

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

23RD OCTOBER, 2001 AT 11 AM:

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN BY

MR. COUGHLAN:

MR. COUGHLAN: Just one or two small matters before I
go into

MR. MCGONIGAL: Just one small matter, Mr. Chairman, in
relation to a change in the transcript. It's a very
small change, but it's page 104, question 555, and the
answer recorded is, "I don't know how he would have
said that though in December of 1995. He would have
known that because" it should be "He would not have
known that because".

MR. COUGHLAN: I think that is correct.

CHAIRMAN: Yes. Well, without checking my own note, if
you are both happy to that effect, I direct that it be
amended accordingly.

Q. MR. COUGHLAN: Mr. O'Brien, if I could just ask you
for a moment to concentrate on the question of the
political donation again, please. And it's just that I
think you know that Mr. John Bruton, who was the then
leader of Fine Gael, that was in 1995, 1996, gave
evidence to the Tribunal?

A. That's correct, yes.

Q. And he was Taoiseach as well, of course, but I'll deal
with it in the context of Fine Gael.

A. Yes.

Q. And I think you are aware that he gave evidence of having a telephone conversation with Mr. David Austin sometime, he thinks, in February of 1996.

A. I didn't read the transcript, but I'll take it

Q. I am not asking you to be specific about the date, but I think you are aware that he gave evidence that Mr. Austin and himself spoke on the phone sometime early in 1996.

A. That's right.

Q. And in the course of that conversation, Mr. Austin, according to Mr. Bruton, indicated that there was a contribution or a donation available from I think what is described as ESAT sources or a general term was used.

A. Yes.

Q. I think you remember that?

A. Yes.

Q. And I think Mr. Bruton informed the Tribunal that he informed Mr. Austin that he really didn't want that type of contribution being made to the Party and may have used words to the effect of "Leave it where it is" or "Leave it where it was" or words like that. Do you remember in general terms

A. I remember the words in general terms.

Q. Mr. Bruton informed the Tribunal that he believed that the money was still with the donor at the time, but in any event, we know that the money remained in Mr.

Austin's account in the Channel Islands.

A. That's correct.

Q. Did Mr. Austin ever tell you that he had a conversation with John Bruton?

A. No, he didn't.

Q. And you didn't know anything about that?

A. I didn't know anything about it, no.

Q. Does it seem in any way unusual to you that, on your own evidence as somebody who facilitated a contribution, and Mr. Austin being a close family friend, that he didn't inform you that the leader of the Party for whom the contribution or donation was intended didn't want it?

A. It's only in subsequent times, when we heard the evidence over the last number of months, that he left it in his account and then paid it through Mr. Conroy and Mr. Conroy paid it that we I think everybody was surprised at that.

Q. Yes, because what I really wanted to just, if I could, tease out with you just in a short way, Mr. Austin I'll take it step by step. Mr. Austin received the money from Telenor into his account. Whether the contribution was your contribution or Telenor's contribution, there is no doubt about it, it was intended for Fine Gael. The contribution was intended for Fine Gael?

A. Yes.

Q. And on the basis of Mr. Bruton's evidence, he was indicating to Mr. Austin that as of that time at least, that would have been early in 1996, he, Mr. Bruton, didn't want a contribution from the general source, if I can put it that way. And Mr. Austin did not give it back to Telenor, on the evidence before us, isn't that correct?

A. No.

Q. And we know then how the money went to Fine Gael through Mr. Conroy coming up to the General Election of the following year?

A. The endorsed cheque, if I can remember that, right, yeah.

Q. In the intervening period, Mr. Austin left himself open to the accusation that he had converted the money to his own use or had taken his money by just leaving it in his account and not informing the donor or donors that the Party didn't want the money; would you agree?

It's open to that one interpretation at least?

A. It could be an interpretation, but maybe it mightn't be the fairest thing, given what happened subsequently.

Q. I am not suggesting for a moment that Mr. Austin was a thief or anything of that nature.

A. No, okay.

Q. And from the evidence you have given, Mr. Austin was a serious and honourable businessman?

A. A very honourable fellow.

Q. And would he have struck you as the sort of person who might have been reckless in leaving himself open to such an accusation?

A. No. I think well, when you look at people's evidence about him and his accounts and things like that, he seemed to be a fairly tidy person in the way he did business.

Q. But you are sure that he didn't inform you of any conversation with Mr. Bruton?

A. Absolutely, and in some ways it's a pity he didn't.

Q. Now, if I might just turn to another matter unrelated to this political contribution, and it's the question of the house in Spain.

A. Sure.

Q. Ms. Helen Malone gave evidence to the Tribunal, and her evidence mainly concentrated on company secretarial services she provided for Mr. Phelan, and for Mr. Phelan and his brother in partnership prior to that?

A. Yes.

Q. That practice was a client of hers?

A. Yeah.

Q. And she informed the Tribunal that Mr. Phelan had gone on his own, and in the first period, when he was practicing on his own, practised out of his brother's practice, the office of his brother's practice?

A. Clonskeagh, yeah.

Q. And that sometime in the late summer/early autumn of 1997, he had a backlog of secretarial paperwork to be sorted out, and she was asked to carry this out for him?

A. I obviously didn't read her evidence, but that's probably

Q. You can take it that it is.

A. It's probably logical.

Q. And that one of the matters she was asked to sort out was the paperwork in relation to the house in Spain?

A. That's correct.

Q. Now, in the course of her evidence, she wasn't sure, but she wondered whether Mr. Phelan did not want her to sort things out, and had a discussion with Mr. Perera about when the money had been paid to Mr. Austin back in 1996 because she thought that Mr. Phelan might have been preparing balance sheets in respect of your affairs on an annual basis around that time. Can you assist the Tribunal if that was so or not?

A. You normally need balance sheets if you are going to borrow money, and I had small borrowings at the time, so I don't know what she was referring

Q. She wasn't saying she never saw them. I just I am just asking you if you can assist the Tribunal. She wondered if that was the reason why Mr. Phelan was getting things sorted out, that he would have been preparing statements of affairs or balance sheets on

your behalf on a yearly basis?

A. He would probably give me lists of people who I owed money to, banks I owed money to, maybe note where money was coming in from, where money was going out. In terms of like full

Q. Full statements of accounts, or anything like that, you don't think he was doing that?

A. No, I mean if there was anything, it was just a piece of paper with notes on them.

Q. Well, I am just wondering, do you know if any balance sheet or document was prepared showing this property being carried as an asset as of 1996?

A. I have no idea, but they are I mean, I know the question was asked last week, and somebody has gone off to look through files.

Q. I see.

A. And as soon as it comes out, we'll obviously make it available to you.

Q. Now, I think you made reference to a letter which was received yesterday from Mr. Chris Tushingham of Walbrook Trustees; that's Deloitte & Touche's

A. This is the clarification

Q. In the Isle of Man. You referred to this. So I'll just put it up, just to complete matters. And it's addressed to a member of your staff, isn't that correct, who was carrying out inquiries on your behalf?

A. That's right, yes.

Q. And he says he refers to Tokey Investments Limited, and we refer to the above. "We can confirm that we received a letter from Valmet Corporate Services Limited in February 1998 enclosing an original declaration of trust issued by their nominee companies, Finsbury Holdings Limited and Finsbury Nominees Limited, stating that he had respectively 99 shares and 1 share in Tokey Investments Limited to our order.

"Walbrook Trustees (Isle of Man) Limited should have issued their own declaration of trust stating that these shares were in turn held to the order of Mr. Denis O'Brien. However, due to an administrative oversight, the declarations were not issued until May 2001.

"Yours sincerely, for and on behalf of Walbrook Trustees.

Chris Tushingham."

That's the letter you referred to?

A. Yes, that's right.

Q. Now, I take it that you wouldn't have any difficulty with Mr. Tushingham coming to give evidence if the Tribunal required him?

A. Not in the least bit.

Q. Now, if I might turn now for a moment, Mr. O'Brien, to the question of the English properties, the Mansfield and Cheadle properties. And these, as you know, now, are two properties in which Mr. Aidan Phelan and

Mr. Michael Lowry had an involvement, isn't that correct?

A. From what I now know, yes. At the time I didn't.

Q. And I think you, on a previous occasion, furnished a statement to the Tribunal in respect of these two matters, isn't that correct?

A. Yes.

Q. These two properties?

A. Yes.

Q. I'll take you through that first, and we can then deal with some matters that arise.

A. Fine.

Q. I think you have informed the Tribunal that these related to or requests for information sought by the Tribunal in letters of the 10th April 2001, and the 17th April 2001, and you have informed the Tribunal that "Denis O'Brien is not in a position to assist the Tribunal in respect of the property known as Hilltop Farm in Derbyshire" that's described as the Mansfield property in the course of this Tribunal

A. Okay.

Q. "with the purchase price of $\frac{1}{2}$ 250,000 as he was not involved in, nor had any knowledge of this transaction.

Denis O'Brien accepts that $\frac{1}{2}$ 300,000 was withdrawn from an account of his with Credit Suisse First Boston in London by Aidan Phelan, who had drawing authority over the account. The said money was withdrawn by Aidan

Phelan as an advance payment on part of a fee due by Denis O'Brien to Aidan Phelan for work done for Denis O'Brien in connection with a company called Versatel Telecom NV. Denis O'Brien was not involved in nor had any knowledge of the property known as St. Columba's Church in Cheshire and did not become aware that his name had been used or may have been used in relation to it to a bank and in particular, Investec Bank, until in or about the 11th to the 18th March 2001. When he became aware of the matter, he contacted Michael Cullen, Chief Executive of Investec Bank, and expressed his anger in the way his name had been used within the bank without any reference to him. In particular he was angry with the idea that the bank would not seek clarification or communication from him that he was involved in or stood behind a particular deal.

"Denis O'Brien is not in a position to deal with any other matters relating to these transactions."

Now, if we could go to the funding of the first property, the Mansfield property. I think you obtained for the Tribunal a statement of the account in Credit Suisse First Boston from which Mr. Phelan instructed the transfer of €300,000, isn't that correct?

A. That's correct.

Q. And I think whilst we have an extract from that particular account showing the funds being withdrawn, being paid by wire, €300,000 is debited from the

account. And I am not going to show the rest of the account, but I am going to ask you a few questions about it in a general way.

A. Sure.

Q. This was not first of all, it was a substantial account, isn't that correct, this particular account?

A. My CSFB account?

Q. Yes.

A. Yes.

Q. And am I correct in thinking that it was an account that appeared to be for perhaps major capital transactions? There aren't, you know, ten movements on the account in a week, or anything like that. It's not an ordinary

A. Well, it was where I had cash available at that time. I had a facility like a bank facility.

Q. You had a facility, yes. And am I correct in thinking that from our examination of the particular account, that this was the only occasion when Mr. Aidan Phelan directed a payment out of this particular account?

A. I wouldn't be totally sure of that now.

Q. Right. When I say that Mr. Phelan directed payment out of the account, I am using it in the context of for his own purposes.

A. I'd have to look into that, because if I agreed fees with him, he'd generally

Q. There is no doubt about it; there are some large

movements out of the account for some capital purposes?

A. But also I would have paid fees, other fees out of that over a number of years.

Q. Well, perhaps it's something we can look at, but just from our examination of it, it appears that it was the only occasion where Mr. Phelan directed a payment out of the account for his own purposes. That is a payment to himself or on his own behalf?

A. I don't know, Mr. Coughlan, but I can obviously come back to you.

Q. And I think, I think I may be wrong about this I think Mr. Phelan may have given that evidence himself, that it was the only time that he directed a payment to himself out of it?

A. Again, I'd have to check on that.

Q. Very good.

Now, that payment to Mr. Phelan out of the account, according to Mr. Phelan, and I think according to you, resulted from a memorandum which Mr. Phelan sent to you dated 22nd December, 1998, and it is regards success fees, is that correct?

A. Reflected an agreement or a conversation that we had had re fees, yes.

Q. I'll just go through the memorandum. It's to you. And it's "Dear Denis,

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

on, I have summarised our discussion as follows:

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

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

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

Now, you had a discussion with Mr. Phelan earlier in the day of the 22nd December?

A. It was from what I can remember, it was a sort of year-end wrap-up just before the Christmas break.

Q. And then there is in manuscript at the top of the note

I think it's your writing, is it, if we just

A. That would be my writing, yeah.

Q. And just at the top is "SA fax/okay send."

A. No, "or send".

Q. "Or send"; I beg your pardon. And it's "To Aido from
DOB", and it's initialled, is that correct?

A. Correct.

Q. So you are agreeing this particular fee with Mr.

A. What I am agreeing is he reflected what we had agreed.

Q. You had a verbal agreement, and he is putting it in
writing, and you are agreeing it and initialling it?

A. That's right.

Q. And you are saying that he is entitled to a fee of
3 percent up to a maximum of 1.5 million?

A. Yes. Just to help you there, when you have people
working with you and you make venture-capital-style
investments, they get a slice of the upside, and this
was a reflection of that.

Q. Yes, I understand.

A. Together with the purchase of Planal, which was Quinta
da Lago.

Q. That was Quinta da Lago, was it?

A. Yes. That's the it's a company, that's what it was
known as, "Planal" at the time. It's now Quinta da
Lago SA.

Q. So this is a fee to reflect both projects, really, is
it?

A. Yeah, yeah. Both of them were fairly intricate at the time. There was a lot of things going on.

Q. Now, is the fee, or is the payment of the fee the fee is agreed?

A. Mm-hmm.

Q. Is the payment of the fee dependent on when you have liquidity in your stock in Versatel?

A. Well, it was it covered two businesses, one which I bought, which was Quinta da Lago, and the other one was Versatel. And there was a number of fairly difficult things going on at Versatel. The first one was, I increased my shareholding in the company because the Chief Executive settled with me because I had given him money some years previously, and he said that I hadn't given him money. And eventually it was settled, and I got a lump of stock in the company apart from my original investment.

Then there was a whole pile of shareholder issues that they all had to agree as the company went through more and more public offerings, so Aidan was working a substantial part of his time on trying to help Versatel. The shareholders were actually helping the management to get it into a position to do bond offerings and then culminating with a joint IPO bond offering.

Q. And I understand Mr. Phelan did a lot of work on this project, it would be fair to say?

A. A substantial amount of work.

Q. But what I am asking is that and the fee was agreed.

There is no doubt about it, you agreed a fee?

A. Yeah.

Q. It was to be 3 percent up to a maximum of 1.5 million?

A. That's right.

Q. But was payment conditional on you having liquidity in your stock?

A. Well, that was the complicated factor with an IPO, is that you cannot take your stock when there is an IPO and then sell the next day. You can sell a little bit, and then you have to wait around for particularly under the Amsterdam Stock Exchange rules, to sell more shares.

Q. But that's what I am just trying to understand here, that this agreement did not give rise to you paying or being obliged to pay Mr. Phelan up to 1.5 million the day it was signed or the next day?

A. It was on a results

Q. And it was depending on you getting money for your stock, isn't that right?

A. Yeah, and I would have sold some stock to recover my initial investment, which is what normally people do, is they try and get their equity off the table. And that was agreed at the IPO, so I did sell a reasonable amount of stock at that time.

Q. And when would that have been?

A. That would have been June/July I think, whenever they did the IPO.

Q. June/July of the following year?

A. No, that year well, sorry

Q. Of '99?

A. '99, yeah, six months hence. But because all the shareholders were working towards an IPO, we knew we were going to do an IPO. It was either going to be the end of the first quarter, if I remember rightly, or the beginning of the second quarter.

Q. So as Mr. Phelan had indicated there, there had been a number of high-yield offerings raising, as he said, the sort of money, and that ultimately culminated in an IPO in June or July of 1999, is that correct?

A. Yeah, they did 375 million. Then they probably raised I think 200 in a bond and maybe another 200 in equity.

So

Q. Very good. And did you I am not asking you for the full details or anything, but did you dispose of some of your stock at the time of the IPO?

A. I did, yeah.

Q. So you achieved liquidity, or some liquidity, in relation to the asset?

A. Yeah.

Q. You may have held on to more stock in the company?

A. Oh, I did, yeah.

Q. Now, the next document I'd like you to look at is

another memorandum from Aidan Phelan to you, and it's dated 25th March of 1999. And it's "Re advance on fees", and it reads, "Dear Denis:

"As discussed on our call today, I am making a drawing today on the CSFB account in the amount of $\frac{1}{2}$ 300,000 sterling. This is an advance against the Versatel fees."

So, around March, can I take it that you would have had you'd have known there was going to be an IPO within a few months?

A. Well, yeah, we were on the track. I think there was even a red herring at that stage.

Q. Right. So Mr. Phelan was looking for an advance on fees, and you agreed to that?

A. Yeah, I was comfortable with it.

Q. And he spoke to you, and then he put it in a memorandum to you as well and got your signature, or your initials?

A. Yeah. I mean, I generally wrote sort of cryptic notes on memos, and there was a jiffy bag going between my office and his office where I would my secretary would throw stuff in, bills or whatever, and they'd all go to his office.

Q. Now, did Mr. Phelan at this time tell you why he wanted an advance on fees?

A. No, he didn't.

Q. Did he say anything to you at all?

A. No. He didn't, no.

Q. Was it usual for him to look for advance on fees?

A. Yeah, if he was in the middle of a job for me and he'd come and say, "Look, I'd like to take some of my fee now", I wouldn't we had a very good relationship. So it wouldn't be a problem.

Q. I don't see anything wrong with somebody looking for an advance on fees either. I am just saying, was it usual for him to do that?

A. He would, yeah, but he would be he'd put something on paper or something, even a handwritten note, so there would be a record of it.

Q. And as far as you were concerned, that was the end of matters concerning this $\text{€}300,000$, and you didn't know anything about it until the matter became a live issue at the Tribunal?

A. That's right, yeah. After Michael Tunney coming to me, well, then everything all matters came out to the fore at that stage.

Q. Who told you about this? Was it the Tribunal, or was it Aidan Phelan? If you can't remember, say so. I am not particularly holding you to it.

A. I actually can't remember. I have seen so many documents.

Q. Mr. Phelan wasn't paid any more fees by you on foot of the memorandum of the 22nd December, '98?

A. Not on this one, for the simple reason that Versatel

has had to restructure itself.

Q. I understand that that may have happened.

A. Yeah.

Q. But as I understood the agreement between yourself and

Mr. Phelan, based on the memorandum of the 22nd

December, '98, was that he would be paid a fee of up to

1.5 million, all right, that might have been negotiated

down a bit.

A. Yeah.

Q. Depending on you having the liquidity in your stock.

And you obtained liquidity in your stock you

obtained some liquidity?

A. Only a small piece.

Q. In relation to your stock at the time of the IPO in

June or July of 1999, is that correct?

A. Then there were the rules there that we couldn't sell

any more stock, so I still have shares in Versatel. So

I haven't sold any more.

Q. I just want to be clear about this, because it seems to

be Mr. Phelan's evidence as well, the balance of the

fee, whatever that may be

A. Has to be negotiated as we get liquidity.

Q. has not been paid to Mr. Phelan even as of today?

A. No, I don't believe so.

Q. I know you won't have the numbers on your fingertips at

the moment, but can you give the Tribunal any

indication roughly of what percentage of your

shareholding in Versatel you would have disposed of at the time of the IPO, roughly?

A. Tiny. I am guessing now, but it could be 10 to 15 percent. I don't know, but I'd be happy to

Q. Very good. I am only asking you in rough terms.

And can you be of any assistance to the Tribunal as to what your overall shareholding in percentage terms was in Versatel at the time of the IPO, again roughly?

A. I started at 30 percent, or 35 percent even. But then with dilution it could have been 10, 12, 15 percent.

But there was somebody would be able to work out the correct numbers and give it to you.

Q. And do you have any idea now of what the price of the share was at the time of the IPO?

A. At the IPO, the price range was \$12 to \$10.

Q. Very good.

A. Per share. ADR, I think it is.

Q. Now, I think you now know that this $\frac{1}{2}$ 300,000 which was withdrawn from your CSFB account went into the client account of Mr. Christopher Vaughan, solicitor, in Northampton?

A. I now know this, yes.

Q. And had you had any dealings or had anyone had any dealings on your behalf with Mr. Christopher Vaughan prior to March of 1999?

A. Yes.

Q. And I think that was Mr. Aidan Phelan, wasn't it, had

dealings with Mr. Christopher Vaughan on your behalf

prior to March

A. Over two properties, yes.

Q. And had you had any dealings yourself personally with Mr. Christopher Vaughan, or did Mr. Phelan conduct the business?

A. I had never met Mr. Vaughan at all.

Q. And the two properties which, am I correct in thinking, it was Mr. Phelan would have had the dealings with Mr. Vaughan on your behalf in connection with the two properties you had an involvement?

A. Yeah, one of them was a property, an office retail block which I have never even seen, in Luton. And the other one was, we bought Doncaster Rovers. We sold the football club and owned the stadium. When I say "we", "I", sorry.

Q. You, yes. And just to explain that, in towns and cities in England, there are football clubs close to centre-city or centre-town locations, isn't that correct, that have a development potential, and the idea is if you can move the club onto a new stadium on the outskirts of the town or city, you release the property for development. That's the general theory?

A. I wasn't interested in the footballing side of Doncaster Rovers.

Q. That's the general theory, isn't that right?

A. Yeah, that's right.

Q. Now, particularly in relation to the Doncaster Rovers transaction, I think your name had to be kept confidential, isn't that correct?

A. Well, yes, for a number of reasons. One, I didn't want my name associated, because although it was a friendly deal with the board, I just didn't want running a public company and then becoming involved in a football club is not a great combination; that investors in ESAT would have said, you know, "Our CEO is now going into the football business", which really wasn't true. So that was the main reason.

Q. There'd be another reason as well; if supporters of a club got wind that somebody who was perceived as being wealthy was around the place, it might be more difficult to effect the movement to a new stadium, or something like that?

A. It was a friendly move, because the Council there wanted the club to move out of Doncaster and out to a new land that they were going to make available, and then there was a local, very wealthy businessman who actually wanted to buy the football club. So everything went pretty smooth. And I am still an owner of the property.

Q. So can I take it that, as you have said yourself very fairly in the witness-box, you owned the club on the property transaction that was effected by Mr. Vaughan, and Mr. Phelan was your agent in your dealings with Mr.

Vaughan?

A. Yes, he would have been the person in charge of the deal, yes.

Q. And in respect of the other property in Luton, which was an office, small office block, again, were you the principal in that particular matter, and was Mr. Phelan your

A. No, no. We did that one that one, we actually did it together, because he wanted to do it. And then he said, "Look, do you want to come in on it?" And I said, "Well, we only put in a modest amount of money each," and I think there was a company set up to do that.

Q. When Mr. Phelan sought your permission to get an advance on fees of $\frac{1}{2}$ 300,000, did he tell you that he was about to engage in a property transaction with Mr. Michael Lowry?

A. No.

Q. I take it it would have started alarm bells ringing in your head if he had suggested that he was going he, Mr. Phelan was going to engage in some sort of property deal with Mr. Michael Lowry?

A. Not necessarily.

Q. Would it have caused you any concern?

A. I would have asked a couple of questions, but I wouldn't have been concerned.

Q. Well, I wonder, Mr. O'Brien, as you say, there had been

in the media, over the years, comment made about the licence, the obtaining of the licence, and matters I'll deal with the media first of all. There had been comment about the licence, in general terms, isn't that correct?

A. Yes, there was a lot of comment. But I wouldn't pay any attention to that. I was very happy to have lunch with Michael Lowry, be seen with Michael Lowry, talk to Michael Lowry. I don't see any problem whatsoever.

Q. Well, let's leave the media aspect of it aside.

A. Okay.

Q. And now let's go back and examine or ask you about what had transpired inside ESAT Digifone sometime previously, particularly around the time of the IPO. Mr. Lowry's name entered the equation there, isn't that correct?

A. That's right, yes.

Q. And it became quite a significant issue for the shareholders and the directors?

A. That's right.

Q. And there was undoubtedly, amongst your fellow shareholders at least, and your fellow directors, a sensitivity about Michael Lowry, wasn't there, as to whether there would have been any financial or business connection between you or anybody on their side and Mr. Lowry? Would that be fair?

A. And there was none.

Q. Yes, but would that be a fair way of summarising it?

A. Obviously in my evidence I have explained the situation.

Q. But you are saying that by March of 1999, it would not have caused you any concern if somebody who acted as your agent, and was known to act for you, was to enter into some sort of a financial deal with Mr. Lowry?

A. I didn't know what clients Mr. Phelan had. If he had a client

Q. I understand that.

A. Okay. So who he was in business with, what he did with his own personal net worth, I didn't know what he was doing. I was only in one business no, two business with Aidan Phelan; that was a tower on a mountain and the Luton property, as far as I can remember. That was the only two.

Q. But apart from Mr. you being a client of Mr. Phelan and Mr. Phelan having other clients also, Mr. Phelan, I think you will accept, was recognised as having a close association with you in Dublin business in financial circles?

A. He would have been one of many people. There was a circle of business associates of mine, and he was one of them.

Q. But he would have been one of them?

A. Yes, he would, of course.

Q. And I think he himself he handled your personal

financial affairs. Would that be

A. Up to a certain period of time, yes.

Q. Because I think he said in evidence himself if he had been described as your money man I don't mean your bagman, but your money man, somebody who looked after your money and your affairs he wouldn't quibble with that particular designation of himself?

A. Up until yeah, sort of middle of '99, he was certainly in that role.

Q. And that's why I am intrigued that you would say that it wouldn't have caused you any concern if Mr. Phelan had informed you that he was going to enter into a business relationship or transaction with Mr. Michael Lowry. But you say it wouldn't have caused you any concern?

A. Well, he wasn't doing anything that was illegal or improper. That's why I say I am not concerned.

Q. If you had known that the money that was going to be used for a joint venture or a property transaction involving Mr. Phelan and Mr. Lowry came straight out of your bank account, would that have caused you concern?

A. Well, when somebody comes to you and looks for their fees and you say, "Okay, pay yourself the fee", nearly in a hundred percent of cases you are not going to say to the person, "What are you going to do with your fee? Are you going to buy a car? Are you going to buy a kitchen, or something like that?"

Q. That's a fair point. I accept that.

A. And that would have been my view at the time.

Q. Right. But this money and I can understand that if you had written a cheque, or if Mr. Phelan had wired the money to his own bank account or an account of his; but this went straight to the client account of Mr. Christopher Vaughan?

A. I didn't know that, so...

Q. I know that is your evidence, Mr. O'Brien. But I am asking you, if you knew at the time that this money was being sent by Mr. Phelan to a solicitor who carried out work on your behalf in respect of property dealings in England and that it was to be a property deal involving Mr. Michael Lowry, would it have caused you concern?

A. No.

Q. It wouldn't have. Does that seem plausible, Mr. O'Brien, that it wouldn't at least have caused you concern, discomfort?

A. You see, I don't have any discomfort, because if Mr. Phelan wants to go into business with Mr. Lowry, that's none of my business. Like, my view on Michael Lowry is that he made a lot of mistakes in his career, but people shouldn't disown him. And there were ministers in government that went out of office and that I still would be on friendly terms with them, and that's all. I mean, that's all you can do in life.

Q. Yes, but would you agree with me that a particular

sensitivity might surround Mr. Lowry, in that Mr. Lowry was the minister who awarded the licence? Do you understand me? That he was in a different position from the point of view of sensitivity to other ministers?

A. Well, there is a small amount of sensitivity, but we won the licence fair and square. There was nothing untoward in that. And in fact, if the Tribunal is going to look into the licence, I would be more than happy with that, because I have always said from the outset, we need a big investigation to kill all of this innuendo about the licence. And you can be assured that, as in this case, you will get every piece of cooperation again from me.

Q. But at the time that you had the conversation with Mr.

A. Barry Maloney, sorry, yes.

Q. Mr. Barry Maloney

A. Yes.

Q. and at the time of the IPO

A. Yes.

Q. you had thought about giving some financial assistance to Mr. Lowry, whether it be by way of loan or donation or whatever?

A. Well, as I described, it was a brief thought.

Q. No, yes, you had the thought

A. It was a bad thought

Q. and you said that you had thought better of it because it wouldn't have been the appropriate thing to do?

A. Correct.

Q. And can I take it it would not have been the appropriate thing to do because of it might be misconstrued, even, that some favour had been obtained in respect of the grant of the licence from Mr. Lowry? Was that

A. I can't precisely remember what I said, but I think broadly what you are saying, Mr. Coughlan, is right.

Q. In broad terms. I'll deal with it both ways. A, if you made it, people might legitimately draw the conclusion that you were making a payment to Mr. Lowry for a favour; or B, people could get the wrong end of the stick, and when your intentions were totally benign, draw the wrong conclusion. Would that be the way to look at it?

A. Yeah.

Q. But by 1999, when the money was coming out of your bank account, and it really is because it comes out of your bank account. I can understand if Mr. Aidan Phelan, you know, had fees or money from somewhere else and went into this, you might still sort of say, "Well, Aidan, I wonder if it was the wisest thing to do"; but when it comes directly out of your bank account, are you still saying that it didn't cause you it does

not cause you some concern now?

A. Well, he came to me and said "Look, can I get an advance on my fee?" I said "Fine." And as in something like this, he wrote me a note and said "I am drawing money." I said "Fine." I did not ask him what he was going to do with the money.

Q. But what I am really trying to find out from you, it does not cause you concern that this happened?

A. No, it doesn't, because it's all above board.

Q. And the fact that you are some way associated, even on your own evidence merely by paying Aidan Phelan some fees, that doesn't cause you any concern?

A. I would have a view that that's I paid him his fee. I didn't ask him what he was going to do with his money.

Q. As far as you are concerned, it's merely a coincidence that Michael Lowry has an association albeit one at arm's length with you, in that the money came out of your bank account?

A. I look at it differently. Somebody came to me who was working for me and said "Please pay me." I said "Fine, I'll pay you." And in this circumstance, I didn't use a cheque, but I did a bank he came to me and said "I want to pay myself out of the bank", and I said "Fine." And that was the end of the matter.

Q. I understand that, at that time; I am asking you to look at it now, to look back at it. And I am asking

you now, does it cause you any concern or discomfort, the fact that you had become associated with it because the money that was used came out of your bank account?

A. I don't see myself as associated, and I don't have concern as to him going and doing and buying a building, or whatever he did with the money. It's his affair what he does with it when he gets paid a fee.

Q. Well, the property was in Michael Lowry's name, and has always been, and to this day remains in Michael Lowry's name. Now, there was a document drawn up which is called a joint venture agreement, and that was drawn up after the property was purchased, whereby Mr. Phelan and Mr. Lowry signed a document, and Mr. Phelan has 90 percent holding in the joint venture and Mr. Lowry 10 percent. But a property was bought in Mr. Lowry's name.

A. I am not aware. Obviously I have seen some pieces of paper, and I have listened to people's evidence, but I am not aware of what the arrangements were, what the deal was, or even where the property was. I know of Cheadle, but I don't even know where that is.

Q. Right. But to come back to the point, even with the benefit of hindsight, it doesn't cause you any concern or the forming of any view that it may have been inappropriate to use money out of your account to make a purchase in the name of Michael Lowry?

A. With the distinction I paid a fee, and I don't have any

other problem after that. Somebody came to me: "Pay me the fee." What they did with the money, Mr. Coughlan, afterwards was their matter. I don't question, if I pay a fee to a professional adviser, what they are going to do with the money.

Q. Mm-hmm.

Was it usual to obtain a request for fees or an advance on fees in this way, there being no invoice, no breaking down of the fee into the amount of the fee?

A. Very much so.

Q. The VAT that would be applicable to it?

A. Well, it was an advance, so I don't know with an invoice, you can do an invoice on an advance, I am not sure. But when Phelan and I agreed the fee, he'd list down a few things, and we'd agree a fee. It could be an hour

Q. I understand that, but in respect of an actual payment, I mean the advance, would it not be more usual to receive an invoice?

A. Sometimes. Well, if it was an advance, I don't know what the accounting treatment is on an advance as this was. I don't think an invoice is involved.

Q. And to this day, have you ever received an invoice?

A. Mr. Phelan has sent me invoices over the years, yes.

Q. No, for this particular advance.

A. You see, we thought that we would get liquidity out of Versatel, and it hasn't happened. In other words, we

thought that we could sell our shares reasonably quickly and that lock-up agreements would go away, but then the company ran into some difficulties, so...

Q. And can I ask you this: Was this particular fee ever taken into account in any of your own accounts which were prepared for the period, your own personal accounts?

A. You see, I don't run like a company; I don't have a profit and loss. I just have incoming income, which would be salary, bonuses, sale of shares or assets, and then outgoings, which would be my costs.

Q. But would this not be a fee payable to a professional adviser?

A. It wouldn't be well, it's an outgoing, but I wouldn't be doing a profit and loss. I would just list out everything that I pay during the year, and you really reconcile it with the bank more than anything else.

Q. And were you non-resident at this time?

A. In no, I wasn't.

Q. In 1999?

A. No.

Q. So the only document which exists is sorry, the only documents which exist are the two memoranda: The first one, whereby the fee is agreed, and the second one, in respect of the advance?

A. That's right, yes, as far as I know, yes.

Q. If it were suggested to you, Mr. O'Brien, that there is no reality in the proposition that that is how you and Mr. Phelan would have conducted your affairs, what would your response be?

A. I'd argue strongly against that.

Q. Now, if I may move on for a moment to the second property, which is the Cheadle property, the one in Cheshire.

After the purchase of the Mansfield property, Mr. Vaughan retained in his client account about 45-odd thousand pounds sterling, which was the balance of the £300,000 which had been wired into his client account by Mr. Phelan in March of 1999. And on the 8th September, £44,000 sterling was paid out of Mr. Vaughan's client account as a deposit on the Cheadle property. Now, this particular property is, on the face of it, a different type of transaction to the Mansfield transaction, in that it was not to be part of the joint venture between Mr. Phelan and Mr. Lowry, but it was a transaction in which Mr. Lowry was solely involved. Do you understand?

A. I am taking your evidence, yeah, or if that's the evidence that's been given, I am taking it at face value.

Q. And it would appear that a company called Catclaus Limited was the vehicle whereby this particular property was going to be taken. And Mr. Lowry it

was a vehicle for Mr. Lowry and his daughter; the directors of the company were Mr. Lowry and his daughter. And on the 20th December, 1999, various documents were signed by Helen Malone and Aidan Phelan, they being the documents of Investec Bank, to enable a loan to be made to Catclaus to complete the purchase of the Cheadle property. Did you know anything about that?

A. No.

Q. On the 21st December, 1999, Investec sent the money to Christopher Vaughan, he having provided the routing instructions, and the purchase proceeded, but the property appears to have been taken in the name of Mr. Vaughan and his wife. Did you know anything about that?

A. Only from what I have heard in evidence earlier in the summer.

Q. During the year 2000, did Mr. Phelan tell you anything about this particular transaction?

A. No.

Q. Did Mr. Phelan ever tell you in the summer of the year 2000 that he had had a meeting with Mr. Vaughan, and Mr. Lowry at which Ms. Malone attended to take notes?

A. Definitely not, no.

Q. Did Mr. Phelan have any discussion with you on or after the 28th February, 2001, after he had had a meeting with Mr. Cullen and Mr. Morland of Investec Bank?

A. No, no he didn't.

Q. Did you know Mr. Cullen?

A. Yeah, I knew him quite well, yes.

Q. You didn't know Mr. Morland, did you? Or did you?

A. No.

Q. Did Mr. Phelan make any contact with you about this particular matter before you were informed of events when you were on a skiing trip where Mr. Cullen was present?

A. No, he didn't.

Q. He didn't?

A. No.

Q. Now, I think, attached to your own statement, I think there is a memorandum or notes of a meeting which was held on the 28th February, 2001, at the offices of Aidan Phelan Consulting, and this is a note which was prepared by Mr. Morland of Investec Bank. Do you have that note?

A. I am sure I have it here. Is this a telephone conversation?

Q. No, it's notes of meeting held on the 28th January, 2001, at offices of Aidan Phelan Consulting. It's a full-page note 28th February, I beg your pardon.

It's a full-page note.

A. Yes, I have it.

Q. And you can see I'll just run through the first part of it: "The bank stated that the purpose of the

meeting was a follow-up to a meeting in January between Aidan Phelan, Michael Cullen, and Michael Tunney."

You know who Michael Tunney is, I think?

A. Yeah. Who wrote these notes?

Q. Mr. Morland made these notes.

A. Did he? Okay.

Q. "And that the documentation and the security for the loan were still in an unsatisfactory condition."

Then there is a point: "Aidan Phelan apologised for not attending to the bank's request to formalise this facility, however stated that from a credit viewpoint, the bank had nothing to be unduly concerned with as this was a DOB" and I think that is a reference to you, Denis O'Brien "transaction and he would ensure that the bank was looked after. Aidan Phelan would do everything necessary to sort out the bank's documentation problems.

"When asked why the transaction had not closed and the loan repaid, Aidan Phelan informed the bank that the 'other business' events had taken precedence over this matter."

Then it goes on to discuss security.

"Aidan Phelan inquired as to whether the bank still required the guarantee of John Daly. The bank said that it did not think so, and asked how he had become involved in the transaction in the first instance.

Aidan Phelan stated that 'they were only try to help Michael Tunney out from a credit viewpoint to enable the transaction to be banked in the first instance'.

"On the property itself, the bank informed Aidan Phelan that it had been brought to their attention that the property was registered into Christopher Vaughan, (the solicitor to Catclause) and his wife, and that the bank were finding it extremely difficult to extract information from Christopher Vaughan in relation to this deal. The bank also informed Aidan Phelan that they had requested Christopher Vaughan to forward the title deeds and a copy of the trust deed to their lawyers in Cardiff.

"Aidan Phelan informed the bank that Christopher Vaughan had been instructed not to reveal any information relating to matters concerning Aidan Phelan or Denis O'Brien without instruction from the principals themselves. He acted for Denis O'Brien on property transactions in the UK, such as the 'Doncaster Rovers' transaction, where confidentiality and privacy were required. Aidan Phelan would instruct him to cooperate with the bank in the matter."

Now, I think that completes the references to you in that particular note, I believe, so do you wish me the read the whole lot?

A. No, that's fine.

Q. First of all, if we could deal with the last matter

that I read from the note, where "Aidan Phelan informed the bank that Christopher Vaughan had been instructed not to reveal any information relating to matters concerning Aidan Phelan or Denis O'Brien without instructions from the principals themselves. He acted for Denis O'Brien on property transactions in the UK, such as the Doncaster Rovers transaction, where confidentiality and privacy were required."

I think you have confirmed in the in evidence this morning that that is factually the case?

A. Because of the circumstances of Doncaster Rovers.

Q. Yes. And that is not information which would have been known to the bank?

A. I don't have

Q. They didn't fund the transaction?

A. No.

Q. So that seems to be a true reflection of the facts?

A. Well, again

Q. As of that time?

A. Again, this is a note from a fellow from the UK. I don't know what Mr. Phelan said in his evidence about this note.

Q. But I am asking you here if this truly reflects the state of affairs which existed. Mr. Vaughan did act in respect of the Doncaster Rovers transaction, and confidentiality was essential because of the nature of the transaction and what was involved?

A. If we pick certain things out, yes, from my evidence today, confidentiality was something that was important to the Doncaster Rovers transaction, and also the fact that Vaughan and I didn't know at the time that he acted for me, but he did.

Q. Well, if Mr. Morland's note is correct as to what Mr. Phelan said, it would appear at the beginning of the note that he informed the bank not to be unduly concerned, as this was a Denis O'Brien transaction.

A. What did Mr. Phelan say in response to this, and what did Mr. Tunney say?

Q. Mr. Phelan was unclear in his recollection in relation to this matter.

A. I wasn't at this meeting.

Q. I understand that.

A. When I read this, I was horrified.

Q. Why?

A. Because it has a reference to me in this which is not true.

Q. Very good. Now

A. If I was involved in this, the bank would have raced out and got a guarantee for me to sign.

Q. Is that your view? I am interested.

A. Well, I mean, banks when people go in and borrow money from a bank, or they say they have a guarantor, or they have somebody standing behind a loan, the first thing they do is get a guarantee form out and ask for a

statement of net worth.

Q. Well, I think there was evidence from some bank witnesses that neither you that you had never let the bank down in the past, if I could put it in broad terms like that.

A. Well, I don't think that has

Q. Any dealings you had

A. That has nothing to do with this, though.

Q. What I am asking you is this: It's correct, though, isn't it, you had never let the bank down? Any facilities you had ever obtained with the bank had been dealt with and met appropriately?

A. Of course, yeah, yeah. But I have never had a situation where the bank would perceive that I am involved in a transaction, or think that I was involved, without them clarifying that with me.

Q. Well, Mr. Phelan had acted as your agent in respect of matters, isn't that correct?

A. Not in relation to raising loans. I always signed loan documentation. Or guarantees, for that matter.

Q. Right. Now, if you look at the if you go to the next document, which is headed "File note", it's a telephone conversation between Mr. IRW that's a Mr. Wohlman, who would have been a senior executive of the bank from London and Michael Tunney, which is dated 12th March, 2001.

And it reads: "Michael Tunney has been trying to

contact me and telephoned me at Investec's office in Dublin.

"Michael Cullen initially took the call and passed it to me. Tony Morland and Eddie Byrne were also present with Michael Cullen in the same room.

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

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

"He went on to say that Aidan Phelan confirmed he would sort all documentation out and ensure the bank was repaid. He stated that Aidan Phelan's attention to documentation was not good and Aidan Phelan had misunderstood our requirements."

A. Can I ask you sorry, do you mind if I stop you there

for a minute?

Q. No, not at all.

A. In the previous memo, dated the 28th, he seemed to know who Denis O'Brien was. In his second

Q. Sorry, the previous one was made by Mr. Tony Morland.

A. And who made this one then?

Q. This is a note made by Mr. Ian Wohlman, who would have been a senior executive from London who had come over.

Now, I'll continue: "He confirmed that Catclause was

the borrower and purchaser. I informed him a that

Aidan Phelan was not a director of Catclause, but a

Mr. and Ms. Lowry were. He said he now appreciated

that, but Aidan Phelan would ensure we were prepaid.

He believed Aidan Phelan had written to the bank to

that effect.

"I stated I had not seen the letter but would obtain a

copy and come back to him as to what Aidan Phelan was

saying.

"Michael Tunney seems to focus on the credit risk and

not the reputational risk if there was a confirmed link

between Denis O'Brien and Michael Lowry."

Now, if you then go to the I'll come back and deal

with it and let you make any comments you wish,

Mr. O'Brien.

A. Fine.

Q. If you go to the next document, which is a handwritten

document, and again this is made by the same gentleman, Mr. Wohlman, and it was made on the 13th March, 2001, at 7.30 p.m. on his mobile.

"Michael Tunney telephoned as he was concerned the position regarding Catclause was escalating, and he felt reputationally responsible to find a resolution to questions that had been asked.

"He was contemplating returning from the French Alps, where he was skiing, to contact Aidan Phelan and his solicitor to obtain clarity and review files.

"I advised that it was his judgement if he felt he should return, but any effort to seek answers to questions raised of Aidan Phelan or his lawyer would be appreciate. I also stated it would be inappropriate to review Investec Bank's files or represent that he was working for Investec Bank as he was not employed by that company.

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

"He stated that Aidan Phelan told him Denis O'Brien was behind the transaction. I informed Michael Tunney that I would be writing to him to seek written responses"

the bottom is cut out

A. "We would also be writing to Aidan Phelan..."

Q. Yes. "We would also be writing to Aidan Phelan and Christopher Vaughan to answer questions." And it's signed by that man.

Now, can you understand how Michael Tunney, on the 12th March and the 13th March of 2001 is informing Mr. Wohlman of Investec Bank that you stood behind the transaction?

A. I don't understand that, no. But I'd like to hear I don't know what the other people said in evidence.

Q. He says

A. Mr. Tunney, Mr. Phelan.

Q. Now, Mr. Tunney went on to say in evidence, as he says in that second note, that Aidan Phelan told him that you stood behind the transaction, and he then went on to elaborate that it was his understanding that you stood behind Aidan Phelan in a general way as opposed to a specific way. Do you understand the point I am making?

A. I understand the point you are making. But it says here that this fellow I don't know whose note the handwritten one is

Q. Mr. Wohlman.

A. He was writing to me.

Q. Pardon?

A. He was going to write to me. He never wrote to me.

Q. If I could just go back to the 12th March, 2001, or the 13th March, Mr. Tunney was skiing in the French Alps.

I think you were also present, weren't you, there?

A. I was on a different trip. I was with my family.

Q. Yes, but you were there?

A. I was

Q. In the same location?

A. We were not staying in the same hotel. He was staying in another place. I don't know where he was staying.

Q. Did he speak to you in France?

A. Yes, he did.

Q. And what did he say to you?

A. He rang me one evening on my mobile and said, "Look, I want to come and see you and talk to you about something." I said, "Fine." And he came up to my hotel. I went downstairs to meet him in the bar, and he looked pretty agitated.

We had a drink, and I said "What's up?" And he said, "You are linked to a property transaction in Ireland in relation to a company" I don't know what the company was at the time. And as far as I can remember, he also mentioned something to do with the Central Bank, that the central Bank was involved in this.

Q. Yes, they had gone to the Central Bank on that day.

A. Yeah. And I was first of all I asked him a couple of questions, and he was fairly vague on the detail.

Q. What did you ask him, to the best of your recollection?

A. I asked him, "What is this about? How am I involved in it?" And you know, "Why is this a problem?"

And it's when he explained to me the full details, where supposedly my name was linked to a loan that would involve Michael Lowry, I became very angry.

Q. You became angry?

A. Yes.

Q. And did you tell him that?

A. I would have known immediately. Like, I was pissed off with him. And I was annoyed with him for a number of different reasons. One is that was the first I heard of it, and secondly, why would my name be linked with a loan that I knew definitely I was not involved in? And thirdly, why would a bank that I had a relationship for 13 years race off to the Central Bank without telling me?

Q. Can you remember when that was?

A. That was on the evening of the 13th of I think it was the 13th March. Now, I wouldn't be precisely sure, but I was seriously concerned about this. And I actually lent him an aircraft to get home, because I said, "Get to the bottom of this, because I am not involved in any loan."

Q. And what upset you about it?

A. Well, it upset me that first of all, my name was being linked to a loan that I wasn't involved in.

Q. Right.

A. And the thing that really annoyed me was that the bank didn't come to me, Michael Cullen in particular, and

ask me whether I was involved in the loan. And my name now, subsequently, I have seen in all these memos, has been bandied about all over the place.

Q. Did you know the roughly the amount of the loan from Michael Cullen?

A. When I got more details I was away on holidays, and then when I came back

Q. You knew roughly it was about a quarter of a million?

A. Yeah, it was something like that. I don't know precisely how much the money was, but I knew it was a good it was a sizable loan.

Q. I beg your pardon, 400,000. 400-odd thousand pounds?

A. I didn't know it was 400. I thought it was much less.

And when I got back, I first of all tried to get Aidan

Phelan on the phone. He was not answering his phone.

He was away. And then when I came back and I found out

the full detail, I actually phoned Michael Cullen and

had a very strong conversation with him.

Q. He told us that you were firm in your conversation with him, all right.

A. And I asked him, I said, "Am I involved in this loan, in your view?" And he said no, I am not. I said,

"Why, then, are people writing notes, or, you know,

sending letters to the Central Bank to say I am

involved in a loan when you know I am not involved in

this loan?"

Q. When did you come back to Dublin? Can you remember?

A. I think I went home to Portugal first for a couple of days, and then I came back. I'd have to look at my diary.

Q. Okay. It was a few days after the 13th, anyway?

A. It was, yeah.

Q. And did Mr. Cullen come back on the 13th or the 14th?

A. No; Mr. Tunney.

Q. Mr. Tunney; I beg your pardon. Mr. Tunney.

A. As far as I remember, he did take the use of the plane and went home.

Q. And was this because you were annoyed that you were linked to a loan that you didn't believe you had any association with?

A. That's correct. But also the fact that people were going to the Central Bank.

Q. They were going to the Central Bank, I think you would have understood, not because there was a loan, but because there was a perceived link on the bank's files between you and Mr. Lowry, isn't that correct?

A. Well, that was one of the things, yes, but I wasn't sure what the grounds were that they were going to the Central Bank.

Q. Well

A. I know now. But I didn't quite understand what the Central Bank had anything to do with this at the time.

Q. Well, did you think I want to take this slowly, because I just want to tease out with you why you would

have been so concerned. And I know 400-odd thousand pounds is a lot of money, even for you, Mr. O'Brien, but that you would give somebody the loan of a plane to fly back to sort something out which could have been sorted out in the normal course of business. It was merely a question of a loan, a loan which you should not be associated with.

A. But it was so unbelievable. That's why I said to Michael Tunney, "Michael, I don't know how I am involved in this. Would you please go off and find out why."

Q. Wasn't the real sensitivity here, Mr. O'Brien, and correct me if I am wrong, was that your name was linked to Mr. Lowry's in a financial way?

A. Well, that is one thing, but I am involved

Q. Wasn't that the really significant issue?

A. Well, no. I think the most significant issue is that the bank knew full well that I was not involved in this loan. I had never signed anything. Nobody had ever spoken to me, and there were you know, my staff would have been talking to Woodchester Bank on a daily basis. So it wasn't as if, you know, it was an intermittent relationship. And nobody ever raised the fact and said, "Are you behind a loan?"

Q. Does that not convey to you some type of impression that this was so sensitive from their point of view that it wasn't something that was just discussed

loosely, but ended up going to the they ended up
going to the Central Bank to seek the advice of the
Central Bank?

A. If they had any perception that I was involved in this
loan, Michael Cullen knew me, he had my mobile number,
he should have picked up the phone and spoken to me
about it. They handled this

Q. You may be correct; maybe he should have done this.

A. They handled this extraordinarily badly.

Q. What I want to ask you about is, what was so important
about this, from your perspective, that you would give
Mr. Cullen (sic) use of a plane to get back to Dublin?

A. To look into and find out how my name was involved in a
loan that I did not have or take out.

Q. And that was the only reason?

A. That was the prime reason.

Q. And not that your name was linked to Mr. Lowry's on the
bank's documents?

A. That would have been

Q. In respect of this particular transaction?

A. That would have been a secondary concern, but the
foremost one

Q. Tell me about that concern.

A. Well, I knew it wasn't true, but the first thing was I
wasn't involved in the loan. Nobody had ever spoken to
me about the loan. Nobody had sent me a guarantee. I
never signed a facility.

Q. Yes, I know all that.

A. If I ring a bank up and say I am prepared to guarantee a loan, straight away their legal department will be on to me and send me a guarantee, a bank guarantee form.

Q. Tell me about the concern, which you say it was a secondary concern, that your name was being linked to Mr. Lowry's. What concern did you have?

A. It was a less of a concern, in many respects, because I knew I wasn't involved in it. So my foremost thing was, you know, the loan, I had nothing to do with the loan. So whether it was Michael Lowry or AN Other, that was not the thing. It was the fact that somebody was saying I am guaranteeing a loan.

Q. Nobody said that.

A. Well

Q. Nobody came to you looking for the money on this loan?

A. Nobody.

Q. What was being said here and Mr. Phelan is recorded as having said it and Mr. Tunney is recorded as having said it that you were behind the transaction, so there was no need for concern; but nobody was putting any pressure on to pay off any loan?

A. No, no, but I think we'd need to go through Mr. Tunney's evidence and Mr. Phelan's evidence, because I think certainly from their point of view, I mean, these memos are only one person's version of conversations.

Q. Well, I will do that if you wish, Mr. O'Brien. But just in relation to these memoranda, you are not, I think, suggesting for a moment that Mr. Wohlman or Mr. Morland were not attempting, at least, to record as accurately as possible what they were being told?

A. Well, do you want a realistic view?

Q. Yes, please.

A. Banks sometimes put file notes into files that suits their position.

Q. Right.

A. That would be my experience.

Q. Well, is that your view about these?

A. Well, having read this and some other things, I will take the view that the bank had a difficulty with a loan, and they were trying to obviously get the file right.

Q. Well, perhaps it's something I'll come back to after lunch, Mr. O'Brien, in relation to this matter. But are you suggesting or is it your view that your name was being introduced here by the bank to get the file right?

A. I actually don't know, because there is so many different people involved. I wasn't involved. I wasn't sitting in on any of these meetings, not part of the conversations. Nobody was telling me anything to do with this. And the first I knew about it was when Michael Tunney called around to my hotel sometime

around the 13th and dropped a bomb on me, basically.

Q. Could I ask you to think about this: That by your name appearing on the file, a big bomb went off inside Investec, because your name and Mr. Lowry's name appearing on the same file in respect of a financial transaction required Investec to go and seek the advice of the Central Bank?

A. Without coming to me and saying "Is this true?"

Q. I just want you to reflect on that. You have offered as a suggestion I am not saying that you are saying that the bank

A. I am only suggesting, yeah.

Q. that the bank made up this file. But you offered a suggestion that a bank may try to get its file right.

Very good. I can run with that for the moment.

A. Okay.

Q. But by doing what you believe was to get the file right, they ended up having a big bomb themselves, didn't they, because they had bring this matter to the Central Bank?

A. Sorry, I had the bomb, and Mr. Cullen, when I spoke to him, told me that he believed that I was not in any way had no association with this loan whatsoever. When I got that comfort from the Chief Executive of the Central Bank, well, then that was the end of it as far as I was concerned.

CHAIRMAN: It's probably as good a time as any, Mr.

Coughlan, Mr. O'Brien, to defer until five to two.

I think there is just one error on about a page and a half back, where I think you are recorded as asking

Mr. O'Brien: "What I want to ask about is what was so important about this, from your perspective, that you would give Mr. Cullen use of a plane to get back to Dublin?" And Mr. O'Brien replied, "To look into and find out how my name was involved in a loan that I did not have or take out." Obviously Mr. Tunney is the person

MR. COUGHLAN: Sorry. Mr. Tunney.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 PM:

Q. MR. COUGHLAN: Now, Mr. O'Brien, I have had a further look at the transcripts over the luncheon break, particularly Mr. Cullen's and Mr. Tunney's. I am not going to open them in great detail. In fact I don't intend opening them at all unless you wish me to.

A. No, I don't, not at all.

Q. And in broad terms, Mr. Cullen's evidence about receiving a telephone call from you is that you were quite firm and annoyed when you rang him and questioned him, first of all, as to why there was any reference to you and that if you were the customer, why you weren't contacted. I think you would agree that's the broad thrust of the conversation?

A. Yeah, I mean, I didn't understand why they hadn't come

to me, and particularly, they went to the Central Bank knowing that I was a Bank of Ireland director and knowing that that would be a problem, that would be a concern of mine.

Q. And then looking at Mr. Tunney's evidence, and it stretches over a fair number of pages on the transcript of the day he gave evidence, but he kept coming back to the position that it was as a result of Aidan Phelan saying that you were, and I am paraphrasing now, generally behind him or there in some sort of general way as a safety net if Aidan Phelan were to default to the bank. That is why he was telling people that you were behind or that you were behind the credit or the transaction.

A. I am aware of that evidence.

Q. That seems to be the broad evidence that was given by him.

A. Yes.

Q. Now, he was questioned as to why he said specific things to Mr. Wohlman, but that is what he came back to say.

Now, what I'd like to obtain your assistance on is when Mr. Tunney who incidentally says he was on the same skiing party with you; you don't agree with that, do you?

A. No, I booked separately to bring my wife and kids I had one child at the time.

Q. And he had a conversation with you, you believe, and it may well have been on the evening of the 13th March, 2001?

A. Mmm.

Q. He explained to you in general terms what it was about and that there was that your name was linked in the bank's records in some way to a transaction involving Mr. Lowry, isn't that it, in broad terms?

A. That's right.

Q. And there was a loan, and you said that you were concerned, so concerned that you gave him the use of your plane to get him back to Dublin, but that your primary concern related to being linked to a loan, is that correct?

A. Well, linked to a loan that I was not involved that had been escalated to the Central Bank.

Q. And it was a secondary concern that there was a link to Mr. Michael Lowry; is that the way you put it before lunch?

A. Yes, that would be true, yes.

Q. Could you just explain to me the that concern? Can you assist the Tribunal as to what that concern was?

A. Well, I always knew I knew I was not involved in a loan with Michael Lowry, and then I knew that I wasn't involved in the overall loan either. And somebody saying that I was involved in a loan when I wasn't and then the bank going to the Central Bank, I had a

concern about that, with more of a Bank of Ireland hat on.

Q. Yes, I can understand

A. It's serious stuff if a bank goes to a Central Bank.

It's a serious situation.

Q. It's a serious step, the Central Bank being the regulatory authority for banks?

A. That's right.

Q. Of course. But I can understand that you'd be annoyed that you were being associated with a loan which you say you had nothing to do.

A. Mmm.

Q. As regards a liability for that loan, that is something that you would have sorted out in any event. Nobody looked for payment, but if they had, you'd have said to them, "Look, I am not involved with this; I didn't sign anything", or words to that effect?

A. Absolutely, I am not paying it, no.

Q. But it wasn't the question of the loan that took Investec to the Central Bank, was it? It was that your name appeared on the file and Mr. Michael Lowry's name appeared on the file. That's what took them to the Central Bank?

A. I didn't know that at the time.

Q. But looking at it now, you can see that that is the reason they went to the Central Bank?

A. I still don't know whether that is correct or not,

Mr. Coughlan.

Q. And isn't it isn't that the very reason that the Central Bank, whatever advice the Central Bank gave them, they acted on that advice and brought the matter to the attention of this Tribunal?

A. That's what I have learnt now, yes.

Q. And doesn't it appear from just an examination of the documents and the steps they took, appear clear that the concern here was, what was the underlying nature of this transaction, isn't that right?

A. Well, I mean, I am not making any sort of allegations in relation to the documents. These documents are, you know, obviously they have been prepared by two gentlemen that work for the bank, one English, one Irish, and their reports of conversations. So I wasn't party to the conversation; otherwise I would have a particular view. And you know, I wasn't there, and it deals with the issue that we are talking about right now.

Q. Yes, but you are not suggesting can I take it you are not suggesting that these people were not these two people who recorded this, Mr. Morland and Mr. Wohlman, were not just attempting to get the file in order in the bank?

A. I don't know is the answer. I wasn't you know, I was dragged into this. My name is on these documents, or in these memoranda, and basically I had no knowledge

of, or involvement.

Q. Well, according to their records, if they be accurate and I think Mr. Tunney, in his evidence, acknowledged that he did say these things to Mr. Wohlman and went on to give a further explanation about them but if their recording of conversations they had with people in the bank are accurate, or reasonably accurate, it is not people in the bank that is, Mr. Wohlman and Mr. Morland who were involving you, but it was Mr. Phelan and Mr. Tunney who had a close banking relationship with you and were involving you, isn't that correct?

A. I think my view is you know, I wasn't around for these conversations.

Q. Yes. I understand that.

A. I had no knowledge of a transaction involving my name. So I wouldn't like to prejudge what they were really doing at that time.

Q. Right. Well, if I could just ask you this: We know you had a close relationship with Mr. Phelan up to the middle of 1999, you say yourself.

A. Yeah.

Q. And I think Mr. Tunney, in his own evidence, informed the Tribunal that he had a close banking relationship with you for a number of years, would that be correct?

A. For about six/seven years.

Q. And you'd agree with that, would you?

A. Yes.

Q. And Mr. Tunney is a person whom you knew from a banking point of view and perhaps socially as well, would that be fair to say?

A. That's correct.

Q. And these two people who were close to you both mention you as being in some way behind this particular credit or transaction, isn't that right, on the documents that we see?

A. Whatever the evidence I mean, whatever their verbal evidence, or their evidence to the Tribunal is, I wouldn't dispute that.

Q. Both on the evidence and on the documents, these two people were close to you. Now, there is no suggestion that either of these people would have wanted to involve you inappropriately in anything, would you agree?

A. I wouldn't have thought so, no.

Q. Now, the concern, and I know that you have given evidence that it was the secondary concern, but the concern you had that you were being linked to Michael Lowry in this particular transaction, could you just explain to me what that concern was, to the best of your ability?

A. Well, allegedly I was involved in guaranteeing a loan for Michael Lowry, or some sort of a banking transaction whereby I was assisting him to get a loan.

Q. Yes? But why should that cause you concern?

A. Well, it's more of a concern that I didn't know about it. I wasn't involved in it.

Q. So can I take it that the fact that your name was linked to Michael Lowry's name was not a matter of concern?

A. Not that much of a concern. It's the same as any other say, a third party saying that the bank thinking that I am involved in guaranteeing a third party or helping them in any way, when I know that that's not the case.

Q. I can understand that on the loan side, if you understand me. But you said you had two concerns; one was that you were being associated or involved in a loan, and you had nothing to do with that loan; I can understand that.

A. And the behaviour the bank was the other part on that.

Q. I understand that. If somebody said that I owed £400,000 to a bank when I wasn't involved in it, of course it's a matter which would cause you concern.

But you said that there was a secondary concern, and it was because your name was being linked to Michael Lowry's name on this credit transaction.

A. Yeah.

Q. I am trying to understand that concern. Do you understand the distinction I am trying to draw between being concerned about a loan

A. Yeah.

Q. and being concerned about your name being linked to Michael Lowry's?

A. I understand that.

Q. It's the second one I am trying to tease out with you to see if you can assist the Tribunal.

A. It's more the fact that I wasn't involved in the loan and suddenly I am allegedly, according to the bank, a guarantor for a loan for Michael Lowry.

Q. May I come at it this way: May I take it you would not have gone as a guarantor for Michael Lowry?

A. Probably not, no.

Q. And can I take it that that is because you might have considered it at best unwise, and at worst probably something that would start speculation going again that there had been some connection

A. Yeah, it would be misconceived.

Q. So can I then take it, therefore, that and I am trying to tease this out with you that that was the concern about your name and Michael Lowry's name being linked, that it might at least be misconceived?

A. Yes.

Q. May I ask you then why you don't have a similar concern about the Mansfield property transaction, in that money which came straight out of your own account I know to Mr. Phelan as an advance on fees was used to purchase property? Would you not at least have the

concern that it might be misconceived?

A. Well, I know my view on this, and we have different views on it.

Q. I know we have been over it, but I am trying to bring it back there, having attempted to understand a concern you would have at being linked with Michael Lowry, and bring it back to this morning and just inquire further:

Would you not at least have had the same, or do you not now at least have the same concern about a link with Michael Lowry?

A. I think it's two different circumstances completely. In this case I didn't even know that the bank believed that I was involved in this loan until I was told about it, and then, in the most vigorous terms, I told the Chief Executive.

Q. I take it you have no difficulty in now seeing that when this was viewed by people in the bank, particularly probably the more senior people in the bank, and there appeared, on the face of it, to be a link between yourself and Mr. Lowry, that the view they came to that this was a matter for I think they describe it in the memorandum "for the big M", meaning the Moriarty Tribunal, how that could come into their mind?

A. I think a phone call would have clarified it.

Q. Yes, I know, but in the first instance, can you see how that would come into their minds?

A. I can see exactly where you are coming from, yeah.

Q. And if they had spoken to you on the phone at that time, you would have told them that you had nothing to do with this, is that correct?

A. Definitely.

Q. And they'd have had to go back and take the matter up with Mr. Tunney and Mr. Phelan, just like we have done it in the Tribunal here, isn't that right?

A. Yes.

Q. Would you agree with me that all of the issues about which you have been asked at the Tribunal, and I'll start with the political donation, the conversation with Mr. Maloney, Mr. Barry Maloney, the purchase of the house in Spain, the Mansfield transaction, and the Cheadle transaction, all involved to a greater or lesser extent a connection with Mr. Michael Lowry? And I just go a little bit further in relation to the political donation: Mr. Lowry appears to have been the Chairman of the fundraising committee at that time and a trustee of Fine Gael, but in that but would you agree that to a lesser or greater extent, there is a connection with Mr. Michael Lowry in all of them?

A. I wouldn't agree with you.

Q. Which ones do you not agree?

A. Well, first of all, the political donation; I never knew he was a trustee of the Party until the Tribunal started.

Q. I am not asking you for your state of the knowledge. I am asking you looking at it objectively.

A. I am trying to be objective. The conversation with Mr. Maloney, I never mentioned Michael Lowry's name.

Q. Sorry, you did inform us you did inform us that well, leave aside you did inform us that you formed a view at that time and changed that view fairly quickly, isn't that correct, involving Mr. Lowry?

A. Well, the conversation with Mr. Maloney was about two payments, but I know my evidence and his evidence right the purchase of that house had nothing to do with Michael Lowry.

Q. A connection, I am saying a connection. The money that went to Mr. Austin found its way to Mr. Lowry, isn't that correct, the same monies?

A. Well, we didn't I didn't know once I bought a house off David, I didn't know that he was going to subsequently, some months later, lend money out to Michael Lowry.

Q. Perhaps if we start this again, and perhaps we are misunderstanding each other. I am asking you to look and look at all the evidence you have heard now

A. Mmm.

Q. and I am asking you about a connection. Do you accept that in that regard, there was a connection; money went from an account of yours to Mr. Austin which

went to Mr. Lowry?

A. I don't see the connection there at all.

Q. You don't see the connection?

A. I am sorry if we differ on that.

Q. Very good. The Mansfield property, a connection to Mr. Lowry?

A. Again, I don't see the connection. Somebody comes in, gets a look for an advance on a fee. I pay them.

Q. Right. And the Cheadle property?

A. The Cheadle, I think we have kind of went over that this afternoon, but again, I wasn't involved in it.

Q. So is it your view that there is no connection with Mr. Lowry in any of these transactions?

A. Yes.

Q. That's your evidence?

A. That's my view.

Q. And that's your evidence.

A. Yes.

Q. Now, if, if the view were to be taken by the Tribunal that there was a connection in relation to these transactions, can you assist the Tribunal as to whether that would be just a matter of coincidence or bad luck on your behalf?

A. I don't think, when the Chairman comes to his conclusions, he will look at it from a coincidence or bad luck. He will look on the facts, hopefully, and my evidence, the material I have made available totally

openly. I haven't hid behind any privilege. I hope I have been seen as a cooperative witness.

Q. So in the first instance, you say that nobody could form the view that there was a connection?

A. That's my view, yes.

Q. In any of these matters?

A. Any of them.

Q. Thank you very much, Mr. O'Brien.

A. Thank you, Mr. Coughlan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

MR. FITZSIMONS: Yes, I have some questions, Sir.

Q. Now, Mr. O'Brien, I think it's fair to say that you disagree with the Telenor evidence, just as the Telenor witnesses disagree with yours?

A. I think that's fairly clear at this stage.

Q. I just want to refer to evidence you gave back on day 123, 28th June, 2001, page 115, question 471. This is Mr. Coughlan can it be put on the screen?

A. Do you want to read what it is?

Q. Perhaps it is a point I could perhaps read and just you are being questioned by Mr. Coughlan, and on one of the meeting memoranda, and question 471, in the course of considering the contents of the memoranda, you say, and I am quoting: "And I am surprised that Mr. Digerud hasn't been asked to give a statement. I know we have written to you about this, but absolutely no. Mr. Digerud was the assistant or

Joint Chief Executive or even Chief Executive at the time before Barry Maloney arrived."

So you are saying then that you were surprised that Mr. Digerud hadn't been asked to give a statement, and of course there was no sign of Mr. Digerud back then, on the 28th June, 2001, isn't that so?

A. No sign of him in what context?

Q. He hadn't given a statement. There had been no intimation that he was going to be here, and here you are saying, putting it down on the record that you are surprised that Mr. Digerud hasn't been asked to give a statement, presumably to support your version. I mean, I take it that's the message you intended to get across?

A. I was surprised that he hadn't at that time been asked for a statement.

Q. And you say, "I know we have written to you about this, but absolutely no" in other words, your solicitors had written to the Tribunal to try to get a statement from Mr. Digerud, presumably because you felt he would support you in some way?

A. No, it would have been interesting to hear his evidence.

Q. Now, if you go onto the next day's evidence, that's day 124, page 109, question 455. This time you are being cross-examined, and you are being cross-examined about the invoices and the shredding. Now, question 455, at

line 1 of that page, and I'll just read the question.

"Question: You suggested at the outset, and you repeated it sorry, I'll start again. On this topic, when you first gave evidence, you said that you suspected that Mr. Thygesen had given the instruction to shred the invoice?

"Answer: Well, he was the Chief Executive, and then he was followed by another Telenor representative, Mr. Knut Digerud, and he has disappeared mysteriously, and we want to hear of his evidence. I certainly do."

And again of course on this day, day 124, 29th June, 2001, there still was no sign of Mr. Digerud; he hasn't been asked to give a statement. He hasn't made a statement, and here are you asserting that "He has disappeared mysteriously, and we want to hear of his evidence. I certainly do."

The implication is that if he was here and had given a statement, he would give evidence that would support your version of events, isn't that so?

A. No, no, we wanted to I think what I was really saying there, Mr. Fitzsimons, was that it would have been interesting to hear his evidence, as it was interesting to hear his evidence or reports of his evidence last week.

Q. Why do you say he has disappeared mysteriously, as if there was something odd about his non-appearance as of the 29th June?

A. Well ,it's been known that he was centrally involved, and I would have thought by June last, it may have been important for him to be a witness or to issue a statement to clarify it.

Q. Yes, but I mean, you are asserting that he has disappeared mysteriously. I mean, what did you know of his availability or non-availability at that time, apart from the fact that he had made no statement and there was no suggestion that he was going to be produced as a witness?

A. It was a mystery as to why, given his central involvement, that he was not making a statement.

Q. Okay. You accept he has a central role?

A. Well, we now know he has a central, absolutely a central role, but at the time we hadn't heard his evidence, but his evidence would have been interesting to hear one way or the other.

Q. Now, if we move on again, still day 124, move on to page 111, question 468.

And the question: "Today you mention not just Mr. Thygesen, but you mention Mr. Digerud. He is brought into the equation because you think he is not around, isn't that so?"

"Answer: Well, we haven't seen a statement from him.

The central people on the Telenor side are very silent in giving evidence."

"We haven't seen a statement from him. The central

people on the Telenor side are very silent in giving evidence." We take it you assume at that point in time that only Mr. Johansen would be giving evidence, isn't that so?

A. Well, I'd stand by what I said.

Q. Yes, but you made this assumption, so you felt free to make this statement, the implication of which was that if they were going to give evidence, the central people, that they could fill in the gaps, and that would support your version of events. I mean, that's the only implication from this and the previous statement, surely?

A. Well, what I was really saying there is that Mr. Johansen was left on his own, but these other people and personalities were centrally involved at the time, and I was surprised that they were not coming forward with statements as you'd expect them to. And given the evidence of last week, I would have thought that it would have been more helpful if they had.

Q. Did you know that at the time the Tribunal was I don't know whether this is being fair to the Tribunal, but putting some pressure on to get these people to Dublin?

A. I wasn't aware of what the Tribunal what the secretariat to the Tribunal were doing.

Q. And as individuals, I am sure you'd understand that individuals wouldn't really want to get terribly

involved in this sort of thing, if I can describe it as such?

A. I think it would have been in Telenor's interest to actually produce or get statements from them.

Q. But there is no upside for individuals within or out any sort of organisation or business to get involved in controversies such as this, where suddenly they find themselves on the line, so to speak, isn't that so?

There is nothing in it for them?

A. I think people have to meet their responsibilities. If they are executives of a company and they are asked to appear, well, then they should.

Q. In any event, you wanted them to appear back last June, and they came. Isn't that so?

A. In October.

Q. But they came here, isn't that right?

A. Yes, they came.

Q. And now we have their evidence, isn't that right?

A. We have their evidence, yes.

Q. Now, yesterday when you were giving evidence, you were asked about Mr. Arve Johansen, and you made this is at day 146, page 103, question 553. And the question was:

"Question: And is there anything specific about Mr. Johansen which you believe may have been a motivating factor in him giving false testimony against you?"

Your allegation was that they gave false testimony.

And you say:

"Answer: Mr. Johansen is a complex character. He can be a fantastic guy, he can be a guy that's very stubborn, unchangeable, probably jumps the gun a bit, a competent executive. But I think the Norwegian way is different, their business is different. The way business is done here, people are much more give and take in this country, where in a debate people will say, 'Okay, well let's do it', and not necessarily push their point of view too hard. The Norwegian view is a lot more black and white."

Now, in the context of the controversy between you and Telenor, are you really suggesting here that if these were Irish executives, or Telenor was an Irish firm, that the Irish executives might give way, so to speak, to avoid trouble?

A. No, not necessarily. What I was really getting at is there, is that Arve was a very stubborn guy. His view of the world was the view, and if he believed in doing something and that was his that was his decision, there was no way he would actually change his mind.

Q. But you are talking about the Norwegian way, you are really talking about all the witnesses here, black and white "The Norwegian view is a lot more black and white."

A. I am trying to, in the context of Mr. Johansen, I am

trying to describe his personality.

Q. But it's your word, "The Norwegian view is a lot more black and white compared to the way business is done here. People are much more give and take in this country."

A. Well, let's put it this way: If you have two Irish people and they are trying to negotiate something, there is more likely to be give and take. What we found over five years is in negotiations with the Norwegians, there was much, much less give and take.

Q. Now, if that is if the word "stubborn, unchangeable" is to be attributable to Mr. Johansen, isn't it perfectly logical that he would come here and tell give his evidence as he saw it, without a thought as to the consequences?

A. I think that's a question you'd have to direct to Mr. Johansen.

Q. And similarly, the other Norwegian witnesses, all of whom came here voluntarily, not under compulsion, but because the Tribunal wanted them to come here.

A. What is the question then, sorry?

Q. I am wondering why you complain about their evidence here, when you, last June, wanted them to come to Ireland to give evidence.

A. Well

Q. When you thought they weren't coming, of course.

A. To be very blunt about it, they changed their evidence.

Material from Mr. Johansen's evidence originally was different to his evidence in the last ten days. And then we had the benefit of the two other witnesses as well that suddenly were involved, whereas before, they were not centrally involved, in June.

Q. Yes, you used that term that he changed his evidence, but in fact he didn't change it as such; he added some further information to what he had stated previously, which is quite different from changing what he had said previously, isn't that so?

A. He actually did change it.

Q. Now, I want to move on. The motives that you attributed the Norwegians

A. Do you want me to go into the changes? Do you want me to bother going into the changes, or will we leave them?

Q. I don't particularly, unless you

CHAIRMAN: If you'd like to mention anything particularly, Mr. O'Brien, whilst it's in your mind, feel free to say it.

A. The first of all was that you know, Knut Digerud was suddenly introduced as the conduit between himself, the accounts department, and Per Simonsen. He also introduced Per Simonsen and the telephone calls allegedly between myself and him, which was not in his previous evidence. Then also he said in his previous evidence that I had chased David Austin to write a

letter of thanks or recognition for the donation. All of which changed when the new evidence we heard in the last ten days, and the fact that he now can remember showing me an invoice at a board meeting on the 20th at a break or before the board meeting.

So those would be just some of the differences

Q. MR. FITZSIMONS: You think that they are differences.

The last one is the new evidence, isn't that right, showing you the invoice at the board meeting, that wasn't mentioned before at all. That's just

A. Either was the fact that Knut Digerud was a conduit between

Q. Well, the documents were there, and Mr. Digerud is here to verify that now, and

A. It's pushed away from Mr. Johansen.

Q. Well, it's not, in fact, I would suggest, Mr. O'Brien, because the documents were there with Mr. Digerud's annotations on them back in June, so he was clearly involved in the communication process between

A. And then Mr. Thygesen was allegedly had nothing to do with it, and then Mr. O'Donoghue or Mr. Maloney then in writing said that he had approached him about the invoices.

Q. And your comment about Mr. Simonsen, that's Mr. Simonsen's evidence, not Mr. Johansen's evidence, the phone calls?

A. Well, I am just saying that the Telenor evidence

has well, it certainly in the case of Mr. Johansen has changed, and it has the evidence is much more detailed. And given that these people were friends in one case, and an executive in another case in the same company, I would have thought that they would have known all of this in June.

Q. There are three more witnesses who have given evidence, the Tribunal wanted them to give evidence, so it's not surprising that there is more detail, surely?

A. That could be so.

Q. In any event, just on the motives, day 146, page 98, question 525 to 527. Page 98. I think you were asked by Mr. Coughlan to attribute motives. You said

A. Sorry, I just want to get that; is it 146?

Q. Day 146, page 98, question 526.

The question is: "Now is there or was there anything in the relationship between you and these three individuals which could assist the Tribunal in understanding why they would come and give false testimony against you?"

"Answer: I think probably two things.

"Question: Yes?

"Answer: And they are both are human nature. The first one is Telenor didn't succeed in their bid for ESAT. And the second thing is that perhaps home in Norway, they weren't full and frank as to the circumstances as to the donation that they made to Fine

Gael."

Now, in relation to the first motive, when did that event occur, Telenor didn't succeed in their bid for ESAT?

A. That would have been December, 2000, the month of December.

Q. December, 2000, okay.

Now, the second motive, whether they are alternative or both motives: When do you say that perhaps back home in Norway they weren't full and frank as to the circumstances as to the donation that they made to Fine Gael? When do you say that happened?

A. Since this became an issue.

Q. Sorry?

A. Since this broke.

Q. Well, give us a date.

A. There was a leak by somebody to the Sunday Tribune I think I know who the person who leaked it is, but it doesn't matter sometime in March.

Q. Sometime in March?

A. I don't think it was in Telenor's interest to put this into the public domain. It certainly wasn't in ours.

Q. Now, I want to do you remember the meeting of the 4th November, 1997? We have been over

A. I recall the date and the meeting, but not fully the contents.

Q. Well, you recall there were different memos of this

meeting, including the memo made by Kilroy's, and this was read into the record in full.

A. Yes.

Q. Okay. And this was a meeting in which you were questioned, and pages 25, 26, and 27 of that memo, on those pages there are recorded your answers to questions. Okay?

A. Well, that would be just one notetaker's view of my answers.

Q. Absolutely, yes. And it's a matter

A. So it would be a version of notes.

Q. It's a matter for the Tribunal to take a view as to whether it's correct or not, but it's a fuller version than the other versions. But at page 125, and this is of course Kilroy's note: "DOB" I am taking just one sentence "DOB acknowledged that he wanted the payment to be paid 'outside the country'. DOB replied, 'I am not sure who ended up paying for it. They (Telenor) paid David Austin. I did not know whether Telenor making payment to David Austin were saying that they were paying on their own behalf or on someone else's behalf. It was Peter O'Donoghue who had dealt with the pretrading expenses. It was he who would have dealt with the issue as to whether ESAT Digifone paying back money to Telenor. DOB stated "I asked AJ whether he would be prepared to make a donation to Fine Gael." I want to read out another couple of quotes, and it's

not the full quotes, and then I'll ask you to comment.

Now, over the page, on page 26 and this is just part of a passage of quotation, but it's quoting you as saying: "It was agreed that ESAT Digifone was to reimburse for this payment." Then this isn't a quote, but you are stated as saying again, "DOB explained that the payment was to be made outside the country."

Then on page 27, it's not a quote, but you are being quoted as saying "DOB said it was a reasonable assumption that ESAT Digifone paid back Telenor."

Now, there is that material there. You may take issue with the accuracy of the memo or not, but

A. Particularly the other two memos that I think we were trying to talk about the other day, or

Q. Very well

A. The ones where they were there was two memos on the one day, and one said that they had spoken to me and the other one hadn't. And there was a lot of confusion. Both Mr. Coughlan and I struggled over it, but memos obviously you'd need to take them at face value, but what is the question, then?

Q. Well, this is the question. You see, we come back to the second of the motives that you have ascribed to Telenor. You say, "Perhaps back home in Norway they weren't full and frank as to the circumstances as to the donation that they had made to Fine Gael."

Well, this memorandum was made back on the 4th
November, 1997?

A. But who did it go to?

Q. I beg your pardon?

A. Who did it go to?

Q. This is Kilroy's memorandum, was made back on the 4th
November

A. How far up the chain

Q. 1997, but it contains quotations from you which, I
think it's reasonable to assume, was part of whatever
information was furnished to the people back in Norway,
isn't that so?

A. Well, maybe the people, three people who had given
evidence this week, but how far up the food chain it
went in Telenor, I don't know.

Q. Well, I am instructed it went right up to senior
management in Norway.

A. They were the senior management, though.

Q. No, no, I have to suggest to you that's not accurate.

A. Well, did it go to the CEO and the board?

Q. I am instructed that it went to the CEO and board.

So you are suggesting that they weren't full and frank,
perhaps they weren't full and frank as to the
circumstances as to the donation they made to Fine
Gael. If they gave their board this information, how
can you say that they weren't full and frank, or that
the board weren't apprised of the situation as of that

time?

A. Well, I think you need to look at their evidence.

Q. I see. You see, coming to the point Mr. Coughlan used the term "fit-up," I think he was suggesting to you that you are suggesting, which I think is difficult to avoid the conclusion, you are suggesting that there was a sort of a conspiracy between the Telenor witnesses to concoct a story and that they have given evidence on that basis?

A. Well

Q. Isn't that the effect of what you are saying?

A. If it was three executives from three different companies, I think you'd have to look at the evidence in a different light. But given that there are three executives from the one company, and one of them being an executive and a friend of the senior executive, I don't disagree with Mr. Coughlan, sorry.

Q. This is the real point. When did the conspiracy start? When did the conspiracy commence? Give us the date.

A. I have never used the word "conspiracy".

Q. When do you say that these people got together to agree the evidence that they would give to do you down?

A. I don't know.

Q. Well, I mean, tell us when. You must have an idea, because you are the person who is making this very serious charge.

A. I am only agreeing with the supposition that

Mr. Coughlan put to me yesterday.

Q. Yes, I know, but when do you say it started?

A. I think you need to direct that to your clients.

Q. No, no, I am asking you, Mr. O'Brien.

A. I would have no idea when they met and when they decided to what to say to the Tribunal. I don't know.

Q. I see. Well, do you think it happened since last June?

Are you suggesting that it happened since last June?

A. I don't know, again.

Q. You don't know?

A. No.

Q. Well, are you suggesting it happened last year?

A. I think you can only rely on the evidence that the Tribunal has witnessed.

Q. We are, yes, I am relying on the evidence. When do you say it happened, on the basis of evidence, that these four people got together to concoct this story?

A. I think you'd have to direct that at your clients.

Q. I see. You can't help us there?

A. I have only got reports of their evidence, and I have given my evidence, and it's then up to the Sole Member to decide, the Chairman to decide what his view is.

Q. But you wanted these other witnesses here last June, isn't that right?

A. Quite definitely, yes.

Q. And last June, whilst we weren't weren't we all on

the wrong track last June where the shredding issue was concerned?

A. Well, I was accused of shredding at one stage.

Q. No, Dublin was accused of it. Dublin, in fairness

A. No, there was an insinuation that I was the shredder.

Q. It wasn't personalised, to be fair. At that time, everyone seemed to feel wrongly that it pointed in that direction, isn't that right?

A. That?

Q. That somebody in Dublin had given the instruction to shred the invoice?

A. Well, it actually in fact in fact, it would have been Mr. Johansen's evidence, and then that evidence changed to being somebody instructed by a Telenor executive to shred an invoice.

Q. Well, it's clear that Mr. Johansen was didn't really know the position in relation to the shredding last summer, and the tendency was to blame Dublin. But now we know from Mr. Simonsen that he was the one who directed the shredding, isn't that right?

A. Yes. But I think there was an insinuation that I was the shredder.

Q. Well Dublin, Dublin, Dublin, anyhow but that was wrong.

A. Given I was handling the invoices, that was

Q. Well, it was wrong and withdrawn, already withdrawn.

A. Okay.

Q. But Mr. Simonsen has given this evidence in ease of you and in ease of ESAT Digifone in Dublin, isn't that so?

He has taken full responsibility for the shredding, isn't that right?

A. I haven't listened to all his evidence, but I take it what you are saying.

Q. He has. Well, on the basis how devious are you suggesting that my client's witnesses are? Are you suggesting that they have concocted a story and have changed part of it to favour you, to make it more believable? Is this sort of part of your

A. Where does it favour me?

Q. Hmm?

A. Where does it favour me?

Q. No one is suggesting now that you shredded this invoice.

A. No, but there is a suggestion that I was centrally involved in changing invoices, changing dollars, dates, names of

Q. They are different points.

A. No, no, but

Q. We'll come to them

A. How could

Q. We'll come to them. Just the shredding point. You are the one who is now I know everyone is Dublin is being exonerated from having taken the sort of odd-sounding step of directing the shredding of an

invoice, and this young man in Telenor is taking all that on his own shoulders: "I did it; I directed the shredding of that invoice."

Now, this is a man you are accusing of telling lies to gain promotion in his firm?

A. It was Telenor's position that I was the Oliver North instructing the shredding. And that was not true.

Q. Well, we'll move on.

The memorandum, or sorry, the David Austin invoice, if I could turn to that now. That's the invoice dated 20th December, 1995 sorry, I beg your pardon, 14th December, 1995. Do you recall that document?

A. Well, there is two versions of it. The original that you handed in the other day had different notations on it, and then the other one we saw didn't have them. So there is the basic invoice plus the two notations are different.

Q. Well, let's look at the if we could get it up on the screen, the one that was shown to everyone at the meeting of the 4th November, 1997. That's the one without the stamp on it. That has on it, "OK" Knut Digerud "K/D."

A. If that's his initials, yes.

Q. And then up top we see the date, 22nd December, 1995.

A. Yeah.

Q. Now, if we could go to the letter of the same date please, the letter of the 14th December, 1995, that

accompanied the invoice. And we have the annotation from Mr. Digerud which is dated 20th December, 1995, isn't that so? The '95 isn't written, but the 20th December?

A. The date on the invoice is different than the notation. It's the 22nd.

Q. There was an explanation given for that in evidence that I won't go into now.

A. Okay. Fine.

Q. But you see, if there was the conspiracy that you allege there was, or suggest there was, isn't this document a central part of it?

A. This is the document that Mr. Johansen requested from David Austin.

Q. Yes. But isn't the annotation well, I should be more specific: Isn't the annotation on this document a central part of it?

A. I don't understand.

Q. Okay. You see, Mr. Johansen, last June, did not remember the events of the 19th and 20th December, 1995, but when contact was made with Mr. Digerud, Mr. Digerud was able to remind him of what happened and reminded him in particular of the fact that he, Mr. Digerud, had been given these documents in Dublin and that he, on that day, in Dublin, in the boardroom, had made this annotation.

A. How do we know that?

Q. That's his evidence.

A. Also, Mr. Johansen, in his evidence, said that I was chasing him to pay the money at a later date, and the money had already been paid. That's another difference in evidence.

Q. Now, let's just stick with this now.

You see, we know from Mr. you addressed this matter yesterday, page 78, question 420. Mr. Coughlan put a question to you:

"Question: And Mr. Digerud said that he put that on the letter" that's the annotation "on the 20th December, and he was in Dublin on the 20th December."

"Answer: The only thing I know is that he was in Dublin. Whether he did or not, but we'll take his word for it."

Okay?

A. Just what line is that, sorry?

Q. Page 78, the very bottom of the page, your answer:

"The only thing I know is that he was in Dublin. Whether he did or not, but we'll take his word for it."

Okay? Now, just to be clear, lest there is any doubt about it, are you accepting or not that Mr. Digerud made this annotation on the 20th December in Dublin, or on the 20th December?

A. I don't know.

Q. You don't know?

A. No. I mean, I answered, "We'll take his word for it",

but I don't know whether he did or not.

Q. Okay. But

A. The more I went in the evidence, the less I thought he did put it on the day.

Q. If he did do it in Dublin, it means that these documents were brought from Oslo to Dublin on the 19th December. What would be the point of bringing these documents from Oslo to Dublin?

A. I have no idea.

Q. Well, Mr. Johansen says that he brought them to Dublin for a purpose, namely just to get the final okay to show them to you, get the final okay, effectively. And that would be a purpose, wouldn't it?

A. But why didn't he give them to me at my meeting at half eleven with him, the pre-meeting where we always discuss the major issues?

Q. Well, that's something he could have been asked by Mr. McGonigal the other day when he was here and he wasn't asked, okay? If you had told Mr. McGonigal about that obviously you didn't.

A. It was probably my fault, not Mr. McGonigal's fault.

Q. But that's a reason for bringing the documents to Dublin, isn't that right, just running it past you

A. It's so farfetched, I am sorry.

Q. But why would he bring them to Dublin?

A. Why did he not give me a copy of them?

Q. Why did he give them to Mr. Digerud

A. Why didn't he put cover sheets on them?

Q. Why didn't he give copies of them?

A. Why didn't he give me copies, cover sheets, when they were sending invoices?

Q. Then there would be a trace in Dublin of this transaction. If he gave you copies of David Austin invoices, there would have been copies on your files in Dublin that David Austin was involved.

A. There wouldn't have been a problem there.

Q. There wouldn't have been a problem there?

A. No.

Q. But the point is that he showed them to you, and he says then he went to Mr. Digerud, who made this annotation straight away.

A. That's his evidence.

Q. That's his evidence. Well, couldn't Mr. Johansen have given this document to Mr. Digerud back in Oslo the previous day, on the 19th, and asked him to hand them on to Per Simonsen?

A. I think you'd have to ask your client that, not me.

Q. Well, couldn't he have done that?

A. I don't know whether

Q. It's evident, isn't it?

A. I don't know if he even had them at that time.

Q. Mmm?

A. I don't know who had them at that time, so I am not going to guess that one.

Q. But he did bring them to Dublin, if you accept that the date is not a forgery.

A. I don't know what to believe.

Q. Hmm?

A. I don't know what to believe.

Q. But one thing you can believe is that you had these documents and saw these documents, as did every other director of ESAT Digifone and Telecom on the 4th December 1997, with these annotations on them.

A. That's an interesting point.

Q. Isn't that so?

A. No, it's not totally true. We don't know which invoices were shown on the 4th. Was the credit note? Was it the invoice for Telenor Invest? Was it dollars? Pounds? Was it the original one?

Q. I have to suggest to you that it is recorded in

A. I wasn't present, of course, Mr. Fitzsimons, as you know.

Q. No, I appreciate that. This is the I think it's still the Kilroy's I am afraid I just don't have the exact page, but it's referred to on day 122, page 43 of the transcript, and I am quoting from the memo of the meeting: "Owen O'Connell asked a number questions. Knut Digerud and Arve Johansen pointed out that they had made the documents available to Kilroy's, and it was acknowledged that all the directors had seen the documents."

And I am instructed that they included all these documents. You see, that brings me back to this, and I think we can finish off: When do you say the conspiracy commenced?

A. I never used the word conspiracy.

Q. Well, the fit-up, we'll use Mr. Coughlan's phrase, the fit-up commence?

A. I think you have to direct that question to your clients.

Q. Hmm?

A. I think you should direct that question to your clients.

Q. You see, you have given two motives.

A. There is a third, that the three executives

Q. We'll deal with the two motives now

A. from the one company

Q. The motives are the fact that Telenor didn't succeed in their bid for ESAT. That's last December.

A. No, it's more, it's now 20 months ago.

Q. 20 months. So that motive wouldn't have kicked in, certainly hadn't kicked in on the 4th November, 1997?

A. In part of my evidence I described Mr. Digerud and his views.

Q. No, this is your evidence we are talking about.

"Telenor didn't succeed in their bid for ESAT." You say that that event occurred in December, 2000, I think. "And the second event, perhaps back home in

Norway they weren't full and frank as to the circumstances as to the donation that they made to Fine Gael".

That occurred this year, you say. Now, if these were the two motives for the fit-up or the conspiracy, it appears that the documents or the document that is fundamental to part of the conspiracy was it was a document that was prepared many years before, isn't that so?

A. The which document?

Q. You see, this is this is an essential part of your conspiracy theory.

A. But who asked for that document? Mr. Johansen requested

Q. You and the other directors were given these documents in November, 1997, with that annotation and the date, 20th December, "K/D" on it. And Mr. Digerud has explained that in evidence, as has Mr. well, he has explained it in evidence and has said it was done in Dublin.

And I am suggesting to you that the only explanation for it having been done in Dublin is that the documents were brought to Dublin for a purpose, namely the purpose that Mr. Johansen has told us about, and this really blows your theory out of the water, where Mr. Digerud's and Mr. Johansen's evidence is concerned on this particular topic.

A. I don't know how you can say that a notation up in the corner of that letter there dispels what you call the conspiracy. And I would say that's probably 1 percent of the evidence that this Tribunal has heard on this matter even in the last two weeks.

Q. Okay. But this of course only deals with the evidence as to what happened at the meeting, Mr. Johansen's and Mr. Digerud's evidence, isn't that so? It doesn't deal with Mr. Simonsen's evidence regarding the two phone calls, isn't that so, which is a different matter.

A. I don't know when that was written, so I can't really comment.

Q. But it certainly existed long before Telenor had any motive, at least any of the motives ascribed by you to them for concocting a story?

A. I think you need to look at the totality of the evidence.

Q. Okay. Now, the only remaining matter then is Mr. Simonsen's evidence. He has given evidence to the effect that he had two phone conversations with you, one regarding David Austin's name and the other relating to the third invoice and the change of the currency. You say they didn't happen?

A. Quite definitely.

Q. Simple as that.

Now, Mr. Coughlan asked you about this, and you said, he asked you this is page 102, question 547 he

said, "And you again, I have to ask you about each individual who gave evidence. What would the motivation on Mr. Simonsen be to come and give false testimony against you?"

"Answer: I can't figure that one out, but he is a reasonably junior executive in a large organisation, and in organisations, people who want to progress, they obviously take their instructions."

Do you realise that you said that yesterday, that this young man

A. I am fully aware of it.

Q. And is that your experience in business in Ireland, that people who want to progress in organisations take their instructions, if needs be, to give false evidence before courts or Tribunals? Is that your experience of business in Ireland?

A. What I am really saying is that Mr. Simonsen, for whatever reason maybe he is not the prime person here, but Mr. Simonsen allegedly said that I phoned him, and I know that is not the truth. So I don't know what his motivations are. And what really what I was saying is that if you are an executive in a company, you toe the party line.

Q. I think you would agree, Mr. O'Brien, that reputation is important?

A. Pardon?

Q. Reputation is important, a person's reputation?

A. Paramount.

Q. And indeed, you yourself have very quite within your rights, gone to the courts to protect your own reputation from time to time where it's been wronged?

A. In one libel case, yes.

Q. Where you have been libelled. And you would know, therefore, of the seriousness of making a casual remark that cast a very serious aspersion on a person's character?

A. It wasn't a casual remark. I was asked a question by Mr. Coughlan that I was trying to answer to the best of my ability.

Q. Well, was this a statement that you would make about Mr. Simonsen outside of this Tribunal? Would you say this about Mr. Simonsen outside this Tribunal? I want to ask you that question: Would you make that comment about him outside of this Tribunal?

A. Those four lines?

Q. Yes. Would you say that about Mr. Simonsen?

MR. COUGHLAN: Sorry, Sir, I don't want to cut across My Friend, but I wonder if this is of any assistance, this question is of assistance to the Tribunal in dealing with the question.

MR. FITZSIMONS: It's an issue of credibility, I'm afraid. I am confining it to the credibility.

CHAIRMAN: It's even in the canvass of some slight uncertainty as to the ambit of Tribunals privilege, Mr.

Fitzsimons.

MR. FITZSIMONS: I am not going to go don't worry,

Sir, I am not going to dwell unduly.

CHAIRMAN: Well, I will allow you

A. I have no problem saying that outside the door.

Q. MR. FITZSIMONS: You'd have no problem about saying that outside the door?

A. No, given the evidence that I have heard.

Q. And would you have the slightest problem saying outside the door, as you said this morning, "Banks sometimes put notes in their file that suit their position"?

A. What I said was I think you need to put everything into context.

Q. No, that's what you said this morning. Every bank official in the country was included in that.

A. No. I actually clarified that with Mr. Coughlan, if you want to look at the transcript.

Q. I am afraid it's there on the record.

A. It may be so, but I also did a further comment.

Q. I'll come back to your question.

Is your experience in Ireland that junior executives in large organisations, in any organisations who want to progress take their instructions, and that would go as far as giving false evidence under oath? Is that your experience in business in Ireland?

A. I am saying that the evidence that we have heard from Telenor is not true.

Q. That's all right. I have no problem with that.

A. I want to be very clear. There is no beating around the bush about that.

Q. There is no difficulty with that. That's your evidence. Telenor has given its evidence. The Chairman will have to decide that issue. But this is a comment made about Mr. Simonsen, and I am asking you for the basis for it.

A. I cannot understand how he can say that I phoned him, okay, on two occasions and got involved in invoices, when from the very first day I have said I didn't have any hand, act, or part in these invoices.

Q. That's okay. That's all right. There is a disagreement, and the Chairman will have to decide it. But this is a comment you have made about him, and I am asking you for an insight into the basis for it. Is it your experience

A. I am trying to think of a motivation.

Q. Just listen to the question, and this is the third time I have asked it.

A. Have you?

Q. Yes.

Is it your experience that in Ireland, junior executives in large organisations who want to progress, that they take instructions which will extend, if needs be, to giving false evidence when under oath?

A. Quite definitely not.

Q. Quite definitely not. And is it your experience that this happens anywhere else in the world that you have experience of?

A. Well, it depends on the context. I have listened to evidence, and I was asked for a view, and that was my opinion.

Q. But just is it your experience that this happens elsewhere in the world?

A. I think if people go into court for a company, then they have to be careful that they don't totally they have to give objective evidence.

Q. Yes. Well, I'll just repeat the question. Is it your experience that elsewhere in the world, junior executives in large organisations who want to progress will take instructions which will extend to giving evidence which is false before courts or Tribunals?

A. I think sometimes it probably does happen. If you read in the newspapers, the Financial Times, you'll see in major court cases sometimes people do that.

Q. Is that right? Junior executives?

A. Junior, senior executives.

Q. Junior, senior

A. Junior or senior.

Q. Well, this is people who want to progress?

A. Everybody wants to progress when they go into an organisation.

Q. But not in Ireland; it doesn't happen in Ireland?

A. Well, I haven't seen it in Ireland. No.

Q. You haven't seen it in Ireland?

A. No.

Q. You have only read it in the Financial Times? How many times?

A. Well, sorry, I would have read it in books. I have read it in newspapers where certain cases in evidence, serious cases, sometimes executives of companies don't tell the truth.

Q. And is that the entire of the evidential basis that you have used to make this terrible remark about this young man?

A. Well

Q. Which was quite unnecessary?

A. You then have to look at his evidence, okay? And take that into the context of what we are talking about now.

Q. Well, all he has said is that he had two phone conversations with you. You say they didn't happen.

A. No, no. It's more than that.

Q. Hmm?

A. It was much more than that. It was him being told by Mr. Digerud that about the briefcase and taking the invoice and the letter out. I mean, the whole you have got to look at all of the whole context of the evidence.

Q. He is not involved in that, the briefcase.

A. Sorry, himself and Mr. Digerud worked in tandem.

Q. In any event, but that is you know this Tribunal is going to decide this case on evidence. You would have known that all along, and I think you have stressed that evidence is what counts, isn't that right?

A. Absolutely.

Q. And your evidential basis for, as I say, making this remark is a few cases you have read in the Financial Times over the years?

A. No, no, sorry, you are absolutely wrong. I have listened to, or I have had reports of the evidence of Mr. Johansen, Mr. Thygesen, Mr. Simonsen. I have partially read some of their transcripts, and when I was cross-examined by Mr. Coughlan, my view at the end of it was that somebody is not telling the truth. In this case, it's Telenor.

Q. Thank you very much, Mr. O'Brien.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. O'Brien, just a couple of matters.

In relation to the evidence which you have given to this Tribunal, when you first gave evidence before the summer, you gave evidence against the background of the material that had then been supplied by many other people, including Mr. Johansen?

A. That's correct, yes.

Q. At that time, Mr. Johansen, presumably, before he gave his evidence, had had an opportunity of researching and checking with people who he thought might have been of

benefit to him in giving his evidence?

A. Yes, that's correct.

Q. One of the persons that he relied upon during the course of his evidence at that time was Mr. Simonsen?

A. Yes.

Q. And I think it is correct to say that at that time, in May of 2001, that there was no evidence in relation to the two phone calls that Mr. Simonsen subsequently gave evidence about?

A. They weren't even mentioned.

Q. In relation to Mr. Simonsen's evidence in relation to these two phone calls, one of the things which I think you tried to do was to identify the time or the place where either of these phone calls might have been made?

A. That's right.

Q. And you have given the Tribunal all of your diaries in relation to where you were at any particular time?

A. I believe I have done that, yes.

Q. And you have had no assistance or information from Telenor or Mr. Simonsen as to the date or time or place that these calls might have been made?

A. No.

Q. So far as you are able to position yourself on the 21st December, 1995, I think following the board meeting, the next day you went down to Westport and were there for most of the day, coming back, according to your diary, around three o'clock?

A. That's correct.

Q. It would appear from your diary that on the 22nd you may not have been in the office, though you cannot be certain about that?

A. I am nearly sure I wasn't.

Q. I think subsequently, after the 25th December, you went to Mexico and were away for a considerable period of time both in Mexico and then I think subsequently in Los Angeles and San Francisco?

A. That's correct.

Q. And I think that you didn't return to the office till in or about the 8th January, if I recollect it correctly?

A. Yes.

Q. I think for the balance of that month, you travelled quite a bit both in Prague and Germany, I think?

A. Hungary as well.

Q. Hungary, I think, during that period?

A. Yes.

Q. I think on the 24th January in particular, you were away in Prague?

A. That's right.

Q. And the position at the moment is that so far as you are concerned, you did not get any you did not make any phone calls to Mr. Simonsen at the time that he's alleged that you made them

A. That's right.

Q. during the entire time of your involvement with Telenor in relation to the Fine Gael donation. Am I right in understanding that your last involvement was the phone call on the 11th December giving the Smurfit number to Mr. Johansen for him to ring Mr. Austin?

A. That's correct.

Q. And at no stage had you, prior to November '97, seen any of the invoices that have subsequently been produced?

A. That's right.

Q. The invoices that have been produced are copies which have come from originals?

A. Yes.

Q. Isn't that right?

A. That's my understanding.

Q. Have you ever seen or had your attention drawn to the originals of any of those invoices, good, bad or indifferent?

A. I have never seen any originals.

Q. Or indeed the original of the letter from Mr. Malen in relation to the sending of the repayment in 24th January, 1996?

A. No, I didn't.

Q. In relation to the 19th February, which was the date of the letter from Mr. Austin acknowledging to Mr. Johansen receipt of the donation, I think, was there a board meeting on the 19th February?

A. That's correct, there was.

Q. And did you have occasion to meet Mr. Johansen on the evening prior to that?

A. I met him on the 18th in the Davenport Hotel.

Q. At that time was there any discussion in relation to the payment, non-payment, or seeking a receipt or otherwise from Mr. Austin?

A. None whatsoever.

Q. In relation to the invoice of the 23rd 27th March of 1996, which was the final invoice that appears to have been sent that appears in a document of Telenor's in between two other invoices bearing the same date, one for 10 million and one for 2 million. Do you recollect ever seeing that invoice or having it drawn to your attention?

A. No, it was never drawn to my attention.

Q. Or have you ever seen the original of it?

A. I have never seen the original.

Q. Other than the contact in November, '95, and the discussion which you had on the 8th December of '95 and the phone call which you had on the 11th December of '95, did you have any other involvement in the Telenor donation prior to November of '97?

A. No.

Q. One of the matters that I wanted to try and understand and I asked some of the other witnesses about it, Mr. O'Brien, perhaps you can help me is in relation

to what I have been calling the bid costs, and an agreement in relation to the bid costs made sometime in December of '95. In relation to the bid costs, what do they refer to?

A. They really refer to the process of writing up the application and the bid, the oral hearing, and then it ended once we won the licence. And then there was some subsequent bills, success fees and things like that, that came in. And then there was a line drawn, and in the Shareholders' Agreement, that number, I believe so, was just slightly under $\frac{1}{2}$ million in cash.

Q. When you say there was a line drawn, what was the line drawn referring to?

A. It means that at a period in December a line was drawn as to what the bid costs were. And then the ESAT Digifone went into a pretrading period, and then it started to trade.

Q. Did that in effect mean that any costs that were related to the bid or the time of the bid couldn't, unless they were included in the 1.99, couldn't then be collected subsequent?

A. That would be correct.

Q. Unless it was established that they were within the roll-up costs

A. Roll-out.

Q. roll-out, I beg your pardon, which were effectively beginning to run from January '96?

A. Yes, the building of the network.

Q. So that the production of an invoice on the 27th March, '96, referring to consultancy, Telenor might have the appearance or be referable to roll-out costs?

A. Yes.

Q. Now, just a few small matters.

In relation to the hostile bid launched by Telenor, was that December 2000, or December '99?

A. '99.

Q. And I think in relation to the Versatel share situation, I think the lock-up terms for the Versatel shares were for 2003?

A. That's correct.

Q. Which means that you cannot sell your shares until after that date?

A. That's correct.

Q. I think when you indicated that you sold 10 percent, you were referring to 10 percent of your holding as opposed to 10 percent of the company?

A. I believe so.

Q. Now, in relation to the English properties, I think your position is quite simple in relation to that, that you knew nothing about the English properties at the time that they were purchased?

A. That's correct.

Q. And I am referring to the Cheadle and Mansfield properties.

A. That's correct.

Q. Your first knowledge or involvement in the Mansfield property came at a time when you were on holidays, and Mr. Tunney came to talk to you about it?

A. Yes, that's correct.

Q. Following that, I think that in an effort to try and have the matter cleared up, you made available your plane to enable him to go back to Dublin?

A. That's correct.

Q. Did you also, at that time, whilst on holidays, try to contact Mr. Phelan?

A. I did.

Q. And were you successful?

A. Not initially, not for a number of days.

Q. When you came home, were you able to contact him?

A. Yes, I was.

Q. And following that, did you then have your conversation with Mr. Cullen?

A. When I knew my facts, I went off to talk to I phoned Mr. Cullen.

Q. And you have the conversation that you have described?

A. That's right.

Q. When were you appointed a director of the Bank of Ireland?

A. Sometime in 2000, first half of 2000.

Q. And was that a matter of concern which would have impacted at the time the matter was referred to the

Central Bank?

A. Yes, it would.

Q. Thanks, Mr. O'Brien.

A. Thank you.

CHAIRMAN: Thank you, Mr. O'Brien, for your attendance today and yesterday. Thank you.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the available witnesses, Sir.

And it is proposed that the Tribunal would sit next Tuesday, this day week, to take the evidence of Mr. Michael Lowry.

CHAIRMAN: Yes. I think it was hoped that it might be possible to proceed almost immediately, but particular representations between the legal advisers have been made, and to facilitate both Mr. Lowry and his advisers, this is felt the maximum deferral that can be extended.

Next Tuesday so. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 30TH OCTOBER, 2001 AT 11 A.M.