

THE TRIBUNAL RESUMED ON THE 7TH MARCH, 2007, AS FOLLOWS:

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN SENIOR BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, yesterday we had arrived at the mediation of the proceedings of Dinard and Westferry in London. And I think you told us that when you furnished your Memorandum of Intended Evidence, that that mediation was scheduled to occur in London on the 27th September, 2002. And you said that on the 24th September you were faxed by Denis O'Connor by Denis O'Connor's office a copy of a letter from Christopher Vaughan to Michael Lowry.

The letter was dated the 25th September, 1988, and it suggested Mr. Lowry had an involvement in Doncaster. I think we know the letter. I didn't know about your total involvement. You say that you gave that suggestion no substance at the time as you knew it to be entirely untrue?

A. Mm-hmm.

Q. So, getting that particular letter from Denis O'Connor's office didn't have any impact on you to the extent that it caused you concern or worry; you just dismissed it as being of no importance because you knew it to be, in your own mind, to be absolutely untrue, is that right?

A. Well, I mean, it was a little more than that, wasn't it? I mean, if you are going to negotiate with someone, and out of the blue they send you this letter that has totally nothing whatsoever to do with the negotiations, you hardly are just going to say "that's that".

Q. Well, sorry

A. You know, I am just saying to you, Mr. Coughlan, it wasn't as easy as that. But I didn't give it any substance because I suspected in fact, I knew I found out where it came from, and I knew this was another ploy by these people I was about to have to negotiate with. Maybe softening me up or something else.

Q. And who did it come from?

A. It came from Brophy through Brophy Thornton. I was told later

Q. By whom?

A. By Mr. O'Connor, that he believed it may have come from Mr. Weaver.

Q. And when were you told that, do you think? Was it after

A. It probably was I can't remember, but it was in or around that time.

Q. Well, do you know whether it was in or around that time.

Was it after the mediation or before

A. No, before it.

Q. Before the mediation?

A. Yeah.

Q. You think. So before you went to London on the

A. Before I met them in London.

Q. Before you met them in London?

A. Yeah.

Q. You believe that you had a discussion with Mr. O'Connor?

A. Yes.

Q. And

A. I know Mr. O'Connor is going to say we didn't, but I am sure he is telling the absolute truth himself. Obviously we beg to differ. I thought I did have a conversation with him, and I thought I was told. But I understand Mr. O'Connor says that's not a fact, but anyway.

Q. Right, fine. Okay. But as far as you're concerned, you received this fax and you say that you had a discussion with Denis O'Connor. Leave Mr. O'Connor out of it for the moment. His version of events, according to you at least anyway, that you had a discussion, and, as you say, it wouldn't be unreasonable to find out about it because there was this reference, wasn't there, to Michael Lowry?

A. It came I think it yeah, I am just trying to recollect. I think it must have been somewhere on that piece of paper that I received, the name of Mr. O'Connor's firm.

Q. I think that must be so, because it would be on the fax banner-head?

A. Exactly, exactly. And then when I spoke to Mr. O'Connor on the telephone about it, I think it must have been, because I didn't meet him, he said "I have not seen that and that I had given instructions in my office if anything came in," because Mr. O'Connor knew our meeting in London was pending, this negotiation, if you like. So, my recollection is he told his office if anything of that nature comes in, send it directly to Denis O'Brien Senior.

Q. Of what nature? You mean anything to do with Doncaster?

A. Yeah, Doncaster, yes, Doncaster. But that had nothing to do with Doncaster, but I considered it to be a process of softening me up for some reason.

Q. Just, if we think about it, it had everything to do with Doncaster, to this extent: that Mr. Christopher Vaughan was the solicitor, isn't that right, involved in Doncaster?

A. That's right.

Q. And he was making a reference to Mr. Lowry as having an involvement in Doncaster; isn't that right?

A. Well, he has since refuted that, hasn't he?

Q. Has he?

A. I think he has, has he?

Q. All right, you are telling me he has.

A. You don't know that, Mr. Coughlan?

Q. We are inquiring, Mr. O'Brien, because an awful lot of information emerged after the court proceedings commenced against this Tribunal, Mr. O'Brien, and that's why we are inquiring.

A. Okay.

Q. But this was Mr. Christopher Vaughan and there was a reference to Mr. Michael Lowry and you were going into negotiations with Messrs. Richardson and Weaver?

A. Yeah.

Q. All right. And to the best of your knowledge, then, the discussion you had with Mr. O'Connor was just determining the source of the

A. Not really. I think I telephoned and said, "Do you know I got this letter?" He said, "I haven't been in my office all day," or something, "I don't know anything about it," you know. And I explained what it was.

Q. I suppose you must have read it out to him?

A. Oh, yeah I can't remember.

Q. I'd imagine?

A. I told him what was the content of it.

Q. And when you say that now, you understood this, as you say sorry, having ascertained or believed that the source was Mr. Weaver or Mr. Richardson, in your mind, you understood this to be, as you said yourself, a softening-up process or some sort of softening-up process, going into negotiations?

A. Yeah. I really said, "What the hell is going on now with these people?"

Q. Well, did you ring Mr. Christopher Vaughan at the time?

A. I never spoke to Mr. Christopher Vaughan in my life.

Q. In any event, that was the extent of your discussion with Mr. O'Connor to

A. It really was. I was preparing for the meeting, and really, you know, I was just trying to that's about the height of it, yes.

Q. He didn't offer you any advice, or anything, at that time?

A. No.

Q. All right. So you went off to London and you knew about this particular document; isn't that correct?

A. Yes.

Q. And the do you know did you send a copy of it to Mr. Denis O'Connor at the time?

A. No.

Q. So you went to London. I think Mr. John Ryall accompanied you; isn't that right

A. He did, indeed.

Q. from staff. And I think you went to the mediation meeting which was took place in a chambers in London; isn't that right?

A. Correct.

Q. I think Mr. Kallpetis, I think, was the Mediator, QC. I think if we go to behind Tab 121 A, this is

A. 121?

Q. 121A.

A. I was afraid you'd come back to this book, Mr. Coughlan.

Q. I know. Unfortunately, I have to, Mr. O'Brien, sorry.

A. 121A.

Q. It's an attendance note.

A. I see it now.

Q. And it's an attendance note and the note is being made by a Kate McMillan. She was a solicitor in Peter Carter-Ruck, I think?

A. She worked with Carter-Ruck, yeah.

Q. And the date is the 27th September, 2002, and that's right, that was the date. The subject is "Westferry Limited also trading as Dinard Trading and Shelter Trust Anstalt,

against" and then the matter and there is a number.

"Mediation in the above matter, Michael Kallpetis,
Chambers, Littleton Chambers.

"The following is a summary of the key events only and for
a full account Kate McMillan's handwritten note of the
mediation contained in A4 counsel's notebook with Westferry
Mediaton 29th September, '02 (written on it in block
capitals) should be consulted."

"Those present:

"Mediator: Mr. Kallpetis.

"For the Claimants: Ken Richardson, Mark Weaver, Reg
Ashworth and Peter Cranfield;" he was their barrister, I
think that's correct?

A. Mmm.

Q. For the Defendants: Denis O'Brien Senior, John Ryall,
Craig Tallents, Richard Lord QC, Ruth Collard and Kate
McMillan." That's correct as well, isn't it?

A. Mmm.

Q. "There were two rooms only available for the mediation. As
the defendants' representatives were in the larger of the
two rooms, the claimants' representatives came to the
defendants' room for the sessions when all representatives
were present."

I think that that is correct, isn't it?

A. Correct.

Q. "MK began by explaining how mediation works. He explained
that the mediation was totally without prejudice.

Everything that was said was without prejudice between those present at the mediation and anyone outside the room. This meant that no one could use any information without the written consent of the other party. Anything said to Michael Kallpetis was confidential. If any party wanted to say anything to the other side, Michael Kallpetis would write it down. Unless and until something was signed, nothing was binding. If parties wanted to 'park' certain issues for the purposes of the mediation, they would not be bound by those decisions."

Do you remember that sort of general

A. Yes, of course.

Q. explanation being given by Mr. Kallpetis?

A. Yes.

Q. "Michael Kallpetis said that any party was free to leave if the process was serving no useful purpose. Michael Kallpetis said that if anyone wished to leave he would ask them to spend five minutes with Michael Kallpetis alone before leaving. Michael Kallpetis also asked that no one interrupt anyone else. He also requested that first names only be used. Everyone agreed that Michael Kallpetis' rules were acceptable to them.

"Michael Kallpetis explained that he had read the position statements and the agreements. The parties exchanged position statements which they had not done previously."

Do you remember that?

A. Yes, of course.

Q. "Peter Cranfield then went through the claimants' position statement.

"Richard Lord went through the defendants' position statement.

"There was then a detailed discussion between the parties led by Michael Kallpetis regarding the issues in the action under dispute. There was little conceded on the side of either party, save for the fact that the claimants accepted that they had been double-counting certain elements of the claim."

Do you remember that sort of discussion?

A. Yes.

Q. "The parties then broke into their original groups (claimants and defendants) to go through the numbers in detail in the light of what was said and come up with settlement proposals."

so you split up and you went off to talk about it yourselves?

"The defendants' conclusion was that the maximum amount the claimants could realistically hope to recover was the retention fund plus $\frac{1}{2}$ 351,000."

Now, you may not remember the actual detail, but you remember that sort of discussion taking place, what's the most they could possibly recover?

A. Yeah.

Q. "The claimants produced a letter to the defendants at lunchtime via Michael Kallpetis that stated that Kevin

Phelan did not agree with the defendant's version of events regarding the payroll and the car-park lease undermining the defendant's case on both counts. (This letter was produced in Kate McMillan's absence from the room to obtain details re Law Society interest rates.)"

So, a letter was produced by the other side from Kevin Phelan which undermined the counterclaim that you were maintaining in respect of the car-park and aspects of the retention. That's what happened; isn't that right?

A. Yeah.

Q. "The claimants then proposed via Michael Kallpetis that a private meeting take place between Denis O'Brien and John Ryall and Ken Richardson and Mark Weaver.

"Denis O'Brien had reservations about this but agreed to participate and the private meeting went ahead."

Do you remember that?

A. Mm-hmm.

Q. And then "See John Ryall separate note prepared in conjunction with Denis O'Brien for the contents of that meeting." I'll come to that, that's a memorandum which Mr. Ryall made

A. This is not complete, sorry. Forgive me. The last paragraph you read, do you know, they consented to have a meeting, and so on. Is that right?

Q. Yes.

A. Read it again, please. Sorry.

Q. "The claimants then proposed via

A. That Richardson and Weaver?

Q. No, Richardson and Weaver proposed, through the Mediator, that the two of them would have a private meeting with you?

A. Correct.

Q. You had reservations about that, but you agreed to it, but you brought Mr. Ryall along, as well; isn't that right?

A. It was a little stronger than that now, Mr. Coughlan.

Q. You tell me.

A. Can I just recount? When they suggested that we have a private meeting without the presence of the Mediator, I absolutely said, "No. I insist upon the Mediator listening to any private conversations we would have together." I just want to emphasise that.

Q. That's fine.

A. Thank you.

Q. Then Ms. McMillan of course wasn't at that private meeting, and there is a note of Mr. Ryall's which I will come to in a moment.

A. Okay.

Q. Because that covers the meeting from another point or that meeting which wasn't covered.

A. Okay.

Q. Then, "Denis O'Brien and John Ryall returning to defendants' room following the private meeting. Michael Kallpetis present at the private meeting at his insistence." That's yours, I think; is that right?

A. Mmm.

Q. "Denis O'Brien clearly furious regarding the content of the private meeting." That's what she notes. That's how you came back to the room, would that be a fair way to describe it; you were furious?

A. Correct.

Q. "He is saying that the defendants have no choice but to go to the High Court. You were saying at that stage you were furious and you came back to them and said "We have no choice but to go to the High Court".

A. Yes.

Q. "Denis O'Brien alleged that he had been blackmailed by Ken Richardson and Mark Weaver." That's what she notes. Again, would that be a reasonable account of

A. Yeah.

Q. "Denis O'Brien reporting that Ken Richardson/Mark Weaver had suggested that the defendants pay i;½2m for the first claimant" that's Dinard. She is noting that you are saying "They suggested that we pay i;½2m for the company."

A. I thought it was two-and-a-half million.

Q. Fair enough. Maybe it is. But it was up there in that range at least, isn't that right?

A. It certainly was.

Q. "Ken Richardson had hinted to Denis O'Brien/John Ryall that a telephone company had offered to buy Dinard." Would you have recounted that when you came back to the meeting?

A. I would, yeah.

Q. "Denis O'Brien believed that this company was Motorola and

it was suggested that Motorola wanted to sue the Irish Government for giving a telecommunications licence improperly to the O'Brien family."

A. Yeah.

Q. Again, she is recording, I think, you were furious and you were recounting what happened at the meeting and what you thought was behind all of this; isn't that right?

A. Yeah, there is a little more to it, it's probably not important, but this guy Richardson said to me, "I have been on my phone to a lawyer in Zurich who is representing telephone interests, and they are very interested in the files of Dinard Trading." He gave me this sort of thing. But if we would give him two-and-a-half million sterling, we could have the files and nothing further would continue from it, or, you know, words to that effect.

Q. And you were she is recording the gist of what you were recounting as you came back into the room; isn't that right?

A. Yeah.

Q. It's a reasonable note of matters?

A. I was livid.

Q. She says "furious". Livid, you say. All right.

A. Yes.

Q. "Denis O'Brien said that two to three days prior to the mediation Denis O'Brien had received a message via Kevin Phelan via Denis O'Connor via Ken Richardson that Ken Richardson had a letter which was damaging to the O'Brien

family and if Denis O'Brien wanted the letter to disappear,

he should meet the claim in full."

A. Mmm.

Q. So, would you think that that's what you said to them when you came back in?

A. I'd love, sometime, Mr. Coughlan, to get your opinion of all that carry-on. Go on, anyway.

CHAIRMAN: Well, we'd better stick to yours for the moment, Mr. O'Brien.

A. All right, sir.

Q. MR. COUGHLAN: So, you told yourself and John Ryall came

back in to your lawyers in the room and you told them as

you say, you are livid that this had happened and you said

"This crowd are trying to blackmail or are blackmailing me

or trying to blackmail me. There is some American

telephone company are interested in buying their files."

And you said to them, that a few days prior to the

mediation, that you had received a message via Kevin Phelan

via Denis O'Connor via Ken Richardson, that Ken Richardson

had a letter which was damaging to the O'Brien family and

that if Denis O'Brien wanted the letter to disappear, he

should meet the claim in full?

A. Yeah.

Q. Now, was that what was conveyed to you by Mr. O'Connor before you went to the meeting?

A. No. By Mr. O'Connor?

Q. By Mr. Phelan?

A. This all happened at the meeting.

Q. Yes, I know that. But what you said there, or what Kate McMillan records there is that before you went to the meeting, a few days before you went to the meeting, you did receive a letter?

A. Absolutely.

Q. And what she has recorded there is that you said, and this was part of the same

A. Scenario.

Q. scenario, that you're recounting here something had happened at the private meeting where they asked you to buy the whole company. You said, "A couple of days ago before I came here I got a message that Ken Richardson had a letter that was damaging to the O'Brien family interests," and if you wanted the letter to go away, you'd better meet their claim in full?

A. Yeah.

Q. Had that been said to you before the meeting?

A. I am just trying to remember now.

Q. I know you are, Mr. O'Brien, and I want you to take your time now?

A. Can I just recount what happened?

Q. Yes.

A. I think you know the type of person I am now. I am in a hurry to get things done. Get rid of all the trimmings, if you can, get down to the main event. I got this letter in my office, okay. It came from Brophy Thornton, okay? I

knew there was no truth in that letter, okay? I put it totally aside and continued to prepare for the meeting. I gave it no substance whatsoever, all right? Now, that is the truth of the matter, okay? And then I went, of course, to the mediation, was asked if we'd have a private meeting without the Mediator, without him. I said "Absolutely not." So Mr. Kallpetis came into the room and then they went on about, you know, "We don't want to hurt your family and your son," and so on. They went on a long diatribe till eventually they said, you know, "We have been approached by telephone people," I can't remember the exact words, but we have been "if you pay us two-and-a-half million," nothing to do with the mediation, it wasn't owed to them or anything, "if you pay us two-and-a-half million, of course we'll give you the file, the Dinard files," whatever it was. I immediately stood up, I said, "I am not dealing with you." And I was raging, and we stormed out of the office. I told my colleagues in the other room, wherever they were, what took place. Then their solicitor came in and, believe it or not, he was quite apologetic about what had taken place. I am sure he felt terrible, representing such people himself, because it was obviously blackmail. And he said, "Mr. O'Brien, you know" he didn't say sorry, or anything like that. He said, "Mr. O'Brien, have you anything can I take back anything?" And I said, "They have to retract all that. I wouldn't dream of dealing with them. I think we'll have to

go to court," or words to that effect. Now, I can't

remember the exact

Q. I don't expect you to.

A. We eventually, as you know - I am sure you are going to

come to it - settled the matter for a lot less, for a lot

less than they were asking. They were looking for

1.2 million. We settled for a little more than 700,000.

Q. But

A. Sorry, in that meeting, I said, "I am bringing this matter

to the London police when I am finished with this, I am

bringing this matter to the London police." Now,

Mr. Coughlan, if I was trying to, in all of that, trying to

hide anything, particularly with reference to Mr. Lowry,

would I have really taken the steps I did, going to the

police and God knows what else? You know, I am sorry, I am

just putting it out to you.

Q. Right. Well, I just want you to concentrate for a moment

on one little aspect of this, the private meeting, the side

meeting, and I'll come to that and what transpired, because

there is a note of Mr. Ryall's there. But what I just

wanted to ask you, and Ms. McMillan does record, you came

back, you were furious, you were livid, you were in a rage,

all of those things.

A. Yeah.

Q. And you told your lawyers about this proposal that you

should purchase Dinard, whether it was for two million or

two-and-a-half million, and that there was an American

phone company, and you speculated that, I think, that it could have been Motorola. You speculated?

A. I probably did.

Q. And nothing I am just looking at her note. But then she goes on and recorded you as saying that a few days before the mediation, that you had received a message. Let's forget about from whom or through whom for the moment?

A. Okay.

Q. You had received a message that Ken Richardson had a letter which was damaging to your family's interests, and if you wanted the letter to disappear, you should meet the claim in full?

A. Mmm.

Q. Did you receive such a communication that you should settle the case in full before you went to the mediation now, because you knew there was a letter

A. No, I didn't.

Q. You didn't?

A. Sorry, my recollection is we got this letter. I couldn't understand why I had this letter, except I did suspect I was dealing with, to say the least, not very honourable people, okay?

Q. Yes.

A. So, it's very hard to go back that long, you know. If I could help you, I really would. Why is it important, though?

Q. It really is a question, and I'll come to it in due course,

when you did go on to make a complaint to the City of London Police, and the draft statement which you prepared and how that subsequently evolved into a statement to the police. So I just that's why I am just asking you.

It's just in relation to the I know it's hard to remember back, but unfortunately, the sort of thing that we have to deal in is the detail, on occasion, to try and tease out exactly what did happen insofar as it is possible to so do. But, you see, that seems to suggest there that you had received a message which had come through Kevin Phelan, through Denis O'Connor

A. Sorry, I was never told it came through Kevin Phelan, did it? What I was told is it came from Weaver. Weaver.

Q. I am not saying yes, it came from Weaver, or Richardson, but it came through Kevin Phelan and Denis O'Connor.

That's what the note seems to indicate?

A. The note from whom?

Q. The note here made by Ms. McMillan of what you said at the meeting?

A. You see, she may not have it absolutely correct, she may not. I mean, we are all nobody it everybody is fallible, you know; nobody is infallible.

Q. No.

A. Right.

Q. That is absolutely true.

A. Thank you.

Q. All right. So we'll move on, so, and we'll come to deal

with it in due course when we come to deal with the draft statement which you made.

A. All right.

Q. "Denis O'Brien said that he would not give in to blackmail." Would you think she is correct there recording that, that you said that?

A. In the mediation?

Q. No, that you weren't she records here: "Denis O'Brien said that he would not give in to blackmail." She recorded that.

A. And this was at the meeting?

Q. At the mediation.

A. Yes, I would have absolutely said that.

Q. "Michael Kallpetis reported that he had taken Peter Cranfield and Reg Ashworth outside and read them the riot act regarding their clients' behaviour." That's Dinard's barrister and solicitor, Mr. Cranfield and Mr. Ashworth.

A. That's right.

Q. "There was then further suggestion about the blackmail issue. Denis O'Brien said that he had never met a more unstable person than Ken Richardson." Could you have said that, do you think?

A. I could easy. Could I interrupt you again, Mr. Coughlan?

Q. Yes, indeed.

A. Just your opinion as a senior lawyer. If that happened, and it did, was I correct in calling it blackmail?

Q. I don't know, that's why

A. What would you call it?

Q. That's what I am trying to ascertain at the moment.

Because you were advised in fact, I am sorry, I can't give you advice at the moment.

A. I don't need advice.

CHAIRMAN: It's another day's work, Mr. O'Brien. We are just trying to find out, and this does appear to be consistent with your evidence, that you were very annoyed and you said you weren't putting up with this conduct.

A. Absolutely. Correct, sir.

Q. MR. COUGHLAN: "Denis O'Brien Senior revealed a piece of a piece of paper in his pocket on which he had written the sum he was prepared to pay the claimants in addition to the retention fund. This note was produced to the defendant's representatives and it read $\frac{1}{2}$ 200,000.

"Denis O'Brien Senior said that he had nothing to hide and that he was not afraid. Now he wanted to go to war."

Would that be the sort of thing you might have said?

A. I could easily have said that, yes.

Q. "At this point Michael Kallpetis brought Peter Cranfield to the defendant's room.

"Peter Cranfield reported that his clients were uncertain as to whether the mediation would work. Michael Kallpetis stated that the claimants had to decide whether they were looking at this dispute or a wider agenda.

"Peter Cranfield said that this dispute was inextricably linked to the wider agenda.

"Richard Lord said that his client suggested that the claimants put forward a figure.

"Peter Cranfield said that the claimants had suggested $\text{€}1\text{m}$ as a sum.

"Peter Cranfield admitted that the claimants were valuing the claim against a wider agenda.

"At this point Denis O'Brien made an impassioned speech regarding his position. He said that the defendant had agreed to mediate. He had come to London especially to reach a settlement and had spent a long time in preparation. He was trying to settle the dispute regarding the monies owing in respect of the Doncaster Rovers Football Club. The defendant had agreed to mediate and to be bound by the agreement which was reached. Now he was being asked to purchase Dinard for over $\text{€}2\text{m}$ or else a certain telephone company in America would buy Dinard and a dispute might ensue in Ireland regarding the giving of a telecommunications licence. Denis O'Brien said that he regarded this as total blackmail.

"Denis O'Brien said that he was giving the claimants one last chance to come up with a realistic figure of settlement. He pointed out that a figure in excess of $\text{€}1\text{m}$ plus the retention fund of more than the claimants' claim in the action. Denis O'Brien said that this was total blackmail and was unacceptable to him. If no reasonable figure for discussion was forthcoming, then he would take the matter to court.

"Peter Cranfield said that he would relay that to his clients. He took back the letter he had given to the defendant at lunchtime to return it to his clients.

"There was then discussion amongst the defendants' representatives and the Mediator, which raised the possibility of a complaint regarding the criminal offence of blackmail.

"Michael Kallpetis revealed that he had not taken a note of the private meeting between Denis O'Brien, John Ryall and Ken Richardson and Mark Weaver. He indicated that he had not taken a note deliberately."

I think he hadn't taken a note and he told everyone?

A. No.

Q. "John Ryall mentioned that Ken Richardson had said in the private meeting that John Ryan was behind the arson of the football club.

"Michael Kallpetis said that Denis O'Brien had been very patient in the private meeting and if he had been in Denis O'Brien's shoes he would have 'thumped him'.

"Denis O'Brien repeated that two days ago he had got a message saying that it was in his best interest to settle the matter."

You see, it's been recorded here again. Do you think you had received some message before you came to the mediation?

A. I am sorry, Mr. Coughlan, I can't remember.

Q. All right.

A. I can't remember.

Q. All right. "The defendant then received a message via Michael Kallpetis that the claimants were prepared to settle the matter for the retention fund plus $\frac{1}{2}$ 375,000.

Denis O'Brien said that he would give the claimants the retention fund plus $\frac{1}{2}$ 250,000 and that that was his final offer.

"The claimants then suggested the retention fund plus $\frac{1}{2}$ 300,000, all in which Denis O'Brien said was acceptable to him."

That's a bit of horse-trading you'd see going on in any case?

A. Yeah.

Q. "The terms of the agreement were then put into a Tomlin Order prepared by Ruth Collard and Richard Lord and Peter Cranfield and Reg Ashworth.

"The agreement was signed at approximately 4.30pm."

So you have now reached settlement?

A. Yeah.

Q. Now, John Ryall, just behind that note there is "John Ryall," it's entitled "Aide-memoire," and it's headed "Note of side meeting held on Friday 27th September 2002 at the chambers of Mr. Michael Kallpetis as part of mediation hearing into the dispute between Dinard Trading Limited, Shelter Trust Anstalt and Westferry Limited." I think this is Mr. Ryall's, we think this is Mr. Ryall's note of that side meeting.

A. Okay, fine.

Q. "Present: Denis O'Brien Senior, John Ryall, Ken

Richardson, Mark Weaver, Michael Kallpetis (mediator).

"The representatives of Dinard Trading Limited and Shelter Trust, Mr. Weaver and Mr. Ken Richardson, had requested a meeting at approximately 2pm with Mr. Denis O'Brien Senior and Mr. John Ryall without the presence of each side's legal or accountancy advisors.

"Mr. O'Brien had agreed to take part in this side meeting on the basis that Dinard/Shelter would put forward a monetary value on what was required to settle the legal dispute covering the retention fund. The basis on which the face-to-face side meeting would take place was communicated to the mediator. Westferry and its advisors spent the lunch break considering a worst-case outcome and Mr. O'Brien and John Ryall went into the side meeting with a view that a settlement of the dispute would require Westferry to pay somewhere in the range of 250,000 to 350,000 plus the balance of the existing retention fund.

"After some brief introductions and discussion on where each person should sit, the meeting began in the presence of the Mediator. Mr. Richardson then followed up with a statement that he felt that there had been a number of misunderstandings, possibly as Dinard had dealt with various people representing Westferry but he was now anxious to resolve the dispute and hoped it could be done in a friendly manner ('Hoped we all could have a drink at some future date'). During the statement he made some

references to his family and a recent illness of one of his daughters and indicated that whilst his family might not be as wealthy as the O'Brien family, they were of substantial means.

"Following his opening comments, Mr. Richardson suggested we discuss the dispute without the Mediator. Mr. O'Brien insisted that the Mediator remain at the meeting.

"Mr. Richardson then began to make various references to a Mr. John Ryan (he is the individual who acquired the running of the football team from Westferry). These references included (i) the suggestion that John Ryan had an involvement in Westferry. Mr. O'Brien advised Mr. Richardson that Westferry was owned 100% by the O'Brien family and Westferry had no connection to Mr. Ryan.

(ii) That he (Richardson) had evidence linking John Ryan with a former SAS soldier who he understood had been involved in the fire at the Doncaster ground. Mr. O'Brien was surprised at this comment given that Mr. Richardson had served a jail sentence for this offence.

"Mr. Weaver then began to make various points. These included further allegations against John Ryan, but, in essence, his part of the discussion covered two areas:

"1. Threats made against him.

"2. Contacts with Irish journalists.

"Threats against Mr. Weaver.

"Mr. Weaver indicated that in the first half of 2001 he received various threats (and it would appear these were

made by telephone). He indicated that the threats suggested that if Dinard did not settle the court case with Westferry he would be harmed. He had a panic button installed in his house following these threats.

"Mr. O'Brien asked who was behind these threats.

Mr. Weaver replied that he believed that the threats came from someone representing the O'Brien family. When Mr. O'Brien asked who was the person making the threats and then asked was this person Kevin Phelan, Mr. Weaver indicated that Kevin Phelan was this person. Mr. O'Brien told Mr. Richardson and Mr. Weaver that this was ridiculous and had no substance whatsoever.

"Contacts with journalists.

"Mr. Weaver advised that in the early summer of 2001 he received a telephone call from a journalist, Colm Keena. This call was received despite the fact that Mr. Weaver had an ex-directory number. It would appear that Colm Keena had got his number through a member of Weaver's family. Colm Keena asked was Michael Lowry involved in Doncaster. Mr. Weaver indicated that he had offered no comment to all questions asked but was being pressurised to make a comment on the basis that comments would in any event be attributed to him.

"He then advised that a second journalist indicating that he was representing someone called Reilly (Tony O'Reilly) who was being sued in Ireland by Denis O'Brien Junior and was anxious to get some 'dirt' on Denis O'Brien.

Mr. Weaver also mentioned a third caller but did not name this person or who he represented. His discussion on this issue was disjointed, but indicated that one of the journalists had wanted to know when the court case would be held as they wanted to be there.

"He advised that following this he had sent certain correspondence by fax to Chris Tushingham in Deloitte & Touche and to Denis O'Brien in Portugal."

I don't think that's a reference to you personally, perhaps.

A. Mmm.

Q. "Mr. Richardson then resumed the discussion. He made a number of references to Ireland and his love of the country and how he had met Michael Lowry and/or his brother at Fairyhouse. He then came to the main point of his discussion.

"He advised that he had been approached by an individual from Fort Lauderdale to sell Dinard. He believed that this person represented a US telephone company in response to a question from Mr. O'Brien. He alluded to the problem of the trust selling and indicated that the telephone call received during the morning session of the mediation related to this matter. He had received a second call during this meeting" that's the private meeting.

A. Yeah.

Q. "but did not answer it, saying that it related to the trust. Richardson indicated that nothing had happened on

this approach but that he had recently received a follow up call from someone based in Illinois, again representing a US telephone company."

A. This was all softening up, as you can see.

Q. This is Mr. Ryall's note of this meeting. This is what you remember, this sort of thing?

A. What happened, yeah.

Q. "It seems that the two approaches were"

A. Sorry, Mr. Coughlan, this was before. Then he suggested we give him two-and-a-half million. Softening up, as I say.

Q. "The two approaches were from the same source. Richardson refused to name the telephone company. Mr. O'Brien believed that he was referring to Motorola.

"Richardson then advised that he would sell Dinard to Westferry for $\frac{1}{2}$ million plus the retention balance of $\frac{1}{2}$ 440,000. The court case would cease as a result. He indicated that the US company had offered an amount in excess of $\frac{1}{2}$ m.

"Mr. O'Brien advised Mr. Richardson that he had come to London to attempt to settle the dispute relating to the retention amounts and not to buy Dinard. He asked Mr. Richardson why would he even consider buying Dinard, to which Mr. Richardson replied that 'Dinard had all the records on the Westferry/Doncaster transaction'.

Mr. O'Brien and Mr. O'Reilly believed that Mr. Richardson and Mr. Weaver were attempting to blackmail them into selling at greatly more than the amount of their claim.

"Mr. O'Brien reaffirmed that he had agreed to the face-to-face side meeting on the basis that Dinard had an amount at which the claims in dispute would be settled. He asked them to outline what they wanted to settle the case. After a short discussion between Weaver and Richardson, Mr. Richardson indicated he would settle for the fund" that's the retention fund "i.e. 1/2 440,000, plus 1.175 million, but would agree to accept the fund plus 1 million. The settlement amount was of course greater than their actual court claim.

"At this stage the Mediator adjourned the meeting and Mr. O'Brien and John Ryall left the room and returned to the room allocated to them where they joined Richard Lord, QC, Ruth Collard and Kate McMillan from Carter-Ruck, and Craig Tallents. Mr. O'Brien advised them of the subject matter of the side meeting. The side meeting had lasted approximately 30 minutes.

"Shortly thereafter, Mr. Kallpetis, the Mediator, entered the room and he advised that he intended to speak to the Dinard legal advisors, Mr. Peter Cranfield and Mr. Reg Ashworth. He then left.

"Subsequently Mr. Peter Cranfield and the Mediator entered the room. Mr. Cranfield asked Mr. O'Brien if he would clearly state his position as a result of the earlier meeting with the Mediator, Mr. Richardson and Mr. Weaver.

"Mr. O'Brien clearly stated to Mr. Cranfield the following points (Mr. Cranfield made written notes of Mr. O'Brien's

comments):

"1. He had come especially from Ireland to try to settle the dispute relating to the retention account.

2. He had not come to buy Dinard or to be blackmailed for stg£1/2m.

3. If Dinard was not prepared to act reasonably in this matter, Westferry was quite prepared to defend their position in the High Court."

I think that's a reasonable note of what you stated?

A. Yes.

Q. "Mr. Cranfield then left the room and returned to meet his clients. Mr. O'Brien then advised the Mediator that Westferry's final offer was stg£1/2250,000, plus the balance on the retention fund, which was £1/2440,000, and would be paying this amount into court if the mediation process was not successful. The Mediator then left the room."

In other words, you were going to offer this money. If it wasn't acceptable, you were going to lodge it in court and let them take their chances?

A. Right.

Q. "The mediator returned after 15 minutes and advised that Dinard would accept £1/2375,000 sterling plus the fund. Mr. O'Brien advised the Mediator that Westferry would settle for stg£1/2300,000 plus the fund.

"Some minutes later the Mediator returned to advise that the offer of stg£1/2300,000 plus the fund was acceptable to Dinard.

"The lawyers on both sides then spent some time together documenting the settlement which was then signed by all parties.

"The settlement achieved was stg;¼740,000 compared with Dinard's original claim for stg;¼1.2 million."

Now, that's Mr. Ryall's note of the side meeting and of what transpired after the side meeting.

A. I think it's pretty accurate.

Q. You think it's pretty accurate?

A. Mm-hmm.

Q. Now, the case was now settled; isn't that right?

A. Yeah.

Q. And I think that was the, I think, the 27th September, the end of September 2002.

A. Okay.

Q. And I think you then, on the if you go to tab, behind Tab 123, I'll read it out, but if you just have it open there, 123 at the moment, please.

Now, this is addressed to Mr. John Ryall. It's from Ruth Collard. Obviously you must have had a discussion after the mediation and you wanted advice about this blackmail issue, as you have described it?

A. Yeah, mm-hmm.

Q. And you will see that she wrote this letter then and addressed it to Mr. O'Reilly, and it's "Westferry Limited and Dinard Trading Limited."

CHAIRMAN: What's the date, Mr. Coughlan?

MR. COUGHLAN: Sorry, I beg your pardon, sir. It's the 4th October, 2002. About a week after the matter had settled.

A. Mmm.

Q. "As requested, I write to advise on the action which might be taken in relation to:

"i) The threats made by Ken Richardson and Mark Weaver during the course of the meeting held between them and Denis O'Brien Senior and yourself in the presence of mediator, Michael Kallpetis, QC, at the mediation of the above matter on the 27th September, 2002;

"ii) Ken Richardson's threat to Denis O'Brien Senior in the course of the above proceedings to reveal a letter, allegedly damaging to him, to the Moriarty Tribunal, unless Westferry agreed to pay the full amount of the claim at the mediation.

"Although (i) above took place in England, I understand that (ii) took place in Ireland, although I would be grateful if you would confirm the position."

Now, what she is identifying there is what happened at the private meeting, and the second issue is the second point which is noted there, that something had been said to you before you came to the mediation that you should settle the case in full. That seems to be what she is getting at here.

"Although I cannot of course advise you on the position under Irish law, under the Theft Act, 1968, in England and Wales, a person is guilty of blackmail if, with a view to

gain for himself or another, or with intent to cause loss to another, he makes any unwarranted demand with menaces. For these purposes, a demand with menaces is unwarranted unless the person making it does so in the belief that he has reasonable grounds for making the demand and that the use of the menaces is a proper means of reinforcing the demand. The nature of the act or omission demanded is immaterial and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

"A person guilty of blackmail is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

"I consider that both of the events described at (i) and (ii) above could constitute blackmail. I do not consider that the confidentiality provisions of either the mediation agreement or the minute of order would prevent a complaint to the police concerning blackmail. Information imparted in confidence may be disclosed lawfully if its disclosure is required to prevent serious harm or is clearly in the public interest.

"I am of the view that it may be appropriate for Denis O'Brien Senior to take action in respect of Ken Richardson's threat to reveal the letter. The threat is likely to be of interest to the Irish police. I do not know what the letter says but there may also be some offence of attempting to pervert the course of justice (or

its Irish equivalent) in relation to the Moriarty Tribunal.

I am not sure what the evidence is in relation to this threat, however.

"I consider that the police are less likely to be interested in the threats that were made at the mediation.

Also, there may be considerable evidential difficulties in proving what was said. Although I do not consider that paragraph 7.3 of the mediation agreement (which states that the parties will not subpoena or otherwise require the Mediator to testify or produce records, notes, or any other information or material whatsoever in any future or continuing proceedings) would prevent you from asking the police to interview Michael Kallpetis QC, I consider it likely that Mr. Kallpetis would seek to resist such an interview. Also, were he to be interviewed, as Mr. Kallpetis made no notes of the content of the meeting, he would have to fall back on memory, which may be faulty in providing an account.

"The O'Brien family may also wish to consider taking action in relation to the allegation that it is connected with the fire at Doncaster Rovers Football Ground via John Ryan and the former SAS soldier involved in the incident. This is a very serious allegation which is highly defamatory of the family. Accordingly, I consider it may be appropriate to send a letter to Ken Richardson making clear that the allegation is untrue and putting him on notice that the O'Brien family will not hesitate to take action against him

(or indeed any other party) if this allegation is repeated

in the future."

A. Just, sorry, Mr. Coughlan, could you read that paragraph again?

Q. I will, indeed. "The O'Brien family may wish to consider taking action in relation to the allegation that is connected to the fire in the Doncaster Rovers Football Club Ground via John Ryan" do you remember that discussion?

A. Okay, got it.

Q. "and the former SAS soldier involved in the incident.

This is a very serious allegation which is highly defamatory of the family. According I consider it appropriate to send a letter to Ken Richardson making it clear that the allegation is untrue." And it was repeated in the future that

A. I don't know whether it's important or not here, but I remember Mr. Kallpetis pointing out to me that, that he was only there for the mediation. He couldn't take sides or confirm what either side said. So he was there to try and

I don't know, would that be right, legally?

Q. I think that's correct.

A. I think he said that to me. I was hoping he might confirm everything that had been said to me, but he said he'd rather not get involved, or something like that. But anyway. He was a charming man, incidentally, very nice man.

Q. And then Ms. Collard's letter of advice continues:

"In addition, it might be helpful to set out in writing to Ken Richardson and Mark Weaver that Kevin Phelan no longer has any connection to the O'Brien family to set the record straight in this regard.

"Please do not hesitate to contact me if you would like to discuss these matters further on the telephone. As we have discussed, I have held back the letter to Ashworth regarding confidentiality while you consider the matter."

So you have obviously asked for advice. Now you have got advice and she is waiting to hear from you; isn't that right?

A. Okay.

Q. Now, if you go to the next tab now, it's Tab 124. And here, Ruth Collard, obviously yourself and Mr. Ryall, or somebody, has considered it, in any event, the advice that has been given.

A. Mmm.

Q. And she recorded attending a call in from you and John Ryall, that

A. It was a telephone call.

Q. It's a telephone call. It was obviously some sort of telephone conference going on here.

"Denis O'Brien thanked Ruth Collard for her letter regarding the blackmail complaint which he said had been extremely helpful. He said that the first point he would make was that the letter he had received had not been directly from Richardson or Weaver but had come from Denis

O'Connor. Denis O'Connor had informed him

A. I should have said his office, really, but the same thing.

Q. "Denis O'Connor had informed him that he had got the letter via Ken Richardson from Kevin Phelan."

A. Yeah.

Q. "Denis O'Brien said that at the time he had been trying to figure out Denis O'Connor and had to be friendly to him.

"Denis O'Brien said the question was where we went from here. Ruth Collard said she thought the option was open to them to make a formal complaint. She was not very optimistic about the prospects of a successful prosecution, however, as it seemed to her it was difficult from the point of view of the evidence. She was not sure how interested the police would be. Denis O'Brien said he would like to make a complaint and he would like Ruth Collard to remain as a solicitor for that purpose. Ruth Collard suggested that she drafted something. Ruth Collard said she would like a copy of the letter which had been sent to Denis O'Brien prior to the mediation. Denis O'Brien said he was not sure that he wanted to pursue the Irish complaint at the moment as it might prove embarrassing for Denis O'Connor and for Michael Lowry. He felt that he would like to pursue the complaint relating to London, and then, at least, if this came up during the Tribunal at any time in the future, he could say that he had already reported the matter to the police.

"Ruth Collard said that she would draft something

appropriate and send it to Denis O'Brien."

would that be a fair

A. Reasonably accurate.

Q. Now, I think you did, then, proceed and deal with the City of London Police; isn't that correct?

A. Mmm.

Q. And in the first instance, there was prepared a draft statement, and I think we have been informed by Messrs. William Fry, Solicitors, by letter dated the 21st January, 2003, and that's behind Tab 133, because you know what happened: an article appeared in the newspaper; isn't that right?

A. Just refresh my memory, will you?

Q. I will. An article appeared in the newspaper?

A. Which newspaper?

Q. In The Irish Times.

A. The Irish Times, okay.

Q. And it's behind Tab 134. Deal involved sale of Doncaster Rovers soccer ground, and reference was made to the potential Michael Lowry involvement in the thing. Do you remember that?

A. If it's there, I am sure it's right. I don't remember the actual thing.

Q. All right. What happened then was obviously the Tribunal wrote to Messrs. William Fry, Solicitors, just making inquiries about what had appeared, and Messrs. William Fry's then wrote to the Tribunal on the 21st January, 2003,

and that's the letter here.

A. Right.

Q. And it reads "Dear Mr. Davis,

"We refer to your letter of the 13th January, 2003, concerning The Irish Times article of the 10th January and reference to a complaint made to the police in London.

"The complaint is set out in the attached draft witness statement of Mr. Denis O'Brien Senior, prepared for City of London police officer. The relevant events relate to a dispute over a lease and retentions held to cover potential liabilities on the closing of the Doncaster Rovers Football Club transaction. Denis O'Brien Senior has been instructing Peter Carter-Ruck & Partners, Solicitors, in London.

"We are instructed that Mr. O'Brien Senior first attended Snow Hill Police Station with a solicitor, Ruth Collard, of Peter Carter-Ruck & Partners, on the 12th November, 2002; that he was interviewed by the police and provided a draft statement to them (copy attached with manuscript reference 'final version')." They attached a copy which they sent to us. "We are also instructed that the police reverted to Ruth Collard on the 20th November, 2002, requesting clarification on certain matters contained in the original draft statement. These queries were dealt with and an amended draft witness statement was passed to the police on the 27th November 2002. We are further instructed that the police have advised that the draft statement has been

forwarded to the Council Prosecution Service who have yet to respond to Snow Hill police.

"We also enclose an aide-memoire prepared by John Ryall, an employee of Denis O'Brien, who attended with Denis O'Brien Senior at the mediation in London in September 2002 at which the events giving rise to the complaint occurred, together with copies of e-mails exchanged between Ruth Collard of Peter Carter-Ruck & Partners with the City of London Police and the original draft witness statement of Denis O'Brien Senior furnished to the City of London Police of the 12th November, 2002.

"As regards the two quoted extracts from The Irish Times article on Saturday 11 January, 2003, we are instructed to confirm that both extracts are broadly accurate, and insofar as the first is concerned, the spokeswoman is Eileen Gleeson."

A. What's that about, can you remember, that last paragraph?

Q. There is a comment, it was just something I suppose, and I might just read I think it relates to this:

"A spokeswoman for Mr. O'Brien, the multi-millionaire who set up Esat Digifone, said yesterday he is categorically of the view that Mr. Lowry is not and never was connected with the purchase of Doncaster Rovers Football Club Limited, the company which owns leases on the Doncaster stadium."

A. And is Eileen Gleeson a reporter or

Q. No, I think a spokes I think what appears in the newspaper is this: The newspaper made an inquiry of, I

think, your son, and a spokeswoman, I think Ms. Eileen

Gleeson

A. For Denis, for my son?

Q. It seems to be. That's what's been stated here. That's all.

A. Thank you.

Q. So that's how matters rested, and I think the document which was enclosed with that letter from William Fry's, a draft statement which you took to Snow Hill Police Station and left there. We'll have to now go back I am sorry about this we have to go back in the file to find this, and it's behind Tab 122.

A. All right. Thank you.

Q. Now, this is the document which Messrs. William Fry's sent to the Tribunal with that letter, and they said in the letter, it has manuscript or written on it, I think, "Final Version"; you can see that up at the top there?

A. Yeah.

Q. Do you know whose handwriting that is? It doesn't look like

A. "Final Version," is that what it says?

Q. Yes.

A. I haven't a clue, sorry.

Q. And it's a draft witness statement of Denis O'Brien Senior.

"I, Denis O'Brien Senior, of 97 Anglesea Road, Ballsbridge, Dublin 4, Ireland, will say as follows"

A. I accept all of this, just to save you some time.

Q. I know you do. I just want to now, you set out in paragraph 2 who you are; you are a businessman.

Paragraph 3, you set out the history of Westferry buying shares in Dinard, and such like. And if you continue on down to paragraph number 6, if you wouldn't mind just looking at that.

A. Okay.

Q. Sorry, I suppose 5, I should start with: "Shortly before the mediation of the above dispute and at the mediation of the above dispute, I am of the view that persons associated with Dinard attempted to blackmail me."

A. Yeah.

Q. Then you say, "To understand the alleged blackmail, it is important to put events into the context of the Moriarty Tribunal, which is ongoing currently in Ireland. In the Moriarty Tribunal, the former Telecommunications Minister, Michael Lowry, is being investigated. It is alleged that he may have awarded telecommunications licences improperly in exchange for bribes and that some of these bribes may have been paid in the form of real estate in England. My family has been questioned by the Moriarty Tribunal because we were awarded a telecommunications licence when Michael Lowry was Telecommunications Minister. My family and I have nothing to fear from the Moriarty Tribunal and are cooperating fully with the Tribunal. We did not bribe Michael Lowry or any individual in order to obtain the telecommunications licence.

"7. In the week prior to the mediation on 27 September 2002 I was faxed a copy of a letter from Christopher Vaughan (the solicitor who had acted for Westferry in the acquisition of Doncaster Rovers Football Club Limited) to Michael Lowry, dated 25 September 1998. A copy of that letter appears at DOB 1." Obviously, you are including with this statement a copy of the letter you were faxed?

A. Mmm.

Q. "The letter suggests that Michael Lowry was contacted with the Doncaster Rovers transaction, which is untrue. I understand that Christopher Vaughan also represented Michael Lowry in some property transactions in England, but these are unrelated to me, my family or my family companies. The confusion regarding Michael Lowry's involvement in the DRFL transaction may have arisen as the property agent, Kevin Phelan, who brought the Doncaster transaction to Westferry, was also involved in introducing property transactions in England to Michael Lowry.

"8. I received a message via Michael Lowry's accountant, Denis O'Connor, which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver, that a copy of this letter would find its way to people I would not want to see it unless I settled the litigation in respect of DRFL on terms which were very favourable to Dinard. I understood this to mean that the letter would be sent to the Moriarty Tribunal. Denis O'Connor informed me that the information about this matter had come from Kevin

Phelan. This individual had acted on our behalf in the purchase of DRFL, but had subsequently become hostile to us following a dispute over fees, and has been in communication with Ken Richardson and Mark Weaver, the representatives and agents of Dinard.

"9. Although I had nothing to fear from the disclosure of the letter, I decided against making a complaint about the threat at that point as I could not be sure who was behind it.

"10. At the mediation of the litigation in respect of the transaction on the 27 September 2002 at Littleton Chambers, the chambers of the Mediator, Michael Kallpetis, QC, I was threatened directly by Ken Richardson and Mark Weaver, the representatives and agents of Dinard."

And then you go on to outline what happened at that meeting.

A. Yeah, okay.

Q. Now, is what you have included in that draft statement which you took to the police in the first instance, is that what happened?

A. To the best of my recollection, yes.

Q. And if I might just go, then, to paragraph number 22 of the of that particular document.

A. Okay. Yes.

Q. You say that "Following the mediation which was finally concluded in the signing of a binding agreement" that was what happened in London?

A. Mm-hmm.

Q. "I discovered that Dinard's representative Mark Weaver some time later had specifically travelled to Northampton and had paid an unannounced visit at the office of Christopher Vaughan, the solicitor who acted for Westferry in the purchase of DRFL. Mark Weaver raised the subject of the letter of 25 September 1998. The conclusion was that he was again trying to see if we were prepared to pay to prevent this letter being disclosed and that his actions to be a repeat of the attempt to blackmail me which occurred before and at the mediation. I understand that Christopher Vaughan has prepared a witness statement regarding this visit in support of my complaint to the police."

A. Mm-hmm.

Q. That's information you must have got from somebody?

A. I must have.

Q. But to the best of your knowledge

A. I think it was accurate.

Q. And Mr. Vaughan was asked to prepare a statement and a draft statement was prepared

A. I must have been told or yeah, it's there.

Q. Did you I know you weren't micromanaging this.

Mr. Vaughan must have prepared some form of memorandum. Do you remember seeing it or would it have arrived to Mr. Ryall or somebody in the office?

A. I don't remember seeing it.

Q. I suppose, Mr. Vaughan did prepare a memorandum. It's

behind Tab 126.

A. Oh, yes, I remember this.

Q. You remember that?

A. I remember reading it.

Q. Do you think you must have seen it at sometime?

A. I did read it when I was reading the file, yeah.

Q. And that's Mr. Vaughan's note of the 18th October, 2002.

"A client was leaving my office following a 9am appointment, and it was about 2 or 3 minutes before 10. I took the client through the office to the front door and said good-bye to him.

"Whilst walking through the reception area there was a small man sitting on one of the blue seats who said hello to me and I could see that he had a piece of paper in his hand. Jean, the receptionist, then said, as I was walking past her showing the client to the door, that the person had come to see me.

"I did not recognise him at all, but because he had a piece of paper in his hand I thought he was probably a client I had seen for a notarial appointment and had come back for some other document to be prepared."

He was a notary public?

A. Yeah.

Q. "After the client had left, I went up to him and asked him if I could help him, and he said 'I have got this letter for you to look at'. I then obviously looked somewhat confused, and he said then 'You remember me, Mark Weaver?'

I then said yes, of course I remember him. He said could he just talk to me for a couple of minutes. I said yes, but also said I had another client who was due at 10am.

"He came into my office and he then produced to me a letter dated 25 September 1998 from me to Michael Lowry, which was on heat sensitive fax paper."

That's that shiney stuff, I think?

A. Yeah, okay.

Q. "I took a photocopy of it when he was leaving 15 minutes later.

"I had previously met Mark Weaver I think about a year ago there is a detailed file note/letter about it which I sent to Aidan Phelan. Other than one occasion I had never met him before.

"Mark Weaver is a nervous little man who smells of tobacco and he is an extremely difficult person to understand or pin down as to what he is trying to say.

"This note is obviously not going to be a verbatim report of what was said but the main points are:

"1. He did not know what to do with the letter. It had been sent to him by fax anonymously a little after midnight on the 26 July last I pointed out to him that you can alter the dates and times on a fax machine so this therefore cannot be relied upon. He said the fax had gone to his home address. I have not tried the number at the top of the fax.

"2. He said he was being rung constantly by Callum Keenum

of The Irish Times, who kept on saying to him, you have a letter in your possession, can you tell me what it is. He indicated that Callum Keenum seemed to be able to track him down wherever he was and had the ability to find out his telephone number.

"3. Mark Weaver said Callum Keenum also said that he, Mark Weaver and I would go to the Tribunal and then the matter would be sorted out once and for all.

"4. I explained to Mark Weaver that I had absolutely no involvement in this matter any longer. I had no interest in it. I did comment to him that I was surprised about the letter because I had not thought that Michael Lowry had had any involvement in the DRFC transaction either. Mark Weaver agreed with that. He knew the whole substance of the DRFC agreement because he was Richardson's 'runner' whilst Richardson was in prison and Mark Weaver confirmed that he had never had any dealings or come across Michael Lowry at all in the DRFC deal. This is rather confirmed by my letter of the 25 September which is after the completion of the purchase of DRFC when in paragraph 2 states that I had not appreciated that Michael was involved in the DRFC.

"5. I asked Mark Weaver who had sent him he did not directly answer the question but said he was employed by Dinard Trading and not by Richardson and Dinard's solicitors in Zurich had had an approach from a third party to purchase from them all the documents they had in their

possession about DRFC.

"I then repeated to Mark Weaver that throughout the whole of the negotiation of DRFC and afterwards I do not recall Michael Lowry ever being involved at all.

"He then said to me several times what should he do with the letter and again several times I said to him I had not a clue because I was no longer involved in this matter at all.

"I suggested that he took advice from Reg Ashworth who was Richardson's solicitor.

"Before Mark Weaver left I took a copy of the letter. I made the comment to him that I almost certainly did not have a copy as it would have been with the DRFC files, which were with the other solicitors Peter Carter-Ruck.

"My thoughts after Mark Weaver had left were:

"1. Why did he come bearing in mind he lives presumably somewhere near Doncaster, which is 80-100 miles away.

"2. Am I just being used as a conduit to facilitate some sort of blackmail? It occurs to me that Denis O'Brien is the only person in the whole business with money. Am I supposed to contact Michael Lowry through his solicitors or Denis O'Connor, his accountant, to make him aware of the situation?

"3. Is Mark Weaver acting alone trying to get some of Denis O'Brien's money?

"4. Who is my next telephone call going to be from Callum Keenum or?

"5. I had never met Michael Lowry before the 24th September and it was arranged by Kevin Phelan for Michael Lowry to meet me on the 24th September to discuss his purchase of the property in Mansfield. He also had an appointment in Leicester later on in the day.

"Within 20 minutes of Mark Weaver leaving, Denis O'Connor telephoned me and he mentioned that there was 'a letter floating about' which had been produced outside the mediation hearing last month.

"I said that I had seen Mark Weaver shortly before, and told him what had happened. Denis O'Connor wants to come to see me. I have no particular problem in that but there is very little I can say to him other than what is set out in this note.

"Putting it bluntly, I am getting extremely fed up with the whole issue, specially having my name plastered all over the various Irish newspapers.

"In particular, at the UK Notarial Forum meeting last month, the Irish notary representatives produced one of the newspapers and although it was a fairly 'friendly' way, I did have to try to explain myself in front of the forum committee consisting of 12 senior notaries of the United Kingdom.

"Mark Weaver's mobile number is" blank. Do you think you must have seen that memo

A. I read that yeah.

Q. around the time?

A. Oh, absolutely, yes. It shows you the sort of people he was having to deal with and I was having to deal with.

Would you agree, Mr. Coughlan?

Q. I don't know, Mr. O'Brien. But you were aware that Christopher Vaughan, around you must have been aware around the time. I know you didn't micromanage the complaint at least, but you or your team must have been aware I mean, Mr. Ryall and people like that that Mr. Weaver had gone to Christopher Vaughan and you must have got this report from Mr. Christopher Vaughan around this time as well about because you included in your own statement

A. I can't remember, but it could have happened. Just, please, can I again emphasise to you: When I closed Doncaster, I got on with my own business. I wasn't following anything up. I was leaving it with whoever needed to do that, whether it was Fry's, or whoever, whatever needed to be tidied up, if you like. I was finished with it. But okay.

Q. You see those references there to Mr. Denis O'Connor in Mr. Vaughan's note, at the end of the note?

A. "Denis O'Connor telephoned," is that the one, the second-last page?

Q. Yes, that's it. "Denis O'Connor telephoned and mentioned that there was a letter floating about which had been produced outside the mediation hearing last month."

A. Yes.

Q. Now, at this time, after the mediation this is after the mediation, did you have any relationship with Denis O'Connor or was he helping you after the mediation?

A. Absolutely not. To the best I sound a bit legal myself now, but to the best that I can remember - I'd like to find another way of saying that, I am sorry - but, no, I don't recollect having any further dealings with Mr. O'Connor about anything. He was as helpful as he could at the time, and there was no need to

Q. And before the mediation, you had told him, on the advice of Ms. Collard, that he should not

A. That's right.

Q. proceed to have a meeting with Mr. Richardson and Mr. Weaver to pursue settlement?

A. That's right, because that was my solicitor's advice.

Q. That's right. Do you have any idea what his involvement was at this time, that is at the time Mr. Vaughan's note was made on the 18th October, 2002?

A. No.

Q. Now, as Messrs. William Fry's have informed us, and you have confirmed yourself, you went to the police station, Snow Hill Police Station, City of London Police, with Ms. Ruth Collard, with the document that we have just opened; isn't that right?

A. Yes.

Q. And you left it there. And I think Messrs. William Fry's have informed us then that the police came back seeking

clarification

A. They actually came to Dublin.

Q. Did they?

A. I think so, yes. I think I recall them coming to my office.

Q. All right. But they came back in writing, anyway, as well, didn't they?

A. I am sure they did. Yes, they

Q. Do you remember there was a statement and it was kind of a question-and-answer sort of form?

A. I remember it very well, absolutely.

Q. We might have a look at that now then?

A. Certainly.

Q. I am going to hand you a copy, because the one in the books has a page missing out of it.

A. Is this the first statement or the one as a result of the police helping?

Q. Yes.

A. The police?

Q. Yes. The one that we have looked at was the one that was sent to us by William Fry's and this was the one it looks as if you took to the police station and left it there with them. Now, in this statement you, first of all, set out, or it's set out who the various parties are, or people are; isn't that right?

A. Okay, mm-hmm.

Q. And if you go to I don't know what page number is on

if you go to page number 2, or continuation sheet number 2,

if you start at the bottom the shares this is the

shares in Doncaster Rovers Football Club?

A. Is it in this?

Q. If you go to the second page, see the last line.

A. That's grand. Thank you.

Q. It sets out there, first of all, the purchase of the shares in Doncaster Rovers Football Club by Westferry. And then

it continues "The shares were bought from the two entities

as separate owners under a single Share Purchase

Agreement."

"The transaction was introduced to Mr. Aidan Phelan by

Mr. Kevin Phelan (no relation). Aidan Phelan was a

financial advisor to my son and was actively involved in

sourcing and reviewing business opportunities for my son.

Kevin Phelan knew him as he had had previous business

dealings with a firm of accountants, Bryan Phelan & Co, run

by Mr. Bryan Phelan, the brother of Mr. Aidan Phelan. The

DRFL transaction was presented as an opportunity to develop

a retail development on the football ground in tandem with

a relocation of the football team. Discussions and

meetings were held with a number of interested parties and

with Doncaster Council.

"The terms of the purchase were that Westferry would

acquire 1,353,453 ordinary shares of which 769,543 ordinary

shares were owned by Dinard and 583,910 shares were owned

by Shelter Trust Anstalt. The consideration was $\text{€}3.7\text{m}$. In

addition, Westferry Limited agreed to pay the following

additional amounts to Dinard/Sheltar Trust Anstalt:

"1. £250,000, if evidence could be produced prior to the completion that Doncaster Borough Council had granted a new lease to year 2005 in respect of the car-parking area adjoining the main football stadium.

"2. A finder's fee of £135,000 plus national insurance of £10,000 (I believe that this fee was paid to a third party)."

I just want to ask you that which is in brackets there, you say that you believe this fee was paid to a third party.

Who was the third party?

A. I don't remember.

Q. All right.

A. I would have got a lot of help in this, of course, from my solicitors, you know, but anyway. Sorry, I can't remember who the third party was.

Q. I accept that, because there is a lot of information contained in that.

A. Okay.

Q. I am not going to read all of this out.

A. Thanks very much.

Q. You can come back to anything you want in it.

A. No, if this this is my statement, it's pretty accurate.

Q. It is, yeah. If you go to the next page, then, there are just a few matters I want to go through.

A. Okay.

Q. You say you see there, it's the second commencing paragraph, but the third down: "In the week prior to the mediation on 27 September 2002 I was faxed a copy of a letter from Christopher Vaughan (the solicitor who had acted for Westferry in the acquisition of DRFL) to Michael Lowry dated the 25 September 1998. A copy of that letter appears at DOB 1. The letter suggests that Michael Lowry was connected with the DRFL transaction, which is untrue. "I understand that Christopher Vaughan also represented Michael Lowry in some property transactions in England but these are unrelated to me, my family or my family companies.

"The confusion regarding Michael Lowry's involvement in the DRFC transaction may have arisen as the property agent, Kevin Phelan, who brought the DRFL transaction to Westferry, was also involved in introducing property transactions in England to Michael Lowry. Additionally, Aidan Phelan (no relation to Kevin Phelan) who had acted as an independent financial consultant to my son, Denis O'Brien Junior, was also involved in transactions for Michael Lowry.

"I received a message via Michael Lowry's accountant, Denis O'Connor, which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver, advising me that a copy of Christopher Vaughan's letter to Michael Lowry" that's the letter "was in their possession and that it would be in my family's best

interest to settle the litigation in a friendly and generous manner as otherwise a copy of the letter would find its way to the Tribunal or the newspapers. Denis O'Connor informed me that the information about this matter had come from Kevin Phelan. This individual had acted on our behalf in the purchase of DRFL but had subsequently become hostile to us following a dispute over fees and I am aware that he had been in communication with Ken Richardson and Mark Weaver the representatives and agents of Dinard. Although I had nothing to fear from the disclosure of the letter, I decided against making a complaint about the threat at that point as I could not be sure who was behind it."

Now, I am going to leave it before lunch now, but I just want to ask you about this.

A. Just before forgive me interrupting you is this as a result of the police asking questions? I don't recognise this sort of crest at the top of it.

Q. That's the that seems to be the City of London, it seems to be

A. It's the police.

Q. It's an official document.

A. But there were two, weren't there? I did a draft one and then I did the final one. Which one is that?

Q. This is the draft one.

A. Thank you, okay.

Q. But it seems to be a reworking, or a rewording of the

document which Messrs. William Fry's had furnished to us originally in relation to that particular dealing, and it seems not to arise as a result of any question being asked by the police. Now, I am not asking you to take all that on board right now, all right? It's just something I want you to bear in mind, all right?

A. Yeah.

MR. COUGHLAN: I might break there, sir, and

CHAIRMAN: All right. We will resume at five to two, Mr. O'Brien. Thank you very much.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. DENIS O'BRIEN SENIOR CONTINUED TO BE EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, just before lunch, and I won't detain you in relation to what I read out to you before lunch from what I'd call the second draft of a statement. It is in slightly different wording, that is dealing with receiving the Christopher Vaughan, or the fax of the Christopher Vaughan letter and the mentioning of Kevin Phelan and Mr. Richardson and Mr. O'Connor and all. It's slightly reworded, but doesn't seem to differ in substance from the first document that was sent to us by William Fry's, do you understand the point I am making?

A. Yes, I do.

Q. It's reworked, but the substance seems to be the same.

A. Okay.

Q. Now, what I then want to ask you about is what appears to be the final statement, which is behind Tab 98. Can I just bring you to what I want to ask you about. Page 8.

A. I am having a slight difficulty with the book.

Q. Now, if you go to page 8, do you see there "During the week prior to the mediation on the 27 September, 2002, on or around 24 September 2002, I believe I was faxed a copy of a letter from Christopher Vaughan to Michael Lowry dated 25 September 1998. I produce a copy of that copy letter" and you exhibit it effectively. "The letter suggests that Michael Lowry was connected with the DRFCL transaction, which is untrue." So you are identifying it there?

A. Okay.

Q. "The copy letter that arrived on my fax machine had the name Brophy Thornton at the top of the page so I assume that the fax came from Butler Brophy Thornton, Denis O'Connor's firm. I called Denis O'Connor on that day I got the fax. He indicated to me that he had not seen the fax before it was sent to me as he was out of the office on the day it was sent. Denis O'Connor was aware of my involvement in the Doncaster project as I had had previous discussions with him in relation to this matter and I understood that he had issued a standing instruction to his Secretary to forward to me anything in relation to Doncaster that arrived in his office. A number of press inquiries had arisen in view of the publicity surrounding the Tribunal and he forwarded that fax without showing it

to Denis O'Connor beforehand. Denis O'Connor did not advise me of the source of the fax. I believe it was sent by or on behalf of Mr. Weaver. I gave no substance to the fax at the time as I know the contents to be untrue although I suspected that it had been sent to me in connection with the mediation."

Now, just to clarify, first of all, the first four lines of that. It the fax arrived with a 'Brophy Thornton' fax banner on it. You assumed that it came from BBT and probably from Mr. O'Connor. You rang the office, and you say that you spoke to him on the day but there is also a reference there to him being out of the office on the day that the fax arrived in, and the standing instruction to the Secretary to fax it over to you. Can you clarify that?

I don't think much turns on it.

A. Perhaps I spoke to him on his mobile.

Q. Maybe.

A. Maybe, I can't remember, sorry.

Q. Sorry, maybe. Yes, that could be correct. But what I want to just bring to your attention here is that, in substance, that is different to what had been contained in the first two drafts that we have looked at, at least anyway?

A. Right.

Q. To the extent that it now seems to indicate that the source or the root of the fax was not disclosed to you and you know, as you had already indicated, I think, in the previous documents, that you had said you had received a

message via Michael Lowry's accountant, Denis O'Connor, which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver, that a copy of the letter would find its way to people I did not want to see it," etc., etc., as appeared at paragraph 8 of what is written on top "Full Version". It's changed, it's modified.

A. Yeah.

Q. I just wanted to ask you this: Do you remember how that came about? Do you remember having any discussions or any people on your behalf having any discussions with anybody which brought that change about?

A. Can I ask you a question, Mr. Coughlan?

Q. Yes, indeed.

A. Isn't it all basically the same stuff?

Q. No.

A. What's wrong?

Q. No

A. I mean, there are different versions of it, but it all comes down to the same thing, does it not?

Q. Well, in this it's different.

A. What exactly

Q. What you have said earlier in evidence now, that document which William Fry's sent us was correct, that that was correct, the one you took to the police in the first instance?

A. The final version?

Q. Yeah, that has "Final Version" written on the top.

A. I stand over that.

Q. You stand over that?

A. Yeah.

Q. Now what appears to be the final version that went in to the police, if you understand me

A. Is different?

Q. Seems to be in that regard.

A. I don't know how that happened. Surely

Q. Do you remember

A. All of that this was all dealt with when I came back to Dublin.

Q. Yes.

A. I was being obviously, I was doing it with the help of my solicitors. Is it wrong to ask you could you ask them how the two documents what did you say happened to them? They differ and did we send two versions?

Q. In one, it highlights how the fax came to you and a communication to you about what the fax meant and the effect it could have. That is I'll put it this way edited down and toned down in what appears to be the final document that went to the police, and I just want to know, you say you stand over the one

A. Can I tell what I'll stand over?

Q. Yes.

A. Okay. As far as I don't know which of the documents said this, or even if any of them did say it. I'll just

say it once more.

Q. Right.

A. I have got this letter in. It looked like it came from Brophy Thornton. I can't remember what time during the day I finally contacted Mr. O'Connor to ask him did he know anything about it, had he seen it? He said, "No, I have been out of my office." Okay? I just put the letter aside because I was preparing for the litigation for the mediation. Now, that's that is that.

Q. Now, that is, if I might suggest to you, another version, Mr. O'Brien.

A. Another one?

Q. Yes.

A. What does it matter, Mr. Coughlan?

Q. You see, you might consider it to be unimportant, and I could be asking, in your mind, silly questions, but it may have some importance, because I want to the Tribunal has been inquiring into a series of relationships between various people; isn't that correct? And you are aware of that?

A. Yes.

Q. And you said in the document which was furnished to us by Messrs. William Fry's, which they say was the document which you took to the police station, that you received the message via Michael Lowry's accountant, Denis O'Connor, "which I was told originated"

A. I should have said via his office.

Q. I take that's fine. "Which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver, that a copy of this letter would find its way to the people I would not want to see it unless I settled the litigation in respect of DRFL on terms which were very favourable to Dinard. I understood this to mean that the letter would be sent to the Moriarty Tribunal. Denis O'Connor informed me that the information about this matter had come from Kevin Phelan. This individual had acted on our behalf in the purchase of DRFC but had subsequently become hostile to us following a dispute over fees and has been in communication with Ken Richardson and Mark Weaver, the representative and agents of Dinard."

You see, that particular statement by you which is what you took to the police in the first instance, indicates, or appears to indicate, that all of that information was imparted to you, or given to you by Denis O'Connor; isn't that right?

A. Well, actually, that's a statement I made I can't understand how I mentioned this chap Phelan, because, as far as I was concerned, the letter had come from either Richardson or Weaver.

Q. Well, what you said in this document, first of all, that Doncaster informed you that the information about this matter had come from Kevin Phelan. That it was Denis O'Connor told you. That's what you said and that's what you took to the police?

A. I think Denis O'Connor, somebody told me, is saying that's not correct. Somebody is telling me that Denis O'Connor, I have not spoken to Denis O'Connor, but somebody has told me that Denis O'Connor did not say that to me. Anyway

Q. Who do you think might have told you that?

A. I haven't a clue, honest to goodness, really. You are going back so far. I can't I don't know why this is important for you.

Q. It's quite significant, Mr. O'Brien, and perhaps I should it is significant, and I'll tell you why: because, you see, when your particular document was made available to the Tribunal by Messrs. William Fry & Sons, obviously it contained a reference to Mr. Denis O'Connor. Isn't that right?

A. Yes.

Q. And this information was brought to the attention of Mr. Denis O'Connor because that's what the Tribunal does when it receives and it sought Mr. O'Connor's views in relation to that. Now, after that, you say somebody must have told you something. Your statement changes and removes the particular reference of the information which you say Mr. O'Connor gave. That's why it's important, Mr. O'Brien, to know, and the Tribunal would like to know who was in contact with whom in relation to all of these matters, for the very simple reason, Mr. O'Brien, that none of this information was brought to the attention of the Tribunal in the first instance? Do you get my point and

see why I am asking the questions? I am not trying to be difficult.

A. No, I am sure you are not trying to be difficult. You are still losing me. Because there are a couple of versions, doesn't it all come down to the same thing?

Q. What is that same thing? That people were in contact with each other and discussing the matter?

A. That I spoke to Denis O'Connor, having got the letter from his office, and I just parked it and didn't do anything further about it, and so on.

Q. All right. Well, you know, perhaps it's a matter that Mr. O'Connor can assist us on, we are just inquiring, or some of your people.

A. Yes.

Q. Because, as you have said, or as you said to Ms. Ruth Collard when you started off this process of making a complaint to the police and she had given you advice about two matters: One, that which happened in London; and secondly, that which you had informed her happened in Dublin. She advised you that she didn't feel there'd be great prospect of the complaint being made to the police in England, but that, perhaps, but she couldn't advise you on Irish law, it's a matter that you should take advice on or perhaps consider about what happened in Ireland. And you informed her, at that time, that you wanted to go ahead and make the complaint in England but that you didn't want to do anything in Ireland because you didn't want to cause

embarrassment to Mr. Denis O'Connor and Mr. Michael Lowry;

isn't that correct?

A. No. Where did I say that?

Q. All right. You just confirmed before lunch, Mr. O'Brien

A. No, can I tell you, the reason

Q. Would you just bear with me for a moment, please.

A. Sorry.

Q. Tab 124. You confirmed before lunch that this note made by

Ms. Ruth Collard of a telephone conversation that she had

with you and Mr. John Ryall was accurate. And I'll read it

to you.

"Denis O'Brien thanked Ruth Collard for her letter

regarding the blackmail complaint which he said had been

extremely helpful. He said that the first point he would

make was that the letter he had received had not been

directly from Richardson or Weaver, but had come from Denis

O'Connor. Denis O'Connor had informed him that he got the

letter via Ken Richardson from Kevin Phelan. Denis O'Brien

said that at the time he had been trying to figure out

Denis O'Connor and had to be friendly to him.

"Denis O'Brien said the question was where we went from

here. Ruth Collard said she thought the option was open to

them to make a formal complaint. She was not very

optimistic about the prospects of a successful prosecution,

however, as it seemed to her it was difficult from the

point of view of the evidence. She was not sure how

interested the police would be. Denis O'Brien said he

would like to make a complaint and he would like Ruth Collard to remain as solicitor for that purpose. Ruth Collard suggested that she drafted something. Ruth Collard said she would like a copy of the letter which had been sent to Denis O'Brien prior to the mediation. Denis O'Brien said he was not sure that he wanted to pursue the Irish complaint at the moment as it might prove embarrassing for Doncaster and for Michael Lowry. He felt that he would like to pursue the complaint relating to London, and then at least if this came up during the Tribunal at any time in the future, he could say that he had already reported the matter to the police."

Now, you told us before lunch that that was an accurate account of the discussion you had with Ruth Collard, to the best of your knowledge, I say, in fairness.

A. Mmm.

Q. Now, you see, what could have been embarrassing to Denis O'Connor and for Michael Lowry if the matter had been brought to the attention of this Tribunal? What could have been embarrassing?

A. You have totally lost me, I am sorry.

Q. All right.

A. I have no recollection of any of that. But if it's there, it's there, you know, but it's

Q. I'll take this slowly, Mr. O'Brien, because it's very serious.

A. It's very serious?

Q. It is very serious, it is very, very serious.

A. Mm-hmm.

Q. This Tribunal, around the time that you and your solicitors were dealing with the Mr. Kevin Phelan dispute, that is in the summer of 2002, was carrying out inquiries here in relation to what came to be known as the long form/short form letters of Mr. Christopher Vaughan. Do you remember that, that they were long form letters and short form letters in relation to Cheadle? One of the letters omitted a reference to Mr. Michael Lowry and one contained a reference. Do you remember that particular inquiry?

A. No.

Q. All right. Now, at that very time an inquiry was being conducted inside in the offices of William Fry, Solicitors, in relation to an ML and Doncaster; isn't that correct?

A. Yeah, well if that's the time, yes.

Q. And it emerged, in the course of that, as you have said in evidence, that Mr. Denis O'Connor, Mr. Lowry's accountant, assisted in relation to the resolution of the dispute with Mr. Kevin Phelan; isn't that right?

A. Yes.

Q. And that he offered, as far as you recollect, he offered to assist in relation to the Weaver/Richardson dispute in two ways: One I'm trying to break it up

A. Can I just sorry. Denis O'Connor, you said, assisted in resolving the problem with Kevin Phelan, is that what you said?

Q. That's what you told us, that he participated in that.

A. It was very, very minor stuff, really. He didn't have a lot to do with it. His main role was in offering to meet Ruth Collard in London, and so on, to see if he could make give her assistance particularly regarding the looking at the files, and all that stuff, overnight. But anyway, go on.

Q. That was one yes, that was one area, looking at the files overnight. And the other was to be involved in settling the case with Richardson and Weaver, which you called off on the advice of Ruth Collard; isn't that right?

A. Yeah, correct.

Q. In the statement or sorry, in the notes made by Ms. Kate McMillan and on the advice given by Ruth Collard, it is noted that Denis O'Connor had an involvement in saying certain things to you about the Christopher Vaughan letter making reference to Michael Lowry and Doncaster prior to the mediation. And you, in the statement you first took to the police in Snow Hill, recount all of that; isn't that right?

A. Yeah, it's there.

Q. And then you think that, as a result, do you, you don't know, but you think that there must have been some contact from Mr. O'Connor, because in the final statement that you furnish to the police in England, you limit Mr. O'Connor's involvement to the document just coming from his office; isn't that right? And but that couldn't have been what

happened if what you said in your first statement is correct, and you say you stand over it, and you were the one who had that conversation?

A. You see, Mr. Coughlan, the final statement

Q. Sorry, I beg your pardon, it's called the final statement, the one William Fry's sent us. You stand over that?

A. The one that the police asked questions about and that I tried to put together, is that the final statement?

Q. Yes.

A. Sorry, is that the final statement?

Q. That's the final statement.

A. The one involving the London police questions?

CHAIRMAN: Well, we'd better be clear on this. There is a reference in the middle one to some element of finality.

MR. COUGHLAN: Yes. We were told by William Fry, Solicitors, that this document I want this document that is written on top of it "Final Version"

A. And it was the final version?

Q. It doesn't appear to be.

A. You say there are three versions?

Q. You see, that is one that looks as if it's typed out by your solicitors. And you took it to the police. One might understand that clarification might be needed in relation to certain matters. There then appear these official they look like official witness statement forms.

A. Is that the police one?

Q. Yes.

A. Okay.

Q. And what appears by in the middle in the official the police witness-statement form, there is a work a reworking of the wording in relation to Mr. O'Connor's involvement. But just bear with me there is a reworking, but, in substance, it's the same. And then there is a final police witness statement which edits, effectively, Mr. O'Connor's involvement.

A. Can I just say to you again: the 'final final', let's call it, is the one that I'll stand over.

Q. So the one you took to the police, as William Fry's have informed us, is wrong; is that right?

A. I'm not saying it was wrong. The final statement is the one that crystallised, in my mind, what actually took place, the final statement. There were no more statements than that, were there?

Q. No. But you say that that came about, you think, as a result of Mr. O'Connor making contact with somebody on your side?

A. Pardon?

Q. Do you know?

A. You have lost me again.

Q. Well, we'll take it again, Mr. O'Brien, because this is very important.

A. Okay.

Q. And perhaps I'll deal with it in this way, also: Messrs. William Fry's, by letter dated the 21st January, 2003,

after a newspaper article appeared in The Irish Times the previous Saturday or on a previous Saturday furnished to the Tribunal a document, in which they said, "We are instructed that Mr. O'Brien Senior first attended Snow Hill police station with a solicitor Ruth Collard of Peter Carter-Ruck & Partners on the 12 November 2002 and he was interviewed by the police and provided a draft statement to them, copy attached, with manuscript reference 'final version'."

So this is what your solicitors have been informed because they were instructed that's what happened.

A. Okay.

Q. So it was either they were told by you or somebody on your behalf.

A. Okay.

Q. And they sent it to us?

A. They say that "We are also instructed" that means they have been told something and they are telling the Tribunal "that the police reverted to Ruth Collard on the 20th November 2002 requesting clarification on certain matters contained in the original draft statement. These queries were dealt with and an amended draft witness statement was passed to the police on the 27th November 2002. We are further instructed that the police have advised that the draft statement has been forwarded to the Crown Prosecution Service who have yet to respond to the Snow Hill police."

Now, why I took you through the references to Mr. O'Connor

in the version which was furnished by Messrs. William Fry was because you give a long account in relation to Mr. O'Connor and I'm not going to read it out over and over again.

I say that before lunch I opened a document from what looks to be the police witness statements which, again, deals with that in different language, but the substance is the same. And then a document which appears to be the final one from the police point of view, does not contain those particular references to Mr. O'Connor. Do you get what I am

A. That's what I'm trying to say to you, Mr. Coughlan. Why are we dealing with all these documents? The final document is the final document.

Q. Right. In this regard, I'd just like to ask you, at some stage you changed solicitors?

A. Yes, we did, indeed, yeah.

Q. When was that?

A. Well, it will be dated somewhere.

Q. You tell me now.

A. I haven't got the date. But a couple of years ago, I suppose. Would you have any idea, Mr. Garvey? Mr. Garvey is my solicitor.

MR. MCGONIGAL: Late '03, if it's of any assistance to the Tribunal.

MR. COUGHLAN: Late '03, okay.

Q. If you go to Tab 136.

A. Okay.

Q. You will see that this is an attendance note created inside the firm of Carter-Ruck, and it's dated the 27th of January, 2003?

A. Right.

Q. And "KM attending" "Kieran McNinch", he was a policeman "on telephone."

"Kate McMillan saying that she was calling to update Kieran McNinch on recent developments regarding Denis O'Brien Senior/Westferry blackmail complaint.

"She explained that" then we have a blank "the Christopher Vaughan letter had been leaked to the Irish press. Consequently, there'd been a number of stories in the Irish media, in the Irish Times newspaper particularly which had alleged Mr. Michael Lowry was involved in the Doncaster Rovers transaction.

"Kate McMillan said that one of the articles was headed 'Lowry linked to $\frac{1}{4}$ m deal by letter.' Its first sentence was: "Lawyer believed former minister was totally involved."

"Kate McMillan said that the Moriarty Tribunal had become interested in the transaction and had asked Peter Carter-Ruck & Partners for a copy of its blackmail complaint file.

"Kate McMillan wanted to know what the police view was regarding the possibility of Peter Carter-Ruck & Partners releasing the file.

"Kieran McNinch said the police had no control over what happened to Peter Carter-Ruck & Partners file. Kieran McNinch said that he would have thought that very little would be at risk in releasing the file to the Moriarty Tribunal. He could not see any problem with disclosing anything to the Moriarty Tribunal. It was a matter for the O'Brien family. Kieran McNinch said that it was not as if one had an ongoing situation where one had to act fast or something would be lost.

"Kate McMillan said that Peter Carter-Ruck & Partners' principal concern was that nothing be done that might prejudice or jeopardise the police investigation. Kieran McNinch said that he did not think that the release of the Peter Carter-Ruck & Partners' file would jeopardise the investigation at all.

"Kate McMillan said surely if the documents were put in the public domain the blackmail suspects would know they were being investigated and the nature of the inquiry. Kate McMillan asked if the police had approached the suspects yet?

"Kieran McNinch said the police had not approached the suspects yet, so they would not know from this source that they were under investigation. However, there was nothing in the statement of which the suspects would be unaware. They knew about everything in statement save for the fact that they were under investigation."

You do remember that you did say to them at the mediation

meeting that you were going to take this matter to the police?

A. Yeah, sure.

Q. "The worst that could happen if the suspects knew that they were being investigated would be that they would flee the jurisdiction (which Kieran McNinch thought was unlikely), or would have additional weeks or months to prepare a defence.

"If the case were to go to trial, the suspects would have several months to prepare their defence anyway.

"Kate McMillan suggested to Kieran McNinch that it would be helpful for him to see a copy of the article in The Irish Times. Kieran McNinch agreed and said that once he had received them, he would do an addendum to the Crown Prosecution Service.

"Kate McMillan thanked Kieran McNinch for his assistance."

And then there is a telephone number.

So that recorded a conversation between your solicitor in London and the police, and it's clear from that particular note that the police had no difficulty in the papers which Carter-Ruck had about this complaint being released to this Tribunal; isn't that right?

A. What was the position of the policeman?

Q. Sorry?

A. What was his seniority, the policeman?

Q. I don't know.

A. So he was just giving an opinion? He wasn't talking to her

it's just a moot point. He wasn't saying "I'll have to take that back to someone who would be better able than I to decide. I'll come back and give you our, you know, official clear opinion on it." He was just giving an opinion; they were talking together.

Q. He seems to have been the investigating officer?

A. Even if he is, is he the sole police authority?

Q. Sorry, Mr. O'Brien, just look at the note. And I asked you, isn't it clear from that note that that policeman had no difficulty about the file being disclosed to this Tribunal? Is there any doubt about that?

A. No.

Q. Right. And was that and wasn't that conveyed to you by Messrs. Peter Carter-Ruck?

A. It may or may not have. Anyway, I had my own opinion.

Q. That's fine.

A. Okay.

Q. Of course, you are entitled to your opinion.

A. Well, I was central to the whole thing.

CHAIRMAN: If you want to state that, of course, Mr. O'Brien, if you want to refer to your own opinion, please feel free to do so.

A. Thank you.

Q. MR. COUGHLAN: Now, what I want you to look at now, Mr. O'Brien, is a separate book I am sorry about this but it is the correspondence which this Tribunal has had with your present solicitors, Messrs. LK Shields,

concerning this question of I think the first letter I am going to ask you to look at is one dated 4th of February, 2004, from your solicitors, Messrs. LK Shields, to the Tribunal, and I think this arose in circumstances where the Tribunal have sought a waiver from your previous solicitors, Messrs. William Fry's, in relation to the Peter Carter-Ruck file and I think either had been referred to Messrs. LK Shields or informed the Tribunal that Messrs. LK Shields would be dealing with the matter in future. That's how

A. Is that here?

Q. I needn't go into that particular letter. That leads us into this particular letter.

A. Okay.

Q. And you will see that it's "Dear Mr. Heneghan" it's dated 4th February, 2004.

"I refer to previous correspondence.

"I expect to be in receipt shortly of the waivers requested of my clients with regard to the files of Messrs. Peter Carter-Ruck & Partners, Solicitors.

"According to the draft letters to Messrs. Peter Carter-Ruck & Partners (enclosed with your letter of the 30th January) among the material sought from them is any material relating to the making of any complaints to the police. As you are aware, a complaint has been made to the police and the Tribunal has been furnished with a draft of that complaint.

"Messrs. Peter Carter-Ruck & Partners have expressed a concern which we understand is shared by the police about the material potentially coming to the attention of the parties who are the subject matter of the complaint in question. My clients share that concern.

"In the circumstances, I would be grateful if you would confirm that the material relating to the complaint made to the police (including the statements made to the police) will be treated confidentially by the Tribunal and that in the event that the Tribunal ultimately determines that it is necessary to hear evidence in relation to those matters, that the Tribunal will do so in private in order to ensure that the relevant ongoing police investigation is not prejudiced in any way."

That's how matters commenced. If you then go the Tribunal responded to that, and it's by letter dated the 21st September, 2004. It's addressed to Mr. Garvey. It reads:

"Dear Mr. Garvey,

"I am writing to you in relation to a number of matters which the Tribunal wishes to take up with your client arising from the contents of documents which have come to the attention of the Tribunal over the last few days."

Now, I am not going to ask you about that which is contained at No. 1. If you go to the next page, this is the issue I want to refer you to.

"Secondly, I enclose herewith the copy of the draft police

statement of Mr. Christopher Vaughan. It appears that this document was faxed by Ms. Kate McMillan of Peter Carter-Ruck & Partners to Mr. Vaughan on the 8th November 2002, and it appears further from the handwritten annotations that the contents of the draft were approved by Mr. Vaughan and were either approved or amended as appropriate. The contents of this document are directly material to the inquiries which the Tribunal is currently pursuing. Accordingly, I am instructed to request that Westferry now produce all of its files in relation to the complaint to the Metropolitan Police regarding the instant[sic] which occurred in the course of the mediation of the dispute between Dinard Limited and Westferry including the files of Peter Carter-Ruck & Partners."

Now, I think the next response to that, Messrs. LK Shields, it's dated the 23rd September, 2004.

"Dear Mr. Heneghan,

"I refer to your letter of the 21st inst. received at 7.48pm. Notwithstanding the title to your letter, the queries posed appear to relate solely to Westferry Limited. I have now taken my client's instructions with regard to your letter.

"1. My client, Westferry Limited, is currently conducting a review to identify any correspondence on its files that may not have already been provided to the Tribunal. Any documentation identified during that review will be provided by my client to the Tribunal.

"2. You have requested that Westferry Limited now produce all of its files in relation to the complaint to the Metropolitan Police regarding the incident which occurred in the course of the mediation of the dispute between Dinard Trading Limited and Westferry Limited to include the files of its UK lawyers, Messrs. Peter Carter-Ruck & Partners.

"From previous correspondence, you are aware that Messrs. Peter Carter-Ruck & Partners have expressed a concern (which is shared by the police) in that material relating to the complaint made by Westferry Limited to the police might potentially come to the attention of the parties who are the subject matter of that complaint. Indeed you have been made aware of the fact that Westferry Limited has been advised by its UK lawyers that it should not have provided the Tribunal with the initial draft witness statement.

"In addition, as the Tribunal is aware, confidentiality provisions apply both to the mediation between Dinard Trading Limited and Westferry Limited and to the terms of the settlement achieved there at.

"Among the confidentiality provisions to which Westferry Limited (and its advisors) is subject in connection with the mediation, are the following:

"A) The parties hereto and their respective representatives shall keep confidential and shall not reveal the terms of this agreement save as required by law and insofar as may be necessary to bring into effect or enforce the said terms

(Schedule to the High Court order dated 2nd October, 2002.)

"B) All documents, statements, information and other material produced prior to or during the course of the mediation, save to the extent that these documents have been disclosed already and are in the domain of the litigation, whether in writing or orally, shall be held in confidence by the parties and shall be used solely for the purposes of the mediation (extract from agreement to mediate).

"In the circumstances, and bearing in mind the request now made by the Tribunal of Westferry Limited (and bearing in mind also previous requests made by the Tribunal concerning or relating to this issue) our client awaits hearing from you as to how the Tribunal believes our client can comply with the request contained in paragraph 2 of your letter under reply without exposing itself (and its advisors) inter alia to an action for damages for breach of confidence and/or breach of contract."

Now, we'll go to the next document. This is the Tribunal, and it responded to Mr. Garvey on the 24th September, 2004.

Now, just bear in mind that litigation was in being at this stage, taken by your son to prohibit or injunct the Tribunal from inquiring into matters relating to Doncaster Rovers. So, it's in that context that this particular correspondence takes place.

It's dated the 24th September, 2004.

"Dear Mr. Garvey,

"I refer to your letter of yesterday's date in response to mine of 21st September. I will deal with each of the points raised by you in turn.

"1. I note that your client, Westferry Limited, is currently conducting a review to identify any correspondence on its files that may not already have been provided to the Tribunal. You have stated that any documentation identified during that review will be provided by your client to the Tribunal.

"I am not clear as to what aspect of the Tribunal's request this exercise is directed. What the Tribunal has requested is a copy of all of your client Westferry's files in relation to DRFC. Furthermore, you have not indicated when you expect to be in a position to furnish these documents.

When I wrote to you on the 21st September I indicated that this request was one of the utmost urgency. While it is the Tribunal's preference that its dealings should be on a voluntary and cooperative basis, I am instructed to inform you that on this occasion the Tribunal cannot proceed on that footing unless its requests are met in a timely and prompt fashion. Please confirm to me by close of business today that your client will produce all of its files to the Tribunal and please indicate when the Tribunal will expect to receive them.

"2. In relation to the Tribunal's request to access to Westferry's files regarding the complaint to the Metropolitan Police, you have again referred to what you

state are the concerns of Messrs. Peter Carter-Ruck, which you further state are shared by the Metropolitan Police.

In addition, you have referred to confidentiality provisions of which you state the Tribunal is aware. This is the first occasion on which the Tribunal has been informed of any confidentiality provisions attaching to the mediation that enjoined your client from producing documents to the Tribunal. These were certainly not invoked when your client produced 4 leverarch files of documents from your client's English solicitors, Messrs. Peter Carter-Ruck, which related to the litigation and the mediation.

"As regards the confidentiality provisions, it is noted that paragraph (a) apparently provides as follows:

"a) The parties here to and their respective representatives shall keep confidential and shall not reveal the terms of this agreement" and this is underlined by the Tribunal "save as required by law and insofar as may be necessary to bring into effect or enforce the said terms... "[emphasis added]"

"It appears therefore that any disclosure 'as required by law' would not give rise to a breach of the agreement.

Irrespective of any such agreement it is well established law that the provision of information under compulsion does not give rise to any breach of confidentiality agreement.

The Tribunal has no difficulty in making an order against your client so that your client will be protected from

exposure to potential breach of confidentiality claim."

"In relation to the apparent concerns of Messrs. Peter Carter-Ruck and the Metropolitan place, the Tribunal does not wish in any way to undermine or jeopardise the investigations being conducted by the Metropolitan Police.

It does not appear that those concerns are shared by Mr. Denis O'Brien (the ultimate beneficial owner of your client) whose grounding affidavit in High Court proceedings exhibited documents relating to and generated in the course of police investigation and which were opened in detail to the High Court in the past few days. The Tribunal must however balance that with its own obligations to investigate fully the matters which fall within its remit.

Accordingly the Tribunal proposes taking this matter up directly with the London Metropolitan Police and for that purpose I would ask you to let me have by return the name and contact details of the officer in overall charge of the investigation. The Tribunal will need this information by return so that the Tribunal's efforts to progress its inquiries are not delayed.

"In relation to the Tribunal's request for access to all of the files of Westferry, please let me hear from you by close of business this evening, otherwise the Tribunal will have to consider whether it is necessary for the purpose of its functions to proceed by way of order for production."

Then on the 28th September, 2004, your solicitors wrote to the Tribunal.

"Dear Mr. Heneghan,

"I refer to previous correspondence, resting with your letter of the 24th September.

"The Tribunal has requested a copy of all Westferry Limited files in relation to DRFC. Those files are currently being assembled and, where necessary, extracted from storage.

The files are, as you know, not held in this jurisdiction.

It is anticipated that Westferry Limited will be in a position to provide the files in question to the Tribunal before the end of this week.

"I will be in contact with you, under separate cover, concerning your comments in relation to the confidentiality provisions referred to in previous correspondence. In the meantime, however, I am instructed to inform you that the officer in overall charge of the investigation is a Richard Gordon of the City of London Police."

Now, the Tribunal then wrote to Detective Constable Richard Gordon, and that's the next document.

"Dear Detective Constable Gordon,

"I am writing to you as a solicitor for the above entitled tribunal of inquiry. For your reference I enclose a copy of the Tribunal's Terms of Reference.

"The Tribunal of Inquiry is presided over by a High Court Judge, The Honourable Mr. Justice Michael Moriarty. In the course of the inquiries instituted by the Tribunal, the attention of the Tribunal has been drawn to a number of English property transactions, including a transaction

involving the purchase, by a company known as Westferry Limited, of Doncaster Rovers Football Club's premises at Doncaster.

"My purpose in writing is to inquire concerning an investigation being carried out by you on behalf of the City of London Police relating to a complaint of blackmail.

From information made available to the Tribunal by solicitors acting on behalf of Mr. Denis O'Brien Senior, Westferry Limited and a number of individuals associated with that company, it would appear that a complaint of blackmail was lodged with your police force on the date of the 12th November, 2002, in which it was suggested that Mr. Denis O'Brien Senior and members of the O'Brien family were being blackmailed by Mr. Ken Richardson and Mr. Mark Weaver.

"In carrying out its inquiries into the purchase of the Doncaster Rovers Football Club premises, the Tribunal has been in contact" that should be "purchase" "the Tribunal has been in contact with the purchasers and with a number of individuals associated with the purchasers. The Tribunal has also received communications from Messrs. Richardson and Weaver, two individuals associated with the vendors. The Tribunal has also been in contact with a number of individuals who appear to have been involved either in the purchase itself or in efforts to resolve a dispute between the vendors and the purchasers, notably Mr. Christopher Vaughan, solicitor, of Northampton;

Ms. Ruth Collard, solicitor, of the London firm of Carter-Ruck & Partners, Solicitors; Mr. Denis O'Connor, accountant, of Dublin; Mr. Michael Lowry of Dublin, a former Irish Government Minister. Mr. Michael Lowry is referred to in the Tribunal's Terms of Reference.

"In the ordinary way the Tribunal's inquiries take the form of preliminary private investigatory work. The work is almost invariably conducted through correspondence or in the course of private informal meetings with the individuals from whom the Tribunal believes it may be able to obtain information. Where the Tribunal determines that the matters being investigated in the course of the private investigative stage warrant investigation in public, it then proceeds to public hearings and evidence is taken from individuals identified by the Tribunal as having, or likely to have, information relevant to its Terms of Reference.

In the course of carrying out its private investigations in relation to the Doncaster Rovers transaction, the Tribunal has examined certain documentation which appear to relate to the police complaint made to the City of London Police.

This includes statements made to or at least drafts of statements made to the police or documents containing material assembled in preparation for the making of statements or draft statements to the police. The Tribunal has been informed by solicitors for Mr. Denis O'Brien Senior (by whom the complaint was made to your police force) that your police force has a concern that material

which the solicitors may have been asked to provide to the Tribunal, material of the kind mentioned above, may potentially come to the attention of parties who are the subject matter of the complaint in question. They have also indicated that the London firm acting for Mr. O'Brien Senior, Messrs. Peter Carter-Ruck & Partners, have expressed a similar concern.

"It is true to say that the Tribunal's public hearings in relation to the English property transactions I mentioned above, including the Doncaster Rovers transaction in particular, will entail reference to some of the material I have mentioned above which appears to be connected with your inquiry. I should say that some of this material has already been put into the public domain by the individual who is effectively the 'owner' of Westferry Limited, Mr. Denis O'Brien, who is a son of Mr. Denis O'Brien Senior. In fact, this material first came to the attention of the Tribunal after it had been put into the public domain by Mr. Denis O'Brien in the course of High Court proceedings in Ireland. I have described Mr. Denis O'Brien as the 'owner' of Westferry Limited. Westferry is an Isle of Man company which is owned by a trust, the Wellington Trust. Mr. O'Brien has asserted that he is effectively the sole beneficiary of the Wellington Trust.

"I would be obliged to know whether your police force has any concerns regarding information coming into the public domain in the course of this Tribunal's public hearings

concerning the complaint made to your police force and including either statements or draft statements made to your police force or documents containing materials preliminary to the assembly or preparation of a draft statement (and including the information already put into the public domain by Mr. Denis O'Brien.)

"I would also be obliged to know (assuming that you are at liberty to so inform the Tribunal) whether you have, in fact, expressed these concerns to either Messrs. Peter Carter-Ruck & Partners, Solicitors, or Messrs. LK Shields & Partners, solicitors, either in general or specifically with respect to the workings of or public hearings of the this Tribunal.

"I would be very much obliged to hear from you at your earliest convenience."

Then, the 9th December, 2004, letter to the Tribunal
Solicitor from Constable Gordon:

"Dear Sir,

"With respect to your letter dated 8th November, 2004, I can confirm that an allegation of blackmail was reported to the City of London Police by Mr. Denis O'Brien Senior.

"The alleged offence occurred during a mitigation[sic] meeting in the Temple, which was attended by Mr. O'Brien and his legal team, and concerned the settlement figure following the sale of Doncaster Rovers Football Club from Messrs. Weaver and Richardson.

"I can confirm that this office is investigating the

allegation, but only insofar as to the events which allegedly occurred within that meeting. This office is not currently investigating any of those matters concerning the sale, which occurred in 1999, or any of the other agreements or land transactions which may have occurred during the same period, a fact of which Mr. O'Brien and his legal team are aware. It is my belief that these matters are already currently under review by the Tribunal.

"With respect to information concerning this allegation or any other information (including draft statements prepared and presented to the Tribunal by Mr. O'Brien), which may be required by the Tribunal in the course of its deliberations, this office does not express concern at this time that this information may be brought into the public domain by the Tribunal (with the obvious exception of any personal details of witnesses contacted by the police).

This fact has previously been relayed to Mr. O'Brien's legal representatives, Messrs. Carter-Ruck & Partners.

"This office does not seek to obstruct the Tribunal's deliberations in any way and I am happy to assist if I am able. At this time, I do not anticipate that any inquiries made by the Tribunal, either previously or in future, will hamper or hinder matters currently under investigation by the City of London Police. Should you have any further inquiries, please do not hesitate to contact me."

The Tribunal then wrote to your solicitor on the 13th December, 2004:

"Dear Mr. Garvey,

"I refer to requests made by the Tribunal dating from January last for access to documents in the power, possession or procurement of your client (including documents held by Messrs. Peter Carter-Ruck solicitors) in relation to the complaint made to the Metropolitan Police Commissioners against Mr. Mark Weaver and Mr. Ken Richardson.

"By letter dated 4th February last, you informed the Tribunal as follows:

"Messrs. Peter Carter-Ruck & Partners have expressed a concern (which we understand is shared by the police) about that material potentially coming to the attention of the parties who are the subject matter of the complaint in question. My clients share that concern."

"In the event that the Tribunal agreed that Messrs. Peter Carter-Ruck could exclude from the files produced to the Tribunal last April, those documents relating to the police complaint.

"Following consideration of documentation exhibited in proceedings issued against the Tribunal last September by Mr. Denis O'Brien, I wrote to you again on the 21st September enclosing a copy of draft statement of Mr. Christopher Vaughan which had been forwarded to him by Ms. Kate McMillan on the 8th November, 2002, and pointed out that the contents of the document were directly material to the inquiries which the Tribunal was pursuing.

Accordingly, I indicated that I was instructed to request that your client produce all files in relation to the complaint to the Metropolitan Police regarding the incident which occurred in the course of the mediation of the dispute between Dinard Limited and Westferry, including the files of Messrs. Peter Carter-Ruck.

"You replied on the 23rd September and you repeated the concerns of your clients and Messrs. Peter Carter-Ruck and you again stated that these concerns were shared by the Metropolitan Police. I responded on behalf of the Tribunal on the 24th September and indicated that the Tribunal did not wish to undermine or jeopardise the investigations being conducted by the Metropolitan Police but that the Tribunal had to balance that concern with its own obligations to investigate fully the matters which fall within its remit. I requested you to let me have the name and contact details of the officer in overall charge of the investigation to enable the Tribunal take the matter up directly with the Metropolitan Police and you duly supplied that information.

"The Tribunal has been in touch with the Central Detective Unit, Police Headquarters, London, and the Tribunal has been informed as follows by Inspector Richard Gordon"

"With respect to information "

CHAIRMAN: That's a quote from the passage of the last letter.

MR. COUGHLAN: "It appears therefore that the Metropolitan

Police do not now share the apparent concerns of your clients or Messrs. Peter Carter-Ruck, Solicitors.

"I am sure you will appreciate that the Tribunal wishes to secure access to these documents without further delay.

You might therefore kindly let me know, by no later than close of business on Friday next, 17th December, whether your clients are agreeable to producing those documents voluntarily. If your clients have any concerns regarding obligations of confidentiality, the Tribunal has no difficulty in making an Order For Production of the documents in aid of your clients' interests.

"I should add that in the absence of confirmation that these documents will be produced in a timely fashion, the Tribunal intends to proceed against your clients by way of an order for production."

Now, there then was a response to that from your solicitors.

"I now enclose two lever arch files (Number 1 and 2) comprising the documentation referred to at paragraph Number 2 of your letter of the 2nd inst. The larger leverarch file (Number 1) comprises documents in my clients' possession in relation to the police complaint made to the Metropolitan Police Commissioners against Messrs. Mark Weaver and Ken Richardson. The smaller leverarch file comprises documentation obtained by my clients (in relation to the police complaint) from Messrs. Peter Carter-Ruck on foot of the request contained in

previous correspondence. Messrs. Peter Carter-Ruck & Partners have asked me to inform the Tribunal that the documentation contained in this leverarch folder relates only to their correspondence files and does not include their time sheets," etc.

And then it outlines what is contained in the lever arch files. But what is contained in those, if we turn over the letter, is the note made by Kate McMillan of the conversation she had with the police officer wherein, as you say, that police officer had informed her that there was no concern of making the information available to the Tribunal. And it was nearly a year old, that note, at this stage.

Now, on the 15th February, 2005, which is the next letter

A. What tab is that?

Q. It's the next tab, Tab 10. If you go down to item number 5 on the second page, do you see that, number 5?

A. Yes.

Q. "I enclose herewith a copy of attendance note dated 27th January 2003 of a telephone discussion between Ms. Kate McMillan of Messrs. Peter Carter-Ruck and Detective Sergeant Kieran McNinch. The discussion relates to the request made by this Tribunal for access to the files relating to the police complaint. It appears from this attendance note that the Metropolitan Police do not consider that the release of the files would" and then

it records the view of the Metropolitan Police, which is

"That the 'files' would jeopardise the investigation at

all. You will appreciate that the views of the

Metropolitan Police as recorded in this attendance note are

not consistent with their views as reported in your letter

to the Tribunal of 4th February, 2004. In that letter you

stated as follows:

"Messrs. Peter Carter-Ruck & Partners have expressed a

concern (which we understand is shared by the police) about

that material potentially coming to the attention of the

parties who are the subject matter of the complaint in

question. My clients share that concern."

"The Tribunal accepted that what was stated in your letter

and endeavoured to proceed with its investigations in a

manner which would not in any way interfere with or

jeopardise the police complaint. It was only when the

Tribunal took the matter up directly with the Metropolitan

Police and was informed in November last that the

Metropolitan Police had no such concern that the Tribunal

reverted to your clients and you then produced the

documents in question on the 8th February last. You will

appreciate that this has delayed the Tribunal's

investigations for upwards of twelve months and has

involved the Tribunal in significant additional costs. The

Tribunal would appreciate your clients' comments on this

matter.

"As the Tribunal is anxious to conclude its investigations

into this matter, I would ask you to let me hear from you within the next seven days."

Messrs. LK Shields responded on the 3rd October, 2006.

Just, I should state that, in the meantime, your solicitors declined to make any response to the Tribunal pending the outcome of proceedings which your son had taken against the Tribunal in the High Court and subsequently on appeal to the Supreme Court.

This letter is the 3rd October, 2006.

"We refer to your letter of the 2nd ult and in particular paragraph number 4 thereof.

"We reply to outstanding aspects of the Tribunal's letter dated 15th February 2005 as follows: (For ease of reference, we use the numbering adopted in the Tribunal's letter of the 15th February, 2005):

"1. Under cover of letter dated 8th February, 2005, the Tribunal was provided with two lever arch files comprising documents in my clients' power, possession or procurement (including documentation which they had obtained from Messrs. Peter Carter-Ruck, Solicitors) in relation to a complaint made to the Metropolitan Police Commissioners against Mark Weaver and Ken Richardson.

"We have been instructed to correspond with Messrs. Peter Carter-Ruck & Partners to ascertain whether they have any additional relevant documents in the period subsequent to the 4th June, 2004. We will be in further contact with you upon hearing from them. Our clients have no such further

documents.

"2. Please see our letter

"3. Making inquiries of Peter Carter-Ruck.

I want to bring you down to number 5, item number 5, because this is what's been stated by your solicitor on your behalf now, on your instruction.

"The clear implication from your letter" that is the Tribunal's letter "that our clients have set out to mislead the Tribunal. Our clients utterly reject that implication. Previous correspondence accurately recorded our clients' understanding of the position of the Metropolitan Police. Our clients had been of that understanding as a result of their dealings with Messrs. Peter Carter-Ruck & Partners who, as the Tribunal is aware, dealt directly with the Metropolitan Police. For the avoidance of doubt, our clients did not, at any material time, understand the position of the Metropolitan Police to be as recorded in the attendance enclosed with your letter."

That is in accordance with the attendance which was on the file of Messrs. Peter Carter-Ruck, Kate McMillan's attendance on Kieran McNinch.

So, that was what your solicitors were instructed to write on your behalf.

The Tribunal then wrote on the 2nd February, 2007, to your solicitors.

"Dear Mr. Garvey,

"I refer to your letter of yesterday's date in response to mine of the same date in which the Tribunal requested that you indicate whether, and if so when, your clients intend to furnish the Tribunal with the Statement or Memorandum of Intended Evidence as originally sought in May of 2004.

"You refer to the Tribunal's letter of the 3rd August last in which it was indicated that there would be further queries to be addressed by your client in this statement and you have asked the Tribunal to identify those matters."

Then the Tribunal sets about identifying those matters, and I don't think you need concern yourself greatly with that.

I think, then, on the 2nd February, 2007, the Tribunal wrote, because of what had been said in Mr. Garvey's letter on your behalf on the 3rd October, 2006, the Tribunal wrote to Messrs. Peter Carter-Ruck, and to a partner there, Mr. Alastair Pepper.

"Dear Mr. Pepper,

"I refer to the above and am instructed to write to you in the following terms:

"The purpose of my letter is to seek the assistance of your firm in connection with the suggestion, resulting from the Tribunal's dealings with Messrs. LK Shields, Solicitors, acting on behalf of Denis O'Brien Senior and Westferry Limited, that your firm may have misrepresented the views of the City of London Police concerning inquiries conducted by the police following a complaint by Mr. O'Brien Senior of blackmail against Mr. Mark Weaver and Mr. Ken

Richardson.

"In January 2004, the Tribunal requested from LK Shields, Solicitors, acting on behalf of Mr. Denis O'Brien Senior and Westferry Limited, access to documentation in the power, possession or procurement of their clients, including documents held by your firm in relation to the complaint.

By letter dated 4th February, 2004, LK Shields, Solicitors, informed the Tribunal as follows:

"Messrs. Peter Carter-Ruck & Partners have expressed a concern (which we understand is shared by the police) about that material potentially coming to the attention of the parties who are the subject matter of the complaint in question. My clients share that concern."

"The Tribunal agreed that Messrs. Peter Carter-Ruck could exclude from the files to be produced to the Tribunal any documents relating to the police complaint.

"Following consideration of documentation exhibited in Judicial Review proceedings issued against the Tribunal in September 2004 by Mr. Denis O'Brien Junior, the Tribunal again wrote to LK Shields, Solicitors, on the 21st September, 2004, requesting that their clients produce all files in relation to the police complaint. LK Shields replied on the 23rd September, 2004, repeated the concerns of their clients and of your firm, and again stated that those concerns were shared by the City of London Police.

"In light of this correspondence, the Tribunal contacted

the City of London Police, and by letter of the 9th December, 2004, was informed as follows by Inspector Richard Gordon" and it sets out what is contained in Inspector Gordon 's letter.

"In light of the contents of this letter from the City of London Police, the Tribunal believes that it was manifestly incorrect, if not indeed misleading, to suggest that the concerns of Messrs. Carter-Ruck regarding disclosure of documents were shared by the police.

"The Tribunal brought the views of Inspector Gordon to the attention of LK Shields, Solicitors, and repeated its request for production of the documents relating to the blackmail complaint. Following a number of reminders, the files in question were produced to the Tribunal under cover of a letter dated 8th February, 2005. The documents included material from your firm. That material included an attendance note dated 27th January, 2003, of a telephone conversation between a member of your firm, Ms. Kate McMillan, and Detective Sergeant Kieran McNinch, a copy of which is attached. Notwithstanding the views attributed to Ms. McMillan, it is clear that the police did not consider that the release of Messrs. Carter-Ruck's file 'would jeopardise the investigation at all'. The view of the City of London Police as recorded in this note are wholly inconsistent with the views of the police as relayed to the Tribunal in Messrs. LK Shields' letter of the 4th February, 2004.

"By letter of the 15th February, 2005, the Tribunal inquired of Messrs. LK Shields as to how the Tribunal could have been informed that it was believed by that firm that the police had a concern regarding the release of material when, as was clear from the attendance note mentioned above, as early as January 2003, no such concern had been expressed by the police. By reason of ongoing litigation brought by Mr. Denis O'Brien Junior (with which Mr. Denis O'Brien Senior had identified himself against the Tribunal), Messrs. LK Shields refused to respond to a number of queries, including this one, and a response was not received until letter of the 3rd October, 2006.

Messrs. LK Shields stated as follows:" "the clear implication," and sets that out.

"From this response provided by Messrs. LK Shields, Solicitors, it is clear that in expressing any view in relation to these matters, they were relying on your firm.

The Tribunal is anxious to ascertain, as a matter of urgency, how Messrs. LK Shields could have been given the impression that the City of London Police had any concern whatsoever in relation to the production of information having regard to the stated position of the City of London Police as set out in their letter of the 9th December, 2004, and in particular having regard to the attendance note of your firm of January 2003.

"The Tribunal's grave concerns in this regard are exacerbated by the fact that it now appears that neither of

the members of your firm that dealt with Mr. Denis O'Brien/Westferry Limited and with the complaint to the police, are willing to attend to give evidence to the Tribunal, whether in Dublin, or by way of commission in the United Kingdom." And that situation has modified.

"I am instructed to inform you that, in due course, the Tribunal may be obliged to draw conclusions concerning the role of your firm in the provision of information concerning the attitude of the police.

"So that the Tribunal will have the benefit of your views, the Tribunal would be obliged to hear from you as a matter of urgency."

And the Tribunal sent the attendance note.

A letter was then received from Messrs. Peter Carter-Ruck to the Tribunal, dated the 19th February, 2007.

"Dear Mr. Brady,

"We write in reply to your letter dated 2 February. You should have now received a letter dated 16 February with enclosures from LK Shields, Solicitors. Further to our letter dated 12 February, we repeat that the 'suggestion' of this firm that your letter dated 2 February contains is flatly and categorically denied."

Then the letter from Messrs. LK Shields. Now, this letter was misdirected and it went to another tribunal, it stayed in the in-tray in another tribunal and came to us a little later, but in any event, what the Tribunal received from Messrs. LK Shields was a fax sheet

Now, I think Messrs. LK Shields enclosed documentation.

Obviously Messrs. Peter Carter-Ruck had been in contact with Messrs. LK Shields after the Tribunal's correspondence with Messrs. Peter Carter-Ruck and they then furnished to the Tribunal the following documentation, which had been obtained from Messrs. Peter Carter-Ruck. And the first one is a letter addressed to you.

A. Sorry, where are we now, please, Mr. Coughlan?

Q. I'll tell you, we are behind Tab 15. We are coming to the end of this particular

A. Tab 16?

Q. Tab 15, I think. The ninth page in Tab 15. I make it the eighth. It's a fax cover sheet.

A. They don't seem to be numbered, are they?

Q. No, they are not. I am sorry about that.

A. Not at all.

Q. It's a fax cover sheet, and what it is, it's a the date is the 14th February, 2003. And it's been sent, it looks, to you, or for your attention, from Ruth Collard in Peter Carter-Ruck.

A. Okay.

Q. And it reads:

"Dear Denis,

"Westferry Limited complaint to the police."

Now, this letter seems to have been sent to you in the context of an exchange of correspondence between you and Messrs. Peter Carter-Ruck about the Tribunal's request for

the disclosure of documents in relation to the police complaint. And this is Ms. Collard writing to you then in February of 2003:

"Dear Denis,

"Westferry Limited complaint to the police.

"Further to a letter which I sent to John on Wednesday, he has now asked that I readdress my advice to you in connection with the above and the request from the Moriarty Tribunal for documents.

"The position regarding our file is as follows:

"1. Our file in relation to the complaint to the police consists of all the documents we hold in connection with our work on that matter. These include, for example, our letters and e-mails exchanged with you, the invoices we have rendered to you, notes of our telephone conversations with you, printouts of our computerised time recording, internal communications between Kate and I regarding the matter, as well as the draft statements and our communications with the police, Christopher Vaughan and Michael Kallpetis.

"2. I am not sure whether, when a request is made for our file, this is intended to encompass the whole file down to our computerised time records, internal communications notes and invoices, etc. All of the material in the file is covered by legal professional privilege and would not, in an English context, be subject to disclosure. Having said that, the privilege belongs to you as the client, and if

you wish to waive it, then you are able to do so. I am at a loss, however, to know what assistance the majority of our file (for example the administrative material, etc.) would be to the Moriarty Tribunal and, indeed, it seems to me its time would be wasted by having to go through it.

"3. Aside from the above, I do not consider it helpful or right that our legal advice, as contained in letters to you and notes of conversations with you, should be disclosed to any third party. In particular, you will recall that our advice about pursuing the complaint in blackmail was not entirely positive and that (very understandably) you took the view that you wanted to proceed in any event in order to be seen to be taking action.

"4. It seems to me that the documents that the Tribunal is really interested in are those relating to our communications with the police. These essentially encompass your witness statement as we first presented it to them, the same statement which was e-mailed back incorporating the police's queries, the revised draft statement responding to those queries and various e-mails we have subsequently exchanged with the police. Again, all of this material is subject to legal professional privilege. If, however, it is felt you wish to assist the Tribunal then this material, I believe, can be made available, and, in fact, as I understand it, the statement in its various drafts have already been handed over.

"We have spoken to the police about their view of the

statement being handed over and potentially being put into the public domain. As a result, the suspects are likely to be alerted to the investigation and it is possible (although unlikely) that they could flee the jurisdiction. They will also have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case. Having said that, the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution.

"5. Finally, so far as Christopher Vaughan's draft statements are concerned, you will recall that there are two drafts of this, neither of which have been signed by Mr. Vaughan. Indeed, in relation to the first draft, he has specifically informed us that he is not happy with its terms and accordingly is not prepared to sign. In these circumstances, I believe it would be wrong to make those drafts available to any third party without Mr. Vaughan's approval.

"In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police.

Alternatively, I would suggest I go through the file perhaps with someone from William Fry to discuss the position further.

"John has also asked me to advise you on your position in libel regarding the disclosure to the statements.

Complaints to the police are covered by privilege in England so that no proceedings can be taken against you in respect of this. As the statement is being handed to the Moriarty Tribunal at that body's request, again this publication is likely to be subject to privilege, although I do not know what the position would be under Irish law. If contents of the statements are leaked to the press and published in a newspaper in England, I do not believe you would be liable for the publication as you have not authorised it or intended it and it could not be foreseen by you as a consequence of handing over the statement to the Tribunal. If the contents of the statements are published as part of a fair and accurate report of the Tribunal's proceedings, again a form of privilege would apply. Again, however, you would have to check the position under Irish law.

"At John's request, I have also sent a letter to Messrs. William Fry today, a copy of which follows.

"I hope the above is helpful.

"Kind regards,

Ruth Collard."

Then, again, the copy of the letter sent to Messrs. William Fry is behind that.

"Dear Sirs,

"Denis O'Brien Senior and Denis O'Brien Junior.

"We refer to your letter dated 24 February" this is dated the 14th February, 2003. That must be a mistake.

"We refer to your letter dated 24th February.

"We have been asked to write to you regarding the draft statement of Denis O'Brien Senior, which we understand you already hold. We further understand that it is proposed that these are made available to the Moriarty Tribunal.

"As you know, these statements were produced in the context of a pending police investigation. We have spoken to the police about the statement potentially coming to the attention of the suspects at this stage. The police have commented that it's possible (although they regard it as unlikely) that, as a result, the suspects could flee the jurisdiction. Additionally, they will have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case. Having said this, the police regard the disclosure of the statements as a matter for the client.

"In the circumstances, we believe that it would be preferable for any disclosure of statements to the Moriarty Tribunal to take place on the basis that they would be dealt with in private and not public, so far as possible."

Now, do you remember receiving those, Mr. O'Brien?

A. William Fry got them, wasn't it?

Q. No, you got the long one from Ruth Collard where she clearly informs you that the police it's a matter for you, the police have no objection to the matters being handed over to the Moriarty Tribunal.

A. Okay.

Q. And she enclosed a copy of a letter which she intended sending to Messrs. William Fry informing them in like terms but not in such detail.

A. Okay.

Q. Which she had sent. Now, I now want you to go behind those two documents, and you will see copies of the same two letters

A. Is this the same tag?

Q. The same tag.

A. What's the tag again, please?

Q. Sorry, I beg your pardon. It's tag 15. It's the same two letters, or copies of the same two letters sorry, I beg your pardon, before I do that I beg your pardon, I should go back. That's the the reply is from you, and I'll just hand you a copy because have you got it there in the book? It's a letter from you to Ms. Ruth Collard.

A. From me personally?

Q. Yeah, "Denis O'Brien Senior, 6th Floor, 1 Grand Canal Quay"
I'll get you a copy of it.

A. Okay. Thank you.

Q. It's marked "Urgent". And it reads dated 17th
February

"Dear Ruth,

"Very many thanks for your comprehensive letter addressed to William Fry, Solicitors, dated 14th February which I have read carefully.

"Could I possibly trouble you to send this letter again

with the following omissions or amendments (see attached).

"Turning to the second letter addressed to me personally, and which is quite comprehensive in detail, could I ask you to please arrange the following omissions and/or additions (see attached). If you have any queries, please contact Nicola in my office.

"Many thanks for your help.

best regards."

Now, do you remember sending that?

A. If I signed it, yes.

Q. No, it's pp-ed. It's signed by you.

A. I am sure it's okay.

Q. No, just let's look. These two letters, the one addressed to William Fry's and the one addressed to you, have amendments made to them in manuscript form, in handwriting form. And you were sending them back to Ms. Ruth Collard in Peter Carter-Ruck and asking her to send them back to you in the amended form.

A. Yeah.

Q. Right?

A. Okay.

Q. Let's take the long one to you first. And if you go to the second have you got the handwritten changes? I want you, if you could, please, identify who made those changes?

A. Sorry, is this what's on the screen?

Q. Yes, it is now.

A. Are you asking me who made the changes?

Q. Yes.

A. I did.

Q. Did you talk to anybody?

A. No.

Q. You made these changes yourself

A. Yes.

Q. on this and on the William Fry's, the shorter letter.

If you go to the shorter letter?

A. I take full responsibility for them.

Q. I am not asking you if you take full responsibility; I am asking you who made them?

A. I must have.

Q. Did you do it, Mr. O'Brien?

A. I am saying I must have done it.

Q. Perhaps you'd look at the handwriting on page 2 of the long letter, I am sorry. Whose handwriting is that? Is that yours?

A. Is this signed by Ruth Collard?

Q. Yes. Do you see the handwriting?

A. No, that's not my writing.

Q. That's not your writing?

A. No.

Q. Whose writing is it, Mr. O'Brien?

A. I have no idea. I don't write like that.

Q. Just looking at your signature, it didn't occur to me that it was.

A. Pardon?

Q. I looked at your signature in other documents and

A. No, it's not my writing and I have no idea.

Q. I am going to read the long one first and to see the effect that the changes that are being asked for make to the letter.

"Dear Denis" I'm going to read through it now.

A. Would you not read just the paragraph, to save time?

MR. COUGHLAN: You see, the whole meaning of the letter changes when you make the changes, Mr. O'Brien. That's the problem. Because you see I'll go to paragraph No. 2.

"I am not sure whether, when a request is made for our file, this is intended to encompass the whole file down to our computerised time records, internal communications, notes and invoices, etc. All of the material in the file is covered by legal professional privilege and would not, in an English context, be subject to disclosure."

And then the original letter said: "Having said that, the privilege belongs to you as the client and if you wish to waive it, then you are able to do so."

And you have requested Peter Carter-Ruck to remove that particular line from the letter.

A. How do you know I requested it?

Q. Sorry, I am saying this, Mr. O'Brien. You sent a letter to Ruth Collard which we just opened, right?

A. Yes.

Q. And

A. And in it I requested these?

Q. You requested these changes.

A. Okay, fine.

Q. Now, I take your point, you said that you'd accept responsibility for them, but you have said that the changes, the writing isn't your writing, and I want to know whose writing it is, Mr. O'Brien, and you can't help us there so we'll have to continue inquiring as to who made these actual changes.

A. Okay.

Q. Because, first of all, the reference to the fact that the privilege is yours and yours to be waived is removed from the letter; isn't that correct? That's what's asked for, because we will now look at the letters when they come back with all of these changes made, Mr. O'Brien.

A. Before you do, Mr. Coughlan, it's purely academic, what has this got to do with your inquiry?

Q. Because, Mr. O'Brien, what is being asked for here is

A. Is it sinister or something?

Q. It could be, Mr. O'Brien. And what is being asked for here is to amend or change letters which a solicitor had sent to you and to your solicitors indicating that there was no difficulty in providing files to the Moriarty Tribunal, to change those letters to mean something else, do you understand me?

A. But they are not significant changes.

Q. They are extremely significant, Mr. O'Brien, and we'll go through them.

A. Yeah, go ahead.

Q. Now

A. I didn't make the changes, but I am just interested in why they are significant.

Q. All right, if you didn't make the changes, do you stand over them? Because a very important statement was made by your solicitor, Mr. Garvey of LK Shields, and the Tribunal kept pressing for a response and ultimately these documents came to light from London which showed that you had been informed in 2003 that you could make it was for you, and there was no objection by the police to make the files available to this Tribunal, and here are letters being altered to convey a different state of affairs.

A. Where is my signature on them that I gave that instruction? Excuse me, Mr. Coughlan, where is my signature that I gave these instructions?

CHAIRMAN: Well, it's the letter that Mr. Coughlan just read where you wrote with your signature on it asking that the following additions or amendments be made.

A. Is this it?

CHAIRMAN: It was the letter just a moment ago.

A. I thought there was another letter about that. No?

MR. COUGHLAN: Well, you see, if we just look at the letter and just put it up. It is a serious matter and you are entitled to look at this and look at it carefully.

It's marked "Urgent". It's addressed to Ruth Collard.

It's from your office. And this is why I asked you earlier

on, it's "Very many thanks for your comprehensive letter addressed to William Fry, Solicitors, dated 14th February, which I have read carefully."

"Could I possibly trouble you to send this letter again with the following omissions or amendments (see attached)."

And that's what I was taking you through, do you understand me?

A. Okay.

Q. "Turning to the second letter addressed to me personally, and which is quite comprehensive in detail, could I ask you please to arrange for the following omissions and/or additions (see attached)."

The letter is attributed to you but it's pp-ed. It looks like 'Prendergast,' but I don't know, maybe I am wrong. Is the language yours?

A. Pardon?

Q. Is the language in that letter yours, or could it be somebody else?

A. I can't remember this at all, but if you feel it's my letter, I will accept it.

Q. No. Look, Mr. O'Brien, all I am trying to do is to get the facts, and

A. You have totally lost me regarding the significance of all of this. What in the name of goodness has that got to do with the police complaint, and so on? You have totally lost me. Maybe you see something I don't, obviously.

Q. Now, I'll read the long letter in its amended form again

and I am going to read the whole letter and hope that you understand the significance of them.

"Further to a letter I sent to John on Wednesday, he has now asked that I readdress my advice to you in connection with the above and the request from the Moriarty Tribunal for documents.

"The position regarding our file is as follows:

"1. Our file in relation to the complaint to the police consists of all the documents we hold in connection with our work on that matter. These include, for example, our letters and e-mails exchanged with you, the invoices we have rendered to you, notes of our telephone conversations with you, printouts of our computerised time recording, internal communications between Kate and I regarding the matter, as well as the draft statements and our communications with the police, Christopher Vaughan and Michael Kallpetis.

"2. I am not sure whether, when a request is made for our file, this is intended to encompass the whole file down to our computerised time records, internal communications, notes and invoices, etc. All of the material in the file is covered by legal professional privilege and would not, in an English context, be subject to disclosure."

Then it would have continued, the initial letter to you read: "Having said that, the privilege belongs to you as the client and, if you wish to waive it, then you are able to do so."

And you have asked Ms. Collard to remove that.

The letter then continues: "I am at a loss, however, to know what assistance the majority of our file (for example, the administrative material, etc.) would be to the Moriarty Tribunal, and indeed, it seems to me its time would be wasted by having to go through it.

"3. Aside from the above, I do not consider it helpful or right that our legal advice, as contained in letters to you and notes of conversations with you, should be disclosed to any third party. In particular, you will recall that our advise about pursuing the complaint in blackmail was not entirely positive and that (very understandably) you took the view you wanted to proceed in any event in order to be seen to be taking action.

"4. It seems to me that the documents that the Tribunal are really interested in are those relating to the communications with the police. These essentially encompass your witness statement as we first presented it to them, the same statement which was e-mailed back incorporating the police queries, the revised draft statement responding to those queries and various e-mails we have subsequently exchanged with the police. Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal, then" the letter read originally "(the material I believe can be made available and, in fact, as I understand it in the statement in the various drafts have

already been handed over)". And you have asked that to be excised and to read: "Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal, then we feel that it would be appropriate to answer specific queries raised, rather than hand files over."

"We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result, the suspects are likely to be alerted to the investigation and it is possible" and then you ask to remove "(although unlikely)" "that they could flee the jurisdiction. They will also have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case.

"Having said that, the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution." And you ask her to excise that particular reference to the police having no objection, or indicating that it would not affect any potential prosecution.

Then continuing: "5. Finally, so far as Christopher Vaughan's draft statement" there is nothing sought there. Then it says: "In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police. Alternatively, I would suggest I go through our file perhaps with someone from William Fry to discuss the

position."

And you ask you want her to excise that and to insert "I suggest I go through our file with you to discuss the matter further. John has also asked me to advise you on your position in libel," and continues with the libel.

Fairly significance changes, aren't they, Mr. O'Brien, a letter

A. I have to ask you again, please, sorry; this was a letter addressed to me by Carter-Ruck, is that right?

Q. Yes.

A. Okay. Did I reply to that?

Q. Yes.

A. I mean, apart from these changes, which are not mine, but apart from the changes, did I actually reply to this letter?

Q. No, other than to ask for the changes?

A. Is there nothing in writing back to her to say, you know, I want these changes made?

Q. Yes.

A. There is a letter back? And did I sign it?

Q. It was the one we read earlier. It was pp-ed. It's the letter we read

A. I have no recollection of any of this.

Q. All right. Well, let's just look then at the short letter in which the amendments were sought. And that was to be addressed to your solicitors, Messrs. William Fry's.

A. It's possible, you know, these changes this is not my

writing, okay?

Q. Yes.

A. It's possible this letter was dealt with by someone else, one of my associates. I am not denying the letter, and so on. I definitely didn't make these changes. I have no recollection of it. And you say it's a pp reply, is it?

Is my signature on it?

Q. No, no, it's a pp reply.

CHAIRMAN: The name seems to be called Prendergast, does that ring a bell?

A. Nicola Prendergast, that's right. She is not my secretary, she is just a stenographer

MR. COUGHLAN: She is just a stenographer?

A. Yeah, in the office, in my office in our offices, not my office.

Q. It's just a clarification. That would just be sending a letter on an administrative basis. There would be no suggestion that Ms. Prendergast was the one who

A. Not at all. Oh, no, no, no, absolutely not.

Q. I just wanted to clear that up.

A. She is a complete innocent in all of this.

Q. Now, if you look at the short letter that was sent to Messrs. William Fry's, that again

A. What tag would that be?

Q. I'll just hand it to you.

A. Okay.

Q. It's easier.

A. Okay.

Q. You can see there "We have been asked to write to you regarding a draft statement of Denis O'Brien Senior which we understand you already hold. We further understand that it is proposed that these are made available to the Moriarty Tribunal.

"As you know, these statements were produced in the context of a pending police investigation. We have spoken to the police about the statements potentially coming to the attention of the suspects at this stage. The police have commented that it is possible," and then "Although they regard it unlikely," that's excised "and as a result the suspects could flee the jurisdiction. Additionally, they will have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case." And then what is asked to be excised: "Having said this, the police regard the disclosure of the statement as a matter for the client.

"In the circumstances we believe that it would be preferable for any disclosure of the statements to the Moriarty Tribunal to take place on the basis that they should be dealt with in private and not public" "As far as possible," and that is asked to be excised also.

A. Okay.

Q. You didn't make those changes; is that correct?

A. I didn't say that.

Q. You did a few moments ago.

A. This is a different letter, is it not?

Q. Did you make those changes?

A. I have no idea, but I mean, this is a different letter, is it?

Q. It is. There were two letters.

A. Okay. And it was addressed to me?

Q. It's addressed to Messrs. William Fry's.

A. To Messrs. William Fry's, okay. I have no recollection of this. I can't really see what's important about it, anyway.

Q. Well, I'll tell you what's very important about it, Mr. O'Brien, it's this: That when the Tribunal was being informed that it could not have access to the police file, the police complaint file in Messrs. Peter Carter-Ruck, and it was being asserted that it was because the police had a concern in relation to it, and that concern was shared by Messrs. Peter Carter-Ruck. But what had been conveyed to you by Messrs. Peter Carter-Ruck, and it would appear, on the face of it at least, and I stand corrected in this, to your solicitors, was that there was no such police concern, but it was being represented to this Tribunal that the reason why the documents were not being made available to the Tribunal was because of such a police concern and a concern which was shared by Messrs. Peter Carter-Ruck. Do you understand that?

A. That wasn't my concern.

Q. Now, solicitors act on instructions from clients. And I

want to look at, again, at the document you sent or

sorry, that was pp-ed but was sent from your office to Ruth Collard asking her to amend the letters which she had sent.

And we'll look at it again.

"Very many thanks for your comprehensive letter addressed to William Fry, Solicitors, dated 14th February, which I have read carefully."

And I underline the word "carefully" there.

"Could I possibly trouble you to send this letter again with the following omissions or amendments." And then you attach them.

"Turning to the second letter addressed to me personally and which is quite comprehensive in detail, could I ask you to please to arrange the following omissions and/or additions (see attached). If you have any queries, please contact Nicola in my office."

Why were you asking Peter Carter-Ruck & Partners to change letters which they had sent to you and to your solicitor?

A. I have no idea. I can't recall that at all.

MR. COUGHLAN: I might just break there, sir.

CHAIRMAN: Yes. Well, it seems to me you haven't a great deal more to explore with Mr. O'Brien. Well, the situation, Mr. O'Brien, is you are virtually at the end of your examination by Mr. Coughlan. It may be that your own barrister or the other barristers in the case may have a few questions to ask. It won't be very lengthy and your evidence will undoubtedly conclude tomorrow.

As regards time, the normal arrangements? Very good.

Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE 8TH MARCH, 2007, AT 11AM.