

THE TRIBUNAL RESUMED ON THE 20TH OF MARCH, 2007, A FOLLOWS:

CONTINUATION OF EXAMINATION OF DENIS O'CONNOR BY MR. HEALY

AS FOLLOWS:

Q. MR. HEALY: Thank you, Mr. O'Connor. I gather from your counsel, Mr. O'Donnell, that you tried to deal with two of the queries that arose in the course of your evidence last Friday. And I think the first one concerns the date on which you first, or roughly the date on which you first came across Mr. Kevin Phelan, and I gather that you believe that that was in the first three months of 1997, am I right in that?

A. Correct, I don't know if that was pre-dating August '97 from the

Q. I can't quite hear you, sorry.

A. From the queries I made at the weekend, I established a date of the incorporation of that particular UK company. I got hold of the Chief Executive's Christian name I mentioned. So he very briefly explained to me that he, as I said, I think, on Friday, was employed pre-incorporation of that company, and he was able to establish he started in August '97, and he further explained that the principal or owner of that company must have, having preceded him properly for the previous twelve months before he came and he, in fact, answered

MR. HEALY: Maybe the stenographer can't hear the witness. I wonder maybe if we rose for a minute and let the engineer fix it, rather than waste time.

CHAIRMAN: That would be preferable, rather than it's made more difficult for you and everybody else. We'll take five minutes.

A. Sorry, I was able to establish that from this guy, let's call him Terry, that the owner of the company and myself had spent the previous twelve months in attempting to get all the pre-trading stuff, including site acquisitions, in place. And he was also able to confirm to me that, in fact, the owner, at that time, was focused in the midlands, which would bring back the theory of how I felt I had met Kevin Phelan in the midlands. Our best guess from a conversation on Sunday was that that would have been in the first three months of 1997, which would tie in now with my recollection

Q. Right. And just, again, to clarify that, you met him with your client, you met him in a hotel was it only once or twice you met him, can you remember?

A. Just once.

Q. Just once. And did you have any subsequent contact by telephone or correspondence, or anything?

A. No. Whatever project, which I can't recall, or site or development land, my client had no interest in it immediately.

Q. So, as far as you are concerned, there was no follow-up with you, and you don't know, but would I be right in thinking there was no follow-up then with your client, either?

A. Being based on what he told me subsequent to the meeting, I would imagine no. I'd be 99 percent sure of that.

Q. And when you met Mr. Lowry or Mr. Phelan, I beg your pardon, Mr. Kevin Phelan, in the Regency Hotel in March of 2001, was that your first time meeting him after you had had that meeting with him in the company of your client in 1997?

A. Correct.

Q. And did you recognise him? Did he recognise you?

A. The name would certainly ring a bell, right. And I would have said, "We have met before." And he probably said, "Yeah". I think it was mutual recognition.

Q. Now, I think that the other matter that you undertook to try to do some other work on pertains to a document at Leaf 39 of Book 1, Book 82.

A. I have that.

Q. And it was with reference to the handwriting at the end of the last bullet point, just above the signatures on the second page of that agreement which appears to read "Kevin Phelan relinquishes exclusive right to sell this property. Kevin Phelan will receive a" you think that's "reward," is that right?

A. I think, but that I'm not certain of.

Q. Let's see how it reads, anyway. "Kevin Phelan will receive a reward fee." Does it look like that?

A. It looks like "fee," certainly.

Q. "Of i;½50,000"?

A. I would now agree with what you said on Friday; that has to look like "fixed," yeah.

Q. In other words, not dependent on a price achieved, or anything like that, not corresponding to a price achieved "due upon completion of sale," is that right?

A. That's correct. Now, the word "reward" I am pretty neutral on. I mean

Q. Whose handwriting is that?

A. That's Kevin Phelan's.

Q. Right.

A. Although when you look at that beside his signature.

Q. I appreciate his signature is in a large round hand and that's quite small, but

A. And not to actually throw the thing all over the place, generally, if I had agreed an amendment, I would have initialled it.

Q. It looks to be initialled, if you look at the right-hand side?

A. But that's not mine.

Q. That looks like it might be Kevin Phelan's, doesn't it, purely from the style of it?

A. Exactly. Just to put the word "reward" in perspective.

Q. Sorry?

A. Just to put the word "reward" in perspective, I got a dictionary and I went through the REs and that's the only word that I could come up with that remotely

Q. Looking at it on the overhead projector, it looks like it

could be "reward". It's not absolutely clear

A. Except the A is joined to the R and there is a gap in the middle of it, so it's weird.

Q. In any case, I don't think it's terribly significant. It seems to suggest a payment of a fee, however the fee is described, of  $i\frac{1}{2}50,000$  fixed due upon completion of the sale, and that seems to be the sense of it, doesn't it?

A. It does.

Q. Just while you are on that document, do you recall in your evidence on Friday, I think you indicated that the purpose of signing these documents from Aidan Phelan's point of view, was to get rid of Kevin Phelan, isn't that right, because the key thing here was fees?

A. Yeah, "get rid of" is a big yeah, it was to settle the Kevin Phelan issue so as to be able to move on with the sites, yeah.

Q. But do you remember I mentioned to you that if you disposed of the issue where Mansfield and Cheadle were concerned, weren't you left with the other issues: Doncaster, Altrincham, wherever else?

A. Well, Altrincham, I mean, as I sit here, I don't know where or what that's at.

Q. I appreciate that, but it was in your letter of the 18th June, 2001, which seems to have been the letter that started off your relationship with Kevin Phelan and Aidan Phelan, in which these matters arose; isn't that right?

A. Yeah, but as I said to you on Friday, I am quite clear in

my mind that there was there is not a link between this and my letter of June; in other words, the matter had died in June, and it got resurrected. In other words, I know

Q. How did it get resurrected?

A. Kevin Phelan telephoned me and told me that he was having huge difficulty in trying to even make contact with Aidan Phelan, and would I be prepared to try and negotiate settling his fee issue with Aidan Phelan.

Q. Why would he have huge difficulty making contact with Aidan Phelan when he had a continuing obligation to him to try to sell property for him?

A. That's what he told me. I mean, as I explained to you, there seemed to be great difficulties between Aidan and Kevin Phelan.

Q. Well, did you take the matter up with Michael Lowry, because he was in the same position, vis-a-vis Aidan Phelan, wasn't he?

A. Yeah, the same position

Q. He had the same obligation

A. He had the same issue, yeah. I apprised Michael Lowry of it, indeed, yeah.

Q. What did he say about it?

A. Do anything I could to try and settle the fees issue with Kevin Phelan.

Q. But the fees issue, how did that affect Michael Lowry in the sense that the fees, we're talking about hundreds and hundreds and hundreds of thousands of fees here; isn't that

right?

A. Yeah, you crystallised it on Friday - I forget what it was - yeah.

Q. It's  $\frac{1}{2}$ 225,000. I mean, I think, on any basis,  $\frac{1}{2}$ 225,000 fees can have nothing to do with those two properties on their own. No one was going to be getting  $\frac{1}{2}$ 225,000 for selling those two properties as fees, were they?

A. Nobody was going to be getting

Q. Does there seem to be any commercial reality in a notion or a proposition whereby somebody sells two properties for a joint amount of - what is it? One is for 375 and one is for there is no price on the other one, or is there, the second one? Well, one was to be sold for 375. The document doesn't refer to the price at which the other one was to be sold.

A. Yeah, but

Q. Assume it was something close to the value of 500,000. You have a total of 800,000 being sold and, out of that, fees of  $\frac{1}{2}$ 225,000 were to come. What I'm suggesting is that the sale of the properties was one thing. Taking the fees out of them doesn't appear to have been related to the effort going into selling the properties, does it?

A. No. The problem here, as I understood it, was that it was the deal that was originally made with Kevin Phelan is the core of this problem.

Q. But did Michael Lowry agree to that level of fees?

A. As regards Mansfield? He did, yeah.

Q. Or even as regards Cheadle?

A. I can't remember. I mean, I just can't remember I mean, I know he was comfortable with Mansfield, because certainly, to my way of thinking, Mansfield, at that stage, didn't appear to be a good deal.

Q. Well, be that as it may, did you have a discussion with Michael Lowry about the feasibility of doing this? Michael Lowry was going to if this succeeded, he was going to be finished with Mansfield. He was going to be finish with what he called his moral obligation to move Cheadle on; isn't that right

A. Correct.

Q. if this worked. And this was all based on somebody getting  $\frac{1}{2}$ 225,000 out of the sale. I'm not a property expert, I don't know whether you are

A. No, I'm not.

Q. But it seems a bit of a long shot, doesn't it?

A. But, you see, the question you asked me at the start of that, was Michael Lowry au fait and in favour of this, and the answer to that is yes, right? So, yes, I agree it's a high level of fees. What I was doing was negotiating between the different parties. That's all I was doing. I mean, I had no vested interest in, you know, in whatever way this came. And, like, it failed at the end, it failed. Life went on for me.

Q. In your letter of the 18th June, which I think is at Leaf 27 I'll put it on the overhead projector, it might



save you having to fold that large bundle of documents over and back all the time.

A. It's okay, I am at it, anyway.

Q. If you look at under the heading of "Letter 15th June" item B:

"As to Handforth and Cheadle, I expressed amazement that he purported to be a 40% beneficial owner. Eventually he agreed that he was not the 40% beneficial owner but rather he was entitled to 40% of the net profit.

"I told him that it was the first I was aware of same.

However, I did say that it was my understanding was that either you or Michael wanted to cover costs at this stage as a priority. I outlined that the current net cost on the sites was in the order of sterling 525,000 and sterling 300,000."

Do you see where you say you told him it was the first you were aware of same?

A. I do.

Q. Do I understand, therefore, that in the course of all the previous briefings you had received in relation to these two properties, nobody had told you the terms under which Mr. Aidan Phelan Mr. Kevin Phelan was to be paid?

A. Correct.

Q. And do I take it that seeing as there seems to be no correction to this at any point in the documentation made available to the Tribunal, that having checked it with Michael Lowry, he agreed with this?

A. Correct.

Q. And this seems to have been the same deal that was made in relation to Doncaster, isn't that right?

A. Correct.

Q. 40% of the profit?

A. I think he called it "the uplift," yeah.

Q. The uplift, yeah. In relation to these two agreements of September 2001, when they didn't come off, remember you said you gave your papers back, and so forth; were there any other agreements involving Aidan Phelan and Kevin Phelan at that time

A. Not to my knowledge.

Q. to get rid of, we'll say, Altrincham or Doncaster?

A. Not to my knowledge. I mean, Altrincham is an absolutely complete blank to me. I don't even know what it's about.

Q. You are sure there were no other agreements at this time?

A. To my knowledge, there wasn't, yeah.

Q. Just one other matter concerning those documents and the file that you opened in relation to them and which, as you mentioned, you ultimately gave back to Kevin Phelan. Would you not have any other record of that file? Would you not have kept any copy of that file in your own office?

A. No, I wouldn't. In fact, I probably didn't explain those files very well to you on Friday. Do you remember we were discussing it?

Q. Yes.

A. And, in effect, in our office, there would be three

different types of filing system. You have certainly seen two of them here in the Tribunal from the Michael Lowry Garuda files. On substantial jobs like this, or like back duty tax cases, a lot of stuff get puts in a lever arch file. On what I would call compliance clients, they were the files you had at the time. Each client would have a kind of a blue or a tax file; an orange or a correspondence file; and green files for every year of accounts preparation; red for, you know, all those types of files; and then, finally, twin-lock is the reference. There is these twin-lock files which are non-compliance, non-job work; sometimes it can even include your own administration stuff, and each one has a filing cabinet where they are dropped. But it would be by far the smallest section of filing in our office. So, to answer your question, no, I don't have

Q. But is there any way, when a file comes into your office, that some that, in some way, it's registered or recorded as a new file, a new client?

A. No. A new client, yes, is registered, right? A new client I mean, I can't tell you about 2001, 2000, but today, if a new client comes in, we now have the anti-money-laundering regulation, so it's the first thing that happens is it's notified to the person in charge of administration who then puts it on what we would call a work-in-progress list, it's office costs, and then it's frozen there until the basic items of a utility bill and

accepted ID is put in place and then it just takes off from there. As regards opening a file, no, there is no procedure as regards opening a file.

Q. But are there not the ordinary procedures that, you know, whatever accountancy body your firm is connected with would either stipulate or recommend so as to protect the firm in the event of any action being taken against it? Are there not protocols that you go through with a client like having a number, having an engagement letter?

A. I was just about to say, they recommend an engagement letter, but sadly, in our office, and I know from my colleagues in other offices, engagement letters wouldn't even apply in half the cases. It's just the nature of it.

I think an engagement letter comes into play on major audits, to be honest with you.

Q. What about the issue of holding on to your files for, you know, the standard period to avoid the risk of being left without any information in the event of somebody suing you for negligence, six years, or whatever?

A. Six years comes into play as regards the Revenue Commissioners, that's

Q. Leave the Revenue Commissioners aside for the moment. If a client decides to sue you for negligence - I am not suggesting you did anything wrong here - and you didn't have your file, wouldn't you be exposed in some way?

A. Yes, you would, but we don't think negligence. I mean, I can say this regarding the Revenue: We think Revenue, we

think of the six-year rule of the Revenue, that's the way we think.

Q. What did you do in relation to the six-year rule and the Revenue in this case?

A. Sure it had no bearing, he wasn't a client.

Q. Pardon?

A. It had no bearing, he wasn't a client.

Q. Kevin Phelan wasn't your client?

A. No. I was doing an exercise

Q. But was Aidan Phelan your client?

A. No.

Q. I thought you mentioned to me on Friday that you were doing this for Aidan Phelan?

A. Sorry, we are now getting down to the definition of 'client'.

Q. I'm not. I am just asking

A. No, he wasn't a client as we would consider it, Aidan Phelan nor Kevin Phelan.

Q. You were providing them with services, weren't you?

A. You are talking about something that, let me see, you are talking about something that I would regard as a non-client matter; in other words, doing a favour trying to resolve something. I think I have said it to you before, probably in private evidence, any time I met Kevin Phelan on this was at night in a hotel in Dun Laoghaire. So 'client', to us, is where you are either doing an audit, doing accounts preparation for submission to the Revenue, or you are

involved in some protracted matter that might be before the courts, such as liquidations, or whatever, whatever. Or, as I said, back duty tax cases or family law cases. This I would not have regarded as a client matter warranting what you are talking about.

Q. This may just be a small point, but I don't think all your meetings with Kevin Phelan were at night. In your letter of the 18th June, you referred to a meeting in your office on Saturday afternoon.

A. You are linking the two again.

Q. I am not; I am just referring to that. That was a meeting with him which was in your office?

A. Correct. But what I'm talking to you about is when I was trying to settle this matter sorry, I keep pointing at Tab 39 every single meeting I had with him was in that hotel in Dun Laoghaire because he either went out at night in a boat or came back at night in a boat. That's a fact.

Q. How does that, in fact what's the significance of that?

A. I didn't regard it as a client matter. You know, I mean, it wasn't compliance. We could argue about this

Q. How many meetings did you have with him?

A. I'd say probably four. If I remember correctly, it was kind of half eight or nine at night that boat moved.

Q. And how many meetings did you have with Aidan Phelan or Michael Lowry about this matter?

A. None with Aidan Phelan. One of the problems here was, if I remember correctly, that he either wasn't available or he

wasn't actually residing in the country at that time.

Q. Leave meetings out of it. Telephone contacts?

A. Sorry, probably the same, four or five telephone in other words, a reaction every time I met Kevin Phelan.

Q. Now, do you remember the last document we were looking at on Friday was document 48 in Book 82?

A. Yes.

Q. In fact, it was the second-last document?

A. Sorry, that's what I was going to say, I thought there was something else.

Q. And I was asking you whether you'd seen this document, the complaint made by Mr. Kevin Phelan to the Institute of Chartered Accountants by letter of the 4th March, 2002.

And I think you mentioned, you stated you hadn't seen it?

A. Sorry, that's correct, yeah.

Q. Were you aware of its contents?

A. No.

Q. I think you stated that Mr. Denis O'Brien asked you to get involved in this Mr. Denis O'Brien Senior asked you to get involved in this matter?

A. Correct.

Q. Can you remember when he asked you to get involved?

A. I believe it to be June, July '02.

Q. And what did he tell you?

A. That he was trying to settle, through his solicitors, a fee dispute on Doncaster with Kevin Phelan, and that, as part of that, he was aware of two complaints that Kevin Phelan

had made against people involved in the transaction from his perspective, and he wanted me to talk to Kevin Phelan about getting them sorted; I don't know what his exact words were - 'resolved', I'd say. That's when I first heard about it.

Q. Who were the two people?

A. I don't know whether he said Aidan Phelan/Bryan Phelan, but it was that camp, on the one hand, and Craig Tallents in the UK, on the other.

Q. And what did you understand Bryan Phelan to have to do with the Doncaster transaction?

A. Nothing, if I remember correctly.

Q. And what did you understand Craig Tallents, at that point, to have to do with the transaction?

A. At that point, it was explained to me that he was the accountant who was running or dealing with Doncaster, whatever.

Q. And at that time point, what did you understand Aidan Phelan to have to do with it?

A. With which?

Q. With the Doncaster transaction?

A. This is '02. At that stage, I would have known that Aidan Phelan had run the project, dealt in the acquisition of the project, but had now ceased to be involved in the project, I suppose is the best way to put it.

Q. Initially, you thought he was the project, you thought it was his project?



A. At the beginning, yes, absolutely.

Q. Did you eventually realise that it was not his project and that it was, in fact, an O'Brien family project?

A. Yes.

Q. When did you become aware of that?

A. That's my problem, as I said on Friday. I would just with all the documents, and everything, that's flying around me, I don't know when I became aware of it.

Q. At this time when Mr. O'Brien asked you to get involved in the complaint against Aidan Phelan, did you know that Aidan Phelan was not the man who, as it were, owned the Doncaster project?

A. I did. That's Senior now. We can take it now that all the references are to Mr. O'Brien Senior unless otherwise

Q. Yes. So you knew that Aidan Phelan was not the man involved at that stage?

A. Correct.

Q. Except inasmuch as he was running it except inasmuch as he was running it?

A. Had been running, sorry, yeah.

Q. And how were you going to deal with this without knowing the details of it?

A. Very simply. I was going to ask Kevin Phelan that it was in the interests of settling his fee dispute with Denis O'Brien Senior, whoever, about the Doncaster thing, that he would withdraw his complaint against Aidan Phelan/Bryan Phelan.

Q. And no more than that?

A. No more than that. I mean, as a result of what Mr. O'Brien Senior said, he said that a firm of solicitors was dealing with the matter in Dublin, and he said, "If you are going to assist in trying to get it settled, you need to contact them," which I did.

Q. And did they bring you up to speed on what the complaint was?

A. No, quite the opposite; they were reluctant to bring me up to speed on it. They kind of insisted that they were in control and comfortable with whatever it was all about, and I kind of, you know, vaguely recall saying to the solicitor I dealt with, that I was going to ask Kevin Phelan to withdraw the complaint and settle the complaint, and I just remember them making the point that if that ever happened, it would be on their terms. They were quite, what's the word?

Q. They were insisting that they were in control of the situation and that, if it was to be settled, they wanted control of the terms of settlement?

A. That's true.

Q. Well, then, when you went to persuade Kevin Phelan to settle, how did you go about it if you didn't know what the terms of the complaint were?

A. I just, all I did was pass on the message: If you intend to settle your fee claim in respect of Doncaster, I am telling you now that the message has been conveyed to me

that it won't be settled without the resolution and withdrawal, in effect, of your complaint about Aidan Phelan/Bryan Phelan.

Q. Does that mean that "You won't get your fees unless you withdraw the complaint against Aidan Phelan"?

A. It does, yeah. That's how I would read it, yeah.

Q. Can I now ask you to turn to document 57, please, in that Book 82. Now, you will see this is a handwritten file note of Mr. Owen O'Connell, solicitor in William Fry, and on the next page there is a printed transcription I think provided by Mr. O'Connell himself. So, unless you want to go back to the handwriting, we'll just go through the printed version for the moment.

It's headed "Memo":

"To: File.

From: OOC.

Dated 24th May, 2002.

Client: Denis O'Brien.

Matter: Moriarty."

Then there are a list of seven items:

- "1. Ownership of Westferry.
2. Rights of KP against Westferry.
3. DOB written instructions.
4. Letter to KP seeking particulars.
5. Response.
6. Letter to KP offering settlement.
7. Acceptance."

Then it says: "Through John Mulcahy?"

"Denis O'Connor/Christopher Vaughan re ownership of Westferry in first instance.

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

"Owen" I think that must be addressed to Mr. Owen O'Sullivan, who was also handling this file, because, as far as I know, they are the only two Owens in the firm.

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

Signed, "Owen".

Now, that document appears to be a sort of a task list, do you see that?

A. Yeah, it's

Q. Isn't that what it looks like?

A. Yeah, it does.

Q. And one of the issues that is arising is ownership of Westferry, do you see that?

A. I do.

Q. And then the last item just after the list is "Denis O'Connor/Christopher Vaughan re ownership of Westferry in first instance." And then if you pass from that on to the transcription of the note, you'll see: "Denis O'Connor said Christopher Vaughan can't help re Westferry ownership

but Walbrook Trustees did it." Now, can you throw any light on those references to you in that document?

A. I believe that, and I had forgotten about this until preparing for my evidence, that when Denis O'Brien Senior took on, if you like, managing the Doncaster project instead of Aidan Phelan, he seemed to have difficulty in gaining access to what, in effect, was his own project, or his son's project or whosoever project it was. If you could just park that for a minute. Also, at the same time, if I remember correctly, there was some reference to if I remember correctly, Westferry was, I think, a Kevin Phelan vehicle which acquired Doncaster. So a big issue of it, I think, was that Kevin Phelan, I think, was claiming for a while that he still owned Westferry, even though, as I understood it, Westferry then owned whatever, whatever Doncaster was, okay? But I do remember Denis O'Brien Senior contacting me and saying that he had just taken over from Aidan Phelan but he was having difficulty accessing the details of the deal that was done to acquire Doncaster, and he knew that I knew Christopher Vaughan, and I think he knew that Christopher Vaughan was the solicitor acting in the purchase, and he asked me, obviously, to try and find out about the vehicles or whatever were in place when Doncaster was acquired in the first instance. I had forgotten about that, but when I saw all this stuff, I do recall that.

Q. And can you tell me roughly when do you think that

happened?

A. Well, it had to be around then sometime, obviously, you know? I mean, it certainly as I have said to you before, I have always believed that Denis O'Brien first contacted me about this in the spring or early summer of 2002, so it was after the initial contact and it was around this. So it's somewhere in that I mean, if that's what you are asking me, generally what time?

Q. Yeah.

A. Yeah.

Q. And did you wonder what were you surprised that Denis O'Brien would ask you, Mr. Denis O'Brien Senior would ask you to make contact with his own solicitor, Christopher Vaughan

A. I was, yeah.

Q. to try to find out, to get information about his own company? Did you not say that to him?

A. I did. I said he said Christopher Vaughan won't even know who he was. I mean, I do agree.

Q. Christopher Vaughan wouldn't even know

A. Who Denis O'Brien Senior was.

Q. What does that have to do with it?

A. Well, Denis O'Brien Senior is asking him, right, to find out who Westferry, or whatever it was. And he said to me would I mind doing it because Christopher Vaughan wouldn't know who he was. Do you understand what I mean?

Q. No, I don't. I can't understand why he couldn't ring up

Christopher Vaughan?

A. Sorry, that struck me, but his point was that Christopher Vaughan didn't even know who he was. Of this, the whole point, that Westferry, if I remember Westferry purchased Doncaster, right? Westferry was a Kevin Phelan vehicle, right?

Q. Yes.

A. Now, somewhere after that - I mean, I'm not familiar with this - Westferry then became an O'Brien vehicle, but Christopher Vaughan, I think, dealt with all of that, but Christopher Vaughan did not know who Denis O'Brien was or what he was. I think in fact, now that you are asking me questions, this is all memory. It's quite possible that Aidan Phelan was the link on that and Aidan Phelan wasn't around. I think that may have been the reason he rang me, would I mind ringing Christopher Vaughan because, you know, I knew Christopher Vaughan. I mean, I can't remember it exactly, but that certainly I do remember being asked by Mr. O'Brien Senior.

Q. You know from the evidence, even if you haven't been following it in detail, and you know from your own knowledge, that Aidan Phelan was, as you put it earlier, running this project; isn't that right?

A. Correct.

Q. And presumably a telephone call from Aidan Phelan to Christopher Vaughan saying, "Look, I am slipping out of this a little now, somebody else is coming in, Mr. Denis

O'Brien Senior," is all that would have been required to sort out that, isn't that right?

A. Yes.

Q. But, instead, Mr. Denis O'Brien Senior went to you and then you rang Christopher Vaughan, did you?

A. I did.

Q. And what did you say to him?

A. I can't recall, but I would have said, "Look," something along the lines of, "Aidan Phelan is obviously not dealing with this. There has been some sort of change of running order on it. Denis O'Brien Senior is dealing with it and he is having trouble accessing the legalities of the mechanism of how all this thing happened." And I would imagine he said to me to try and find out about Westferry more than anything, right? So I rang Christopher and said that to him.

Q. And what did he say to you?

A. You see, I can't remember. I mean, as you read that bottom, as you call it, stick-it or Post-it note, right, it says: "Denis O'Connor said CV can't help re Westferry ownership but Walbrook Trustees did it." Now, if that's an accurate recording or note of what I said, or am supposed to have said, right, it would mean that Christopher said to me that it's gone beyond, if you like, the Westferry ownership and some crowd called Walbrook Trustees did it. That's what I would understand. I mean, I can't recall exactly what he said. I would have just passed it on.



Q. And your previous dealings with Christopher Vaughan had been as Mr. Lowry's advisor, isn't that right?

A. Correct.

Q. You had met him in Dublin. You had been in contact with him?

A. Correct.

Q. And did you go and visit him about this or did you do it on the phone?

A. No, I didn't visit him about this. This would have been a phone call. I mean, definitely a phone call.

Q. So he received a telephone call from Mr. Lowry's advisor asking him to help Mr. Denis O'Brien to sort out the details of Westferry, the company that had purchased Doncaster, isn't that what that means?

A. Sorry, I'm not being smart; there was a lot in that, if you could just repeat it before I answer you?

Q. No problem. The situation as outlined by you can be summed up as follows, I suggest: Mr. Michael Lowry's advisor rings up Mr. Christopher Vaughan and asks Christopher Vaughan to help out providing Mr. Denis O'Brien Senior, if you like, who is handling the Doncaster transaction, with details of the company Westferry by which the property was acquired, and he was prepared to do that; isn't that right?

Is that a good summary?

A. 'He' being Christopher Vaughan?

Q. Yes.

A. That's correct, yes.

Q. So he was prepared to discuss with you, whom he knew only as Mr. Michael Lowry's advisor, the details of Westferry's acquisition of Doncaster?

A. As I read that there, yes. What he said was, it's Walbrook Trustees, and as you look at it there, he obviously, I would imagine, knew that Walbrook was an O'Brien vehicle; in other words, go and look in your own records.

Q. What does it matter? The fact is he was discussing

A. Fine, yeah.

Q. He was discussing his knowledge of the Doncaster transaction with Michael Lowry advisor, and he seemed to have no difficulty doing it?

A. Who? He?

Q. Mr. Christopher Vaughan?

A. He definitely didn't, no.

Q. And I think Mr. Vaughan actually sent you some documentation, is that right?

A. Yeah. That, I'm kind of it's in here somewhere, isn't it?

Q. If you just go to 53 for a moment. You see the first document is a fax cover sheet on your notepaper addressed to Owen O'Sullivan, William Fry, Solicitors, and so on, from Denis O'Connor, "Pages to follow: 1."

And on the next page: On Christopher Vaughan's notepaper, is what looks to be like part of a letter or either a memo of some kind, but maybe you can help me on it.

A. Okay. Well, the first thing that tells me is that it would

suggest that either the specific query came from Owen O'Sullivan or I was told to reply to Owen O'Sullivan, okay, that's the first thing. As regards the second page of that, I have looked at it quite a few times and I have tried to put an interpretation of what it is. In other words, is it a one-page letter with something removed or is it a two-page letter with the front page removed? And I actually have no recall of this or of receiving this. It just doesn't ring a bell. I mean, when I look at someone telling me about people in Walbrook Trustees, and that, it looks like a response to what we were discussing a minute ago at the last tab, it definitely looks like that, but

Q. I suppose, because it's headed notepaper, you'd be inclined to think that it was the first page of a letter, do you understand me?

A. I do, I know exactly what you mean.

Q. Rather than a continuation page. And if you look at the fax banner, you see on the top you have your fax banner, "Denis O'Connor," and underneath that you have Christopher Vaughan's fax banner, and it just said "page 01," do you see that?

A. I do, indeed.

Q. You'd have faxed that to Mr. Owen O'Sullivan, presumably you'd had your own fax in your own file, wouldn't you?

A. My own fax?

Q. Well, you got a fax?

A. I did, yeah.

Q. And then you sent a fax on?

A. Exactly.

Q. But you still had the physical document

A. Yeah.

Q. in your own file?

A. I did.

Q. What file would that have been?

A. Well, I never had a Christopher Vaughan file, so it could well have ended up that I put it in a desk drawer, which I can do with stuff. We don't open files for everything that passes our desk.

Q. I appreciate that.

A. This is somebody looking for information that comes through and I pass it on. And, in fact, another interpretation I had of that, preparing for my evidence, was, was that, by any chance, part of or an extract of something that wasn't addressed to me, in the first instance, at all? In other words, it was information he had given to somebody else, and because I was asking it, someone pulled it out and flicked it on to me, type of thing. That actually struck me, looking at it, because it just doesn't make sense in isolation. Actually, sitting here, I can't even remember that document.

Q. I understand. Can we just go to the next document in that sequence. Document 58. I am sorry, Mr. O'Connor, I must ask you to go back to another document first. In fact, could I ask you to go to 56 first. This is a fax from

Mr. Denis O'Brien Senior to Mr. Owen O'Sullivan in Fry's

Solicitors of the 4th June, 2002. It's headed:

"Subject: Westferry.

"Dear Owen,

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

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

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

"I would very much like to see everything completed if possible before Thursday 20th June as I have to leave Ireland for ten days on business. When you have time, could you please telephone me to confirm safe receipt of this telefax and let me have comments regarding the

foregoing."

"Kind regards," and so on. And I think what was enclosed was the document we had on the overhead projector a moment ago, the one that you sent on, the Christopher Vaughan document?

A. Not what's attached here.

Q. No, what's attached there is in error.

A. Right. Sorry, what tab of the other

Q. Well, you have seen it. If you look at your monitor for a minute, you'll recognise it?

A. Sorry, the one from Christopher Vaughan, yeah, okay. Sorry okay.

Q. Now, if you go to the third paragraph of Mr. Denis O'Brien Senior's letter to Mr. Owen O'Sullivan: "When you receive this information from Sandra, I would be grateful if you could treat the matter of Doncaster Rovers with some urgency. I have again spoken with Denis O'Connor and asked him, for his part, to have prepared a legal comprehensive letter in draft form covering all aspects of the matter in which he has been involved in (with the exception of Westferry) and he has promised to give this his immediate attention when he returns on Wednesday from Mexico."

This suggests that you were in regular enough contact with Mr. Denis O'Connor with Denis O'Brien, does it?

A. When you see the reference to that other country there, right?

Q. Yeah.

A. I can actually recall getting stranded out there on business for most of that period, so I wouldn't have been in regular contact with anyone because there was around an eight- or nine-hour time difference when I was stuck. So "regular" just doesn't add up, to me.

Q. He says, "I have again spoken to Denis O'Connor and asked him, for his part, to have prepared a legal comprehensive letter..."

Leave aside whether it's regular or not, do you remember getting that request from Mr. Denis O'Brien Senior?

A. I don't.

Q. Do you remember him asking you to provide or to prepare any form of comprehensive account covering all aspects of the matter in which you had been involved?

A. I can't. I mean, I literally cannot remember. I mean, I'm trying to sorry, can you just, for a minute, tell me where that Christopher Vaughan tab is at that we were looking at a minute ago? I'm just trying to put it in context with this.

Q. Yes, 53.

A. You see, as that is written there, it doesn't make sense to my way of thinking. Because here I am, if you like, a few days earlier, being asked to find out how, or to find out from Christopher Vaughan how the deal was structured, the purchase of Doncaster. And, in fact, that would suggest that people were at a remove from finding out what was going on, i.e. Mr. O'Brien Senior. And then we are saying

I sent this to Owen O'Sullivan, the Christopher Vaughan extract, or whatever it is, and, almost in the same breath, all of a sudden I am preparing a legal comprehensive letter in draft form covering all respects of the matter. I haven't an idea of what that's about.

Q. There is a gap of four days. If we stay with that document for a moment. Christopher Vaughan appears to have sent you that document?

A. Correct.

Q. It looks to be the first page of a letter on the assumption that a continuation sheet doesn't have a person's headed notepaper?

A. Okay.

Q. The addressee seems to be missing, or the early part of the letter seems to be missing. But that's how you got it, in any case; is that right?

A. That's as I said to you earlier, a few minutes ago, I don't even recall this letter, the Christopher Vaughan one that's on the screen there. But keep going anyway, sorry.

Q. Could I just go back now to document 55, please. Again, it's a fax from Mr. Denis O'Brien Senior to Mr. Owen O'Sullivan. It's headed:

"Dear Mr. O'Sullivan,

"Please find copy of memo being sent to Denis O'Connor today.

"Yours sincerely,

D. Fogarty



Denis O'Brien's office."

Then on the next page, there is it looks like a memo of some kind:

"Content of memo to be sent by Denis O'Brien Senior.

"The following considerations should be incorporated in any agreement:

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

- "1. Any references to the party occurring during the business of the hearing.
2. Any publicity (radio, TV, other) occurring directly or indirectly as a result of the hearing.
3. Any correspondence, summonses resulting from either the hearing or litigation involving any of the property transactions which are the subject of the agreement.
4. Any attention resulting from the agreement or any payments made by parties to the agreement from the Inland Revenue or any taxation authorities, Companies House and bankruptcy assignee.
5. Any complaints rendered to the party to this agreement which are not under our control."

Now, do you recall getting that memo?

A. No, no.

Q. Well, could you have received that memo?

A. Could I have?

Q. Mm-hmm?

A. In a world where anything is possible, I could have, but I

never saw it before.

Q. Let me put it this way: Do you currently have a file in your office with the document that we had on the screen a moment ago?

A. No.

Q. From Christopher Vaughan in it?

A. No.

Q. Or your fax cover sheet in it?

A. No.

Q. So, if this document was sent to you, would it have been put into a file that from which it could be retrieved now?

A. Yes, if that could be retrieved now? I doubt it.

Q. Why not?

A. Because I have no files on any of this. But just to be clear, I never saw this before this. This looks like something that would be sent I mean, part of it looks like something that's kind of, what's the word, media driven, or something or I mean, not my department.

Q. Can I ask you to go to document 58 now, please.

Now, around this time, the Tribunal was in the process of moving on to hearings at the end of July concerning, what you may have been aware of at the time and which I am sure you are aware of now, as the long form/short form letters, do you remember those?

A. These were the Christopher Vaughan letters?

Q. Yes.

A. Yeah.

Q. Now, this is another William Fry file memo. The client is described as Denis O'Brien. And the matter, as with the previous one I mentioned a moment ago from Mr. O'Connor to his file, is headed "Moriarty". Then it says:

"DOB Senior re Kevin Phelan payment."

It seems to suggest some kind of contact.

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

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

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

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

"Above to DOB senior 11/6" in fact, if you look at the manuscript, it's '02 not '03 "9.35am."

Now, just to put this document in context, it appears to be related to the document we looked at a moment ago in Tab 56, because you see it's the same client, "DOB"; the same matter, "Moriarty"; and it refers to "Following steps

in OOC previous note," and that probably relates to the seven steps mentioned in the previous note. Do you follow that?

A. In 56?

Q. Yes. 57, sorry, I beg your pardon, sorry for confusing you, 57. I'll go through that again.

A. I have it. I was just looking at the wrong one a minute ago. So what you are saying to me is you believe this is a follow-on

Q. I'm just suggesting, to help you to put it in context. If you look at the two memos, they are both file memos from Mr. Owen O'Connell. The client in each case is the same, Denis O'Brien, and the matter in each case is the same, Moriarty. They were also produced to the Tribunal as part of the same file.

A. Okay.

Q. If you go to the fourth bullet point in the later memo, the one of the 11th June, you'll see, "If this rejected before any payment is made, follow steps in OOC previous note of which key ones are to establish DOB ownership (i.e. beneficial)," and that seems to be the theme of the previous note which contains seven steps.

A. Okay.

Q. Now, at this time, you were in contact with, it appears, Mr. Owen O'Sullivan and probably Mr. Owen O'Connell as well, is that right?

A. That's possible.

Q. And who put you in contact with them?

A. Well, the link was Denis O'Brien Senior.

Q. And what was the purpose of your dealings with Fry's at that stage?

A. Basically, Kevin Phelan was making a claim in respect of Doncaster. He had instructed solicitors in the UK. They were liaising with William Fry, and, at the same time, I was liaising with Kevin Phelan. So either Owen O'Sullivan or Owen O'Connell at times would make contact with me if we were having difficulty with issues relating to Kevin Phelan. That's the summary of it.

Q. I think, just if I could go over that. You say that Kevin Phelan was making a claim in respect of Doncaster. He had instructed solicitors in the UK; they were liaising with William Fry. And, at the same time, you were liaising with Kevin Phelan. Now, we know who the solicitors were acting for in England, they were acting for Kevin Phelan. We assume, from these files, that Messrs. William Fry were acting for Denis O'Brien. Who were you acting for when you were liaising with Kevin Phelan?

A. I wouldn't regard I would regard "acting" as a very strong word in those circumstances. I was assisting either William Fry or Kevin Phelan as the issue arose as regards, if you want to put it in kind of simplistic language, if clarity impasse, or whatever, arose, I was willing to try and help, if I could.

Q. But what did you know about Doncaster?

A. Nothing. Sorry, nothing. I just knew there was a fees dispute. I mean, I didn't know much about Doncaster, but I knew Kevin Phelan. That was the core part of it.

Q. Well, in what way was that the core part of it, your knowing Kevin Phelan?

A. Sorry?

Q. In what way was that the core part of it?

A. The issue was that Kevin Phelan was claiming fees in respect of Doncaster, and the if you want to look at it real technically, the beneficial owners of Doncaster were represented by Denis O'Brien Senior, who had instructed Fry's, and whenever issues arose, you know, I was, if you like, a link between Kevin Phelan and the deal.

Q. Could I ask you to look at the first bullet point in the document which says well, just before it, it says "DOB senior re Kevin Phelan payment". Were you aware of a payment being made to Kevin Phelan at this point?

A. I wouldn't have been, I think, at that time. I knew it was all about him getting his fee settled. So I wouldn't have been aware about a payment, as such.

Q. Well, leave the word "payment" out of it. Were you aware that, at that stage, a sum of money was being mentioned by Kevin Phelan?

A. At that moment in time, sitting here, I can't be sure, but I would imagine, yes.

Q. Looking at this file, no problems appear to have arisen at this stage with Kevin Phelan in relation to fees. Why were

you involved? What issues were you dealing with at this stage?

A. As regards who?

Q. Well, anyone. Why were you brought in at all?

A. Well, I suppose to cut to the chase of it, there were a lot of issues with Kevin Phelan. There was, not necessarily in order now: He was claiming fees in respect of Doncaster; the Mansfield issue still wasn't resolved; the Cheadle issue wasn't resolved; I don't know if it was exactly at this time or not, but we had the complaints about Craig Tallents, Bryan Phelan to their respective bodies. There was also, I suppose certainly an issue that concerned me greatly was that when I signed those September '01 agreements that they were discussing there a while ago, which is, if you like, the non-enforcement of them crystallised at the end of '01, early 2002, I just felt I was being isolated as regards those two agreements. There was a perception put around that I didn't have Aidan Phelan's authority to go as far as I did. That was a concern to me. And finally, I think around this time, or sometime around then, there were all sorts of people trying to get themselves off the hook with Kevin Phelan and try and get sorry, another issue that was hanging around was Vineacre, there was a fees issue with Vineacre at that time as well. There was all sorts of issues.

Q. Wasn't one of the issues, the first point mentioned by Mr. Owen O'Connell in this, that Kevin Phelan was the

potential witness hostile to DOB in the current Tribunal?

A. I don't know what he means by that note. I actually don't know.

Q. Was that ever an issue, as far as you were concerned?

A. No.

Q. That was never a problem?

A. I mean, I have been conscious of the fact that he promised to cooperate, you know, one; and subsequent to that, he wouldn't cooperate, and, I mean, I have been conscious of the fact certainly for, say, around then sometime, that he wasn't cooperating with this Tribunal. I can't put a time on it sitting here, but I became conscious of the fact that, subsequent to agreeing to cooperate at the beginning, he went the other way around. I don't know what that reference is, though. It's

Q. Were you aware at that stage, or were you not in fact aware, I think as you mentioned a moment ago, at that stage, that the issue of the long form/short form letters which concerned Kevin Phelan had arisen?

A. Was I aware? I couldn't tell you.

Q. Well, presumably you must have been, judging from the date, the 11th June?

A. Yeah, that's what I mean, I am sitting here and I don't know. I mean, you understand what I mean? I can't go back in time and put myself

Q. The Tribunal had written to Michael Lowry, Mr. Michael Lowry's solicitors about the



A. Then I would have been aware. Sorry, that's the point I am trying to make. If someone can put it in context for me, yes. If the letters had been issued, if you know, what became the issue, what you call the long form/short form had raised its head, well, then, yes, I was aware.

Q. You said you were concerned about the fact that you were being isolated with reference to whether or not you had authority to conclude the September agreements. Why would that have been any concern of yours at this point?

A. Well, it was a concern of mine at all points.

Q. Pardon?

A. It was a concern of mine at all points, not just at this point.

Q. But that was over, it was history, wasn't it?

A. No, it wasn't.

Q. The arrangement hadn't worked out.

A. Yeah, but I had signed an agreement with Kevin Phelan, and in the beginning, sometime in 2002, his advisors put it to me that I didn't have his authority to take that agreement down the line. That concerned me. It continued to concern me.

Q. Did you ever write back to his solicitors at that time?

A. No.

Q. Did you write back to him directly?

A. No.

Q. Did you take it up with him directly?

A. No.

Q. Well, then, how was it a matter of concern to you if you didn't intend to do anything about it?

A. Because what was put to me isn't what happened, that's where it was of concern to me.

Q. But, in any event, why would you have been concerned about that matter since it involved Aidan Phelan, and that was your concern, when you were now dealing with something else altogether, isn't that right?

A. Well, I wasn't such concerned with Aidan Phelan, if you follow. What I was concerned was that I had signed a piece of paper with Kevin Phelan. That was my concern. And

Q. No, no, you told me that you had received a letter from Mr. Aidan Phelan's advisors?

A. Yes.

Q. And I asked you what your concern was. You put it down to a letter you received from Aidan Phelan's advisors suggesting you didn't have authority to do what you did, you said that was a matter of concern to you?

A. Of course, yeah.

Q. And I asked you about it. You said you never responded to it, you never wrote to Kevin Phelan, you never spoke to him about it. You are now telling me or am I right that you are now telling me it's something to do with Kevin Phelan?

A. No, not Kevin Phelan. Aidan Phelan. The last person I would have been highlighting it to would have been Kevin Phelan. You said Kevin Phelan there a second ago, I think.

Q. I think there is perhaps a bit of confusion. Maybe I am

responsible for it. You indicated that you had a concern that you were being isolated with reference to the conclusion of the agreement in 2001?

A. Correct.

Q. September.

A. Correct.

Q. And you said you had a continuing concern about it, and that concern, am I right in my understanding, related to your dealings with Aidan Phelan?

A. Correct. But how you are putting it doesn't catch it correctly.

Q. You were concerned because you had received a letter from Aidan Phelan's solicitors?

A. Correct.

Q. So your concern was to do with your relationship with Aidan Phelan, is that right?

A. My concern was I suppose I'd better put this simply my concern was that Aidan Phelan's solicitors were now saying that what I negotiated with Kevin Phelan had been without their client's authority or permission, or whatever. That was grand. I didn't feel as such, if you like, that I was going to have a problem with Aidan Phelan as a result, right? But I was wary of the fact that I could have a problem with Kevin Phelan.

Q. I don't understand that?

A. Sorry?

Q. I don't understand that. Perhaps you could explain it to

me?

A. Those two agreements that you are looking at are signed by, just, Kevin Phelan and myself, and if Kevin Phelan wanted to pursue them in any shape or fashion, right, say try and enforce them in any shape or fashion, whatever, I was his target, not Aidan Phelan, because I signed the agreements with him. That was my concern.

Q. But weren't the due dates for the completion of those agreements already passed?

A. Exactly. But when a firm of solicitors writes to you after the due date has passed and starts trying to put it to you that you didn't have their client's authority, then you get concerned. The same principle applies as to what you are putting to me is what was in my mind.

Q. But weren't the agreements history at that stage?

A. But why would his solicitors write to me then in the following year?

Q. I suppose perhaps they took the view that you might continue to represent that you had authority for their client, which they claimed you didn't have?

A. Well, they didn't talk in the future; they talked in the past, after the dates that you are talking about had expired.

Q. Did you bring this matter to the attention of your own solicitors?

A. No.

Q. You brought it to no one's attention?

A. No.

Q. You were now involved again with Kevin Phelan, isn't that right?

A. That's right.

Q. And you had an apprehension that you could be in trouble if he sued you over the previous agreement, is that right?

A. I had an apprehension about having been isolated by Aidan Phelan in my dealings with Kevin Phelan.

Q. To do with whether you had authority to represent the person you claimed you were representing?

A. Correct. I believed I had the authority. Now it was being disputed.

Q. In relation to this matter, you described your role as in some way liaising with Kevin Phelan. You were liaising with Kevin Phelan?

A. Sorry, I'm not being you said "this matter"?

Q. This matter, the question of the continuing dispute or continuing, how shall we put it, dealings regarding his fees?

A. On Doncaster? Sorry, I wasn't sure which subject.

Q. Yes.

A. Correct.

Q. And why did you continue to deal with him?

A. You see, I never fell out with Kevin Phelan. Is that what you are I mean

Q. I was just wondering, you had an apprehension that he might cause trouble for you over the previous agreement in light

of what Mr. Aidan Phelan's advisors had said to you?

A. Correct.

Q. You were continuing to deal with him now in a new matter?

A. Yeah.

Q. Isn't that right?

A. Yeah.

Q. Did you know precisely what your role was in continuing to deal with him in relation to this new matter?

A. Precisely, no, but I had an understanding of what it was.

Q. Well, what was your understanding?

A. Very simply, that himself, his solicitors and Fry's were trying to reach an agreement on a fees issue relating to Doncaster, and if at any stage or other in it that I could help, I was happy to do that. That's my understanding.

Q. Were you some sort of broker?

A. I don't know what the definition of a 'broker'. I mean, I think a broker, I think of insurance broker. No, broker is broker I would understand to be kind of a Henry Kissinger type thing. I wasn't that.

Q. Were you acting for Michael Lowry?

A. As regards?

Q. In any aspect of this?

A. When you say "this," you are talking about Tab 58?

Q. Yes.

A. No.

Q. Were you acting for Kevin Phelan?

A. Acting is just that

Q. Well, did you were you representing him? Did you have his authority to represent him?

A. No.

Q. Were you acting for Denis O'Brien Senior or Westferry?

A. No.

Q. At this particular time, did you have any dealings with Kevin Phelan in which you were acting for anybody else other than the people I have just mentioned?

A. Sorry, I am trying to be careful here. I am sure you can read that question back to us. There is one part of it that I didn't catch.

Q. Well, I just want to know, were you dealing with Kevin Phelan or his solicitors at this time on behalf of any person?

A. Middle of June '02. I'm not quite sure that at this stage we had got into the issues I raised with you earlier, i.e. the two complaints, Vineacre, this, that and the other. So at that moment in time, I'm not certain, but certainly, soon after, I was conscious of the fact that I was trying to get agreement on all issues that were flying around, those ones I listed to you earlier. But you are asking me about a specific moment in time which I am having a bit of difficulty with.

Q. Let's leave the specifics out of it for a moment and come back to this document again. You see where Mr. O'Connor is noting or recording his "concern about Denis O'Brien making a payment to Kevin Phelan in circumstances of current

Tribunal where Kevin Phelan a potential witness (hostile to Denis O'Brien)." That seems a perfectly reasonable concern, doesn't it?

A. Well, it's his concern, yeah.

Q. Doesn't it seem perfectly reasonable? You are making a payment to somebody who is potentially likely to cause difficulties for you in relation to the inquiries being conducted here?

A. Fine, yeah.

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

Do you know anything about that?

A. No, well no.

Q. Well, you were dealing with Fry's, weren't you?

A. You mean communicating with Fry's, yeah.

Q. You were in communication with them?

A. Yeah.

Q. And you were in communication with Kevin Phelan?

A. Correct.

Q. Was Michael Lowry in communication with any of these people, to your knowledge?

A. Was he in communication with any of these people?

Q. Was he in communication with Kevin Phelan or with Fry's in relation to this matter?

A. Well, to my knowledge, he wasn't in communication with Fry's, certainly. And Kevin Phelan, I would say he had been in communication with Kevin Phelan around this period,



yeah.

Q. Do you know what that would have been about?

A. Well, I certainly know he was I am kind of 99 percent certain, it's something I can check time-wise, but I think the Vineacre project was in its height around this time. That's one understanding I have of it. It's possible that he discussed the Mansfield thing with him, but I would imagine, sitting here, I mean Michael Lowry can clarify that, but I would say my recollection is, around that time, there was a lot going on in Vineacre. That's my recollection.

Q. Is it likely that you were involved in his dealings with Kevin Phelan about Vineacre?

A. Vineacre was a job that, if you remember, I said I inspected the site in Wigan, but, subsequent to that, I didn't have much role in it. There was somebody else involved in it, as I said, and I think I actually think there was a lot of activity on Vineacre which I was excluded from. I actually think that.

Q. So at this time, Mr. Lowry was involved with Mr. Kevin Phelan in relation to Vineacre, and you weren't, as it were, in the loop; he wasn't getting advice from you about it?

A. Correct, he wasn't. The only ever real role, like, that I think I had around then with Vineacre was in my dealings with the Revenue Commissioners.

Q. Do you recall did Michael Lowry have any other dealings

with Kevin Phelan around this time, apart from Vineacre?

A. Not to my knowledge. Now, he could have discussed Mansfield, as I said, but I have no recollection of it.

Q. Well, would Michael Lowry himself have been dealing with it or would you have been dealing with it on his behalf?

A. Mansfield?

Q. Yes.

A. I think it was a dead duck at that stage. You know, it was nothing had happened on Mansfield, but it was there in the background as unfinished business, i.e. he had whatever, a 10 percent share in it. But you asked me could he have been talking to him; I said he could have been.

Q. No, could you have been talking to Kevin Phelan on Michael Lowry's behalf?

A. Only as regards Mansfield.

Q. Or Cheadle?

A. You see, that's what I'm trying to say to you, I don't have a recollection of, if you like, a hands-on involvement in sorry, did you say Vineacre or Cheadle?

Q. Cheadle?

A. Oh, Cheadle, I can't recall. I think Cheadle had kind of walked off the horizon at this stage. I thought you said Vineacre, apologies.

Q. So these things were not in the forefront of your mind at this time when you were dealing with Kevin Phelan?

A. Which things?

Q. Neither Mansfield nor Cheadle?

A. Well, I would have been conscious that they were unfinished business. As I said, primarily because my name was on both agreements, I would be conscious about that.

Q. Were you dealing with Kevin Phelan about them?

A. Dealing, no. 'Dealing' means in active role-play?

Q. Yes.

A. No.

Q. As I understand it, you may have been conscious of them, conscious of the earlier dealings, but they were no part of what you were involved in at this time?

A. Not day-to-day stuff, yeah, correct.

Q. If you look at the next bullet point, it says:

"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 KP to make a written claim against Westferry."

Do you understand what that means?

A. No.

Q. Does it have any resonance for you in the context of the dealings you were having with Kevin Phelan at the time?

A. No.

Q. Did Mr. Denis O'Brien Senior pass on any recommendation to you along these lines at that time?

A. No.

Q. Did he pass on any concern to you from his solicitors that there appeared to be collaboration between you and Michael Lowry, on the one hand, and Denis O'Brien, on the other

hand, in dealing with Kevin Phelan?

A. No.

Q. He passed on no concern?

A. Yeah, sorry, the word you used was "concern". No.

Q. Did he pass on any view to you concerning what Mr. Owen O'Connell has expressed or recorded here?

A. No.

Q. Can I now ask you to go on to document 60. It looks like a telephone message - it's from the files of William Fry - for Mr. Owen O'Connell from DOB Senior:

"Re: Attached fax. Can expect letter from Woodstock" I think that means Woodcock's "as a follow-up. Also, do not reply to KP solicitors until we have dealt with Denis O'Connor matter." Do you see that?

A. I do.

Q. If you just go on to the letter. It looks like a draft letter. It's addressed dated the 11th June, 2002.

A. Is that in the same tab, 60?

Q. It's in the same tab, yes. Is it not on yours?

A. No.

Q. I think you have a little

A. These are not in any of my books.

Q. I think if you go to the second document.

A. Can I just catch up on these just for a sec, please. These are definitely not in my book.

Q. They are all in the books but in different places.

A. Okay. Well, sure, look, you ask me what you want me to

look at.

Q. I'll go through them all very quickly and then I'll come back to them individually.

A. Fine.

Q. The first one is a letter from Mr. Owen O'Connell to Mr. Denis O'Brien Senior of the 11th June, 2002, and it encloses a draft letter and it seeks instructions. "Is it to go from me or is it to go from you?" And makes certain suggestions as to the drafting of the letter.

The next document is the draft letter that appears to be enclosed, do you understand?

A. I do. That's the second letter; in other words, draft of the 11th June?

Q. Yes. The next document is

A. What you just read out?

Q. What I just read out, which encloses a fax from Mr. Denis O'Brien Senior, again dated the 11th June, 2002, and which appears to refer to the draft.

"Dear Owen,

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

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

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

"I will keep you informed as matters progress with Kevin Phelan."

And the next document then is a draft letter as suggested by Mr. Denis O'Brien Senior. It differs slightly from the draft proposed by Mr. O'Connor, and it is as follows:

"Dear Mr. Phelan,

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

"When replying, please confirm the name of the person in Woodcock & Sons whom you wish us to communicate with and that this is the firm of solicitors who will act on your behalf."

And the next document is a letter that I may be coming back to later, but it's a letter from Woodcock & Sons to Mr. Christopher Vaughan, dated 19th April, 2002, in which Woodcock & Sons refer to the various capacities in which they represent Mr. Kevin Phelan, both in his own capacity, in his capacity as a partner of M&P, as a director of Game Plan International and in his capacity in Westferry and

Glebe Trust. We needn't go into it, but what it effectively does is it incorporates a withdrawal of a complaint to the English Law Society against Mr. Christopher Vaughan.

And the next document is simply Westferry's formal authority to William Fry's to act on their behalf.

It looks like this was following up from the earlier list of steps recommended by Mr. Owen O'Connell that Westferry or their solicitors, William Fry's, would write to Mr. Kevin Phelan asking what claims he had and what money he was looking for, and so forth.

A. In other words, the memo that's at Tab 58?

Q. Yes. But the message refers to if we just put the memo up, the telephone memo on the screen that refers to expecting a "letter from Woodstock as a follow-up. Also, do not reply to KP solicitors until we have dealt with Denis O'Connor matter."

Do you know what that's about?

A. No. What date is that message?

Q. I am assuming it's around the same time as the other documents, the 11th June.

A. Sorry, you see what you have just handed up, I have had all these already in these files, are you saying that?

Q. Yes, in different places.

A. Some of them look strange to me.

Q. For the moment, let's just concentrate on this, the one that contains this fax.

A. Okay.

Q. As I understand it, that attached the fax behind it?

A. Which is the one from Denis O'Brien Senior to Owen O'Connell?

Q. Yes.

A. Okay.

Q. "Thank you for your suggested draft..." All right?

A. Yeah.

Q. Now, if we go back to the telephone message. If you want to just read the telephone message to yourself. You have seen that before, the telephone message?

A. That was in the file. Okay. I'm really trying to get my head around all these documents here.

Q. You were involved in this transaction at this time?

A. Yeah.

Q. Somebody refers to dealing with a Denis O'Connor matter?

A. Yeah.

Q. Now, you didn't write this you didn't send this message, this telephone message, nor did you record it, of course.

I am simply asking you whether you are aware of any contact you had with, or you can recall any contact you had with Mr. Denis O'Brien Senior around this time

A. Well, I can't recall any contact

Q. relating to your role in this matter?

A. that you are trying to link at this specific period.

Q. I am just wondering are they linked?

A. I can't recall. I am actually going to look at these in



detail over lunch and see does it make any more sense to me, to be honest with you. You see, I wouldn't have looked at that message thing with anything, because the tab I have, it's sitting on its own here, I just passed it by, I didn't know what it was about. Do you understand?

Q. Yes.

A. But now I am looking at it in the context of an attached fax. So if it's okay, I'll do that at lunch hour and I'll see.

Q. Just before we do that, we'll pass on to one other document and you might consider that at lunchtime, as well. If you pass on to document 62, please. There are a number of documents in this leaf. The first one is a fax cover sheet from your firm, and it's from you to Denis O'Brien Senior dated the 14th June, 2002. It says "as discussed"; does that mean that you had a telephone conversation with Mr. Denis O'Brien Senior?

A. That's what that would mean, yeah.

Q. And with it you enclosed a letter of the 14th June from Woodcock & Sons, solicitors for Kevin Phelan to you:

"Dear Mr. O'Connor,

"Please find attached copy correspondence sent to William Fry together with fax confirmation sheet confirming it was sent and received on the 12th June 2002."

And it says "We act on behalf of" you see the document 12th June, 2002, "re Westferry"?

A. Yes.

Q. "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 project. Our client has forwarded details of these claims in the past (which are attached.)

"We instructed that our client is prepared to accept a £150,000 settlement of any claims for outstanding fees or uplift in relation to the above.

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

Now, that would appear to be related to the bundle of documents I gave you a moment ago, because it appears to contain a claim by Kevin Phelan to be owed money and his agreement to accept a £150,000 in settlement of any outstanding fees. Do you see that?

A. I do.

Q. That letter is addressed to William Fry, Solicitors, do you see that?

A. I do.

Q. But a copy was sent to you, isn't that right?

A. That's right.

Q. So you appear to have been kept quite firmly in the loop here?

A. Correct.

Q. And you got on to Mr. Denis O'Brien Senior to talk to him about it?

A. I got on to him, yeah.

Q. What reason did you have to get on to him about it?

A. I would imagine I said to him that "This is after being faxed through to me," or whatever way it was sent to me, "and I am sending it through to you."

Q. But sure doesn't it isn't it clear that it had already been sent through to him, because it's the letter that was sent through to you was already addressed to William Fry, Solicitors, do you see that?

A. I see that, yeah. I read that as written some way in the context of saying, "Look, I have made an offer to settle. Here is a copy of it and I am sending it on to Denis O'Brien Senior." And I would have imagined if it was today, I would have rang him and said, "I have a fax" or a letter, or whatever it was, "from this crowd, I am faxing it through to you."

Q. Before you got this letter, had you had any discussions with Kevin Phelan about how much money he'd be looking for?

A. I believe I must have, as I read it here, that he was prepared to compromise, or settle his deal on his fees claim for  $\frac{1}{2}$ 150,000. That's how would I read that.

Q. Had you had any discussions with William Fry, Solicitors, or Denis O'Brien Senior in relation to that sum of 150,000?

A. As I read it there, I would say probably not, but I can't be certain, sitting here.

Q. Is that possibly what Mr. O'Connell was referring to in his note when he spoke about "apparent collaboration with ML/ML advisor in relation to this payment"?

A. I don't know what that note is about. I just can't get it into context.

Q. How do you mean you "can't get it into context"?

A. You see, I have been reading it on its own up to now and now you have documents stuck to it, and I want to try and understand it a bit better.

Q. Well, we may just touch on it in the afternoon.

A. No problem, yeah.

CHAIRMAN: All right, two o'clock.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF DENIS O'CONNOR BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Thanks, Mr. O'Connor. Do you remember before lunch we were looking at I think it's document 62, was it? And you were going to consider it?

A. That's the one I took away with me, yeah.

Q. Do you remember, again, you were going to tell me if you could remember anything about it, to begin with, or anything about what it appears to refer to?

A. I have no idea.

Q. Except that, I think you agreed with me it must refer to a discussion you had with Mr. Denis O'Connor I beg your pardon, Mr. Denis O'Brien Senior?

A. Which part of it?

Q. Well, if we start at the very first part of it, which is your fax to Mr. O'Brien Senior.

A. Sorry, I'm looking at the wrong thing.

Q. Document 62.

A. Yeah, I have that now.

Q. I think, as you agreed with me before lunch, the first page of the three pages there appears to indicate that you had a telephone conversation with Mr. O'Brien Senior, isn't that right?

A. Correct.

Q. And that you were sending him on these documents which had been sent to you by Woodcock's?

A. Correct.

Q. Indicating what they had sent to William Fry's?

A. That's right.

Q. In which they set out that their client was willing to accept  $\frac{1}{2}$ 150,000 in settlement?

A. That's right.

Q. And what I was asking you about was, around that time, it would appear that you must have known something about this  $\frac{1}{2}$ 150,000 settlement being on the cards, if I can put it that way?

A. I agree it would appear that way, yeah.

Q. That, in other words, you seem to have been kept in the loop by, on the one side, Woodcock's, acting for Kevin Phelan, and on the other side, Fry's, acting for Westferry

or Denis O'Brien Senior?

A. Well, as regards this document, I am sending it to Denis O'Brien Senior.

Q. Yes.

A. So as regards this document being kept in the loop by Fry's, I wouldn't go along with being "kept in the loop," as you say it, yes.

Q. Well, okay, by Denis O'Brien Senior, if you want, as regards this document.

A. Yes.

Q. And if I could take you back, then, to Mr. O'Connell's note again, where, a few days earlier, on the 11th June - this is document 58, it's the second bullet point - he was expressing concern or "heightened concern," in fact, "by apparent collaboration with ML/ML advisor in making larger payment." Now, he doesn't say "collaboration," in fairness; he says "apparently collaboration," but could I suggest to you that that appears to relate to, or appears to describe the extent to which you were in contact with the O'Brien interests in making or in settling the amount of money at issue between Mr. Phelan and the O'Brien interests?

A. Okay, I got the question. Just which tab is that document at?

Q. Sorry, 58.

A. I am really sorry about this, where was the document that there is documents everywhere here. Can I ignore this

one, first of all, that I took away at lunchtime?

Q. If you go to Tab 58 now.

A. I'm at that now.

Q. And if you go to the document that's on the monitor in front of you, make sure it's the same document that you have?

A. Correct. It's the other one I need now that you were at.

Q. The other one we were on was 62.

A. That's the one. Now I'm clear, yeah.

Q. And at 62, what you have is you sending a fax to Mr. O'Brien Senior alerting him to correspondence you had received from Woodcock's in which Woodcock's were alerting you to correspondence they had sent to William Fry's indicating that they were instructed that their client was prepared to accept  $\frac{1}{2}$ 150,000 sterling in settlement.

A. Okay.

Q. And I am asking you, then, to go back to number 58, the document that's on the overhead projector, and I am suggesting to you that what Mr. O'Connell appears to be recording here is "concern at apparent collaboration with ML/ML advisor" meaning you, I am suggesting "in making larger payment," that he is referring to your role in settling this dispute and in making and in the making of this payment.

A. And the question is, do I see

Q. Do you agree with that?

A. No, I can't actually the Tab 58, the memo note of Owen

O'Connell, I can't link that, as you are linking it, to

Tab 62, which is

Q. I'm not linking it to Tab 62. I am linking it to what you agreed to me was signified by Tab 62, the fact that you were in the loop as regards the settlement of Mr. Phelan's demand for fees at  $\frac{1}{2}$ 150,000.

A. Okay, that I accept.

Q. So what was your role in that? What did you say to Mr. Phelan or what did he say to you about it?

A. In the settlement of the dispute?

Q. Yeah.

A. My role in it was, in effect, conveying messages between Mr. Phelan, Kevin Phelan, and William Fry's and the personnel dealing with it.

Q. And what messages did you convey?

A. I can't recollect it now, but, looking at this correspondence, I'd say at some stage I would have conveyed the message that  $\frac{1}{2}$ 150,000 would have settled it. That's what I think. It's very hard it's some time ago.

Q. I appreciate that.

A. You have sheafs of documents in between that you have been reading, and you are trying to isolate what you are asking me, like, what was I doing at that moment in time. It's quite difficult, so I'm doing my best in those circumstances.

Q. You have been asked a lot of these questions before?

A. That's fine.



Q. Some considerable time ago.

A. Yeah.

Q. But you think that your role would have been in conveying the message that  $\frac{1}{2}$ 150,000 would do it, in other words, something to that effect?

A. Would have been part of what I did, exactly, yeah.

Q. Well, you were hardly just, presumably, just conveying messages. The two firms of solicitors were in contact here. They seemed to be getting on quite well. Had you a role in persuading either side, in the case of Mr. Kevin Phelan to accept 150, in the case of Fry's to pay 150?

A. No.

Q. Well, what was the point in you being involved at all then?

A. What would settle it? I remember being involved in what would settle it. Whatever claims they were making on one another was outside my scope or knowledge, but I do remember 150 being conveyed by me as the figure that would settle it.

Q. Does that mean that you had been in contact with Kevin Phelan or his solicitors and, as a result of that contact, you conveyed that 150 would settle it?

A. I would imagine that's my recollection of it, I mean, sparse and all as it is.

Q. Who would you have been talking to?

A. Well, I think the settling of it would have come from Kevin Phelan, but, you see, I'm not a hundred percent certain of the exchange of documents between Fry's and Woodcock's. I

mean, I wasn't privy to what negotiation, if you like, went on, or what claims went on before they arrived at a settlement, do you understand? I mean, I don't know what the claims were.

Q. Well, did you not ask?

A. No.

Q. If Fry's or if Woodcock's had said to you 350,000 would be required to settle it, would you have just passed on that information?

A. If I was asked.

Q. Why couldn't they have passed that on in a letter themselves, which is what they did in this case anyway?

A. If you as I look at that, what they are setting out in this letter, in Tab 26, the letter of the 12th June, is that they are prepared to accept 150,000. What I'm saying is I don't know what preceded that between Fry's and Woodcock & Sons.

Q. Are you saying to me that that letter seems to indicate that this is a position that Woodcock's have adopted which they believe will be acceptable to Fry's?

A. That's the way I read it.

Q. That, in other words, there has been some contact beforehand which is going to be crystallised in the form of a letter from Woodcock's saying, "We have instructions to accept 150, the implication being that we understand you are going to pay it"?

A. That's exactly how I would read it.

Q. Well, now, on the files, there seems to be very little by way of correspondence setting up any demand or counter to any demand in relation to a claim for  $\frac{1}{2}$ 156,000 at this point?

A. Yeah.

Q. There was correspondence a lot earlier, but there is no correspondence leading up to this.

A. Well, I don't know.

Q. The deal appears to have been done fairly quickly, in other words?

A. The deal on the amount of money?

Q. Yes.

A. It looks that way, reading this, yeah.

Q. Go to document 63 for a moment. Sorry for delaying you, Mr. O'Connor. I am trying to find a calendar for this particular year. Document, or Leaf 63 contains a letter from, a copy of a letter from Messrs. William Fry's to Mr. C.A. Vanderpump, do you see that?

A. I do.

Q. Which encloses the letter that you had received, or which you had received a copy from Woodcock's, signifying that Mr. Phelan, Mr. Kevin Phelan, would take  $\frac{1}{2}$ 150,000, do you see that?

A. I see that.

Q. And this looks to be like a formal letter to Mr. Vanderpump of Westferry explaining the situation.

It says:

"Dear Mr. Vanderpump,

"Many thanks for your instructions 11 June 2002.

"I attach a copy of a letter received from Mr. Phelan's solicitors, Woodcock & Sons, together with a statement and invoice dated May 2001.

"You will see that they confirm that their client has confirmed that he is prepared to accept  $\frac{1}{2}$ 150,000 sterling in settlement both of his claim in respect of fees and his entitlement to a 40% uplift on the profits of the project subject to payment being received in the Woodcock & Sons client account by 4pm today.

"Also attached is a draft response for your approval.

"He should be grateful if you would give me a call on receipt of this fax."

And the next document is the letter offering the money.

The next document is a statement and an invoice following it.

And the next document is a draft letter from William Fry, Solicitors, to Woodcock's, confirming the settlement which is to be approved by Westferry.

Now, this is really, it seems to me, it's not unfair I think to describe it as a sort of a pro forma step in which the Isle of Man secretarial service operating the company are being brought up to speed as to what is happening, do you see that?

A. I do.

Q. But I think we can safely assume that the approval was

forthcoming, and that, therefore, by that day, Messrs.

William Fry & Sons, on behalf or by that time, Messrs.

William Fry & Sons, on behalf of Westferry, were prepared to settle the dispute for 150,000.

Now, the letter that I had shown you a moment ago from you to Mr. Denis O'Brien Senior was dated the 14th June. That was a Friday. And this and it enclosed the letter from Woodcock's, which I think was also dated which was dated the previous Wednesday, and this letter that I am asking you to look at now is the 17th June, which is the Monday following. So things are moving along at a fairly fast pace. But it would appear that there was no difficulty on the Westferry side in relation to the sum of money that was to be paid over. And if you look at the draft letter that was proposed, that would appear to give an indication of the thinking on the Westferry side at that time.

It says:

"Dear Sirs,

"We refer to your letter of 12 June, and having taken instructions from our client, Westferry Limited, confirm that our client will discharge  $\frac{1}{2}$ 150,000 sterling 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's claim to be entitled to a 40% share of any profits in the project and (iii) all other

claims by your client howsoever arising against our client, its shareholders, directors, employees 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.

"Arrangements are being made to have the payment transferred directly into your account as detailed in your 12 June letter. Kindly acknowledge receipt of both this letter and the payment as soon as possible."

That seems to be fairly simple, doesn't it? "You withdraw all claims and we'll give you  $\frac{1}{2}$ 150,000 and that's the end of our relationship"?

A. It certainly looks that way.

Q. Now, if we could just go on for a moment to 65. This is an attendance note of Ms. Ruth Collard, a solicitor in Peter Carter-Ruck & Partners, dated the 20th June, 2002.

"Re Doncaster Rovers Football Club and the contract dispute.

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

"DOB said he had one or two questions for RC. He asked about the proposal to arbitrate the case. RC said she was in a little difficulty speaking to DOB as she was not

entirely clear where he fitted in and she had to be conscious of client confidentiality. DOB said he appreciated this and he could tell RC that he owned the Wellington Trust which was the ultimate owner of Westferry. RC said she would still like to speak to AP but she could give him a brief outline of the current position. We were not discussing arbitration, but mediation, which was a different matter. DOB asked if there would be a binding decision at the end of the mediation. RC said there would not outlining to DOB how such a procedure worked and that if it failed the action would simply continue from where it had left off. RC said about 90% of mediations succeeded and both of those she had been involved in had succeeded but there was no guarantee.

"DOB said they were currently in this position with Kevin Phelan and had a letter from Reg Ashworth to him. DOB said he refused to speak to KP himself, but, through an intermediary, had asked KP what the current position was following that letter and whether he was going to be a witness. RC said what DOB was mentioning made her extremely uncomfortable. She asked if the letter he was referring to was one from Reg Ashworth to KP. DOB said it was and he could fax it through. RC said she did not want to see it. She asked how it was we had got hold of such a letter and said that it was privileged. In addition, what DOB had said about KP being a witness concerned her. That is why she wanted to discuss the matter with AP. Any

payment made which could be represented to be in connection with KP's evidence in this matter would be improper and a serious matter. DOB said it was not to do with him being a witness but he was not going to reach a settlement with him on outstanding fees when it appeared that KP was going to give hostile evidence. RC said this concerned her and she was concerned about how it could be presented. She did need to discuss it with AP.

"DOB reiterated that he had left a message for AP and hoped he would contact RC soon."

Now, behind that document is a faxed letter to Mr. Kevin Phelan from Mr. Reg Ashworth, who was the solicitor for Dinard Trading in the dispute effectively between the Richardsons and Westferry arising out of the Doncaster project.

Did you ever see this letter, Mr. O'Connor, apart from seeing it obviously in the course of preparing for this evidence?

A. No.

Q. You never saw it before?

A. No.

Q. Did you ever have any discussions with Mr. Denis O'Brien Senior concerning Mr. Kevin Phelan's availability as a witness?

A. As a witness?

Q. For the O'Brien interest in litigation, or anywhere else for that matter?



A. I think I remember having a discussion with him, but I don't think it was this time, about the subsequently, about the mediation, the arbitration, but not it doesn't ring a bell here.

Q. Yes. Isn't that what he is talking about here, the mediation?

A. Yes, but that's not what I am trying to say. In June '02, it doesn't ring a bell with me.

Q. When do you think it was you had the discussion?

A. I think it was later.

Q. What do you mean by "later"?

A. August or September, that late. This doesn't ring through as concerning me.

Q. When you had the discussion with him about it, what did he say to you?

A. My vague recollection, that he said that he was being asked by the representatives of Messrs. Weaver and Richardson to attend the mediation, or whatever it was, or arbitration, at their request.

Q. That was a discussion you had with Kevin Phelan?

A. With Kevin Phelan.

Q. But did you have any discussion with Denis O'Brien Senior about Kevin Phelan being available as a witness for Mr. O'Brien and his family's interests?

A. I can't recall it. I don't believe at this period in time I was aware of the details of the mediation or arbitration, or whatever it was.

Q. Could I ask you to look at the third paragraph, which begins: "DOB said they were currently in this position with Kevin Phelan and had a letter from Reg Ashworth to him. DOB said he refused to talk to KP himself, but, through an intermediary, had asked KP what the current position was following that letter and whether he was going to be a witness."

Now, Mr. Denis O'Brien Senior has indicated that he identified you as the intermediary he was using to speak to Kevin Phelan?

A. That I would accept.

Q. Well, if you look at the sentence, it suggests that, through you, he had asked Kevin Phelan what the current position was following the letter I just mentioned a moment ago, and whether he was going to be a witness. Do you understand that?

A. I do, yeah.

Q. Would you agree with that?

A. That I was an intermediary for Denis O'Brien Senior? Yes, I would agree with that.

Q. Would you agree with the rest of the sentence?

A. You see, I don't, because I can't recall it being, if you like, on the table that period in time. I certainly don't ever, I never saw this letter that you have with the pack from the English firm, so that's where I have a problem with it, time-wise.

Q. Leaving time-wise out of it, were you ever asked by

Mr. O'Brien Senior to inquire of Kevin Phelan whether he was going to be a witness?

A. I believe I was, yeah.

Q. And that was later on?

A. Later on that summer, yeah.

Q. And what information did you get from Kevin Phelan?

A. That he was being pressurised by Messrs. Weaver and Richardson to attend the mediation or arbitration hearing in London, and that he was reluctant to do so. That was the gist of it.

Q. And did you convey that information to Mr. O'Brien?

A. I possibly did. I couldn't tell you, sitting here, for definite, but I possibly did.

Q. But do I take it that you agree with me that you were asked by Mr. O'Brien to make the inquiry?

A. I'm not certain I was asked by Mr. O'Brien to make the inquiry.

Q. Now, could I ask you to go to Leaf 66, please. This is another file note from Messrs. William Fry's files concerning the Westferry dispute with Kevin Phelan. It's dated the 21st June, 2002.

"From: Owen O'Connell.

Client: Westferry.

"DOB Senior. Problem. OOS told Denis O'Connor another letter required for signature. What required?"

I don't know if you agree with me, but, to me, that seems to suggest that Mr. Denis O'Brien Senior was on to Mr. Owen

O'Connell and said, "There is a problem. Mr. O'Sullivan, your associate, your colleague, told Denis O'Connor that another letter was required for signature. What letter is required?" Would you agree with me that that's what it means?

A. As I read it, yeah, that Owen O'Sullivan is telling me some other letter is required for signature. That's what you are asking me, your interpretation?

Q. Yes.

A. Yeah, that's the way I read it, anyway.

Q. That you must have said it to Mr. Denis O'Brien Senior and that must have prompted him to get on to Fry's?

A. That's what it looks like, yeah.

Q. Now, if you look at the rest of it. "Denise in DOB Senior office" that seems to refer to a lady working in Mr. Denis O'Brien Senior's office.

"One letter from us to Woodcock Solicitors which Westferry [have] approved." The "have" is in brackets because it's not entirely clear, but I think it's what the sense of the note means. "Money being paid full and final settlement. Don't have authority to release awaiting DOB Senior authority. (Litigation impact Dinard Trading and Westferry query to Sandra awaiting response this a.m.)

"We awaiting money from Westferry.

"Will release money on receipt of confirmation from Woodcock as above."

Now, around this time, do you recall that sometime shortly

after you received the letters from Woodcock's that we mentioned a moment ago, the deal was done at 150,000, and at this point it seems that a problem has arisen. Now, we know the deal was not concluded until much, much later, isn't that right?

A. Until August, I think, or the end of July.

Q. It seemed to be very simple up to this point: "150,000, and you terminate your relationship with us." Do you recall a difficulty arising at this stage connected with the litigation that upset the settlement?

A. The litigation with the

Q. With Dinard, with the Richardsons?

A. No.

Q. Could you go on to the next document, which is number 67.

This is a memo from Mr. Owen O'Connell to Mr. Owen O'Sullivan of the 24th, but it refers to a number, and at least one important earlier document. It's:

"Client: Denis O'Brien.

Matter: Westferry.

"Herewith letter received on Friday last from Denis O'Brien Senior, together with my reply. I subsequently had a conversation with him, in which I explained that I had no knowledge of the Doncaster Rovers matter. He accepted that and suggested that the letter to Woodcock & Co should require, as part of the overall settlement, a written account by Kevin Phelan of the negotiations leading up to the dispute and of the dispute itself (the same to apply to

any other dispute regarding Westferry which is current).

"I would be obliged if you would issue a draft letter as instructed to Woodcock & Sons and copy it to DOB Senior.

The letter to them should be clearly identified as a draft and issued without prejudice in accordance with DOB Senior's instructions herewith."

The document I think you should turn to, to understand this, is the fax of the 21st June from Mr. O'Brien Senior to Mr. O'Connell, do you see that? It's the third document.

A. Sorry, I have that.

Q. Have you got it?

A. I have, yeah.

Q. It says:

"Dear Owen,

"The following is intended only to finalise the problem with KP, Westferry and Doncaster Rovers.

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

"With reference to this letter, could I please have your opinion that if KP should become, or indeed is legally bound to become a witness in all of the disputes relating to Doncaster, does this in any way complicate our draft letter addressed to his solicitors, Woodcock & Sons, regarding the dispute in relation to the Escrow account, or indeed any other matter, for example contingency funds

which are being held by to us meet any other potential outstanding claims from third parties which the Doncaster club may be responsible.

"I spoke yesterday with the English solicitor appointed by Aidan Phelan who represent Westferry. I was informed that Dinard Trading and ourselves have agreed to mediation only very recently. My question is do you believe any of the foregoing could prove a disadvantage to us in the future and specifically relating to finally getting rid of KP now.

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

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

"Kindly acknowledge safe receipt of this telefax."

The next document then is the Reg Ashworth letter.

Essentially, what that letter seeks to do is to inquire of

Mr. Phelan what his understanding is of the key events leading to the negotiation of the Doncaster Rovers project. I won't go into all the details of it at this stage, but it seems to be directed to ascertaining from Mr. Phelan, Mr. Kevin Phelan, whether any representations were made to him concerning the lease and the  $\frac{1}{2}$ 250,000 that would become payable by the purchaser in the event of a lease being made available, do you know that issue? You are aware of that?

A. I am aware of it.

Q. But it obviously appears to indicate that as of the date of the letter, which was the 13th February, 2002, Reg Ashworth, on behalf of the vendors, was seeking to, if you like, ascertain whether Mr. Kevin Phelan could be called as a useful witness for their side. You see that?

A. I do.

Q. And Mr. Denis O'Brien appeared to have obtained a copy of this letter and was seeking advice from Mr. Owen O'Sullivan about it. Now, I have already asked you, you never saw that letter until you see it here, so you knew nothing about that issue then?

A. No.

Q. Could you go to the second-last paragraph of Mr. O'Brien's letter to Mr. Owen O'Connell, and do you see in the second sentence where Mr. O'Brien Senior says, "The reason I ask you to do this is because I have been told that Kevin Phelan will not complete all other outstanding disputes until he has some form of communication from us indicating



that we are ready to settle re Doncaster."

Now, do you recall having any discussion with Mr. O'Brien Senior along those lines?

A. I don't.

Q. Did you ever receive any did you ever discuss the matter with Kevin Phelan which left you with the impression that he wouldn't settle the Doncaster dispute until all other disputes that he had were settled?

A. No.

Q. I think what you told me earlier is that you had received information from Mr. Denis O'Brien Senior that he wouldn't settle with Mr. Phelan unless Mr. Phelan settled, Mr. Kevin Phelan settled all other disputes, is that right?

A. Well, the other disputes being Craig Tallents and the Bryan Phelan/Aidan Phelan.

Q. When you agreed with me a moment ago that you were an intermediary, as Mr. O'Brien saw it, between Mr. O'Brien and Kevin Phelan, do you know if anybody else was also acting as an intermediary at that time?

A. I don't. Like, you use the word "intermediary". I'd just like to put it in perspective. This was taking up .01% of my time. It was telephone calls. So I'm just looking at some of the dates here. I don't think I was even in the country for half these times. So, to answer your question, no, I wasn't aware.

Q. You weren't aware of any

A. Whether there was or wasn't, exactly, yeah.

Q. In any event, if you go back to the first document in this set of documents, it would appear that a new element had entered into the relationship, isn't that right?

A. That's correct.

Q. And instead of settling for  $\frac{1}{2}$ 150,000 and the release of claims, there was now a request for a written account by Kevin Phelan of the negotiations leading up to the dispute, and so on?

A. Correct.

Q. Were you aware of that new element entering into the equation?

A. No, not at that moment in time.

Q. Did you become aware of it subsequently?

A. What I became aware of was that they sought an account from Kevin Phelan of his involvement, but I didn't understand it to be as it's written here, leading up to the dispute and of the dispute itself; that I never really understood.

"Dispute" being the arbitration or mediation.

Q. If you go on to the next document, just to put things in context at or around this time at the end of June 2002.

It's a letter from Messrs. William Fry's to Woodcock & Sons, indicating that Messrs. William Fry was prepared to settle, but subject to receiving a narrative of their client's position regarding the negotiations leading up to the conclusion of a deal and the subsequent and ongoing dispute with Dinard Trading.

Then the next document is a response from Messrs. Woodcock

& Sons

A. This is 69 now, yeah?

Q. Yes. This is their response to the letter from Messrs.

Fry's stipulating the condition regarding the narrative.

They say, on the 28th June:

"Dear Sirs,

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

"We understand that your client is prepared to authorise you to issue the correspondence dated 21st June 2002 subject to you first of all receiving a narrative account of our client's position regarding the negotiations leading up to the conclusion of a deal and the subsequent 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 to both sides. Our client previously put forward a proposal which has been rejected by your most recent correspondence.

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

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

"1. Negotiations leading up to the conclusion of the deal.

2. The dispute with Dinard Trading.

"Dealing with the first issue, our client is in a position

to be able to provide a narrative as he was directly

involved in relation to these negotiations. We would make

it clear, however, that these negotiations were very

intense negotiations over a nine-month period. There is a

substantial volume of documentation to evidence the

negotiations, which would run to several lever arch files.

For our client to be able to review all of this

documentation and to prepare a narrative (bearing in mind

the length of time that the negotiations go back) would be

a very substantial exercise. We would envisage that it

would take our client the best part of a week to prepare a

narrative and that during this period of time he would need

assistance from the writer to enable same to be concluded.

As you appreciate, our client is busy on other projects and

does not wish to spend this length of time unless it is

wholly necessary. Further, as you appreciate, our client

would not wish to incur the expense of having to do this if

it was not wholly necessary. Due to the difficulties,

therefore, in the preparation of the narrative, would you

please clarify the precise reasons as to why this is

needed. Christopher Vaughan was the solicitor who was

instructed in relation to the negotiation and the

conclusion of the deal in this matter and no doubt he would

be able to provide you with his files on the basis that he

was instructed by Westferry Limited (currently your client). Please revert to us on this.

"Secondly, our client has not in any way been involved in the ongoing dispute with Dinard Trading. Our client has no precise knowledge as to the nature of this ongoing dispute.

We believe it would be helpful if it is that our client was to let you have sight of correspondence that was sent by him to Aidan Phelan of Brian Phelan & Co, Chartered Accountants, recording the position as of 21 November 1998, some 13 weeks after the project had commenced. This identifies at that stage the difficulties that our client was having in this matter with Aidan Phelan. We further attach correspondence from our client to Aidan Phelan recording the outcome of the meeting on 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 in 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 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 please do not hesitate to contact the writer."

That letter, I think, was dated the 28th June. It would appear that it was intended that certain documentation would have been enclosed with it, and if you go on to the next document, but not the next leaf, you will see that Woodcock & Son state "We refer to previous correspondence.

We understand that you have failed to receive the attachments to our last substantial letter.

"To ensure that you can consider these, we attach further copies."

Then they send copies firstly of a letter of the 21st November 1998 from M&P Associates to Mr. Aidan Phelan. And then, secondly, a fax from Mr. Kevin Phelan to Mr. Aidan Phelan dated 11th August, 1999.

Now, at that time, did you recall receiving any intimation

from Woodcock & Sons or from Mr. Kevin Phelan that a difficulty had arisen in the settlement?

A. No, not as in when these faxes were going around?

Q. Yeah.

A. No, I have no recollection of being told of any dispute or request for narratives, about arbitrations. There is quite a lot in here.

Q. Leave aside the detail. Did anyone tell you that there was a problem with the settlement?

A. Did anyone tell me there was a problem with the settlement?

At some stage, they did.

Q. And who, do you recall, told you that?

A. I can't recall.

Q. Well, do you know if it came from the Kevin Phelan side or from the O'Brien side?

A. Eventually, it would have had to either come from Kevin Phelan or someone in William Fry. I just can't recall.

Q. Well, somebody or other on either side then you think contacted you and told you that there was a problem?

A. Eventually, yeah.

Q. Now, if you could look at, just to make it easier for you so you won't have to hold two books, if you pass on to book I think it should be Book 83. Now, the last document in Book 82 enclosed, as I said, the letter enclosed the attachments which were apparently intended or which were apparently attached or intended to be attached to the letter from Woodcock & Sons to Messrs. William

Fry's. If you go on to document 70, you'll find that in a letter from William Fry's to Denis O'Brien Senior from Owen O'Sullivan, the same documents are attached. Can you see that?

A. Yes. In other words, they are enclosing the same documentation that came in on the

Q. Yes.

A. Yeah.

Q. And these documents are the documents that were effectively described in the letter from Messrs. Woodcock & Sons that I read out a moment ago?

A. Correct.

Q. If you go to the second of these documents, it's the last two pages in Leaf 70. Do you see this document

A. I have it now. Go to the first or second one?

Q. Go to the second one, the one that's headed "Game Plan International, fax from Kevin Phelan to Aidan Phelan."

A. Yeah.

Q. You see it's a fax dated the 11th August, 1999?

A. Yeah.

Q. It's headed "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 Barker, Andy White) and Westferry (Kevin Phelan)."

There is a numbered list of items.



The first one is regarding is headed "Joint Venture":

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

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

"2. McAlpine/Westferry list of correspondence."

Then as there is a list of correspondence to be attended to under a number of different headings. Do you see that?

A. I do, yeah.

Q. Then the next item is item 3, "Retention Fund," and it seems to be a reference to tasks to be dealt with by, or a task to be dealt with by Christopher Vaughan and Craig Tallents.

The next item is "Outstanding Expenses":

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

The next item is "Altrincham":

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

The next item is "Luton":

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

And the next item is item 7, "ML":

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

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

Now, do you recognise that document?

A. In what context?

Q. Have you ever seen it before?

A. I have never seen it until I have seen it in the Tribunal documents.

Q. You have never seen it except in the Tribunal?

A. Yes.

Q. Had you ever heard about it before?

A. I believe that is the reference which I was asked about by either Owen O'Sullivan or Owen O'Connell in Fry's, the famous "ML" reference.

Q. Who asked you?

A. I believe this is recollection time but I believe that somebody in William Fry's asked me, or mentioned to me at one stage that they had received an exchange or documents or a narrative from Woodcock & Sons which had the reference "ML" in it relating to Doncaster. That's what I'm talking about.

Q. Did they say they had received a document?

A. I actually believe it said "narrative," but, you know, you are talking again about some time ago.

Q. If you go to document 75, now, for a minute. This is a file note of Mr. Owen O'Connell. The client is DOB Senior.

The date is 24th July, 2002. The matter is Westferry.

It says "OOS" it probably is to Mr. Owen O'Sullivan.

Then there is a Number 1.

"Denis O'Brien Senior letter." Then bullet points.

" put on inquiry by Woodcock. Must make inquiries."

Now that seems to relate to the documents sent by

Woodcock's, one of which contained a reference "ML" in the

terms that we discussed a moment ago. "All inquiries

regarding Doncaster to be sent to Aidan Phelan."

A. Okay.

Q. " discussed OOC proper inquiries are" the

manuscript gives you a better idea of what's envisaged

here. You see "proper inquiries are" and then there seems

to be a list of them: "Woodcock as already." And I

haven't gone into the documents, but there had been contact

between Woodcock's and Fry's seeking an explanation as to

what was meant by this reference, because it was a matter

of concern to Fry's for perfectly obvious reasons.

The next bullet point:

" Denis O'Connor as already plus follow up re who is

Mike Lloyd and what is his connection."

Next bullet point:

" Denis O'Brien no Michael Lowry connection plus who is Mike Lloyd."

Final bullet point:

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

Now, if you could just leave that for a moment and go into the next document, which is a letter of the 25th July to Mr. Denis O'Brien Senior. And it seems to put the state of play as of that point in time in context. It's from Mr. Owen O'Sullivan to Mr. Denis O'Brien Senior, 25th July, 2002. The subject is Westferry.

"Dear Denis,

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

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

sought and you might consider what response should be made to us. It seems to us that at least three possible responses could be made:

"1. Accept the narrative even though it's inadequate.

"2. Reject the narrative and demand again a comprehensive account of events.

"3. Accept the narrative subject to the correspondence being annexed to it and being confirmed as a true account of events (i.e. effectively make the correspondence the narrative). The narrative would also have to explain the ML reference (see below).

"I also agreed with you last week that I would review the "ML" reference issue with you and with Owen O'Connell when he and I both got back from our holidays. Having discussed the matter with Owen, we are satisfied that having been put on notice of the reference, appropriate inquiries have to be made. Subject to anything else you feel should be done, we think those inquiries should comprise:

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

Now, that seems to refer to the first point in the memo we had a moment ago.

" proper inquiries" do you see that? "Woodcock as already," so write to Woodcock's and ask them again to clarify the issue.

"2. Since Denis O'Connor understood the 'ML' reference was

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

Now, that, again, seems to tally up with the note "Denis O'Connor as already... plus who is Mike Lloyd and what is his connection."

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

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

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

Now, this seems to suggest that there had been some contact between you and either Mr. O'Sullivan or Mr. O'Connell, as you indicated a moment ago, concerning this Mike Lloyd, or concerning this "ML" reference, is that correct?

A. That's correct.

Q. And you say that nobody gave you the document when asking you to clarify who the "ML" might be?

A. That's right, that's correct.

Q. And did anyone read out to you the actual wording in question?

A. The '99 document that you read out?

Q. The portion of the document

A. No.

Q. Just so that we are clear about it, what it says is: "ML," and this is underlined, "Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan."

Did anyone tell you that was the entry or that was the reference in respect of which assistance was being sought?

A. Not specifically as you have just read it out to me.

Q. Well, would you agree with me that, reading it as I have just read it out to you and seeing as you can now see it in front of you, it would cause alarm bells to go, wouldn't it?

A. Well, considering it's headed up the Doncaster project, and it's totally about sorry, it's not.

Q. It's not totally about Doncaster?

A. Sorry, I just see the second-last two. Yeah, it has to raise alarm bells about query re Doncaster to Aidan Phelan under the heading of "ML," yes, yeah.

Q. Well, if "ML" meant Michael Lloyd, Michael Lynch, it wouldn't matter, it would be of no consequence, assuming those people were not connected with Michael Lowry. But if "ML" means Michael Lowry, then obviously alarm bells go off?

A. Correct.

Q. But when you were being asked to assist in it, you tell me that nobody said to you, "Look, the problem is ML is mentioned here in the context of Doncaster"?

A. Rather than answer your kind of specific question, let me just tell you my recollection of it.

Q. Yes.

A. First of all, this famous narrative that was mentioned, I didn't understand that ever to be part of the dispute issue as it's laid out here, you know, that it seems to be sought in that context. I always understood the context was that it was, if you like, substantiating the fee note. That's my understanding.

Q. I see.

A. As regards the second point, I was told that, as part of this narrative, right, that they had received documents, or whatever, from Woodcock & Sons, and there was a reference in it to Doncaster and ML and could I ascertain from Kevin Phelan what exactly it was about. That's my best recollection of that.

Q. So when they said to you as part of the documents provided, there is a reference to ML and Doncaster, you understood that to mean that their concern was that "ML" was Michael Lowry?

A. Correct.

Q. And did you relay that request to Kevin Phelan then?

A. I would have rang Kevin Phelan, which was more or less the request that was made of me.



Q. And what do you recall of that conversation?

A. That I would have just said to him that in the communications between Woodcock's and Fry's, William Fry's had received some correspondence within which there was a reference to the Doncaster project and "ML," and clarification was required as to what this "ML" reference was about.

Q. The same request that had been made directly to Woodcock's?

A. But, you see, I wasn't privy to what was going on with Woodcock's. Had it been made to Woodcock's at that stage?

Q. Yes.

A. Well, I wasn't privy to that.

Q. And did Aidan Phelan know what you were talking about?

A. Kevin Phelan.

Q. Kevin Phelan, I beg your pardon, did Kevin Phelan know what you were talking about?

A. I can't recall if he answered me there and then, right, or came back to me, I just cannot recall that detail. But I know he came back with a response. I just couldn't remember, sitting here, if it was there and then or a call back.

Q. And do you recall what that response was?

A. Yeah. He said the "ML" reference could be to a Michael Lloyd.

Q. And did he explain to you what role Michael Lloyd had in the Doncaster project?

A. No.

Q. And did he tell you it could be a reference to Michael Lloyd or that it was a reference to Michael Lloyd?

A. I believe he said it could be a reference to Michael Lloyd.

Q. If you look at the second page of the letter from Mr. O'Sullivan to Mr. Denis O'Brien and item number 2, it says: "Since Doncaster understood the ML reference was to a Michael Lloyd with whom Kevin Phelan had had business dealings for a number of years, we should ask Denis O'Connor to follow up on what Michael Lloyd's role might have been in relation to Doncaster." Then he says: "I understand that Denis O'Connor is making further inquiries in this regard today."

A. Sorry, what tab is that?

Q. Just take your time. That's Tab 76.

A. Yeah, I see that, top of the second page.

Q. Yes. Now, it seems to refer, firstly, to your understanding that "ML" referred to a Michael Lloyd, and your evidence is that you got that understanding from Kevin Phelan, is that right?

A. Correct.

Q. And then it suggests that you should be asked to follow up, and it goes on to state that it's understood that you are making further inquiries. Does that ring a bell? Did you get back on to Kevin Phelan and ask him for some more information about Michael Lloyd?

A. I don't recall ever doing that.

Q. And when you spoke to Kevin Phelan about it, you were both,

presumably, clear that what was causing the problem was a potential reference to Michael Lowry in the context of Doncaster?

A. Well, I did, and I was pretty sure he did. I didn't exactly say, "Do you understand what this is?" It just referred to the fact that correspondence had been received.

Q. Let's be careful now. Presumably you got on to him and said there is an ML reference here?

A. Correct.

Q. And if it means Michael Lowry, it's obviously problematical?

A. Well, I mightn't have just said it as you have said it, but I certainly would have been conscious of the fact that it could be a Michael Lowry reference, absolutely. And I am certain that he would have been in the same position.

Q. I see. Right. And he came back to you with Mike Lloyd as the person who could have been referred to?

A. Correct.

Q. Could you go to document 79 now for a minute, please. Did you have any further contact with Kevin Phelan about that reference?

A. The ML reference?

Q. Yes?

A. I don't believe I had. I mean, that's the way I read it. I mean, my recollection is that whatever the issue was, the lawyers could sort it out, as such.

Q. And did you ever have any further involvement in sorting it

out?

A. You see, I can't recollect anything further.

Q. Did you understand what the final sorting out of it was?

A. I actually didn't.

Q. Did you know that the final answer provided by Woodcock's was that it did mean Michael Lowry?

A. I understand that now, but it related to something else.

Q. And it related to Mansfield?

A. I have heard that, yeah.

Q. And when was the first time you heard that?

A. I believe it's from within hearings or documents of the Tribunal. I just can't recall that from back then. It just doesn't make sense to me.

Q. Sorry, I asked you to go to 79. I should have asked you to go to 78 for a moment. This is a letter from Messrs.

Woodcock & Sons to William Fry's. Now, we'll be coming back to this letter again.

A. Okay.

Q. At this stage, I just want to give you the context of it.

A. Okay.

Q. Messrs. William Fry's were insisting on an explanation and on a narrative, and they were insisting on either a narrative in explanation or an indication that Mr. Michael Lowry had nothing whatsoever to do with the Doncaster project. And Woodcock's were responding, saying that if that was what was being sought, their client was asked to do something which was it was not lawfully possible for

him to do at that point and they were instructed to terminate the negotiations, but in their letter, they set out a sort of course of dealings between the parties leading up to what they saw as the then impasse between themselves and William Fry's. Now, I think just the first two paragraphs or three paragraphs I want to talk about at the moment.

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

That's the 30th July, 2002.

"It is our view that our client has done everything that is possible to agree satisfactory terms. You will be aware that our client is in negotiations with your firm on behalf of Westferry Limited, LK Shields Solicitors 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.

"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."

Now, just to put the dating here in context. This letter is dated the 30th July, which was a Tuesday, the 30th July, 2002. It refers to the previous Thursday, which was the 25th. And it says that "the writer, together with Kevin Phelan, met with Denis O'Connor."

Now, can you recall meeting with Kevin Phelan and his solicitor around that time?

A. I can, yeah.

Q. You can?

A. Yeah.

Q. And can you recall what that meeting was about and where it took place?

A. It took place in Bury, and it was at the request of Kevin Phelan.

Q. And how did you get there?

A. I flew there.

Q. You flew to where?

A. Manchester, I'd say.

Q. How long did the meeting take?

A. It took around, I'd say, an hour.

Q. Yes. And did you fly, then, back to Dublin?

A. I can't recall I mean, I left sorry, I got to the offices of Woodcock's on my own and I left on my own, so I would imagine I flew back that day, yeah.

Q. And what was the purpose of the meeting?

A. Kevin Phelan asked me to travel over, that there were a lot of unresolved issues, and perhaps I could, by meeting his solicitor, try and get some of them resolved.

Q. And what were the unresolved issues?

A. The unresolved issues were: Bryan Phelan/Aidan Phelan; Craig Tallents; there were issues to do with Vineacre; and there was the issue of my own - I wanted him at the time to actually sign off on me in those agreements I had signed in December '01, and at the same time, the Doncaster issue was flying around and I think also at the same time there was an issue of Christopher Vaughan flying around, I think there was complaints on Christopher Vaughan, if I remember it right. Aidan Phelan was also seeking to get a 'no claims' letter, or whatever, from

Q. And did you deal with the complaints against Christopher Vaughan and Aidan Phelan and Craig Tallents?

A. I dealt with, certainly, Craig Tallents. I dealt with yeah, on the Bryan Phelan one, like I see the way it's written there, but if I remember correctly, the documentation, if you recall I said that LK Shields said it would be on their terms. If I remember correctly, they

drafted what they sought, and I could be right or wrong in this, but I could have brought it to that meeting, I could have, I just don't know. So there wasn't a lot of communication, if you like, between Woodcock's and the firm representing Bryan Phelan.

Q. And what about Christopher Vaughan?

A. Just, I recall at the time that I certainly was aware that Kevin Phelan I just hope I have my times right here that he had initiated a complaint I think against Christopher Vaughan and there was ongoing difficulties between the two of them. And I actually asked him to, if you like, back off on the Christopher Vaughan situation. That's my recollection. There was certainly issues I know an ongoing issue was this thing about the transfer of shares in Westferry which Kevin Phelan claimed hadn't been done and that he was still partial shareholder. There was a lot of issues on stuff like that.

Q. I think the complaint against Mr. Vaughan had been disposed of earlier in the year?

A. But I think the ongoing

Q. But your role was to try and get him to drop his complaint to the Law Society?

A. It was to get to stop the ongoing I am trying to get the right word for you now the ongoing disputes he was having with Christopher Vaughan.

Q. The only dispute he was having with Christopher Vaughan earlier was a dispute in relation to well, it was a



complaint he had made to the Law Society. He dropped it?

A. But I think there were other issues. That's my recollection, that there were other issues.

Q. Let's be clear about this: It wasn't an issue at that meeting because didn't we refer earlier, in passing, to a letter from Woodcock's withdrawing that complaint? Do you not remember that this morning?

A. I do. But I also think, if I'm right, that that didn't stop all, let's say, disputes between

Q. It stopped that dispute?

A. Yeah.

Q. Let's be clear about it then. That dispute wasn't on the agenda when you were in Woodcock's on that day?

A. I will accept that, but there was ongoing disputes between Kevin Phelan and Christopher Vaughan that hadn't stopped.

Q. Okay.

A. I can remember that that was going on.

Q. And there was a dispute concerning Aidan Phelan, Bryan Phelan and a dispute concerning Craig Tallents?

A. Correct.

Q. And these were complaints to their professional bodies?

A. Correct.

Q. And you were spending some time trying to resolve those disputes?

A. Yeah.

Q. But can you understand my difficulty in trying to see what your role was in resolving these disputes if you didn't

if you hadn't any access to the complaint documentation?

A. But, if I take you back in, you are talking about both with the professional bodies now, those two complaints.

Q. Yes.

A. If I take you back to both of those, I was made aware of them by Mr. O'Brien Senior; he asked me to get them resolved. The one way to get to the end of a resolution, if you like, is to withdraw the complaint or have it settled. I wasn't interested and I wasn't going to waste time on I mean, you read me out a letter there on Friday that Bryan Phelan wrote, and there was so many letters in it. You remember the last letter you read me out? There was so many letters in that that you'd want to knock off a day of your time to go through them all. I wasn't interested in the detail of those disputes. I was really saying to Kevin Phelan, "Will you bury the hatchet and settle these cases and get on with your life."

Q. But you were trying to do that without knowing anything about what his complaint was?

A. Yeah.

Q. I see. And the same for Craig Tallents, you didn't know what the complaint was?

A. I just knew he had complained him to the Institute of Chartered Accountants in England and Wales and, if I remember correctly, it was something to do with his management of the Doncaster project. It wouldn't be the only dispute that I'd be aware of that you didn't have to

go into the detail to solve something. I mean,

unfortunately, I mean, I have lots of them in my own

Q. Here you were over in England. You had taken the time off,

something which you said wasn't taking up much of your

time, you take the most of a day off to fly to Bury in

Lancashire to try to deal with a Craig Tallents dispute you

don't know the details of, to try to deal with an Aidan

Phelan dispute you don't know the details of, a Christopher

Vaughan dispute you don't know the details of, and, in

fact, you don't even know the details of the Denis O'Brien

dispute because you are not up to speed on it, are you?

How could you solve anything without having some idea of

what the disputes were about?

A. If someone I mean, in the real world out there,

unfortunately, people make complaints and they utilise

bodies to exert pressure at someone else's cost, the

taxpayer's cost, and, at the end of the day, if you get a

person to withdraw that complaint, that gets you there.

You don't need to know I mean, chapter and verse, that's

not my scene, I am just not interested in the detail. But

a result is what I was after.

Q. I see.

MR. O'DONNELL: Sir, I just don't want to cross Mr. Healy.

I think, in fairness, Mr. Tallents was unaware of what the

complaint was about. That had never been articulated to

him.

Q. MR. HEALY: Mr. Tallents had seen the documentation, but I

don't think Mr. O'Connell has, aren't I right?

A. I never saw. No, I was never aware I was told by Mr. O'Brien that a complaint had been made by Kevin Phelan to the Institute of Chartered Accountants and that part of sorting out his issues with Kevin Phelan would be getting that settled. I wasn't prepared to put time

Q. And was it the same with Denis O'Brien Senior, that he told you about Craig Tallents and he told you about Christopher Vaughan?

A. No, no. I thought I was talking about Craig Tallents there.

Q. Well, let's I am sorry. He told you about Craig Tallents. We know earlier that he told you about Aidan Phelan. Did he also tell you about Christopher Vaughan?

A. No.

Q. Who told you about Christopher Vaughan?

A. Christopher Vaughan told me.

Q. Himself?

A. Yes.

Q. Did Christopher Vaughan make it a condition of his involvement in any of these matters that you'd get rid of that complaint?

A. Not to my knowledge.

Q. If you go to the paragraph, it goes on: "Last Thursday the writer, together with Kevin Phelan, met with Denis O'Connor. Previously draft correspondence had been proposed to our client in relation to all by our client

in relation to all parties and also a draft agreement in relation to Michael Lowry had been supplied."

Do you know what that's about?

A. No.

Q. Did you have any discussion with Kevin Phelan about Michael Lowry?

A. I would have at that meeting.

Q. About what?

A. About Mansfield. In general chat about Michael Lowry, probably about Cheadle. I mean, I just can't recall it. I mean, I see all these connotations here, but I don't know what they are about. I mean, it's like

Q. Ah, you do know what they are about, Mr. O'Connor, surely?

I want you to understand the questions I am asking you.

Surely, you do know what they are about?

A. Which is?

Q. You know that the settlement here is being held up by a reference to Michael Lowry in connection with Doncaster.

You know that connotation?

A. I know that's in existence. But there is a lot of references here to Michael Lowry and agreements. I don't know what all that's about, and that's what I'm saying to you.

Q. Were you aware of draft letters?

A. The only draft letter I wouldn't call it a letter, that I am aware of I would call it more I tried to get Kevin Phelan, in the presence of his solicitor, to

withdraw, or to agree a 'no claim' against me. That I do recall, right?

Q. Yes.

A. And I think I said this to you already. He refused, but all he would give me was a verbal assurance that he would never pursue me in line of those agreements. I can't recall any agreements that reference Michael Lowry.

Q. Well, is this all fantasy, this paragraph? I mean, this is not just remember, now, this is not just Mr. Kevin

Phelan; this is Mr. McCann. Mr. McCann says "that 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 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."

Is all of that something you don't recall or something that is just fantastical to you?

A. Well, as I have said to you, I accept I had a meeting.

"Previously draft correspondence had been proposed by our client in relation to it also a draft agreement in relation to it had been supplied." To who, I couldn't tell, I don't know what that's about. "The terms of the draft letters and draft agreement were not satisfactory to Michael Lowry and Denis O'Connor." I don't know what that's about. And

the reference in that last sentence "to protect themselves in relation to future claims," well, if that's meant to be, or something suggested in relation to the ML reference that you are asking me about

Q. I don't know what it's about.

A. That's the point I am making. The only thing I was worried about were the two agreements I signed with Mr. Kevin Phelan. That's all. So, I mean, I find parts of that paragraph is accurate and parts of it I don't understand.

Q. Let's just go through it. Where is the accurate parts, because that's important?

A. Well, I accept, and I presume it was the previous I met Kevin Phelan and the writer, okay. The next sentence, I don't know what it's about. I mean, "had been proposed by Kevin Phelan in relation to all parties." "All parties," I don't know what that is about. And that a "Draft agreement in relation to Michael Lowry had been supplied." I mean, I don't know what that is, a draft agreement in relation to Michael Lowry?

Q. You know nothing about that?

A. I don't know what that is, no.

Q. Or a draft agreement in relation to Denis O'Connor?

A. Well, you see, the only thing I recall about myself, and my only concern would have been those two agreements that I signed in September 2001. I mean and I did ask. I am telling you I did ask. I am very conscious of asking to be relieved of anything that might be attaching to them. The

key amendments to the agreements

Q. Hold on, "The terms of the draft letters and draft agreement were not satisfactory to Michael Lowry and Denis O'Connor." That doesn't refer to the September 2001 documents?

A. I accept that. What I said

Q. No, but were there any other documents ever produced to you by Kevin Phelan or by his solicitors?

A. By Kevin Phelan or his solicitors? No. In fact, that meeting was quite short. I doubt if it was even an hour.

It was pretty hostile stuff, right, in that I remember he sat both of them sat on one side of a desk against and I was on, you know, the visitor's side of the desk.

And, I mean, it was kind of being conveyed to me that they weren't prepared to settle anything, and it was around that time that they brought into play that there was the ongoing, or the upcoming mediation, arbitration, that came up at that meeting. There was a lot of tension, aggression at that meeting.

Q. What was the aggression and the hostility about?

A. I felt it was about the fact that Kevin Phelan felt he had done a deal for 150. That was a lot of it. So where was his money or he had done an agreement for 150, where was his money? What was delaying the payment of his money? That was one part of it.

Q. Did you ask him what was delaying the payment of his money?

A. Did I ask him? I wouldn't say that I asked him. I would



imagine, at that stage, that there was this conflict going on still between him and or William Fry and Woodcock's.

I just can't remember, Mr. Healy. I mean

Q. Sure, doesn't it seem likely that you must have discussed what the hold-up was. If we look at your evidence in relation to another part of this, we'll come to it in detail later the retention dispute your anxiety was to see what the logjam is. What's holding things up?

What's the problem? You went to the trouble of flying all the way to Lancashire and back for a meeting that was to take less than an hour out of your entire day, without getting to the bottom of what the problem was?

A. I was asked by Kevin Phelan, right, to go to that meeting.

By nobody else. And as far as I was concerned, right, I was not resolving the Doncaster issue. I was trying to resolve the Bryan Phelan, the Craig Tallents, they were two primary parties

Q. You were trying to resolve the Doncaster issue then, weren't you, because Mr. O'Brien had told you that unless the Craig Tallents and the Aidan Phelan issues were got rid of, there'd be no settlement to the Doncaster issue?

A. I am talking about at this meeting, and if you actually follow what you just said, if the Bryan Phelan and Craig Tallents issues weren't resolved then, there was nothing going to be resolved. Like, let's think about it that way.

Q. Yes. But it was Mr. O'Brien was stipulating that these were it was Mr. O'Brien was inserting these conditions,

according to the evidence you gave this morning?

A. Yes.

Q. It's Mr. O'Brien was saying, "Unless those issues are settled, I won't pay any money"?

A. Yeah.

Q. But what Mr. Phelan's solicitors are saying here is, you have introduced a new element into this. The problem at this stage wasn't Craig Tallents, the problem wasn't Aidan Phelan; the problem was ML connected to Doncaster, wasn't it?

A. Okay, yeah.

Q. Isn't that what the correspondence shows?

A. The correspondence between Woodcock's and Fry's.

Q. That we have been just been through this morning?

A. Yes, that's what that shows, yeah.

Q. The real issue was that. So are you telling me that you were over there, looking back at it now on the basis of your evidence, doesn't it look like you were over there trying to sort out an issue that had nothing to do with the logjam in this so-called settlement?

A. You see, it's very easy putting an interpretation like that on it now in two thousand and whatever year we are in. But first of all, let me be quite clear: In 2002 I mean, you have put this scenario to me now quite a bit, right?

Q. Yes.

A. I first started acting for Michael Lowry on the 28th November, 1996 in a personal capacity. And from then to

now and from then, November '96, to then, I had sat and gone through most parts of his personal papers, right, in relation to every inquiry that was dragged out. It started with Buchanan, it became McCracken, it became the authorised officer, it became the Revenue Commissioners, it became this Tribunal, it became anything and everything.

And I never saw or I am absolutely satisfied, to this day, that Michael Lowry had no involvement in Doncaster Rovers, financial, material, beneficial. On top of that, the I'm trying to put this in a way the exhaustive inquiry that was carried out by the Revenue Commissioners with us as regards his affairs was pretty extensive. So, first of all, never in my mind did I have a conspiracy theory that Michael Lowry was involved in Doncaster. It didn't come into play. Now, I accept what you are saying today, you have to inquire into that, but you have also got to accept my frame of mind was never

Q. But wasn't it also the case that up until March 2001, you knew nothing about Mansfield?

A. That's right.

Q. You knew nothing about Cheadle?

A. That's right.

Q. You knew nothing about the Isle of Man, David Austin account?

A. That's right.

Q. And because you hadn't been told any of those things by Michael Lowry?

A. Correct.

Q. Right. And you were his right-hand man, if you like, providing enormous assistance to him and to the Tribunal?

A. Yeah.

Q. So doesn't that seem to suggest that you are telling me that I should accept it from your point of view that you could see no sign of Michael Lowry, of Doncaster anywhere in Michael Lowry's affairs, but sure up till March 2001 you hadn't seen any sign of Mansfield or Cheadle or the Isle of Man, either; isn't that right?

A. Well, I have been reminded numerous times that I am not an advocate. Sorry, I am answering your question, Mr. Healy. I have been reminded many times that I'm not an advocate. But from the first time I interacted with this Tribunal, everything, and I mean everything, stopped at the 31st December, '96. That was the way we operated, that was the way we did our business in here. And my understanding, as a non-legal person, of that, was that in 1997 there were legal cases, let's say, and I understood that the Terms of Reference applied to Michael Lowry during his period as a Minister in office. So we proceeded to work away on that basis. So, from that day on, every document that was supplied, every waiver that was sought, both in respect of Michael Lowry and his extended family of siblings and children and parents, all went to the 31st December, '96. Now, for a long time afterwards, it has kind of I have wondered about what's going on, but I have only recently

discovered that, again from a lay person's point of view, a non-legal person, that the Terms of Reference were amended in 2001, and I was never aware of that, and I don't believe

Q. I think you must be confused, Mr. O'Connor?

A. I am only telling you from a lay person. I am not a legal person.

Q. I think you must be confused. I think you said that you acted for Michael Lowry on the 28th November, 1996, in a personal capacity?

A. Yeah.

Q. "And from then to now and from then, November '96, to then, I had sat and gone through most of his personal papers."

And I think you thought that November was it November '96 was a cut-off date, was it? December '96 was a cut-off date, is that right?

A. Yeah.

Q. The account in the Isle of Man was opened in October 1996?

A. Yeah.

Q. Doesn't that seem to give the lie to what you said a moment ago?

A. No. I am explaining to you why everything I did

Q. I am not accusing you of having done anything. What I'm saying to you is you weren't aware of these things?

A. Correct. But you put the question to me in the context of the UK property, and I am answering you in that context. I accept your point about the David Austin account, let's

call it, right?

Q. Yes.

A. But I'm trying to tell you, if I am right or I am wrong I don't know, but I have looked at this as a lay person and I am telling you that everything we did went to December '96, and then something happened in 2001, which I wasn't aware of. That's just my understanding of it

Q. Can I just be clear about one thing: If you went to December 1996, and you had access to all Mr. Lowry's papers - that's the only point I am making to you - you didn't find, and you weren't told about the Isle of Man account?

A. I accept that. And Mr. Lowry can answer for that, as he has done in here.

Q. I am simply making the same point about the other properties; you weren't told about those either?

A. The Mansfield, Cheadle?

Q. Yes.

A. Correct. Just on that point

Q. Yes.

A. I mean, that's the issue I was getting to on Friday.

You are mentioning the David Austin money. Well, in '99, when I gave evidence, I was not aware of it, and on that basis I couldn't have told this Tribunal about it.

Q. Of course you couldn't have. I accept that, Mr. O'Connor.

The point is you made a statement here a moment ago - maybe we are at cross-purposes - saying you had examined all

Mr. Lowry's affairs from going back for years and that you never came across any sign of Doncaster?

A. Correct, yeah.

Q. What I am telling you is that you clearly didn't come across the other English property transactions either, did you? Nobody brought them to your attention?

A. But I was never looking for them.

Q. Nobody brought them to your attention?

A. Sorry, I am listening to you, but please listen to me.

Q. I will, of course. Sorry.

A. They didn't arise because we stopped at December '96.

That's what

Q. If you stopped at December '96, can you explain why you didn't become aware of the Isle of Man account?

A. Michael Lowry has explained that, and that's his issue.

But I am also telling you, in the context of what has been said, I was not aware of it in '99 when I gave evidence.

Q. Now, when you left this meeting and you came back to Dublin, what did you understand the state of play to be?

A. I genuinely can't recall.

Q. Was the settlement on or off?

A. My recollection was that we hadn't resolved the issues, that's my recollection, yeah, so therefore, we hadn't resolved the issues. That's my recollection.

Q. At that time, was Michael Lowry seeking to terminate his relationship with Kevin Phelan?

A. When you say you mean all his relationships?

Q. All his relationships with him?

A. I certainly know he was trying to get as I said to you, I wasn't intimately involved, I never was in this Vineacre project, but, as I understand it, just prior to this, Kevin Phelan had been paid fees in relation to his involvement in the Vineacre project, which I think was set up along the same type of basis, a share of the uplift type of thing.

Now, I know that Michael Lowry was keen that the Vineacre company project did not become, if you like, what, say, Mansfield and Cheadle eventually became, difficult situations, and he was trying to get finality, or I think, in fact, if I remember correctly, he was trying to get Kevin Phelan, if you like, settled and finished with the Vineacre project. That's my recollection of it.

Q. And was there any dealings with Kevin Phelan in relation to the Mansfield project? I understood you to say this morning there wasn't, but I'm not entirely clear on it now.

A. I don't believe sorry, except the agreement I signed.

Q. No, no, nothing to do with that. At this time, at this meeting?

A. No.

Q. And nothing to do with Cheadle either at this meeting?

A. No.

Q. So, when Woodcock & Sons - if you look at the first paragraph - write that there were issues, or write, rather, that they were in negotiations with you on behalf of Michael Lowry, are they correct?



A. This is in the first paragraph?

Q. Yes.

A. What I don't understand is they write that we were trying to settle the Vineacre issue

Q. No, at this meeting, at this meeting. This is about Westferry. Look at the top of the note.

A. I see that, but, as against that, there is references to Bryan Phelan okay, that was, partly related "myself on behalf of his client, Michael Lowry." I mean, no, Michael Lowry was not discussed in the context of Westferry or the Westferry project. The only discussion related to this Vineacre issue.

Q. And did you get any letter about that?

A. No.

Q. No letter was sent back?

A. There was nothing. I mean

Q. Nothing to report?

A. Except that he wouldn't agree that he still had an ongoing involvement in the Vineacre project. In other words, that he was entitled to fees and he was entitled to an uplift on that project.

Q. But that wasn't part of the settlement then? Vineacre had nothing whatsoever to do with any settlement that was being achieved at this time?

A. As regards Doncaster and

Q. Yes.

A. No.

Q. Could you go on to the next document, which is number 79

CHAIRMAN: Just while you are getting that, Mr. O'Connor, could I just raise one matter with you. I think you have devoted enormous man hours to the matter of Mr. Lowry and his relationship with this Tribunal. You have been down when you have given evidence, you have been here on other days and at court cases and you have obviously had to give a lot of time doing preparation for it and I suppose the matters primarily involved have been Mr. Lowry's accounts generally, getting them up-to-date or in some sort of shape with the Revenue Commissioners, and dealing, in particular, with payments that might be potentially improper, in particular the possibility of any payment from Mr. O'Brien.

A. Correct.

CHAIRMAN: It just seems to me that at the stage when you went over to this meeting in Bury, and you have stated that you were primarily concerned with the complaints and with payments and so on, it surprises me, from your evidence, that you did not perhaps regard the potential implication of Mr. Lowry in Doncaster as being very much the biggest item on the agenda, having been told about it by somebody from Fry's. I mean, would your reaction not have been "This can't be Lowry and Doncaster. Give me that document and I'll look into this"?

A. Well, my first reaction is, as you have just said, it can't be and it isn't Lowry. That's my absolute belief, okay?  
My second my response to the second part of your

question, Chairman, is that in all disputes that we get involved in out in the world, excluding Michael Lowry, you know, there is lots of things I would get involved in; if there is a firm of solicitors dealing with it, as in William Fry's, my attitude would be let them sort it out. That's my I mean, that's why they are there. And to some extent, it was easy for them, in inverted commas, to throw it on to me. What I would be reasonably good at saying, I'm not taking that poisoned chalice, so I would help where I could, but I wasn't prepared to take on the responsibility of something that I didn't have the full details of anyway. I just did not have access I mean, I am seeing stuff here in these files that I never saw before. So, that would have been naive and all as it might have been, that would be my attitude. And I have just got it, I have got the absolute belief that he had nothing to do with it, but I know that has to be adjudicated by you. But that's my belief. In life, in accountancy firms every day, a lot of what you work on is based on explanations. It's even in the certificates, based on explanations you get from your clients, and that. But, I mean, I had asked other people; like, I distinctly asked Christopher Vaughan one time, straight up: "Give me an honest, absolute, if you like on the Bible, was Michael Lowry involved in this project, any shape or fashion?" And he said, "Absolutely not." I mean, that was one of lots of people I asked was he involved? So everywhere I went,

"No". And everything I saw within Michael Lowry's and I accept what Mr. Healy is saying but I never saw any reference to Michael Lowry and Doncaster. And that's my belief. Now, I mean, you have to adjudicate on it, I am afraid, but that's my belief.

CHAIRMAN: Well, you might just bring him to the next document.

Q. MR. HEALY: But you have seen this document, now, with a reference

A. Sorry, I lost the number.

Q. The one we were discussing a moment ago: "ML, all queries regarding Doncaster to be sent to Aidan Phelan." You have seen that document now?

A. Now, yes.

Q. And that document does contain a reference linking Mr. Lowry to Doncaster, doesn't it?

A. It does, yeah.

Q. And does that surprise you in light of everything you have been told?

A. Does that surprise me? Lots of things in this saga have gone beyond surprising me. There is so many different, if you like, bits and pieces being thrown around the place. I mean, if you want to call it, in a country way, it looks like there was a lot of devilment going on all over the place. Like, a bit in here, a bit in there, a bit changed, a bit this and a bit the other. So, yes, it surprises me in one context, if that is a genuine document and it's

dated '99 I think it was that I saw a minute ago. As it's written there, it's a weird reference because, in a way, it doesn't list the project as the heading; it lists "ML" as the heading.

Q. It lists "ML" as the heading?

A. Rather than the project. That's the part that looks funny in it, just, again, from my opinion. I think it starts off with Doncaster I don't have it in front of me now.

Q. It goes on to other project?

A. Then it goes on to other projects and then it comes back to this. So it's quite a weird-looking piece of correspondence, to be frank about it.

Q. What's weird about it?

A. Sorry, could you tell me the tab it's at?

Q. You can find it in a few places, but the book you are in you can find it at 75. Could I ask you one thing, did you hear the evidence of Aidan Phelan?

A. No.

Q. 70, sorry, 70.

A. No, I wasn't here for that.

Q. It's addressed it was addressed to him. There is no suggestion, I think, that the document is any kind of a forgery or invented, or anything else?

A. No, I am not saying that. What I'm saying is

Q. We'll just deal with that first, and it came into existence, do you see, in 1999

A. I see that.

Q. when there was perhaps a degree of tension, but no falling out between Kevin Phelan and Aidan Phelan such as happened subsequently, right?

A. Yeah.

Q. And it lists who is going to do what? It looks like fellas are trying to sort of divide areas of responsibility so they can't be blamed for things that they weren't supposed to be doing and the other fellas can be blamed for things they are supposed to be doing, do you see that?

A. I do.

Q. It says at the end: "ML. Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan." It seems to suggest that: From now on, ML is Aidan Phelan's issue, not my issue any more. Do you see that?

A. I do, but I was being asked to comment on this letter, this fax

Q. Sorry, go ahead, sorry for interrupting you.

A. That's why I went back to it, right? So, I mightn't be the best at English or writing letters, but as you look at this, it starts off with a Doncaster project. Then it goes 1, 2, all to do with it; 3, a retention fund, which is that thing; 4, that wouldn't suggest that 4 is all of Doncaster. Maybe it is, I don't know. I don't know what it's about, but I'm just reading it as

Q. 4, 5, 6 and 7 seem to be tag-on issues, don't they?

A. They do. So now, what looks funny in this letter is why isn't 7 the last item at number 4? That's the only thing I

see unusual about that letter or fax or whatever the heck it is, right? That's all, that's my comment on it, for what it's worth. It's funny the way it's tagged on at the end under "ML". I can't explain it, but if I got that letter, I would be saying, weird, the way the order of it is laid out.

Q. But you never got it?

A. No, I said if I had ever got it, that's what I would have said. I mean, you asked me about that

Q. Are you surprised now that you were asked to settle this issue with Kevin Phelan and nobody gave you this document?

A. Am I surprised now? Yeah. I mean, if you look at it now

Q. No, no, I am not saying are you surprised by the document; I am saying are you surprised now that nobody gave you this document at that time, seeing as you were one of the people charged with trying to sort things out with Kevin Phelan.

A. Am I surprised? In the first instance, I got no documents from Fry's. It was all conversations. So now, in the context of being asked to sort out the query, yes, if I had seen this, at least I would have known what I was talking about as distinct from saying that "There is documents that have come from your solicitors with an ML reference". I mean, I never actually saw it as it is here until I saw it in the documents here. So, am I surprised? Yeah.

Q. I suppose you'd have asked Michael Lowry about it?

A. At that stage, I would have said, "Yeah, I have this thing

here, do you know what it is?" And let him go and respond to it and do whatever. I mean, I wasn't going to carry everyone's burden for them. People are old enough to sort out some of their own issues.

Q. You didn't know what burden you were being asked to carry at the time?

A. No, correct, yeah.

Q. Could you go on to the last document I want to mention today, number 79. It's a note in Fry's. I am not sure whose writing it is. It's for the Westferry file. It says: "Got on to Denis O'Connor. Has to have simple statement in reply to William Fry query no connection.

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

"Owen O'Connell write Woodcock's understand client happy to give assurance."

Now, does any of this ring any bells with you?

A. No. First of all, who wrote this, do we know?

Q. It looks like Mr. Owen O'Connell wrote it.

A. Okay. I am not being flippant, but, you know, "Late Saturday," I don't know what I'm doing, either talking to Owen O'Connell, I just this doesn't ring a bell with me.

Q. It wouldn't be the first time you would have worked on a Kevin Phelan matter on a Saturday, sure it wouldn't?

A. Not late Saturday; there is other things to be doing.

Q. "Got on to Denis O'Connor. Has to have a simple statement in reply to William Fry query no connection."



Do you understand what that means?

A. Well, I understand what it suggests. That

Q. No connection between Michael Lowry and Doncaster.

A. Sorry, yeah. Sorry, who did you say wrote it again, Owen O'Connell?

Q. Yes.

A. It suggested Owen O'Connell got on to me. Is that suggesting he got on to me on a Saturday?

Q. Forget about the date for a moment. I am not expecting you to remember days and dates going back to 2002. But around this time in July 2002, do you remember having a discussion with Owen O'Connell in which he said, "Have to have a simple statement that there is no connection between Michael Lowry and Doncaster"?

A. I don't recall it, that's the answer. I just don't.

Q. Then it says "Late on Saturday O'Connor has assurance will give through Woodcock's." That seems to suggest that you had an assurance that there would be a simple statement of no connection, or words to that effect, and that that assurance would be given through Woodcock's, do you see that?

A. I do.

Q. Does that ring any bells with you?

A. It doesn't. But I will actually try and look at that tonight and see

Q. I suppose if it's recorded by Mr. O'Connell, it's likely there was some discussion between you?

A. It suggests that.

Q. It mightn't be obviously pinpoint accurate, but it suggests

that there had been some contact between you and the

clients, you and sorry, Woodcock's. And that's what I

am asking you to recall. Did you have some contact

A. I don't recall that. That's the point I am making.

Q. Well, if it's correct, it suggests that you had some

contact with Woodcock's and you were going to get an

assurance that there was no connection?

A. I don't believe I had contact with Woodcock's.

Q. Well, you had met them the day before?

A. I accept that.

Q. And is it possible that at that meeting you discussed it?

A. No. I mean, I would have understood you are saying I

met I would have understood that if I had to get on, if

you like, in inverted commas, Woodcock's, I wouldn't have

done it; I would have gone to Kevin Phelan rather than

getting on to Woodcock's, do you understand? If that's

what that's suggesting.

Q. It just suggests that you had been speaking to either Kevin

Phelan or Woodcock's, but you had been speaking to both of

them the day before, isn't that right?

A. Yeah.

Q. And isn't it likely that, at that meeting, you had

discussed getting an assurance required by William Fry's

that there was no connection?

A. It suggests that, but, I mean, I just can't get my head

around this file note, do you understand? It's not making sense to me as I am looking at it here.

MR. HEALY: I think I'll go on to the other documents tomorrow, Mr. O'Connor.

CHAIRMAN: We'll take up the balance of evidence tomorrow at 11 o'clock. Thank you, Mr. O'Connor.

THE TRIBUNAL ADJOURNED UNTIL THE 21ST MARCH, 2007, AT 11AM.