

THE TRIBUNAL RESUMED ON THE 2ND MARCH 2007 AS FOLLOWS:

MR. COUGHLAN: Mr. Denis O'Brien Senior.

DENIS O'BRIEN SENIOR, HAVING BEEN SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Good morning, Mr. O'Brien. Thank you know for your attendance today and if, in the course of your evidence, anything arises that you'd like to think a little bit on or that you wanted to reflect on, please let me know and we'll facilitate you.

A. Thank you very much, Chairman.

Q. MR. COUGHLAN: Now, Mr. O'Brien, I think you furnished the Tribunal with a Memorandum of Evidence which arrived at the Tribunal about ten to seven last night. And I am going to, in the first instance, take you through that and have you got a copy there with you?

A. I haven't.

Q. I'll give you a copy. Now, what I propose doing is, I'll take you through it in the first instance, we can come back and ask some questions about it later, if that's all right?

A. Say that again, please?

Q. I'll lead you through it in the first instance, if you wish?

A. Certainly.

Q. And then I'll come back and ask some questions later if that's all right.

A. Thank you.

Q. I think you informed the Tribunal that in 2002, to the best

of your recollection, late in the spring or early in the summer of 2002, your son asked you to become involved in the Doncaster Rovers project. This involved dealing with the High Court action which had been commenced against Westferry by Dinard Trading Limited and dealing also with an issue concerning payments Kevin Phelan contended he was due from Westferry; is that correct?

A. Mm-hmm.

Q. Now, I think you informed the Tribunal that following you becoming acquainted with Denis O'Connor, you recall telling him of your involvement in the Doncaster Rovers project.

To the best of your recollection, this occurred in circumstances where Mr. O'Connor informed you of the fact that Mr. Kevin Phelan, whom you learned from Mr. O'Connor that he knew, was contending that he was owed payment in respect of the Doncaster Rovers project. As Mr. O'Connor knew Mr. Kevin Phelan and you did not, you believe you asked him to let Mr. Kevin Phelan know that Westferry would pay any sums that were properly due to him. Given that he knew of Mr. Kevin Phelan, Mr. O'Connor offered to assist in any way that he could in the resolution of that matter; isn't that correct?

A. Mm-hmm.

Q. Now, I think you go on then and inform the Tribunal that, Westferry had acquired Doncaster Rovers Football Club Limited in August 1998. At the time of you becoming involved in 2002, you faced a situation where, apart from

knowing Aidan Phelan, you had no knowledge or relationship with other parties who had an involvement in the matter previously, including Kevin Phelan, Mark Weaver, Ken Richardson, Christopher Vaughan, Craig Tallents, for Messrs. Peter Carter-Ruck, the solicitors; isn't that right?

A. Correct.

Q. The fact that you learned that Mr. Kevin Phelan was claiming that he was due fees from Westferry was a matter of some concern to you (claiming) you say: "As stated above one of the matters you had to deal with was the issue of the High Court litigation commenced by Dinard Trading Limited against Westferry"?

A. Mm-hmm.

Q. In the circumstances, you welcomed Mr. O'Connor, that's Mr. Denis O'Connor's offer of assistance in the matter, and upon learning of Mr. Kevin Phelan's claim, you made contact with Messrs. William Fry solicitors with a view to seeking to have the matter dealt with; is that correct?

A. Mm-hmm.

Q. You say that following correspondence between Messrs. William Fry, Mr. Kevin Phelan solicitors, Woodcock and Son, Mr. Kevin Phelan's claim was settled by the payment to him through his solicitors of a sum of sterling  $\frac{1}{2}$ 150,000 on the 22nd August 2002; is that correct? You have informed the Tribunal that at about this time, Messrs. Carter-Ruck and Partners were preparing for a mediation which had been

organised with a view to seeking to ascertain whether the litigation between Dinard Trading and Westferry could be resolved otherwise than through a trial before the High Court. You believe that at around this time, Mr. O'Connor told you that Mr. Kevin Phelan had told Mr. O'Connor that he, Mr. O'Connor, would be an acceptable referee in seeking to achieve a settlement of that dispute. In those circumstances, you asked Westferry to give Mr. O'Connor authority to meet with Craig Tallents and Ms. Ruth Collard, a partner with Peter Carter-Ruck & Partners, to familiarise himself with the elements of the High Court dispute.

Following advice received from Messrs. Peter Carter-Ruck & Partners, you felt that a meeting Mr. O'Connor had intended having with the vendors of Doncaster Rovers did not proceed and you asked him to cancel the meeting. Is that correct?

A. Correct.

CHAIRMAN: I suppose that should be

Q. MR. COUGHLAN: You have informed the Tribunal that as stated above mediation of the dispute between Dinard Trading and Westferry was scheduled to occur on the 27th September, 2002. On the 24th September, 2002, you were faxed by Denis O'Connor's office a copy of a letter from Christopher Vaughan to Michael Lowry. This letter was dated the 25th September 1998. It is suggested Michael Lowry had an involvement in Doncaster Rovers. I presume that in it it's suggested Mr. Michael Lowry had an involvement in Doncaster Rovers. You said that you gave

that suggestion no substance at the time, as you knew it to be entirely untrue; is that correct?

A. Mm-hmm.

Q. I think you informed the Tribunal that on the 27th September, 2002 you attended little tonne chambers for the mediation meeting. Those in attendance included, on behalf of Westferry, yourself, John Ryall, Richard Lord QC, Ruth Collard and Kate McMillan and Craig Tallents. On behalf of Dinard Trading were present, Ken Richardson and Mark Weaver with their counsel Peter Cranfield and their solicitor, Reg Ashworth. During the lunch break Messrs. Richardson and Weaver, through the mediator, Michael Kalapeatus QC, requested a private meeting with you. While you agreed to meet them you insisted that the mediator and John Ryall be present also.

A. Excuse me, is that clear? When I said through the mediator, they requested a meeting. A private meeting. They didn't want him present.

Q. I understand. A private meeting was them on one side, and no mediator present. I understand.

A. Okay. Thank you.

Q. But you insisted that the mediator and Mr. O'Reilly would accompany you

A. Correct.

Q. to the meeting?

A. Correct.

Q. You recall that during the meeting Mr. Richardson suggested

that the meeting continue in the absence of the mediator, you say that you refused and the meeting continued with the mediator present. In summary, it was suggested to you that Westferry might be interested in purchasing Dinard Trading for approximately  $\pounds 2.5$  million sterling to stop various parties gaining access to its files. That's the files of Dinard Trading Limited; is that correct?

A. Yeah.

Q. From what was said to you, it was clear that you were being blackmailed. You made it clear that you had come to the meeting to try and settle the dispute and not to acquire Dinard Trading Limited?

A. Yes.

Q. The mediator intervened, restated the purpose of the mediation and suggested that each side write down the sum they would be prepared to pay or to receive to settle the dispute. You did so and left the meeting believing, in light of what had occurred, that the mediation was unlikely to be successful and that a High Court trial appeared likely. Ultimately, the mediation process continued with the arbitrator informing you that Dinard's representatives were no longer proposing that you should buy Dinard Trading. Eventually it was agreed that the dispute would be settled on the basis that Westferry would pay  $\pounds 744,000$  sterling, made up of the retention fund of  $\pounds 444,000$ , plus  $\pounds 300,000$  sterling. Dinard Trading's original claim at the proceedings had been for a sum of 1.2 million.

A. Correct.

Q. Subsequent to the mediation, you informed Mr. O'Connor of the settlement of the dispute between Dinard Trading and Westferry. Mr. O'Connor may then have indicated to you that he had a client that might have an interest in acquiring Doncaster Rovers Football Club. If Mr. O'Connor did, I didn't pursue the matter with him.

A. Mm-hmm.

Q. You were extremely annoyed by the fact that an attempt had been made to blackmail you at the mediation meeting on the 27th September, 2002, and you took advice from Carter-Ruck as to the action you could take to address it. You made a formal complaint to the Metropolitan Police and subsequently made a written statement to them. You say that subsequently in January 2004, the Tribunal sought a waiver of confidentiality from you in respect of inter alia the files of Carter-Ruck & Partners relating to the making of your complaint to the Metropolitan Police. Your understanding at the time of the Tribunal's question was that Carter-Ruck and partners had a concern which you understood was shared by the Metropolitan Police, about the material potentially coming to the attention of the parties who were the subject matter of your complaint.

Independently you had a similar concern, you were outraged by the blackmail to which you had been subjected on the 27th September 2002 and you were very concerned that anything might be done that might have an adverse impact

upon the chance of a successful prosecution of those who had attempted to blackmail you?

A. Correct.

Q. And I think that completes the statement that you furnished.

A. Thank you.

Q. You have informed the Tribunal, Mr. O'Brien, that in the late spring or early summer of 2002, your son, that's Mr. Denis O'Brien Junior, asked you to become involved in the Doncaster Rovers project; is that correct?

A. That's right.

Q. Now, I don't expect you to remember verbatim matters that occurred between you. But could you give us some indication of what your son well first of all perhaps we'll start here. What were you involved in yourself at this time?

A. I have I'm involved in three or four different businesses. I am the Chairman of the P.G.A., it's a very big European it's the biggest in Europe, in fact.

I have my own business, which is manufacturing and selling in more than 34 countries, a supplement to balance the diet of performance horses. I am also involved, of course, in my son's telephone activities. And then I have one or two other small businesses I am involved in.

Q. Very good. But in 2002 you were an active businessman in your own right?

A. Absolutely, yeah.



Q. And your son asked you to become involved in what is described as the Doncaster Rovers project?

A. Correct.

Q. Can you remember, in general terms, what he said to you or asked to you do?

A. As best now as I can remember, okay, his colleague and friend, Aidan Phelan, Mr. Chairman, was in fact attending to Doncaster, but it had become very protracted. It was going on then, at that stage, for nearly four years.

I can't be absolutely accurate in that, I could if I looked up some dates. And it was going nowhere really, all right?

Aidan Phelan had his own businesses which he wanted to attend to, so Denis asked me, my son, would I take it over and see if I could help resolve the issues.

Q. And do you know what you did? Did you go to Aidan Phelan or did Aidan Phelan come to you and

A. Yes, I spoke with Aidan Phelan, of course, and he brought me up-to-date where he saw the matter and how far it had progressed.

Q. And there were many issues relating to Doncaster, I am talking about the football club itself, the site, and matters relating to the accounts, isn't that correct, on one side

A. Sorry, to try and answer you there. The only issues I was going to deal with was a man called Kevin Phelan, who had a claim against us, and the pending litigation and possibly High Court proceedings. Those are the only two issues that

I really got involved in.

Q. Or that you were asked to get involved you weren't involved in the day to day running or the difficulties in relation to the actual site itself or dealings with the football club?

A. No. In fact I was totally unfamiliar with them.

Q. Right. So, as a result of your son asking you to become involved and your discussions with Aidan Phelan, you became aware that there were two issues that you were going to deal with, and those were a claim which Mr. Kevin Phelan was making against Westferry, and a potential, or a High Court action which Dinard had commenced against Westferry; isn't that correct?

A. Correct.

Q. And what did you understand Mr. Kevin Phelan's claim to be at that time, when you first got involved?

A. Sorry what

Q. What did you understand or what were you given to understand was Mr. Kevin Phelan's claim against Westferry, when you first became involved and were unfamiliar

A. There was nearly always a figure there of  $\text{€}150,000$ .

I can't remember any other particular figure.

Q. So, it's your recollection, and I'm not I don't expect you to have absolute recall in relation to it. It's your recollection that when you became involved and had an understanding of matters, that Mr. Kevin Phelan had a claim for  $\text{€}150,000$ , and that on the other side, Dinard, in their

High Court proceedings, as you say, the claim seemed to take the form of a full claim for 1.2 million, but that claim related to retention money under the contract, and i½250,000 odd in respect of a dispute about a lease in relation to the car-park?

A. That's correct.

Q. Those were the issues?

A. That's correct.

Q. And those were, as you understood them from an early stage, would that be correct?

A. Yeah.

Q. Now, if we could first of all separate the two matters: The Kevin Phelan issue or claim, and the Dinard one.

A. And the which?

Q. The Dinard.

A. The Dinard, sorry.

Q. The Richardson/Weaver.

A. Okay.

Q. Did Aidan Phelan tell you that Kevin Phelan was owed i½150,000 by Westferry?

A. I am sorry, I can't remember that.

Q. You can't remember?

A. No. In fact, I cannot remember very accurately any of the conversations I had with Aidan. He gave me a, sort of a general picture of what the dispute was about. And I am sure you will understand, we're very busy all the time.

Q. I do, I do.

A. And so, it would be a very brief conversation,

Mr. Chairman. As long as he felt I was fully informed of what the main issues were. And it was very protracted, as you know, it had been going on a long time.

Q. I know. This whole thing had commenced in 1998 in fact; isn't that correct?

A. It was, okay.

Q. Now, I think it was clear what the dispute with the Richardson/Weaver side was. That related to the retention money?

A. Yeah.

Q. And the lease, the lease in relation to the car-park, those were the two major issues. And but, what was indicated to you was the nature of the dispute with Kevin Phelan?

A. It was he was claiming he was owed money for his work in Doncaster. He was claiming he was owed  $\frac{1}{2}$ 150,000, I think that was the sum.

Q. Yes. Can you remember whether the dispute was about the amount or whether the dispute related to any work being done, can you remember that?

A. I can't, I am sorry.

Q. Now, apart from being informed of the two claims, if I can put it that way, did Kevin Phelan say anything sorry, I beg your pardon, did Aidan Phelan say anything to you that Mr. Kevin Phelan was causing any problems?

A. Not that I can recall.

Q. Or, at that stage, was there any suggestion that Messrs.

Richardson and Weaver were causing any problems? This is when you became involved in the first instance?

A. No.

Q. Now, you say that you became involved, you say, spring, early summer, whatever, in 2002, and you say that you became acquainted with Denis O'Connor at some time?

A. Mm-hmm.

Q. When was that?

A. I can't put an exact date on it now for you, you know.

Q. I accept that.

A. It was during here in this room is where I really met, Mr. Chairman, where I really met Mr. Denis O'Connor, and got to know him. Now, I do know, from reading some of Mr. O'Connor's evidence, he may have said we met socially somewhere, that could also be correct. But that didn't register with me. My first real meeting with Mr. O'Connor was when I was coming here on a fairly daily basis when my son was giving evidence. I was sitting in the back of the room, and it was during the recesses that I got to know him.

Q. And I think you were here and there is no doubt about it on occasions when your son was giving evidence and Mr. O'Connor was also here?

A. Yes.

Q. There is no doubt about that. But how did discussion can you help us there, I'm not asking you to be perfect in your recollection, but how did discussions about Doncaster

Rovers arise between you and Mr. O'Connor or

A. I am sure I may have raised it initially, and because Denis O'Connor had been involved in some of the transactions for properties and that which involved Kevin Phelan, he must have known him, and it was because he knew him that I raised the conversation, what sort of a chap is it and so on. And that's how it began.

Q. And how did it develop then, if you understand me?

A. Well, any chance I got, I would ask him for some advice I found him very helpful. Any chance I got I would ask him for advice on these, what sort of a man is Kevin Phelan?

What sort of people do you know Richardson and Weaver and these people and so on and so on? I really was in a hurry to try to solve the problem of the dispute, bearing in mind I was also very, very busy in my own businesses at the time.

Q. And I understand that.

A. I wasn't giving this a huge amount of time, you know. I was giving it as much time as I could.

Q. What was the dispute with Kevin Phelan? That's what I'm trying to understand. There was a claim being made, but what was the dispute?

A. It was on the size of the claim I think. Sorry now, you are asking me to go back four or five years.

Q. I accept that.

A. All I I think it might help you if you understand what type of person I am.

Q. Right.

A. My son, Denis, asked me would I try to solve Doncaster, it had been going on for a long time. Aidan Phelan was trying to look after his own business and was not able to devote the time to it that it needed. It seemed to have come to a stalemate; nothing was happening. I got involved in the spring or whatever it was, those months, and as you know, we solved the problem in about four months. It had been going on for nearly four years. So, I wasn't terribly interested in getting into the details of people. I was interested in saying, what is the problem? This man wants  $\frac{1}{2}$ 150,000, you know, is there any justification for that?

Well he has some he did some work and maybe it's a little bit too high, but he had well I said, "Look, let's get rid of that one, let's pay him". Like, that sort of thing.

Q. Yes, and I know you are a businessman, I am just trying to get the feel for how you'd think and do it, yes. And that's what you did eventually, Kevin Phelan was paid?

A. Kevin Phelan

Q.  $\frac{1}{2}$ 150,000?

A. He was, mm-hmm.

Q. Do you remember any difficulty arising during the course of your dealings with Kevin Phelan and his solicitors in relation to making that payment?

A. I am sorry, I can't.

Q. I think

A. Difficulties.

Q. Well, difficulties in concluding it, if you understand me.

A. I am sorry, I can't.

Q. You can't?

A. No.

Q. I'll come to some documentation in a moment. You went to Messrs. William Fry solicitors, they had acted and been acting for your son in some of his businesses over the years; isn't that correct?

A. Yes.

Q. And I think you used them as or sorry, you, because you retained them in relation to dealing with the Kevin Phelan issue; isn't that right?

A. Mm-hmm. The whole of the dispute, really, they were their solicitors.

Q. Yes, I understand. Messrs. Peter Carter-Ruck were obviously handling the matter in England because of the High Court proceedings in England; isn't that right?

A. Yeah, yeah.

Q. But the you went to Messrs. William Fry's and retained them in relation to this matter, which was Kevin Phelan and what he was claiming?

A. Were they not already retained by Aidan Phelan? I can't remember that either. Would Aidan Phelan have been using Fry's the solicitors, or I think they were the solicitors from the very outset, were they?

Q. In relation to Doncaster?



A. Yeah.

Q. No. You see, I think the way this matter started, and perhaps I'll just briefly go through it with you.

Doncaster, as you say, was about four years old by the time you became involved?

A. Yeah.

Q. And back in 1998 Mr. Kevin Phelan, through a company called Westferry, seemed to do the dealings with appears to be with the Richardson side, that's what it appears to be.

And that a solicitor called Mr. Christopher Vaughan, in Northampton in England, was the solicitor dealing with the Westferry, Doncaster Rovers matter?

A. Excuse me interrupting you. I know that, but I'm saying with the dispute regarding the fees of Kevin Phelan, did we only William Fry's were involved in that; is that right?

I can't remember if there was solicitors dealing with Kevin Phelan's dispute before we used Fry's, do you know?

Q. I don't. That's why I am trying to

A. I thought it was only William Fry's.

Q. It doesn't appear to me but I don't know.

A. Okay, all right.

Q. It doesn't appear to me to be the situation but I don't know. We'll take it at the moment Messrs. Fry's are dealing with it as far as you are concerned anyway?

A. Yes.

Q. And, as you say, you knew from when you came into it, even if it was only sort of briefly, you knew that Kevin Phelan

was claiming  $\text{€}150,000$  and you must have got that information, you think, from Aidan Phelan?

A. Of course.

Q. And there is a document it just might be of some help, and I won't go through this in great detail at all,

Mr. O'Brien. Now, I am just going to very briefly put this up. It's a document addressed to Messrs. Aidan Phelan from BBT, that he is Mr. O'Connor's firm, accountancy firm.

A. Okay.

Q. It's dated the 18th June, 2001, which was before you became involved in the matter at all.

A. Okay.

Q. And it appears early somewhere on the William Fry file dealing with the dispute with Kevin Phelan and it looks as if it must have been given by Aidan Phelan or, if it was given to you, you gave it to William Fry's. But you will see, and I'm not going to read this document at all, but, there are behind that particular letter, a number of documents, including a number of invoices or statements, and one of them is a fee in relation to Doncaster in respect of Mr. Aidan Phelan, coming to, I think, about  $\text{€}149,200$ ,  $\text{€}150,000$  or thereabouts. So that always seems to have been the position, as far as you were aware anyway?

A. I have never seen that.

Q. I understand that

A. The dispute was 150,000.

Q. The dispute you were told was around 150,000 and that seems

to be the position. Now, in your dealings with Kevin Phelan on behalf of Westferry, did you, and you say that from discussions you had with Mr. O'Connor here, you found him helpful?

A. Mmm.

Q. And did you make use of his good offices in the dealings with Kevin Phelan, do you know?

A. When you say "make use of", what do you mean by that?

Q. Well did you ask him to have any involvement talking to Kevin Phelan?

A. No.

Q. Talking to anybody?

A. No, I am sure I didn't. I am sure I just wanted to get some background to what type of an individual was Mr. Kevin Phelan. But, now, I am working on memory again.

Q. I accept that.

A. Okay.

Q. Do you know and perhaps I should just seek, for the assistance of the Tribunal you were a busy man?

A. Mm-hmm.

Q. You had an, as you say, overall or general view in relation to this particular matter?

A. Yes.

Q. Was there anybody else under you having a day to day involvement?

A. Absolutely no-one. To help me?

Q. Yes.

A. Absolutely no-one.

Q. Well, I just wonder, you know, sort of who is Mr. John Ryall, for example?

A. Mr. John Ryall is an executive who works for my son.

Q. And who is Ms. Sandra Ruttle?

A. Ms. Sandra Ruttle is the Chief Executive of our P.G.A., our big golfing business in Europe.

Q. And did you have any knowledge of their involvement or giving any instructions in relation to any of these matters?

A. As far as I can remember, Sandra Ruttle would have had nothing whatsoever to do with this. And as far as I can remember, unless you can show me that that's not the case.

With regard to John Ryall, John Ryall only really became involved when we went to London regarding the dispute.

Now, as far as I can remember, all right?

Q. All right. But, look, it might be helpful if I open a few documents with you. I'll take it slowly because, as you say, you may not have seen some of these. And if you have any difficulty and want time to consider it, just say it and there is no difficulty about that.

A. Sure.

Q. And the first document I would ask you to I'll tell what you, I'll give you one of our books; that makes it easier.

Do you see the way the tabs are numbered?

A. Is this in long hand?

Q. Yes. And if you turn over the page, you will see that

there is a typescript of it, do you see that? I'll tell

you whose note that is; that's Mr. Owen O'Connell's note?

A. Okay.

Q. And you know who he is a solicitor in William Fry's; isn't that right?

A. Yes, of course.

Q. And we asked him then to type

A. Excuse me, is this a transcript of the scribble?

Q. Yes. Made by him?

A. Okay. Thank you.

Q. Yes. Exactly.

MR. O'DONNELL: If Mr. Coughlan could just identify the tabs.

MR. COUGHLAN: 57, I thought I said that. I beg your pardon. 57.

Q. You can see that the client is DOB. The matter is Moriarty, do you see that?

A. Yes.

Q. And then the note is:

"1. Ownership of Westferry;

2. Rights of KP against Westferry.

3. DOB written instructions.

4. Letter to KP seeking particulars.

5. Response.

6. Letter to KP offering settlement.

7. Acceptance.

"Due John Mulcahy.

"D O'Connor/C Vaughan re ownership of Westferry in first instance."

Then he has "The top right-hand corner of this memorandum bears a Post-it note as follows:

"Owen, as discussed, please copy and return to me. Denis O'Connor said CV can't help re Westferry ownership but Walbrook Trustees did it I think they are DOB's people in the Isle of Man (Deloitte's? ) Sandra will know.

Owen."

It seems to be that that's been sent by Mr. Owen O'Connell to Mr. Owen O'Sullivan who was another solicitor in William Fry's.

A. Who prepared this file, did you say please?

Q. This note? Mr. Owen O'Connell.

A. Owen O'Connell, okay.

Q. And it seems to be a note that he has prepared and he seems to be referring it to Mr. Owen O'Sullivan, whom I think you know is another solicitor in the firm of William Fry's?

A. Of course.

Q. Sorry, I beg your pardon. The note is on a file, the Post-it is to Mr. Owen O'Sullivan; it seems to be.

A. Okay.

Q. Now, did you have any discussions with Mr. Owen O'Connell at this stage concerning the matters which are being referred to as seemingly various steps which he is noting to be taking or to do?

A. No.

Q. Okay. That was a little bit out of order, if you go back to 53, please. You can see that it is a fax cover sheet from Mr. Denis O'Connor to Mr. Owen O'Sullivan of William Fry Solicitors?

A. Excuse me. Sorry, I am at the wrong one.

Q. 53.

A. Yes, sorry.

Q. It's a fax cover sheet from Mr. Denis O'Connor to Mr. Owen O'Sullivan of William Fry Solicitors dated the 31st May, 2002. Do you see that?

A. Right.

Q. And then it says pages to follow: 1. And if you go over the page it's a copy of a letter from Mr. Christopher Vaughan which reads or portion of a letter at least, because we don't seem to have the front part or the first page of the letter. But you can see the second paragraph there that commences:

"I was not involved in any way in respect of the share transfer for Westferry. Looking at my files, I see that the people with whom I have had contact in respect of those shares were Peter Vanderpump and Stephen J Woods of Walbrook Trustees (Isle of Man) Limited, Deloitte & Touche". And it gives addresses and various telephone numbers.

"The current litigation between Westferry and Dinard Trading Limited is being dealt with by Ruth Collard of Peter Carter-Ruck & Partners. He has no knowledge of the

current status of the litigation that is something that

you would have to discuss with Aidan Phelan.

"If I can be of any further assistance, please let me know.

Yours sincerely".

A. Just remind me again, who is this addressed to?

Q. We don't know, because we haven't got the front.

A. Okay.

Q. What we have here is on the Fry's file, a fax sent by Mr. Denis O'Connor to Mr. Owen O'Sullivan containing one page, which is the second seems to be, or at least the second page of a letter from Mr. Christopher Vaughan concerning the affairs of Westferry to some extent.

A. Yes.

Q. So when you asked me who is it addressed to? I don't know.

A. Okay.

Q. But you can't throw any light on that for the moment?

A. I am sorry, I don't believe I have ever even seen this.

Q. Now, if you go back to 57, and the typed version of the Post-it, at the bottom on the second page.

A. Go forward you mean?

Q. Go forward, I beg your pardon.

A. Okay.

Q. You see down at the bottom there of the typed note: "Owen, as discussed, please copy and return to me. Denis O'Connor said CV can't help re Westferry ownership but Walbrook Trustees did it."

They seem to be referring to the same matter there, maybe



not but that's what it appears at the moment. But you can't throw any light on this at the moment?

A. I am sorry, no.

Q. Very good. It would appear that Messrs. William Fry's, that is your solicitors, were having some contact with Mr. Denis O'Connor in relation to these matters; isn't that right?

A. With Mr. Denis O'Connor?

Q. Yes.

A. Regarding it? I don't know that either, sorry. But if it's there in the file, it must be right.

Q. All right. Now, I wonder if you'd go forward to Tab 58, please. And, again, this is a handwritten note of Mr. Owen O'Connell and behind it, you will find that he has prepared a typescript of that handwritten note. And

A. Is it two pages handwritten, is it?

Q. Two pages handwritten and then one page typed.

A. Thank you.

Q. And it's a note to the file. And the matter is: Moriarty.

You can see that.

A. Mm-hmm.

Q. And it's dated the 11th June, 2002. And the note is:

"DOB Senior re K. Phelan payment.

" concern about DOB making payment to KP in circumstances of current Tribunal where KP a potential witness (hostile to DOB).

" concern heightened by apparent collaboration with ML/ML

advisor in making larger payment.

" recommendation is to ask ML not to make any payment in anticipation of DOB contribution and to exclude DOB/Westferry from any deal/settlement he may reach, telling KP to make a written claim against Westferry.

" if this rejected, before any payment is made, follow steps in OOC previous note, of which key ones are to establish DOB ownership (i.e. beneficial) of Westferry and get written evidence of Westferry's indebtedness to KP in excess of proposed payment.

"Above to DOB senior 11/6/03, 9.35am.

"OOO."

I beg your pardon, it's '02 in the manuscript.

This seems to be a note pertaining to matters you had with Mr. O'Connell or a discussion over the phone or through some third party I'm not sure. Can you throw any light on this?

A. I have never seen this before, I can't recall what's it all about. Is it ML Michael Lowry? Sorry, "recommendation is to ask ML not to make any" who is ML there?

Q. Well, sorry, this note appears

A. No, I understand the note. You have made that quite clear, but I am just trying to understand what's your

Q. Well I'm asking you. I am looking for your understanding, do you get me?

A. I haven't a clue. I mean why would Michael Lowry recommend? If that is ML, why he would recommend we don't

make a payment and so on?

Q. Exactly.

A. What the hell is that about? I haven't an idea about that.

I have never seen that before, I have no recollection.

Q. Can I try and tease a few matters out with you? Can I

tease a few matter out with you in relation to it? I take

your point, you are saying what the hell is there a

reference to Michael Lowry in there for at all?

A. Yeah. But if he is writing to me, surely I would have been

aware of something going on regarding payments. Did he

actually address this to me? Is this a note sent to me by

what's his name, the solicitor?

Q. Owen O'Connell.

A. Was this sent to me?

Q. Well, I am asking you. I don't know. I am trying

A. I have never seen it.

Q. I am trying to get your help.

A. Okay.

Q. If we go through the note, there is no doubt it's a note

made by Mr. Owen O'Connell who is a solicitor in William

Fry Solicitors?

A. Sure.

Q. And Mr. Owen O'Connell has given evidence here and we all

know Mr. Owen O'Connell is a senior partner in the firm and

has been involved in affairs concerning your son's business

over the years?

A. Sure.

Q. And Mr. Owen O'Connell has also been involved in dealing with or assisting this Tribunal in giving evidence in relation to matters, and we know that Mr. Owen O'Sullivan has also handled the affairs of your son or his interests in relation to dealings with this Tribunal; there has been a lot of correspondence over the years.

A. Okay, mm-hmm.

Q. Now, the first thing is that Mr. O'Connell seems to be noting, seems to be, and now, I stand corrected it seems to be a phone call. That's what it seems to be, but I may be wrong about that, but what it is is, the first thing is it relates to Moriarty, which is the Moriarty Tribunal, I don't think that

A. It seems to be a phone call with whom?

Q. Well, if you go to the bottom "Above to DOB Senior 11/6/03". That should read '02, it should read '02.

A. Okay.

Q. I see that there and I ask myself is that you as one might reasonably do, and then I ask you to look at the note and we'll go through it. It seems to be it relates to the Moriarty Tribunal.

A. Mmm.

Q. And it seems if you go then, "DOB senior". That seems to be you "Re K. Phelan payment." It seems to be that Mr. O'Connell here is noting what the matter is about.

A. Yeah.

Q. And he notes then: "Concern about DOB making payment to KP

in circumstances of current Tribunal where KP a potential witness (hostile to DOB)". Now, that seems to be now, because I stand corrected again, that seems to be Mr. O'Connell giving advice or expressing a concern in relation to some matter which has been conveyed to him. That's how I read it at the moment. I could be completely wrong.

A. I'd read it the same.

Q. You'd read it the same, would you?

A. I imagine so.

Q. And the next matter, then, is "Concern heightened by apparent collaboration with ML/ML advisor in making larger payment." That, again, seems to be Mr. O'Connell saying, look, I am concerned about what is happening here, or what I am being told is what is happening here or about to happen here. That's how I would read that. Would you read it that way?

A. I find it extraordinary.

Q. Yes

A. What the heck has that got he is concerned about a collaboration with ML and stroke ML, who are the two MLs do you think?

Q. Well, would you think that they refer to Michael Lowry and Mr. Denis O'Connor, who is Michael Lowry's advisor?

A. Who is the second ML?

Q. No, stroke ML advisor, do you get the point?

A. Collaboration with ML down stroke ML again.

Q. No, ML advisor, it's ML and ML advisor, do you get me?

A. Oh, sorry, okay.

Q. "In making larger payment." Again it seems to be that

Mr. O'Connell was noting here: Look, I have heard

something or somebody has asked for advice and I have

expressed a concern in relation to these what I'm being

told or asked about. And it's now heightened, his concern.

And then the note continues, it seems to be that

Mr. O'Connell now is giving advice. "Recommendation is to

ask ML " it seems to be Michael Lowry "Not to make any

payment in anticipation of DOB" Denis O'Brien I presume

that is "Contribution and to exclude DOB" Denis

O'Brien "/Westferry from any deal/settlement he may

reach." That is that Michael Lowry may reach, not Michael

Lowry's advisor here, Michael Lowry may reach "Telling

Kevin Phelan to make a written claim against Westferry."

Now, do you remember

A. I have nothing to do with that. I have never seen that

before. I have no recollection whatsoever of anything in

that. What the hell would Michael Lowry be making a

payment on my behalf for and my company, or whatever, is

that what the suggestion is?

Q. Would you agree with me, that's what it seems to be?

A. I know. You will have to get this man back from Fry's and

ask him what does he mean by it. I am sorry, I would help

you if you could.

Q. You see the reason why I am asking you, because the two of

us seem to be jumping to the same conclusion, sorry a view,  
not a conclusion, that that seems to be what it's  
indicating, would you agree?

A. Well I mean, I have no knowledge whatsoever of that

Q. I accept that, but would you agree with me that reading  
that note, you'd say, Michael Lowry making a payment to  
Kevin Phelan, and that there would be a contribution from  
Denis O'Brien/Westferry. That seems to be what is being  
suggested there; isn't that right?

A. Yeah, well it may be that's what it's suggesting but that  
never took place, I can assure you. Not while I was  
dealing with the dispute on Doncaster, nothing like that  
ever took place.

Q. And then, again, the note seems to continue "Advice being  
given by Mr. O'Connell. "If this rejected before any  
payment is made, follow steps in OOC previous note"  
which is the one I just read out about the steps to be  
taken "Of which key ones are to establish DOB ownership  
(i.e. beneficial) of Westferry and get written evidence of  
Westferry's indebtedness to KP in excess of proposed  
payment."

Do you remember getting such advice?

A. Honestly, this is complete mumbo jumbo to me.

Q. Fine. Maybe this will assist you in recalling if there is  
any lack of recall, or you just don't know about things.

If you go back to Tab 55?

A. Yes.

Q. You will see now this has been sent, I think it's been sent from your office

A. Does this excuse me asking you, is this headed "Mr. Michael Heneghan"?

Q. No, it's not. I beg your pardon, it's 55, it's a fax cover sheet. It's

A. All right I have it.

Q. It's from your office; isn't that right, to Owen O'Sullivan.

A. Okay.

Q. And it says: "Dear Mr. O'Sullivan, attached please find copy of a memo being sent to Denis O'Connor today."

Then if you go over there is a "Content of memo to be sent to DOB Senior.

"The following considerations should be incorporated in any agreement.

"In general, all future events occurring as a result of the hearing and in particular the following:

1. Any reference to the Party occurring during the business of the hearing.
2. Any publicity (radio, TV other) occurring directly or indirectly as a result of the hearing.
3. Any correspondence, summonses resulting from either the hearing or litigation involving any of the property transactions which are the subject of the agreement.
4. Any attention resulting from the agreement or any payments made by parties to the agreement from the Inland



Revenue or any taxation authorities, Companies House and bankruptcy assignee.

5. Any complaints rendered to the Party to this agreement which are not under our control."

Can you throw any light on that at all?

A. It says at the top "Content of memo to be sent by D O'Brien Senior.

Q. Yes.

A. What seems to be set out is rather legally

Q. I agree.

A. You know, it's not layman's terms. So

Q. It seems to be something to be incorporated into some agreement?

A. Okay. So I am very sorry, I have no recollection whatsoever what this is about.

Q. I agree with you, it is a legal use of language, but it looks to be something to be incorporated into some form of agreement, would you agree?

A. Well, if you say so. I am sorry, I can't throw any light on this whatsoever.

Q. Now, if you go to Tab Number 56. Now, it's a letter, or it's a fax to Mr. Owen O'Sullivan, and it's from you and it's dated the 4th June, 2002, and the subject is:

Westferry.

"Dear Owen,

"You may already have received the enclosed from Denis O'Connor.

"As you can see, Christopher Vaughan is not fully aware of the background regarding Westferry. However, I have now spoken with Sandra Ruttle in my office and she will be contacting you shortly to give you much more accurate information concerning the details in relation to Westferry.

"When you receive this information from Sandra, I would be very grateful if you would treat the matter of Doncaster Rovers with some urgency. I have again spoken with Denis O'Connor and asked him, for his part, to have prepared a legal comprehensive letter in draft form covering all aspects of the matter in which he has been involved (with the exception of Westferry) and he has promised to give this his immediate attention when he returns on Wednesday from Mexico. We should then try, all of us, to meet again to pursue the matter further.

"I would very much like to see everything completed, if possible, before Thursday the 30th June, as I have to leave Ireland for ten days on business. When you have time, could you please telephone me to confirm safe receipt of this telefax and let me have your comments regarding the foregoing.

"With kind regards.

"Yours sincerely,

Denis O'Brien Senior."

You will find behind that a document which I want you to disregard, because on closer inspection, that's not the

enclosure, I am going to show you what the enclosure seems to be which is the document we referred to earlier, if we just put it up. It's the

A. Is this an enclosure with this letter?

Q. Yes. It's an enclosure I'll tell you what, I'll give you a hard copy.

A. Okay.

Q. We'll put it up anyway. It's a document we have already referred to.

A. I am sorry, just to refresh my memory again. This is mentioned in my letter?

Q. This is mentioned in your letter.

A. Where is it again, please?

Q. I'll go through that.

A. Okay.

Q. You say, the first line: "You may already have received the enclosed from Denis O'Connor."

A. Is that it?

Q. That's it.

A. That's the Christopher Vaughan letter.

Q. The Christopher Vaughan letter. Do you understand?

A. Right.

Q. I take it that that is your letter that is your letter?

A. Absolutely.

Q. Now, do you have any recollection of this?

A. I am sorry, no, but that's my letter all right.

Q. And you can see in the second sorry, I beg your pardon,

the third paragraph, which commences: "When you receive this information from Sandra" you make reference to Sandra Ruttle "I would be very grateful if you would treat the matter of Doncaster Rovers with some urgency.

I have again spoken with Denis O'Connor and asked him for his part to have prepared a legal comprehensive letter in draft form covering all aspects of the matter in which he has been involved (with the exception of Westferry)" which seems to indicate that he had an involvement in Westferry "And he has promised to give this immediate attention when he returns on Wednesday from Mexico. We should then try, all of us, to meet again to pursue the matter further."

Can you assist the Tribunal or throw any light on what was happening there?

A. I can't.

Q. Well, could I suggest to you, and disagree with me but might I suggest to you that at least what appears to be happening there is this: That you are trying to sort out the Kevin Phelan matter at that stage, at least?

A. Right, I was.

Q. And that Mr. O'Connor seems to be involved with you in discussions in relation to how to progress

A. He was.

Q. That seems to be, doesn't it?

A. Yes.

Q. He seems to have an involvement in the matter?

A. He was trying to help me, yes.

Q. And if you then go back to Mr. Owen O'Sullivan's note at Tab 58?

A. Go forward, you mean?

Q. Sorry, you are absolutely right. Mr. Owen O'Connell's note, I said Mr. Owen O'Sullivan, Mr. Owen O'Connell's note.

A. 58?

Q. You know the one at 58. That is dated some days after your fax to Mr. Owen O'Sullivan dated the 4th June, 2002. This is dated the 11th June, 2002. And here

A. Sorry to interrupt you, I may be looking at the wrong thing. Am I looking at 58?

Q. Yes.

A. 58. There is a handwritten piece and then it's typed.

Q. The typed. We were looking at it earlier.

A. I understand that. What dates are you saying it is again?

Q. Now, your letter, or fax to Mr. Owen O'Sullivan which we have just looked at, is dated the 4th June 2002, do you understand me?

A. Okay.

Q. And now, if you look at Mr. Owen O'Connell's note, that's dated the 11th June, 2002, some days after your communications with Mr. Owen O'Sullivan?

A. I'll have to interrupt you again.

Q. Yes.

A. I am looking at a William Fry note from OOC. The date

I see is the 24/5?

Q. Yes, you are right. Let's get them that is the previous tab.

A. So which one do you want me to look at now.

Q. I want you to look at the one look, maybe let's put it, they are probably a little bit out of sequence in the book.

A. Okay.

Q. The first thing is the note dated the 24/5/2002 made by OOC regarding certain steps to be taken, do you understand?

A. Yeah, it's headed "Client: DOB.

Matter: Moriarty.

Q. Yes. Then it's "1. Ownership of Westferry, 2. Rights of KP against Westferry."

A. Okay.

Q. Then the next document we looked at in date order would be your letter of the 4th June 2002, which is at tab 56, the one we have just looked at, which you sent by fax to Mr. Owen O'Sullivan, and you enclose a document and you discuss your dealings, to an extent, with Mr. Denis O'Connor; isn't that right?

A. Yes, it is right, but I am just wondering why it is before the other letter? You normally would follow it, wouldn't you?

Q. I agree. It's just out of order there.

A. Okay.

Q. You then go to, as I asked you, Tab 58

A. 58 is the one you just read, isn't it?

Q. 58 is the one which is Mr. Owen O'Connell and it is dated the 11th June, after you have written to Mr. Owen

O'Sullivan and had dealings with Mr. Denis O'Connor

A. I am sorry, I am confused.

Q. All right.

A. The first one you have asked me to refer to, it's dated the 24/5, it's from Owen O'Connell and it's his own, whatever you call it

Q. To do list?

A. Internal thing. And the client: D O'Brien; isn't that right?

Q. Yes. I then asked to you look at your letter to Mr. Owen O'Sullivan, which was dated the

A. Correct, I have that in front of me also.

Q. Okay. Would he have looked at that, and then in that you make your references to Mr. Denis O'Connor in relation to dealings and settlement with the Westferry and Mr. Kevin Phelan matter; isn't that correct?

A. Yeah.

Q. And then I asked you to look at Tab 58

A. Sorry, again, did I also say dealing with Westferry and the payment to Kevin Phelan? Because, Kevin Phelan, as far as I was concerned, in the dispute, Kevin Phelan was claiming his fees and my solicitors were handling the matter. I never remember getting him involved in Westferry as well; is that what you are saying?

Q. No, no. I am asking you I am just trying to figure out, because you can't, and I am not saying that you necessarily should, but I am just trying to follow from the documents what appears to have been happening around that time. On the 4th June, 2002 we know you wrote to Mr. Owen O'Sullivan, we have your letter; isn't that correct?

A. Yeah.

Q. And you said in that, in the third paragraph first of all, you sent him a document which you had received from Denis O'Connor?

A. Yeah.

Q. Then you say at paragraph 3 "When you receive this information from Sandra, I would be grateful if you would then treat the matter of Doncaster Rovers with some urgency. I have again spoken with Denis O'Connor and asked him for his part, to have prepared a legal comprehensive letter in draft form covering all aspects of the matter in which he has been involved (with the exception of Westferry) and he has promised to give this his immediate attention when he returns on Wednesday from Mexico. We should then try" etc.?

A. Okay.

Q. We then go, as I say, the next document that I'd ask you to look at in date order is at Tab 58, the one we have looked at already which seems to follow-on.

A. Just one moment, please.

Q. All right.



A. That the William Fry?

Q. That is the William Fry one dated the 11/6/02.

A. I don't seem to have that one. Just a moment, Tab 58.

Q. There is a handwritten, two pages of handwritten note and then behind that is a typed note.

A. I was thinking Tab 58 and the letter was sitting on top of it, I should have gone over to 58. Fine.

Q. You have now communicated with Mr. Owen O'Sullivan and you have told him about communications you have had with Mr. Denis O'Connor. Now, this seems to record, as you say, concerns being expressed by Mr. Owen O'Connell about information he has received and recommendations he is making arising from that, and it indicates that that information was, in some way, communicated to you, but you have no recollection of that; isn't that correct?

A. Would you mind if I read the letter?

Q. Your letter? Your own letter?

A. Is this what you are referring to now? This is dated the 11/6, is it?

Q. It is.

A. And it's a file note.

Q. It's a file note, yes.

A. It's from Owen O'Connell. Just let me read it for one moment, please.

Q. Please do. It's the one we looked at earlier.

A. I know, but I am at a total loss to understand what this is all about.

Q. Exactly. Because undoubtedly he is expressing concern about DOB making payment to KP in the circumstances of the current Tribunal

A. That's okay. That's all right.

Q. "Concern heightened by apparent collaboration with ML/ML advisor in making larger payment."

A. Yeah.

Q. You can't

A. I don't know what that is all about. I am quite surprised actually. Nothing whatsoever that, to the best of my knowledge, and I am under oath, that had nothing that had nothing to do with my negotiations in trying to solve Westferry. Michael if that ML is Michael Lowry, it never, never, never entered the negotiations at any stage in any form.

Q. As far as you are aware?

A. In my negotiations in trying to solve the dispute, I never spoke to Michael Lowry. I never entered it. I don't know what that is all about frankly.

Q. You did speak to Denis O'Connor as appears from your own

A. Many times.

Q. And I just want to you spoke to Denis O'Connor in social circumstances when you were up here listening to the evidence, and it would appear that you were also had dealings and spoke to Denis O'Connor in relation to the settlement of matters with Mr. Kevin Phelan; isn't that right?

A. Yes.

Q. But you can see that the recommendation here, the first recommendation which is made by Mr. O'Connell is recommendation is to ask ML, which seems, or appears to be Mr. Michael Lowry "Not to make any payment in anticipation of DOB contribution and to exclude DOB/Westferry from any deal/settlement he may reach, telling KP to make a written claim against Westferry." You can't throw any light on it?

A. I'd like to ask you something: Have you any idea why ML that must be Michael Lowry would make any payments in anticipation of D O'Brien's contribution I mean, what the heck is that all about?

Q. That's what I'm trying to find out.

A. But why don't we ask Fry's?

Q. I am asking you here because

A. This is a Fry note.

Q. I agree.

A. You know.

Q. I agree, but the only reason I am asking you here Mr. O'Brien is this, it seems to be indicated on this note that this information was imparted to you?

A. I never if it was, I never saw it.

Q. All right. Or you never remember it?

A. Not alone did I never remember it, I never saw it. This is the first time I am aware of it, this morning.

Q. All right. Now, I am going to ask you to look at some

documents at lunch time. It's just they are not in the books.

A. You are going to ask me to?

Q. Ask you to look at some documents at lunchtime. They are in the books but they are in different places, and we have brought them together

A. You'd like me to look at them over lunch in relation to right.

Q. I don't intend spending, or think that I would this is fairly detailed stuff for Mr. O'Brien, and I think a lot of the matters are matters which he seems to be coming at for the first time, and I think to enable him to deal with them and to give a best account himself

CHAIRMAN: That seems to make sense. Mr. O'Brien, might it be an idea if we paused for lunch now and I'll allow a little bit of extra time just to enable you consider these couple of extra documents which may be new to you?

A. Thank you, Chairman.

CHAIRMAN: So we'll say, perhaps, ten to two.

MR. McGONIGAL: Can I confirm that Mr. Coughlan has not sought or asked for any comment from Mr. O'Connell in relation to this memo? I would have assumed that the Tribunal had made inquiries in relation to it and I'm surprised that it appears to be the position that they haven't. Is that the position?

CHAIRMAN: It's Mr. O'Connell's note that's been communicated. That can be checked. Very good. Ten to

two.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. COUGHLAN: Thank you, Mr. O'Brien.

Q. Now, the loose documents I asked to you look at over lunch, I just want to bring a few matters to your attention in relation to them.

A. Okay.

Q. You see, the top document, it's a letter to you from Mr. Owen O'Connell in William Fry's and it's dated the 11th June, 2002 and it's about Westferry Limited, and it reads:

"Dear Denis,

"Further to our telephone conversation of this morning I enclose a draft letter. This is in the form in which it will be written by me, alternatively you can slightly amend it so that it becomes a letter from you. If it is to go from me, I would need to have confirmation from Walbrook Trustees as to the beneficial shareholders and directors of Westferry, together with an instruction from the directors to act on behalf of the company. I called John Ryall, as arranged, and left a message for him, as he was not available.

"I received your message regarding the maximum entitlement, but feel that is something for the next letter, at this stage we are merely asking him to state his claim, and it would be contradictory to say that, no matter what it is, we will pay a given amount."

Now, I suppose the first thing I just wanted to draw your attention to is the first line the 11th June, it's the same date as the date on the note of Mr. O'Connell that we spoke about before lunch. And the first line says "Further to our telephone conversation of this morning", but you don't have any recollection of that anyway?

A. I am sorry, I don't.

Q. Very good. Now, if you just turn over the page of the loose documents. This is a draft which Mr. O'Connell is sending to you, I think. And it's to be sent to from Westferry to Mr. Kevin Phelan. And it's in this form:

"Dear Mr. Phelan,

"We have been instructed by Westferry Limited. We understand that you have certain claims against the company in respect of fees due to you and possibly otherwise. We would be obliged if you would let us have a note of all claims made by you together with whatever evidence is available to you as to your entitlement, so that we may advise our clients as to the amount properly due to you.

"We look forward to hearing from you."

A fairly standard sort of draft.

And then the next document is I think it's probably a note made by a secretary or something in William Fry's.

A. It's supposed to be from me, isn't it?

Q. It's from you to Owen O'Connell, and I don't think it's Mr. O'Connell's writing, I think it may well be somebody taking a message, that's what it looks like to me.

A. Right.

Q. It's just "Re attached fax, can expect it from Woodcock as follows. Also do not reply to KP solicitors until we have dealt with Denis O'Connor matters."

Can you throw any light on that or

A. I sound terrible, I would help you if I could. I really don't honest to goodness remember that.

Q. That's fine Mr. O'Brien. I appreciate that you are trying to remember these matters.

If you go then to the next document in the pile, it's signed by you, it's dated the 11th June again, and it's being sent to Mr. O'Connell in William Fry's. And it reads:

"Dear Owen,

"Thank you for your suggested draft to KP. As you will see from the enclosed I have removed your reference and Fry's name and added the last in relation to Woodcock & Son.

"I have spoken to Christopher Vaughan to make sure there are no loose ends. As a result he has sent me the enclosed copy letter and I gave it to you in case it may be of any use in the future.

"John Ryall will immediately respond to your question regarding confirmation from Walbrook.

"I will keep you informed as matters progress with KP.

Best regards,

Yours sincerely, Denis O'Brien Senior."

Do you remember that?

A. It's obviously my letter, but I don't even know what it's about really.

Q. May I ask you this, Mr. O'Brien, it was something I asked you this morning to begin with. Would somebody have prepared these letters for you?

A. No. I always do my own letters.

Q. I see.

A. And even this type is my typewriter.

Q. I understand it was probably done in your office, but

A. No, no, nobody does my letters. I do my own letters.

Q. All right.

A. But could I just add a rider to that?

Q. Yes, please do.

A. I mean, I do thousands of letters and this is going back four or five years. If I could help you, I would.

Q. Thank you Mr. O'Brien. But we'll just proceed, if you can, we'll see.

A. Right.

Q. Then there is the it's the draft it's a redrafting of the draft Owen O'Connell sent you, and I'm not I'm not going to read it in any great detail. But you have removed William Fry's name, as you said, and you added the piece about

A. Is there anything sinister in that, do you say?

Q. I am not suggesting there is. I am only trying to figure out what was happening.

A. Okay. All right.



Q. Do you understand me?

A. Okay.

Q. Sorry, there is nothing sinister in removing Fry's name, absolutely not, oh, no.

A. Okay.

Q. And then the next document, which seems to accompany it, is a letter from Woodcock addressed to Mr. Christopher Vaughan, which is "I have been instructed by my above client "" that's Mr. Kevin Phelan "To correspond with you as follows.

"1. In your own capacity.

2. In his capacity as partner of M&P Associates.

3. In his capacity as a director of Gameplan International.

4. In his capacity in Westferry, Glebe Trust.

"I would refer to the allegation and request made to you in our letter of the 28th January 2002 and the 21st March 2003.

"Our client agrees that:

"1. There is no need for you to reply to any of the points raised in the above letter.

2. At all times when instructions were given by our client on the part of a principal he was acting as an agent either for disclosed or undisclosed principal.

3. He unreservedly withdraws the complaint made about you to the office for the supervision of solicitors.

4. Our client has in no claims for negligence against you.

5. Our complaint is not demanding the return of any files.

Yours sincerely, Woodcock."

I presume you can't throw any light on that?

A. I have never seen that letter. Sorry, can I just help you a little more on it? This is April 2002. I forget when

I took over, but

Q. It's a separate document which seemed to accompany, be enclosed with what was being sent, do you understand? It's a historical document.

A. All right.

Q. I was just wondering how it came into being, where it came from, you can't help there?

A. No.

Q. Now, in fairness to you, in your letter, which is the fourth document, you say in the second paragraph: "I have spoken with Christopher Vaughan to make sure there are no loose ends. As a result, he sent me the enclosed copy letter and I give it to you in case it may be of any use in the future."

I take it you must have received it and you sent it on to Owen O'Connell but you just can't remember?

A. No. Sorry, what enclosure?

Q. That letter we were just reading, Woodcock letter. You got that, it looks like you got it from Christopher Vaughan and you sent it on to Owen O'Connell but you can't remember, that's

A. No. But I must have sent it I said I did.

Q. Yes. And then the final document is just something Mr. O'Connell was looking for if he was going to act in the matter, which was instructions from Westferry Limited, isn't that right, Mr. Vanderpump in the Isle of Man?

A. Yeah.

Q. I wonder would you move to Tab 61, and I think where you and I may be having confusion is, when the document is normally behind that number.

A. Yes, I understand how it works now. Can you excuse me a moment? Mr. Chairman, I apologise. I have been told I should be addressing you with my answers, but I find it rather difficult to adopt to

CHAIRMAN: I think it's easier if you talk to Mr. Coughlan.

A. It is indeed. Thank you very much.

MR. COUGHLAN: Now, this is a letter which is sent to William Fry's, and it's from Messrs. Woodcock & Sons, Kevin Phelan's solicitors. And it's dated the 12th June, 2002.

"Dear Sirs,

"We act on behalf of Kevin Phelan who acts for the Glebe Trust.

"We are instructed that are outstanding fees and costs in relation to the above project. We are further instructed that there was an agreed uplift of 40% of the profits of the project. Our client has forwarded details of these claims in the past which are attached.

"We are instructed that our client is prepared to accept  $\frac{1}{2}$ 150,000 sterling in settlement of any claims for

outstanding fees or uplift in relation to the above.

"Our client has made it clear to us that it is a condition however of this offer that such sum be paid to our client account (details below) by 4pm on Monday the 17th June, 2002."

Now, that is what one of the things Mr. O'Connell wanted, wasn't it, I think he wanted a notification of claim, he wanted somebody to say "Look, this is what we're claiming", he want that had from Kevin Phelan or from his solicitors

A. Well, if you ask me the question, I don't know how solicitors work, but it would seem he wanted some confirmation.

Q. Yes. And I just wanted to go, if you go behind the next tab, 62. This is a fax from Mr. Denis O'Connor to you of the 14th June, 2002, and he is sending on to you the same letter which has gone to Messrs. William Fry Solicitors from Woodcock's, or a copy of it, and a letter, a copy of a letter which had been sent to him by Woodcock's about the same claim and it also includes the details, or the invoice in respect of the claim. So it looks as if Mr. O'Connor was being copied as well and he was sending matters to you, doesn't it?

A. It does of course.

Q. And does that seem how things were going along as far as you are concerned? Mr. O'Connor was in the loop as well?

A. If you recall, I asked Mr. O'Connor's help. He was dealing with Kevin Phelan, and obviously Kevin Phelan's solicitors,

through Kevin Phelan. I am only guessing at this now, you are asking me to go back I wasn't involved in this.

Unless somebody says this is all to do with Denis O'Brien's instructions or something. I wasn't involved with that.

Does that help you?

Q. Well, it does and it doesn't. I suppose what I really you see the reason I am asking you can you help the Tribunal, is because the correspondence seems to be either written by you or addressed to you, and the solicitors' notes seem to indicate that there were conversations with you. Now if you can't remember, that's fine, Mr. O'Brien.

But that's the reason I am asking you.

A. Yes, well I am sorry I can't remember. But if it's correspondence from me, I accept it but I can't remember it, okay.

Q. I appreciate the point you are making.

A. Mr. Coughlan, I am sure you will appreciate, if this was correspondence about six months ago and I was involved in it, of course I'd have some memory of it. But we are going back nearly five years. It's very difficult for me to would you agree?

Q. Yes. I haven't criticised you once about that, Mr. O'Brien, have I?

A. All right, okay.

Q. Would you go to behind Tab 65 now, Mr. O'Brien? This is a note or an attendance made by Ruth Collard, who was the solicitor in Peter Carter-Ruck?

A. Correct.

Q. And it seems to be recording a telephone conversation she had with you I think?

A. With me?

Q. Yes.

A. Okay.

Q. Well, I think the only Denis O'Brien she ever met was you?

A. No, I am the only one.

Q. It's dated the 20th June, 2002.

"Ruth Collard attending call in from Denis O'Brien. DOB said RC had previously been talking to Sandra Ruttle about this matter and he understood RC was waiting to speak to Aidan Phelan. He had left an urgent message for Aidan Phelan to call RC and said he hoped that she would hear from him shortly.

"Denis O'Brien said he had one or two questions for Ruth Collard. He asked about the proposal to arbitrate the case. Ruth Collard said she was in a little difficulty speaking to Denis O'Brien as she was not entirely clear where he fitted in and she had to be conscious of client confidentiality. Denis O'Brien said he appreciated this and he could tell Ruth Collard that he owned the Wellington Trust which was the ultimate owner of Westferry. Ruth Collard said she would still like to speak to Aidan Phelan but she would give him a brief outline of the current position. We were not discussing arbitration but mediation which was a different matter. Denis O'Brien asked if there

would be a binding decision at the end of the mediation.

Ruth Collard said there would not. Outlining to Denis O'Brien how such a procedure worked and that if it failed, the action would simply continue from where it had left off. Ruth Collard said about 90% of the mediations succeeded and both of those she had been involved in had succeeded but there were no guarantees.

"Denis O'Brien said they were currently in this position with Kevin Phelan and had a letter from Reg Ashworth to him. Denis O'Brien said he refused to speak to Kevin Phelan himself but through an intermediary had asked Kevin Phelan what the current position was following that letter and whether he was going to be a witness. Ruth Collard said what Denis O'Brien was mentioning made her extremely uncomfortable. She asked if the letter he was referring to was one from Reg Ashworth to Kevin Phelan. Denis O'Brien said it was, and he could fax it through. Ruth Collard said she did not want to see it. She asked how it was that we had got hold of such a letter and said that it was privileged. In addition what Denis O'Brien had said about Kevin Phelan being a witness concerned her. This is why she wanted to discuss the matter with Aidan Phelan. Any payment made which could be represented to be in connection with Kevin Phelan's evidence in this matter would be improper and a serious matter. Denis O'Brien said it was nothing to do with him being a witness but he was not going to reach a settlement with him on the outstanding fees when

it appeared that Kevin Phelan was going to give hostile evidence. Ruth Collard said this concerned her and she was concerned about how it could be presented. She did need to discuss it with Aidan Phelan.

"Denis O'Brien reiterated that he had left a message for Aidan Phelan and hoped he would contact Ruth Collard soon."

Do you remember that telephone conversation?

A. Just a second, I am just reading it.

Q. Sorry, I beg your pardon.

A. Yeah, I'll just make a comment on this if I may?

Q. Yes.

A. The second paragraph: I would never have spoken like that.

When I read that, I think you were kind enough to say you

should read this file, I think I was reading it last

evening, this letter. I am very confused about it. I'll

tell you why. I would never have talked about "I was the

owner of" said that I was the ultimate owner of

Westferry.

Q. You owned the Wellington Trust which ultimately owned

Westferry?

A. Sorry?

Q. I think it says you were the owner of Wellington which was

the ultimate owner of Westferry?

A. I would never have said that. I don't own it.

Q. Who does own it?

A. It must be my son. Westferry is owned by Denis, my son.

And if it's held by the Wellington Trust, it must be Denis.



But is she saying that I said? Ruth Collard, is she saying I said I was the owner of the Wellington Trust? It's just a moot point but I am trying to get a feel for this.

Q. I am just wondering, did you have this telephone let's go through a few other matters in it because there are a number of points in it, I suppose, which are things you might or might not remember.

A. Could I help you, Mr. Coughlan? I don't want to be rude now. But please ask me directly, what makes you unhappy about this?

Q. Nothing makes me unhappy about you or anything, Mr. O'Brien. All I'm doing is asking you questions for the purpose of this Inquiry.

A. Okay.

Q. Now, what I just want to know. First of all, do you remember having a conversation with her?

A. No, I am sorry, I don't.

Q. Right. Do you know if your son, Denis O'Brien, had a conversation with her?

A. I do not know, but I am nearly positive he never spoke to Ruth Collard. Denis gave me this whole thing. He was so busy everywhere, and now, subject to being contradicted, I don't believe he ever spoke to he ever met her, nothing.

Q. Do you remember whether you ever had in your possession a letter from Mr. Reg Ashworth, who was Dinard's solicitor, which had come via Kevin Phelan?

A. I could have, I can't remember it, but that might well have happened.

Q. Do you remember it?

A. I can't remember it, but it could have happened. Sorry.

Q. Right.

A. What's the significance of that?

Q. I am just inquiring at the moment, Mr. O'Brien, to see what the significance of any of this is.

A. Okay.

Q. Do you ever remember receiving any advice or caution from Ruth Collard concerning Kevin Phelan as a witness and the question of payment?

A. No.

Q. You don't remember that?

A. No.

Q. All right. Well, if you don't remember, I am going to pass on from it, Mr. O'Brien.

A. Whatever, yeah. I am sorry I can't help you.

Q. I wonder if you'd go to behind Tab 67, Mr. O'Brien?

A. 57?

Q. 67.

A. Yes.

Q. And this is a note it's an internal Fry's note, and it's from Mr. O'Connell to Mr. O'Sullivan dated 24th June, 2002. And he is informing Mr. O'Sullivan?

"Herewith letter received on Friday last from Denis O'Brien Senior together with my reply. I subsequently had a

conversation with him, in which I explained that I had no knowledge of the Doncaster Rovers matter. He accepted that and suggested that the letter to Woodcock and Co. should require, as part of the overall settlement, a written account by Kevin Phelan of the negotiations leading up to the dispute and of the dispute itself (the same to apply to any other dispute regarding Westferry which is current).

"I would be obliged if you would issue a draft letter as instructed to Woodcock & Sons and a copy of it to Denis O'Brien Senior. The letter to them should be clearly identified as a draft and issued without prejudice in accordance with Denis O'Brien Senior's instructions herewith."

Do you remember issuing that instruction?

A. Do you mind if I just read the letter myself?

Q. Yes, of course. That's fine.

A. Thank you.

Q. Do you remember you can see if you go behind two pages, you can see that you have sent this matter over to Mr. O'Connell, and I think it's, it seems to be your instruction, but it's PPed by D Fogarty, do you see that?

Was that somebody working in your office or

A. Probably, yeah.

Q. I take it you don't have any recollection of seeking from Mr. Kevin Phelan an account in relation to the negotiations or the dispute?

A. I can't remember it, no, I am sorry. Can I just point out,

Mr. Coughlan, I am trying very hard to be helpful. I am sorry to keep saying "I can't remember" but there is no point in saying otherwise.

Q. All right. Well, I suppose the only thing if you just look behind there, it's your fax, which is Pped by D Fogarty. If you just look at the

A. Sorry, this is the one "Dear Owen"?

Q. Yes.

A. And it's to Mr. Owen O'Connell. And it starts off "The following is intended only..."?

Q. Yes. "To finalise the problem with KP and Westferry and Doncaster Rovers.

"The enclosed letter is self-explanatory and you will see that it is dated the 13 February 2002 and written by Ashworth, solicitors and addressed to Kevin Phelan.

"With reference to this letter could I please have your opinion that if Kevin Phelan should become or indeed is legally bound to become a witness in all of the disputes relating to Doncaster, does this in any way complicate our draft letter addressed to his solicitors, Woodcock & Sons. Regarding the dispute in relation to the escrow account or indeed any other matter for example contingency funds which are being held by us to meet any other potential outstanding claims from third parties which the Doncaster club may be responsible.

"I spoke yesterday with the English solicitors appointed by Aidan Phelan who represent Westferry. I was informed that

Dinard Trading and ourselves have agreed to mediation only very recently. My question is do you believe any of the foregoing could prove a disadvantage to us in the future and specifically relating to finally getting rid of KP now?."

"Important: Could you please in any case send to Woodcock & Sons your draft letter for KP's eventual signature make it quite clear at the top of the letter whatever you feel is appropriate such as 'without prejudice' and of course leave the draft unsigned. The reason I ask you to do is because I have been told that KP will not complete all other outstanding disputes until he has some form of communication from us indicating that we are ready to settle re Doncaster.

"What I am asking is do you in light of the foregoing think your draft letter which we must now send to Woodcock & Sons to progress everything will cover us totally and completely regarding all contingencies into the future insofar as we are concerned with KP, Westferry and Doncaster.

"Kindly acknowledge safe receipt of the telefax."

I know you don't remember sending this

A. But I did sign the letter.

Q. It's Pped but I think it is your

A. No, no, it's my secretary.

Q. It's your secretary or somebody, yes. What, or maybe you can't, what were the contingencies, can you remember, in relation to KP that you were the future contingencies in

relation to KP regarding Westferry and Doncaster, can you remember?

A. I don't know if I'd call I don't know whether I was correct in calling it a contingency. Now, I can't even remember this letter, but I accept responsibility for it, okay. But what my I remember one of my big concerns was, somehow we had been told he was going to give evidence possibly against us in the pending High Court, okay? I don't know if I am jumping ahead too far.

Q. No, no.

A. But my concern was, could we possibly find out from what exactly, could we get some narrative from him, what exactly what his whole part in this so that we'll have a good idea what he is going to say in the High Court when we go there. I don't know if that helps in this

Q. It does indeed, yes.

A. And I was trying to even make it a condition probably of finally paying him, not a condition that he had to do it, but as a sort of a way of getting this other information from him, we'll pay you, but can you please tell us, give us an idea of what sort of evidence you are going to give. I was trying to prepare us for the High Court.

Q. Yes, I see the point you are making.

A. I don't know if that ties in with this.

Q. Sorry, I see the point you are making.

A. Okay.

Q. And then if you go to the next tab, this is a letter from

Messrs. William Fry's, dated the 24th June, 2002, and there they are carrying out your instructions that you want a narrative of some sort; isn't that right?

A. All right, okay.

Q. That's the letter that was sent to Woodcock.

A. Okay.

Q. And then, if you go to the next tab, which is Tab 69, behind 69, the last one in the book. This is a response from Woodcock's dated 28th June, 2002.

It's addressed to your solicitors, and it reads:

"Dear Sirs,

"Thank you for your fax dated 24th June 2002, attached to which was a draft letter dated 21st June 2002.

"We understand that your client is prepared to authorise you to issue the correspondence dated 21st June 2002 subject to you first of all receiving a narrative account of our client's position regarding the negotiations leading up to the conclusion of a deal and the subsequent ongoing dispute with Dinard Trading."

A. Can I just stop you please?

Q. Yes.

A. In the second paragraph "We understand that your client is prepared to authorise you." Who are they referring to, do you think?

Q. Well I think what they are saying is, what they are saying is that "our client", that's what they are saying. That's probably

A. Why do they say "Your client"?

Q. I don't know. I didn't write the letter.

A. Okay. No, I understand it, Mr. Coughlan. I just thought you, having reviewed it, you might have some idea about it.

You haven't? Okay. So maybe that's mistype, he must mean our client.

Q. I think you are probably correct.

A. Okay.

Q. "The reality is, as you appreciate, our client is anxious to bring matters to a conclusion. Terms of settlement however have to be satisfactory to both sides. Our client previously put forward a proposal which has been rejected by your most recent correspondence.

"To avoid any confusion, we would identify therefore at this stage that there are no concluded terms of settlement in this matter. The purpose of this correspondence is to see if it is possible to negotiate terms.

"The first issue therefore to assess is whether our client is in a position to provide the narrative that you have requested. There are two separate issues to the narrative:

- "1. Negotiations leading up to the conclusion of the deal.
2. The dispute with Dinard Trading.

"Dealing with the first issue, our client is in a position to be able to provide a narrative as he was directly involved in relation to these negotiations. We would make it clear however that these negotiations were very intense negotiations over a nine month period. There is a



substantial volume of documentation to evidence that negotiations, which would run to several leverarch files. For our client to be able to review all of this documentation and to prepare a narrative (bearing in mind the length of time that the negotiations go back) would be a very substantial exercise. We would envisage that it would take our client the best part of a week to prepare a narrative and that during this period of time he would need the assistance from the writer to enable the same to be concluded. As you appreciate, our client is busy on other projects and does not wish to spend this length of time unless it is wholly necessary. Further, as you appreciate, our client would not wish to incur the expense of having to do this if it was not wholly necessary. Due to the difficulties therefore in the preparation of the narrative, would you please clarify the precise reasons as to why this is needed. Christopher Vaughan was the solicitor who was instructed in relation to the negotiation and conclusion of the deal in this matter and no doubt he would be able to provide you with his files on the basis that he was instructed by Westferry Limited (currently your client).

Please revert to us on this.

"Secondly, our client has not in any way been involved in the ongoing dispute with Dinard Trading. Our client has no precise knowledge as to the nature of this ongoing dispute. We believe it would be helpful if it is that our client was to let you have sight of the correspondence that was sent

by him to Aidan Phelan of Bryan Phelan & Co. Chartered Accountants recording the position as of the 21st November 1998, some 13 weeks after the project had commenced. This identifies at that stage the difficulties that our client was having in this matter with Aidan Phelan. We further attach correspondence from our client to Aidan Phelan recording the outcome of the meeting on the 9th August 1999. This identifies at point 1 that Aidan Phelan was to deal directly with Andy White in relation to all matters in relation to the joint venture. In essence, this therefore meant that any issue relating to payments being made out of the retention fund would fall directly upon Aidan Phelan and from that day on our client ceased to have any direct involvement whatsoever with the retention fund or Dinard Trading. If it is that you wish to raise specific questions therefore in relation to the dispute, would you please let us have those. At the moment your our client can add nothing further in relation to the general request that has been made.

"With regard to the possibility of a settlement as a whole, if it is that you are saying that it is a condition precedent that your client must receive a narrative account of the position as stated above, then we look forward to hearing from you in relation to the issues that have been raised by us. If your client however is prepared to make an offer to our client to settle ongoing matters without being a condition precedent that a narrative account be

received, then please let us know the precise terms of your client's offer. Upon receipt of the offer we will then take our client's instructions.

"We trust our client's position is clear. Should you require clarification however on any issue, then please do not hesitate to contact us."

So that's their response. They are saying in the first instance, look there is an awful lot of stuff here. It's going to take a long time. I need the assistance of solicitors. I am not going to bear the costs. It's the fairly normal sort of thing that goes on.

A. This is a letter in response to our request

Q. For a narrative?

A. For a narrative, okay.

Q. But then he says that, you know, sort of, the negotiations leading up to concluding the deal took a long time.

Christopher Vaughan was the solicitor. Can you not get the file from him. And he then goes on to say, we weren't I wasn't really, our client wasn't really involved in the subsequent disputes in relation to the running of the affairs. And then he says, "Look, I'll tell you what I will do, at the moment do you want to make an offer or is it a condition precedent that you supply, that I supply a narrative? But in the meantime I am sending you on some documents anyway." And that's what happened.

A. Yeah. But I don't think we pursued it after that, did we?

Q. Well, I think I might just look at the documents which

he sent along because I think one of the documents

A. No, sorry, Mr. Coughlan, just to ask you, to refresh my own memory, you obviously have been through it. I don't think we insisted upon it being a condition to pay him since we couldn't get the narrative, I think we said we'll just pay him anyway, is that what happened?

Q. That might be right. I don't know. But

A. Well I am guessing.

Q. Yes, I know that might be right

A. From memory.

Q. But something happened between

A. In the meantime.

Q. In the meantime.

A. And is this it what you are going to read now?

Q. It is.

A. Right.

Q. And one of the documents that Woodcock's sent was a fax which had been sent to Mr. Aidan Phelan back in August of 1999. And it's the final document in this book.

Now, this was a historical document. It wasn't generated during the currency of this particular negotiation?

A. This created a lot of problems.

Q. It did.

A. It did indeed.

Q. And it's a fax just read through it quickly. It's from Gameplan, that's Kevin Phelan anyway and it's to Aidan Phelan, and it's August of 1999. And it starts off.

"Doncaster project.

"Following our meeting on Monday 9th August, this is a note to confirm our discussions and also detail the correspondence which has taken place to date between McAlpine and Westferry." That related to sorry, that first aspect related to potential development. That was the business side of things.

A. Okay, yeah.

Q. "1. Joint venture.

"Aidan Phelan will now deal directly with Andy White in all matters involving Asda, B&Q and the Council relating to the development at Belle Vue and additional land which will be made available by Doncaster Council.

"Kevin Phelan will continue to correspond directly with the Board of the football club and in particular determine all grant aid available for the project. Kevin Phelan will also endeavour to establish the stadium specification and the cost for the construction of the stadium.

"2. McAlpine/Westferry list of correspondence.

"McAlpine to Westferry/Kevin Phelan.

"A) letter 14th June 1999, detailing way forward including stadium costings.

"B) copy draft programme received from Stephen Baker 22nd June 1999.

"Westferry (Kevin Phelan) to McAlpine (Stephen Baker)

A) Fax 16th June confirming meeting, agenda copied to David Pritchard and David Needham .

B) fax 24th June minutes of the meeting.

C) fax 9th July regarding plan/appraisal preparations.

D) fax 24th July regarding minutes of meeting.

E) fax 24th July regarding plans from David Lyons & Associates.

"3. Retention Fund.

"Christopher Vaughan and Craig Tallents will meet with Reg Ashworth on Thursday 12th August to discuss the accounts which have been produced.

"4. Outstanding Expenses.

"Aidan Phelan will make payment this week of the two invoices received. All invoices received by Aidan Phelan will be for his records only.

"5. Altrincham.

"Kevin Phelan to prepare a report on this project for Aidan Phelan.

"6. Luton.

Kevin Phelan to prepare a final report on this project.

"7. ML.

Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan.

"It is agreed to continue holding regular meetings on the Doncaster project. It has been taken on board our shared concern regarding McAlpine and in particular the other side which McAlpine have in Doncaster and also conflicts regarding construction, costings and appointment of their own professional contacts.

"Regards, Kevin."

A. Mr. Coughlan, sorry, what was the date of that? It's not on the screen.

Q. It was the 11th August, 1999.

A. 11th August, 1999. Thank you.

Q. Now, that was nigh on three years previous to your involvement; isn't that right?

A. Mmm.

Q. And well, not that I have seen anyway in that intervening period, was there any document which suggested, or sought clarification that there was anything amiss with

Item Number 7:

"ML.

Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan."

But when Mr. O'Connell saw this, it caused a problem?

A. When Mr. O'Connell saw

Q. When Owen O'Connell, when he got

A. It caused me a problem first of all.

Q. I understand that.

A. I was most upset about it.

Q. Did you have any doubt as to who the ML referred to yourself there?

A. Well you know, ML, you hear ML everywhere, Michael Lowry. But would you like to hear what I did about it?

Q. Yes I'm going to take you through the documents in fact.

A. Sorry?

Q. I am going to take you through the documents. I would like, I'd very much like to hear

A. Sorry, you want to take me through something first?

Q. You tell me what you did about it and we can go through the documents then.

A. I said first of all what in the name of to Fry's solicitors what in the name of God is that reference?

Okay? I was completely dumbfounded by it. So were Fry's.

And I said, there is no question of paying this man anything until he gives us an explanation of this. First of all, we were asking for a narrative, okay? We didn't ask for any background memos that he may have had in his possession. Why did he send that out of the blue? We never asked him for it. We were asking him for a narrative. I am just trying to explain to you where I was coming from at that time.

Q. I understand, yes.

A. I insisted with Fry's that they write to him and point out, we are not paying him anything until he gives us an explanation what does that point 7 actually mean, okay?

Q. Yes.

A. And I think there should be documents to show that Fry's did write to him not once, but several times for an explanation of it. We could not get it from him.

Eventually, eventually, somewhere down the line, he gave an explanation that it referred to one of the properties that



he was involved with with Michael Lowry much earlier on and not Doncaster. That was Kevin Phelan's explanation finally some time later. It was something to do with Cheadle or somewhere else Mansfield, but it had nothing to do with Doncaster. And it was on the basis of that, that we paid him. Does that help you Mr. Coughlan?

Q. It does. And I'll just take you through the documents, if I may then. First of all, as you say yourself, the "ML" reference in this document and the first thing that occurred to you, as you said, "ML", Michael Lowry, that was the

A. Yeah, sure.

Q. That's what jumped into your mind; isn't that correct?

A. Absolutely.

Q. And it entered Mr. O'Connell's mind as well?

A. Absolutely.

Q. It says "Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan under the heading ML". So Michael Lowry and Doncaster are the two things that you see as linked there?

A. Yes, because, now let me go on to say, please. In all of my dealings in Doncaster, in every foot of the way, Michael Lowry's name never, never came into the discussions or possibilities or anything. He was never, never, never mentioned. That's why I was totally flabbergasted with this reference to him, ML, Doncaster.

Q. But what caused you what caused you to inquire, I am not

going to say concern, what caused you to inquire was that here was a reference to Michael Lowry and Doncaster, isn't that right, as far as you understood the matter at that time?

A. Well, I had several concerns. Why would he why did this individual, when we were asking for specific information by letter, we didn't ask for a copy of his faxes to various people. Why did he my first why does he act like that? Why does he send that to us? Is this some form of blackmail or what is it? That was my first concern. It was a funny way to reply. He sends us an old memorandum or something. What was the date of that please again, Mr. Coughlan?

Q. The memorandum the fax was dated the 11th August 1999.

A. Well, 1999, I mean, why did he send that to us when we were asking him for a narrative and then trying to make arrangements to pay him and that. It sounded terribly strange to me and some form of it had to be some form of intimidation or blackmail or something. I can't like, I have no other explanation for it except that, can I just again reiterate, you will forgive me Mr. Chairman, we did everything we possibly could. We did not ignore it. Our solicitors wrote not once, several times, asking him for an explanation before we would make payment. We could not get an explanation. He would not respond. He would not even respond to say "That is Michael Lowry and that is Doncaster, that's why he is in" he never responded to

that. We couldn't get anything out of the man. This was a very difficult individual. Very difficult individual in my experience, my short experience of him. But, I want to emphasise to the Chairman, that we did not just ignore that willy-nilly, pay over the money, let's see if we can keep that quiet. We did everything. In letters, William Fry's, it must be in their file, we wrote to him, we asked him, not once, twice for an explanation of this.

Q. Never brought it to the attention of this Tribunal; isn't that correct?

A. I never brought it?

Q. You, yes.

A. At what stage. I am only

Q. At this time. You never brought it to the attention of this Tribunal that a query had arisen which had caused you concern and had caused concern

A. Excuse me

Q. Would you just listen to the question first?

A. Okay, go ahead.

Q. And had caused concern in the firm of William Fry's that there was a reference which caused concern and inquiries to be made as to whether there was a connection between Michael Lowry and Doncaster in a document in the firm; that was never brought to the attention of the Tribunal, was it, Mr. O'Brien?

A. Now hold on

Q. First of all, was it brought to the attention of the

Tribunal?

A. No, no, it wasn't. But that has nothing to do with me. I was taking advice from William Fry's. It was for let me finish please. Surely it was for William Fry's to say "Mr. O'Brien, this has to be given to the Tribunal." Had they said that to me I would have said, "of course." But that never I am a lay person.

Q. And I accept that.

A. Don't give me the responsibility of not telling the Tribunal. It was not me who did not tell it. I was in the hands of my solicitors.

Q. All right. Well then, what we'll do so, we will perhaps look at the documents because there is no doubt about it, that Mr. Owen O'Connell, and I want to acknowledge Mr. Owen O'Connell as being a very responsible and good solicitor, took certain steps, isn't that correct, when he saw this. He wanted clarification about the ML reference re Doncaster; isn't that correct? That's what he wanted.

A. Yeah but

Q. And I am saying you did too?

A. Excuse me, Mr. Coughlan. I want you to go on to say it was, therefore, Mr. O'Connell's fault that he did not tell is that what you are saying?

Q. Oh, no.

A. What are you saying then? Whose fault is it?

Q. Mr. O'Brien, I most certainly

A. But whose fault is it?

Q. I want to be very clear about this, Mr. O'Brien. I am not saying that anything is Mr. O'Connell's fault.

Mr. O'Connell is a responsible solicitor. I am not, and the Tribunal has never suggested

A. You just inferred it was my fault.

Q. Mr. O'Brien, you were the client here. I just

A. I am in the hands of my solicitors.

Q. Sorry, well we'll go on and we'll look at

A. Would you mind withdrawing that, then?

Q. I didn't withdraw and I won't withdraw anything because I haven't said anything that I need to withdraw.

A. You did infer it.

Q. Mr. O'Brien, we'll move on and we'll look at what occurred.

A. Mr. Chairman, can I appeal to you, am I being fair here or not?

CHAIRMAN: I don't think Mr. Coughlan has made any accusation. He asked you had the matter then been brought to the Tribunal's attention? You said that it had not, but that you were the lay client and you viewed it as a matter within the expertise of your solicitors. I don't see anything that Mr. Coughlan said to you

A. I thought he said "should you not have brought it"

MR. COUGHLAN: No, I didn't. I said "You didn't, did you?"

It's a matter of fact you didn't.

CHAIRMAN: Well, I have to reply, Mr. O'Brien, and there is no question of any finger being pointed.

A. And there no question of my behaviour me behaving in any

way dishonourably regarding this matter?

CHAIRMAN: We are not concerned at this stage with any question of a finding or so in that light. We are just looking into the facts.

A. Okay.

MR. COUGHLAN: I am going to ask you to look at the second, and I'll get it for you now, the second yellow book, Mr. O'Brien. It's just the continuation of the documents.

A. Am I finished with this book?

Q. Yes, you are. Thank you very much. I suppose I should just perhaps, if you look at the first set of documents, it's just a copy of the

A. What number please?

Q. I am going to pass over. I just want to say that at 70 it's just a copy of the Woodcock's letter and the enclosures that we have just been discussing, and they are being sent from William Fry's to Ms. Sandra Ruttle.

A. Okay.

Q. That's what I'm saying.

A. Okay.

Q. And I think, you know, in fairness to everybody including Mr. Kevin Phelan in relation to all of these matters, what the letter from Woodcock's was really saying was this: Our man, Mr. Phelan, Mr. Kevin Phelan, was involved in the first part, that is the negotiating and the concluding of the agreement. In relation to matters thereafter, Mr. Aidan Phelan was running the show, effectively, and

that it might be more appropriate that matters might be taken up with him. I think that's what they are saying in relation to it. And, after all, Mr. Aidan Phelan was a trusted advisor and business associate of your son; isn't that right?

A. He still is.

Q. And still is. Now, if you go to Tab, behind Tab Number 71, and this is a fax from William Fry's to you "attaching a final version of a recent letter from Woodcock & Sons which is slightly revised from the draft you have proofed and I will explain if you give me a call. I am out of the office for the week but you can get me on my mobile". And it's Mr. Owen O'Sullivan. Do you remember having a call with Mr. Owen O'Sullivan on his mobile?

A. It must be right, if it's documented here.

Q. I know maybe you didn't, you see, that's the whole he is asking you to have one, maybe you didn't, I don't know?

A. Let's assume I did for the moment.

Q. You don't have any recollection of it, do you?

A. It's so long ago. Excuse me, Mr. Chairman, may I take my coat off?

CHAIRMAN: Of course.

Q. MR. COUGHLAN: Would you like to take a little break or anything

A. Not at all, I am enjoying this.

Q. Now, if you look at the draft which Owen O'Sullivan has sent you. It's addressed to Woodcock's and it says: "Dear

Sirs,

"Thank you for your fax of the 5th July 2002 and for your follow-up on the 7th July. With the later fax you enclosed a fax from your client to Aidan Phelan dated 11 August 1999. As a prerequisite to being able to take this matter any further can you please clarify who the 'ML' referred to at 7 is?

"Subject to getting that clarification, our client simply requires a narrative, signed by your client as outlined in our letter of 4 July 2002. That narrative should recite who retained your client, from whom your client took instructions, to whom he reported, a general description of the project followed by some broad chronological description of significant events. A broad indication of the time and expense incurred to back up the invoices furnished should also be included.

"While we appreciate that this will involve some time and input from your client, we don't believe it should necessitate the amount of work you suggest in your letter of the 28th June 2002 and our client's position is that the settlement figure proposed would include and cover any costs or expenses your client might incur in preparing the narrative.

"We await hearing from you."

So Mr. O'Sullivan, or Messrs. William Fry Solicitors are saying, look, this is what we think you need to do. We don't think it's going to take as long as you thought



yourself, but we are prepared to meet your reasonable expenses in carrying out that work. That's what

A. Mm-hmm.

Q. Now, I think you the next Tab 72, I don't think anything much turns on it. It's just your you had a conversation, it looks like you had a conversation with Aidan Phelan, and you are just recording for Owen O'Sullivan's information, matters that Aidan Phelan indicated might be necessary to close off Doncaster and it's getting various agreements and tying off no claims against directors of Westferry, no claim against Craig Tallents, it's the full gamut of that.

A. Okay.

Q. Now, if you go to Tab 74, and this is a letter written by Woodcock's, dated 24th July, 2002.

"Dear Sirs,

"We refer to previous correspondence between ourselves attempting to negotiate terms of settlement.

"There have been further discussions as you appreciate in this matter and our client is now anxious to look forward to crystallising terms of settlement.

"We understand from our client that the correspondence that you now require differs to that previously requested. We attach draft correspondence that is without prejudice to our client's right to pursue claims in this matter which we should be grateful if you would review and approve. If it is that this correspondence can be agreed, then of course

subject to being in receipt of the agreed settlement figure due from your client in relation to the above, we believe that we can crystallise terms of settlement. We would propose that settlement be agreed by way of exchange of correspondence including the draft letter.

"Please contact me at your earliest opportunity to progress this matter. We are instructed now by our client that due to previous delays, time is of the essence.

Yours faithfully."

And then the draft, which is submitted as being is the next document as being what they propose is

A. Sorry, is that the same is there another number?

Q. No, just behind that, you will see that this is what they are proposing as a draft to be acceptable for the purpose of settlement purposes.

A. Are we still at

Q. We are still at 74.

A. Okay.

Q. You see the second page of it. And it's to be addressed to Messrs. William Fry's and it's obviously to be on behalf of Mr. Kevin Phelan.

"Dear Sirs,

"We have been instructed by our clients in relation to the above project and that at all times we received direct instructions from Aidan Phelan to manage and promote this venture.

"The venture itself was involved and protracted but in

essence involved the acquisition of Doncaster Rovers Football Club and its grounds. The intent was to relocate the football club to new site and a purpose built stadium and to sell on the existing land (freehold) with planning permission.

"Our client reported solely to Aidan Phelan.

"We are instructed by our client that at all times he dealt with matters in a professional and competent fashion and further is satisfied with the benefit of hindsight that the action that he took and the view in relation to the retention sums was correct.

"We are instructed by our client that the above is a true representation of the event.

Yours faithfully."

That is what they were proposing they would give for the settlement.

And then the next document at tab is Tab 75. And you will see it's a handwritten note again of Mr. Owen O'Connell and behind it he has typed up the version.

A. Yes.

Q. And it's a file note from Owen O'Connell.

Client: Denis O'Brien Senior.

Owen O'Sullivan.

"1. DOB senior letter.

" put on inquiry by Woodcock, must make inquiries."

So he is saying we have been put on notice by this Woodcock letter, we must make inquiries.

A. What's the inquiry about again?

Q. Just listen. "Discussed OO'C proper inquiries are Woodcock as already.

D O'Connor as already plus follow-up who is ML Lloyd plus what is his connection?

" DOB no M Lowry connection and who is ML Lloyd?

" aware difficulties and regret them but matters on record and must be resolved."

The inquiries that Mr. O'Connell and Mr. O'Sullivan seem to be discussing is this

A. Is this an inquiry, an internal inquiry that they are setting up themselves?

Q. No. It is the inquiries that must be made because Woodcock's have put you on notice with the ML/Doncaster connection reference. And what the solicitors are saying here is, there must be an inquiry made, a proper inquiry made, who is ML in this context? There is

A. Excuse me, Mr. Coughlan

Q. Sorry, perhaps I could just come back for a moment. This was the 24th July.

A. Yes.

Q. In 2002. I just want to go back, because there is another note of Mr. O'Sullivan's. It's Tab 73. It's a handwritten note, and it's Mr. O'Sullivan's note. And it's dated the 16th July, 2002.

And it's:

"DOB senior Westferry.

David McCann ring"

David McCann is in Woodcock's.

A. Okay.

Q. These are instructions now that it looks like he seems to be getting?

A. From whom?

Q. It looks to be from you. According to this note anyway.

We'll just go through it anyway?

A. Okay, go ahead.

Q. "David McCann ring.

He can disregard request for confirmation of identity of

'ML' for moment.

" when client get back, deal with narrative."

Then it looks to be his attendance of a telephone

conversation:

"David McCann, he understands, hopes to speak with Kevin

Phelan on Thursday. Understands the request as reference

was made to initials but he doesn't know to whom they refer

himself." That's Mr. McCann didn't.

"Will be speaking to client on Thursday and will ask for

instructions and work on narrative. Will disregard request

for confirmation for the time being."

A. Yeah. Just a moment, do you want to ask me a question about that?

Q. I do. Do you remember it?

A. It has nothing to do with me. This is this has nothing

to do I never had that conversation. I never requested

this stuff. Absolutely not. He may have DOB/Westferry, but he is not saying DOB said this. He couldn't, because I never did say it.

Q. I see.

A. Okay?

Q. Yes.

A. Fine.

Q. Because it looks, again you say you didn't you couldn't have had that conversation with Mr. O'Sullivan. If you go to the memo behind Tab 75 now, that's Mr. O'Connell's from Owen O'Connell to Owen O'Sullivan, it looks as if what is happening here is Mr. O'Connell and Mr. O'Sullivan are discussing the matter, and what is being recorded is:

Look, Woodcock's have put us on notice with the ML reference. Once we are on notice, we are obliged to make an inquiry. It seems fairly

A. Yes, that's very straightforward.

Q. And what you'd expect from a solicitor?

A. Yes.

Q. And there are these references to a Mike or an ML Lloyd. Do you know where they came from?

A. Vaguely. That was an explanation that Kevin Phelan eventually gave us, I don't know how he gave it to us, but he eventually said it was a Michael Lloyd. But then later, I don't know where it is, but I can swear under oath I do recall later, but it must be somewhere in all these files, Kevin Phelan then said he made a mistake, so he changed his

mind again. He then made a mistake and said the ML was not Michael Lowry, it was referring it was Michael Lowry, sorry, it was Michael Lowry, it was referring to an earlier transaction. He made a mistake in saying Doncaster.

That's my best recollection. But just to help you on this, if I may?

Q. Yes.

A. I am not doubting the accuracy of all these scribbles and what they contain, but I am sorry to use the phrase again, it's mumbo jumbo to me. I had nothing to do with that.

Q. Fine. Well, can I take it so that it's mumbo jumbo to you

A. These scribbles and what they are saying in them. I mean, this is legal stuff, isn't it?

Q. Yes. It's a solicitor recording.

A. Yes, of course.

Q. And again, to be fair to Mr. O'Sullivan because you said you never said anything. Could it be that you just don't remember saying these things to Mr. O'Sullivan?

A. That I don't remember saying them?

Q. Sorry, you have said about a note made by Mr. Owen O'Sullivan, the solicitor?

A. We are looking at a note here. You told me to refer to it.

Q. But a previous note, the previous note, do you remember where we discussed that it looked, it looked as if the note was recording instructions he was taking from you to ring Mr. McCann and you said you could never have said it. In

fairness to Mr. O'Sullivan, could it be you are saying these notes are just mumbo jumbo as far as you are concerned, that you did say it, Mr. O'Sullivan recorded it but you don't remember now. Could that be it?

A. You are asking me. I am not going to be I am not going to try and see something into something I can't, I have no recollection of whatsoever. So there is no use asking me supposition, do you think, could it be possible? Anything is possible.

Q. No, and of course anything is possible, but in fairness to Mr. O'Sullivan here, Mr. O'Brien

A. But I am not demeaning Mr. O'Sullivan, absolutely not.

Q. Look, Mr. O'Brien, I just want to make it clear here.

Mr. O'Sullivan made a note.

A. Mr. O'Sullivan what?

Q. Mr. O'Sullivan made a note.

MR. O'CALLAGHAN: I might be able to clarify some matters which may be of assistance to the Tribunal. This actually wasn't a note of Mr. Owen O'Sullivan. Mr. Richard Breen, who is also a solicitor in William Fry, informs me that it's his note, and that's on page 73.

MR. O'DONNELL: That's the earlier note and this is the file note from Mr. O'Connell. You said it was Mr. O'Sullivan.

MR. COUGHLAN: No, the first note I understood as being Mr. O'Sullivan's note.

Q. But this is Mr. Owen O'Connell, this is Mr. Owen



O'Connell's note. Well, let's go back and I thank My Friend for clarifying who the solicitor in William Fry's is who made the note.

Can we take it that the note is made by a solicitor in William Fry's who were your solicitors acting in the matter, probably represents what you said but you can't remember it now?

A. No, I don't accept that.

Q. All right. Fine.

Now, we will go to Mr. O'Connell's note, which I always knew was Mr. O'Connell's note.

MR. O'DONNELL: I don't want to interrupt either Mr. Coughlan or raise matters in any inflammatory way, but we have just seen a memorandum prepared, we now know by a Mr. Richard Breen, referring to Mr. O'Sullivan and Mr. O'Connell discussing correspondence from Messrs. Woodcock in relation to their client Mr. Kevin Phelan, and the only thing those five people have in common is that none of them are witnesses or proposed witnesses at this Tribunal. Now, on Tuesday last, we asked the Tribunal for an indication, as it were, of what are the ground rules by which these, this hearing will proceed in relation to evidence? These matters not clearly being evidence in any other forensic forum, and I'm I appreciate that this Tribunal is not bound by the rules of evidence. But here, where we are so far into this forensic swamp, it would be helpful if we knew what are the rules the Tribunal proposes

applying to this information, and if we could have a response to that either written or oral, it would be helpful.

MR. COUGHLAN: The only thing I would say, sir, at this stage, this was a note about a telephone conversation. I do not understand the forensic swamp My Friend is talking about. I am inquiring of this witness of his dealings with his solicitors in relation to a matter, and recorded by solicitors. That's what we are dealing with at the moment.

CHAIRMAN: I don't think the Mr. Breen matter is going to be of immense consequence, Mr. O'Donnell. If at some stage it looms large in the future, of course I'll take whatever procedural stages needed to vindicate your client's interests.

MR. O'DONNELL: I fully appreciate that Mr. Breen is not a central character. I am just asking for some clarification on the more general proposition as to what are the ground rules, as it were, that the Tribunal applies to matters of evidence or information, if I can use those words, in general without any technical meaning and we have asked for that clarification. We had hoped it would be dealt with in the opening and I might ask for it to be dealt with.

Q. MR. COUGHLAN: Now, let's look at Mr. O'Connell's note, Mr. O'Brien. Mr. O'Connell wants clarification. He wants inquiries to be made, or he is advising that; isn't that right? And you say that the reference to Mike Lloyd or ML

Lloyd was an explanation which Kevin Phelan gave at one stage, and he subsequently came back and said, no, I was wrong, that it was a Michael Lowry

A. Sorry, I don't have that on my screen.

Q. I beg your pardon, do you see the ML Lloyd

A. Can we start at the top? The date is the 24/7.

Client: D O'Brien senior.

Matter: Westferry.

"OO'C where is the like?

Q. If you go down.

"DOB Senior letter.

" put in inquiry by Woodcock, must make inquiries.

"Discussed OO'C proper inquires from Woodcock as already.

" D O'Connor as already plus follows up who is Mike Lloyd? What is connection?

"DOB no M. Lowry connection. Who is Mike Lloyd? Aware difficulties and regret them but matter must be resolved."

Now, there are two names mentioned there; there is Mike

Lloyd, which you say was an explanation furnished by

Mr. Kevin Phelan as to representing the

A. Then it became null and void.

Q. And then you say that he corrected that and said "No, it's

Michael Lowry all the time." There is a reference there in

that note to Denis O'Connor. Now, did you have any direct

dealings with Kevin Phelan which gave rise to the name Mike

Lloyd?

A. Did I have any direct contact? No.

Q. Do you know if your solicitors ever received that explanation: Mike Lloyd, from Mr. Kevin Phelan's solicitors, for example, Messrs. Woodcock's or from anybody else?

A. Is there anything on file about it?

Q. Not that I can see.

A. I can't remember that.

Q. I beg your pardon?

A. There is something on it, is there?

Q. I'll come to it. Where do you think that the information, first of all, came from?

A. It had to come from Kevin Phelan. We are talking about ML, Michael Lloyd.

Q. Yes.

A. It had to come from Kevin Phelan.

Q. It had to come from Kevin Phelan?

A. Yeah.

Q. There is something on file about it and I'll take you to the next letter, if I may.

A. Right. What tab is it, please?

Q. I beg your pardon, 76, behind 76. This is a letter to you from Messrs. William Fry's, your solicitors.

"Dear Denis,

"I refer to the ongoing efforts to settle Kevin Phelan's claim for costs and an entitlement to a share in any profits on the Doncaster project.

"As you know, it was agreed that we would require as a condition of any settlement, a narrative from Kevin Phelan of his role in the project. Pursuant to that request, Woodcock & Sons solicitors sent us copy of correspondence between Kevin Phelan and Aidan Phelan which contains a reference to "ML" in the context of the Doncaster project. I told you that reference having been put on the record, we should make appropriate inquiries. We have allowed Woodcock & Sons' preparation of a draft narrative to proceed and a copy of that draft narrative as received yesterday afternoon is enclosed for your comment. Clearly it is not adequate in the context of what was sought, and you might consider what response should be made to it. It seems to us that at least three possible responses could be made:

- "1. Accept the narrative, even though it is inadequate.
- "2. Reject the narrative and demand (again) a comprehensive account of events.
- "3. Accept the narrative subject to the correspondence being annexed to it and confirmed as a true account of events (i.e. effectively make the correspondence the narrative). The narrative would also have to explain the; 'ML' reference (see below).

"I also agreed with you last week that I would review the 'ML' reference issues with you and with Owen O'Connell when he and I both got back from our holidays. Having discussed the matter with Owen, we are satisfied that having been put

on notice of the reference, appropriate inquiries have to be made. Subject to anything else you feel should be done, we think that the inquiries should comprise:

"1. Follow-up of our request to Woodcock & Sons the 11 July that they clarify the identity of 'ML' referred to in the correspondence.

"2. Since Denis O'Connor understood the 'ML' reference was to Michael Lloyd with whom Kevin Phelan had had business dealings for a number of years, we should ask Denis O'Connor to follow up on what Michael Lloyd's role might have been in relation to Doncaster. I understand that Denis O'Connor is making further inquiries in this regard today.

"3. Having regard to evidence given to the Moriarty Tribunal, we should ask Denis O'Brien Junior to confirm that Michael Lowry does not have any interest in the Doncaster project, and ask him whether he knows anything about Michael Lloyd.

"4. Since the correspondence is between Aidan Phelan and Kevin Phelan, we should ask Aidan for his explanation of the 'ML' reference, and who he understands it to mean.

"I regret that we have all been put to this trouble but hope you appreciate that we have no alternative in the circumstances.

"Yours sincerely

"Owen O'Sullivan."

Now, can you help us at all about the origins of the

suggestion, or a statement that the ML reference was understood by Denis O'Connor to refer to Michael Lloyd, do you know how that came about?

A. No.

Q. Did you have any discussions with Denis O'Connor?

A. No. But we must have he must have been asked. I mean, again, it would be Owen O'Sullivan or one of the solicitors would have a better recollection of that. We obviously were trying to find out.

Q. Now, I think it looks, when you carry on with the rest of the letter: "Having regard to evidence given to the Moriarty Tribunal which had asked Denis O'Brien Junior to confirm that Michael Lowry does not have any interest in the Doncaster project and ask him whether he knows anything about Michael Lloyd." That seems a sensible road to take?

A. Mmm.

Q. "4. Since the correspondence is between Aidan Phelan and Kevin Phelan, we should ask Aidan for his explanation of the 'ML' reference and who he understands it to mean."

A. Yeah.

Q. Again seems reasonable?

A. Of course.

Q. Now, the next document is a letter dated the 25th July, 2002 from Messrs. Woodcock & Sons

A. What tab is that, please?

Q. I beg your pardon, Mr. O'Brien, 77.

A. 77, okay.

Q. And it's a letter from Messrs. Woodcock's addressed to Messrs. William Fry's and it says:

"We refer to previous communications between us.

"We have today met with our client.

"Our client is anxious now to move this matter forward.

With the above in mind, we take it that you are in possession of your client's funds to the sum of  $i\frac{1}{2}$ 150,000.

"We have forwarded to you draft correspondence that your client is prepared to send in this matter. We further attach draft correspondence that we would require your firm on behalf of your client to send to ourselves.

"We are looking towards completing settlement of the outstanding claims between the parties in this matter on Monday of next week.

"With the above in mind, would you please confirm that you are authorised to transfer to our firm the sum of  $i\frac{1}{2}$ 150,000. We will hold this sum on account to your order. We would expect however to receive correspondence from you at the time of payment being transferred to us confirming that upon our client authorising us to sign the draft letter that has been forwarded to you and such correspondence being delivered to our firm and at the same time the draft correspondence attached being signed by your firm and forwarded to our firm, that the sum of  $i\frac{1}{2}$ 150,000 that would be held by us can thereafter be immediately released to our client.

"We detail below our bank".



So they are asking for confirmation that it's 150,000, subject to various matters clicking into place; isn't that correct

A. Mmm. Could I interrupt you?

Q. Yes.

A. It just occurred to me. You know this, we were talking about the ML reference Number 7. We had been asking for just to forgive me we had been asking for a narrative and no narrative came and this, out of the blue, dated some time before, this memorandum with Number 7, reference ML Doncaster, okay? Could I just point out to you, Mr. Chairman, it seems extraordinary to me the behaviour of these people, because, you know, this was a very straightforward thing we were asking. All he had to do was come back and say we are not giving you a narrative. Instead he sends us a 7 or 8 point old memo addressed to someone. What was that supposed to be going to do to us I wonder? Was that another form of, you know, intimidation? Threatening, you know, I have this sort of information I find it extraordinary.

CHAIRMAN: Well, I have got that point already from you, Mr. O'Brien, because you did say it at an earlier stage that they just sent the old fax and nothing else.

A. It's extraordinary. Sorry, Mr. Coughlan.

MR. COUGHLAN: Not at all.

Q. If you then go behind the next tab, Tab 78. I don't think I need the next matter is at Tab Number 79, and it's a William Fry memo, and the client is Westferry. It's dated

the 26th July 2002 and "Got on to Denis O'Connor. Has to have simple statement in reply to William Fry query no connection.

"Late Saturday O'Connor has assurance will give through Woodcock's.

"OO'C write W understand client happy to give assurance."

Do you know or did you have any knowledge that Mr. O'Connell may have been dealing with your solicitors about this?

A. None at all. Sorry, Mr. Coughlan, I have never seen that.

I have no knowledge of it.

Q. All right. Now, the next note, then, is behind Tab 80.

This is from Mr. Richard Breen, and it's a telephone attendance on David McCann of Woodcock's having spoken with Owen O'Connell in relation to Woodcock & Sons fax on Friday afternoon.

"I conveyed to David McCann that our client was extremely serious about concluding this matter, however there was a reference to ML in one of the copy letters he had sent to us which has created some concern. I explained that it was likely that we will need either an explanation of the reference or confirmation that 'ML' is not Michael Lowry or confirmation that Michael was not involved in the Doncaster transaction in any way. I said however that we expect our clients to clarify instructions in this respect on Monday and again stress that had our client was extremely serious

about concluding this matter.

"David McCann said he recommended that our client speaks to Denis O'Connor and that actions speak louder than words and that he will take his instructions.

"I passed this information on to Owen O'Connell who said that our client had already spoken to Denis O'Connor and that we need the necessary confirmation."

Do you remember having any discussion with Denis O'Connor about this?

A. I had nothing to do with that.

Q. If you then go to Tab 82. This is a letter from William Fry's to Woodcock's, dated the 29th July, 2002.

"Westferry Limited.

"We refer to recent correspondence.

"As confirmed to you by telephone on Friday, our client is serious about concluding the settlement. Some time ago in place of the narrative requested by our clients, you sent a certain past correspondence related to Doncaster Rovers matter. One of the letters contained a reference to an 'ML' in apparent connection with the matter and you must appreciate that the reference caused some concern.

"We understand that our respective clients have been in contact and that your client is prepared to give an explanation for that reference (as to it's referring to someone other than Michael Lowry or to some other matter) and/or to confirm in any event that Mr. Lowry had and has no interest in or connection to the Doncaster Rovers

matter.

"We confirm that our client will complete the terms of settlement on our receipt."

Do you remember that happening

A. Well it must be correct. It looks correct to me.

Q. Now, there was no difficulty at this stage about the amount. 150 was the amount that

A. Yeah.

Q. The difficulty at this stage was this reference to ML and Doncaster, wasn't it? That was the difficulty?

A. I mean, it came completely out of the blue.

Q. It came to you completely out of the blue?

A. It came to everyone completely out of the blue. We were asking for a narrative. And all he sent back was this old memorandum thing.

Q. Did you notice that between 1999 and 2002 and you taking over, there doesn't seem to be any request by Aidan Phelan made of Kevin Phelan to explain that reference?

A. Would you just rephrase that again, please?

Q. Yes, I will. Between 1999, August 1999, when the fax was sent to Aidan Phelan, and 2002, when you took over, there is no there seems to be no question

A. No correspondence?

Q. Yeah, arising on the part of Aidan Phelan asking what is this reference to is there?

A. No. No Aidan Phelan was gone now out of sorry, I don't have I don't understand exactly what you are trying to

get at.

Q. I am not trying to get at anything.

A. Excuse me, Mr. Coughlan. Let me just say maybe that's a bad way to phrase it. Remember, I had taken over. Aidan Phelan was no longer involved. I was hardly even asking him for help at this stage. So what's that to do with the ML reference?

Q. Up to, up to the time you took over, Aidan Phelan, virtually from the inception of this project, was running and managing it; isn't that right?

A. Oh, he was, definitely.

Q. And that particular communication was made to him as the person running the affair back in 1999 and there doesn't seem to be any query or suggestion that there was anything unusual about that reference between 1999 and 2002?

A. But neither you or I have any proof that that reference of ever made to Aidan Phelan.

Q. I suppose we do in that well, one presumes that the fax was sent to Mr. Aidan Phelan?

A. You mustn't presume. You are trying to deal with the truth and evidence.

CHAIRMAN: Mr. Coughlan, we'll be hearing from Mr. Phelan next week anyway, so I think we will pass on.

Q. MR. COUGHLAN: Now, if you go onto the next document

A. Mr. Coughlan, are we going to go through not necessarily today, all of this book? I mean, I'd like to have an opportunity to read it.

Q. Not all of it. Sorry, and if you do look, if you want an opportunity, just say it and

A. No, I don't, but I mean if it's going to be page after page, you know, but go ahead anyway.

CHAIRMAN: Well what I'll do, plainly we are going to need another day to finish your evidence because there are other matters relating to the mediation and the police complaint which I think is the primary remaining matter that Mr. Coughlan may be asking you about. There will be some of the barristers for other people, including your own, will be asking you some questions, but I'll see that you are given full information as to the main documents that the be raised and I dare say it will be possible to limit, over the weekend, the number of documents that you may have to be asked to consider.

MR. COUGHLAN: I intend finishing after the next document which is a reasonably lengthy one and I think we will call it a day for today on that, if that's all right.

A. We'll call it a draw, Mr. Coughlan.

Q. Very good, Mr. O'Brien.

CHAIRMAN: We did hear of your legendary contest with Mr. Hearn.

A. Oh, thank you very much indeed.

Q. MR. COUGHLAN: That's Mr. Eddie Hearn?

A. Yes, indeed.

Q. Now, I think the next document is a behind Tab 83, and it's a letter from Messrs. Woodcock & Sons to your

solicitors and it's about this issue.

"We refer to correspondence between us of last week and also to your fax received yesterday.

"It is our view that our client has done everything that is possible to agree satisfactory terms. You will be aware that our client is in negotiation with your firm on behalf of Westferry Limited, LK Shields solicitors on behalf of Bryan Phelan, together with Bryan Phelan & Co. and also Denis O'Connor on behalf of his client Michael Lowry.

There are also issues concerning Aidan Phelan and Craig Tallents, an English registered accountant, the writer liaising with Denis O'Connor in relation to these two individuals.

"Last Thursday, the writer together with Kevin Phelan, met with Denis O'Connor. Previously draft correspondence had been proposed by our client in relation to all parties and also a draft agreement in relation to Michael Lowry had been supplied. The terms of the draft letters and draft agreement were not satisfactory to Michael Lowry and Denis O'Connor. The key amendments to the agreements were amendments that Michael Lowry/Denis O'Connor required to protect themselves in relation to future claims.

"As a result of this, the same day correspondence was sent to Denis O'Connor for approval. As of Thursday afternoon therefore, it is our client's view that he had done all that was reasonably possible to agree terms of settlement in relation to all the parties that our client is in

dispute with.

"There was further correspondence that was sent, as you appreciate, by our firm on Friday in an attempt to progress matters. Matters however were not progressed.

"Our client now finds himself in a position where this matter is being further delayed in his mind for no good reason and finds himself being asked now to provide the impossible which he is not prepared to do.

"Our client is extremely disappointed that despite him doing everything that was lawfully possible to agree satisfactory terms of settlement, your client and those other parties associated to the above venture have not been prepared to crystallise terms of settlement. At this very late stage your client now appears to be imposing an unreasonable condition. Due to the very serious implications of the request that is now being made by your client, we have been specifically instructed by our client to terminate negotiations.

"As previously stated, there are currently no concluded terms of settlement and in those circumstances, our client will now review all options that are open to him and decide how best to proceed.

"We are further instructed by our client to make it clear that he was always prepared to proceed with settlement in the terms that had previously been discussed in outline but as a result of the terms of settlement failing to be reached today and in light of your most recent



correspondence, he feels he has no choice but to draw a line under the negotiations and move on in a way that is beneficial to him.

"All future communications (if any) should be diverted to ourselves not our client."

It looks as if what's being said here is: We have always been prepared to settle this matter and to do all that is lawfully, that we can do lawfully, but that they are being asked to do the impossible here. That's what

A. That seems to be the tone, yes.

Q. Now, there was no difficulty as regards the money.

£150,000 was agreed; isn't that right?

A. That's right.

Q. There was no issue about that?

A. No.

Q. The only outstanding issue appears to be that which is contained in the letter from Messrs. William Fry's dated 29th July 2002, that is the one on the previous tab, addressed to Mr. Phelan's solicitors. In other words

A. Asking what, just remind me?

Q. I'll read it. "Some time ago in place of a narrative requested by our client you sent us certain post relating to Doncaster Rovers. One of the letters contained a reference to "ML." We understand that our respective clients have now been in contact and our clients are prepared to give an explanation for the reference as it's referring to somebody other than Michael Lowry or to some

other matter other than Doncaster. And, in any event,

Michael Lowry had no interest in Doncaster."

And that was the sticking point. Mr. Phelan was saying, through his solicitors, "I cannot do that, I cannot do that lawfully". He is saying, I will do all that I can do but I cannot do that. That's what I was saying, isn't it, in that letter

A. In essence.

Q. He was the one that was having the problem. He was the one, isn't that correct, who couldn't get his hands on the money who was due to him, because he couldn't he felt he couldn't do this, he couldn't take this step; isn't that right?

A. Mm-hmm.

Q. He never asked for any more money than the  $\text{€}150,000$ ; is that correct?

A. Not that I can remember, no.

Q. No evidence, I would suggest, as matters, as you have recounted, that he was using this to make you pay the  $\text{€}150,000$  or using this to ask for more than the  $\text{€}150,000$ ?

A. I disagree with you.

Q. I see.

A. You said no evidence did you say no evidence?

Q. As from what you said?

A. Excuse me, did you say no evidence?

Q. Yes.

A. But surely when we were asking I am just speaking as a

layman. When we were asking for a narrative, okay, and he comes back with this old memorandum, point 7. As far as I was concerned, it was some form of blackmail, some form of making us get on with it or else he could do something even more damaging. And then you must follow it through. We didn't accept it like that and say quickly pay him, let the whole thing die, that he must go away, he knows something. We pursued it and you have just read a letter, his final frustrations as a result of us pursuing it. Is that a fair comment?

Q. I know that's your view of matters

A. Would you agree with it?

Q. I want to ask you to look at the matter in detail?

A. Would you agree with it, Mr. Coughlan?

Q. It doesn't matter whether I do or don't, I am not the Tribunal

A. You keep asking me: would you agree? Surely I am entitled to ask you would you agree?

Q. Fair point. But can I ask you this: When you took over the project from Aidan Phelan, you knew, or you had been informed, you told us, that Kevin Phelan was claiming  $\frac{1}{2}$ 150,000 and that was probably owed to him; isn't that right?

A. And that was probably owed to him, yes, correct.

Q. So, when you started off, you knew that Kevin Phelan, and you even had figures or computations in relation to it or invoices. You went to Mr. Owen O'Connell, or to a

solicitor in Messrs. William Fry's and you were given advice: Well, look in the first place, let's get him to make a claim in relation to it; isn't that right, or words to that effect.

A. Just to correct you a little, forgive me, this may not be important. Aidan Phelan already was using William Fry's. I didn't go to William Fry and appoint them. Sorry, okay.

Q. Okay. But using William Fry's?

A. Yes, exactly.

Q. In fact, you had said I think at one stage, look, I have the computations, or words to that effect in relation to Mr. Phelan's

A. I said, did I?

Q. I can go back in the documents. I think I am correct in saying

A. It's not a word I use, "computation", but anyway.

Q. It's a word I used.

A. Okay.

Q. Your solicitors said: Well look, let's get him to put it in writing what his claim is.

A. Yes.

Q. And then matters moved on. You began to think about, well, look, we are paying his fee. Can we get a narrative from him to see if he might or could be a useful witness in the case

A. What evidence was he going to give in the High Court case.

Q. He never looked for more than  $\text{€}150,000$ , did he?

A. No. Not that I can recall, in case you find something somewhere, I can't I think it's  $\frac{1}{2}$ 150,000.

Q. You are safe there, I think.

A. Okay. Fine.

Q. You keep talking and, you know, sort of using the term blackmail is a fairly serious

A. Very serious. I am aware of that.

Q. And I am just trying to understand your suggestion that and I'll be careful about this you didn't say you were being blackmailed, you said you wondered whether it was some kind of blackmail, in fairness to you?

A. That's right.

Q. And I am just trying to it was always  $\frac{1}{2}$ 150,000. You eventually paid  $\frac{1}{2}$ 150,000?

A. Mmm.

Q. The problem that Mr. Kevin Phelan had was complying with the request to remove, or to Michael Lowry from being associated with a reference in an historical document?

1999, ML

A. We never asked where was that written down, that we asked him to delete that?

Q. Sorry, if we go to the letter on the previous page. I didn't see delete.

A. What did you say?

Q. "We understand that our respective clients have been in contact and that your client is prepared to give an explanation for the reference as to its referring to

somebody other than Michael Lowry."

A. What's wrong with that?

Q. "Or to some other matter", that is some other matter related to Doncaster

A. What's wrong with that, Mr. Coughlan?

Q. That was the problem. Mr. Phelan was saying I have difficulty, I can't do that. Isn't that right? That's what the letter from Woodcock's is saying. I can't do that. I'll do all sorts of things to settle. I want to get my money, but I cannot do that. He wasn't asking

A. I think the bulk of that letter, was it not, that they were saying how much work it would put him to. Is that not the letter you read to me?

Q. No, not this letter.

A. Sorry, okay.

Q. What he is saying is, my client is being asked to do the impossible.

A. Okay.

Q. That seems to be maybe I am wrong?

A. You may be right. I don't have an opinion on it.

MR. COUGHLAN: I'll leave it there.

CHAIRMAN: All right. Well, I will fix Tuesday at eleven o'clock, and I'll leave it for discussions between the parties as to how various witnesses will be accommodated.

I appreciate we have people travelling from the UK

MR. McGONIGAL: We have a number of people on standby for Tuesday. You have two English trustees. You also have

John Ryall, and I understand you may have Aidan Phelan.

MR. COUGHLAN: We have Mr. McGonigal is correct, there are some English witnesses coming and they are specially fixed for Tuesday, so, perhaps, not before midday anyway.

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CHAIRMAN: I don't want to needlessly trouble Mr. O'Brien.

Will I say not before three o'clock?

MR. COUGHLAN: I don't think it needs to be two o'clock

I think.

CHAIRMAN: Very good. Two o'clock on Tuesday.

A. Thank you, two o'clock on Tuesday.

MR. MCGONIGAL: I take it John Ryall will not be needed on Tuesday?

CHAIRMAN: I think that seems to be the way of it,

Mr. McGonigal. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 6TH MARCH, 2007.