

I N D E X

WITNESS: EXAMINATION:Q. NO:

MICHAEL LOWRY Mr. Healy 1 - 519

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,
2ND NOVEMBER, 2001 AT 11 AM:

CONTINUATION OF EXAMINATION OF MR. LOWRY BY MR. HEALY:

CHAIRMAN: My apologies, ladies and gentlemen, for the somewhat late start.

My understanding, Mr. Healy, is that some further documentation has come to light in very recent minutes and may be alluded to in the course of continuing evidence.

MR. HEALY: Yes, Sir.

Q. Mr. Lowry, I think your solicitors provided the Tribunal with some further documentation, and I think what I'll do firstly is I'll just put it on the overhead projector, because there hasn't been time to copy it, and I'll describe it.

What the Tribunal has been provided with is a letter an envelope marked "Private and confidential, Michael Lowry." The Tribunal has also been provided with another, with a copy of the what appears to be a photocopy of the agreement of the 24th October of 1996, as we were calling it yesterday, and the Tribunal has been informed that those two documents were those two documents, together with the original of the agreement of the 24th October, 1996, were always in

your possession. The Tribunal has also been informed that that envelope on the overhead projector addressed to you was handed into offices of your accountants, Butler Brophy Thornton, sometime in February of 1997; am I right in that?

A. No.

Q. No? I am not right in that yes, correct me if I am wrong.

A. If you wish to finish it, then I'll just clarify you.

Q. If we start at that date. That's my impression.

A. Could I just just to assist you, Mr. Healy. What happened was, Mr. Chairman, yesterday evening obviously here at the Tribunal yesterday there was confusion in terms of the documentation, and I genuinely did not have a recollection of the events leading to the signing of that document, and I was asked extensively about it.

Arising from yesterday's sitting of the Tribunal, I went to my accountant's office yesterday evening.

During the course of examination here yesterday, I stated that whatever I had in my possession, I had discovered to the Tribunal. And personally I wasn't aware, whatever documentation I gave all my documentation to Mr. Kelly and to Mr. Denis O'Connor.

When I discovered what documentation I had, that was the discovery in this year, in April. I gave everything to Denis O'Connor. Now, I hadn't

scrutinised it, but yesterday when I was asked questions about it, I said to Denis, I said, "I want to have a look at whatever we have given to the Tribunal in respect of this."

And one of the things I asked for was to look at my a copy of my ministerial diary for that particular week. And when I looked at my ministerial diary I saw that I in actual fact had attended an official function at Maxwell Motors in Blackrock on that evening. And that jogged my memory, because immediately it came back to me that it was that evening on which I went to David Austin's apartment in Salthill, and that evening was the evening of the 24th, which was the date that the document was signed. And I just wanted to clear up the confusion in relation to that.

The second issue that arose then was how did I there was a complication I knew yesterday, when you asked me the questions, that in actual fact I had a copy of the document. I had already discovered the original and I knew that I had a copy. And when you said to me, "had you a copy?" I said I did.

So in actual fact what happened was I had given the original of the document plus a copy of the document to Mr. O'Connor. I had given him the original of the thank-you note for payment, or the receipt for payment. And the Tribunal wrote to us and we discovered, at your

request, the original of both documents.

What I didn't know yesterday was that Mr. O'Connor had retained, in his office, the copy. So what we did was we gave you the two originals, and we retained the copy which is in your possession now.

Q. Yes. "The two originals", you mean what we are calling the agreement and the letter?

A. Yes, the agreement and the letter.

So my memory of it now, and what I am saying to you is it's clarified somewhat in my mind, as I say, triggered by looking at my diary. And I have checked, cross-checked this, and I did attend that function, and my memory is I can say for absolute certainty that I did go from that function to David's house, which was on that evening it's only three minutes' drive from there; it was it was on the same evening and that I obviously signed the document. David held onto the original. I had a copy of it, which is the copy that you have there, which was discovered to the Tribunal. And subsequent to that, David left the original of the document after the monies had been returned at some stage for collection. And I am almost certain that it was left for collection at The Gables in Foxrock.

Q. Now, is that the envelope in which the original was left for collection at The Gables in Blackrock in Foxrock?

A. I can't say for definite. That envelope was in was

one was in the documents that I actually gave to Denis. That's why that envelope is here. He had it in the folder. I can't say for definite

Q. And is that, as it seems to be, is that David Austin's handwriting?

A. I wouldn't say so. I don't actually know, but I wouldn't say so.

Q. I see.

A. What I am putting before you, Mr. Healy, is anything that I had that I gave my accountant in connection with it. And that envelope happens to be with it, so whether David gave the document to somebody and put it into an envelope and they put my name on it for collection or not, I don't know.

Q. Well, I am obviously not a handwriting expert, and I am sure you are not either, but looking at the

A. Personally, I don't think it's actually his writing.

Q. It just seems to me to be similar to the writing on the original of the agreement that we mentioned in evidence yesterday.

A. I actually can't say for definite, but

Q. But what you think happened is that the original of the agreement contained in an envelope was handed in to your accountant's offices at The Gables, Foxrock?

A. There is some reason for that envelope being in my possession, and I can't speculate any further other than to say I do recall David saying that there was

something left for me at The Gables, and it is my belief that it was the original of the document, and possibly it was in that envelope. I don't know, I can't say for definite in relation to that, but the sequence of events is clear in my mind now because of this event that I attended.

Q. Okay. If I can just get it clear in my mind.

You think that you went to an event on the 24th October in Blackrock at an opening of a showroom at Maxwell Motors.

A. Presentation of an ISO award.

Q. I see. And you feel that that was the day on which you called out to the Salthill Apartments?

A. Yes.

Q. Or that evening, or whatever, and that that accounts for the date of the 24th October of 1996 being on the original of the agreement. And that was 1996.

You then think that you had contact with David Austin in 1997 and that you understood from him that the original of the agreement this is after you had paid back the money, now the original of the agreement would be left for collection by you left for collection by you at The Gables in Foxrock?

A. I can't say for definite. But that would be that's my view, that I collected that he obviously left the original. The envelope and that particular I do recall him ringing me and saying that he had something

left for me in and my memory I think is right in saying that it was the original of that particular agreement, because I don't recall any other event when he actually passed me the original of the agreement. I would say that he had previously written the note to me, if you know what I mean. Which I presented to you, which is the original of the note.

Q. Yes, right.

A. And then subsequent to that, he left the document which was the original for my collection my collection, because yesterday I was confused myself as to how I actually discovered the original, and I am trying to explain it.

Q. So the sequence, then, is you think you got the letter from David Austin; that subsequent to that, you and David Austin had a conversation, and that you think that in that conversation, he said to you, "I'll leave the originals in at your accountants at the Gables in Foxrock"; that you went out to the Gables, and that you collected the original; and because that envelope was with those documents, you think it may have been in that envelope?

A. That's generally I'd say it was just a casual conversation, in a sense that "I am leaving it for you there," or "leaving something for you there". I do remember him saying that. Whenever I was in the next time, collect it, or whatever, because he would have

known that I was in and out of that place, which I was, obviously, a lot.

Q. Why would he have known you were in and out of the place?

A. Because at that particular stage I was very involved with Denis O'Connor in sorting out business matters and what have you. He would have known

Q. What time was that?

A. I don't I can't put a precise time on it, but it would have been, I would say, shortly I would imagine it was shortly after the repayment of the loan and the letter that I received. He sent me the letter I think in February. It must have been around that time.

Q. So sometime in the month of February?

A. Pardon?

Q. Sometime in the month of February?

A. I can't say for definite it. Could be March/April. I think he wrote to me if you see from the sequence, sometime in February, so it was obviously after that.

Q. That would have been during the McCracken Tribunal period?

A. Pardon?

Q. That would have been during the McCracken Tribunal period?

A. I don't know; when did McCracken start?

Q. We know that the resolutions were being mooted in

February, and by the or in January and February, I suppose. By the 7th February, as we have already heard, I think the establishment of the Tribunal may have been announced, but certainly it was getting underway at the end of the first week in February and from then on, until the summer of that year.

A. I can't be precise on the date, to be honest about it.

Q. But if you if the money was paid back around the 7th February, you say sometime after that you got a letter from David Austin thanking you for promptly repaying the money. And then you had a conversation with him, you think, and as a result of that conversation, you went he told or in that conversation, he told you that he'd leave the original for collection at The Gables in Foxrock. And then, because you were in and out of The Gables in Foxrock a lot because of your dealings with Mr. O'Connor, you were able to collect the original.

A. David would have known my connections with that office, yeah.

Q. At that time, was David Austin in Ireland a lot still?

A. I can't I mean, David was in and out of the country a lot. I can't say for definite whether I was in and out. I would imagine at that time he was probably receiving some treatment or other. He was, I suppose, semi-retired at that stage. I don't know what his movements were.

Q. Do you think was it David Austin handed that document in to your accountants?

A. Either handed it in or ensured that it was handed in by someone else.

Q. And was it your accountant, Mr. O'Connor, or some member of his staff, who handed it to you?

A. Somebody on reception.

Q. Do you remember actually getting it from someone at reception?

A. I do actually remember. Which of the girls, I am not sure; they actually the system was out there, they alternate the staff between them, so one of the girls

Q. Gave it to you?

A. gave it to me, yeah.

Q. And presumably when she gave it to you, you were wondering what this was? Or did you know what it was?

A. I don't recall. I am sure I don't recall, to be quite honest with you, whether I opened it there and then or whether I knew, what have you. As I said, it's the problem you have with this is the time scale involved. I have done the best I can to put it in perspective.

Q. Were you getting lots of post left for you there, do you think?

A. In The Gables?

Q. In the Gables.

A. Well, I would certainly have had if I needed something, it would be either left for me there or in my office in the Dail. At that particular stage, I was using that office a good bit, yes. It's also, I would imagine

Q. It wasn't an office to which things would be posted to you; it's only an office to which things would be left for you by prior arrangement. Would that be right?

A. No. If I needed some correspondence that needed attention of a professional with professional assistance, I would ask for it to be directed directly to the offices also. I used that office, as you know, as an administrative place for my company. My company is registered there, and the other issues involved with the company company car, phone are registered there.

Q. I appreciate that, yeah. I know that your company car was operated from there. Company issues, because that's the registered office of your company, were bound to be dealt with from there. But did that office receive correspondence, "Michael Lowry, care of Butler Brophy Thornton, The Gables, Foxrock"?

A. Did that office?

Q. Receive correspondence addressed to Michael Lowry, care of Butler Brophy Thornton, The Gables?

A. I don't know. Not that I am aware of, other than the normal business transaction. If I felt there was

something that could be short-circuited by diverting it to my accountants or to my office, I would do it.

Q. I understand that. What I am trying to get at is, if something was being sent there, you would direct it there or divert it there, or you would arrange for it to be delivered or sent there. It would be something fairly specific. It's not something that would happen without your involvement?

A. Well, in my situation, some of my correspondence comes to my home; some of my correspondence comes to my address at Abbey Road, Thurles; some of my correspondence comes to Dail Eireann; and some of my correspondence goes to various people who are agents for me, and that would include Brophy and Thornton.

Q. At that time, in any case, you were embroiled in the McCracken Tribunal, and you realised or you went out to your accountants' offices and you found that there was a letter marked "Private and confidential", and you didn't recognise the handwriting, presumably?

A. Pardon?

Q. You didn't recognise the handwriting?

A. I don't recall the precise details

Q. Well, you don't recognise it now; presumably you didn't recognise it then?

A. I would say it's David Austin's, but I am not a handwriting expert either.

Q. A moment ago you said you thought it wasn't David

Austin's.

A. I can't say for definite. I just don't know.

Q. Is it more likely than not it's David Austin's? Does

it not seem as I said, I am not a handwriting

expert, but it seems to me to be similar to the

handwriting

A. I would think it is. When I say I can't be sure. I

don't want to produce an envelope to you today which is

in the possession of my accountant and be as definitive

as to say "This envelope which is which has been

written by David Austin". But I looked at it last

night, and I thought it was, but I couldn't be sure.

Q. I see.

A. And it may not be his. I don't know.

Q. Well, I suppose when you saw it for the first time,

then, you would have been in the same dilemma to some

extent. You would have said you wouldn't have

recognised it as his writing immediately from the front

of the envelope?

A. Mr. Healy, I don't know. What I am saying to you is I

don't know whether or not

Q. I am just trying I am not trying to commit you to

anything. I am just saying, just as you can't be

absolutely sure now, presumably you couldn't have been

absolutely sure then. It may not have even been this

envelope, you said. But if it was this envelope, you

were presumably not absolutely sure then, just as you

are not absolutely sure now; that's all I am saying.

A. I don't recollect. What you are asking me is, do I recollect seeing the envelope and opening the envelope

Q. No, I passed on from that.

A. Mr. Healy, I am after saying to you that yesterday I didn't recollect getting it. I am saying to you today I didn't, but it was in the possession of my accountant, and I felt that it should be brought to your attention on the basis of the discussion that we had here yesterday. All I am trying to do is assist the Tribunal to clarify the events leading up to that particular document and my discovery of the documents, because there was a confusion yesterday about the original and the copy, and I hope I have assisted you in clarifying that.

Q. Yes, it's of some assistance.

What I am just trying to, in some way, get some assistance from you on is what you did when you went to your accountants' office in Foxrock, what you did when you got this document. Did you open it there and then?

A. I don't know.

Q. Because what I'd suggest to you is this: That the natural sequence of events is probably likely to have been like this. If you saw an envelope and you didn't really recognise or you weren't sure of the writing on the envelope, and you weren't sure who it came from,

then you'd probably open it there and then.

A. I don't know.

Q. But isn't that the natural consequence, normally, if you are not sure about an envelope marked "Private and confidential", that you'd probably open it there and then; whereas if was an envelope that you recognised the writing on, and you were anticipating receiving something from that person, and you knew what that person was sending you, you mightn't open it there and then. Isn't that right?

A. I simply don't recall opening the envelope, looking at the envelope. I don't know what I did on that particular day. I can't this is six years ago. I don't know precisely what I did one minute what would it have taken? A minute or two in the days. I don't know if there was other documents there for me to collect. I certainly I can't imagine going to the office simply to collect this envelope. Maybe it was part of other documentation. I don't know when it was left in. If you know what I mean.

Q. You would have been spending a lot of time in your accountant's office in that time in connection with the McCracken Tribunal as well, because he was assisting you in putting together figures and financial information for that Tribunal; would that be right?

A. It would have been a case of at what stage I don't know when the letter was left in. So I don't know what

stage we were at in terms of McCracken, whether it was early, late, or and that would whatever stage it was at would determine how busy I was, if you know what I mean, because a lot of the work on the McCracken Tribunal would be done without my presence. All my documentation would have been handed over, and the real work would have been done by others.

Q. When you say you handed over material to your accountants in connection with this matter in April of this year, you are certain that you handed over this material at that time?

A. Pardon?

Q. You are certain you handed over this material to your accountants in April of this year?

A. Yes. Yes, my accountant I didn't I wasn't certain yesterday, but as I said, arising from yesterday's proceedings, I went through and I asked my accountant last night. Both of us sat down and we went through that particular file that he had, and it was he who had those. And the reason he had those is that the Tribunal had asked him to send in the originals.

Q. We'll come back to that issue in a minute. Can I just ask you this question: When you got that document, isn't it rather surprising that you wouldn't have told your accountant there and then that you had cleared off a loan, and this was a loan agreement you had this was one account you weren't going to have

to trouble yourself with any more, this account you had in the Irish Nationwide in the Isle of Man?

A. I have answered that on numerous occasions, and my answer at that stage is that I can only give you what I have said already, and that is that I never deemed that transaction to be relevant to any inquiry. It certainly wasn't relevant to the McCracken Tribunal because the McCracken Tribunal was dealing with payments to politicians from Dunnes Stores. I didn't deem it relevant to any Tribunal until April, when the circumstances came about where it had a new significance. Not the transaction, but my dealings with David Austin. At that particular stage, it wasn't a gift and it wasn't a payment, so I can't say any more than what I have said already on it.

Q. It's just that you have an opportunity, you have had an opportunity now to remember all of these transactions and to recall things that I suppose you weren't able to recall yesterday, as you said, because your memory was jogged by something in your official diary. But what surprises me is that or at least what I certainly find curious is that here you had a letter or a document contained in a private and confidential envelope being left in at your accountants' offices by David Austin or somebody on his behalf concerning an offshore loan account that was that had been opened in the Isle of Man and that actually involved the

accountants into whose offices the letter had been left, because their address was on the loan or the account documentation. Would you not agree that it's surprising that you wouldn't have mentioned it to your accountants?

A. The fact is I didn't mention it.

Q. I know, but is it surprising?

A. And I have given the reasons why on a number of occasions on numerous occasions here.

Q. And not only that, the accountant that you were dealing with all the time or most of the time, Mr. Denis O'Connor, was the very accountant that you had in mind to administer this account, isn't that right?

A. That's correct. It's possible that Mr. O'Connor you know, I don't know even if Denis was in the office on that particular day or not. But I didn't see the relevance of this on the basis that, number one, it wasn't relevant to the McCracken Tribunal, in my mind, because the McCracken Tribunal was dealing with payments to politicians from Dunnes Stores. And it didn't have relevance, in my mind

Q. Wasn't it relevant to Denis O'Connor?

A. It didn't

Q. Wasn't it relevant to Denis O'Connor that his name was mentioned on it?

A. There was no relevance. Denis O'Connor at that stage

Q. Wasn't his name on the account, the name of his firm?

A. On what account?

Q. The account that you had in the Isle of Man.

A. I already explained

Q. Wasn't it relevant to Denis O'Connor?

A. I already explained why it was on that: In the event of the arrangement that we had in relation to the loan for the refurbishment of the house. That specific reason no longer existed because I had sold the house, and for that reason, I didn't bring it to Denis's attention. There was no need, because he never had to do what it was he was intended to do at an earlier stage.

Q. Did you know did David Austin know who Mr. O'Connor was?

A. Pardon?

Q. Did David Austin know Mr. O'Connor was dealing with your affairs?

A. I can't recall whether he did or not. He wouldn't have known Mr. O'Connor as such. He would have known that that was my that I was dealing with that office.

Q. I see.

A. I am not sure whether I ever discussed Denis O'Connor on a personal level with him.

Q. There was, according to your evidence, no covering note with this document, the original of this document?

A. I can't say whether there was or not. I have

discovered to you what Denis had in his possession. I

went to his office.

Q. Try to remember, Mr. Lowry. I may be responsible for the six-year reference; it was in fact, I think, four years ago. But try to remember.

A. I think, in fairness

Q. Try to remember, was there a covering note or was there not with this fairly important document?

A. I don't know, Mr. Healy. I have done the best I can.

It became an issue here yesterday, and I have done the best I can to clarify it.

Q. The discussion you had with David Austin that led to that document being left off for you was a discussion you had over the phone, is that right?

A. Pardon?

Q. The discussion you had with David Austin that led to that document being dropped off for you at your accountants was a discussion you had over the phone, is that correct?

A. With David Austin on this, I would say it was, yes.

Q. What did you discuss?

A. Oh, I have no idea, Mr. Healy. You know, this I had numerous conversations with David Austin. You know, I don't recall the specific discussion. It wasn't it was probably part of some other discussion. I don't remember the specific discussion on the phone.

Q. Well, did you have a discussion about whether he'd post

this to you or drop it in

A. I don't recall the particular discussion. I don't recall it.

Q. Who was it

A. As I said to you in previous evidence, I would have been in contact with David on a regular basis, so we'd have had numerous calls over that period of time and subsequent to that.

Q. Who was it suggested that you'd be given the document back?

A. Pardon?

Q. Who suggested that you would get the document back? Whose idea was it?

A. I don't know. I presume it was David's.

Q. Well, when you say you presume it was his idea, how did it come up in the conversation? What reason would he have to give it back to you?

A. I can only, again, presume that the matter had been concluded and that he felt that I should have the original back. I don't know.

Q. But he didn't want the original any more, anyway?

A. Pardon?

Q. We now know, as I was suggesting to you yesterday, that he didn't want the original at all; he had no more use for it.

A. That he hadn't?

Q. Yes. I was suggesting that to you yesterday.

Remember, I was suggesting to you that it would seem perfectly natural to me that Mr. Austin would have no more use for the original; he wouldn't want it any longer.

A. Mm-hmm.

Q. Because the whole thing was done and dusted. But what use would you have for the original?

A. Well, I don't think a document I certainly didn't tear it up, if that's what you are saying. Why did I put it on my personal file? Because it was a personal matter, and it just remained on my file.

Q. Why did you want it?

A. Why does anybody hold anything if it's of a personal nature?

Q. What I am trying to get at or try to understand is, Mr. Austin didn't want to keep it?

A. Well, Mr. Austin obviously gave it back, on the basis, I suppose, that the matter was concluded. I can't get into his mind and know why he did, but I presume that was the reason. Why I kept it was it was a personal document. I put it into my file, and I forgot about it. It was there. It's as simple as that.

Q. Presumably there must have been no covering note, or you'd have kept that as well?

A. I am not sure.

Q. Well, you see, what you have said to us is that you kept it because it was a personal document. There

seems to be no particular reason for keeping it other than it had some personal meaning for you, but why wouldn't all the documents you got at the time have been kept?

A. It would have been a case I had, Mr. Healy, a substantial amount of documentation. It took a small van to take the documentation that I had in my possession to Mr. O'Connor's office initially. I had personal files, what have you. My difficulty with keeping records was I had the paperwork, but I didn't have the records to attach them to. It's not a case that I didn't keep anything. Of course I did keep and the amount of discovery that I made would indicate that I have a lot of documentation. That was simply

Q. Mr. Lowry, it would not. The Tribunal has not got from you a lot of documentation of this kind. The Tribunal has got a lot of accountancy-type documentation, a lot of bank documentation from your bankers. But the Tribunal has not got a lot of documentation of this kind. In fact, very little.

A. Of that kind? Of that kind? How could you? Because there isn't any of it.

Q. Precisely.

A. There isn't any of it. You would have other documentation

Q. Of what kind?

A. Like bank statements, like contracts, like all that

kind of stuff.

Q. Those documents were all generated by banks, and one can understand why one would hold on to them. This documentation wasn't just thrown there with a whole load of other bank statements. It was kept in a personal file, you told us.

A. Yes, because it was a personal matter. I have already said I had a personal

Q. Is that personal file very big?

A. I had a personal private arrangement with David Austin. That is a record of it, and I think I am perfectly entitled to keep it in my personal file.

Q. Is it a very big personal file?

A. My personal file?

Q. Yes.

A. There would be a substantial amount of documentation in it, yes, of course. Like you know, like things people normally keep.

Q. What sort of things would be in it?

A. What sort of things would be in it? I certainly would have my life insurance policies in it; I would certainly have documentation in relation to my private, family, personal matters. I would have other documentation in relation to that. I would have documentation in relation to my own private my own immediate family. I would have such things as birth certificates for my family. I would have, in fact,

some private personal stuff in it that was bequeathed to me by my grandfather. I have a letter from my own late father in it which was in it, and on top of that, I would have a lot of details that would be related to my business, or related to my activities in GAA circles, or sporting circles, or anything like that.

Whatever the normal things that people feel are personal to them. And I consider that document to be a private and a personal document. It was in my file. I left it aside, and I found it when I started looking.

Q. So it's not just like an ordinary commercial document, then?

A. Pardon?

Q. It's not just like an ordinary commercial document; it has more meaning than that?

A. It is a personal commercial document, yes.

Q. Sorry

A. It's personal in the sense that I have already explained to this Tribunal, that it was personal to myself and David Austin. It's commercial to the extent that it was a loan base that it dictates the terms of a loan which was based on commercial terms.

Q. Remember, yesterday you were telling me about how the documents actually came into existence. Now you say that you can remember, your memory has been jogged, that you went over to Mr. Austin's house on the 24th October, 1996, and you got this original document from

him, the one that we have on the overhead projector and we were discussing yesterday.

A. Yes.

Q. Can you now try to remember what happened in that apartment again?

A. My recollection is that on that particular evening, that now, when I put it, the place and time, I can put a time on it. And as I say, it was the diary that triggered me, David Austin had prepared that document. I was in the apartment, I would think, for a very short time, because I was on my way back to another function in Thurles, and I obviously signed the document at that particular time.

Q. Well, now, you told me yesterday you didn't know whether you had signed it or not.

A. I didn't.

Q. You are now saying obviously you signed I just want to be careful about this, now, Mr. Lowry. Are you saying you definitely remember signing it, or that you feel you must have signed it?

A. I feel I must have signed it on that particular evening.

Q. So you don't remember signing it, but you feel you must have signed it?

A. Yes. And the reason I am saying that to you now is because of the information that was made available to me. I did not think that this was an issue. You

raised it as an issue yesterday, and to refresh my own mind, or to go through the file, we went through the file last night. I looked at my ministerial diary, and that was this particular function that triggered the fact that I was there.

Q. So what about the other document that you gave us this morning? The photocopy of the original, how did that come into existence?

A. I presume that it was either that David actually photocopied the document itself.

Q. Now, what you now think is that you photocopied the document and you signed the original or rather the other way around: You signed the original and he photocopied the document?

A. I would think so, yes.

Q. And what happened then?

A. That I must have taken the what we discovered to you, which is the

Q. Copy?

A. A copy, and that he held the original.

CHAIRMAN: I think we are clear on that. I think, just in error, a couple of minutes ago you maybe put it to Mr. Lowry that he had taken the original away from the Salthill meeting. And Mr. Lowry may not have adverted to it, but we are clear on that, Mr. Lowry, that you didn't take the original on the occasion of the 24th October.

MR. HEALY: Right.

Q. Can we take it, then, this is the document? I am now holding a copy that your lawyers gave this morning to the Tribunal. This is the document you took away from the Salthill Apartments?

A. That is the document, discovered from my file, so I presume that it is.

Q. Now, you said to the Tribunal yesterday that you believe that you made copies of these documents.

A. I thought that I had, because I knew I had seen my copy; and in my memory, I knew I had seen the copy.

And that's why I was confused yesterday when you said that I had discovered the original, because I hadn't gone throughout the file that I had given to Denis O'Connor. I did that last night, and when I did that last night, it came back to me, the sequence of events that I obviously had the copy, and it was that copy that I had seen, so I understood it was I had the copy.

Obviously it wasn't it was David had a copy of it.

Q. I want to be careful about it. Yesterday I was asking you about why you would have made copies, and you said you'd have made copies for your own purposes. And I was puzzled by that because I couldn't understand what purpose you'd have for making copies.

A. I think what I said, why does anybody copy anything other than to retain it.

Q. That was wrong. That's not what happened; you didn't

copy this document at all?

A. I had a copy of it, so I assumed, when I had a copy of it, that I had it copied. What I am saying to you was last night when I reviewed it, and with the benefit of the new information that was at my disposal, including the documentation that was in the possession of my accountant, I am able to put a better sequence on it.

I can't be any more precise than that.

Q. So what you are saying now is this: That you went to his apartment on the 24th; that he gave you the original; that you dated it and signed it on that date; that he then photocopied it; that he retained the original, but that you took the copy?

A. Yes, I obviously was in possession of the copy, and that when the fund was repaid, that he gave me the original. And I finished up with the original and the copy, and the original and the copy was given to the Tribunal.

Q. I want to take it slowly now, because this has been quite confusing. I want to go back to where I was. You took the copy away with you. The fund was then repaid, as you put it?

A. Pardon?

Q. The fund was then repaid.

A. The sequence of events, as the evidence would show, that yes, the repayments were made. I got a letter from

Q. Yes, can you just stop there now ,because I don't want to get confused.

You took the original away with you sorry, you took the copy away with you. We don't want to get back into that confusion. You took this document, which is a copy of the original, away with you?

A. I don't know if I took it away with me that evening, but I certainly was in possession of that copy of it.

Q. Sure, Mr. Lowry, the likelihood is you took it away with you that evening?

A. It's possible. All I can tell you

Q. Is it probable or possible?

A. Pardon?

Q. Is it probable or possible?

A. I can't say for definite. I am being as precise with you, Mr. Healy, as I can. I just don't know.

Q. Is it likely

A. I am giving you the best of my recollection on it, and my recollection of the sequence of events was that I was in that area. The document was obviously ready. I signed it. Whether or not David copied it there and then and gave me a copy, I can't say for definite. But I certainly got a copy of the agreement, because it was my possession.

When I repaid it if you'd let me finish, just to assist you when I repaid the funds, I received a note from David, which is the note, the original note

that you have in your possession. And subsequent to that, obviously David felt that I should have the original back, and I feel that he communicated that original to me through the method which I am after saying which was left in at that office.

Q. I want to go back now. I want to go back now. I want to go back to where I was, because I want to understand this. And you remember yesterday I suggested to you that as a matter of probability, it was Mr. Austin who retained the original, but not you. Now, judging by the evidence you have given us, that wasn't a bad guess on my part, because what you have now told us is that that is what in fact happened: Mr. Austin retained the original.

Now, I want to know, is it, as a matter of probability, the case that you took the copy away with you?

A. I don't know. I can't recall exactly whether I did or not, or whether David copied it and then gave me the copy later. I don't recall. But I certainly was in possession of a copy of the document.

Q. He had a photocopier in his house?

A. I think he had. He certainly had a fax in his house.

I am not sure I think he had.

Q. A fax is a photocopier anyhow?

A. I am not sure if he had or not.

Q. Well, now, you left his house, having executed this quite formal document, and you had no record of it

yourself, you are saying, is your recollection?

A. Mr. Healy, I wouldn't have been looking upon you are saying I left without a formal document.

Q. Well, you had signed a formal document?

A. Yes, yes. We are talking here friends. I would certainly if it wasn't copied there and then, I would certainly trust David Austin to copy it for me and to give it to me and that nothing was going to happen in the interim.

Q. All right. The chances are you either took that copy away with you there and then, or if Mr. Austin didn't have a photocopier, which he probably did, he got it copied, and he gave it to you sometime shortly afterwards?

A. One or the other.

Q. Right. Okay. Sometime shortly after, shortly after that meeting, you got this document?

A. Pardon?

Q. Sometime shortly after that meeting, you got this document, if you didn't get it on the night in question. One or the other?

A. I got a copy of the document of whatever document it was, I am sure.

Q. Well, I said you presumably got it either on the night or sometime shortly afterwards.

A. I don't know. I can't say for definite.

Q. And do you know if you got it by letter?

A. Mr. Healy, I am saying I don't know. I don't recall the exact circumstances of it.

Q. When you got it, you must have put it into your file?

A. When I got it?

Q. Mm-hmm.

A. Yes, that would be the natural thing for me to do.

Q. You must have put it into your personal file?

A. I would have, yes.

Q. Then when you got the letter from Mr. Austin on the 27th February, or dated 27th February, sometime shortly after that in 1997, where did you put that? On the same file?

A. I would say in my personal file, yes.

Q. So you put it, presumably, in the same place, in your personal file?

A. Maybe not. The file there wouldn't be that tremendous order in it, but it would be in my personal filing cabinet.

Q. And subsequently, when the envelope was left in to Butler Brophy Thornton, and you collected it, you put the envelope and the original of the agreement that was in the envelope into the same file?

A. Into the same drawer at least, yes.

Q. Well, certainly into the same place, so that you were able to produce them all?

A. Whatever was in my possession, I gave to my accountant, and he discovered them to the Tribunal, yes, the

originals of them.

Q. At that point, you had got a loan of money. You had paid it back. The person, the good friend of yours who gave you the money had given you a letter acknowledging that you had paid it back, and in any case, wasn't it as plain as a pikestaff that the money had left your account and gone back into his account?

A. Mm-hmm.

Q. And your friend retained no documentation at all, but you retained all the documentation.

A. Mm-hmm.

Q. For a person who, you know, wasn't so great at the paperwork, why did you retain all that documentation?

A. Mr. Healy, I have given you the reason. I retained it on the basis that as I put it into my file if you look if you wish, I will present you with the file that I have, my personal file, and you will see that there is a lot of correspondence and documentation in that file, some of it relevant to the present day, more of it a lot of it relevant to the present day, more of it not. It was in my personal file because it was a personal loan that I had from David Austin. It was if you look at it, you couldn't describe it other than personal and private, and at the same time, it was commercial in nature. I have no other explanation for it. I held the documentation the same as I hold any other documentation like that.

Q. Did you hold any documentation from the Irish

Nationwide in the Isle of Man in that file?

A. I never got any documentation from the Isle of Man.

That's from my memory of it. I don't recall. I

certainly hadn't any.

Q. Did you not get a withdrawal instruction and sign that

and fax it to the Isle of Man so as to have the money

put back into Mr. Austin's account?

A. I did, I think it was came in by fax or whatever way

it came.

Q. It's on the overhead projector.

A. Yeah.

Q. Wasn't that a document to do with the same transaction?

A. Pardon?

Q. Wasn't that a document to do with the same transaction?

A. Yes.

Q. You didn't hold on to a copy of that document?

A. Not to my knowledge.

Q. Well, what do you mean, "Not to my knowledge"?

A. That document was discovered I am not sure if it was

discovered by the building society or it was part of my

discovery.

Q. Oh, no, it was discovered by the building society.

A. Well, then, I didn't have any documentation

Q. It was discovered by the bank, sorry, in the Isle of

Man, not by the building society in Ireland. But you

must have had that document or a copy of it in your

possession at one stage?

A. Obviously on the day that I signed it.

Q. Yes, and for someone who was anxious to keep the records connected with this transaction, you never kept that document, or a copy of it?

A. I would have signed that document and probably asked my secretary to forward it by fax, I think it was, at that particular time, to the bank. And I haven't seen the document that I signed other than what I have discovered since the Tribunal.

Q. And you didn't retain the application form in relation to that account, the account-opening application form that you signed; you didn't retain any copy of that either?

A. No, the original, I just signed it, and it went back to the bank.

Q. But you didn't make a copy of the original?

A. Pardon?

Q. You didn't make any copy of the original?

A. I didn't, no, I didn't.

Q. That was another document connected with that transaction that you didn't retain. Isn't that right?

A. Correct.

Q. Do you remember yesterday you were telling me about how the transaction came into being, how you were discussing your finances with David Austin in connection with funding the refurbishment? Do you

remember that?

A. Yes, we had a long discussion on it yesterday.

Q. Yes. And your original plan was to use your AIB Channel Islands account, but you had a long discussion with David Austin, and because that was, to use a neutral term, an or relatively neutral term not a tax-compliant account, David Austin proposed that instead of using that account, he'd loan you money, you'd put it into an account in the Isle of Man, and you'd draw off that for the refurbishment?

A. Yes.

Q. And the thinking was that you couldn't draw off or bring over to Ireland the money off the non-tax-compliant account in the AIB in the Channel Islands, but that there would be no problem with surfacing any of the money from this account in Ireland, because it was a wholly proper and regular account, isn't that right?

A. Which account?

Q. This account

A. The loan account

Q. The Irish Nationwide.

A. Yeah, could I Mr. Healy, would you allow me to, now that we have gone back to this subject

Q. Yes.

A. And we had, I think, yesterday, we outlined the sequence of events which led up to that money being in

my account.

Q. Yes.

A. Now, there was a number yesterday you put some statements on the screen which were in the possession, I presume, of my accountants and legal advisers, but as I indicated to you yesterday

Q. What were they now?

A. This is David Austin's account and the transfer of the money from the bank in the Netherlands, and you asked me to comment on them and to indicate

Q. Do you want me to put this material aside for the moment, then, and go back to that material?

A. Please, if you could.

Q. Yes, right.

A. Now, I indicated to you yesterday that I did not ever consider it necessary for me or I had no interest in looking at the final documentation provided to you by the executors on behalf of David Austin. Neither did I have any interest in looking at the documentation which was provided by Denis O'Brien, Digifone, or anyone else. I was simply concentrating on documents that were relevant to myself.

Q. Yes.

A. But yesterday you put on the screen a number of documents which you deemed to be very relevant to me, which I hadn't seen prior to yesterday

Q. Which I deem to be relevant to you to comment on, yeah.

A. Yes. And I since you put those on the screen, to assist the Tribunal and to enable you to have a clearer understanding of my position, I last night did go through that documentation.

If you recall, yesterday, and in fact if you could bear with me for a minute, I'll just put this in context. You asked me a question yesterday in relation to those accounts, which was question number 266, day 1 (sic) of the transcript, on page 81

Q. Sorry, day 1 of the transcript

A. Yes, yesterday.

Q. Day 150. What question? Just remind me.

A. It's question 266. And it's day 150, which was yesterday, and it's page 81.

Q. Yes, I have that. Question 266.

A. Because we need to look at this before we actually get to the 147. Now, if you look you asked me the question, you said: "I just want to take you through the money trail. You see, what you have here is a conversation between you and Mr. Austin, and according to you in which Mr. Austin promised to give you money by way of a loan to refurbish your house. And at approximately the same time, Mr. Austin gets 150,000 from Mr. O'Brien and uses that 150,000 to put into an offshore account in your name. And the explanation the Tribunal has been given is that all these events are merely coincidental."

And I answered: "Are you saying that this purchase or that the sale of the property is coincidental?"

And I said you said that "Well the events, according to the evidence the Tribunal has been given, occurred at the same time."

This is the loan and the refurbishment of the house.

Q. Yes. Well, not quite, now

A. There is a very clear and distinct message from that to me, and I responded to it. Now, in the context of saying that, that that loan was specifically drawn down for the purpose of refurbishing the house, I did examine what you asked me to examine yesterday, which is this particular transaction. And yesterday you put on the screen a document from Investec showing a withdrawal from an account held in the name of Radio Investments in the Netherlands.

Q. Yes.

A. That withdrawal of £407,000 and it was the 3rd July, 1996.

Q. I think what I said to you was it was on the 10th July.

A. Well no, the 3rd; I have it circled here. The 3rd.

Q. That's the value date, if you look at that, Mr. Lowry.

A. That's the day, anyway

Q. No, it's not. I think the evidence was it was on the 10th, but I was explaining to you that the photocopy

A. We'll leave it. We'll say the 10th, but as far as I am concerned, it's the 3rd.

Q. We'd better be clear about this. I can go back and get the documentation. But don't be worried about it. I am telling you the evidence is it was the 10th. In case you misunderstand the document, if you want to make a point, I want to understand exactly what the evidence is. That document has, on the left-hand side, entry dates for transactions, and on the second column in from the right-hand side, it has the value date.

The value date of a transaction and the date in which the transaction may be entered in may not be the same, as I am sure you know. The evidence is that occurred on the 10th. If I am any way wrong, we'll check it.

But the value date is the 3rd.

A. In or around that time. When you put a second document on the screen, which was a cheque made out to David Austin, which was dated the 10th July, '96

Q. Yes, the cheque of the 10th, yes.

A. Now, those two that money trail, as you described it, you put it to me yesterday, you put it to me yesterday in your question to me that this money was designated designed to reach me for the refurbishment of my house through a loan by David Austin.

Q. No, no, no.

A. Oh, yes, that's the clear message I got.

Q. Could you just

A. Could I finish

Q. No, Mr. Lowry, just listen to me now. If you have got useful and helpful information to give me about this, I am interested, and I am sure the Sole Member is very interested in hearing it. But for the moment, as I understand it, the position that I am trying to draw to your attention for your comment is that all these events occurred at approximately the same time.

A. If you read the question I put to you, 266, you could conclude the point I want to make

Q. We'll go through the documents and make the date clear.

CHAIRMAN: Let him make his point Mr. Healy.

A. I am entitled to make the point.

CHAIRMAN: I have no doubt about that. Feel free to put before the Tribunal whatever you think is relevant, of course.

A. Now, Mr. Healy, I got the distinct impression, and I have to say, anything that I have heard or read in reports of this, everybody got the distinct impression that it was connected to the loan and the refurbishment of my house. I want to put it on to the Tribunal, by way of assistance to you, that that could not be possible. And the reason it could not be possible is that I have here, in my possession, even though it's already on the record of the Tribunal, that not alone did I not have the refurbishment in place at that stage, I hadn't even purchased the house. There is a document which clearly shows confirmation of the

auction date and the purchase of the house by Mick Holly, which was on the 17th July, 1996 the 17th July.

You are talking here about transactions way in advance of it. I didn't in actual fact get possession of that house, in legal terms, until September, 1996, when I purchased the house by way of assistance of a mortgage.

So it's totally unfair to say that this transaction emanating on the in or around whatever date it was, early July, had anything to do with the refurbishment of my house, because not alone had I no refurbishment in place, I didn't even have a house.

Now, nobody can say to me that I had designs on the house, because the house was up for public auction, and that was the date of the public auction. And I already gave evidence to the McCracken Tribunal and I already gave evidence to this Tribunal that what happened was I received a phone call from Mick Holly while I was chairing a Council of Ministers meeting in Brussels, so it was an instant decision, and the arrangement was that he thought the house could go for good value. He purchased the house, held it for me until I came back some weeks later and had a look at it, and then I purchased the house.

Q. MR. HEALY: At this point, I just want to I want to make one thing clear, Mr. Lowry. Yesterday we were in the course of dealing with the sequence of events; we

were dealing with the sequence of events. I don't think we had got to the end of the sequence, when it became clear that we were having some difficulty dating your various meetings in August. Do you remember that?

A. Pardon?

Q. We were discussing this matter yesterday.

A. Yes.

Q. From the point where I put the money trail to you, at around question 266, and we were going through the various dates after that. And I think we got diverted at some point in trying to fix the date or some approximate date for your various meetings with Mr. Holly and Mr. Austin and so on. So we haven't quite reached the end of that particular discussion yesterday.

A. Okay.

Q. At all. And I am sure that you will want to make the point you have just made again if necessary.

A. Yes. Could I make just a further point on that?

Q. I am not sure there is any point in you making it if you are not going to wait till we get to the very end of it, but go right ahead.

A. I am saying again, for a point of clarification, I also noted last night, when I looked at the David Austin statement, that there was two pages to that particular statement. You put on the screen yesterday one page of it. And if you notice, on the second page of that

statement

Q. Would you just bear with me, and I'll get it

A. Because we are actually following the money trail, so we need to see it out.

Q. Yes. Maybe if you could tell me what page you are talking about?

A. My legals have it.

MR. O'DONNELL: It's the account number 66064.

Q. MR. HEALY: Maybe we could borrow that copy and let me see what point you are making in relation to it.

A. The point I am making about that part of that statement is that my accountant drew that to my attention, and for a number of months now we were seeking that part of that statement. We had no way of getting it; we were seeking assistance from the Tribunal in relation to

Q. No, I must stop you there, Mr. Lowry. You were given the second page a long time ago.

A. Yes, Mr. O'Connor was.

Q. Yes.

A. So the reason we were looking for that statement was, it clearly shows that second part of that statement clearly shows that the money trail that you tied in yesterday, or that you outlined yesterday, first of all, I have made the point about it couldn't have been in relation to my property and the refurbishment of my property on the basis that I didn't even own the house, never mind say get to the stage where he was

refurbishing it.

The second point about in a money trail, that particular account, David Austin transferred out of that account, the one that you followed as far as the 147, the repayment, but it goes further than that. The balance of that money went back to David Austin's personal account in the ACC. It didn't go back to me; it didn't go back to Denis O'Brien. It went back to the ACC. In other words, it was Mr. Austin's own money.

I think it's very important that that would be put on the record. In other words, that people would have a total overview, and that we wouldn't have a selective analysis of this particular account.

Q. What happened I think we should put it on the overhead projector so we can just have a look at it.

Now yesterday we showed the $\text{€}150,000$ coming into the account from the Mr. O'Brien account through Mr. Aidan Phelan, and then we showed the $\text{€}147,000$ going out to your account. Then we showed the $\text{€}148,816.93$, which was the money that had gone out with a bit of interest coming back into the account; and at the bottom of that page, on the right-hand side, there is a credit balance in the account of some $\text{€}153,000$ -odd.

Then if we go on to the next page of the account, which is the page that you have drawn to the Tribunal's attention, you see a number of debits to the account.

The first big debit to the account is a sum of £233,000, which interestingly enough is the money that was repaid to Fine Gael.

A. Correct.

Q. By way of a contribution from Mr. David Austin?

A. Correct, which

Q. That was in fact the money that had been paid over by Telenor, according to the Telenor evidence, on behalf of ESAT Digifone in December of 1995, and it lay in accounts under the control of

A. Sorry, Mr. Healy

Q. We'll just go through them now

CHAIRMAN: Just hear the question, please, if you will, Mr. Lowry.

Q. MR. HEALY: That's what went out of it on that occasion.

That was the money that went back through Mr. Frank Conroy to Fine Gael.

A. That's correct.

Q. And then if we go down, there is a couple of minor debits again to the final debit that effectively closes the account. That's a repayment by Swift; that is by a transfer to the ACC bank in Dublin.

A. Which is a personal account of

Q. Mr. Michael Lowry?

A. Of Mr. Austin.

Q. I beg your pardon; Mr. David Austin.

So all of the money in the account eventually left it

for purposes intended by Mr. David Austin, and the final the largest debit at the end of the day was to discharge his own indebtedness in an Irish bank?

A. Yes. I think that's very important to put on the record.

Q. Yes.

A. Now, you mentioned, Mr. Healy, if I could just finish on this statement, you mentioned about the 33,000. You will also if you look at Mr. Austin's statement, another statement, another account, you will see that the Telenor 50,000 that was paid was not paid into that account; it was paid to another personal account of Mr. Austin.

Q. I am aware of that.

A. That is the debit from it.

Q. I am aware of that. It was moved. Yes. But do you notice one thing about this, that Mr. Austin doesn't seem to have any difficulty at all in transferring money from this account into accounts in Ireland? Do you notice that?

A. Yes, I notice that, because obviously those are his own finances, and he can organise those in whatever way he wishes. But the one thing I did notice very much, Mr. Healy, was that the scenario that was painted for me simply doesn't fit into that date schedule in relation to the refurbishment of my house.

And I want to make it quite clear again, I want to make

it quite clear again, in view of the coverage of the presentation of the events yesterday and the manner which it affects me, I want to make it quite clear again that the monies I received from David Austin were a loan from David Austin. I had absolutely no dealings or no connection whatsoever with that refurbishment of my house and Denis O'Brien, and I think it is very unfair to present it in the manner which it was presented yesterday.

Q. Yesterday I was taking you through some of the aspects of that money trail, and I hadn't got to the end of it, and I was going to try to get to the end of it today, but for the fact that we had that additional information this morning about the envelope. But I think what I was trying to do, to begin with, was to discuss with you or to get as much assistance from you as I could concerning the discussion you had with David Austin, and then I was going to go back to try to date it, and you obviously have got strong views about that. But could I just go back to the discussion that you had with him that led to his putting money, according to your evidence, into an Irish Nationwide account in your name in the Isle of Man. And I'll just go over the remarks I made earlier so that we can go back to where we were in the transcript, as it were.

Your original plan was that you'd use money you had in AIB in the Channel Islands, but because that money

wasn't tax compliant, you discussed it with David Austin and he proposed that instead, he'd open the account in the Irish Nationwide in the Isle of Man. The thinking was that this money in the Channel Islands was not tax compliant. It might be difficult to surface it in Ireland, but the money that Mr. Austin was putting into your account was completely regular and upfront, and there was going to be no problem of bringing it back into Ireland. It was going to be disclosed, and I suppose you were probably going to claim relief for interest payments and so on under the dual allowance; would that be right?

A. I certainly on the mortgage, I think it was possible to do that. It wouldn't be possible to do that, I would think, I don't know, on I would imagine there is only a certain amount of monies

Q. They are extremely generous allowances, and I think you had them checked out by your accountant. You could use them for any borrowings to get the house, right? You weren't after all, you were only mortgaging part of the cost of this house, isn't that right, because you were buying a house in need of almost as much money as it had cost you to buy it; isn't that right?

A. I am not familiar

Q. Isn't that right?

A. Obviously I said to you that one of the considerations I had in relation to the purchasing of a property was

to avail of the dual abode allowance. The precise details of it, I simply don't have.

Q. All right. Okay. I have the precise details of it, and clearly it's a matter for, I suppose, the Revenue or whoever administer the scheme to say what it would or would not cover, and at the end of the day you might have argued the toss with them whether it might have covered one thing or another thing.

Can I take it in any case, you would probably, as any taxpayer would, try to maximise the tax advantages you had; and if you could claim for the David Austin loan as much as the Irish Nationwide Dublin loan, you'd have claimed for both of them?

A. Whatever would be the tax-efficient way of doing it, I would do it.

Q. You would have no difficulty in disclosing the David Austin loan as a loan to claim relief on it?

A. If I proceeded with it, I wouldn't have a difficulty.

Q. I accept that. Therefore there would have been no problem with surfacing any of the money in that account or showing what it was costing you to have it there. I take it that was your plan?

A. Yes.

Q. Now, did you tell Mr. Austin at that time that you had money in other offshore accounts in the Isle of Man, Bank of Ireland and Rea Brothers?

A. I am not sure if they were actually closed at that

stage.

Q. I see.

A. I don't think I had money in those.

Q. You may be right.

A. If you put the question to me, you should look and see you have the information, Mr. Healy?

Q. I am asking for the information.

A. I don't know. Mr. Healy, be a bit fair. How do I know? I can't recall dates and times. I gave you the information on discovery. You know whether I had them opened or not. My recollection is from no documentation in front of me; you have the documents.

Was the account opened or closed, those two accounts?

My recollection am I correct when I say they were closed?

Q. I'll have to take your word for it at the moment.

A. I don't know.

Q. I suppose it's more likely than not that if you were

A. Maybe have a look

Q. If the alternative was the Channel Islands account or Mr. Austin's proposal, then you didn't have the accounts open in they were closed in May of 1992.

A. Yes, and that information has been provided to the Tribunal.

Q. So they were done and dusted as well.

A. Pardon?

Q. They were done and dusted as well?

A. Those accounts were closed sorry, what date were those accounts closed?

Q. 1992, May of 1992.

MR. O'DONNELL: They were transferred to the Irish Permanent in Cork, it's my recollection, and used to buy the house in Holycross. I think that is

Q. MR. HEALY: Just while we are at it, on that particular point, you were being criticised, as you yourself pointed out, and taken to task in the McCracken Tribunal, I think, and maybe elsewhere, you have suggested on the grounds that the reason for having money in an offshore account was to conceal it, isn't that right?

A. Yes. We covered this ground

Q. You were taken to task on the basis that that would be the reason why somebody would have money in an offshore account. You didn't agree with that.

A. This is we have addressed this on several occasions, and I have given my answer in relation to that.

Q. But isn't it a wonder that you didn't say to the McCracken Tribunal, in explaining that you weren't hiding money in an offshore account, isn't it a wonder you didn't say to them, "Why, only a few months ago I opened a wholly proper and regular offshore account in the Irish Nationwide in the Isle of Man. I don't put money into offshore accounts to hide it. Sure, look at this account I opened in October of 1996; it's

completely upfront and regular". Is it a wonder you

never said that to them

A. To whom?

Q. The McCracken Tribunal

CHAIRMAN: We know it wasn't relevant to the Terms of

Reference, but that's not the point Mr. Healy is

making.

A. Well, it didn't cross my mind to make it. I didn't

think there was any necessity to make that point.

Q. MR. HEALY: You were under a lot of pressure in that

Tribunal as to why you would put money into an offshore

account, and that was your answer, wasn't it? There

was nothing wrong with it; you had just done it?

A. And there was nothing wrong with it.

Q. And you never said that to them?

A. Mmm?

Q. You never said that to the McCracken Tribunal in your

evidence?

A. I am sure I did, at some stage, that I didn't see

anything wrong with it and to this day there was wrong

with it, and the monies that were put into the offshore

account in relation to the loan from David Austin are

perfectly legal. There is nothing wrong with opening

an offshore account once it's tax compliant.

Q. And the problem you had at that time was that you had

we'll put it no further than this tax compliance

difficulties with some of the money that was in your

offshore accounts, but yet no tax compliance

difficulties with the money in the Irish Nationwide

(Isle of Man) account, isn't that right?

A. Correct, because it was a loan.

Q. And of all the offshore accounts that you had, the one

you couldn't possibly be embarrassed by was the Irish

Nationwide offshore account in the Isle of Man?

A. Correct.

Q. And that was the one account that has been kept hidden

for so long.

A. Because there was no embarrassment in it. It wasn't an

issue. It was it wasn't relevant, in my mind.

Q. I see. I see.

Go back to the dating. You bought the house, I think

you said, on the 17th July, is that right?

A. That was the the 17th July, no, I didn't buy the

house on the 17th July. Mick Holly bought the house on

the 17th July.

Q. I understand that.

A. At public auction.

Q. Yeah, but the contract was a contract to buy a house.

It was for you the house was being bought?

A. No. The position was as I explained.

Q. I understand; I am not going to quibble with you about

words.

The house was bought by Mick Holly on the 17th July.

You were off in Brussels?

A. At public auction, yes.

Q. And it was to be your house unless you didn't want it?

A. The opportunity was given to me. I had first option on the house, whenever I got time to look at the house.

If he if I didn't want the house after viewing the house, then Mick Holly was happy to keep the house within his own company, on the basis that he felt it was a good location, good value and potential.

Q. I understand that. And I think, looking at your evidence yesterday sorry, the day before, I think, 148. If you start with the questioning on question 475, I think, I am referring to your statement:

"Question: Now, in your statement you say, "Mr. Holly indicated through his building company, Cedar Homes, that they would carry out the structural renovations for a figure in the order of $\frac{1}{2}$ 90,000. It was also recognised that there be substantial expenditure on fitting out the premises, to include decoration, furniture, flooring, tiling, etc. Mr. Holly indicated that we would have to put some arrangement in place to discharge the envisaged expenditure. Discussion took place between myself, Mr. Holly, and Mr. David Austin in relation to the matter, and arising out of those discussions, Mr. Austin agreed to provide the loan facility to which I have referred."

"Now, is there not a difference between what you have just said to me a moment ago and what's contained in

your statement?

"Answer: There is no difference. There is certainly no intention of any difference.

"Question: What you say here is that a discussion took place between yourself, Mr. Holly, and David Austin in relation to the matter.

"Answer: Correct.

"Question: And arising out of those discussions, Mr. Austin agreed to provide the loan facility to which I have referred, and Mr. Holly and Mr. Austin had calculated that the total expenditure involved would be 147,000.

"Answer: That's correct. That's a synopsis of exactly what happened. What happened was I initially we initially had the triparty meeting. That was to determine the extent of the refurbishment requirement, to get some idea of what was needed to be done, to get indicative figures in terms of costings. And arising from that, then, David Austin and myself had our personal discussion in relation to my overall financial position and how that particular refurbishment would be funded."

Do you see that?

A. Yes.

Q. Now, I am just trying to get the timing or the sequencing of this right. You bought the house on the 10th on the 17th July?

A. Yes. I actually

Q. It was obvious you were going to have to do something to get it to put it into habitable condition

A. I wouldn't have bought the house on the 17th July.

Q. I appreciate that, Mr. Lowry. I am using a shorthand. It's your house.

A. Just a second. As you indicated yesterday, a deal is a deal when it is signed. That's what you were putting to me strongly yesterday. Now, in this case, the same applies. A deal is a deal when it's agreed.

Q. What was what deal are you talking about?

A. The 17th July just one moment the 17th July, the house was purchased at public auction in trust for the Cedar Building Company, Mick Holly, on the basis that I would view it in the interim, and if it suited my requirements or if I was happy with the location, then I would have the opportunity to purchase it at the price that was paid on the auction day. In the event of I not purchasing it, Mick Holly was happy to keep it himself.

Then what happened was I had to go and make arrangements to get a mortgage on the property, and obviously that took some time. And I went and I processed the mortgage and got a commitment from the Irish Nationwide Building Society in respect of the mortgage, and I think it was on the second or in around the first week in September, and it was from

there on that the house started to become mine. In

actual fact

Q. Could you just give me that again. You went to make an

arrangement for the mortgage on the property, and

obviously that took some time, you say. You went to

A. Well, the first thing, when the house was purchased in

July, the first thing that had to happen

Q. You had to look at it?

A. I had to look at it. So it took a bit of time to look

at the house. I don't know when I looked at it. I

don't know. At that stage I was Chairman of a couple

of Council of Ministers meetings, so I don't know

Q. Was it before or after the Galway races?

A. Oh, Jaysus, I don't know

Q. Did you go to the Galway races?

A. Did I go to the Galway races? I went on a number of

years. I usually go to Galway, Listowel and other race

meetings, Leopardstown, Punchestown

Q. Could I suggest you had the Galway races in mind that

year?

A. I don't know whether I went or not. I go to the Galway

races any year that I can.

Q. Do you remember had you the house bought, if you like,

before the races?

A. Had I the house bought before the races? Maybe I had.

Maybe I went to the Galway races to pay for it, hoping

to win a few pound at the races. But I don't know, Mr.

Healy.

Q. Did you go to the races with David Austin?

A. Pardon?

Q. Did David Austin go to the races with you?

A. I didn't go with him. But I am sure he was at the races. He regularly visited Galway.

Q. Then you went and you had to have a discussion with Mr. Fingleton?

A. Yes, I met I discussed the property, and the documentation is there to show if you are looking for the dates and the sequence of events the dates are in Mr. Fingleton's statement, and the documentation supporting it would give you an indication of when I went. I don't have them in front of me here.

Q. Well, you must have gone to Mr. Fingleton sometime in August, because the valuer's report was prepared in August.

A. Yes.

Q. And Mr. Fingleton presumably told you that there would be no problem?

A. What?

Q. That there would be no problem?

A. What he told me was he would go through the normal assessment process. My recollection of it was that he said he would have to have it he'd have to get some valuations done on it and some assessments done on it.

Q. Apart from that, he was happy with you as a borrower?

A. Yes, in his statement to you, he indicated that he was, yes.

Q. So it was only a question of the house, not the borrower?

A. The house, not the borrower?

Q. Yes. He was concerned he was quite happy to loan you the money; he was quite happy you could repay him; he just wanted to have the house checked out by his surveyor?

A. Obviously, before he made any decisions, not alone did he look at the house; he obviously went through my own financial details, and looking for those, he asked me for some information. I think you will see that on his own file.

Q. He went through your financial meetings at a meeting with you?

A. He asked me obviously he knew I was a minister. He asked me how much my ministerial income was. He asked me how much my TD salary was. He asked me how much property I had in Holycross; I gave him an indication in that. He asked me, was my wife working at the time. He asked me what else would he have asked me? He probably asked me, if I recall correctly, had I a mortgage on the house? General questions that somebody would ask you when they are assessing a loan.

Q. I think you agreed with me yesterday it was clear from the meeting that he'd make the loan to you?

A. Pardon?

Q. It was clear from the meeting you had with him that he'd make you the loan subject to the house being checked by the surveyor?

A. Well, he obviously did, sure, he gave me the loan. He gave me the mortgage.

Q. But it was clear from the meeting, in any case, that he had with you, that he was going to give you the loan, subject only to checking the house?

A. Arising from the previous discussions we had had, he would have been satisfied that number one, the house had to be valued; number two, that he had an overview of my own finances, and I think he has made a statement in relation to that. And he would also have been asked me the question, which we didn't go into in detail, as to my ability to repay the mortgage.

Q. And you told him that you had your own funds to

A. Yes.

Q. carry out the renovations?

A. Yes.

Q. So at that stage, renovations were in your mind, and you were satisfied you had enough money to carry them out?

A. Well, I had been told there was going to be renovations involved. I wasn't sure of the extent of the renovations at that particular stage, because I hadn't got back the figures from Mick Holly; neither would I

have got his valuation, because this was at the initial stages of it. So at that particular time, I knew there was going to be renovations involved. The extent of it, I didn't know, but I felt that it could be covered from, yes, the Channel Islands account.

Q. Though you didn't know how much they were. But surely I am trying to get this right you decided to buy this house before you went to Michael Fingleton, didn't you?

A. Pardon?

Q. You decided to buy this house before you went to Michael Fingleton?

A. This house?

Q. Yeah.

A. No, I didn't. I decided if I could, I'll buy it. I said to Michael Holly, "I'll have a look at it, and obviously if I like the house, then I'll come back to you on it." So I wouldn't have made any decisions in my mind until such time as I knew what I was doing.

Q. Just get this clear, now. You were in Brussels; Mick Holly rang you and told you about a house; he told you about the amount of money that was involved.

A. Mm-hmm, yes.

Q. He was going to buy it anyway. He thought it was good value at that price.

A. Yes.

Q. You came home from Brussels. At some point you would

have gone and looked at the house?

A. Yes.

Q. Sometime after that?

A. Yes.

Q. Sometime after the 16th, or is it the 17th July, 1996?

So after you looked at the house, was that enough to satisfy you that it was worth buying it?

A. After I looked at the house?

Q. Yes.

A. Yes, the location was good. And yes, I liked the house.

Q. So you decided to buy it?

A. Obviously subject to whatever needed to be done, knowing what exactly did need to be done. Maybe at that stage, in principle, I would have certainly agreed with him in principle at that stage to buy the house.

Q. Yes, so you decided to buy the house. You didn't need Michael Fingleton's agreement to provide you with a loan to enable you to decide to buy the house?

A. Sure you couldn't buy the house unless you could pay for the house, could you? I mean, I had to go to talk to somebody in relation to the funds about the house. At that stage Mick Holly had the house purchase. It was in his possession. He was happy to hold it whether I needed it or not. So in the interim I did what anybody in normal circumstances would: I approached the building society for a loan, a mortgage on the

house.

Q. You hadn't approached a building society for a loan before that in relation to any house.

A. I had had discussions with the gentleman that gave evidence here. I had discussions with him previously about

Q. About what?

A. About purchasing a property in Dublin and getting another mortgage on my own house.

Q. No, no, are you saying that you had discussions with him about buying a house in Dublin in 1996?

A. In general terms, I would have had a discussion I had that, and I would have discussed it with yeah, it would have been my intention at some stage to buy a house.

Q. Well, I don't want to know about what would have been or would not have been your intention. The evidence is that in 1996, you were dissatisfied with your accommodation. According to you, you had had discussions with some of your friends, David Austin included, and they were pointing out to you and you agreed with them that you'd need better accommodation in Dublin, and from that time, you looked for you kept on the lookout for some better accommodation. You went and looked at something with your accountant, isn't that right?

A. Yes, I was looking for a very short period of time.

Q. You got on to Mr. Mark Fitzgerald, and you got on to some other people, but you had no finance arranged at that time?

A. Well, it's impossible to arrange finance until you know exactly what you are going to buy.

Q. But you must have had a reasonable idea that you were going to buy something and you were going to be able to fund it yourself?

A. Mr. Healy

Q. Are you telling me that you didn't know you couldn't fund a house? Are you telling me that?

A. I am actually telling you that, and I am telling you that quite clearly, and I'll give you the reason why I am telling you that. There is a huge difference everything in terms of what you are going to buy in Dublin depends on the location. It depends on the address on what the value is and what you have to pay for. So there is not much point in I going into the first thing any building society, the first thing any financial institution will ask you is, "Where is the property? Where are you thinking of buying? What kind of value are you putting on it?"

Q. Can you tell me when you had a discussion with the Irish Permanent in Cork about whether they would finance the purchase of a house for you in Dublin in 1996?

A. In around the same time as I discussed it with Michael

Fingleton.

Q. So who did you discuss it with? Mr. Michael Gaffney?

A. Michael Gaffney, yes.

Q. You told him you wanted to buy an apartment in Dublin or a house in Dublin?

A. I didn't. What I said to him, in general terms, I was talking about my finances in general, about the mortgage on my house. I was resolving a personal situation at the time. I wanted to find out what way I was fixed in financial terms, and as part of that discussion, I would have said that I may need a property in Dublin for residential accommodation for myself. It would be in that context. I never made a formal application. I just discussed it with him.

Q. And did he say to you that they would be that that was something they'd look on favourably?

A. Did he say? I would have I would say that in terms of my discussions with the Irish Permanent in Cork, in relation to my finances generally, it all came back and related to the asset that I had which they had title deeds for, which was my home, my home in Holycross. So I would say whatever offers I would have been getting from him would be in that context, yes.

Q. Did you tell him what that you wanted to buy a house in Dublin, and did you have a discussion with him like the one you had with Michael Fingleton?

A. Not in that detail, no.

Q. I think that's what you told me a moment ago. You had a similar discussion to the one you had with Michael Fingleton

A. Similar to the extent, Mr. Healy, that the reason that discussions they were similar discussions, obviously, because they were financial in a general nature.

Q. Did you meet him, or did you ring him?

A. Pardon?

Q. Did you meet him, or did you ring him?

A. Who?

Q. Mr. Gaffney.

A. Around I don't know whether I met him at that time.

I think I I certainly met him on a number of occasions. Whether on that occasion I met him or actually spoke to him on the phone, I am not sure.

Q. If you met him, you'd have to go to Cork, or he'd have had to come to Dublin?

A. I'd say that's a natural assumption.

Q. Did you go to Cork? Can you remember that?

A. Pardon?

Q. Did you go to Cork?

A. I don't recall if I did. I certainly met Michael Gaffney in his office on a few occasions. In this particular instance, whether I actually drove to Cork or whether I met him in Holycross or whether I met him in Dublin, I just don't know.

Q. Would that be a discussion like a discussion he described here in evidence the other day concerning some English property you planned to buy?

A. No. That was a later discussion.

Q. I know, but was it a similar type discussion to that?

A. No.

Q. What was the difference between it? Was it more detailed or less detailed?

A. I would say both discussions were general in nature. I can't I don't have something I don't have a measurement for that kind of a discussion.

Q. That's the point I was making.

A. But a general discussion.

Q. And after the general discussion about the English property, you got a letter from Mr. Gaffney saying that the building society would look favourably on your general proposals to buy property in England. Isn't that right?

A. You have now gone forward to what year?

Q. Nineteen-ninety-

A. 7th November November November 1997, yes.

Q. 1999, I think, wasn't it?

A. 1999, okay.

Q. You got a letter from Mr. Gaffney saying that the building society would look favourably on any proposals you had to borrow money on the security of your house in Holycross?

A. Let's not confuse the two now. Because

Q. I am not confusing them.

A. I don't want to be confused myself. I just want to get it clear. You have now jumped from a discussion that I have had with Michael Gaffney. We are now on three years.

Q. Yes?

A. So the discussion that I am now referring to is a discussion which led to a letter that I received on the 7th November, 1999.

Q. Yes.

A. Okay. That's the discussion that's what you are talking about?

Q. Yes.

A. Okay. The background to that

Q. I know the background to it. It was you brought it up in evidence, referring to the evidence that that man gave here a few days ago. The two discussions were general in nature.

A. Yes.

Q. One discussion resulted in a letter from Mr. Gaffney saying that he would that the building society would look favourably on your proposal to buy property in England on the security of Holycross.

A. Yes.

Q. I am just wondering why the discussion you had with him in 1996 didn't result in a similar letter.

A. Because I didn't have a specific project in mind at that particular time. I was talking in a general sense. When I met Mr. Gaffney in November 1999, early November 1999, I had a number of things which were specific on my mind. I was trying at that stage to reorganise my finances, to use them to maximum benefit. I had a certain situation that I had to resolve which involved my home, the house, and I also had in mind to get involved in some property venture, and it was in that context that I had a discussion with him. There was two elements to the discussion that I had with him.

Q. I just thought you said a moment ago they were equally general, and I was wondering why they wouldn't both have resulted in a similar-type letter. You are saying here, Mr. Lowry, the bank will look favourably on you to buy a flat in Dublin or a house in Dublin, whatever?

A. I am not going to split words with you, Mr. Healy. What I am saying to you is the second one, I suppose, if you really look at it that closely and if you want to scrutinise it and go through the precise detail of it, I suppose the second one is possibly more specific, on the basis that I myself had something in mind.

Q. I see.

CHAIRMAN: Five to one; we'll resume at five past two.

Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:05 P.M.:

Q. MR. HEALY: Now, there are just two things I want to draw to your attention, one of which I want to mention right away and then put it aside for a moment; I'll be coming back to it again when we just finish up on this question, what I call the money trail, to get your comments on it. But it may be of relevance in it may be of relevance to you and you can be thinking about it.

We are discussing this morning, and you were drawing to the attention of the Sole Member, your views on the money trail and the relevance of the money trail, as you saw it, to any activities that you were engaged in, and you said it had no relevance. One of the things you were anxious to point out was that the transfer of monies from the bank account in Dublin, the $\text{€}407,000$ remember that transfer?

A. Yes.

Q. That that occurred on the 3rd, and the impression that the Tribunal had, wrongly, was that it occurred on the 10th, with a value date of the 3rd. Over the lunchtime I checked the actual original documentation, not the bank account that we had on the overhead projector, but the documentation that was generated and which eventually led to the bank account, because the bank account is indistinct. And I have checked, and I have informed your lawyers that the value date was the 3rd but the actual entry date, the date of the transaction

is also the 3rd as you surmised. Do you understand

that?

A. So the date that I mentioned

Q. The 3rd

A. Is the correct date. I accept that.

Q. I'll be coming back to it later, at the very end of it.

The date it actually landed in the Aidan Phelan account

in the Isle of Man is still in fact the 10th, and we'll

come back to that later. This document indicates why

in fact there may have been a delay.

Now, the other thing I just want to try to get over and

done with is to try to get in my mind a clear picture

of what was happening in relation to the purchase of

the Carysfort.

Now, the first thing I want to do is to try to get the

sequence of events right and then forget about the

dates, and then come back to the dates as I understand

the sequence, and if I can take them one at a time, and

stop me at each one if you disagree.

Firstly, Mick Holly does the action, right?

A. Correct.

Q. The contract is signed on the 17th July?

A. Between Mick Holly and

Q. Yes.

A. Yes, right, that's the start date.

Q. The contract is signed?

A. The action was on the 17th.

Q. The next event. Forget about the dates at the moment.

Are you looking at the place?

A. Yes.

Q. You arrange with Michael Fingleton to get a loan for the place?

A. Yes.

Q. You have a meeting with Michael Holly and David Austin, all three of you together, in which you get some indicative prices, I think is the word you used, for the refurbishment. At a later stage to judge from the documentation I think it would be the 2nd or 3rd September you get the actual price in from Cedar Homes, because I think in the meantime, from documents I gave your lawyers, a firm of architects had gone and done some more detailed work on it, right?

A. Yes.

Q. So then we have the purchase by Mick Holly. You see the property. You go to Michael Fingleton. You have a tripartite meeting, I think you called it, to get indicative figures only. You then have a private meeting with David Austin to discuss the financing. Later you get more specific figures, isn't that right?

A. Correct.

Q. And it's only later still that money is actually put into the account in the Isle of Man.

All of that sequence had to start, we know, on the 17th July?

A. Yes.

Q. To judge from this letter that the Tribunal got from Mr. Holly's architect, Mr. Brian O'Halloran, it seems that towards the end of July he was given his brief to go and get some figures.

A. At that stage Mick Holly had agreed that he was he obviously was proceeding with whatever structural refurbishment was required. And my understanding is that Cedar were operating for either him or whoever, or me if I was buying the house.

Q. Right. Well, at that stage let's forget for the moment who was actually buying it at that stage what he was doing was telling his architect, "Look, we need to get more specific figures. We need to get details." But prior to that there must have been some indicative meeting between or some meeting between yourself, Mr. Holly, and Mr. Austin at which a rough indicative set of figures was given?

A. No, not at that stage.

Q. All right. Okay.

A. This was Mick Holly having purchased the house for either his company or for me to purchase, and irrespective of who had the house, he had his architects to look at it for whatever structural works were required. I wouldn't have been aware even of that at that stage.

Q. All right. We know that the final figures came in from

Cedar Homes, is it the 2nd or 3rd September? The 2nd September?

A. I didn't actually agree those figures until I think it was the in around the 20th September.

Q. I appreciate that, but they came in around then. They were produced around that

A. Yes, they were produced around September, yeah.

Q. So the indicative figures must have occurred earlier, perhaps in August sometime?

A. Well, I wouldn't have known what the indicative figures were until I actually got

Q. I am only going by what you told me. You told me the sequence was he brought it at that time we weren't going through all the details of Michael Fingleton.

You saw it. You had a meeting with him and David Austin. The indicative figures were mentioned, and at some stage we know the 2nd September, the final figures were obtained, so the indicative figures must have been before the final figures?

A. No, I wouldn't have got any the only contact I had in terms of the refurbishment would be the discussion that I had with Mick Holly, find out what it's going to cost, what have you. He went off to do that, obviously. Then when he came back in September, that would be the first time I would know as to what kind of money was involved.

Q. Right. I am not going to spend too long on it, but my

interpretation of the expression "indicative" is that you wouldn't be getting final figures. You'd get just a rough idea of what something would cost; the final figures would come later?

A. I never got it. The first time I knew of what was involved in it was when I actually got the figures in September from Mick Holly.

Q. So when you told me you got indicative figures

A. I didn't say I got indicative figures. What I said was we had a discussion to get indicative figures. I didn't get indicative figures because I didn't know what was involved.

Q. Right. I see. That's what I thought you said. Maybe you didn't. You had a discussion to get indicative figures?

A. Yes, a general discussion to say, "Look, what's involved in this", and what have you. And obviously he would have to go away and do some costings.

Q. You got the indicative figures, and then you had a discussion with David Austin

A. September, yes. The refurbishment was actually agreed, the figures were agreed in mid-September. The refurbishment programme for the structural works was agreed in mid-September. I received a document at that particular time which I signed.

Q. Yes.

A. I asked Denis O'Connor to witness that particular

contract. So that is that's and that's the stage where I referred to earlier, where I said, you know, "I might need you later to administer the scheme."

Q. All right. So the first date is the 17th of July, when Mick Holly entered the frame. The final date is sometime in the middle of September?

A. Yes. In the meantime

Q. There must have been some discussion about the figures, then, between yourself, Mick Holly, and David Austin, sometime, judging from what you have just told me, between the beginning of September and the middle of September?

A. There would have been a discussion between myself and Mick Holly at that stage in relation to the figures.

Q. I thought you had a three-part discussion.

A. I had three parts the three of us met initially.

Then I got my figures, and obviously I had to go through the figures. And the person to go through them was Mick Holly. And then probably within a week or what have you, I would have discussed it with David.

We sat down at that stage, the full picture was clear, and I knew exactly what was involved. And we discussed it in detail at that stage, and that would be, I would say we are talking there in the region of that particular discussion that I am talking about with David Austin would have taken place first, second week in October, early in October.

Q. Right. I think you have confused me now. Because you signed the agreement in the middle of

A. I signed the agreement on I think it was the 20th or 22nd September. And at that stage, when I signed it, just to help you, at that stage, when I signed it in September, I had intended to use the money that I had in the Channel Islands. Early October, I had a discussion with David Austin. Now, at this stage

Q. Where did you have that discussion?

A. With David Austin.

Q. Where?

A. I actually I had a couple of discussions with him. One of the discussions I had with him was in the I think it's a pub called the Purty Kitchen, which is up the way from his own place. It's a lounge and restaurant. I know I had two discussions with him. I don't know where the second one was.

Q. Where did you have the three-part discussion?

A. Pardon?

Q. Where did you have the three-party discussion?

A. Where did we have that? We had it in I don't know the name of the place. I can see it, but I don't know the name of it. Some place between Blackrock and the top of Leopardstown. It's on the right-hand side.

Q. I just want to get the number of meetings you had. You had the general three-party discussion; that was the end of that. Then you had a discussion with Mick Holly

yourself?

A. Yes.

Q. At that stage, did you have the Cedar Homes letter of the 2nd September?

A. I can't recall specifically, but I would yes, I would think that I knew at least what was happening, yes.

Q. At that stage you knew the precise amount of money that was involved, but you didn't get the formal articles of agreement until sometime later in the middle of September, is that right?

A. Yes. Subsequent to that, then, as I say, at the end of that month or early in October, I would have had discussions

Q. How do you know it was the end of the month? How do you know it wasn't the day after the agreement, for instance?

A. It wouldn't have been. I wouldn't have been able. There is no way I would have been that involved in it. There was no way I would give a day in a row, if you mean.

Q. Where did you sign the agreement?

A. The agreement with Mick Holly?

Q. Yes.

A. I signed that in a coffee shop in the Stillorgan shopping centre.

Q. Which would be fairly near to David Austin, wouldn't

it?

A. Pardon?

Q. It would be fairly near David Austin, wouldn't it?

A. Where does David well it wouldn't be. It would be at the other side of the dual carriageway.

Q. Same side of the city. Same part of the city. Go on, anyway.

A. I won't argue about that.

Q. Okay, so you had that discussion with David Austin, you think at the end of September, beginning of October.

Is that right?

A. Yes. What happened at that stage is we had a detailed discussion on it, and that discussion involved at that stage we had a complete discussion. There was there was a couple of strands to that discussion. Number one, there was the structural cost. Then we discussed then obviously there was a fit-out to be done, and then at that stage, David went away, got some prices with Mick Holly I wasn't involved in that aspect of it and between them, they came up with the overall cost of it.

So in the first I don't know, in or around early October, maybe the middle of October, David and I came to conclusions. So that's the time scale.

Q. I see. Okay. So then the money was put into the account. The event of the end of November, November/December, overtook the other affair. You

decided you'd try to sell the house. By the middle of February of the year 2000, you had paid the money back to him, and the whole thing was reversed, if you like.

A. Yes.

Q. Okay.

Now, the evidence that the Tribunal has heard concerning the money trail that we mentioned this morning and that I mentioned to you yesterday for your comment, I'll just recap again the comments the matters that I want you to comment on.

Remember, I told you that evidence was given by Mr.

Barry Maloney that in November of 1996, Denis O'Brien said to him, "Look, I have paid two made two payments." One of them was $\text{€}100,000$ payment to you.

Subsequently, a year later, Mr. O'Brien said that money never went through, and subsequent to that he said it got stuck with an intermediary.

Now, at the time that Mr. O'Brien first spoke to Mr. Maloney, the money trail that I have described had already commenced; you understand? Money had left Mr. O'Brien's account. It had gone to Mr. Phelan's account. From that account it had gone to Mr. Austin's account, and from that account, it had gone to your account. Do you understand? I am going to give you a chance to comment on that in a minute now. That was the state of affairs as of November of 1996, which was the time that Mr. O'Brien said "I paid $\text{€}100,000$ to

Michael Lowry."

By 1997, Mr. O'Brien said that while he had paid
\$100,000, or had intended to pay \$100,000, it never
went through. He says it got stuck with an
intermediary. Now, by that stage, that money had not
in fact gone through, or if you like, it had gone
through, but had been reversed and had gone back into
David Austin's account?

A. Excuse me, Mr. Healy

Q. Just let me finish.

A. No, that's unfair to me

CHAIRMAN: Let's hear the whole proposition. You can
comment fully then.

Q. MR. HEALY: Now, the suggestion that might be made is
that when Mr. O'Brien was referring to the money
getting stuck with an intermediary, what he was
referring to was the fact that the man who was used as
the conduit for the money the intermediary for the
money, Mr. Austin got stuck with the money by that
stage, because it had gone back into his account.

A. Okay.

Q. Now, do you want to comment on that proposition?

A. Okay. Two things. Number one, I know nothing about an
intermediary; and number two, I totally, totally and
utterly reject any insinuation or any inference that I
got any money through any route by Denis O'Brien.

Now, Mr. Healy, I will remind you that yesterday you

gave you repeated to me evidence which you accepted, you said, from Denis O'Brien and Barry Maloney that the intermediary was Woodchester. Now you are telling me that

Q. No, I didn't say that.

A. You did. The message that I got yesterday in the transcripts, as they were read back to me, was that Denis O'Brien had mentioned to Barry Maloney, and he named the intermediary as Woodchester. Now you are suggesting to me that the intermediary was David Austin, as you called him, the intermediary. Let me assure this Tribunal that there is no intermediary required for Michael Lowry or anybody associated with me as an conduit for money from Denis O'Brien, because it never happened. And I want to repeat again to the Tribunal, I have never, never requested money or received money in any form, through any individual or any entity, from Denis O'Brien.

Now, in relation to this trail, specifically I recall it being said to me here yesterday that Woodchester was the intermediary. The second thing, I am glad that you have confirmed, because if you look at your trail

Q. If you want me to confirm something, just give me a chance. The Tribunal is not here to make a case against you. The Tribunal has got a lot of information, and as the Tribunal made clear at the very outset of these sittings, way back in June or before

June, what it's trying to do is to try to see whether conclusions could be or should be drawn from a set of circumstances. The circumstances are the money trail that I have outlined to you and the evidence that was given, and is there a connection between that evidence?

And if you want to make the point and you are absolutely at liberty to make it that the intermediary that was mentioned, not by me for the first time, but in evidence, the intermediary that was mentioned by Mr. O'Brien in the course of the discussions that took place in November of 1999 was Woodchester, you are absolutely right about that. I am not saying it's not for me to accept it in any case; it's a matter for the Sole Member. You are absolutely right. The intermediary that was mentioned was Woodchester, yes. Mr. Austin was not mentioned as an intermediary.

A. Yesterday, I dealt

Q. But I am suggesting to you that it could be suggested that Mr. Austin was the intermediary and that the money that went the route I have described, from Mr. O'Brien's account to your account and then back to Mr. Austin's account, got stuck with him, got stuck with his account, and that he was therefore the intermediary.

A. Okay. Could I could you bear with me on that?

Q. Yes.

A. Also yesterday, and as I mentioned this morning, and I don't want to hold up the Tribunal in relation to this

Q. No, this is important. Take your time.

A. It is important, from my point of view, that it was Woodchester yesterday, and it was also connected to the refurbishment of my house, and we are now back to the refurbishment of the house again. The theory. The theory.

Q. Yes.

A. Or the suggestion.

Q. There is no theory.

A. Well, whatever it is. It's a suggestion, at least, that now this money could have been channelled through David Austin. The first thing I have said to you is this: That the money trail was long started on the 3rd July. You accept that. I accept that. It was the 3rd July.

Q. Yes.

A. We didn't go to public auction Mick Holly didn't go to public auction until the 17th July. So and after that, the sequence of events is outlined. In other words, there was no house, there was no refurbishment, before the money trail started.

So what I would suggest, if I may, is that sorry, let me finish this part of it. So the 3rd July. The loan from David Austin didn't come into my account

until the 16th October, 1996, which is months, months

later.

Q. Correct. Yes. So if somebody was going to give you money

A. Where is

Q. Just let me finish. Do I understand you rightly, if somebody was going to give you money for a house, that's not consistent with the fact that you had no house at the time that the money first moved? Is that what you are saying?

A. What I am saying to you is this, is that there is no connection whatsoever with my dealings my dealing with David Austin was a straightforward loan agreement, and I have outlined the lead-in to it. It was it had nothing to do with any third party. It was strictly a business arrangement, a commercial business arrangement on a private basis, on a friendship basis, between myself and David Austin.

Q. Yes.

A. It was nothing more, nothing less, and I honoured it and honoured it fully, and I think the sequence of events as I am outlining them today I mean, there was no house, there was no refurbishment, when the money transaction and the other thing that's being left out of the equation is, I'd have to say that I have also last night read the statements that were given to this Tribunal

Q. Can we just deal

A. by Mr. O'Brien and by Mr. Phelan, and the reality is that the money that was transferred was for a property which was purchased from Mr. Austin in Spain.

And the other point I wish to make

Q. No, no, that's the evidence that's been given.

A. It's not for me to make a decision on it. I think it needs to be put into the equation. You can't leave that property transaction out. You can't forget it.

It happened; it's a reality.

Q. Can I get it clear, so that I understand it. What the Tribunal is looking at is a money trail that goes from Dublin to the Isle of Man, down to the Channel Islands, and back to the Isle of Man. It goes from Mr. O'Brien's account, if we can use that shorthand, in Dublin to Mr. Phelan's account to Mr. Austin's account, and then to your account.

Now, what the Tribunal has been told

MR. O'DONNELL: Sir, if we are putting the money trail, I think the point that Mr. Lowry is entitled to make, he put it from start to finish. And that's not the finish of the money trail, as Mr. Healy knows. It doesn't stop in Mr. Lowry's account. It goes to Mr. Austin's account, where he spends it, and if Mr. Lowry is to be asked to speculate on matters, he should be given the whole trail to speculate on.

CHAIRMAN: No doubt he will.

Q. MR. HEALY: So it goes to your account, and then from your account it goes back to Mr. Austin's account?

A. With interest.

Q. Now, what the Tribunal is trying to look at

A. There is another part to it, which Mr. O'Donnell has pointed out. Not alone did it go back to Mr. Austin, but Mr. Austin himself transferred that account, as I could see from statements last night, back to his own personal account with the ACC for disbursement on personal matters.

Q. Not connected with you?

A. Not connected with me or anybody. In other words, Mr. Austin gave me the money as a loan. Mr. Austin got his money back with interest. Mr. Austin spent that money on himself. I can't make it any clearer than that.

Q. Let me just it's important that you should understand what I think or the potential interpretation that could be put on it.

As I have said, the money took the route we described, from Mr. O'Brien to Mr. Phelan to Mr. Austin to you back to Mr. Austin, to be used in Mr. Austin's own personal and private matters. Right?

A. But one thing you are leaving out of the equation there: Where is the house in the middle of this?

Q. Just a minute now. That's the money trail. That's the thing that we start it. It's in documentary form.

There is no dispute on any side that all those

movements took place. What you are saying is that those movements are totally unconnected with you. All that happened, as far as you are concerned, is that you bought a house in July. And at a later point, much later point, in October, you got a loan from Mr. Austin, and that loan was to enable you to refurbish the house which you had bought earlier?

A. Correct.

Q. And what the Tribunal is being told on Mr. O'Brien's side is that he wasn't sending any money to you; he was buying an apartment from Mr. Austin, and that he bought that apartment in July, and that he was paying for that apartment. And that was his explanation for the money. So what the Tribunal is faced with is a money trail and your explanation, and you have given it: "It had nothing to do with me. I was simply borrowing money for a house." Mr. O'Brien provided an explanation that it had nothing to do with you either, that he was simply purchasing an apartment, purchasing David Austin's apartment to explain the movements to David Austin's account.

What the Tribunal is trying to look at is those interpretations, those two interpretations I won't call them interpretations; in fact, they are the evidence the Tribunal has heard and the other circumstances.

I have asked you to comment on one of them yesterday,

the fact that in 1997 this transaction was obscured in the course of the inquiry carried out at the time of the IPO. There is the fact that the Tribunal has to decide whether some conclusion shouldn't be drawn from the fact that Mr. Austin, who had accounts in Ireland, and who is paying money out of that account into an account in Ireland, wouldn't give you a loan for a house by simply putting money into an account in Dublin.

There is the fact that the account that was opened in the Isle of Man was opened with the name of your accountants, without their authority or permission, and the fact that it contains a direction that no correspondence would be sent to that address. And then there is the fact that your accountant was never told about this, and nobody was ever told about it until recently. Those are the circumstances the Tribunal has to take into account.

Am I right in summarising your evidence by saying that your house purchase was independent of all of these matters and occurred without any connection with any of them?

A. You are putting it we finally, I think, could reach an agreement, in the sense that we might agree to differ. It's a matter for the Chairman to make a decision, obviously. But that is my position. My position is as I have outlined it.

And what I would say is that the money trail that you referred to yesterday started on the 3rd of July. I had no house, I didn't even own a house, never mind say to refurbish a house. So you follow it up along, and we got to the stage where we got to October, which is months later, and I not knowing anything about any transaction with Mr. David Austin and any other third party.

So we have got to the stage where I draw down the loan. You understand the reasons why the deal fell apart, and that has been that evidence has been supported by others, and it's in the public domain. And after that, I repaid it.

Now, I'd have to say you have to say, in relation to it, it was David Austin's money. Why did he you know what I mean; it went back to David Austin's account. David Austin spent it for his own purposes, so obviously it was David Austin's money. And the reason it was David Austin's money, in my understanding of it, is that there was a transaction for a property.

David Austin lost an asset in return for whatever payments he received.

In relation to obscuring, I don't wish to delay the Tribunal. I have already accepted I have already accepted that I should have disclosed it in a more timely fashion. But in mitigation to that, I would say that I did disclose it and I did do it in a voluntary

way. I didn't understand the relevance of it or didn't fully appreciate the relevancy of it until the other matters became an issue, and then at that stage, I disclosed it.

Now, I just there is nothing more I have to say than that, other than to say, Mr. Chairman, I did not get any money through an intermediary or anyone else from Denis O'Brien. It was a straightforward, personal, private deal that I had with David Austin which came about because of a friendship and the particular circumstances that I was in. I honoured that agreement, and there is nothing more I can say on it.

CHAIRMAN: One passing matter occurs to me, Mr. Lowry.

I think I have fully your view of matters, that in fact, your transaction was entirely distanced from any other matters about which you knew nothing, and that it was only in spring of this year when the emergence of the Investec and other matters prompted you to speak to your advisers and contact the Tribunal about the loan.

It occurs to me that whilst you may not have had much time over the last few years to follow up aspects of this Tribunal's business, it might have come to your attention, in the course of evidence last year relating to Mr. Charles Haughey, that Mr. Austin was, on one view of evidence, connected, potentially, with an alleged or a suggested Smurfit payment to Mr. Haughey from an offshore location.

And I just wondered, did you notice that evidence at the time, and might it have prompted you to feel, "Well, perhaps it might be beneficial just to unburden myself to my advisers of my wholly innocuous dealings with Mr. Austin in view of his emergence in that other context last year"?

A. Mr. Chairman, I have to say to you in sincerity, I wasn't aware that Mr. Austin was in with the Tribunal to give evidence in relation to that matter. I hadn't heard that David Austin was connected in any way to any payment with Mr. Haughey.

CHAIRMAN: All right.

A. I knew that the Smurfit organisation, I have to say I heard that the Smurfit organisation I saw Michael Smurfit coming in and out on a number of occasions. I didn't actually realise that David Austin was what would I say; I don't know the right word to say was connected in any way with that.

Q. MR. HEALY: Now, one of David Austin's executors is Mr. Aidan Phelan, isn't that right?

A. Yes.

Q. I think you know that now. During the course of your association with Mr. Austin up to the time that the account in the Isle of Man was opened, did you know that he was friendly with Mr. Phelan?

A. Did I know of no, I wasn't aware of first of all, I wasn't aware that Aidan Phelan, as you pointed out to

me, was an executor to David Austin. No, I was not aware of that.

Q. Yes, but were you aware, up to the time that the account was opened in the Irish Nationwide in the Isle of Man, were you aware up to that time in your relationship with Mr. Austin that he had a friendship with Mr. Aidan Phelan?

A. No.

Q. I see. Now, the Tribunal has heard evidence that Mr. Aidan Phelan was instrumental in getting a mobile phone for you sometime in I think it was late '96, was it, or something like that?

A. It would have been yes, after my

Q. After your resignation?

A. Yeah, '96 to early '97.

Q. I am not making an issue of the fact that he got you a phone, but he got you a phone; your own accountant arranged for him to get a phone for you so that you would have the use of a mobile phone which was not traceable to you for the purposes of maintaining your own privacy from perhaps journalists and people like that who might be ringing you up for information or quotations or whatever. But this all blew up in the newspapers, and there were headlines to the effect that Aidan Phelan, the ESAT money man, provided a free phone for you. And Mr. Phelan says he is not the ESAT money man, but he was Denis O'Brien's money man. And after

all that furore blew up, Mr. Phelan says that he had a meeting with you and I think Mr. O'Connor. If I am right in recollecting it, the meeting took place in Mr. O'Connor's offices, do you remember that?

A. I do indeed.

Q. So at that stage you knew who Aidan Phelan was?

A. Whenever that meeting took place, that was I hadn't met Aidan Phelan. What happened was first of all, I didn't request Denis O'Connor to approach Aidan Phelan for a phone. Denis O'Connor knew Aidan Phelan through his own accountancy practice and his own connections, whatever personal connections.

Q. Yes, he has given that evidence.

A. So when I asked Denis O'Connor to acquire a phone for me, it didn't matter to me who he was it just happened that he was doing that. What happened then was, and may I say well, I don't think I should I don't need to; Denis O'Connor was going out to get me a phone the same as anybody else would, in other words, to acquire a phone and to pay for the phone. There was no question of Denis O'Connor, at my request or from his own volition, going out to look for a free phone.

Q. Yes, he has explained that at the time there were phones going free with bags of coal, and things like that.

A. I have to say, Mr. Healy, that you mentioned about media and what have you; I want to make it clear,

because this is the first opportunity I have had. I have had to digest acres of newspaper comments and banner headlines, that made even six o'clock and nine o'clock news, that I got a free phone from ESAT. Let me knock it straight on the head, as my accountant has done. He has given an outline. He has told this Tribunal exactly what happened, and let me make it quite clear that any bills in relation to phone calls or phones have either been paid personally by me or by my company. I have never got a free phone, and nobody has ever paid my phone bills other than myself.

Q. But it did cause now that you mention it, ferocious consternation, all about more or less nothing, really?

A. Pardon?

Q. It did cause an awful lot of consternation, although it was about very little?

A. It was about nothing. As Mr. O'Connell said, they were giving out phones with bags of coal. I remember going home one Christmas, and I saw a sign on a sideboard which said "Free phone with a bag of coal".

So what was happening at that stage, what was happening at that stage and it should also be remembered, like, I can't understand how anybody could run with an issue like this to the extent that it was ran. I paid for the phone. I paid my bills for the phone. And in actual fact, the phone was an 087; so if I was getting a free phone, I wasn't going to be getting Mr. O'Connor

or Mr. O'Brien or anybody connected with him to pay

Eircell for a connection to the Eircell system. So I

just

Q. I don't think that there were any phones other than 087

phones at the time.

A. They weren't up and running at the time. That's the

point I am making. We'd heard at this stage I think

that the licence had been granted and they were in the

process of commencing their operation. But all I want

to say about the phone, it was a non-issue that was

blown out of all proportion, and it was a symptom of

the frenetic activity that was out there to pin

something on Lowry and connect him in some way.

Q. I can assure you I can understand all of that. As I

was saying, it created a total furore, although it was

virtually nothing; somebody getting a phone through

their accountant. It just so happened to be Mr. Phelan

who organised it, and people started connecting your

name to Mr. Phelan's name and running banner headlines

about it.

As it happens, did you have any discussion or chat

during that time with Mr. Austin about how these

dreadful connections were being made between your name

and ESAT over something as trifling as a mobile phone?

A. At that stage I was getting bad press all over the

place. I probably would have had a general comment

from David Austin that, you know, there was he never

went into any specific discussion in terms of any particular item. The phone was only one of numerous items at that particular stage. There was a lot of issues flying around at that stage.

Q. I understand. In any case, you don't remember having a specific discussion, but I suppose you must have chatted in some way about it, even if only to curse the press or the newspapers for drawing these conclusions?

A. I don't recall actually having any discussion with him about it.

Q. So you had a meeting with Mr. Phelan in Mr. O'Connor's offices?

A. I wouldn't say a meeting, to be honest with you. It was a very simple, casual

Q. I think he just said he wanted to meet the man.

A. No, he didn't actually say that.

Q. He said that in evidence. He said he just wanted to meet you.

A. I wasn't aware. I understood it was something casual that Denis said: "This guy is around; you may as well meet the fella you are supposed to have got the free phone from." It was as casual as that. It wasn't what you'd call a formal brainstorming session about this phone.

Q. I think that's what Mr. Phelan said also. Maybe he called in to Mr. O'Connor for some other reason, and it was an opportunity to meet you. But in any case, you

could have been in no doubt at that stage that connections between you and Mr. Phelan were going to fuel controversies?

A. Myself and Mr. Phelan?

Q. Yes. Seeing as something like a mobile phone had caused the banner headlines, as you call it.

A. You could take that impression from it.

Q. I think what Mr. Austin or what Mr. Phelan said was, "Look, this had put me in the public domain. I just wanted to understand what had happened." And that was one of the reasons why, I think, he met you; would that be a fair way of putting it?

A. Sorry, could you repeat what he said?

Q. What he said in evidence I can give you the page, but I don't think it's hugely significant. He said he was asked, "The first time you met him, did you actually meet him at that time?" It's day 138, page 24, question 93.

"Question: The first time you met him, did you actually meet him at that time?"

"Answer: Yes.

"Question: In what circumstances?

"Answer: I just met him to see what went wrong here in I suppose he appeared in the paper. Just wanted to meet him, sort out what went wrong. It put me in the public domain, and I just wanted to understand what had happened."

A. That's a fair description.

Q. Do you remember your next contact with Mr. Phelan?

A. My next contact with Mr. Phelan would have been in connection with Denis O'Connor asked him in connection with some to do some as far as I recall, it was in connection with my company, my refrigeration company. If you'd like to go through my statement, I think it's

Q. Yes, maybe we'll go back to your statement. I don't think it's actually dealt with in your statement as a specific matter, and I am not criticising you in any way, or at least I can't find it.

It's in a separate letter, yes. Your statement, Mr. Lowry, I think is based on a personal letter that you wrote to the Tribunal in April of 2001, and on some other material. Maybe if Mr. Kelly wants to refer me to another letter, I can go to that if it will speed matters up.

I think if we proceed for a moment without the letter, and you can correct me if my impressions are wrong I think that you met Mr. Phelan, I'll come to the date in a moment, or you had dealings with him, and maybe your accountant, Mr. O'Connor, had dealings with him as well, in connection with either the formation of a strategic alliance or perhaps the sale of the business of your company. Would that be right?

A. Yes.

Q. And can you recall meeting Mr. Phelan in connection with these matters, and if so, roughly when?

A. Yes, I can recall it, and the background to it is at the background to that particular contact is the fact that when I went back into my company, and went full-time back into the company, I obviously had to look at ways and means to develop the business, to expand the business and to improve the business with a view to protecting the employment of the people that work for the company, and also to improve the financial position of the company, as everyone in business would like to do.

In that process, I identified a number of problem areas for the company. And one was the fact that for a considerable length, since the formation of the company, we were exclusive to Dunnes Stores and reliant on Dunnes Stores. And by mutual agreement with Dunnes Stores, that situation changed. And what I was trying to do is to identify, by virtue of the fact that I had been excluded by our own decision, by my company's decision, excluded from the main market, it meant that we had lost our representation in a big sector of the market. And at the same time, on the other side of my business, I had lost a substantial amount of what was my core business.

Q. The Dunnes Stores business?

A. Yes.

So what I was trying to do is to access the market that I had lost, as quickly as I could. In other words, it's not possible to put sales people out there. It's not possible to rebuild up, because other people have commitments made to other companies, what have you. So I was trying to rebuild the company. I came to the decision that it would be extremely difficult to do it on a day-to-day basis within our own resources, and I looked around to see what kind of an alliance I could form with other companies that would be complementary to ours. I had discussions, personally, myself, with a number at least four companies in that regard. One of the companies that I wished to have discussions with was Masser Hammond maybe I shouldn't name them publicly

Q. I think they have been mentioned in evidence. That's no reflection on them.

A. One of the companies was Masser Hammond. And the reason I had identified those is that they are a very influential company, and they have a big share of the market in relation to catering, which has a big refrigeration tie-in. And the sectors they would have been involved would have been supplementary and complementary to where our strengths were. During the course of discussions with Denis O'Connor in respect of the overall, I asked him did he know anybody who might know somebody in Masser Hammond that I could contact,

because I didn't actually know the principals in that company at the time.

And arising from that particular discussion, Denis O'Connor put out his own inquiries amongst his own professional people, in the accountancy and whatever practices, and he came back to me and he said that Aidan Phelan is very friendly with David O'Keefe, he is familiar with our business, and he asked me would I mind would it be okay if he contacted him to arrange a meeting.

That contact was made by Denis O'Connor. Arising from that contact, Aidan Phelan my recollection is that we had a number of meetings with Aidan Phelan, Denis O'Connor, myself, to effectively get to know exactly what it was we wanted to do, or for them to know what I wanted to do or what I had in mind.

Arising from that I am not able to put a time scale on this arising from that, we would have had discussions I had discussions with Mr. David O'Keefe, the principal of Masser Hammond, and we agreed that an exercise should be done which was pretty extensive, and it was agreed that Aidan Phelan would carry out that. In other words, that he was I was happy for him to do it. David O'Keefe was happy for him to do it; it was his company. And effectively he was able to crosscheck and to see where the synergies were and how the finances would fit into place.

Those discussions and, if you would call it, inquiries between the two companies went on for a considerable period of time, probably in over twelve months. And at the end of it, at the end of it, we we didn't reach a successful conclusion, on the basis that there was a difficulty in relation to capitalisation of one of the other companies.

So that is the background to that. And I would say that in at the same time as that was taking place, I was actually speaking also to other companies, and the information that I had built up from the other finances in relation to my own company were used for that purpose also. I had discussions with three companies in Southern Ireland, I had discussions with a company in England, and I had discussions with a company in Northern Ireland.

And ultimately I need to say this because I need to say this: There was never a suggestion that I was selling my company. It was always a case of, because that's what's happening in the business at the moment there are alliances being formed, and what we have done since that is we have developed the business.

Q. How many meetings do you think you had with Mr. Phelan in connection with that?

A. How many meetings

Q. Yeah, how roughly, or how often would you have met him?

A. I would have met him, I would say I can't say for certain, but certainly there was a good level of contact in relation to that. I would say seven or eight times at the minimum.

Q. And during all that time, you were also embroiled in the McCracken Tribunal?

A. I was involved?

Q. Yes. This is all during 1997?

A. Yes, I don't know what the time scale involved is. If I could get my is it possible, Mr. Chairman, that I could have my statement that I made on this earlier?

CHAIRMAN: Of course, Mr. Lowry.

MR. O'DONNELL: I don't think Mr. Lowry made a statement himself. Mr. O'Connor made a statement and dealt with it in his evidence. I think that's what Mr. Lowry is referring to. I don't know, if he wishes to have Mr. O'Connor's statement, if there is any difficulty with that.

MR. HEALY: I'll go through the portion of the evidence that Mr. not the evidence, but the portion of the statement that Mr. O'Connor made concerning this.

(Statement handed to witness.)

Q. MR. HEALY: Mr. O'Connor says that he had known Aidan Phelan since around the mid-1990s. Brophy Butler Thornton has never had a business relationship with him. That's obviously not of concern to you. Sometime in June, mid-1992 he met Aidan Phelan, and in a general

discussion, he asked as to how Michael Lowry was. I think Aidan Phelan said he may have asked that following the contact he had with earlier in the year when the whole issue of the mobile phone had blown up. An issue which I brought up this is what Denis O'Connor says: "Was that Michael was interested in seeking a strategic alliance for his company and would he be aware of any interested party? I had then reverted and after sometime he mentioned Masser Hammond and would I meet a David O'Keefe, who was their managing director. I subsequently met him in Aidan Phelan's office without Michael Lowry." Do you know if that's right or wrong? Did Mr. O'Keefe meet with Mr. O'Connor in Mr. Phelan's office without you being present?

A. Yes, that's correct.

Q. "And there was sufficient interest in that David called to Thurles. At that stage I passed it on to Michael Lowry, and there was a subsequent meeting involving Michael, David, and Aidan, but nothing ever materialised."

Would that be right? I think what Mr. O'Connor said in evidence was that he left it to you, David O'Keefe, and Aidan Phelan, maybe you had a site visit to your premises in Thurles, and maybe you had other meetings, but he says that he became too deeply involved in the McCracken Tribunal at that stage to be able to devote

his attention to the purely business matters as well.

Would that be right?

A. That would be correct.

Q. And in any case, one way or another, nothing came of this whole thing, is that right?

A. Yeah, that's correct. That particular discussion in fact what happened is they changed direction. I changed direction. And we both went our own ways. We just how would I put it; we have a good working relationship, and we cooperate with each other wherever we can.

Q. Now, you were dealing with him at one time or another during '97, according to him, and right up into sometime in 1998, over a period of perhaps about a year or so?

A. I would say that I was dealing with him really up to, into 1998, Aidan's initial involvement, and after that, when we got the finances and we knew exactly how the financial position with each company was, David O'Keefe and my people and his people would have had discussions, but he was involved in the periphery, yes, but not to the same extent.

Q. Right. I think what he said himself is he didn't want to be held to the actual dates, but that's 1997 and '98, putting it in those general terms. Maybe it was the end of 1998, early part of 1998?

A. Certainly not into '98. I'd say the end of '97.

Q. Okay. The end of '97.

Now, during all that year, I suppose your name, as you would put it, was being highlighted in the context of the McCracken Tribunal's inquiries during most of that year?

A. That's correct.

Q. And then after that, those inquiries began although I don't like to think back that far this Tribunal began. Isn't that right?

A. That's correct.

Q. And while you may not have welcomed it, your name was again one of the two major names highlighted in connection with this inquiry.

Now, during that time and I have asked you this already, so I am going to assume your answer during that time there were very intensive discussions taking place in the context of the ESAT Telecom flotation in November of 1997.

A. Mm-hmm.

Q. Concerning the question whether the Telenor/ESAT payment went directly to you or to Fine Gael.

A. Mm-hmm.

Q. And as I understand it, your evidence is that at that time, nobody told you about that. Not David Austin, not ESAT, Telenor, Denis O'Brien, Aidan Phelan or anyone. Nobody mentioned that to you?

A. I never I have given that in evidence, and that is

my evidence, and that I can only repeat that,

because that is the factual position.

Q. So

A. And it's important to note, at this particular time, I was also completely out of the Fine Gael Party.

Q. You were, yes. I agree. But the issue that has raised

a question for the Tribunal concerns the fact that Mr.

Phelan, who at that time was aware of controversies

that had been caused concerning his earlier and quite

trivial dealings with you, was now involved with you in

a, if you like, a business relationship, was aware of

all that had happened in the course of the McCracken

Tribunal, and was now involved with David Austin and

Denis O'Brien in procuring evidence or information to

satisfy the directors of ESAT Telecom that there was

nothing untoward or improper in the ESAT/Telenor

payment. And are you surprised that he wouldn't have

told you about that?

A. He would have absolutely no reason to discuss it with

me. He certainly did not discuss it with me. It was

never even mentioned between Kevin Phelan and myself.

And I'd have to say, I see no reason why it ever should

have been, because I had no connection with that

payment.

Q. I can understand that that's your view. But other

people were taking a different view, and Aidan Phelan,

who had by this stage become, presumably, a business

acquaintance of yours; I won't say a friend.

A. He was simply doing a job for me at that stage, yeah.

Q. Yes. He was dealing with one of your closest friends,

Mr. David Austin, who was undergoing some quite nasty

chemotherapy or medical treatment, I think, in France

at the time, and Mr. Austin was dealing with Mr.

Phelan, and Mr. Phelan was dealing with you, and Mr.

Phelan was dealing with Mr. O'Brien, and none of them

mentioned to you what was going on at the time?

A. I want to say again, again, again, and again: I knew

nothing about the Telenor payment. Nobody asked me

about the Telenor payment. And the reason why they

didn't ask me about it is they obviously knew I had

nothing about it or no role or involvement in it.

Q. Would you agree with me that it's curious that neither

Mr. Phelan or perhaps more important, Mr. Austin

at this stage would have said it to you?

A. From what I have read, from what I have read, obviously

it wasn't a contentious issue, on the basis that I say

it didn't apply to me.

Q. At that stage, did you mention to Mr. Austin at all, in

the course of your regular contacts, did you ever think

of mentioning to him that you were doing business with

Aidan Phelan?

A. No. I would have had discussion with David in terms of

my company and what I had wished to do. I would have

said to him that I was having discussions with various

companies in relation to what I might do into the future. But I had no discussion I didn't say to David that I have, through Denis O'Connor, asked Aidan Phelan to conduct a consultancy business or a consultancy job of work, which was you know, it wasn't that extensive. It wasn't a big deal.

Q. But isn't it curious that all these people who were so intimately known to one another never seemed to make any connections between one another during this time?

A. Maybe they did. All I am telling you is maybe they did. I don't know what connections others had. I can only speak for myself.

Q. If your relationship is

A. I don't think you are speaking about you are talking you are asking me about the connection with Telenor.

Q. What I am asking you about is this: Mr. Austin knew Mr. Denis O'Brien. He knew Mr. Phelan, who subsequently became his executor. Mr. Austin was a very close friend of yours. Mr. Phelan had been involved in a lot of newspaper controversy with you and was now working on a consultancy for you. And you were, at the same time, in the newspapers every day in connection with both the McCracken and Moriarty Tribunals. And it's a wonder that none of those things ever cropped up in any of your conversations with Mr. Austin.

A. What things?

Q. The fact that Mr. Phelan was working for you; the fact that

A. Mr. Phelan wasn't working for me. I have already said to you, Mr. Phelan was asked to do a specific job

Q. He was working for you

A. Working for me in the sense you are giving the impression that Mr. Phelan was working out of my office. Mr. Phelan was asked to do a job, I have said in the course of approximately, whatever length of time it was, I probably met him, between Denis O'Connor and David O'Keefe, I would say in total, in total there was no more than six or seven meetings between all. It wasn't as if we were sitting down every day drinking coffee and discussing world affairs. He was asked to do a job, and he did that specific task for us and did it quite well.

Q. In your discussions with Mr. Austin concerning what you were trying to do with your company, did you ever get to the point of telling him, "Look, I have decided not to go ahead with or I have not succeeded in making a strategic alliance with Masser Hammond"?

A. I wouldn't I don't ever think I got into those specifics. He asked me regularly, now and again, whenever he would feel like it. Obviously the normal thing would be to say, "How's your business going?" Different discussions like that. That would be as

much as far as we went.

Q. Around this time, sometime in the end of 1997, did you make contact with Kevin Phelan? No relation to Aidan Phelan.

A. In October/November of 1997, I had contact from him, that's my understanding. Or we made contact at that stage, yes, through a mutual friend.

Q. How did Kevin Phelan contact you?

A. Kevin Phelan contacted me I received a call it is my recollection of it that I received a call from a mutual friend asking me would it be okay if I met a Mr. Kevin Phelan. That was I think in October/November, 1997. And I agreed to do that. I asked the question at that particular time, what did he want to meet me for? What was it about? And the response I got was, "I don't know, he just asked me to make the introduction and take it from there."

Q. Did you regard that as a very strange call, that you should have been picked out above all the people in Ireland to meet Mr. Kevin Phelan?

A. Did I consider it strange?

Q. Yes.

A. I received calls, and still receive them, frankly, to meet various people in different walks of life. Different everywhere and anywhere.

Q. And you had no idea before meeting Kevin Phelan

A. Is there an a problem with someone wanting to meet me?

Q. No.

A. Thank you.

Q. But did you think do you think that did you know before you met Kevin Phelan what the purpose of meeting was about?

A. I am already after saying I didn't. I asked the question, why did he want to meet me?

Q. And you didn't know?

A. I didn't know until I met him.

Q. Where did you meet him?

A. I met him I had a short discussion with him on the phone. He asked to meet me, and I met him in Monaghan.

I was up on business, on other business, and I rang him to say that I would be there, and if he wished to meet me, if it suited him, we'd have the meeting. And we did.

Q. And what did he tell you at the meeting?

A. Pardon?

Q. What did he tell you at the meeting?

A. What did he tell me? We had a general discussion from he had the agenda, in terms of it was he who wanted to meet me. During the course of the discussion, he advised me that he was a property consultant and adviser, involved in the property market, and that he was actively involved in the UK scene, that he knew it very well; that he had facilitated a number of investors with appropriate and

suitable properties, and he was wondering ultimately, obviously, I am giving it to you in overall terms he was wondering, would I have any interest in the property scene in the UK.

Q. Right. But did you ever ask him how he came to bring this proposition to you, of all people?

A. How he came to bring it to me?

Q. Yeah.

A. He was meeting Aidan or Kevin Phelan as I know since; I didn't know at that particular stage but Kevin Phelan would know numerous business people. He'd have a huge amount of contacts in the commercial sector. That's his job, to make contact with people who he felt might be interested in investing in properties.

Q. But have you any idea to this day why he chose to contact you, and why he chose to contact you through a mutual friend and not directly?

A. Because he hadn't known me up to that. He had read about me. He had seen my followed whatever was happening at that particular time, and arising from that, he felt that I would be a good contact.

Q. Is that what he said to you? "I didn't know you, but I have read about you in the newspapers, and I think you'd be a good contact"?

A. No, he didn't know me personally. That's why he didn't contact me directly. But he would have had family in

my area. He would have had relations in my area, what have you. He was originally from not far from my place, so certainly would know of me and know about me, yes.

Q. But is that what he told you? Is that why he contacted you?

Do you follow me? Why did he choose you?

A. I never actually said to him, "By the way, why did you ring me?" It was perfectly understandable, in telling me of all the people that he generally did work for and who he was involved with, that he was looking to extend it, and he is doing it all the time. Since I met him he would have made introductions himself to many other people in Southern Ireland. That's the nature of his business. The nature of his business is to know people, to put people in contact with each other, to put people in contact with investment opportunities. That's the way business works. And

Q. Why did he think do you know where he thought you see, we can't talk to him. Do you know why he thought you would be a good business contact for the business he had in mind?

A. Well, if you really want to know, because gradually, when I got to know him, eventually it actually I didn't ask him there and then. But gradually, as I got to know him, I realised I realised that from reading everything about me, as you say already, reading all

the newspaper comments, reading about the McCracken Report, reading about the Moriarty Tribunal, the reality is this guy thought that I had money coming out of my ears, that I had offshore accounts here, there and everywhere, that I was a big investor, that I had lots of funds at my disposal. In actual fact, I would say from speaking to him that I got the impression later that he thought I could buy London.

Q. What did he think offshore accounts meant?

A. Pardon?

Q. What did he think of having lots and lots of offshore accounts meant?

A. Whatever he read about them. I don't know what his state of mind was in terms of offshore accounts, and I still don't know his state of mind in relation to offshore accounts.

Q. But you told me a moment ago that that's what attracted him to you.

A. I am saying what attracted him to me I didn't say that's what attracted me I am saying that I had read much of the commentary that you have referred to earlier, much of the commentary which you have attributed to me. And obviously, from reading that, he formed the mistaken impression that I had a lot of money to invest, and that he felt that he could assist me in that investment. Unfortunately, I had to let him down gradually and give him the reality of the

situation.

Q. You know that he is not prepared to give evidence to this Tribunal?

A. Kevin Phelan?

Q. Mmm?

A. That's his decision. It's nothing to do with me.

Q. This is a third individual with whom you were dealing who is not prepared to give evidence to this Tribunal.

A. Could you name them, please.

Q. Mr. Tully.

A. Pardon?

Q. Mr. Tully.

A. Who is Mr. Tully?

Q. Mr. Tully of the Irish Nationwide in the Isle of Man.

A. I never had any dealings whatsoever with a Mr. Tully.

I don't know Mr. Tully personally. Never met him. Mr.

Tully has no connection with me whatsoever. Who does

Mr. Tully work for?

Q. Mr. Tully opened an account for you in the Isle of Man.

A. He opened an account on the instruction of David

Austin. I never had any contact with Mr. Tully. In

other words, I am not responsible. I am not

responsible for Mr. Tully.

Q. I see. But you did operate the account.

A. Pardon?

Q. You did operate the account.

A. Mr. David Austin opened the account for my benefit by

way of a loan. I had no contact. I had no contact

whatsoever with Mr. Tully.

Q. But you did operate the account. You held it. You

kept the account.

A. We have been through that

Q. Yes, but did you keep it. Mr. Tully opened it, and you

kept it.

A. I opened the account or he opened the account for

me.

Q. That's all I am concerned about here.

A. To facilitate the loan that I had agreed with David

Austin, which was subsequently returned with interest.

Q. And the other, the third person is Mr. Christopher

Vaughan.

A. Well

Q. Your solicitor

A. Well, if you wish to introduce Mr. Christopher Vaughan,

I think it's only correct and fair both to me and

Christopher Vaughan that you should put the letter in

front of the Tribunal that he has written to you.

Q. Yes, he said that he believes

A. I'd prefer to see the letter, please. I think it's

important, if I am to answer for Christopher Vaughan.

Q. You answer now so.

A. I will answer

Q. I am asking the question

CHAIRMAN: I'd like to proceed. I think we have, as a

given, whatever the degree of dealings, peripheral or otherwise, the situation that Mr. Karl Tully, Mr. Christopher Vaughan, and Mr. Kevin Phelan have indicated a disinclination to attend. And I think we should proceed.

Q. MR. HEALY: When you had your meeting with him in Monaghan

A. Mr. Chairman, I am sorry, I know I am testing your patience, but it's important that I say, together with my advisers, we have done everything possible to encourage I have given you the waivers; I have given you access to those people involved. It's not of our doing.

CHAIRMAN: I understand.

Q. MR. HEALY: Did you what was the conclusion of your meeting with him in Monaghan?

A. Pardon?

Q. What was the conclusion of the meeting you had with him in Monaghan?

A. There was no conclusion. I just at that stage, I would have said to him, "Look, if something comes up you think that would be maybe of interest to me, I would be interested in getting involved." But I said there was a limitation in terms of what I could do.

And he went away at that stage, and I didn't hear from Kevin Phelan for at least another eight or ten months.

Q. And at that stage, in the course of your discussion

with him, did you know of any of his contacts with other businessmen in Ireland, such as, for instance, Mr. Aidan Phelan?

A. At that stage, I didn't. I wouldn't have gone into the detail of all I knew was that he was active in Southern Ireland, that he had a lot of investments from Southern Ireland, the UK market, the Southern Irish market the UK market was obviously attractive to a lot of Irish people at that stage.

Q. You say you met him in Monaghan; was it in the south you met him, or in the north? It was definitely in Monaghan you met him?

A. I met him in Monaghan, yes, I am nearly sure it was Monaghan, or at least I was going to Monaghan. It's possible that I met him I met him in some hotel, that's all I know. It was near Monaghan, or I was on my way to a business meeting in Monaghan.

Q. I think you say that you didn't hear from him again for another seven or eight months?

A. Correct.

Q. And what was the next contact you had with him?

A. I would have had the next contact, the main contact I would have had, I think it was I would say the middle of the year, June/July, 1998. Again Phelan contacted me, and he said that he had a small development in Mansfield that he thought I should look at or take an interest in.

Q. Yes. And what happened?

A. Pardon?

Q. What happened?

A. What I did was, I don't I think it was that was it was either June or July. Sometime later, I would say a number of months later, I eventually got round to meeting him. I think it was September of that year, in around September of that year. And I went and I met him. I looked at the property that he was speaking about, and I think on the same day he introduced me to Christopher Vaughan. That was my first contact with Christopher Vaughan, the solicitor that you have just referred to.

Q. And what happened after that?

A. Pardon?

Q. What happened after that? You looked at a property?

A. Looked at the property. He convinced me that it was a good purchase, particularly in the long-term. So I would have probably I think I would have thought about it, and he convinced me that I should take an interest in it.

So I explained to him that I couldn't purchase it outright, and he said, well, that was his job, that he was good at putting investors together, putting groups together. And he said if I wanted to take an interest in it, I was welcome to do that; obviously at a cost.

So there was negotiations between Kevin Phelan and his

people and the landowner involved, and ultimately, they came to an agreement on a price for it.

Q. And what was the price?

A. The price was the price that was negotiated, I think it was negotiated down to I think it was 250.

Q. And so you agreed to purchase at that price?

A. No, I didn't agree to purchase the property. What I agreed with Kevin Phelan was that I would pay the 10 percent deposit. We negotiated a deposit in around at about 10 percent, I would say I said that I would pay the 10 percent deposit. I would take a 10 percent interest in it, and he assured me that he would get investors to take the rest of it.

Q. And who signed the contract?

A. Pardon?

Q. Who signed the contract?

A. I signed the contract. Because when you pay a deposit, somebody has to obviously

Q. So you signed as the purchaser?

A. I signed as the purchaser, yes, on the understanding with Kevin Phelan that he would get the investors. And obviously

Q. So you were signing the contract for 250,000, but what you were putting up was 25,000, on the basis that other investors would put up the rest?

A. Yes, effectively I was holding the contract at that particular time. And what I had said to him was, and

what he agreed was, we either get investors in on the property or in the meantime, if there was a particular interest in it, that we'd roll it over at a profit.

Q. Roll it over before it came to closing the sale?

A. One or the other, whichever was obviously, from my perspective, I would have preferred, in the sense that it was long-term. If you wish to know the reasons behind that, I will tell you.

Q. But you were in any case, you were fronting the deal, and basically you were taking the risk?

A. Yes. I would if he didn't deliver in terms of what he was saying, I was happy to do that, on the basis of the information that I had, on the basis of my inspection of the site and the details that I had been given on the site.

Q. And you weren't planning to raise any finance by borrowing; you were proposing to get a number of investors who, between them, would put up the money?

A. Well, Kevin Phelan would have done this on a regular basis. That's his forte. That's what he is good at. That's what he made his living from. And that was the intention, and he has done that before and since, successfully, on numerous occasions.

Q. And did he get the investors?

A. Pardon?

Q. Did he get the investors?

A. He did. He got he had approached a number of

people, and he did get I put down my 10 percent. I paid for my 10 percent interest in it in December, I think it was, 1998, that was. I paid the 10 percent it was December 1998 I paid i.e. 1/2 25,000 out of my own bank account, my own resources.

Q. And the rest?

A. In the meantime, in the meantime Kevin Phelan, who unknown to me had already who already was familiar with the business of Aidan Phelan, introduced Aidan Phelan to the proposal.

Q. And did you know of his prior relationship with Aidan Phelan at that stage? Did you know that he had done any work for Aidan Phelan?

A. At that stage?

Q. Yes.

A. I didn't at that stage. I was actually surprised to learn that he had.

Q. And what was the arrangement that was made between you?

A. The arrangement that was formalised, the arrangement that was made obviously after discussions; we had meetings and discussions and after, Aidan Phelan decided that he would take 90 percent of the property. I had 10 percent.

Q. And he put up all the rest of the money?

A. Pardon?

Q. He put up all the rest of the money?

A. He put up the money from his own resources. That

at that stage, we were in April, I would think, of 1999. The deposit was paid in March 1999. I paid my 10 percent. He paid his 90 percent, and that was put by way of a formal legal agreement where that partnership agreement superseded the fact that the site was in my name. And it was done formally and legally through Mr. Christopher Vaughan, our solicitor.

Q. Before Mr. Aidan Phelan came along, was there anybody else potentially interested in the site, do you know?

A. Yes, I understand that there was. Kevin Phelan, I don't know, but he told me he had a number of discussions with them. But most of them wouldn't that's his job; I didn't get involved in it. But I understand, yes, he had several discussions in relation to it and other properties.

Q. I think the Tribunal has obtained certain documents from Mr. Christopher Vaughan.

A. Sorry?

Q. The Tribunal has obtained documentation from Christopher Vaughan, and I think from you, concerning some of these dealings, and I am just trying to identify them in the book of documents you have.

A. These are the documents that Christopher Vaughan supplied, the full file, as I understand it, that Christopher Vaughan supplied to the Tribunal at my request and that of Aidan Phelan's.

Q. I think so, yes. The first document I don't think

it's in the book of documents, but I think you are

familiar with it; if you are not, you can tell me.

It's a letter from Mr. Christopher Vaughan rather

it's a copy letter from Mr. Christopher Vaughan to Mr.

Kevin Phelan. I am just going to put the letter

A. Which part of my folder?

Q. It's not in your tab as far as I can see, anyway. I

have been looking at the

A. Could I have time to consider it?

Q. Yes, absolutely. If you just look at it first, and you

may not require time to consider it, but if you do,

there is no problem at all.

You see, it's a letter addressed to Kevin Phelan, fax

only, 01662650744, 10th March 1999.

"Dear Kevin, re Michael Lowry site at Mansfield.

"I enclose my complete statement.

"Could you arrange for the funds to be sent to my

client account before completion on the 18th March,

1999 please?"

You don't require any time to consider it?

A. Pardon?

Q. Do you want to take time to consider it?

A. I am not familiar with the document, but I understand

what it says.

Q. If I just for a moment go to the document that was

enclosed with it. It's a completion statement. It

says "Mr. M.A. Lowry, Completion Statement relating to

the purchase of the land at Hilltop Farm, Chesterfield Road, Glabwell near Mansfield, and an option agreement on adjoining land. Completion date as we have discussed. Purchase price "£250,000", and so on.

Just go down the statement. It's the total costing involved to include various disbursements, legal costs, and so on, indicating the amount of money that the solicitor requires to enable him to close the transaction and giving his bank account into which presumably he wanted the money paid?

A. Mm-hmm. Could you bring it back a bit? The purchase price, less deposit paid

Q. The first thing it says is "Purchase price, 250,000."

The option agreement is not a matter of consequence, £100. Legal costs, £275 plus VAT. The total comes to £250,423-odd. Less deposit 25,000. Balance due £225,423. Other costs: Stamp duty, land registry fees, etc. Then "C.J. Vaughan fees", coming in total to £5,123.30. And then the grand total due to Christopher Vaughan to enable him to complete the sale, being £230,546.42.

A. I am just seeing did it reflect the 10 percent deposit I paid? Which it does. That 25,000 that is there is

Q. Obviously your deposit?

A. my personal funding. Yes.

Q. So at that stage, he was writing to at that stage,

on the 10th March, he was saying 'we need the money to close this sale by the 18th March'. Do you remember that degree of urgency arising, that you had eight days in which to find the bones of a quarter of a million pounds?

A. Yes, there was discussions in relation to it. At that particular stage, Aidan or sometime in or around that time, Kevin would have contacted me and said that he had approached Aidan Phelan in terms of an investment, and he arranged for us to meet.

Q. Can you just help me with this. I just

CHAIRMAN: I am not normally in the business of making a big issue out of this but it's a stressful business for Mr. Lowry. It's simply not proper. Whoever has a mobile phone, please make an effort not to interrupt proceedings.

Q. MR. HEALY: I'll just go over that again, Mr. Lowry.

There is just one thing about that letter that I wanted to ask you. You were the person whose name was on the contract, if you like; you were carrying the can, on the face of things. And the letter from the solicitor is addressed to Mr. Kevin Phelan. Did you find do you find that slightly unusual, that he'd be writing to Kevin Phelan and not to you, or at least not copying you with Kevin Phelan's letters?

A. No, Kevin Phelan, on the day that we looked at the site, what have you, obviously I wasn't going to be

involved to that extent in the UK, in terms of day-to-day hands-on approach. That's what Kevin Phelan that's what his job was. His job and the way he operates is that he finds a project. He finds investors for the project. When he has the project in place, he then takes instructions as to how he should proceed from there. And he is the one who liaises with the planners; he is the one who liaises with the various consultants, architects, or engineers, and that kind of business.

Q. I think, after that letter, the next letter I want to draw to your attention is a letter of the 15th March.

It's the first letter in divider 5, document 1 or it's document 1 in divider 5.

A. Is that letter in my file?

Q. Yes.

A. Which one is it?

Q. It's schedule 5, or divider 5, if you like.

A. Pardon?

Q. Divider number 5, the last divider. It's the first document. You have that document?

A. 15th, yes.

Q. It's addressed to you in Thurles, from Aidan Phelan.

It says:

"Dear Michael.

"I refer to our recent meeting and my discussions with Kevin in relation to the Mansfield opportunity. In

general terms I would be interested in participating in this project and other property opportunities in the UK.

As discussed, I would not have the time to have any direct involvement in the management of the property.

I will rely on yourself and Kevin to manage the projects.

"As regards your suggestion of a 75/25 split, I would prefer that the participation is reflected by equity investment, (i.e. 90/10) and that you and Kevin would be rewarded disproportionately on the upside.

"Please let me know your thoughts on this."

Do you remember that letter?

A. Yes.

Q. Can you tell me what meeting you had with Mr. Aidan Phelan which led to that letter?

A. As I said to you earlier, Kevin Phelan, by way of his role and the function that he had was seeking investors. He had already approached Aidan Phelan in connection with this particular property. He had gone through it with Kevin Phelan, or with Aidan Phelan, and arising from his presentation to Aidan, Kevin asked us to meet, which we did. And arising from that particular meeting, I received a letter on the 15th, that I received then.

Q. What the letter refers to is a meeting between you and

Aidan Phelan.

A. Pardon?

Q. The letter refers to a meeting between you and Aidan Phelan. Do you see that?

A. And my discussions with Kevin. Yeah, my understanding is Kevin was at the meeting that he is referring to.

And he had already previously met Kevin. The sequence of events, again was the as I said already

Q. I understand his role, yeah, I understand Kevin Phelan's role. You had a few days left to complete the sale. He was trying to find investors. It was his role to find the other investors.

A. He had already, by the time that that letter I think was written, he would have had already contacted he was already in contact with Aidan Phelan. He had meetings with Aidan Phelan before he ever discussed the fact that Aidan Phelan was prepared to enter it. Then we had another meeting with myself and Aidan, just the two of us.

Q. And just tell me, how did that meeting come about? The one between you and Aidan Phelan.

A. The one between myself and Aidan which one?

Q. The one you have just described.

A. The first there was meetings between, obviously, Kevin Phelan it was Kevin Phelan who brought the project to Aidan Phelan. I know it's confusing in terms of the name. But it was Kevin Phelan who brought

the project, as he had previously done with others, to Aidan Phelan. And he obviously sold the idea of getting involved in that project to Aidan.

Arising from that, he familiarised Aidan and told him of my involvement. And subsequent to that, there was a meeting between the three of us, and then I had a further meeting, or discussions, whether it's phone or whatever, with Aidan which culminated in the agreement that we had.

Q. Right. Could we just go to the first thing. It's the meeting between you and Aidan Phelan, the meeting just the two of you had.

A. Which one?

Q. I understand that you and Aidan Phelan had a meeting on your own in connection with this, as well as having a meeting between yourself, Aidan Phelan, and Kevin Phelan?

A. The initial meetings were, yes, between Kevin and Aidan Phelan. That's why

Q. I understand he sold the project to Aidan Phelan. Now, was there a meeting between you and Aidan Phelan alone?

A. The next meeting after that was a meeting between Kevin, myself, and Aidan.

Q. The three of you?

A. Yes. And then obviously from this correspondence that Mr. Vaughan has given you, it appears that Aidan wrote to me on the 15th March. And after that, then we had a

meeting, yes.

Q. I don't think we got this document from Mr. Vaughan. I may be wrong in that, but I think we got this document from Mr. Aidan Phelan.

A. Okay, sorry.

Q. Do you have the original of that letter?

A. The original of this? If it's if I have, it's in disclosure. I can't recall it.

Q. It's not in the documents that the Tribunal got. Maybe you'd look for it over the weekend and see if you can find it.

A. Ill look for it. If I have it, you can have it.

Q. I presume you would have filed it. It was a fairly important document at this stage, this letter, because it was proposing a certain split to you, 90/10?

A. Well, what was happening was, I was looking for 25 percent, and he was only offering 10 percent, so effectively what he was saying was, on the basis that he was offering me 10 percent on the basis that that's the amount of money he had put in.

Q. That's what he said, "I think the share should be based on equity involvement." Then he talked about a reward for you and Kevin Phelan disproportionately on the upside.

A. Mm-hmm.

Q. What did that mean?

A. In every property transaction for me

Q. What did it mean to you? What did that letter mean to you when you got it, that particular part of the letter?

A. What it meant, effectively what it means is that in these situations, and it's very common in relation to investors, you have to give an incentive to the people who are involved to get out there and to do whatever is necessary in terms of the various procedures that apply. And effectively, what he is being asked to do here, Kevin Phelan, to that to get involved in the project. So oversee the project, and ultimately, he would be paid in accordance with his performance. It would be performance-related.

Q. But there was there is no indication here, is there, of how that performance-related bonus would be calculated?

A. That's always something that you know, it would be negotiated during the process. It's not something that you'd normally put down on paper. I mean, the reality is that everyone in business, if they know each other and depend on each other, they negotiate these things and they work them out. Effectively, you have to barter your way through it.

MR. HEALY: I think this might be an appropriate time

CHAIRMAN: I think that's probably sufficient for today. And obviously, as indicated, we can't sit on

Monday, so Tuesday, 11 o'clock.

Thank you very much, Mr. Lowry.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY,

6TH NOVEMBER, 2001 AT 11 A.M.