

TRIBUNAL OF INQUIRY

(PAYMENTS TO MESSRS CHARLES HAUGHEY AND MICHAEL LOWRY)

DAY 153

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 WEDNESDAY, 7TH 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. Donal O'Donnell SC

Mr. David Barniville BL

Instructed by: Kelly Noone & Co.

Solicitors

FOR MICHAEL TUNNEY: Mr. Bill Shipsey

Instructed by: Hugh Garvey

LK Shields & Co.

Solicitors

FOR AIDAN PHELAN: Mr. John Gleeson SC

Instructed by: A & L Goodbody

Solicitors

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 - 421

Mr. Shipsey 422 - 526

Mr. O'Donnell 527 - 603

Mr. Healy 604 - 615

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THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,
7TH NOVEMBER, 2001 AT 11 A.M.

CONTINUATION OF EXAMINATION OF MICHAEL LOWRY BY
MR. HEALY:

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

Do you remember yesterday, Mr. Lowry, you told the
Tribunal how Mr. Aidan Phelan loaned you the $\text{€}44,500$
deposit to put on the Cheadle property?

A. Yes.

Q. And I asked you whether there was any documentation in
connection with it, such as a letter from him to you or
a letter from you to him, and you said there wasn't,
and I was wondering whether that wasn't in some way
curious. And I just thought I'd look at it again in
view of the fact that you had not met Mr. Phelan until
I think about two years previous, would that be right?

A. Pardon?

Q. You hadn't met Mr. Phelan till two or three years previous to that?

A. Yeah, I became

Q. 1996, would that be right?

A. My friendship or relationship with Aidan Phelan would go back roughly that length of time, yes.

Q. And you had had a joint venture, which as you pointed out yesterday was reduced into writing. But would you agree that it seems curious and there may be a perfectly good explanation for it, but it seems curious

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that there is no letter from you to Mr. Phelan, from Mr. Phelan to you, or no formal acknowledgment from you to Mr. Phelan that you owe him this money; and isn't it a little more curious, at least I would think so, when you compare it with the rather formal document that you executed for the late Mr. David Austin, who was, after all, a friend of yours for some seventeen years. Would you agree with me that it seems curious?

Now, there may be an explanation. I am just wondering, comparing the two transactions, why one was accompanied by such formal documentation, a documentation which you in fact kept even after the transactions were over, and why this transaction didn't have any documentation at all. Would I be right in that?

A. Yes, I can confirm, as I said yesterday, there is no formal documentation. It was an agreement between us. It was a commercial understanding, and it was ongoing.

Q. Well, I think you told us that the arrangement with Mr. Austin was also a commercial understanding.

A. Yes.

Q. But is there any special reason why there was no paperwork for this loan of $\frac{1}{2}$ 45,500?

A. Because, obviously, Aidan Phelan was not concerned. He didn't require documentation on it. We had we had an agreement between ourselves on it. There was a perfect understanding between him and me, and he didn't see the requirement for it, and I didn't ask for it.

Q. Would you agree with me that even between good friends, and perhaps more importantly between good friends where

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there is a substantial amount of money involved, it would be usual, for the sake of good order, at least, that you'd have some piece of paper to acknowledge that there was a loan?

A. He knew what the purpose of the loan was for. He was effectively assisting and encouraged me assisting me, in particular, to conclude that particular deal.

And I was quite happy that I wasn't going to renege on the deposit as soon as the deal was completed.

Q. But there is no difference between that and the

arrangement with Mr. Austin, is there? I presume Mr.

Austin was quite happy you were going to pay him back?

A. Well Mr. Austin proposed, and I agreed, that we would have a document between us, and that document was formally agreed and signed.

Q. Did you not think that as between yourself and Mr. Aidan Phelan, it might have been wise to write a letter to Mr. Phelan saying, you know, "Dear Aidan, I just want to formally acknowledge that you have loaned me €44,500", lest there might be any misinterpretation that having regard to your position as a public representative, you were being given a gift of €44,500?

A. It was a loan in connection with

Q. I know that. Would you answer my question: Did you not think it would have been wise?

A. No, I didn't see any danger whatsoever.

Q. You saw no risk of misinterpretation or vulnerability to misinterpretation?

A. No, I did not. And I think Mr. Phelan would also have communicated the fact that he would have had to give an

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instruction to his solicitor, and in giving that instruction to his solicitor, his solicitor would have been aware that it was a transfer of funds on the basis of a loan to put a deposit on a commercial property.

Q. Yes. But that doesn't advance the position in any way,

does it? That doesn't in any way make it clear that Mr. Phelan's money was being used by way of a loan to you?

A. Well, I would have thought that in the discussion of the transfer or the instruction that that message would have been brought across. But as I said already, there was agreement between us, and obviously Aidan Phelan was happy with the verbal agreement that he had with me, and I certainly hadn't any intention of renegeing on that agreement. In other words, that it was a loan for that purpose.

Q. I understand that. But you can understand that maybe his solicitor, and he was also your solicitor, had made a note to the effect "Mr. Aidan Phelan has instructed me to use £44,500 of his money in my client account to pay a deposit on the Cheadle property, but it is in fact not his deposit, it is Mr. Lowry's own deposit, but it is being used by way of a loan."

If there was a note like that on the solicitor's file, and I can understand it might be easy to say that there was clear evidence of the loan, but as far as I know, there is no such note. At least I haven't seen any, anyway.

A. I haven't had access to the solicitor's file, but my /RS

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understanding is that there is some communication

between Aidan Phelan and the solicitor, at least an instruction to transfer the funds. As to the conversation they had in respect of it, I am not aware of it.

Q. Well, the only document we have is schedule 5, document number 8, if you want to look at that.

A. Yes.

Q. It says "8th September. Deposit of £44,500."

A. This is a note on my solicitor's file.

Q. Yes. I'll just read it out first:

"8th September, deposit of £44,500 for purchase agreed with AP.

This to come from Mansfield excess."

Underneath is what I understand to be the signature Christopher Vaughan puts on his notes. And my understanding, from the documentation that was made available to the Tribunal, is that this is the solicitor's note of the type of instruction that he received and which you described in outline a moment ago. But if you look at that, all it says is, "Deposit of 44,500" we can assume it's to do with Cheadle, I suppose, because that is the amount of money "Agreed with AP", Aidan Phelan. "This to come from Mansfield excess."

Now, it doesn't say anywhere there that it's by way of a loan to you, does it?

A. Well, I am not aware of that's obviously I am not

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aware of the conversation, I can't comment on the conversation that Aidan Phelan had with Christopher Vaughan. But what we have, I suppose, if you look at it at face value, what we have is confirmation of Aidan Phelan's agreement to do the transfer. As to the rest of the conversation they had, I wasn't privy to it, and I don't know. But what I can confirm to you is what you have said yourself, that there is no other formal agreement in place.

Q. Yesterday I think you were telling the Tribunal about your dealings with Mr. Daly. And you said that you knew Mr. Daly, you knew him a long time, and you frequently met him, and that on one of these occasions that you met him you thought it was October you mentioned to him that you were involved in this project in England, and you discussed it with him. I think would I be right in saying that the discussion could be described as one in which you ran it past him? Would that be right? And as I understand your evidence, he seemed to think it was a good idea?

A. Yes.

Q. Now, after that meeting, that was your that was a meeting you had with him in sometime in November, isn't that right?

A. Yes, I would this is John Daly we are talking about?

Q. Yes.

A. I would have met John Daly again in November, yes.

Q. But at that meeting, what was the purpose of your meeting was to run this idea past Mr. Daly. Isn't that right?

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A. This is in October, yes.

Q. In October, yes. And having run it past him, he indicated to you that "Look, it was a runner", I suppose would be the way of putting it, but he didn't give you any indication that any money would be available from him to fund it, is that right?

A. That's correct.

Q. So this is October, and you still don't have the money. What did you do then?

A. I at that stage, I discussed it as I said, I was after having a meeting with the Irish Permanent.

Q. I am aware of that, yeah. We have gone past that.

A. I met John Daly in advance of that meeting, which was effectively to review it and from to use the advice and guidance that he would have based on his experience and his knowledge.

Q. How can that be right, Mr. Lowry? Sure you told me yesterday that the meeting with the Irish Permanent, you didn't mention the project in detail at all?

A. I mentioned the project in general terms. I didn't

mention it in detail. I had a discussion with the Irish Permanent, as I said to you already. It was an overall discussion which took into account a number of aspects of my finances

Q. All I am interested in, after you had the discussion with John Daly. One of the purposes of that discussion, you are telling us now, is to, sort of, enable you to set yourself up for a discussion with the Irish Permanent for the part of the discussion that related to your English transaction. You had that

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discussion with the Irish Permanent. You didn't discuss the details of it, and we know that you got a letter from the Irish Permanent a considerable length of time down the road.

In the period between your discussion with the Irish Permanent and when you got the letter from them, which would have been sometime on the 8th or 9th November, did you do anything about getting money?

A. Which time are you talking about?

Q. The period between when you had your discussion with the Irish Permanent, which was after your discussion with John Daly, and the 7th or 8th November, when you got your letter from the Irish Permanent, did you do anything else about getting money?

A. After I got the letter from the Irish Permanent

Q. No, no, in the period between the discussion

A. No.

Q. You did nothing?

A. No. Because there was a short period between it, but

after I got the letter from the Irish Permanent, I

contacted the Irish Permanent and I had a telephone

conversation with a representative of the Irish

Permanent. And at that stage, it became rather clear

to me that what I was what I had in my mind and what

I was proposing in my you know, as to how I was

going to approach the funding of it simply wasn't going

to work. And it was at that stage, approximately

mid-November, that I went back to Aidan Phelan, and I

simply told him, at this stage, that I brought him

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up to date and told him that I was having difficulty

myself in securing the funding. And I asked him at

that stage he was surprised at that stage, because

all the advice that I had got and the information I had

given him previously, when he put down the deposit, was

that it was bankable and that it would be possible to

do it.

So I asked him to assist me

Q. With I just stop you there. Before you asked him to

assist you, you said you brought him up to date and

told him, notwithstanding the advice in his own view,

that it was a good project and you hadn't raised finance. Isn't it a fact that you had not brought this project to any bank and told them "I want to complete a purchase of a property in Cheadle on which I have paid a deposit of £44,500 which I borrowed from a partner of mine, and where I now need approximately £400,000 to complete the project. It's a very good project. I have been advised it's a good project. I have a firm of property consultants assisting me in relation to this."

You didn't bring your project like that to any bank.

The only bank you went to was Irish Permanent, and you simply told them about the proposition in general terms?

A. Yes, the Irish Permanent. And I also at that stage had been having discussions with the Allied Irish Banks, which was the bank to my company in terms of funding a /RS

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development within my company. So overall, I was at that stage, after those discussions, I was in a position to assess the attitude of the institutions

Q. What discussions did you have with the Allied Irish Banks?

A. That was a discussion in relation in relation to my business about

Q. When was that discussion?

A. about monies.

In around the same time, early November.

Q. What bank?

A. Thurles.

Q. And who was the manager with whom you discussed it?

A. At that stage I was speak to Mr. Carr, and it was in relation to a subsidiary company I wanted to capitalise to develop another side of my business.

Q. And what did you say to Mr. Carr?

A. I just had a general discussion with him in terms of my requirement for funds to do that particular project .

There was no discussion in relation to property.

Q. Well, what's the relevance, then, of the discussion you had with Allied Irish Banks?

A. Well, what I am saying is that you know, I am aware from those discussions in relation to my business, I knew what I could do with my business.

With my discussion in relation to the Irish Permanent, I knew what was available to me from the point of view of putting my house at the disposal, as collateral.

Q. Could we ever get a bit of sense into this, Mr. Lowry.

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You didn't mention to the bank in Thurles what you wanted the money for?

A. Correct.

Q. You didn't mention to the Irish Permanent what you

wanted the money for. Did you tell anyone that you wanted $\frac{1}{2}$ 400,000 to complete a sale of a property in Cheadle? Did you tell anyone that?

A. No.

Q. There is no bank that you went to that you told that?

A. In my mind what I was doing was that I knew what I needed, and I was having a discussion, a general discussion to see what finances would be made available to me against the collateral of my house and against my business. I realised that I wasn't going to get any further funding in relation to my house because it wasn't deemed suitable or that it wasn't I don't know, under whatever technicality, it wasn't possible. And in relation to my business, I established that I couldn't borrow to the extent that I wished against my business.

Q. Why didn't you go back to Mr. Kevin Phelan and say "Look, we'll have to get some finance for this in England. I can't get finance in Ireland"?

A. Well, I had dealt with Aidan Phelan on it, and he

Q. You hadn't dealt with Aidan Phelan. He'd simply loaned you the money, money which you had yourself at your fingertips?

A. Yes, but obviously I was committed to Aidan Phelan by virtue of the fact that I had you know, I had a business relationship with him.

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Q. How were you committed to him?

A. Pardon?

Q. How were you committed to him?

A. To Aidan Phelan?

Q. Yeah.

A. Of course I was committed to him.

Q. How?

A. We are now talking about which period are you talking about?

Q. We are talking about the time in November when you are looking for money to complete this sale. Why were you committed to Aidan Phelan? Why was he the person to go to?

A. Well, we had already paid the deposit on the property.

Q. Not "we". You had paid it with his money?

A. Yes.

Q. But sure

A. A loan from him.

Q. How did that make you committed to him?

A. I would have seen I think it was quite normal in those circumstances to go back to the individual who you had discussed it with and who had assisted me with the deposit. I went back and I updated him and briefed him on the situation, and at that stage he offered to go and see could he arrange the finance.

Q. I don't understand why you would have gone back to him

for the reasons you stated, Mr. Lowry. That's the problem I have. I can't see why Mr. Aidan Phelan was the man to go back to. You weren't committed to him in relation to this project at all. He was one person who

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didn't like the project. He didn't like the shape of it at all, from his point of view. Now, he had provided you with a loan of money. You could have got Mr. Phelan out of the equation very easily by writing a cheque for £44,500, isn't that right?

A. Correct.

Q. Why were you going back to him for more money?

A. I didn't go back to him for more money. I simply went back to him to brief him on the update. He had he had initially anyone that I had discussed this project with felt it was bankable a bankable project, the idea.

Q. But you had failed to find a bank to take it?

A. Yes, I personally had failed to find a bank to do it.

Q. Isn't it in fact the case you hadn't mentioned it to a single bank?

A. If you want to interpret it that way, strictly speaking, that's correct. But you understand the background to it and the way I approached it. I went back to Mr. Aidan Phelan and I appraised him on the up-to-date position, what have you. He was surprised

that I hadn't got the funding on it, but he said that he would assist and that he would go directly himself and see could he get it funded.

Q. During all of this time, you must have been under, let's put it conservatively, a little bit of pressure wondering where you were going to get this $\frac{1}{2}$ 400,000?

A. Yes, I was.

Q. And you never went to your own accountant, Mr. Denis O'Connor, or BBT, and said "Look, I need to examine my /RS

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situation. I need $\frac{1}{2}$ 400,000. We need to make a presentation to a bank"?

A. Well, Mr. Aidan Phelan is a professional accountant

Q. But you didn't do that?

A. No, there was no necessity to do that. I was already dealing with Aidan Phelan Aidan Phelan is a professional accountant. He was familiar with the situation, and I didn't find it necessary to discuss it with anybody else. There was no requirement to do it.

Q. Well, you had discussed it with Mr. Daly.

A. Pardon?

Q. You say you discussed it with Mr. Daly?

A. On the basis that Mr. Daly was a friend of mine who was familiar with development and construction industry.

Q. You had given an outline with the manager in the Irish Permanent in Cork without mentioning any specifics.

What was so sacrosanct about this proposition that you couldn't mention it to the man who was giving you sterling service in relation to your affairs?

A. As I have already explained, Aidan Phelan I was dealing with Aidan Phelan. If there was any accountancy matter to be looked at, Aidan Phelan was well capable of doing it. No the only time that I sought advice in relation to property transactions from my accountant was in relation to CGT, and I did that through the normal channels, which was my accountancy practice.

Q. The company you were originally going to take one the company you were originally going to use for one of these projects was Abbeygreen Consulting, isn't /RS

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that right?

A. That's correct.

Q. The registered office of Abbeygreen Consulting is BBT, your accountant's offices at The Gables in Foxrock?

A. That's correct.

Q. And they didn't know you were involved in the transaction?

A. Pardon?

Q. They didn't know you were involved in the transaction?

A. Mr. Healy, there is no great surprise. Your accountant doesn't have to know or need to know all of any

particular client's involvement in all or every aspect.

They are there to do a particular job. I am no different than any other client.

Q. I suppose Mr. O'Connor was in a slightly more special position; he was your general adviser, not just your accountant. Isn't that right?

A. In what way do you mean?

Q. Well, he was advising he was a member of your firm of accountants. His firm had taken over all your accountancy affairs by this point. They didn't know all about your accountancy affairs, but you felt you didn't have to tell them. But Mr. Daly Mr. O'Connor, within that firm, was in a special position in that you were incurring vast liabilities to him to enable him to keep on top of your affairs in the context of tribunals, and he was the one person who wasn't aware of this.

A. He was aware of, it in general terms. I never discussed it in detail with him.

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Q. He was not aware of it in any terms, according to his evidence, Mr. Lowry. Are you telling me he will come into the witness-box and say that he was aware that you were involved in transactions in, he thinks, land, and that you needed substantial sums of money to complete them without knowing the details of the amounts or the

transactions?

A. I never discussed monies with him in relation to those transactions. But yes, Mr. O'Connor would have been aware in general terms.

Q. I see.

A. And I would have I would have put an inquiry through Mr. O'Connor. He didn't deal with my personal transaction, he didn't at any stage deal with my personal file. It was another manager within his practice

Q. Do you remember his evidence that he was staggered? I think he said he used language that was so colourful he wouldn't wish to use it in the witness-box when he heard about these things.

A. I remember Mr. O'Connor's evidence, and after Mr. O'Connor gave evidence, I actually reminded him of the fact that I had asked him in relation to and that I had mentioned to him in general terms about the UK property deal. And when I did remind him of that fact, he did check with check his files in his practice, and it did confirm that I had discussed in general terms with him, that I had discussed the tax implication with him, and that the matter had been referred to one of the managers in his office.

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Q. I see. None of that documentation, or none of that

information has been made available to the Tribunal.

A. None of which

Q. None of that documentation

A. I am not sure of the relevance to it. You have asked me a question, and I am answering it.

Q. Isn't it relevant to Mr. O'Connor's evidence, if Mr. O'Connor's evidence is incorrect, and if in fact there is documentation to

A. Mr. O'Connor's evidence is not incorrect. I think Mr. O'Connor said that he did not have a detailed knowledge of the transactions, and he is quite correct when he says that.

Q. He says he had no knowledge of the transactions.

A. Well, he certainly had a general knowledge

Q. Was he incorrect when he said that?

A. Yes.

Q. He was incorrect. So therefore his evidence was incorrect, and in fact there is documentation to show that it's incorrect; and I am asking you why that documentation hasn't been made available to the Tribunal, since you were aware of the existence of it.

A. I am only you have asked the question, and I am putting the factual position to you.

Q. Mr. Lowry, don't you realise that if evidence has been given here which you know to be incorrect, and you know why it's incorrect, and you know there is documentation

A. I don't accept that it was incorrect. What I am saying is that there was a narrow interpretation put on his /RS

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evidence. What I am saying to you clearly, Mr. Healy, you have asked me a question, and I am answering the question. The fact of the matter is that yes, I did discuss in general terms with Denis O'Connor the fact that I was involved in property transactions in the UK. I did ask a question about the tax implication in relation to CGT. I was referred to a manager within that office, and that has been confirmed to me since. That was my recollection of it, and my recollection of it is correct.

Q. I see

A. And is agreed, in fact, with Mr. O'Connor.

Q. I see.

A. Sorry it's important, actually, that I point to the fact that it was another manager within that practice that I actually dealt with in relation to that matter. I was simply referred.

Q. Did you tell that other manager what you have told this Tribunal now, that you were trying to buy trying to, rather, complete a sale of a project in England on the one hand, and on the other hand, that you had bought a 10 percent interest in another property?

A. No, there was no discussion in relation to it. I was

told that whenever the transactions were complete, and if there was a tax benefit or there was a benefit from the transaction, that obviously then there would be a tax implication, and that I should give them the details of it. My inquiry initially was in relation to CGT; did that actually apply to the UK markets? In other words, if you purchased there, did it apply here?

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Q. So that what you said to Mr. O'Connor's practice, we'll put it that way: "If I were to purchase property in England, what would the CGT implications be?"

A. Yes.

Q. Is that all? I would regard that as telling them nothing about it, Mr. Lowry, and I defy to you produce a single human being in this country who wouldn't reach the same conclusion if that's what you told them. So can we get on and get to the hard facts of this and stop going down blind alleys.

When you had your first meeting with Mr. Daly, you arranged for the documentation to be sent to him. The documentation was sent to him. What happened then?

A. Denis O'Connor was this where what stage are we at?

Q. You went to Mr. Daly. You ran it past him. He wanted more information. You went off to Irish Permanent, but you also arranged for information to be sent to Mr.

Daly. Do you remember that evidence?

A. Yes.

Q. Right. So now Mr. Daly has presumably got the information, right?

A. Yes.

Q. What happened then?

A. What happened then was, at this stage, I had that was early in the time. What happened was in the intervening time, I had discussions with Aidan Phelan. And Aidan Phelan had agreed that he would go and see if he could get his bank to fund this particular

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transaction. Aidan Phelan had discussions with the bank, and he reverted to me with sometime later, I don't know, a short time later and said that he would require the following. He required information, obviously, in relation I gave him everything that he needed in terms of backup documentation for the particular property in question. All of the details and whatever specifications that I had in relation to that.

And sometime later, then, again, Mr. Phelan, Aidan Phelan came back to me and said that the bank were looking favourably on it on the basis that I say, they would use the property as collateral, needless to say, they needed a charge on the property, and that but

that to finalise it, that I certainly would need somebody to go as guarantor. And it was at that stage that I had that's where the guarantor came in.

Q. Right. So the sequence of events was you met Mr. Daly.

Then you met the Irish Permanent. Then you got no, if you like, joy from the Irish Permanent. You then went to Mr. Phelan. Mr. Phelan went to the bank. The bank looked favourably on it, and he came back to you with that news and also informed you that the bank would need to take a charge, and they'd want a guarantor?

A. Yes.

Q. Now, that must have been sometime toward the end of December end of November, beginning of December, presumably?

A. I would have gone yeah, that would be the end of /RS

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November, early December.

Q. All right. I just want to get this clear in my own head. Your evidence about Mr. Daly is that your first discussion was simply to run it past him. He wanted more information. You got the information sent to him. The evidence he has given the Tribunal is that he got information directly from Mr. Eastham and Mr. Kevin Phelan

A. That's correct, at my request.

Q. Yes, yes. And he got a letter. I think the letter we

got was dated 9th November; I have a copy of it. I am not sure it's on your it's not in the book. The book was probably prepared before this documentation became available, although in fairness to Mr. Daly, I am not sure that's correct either. I think it may simply not have been included in the documentation. Though I think your solicitors would have been given the documentation a long time ago in the course of ordinary correspondence.

Anyway, it says this is a letter, 9th November, 1999, for the attention of Mr. John Daly, Courthouse Chambers, 27-29 Washington Street, County Cork.

"Dear Sirs, re Saint Columba's Church. Further to discussions with my client, I take pleasure in enclosing details of the above site for your information and action.

"As you can see from my site information sheet, the

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site extends to approximately 1.6 acres and has potential for a variety of uses. I have provided development appraisals for three potential uses and trust these are of interest to you. However, should you require any further information, please do not hesitate to contact me."

Now, maybe there is an explanation for this, but that letter does seem to suggest that Mr. Daly is being put

in the picture as a potential investor?

A. As I explained yesterday, I met Mr. Daly in October, and then following that and at that particular time, I was hoping to interest him in the property, and at this stage I would have given him all the verbal information; I would have taken him through it based on my own particular knowledge. And what he said to me at that stage was, "Get the information sent to me."

So I contacted Eastham and asked him to write directly to John Daly, yes, in the hope, at that stage, that he may become an investor.

CHAIRMAN: I think what you said yesterday, Mr. Lowry, was that at the first meeting with Mr. Daly, you had run it past him, just to get his views as somebody who was a friend and who was experienced in property ventures; and whilst you would not have been averse, if he had offered to become an investor, you did not raise it. At the second meeting that you had arranged, that he had the documentation from Mr. Eastham, and at that

/RS

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stage you were genuinely anxious that he might have come on board as a financial backer.

A. That's correct.

Q. MR. HEALY: And at that second stage, how did that second stage, or what did that second stage entail?

Was it a meeting, or what was it?

A. With John Daly? Yes. It was as I said you, I met him, and effectively what I was doing was, I gave him the bones of the details, and then I was giving him as much encouragement as I could to look at the property in the light of an investment for himself. He asked me to send the documentation. I sent the documentation. And what happened was that in the interim, Aidan Phelan had secured the funding from the bank. And he reverted to me and said to me that he could, at this stage, get funds from the Woodchester Bank; in other words, that the property was bankable, that he could get it, and that if I could secure a guarantor, he would be able to get the loan for that particular purpose from the bank. That's the sequence of events, you know, give or take a day. That's the sequence

Q. I don't expect you can be that certain about the dates, but that's the sequence, you think?

A. That's the sequence of events.

Q. I just want to look at Mr. Daly's evidence. It's at Book 134, page 63, I'll get you a copy of it. I am going to put it on the overhead projector.

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You see the top of the page. Question 277:

"Question: I think you have known Michael Lowry socially for many years, and that this is the only transaction in which you had, or more correctly

speaking, nearly had, and in dealings with him?

"Answer: Yes.

"Question: Now, Mr. Daly, can you tell us what Mr.

Lowry said to you when you met him in November of 1999?

"Answer: We were talking generally for about 10 or 15

minutes, when he brought up the subject of this thing

that he had in Manchester and he asked my advice on it.

And I gave him the advice that I gave him, that I

thought it was a good project. And after another while

he was saying to me that would I be willing to go

guarantor on this thing. And I said I would, if he

furnished me with the details."

Do you see that?

A. Yes.

Q. "Question: Right. Now, when you spoke to him in

November, was he indicating to you that he was

interested in going to get involved in the property

deal, or that he was involved in the property deal.

Can you remember?

"Answer: He didn't say he was involved. He was saying

he was interested, I think."

Can you remember that? Do you think that you told Mr.

Daly that you were involved or that you were thinking

of getting involved?

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A. I would have told him that I was involved. As you can

see, Mr. Daly himself isn't too sure, but my recollection is that I would have told him. I would have told him in the October meeting that I was interested. I would have told him in November that I was involved.

Q. Yes. But if you go on, he said:

"Question: I see.

"Answer: As far as I can remember, yes.

"Question: Right. And did he tell you how much money was involved in it?

"Answer: Not at that particular moment.

"Question: And what did he tell you the property was?

"Answer: He told me it was a church, a church site in Manchester.

"Question: A church site in Manchester?

"Answer: Yes.

"Question: Did he tell what was hoped for in relation to this particular transaction?

"Answer: Not that's why I asked him to send me on some details, before I made up my mind what I'd do.

"Question: And what details did he send you on?

"Answer: He sent me the financial breakdown of the profit and loss account and all that type of thing

"Question: Of what?

"Answer: Of the project that was intended for the site.

"Question: Do you have that?

"Answer: Yes. Yes, I have that, my solicitor has it there. "

/RS

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Now, he seems to think that you didn't even mention the amount of money involved to him.

A. I did.

Q. You are certain you did?

A. Absolutely certain.

Q. And after the discussion you had with him, in any case, he wasn't going to get involved to the extent of putting any money into the project?

A. Yes, initially initially he wasn't, but events had overtaken us at this stage, because Aidan Phelan had managed, as I said, to secure a loan from Woodchester for the particular property.

Q. When Mr. Phelan knew he was going to go to Woodchester, did he tell you who he was going to speak to in Woodchester?

A. He didn't in actual fact tell me I didn't know that it was Woodchester. It was sometime later I would have known it was Woodchester, and therefore he wouldn't have told me what individual, no.

Q. Right. So you just thought he was going to try to get finance for you somewhere?

A. What he said to me was, he said, "Look, I'll have a go at funding this myself, and

Q. He said what?

A. "I will have a go at getting a loan for this. I think, you know, it should be bankable", he said. And he just said to me that he would assist in doing that, and he went off to do that.

Q. And when he came back to you, you presumably knew he /RS

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had got funding from a particular bank?

A. At that stage he had told me he secured the loan for I had known them as Woodchester; I don't know what they were at that time.

Q. I think they were Woodchester; they may have been Woodchester GE Capital, but Woodchester was the name by which they would have been known.

He said you needed a guarantor?

A. Yes, in the interim, there was obviously to-ing and fro-ing, and information that was gathered for Aidan Phelan to pass on to the bank about the property itself. Then, when the when he got a verbal commitment from the bank that they would actually fund the project with the site as security but with an additional security of a guarantor, he asked me about could I find a guarantor. The bank were insisting on a guarantor. They weren't prepared to grant the money on security of the site. They wanted additional security in the shape of a guarantor.

Q. And at that stage, who was the borrower going to be?

A. At that stage the borrower was Catclause.

Q. Well, the vehicle was Catclause.

A. The vehicle was Catclause.

Q. But you were actually going to be the borrower?

A. Catclause was the borrower.

Q. Yes, but you were the individual behind the company

that was going to be the borrower, and the vehicle that

you were going to use was that you were going to take

the borrowing in your own name or in the name of a

/RS

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company, not in your own name?

A. The company the company was Catclause, and the

directors of Catclause were Michael Lowry and Lorraine

Lowry.

Q. Yes. And at that stage, did you know who the

individual in Woodchester did you know the identity

of the individual in Woodchester who had made the money

available?

A. I would I am not sure at that particular stage. All

I know is that the money was sanctioned, or verbally

agreed, in Woodchester, and yes, I would have become

aware that Aidan Phelan was dealing with a Mr. Michael

Tunney.

Q. I am sorry, I didn't catch that last bit. You would

have become aware?

A. I would have become aware in due course that he was dealing with a Mr. Michael Tunney.

Q. What's "due course"? Do you mean that in the period during which Aidan Phelan was trying to set this up with Woodchester, in the period you mentioned a moment ago during which Woodchester were looking for some details of the property, is it in that period that you would have become aware it was Michael Tunney?

A. No.

Q. You didn't become aware it was Michael Tunney until when, then?

A. I became aware of Michael Tunney the next the sequence in the event was that what happened was I was asked for a guarantor, and that's when I approached John Daly as the guarantor, for the reason that I

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had he was, as I said, involved in the industry and what have you. And he also had looked at the property, and I felt that he would be the one, if anyone was going to go guarantor, because of his knowledge of the property, that he might do it. And I asked him to go as guarantor, and he agreed to go as guarantor.

I communicated that back, whenever it was, to Aidan Phelan, that I had somebody who would go guarantor.

Aidan Phelan reverted to me seeking financial information and details and the background of the

individual's name that I had put forward, which was John Daly. And it was subsequent to that, at some stage, that I received a phone call from Aidan Phelan to say, "Look, this thing is going around in circles." He was speaking to me, I was speaking to John Daly. And then he was reverting back, and he told me, he asked me he said, what he said to me at that stage was, "A Michael Tunney will contact you directly to ask you the questions that I am being asked."

And I did receive a telephone call from Michael Tunney in relation to it, and I at that stage, we put together information; I think I was asked to get there was John Daly, I had to get information from John Daly. The bank requested as well a letter from in relation to the property itself, and I got that. Then, from what I can recollect, I think we got information from John Daly by virtue of what Aidan

/RS

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Phelan had been looking for, and that wasn't sufficient; there was further detail required.

And it was in that context that I got a phone call from Michael Tunney, and I gave him John Daly's mobile number, and he rang him directly.

Q. Right.

A. So the information was gathered between the first week in December and the middle of December, in or around

that time, and the information came back to me. I forwarded it to Aidan Phelan, and he forwarded it to the bank.

Q. Were you surprised that the person who was making the money available was Michael Tunney?

A. Was I surprised?

Q. Yes.

A. Michael Tunney meant nothing to me. Michael Tunney was simply a name to me.

Q. Sure you knew he was the man you had met before?

A. Yeah, but Michael Tunney didn't you know, I wouldn't have had a relationship with Michael Tunney. I only met him once before.

Q. Could we just get it clear, then. Are you saying you didn't know that the Michael Tunney who was making the money available, the Michael Tunney who spoke to you on the phone, was the same Michael Tunney who had spoke to you in the Radisson Hotel?

A. I did after Aidan had told me to expect a call from him. I didn't know who Aidan was speaking to I didn't first of all, I didn't know which bank. When

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then he came back to me and told me he had secured the money with Woodchester, it was on the context of the phone call that would short-circuit it, that Michael Tunney would contact me directly.

Q. Just go back to that meeting in August or September, whenever it was.

A. Yes.

Q. One thing that you didn't make clear yesterday was what the result of that meeting was.

A. I actually did, from my

Q. Did you?

A. Yes, well

Q. In the sense that you did get a result from it. Did Mr. Tunney give you advice?

A. No

Q. Directly or indirectly, either himself or through Aidan Phelan?

A. No. As I said yesterday, I didn't get a result from that meeting. It was a case of he listened to what I had to say. I asked a lot of questions. I answered the questions, and I didn't get a result I didn't there was no outcome of it.

Q. And this was the same man who was now going to make $\frac{1}{2}$ 400,000 sterling available to you?

A. This was the same man, yes.

Q. Now, if the evidence that Mr. Tunney has given is correct, that he told you in August or September in the Radisson Hotel, that you were such a hopeless case that you should sell everything and start all over again, it would be surprising, wouldn't it, if he was now

/RS

prepared to give you money?

A. Definitely. But I have already commented on

Q. You are saying he never said that to you?

A. the comments that were attributed to him.

Q. And in order to get this money from him, you didn't even have to go and meet him?

A. No, not specifically.

Q. The only meeting you had had with him was the earlier meeting?

A. Yes, but the details of the transaction and all the backup information that was required in relation to the property itself had already been communicated to him through Aidan Phelan in their discussions which I was not privy to.

Q. But presumably whatever Mr. Phelan said to Mr. Tunney convinced Mr. Tunney that you were a reasonably good bet?

A. Well, I would say that possibly obviously that and the fact that he had previously met me, and contrary to what he is saying, he must have formed the opinion that from the information he had gathered from me, that I wasn't that bad of a wager.

Q. If the loan was being made available to your company, Catclause, wouldn't it be usual or the more usual thing for a person associated with the company to give the guarantee, such as you, for instance?

A. For me to give the guarantee?

Q. Yes.

A. I wasn't asked

Q. Wouldn't that be the more usual thing?

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A. I can't comment on that. I don't know.

Q. Wouldn't you know that from yourself, from your own

experience of dealing with financial institutions, that

where a company borrows money, and in this case,

borrows it on what would be appear to be relatively

good security, and where a guarantee is sought, what is

usually looked for is a guarantee from one of the

promoters or individuals involved in the company?

Isn't that the more usual way of securing a

transaction?

A. My understanding is that third-party guarantees are

normally used and that they are preferred by any

institution in relation to it. It gives them better

security.

Q. You have I don't want to go into the details of it,

but you have borrowings in your various businesses?

A. Do I have?

Q. Mm-hmm.

A. Do I have borrowings? At the moment, I just have one

overdraft facility. That's all.

Q. In this case, Mr. Phelan told you that Mr. Tunney was

happy in principle to go ahead, subject to a charge and a third-party guarantee.

A. Yes.

Q. And I think you were saying that you were going around in circles; it was hard to put this guarantee in place.

Mr. Tunney was contacting Mr. Phelan. Mr. Phelan was contacting you. You were contacting Mr. Daly, or something to that effect, and it was far easier for you to put Mr. Tunney in contact with Mr. Daly and get the

/RS

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thing done, because at this stage, time was running out?

A. Exactly. There was pressure on to conclude it.

Q. The closing date had passed. Presumably your solicitor had negotiated an extension of the closing date to enable you to put your financing in place, but you were getting very close to the point where I think, if my memory serves me correctly, the vendors were probably going to say "All bets are off; we won't go ahead with this unless you close"?

A. Well, as you can see from the trail that we have followed in the last day or so, they started off in April/May. We didn't, in actual fact, between all of the negotiations and the difficulties, we didn't get to exchange contracts until September. We originally had a closing date of November on it, and it had slipped at

this stage past a couple of weeks, but I think that there would have been communications my understanding is, if I am correct, there is documentation that you have received which I have read, anyway; whether it was on my file or whose file I don't know but there was communication between Mr. Tunney, representing the bank, and Christopher Vaughan, the solicitor representing Catclause, and that conversation had indicated that the money was not ready and available, agreed in principle; but obviously there was documentation to be sorted out.

Q. Yes. So you had the money, you had the promise of the money?

A. Yes.

/RS

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Q. You had the borrower, Catclause. You had the security of the property, provided you could get the money, obviously. The only vital third element was the third-party guarantee?

A. Yes.

Q. And you went and spoke to Mr. Daly about that. You asked him to get some information concerning his financial affairs, his financial status. And that information was to the effect that he was a person of considerable wealth. Wouldn't that be right?

A. Yes.

Q. Certainly I think the evidence was given that he was a multi-millionaire?

A. He would be

Q. Net worth

A. I don't know what his net worth is, but he would certainly be a man of considerable

Q. He certainly could cover a loan for $\text{£}400,000$, anyway?

A. Like all people involved in business, what have you.

He certainly would have had a big involvement in the construction industry. I don't know what his liquidity would be like. Obviously he'd have assets.

Q. Well, I think his accountants said that he had a net worth in other words, he was in excess of $\text{£}5$ million.

A. In properties and

Q. Whatever, but his net worth was $\text{£}5$ million?

A. The only point I am making is I don't know whether that's what kind of cash flow the man would have.

Obviously he has assets, and that would

/RS

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Q. If his net worth was 5 million, then after his liabilities, he was worth 5 million; maybe it was in property terms, or whatever, but that was the net figure.

A. That's the only distinction I am making; maybe it is in property terms.

Q. So he had plenty of cover for $\frac{1}{2}$ 400,000. So presumably by agreeing to make all that information available to the bank, and get his own bank I think also to write to Woodchester, he was indicating that he was prepared to become a guarantor?

A. Yes.

Q. And eventually we know that he got a faxed copy of the guarantee, and he signed it and faxed it back. Isn't that right?

A. That's correct.

Q. I'll just go back again to the period, I think, in the just to the date of the contract. The contract was I think the 1st September with a three-month closing in the end of November, isn't that right?

A. Correct, yes.

Q. Do you remember that document we put on the overhead projector yesterday, a note made by Christopher Vaughan of a conversation with you I am assuming they are telephone conversations and of the conversation with Kevin Phelan?

A. Yes.

Q. It's the second half of the document I am interested in, where he notes that he spoke to Kevin Phelan, "Try and delay!" Kevin Phelan at that stage was saying,

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presumably, "Try to delay the signing, try to get a bit

more time"; would that be right?

A. Correct.

Q. Then he says, "But spoke to Michael Lowry on the mobile. He said no way funds available until November at earliest."

A. Mm-hmm.

Q. And "Agreed the purchase vehicle would be Catclause. Offer 5 percent deposit."

At that stage, I was suggesting to you that you seemed to have some fairly definite date in mind by which money could be available at the earliest, and that date was November.

A. At that stage, this was on the 1st September.

Q. Yeah.

A. I hadn't in actual fact met with Aidan Phelan, and effectively what I was saying to Kevin Phelan and to Christopher Vaughan was to as I stated yesterday, to push out, as far as you could, the closing date

Q. I don't I think it was Kevin Phelan said "Push it out as far as you can". If you look at the note, you said

A. Well, that was my I am sure that instruction, if he had been speaking to me, I would be giving the very same instruction. The message in that memo is very simple. You can interpret it what I am going to do is, if I may interpret exactly what I meant at the time was very simple, the instruction was, they had messed

us around for months and months. At this stage I

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hadn't discussed it in detail with Aidan. This was the 1st September, and what I said to Christopher Vaughan and Kevin Phelan at whenever I did speak to them, I said "Look, they have messed us around. We have given them a long time. I have to deal with this. I have to go to Aidan. We need months, not weeks," and I said "At the earliest I will consider a closing will be November."

It was in that context I said it, in terms of giving us sufficient time to deal with it. We had no contracts signed at this stage. We weren't committed to anything.

Q. Well, you were going to be committed that day?

A. Pardon?

Q. You were going to be committed that day?

A. As far as I was concerned, we weren't committed until the 8th or 9th September. This was the 1st September. We weren't committed until the 8th or 9th September, when we exchanged contracts.

Q. You weren't saying "We just want time to put things in place." You said "No funds", or "No way funds available until November." And the reason I would draw your attention to that part of the note is that that is roughly the time that funds did become available.

Isn't that right?

A. Well, there is no the funds became available in fact, they did not become available in November. The funds became available on the 20th December.

Q. But I think the discussions were taking place from /RS

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sometime towards the end of November until eventually all the pieces were put in place by the 20th December, but it was in or around November that steps were taken by Aidan Phelan and Michael Tunney which ultimately led to the money being put in place. Would that be right?

Isn't that a fact, anyway?

A. In or around that time, yeah.

Q. And is it possible that there is some connection between that discussion that you had with Mr. Vaughan and the discussion that you had had in August or September, whenever, with Mr. Tunney? Are you sure that at that discussion with Mr. Tunney, you weren't making arrangements to have funds put in place?

A. Absolutely positive. Absolutely not. Definitely not.

Q. No question of it?

A. No question. And if you look at the sequence of events after that, how could I anticipate I hadn't even signed the contract, exchanged the contract. We had no discussion with the banks in relation to this fund. I was simply taking an educated guess that it would take

a minimum of that length of time from the 1st September to put the funds in place.

Q. But sure in fact you didn't do anything during that three months; you didn't mention the project to a single bank. The only person that you actually went to with hard facts, money questions, was Aidan Phelan, and you went to him just before sometime shortly before the money became due, and then he provided the money through Michael Tunney. That is in fact what happened. No bank at all was approached.

/RS

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A. I reject that. I didn't specifically discuss it with banks. But there is no point in I going over it all again. I have said what I have to say on it. I have given you the facts of the situation in relation to the discussions I had. The discussion I had with the institutions that I spoke to were in respect of funding for myself to deal with a number of aspects of the finances that are required, including the property.

Q. You got Mr. Daly to sign the guarantee, or the faxed guarantee; he faxed it back. As far as you were concerned, at that stage, now, the money had been sent to your solicitor; the sale had been closed; you had your loan in place; your guarantee was in place; you could go and develop the property, find a new purchaser, sell it, enhance it in some way or do

whatever it is it was you wanted to do with it.

Isn't that right?

A. Correct.

Q. As far as you were concerned now, you were a customer of Woodchester Bank?

A. Catclaus was, yes.

Q. Your company was a customer of Woodchester Bank. You still hadn't met the bank in connection with the loan, would that be right?

A. That's correct.

Q. You got the loan just before Christmas. You received no correspondence yourself from the bank indicating that they were happy to make the loan available to you.

A. The facility was forwarded, yeah.

Q. Well, it wasn't forwarded to you, surely, was it?

/RS

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A. No, it was forwarded to Aidan Phelan, the facility letter.

Q. Well, are you sure about that now?

A. Well, yeah.

Q. My impression and I am trying to find it here, but I'll find it in a minute was that the facility letter was addressed to Mr. John Daly's address at Courthouse Chambers in Washington Street in Cork.

A. I don't know if that's if it was, it was. It would have been the bank that did it, for whatever reason.

Q. If we just go to document 11 on schedule 3 for a minute. Have you turned it up in your book?

A. Yeah.

Q. It's from GE Capital Woodchester Bank. It's addressed to the directors of Catclause Limited, care of John Daly, Courthouse Chambers, Washington Street, Cork.

If we go to the last page we'll only be going back and forth on the overhead projector, there is no need.

I am just asking you to go to the last page, Mr. Lowry.

You will see that the letter is signed by Michael Tunney, director of corporate banking.

A. Yes.

Q. And then what it requests is that the authorised signatories of the company would sign the letter indicating their acceptance of the terms of the facility letter.

A. Mm-hmm.

Q. Now, do you see that the address is or the address /RS

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of the company is care of John Daly?

A. Yes.

Q. Is there any reason why Mr. Daly's address was given?

A. I have no idea. I haven't seen that document. That's something you'll have to put to the bank, as to why they sent it to that address.

Q. But you have no idea?

A. No.

Q. And if you go to condition 19

A. On the same tab?

Q. It's the same of the same document, of the facility letter, paragraph 19, if you want to call it that.

A. Okay.

Q. About five or six pages in.

It says: "Any notice, demand, or request or other communication required or committed to be given or made hereunder shall be addressed or sent as follows: a) to the borrower, and b) to the bank."

Any letter or notice to be given to the bank or other communication was to be sent to Michael Tunney, but any notice, demand, or request to the borrower was to be sent to Mr. John Daly.

Do you see that again?

A. Yes.

Q. Now, the personalities involved here were you?

A. Yes.

Q. And no one else, isn't that right?

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A. The two directors of that company were

Q. Let's be realistic; your daughter wasn't borrowing the money?

A. Yes.

Q. Whatever role she may have had in the company, you were

borrowing the money, and as your solicitor said, your vehicle was going to be Catclause?

A. Yes.

Q. Not you and anyone else.

This document doesn't mention you anywhere. Your name isn't mentioned anywhere. Did Mr. Daly give you a copy of this document?

A. Is Catclause mentioned?

Q. Catclause is mentioned. It's headed the address is "The directors, Catclause Limited."

A. I have no idea why the bank would have forwarded that document to John Daly.

Q. Presumably only because somebody gave them John Daly's name, and the only people and address. Only three people, presumably, could have done that: John Daly himself, you, or Aidan Phelan. Wouldn't that be right?

A. John Daly would certainly have given them his address when he spoke to Michael Tunney about the guarantor.

Q. Could Michael Tunney have been under any apprehension or misapprehension but that you were the borrower?

A. Absolutely none. Catclause was the borrower.

Q. Yes, but that you were Catclause?

A. Yes. He knew that.

Q. Even if he had checked up in the Companies Office on /RS

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Catclause, he mightn't have bothered writing to that

address; the one individual he knew who was Catclause was you.

A. It was very clear to the bank that Catclause was the vehicle, that Michael Lowry and Lorraine Lowry were the directors, and Aidan Phelan was negotiating the loan.

Aidan Phelan knew the loan was for me and Catclause, and John Daly knew that the loan was for Michael Lowry and Catclause.

Q. I don't want to get bogged down in the possibility that the bank might have looked up Catclause Limited. I want to leave that out of it. Mr. Tunney was dealing with you on the phone?

A. Yes.

Q. And he was dealing with you as the borrower?

A. Yes.

Q. He knew you were going to have a vehicle for the borrower, Catclause?

A. Yes.

Q. And he was dealing with you in the preparatory stage with a view to getting all the ducks in a row, getting your solicitor on-line, getting your borrower to come up with his documentation to justify the bank in treating him as I may have called him "borrower"; I should have said "guarantor", as an acceptable guarantor.

And none of those people was under any illusion but that it was Michael Lowry and Catclause were the

borrowers and that John Daly's role was a purely

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third-party role; however important it was, he wasn't the borrower?

A. No, definitely not. And nobody could have that impression.

Q. I think you said to me a moment ago that you never saw this document. I just want to clarify what you mean by that. Obviously you saw it as a result of the Tribunal's inquiries?

A. Yes. That particular document this particular document? Yes. I didn't actually when I say "it", I didn't go through all the documents.

Q. Well, I appreciate that. What I am trying to do is to distinguish between any document that may have come to your notice in the course of the Tribunal's inquiries

A. This document has come to my notice now, in the course of the Tribunal.

Q. And you weren't aware of it up to then?

A. No.

Q. In all of the time between 20th December, '99, and when it came to your attention in the course of the Tribunal's inquiries, which would have been earlier this year, you never saw that document?

A. Never saw that particular document, no.

Q. Aidan Phelan never showed it to you?

A. No.

Q. John Daly never showed it to you?

A. No. The document, if I could assist you, my understanding is that that document was that document sent my understanding of the letter of /RS

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facility, that that was actually forwarded this was what I find confusing; I don't know why the bank would have sent it to John Daly. My understanding is that that letter of facility was actually sent to Aidan Phelan.

Q. I don't know if it was sent. It was certainly obtained by him in some way. He may have collected it. I am not sure of that evidence. I am sure you are right about that.

A. Because my understanding was it was that I had no dealing with first of all, Aidan Phelan dealt directly with John Daly in respect of the guarantor and the signing of the guarantee forms, which were ultimately faxed back to him. My dealing with the facility letter was I received a around that week of the it was coming up to Christmas week, and around that time I was being told by Aidan Phelan that it had been sanctioned in principle, what have you; he had been assured by obviously Michael Tunney, or someone

in the bank, that the money was on its way. And it was they were to-ing and fro-ing for a number of days, and eventually I received a phone call to say that the letter of facility had arrived, and at that stage it was certainly with Aidan Phelan. I had no communication whatsoever with John Daly in connection with the letter of facility.

Q. But even after all of that, nobody sent you a copy of the facility letter. The bank didn't send you a copy. Aidan Phelan didn't send you a copy.

A. Possibly Aidan Phelan gave me a copy. I don't know, as

/RS

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I say, was it that letter? I am not sure it was that letter. I don't ever recall seeing a letter with John Daly's name on it, if you know what I mean. Maybe it was on it as guarantor. That's the first time I have seen John Daly's name on correspondence

Q. Would I be right in thinking that you do not have on your files and do not remember getting any letter from Woodchester with the terms of the loan on it, any facility letter at all?

A. My understanding is that Aidan Phelan got it on behalf of Catclause.

Q. Yes, but if he got a document, if Aidan Phelan got a document, then I think, judging from the evidence and judging from what we see in front of us here, the

document he got is this document which was addressed to John Daly.

A. It must have been. I don't know. Possibly it was a separate document. I am not sure. I don't know.

Q. He seems to have signed this document?

A. Mm-hmm.

Q. Mr. Phelan seems to have signed this document. He never rang you up and said "Michael, you need to sign this document fast"?

A. Yes, he did. What happened was on what happened was we were expecting this letter, and it hadn't arrived.

This letter of facility, as it's called. And I did receive a phone call from Aidan Phelan it was actually he rang me on the day that the letter of facility was given to him, which was the 20th December; it was coming up to it was Christmas week.

/RS

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The 20th December, and he rang me on the afternoon of that day to say that he had received this is why I am confused; I don't know how John Daly could have got it, because definitely Aidan Phelan rang me to say that he had received a facility letter, that he had made a commitment in terms of drawing down the funds. And we were fast approaching when business would be closing down, and he needed to sign the facility letter. And at that stage, he was requesting that I would sign it

and that my daughter Lorraine would sign it.

I explained to him that I recall I was in part of the constituency a fairly remote part of the constituency. I had just received an earlier call to say that I had to get home urgently to my mother's house, and I told him that I couldn't get to Dublin to sign that on the day, and I asked him, was there any other way that it could be done. And he said he'd come back to me.

And he came back to me within a short time, a half an hour, what have you, and said that if I agreed, that I could designate him as an interim director to actually sign the document, and I agreed to do that on the phone with him. I said, "Is that possible? Can that be done?" He said "Yes, it can be done," so that's what we did. Now, whether it's that document or some other document, I don't know.

Q. It seems to me, if that's the conversation you had,

/RS

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this must be the document that he signed.

A. Yeah

Q. The only document the Tribunal has with the documents the Tribunal has with Mr. Phelan's name on them in connection with the facility letter is this document. We will just pass on from that

A. I haven't seen the document other than from here. The

reason is I remember Aidan took me through what the facility terms were. He just outlined what it was he was signing on my behalf. It was a loan offer on behalf of Catclause. It was a loan over a seven-month period, I think, so it was, if I remember correctly, I think the contract rate was approximately two and a half percent rolled up. In round figures, what it meant to me was I had to have $\frac{1}{2}$ 25,000 to service that loan at the end of the six months. And that's the conversation we had, and I was quite happy with that.

Q. I just want to clarify your evidence that you never received a copy of this document, ever?

A. I don't have any recollection of getting it ever, no.

Q. And the other document that he signed at that time, that was the facility letter, the main document, obviously, accepting the terms. He then signed schedule 3, document 12, which was a resolution of the company authorising himself and Helen Malone to accept the facility letter?

A. He would have done yes, that would have happened. That's as a result of the telephone conversation that we had.

Q. And then the next document he'd have signed was the

/RS

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letter of application to GE Capital Woodchester Bank for the opening of an account by a limited company, and

this would effectively be the bank mandate; you see that?

A. Yes.

Q. It says "The address is given as Catclause, 27/29 Washington Street, Cork." Again it seems that Mr. Daly's address is given as the address of Catclause.

A. I don't understand why the bank would have put down that address. The address of Catclause, my address for Catclause, the registered address for Catclause, as I recall it, was Abbey Road

Q. I think it was Christopher Vaughan's.

A. Whichever.

Q. It's not always the case that a company will use its registered address as its address for correspondence. I assume frequently you might get letters at one place or another relevant to one of your companies when the letters wouldn't go to the registered address of the company. But if you were going to put an address down for Catclause, isn't it likely or not that you'd have used Mr. Aidan Phelan's address, or your address of your flat in Dublin, or something like that?

A. If I was personally, if I was referring to Catclause at that stage, I would either put down the registered address of the company which was, you were saying, Christopher Vaughan's or I would have put down my own business address. I would have no reason, certainly, to put down John Daly's address. It

wouldn't make sense.

/RS

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Q. One thing that is clear is that none of those documents contain your name, in any case, isn't that right?

A. No. It would be Catclause.

Q. Apart from that?

A. Pardon?

Q. Apart from Catclause?

A. Yeah, Catclause was a registered company in my name.

MR. HEALY: I was going to pass on to another part of

this transaction, Sir, and I do need to get a few

documents ready. I wonder, if you were to rise earlier

and start earlier, would that be possible?

CHAIRMAN: I don't see any problem with that,

Mr. Healy.

We will adjourn now and resume at twenty to two. Thank

you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

/RS

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THE TRIBUNAL RESUMED AS FOLLOWS AT 1.40 P.M.

CONTINUATION OF EXAMINATION OF MICHAEL LOWRY BY

MR. HEALY:

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

In the course of some of the evidence that was given to

the Tribunal last July by Mr. Phelan, Mr. Aidan Phelan,

that is, there was a reference to correspondence that was, or documentation made available by you to Mr. Phelan to enable Mr. Phelan to promote the transaction with Woodchester to convince them to run with it, and one of the documents was a document which in fact came into the possession of the Tribunal as a result of inquiries made with Woodchester Bank, or Investec, as they are now called. This is a document, schedule 3, document number 6. Now, I have got it with another bundle of documents which will make it easier for you to look at it, so I'll just give you the other bundle.

It's the second document in the bundle I am now giving you.

A. The second one?

Q. It's the second page of that bundle of documents. The bottom right-hand side. It's in fact extracted from schedule 3, document number 6; do you see that?

A. Yes.

Q. Now, this is a document which it would appear was connected with, as I said, convincing the bank to run with the proposal. And the evidence of Mr. Phelan was

/RS

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that he got the document from you. Now, the document from the bank, not from anybody else. And the copy on the overhead projector is the copy of the document that the Tribunal got, so that what the Tribunal got from

Woodchester was a document which has, on the right-hand side, a photocopy of the logo of Mr. John Eastham's company. Mr. John Eastham is the associate of Mr. Kevin Phelan, the man with whom you were dealing in England in connection with those these properties.

On the left-hand side, then, is what looks like a reference J something stroke JE; I suppose the "JE" is probably "John Eastham". Underneath that there is a space for where it would appear there may have been an address, or where one would expect an address.

Underneath that there is "Re development site, Saint Columba's, Handforth." And then it looks like there is a start of a letter:

"Further to our telephone conversation, I confirm that I have now received architect's drawings for the proposed development of the site to create an 85-bed nursing home. This scheme is based on the existing footprint, which is a design point we have discussed with the Planning Authority.

"Once instructed by yourselves, we will apply to the Planning Authority and progress the obtaining of the relevant permission, which I assess should take approximately two months.

/RS

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"Upon receipt of this permission, I assume the potential value of the site to be in the region of

£650,000 pounds, which includes the existing lands.

"I also confirm that I am currently negotiating with two potential end users for the sale of the site for hotel/licensed retail premises. These are Bass Retail Ledger and Premier Hotels. Bass advised me that they are considering both an unconditional bid and a bid subject to planning. Premier Hotels are considering a bid subject to planning.

"We believe that should planning be obtained for licence retail/hotel use, the value of the site would be in the region of £1 million, but the time scale for obtaining planning permission would be extended by approximately two months."

"Yours sincerely, ECL Projects Limited.

Signed "John Eastham, managing director."

Now, what the Tribunal believes it has here is a letter addressed to you. Do you recognise that as a letter that you would have received?

A. Yes, I recall I recall that letter. I recall a request for that letter from Aidan Phelan to assist the bank in their analysis and assessment, and yes, I do recall asking John Eastham to give me a letter which effectively was a summary or a synopsis of the potential that the site had with valuations on it,

/RS

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because previously I had given Aidan Phelan all of the

other documentation, which was land maps and all of that, so this was requested, and I recall the letter, yes.

Q. Can you just clarify one thing in the letter for me.

If you look at the second paragraph, it says "Once instructed by yourselves"; he uses the plural there as opposed to the singular.

A. I presume he is referring there to Kevin Phelan and myself, or whoever.

Q. I see. He and Kevin Phelan did work together, didn't they?

A. They weren't in the same company, but they had a cooperation where they provided services to each other.

Q. Did they work from the same building or the same offices?

A. No.

Q. I understand. Now, as I said, when the Tribunal got this document from Woodchester, your name and presumably your address, I don't know which address would have been there for you, seems to have been removed from it. Do you see that on the copy you have in front of you? You see the reference?

A. Yeah, there is no name on it.

Q. Yes. Do you see the reference? Then you see 3rd December, the date?

A. Yes.

Q. Then you see the space that you would normally use for

the address?

A. Yes.

/RS

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Q. And then you see underneath that, where you would normally have "Dear so-and-so", "Dear Michael," "Dear Mr. Lowry", whatever. None of that is on the letter; do you see that?

A. Yes.

Q. But that letter, from the information the Tribunal has been given by Mr. Eastham, would have been addressed to you, isn't that right?

A. I would yes, that letter was certainly requested by me, and I recall that was part of an enclosure that I sent between all of the information I gathered, all of the information, that was one of the letters that was requested by the bank.

Q. And when you sent it to the bank, can you recall whether you removed your name and address from it?

A. I definitely didn't remove my name and address, no way.

Q. But between the time, therefore, that you gave it to the bank and the time the bank gave it back to the Tribunal, somebody seems to have removed your name and address, and whatever salutation there was on the letter, "Dear Michael" or "Dear Mr. Lowry" or something like that. Wouldn't that seem to be the case?

A. Well, I certainly would have no I certainly did not

in any way interfere with the letter. I would certainly have no reason to. I can't comment on what others might have done. I just don't know. I can only speak for myself.

Q. Yes. You see, as I mentioned earlier, the bank documentation that I was bringing you through a moment ago contained many names and many addresses, but

/RS

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contained no reference at all to your name, or your daughter's name, or your address.

A. All the documentation that I have seen to date that has been presented to me has "Catclause" on it. And it's a matter of public record that Michael Lowry was the owner of Catclause Company, and the registered director of Catclause.

Q. I accept all of that, Mr. Lowry. But I am also trying to inquire as to what I imagine you know happens in the real world, that when you get on to a bank and you say "I'm Michael Lowry", or somebody else says "Michael Lowry wants a loan; he is going to take it through the vehicle of a company called Catclause", that it would be very, very unusual that your name wouldn't appear somewhere in the bank documentation, or even if your name didn't appear, that your address at least would appear. But it seems, from the documentation we have looked at, that neither your name nor your address

appears, and what we have are other people's names.

And then, as I said, there is this document which definitely contains your name and address, and when we got it from the bank didn't contain your name and address. Do you have a comment to make on that?

A. That is a matter that you obviously have taken up with the bank. All I can say for my part is that the vehicle that operated in my particular interest was Catclause, and Catclause was a registered company with my name. And my understanding I am not an expert on these matters, but my understanding would be it would be a fundamental, fundamental measure for anyone to /RS

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check a company record and see Michael Lowry is a director. It was there for all to see, or anyone who wished to see it.

Q. In this case, don't we have your evidence that Mr. Tunney wouldn't have had to check up any company records? You told him, in your telephone conversation, that you were the borrower?

A. Yes.

Q. He didn't have to check any records?

A. Exactly.

Q. Mr. Phelan's evidence is that he told him you were the borrower. Catclause is irrelevant here.

A. Well, Catclause

Q. In the sense that Mr. Tunney, according to your evidence and Mr. Phelan's evidence, was absolutely clear about it: Michael Lowry was the borrower. He had this project. He got the project from England. Here is a letter from Mr. Eastham to Michael Lowry describing the project and how they expect to turn it around and so on.

So the fact that Catclause was the company and that Catclause, if you checked it up in the English Companies Office, would show that Michael Lowry was a director is beside the point. According to your evidence and Mr. Phelan's evidence, Mr. Tunney could have been in no doubt that he was dealing with Mr. Lowry.

A. I absolutely agree with you.

Q. Now, on day 133, Mr. Tony Morland, who was the official /RS

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of Investec Bank, as it's now called

A. Sorry, Mr. Healy, which day are we on?

Q. Day 133. I am going to get you a copy of the relevant document.

(Document handed to witness.)

I hope you have pages 106 and 107 from that day, do you?

A. I have those.

Q. If you look at question 463 on line 24 of day 106.

A. 463? Yes.

Q. I think it's Ms. O'Brien is asking the question, and she says to Mr. Morland:

"Question: You say in your statement that Mr. Tunney described the transaction as a proposed, and you say in quotes, "Denis O'Brien transaction"

"Answer: That is correct.

"Question: Now, what did you understand Mr. Tunney to mean when he indicated that to you?

"Answer: Mr. Tunney had told me that, I think it was a proposal for a purchase of a property for Denis O'Brien. However, Denis O'Brien did not want his name associated with the transaction because it was the purchase of a property from a religious order in the United Kingdom. That is how the reference to a 'Denis O'Brien transaction' came about. He then went on to discuss the details in terms of the first legal mortgage and the guarantee of a high-net-worth individual, to which I gave what I would expect to see

/RS

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in terms of the ability of the principals to perform this transaction.

"Question: So can I just take you through that slowly, Mr. Morland? You are saying that Mr. Tunney told you that it was a proposal for the purchase of a property for Denis O'Brien?

"Answer: Correct.

"Question: That he further stated that Denis O'Brien did not want his name associated with the transaction because it was the purchase of a property from a religious order in the United Kingdom?

"Answer: That's correct.

"Question: You state that this is how the reference to a 'Denis O'Brien transaction' came about?

"Answer: That is correct.

"Question: At the time that Mr. Tunney was discussing this with you, did you have any knowledge of Mr.

O'Brien?

"Answer: I knew of Mr. O'Brien. I had met him one in the company of Mr. Tunney at a luncheon. I did not know, however, the standing of Mr. O'Brien in the community or the net worth of Mr. O'Brien other than that we did have deals with certain of his companies on our books, of which I had done a due diligence on."

I don't know actually if you received page 108, did you?

A. Just 106 and 1107.

Q. I want to go on to 108, and I'll go on on the overhead projector. You will see it on the monitor in front of

/RS

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you.

"Question: So at the time, on the basis of what you

are saying, would it be fair to say that it was your understanding that Mr. Denis O'Brien was the beneficiary of the company, Catclause?

"Answer: Correct, but that would not have meant that much to me.

"Question: It wouldn't have meant that much to you? I can appreciate that. But your understanding, nonetheless, it was Mr. O'Brien was the beneficiary of Catclause?

"Answer: I wouldn't have known about Catclause at that time.

"Question: I see. At that stage

"Answer: I did not know who was going to purchase the property or in what company's name or I didn't have that information.

"Question: Yes, I understand what you mean. You did not know at the time that it was proposed that this special-purpose company be used as a vehicle to acquire the property, is that what you are saying?

"Answer: Correct.

"Question: I see. So it was your understanding, again just to summarise it so that we are clear about it, that it was the purchase of a property for Mr. O'Brien, but that he did not want his name associated with the transaction because it was a purchase from a religious order in the UK?

"Answer: I don't know if it was because it was a

purchase of a property from a religious order, but that

/RS

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it was the purchase of a property from a religious

order

"Question: That wasn't necessarily said to you as an explanation for why he didn't want his name associated with it?

"Answer: No, I am just saying he didn't want his name associated with it, and the transaction was the purchase of a property from a religious order in the UK.

"Question: Did you make any inquiries of Mr. Tunney, at the time as to why Mr. O'Brien might not have wanted his name associated with this transaction?

"Answer: No, there could have been any number of reasons.

Question: In your own mind had you thought of what the reason might have been or had you any views as to what that reason might be?

"Answer: No, it would have been of little concern to me."

Now, this was around the time that this transaction was being put in place inside Woodchester. And Mr.

Morland's evidence, with which Mr. Tunney does not agree, is that he was told by Mr. Tunney that this was

a Denis O'Brien transaction but that Denis O'Brien's

name couldn't be associated with it.

At that time, you are saying that you have no doubt but that Mr. Tunney knew this was a Michael Lowry transaction?

/RS

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A. Absolutely and totally. No doubt.

Q. Now, you had had no contact, or had you, with Denis O'Brien in connection with this transaction?

A. What's in this what you have read to me there is total and utter nonsense. I never had any discussion of any description. The first I heard of Denis O'Brien was on the 15th March when I received a phone call from Aidan Phelan to say that there was internal confusion in the bank and would I call to see him about it. And that's the first time I ever heard Denis O'Brien's name mentioned in connection with Catclause or anything else. He had absolutely nothing to do with it, from my point of view, nothing to do with it.

Q. Well, on the face of it, certainly, he had no connection with the deal at all, from the documentation we have seen to date, isn't that right?

A. I haven't seen any documentation where Denis O'Brien

Q. Except that his money from his account was used for the deposit?

A. I don't accept that.

Q. But it was his money; it came from his account. Isn't

that right?

A. It wasn't his money. It was Aidan Phelan's money.

Q. But it did come from Mr. O'Brien's account?

A. It was Aidan Phelan's money.

Q. Yes, but just to be clear about it, on the face of it,

I am simply saying on the face of it, there is no

document which suggests a connection between Mr.

O'Brien and this transaction other than the fact that

the $\text{€}44,500$ which went into Christopher Vaughan's

/RS

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client account and which you used for the deposit came

straight out of a Credit Suisse First Boston account.

That is, on the face of it, the only connection, isn't

that right?

A. Yes. And then if you take it beyond the face of it,

the reality, then, is that you have an explanation as

to how Aidan Phelan's actual own money was used to pay

that deposit. That explanation has been given by Mr.

O'Brien, and that explanation has been given by Mr.

Phelan.

Q. Yes. But Mr. Morland, now, presumably has no axe to

grind against you?

A. Mr. Morland?

Q. Mr. Morland, who gave the evidence of what Mr. Tunney

said to him.

A. I am not going to speculate on what happened internally

within the bank or what one of them said to each other, other than to say other than to say that what I have heard read back to me as the evidence given appears to me to be total and utter nonsense. It certainly has no relationship with my understanding. They had no connection Mr. O'Brien had no connection whatsoever.

Q. I appreciate that from your point of view, Mr. Lowry, you would describe this as nonsense. What I am trying to ask you to do is to tell me if you can throw any light on it, provide any explanation for why these things happened, and to give you an opportunity of doing that.

Mr. Morland, a bank official in Investec, didn't know

/RS

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who you were at the time. He didn't know much about Mr. O'Brien except he was a big customer of the bank. Presumably you would agree with me that he would have no reason to draw all this trouble down on top of himself and on top of his bank to be mentioning the suggestion there is a connection between Mr. Denis O'Brien and borrowings you had with the bank. You'd agree with all of that, presumably?

A. Am I correct in my understanding that Mr. Morland is effectively repeating what he was told by Mr. Tunney?

Q. Correct. Correct.

A. Well, yeah

Q. Just from his point of view.

A. From Mr. Tunney's point of view?

Q. No, from Mr. Morland's point of view.

A. Effectively, his knowledge of this comes from Mr. Tunney?

Q. Correct.

A. And it's effectively what I am after listening to here is what Mr. Tunney related to Mr. Morland?

Q. Correct.

A. Okay.

Q. Let's take it step by step. I think that we are addressing on what we are trying to address.

If Mr. Morland would have no reason at all to be putting down on paper and bringing to the attention of the Central Bank things that would cause nothing but trouble for his bank and you and anybody else and people pointing the finger at him, if what he says is

/RS

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correct, that Mr. Tunney said to him this was a Denis O'Brien transaction, have you any comment to make on what Mr. Tunney said?

A. I can't obviously comment on what Mr. Tunney said. All I can say is that he certainly would from my perspective, he would have absolutely no reason to say what he said. Now, as to what his motivation and what the reason for saying what he said was, I can't

speculate. What I can say to you is that when I became aware that there was a difficulty, it was roughly on the 15th March. I received a phone call from Aidan Phelan, and he said to me that he had been away in Canada, and that on his return he had been notified by Woodchester that he should take legal advice on the basis that the bank had conveyed some message to the Central Bank, who in turn had communicated with the Tribunal, that somewhere

Q. The other way around

A. Whatever way it happened, whatever way it happened, so on that, I met Aidan Phelan briefly on the 15th, and all he could the only light that he could put on it at that stage was that he had previously been in discussions with the bank for two days and that to use his own phrase, I think I remember that there was massive confusion internally within the bank, and that this particular transaction which he had negotiated on behalf of Catclause had become the subject matter of some internal procedure which involved either due diligence or a compliance issue in relation to the takeover of Woodchester by Investec.

/RS

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And Aidan conveyed to me, arising from his previous discussions with him, he said that it was an internal problem in relation to whatever documentation was in

place. And effectively what he was conveying to me is that a major dispute had arisen between the London branch, or between London Investec in London and between Woodchester in Dublin. And he assured me that I had nothing whatsoever to be concerned about.

And that, as far as I was at that stage, I was quite relaxed, in the sense that I just couldn't understand it. I mean, it was news to me. Completely out of the blue. I was just to be quite honest with you, I couldn't make sense of it. And I don't think even Aidan himself, even at that stage, could make sense of it. But he assured me he had already clarified the matter with the bank, and he understood that it had been clarified to their satisfaction. So he was surprised that this had become an issue and couldn't understand why, but he was putting it down, at that particular stage, to internal banking difficulties which Catclaus had got caught up in.

Q. What happened, as I understand it, is this loan was due to be repaid, and it wasn't repaid.

A. Pardon?

Q. The loan was due to be repaid, and it wasn't repaid.

It was due to be repaid in July, I think.

A. The end of July, yes.

Q. The end of July, it wasn't repaid. The bank weren't

/RS

insisting on the end of July, but as time wore on, the bank began to get a little concerned. And when the bank sought explanations as to what the loan was about, they were then told that it was a loan that concerned you, but that Mr. Denis O'Brien was behind it; and Mr. Morland has given evidence that not only was let me just tell you first not only was he told that at the time, that question marks began to be asked about the repayment of the loan, but he was told at a much earlier time, at the time that the loan was first given, that it was a Denis O'Brien transaction but that Denis O'Brien's name couldn't be used.

Do you understand? That's the evidence of how the problem arose.

Now, the problem for the bank was, they had a loan which didn't mention your name and didn't mention Mr. Denis O'Brien's name, and they were told, nevertheless, that the loan involved both of you. And what I am trying to ask you to look at is firstly the fact that the only document which appears to have come into existence from the bank, which was generated or which came into existence around the time the loan was granted and which did contain your name, has had your name taken off it. And I wanted to know whether you took it off, or someone took it off on your direction, or whether it was taken off in the bank.

A. Well, all I can I can only answer the first two

elements of that last question. I certainly did not

/RS

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take it off, and I most definitely did not instruct anybody to take it off.

And the second the first question that you asked me,

I want to say clearly again that my name the

documentation was in the name of Catclause, and my name

was readily associated with Catclause because I was

openly a director of that company, a registered

director. Denis O'Brien's name didn't appear on

documentation because he had nothing to do with it. I

never had any dealings or discussions of any

description with Mr. Denis O'Brien.

Q. Do you understand the problem?

A. I do.

Q. Mr. Morland has given evidence that Mr. Tunney said "We don't want Mr. O'Brien's name to appear on it."

A. What I repeat is that the evidence that I am hearing is

an internal discussion or an explanation by Mr. Tunney

to one of his superiors, and in the course of that

explanation, he happens to drop Denis O'Brien's name.

Now, I can't comment on his motivation or his reasons

behind that, other than to say that Denis O'Brien had

absolutely nothing to do with this.

Q. And the fact that Mr. O'Brien's associate, Mr. Phelan,

was involved in it did not entail, as far as you were

concerned, any Denis O'Brien connection?

A. Absolutely not. It was never Denis O'Brien and Aidan Phelan, we have never discussed property. We have had nothing to do with Denis O'Brien

Q. I just want to be clear about that. I know you may say
/RS

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you have never discussed property. Do I understand you to be saying that it isn't just a case of you not discussing property with Mr. Denis O'Brien, but Mr. Phelan, in becoming involved in this transaction, was not, as far as you are concerned, acting in any way on the instructions of or with the encouragement of or in connection with or with the knowledge of or acquiescence of Denis O'Brien?

A. Most definitely not.

Q. Over Christmas, you were at least satisfied now, Christmas of 1999/2000, that you had a loan in place; your property was, as I said before lunch, available to be developed. You had complete control and dominion over it. After Christmas you then find out that you have no guarantor. How did you find that out?

A. Well, what happened was Aidan Phelan rang me, and he said to me that the bank had requested from what I can understand, what transpired was that as I said to you earlier, Aidan Phelan had made direct contact with John Daly, and between them they agreed on the

documentation that was required for the bank from a guarantor point of view. That documentation was provided by Aidan Phelan to John Daly. John Daly signed it and returned the faxed document to either Aidan Phelan or the bank, I am not so sure which or other, so the money was drawn down in around that time. I think the money was drawn down on the 20th December.

Q. Yes.

A. What happened then was the bank contacted who at the bank, I don't know, but Aidan Phelan was contacted, and /RS

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he was asked to get an original document signed by John Daly. In other words, the previous document he had signed was not sufficient. And he sent that to me, and at that stage, I contacted John Daly.

Q. And John Daly yes

A. And I explained that this documentation had to be signed, and the bottom line with John Daly at that stage is that he effectively, out of the blue, said to me that if the document that they had in place wasn't sufficient, that he didn't intend to sign anything else. So I actually asked to meet him, and I met him, because needless to say I was, at this stage, not concerned, very concerned, as to the implication of this.

And I just met him, and his explanation to me was there

was very simple; that a business transaction which he had been looking for for some time had come faster than he had anticipated this is what he told me come faster than he had anticipated, and that some of his advisers had said that he would need all the collateral that they had, and that he shouldn't be committed to anything other than he had already committed himself to. And he apologised and said you know, he asked to be released from it.

I actually at that stage, what I understood the implications, I didn't realise that it was as serious as it was. And we talked about other matters and what have you, and I came back to it again, and I said it

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was gradually, as I was speaking to him, dawning on me it was putting me in a very invidious and difficult position. And I explained that to him, but he just said to me he was sorry. And to this day, well to this day he does I think that John Daly didn't actually realise when he withdrew from that guarantee, the consequences that it was going to have. And in fact, I think it's just to give you his state of mind since he gave evidence to the Tribunal, and since the stark reality was put to him, I think, by a question by either you or Mr. Coughlan, that he had left me in the lurch, I think it was around that time

that it dawned on him that he had left me in a position which was how would you put it

Q. Up a creek without a paddle?

A. Up the creek without a paddle, yeah. And he did, since the Tribunal, since he gave evidence to the Tribunal, I may say that I did meet him, and he said it was on the day that the question was put to him so bluntly, it was on that day he realised the significance of what he had done. He said he regretted it and apologised to me for it.

Q. I am trying to recall his evidence, but I don't recall that in the course of his evidence he indicated to the Tribunal that was the first time he realised how serious his actions had been. But be that as it may

A. I think, Mr. Healy, what happened was that there was publicity after he gave the evidence, and there was a headline which captured, I think how would I put it in human terms, and I think it was that particular

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reading of that particular paper, he said to me,

"Jesus," in his best Cork accent, "I didn't realise how significant and important it was." Now that was his explanation.

Q. Do you believe that?

A. Pardon?

Q. Do you believe that?

A. All I can say is that he is genuinely a nice, decent man. I don't you know, there was no point in I falling out with him over he made his decision, and

CHAIRMAN: I think he said you took it extraordinarily well, and you didn't seem to be particularly upset about it. Does that accord with your own recollection?

A. Maybe I didn't show my upset, and maybe the reason I am better able to control my emotions than I would have been previously is that I have had a few setbacks in my time in the last number of years. And you learn to deal with them. There is no point in getting angry. It's how would I put to you inwardly I was certainly very upset, and I would think that he should know from my emotions on the day, and my dismay on the day, that I was upset.

Q. MR. HEALY: But wouldn't he know, from his own business background, to welsh on a guarantee was going to leave you in dreadful trouble?

A. I can't speak for him other than what I have said, Mr. Healy. I have tried to the best I can

/RS

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Q. Would you agree with me, as a businessman, were you surprised

A. I was, I was. And the point I am making to you is that I think he himself, for whatever reason and I don't

wish to go any further, other than to say that it is only in recent times that he communicated to me the importance I think it was when he found himself before the Tribunal, he found himself questioned in detail in relation to it, it was then, and he would say that he possibly took advice from others, not realising the consequences.

Q. Did you tell him that you were going to get into big trouble with the bank? Did you tell him that at the time?

A. I didn't. I actually told him I was going to get into trouble with Aidan Phelan, I would think. Because I said that he was the one that asked me to get the guarantor, and effectively, it was him I was letting down in relation to what was happening.

Q. You didn't think of taking any stronger action, by having your solicitor write to him or anything like that, to remind him of his obligations?

A. I didn't. I didn't see the purpose in pursuing him in that way. To be you know, I have to put this in human terms. He is not the kind of a man that you'd actually do that to. I'll have to say

Q. He had done it to you, though, hadn't he?

A. He had, but I'd like to think that he didn't mean to be as how would I put it as irresponsible as he was.

Q. What happened after your meeting with Mr. Daly? What

/RS

did you do?

A. I rang Aidan Phelan and informed him of what was after happening and said I wasn't going to be able to get the original documentation back to him. So effectively what was happening then was I had anger in reverse, in the sense that Aidan Phelan was extremely angry with me. And he on the phone he conveyed to me his extreme displeasure.

And then I called to his office he asked me to call and see him, so I called to his office and I told him what had happened, I explained to him what had happened. And in fairly colourful language he told me I had landed him in serious difficulty with the bank on the basis that, as I say, he had put his reputation on the line with the bank to negotiate the loan, that it was subject to the guarantee, and that effectively, now, he was reneging on his commitments to the financial institution from which he got the money on my behalf and on behalf of Catclause.

Q. Are you familiar with two letters written around that time by Christopher Vaughan to Aidan Phelan and by Aidan Phelan to you? The first is a letter of the 11th January, 2000, from Christopher Vaughan to Aidan Phelan. It's document 15, schedule number 6 schedule number 5, sorry.

A. 15?

Q. Document 15, schedule number 5. It's the last schedule in the book.

A. Okay. Yes.

/RS

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Q. It looks like an office copy of Mr. Vaughan's letter to Mr. Aidan Phelan of the 11th January, 2000. It says

"Dear Aidan,

"Re Saint Columba's site.

"Further to our telephone conversation, I am writing to confirm that the completion of Saint Columba's Church took place on the 21st December 1999, and I enclose a copy of the completion statement. The handwritten notes at the end are my workings-out of the interest that had to be paid.

"Following the decision that Catclause Limited is no longer the purchasing vehicle, the property is to be registered in the names of myself and my wife, who is also a solicitor, as bear Trustees.

"I have spoken to Michael Tunney in respect of the transaction, and I would like to meet you when I come to Dublin for the notary's conference. I will be staying at the Fitzwilliam Hotel on 15th, 16th February.

"I look forward to speaking to you then."

Now, in that letter, all that is said is that Catclause aren't going to be purchasing the vehicle aren't

going to be purchasing the property any more, that it's not going to be the purchasing vehicle. Do you see /RS

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that?

A. Yes.

Q. But do you notice the way that letter makes no reference at all to the fact that there is no guarantor in place or anything like that?

A. What happened was, when I met Aidan Phelan, there was a phone call between Aidan Phelan I was in the office when Aidan Phelan rang Christopher Vaughan and told him what the current position was. That was obviously before that letter of the 11th January.

Q. Well, as far as the Tribunal is aware, Mr. Vaughan has made no attendance of any such telephone conversation. Leave the telephone conversation alone for the moment; on its face, would you agree with me that the letter would simply appear to indicate that there has been a technical change in the way the transaction is going to be completed, and instead of the transaction being completed by way of Catclaus as the purchasing vehicle, the names of the solicitor and his wife were now to become the purchasers as Trustees. Do you notice that? Isn't that all it means, on the face of it?

A. Well, all I know is that as I read that instruction,

Catclaus was me. Michael Lowry.

Q. It doesn't say you weren't going to be the purchaser.

It simply says Catclaus was no longer the purchasing vehicle.

A. Well, at that stage, in early January, effectively what had happened, I had had the row with Aidan. Aidan had effectively taken over the loan and the property, and

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he communicated as such, and I was actually in the office when that was done. He communicated to Christopher Vaughan by way of a telephone call of what had happened, and so and some my understanding is at that stage what arrangements Aidan would have made after that, I wasn't privy to, but all I know is that we had our dust-up on the issue, and Aidan decided that because he had already paid the deposit, and because of the circumstances that had evolved, he asked me would I be able to get another guarantor.

And to be quite honest with you, I didn't have the inclination or the stomach for it, and I didn't know where I'd go looking for a guarantor. I had effectively had a bad experience, and I wasn't going back for a second one. So when Aidan offered to take over the loan and the property, I was just glad that he did. Because I knew that I had landed him in trouble, and I knew that I had a responsibility in the matter.

So on that I think it was I don't know was it the first day or the second day; I certainly met Aidan twice about it. He rang Christopher Vaughan and informed Christopher Vaughan that I was no longer in other words, Catclaus was no longer the beneficial owner of the property, that he was effectively taking it over, both the loan and the property.

Q. You didn't write any letter to when do you think that conversation took place, by the way?

A. I am not sure, I don't I can't recall.

Q. It must have been before the 11th January, obviously?

/RS

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A. I don't know when

Q. Would you agree with that, firstly: It had to be before the 11th January?

A. When?

Q. That conversation

A. I can't say for definite

Q. Look at the letter here.

A. If I was asked, I would have said between I would have said early I would have said sometime in January, early January, mid-January, somewhere around that time.

Q. Let's be clear about it you may be confused, Mr. Lowry. Just look at the letter again. And could we just have the date of the letter, please.

A. Look at which? Look at the date of the letter?

CHAIRMAN: We know it's the 11th.

A. 11th January, yes.

Q. MR. HEALY: If you had a conversation before that letter, it must have been prior to the 11th January?

A. It must have been?

Q. Prior to the 11th January.

A. I don't know where that letter refers to the conversation I am talking about. I don't know. As I said to you already, the sequence of events was that I spoke to Aidan on the phone. Now, whether Aidan communicated

Q. No, no, you told me you were present when Mr. Phelan

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made a telephone call to Mr. Christopher Vaughan.

A. He had obviously been speaking to him before I spoke to him

Q. I didn't know that. You are going too fast for me, Mr.

Lowry. I just

A. Sorry

CHAIRMAN: I think he did say, in fairness, he spoke to

Mr. Phelan on the phone, who evinced considerable

distress. Told him to come into the office. He did,

and then matters unfolded.

Q. MR. HEALY: You spoke to Mr. Phelan on the phone?

A. Yes.

Q. I understood that. But you went into his office in Dublin, is it, in Clonskeagh, or wherever his office is?

A. His office, yes.

Q. And he then picked up the phone and rang Christopher Vaughan, is that right?

A. What he did, to put it mildly, when he was finished dusting me down in relation to the issue which I was expecting and which I deserved at that stage, he had already been in contact with Christopher Vaughan. He obviously had been in contact with Christopher Vaughan after my phone call to him, and from my

Q. How did you know he had been in touch with Christopher Vaughan

A. Because I knew the way they were speaking on the phone.

He rang him about some issue on the phone, and I knew,

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the way they had spoken on the phone, that he had previously been in contact with him. And I got the impression from Aidan as well that he had also been in contact with the bank. Now, the precise date, I am not quite I don't know.

Q. And what did Mr. Phelan say to Mr. Vaughan while you were in Mr. Phelan's office on whatever day that telephone call took place?

A. He was effectively asking me in his presence and to

confirm to Christopher Vaughan whatever he had told him previously; in other words, that I was out of the deal and that Aidan Phelan was the beneficial owner of the loan and the property.

Q. Did you speak to Mr. Christopher Vaughan that day on the phone?

A. We were it was do you know those speaker phones?

One of those, so I would have said

Q. Conference call

A. I would have said, "Christopher, sorry about the problems and what have you, but Aidan, whatever Aidan has told you, what he is telling you now is accurate and correct." And that was it.

Q. And Aidan would have said, as you said a moment ago, you are out of it, and he was now going to have to take it over?

A. Yes.

Q. And do you recall, did he explain why?

A. Did he explain why?

Q. Yes.

A. He didn't think he asked me would I be able to get

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another guarantor. And I resisted

Q. When did he ask you that?

A. I would have said probably on the first time on the phone: "Can you get somebody else?" And I would have

said no.

Q. I think he had the impression that you looked for a replacement guarantor.

A. Well, he'd be wrong in that impression, I have to say.

Q. Did you give him that impression?

A. I don't think I did. Maybe I did. Maybe I did. But I doubt it. To be quite honest with you, maybe initially I said "Maybe I'll look," to take the heat out of it, but certainly by the time I met with him, I wouldn't have. It was

Q. Could you not have guaranteed it yourself?

A. This? No. It wasn't possible for me to do it.

Q. Why not?

A. It wasn't possible for me to do it because other matters that I was involved with had made it difficult made it impossible for me to do that in terms of the only thing, way I could guarantee it would be if I had the certain asset that would be at my disposal, and it wasn't at my disposal. And I had learned that through the Irish Permanent and through other how would I put it meetings, private meetings that were held in the interim.

Q. In order to provide a guarantee, you'd have had to get a letter from your bank and from your accountant indicating what your net worth was, I suppose, would you?

/RS

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A. I am not I presume I'd have to go through the same hoops as John Daly was put through, yes.

Q. And did you go to Mr. O'Connor or BBT and ask them would they be able to provide a letter indicating what your net worth was?

A. No, because I didn't consider it.

Q. The conversation you had with Mr. Vaughan, you say, left him in no doubt but that you were now ceasing to be involved in the transaction?

A. Well, Aidan and I came to a conclusion in the sense that he took over the loan and the property. And he requested me, he said, "Look, you know all these guys. I want you to keep the push on them and try and bring the thing to fruition. I am not" his exact words, as I recall it, was "I am not interested in making money out of this deal. All I want to do is get sufficient return to pay off the loan that I am now responsible for."

So I agreed that I would keep the pressure on Aidan Phelan or Kevin Phelan and John Eastham, and that I would do anything I could, including any contacts that were already interested in the property, that we'd do what we could to get it moved for him.

Q. From what you have just told me of your conversation, your three-way conversation with Mr. Vaughan, I think I can take it that you appreciate how important it is for

a solicitor to know that his instructions from his client are being withdrawn and that where those instructions relate to somebody else, that that other

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person is now going to take them over.

A. Yes.

Q. I can assure you that is an extremely important thing for a solicitor. A solicitor has to know who his client is. And if his client is going to pull out of something and going to put somebody else in his place, then it's very important for the solicitor to know who that person is and have a careful record of it.

A. Mm-hmm.

Q. I may be wrong in this, but I would be surprised, in fact, that the Law Society don't have fairly strong guidelines as to how events like that are recorded in a solicitor's file.

Now, the Tribunal has had access, based on your instructions to Mr. Vaughan, to his file, and based on Mr. Phelan's instructions, and there is no record that the Tribunal has been given any of the documents on Mr. Vaughan's file which indicates as of the period shortly after the 1st January, of the end shortly after Christmas of the year 1999, you were no longer his client, that you were no longer acting for him and that he was acting instead for Mr. Aidan Phelan alone.

A. I am not sure what legal procedures are or I wouldn't have any idea what legal procedures or what's the norm in that situation. All I can say to you is that he clearly understood, he clearly understood that Aidan Phelan had taken control of the loan and the property. And if I remember I am not sure is it in my documentation, but I think Aidan Phelan I don't /RS

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know did Aidan Phelan confirm to me in writing the actual position at some later stage.

Q. I'll come to that letter. You are absolutely right. There is a letter in which Mr. Phelan makes some reference to it, but for the moment I am just concerned with the solicitor's file, and that makes no reference to it.

And what I am suggesting to you is that it's fairly hard to credit that, that a solicitor wouldn't keep such a note. And I want to go further, in suggesting that if you look at this letter of the 11th January, 2000, what I'd suggest to you is that it is perfectly consistent with you continuing to be involved in this transaction as it is with your leaving the transaction.

All it says is that Catclause is no longer the purchasing vehicle. It doesn't say that "Michael Lowry is no longer my client."

A. Well, Michael Lowry is Catclause, was Catclause at that

stage. And I have no misunderstanding or doubt about it. Christopher Vaughan had no misunderstanding or doubt about it. Aidan Phelan certainly had no misunderstanding or doubt about it.

Q. So far as you were concerned at that time, you had no obligations to Woodchester; you were going to leave Woodchester behind and walk away from this?

A. No, I wasn't walking away from it. Effectively what happened was Aidan Phelan agreed

Q. Were you leaving Woodchester behind?

A. Pardon?

/RS

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Q. Were you leaving Woodchester behind?

A. Was I leaving Woodchester behind?

Q. Yes.

A. No, not on the basis that Aidan Phelan was taking over the loan and the property. So whatever responsibility was to Woodchester in this transaction, Aidan Phelan had taken responsibility for it.

Q. That's my point. You are leaving you were walking away from Woodchester. Michael Lowry was walking away from Woodchester as of this point, according to you?

A. Yes, in the sense that Aidan Phelan had agreed to take it over.

Q. But you were the client. You were the borrower up to this point. You had borrowed $\frac{1}{2}$ 420,000 sterling.

A. Catclause had.

Q. Catclause is you. Is there any doubt about that?

A. No. If we'll agree on that

Q. Is your vehicle; there's no doubt about it. It was simply a vehicle. You might have had some other company. You might have had no company. You might have decided after a short while, "Look, I won't take this in the name of Catclause." It wouldn't have made any difference at all to the bank if you had continued in the transaction under your own name, sure it wouldn't?

A. I am sure it would

Q. If you substituted your own name for Catclause, you think it would have made a difference to the bank?

A. I don't know can you do a transaction like that

Q. Mr. Lowry, what difference could it make to the bank?

/RS

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A. I am sure it does, Mr. Healy. I don't understand the obligations within the banks, or what have you. All I am saying to you is from my point of view, and speaking to you as a businessman and a layman and leaving aside the legalities of the procedures involved, all I know is that I had an arrangement with Aidan Phelan.

Subsequent to that discussion and conversation, Aidan Phelan communicated with the bank that he was taking over the loan and the property, and at that stage, as

far as I was concerned, I didn't have any responsibility to the bank.

Q. Why didn't you write to the bank and say "I am writing to you on behalf of Catclause, of which I am a director. I am writing this letter on my own behalf and on behalf of my co-director, Lorraine Lowry, and we are instructing you now we are no longer the borrowers. We do not wish to take up this loan."

A. The only communication

Q. Why didn't you write a letter like that?

A. I'll put it to you this way: There was no necessity to do it, on the basis that Aidan Phelan had already communicated it.

And you will find that there is no communication from Michael Lowry at any stage with Woodchester Bank. I never communicated with them. The only conversation that I had with Woodchester was through Michael Tunney, with a telephone call that I received from him in which I put him in contact with John Daly. Other than that, all of the dealings, all of the transaction was handled

/RS

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on behalf of Catclause by Aidan Phelan.

Q. Isn't that precisely the problem, Mr. Lowry, that although you were the borrower, there isn't a single letter from you or a letter with your address seeking the loan, confirming acceptance of the loan, or making

it absolutely clear that you are no longer the borrower but that somebody else had agreed to come in and take over? Isn't that the problem? There is no trace, apart from a document from Mr. Eastham, which must have contained your name and address at one point but no longer does.

A. What is the point you are making?

Q. That your name has been removed from any record of this transaction in Woodchester.

A. Are you actually

Q. That's the problem.

A. Are you actually saying to me that Woodchester Bank would loan 400 and whatever it was, 20,000 pounds sterling, to a company, and that they wouldn't know the basic essential of who the directors of that company were? Are you telling me that a bank that a bank

Q. That's not the question.

A. Are you telling me that a bank would do that?

Q. Mr. Lowry, if you listen to the question, you will understand better what I am trying to do. I am asking you why you didn't write to the bank to make, as you have just been trying to point out to me, the very serious point that you are no longer responsible for $\frac{1}{2}$ 420,000 sterling and that they needn't come to you looking for it.

/RS

A. And didn't.

Q. You didn't write any such letter?

A. And you will find no communication from the bank looking for $\frac{1}{2}$ 420,000 from Michael Lowry because Aidan Phelan had taken over the loan and the property, and they were well aware of that, and that's why they didn't communicate with me looking for the money.

And you will also find, if you take it to the end of the trail, I understand that that loan was settled in full by Aidan Phelan.

Q. What is absolutely clear is that as of that point in time, Catclause was being taken out of the equation, isn't that right?

A. That's correct.

Q. As the purchasing vehicle, in any case. And instead of Catclause's name being associated with the transaction, Mr. Aidan Phelan's name was now going to be associated with it, isn't that right?

A. That was a matter between Aidan Phelan and the bank at this stage.

Q. I think you mentioned a moment ago that there was correspondence between Mr. Phelan and yourself which you thought related to this aspect of the transaction, and am I right in thinking that you were referring to a letter of the 26th January, 2000?

A. I am not sure.

Q. I'll put it it's document 16, schedule 5.

A. Schedule 5?

Q. Yes.

/RS

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A. 16?

Q. Yes. Is that the one you were referring to?

A. Not particularly, but that's that's a letter,

obviously, that was sent to me.

Q. It's addressed to you at Abbey Road, Thurles. It says:

"Dear Michael,

"It is now clear you are not able to obtain a

replacement guarantor for John Daly. This places me in

an extremely embarrassing position with Mick Tunney, as

I have given my ... sorted out.

"As you know, Christopher has been instructed that

Catclause is gone, and he is holding the property in

trust for me until the loan is repaid.

"Although I am prepared to back-stock the loan, you

will have full responsibility to move the property as

soon as possible."

Now, if you just look at the date of that letter, it's

dated 26th January, 2000. Do you see that?

A. Yes.

Q. And the date of the letter we looked at a moment ago

was the 11th January, 2000, about two weeks previously?

A. Yes.

Q. And the previous letter would appear to have been

written sometime after the telephone conversations that you had with Mr. Phelan and the conversation that yourself, Mr. Phelan, and Mr. Vaughan had.

/RS

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A. Yes.

Q. Now, why does Mr. Phelan say "It is now clear that you are not able to obtain a replacement guarantor for John Daly"? Was the question of obtaining a replacement guarantor left open at the previous meetings or telephone conversations?

A. No. That it was obviously initially it was a bone of contention. I suppose you could say it is now clear, it was then clear, and it was still clear to him that I wasn't looking for a guarantor at that stage. I don't know when this letter was dictated or when it was sent or what have you, but it certainly initially, to take, as I said, the heat of the discussion I had that I had with Aidan. I would have said I probably said, "I'll try for a guarantor." But when I actually met him, I let him know that I wasn't going to get a guarantor.

Q. Do you see would you agree with me that nowhere in this letter does Mr. Phelan say "I am going to take over the loan"?

A. Well, all I can say is that whatever way I am not going to get into mincing words, but all I know is that

the factual position was that he did take over the loan, that he did take over the property, and that he did consequently repay the loan, and that the property is Aidan Phelan's. That's the factual position.

Q. He repaid the loan after the whole thing blew up and after the Tribunal had been on to him, and indeed, I think, after he gave evidence, I am not sure before he gave evidence?

/RS

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A. So?

Q. He didn't repay the loan until after the whole matter became a controversial matter?

A. But we have already criticised Catclaus for not repaying the loan on the due date, which was July. So I think there would be an expectation from the bank that it would be repaid as soon as possible, and obviously he fulfilled that obligation and repaid it as soon as he could.

Q. We'll go back to the letter, in any case. I take it from your answer that you agree with me that the letter itself doesn't say "Dear Michael, you have placed me in an extremely embarrassing position; I've going to have to take over this"; what it says is "Dear Michael, I am prepared to stand behind this, or to support it in some way from behind."

A. I'll put it to you this way: He didn't need to put

anything in writing. It was made abundantly clear to me what his feelings were on the discussion I had on the telephone and in the meeting that I had with him.

Q. Do you see where he says "As you know, Christopher has been instructed that Catclause is gone, and he is holding the property in trust for me until the loan is repaid"?

A. Yes.

Q. What does that mean?

A. I don't know. You'll have to ask Aidan.

Q. What did it mean to you?

A. What does it mean to me?

Q. Mm-hmm.

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A. The message I get from that is that Catclause is no longer the vehicle; that he is holding the property in trust I think that obviously had something to do with the I would think it has something to do with governance in terms of someone might tell me, I don't know, maybe a legal obligation that a solicitor would have in terms of the property itself as long as a loan was there. I would imagine it's some reference to that.

Q. What do the last five words mean, "until the loan is repaid"?

A. That's what I am saying. I think that would be the

explanation for it, that there would be some legal responsibility on the legals acting, I would think would the legals have made a commitment to the bank in relation to it? That's what I am just wondering. I don't know.

Q. Does it seem to suggest that he was going to hold the fort until the loan was repaid, but that he wasn't taking over the property?

A. Definitely Aidan Phelan certainly took over the loan and the property.

Q. When you got that letter, what did you understand Mr. Phelan to mean by saying "You have full responsibility to move the property as soon as possible"?

A. Well, obviously I had been dealing with it. I was familiar with the people involved with the property, and what is not what I take from that letter, my clear understanding from the discussion that I had with him was that he expected me to involve myself and take

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responsibility for moving on the property as quickly as possible, because of my previous contacts with the property and the people involved with it.

Q. And if you had succeeded in moving on the property, and made a profit, what would have happened to that profit?

A. What would have had happened to the profit? Obviously the sale of this property is with the beneficial owner

of the property and the funds accruing from that property is Aidan Phelan.

Q. And what if there had been a loss?

A. Pardon?

Q. And what if there had been a loss?

A. The loss, obviously, would be Aidan Phelan's as well.

Q. Aidan Phelan certainly didn't see it that way.

A. Well, why?

Q. He certainly took the view, if there was a loss, it would be your responsibility.

A. Pardon?

Q. He took the view that if there had been a loss, it would have been your responsibility.

A. Never discussed. There was never any question of I making up a loss. Aidan Phelan took over the loan and the property. He took over the possibility of the potential of it, and he took over the potential of a downside to it.

Q. Did you have that discussion with him?

A. Pardon?

Q. Did you have that discussion with him?

A. No, we didn't. We never had that discussion, because I mean, somebody doesn't take it over nobody is going

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to take over a property and say, "Well, if it goes well, I'll take something from it; if it doesn't, I

won't." That's the

Q. Well, wouldn't you think, in fairness to Mr. Phelan, that at some point after all, he had got you out of an enormous hole, and you owed the bank $\frac{1}{2}$ 420,000 sterling, according to your evidence he took over the loan. His evidence to the Tribunal was that if there had been a loss, you'd have been responsible for it because you had got him into that position?

A. I may have been responsible in the sense that I would have had an obligation, but there was never any question of Aidan Phelan tagging me with a loss on it. That never, never arose; it was never discussed. He might have felt that way, but there was nothing we never discussed that.

Q. What efforts did you make to move the property on?

A. I communicated on a number of occasions with various people. There was a couple of offers put on it, and ultimately, just there was a number of offers put on it. One or two offers fell through. And then a decision was taken that he would sit on the property, on the basis that the people who were acting as agents there had gone to the planners, and the potential of the property has increased and will increase further, because the local town planners have included and have actually commenced a ring link road which would link this particular record with the airport.

So I haven't had any dealings with it in recent times

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because Aidan has taken it over himself. Because that's my understanding of the current position, and as I understand it at the moment, I think Kevin Phelan is negotiating on Aidan's behalf with some potential purchasers.

Q. I think there was a discussion between yourself, Mr. Vaughan, Mr. Phelan, and Helen Malone about this transaction and the other one, the Mansfield transaction, in August of the year 2000. Is that right?

A. Yes. This is the Jurys meeting.

Q. That is Jurys, is it? Schedule 5, document 17. Do you see it?

A. Yes.

Q. These are meeting notes of a meeting between yourself, Christopher Vaughan, Aidan Phelan, and Helen Malone.

A. Yes.

Q. Isn't that right?

A. Yes.

Q. You see the date, 17th August, 2000. "Present, ML, CV, AP, HM." You remember that?

A. I do.

Q. And those people being present. And you see the two properties being discussed? Hilltop Farm, which is Mansfield, I think, and Saint Columba's Church. Do you

see that?

A. Yes.

Q. By this time, now, Saint Columba's Church, which is Cheadle, had been taken over lock, stock, and barrel by Aidan Phelan, isn't that right?

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A. That's correct.

Q. Would you look at the heading on the document. It says "UK property, ML." Do you see that?

A. Yes.

Q. Doesn't that seem to suggest that the subject matter of the meeting was the UK property of Michael Lowry?

A. Yes. In actual fact, the meeting was called at my request.

Q. Yes?

A. And that reference to "ML" would probably be because of that.

What had happened was Christopher Vaughan was to visit Ireland I don't know, I think it was shortly after I think there was a reference in it to one of those letters that you have just shown me; I think he was to come over here in February. He didn't. In the interim, I received a phone call or correspondence I think it was from the Companies Office; I think it was from the Companies Office in relation to Catclaus, because we hadn't filed returns. There was some I

don't know when it was, but there was some communication from them, and I didn't at that stage, I didn't know what to do with it.

And Christopher Vaughan I think wrote back to them. He contacted me, and I think he wrote back to whoever, the Companies Office, and said that I think you can invoke a 21-day clause, or something like that. So he got some time.

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So I said, "Look, the next time you are over, make sure that I know about it." So that meeting, I think, was arranged at his convenience in August. It took place in Jurys Hotel, and it was the agenda is, as I see it here, the Hilltop Farm is the Mansfield project, of which I have a 10 percent interest in it

Q. We'll go through it. It says:

"Hilltop Farm.

"Acquired: March 1999.

"Cost: Sterling 250,000.

"Registered owner: ML.

"Financed by: Partnership investment, AP - Aidan Phelan.

"Action: ML to hold as trustee."

Do you see that?

A. Yes.

Q. Underneath that it says:

"Saint Columba's Church.

"Acquired: December 1999.

"Cost: Sterling 445,000.

"Registered owner: Christopher Vaughan as trustee.

"Financed by: Investec.

"Loan from partnership: 44,500.

"Original loan: 420,000.

"Balance outstanding as at the 16th August, 2000:

444,000.

"Action: AP to obtain copy from ML of letter of offer from developers in relation to this site.

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Planning application to be submitted within three weeks. Christopher Vaughan to arrange to strike off Catclause. Check."

Now, do you see where it says "Financed by Investec," then it says "Loan from partnership, 44,500"; what does that mean?

A. I presume he is referring there to the well, it can only he is referring to it's 44.5, which is obviously the 44.5 deposit that was paid.

Q. But that

A. It's just a factual description

Q. But is it a loan from a partnership? I understood that was Aidan Phelan's money.

A. It is, yes.

Q. But why does it say "loan from partnership"?

A. Obviously because well, I am not going to nitpick over a word, but

Q. I regard it as a very important word, Mr. Lowry. Would you just read it again carefully. "Loan from partnership, 44,500." Now, what partnership made a loan of 44,500 to pay a deposit?

A. I am sure it refers to the loan under the partnership agreement which Aidan Phelan put funds into, and that, as you are aware

Q. What are you talking about, Mr. Lowry? What partnership agreement?

A. We have been at this for days now.

Q. I know the partnership agreement that was entered into just a moment now, please I know the

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partnership agreement that was entered into in relation to the purchase of the Mansfield property. I fully understand that.

But I was left in no doubt from your evidence yesterday that the $\frac{1}{2}$ 300,000 that went into that from Denis O'Brien's account was Aidan Phelan's money, lock, stock, and barrel; that when you went to put a deposit on the Cheadle property, you didn't have any money, but that Aidan Phelan you did have money, but you just didn't have it at your fingertips for some reason, and

Aidan Phelan gave you, not Mr. O'Brien's money, but his very own money, 44,500, and that you said that there was some arrangement whereby it was clear in Mr. Vaughan's office that that money was loaned to you by Aidan Phelan.

Now, I don't know what partnership account you are talking about, because there is none that I am aware of, from the evidence so far, from which $\frac{1}{2}$ 45,000, almost, came to you. So just clarify that for me now.

A. Well, I can clarify what I can say to you is, as I have previously stated and as the evidence before you indicates, that the monies in that account are Aidan Phelan's money, his own personal money which he put in.

Obviously what this 44 the way it's worded is that it's $\frac{1}{2}$ 44,500, and it refers to the partnership because it was originally it was originally put into that fund as Aidan Phelan's money which it still is under the partnership agreement that we had to purchase

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Mansfield.

Q. This is a document prepared, as I understand it, by Ms. Helen Malone, a person trained as in company secretarial skills, a professional person and an associate, and indeed at the moment a partner of Aidan Phelan. Now, how could she have got the wording of that wrong?

A. I don't accept that the wording of it is wrong. But I am giving you an explanation. I am saying that the partnership obviously refers to the partnership agreement that we had, and I have explained that the €44,500 that came from that was Aidan Phelan's fund. And it still is Aidan Phelan's fund. And if you check, you will find that that particular account is in the client name of Aidan Phelan.

Q. I'll just go back a step.

In August of 2000, this was a meeting held to discuss two properties, one of which was jointly owned by you and Aidan Phelan, according to your evidence, although you were the registered owner, you held it as a trustee subject to terms of a partnership agreement, a joint venture. You had also entered into another agreement, nothing to do with your joint venture at all. In fact Mr. Phelan refused to get involved in it. You borrowed a deposit from him. You got a loan organised by him. You pulled out of the loan because the guarantor didn't live up to his promises, and Mr. Phelan took over the loan, the property, the whole lot.

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Now, there is no document recording it, but am I right that when Mr. Phelan took over the loan and took over the property, you no longer owed him €44,500 for the deposit. Am I right in that?

A. Exactly.

Q. Not only was that money his to begin with, it now became his money completely, and you had effectively repaid him?

A. Correct.

Q. Well, then, why does it say "Loan from partnership of £44,500" on the 17th August 2000? Why does it say that?

A. Because all it is is a demonstration of a a practical demonstration of how the property stood and how it was funded. It is simply an explanatory note, and if you look at it

Q. It doesn't explain either the historical events or the then position. It certainly doesn't explain the historical events, because the loan came from Aidan Phelan.

A. There was no necessity. Everybody understood the exact position. Christopher Vaughan understood it. Aidan Phelan understood it. I understood it. And I still understand it. And they understand it.

Q. Well, can we agree on this, then: It's wrongly worded?

A. Pardon?

Q. It's wrongly worded?

A. I am not going to criticise Helen Malone's skills, secretarial skills

Q. The Sole Member has to make a decision based on the

/RS

evidence and this document. Is that document wrongly worded, or not? Was there a loan from the partnership, or was there not?

A. There was a loan from Aidan Phelan's client account, which was his fund.

Q. Yes, so there was no loan from a partnership fund?

A. What I am saying to you is I believe that that reference there is to the partnership in terms of the original partnership, because that explains how the forty-four and a half came about.

Q. Well, if there is a reference to the original partnership in August of 2000, after the partnership had ceased, and never indeed had anything to do with this transaction, is there something to be said therefore for the proposition that I canvassed with you a moment ago, that the heading on this document, where it refers to Michael Lowry's property in the UK, could be referring to your property and not Mr. Aidan Phelan's property?

A. You are incorrect when you say when you refer to the partnership in the manner you have done. The fact is the partnership was in place, was in place at that meeting. The reason I was at that meeting is I was in partnership with Aidan Phelan, and the fact

Q. The partnership was in place in relation to Hilltop Farm?

A. The fact is that the partnership arrangement of is still in place, and that there is a legally binding agreement between Aidan Phelan and myself which clearly demonstrates that I own 10 percent of the Hilltop Farm,

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the Mansfield site, and he owns 90 percent of it.

Q. Yes. Couldn't be clearer.

A. And the reason I can only surmise, but the reason "ML" is on the top of it is I had requested the meeting to take place.

Q. And did "ML" have anything whatsoever to do with Saint Columba's Church as of the 17th August, 2000 by way of ownership now, by way of ownership?

A. By way of ownership, as I have said already, and as the bank would be aware and as Aidan Phelan was aware, as everyone was aware, I no longer had any beneficial interest in the Saint Columba's Church property from mid-January on, or January on, sometime in January, on.

And I still obviously have no beneficial interest whatsoever in that particular property. Unfortunately, I have to say.

Q. When Mr. O'Connor was giving evidence on day 140, Mr. Lowry, he made reference to a meeting that he had in the Regency Airport Hotel, I think. There may have been two meetings. He referred to a meeting that he had in the Regency Airport Hotel with you, Mr. Kevin

Phelan, Mr. Christopher Vaughan, and your solicitors,

and Mr. Denis O'Connor.

CHAIRMAN: Was Mr. Aidan Phelan there?

Q. MR. HEALY: Mr. Aidan Phelan, Mr. Christopher Vaughan,

Ms. Helen Malone, you, Mr. Denis O'Connor, your

solicitors. Mr. Kevin Phelan was present at one of the

meetings, either in another room or he was present at

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the meeting?

A. There was two meetings.

Q. Yes?

A. The first meeting that took place took place, I think,

from memory, it was the 15th March. That was, to use

your own expression, when the bubble went up, or

whatever went up. And that meeting was as a result of

a short telephone conversation that I had with Aidan

which alerted me to the fact that there was an internal

difficulty in the bank, and that this matter had been

referred to the Tribunal, and I think then to the

Central Bank, or whatever the sequence was.

And Aidan said, "If you are in town" I actually

happened to be in town, so I went to his office, and he

explained to me what had been communicated to him. And

there is no point in I repeating it; I have already

given you the gist of what happened at that. And

Q. Well, Mr. O'Connor wasn't at that meeting, was he?

A. No.

Q. He was at the meeting in the Regency Hotel?

A. The reference, I think, to Kevin Phelan would arise from that because Kevin Phelan was in the office when I called. He wasn't at a meeting, but he was in the office when I called. I think that's where the reference comes in for him.

Q. I see. But the meeting that took place in the Regency Airport Hotel, Mr. Phelan was at that meeting, Mr. Kevin Phelan was at that meeting, was he?

A. No.

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Q. I see.

A. Not to my recollection.

Q. He was present in the hotel while that meeting was taking place?

A. I had no communication with him if he was.

Q. I see. Mr. O'Connor was asked, at page 36, question 160 do you have that?

A. Yeah.

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

"Answer: Well, until that day I really was having difficulty understanding anything. So that meeting was about getting me I suppose, in fairness, the meeting was about getting me getting an understanding from

Michael Lowry's perspective of what had gone on.

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

"Answer: With Woodchester Bank, I believe the only references if you could just picture it, there has been a lot of meetings between then and now, and listened to a lot of evidence here, my recollection would be that the items for discussion as regards Woodchester Bank would be, certainly he had told me about meeting Michael Tunney in the Radisson now, that is now between the 16th and the 27th that Woodchester had lent the money to Catclaus. I was told about Catclaus at this stage. In fact, I think I did a search that week after I came back on Catclaus a Companies Office search myself which I sent it

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to the Tribunal

"Question: Could I just stop you

"Answer: that would be the limit of the knowledge, I think, on Woodchester, I think, at that

"Question: so I just want to be clear about this.

Before this meeting from what Mr. Lowry told you he had dealings with Woodchester in connection with the purchase of property, is that right?

"Answer: Correct.

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

"Answer: He must have made that connection, because why would he tell me in the context of what I considered like, at this particular moment in time, the focus, from my perspective, would have been preparing a submission to the Tribunal, including a statement from Michael Lowry, so that would have been my focus. I wouldn't be interested in side issues.

So, yes, it must have been told to me in that context, that it was related in way or another to the Catclause let's call it.

"Question: Up to that time had you ever heard the name 'Michael Tunney'?

"Answer: No, sorry, no."

Now, if Mr. O'Connor's recollection is correct, he seems to link your dealings with Woodchester, and specifically the Catclause dealings with Woodchester,

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which must mean the purchase of this property, to the meeting you had with Mr. Tunney in the Radisson Hotel.

Now, if he is correct in that recollection, that that is the impression he got from you, wouldn't that suggest that the meeting in August or September in the

Radisson Hotel was to do with the funding of the

Cheadle transaction?

A. Absolutely not. But I can understand how Denis would

have come to that understanding. Because in the course

of I attempting to explain to him in the course of I

attempting to explain to him how the transaction had

developed and how this matter had come before the

Central Bank, he asked me, who was I dealing with?

Obviously he knows Woodchester, and he said, who was I

dealing with in Woodchester? And I said we were

dealing with a man called Tunney. And he asked me,

when did I meet him and where did I meet him? I told

him the only meeting I ever had with Tunney was in the

Radisson Hotel.

So that would be the connection he'd have made. As I

have explained already, there was no discussion,

specific discussion whatsoever in relation to any

property. The only discussion that I had in the

Radisson Hotel with Mr. Tunney in relation to property

was of a general nature.

Q. What is clear is that as of that moment, you were

negotiating to purchase a property in Cheadle, and you

did in fact sign a contract to purchase it at a time

that must have been soon after that meeting in early

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September of 1999, isn't that right?

A. Which meeting are we referring to now?

Q. The meeting you had with Mr. Tunney.

A. In the Radisson Hotel?

Q. Yes.

A. Yes.

Q. And between signing that contract and closing it with a loan from Mr. Tunney, you hadn't been to any other bank with a concrete proposal to fund the project, isn't that right?

A. No. And the reason to that, could I explain to you, to assist you: As you will know from the evidence that I have already given, and from the evidence given by Aidan Phelan, I had not even sat down with Aidan Phelan and gone through the specifics of the Cheadle project before that meeting in the Radisson. If I recall yesterday, I told you in evidence that when Aidan Phelan rang me to tell me that I should meet Michael Tunney, I hadn't even discussed with him I said, "Will I mention the property that we have in the UK?" After that meeting, sometime after that meeting, early September, as far as I was concerned, at that meeting, Aidan and I were in the partnership, and we were going to fund that particular deal. So that's the reason it wasn't discussed with anybody specifically up and until I discussed it with Aidan.

My discussion with Aidan Phelan was in the first week in September in relation to Cheadle. In April or May I

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told him that I was chasing a property in accordance with our understanding of progressing to a further property, and as you will see from all of the evidence to date, it took months and months and months, and it wasn't until September that the middle of September that contracts were exchanged. I didn't have any specific meeting with Aidan Phelan until the first week in September. The meeting with Mr. Tunney took place in sometime around mid-August.

Q. From the time that you resigned as a minister, from some time shortly after that, you have had a series of fairly constant dealings with Mr. Aidan Phelan, isn't that right?

A. That's correct.

Q. One inconsequential, concerning a phone, in '96/'97.

Then professional services in '97. Then the dealings you had with him in connection with Mansfield, the dealings you had with him in connection with Cheadle.

And during all that time, you developed a close relationship with him, and a friendship as well. And in fact, if you take your evidence, he was the person who came in to fund both the Cheadle and the Mansfield transactions, very close to the 11th hour in each case, isn't that right? Wouldn't that be right?

A. In which?

Q. He came in to fund both the Cheadle and Mansfield transactions, at the 11th hour in each case, on your evidence?

A. I wouldn't say the 11th hour. I wouldn't be as dramatic as that. Any funding that Mr. Phelan did in /RS

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relation to my partnership or with me was legitimate, proper, and done on a commercial basis.

Q. Your dealings with him since 1997, as I say, have spanned by now a period of almost nearly five years, quite intensive dealings over a period of time, plus a friendship, and none of those dealings have been brought to the attention of your own adviser or firm of accountants, Mr. O'Connor or any of his partners.

Isn't that right?

A. Any transaction that

Q. Isn't that right, first, is that right

MR. O'DONNELL: It's not right, Sir. It's not right.

The dealings over the five years, as Mr. Healy knows, in relation to as he said, the inconsequential relationship with the mobile phone and the introduction to Masser Hammond were both done through Mr. O'Connor.

I think the evidence in as much as this question is directed, should be to the English transactions.

MR. HEALY: I accept that is absolutely right.

Q. MR. HEALY: During that time, you had very close

business dealings with Mr. Phelan. You are in fact a partner of his, in a partnership which you tell me is extant up to today. And during that time, you had two inconsequential dealings with Mr. Phelan, one involving professional services in connection with the strategic alliance and one involving a telephone, both of which were brought to the attention of Mr. O'Connor. But

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none of the others, including your active partnership, was brought to his attention, isn't that right?

A. Yes. And for a good reason.

All matters that had any tax implication for me would be brought not to Mr. O'Connor, would be brought to the taxation manager within his partnership.

Q. I understand that. You answered a question for me earlier in connection with Mr. O'Brien, just to make it absolutely clear that Mr. O'Brien I think I put it to you using every possible word I could use to suggest a connection, and you agreed you had no connection.

Have you had any dealings with Mr. O'Brien, meetings social or businesswise?

A. Yes, I have had no business dealings with Mr.

O'Brien I have had no business dealings with Mr.

O'Brien. I have had social contact with Mr. O'Brien.

We are I would consider how would I put it if

you want to know the extent of the social contact, I

would have met Mr. O'Brien on a number of occasions over the last number of years. For instance, at GAA games. Mr. O'Brien rang me at one stage and asked me to know could I facilitate some friends of him to visit Thurles to visit a GAA match. I met him there; I met him after the match. We had some drinks together in the local pavilion.

I think at one stage I received through his secretary, at my request, tickets for a soccer match. I had lunch with Mr. O'Brien at one stage in the Berkeley Court

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Hotel. I met Mr. O'Brien in the company of many others in the pavilion at the Punchestown Race Course. I went, in the company of my own friends, to a pub after Punchestown one evening, and Mr. O'Brien was in the company of other friends, and naturally enough we said hello.

There are other so I can't I don't recall them all, but yes, of course you know

Q. Would I be right in thinking that you would have either bumped into him or had contact with him or otherwise socially reasonably regularly over the past three or four years since you have resigned? Would that be right?

A. I would have met him, as I said, in those circumstances and in those surroundings, yes.

Q. Would you have conversations with him?

A. I'd have conversations, probably, usually how would I put it light-hearted conversations, what have you.

No detailed conversations, no.

Q. Would you have any conversations of the kind, "How are you getting on? What are you doing now? How's your business?" That type of conversation?

A. Let's say, as a businessman, obviously, I'd have to say any time I met Mr. O'Brien, he would genuinely inquire as to my welfare and my well-being and how I was getting on. Obviously very conscious of the fact of the amount of pressure that I was under, and he graciously acknowledged that on a number of occasions and regretted the fact that it had happened.

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Q. Did you ever tell him in the course of any of your conversations that you were in fact in business with his one of his closest associates, Mr. Aidan Phelan?

A. I never had any specific discussion about business matters, what have you. He knew that I was in contact with Aidan.

Q. How did you know that how do you know he knew that?

A. Because on let's put it this way: It's a small world. Dublin is very small as well, the business community is very small as well. And I am sure Aidan might have said to him from time to time that he had

been in contact with me, because yes, once or twice he did refer to something that Aidan or I might have done.

We had no business discussion of any description.

Q. Like what?

A. Like go on the tear.

Q. But when you say that when he might have referred to things you had done, you mean social things, then?

A. Yes.

Q. Not business matters?

A. I never had any business

Q. So if Mr. Phelan, on your assumption, had been speaking to Mr. O'Brien about his contacts with you, would I be right in thinking that the assumption that you made is that those conversations he had with Mr. O'Brien were about social matters; he had gone out to lunch or dinner with you or something?

A. I can't speak of what either of them said to each other. I am sure they had many conversations. Like many people, I presume I would have come up in

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conversation.

Q. That's the point that's puzzling me about a lot of conversations. Did you assume, in any case, from your discussions with Mr. O'Brien, that Mr. Phelan had or had not discussed your business relationship?

A. I can't say whether he did or not. You'll have to put

that to Mr. Phelan.

Q. I am just asking you, did you assume? You said you assumed

A. I never got any indication that he knew anything about our business dealings. He certainly knew that we were in regular contact and that we were friendly. He would know that.

Q. Thanks, Mr. Lowry.

CHAIRMAN: Well, the situation now, Mr. Lowry, is that there are a number of other legal practitioners who I think will have some questions for you. I am very anxious, both in ease of you yourself, Mr. Lowry, and also so that we may resume the ongoing business of the Tribunal as soon as possible, I'd be very anxious, if we can fairly do so, that we conclude this evening.

I am not going to take anyone unfairly short, but as in any event it's going to be quite a long shift for yourself and for our stenographers, I think what we'll now do is take a ten-minute break to give people an opportunity to refresh themselves, and then, whilst I am not going to deprive people of an opportunity of putting matters they feel to be important, we'll do the

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level best we can to see if Mr. Lowry's present phase of evidence can then be concluded. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND

RESUMED AS FOLLOWS:

CHAIRMAN: Well, I think the appropriate sequence for remaining questions would be first Mr. Gleeson, on behalf of Mr. Aidan Phelan; then Mr. Shipsey, on behalf of Mr. Michael Tunney; and then Mr. O'Donnell, as Mr. Lowry's own counsel.

Mr. Gleeson?

MR. GLEESON: I have no questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: My name is Bill Shipsey, and I appear for Michael Tunney. And I have a few questions for you.

Mr. Lowry, as we all know, this is not the first Tribunal you have had to give evidence to, and this is not the first time that you have had to give evidence to this particular Tribunal, isn't that correct?

A. That's correct.

Q. And I take it that over the course of your involvement in this Tribunal and in the previous Tribunal, you have had to make statements to the Tribunal, to the various tribunals, in response to requests from those

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tribunals?

A. That's correct.

Q. And I take it that in preparing the statements that you have made, both to this Tribunal and presumably the McCracken Tribunal, you have taken great care and

consideration in preparing those statements to ensure that the information that you were providing was both accurate and complete?

A. Obviously.

Q. And do you recall on the I think it was the 11th May of 2001, and that you were asked by the Tribunal in a letter from a Mr. Davis to your solicitors to make a statement in relation to certain matters that had come into the public domain for the first time, I think, in March of 2001?

A. What did that letter refer to?

Q. It was a letter asking you to make a statement in relation to a number of matters including a what is referred to as a joint venture and purchase of properties at Mansfield and Cheadle. Do you remember that, do you?

A. I know the letter, yes.

Q. And would it be true to say that in preparing that statement you took the same care that you had taken in preparing other statements that you had prepared for the Tribunal?

A. Yes.

Q. And if I can just ask for the third paragraph of that letter of the 11th May, 2001, to your solicitors to be put up on the screen, if that can be done, but I'll

/RS

read it out anyway, the paragraph that is in that letter.

And what your solicitors are asked in that letter is:

"Your client should set out the factual material regarding these matters comprised in your other letter of the 24th April last addressed to the Tribunal, and in addition, your client should outline all of his dealings with GE Capital Woodchester and Mr. Michael Tunney in connection with the loan advanced to Catclause and in relation to any other matters."

Do you recall that question being put to you?

A. I do. Together with other questions in the same letter.

Q. Yes, there were I think a large number of questions, but insofar as this paragraph 3 is concerned, it was quite short relative to the others and quite specific.

And do you remember the response you made to that request for a request to outline all of your dealings with GE Capital Woodchester and Mr. Michael Tunney in connection with the loan advanced to Catclause and in relation to any other matters?

A. Yes.

Q. And do you recall whether in that letter you made reference to speaking with Mr. Tunney in or about November or December, at around the time that the loan was being negotiated?

A. I wouldn't have gone into specifics such as that.

Q. And do you recall what you did say in your statement?

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You don't have a specific recollection of what you said in your statement in response?

A. I don't. In all of these the questions, particularly in matters where there is a lot of detail involved, our practice has been to give a general overview and then to answer any specific questions.

Q. But you understood the question at least to ask you for you to outline all your dealings with GE Capital Woodchester and Mr. Michael Tunney; you weren't under any misapprehension in relation to that question and what it meant?

A. No.

Q. And if I could just ask to have put up your response to this particular question, which is contained in your statement. I am not sure the date of your statement, because I only have extracts, but it starts: "This statement is made by me, Michael Lowry, in response to a request by John Davis, Solicitor to the Tribunal, as set out in his letter of May 11th, 2001, to my solicitors, Kelly Noone & Company Solicitors."

And then there are a number of deletions in mine. It comes to paragraph 3, which deals with the joint venture agreement purchase of the properties at Mansfield and Cheadle. And on the last paragraph of

that letter, if I can just go to the last paragraph
sorry, of that particular statement, the last paragraph
of paragraph 3, I think is on the next page.

It reads: "I recall that I had one meeting with

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Michael Tunney, who was an executive with GE Capital
Woodchester. It is my recollection that this meeting
took place in a hotel in Dublin, and we had a general
discussion in relation, I assume, to my company and
personal finances."

That's the response you gave to the request for
information of all your dealings with Michael Tunney,
isn't that correct?

A. That's correct.

Q. If your evidence is now to be believed in relation to
the telephone conversation you say you had sometime in
December of that year, that statement is either
incomplete or inaccurate, that is, the statement you
made in response to the letter, isn't that correct?

A. As I stated already, when I'd receive a query, we would
give a general broad outline. If I was to refer in all
of the correspondence I have received from the
Tribunal, if I was to document and to list every
contact and telephone call that I had in relation to
every event, I'd certainly I'd accumulate a lot of
paper.

Q. And your evidence to this Tribunal is that your reference in the last paragraph to your recollection of one meeting with Mr. Michael Tunney was to give the Tribunal the full picture in relation to your sorry, not to give the full picture but just to give an outline of the type of meeting that you had with him.

Is that what you are saying?

A. Correct.

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Q. And I take it you'd agree with me that on reflection, at least, it would have been important for you to make reference to contact between you and Mr. Tunney at around the time of December of that year?

A. Yes, I accept that.

Q. And it's not something that struck you as or clearly didn't strike you as relevant or significant at the time. Would that be correct?

A. You'd be correct in that.

Q. And can we just explore that somewhat further, Mr. Lowry. Because you are aware that Mr. Tunney has made a statement and has also given to this Tribunal of having had no knowledge or awareness of your involvement until almost, if not two years, certainly fifteen or sixteen months after the particular transaction. You are aware of that?

A. Yes.

Q. And insofar as Mr. Phelan's evidence is concerned, you, I take it, either heard or read the transcript of Mr. Phelan's evidence in relation to his discussions with Mr. Tunney?

A. Yes, I would have heard it subsequently, yes.

Q. And I am correct, am I not, in saying that other than you saying that you had a telephone conversation with Mr. Tunney sometime in December of that year, there is no other evidence of that conversation having taken place?

A. Which conversation?

Q. Between you and Mr. Tunney.

A. Yeah, the conversation that I had with Mr. Tunney was a /RS

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very simple call that was taken by me to access information that he required. And I put him directly in contact with Mr. John Daly.

Q. And do you recall where you were when this telephone conversation took place?

A. My recollection is that I was in my office.

Q. And do you know what date it was?

A. I have no idea of the date.

Q. You see, as I understood and understand your evidence, you think that the application by Mr. Phelan to Woodchester Bank was made for the first time sometime in around November, is that correct?

A. I am not I couldn't I am not aware of the detail of the either the approach or the detail of Mr. Phelan's contact with Mr. Tunney. I am not privy to that.

Q. But if I understood your evidence correctly, you were dating it sometime around late November or early December, or am I incorrect in that?

A. It would be it was in around November, yes.

Q. You see, from the documentary evidence that we have in the form of documents coming to the bank and we have Mr. Phelan's confirmation of this, of documents having been sent to the bank on the 17th December

A. Yes.

Q. that suggests that the time at which the bank was at least receiving documentary evidence in relation to this loan application was a lot later than you suggest.

A. No. My understanding is that the documentation which is required by the bank, if my recollection is right,

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that documentation was sought and processed and conveyed to the bank between early December to the middle of December.

Q. But if we can believe the fax banner heading on the documentation as it arrives in the bank, the date is the 17th December.

A. Okay.

Q. And you'd accept that that is in all probability the date upon which it arrives in the bank?

A. I have no reason to dispute that.

Q. And you are also aware both from not only from Mr. Tunney's evidence but Mr. Phelan's evidence that the application for a loan on behalf of Catclause was done in somewhat of a rush. You have heard the evidence of not only Mr. Tunney, I assume, but also the other bank officials, that this was processed in somewhat of a hurry?

A. I am that's their evidence. I don't know if that's factual or not, but I have no reason to doubt it.

Q. And it is of course the case that you had had no prior banking dealings with Woodchester Bank at this time?

A. No. I never had an account in Woodchester other than through my business to do some leasing agreements with them.

Q. And that wouldn't have been with Mr. Tunney or anyone on the banking side?

A. No.

Q. The commercial banking side?

A. No, I never had any dealings.

Q. And on your evidence and Mr. Tunney's evidence, apart

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from this telephone conversation you say you received in December, you had one fairly informal meeting with

him which you place at around August of that year in

the Radisson Hotel?

A. That's correct.

Q. But you knew that Mr. Phelan had had considerable dealings with the bank, and you knew he was a customer of the bank?

A. Mr. Phelan, yes.

Q. You had made some approaches to your own building society, I think, in Cork, the Irish Permanent, looking for loan facilities or suggesting that you needed loan facilities; but if I understood it correctly, you weren't very specific initially as to how much you needed, or in fact what you needed it for?

A. Well, I knew what I needed it for in terms of it was a combination of things, but I didn't have any excessive discussion in relation to the actual property that you are referring to.

Q. You didn't tell your bank or your lending institution that you wanted 400,000 sterling for a property in Manchester?

A. No.

Q. And that was a bank with which you had a relationship?

A. That was a bank at which I had a mortgage with, yes.

Q. And a relationship over a number of years?

A. Yes.

Q. And that was a bank that had an awareness of you and your property, because they held a property mortgage

over your property?

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A. On my home property, yes.

Q. And as I understand it, one of the difficulties, when there was some reference to loan facilities being made available to you in a non-specific amount for property in England, that there was not an appetite at bank level to lend you money secured on your Irish property for commercial property in England. Would that be correct?

A. I think it was the case that for whatever technical reasons, that it's not possible to offset one to the other. That was the reason I was given. As I recall it, the executive from that bank stated that they were prepared to give me money, but I could only access that on the basis of offsetting my home property against the property in England; and for some technical reason, they weren't compatible.

Q. And the executive of that bank that's the building society you are talking about, Irish Permanent?

A. Yes, yes.

Q. But I take it you're familiar enough with banks and with bankers to know that they place a considerable degree of reliance upon knowledge of customer and on relationship?

A. I would appreciate that, yes.

Q. And if we just, for the moment and I know you don't accept this; if we assume for the moment that Mr. Tunney is correct and you didn't have a telephone conversation with him, and he didn't know of your involvement in Catclause and I know you don't accept that, but if you just bear with me for a moment and /RS

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if you accept it for a moment, in a hypothetical sense, would you agree with me that it's more likely that a lending institution would be more likely to lend £400,000 that is, an Irish lending institution would be more likely to lend £400,000 sterling to a customer well known to them, in connection with a property transaction in England, than to a customer or somebody who was not yet a customer, but to a potential customer of that bank?

A. That's probably true, but the reality is he did make the phone call, and the reality is he did know I was involved in Catclause.

Q. And if your evidence is correct, therefore Mr. Tunney was prepared or happy to lend to a corporate vehicle in the full knowledge that you were associated with it, and with which their known customer, a trusted and respected customer, Aidan Phelan, did not have an involvement?

A. I didn't realise, until this Tribunal commenced

evidence on this phase, that Mr. Tunney was claiming that he didn't know of my involvement in the property transaction. That was completely new to me.

Q. But if he is correct and I have explained to you that I realise that you don't accept this, but if he is correct in that, you have agreed with me that it's more likely they would have lent to Mr. Phelan through his corporate vehicle than to you?

A. To?

Q. That they would have lent or would have been prepared to lend to Mr. Phelan, who was known to them, than they

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would have been to you, who was not known?

A. Well, I think in the commercial world, there is such a thing as reference, and people who are known to the bank make introductions; they give recommendations.

And based on those recommendations, bank officials can make decisions. And that's what happened in this case.

Q. What evidence are you aware of of Mr. Phelan having given any reference on your behalf?

A. On my behalf?

Q. Yes.

A. Because Mr. Phelan communicated directly with me that he would contact the bank where he had a longstanding relationship with them. And obviously he was vouching for me, and that's what caused the difficulty for me

afterwards, when I had difficulty with the loan, because that was a source and a cause of embarrassment to Mr. Phelan, who had such a good and longstanding arrangement with the bank.

Q. And is it your evidence that Mr. Phelan did give a reference to Woodchester Bank on your behalf?

A. I would think that in the normal course, he certainly would.

Q. Well, now, I am not really concerned with what he would have. Are you aware that he did give a reference?

A. I can't say whether he did or not, but I am sure he would have vouched for me as an individual if he had been asked.

Q. And that reference, would it have been, do you think, in writing, or just orally?

A. I'd imagine orally, on the basis that he had a working /RS

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relationship with them.

Q. And is there anything that you have seen in the evidence given by Mr. Phelan to suggest that he gave such a reference to the bank?

A. I have no indication one way or the other; I don't know. I have never I have never pursued that.

Q. Well, I take it you have studied or had studied for you the evidence given by Mr. Phelan?

A. I have, in general terms, yes.

Q. And have you ever seen any suggestion in the evidence given by Mr. Phelan that he gave a reference to Woodchester Bank orally on your behalf?

A. On behalf of me or Catclaus?

Q. On behalf of you.

A. I am not privy to the discussions that took place between the bank and Mr. Phelan or Mr. Tunney and Mr. Phelan. I am not privy to the detail of that.

Q. And you are surmising that it's something that he would have done?

A. I think it's reasonable to surmise that it could happen, yes.

Q. Now, your name being mentioned in connection with Denis O'Brien's name was something that gave rise to this particular module of the Tribunal. Isn't that correct?

A. Yes. At the yes, out of from the bank, yes.

Q. In or about March of 2001?

A. I was made aware of it in March; 15th, I think it was.

Q. And would I be overstating matters if, insofar as the bank was concerned, the discovery by at least certain persons in the bank of your name being mentioned in the

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same breath as Denis O'Brien caused an explosive reaction?

A. Well, I am surprised that it left him breathless, but what can I say? The bank officials themselves are best

positioned to actually indicate to you what exactly

transpired and how it came about.

Q. But certainly insofar as this the bank was concerned, in or around March of 2001, when it was discovered that you were a director and your daughter was a director of Catclause Limited, it caused a very strong reaction in the bank?

A. What date was that?

Q. I think it was on about the 3rd March of 2001.

A. The 3rd March, 2001?

Q. I may be wrong on the date, but in or about March

A. About that time

Q. You are aware of that?

A. I am aware of that. And when you make me aware of that, obviously my reaction was why, in my understanding of any bank, is that they giving a loan to the company, the first fundamental exercise would be a fundamental elementary exercise would be to check who in fact is the company and who are the directors of the company. And that was available to the bank. It was placed in the Companies Office on the 1th June, I think it was, a year earlier.

Q. They certainly could have ascertained that, but they did have a document signed on behalf of Catclause, which was not signed, which was not signed by the actual directors of Catclause, isn't that correct?

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A. Yes, and my understanding from the evidence already given, that that was by agreement between Aidan Phelan and the bank official with which he dealt with, Mr. Tunney.

Q. Well, there is nothing on the document to indicate that he was signing it on behalf of the actual directors, isn't that correct?

A. You are referring now to the letter of my head is getting fuzzy the letter of what you do you call it

Q. The letter of offer

A. Yes, the letter of offer. That letter of offer was clearly made out to Catclause, and Catclause is Michael Lowry. Any cursory look at the company directorship will see that it was Michael Lowry.

Q. Well, the cursory look you are talking about is not at that document itself, because that's signed by Mr. Phelan and Ms. Malone, isn't that correct?

A. Yes, but Catclause is Michael Lowry.

Q. What you mean is if they had gone to the trouble of conducting a search in England, in the Companies registration Office, they would have found that it was Michael and Lorraine Lowry?

A. I am not an expert on this, but I am told within a matter of minutes you can access that type of information.

Q. But they did have a document which was signed, and you know it was signed by Mr. Phelan and by Ms. Malone?

A. Yes, because I received a phone call from Mr. Aidan Phelan seeking interim authority to do it, which I did.

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I asked him, would that suffice with the bank? And he told me that he had already discussed it with Mr. Tunney and that they had between them agreed on how they'd process it.

Q. And you would agree that there is nothing on the document to indicate that Mr. Phelan or Ms. Malone were signing in a representative capacity?

A. The document itself, but obviously the conversation had taken place in advance. In other words, it was going into the bank on the understanding that it was pre-agreed, both with me and with the bank.

Q. Now, you are aware, as I think you have indicated a few moments ago, that in March of 2001, when your name was mentioned in the same breath as Mr. O'Brien's in connection with this transaction, or at least associated with this transaction, that that caused a very strong reaction in the bank. You are aware of that factually. Whether it was justified or not is another matter, Mr. Lowry. But you are aware that it did cause that reaction?

A. It certainly caused that reaction, and I certainly

would agree with you that it wasn't justified.

Q. But you are around long enough to know that any mentioning of your name in the same breath as Denis O'Brien's in connection with any transaction, be it from the large to the very trivial and I am thinking in terms of the mobile phone has caused and does cause reaction, isn't that correct?

A. Yes.

Q. It's something you have to live with, Mr. Lowry, isn't /RS

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that correct?

A. Yes, I would have to say, now that you have raised it, reactions which are based on innuendo, speculation, conjecture, such as your bank had or Investec had.

Q. And the reaction to your name being mentioned in the same breath as Mr. O'Brien in March of 2001 did not arise as a result of thinking that happened in the days or weeks prior to March of 2001, isn't that correct?

A. My understanding is that in February, this matter was discussed when this became an issue, I subsequently found out that this matter and in evidence to this Tribunal, it became apparent that this reference to Denis O'Brien became the subject matter of a discussion between executives of the bank and Aidan Phelan on two occasions, and that Mr. Aidan Phelan had left had left had been given the clear and distinct

impression that the matter had been clarified to the satisfaction of the bank. And he was asked to put a letter into the bank at their request and on their instructions. So it was even a surprise to Mr. Phelan that the bank should persist with the mistaken view that Denis O'Brien had any connection with Michael Lowry in regard to this transaction.

Q. I think you have misunderstood my question, Mr. Lowry. My question, and what I was trying to ascertain from you, is that reaction to your name being mentioned in connection with anything to do with Denis O'Brien is a reaction that occurs and has been occurring, not since March of 2001, but going back for many months, if not years, prior to that?

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A. Unfortunately I have to accept that, yes.

Q. And that's what you have had to live with at least, I would have thought, since sometime in 1997 or 1998, would that be correct?

A. Back to 1995.

Q. And therefore, if in December of 1999, when this application was being made for loan facilities from Woodchester Bank, would you agree with me that it would be, to put it very mildly, unlikely that bank officials would be mentioning your name and Denis O'Brien's name in connection with that transaction?

A. That when?

Q. In December of 1999, that it would be unlikely that the bank would be involving itself in a transaction in which your name and Denis O'Brien's name was being mentioned?

A. It would be impossible, because there was no connection and is no connection.

Q. I appreciate that point. My point is, is it not unlikely, because bank officials were bank officials in Ireland, and they were, in December of 1999, aware of the effect of linking your name with Mr. O'Brien's name, and as aware of that as they were in March of 2001. Isn't that correct?

A. Yes, but I would also say that I am sure that the bank officials within the bank here in Ireland would also, from what I have heard and the evidence that has been subsequently given, would also be very conscious of the fact that if you dropped Mr. Denis O'Brien's name within the banking institution, the one that I am

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referring to, that it might, how would you put it, it might satisfy people within that institution. It depends on the context in which the name was dropped.

Q. Yes, I can readily understand that, Mr. Lowry, in connection with the loan application being proffered on behalf of Aidan Phelan. But you are not seriously

suggesting that Denis O'Brien's name would be dropped by a bank official to procure a loan for Michael Lowry?

A. No, what I am saying to you is that there is just from my knowledge of it, you know, there was obviously a lot happening within that institution at the time.

Denis O'Brien, I understand now, was also a very big client of the bank. And my understanding is that at that particular time, there was due diligence or there was definitely procedural administrative work going ahead, and that there was a takeover by Investec of the Irish operation; and I am just in that context, I am wondering, had it anything to do with it? I am not suggesting anything or saying anything other than that.

Q. But again, I take it, you'd agree with me that Irish bank officials, in December of 1999, would not be likely to wish to connect your name and Denis O'Brien's name in connection with the same transaction, as a general proposition?

A. I don't know. I mean, all I can say is that I have no connection or had no connection. As to what their state of mind is in relation to it, I don't know. All I know is that an application was made on my behalf through a company which I was registered as a director with, which was Catclause, and the bank offered a loan /RS

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facility based on the information that they had

received, in the full knowledge that the loan was for Catclause and in the full knowledge that Michael Lowry was a director of Catclause.

Q. You see, I can understand, if you are correct, that it is conceivable, although I suggest unlikely, that they would provide a loan to Catclause knowing that it was Michael Lowry. But my point is to you that they would not, and it would be inconceivable for any banker to go further and to say, in effect, "This is a loan for Michael Lowry's company, and Denis O'Brien has a connection with it." That would be inconceivable, and to suggest that would be, I would suggest to you, Mr. Lowry, ludicrous.

A. I can't account for the actions or the motivation of people who I don't know or have never met. I just don't know.

CHAIRMAN: I think it's a point that's been pretty well aired by a number of people, Mr. Shipsey. I am certainly not unaware of it.

MR. SHIPSEY: May it please Your Lordship.

Q. MR. SHIPSEY: Can I just, then, in relation to the documents which we for our part say were faxed to the bank on the 17th December, you are aware that a bundle of documents were faxed by Mr. Phelan to Mr. Tunney in the bank?

A. I understand that, yes.

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Q. And one was a letter from a Mr. Eastham, the managing director of I think a company called ECL. And that's a letter of the 3rd December I think it's of 1999, but it could be 1998 and I think it is accepted by you that the original of that letter had your name between the date of the 3rd December and the lines "In re development site"; isn't that correct?

A. I think Mr. Healy if this is the same letter Mr. Healy put that proposition to me. All I can say is that I do recall seeking the letter, getting the letter. As to what was on the letter, I have no recollection. On the balancing of probability, as it was put to me today, yes, my name must have been on the letter or on a cover letter. Obviously it was referred to me because I looked for it.

Q. And at some stage and by somebody, your name was removed?

A. I can't say that for definite. I certainly, as I have given evidence already, I certainly if my name I don't know. If my name was on it, I certainly didn't remove it. I'd have no reason to remove it.

Q. And you have heard Mr. Tunney's evidence that that's the way it was received in the bank, with no name of Michael Lowry on it. You have heard that evidence?

A. Yes, Mr. Tunney has said that, hasn't he?

Q. And that Mr. Phelan has said that that's the way it was

sent by him to the bank.

If we assume for the moment that your name was on the original, and it was addressed to you, does that not

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suggest at least, Mr. Lowry, that somebody, and it may not have been you, but somebody did not want the letter arriving at the bank with Michael Lowry's name on it?

A. Well, that's assuming a lot. I can't say for definite.

I just don't know. As I have said already, the only thing that I can speak for, or the in relation to

this matter is you said that maybe I didn't remove

it. I can be categoric in saying that I didn't remove

it. I have no reason to remove it, if it was ever on

it.

What I am saying to you is I don't know whether it was

part of I certainly recall requesting the letter,

and the letter is familiar to me, and I know that the

bank had requested the letter. Whether the name was on

it or whether it was part of a cover sheet or what have

you, I just can't say. I don't know.

Q. But if we assume for the moment that it was on it, but

not on it when the bank received it, somebody must have

removed it?

A. Well, all I can do is say to you that I can't assume

because I don't know, and all I can do after that is

speak for myself and say to you that I presented the

letter as I got it to Mr. Aidan Phelan. He says he presented it to the bank as he got it, to Mr. Tunney. So maybe the letter did arrive as you have it now. I don't know. Maybe it didn't.

Q. Now, Mr. Lowry, when this matter all blew up after March, or sometime in March of 2001, you attended a meeting with Mr. Christopher Vaughan, Mr. O'Connor, Mr.

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Phelan, and Ms. Malone, at least, I think somewhere near Dublin Airport. Is that correct?

A. Yes, that was a meeting in the Radisson no, the some hotel there, yeah.

Q. And I take it that that was a meeting at which those of you who were involved in the transaction wished to discuss your respective positions in relation to the transaction?

A. That meeting was requested by me on the basis that I was it was inevitable that I was going to make a statement to the Tribunal in connection with it. I asked that my adviser, Denis O'Connor, be briefed in terms of the details of it. And as you can see, to say the least of it, there was a lot of intricacies in it, and it was understandable that we'd want to brief ourselves, yes.

Q. I think you mentioned the Radisson. It was a hotel near Dublin Airport; I think the Regency.

A. The Regency, yes, that's the one.

Q. And would it be unfair to describe it as an opportunity for all of you to ensure that you got your stories straight in relation to this particular transaction as it was unfolding?

A. I would say that that suggestion is uncalled for and passes a slur and a reflection on many professional people. That was not the purpose of that meeting.

Q. But you were going to make a statement, and you wanted presumably to know what others were going to say in relation to the particular

A. No. It was simply wanted to ascertain the facts so
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that the statement as you outlined earlier on, I certainly have, unfortunately for me, too much experience in relation to tribunals. And the one thing that I do know about tribunals is that you have to be factual when you make a statement. And the purpose of that meeting was a simple exercise to ascertain the facts, because you will have to understand that because of the actions of the company that you represent, there was confusion. We wanted to find out where the confusion was emanating from and why this story, which had absolutely no foundation or substance, should be peddled in the way that it was.

Q. But the thing that wasn't done in relation to that

meeting, there was no invitation to Mr. Tunney to attend the meeting?

A. Mr. Tunney?

Q. Yes.

A. I am sure Mr. Tunney was having several meetings himself within his own bank with several officials to know what happened with them.

Q. But you didn't think of inviting him to that meeting?

A. I would say, at that stage, that Mr. Tunney probably would be disinterested, and I don't think he'd be on the invitation list, either. This was a simple exercise conducted on our behalf to ascertain the facts of it. Because you will appreciate that the first thing we had to do was understand why, why this view was about or why this matter was brought to the Central Bank. Because I certainly, or those representing me could not see the justification for it or the relevance

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of it.

Q. And insofar as that meeting was concerned, you made your statement to the Tribunal following this meeting?

A. A long what that meeting was to establish was the factual position, and sometime later, yes, I would have made a statement. At that stage, my understanding if you are trying to link a statement, my understanding at that stage is that the matter had been referred to

the Tribunal. I don't know who had made statements at that particular time.

Q. And is it not also somewhat surprising that insofar as any persons who attended that meeting in the Regency Hotel is concerned, that none of them say that you said to them "I don't know what all this fuss is about; Michael Tunney knew of my involvement at all stages because I had a conversation with him"?

A. Sure that's what the confusion is about. We all knew he was involved. The only people that were involved was Aidan Phelan and myself, and we knew at that stage he was involved. That's why we were confused. We couldn't understand why the bank had made an issue of this in the full and certain knowledge that Michael Lowry was involved in this transaction from the start. That's what had us perplexed.

Q. I am just coming back to my question, Mr. Lowry. Nobody has given evidence to the effect that you said that Michael Tunney had a telephone conversation with you at that meeting. Isn't that correct?

A. At which meeting?

Q. The meeting in the Regency Hotel.

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A. At that meeting that day? Yes, yes, we went through the sequence of events, and yes, I made it quite clear that I had had personal contact with Mr. Michael

Tunney.

Q. My question is to you: Is it not surprising that none of the persons who attended that meeting have given evidence in relation to a recollection of you saying so?

A. Pardon?

Q. Is it not surprising, therefore, that none of the persons who have given evidence in relation to that meeting, or having attended that meeting, have any recollection of you telling them so?

A. Do you see, you are placing a significance on this telephone conversation that nobody did. And even I, at the moment, I don't know why the telephone conversation is the telephone conversation is a matter of fact.

But nobody would place why is there such significance or emphasis in regard to the telephone call? The telephone call is a matter of fact. Mr.

Tunney rang me. And then Mr. Tunney proceeded to ring Mr. John Daly.

Q. Mr. Lowry, are you seriously suggesting to the Tribunal that you want the Tribunal to accept that you can't understand the significance of Mr. Tunney, who has denied knowing of your involvement, telephoning you in December of 1999?

A. Can I understand? I understand the significance of it now, but not when we didn't understand what the purpose of this exercise, this original exercise was. And

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like, you know, if you wish me to tell you what we surmised, I shall do that, but there was obviously we were seeking explanations. We couldn't understand, particularly Aidan Phelan couldn't understand, I couldn't understand, as to why Denis O'Brien's name would be dropped conveniently at a time for possibly suited internal reasons, we don't know, I don't know; it's a matter for the Tribunal to make a decision on that.

Q. But if it be the case that there was no reference by you at this meeting, that is consistent that is this meeting in the Regency Hotel no reference to a telephone conversation with Mr. Tunney, that is consistent with what you included in your statement to the Tribunal in response to their request, isn't that correct?

A. What I am saying to you is at that stage, I certainly I have already said to you that I made reference to the fact I went through the sequence of events, and I did at that meeting make reference to the fact that Michael Tunney had telephoned me. That telephone conversation that you are now referring to took on a different significance when Mr. Tunney denied that he ever made the call. That's when it took on a significance. It had taken no significance up to that.

It was just one of thousands of calls that I would get.

But when I hear somebody standing up and saying they didn't ring me when they did, of course it rings a bell with me.

Q. Thanks, Mr. Lowry.

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

MR. O'DONNELL: Mr. Lowry, I hope I can be brief.

Just on that point, just picking up on what you said there, the position is that it's your evidence that you spoke to Mr. Tunney and that he was looking for information about Mr. Daly, and you gave him Mr. Daly's telephone number and suggested he make contact with him direct.

A. That's exactly what happened.

Q. I think on day 134 Mr. Daly gave evidence that he'd indeed had a phone call from Mr. Michael Tunney. He had asked him how he got his number, and Mr. Tunney told him that you had given him the number.

A. I had actually yes, that's factual. And I had already rang Mr. Daly to tell him to expect the call, so that he would speak to him and know who he was speaking to.

Q. Thank you, Mr. Lowry.

Now, can I ask you to go back to where we started this phase of the Tribunal's examination of you some six

days ago, and I think you were asked firstly, in the sequence in which Mr. Healy addressed it, but New York fundraising event that Mr. Austin organised and which I think the then Taoiseach, Mr. John Bruton, attended in late 1996. Do you recall that evidence in relation to that?

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A. Yes.

Q. And I think it was during the course of that examination it was put to you, for example, that you had held positions of some seniority and some success in fundraising, both initially I think for the GAA in Tipperary and subsequently for the Fine Gael Party?

A. Correct.

Q. And that the question was raised with you, would you not then be involved in the New York fundraising as well? Now, I'll come to that in sequence, but perhaps you can can you just tell the Tribunal what your involvement was in the fundraising for Fine Gael, particularly when that party unexpectedly took office, I think in late 1995, because I think some questions have been put to you and some comments in relation there to.

Can you describe to the Tribunal the nature of the fundraising that you have done and your expertise in relation to it, because I think it's then relevant to

the questions in relation to the New York fundraiser.

A. Yes. The background to that, and there has been a lot of public comment, particularly by some elements of the media, which is persistent in terms of equating my position as Chairman of the Trustees and the sudden surge in the monies available to Fine Gael for political purposes.

I took over as Chairman of the Trustees in 1993. When

I took over as Chairman of the Trustees, I was given a

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specific task by the then leader of the Party, John Bruton, to determine the extent of the Party's financial problems; to arrive at suggestions and conclusions in terms of what was needed to remedy what was a crisis situation.

At that particular time, the Fine Gael Party was in financial crisis. Had it been at that stage had it been a company, it would have been declared insolvent.

The Party was in a position at that particular time when there was weeks when we were unable to pay the salaries of senior people, staff within the Party.

It was against that background, it was against that background that Fine Gael commenced a major fundraising drive, and we did that with the support and encouragement of the administration of the Party, of the Party hierarchy, and of the members of the

parliamentary party.

Initially we had we had success. What happened then was suddenly, and out of the blue, Fine Gael went into government after the collapse of the Fianna Fail/Labour government. And before we went into government, it's fair to say and I think everybody who was involved in the party at that stage would concur when I would say that because of the fact that the Fine Gael Party hadn't been in power for approximately ten years, that the membership had become disillusioned and demoralized. When we went into power, the effect of

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that was almost instant on the organisation in terms that it was energised. It was motivated, and we mobilised that new enthusiasm to get the organisation to address the financial problems that it has. And contrary to the impression that has been created, there was the principal element in that fundraising was the efforts of the membership of the Party who supported very generously at least two major fundraising drives. The corporate element of the fundraising was a much smaller part of it.

So it's against that background that the New York dinner was organised. In other words, there was a general drive on within the organisation, and there was, as I said, it was much easier, not for the reason

that we had people in ministerial positions, but by virtue of the fact that the Party was reenergised because they had a lift from the fact that they went into government. And that happens in every political organisation.

Q. Now, would it be fair to say that the bulk of the funds that were raised were funds, as you say, from the Party organisation and through the Party organisation, a large number of small contributions rather than a small number of large contributions from corporate donors?

A. Absolutely. Any assessment of the Fine Gael financial affairs would indicate quite clearly that the greatest proportion of the funds raised during that period came from the efforts of the general membership of the Party country wide.

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Q. And would it be fair to say that your skill was in relation to that fundraising, not unlike the fundraising you might have been able to carry out on behalf of the GAA in Tipperary?

A. Yes, my skills, if I have any in those terms, would have been organisational ability and the ability to delegate and to give sufficient support and encouragement to people to carry out the tasks which we saw as necessary.

Q. I think that you received a letter on the 4th July,

1995, from Mr. David Austin. I think it's document 1 in schedule 1, and I think you might have the book there.

A. Yes.

Q. But you may recall it, and that's a letter which set out in general terms a proposal that Mr. Austin was making for fundraising in the USA?

A. That's correct.

Q. Now, that was a new venture, I take it, for Fine Gael, and it was a new venture for you; that you had no previous experience of fundraising in the USA in relation to, say, the GAA in Tipperary.

A. It was a new departure for the Party. It was something we hadn't done previously. And I was conscious of the fact that it would need approval at the highest level, and the highest level was the then Taoiseach, John Bruton, and the Fine Gael Trustees. So it got organisational approval to proceed.

Q. Attached to that letter was a list of some 87 extremely senior business persons who are extremely successful

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businesses in the USA, with contact numbers or contact names?

A. That's correct.

Q. Those were all names put forward by David Austin?

A. Correct.

Q. They were his contacts, and I take it that they were not contacts that you had ever made or ever dealt with in any of other previous fundraising activities on behalf of any organisation?

A. I would say that they were David Austin's personal contacts together with probably a list out of some publication or other which listed the top companies and the top business people.

Q. They were essentially blue-chip mostly Wall Street firms like Merrill Lynch, Morgan Stanley, mostly people like that, whatever their many merits, have not been known to take the interests they should take in the national game of hurling or the interests of the Tipperary GAA. I mean, you hadn't come into contact with them in any of your previous contacts?

A. I doubt you'd see them in Hill 16 or Parc Ui Riain in Thurles or Semple Stadium or anywhere else.

Q. Perhaps they are at a loss, Mr. Lowry. But in relation to that letter, could I just ask you to look at the letter.

One point you have already made is the letter suggested a meeting on the 20th or 21st July. I think that meeting never took place?

A. Correct. I was away on European Union business on the /RS

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21st/22nd May. I was at a Council of Ministers meeting

in Spain.

Q. And just looking at that proposal, that proposal was in the end, I think we know, quite something different to the event which ultimately transpired. Firstly, I think on the first page it was suggested "there should be a small committee formed, chaired by Peter Sutherland and I will liaise directly with Peter with the support of Maurice Buckley." I think ultimately it became Mr. Austin's committee, isn't that right?

A. Absolutely.

Q. Not Mr. Buckley or Mr. Sutherland. I don't think they had any involvement?

A. No.

Q. And over the page, and significantly at subparagraph 7, it was said: "I am suggesting the following people should be in attendance at the dinner in the US: The Taoiseach, Mr. John Bruton, Ministers Lowry, Barry, Yeats and Peter Sutherland."

With the exception of Commissioner Sutherland, who would obviously have been known in the USA, those ministers were, I think, the senior Fine Gael ministers in that coalition government, is that right?

A. That's correct.

Q. Now, it would be logical, perhaps, that those ministers would have an involvement in making contact with persons and inviting them to an event to which they themselves were going to attend, but in fact, what

occurred was that none of those other ministers attended the event, and the event went forward as a /RS

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meet the head man, as it were, the Taoiseach of the country, Mr. Bruton?

A. That is an accurate description, yes.

Q. And consequently, is it fair to say that as that as that complexion of the proposal changed and as that as the possibility of you or any of the other Fine Gael ministers attending fell out of the picture, the need to discuss any matter with you or to involve you in inviting somebody to an event that you weren't going to attend became correspondingly less significant?

A. Absolutely.

Q. Now, I think those I think 87 names were put on a follow-up list, which is another document that the Tribunal has, schedule 1, document 5. And you were asked some questions about that and about the fact that your name was put in a column under the heading "To be followed up by"; do you recall that?

A. I do.

Q. I think it was suggested to you that that meant that you had some significant involvement, or it might be understood that you had some significant involvement in that fundraiser, the significance of all this being

that the contribution that was attempted to be made by or through Telenor was said to be linked to that fundraiser.

Now, I think there were some 87 names on that list, and your name is down beside six of them. Do you recall having, indeed, contacted any of those persons?

/RS

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A. No. I do not. I have explained that of the 87, my name was behind six, and I didn't contact I had no contact with any of the 87, including the six that my name was behind.

Q. But I think you have also informed the Tribunal that you are quite happy for the Tribunal to contact those persons?

A. Yes.

Q. And ask them if indeed they were invited to the New York fundraiser by you or had any other dealings with you in relation thereto?

A. Yes. I did suggest that in a response that I made to a specific question from the Tribunal.

Q. But in general terms and I think this is an issue that was raised with you, the suggestion was raised for you to deal with; it wasn't being necessarily advanced as a fact that you, in your position as a senior fundraiser and as a senior economic minister, would necessarily have had to have a very extensive

involvement in this fundraising event.

The fact is, Mr. Lowry, this is something you had never previously dealt with. You had no previous dealing with the sort of blue-chip customers that Mr. Austin was familiar with in the USA. You weren't going to attend the event, and there was very little to be gained from you being a person inviting persons that were never going to meet you to an event to meet somebody else?

A. That is accurate.

/RS

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Q. So whether that's right or wrong, the position is, as I understand it, is that you had can recall having little or no involvement in the organisation of the New York fundraiser?

A. Yes. I have already given evidence to that effect. I did not.

Q. But you are quite happy for the Tribunal to follow that up with any of the individuals on that list if they so wish?

A. Yes.

Q. And it follows, obviously, that there is only six names that have your name beside it, but obviously any of the other 81 if they so desire?

A. I think it's important to actually contact, if you are going to contact them, contact the whole 87.

Q. Now, can I just move on to a second issue that was raised with you, which is the £147,000 loan made to you by Mr. David Austin in October, 1996, 18th October 1996, and repaid by you on or about the 6th February, 1997.

Now, I think, just that the Tribunal obviously has to look at the all of these transactions as they stand, and some of them acquire greater significance. And they also, in a sense, have to be professional sceptics about any of these matters and test each part of the transaction and your explanation that is given for it.

But in relation to that, I think it was suggested to you, or your attention was drawn to another document,

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which I think is schedule 2, document 9, which is the initial Irish Nationwide (Isle of Man) Limited application form for what is described as a fixed rate account. Do you recall that document, Mr. Lowry?

A. I do.

Q. And that's a document that you had signed, and on it, on the top right-hand corner, there is handwriting I think not in your hand, and I don't know if you recall that it was on the document when you signed it or whether that was subsequently applied by the bank which says "Seven years at 5.5 percent."

A. I certainly it's not in my handwriting, and whether

it was on it or put on it subsequently, I don't know.

Q. Well, it appears to be a banking notation?

A. Yes.

Q. In handwriting. And I think it was properly raised with you and then subsequently was adverted to, perhaps in more concrete terms, in the media that this in some sense might be thought to be inconsistent with the explanation you had given for a loan, because a loan that you had described, and indeed given evidence of and produced evidence of, was one that was to be repaid within a fixed time of four years or the sale of the property at Carysfort, whichever was the sooner, as it were?

A. Yes.

Q. It was suggested to you that that application of "Seven years at 5.5 percent" appeared inconsistent with that and might be therefore consistent with some more long-term arrangement?

/RS

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A. That was suggested.

Q. And I think that you rejected that suggestion, but I don't think you were referred to I am not making any point about this, but I think it would be of significance to refer to schedule 2, document 13, which I think is the first Irish Nationwide (Isle of Man) document generated on that account in relation to the

transaction that was carried out. And it's dated the 30th October, 1996, which would be some small number of days after the account was opened and the monies lodged.

And there are, I think, two important things about that document which I'd like to you comment on, Mr. Lowry, in the context which we have just discussed, which is that firstly, the account is not a 5.5 percent interest rate, but rather 4.5 percent; that the current interest rate on the account is 4.5 percent per annum, and perhaps more significantly, that it is described as the above instant access account. So whatever was on the application form or put on the application form in handwriting, the account that was opened and money that was held there was an instant access account with a different interest rate?

A. Yes, that is very important in the context that the previous suggestion was put to me.

Q. Is that consistent with your understanding of what that account was?

A. Yes, totally.

Q. And certainly I think it's the case you didn't ask the

/RS

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bank to open some different account or some fixed-term account, let alone a seven-year account?

A. No.

Q. And does not appear to be the account the bank opened for you?

A. Exactly.

Q. I think you made the point yourself you were able to treat it it was an instant access account because within four months, you were able to remove the money from that account and indeed have it directly transferred to the account of Mr. David Austin with the accrued interest?

A. I would have not been able to do that unless that understanding was there.

Q. Now, again, I think the some questions, quite properly, are asked of you in relation to that transaction and to, I suppose, to look at the underlying transaction and test it.

One of the features I think which Mr. Healy put to you was that it was important for the Tribunal to consider the circumstances in which this transaction came to light and came to the Tribunal. I think you have already dealt with that a number of times with Mr. Healy, but it is the fact that whatever points may be made or criticisms that can be levelled at you for not disclosing it sooner, it was you who disclosed this transaction to the Tribunal, disclosed and gave them the documentation from Mr. Austin and indeed the documentation from the Irish Nationwide (Isle of Man)?

/RS

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A. That is correct.

Q. And in particular, I think the Tribunal has made the point that it has had difficulty in securing cooperation from the Isle of Man, and in particular, requiring the attendance, considering it can't attendance of a witness from the Irish Nationwide (Isle of Man). I think you have asked every person, at the request of the Tribunal, to cooperate with the Tribunal, isn't that right, Mr. Lowry?

A. Yes. And the Chairman referred to that yesterday, and I appreciated his comments in that respect.

Q. Now, but it follows that if the Tribunal could not require the attendance of a witness, it would have significant difficulty, to put it at its lowest, in demanding the production of documentation from that same institution. But the Tribunal has documentation from the institution, and it has it because you requested it and obtained it, isn't that right, Mr. Lowry?

A. That is factual, yes.

Q. And that documentation shows a number of things. It shows the £147,000 coming into that account. It shows that that account was opened by you in your own name, isn't that right, Mr. Lowry; not in the name of some other company, not in the name of some offshore company, not in the name of a company with offshore

directors, which has been known to be a feature the Tribunal has come across in another context, dealing with some other matters, in the way of disguising a transaction.

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It also contains, Mr. Lowry, isn't this correct, the repayment and the details of repayment to the account of Mr. David Austin?

A. Yes, it outlines that.

Q. And it also contains a very important document, might I suggest, Mr. Lowry, at schedule 2, document 10, which is a handwritten document in the hand of Mr. David Austin. I don't know if you recall that.

A. Yes, I do.

Q. Friday, 18th October, 1996. And it's "Dear Sir," it's struck out and it's "Dear Karl Tully." Now, that's a document which, if we look at it closely, because one because I suppose one suggestion is made that this was a clandestine and hidden arrangement that's a document which you have produced which, in one single page, in the handwriting of Mr. David Austin, contains three critical features of this transaction which, if there was any difficulty with the transaction, would otherwise could otherwise have easily been obscured.

It has Mr. Austin's name and own signature. It has your name. And it has the figure of £147,000 being

deposited by Mr. Austin to your account, with the account number.

I mean and would you consider that that is consistent with attempting to hide this transaction, either on Mr. Austin's part who wrote the note, or on your part who has produced it to the Tribunal?

A. Absolutely not. I think it's very transparent.

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Q. One of the other features of that note that is of some significance is that there is no doubt that this is a contemporaneous note written by Mr. Austin for the purpose of opening the account, isn't that right?

That's what it has been treated by the Tribunal as?

A. Yes.

Q. And "Yours sincerely," not typewritten. It's not on headed notepaper. And it's in the same format, therefore, as the document setting out the agreement between you and Mr. Austin, whether it's considered formal or informal, and equally the receipt which Mr. Austin sent to you acknowledging the receipt of the repayment.

A. I hadn't noticed that, but you are quite correct.

Q. It's entirely consistent with the way Mr. Austin did business, therefore?

A. Yes.

Q. And it might suggest that there is nothing suspicious

in the fact that the other documents were also in handwriting?

A. Correct.

Q. But certain it is that whatever suggestions might be made about hiding this transaction, that's a document produced by you, written by David Austin, which on its face contains all the features of the transaction, at least in its financial detail?

A. All of the critical details, exactly.

Q. Now, apart from Mr. Lowry, I may have misunderstood this, but it seemed to me it seems that the Tribunal firstly must look at all financial transactions with /RS

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you and must, as it were, test them to see what is the underlying reason. But the Tribunal has looked particularly carefully at this transaction for a very specific reason, and I want to bring that to your attention so that you have an opportunity of dealing with it.

As I understand it, the particular significance which could potentially be attributed to this transaction and in fairness, the Tribunal must, as I say, be a professional sceptic look at this information, test it, raise all the questions that could be raised; but the potential significance of this transaction, because it might be connected to, in some way, the conversation

which Mr. Barry Maloney is says he had, Mr. Denis O'Brien says he had, with each other, sometime in November, 1996, either on the mountain or at the Malt House.

A. That's correct, that's the

Q. And a later conversation, almost a year later, referring to the same thing?

A. Yes, those suggestions have been put to me.

Q. And those matters have all been investigated, not just by the Tribunal but by others. But the burden of those conversations, and the reason they gave rise to investigation, is Mr. Maloney suggests that what Mr.

O'Brien said was that he had given €100,000 to you and €100,000 to some other person. In effect, that this is what Mr. O'Brien said, I think; he says he didn't mention your name directly, for the second mobile phone

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licence that ESAT Digifone obtained, and that subsequently in 1997, he returned to the topic and said, on Mr. Maloney's account, that the monies had not reached you or your account but had got stuck with an intermediary.

Now, I think Mr. Healy was careful and at pains to put those matters together. And as I understood it, the significance of that, and I want you to be able to deal with it then, is that in considering whether that could

be true it would be a very serious matter if indeed a payment had been made to a sitting minister for a second mobile phone licence, or indeed any mobile licence or any matter that was to be allocated by that department that the Tribunal has an obligation to investigate that, and it must look for whether there is any truth to that. And in a sense, whether rounding up the usual suspects or not, that this is the closest transaction to that sequence of events.

That's, I hope, putting it fairly to you, Mr. Lowry, that's the significance I think which could be attributed to this payment or this transaction in particular.

And to do that, I think Mr. Healy and you may have discussed this matter with him put together what he said, because obviously Mr. O'Brien denies that that was the case, that a payment was made in respect of the licence. And you obviously have denied that

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vehemently, but he was putting to you what might be described as the money trail, being the fact that this loan by David Austin to you comprised money coming from an account which Mr. Austin had in turn received in respect of, Mr. O'Brien says, of a transaction in respect of Mr. Austin's Spanish property.

Now, I think it's important for you to have the

opportunity to comment on the other features besides those features which Mr. Healy has identified. I think, firstly, you yourself identified matters prior to the money coming to you that were of significance and after the repayment of the loan which you would have considered significant?

A. Yes, I referred in particular to the trail that was put before me of starting on the 3rd July, which was in advance of I even knowing that the auction, the public auction was held, and it was a public auction, on the 17th July. I didn't get possession until much later. And then the loan didn't come through to me until October.

Q. The 18th October, I think, was the transfer, as we have just seen?

A. Yes.

Q. The money, i.e. £407,000 moved from Mr. O'Brien to Mr. Phelan on to Mr. Austin, starting with the 3rd July, previously?

A. That's correct.

Q. I think when you repaid the money to Mr. Austin in February, it was of importance to you what Mr. Austin

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did with that, because if that was money that was in truth Mr. O'Brien's, one might normally expected it to be repaid to Mr. O'Brien?

A. Absolutely. And what I was anxious to show, and it has been put before the Tribunal, that those monies which went back to Mr. Austin were used for his own purposes and were at disposal for his own needs. In other words, that money was spent by Mr. Austin on himself

Q. Yes

A. and his family.

Q. And now, just going back to the hypothesis that this money might be in truth what Mr. O'Brien was referring to, or Mr. Maloney was to understand him as referring to.

The first thing to be said is that Mr. O'Brien referred to $\text{€}100,000$ being paid to you. If this is he was wrong. It's $\text{€}147,000$?

A. True.

Q. He also referred to another $\text{€}100,000$ he also referred to another $\text{€}100,000$. I think it's common case that there is certainly no evidence of $\text{€}100,000$ being paid by Mr. O'Brien to anybody else?

A. I never received any money from Denis O'Brien. That is the factual reality of the situation.

Q. But in this conversation, if it was in any way correct, there also had to be $\text{€}100,000$ for somebody else?

A. Exactly.

Q. And there is no evidence of that?

A. Yes.

/RS

Q. I appreciate this is something the Tribunal may be looking at in some detail itself, but it is a striking feature of the evidence given in this Tribunal that nobody suggests, even people bitterly now bitterly antagonistic to Mr. O'Brien, on the evidence he has given, notably Mr. Johansen from Telenor and Mr. Maloney himself, and I think Mr. Walshe, who may not have been antagonistic to Mr. O'Brien, that nobody suggests that a payment was made in relation to the licence; indeed, all of those witnesses agreed that that would have been impossible, for you to have influenced the grant of a licence to ESAT Digifone?

A. Yes. Everything that I have been accused of over the last six years, really, it's based on the false premise that there was something wrong with the licence and that I showed favouritism or that I interfered with the process or that I made a political decision rather than a decision that emanated from the independent consultancy group that was set up to adjudicate on it. Everything has flowed from that accusation, and that simply doesn't stand up. Effectively what had happened is many, many of the suggestions that have been put to me have been based on that false premise, that there was or is something wrong with the licence. What I am saying clearly is that there is not and obviously I am going to have no peace; I will have no my

credibility and my integrity will always be in question until that doubt is cleared up. And that's why I welcome the fact that the Tribunal is looking at it.

/RS

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I know in my heart, and the people who worked with me know, and here we are talking here as well about the professional integrity of senior civil servants. I know and they know that this process was completely conducted in an impartial and fair way, with equal access and equal opportunity to all the competitors, and that at the end of that process, I as minister and my colleagues in government made a collective decision to accept the recommendation that they had made.

People, for their own reasons, have chosen to ignore that; and since that happened, I have constantly, persistently, every day for six years, since I got up and my family have been subjected to what I would call the most horrific treatment, based on suggestions that are put forward, which are grounded in innuendo, in coincidences and conjecture and speculation. That's how I would sum it up.

And I very much welcome the fact that this Tribunal are in the process of examining that licence. I think it's important, obviously, from my point of view. It's important from the point of view of the public servants who were involved in it. It's important from the point

of view of the company who won that licence on merit.

And it's important to Ireland as a community to show clearly that this type of decision is conducted in an appropriate and proper way.

Q. I don't want to tempt fate on your behalf, Mr. Lowry.

/RS

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The fact is that at the moment, nobody has given evidence to this Tribunal either suggesting that that licence was given wrongly to ESAT Digifone in return for a payment to you or suggesting how that could be done or how that was. I mean, I appreciate that that's a matter that's under scrutiny, but that's the current position; isn't that right, Mr. Lowry?

A. That is the factual position. But unfortunately as I say, I appreciate that the Tribunal are doing their business in a very professional and competent manner. I am not talking about the Tribunal. I just welcome the fact that this is now in capable hands and that we will have a decision on it.

Q. One other feature that should be brought to your attention, Mr. Lowry, so that you can comment on it, is this: The second conversation I think referred to Mr. Maloney said day 123, pages 67 to 68, to the money not reaching Michael Lowry or any account of yours. Now, this €147,000 coming from Mr. Austin reached you and your account and was repaid.

A. Correct.

Q. That is inconsistent with the version, if this was to be what Mr. Maloney thought was being discussed, that doesn't that's another feature which just doesn't fit, and you have been asked to look at a series of circumstances and see how they do fit about that hypothesis.

In addition to all those matters, Mr. Lowry, are the

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features that we have already identified, is that this

these transfers were not particularly clandestine,

in the sense that Mr. Austin received this money into

an account in his own name and that of his wife?

A. That's correct. The account was in the name of David and Maureen Austin.

Q. And he writes a letter in his own hand to the Irish Nationwide paying the money into your account?

A. Yes. The people involved in the transaction were all known to each other, to the extent that the bank knew they were dealing with David Austin. They knew they were dealing with me.

Q. They knew who you were?

A. And they knew who I was.

Q. And you repaid the money into David Austin's account.

Not through a series of the sort of series of

companies which are come across sometimes by the

Tribunal, used by other persons to conceal the sorts of funds they have received?

A. That dealing was completely that loan transaction with David Austin was completely open and up front.

There was no attempt at all of any description by me to conceal it. I made the mistake of not bringing it to the attention of the Tribunal in a more timely fashion.

I have explained the reasons why for that. I regret that, I apologise for that, but ultimately I did bring it.

Q. Finally, Mr. Lowry, and Mr. Healy today referred to what he described as two inconsequential transactions you had with Mr. Phelan, to point up a perceived

/RS

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difference in the way you dealt with them and your dealings with Mr. Denis O'Connor. In the first place, I am sure you will be grateful to know that the mobile phone incident is being identified as an inconsequential dealing. But your dealings with Mr. Phelan through Mr. O'Connor in relation to a joint venture with Masser Hammond were not probably inconsequential; would that be fair, Mr. Lowry?

A. That would be that was a commercial exercise I was undertaking that was of value to me, yes.

Q. And there was they were very significant dealings, and that proposal went quite a distance towards being

consummated?

A. Yes. It did. And unfortunately what happened afterwards was that that proposal was consummated by others. Our idea was effectively utilised to the advantage of others.

Q. Now, I think Mr. Healy suggested to you that these matters were brought to the attention of Mr. O'Connor and contrasted that to the fact that your dealings with Mr. Phelan in relation to English properties were not brought explicitly to the attention of Mr. O'Connor; but in fact there is a significant difference between the transactions, because as I understand it, and perhaps correct me if I am wrong in both the case of the mobile phone and the joint venture, you went to Mr. O'Connor and asked him to look for persons, and purely as a matter of coincidence, one of the people he dealt with in that regard was Mr. Aidan Phelan. Isn't that right?

/RS

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A. That is correct.

Q. So you came to Mr. Aidan Phelan in those transactions through Mr. O'Connor. It's not a case of you disclosing to Mr. O'Connor your dealings with Mr. Aidan Phelan in dealings in those respects?

A. No significance. That has been confirmed by Denis O'Connor, by Aidan Phelan, and if the Tribunal so

wishes, by Mr. the Masser Hammond man, David

O'Keefe.

Q. Yes. As I say, both those matters, those were indeed the circumstances in which you originally came into contact with Mr. Aidan Phelan, was through Mr. O'Connor making an entirely coincidental introduction to you?

A. Yes.

Q. I think Mr. O'Connor was unaware of Mr. Phelan's other dealings at the time and had in fact contacted other people, other clients in his office about the mobile phone and had contacted other possible joint venturers or their advisers?

A. That is correct, a number of them.

Q. That's how you came to meet Mr. Aidan Phelan in the first place?

A. Yes.

Q. So, and finally in relation to those two English transactions, I think the English the end result of those property transactions is that you retain a 10 percent interest in one, which you acquired with your own money, isn't that right?

A. Mansfield: I have a beneficial ownership of 10 percent of Mansfield, which was paid for out of my own personal

/RS

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account, my own money. That is correct.

Q. And you have no interest, beneficial or otherwise, in

the other transaction, at Cheadle?

A. I have no beneficial interest whatsoever in the Cheadle site since last since January.

Q. And so looking at this overall, the current position certainly is that your interest in property in England resolved itself to 10 percent of the Mansfield property, represented by money you yourself introduced by your own resources?

A. That is absolutely it. I have no beneficial interest; I have nothing else to benefit or gain from it.

Q. Thank you, Mr. Lowry.

I am grateful to the Tribunal for the time.

MR. HEALY: Two very short matters.

CHAIRMAN: I didn't imagine you were going to take up any analogy of re-examination.

MR. HEALY: No.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY:

Q. MR. HEALY: Just very briefly, Mr. Lowry. This is something I could have done earlier, but just so there is no dispute or doubt about it.

In relation to the letter of the 3rd December, the one

/RS

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from which your address, as far as I can see, and I think it seems to be the case, and your name was removed. I may have picked up something you said incorrectly, but just in case there is any doubt about

it, as I understand it, your name was definitely on

that, and Mr. Eastham has so confirmed.

And what I want to do and to speed matters up, what

I'll indicate to you is this: The Tribunal solicitor,

Mr. Davis, wrote to Mr. Kelly, your solicitor, on the

31st July, 2001, drawing this matter to your attention

and seeking your comments in relation to it.

Mr. Kelly replied on the 2nd October, 2001, indicating:

"With reference to your letter of the 31st July and the

letter of the 3rd December from Mr. John Eastham, we

enclose a copy letter of 26th July, 2001, from Mr. John

Eastham to Denis O'Connor, together with copies of the

enclosures therein referred to and we believe that the

foregoing brings all items of correspondence as between

us up to date."

This is the letter, then, from Mr. Eastham to Mr. Denis

O'Connor, The Gables, Foxrock.

"Dear Denis,

"Re development site Saint Columba's Church, Handforth.

"Further to telephone conversation and your letter of

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26th July 2001, I confirm my letter of the 3rd

December, 1999, relating to the proposed development

site at Saint Columba's was sent to Michael Lowry at

his request.

"I understood from Michael that he required this letter

to assist him in securing the necessary finance to proceed with the deal. As I mentioned, this letter was dictated by me on Friday 3rd December and faxed to Michael on 7th December.

"I take pleasure in enclosing copies of the fax header sheet and transmission GX report relating to my correspondence to Michael on the 7th December, 1999 as requested.

"I trust enclosed is of assistance to you, but should you have any query, please do not hesitate to contact me."

He encloses the faxed transmission sheet showing that the document is faxed for the attention of Mr. Michael Lowry at 050423349. Would that be your County Tipperary fax number?

A. Yes.

Q. Mr. Davis replied, on the 25th October, 2001, as follows:

"In your letter of the 2nd October last, you enclosed a copy letter from Mr. Eastham to Mr. Denis O'Connor which in turn enclosed the fax header sheet and

/RS

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transmission GX report relating to Mr. Eastham's correspondence with Mr. Lowry on the 7th December, 1999.

"Presumably Mr. Eastham retains on his file a copy of

the actual letter faxed to Mr. Lowry on the 7th December, 1999, and that being the case, the Tribunal would be obliged to receive a copy of that letter as soon as possible."

Now, I don't think the Tribunal did in fact receive a copy of that letter. Maybe it can be found, but am I right in saying that your recollection is that the original letter of the 3rd December was definitely addressed to you?

A. Yes, I would I had sought the letter and I got the letter, and I presume that it would be, yes.

Q. One final one other small matter.

In relation to the Irish Nationwide account-opening application form, I note the point that you made in the course of your evidence, or at least the point Mr. O'Donnell made concerning the seven-year term at 5.5 percent.

Could I just have that on the overhead projector, please. It's document number schedule 2, document 9. It's a multi-page document. If you go to the bottom right-hand corner of the document, please, you will see and if you turn it around you will see

/RS

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that there is a stamp. It says "10th December, 1996."

Do you see that?

(Document handed to witness.)

16th. It could be 16th or 10th.

A. 16th, I would think.

Q. Can you recall whether you opened or signed that documentation before or after the money was put into the account?

A. Before I don't I don't recall which or whether.

Q. You don't recall? Because obviously if it was done afterwards and done in December, then it might make some sense to put the money into a different type of account in December, by which time you had probably decided not to go ahead with the original refurbishment project.

A. Yeah, there was no I never had any discussion in relation to the terms of it. It was simply lodged and available.

Q. Maybe we can take it up with Irish Nationwide insofar as that's possible.

Lastly, in the course of your evidence a moment ago, you said that in relation to the fundraising venture involving the dinner in New York, neither Mr. Buckley nor Mr. Sutherland got involved, nor did any of the ministers, but that ultimately the whole thing became Mr. Austin's project, from beginning to end?

A. Yes, he was the

/RS

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Q. I am just wondering how you knew that if you weren't

involved in it.

A. Because of the evidence that has subsequently been given to the Tribunal.

Q. Right. But you didn't know it?

A. No. Mr. Bruton referred to him, actually, as the something about he was the it was his project.

Q. Am I right that you don't know anything about who was or who was not involved, of your own knowledge?

A. No. Only what I have subsequently learned.

Q. Thank you.

MR. HEALY: That's the evidence.

CHAIRMAN: Very good, Mr. Lowry. Thank you for your attendance over the past week or so. I appreciate it's been a lengthy and taxing session for you. Thank you for your attendance.

And I think the situation now is, Mr. Healy, that it is proposed to take up the relevant substantive evidence in relation to the actual licence competition itself.

There has been a great deal of work done, as I think I have indicated already, in relation to extremely compendious files received from a number of sources.

Some yet remains to be done, and the Tribunal will be directing itself to relevant evidence at the earliest possible opportunity, once the investigatory work is concluded and relevant persons notified.

/RS

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MR. HEALY: That's correct, Sir, yes.

CHAIRMAN: Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.

/RS