

TRIBUNAL OF INQUIRY

(PAYMENTS TO MESSRS CHARLES HAUGHEY AND MICHAEL LOWRY)

DAY 152

Appointed by instrument of An Taoiseach dated

26th day of September 1997

pursuant to the

Tribunals of Inquiry (Evidence) Acts 1921 and 1979

TRANSCRIPT OF PROCEEDINGS HELD IN DUBLIN CASTLE

BEFORE MR. JUSTICE MICHAEL MORIARTY (CHAIRMAN),

ON FRIDAY, 31ST OCTOBER 1997, AND FOLLOWING DAYS:

TRANSCRIPT OF PROCEEDINGS ON TUESDAY, 6TH NOVEMBER, 2001:

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan SC

Mr. Jerry Healy SC

Ms. Jacqueline O'Brien BL

Instructed by: John Davis

Solicitor

FOR MICHAEL LOWRY: Mr. David Barniville BL

Instructed by: Kelly Noone & Co.

Solicitors

FOR AIDAN PHELAN: Mr. John Gleeson SC

Instructed by: A & L Goodbody

Solicitors

FOR MICHAEL TUNNEY: Hugh Garvey

Solicitor

LK Shields & Co.

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

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I N D E X

WITNESS: EXAMINATION:Q. NO:

MICHAEL LOWRY Mr. Healy 1 - 460

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THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

6TH NOVEMBER, 2001 AT 11 A.M:

CONTINUATION OF EXAMINATION OF MICHAEL LOWRY BY

MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Lowry.

I think last Friday we were we had passed on to your dealings with Mr. Aidan Phelan, and I think we mentioned very briefly your first, I suppose, real contact with him, which was in connection with the mobile phone. Then you passed on to have, if you like, a real dealing with him, and that was in connection with the proposed strategic alliance for your company, would that be right?

A. That's correct.

Q. And then we came on to what we have been calling the Mansfield project.

Now, just so you will understand what it is the Tribunal is seeking to do in relation to the information that has been made available to it, and the evidence that's been given in relation to the Mansfield project. If I could divide it up initially into the

money trail and then the responses of the various people involved to the evidence concerning the money trail, I'd put it to you like this: That the information the Tribunal has is that you were involved in the purchase of property which we call the Mansfield /RS

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site; 10 percent of the purchase price came from you, and the balance came from Aidan Phelan, but the money provided by Aidan Phelan was in fact money which came from an account of Mr. Denis O'Brien in Credit Suisse First Boston. So, if you look at the bare money trail, what the Tribunal has is examine is a transfer of some $\frac{1}{2}$ 300,000 from an account of Mr. Denis O'Brien which ends up in a client account of Mr. Christopher Vaughan's which is in your name and Mr. Aidan Phelan's name.

Now, Mr. Phelan has given evidence that through Mr. Kevin Phelan, he was introduced to a project in which you were already involved, and that is how he came to put up that money; that that money was effectively an advance on monies which were likely to come to him out of a project in which he assisted and advised Mr. Denis O'Brien. You are probably aware of that evidence. And the information with which you have provided the Tribunal, and some of which we touched on last Friday, was that you were approached by Mr. Kevin Phelan, who

made contact with you through a mutual friend, and on foot of that contact, you became involved in property development or a property development project in England.

Now, I think we were at the point where you were saying that Mr. Phelan, Mr. Kevin Phelan's approach to you was along the following basis: That he would identify properties; you would or would not express an interest

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in them; if you did, you'd get going on the project, and that he would find other investors to provide the balance of the funding for the project. In relation to the Mansfield project, you were the initial investor.

You signed the contract. I think you agreed with me that at that point you were effectively taking the risk, but you relied on Mr. Kevin Phelan to use his expertise to find the other investors and the rest of the funding, would that be right?

A. Correct.

Q. I think one of the things I drew attention to the last day we spoke was that some of the initial correspondence from the solicitor, certainly one of the letters I mentioned, was in fact sent to Mr. Kevin Phelan, and that Mr. Kevin Phelan then wrote to you, I think copying you with the solicitor's letter to him.

And I asked you why it was the solicitor wouldn't have

written to you directly, and you said, well, that's the way Kevin Phelan runs the thing. He sets it all up. He introduced you to the solicitor, and he basically keeps you informed as to the developments along the way. Is that right?

A. That's correct.

Mr. Healy, is it possible in your opening comments there, and you put it quite fairly, that's the way I understand it. Could I reiterate my position in relation to the opening comments that you have made?

Q. Yes.

A. My position is crystal clear in relation to this. And
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that is in relation to that property, and it's important from my perspective, that the public will be aware of this, because there is a mistake in view that I ended up owning a property for which I only paid 10 percent. The facts and we have to deal with facts here the facts are that this property was identified. I agreed with Mr. Kevin Phelan to secure that property with 10 percent of a deposit. That 10 percent, which was paid on deposit, was my money. It came from my own personal resources, my own personal bank account in Thurles. That's my interest in that property.

Subsequently, Kevin Phelan found an investor who paid,

with his money, for 90 percent of that property, and that investor was Aidan Phelan, who had previously done business with Kevin Phelan. So the property at Mansfield then was the subject of a partnership agreement between Aidan Phelan and myself.

So the legal position is, and the legal position to this day is that I own 10 percent of that property at Mansfield. I have a legal entitlement to it because I paid the 10 percent. Aidan Phelan owns 90 percent of it, and he has a legal entitlement to 90 percent of it.

And that is strictly my position. And the monies that were paid for the 90 percent is a matter for Aidan Phelan, but those were his funds. It's his money.

It's he, Aidan Phelan, that has the legal entitlement to the 90 percent of that particular property.

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If the property is sold, I have 10 percent of whatever uptake is there, or I have 10 percent of whatever losses we might whichever way it goes. But the reality is, and it's very important for my perspective this would be put across: I only own this day I only have a legal entitlement to the 10 percent, which is because I paid for 10 percent personally myself.

Q. Yes. We discussed the last day that you were negotiating to see could you get a larger chunk of the venture you were trying to, you were I suppose pitching

at 25 percent/75 percent, and Mr. Phelan was insisting on 10/90; but I think and we'll be looking at your Joint Venture Agreement later on as a result of those negotiations, you concluded a 10 percent/90 percent deal, but there was, if you like, a rider to that deal, wasn't there, that you and Kevin Phelan might expect to share to some extent in any profits at a rate greater than the 90/10; would that be right?

A. The 90/10 reflected the equity as was put in.

Q. I know that

A. That's what I ultimately did.

Q. We'll look at the detail of it in just a moment, but just to be absolutely strictly correct about it, under the Joint Venture Agreement, the 90/10 is subject to a performance-related bonus for you and Kevin Phelan.

That's the only point, isn't it, just that qualification?

A. When you come to that, I'll explain to you how that came about, and that's actually attached to the 31

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acres on which we have an option. And that's a subject for discussion at a later time. But what the important thing about the Joint Venture Agreement, and this is important. That joint venture agreement is a legally binding document, which was drawn up by the solicitor, which was signed by Aidan Phelan and

witnessed. It's a legally binding document, and that

clearly, clearly shows that I have 10 percent of it.

He has 90 percent of it for the money which he put in.

Q. Right. And I think you were anxious to point out, and you have just said so, that the money that Aidan Phelan put in was, from your point of view, his own money?

A. Yes.

Q. You mentioned that he had a previous connection with Kevin Phelan because he had previously done business with him?

A. Unknown to me. I hadn't realised it, but when the issue of doing business with Aidan Phelan came up, I, at that particular time, I hadn't realised that Kevin Phelan had already had other previous transactions unknown to me and unconnected with me with Aidan Phelan.

Q. The Tribunal queried Mr. Phelan, Mr. Aidan Phelan in relation to those other transactions, and it appears that they both involved Mr. Denis O'Brien; you are aware of that?

A. Yes, subsequently, yes.

Q. I think one of them, for short, we can call the Luton transaction, and the other was the Doncaster Rovers transaction. And the evidence also showed I hope I

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am right in this that both of those transactions

were primarily funded from borrowings?

A. From?

Q. Borrowings.

A. Yes.

Q. Both Mr. Phelan and Mr. O'Brien put up some equity, but that the bulk of the financing came from borrowings.

I am sorry, Mr. Coughlan corrects me that the Doncaster Rovers project, according to Mr. O'Brien, was a pure Denis O'Brien promotion. Mr. Aidan Phelan may have been involved in some of the administration of it for him. But the Luton project was one in which Mr. O'Brien and Mr. Phelan put up some equity but that they but obtained the bulk of the financing from borrowings.

Now, in this project, Mr. Phelan appears to have put up his own money. He didn't borrow any money?

A. Yes.

Q. If according to his own evidence, isn't that right?

A. Correct, and my understanding of it, my understanding is that the original it's probably confusing, but my understanding is that the original contact with Aidan Phelan by Kevin Phelan emerged through the practice that he was in at the time, which included his brother, and that it was his brother who had an earlier contact and had done business out of the same office with Kevin Phelan.

Q. I think you are right in that.

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A. Mm-hmm.

Q. On the question of Mr. Aidan Phelan's involvement with you in the project, can you recall whether you had any discussions with Aidan Phelan so as to, if you like, excite his interest in the project, and in particular, to excite his interest to the point where he was prepared to put in his own money, not actually to go and borrow money but put up his own cash?

A. Yes. After the my position with Aidan Phelan Kevin Phelan at this stage, had the property was secured, and he went off to do what he is good at, in terms of seeking investors and selling the opportunity that he was now in possession of. There is a big difference in property and this is one of the things I have learned: That there is a big difference in having something and actually having a hold on something; then you realise you can go and you can put work into it, you can devote the time and the effort in the knowledge that somebody is not going to have the property gone by the time you get back to it. Now, it was on that basis that I gave the go-ahead to secure the property on the 25 percent, conscious of the fact that yes, there was an element of risk to me in the sense that it was \$25,000, that if it went wrong I was going to lose my own 1/2 \$25,000. But he had convinced

me that he was that this was a property he wouldn't have had a difficulty in relation to, and that it was a long-term project

Q. And did he convince you that he'd get other investors?

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A. Yes, he did. He left me in no doubt. Other than that,

I wouldn't have gone with it. Now, he, in the meantime, approached a number of people about it, and ultimately he approached Kevin Phelan. As I say, he had previously done business with he approached Aidan Phelan. He had previously done business with Aidan. He had also previously done business with the practice that Aidan was within in Clonskeagh. So there was a strong understanding between them of what each other did. Kevin sought out the opportunities, and he got investors to come in and capitalise on those opportunities.

In my case, that's exactly happened. As I said to you on Friday, the sequence of events was that I had a call from Kevin. We discussed it. He said to me that he would be in contact with me again. Obviously I was putting pressure on him to see where I stood. So he came back to me and said that he had had discussions with Aidan Phelan; that he had put the proposal to him, and he had informed him of the project and what he felt about the project.

From what I can understand, there was particular emphasis placed on the value of the option for the 31 acres. And my understanding, then and now, is that that was the area of principal interest to Aidan Phelan. In other words, that that's where if there was to be something made from that particular property, you weren't going to make it out of the disposal of the /RS

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main house and the adjoining buildings; it would be out of getting planning permission onto the 31 acres. And that's why the 31 acres became central to an upside of the option. In other words, when that part of the agreement was put in, we were referring to those 31 acres and the future potential of it.

So Kevin Phelan sold the idea of this particular property to Aidan Phelan. And he rang me to say that Aidan Phelan was interested. And I actually asked Kevin Phelan on the phone: "Does he realise that it is Michael Lowry that has a 10 percent deposit placed on this?" And he said "He does, and he'd have no problem meeting with you to discuss it."

And I think it's important to put that particular aspect of it in context also; that after Aidan Phelan had done the service for me in relation to the Masser Hammond, obviously I got to know him. We had six or seven meetings. I would have had telephone discussions

with him, what have you. I got to know him, and it was from there on I think that operation finished up 1998, early '98. I would have met him on a number of occasions in social circumstances. We would have gone out for drinks, we would have had something to eat, that kind of thing. So I wasn't a stranger to Aidan any more. Aidan Phelan would know about me. I would have known about him. And in that context, we met when we had a tri-party meeting, which was Kevin Phelan, Aidan Phelan, and myself.

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Q. Where was that meeting? Can you remember?

A. That meeting was held in Aidan's office. And at that particular time, if my recollection serves me right, Aidan was operating in Clonskeagh in the practice where he gave most of his business life, which was with his brother within that practice. I don't know what so we met, we discussed it, and we went through it. Kevin Phelan gave what he considered to be the high points. I would probably say less emphasis on the low points, but he certainly gave an outline of the property, what his considered view was and what the future potential of it. And it was quite apparent that this was to be, you know, that it was a long-term project in terms of any benefits deriving from it.

What happened then was on the Kevin Phelan left that

particular meeting, and on the periphery, after that meeting, then, Aidan and I had a general discussion about how it could be approached. And my understanding is that subject to that we didn't agree on that particular day and I think subject to that, he forwarded me a letter which you showed me last week, which is sometime around the middle of March. And in that letter, we were talking in terms of we got to the stage where he had in principal agreed to go into partnership. And the terms of the partnership hadn't been concluded, but he was thinking in terms of 70/25 and what have you.

Q. He was in thinking in 70/25?

A. Yes, 75/25. Sorry; he was thinking in terms of 90/10 /RS

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and I was thinking of 75/25. So obviously we hadn't agreement at that particular point, but in my mind, I was happy that in principal we were going to go into partnership in relation to this particular property. Not just this one, but I think at that meeting after it, he had an interest in going into the UK property scene. He was already there. He had a good experience in the previous experience that he had, in that they were profitable and worthwhile for him, so he didn't have any problem in cooperating and working with me in relation to that.

So we agreed that we would meet. And the next time I was in Dublin again, I called in to him and we discussed it for a short time. And at that particular stage, he I said to Aidan, would he draw up the agreement. He said he would contact Christopher Vaughan, the solicitor, and he would draw up an agreement which reflected the verbal agreement that we were after making there and then. And that's how the formation of the legal agreement came about between us.

Q. You mention that Mr. you mention that you asked Mr. Kevin Phelan to point out to Mr. Aidan Phelan that the proposed partner in the business was you, and did he have any problem with that, and Aidan Phelan said no, he hadn't; and he has said so in evidence as well. Did you have any problem getting into business with Aidan Phelan in view of what had happened over something as minor as a mobile phone sometime earlier, about a year earlier?

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A. I didn't, Mr. Healy, because what happened was, we discussed the mobile phone after the event. And it was taken very lightly, and it was dismissed as one of those things that happened that got attention that it simply didn't deserve. And for that reason, you know, the mobile phone licence was not an issue.

But I would have to I'd have to be truthful and say

to you that in the course of my how would I put it;
in the course of my social chats with Aidan Phelan,
we'll say, after '98, in around '98 and what have you,
when we went for drinks or lunch or what have you, no
point in I saying it, we did go on the tear once or
twice. And in the course of those conversations, I
suppose every topic would have been hit on once, or
whatever way the case may be, and Aidan Phelan did
question me about my connection with Ben Dunne. He had
read about all the stuff that had happened. He was
conscious of the fact that these things the
arrangements I had with Ben Dunne, while it was
unorthodox, he was sympathetic to the point of view
that he is in business himself. He knows the
business connections, and he knows the way Ben Dunne
conducted his business.

So from that point of view, he was sympathetic to the
extent that while he didn't condone my unorthodox
practices with Ben Dunne, he understood why somebody in
business could get caught up like that with Ben Dunne.

And at that particular time, also or in or around that

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time, in one of those discussions, he would also have
asked me, why was I getting so much flak about the
licence and the issue of the licence?

Q. When did he say that to you? Can you remember?

A. I would have said in around it was one of those some of those social outlets or discussions that we had.

Q. Would that be between the time of the mobile phone controversy, if you like by that, now, I mean the as you put it, the ball-of-smoke issue that hit the headlines in 1997

A. This would have been in '98.

Q. And sometime in '98?

A. Early '98, in or around that time.

Q. He asked you

A. In or around the same time, I can't be certain whether it was the same occasion, whether it was the same lunch or session or what have you, but he would have got around to asking me why was I taking so much flak about the licence. And I left him in no doubt, I left him in no doubt and may I say I have done this to anybody that I have ever met, or anybody who cared to listen I left him in no doubt that my conduct and my stewardship of that licence was totally above reproach. And I would have left him in no doubt that I had taken the decision on the advice of the independent assessors that were established to do it, and I left him in no doubt that whoever and whenever the licence whoever the licence was examined by and at this stage it had been examined, you know, by the European Commission, by

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a number of ministers on behalf of different and what have you and my position then, as it is now and I welcome the fact that this Tribunal, which has the extensive powers that it has, that this Tribunal will do a thorough examination of the licence. And while I don't wish to prejudge it, and it's not my business to prejudge it, I know in my heart, I know, and I will always know, that I did not interfere or influence the outcome of that licence. And I would have conveyed that to Aidan Phelan and many many others during the course of the last number of years.

Q. And when you were having those discussions, you just described to me a moment ago that you were you would have said to him that as far as you were concerned, you had behaved properly. There had been no improper behaviour. There had been this investigation, that investigation, the other investigation, and they had all shown absolutely nothing untoward or improper in terms of your behaviour or anyone's behaviour. You had that sort of discussion with him?

A. Mm-hmm.

Q. In the course of that kind of discussion, did he ever tell you about all of the fuss that was caused in the course of the IPO about the \$50,000 Telenor donation?

A. No. In or around this time, I would have been aware of two things from Aidan on his side. I have told you

what I have communicated to him from my perspective.

I would have been conscious of the fact that he never discussed Telenor or the IPO in detail. What he

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did say to me was that natural for me in a discussion like that, I said to him, "Well, how's the ESAT Digifone going? What way is it moving?" I said they had made a huge impression, and from my perspective, I was quite happy that they had delivered and mind you, my only concern when this licence was granted was that whoever got the licence, especially ESAT Digifone, that they would deliver on the commitments that they had given to the political system. And if they had failed to deliver, then I certainly would have been open to criticism on the basis that there was a political misjudgement and that we had granted the licence to an operation that was ineffective and unable to deliver on the policy initiative, which was to bring competition to the sector and to give consumer choice.

So I was happy then, and I am happy now, that that particular policy initiative was hugely successful. In fact I would say dramatically successful, which is attributable to the team that was involved in the ESAT Digifone; number one, that they were able to put it together in such an efficient and effective way, and

number two, that they could deliver on it in such a competent way.

Q. I think you were saying to him, anyway, "How's ESAT Digifone going?"

A. Yeah, and I got the distinct impression from him he didn't go into in detail, but certainly he told me that there was friction internally between ESAT Digifone,

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and that in particular, that there was a lot of animosity had built up between Barry Maloney and Denis O'Brien, and he said to me that there was constant internal battles taking place. And that was the general gist of you know, I didn't get into any more detail, what have you. I said I was surprised at that, because I had understood that Barry Maloney was head-hunted by Denis O'Brien and that they were actually friends, and I was surprised that he told me that their relationship had effectively broken down and that, as he put it himself, I think he said it was a clash of two major egos, with Denis O'Brien, the lead man, and Barry Maloney feeling that he had made such a contribution that he should be the lead man. It was in that kind of a broad-line discussion. And needless to say, I didn't get involved in the personalities of it. But I was surprised, and subsequent to that I did read about that kind of problem that existed.

Q. Isn't it curious that he'd have gone into that sort of detail and never told you about the dramatic events in which your name was mentioned in 1997?

A. But I can't say for definite, Mr. Healy, whether he even knew it at that stage, or certainly I don't know what his involvement

Q. Sure we know he knew.

A. Well, he certainly didn't discuss it with me. And I think, if you look back through the evidence, one of my complaints in relation to all of this is that as I said here last week, I take serious objection and offence to the fact that my name was bandied about in such a

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cavalier way when in actual fact, I had no involvement whatsoever in the subject matter which was being discussed.

And you'll also know, Mr. Healy, that it became pretty evident in the evidence that was given here by Telenor executives who are now you know, I mean, I'll say nothing, but Telenor executives gave evidence here.

ESAT executives gave evidence here. And key influential people within those two companies gave evidence here, and I think that they will admit and probably gave it in examination that they went out of their way not to tell anybody outside of their own internal loop as to what was happening. And I would

imagine that if Aidan Phelan was involved I don't know what the extent of his involvement was, but whatever involvement he would have had in it, I certainly wasn't going to be made aware of it. And the reality was if somebody if anybody from ESAT Digifone and there was many of them involved in it if Barry Maloney himself, who initially was concerned about it and who subsequently accepted to this Tribunal that there was no grounds for concern, that he was satisfied that I didn't get the money, if any of those people, Barry Maloney, Denis O'Brien a huge number of Telenor executives were involved, and what have you, there was a huge amount of legals involved in this; there was accountants involved in it. Nobody, not one of them, ever mentioned it to me.

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Now, for whatever reasons, they obviously had their own reasons, and they obviously had a Confidentiality Clause internally in relation to the discussions. But I never knew anything about this so-called payment or this so-called run on the mountain or this so-called commentary until such time it was brought to my attention by the Tribunal. And I have answered I have answered clearly in relation to that. I knew nothing about it.

Q. When you had those kind of discussions with Aidan

Phelan, in which he certainly disclosed some of the intimate knowledge he had about ESAT Digifone to you, did you ever draw up those matters in your conversations with Mr. Austin which you were presumably having around the same time?

A. I think that what happened after that was I think if you go back, I think it became public knowledge at that stage that there was internal difficulties in relation to the company. I think it was common knowledge. I mean, I certainly read it myself from on the business pages of various publications that it was common knowledge that there was friction within the two companies. And I would say in that context, David would have known; and in that context, David might have passed the remark to me, "What's going on?"

The only thing I ever remember David saying to me about the ESAT Digifone thing was when it was around that time when the difficulties were becoming public was that he couldn't understand that a company that had

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done so well and had achieved so much, that he just couldn't get his head around the idea of they actually arguing and having infighting when they should have been concentrating on the success that they had and building on that.

I never had a detailed discussion with David Austin or

with Aidan Phelan, or indeed with Denis O'Brien. I was as much a bystander as anybody else at that stage. I was on the wings looking in, the same as everybody else was.

Q. But you did have some discussions with David Austin

I won't say formal discussions; that was hardly the basis of your friendship but in the course of your ordinary chats, clearly you must have discussed these matters along the lines you discussed?

A. Yes, that did happen.

Q. And Mr. Austin was subject to no confidentiality obligations, and he never mentioned to you his role in a matter which concerned you?

A. I would have to say there were three people I didn't you know, when you look at it with the benefit of hindsight, I can understand why internally the executives who were dealing with this issue obviously they had there was a shroud of secrecy over it in terms of their negotiations and their dealings and what have you; I can understand in hindsight why none of them said it to me. I have already put on the record that I was surprised that, unknown to me that this was happening, I was surprised

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that and the people who gave evidence have confirmed that for instance, John Bruton, who was leader of the

Fine Gael Party at the time, even though I had departed from the Party, I had resigned as a member in early '96, in January '96. I was no longer I had no longer any function, any role within the Party. I wasn't even a member of the Party. But, like, if anybody was going to raise that as an issue with me, it would have been John Bruton, who had been involved by David Austin, or it would have been Jim Miley, who was the General Secretary of the Party, who had all of the documentation and the paperwork at his disposal after he had left.

Now, in evidence, Jim Miley also said that he had questioned David Austin as to my knowledge of that Telenor payment, and I read his evidence where he said that he could confirm that David Austin said that he had never mentioned it to me and that I had known nothing about it.

Now, I can't surmise as to why he didn't. It's possible he could have several reasons, but it's not for me to speculate on what was in his mind. All I can say for definite is that neither David Austin, John Bruton, or Jim Miley ever discussed that particular donation with me. And I have already given evidence directly, myself, to the Tribunal that I didn't know anything about the donation until it became a public a matter of public controversy at a much

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later stage.

Q. Or Aidan Phelan?

A. Or Aidan Phelan.

Q. Or even when you developed a close business relationship?

A. No.

Q. You mentioned an a moment ago that Kevin Phelan approached a number of other people to get involved, can you remember who they were?

A. I don't. That would have been his you know, that's what he told me. And whether he did or not, you know what I mean, I don't have concrete evidence that he did or not.

Q. Do you believe him?

A. I do. I would.

Q. Well, presumably the Tribunal can write to him and see what comes out of it.

A. Mm-hmm.

Q. How many times do you think you discussed with him the approaches he was making to other people?

A. Kevin?

Q. Kevin Phelan.

A. I would have said moving on towards the end of it

Q. March '99?

A. When we would have had pressure to close, what have you, I would have asked him at that stage what kind of

progress he would have been making. Obviously, in the context of making approaches to people, he'd have to be saying that there was 10 percent of this already

committed. Now, I don't know what impact that would

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have had on his ability to get him

Q. Wasn't that the whole basis of his job, you told me the

other day? His job was to put together a package or a

group of investors. Sure there was always going to be

10 percent, 20 percent, 30 percent missing?

A. He was good at that.

Q. How did that create a problem?

A. Pardon?

Q. How did that create a problem?

A. I don't know; I am not saying it did. I am only

surmising in those scenarios, you will have to approach

different people. What I am saying definite, Kevin

Phelan did tell me he had approached a number of people

about it. Now, whether they refused or not, I don't

know. But he came to me ultimately with what he

considered the best option, and as far as he was

concerned, the best option was that Aidan Phelan had

had success already. He was looking for other

properties. He was into the UK market in the long

term, and he brought me that he said he had the

money, that he decided to approach on that basis.

Q. Did he tell you before he approached Aidan Phelan at all that he was going to approach him?

A. No, he didn't tell me who he had approached.

Q. And you never knew who the other people he had or was going to approach?

A. No, I didn't have any idea. That was a matter for him. That was his job.

Q. And would you and he have sat down as the closing date was approaching and said, "Look, you might try

/RS

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so-and-so," or "You might try this person or that person"?

A. No, we never had a discussion such as that. I wouldn't have you know, at that stage, I left; that was his responsibility. That was his job. That's what he is good at.

Q. How were you going to pay for this as the 15th, whatever it was, of March approached, the end of March approached? How were you going to pay for it if he didn't have any investors?

A. The reality was if he didn't come up with the investors or what have you, that was his job, I had confidence in him to do it. I didn't contemplate failure in relation to him. But if he did fail, obviously I would have lost my 25 percent.

Q. You might have lost more than that.

A. Why?

Q. Because you could have been sued for the balance of the money.

A. I doubt it. I don't know what would happen in those circumstances, but I doubt very much if I would.

Effectively, what would happen, the vendors would have ended up with my 25 percent; and all they would have to do is resell it, and the 25 percent was a bonus to them.

CHAIRMAN: 10 percent.

A. Pardon?

CHAIRMAN: 10 percent.

/RS

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A. 10 percent, sorry.

Could I say, Mr. Healy, in relation to this, like, in Kevin Phelan's case, it's also important for the Tribunal to be aware, and to note it, that Kevin Phelan does this on a regular basis. He's been quite successful at it. In actual fact, in my own case, I have been involved in other property transactions which have absolutely no connection, like, no connection whatsoever with any of the people that we are mentioning here now. And in fact he put together for me another joint venture agreement with a company called Vineacre, which I have given the details of to this Tribunal.

So, like, this wasn't a once-off. He had done this

before it. He did it with me.

Q. MR. HEALY: That was your first one with him?

A. This was my first one with him. He had done it previously with numerous people. He had done it previously with Aidan Phelan. He had done agreements with his brother, and then I did this one and subsequent to I do doing this deal what I am saying to you is I did a further deal with Kevin Phelan involving others.

Q. How many were involved in that other deal? I can't remember.

A. Three of us.

Q. Three of you?

A. Yeah. And they were put together again, that

/RS

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particular programme was put together again by Kevin Phelan, and that particular one has worked very successfully.

Q. One of the things that you might be able to help me out on, in relation to the documents that we have been provided with in the form of correspondence from Kevin Phelan to you, is that if you look at that documentation and we'll go through individual letters there doesn't seem to be any reference at all to the arrangements that you said you had with him

whereby he would get other investors. He never mentions anyone except you.

A. Well, he would have been dealing direct with me on the basis that I was the one who had the agreement with him.

Q. I know, but you know, the agreement with him was, "Look, Kevin, I'll put up the 10 percent, i.e. 1/25,000; you'll get the other investors." Maybe I am wrong in this, but if you look at the correspondence, right let's take the example of the letter of the 30th September of 1998. I think that would be one of the earliest letters. I think it's certainly the earliest one that the Tribunal has. It's schedule 4, document number 1.

"Dear Michael.

"Further to our discussions on the above project and your recent visit to the UK, we now enclose the complete details on the site.

/RS

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As we have already outlined to you, the site consists of two elements detailed as follows.

"(1) 2.5 Acre Hotel Development Site.

This site currently has planning permission for a 55-bed hotel and ancillary development. The current planning expires in April 1999, however, we see no difficulty in a new planning being approved. We also

believe that the planning can be approved to increase the number of bedroom units to approximately 110 units.

While we anticipate the sale's potential to be more long-term, we consider the asking price to be competitive, especially if we can negotiate an option on 31.5 acres of land surrounding the hotel development area.

"(2) Potential Option Lands.

"There is approximately 31.5 acres of land around the hotel development site and we anticipate negotiating an option on this land. As you will see from the enclosed site plan, there is a residential development to one end of the site. We believe that the optioned land may achieve partial residential planning. However, we will be seeking a five-year option period.

"At present, residential land in the general area is achieving in the region of $\frac{1}{2}$ 200,000 per acre, so any residential planning achieved would make the overall site very valuable.

/RS

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"We will contact you next week to discuss the enclosed information."

Now, unless there is some other letter of which the Tribunal is not aware, that's the opening letter; and it doesn't mention anything along the line of the services that M & P Associates would provide in the way

of getting other investors. It simply refers to their advice about whether this is a good deal, a bad deal, whatever; do you understand me?

A. Yes, I understand what you are saying, but the answer to that is that there was no ambiguity whatsoever about my arrangement with him.

Q. I am not saying there was ambiguity, because I have no there is no document that I have seen that refers to the agreement.

A. It was clearly understood, clearly understood what the arrangement was. And because how would I put it to you it went without saying, that was his function. That was his role. That's his what he does in life, identify properties and find investors for it. And in my case, I clearly understood what his function and what his role was, and both of us did. There was no necessity to put it anywhere. It was a clear understanding.

Q. What you are describing to me seems to me to be a perfectly simple proposition. The only point I am making is that there is no documentary evidence of it from Mr. Kevin Phelan, who certainly is able to write a /RS

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fairly long letter when he wants to. Do you understand me?

A. I accept the point you are making, that you haven't it

in writing. But what I am saying, I had no difficulty with it, on the basis that I say my arrangement with him was clearly understood. He understood it and I understood it.

Q. As you have described it, it's a fairly simple commercial agreement?

A. Yes.

Q. Again, it's surprising that Mr. Kevin Phelan wouldn't come and give evidence about it and help the Tribunal.

A. Yeah. Could I I think, Mr. Chairman, with your indulgence, if I could, please: On Friday and I don't wish to detain the Tribunal reference was made and I got huge coverage outside of here, particularly media coverage, and the impression was created that in some way or other, because these three witnesses were connected to me or to any transaction that I had, that I was in some way or other responsible for they not attending this Tribunal.

Now, that probably was not the intent of the Tribunal in making the comment, but certainly that was the impression it created. Now, I have had to sit since last Friday listening to radio commentaries, looking at news bulletins, and reading papers at the weekend which took up that line that somehow or other I was responsible for that.

/RS

Now, this Tribunal, in my view and I say this sincerely, Mr. Chairman this Tribunal owes me to clear that up, because there is two sides to this.

That commentary which passed on Friday was exceptionally selective in that it omitted to present for the public the facts from my point of view.

Q. I think you have taken every opportunity to explain the position, Mr. Lowry, and I don't want to get involved with newspapers

A. I haven't. I have had no opportunity, Mr. Chairman.

CHAIRMAN: I thought, Mr. Lowry, you had made it quite clear that these three individuals were not people that you had in any way constrained from attending; that you had made available all waivers, and you were more than happy and would indeed prefer that they attend. And I think you had made that quite clear to me on several occasions in the course of the latter days of last week, and that is certainly noted as the evidence.

A. I accept, Chairman, you have put it in a nutshell. And there is documentation, backup documentation that confirm that I did all of what the Chairman has outlined. And I'd ask people to take note.

Q. MR. HEALY: There is another letter of the 9th October of 1998 from Mr. Kevin Phelan to you that I want to ask you to comment on. It's document number 6, schedule number 4.

A. Joint Venture Agreement?

/RS

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CHAIRMAN: No, it's after the Joint Venture Agreement and the planning agreement.

A. Sorry, document 6.

Q. MR. HEALY: It's after the Joint Venture and then after the two cheques. It's the next document.

A. Yes.

Q. It's addressed to you at Abbey Road in Thurles, 9th October, 1998:

"Dear Michael,

"Re development site Mansfield.

"Following our telephone conversation and our letter of the 30th September, we will now proceed to conclude an acceptable purchase agreement for the development land at Mansfield. We will telephone Mr. Christopher Vaughan, solicitor, who you met when you last visited the UK, to ask him to act on your behalf. As agreed, you will advise us in due course how you wish to purchase the site, in a limited company or alternatively in your sole name.

"We would anticipate that Christopher Vaughan would make direct contact with you as matters proceed.

"In the meantime, we'll keep you advised of progress."

/RS

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Now, my impression from reading that letter is that it

contemplated that you were the only person involved in this transaction and that you were the person who was going to call all the shots, as it were; because it refers to your advising Mr. Phelan in due course as to how you wish to purchase the site in a limited company, or alternatively in your sole name, and it doesn't refer in any way to any role anybody else might have to play in it. At this point, they seem to be anticipating signing a contract.

A. Yes. Not so much at this stage, at this stage, Mr. Healy, that letter would have been asking me, in other words, the site had to be secured, and was I using a company vehicle to secure the site? Was I putting it in my own name, or what arrangements was I making? That's what that letter was about.

Now, subsequent to that letter, I had discussions with Christopher Vaughan in other words, we couldn't you can't change contracts, or you couldn't do anything in relation to securing the site unless you put down you make a decision in relation to the what name you are going to put it in.

Q. Well, unless you sign a contract.

A. Yes. So at that stage, the intention was to proceed on the basis that we secure the site at 10 percent in my name, with my address.

Q. But if Mr. Phelan was, at that stage, contemplating that he was going to assemble a group of investors,

/RS

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don't you think he'd have written in the letter something along the lines of "Well, dear Michael, we haven't yet got all the investors on board. We have got to sign a contract. Maybe we'll sign the contract in trust, or we'll get the solicitor to sign it in trust", but he is referring to you as if you were the only person who is ever going to be involved in this.

A. No. The intent of that letter was referring to me as, did I want to put in my company name? Was he putting it in my own name, what have you? The first thing we had to do was secure the site, and the only way we had to secure the site was by putting it in my name, the company name, buy it in trust, what have you. And it was decided that we would purchase it in my name.

Q. That's what you understood the letter to mean. You obviously can't say that was intended; only Mr. Kevin Phelan can tell us that.

A. That was my certainly the intention, yes.

Q. No, that was your impression?

A. It was my intention also.

Q. Yes, but you don't know what the letter what I am trying to clarify is that you'll understand the problem the Tribunal has is and I am sure you'll agree with me you can't tell the Tribunal what the letter intended; only Mr. Kevin Phelan can tell us that,

because he is not here. You are saying what it meant to you.

A. I am quite clear, I am clear what the intent was, and I am quite clear personally what the message I was getting from that letter was.

/RS

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Q. I see. You'll have to understand, Mr. Lowry, that ultimately it would be preferable if the person who wrote the letter could be questioned about what his intent was. You understand that?

A. Well, what I have always said in relation to this and may I say that I did, on a number of occasions, ask Kevin Phelan I know that he was in contact with this Tribunal on a number of occasions, and his response was that a number of his concerns were not satisfied. You would have to understand that he is living outside of the country, for starters. He is not in this jurisdiction. And I certainly

Q. Northern Ireland, I think.

A. I certainly have approached him and asked him to assist the Tribunal. I understand that he gave some assistance to the Tribunal. He, for business reasons, for business reasons I am only conveying to you what he has told to me; he obviously has followed the Tribunal ,and he has, as he said to me, "I have seen people go into the Tribunal and be the focus after the

Tribunal of massive media publicity." As far as he was concerned, he was involved in a straightforward, perfectly legitimate transaction, and he is not going to offer himself to the Tribunal on the matter.

And that is against my wishes. I have done everything I could to encourage him to do it.

Q. If you go to a letter of the which is the next letter the Tribunal has, of the 23rd October, 1998, schedule 4, document 7. It's a one-page letter. It

/RS

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refers to the site.

"Thank you for meeting me on Tuesday in Dublin."

Obviously you met with Mr. Phelan somewhere in Dublin.

"We now confirm our agreement on costs and fees as discussed.

"As you are aware, ECL Projects operate in conjunction with M & P Associates and are responsible for all the planning issues and associated project development matters. The fees and costs outlined represent all costs in respect of M & P Associates and ECL Projects."

Then he has a list of architectural services and the costs that would be incurred in relation to architectural work, whether you'd want full services, partial services, and so on.

At the very end, then, he refers to a development sales profit. "I confirm our agreement that M & P Associates

will be remunerated 15 percent of the site sales profit after deduction of all costs.

"I trust this is as agreed and is acceptable to you."

And is that writing, the manuscript, in your handwriting, is it?

A. The "No profit, no fee" is my writing, yes.

/RS

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Q. Why did you write that?

A. Because that's what that agreement that's what it meant. Effectively, what he was outlining to me was the costs that would be involved in this project; this is prior to I paying the deposit. I wanted some confirmation as to what kind of costs were involved.

And like, in these situations, this is the way if you don't control them, if you don't control agents, what happens is you'll be receiving invoices for work that may or may not have been done, and effectively, there is no ceiling or no cap on what kind of costs would be attached to it.

At this stage I would have been aware, Mr. Healy, that there was planning permission on this site for a 55-bedroom hotel, and that that planning permission had lapsed.

Q. I understand the point you are making. I simply want to know, was that written by you as an idea you had to discuss with him, or was it a reflection of a

discussion you actually had. I.e., "All these costs are fine as long as we make a profit; if there is no profit, you get nothing"?

A. Exactly. The agreement with him was, bottom line is what I have written there: No profit, no fee.

Q. Again, I simply draw your attention to the fact that in this letter, he makes no mention of any other investors. And could I just ask you this question:

Let's assume for argument's sake that having signed a contract, you got no other investors and you lost the

/RS

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€1/25,000; would that be entirely your loss, or would you have any call on Kevin Phelan to share any of that loss with you?

A. I wouldn't have. He'd have lost as well, because already he would have put in a significant amount of time. He would have put in his own technical resources to do it, so he would have had a keen interest himself in making sure that I didn't lose.

Q. But he wouldn't be losing €1/25,000 you will agree?

A. He wouldn't, but he would be losing a substantial amount. There was a number of people involved, and professional fees don't come cheap.

Q. If you go to the next letter, which is document 8, schedule 4, again a letter from Kevin Phelan to you.

"Dear Michael,

"Re Mansfield development site.

"Following our meeting in Manchester on 26th November 1998, we are not surprised to have received the enclosed letters relating to the above site.

"As discussed at our meeting, we require you to forward a 10 percent deposit to Christopher Vaughan so that he can give some comfort to the vendor. We will telephone you later in the week to further discuss."

Then he exhibits a letter, I think two letters. I think we will look at them in the correct sequence.

/RS

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Firstly a letter from Harrop White, Vallance & Dawson, solicitors. It's "Re" what we will call the Mansfield site, for short. It simply has a slightly different description here.

"Dear Mr. Vaughan,

"B Jephson (Mansfield) Limited" that's the vendor "to Abbeygreen Consulting Limited, land at Hilltop Farm, Chesterfield Road, Glapwell.

"We refer to the above matter and should be pleased to hear from you by return."

Can you tell me, at that stage, do I take it that you were contemplating taking the site in the name of Abbeygreen Consulting Limited?

A. Yes.

Q. And where was that company formed?

A. That company is a company formed by myself, with my brother and I as directors. And it's based at Abbey Road, Thurles, and it's a company that does has, since I formed it, conducted some consultancy work both on property and on the refrigeration side.

Q. Has it ever purchased property before in England?

A. No.

Q. Or since?

A. No.

Q. And is there some reason why you decided not to proceed

/RS

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in the name of Abbeygreen Consulting Limited; to take the property in your own name eventually? I mean, does anything turn on it?

A. What turned on it was the possibility of the administration of Capital Gains Tax.

Q. I see.

A. And the money that was in Abbeygreen, any monies that was in Abbeygreen was my own seed capital for that company. It was my own personal monies.

Q. If you go to the that letter is 20th November.

There is a response from Christopher Vaughan of the 23rd November.

"Dear Mr. Dawson:

"Thank you for your letter of the 20th November, 1998.

"Mrs. Jephson has spoken to me directly on the

telephone a couple of times, although I have explained to her that I cannot speak to her."

What he means by that is that she shouldn't be speaking directly to him; she should be speaking to her own solicitor. There is nothing sinister in it.

"I simply do not have any current instructions from my clients on this matter.

"They have been trying very hard to put together a package involving a hotel company and a developer, and

/RS

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as soon as I have instructions, I will contact you immediately."

Now, do you know anything about who those other clients were, if you like?

A. I think what Kevin Phelan would have been attempting to do at that stage was obviously I mean, that's what they do in property, that if you can hold the property and then if you can find somebody to come in and take it off you, the quicker you can turn it, the better.

So at that stage my recollection is, even though I wasn't involved in it, is that he had approached a number of companies to see what level of interest would be in it for the purpose for which the lapsed planning was on it. And he gave me he came back to me after that and said that at that stage, he would have said to me that's why I would have paid the deposit around

the 12th December, because arising from those discussions, he said to me, "Look, if we can get if you secure this site and get the planning, it has potential." from the discussions that he has had with other people, that's the view that he formed.

Q. Just as a matter of interest, who did ultimately advise you in relation to the taxation implications of taking the property in the name of the company as opposed to your own name?

A. Who actually? I actually asked Denis, I just asked him in what connection when would Capital Gains apply?

And he explained to me that Capital Gains does not apply well, the impression that I got, anyway, was

/RS

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that you are better to put the a purchase of a property, if you are talking about Capital Gains, in your own name; that's why I did it that way. I don't understand the technical reasons behind it, but that was one of them.

Now, I didn't actually speak about this property in particular; I just said in general terms.

Q. Right; you asked him a general query. He didn't know that you were buying this property?

A. He did. Well, he knew that I was getting involved. As I have given evidence already

Q. Let me be absolutely clear about it, now. He has given

evidence; he said he knew nothing about this.

A. Sorry, he said that he knew in general terms that I was involved in the UK property, but he was not aware of the specifics.

Q. Did he know that you were buying this property?

A. Not this specific property.

Q. You didn't mention this property to him when you raised this query with him?

A. No. I just said, if I bought a property in the UK, what would be the position in relation to Capital Gains?

Q. And you didn't tell him that the person you were dealing with in relation to this property at that time was Kevin Phelan?

A. There would have been no reason to, no.

Q. When you subsequently went and bought the property in your own name, you didn't tell him, either, that you

/RS

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had bought it with Aidan Phelan, who he would have known very well?

A. There was no necessity.

Just to put that in perspective, Mr. Healy, we were at the stage that Denis O'Connor was exceptionally busy in relation to my general affairs and with cooperating with the five different inquiries that I have been involved with over the last six years, and the five

different inquiries have been essentially inquiring into the same matters. So he would have been quite busy in relation to that. And you have to understand, Mr. Healy, that at this stage, I had taken up a considerable amount of his time.

Q. What five inquiries, just to clarify my mind about it?

A. We started off, in the six years after I resigned, we started off I started off with the Buchanan inquiry.

Q. Was Mr. O'Connor involved in that?

A. Yes.

Q. I see; I didn't realise that.

A. I went from the Buchanan inquiry to the McCracken Tribunal. I went from the McCracken Tribunal to Minister Harney sending in an Authorised Officer, an inspector, to do an inspection on my company, Garuda. I went from there to the Revenue, at which you are aware I was in the High Court yesterday. And I went from there to the Moriarty Tribunal.

And so I have had five different levels of investigation and interrogation over that six years, so

/RS

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Mr. O'Connor was exceptionally busy. And I'll have to say there is no point in I saying anything else he was at that stage moaning to me that he had difficulties within his own practice because he was neglecting his other clients because he was giving so

much time to me. So for that reason, I didn't get him involved. I was going to get a short answer if I asked him to get involved and start looking at the detail of anything else. And that's the reason he wasn't actively involved in relation to this.

Could I say, Mr. Healy, in relation to all of those inquiries, you know, it's something that the public wouldn't be aware of. And I am not making it a big issue, but I have done the best that I can to cooperate with all involved within the parameters available and open to me. And in that process, over six years, my accountant has estimated that I, on a personal level, have accrued costs to me and my company of €1,436,000. That's what the accumulated costs are.

Q. Your accountant carried out that exercise for you?

A. Yes.

Q. It took a fair bit of while to carry out that exercise?

A. Yes.

Q. He seems to have had the time to devote to that exercise, and yet you didn't seem to think he had the time to hear from you that you were buying a property in England with Kevin Phelan or with Aidan Phelan?

A. What I am saying to you, I have given the reasons why he didn't become involved in it.

/RS

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Q. I understand.

A. There is only so much and I think, if you wish, you can put that to you can get confirmation of that, in the sense that that is the reality of the situation. I was such a regular visitor to The Gables that they simply didn't want to see me coming, that I was taking up so much time of the practice of of one of the principal members of the practice.

Q. You entered into a Joint Venture Agreement, in any case, with Mr. Aidan Phelan, and this is schedule 4, document number 4

CHAIRMAN: Just before we leave that letter, Mr. Healy, there is a small potential point that I think should be clarified in Mr. Lowry's favour.

If you just look at the upper part of that Christopher Vaughan letterhead, there is a reference, "CD 1233/AP." And I think, just in ease of you, Mr. Lowry, we should make clear that when the Tribunal was investigating these documents, there was some initial concern that the "AP" could have been a reference to Mr. Aidan Phelan. And I think it's clear from the overall correspondence that in fact it's a reference to the other English firm of solicitors, Harrop White, Vallance & Dawson, and in particular Mr. Charles Dawson, the principal of that firm, and that it doesn't bear any apparent relevance to Mr. Aidan Phelan. So I think that should be clarified in your favour.

/RS

A. Thank you, Mr. Chairman.

Q. MR. HEALY: Now, if you could turn to schedule 4, document number 4, Mr. Lowry please. It's the joint venture agreement.

You will recognise the kind of document on the monitor?

A. Yes.

Q. Do you have it in your book of documents?

A. Yes.

Q. This joint venture agreement was made, I think, was entered into sometime maybe a number of days after the actual purchase of the completion of the purchase of the Mansfield property. Would that be right?

A. It was agreed in principle, and the actual signing the background to this

Q. I am not making any issue of that, Mr. Lowry. It's just, you closed you were looking for some other funding, some other investor. Eventually you got one person, one investor, who basically funded 90 percent of it. You entered into an agreement with him. He was a person with whom you were developing a closer relationship over the previous two years, and you agreed that the basis of your agreement, that enabled you to get the money to close the sale. The sale was closed, and then the agreement was reduced into writing, can I put it that way, having already been

agreed.

/RS

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Now, it would seem that neither you nor Mr. Phelan used independent solicitors to draw up this agreement. And it's not entirely clear to me how it came into existence unless you know more about it than I do from the evidence already. And if you do, can you tell me how it came into existence?

A. How that agreement first of all, the timing of this would be that I mentioned about the letter that I was sent, and then I had further discussions with Aidan, and we agreed in principle that we would go ahead with it.

Then between roughly between the middle of March and the end of March, we agreed between ourselves, Aidan Phelan and I if you recall, previous to this, there was still the question of I looking for 75/25

Q. I am aware of all of that; I just want to know who actually drafted it. Do you know?

A. I am coming to that. What happened then was we signed off on it in at the end of March, the last week in March, in or around that time, we would have agreed it between ourselves. And at that stage he said, you know, the question obviously arose, well who will draw up the agreement? So we both agreed that Christopher Vaughan, our solicitor, should be the one who would

draw up the agreement. And I left it to Aidan Phelan to make contact with Christopher Vaughan and to communicate to Christopher Vaughan the terms of the agreement, the broad principles which he and I had already agreed, and it was up to Christopher Vaughan to /RS

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frame that in the legal context.

Subsequent to that, my understanding and my recollection is that what happened was I got a phone call from Aidan to say that the document was ready for signing and that next whenever I am in the area, to give him a ring in advance and to call in and to sign the document.

And on the 29th March, I was in Dublin on other business. I recall that I was to go to Aidan's office.

At this stage, I think yes, his office was actually out in Clonskeagh. He was he moved office, but at that stage he was in Clonskeagh. And it was towards late in the evening; there was nobody in the office other than Aidan. I met Aidan, went through the document.

I think the way I understand is that a hard disk of the document was forwarded to Aidan Phelan

Q. A floppy disk, surely?

A. Or whatever you call them; sorry, a disk, anyway.

That the disk was transmitted from Vaughan to Aidan

Phelan; that he asked his secretary to transcribe that onto paper; that that's what gave us the particular document that we have in front of us. I signed the document. He signed the document. He went to get I think he said "I'll get my brother to sign it." He didn't happen to be in the office. The only person who /RS

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was left in the office it was after work was Helen Malone, and she acted as a witness to both our signatures on that particular date.

Q. It says "Joint Venture Agreement between Aidan Phelan of Orchard House, Number 2 Clonskeagh Square, Dublin 2." That's probably wrong.

And "Michael Lowry of Abbey Road, Thurles County, Tipperary, Eire." which I suppose is the indication of the provenance of the disk. "Jointly referred to as the promoters.

"It is agreed as follows:

"1.1 The promoters shall carry on business together for the purpose of property development.

"1.2 The venture has already commenced and this agreement has been entered into to regularise the position until it is terminated as provided in this agreement."

Then there is a list of the obligations on each promoter.

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

2.1 Lend any joint venture money

2.2 Release any debt due to the venture

2.3 Enter into any contract for the sale or purchase

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of any property

2.4 Enter into any borrowing or other arrangements

with mortgage lenders or bankers in respect of any

assets or prospective assets of the joint venture.

2.5 Become guarantor for any person."

Under the heading "Financial", it says: "The profits and losses of the venture shall belong to the promoters in the following shares:

(i) Aidan Phelan - 90 percent.

(ii) Michael Lowry - 10 percent.

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

4. Termination.

The joint venture may be terminated by either promotor giving to the other not less than three months' notice in writing at any time. On termination the assets will be divided between the promoters by agreement but in default of agreement to be determined by an expert appointed in default of agreement by the president of

the Institute of Chartered Accountants of Ireland.

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

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this agreement."

Then it's signed by both of you.

Now, at that stage, did you envisage entering into a long-term agreement with Aidan Phelan?

A. Yes.

Q. Involving more than one property?

A. Yes.

Q. And that seems to be clearly what the words of the agreement say, isn't that right?

A. Yes, that was our understanding.

Q. And you were going to conduct that relationship on the basis of a 90 percent/10 percent split in relation to all those properties?

A. Yes.

Q. Even though that was the split that applied as of that moment only to the Mansfield property, isn't that right?

A. Yes, but obviously it would be you know, we were going to be flexible with each other. If my resources allowed for whatever changes would be made to the

percentages would obviously be by mutual agreement, but that was the intention as outlined.

Q. Can I just ask you to look at the third clause, "Financial", which refers to the breakdown of your respective shares but provides that it's to be subject to a performance-related incentive payable to Michael Lowry which from time to time shall be agreed between the promoters."

/RS

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Can you explain to me

A. Sorry, Mr. Healy, are we on the same document?

Q. Yes, second page, top of the second page. The breakdown was subject to a performance-related incentive payable to you to be agreed between the promoters.

As I read that, it means that if you made $\frac{1}{2}$ 100,000 gross profit on a venture, then before the 90/10 divvy-up would be made, there is to be an agreement between you as to a performance-related incentive payable to you?

A. Well, my argument in relation

Q. But let me just finish for a minute. But I don't see from the agreement any basis upon which that performance-related incentive could be calculated; do you understand me?

A. Yes.

Q. It's all left up in the air. The person paying it, if you like who would really be Aidan Phelan; he'd be suffering the most could stymie the performance-related incentive?

A. What that meant to reflect is that in the discussions that I had with him, and the negotiations I had about the 90/10, I was effectively saying to him, well, fair enough; both Kevin Phelan and I, both of us, would be entitled to, if there is an upside, a profit side, that we felt well, generally I felt Aidan Phelan has felt I felt that at that stage, if there is a

/RS

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profit, that I'd be entitled to some fee in terms of bringing the project to the table. And that's what that was meant to reflect.

Q. I fully understand that. Kevin Phelan was covered after, he'd be covered in the costs of the venture because he had an agreement whereby he'd get a certain percentage of any profit and he'd lose out if there was a loss.

A. Yes.

Q. But there is a specific percentage applied to calculate what Kevin Phelan was to get, but where you were concerned, it was simply something to be agreed between yourself and Aidan Phelan?

A. Mm-hmm.

Q. And if you couldn't agree, you'd get nothing, as far as I can see.

A. If we couldn't agree, I was going to get nothing. But obviously, if you were in a partnership, there has to be an element of trust in it. And there was. And I was arguing the point that for the 10 percent, that I was getting 10 percent, and that I felt I was entitled to more. He wouldn't give me the 25 percent, so I said "Okay, if the arrangement works out well, let's readdress the between the 10 and the 25." And we'd have come to some agreement on that.

Now, that hasn't as yet happened. I don't know, are you interested to know

Q. What I am what I want to examine is the fact that the agreement seems to be, if you like, skewed against

/RS

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you. Kevin Phelan is already covered by his own agreement. Aidan Phelan is covered as to his 90 percent here.

A. Mm-hmm.

Q. You'd be covered as to your 10 percent. But you were going to be doing a lot of the work, if not as much as, but close to as much as Kevin Phelan, and you were going to get an incentive only if Aidan Phelan agreed it. Now, there is trust, of course, in a partnership agreement, but you were putting all the trust in him;

let's put it that way.

A. Well, no. The reason that's in, the reason that clause is in, this is precisely what we argued about originally on the 90/10. I felt that I was entitled to more than the 10 percent on the basis that I say it was I had brought the deal to the table.

Q. I understand that.

A. And he was effectively saying I am only paraphrasing it in general terms, what he is saying is "Fair enough; if it works out successfully, and if we do well in it, we'll sit down and have a discussion and see what bit more we can get." I wasn't going to get a lot more, but I might get a bit more than the 10 percent. I asked that be put in to reflect the fact that it was still open for discussion.

Q. I fully accept that. You put it in to reflect what you believed you had brought to the table; as you said, you had brought the deal to Aidan Phelan, up to a point. I am simply trying to point out to you and I am sure you can agree with me on this the document itself

/RS

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doesn't spell out in clear terms, or in any terms, how your performance-related incentive was to be calculated. Do you understand me? The document doesn't spell that out.

A. Okay.

CHAIRMAN: I suppose Mr. Barniville might have put together a quantum meruit claim on the basis that the agreement was some spectacular succession on a future deal.

MR. HEALY: I think it says "performance-related"; that's why I am concerned about it.

Q. Do you remember, you were giving evidence last June, and you were describing, I think, your own business, the refrigeration business, and a number of deals that you did, I think one with Mr. Whelan and one other deal I am not sure the name of the other person; it will come to me in a minute and in the course of the evidence you gave concerning that, you mentioned the way you worked.

A. Mm-hmm.

Q. You put in a lot of work. You organised a refrigeration system for Mr. Whelan, and at the end of the day, Mr. Whelan effectively decided how much effectively how much you were going to get paid. And Mr. Coughlan put it to you that that seemed to be a rather one-sided arrangement again, and I think you were saying it was the way things were done in that business. And then he mentioned to you that it was

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perhaps an unwise way to do business, when you were a public representative, to leave yourself completely in

the hands of another person. Do you remember that evidence?

A. Yes. What's the point?

Q. Well, what you said at ,that time to Mr. Coughlan, I think I think it was day 23, I think, page 4, line 14

MR. BARNIVILLE: Perhaps Mr. Healy could give a copy of the transcript to Mr. Lowry.

MR. HEALY: Yes.

(Document handed to witness.)

I can give Mr. Barniville my copy. There is a copy on the overhead projector.

You can go down the page. You are describing how you do business: "What I normally do is give a budget price, and then when all the costs are in and we have actual costs and we total them up, and that's the figure that we base our decisions on."

You were asked: "Again, I suppose you would agree with me I suppose that whilst it's an unusual way to do business, but it's the way you do the business, it's perhaps not the best way for somebody who might hold public office to be doing business."

/RS

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You said, "Well, I never linked my business

I think what you probably meant was you never linked your political business with your commercial activity.

"... but when I see all the questions that are being asked of me for the various commercial decisions that I have taken, I do realise now in hindsight that you have to be ultra-careful, and that something which is totally innocent and innocuous and something which is complete above board can be interpreted in different ways. And obviously I'd be I should be careful not to leave myself open to that.

"Question: I suppose you wouldn't disagree it would be suggested it might be an unwise thing to do?

You say, "I'll accept that."

Do you see that?

A. Yes.

Q. Well, at that particular time or around about that time, weren't you entering into another agreement, a commercial agreement with somebody else, where the other person was holding all the aces, if you like, in that your performance-related bonus was going to be related to what they thought you should get? Did you not recognise that that could give rise to, as you put it yourself, you know, different interpretations that might be unfavourable or negative? Would you not

/RS

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accept that?

A. I don't accept that. In this instance, I don't accept that. I don't accept the comparison that you are

drawing, on the basis that I clearly established a formula which was put on paper, which was agreed and which was signed by me, which gave me 90/10 percent. Once I was covered in relation to my own input, and my own outcome followed, anything else that I would get from it would indeed be a bonus. I had argued for 75/25; I didn't get it. But in the event of the deal becoming exceptionally good, I felt that it should be revisited on the basis that I had brought the deal to the table.

Q. I think the point

A. There was no way I was vulnerable in that my own interests, the interests that I was entitled to out of it again, I had paid

Q. Were you not vulnerable in the sense that as a public representative, you were leaving it up to somebody else, in this case somebody who had an association with other individuals which was being negatively commented on in the press already in relation to you, was going to decide how much you were going to get? Was that an unwise thing to do?

A. In the first instance, I want to take the last question you put to me first. I have had no difficulty whatsoever in dealings with Aidan Phelan because of any previous business relationship that I had with Mr. Denis O'Brien.

/RS

The third-last question you put to me, I had no dealings whatsoever with Mr. O'Brien on this. I was dealing with Aidan Phelan. We had a mutual agreement which was enshrined in a legal document which protected my position and protected him, but which gave us the flexibility, pending the outcome of the deal, if it was successful or not, pending the outcome of the deal to have a negotiation in relation to an upside. And that was in my understanding, that happens every other day in business transactions such as this.

And there was no negativity. And I want to make it clear again, I want to make it clear again, I want to make it abundantly clear: I have never had any difficulty whatsoever with dealing with Mr. Aidan Phelan.

Q. I appreciate that, Mr. Lowry. I am not suggesting

A. Could I answer

Q. I am not suggesting for one moment that you had. The point I am trying to make to you

A. When you threw in that word "negativity"

Q. You had a sensitivity with Mr. Phelan about a telephone, something as inconsequential as a mobile phone, and it had made banner headlines, not because of any negativity you had

A. And the six o'clock and nine o'clock news

Q. Not because of any negativity as towards Mr. Phelan and

Mr. O'Brien but because there were connections between them, and those connections were interpreted in a certain way. All I am suggesting to you is, would you /RS

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agree with me that you should have been alive to the possibility of those connections being made once again, in the middle of 1999, when you were giving evidence here and doing this deal at the same time?

A. My answer is that is simple: No. And the reason I say no is because I know, I know from my own dealings and my own transactions and my own stewardship of the department when I was minister, effectively what you are asking me to do is to you are effectively asking me whether or not there was a reason why there should be negativity attached to my dealings with Aidan Phelan. And I am saying there was absolutely no grounds for it whatsoever, because I know what happened in relation to the licence, and I know that the licence had been totally, totally properly dealt with, without any interference in relation to myself.

Secondly, you know, I want to make it clear that I feel free, totally free and nobody has said to me that I can't do it I feel totally free to conduct legitimate commercial transactions with Aidan Phelan or with anybody else in Ireland associated with Denis O'Brien. I don't have a problem with that. And the

reason I don't have a problem with it is I have a totally clear conscience in relation to any transactions or dealings that I had as minister with Mr. O'Brien, or indeed with any business person in Ireland.

Q. I think, Mr. Lowry, that you are addressing something else altogether. I simply asked to you reflect on the

/RS

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evidence you have already given about a similar type of arrangement you entered into with Mr. Whelan, I presume there is nothing wrong with Mr. Whelan. You had totally commercial dealings with him. I think you did agree that you were a little exposed to misinterpretation. That's how I read your evidence.

A. I just could not read that interpretation into it. I am quite happy that my position is protected, as is enshrined in that legal document, the partnership arrangement. I am quite happy with that.

Q. Could you clarify one final matter in relation to Mansfield. Did I not understand your evidence that it was Mr. Kevin Phelan who had done most of the work at that stage, in bringing the project to Aidan Phelan?

Because I understood you to say to me a moment ago that you had no dealings with Aidan Phelan until Kevin Phelan identified him as the potential target. You didn't even suggest Aidan Phelan. You didn't even know

Aidan Phelan was going to be targeted. So what did you bring to Aidan Phelan to justify his giving you a performance-related incentive?

A. At that particular stage, when the property was initially brought to my attention by Kevin Phelan, the first as you will see from the correspondence between the vendor's solicitor and Christopher Vaughan, our solicitor, there was a huge amount of to-ing and fro-ing in terms of first of all, there was a difficulty in relation to the planning. And obviously I advised Kevin Phelan as to what how he should approach that matter; in other words, I needed to know

/RS

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whether there would or would not be a difficulty in renewing the lapsed planning. I asked him to do an assessment in terms of what costings would be involved in that process and who would be involved in it. I asked him what kind of a time scale would be involved in it.

I would also have, at that particular time, had a concern which was a concern which was difficult to resolve in terms of if you look at the site itself, the site is approached through a long avenue. There is property on the left- and right-hand side of it. And I was concerned that the option to the 31 acres was on the right-hand side, and I was concerned about, number

one, the side of the access of all that property because as we had it, we had an old farmyard entrance, and there was no point in trying to negotiate a wider entrance when the deal was done. So in advance of that, we had to get proper access to the totality of the site.

Secondly, there was a difficulty with a right of way, in terms of who had a right of way as far as our property at the top. In other words, the existing land owner had land remaining to the left-hand side. There was difficulties in resolving that right of way. If this was intended as a hotel, for instance, which it was, one of the difficulties we would have is we didn't want farm machinery and what have you transgressing into areas which was going to reflect badly on the

/RS

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lead-in to the hotel itself. We then had a difficulty in that the vendor did not want to separate the she wanted to separate the option to purchase the 31 acres and the property at the top, which was the old farmhouse and the outbuildings.

Q. Was that what you were building, the old farmhouse and

A. The old farmhouse and the out buildings. While the real value in the property was the option on the 31 acres.

Q. Did you get that?

A. We did. The reason we got that was that that's what my recollection of it is that on that there was planning permission for the 55-bed hotel. We succeeded in increasing that to 65, so they renewed ultimately they renewed the planning on it. At the time we purchased it, I didn't know that. I was trying to ascertain it. We did purchase the 31 acres. We made an agreement on 31 acres, that the 31 acres could be purchased at $\frac{1}{2}$ €3,000 per acre within any time scale of five years. And the reason it was for five years is because the local authority would be reviewing their development plan. And as it stands at the moment, there is residential planning bounding our property, our 31 acres. So it's inevitable that that will come under planning rezoning. And for that that's the reason

Q. That was all there from the letter of the 30th September 1998 from Kevin Phelan to you. You see, it seems to me that you didn't bring anything to it. It

/RS

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was Aidan Phelan who rescued you, and you were going to go

A. I gave a lot in terms of

Q. Would you agree with that proposition, that Aidan Phelan rescued you?

A. Pardon?

Q. Would you agree with my view that you were bringing very little to this, and that if Aidan Phelan didn't come in with 200, whatever it was, thousand pounds, in March of 1999, if he didn't come to the rescue, you were a goner?

A. I totally reject that. Aidan Phelan

Q. Well, did you have the money?

A. Just a second; let me answer the question. Aidan Phelan did not come to the rescue. Aidan Phelan was presented with a commercial opportunity. He saw value in that opportunity, and he made a conscientious commercial decision to go ahead with it, as he had done with previous arrangements with Kevin Phelan.

Q. He had in fact only done one previous arrangement with

A. I don't know how many he had done.

Q. You just said he had done several. I am just wondering

A. I am not aware. All I know is they had a good business relationship.

Q. Let's be clear about it. Had they done one previous arrangement, or more than one?

A. I am not sure. I would say Aidan Phelan certainly had one, and it's possible that his practice others in

/RS

his practice had commercial arrangements with Kevin Phelan.

Q. Just one last matter

A. In fact, I am actually correct in recollection when I do say it, that he had, he had the point I am making to you is that Kevin Phelan already had a commercial business relationship with other partners in that business before Aidan Phelan was introduced to him.

Q. You have only found out about those since, of course?

A. Yes.

Q. You didn't know them at the time?

A. No.

Q. Do you remember, I think last Friday I was asking you, could you turn up the originals of letters that the Tribunal was given copies of by Mr. Aidan Phelan. And one of the letters that I mentioned to you was, I think, the letter we may have mentioned a while ago; we certainly mentioned it last Friday of the 15th March of 1999 from Aidan Phelan to you, where he says, "I don't agree with 75/25; 90/10 is what I want." Have you had any success

A. There was one letter, which is the letter of the 15th March, which was a letter effectively relaying to me the understanding of a telephone conversation and

Q. About a meeting as well

A. I discovered whatever I had. Obviously, I don't have that letter.

Q. Well, have you looked for it again?

A. We did. I haven't got it.

Q. Have you the originals of any other letters from Aidan

/RS

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Phelan to you, or from Kevin Phelan to you, apart from

the ones

A. Any letters that I have are in my discovery file, yes,

I would have had, I am sure.

Q. I think we are moving on to something else.

CHAIRMAN: I thought you might be. Very good, five to

two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

/RS

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THE TRIBUNAL RESUMED AS FOLLOWS AT 1:55 P.M.

CONTINUATION OF EXAMINATION OF MICHAEL LOWRY BY

MR. HEALY:

Q. MR. HEALY: Mr. Lowry, during the period in 1997 and

1998, during the period after you first had contact

with Mr. Kevin Phelan, do you ever remember mentioning

to Mr. Aidan Phelan that you were involved in property

transactions in England, seeing as you were discussing

business matters in a general way during your social

contacts?

A. Sorry, which period?

Q. The period after you became involved with Kevin Phelan,

you had social contacts with Aidan Phelan, business contacts and social contacts. And if I understand your evidence correctly, although you were discussing aspects of your career as a minister, aspects of the ESAT Digifone operation, I suppose, including I suppose relatively detailed aspects of it, it seems you never mentioned to him that you were getting involved in a new venture involving property development in England?

A. That contact that I had with Kevin Phelan, the first contact I had in relation to Mansfield would have been in the middle of 1998.

Q. Yeah. And you never mentioned that to Aidan Phelan?

A. No, there was no necessity at that stage.

Q. I know, but you were socialising quite a lot, even more than I thought from your evidence last week. You have indicated today that you had a lot of contacts,

/RS

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business contacts, a lot of social contacts, and in the course of those contacts, he discussed aspects of the ESAT Digifone operation and aspects of it that affected, you felt, obviously, your career and your political reputation, and although you were having those quite intimate, relatively intimate, I suppose, conversations, you never mentioned to him that you were turning to property development in England?

A. No. The contact that I had with you are correct

when you say that I had a business contact with Aidan in relation to Masser Hammond, and after that I wouldn't say a lot of social contact. I certainly had social contact to the extent we became friendly, and the type of discussion I described this morning did take place over whatever number of occasions we met. And no, I did not have any detailed discussions, certainly, in relation to property in the UK. As I said in my evidence already, I was not aware that Aidan Phelan or his practice, or the practice that he was involved with, that they had had previous dealings with Kevin Phelan.

Q. I understand I understood you to say a moment ago that you had no detailed discussions. What I am suggesting to you is that it's curious that you had no discussion at all; that you never said to Aidan Phelan, "Look, I am trying to get myself involved in property in England now, and I have this associate, Kevin Phelan, who is trying to put together a package for me." That sort of discussion never took place?

A. No. I had no I have no recollection whatever of

/RS

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that type of discussion.

Q. In relation to the question I asked you just before the lunchtime adjournment about your files or your documentation, and in particular, the correspondence

you received from Aidan Phelan, you will be aware that the documentation the Tribunal has consists of Aidan Phelan's copies of the letters that he sent to you .

Can you tell me what you did or would have done with correspondence like that, including in particular the letter of the 15th March, 1999, which contained his agreement to a 90/10 split?

A. I would, as I say, the 15th March are you asking me about the specific letter?

Q. I am just taking that as an example. The Tribunal has, from you, no originals of the correspondence that you say and that Aidan Phelan says he sent to you.

A. What are those? The 15th March?

Q. Let's take that to begin with. That strikes me as a fairly important letter. After all, until such time as you had a joint venture agreement in place, it was the only thing you had to protect you in relation to your investment?

A. Well, at this stage, you can see from the bottom paragraph, I wouldn't see that letter as being particularly significant. It was simply a follow-up to a discussion that we had previously. And as you can see, the letter is speculative to this extent, that it's just confirming that we had the discussion and that there was something further to discuss.

Q. Well, what did you do with the letter when you got it?

/RS

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A. I have no idea. I probably I wouldn't have considered that letter to be an important letter, so whatever correspondence I had in relation to this, this particular project, I would have discovered to my accountant. Whatever you have is what I was in possession of.

Q. Well, why wouldn't you have kept a letter like that? Surely it was an important letter.

A. I wouldn't have seen it like that.

Q. Do you mean you'd have thrown it out?

A. Pardon?

Q. Do you mean you would have thrown it out?

A. I would have considered that letter simply to be a letter confirming that we had met. I would get those every other day of the month. The correspondence that I would get that would require putting away would be I don't consider that, no, I certainly wouldn't.

Q. You are telling me you wouldn't regard that letter as important, and that you wouldn't keep it, and you wouldn't see any reason to put it in a file or anything like that?

A. Unfortunately, I have been criticised for my record in respect of keeping records, and I suppose that's a further example of the fact that I am not good at keeping records.

Q. No, I understood your evidence the other day, Mr.

Lowry, to be that you corrected that. Your evidence was that you kept things, but that you didn't keep them in an orderly fashion. And when I was asking the about Mr. Austin documentation, and I was expressing surprise

/RS

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that you kept that documentation even after the whole thing was over and done with, was amazed that you kept it, and what's more, you kept it in fairly orderly fashion, you were saying that your problem was you kept documentation but you didn't keep it in order.

What I want to know is, are you now saying that there was lots of documentation you didn't keep and that this is an example of the type of documentation you wouldn't keep?

A. I think that all of the evidence I have given to both tribunals would indicate strongly that my record-keeping was haphazard, and that yes, I didn't keep all the documentation that I should. In respect of your comments of last week in respect of David Austin, I made the distinction on the base that it was a personal, private transaction, and for that reason I obviously had retained it.

Q. Yes.

Did you ever discuss with Aidan Phelan how he was funding the Mansfield property?

A. Did I discuss it with him?

Q. Yes.

A. No.

Q. And when did you become aware that he was funding it from his own resources and not from bank borrowings?

A. I wouldn't have asked him. I was I would have never not queried him in relation to his funding arrangements. That was a matter for himself.

/RS

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Q. When did you become aware that Mr. Phelan was funding it from his own resources?

A. When did I become aware?

Q. Yes.

A. I always assumed that Aidan Phelan was, as I do now, I assumed that he was doing it from his own resources.

And I know for a fact that he did do it from his own resources, now, from the evidence that's been put forward.

Q. So from the very beginning, from the time that Aidan Phelan became involved in this transaction, you assumed that he was funding it from his own resources?

A. I assumed, quite correctly, that he was.

Q. No, but from the very beginning?

A. Yes.

Q. That is to say from sometime in or around the 15th March, sometime between then and the 26th March?

A. When Aidan Phelan committed himself to funding the

project, obviously he was funding it from his own resources.

Q. What made you think that it was obvious that he was funding it from his own resources and not from a bank?

A. Well, that was I would consider, if he was getting it from a bank, his own resources. That was a matter for him. I didn't get involved in where his money was coming from.

Q. Come on, Mr. Lowry. You are a businessman. You know the expression "own resources" as opposed to a bank means. Bank borrowings and own resources are not the same thing. I think you yourself indicated that in

/RS

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your conversations with Mr. Fingleton, you drew a distinction between having your own resources at that time you were thinking of money you had in the Channel Islands and borrowings from Mr. Fingleton.

"Own resources" means somebody's own money, not money they have to borrow.

When Mr. Phelan became involved with you as the 90 percent funder, did you or what was it that made you assume that was his own personal money?

A. I would assume he was hardly going to give me someone else's money. He wouldn't have authority how would he have authority other than over his own monies?

Q. Couldn't he borrow the money?

A. He could have had. I wasn't privy to whether he had borrowed it.

Q. That's what I am trying to ask. When did you become aware that it was his own money and not borrowed money?

A. I would never make the distinction. As far as I was concerned, the funds that were provided by Aidan Phelan were his own resources. As to how he managed them was a personal matter for himself. I certainly did not

Q. Mr. Lowry, do you not accept there is a distinction between bank borrowings and own resources? So that we can follow this matter up properly, do you accept that distinction?

A. I would consider it his own resources irrespective of whether he borrowed it or not.

Q. Mr. Lowry, there is no point in me asking one question /RS

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and you answering another. Do you understand the distinction between "own resources" and bank borrowing? Do you understand that distinction?

A. Not in the terms you are putting it to me.

Q. As I understand it, and as I understood you to use the two expressions the other day, bank borrowings is money that you borrow from a bank. Own resources are your own funds that you don't need to borrow from anybody.

A. I would not be aware

Q. Do you understand that distinction?

A. Yes.

CHAIRMAN: Didn't we see it over your own transaction, Mr. Lowry? You were initially thinking of having your own money from the Channel Islands until there was difficulties about that, and then you acceded to Mr. Austin's proposal to loan you the money.

Q. MR. HEALY: So you understand the distinction?

A. I understand, yes, what you are saying.

Q. Now, what I want to know is, from you, is when you became aware that Mr. Phelan was not using bank borrowings to fund his 90 percent involvement with the Mansfield project

A. I would not have been aware of Mr. Phelan's funds until such time as they became the matter of I wouldn't have been aware of it until it became a matter for the Tribunal to look at.

Q. Right. So until such time as it became a matter for the Tribunal to look at, you had no knowledge of where

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Mr. Phelan was getting his money to fund the transaction?

A. I never had any discussion with Mr. Phelan in relation to his own funds.

Q. And you made no assumptions about it one way or the other?

A. Like, Aidan Phelan put up the money. There is only one assumption; that's that it's Aidan Phelan's money.

Q. I understand that if Aidan Phelan puts up the money, it's his money. What I want to know from you is, did you assume that he was borrowing the money, or did you assume that he was getting it from his own resources?

A. I didn't assume anything. All I knew is that Aidan Phelan had himself paid for the 90 percent stake and shareholding that he had in the Mansfield property. I never had any discussion with him in relation to whether he borrowed it or whether he had it or all I was concerned with was Aidan Phelan paid for his 90 percent share. And the agreement that we had, the legal agreement we had, reflects his input of finance. And in turn, it shows that he has a stake of 90 percent in that property.

Q. The agreement you have between the two of you?

A. Yes.

Q. The joint venture agreement. But if you look at the title to the property, however, it's all in your name, isn't it?

A. Yes.

Q. And if you were to look at the title to the profit, the only conclusion you could come to is that the profit is

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100 percent your property?

A. Yes, but that would be a false assumption, as you know yourself, Mr. Healy. Because the joint venture, as I have explained and maybe to assist me with that, you would put the joint venture agreement on the screen, and I would indicate to you the part of it.

The fact is that I explained this point to you earlier on this morning, because there was a mistaken impression, a mistaken impression conveyed over the weekend that in fact, I had

Q. Could you just answer my question now. We'll deal with the weekend later. I just want to understand the point you are making. I don't want to talk about the weekend, Mr. Lowry. I want to understand the point you are making about the joint venture agreement.

You say the joint venture agreement contains something that will help me in answering the question I want to get, which is that the title was in your name alone, even though, as you say, there was this agreement which made it absolutely clear that there was a 90/10 arrangement?

A. What tab is the document in?

Q. Tab 4, I think it's number 2. Number 4, sorry, document number 4.

A. If you go to first of all, in a general, in a very short explanation, could I say to you that this document, this partnership agreement that is there is legally binding and supersedes any other legal

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arrangement that was in place. That is clear to me from my legal adviser.

And if you look at number 5 clause, number 4 is in respect of termination. Number 5 covers the point that you are making, that "If any property is acquired under the terms of this agreement, but is acquired in or registered at Her Majesty's Land Registry in the name of one only of the promoters, it shall be held subject to the terms of this agreement."

Q. Right. I understand the point you are making. One might make a technical point that in fact Mansfield wasn't acquired under the terms of the agreement, but under the terms of an oral agreement of which these are supposed to be a written reflection.

But leaving that aside for the moment, I understand the point you are making

A. Could I answer that question?

Q. Yes.

A. The point is that this agreement is the current legal position in relation to that particular site. This agreement says that this property, which is in my name, because it's registered in my name for purchase purpose, that this agreement supersedes it and that this property is the subject of the binding legal partnership agreement, which states clearly that Mr.

Aidan Phelan owns 90 percent of for his money and I own 10 percent for the money that I put in out of my personal funds.

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And there is no from my perspective, from Mr. Phelan's perspective, from our legal advisers' perspective, there is no argument about that.

Q. You know that your legal adviser did advise that Mr. Phelan should register a caution?

A. I am sure that's a normal legal thing to do.

Q. It's not just a normal legal thing to do. It's an absolutely vital legal thing for a person to do if a bank, or another individual, has put up 95 percent of the funding has absolutely no protection if somebody were to go off and sell the property other than suing you?

A. I think you will see there that the sale of the property is actually "Either promoter shall without the consent of the other enter into any contract for the sale or purchase of any property", so in other words, there has to be agreement between the partners in relation to it. And if there is any dispute, that's dealt with in relation to number 4 in relation to a termination.

Q. I am sure your own solicitor will explain to you, Mr. Lowry, as I think Mr. Vaughan explained to you, that

Mr. Phelan has no protection on the Land Registry in England for his interest in the property. He is dependent entirely on this document. Now, the purpose of the land registry is to protect someone's interest in property where that interest, in this case, consists of the ownership of the property, of 90 percent of the ownership of the property.

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A. Could I say, in relation to that, that our legal person, the individual who was a solicitor who drew up this agreement is quite satisfied with it, I am quite satisfied with it, and Mr. Aidan Phelan is satisfied that it respects and covers his shareholding of 90 percent in the property.

Q. Do you remember the letter written by Mr. Vaughan, schedule 4, document number 11, on the 26th March 1999, which was the I presume the day of closing of the sale? Do you see that letter?

A. Yes.

Q. It says, from Christopher Vaughan to you, "Dear Michael.

"Re Mansfield site.

"I am writing to confirm that completion of purchase of this site took place today. Aidan has sent me the balance of the purchase monies to enable the completion to take place.

"The purchase of the property and the option agreement to enable you to acquire additional land is in your name, but is held by you subject to agreement between yourself and Aidan." You understand that?

A. Yes.

Q. "I must advise Aidan, in order to protect his interests, that a caution be placed on the register to reflect the fact that you cannot deal with this property without his consent. Could you speak to him

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about that, please."

Now, did you speak to

A. No

Q. Did you speak to Aidan about that?

A. Yes, that was discussed, and I say, very briefly, as far as Aidan Phelan was concerned, the legal, binding document that we had was the share partnership agreement. As far as he was concerned, he was happy with that. His interests were covered with that. And for my part, I was quite happy with it, and I am still very happy with it.

Q. It's just that Mr. Phelan's solicitor, who also happened to be your solicitor, advised that that wasn't enough. You are aware of that?

A. I accept that this document is here, and I am saying that obviously legal people have the follow-up,

whatever the technicalities are, the same as

accountants and others

Q. This was not a technicality. Let me assure you

A. Let me assure you it was brought to his attention. We discussed. There was no difficulty arising from that.

And there is no difficulty

Q. Where did you have that discussion?

A. Of it a brief conversation. Possibly on the telephone; I can't recall.

Q. Do you know when you had the brief discussion? How soon after the letter of the 26th March?

A. I can't say for definite. I just don't know. Let's put it this way: We certainly we didn't have a

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meeting about it, because it was an issue, and it's not an issue between us.

Q. The property to this day is in your name, isn't that right?

A. That's correct. And held in my name subject to the legally binding shared-ownership agreement. So in other words, the property I own 10 percent of the property, Aidan Phelan owns 90 percent of the property.

Q. Have you done any other property projects with Mr. Aidan Phelan?

A. After that, from the with Mr. Aidan Phelan?

Q. Yes.

A. No.

Q. And do you plan to do any more with him?

A. Yes.

Q. You do?

A. Yes.

Q. You plan to do?

A. Yes.

Q. Right. Just one final point in relation to the Mansfield transaction. When I was describing it to you this morning, where the funds Mr. Phelan brought to the transaction came from, I indicated to you that they came from Mr. O'Brien's Credit Suisse First Boston account. Just so that you will have an opportunity to comment on it, the evidence that has been given is that that money didn't go to an account of Mr. Phelan's, or to Mr. Phelan and then on to the client account that you had with Christopher Vaughan; Mr. O'Brien's money went directly to Christopher Vaughan's client account.

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Do you understand?

A. Yes.

Q. So there was a direct transfer of money from Mr. Denis O'Brien's account to a client account in which you had an interest, in Mr. Christopher Vaughan's office. Now, have you any comment to make on that?

A. Yes, I have. The first comment I would make on that is

that that presentation of it is is not the full picture. The fact is that Aidan Phelan gave had agreement of and had access to funds that were legitimately his, which he gave an instruction to be transferred to the solicitor's client account to represent the value of his shareholding of 90 percent in a property which he was purchasing for himself.

Q. Yes.

A. That's my comment.

Q. If you had been made aware at the time, by Mr. Phelan, that the money to fund the balance of the 90 percent due on closing was coming directly from a Denis O'Brien account, would you have said to Mr. Phelan, "Look, this could be misinterpreted; I'd prefer if you'd get it into your own account first"?

A. If it's it's hypothetical, but if he had said that to me, I would ascertain if the funds were legitimately his. And once that was ascertained, as was in this case subsequently, I'd be quite happy with it. They were Aidan Phelan's funds. It was his own money to do with it what he wished.

Q. But, in other words, you wouldn't be concerned that you were vulnerable to misinterpretation by reason of the

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fact that the funds came directly from Denis O'Brien's account to the solicitor's account?

A. The only concern that I would have, and the only concern that I had when this became an issue, was to ascertain the fact that these funds were legitimately due and legitimately the funds of Aidan Phelan. Once that was established to my satisfaction, I was quite happy with that.

Q. Well, to be fair to you, Mr. Lowry, I don't think you had any such discussion at the time. You are saying if it were

A. I am saying when I subsequently became aware, and hypothetically, if I was asked.

Q. Yes. What I am saying to you is, even if you had established at the time and you have no such discussion, according to your evidence even if you had established that these were wholly and exclusively Mr. Aidan Phelan's funds, would you have been concerned that by having the funds come directly from Mr. O'Brien's account to yours, that you were vulnerable to misinterpretation? Would you have been concerned about that?

A. No. On the basis that the fund was legitimately available to Aidan Phelan as his money. Aidan Phelan transferred his money to the solicitor's client account to purchase his his, and I emphasise "his" interest in that particular property, which was 90 percent of the property. And to this day, he retains the legal beneficial ownership of 90 percent of that

particular property.

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Q. I fully I am simply trying to give you an opportunity, Mr. Lowry, to comment on the facts. I know what you are saying. You are saying that he was purchasing his interest, and that is precisely the arrangement that you had with him at the time. But what I am asking you to look at, and I don't want to press you on it if you don't want to deal with it, but I am suggesting that perhaps you might have been concerned with the appearance that money was going directly from Mr. Denis O'Brien's account in Credit Suisse First Boston to close a sale of a property to you in your name, and that that could have been open to misinterpretation, those facts.

A. Is it not from my recollection of the evidence given to the Tribunal by Mr. Denis O'Brien and by Mr. Aidan Phelan, am I correct in recalling that they had their own agreement in terms of the of what was owed to Mr. Aidan Phelan, and that and that he transferred that money with the express authority and approval of Mr. O'Brien, and that at that stage, that money was Aidan Phelan's money to do with it what he wished. In this instance, he decided that he was investing in a property of which he has a 90 percent stake and which he still retains.

Q. I don't think I can make the question any clearer, Mr.

Lowry. That is your answer, is it?

A. That's my answer.

Q. Fine.

Now, that transaction, so far as the purchase and

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completion of the purchase was concerned, was completed

on the 26th March of 1999.

A. Mansfield?

Q. Yes. You continued to have dealings with Mr. Phelan during 1999, isn't that right?

A. Sorry

Q. You continued to have dealings with both Mr. Aidan Phelan and Mr. Kevin Phelan during 1999?

A. That's correct.

Q. Can we just move away from Mr. Kevin Phelan for a moment and stick with Mr. Aidan Phelan.

You had, I think, some dealings with Mr. Aidan Phelan in the summer of 1999 which resulted in you meeting Mr. Michael Tunney of Woodchester Bank?

A. That's correct.

CHAIRMAN: We are now effectively switching to the Manchester property?

MR. HEALY: Yes, Sir, up to a point with the I suppose the Woodchester element, in any case.

CHAIRMAN: Yes.

Q. MR. HEALY: Can you tell me how that meeting came about?

A. The meeting with?

Q. Mr. Tunney of Woodchester.

A. The meeting came about with Mr. Tunney, it was at this /RS

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stage Aidan Phelan, as you know, had been involved with me in relation to the my business.

Q. Yes.

A. And was familiar with that. We had in the interim conducted the Mansfield project.

Q. Yes.

A. And again, in the context of my overall finances, Aidan Phelan organised a meeting well, in fact, when I say he organised a meeting, my understanding and my recollection of it was that Aidan Phelan was meeting Michael Tunney about other matters. And I received a phone call from Aidan to say that I should meet Michael Tunney of Woodchester; that he could be of assistance to me in organising my finances and gaining the best benefit from the assets and that I had at my disposal. My recollection of that meeting was that we met in the Radisson Hotel. I am not quite sure of the date, but it would have been August/September, around that time, late August that's my recollection of the meeting. And before I went to that meeting, on the telephone,

when Aidan was organising that meeting, he just he said, you know, "Have a general discussion with him in relation to your general finances, whatever information he is seeking, just explain your position to him."

And at that particular time, I said to him, "Do I mention the fact that we are actually involved in the UK property scene?" And he said, "Yes, why not? Run it past him and see what he thinks."

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So that meeting was held, and Mr. Tunney when I say it was held, there was a meeting already in place. I arrived. I was introduced to Mr. Tunney, and during the course of that meeting, a lot of specific questions were put to me. We spoke in generalities, in terms of the overall economic climate, what have you. He was aware of what I was proposing to do with my business from Aidan, and I was asked about you know, general questions about my finances. And I answered them to the best of my ability.

Q. How long did the meeting take?

A. I would say that meeting lasted for approximately I would think that I left after approximately 20 minutes to a half an hour.

Q. And how was Mr. Tunney introduced to you? What were you told was the benefit of discussing your affairs with Mr. Tunney?

A. Well, the principal reason, at that particular time I was still looking at my company in terms of its value and how I could realise some equity from it. I was particularly I don't know if it's necessary to say this, but I was particularly interested in seeing was it possible for me to find a mechanism whereby I had attempted an alliance which wasn't working. I was developing the company. I myself had a requirement for some equity. I own 99.9 percent of the shares in the company. And I was wondering, was there a way whereby I could call in some of that equity, put it at my disposal and involve the management of my company in /RS

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that process. And that was the principal I would consider that was the main focus of that particular meeting.

Q. And what was Aidan Phelan's role at the meeting?

A. Aidan Phelan's role at the meeting, Aidan was obviously meeting about other matters. As I say, this meeting wasn't called specifically for me. My understanding is that the meeting had been rearranged, and Aidan felt it was an opportunity for me to meet Michael Tunney, whom he said had very extensive contacts in the commercial world, in the business world, and that it would be useful for me to let him know what my position was in relation to the company, amongst other matters. And in

doing that, he would have an indication of what I wanted to do, and at the same time, may be in a position to divert somebody to me that might be of assistance to fulfil those ambitions.

Q. And what advice did Mr. Tunney give you?

A. Well, what I have to say is that at that meeting, he asked me I didn't get a lot of advice from him. In general terms, in general terms, he could see that I had a number of predicaments. I don't know that he gave me any definite advice. He just listened to my situation. He asked the questions, and I assume that you know, he was formulating his own opinion at that stage.

Q. Well, what opinion did he form, and what did he say to you?

A. I don't recall precisely what he said to me, but I don't recall precisely what he said to me, but in

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general terms, he would have understood that I had a focus and a vision of what I wanted to do, and as to whether or not I could achieve that was obviously there was a lot of imponderables in the way.

Q. What was the advice you got? What was the result of the meeting, from your point of view?

A. The result of the meeting from my point of view was

simply that he was aware of my particular circumstances. He was aware of the fact that my business was up and running, doing pretty well, that if it was possible for me to, again, get some equity out of the company, that I would be able to do that. And obviously I had my my principal concern was to involve the existing management within that process.

Q. And was Mr. Tunney, or were you, if you like, was Mr. Tunney represented to you as somebody who was going to have some special skill in advising you or some special expertise to bear or some special experience he could bring to bear that you were prepared to you know, discuss your personal financial affairs with him?

A. Well, Aidan, I would imagine, from the impression I would have got, was that Aidan had discussed the fact that he had worked for the company, that he was familiar with the background to the company, that he knew exactly what you know, what I had proposed to do. And I suppose, in that process, he felt that because of his commercial and business contacts, that Michael Tunney might be able to assist.

Q. And what did Michael Tunney say to you?

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A. The detail of it, what I am saying to you is that he principally asked me questions and listened to what I had to say. He didn't, needless to say, come to any

conclusions.

Q. Did you come to the conclusion at the end of the meeting that this is a total waste of time?

A. No, I never consider it a waste of time sharing views and experiences with other people, particularly people in business, because I think if you take anything from a meeting, it's worthwhile.

Q. The impression the Tribunal has from the evidence given by Mr. Tunney is that he told you that you were in a hopeless state, and the thing to do was sell everything and start all over again. Are you aware of that evidence?

A. I am, and I can tell you if he said that to me on the day, I'd certainly remember it. He never said any such thing to me.

Q. It's a fairly dramatic thing to say, isn't it?

A. It's a dramatic thing to say, and something that would certainly stick in your mind. And to say the least of it, I was surprised when I read from reports of the Tribunal that this is in actual fact that he had said.

Q. I think he went on to link that evidence with other evidence at a later point, when he said that there was no way Woodchester Bank would loan you money; that as far as you were concerned, you were in a fairly bad state financially. I am not saying that; I am saying that's the evidence he gave. You wouldn't agree with that either?

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A. He'd be totally incorrect. And that is not the impression that was conveyed to him by me. So he had no grounds on which to form that opinion.

Q. I am conscious that you are still in business. And I am anxious to make it clear that that was his evidence. And as you say yourself, if somebody said that to you, it's unlikely that you'd forget it. It would have made an impact on you, he'd have been telling you, "Stop dead in your tracks and start all over again." I thought it was fairly dramatic thing to say.

A. Well he certainly didn't say it to me.

Q. Now, in fairness to you, I think that Mr. Phelan was asked about that meeting as well, and he was asked about the evidence of Mr. Tunney, that Mr. Tunney advised you to sell up everything and get out and start anew, and he was asked whether he remembered that this is Book 138, page 67. I'll read out the relevant portion. You won't have any difficulty following it.

Mr. Phelan said, "I don't remember that particular discussion. I just have to put it into perspective.

The meeting was a lunch; it wasn't very formal. It was sitting around having sandwiches, you know. I was pulling two people together for discussion. I wasn't chairing the debate."

And I think that was essentially the gist of his

evidence on the matter.

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According to Mr. Tunney, what he indicated was that you were under too much pressure, and that the bottom line on his advice was that the only way of getting away from the pressure or dealing with the pressure you were under was simply to sell up, lock, stock, and barrel, something you say was not said to you, or if it was, it's definitely something you'd have remembered.

A. Absolutely. And I would have to say that I think from you know, looking at experience, yes, I have been under pressure. But it's totally alien to my character and personality to get up and leave. The problems that I have are manageable; the problems I have, I have confronted them, and the problems I have, I am going to deal with them successfully.

Q. As I said a moment ago, I am conscious of the fact that you are still in business. You have a company out there which is still providing an income, presumably a successful income. A satisfactory income.

But can you give me any reason that you can think of why Mr. Tunney would say that that is what was said at the meeting?

A. I have no idea why he said that, but the only assistance I can give you is to say to you that he

certainly didn't pass those comments to me, because I would definitely remember a comment such as that.

Q. And can you speculate at all as to why Mr. Tunney would say something that was damaging to your company, in that it reflects on your company; damaging to you, I suppose, in terms of your ability to cope with

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financial pressure; and which was bound to do harm to you? Why would he want why would he say something like that if it didn't happen?

A. Well, it's not there is no "if" in it. It didn't happen. As I said, if that discussion took place, I would certainly remember it. I mean, obviously anybody if somebody said that to you in a professional capacity, you would be shocked. And if I was shocked and I have often been shocked, and I remember when somebody hits me with something that actually shocks me, and I am telling you now that that discussion did not take place. And I have no idea why he represented that discussion to this Tribunal in the manner he did. There was no foundation for it. There was no reason for it. It simply didn't happen that way.

Q. And to get back to my earlier question: What was, from your point of view, the benefit of meeting Mr. Tunney? What advice did you get from him ,or what conclusions, according to your evidence, did you leave the meeting

with?

A. I came to the conclusion I had the same feeling, I have to say, by virtue of the questions that he asked me, I felt that he was interested in assisting, you know, in a financial way. He didn't give me any indication otherwise. I mean, I went through all of the whatever assets I had at my disposal. I went through the company and the way of it trading, and it was certainly trading successfully at the time. I had a general discussion about my finances, which, in giving that overview of my finances, would have

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presented me as somebody who, yes, was looking ahead to be prepared for financial eventualities, but certainly be well capable of coping with those eventualities when they would arise, and I was looking for his assistance in that regard. And as I mentioned to you earlier

Q. I understand what you were trying to convey to him from your evidence, Mr. Lowry. We have his evidence of what his conclusion was and his evidence as to what he said, which you completely reject. Do you have any evidence to give as to what you recall he said to you you should do or what you recall he said to you you could do?

A. He didn't really give me he didn't come to any conclusions, and certainly not the conclusions that he has conveyed to you. As I said, he asked a number of

questions. He listened to what I had to say, and my attitude was, well, you know, if there is anything, he would take it up at a later stage with Aidan Phelan.

As I said at the outset, before the discussion took place, I actually asked Aidan Phelan, you know, the purpose of it. And Aidan Phelan said, "He is a guy who is well connected in the business and commercial world; it will be useful to meet him. I am aware of your finances, and he is aware of I want to you make him aware of what it is you would like to do in relation to the company."

And I do recall saying to Aidan, "Do I mention about the property and our proposals in relation to property?" And he said, "Yes, discuss anything with /RS

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him that you wish."

Q. Well, in relation to property, what did you tell him?

Did you tell him that you had bought a property?

A. Yes, I told him that we had bought a property, and he was I told him that we had bought a property, and I also told him that I was chasing further properties in the UK.

Q. Did you tell him you'd be looking for funds?

A. No, I didn't get into the I actually the only what happened was, in relation to the property was, I recall him saying to me that he had a lot of

involvement himself in the UK property scene. I just discussed property in the UK in general terms. I told him that we had a property, that I was chasing a further property, and I gave the details roughly of the other property. And the only comment I think that he passed, or something to that effect, I can't recall exactly, was but he certainly didn't discourage me from proceeding with it.

Q. So you told him that you were interested you were at that time pursuing the Cheadle property?

A. Yes.

Q. And

A. I didn't actually specify the particular property, but I said that there was another property which I was in pursuit of, and I just asked him general questions in terms of what he thought about it.

Q. How could he have any view about it if you didn't tell him where the property was or what it was?

A. Yeah, I just told him in general terms. I was

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effectively asking him what the UK market was like. I was trying to get confirmation of what I felt myself was the situation in the UK.

Q. You didn't say it was a property in Cheadle? You didn't say what kind of a property it was or what advice you were getting in relation to it?

A. I just said that I was pursuing a property that looked to be a good proposition. I didn't go into the detail of it other than to say

Q. What was the point of this whole discussion?

A. Pardon?

Q. What was the point? It seems to be the discussion, as you describe it, seems to be very vague. What was the point about the whole thing?

A. As I said, it was a general discussion. I was asked during the course of the discussion, we discussed my business. We discussed my whatever assets I had at my disposal. We discussed my income stream. And we discussed any involvement I had in relation to properties. I told him that I was already involved in a property. I don't know whether he had actually known that or not. And I said that I was currently pursuing a property. And as I said, the meeting didn't come to any conclusions. I answered the questions that I was asked. And that was it.

Q. Did you think that you might get money from him, funding from him?

A. Well, I thought that, yes, from a financial point of view, that in some way he could assist in whatever strand of the plan that we had.

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Q. Well, I mean, did you not say straight up that you were

wondering whether his bank would be interested in funding some of these property ventures you had?

A. I don't recall putting it to him like that. No, we didn't get down to that level of detail. As I said, it was in general terms.

Q. At that particular time, you just take me to where you were in relation to the Cheadle property. I think you had some letters from Mr. Kevin Phelan's associate, Mr. Eastham?

A. Yes.

Q. Introducing you to the property?

A. I would say at that stage, yes, I would have had, I would have had correspondence in relation to it. I would have had looked I would have looked already, inspected the Cheadle property. And negotiations would have been taking place between the agents for the vendors and Kevin Phelan and others involved, whoever else was involved.

Q. I think sometime in April and May, you were contacted by Kevin Phelan's colleague with a view to promoting some interest on your part in the Cheadle property?

A. Yes. After the Mansfield project, we agreed that you know, if something came up that was worthwhile, the Mansfield project was short term and or long term. At that stage we had agreed to pursue any if there was another opportunity that was suitable, we would.

Q. Well, this opportunity came up.

A. Yes.

Q. Did you go to your then partner, Aidan Phelan, about
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it?

A. Aidan would have known that we were still that we were on the lookout for property. And the arrangement that I had with Aidan was that I would deal with Kevin Phelan and John Eastham or the others, what have you, and if something worthwhile came to attention, I would bring it to his attention, before, obviously, we'd sign any contracts or what have you.

So effectively, the instruction to Kevin Phelan, what have you, if they found something that was worthwhile, something useful, negotiate on our behalf, but obviously don't finalise or complete anything until we have agreed ourselves.

Q. I think in your statement you say it was in April or May that John Eastham, Mr. Kevin Phelan's colleague, contacted you?

A. Yes.

Q. Can you recall when you contacted Aidan Phelan?

A. Pardon?

Q. Can you recall roughly when you would have contacted Aidan Phelan?

A. In relation to that property, I would have mentioned it to Aidan, I would say prior to the that meeting that

you refer, I would say in or around late August, early September. Late August, I would think.

Q. Right. I think you received a letter on the 19th June

A. Yes.

Q. of 1999 from John Eastham. This is document 19, in /RS

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schedule 4.

A. Yes.

Q. In relation to Saint Columba's Church. We'll keep calling it "the Cheadle property"; that way there won't be any confusion.

A. Okay.

Q. It says, "Dear Michael,

Re Saint Columba's Church, Handforth, Cheshire.

"Please find enclosed a copy of my letter of the 7th June offering a bid on your behalf for the freehold purchase of the above site.

"I also enclose a copy of the letter I have received from vendor's agent related to our bid. I was led to believe that this site was not on the open market, and as such, I am surprised at the contents contained therein. I will however proceed with negotiations with the vendor in line with the Dunlop Heywood letter attached and advise you of a suggested revised bid before the closing date at 12 noon on Friday 2nd July,

1999.

"I trust this is acceptable and await your further instructions, but should you have any queries, please do not hesitate to contact me."

Now, on the next page, which is document 20

A. Sorry, what tab is that?

/RS

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Q. It's schedule 4, still, just the next page.

A. Schedule 4?

Q. Yes, document 20.

I don't need to go into the all the details of it.

It's a letter from Mr. Eastham in which he says that he confirms an offer on behalf of his client in the sum of £15,000.

A. Yes.

Q. Now, at that stage, you didn't have £15,000 for this property, isn't that right?

A. That's correct.

Q. You didn't in fact did you have a deposit at that stage to put on the property?

A. All we were doing at that stage, which is the normal thing in property transactions, what you do is you negotiate you negotiate, and eventually you could be doing that for months and months, and the experience of anybody involved in the property is that there is nothing unusual about putting a bid on and ultimately

it gets to a stage where you have to make a decision as to whether or not you are going to go with that property.

Q. Yes.

A. And I was actually as I said to you already, Aidan was well aware of the fact that we were still pursuing opportunities, and this was one of those opportunities that was being pursued.

Q. What advantage was it to you that Aidan was aware?

A. Pardon?

/RS

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Q. Did you see Aidan as the major supplier of the funds?

A. No, well, we were already we already agreed with each other that whatever we would do in the UK, that we would discuss it, like we did with the Mansfield one, what have you; if it suited us both, then we would continue to do business in the same way as we are now.

Q. By the 17th June of 1999, schedule 4, document 19

sorry, I think I just referred you to that document by the 1st July, I beg your pardon, of 1999, schedule 4, document 22, you were informed by Mr. John Eastham that he had put in a revised bid. It says:

"Dear Michael.

"Re Saint Columba's Church.

"Please find enclosed a copy of my letter of the 1st

July offering a revised bid on your behalf for the freehold purchase of the above site.

"Having been in negotiations with the vendors for some time, I feel confident this bid will be acceptable.

"I trust you are in agreement and await your further instructions. If you have any questions, please do not hesitate to contact me."

From the next document, document 23, Mr. Eastham had put in a revised bid of \$445,000.

/RS

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A. Yes.

Q. Do you see that?

A. Which document?

Q. That's document 23.

A. On 4?

Q. Yes. It is in fact a copy of what was either an attachment or an enclosure of the last letter from Mr. Eastham to you.

A. Sorry, what number, Mr. Healy?

Q. Document 23.

A. 23?

Q. Yes.

A. Yes.

Q. You see that document?

A. Yes. And on the top of that document obviously, all of these documents, as you can see is "Subject to

contract".

Q. Of course, absolutely. You weren't legally binding yourself to anything, but nevertheless, you were now getting close to concluding a contract, and you had no money at all lined up for this, is that right?

A. That's correct.

Q. You had no deposit, you didn't have $\text{€}445,000$, anyway, right?

A. There was there was no commitment; there was absolutely no commitment. It's normal procedure in commercial business transactions such as this, first of all, because you could get the runaround for months and months, which in this case we did. It started in April, and we didn't get to a contract stage until

/RS

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September.

Q. I appreciate that. I fully appreciate that. But you hadn't any arrangements in place, you hadn't any feelers in place, even, to get your hands on $\text{€}445,000$?

A. I was doing this on the basis as I have already stated to you. I was doing this it was agreed between myself and Aidan Phelan that we would pursue, after Mansfield, that we would pursue other property opportunities. He obviously wasn't involved or didn't want to be involved in the day to day matters. We instructed Kevin Phelan and John Eastham, if they found

something that was suitable, to bring it to us. This certainly looked to be a good proposal, and we asked him to play it out and to see where it would get it.

As I said, it started in May, but the reality was we didn't get to a contract stage until September because of all the to-ing and fro-ing, which is normal for property transactions.

Q. Well, by the 21st July, 1999, schedule 4, document 25, Mr. Eastham was now indicating to you that you had revised your bid to 465,000.

A. This is schedule 4, document 24, is it?

Q. 25.

A. 25. Yes.

Q. Mr. Eastham is telling you that the vendors would be prepared to proceed with you, even though you weren't the highest bidder, at 465,000. Do you see that?

A. Yes.

Q. Do you remember that?

/RS

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A. I do.

Q. Now, eventually you signed a contract I am trying to find the date of it here

A. The contracts were exchanged in September, early September 1999.

Q. Yes.

A. And the just to

Q. Yes? It was the 14th, in or around I think the 14th September. Contracts were exchanged and a deposit was paid in the order of £44,500, isn't that right?

A. That's correct.

Q. And where did the deposit come from?

A. The lead-up to that was when this particular deal that we were pursuing was coming to a stage where we'd have to make a commitment, Aidan had previously known in general terms that we were pursuing it, and as you can see, it started in April. There were difficulties that needed to be resolved, and eventually, one of the principal difficulties you drew my attention there to a section in that letter which stated that the reason why they were prepared to proceed with 445, even though it wasn't the highest, was because in our situation, in our negotiations with them, we were dealing with a matter that was complex for the authorities that owned the property, which was the residency of one particular individual. They were anxious that under any contract, that the house beside the church that there would be a right of residency in that.

/RS

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It seems, from my understanding of it, my recollection of it is that while the people who were speaking on our behalf were prepared to accede to that request, others

were not. And that's the reference in the letter to the fact, despite the fact that you weren't the highest.

Q. I appreciate that. Vendors have various reasons for preferring to go with one purchaser over another. They have more confidence in a deal with you. That probably accounts for a slight variation in the purchase price.

But in any case, the contract now has to be signed. We are now at the stage of the first week in September.

Did you have any money at that stage?

A. Well, in the interim, in the interim, if you notice the contract the exchange of documents obviously nothing committed, and the agreement was that this property could be purchased for $\frac{1}{2}$ 445,000, and that it could be done, and that the closing date, the hoped-for closing date would be the end of November. So there was a window of three months for us to see particularly for me to see whether or not we wished to pursue it. And in that three months

Q. Let's get this clear, Mr. Lowry, so that we are not at cross-purposes. I know you are not a lawyer. But once you have signed a contract, there is no question of seeing whether you'll go an ahead with something. You are stuck with it?

A. But there was no contract signed there was no contract signed. The initial contract what happened

/RS

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was contracts were exchanged. Now, there was nothing committed. There was nothing definite about

Q. I think again we may be at cross-purposes, Mr. Lowry.

As I understand English conveyancing practice, once you exchange contracts, you are committed. I am sure your solicitor will correct me if I am wrong. But once you exchange contracts, what the English solicitors mean is you have signed and you have bound yourself to purchase; you understand that?

A. Yes. In September.

Q. Up to September you were negotiating. You were carrying the long day, you were doing whatever you liked. But by the time September came

A. We exchanged contracts. We paid the deposit. They then had until the end of November to close the contract.

Q. Absolutely. When September came, you had to find the money. Now, you didn't have, at that stage, $\text{€}445,000$.

Isn't that right?

A. What happened was

Q. Let's take it step by step.

A. No, I didn't have $\text{€}445,000$.

Q. Right. Were you buying this property yourself, or were you buying it as part of your Aidan Phelan partnership?

A. I want to make that quite clear. I have said the whole way through that Aidan was aware of the fact that we

were pursuing another property. When this property came to a stage where we had to make a decision in relation to finances and before any contract was exchanged, before any contract was exchanged, I

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contacted Aidan. In actual fact it was shortly it was after, I would say, the end of August, and I sat down and I went through it with him. I went through the specifics and the details of what was available.

So at that particular stage, the discussion we arrived at a situation where I was very keen on the project. I had all the advice that I had been given was that it was a bankable project, that you would have a quick turn on it, and that it was a short-term investment that would lead to a good dividend.

And I, as I said, I went through all of that with Aidan, and what Aidan exactly said to me at that particular stage is "Look," he said, "I wouldn't be as keen on it as you are, but if you are that keen on it, and if you have been told that it's bankable" which I had "by the advisers in the UK, well, then," he said, "why not put the deposit on it?" And he allowed me to use the deposit by way of a loan from our client account, the client account at Christopher Vaughan's.

So we placed the deposit on the property, and that gave us until November. And

Q. If we just take this slowly, now. What do you mean by "we placed the deposit"?

A. Well ,at that stage we had made

Q. Who is the "we"?

A. At this stage, Aidan and I had discussed the project.

Q. Yes.

/RS

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A. I had obviously convinced Aidan that this was a good project to pursue. And Aidan allowed me what he said to me was, "Why don't you pursue it on your own, personally, if it's bankable? Because you will get a good turn on it, and it will assist with your finances."

In other words, he was giving me approval and permission to do that. And also he said it was okay if on a loan basis, used the 44,000 that was sitting in the client account for the purpose of putting down the deposit. That's

Q. So you went to Mr. Phelan. He thought it was a good project, it was bankable. You, according to your evidence, think that he feels that it would be a good way of generating money for you, a quick turn. You didn't have any money to put a deposit on it.

A. Well, obviously if I had at that stage, Aidan said, "There is money in our client account; why don't you use that as an interim?" He had no difficulty or

problem with that. What I am saying is

Q. He said "There is money in your client account"?

A. In the client account.

Q. You said in your client account. What did you mean by that?

A. In the client account.

Q. I think you said "in our client account". I am wondering what you meant by that.

A. In Christopher Vaughan's client account. I put my 25,000 originally in that client account. The 44,500,
/RS

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that's this deposit is Aidan Phelan's monies from his client account with Christopher Vaughan, his own money.

Q. That's what I thought. It's just that you referred to it as "our client account", and I was wondering what you meant by that.

A. I hope I have cleared that up.

Q. Well, you meant nothing by it; you say it is a slip?

A. What I am saying was Aidan Phelan allowed me to use monies that he had in his client account, which were his personal funds, to place a deposit of 44,500 on this particular property. Aidan Phelan's reaction

Q. Should I be concerned by you using the expression "our client account"?

A. No, you shouldn't be concerned.

Q. That was a pure slip, from your point of view?

A. I am after explaining that to you.

Then, in relation to this as I say, the background to the property is I went with him. I was obviously I felt it was an exceptionally good one. A lot of running had been done on it, in terms of everybody involved in it at the other side felt it was a good project. And Aidan himself wasn't that keen on it, on the basis of he mentioned to me about planning on it. But he said "If you are convinced, obviously you have done a lot of work on it; if you are convinced on it, I am prepared to assist you with it, and why don't you go it alone, if it's bankable, so go it alone and get your finances for it and I will assist you in the interim by

/RS

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way of giving you a loan for the deposit"?

Q. I'll give you a loan of the deposit, you mean?

A. Pardon?

Q. You mean "I will give you a loan of a deposit" is what I said to you?

A. He allowed me I think the correspondence would indicate that he gave an instruction to Christopher Vaughan to make available the 44,500 from Aidan Phelan's personal client account to put down as a deposit on the property. That was in September of '99.

Q. I think what Mr. Phelan said was he didn't like the shape of this project. Would that accord with your recollection of

A. I don't know that he used the word "shape", or what have you. I think the one concern that I recall him having with it was the fact that would we have a difficulty in relation to change of use.

Q. That was his own evidence, yes.

A. I think that was my recollection of it. Now, obviously the people John Eastham and his people had, at this stage, satisfied me that it would be possible with proper preparation and obviously doing in a professional way a plan that would be acceptable to the planning authorities.

But the main thing on this, the main thing at this point was that Aidan felt knew that it was a project that I was anxious to get involved in. It was to be it wasn't a long-term investment. It was a

/RS

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short-term investment, in that all of the project team who had been working on it, all of them had one result, and that if it could be bought for this money, you would be able to get a return on it pretty quickly; and because of that point of view, Aidan said, "Why don't you go it alone? Go on a personal level. It should be bankable".

Q. Do you know if there is any correspondence between yourself and Mr. Phelan concerning the loan of the deposit?

A. No, there is no correspondence. We just it was an agreement between ourselves. It was, as you say, probably, as they say in rural terms, it was a handshake; we just agreed among ourselves. And the solicitor, Christopher Vaughan, my understanding was Aidan rang him or instructed him to make it available on that basis.

Q. You say that you kept Mr. Phelan aware of what you were doing during the summer, is that right?

A. What I am saying is that during the summer initially, when this project came up now, you have to put this in perspective, in the sense that in every property transaction, it's rare that you get finality to it; there is a lot of to-ing and fro-ing, there is a lot of dispute and a lot of disagreement. So Aidan Phelan would be aware that we were pursuing another opportunity in the UK. At this stage, at this stage, my

Q. I think his evidence was that they only became aware of this project in September.

/RS

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A. He would have been aware that we were pursuing a project long before that, but this I actually

approached him about this specific project, I would say, the end of August, yes.

Q. But when you approached him about that project, wasn't the reality that you were going to have to clinch this deal one way or another and you didn't have any money for a deposit?

A. Well, I didn't I was under no pressure to do anything other than make a decision on it. And arising from the discussion I had with Aidan, we decided yes, we would go with it.

Q. Just to clarify this, if you were going to make a decision on it, you were going to have to decide to sign the contract or not sign it; if the contract was going to be signed or exchanged, then a deposit was going to have to be paid?

A. Yes.

Q. So if the decision was going to be "Let's go with this", you had to have money. Now, at that stage, had you any other access to £44,500 sterling?

A. At that stage, we were at that stage, the intention all the time

Q. I know, but did you have access to the money, is what I want to know.

A. I would say yes, I wouldn't have had the difficulty getting the 44,000.

Q. Where would you have got it?

A. If you look at my accounts, I think that between my

company and between my own personal account, and the

/RS

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funds that were available to me, it would be possible, if I wished to, to get 44,000, yes. But that was never my intention. The intention was the intention was that when this project

Q. Why wouldn't you have written your own cheque for 44,500? If you had had ready access to that money, why use somebody else's money? Why get involved in that complication if you can write your own cheque?

A. There is no complication.

Q. I think there is a complication.

A. I don't accept that. I am outlining exactly what happened. The facts are the facts. I can't change what happened in terms of facts. The facts are that Aidan knew we were going to pursue another project. After the Mansfield project if you'd allow me for one second to give you a better understanding of it

Q. Yes.

A. After the Mansfield project, I discussed that what we were going to do into the future with Aidan, and one of the decisions we made on Aidan's advice; Aidan is a professional accountant, and his advice was that for any future developments that we were going to get involved in, that we should actually do it through I think the term that was used at the time was

"special-purpose company". By using that mechanism, it meant that the project was more bankable, I think would have been the expression that was used, and it would be easier for the bank to get security. And the other aspect

Q. And was the last project not bankable, the Mansfield

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project?

A. Yes, it was, and I gave you the reasons why.

I then, at that stage, raised the question with him, the question in relation to Capital Gains Tax. Now, I am not a property expert; I am not an accountant. But I am relaying to you the advice that I was given and that I accepted. And I was also informed that in relation to Capital Gains Tax, by using a vehicle of a company, number one, it was more bankable; two, the banks preferred to deal with companies, on the basis that it's easier to secure the property; and number three, that in relation to taxation implications, I was concerned about the Capital Gains Tax, as I said previously, that you got over that by way of the shares within the company.

So that's the manner in which I had intended to go about

Q. You have gone away ahead of me, Mr. Lowry.

A. This happened

Q. I am only concerned with the money side of things.

This is away down the road, as far as I can see. I

just want to go back to one thing, firstly, to get it

out of the way again.

You were going to what Mr. Phelan was recommending

to you, in general terms, leave all the technicalities

out of it, was that this was a bankable project, one

you could get bank borrowings from. Before we leave

/RS

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the Mansfield project completely, was that a bankable

project?

A. Mansfield?

Q. Yes.

A. Obviously.

Q. He didn't use any bank borrowings for it?

A. Who?

Q. Mr. Phelan.

A. Aidan Phelan?

Q. Yes, Mr. Aidan Phelan.

A. That was his own decision to how he wished to approach

it and how he wished to finance his share of the 90

percent.

Q. I see.

In relation to the Cheadle project, you originally

approached Mr. Phelan on the basis that this was a

project that would be part of the joint venture, isn't

that right?

A. This one?

Q. Yes, the Cheadle. You were approaching him on that basis?

A. I tried to explain to you, and you said I had gone too far ahead.

Q. Can you just stay with me

A. The intention was up to September, up to September, yes, that this would be under the same

Q. I just want to know who knew what up to September. Up to September, my understanding is it's your evidence that Mr. Aidan Phelan was aware that you were, in

/RS

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general, involved with some properties. Did he not know that it was this property, in this part of England, at this price?

A. Yes, he knew sorry, what Aidan Phelan would have known, what Aidan Phelan would have known is that we were that these the guys in the UK would have been back to us in relation to a number of properties.

I told him that we were pursuing this one, that it could take months, and that

Q. When did you say "we were pursuing this one"?

A. I would say it would have been in we didn't get into the detail of it, because I would have said that probably in around June, in around maybe May, in

around that time

Q. When you say

A. for instance, Aidan would have been conscious that I was over to look at a property.

Q. Stay with me, Mr. Lowry. I want to try to tie this down.

You say you would have told Mr. Phelan about this one in May or June. I am not particularly concerned about whether it's May or June, but you would have told him about this one. Did you tell him "this one", meaning Cheadle, this property at or around $\frac{1}{2}$ 450,000? Did he know that detail?

A. I wouldn't have known the price of it at that stage.

Q. Did he know the place?

A. He would have known it was an old church in the UK.

Q. Would he have known it was a church in Cheadle,

/RS

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wherever it is

A. We had no discussion on it. It was just general terms.

I said to him that these the fellas that we had working for us there were looking at properties, and this was the one that I thought would be of interest to us. That it was going to take months, months, before we might know where we were going on it.

And when I did know where we were going on it, which was probably towards the end of August, I rang Aidan

and asked to know, could I have a chat with him in relation to the specific property that we had been talking about. At that particular stage, Aidan would then have been become familiar with it.

We went through the detail of it. I went through the documentation that I had in my possession in regard to it. I gave him my views on it. I conveyed to him the views that I had received from others, the professional people on the other side. And arising from that discussion, arising from that discussion, Aidan said to me, "Look, I am not that keen on it myself, but if you want to go it alone yourself, I'll assist you, in that I'll put down the deposit for you. I will loan you the deposit. You can use the monies that I have in my client account."

I availed of that opportunity. We put down the deposit in relation to that, and I went then to see about banking the remainder of it.

/RS

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Q. Up to that let me get this straight up to that time, up to the time that Aidan Phelan agreed that you could take a loan of the deposit from the client account you were coming to him with the project, It was going to cost 450-odd thousand pounds of 44,500. You were proposing to do it under the joint venture agreement. Did you have your 10 percent?

A. At that stage?

Q. Yes.

A. Yes, of the joint venture, I would have been

Q. At the time you went to Aidan Phelan, as far as you were concerned, you were saying, "Aidan, I want to interest you in this project. I want to do it under a 90/10 arrangement. I have got 44,000 pounds. I am looking to you to put up the balance."

Now, isn't it strange that the result of that conversation was that he put up the $\frac{1}{2}$ 44,000 even though he was not getting involved in the transaction?

A. Because I think the reason for it is that he probably realised not probably; he did realise that we had done a lot of work on it, that I felt it was a good opportunity. And I felt that was his way of saying, "Look, I am not letting you down completely; you can have a loan of the deposit, and I will assist you in any way I can after that."

Q. What obligation did he have to assist you because you had done work?

A. None whatsoever. Obviously that's a decision of himself. It was a free-choice decision.

/RS

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Q. So as a result of you saying to Mr. Phelan that you are prepared to go ahead with this project on your own, a project you could have done on a 10 percent basis with

him, was that he gave you the deposit?

A. Yes, that's the facts of the situation.

Q. I see. Would you agree that that's a very bizarre arrangement?

A. No, I don't. I do not accept that it is a bizarre arrangement. And I don't think Mr. Phelan would accept that it's a bizarre arrangement. That's exactly what happened.

Q. Mr. Phelan says that the first knowledge he had of the Cheadle property was sometime probably sometime in September of 1999.

A. The first time he would have had a detailed knowledge of it was

Q. He didn't say "detailed"; he said "knowledge".

A. Yeah, in general terms, Aidan Phelan knew we were pursuing a project. He would not have been aware of where it was. I certainly totally familiarised him with it towards the end of August, and it was in early September, then, the contracts were exchanged following the discussion that I had with Aidan.

Q. And the discussion you had with Mr. Tunney, there is no possible way that could have been a discussion with a view to raising finance for the Cheadle project?

A. I didn't mention Cheadle. But I certainly discussed the English property. I told him I was looking at a property in the UK. I have already said that to you.

I didn't get into the detail of it. I just said that

/RS

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we had a property in the UK; I was looking at another project. I didn't know whether or not we were going to go ahead on it, and I simply asked him his advice in terms of what he thought about it.

Q. But were you I think you said to me a moment ago you saw him as a potential funder?

A. Mm-hmm.

Q. Is that right?

A. Aidan saw him as a potential funder to the extent that he was involved in the commercial business sector, and Aidan was conscious of what I wanted to do with the business in terms of getting some equity

Q. No, did Aidan see him as a potential funder of English property, or as somebody who was going to deal with your Irish business? Which?

A. I don't know which. I can't speak for Aidan. But what I can say to you is when I said to Aidan, "Will I mention about the property in the UK", he said "By all means do", and I did.

Q. So you mentioned not only the property you bought, but property you were intending to buy, in general terms?

A. No, he knew about the property we had bought. He knew I was involved. Because what I have already said to you in evidence is that Mr. Tunney was very familiar with the property market in the UK. My understanding

is that he had some a fair amount of involvement in it himself.

Q. But you didn't go and ask him straight out for the money?

A. No.

/RS

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Q. And Mr. Phelan didn't ask him straight out for the money either?

A. Because Aidan and I at this stage hadn't had our discussion when that meeting took place.

Q. Did Mr. Phelan know at that stage that the property you were discussing in your discussion with Mr. Tunney was the property that, according to you, he was aware you were looking at in England?

A. No, I wouldn't think so. There was no Aidan Phelan in fact, most of the discussion that I had with Mick Tunney was on I don't think Aidan would have heard all of the discussion. I don't think he did, anyway.

Q. In any case, when it came to putting up the deposit, you got it from Aidan Phelan. You arranged for instructions to be given by Aidan Phelan to Christopher Vaughan to enable Christopher Vaughan to use the money on the client account, Aidan Phelan's money, according to you, on the client account, to pay the deposit?

A. That's correct.

Q. And you now became obligated to purchase the property

by the end of November?

A. Yes.

Q. Right.

By that stage you had formed a company, isn't that right, Catclaus?

A. That's correct.

Q. And was that the special-purpose company that you were talking about a moment ago as a potential vehicle for

/RS

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A. Yes.

Q. company property purchases?

But that company was formed in June of 1999, isn't that right?

A. That's correct.

Q. Wasn't that long before your discussions with Aidan Phelan about the advantages of special-purpose companies?

A. No.

Q. I understood that you only had that discussion with Aidan Phelan toward the time when you gave him the details of the Cheadle transaction.

A. No, that is incorrect.

Q. I see.

Yourself and your daughter, Lorraine Lorraine would be your adult daughter; wouldn't that be right?

A. That's correct.

Q. I am not suggesting you are using a young child.

Was you were the directors of this company. Why would you and your daughter be directors of a company which was to be a special-purpose venture for yourself and Aidan Phelan?

A. Simply because Aidan Phelan and I communicated the need to Christopher Vaughan; we told Christopher Vaughan that we needed a special-purpose company. That purpose that's the way these companies are referred to, and the intention was any property from here on that we purchased would be put in through a company,

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for the reasons that I have already outlined.

Q. But it would be a company which wouldn't have Mr. Aidan Phelan's name on it?

A. Pardon?

Q. It would be a company which wouldn't have Mr. Aidan Phelan's name on it as a director or shareholder?

A. Well, you know yourself, Mr. Healy, that the directors it's not the directorship that matters in a company; it's the shareholding in a company that's relevant.

And the intention was, first of all, to register a company. This company was purchased from a company by who specialised in the formation of companies, by Mr. Vaughan on my behalf. And that company, to be made

available to you, you had to have two directors. I filled the forms for the directors. The two directors were Michael Lowry, Abbey Road, Thurles, and Lorraine Lowry, my daughter. So the company

Q. Sure, why bring your daughter into this at all? What did your daughter have to do with this? Wouldn't it be the most obvious thing in the world, if you, one of the people involved in the joint venture agreement, was going to be a director, for Mr. Aidan Phelan, the other person involved in the joint venture agreement in fact the biggest person in the joint venture agreement, wouldn't it be the most obvious thing to use his name?

A. I asked Aidan did he wish to be a director. He said the directorship doesn't matter. Get the company registered. When I said it to Aidan, he said it's not the directorships that matter, it's the shareholders. This is not hearsay from me. The reality is and the

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fact is that it's the shareholding of that company that has the relevance, not who are the directors. My daughter Lorraine was I asked her, would she like to be involved? And she said yes, and there was no difficulty with that. There is no difficulty with that. It's perfectly normal.

Q. But your daughter wasn't involved at all, sure she wasn't?

A. My daughter is involved in my business. Yes, my daughter is involved in my business.

Q. She wasn't involved in these businesses at this time?

A. What's wrong in involving your family

Q. Nothing whatsoever, if they have an involvement. It's just I don't understand I am finding it hard to

understand why it is that you have your daughter involved in a company which was to be exclusively for the purposes contemplated by you and Aidan Phelan?

A. I have different ways of looking after my family, and that was the one way I know why I involved her in it, and this was a perfectly normal and genuine reason, a family reason.

Q. After the contracts were exchanged in September and the deposit was paid, how did you intend to raise the balance of the purchase price?

A. Subsequent to that, after that was done, a number of weeks later, obviously I started to concentrate in relation to the funding of it, and at that stage, I accumulated whatever information I could in terms of my the assets that were available to me and the monies that I had. I think one of the first things I

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did actually before I went anywhere was this is in October I met with John Daly, who you are familiar with, and I met John Daly and I asked him to go through

the project with me, to go through the project with me.

And he did, and he felt it was a very good investment opportunity. In other words, I wanted him to assist me to highlight what he considered to be the advantages of this particular deal.

I then approached the Irish Permanent Building Society in Cork

Q. Let's just look at John Daly first. You met John Daly?

A. Yes.

Q. Where did you meet him?

A. I met John Daly I think the first meeting I had with John Daly was in the Horse and Jockey in Thurles. On the main Dublin/Cork road.

Q. And was the purpose of the meeting to discuss the project you had?

A. No, it was we were having we normally we meet on a fairly regular basis, and it was during the course of one of the discussions I asked would he have a look at something that I had become involved in.

Q. And he said that he thought it was a good idea?

A. Pardon?

Q. He gave you the impression it was a good idea?

A. Yeah, I didn't get in as I say, at that particular stage, all I gave him was verbally, I went through it with him and asked him what he thought of it. And yes, he thought that from all of the information that I was

/RS

after giving him, that it was a good project.

Q. How often would you meet Mr. Daly?

A. How often would I meet him?

Q. Yes.

A. I would meet him, I suppose, I can't say for definite, but I certainly would meet him that rarely a month or two months go by without us meeting or having contact even more regular than that, but meeting, probably, around then.

Q. You probably meet him once or twice a month?

A. It would be every two or three months, yes.

Q. Did you ever discuss or why is it you never discussed this project with him in the period of its gestation, from much, much earlier, from April of 199 of 1999 onwards, before you ever got involved in it or ever signed on the dotted line? Wouldn't that have been the time that you mentioned it to him?

A. I don't know whether I did or not. I don't have any recollection of saying it to him any earlier than that.

Q. You were meeting him after you had committed yourself, in any case?

A. Pardon?

Q. You were meeting Mr. Daly after you had committed yourself, in any case?

A. Yes, I met I had the details a discussion with him after Aidan and I had had our discussion and agreed

to proceed on the agreement that we had.

Q. But you were committed at this point at the time of your discussion with Mr. Daly, the $\frac{1}{2}$ 44,500 had been paid, and the balance, the 400-odd, had to be found?

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A. That's correct.

Q. Were you meeting Mr. Daly because you were in some way uncertain or doubtful about the viability of the proposition?

A. No. I would have been meeting him because I would value his judgement and

Q. I appreciate that, but as I asked you a moment ago, or as I suggested to you a moment ago, you had innumerable opportunities from April of that year to discuss it with him before you committed yourself.

A. Mm-hmm.

Q. Were you now bringing it to his attention because you had some concerns or some doubts about its viability?

A. No, I didn't have any concerns or doubts about it. And the reason why we went ahead with it, I think, because Aidan, in discussing it with me felt how would I put it to you that I was so confident about it that it would be a good project, and he obviously wanted he had made the decision that he would assist me in doing that.

Q. When you say "Aidan"

A. Pardon?

Q. You said "Aidan"; are you talking about Aidan Phelan?

A. Yes.

Q. I am talking about Mr. Daly.

A. John Daly, at that stage when I discussed it with him, what have you, he felt it was a good opportunity, yes.

Q. Were you trying to get Mr. Daly involved as an investor?

A. No. I didn't put it directly to him. I suppose at /RS

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that stage, if he had offered to become an investor, I would have certainly discussed it with him, but I never asked him to become an investor. I told him that what I was doing was, first of all, asking him for a view on it. He gave me a view, and from there on, I was going to see how I could put the resources together to fund it.

Q. And at that stage, how did you think you were going to put the resources together to fund it?

A. Well, all of the advice that I had got was that it was a bankable project. And as I said, I had, in my own mind, an order on my finances, and I proceeded on that basis.

Q. Well, you got the advice it was a bankable project from Mr. Aidan Phelan, who didn't want to get involved in it, isn't that right?

A. It's not something he didn't want to get involved in because it wasn't bankable. To use his own phrase was, I think he said to me he had a concern about an element of the planning in it in relation to the change of use.

That's the only concern I remember him saying.

Q. What did you do to bank the project, in any case?

A. Pardon?

Q. What did you do to bank the project at this stage?

A. What I did at that stage is I approached, I would say,

late October I had already I approached at

that stage, I would have approached the Irish Permanent

in Cork. I went down to the Irish Permanent in Cork,

and I met with the manager of the Irish Permanent in

Cork. And I had a general discussion in relation to my

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finances and assets that were available to me,

including my house.

Q. Yes. What I want to know is what you did in September.

A. In September, from recollection, I certainly didn't do

a lot. I don't think I did anything in September. I

started to concentrate on the project

Q. In September you signed the contract. You had to find

€444,000 yourself. You did nothing about it in

September?

A. When I say I did nothing about it, obviously I was

getting it clear in my mind in relation to my own

finances and what I could do.

Q. Did you have the money yourself?

A. Pardon?

Q. Did you have the money yourself in September?

A. Did I have 400 no, it would have to be banked.

Q. Right. And you are certain you didn't approach a bank, or any non-financial institution, any individual, to assist you with finances in September?

A. No. What I am saying to you is it would be I don't know, the middle of September, what have you, so the last two weeks in September, what have you, I didn't do anything with it. All I know is in October, in October I met with John Daly and

Q. Mr. Daly said he met you in November, I think.

A. He met me in November as well.

Q. What did you do in October?

A. In October, as I have outlined to you already, I went through the project with him

Q. Just a moment, Mr. Lowry. Mr. Daly says you met him in

/RS

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November, I think.

A. Yes. But I also met him in October. I did meet him in November, as Mr. Daly has said, yes.

Q. I think, as I understand Mr. Daly's evidence, the first time you brought this to his attention was in November.

A. No, that would be incorrect.

Q. You also

A. Pardon?

Q. You also brought it to him in October?

A. Yes, I mentioned to him.

Q. So you brought it to him twice?

A. Yes.

Q. When was the first time you went through the details with him?

A. The first time would have been in October, early October.

Q. Early October?

A. Yes.

Q. And the purpose of that meeting was simply to run it by him to get his view as a property developer?

A. Yes, as a property developer, and had he any suggestions in relation to how I'd go about banking it.

Q. You didn't say that to me a while ago.

A. What I said to you was Mr. Daly I think I have already put in evidence, or in my statement

Q. He said to you, what did he say about how you might bank it?

A. I asked him I was literally speaking to him on the basis that, first of all, I was friendly with him.

Secondly, I knew that he was involved in the

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construction and development industry and that he had

vast experience in that area. So

Q. What did he tell you to do about banking it?

A. Pardon?

Q. What did he tell you to do about banking it?

A. First of all, he thought that the project he also felt that the pro

Q. What did he tell you to do about banking it? What did he say to you?

A. What he said to me was that the project, in his view, was bankable on the basis of what I had told him. And I told him that what I was going to do, obviously, was approach my own financial institutions, put forward the details in a general way, and see what results I was going to get.

Q. Two people have told you the project was bankable.

Aidan Phelan, your partner, told you the project was bankable. John Daly had told you the project was bankable. Did John Daly tell you what you might do to get finance?

A. Effectively, anybody at this particular stage, it was on my mind, obviously, that my house, on which the mortgage had been reduced to an insignificant amount, that obviously that was going to be available to me, plus the title deeds of the property itself.

Q. Mm-hmm. Well, was that what Mr. Daly said?

A. What do you mean?

Q. Go and mortgage your house and the property itself?

A. It was one of the options I discussed

Q. This is not rocket science, Mr. Lowry. You buy a

/RS

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property. If it's a bankable property, it should have been a simple matter to go around the corner in Cheadle and find a bank to fund it. Here you are, we are into October; according to you, we could be into November. You have spoken to Mr. Phelan, who says it's bankable, and you are now speaking to Mr. Daly, who says it's bankable. Did Mr. Daly tell you to do anything? Did the conversation you had with him result in advice from him as to what you should do?

A. This conversation didn't take place in November. This conversation took place in October.

Q. The first conversation took place in October?

A. Which is the one we are referring to now.

Q. Right. And after that conversation, or as a result of that conversation, did you do anything to bank the project?

A. Yes.

Q. You went to Irish Permanent Building Society?

A. Yes.

Q. Was that the only thing you did?

A. Yes.

Q. All right. So you went to Irish Permanent Building Society. Did you get finance?

A. No.

Q. Did you speak to Mr. Daly again?

A. When you say did I get could I explain to you why I didn't get the finance?

Q. I just want to know, firstly, if you didn't get it, what I am trying to concentrate on is the fact that the closing date is coming up. You haven't got any money.

/RS

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The Irish Permanent didn't give you money. I know there may be a reason. Maybe they were prepared to give you money, but you didn't have money. You saw Mr. Daly again. Was your second meeting with Mr. Daly to do with raising finance, or was it to do with something else altogether?

A. It was to do with the property, yes, the meeting. But could I explain I think I am entitled to have the opportunity to explain that when I approached the Irish Permanent, I discussed the project in general terms, in terms of not so much the project, but I discussed my financial requirement. And at that particular stage, at that particular stage, I was of the conviction that it was possible that it was possible to get some funding from the Irish Permanent based on the asset which I had at my disposal, or which I thought I had at my disposal, which was my house at Holycross. And we went through on that particular occasion

Q. That's with Mr. Gaffney?

A. With Mr. Gaffney.

Q. That's when you went down to Cork?

A. Yes, this is the meeting I was here for Mr.

Gaffney's direct evidence, and he accepted that there was such a meeting. And the meeting that was referred to with Mr. Gaffney, the meeting that Mr. Gaffney referred to, or that was brought to his attention, was the meeting which I am now referring to.

Q. Right.

A. At that meeting, I went through again, the usual that you do with financial institutions, in terms of /RS

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what monies I had available to me, what assets were at my disposal. There was a discussion on my business, and what have you. But so, further to that meeting, I received

Q. You are certain it was a meeting? Because I have an impression there was a phone call from Mr. Gaffney to you. But there could have been both; I accept that.

A. Yes, there was a

Q. It was a meeting?

A. There was a definite meeting. It was a meeting that I went specially to Cork for, to meet with him. And at that particular meeting, as I say, we went through all of the detail. I didn't actually say I said I

needed funding, and I was wondering in what way could I use my house to get that funding from the Irish Permanent in Cork. And I left that meeting with the impression that it was possible for me to get a substantial amount of funding.

Now, Mr. Gaffney himself mentioned here in terms of €150,000. There was no precise figure mentioned at any stage. It was a general conversation on the valuations that were put on my house and the monies that I had in my various accounts; that was the type of and the income stream that I had from my company. Those would have been the general issues that were discussed.

So then at a later stage, in November, early November, I hadn't heard from Mr. Gaffney in terms of what might be available to me. He said he would come back to me.

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And I rang him, and then I received a letter from them saying that they would be favourably disposed towards giving me some funding. And subsequent to I getting that letter I don't know what date it was, but it was definitely early in or around November

Q. 7th November, yes.

A. Pardon?

Q. 7th November.

A. I would have got it in the middle of November, probably

Q. You got it presumably the 8th or the 9th.

A. In or around that time in around that time, yes, I would have had discussions with Mr. Gaffney on the phone; that's the phone call that he referred to. And at that particular stage, he informed me that it wasn't possible I told him that I was interested in purchasing this property in the UK, and at that stage, he informed me that it wasn't possible to have an attachment for a residence in Ireland in regard to a property in the UK.

Q. He told you that?

A. Yes.

Q. You are absolutely certain of that?

A. Yes.

Q. So you went down to Cork, to Mr. Gaffney. You travelled to Cork?

A. Yes.

Q. And it was a meeting, definitely, not a telephone conversation. And in the course of that meeting, you laid out your stall in relation to your finances.

/RS

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Subsequently he didn't get back to you, and you had to jog him by ringing him up?

A. Yes.

Q. You went to the meeting in Cork. This was the month of presumably October. You needed $\frac{1}{2}$ 400,000, and you never

told Mr. Gaffney that you needed €400,000?

A. I would have said to Mr. Gaffney the kind of monies that I was talking about, and that's why the valuation of my house came up, as to what valuation he could put on my house.

Q. I don't think Mr. Gaffney gave evidence that you discussed the fact that you were in the throes of purchasing a property and that in fact you had to close it.

A. I accept that, and I am already after saying that.

Q. Isn't that strange, that you'd go to somebody trying to raise finance, and you wouldn't say to them "Look, I have got to have €400,000, and I have got to have it quick"?

A. Because as I said to you, I had other I mean, it wasn't just in relation to the house. The matter was complicated, Mr. Healy, without I getting into the detail of it. It was complicated how would I put it it was complicated because of a personal, family, domestic situation that I had and that was of the equation. I wasn't just discussing the property. I was discussing an overall requirement that I had at that particular time.

Q. When you didn't get the money from the Irish Permanent this was the 7th, we'll say the 8th

/RS

November, the 9th, when the letter came to you. What did you do then?

A. I recall, after that meeting, the first person I hit for and rang and contacted at that stage was John Daly.

Q. A second time?

A. Yes. And what John Daly asked me to do at that stage was he said to me, "Look, get me the details." I hadn't given him any I had given him everything verbally. And my recollection was that I rang John Eastham in the UK and asked him to forward to him the brochure and the layout, the design, and the various he had done a lot of background work with the planners; he had done a lot of background work with he had done a lot of work with the various architects and consultants and what have you. And from memory I don't have access to it right now, but from memory, I think he had various options that were available, and he had costed out what the various options would cost to put in place, and then he gave, the English group gave an estimate of what the return and the dividend might be out of the various uses. So it was that type of documentation and that type of background and that type of detail that I asked John Eastham sometime I don't know, it would have been early in November, I asked John Eastham it would have been after I realised that I couldn't get the funding from the Irish Permanent.

Q. Yes.

A. I would have rang John Eastham and asked him to

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forward

Q. But what were you looking for from Mr. Daly at that stage?

A. At that stage I was hoping he'd become an investor, yes.

Q. And what did he say to you?

A. What he said to me was, "Look ,Michael, get me the detail."

Q. You have got him the details. What happened then?

A. I got him the detail. He wouldn't have got that, I think, until towards the end of November.

Q. Right.

A. And at this stage, I felt that I have to in the middle of November, early November, whatever time it was; it was in November, anyway after I discussed it with John Daly, I obviously felt obliged to say to Aidan Phelan that I was having difficulties in relation to the drawdown of funds to finance it. And I informed Aidan of that, and at that stage, Aidan offered to go and investigate the possibilities himself of having it banked with a financial institution.

Q. Can we just go back to September for a moment. There is a memorandum on Mr. Vaughan's file of a

conversation, of what would appear to be a telephone conversation he had with Mr. Kevin Phelan. Have you got that?

A. Yes.

Q. It's dated 1st September, '99. Saint Columba's Church, which is the Cheadle property. "Mr. Oldham of Towns Needham on phone. He is very unhappy about matter.

/RS

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Said I would be seeing clients later today and revert to him." Then "Spoke K.P., try and delay! But spoke to ML on mobile" ML is presumably you, "He said no way funds available until November at earliest. Agreed purchase vehicle is Catclouse, offer 5 percent deposit, complete 3/11/99 or earlier by agreement."

What did you mean when you said to Mr. Vaughan at that stage, "No way funds available until November"? What did you mean by that?

A. Exactly what it says. I mean, what I was doing, which is normal for any property deal, what you do is you push out the closing date for as long as you can.

Q. No, but you are saying something specific. You are talking to your own solicitor now, and your own solicitor had spoken to Kevin Phelan, who was the person advising you throughout all of this. Obviously you tried to delay the closing date. That stands to reason in a speculative venture.

A. Sorry, I missed that.

Q. Obviously you tried to delay the closing date in a speculative venture. You are trying to make money; you don't want to commit yourself to cashflow obligations earlier than you'd have to. But you are saying here, "No way funds available until November at the earliest."

A. Mm-hmm.

Q. That would indicate, wouldn't it, that at that stage, you had an impression in your mind that there were no funds available now, but that they wouldn't be

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available until November at the earliest. I just want to know, what did you mean by that? What what efforts had you made to get funds at that stage, if any?

A. Well, the reality is at this stage that the vendors on their side had messed around our people and what have you. They were trying to push a closing date on it and exchange contracts and what have you, and I simply said, bottom line is, slow them down; we'll do it at our pace. That's my intent.

Q. If it's the case, then, that you had no money at all going into this transaction

A. That's not I never said that.

Q. Is it the case you had no money?

A. No, he is saying that this is a conversation

Q. Can you just put the conversation in perspective. As I think you will agree you might say yourself, that you had no deposit on the 1st September, 1999. You say that you could have got it from your own resources.

A. Yes.

Q. You did get it eventually from Aidan Phelan. You certainly didn't have $\frac{1}{2}$ 400,000?

A. Mm-hmm.

Q. You had spoken to no banker at all about getting $\frac{1}{2}$ 400,000 at this point. This was a pure shot in the dark, as far as you were concerned, a high risk?

A. No. That conversation

Q. You had no money, isn't that right?

A. That conversation that's referred to here, that conversation referred to here is the norm that will

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happen in any business transaction, where you say to your solicitor, "Tell them that they can take their time, and that it will be done, and the earliest they can expect anything to happen is" whenever I said, November, whatever the date. That is perfectly normal in any of the these type of transactions.

Q. So were you therefore just did you just pick November as what you thought was achievable? You didn't actually have any fixed arrangement in place to

get money from anybody by November?

A. In any situation

Q. No, just is that the case? I am not talking about any situation.

A. In this situation

Q. Just listen to me for a moment. I am trying to get a specific answer to a specific question. Am I right in thinking that you had no funds available by November or by any particular date as of this point?

A. I did not envisage any difficulty in relation to providing funds for this project. This project was ongoing since May, and the reality is that anybody who is dealing in a property transaction will communicate with the vendor, who they are purchasing for on the basis that suits themselves. And in this situation, we had been messed around for months and months. And my attitude was very simple: They can wait. If they wish to sell, they can wait until we are good and ready to do it. And I was given an estimate as to what length of time we would need to do that. Nothing more, nothing less.

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Q. I am not sure that anything turns on the fact that you say you had been messed around. Do I gather from that that you wanted to close earlier than this date?

A. No. There was no urgency about it whatsoever. What I

am saying is that we had protracted and prolonged negotiations with the vendors. And on numerous occasions the ground changed. The ground shifted, and for that reason, all of a sudden just because they had their house in order didn't mean that we had to jump to their tune. And that is the norm in relation to property transactions.

CHAIRMAN: It's just on four o'clock, Mr. Healy.

Mr. Lowry, whilst I am not certain how much other counsel may have to ask of you, I am hopeful we will conclude your evidence tomorrow. We will take it up at 11 o'clock in the morning as usual.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 7TH NOVEMBER, 2001 AT 11 A.M.

/RS