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## I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 17TH

JULY, 20034 AT 11AM:

CONTINUATION OF EXAMINATION OF MARK FITZGERALD BY

MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. FitzGerald, just overnight I was

trying to do some checking in relation to certain

matters. Your business dealings with Mr. O'Brien, as

I understand it, Sherry FitzGerald, your firm, acted

for him or one of his companies in relation to a

number of property transactions?

A. That's correct.

Q. And these weren't dealt with by you personally. They

were dealt with by someone else within the firm?

A. Well, yes. Other people within the firm.

Q. To identify them I am not sure whether you're familiar with them or not but in broad terms, there was the Malt House North Block, the stack B in the Irish Financial Services Centre, the cats and dogs home, which is the Grand Canal building, and the Mespil Road offices?

A. Broadly, I think in I think it's possible in some of those cases we actually acted against Mr. O'Brien, for his company as it happens, in terms of Esat.

Q. But certainly so far as you yourself were concerned, you had no business dealings of a property nature with Mr. O'Brien?

A. No, not in that period.

Q. So far as his recollection goes, the only occasions which he can recollect as ever possibly meeting you, were at social occasions. Would you agree with that?

A. Like going back to when we were childhood, so to speak?

Q. No. Well, I was actually thinking about '95/'94, which is when he was thinking about.

A. Well, it's possible that one of the meetings, which is nothing to do with the meeting I had in Patrick Kavanagh's, may have happened some stage '93 -ish, but generally if I would have met Mr. O'Brien, it would have been at the meetings I alluded to or at a social

occasion such as a Fine Gael lunch.

Q. Certainly at this time, '94/'95, he has no specific recollections of any one-to-one meetings with you?

A. Obviously, I can't add anything further to what I said yesterday on that, Mr. McGonigal.

Q. Can you help me remind me if you can I am not trying to my memory doesn't remember it do you say that there were one-to-one meetings in '94/'95?

A. I am saying what I am saying quite clearly, Mr. McGonigal, is that the meetings I referred to yesterday in the Shelbourne Hotel and Loyds Brasserie were meetings that happened in '95. I also referred, in my statement, that I could recall two previous occasions in life prior to this period where I had some very cursory dealings with Mr. O'Brien, and I think one of those was in Patrick Kavanagh's restaurant I am not quite sure of the year, it's an earlier year, that's what I am saying.

Q. And the second?

A. The second was oh, a good few years previously, he had a property off a mews property off Baggot Street and myself and myself and a colleague valued it, but we didn't subsequently sell it.

Q. So that certainly in '94/'95 assuming the Kavanagh thing may have been earlier, there doesn't appear to have been, even within your own recollection, any one-to-one meetings between yourself and Mr. O'Brien?

A. Well, beyond the meetings

Q. Apart from the August two?

A. Yes, apart from the meetings.

Q. Now, just in relation to your own role, as I understand it, you were a trustee of the Fine Gael Party from 1991, until June of sorry, June of 2002.

Is that right?

A. That's correct.

Q. And during that time a is it correct to say that a significant amount of your input or an amount of your input, was related to fundraising?

A. No. That wouldn't be correct.

Q. Was none of it related to fundraising?

A. Obviously, some of it was, but an it wasn't a significant amount of time. I was a voluntary party worker. I had a young family and a growing business.

I mean, the 1990s was when my business, Sherry FitzGerald, would have really grown at quite a fast pace and that was what was taking up my time.

Q. I am not disputing any of that, Mr. FitzGerald. I had understood that during that period that you, and I know there were others, would have been recognised or considered as a significant person within political fundraising for Fine Gael and that you would have been considered sort of one of the better ones, if I can put it that way, extremely successful.

A. Thank you for the plaudit, Mr. McGonigal, but the

modus operandi for Fine Gael raising funds centrally historically was an operation called the Fine Gael Capital Branch, of which I was never a member. So my fundraising, in as far as I was involved in fundraising, would be what I would call the retail end of the fundraising spectrum.

Q. You see, what I am really trying to understand, just on a general basis, is that in relation to fundraising, or in relation to the bringing together of business and politics, there is the purpose, really, is to enable business people to get involved with and to get to know the particular party on a better basis than they might otherwise have known them. Would that be a fair description?

A. I mean I mean, for a number of years now, I have had views on the need for state funding, so I think there is a need for a relationship between business and politics and society, but you know, I would be cautious about the relationship when it comes in a deep way to fundraising, and therefore, it's something I have been reasonably consistent in my views for many years on.

Q. I am neither advocating or not advocating, Mr. FitzGerald. I have no flame to burn for any of the political parties, I am merely trying to understand what I had understood to be the relationship that one tries to establish, that where

you have a political party in power, it is not unusual or unnatural for business people, professional people and indeed ordinary people, to want to be associated with, to get to know, so that they can assist and add to the political dialogue, the Ministers and members of that Government?

A. That, as I think what human habits are obviously about, and I don't have any issue with that. It's really an issue of access is really what you're describing.

Q. And in the same way when this coalition Government came into being, the natural reaction of businesses was to try and associate and become involved with Fine Gael/Labour, because they hadn't been there for sometime. Would you agree with that?

A. Well, I suppose in life people like to associate with success. I think the former Party Leader Mr. Bruton has said that already.

Q. But what I am trying to get at is this: There is nothing wrong with that, is there?

A. I have as I said already on the issue of access and the relationship between business people and politics, I have no problem. In fact, I think it is a good thing because a lot of politicians have relatively little experience of business and obviously business people can learn about the political process and help make a contribution to their country by making their

views known on a series of issues such as the general business climate.

Q. And even I mean, taking your own position, even though you modestly describe yourself as a sort of voluntary foot soldier, you had a slightly more unique position within Fine Gael as being the son of the former Taoiseach, and all that that carried with it?

A. I am not sure what all that carries with it actually means, Mr. McGonigal.

Q. It's complimentary, Mr. FitzGerald, don't worry. There is some niceness in me now and again.

A. Okay. Well, my relationship with Fine Gael was through my father really. I never actually, you know, stood for election for the National Executive, the National Council, or indeed offered myself for selection as a constituency officer. So my relationship was through my father, and I suppose, there were different periods of my life where I was involved in Fine Gael; it would go back to 1965, but certainly in the late '70s and early '80s, I would have travelled the country fairly extensively with my parents at that stage. And then when I was appointed a trustee, I wasn't a particularly active trustee in the early part. I suppose I was a new kid on the block. I was younger. There were influential people who had, I suppose, time on their hands and they kind of took up the running. It really probably, in the

period of '95-'97, after Mr. Miley was appointed, that I did put some more time into Fine Gael. And then after '97, I stood down as the Chairman of the strategy committee. I remained as a trustee and I concentrated on family and business interests thereafter.

Q. You see, the Tribunal at times has unfortunately, and quite properly, tends to focus in on a particular aspect, and it has, in this particular section of its inquiry, focused in on your relationship with Michael Lowry, but is it not right to say that in reality, because of your position, who you were etc., etc., your contribution to the Party, that not only Michael Lowry, but you would have had relationship with most of the other Ministers and members of the Fine Gael Government?

A. Well, funnily enough, because I wasn't I mean, I would have known them, but I was not somebody who had actually worked very closely with them before, because I wasn't actually that actually as I said, my relationship was through my parents, so actually would have met them on election tours and I would have you know, I had a good relationship with them all, but it wouldn't have been a close relationship.

Q. I wasn't necessarily talking about long term. But, I mean, you didn't know Michael Lowry very long, he only became a Minister in '94, and you only got to know him

'94/95, and you seemed to develop very quickly a relationship with him one way or the other, and I had assumed, perhaps wrongly, that leaving aside Michael Lowry, the reality of life is that you would have known many of the other Ministers you would have had a relationship similar, or different to the one that you had with Lowry, where there would be a swapping of information, and a trading of political dialogue, if you like?

A. I wouldn't have well, I would have known them and I would have met them on occasion, but I wouldn't have had a huge amount of interaction with them to be honest with you.

Q. So is the position that, in fact, during this period of time, that the only Minister that you had any real interaction with was Lowry?

A. No. I mean, as I said my interaction already with Mr. Lowry was reasonably limited as well.

Q. Limited in one sense, but I mean, relevant in another sense, and let me go to well, let me I'll come back to the statement in a minute. But certainly with Michael Lowry, you seemed to have had a sort of particular relationship in the sense that he would come to you, and would you tender opinions one way or the other?

A. Well, I wouldn't accept that, Mr. McGonigal. As I said yesterday, in my view, Michael Lowry was he

liked to be the centre of events, and I really don't have anything further to add about my relationship with Mr. Lowry beyond that.

Q. I'll come back to you in a second. Can I go over something very quickly, Mr. FitzGerald. Apart from Mr. O'Brien, in relation to business transactions or otherwise, can you say or do you know whether you had any dealings with any of the other consortia or members of the consortia who were applying for the licence?

A. Did I have any business dealings?

Q. Yeah.

A. Well, I mean, when you say my personally, I mean, we

Q. Of the same kind that you have identified with Mr. O'Brien, either through property transactions, meetings with members of those

A. It's possible that my company might have, but I don't personally recollect any. But, I mean, we obviously have a large business, and

Q. I am speaking about you rather than your business, and only insofar as you remember it.

A. Did I have any business dealings?

Q. Yes. I mean with Persona? With Motorola?

A. Not that I recollect, no.

Q. With Irish Mobicall?

A. Irish who?

Q. Irish Mobicall, who was

A. I never heard of them.

Q. Mr. O'Reilly, I think it was. Irish Cellular, I am

sorry. Let me put it a different way: Did you have

any dealings with Mr. O'Reilly?

A. Mr. O'Reilly?

Q. Yes.

A. No.

Q. None at all?

A. No.

Q. Not even prior to this Tribunal?

A. When you say Mr. O'Reilly

Q. Sorry, Mr. AJ O'Reilly.

A. No, I would have known him since I was a child.

Q. But you had no dealings with him

A. I have business dealings. We advertise in the Irish

Independent, but that's about the extent of it.

Q. You have had no contact with Mr. O'Reilly in recent

times in a similar vein to which you have described as

the contacts with Mr. O'Brien?

A. No, I met him socially.

Q. Now, going back to what I left a moment ago. If you

just go to your statement of the 26th November,

Mr. FitzGerald. Do you have them?

A. I do.

Q. And if you go to paragraph 5. This is the this is

a conversation which you had with Mr. Lowry in

relation to the Chairmanship of the ESB. Do you see

that?

A. I do.

Q. This meeting, which seems to have taken place sometime

around February of '95, was an occasion when Mr. Lowry

seems to have been seeking, from you, names or

assistance in relation to potential chairpersons for

ESB.

A. As I said, it was at the margins of a meeting and I

felt it was nearly filling a conversation gap.

Q. But you gave him two names, one of which was

subsequently chosen, for his consideration?

A. Well, as it happened, yeah, but he asked me a specific

question in the context of somebody who would be

acceptable to Mr. Spring, and I would have thought,

you know, my knowledge of Mr. Spring, having worked

with my father, that you'd be looking for somebody who

was eminent and apolitical. So I had an awareness

that Mr. McCann was already director of the ESB, and I

suggested another name, but I didn't make any

recommendations.

Q. But was this a job that was being actively considered

at this time in the sense that there was a vacancy in

the foreseeable future and some consideration was

given as to who might or might not get it?

A. It was a complete I regarded it as a complete

longshot, Mr. McGonigal, because my recollection was

that the vacancy wasn't for another year.

Q. In fact, he was appointed in January of '96?

A. Well, 11 months, was it

Q. In one sense, there is nothing in it, Mr. FitzGerald.

In another sense, I am just curious from this point of view; that arguably, and I put it no further than that, Price Waterhouse were also involved in the Golf Classic in October '95, and one might query, certainly in theory, as to whether in circumstances where persons from a firm might have been actively considered for a job, was that appropriate for that firm to be seen at a Golf Classic? I am just curious as to what context you would put that vis-a-vis Esat Telecom at your Golf Classic; would you have had some concern about it?

A. I wouldn't put it in any context. I mean, the reality is that Ireland is a small country, it's a country of 4 million people. Government and business have to interact. All businesses come in contact with Government. So if there is going to be political fundraising, people who come in contact with going to support political parties and, I mean, I see the issue you're raising, and you know, if you're saying to me do I agree there should be state funding, I do agree with you.

Q. I wasn't saying that at all. I was just asking to see whether you saw any consistency or inconsistency in

the position that you were taking in relation to Esat Telecom.

A. Well, just to be clear, what I said yesterday about Mr. O'Brien, that you know, I didn't have an issue, and I said I didn't want, you know, I think the word I used, I didn't want to repudiate Mr. O'Brien over this particular Golf Classic. The point I was making was about the systematic support, and it was obviously a particular event in terms of a licence coming up and we had a new General Secretary, and I felt I had formed a good rapport with him, he was somebody of my own generation, and I didn't have a huge amount of experience as a trustee, but I did have some wisdom to offer from my extended family situation as to past practices in Fine Gael, and I felt that I'd pass that wisdom on to, inasmuch as it was wisdom, on to Mr. Miley.

Q. No, I understand what you're saying. I am just curious about your use of the word systematic, because I am not quite clear what you mean by that, whether you are suggesting or what are you suggesting?

A. Well, all I knew was that I wasn't at it, but my wife was at it that Mr. O'Brien was at the Dublin Central lunch and that he had taken a table, because I was at the Carlow/Kilkenny lunch, and then the Golf Classic came up and I felt from Mr. O'Brien's perspective, that if I was applying for a licence,

that going to one or two events was something that was fine, but unless you started going to, you know, a sequence of events, that the donation becomes more sizable. I mean, this is you know, this is a judgement issue, Mr. McGonigal. That was my judgement of the situation.

Q. I mean, I don't want to have to go through all of the records to see who was systematic or who wasn't, but I find it difficult to describe Mr. O'Brien's contribution to Fine Gael as systematic. He certainly seems to have contributed inter alia to your father's constituency on a regular basis, but apart from that

A. Could I just stop you there a sec, Mr. McGonigal. I have no evidence of I have no recollection of him ever contributing to my father's constituency. I don't know, maybe you have.

Q. I think we actually gave details to the Tribunal, and it appears that certainly on at least one occasion, contributions were made to that constituency.

A. Well I would make the point that my father retired from politics in 1992.

Q. I attach no significance to it, Mr. FitzGerald. It possibly was wrong to refer to it as your father's constituency. I think there was another person

A. Frances Fitzgerald was the TD. She is a very fine woman, but no relation.

Q. No relationship, but a very fine woman.

A. Yes, we agree on that.

Q. Another thing, Mr. FitzGerald, because I want to

conclude this, is paragraph 10, this is where

Mr. Lowry comes to you sorry, this is where on the

6th April 1995, your meeting with Mr. Lowry,

and there is a question about the mobile licence.

Do you see that?

A. I do.

Q. And you were there recommending you were there

talking about Motorola?

A. You were about to use word recommending. What

happened there, as I explained, we were sitting in a

car filling time, waiting for Geraldine Byrne to turn

up and Mr. Lowry, as is his want, suddenly introduced

the subject, and the only thing in my mind was I had

read somewhere that Motorola were interested. I just

filled a conversation gap. That's it.

Q. What I actually find interesting was that you said the

a company like Motorola was likely to be a strong

contender?

A. Because of its size of their employment in the

country.

Q. Had you had any contact with Motorola? Had they been

in contact with you or asked you to lobby on their

behalf?

A. No, they hadn't, Mr. McGonigal.

Q. I mean, in one sense, is there a difference between saying to Mr. Lowry that Mr. McCann and AN Other would be good candidates for the ESB and Motorola would be a strong candidate for the GSM2 licence?

A. It was simply a conversation gap-filler and at the time, if I I don't know whether you got the figures, but Motorola was one of the most significant employers in the country, if I recollect. Very, very significant employer. And it was in that context I mentioned it, so it was obviously if a State is giving a licence, they need to be mindful of a whole series of issues. It just struck me they were a big employer and that's possibly something the State would be thinking about. I had no axe to grind, good, bad or indifferent. I never was asked and never made any representation on behalf of Motorola.

Q. But you seem to have known something about them.

A. Well, I knew what was in the public domain. I do tend to read the papers.

Q. Were you aware of any rumours in relation to them?

A. No.

Q. In relation to the granting of the licence?

A. No.

Q. But this is the same Motorola that was subsequently allegedly discussed in August of '95?

A. Yeah. Well, Mr. O'Brien raised it with me.

Q. Paragraph 13, then. This is to do with the

appointment of sorry, this is to do with the question of Michael McDonnell potentially going being short-listed in relation to a vacancy on CIE, isn't that right? And Mr. Lowry came to you asking you to effectively talk to the person who was involved in drawing up the short list.

A. Mr. Lowry telephoned me.

Q. Yes, and as a result of that, you went to Mr. O'Higgins and indicated to him that Michael McDonnell was someone that, if possible, should go onto the short list because of his qualities?

A. First of all, I didn't go to Mr. O'Higgins. I telephoned Mr. O'Higgins. I suppose the background to this is that given my previous contact with Mr. Lowry, I was kind of relieved to feel that he was that I felt the phone call was very much a phone call in the motivation which was coming from the public interest, because I knew Mr. McDonnell to be I had only met him on one occasion very briefly, that I can recollect, but I didn't know him personally in any way, but I knew him to be a civil servant of the highest repute and I really, even though the approach was slightly unorthodox in terms of methodology, I really didn't have any problem about saying to Mr. O'Higgins that he should be considered. I didn't suggest that he should be appointed. There is a big difference in that.

Q. I presume he, along with others, had applied for this position and was being considered by Mr. O'Higgins without any intervention by you?

A. Well, I don't know I am not aware of the process.

Q. But the purpose, presumably, of your telephone call with Mr. O'Higgins was to make it clear to him that so far as you and

A. Well

Q. And Mr. Lowry were concerned, you would like to see Mr. McDonnell on the short list?

A. Well, I explained exactly that I had received a phone call from Mr. Lowry. Mr. O'Higgins can interpret it in which way he wanted to, so I was completely upfront with him. And one of the reasons why I had no problem making the phone call was that my brother, who had been a public servant for 30 years, and my father, who has been involved in public service on and off for many years, both had professional experience of him and I had the benefit of being present at a conversation about a job he had done in Aer Lingus when Maire Geoghegan Quinn was Minister. So in that sense, I knew the man in terms of his professional reputation to be an outstanding public servant and should be considered. Now, it was up to whoever was involved in the process and CIE themselves to decide who was appointed.

Q. I am not concerned at all about the qualities of

Mr. McDonnell. They are very well able to look after themselves. In reality, capable of being assessed properly by a person or board set up to examine those candidates that are applying for a particular job.

What I am actually trying to focus in on, because I do find it interesting, that you, through as a result of Mr. Lowry's request, thought that appropriate to contact your brother-in-law

A. Excuse me, Mr. McGonigal, I didn't contact my brother-in-law.

Q. Sorry, is Mr. Tom O'Higgins not your brother-in-law?

A. No. Mr. Tom O'Higgins is the first cousin of the former late Chief Justice O'Higgins, Tom O'Higgins, who is my father-in-law. So he is my wife's first cousin once removed.

Q. You are an indirect relation, or whatever you like to call it. That was my mistake, I apologise for that, Mr. FitzGerald. But you thought saw no difficulty in contacting him and saying effectively, saying to him, as your statement appears to say, what Mr. Lowry wanted you to do, which was to tell him the qualities of Mr. McDonnell and that the Department were keen to see him short-listed. You saw no problem in doing that?

A. I was comfortable, given the background that I had had in terms of opinion of Mr. McDonnell from both my father and my brother.

Q. You see, in one sense, one is would rhetorically ask: if Mr. Gill had had any connection, directly or indirectly with your family, would there have been a different approach or result?

A. Mr. Who?

Q. Gill.

A. Where does Mr. Gill come in?

Q. In the Marlborough House Mr. Good, is it, the arbitrator in Marlborough House?

A. Gordon Gill.

Q. But you wouldn't agree with that anyway?

A. I am not quite clear what you're suggesting.

Q. What I was suggesting, Mr. FitzGerald, was that if Mr. Gill had been a relation of the family, directly or indirectly, is it possible there would have been a different result in the way you approached it the alleged request from either Mr. Lowry or otherwise?

A. Absolutely not.

Q. Finally, Mr. FitzGerald, just one small thing. In relation to the minutes of the golf outings, two things. One, the 29th May of 1995, which appears to have been the first

A. Give me one sec there, Mr. McGonigal. I have every minute except May. I found a May minute, yes.

Q. First of all, just a small matter. The number 2 at the bottom of the first page, just above your own name and Enda Marren's name, it was decided that a phone

call to keep people was the best method to ensure a successful event, seems to be the methodology which was to be approached by all in getting teams and sponsors. Do you see that?

A. I do.

Q. Which was the reason why people were given lists of names and they were to go off and contact them; is that right?

A. Well, the list sort of flowed, yeah.

Q. Number 4 of that same meeting: "The parliamentary parties to be informed of the date of the Classic.

Ministers should be urged to attend and informed of the date as soon as possible." And the purpose of that was to ensure that as many Ministers as possible would attend either the playing of the game or the dinner in the evening; isn't that right?

A. I presume so, yeah.

Q. And in fact, the information that Ministers were to be given is to be found on the minute of the 21st July of 1995, when on the second page we see that it is imperative that as many Ministers as possible attend during the evening of the Classic. A list of those teams attending the Classic should be circulated to all Ministers at their September meeting." Do you see that?

A. I do.

Q. So that the contact, so far as these golf classics and

events were concerned, were for the Ministers, those who decided to attend, to be able to have a dialogue with the persons who were there. And it doesn't appear, other than through the list, that the sponsors, as such, were being drawn to their attention?

A. I haven't studied the minutes in that detail, but if you say, Mr. McGonigal. But the sponsors were going to be were on a card, as I recollect, at the event, printed on the back of the invitation.

Q. Absolutely. That's the one we discussed yesterday.

A. Yeah.

Q. And as I pointed out to you yesterday, the interesting thing really there is, Esat Telecom don't appear, but Cellstar do appear?

A. I recall you making the point, yes.

Q. Thanks, Mr. FitzGerald. I am sorry for taking so long.

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

MR. O'DONNELL: No questions.

CHAIRMAN: Mr. Meenan or Mr. O'Donnell?

MR. MEENAN: The position is, Chairman, that there are differences in recollections between the people I represent and Mr. Fitzgerald's evidence. They have been very properly put by the Tribunal, so in those circumstances, I have no questions.

CHAIRMAN: So be it. Then, Mr. O'Hanlon.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'HANLON:

Q. MR. O'HANLON: Mr. FitzGerald, if I could deal first with your first statement of November 11th November. Can you clarify why the statement was actually made at such a late stage from the event it refers to?

A. The 11th, no, I have the statement, sorry, Mr. O'Hanlon, yeah. Sorry, your question?

Q. I was wondering could you clarify why it was made at such a late remove from the events it refers to.

A. Because this is the 11th November

Q. Yes.

A. statement?

Q. Yes.

A. Well, because I got a letter from the Tribunal and they asked me to come and see them and they asked me questions.

Q. But you are aware its contents would appear to have direct relevance, I suppose more so your second statement, to the former Tribunal that was investigated by Mr. McCracken, and would appear to be directly relevant to the terms of this Tribunal?

A. That was a question I was asked yesterday by Mr. Healy, and I mean, obviously the the issue did occur to me and I sought advice and I was advised that it wasn't required.

Q. But notwithstanding the absence of the requirement, if

that is the case, why didn't you come forward with this information in any event, if you felt it's true and relevant and clearly if it is correct, would appear to be relevant?

A. Because as a citizen, I would fill my legal duties.

If I don't have a legal duty, I don't particularly want to volunteer for something which is a rather unpleasant task. I mean, you have to realise, Mr. O'Hanlon, being the son of a politician, I'd be extremely sensitive about the sensitivities of families involved in politics. So to me, what we're giving evidence on today is an unpleasant task.

Q. You see, in November 2002, on the 11th, your first statement, you refer to a meeting that took place in the Shelbourne, isn't that correct?

A. That's correct, yes.

Q. And none of the people you refer to as having been present appear to recollect that meeting. Did you discuss it with them or did you try to contact them with a view to ascertaining what actually took place in recollecting some seven years after the event, the meeting and what might have transpired there?

A. Well, the meeting in the Shelbourne was only one person in that it was Mr. O'Brien. No, I have had no contact with Mr. O'Brien.

Q. And that meeting was prior to the Golf Classic?

A. It was.

Q. And Mr. O'Brien was inquiring, or made reference to the mobile phone licence?

A. He did.

Q. And the Golf Classic took place and then there was a second meeting that you refer to, where you were surprised, you say, to find people in attendance who you hadn't expected to be there?

A. That's correct. This is the meeting in Loyds Brasserie, yes.

Q. And once again, Mr. O'Brien was making some form of inquiry in relation to the phone licence?

A. That's correct.

Q. Now, at the Golf Classic, you say that Mr. Lowry volunteered information relating to the phone licence?

A. That's correct.

Q. You see, I have to suggest that that information was in response to an inquiry by you and the information that you got from him was, as you described quite correctly, relatively innocuous?

A. Well, as I said yesterday, it was Mr. Lowry raised the issue with me. I certainly didn't raise it with him.

Q. You had no hand, act or part in the phone licence, the granting of it or in any aspect of it?

A. Well, not as far as I am aware. I mean, obviously the Tribunal is here to examine these issues.

Q. And Mr. Lowry clearly was the Minister who was presiding over it in a certain sense, although he

sought to ring-fence any political interference in the decision-making process?

A. Sorry

Q. I said Mr. Lowry was clearly involved in it.

A. Mr. Lowry was the Minister, I think, responsible for the Department that was handling the process as I understand it.

Q. You see, I have to suggest that Mr. O'Brien might have inquired as to what you might know. Mr. Lowry wouldn't would have no reason to inquire of you or supply information to you in relation to the licence at all, isn't that correct?

A. Well, I don't know. Mr. Lowry whether what actually happened is that Mr. Lowry, for reasons I can't understand, opened the conversation and provided the information that I have given in my statement, innocuous and all as I think it is, but that's actually what happened. So I can't comment beyond that.

Q. You see, I have to suggest that the information you received is quite typical of somebody in Mr. Lowry's position who receives an inquiry which might relate to something that he ought not to be discussing in public and as such, he gave a relatively bland innocuous answer?

A. Possibly if he received an inquiry that's the way he'd handle it, but he didn't receive an inquiry. He

offered the information.

Q. And I have to suggest that that's why Mr. O'Brien would inquire of you subsequently as to whether you might have found out any information or whether you might have gathered any information at the K-Club meeting, at the K-Club dinner?

A. I have no idea why Mr. O'Brien would ask me a question. You should maybe ask Mr. O'Brien that .

Q. And it's clear that Mr. McCrea and Mr. Donlon have no recollection of you inquiring at all in relation to the phone licence or granting of it, isn't that correct?

A. Well, Mr. McCrea I have been informed, I didn't know about Mr. Donlon, you may have been supplied by something the Tribunal knows something that I don't know.

Q. You say you are concerned, or you were concerned about Mr. O'Brien's sponsoring of the K-Club event?

A. Let's be clear, he wasn't sponsoring the event. I think what he sponsored was the wine and a hole, but as I said before, I thought it was ill-advised, but I wasn't going to repudiate Mr. O'Brien because the event in itself wasn't that significant in terms of the contribution.

Q. But yet you had never sought to bring that to the attention of the committee who were organising the event, that they should be concerned in some way about

this or they should satisfy themselves as to its appropriateness?

A. I think, as I explained before, Mr. Miley was the Chief Operating Officer of the Party, so he was the man who I felt had the executive responsibility and I made my concerns known to him and as I explained, it wasn't so much this contribution to the golf outing, it just raised a question as to what our policies and procedures were, because there were, you know, what was happening was there were more and more people becoming involved in fundraising and as the organisation gets bigger, you know, more control over a process, the better.

Q. The committee who were involved in this were meeting on what appears to be a monthly basis, approximately, isn't that correct?

A. May, June, July, September and October, yeah.

Q. And I have to suggest to you that if you did have a concern, that the committee or the appropriate people to consider whether the fundraising was appropriate or whether it ought to give rise to concern as to where the source of this fundraising was coming from?

A. Well, as I explained before, I didn't regard the particular donation as particularly significant. And as I also have explained, that it's difficult in voluntary organisations to get people involved in raising funds for any causes, it's not the easiest of

things to take on, and the committee comprised of voluntary people giving up their time in service of a political party and in service of the public. I certainly didn't want to in any way demotivate them. I felt that it wasn't for the volunteers to shape the policy. It was for the Party itself to shape the policy and for the volunteers then to be made aware of it would be the proper process and procedure.

Q. You see, I have to suggest that the evidence, the written evidence is more in accordance with you, rather than having a concern about Mr. O'Brien's contribution, were responsible in some way for it, and that's why you're credited with being associated with it in the letter from Mr. Hogan subsequent to the sponsorship having been made?

A. No, I wasn't. I advised Mr. O'Brien not to make the contribution, and I also alerted Mr. Miley, feeling that I thought it was an ill-advised contribution from Fine Gael's point of view. So even though I was on the committee, I, in effect, at the meeting in the Shelbourne, you know, refused to engage with Mr. O'Brien about the contribution. I did, because I was polite, supply him with the information, but I, at the same time, advised him that I didn't think it was appropriate from his point of view.

Q. It's clear that Mr. Hogan is giving you credit for having raised it and says so in the letter which was

sent to Mr. O'Brien, isn't that correct, the letter of the 30th August, 1995?

A. Well, the first time I saw the letter was in the context of this Tribunal. Mr. Hogan at the time never sent me a copy of the letter. I explained to Mr. even though Mr. Hogan was nominally the Chairman of the committee, Mr. Austin was, in effect, running the show and I explained to Mr. O'Brien that Mr. Austin was the person really running the show, and my understanding would be that Mr. O'Brien contacted Mr. Austin, and there is a possibility, if you look at other people's evidence, that the probability, I think, Mr. Hogan suggested the letters were prepared by the Fine Gael Secretariat, so as I explained before, Mr. Austin's style, which is a good style of leadership, I think, is to pour out praise and he probably said, I never had any contact, discussion with Mr. Austin beyond at the committee meeting when he thanked me later about Mr. O'Brien and the donation. So I can only interpret that Mr. Austin was trying to pour out praise and spread the goodwill, because he himself was doing exceptionally well at recruiting people and he wanted to give other people encouragement.

Q. Yes, but it's unusual, I have to suggest, in political circles, to spread credit for something to somebody who is not responsible, when clearly whoever is

responsible ought to be receiving the credit for it,

isn't that correct?

A. Well, that's your view. I mean, I have already explained, so I don't think I can add anything further.

Q. In your two statements of the 11th November, and 26th November, you essentially set out, as far as I can understand from your evidence, your meetings with Mr. Lowry, not having had any contact with him before 1993, and then you give an account of a number of meetings with him over the course of the year up to 1995, I think.

A. That's, I think

Q. Is that correct?

A. You are talking about the statement of the 26th November.

Q. I am talking about the contents of the two statements.

A. Well, there is a reference in the first statement, yes

Q. But, are those statements, as I understand it from your evidence, a direct account or a full account of your meetings with Mr. Lowry?

A. Well, they're as good a general account as I can make, in terms of my recollection.

Q. It's suggested in paragraph 6 of your second statement that it's in March or early April, 1995, that Mr. Lowry telephoned you on your mobile phone and it

was the first occasion you ever recall him telephoning you. That's correct?

A. That's correct.

Q. Now, you had been appointed a trustee of the Fine Gael Party in 1991. How many Trustees are there, or were there at that time?

A. I can't be precise, but I would say 10 or 11.

Q. And Mr. Lowry was appointed Chairman of the Trustees in 1993?

A. That's correct.

Q. Now, over the course of that time, I think there was substantial fundraising activities going on on behalf of Fine Gael; is that correct?

A. Well, I think there was a particular problem, yeah, in 1994.

Q. You see, I have to suggest to you, that as Chairman of the Trustees, you would have had significantly more contact with Mr. Lowry than your statement discloses?

A. No, I didn't actually. I wasn't particularly involved in the fundraising process at that time.

Q. And that you would Mr. Lowry you would have been in frequent contact with him and, in fact, Mr. Lowry would have recollections of going to the banks in your company on behalf of Fine Gael over this period?

A. No, that's not correct. Mr. Lowry and the late Mr. Murray dealt with the bank with the General Secretary.

Q. And that from 1993 up to April, March or April 1995, to suggest that you had no telephone contact with Mr. Lowry, when he is Chairman of the Trustees and the Trustees, I think, meet approximately every three months, is that correct?

A. Probably a little bit more frequently than that.

Q. That that simply is not accurate or fair; that you were frequently in contact with Mr. Lowry?

A. No, you see, I was Mr. Lowry was a full-time politician, and I was a voluntary party worker and you know, people it's like an executive/non-executive situation, you know, people go to the meetings who are non-executives and they turn up and they go away again and there is generally, unless there is subcommittees that they're on, they don't actually interact that much and that was the nature of that situation.

Q. And you were appointed on to one of the subcommittees, isn't that correct?

A. What subcommittee? When?

Q. I think you refer to resigning off a subcommittee earlier in your evidence in 1995?

A. No, I was it wasn't anything to do with the Trustees now. That was, in effect, because I was appointed the Director of Elections in the 1997 election, I was Chairman of the national strategy committee which was a political committee, and I resigned from Chairmanship shortly afterwards in 1997.

Q. Up until this time, you were describing, or you gave evidence earlier that your business in the estate agents was gathering, I suppose, momentum and was increasing in size and value?

A. Well, it was yes, in the context it was taking up a lot of my time.

Q. And I have to suggest, in relation to Mr. Lowry's contact with you, that you set out in early March or April, where he telephoned you, or there was a contact in relation to a Mr. Gill working in Sherry FitzGerald, that he would have known and you would know he knew that there was no possibility of your interfering with an arbitrator in a decision-making process?

A. Well, when Mr. Lowry phoned me I certainly didn't get he didn't allude to the fact that Mr. Gill was an arbitrator and I didn't know he was an arbitrator until I phoned Mr. Gill, and to be fair to Mr. Lowry, my impression would be that it wasn't to the meeting, the cup of coffee in Powers Hotel, that when I explained to Mr. Lowry that Mr. Gil was the operator, and what that entailed, I think that was my perception was that was the first time Mr. Lowry may have known the precise role of Mr. Gill in this process.

Q. Well, I have to suggest to that what Mr. Lowry, the information he wished to gather or to put across to

you to convey to you was to see if you could assist in having the arbitration speeded up, and not an attempt to suggest that Mr. Gill should be asked or to assist in raising the rent from  $\$5$  per square foot to  $\$10$  per square foot. It was simply conveying the information that Mr. Dunne wished to have the arbitration heard expeditiously?

A. As my statement, and as in my prior evidence, the answer to that is no and I have nothing further to add that can throw any greater light for you Mr. O'Hanlon.

Q. Have you seen the statement of Mr. Dunne in relation to this aspect of your statement?

A. I have.

Q. And it's clear from that that he never suggests that or that he mentioned to Mr. Lowry that he wanted a rent increase from  $\$5$  to  $\$10$  per square foot and indeed, in the arbitration, it's clear that he sought to have it increased to approximately  $\$8.75$ ?

A. Well, I don't feel I can comment on Mr. Dunne's statement, because I had no interaction with Mr. Dunne.

Q. But it's clear that that would be inconsistent with Mr. Lowry inventing off his own bat or that would suggest that Mr. Lowry would have had to invent the figure off his own bat in relation to his conversation with you, isn't that correct?

A. Well, if you deduce that, that's what you deduce, but

I can't comment on Mr. Dunne's statement or what was behind Mr. Lowry's approach to the meeting. You'd have to address that to Mr. Dunne and Mr. Lowry.

Q. Yes, but I have to suggest that the meeting your statement of the meeting does not reflect what happened and your recollection of it does not reflect what happened.

A. I reject that completely, Mr. O'Hanlon. I have covered that already. I have nothing further to add to what I have said already, which is quite unequivocal.

Q. That it's inconceivable that Mr. Lowry would have suspected or would have thought that you could influence an arbitrator in the fashion you suggest he asked you to.

A. Well, as I explained to you, in fairness to Mr. Lowry, my perception was that Mr. Lowry was taking in the fact that Mr. Gill was an arbitrator at the meeting.

He was digesting it, as I spoke. And he had come to the meeting with an objective in mind to get the rent raised from  $\frac{1}{25}$  a foot to  $\frac{1}{10}$  a foot. And I think Mr. Lowry had didn't understand the complexity of what was involved and the process that was entailed.

Q. What did you understand Mr. Lowry's impression of Mr. Gill's role was?

A. That he was involved in some way.

Q. What do you mean by involved?

A. Mr. Gill could be acting for Telecom, he could have been selling the building, he could have been acting for some other party who wanted to buy the building. Just, I don't know what Mr. my suspicion, when he called me in the first instance on the mobile phone, was that because the State were in the process of buying buildings that they were tenants in, that Mr. Lowry's possible interest might possibly be around that he had a strategic view that as semi-States under his care should buy the buildings that have long-term tenants in, and that he was actually, which I suppose would have been characteristic of him, getting involved in something that was operational. As it transpired, that was not the case; he was calling on behalf of Mr. Dunne who was the landlord.

Q. If that was the case, wouldn't Mr. Lowry's interest be in keeping the rent low so as to reduce the price for the purchase by the State of the building?

A. It's a non-sequitur, Mr. O'Hanlon. I am just explaining I am just trying to explain my impression at the time of Mr. Lowry's first call and then what Mr. Lowry's position at the second meeting was.

Q. Your impression of the second meeting is that Mr. Lowry was not aware that Mr. Gill was the arbitrator?

A. Until I told him.

Q. Yes. But prior to that

A. And I made it quite clear to him that arbitrator as I mentioned yesterday, has a quasi-judicial function, was covered under the Arbitration Act. I may have got the year of the act wrong 1954 and I advised him strongly not to pursue the matter any further.

Q. So your statement, and your evidence is not to suggest that Mr. Lowry in some way sought to influence the arbitrator; that he appears not to have realised Mr. Gill was the arbitrator and it was simply to see if you could facilitate in, what you say, was to have the rent raised by contacting somebody who was involved in the process in some way?

A. I say two things about that. I'll say that he went on in the meeting to, when he saw, at that stage, that I wasn't entertaining the engagement in the issue of getting the rent raised, he went on to say what are we going to do about the fact that Mr. Dunne had given £170,000 to the Party and then, of course, as you know from my statement, he came back and made an appointment to see a house and asked me to be there particularly, when it wasn't my practice to do so, and I was courteous enough to do so. And he once again raised the issue, and he obviously had some time to reflect on the fact from the previous meeting, that I was quite clear to him that Mr. Gill was an arbitrator and what a property arbitrator, the roles and

responsibilities entailed. Yet he did raise the issue once again at that meeting sorry, in the car coming from Palmerstown Close.

Q. Well, I have to suggest to you that Mr. Lowry did not mention the contribution of  $\text{€}170,000$  from Ben Dunne.

But in any event, that you would have been well aware that Ben Dunne was a significant contributor to the Party; that your recollection of actually what was said is inaccurate.

A. The answer to your first question, the first part of your question, is about the  $\text{€}170,000$ , is that that was the first I heard of it. The other part of your question?

Q. That you would have been well aware that Mr. Dunne was a significant contributor to the Party in any event.

A. I wasn't well aware, no.

Q. But, I am sorry to come back to this, but it appears that the impression from your statement, and the evidence, is not in accordance with each other, that you're not suggesting in evidence that Mr. Lowry sought to have you have an effect on an arbitrator, but simply sought to see if you could assist in conveying Mr. Dunne's what you say would appear to be Mr. Dunne's hope that the rent would be increased to  $\text{€}10$  to a Mr. Gill, because he was involved in the process but not because he was the arbitrator?

A. No. We need to take the two meetings, the meetings at

the Powers Hotel and the journey in the car from Palmerstown Close back to the Minister's Department on the 6th April together. And Mr. Lowry raised the issue raising the rent with me in the first meeting.

I explained about the arbitration. He mentioned the donation, what are we going to do. Then he made an appointment to see a house. And as I have covered in my statement and covered in my evidence, he once again raised the issue on the way back in from the house to his Department and he was exceptionally emphatic, in what I said to Mr. Lowry, if you want I can go into greater detail.

Q. Your account in your statement you see, I have to put it to you and suggest to you that at no time did Mr. Lowry seek to have any benefit, as such, direct benefit done on behalf of or provided for Ben Dunne, Mr. FitzGerald at no stage, neither in your what you describe as your second meeting after the phone call, or in the car on the journey back from

A. I have covered all that already in my evidence, Mr. O'Hanlon. And the answer is no, and I can't add anything further.

Q. It's also, I have to suggest, clear, that Mr. Dunne himself has never suggested that he sought any political favour from Mr. Lowry.

A. Well, I can't comment on Mr. Dunne, because I had no interaction with Mr. Dunne.

Q. I have also to suggest that once you say you clarified what Mr. Gill's function was, I think he was Chairman of the Arbitration Board at this stage, is that correct?

A. He was just the arbitrator of this particular building, under the terms of the lease, as I understand it. It's covered in his statement.

Q. That it would have been absolutely clear to anybody in business, that he couldn't be interfered with in the way it's been suggested by your statement, and that your statement and your account simply is not credible?

A. Well, I was here yesterday. I covered that ground yesterday, Mr. O'Hanlon, and I absolutely stand over everything in my statement, everything in my evidence.

Q. In relation to the McDonnell appointment, Michael McDonnell appointment, I think that is something in which you say you were just there was an inquiry made of you as to his suitability, and you were happy to recommend him?

A. Well, Mr. Lowry requested that I contact Mr. O'Higgins because he knew I knew Mr. O'Higgins from an interview board possibly because he was a relation of my wife's, and I was happy to do so because I knew Mr. McDonnell to be a fine public servant and obviously I had had the benefit of conversation of part of a conversation with both my father and my brother about

Mr. McDonnell, both of whom knew him professionally,  
and I was happy to pass that on to Mr. O'Higgins on  
the basis that he might be considered.

Q. You see, Mr. Lowry is in agreement that Mr. McDonnell  
is a capable, efficient public servant and deserved to  
be on the short list of candidates, but doesn't agree  
that you were responsible for having him short-listed  
or contributing to him being short-listed?

A. I never suggested that I had him short-listed or  
indeed contributed to him being short-listed.

Q. Thank you.

CHAIRMAN: Mr. Clarke?

MR. CLARKE: No questions, Sir.

CHAIRMAN: Mr. Healy.

MR. HEALY: Just one thing, Sir. I think

Mr. O'Hanlon said, and I am not sure whether it was an  
error, that Mr. Donlon knew nothing about the meeting  
or the approach from Mr. Fitzgerald where Mr.

FitzGerald queried the nature of the decision that  
would be taken and by whom the decision would be taken  
with respect to the winner of the telephone process.

Now, Mr. O'Hanlon may have information, but the  
Tribunal has no information from Mr. Donlon yet. It's  
awaiting completion of its correspondence with  
Mr. Donlon.

CHAIRMAN: Just in conclusion, Mr. FitzGerald, you  
mentioned something in relation to Mr. O'Brien going

back to childhood. Is it the case that the two of you had known each other for quite a while as near contemporaries?

A. No. We grew up in close proximity to each other, Sir. So I would have been aware of him because he was about the same age of me, but we would have known of each other without playing with each other, if you know what I mean.

CHAIRMAN: Other than your evidence, and what has been raised over the past two days, is there anything in relation to either Mr. O'Brien or Mr. Lowry by way of a falling out or a difference in business or personal dealings that has not been alluded to?

A. No, there is absolutely not.

CHAIRMAN: Thank you very much for your attendance.

THE WITNESS THEN WITHDREW.

MR. HEALY: One further matter; it doesn't concern Mr. FitzGerald. Mr. Dunne has written to the Tribunal and indicated, due to logistical difficulties, he is not able to be here and he wants to reserve his position in respect to cross-examination. I am not suggesting it will arise, but I am simply indicating he wishes to reserve his position. I think in fairness to him it should be mentioned.

CHAIRMAN: Yes, I note that.

MR. COUGHLAN: Mr. Gordon Gill is available for this afternoon. Mr. FitzGerald completed his evidence a

little bit quicker than was anticipated.

CHAIRMAN: In those circumstances, we'll start at two sharp.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MS. O'BRIEN: Mr. Gordon Gill, please.

GORDON GILL, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Mr. Clarke, you again appear I think what I'll do for convenient administrative purposes, I'll simply amend the limited certificate granted yesterday to entitle Sherry FitzGerald generically and thereby encompass both Mr. Gill, the previous witness, and the comparatively minor involvement of Mr. Killian O'Higgins next week.

MR. CLARKE: May it please you, Sir.

MS. O'BRIEN: Thank you, Mr. Gill.

Q. Mr. Gill, you furnished the Tribunal with a statement, and what I propose doing your statement is dated the 29th January of 2003?

A. That's correct.

Q. What I propose doing, subject to your agreement, is to initially just take you through that statement to enable you to confirm its contents, and then I'll just return to one or two matters in your statement to discuss them with you a little more fully.

Now, in your statement, at paragraph 1, you state that

you were nominated as arbitrator by the Society of chartered accountants on the 31st March 1995, the acceptance of which you confirmed on the 7th April, 1995 to determine the revised rent of the property known as Marlborough House or Telephone House, 43 to 46 Marlborough Street, and the adjoining pieces of land known as 12 and 13 Britain Place, Dublin 1, which thereafter you refer to as "the premises" on a current open market rental value basis as at 23rd July, 1994, pursuant to lease dated 31st December, 1978.

You stated that the original lessor of the premises was the New Ireland Life Assurance Company Limited and as at March 1995, the lessor's interest was vested in Bark Island Limited, the landlord represented by Harrington Bannon, chartered evaluation surveyors.

The original lessee of the premises was the Minister for Posts and Telegraphs, and as of March 1995, the lessee's interest was vested in Bord Telecom Eireann, which you thereafter refer to as "the tenant" which was represented by Shannon & Company, Chartered Valuation Surveyors, is that correct?

A. That is right, yes.

Q. You state that on your appointment, you convened a preliminary meeting on the 12th April, 1995, with Mr. PJ Joseph Bannon of Harrington Bannon and Mr. Peter Shannon of Shannon & Company. Following that meeting you issued an order for directions dated 26th April

1995, and you subsequently received evidence of comparable transactions for exchange between the parties from each of those firms respectively on behalf of the landlord and the tenant.

On Monday, 15th May 1995, you held a formal arbitration meeting attended by Mr. Joseph Bannon, Mr. John McCann and Mr. Stuart Harrington, of Harrington Bannon for the landlord, and Mr. Peter Shannon, of Shannon & Company, accompanied by Mr. Austin Dunphy, architect, and Mr. Henry Noonan, chartered surveyor, and Mr. Michael Doyle of Bord Telecom Eireann, all of which were for the tenant.

You state that Mr. Dunphy and Mr. Noonan both gave evidence before you relating to the condition of the premises and submissions were made in detail on behalf of the tenant and the landlord, including references to comparable tenant premises; is that correct?

A. Correct.

Q. You state that both the landlord and the tenant agreed on the following in relation to the premises: That the square footage of the offices was 82,322 square feet; that the square footage of basement stores was 2,819 square feet; and that there were 88 car spaces comprised in the premises.

A. Correct.

Q. You state that the landlord submitted for the following revised annual rent: that the offices

comprising 82,332 square feet should be valued at  
\$9.25 per square foot amounting to \$761,571; that  
the basement stores comprising 2,819 square feet,  
should be valued at \$5, amounting to \$14,095; that  
the 88 car spaces should each be valued at \$850,  
amounting to \$74,800, making the total rent submitted  
for by the landlord \$850,466, plus a loading of 5% to  
reflect a seven-year review pattern; that loading  
amounting to \$42,523, giving a grand total of \$892,989  
and approximated down to \$890,000 per annum.

You say that the tenant submitted for the following  
revised annual rent: And the offices, again,  
surprising, the agreed measurement of 82,332 square  
feet; that they should be broken down between the  
ground floor offices of 9,639 square feet at \$5 per  
square foot, amounting to \$48,195; the first floor  
offices comprising 10,180 square feet at \$5.50 per  
square foot, amounting to \$55,590; the second 7th  
floor of the offices, comprising 81,080 square feet at  
\$5 per square foot, and the penthouse floor comprising  
1,433 square feet at \$4 per square foot, totalling at  
an average of \$5.04 at \$415,317; The basement store,  
as the tenant submitted, should be valued at \$4, per  
square foot, as it comprised 2,819 square feet being  
the agreed measurement. The total for the basement  
stores was \$11,276. And again, the 88 car-parking  
spaces, this time with a proposed valuation of \$650

per annum, amounting to  $\text{€}57,200$  giving a grand total for the rental per annum at  $\text{€}483,793$ , and approximated up to  $\text{€}484,00$  per annum, is that correct?

A. That's correct.

Q. The difference, therefore, between the figures submitted for by the landlord and the tenant was 890,000 as opposed to 484?

A. Correct.

CHAIRMAN: Just, Mr. Gill, for those like myself who are less proficient than yourself and Ms. O'Brien in these matters, could you just explain the actual loading to reflect the review.

A. It's an investment property, and effectively five-year reviews would be the standard, so that the landlord every five years gets an opportunity to increase the rent. If it's pushed out to seven years, it's to compensate for the unusual review pattern, there's a bit more added to the rent.

CHAIRMAN: I see.

Q. MS. O'BRIEN: Now, you state at paragraph 4 that on receipt of payment of your fees on the 30th May 1995, you issued your award dated the 26th May, 1995, awarding and determining that the current open market rental value of the premises as of the 23rd July, 1994 was  $\text{€}640,000$ . That's Irish pounds?

A. That's correct. That's correct.

Q. And just to ensure there that I comment that it's

perfectly usual for an arbitrator to await payment of his fees until he makes his award available, is that correct?

A. That's the standard procedure for rent review valuation arbitrations anyway.

Q. I think for all arbitrators.

You state that it is not in accord with general practice for an arbitrator in such matters, and it was not done by you in this instance, to give to the parties a break analysis of the award or the arbitrator's reasons for coming to a particular conclusion, but you state that, however, if the Tribunal deems that the furnishing of such a breakdown or reasons are relevant, you can provide typed copies of your original manuscript notes showing you arrived at the overall figure of  $\text{£}640,000$  per annum, is that correct?

A. That's correct.

Q. And the Tribunal hasn't requested you to do that.

A. No.

Q. Paragraph 5, you state that some short time subsequent to the issuing of your award, likely during June 1995, you had a conversation with Mr. Mark FitzGerald in your office when he informed you that he had been approached by Mr. Michael Lowry after your appointment seeking to influence your decision in the landlord's favour in respect of this rent review. You do not

think that you discussed any details of your award or of the submissions made to you in the course of the arbitration, is that correct?

A. That's correct.

Q. Paragraph 6 you state that you refer to Paragraph 7 of Mr. FitzGerald's statement, dated 26th November, 2002 I think that's the portion of Mr. FitzGerald's statement where he indicated he had contacted you either sometime at the end of March or early April to inquire whether you had been retained and you, through Sherry FitzGerald, had been retained in a capacity in relation to Marlborough House. And you state that you do not recollect the particular phone conversation between you and Mr. FitzGerald to which he has made reference, but it would not have been unusual for Mr. FitzGerald to contact you or vice versa to inquire whether your firm was already involved in a particular property related transaction?

A. That's correct.

Q. Then finally you state that to the best of your recollection, the only other person with whom you discussed Mr. Lowry's approach to Mr. FitzGerald was another office colleague, Mr. Killian O'Higgins, with whom you believe Mr. FitzGerald had spoken at the time of Mr. Lowry's approach to Mr. FitzGerald, and when a decision had been made, that nothing should be said to you about that approach while you were acting as

arbitrator, is that correct?

A. That's correct.

Q. Now, I think in the early paragraphs of your statement, Mr. Gill, you indicated that you were nominated on the 31st March of 1995, and you formally confirmed your acceptance of that appointment on the 7th April, 1995?

A. That's correct.

Q. And then you indicated, if you like, the milestones in the arbitration process. On the 12th April, you convened a preliminary meeting with the valuers for both the landlord and the tenant. You made an order for directions on the 26th April of 1995, presumably that order of directions related to the provision of comparative evidence, did it?

A. Yes, and to the arbitration date and proceedings.

Q. I see.

A. It was just the confirmation of what we were going to do.

Q. I see. And then you state that you subsequently received evidence of comparable transactions?

A. That's correct.

Q. That would be for perfectly straightforward evidence that you'd receive in any rent review arbitration, wouldn't it?

A. The purpose was to exchange between the parties so that before the hearing they would have a chance just

to peruse each other's comparative evidence.

Q. That would be just illustrations of other similar premises and the rental values of those premises?

A. That's correct.

Q. And the intention of that would be to support the submissions being made by both parties, would that be correct?

A. That's correct.

Q. You state then on the 15th May, that you held a formal arbitration meeting, and that would have been the occasion in which you heard the oral evidence on both sides?

A. Yes, with written submissions.

Q. Yes. You state then that your award was dated the 26th May, and you made it available to the parties on the 30th May?

A. That's correct.

Q. So really from start to finish, this whole process was completed within a little less than two months?

A. Yes.

Q. And I think by anybody's reckoning and anybody's experience of any arbitration, that would be a fairly prompt, if not expeditious, completion of the process, wouldn't it?

A. It was pretty good, yeah.

Q. Now, at paragraph 3 of your statement, you set out in summary form a breakdown of the submissions that were

made to you on the rental values both on behalf of the landlord and on behalf of the tenant, and I think we looked at those in detail before when I was reading it out, and the landlord was submitting a proposed rent of 890,000 pounds per annum, and the tenant was submitting a proposed rent of £484,000 per annum?

A. That's correct.

Q. And I think give or take, that amounted, on the landlord's side, to just something shy of £10 per square foot, didn't it?

A. Well, 9.25, yes.

Q. And on the tenant's side, in or about £5, slightly in excess, marginally in excess of £5 per square foot?

A. That's right.

Q. Now, the difference between those two rentals, the 890,000 pounds and the £484,000 was being proposed was roughly £406,000 per year?

A. Yes.

Q. So that we take that over the seven years that you were referring to, the seven-year rent review period for which the landlord was seeking an extra 5%, because it varied by two years from the standard rent review, that you'd find in a commercial lease which would be a five-year rent review period, the difference over that seven years between the landlord's rent and the tenant's rent would have been £2.1 million, I think, on my calculation?

A. I'd accept that, yes.

Q. Now, in the event, you fixed the rent at  $\dot{\imath}_c^{1/2}640,000$  per annum?

A. That's correct, yes.

Q. And that would approximate, I think, to about  $\dot{\imath}_c^{1/2}6$  per square foot there or thereabouts?

A. I think it was a bit more.

Q. A little bit more marginally more. Now, yesterday, when Mr. Healy was examining Mr. FitzGerald, he asked Mr. FitzGerald for assistance in relation to how increases in rental can have a knock-on effect on the capital value of a property and he deferred to you on the basis that that was your particular area of expertise. And I wonder if you could assist the Tribunal on that matter.

A. Yes. I mean, it's an office investment which are valued by reference to an expected rate of return or yield on the property, and again, I haven't looked into what the relevant figures should be back at that date, but and the converse of a yield is a multiplier or year's purchase, which could be a roundabout 15 times the rent.

Q. About 15 times the rent?

A. Say  $\dot{\imath}_c^{1/2}100,000$  would be 1.5 million difference in capital value. That's a very crude way of putting it but...

Q. It's very crude and rough

A. And there are things like costs to look at, but...

Q. That would be a reasonable

A. That would be the sort of magnitude of the sum.

Q. That would be a kind of rule of thumb an expert valuer would apply?

A. It would be a bit more sophisticated than that.

Q. So if the difference was roughly  $\frac{1}{2}$ 400,000, it would be what, a difference of maybe 1.5 million per  $\frac{1}{2}$ 100,000, would that be about right?

A. About 6 million difference.

Q. About  $\frac{1}{2}$ 6 million in the difference?

A. On the capital, yes.

Q. Now, paragraph 5 of your statement, you stated that some short time subsequent to the issuing of your award, and I think your award was issued at the end of May, so you placed it as likely during June, 1995, you had a conversation with Mr. FitzGerald in your offices, and he informed you that he'd been approached by Mr. Michael Lowry after your appointment seeking to influence your decision in the landlord's favours in respect of this rent review.

Now, I wonder can you be any more specific as to what Mr. FitzGerald informed you of on that occasion?

A. My memory isn't great. I remember the occasion all right, because I was a bit shocked by the comment but effectively it was along the lines that Michael Lowry had approached him during the term when I had been

appointed, to influence me in my decision.

Q. And by you being informed that Mr. Lowry had approached Mr. FitzGerald to seek to influence you in your decision in favour of the landlord, did you interpret that as meaning that he was seeking to influence you to fix a higher rental?

A. That would be the implication, yes.

Q. You say that that occurred sometime subsequent to your meeting, you think, during June. Can you be any more specific as to when it occurred?

A. It was within days of the award being made. I don't have a recollection of the precise day or the precise week even.

Q. So sometime

A. There wasn't a large time-lag but it wasn't instantaneous any way.

Q. Do you recall at all if you formed any impression as to what Mr. FitzGerald's attitude was at the time to the approach that had been made by Mr. Lowry?

A. I think he was a bit shocked and I think disappointed.

Q. Now, you stated at paragraph 6 that you don't have a recollection of Mr. FitzGerald telephoning you sometime before to ask you whether you had been retained in relation to the Marlborough House?

A. No, I don't remember that, but I'd say we would talk about the business quite regularly, about what was happening in coming in and going out.

Q. I suppose you'd want to be certain that you didn't end up being retained on both sides of the one transaction?

A. That would be the issue as well as everything else. Although we would have other recorded systems of doing that, but...

Q. I see. You say to the best of your recollection, the only other person with whom you discussed Mr. Lowry's approach was another office colleague, Mr. Killian O'Higgins, with whom you believe Mr. FitzGerald had spoken at the time of Mr. Lowry's approach to Mr. FitzGerald and when a decision had been made that nothing should be said to you about that approach while you were acting as arbitrator.

Now, I take it that your discussion with Mr. O'Higgins would have taken place after Mr. FitzGerald told you about the approach that had been made by Mr. Lowry?

A. That's correct.

Q. Because presumably, it was Mr. FitzGerald himself who told you that he had spoken to Mr. O'Higgins?

A. That is correct, yeah.

Q. And do you recall the conversation that you had with Mr. O'Higgins at the time?

A. In detail, no. Again, it would be just sort of a sense of shock, that the approach had been made, and regret, I suppose.

Q. And do you recall whether Mr. O'Higgins, or what

Mr. O'Higgins said to you was consistent with what Mr. FitzGerald had indicated to you when he discussed the matter with you initially?

A. Probably. I mean, I don't remember anything inconsistent.

Q. You don't remember anything different to what Mr. O'Higgins said to you?

A. I don't have great recollection of the precise wording but it would be the same broad content.

Q. Thank you very much, Mr. Gill.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'HANLON:

Q. MR. O'HANLON: Mr. Gill, the arbitration process from the time of your appointment to the final award is just over two months. Just two months?

A. Yes.

Q. Would that time scale for a rent review be approximately normal?

A. It would be on the quicker side of normal. A lot of them drag.

Q. Would it be fair for a landlord who, I suppose, who would have the primary interest in seeing this concluded, could expect that an arbitration process would be from the time of submission to arbitration to conclusion, would be in the order of two months to maybe three or four, but you wouldn't expect it to go much past that?

A. No. Generally once the arbitrator is appointed it

would get on to a better programme. I think delays often take place before the arbitrator is appointed.

Q. You are aware, or are you aware in this property was due for review in July 1994?

A. I was.

Q. So that there had been some considerable time-lag before you were actually appointed. You were the second appointment, I think, to the process?

A. That's correct.

Q. And I suppose it would be fair to say that both sides would have an interest in having the matter expeditiously concluded at that stage?

A. That's correct.

Q. Now, you describe how you had your initial meeting, having been appointed, and do I understand you correctly, that after that it was an exchange in the figures between the two parties was with some contemplation that if it was possible, the matter could be settled?

A. No. The process we had a preliminary meeting just to see if there were any sort of extraordinary problems over and above rent or who their witnesses were, just to chat about the process, and it was informal. Then I gave my directions. It is normal then for the comparisons to be exchanged between the parties before the hearing on the grounds they can check the facts and, you know, if they come in with

rent information that's wrong at the hearing, it creates a problem. Whereas, in fact, they have a week beforehand to do their own investigations as to the hard evidence, so they would have exchanged just the comparative transactions these are the other office buildings they wanted to bring into evidence, and then their main book of evidence would have been brought in at the actual hearing.

Q. Can I ask you, would you have regarded it as inappropriate to be asked to be sure that this matter was dealt with expeditiously, having been appointed?

A. It happens. No, it's not inappropriate. I mean, if either party wanted to talk to me and say, "would you speed it up", I'd prefer it was done in writing.

Q. Because you are aware or I am not sure if you are aware, that Mr. Dunne is of the opinion that that's what he had requested Mr. Lowry to convey to Mr. FitzGerald and Mr. Lowry is of the opinion that that's what he did convey to Mr. FitzGerald.

A. I am aware of that, yes.

Q. And that form of request is not something which would be which you would consider inappropriate interference. It's preferable, I suppose, it not happen, but insofar as it does happen, it's not going to affect it's not done with the purpose of affecting the outcome?

A. It's unusual to have a principal or intermediary.

Generally, the valuers would be asked by their respective party to look for, you know, quick proceedings.

Q. And you obviously can't comment on the meeting between Mr. Lowry and Mr. FitzGerald. Your evidence is restricted to what you recall of him saying to you subsequently?

A. That's correct.

Q. And you are not in a position to give a detailed account of that, but just that you were surprised by what he said where your memory is that he suggested Mr. Lowry sought to influence the decision?

A. That is correct, yes.

Q. But obviously that doesn't you can't comment on what actually went on between Mr. Lowry and Mr. FitzGerald?

A. No. Obviously, it was a sort of a paraphrasing of the meeting was given to me.

Q. And were you aware Mr. FitzGerald seemed to be under the impression that Mr. Lowry wasn't aware you were arbitrator when he first approached him?

A. I am not aware of that.

Q. And insofar as he might have been contacted in late March, prior to April, the first contact that Mr. FitzGerald recalls, that would actually have been before you were appointed arbitrator; you were appointed on the 31st March?

A. What I probably would have got was a preliminary request from the institution, was I available to act, and then I would have got the phone confirmation, once I responded back, which would have been the letter of the 7th April.

Q. Your statement appears to reflect the nomination occurring on the 31st March and your acceptance occurring approximately a week later, the 7th April?

A. That's right.

Q. That insofar as there was any contact between Mr. Lowry and Mr. FitzGerald in late March, it was actually before you were appointed arbitrator?

A. Apparently so.

Q. Thank you.

CHAIRMAN: Nothing in conclusion, Ms. O'Brien? Thank you very much for your attendance and assistance, Mr. Gill.

THE WITNESS THEN WITHDREW.

CHAIRMAN: That's the entire of today's witnesses. We will resume at eleven o'clock tomorrow morning.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, FRIDAY, 18TH JULY, 2003 AT 11AM.