr. Phelan transaction from day one, and that he was going to take it in one guise, but decided, for whatever reason, to take it in another guise. And I don't mean "guise" in the sense of disguise; he was going to take it through a corporate vehicle. And he decided, "I won't; I'll take it through in my own personal name"?

A. Yes.

Q. I am not concerned what the bank thought or what the bank wanted or what the bank hoped to get, but isn't it a fact that that is not what happened, and that is a distortion of the true position?

A. I don't believe you can make that jump in terms of that is the position, and as I understand the transaction in the various evidence, I think people have indicated what their intentions were, but the true construction was that Catclaus didn't purchase the property.

Q. We know that.

A. But it I can never be sure of the intentions, that is other witnesses have given you a brief on what their intentions were at the time when they started to talk about the transaction.

Q. Mr. Phelan says that in the course of his meeting with you, you couldn't have been unaware of the fact that what happened here with Catclaus was to take the property, that Catclaus was a Lowry vehicle, that there was to be a guarantor of Mr. Lowry's borrowing, that that guarantor was to be a Mr. Daly, that the guarantee didn't materialise, and that ultimately Mr. Phelan took over the borrowing, which is a totally different thing altogether to simply deciding to take the borrowing in his personal name. Isn't that the reality?

A. I knew all those points at the time of the meeting.

They weren't discussed at the meeting on the 2nd March.

Q. When you say they weren't discussed, are you saying that Mr. Phelan is wrong, then, when he says that he ran through the daily guarantee?

A. I beg to differ with Mr. Phelan on this particular point. The daily guarantee was discussed not at the meeting of the 2nd March, but between Mr. Morland and myself and Mr. Phelan on the 28th February. At the meeting on the 2nd March

Q. Well, in any case, would you have been aware on the 2nd March that the true nature of the transaction was that, as was put to Mr. Phelan in evidence, that Mr. Lowry was behind Catclause, that he was to take the loan because the guarantee didn't materialise from Mr. Daly, Mr. Phelan was going to take it over and be responsible for the credit?

A. From our viewpoint, Mr. Phelan was responsible for the credit.

Q. You see, Mr. Phelan indicated that he formed the impression that in drafting this letter, what was required was a description of the transaction which kept Mr. Lowry's name out of it?

A. Again, I would beg to differ with Mr. Phelan. If that's an impression he got, that was not the intention. What we wanted and what I asked for was please give me some background to the transaction, and then please stand up

and acknowledge the liability. What was going

Q. Yes?

A. What was going to be written in the letter as it turned out, the letter was in accordance with what, at that stage, we reckoned the position to be. However, we were waiting for the letter to see whether any other information came out.

Q. I think you have confused me now, Mr. Cullen. You say that the letter was in accordance with what you understood the situation to be; is that what you just said a moment ago?

A. Yes.

Q. Did you not agree with me a few minutes ago that the letter does not contain an accurate account of the true background to the transaction just wait but that it contains a totally different account of the true background?

A. You had Mr. Healy, you have information which I now subsequently have which we learnt from submissions made to the Tribunal.

Q. What information is that, just so we are on the same wavelength?

A. To be absolutely sure we are on the same wavelength, it's all the detailed information of Mr. Lowry's involvement. All we had from the bank's viewpoint at that particular time was that Mr. Lowry and Ms. Lorraine Lowry were directors of Catclaus and that

Catclaus himself was in the process of being wound up.

We did not know, from the bank's position or my own position and my colleagues' position in the bank at that stage, any further involvement of Mr. Lowry.

Q. Prior to meeting Mr. Phelan on that particular day, the 2nd March, you'd had a meeting with Mr. Phelan on the 28th March, and you had had, I think, also a meeting, am I right, with Mr. Tunney sometime after that meeting?

A. Yes.

Q. The upshot of those meetings was that you were aware, and you so informed both Mr. Tunney and Mr. Phelan, that Catclaus, the apparent borrower, was in fact a vehicle for Michael Lowry and his daughter, isn't that right?

A. Yes.

Q. So as far as your bank was concerned, you seemed to be loaning money to Michael Lowry?

A. The apparent borrower had been Catclaus.

Q. Yes, the apparent borrower?

A. But as of the 2nd March, we knew Catclaus could not possibly have been the borrower, or be the borrower.

Because Catclaus was in the process of being wound up.

Q. Yes. You knew it couldn't be the borrower as of that date.

A. Correct.

Q. But you knew that it had been represented to the bank as the borrower at an earlier point in time?



A. Absolutely. It had been represented as the borrower.

Q. If we just stop it there for a moment, because I don't want to get too involved in this. If a company has been represented to the bank as a borrower, in this case Catclause, and you subsequently find out that it is not the borrower, isn't that in itself a very disturbing background to any transaction?

A. Absolutely.

Q. Isn't it even more disturbing that the principal in that company is someone to which, as you have said, you would not have loaned money?

A. Just by way of clarification, Mr. Healy, I don't think I am on evidence as having said we would never have loaned money to Mr. Lowry; I presume that's the implication. That's not a view that I have the information to give, but we would never be to the best of my knowledge, we in the bank have never been approached to lend money. I believe somebody may have given that evidence, but certainly I didn't give that evidence on behalf of the bank.

Q. Okay. You were nevertheless in a situation where, as far as you were concerned, a loan on the bank's books was represented as being a loan of a company called Catclause of which Mr. Lowry, an individual involved in relatively serious controversy, at a time when, as you now find out, the company Catclause is being wound up and Mr. Lowry is nowhere near the transaction; is that

right?

A. I missed the start of the question. If the answer is our antennae were very, very high at this stage.

Q. But your antennae were high for a reason. You had a set of documents which suggested that this was a loan of Catclause, a company controlled by or at least owned by Mr. Lowry and his daughter; that's what was on your books?

A. Absolutely.

Q. And you were now being told that those are not the facts; Mr. Lowry is not the borrower. In fact, under the terms of this letter, you are being told he was never the borrower.

A. Yes.

Q. You were told by this letter that he never even bought the property, that Mr. Phelan bought it?

A. Yes.

Q. So isn't the set of facts set out in this letter a completely different version of the facts as represented in the bank's documentation up to that time?

A. Sorry, Mr. Healy, for dragging this particular point.

The set of facts that we had in the bank were totally inconsistent with each other. We had a facility letter in the name of Catclause. We had confirmation from a solicitor saying that he was holding the property in favour of ourselves, but on behalf or in trust for

Catclausé or Mr. Phelan. We had inconsistent information. This letter, for the first time, set about, in very summary fashion, clearing the air in terms of who was the borrower now, because we knew Catclausé could not possibly be the borrower.

Q. Yes, it cleared the air in the sense that you now had a person to look to to repay the loan?

A. Yes.

Q. But it cleared the air by distorting all the previous facts as known to you?

A. As distorting the previous information given to us.

Q. I see. Wouldn't the correct way to have gone about that have been to say, This transaction was entered into by Catclausé. Catclausé was never involved in this transaction. I was involved in it from the very beginning. The documents that were given to you suggesting Catclausé was involved were completely misleading. They were a total misrepresentation of the truth and an explanation, you would have expected to have been given, as to why that was the case?

A. That would be a very comprehensive explanation of the transaction. At that particular time, Mr. Healy, one step at a time, we had a borrower now confirming his indebtedness to the bank. But I do agree with you, that would be very comprehensive, and it would tie up all the various knots and gaps in our file.

Q. Now, it's my duty to put to you what Mr. Phelan has

said, and all I can say to you is that it's his evidence that it was his impression that Investec wanted Mr. Lowry's name kept out of this matter, and I'd suggest to you that anybody looking at this letter objectively and on the basis of the known facts would be very inclined to think that that was the true position.

A. Well, in answer to that, Mr. Healy, I put it to you, I feel the facts do not accord with that particular question. Investec would handle every information in a very professional manner, prior, on the 28th February, or the 27th February we became aware of it. On the 28th February, when we became finally aware that Mr. Lowry was involved, it was brought up and raised with our formally raised with our legal people to establish what we had to do with Mr. Lowry being identified with the transaction.

So in the context of Investec keeping it out of a particular letter, Mr. Lowry's involvement now was fully known within the bank, and due process was now full steam ahead. So whether it is in this letter or any other letter, we didn't want it kept out from any particular letter, because it was now on the files and due process was taking place.

Q. Just one last matter: Up to this point the files did not represent the true facts, up to this point?

A. Absolutely.

Q. Up to the time you got this letter?

A. Yes.

Q. And from the time you got this letter onwards, as far as you were concerned, the file did represent the true facts?

A. Mr. Healy, I think when we say "true facts," I mean, full information, we had now got a borrower, we now didn't know the full story behind the borrowing. I'd have to say in lots of cases we don't always understand the full information, but over the course of the last number of months, of course we have got full information.

That was the start. The letter of the 5th March established beyond a shadow of a doubt in our minds that Mr. Aidan Phelan, who had indicated he was behind the transaction, was confirming to us in writing that he was.

Q. And he was saying to you that it was his transaction from the very beginning?

A. He was clarifying how the situation arose that Catclause had come into the transaction and was no longer there. And in the letter, I believe he apologises for

Q. That's right. I just want to be clear about it. You are saying it clarified the situation. It's just to my mind, it makes it even murkier. It doesn't clarify it.

I want to get this clear. As far as you were concerned, this cleared the situation; Mr. Phelan now tells you this was his personal transaction from the beginning.

That's your evidence?

A. That is what is in the letter, and that is actually what we took on board and what we understood to be the position, that at that stage, on the 2nd March, Mr. Phelan was the borrower, so if anything was to go wrong with the facility, we could have redress to Mr. Phelan.

Q. And would it be fair to say that what you may have said to Mr. Phelan is "Mr. Phelan, you are now the borrower; will you please give me your letter as identifying the transaction as your transaction from the beginning."

A. What I asked Mr. Phelan to do in the meeting I asked him to clarify the situation and explain to us who was the borrower, what was the security, and whatever would come from that letter, so be it. He did indicate that he was liable, so therefore, the letter didn't surprise me. But at no stage did we put the exact words into Mr. Phelan's mouth. I outlined the form that the letter that was to be written was to take, the background of the transaction, and indeed the letter represents, I believe, Mr. Phelan wrote that he did take notes on it, and the letter represents the points that were to be covered, based on what I had asked him to cover.

Q. You wanted him to set out the background and to

indicate that he was liable for the credit?

A. I wanted him to say who was liable for the credit formally, and that if it was him, he was to write it down.

Q. And where do you say the background is set out in the letter? In the second paragraph that I have just read out?

A. Yes.

Q. And that is the background you were concerned at that time, you were satisfied that is the background when you got this letter?

A. Yes.

Q. So you were satisfied at that time that it was always Mr. Phelan's transaction from the very beginning?

A. Yes.

Q. And you were satisfied that that was the result of the conversation you had with Mr. Phelan?

A. Sorry, Mr. Healy, I missed you.

Q. That was the result of the conversation you had with Mr. Phelan, that it was his transaction from the very beginning, his purchase, his loan?

A. Not at the meeting of the 2nd March, but the meeting of the 28th February when Mr. Morland and myself had the meeting with him.

Q. Thank you very much.

CHAIRMAN: Could it be said as a minimum, Mr. Cullen, that you wanted a letter which first of all was going

to reassure you that you would get your money from a safe borrower, and that secondly, as a minimum, did not add to the sense of alarm that you had felt in recent days with your colleague over the historic Lowry involvement? You had a facility letter to Catclause, and you now found that Mr. And Ms. Lowry were directors.

A. The first point, I'd readily agree it; it's on the credit side. In terms of whether it added to the sensitivity or not, I really had no view in terms of that particular thing. It was already very sensitive because we had that information.

So the letter that Mr. Phelan wrote my primary purpose was to get formal written confirmation from Mr. Phelan that he was liable for the facility. In terms of whether it expanded Mr. Lowry's involvement or not, to be honest, I had limited views on that, because it was already in process that we were already reviewing what the position was, because it was now there, and it was live. And whether it added to it or subtracted from it, we had already set in train a sequence of events that ultimately led us to come to yourselves.

CHAIRMAN: Mr. Clarke?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CLARKE:



Q. MR. CLARKE: A couple of small points.

Firstly, to confirm, going back to your initial evidence, Mr. Cullen, at the very beginning of it. I think you confirmed that as far as you understood the position, Catclause was indeed Mr. Phelan's company?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. So in fact, if we look at the sentence to which Mr. Healy has directed your attention, at the beginning of the second paragraph, where he says "When I entered into the transaction to purchase the above property, it was intended the purchase be undertaken through a limited company, Catclause," etc.

When he says "When I entered into this," there was nothing inconsistent between his saying that and what you had originally understood this transaction was about?

A. That is correct.

Q. And what you had learnt in the days immediately before this letter was written was, was it not, that Mr. Lowry and Ms. Lowry were directors of Catclause?

A. Yes.

Q. That was the great surprise?

A. Yes.

Q. It was a disturbing surprise?

A. Absolutely.

Q. Did it mean that Mr. Phelan didn't own Catclause?

A. No.

Q. Exactly. So it was in fact perfectly possible and feasible that Catclause was indeed at all times owned by Mr. Phelan, albeit that clearly Mr. And Ms. Lowry had some involvement in it?

A. Yes, that is possible.

Q. We know a lot more now, but at the time, the limit of your knowledge in relation to this matter was that Mr. Lowry and Ms. Lowry were directors of this company?

A. At the time of the meeting, that was all that I knew.

Q. Thank you. And the only other point I wanted to check with you is this: There seems to be some suggestion that you had some interest in trying to conceal the involvement, whatever it may have been, of Mr. Lowry and Ms. Lowry. Is there any truth whatever in that?

A. None.

Q. At the time, as you have already told the Tribunal, you had already initiated a line of inquiry and consultation to decide what you should do about that fact, isn't that right?

A. That is correct.

Q. There was nothing that Mr. Phelan could do about that, was there?

A. No.

Q. Thank you.

CHAIRMAN: I should really have offered you the first opportunity, Mr. Gleeson, but I don't think you are greatly prejudiced if you'd like to proceed now.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GLEESON:

Q. MR. GLEESON: Mr. Cullen, just a few short questions.

You have very fairly said today, in fact confirming the evidence you gave on the last occasion, that the letter of the 5th March was exactly what the bank wanted, isn't that correct?

A. Yes.

Q. And on the last occasion, you indicated to the Tribunal that you had had a very clear discussion with Mr. Phelan in which you very clearly outlined what you required from Mr. Phelan. I am simply paraphrasing what you said on the last occasion.

A. I am very conscious, Mr. Gleeson, not to when you say "you", do you mean me personally, or me as the representative of the bank?

Q. As the representative of the bank.

A. As the representative of the bank, yes.

Q. And so I don't think you will disagree with this:

Mr. Phelan was absolutely clear in his own mind what the bank required when he set about writing this letter to you or to Mr. Morland, rather?

A. Yes.

Q. Because you had been so crystal clear in your requirements?

A. I had been crystal clear in the requirements in the form and the points that the letter should cover, yes.

Q. I think you had also been crystal clear as to the subject matter of the content of this letter,

Mr. Cullen. Your statement to the Tribunal today, the additional statement, says that you were precise as to the subject matter of this letter.

A. The form of the letter and the issues to be covered in the letter, yes.

Q. The subject matter of the letter?

A. Yes.

Q. And of course, one of the subjects that were discussed at this meeting of the 2nd March was Mr. Lowry, isn't that right? His name was mentioned somewhat briefly, I think.

A. Yes.

Q. And on the last occasion you indicated that Mr. Lowry was the subject not to be discussed or not to be spoken about?

A. Yes, not to be expanded on.

Q. Well, you use your "not to be spoken about", and you also said "not to be discussed."

A. Mr. Gleeson, I'd have to go through all my evidence, but I don't think on my evidence on the 2nd March, both Mr. Phelan and myself knew that I knew that

Mr. Lowry and Ms. Lorraine Lowry were directors of Catclause. We spoke about it at that meeting very briefly, and in my reference to "the subject not to be discussed," I didn't seek any further explanation at that stage about what his involvement was. I asked the form in the context of the letter to be written, basically a background to the transaction, so at that stage, it was raised; it was raised that I knew that information and that he was a director.

Q. Well, just to clarify this point, Mr. Cullen, I would just like to put a couple of references to you from your evidence on the previous occasion that just might assist you. I'll just hand you up a copy of what your evidence was on the last occasion.

CHAIRMAN: Well, he is your own witness, Mr. Gleeson. I think you can clearly lead him on the matters that you have found in the transcript.

MR. GLEESON: I don't want to be unfair to Mr. Cullen, if he doesn't remember what he said on the last occasion.

Q. Could I ask you to look at day 132, Mr. Cullen, firstly, and it's question 265, which I think is on page if we start at page 97 of that day, day 132. And this is in relation to the meeting that you had on the 2nd March. And at question 264

A. Mr. Gleeson, could I just number 262, I haven't got

the page for. And at that meeting, what did you draw

Q. We'll start from there.

A. That's the meeting of the 2nd March we are referring to here?

Q. Yes, exactly.

A. So could we start from there?

Q. Question 262: "And at that meeting what did did you draw up with Mr. Phelan the fact that you now had confirmation that Mr. Lowry and Ms. Lowry were the directors of Catclause?"

"Answer: Yes.

"Question: And what was his response to that?"

"Answer: At that meeting we concentrated, I mean, and again just to step back from the bank's position at that stage, we had two issues. One was a credit issue which was still unresolved, and secondly, one was a reputational issue which was very much of equal importance. My prime interest on the Friday was to kill off the credit side of it in terms of establishing beyond a shadow of a doubt who was the borrower and to get confirmation on board so as to take I suppose take some heat off the situation because information had been given on the ... Christopher Vaughan really didn't move us forward.

So on the meeting of the Friday, it was very much a credit issue. This is what I wanted to know at this stage, who the borrower was beyond a shadow of a doubt,

and I wanted confirmation from Mr. Phelan to that effect. Not who might be the borrower, but who was the borrower and who was liable for the facility of Investec.

"Question: I can understand that you wanted at least to make sure somebody was going to repay the bank, but did you take up the reputational issue with him?"

"Answer: I did not.

"Question: Did he volunteer anything to you once you informed him that you knew of Mr. Lowry's involvement?"

"Answer: To the best of my recollection, it was the subject not spoken about."

Now, that is a reference by you to the subject being Mr. Lowry, and it was a subject not spoken about at that meeting, although a reference was made to it.

A. I think I stand by my evidence, Mr. Gleeson, in the sense that it confirms in the start of that that I confirm to Mr. Phelan that I knew Mr. Lowry, that we had information Mr. Lowry and Ms. Lowry were directors of Catclause, and that at that meeting, we didn't expand on that particular point.

Q. Well, you see, Mr. Phelan's evidence is that you didn't want any reference made to Mr. Lowry in this letter, and that is consistent with the answer that you have given there. It was the subject not spoken about.

A. I suppose, Mr. Gleeson, I'd have to disagree with you

on that. It's not that I I asked very clearly at the meeting the form that the letter was to take. And whatever information was going to come out in respect of that, that was fine from our viewpoint. But what I wanted to establish was who the borrower was. The reputational side, from my viewpoint at that stage, I already knew we were in process in that particular aspect.

Q. But you were very aware of the importance of the reputational issue. You describe it in that passage I have just read as being of equal importance?

A. Very much so, but as I think I have indicated in evidence previously, it's one step at a time in terms of solving the particular problems. The problems I faced on that particular day, we had no letter from anybody confirming who the once and for all who the borrower was, and the letter of the 5th March, to my mind, I was quite comfortable with.

Q. Yes, I think that is certainly a consistent thread in your evidence, that the letter of the 5th March was precisely what you wanted. But hadn't the bank received, on the 1st March, a letter which said something quite different? I am referring to the letter from Mr. Vaughan to Mr. Morland of the 1st March.

A. The letter of the 1st March obviously caused concern to the bank. It was an attempt to answer a question, but



not but added nothing from our viewpoint in terms of establishing beyond a shadow of a doubt who the borrower was. And we knew, at that stage, and we were stunned that the solicitor didn't know that Catclause was in fact being wound up.

Q. But whether it was being wound up or not, from the bank's perspective on the 1st March, you were being told unequivocally that Catclause is the entity involved, is still involved?

A. Christopher Vaughan excuse me, the solicitor on the 1st March sent the letter, but we knew that Catclause was being wound up, so we knew that it couldn't be still involved.

Q. Yes, so you didn't you couldn't leave this letter on your file without getting a further letter from Mr. Phelan which effectively downgraded the involvement of Catclause and removed it?

A. Well, we couldn't certainly rely on the letter of the 1st March.

Q. Yes. It was in your interest entirely to have the letter of the 1st March reversed?

A. Not reversed, Mr. Gleeson. It was entirely in the bank's interest to get a letter telling us confirming to us who the borrower was.

Q. But Mr. Cullen, would you not agree with me that the bank was not anxious to see any connection between Mr. O'Brien and Mr. Lowry on your file? And I think

you have given evidence to that effect.

A. Mr. Gleeson, I'd have to see that evidence. The bank will accept whatever information it's given. We had, at that stage, information where Mr. Lowry's name was involved in a transaction, and Mr. O'Brien's name was referenced to that transaction. That caused us concern. Any additional references at that stage become just added to the concern.

Q. But even if you go back to Mr. Vaughan's letter of the 1st March, there wasn't a credit problem at that stage. Because the letter of the 1st March was holding the land cert to your order, so you knew that from a credit point of view, you were in a pretty comfortable position at that stage?

A. Again, Mr. Gleeson, not exactly the fact that the property was held for our account left us exposed, that if a facility was repaid and we couldn't establish, even though we had accepted repayment, that the person who repaid that facility was the actual borrower, I think legally that doesn't place the bank in a great position.

The letter of the 1st March caused us concern because it outlined the name Catclaus, a company which we knew at that stage was going into voluntary was being struck off. So that caused us concern, because information was now being given to us that raised our antennae even higher.

Q. Mr. Cullen, I'll have to put to you one further answer that you gave on day 133, and the question I think I can read it out without having to give copies out.

This is when you were being, I think, re-examined by Mr. Healy. It's question 217 on day 133, and the question is: "As you said yourself, you weren't anxious to see connections between Mr. O'Brien's name and Mr. Lowry's name on your files or in your bank when they couldn't be explained satisfactorily?"

"Answer: No. "

A. And I'd agree if you read the question again, Mr. Gleeson

Q. "As you said yourself, you weren't anxious to see connections between Mr. O'Brien's name and Mr. Lowry's name on your files or in your bank when they couldn't be explained satisfactorily. "

A. And the last part of that question I think is the key, when they can't be explained satisfactorily.

Q. So are you saying that you wouldn't have minded if Mr. Lowry's name had been all over the letter of the 5th March?

A. From our viewpoint, we had already we had got a reference to Mr. Lowry which came up on the 27th/28th February which caused us concern.

Q. Can I ask you to answer the question, please? I asked you, would you have minded if Mr. Lowry's name appeared

in the letter of the 5th March?

A. I would not have.

Q. You would not have minded?

A. Would not have minded.

Q. So if Mr. Lowry's name had been all over that letter, it would still have met your requirements exactly? Is that what you are saying?

A. If Mr. Lowry's name was in the transaction, certainly what would have caused us great concern, if we understood if Mr. Lowry was the borrower. What we wanted out of the letter of the 2nd March was confirmation of a borrower. Mr. Phelan confirmed he was the borrower. Any other background information which would have been relevant to our understanding of the transaction would have been useful, but in terms of confirming who the borrower was at that stage, Mr. Phelan confirmed who was the borrower, so any reference to Mr. Lowry in addition to that, you know, would have been just additional to the information that we had.

Q. But, Mr. Cullen, you were told four days earlier that Catclause was the borrower, it could easily have been reinstated and put back on the register, and then you had your borrower and then you had your security.

A. Mr. Gleeson, I disagree with that contention. The property the property funds were already lent out to an entity, and the property was still in existence.

Yet now we had a company called Catclause which was being struck off. How reinstating that company could at all give us any comfort, I fail to understand.

Q. Mr. Cullen, just finally, if you compare the letter of the 1st March to the letter of the 5th March, you have a situation where Catclause was represented to be the borrower on the 1st March, and on the 5th March, it is no longer the borrower. And you have given evidence to this Tribunal that the letter of the 5th March was exactly what you wanted, and I must put it to you that that is consistent with Mr. Phelan's evidence when he said that you wanted Michael Lowry's name out of this.

A. I disagree with that contention. Some parts the addendum to the question I disagree with. The early part of the question, I readily concur with, Mr. Gleeson.

Q. Thank you Mr. Cullen.

CHAIRMAN: Thank you, Mr. Cullen.

THE WITNESS THEN WITHDREW.

Ms. O'BRIEN: Ms. Catherine Butler, please.

MR. MALLON: I appear for Ms. Butler.

CHAIRMAN: You already have been granted limited representation, Mr. Mallon.

MR. MALLON: I am obliged. Ms. Butler has a medical condition which may require a short break, depending on

the duration of the evidence.

CHAIRMAN: I'll certainly be alert to that, Mr. Mallon,  
thank you.

CATHERINE BUTLER, HAVING BEEN ALREADY SWORN, WAS  
EXAMINED AS FOLLOWS BY MS. O'BRIEN:

Q. Ms. O'BRIEN: Thank you, Ms. Butler.

Ms. Butler, you gave evidence to the Tribunal nearly  
two years ago now, I think, on the 19th October 1999?

A. That's right.

Q. And of course you are still sworn from that occasion?

A. Yes.

Q. Now, I think you will be aware that the solicitor to  
the Tribunal, Mr. Davis, wrote to your solicitor,  
Mr. Ciaran O'Meara, on the 30th March last, and he  
raised certain inquiries with you arising out of a  
deposition that was being taken from Mr. Haughey at the  
time?

A. That's correct.

Q. Now, I wonder, do you have a copy of that letter with  
you in the witness-box? If you don't, I will  
arrange

A. Just one moment now. I think I do.

Q. I can arrange

A. No, it's all right, I am prepared. Yes.

Q. I'll just refer you to the second page of that letter.

I don't want to read it out in any great detail, but just to summarise the queries which the Tribunal raised with you, and these were really queries arising out of Mr. Haughey's deposition where he had made reference to you in the course of that deposition.

A. Yes.

Q. And that letter stated as follows: "The Tribunal wishes to bring to your client's attention the following aspects of Mr. Haughey's examination. Day 7, questions 80 and 90; Day 8, questions 4, 14, and 20, and Day 9, question 3. And Mr. Haughey's deposition at the time, as it was, was summarised as follows: "Mr. Haughey stated in the course of his examination that a balance was kept by Ms. Eileen Foy of the expenditures which she undertook out the Leader's Allowance Account on Mr. Haughey's behalf in his personal capacity, and that from time to time a balance would be struck either in Mr. Haughey's favour or in the fund's favour. Mr. Haughey further stated that the balance could work in the other direction, if he had expended monies on behalf of the Fianna Fail Party and the balance would be struck and the Party Leader's Account might owe money to him. He stated that it was Ms. Foy's duty or function to make sure that the ongoing balances were maintained.

With regard to the use of the Abbeville, Mr. Haughey

stated that Ms. Foy and your client would insist that he should be recompensed for Abbeville activities and that Ms. Foy and your client would take the initiative in keeping a balance on the account. Mr. Haughey stated that both Ms. Foy and your client could confirm the arrangement. Mr. Haughey also stated that he discussed the Charvet payment with your client and that your client recalls Mr. Haughey asking Ms. Butler to take care of the Charvet bills and that he would reimburse her at a later stage. "

And they were the matters which Mr. Davis brought to your solicitor's attention and to your attention through your solicitor, and in fact, your solicitor replied in some detail and at some length to the Tribunal by letter of the 12th April. And based on the contents of that letter of the 12th April, the Tribunal prepared a memorandum of the evidence which you are in a position to give, and I wonder, do you have a copy of that with you

A. Yes, I do.

Q. with you in the witness-box? And I think, in fairness to you, for personal reasons, you weren't available to give evidence last May when this deposition was read into the record of the Tribunal, but you are making yourself available to give evidence

A. I was ill and I subsequently underwent surgery.



Q. The Tribunal had no difficulty with that.

Now, if I could just take you through your memorandum, there may be one or two matters that I might wish to clarify with you in the course of it, if that's all right?

A. Absolutely.

Q. Now, you say if the first paragraph, "Ms. Butler was not aware that Mr. Haughey sought reimbursement from the Party Leader's Fund in relation to the use of Abbeville as a hospitality facility. Ms. Butler never encouraged Mr. Haughey to seek such reimbursement. Ms. Butler never kept any ongoing balance in relation to such hospital alternatives. She does not recall whether or not Ms. Foy kept any such information. Ms. Foy rarely discussed financial matters in any detail with Ms. Butler except if Ms. Foy was going on holidays or was ill. Ms. Foy did not advise Ms. Butler that it was Ms. Foy's role to monitor hospitality activities at Abbeville with a view to reimbursing Mr. Haughey. If she did so it's a matter not within the knowledge of Ms. Butler. From her knowledge Mr. Butler is of the belief that any reimbursement or cross-balancing of accounts was not done on a regular basis but may have happened from time to time. "

Now, just in relation to that, Ms. Butler, I think your position therefore is that you were not aware that Mr.

Haughey sought, from the Leader's Allowance Account, any reimbursement for the use of Abbeville, presumably for Party type activities?

A. I was never aware at any stage that that occurred.

Q. I think, in fact, Ms. Foy's evidence also was that she had no recollection, no specific recollection of Mr.

Haughey seeking any reimbursement for such use of Abbeville?

A. That is also my recollection and indeed to support that further, if Ms. Foy needed to have dates of certain functions, she could only have obtained that information either directly from Mr. Haughey - and I don't know whether she did that - or from me, but she never did that.

Q. She never sought them from you?

A. No, she did not.

Q. And you have no recollection or awareness that Mr. Haughey ever sought reimbursement for costs associated with those kind of Party events?

A. Yesterday I did think of something. In 1983 or 1984 I was contacted by an official from the Houses of the Oireachtas, either from the salaries section or the Ceann Comhairle's office asking me to bring to Mr. Haughey's attention that he had not been claiming expenses and I brought that to his attention and nothing was ever progressed. That's the only time I ever talked to him about money.

Q. I see. But that wouldn't have been in connection, I take it, with any operation of the Party Leader's Allowance?

A. No, that's correct.

Q. Now, Mr. Haughey, in his deposition, which is of course now evidence, I think put you in a fairly central position regarding this issue in which he says you took the initiative in keeping a balance and that you and Ms. Foy insisted that he be reimbursed and do I take it therefore from your evidence, that you would not agree with what Mr. Haughey said?

A. I would say that Mr. Haughey is very confused about that.

Q. Now you state in paragraph 2 of your memorandum in relation to the Charvet payments: "It is Ms. Butler's recollection that on one occasion and possibly two, items were received from Charvet which incorporated what Ms. Butler took to be an invoice. On the occasion which she clearly recollects, Mr. Haughey said words to the effect "I will give this to Eileen and get her to pay it and I'll reimburse her. "

A. That is correct.

Q. Now, I think you say there that items were received from Charvet which incorporated what you took to be an invoice. Do I take it therefore that merchandise was received in Mr. Haughey's office?

A. I'll tell you exactly, completely from 1981. When Mr.

Haughey was in or out of power, but when he was in Fianna Fail's longest period in opposition, from December of 1982 right up to he took office in '87, a number of parcels came through the diplomatic black box system from the Department of Foreign Affairs. They were small boxes which I now know to be shirts and they were delivered, we would get a call from someone in the Department of Foreign Affairs and they arrived over to Mr. Haughey's office on the fifth floor of Leinster House. I never opened anything there. I just gave him the box and there was an envelope attached on the box which looked like an invoice. And then in Government Buildings I actually visited Charvet, the shop, the department store with Mr. Haughey in Paris, and I told that to Mr. Coughlan and to Mr. Healy and Mr. Davis and he bought me a scarf there.

Now, there were two occasions that I can recall that happened in old Government Buildings, not in new Government Buildings, so between 1987 and 1990, one, if not two parcels arrived. They were brought to my attention. I was two offices down from Mr. Haughey's Taoiseach's office. The next office was the telephonist's office and then the next one, the government private secretary, and on one certainly on one occasion, if not on two, the government private secretary said to me, "There is a personal item here. I

don't wish to open it. " So I just got a scissors and I slit the top of it and there was a navy blue garment wrapped in tissue paper and I brought it into Mr. Haughey's office. He ripped it open. We made the appropriate ooh-aah comments. He said to me, "What is this?" I opened it, and it was an invoice, a bill for a very large amount of French francs.

Q. And is this the occasion that you recall

A. It was on that occasion I said will I send this out to a certain lady in Abbeville where I thought it should go.

Q. This was Nuala Butler you were talking about?

A. Nuala Turner.

Q. I apologise, Nuala Turner.

A. And he said, "Is Eileen there?" I said she wasn't in the office, "will I go and get her?" He said, "No," and then "give this," you know, "give this to Eileen Foy, ask her to pay it and ill reimburse her."

Q. So in fact that recollection that you have dates, as you say you place it at the time that Mr. Haughey's office was in Old Government Buildings, so it would have been sometime between 1987 and 1990.

A. That's right.

Q. So it doesn't relate to the two payments to Charvet which had been the subject matter of the Tribunal's public sittings?

A. I don't know when Mr. Haughey paid the bill for the

navy blue garment. I don't know when he paid I don't know.

Q. But your clear recollection does not relate to a period in 1991?

A. No, it does not.

Q. That wouldn't be either in February 1991 or September 1991?

A. No.

Q. Now, I think you know or maybe you don't, Ms. Butler, that in the course of evidence heard in relation to the Leader's Allowance Account, both from Mr. Haughey and from Ms. Foy, the Tribunal has heard no evidence of any actual reimbursement being made by Mr. Haughey. Are you aware of that?

A. Well, Mr. Haughey sought my help. I went to see well I saw him very recently at his family

Q. Was this on the occasion which we understood was the 3rd March, but in fact

A. No, there were numerous occasions and I will tell you because I don't know how my health will stand up and I would like to clear up any matters today. So that everything in this connection can be resolved, just in case I am not in a position to return here at a time that you may require me to.

On Friday of last year, the 15th September, I visited Mr. And Mrs.. Haughey unannounced at Abbeville.

Q. Can I ask, can I interrupt you for one moment; is that

the 15th September, 2000 that you are referring to?

A. Yes, last year and I brought some flowers for Mrs. Haughey and a gift for Mr. Haughey and Mr. Haughey was very ill and in a lot of pain and I was very shocked at his condition. He had, in addition to his main problem, he had another medical condition and I asked him if he was taking his usual injections of Pethidine and he told me that he couldn't because he had to come to the Tribunal and he felt that, you know, he was really very distressed and I was very upset when I saw him. And he then telephoned me about a week later and I went out to see him. And he was in a very, very bad condition. Really

Q. On either of these occasions, Ms. Butler, did you discuss anything relevant to the Tribunal?

A. Well, on the second occasion I did. He said to me that he felt, when he was giving evidence, he was in such discomfort that he felt like screaming and I said to him he should make somebody aware, particularly the Chairman of the Tribunal, if he was unwell; that he was defending his reputation and his character, and it was shortly after he had given evidence about Mr. Fustok, which I would regard as being incorrect. He said that he last spoke to Mr. Fustok in or had contact with Mr. Fustok in 1986. And that was not my recollection of matters.

Q. What was your recollection of matters

A. My recollection

Q. in relation to Mr. Haughey's contact with Mr. Fustok?

A. He had contacts through a third party and he went and stayed in Mr. Fustok's residence outside Paris in Chantilly and he put his hands on his head and he said, "Oh my God, oh my God, I have completely forgotten. "

Q. And can you place in time the occasion on which Mr. Haughey stayed in Mr. Fustok's house in France?

A. It was again during the period between '87 and '90. It was in old Government Buildings.

Q. And do you know of any other contact that Mr. Haughey had with Mr. Fustok other than the occasion in which he stayed with him in France?

A. There was another, and I would prefer my solicitor to write and give you this rather than because I don't wish to name certain individuals, but after Mr. Haughey's retirement, there was another visit to that place.

Q. I don't think there is any difficulty with that is that a visit to the property in France, is that right?

A. Yes.

Q. So there was a subsequent visit after Mr. Haughey's retirement?

A. That was after my retirement, yes.

Q. I don't think the Tribunal has any difficulty

A. That was in 1992.



Q. with your solicitor dealing with that. So that would have been in 1992 that the second visit to Mr. Fustok's residence in France would have occurred?

A. Yes.

Q. I think then in your statement you have informed the Tribunal that you saw Mr. Haughey again on the 9th November, 2000?

A. Yes. Now, I'd like to give you the I was very ill, and I'd like to thank my solicitor, Mr. O'Meara, and my counsel, Mr. Mallon, for preparing this memorandum for me, because I just gave them handwritten notes. I was unwell. I was not able to do it myself.

Now, I'd like to recount exactly what happened, because it's very important from your point of view.

On the 9th I have kept my solicitor advised of each and every time Mr. Haughey talked to me in the strictest confidence in matters pertaining to the Tribunal.

Now, on the 9th November of last year, Mr. Haughey had asked me to visit him at his residence at Abbeville at 10 a.m. And Mr. Haughey is a very punctual man, so a little bit of it has rubbed off on me. And I was delayed I got into my car at 9. 20, and I it's normally a fifteen-minute journey, but I wanted to be on time. But as luck would have it, I got stuck at the

DART station. The barriers came down at Sutton Cross, and I was there for about 25 minutes. So I telephoned Mr. Haughey to apologise for the fact that I was going to be late.

So I got there at about fifteen minutes past ten or twenty minutes past ten, and I got out of my car to find this man walking down towards me saying, "Hello, Catherine. " And panic immediately struck me, because I couldn't place him. But he said "Des Peelo," and I said, "Oh, hello, Mr. Peelo. "

And he said "I have to go into town; I can't stay for this meeting. " And I wasn't aware that he was to be there. I thought I was just going to see Mr. Haughey.

Q. Did you understand that this was going to be just a social visit to see Mr. Haughey?

A. Yes, I did. And Mr. Peelo advised me that he was preparing a report on Mr. Haughey's behalf. And I asked him, because I had come across Mr. Peelo it could have been through Haughey Boland, or some such entity like that, or maybe on the television, if he commented on the budget or something and I asked him was he Mr. Haughey's forensic accountant, and he said he was.

And he said I said "Well, you know, I don't think that this is the proper way to go about it. I don't have my solicitor present. I would climb Mount Everest to help Mr. Haughey, but I don't think this is the way

to do it.

So he said, "Well, I am late for an appointment. "

Now, Mr. Haughey was standing watching me from the window. And in I went, ready to throttle him. But

having seen the condition he was in, I said nothing.

And he just said what Mr. Peelo had said to me, that they were preparing a report.

And I told Mr. Haughey I didn't think that that was the

way to go forward; that I had no representation, that

the Tribunal were not aware of this, and that

Mr. Haughey just said that he told me he was in

pieces, that he was trying to put things together. He

had no recollection of certain matters, and he had no records, and he said I have a very good memory.

And I told him he said he was going to ask Eileen

Foy, myself, and Paul Kavanagh to all meet separately

with Mr. Peelo so that Mr. Peelo could prepare a report

which may or may not be submitted to the Tribunal.

Q. I see.

A. So I said "Well, I thought that could be a bit

cherry-picking at the truth, and I just really would

like to help Mr. Haughey in any way possible, and that

I really couldn't deal with Mr. Peelo.

And Mr. Haughey said to me, "Well, can you help me?"

And I said, yes, I would help him, I would do anything to help him, provided I told my solicitor and that he advised the Tribunal, and you know, he then went on to have several we had a conversation about the evidence I had given at my last appearance here. He said, you know I told him I was never going to fall out with him over a difference of recollection, that you know, he was very ill. He had been in my life a very long time, etc.

Q. And was there any particular aspect of the evidence that you gave it's now two years ago that you discussed with Mr. Haughey on that occasion?

A. No. It's not two years ago. It is November of last year

Q. Oh, I accept that, but the evidence that you gave in October of 1999

A. Well, during the last meeting well, I did take the opportunity of raising with him, because I was very, very shocked, as I think I told

Mr. Coughlan at our meeting in the summer of last year about Mark Kavanagh. And I asked Mr. Haughey about Mark Kavanagh, had Mark Kavanagh given him any monies towards the Brian Lenihan fund, and what did he do with them? And he told me that Mark Kavanagh was not at his home that morning. I then told Mr. Haughey that I had been there that morning

Q. What morning? Could you just clarify what morning you

are talking about?

A. That is the morning of the day of the General Election in 1989.

And Mr. Haughey said, "Right, okay, well that's my recollection."

Q. I see. So you and Mr. Haughey discussed the evidence that you had given to the Tribunal the previous October regarding Mr. Kavanagh?

A. Yes, but I had not given evidence in public about Mr. Kavanagh. You did not ask me any questions. You did ask me in private, and I was very frank with you in July of last year.

Q. I see. And can you just recount for the Tribunal now, in the course of these sittings, what evidence you are in a position to give regarding that day, your movements on that day and any information you have with regard to Mr. Kavanagh's movements on that day?

A. Well, I was out in Abbeville Mr. Haughey had phoned me, and I had gone to Abbeville. He had asked me to purchase something of a personal nature for him, toiletries, in fact. And I went out to Abbeville with no toiletries because I didn't he told me they would do any time that week and I got a roasting that morning. And I had a cup of tea with Mrs. Haughey. She knew I had obviously had an earful, and I left at you know, shortly before nine o'clock, so did Mr. And Mrs.. Haughey. They went in to vote. I was in

the car behind them, I think, and I went into the Government Buildings. I did not see Mr. Kavanagh at Abbeville that morning.

Q. I see. And what aspect of Mr. Haughey's evidence in relation to that matter did you disagree with or discuss with him on that occasion?

A. No, I just discussed that.

Q. You simply discussed that?

A. Yes, I did, yes.

Q. And what was the context in which you discussed that at the time?

A. My absolute disbelief at the evidence that Mr. Kavanagh gave.

Q. You weren't present Ms. Butler, you weren't present in Abbeville on that morning; you left Abbeville at nine o'clock, isn't that correct?

A. I did, mmm.

Q. How do you say, therefore, that you were in a position to express disbelief at what Mr. Kavanagh stated in evidence given that you had left Abbeville at nine o'clock that morning?

A. Because I usually arranged Mr. Haughey's appointments for him, though he had an official appointments secretary. And in all the years I had known him, in any General Election or any election, European, local or anything, he never saw anyone at his house. And he would have been getting ready and possibly having his

hair done or whatever, going down for a photograph. It would be, I suppose, his habit to just be there shortly before nine o'clock and have his photograph taken, you know, with print, media and television. He would leave Mrs. Haughey back home, and then he would visit the polling booths for the early sort of morning situation and come into the office for an hour or two and then go around the polling booths in the evening.

Q. I see, and that was what you are saying is that that is his invariable practice?

A. Yes.

Q. On that morning that you left at nine o'clock, I think you said you followed Mr. And Mrs.. Haughey out, and they were going to vote at the local school in Kinsealy?

A. That's right.

Q. Presumably Mr. Haughey had prepared himself to meet the cameras at that stage, so that that he had attended to all of his personal needs?

A. His ablutions.

Q. Ablutions, yes. Did you see him later that day, do you recall?

A. I have a vague recollection that he was in Government Buildings for very short time.

Q. And can you place that approximately in time?

A. Before lunch.

Q. So between nine o'clock in the morning, when you left

Abbeville, and before lunch, when you saw him in Government Buildings, you were not with Mr. Haughey at any time?

A. No, I was not.

Q. Now, in relation to the 9th November, 2000, at the meeting that you had in Abbeville, were there any further matters or any further aspects of Mr. Haughey's evidence or your evidence or anybody else's evidence that you discussed with him?

A. Yes, there was.

Q. And what were they?

A. I just put them down here. He asked me for my recollection of the Party Leader's the operation of the Party Leader's Account, and my recollection was as I gave to the Tribunal in evidence in October of 1999. I have written it down here. I discussed I also said to Mr. Haughey that I was of the belief that he reimbursed the Party leader's funds for monies expended on his behalf in relation to Charvet and in relation to Le Coq Hardi bills.

Q. You were of the that opinion?

A. Yes, I was.

Q. And was that based on information that you had available to you?

A. Yes.

Q. And what was that information, Ms. Butler?

A. Well, four or five times a year, Eileen Foy would ask



me about Mr. Haughey's movements, in other words, what has he got on today? Even though there was a computerised diary on a screen very similar to this here, but there would be appointments not listed on that, she said, you know, if she got bills in from Le Coq Hardi, she would tell me and she'd say, "Mr. Haughey owes me some money, what's his form like today?" Or, you know, "has he finished his script?" And I'd say, "Well, you know, why don't you leave it till the afternoon or he has a queue of people" or, you know, something like that, and that happened many, many times.

Q. So Ms. Foy discussed with you her need to speak to Mr. Haughey about the payment of bills?

A. Yes.

Q. Did you ever see Ms. Foy with a cheque from Mr. Haughey?

A. No.

Q. Did you ever see Ms. Foy with any cash which Mr. Haughey had given to her?

A. No, I did not.

Q. Did she ever say to you that she was going to the bank in Baggot Street to make a lodgment to the Party Leader's Account account from funds which Mr. Haughey had given to her?

A. No. Well we had lunch nearly every day, as I told you.

Q. Yes, you did

A. the last time. And times I would go to the bank with her and I really couldn't say whether it was to lodge the to cash Mr. Haughey's salary cheque, lodge the Party Leader's cheque or lodge other matters or take money out because I never went up to the cash desk with her. I always remained I always respected the confidentiality of her position.

Q. So you always respected the privacy of what she was doing?

A. Yes, I did.

Q. You never saw her with a cheque from Mr. Haughey; you never saw her with cash from Mr. Haughey?

A. No.

Q. Ms. Foy herself has no recollection of any specific reimbursement, although she stated to the Tribunal that reimbursement may have occurred, but she has no recollection of any specific occasion of reimbursement from Mr. Haughey.

A. Well, I know well, I don't know that she sought it. She told me she needed to seek reimbursement. So that's all I know.

Q. I see. That's the basis of your knowledge?

A. That's the basis, that's the only basis.

Q. I see. Now, if I can just go back to your Memorandum of Evidence.

A. Yes.

Q. I think if I take to you paragraph 3, I think we have

already dealt with the reimbursement. If I take you to the third sentence you say, "Ms. Butler is further aware that a formal system existed in the Department of Taoiseach with regard to Mr. Haughey reimbursing government departments and she recalls an official memorandum crossing Mr. Haughey's desk in this regard relating to a request that Mr. Haughey reimburse the Department of Foreign Affairs in connection with expenditure involving Mrs. Haughey and his daughter visiting Australia and the USA?

A. That's right.

Q. That, of course, would be something entirely separate from any reimbursement on the Party Leader's Account?

A. Yes, it would.

Q. I think at paragraph 4 you then say, "Ms. Butler has no knowledge as to whether or not any balancing arrangements were kept in writing and has no knowledge as to how the use of Abbeville was valued when used for government purposes. Ms. Butler sometimes verified invoices relating to entertainment at Abbeville at the request of the Department of the Taoiseach. "

A. Yes, and I'd like to expand on that to be absolutely clear.

Q. Yes, of course.

A. There was a protocol office attaching to the Taoiseach's department and I was not a civil servant, I was a political appointment. So there was a protocol

officer attached to each function and I usually worked in conjunction with that protocol officer and would act as a sort of liaison between Mr. Haughey and the protocol section. So, for instance, Mr. Haughey hosted a dinner in honour of Prime Minister Brian Mulroney at Abbeville and menus were printed for the occasion and I designed help design those menus and indeed clear the menu with Mr. Haughey. Someone from the personnel section and to my regret, I don't recall the person's name because there are a number of job sharing situations there, would tell me to ask, you know, that they had a particular invoice in for wine or whatever, and I'd say, "Yes," and the protocol officer pertaining to that was Mr. Or Ms. Whoever, and then they physically signed off on the invoices.

Q. This was from the protocol division?

A. Yes.

Q. I think in fact the Tribunal has seen documents in relation to those kinds of expenses which arose in connection with official functions that may have been hosted in Abbeville.

A. Yes.

Q. Then I think paragraph 5, I think you have already dealt with, which is your meeting of the 9th November.

I think just to confirm so that it's clear on the record; you actually declined Mr. Haughey's request to discuss this matter with Mr. Peelo?

A. I did more than that. When I saw him over at Christmas time, Mr. Haughey had asked me to reconsider meeting Mr. Peelo. I told him I thought it was not a good manner in which to deal with this. I criticised Mr. Haughey's legal team and his advisers for never having a senior counsel or a barrister or a solicitor ask any witness any question in public and because I thought that's the place where it should be heard.

Q. I see. Rather than behind closed doors with Mr. Peelo?

A. Rather than behind. However, taking into account Mr. Haughey's very serious ill health and my affection for him, I sought to help him.

Q. Of course, that's perfectly understandable, Ms. Butler.

Can I just take you then to the final paragraph of your Memorandum.

A. Yes.

Q. You say, in fact I think you have corrected the date, it was the 3rd February, 2001, "Ms. Butler again met Mr. Haughey at his request. Mr. Haughey asked her if she would be comfortable in talking to him about Tribunal matters. "

A. Yes.

Q. "Among other matters, Mr. Haughey sought Ms. Butler's assistance in his recollection of the Party Leader's Fund. Ms. Butler answered some questions that Mr. Haughey had and asked him to advise the Tribunal that he had sought your assistance.

A. Yes.

Q. Now, can I just ask you, first of all, about that meeting on the 3rd February. Was that meeting arranged in advance or did you happen to call out to Mr. Haughey?

A. He telephoned me and asked me to call and see him.

Q. I see. And can you recall was it over a weekend or during the week?

A. Well, just one moment now. I have my medical record here so I'll be able to tell you just one moment. I keep a reading of blood sugars and other, so just one moment.

Q. Take your time, Ms. Butler, there is no rush.

A. It was Saturday 3rd, Mr. Haughey phoned me on Friday 2nd. He would have phoned me a day in advance.

Q. All right, to make the arrangement?

A. Yes.

Q. Do you recall if it was in the morning or the afternoon?

A. It was the morning.

Q. And were you the only person who met with Mr. Haughey on that morning?

A. No. Mr. Haughey had another caller.

Q. I see. Was this a person who might have knowledge as well in connection with these Tribunal matters or not?

A. Yes, but, My Lord, may I give you the name because I think it is just so sensitive that and then if you

wish me to

CHAIRMAN: Yes, I think if you do that, it may be that little turns on it, Ms. Butler.

Ms. O'BRIEN: Maybe nothing turns on it. For the moment perhaps it can be left be and if needs be, we can raise queries in correspondence.

CHAIRMAN: I think it's unlikely that it's going to be of any probative context in the context of the Terms of Reference.

Ms. O'BRIEN: Very good, Sir.

Q. You say on that occasion, can I just confirm as well, Mr. Peelo, I take it, wasn't present at this meeting?

A. No.

Q. It was just you and Mr. Haughey were discussing matters?

A. Yes.

Q. Can I just ask you, can I take it that one of the things you discussed given that the Party Leader's Fund was a matter concern, was one of the things you discussed the issue of the Charvet payments?

A. Yes, it was.

Q. And it was on that occasion that you told Mr. Haughey that you had already

A. No, I had already told him that. I had already

discussed that with him on the 9th November and Mr.

Haughey said he just wanted to go over what I had told him, he said, in the meeting last winter. He didn't name the date.

Q. And in fairness to Mr. Haughey, I think in his deposition, he did say that he had discussed the Charvet payment with you and that you had recalled this matter?

A. Yes.

Q. Now, apart from that Charvet matter, was there anything else that he asked you questions on that you were able to provide him with answers?

A. Again, just how the Party Leader's Account operated and also, he told me that he was unaware of the blank, the pre-signed blank cheque arrangement and he asked me when did that sort of occur at length? So I told him that again, what I told you in evidence the last time, that Minister Ahern was a very busy man. He was getting more and more difficult to contact. We had the certain nickname because he was so elusive, and that this occurred at the time of the EC presidency.

Q. That would have been roughly in 1990, would it?

A. Yes, yes.

Q. 1990?

A. Yes, yeah. January, 1990.

Q. And was there anything else, apart from material or matters on which you had already given evidence to the



Tribunal, was there anything else that you discussed?

A. I took the opportunity to ask Mr. Haughey, because he was very, very distressed, stressed and despondent is the only way I can describe his demeanour. I asked him about the Brian Lenihan fund. I mean, I had a very frank discussion with him and I asked him if he took any monies improperly from that fund for his own personal use and he told me that he did not.

Q. I see.

A. I wanted to ask him that, so I asked him.

Q. I see. And apart from what you asked him, were there any other specific matters on which he asked your assistance?

A. No, no.

Q. I see.

A. Oh sorry, the Mark Kavanagh issue.

Q. I see I think we dealt with that already. We discussed that already.

A. Yeah.

Q. Since the 3rd February, Ms. Butler, have you had any further dealings with Mr. Haughey in relation to Tribunal matters only. Obviously the Tribunal doesn't want to trespass on any personal contact you have had with Mr. Haughey.

A. No, and it's very difficult because he has opened up his heart to me and it's extremely difficult. I had been receiving nuisance telephone calls and on the

advice of Telecom Eireann malicious calls bureau, I changed my telephone number and I wrote to Mr. Haughey to tell him that and I would give him the new number when I had it. Mr. Haughey sent a letter by hand to me inviting me to his home to celebrate his birthday and his golden wedding anniversary on the 16th September, and I attended that but I did bump into him accidentally on the 19th anniversary of my mother's death, I had gone to lunch with my family, Mr. Haughey was in the restaurant and he said, you know, "I hope you are going to come to the party. " I phoned Mr. Haughey on the day after his family celebration, and to thank him for such a lovely day and he said to me, "I need to see you, will you come out and see me?" So I went to see him on Tuesday, 18th September in the morning about eleven o'clock. He told me he was going to Cannes and he also gave me more information about his health and I told him that I had been called by the Tribunal to give evidence in public, that he was not yet aware of the information, and he said, "Oh my God, I am sorry that this has happened to you. " Mr. Haughey telephoned me last Sunday morning, I was ill in bed, to say that he had returned from Cannes and would I like to come over for a cup of tea and a chat and I told him that I would love to see him but that it might be viewed as improper by the Tribunal if I saw him in advance of my appearance which was scheduled for

yesterday, and that I would go and see him on Friday, and then I got a call from Mr. O'Meara to say that everything had changed, that I was going to see Mr. Haughey on I was going to the Tribunal on Friday, so therefore, I couldn't see him, and he said, "I am just so sorry," and he said, "Do you know what it's about?" I said, "Probably the Party Leader's Account and the Tribunal will want to know what conversations you and I have had about the Party Leader's Account and matters pertaining to the Tribunal," and he said, "All of our conversations were private, Catherine. You know everything I tell you is private," and I told him, "Well you know, I had to tell the truth" and I intended to do so.

Q. I see. If I can just clarify, if you would confirm, Ms. Butler, the Tribunal has never objected to or interfered in any way with you seeing Mr. Haughey when you wished to over the course

A. I placed those constraints on myself because I did not want to be accused of collusion or indeed to protect Mr. Haughey because I didn't want him to be accused of witness tampering either.

Q. I see. Thank you, Ms. Butler.

CHAIRMAN: Ms. Butler, thank you very much for coming back to the Tribunal and I think I can safely assure you we won't need to trouble you again. Thank you very much for your attendance.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Well, Monday obviously the Tribunal has other commitments, so I take it Tuesday what time should I say? Eleven o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 16TH OCTOBER, 2001 AT 11 AM.