

THE TRIBUNAL RESUMED ON THE 15TH OF MARCH, 2007,

AS FOLLOWS:

CONTINUATION OF EXAMINATION OF AIDAN PHELAN BY

MR. COUGHLAN:

CHAIRMAN: Thanks very much indeed for coming back,

Mr. Phelan.

Q. MR. COUGHLAN: I wonder do you have the first yellow book?

It's behind Tab 48. Do you remember the Kevin Phelan

complaint to the Institute?

A. Yes.

Q. And it commences: "We wish to register a formal complaint

against the above firm of accountants and in particular

Mr. Bryan Phelan and Mr. Aidan Phelan who gave undertakings

to our firm which were relied upon but which were not

honoured despite numerous requests.

"We have been instructed in the past on two projects by the

above firm. We have also had instructions from the firm

through Mr. Aidan Phelan who confirmed he was acting as

agent for Mr. Denis O'Brien and another in respect of four

other projects: Mansfield site, Handforth site, Altrincham

Football Club and Doncaster Rovers Football Club. We were

informed that fees in relation to four projects outlined

above would be discharged, agreements to confirm this

position were signed in September 2001. Brian Phelan &

Company has failed to make a payment of outstanding fees in

relation to the two other projects despite undertakings to

discharge our account and despite being furnished with

invoices and statements.

"We believe that the failure to make payment is indirectly related to our correspondence with Mr. Aidan Phelan regarding his evidence to the Moriarty Tribunal and the fact that we have questioned the accuracy of his evidence.

We further believe that the failure to make payment of our fees relates to our many requests for the return of our files. The files requested are necessary for us to fully cooperate with the Moriarty Tribunal. We have corresponded with Mr. Aidan Phelan of Brian Phelan & Company on a number of occasions. Mr. Bryan Phelan has acknowledged the correspondence in a letter dated 17th September, 2001. In Mr. Bryan Phelan's letter on the 17th September, 2001, he attempts to distance his firm from Mr. Aidan Phelan, however we have documentary evidence that Mr. Aidan Phelan operated from Orchard House and indeed his name appeared on the firm's notepaper at September 2001. In any event, Mr. Aidan Phelan in past correspondence has held himself out to be completely involved with the above firm.

"We have been informed that Mr. Aidan Phelan has suddenly gone. We firmly believe that Brian Phelan & Company has a legal obligation to return our files so as to allow us to cooperate with the Moriarty Tribunal. We further believe that this firm should discharge our account in full in accordance with their undertakings and commitments to our company."

That was the complaint. I take it you were made aware of

the complaint?

A. I was made aware of it, yeah.

Q. Now, I think, as you said, your brother dealt with some aspects of this, isn't that right, and if I could just identify here the various properties that are being referred to and I think we will come to correspondence we received from your brother about certain properties that he had an involvement in; isn't that correct? There were two properties. That one, I think, was in County Offaly and one in Northampton unrelated to any of these matters in which your brother had some sort of a relationship with Mr. Kevin Phelan; isn't that right?

A. Yes.

Q. He states here that "Mr. Aidan Phelan confirmed he was acting as agent" Just, I know a letter subsequently came in, which I will come to, from Mr. Kevin Phelan to the Institute withdrawing the complaint, but here he is being very specific. He is complaining 'the firm', he is complaining 'your brother' in respect of two properties, that he is making a complaint about you in respect of these other properties that he mentions here; that seems to be the position, isn't that correct?

A. Yes.

Q. Now, he then, I think, received a letter, I think, from Messrs. LK Shields, who were your brother's solicitors, or the firm's solicitors; isn't that correct?

A. Yeah, they are his solicitors, LK Shields.

Q. I just want to be not Mr. Garvey. Another solicitor was handling the matter, isn't that right, as appears to be the situation anyway?

A. Yeah, I haven't seen that letter.

Q. If you go to the next document, so. Just before I do, that particular statement by Mr. Kevin Phelan in that second paragraph of that letter, the letter of complaint about the various properties; did you ever hear or have you ever since become aware of Mr. Kevin Phelan making that suggestion other than in this letter here?

A. I don't believe so.

Q. You don't believe so?

A. I don't believe so.

Q. All right. Now, I may have to come back to that, because I may ask you to consider something. I want to ask you whether it refreshes your memory or not but it's something

A. It's possible. I mean, Kevin Phelan had a lot of correspondence.

Q. I don't mean in correspondence. Did you ever see or hear anything, even in correspondence, from Kevin Phelan, which where he was making this particular case, if I can put it that way?

A. The case being?

Q. The case being, here, that there were a number of properties in which he was due fees, in respect of which he was due fees. We'll leave aside the two properties which

related to your brother, that seems to be a separate matter, a property in Offaly and a property in Northampton; I think Northampton, an English property, in any event.

But that seems to be unrelated to you?

A. Yes.

Q. That would appear to be the situation. I'll just leave those aside.

A. They are unrelated to me.

Q. Then he says that his complaint about you was that he was owed fees in respect of properties and he said that he had received instructions from you, who confirmed you were "acting as agent for Denis O'Brien and another in respect of four other projects: Mansfield, Handforth" but that's Cheadle "Altrincham Football Club and Doncaster Rovers Football Club." That seems to be what he says he is owed fees in respect of, isn't that those are the properties?

A. He is making that contention, yes.

Q. Now, we then go to the next tab, and this is a letter from Messrs. LK Shields acting on behalf of the firm. You can see that, "Our client, Brian Phelan & Company." And it commenced: "We have been instructed by Brian Phelan & Company in relation to your letter of the 4th March 2002 to the Secretary of the Institute of Chartered Accountants in Ireland.

"We should make it quite clear at the outset that your letter is vexatious, frivolous and that our client will

hold you responsible for all costs, loss and damages sustained or incurred by them by reason of the issue of this letter.

"Our instructions are clear from our client.

"You received no undertakings for or on behalf of our client, and no such undertakings, accordingly, have, as you allege, been not honoured.

"Further, you refer to instructions having been received from our client in respect of two projects which you go on then to identify. Our instructions are quite clear. Our client had no dealings whatsoever with Gameplan International Limited. Accordingly, your purported claim for outstanding fees is nonsense.

"You then go on to indicate reasons in relation to the nonpayment of fees to which our client is a stranger, as our client gave no instructions at any stage to your company. You also refer to a request to return files.

This just simply does not arise, as our client received no instructions from your company, which we repeat. Our client does not have and never had any files in relation to your company.

"It is clear that, as we have said, your letter is vexatious, motivated by malice, and in these circumstances, if it is not withdrawn forthwith, our client will have to consider taking such proceedings as it may be advised to prevent you from making or repeating these spurious allegations against our client."

Now, I think you had left the firm by the time this

particular letter was sent?

A. Yeah, five years earlier.

Q. And can I ask you if you had any contribution or input to the contents of this particular letter?

A. I may have spoken to Bryan on the phone about it, but no significant input.

Q. Now, did you make any contact with the Institute or with Mr. Kevin Phelan in respect of the complaint he was making against you?

A. No.

Q. Did you authorise anybody to make contact with Mr. Kevin Phelan or the Institute on your behalf?

A. No.

Q. Specifically, did you ever ask, request or in any way acquiesce to Mr. Denis O'Connor having any contact with Mr. Kevin Phelan on your behalf in respect of this complaint?

A. Not in respect of the complaint, but in respect of, as I said the other day, in respect of I was acquiescing to him talking

Q. Mansfield and Cheadle?

A. Yes.

Q. That was months previously, that was the previous year; isn't that correct?

A. Yes, yes.

Q. And nothing came of that. And, in fact, we saw a letter

from your solicitor, Mrs. Preston, to Mr. O'Connor in fairly emphatic terms informing him that he had no instructions on your behalf; isn't that right?

A. To enter into agreement.

Q. To enter into anything?

A. Yes.

Q. That was in the past. That was over. Mansfield and Cheadle?

A. Yes.

Q. You say that you had acquiesced in a situation where Mr. O'Connor had, and we saw them on Friday, these documents signed in respect of the two properties, in effect, that if Mr. Kevin Phelan shifted them to a specific buyer whom he was indicating he had, that he would receive money in respect of finding that buyer, effectively, isn't that what that was about?

A. Yes.

Q. That did not happen, isn't that right, and that was over?

A. Yes.

Q. So we now move on, and a complaint is made against you to the Institute, along with a complaint against your firm or your former firm, as the case may be, and your brother, but you did not ask or acquiesce in respect of Mr. O'Connor making any approaches on your behalf in respect of the complaint; is that correct?

A. That's right.

Q. Now, perhaps to try and keep the matter moving along in

respect of the complaint, if I might ask you to go to behind Tab 54 for the moment, and this is correspondence which the Tribunal received from your brother, Bryan Phelan, and he was asked various questions and he very kindly responded to the Tribunal. And he said that he referred to a letter from the Tribunal dated the 30th September, 2004. He replied to this letter on the 10th December, 2004.

"You go on to indicate that you wish to obtain a full account of the following:

"1. All matters in dispute between Mr. Kevin Phelan and you/your firm."

He responded: "Mr. Kevin Phelan wrote to Mr. Aidan Phelan at our firm on the 27th August 2001, 12th September 2001, and 14th September 2001, raising or alleging certain matters. I replied on behalf of Mr. Brian Phelan & Company on the 17th September 2001. Mr. Kevin Phelan responded to our letter on the 4th October 2001. We had a further letter from Mr. Kevin Phelan on the 3rd January 2002, again addressed to Mr. Aidan Phelan. We replied to this letter by fax on the 9th January 2002, in light of our letter of the 17th September 2001.

"We should point out that we do not recall or have a copy of the letter of the 12th November 2001, referred to in Mr. Kevin Phelan's letter of the 3rd January 2002.

"On the 4th March 2002, Mr. Kevin Phelan forwarded us a copy of a letter dated 4th March 2002, which he had

apparently sent to the Secretary of the Institute of Chartered Accountants in Ireland ('The Institute').

"On the 19th March 2002, the Institute wrote to our firm.

Our firm instructed LK Shields, Solicitors, to represent

it, and by letter of the 27th March 2002 they wrote to

Mr. Kevin Phelan. This firm wrote to the Institute on the

28th March 2002. There was further correspondence from the

Institute on the 25th June 2002 to which we replied on the

1st July 2002. The Institute wrote to us again on the 11th

July 2000 and we responded on the 26th July 2002. The

Institute wrote to us on the 1st August 2002. LK Shields,

Solicitors, were not informed by us in 2002 about the

further correspondence with the Institute commencing on the

25th June 2002 and ending on the 1st August 2002"

Then going on to how such matters in dispute arose. "This

is evidenced in the attached correspondence" and we have

I am not going to open all that correspondence.

"How such matters were connected. If such be the case that

the matters in dispute between Mr. Kevin Phelan and other

parties referred to in the second paragraph of the letter

dated 30th July 2002."

The response was:

"Mr. Kevin Phelan sought to connect the various matters as

is evidenced by his letter of the 4th March 2002 to the

Institute. This firm's view is that the matters were not

connected with matters in dispute between Mr. Kevin Phelan

and the said other parties. You are aware of my letter of

the 10th December 2002 of my primary business involvement with Mr. Denis O'Brien."

"4. The manner in which the matters in dispute with you/your firm were resolved:

And your brother informed the Tribunal "Our firm retained LK Shields, Solicitors, in this matter. Denis O'Connor, we understand, contacted that firm early in June 2002 as he had several dealings (including some ongoing dealings) with them over a number of years. He had become aware of the complaint to the Institute and offered to try and help dispose of that matter as he was fully aware of the amount of time and cost that would be involved by our firm in dealing with the Institute. LK Shields, Solicitors, were made aware by Denis O'Connor of terms upon which matters between our firm and Mr. Kevin Phelan might be resolved and subsequently LK Shields, Solicitors, were instructed by our firm to prepare a draft agreement containing those terms. This they did and sent it to Woodcock & Sons, Solicitors, by fax of the 18th June 2002, a copy of which I enclose. This was responded to by letter of the 30th July 2002, a copy of which we enclose. This was followed by further letters from LK Shields, Solicitors, dated 20th August 2002 to David McCann of Woodcock & Sons, of the 29th August 2002 from LK Shields, Solicitors, to David McCann, and by letter of the 4th September 2002 from Woodcock & Sons to LK Shields, Solicitors. There followed a further e-mail and fax from LK Shields, Solicitors, on the 4th September 2002

to Mr. McCann. On the 5th September further details were dispatched by e-mail to Mr. McCann followed by a confirmatory fax of 6th September 2002 requesting confirmation of wording being agreed. This was responded to by letter of the 6th September 2002 from Woodcock & Sons.

"The agreement was subsequently received, duly executed, and a letter dated 27th September 2002 was sent to the Institute who responded on November 7th 2002. We attach a copy of the signed agreement made 12th September 2002 and of the various letters and e-mails referred to above.

While the draft settlement agreement included, on my instructions, reference to my brother, Aidan Phelan, I should clarify that he was not a participant in the settlement in circumstances where he did not, in the event, instruct LK Shields, Solicitors."

Then, "5. The involvement of Mr. Denis O'Connor (if any) in the dealings of Mr. Kevin Phelan on behalf of your firm.

"We were informed that Denis O'Connor contacted LK Shields, Solicitors, and offered to assist our firm in relation to the complaint, and his role, as far as I was concerned, was one of a friend and colleague. Mr. Denis O'Connor did not report to me on his dealings with Mr. Kevin Phelan.

Through LK Shields, Solicitors, he offered to assist us and suggested that an agreement might be prepared by our solicitors and sent to Mr. Kevin Phelan's solicitor. I was not involved in any negotiations with Mr. Kevin Phelan

following upon his complaint to the Institute. The sole act carried out by Denis O'Connor on behalf of this firm was to deliver the settlement agreement dated 12th September 2002 to Mr. Kevin Phelan's solicitor, to receive in exchange the counterpart of the agreement duly executed and to forward same to LK Shields, Solicitors.

"The documents attached relate to the matters raised by Kevin Phelan in his correspondence with our firm. I also attach a copy of the correspondence and documentation passing between Denis O'Connor and LK Shields, Solicitors, in relation to the dispute Mr. Kevin Phelan had with my firm and myself."

Now, at that time, had you any knowledge that's in this period of 2002 that Mr. Denis O'Connor was engaged in any negotiations on behalf of the firm of Brian Phelan & Company with Mr. Kevin Phelan over a complaint to the Institute?

A. Yeah, I had knowledge of it.

Q. Who told you?

A. Bryan.

Q. What did he tell you?

A. He told me that he was trying to resolve Denis O'Connor was trying to resolve the matter of the complaint.

Q. Yes.

A. And I I always said, I don't want to know. I regarded this complaint as completely vexatious.

Q. But did he tell you how Denis O'Connor came to be involved,

or why should Denis O'Connor be involved, could you help us there, why should Denis O'Connor be involved in any complaint that Kevin Phelan had made about you or your firm to the Institute?

A. I can't say why he decided to become involved. It's a question really for him.

Q. But there was a personal complaint against you, as well; isn't that right?

A. Yes.

Q. You didn't authorise him to negotiate with Kevin Phelan on your behalf?

A. No.

Q. And we'll come to some documents in a moment, but can I take it that you were aware, or you were made aware by your brother that well, first of all, you were aware there was a complaint against the firm, your brother and yourself, by Kevin Phelan; isn't that right?

A. Yes.

Q. Did you receive a letter from the Institute or did your brother, Bryan, receive a letter and tell you about that?

I'm just

A. I am sure he did.

Q. You did not instruct the firm of LK Shields

A. No.

Q. to act on your behalf in respect of the complaint or to write to Kevin Phelan?

A. No. There was never a letter of complaint. I was never

written to about this complaint. It was always through Brian Phelan & Company.

Q. Yes, I take the point. But you didn't instruct any firm of solicitors

A. No.

Q. in respect of the complaint. You didn't instruct any firm of solicitors to write to Kevin Phelan asking to withdraw the complaint, or anything of that nature?

A. No.

Q. You didn't instruct Denis O'Connor to act on your behalf in dealing with Kevin Phelan in respect of the complaint?

A. No.

Q. But you were informed by your brother that Denis O'Connor had become involved and had approached his solicitors with a suggestion that he might be able to help out. Would that be generally

A. I was aware that Denis O'Connor was attempting to arbitrate in the matter of the complaint.

Q. Did you consider that unusual or perhaps potentially problematical in that Denis O'Connor was so closely associated as Mr. Lowry's accountant, particularly in his dealings with, say, the Tribunal and the Revenue and people like that?

A. I didn't consider it but, not casting aspersions on Denis O'Connor, I wasn't surprised.

Q. Now, at the same time, or around the same time as the complaint was made sorry, prior to the time that the

complaint was made but after the meeting at the Regency Airport Hotel, which was held primarily for the purpose of briefing Denis O'Connor in respect of certain property transactions; isn't that correct

A. Yes.

Q. you had received documents, or an invoice, or something, from Mr. Kevin Phelan in respect of a claim of roughly $\frac{1}{2}$ 150,000 for Doncaster; isn't that correct?

A. Yes.

Q. You paid no attention to that, you told us, because it wasn't owed, and that was the end of it as far as you were concerned?

A. Yes. I never disputed that Kevin Phelan was owed fees, but his fees were based on a success. I am not disputing he was owed fees, but those particular invoices I am disputing shouldn't have been raised at that time, because his fee was a quantum merit fee based on the success of the project, just to clarify the issue of fees in Doncaster and Kevin Phelan.

Q. Kevin Phelan wasn't due fees in respect of Doncaster; isn't that correct? What he was due, according to you, because there was an agreement with him, was 40% of the profit on the project; isn't that right?

A. Which I regarded as a success fee, based at 40% of the profit, yes.

Q. But as far as you were concerned, it had crashed, isn't that right, the project?

A. Crashed well, I'd use the word 'disappointed' with the progress. Crashed, no. But I saw it as a long-term project, not a 9- to 12-month project.

Q. But there was no profit in the project at this stage?

A. At this stage, the prospect of a profit was something in the future, not at this stage. There was no realisable profit at this stage.

Q. So as far as you were concerned, he wasn't owed anything at this stage?

A. At this stage, yes, he wasn't owed anything.

Q. Have you been discussing this with anybody since you gave evidence here the last day?

A. No.

Q. But you did not tell anybody when Mr. O'Brien and Mr. Ryall took over the affair from you, that he was owed money at the time?

A. No.

Q. And you had told us on Friday that you got wind that they were going to pay him money; isn't that right?

A. Yes.

Q. And you think that you would have got that from either Mr. Ryall or Mr. O'Brien Senior?

A. Yes.

Q. They must have been talking to you about it?

A. Well, I spoke to them I would have spoken to them once or twice over that period.

Q. And did they tell you they were going to pay him $\frac{1}{2}$ 150,000?

A. They may have done. I'm not sure whether they actually gave the amount.

Q. I wonder if you wouldn't mind going to behind Tab 52, please. Whilst you are doing that, could I just ask you, in response to being asked about Denis O'Connor becoming involved and you said you were casting no aspersions on Denis O'Connor, but you weren't surprised; what were you not surprised about?

A. Denis O'Connor tended to get involved in well, I believe he was trying to get involved in he was courting the O'Brien camp with a view to maybe winning some work. That's just an opinion.

Q. When did you form that opinion?

A. I formed the opinion when I subsequently learned that he had gotten involved in the arbitration, going to see Carter-Ruck and the arbitration of the warranty claims.

Q. You formed that opinion subsequently?

A. Yes.

Q. At the time, when he became involved, what opinion had you formed?

A. Well, I suppose I didn't really form I mean, I am looking back at the whole thing and putting it all into context. I'm not sure I formed any significant opinion.

Q. Did you discuss that with anybody?

A. No.

Q. You didn't discuss it with anyone at all, as to why Denis O'Connor would have been involved?

A. I don't know, I am sorry.

CHAIRMAN: I suppose, Mr. Phelan, it was a whole year after an English bank had got more than a bit anguished about seeing Mr. O'Brien and Mr. Lowry seemingly in the same transaction, so this must have occasioned you some concern?

A. I mean, I wasn't living in the country at this stage; I had moved out.

CHAIRMAN: I appreciate that, yes.

A. And, yeah, I mean, really, you know, I wanted to get on with my life, build up I had left my practice here in Dublin. I didn't really I just maybe left people to their own devices. I am trying to assist here, but, but I don't want to be misleading.

MR. COUGHLAN: I appreciate that.

A. It just looks real significant now, obviously, with all its

Q. Well, you see, yes, it does, but also, as the Sole Member asked you a few moments ago, we had been having evidence at the Tribunal when these matters were unfolding; isn't that correct?

A. That's correct.

Q. And there is no doubt about it that everybody was aware that inquiries were being conducted and that various names were being referred to in the course of evidence:

Mr. O'Brien, Mr. Lowry, Mr. Denis O'Connor, you, Investec, Mr. Kevin Phelan, isn't that correct, all of those names and

A. They were all

Q. They were all being inquired into in respect of, at the time, Mansfield and Cheadle, and here, the complaint which was being made against you was in respect of four properties, and let's just leave let's just leave

Doncaster and Altrincham out of it for the moment. The complaint here is that there was a suggestion that there were fees owed in respect of Mansfield and Cheadle, which were matters which were then before the Tribunal, and under at the time under which everybody was under a continuing obligation to keep the Tribunal informed of any developments or documents which may have been coming into being in respect of those matters; isn't that right?

A. Yes.

Q. And what happened, or what appears to have happened here was that Mr. Denis O'Connor, who was Mr. Lowry's accountant, who had brought information to the Tribunal in respect of Mansfield; isn't that right

A. Yes.

Q. appears to have been getting involved in a settlement with Mr. Kevin Phelan over those particular matters, and that and the complaint to the Institute was in respect of that, and it didn't seem to cause any concern?

A. Yeah, well I suppose it didn't concern me. Maybe it should have concerned me.

Q. Did it not concern you because you weren't here in Ireland?

A. It didn't concern me, period. I wanted to move on. I am

sorry, but that's the way I felt about it.

Q. All right. Did you want to move on because you considered it was something strange or concerning or something amiss here that you wanted to move on from?

A. I just wanted to get on with my life, my business.

Q. No, I understand that. I suppose that's what everyone wants to do every day of their lives, is just get on with their lives and their business.

A. My situation was different. I had to close my business here because obviously I couldn't do business with financial institutions here while the Tribunal was continuing, so I had to close my office in Dublin and move out of the State to be able to carry on a business. So it wasn't you don't do that every day of your life.

Q. I understand that and, therefore, matters that were occurring at the Tribunal were of deep significance to you?

A. They were of deep significance and I have always answered and cooperated.

Q. Yes, but here was Denis O'Connor, you were being informed, getting involved. Did you consider counselling against his involvement, or anything like that?

A. I thought I said to Bryan I thought it was foolish that he was involved. I never dealt with him.

Q. All right. If we then go you were still, at this time did Bryan say anything to you? It's interesting, and in fairness to your brother Bryan, now, in the letter he wrote to the Tribunal he talks about Mr. O'Connor

approaching LK Shields and communications seemingly going through LK Shields rather than directly between him and Mr. O'Connor. Do you know yourself whether there were communications between him and Mr. O'Connor or whether it was kept at arm's length?

A. I don't know.

Q. If you don't know, it doesn't matter, okay. And what was very serious about this, of course, was that there was a suggestion here in this complaint to the Institute I am leaving Doncaster and Altrincham out of it altogether for the moment, but that matters that were then before the Tribunal were being inquired into, that there was a suggestion here that Denis O'Brien was involved in Mansfield and Cheadle; isn't that right? That's what this document says?

A. This is the Phelan letter?

Q. This is the Phelan letter.

A. Yeah, he is saying, you know, he is naming so many projects there. I mean, that's his contention.

Q. No, I understand that. But these very matters were being inquired into at that time, at that time before the Tribunal, and it was those particular matters weren't being brought to the attention of the Tribunal either, I'm not just talking about Doncaster; isn't that right?

A. Yes.

Q. If you go to but you continued, although you had, I think, left the country at this stage, you continued

dealing with Carter-Ruck in respect of the English litigation; isn't that right?

A. Yes.

Q. By this time, and I'll come to it in due course, but perhaps we'll just go to behind Tab 52. It's an attendance of Kate McMillan's of Carter-Ruck. It's an attendance on you on telephone.

"Aidan Phelan saying he received Kate McMillan's correspondence." It looks like something about invoices.

"He is saying that he had the following thoughts about the mediation suggested in Reg Ashworth's recent letter."

So seemingly, the suggestion for mediation appears to have come from the Dinard side; is that correct?

A. That's right.

Q. "Aidan Phelan said the approach was first instigated by Dinard. It was frustrating to him as he had offered Dinard negotiation, binding arbitration or litigation before proceedings had been issued."

So, there, somebody must have made contact before they issued proceedings, and you said will we arbitrate or have a meeting to settle before

A. That was Weaver, yes.

Q. That was Mr. Weaver?

A. Yes.

Q. "Aidan Phelan asked Kate McMillan how mediation would work.

Kate McMillan reminded Aidan Phelan it would essentially be negotiation in the presence of a mediator who had

experience of helping parties reach negotiated settlements.

"Usually, the parties and the mediator would come together at the start of mediation and then there would be caucus sessions between mediator and each party separately, where the mediator would try to identify sticking points between the parties, and suggest resolutions. There was usually a deal of to-ing and fro-ing as the mediator tried to help the parties to find a solution which was acceptable to them both. The mediator had no power to impose a binding decision on the parties and it was important to understand that the mediation would be successful only if the parties could agree."

It seems to be some sort of super form of settlement meeting with a third party present as some kind of a referee, or something. That's what you are being told here?

A. Yeah.

Q. "Kate McMillan reminded Aidan Phelan that both Ruth Collard and Richard Lord" he was your barrister, or QC?

A. Yes.

Q. "had previously recommended mediation as the most appropriate form of alternative dispute resolution and they had both found to be highly effective, even in incidents where the parties bitterly opposed to one other and entrenched. Aidan Phelan said he did not want to get involved in a big merry-go-round which might not conclude the matter. He was concerned that mediation had no teeth."

I suppose that was a reference to the non-binding nature of it; is that right?

A. Yes.

Q. And then you go on, and these are just your own views:

"The other problem with mediation was that people behind D were fruitcakes... Richardson was an ex con and Mark Weaver was mad. They were faceless soulless and invisible. Had they been reasonable people Aidan Phelan might have given them the whole retention fund. Aidan Phelan said he thought mediation would have a chance of success only if Richardson was there and Mark Weaver wasn't. Kate McMillan said the mediation could succeed only if the people with the power to make the ultimate decision were present."

I suppose that's the sort of talk, and I'm not being critical

A. This is, I didn't see this coming. It's a private

Q. "Kevin Phelan said Kate McMillan asked Aidan Phelan if there was any more news about the deal he had mentioned to her previously. Aidan Phelan said that Michael Cambridge was in hospital but he believed he was still gung-ho about the deal. Michael Cambridge had said his solicitors would call Aidan Phelan, but they hadn't. Aidan Phelan would call Michael Cambridge again the following day."

What deal was that?

A. This is the guy, do you remember the guy who got the finder's fee?

Q. I do, yes.

A. He telephoned me sometime around that period of time and he heard that the Doncaster deal had floundered - as it was originally conceived, it had floundered, and he said that he might be able to find a buyer to take over the deal.

That's what he is referring to there, or I am referring to.

Q. And nothing came of that, in any event?

A. No.

Q. Now, at this time there were two issues in relation to the conclusion of the transaction between Dinard and Westferry; one was the retention fund, isn't that correct?

A. Yes.

Q. And the second was the question of $\frac{1}{2}$ 250,000 to be paid to Dinard if they could secure a new lease in respect of a car-park adjacent to the club; those were the two matters?

A. Yes.

Q. And those were the two matters which they claimed in respect of; isn't that correct?

A. Yes.

Q. Now, in relation to the retention monies, there might have been a bit of a dispute as to whether some of the expenses that you had to bear after the contract was signed could have been retained by you and reduced the amount you had to pay them, but that wasn't a big deal, as far as you were concerned; isn't that right?

A. Yes.

Q. And the big issue here was the $\frac{1}{2}$ 250,000 for the getting of the new lease for the car-park from the Council; isn't that

correct?

A. Yes.

Q. And there were only two people who could have known anything about that: One was Mr. Kevin Phelan, who had negotiated the contract on behalf of Westferry; isn't that right?

A. Yeah.

Q. And on the other side, Mr. Richardson and/or Mr. Weaver, who had negotiated the contract on the Dinard side; isn't that right?

A. I'm not sure what you are asking me there.

Q. Sorry, the two sides, Westferry and Dinard, were in dispute about whether, at the time that the agreement was reached, whether a lease existed already?

A. Yes, okay.

Q. If it didn't exist already, and they swung a new lease for the car-park, they were to get another $\frac{1}{2}$ 250,000; isn't that correct?

A. Yes.

Q. And the only two people who were involved in the deal at the time were Kevin Phelan, on the Westferry side, and the Richardson/Weaver side, the Dinard side; isn't that right?

A. Yes.

Q. Now, do you know, or did anybody tell you, that Michael Lowry may have been in a room when Mr. Kevin Phelan was discussing these matters with Messrs. Richardson and Weaver?

A. No.

Q. You don't know?

A. Well, I have since learned there was some correspondence somewhere within the Tribunal documentation. I have seen it.

Q. Yes, all right. But as regards the case itself, Kevin Phelan without Kevin Phelan as a witness, Westferry had no case in respect of the issue on the lease; isn't that right?

A. He would have been helpful, very helpful.

Q. And I think that was the view that was taken by the QC in the matter, as well; isn't that right?

A. I think the QC had a much more negative view of our ability to succeed in the $\frac{1}{2}$ 250,000 claim, because we contracted, we had contracted to pay. I can't remember exactly his interpretation, but he was much more negative. We initially thought we had a very strong case.

Q. Because it would have to be you'd have to succeed in that there had been misrepresentation made at the time, roughly that?

A. Yes.

Q. And that was misrepresentation to Kevin Phelan at the time when he was negotiating on behalf of Westferry, or whoever else was involved on behalf of Westferry?

A. Yes.

Q. Now, if you go to the final paragraph, so, of Kate McMillan's attendance, on the 2nd May, 2002:

"Aidan Phelan said he thought he might be able to get Kevin Phelan on side. He might give a witness statement and evidence at trial. Aidan Phelan thought he might know what the position was regarding Kevin Phelan by mid next week (i.e. by 8 May).

"Kate McMillan said she would like to remind Aidan Phelan about the advice Richard Lord and Ruth Collard had given previously about alternative dispute resolution other than mediation in view of Aidan Phelan's reservations, that she would get the file which was not on her desk and call Aidan Phelan back.

"Kate McMillan, locating Peter Carter-Ruck's letter to CT" Craig Tallents "on the 21 September 2001, and relaying paragraphs re ADR to Aidan Phelan on the phone, in particular reminding Aidan Phelan of why Richard Lord and Ruth Collard had thought mediation preferable to arbitration or expert adjudication and the problems they saw with the latter two. Aidan Phelan said that having been reminded of this, he was prepared to go along with mediation, subject to what he had said about R being present" Richardson being present. "Kate McMillan suggested she e-mail Aidan Phelan a further copy of the letter of 21 September to refresh his memory.

"Kate McMillan said she would relay Aidan Phelan's comments to Ruth Collard and Peter Carter-Ruck would try to call Aidan Phelan the following week to discuss the next step."

Now, could I just ask you, what were you talking about

there to Kate McMillan when she noted that he had indicated that you would try to get that you might be able to get Kevin Phelan on side and he might be able to give a witness statement and evidence at trial? Aidan Phelan said he would know the position "by mid next week," the 8th May.

What was that about?

A. I was going to call him up and, you know, ask him to come and support our case.

Q. At this time, you knew he had made a complaint about you, didn't you?

A. Oh, I did.

Q. And do you mean you were just going to say, "Kevin, look, will you come along and give evidence about this?"

A. I never followed up on it.

Q. When was the last time you had contact with Kevin Phelan before the complaint?

A. He phoned me after I gave evidence here in July '01, and that's the last time I have had any contact.

Q. What did he say to you?

A. He said to me he was annoyed about my remarks and that I was damaging his reputation. And I pointed out to him that, you know, what I said, I stood over, and the phone call ended fairly briefly.

Q. Would you describe it as a fairly unfriendly conversation?

A. It wasn't a friendly conversation.

Q. And he had since made a complaint to the Institute about you; isn't that correct?

A. Yes.

Q. And you believe that that note by Kate McMillan was that you were the one that was going to ring Kevin Phelan and say, "Kevin, will you give us a witness statement and will you come and give evidence in the case?"

A. Yes.

Q. I see. But you didn't do that?

A. I didn't do it.

Q. Why didn't you do it?

A. Because after the meeting it was something was said at the meeting - after the meeting, I reconsidered it. I thought, I didn't really want to contact him.

Q. Well, just tell us about your thought process, so.

A. It wasn't an intense process. I just thought I thought, I'm not contacting him.

Q. Why?

A. Well, I believed that he probably wouldn't, you know, on reflection, I think I believed he wouldn't come and assist us.

Q. And can I take it you were, you would have been aware at that time, so, that, on the basis of the advices you were receiving, that you had no case, so, in respect of defending the Dinard claim or in respect of your counterclaim?

A. I think Richard Lord really put the kibosh on the 250.

Q. Without Kevin Phelan, there was no case; isn't that right?

A. Yeah, well he even said that that was remote enough,

because we had contracted.

Q. Without Kevin Phelan being able to suggest a misrepresentation, there was no case at all, was there?

A. Yes.

Q. Now, were you aware that at the time that Kevin Phelan had made a complaint, or around the time that Kevin Phelan had made a complaint about you and your former firm and your brother to the Institute, that he had made a complaint against Christopher Vaughan to the Law Society of England and Wales?

A. Yeah, I'm not sure when I became aware of that, but I certainly am aware that he made the complaint.

Q. Did you have any discussion with Denis O'Brien Senior or Mr. John Ryall or Mr. Denis O'Brien Junior about the complaint that was made against you?

A. It's possible.

Q. Did you discuss it with Kate McMillan?

A. I can't remember.

Q. Can you help the Tribunal whether Mr. O'Brien Senior or Mr. O'Brien Junior or Mr. John Ryall were aware of the complaint against Christopher Vaughan?

A. I'd imagine they were.

Q. Were you aware, or had you been informed by Mr. Craig Tallents or anyone in Peter Carter-Ruck, that is Ruth Collard or Kate McMillan, that Mr. Kevin Phelan had made a complaint against him to his Institute?

A. I was aware of that.

Q. You were probably told about that by Craig Tallents or somebody

A. I'd say by Craig. I think he was moving office, there were problems at that time.

Q. Yes. Now, I know that you told us that you got wind from wind of it from either Denis O'Brien Senior or John Ryall, that they were going to pay money to Kevin Phelan, and you think it's possible that you knew the amount? I'm not holding you to that.

A. Yes.

Q. Can you help us as to when you might have become aware of that?

A. Sometime in, you know, mid to late 2002.

Q. Well

A. I can't be specific.

Q. All right. I think we have had Ruth Collard's attendance.

I might be able to put a date on when you told her. It's the one that we opened on Friday last. Ruth Collard has a note of a conversation with you, and she dates that as the 29th August, 2001. So you obviously knew by then?

A. August 2001 or 2002?

Q. Sorry, August 2002, of course.

A. Okay.

Q. You must have known by then?

A. I must have known.

Q. That was the sweat equity the note

A. Yes, I remember that.

Q. Now, if you go over the tab to Tab 55, it's just a document which is an internal document to Mr. Denis O'Brien. It won't mean anything to you, but it shows "Copy of a memo which has been sent to Denis O'Connor today." Were you aware that Mr. Denis O'Connor, at this time, was involving himself in respect of the dispute, the dispute, if any, which existed with Kevin Phelan?

A. I'm not sure whether I was actually aware at this time.

Q. But, as far as you were concerned, there was no dispute, isn't that right, between Kevin Phelan and yourself?

A. Yeah.

Q. And as far as you were concerned, the only dispute you knew that he was annoyed with you, you definitely knew he was annoyed with you because you had had a phone call after you gave evidence here the previous year; isn't that right?

A. Yes.

Q. And you knew he had submitted these documents which you had paid no attention to; isn't that right?

A. Yes.

Q. And you knew that he had made a complaint to the Institute which you had considered was vexatious; isn't that right?

A. Yes.

Q. But you were, at that time, unaware that Denis O'Brien or I beg your pardon, that Denis O'Connor was in any way involved with Mr. Denis O'Brien Senior in respect of anything to do with Kevin Phelan, is that correct, initially?

A. I think at that time, yeah.

Q. When do you think you became aware of that?

A. Sometime in like, sometime in that year. I can't exactly say when.

Q. Well, if we could try and fix it. Did you ultimately become aware that the case between Westferry and Richardson and Weaver was settled?

A. Yes.

Q. That must have been you must have been told that in late September; is that right

A. Yeah.

Q. of that year. Did you know at that time that Denis O'Connor had been involved?

A. I believe I do, yes, yeah.

Q. So can I take it that you would have some knowledge that Denis O'Connor was involved before the case was settled in September?

A. Yes.

Q. And would you also have known that Denis O'Connor had some involvement with Kevin Phelan?

A. Yes.

Q. Could that possibly be what you were referring to when you spoke to Kate McMillan in May of 2002?

A. No.

Q. It couldn't be?

A. It couldn't be.

Q. Why?

A. I don't believe I knew that at that time.

Q. All right. Well, you don't believe that you would have known when you spoke to Kate McMillan, that would have been towards the beginning of May 2002, because you indicated that you might be able to give her some view on it the following week, which you indicate was around the 8th of May of that year. I am trying to get your assistance in trying to fix it. We'll take that as one period; that's May. If we take it that in that date, in August 2002, the end of August 2002, you informed Ruth Collard that there was no question of a witness being paid for. "The money was being paid for him to go away," is the expression that's used. I'll come to that in due course.

A. Yes.

Q. Between those two dates you must have had some information given to you that something was going on with Kevin Phelan; is that right?

A. That's right.

Q. And you think you would have got that from either Mr. O'Brien Senior or Mr. Ryall; is that right?

A. Yes.

Q. Well, would it have been in June of that year, do you think, that you might have been told something?

A. I can't speculate.

Q. I'm not asking you to speculate; I'm trying to get to the best of your recollection. We are talking about May, so there is June, July and August. I'm just trying to ask

you, because a lot of things happened in those months, and I'm just looking for your assistance.

A. Yes, it was one of those months. I can't say which month it was.

Q. All right. Perhaps if I put up the attendance, the Ruth Collard attendance, it might help us, and in fairness to you, just try and fix a date. I'll just put it up. Sorry, I was mistaken when I said August; I think June is the date. It's book 80, Tab 1 CC.

"Ruth Collard attending call in from Aidan Phelan" it's dated 24th June, 2002.

"Ruth Collard attending call in from Aidan Phelan.

"Aidan Phelan apologised for not reverting he had been away in Canaries." That's just the first one is about payments. I'm not going into that.

If we go to the second paragraph then:

"Aidan Phelan said he had messages that Ruth Collard wanted to contact him about a payment to Kevin Phelan. He had not yet spoken to Denis O'Brien about this. Ruth Collard said she had received telephone calls from, first, Sandra Ruttle and then Denis O'Brien. Not really knowing what their involvement was, she had been a little wary about speaking to them. Aidan Phelan said that Denis O'Brien was behind Westferry, in fact he was the principal shareholder. Aidan Phelan was a shareholder as well and ran the company for Denis O'Brien. Sandra Ruttle said Denis O'Brien's financial affairs. Denis O'Brien was extremely wealthy,

having sold his company to BT for 2.9 billion.

"Ruth Collard asked about the payment to Kevin Phelan.

Aidan Phelan said Kevin Phelan had persisted in asking for

a fee, and had, as Ruth Collard knew, been making trouble

in the litigation. Ruth Collard said she was aware of

this. What concerned her was whether any settlement with

Kevin Phelan had anything to do with him being a witness,

either for our side or for theirs. Ruth Collard said that

such an arrangement would be a criminal offence. Aidan

Phelan said that there was no question of this. They were

simply paying him a fee to go away. Aidan Phelan said that

he personally was against this and against any negotiations

with Kevin Phelan but Denis O'Brien want to sort the matter

out. Ruth Collard said Denis O'Brien had mentioned

something to her about Kevin Phelan being a witness, which

had concerned her. She reiterated that any payment

connected with this would be a criminal offence and a

contempt of court. Aidan Phelan said he understood this

and would make the point to Denis O'Brien in no uncertain

terms. He would revert to Ruth Collard later on today."

You hadn't spoken you seem to have had some knowledge

that something was going on. You hadn't spoken to Denis

O'Brien about it and you certainly, as a result of having

this discussion with Ruth Collard, said you would speak

to you would tell Denis O'Brien in no uncertain terms

what the view, the legal view was about it, isn't that

right?

A. Yes.

Q. Now, at this time you were still handling the litigation; isn't that right?

A. Yes.

Q. Do you know what Denis O'Brien was doing in any dealings here?

A. No, well this obviously is where Denis O'Brien first emerged to Ruth Collard, yeah.

Q. It looks like it, yeah.

A. Yeah. And what he was doing, he took over the management of the project, namely, really, the litigation was the most active thing and I think he wanted to tidy up this whole 40% issue.

Q. What trouble had Kevin Phelan been causing in the litigation at this stage?

A. I think he, at some stage, had I don't know how I got this knowledge, okay, but somewhere along the line I became aware that he was talking about appearing for Dinard to support their case; in other words, the $\frac{1}{2}$ 250,000 issue we talked about and also aspects of the warranty claims. And, you know, I think Craig Tallents might have told me this, somewhere, I learnt it somehow anyway, that he was suggesting that he would, if you like

Q. With a witness on the other side?

A. Well, support their argument, I suppose.

Q. Support their argument?

A. Yeah.

Q. But you hadn't spoken to when Ruth Collard spoke to you on this date in June of 2002, you had some idea that there was a payment going to be made to Kevin Phelan. You weren't you hadn't spoken to Denis O'Brien about it in detail, or you hadn't spoken to Denis O'Brien; you were going to get back on to him to caution him on the question of making sure that Kevin Phelan would not be procured as a witness, isn't that right, that's the advice you are getting?

A. Reading between the lines, obviously he had said something to Ruth Collard about making a payment to Kevin Phelan, and possibly infers that to become a witness, something along those lines, and hence her comments.

Q. Yes, but you had some knowledge before, in a conversation with Ruth Collard, did you, that something was going on with Kevin Phelan?

A. I must have had, yeah.

Q. So that was on the 24th June, so it must have been before that that somebody had spoken to you about it?

A. Yes, it must have been.

Q. You wouldn't mind going to behind Tab 58. This is an Owen O'Connell note or memo. And it's "DOB Senior re K. Phelan payment. Concern about DOB making payment to K. Phelan in circumstance of current tribunal where KP potential witness, hostile to Denis O'Brien.

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

"Recommendation is to ask Michael Lowry not to make any payment in anticipation of DOB contribution and to exclude DOB/Westferry from any deal/settlement he may reach, telling K.P. to make a written claim against Westferry.

"If this rejected, before any payment is made, follow steps in OO'C previous note, of which key one is to establish DOB's ownership (that is beneficial) of Westferry and to get written evidence of Westferry indebtedness to KP in excess of proposed payment."

Now, did you know around this time - this would be, say, in the middle of June - that there was something afoot in respect of Kevin Phelan, in respect of a payment?

A. I didn't know anything about this memo.

Q. I'm not asking you about the memo. Did you know there was something about a potential payment?

A. I knew there was something going on.

Q. And did you know that Denis O'Connor had some involvement?

A. I'm not sure whether I knew that at that time.

Q. Right. Do you know that now?

A. I do.

Q. And he did have an involvement?

A. Yes.

Q. Now, if you go to Tab 61. This is a letter from Woodcock's & Sons; you know that they are Mr. Kevin Phelan's solicitors, isn't that right?

A. Yeah.

Q. And they have written to Messrs. Fry's on 12th June, 2002.

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

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

"We are instructed that our client is prepared to accept i;½150,000 sterling in settlement of any claim for outstanding fees or uplift in relation to the above.

"Our client has made it clear to us that it is a condition, however, of this offer that such sum be paid to our client account by Monday, 17th June 2002."

So there is the first time the offer in respect of settlement, isn't that right, coming in in this form, i;½150,000?

And then if you go over, you may or may not be able to help us at all. You can see, if you go over that's Tab 62 this is in the files of Fry's; there is Denis O'Connor sending on a letter he received from Woodcock:

"Please find attached copy correspondence sent to William Fry, together with fax confirmation sheet confirming it was sent and received on the 12th June," and there is the letter sent to Fry's, and the Gameplan claim for i;½150-odd thousand pounds. Do you have any knowledge how Denis O'Connor would have been getting these documents, yourself, no?

A. No.

Q. Now, the next document is a proposed or a draft of an agreement which has been sent it's at Tab 64 by LK Shields on behalf of Brian Phelan & Company to Mr. McCann of Woodcock. This is a draft. You can see there, it's a draft letter addressed to the Secretary of the Institute of Chartered Accountants.

"Dear Sirs,

"We hereby notify you that we withdraw our complaint dated the 4th March 2002 or any possible variation thereof and request that you should close your file and take no further action in the matter. We have resolved matters directly with Brian Phelan & Co, Bryan Phelan and Aidan Phelan to our mutual satisfaction on terms including our agreement that our allegation against Brian Phelan & Co, Bryan Phelan and Aidan Phelan to the Institute be irrevocably withdrawn. For the avoidance of any doubt, we wish to state that the terms agreed do not include the payment of any monies to it by Brian Phelan & Co, Bryan Phelan or Aidan Phelan.

"Yours faithfully."

Now, did you know anything about that particular document being sent, and including you?

A. No. Well, Bryan, really, was doing this.

Q. I understand that.

A. I may have been aware that he included me in this.

Q. Now, you are aware that sorry, he may have informed you that he was including you in the draft; isn't that right?

A. Yeah.

Q. Now, I am going to find the tab now, but the final agreement and the letter to the Institute which withdrew the claim, the final agreement excluded reference to you; isn't that correct?

A. I accept that, if you

Q. I can tell you it does.

A. Okay.

Q. But did anyone tell you that?

A. No.

Q. It's Book 2, Tab 114.

A. Maybe I can help on that.

Q. Yes.

A. I was never a member of the Institute of Chartered Accountants. So I am sure the partnership felt maybe it wasn't necessary for me to be included. I was never a member of it.

Q. I see. Right. So there was no letter of ever responding you never received a letter from the Institute of Chartered Accountants and you never responded to the complaint; is that correct?

A. Yes.

Q. That is probably the explanation why you are not included in the final settlement in relation to it?

A. I'd imagine so. I know Bryan's partners. My attitude to Bryan was, just write to the Institute and tell them the facts. The facts were that this was a frivolous claim and

"don't get involved beyond that, you are wasting your time, money and energy."

Q. But I take your point. In the normal course of events where a complaint would be made to the Institute, or a professional body like that, they'd send the complaint to the person against whom the complaint was made, seek their response, deal with the matter on paper, proceed to whatever type of hearing they might deem appropriate; isn't that right?

A. Yes.

Q. And you said that you informed your brother, "Just say this is a vexatious complaint, there is no reality in it. Leave it at that. Forget about it, it's a waste of time." But that's not what happened?

A. No.

Q. In fact, there was very, very intensive and detailed negotiations went on; isn't that correct?

A. Yes.

Q. And formal agreements entered into which seem to be in some way associated with an overall settlement with Mr. Kevin Phelan; isn't that right?

A. I accept that.

Q. That seems to be what happened?

A. Yes.

Q. So, the complaint against well, I'll only deal with you at the moment Mr. Tallents didn't know, but we opened a document to him which seemed to indicate that Mr. Denis

O'Connor was involved in interceding with Mr. Kevin Phelan to withdraw his complaint against Mr. Tallents; isn't that right?

A. Yes.

Q. And it looks as if Mr. O'Connor intervened, or was involved in some way in arriving at an agreement between Messrs. Bryan Phelan and Mr. Kevin Phelan to withdraw the complaint against the firm - you were not in the final agreement - but the firm, in respect of the property transactions; isn't that right?

A. Yes.

Q. And that all seemed to be linked up to the payment of £150,000 to Mr. Kevin Phelan in respect of matters that were being discussed between him and the O'Brien side; isn't that right?

A. Mm-hmm, yes.

Q. And Mr. Denis O'Connor was involved in that, as well; isn't that right?

A. He was.

Q. And, as far as you were concerned as the person involved in the running of the whole of the affairs of Doncaster up to that time, that payment was not due to Mr. Kevin Phelan; isn't that right?

A. Yes.

Q. Now, could I just a bit of a sticking point arose, though, it would appear, on the documentation, in that what was sought from Mr. Kevin Phelan was that he would provide

a narrative of his involvement in Doncaster; isn't that

correct?

A. Yes.

Q. Did you know that at the time or do you only know that

since

A. I only know that since the documents emerged, yes.

Q. Now, if you go to Tab 68 sorry, I beg your pardon, yes,

Tab 68. Now, this is dated 24th June, 2002. Could I just

ask you before I open this, when you spoke to Ruth Collard

on the 20th June, 2002, and she said, "Look, there can be

no question of purchasing a witness," effectively, and you

said that you would make that known to Mr. O'Brien in no

uncertain terms, did you?

A. I am sure I did.

Q. Now, if you go to that tab, you'll see this is a letter

dated 24th June, some four days later, and it's from

Messrs. William Fry's to Westferry, and "Dear Sirs"

sorry, to Woodcock & Sons on behalf of Westferry.

"Dear Sirs,

"We refer to previous correspondence and enclose a draft

letter our client is prepared to authorise or issue subject

to our first receiving a narrative account of your client's

position regarding the negotiations leading up to the

conclusion of the deal and subsequent and ongoing dispute

with Dinard Trading.

"We look forward to hearing from you as soon as possible."

Now, then the draft is behind that:

"We refer to your letter of the 12th June 2002 and having taken" this is addressed to Woodcock, and it's Westferry, it's a draft letter.

"We refer to your letter of the 12th June 2002 and having taken instructions from our client, Westferry Limited confirm that our client will discharge the sterling £150,000 payment referred to in your letter in full and final satisfaction of (i) all fees and expenses due to your client, whether trading through Gameplan International Limited, the Glebe Trust or otherwise arising out of the Westferry/Doncaster Rovers project. (ii) Your client claims to be entitled to 40% of the share of any profit on the project and (iii) all other claims by your client of any nature whatsoever and however arising against our client, its shareholders, directors, employers and other consultants relating to the project. This is a terminating payment and your client will not be required or entitled to have any further role either in terms of managing or potentially developing the project.

"We are in funds to make the payment by transfer directly into your account as detailed in your 12th June letter on receipt of written confirmation that the terms of this letter are accepted by your client.

"We look forward to hearing from you."

So that was what was proposed to be sent. I know you weren't involved in the detail, but I take it you had some idea that these discussions or negotiations were going on?

A. Yes.

Q. You wouldn't have been kept abreast of the correspondence that was going on?

A. No, I got no correspondence.

Q. Were you out of Ireland at the time, as well?

A. Yeah.

Q. At the time, as well?

A. I was, yeah.

Q. Now, if you go to Tab 69, then. This is a letter from Woodcock to Fry's:

"Dear Sirs,

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

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

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

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

see to see if it is possible to negotiate terms.

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

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

"Dealing with the first issue, our client is in a position to be able to provide a narrative as he was directly involved in relation to these negotiations."

That seems correct, doesn't it? That's what he was involved in.

"We would make it clear, however, that these negotiations were very intense negotiations over a nine-month period. There is a substantial volume of documentation through evidence and negotiations which would run to several lever-arch files. For our client to be able to review all of this documentation and to prepare an narrative (bearing in mind the length of time the negotiations go back) would be a very substantial exercise.

"We would envisage that it would take our client the best part of a week to prepare a narrative and during this period of time he would need assistance from the writer to enable the same to be concluded. As you appreciate, our client is busy on other projects and does not wish to spend this length of time unless it is wholly necessary.

Further, as you appreciate, our client would not wish to

incur the expense of having to do this if it was not wholly necessary. Due to the difficulties, therefore, in the preparation of the narrative, would you please clarify the precise reasons as to why it is needed. Christopher Vaughan was the solicitor who was instructed in relation to the negotiation and conclusion of the deal in this matter and no doubt he would be able to provide you with his files on the basis that he was instructed by Westferry Limited (currently your client). Please refer to us on this.

"Secondly, our client has not in any way been involved in the ongoing dispute with Dinard Trading. Our client has no precise knowledge as to the nature of this ongoing dispute. We believe it would be helpful if it is that our client was to let you have sight of correspondence that was sent by him to Aidan Phelan of Brian Phelan & Co, Chartered Accountants, recording the position as of the 21st November 1998, some 13 weeks after the project had commenced. This identifies at that stage difficulties that our client was having in this matter with Aidan Phelan. We further attach correspondence from our client to Aidan Phelan recording the outcome of the meeting on the 9th August 1999. This identifies at point 1 that Aidan Phelan was to deal directly with Andy White in relation to all matters in relation to the joint venture. In essence, this, therefore, meant that any issue relating to payments being made out of the retention fund would fall directly upon Aidan Phelan and from that day on our client ceased to have

any direct involvement whatsoever with the retention fund or Dinard Trading. If it is that you wish to raise specific questions, therefore, in relation to the dispute, would you please let us have those as at the moment our client can add nothing further in relation to the general request that has been made.

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

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

Now, that's what he sent to Fry's. They were saying: I think, you must divide it into two periods: matters leading up to concluding the deal, which of course we were extensively involved in, that could take a bit of time and might involve assistance from a solicitor and could cost something; and then there is the second period, where he is saying, effectively, that matters were in your hands.

That's what he is saying in the letter; isn't that right?

A. Yes.

Q. And was that correct, effectively?

A. Well, effectively, yeah, I was looking after the development side, yeah.

Q. And then if you go over what he included then. It's a letter to Fry's from Woodcock's dated 7th July, 2002.

"Dear Sirs,

"We refer to previous correspondence between us. We understand that you have failed to receive the attachments to our last substantive letter. To ensure that you can consider these, we attach further copies."

And then there is a letter, M&P Associates, it's addressed to you, dated 21st November, 1998.

Do you know who the M and P in the M&P Associates are?

A. M and P, I think it was a guy that was in the meat business with him, Maher or something, Bill Maher or something

Q. Something like that?

A. Something, roughly, like that.

Q. Would it be Maher & Phelan Associates?

A. I think Bill Maher or

Q. Right.

A. I thought it was Paul May originally, so, because

Q. Who is Paul May?

A. Paul May was a guy who you may remember there when Christopher Vaughan wrote the letter dealing with the retentions and the deal, and all that, in August '98, the

one we looked at the other day, he was the guy who was intended to come in and run the club and the handing over of the okay, two aspects: One was to offload the football side to John Ryan's company, Patienceform; and the other side was the development side. He was the guy to come in and really oversee the handing over of the football side, kind of like acting managing director.

Q. Right. But you think this is Maher and Phelan?

A. I think it's Maher, yeah.

Q. And it's "Re the Doncaster project.

"Following my conversation with John Ryan on Friday 20th November 1998, I have become very concerned regarding your discussion with him and wish to outline the events to date and confirm our strategy.

"We are unhappy with the way negotiations are being carried out at present and we want to agree a unified approach to this project, otherwise the return from the project cannot be the responsibility of M&P Associates. We do not want John Ryan projecting this project as a 'bad deal' or a 'pup' because this would benefit his position and be a major disadvantage to ourselves. M & P believe that we can achieve the return that we all discussed to date if we are allowed to do our job. However, we cannot be responsible for decisions taken out of our control. Any comments on the returns on the project at this stage are premature as the Council have not confirmed their commitment and this, as you are aware, has a major impact on the final returns.

"As you are aware, after a lot of discussions, proposals, meetings, etc., we took control of Doncaster Rovers Football Club Limited on the 18th August 1998 (which is now 13 weeks). As you are also aware, M&P Associates agreed to negotiate and take matters forward on an active basis and deliver on the projected returns as outlined. We also understand that you representing the investor would support M&P Associates in achieving our projections and take decisions where necessary in conjunction with M and P. We now wish to outline what we have done to date and what we believe the next steps are which need to be addressed.

"There are three aspects of the project as M and P view matters.

"A) football club.

"B) existing site.

"C) the alternative site (new site).

"A) The football club:

"The football club in our opinion was the most important area to get right and to introduce maximum credibility in order to gain the support of the local Council and the people of Doncaster so we could deliver on our projected returns.

"We appointed the following professionals/individuals;

"Ian Green, Acting Chairman.

"Ian is an Executive Chairman of over" and he goes on to describe who he is.

"Paul May, a financial director.

"Paul is a partner in M&P," so I think you must be correct, that there appears to Mr. Maher, a Mr. May and a Mr. Phelan?

A. Yeah, I think

Q. "Paul May is a partner in M&P and agreed to take over this role in order to get the club restructured and to prepare the club for the new shareholders who will take over."

"David Parker.

"David is a journalist and has a PR company which deals mainly with the sport and he agreed to take control of the press."

"Premier Crew Sport.

"Premier Crew are a sports management agency and agreed to put playing staff together but rather than operate on their normal percentage of the players' wages, agreed a fee per month." And that's set out.

"Ian McMahan, Managing Director.

"Ian was approached to manage the company and will remain in place when the shareholding changes hand. He is a former player and has a sports management background and is qualified in marketing.

"Within five weeks, the process of resolving all the major problems of the club was complete, the Council were extremely happy with the situation and the fans showed their support by creating record crowds in the Conference League. Our next step was to identify someone to take over the club who would enter into an agreement on our terms.

This was not an easy task, considering the club will have operational losses of £150,000 per annum until the new stadium is built. However, we identified John Ryan of Transform who is reported to have a net worth of approximately £10 million sterling and is a fanatical Doncaster Rovers fan. John Ryan has agreed to take on the operation of the football club and the ongoing running expenses. He has agreed to pay £500,000 for the club and take an option to purchase the stadium for £2.5 million, the payments are staged.

"On the playing side, the team is now integrated after a very short period together, and with no pre-season training they have won their last four games and have qualified for the second round of the FA Cup.

"M&P Associates have now appointed Jenna Maxwell to take control of youth development at the club and also to integrate the club with other sporting organisations and clubs in Doncaster. Jenna is a qualified sports administrator, she has a licence to train for NVQ and is accredited by all the governing bodies. M&P brought Jenna Maxwell from Manchester City, where she worked very closely with Manchester Council and had a number of joint initiatives with the Council and the football club. The purpose of this move is to demonstrate to the Council that we want to make this project a success. Last week, Doncaster Rovers was appointed under Jenna's guidance to take on training of sport and recreation clubs in the

complete Doncaster area.

"This was a profound benefit to our planning and the relocation of the club. All the initiatives are at no cost to us but benefit the club and are funded by the Council and governing bodies.

"B) Existing Site.

"M & P agreed that Kevin Phelan would concentrate on the property side of the project dealing with the Council, Asda and other possible interested parties relating to the site in conjunction with Aidan Phelan. We have had a number of meetings with the Metropolitan Council and have weekly contact. A document outlining all our meetings with the Council and confirmation what they had indicated is available to us, have been prepared and submitted to the Council leader. The document includes a complete breakdown of our proposal, including all plans and maps of the sites and a time scale schedule. We have had a number of interested parties make approaches regarding the existing site. A number of meetings took place with Alfred McAlpine, who built the stadium at Huddersfield. The meeting culminated in an offer letter dated 11th August 1998. This offer is continuously under review, subject to planning and a number of other matters.

"In order to be properly advised, we appointed Lambert Smith Hampton to advise on valuation and assess all proposals received. Lambert Smith Hampton's fee is based on a successful outcome. In order to make progress on the

planning and on the new stadium development, we appointed ICDM Project Managers.

"The arrangement with ICDM was a monthly fee of approximately £3,000 plus any planning fees or costs.

M & P believes this was the most cost-effective way to employ a project management company. When we complete a deal with a development company, we could terminate ICDM's services. However, ICDM refuse to act because we did not pay their agreed retainer and we have now appointed Thornbourne Calhoun. Fortunately, we were able to introduce the new project managers without upsetting the Council. Thornbourne Calhoun agreed a fee in total of £15,000 paid over three months to achieve planning application.

"We have had a number of meetings with DTZ, representing Asda, and some detailed correspondence. We were not happy with the discussions with DTZ and decided to terminate the discussion because we believe the DTZ representative was not cooperating. As a result of this termination, we were directly approached by the stadium group to develop Meadowhall Centre in Sheffield, approximately 3 million square feet retail and are currently developing a similar shopping centre in Germany. The Stadium group development stores or Asda the following various discussions which have taken place, we believe we can possibly conclude an acceptable deal with the organisation.

A meeting took place at 11:30pm on the 5th November at

Doncaster. The following people attended:

"Paul Healy, David Harkins, Guy Rusling, Bill Reed, Kevin Phelan, Aidan Phelan.

"The meeting was very positive and the stadium had produced a detailed range of figures for discussion at this meeting.

The general consensus was that we use their figures as a basis of negotiating a deal which would involve the stadium group assisting in the development of the new site also.

It was agreed that we examine a number of areas in relation to the proposed figures, including:

"Yield;

"Rent paid by B&Q.

"M&P believe that we should also examine all the costs, albeit that we may have indicated at our meeting that we accepted the costs. M & P would not agree with the costs and would want to challenge some of them. The costs represent almost 6 million pounds of the figures prepared by the stadium. A 10% saving on the costs (i.e. 600,000) covered with a yield saving and increased rent from B&Q would increase the return by up to 1.8 million.

"Further discussions are ongoing and we should try to achieve a deal with the stadium group if we can improve our figures as outlined above. The stadium group represents both Asda and B&Q and would be very helpful to the Council.

"C) Alternative Site.

"M&P has had extensive discussions with the Council regarding the relocation site at the Lakeside site. The

site still appears to be the most acceptable. In all of our discussions we had indicated that we would require approximately 35 acres to deliver the new stadium. While the Council accept that the land would be made available to support the new development, we do not expect 35 acres of land free of charge. We do believe, however, that we will have an acceptable overall deal making the land available under certain conditions and perhaps we'll have to pay a nominal price per acre. There will be substantial grants available to construct the new stadium and there may be other funding available also."

Then he sets out an approximate summary of figures currently, and they are set out showing a balance of 6.3 million.

"These figures will crystallise over the coming weeks.

"M&P believe that our strategy has worked very well to date, the continuation of this strategy will be vital to deliver the above figures. We believe that independent discussions and negotiations outside of M&P's involvement will only lead to us falling 'between two stools' and allow others to take advantage of our position. As we all know there would be some background assistance to deliver our objective. However, M&P wish to stress that we are totally committed to ensuring an acceptable return to the investor and we cannot allow any of the parties to take us off track.

"To conclude this project summary, M&P have a number of

concerns that are outside our control and which we cannot accept responsibility for in the event of them not being followed through."

Then taxation Matters, company acquisition structures. And then

"Retention held.

"Since the completion of the acquisition on the 28th August, retention funds have been held jointly by both solicitors. The amount as of the 18th August 1998 was £697,440 sterling. Some of these funds will be paid against liabilities which arose since takeover was completed. The difficulty has been the delay in resolving these retentions and the club/company had to pay out liability from their cash flow which were held in the retention fund. The delay raised the preparation of a balance sheet as of the 18th August 1998, including all liabilities till that date. Paul May has been unable to produce this balance sheet to date because Grant Thornton had an outstanding account from acquisition. The delay has not helped the club's cash flow or credibility."

Then he sets out the outstanding accounts.

Then, finally, there is, under the heading 'M&P Associates':

"It was agreed in the budget figure that M&P Associates would be paid £5,000 per month for expenses. All agreed expenses were paid to the end of May 1998. However, from the end of May to date, M&P have been paid £10,000 in

total. At this stage, Premier Crew Sport and ICDM have ceased to act. M&P have identified another project manager to replace ICDM in the case of Premier Crew Sport at the end of October. We no longer require their assistance. M&P understand that keeping cost to a minimum was important and we believe in this outline summary it is well demonstrated that we have negotiated on every issue to get the best value. However, if we can make commitments to proposals and fail to honour them, our credibility suffers and, in turn, could affect the project. I trust this summary of the position will help to clear up a number of positions and help to understand our strategy. We do understand that this project is only one of many projects you are involved in. However, M&P have no difficulty in bringing the project to a successful conclusion and giving you regular updates. All we ask is your support in areas outside of our control.

"Kevin Phelan."

So that was sent along to give a flavour, and that had been sent to you in August of 1998; isn't that correct?

A. I imagine, yeah.

Q. It shows a reasonably active involvement of M&P Associates, or Mr. Kevin Phelan, doesn't it?

A. Yes.

Q. Also included in the letter which was sent to Messrs. William Fry was a fax dated 11 August 1999 to you from Kevin Phelan, and it concerned the Doncaster project. And

it reads:

"Doncaster Project.

"Following our meeting on Monday 9th August, this is a note

to confirm our discussions and also detail the

correspondence which has taken place to date between

McAlpine, Stephen Baker, Andy White from Westferry, Kevin

Phelan." Did you have a meeting on the 9th August?

A. I imagine so. I can't really remember, you know.

Q. Fair enough.

"1. Joint Venture.

"Aidan Phelan will now deal directly with Andy White in all

matters involving Asda, B&Q and the Council relating to the

development of Belle Vue and additional land which will be

made available by Doncaster Council.

"Kevin Phelan will continue to correspond directly with the

Board of the Football Club and, in particular, determine

all grant aid available for the project. Kevin Phelan will

also endeavour to establish the stadium specification and

the cost of the construction of the stadium."

Do you remember that split in dealings with

responsibilities?

A. Not specifically, but

Q. But you have no reason not to?

A. I have no reason not to, yeah.

Q. Then "McAlpine/Westferry, list of correspondence." Then

sets out again, you have no reason to have any concerns

about anything that's there; isn't that right?

A. Yeah.

Q. "3. Retention Fund.

"Christopher Vaughan and Craig Tallents to meet with Reg Ashworth on Thursday 12th August to discuss the accounts which had been produced." That seems to indicate that it was a matter for or the responsibility of Mr. Tallents and Mr. Vaughan to try and sort out the question of the retention fund with Mr. Ashworth; isn't that right?

A. Yeah.

Q. Again, I suppose it supports Mr. Kevin Phelan's intention, or contention that he wasn't involved in relation to the retention fund, isn't that right, that's where the responsibility lay?

A. Yeah.

Q. "4. Outstanding Expenses.

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

Again, you probably did pay them, I don't know. But there is no suggestion that you didn't pay these, is there, no?

"Altrincham.

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

"Luton.

"Kevin Phelan is to prepare a final report on this project.

"ML

"Kevin Phelan to refer all queries regarding Doncaster to

Aidan Phelan.

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

Now, I think the Tribunal asked you about this particular document, and you have informed the Tribunal I think the Tribunal wrote to your solicitor, Mrs. Preston, I think, on the 14th January, 2005; isn't that correct?

A. Yes.

Q. And you enclosed that particular fax, and particularly the reference to "Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan." And I think the Tribunal wished to obtain your assistance in relation to the following:

"A) Whether a copy of the fax dated the 11th August 1999 was within the documents furnished to Westferry when your client ceased to act on behalf of Westferry in relation to the DRFC project."

And I think you informed the Tribunal that you regret that you cannot remember whether a copy of the fax dated 11th August, 1999, was within the documentation furnished to Westferry when you ceased acting on behalf of it in relation to the DRFC project.

I just want to clarify, and can I take it that you can't

remember, or know what documents you handed over?

A. Whatever documents I had, I gave over.

Q. "B) What your client understood Kevin Phelan to be referring to in paragraph 7 of the fax."

And you have informed the Tribunal that you have no recollection of what he understood Mr. Phelan to be referring to at paragraph 7 of the fax, if indeed you ever saw it.

And "C) Whether any queries were raised with your client by Westferry or any person on behalf of Westferry in relation to paragraph 7 of the fax in or about June, July or August of 2002, and, if so, the queries raised and details of your client's responses."

And you have informed the Tribunal that you have no that no queries were ever raised with you by Westferry, or anyone on its behalf, in relation to this matter, either in June, July or August 2002, or at any time; is that right?

A. Correct.

Q. Now, could I just ask you in the final paragraph of the letter which Mrs. Preston sent, you said that you have no further documents which can assist the Tribunal, you personally are in possession of no documents, and that you furnished everything which you had ever had either to Westferry or to the Tribunal, you furnished documents to the Tribunal in relation to various matters, and you regret you cannot assist any further.

When you say you furnished documents to Westferry, was that

to Mr. O'Brien?

A. It would have been, yeah.

Q. Or Mr. Ryall, can you remember?

A. Well, Mr. Ryall, probably.

Q. Probably Mr. Ryall?

A. Probably.

Q. And you didn't draw anything to Mr. Ryall's attention that there was anything wrong with any of the documentation?

A. No.

Q. Now, this particular reference caused some concern in William Fry's; I think you are aware of that?

A. I am aware of that now.

Q. And Mr. O'Connell notes in the files that once he is on notice of it, or once the client that an inquiry must be made, isn't that right, to clear up what this reference is?

A. Yes.

Q. Because there can be no doubt but that a reference to ML, meaning Michael Lowry, and Doncaster, is of extreme significance; isn't that right

A. I agree.

Q. in relation to the inquiries that this Tribunal have been making?

A. Yes.

Q. And Mr. O'Connell very correctly said, "No, we can't ignore it, we must make an inquiry about this."

A. Yes.

Q. And he set out various steps. And we have seen in the past

that Mr. O'Connell set about carrying out an inquiry when issues arose around the time of the initial public offering; isn't that right

A. Yes.

Q. when he travelled to America, and he very correctly set out a 'to do' list in relation to how and what inquiries should take place; isn't that right?

A. Yes.

Q. Now, you didn't know it at the time, because you say nobody asked you, but one of the matters which Mr. O'Connell noted as being something that should be done in conducting the inquiry about the reference of ML and a reference to Doncaster was to ask you; isn't that right?

A. Correct.

Q. And you were never asked?

A. No.

Q. And, in fact, I think you were aware from the documents, and you weren't you are now aware from the documents, but you were not aware at the time, that a suggestion had come along, and appears to have come from Mr. Denis O'Connor, that the ML was a reference to a Mike Lloyd; isn't that right?

A. Yeah.

Q. Do you know who a Mike Lloyd is?

A. No.

Q. You have no idea?

A. No.

Q. In any event, that was not something which appears to have convinced those carrying out the inquiry inside in William Fry's; isn't that right?

A. Yes.

Q. Because that was said, "No, that won't do". And then correspondence continued. And the correspondence shows that what was sought here before any money would be paid was clarification that the ML did not refer to Michael Lowry or that it referred to some other property transaction, or something else; isn't that right?

A. Yes.

Q. And the response all of the time from Messrs. Woodcock's, on behalf of Mr. Kevin Phelan, was to the effect, "I'm being asked to do the impossible here," isn't that right?

A. In terms of the memo

Q. In terms of the clarification that was being sought, "I am being asked to do the impossible," isn't that right?

A. Yes.

Q. And I will come to read the letter, but I just wanted

A. Yes, I'd like to see that.

Q. I'll go through the letters again with you in a moment.

And ultimately, a letter was provided which said that the reference to ML was a reference to Michael Lowry, I think you are aware of that now; isn't that right?

A. I am aware of that, yeah.

Q. But that it referred to Mansfield property transaction, isn't that

A. Yes, I am aware of this

CHAIRMAN: Well, I suppose, Mr. Coughlan, Mr. Phelan said he'd like to have a glance at the correspondence, and we are at twenty to one. Five to two.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

AIDAN PHELAN CONTINUED TO BE EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. Phelan, perhaps I'll just refer you to some of the correspondence dealing with the matters we touched on before lunch.

The first one, I'd ask you just to put something in context. Perhaps you'd look behind Tab 82, please.

A. I don't think I have the right book.

Q. Sorry, it's the second book, yes, Book 2. It's dated the 29th July, 2002.

"We refer to your recent correspondence. As confirmed to you by telephone on Friday, our client is serious about concluding the settlement some time ago in place of the narrative requested by our clients, you sent certain past correspondence relating to the Doncaster Rovers matters.

One of the letters contained a reference to an ML in apparent connection with the matter and you must appreciate that this reference caused some concern.

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

someone other than Michael Lowry or to some other matter and/or to confirm that in any event Michael Lowry had no interest in or connection with Doncaster Rovers matters."

Now, you had no involvement in relation to these ongoing discussions; is that correct?

A. No.

Q. If you then go to the letter, the next tab over, 83. It's a letter dated the 30th July, 2002. It's from Woodcock & Sons to Messrs. William Fry's.

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

"It is our view that our client has done everything that is possible to agree satisfaction re terms. You will be aware that our client is in negotiations with your firm on behalf of Westferry Limited, LK Shields on behalf of Bryan Phelan, together with Brian Phelan & Co, and also Denis O'Connor on behalf of his client, Michael Lowry. There are also issues concerning Aidan Phelan and Craig Tallents (an English-registered accountant). The writer is liaising with Denis O'Connor in relation to these two individuals.

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

amendments that Michael Lowry/Denis O'Connor required to protect themselves in relation to future claims.

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

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

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

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

"As previously stated, there are currently no concluded terms of settlement and in those circumstances our client

will now review all options that are open to him and decide how best to proceed.

"We are further instructed by our client to make it clear that he was always prepared to proceed with settlement in the terms that had previously been discussed in outline, but that as a result of the terms of settlement failing to be reached today and in light of your most recent correspondence, he feels that he has no choice but to draw a line under the negotiations and move on in a way that is beneficial to him.

"All further communication (if any) should be directed to ourselves, not our client."

Now, matters ceased there for the moment, and then, ultimately, matters were concluded in August of that year.

But just for the moment, if you just look at who Woodcock's say that are involved in the matter. "It is our view that our client has done everything that is possible to agree satisfaction re terms. You will be aware that our client is in negotiation with your firm on behalf of Westferry Limited." That seems correct. "LK Shields, on behalf of Bryan Phelan, together with Brian Phelan & Company, and also Denis O'Connor on behalf of his client Michael Lowry. There are also issues concerning Aidan Phelan and Craig Tallents (an English-registered accountant). The writer is liaising with Denis O'Connor in relation to these two individuals."

So, that appears to be a reference issues seem to be the

issues which were raised, appear to be the issues which were raised in the complaint to the Institute?

A. That would seem like a reasonable reading of that.

Q. And an issue is a Craig Tallents issue as well, it's a complaint to the Institute in respect of

A. Yes.

Q. But can you assist us at all well, first of all, can you clarify this; there was nobody negotiating on your behalf there, was there?

A. No.

Q. Or nobody had any authority to negotiate on your behalf?

A. No.

Q. And nobody had any authority to negotiate on your behalf in respect of as you said, Cheadle was now something which was under your total control; isn't that right?

A. Yes.

Q. And nobody had any authority to negotiate on behalf of Mansfield, because that was 90% yours, as far as you were concerned; isn't that right?

A. Yes.

Q. So anyone who was negotiating in respect of Mansfield would have had to have discussions with you; isn't that right?

A. Yes.

Q. Before they combined or committed in relation to anything?

A. Yes.

Q. And those two transactions were transactions in respect of which you had a connection with Michael Lowry, isn't that

correct, on your own evidence?

A. Yes.

Q. And, as far as you were concerned, there was nobody had authority to negotiate in respect of those transactions; isn't that right?

A. Can I just clarify? Are you talking about negotiating for fees or

Q. I am talking about just look here. They are talking about paying $\text{€}150,000$, and they want a narrative. They now want an explanation in relation to the ML and its association with Doncaster. I have opened that, do you understand the point?

A. Yeah, yeah, okay.

Q. There is $\text{€}150,000$ being paid over here by Westferry or Mr. O'Brien, but it looks, from this particular document here, that there is, in fact, a three-way negotiation going on, do you understand that, at least, or maybe four ways?

A. Yeah, okay.

Q. There is William Fry's on behalf of Westferry; there is LK Shields on behalf of Bryan Phelan, together with Brian Phelan & Company; and Denis O'Connor on behalf of his client, Michael Lowry. Do you see that there?

A. I do, yeah.

Q. And then the issues. And, sorry, then there is issues concerning Aidan Phelan and Craig Tallents; isn't that right?

A. Yes.

Q. Now, if you're correct that nobody had any authority to negotiate on behalf of Mansfield and Cheadle, which you say is long gone from the previous year, isn't that right, in terms of Kevin Phelan having any involvement or entitlement or look into anything; isn't that right

A. Yeah.

Q. what could Michael Lowry, and Denis O'Connor acting on his behalf, be involved in these negotiations in those circumstances other than it was Doncaster?

A. Well, I mean, you'll have to ask Denis O'Connor why. He seemed to be the guy involved here. You'll have to ask him that. It doesn't make sense to me.

Q. So, I take your response there; it doesn't make sense unless he was involved, isn't that right? It doesn't make sense. Sorry, what doesn't make sense? If he had no entitlement to be involved in any discussions about Mansfield or Cheadle, as far as you were concerned, the only other basis on which he could be present in relation to negotiations in respect of these properties, the only other one was Doncaster; isn't that right?

A. Yes.

Q. And it doesn't make sense to you?

A. It doesn't make sense. I mean, I keep saying you'll have to ask Denis O'Connor what he was doing vis-a-vis Michael Lowry.

Q. But this letter was written to Westferry solicitors. It doesn't make any sense to you. You were not asked about

it?

A. No.

Q. And you had been handling the matter up to then, isn't that right, Westferry's affairs?

A. Yes.

Q. And ultimately an explanation was afforded when $\frac{1}{2}$ 150,000 sterling was being paid over, that the ML in the faxed document did refer to Michael Lowry, but that the reference was to in respect of property, was to Mansfield, you know that?

A. Yes.

Q. That doesn't make sense either, does it?

A. No.

Q. It doesn't make any sense at all?

A. It doesn't make sense.

Q. Now, you say that you became aware at some stage that there was something going on in terms of contact or discussions with Kevin Phelan; isn't that right?

A. Yes.

Q. Could that have begun around the time that the Tribunal made inquiries about what were described as the long form/short form letters in respect of Cheadle? Do you remember those documents?

A. I do.

Q. Was that when contact started to be made?

A. I don't know. I don't know when. I mean, I don't know the timing of those.

Q. I'll just if you go back to the first book I am sorry, I'll get it for you now. I'll get you the book and I'll have the tab opened now, I hope. I think it's 51.

A. I have it here.

Q. If you look at Tab 51 sorry, I beg your pardon, if we look, sorry, behind Tab 50 first. This is a letter which Woodcock & Sons wrote to Mr. Christopher Vaughan. Remember, Mr. Phelan had complained about Mr. Vaughan; isn't that correct?

A. Yeah.

Q. And this is dated the 19th April, 2002:

"I have been instructed by the above-named client to correspond with you as follows:

- "1. In his own capacity.
2. In his capacity as partner in M&P Associates.
3. In his capacity as a director of Gameplan International Limited.
4. In his capacity in Westferry, Glebe Trust.

"I would refer to the allegations and requests made to you in our letters of the 28th January 2002 and 21st March 2002.

"Our client agrees that:

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

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

"3. He unreservedly withdraws the complaint made about you to the Office for the Supervision of Solicitors.

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

"5. Our client is not demanding the return of any files."

Now, that is a letter dated the 19th April, 2002.

Mr. Vaughan wrote a letter to the Tribunal solicitor on the 29th April, which is at the next tab. That's in response to a letter from the Tribunal making inquiries about how these two particular long form and short form letters happened to be in existence. And Mr. Vaughan responded:

"Thank you for your letter of the 17th April 2002.

"I am sorry that I have been slow in responding to your inquiries but I have been seeking instructions from my clients.

"I am enclosing copies of an exchange of correspondence between myself and Mr. Kevin Phelan for your information."

And then there is a letter addressed to Mr. Kevin Phelan dated the 18th April, 2002, which is the day before the letter is dated, Mr. Kevin Phelan withdrawing his complaint or any allegations against Mr. Vaughan.

and it reads:

"Dear Kevin,

"Mr. John Davis from the Moriarty Tribunal has contacted me in recent weeks. Mr. Davis has queried documents which passed between my office and you in July and September 2000. I would be grateful if you could assist me with regard to queries raised in relation to these documents.

In order to assist you, I have marked the documents 'July A' and 'July B', 'September A' and 'September B' respectively.

"As you will observe, there are two letters with the same date in each case. I have forwarded 'July A' and 'September A' to the Tribunal as the only copies on my files. However, the Tribunal now appears to have 'July B' and 'September B', which raises obvious queries on their part.

"I would ask you to examine your files and let me have your comments and observations. I would appreciate an immediate response as the Tribunal is anxious to clear up this confusion and are pressing me with some urgency.

"I trust that you will be in a position to assist, and look forward to your early response."

And then he enclosed what we know are the long form and the short form or sorry, he enclosed to Mr. Vaughan the short form letters, obviously.

And then there is a response dated the 23rd April, 2002.

It's a response from Mr. Vaughan to or Mr. Phelan to Mr. Vaughan.

"Dear Christopher,

"I acknowledge receipt of your letter dated April 28th 2002. I have examined my files as requested by you and confirm the only letters I have on file are 'July A' and 'September A'.

"I recall on some occasions in the past you issued

correspondence to me outlining incorrect details following our prolonged and detailed meetings. I know on occasions you confused clients and projects, which resulted in corrections having to be made and new correspondence to be issued. I believe the documentation you have forwarded has probably arisen for this reason. In any event, as stated, I have letters marked 'July A' and 'September A' on my files, which I hold as originals.

"I have no idea where the documents marked 'July B' and 'September B' have come from.

"I trust this information is of assistance."

And that is what Mr. Christopher Vaughan furnished to the Tribunal in respect of an explanation which was sought of him. As you know, he furnished this letter from Mr. Kevin Phelan.

Now, that letter is dated the 23rd April, 2002.

And then if you turn to the next tab, you see the Kate McMillan attendance on you, which is the 2nd May, about a week later. And if you go to the end of that, the note:

"AP said he thought he might be able to get Kevin Phelan on side. He might give a witness statement and evidence at trial. AP thought he might know what the position was regarding Kevin Phelan by mid next week."

And you said that it just occurred to you that you might ring him, but you decided not to. I must suggest to you, doesn't it seem more consistent with the proposition that somebody was in contact with Kevin Phelan in respect, first

of all, of the long form/short form letters, and that, somewhere or another, it was indicated to you that there was contact taking place with Kevin Phelan?

A. I mean, you can draw that assumption, but I stand on what I said.

Q. Now, when you informed Kate McMillan I am not sticking to exact words, but in general terms that you thought you might be able to get Kevin Phelan on side, what did you anticipate you would have to do to get him on side?

A. I thought about saying to him that if we were successful, he would get some kind of a commission from the if we won our case, as we saw it, I thought about that, ringing him up and saying that to him, and then I thought it's not a good idea.

Q. Why?

A. I just didn't want to have any contact with the guy.

Q. Was that because you were aware

A. It's because I had second thoughts.

Q. That you thought there was some other contact going on?

A. No, I had second thoughts. I mean, this was said in a meeting at the drop of a hat. It's not

Q. It was a fairly crucial matter, wasn't it? Kevin Phelan he was the only witness to the negotiations on your side of the transaction, as far as you were aware?

A. In relation to the $\frac{1}{2}$ 250,000, he was the only person who could have supported that argument.

Q. And that was the big thing in the case, wasn't it?

A. It was $\frac{1}{2}$ 250,000; I mean, the rest of it was over $\frac{1}{2}$ 400,000.

So two big amounts.

Q. Yeah, I know that, but I think you have accepted that in relation to the retention money, the big issue here was the $\frac{1}{2}$ 250,000?

A. It was a big issue.

Q. What was involved in relation to the retention, I think, I'd have to go through the figures, but, at the end of the day, might have amounted to about a dispute in respect of 50-odd thousand, isn't that right, or thereabouts?

A. It worked out, at the end of day, yes.

Q. But I just want to move forward, but just to come back again to the suggestion that appears to have been accepted, or at least left stand or lie, that the fax containing the ML Doncaster reference was a Michael Lowry/Mansfield, that couldn't have been the case, isn't that right? It could not have been the case?

A. No. I mean, the main reason for that was that Kevin Phelan was running the Mansfield project. So the notion of him sending queries to me doesn't make sense.

Q. Exactly.

A. That's

Q. I know, exactly. And if you had been asked about that, you'd have had to give that view, wouldn't you?

A. Yes.

Q. It just doesn't make sense?

A. Yes.

Q. So what people would have been left with then was a letter now saying that the ML was a reference to Michael Lowry and a reference to Mansfield, which just couldn't make sense, but Doncaster was on the original document; isn't that right?

A. That's right.

Q. But you weren't asked about any of this?

A. No.

Q. Now, I think now, could I just ask you, did anybody ask you about I'll find it at some stage, but you may have seen the document, you know the letter Mr. Vanderpump and Westferry wrote to Christopher Vaughan and the response he got back with references to the Glebe Trust?

A. I know the document, yeah.

Q. Was that ever mentioned to you or were you ever asked anything about it?

A. No.

Q. I am told it's 136. Maybe it's not. 131.

CHAIRMAN: Well, he said he is familiar with it,

Mr. Coughlan.

MR. COUGHLAN: I just want to get the actual reference,

Sir, because I want to come back to the beginning, if I may.

Now, the only reason I am referring you to that is the reference to the Glebe Trust and the assertion made in that letter that Kevin Phelan had stated to Christopher Vaughan that Michael Lowry had an interest in the Glebe Trust. You

know the

A. I know the document.

Q. I want to come back now, to come right back to the beginning of your involvement with Kevin Phelan in respect of Doncaster, if I may.

A. Okay.

Q. I know you can't help us as to whether you introduced Kevin Phelan to your brother Bryan or vice versa, but anyway. What did Kevin Phelan say to you and how did he know anything about you?

A. I can't remember.

Q. Well, this was a fairly big venture, wasn't it, of its time?

A. Yes.

Q. Like, there was the guts of £1/2m sterling involved in the matter in terms of a purchase; isn't that right?

A. Yes.

Q. Did he come up to you and say, "Look, I have got" because it was an opportunity, as well, as perceived at the time, that the Council were going to quickly grant the permission for the redevelopment, shopping centre and matters of that nature?

A. Yeah.

Q. Did he say to you why he had chosen you or why you were the lucky one to be brought this particular opportunity?

A. I really can't remember what the discussion how he introduced this to me. I mean, Luton, he introduced Luton

to me and Doncaster around the same time.

Q. And did you tell him where you would get the funds to deal with it?

A. No.

Q. Well, let's just concentrate on Doncaster for the moment.

The funds came from Mr. Denis O'Brien, in the first instance, of the $\frac{1}{2}$ 700,000 deposit; isn't that right?

A. Yeah.

Q. And the balance at the time was borrowed from Anglo Irish Bank, I think; is that right?

A. Yes.

Q. And after a year, was that restructured or that's neither here nor there?

A. I actually don't think so.

Q. All right. What did you say to Mr. O'Brien?

A. Well, Kevin had a story, Kevin Phelan had a story about Hull City, Hull City Football Club, or something like that, and he gave me kind of the overview of that and how the transaction was completed. I said to Denis O'Brien that it looked like an exciting opportunity. I went over and met the Council, visited the site, did some commercial due diligence, spoke to, you know, a number of people. I mean, I spoke to DTZ, who were acting for Asda, and, you know, just formed a view that this was a good thing to document the Council there was a chap called Michael Clynch in the Council, who was the head of economic planning, who really gave it the thumbs-up. I thought it was a good

deal.

Q. And you reported back to Mr. O'Brien?

A. Yeah.

Q. And?

A. He said, "Well, we'll have a go at it."

Q. Did he suggest to you how the funds were to be raised to

A. That was my job.

Q. That was your job?

A. Yeah.

Q. And what dealings were you having with Kevin Phelan at this time?

A. He would have been with me.

Q. On all the trips?

A. More or less all the trips, yeah, from memory, yeah. He had some kind of he did some kind of a quite a detailed proposal at the time.

Q. And did he tell you about the Glebe Trust?

A. No.

Q. Did he ever mention the Glebe Trust?

A. No.

Q. Did he mention Westferry?

A. He did.

Q. Did he tell you how Westferry was being set up?

A. No. He told me it was a shelf company which he had used to front the deal, he had already been well down the road with the Council on the deal and using Westferry Limited, and the only reason Westferry Limited was used, the only reason

was because of what the Council were saying about introducing a new vehicle. I mean, in the normal course of events, I'd just pick a company off the shelf. I had no reason to believe anything about the Glebe Trust. I mean, the share transfers were done by the Charterhouse nominees. I would never have seen anything to do with the Glebe Trust.

Q. You wouldn't have seen anything to do with the Glebe Trust?

A. No.

Q. Did anybody ask you when negotiations were taking place to conclude agreement with Kevin Phelan, that there was this trust being referred to as the 'Glebe Trust'? Did anyone say that to you at the time?

A. No. I learned about the Glebe Trust since.

Q. And nobody asked you afterwards when Christopher Vaughan sent a letter to Vanderpump mentioning the Glebe Trust and the potential involvement of Michael Lowry in that, nobody asked you, "Come here, Aidan. When you were involved in this at the beginning, did anybody talk to you about that?"

Did anybody ask you about that?

A. No.

Q. And can I take it when you say you learned about the Glebe Trust since, it's what you learned in this Tribunal?

A. I believe so, yeah. I mean, if there is documents to suggest otherwise, you know

Q. No, I am saying it's what you have learned from documents you have seen in this Tribunal?

A. I believe so, yes.

Q. Have you discussed it with anybody?

A. No.

Q. Could I ask you to look at the other book again for a moment. It's just a few matters to tidy up.

A. Is it 2?

Q. 1, please. Tab 28, I think. This is Christopher Vaughan's letter to the Tribunal dealing with a lot of matters, a lot of queries that were raised. If you go to the fourth page, and this is in response to a query regarding contacts with you during the period 27th May 2003 to the 7th September 2004, I think.

And it says: "I have spoken to him briefly on the telephone on three or four occasions over that period.

Other than the last occasion, they were calls of a personal nature. The last time that I spoke to him was a couple of days before the London meeting which he had heard was taking place."

First of all, is he reasonably correct that he had a number of telephone calls with you, many of them of a personal nature?

A. Probably.

Q. "... the London meeting which he had heard was taking place (I did not inquire who told him). He wanted to know if I was content with such a meeting taking place and I told him the terms of reference in respect of the meeting."

Do you remember that?

A. Yes.

Q. Specifically, it was a meeting that Christopher Vaughan with his solicitor, Mr. Needham, was having with counsel and solicitor for the Tribunal; isn't that correct?

A. Yes.

Q. Now, you knew about that meeting before it took place?

A. I did.

Q. You didn't hear that from Christopher Vaughan?

A. No.

Q. Who told you?

A. I can't remember, but I don't remember.

Q. Now, Mr. Phelan, who told you?

A. I don't remember.

Q. What were you told?

A. I was told he was meeting the Tribunal to assist them.

Q. This was in 2004, is that right?

A. Yeah.

Q. And are you seriously suggesting you can't remember who told you?

A. I really can't remember.

Q. Very good. If that's your answer. Thank you.

Now, he told you what was going to occur at the meeting, isn't that right, what the agenda was, what was to be discussed?

A. I guess he did.

Q. And he asked you if you were content with he wanted to know "The last time that I spoke to him was a couple of

days before the London meeting which he had heard was taking place (I did not inquire who told him). He wanted to know if I was content with such a meeting taking place and I told him the terms of reference in respect of the meeting."

So you asked him if he was content with the meeting taking place; is that right?

A. Probably, yeah.

Q. Why?

A. I just I think when he came over here to assist the Tribunal in a private session, he was unhappy about it.

Q. So?

A. Just, like, he was just unhappy. I don't want to I mean, he felt that the notes that were done were very short in relation to his discussions, something along those lines. And I also I don't know whether it was sometime after that that the Tribunal were maybe saying, you know, they were going to report him to the Law Society, or something like that.

Q. How did you know that?

A. He told me.

Q. He told you that. Why would he have made contact with you about this meeting?

A. Presumably he felt he represented me in some of the subject matter.

Q. Explain that to me?

A. Well, I mean, the Tribunal were interested in a number of

different areas of his involvement with me.

Q. Which were?

A. Cheadle, you know, Mansfield, Doncaster. All the transactions that he was involved in.

Q. But if this note is correct, you seem to have contacted him rather than he contacting you, because the note reads "(I did not inquire who told him)." So if he did not know before this contact, it looks as if you were the one who contacted him?

A. It looks like that, yeah.

Q. Why?

A. Well, I contacted him to see how, you know, how he felt about the meeting.

Q. I see.

A. I mean, I think he found it quite stressful when he came here. He is a gentleman. I like him. So I contacted him.

Q. And you don't know who told you?

A. No.

Q. Was it Mr. Denis O'Brien?

A. It could have been.

MR. COUGHLAN: Thank you very much, Mr. Phelan.

CHAIRMAN: Well, I think, as I had indicated to you, we will be seeking to finish today. There are a few questions from other counsel. Do you want to take a short break or are you happy to plough on?

A. No, I am happy.

CHAIRMAN: Mr. McGonigal?

THE WITNESS WAS EXAMINED BY MR. McGONIGAL AS FOLLOWS:

Q. MR. McGONIGAL: I wonder, Mr. Phelan, without going back to it, I think you remember the note of the 11th August of 1999 which, at paragraph 7, refers to ML?

A. Yes.

Q. And I think Mr. Coughlan was asking you a few moments ago about it, and you indicated to him that since Kevin Phelan was running the Mansfield project, it didn't make sense to try and interpret that as referring to Mansfield?

A. Yes.

Q. Just as it stands there, ML meaning Michael Lowry, "Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan." Does that make sense

A. No.

Q. to you?

A. No.

Q. Now, the other matter that I wanted to ask you about was, am I right in understanding that prior to you getting involved with Kevin Phelan, that your brother had been involved with him before that in relation to a number of transactions?

A. The timing of it I'm not sure. I mean, there is confusion, as I outlined in earlier evidence, about who introduced him to who. So the timing of those projects at Wooler and somewhere in Ireland, I can't say what the timing was.

Q. But were they all taking place in or around the same time?

A. Yes.

Q. And so far as you are concerned, am I right in thinking that the Luton project came first?

A. Yes.

Q. And then Doncaster and then Mansfield and Cheadle or Cheadle and Mansfield?

A. Yeah, Mansfield, Cheadle, and Altrincham is somewhere in the middle.

Q. Now, just in relation to Luton, about which you have been asked nothing about really, that I think was an office-block development, was it?

A. Yeah, office/retail.

Q. And did you purchase that with Denis O'Brien?

A. Yes.

Q. On a 50/50 basis, presumably?

A. Yeah.

Q. That is the first, we think, transaction that you are involved in with Kevin Phelan?

A. Yes.

Q. And he introduced that?

A. Yes.

Q. Then the second transaction was Doncaster, and again you negotiated with him?

A. Yes.

Q. And solely with him?

A. Yeah.

Q. And at no stage was Michael Lowry, so far as you were concerned, involved in any of those negotiations or

dealings?

A. Yes.

Q. So that when you finalised the agreement and the contracts were signed, that was a contract between you/Denis O'Brien and the Dinard interests purchasing the property, selling and purchasing the property?

A. The contract was Westferry Limited with Dinard/Anstalt.

Q. And the O'Brien family trust takes over then in the Wellington Trust?

A. The Wellington Trust, yeah, own the shares, well, under declaration of the trust.

Q. And again, at that stage, no suggestion of Lowry?

A. No suggestion.

Q. In relation to the negotiation of the 40% uplift, was there any suggestion made to you or about, at that time, that Michael Lowry was to get any benefit in relation to the 40% uplift?

A. No, there was no suggestion.

Q. In relation to the $\frac{1}{2}$ 150,000 fees paid to Kevin Phelan, was there any suggestion that you are aware of, or know, of Michael Lowry getting anything out of the $\frac{1}{2}$ 150,000?

A. No, no suggestion.

Q. Within your knowledge, Mr. Phelan, is there any involvement of Michael Lowry in a financial or beneficial way to Doncaster Rovers, so far as you are concerned?

A. No.

Q. Thanks very much.

THE WITNESS WAS EXAMINED BY MR. BARNIVILLE AS FOLLOWS:

MR. BARNIVILLE: Good afternoon, Mr. Phelan. I appear for Mr. Lowry and for Mr. O'Connor. I just have a couple of questions for you. Mr. McGonigal has, in fact, asked a number of questions that I would have asked you, but perhaps I'll just ask you a couple of questions.

Q. Mr. Phelan, you were involved, I think, intimately in the Doncaster Rovers transaction between, I think you said, January or February '98 through sometime to the middle of 2002; isn't that right?

A. Yes.

Q. A period of a little over four years, perhaps four-and-a-half years, is that right?

A. Yes.

Q. And I take it, then, during that period, you were, and would have been, intimately familiar with the details of those, of the transaction and with the Doncaster Rovers project, if we can call it that?

A. Yes.

Q. And with those involved in the project?

A. Yes.

Q. I think you said in response to a question raised by Mr. Coughlan early in your evidence on Friday, the 9th March, that any suggestion that Mr. Lowry was involved in the Doncaster Rovers project or in the Doncaster Rovers transaction was preposterous, is that the position?

A. Yes.

Q. That's the word you'd use, 'preposterous'?

A. Yes.

Q. And I take it any suggestion, then, in any document which the Tribunal which Mr. Coughlan may have suggested to you or which anybody else might suggest to you connotes a connection between Mr. Lowry and the Doncaster Rovers transaction, is equally preposterous?

A. Yes.

Q. Untrue?

A. Untrue.

Q. Did Mr. Phelan tell you at any stage that Mr. Lowry was involved in the Doncaster Rovers transaction?

A. No.

Q. And insofar as the e-mail of the 11th August, 1999, that Mr. Coughlan asked you questions about, contains the initials "ML", do you believe that refers to Mr. Lowry in the context of the Doncaster Rovers transaction?

A. It could mean Michael Lowry.

Q. But did he have any involvement?

A. I don't understand how that reference was put in there.

Q. It would be, I think to use your own words, it would be a nonsense to attribute that reference to Michael Lowry to Doncaster Rovers, isn't that right?

A. Yeah. I mean, that fax refers to three projects, I think it's Luton, Altrincham and Doncaster, and they all have that common thing that Michael Lowry had nothing to do with either of those three projects.

Q. With any of those projects?

A. With those three, yeah.

Q. And the suggestion then that Mr. Lowry was connected, is, to use your own words again, preposterous; isn't that right?

A. Yes.

Q. And equally, I assume then the reference in Mr. Vaughan's letter of the 25th September, 1998, to Mr. Lowry having a total involvement, is equally preposterous and untrue?

A. It's untrue. I believe the letter was written, but it's an untrue representation.

Q. Now, Mr. Coughlan asked you again on Friday whether you had any reason to believe that Mr. Lowry didn't get the letter or sorry, whether you had any doubt as to whether Mr. Lowry had received the letter from Mr. Vaughan of the 25th September, 1998, and the documents referred to in the face of the letter, and I think you indicated you had no reason to doubt that; isn't that correct?

A. That's right.

Q. I take it you equally simply don't know whether Mr. Lowry received the letter or not, you just don't know?

A. I don't know.

Q. And Mr. Lowry has never told you he received the letter ; isn't that right?

A. No.

Q. Now, again, I suppose Mr. McGonigal may have covered some of this ground, but can I ask you to confirm to your

knowledge, having regard to your intimate involvement in the project from inception through to mid-2002, does Mr. Lowry have any interest, direct or indirect, legal or beneficial, in Doncaster Rovers Football Club or in Westferry?

A. He has no interest.

Q. Or otherwise in connection with the Doncaster Rovers transaction?

A. Yes.

Q. No interest?

A. No interest, yes.

Q. Did he have, to the best of your knowledge, any such interest?

A. No.

Q. Was it intended, to your knowledge, that he might be given an interest?

A. There was no intention.

Q. If it was the case that he has an interest, had an interest, or was intended to be given an interest, would you have known about it?

A. I should have known about it.

Q. And therefore, any suggestion of an involvement, either past, present or intended, is entirely without foundation; isn't that right?

A. Yes.

MR. BARNIVILLE: Thank you, Mr. Phelan.

CHAIRMAN: Mr. Gleeson?

THE WITNESS WAS EXAMINED BY MR. GLEESON AS FOLLOWS:

Q. MR. GLEESON: Mr. Phelan, can I just ask you a couple of questions. Firstly, if we could go back to the fax in August 1999 where the "ML" reference appears. Can you just perhaps list the property transactions that were current at that stage, if we could go through them in sequence. First of all, in relation to the Luton transaction, can you just explain when did that transaction commence?

A. March '98, February/March '98.

Q. And that was a property transaction in which you and Mr. Denis O'Brien each had a 50% interest; is that correct?

A. Yes.

Q. And in relation to the Mansfield transaction, when did that commence?

A. It commenced in March '99.

Q. And that is the transaction I think in which Mr. Lowry did have a 10% interest; isn't that so?

A. That's right.

Q. The Doncaster Rovers project that you have been involved in and have effectively steered from its inception, when did that commence?

A. March '98, and closed in August '98.

Q. And the Handforth or Cheadle property transaction, when did that commence?

A. That commenced in July '99. Closed December '99.

Q. That is the transaction which involved the company Catclause Limited, isn't that right?

A. Yes.

Q. And ultimately, Mr. Lowry stepped out of that transaction, as it were, isn't that right?

A. That's right.

Q. In relation to, finally, the Altrincham transaction, can you assist us as to when that commenced?

A. Sometime in '99, I think.

Q. And that was a project in which you were 100% involved?

A. Yes.

Q. Now, when that e-mail or fax came to be sent in August 1999, therefore, is it correct to say that the Mansfield transaction was alive and Mr. Lowry did have an interest in that? The Handforth and Cheadle transaction, I think you said, commenced in or about August 1999, is that right?

A. Yes.

Q. And at that stage, did he have an interest in that?

A. Yes.

Q. Now, that fax, in fact, refers to the Doncaster project, and it also mentions the Luton project and the Altrincham project, isn't that right?

A. Yes.

Q. So as you have already indicated, those are the three transactions which, to your knowledge, Mr. Lowry had no interest in?

A. Correct.

Q. Now, can I then ask you to turn to the letter of the 30th August of 2000, which Mr. Coughlan put to you on Friday.

That is the letter, Mr. Phelan, where Mr. Kevin Phelan has written to you and has referred to three transactions:

Doncaster, Altrincham and Luton, isn't that right?

A. Yes.

Q. And there was a reference, and you have given evidence about this, to a meeting which you had with Ms. Helen Malone, Christopher Vaughan and Michael Lowry on the 17th August, 2000; isn't that right?

A. Yes.

Q. And I just want you to look at the minute of that meeting which you referred to in evidence on Friday. I think, Mr. Chairman, this document was in evidence many years ago when we dealt with the Catclause issue. If I could just take you through that document, Mr. Phelan. It's a document headed "UK Property ML," isn't that right?

A. Yes.

Q. And it's headed:

"Meeting Notes.

Date: 17th August, 2000.

Present: ML, CV, AP and HM."

That is Michael Lowry, Christopher Vaughan, Aidan Phelan and Helen Malone.

Who prepared this note of the meeting, Mr. Phelan?

A. Helen Malone.

Q. I think she has already given evidence of this. It goes on to deal with Hilltop Farm. For those who aren't aware of what Hilltop Farm is, which transaction is that referring

to?

A. That's Mansfield.

Q. That's Mansfield?

A. Yes.

Q. And it refers to Mr. Lowry's interest. And secondly, the Saint Columba's Church property. Which of the transactions is that referring to?

A. That's Cheadle.

Q. That's Cheadle?

A. Yeah.

Q. It goes into the various details of those two transactions.

Now, the letter that Mr. Kevin Phelan wrote on the 30th August, I think you were asked for an explanation of that letter last Friday, although, of course, it looks as though Mr. Kevin Phelan himself will not be giving his explanation of the letter that he himself wrote, but the letter, in any event, was read out on Friday, and you will see that the first part of the letter reads: "Further to our discussion with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting, we have now had time to reflect on those suggestions and also consider the letter received from Christopher Vaughan dated 18th August 2000."

And on Friday, Mr. Coughlan put to you that "What is being suggested here is that what is being conveyed to him that there was a discussion about Doncaster at that meeting as well, isn't that the way the letter reads?"

A. Yes.

Q. And your answer there was, "Well, the minute that was taken of the meeting, there was no discussion of Doncaster. I just find this letter misleading." And if one looks at the minute that was taken, that does not refer to Doncaster; isn't that right?

A. Yes.

Q. And, as I say, we don't know why Mr. Kevin Phelan would have put that into a letter, because he is not obviously here to give us any explanation for that.

Now, you have already answered My Friends in relation to your involvement in this project, the Doncaster project.

You were intimately involved in the detail of this from the start; isn't that so, Mr. Phelan?

A. Yes.

Q. And I think you have already answered Mr. Barniville, that if there had been any suggestion or indication or intention that Mr. Lowry was to be connected with or have an interest in this project during the period of your stewardship of the project, you would have known about that?

A. I would.

Q. And was there any such suggestion?

A. No.

Q. Now, when the Tribunal delivered the Opening Statement for this module a couple of weeks ago whatever it is Mr. Healy suggested or indicated that the Tribunal had information which suggested that Mr. Lowry may have been involved in Doncaster Rovers. Now, if you assume,

Mr. Phelan, that that information has now been put to you in the course of the last two days' hearings, does that cause you to alter your view in any way

A. No.

Q. about Mr. Lowry's involvement of any kind?

A. No.

MR. GLEESON: Thank you, Mr. Phelan.

THE WITNESS WAS FURTHER EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Just a few short matters, if I may, Mr. Phelan. First of all, if we could just look at the memo or the note made by Ms. Helen Malone of the meeting of the 17th August, 2000. I think we have been over this before. But it is just in the context that you were asked by your counsel about it, that these refer to Michael Lowry that these refer to properties, and Doncaster isn't mentioned in the context of the letter sent by Mr. Kevin Phelan the following day.

These two or the heading on this note - we asked you about it before - is "UK property ML," Michael Lowry, isn't that right?

A. Yes.

Q. And these two properties here are being attributed as being Michael Lowry properties on that date, isn't that right, in that note?

A. Yes.

Q. Are you now saying that to distinguish it from the

Doncaster matter, because the evidence which you gave on a previous occasion in relation to Saint Columba's Church, had, in fact, moved by this time; isn't that right? I

just

A. In terms of Michael Lowry's ownership?

Q. Yes.

A. Yeah.

Q. You see the point?

A. Well, my point would be that Michael Lowry had a moral obligation to see through this project.

Q. No, just look at the note now. Your own counsel brought that up to draw a point about Doncaster, to distinguish them. That's why it was put to you. And you accepted it readily. There is no note there of any moral obligation. They are stated to be Michael Lowry properties, isn't that right, on that note; isn't that right?

A. Yes.

Q. Now, I now want to go and ask you about the first question which Mr. McGonigal put to you. He put it in a reasonably benign manner, but it was put to you on behalf of Mr. Lowry, and Mr. O'Connor perhaps in more trenchant terms, and that is the reference to "ML" to Doncaster on the fax of August 1999. In the first instance, you responded to Mr. McGonigal when he asked you did that make any sense to you, and he was comparing it to the justification that was being proposed that it referred to Mansfield as making no sense to you, and you said it made

no sense to you; isn't that right?

A. Yes.

Q. In response to Mr. Barniville, you said that it was a lie, it wasn't true, isn't that right?

A. Yes.

Q. And between 1999 and to this day you have never written to Mr. Kevin Phelan to correct him or disabuse him in relation to that; isn't that right?

A. Yes.

Q. And, of course, at the time that that fax was written, there was no friction between you?

A. There was no, you know no.

Q. Now, you were asked about Luton, and the reference to Luton, and you were asked that that was a property involving yourself and Mr. Denis O'Brien; isn't that right?

A. Yes.

Q. And it was a Kevin Phelan property I am using it in that sense Kevin Phelan was involved?

A. He introduced it, yeah.

Q. Christopher Vaughan was involved?

A. Yes.

Q. But in all the times that you have looked at Luton documentation, there was never one single document, I suggest to you, that made any reference to ML or Michael Lowry in all of the documents in relation to Luton; isn't that correct?

A. Yes.

Q. That is not the case in relation to Mansfield, Cheadle or Doncaster, isn't that correct?

A. Yes.

Q. And you were asked about Christopher Vaughan's letter, the letter of August of 1998, I think, where the reference to Michael Lowry I hadn't entirely understood your total involvement, that particular letter?

A. 25th September, '98.

Q. And you were asked wasn't that untrue; isn't that right?

A. Yes.

Q. Now, let's be clear about this. When you asked Christopher Vaughan about it, he told you that Michael Lowry told him something that led him to that view; isn't that right?

A. Yes.

Q. Christopher Vaughan is not a stupid man?

A. No.

Q. So, if there was any untruth here, so and there is no suggestion that Christopher Vaughan was telling you an untruth, is that right?

A. Correct.

Q. So what is the untruth? Who told the untruth?

A. I guess Michael Lowry

Q. Lied?

A. maybe, in an act of bravado, gave him an impression he was involved. I am only surmising that.

Q. I see.

MR. COUGHLAN: Thank you.

CHAIRMAN: Thanks for your attention, Mr. Phelan.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Tomorrow at what time, gentlemen? Eleven.

THE TRIBUNAL ADJOURNED UNTIL THE 16TH MARCH, 2007, AT 11AM.