

THE TRIBUNAL RESUMED ON TUESDAY, 5TH OCTOBER, 2004 AT

11AM AS FOLLOWS:

CHAIRMAN: This morning's hearing will somewhat, to my regret, be a short one. It is being held for the purpose of explaining to persons present, and also to members of the public, the situation that has arisen whereby it is not feasible to embark upon taking further sworn evidence today.

As all persons present will be aware, it had been the intention of the Tribunal to proceed with the evidence pertaining to what has been referred to as the Doncaster Rovers matter this morning, and it was intended that the first witness to testify this morning would have been Ms. Ruth Collard, a solicitor practising in London.

As it transpires, events on two fronts have overtaken those intentions. As I think everyone will be aware, in the course of the past two weeks and somewhat more, proceedings were instituted on behalf of Mr. Denis O'Brien Jnr. in the High Court with a view to obtaining orders prohibiting, by way of injunction in the first instance, the Tribunal from embarking upon public hearings in relation to the matters comprised in the Doncaster Rovers matter. That hearing proceeded over very much the greater part of the previous two weeks in the High Court before Mr. Justice Herbert.

On Thursday last, Mr. Justice Herbert made an order refusing relief, either by way of injunction or by way of any of the additional remedies pertaining to matters of judicial review, that had been sought by Mr. O'Brien's lawyers. Accordingly, no order was in being prohibiting the Tribunal from proceeding to public sittings.

In the very latter stages of last week, a notice of appeal to the Supreme Court was filed and furnished to the solicitor to the Tribunal, and it is my understanding that at approximately this very time, an application is being made by Mr. O'Brien's legal advisers to the Supreme Court with a view to seeking an early date for a hearing of an appeal from Mr. Justice Herbert's refusal of the relief sought by Mr. O'Brien. Legal advisers on behalf of the Tribunal will also be attending upon that application, and on the basis of the appeal proceeding, it is the emphatic wish of the Tribunal, subject to the convenience and commitments of the Supreme Court, that that should proceed at the very earliest vantage point possible.

In addition, as I have stated, it had been the intention of the Tribunal to embark, before these matters arose, by way of oral evidence from Ms. Ruth Collard today; and as will, I think, in a short time be intimated on behalf of the Tribunal by Mr. Healy, some further developments have taken place in that

regard whereby it has appeared that Ms. Collard would not be in a position to attend and testify today.

The Tribunal has a number of objectives and commitments. I indicated in what I believed to be the strongest possible terms, on the short sitting that was last held, my very acute anxiety to proceed with and seek to finalise the public business of the Tribunal at the very earliest vantage point. At the same time, the Tribunal recognises in full that it has a duty to afford the vindication and entitlement of any legal remedies that may be sought by any persons connected with its dealings, such as Mr. Denis O'Brien; and by obvious analogy with that, the last conceivable thing that I would wish to do as Tribunal Chairman would be to in any way show disrespect for the deliberations of the Supreme Court into any arrangements pertaining to the feasibility of a prompt appeal in relation to the matters heard by the High Court.

Accordingly, the Tribunal must have regard to both those objectives, but there would have been no question of the Tribunal proceeding to sworn testimony unless and until the Supreme Court would have had an opportunity to consider the position in full.

That, accordingly, remains the position today.

Matters are presently being canvassed before the Supreme Court, and the Tribunal will, of course, abide

what there transpires and will cooperate in the very fullest way to enabling the matters sought to be pursued by way of appeal to be ventilated and heard and ruled upon at the very earliest vantage point.

In that context, the Tribunal's anxiety is to resume public sittings at the very earliest day possible, and I would contemplate any deferral of any substance with the gravest disappointment.

Perhaps by way of giving some further indication of what has taken place, I might now ask Mr. Healy to deal in slightly more detail with some of the matters that have arisen, both in the litigious context and in regard to the attendance of Ms. Ruth Collard. What in fact has transpired has entailed very lengthy and somewhat intense correspondence between the respective solicitors to interested persons, and in a context of noting that Mr. O'Brien's advisers are not present, being doubtless in the Supreme Court, I would be somewhat diffident as to the fairness of opening all these matters in their entirety and would regard it as perhaps being preferable that they be included in the course of what would require to be a fresh Opening Statement dealing with matters that have arisen both in that regard and which became apparent in the course of the High Court proceedings and the further documents that were produced and made available in the course of Mr. O'Brien's application.

Mr. Healy.

MR. HEALY: Yes, Sir. I, like you, Sir, am conscious that notwithstanding the very intensive course of correspondence between the Tribunal and solicitors both for Mr. O'Brien and for his company, Westferry, it would be preferable, in light of the Supreme Court proceedings, that the details of that correspondence shouldn't be ventilated unless absolutely necessary at this stage, though it will be necessary, I suspect, to refer to it in the course of a revised Opening Statement.

Ms. Collard will not be giving evidence here today, and whether she will be giving evidence, whether she will be available to give evidence in the future is something the Tribunal is working on.

She is, as you will know from a previous Opening Statement, the solicitor for Mr. O'Brien's company, Westferry, the company that his family trust, Wellington Trust, used to purchase the Doncaster Rovers Football Club premises. From the previous Opening Statement I made, it will be clear that she had important evidence to give to the Tribunal, and the Tribunal has been in contact with her over a lengthy period of time.

It had a meeting with her in March of last year, and in order to enable that meeting to go ahead, the Tribunal had to arrange and she herself, of course,

had to arrange for a waiver to be provided by her clients, and that waiver was eventually provided, and the meeting went ahead. Subsequently the Tribunal indicated to Ms. Collard that in light of the information she had provided to the Tribunal in the course of her meeting, her evidence would be valuable and that it was evidence or information that would be appropriate to be ventilated in evidence in the course of the Tribunal's public hearings.

The Tribunal wrote to Ms. Collard in June of 2004, and she wrote indicating that she was instructed to inform the Tribunal that she would attend to give evidence as requested and also indicated that she would provide a voluntary statement. Of course, Ms. Collard, as she is outside the jurisdiction, could not be compelled to give evidence.

Yesterday morning at 10.15, the Tribunal was informed that Ms. Collard could not give evidence. Between the date upon which she indicated in June of 2004 that she was instructed to give evidence, the Tribunal was confident, until yesterday morning, that she would give evidence and that there would be no difficulties concerning any evidence she might give. The arrangements with the Tribunal over the latter part of July and August included numerous letters to her and to Westferry solicitors in Dublin, Messrs. LK Shields, concerning her evidence and the manner in which it

might be given. The Tribunal was informed by her solicitors, as far as the Tribunal was concerned, as a matter of formality, that the waiver she would require to give evidence and the authorisation she would require would be provided. But there was no suggestion, until yesterday morning at 10.15, approximately, that she would be precluded from giving evidence by reason of the non-production of a waiver or authorisation from her clients.

Now, I should say, Sir, that the arrangements for her evidence had gone so far as to include the most minute practical details down to and including how she would gain access to this room, arrangements for her transfer from the airport to Dublin Castle, and so forth. And it came as a complete surprise to the Tribunal yesterday morning that she was precluded from giving evidence by the failure of her clients, Westferry, to provide her with a waiver.

Now, I should say that is not the end of the matter, and hopefully the Tribunal will be in a position to provide the public with some more information concerning the matter later on, once the developments concerning the Supreme Court have been resolved in one way or another. I should also say that one couldn't preclude her being made available in the future as a witness, and the Tribunal is working intensively on endeavouring to arrange for a waiver to be provided.

I can't add any more than that at this stage, and I certainly don't want to go into what has been an extremely intensive course of correspondence concerning the matter over the past week or so.

CHAIRMAN: I think as you have stated, Mr. Healy, in relation to that, and in relation to matters that were in fact ventilated for the first time in the course of the proceedings before Mr. Justice Herbert, it may be necessary that a revised opening be adverted to.

MR. HEALY: Yes, a significant amount of extremely important material, which had not been made available to the Tribunal before that date, has come to light, and is in fact of course in the public domain at this point and will be ventilated in the course of a revised Opening Statement.

CHAIRMAN: Yes. Very good, Mr. Healy.

Well, Mr. Barniville.

MR. BARNIVILLE: I would like to say a few words. As you know, Sir, I appear for Mr. Lowry and Mr. O'Connor. I am slightly concerned to hear from Mr. Healy that the Tribunal was aware at 10.15 yesterday morning that Ms. Collard was not intending to attend to give evidence this morning, because during the course of a number of conversations by my solicitor with the solicitor for the Tribunal yesterday, we were led to believe that Ms. Collard would be here to give evidence this morning, and that's why I am here, and



that's why I have prepared to cross-examine Ms. Collard. It is slightly surprising to hear from Mr. Healy now that the Tribunal was aware as of 10.15 yesterday morning that that was not in fact the position and that there was obviously some form of miscommunication or misunderstanding.

But the fact of the matter is, and I'd just like to make it clear, Sir, that I am here for both of my clients with the intention and for the purpose of cross-examining Ms. Collard

CHAIRMAN: I was going to certainly express regret, even if you hadn't spoken, Mr. Barniville, because you had in fact attended on that basis; but of course I can't answer for all the conversations that went on in the context of a very intensive day yesterday. I think there were abundant further exchanges I am not going to go into them now between Messrs. Shields and the Tribunal solicitor, and of course I accept from you, you were not made aware that in fact she would not be present. I am sorry you have had that inconvenience.

MR. BARNIVILLE: I entirely understand. I understand how these things can happen. I don't intend to be unduly critical about it. But I would like the Tribunal to note that we are here for that purpose. The second issue arises concerning the additional documents that Mr. Healy refers to that he states

became available during the course of the recent judicial review proceedings. I'd like to make it clear, I am sure Mr. Healy can confirm that when he said material was disclosed in the context of those proceedings which had not previously been provided to the Tribunal, he doesn't intend to make any criticism of either of my clients in relation to that issue, because certainly if that is a criticism, it's not one that has been put to us before being referred to in that manner by Mr. Healy.

I'd also like to say in the context of the documents, Sir, that as of yesterday evening, my solicitors were served with six further leverarch files. I think there is some duplication in relation to them, and I have only seen those this morning; but in the absence of any knowledge that the matter was not proceeding this morning, I have had to try and come to grips with what's in there.

And it does seem there are relevant documents, if Ms. Collard was to give evidence, and that just doesn't seem to be it's uncharacteristic, I have to say, of the way the Tribunal has dealt with these matters. It has dealt fairly, generally, with in the way it's dealt with these things; but that I think, Sir, you would accept, is not a terribly fair way of proceeding, if we are lumbered with six leverarch documents on the evening we have been led to believe

that a witness is going to give evidence. I am sure that's a matter that will be addressed by the Tribunal, and I don't, again, intend to be unduly or unnecessarily critical about it.

CHAIRMAN: I would never intend, Mr. Barniville, that we depart from a substantive course of fair proceedings. I have little doubt that in liaison, perhaps, with your colleagues on the Tribunal side, that substantial assistance could be given in identifying what may be the most pertinent matters to be pursued. But I think, whilst it's not something I in any way lay at your doorstep, it's also been the case that very intensive correspondence and courses of dealings have been thrust upon the Tribunal in the context of very recent events, and if it transpires that not all the matters that might ordinarily have been attended to have been pursued to their extremity in relation to your solicitor, if that's the case, it's only in the context of extreme difficulties faced by the Tribunal in recent days.

MR. BARNIVILLE: I entirely understand that, Sir. I am grateful for the opportunity at least of saying those words. Thank you.

MR. HEALY: Just to clarify one matter, Sir. It came as a complete surprise to the Tribunal yesterday morning that Ms. Collard was being precluded from giving evidence. The Tribunal did not, however, give

up all hope and was in correspondence until 18.37 last evening with Messrs. LK Shields with a view to seeking to compel the fulfillment of an earlier promise to provide the relevant waiver and authorisation, and it was on that basis that I am sure anyone dealing with the Tribunal was informed that Ms. Collard was in attendance.

So far as my earlier remarks about the new documentation is concerned, I think I put the matter neutrally, those documents had not been made available to the Tribunal. In due course, it will be necessary to examine why some very important documents had not come to the attention of the Tribunal until they were put into the public domain last week.

CHAIRMAN: All right. I see little point in proceeding further. I have made abundantly clear my anxiety in the context of the other matters I have mentioned, that the very moment it is possible to embark on the Doncaster Rovers hearing, that we do so immediately, and I will cause, on the usual basis, a website announcement to be recorded appropriately.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.