

THE TRIBUNAL RESUMED ON THE 6TH MARCH, 2007, AS FOLLOWS:

MS. O'BRIEN: Mr. Peter Vanderpump, please.

PETER VANDERPUMP, HAVING BEEN SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Thank you, Mr. Vanderpump. Mr. Vanderpump,

you kindly provided the Tribunal with a Memorandum of Intended Evidence, and what I propose doing, in the course of your evidence, is firstly to take you through that memorandum and just to ask you formally to confirm that its contents are correct, and then to revisit a small number of matters that you have referred to and to discuss those in a little more detail with you. And I wonder do you have a copy of your memorandum with you in the witness box?

A. I do, thank you.

Q. It's there in the small book that the Tribunal provided to you.

Now, you say that you were a partner in the Isle of Man office of Deloitte & Touche and also a director of Walbrook Trustees (Isle of Man) Limited (Walbrook) which was owned by Deloitte and provides trust and company administration services. You say that on the 5th December, 2003, there was a management buyout of Walbrook as a result of which you retired as a partner of Deloitte. However, you continued to act as a Director of Walbrook until your retirement from that company on the 31st July, 2004. Prior to your retiring from Walbrook, you also retired as a director of all companies run by Walbrook, of which

Westferry was one. You state that Walbrook acts as Trustees of the Wellington Trust which was set up for the benefit of Mr. Denis O'Brien and his family and also administers a number of companies, either owned by the Wellington Trust or directly by Mr. O'Brien. On the 13th August, 1998, Walbrook was approached by Mr. Aidan Phelan, your main contact with Mr. O'Brien at that time, to ask if you would consider taking over the administration of an existing company called Westferry Limited (Westferry) which would then be owned by the Wellington Trust. Westferry was then being administered by another corporate service provider in the Isle of Man called Charterhouse Corporate Services Limited and was in the process of acquiring shares in Doncaster Rovers Limited. Consequently, you and one of your fellow Walbrook directors were appointed as directors of Westferry on the 13th August, 1998, and the company subsequently acquired the shares in Doncaster Rovers Football Club.

The shares in Westferry were registered in the name of Walbrook Trustees (Isle of Man) Limited for the benefit of the Wellington Trust. From your brief review of the Westferry files held by Walbrook, you were fairly certain that your first contact with Mr. Christopher Vaughan, that's Mr. Christopher Vaughan, solicitor, was in August 2001. You phoned Mr. Vaughan's office on the 30th August, 2001, regarding the ownership of Westferry. This followed a telephone conversation that you had had with Mr. Aidan

Phelan after you had received correspondence from Craig Tallents which alleged that Kevin Phelan was the beneficial owner of Westferry. Aidan Phelan had told you that Kevin Phelan was originally involved with Westferry, but had dropped out. You phoned Mr. Vaughan to discuss this, but Mr. Vaughan was away from his office. You eventually spoke to him on the 3rd September, 2001, when Mr. Vaughan told you that he had a recollection that there was a clear instruction on his file from Kevin Phelan to transfer the shares in Westferry to Aidan Phelan or persons nominated by Aidan Phelan.

According to the file, your next correspondence with Mr. Vaughan was in October 2002. This followed on from a mediation meeting which the duly-appointed representatives of Westferry, Denis O'Brien Senior and John Ryall, held with Ken Richardson and Mark Weaver, representing Dinard Limited (Dinard), in September, 2002. The directors of Westferry had agreed to the mediation meeting on the basis that they hoped a deal could be reached to end the long-running dispute with Dinard which had originally sold the shares in Doncaster Rovers to Westferry. Walbrook had received various correspondence from Mr. Mark Weaver since taking over the affairs of Westferry. The correspondence related to various claims being made against Westferry under the terms of the Share Purchase Agreement. The financial affairs of Doncaster Rovers, which appear to have been, to put it bluntly, in a significant mess, had been

taken over by Craig Tallents, chartered accountant, then with the accounting firm Morton Thornton, who was trying to clear these matters up. It was therefore agreed that Westferry would appoint Mr. Tallents to deal directly with Mr. Weaver. However, Westferry continued to receive even more bizarre correspondence from Mr. Weaver who appeared, inter alia, to take issue with the way Mr. Tallents was dealing with these matters.

Eventually, some time during 2001, Dinard lodged a formal claim against Westferry, and Peter Carter-Ruck & Partners were appointed to lodge a defence on Westferry's behalf.

After a protracted period of correspondence, it was agreed that the best way to resolve matters was to get all relevant parties to meet, and this duly happened.

During the mediation process, the representatives of Dinard requested a side meeting without the presence of legal advisers, and at this meeting, to put it bluntly, tried to blackmail Messrs. O'Brien Senior and Ryall into agreeing to settle the claim for an amount significantly greater than their court claim by making various veiled threats against Mr. Denis O'Brien Junior. Both the representatives of Westferry and the mediator protested vigorously about the conduct of Mr. Richardson and Mr. Weaver, and following further discussion, the dispute was eventually settled for an amount well below Dinard's original claim and significantly below the amount sought at the side meeting.

A formal complaint was made to the police.

As a result of these events, you wrote to Christopher Vaughan on the 17th October, 2002, to clarify the ownership of Westferry. Mr. Vaughan had been involved in the original negotiations concerning the purchase of Doncaster Rovers by Westferry, and apparently there had been suggestions and correspondence from his office that Mr. Michael Lowry was in some way involved with Westferry. You, therefore, made it clear in your letter that the sole shareholder of Westferry was the trustee of the Wellington Trust and asked him to confirm that this was indeed his understanding. Mr. Vaughan replied to you on the 23rd October, 2002, together with enclosures. To the best of Mr. Vaughan's knowledge, he had never had any correspondence, meetings or any other dealings with Mr. Lowry. You acknowledge Mr. Vaughan's letter on the 24th October, 2002, and replied in detail on the 25th October, 2002. In that letter, you thanked Mr. Vaughan for his response and dealt with an issue regarding leases at Doncaster Rovers Football Club and the continuation of Mr. Vaughan as Company Secretary of Doncaster Rovers. Mr. Vaughan replied to you on this matter on the 28th October, 2002. And finally, you have informed the Tribunal that you do not believe that you had any further correspondence or telephone conversations with Mr. Vaughan since October 2002.

And that completes your Memorandum of Intended Evidence, and I think you can confirm that that is correct?

A. Could I just make one point?

Q. Yes, of course.

A. You referred, I think it's the fifth line from the bottom, you referred it says "To the best of Mr. Vaughan's knowledge, he has never had any correspondence." I think that should be "To the best of my knowledge, I have never had any correspondence." Just to get the record straight.

Q. It should read to the best of your knowledge, you had never had any correspondence, meetings or any other dealings with Mr. Lowry?

A. That's correct.

Q. And, in fact, you retired as a director of Walbrook and also as a director of Westferry on the 31st July, 2004?

A. That's correct.

Q. Now, in your statement, Mr. Vanderpump, you have referred to the fact that Walbrook acted, and continue to act, as Trustees of the Wellington Trust; isn't that right?

A. That's correct.

Q. And I think the Wellington Trust, and I don't want to refer to it or open it in any way, but I think that Trust was established or created in September of 1997; is that right?

A. That's correct.

Q. And prior to the establishment of the Wellington Trust, had Walbrook acted on behalf of Mr. Denis O'Brien or in relation to any of his interests or was this Walbrook's first involvement with Mr. O'Brien?

A. My recollection is that we started acting for him round

about that time.

Q. And you took instructions from Mr. Aidan Phelan; is that right?

A. He was one of he was the principal contact at that time.

Q. I see. And the Wellington Trust, again I don't want to open it or refer to it in detail, but it's a relatively standard Discretionary Trust instrument. Wouldn't that be the position?

A. It was a completely standard Discretionary Trust.

Q. And you were effectively settling property on that trust subject to a discretion to distribute the property or perhaps the income from the property to a number of named beneficiaries?

A. That's correct.

Q. Now, there was, I think, in that trust, another provision which again I think is a relatively standard provision in any Discretionary Trust, a power to include and to exclude beneficiaries; isn't that right?

A. That's correct. It was a standard clause.

Q. And the way that clause would work in any trust deed, and certainly in this trust deed also, is that the Trustees could appoint additional objects to the trust or, indeed, could exclude objects that were originally named as beneficiaries in the trust; is that right?

A. Correct.

Q. And that, of course, is with the consent in this case of Mr. O'Brien himself?

A. Correct.

Q. And I think, again, I don't want to go into the details of who was or wasn't named as a beneficiary, but I think that in the course of the operation of that trust since 1997, the power to include has been exercised; isn't that right?

A. To the best of my knowledge, that's correct.

Q. And indeed the position is the same with regard to the power to exclude; that has also been exercised?

A. I think that is correct.

Q. Now, in your statement you refer to contact from Mr. Aidan Phelan in August of 1998 when he asked if Walbrook would be prepared to take on the administration of an existing company, Westferry Limited, isn't that the case?

A. Yes.

Q. And the intention I think was that Westferry would acquire the shareholding in Doncaster Rovers Football Club Limited?

A. Correct.

Q. So, in effect, Westferry would then become the holding company of Doncaster Rovers Football Club, would that be correct?

A. That's correct.

Q. So am I correct in thinking that the overall transaction, from Walbrook's point of view, involved two stages; is that right?

A. The first stage was for us to become owners of Westferry on behalf of the Wellington Trust and then the second stage was for Westferry to acquire the shares of Doncaster



Rovers. It happened that way round. It could have happened another way round, but it happened that way.

Q. It happened that way?

A. Yes.

Q. So it was a two-step acquisition: Firstly, acquisition by Walbrook of the shares in Westferry, which was an existing company; and then the acquisition by Westferry of the shares in Doncaster Rovers?

A. Correct.

Q. And, of course, all of that was subject to Westferry holding the shares in Doncaster Rovers subject to the Wellington Trust?

A. I'm not sure what you mean, sorry, when you say "subject to the Wellington Trust"?

Q. Or as nominee?

A. Yes, correct.

Q. As trustees?

A. Yes.

Q. So, that having been done, you then became a director of Westferry, and I think another colleague of yours also became a director of Westferry?

A. Correct.

Q. And can you just explain to me what functions and what services you then provided to Westferry as a corporate service provider?

A. We made sure that the company was kept in good order. We carried out made sure it was in good statutory order and

we carried out whatever duties it was necessary to carry out, as directors, to make sure that the company remained in good order.

Q. And I think in the body of documents that were produced by Westferry, we have seen various formal instructions to solicitors and to accountants to act on behalf of Westferry or, indeed, to take instructions from named persons on behalf of Westferry?

A. That's correct. If we needed other professionals to assist us, then we would instruct them to do that.

Q. I think you had said that Mr. Aidan Phelan was your principal point of contact in relation to Mr. O'Brien's affairs, certainly initially, and I think from evidence the Tribunal has heard, Mr. Aidan Phelan, over the years, took, if you like, a less direct involvement in Mr. O'Brien's business affairs and that ultimately I think he ceased to have any involvement sometime in early 2002. And do you recall after Mr. Aidan Phelan ceased to be involved, who was your principal contact in relation to Mr. O'Brien's affairs and indeed the affairs of Westferry specifically?

A. I can't remember the exact dates, but after Mr. Aidan Phelan became less involved, there was a team of people in Dublin, the principal contact of which was Mr. John Ryall that we dealt with.

Q. Now, can I just refer you to I think some of the documents that are in the small book that we prepared for you this morning, Mr. Vanderpump. Now, just the documents numbered

Divider 3, which I think are actually towards the back of the document book, and for everybody else, it's Book 82, Divider 3.

Now, the documents at Divider 3, just to make sure you are looking at the correct documents, Mr. Vanderpump, are the Certificate of Incorporation of Westferry, a Declaration of Trust for Westferry Limited and an invoice from Charterhouse Group to Mr. Kevin Phelan. Do you have those three documents?

A. I do.

Q. Now, just the first of those documents is the Certificate of Incorporation of Westferry, and it's dated the 23rd of October of 1997, and issued by the General Registry, Isle of Man?

A. Correct.

Q. And I presume that these are documents that would have been furnished to you at the time that you acquired the shareholding in Westferry?

A. That's correct. When we took it over from Charterhouse, they would have sent us these documents.

Q. They would have sent you those documents?

A. Yes.

Q. These were on the files or maintained by Walbrook in the Isle of Man?

A. Correct.

Q. Now, the next document is a Declaration of Trust for Westferry Limited, and it's a Charterhouse Corporate

Services Limited document, and Charterhouse I think is a similar corporate service provider in the Isle of Man?

A. That's correct.

Q. And if we just look at the Declaration of Trust. It's dated the 29th January, 1998: "We, CCS Directors Limited, hereby acknowledge and declare that we hold one ordinary share of 1/21 each in Westferry Limited (hereinafter called 'the Share') registered in our name as nominee and trustee for the Glebe Trust (hereinafter called 'the Owners') and we undertake and agree not to transfer, deal with or dispose of the shares, save as the owner may from time to time direct, and further to give full effect to the trust hereby declared, we hereby deposit with the owners the certificate for the share together with a transfer thereof executed by us in blank and we hereby expressly authorise and empower the owner at any time to complete such transfer by inserting therein the name or names of any transferee or transferees and the date of the transfer and to complete the same in any other necessary particular and we expressly declare that this authority is irrevocable by us.

Furthermore, we irrevocably assign to the owner the right to receive any dividends which may be declared on the share, together with all profits and other monies which may be paid or payable to us from time to time upon the share, or in respect thereof, and we further agree and undertake to exercise my voting power as holder of the share in such manner and for such purposes as the owner may from time to

time direct or determine."

It's dated the 29th January, 1998, and it's signed by Sandra Shand and it's witnessed. That would be a fairly standard Declaration of Trust that would be executed by trustees who hold shares as nominee for the beneficial owner, wouldn't that be the case?

A. Yes.

Q. And this was a Declaration of Trust which appears to have been made shortly after the incorporation of Westferry?

A. Correct.

Q. And this was in favour of the Glebe Trust?

A. Yes.

Q. And then if we just go over the page, and again that was a document that would have been furnished to you, I think, at the time that you took over the running of Westferry?

A. I can't be certain it came exactly at the time, but on or around the time.

Q. And it would have been within your files?

A. Yes, I believe so.

Q. And then, again, the last document that I want to refer you to in these group of documents is the invoice from Charterhouse Group, and it's addressed to Kevin Phelan, Glebe Trust, Tortola, British Virgin Islands. It's dated the 28th January, 1998. Invoice number B/143.

It's "Re: Setting up Trust and Company," and there are various fees there for the establish of the trust: The annual trustees fee. Formation of the Isle of Man company.

Domiciliation. Nominee services. Tax exemption fee, bank account, standard setup fee. And then the total coming to £2,650?

A. Yes.

Q. And, again, those would be the fairly standard kind of costs that would be incurred by somebody who was setting up a company in the Isle of Man and who was also setting up a trust to hold the shares of that company?

A. I presume these were the standard charges that Charterhouse would have issued, correct.

Q. And as this invoice was addressed to Kevin Phelan of the Glebe Trust, British Virgin Islands, I take it that it kind of follows that it was Mr. Phelan for whom these shares were probably beneficially held?

A. I don't know. This is a matter I think that Charterhouse would have to answer. We just received these papers later.

Q. I see. But it's quite clear that he is the person who is being charged for the establishment and setup costs?

A. I think the invoice is clearly made out to him.

Q. Now, in your statement, I think you said that your initial contact with Mr. Christopher Vaughan was in August, September of 2001; isn't that right?

A. That's correct.

Q. And I think that arose from a fax that you had received from Mr. Craig Tallents, in fact from who we have heard evidence last week and whom at that time was acting as an accountant and assisting in relation to the litigation

between Westferry and Dinard?

A. He was trying to Mr. Tallents at that time was trying to help sort the affairs of Doncaster Rovers, that's correct.

Q. And I think Mr. Phelan had asserted to Mr. Tallents that he, in fact, was the beneficial owner of Westferry and he had purported to terminate Mr. Tallents' retainer by Westferry; isn't that right?

A. Sorry, this is Mr. Kevin Phelan?

Q. Mr. Kevin Phelan.

A. I believe that's what the correspondence shows, yes.

Q. And it was this correspondence that prompted you then to make inquiries of Mr. Christopher Vaughan to confirm what the position was in relation to the ownership of Westferry?

A. Correct. Our understanding was that there were no other parties involved other than Mr. O'Brien's interests, and, therefore, I contacted Mr. Vaughan to clarify the situation.

Q. All right. We'll just have a look at these documents here.

And in the yellow book, Book 82, it's Divider 32, and I think in your book it's also Divider 32 but it's towards the back of your small book. Do you have them there, Mr. Vanderpump?

A. Yes, in the...

Q. And the first page is a fax from Morton Thornton to you, it's a fax cover sheet dated the 29th August, 2001.

A. I have got that.

Q. Then the next document is Mr. Tallents' letter to you of

the 29th August, 2001. In fact, it's Morton Thornton's letter to you of the 29th August, 2001.

"Dear Mr. Vanderpump,

"Re Westferry Limited.

"We enclose copies of correspondence between ourselves and Mr. Kevin Phelan.

"You will note from the letter that Mr. Kevin Phelan is advising us to stop acting on behalf of Westferry Limited at his instructions.

"We pointed out to Mr. Phelan that he is not to our knowledge an officer of the company.

"We are writing to seek your instructions with regard to this matter.

"You will appreciate that it is a critical time for the company with the need to submit a defence against the claim of Dinard Limited in respect of the purchase of Doncaster Rovers Football Club Limited.

"We look forward to hearing from you as a matter of urgency.

"Yours faithfully,  
Morton Thornton."

And included with this fax were three items of correspondence. I am just going to refer you briefly to the first one, which was a letter from Mr. Kevin Phelan on the headed paper of Gameplan International Limited, which I think was his company, and it's addressed to Mr. RW Thornton & Partners, Morton Thornton, and it's also dated



the 28th August, 2001. Do you see that letter?

A. I do.

Q. "Re Westferry Limited and Gameplan International Limited.

"Dear Sir,

"I confirm receipt of your letter dated 28th August, 2001.

I am not satisfied with your response and believe that you have been misinformed by your colleague.

"Mr. Craig Tallents was instructed to act by me when Westferry Limited purchased the shares in Doncaster Rovers Football Club Limited. When Mr. Tallents accepted instructions on behalf of your firm from me, he was not aware who the directors of Westferry Limited were at the time. I have received extensive correspondence from Mr. Tallents in relation to Westferry Limited and Doncaster Rovers Football Club Limited.

"I confirm that I (Kevin Phelan) set up Westferry Limited and received all the company documentation on the 29th January, 1999."

I think that should more correctly have been 1998.

A. Correct.

Q. "I paid for the company formation on my own behalf. I have a Declaration of Trust in my possession for the company confirming the trustees for Glebe Trust who own the shares in Westferry Limited. I have a bank account for the company. I have memorandum and articles of association.

The company was incorporated on the 23rd October, 1997, and the company registration number is 087972C, for the record.

I also confirm I paid income tax to the Isle of Man

Government for Westferry Limited.

"Based on the information in my possession as outlined above, I again insist that your firm cease acting for Westferry Limited. We reaffirm our position as outlined in our earlier letter of the 28th August, 2001, regarding proceedings against your firm for any losses incurred.

"I await the return of all documents in relation to Gameplan International Limited."

That's what Mr. Kevin Phelan was asserting to Mr. Craig Tallents; isn't that right?

A. Correct.

Q. It was that which prompted your initial contact with Mr. Vaughan, I think you said, on the 30th or 31st August, and he wasn't available at that time and you spoke to him then on the 3rd September?

A. Correct.

Q. Now, can I ask you, before you contacted Mr. Vaughan, would you have discussed what steps you should take with anybody on behalf of Mr. Denis O'Brien?

A. I believe I contacted Aidan Phelan, and I think as a result of that, I then in fact, I think I can see on here yes, a handwritten note of a telephone number or fax number, so I spoke to Mr. Phelan.

Q. I see it on the front of the fax cover sheet. We can just have a look at that, it's a little handwritten annotation at the top of the page. And if you could just read it for

me because I can't quite make it out?

A. On the right-hand side there is a scribble, my just acknowledging that I had seen the fax. It says "Seen P.V. 29/8." Then there is a telephone number, I believe it's a telephone number but it might be a fax number, 0035316760945, Aidan Phelan phone number," I think it says. That's my

Q. You would have contacted Aidan Phelan

A. I believe I spoke to Aidan Phelan to say, I presume I said, asked him what this was about, as a result of which I then tried to ring Mr. Vaughan and, as you say, Mr. Vaughan wasn't available the day, the first day that I phoned him, which I think was the 30th August. I then phoned him, or he phoned me back, I can't remember which way around it was, at the beginning of the next week, where I put to him this particular problem, and I think you have a copy of my note of the time.

Q. Yes. Can I just refer you then to the next document. It's at Divider 33 in the yellow book, 82, and I think it could be the very last document in your little booklet that we prepared for you. I think that seems to be a working document that we found on the Walbrook Trustees/Westferry files, and it does seem to record, perhaps, the result of an inquiry that had been made either by you or at your direction at the time or, indeed, it may record the results of the inquiry you made to Christopher Vaughan, and I'll just open it here.

"Westferry Limited.

Review of history of company.

"Set up by Charterhouse in 1998 and incorporation invoice addressed to Kevin Phelan, Glebe Trust, Tortola, BV1.

"Bank account opened at Isle of Man bank account Number 85349208 and 25349216.

"13/8/98 letter from Christopher Vaughan, UK solicitor, instructing Charterhouse to transfer Westferry to Aidan Phelan or to whom Aidan may direct.

"13/8/98 Charterhouse transferred shares in Westferry from their nominee companies to Walbrook and resigned their officers and appointed CPAV" I think that's you

A. Correct.

Q. "and ABKT," who is presumably was one of your colleagues?

A. Mr. Bruce Taylor, fellow partner.

Q. He was the other director of Westferry?

A. Correct.

Q. And I think Mr. Tallents said, in fact, you confirmed his instructions to act after he had forwarded that correspondence to you?

A. I believe that's the case. I can't be certain, but I believe that's the case.

Q. Now, your second, and I think final, contact with Mr. Christopher Vaughan related to an exchange of correspondence between you in October 2002, and I just want to have a look at that correspondence, Mr. Vanderpump.

It's at the beginning of the book with which you were provided. It's at 3B, Divider A to F, and in the Tribunal working books, that's Book 79. I think that exchange of correspondence opened with a letter from yourself to Mr. Vaughan dated the 17th October, 2002. And we can just put that up on the screen now in a moment.

Now, it's to Mr. C Vaughan, Esquire. It's dated the 17th October, 2002.

"Dear Mr. Vaughan,

"Re Westferry Limited/Doncaster Rovers Football Club Limited.

"We refer to the above matter.

"It has come to our attention during the mediation of the dispute with Dinard Trading Limited and Shelter Trust Anstalt that certain correspondence from your office suggested that Mr. Michael Lowry has or had a shareholding in Westferry Limited or indeed was involved in the negotiations on the completion of the purchase of Doncaster Rovers Football Club Limited.

"We wish to advise you that the sole shareholder in Westferry Limited is Walbrook Trustees (IOM) Limited in its capacity as the trustees of the Wellington Trust. The beneficiaries of the Wellington Trust are Mr. Denis O'Brien and his family and no other party was or is involved.

"We would be grateful if you will confirm in writing that this is also your full and complete understanding of the matter.

"We look to hearing from you.

"Kind regards.

"Yours sincerely,

C.P.V. Vanderpump, Director."

Now, in your statement, you have informed the Tribunal that

it was the events at the mediation in London at the end of

September of 2002 that prompted you to write this letter?

A. Correct.

Q. And, of course, you weren't at the mediation yourself, were you?

A. I was not.

Q. So, insofar as you had any knowledge or information regarding what occurred, that had to have been relayed to you by somebody who was present at the mediation?

A. Correct.

Q. Do you recall who that was?

A. I believe it was Mr. Ryall.

Q. Mr. Ryall. And did you discuss the matter with Mr. Ryall in terms of deciding to send this letter to Mr. Vaughan?

A. I believe I did. I think that's what happened.

Q. And can you tell me what the purpose of the letter was?

A. Again, it was to clarify any uncertainties in terms of the ownership of shares in Westferry.

Q. Now, I think you received a response from Mr. Vaughan on the 23rd October, 2002, and that's at Divider C of the documents that you are working from, and also Divider C of the same documents in Book 79. Do you see that?

A. Yes, I do.

Q. And that's dated the 23rd October, 2002. And he says:

"Dear Mr. Vanderpump,

"Thank you very much for your letter of the 17th October.

I completely understand what you are saying as to the beneficial ownership of Westferry Limited.

"As you are aware, I do not have any of the documentation in my possession relating to the acquisition of Doncaster Rovers Football Club (DRFC) by Westferry Limited as all this paperwork is with Peter Carter-Ruck & Partners. I do have the original lease of the football ground and copies of various other property-related documents, to which I will refer later on in this letter.

"Therefore, my comments in the next paragraph are purely from memory.

"I am quite convinced that during the course of the acquisition of DRFC by Westferry, Kevin Phelan maintained to me that he was the beneficial owner of a trust called 'Glebe Trust', and also that he had a beneficial interest in Westferry. I am also sure that he made representations to me to the effect that Michael Lowry was also involved in Glebe Trust.

"I have to say that at no time during the acquisition of DRFC by Westferry did Michael Lowry have any input into that process, nor later following completion. I do not know if you are aware, but shortly after completion, I was sacked by Kevin Phelan who then took the whole matter to

Betesh Fox in Manchester. At a later date I was re-engaged to try and sort out the retentions.

"As you are probably aware from Kate McMillan of Peter Carter-Ruck & Partners, I have been visited by Mr. Weaver and I enclose herewith a copy of a letter dated 25th September, 1998, and a copy of my file note of Friday, 18th October, and a copy of an earlier letter of the 19th February, 2002."

Then over the page he really refers to future arrangements regarding Doncaster Rovers Football Club. I don't think I need to read those out. And he closes by saying: "If there is anything further I can do to assist, please do not hesitate to contact me. Yours sincerely, C.J. Vaughan."

And that's the letter that you received?

A. Yes.

Q. Now, over the page, we can see that you acknowledged the letter on the 24th October, 2002.

"Dear Mr. Vaughan,

"Thank you for your letter dated 24th October , 2002 together with its enclosures."

And you sent a further letter to him on the 25th October, 2002, regarding, I think, some of the action that he had been referring to in the second page of that letter; isn't that right?

A. Correct.

Q. And then, finally, he responded on the 28th October, 2002:

"Thank you for your letters of 24 and 25 October. I look



forward to receiving the relevant 288B forms as my resignation as Company Secretary in due course."

And that would be his resignation as Company Secretary to Doncaster Rovers Football Club Limited?

A. Correct.

Q. Now, if I can just go back to the letter of the 23rd. I see that there is a handwritten notation at the top of it, and is that your handwriting, Mr. Vanderpump?

A. Yeah, that's correct.

Q. And I think it reads: "Please send a copy to John Ryall ASAP, 24/10"?

A. Correct.

Q. So that would have recorded your instructions perhaps to your secretary or to somebody else who was assisting you

A. It was actually to Mr. Tushingham.

Q. That he should send a copy of it to Mr. Ryall?

A. Correct.

Q. Do you remember having any discussions with Mr. Ryall about this letter after it had been sent to him?

A. I can't remember whether I had discussions or whether Mr. Tushingham had discussions, but I think the letter went to Mr. Ryall, so that he was aware of what was of what Mr. Vaughan had said. And then we responded, I responded a couple of days later.

Q. Yes. Now, you have also furnished the Tribunal with a copy of a letter dated 21st October, 2002, which was on Mr. Vaughan's files and is also a reply to your letter of

the 17th October?

A. Correct.

Q. I am just going to refer to that, as well, and that's at Sub-Divider B in that group of documents that we are referring to. And do you have it there in front of you?

A. I do.

Q. It's dated the 21st October, 2002:

"Dear Mr. Vanderpump,

"Westferry Limited/Doncaster Rovers Football Club Limited.

"Thank you for your letter of the 17th October. I now fully understand the structure of Westferry Limited, as set out in your letter.

"You should be aware that I do not have any of the documentation relating to the acquisition of DRFC by Westferry, save for the original lease and some copies of the various property documentation. However, I am quite positive in my mind that Kevin Phelan represented himself on a number of occasions as having an interest in Westferry Limited and, you will no doubt recall, that he was maintaining that situation in August 2001. I now understand that Kevin Phelan did not have any interest in Westferry whatsoever.

"I do, however, enclose a copy of a letter from me to Michael Lowry dated 25th September, 1998, together with a file note as to how that letter came into my possession.

"What I can state quite categorically is before I met Michael Lowry for the first time on the 24th September, I

had absolutely no knowledge that he might have been involved in the acquisition of DRFC, and you will see that in a letter I explained to him some of the future problems facing the acquisition of the club and with the thought that he might have some influence, I set them out in that letter. Suffice it to say that none of those matters were resolved by Michael Lowry.

"I do not think that I misunderstood his comments to me that he was involved in DRFC, but in hindsight I must put it down to some sort of political ego that he was trying to attach his name to what appeared to be a successful venture.

"I would, however, reiterate that so far as I was aware throughout the whole of the negotiations with DRFC acquisition, Michael Lowry was never ever involved in giving me instructions.

"I am not sure whether you are aware but in October/November 1998 I was sacked by Kevin Phelan from having any further involvement in the matter, as he had instructed other solicitors, Messrs. Betesh Fox in Manchester.

"At a later date, sometime in early 1999, I was reinstructed to try and sort out various matters as Betesh Fox and Kevin Phelan had fallen out.

"I hope that this explains my position.

"Yours sincerely,

C.J. Vaughan."

Now, a copy of that letter was on Mr. Christopher Vaughan's file that was made available to the Tribunal, Mr. Vanderpump. But you have said that it wasn't received by you?

A. No, I have never seen this letter. It certainly wasn't on the Walbrook files.

Q. I see. Between the 17th September, 2002, when you wrote to Mr. Vaughan, and the 23rd October - the 24th October I think when you received his letter of the 23rd October, did you have any discussions with Mr. Vaughan on the telephone or any other way?

A. Not that I am aware of, no.

Q. Were you aware that Mr. Vaughan had discussions with anybody other than yourselves regarding your letter of the 17th September?

A. No.

Q. Do you recall having any contact with Mr. Ryall or anybody else on behalf of Mr. O'Brien between sending that letter on the 17th and receiving Mr. Vaughan's response on the 24th?

A. I don't recall anything, no.

Q. But your principal contact on behalf of Mr. O'Brien at the time was Mr. John Ryall?

A. Correct.

MS. O'BRIEN: Thank you very much, Mr. Vanderpump.

CHAIRMAN: I'll just see if one or two of the other barristers may have a couple of matters to raise with you

Mr. Vanderpump. Mr. McGonigal?

MR. MCGONIGAL: No questions.

CHAIRMAN: Mr. Barniville?

MR. BARNIVILLE: Yes, Chairman, just one or two questions.

THE WITNESS WAS EXAMINED BY MR. BARNIVILLE AS FOLLOWS:

Q. MR. BARNIVILLE: Mr. Vanderpump, I appear for Mr. Michael

Lowry and for Mr. Denis O'Connor and I just have a couple

of questions for you, if you don't mind.

Just so I understand the timing of your involvement, as I

understand it you were you became a director of

Westferry from around the time you first received

instructions in August 1998 and remained a director of that

company until the end of July, 2004; is that correct?

A. That's correct.

Q. And that was from the first time instructions were received

from Mr. Phelan in relation to Westferry and the Doncaster

transaction; is that right?

A. Correct.

Q. And I think you have explained to Ms. O'Brien that

ultimately, what happened was there was a two-stage

process: The shares in Westferry were first acquired, held

by Walbrook, your firm, on trust for the Wellington Trust;

and then shares in Doncaster Rovers Football Club were

acquired also, isn't that right?

A. Correct.

Q. And I think you have explained to Ms. O'Brien that the

Wellington Trust was a trust that was beneficially owned by

Mr. O'Brien and members of his family?

A. It was for the benefit of Mr. O'Brien.

Q. Precisely. And no one else, as far as you were concerned?

A. Mr. O'Brien and his family, correct.

Q. And no one else?

A. Nobody else.

Q. And bearing in mind your involvement for the period I have mentioned, from the middle of August 1998 until the end of July 2004, to your knowledge did Mr. Michael Lowry have any involvement, direct or indirect, in Westferry?

A. From my knowledge, he had no involvement.

Q. Or otherwise in your knowledge or otherwise in connection with the Doncaster Rovers acquisition?

A. He had no knowledge, so far as I am aware.

Q. Ms. O'Brien referred you to, and I think it was a letter that was sent to you by Mr. Tallents in August 2001.

That's a letter from Mr. Kevin Phelan of Gameplan to Mr. Tallents' then firm. That was copied on to you, I think, isn't that right

A. That's correct.

Q. at the end of August, 2001?

A. Yes.

Q. And without asking you to get out the letter again, I think you agree, or you will agree that, in that letter,

Mr. Phelan makes no suggestion of any involvement by

Mr. Lowry in Westferry or otherwise in connection with the Doncaster transaction; isn't that right? Maybe you need to

get the letter out again. Perhaps Ms. O'Brien would help me. It's Tab 32 of the big book, 82, but I am just not certain in the book that you have, Mr. Vanderpump.

MS. O'BRIEN: It's actually in the tab marked 32 but it's towards the back of your book, Mr. Vanderpump.

Q. MR. BARNIVILLE: Do you have that, Mr. Vanderpump?

A. I have got the letter, yes.

Q. If you turn in a couple of pages, you will see Mr. Kevin Phelan's letter to Morton Thornton, and if you have a very quick read of that, I think you'll see no reference to Mr. Lowry there, will you?

A. That's correct, there is no reference.

Q. Is it correct, then, that the first time it came to your attention that there was any suggestion or allegation of any involvement by Mr. Lowry in either Westferry or in connection with the Doncaster Rovers transaction was in the course of the mediation process in September 2002?

A. I can't be absolutely certain, but I can't recall anything before that. In fact, I am not actually sure at the time of the mediation that I was particularly aware of Mr. Lowry's involvement, or, sorry, alleged involvement at that stage.

Q. In any event, perhaps I may help you. The first time you raised it was I think in your letter of the 17th October, 2002, and that was following the mediation; isn't that right?

A. Correct.

Q. That was your letter to Mr. Vaughan. And I'm just asking you to get out that letter again. I am not sure again what tab it's in in your book, but it's a tab it's Tab 125 of the yellow book. You had it out with Ms. O'Brien a minute ago.

A. Yeah, I have it.

Q. In that letter, when you wrote to Mr. Vaughan, you asserted in the second main paragraph, Mr. Vanderpump, that "The sole shareholder in Westferry Limited is Walbrook Trustees in its capacity as the trustees of the Wellington Trust. The beneficiaries of Wellington Trust are Mr. Denis O'Brien and his family and no other party was or is involved."

Does that remain your understanding and your knowledge of the position?

A. That does, as of that time, certainly up to the time when I retired from Walbrook.

Q. And Ms. O'Brien referred you to the response from Mr. Vaughan of the 23rd October, 2002, in which Mr. Vaughan refers to a representation made by Mr. Kevin Phelan about an alleged involvement of Mr. Lowry in a trust called Glebe Trust. I take it you have no knowledge or information about that, do you?

A. Well, the only knowledge of the Glebe Trust was, we were aware of the Glebe Trust at the time we took over Westferry, but that's the only knowledge we have. So we could see on the documentation from Charterhouse that Glebe Trust was mentioned, but that's the only time we have ever



come across it.

Q. And I think we see Mr. Phelan's name was mentioned as being the addressee of the invoice that I think we saw earlier?

A. That's correct.

Q. But no mention or reference to Michael Lowry in those documents?

A. Not that I am aware of, no.

Q. Thanks very much, Mr. Vanderpump.

CHAIRMAN: Anything in conclusion, Ms. O'Brien?

MS. O'BRIEN: Just one matter, Sir.

THE WITNESS WAS EXAMINED FURTHER BY MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Just in relation to that letter of the 23rd October, Mr. Vanderpump, and the references to Kevin Phelan's representations that Michael Lowry was involved in the Glebe Trust, this was information that was being furnished to you by Mr. Vanderpump, the solicitor

A. Sorry, Mr. Vaughan.

Q. Sorry, by Mr. Vaughan, I do apologise, Mr. Vanderpump, by Mr. Vaughan, and he was the solicitor who had acted in the negotiations leading up to and in relation to the acquisition of the shareholding in Doncaster Rovers by Westferry; isn't that right?

A. Yes.

Q. And as I said or as you said in response to Mr. Barnville, you were, of course, familiar with the Glebe Trust because you knew, from the documents that you had received from Charterhouse, that when Westferry was

incorporated, it was held for the benefit of the Glebe

Trust?

A. That's correct, we were aware you say "familiar". I mean, we knew of the Glebe Trust in the circumstances, of the fact of its previous involvement with Westferry, but that was as far as our familiarity went.

Q. So, in effect, what you had was, you had the solicitor that had acted in the transaction suggesting that it was represented to him by Kevin Phelan, from whom he received instructions, that Michael Lowry did have an involvement; isn't that right?

A. Yes. I mean, I think the sentence says "I am sure he made representations to me to the effect that Michael Lowry was involved in Glebe Trust."

Q. Yes, and Glebe Trust had previously been the trust that had owned the shares in Westferry prior to Walbrook Trustees taking it over?

A. Certainly yes, it was the trust, but there were no assets in Westferry as far as we were aware at that stage.

Q. Well, no assets at that stage, but prior to when Walbrook took it over, there may well have been; there were assets?

A. But Glebe Trust wouldn't have been relevant because as soon as Walbrook took over Westferry, Glebe Trust dropped out.

So, as far as we were concerned, it would make no difference what was in Glebe Trust.

Q. It would make no difference in terms of the ownership of the shares after Walbrook took over the interest in

Westferry; isn't that right?

A. Yeah, but before we took over, Westferry was a dormant company. After we took it over and Westferry was owned for the benefit of Glebe Trust. After we took it over, we took it over as a dormant company and then we transacted the Doncaster Rovers shares in, and all the time since we owned it, it was for the benefit of Wellington Trust. So whether Glebe Trust, or any other trust, had an interest beforehand, they couldn't have had an interest afterwards in the shares in Doncaster.

Q. And, in fact, if you look at the letter of the 23rd, what Mr. Vaughan was saying, in the fourth paragraph, that he was quite convinced that during the course of the acquisition of DRFC by Westferry, Kevin Phelan maintained to him that he was the beneficial owner of the trust called 'Glebe Trust'. That was during the course of the acquisition?

A. That's what he says in his letter, yes.

Q. And he goes on to say that Kevin Phelan had represented that he had a beneficial interest in Westferry, isn't that right? He goes on to record that and we had seen that in the earlier correspondence?

A. Yes, in the earlier correspondence, yes, that's correct.

Q. And then he goes on to state: "I am also sure that he made representations to me to the effect that Michael Lowry was also involved in Glebe Trust," albeit during the course of the acquisition of DRFC, isn't that what he is saying?

A. I am not sure he is saying that. Because Glebe Trust was not party as far as we were concerned, Glebe Trust wasn't a party to the acquisition of Doncaster Rovers. The acquisition of Doncaster Rovers was made by Westferry. Westferry was owned by Wellington Trust at that time, so Glebe Trust wasn't part of it.

Q. What did you understand then, Mr. Vanderpump, that he was telling you?

A. I can't recall exactly what I thought at the time. But, I mean, I think Mr. Vaughan was just trying to set out what his understanding of the situation was around the time, perhaps just prior to the time or around the time of the acquisition of Doncaster Rovers, but, from our point of view, we were absolutely clear that we had acquired Doncaster Rovers for the benefit of it was acquired Doncaster Rovers was acquired in the company Westferry. Westferry was wholly owned by Wellington Trust, and there were no other parties involved.

Q. Now, you brought that letter to the attention of Mr. John Ryall; isn't that right?

A. I did.

Q. And tell me, did you make any further inquiries regarding the representation that Michael Lowry had an interest in the Glebe Trust, or did you discuss with Mr. Ryall the possibility of making any such inquiries?

A. I don't recall. As I told you earlier, we sent a copy of this letter to Mr. Ryall, and there were either I don't

recall particularly a discussion, but certainly a letter, we decided to draft a letter, perhaps in conjunction with Mr. Ryall, to go back to Mr. Vaughan, and you have seen the letter that went back to Mr. Vaughan. But I don't think we followed up particularly the issue of the Glebe Trust, because I don't think it was particularly relevant to us.

Q. And that's, effectively, the acknowledgment of the

A. The 24th and 25th letter.

Q. And then the further letter of the 25th, which is the further actions that had to be taken regarding Doncaster Rovers Football Club?

A. Correct.

Q. Thank you, Mr. Vanderpump.

CHAIRMAN: Thanks for your assistance, Mr. Vanderpump.

A. Thank you very much.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Christopher Tushingam, please.

MR. CHRISTOPHER TUSHINGHAM, HAVING BEEN SWORN, WAS EXAMINED

BY MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Thank you, Mr. Tushingam. You have also provided a memorandum of information to the Tribunal, and I think you have the booklet that the Tribunal furnished to you this morning

A. I do.

Q. in the witness box with you. And again, I am just going to read that out for you, Mr. Tushingam, and ask you to confirm its contents, and there may be one or two matters

that I will revert to and clarify with you.

A. Thank you.

Q. You state that you were appointed a director of Westferry Limited (Westferry) in May of 2004. However, before this, in your capacity as a Senior Manager with Walbrook Trustees (Isle of Man) Limited, you had assisted Mr. Peter Vanderpump with the administration of the company. In August 1998, Mr. Tushingam that's you was contacted by Mr. Aidan Phelan, who was at the time the individual you dealt with on matters concerning Mr. Denis O'Brien.

Mr. Aidan Phelan informed you of a potential investment involving Doncaster Rovers Football Club ground.

Mr. Phelan explained that there was an existing company called Westferry which had been involved in initial negotiations and that he wished them to take over the administration of the company and for it to be owned by the Wellington Trust. The Wellington Trust was settled by Mr. O'Brien in 1997 for his and his immediate family's benefit.

You then took over the administration of the company from another Isle of Man corporate service provider, Charterhouse Corporate Services Limited, and subsequently acquired the shares in Doncaster Rovers Football Club. The issued shares of Westferry were registered in the name of Walbrook Trustees (IOM) Limited and held for the benefit of the Wellington Trust. Over the next few years there was ongoing correspondence concerning claims over alleged

monies due, the retention fund, etc., which eventually resulted in a formal claim being made by Dinard Trading Limited, the former owners, against Westferry.

Subsequently, Westferry agreed to a mediation hearing and appointed Messrs. Denis O'Brien Senior and John Ryall to represent the company at the meeting which took place towards the end of September 2002.

The result of the mediation meeting was that Westferry agreed to pay £300,000, together with the retention fund of £440,000, which was considerably less than the amount that had been originally claimed. However, during the meeting, the representatives of Dinard, Mr. Ken Richardson and Mr. Mark Weaver, made various veiled threats to Messrs. O'Brien Senior and Ryall linking Denis O'Brien Junior with Mr. Michael Lowry. In effect, they tried to blackmail them into agreeing to buy Dinard for an exorbitant amount. As a result of this meeting and following discussions with Mr. Ryall, Mr. Vanderpump wrote to Christopher Vaughan to confirm the ownership of Westferry. Mr. Vaughan is a solicitor and he had been involved initially with the transaction and it was believed that certain letters from him or his office had suggested that Mr. Michael Lowry had been in some way connected with the transaction.

As regards any involvement of any kind of Mr. Michael Lowry in the Doncaster Rovers Football Club transaction, to the best of Mr. Tushingham's knowledge, this was the first time he had heard his name in connection with this transaction.

Indeed, it is fair to say that, at the time, Mr. Tushingam

had no idea who he was.

A. Correct.

Q. So the position is, Mr. Tushingam, that you were a Senior

Manager with Walbrook, that you assisted Mr. Peter

Vanderpump in the administration of the company, and that,

in May 2004, and I think Mr. Vanderpump's retirement, you

then became a director of Westferry?

A. Correct.

Q. Now, can you just explain to me what, if you like,

day-to-day involvement you would have had with the affairs

of Doncaster Rovers?

A. To begin with, when we acquired the shares, there was a

certain amount of activity. However, following the

acquisition, there wasn't much day-to-day running of the

company because we were simply the holding company, and

there was the ongoing dispute about the retention fund and

other things, so there was correspondence appointing

lawyers to act on our behalf. But in terms of day-to-day

administration, it was fairly minimal.

Q. How often would you have had a need to go and even open the

Westferry file?

A. It's difficult to say. I might go weeks without looking at

it and then other occasions we might be looking at it every

day.

Q. So initially you had to acquire the shareholding,

obviously, and there was the Declaration of Trust in favour



of the Wellington Trust?

A. Correct.

Q. And you had to put all those formal steps in place?

A. Correct.

Q. And we have seen, in the course of the files, that you appointed various people to act on behalf of Westferry in the giving of instructions to solicitors such as, I think, Ruth Collard and Peter Carter-Ruck and indeed authority to Peter Carter-Ruck to meet Mr. Denis O'Connor in, I think, September, August, September of 2002; isn't that right?

A. I can't remember that. That may well be. I can't remember.

Q. But that was the kind of function

A. Correct, yes.

Q. and role that you were fulfilling?

A. Yes.

Q. As you said, you were effectively the holding company of the shares in Doncaster Rovers Football Club?

A. Correct.

Q. But you had no involvement, did you, in the day-to-day running of the affairs of Doncaster Rovers Football Club?

A. No.

Q. Did you ever have, apart from instructions to Mr. Tallents and exchanges of correspondence, and so forth, did you ever have any dealings with him in relation to any aspects of the work that he was doing for Doncaster Rovers or for Westferry?

A. Not apart appointing him to look into the affairs, no.

Q. And apart from the two contacts that Mr. Vanderpump identified that he had with Mr. Christopher Vaughan, did you have any dealings with Mr. Christopher Vaughan in relation to it?

A. No.

Q. And apart from the authorisations, and so forth, sent to Messrs. Peter Carter-Ruck to take instructions, did you have any day-to-day dealings with the running of the litigation between Dinard and Westferry?

A. No. I mean, they kept us up to date. They'd send us various correspondence, but not on a day-to-day basis, no.

Q. You weren't furnished with the correspondence as it passed between the solicitors acting in the litigation?

A. No.

Q. And, of course, prior to the shares in Westferry being transferred by Charterhouse to Walbrook, you wouldn't have had any contact whatsoever with anybody in relation to the acquisition of Doncaster Rovers Football Club?

A. Correct.

Q. And would it be fair to say that there might have been quite a number of people who had an involvement in Doncaster Rovers Football Club that you would never have heard of?

A. That's a possibility, yes.

Q. Had you ever heard of Mr. Paul May?

A. Not that I recall.

Q. Had you ever heard of a Mr. Michael Lloyd?

A. Again, not that I recall the name, no.

Q. Now, can I just refer you also very briefly, I am not going to open all the correspondence again, but the exchange of correspondence between Mr. Vanderpump and Mr. Vaughan in October 2002.

A. Okay.

Q. I think you'd have seen it up on the screen during Mr. Vanderpump's evidence?

A. Yes, I did.

Q. Now, you were assisting Mr. Vaughan at this stage

A. Mr. Vanderpump, yeah.

Q. Mr. Vanderpump, in relation to the affairs of Westferry?

A. Correct.

Q. And do you recall dealings with Mr. Ryall subsequent to the mediation that prompted the writing of this letter of the 14th October, 2002?

A. Yes. Mr. Ryall reported back to us following the mediation meeting and what took place.

Q. Sorry, did he seek your advice or

A. No, he told us what had happened at the meeting.

Q. And did he furnish instructions that this letter should be sent to Mr. Vaughan?

A. I think it was I don't think he was instructed by John Ryall. I think it was agreed that would be the good approach, given that what happened at the hearing.

Q. Had you been furnished with a copy of the letter of the

25th September of 1998 from Mr. Vaughan to Mr. Michael

Lowry in which the suggestion had been made that

Mr. Michael Lowry was involved?

A. No, not at that time, no.

Q. Now, when the letter of the 23rd October came in, I think

Mr. Vanderpump asked you to send a copy of it to Mr. John

Ryall ASAP?

A. Yes.

Q. Now, between the 17th and the 23rd, do you recall having

any dealings with Mr. Ryall in relation to this?

A. I believe he probably acknowledged it, but I don't think

anything more than that.

Q. No, sorry, you misunderstand me. Between the 17th October,

that's the date on which Mr. Vanderpump sent his letter to

Mr. Vaughan, and the 24th October, being the date on which

he received Mr. Vaughan's response, do you remember having

any dealings with Mr. Ryall in relation to it?

A. Not that I recall, no.

Q. And did you have any contact at all with Mr. Vaughan? Did

you speak to Mr. Vaughan at any stage?

A. I have never spoken to Mr. Vaughan, no.

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

CHAIRMAN: Anything, Mr. Barnville?

MR. BARNVILLE: Yes, sir, just one or two questions.

THE WITNESS WAS EXAMINED BY MR. BARNVILLE AS FOLLOWS:

Q. MR. BARNVILLE: Mr. Tushingam, you have given evidence in

relation to your involvement at the time the instructions

were received from Mr. Aidan Phelan in the middle of August 1998, and I think you are still involved in your capacity as a director of Westferry; isn't that right?

A. Correct.

Q. Can I ask you that at the time of the acquisition of the shares in Doncaster Rovers, and at the time of the acquisition of Westferry, to your knowledge, was there any discussion that Mr. Michael Lowry had any involvement, direct or indirect, in connection with any of the transactions at issue there?

A. Not to my knowledge, no.

Q. And is the first time, then, that you heard any suggestion or contention that Mr. Lowry might have had an involvement, was that in the aftermath of the mediation?

A. Yes, to the best of my memory, yes.

Q. When Mr. Ryall was in contact with you?

A. Correct.

Q. And is it the case then, bearing in mind the involvement that you have had with the affairs of Westferry since August 1998, that, in your knowledge, did Mr. Lowry have any involvement, good, bad or indifferent, direct or indirect?

A. No.

Q. And is it the position, then, that the shares I think that Mr. Vanderpump has given evidence in relation to this but perhaps could you confirm it, that the shares in Westferry are held in the name of Walbrook, I think, for

Wellington Trust; isn't that right?

A. Correct.

Q. And Wellington Trust is beneficially owned by Mr. O'Brien and Mr. O'Brien's family?

A. Mr. O'Brien is the principal beneficiary, yes.

Q. And Mr. Lowry has no involvement?

A. No, he has not.

MR. BARNIVILLE: Thank you very much.

MS. O'BRIEN: Just one matter, sir, if I might just take up with Mr. Tushingham.

THE WITNESS WAS EXAMINED FURTHER BY MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Mr. Tushingham, you would have been aware in 2002 that Messrs. William Fry were acting on behalf of Westferry in relation to the fees dispute with Mr. Kevin Phelan; isn't that right?

A. Correct.

Q. And, in fact, you authorised, I think, William Fry to act on behalf of Westferry regarding that fee dispute?

A. Correct.

Q. Do you recall whether you were informed that an issue had arisen in the course of the negotiations surrounding that dispute regarding a reference to ML in a fax from Mr. Kevin Phelan to Mr. Aidan Phelan which had been sent back in August of 1999, and an involvement, and which suggested an involvement of Mr. Michael Lowry in the Doncaster Rovers matter?

A. No, it means nothing to me.

MS. O'BRIEN: Thank you.

CHAIRMAN: Thanks very much for your attendance.

THE WITNESS THEN WITHDREW.

CHAIRMAN: I think those are the two witnesses for this morning, Ms. O'Brien, and the balance of the testimony of Mr. O'Brien Senior has been fixed for two o'clock.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MR. DENIS O'BRIEN SENIOR BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. O'Brien, I think on Friday afternoon we were dealing with the second yellow book, Book of Documents No. 2. I can give you a copy. And we had finished looking at the letter from Woodcock & Sons, which is behind Tab 83. That's where we had, we finished on Friday. That, you remember, was a letter on the 30th July, 2002, where, effectively, they were kind of breaking off negotiations, or something of that nature, around that time. Now

A. Excuse me, Mr. Coughlan, just remind me, breaking off negotiations?

Q. Well, do you remember the payment of the  $\text{€}150,000$  was on the basis of a satisfactory narrative, 1st of August, being provided in relation to Mr. Phelan's involvement in the affairs involving the purchase of Dinard or Doncaster Rovers.

A. Okay.

Q. And then the explanation that was being sought for the reference to ML and Doncaster in the fax that went to Mr. Aidan Phelan back, I think, in August of 1999. And the statement by Messrs. Woodcock's on behalf of their client, Mr. Kevin Phelan, that he was being asked to do the impossible in relation to that particular matter, the ML/Doncaster, do you remember that was

A. Absolutely.

Q. that was the matter that was going along. And they were saying that, "Look, you know, we have always been anxious and happy to settle with you in relation to the money we say is due and which" I don't think you were disputing about the £150,000 that was due?

A. No.

Q. But they are saying that "We are being asked to do virtually the impossible here now and we just can't do it." That was kind of where we ended on Friday afternoon?

A. Thank you, Mr. Coughlan.

Q. Now, if you go behind Tab 84, then, there is a letter dated the 30th July?

A. You won't believe it, I don't have a Tab 84. I start at 85.

Q. It might be in front of Tab 85. Is that a letter dated 30th July, 2002, from Messrs. Woodcock's to

A. Yes, I see it.

Q. to LK Shields. Do you see that?

A. I do, yeah.



Q. That, in fact, is a letter addressed to Messrs. LK Shields, who weren't your solicitors, they were not your solicitors at that time; they were Messrs. Bryan Phelan's solicitors.

And you know that Mr. Kevin Phelan - I know all the Phelans are confusing - but Mr. Kevin Phelan was in a dispute with Messrs. Bryan Phelan's, the practice, including two of his partners, Mr. Bryan Phelan and Mr. Aidan Phelan. You were aware there was some sort of a dispute going on between them, as well?

A. Excuse me, I was aware that Bryan Phelan had some dealings with Kevin Phelan, something to do with a property in Ireland. I wasn't aware there was a dispute about that, but you are telling me there was. I wasn't involved.

Q. I don't know I am just saying that here was again, it looks as if there was a kind of a breaking off of negotiations, if I could put it in its broadest sense, between Mr. Kevin Phelan and Mr. Bryan Phelan/Mr. Aidan Phelan around this time as well, July 2002. I'm not going to open that particular letter for the moment.

A. All right.

Q. Then, if you go behind the next tab, you will see

A. That's 85?

Q. There is the handwritten note. It's a Mr. Owen O'Connell note. And the typed version is immediately behind it, do you have that?

A. Yeah.

Q. And it's dated the 13th August, 2002. And the client is

Westferry. The matter is you, "DOB Senior". And the note just reads:

"Denis O'Connor.

"Finish Monday PM? 'practically full' retraction.

"If Woodcock come to Dublin Monday, whether we could meet with Woodcock yes but not necessarily off record.

(Could be without prejudice but not the same thing.)"

Now, do you know anything about what was happening in the first two weeks of August of 2002 concerning Mr. Kevin Phelan and any dispute you may have had with him?

A. No. The only dispute I had with him was that reference to "ML". I am sorry, I cannot remember any other dispute.

Q. All right. Can you remember whether anybody on your behalf, and I'm not talking about your solicitors, because there is nothing on the file of Messrs. William Fry's that would indicate that they were in communication with Messrs. Woodcock's in this period, but do you know if you or anybody else on your behalf was in contact with either Mr. Phelan or somebody on behalf of Mr. Phelan, that's Mr. Kevin Phelan?

A. No. What do you think they mean by that "'practically full' retraction"?

Q. What do you think that would mean?

A. I haven't a clue. Were we in touch with Woodcock?

Q. That's what I am just wondering about, or were you in touch with Kevin Phelan or was somebody

A. No.

Q. You see, the retraction, and the the retraction, I think, was requested in a letter previously and I think the retraction was "ML/Doncaster", do you understand the point I am making, that you wanted clarification

A. Oh, I see.

Q. That's what I think. I may be wrong.

A. I see, fine.

Q. I may be wrong. But it is interesting, "practically full," which would seem to indicate that it was less than a full retraction seems to be taking place around this time, would you agree? I am reading it that way, anyway.

A. I am sorry, I can't help you on it. I was just wondering what this all meant.

Q. Now, if you go behind the next tab, 86. This is another file note on the file of your solicitors, Messrs. William Fry's, and it's headed "O'Sullivan Owen, From: O'Connell Owen. Sent: 14th August 2002, 12:22. To: O'Sullivan, Owen. Subject: SW Denis O'Brien, Denis O'Brien Senior."

And then there is a mobile-phone number and then the importance. What it seems to be is it seems to be a telephone message and the conveying of a telephone message which seems to have been taken from a Carol McNeillis in the office, it seems to be, on the 14th August, 2002, at about half past eleven, and it's been passed on.

A. Sorry, what is the which office was that?

Q. You see, the original message, McNeillis Carol. I think that's somebody working in William Fry's taking a message

A. It's somebody in William Fry's.

Q. taking a message and sending it on or passing it on to

Mr. O'Connell and/or Mr. O'Sullivan, I am just not sure

about that. That seems to be the situation.

It reads:

"Owen, DOB Senior called at 11.25 and asked me to inform

you of the following:

"1. With regard to Doncaster Rovers and the retraction from Kevin Phelan, DOB Senior has arranged for Kevin's solicitors to call you next week with regard to making an appointment to meet with you and from there to find acceptable wording regarding the retraction. I believe it will be after next Friday before the meeting happens.

"2. DOB Senior mentioned that he heard that an American lawyer (unknown) has approached Woodstock & Sons and asked whether they would, for a fee, release all papers concerning the dispute. Obviously DOB Senior isn't happy.

"3. When you and Kevin's solicitors get together to word the letter with the retraction, he also wants it noted that they will want to own all IP.

"Denis is available on his mobile if you want to call him, but he said he was just calling to let you know about Woodcock's contacting and in particular point 2.

" Carol."

So it seems to be that Carol McNeillis has taken a phone call from you and is passing on the information to

Mr. O'Connell, perhaps.

A. Mmm.

Q. Now, if you go to point 1. "With regard to Doncaster Rovers and the retraction from Kevin Phelan. DOB Senior has arranged for Kevin's solicitors to call you next week with regard to making an appointment to meet with you and from there find acceptable wording regarding the retraction. I believe it will be after next Friday before that meeting happens."

Now, what contact had you with Mr. Phelan or his solicitors at this time?

A. None whatsoever.

Q. All right. Who, on your behalf, had any contact with Mr. Phelan

A. Nobody.

Q. or his solicitor at that time?

A. Absolutely I never contacted Mr. Kevin Phelan's solicitors or himself. I never spoke with either Woodcock or Mr. Kevin Phelan.

Q. All right. Fair enough. Now, did anybody, on your behalf?

A. No, no one on my behalf. That's what I mean.

Q. You yourself or nobody on your behalf?

A. Nobody on my behalf. Absolutely not.

Q. Did anybody come to you, and I am taking it the other way now, come to you on behalf sorry, you didn't speak to Mr. Kevin Phelan or Woodcock's?

A. Never.

Q. But did anybody come to you on behalf of Mr. Kevin Phelan and Woodcock's about the issues in dispute?

A. To the best of my recollection, absolutely not.

Q. So, can I take it, if that was the case, you could have had no knowledge now I'm talking about this time in August before the matter finally settled you could have had no knowledge whatsoever of any dealings which involved Mr. Kevin Phelan and, I put it broadly, the O'Brien interests?

A. No. Is this - perhaps if I could trouble you, Mr. Coughlan - is this before we settled with Kevin Phelan?

Q. Yes.

A. I don't know what this is about. Sorry.

Q. The final settlement occurred towards the end of the month.

A. Yeah, that's

Q. And you moved into the mediation in September. So this is actually before the final settlement, and I was just wondering how you could have been passing on a message or asking someone to pass on a message to your solicitors to arrange a meeting or a discussion, but a meeting with Kevin Phelan's solicitors concerning a retraction, how that conversation could have been taking place if you didn't have any contact or anybody on your behalf didn't have any contact and no contact was made with you?

A. I know this may be an over-simplification, but would it help to ask Mr. Owen O'Sullivan what that is all about? He seems to be the one is he the one involved?

Q. You see, what the note here says maybe, maybe the note is not correct, I don't know, but somebody is taking a note of a telephone conversation and they are recording it as a telephone conversation with you. It's neither Mr. O'Sullivan nor Mr. O'Connell, it's not their note.

It's somebody who is passing on "Denis O'Brien Senior has been on, he has asked me to tell you," and then it records it there. And I am just wondering how that could be if you had no contact on your side with Mr. Phelan and there was no contact made with your side from Mr. Phelan?

A. Now, this was during the final negotiations with Kevin Phelan about his fees and the letter, the narrative we were looking for, and so on, wasn't it? I would never go outside my solicitors, if that's what that seems to suggest I can read it, but I would never have done that, no.

Q. All right. So, do you think that the note was a mistake?

A. I can't comment on it. I don't want to say I think the only way to solve it would be ask Owen O'Sullivan, who seems to have written this, did he?

Q. It doesn't seem to be, it seems to be a Carol McNeillis, I think?

A. Even her, maybe she can recall it.

Q. Yeah, maybe you're right. But I just want to be clear about this now. Are you saying that you couldn't have said this, or you could have said this and you have forgotten about it?

A. I could not have. I would only do it through my

solicitors; I would never do something outside of the solicitors. So I say it could not be, I could not be accurate with that.

Q. You could not have said that?

A. No. Only through my solicitors. If this is something I have done myself, I definitely did not do it.

Q. Now, if you go to item number 2, so, on the list. "DOB Senior mentioned that he heard that an American lawyer (unknown) has approached Woodstock & Sons and asked whether they would, for a fee, release all papers concerning the dispute. Obviously, DOB Senior isn't happy."

Do you ever remember having any

A. I don't remember it but I could have said it.

Q. You could have said it?

A. Well, there was a lot of rumour at the time. Can I just go back to Doncaster itself, because this is all part of it?

Q. Yes, please do.

A. As far as I was concerned, the people I was dealing with were dishonest, okay? It wasn't just Kevin Phelan. I am sure you'll come to them. Richardson and Weaver.

Mr. Richardson having gone to jail about something. I was very suspicious of all that company, okay? So I might well have said I heard somewhere an American lawyer is looking for papers, although it may not be here, representing some telephone company or other.

Q. We'll come to that

A. I know you will.



Q. That comes, I think, later in the mediation.

A. So excuse me, I'll go back, just to save time. I might well have said that. I have no recollection of it but I may well have said it.

Q. Right. Okay. Well, if we go to item Number 3, so. "When you and Kevin's solicitors get together to word the letter with the retraction, he also wants it noted that they will want to own all IP."

A. What's IP?

Q. I think it might be intellectual property, I don't know.

A. I would never speak like that.

Q. I don't know. That's what it normally is, but I don't know. It might be I don't know.

And then "Denis is available on his mobile if you want to call him but he said"

A. You see, it's very interesting, Mr. Coughlan. Why I am conveying this, am I, to Owen O'Sullivan? Am I doing that? Is that what this is saying, all of this?

Q. No, a Carol McNeillis has recorded information

A. Who is Carol McNeillis? Is she in Owen O'Sullivan's office?

Q. I don't know, but this is on the file of Messrs. William Fry. I presume she is. Yes, she is. She is.

A. Okay.

Q. Yes, and one would expect, it's on your solicitor's file in these documents that are dealing with the Kevin Phelan matter, and it's the sort of thing you might expect to find

on a solicitor's file where somebody phones in and somebody takes a message to pass on. That's all. It doesn't in terms of the making of such a note, it doesn't seem any way unremarkable, but you say that you couldn't possibly have said what's noted at No. 1 there?

A. Nor No. 3.

Q. Nor No. 3, all right.

A. I am not able to help you on any of this.

Q. All right. Now, if you go behind the next tab, that's 87, Mr. O'Brien, this is a letter from Woodcock & Sons to Messrs. William Fry's, and it's about the Westferry matter.

It's dated the 19th August, 2002.

"Dear Sirs,

"We refer to previous correspondence that has passed."

Now, the last correspondence that had passed was at the end of July, so this was now on the 19th August.

"We understand that our respective clients are close to terms of settlement.

"We would clarify for the avoidance of doubt that there are currently no concluded terms of settlement and that this correspondence is simply sent in an attempt to clarify the possibility of a settlement.

"At the moment we understand that the parties may be able to agree the terms of settlement on the basis as follows:

"1. Your client make payment to our client of  $\frac{1}{2}$ 150,000 in settlement of all monies due to our clients arising out of the Doncaster Rovers project. For completeness, our

clients are Kevin Phelan, M&P Associates (a firm), Gameplan International Limited and the Glebe Trust. In consideration of our client accepting this sum, it also compromises any claims that your client may have against our clients.

"In the first instance, please confirm therefore that you are instructed by your client that it is prepared to put forward such proposal as an offer capable of being acceptable by our client.

"2. We also understand that it would be helpful to your client if it is that our client could seek to clarify reference that was made to the initials 'ML' in the faxed document dated the 11th August, 1999, to Aidan Phelan. We confirm that we have received written instructions from our client Kevin Phelan, Gameplan International Limited, and the reference to 'ML' within the aforesaid document was to Michael Lowry but that this related to a project in Mansfield in which Michael Lowry was a shareholder. We trust that this clarifies the position.

"3. We also understand that it is a requirement that our client authorise us to send the attached letter to your firm.

"We understand from our client that he is anxious that a payment of £150,000 can be made immediately and therefore look forward to hearing from you with confirmation that your client is prepared to put forward an offer in the terms detailed above.

Yours faithfully."

Then there is a draft letter, and I think the draft letter, which is just behind, says:

"Dear Sirs,

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

"The venture itself is involved and protracted but in essence involved the acquisition of Doncaster Rovers Football Club and its ground. The intent was to relocate the football club to a new site with 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 the matter in a professional and competent fashion and further is satisfied with the benefit of hindsight that the action that he took with his view in relation to the retention sum was correct.

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

Yours faithfully."

Now, was that brought to your attention, do you know?

A. Who wrote that letter, do you think?

Q. That's Woodcock's wrote the letter to your solicitors dealing with the question of the  $\frac{1}{2}$ 150,000.

A. Okay, right.

Q. Dealing with an ML reference and enclosing a draft letter dealing with two matters, saying that you took instructions from Aidan Phelan at all times, and secondly, probably a significant matter from your point of view because you say it's what motivated you to seek the narrative in the first place, that the view he took about the retention money was correct at all times, because you were interested in him as a witness in the proceedings in England; isn't that right? Do you remember that being brought to your attention?

A. It must have been, but I can't remember.

Q. Now, if you go behind Tab 88, it's a response from your solicitors to Messrs. Woodcock's. It's dated the 19th August, 2002. And they refer to the letter.

"We confirm that our clients will formally offer to pay the sum of £150,000 sterling referred to in your letter in full and final satisfaction of (i) all fees and expenses due by your client, Mr. Kevin Phelan, whether trading through or as Gameplan International Limited, the Glebe Trust, M&P Associates or otherwise arising out of the

Westferry/Doncaster Rovers club and ground project;

(ii) Your client's claim to be entitled to a 40% share of any profit on the project; and (iii) all other claims by your client of any nature whatsoever and howsoever arising against our client, its shareholders, directors and employees and other consultants relating to the project.

Our client also requires confirmation that, unless compelled by law, neither you nor your client will release

your respective files nor any papers on them nor any other documentation related directly or indirectly to the project which is under your client's control to any third party without our client's prior written consent. Our client would require the letter referred to in paragraph Number 3 of your letter and enclosed therewith. It would also be helpful if your confirmation concerning the 'ML' reference could be given in a separate open letter at the time a settlement is concluded.

"Confirmation of the foregoing will also compromise any claims that our client may have against yours. We are in funds to make the payment by transfer directly into your account as detailed in your 12th June letter on receipt of written confirmation that the terms of this letter are accepted by your client.

"We look forward to hearing from you."

Now, Messrs. Woodcock's then replied and you go over the next page by letter dated the 20th August, 2002.

"Dear Sirs,

"Thank you for your without prejudice correspondence. The offer that has been put forward by your client has been resented.

"Certain issues can be agreed but the proposal as a whole is not acceptable. The writer will attempt to speak to Mr. O'Connell to discuss the matter. We would comment as follows, however, in relation to the points put forward by you:"

Then there is Point Number 1, and that is 1/2 150,000 in respect of all fees.

That is acceptable.

Point Number 2, that is that "Your client's claim to be entitled to a 40% share of any profits on the project" would be taken care of by this particular settlement.

Point Number 3, which is that "All other claims by your client of any nature whatsoever and howsoever arising against our client, its shareholders," etc., that this, they say, is not acceptable. "Our client is not prepared to compromise any claims that it might have against individuals whose identities are not known. Our client does not know who the shareholders, directors, employees or other consultants are that you refer to. If you wish a specific individual to be covered by this agreement then you should make this clear. As you appreciate, our client will wish a reciprocal agreement with the individuals that they compromise any claims that they have against our client. This clause, therefore, is simply too wide."

Then point number 4. "With regard to the release of files, the writer will discuss this with you. The concern our client has, however, which we must state clearly in writing is that documentation is now held by a number of people.

Our client cannot be held responsible for the disclosure of documentation from a third party. We make it clear therefore that the burden would be on your client to evidence that, in fact, if there was disclosure, that it

had come from our client after the date of compromise being reached.

"5. With regard to the draft letter attached to our correspondence of yesterday, then we confirm that we are authorised to send it subject to terms of settlement being agreed as a whole.

"6. With regard to clarification of the reference to 'ML', we confirm that we are instructed to clarify the position in a separate open letter at the time settlement is concluded in the form of words used in paragraph 2 to our correspondence of yesterday.

"We believe that our client's position as stated above is reasonable and should be grateful therefore if it is, that's confirmation can now be given so the terms of settlement can be agreed.

"At this stage, to avoid confusion, we would identify that there are no terms of settlement in relation to any specific issues. Settlement will only be reached when all issues between our respective clients are finalised."

Now, the next document, and I take it you were being kept abreast, and perhaps being copied with the letters, but at least you were being informed in general of how things were proceeding, I presume?

A. I am sure I was.

Q. The next document then is a file note of Messrs. William Fry's. It seems to be Mr. O'Connell. It's dated the 20th August, 2002.



Client, is you, Mr. Denis O'Brien Senior.

"Matter: Westferry.

"Dave McCann per his letter of 20 August.

Point 3 he is obviously making notes; he has read this letter "Will give list of names; confirm OOC acts for or has authority and gives reciprocal waiver.

"4. Have been discussions with Denis O'Connor. KP will hand over his files to D0'C.

"OOO whether aware of D0'C discussions re documentation."

Now, it looks as if Mr. O'Connell is being informed or receiving some form of information at this stage that there have been some discussions with Denis O'Connor about files.

Do you know anything about that?

A. No, sorry.

Q. And nobody told you that any such discussions were going on?

A. To the best of my recollection, no. Is this after the settlement?

Q. Well, it's coming right up tight against it, if you understand me?

A. Okay.

Q. Things are being just ironed out at this stage.

A. Mr. Coughlan, I am sure you'll understand. When I succeeded in getting agreement with Mr. Kevin Phelan and up to this "can I have a narrative?" you know. I wouldn't have then necessarily been following every inch of the way.

I mean, that's done. I now turn my attention to the actual

meeting with the other two guys in England. Like, you know, I wouldn't have been following all this particular thing.

Q. I can understand. I am not expecting you to know the minutiae of the matter. I understand that, Mr. O'Brien.

But there were from your point of view, going into this dispute with Kevin Phelan, there was the  $\frac{1}{2}$ 150,000, which was never really in dispute, in fairness?

A. No.

Q. And the other issue was the 'ML' reference that arose when the letter came back with the fax on it.

A. Yeah.

Q. But an issue that seems to have arisen in the course of concluding the agreement with Mr. Kevin Phelan, was a concern that confidentiality should attach to any documentation, subject, of course, as Mr. O'Connell was indicating, subject to a legal obligation to produce them to somebody, but that they wouldn't be released; that everyone would be keeping the document

A. Whose concern was that, do you think?

Q. Well, I don't know. And it's a thing that does happen, but what was being put forward here was that this was becoming a term of the agreement, it seems to have become a term of the agreement. Now, of course

A. Would it ever have been - just pure conjecture - would it ever have been because we had the main event coming up and we didn't want anything to disturb our negotiations in

that.

Q. That's possible. I am not saying it wasn't.

A. I know you are not, but I am just trying to be helpful.

Q. That could be so, yes, it could be. Because this was

there were two aspects to this, as far as you were

concerned: there was Mr. Kevin Phelan and then there was

Mr. Richardson and Weaver; isn't that right? That's what

you wanted to get cleaned up, as far as

A. That's correct.

Q. And you understood that to be your brief?

A. That's right.

Q. But, of course, I suppose I just wonder whether, at this

stage, in August, if it had something to do with the main

event, as you described it, that's Mr. Richardson and

Mr. Weaver, because that was bigger in terms of money,

there is no doubt about that.

A. Yes.

Q. I am just wondering what Mr. Denis O'Connor might have had

to do with it at this stage in August, if it was to do with

the main event? I don't know.

A. Denis O'Connor, is it in the documentation that Denis

O'Connor helped me with Kevin Phelan and in the settlement?

From my recollection, I asked Mr. O'Connor to help me

regarding the main event. I asked him I am sure you'll

come across it, or asked him he said he was going to

London. He said, "Would you like me to meet with Ruth

Collard," and so on, "to see if I can help anyone?" He

took the files away you know all this.

Q. I do. That seems to be a little bit later.

A. It is later, definitely.

Q. I am just wondering at this stage if you can throw any light on

A. I can't. Sorry.

Q. You can't?

A. No.

Q. Then if you go behind the next tab. This is just an Owen O'Connell note to the file.

A. 91?

Q. 91, yeah. And just going through it, it occurs to me that it's it looks like a 'to do' list, or something of that nature, or a check or a review taking place, because if you look at you see it's "Tushingam and Vanderpump" they are the people in the Isle of Man "Refer David Sykes to Sandra Ruttle." That would seem to be the correct, that's the kind of housekeeping, administrative; doesn't that seem right?

"Denis O'Brien and Denis O'Brien Senior." I don't know what that refers to.

"AP" it must be Aidan Phelan, or perhaps, yes, Mr. Healy just draws to my attention, it may be the list of people that he was getting who all the indemnities Do you know the indemnities and the cross-indemnities that Mr. Kevin Phelan was asking about? If you are asking me, you know, sort of, not to sue anyone connected with Westferry or Mr.

Denis O'Brien, I want their names so that I can consider

that because I don't want to have too wide

A. Did we ask him that?

Q. No, but he asked that at one stage.

A. Okay.

Q. He asked now, it may be so.

A. I don't particularly remember, just, again, being concerned

what Mr. Kevin Phelan would or would not do into the

future, I have no I was never I was never concerned

about it. I never spoke about it. I just wanted to be

finished with this individual. That's all. So I was never

concerned what he might or might not do in the future with

anyone.

Q. Now, the only thing I'd ask you about, if you can throw any

light on this now, it's crossed out, to begin with, but

what is noted, first of all, that's crossed out, "We are

happy to drop requirements re files" and then there

is there is "No. D. O'Connor request likely to be

withdrawn."

Do you know what that might be about at all?

A. I haven't an iota. I have never seen that.

Q. Now, just in fairness to you there, that you see the

crossing out "We are happy to drop requirements re files,"

that is perhaps consistent with the evidence that you have

just given, that you just wanted to get this matter over

with, but it looks as if the note continues that there was

a concern being expressed by Denis O'Connor. I don't know.

You can't help us there?

A. No, honestly.

Q. Now, the next is a phone message from Denis O'Brien Senior, 21st August, 2002.

A. Is this '92?

Q. "Spoke with Denis at 10 o'clock this morning. He had a message to call you but wasn't sure if it was just an overlap. I mentioned the message I had for him last night and he just asked me to reconfirm the following:

"1. Asked Aidan Phelan to get his solicitor to call OOC to give his assurance that Aidan Phelan will not be suing Kevin Phelan. Aidan said his solicitor was on holiday but he would try and get someone else to act on his behalf (DOB Senior already informed OOC).

"2. McCann had heard that we had asked for the files."

McCann is the man in Woodcock's.

"McCann had heard that we had asked for the files. McCann said that he would be unable to give us assurances if we were to hold the files and therefore Denis asked Denis O'Connor to withdraw his request. Denis O'Connor is to confirm this."

You don't remember having any discussion with Denis O'Connor asking him to withdraw a request, or anything?

A. It could have happened, you know, I mean

Q. "Denis O'Brien Senior is happy to settle today and to give the 150K without further assurances being dealt with."

And then you are available and your wife's

Do you remember having those sort of conversations?

A. I don't, but it seems reasonable, I don't have a problem with that.

Q. Right. Then the next document is at 93, and this is a formal offer being made, you can see, by your solicitors.

"On behalf of our client, we hereby offer to pay the sum of stg£150,000 in full and final satisfaction of:

"1. All fees and expenses due to your clients or any of them howsoever described arising out of the project."

And those clients are referred to as Mr. Kevin Phelan, Gameplan International Ltd, The Glebe Trust, and M & P Associates.

"2. Your client's claim to be entitled to a 40% share of any profits on the project.

"3. All other claims by your client of any nature whatsoever and howsoever arising against any or all of our clients and then Mr. Denis O'Brien, Denis O'Brien Senior, Mr. Peter Vanderpump, Mr. Nicholas Williamson and Walbrook Trustees (Isle of Man) Limited relating to the project.

"Our client also requires confirming that, unless compelled by law, neither you nor your clients will release your respective files nor any papers on them nor any other documentation related directly or indirectly to the project which is under your client's control to any third party without our client's prior written consent. However, it is acknowledged that such confirmation is subject to the fact that your client will not be in breach of this confirmation

if court proceedings are issued against any of your clients, such that your client will be at liberty to rely upon such documentation as they have in their possession as is reasonably required to defend their position. Further, our client would require the enclosed letter drafted by you to be signed by you on behalf of Mr. Phelan and sent to us with acceptance of this offer.

"If you accept this offer on behalf of your client, such acceptance will be deemed to constitute the satisfaction and confirmation referred to above, whereupon we will forthwith transfer to you the said sum of £150,000 sterling. We confirm that we have been placed in funds by our client for this purpose.

"We further confirm that we have been authorised by each of our clients, Mr. Denis O'Brien, Mr. Denis O'Brien Senior, Mr. Peter Vanderpump, Mr. Nicholas Williamson and Walbrook Trustees(IOM) Ltd, to declare fully and finally satisfied all claims of any nature whatsoever and howsoever arising against your client relating to the project upon and in consideration for your client's acceptance of this offer, and that such satisfaction shall be deemed to have occurred upon your acceptance as aforesaid.

"This offer is available for acceptance until 5.30pm on Friday next, 23rd August, whereupon it shall lapse if not previously accepted. Acceptance should be made in writing without any condition or qualifications," etc.

Now, that's the formal offer going, then, in relation to



And then you see the next letter is just the response, it's the acceptance of that offer on the 21st August.

And that enclosed the letter which had been sent in draft form previously by Mr. Aidan Phelan, being the only one he took instructions from, and his view about the retention money being correct.

And then if you go to the next document, then, it's a note, a file note of Mr. Owen O'Connell's. It's dated the 21st August, 2002. And it's "DOB Senior wants to settle today. "Go ahead without AP if necessary.

"Denis O'Connor withdraw requests for files. Better to have commitment re non-release. Aidan Phelan no intention of suing. If don't get him, DOB Senior will keep after him. OOC or CCS to confirm position at the end of day."

You can see there is some reference again to Mr. Denis O'Connor and files. Can you remember anything about that?

A. I don't, I can't. I am just trying to figure it out, what the heck it means. "Denis O'Connor withdraw request for files." Is he saying he wants to withdraw his request or is he saying don't

Q. I think it looks like, I could be wrong, it looks like it's Mr. Denis O'Connor is requesting files from Mr. Kevin Phelan's side. That's what it looks like.

A. Oh, I see.

Q. There is a question here again, it seems to be it's a position that you may not have been adopting at the time, and it reads "Better to have commitment re non-release."

You can't remember anything of that nature?

A. I don't know if I even had anything to do with it.

Q. All right.

The position as of this time was that and you had arrived at a stage where you had offered the  $\frac{1}{2}$ 150,000, subject to the explanation in relation to the ML/Doncaster, and agreeing mutually not to sue each other in respect of other matters arising out of the Westferry or the Doncaster Rovers transaction. That's in broad terms. And then there was some other side issue in relation to documents, and you can't necessarily help when it comes to that?

A. No.

Q. Now

A. Wouldn't you agree, Mr. Coughlan - I am just reflecting on that time - wasn't it a good job we asked Mr. Kevin Phelan for an explanation of the reference to 'ML' and eventually he came up with the explanation that it refers to some other earlier transaction. I mean, we could have totally ignored it and paid him. We didn't. We went to considerable trouble, really, to try and find out what in the name of heavens is this all about. I just want that for the record. We didn't just pass it by and say "Let's pay this chap and be done with it." You know, okay?

Q. But what you were presented with was, in the first place, a fax, which had a reference to ML and Doncaster; isn't that right?

A. Yes, we did yeah, definitely. And remember, please, it wasn't it had nothing to do with a narrative. Why he suddenly sent this memorandum out of the sort of, for me, out of the blue, you know? You say to somebody, "What time is it, please?" And he said "The horse will pass in two minutes." There is no connection whatsoever. I really was dumbfounded at that time. I did really think it was intimidation and some form of intimidation or blackmail, or both.

Q. Now, just to put the position of Mr. Kevin Phelan, if I can, on the correspondence that I have seen from Messrs. Woodcock's. That particular fax accompanied a letter, which contains some other documents, and that letter attempted to explain that Mr. Kevin Phelan was involved in the Doncaster Rovers transaction up to and concluding the negotiations which led to the signing of the agreement for the purchase of the shares or the purchase of Doncaster Rovers.

A. Would you mind starting again, sorry? Are you talking about the ML reference fax?

Q. I am going to come

A. Sorry, is that the one you said was accompanied by a letter?

Q. Sorry, that accompanied a letter.

A. It came with a letter?

Q. It came with a letter.

A. Not to my recollection.

Q. Mr. O'Brien, in fact, you can take it from me, it did.

Now, you can take it from me, and you needn't worry; this isn't trying to trick you, or anything.

A. Okay, go on.

Q. It came with a letter. And the letter from Woodcock's sorry, in the first place, it started off with Messrs.

William Fry's writing a letter asking them to set out his claim, and the claim is set out, and you are agreeing to pay it, subject to him providing a narrative because you were anxious that this narrative might assist you in your dealings with the bigger case, as you saw it. That is your dealings with Mr. Richardson and Weaver and the High Court action, that's how it all started off, isn't that right?

A. Yeah.

Q. His solicitors wrote back and said: Providing this narrative is going to take an awful long time and it's going to cost a lot of money because he is going to have to spend so much time and he is going to need assistance, and, in any event, look the position is this: It's in two phases. Doncaster is in two phases. The first phase is the negotiations leading up to the purchase of the shares in Doncaster Rovers Football Club Limited, and Mr. Kevin Phelan was involved in all of that. The second phase, after that, was run by Mr. Aidan Phelan. And they are saying "the reason why there will be no narrative in relation to that second phase is because we weren't involved, and here you are, the documents that we have that

show it was Mr. Aidan Phelan," and it included in the documents a fax which Mr. Kevin Phelan had sent to Mr. Aidan Phelan years previously, back in 1999, about Doncaster and other matters, but it did contain a reference "ML/Doncaster," isn't that right? That's how it all came into being?

A. Mmm.

Q. You then said that payment was subject to an explanation in relation to ML and Doncaster; isn't that right? Somewhere along the way the name or reference is made to a Mike Lloyd being the ML, do you remember that? It appears in the papers?

A. Later on, yeah.

Q. Your solicitors continue to write and they say that the payment is subject to an explanation in relation to the ML not being Michael Lowry or that the reference is to some other transaction and, in any event, a statement to the effect that Michael Lowry had no involvement in Doncaster.

That seems to be the way the correspondence goes.

A. Okay.

Q. Mr. Kevin Phelan's solicitor writes back and says "We'll go as far as we can, but my client, our client finds it impossible to meet those requirements, that is the requirements in relation to the ML or some other transaction."

Negotiations are broken off at the end of July of 2002. It looks, from the documents, that some contact, other than

contact between lawyers, took place in the first two weeks of August of 2002. Matters

A. Sorry, contacts between whom?

Q. Well, according to these documents, there was no communication by way of correspondence or noted telephone conversations between Messrs. William Fry's and Messrs. Woodcock's. But they record, or there are records being made that some some form of contact is taking place, anyway, and Messrs. Woodcock's then come back and inform Messrs. William Fry's, as I think of the 17th August, or there or thereabouts, that "It looks as if our clients are close to reaching agreement," and, in lawyers' speak, start putting terms on it. That seems to be what's happened. And then the matter is finally concluded. The money is paid over. And an explanation is accepted by you that the document which said "ML/Doncaster" now means "ML/Mansfield"; that's the explanation you accepted, isn't that correct?

A. I must compliment you, Mr. Coughlan. You have fantastic retention. How you remember all that

Q. You are very kind, Mr. O'Brien. It's your documents which enable us to pull it together. But that seems to be the sequence of events. Now, you told us on Friday your view about the fax document, the "ML/Doncaster" reference?

A. Yeah.

Q. And looking at the correspondence, it was you or your side who were refusing to pay  $\frac{1}{2}$ 150,000 until Mr. Kevin Phelan

came up with some sort of explanation which was suitable to you; isn't that right? I mean, suitable that you could understand it? I am not saying that you were putting words in his mouth. That you could understand it?

A. I'd prefer if you could rephrase that a little, please.

Suitable

Q. I will.

A. Obviously, he was referring to Doncaster, ML/Doncaster, right? I was asking, what is the explanation of this? I didn't ask him "Please change it and say it's an earlier transaction." I said "Before we pay any money over, what in the name of goodness is this all about?"

Q. But could I just ask you this

A. Yeah, go on.

Q. When you look at the fax itself, the "ML" and "Doncaster", it seems, on the face of it at least, fairly clear, doesn't it, a connection between ML and Doncaster on the face of it

A. No, his statement is clear. But I found no evidence whatsoever of Michael Lowry's involvement in Doncaster, not a single sentence. Do you understand?

Q. I do.

A. Now, the second thing is, I am sure you will accept this, we were asking for a narrative. He might as well have said "I want to talk about a basket of apples and oranges." I mean, it had no connection whatsoever with receiving a narrative.

Q. I understand you wanted a narrative for the English case.

A. Hold on, please. Then he sent this to us. I mean, how would you react to it? You are a legal person. How in the name of God would you react to it? Wouldn't you ask for an explanation of it?

Q. Yes.

A. Well, that's all we did.

Q. Yes. But you took a view that this was something that you viewed as being intimidating or

A. Absolutely. Not only

Q. or in some way sinister?

A. Absolutely, very sinister. And would you not have taken the same view if you were handling it?

Q. If that is so, Mr. O'Brien, I just and bear in mind that it's Mr. Kevin Phelan who was being kept out of his money by resisting moving from ML being Michael Lowry, or at the early stages of offering a different explanation, that when "Doncaster" is written, that that should really read "Mansfield"?

A. We didn't ask him to do that.

Q. No, I didn't say you did. He was being kept out of his money. There was pressure being exerted from your side in relation to him, commercial pressure, the lack of money, getting his hands on his money?

A. There was no pressure. We wanted an explanation. There was no pressure.

Q. Well, could I ask you this: If he then came along and said



to you, "Well look, ML is Michael Lowry" in fact, I want to take it in stages.

Some explanation is floated somewhere along the way, we'll have a look at that more closely, that ML is a Mike Lloyd.

A. Yeah.

Q. Would you agree with me that one could more easily understand, looking at the document now that's on the screen, this is the fax, you know, the ML, "Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan," looking at that and being told that ML is a Mike Lloyd might be easy enough to understand?

A. Yeah.

Q. But Mr. Phelan, Mr. Kevin Phelan said, "No, the ML isn't a Mike Lloyd. ML is Michael Lowry." But "Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan" should have meant "Kevin Phelan to refer all queries regarding Mansfield to Aidan Phelan." And you accepted that as an explanation?

A. Finally.

Q. You did?

A. Yes, of course. What was the date? As a matter of interest, what was the date of that particular memorandum, those seven points? What date was on it, Mr. Coughlan?

Q. This particular

A. The one he sent us, the Kevin Phelan one what Kevin Phelan sent us.

Q. Yes. August 1999.

A. You see, it goes back a long, long way.

Q. And you were dealing with it in August 2003, nearly three years later.

A. This is a long time afterwards. So obviously he had written that if it's August 1999, he had written that in '99.

Q. Yes.

A. You know?

Q. Yeah.

A. But what are you trying to I am doing my best to help you. Ask me a question.

Q. I am just trying to understand why a word which isn't there sorry, why initials which are there, which could be an explanation, "Mike Lloyd", do you understand me, because it is ML, but, of course, that isn't the case

A. You know, funny enough, I don't even know who Mike Lloyd is. Have you ever come across him?

Q. No, I personally, I haven't come across a Mike Lloyd.

A. In all your investigations?

Q. No, I have never come across a Mike Lloyd. But I want to know this, sort of, ML, yes, you could say ML, Mike Lloyd, but how do you think you could say Doncaster is Mansfield? How do you think that and you accepted that, from somebody you considered to be sinister and dishonest?

A. Pardon?

Q. Somebody you considered to be

A. Somebody I didn't trust. If "sinister" is the word, I

don't know.

Q. Use your own words.

A. Now, you must be fair, Mr. Coughlan. We didn't accept what was sent to us and willy-nilly immediately paid him the  $\frac{1}{2}$ 150,000 and let's forget it as quickly as we can. You must be fair about that. We did go back and try to find out what in the name of God is this all about before we would make payment to him.

Q. Would you have made the payment if no explanation had been furnished? In other words, if the document remained as it was?

A. I have no idea. I mean, I was trying to get rid of all of that Doncaster thing, so, for me, it was a total bore.

Q. Did you know anything about Mansfield, no?

A. No, nothing. I have heard about it, but I don't know anything about it.

Q. All right. I won't go into the details of that with you, so.

A. Excuse me, Mr. Coughlan. Are we going to go through all of this?

Q. Believe it or not, these are your documents.

A. I am just asking you, are you going to go through all of that?

Q. Most of it.

A. Mother of God.

Q. Because, believe it or not, three documents in there are various versions of are drafts of a statement that you

prepared for the purpose of making a complaint in England.

So that's

A. I don't mind you coming to that. I understand that. But,

I mean, this seems to be a tome.

Q. Do you think so?

A. I do, really.

Q. I'll try and break it up and take it as piecemeal as I can,

and perhaps we can leave out some of it, if that's all

right.

Now, just before I move, because I am not moving this is

from the settlement and we are going to move into the

mediation of the case in England. That's the next step.

A. Thank you.

Q. But just before I do, can I take it that you didn't know anything about Mansfield? You weren't involved in that?

A. Absolutely not.

Q. And can I take it, so, that it must have been somebody

other than you who accepted the explanation which was

afforded at the end, that Doncaster

A. was Mansfield. It must have been. I must have asked my colleagues, or someone, what the hell is Mansfield.

Q. Or your son?

A. Or my son, of course.

Q. Now, if you go to I'll be going behind, I think, Tab 99

next, but, before I do, let's move away from the documents

at the moment and just see if you can help us in relation

to the setting up of the mediation and matters that arose.

Now, we have had a Mr. Craig Tallents give evidence here.

I think you know that Mr. Craig Tallents gave evidence?

A. So I believe.

Q. I don't know if you know him or if you have met him? Oh you meet him at the mediation?

A. I met him at the mediation for a day, yeah.

Q. Now, he has told us that from an early time in the Doncaster affair, he was involved as an accountant, looking at matters, sorting things out, dealing with the Revenue, dealing with various aspects of the running of the club and the company over the years. So that was the type of work that he was involved in. And he reported, I think, to a Mr. Paul May, who was running Doncaster at the time on a day-to-day basis in general terms.

Now, there was an issue between you and the people who had sold Doncaster Rovers to Westferry I am going to use Mr. Richardson and Mr. Weaver

A. And issue between me personally?

Q. Sorry, between Westferry and Mr. Richardson and Mr. Weaver; isn't that right?

A. Okay.

Q. And the issue was really this: That there was, as would happen in any contract, big contract like that where the shares were purchased, there was money retained pending resolution of certain matters in relation to it, what bills might be outstanding and might have to be paid and who to be responsible for them, matters of that nature. That was

one aspect of it. And the other was, under the agreement, that an extra  $\frac{1}{2}$ 250,000 sterling would be paid to Messrs. Richardson and Weaver if they could persuade or swing an extension of the lease for the car-park in front of Doncaster Rovers; isn't that right? And a view was taken, or being taken by somebody on your side that it already that extension already existed at the time that the deal was done and, therefore, you shouldn't be liable for the extra  $\frac{1}{2}$ 250,000. That, kind of, in a nutshell, is what it was about, the dispute?

A. It seems to be, yeah.

Q. Now, there were solicitors involved in both sides: There was a Mr. Reg Ashworth, I think, up in Yorkshire acting for Mr. Richardson and Mr. Weaver; and a firm of Peter Carter-Ruck were Westferry's solicitors in the matter.

A. Mm-hmm.

Q. And it was a Ms. Ruth Collard who was a partner in that firm who was handling the matter; isn't that right?

A. Mm-hmm.

Q. And the way the case was unfolding was they had their claim in and you had a counterclaim in respect of matters which you said should be taken into account and should be deducted from the monies that they say they were owing.

That's generally what the case was about?

A. Yeah.

Q. It seems like a sort of a dispute that goes on day in day out all over the world, I presume?

A. Yeah.

Q. And it's a sort of dispute that's normally either settled or you get to the door of the court or there is this mediation process now where you go along to this thing and you try and sort it out or pare it down, what you don't agree with. You might fight about that or you mightn't fight about that, you might take a commercial decision about that. On the face of it, it looked like a fairly run-of-the-mill sort of commercial dispute, would you agree with that?

A. Absolutely.

Q. Now, how things unfold is you ultimately did end up at mediation, and the case was settled around this time, or at that time?

A. Correct.

Q. More or less in the general area I think that you might have anticipated that it would have sorted itself out at, as well, more or less?

A. Well, we were hoping, because otherwise it was a High Court case.

Q. And there'd be costs to be taken

A. Exactly.

Q. Can you be of any assistance to us as to how or why Mr. Denis O'Connor should have entered the frame in relation to what seemed like a fairly run-of-the-mill commercial dispute between two parties?

A. How he entered? He wasn't at the mediation.

Q. I know he wasn't at the meeting, but he got involved he did become involved at some stage?

A. Oh, yes. He offered to help.

Q. Could you just explain that to me?

A. Yeah, it happened here. Because he knew Kevin Phelan from old, I was asking what sort of a chap was he, and so on and so on. Then we got into the conversation of the dispute itself over Doncaster. He said he was going, to the best of my knowledge now, at one stage he said to me he offered to help in two ways: one was to meet Richardson and now, don't put a date on it for me I'll just give you my recollection he offered to meet, on our behalf, Richardson and Weaver to see if he could do be of any help in solving the dispute with them over the funds. And I I remember, I think, Ruth Collard advising me "Don't have him involved in doing that. We are your solicitors," and so on. So I asked him not to get involved. The second thing then was he said he was going to London now, bear in mind, just to remind you, Mr. Coughlan, I know you know this, but, as far as I was concerned, Mr. O'Connor is a very reputable businessman. He is the head of his own firm, well-known firm, with a very good reputation of chartered accountants, so I had no problem accepting his help when he offered to go to London to look at the Ruth Collard files and to give me an opinion how much really are we liable for in this dispute. Apparently, he did go to not apparently, he did. And he received the files from



Ruth Collard, read them over the evening, made a recommendation in the morning, whatever it was, and then that was the end of the matter there. The only other time, then, he came into the equation was after I had settled the matter in London, I must have telephoned and said "It's all over and done with". I don't know if that helps you now in the sequence.

Q. So, you say that you met him here?

A. Yeah.

Q. You were chatting to him?

A. Yeah.

Q. You knew that he knew Kevin Phelan?

A. Actually, not when I met him. I met him here. I knew he represented Mr. Michael Lowry. I met him here. I didn't know the sky over him at the time, or what he knew or didn't know.

Q. And you say that he offered to

A. To help.

Q. to help you in attempting to settle the case with

Mr. Richardson and Mr. Weaver?

A. No, Mr. Kevin Phelan first.

Q. Mr. Kevin Phelan first?

A. Yeah.

Q. And what about how, then, did he become

A. Obviously, it graduated into that since he was being helpful.

Q. And he wasn't your accountant?

A. No.

Q. Mr. Craig Tallents was doing that job, isn't that right, in the Westferry in the Doncaster Rovers matter; isn't that right?

A. Yeah.

Q. You can take it he was.

A. Okay.

Q. And, in any event, at the home end of things, as well, I mean, your own office or assistance from your son's office, there was Mr. John Ryall also had some input into matters; isn't that right?

A. Yes, mm-hmm.

Q. And would have been advising you and assisting you?

A. Okay.

Q. You knew Mr. Denis O'Connor up here at least was involved on behalf of Mr. Michael Lowry?

A. Correct.

Q. And you knew, I take it, that a matter which was being inquired into was whether there had been any relationship or connection involving a certain number of individuals, and two of those individuals at least that was being looked at by the Tribunal was your son and Mr. Michael Lowry; isn't that right?

A. Absolutely. That's what it was all about.

Q. That's what it was all about. And did Mr. O'Connor, from your recollection now, suggest to you that, as a professional person - because, as you say, his offer was in

two parts, or three parts, perhaps - attempt to reach some sort of an agreement with Mr. Kevin Phelan, to

A. Tried to help with Ruth Collard.

Q. The meeting with Ruth Collard to find out what the financial aspects of the Richardson/Weaver case were about?

A. Yes.

Q. And the third part was a suggested he was suggesting that he would meet with Mr. Richardson and Mr. Weaver, or one or other of them, in an attempt to try and sort out your dispute - I mean Westferry dispute - with them, and you, on the advice of Ruth Collard, told him not to have that meeting?

A. I don't want to interrupt you, Mr. Coughlan, but can you just remember where you stopped, because I'd just like to address the Chairman, if I may, please?

CHAIRMAN: Certainly, Mr. O'Brien.

A. Mr. Chairman, I just would like to make the point, I was very well aware of the suggestion that Michael Lowry may have got paid regarding the licence. I was also very well aware, of course, during the courtroom where, you see, I met him for the very first time. I know Mr. O'Connor said I met him socially sometime in the past, but I can't recall that. But where I really met him was here. I just want to make the point to you, sir, I am 76 years old, so I am not a fool, I hope, by now, and I have been reasonably successful in business. I just want to make the point to you. Would I really have used Mr. O'Connor to such an

extent, knowing, knowing he was a close colleague of Mr. Lowry, if I thought for one moment that Mr. Lowry had done something improper? I would just like that for the record. I don't know if I expressed it properly, but you get my point. Sorry for interrupting you.

MR. COUGHLAN: I do. And that very point that I'd just like to ask you, and perhaps I'll come back to it at a later stage, but you might think about it; did you think that there was any danger or perceived danger in having Mr. O'Connor involved in helping you to resolve the Doncaster Rovers matter, particularly now and I'm asking you, because the Tribunal did not know about this at the time particularly when you had the ML reference in the Kevin Phelan document which had just been settled? Did it occur to you that, oh, God, this could be a bit it would be safer not to?

A. No.

Q. That didn't occur to you at all?

A. No. Please try to remember, again, I was dealing with Doncaster. I found no reference whatsoever to Mr. Michael Lowry. I swear on oath, okay? This guy had sent us this memorandum, nothing to do with my request for a narrative, so I said this man is behaving in an extraordinary way, so okay, I am trying to answer your whole question. The fact that I used Mr. O'Connor's help, I was more than glad. I found him very courteous and helpful and intelligent. I would never have used his help if I, for one moment,

suspected that Mr. Lowry had received a payment from my son. Would I now, really? You'd want to be nuts.

Q. Well, can I ask you this

A. Yeah.

Q. Mr. O'Connor, on the documents that we have seen at least, and from what you have informed us and he has told us himself, he did a considerable amount of work on this?

A. He did, he was very helpful.

Q. And we'll see, in due course, he did a lot of calculations.

In fact, he reviewed, effectively, Mr. Tallents' assessment of the case on the financial side; isn't that right?

A. Reviewed what?

Q. Reviewed Mr. Tallents' all the numbers, he worked on all the numbers and came to a view about

A. Yes, in London?

Q. in London, yes about the potential value of the case.

He went to see Ms. Collard and he must have spoken to you, I presume, to do all of that, and

A. He went with my permission, yes. He said he was going to London and he said

Q. I know he went with your permission. We know, in fact, that you obtained from William Fry, Mr. Vanderpump, or Mr. Vanderpump's office, because, technically, that was the company, an authorisation for Ruth Collard to talk to Mr. O'Connor; isn't that right? You can take it you did?

A. Okay. I can't remember that, but go ahead.

Q. Nothing much turns on it. Now, did Mr. O'Connor ever ask

for any fee or did you suggest any fee?

A. Never.

Q. Or was there ever any invoice?

A. No.

Q. And, as you say, Mr. O'Connor is a respected accountant in this town.

A. Yeah.

Q. And you weren't being asked to pay for his time, I suppose?

A. No, I wasn't. I wasn't being asked to pay for his time.

Q. Now, I am just going to

A. Sometimes people help without being asked for payment.

Q. I know that.

A. Okay.

Q. Now, I am not going to read them out to you; I am just passing through the documents as being documents for the purpose of the inquiry here at the moment.

A. Right.

Q. Behind Tab 99 there is

A. Do you want me to look at it?

Q. I don't think you need to look at it.

A. Thank you. Okay. That's a help, Mr. Coughlan.

Q. I'll briefly tell you what's in it and I don't think you'll be disagreeing with

A. All right. Thank you.

Q. Mr. O'Connor wrote to Mr. Tallents on the 2nd September, 2002, and he told him that he had spoken to you on the previous Friday and that you had authorised him talking or

approaching Mr. Tallents. I think there is no disagreement about that, is there?

A. No.

Q. And he told Mr. Tallents that he was trying to settle matters with all parties, including retention and other claims issues with the vendors, and then he asked Mr. Tallents for various information, and then informed him that he'd be in London the following week and suggested a meeting I think on the 12th September, or there or thereabouts, in London. You have no difficulty that happened and you don't have any difficulty?

A. No.

Q. And did you tell or maybe you can't remember

A. Go on.

Q. Did you tell Mr. John Ryall about Mr. O'Connor's approach to you?

A. I am sure I did. Sure, we were colleagues.

Q. And he was the was he the man who was really in the day-to-day

A. He was doing all the sort of hard work, yeah, keeping everything together.

Q. Now, I think you have said, and I think Mr. O'Connor has said in his letter to Mr. Tallents, he wasn't, and he wasn't the offer, as you understood it, was to get involved to try and settle the case?

A. Mr. O'Connor?

Q. Yes. With Richardson and Weaver?

A. Yeah.

Q. Not to give you general accountancy advice, or anything like that?

A. No.

Q. It was to settle the case. That's as you understand it, anyway?

A. Wait now, let me just think back.

Q. I'll take it slowly again.

A. Sorry, the help was the help was: the claims that were being made against us, he said he'd look at the files overnight in London and make a recommendation to Ruth Collard whether they were fair or I think it was with regard to Phelan, not the final I am sorry, I can't say for sure. I thought it was with regard to Kevin Phelan's claim.

Q. I am going to wind up in about ten minutes, Mr. O'Brien, because I think

A. I am not having a problem.

Q. I know you're not.

A. Why do you want to wind up?

Q. Perhaps I am. I'll just explain

A. Okay.

Q. that there were three aspects to Mr. O'Connor's involvement, you have told us already. One was to help settle the Kevin Phelan matter?

A. Yes, correct.

Q. That was done?



A. Yes.

Q. The second was the meeting with Ruth Collard and getting filled in, and that sort of thing?

A. Correct.

Q. And the third was to arrange a meeting with Richardson and Weaver for the purpose of settling the case; isn't that right?

A. That may have been before

Q. That may have been before

A. That may have been in the middle rather than the end, but go ahead.

Q. So those are the three?

A. Those are the three.

Q. All right. Now, behind Tab 101?

A. I am getting to hate this book.

Q. I know that, and I am sorry for you.

A. 101, right.

CHAIRMAN: It's a feeling we all share, Mr. O'Brien.

A. If you have been doing this for ten years, you must have enormous patience.

Q. MR. COUGHLAN: Now, this is an e-mail, I think, from John Ryall to Ruth Collard, and "I understand from Craig that he scheduled a meeting for next Tuesday between Denis O'Connor, you and Craig with a view to progressing the retention issue. Denis O'Connor is not representing either Westferry or Dinard but may be able to assist in resolving matters. I have requested the directors of Westferry to

authorise you to attend the meeting with Mr. O'Connor and to discuss matters in relation to the retention amount.

You should receive this authorisation either later this afternoon or first thing tomorrow.

"Regards,

John Ryall."

A. Okay.

Q. So, did you tell Mr. Ryall that Mr. O'Connor was acting as a friend?

A. A go-between, if you like. I probably did, yeah. Not probably; I must have. I was consulting quite a lot with John Ryall at that time, of course. I'll just explain to you; I know you are going to interview him tomorrow. John Ryall is much better than I am at attention to detail. He is what I would call a detail man. I am sure he will prove to be very helpful for you.

Q. Thank you very much, Mr. O'Brien.

A. Right.

Q. And then, if you go over the page, this is from Ruth Collard back to John, and it's really a matter we should take up, but again, she is acknowledging receipt of that.

And she goes on to say "I appreciate there may be hope that the matter can be settled with Mr. O'Connor's assistance before the mediation" because the mediation was coming up; there was a date set for the mediation I think at this stage.

A. Okay.

Q. But "It is still necessary to prepare as though it is proceeding, particularly given the short timescale and the fact that the court has been informed of the date. I shall be grateful if you would telephone me. I look forward to hearing from you."

So what she is saying back is "Yes, John, that would be great, it would be great if Mr. O'Connor can do something that might settle the case before mediation, but we mustn't slacken, we must keep going as if we are proceeding to mediation." Is that right?

A. Yeah.

Q. And, in any event, the meeting took place between Mr. O'Connor, Mr. Tallents and Ms. Collard in the offices of Peter Carter-Ruck; isn't that right?

A. Mmm.

Q. Now, do you know whether, in the meantime, between you and Mr. O'Connor having any discussions here where he offered to help, as you say and I am not holding you, it mightn't have been in this hall

A. That he offered to help.

Q. Where there had been any contact between Mr. O'Connor, Mr. Richardson and Mr. Weaver or Mr. Kevin Phelan, did you have any discussion

A. Sorry, at the time that we discussed him getting involved here in this room, you are asking me did I know did he have any discussions with Weaver, Richardson? No.

Q. Or Mr. Kevin Phelan?

A. Or Mr. Kevin Phelan, no, absolutely did not know. I raised the subject with Mr. O'Connor. He did not raise the subject with me.

Q. Right. Now, we have seen the you weren't at the meeting, of course, so you can't comment on any note that was made by anybody at the meeting?

A. Which meeting was this?

Q. The meeting in London which was attended by Mr. O'Connor?

A. Okay.

Q. But I think you are aware, in general terms, that Mr. O'Connor, in London, overnight, prepared calculations

A. I am, yeah.

Q. Serious calculations, and that these were given back to Ms. Collard; is that right?

A. Yeah, the following morning.

Q. The following morning. Now, could you tell us you say that Ms. Collard advised you that it would be preferable if Mr. O'Connor did not get involved in any dealings with Messrs. Richardson and Weaver; is that correct?

A. Yeah.

Q. Can you just tell us what your feeling about that was then, if you were so advised? Like, here was a man whom you had huge respect for. You had told us that if you had the slightest doubt or if anyone could have the slightest doubt that there was anything in any suggestion of a relationship involving your son, Mr. Lowry or Denis O'Connor or the

people the inquiry was taking place into, that you wouldn't have asked Mr. O'Connor. What made you change your mind about him going along to help and see if he could settle the case with Richardson and Weaver?

A. Was that the question that you just asked me?

Q. Yes.

A. I thought okay. I had no problem with taking I thought you asked me why I accepted Ruth Collard's advice not to use him? Did you ask me that?

Q. Yes.

A. Sorry. I had no problem in doing that. She was our solicitor, and naturally you should take advice from your solicitor.

Q. But did you ask why?

A. No. I just don't forget, these things just happened very quickly. I didn't have any big discussions, "Why, Ms. Collard, did you think of that? Let's go over this in great detail." What nothing like that. She said, "I don't think it's advisable." I said, "If that's what you say, let's get on with it."

Q. But steps had been taken beforehand when you had an accountant in England dealing with the matter?

A. Yeah.

Q. And there is no suggestion that there was dissatisfaction with Mr. Tallents at all. And Mr. O'Connor, you say, offered to help?

A. Yeah.

Q. And then you take steps that he will go over. You get instructions

A. Well, he didn't go over, did he?

Q. He went to London.

A. No, that was before that, was it not? That wasn't the same occasion, sorry, was it?

Q. No, no.

A. So he hadn't gone to London. I had said to Ruth Collard, "Maybe he can help with Richardson and Weaver." And she replied, "We don't think he should become involved. We are dealing with the matter." I accepted the advice of my solicitor on that count.

Q. Now, did Mr. O'Connor tell you about how he was arranging to meet Richardson and Weaver?

A. No. There is something in the files about that, their coming to Manchester or their going somewhere, I don't know what it was. But it didn't really register to me how he was going to meet them.

Q. Or how did you think he might have been able to sort it out, in our own mind now

A. How did I think he'd sort it out? He offered to help to see if there was any way remember, this was going to go to a High Court. I would have accepted help from the devil himself.

Q. You settled it at mediation, though, in a fairly normal way?

A. I settled it myself at mediation.

Q. Yes, you did.

A. Myself at mediation.

Q. Yes. But how did you think or why did you think

Mr. O'Connor was in a position to help to settle the case with Messrs. Richardson and Weaver? What could he bring to the party, in your mind?

A. He is a very intelligent man. He has a very good reputation. You know, he is very able. He is worldly. If he offered to help, as I told you, if a passersby in the street had offered to help, I would have accepted it.

Remember, I was just interested in getting rid of this damn problem. Do you understand?

Q. I do.

A. This is not my field. I am not interested in all that stuff. I was bored stiff with it, in fact, in the middle of it, and I would have accepted

Q. Why were you asked to handle it, if that was the case?

A. Because it went on too long. And Denis knew the type of guy I am. That's why. It went on for nearly four years, as you know. It was unbelievable how long it went on for.

Q. What went on for four years?

A. That whole dispute. It went on, I don't know whether it was three or four years, but it was going on a long time.

'99, wasn't it? '98 or '99?

Q. No, the

A. The Doncaster dispute.

Q. The proceedings

A. When did we buy it?

Q. The proceedings were issued against you, as I understand it, I think, in England in 2001?

A. The proceedings what?

Q. The High Court proceedings in England were issued by Messrs. Richardson and Weaver in 2001.

A. Yeah.

Q. The case was settled in August of 2002. I haven't got the exact date that the proceedings were issued, but I think it was June of 2001. In nearly all jurisdictions, that's fairly speedy.

A. But those proceedings were not issued just out of the blue. There must have been disputes about everything before they had to arrive at deciding it would have to go to court, wouldn't it?

Q. Yes.

A. So it went on for a long time before the proceedings.

Q. Yes, do you know how long?

A. I haven't a clue, but it was a long time.

Q. All right. But what did you think and you have explained Mr. O'Connor was competent, worldly, pleasant, yes, all qualities, that is so. But he wasn't a lawyer; isn't that right?

A. No.

Q. And what did you think that what access did you think he had to Messrs. Richardson and Weaver which would enable him to help you? And I understand, I understand that people



would seek help in any quarter to try and settle a case?

A. Did I say he had access?

Q. No, but what do you think? How did you think that this man, who was an accountant here in Dublin, could set about settling a case with people in England, in proceedings which were in England, where you already had the services of solicitor, accountant and barrister? What extra did you think Mr. O'Connor could bring to it?

A. Just in case he could help, I was quite happy to accept it.

Q. Well, I think you say all right.

MR. COUGHLAN: I was going to move on to the mediation now, sir.

CHAIRMAN: I think we'll get on to that tomorrow,

Mr. O'Brien. I don't, of course, tell the barristers what questions to ask, they are independently advising me, but I will make some inquiries as to whether we can cut out some of the documents to keep matters to the realistic minimum, and if we make a start at 11 o'clock tomorrow, I am hopeful we will make reasonable progress on it.

A. I am very grateful to you, sir. Thank you very much.

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

THE TRIBUNAL ADJOURNED UNTIL THE 7TH OF MARCH, 2007,  
AT 11 A.M.