

TRIBUNAL OF INQUIRY

(PAYMENTS TO MESSRS CHARLES HAUGHEY AND MICHAEL LOWRY)

Appointed by instrument of An Taoiseach dated

26th day of September 1997

pursuant to the

Tribunals of Inquiry (Evidence) Acts 1921 and 1979

DAY 154

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 MONDAY, 15TH JULY, 2002:

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 DENIS O'BRIEN: Mr. Eoin McGonigal SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR MICHAEL LOWRY: Mr. Donal O'Donnell SC

Mr. David Barniville Bl

Instructed by: Kelly Noone & Co.

Solicitors

FOR AIDAN PHELAN: Mr. Michael Gleeson SC

Instructed by: Caroline Preston

A & L Goodbody

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

WITNESS:	EXAMINATION:Q. NO:	
JOHN DAVIS	Mr. Coughlan	1 - 124
Mr. Gleeson	125 - 144	
DENIS O'BRIEN	Mr. Coughlan	145 - 183

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THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, 29TH JULY,
2002 AT 11:00AM:

CHAIRMAN: Good morning, ladies and gentlemen. I shall have somewhat more to say tomorrow morning before the substantive sitting in relation to the intended further course of the Tribunal and in relation to what has transpired during the past several months since we last held substantive public sittings. But I am anxious for immediate purposes, to proceed as soon as possible to the limited body of evidence that is intended to be dealt with today and tomorrow, particularly as I understand one witness has attended at considerable personal inconvenience, and I am anxious to ensure that he can be discharged and have his evidence concluded today. Let me accordingly, for this morning's purposes only say three quick things.

Firstly, subject to finalising appropriate procedures with the legal representatives of certain interested

persons, the Tribunal has determined that it will proceed from private investigations to actual public sittings at the earliest vantage point possible in relation to the circumstances of the second GSM licence competition, the award of the licence itself, and certain other broadly related matters. From that mere balanced statement of intention, obviously no one should draw any inferences that are in any way adverse to any person connected with the Tribunal's business.

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Secondly, whilst I will have somewhat more to say on this tomorrow morning, the diffusion and complexity of preparing this phase of substantive evidence necessarily means that there will be involved a very lengthy Opening Statement indeed, one that is probably more complex than even the fairly lengthy recent Opening Statements in past phases of evidence.

Having considered the position with my colleagues on the Tribunal legal team, and having received and evaluated certain submissions from the legal representatives of some interested parties, I have come to the conclusion that it would not be an appropriate or fair procedure to here and now proceed with a substantive Opening Statement and then to leave the matter hang for some number of weeks until the substantive evidence is taken up. I do that both

having regard to the very considerable public interest in the matters that will fall to be considered during the phase that is approaching, and also bearing in mind that in journalistic terms the weeks ahead are normally referred to as a somewhat fallow period for news.

Thirdly, I should point out that whilst the Tribunal has been engaged in the very substantial task of preparing this intended phase of evidence over the last several months, there have been further matters that have been attended to in the context of what is colloquially described as "the money trail" in relation to the last substantial phase of evidence. I had hoped

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that it might be possible that all these additional matters could be dealt with and finalised in the course of these couple of days, but that has not proved possible. However, we are proceeding to one particular aspect, and it is to that that I would now invite counsel for the Tribunal to open the matter.

MR. GLEESON: Mr. Chairman, before Mr. Healy proceeds with his Opening Statement, I would like, Mr. Chairman, clarification from the Tribunal on a particular point relating to the evidence of Mr. Davis that is intended to be led this morning, Mr. Chairman, and it arises in this context: I appear for Mr. Aidan Phelan, and the Tribunal has, in correspondence with my client, raised

the possibility of inferences adverse to Mr. Phelan being drawn, and having raised that possibility expressly, and having identified a very particular prejudice which the Tribunal says may follow, in my respectful submission, it is incumbent on the Tribunal to therefore apply the highest standards of fair procedures insofar as this particular matter is concerned.

Now, I understand that the position is that the Tribunal is proposing to read into the record certain correspondence between Mr. Kevin Phelan, who is no relation of Aidan Phelan's, and Mr. Christopher Vaughan, solicitor, in circumstances where neither the sender nor the recipient of that correspondence is apparently going to give evidence.

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Now, I had understood the position to be that the Tribunal was adopting the standard of fair procedures whereby hearsay evidence was not going to be relied upon, especially where somebody's good name was concerned, and I do recall, Mr. Chairman, that in the course of a cross-examination that I conducted with one of the witnesses from Investec Bank that I was prevented from putting certain hearsay materials to that witness, and quite properly so. But my request for clarification now is on the basis that this

correspondence is now going to be read into the record, what is the status of this material? Is it the case that the Tribunal has now decided that it can and will act upon hearsay evidence? Or to what extent is the Tribunal proposing to rely on such hearsay evidence, particularly where it has itself identified the prejudice that may be visited upon my client? And therefore, I am asking, Mr. Chairman, for clarification of that point, and perhaps at this stage, as Mr. Phelan has not, nor has any other witness given evidence for some time in this Tribunal, I would like, on behalf of Mr. Phelan, to reiterate something which everybody I am sure is aware of, and that is that the commercial reputation of people who have given evidence and who may still be giving evidence is, every day, being affected by what transpires at this Tribunal. And I would like to recall the jurisprudence of the

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High Court in relation to the disqualifications of directors of limited companies. In one of the first judgements under Section 150 of the Companies Act, Mr. Justice Murphy in the case of Baxter v. Business Communications stated that it was very easy to be wise after the event and that an application of that kind could not end up in a witch hunt of any individual director. And in my respectful submission, the

Tribunal, as it has professed, must apply very high standards of fair procedures, and it is for that reason that I am asking the Tribunal to clarify what it intends to do with this material and how it intends to use this material, particularly having regard to the very prejudicial consequences which it itself has identified insofar as Mr. Phelan is concerned.

CHAIRMAN: Anything you want to deal with, Mr. Coughlan?

Well, Mr. Gleeson

MR. McGONIGAL: Before you reply to Mr. Gleeson, Mr.

Chairman, it might be as well that I indicate not only support for Mr. Gleeson's application, but I am curious to ask the question why the Tribunal is sitting for these two or three days. I understand that the Tribunal is not sitting in the month of August. It's not clear to me at the moment why the Tribunal is not sitting in August or September. I understand that there is material available to the Tribunal which they believe is important and of urgent public importance to be dealt with, and it seems to me, therefore, that if

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the Tribunal has these matters, that it should be moving with speed to deal with them in public.

Apparently, in the last eight months a lot of time has been spent by the Tribunal inquiring into those matters. It would also appear that over the last eight

months some time has been spent dealing with other matters relating to what you have identified as the money trail. It's not clear to me, Mr. Chairman, at the moment why this particular piece of the so-called money trail has been selectively chosen to be led at this time, particularly when there are other aspects of the money trail that have been not been completed and on which the Tribunal has carried out inquiries and doesn't seem to be leading evidence at this time and which are of equal importance insofar as anything has importance in relation to the money trail.

The Tribunal is aware that for a long time my client, who is being facilitated today, had indicated that he would be unavailable for this week due to having taken a family holiday, has at significant inconvenience brought himself back to Dublin in circumstances where he has only recently had an opportunity of looking at the material that's being dealt with today. The material which he is looking at is material which was served late on Thursday, apparently, and wasn't and wasn't got by him, because he had left the country before it could be got to him. He has not therefore had an opportunity of reading this material.

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We have indicated in our correspondence that we consider the procedure of sitting in these three days

to be oppressive and unconstitutional and unfair. It appears there are a number of persons who are not available to the Tribunal to call this week, and they presumably will be re-called in September/October. It doesn't seem clear to me why it is necessary for the Tribunal to sit now, when those witnesses are unavailable. It seems to me fairer and in keeping with fair procedures that the Tribunal should be taking all of the witnesses together and in a sequence that might make sense, having regard to the material. That is not what the Tribunal appears to be doing in these two or three days.

It is with regret that I have to say that it seems to me that the only reason for appearing to sit these three days is because the Tribunal has not sat for the last eight months, and it feels that there is a necessity to keep the press on its side and advise it as to what is going on, that it should sit for these three days before a break, for whatever reason. And I want to register a protest in the strongest possible terms as to the conduct of the Tribunal in sitting in these three days. I think it is grossly unfair not only to my client but also to the principle of fair procedures which this Tribunal is supposed to be concerned with.

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CHAIRMAN: Taking first of all Mr. McGonigal's observations, I am emphatically rejecting any suggestion that the convening of the short sitting over these couple of days is in the nature of some public relations stunt or a formula to appease the media, as I have indicated, and as was set forth very explicitly in recent protracted correspondence between the Tribunal solicitor and the solicitors instructing Mr. McGonigal, a very substantial part of the reason why I have decided it would be unfair and inappropriate to proceed with a full opening of perhaps approximately two days on the intended further phase for the very reason that it would invite potentially adverse conjecture against Mr. O'Brien or other interested persons; and it appeared to me, accordingly, having evaluated that submission in correspondence and considered it with my legal advisers, that it would be quite inappropriate to proceed, and I am somewhat surprised that Mr. McGonigal is making that submission that if the Tribunal has pertinent material, it should proceed with it immediately, as it appears expressly at variance with the tenor of recent correspondence from Messrs. Fry's. I am of the view that the limited evidence that has been assembled in relation to further aspects of the money trail should be heard and dealt with as soon as possible. There was at least one other aspect that I had hoped to deal with, but it has not proved possible

to do that, and it will be adverted to at the earliest possible point.

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Regarding the submission of Mr. Gleeson, in which Mr. McGonigal joined him as to the nature of the intended evidence, I am satisfied, having regard to the inquisitional nature of this process, having regard to the degree of investigation that the Tribunal has carried out into the matters that were brought to its attention some months ago, and having regard to the difficulty that the Tribunal has encountered in persuading some potentially relevant witnesses to attend for these sittings, that it is appropriate that this evidence proceed on a basis that it is relevant and pertinent to the Tribunal's business.

As to what is said by Mr. Gleeson in relation to reservations he may argue as regards the nature of the evidence, the weight of the evidence that is to be received will be a matter to be appropriately evaluated in due course, and I will of course provide for any reasonable opportunity that may be available for any viva voce evidence to be given by Mr. Aidan Phelan, Ms. Helen Malone, or any other person before seeking to draw any conclusions; but in all the circumstances, I am satisfied, given all that has taken place to date, it is appropriate that this limited portion of evidence

proceed and proceed now.

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OPENING STATEMENT WAS THEN DELIVERED BY MR. HEALY:

MR. HEALY: Sir, when the Tribunal resumed its opening sittings on the 22nd May, 2001, the Opening Statement dealt with aspects of the Terms of Reference which concerned both Mr. Haughey and Michael Lowry. Where Michael Lowry was concerned, the sittings focused on a number of financial and property transactions and the individuals involved in those transactions.

In the course of the Opening Statement, it was stated that the focus of the Tribunal sittings with regard to those financial and property transactions would be on what is commonly described, and as you have mentioned yourself, as the money trail. The Opening Statement at page 76 went on as follows, and I am quoting from that Opening Statement: "The information made available to the Tribunal will, however, involve examining material concerning relationships, connections, or dealings between Mr. Lowry and a number of individuals against a background in which some of those individuals and Mr. Lowry were involved in a competition to operate what has come to be known as the second GSM licence."

At the time of the Opening Statement, the Tribunal envisaged examining a number of different matters which were at that time itemised as follows:

Firstly, the US \$50,000 payment described as the Telenor/ESAT payment. Secondly, the £147,000 payment /RS

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by Mr. David Austin into an account in the name of Mr. Michael Lowry in the Isle of Man, described at that time, I think, as the Carysfort Avenue/David Austin payment.

Thirdly, a property transaction involving the purchase of premises at Mansfield and described as the Mansfield transaction.

Fourthly, another property transaction involving the purchase of premises at Cheadle and known as the Cheadle transaction.

Fifthly, a number of share transactions involving the purchase of ESAT Telecom shares on the account of Mr. David Austin with Donaldson Lufkin & Jenrette, a company within the Credit Suisse First Boston group.

Evidence was heard in connection with these matters over a period between May and November of 2001. The matters described in the Opening Statement at that time, and in respect of which evidence was heard, all occurred between in or about June 1995 and March of 2001. In the course of the Opening Statement, the Tribunal drew attention to the fact that although prima facie clearly of relevance to the Tribunal's Terms of Reference, the ESAT/Telenor payment had not been drawn

to the attention of the Tribunal, and it appears that it would not have come to the attention of the Tribunal but for the fact that it came into the public domain by

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way of press comment.

The remainder of the itemised matters which I have mentioned above would not have come to the attention of the Tribunal but for the fact that inquiries by the Tribunal prompted by information made available to the Tribunal by Investec Bank resulted in their disclosure to the Tribunal.

It will also be recalled that, as I think has been pointed out in an earlier Opening Statement, it was not until after the resumption of those sittings in May of 2001 that the Tribunal learned from Mr. Barry Maloney of the conversations he had had with Mr. Denis O'Brien in which reference was made to two $\text{€}100,000$ payments in the context of the payment of success fees in connection with the winning of the competition for the second GSM licence.

In the course of that May 2001 Opening Statement, the Tribunal indicated that the concealment, or at least the apparent concealment of what was described as the loan of $\text{€}147,000$ by Mr. David Austin to Mr. Michael Lowry was a factor to be considered by the Tribunal in determining whether that money paid into an offshore

bank account in Mr. Lowry's name was in truth a loan or a payment within the Terms of Reference.

With regard to the Mansfield and Cheadle transactions, the Tribunal indicated that it wished to inquire into

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the circumstance that up to that time those transactions had not been brought to the attention of the Tribunal, and furthermore, that steps appeared to have been taken as part of the transactions to conceal the identities of the true parties, and most specifically, as the evidence at those sittings unfolded, the involvement of Mr. Michael Lowry.

The Mansfield transaction, it will be recalled, involved the purchase of a property at Mansfield for $\text{£}250,000$ sterling. The Cheadle transaction involved the purchase of a property for $\text{£}445,000$ sterling. Mr. Lowry has informed the Tribunal that he was introduced to those properties by a Mr. Kevin Phelan, who seems from the evidence to have been performing the role of a property consultant.

A deposit of $\text{£}44,500$ was paid on the 8th September, 1999, on the signing of the contract for the purchase of the Cheadle property. The funds for that deposit were made available by Mr. Aidan Phelan from the surplus of $\text{£}300,000$ transferred from Mr. Denis O'Brien's account to Mr. Christopher Vaughan's client

account after paying the balance of the purchase price on the Mansfield property.

You will recall that evidence was given in relation to the detail of all those transactions at earlier sittings.

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The balance of the purchase price on the Cheadle property was raised by way of a loan from GE Capital Woodchester, the bank which we now know as Investec. From what the Tribunal was informed prior to the resumption of sittings in May of 2001, Mr. Aidan Phelan was instrumental in arranging this loan. It will be recalled that the Tribunal, in terms of the information made available prior to the resumption of the sittings and from the evidence heard at the sittings, was given a number of different versions of this transaction. It has proved difficult to obtain all of the evidence of the true nature of this transaction.

It will be recalled that when the Tribunal first investigated the matter, it learned that the original loan file in Woodchester Bank or Investec Bank could not be found, and to date, this file has not been located. Indeed, it was as a result of attempts by officials of Investec Bank to reconstitute the true nature of this transaction that the matter was referred to the Tribunal.

From Investec Bank's inquiries, it appeared that the loan transaction suggested a connection between Mr. Michael Lowry and Mr. Denis O'Brien. You will recall that evidence was given by Mr. Phelan, Mr. Aidan Phelan, that it was he who negotiated the loan with Michael Tunney, a senior official of Investec Bank. Mr. Aidan Phelan informed the Tribunal and in evidence stated that he had made it absolutely clear that the

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loan was to be taken by Mr. Michael Lowry, and that for that purpose a corporate vehicle, Catclause, would be used. Mr. Tunney, on the other hand, informed the Tribunal and stated in evidence that Mr. Lowry was not involved.

However, a number of other bank officials informed the Tribunal and stated in evidence that Mr. Denis O'Brien did appear to be involved in the transaction. Mr. Morland informed the Tribunal that he had been informed by Mr. Tunney that although the property was being purchased for Mr. Denis O'Brien, Mr. O'Brien did not want his name associated with it. It's only fair to point out at this stage that Mr. O'Brien at the time informed the Tribunal, and has since stated in evidence, that he knew nothing of either the loan or the property transaction.

It will also be recalled from the evidence that

Investec Bank encountered real difficulty in ascertaining the true nature of this transaction, and in particular the true identities of the individuals involved. It was with a view to endeavouring to ascertain the true nature of the transaction and the true nature of the individuals involved that the Tribunal embarked on the inquiries carried out in the course of those resumed sittings between May and November of last year.

Much of the information available to the Tribunal in

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connection with that investigation came in the form of documentation provided by Mr. Christopher Vaughan. Mr. Vaughan is a solicitor practicing in Northampton and was the solicitor involved in both the Mansfield and the Cheadle transactions, and indeed was the solicitor acting in relation to a number of other property transactions which involved Mr. Denis O'Brien and to some degree, in a ministerial capacity, Mr. Aidan Phelan, and also with which Mr. Kevin Phelan was involved.

Prior to the resumption of the Tribunal's sittings in May of last year, Mr. Vaughan met with members of the Tribunal legal team in the course of the private investigatory stage of its work. You will remember from the evidence that Mr. Vaughan also attended a

meeting at the office of Mr. Aidan Phelan on the 15th March, 2001, a meeting attended by Mr. Michael Lowry, Mr. Aidan Phelan, Ms. Helen Malone, and Mr. Kevin Phelan.

It also was stated in evidence that some short time later Mr. Vaughan attended another meeting, this time at the Regency Airport Hotel. Mr. Lowry, Mr. Aidan Phelan, and Ms. Helen Malone attended that meeting. Mr. Denis O'Connor, an accountant, also attended the meeting. From the evidence, it would appear that while Mr. Kevin Phelan was in the Regency Airport Hotel for some reason connected with the meeting, he may not have attended for the entirety of the meeting or may not

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have attended at the same time as all of the other participants.

From the evidence to date, it would appear that none of these meetings had anything to do with the processing, either from a legal point of view or otherwise, of any of the two property transactions in question.

According to the evidence of Ms. Helen Malone, the first meeting, at Mr. Aidan Phelan's office, was held for the purpose of briefing those persons present with regard to the transactions. Ms. Malone has given similar evidence in relation to the purpose of the meeting at the Regency Airport Hotel, as has Mr. Denis

O'Connor.

While Mr. Vaughan was prepared to attend these meetings and indeed, as I have said, to attend a private meeting of the Tribunal, he declined to give evidence at the Tribunal's public sittings. As Mr. Vaughan was out of the jurisdiction, he could not be compelled to give evidence; and while this matter was drawn to the attention of both Mr. Lowry and Mr. Aidan Phelan, both of whom gave evidence that he had encouraged him to attend, he persists in his refusal.

In the course of the evidence, it became clear that although the two meetings at the offices of Mr. Phelan and at the Regency Hotel respectively were held ostensibly for the purpose of briefing the participants

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or were held ostensibly for the purpose of briefing the participants, no notes appear to have been kept, although taking part in the meeting were a number of professionals to whom the taking of a note would be a matter of ordinary professional practice.

Now, this evidence concerning these meetings and the non-attendance of Mr. Christopher Vaughan, and to date Mr. Kevin Phelan, may now need to be revisited in the context of the events to which I will refer in a moment concerning Mr. Vaughan's attitude to the Tribunal.

Before dealing with this material, it will be useful to

refer to the Tribunal's efforts to persuade Mr. Vaughan to give evidence. Before referring to those efforts, I should say that in the ordinary course, whether in a forensic or any other inquiry, where there was any uncertainty whether a bona fide uncertainty or otherwise concerning the true nature of a conveyancing or a property transaction, the Tribunal has proceeded on the basis that one would expect that a solicitor's file would contain an accurate reflection of the course of any such transaction.

What is more, the Tribunal has always proceeded as it would seem reasonable to do, on the basis that in the ordinary way a solicitor performing a professional duty where any obligation of confidentiality had been waived by his clients would be only too happy to make himself available to explain the contents of his file, and

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indeed we have had examples of that in the context of other evidence given to this Tribunal.

On the 19th June, 2001, following a lengthy meeting with Mr. Vaughan on the 30th May, the solicitor to the Tribunal, Mr. John Davis, requested Mr. Vaughan to give evidence at the sittings resumed in May of 2001. Mr. Vaughan replied on the 27th June indicating that he could not accede to the Tribunal's request that he give evidence at its public sittings. His reasons for not

attending were as follows, and I'm quoting from his letter:

"As you will appreciate, I am a practicing solicitor and a notary public in this country. I am not familiar with the laws of Ireland and in particular the workings and objectives of the Tribunal.

Therefore, purely from a professional point of view, I cannot expose myself to a public matter in the context of the past professional representation of my clients, as I believe I could find myself in a totally impossible position."

On the 16th July, 2001, the Tribunal replied to Mr. Vaughan explaining the workings and objectives of the Tribunal. In particular, the Tribunal pointed out that the inquiry upon which it was engaged had been established under an Act the Tribunals of Inquiry Evidence Act of 1921, an Act of the English parliament, an Act which, as the Tribunal pointed out, governed

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Tribunals of Inquiry appointed to carry out inquiries in England and Wales and which, along with other UK legislation, was carried over into Irish law at the foundation of the State. The Tribunal also pointed out that as far as it was aware, the conduct of the business of the Tribunal did not differ significantly from the conduct of the business of similar Tribunals

in the United Kingdom.

In response to Mr. Vaughan's statement that he was concerned and feared that he might be exposed in giving evidence to the Tribunal, formal waivers of confidentiality were obtained from Messrs. A & L Goodbody, solicitors for Aidan Phelan, and Messrs. Kelly Noone, solicitors for Michael Lowry.

By letter of the 24th July, 2001, Mr. Vaughan wrote again stating that he would not be attending the Tribunal notwithstanding the Tribunal's further correspondence and the provision of waivers.

On the 23rd October, 2001, the Tribunal again wrote to Mr. Vaughan recording that the Tribunal had been left with the impression that notwithstanding that he appeared to have been exhorted to do so by Mr. Phelan and Mr. Lowry, he was still not prepared to attend at the sittings of the Tribunal for the purpose of giving evidence concerning his dealings on their behalf. The Tribunal wrote formally so as to put him on notice that his stated reasons for non-attendance might be

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insufficient to convince the Tribunal that it would be inappropriate to draw unfavourable conclusions concerning his conduct of the affairs of his clients.

In a letter of the 24th October, 2001, in which Mr. Vaughan provided the Tribunal with information on a

number of other matters, he stated that he had been contacted by both Mr. Michael Lowry and Mr. Aidan Phelan and their representatives and that he had indicated to them that although he would be as helpful as possible, he would not attend before the Tribunal in public session. He repeated that he was prepared to continue to assist the Tribunal but that his assistance would not extend to attendance at the Tribunal's public sittings. Despite further correspondence from the Tribunal along similar lines, Mr. Vaughan was unwilling to attend to give evidence.

As a result of information made available to the Tribunal in March of this year, the Tribunal raised a number of new matters with Mr. Vaughan with a view to persuading him once again to give evidence to the Tribunal. The information in question was made available to the Tribunal on the 21st March, 2002 by Mr. Colm Keena, a journalist with the Irish Times. Mr. Keena contacted Mr. John Davis, the solicitor to the Tribunal, indicating that he had certain information which might be relevant to the Tribunal's Terms of Reference. At a private confidential meeting with Mr. Davis, Mr. Keena handed over four documents.

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Firstly, a copy of a letter which appeared to be on the notepaper of Mr. Christopher Vaughan, solicitor,

notepaper with which Mr. Davis was familiar. The letter was dated the 12th July, 2000, and was addressed to Mr. Kevin Phelan of 106, Gillygooley Road, Omagh, County Tyrone.

Secondly, a copy of a letter, which again appeared to have been written on the notepaper of Mr. Christopher Vaughan, dated 5th September, 2000, and again addressed to Mr. Kevin Phelan.

Mr. Keena also provided Mr. Davis with two file copies of what appeared to be letters written on the same date by Mr. Christopher Vaughan to Mr. Kevin Phelan at the same address. The first one is dated 12th July, 2000.

The second one is dated 5th September, 2000.

I want to deal firstly with the two letters written on the headed notepaper of Mr. Christopher Vaughan dated respectively the 12th July, 2000, and the 5th September, 2000. These letters were of interest to the Tribunal because they appear to be different to copies of letters of the same date between the same parties copies of which have been furnished to the Tribunal had been furnished by Mr. Christopher Vaughan, Mr. Kevin Phelan, and Mr. Aidan Phelan.

Under cover of a letter of the 26th April, 2001, Mr.

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Christopher Vaughan furnished the Tribunal with a file copy, or an office copy, if you like, of a letter from

his office to Mr. Kevin Phelan at 106, Gillygooley Road, Omagh, County Tyrone. The letter was dated 12th July, 2000, and was written in connection with Saint Columba's Church; that is to say in connection with the Cheadle property.

Some time later, on the 23rd May, 2001, Mr. Kevin Phelan provided the Tribunal with a copy of his file.

The documents provided by Mr. Kevin Phelan included a photocopy of what appeared to be the original of a letter of the 12th July, 2000, from Mr. Christopher Vaughan, addressed to Mr. Kevin Phelan. It became apparent to the Tribunal that there were marked differences between the two versions of this letter of the 12th July, 2000, between on the one hand the short form file copy initially provided by Mr. Christopher Vaughan and the photocopy of the short form original of the same letter subsequently provided by Mr. Kevin Phelan, and on the other hand the photocopy of the long form letter provided to the Tribunal by Mr. Colm Keena.

Whilst I don't propose in the course of the Opening Statement to go into the many differences between these two documents, it will suffice at this stage to emphasise the differences between the second paragraph in the short form letter as compared to the second paragraph in the long form letter.

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Now, if I could put the short form letter on the overhead projector, the short form letter of the 12th July.

You will see that it's from Mr. Vaughan to Mr. Kevin Phelan, it's re Saint Columba's Church that's the Cheadle property. It says:

"Dear Kevin, I enclose copy letter and policy schedule relating to this property which has only just been sent to me.

You will recall that this property was purchased in I... in my name as trustee for Aidan Phelan. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied.

Can you please let me know as a matter of urgency

1. Have you managed to find a purchaser?
2. If not, is there now a tenant in the house as discussed with you recently?
- 3: Could you please ensure that the conditions be complied with immediately, as the policy could be null and void and I could be personally liable for losses."

Then it signs off, "Yours sincerely, C.J. Vaughan", and it's signed with what appears to be Mr. Christopher Vaughan's signature.

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If we just go to the top of that letter again, please.

That is the letter that is a photocopy of a letter

which was made available to the Tribunal by Mr. Kevin Phelan, Mr. Christopher Vaughan, and Mr. Aidan Phelan, and which was used in investigating the Cheadle transaction in the course of the Tribunal's sittings which commenced in May of last year.

Now, I have called that the short form of that letter.

It is in the same form as the file copy of that letter provided to the Tribunal by Mr. Christopher Vaughan, and I'll just put the file copy on the overhead projector.

If you go to the top of that document, you'll see it's blank, because it's an office copy. It's again addressed to Mr. Kevin Phelan, dated 12th July; it is in the same form as the photocopy of the original which we had on the projector a moment ago.

Now, the photocopy provided to the Tribunal by Mr. Colm Keena, of the same date, between the same parties, I have decided to call the long form of that document; and if I could put that on the overhead projector, I'll draw attention to the differences.

Again it's from Christopher Vaughan to Kevin Phelan, dated 12th July, 2000. It's re Saint Columba's Church, which is the Cheadle property. It begins: "I enclose copy letter and policy schedule relating to this

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property which has only just been sent to me".

It goes on: "You will recall that this property was purchased I" "I" I think should be in "my name as trustee for our client. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied".

In the course of these sittings, the Tribunal will endeavour to address the question whether it would be appropriate to interpret the long form document and the reference to "our client" in the second paragraph which I have just read out as a reference to Mr. Michael Lowry, and whether it would be appropriate also to draw the inference that the short form letter was intended to conceal the true identity of the parties to the transaction, namely Mr. Michael Lowry, and to suggest that in fact Mr. Aidan Phelan was the purchaser of the Cheadle property.

I want to compare now the two forms, the long form and the short form of the letter of the 5th September.

Firstly, if I could put the short form of that letter on the overhead projector. Again, this is the document relied on by the Tribunal in the course of its investigation of this matter last year. It's from Christopher Vaughan to Kevin Phelan, dated 5th September.

"Dear Kevin, I faxed through to you on the 4th

/RS

September the letter from Thistlewood Estates. This was waiting for me when I returned from holiday. This looks to be excellent news, depending on whether the conditions can be satisfied.

"Could you therefore let me know:

1. What is the current situation with regard to the granting of planning consent for the proposed residential scheme? Who is going to submit and pay for the planning application, and when will it be done?
2. Presumably the access will be dealt with at the same time as the planning application is submitted?
3. Are Thistlewood undertaking a soil survey at the present time?

"Do you know the identity of Thistlewood Estates' clients? I have done a company search against Thistlewood, and I enclose a copy herewith which says very little. Do you know who their actual clients are?"

Now, the Tribunal was also provided with an office copy of that letter, an office copy of the short form of that letter, which I'll just put on the overhead projector just for a moment. And as you can see, that is in the same form as the photocopy of the original, except of course that it doesn't have Mr. Christopher Vaughan's letterhead.

/RS

I now want to turn to the long form of that document, the photocopy of the letter of the 5th September provided to the Tribunal by Mr. Colm Keena.

Again it's on the headed notepaper of Mr. Christopher Vaughan, dated 5th September, addressed to Mr. Kevin Phelan. It begins:

"Dear Kevin, I faxed through to you on the 4th September the letter from Thistlewood Estates that was waiting for me when I returned from holiday. This looks to be excellent news, depending on whether the conditions can be satisfied."

Then it goes on in a paragraph which is not contained in the short form of that letter, which is as follows:

"What I would like to do is set up a timetable bearing in mind that Michael wants to own the property in his own name for a month prior to the sale to Thistlewood Estates." Then it goes on:

"Could you therefore let me know", and again the same three questions are asked as are asked in the short form of the letter.

It then goes on: "Do you know the identity of Thistlewood Estates' clients? I have done a company search against Thistlewood, and I enclose a copy

/RS

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herewith which says very little. Do you know who their actual clients are?"

Again this appears in the short form and it's the final paragraph in the short form letter.

In this long form letter there is a further paragraph, which is as follows:

"I have not written to Michael about this, as I get concerned about correspondence going to him, but a copy has been sent to Aidan as he needs to keep the mortgage lender happy as to the loan that Michael took out."

Now, it should be borne in mind that from the evidence given to the Tribunal by Mr. Phelan, and also from information gleaned by the Tribunal from other documentation provided by Mr. Christopher Vaughan in the course of the May 2001 sittings, the Tribunal was led to believe that Mr. Aidan Phelan had taken over this transaction from January of the year 2000 and that Mr. Lowry had completely ceased to be involved in the transaction, and that was Mr. Lowry's own evidence also.

The Tribunal will now wish to consider whether the short form of this letter was generated so as to exclude in the second paragraph a reference to Mr. Michael Lowry as the owner of the property, a reference, which as I have said, would be inconsistent

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with all of the evidence given to the Tribunal to date.

So far as the last paragraph is concerned, the Tribunal

will wish to consider whether it was excluded from the short form of the letter so as to obscure the anxiety and concern Mr. Vaughan, and perhaps a number of other individuals connected with the transactions, may have had that Mr. Michael Lowry could be identified as the purchaser or owner of the property and/or as the person ultimately liable to Woodchester/Investec Bank as the borrower.

The Tribunal will also wish to consider why these documents were not brought to the attention of the Tribunal and whether in fact they were concealed from the Tribunal so as to obscure the true identity of the purchaser of the Cheadle property and the true nature of the relationship between Mr. Aidan Phelan and Mr. Michael Lowry, the true role of Mr. Christopher Vaughan and of Mr. Kevin Phelan, and the true identity of the borrower of the funds.

And I now want to refer to some of the steps taken by the Tribunal on receipt of these documents.

Firstly, the Tribunal decided that it should endeavour to establish whether these documents had in fact been generated by Mr. Christopher Vaughan and whether they had in fact been sent by him to Mr. Kevin Phelan, as on their faces they purported to have been.

/RS

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Mr. Davis, solicitor to the Tribunal, contacted Mr.

Vaughan on the afternoon of the 21st March, 2002, and spoke to Mr. Vaughan on the telephone. He had already furnished Mr. Vaughan with Mr. Vaughan's own file copies of the letters respectively of the 12th July and the 5th September, 2000, together with the copies of the long form of those letters on Mr. Christopher Vaughan's own notepaper. Mr. Vaughan, in the course of a telephone conversation, indicated that he had no comment to make in relation to the letters which had been forwarded to him and that he had no instructions in relation to the matter. However, he speculated that the discrepancies between the short form file copy letters from his own file and the long form letters provided to him for comment by Mr. Davis might have been explicable on the basis that the short form file copies consisted of drafts which he later expanded on and forwarded to Mr. Kevin Phelan. He was satisfied that the long form letters on his headed notepaper and which bore his name were in fact his letters.

By fax of the same day he stated in reply to Mr. Davis as follows:

"Thank you for your fax of this afternoon. I have no immediate comment to make on the points raised in the fax, and so far as I am aware, I am no longer instructed by any of the parties in respect of those matters before the Tribunal. However, if you wish, I

/RS

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could write to the relevant parties to see if they wish to instruct me further.

"I would also need to be sure that any previous waiver of client confidentiality is still applicable to me.

Yours sincerely."

The Tribunal again wrote to Mr. Vaughan on the 25th March, 2002, enclosing another set of the same four documents. Mr. Davis in that letter stated: "You will recall that we discussed the divergence between the office copy and the final issued letter in each of these cases." That's referring to the July and September letters. "You felt that the differences were probably due to the fact that you had expanded on the drafts when issuing the final letter. I would be much obliged if you could examine your file so as to clarify the position, since I am sure you will agree that it is unusual that a solicitor would not retain an office copy of the final draft of a letter issued on behalf of a client."

Having received no response from Vaughan, the Tribunal letter of the 12th April 2002 forwarded to Mr. Vaughan by fax for Mr. Vaughan's comments further copies of the same four letters together with two additional copies, namely, top copies of the short form of Mr. Vaughan's letters dated 12th July, 2000, and the 5th September, 2000. So that what Mr. Davis had now given to Mr.

Vaughan under cover of this letter was all of the

/RS

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documents to which I have referred you, Sir, on the overhead projector.

Mr. Davis said in his letter:

"Dear Mr. Vaughan.

"I refer to my letter of the 25th March, 2002, to which I have not had a reply.

"I am now writing to seek once again your comments on the matters raised in my letter and in our telephone conversation of Thursday, 21st March, 2002. With this letter I am enclosing not just the material to which I drew your attention in my letter of the 25th March, but all the relevant documents to hand concerning this matter, including documents recently supplied to the Tribunal by another party.

"1. Office copy of the letter of the 12th July, 2000 from your office to Mr. Kevin Phelan."

That is the document which we have been referring to as the short form office copy.

"2. Top copy of the same letter issued by you to Mr. Kevin Phelan and also dated 12th July 2000." That is the document we been calling the short form original of the letter of the 12th July.

/RS

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"3. Top copy of another letter issued by you to Mr. Kevin Phelan and also dated 12th July." That is the document we have been referring to as the long form of the letter of the 12th July.

"4. Office copy letter of the 5th September, 2000, from your office to Mr. Kevin Phelan." This is an office copy of the short form of the letter of the 5th September.

"5. Top copy of the same letter issued by you to Mr. Kevin Phelan and also dated 15th September, 2000." This is the top copy of the short form of the letter of the 15th September the letter on the overhead projector says the 15th; that should be the 5th September. It's a typographical error.

"6. Top copy of another letter issued by you to Mr. Kevin Phelan also dated 5th September, 2000." This was the long form of the letter of the 5th September. Documents numbers 3 and 6 were the documents, copies of which were provided to the Tribunal by Mr. Colm Keena; they were, in other words, the long form of the letters which the Tribunal already had copies of, both the file copy and the original provided to the Tribunal by Mr. Christopher Vaughan on an earlier occasion.

Mr. Davis went on: "You will recall that when we spoke on the phone on Thursday 21st March, 2002, and as I

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state in my letter of the 22nd March, 2002, you indicated that letter number 3 above probably differed from letter number 1 above because you had expanded on the draft when issuing the top copy from your office. Likewise you indicated that the same was the position in relation to letters numbered 4 and 6.

"You will see from the copies enclosed that firstly it would appear that letter number 3 is not in fact an enlargement of letter number 1, and secondly, that letter number 6 is similarly not an enlargement of letter number 4. "

Mr. Davis was obviously able to make that point because letters numbers 2 and 5 were in fact the enlargements, if you like, of letters of the office copies provided to the Tribunal and itemised at numbers 1 and 4 of Mr. Davis's letter.

Mr. Davis went on: "From the foregoing, a number of reasonable inferences that could be drawn are (a), that you generated two separate sets of correspondence concerning this matter; (b), that only one set was made available to the Tribunal on foot of its original request for assistance; (c), that a separate set of documentation was obscured from the view of the Tribunal; (d), that two files appear to have been kept in connection with this matter, one for disclosure and one to be obscured from disclosure; (e), that, as appears from letter number 6, this concealment

/RS

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may be related to the involvement of Mr. Michael Lowry.

"As these are obviously matters of the most serious nature and could ultimately lead to conclusions which might have an adverse impact on your clients and on the conduct of your practice as a solicitor, I would be much obliged if you could let me have your comments on the foregoing as a matter of the utmost urgency and certainly by no later than twelve noon on Wednesday next, 17th April."

In this letter the Tribunal was mindful of the fact, as the last paragraph of the letter shows, that on the face of it, Mr. Vaughan's role in these matters may have been a purely ministerial one, and that he appeared to be acting as an agent only, and that therefore he should be given every opportunity to account for the state of this documentation, having regard to the impact which any one of a number of reasonable inferences could have on his professional standing.

Mr. Vaughan replied by letter dated 16th April, 2002, to the effect that he had taken advice on the points raised by the Tribunal but that he was unable to respond without instructions from his clients, and he indicated that he was actively seeking instructions.

After some further correspondence from the Tribunal,

Mr. Vaughan wrote to the Tribunal by letter of the 29th

April, 2002, as follows:

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"Thank you for your letter of the 17th April 2002. I

am sorry that I have been slow in response to your inquiries, but I have been seeking instructions from my clients.

"I am enclosing copies of an exchange of correspondence between myself and Kevin Phelan for your information."

Mr. Vaughan enclosed a letter from Mr. Kevin Phelan

where, with reference to the documents queried by the

Tribunal, Mr. Phelan stated that that is, Mr. Kevin

Phelan stated, and I quote: "I recall on some

occasions in the past you issued correspondence to me

outlining incorrect details following our prolonged and

detailed meetings. I know on occasions you have

confused clients and projects, which resulted in

corrections having to be made and a new correspondence

to be issued. I believe the documentation you have

forwarded has probably arisen for this reason. In any

event, as stated, I have letters marked 'July A' and

'September A' on my files which I hold as originals.

"I have no idea where the documents marked 'July B' and

'September B' have come from."

The references in that letter to the "A" documents are

in reference to the short form letters. The references

to the "B" documents are references to the long form letters.

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It will be obvious that the Tribunal regarded Mr. Kevin Phelan as a person likely to be able to give evidence or provide the Tribunal with information relevant to the inquiries being conducted in relation to these documents. In the past Mr. Kevin Phelan has declined to attend the Tribunal as a witness, or for that matter to attend private meetings with members of the Tribunal legal team. As he currently resides outside the jurisdiction, he cannot as long as he remains outside the jurisdiction, in any case be compelled on foot of a summons to attend as a witness at the Tribunal sittings.

When requested by letter of the 12th July of this year to attend as a witness in connection with these documents, he indicated by letter of the 18th July that he intended to take legal advice on the matter and promised to respond to the Tribunal without delay. To date the Tribunal has not heard from him.

In addition to taking this matter up with Mr. Vaughan and Mr. Kevin Phelan, the Tribunal also took the documents up directly with Mr. Michael Lowry and Mr. Aidan Phelan. Mr. Aidan Phelan, through his solicitors, has informed the Tribunal that he was not

in a position to explain the apparent discrepancy between the long form and short form documents comprising the correspondence between Mr. Christopher Vaughan and Mr. Kevin Phelan. Mr. Aidan Phelan also /RS

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indicated that he had again urged Mr. Vaughan to deal with the Tribunal's inquiries.

Mr. Lowry, by letter of the 30th April, 2002, from his solicitors, indicated that he was at a loss to understand the documents in question. Through his solicitors he has stated that he had no knowledge whatsoever of the long form letters of the 12th July or the 5th September.

In light of the responses from Mr. Kevin Phelan, Mr. Aidan Phelan, and Mr. Michael Lowry, the Tribunal, by letter of the 1st May, once again sought the assistance of Mr. Vaughan and requested him to address the issues identified in the Tribunal's letter of the 17th April; that is to say, the possibility that negative inferences could be drawn concerning the manner in which he conducted his clients' affairs.

He replied to the Tribunal by letter of the 7th May 2002 as follows:

"I do not think there is anything further I can do to assist the Tribunal".

In view of the seriousness of the inferences that could

be drawn from the existence of these documents and the fact that they had only recently come to the attention of the Tribunal, the Tribunal renewed its efforts with solicitors for both Mr. Michael Lowry and Mr. Aidan /RS

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Phelan with a view to encouraging them to obtain from Mr. Vaughan a comprehensive explanation for the existence of these documents, in particular, in light of the potential for negative conclusions affecting Mr. Vaughan and also the potential that Mr. Vaughan's actions in relation to these documents would reflect on his clients with whom, in certain circumstances, it might be appropriate to identify him in connection with the documents.

Specifically the Tribunal requested both Mr. Phelan and Mr. Lowry to request that Mr. Vaughan, as their solicitor, provide an explanation for the manner in which he appeared to have conducted his practice in relation to their affairs, and also drew their attention to the fact that in the event of not obtaining the assistance to which it would appear they were entitled, they should consider bringing the matter to the attention of the Law Society of England and Wales with a view to requesting the Society to carry out such inquiries as it might deem appropriate to ascertain why Mr. Vaughan was conducting his practice

in this way.

Mr. Phelan, through his solicitors, by letter of the 13th June, 2002, took the view that the Tribunal was suggesting that he, Mr. Phelan, should take it upon himself to litigate a complaint against a solicitor before a regulatory authority in another jurisdiction, and that this was unreasonable and went well beyond the

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scope of cooperation which the Tribunal was entitled to expect from him.

Mr. Lowry's solicitors informed the Tribunal that they had written to Mr. Vaughan and furnished the Tribunal with a copy of their letter of the 12th July, 2002, addressed to him in which they drew his attention to the inquiries being made by the Tribunal, and in that letter, after describing the nature of their client's dealings in connection with the Cheadle property, stated as follows:

"Leaving aside the fact that there appears to be two versions of each letter in existence, we would request that you let us have a full explanation as to why reference was made in the letter of the 5th September, and we quote, 'Michael wants to own the property in his own name for a month prior to the sale', and furthermore, why in the letter of the 12th July one version records 'This property was purchased in my name

as trustee for Aidan Phelan" and the other version records 'was purchased in my name as trustee for our client.'"

By letter of the 17th June 2002, Mr. Vaughan replied to Mr. Lowry's solicitors as follows: "I shall need to do a certain amount of research before being able to reply to your letter in full."

On the 4th July, 2002, in a lengthy letter, Mr.

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Vaughan, writing to Mr. Lowry's solicitors with regard to the matter at issue, namely the fact that there appeared to be in existence two different versions of the same letters concerning Mr. Vaughan's conduct of the affairs of Mr. Lowry and Mr. Phelan, and I quote: "Because Kevin Phelan acted for both Aidan Phelan and Michael Lowry and was involved in other matters as well, it was very difficult when speaking with Kevin Phelan over the telephone to know whom he was representing at any one time, especially as any one telephone conversation would cover a number of different matters. This certainly caused confusion on various occasions, which was why there may have been more than one version of the document prepared by me, because the first may have been prepared by me following a misunderstanding of my instructions. You indicate that I have confused Aidan Phelan and

Michael Lowry. This is not unexpected, bearing in mind what I have written above.

However, I was instructed that the Revenue would expect that any site should (be) owned by an investor personally to minimise any Capital Gains Tax liability. Therefore, the objective was correct but the name was stated incorrectly by me. I would put this down to either a simple error or lack of concentration. Kevin Phelan complained to me over it and I simply corrected it. With regard to your

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reference to the duplicate letters as mentioned above I regularly faxed transmissions to Kevin Phelan throughout our whole working relationship. If he then corrected something on receipt of a fax, I would have sent him the amended version and kept that hard copy on my file but probably not the first version of the fax. Kevin Phelan would therefore have two versions of the same letter, and I would only have the final version.

"I have already explained this to the Tribunal clerk, and Kevin Phelan has confirmed my view of what I think occurred."

Mr. Vaughan went on to say that having given the matter considerable thought and having taken advice, he was firmly of the opinion that as a witness before the

Tribunal, his evidence would be totally and completely worthless. He said that while he would genuinely like to assist the Tribunal, he knew that his evidence would be of no value. He stated that he was suffering from an inherited serious heart problem and that he had had heart surgery, that he had been on regular medication, and that he felt that and I am quoting: "Appearing before the Tribunal in opening session and submitting himself to cross-examination would be an extremely stressful experience and that there was absolutely no doubt that his health was far more important than the wishes of any client."

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That letter, written by Mr. Vaughan to Mr. Lowry's solicitor, was provided to the Tribunal by Mr. Lowry's solicitors. The Tribunal then wrote to Mr. Vaughan by letter of the 15th July referring to that letter and repeated the view that Mr. Vaughan's evidence would be of real value to the Tribunal's deliberations, and stressed once against that in the absence of any meaningful explanation as to the manner in which he kept his file concerning these matters, negative conclusions could be reached with respect to his conduct of his professional practice.

The Tribunal went on to state that in light of Mr. Vaughan's assertion that he did not think that his

health would permit him to attend in open session, the Tribunal would be prepared to consider taking his evidence otherwise than in open session, and the Tribunal requested him to indicate whether he would be prepared to give evidence in what has colloquially been called "a closed session".

Mr. Vaughan replied on the 17th July and expressed surprise that Mr. Lowry's solicitors had sent the Tribunal a copy of his letter to Mr. Lowry. He went on to say that nothing in the Tribunal's letter of the 15th July persuaded him in the slightest that his evidence would be of any value to the Tribunal and that in no circumstances would he be attending either in public or closed session. He went on to say: "So far /RS

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as I am concerned, that is the end of this correspondence."

In view of the fact that the Tribunal, as I mentioned in this Opening Statement and as was stated in earlier Opening Statements, is examining a number of overlapping relationships between a number of individuals, including Mr. Denis O'Brien, this correspondence and this documentation was brought to the attention of Mr. O'Brien's solicitors. Mr. O'Brien has stated that he had no knowledge of any correspondence that passed between Mr. Vaughan and Mr.

Kevin Phelan, let alone any knowledge as to why different copies of that correspondence might exist and that he was unable to make any comment on the subject matter of the correspondence.

Now, as I indicated at the outset of this statement, when the Tribunal first embarked on examining the money trail in connection with the five itemised matters to which I have already referred, in May of this year, one of the lines of inquiry upon which the Tribunal focused was the fact that none of the information which appeared on any view to be prima facie relevant to the Tribunal's Terms of Reference had not, until then, been brought to its attention. In assembling information in connection with these transactions prior to the resumption of sittings in May of 2000, and in leading evidence in connection with those transactions between May 2000 and November 2001, the Tribunal, as I have /RS

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said, sought to establish the true nature of the transactions and the true identity of the parties to the transactions and also whether attempts had been made to obscure from the Tribunal the true substance of the transactions.

All of this evidence will clearly now have to be reviewed and some of it revisited in the light of the additional information to which I have just referred,

and in particular, in the light of the documents provided by Mr. Colm Keena and the responses by various individuals connected with those documents to the Tribunal's requests for information. The Tribunal will have to consider whether, in particular, if it is accepted that the true nature of these transactions is reflected in the long form letters respectively, of the 12th July and the 5th September 2000, there wasn't a resolve on the part of certain persons to deprive the Tribunal of access to those documents.

Ultimately, the Tribunal will have to determine how to approach the evaluation of the evidence concerning these documents, and especially what account ought to be taken of the fact that the person primarily responsible for generating the documents, namely Mr. Christopher Vaughan, has refused to attend; the fact that the apparent addressee of the documents, Mr. Kevin Phelan, has yet to indicate his willingness to attend; and whether any other person connected with the documents or the transactions to which they refer ought

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to be identified with the actions of Mr. Christopher Vaughan.

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Now, Mr. Gleeson earlier addressed you in connection

with the attendance of Mr. Christopher Vaughan the attendance of Mr. Aidan Phelan, I am sorry, and his solicitors were in touch with the Tribunal today and requested that the Tribunal read into the record a letter sent to the Tribunal by his solicitors. The Tribunal received this letter this morning and responded to Mr. Aidan Phelan's solicitors indicating that the letter would be read into the record in the context of recent correspondence between the Tribunal and Mr. Aidan Phelan's solicitors, and I propose to do that at some other appropriate point in the course of the next day or so.

MR. COUGHLAN: Mr. Davis.

MR. McGONIGAL: There is one matter, Mr. Chairman, that Mr. Healy omitted to deal with, and I don't know whether it's deliberate or not, but in the documents which were served on us last Friday, there was nothing in the documentation that indicated that this material had come from a known source. In fact, there was no reference at all to where the documentation had come. And I am curious to know whether that was deliberate on the part of the Tribunal and whether it was on the basis of an agreement reached with Mr. Keena. The first it was known that Mr. Keena had furnished this document was this morning in the opening. And apart from the first two questions, I am also curious to know whether part of the agreement reached with the

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press or Mr. Keena that his name would be released only on today.

I'd also like to know when the private meeting took place. It seems to me these should have been dealt with in the opening.

MR. HEALY: Yes, Sir, it was deliberate that Mr. Keena's name was not mentioned until today, but it was not on foot of any agreement of any kind with Mr. Keena. In fact, there was no contact with Mr. Keena until this morning when he was informed, purely as a matter of courtesy, that his name would be mentioned in the course of my making the Opening Statement.

CHAIRMAN: There may have been an attempted phone call last night

MR. HEALY: To inform him of the same thing.

CHAIRMAN: But not prior to the conclusion of yesterday.

MR. HEALY: No.

MR. COUGHLAN: Mr. Davis.

JOHN DAVIS, HAVING PREVIOUSLY BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

/RS

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CHAIRMAN: Mr. Davis, you are already sworn from around earlier occasion.

MR. COUGHLAN: Mr. Davis, I think you are solicitor to this Tribunal of Inquiry.

A. That's correct.

Q. I think on the you have prepared a memorandum of intended evidence which you have with you in the witness-box?

A. I do.

Q. And I think on the 21st March, 2002, the Tribunal, through you, was furnished with copies of photocopies of two letters, one dated 12th July, 2000, and one dated 5th September, 2000?

A. That's right.

Q. And those photocopies were photocopies on the headed notepaper of Mr. Christopher Vaughan, solicitor, of Northampton; isn't that correct?

A. That's right.

Q. I think that particular notepaper was familiar to you, you having been involved in lengthy correspondence with Mr. Vaughan over a long period of time?

A. That's right.

Q. Now, I think those documents were supplied to you by Mr. Colm Keena, journalist; isn't that correct?

A. That's correct.

Q. I think you received them together with two other documents which Mr. Keena furnished to you which were what has been described by My Friend, Mr. Healy, as the short form file copies which were on, or which were

/RS

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similar to those which were on the file provided to you by Mr. Christopher Vaughan; isn't that correct?

A. That's right. They correspond exactly with the file copies which Mr. Vaughan had forwarded to me.

Q. And just to clarify in evidence, you entered into no agreement with Mr. Keena in relation to the receipt of these documents; isn't that correct?

A. That's correct.

Q. And you informed Mr. Keena that you were receiving them in the private confidential phase of the Tribunal's business, and that was where matters ended?

A. That's right.

Q. Now, I think in your memorandum of intended evidence, if we could just deal with what Mr. Keena furnished to you in the first instance. If I could first of all deal with the file copy short form for the document number 3, I think. The first document is the short form document or, sorry, the file copy of the short form document, or short form letter; isn't that correct?

A. Yeah.

Q. And it reads it's addressed to Mr. Kevin Phelan of 106 Gillygooley Road, Omagh, County Tyrone, and the number is given, Northern Ireland. It's dated 12th July 2000. It reads: "Dear Kevin, Saint Columba's

Church business", in bold?

A. Yeah.

Q. "I enclose copy letter and policy schedule relating to this property which has only just been sent to me.

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"You will recall that this property was purchased" I think that should perhaps be "in my name as trustee for Aidan Phelan. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied.

Could you please let me know as a matter of urgency

"1. Have you managed to find a purchaser?

2. If not, is there now a tenant in the house as discussed with you recently?

3. Can you please ensure that the conditions be complied with immediately as the policy could be null and void and I could personally be liable for losses? "

And then it's "Yours sincerely".

That was one of the documents Mr. Keena furnished you with; isn't that right?

A. Yes.

Q. Now, he also furnished you with what has been described as a photocopy of a long form of a letter dated 12th July, 2000, which was on his headed on Mr. Vaughan's headed notepaper?

A. That's correct.

Q. If we could just look at that. Just look at the top first, please. Are you familiar with that particular letterhead, Mr. Davis?

/RS

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A. I am, yeah.

Q. And that is addressed again to Mr. Kevin Phelan. There is a fax number on this particular document; isn't that correct?

A. That's correct.

Q. Which I think is not on the

A. It's not on the file copy.

Q. Or the file copy furnished by Mr. Keena?

A. That's correct.

Q. And it reads "Dear Kevin", and then it's "Re" colon "Saint Columba's Church". Again I think this is different to the file copy; isn't that correct?

A. There is an apostrophe in the "Saint Columba's", and it's in different type; it's bold

Q. And there's no "Re"?

A. That's correct.

Q. It continues "I enclose copy letter and policy schedule relating to this property which has only just been sent to me.

"You will recall that this property was purchased in my name as Trustee for our client. I have only

appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied.

Could you please let me, know as a matter of urgency,

"1. Have you managed to find a purchaser?

2. If not, is there now a tenant in the house as discussed with you recently?

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3. Can you please ensure that the conditions be complied with immediately as the policy could be null and void and I could personally be liable for losses?

"I seem to recall when the lending process was being completed that the lender was going to require a six monthly report on the marketing of the property. Can you please let me have details so that I can deal with this? I think the same will apply to Mansfield as well.

"Yours sincerely", and it's signed off. And I think you have had a lot of correspondence with Mr. Vaughan.

Does that appear to you to be Mr. Vaughan's signature?

A. It does.

Q. Now, apart from the differences that we have already discussed between the file copy short form letter and this long form photocopy, I think the second paragraph, there is a difference, is that correct?

A. Yes. In the file copy, it refers to purchasing the

property as trustee for Aidan Phelan, whereas the long form says "as Trustee for our client."

Q. And then if you go to the final paragraph of the long form photocopy, is that in the file copy?

A. No, it doesn't appear at all in the file copy.

Q. Now, if we proceed then to the yes, sorry, perhaps you could just deal with the file copy and the long copy. Can you be of assistance to the Tribunal as to whether one is justified and one is not justified in

/RS

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terms of the

CHAIRMAN: You better explain that, I suppose, Mr.

Coughlan. It's not everyday parlance unless one is typing frequently.

MR. COUGHLAN: Yes.

Q. The long form versus the short form. The short form, would you agree, appears to be justified, in that there are straight margins on both sides, and the long form is not justified?

A. That's correct.

Q. There is only a straight margin on the left-hand side; isn't that correct?

A. That's correct.

Q. Now, if we could go to the other two documents which Mr. Keena gave you. First of all, the file copy, dated 5th September, 2000, and that is again addressed to Mr.

Kevin Phelan at the same address. And it reads:

"Dear Kevin,

"I faxed through to you on the 4th September the letter from Thistlewood Estates that was waiting for me when I returned from holiday. This looks to be excellent news depending on whether the conditions can be satisfied.

"Could you therefore let me know:

"1. What is the current situation with regard to the

/RS

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grant of planning consent for the proposed residential scheme? Who is going to submit and pay for the planning application and when will it be done?

"2. Presumably the access will be dealt with at the same time as the planning application is submitted?

"3. Are Thistlewood undertaking a soil survey at the present time?

"Do you know the identity of Thistlewood Estates clients? I have done a company search against Thistlewood, and I enclose a copy herewith which says very little. Do you know who their actual clients are?

Kind regards, yours sincerely."

Now, if we could look at the other document, the fourth document then that Mr. Keena gave you, and that is a photocopy of a long form original dated 5th September, 2000, on the headed notepaper of Mr. Christopher Vaughan, solicitor; is that correct?

A. That's right.

Q. And it reads it's again addressed to Mr. Phelan

Mr. Kevin Phelan, that is. It reads:

"Dear Kevin,

"I faxed through to you on the 4th September the letter from Thistlewood Estates that was waiting for me when I returned from holiday. This looks to be excellent news

/RS

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depending on whether the conditions can be satisfied.

"What I would like to do is to set up a timetable,

bearing in mind that Michael wants to own the property

in his own name for a month prior to the sale to

Thistlewood Estates.

"Could you therefore let me know:

"1, what is the current situation with regard to the grant of planning consent for the proposed residential scheme? Who is going to submit and pay for the planning application and when will it be done?

"2. Presumably the access will be dealt with at the same time as the planning alteration is submitted?

"3. Are Thistlewood undertaking a soil survey at the present time?

The next paragraph, with an asterisk to the left in manuscript: "Do you know the identity of Thistlewood estates clients? I have done a company search against Thistlewood, and I enclose a copy herewith which says

very little. Do you know who their actual clients are?

"I have not written to Michael about this as I get concerned about correspondence going to him, but a copy has been sent to Aidan as he needs to keep the mortgage lender happy as to the loan that Michael took out.

/RS

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"Kind regards, Yours sincerely, C.J. Vaughan", and it's signed again. Could you just say anything about the signature?

A. That against appears to be Mr. Vaughan's signature.

Q. And then at the bottom there is the asterisk; it appears to say "To follow".

A. That's correct.

Q. Now, can you identify the differences between the file copy short form which Mr. Keena gave you and the long form?

A. Well, I think the type seems to be different in the two letters, to start off with. Secondly, the second paragraph in the long form letter referring to Michael wanting to own the property in his own name doesn't appear in the file copy. And similarly, the last paragraph

Q. Is not in the file?

A. Is not in the file copy.

Q. Now, the asterisk and the words written at the bottom "To follow," are they on the file copy?

A. They are not on the file copy, no.

Q. Now, I think when you received these documents from Mr. Colm Keena, did you take out the file of documents which had been furnished to you by Mr. Christopher Vaughan?

A. I did, I took out the documents, the file of documents in relation to Cheadle which Mr. Vaughan had forwarded to me in I think April of 2001 to compare these particular letters with the letters which Mr. Keena had /RS

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now forwarded to me.

Q. And when you examined the file, what was the situation?

A. Well, I noticed that there were differences between the long form letters which Mr. Keena had now forwarded to me and the file copy letters which were on Mr. Vaughan's file.

Q. And the file copies which were on Mr. Vaughan's file, how did they compare with the file copies of the short form as I have described them, which Mr. Keena had furnished you with?

A. They were the same as the file copies which Mr. Keena had forwarded to me.

Q. Now, did you examine any other file at that stage?

A. I believe I also looked at the documents which Mr. Kevin Phelan had forwarded to me in May of 2001. I may also have looked at some documents which Aidan Phelan

had forwarded to me, but I am not sure if I actually looked at the documents at that stage which Aidan Phelan had forwarded. I think it was particularly the documents which Kevin Phelan had forwarded.

Q. Now, so as of the 21st March, when Mr. Keena brought these particular documents to your attention, the documents which were in the possession of the Tribunal were in relation to the Cheadle transaction, they were effectively the file of Mr. Vaughan as you understood it; isn't that correct?

A. Yeah.

Q. Mr. Kevin Phelan's file which had been furnished to you as solicitor to the Tribunal; isn't that correct?

A. That's correct.

/RS

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Q. And documents which had been furnished to you by Mr. Aidan Phelan or through his solicitor?

A. That's correct.

Q. And did the long form of the photocopy which you had been furnished by Mr. Keena of either letter appear on any of those files, either as an original or as a file copy?

A. No. These new letters were totally new to the Tribunal.

Q. The long form letters?

A. The long form letters were totally new.

Q. Now, I think on the 21st March, 2002, you wrote to Mr. Vaughan enclosing both the copy file letters which he, Mr. Vaughan, had previously furnished to you and copies of the new letters which had been furnished to the Tribunal by Mr. Keena; is that correct?

A. That's correct.

Q. And that was by letter dated 21st March, 2001, and was addressed to Mr. Vaughan. And it reads:

"Dear Mr. Vaughan,

"I enclose herewith copies of letters dated 12th July, 2000, and 5th September, 2000, which you produced to the Tribunal on foot of waivers provided by your clients."

Those waivers had been provided, of course, by Mr. Aidan Phelan and Mr. Michael Lowry?

A. That's correct.

/RS

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Q. "I am also enclosing herewith photocopies of two documents which were furnished to the Tribunal today."

Those were the long form

A. The long form letters.

Q. "The matter is extremely urgent and please let me hear from you by return. Yours sincerely".

So you sent that letter on the day you received the documents from Mr. Keena?

A. That's right. It was sent by fax to Mr. Vaughan's

office on that afternoon.

Q. I think just in relation to that, did you take any precautions because of what you understood to be the sensitive nature of these matters in relation to sending a fax to Mr. Vaughan at that stage? You sent them to his office; isn't that right?

A. I sent them to his office; that's right.

Q. Now, I think you spoke to Mr. Vaughan by telephone on the afternoon of the 21st March, 2002; is that correct?

A. Yeah. Later on that afternoon, I think Mr. Vaughan telephoned me in relation to the fax he had just received, and he said he didn't have any particular comment to make in relation to the fax, and he said that he didn't think he was instructed in the matter any longer. And he said he would be sending me a fax later that day.

Q. Now, did you have any discussion with him about the long form, the copies of the long form letters which had been sent in your letter to him?

A. Yes. He suggested that perhaps the long form of the
/RS

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letter was something which he had in fact I think he said that they yes, that the long form was something that he had expanded on when he was sorry, rather that the drafts or the file copies which were on his file were simply drafts which he had later expanded on

when he was writing to Kevin Phelan.

Q. And did he say anything about the photocopies which you had sent to him?

A. Yes, I said to him I said to him, "They do appear to be your letters". He said "Oh, yes, they are my letters; they have my name on them."

Q. Now, I think later on the same day, that is the 21st March, 2002, Mr. Vaughan sent you a fax; is that correct?

A. That's right.

Q. And I think the fax reads it's addressed to you at the Tribunal, and it reads:

"Dear Mr. Davis,

"Thank you for your fax of this afternoon.

"I have no immediate comment to make on the points raised in the fax and so far as I am aware I am no longer instructed by any of the parties in respect of those matters before the Tribunal.

"However, if you wish, I could write to the relevant parties to see if they wish to instruct me further.

/RS

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"I would also need to be sure that any previous waiver of client confidentiality is still applicable to me.

"Yours sincerely." And it's signed by Mr. Vaughan; is that correct?

A. That's correct.

Q. Now, Mr. Davis, by this time, had the Tribunal ever led in evidence the copies, the file copies or the photocopy of the original short form letter furnished by Mr. Kevin Phelan, had the Tribunal ever led those documents in evidence?

A. No, I don't believe the Tribunal had ever led them in evidence.

Q. And to your knowledge, had the Tribunal, whilst making use of such documents in its private investigative phase, had it ever furnished those particular documents to any party for the purpose of the taking of evidence at the Tribunal?

A. No, I don't believe they had appeared in any books of documents which had been sent to any parties, and I don't think they had been furnished to any parties in any other circumstances.

Q. Now, I think you wrote to Mr. Vaughan again on the 25th March, 2001, enclosing further copies of the letters you had forwarded to him on the 21st March; isn't that correct?

A. That's correct.

Q. And I think you recorded the possible explanation proffered by Mr. Vaughan in his telephone conversation with you on the 21st March and requested Mr. Vaughan to
/RS

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examine his file to clarify the position, as it was

observed by the Tribunal that it was unusual that a solicitor would not retain an office copy of the final draft of a letter issued on behalf of his client; isn't that correct?

A. That's correct.

Q. If we just look at the letter. I think this is addressed to Mr. Vaughan, and it reads: "

"Dear Mr. Vaughan.

"I refer to our telephone conversation of Thursday last.

"With this letter I am enclosing further copies of the documents we discussed on the phone, namely:

"1. Your file copy of letter dated 5th of September, 2000.

"2. A copy of letter you issued from your office on the 5th September 2000.

"3. Your file copy of a letter dated 12th of July 2000.

"4. A copy of letter you issued from your office on 5th July, 2000.

"You will recall that we discussed the divergence

/RS

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between the office copy and the final issued letter in each of these cases. You felt that the differences were probably due to the fact that you had expanded on the drafts when issuing the final letters.

"I would be much obliged if you could examine your file so as to clarify the position since I am sure you will agree that it is unusual that a solicitor would not retain an office copy of the final draft of a letter issued on behalf of a client."

In relation to the final paragraph, what point and then you say "I look forward to hearing from you".

Could you just explain, as a solicitor, Mr. Davis, the thinking in relation to that final paragraph?

A. Well, it would be normal for a solicitor's file to reflect exactly what was issued to his client; in other words, that the file copy on his file should correspond exactly with the letter he had sent to his client.

Q. Now I think, having received did you receive a response to this immediately?

A. No, I don't believe I received a response to that letter.

Q. And having received no response, did you send a fax to Mr. Vaughan on the 12th April, 2002?

A. I did; I sent a further fax to Mr. Vaughan on the 12th April, 2002.

Q. And did you request or seek his comments on the matters initially raised in the Tribunal's letter of the 21st

/RS

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March, 2002?

A. Yes, I did.

Q. And on this occasion, did you enclose further copies of the same four letters, together with two additional documents, and these were the top copies of Mr. Vaughan's letters dated 12th July, 2000, and the 5th September, 2000, addressed to Mr. Kevin Phelan?

A. That's correct.

Q. Which you had obtained from Mr. Kevin Phelan's file?

A. These were from Mr. Kevin Phelan's file, the documents that Mr. Kevin Phelan had furnished to the Tribunal.

Q. If we just look at the letter. I think because there were certain sorry, I'll just deal with it for the moment, and I'll come back to the question I want to ask you.

"Dear Mr. Vaughan,

"I refer to my letter of the 25th of March, 2002, to which I have not had a reply.

"I am now writing to seek once again your comments on the matters raised in my letter and in our telephone conversation on Thursday 21st March, 2002. With this letter, I am enclosing not just the material to which I drew your attention in my letter of the 25th March but all the relevant documents to hand concerning this matter including documents recently supplied to the Tribunal by another party.

/RS

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"1. Office copy letter of the 12th July, 2000, from

your office to Mr. Kevin Phelan."

That you had from the file which Mr. Vaughan had furnished to you?

A. That's right.

Q. And that was in the same form as the copy which Mr. Keena had furnished to you?

A. As the file copy which Mr. Keena had furnished to me.

Q. Just put that up for a moment, please. I won't read the whole thing. The file copy of the 12th July, 2002.

The short form. You sent that; that was document number 1?

A. That was document number 1.

Q. If we go back to the other letter, please.

"2. Top copy of the same letter, issued by you to Mr. Kevin Phelan and also dated 12th July."

If we just put that up, please. That was the top copy of the short form file copy which you had extracted from Mr. Vaughan's file; is that correct? We already had that document you took from Mr. Kevin Phelan's

A. That letter from Mr. Kevin Phelan's file, yeah.

Q. And that was the top copy of the short form file copy which you had taken from Mr. Vaughan's file?

A. That's correct.

Q. Document number 3. If we go on to your letter.

"3. Top copy of another letter issued by you to Mr.

/RS

Kevin Phelan also dated the 12th of July."

I think that is the top copy short form, isn't that correct long form, sorry, top copy long form?

A. That's right. That's the letter I had received from Mr. Keena.

Q. And which you had already furnished

A. I had already furnished it to Mr. Vaughan on the 21st

Q. And which he had proffered as an explanation that it was an expansion of a draft of the file copy that he had on his file?

A. That's correct.

Q. Very good. Now if we go back to your letter now, please.

"4. Office copy of 5th September 2002 from your office to Mr. Kevin Phelan."

That's the short form office copy which you extracted from Mr. Vaughan's file; is that correct?

A. That's correct.

Q. And which was the same as the short form copy which Mr. Keena had furnished you with?

A. The short form file copy which Mr. Keena had given me.

Q. If we go back to your letter, please.

"5. Top copy of the same letter, issued by you to Mr. Kevin Phelan and also dated 5th September" it says "15th", but should read "5th". Is that the document

/RS

that you extracted from Mr. Kevin Phelan

A. That again is from the documents that Kevin Phelan had forwarded.

Q. Very good. If we go back now.

"6. Top copy of another letter issued by you to Mr. Kevin Phelan also dated the 5th September, 2000."

And that is the long form, I think, isn't it, of the letter dated 5th September, which Mr. Keena had given you?

A. Yeah, that's it.

Q. Very good. Now, if I go back to your letter.

"You will recall that when we spoke on the phone on Thursday 21st March, 2002, and as I stated in my letter of the 22nd of March, 2002, you indicated that letter number 3 above probably differed from letter number 1 above because you had expanded on the draft when issuing the top copy from your office. Likewise, you indicated that the same was the position in relation to letters numbered 4 and 6.

"You will see from the copies enclosed that:

"1. It would appear that letter number 3 is not in fact an enlargement of letter number 1.

"2. That letter number 6 is similarly not an enlargement of letter number 4.

/RS

"From the foregoing, a number of reasonable inferences that could be drawn are:

"a. That you generated two separate sets of correspondence concerning this matter.

"b. That only one set was made available to the Tribunal on foot of its original request for assistance.

"c. That a separate set of documentation was obscured from the view of the Tribunal.

"d. That two files appear to have been kept in connection with this matter, one for disclosure and one to be obscured from disclosure.

"e. That, as appears from letter number 6, this concealment may be related to the involvement of Mr. Michael Lowry.

"As these are obviously matters of the most serious nature and could ultimately lead to conclusions which might have an adverse impact on your clients and on the conduct of your own practice as a solicitor, I would be much obliged if you could let me have your comments on the foregoing as a matter of the utmost urgency and certainly by no later than 12 noon on Wednesday next, 17th April."

/RS

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Now, I think Mr. Vaughan replied by letter dated 16th April, 2002; is that correct?

A. That's correct, yeah.

Q. Again, I think this was a fax, isn't that correct?

A. Yeah, I think all the correspondence was by fax.

Q. And it's dated 16th April, 2002 and it reads:

"Dear Mr. Davis,

"Thank you for your two letters of the 15th April.

"I have taken advice on the points raised in your letter, but unfortunately I am unable to respond to the substantive letter without instructions from my clients.

"I have no such instructions at the present time, although I am actively seeking instructions in order to enable me to respond.

"Regrettably, until such time as I have those instructions, I am not able to make any comment whatsoever.

"Yours sincerely. Christopher Vaughan."

A. That's correct.

Q. Now, I think you wrote to Mr. Vaughan again on the 17th April; is that correct?

A. Yes, I wrote to him again on the 17th April.

/RS

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Q. And I think you said:

"Dear Mr. Vaughan,

"Thank you for your letter of the 16th April, 2002.

"I note that you have taken advice, and that subject to

your client's instructions, you are willing to respond in relation to the content of what you have described as my substantive letter of the 15th April.

"As I understand the situation, those clients of yours connected with the transactions mentioned in the correspondence referred to in my letter of the 15th have already waived confidentiality in favour of this Tribunal. I am also aware that two of your clients or former clients, as the case may be, Mr. Michael Lowry and Mr. Aidan Phelan, have indicated in evidence that they would exhort you to assist the Tribunal, even to the extent of attending at Dublin Castle at the Tribunal's public sittings for the purpose of giving evidence. I would hope, therefore, that in light of the seriousness of the matters mentioned in the correspondence referred to in my letter of the 15th April, you will impress upon your clients the urgency of obtaining their instructions so as to enable you to respond to my request for assistance.

As the Tribunal is anxious to proceed with its further investigations in relation to this matter, having regard to the potentially serious ramifications of the

/RS

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correspondence referred to in my letter of the 15th April, I am sure you will agree that it is of the utmost importance that the Tribunal would have your

response before the end of this week. If you have any difficulty in seeking instructions from your clients, please let me know, and the Tribunal will endeavour to do whatever is within its power assist you in obtaining instructions. I would now hope to hear you from by noon on Friday, 19th April, 2002. After that date I expect the Tribunal will take further steps in relation to this matter."

CHAIRMAN: I think that's a suitable time to adjourn until two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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

CONTINUATION OF EXAMINATION OF MR. DAVIS BY

MR. COUGHLAN:

Q. I think the last document we dealt with, Mr. Davis, was your letter of the 17th April, 2002, to Mr. Vaughan; isn't that correct?

A. That's right.

Q. And I think in your memorandum you informed the Tribunal that you did not hear from Mr. Vaughan until the 1st May, 2002, when you received a letter from Mr. Vaughan dated 29th April, 2002, indicating that he had

/RS

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been seeking instructions from his clients, and he enclosed a copy of exchange of correspondence between himself and Mr. Kevin Phelan; is that correct?

A. That's correct.

Q. That's document number 13. And first of all, he thanks you for your letter of the 17th April. He is sorry that he has been slow in responding to your inquiries, but he has been seeking instructions from his clients.

"I am enclosing copies of an exchange of correspondence between myself and Mr. Kevin Phelan for your information." Is that correct?

A. That's correct.

Q. And then the enclosures. First of all, a letter to Mr. Phelan from Mr. Vaughan dated 18th April, 2002, and it reads:

"Dear Kevin,

"Mr. John Davis from the Moriarty Tribunal has contacted me in recent weeks.

"Mr. Davis has queried documents which passed between my office and you in July and September 2000. I would be grateful if you could assist me with regard to queries raised in relation to these documents. In order to assist you, I have marked the documents "July A" and "July B", "September A" and "September B" respectively.

/RS

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"As you will observe, there are two letters with the same date in each case. I have forwarded 'July A' and 'September A' to the Tribunal as the only copies on my

files. However, the Tribunal now appear to have 'July B' and 'September B' which raise obvious queries on their part.

"I would ask you examine your files and let me have your comments and observations. I would appreciate an immediate response, as the Tribunal is anxious to clear up this confusion and are pressing me with some urgency.

"I trust that you will be in a position to assist and look forward to your early response.

"Yours sincerely,

Christopher Vaughan."

And I think also in that series of correspondence sorry, those are just the documents which Mr. Vaughan sent, the July A, the September A, and the July B and the September B, which were the long form and the short forms; isn't that correct?

A. That's correct, yeah.

Q. And I think Mr. Kevin Phelan responded to Mr. Vaughan, isn't that correct, and this was sent to you by Mr. Vaughan?

A. Response was enclosed with Mr. Vaughan's letter, yeah.

Q. And it reads it's dated 23rd April, 2002, and it's

/RS

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from Gillygooley Road in Omagh. And it reads:

"Dear Christopher,

I acknowledge receipt of your letter dated April 18th 2002. I have examined my files as requested by you and confirm the only letters I have on file are 'July A' and 'September A'." Those are the short form; isn't that correct?

A. That's correct.

Q. "I recall on some occasion in the past you issued correspondence to me outlining incorrect details following our prolonged and detailed meetings. I know on occasions you confused clients and projects, which resulted in corrections having to be made and new correspondence to be issued. I believe the documentation you have forwarded has probably arisen for this reason. In any event, as stated, I have letters marked 'July A' and 'September A' on my files I hold as originals.

"I have no idea where the documents marked 'July B' and 'September B' have come from.

"I trust this information is of assistance.

"Yours sincerely,

Kevin Phelan."

Mr. Vaughan sent those to you; isn't that right?

/RS

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A. He did.

Q. Now, I think in the meantime, by letter of the 25th April, 2002, you brought these matters, together with

copies of correspondence of Mr. Christopher Vaughan, to the attention of Mr. Kevin Phelan and the solicitors acting for Mr. Michael Lowry and Mr. Aidan Phelan; is that correct?

A. That's right.

Q. The Tribunal requested the comments of Mr. Kevin Phelan, Mr. Michael Lowry, Mr. Aidan Phelan on the subject matter of the correspondence by the 30th April, 2002; isn't that correct?

A. That's correct.

Q. The first document is document number 16, and it's addressed to Mr. Kevin Phelan; is that correct?

A. That's correct.

Q. In which you say:

"Dear Mr. Phelan,

"I refer to previous correspondence. I am now writing to you in relation to a further matter on which the Tribunal is seeking your assistance in the course of the investigative phase of its work.

"I enclose herewith copies of the documents listed in the schedule to this letter comprising copies of correspondence (together with enclosures) which has passed between the Tribunal and Mr. Christopher Vaughan, solicitor, dating from the 21st March last.

/RS

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The correspondence rests with the Tribunal's letter of

the 17th April, to which the Tribunal has not as yet received a response.

"The Tribunal wishes to obtain your comments on the subject matter of the correspondence. As this is a matter of some urgency, I would be obliged to hear from you by no later than close of business on Tuesday next, 30th April, 2002."

And then the schedule, and you set out I don't intend going through the whole schedule, but all the documents we have been discussing in your previous evidence this morning?

A. All the documents and all the correspondence that existed up to that time with Mr. Vaughan.

Q. Now, you also wrote to solicitors for Mr. Michael Lowry; isn't that correct?

A. That's correct.

Q. And I think the letter is in the same form?

A. The same terms as the letter to Mr. Phelan.

Q. And the enclosures were the same?

A. And the enclosures were the same as well.

Q. And likewise you wrote to solicitors for Mr. Aidan Phelan in similar terms and with the same enclosures; is that correct?

A. That's right, yeah.

Q. Now, I think you received a letter from Messrs. Kelly Noone & Company, solicitors for Mr. Michael Lowry, dated 30th April, 2002, and you were informed that Mr.

/RS

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Lowry had indicated that he was at a loss to understand the situation arising from the correspondence; that the position as Mr. Lowry saw it was that sometime early in the year 2000, and as a result of Mr. Lowry not being able to properly provide the security required, Mr.

Aidan Phelan took control of the Cheadle property. Is that correct?

A. That's correct.

Q. And is that the letter that you received from Messrs. Kelly Noone which is on the screen?

A. That's it, yeah.

Q. I think the first paragraph is as I have just read there. And it continues:

"Aidan Phelan made it quite clear to Michael Lowry he continued to rely on Mr. Lowry to make effort to arrange for a disposal of the property as Mr. Phelan took the view that Mr. Lowry had a moral obligation, having got Aidan Phelan into the situation which then existed.

"Michael Lowry advises me that he has no knowledge whatsoever of the letters of 12th July and the 5th September 2000 issued by Mr. Vaughan to Kevin Phelan."

And I think I'll just get the balance up but that the letter continued on that Mr. Lowry had instructed his solicitors again to confirm to the Tribunal that he

would assist in any way possible with the Tribunal's ongoing inquiries?

/RS

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A. I don't have the letter in front of me, but I believe that's how it continued.

Q. Now, I think you received a letter dated 28th April, 2002, from Messrs. A & L Goodbody, solicitors for Mr. Aidan Phelan; isn't that correct?

A. Dated 29th

Q. I beg your pardon, dated 29th April, yes, you are right. And that reads:

"Dear Mr. Davis,

Thank you for your letter of the 25th April, 2002.

"As you are aware, Mr. Phelan has given express instructions and authority to Mr. Vaughan to cooperate with the Tribunal. No change has been made to those instructions or authority.

"Naturally, he is not in a position to explain the apparent discrepancy between the file copies and the top copies (if that be what they are) of letters between Mr. Vaughan and Mr. Kevin Phelan furnished to the Tribunal.

"For the record, Mr. Phelan has again urged Mr. Vaughan to deal with the Tribunal's inquiries."

And it's signed by C. M. Preston on behalf of the firm of A & L Goodbody?

A. That's right.

/RS

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Q. Now, I think by letter dated 1st May, 2002, your reply to Mr. Vaughan's letter of the 29th April and which was received by the Tribunal on the 1st May; is that correct?

A. That's correct, yes.

Q. And you say:

"Dear Mr. Vaughan,

"Thank you for your letter of the 29th April 2002

together with the enclosed correspondence between your

firm and Mr. Kevin Phelan. Neither your letter nor

Mr. Phelan's correspondence throws any light on the

issues mentioned in my letter. The Tribunal has been

in touch with solicitors for Mr. Aidan Phelan and for

Mr. Michael Lowry, and I enclose copies of

correspondence from Messrs. A & L Goodbody on behalf

of Mr. Phelan and from Messrs. Kelly Noone on behalf of

Mr. Lowry.

"As you can see once again neither of those letters

throw any light on the issues identified in my letter

of the 17th April. Having regard to the contents of

the letters from the solicitors for Mr. Phelan and Mr.

Lowry, I take it that you are now in a position to

address these issues. If there are any other

individuals whom you regard as your client in relation

to any of the matters alluded to in any of the letters,
please let me have details of the identity of any such
client or clients. Assuming that you regard Mr. Phelan

/RS

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and Mr. Lowry as your clients, then in light of the
contents of the letters from their respective
solicitors, I will be obliged to have your response to
the issues outlined in my letter of the 17th April,
2002. As I mentioned in that letter, this matter has
now become extremely urgent and I would therefore be
obliged for a response as soon as possible.

"Yours sincerely,

John Davis."

I think Mr. Vaughan responded by letter dated 7th May,
2002; is that correct?

A. That's correct.

Q. And it reads: "Dear Mr. Davis, thank you for your
letter of the 1st May. I do not think there is
anything further I can do to assist the Tribunal.

Yours sincerely, Christopher Vaughan."

A. That's right.

Q. And I think in your memorandum you say that in view of
the seriousness of this matter, the Tribunal renewed
its inquiries with solicitors for Mr. Michael Lowry and
solicitors for Mr. Aidan Phelan. And by letter dated
31st May, 2002, from the Tribunal to Mr. Lowry's

solicitors, the Tribunal referred to the potential negative conclusions affecting Mr. Vaughan and the possibility that such conclusions could also have a negative impact on Mr. Lowry; is that correct?

A. That's correct.

Q. I will just read the letter.

/RS

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"Dear Mr. Kelly,

"I am writing to you in connection with some of the documents discussed at our meeting last Monday (copies of which have already been sent to you).

"My inquiry concerns the documents in relation to the conduct by Mr. Christopher Vaughan of his solicitor's practice in a way which would appear to suggest that he was keeping two sets of files in matters relating to your client; and that it was your client's involvement in those matters which prompted the keeping of two sets of files; and furthermore that the keeping of files in this way was calculated to avoid scrutiny of the true nature of the dealings with which Mr. Vaughan was involved on behalf of your client.

"As you will see from the documentation made available to you by the Tribunal, Mr. Vaughan has not provided the Tribunal with any explanation for the way in which he conducted his solicitor's practice in these matters.

He has also informed the Tribunal that he cannot

provide it with any further assistance.

You will be aware, both from my letters to you and from our recent meeting that the manner in which the correspondence was conducted has the potential to give rise to very negative conclusions affecting Mr.

Vaughan, and that inasmuch as if it is on concluded

/RS

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that your client ought to be identified with Mr.

Vaughan in these matters, any such conclusions could also have a very negative impact on your client. As a solicitor, you will no doubt understand the seriousness of this matter. In the circumstances, I am writing to suggest that since your client's encouragement to Mr.

Vaughan to assist the Tribunal to date has proved ineffective, your client should now take it upon himself to do the following:

"(i) to request Mr. Vaughan, as your client's solicitor, that he, Mr. Vaughan, provide an explanation for the manner in which he conducted his practice in relation to your client's affairs.

"(ii) in the event of not obtaining the assistance to which it would appear to the Tribunal he is entitled, he should bring the matter to the attention of the Law Society of England and Wales with a view to requesting the Society to carry out such inquiries as it may deem appropriate so as to ascertain why Mr. Vaughan was

conducting his practice in this way.

"Your client is in the best position to promote these inquiries, and I can confirm that the address of the English Law Society is as follows." You give the address.

"You will no doubt be well aware that this is a matter of considerable urgency. In recognition of the fact

/RS

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that your client has been very busy with his own affairs during the period leading up to and in the course of the election, the Tribunal has shown considerable forbearance in seeking his assistance over the past month or so. I would hope, therefore, that you will see your way to dealing with this matter promptly, and I would expect to hear from you within the next week.

Yours sincerely,

John Davis."

Now, I think on the 4th June, 2002, you wrote a similar letter to Messrs. A & L Goodbody, solicitors for Mr.

Aidan Phelan; is that correct?

A. That's correct.

Q. Unless somebody wants me to read through the whole letter

A. It's pretty much in the same terms.

Q. It's pretty much in the same terms. And in that

letter, you drew it to the attention that the matter could be brought to the attention of the Law Society of England and Wales as well?

A. I did.

Q. Now, I think you received a response to that letter, didn't you?

A. I did. I received a response from Mr. Phelan's solicitors on the 13th June sorry, it was a letter dated 13th June; I received it on the 14th June.

Q. That's Mr. Aidan Phelan?

/RS

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A. Mr. Aidan Phelan, sorry, yeah. Mr. Aidan Phelan.

Q. And that reads:

"Dear Mr. Davis,

"I refer to your letter of the 4th June 2002. You are aware that Mr. Phelan has already requested Mr. Vaughan to cooperate fully with the Tribunal. Indeed, I was requested to travel to England by Mr. Phelan to try and persuade Mr. Vaughan in this regard.

"Your suggestion that Aidan Phelan should now take it upon himself to litigate a complaint against a solicitor before a regulatory authority in another jurisdiction is unreasonable and goes well beyond the scope of cooperation which the Tribunal is entitled to expect from Mr. Phelan and which Mr. Phelan has consistently provided.

"Mr. Phelan instructed Mr. Vaughan to acquire a good title to a property, and this Mr. Vaughan did.

"Whereas it is appreciated that the Tribunal itself may wish to pursue Mr. Vaughan before a regulatory authority in the neighbouring jurisdiction in the public interest, that is entirely a matter for the Tribunal itself.

"We are extremely troubled at the suggestion that Mr. Vaughan's behaviour or alleged lack of cooperation 'has /RS

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the potential to give rise to very negative conclusions affecting Mr. Vaughan and his clients'. In what way could Mr. Vaughan's behaviour, over which Mr. Phelan has no control, affect him?"

Now, I think Messrs. Kelly Noone and Co., solicitors for Mr. Lowry, replied to the Tribunal by letter dated 13th June 2002 and enclosed a copy letter which they had forwarded to Mr. Christopher Vaughan; is that correct?

A. That's correct.

Q. And just briefly, the letter from Messrs. Kelly Noone reads:

"Dear Mr. Davis,

"We refer to your letter dated 31st May and enclose herewith copy of letter which we have now furnished to Christopher Vaughan solicitor."

And that letter to Mr. Vaughan, the copy of which was provided by Messrs. Kelly Noone, reads:

"Dear Mr. Vaughan.

"We write to advise that we act on behalf of Mr. Michael Lowry in relation to matters under investigation by the Tribunal of Inquiry (Payments to Messrs. Charles Haughey and Michael Lowry). Mr. John Davis, the solicitor for the Tribunal, wrote to us on the 25th April and furnished with his letter copies of /RS

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correspondence and communications with you, and amongst the documentation furnished provided us with copies of letters issued by you to Mr. Kevin Phelan solicitor dated 12th July and the 5th September 2000. We have subsequently had a meeting with counsel for the Tribunal, and it has been made very clear to us that you have not provided the Tribunal with a meaningful explanation for matters under inquiry, there is a considerable potential for very negative conclusions affecting your conduct in the matter and as a direct consequence could unfairly impact on our client.

"On Wednesday, 25th July, 2001, Mr. Aidan Phelan gave evidence to the Tribunal of Inquiry and in the course of this evidence Mr. Phelan informed the Tribunal that in September, 1999, Mr. Lowry approached him, having identified a property in the UK which he believed had

considerable potential. Mr. Phelan arranged finance to assist in this acquisition with GE Capital Woodchester Bank, and it was further agreed that a company known as Catclause Limited would be used for the purpose of acquiring the property.

"We feel that it is important to point out to you that as we understand it, your office acted in the incorporation of Catclause Limited, and the first directors of the company were detailed and registered as being Michael Lowry and his daughter. We emphasise this point as it has been suggested in evidence before the Tribunal that there was attempts to disguise the /RS

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involvement of Mr. Lowry with the transaction.

Catclause Limited was identified to GE Capital Woodchester bank as the acquiring mechanism yet incredibly it appears that the bank did not see fit to make even the most basic inquiry as to the parties behind the company which would readily have identified Mr. Lowry's involvement.

"In the course of his further evidence, Mr. Phelan described a situation which arose relating to the inability of Mr. Lowry to provide a suitable guarantor for the loan. As this arose subsequently to GE Capital Woodchester Bank having made the funds available, a highly embarrassing situation arose for Mr. Phelan, and

in February of 2000, Mr. Phelan advised the bank that he was personally responsible to the bank in respect of the loan and in the course of his evidence he further advised the Tribunal that at that point in time you were instructed to hold the property in trust for Mr. Phelan.

"From the evidence and surrounding circumstances, it seems abundantly clear that by February of 2000, Mr. Lowry was no longer involved in the transaction and Mr. Phelan had adopted the position of personal responsibility in the matter with the bank and had informed you of the situation. In light of this, our client is at a total loss to understand the content of your letters of the 12th July 2000 and the 5th September 2000 to Mr. Kevin Phelan.

/RS

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"Leaving aside the fact that there appears to be two versions of each letter in existence, we would request that you let us have full explanation as to why reference was made in the letter of the 5th September to 'Michael wants to own the property in his own name for a month prior to the sale', and furthermore, why in the letter of the 12th July, one version records 'this property was purchased in my name as trustee for Aidan Phelan' and the other version records 'was purchased in my name as trustee for our client'.

"We would request that as a matter of extreme urgency you let us have an explanation of the foregoing.

"Yours sincerely."

Now, I think by letter dated 25th June, 2000, Messrs. Kelly Noone & Company, Michael Lowry's solicitors, enclosed a letter from Mr. Vaughan dated 17th June, 2002; is that correct?

A. That's correct, yeah.

Q. The letter from Messrs. Kelly Noone just reads:

"Dear Mr. Davis,

"We refer to our letter of the 21st June and subsequent telephone conversation of the 24th inst. And enclose herewith copy of letter dated 17th June from Christopher Vaughan, which was omitted from our earlier communication."

/RS

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If we just look at that particular document. It's a letter from Mr. Vaughan dated 17th June, to Kelly Noone & Company, and it reads:

"Dear Sirs,

"Your letter of the 12th June 2002 has been received by me.

"I shall need to do a certain amount of research before being able to reply to your letter in full.

"I hope to let you have a detailed reply within the next seven days.

"Yours sincerely,

Christopher Vaughan."

Now, I think under cover of a letter dated 12th July, 2002, Kelly Noone & Company provided the Tribunal with a copy of Mr. Vaughan's substantive reply dated 4th July of 2002; is that correct?

A. That's correct.

Q. Just the letter from Mr. Kelly enclosing Mr. Vaughan's letter to you, and if we put Mr. Vaughan's letter up.

"Dear Mr. Kelly,

"I refer to your letter of the 12th June, 2002 which I

/RS

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received on the 17th June, 2002.

"I am not going to reiterate all the facts of my involvement in the acquisition of 377 Wilmslow Road, Cheadle known as Saint Columba's Church, and Hilltop Farm, Chesterfield Road, Glapwell known as the Mansfield property. These have previously been explained in great detail in correspondence and to the Tribunal in private session.

"The following issues, however, need to be put into the proper context.

"I was first instructed by Mr. Kevin Phelan, who is not a solicitor but an agent on behalf of Michael Lowry in respect of the purchase of the Mansfield property in September 1998, and completion of the purchase of that

property took place on the 18th March, 1999.

"I was instructed in respect of the purchase of Saint Columba's Church in September 1999, again by Mr. Kevin Phelan on behalf of Michael Lowry, and completion of the purchase of the property took place in December 1999.

"As a solicitor, my practice deals with purely non-contentious matters, the vast majority of which are commercial conveyancing transactions similar to the purchase of Saint Columba's Church and the Mansfield property.

/RS

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"The only unusual fact relating to the purchase of these two properties was that following the exchange of contracts, the solicitors acting for the vendor of both of these properties had occasion to serve notices to complete because I did not receive the completion funds on the due date.

"Kevin Phelan's intention on both sites was to have discussions with the relevant planning authorities with a view to obtaining planning permission within the purchase process, so that a sale of a particular property could be "back-to-back" with the purchase in an attempt to effect a positive cash flow.

"Both before and after the purchase of these two properties, my practice has dealt with other similar

transactions.

"Prior to being instructed by Michael Lowry through his agent Kevin Phelan, I had never met him or been instructed by him in any other transactions. Further, I have not been instructed by him since. I do not have any current contact with him, and I do not regard him as a current client of mine.

Likewise with Aidan Phelan I had been involved in the acquisition of Doncaster Rovers Football Club, but all the negotiations relating to that transaction were conducted by Kevin Phelan, and I did not even meet

/RS

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Aidan Phelan until after the transactions had been completed.

"The instructions relating to the purchase of the property in Luton by Beechwild Limited were again given to me by Kevin Phelan. I do not recall ever meeting Aidan Phelan in respect of this transaction, although it is clear from my file that I spoke to him about it on the telephone.

"I am not currently instructed by Aidan Phelan in respect of any other matters, and although I am still the company secretary of Doncaster Rovers Football Club Limited, that company, although not dormant, is merely a holding company for the leases on the football ground upon which the club plays I have no involvement

whatsoever in the club itself.

"I hope this explains the background to my involvement in the two particular conveyancing transactions in which the Tribunal are interested, namely the acquisition of Saint Columba's Church and the Mansfield site which I would reiterate were very ordinary transactions.

"I do not hold the deed of either property, which are either with Aidan Phelan or any other solicitors instructed by him.

"Although these two transactions appear to be of an

/RS

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enormous amount of interest to the Tribunal, so far as I am concerned (without in any way wishing to appear discourteous to the Tribunal) they were ordinary transactions representing a fairly small part of my work at that particular time.

"However, I would like to state that:

Both transactions were somewhat confusing and difficult because:

"1. Kevin Phelan acted for the purchaser of the Mansfield property and had a very close relationship with the vendor and her agent.

"2. Because Kevin Phelan acted for both Aidan Phelan and Michael Lowry and was involved in other matters as well, it was very difficult when speaking with Kevin

Phelan over the telephone to know whom he was representing at any one time, especially as any telephone conversation could cover a number of different matters.

"This certainly caused confusion on various occasions, which is why there may have been more than one version of a document prepared by me because the first may have been prepared by me following a misunderstanding of my instructions.

"3. There was constant pressure from Kevin Phelan to
/RS

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hold up exchanging contracts for the purchase of the two properties, pending him making planning inquiries and looking for new purchasers, to see if added value could be achieved on a site, with the objective of completing a purchase practically simultaneously with the completion of a sale on to a new purchaser.

"4. Kevin Phelan was constantly telephoning my office, my home and my mobile telephone, putting my staff and me under additional pressure.

"5. So far as I was concerned, Michael Lowry relinquished any claim to ownership of Saint Columba's Church in early 2000 and certainly by February 2000.

However, I was well aware that Michael Lowry was honour-bound to Aidan Phelan to help achieve a sale of Saint Columba's Church. By implication, so was Kevin

Phelan as Michael Lowry's agent.

"In your letter you mention evidence given by Aidan Phelan to the Tribunal. I cannot comment on that, as I have neither seen a transcript of that evidence nor was I present at the Tribunal when it was given.

"However, I confirm that I acquired on behalf of Michael Lowry at the request of his agent, Kevin Phelan an "off the peg" company called Catclause Limited from Messrs. Jordans, the company agents.

"Michael Lowry and his daughter were registered as

/RS

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officers of that company. I cannot imagine how anyone could believe that Michael Lowry was trying to disguise his involvement with this company because Companies House in England and Wales is an open, public register and information is easily accessible to anyone.

"You indicate that I have confused Aidan Phelan and Michael Lowry. This is not unexpected, bearing in mind what I have written above.

"However, I was instructed that the Revenue would expect that any site should (be) owned by an investor personally to minimise any Capital Gains Tax liability. Therefore the objective was correct but the name was stated incorrectly by me I would put this down to either a simple error or lack of concentration. Kevin Phelan complained to me over it and I simply corrected

it.

"With regard to your reference to the duplicate letters as mentioned above, I regularly faxed transmissions to Kevin Phelan throughout our whole working relationship.

"If he then corrected something on receipt of a fax, I would have sent him the amended version and kept that hard copy on my file, but probably not the first version of the fax. Kevin Phelan would therefore have two versions of the same letter, and I would only have the final version.

/RS

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"I have already explained this to the Tribunal clerk, and Kevin Phelan has confirmed my view of what I think occurred.

"I have been subjected to a huge amount of pressure, inquiry, discussion, and speculation about these transactions from various bodies, including the press.

"I have also been given an equally large amount of information about situations, matters and characters of which and of whom I had no previous knowledge whatsoever, whilst the two conveyancing transactions were taking place.

"For example, I have still never met or spoken to Denis O'Brien, or indeed had any idea of who he was prior to the Tribunal asking me for information about these two conveyancing transactions!

"I have given this matter some considerable thought and taken advice and I am firmly of the opinion that as a witness before the Tribunal, my evidence would be totally and completely worthless.

"I would find it impossible to separate out contemporaneous facts from current knowledge of which I am now aware, which would make any evidence I gave to the Tribunal totally unreliable.

"I could foresee that I would be unable to answer with
/RS

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any degree of certainty questions put to me by the Tribunal or by counsel representing interested parties.

"I would genuinely like to assist the Tribunal, but, as I indicated above, I know that my evidence would be of no value.

"I was happy to attend a meeting before counsel to the Tribunal in Dublin Castle. However, the fact that my previous inquiry as to the accuracy of the notes of that meeting has still not been satisfactorily resolved caused me considerable concern.

"There is another issue which I have not mentioned previously to Michael Lowry or indeed to anyone else involved in these transactions.

"Unfortunately in 1992 it was discovered that I was suffering from an inherited serious heart problem, and I underwent, at short notice, a triple heart bypass

operation.

"Since that time I have been on daily regular medication in respect of the heart disease, which cannot be cured, and I know only too well that one of the factors that aggravates the condition is stress.

"The interest in my actions generated by these two quite ordinary conveyancing transactions, in which I did as I was instructed, has caused me a certain amount

/RS

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of stress.

"I have even found the dictation of this letter stressful, and I have absolutely no doubt that appearing before the Tribunal in open session and submitting myself to cross-examination would also be an extremely stressful experience, especially as I cannot imagine that my appearance would assist the Tribunal in any way whatsoever.

"I have discussed this latter point as to my health with my wife, who is also qualified as a solicitor, and there is absolutely no doubt that my health is far more important than the wishes of any client especially when I have already assisted so far as I am able, and I consider it to be totally unreasonable to expect me to put my health in jeopardy.

"Please bear in mind the huge amount of information that I have given to the Tribunal already; I have

nothing else to add that could assist the Tribunal.

"Yours sincerely,

Christopher Vaughan."

Now, I think on the 12th July, 2002, prior to receiving a copy of this letter of Mr. Vaughan's, you wrote to Mr. Vaughan and informed him that the Tribunal intended to resume its public sittings on the 29th July to hear evidence in relation to this matter; is that correct?

/RS

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A. That's right, and invited him to attend.

Q. And you said:

"Dear Mr. Vaughan,

"I refer to recent correspondence dating from the 21st March last in relation to certain documents which had come to the attention of the Tribunal and which were as follows:

"1. A top copy of a letter dated 12th July 2000 issued from your office and addressed to Mr. Kevin Phelan.

"2: A top copy of a letter dated 5th September 2000 issued from your office and also addressed to Mr. Kevin Phelan.

"As you know, file copies of the letters also dated 12th July 2000 and the 5th September 2000 from your good self to Mr. Kevin Phelan had been provided to the Tribunal voluntarily by you on foot of authorisations provided by your clients. The Tribunal has also

received top copies of the file copy letters from Mr. Kevin Phelan, the addressee of the letters. These letters, in the form of the file copy letters produced by your good self, had been led in evidence by the Tribunal in the course of its sittings last year. As the Tribunal has already drawn to your attention, there appears to be discrepancies between the contents of the top copy letters referred to at 1 and 2 above on the /RS

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one hand, and the file copy letters (produced by your good self) and the top letters (produced by Kevin Phelan) on the other hand.

"The Tribunal raised this matter with you in a number of letters dating from the 21st March last.

Notwithstanding these requests, you have not provided the Tribunal with any information which sheds light on the apparent discrepancies between these letters.

"The Tribunal, in its letter to you dated 12th April 2002 indicated that "in the absence of an explanation, the following reasonable inferences could be drawn from the existence of these documents:" and then you recited the inferences which could be drawn which had already been brought to Mr. Vaughan's attention?

A. That's right.

Q. You then went on: "The Tribunal has also raised this matter with Mr. Kevin Phelan, with the solicitors for

Mr. Aidan Phelan and with the solicitors for Mr. Denis O'Brien. The Tribunal has received no response from Mr. Kevin Phelan (other than the correspondence between your good self and Mr. Phelan appended to your letter to the Tribunal dated 29th April last). Mr. Aidan Phelan's solicitors have informed the Tribunal by letter dated 29th April 2002 that Mr. Aidan Phelan is not in a position to explain the discrepancies between the file copies and the top copies of the letters between your good self and Mr. Kevin Phelan. Mr. Denis O'Brien's solicitors, by letter dated 10th July 2002,

/RS

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have informed the Tribunal that Mr. O'Brien is unable to make any comment on the subject matter of the correspondence, nor has he any knowledge of the correspondence passing between your good self and Mr. Phelan, let alone any knowledge of why different copies of that correspondence might arise.

"The Tribunal intends to resume its public sittings on the 29th July next to hear evidence in relation to this matter. The Tribunal is of the view that your evidence in relation to this matter would be of critical importance to the Tribunal's deliberations. I am once again requesting that you make yourself available to give evidence voluntarily, as being located outside the jurisdiction, the Tribunal cannot compel your

attendance. As before, I confirm that the Tribunal would be happy to meet your reasonable travelling and incidental expenses.

"I am also instructed to request that you provide the Tribunal with a statement or memorandum of the evidence which you are in a position to give regarding this matter. You are under no obligation to provide such a statement or memorandum, but in that event, you should be aware that the Tribunal will be obliged to notify persons who may be affected by your evidence of the matters which the Tribunal intends to raise with you in the course of your evidence. If you do intend to provide the Tribunal with a voluntary statement or memorandum, such statement or memorandum should set out

/RS

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all of your knowledge as to how, when and in what circumstances what appears to be two different versions of the same letter came into existence.

"I would be obliged if you would contact me by no later than Wednesday next, 17th July, 2002, to indicate whether you are agreeable to attending to give evidence at the Tribunal and to indicate whether you do or do not intend to provide the Tribunal with a voluntary statement or memorandum, and if it is your intention to assist the Tribunal in this regard, to indicate when I can expect to receive such and statement or memorandum.

"Yours sincerely."

Now, after you received Mr. Vaughan's letter dated 4th July from Messrs. Kelly Noone & Company, solicitors for Mr. Lowry, under cover of the letter of the 12th July, 2002, I think you once again wrote to Mr. Vaughan on the 15th July, 2002?

A. I did, yeah.

Q. And you said:

"Dear Mr. Vaughan,

"Mr. Michael Kelly, solicitor of the firm of Kelly Noone & Co., solicitors for Mr. Michael Lowry, has provided the Tribunal with a copy of your letter dated 4th July 2002.

/RS

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"The letter contains very little by way of assistance to the Tribunal in obtaining answers to the queries raised by the Tribunal with Mr. Lowry and also in earlier correspondence with you, more particularly in the Tribunal's letter of the 12th April, 2002.

"Regardless of your own opinion as to the likely value of any evidence you may have to give the Tribunal, let me assure you lest there be any doubt about the matter, that the Tribunal is of the view that your evidence would be of real value. What is more important from your own point of view is that in the absence (as is the case to date) of any meaningful explanation from

you as to the manner in which your file was kept concerning these matters, conclusions could be reached with respect to your conduct of your profession in these matters which might reflect poorly on you.

I now note that you state for the first time that you feel that to attend at the Tribunal to give evidence would put your health in jeopardy. I note that you state that an appearance before the Tribunal "in open session" would be likely to be an extremely stressful experience and one which, because of its likely impact on your health, both you and your wife would wish to avoid. However, I can assure you that provided the Tribunal had satisfactory evidence of the state of your health, the Tribunal would be prepared to consider taking your evidence otherwise than in open session.

This facility has already been accorded to a witness where, for health reasons, it was inappropriate to

/RS

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subject the witness to the ill effects which would otherwise be associated with the giving of evidence in public.

"In those circumstances, perhaps you would kindly let me know whether you would be prepared to attend at the Tribunal to give evidence in a "closed" session.

"As this is a matter of considerable urgency, I would be obliged to hear, if at all possible by return of

fax, and if not by return of fax, tomorrow morning.

"Yours sincerely,

John Davis."

Now, I think Mr. Vaughan wrote to you on the 17th, by letter dated 17th July, 2002; is that correct?

A. That's correct.

Q. And he said:

"Dear Mr. Davis,

"Thank you for your fax of the 12th July. I am sorry if you did not consider my letter of the 29th April last, together with the enclosures contained in that letter, "shed any light" on the situation.

"However, I will try and amplify the point that was implicit in that letter! Practically the whole of the correspondence I had with Kevin Phelan throughout our /RS

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working relationship was by fax. You must be aware that Kevin Phelan was acting as agent for Michael Lowry and Aidan Phelan, but he was also involved in a number of other projects which had nothing whatsoever to do with Michael Lowry or Aidan Phelan.

"As you can imagine, any telephone conversation with Kevin Phelan might cover half a dozen separate matters which would then result in me sending several faxes to him at some stage in respects of those matters.

"Because Kevin Phelan was dealing with so many

different matters with me acting as legal adviser,
inevitably some misunderstandings occurred between us.

"Kevin Phelan may well then have corrected my
understanding of events on the receipt of a fax to him.

I would have then sent him an amended version and kept
the hard copy of that amended version on my file. I
probably would have disposed of the first version of
the fax to avoid further confusion. The end result
would be that Kevin Phelan would have two versions of
the same fax, the first incorrect version and the
second correct final version.

"Kevin Phelan, in his letter to me on the 23rd April
2002, states that he only has one version of the two
letters in question, I assume, therefore, that he
likewise disposed of the incorrect version.

/RS

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"However, the faxes may well have had a wider
distribution as copies could have been sent through to
the clients and possibly other professional advisers,
and one of those third parties may well have
mischievously sent the incorrect version through to the
Tribunal for some reason only known to the sender.

"I cannot speak on behalf of Kevin Phelan, but so far
as I am concerned, the Tribunal has the correct version
of the faxes in question.

"Since drafting the above reply to you, I have now

received your fax of the 15th July.

"Firstly, I am extremely surprised that Mr. Kelly has sent you a copy of my letter to him of the 4th July 2002. So far as I was concerned, that letter was sent to him in confidence, and at no stage did Mr. Kelly ask for my permission to send a copy of it to you.

"Nothing in your letter of the 15th July persuades me in the slightest that my evidence would be of any value to the Tribunal, and in no circumstances will I be attending either in public or closed session.

"So far as I am concerned, that is the end of this correspondence.

"I have nothing further to add.

/RS

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"Yours sincerely."

Is that correct?

A. That's correct, yeah.

Q. Now, I think apart from the Tribunal's inquiries of Mr.

Christopher Vaughan, Mr. Kevin Phelan, Mr. Michael

Lowry, and Mr. Aidan Phelan, being the persons most

directly involved, I think the Tribunal also raised

this matter with a solicitor acting for Mr. Denis

O'Brien, by letter dated 28th June, 2002; is that

correct?

A. That's correct.

Q. And the letter reads:

"Dear Mr. O' Sullivan,

"I refer to ongoing correspondence in relation to your above-named client. I am now writing to you in relation to a separate matter on which the Tribunal is seeking your client's assistance.

"I enclose herewith copies of the documents listed in the schedule to this letter comprising copies of correspondence (together with enclosures) which has passed between the Tribunal and Mr. Christopher Vaughan, solicitor, dating from the 21st March last.

The correspondence which rests with Mr. Vaughan letter to the Tribunal of the 7th May last speaks for itself.

"The Tribunal wishes to obtain your client's comments on the subject matter of the correspondence. As this

/RS

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is a matter of some urgency, I would be obliged to hear from you at your earliest possible convenience, and certainly by no later than the end of next week."

Is that correct? I think you enclosed all of the correspondence, which we have dealt with so far?

A. All the correspondence up to that date at that time.

Q. I think you received a reply to that letter, isn't that correct, by a letter dated 10th July, 2002?

A. That's correct, yeah.

Q. And it reads:

"Dear Mr. Davis,

"We refer to your letter of the 28th June enclosing copies of correspondence exchanged between the Tribunal and Mr. Christopher Vaughan.

"Our client is unable to make any comment on the subject matter of the correspondence, nor has he any knowledge of the correspondence passing between Mr. Vaughan and Mr. Kevin Phelan, let alone any knowledge of why different copies of that correspondence might exist.

"Yours sincerely,

William Fry's." Is that correct?

A. That's correct, yeah.

Q. Now, I think while you were giving evidence this morning, Mr. Davis, a fax was received at the Tribunal /RS

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office which you received at lunch time; is that correct?

A. That's correct.

Q. And it's from it's a fax from Mr. Kevin Phelan; is that correct?

A. That's correct.

Q. And it appears to be dated today's date, 29/7 on the fax machine, at 11.38; is that correct?

A. That's correct.

Q. And it's from 106 Gillygooley Road, Omagh, and it's addressed to you at the Tribunal, and it's dated 29th

July.

A. That's right.

Q. And reads:

"Dear Sir,

"Further to my letter of the 18th July 2002, I have been able to discuss the matter with my solicitor.

"You have raised specific issues within your correspondence.

"Any issue considering the validity of correspondence with Christopher Vaughan is a matter that should be addressed with him. It is for the Tribunal to come to its own conclusion over the validity or otherwise of correspondence that has come from Mr. Vaughan. I would respectfully state, therefore, that questions as to the validity of this documentation have wrongly been directed to me.

/RS

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"Further, I have instructed solicitors in England to act on my behalf in relation to issues that have arisen which Christopher Vaughan is connected to. At this stage, therefore, my priority has to be the resolving of issues that I am connected to in relation to ongoing disputes arising out of business transactions within England. What I do not wish to do is to prejudice my position in relation to these ongoing matters by divulging information to the Tribunal.

"Further, due to ongoing business transactions that I am connected to, I need to devote all my time to those to ensure that I protect my livelihood. I wish it to be clear that I do wish to fully cooperate with the Tribunal, but there are certain issues that I believe would be better addressed with Christopher Vaughan rather than myself, and that also I need to ensure that my own position is properly protected in relation to ongoing disputes that I personally have. Therefore, at this time, and for the reasons outlined, I am unable to attend public sittings of the Tribunal.

"I would further conclude by stating that no inference can be drawn by my failure to agree or contradict the assertions as put forward by the Tribunal in relation to Christopher Vaughan's correspondence and that my reason for failing to respond substantively is detailed above."

/RS

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I think you received that at lunch time?

A. At lunch time today, yeah.

Q. And I think that's the correspondence and the evidence?

A. That's all of the correspondence.

Q. Thank you, Mr. Davis.

CHAIRMAN: See if counsel for persons in attendance may have some matters to raise with you, Mr. Davis.

Mr. Gleeson?

MR. GLEESON: Yes, Chairman, one or two short matters.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GLEESON:

Q. Mr. Davis, I think you said that the documents that we have looked at, namely the two letters with the additional portions in them, those documents were received by the Tribunal on the 21st March of this year?

A. That's correct.

Q. And they were received; were they handed to you, or how were they communicated to the Tribunal?

A. They were handed to me.

Q. By whom?

A. By Colm Keena.

Q. And did you inquire from him as to where he had obtained these documents?

A. No, I didn't.

Q. Why not?

/RS

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A. I didn't believe he was going to tell me.

Q. Well, how did you know whether he would or not without putting the question to him?

A. I expected, as a journalist, that he would say that he was not going to reveal his sources.

Q. So rather than make any inquiries of Mr. Keena, these documents have now become the subject of a public inquiry; is that the way the matter has progressed, Mr.

Davis?

A. Well, the matter has progressed in the way you have seen the correspondence disclosed.

Q. But would you agree with me that the origin or the providence of these documents which Mr. Keena gave to you is a matter of some public importance?

A. Well, I think it was decided to take up these matters with Mr. Vaughan, who appeared to be the author of the documents, and Mr. Vaughan has never denied these were letters which did in fact issue from his office.

Q. Did you inform any of the other parties against whom inferences were being threatened that these documents came from a journalist who wasn't questioned about his sources?

A. No, I didn't.

Q. Why not?

A. Because, well, I mean, as I said, I had disclosed all the correspondence that had taken place with Mr. Vaughan, who appeared to be, and who has never denied that he was, the author of the documents.

Q. Mr. Davis, just to finish on this point, I think you will agree with me that the Tribunal has itself decided

/RS

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to devote some time to looking at this correspondence.

Therefore, the documents themselves are clearly of some importance to the Tribunal; isn't that so?

A. That's correct, yes.

Q. And yet the people who are being asked to give evidence about these documents did not discover until today that they came from a journalist; isn't that so?

A. That's correct.

Q. And I must put it to you that that is a very unfair way of proceeding, by not informing people in advance of where these documents came from.

A. Well, as I said to you, these matters all the correspondence has been disclosed to Mr. Vaughan and all other parties involved. Mr. Vaughan has never suggested that these are anything other than letters that did in fact issue from his office.

Q. Can I ask you to look at document number 31 finally. I just want to clarify something in relation to this letter which you sent to Mr. Vaughan on the 12th July. If we could go to the second page of that letter. This is a letter which has already been read into the record.

There, Mr. Davis, you set out what you describe as reasonable inferences which could be drawn from the existence of these documents. And the last of those inferences reads "That as appears from the letter referred to at 2 above, this concealment may be related to the involvement of Mr. Michael Lowry."

/RS

Now, is that the inference which you have put to other persons to whom you wrote in similar terms? Is that the same inference?

A. Sorry, I think, I think all of this correspondence has been available to all parties.

Q. Yes. No, that's not my question. My question is these inferences which you have put to Mr. Vaughan, are they the same inferences which were put to other persons to whom you wrote at the same time in similar terms, or perhaps in identical terms?

A. I think the letters to other people may have simply asked for their comments on the correspondence.

Q. I am going to have to ask you in relation to a particular letter which was sent to Mr. Phelan's solicitors on the 11th July, 2002. I don't believe it's in the booklet of documents that we have just seen. Now, I don't have copies of this document, but I can hand you in my copy of it. It's a letter of the 11th July, addressed to Mrs. Preston. And it appears to follow the terms of the letter we have just looked at.

Now, can I just ask you to turn to the second page of that letter, Mr. Davis. You will see that again the five inferences that we have seen on the screen are set out, but there is one slight difference. The very last inference which is being put to Mr. Aidan Phelan's solicitors is that this "Concealment may be related to

the involvement of Mr. Aidan Phelan." I.e., your client. Do you see what I am referring to, Mr. Davis?

/RS

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It's paragraph (e). Do you see what I am referring to, Mr. Davis?

A. I do, yeah.

Q. And the letter is headed "Your client Aidan Phelan"; isn't that right?

A. That's correct.

Q. I wonder

MR. COUGHLAN: Perhaps I could assist My Friend. That looks to be a typographical error.

A. I think it is a typographical error.

MR. GLEESON: It's a typographical error; very well.

That should be Michael Lowry instead of Aidan Phelan.

A. Instead of "your client", I think it should read "Michael Lowry". Just to answer your question, all the letters that would have issued along those lines would have referred to Michael Lowry instead of your client.

Q. Except this one, which was the one sent to my client?

A. Again, I think it is a typographical error, and it should have said "Michael Lowry".

Q. Well, can I just suggest to you, Mr. Davis, finally and I am grateful to Mr. Coughlan for confirming it's a typographical error.

A. It's a typographical error that has caused my client

some considerable stress. Because here is an inference that is going to be raised against him on the basis that there has been concealment which relates to his involvement. So, whereas I am grateful for the clarification, I must suggest, Mr. Davis, that this is

/RS

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something which calls for more than just a clarification from the Tribunal.

Thank you very much.

CHAIRMAN: Mr. McGonigal? Mr. O'Donnell?

Nothing in conclusion, Mr. Coughlan?

Thanks, Mr. Davis.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. O'Brien, please.

/RS

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DENIS O'BRIEN, PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

CHAIRMAN: Thanks very much for your further attendance, Mr. O'Brien. I appreciate there are places you'd prefer to be today.

Q. MR. COUGHLAN: I think, Mr. O'Brien, you have been asked to give evidence today about certain documents and correspondence; isn't that correct?

A. The ones that you have been talking about.

Q. The ones that we have been going through?

A. Yes.

Q. I have no intention of going through them in any great detail, just in general terms, so that you understand that there appear to be two different versions of two letters. Do you understand that that is the general nature?

A. I don't fully understand what all the detail is.

Q. Very good. Well, just to explain, what appears to be the situation, Mr. O'Brien, is that the Tribunal was furnished with a file from Mr. Christopher Vaughan, having received a waiver and instructions to do so from both Mr. Michael Lowry and Mr. Aidan Phelan's solicitors, in relation to the Cheadle transaction which we discussed previously. And on his file there were what you would expect, file copies of correspondence. And the two letters were written to a Mr. Kevin Phelan, who acted as agent for Mr. Aidan Phelan and/or Mr. Lowry in relation to certain property

/RS

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transactions. And Mr. Kevin Phelan furnished the Tribunal with a file which had the top copies which were the same as the file copies on Mr. Vaughan's file. And then subsequently, the Tribunal was furnished with photocopies of two copies which had more in them than were in the copy on Mr. Vaughan's file or the copy which Mr. Kevin Phelan had. That's just basically it

in a nutshell.

A. I don't see how it involves me, Mr. Coughlan. I appreciate your explanation.

Q. So that at least we understand what we are talking about.

A. Okay.

Q. Now, the reason that I am asking you about this, Mr. O'Brien, is that Mr. Kevin Phelan acted as an agent or had in some capacity for yourself and Mr. Aidan Phelan in relation to the Doncaster Rover deal and perhaps the Luton deal; isn't that correct?

A. From the correspondence that is there, yes.

Q. I think that's correct. I don't know whether you ever met Mr. Kevin Phelan.

A. I have never met him.

Q. Very good. And Mr. Christopher Vaughan was the solicitor who acted for you and Mr. Aidan Phelan in relation to the Doncaster Rovers transaction and also the Luton transaction; isn't that correct?

A. I know that now, yes.

Q. And just so that you understand fully why I am asking you about this particular Cheadle transaction now as

/RS

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well, is that the deposit which was used for the Cheadle, the purchase of the property in Cheadle was the balance of monies belonging to Mr. Aidan Phelan,

which were in Mr. Christopher Vaughan's client account, which had originally come from your bank account in Credit Suisse First Boston and related to the Versatel deal, monies which Mr. Phelan and you say he was entitled to. Do you understand?

A. It was an advance on fees, yes.

Q. Now, your solicitors were written to, and all of this correspondence was sent to them for your consideration, and your solicitors have responded to the Tribunal giving your position in relation to it. I just want to confirm that that is your position in evidence.

You have informed the Tribunal in correspondence through your solicitor that you know nothing about the transaction, you know nothing about any correspondence, or you see no reason why there should be differing letters in respect of the same correspondence?

A. Well, I think my solicitor wrote back on my behalf to say that I know nothing about this matter.

Q. Maybe you can assist the Tribunal in this way, Mr. O'Brien: Were you ever informed in relation to the Doncaster Rover transaction or the Luton transaction that the solicitor Mr. Christopher Vaughan would send letters about such transactions to Mr. Kevin Phelan for his approval before he created the true version of the letter?

A. In my evidence before, I said that I did not know I

/RS

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have never met Mr. Vaughan and that I didn't even know that he was acting on behalf of a vehicle that I was the owner of to purchase Doncaster Rovers.

Q. What I am really trying to establish, have you ever heard of a situation where the solicitor acting for you, I accept that you never met him, had the practice of sending letters to Mr. Kevin Phelan for his approval in relation to any transactions he was conducting on your behalf?

A. No, I wouldn't I wouldn't know that level of detail, if it took place

Q. You never heard of any such thing?

A. No.

Q. You were never told by Mr. Kevin Phelan or Mr. Christopher Vaughan?

A. I never met Mr. Phelan.

Q. You were never told of such a practice by Mr. Aidan Phelan never told you that such a practice went on?

A. No.

Q. And Ms. Helen Malone never told you that such a practice I am just trying to see as wide a scope of people who may have had some dealings on your behalf with the solicitor on behalf of Mr. Kevin Phelan.

A. No.

Q. Since this matter has been brought to your attention, have you had any discussions with Mr. Aidan Phelan

about it?

A. No.

Q. With Ms. Helen Malone about it?

A. No.

/RS

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Q. With Mr. Christopher Vaughan about it?

A. No.

Q. Or with Mr. Kevin Phelan?

A. No.

Q. Or anyone else apart from your lawyers?

A. Only my lawyer.

Q. Now, because you know that certain people have linked your name to this particular transaction, the Cheadle transaction, people in Investec Bank, isn't that correct? You know there was evidence here?

A. Yeah, something I am very unhappy with, Mr. Coughlan.

Q. Of course, and you gave that evidence. And you gave the evidence at the time that you, I think, to put it politely, you bawled Mr. Cullen out about it?

A. Well, he admitted to me that he wasn't involved, and he was the Chief Executive of Investec.

Q. You were so annoyed about it that you told Mr. Tunney to get onto your own plane and get back and sort it out; isn't that correct?

A. Like, I am sure anybody would have the same concerns if they were accused of having a loan that they didn't

have.

Q. Yes, something very serious?

A. Yes.

Q. Did you have any similar exchanges with Mr. Aidan Phelan or with Mr. Michael Lowry, or even the hint or a suggestion that you could have been connected with these property transactions in any way whatever?

A. I didn't have an exchange with Mr. Lowry, but I did ask Mr. Phelan in what context this had come about.

/RS

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Q. When was that?

A. It would have been March 2000, when this matter arose.

Q. When it emerged in the first instance. And was Mr. Phelan able to give you an explanation which you found satisfactory?

A. Well, he told me that I was not involved in any transaction. I knew that anyway.

Q. Well, did you have any robust exchange with him to "Get me out of this", or

A. Well, I wasn't in it.

Q. You were in to the extent that you were being inquired into, at least?

A. But I wasn't a guarantor of any loan in Investec for a transaction.

Q. No, but that your name was being linked with something?

A. And I asked him for an explanation.

Q. And the explanation given was that you just were not

A. That I was not involved.

Q. You were not involved. Can you remember I know it's

some time back but can you remember the precise

words he may have used?

A. I don't, to be honest with you, no.

Q. Or what kind of words? What might he have said to you?

A. I would have just questioned him generally what this

was all about. And he was away at the time, if I

recall. So it was some time after the event that I

actually got to talk to him.

Q. And where would you have met him?

A. I think I would have spoken to him on the telephone.

Q. I see. And would it have been a lengthy discussion or

/RS

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a short discussion between you?

A. I'd say reasonably short. I can't remember.

Q. Did you have any meeting with Mr. Lowry?

A. No.

Q. Or any telephone conversation with Mr. Lowry?

A. No.

Q. Thank you, Mr. O'Brien.

CHAIRMAN: Mr. Gleeson?

MR. GLEESON: No questions.

MR. O'DONNELL: No questions.

CHAIRMAN: Mr. McGonigal?

MR. MCGONIGAL: I have no questions, Mr. Chairman.

CHAIRMAN: Thank you very much, Mr. O'Brien.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: That's the evidence for today I beg
your pardon

MS. O'BRIEN: There is one matter

CHAIRMAN: Mr. McGonigal has an observation to make.

MR. MCGONIGAL: It may be the wrong time to say this,

/RS

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Mr. Chairman, but in the light of that examination of
Mr. O'Brien, I do not understand why the urgent
necessity was to bring him back for today in the
circumstances in which he was brought back, and I want
to register in the strongest possible terms for what
it is worth, and it is probably worth very little my
outrage at the way he has been treated for the second
time.

CHAIRMAN: Your outrage, not for the first time in the
several years of this process, is duly registered, Mr.
McGonigal. Thank you.

Ms. O'Brien?

MS. O'BRIEN: Sir, just one last matter for today's
sittings is to put on the record the further
correspondence between the Tribunal and Mr. Aidan
Phelan's solicitors. And this is being done, Sir, at
the request of Mr. Phelan's solicitors.

The initial correspondence between Mr. Phelan's solicitors and the Tribunal commenced with letters of the 25th April, and that letter has already been opened in the course of both the Opening Statement and Mr. Davis's evidence. That was responded to by letter of the 29th, which has already been dealt with, Sir, as have the letter of the 4th June and the 13th June.

Following the letter of the 13th June from Mr. Phelan's

/RS

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solicitor, the Tribunal wrote to Mr. Phelan's solicitors on the 17th June, 2002. That should be on the overhead projector.

"Dear Mrs. Preston. I acknowledge receipt of your letter of the 13th June last in connection with the above.

"Please note that Mr. Phelan will be required to give evidence in relation to this matter at public sittings of the Tribunal which are due to commence at the beginning of July.

"Yours sincerely, John Davis".

I should say a further letter was then forwarded by the Tribunal to A & L Goodbody on the 11th July, 2002; I think this has already been referred to by Mr. Gleeson in the course of examining Mr. Davis. And that reads:

"Dear Mrs. Preston.

"I refer to recent correspondence in relation to your

above-named client.

"You will recall that I wrote to you sometime ago to bring to the attention of your client certain correspondence that has passed between the Tribunal and Mr. Christopher Vaughan dating from 21st March last.

The correspondence related to certain documents which

/RS

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had come to the attention of the Tribunal and which were as follow:

1. A top copy of a letter dated 12th July 2000 issued from Mr. Christopher Vaughan's office and addressed to Mr. Kevin Phelan." And that was the long form letter.

"2. A top copy of a letter dated 5th September, 2000, issued from Mr. Christopher Vaughan's office and also addressed to Mr. Kevin Phelan." That was also the long form letter of the 5th September.

"File copies of letters also dated 12th July, 2000, and 5th September, 2000, from Mr. Vaughan to Mr. Kevin Phelan had been produced to the Tribunal voluntarily by Mr. Vaughan on foot of authorisations provided by your client. The Tribunal had also received top copies of the file copies letters from Mr. Kevin Phelan, the addressee of the letters. These letters, in the form of the file copy letters produced by Mr. Vaughan, had been led in evidence by the Tribunal in the course of its sittings last year".

That statement in fact was in error, and it has since been clarified by the Tribunal that these letters have been used solely in the course of the price investigative phase of the Tribunal's inquiries.

"As will be apparent from the documents, there appear to be discrepancies between the contents of the top

/RS

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copy letters referred to at 1 and 2 above on the one hand, and the file copies (produced by Mr. Vaughan) and the top copy letters (produced by Mr. Kevin Phelan) on the other hand.

"The Tribunal raised this matter with Mr. Vaughan in a number of letters. Copies of these letters have already been forwarded to you on behalf of your client.

Notwithstanding repeated requests, Mr. Vaughan has not provided the Tribunal with any information which sheds light on the apparent discrepancies between these letters.

"The Tribunal, in its letter dated 12th April 2002 to Mr. Christopher Vaughan, indicated that in the absence of explanation, the following reasonable inferences could be drawn from the existence of these documents:

"(a) that Mr. Vaughan generated two sets of correspondence concerning this matter.

"(b) that only one set was made available to the Tribunal on foot of its original request for

assistance.

"(c) that a separate set of documentation was obscured from the view of the Tribunal.

"(d) that two files appear to have been kept in connection with this matter, one for disclosure and one /RS

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to be obscured from disclosure.

"(e) that, as appears from the letter referred to at 2 above, this concealment may be related to the involvement of your client" and that's a typographical error, and it should have had read "Mr. Michael Lowry."

"The Tribunal has also raised this matter with Mr. Kevin Phelan and with the solicitors for Mr. Denis O'Brien. The Tribunal has received no response from Mr. Kevin Phelan." As was the position as of the date of that letter, Sir.

"Mr. Denis O'Brien's solicitors, by letter dated 10th July 2002, have informed the Tribunal that Mr. O'Brien is unable to make any comment on the subject matter of the correspondence nor has he any knowledge of the correspondence passing between Mr. Vaughan and Mr. Kevin Phelan let alone any knowledge of why different copies of that correspondence might arise.

"The Tribunal intends to resume its public sittings on Monday 29th July next to hear evidence in relation to this matter. The Tribunal will wish to hear evidence

from your client and I would be obliged if you would confirm that your client will make himself available to give evidence voluntarily, as otherwise the Tribunal will have to consider securing his attendance by service of a Witness Summons.

/RS

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"I am also instructed to request that your client provide the Tribunal with a statement or memorandum of the evidence which he is in a position to give regarding this matter. Your client is under no obligation to provide such statement or memorandum of intended evidence, but in that event, he should be aware that the Tribunal will be obliged to notify persons who may be affected by his evidence of the matters which the Tribunal intends to raise with him in the course of his evidence.

"If your client does intend to provide the Tribunal with a voluntary statement or memorandum, such a statement or memorandum should set out all of his knowledge in connection with this matter; the details of all inquiries which he has set in motion; and the outcome of such inquiries.

"I would be obliged if you would contact me by no later than Wednesday next, 17th July 2001 to indicate whether your client is agreeable to attending to give evidence at the Tribunal and to indicate whether your client

does or does not intend to provide the Tribunal with a voluntary statement or memorandum and if it is his intention to assist the Tribunal in that regard, to indicate when I can expect to receive such statement or memorandum."

Next letter, Sir, is a letter dated 15th July from Mr. Davis, also to Mr. Phelan's solicitors.

/RS

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"Dear Mrs. Preston,

"The Tribunal has been informed by way of a letter written by Mr. Christopher Vaughan solicitor to Mr. Michael Lowry's solicitors that he does not now hold the deeds of either to the two properties, namely Saint Columba's Church or the Mansfield property, referred to in the course of the Tribunal's last sittings in the evidence of your client. Mr. Vaughan has stated as follows:

'I do not hold the deeds of either property, which are either with Aidan Phelan or with other solicitors instructed by him.'

"I would be much obliged if you could have your client respond to the following inquiries concerning these properties and in particular the deeds relating to them:

"1.1. Are the deeds of Saint Columba's Church property with Mr. Phelan?

"1.2. If they are with Mr. Phelan, please indicate when they came into his possession and how they were transferred to him, and if they were so transferred to him by letter, please let me have a copy of the letter and copies of any other relevant correspondence.

/RS

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"1.3. If the aforementioned deeds are with another firm of solicitors, please let me have the identity of the firm of solicitors together with copies of any correspondence transferring the documents to that firm of solicitors and copies of any other correspondence between that firm of solicitors and Mr. Phelan in connection with the properties. Please also let me have a waiver from Mr. Phelan so that the Tribunal can take the matter up directly with any such firm of solicitors.

"2.1. Are the deeds of the Mansfield property with Mr. Phelan?

"2.2. If they are with Mr. Phelan please indicate when they came into his possession and how they were transferred to him and if they were so transferred to him by letter, please let me have a copy of the letter and copies of any other relevant correspondence.

"2.3. If the aforementioned deeds are with another firm of solicitors, please let me have the identity of the other firm of solicitors together with copies of

any correspondence transferring the documents to that firm of solicitors and copies of any other correspondence between that firm of solicitors and Mr. Phelan in connection with the properties. Please also let me have a waiver from Mr. Phelan so that the Tribunal can take up the matter up directly with any such firm of solicitors.

/RS

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"As the Tribunal envisages going into evidence at its next public sittings commencing on the 29th July, 2002, in connection with this matter, I would be much obliged for your response at your very earliest convenience."

Next letter is also a letter, Sir, from the Tribunal, through Mr. Davis, to Mr. Aidan Phelan's solicitors.

"Dear Mrs. Preston.

"I refer to my letters to you of the 11th and 12th July last in connection with your above named clients.

"I note that I have yet to hear from you with confirmation that your clients will be in attendance at the Tribunal's resumed public sittings on Monday 29th July next. I must now advise that in the absence of such confirmation by 5:00pm tomorrow evening, 23rd July, the Tribunal will be obliged to serve Witness Summonses to secure your clients' attendance.

"I look forward to hearing from you.

"Yours sincerely,

John Davis."

The next letter in the sequence of letters, Sir, the letter from Mr. Phelan's solicitors to Mr. Davis, dated 23rd July:

/RS

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"Dear Mr. Davis,

"I refer to your letter addressed to Mr. Phelan of the 11th July." In fact the letter was addressed to Mr. Phelan's solicitors. "Mr. Phelan is no longer resident in Ireland and regrets that he will not be available on the 29th next.

"Yours sincerely,

Caroline Preston."

Next letter is a letter dated 23rd July, which is the same date as Mrs. Preston's letter. It's addressed to Mrs. Preston from Mr. Davis.

"Dear Mrs. Preston.

"I refer to your letter of today's date.

"The Sole Member is disappointed that it has taken Mr. Phelan until now to respond to the Tribunal's correspondence and that it is only now that he has indicated that he will not be available on the 29th next. He has not indicated what his availability is around that date or at any other time. Please let me know what your client's availability is on or around the 29th next. Please also confirm that in addition to

being available on some other date at or about the
29th, he will be available to give further evidence to
/RS

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the Tribunal in late September/October of this year.

"Yours sincerely,

John Davis."

There then followed another letter from Mr. Davis to
Mrs. Preston dated 25th July, 2002.

"Dear Mrs. Preston.

"I enclose herewith documentation in anticipation of
the resumption of the Tribunal's public sittings on
Monday next, 29th July 2002.

"I am enclosing one leverarch file entitled 'Book
290702/32' containing, where available, statements of
the evidence which the Tribunal anticipates will be
given by various witnesses. Where statements are not
available, I am enclosing memoranda of such evidence or
memoranda of inquiries to which the Tribunal
anticipates that a response will be received.

"Your clients will already be familiar with much of the
material in the book which has already been led in
evidence at the public sittings of the Tribunal.

However, for ease of access, material already furnished
is now being resubmitted in a more convenient form.

Your clients should bear in mind that the material is
confidential and should not be disclosed by you, or by

your clients, to any other person save to the extent to

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which this may be necessary to enable your clients to assist the Tribunal. Any such third person to whom any of this material is disclosed for such purpose should be informed of the confidential nature of the material and the obligation of confidence subject to which it is being made available.

"On the basis of the information currently available to the Tribunal, the persons mentioned in the witness list are the only persons likely to be called to give evidence. It may be that further information will come to hand either between now and the commencement of the sittings or at any time during the sittings, whether in the course of the evidence or otherwise, which may render it necessary to call further witnesses. Every effort will be made to ensure that, as far as practicable, statements are obtained from such witnesses and, if not, that your clients are given advance notice of the intention of the Tribunal to call such witnesses where it is anticipated that his or her evidence will affect your clients.

"I anticipate that the Tribunal will be making a further Opening Statement prior to dealing with this material, and if your clients wish to make any comment on any of the material now furnished (other than

comments already furnished in correspondence) which they desire to have incorporated into such Opening Statement, then provided that the Tribunal regards your clients' comments as relevant to its Terms of Reference

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in the proceeding at its public sittings, consideration will be given to including those comments or their effect in the Opening Statement.

"Please also note that if there are any other documents which your clients believe to be relevant to the Tribunal's Terms of Reference having regard to the documentation provided to you, please contact me as soon as possible. Likewise if there are any persons whom your clients desire to call to the Tribunal as witnesses and who may be able to give useful information relevant to the Tribunal's Terms of Reference, please contact me, and if necessary for this purpose and for the purpose of furnishing any such additional documentation, you might contact me in the first instance by telephone".

The next letter is also a letter of the 25th July, from Mr. Davis to Mr. Phelan's solicitors.

"Dear Mrs. Preston.

"I refer to my letter of the 23rd July last regarding the availability of your clients for the Tribunal's public sittings next week and I note that I have yet to

hear from you in reply.

"I would be obliged to hear from you as a matter of urgency regarding Mr. Phelan's availability on dates other than the 29th July next for which you have

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confirmed that he will not be available."

Next letter is a letter dated 24th July, from Mr.

Phelan's solicitors, received by the Tribunal on the 26th July.

"Dear Mr. Davis,

"I refer to your letter of yesterday's date.

"I am naturally sorry that the Sole Member is disappointed that it took some time to respond to the Tribunal's request that Mr. Phelan attend on the 29th. Unfortunately, as I have already indicated to you, Mr. Phelan is no longer resident in Ireland and communication with him is therefore more difficult.

"I note your request that I again seek his availability on or around the 29th. I know that he is not available on the 29th, and this I have communicated to you. I have been unable to contact him today, although I have left messages where possible.

"I refer to your letter of the 4th June 2001 in which you state that "the manner in which the correspondence was conducted by Mr. Vaughan has the potential to give rise to very negative conclusions affecting Mr. Vaughan

and his clients." Mr. Phelan has stated unequivocally, through myself, that he has no explanation for the apparent discrepancy between the copies of

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correspondence held by Mr. Vaughan and Mr. Phelan. It is not appropriate that any negative conclusion affecting Mr. Phelan, if that was what was intended to be conveyed by your letter of 4th June 2002, be reached in these circumstances. This is clearly a matter for Mr. Vaughan and for Mr. Kevin Phelan to address. Nor is it appropriate, given our client's constitutional right to fair procedures and to protection of his good name, to put this matter to individuals who know nothing of it, thereby putting it into the public domain.

"Yours sincerely,

Caroline Preston."

The next letter is the letter dated 26th July from the Tribunal to Mr. Phelan's solicitor.

"Dear Mrs. Preston.

"Thank you for the letter of the 24th July 2002 received at the Tribunal today.

"I note what you say concerning the difficulties which you have encountered in contacting Mr. Phelan. The Tribunal does not accept that the question of the manner in which Mr. Vaughan conducted his

correspondence is a matter solely for Mr. Vaughan and Mr. Kevin Phelan to address. The correspondence concerned a matter upon which, as your client has been /RS

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only too anxious to emphasise, Mr. Vaughan was acting as your client's solicitor. That correspondence and the manner which it was conducted is clearly a matter for your client. The Tribunal regards your clients' evidence in this matter as likely to be of value.

Quite apart from that, and recognising your client's constitutional right to fair procedures and to the protection of his good name, the Tribunal is anxious to give him every opportunity to contribute to the evidence at the Tribunal's sittings on the matter and to make whatever observations are appropriate in the protection of his good name.

"Yours sincerely,

John Davis."

Then there follows a letter dated 26th July, and received by the Tribunal this morning, Sir, at 9.50am, from Mr. Phelan's solicitors, addressed to Mr. Davis.

"Dear Mr. Davis,

"I refer to your letters of the 25th July 2002 which arrived in this office late that evening and which I note do not address the constitutional issues raised in mine of Wednesday 24th July.

"I understand that you now intend to read Mr. Vaughan's correspondence into the record of the Tribunal and do not intend to, or cannot lead appropriate evidence in /RS

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connection with it. I would remind you that you yourself in your letter of the 4th June, 2002, said that this issue may have "very negative conclusions" for Mr. Phelan. It is inconceivable how it could be considered to be constitutionally sound to proceed on the basis apparently now contemplated by you.

"We require an opportunity to address the Tribunal in this regard ahead of any Opening Statement or attempt by you to read anything pertaining to this matter into the record of the Tribunal.

"Mr. Phelan is prepared to endure the inconvenience, cost and stress associated with yet another appearance before the Tribunal, notwithstanding the fact that he has, through myself, made it clear that he can not resist the Tribunal with this. However, he will need a reasonable period of notice and he would be available to give evidence in September or October at a date to be mutually agreed.

"In the event that you proceed to attack our clients' constitutional rights by reading into the Tribunal's record any reference or documentation relating to this issue, we insist that this letter will also be opened

in public forum. On behalf of Mr. Phelan, we reserve his position with regard to any attack on his constitutional rights."

Then, finally, Sir, the correspondence closes with a

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letter of today's date from the Tribunal to Mr. Aidan Phelan's solicitors.

"Dear Mrs. Preston,

"I refer to your letter dated 26th July 2002 but not received by the Tribunal until this morning at 9.50am when delivered by courier.

"The Tribunal notes your request that your letter of 26th July be read into the record of the Tribunal's proceedings in advance of the Tribunal leading evidence. I confirm that as requested, the Tribunal will open your letter of the 26th July 2002 in the context of the correspondence with your firm relating to the material which forms the subject matter of the Tribunal's public sittings commencing today, 29th July, 2002.

"May I also remind you that your client was first notified that he would be required to give evidence in July by letter dated 17th June last.

"Yours sincerely,

John Davis,

solicitor to the Tribunal."

And the correspondence closes and rests with that letter, Sir.

/RS

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CHAIRMAN: Very good. Thank you Ms. O'Brien.

Mr. Gleeson, I think those were the matters that Mrs. Preston, your solicitor, had indicated an anxiety to have read onto the record. I hope nothing has been omitted in that.

MR. GLEESON: No, no, Sir, nothing has been omitted.

Just while I am on my feet, could I just make an inquiry, in the light of Mr. Davis's evidence given today, as to whether or not the Tribunal intends to call Mr. Colm Keena to give evidence here.

CHAIRMAN: Well, I am not going to deal with that, Mr.

Gleeson. I am going to leave that open as an issue that has been canvassed by you, and I am going to reflect on it and hear what anyone has to say about it.

I am not going to wade without a proper reflection into that particular arena, but if you want to say something about it in due course, of course I'll listen carefully to what you have to say, or anybody else that wishes to raise the issue.

MR. GLEESON: Very well.

CHAIRMAN: Well, in reading that correspondence, and I stress that not the slightest criticism is made of the solicitors to Mr. Phelan, who were seeking to express

their client's views as accurately as possible, it may

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perhaps become clear to members of the public why new

shelving and document containers have had to be put

into each of the Tribunal offices in recent weeks.

Eleven o'clock tomorrow. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

TUESDAY, 30TH JULY, 2002 AT 11AM.

/RS