

THE TRIBUNAL RESUMED ON THE 21ST OF MARCH, 2007,

AS FOLLOWS:

MR. HEALY: Sorry for the delay, Sir. There was some additional photocopying to be done arising from the fact that, in the course of examining documentation late last evening, the Tribunal realised that a document which had not been put in the yellow books, Book 2 or sorry, Book 83, because it was thought that it had not been sent, in fact appears to have been sent; it's a letter of the 2nd August, 2002, from William Fry, Solicitors, to Woodcock's, and it's now contained at Folder 84A, or Leaf 84A of Book 83.

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

AS FOLLOWS:

Q. MR. HEALY: Mr. O'Connor, I just want to go back for a moment to the period of the meeting of the 30th July, 2002, because there are some things about it that still are puzzling to me. Before I do so, can I just take up one other matter with you. Do you remember yesterday I think you stated in evidence that the letter, or the fax of the 11th August, 1999, from Mr. Kevin Phelan to Mr. Aidan Phelan that contained the ML reference linking Mr. Michael Lowry to, on the face of it, Doncaster; do you remember that document?

A. The '99 August, yeah, I remember that one.

Q. And I think you stated that you hadn't seen that document until it was brought to your attention in the course of the

Tribunal's inquiries?

A. Correct.

Q. But the existence of a document containing a reference to ML and linking it to Doncaster in the context of relaying queries from Michael Lowry to Aidan Phelan was brought to your attention, isn't that right, the existence of such a document was brought to your attention?

A. Well, the existence of a document was brought to my attention.

Q. Right. Well, maybe we can just clarify that. The existence of a document was brought to your attention, and what was brought to your attention was there was a troublesome reference on it that was concerning William Fry's, isn't that right?

A. Correct. I understood it to be some narrative as distinct from a specific letter.

Q. Yes. Saying what?

A. That there was a reference to ML and Doncaster.

Q. And you understood that William Fry's were concerned that the reference to ML was a reference to Michael Lowry linked to Doncaster?

A. Correct.

Q. So your understanding was that there was a document produced by Kevin Phelan which, on an interpretation, could have linked Michael Lowry to Doncaster; that's what you understood?

A. Did you ask me was I concerned?

Q. Well

A. I don't know if you sorry.

Q. Messrs. William Fry's were clearly concerned?

A. Sorry, yes.

Q. And presumably you were concerned about it?

A. Not concerned. 'Concerned' is the wrong word.

Q. Right. Well, what's the correct word then?

A. As I explained yesterday, I did not believe Michael Lowry had anything

Q. I'm not asking you that.

A. But I can't

Q. When it was brought to your attention there was such a document, did you have any concern?

A. The concern I had was that I was asked to clarify what the reference was, so, to me, let's get a clarification of it.

That would have been my attitude. I wouldn't have had a concern. I would have been "let's get an answer on this".

Q. Yes, but what you were told was that there was a document which referred to am I right in thinking, correct me if

I'm wrong there was a document. You thought it was a

narrative provided by Kevin Phelan which contained a

reference linking ML to Doncaster, and if ML was Michael

Lowry, then, on the face of it, there was a connection

between him and Doncaster in this document, would that be a

fair way of putting it?

A. You see, you keep referring to a document. No one ever said to me "a document". My recollection is, my

recollection is, and, you know, I explained to you also yesterday that I saw, somewhere in the documentation you were showing me yesterday, that the documentation was sought in relation to the litigation that was going on, the upcoming mediation or arbitration. That was somewhere in some of the documents you showed me yesterday. But I always understood - I am trying to explain where I am coming from - I always understood that there was a request for a backup narrative, whatever, to the fees claim of 150,000 in respect of Doncaster. So I was told that, in the course of that being resolved, there was a reference, as I understood it to be, in the narrative, or whatever, backup they were looking for, to ML/Doncaster. But I never thought of it I'm not running away from the word "document". I just, just understood they were trying to substantiate, backup a fee that was being agreed between them and Kevin Phelan. That's what I understood.

Q. And you thought this was in a narrative. By "narrative" do you mean in a document?

A. What I understood was that, somewhere or another, Kevin Phelan sought fees of 150,000 in respect of whatever he had done on Doncaster. What I understood William Fry's were trying to get, was to complete the file. In other words, let me put it another way: If I send a fee note out and I say you owe me 10,000, well there has to be a bit of clarity as to what the 10,000 is about. That's what I understood they were trying to achieve. So I didn't I

wouldn't have known that they got a document back, or two documents, what I see in here.

Q. What did you think they got?

A. Some backup

Q. But backup can we just get this clear; did you think they got a written statement?

A. I understood, right, you see but this is me thinking of my life in the world I work in, you know, out in my own place I understood that there was some sort of backup narrative to whatever they sought to substantiate, possibly, or backup the fee of 150. So the way I would think of that is that one wrote out a narrative, fees incurred during the period from dot to dot, doing this, doing that, doing the other, but that somewhere in that there was a reference to ML/Doncaster. That's what I you know, that's the way I would think. Like, it's the way I think every day.

Q. So you assumed Kevin Phelan wrote back he didn't say it he wrote back to William Fry's, you thought, backing up his claim for fees, and that, in whatever he wrote, you thought, you understood he had referred to ML in connection with Doncaster?

A. That would be a fair interpretation.

Q. Okay. And you were being asked you were asked by William Fry's could you provide some assistance?

A. Correct.

Q. What was the assistance that you were asked?

A. Could I clarify with Kevin Phelan what the ML/Doncaster reference was on the paperwork they got back to substantiate 'substantiate' is the wrong word, but the paperwork they sought in connection with the fee, the 150,000 fee demand.

Q. Okay. You didn't see the paperwork, nobody showed it to you. You were simply going back to Kevin Phelan, or anybody else. You weren't asked were you asked to go to Kevin Phelan?

A. Yes.

Q. And to try to get him to explain it to you?

A. To get it clarified what the ML/Doncaster reference was. Throughout this, like, I was getting no papers from William Fry, you know?

Q. And you got on did you ring Kevin Phelan, or what did you do?

A. I can't recall, but yes, I would have rang him. I wouldn't have met him. I would have rang him.

Q. And did he know what you were talking about?

A. Well, he knew what I was talking about, yeah, certainly he knew what I was talking about.

Q. He knew you were talking about the document that we have been discussing in the last few days? He must have?

A. Well, you see, I didn't know it was a document. You keep saying "document". I he knew what I was talking about.

Q. And what did he say to you?

A. I can't recall if he gave me I just don't believe now he

gave me an off-the-cuff answer. I would say he said, "I'll get back to you," but I can't recall that detail.

Q. He said he'd get back to you?

A. And he said that, as far as he was concerned, that could be a reference to either Michael or Mike Lloyd, I just can't remember.

Q. It could be a reference to Mike Lloyd?

A. That's the way I recall it.

Q. And you brought that piece of information back to William Fry's?

A. To whoever had asked me, I can't even recall, but whichever of them had asked me in William Fry's.

Q. And did you follow up on it after that? Did they not get back to you and say, "Who is Mike Lloyd? What do we know about him?"

A. You see, I can't recall I can't recall that.

Q. Do you remember being told then that it wasn't Mike Lloyd?

A. By William Fry?

Q. Yeah.

A. I think they would have come back and said they sought clarity on who Michael Lloyd was, but I have no recollection of pursuing that line of inquiry.

Q. Did Kevin Phelan tell you that it wasn't Mike Lloyd; it was, in fact, Michael Lowry?

A. Did Kevin Phelan tell me that? No, I don't recall him ever telling me that. You see, my recollection of this, and it's kind of hard to recall it and it wasn't active stuff,

that I passed on I know I passed on the message about the Michael Lloyd reference from Kevin Phelan. But my recollection is that I thought it kind of went away, do you know what I mean? I mean, I would have said Michael Lloyd and who he is or what has he got to do with all of this?

But I actually cannot recall I am not saying it didn't happen, but I cannot recall it.

Q. And nobody else came back to you about it, even though, from the documentation we saw a moment ago, it seems that it nearly scuttled the settlement?

A. Sorry, yeah, but this is what actually confirms to me mind that I was excluded from all this. I mean, I wasn't aware of all these

Q. But you were included at one point?

A. I know, but

Q. Why do you think you were excluded, having been included initially?

A. Well, why do I think I was excluded? I think, you see, as all this unfolded and, I mean, it's easy now looking at all these documents that I have never seen before.

Q. Yes, I accept that.

A. You can put a lot of interpretations on what was perceived of me, right? Maybe I was regarded as untrustworthy by Fry's, maybe I was regarded as being a Kevin Phelan person rather than a whatever, Westferry person.

Q. Rather than what?

A. Westferry, rather than their side of the table. And, I

mean, these things happen out there. But there is I
have to say, I have a sense of being used when it suited.

Q. Used when it suited?

A. I have that feeling now. I mean, I didn't have it then,
because I wasn't privy to what was going on, but when I
look at all these books of documents, there is a sense that
you asked me what I think, so what I think then and what
I think now I can't

Q. You have got the advantage now that you can look back on
the whole sequence of events so far as we have some
documents to deal with them. You think that you were used
at some times, and by "used" you mean abused?

A. If you want to look at it that way.

Q. That's the sense I am getting from you.

A. 'Abused' is the wrong word, right? But when people are
negotiating outside, they will always try and use
everything to their best advantage. Unfortunately for me,
this is what I'm trying to say to you: I didn't know then
the full extent of this that you now know from looking at
all of this. There is stuff here that just

Q. Did you ask Michael Lowry or tell Michael Lowry about this
ML business?

A. I would find it hard to believe I didn't.

Q. Somebody mentions his name in the context of Doncaster?

A. Yeah. I would find it hard I mean, I can't recall it,
but I just can't believe I didn't say it to him.

Q. Did you ever wonder did you ever not think that you

should, on Michael Lowry's behalf, say to William Fry,

"Listen, I want to see this document. Michael Lowry had nothing to do with Doncaster. If somebody is saying he had, I want to see the document"?

A. This is difficult, but I asked everybody had Michael Lowry as I explained to you yesterday, I had been looking into every nook and cranny that I got, and Michael Lowry, you know, I'm not trying to make a song and dance out of it, had no involvement.

Q. No, no, but I appreciate you asked people that question; you told us that the other day. But here was somebody who has asked you a question and who tells you there is a document coming from Kevin Phelan which suggests a link between Michael Lowry and Doncaster. From everything you knew, he had nothing to do with Doncaster?

A. Correct.

Q. Do you not understand why I would wonder, why I think anyone would wonder that you wouldn't have said, "Can I see that document"?

A. Well, in the first instance, I believe if I asked to see it, I would have been told where to go, because as I told you a minute ago, I wasn't given any documentation. I was being, as you want to call it, I was being used. So, asking for a document I mean, there were obviously exchanges of correspondence, or whatever, between William Fry and the other side, but I hadn't I wasn't privy to these. You know, I was being excluded and used, as far as

I am concerned. So it wouldn't have even entered my mind to see the document on two scores: Number one, as far as I was concerned, Michael Lowry had nothing to do with Doncaster. That has been and, I mean, as I said yesterday, yes, by all means it's being inquired into, but in 2002, Michael Lowry, as far as I was concerned, had nothing to do with Doncaster, and any carry-on around that was exactly that, carry on. I used the word "devilment" yesterday.

Q. You did. Well, did you think that at the time?

A. I didn't think anything because, you see, I don't want to William Fry are a big organisation.

Q. I mean, I'd like to come back to the word "devilment" in a minute.

A. You can. But William Fry are a big organisation, right? I dealt with them numerous times in the past on lots of issues, right?

Q. Yes.

A. And far be it for me, from where I come from, to get involved with whatever they're at. They are a seriously large entity, in Irish legal affairs. That's my attitude to it, right? I mean

Q. But you said they were you felt you were being excluded you were being asked to assist in something but you were being excluded from some of the relevant information, and you felt even if you'd asked for it, you wouldn't have been given it?

A. Sorry, I don't think I was being excluded from some of the relevant information. What I said was I was given no documents. I was being used as a messenger boy. I don't care what you want to call it. But whenever they seemed to get into some difficulty on this, they rang Denis O'Connor because he knew Kevin Phelan.

Q. They asked you a question, "Who do you think ML is? Can you find out from Kevin Phelan?"

A. Yeah, and I did.

Q. It wasn't just a messenger boy; you asked the question?

A. Yeah.

Q. And you were used specifically in relation to this Michael Lowry question mark that arose?

A. The ML question mark, yeah.

Q. All I'm saying to you is, I don't care, even if you thought the answer was "I won't be shown that document," wasn't that all the more reason to say to William Fry, "Look, I want to see that document. You know that I act for Michael Lowry. I want to see that document. If there is something in here that affects him, if somebody is trying to get at him in some way."

A. Again, very difficult to go back to whatever year it was, but Michael Lowry wouldn't have been in my mind during that process of trying to agree a fee structure between them and Kevin Phelan. It just wouldn't have arisen. Now, all of a sudden, this ML reference arises. I am not sure of the context. They asked me a question, I go about it. And,

you know, hindsight, looking backwards, maybe I should have asked for what the document was, maybe they would have given it to me and then I could have made a decision on it, but it didn't happen, and if I was silly in doing that, I am sorry for being silly but that's exactly how it happened. And sorry, I wasn't this wasn't full-time for me; I was doing a million other things at that time. This was nearly an irritant at that time. I spent most of that year actually out of the country, out of Ireland, most of that year, 2002.

Q. It seems that every time you were back in Ireland you seemed to have had something to do with this?

A. Maybe. But, you know, I'm not being smart here either, Mr. Healy. I work a long day and I work weekends. My attitude in life is, like last night, I go out to my office and I catch up on my work and if that means leaving the office at 10 o'clock at night. I answer my phones, I tend to my tasks on my desk. That's just me. Maybe it's not a great way to be, but that's the way I act. But I can assure you I spent most of that year outside the country, and that didn't actually register with me until

Q. I can see a lot of references to you being abroad.

A. A lot. I think it transpired at the end of that year, I was told by someone in my office, that if I set about it, I could nearly have qualified for non-residency. I actually got marooned in Mexico a few times that year on business, nothing to do with this. I think in that year, I think I

must have travelled to the United States around 15 different times, along with other countries, South America.

I was everywhere. When you say it consumed all of my time

Q. I didn't say consumed all your time. You seem to have given a lot of time to it?

A. If I did, it was in a limited time, and I was giving a lot of time to a lot of jobs, and I can think of some of them, sitting here, that, you know, take up took up a lot of my time that year.

Q. I just want to go back over that whole period in which that letter of the 30th July, 2002, was written; firstly because I am still puzzled by the sequence, and secondly because a new document has come to light that I think has been made available, but certainly hasn't been highlighted before, and perhaps I should draw that to your attention first so that you'll understand

A. This is the 84A.

Q. so you will understand the overall set of documents when I come to deal with them. If you go to 78 for a moment, or in fact you can go to, I think you can go to 84. It's the same thing.

A. Sorry, is 84 a one-page letter from

Q. Woodcock's.

A. Yeah, dated the 30th July.

Q. Yes. Sorry, go back one document to 84.

A. Okay, I just want to get this file in order first. This is

the letter we were at yesterday.

Q. That referred to a number of matters, but you will recall that the gist of the letter from Woodcock's & Sons was that they believed their client was had done everything that was reasonably possible and that they were now being asked to do everything that was lawfully possible, and that they were now being asked to do something that had serious implications for their client and that they had been specifically instructed to terminate negotiations.

Now, if you go to 84A, you get the response of Messrs. William Fry, and it's William Fry, without prejudice, 2nd August, 2002, re Westferry.

"Dear Sirs,

"We refer to your telefax of the 30 July concerning our above client and your client, Mr. Kevin Phelan. We are neither aware of nor concerned in your firm's negotiations with others. Our discussions with you have concerned only your client's claim against Westferry Limited.

"It was our understanding that agreement had been reached on the terms of the settlement. As part of the settlement, we sought a narrative statement from your client as to his involvement in the actions taken by him. This was sought purely as a matter of prudence, so that our clients would have an appropriate record of your client's activities as their agent in the matter and we did not regard it as unduly difficult or controversial.

"It had always been our understanding that Mr. Michael

Lowry had no involvement in the Doncaster Rovers transaction. You sent to us (we believe in lieu of a narrative statement) certain correspondence between Mr. Aidan Phelan and Mr. Kevin Phelan. One of the letters sent by you contained an indication that an individual with the initials 'ML' should be informed of developments in relation to Doncaster Rovers. We interpreted this (and we are perfectly prepared to be told that this interpretation was incorrect) as a possible (underlined) indication that Mr. Lowry was in fact involved in some way in the Doncaster Rovers transaction. Accordingly, we felt it incumbent upon us to ask your client, through you, for an explanation and/or confirmation of the true position. This could be confirmation that Mr. Lowry was, after all, involved in the matter, or confirmation he was not, perhaps accompanied by an explanation that the initials referred to someone other than Mr. Lowry or that the reference was added in error or some other appropriate explanation. Frankly, we do not believe that we acted unreasonably in seeking such confirmation and/or explanation, given that the matter was initially raised by you sending the correspondence in question to us. In particular, and in response to the sixth and seventh paragraphs of your letter of the 30th July, we do not understand why the giving of such confirmation and/or explanation by your client should be regarded by him as either unreasonable or impossible.

"We wish to confirm that Westferry Limited is willing and

able to pay the sum of sterling $\frac{1}{2}$ 150,000 to you for the account of Mr. Kevin Phelan forthwith upon execution of the settlement documentation which has been agreed by us and provision of confirmation and/or explanation as described above. We cannot of course comment on or be responsible for the progress of any discussions in which you may be engaged with other parties for whom we do not act.

"If you feel that it would be helpful for you to have a direct discussion with us as to any aspect of this matter which remains unclear (and assuming, of course, that you have authority from your client to do so) we would be happy to participate in such a discussion."

Now, I'll come back to that document later when we try to put the sequence of events together. But I'd suggest to you what that document makes clear, that the issue that was holding up the settlement was the ML issue. Would you agree with that?

A. I would.

Q. Now, could I ask you to go to Document Number 77. On that day, you went to Bury to meet Kevin Phelan, isn't that right?

A. That's correct.

Q. And his solicitors?

A. Yeah.

Q. And at that stage you had you were already aware that the ML issue had raised its head in some way, isn't that right?

A. Correct.

Q. You said that the meeting was a hostile and aggressive one, is that right?

A. Well, it wasn't friendly.

Q. It wasn't friendly?

A. Yeah.

Q. And do I understand you to mean by that, that Kevin Phelan, his solicitor felt there was some hold-up in getting them, getting Kevin Phelan his money?

A. Yeah, I mean Kevin Phelan's agenda was, "Where is my money?" Definitely, yeah.

Q. And can you remember when you left Bury, roughly? I mean, was it in the evening? Was it in the afternoon?

A. No, my recollection is I was well gone by lunch hour that day. That's my recollection.

Q. All right, it was a short meeting?

A. I think I said an hour. I mean, I can't remember, but it was a short meeting. If you want to call an hour a short meeting.

Q. And you feel that you were being given a message, or something?

A. When you look back at it, right, it's hard to know what was going on, okay. That's a frank answer to you. My recollection of the meeting is that he wanted his money.

Obviously he was aware and I was aware that this ML reference was hanging around. I wanted other issues sorted out. He knew that those other issues were always marked

down as part of resolving this, and I was trying to bring in some other issues into the equation as well, as I explained to you yesterday. And at the heel of the hunt, his attitude was that "I just want my money". I can recall that. And, in fact, he was making a point that he felt he had an arrangement, or it's probably not fair, a deal already in place to get his 150, and why, like, was he getting messed around. I think it had gone on a while at that stage.

Q. Isn't that what the evidence, the documents shows, that he had a deal done to get his 150 and then this new question of the narrative came up?

A. Yeah, that kind of rings in with my recollection of the whole thing.

Q. He didn't bring up the question of the narrative?

A. That's my understanding.

Q. He didn't introduce the letter that contained ML. He was asked a question, isn't that right?

A. Yeah, but didn't he introduce it, no? Or his letters?

Q. Well, wasn't he asked a question wasn't the deal done before that letter was ever produced

A. I am accepting that, but sorry, I thought you said he didn't introduce the letter?

Q. I am saying the deal was done at 150,000, from the documentation?

A. Yes.

Q. Then he was asked a question to give a narrative of his

dealings, isn't that right?

A. Well, there is two different versions of what he was asked.

As I explained, I thought it was just of his involvement in it.

Q. But you saw the documentation?

A. Now there is a reference there

Q. Don't mind the two different versions for a moment.

A. Okay, but he was asked for it, you are dead right.

Q. From the documentation let's just take it slowly from the documentation, he was asked for a narrative of his dealings with in the Doncaster transaction?

A. Correct.

Q. Both leading up to the negotiations and subsequently?

A. Correct.

Q. In two stages?

A. Yeah.

Q. And he wrote back saying, "I can tell you about leading up to the negotiations but I want to be paid to do it, but I don't think I can tell you about what happened afterwards, because I wasn't in full control." And he says, "Here is the proof of it."

A. That was read out yesterday, wasn't it?

Q. Yeah.

A. Yeah.

Q. And he produces the fax to Aidan Phelan.

A. Right.

Q. From way back in 1999?

A. Correct.

Q. Okay. And this was what was keeping him out of his money?

A. Correct.

Q. And this was what was exercising the minds of the solicitors in William Fry?

A. Correct.

Q. From the letter I read out to you a moment ago, it is clear that William Fry understood this as being the central problem holding things up at this time?

A. Correct.

Q. What I don't understand is why, when you went over there, was there some discussion of that?

A. Yeah. I mean, at a quarter past seven this morning I was reviewing my transcript of yesterday's proceedings and I don't think I elaborated in a correct fashion on this to the Chairman when he asked me a question, right. Yes, it came up, which, I mean, I think the way I answered it might have suggested that it didn't come up. It did come up.

Q. But it must have come up as the thing that was really annoying Kevin Phelan?

A. Yeah, it did, but that did not take over the meeting because, number one, he said it was a matter that they would sort out, being him and Mr. McCann, right? And number two: As far as I was concerned, it was a matter that I didn't know enough about to even get involved in. And the consensus at the meeting was, with him, we'll sort it out, and I tried to get on to other matters. That was

their attitude.

Q. What was the hostility, so, and the aggression?

A. The aggression? Well, I was told where to go as regards many of the issues I brought up that day. In other words, "not happening for you," okay? And I think to some extent that day, that he was passing on the message to me that nothing would be sorted until Fry's paid, William Fry paid him the 150,000, and my attitude to that was that was something I couldn't force or topple over. It was nothing to do with me, I couldn't do that for him.

Q. Didn't you know that was the same attitude that was being adopted by Mr. Denis O'Brien, that he wouldn't pay over the 150,000 until everything, all the troubles on his side were sorted out, Craig Tallents, Aidan Phelan, Bryan Phelan; isn't that right?

A. That's right, yeah.

Q. But that the thing holding it all up at this stage was the ML reference?

A. It wasn't the holding thing, but it was holding it up.

Q. Well, it's the thing that they terminated they terminated the negotiations on it?

A. No, no.

Q. Did you not did I not read the letter out to you?

A. Sorry, that's their letter, right? I wasn't I don't know how many times I have to say this: I wasn't privy to this correspondence. My agenda at that doesn't tie in with what's been flown back and forth here between William Fry

and Woodcock's. I wasn't familiar with it.

Q. Have you any documents relating to your agenda? I don't mean an agenda, but do you have any documents?

A. I probably did, and I'd say I put them in that Kevin Phelan file, which, looking at the files, I think I gave to him when he gave me the final Bryan Phelan settlement document that I passed on to the solicitors representing Brian Phelan and Co. That's my recollection of it.

Q. And in that file, would there have been the documents relating to the matters that you were discussing with Kevin Phelan that day?

A. All that, I think, that could possibly be in it is me seeking the clearance on my own case in particular. I had no documents as such that I can recall on Bryan Phelan

Q. Why did you give Kevin Phelan that document?

A. I wanted him to sign it.

Q. But did you not have any copy for yourself?

A. But sure it didn't matter if he wouldn't sign it.

Q. It was still your document, wasn't it?

A. It's not worth the paper I wrote it on if he didn't sign it.

Q. Is that the only do you have other documents relating to Vineacre?

A. No, I didn't have anything on Vineacre. I was basically asking him, on Vineacre, to sign up to, in other words, 'sign up' is the wrong word, to agree to whatever fee had been paid before that by Vineacre to him settled all

matters between him and Vineacre, but I wasn't privy to that, but there was a substantial payment, as I understand it, right, and that Michael Lowry wanted finality or conclusion

Q. And is there documents relating to that payment?

A. I would imagine there is. You see, as I said to you yesterday, I wasn't active in the Vineacre

Q. But you were active. You went to the trouble of flying the whole way over to Bury?

A. Sorry, Mr. Healy, you asked me a question, have I any paperwork on the payment? And I am trying to explain to you that I didn't, right? And I didn't. And I couldn't tell you what it was. There is a figure in my mind, I don't want to speculate on it, but there is a figure in my mind, okay, and I was just paid prior to that.

Q. Would it be possible, not now, but would it be possible to gain access to that documentation?

A. Absolutely. But, sure, Michael Lowry has total control of that, and I just know that the other person involved would have no trouble cooperating with this Tribunal either.

Q. Now, if you go to the letter that was sent by Mr. McCann

CHAIRMAN: Just before that, I know it's only a little point, Mr. O'Connor, but did you bear your own expenses for the day trip to Manchester and Bury?

A. I did. It cost me an air fare and around four or five hours of my time. But I would have always had this will come up later on, as well, when you get to it, the trip I

did to London on the exercise. I would have always had an expectation that on a success I would have got a fee, and I'll cover that later, but on this one I had an expectation, if we get all this together, I would get paid my fees, and, you know, I sometimes would work one in ten times that way on new work. So that was my expectation. But in the context of where I was in that year, like, an air fare and a few hours in Manchester wouldn't have cost me a thought.

CHAIRMAN: Presumably you put it down to the practice as a deductible expense?

A. You don't look at it that way. The way we look at it in our office is that partners and senior staff have a minimum projected chargeable hour basis per annum, and then juniors and trainees pro ratas down along. So the golden rule in our place is that you achieve that figure billable, payable and collectible hours every year. Now, for whatever reason, I am a bit of a workaholic, I do work long hours, so I do have no problem achieving my hours per annum, and therefore, 14, 24 hours wouldn't affect, in the last five, seven years, my productivity. That would be my attitude. And it wouldn't have been the only, looking backwards, wasted exercise I would have got involved in. There is a few you know, there is always a few a year.

MR. HEALY: So

A. Just to clarify. It's not a question of deductibility; it's a question of fee income, it's a question of achieving

the hours and converting them into you asked me about deductibility, but it's the other way around: It's about achieving the number of hours by the charge-out rate, by the fee and collectability. Sorry.

Q. MR. HEALY: Could I ask you to look at document 76, please, the second page. If you look at the first page you will familiarise yourself with it, it's a letter from Mr. Owen O'Sullivan to Mr. Denis O'Brien Senior, dated 25th June, 2002.

A. July?

Q. July, I beg your pardon, 2002. Do you see on the second page there are three numbered paragraphs, 2, 3, 4?

A. Yeah.

Q. And the first one is: "Since Denis O'Connor 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. I understand that Denis O'Connor is making further inquiries in this regard today." Do you see that?

A. Yeah.

Q. That was the day that you were in Bury?

A. That's correct.

Q. So do I take it that William Fry's were aware that you were going to be making this trip to Bury?

A. Obviously, yeah.

Q. And that you were going to be using the opportunity to get

more information from Kevin Phelan?

A. That's what the letter suggests, yeah.

Q. And does that suggest that, at that stage, the Michael Lowry explanation was still in the air?

A. It certainly suggests that, yeah.

Q. And can you recall if, at the meeting can you recall what Kevin Phelan said to you in relation to the ML reference?

A. My only recall of dealing with Kevin Phelan on the Michael Lloyd issue is that he persisted with the Michael Lloyd issue. I mean

Q. What do you mean "persisted"?

A. That Michael Lloyd was the response to the query on this ML/Doncaster reference. He persisted in that.

Q. He said that to you?

A. Persisted

Q. Over in Bury, he said that to you?

A. Sorry, did he specifically say it to me in Bury? He must have. That's all I can say. He kept insisting on that line. I mean, when I first asked him, he came up with this name, Michael Lloyd, and he kept insisting on this Michael Lloyd reference.

Q. What was the problem if it was Michael Lloyd, sure it had nothing to do with Michael Lowry?

A. Exactly.

Q. So why would he have been aggressive or in any way hostile?

A. He wasn't aggressive or hostile to me about Michael Lloyd

or ML. He was just aggressive, hostile, where was his money.

Q. But sure it was the ML that was holding it up, that was the only reason?

A. That was his problem and their problem, not my problem. Do you understand?

Q. Can't you understand, I can't see why he would be remotely hostile if he was satisfied that this was Mike Lloyd, that was a perfectly simple explanation for it, nothing whatsoever to do with Michael Lowry?

A. My attitude to that is go and sort it out with William Fry's. It wasn't my money that was held up. It was his money that was held up. Go and sort it out.

Q. Doesn't there seem to be an amazing inconsistency, though, between meeting, as you have described it

A. The letter of the 30th?

Q. Yeah, 78.

A. Yeah, there is a lot inconsistencies around here. I mean, and as I say, I never saw it before, but there is a lot of inconsistencies.

Q. Mr. Phelan and Mr. McCann would have been aware that you were dealing with William Fry's, isn't that right?

A. They would have been conscious, yeah, of contact with William Fry, yeah.

Q. And so in writing that letter to William Fry of the 30th July, 2002, they would have known that if the letter contained fabrications or a description of the meeting that

was in any way not in accordance, you know, with the main things that happened at the meeting, you'd have been able to tell William Fry, isn't that right?

A. Providing I was aware of it.

Q. Well, yes, but surely they must have realised, in writing the letter, that if the letter wasn't reasonably accurate as to what happened, you'd have been there to correct the impression? William Fry's could have asked you, or you might have learned of the letter and said "This isn't what happened at all"?

A. Yeah, all things are possible, but I'm just telling you I don't know.

Q. But let's get to the realities. Mr. McCann is writing a letter to William Fry calling off an agreement for $\text{€}150,000$ and he describes what happened at a meeting. It didn't accord with your understanding of what happened at the meeting. Are you suggesting that the solicitor was prepared to expose his client by writing a letter containing a version of the events which would have been easily contradicted by you?

A. I am not suggesting that, but what I'm trying to tell you is that, at the meeting, all that was on Kevin Phelan's mind was getting paid the $\text{€}150,000$, right?

Q. Yes.

A. Now, looking at all this bundle of correspondence, for whatever reason, it eventually got sorted. So if you put that in the context of what you are asking me, I find a lot

of this hard to understand and follow, what was going on with all the messages flying back and forth. And that question you just put to me, I mean, I have read here how they sorted it out, or went about sorting out the ML reference. It's very hard to put it all in context. It's hard to understand a lot of what was going on here.

Q. Yes. Could I ask you to go to document 80 for a minute.

Now, if you go to the second page of that document in fact, it's two documents, and I think the second one is the first in the sequence of time, and I'll go through it with you. It seems to be a memorandum prepared by Mr. Richard Breen, we know that from earlier documentation, dated the 26th July, 2002.

"Client: Denis O'Brien Senior.

Matter: Westferry."

Then it says, "David McCann (Woodcock & Sons)." Then there is a phone number. It says "Needed monies to be transferred today i.e. 150,000."

On basis

Exchange correspondence/venue Dublin

Draft correspondence (yesterday)."

Then it goes on, "Refer to OOC". That seems to suggest that Mr. Breen was referring whatever contact he had had with David McCann to Mr. Owen O'Connell. Do you see that?

A. I see it.

Q. Now, I'll just I'll read the whole thing through and I'll go through with you the way I think it should be read.

It says, "Pass on message to our client." That seems to be the result of referring to Mr. Owen O'Connell.

Mr. O'Connell said pass on a message, the message you received from David McCann to our client.

Then the next, there seems to be a gap and then it says,

"Spoke to Owen O'Connell. Gave me instructions on what to say to David McCann." Then there is again a little line, which suggests a gap. "David McCann" seems to suggest a call to him "passed on OOC wording. Recommended our client speaks to Denis O'Connor."

Then at the bottom: "Actions speak louder than words."

Now, on the 25th, the day of your meeting, Mr. McCann of Woodcock's had written to Fry's saying effectively he wanted $\frac{1}{2}$ 150,000, and that seems to be what's referred to by Mr. Breen in the first part of his letter in the first part of his memorandum. If you now go to the printed document, you have a typed telephone attendance, again of Mr. Richard Breen, and what I suggest and again dated the 26th July, and this seems to be a more comprehensive account of Mr. Breen's telephone conversation with Mr. David McCann that he refers to at the end of his handwritten note. Do you follow?

A. I do.

Q. He says, "Telephone attendance on David McCann having spoken with Owen O'Connell in relation to Woodcock & Sons' fax on Friday afternoon."

Now, Friday afternoon is that day, the 26th July, and there

was no fax that day. The fax seems to have been the fax on the 25th that I mentioned to you a moment ago where Mr. McCann was looking for $\frac{1}{2}$ 150,000.

"I conveyed" and this seems to be on the 26th July "to David McCann that our client was extremely serious about concluding this matter. However, there was a reference to 'ML' in one of the copy letters he had sent to us which has created some concern. I explained that it was likely that we will need either an explanation of the reference or confirmation that 'ML' is not Michael Lowry or confirmation that Michael was not involved in the Doncaster transaction in any way. I said, however, that we expect our clients to clarify instructions in this respect on Monday and again stressed that our client was extremely serious about concluding this matter.

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

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

Now, if you go back one leaf to Leaf 79. Again, on that day, the 26th, which was the day after you had been to Bury, there is a note of Mr. Owen O'Connell which says "Got on to Doncaster. Has to have simple statement in reply to William Fry query no connection.

"Late Saturday O'Connor has assurance will give through

Woodcock's.

"OOC write Woodcock's understand client happy to give assurance."

Now, if you go to document 82, you will see that Messrs. William Fry's are writing on the 29th July, 2002, which is the Monday following the Saturday, re Westferry.

"Dear Sirs,

"We refer to our recent correspondence.

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

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

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

Now, going back over that sequence again, it would appear that on the 26th July, Mr. Richard Breen, speaking to Mr. McCann, was told by Mr. McCann or was recommended that

Mr. Denis O'Brien should speak to Denis O'Connor and that actions speak louder than words and that he would take his client's instructions. That seems to suggest that you had left the meeting in Bury understanding some message to be delivered back to the O'Brien side or to William Fry's, that you would know what was required to sort this matter out; would you agree with that?

A. That this suggests that?

Q. Yes?

A. I'd agree it suggests that.

Q. Would it accord with your recollection of the events that occurred?

A. No.

Q. I see. Do you agree that Mr. Owen O'Connell got on to you around that time?

A. Well, is that the reference to the Saturday night?

Q. Well, no, let's take it, firstly, the 26/7, the first entry in that note is "Got on to Denis O'Connor. Has to have simple statement in relation to William Fry query no connection." It would suggest that either Mr. O'Connell got on to you or possibly Mr. O'Brien Senior may have got on to you

A. Sorry, which one was that, Mr. Healy?

Q. It's 79.

A. That suggests that someone got on to me, right, I accept that. "Has to have a simple statement in reply to" I presume the Westferry query "no connection." What I

don't understand about this is the day after I met these guys, so that's where I can't put this in context. It just doesn't make sense to me. Do you understand what I mean by that?

Q. No, I don't.

A. I don't know what it means. "Has to have a simple statement in reply to" let's assume it's the Westferry.

Q. Well, William Fry; WF is the way William Fry is

A. Oh, sorry. "Has to have a simple statement in reply." So what that's suggesting, then, is someone got on to me and they passed the message on that William Fry want a simple statement in reply to a query that they have either issued or going to issue.

Q. Well, in response you see, do you not remember I read out to you the Richard Breen conversation with David McCann

A. I do.

Q. where Richard Breen repeated, effectively, what had been stated before, namely that William Fry had a concern about what these references to, potentially, Michael Lowry could imply?

A. Yeah.

Q. And they wanted confirmation that it wasn't Michael Lowry, or confirmation that Michael Lowry had nothing to do with the Doncaster transaction. And I think that's, in a sense, what Mr. O'Connell refers to compendiously in his statement "no connection," do you see that?

A. I do. I have never seen this before, obviously.

Q. I know you may not have seen it.

A. And I am trying to put an interpretation on it, which is what you are asking me to do.

Q. Firstly, can I suggest to you the interpretation I put on it, and I suggest it's a reasonable one, is that somebody from the O'Brien side, either Mr. O'Connell or Mr. O'Brien, got on to you and said, "We have to have a simple response to the William Fry query about ML. We have to be satisfied there is no connection." Now, can you recall somebody getting on to you around the time the day after you were back from Bury?

A. I can't, obviously, recall that.

Q. Right. Can you recall a short time after that, a day after that, indicating either to Mr. O'Connell or to Mr. O'Brien that you could assure them that this sort of explanation would be produced and that it would be given through Woodcock's?

A. No, I can't recall that.

Q. Right. From the fact that Mr. O'Connell records it here and then on the Monday following wrote a letter referring to contact between the clients, doesn't it seem reasonable to assume that you must have been in some contact with him at least twice over that few days?

A. With?

Q. Mr. O'Connell or, if not him, Mr. O'Brien Senior?

A. Yeah, I don't actually recall having contact with

Mr. O'Brien Senior. So I have to assume it's Owen

O'Connell.

Q. The only reason I mention Mr. O'Brien Senior, because I assume you'd agree with me he is the only other person in relation to this on the O'Brien side that you would have been in connection with?

A. Correct. I think I spoke once or twice to Owen O'Sullivan.

Q. Leaving Fry's out of it, was Mr. O'Brien Senior the only other person you were in contact with in relation to the ML issue?

A. On their side.

Q. On their side, okay. What it suggests is that there was a deal of to-ing and fro-ing around this time concerning the ML issue?

A. Correct.

Q. And that it was the stumbling issue?

A. Yeah.

Q. And that you seemed to have persuaded Kevin Phelan to give some kind of assurance that there was no connection between Michael Lowry and Doncaster?

A. You see, I wouldn't have had to persuade him. I keep telling you that Kevin Phelan consistently told me that Michael Lowry wasn't involved in Doncaster.

Q. He may have told you, but he clearly wasn't prepared to tell William Fry's?

A. You see, I wasn't privy.

MR. O'DONNELL: Sir, in fact, on this, I think it's the

17th August Mr. Phelan in fact did tell William Fry.

MR. HEALY: We'll come to the 17th August and we'll see.

He told you that Mr. Lowry had nothing to do with

Doncaster?

A. Kevin Phelan?

Q. Yes.

A. He consistently told me that.

Q. But he wasn't, clearly, prepared to provide an explanation

here to Messrs. William Fry's. In fact, we know that, a

day later, in response to this letter, he said he was being

asked to do the impossible, and his letter seems to suggest

that he was dealing with Michael Lowry or with you on

behalf of Michael Lowry. So how could he say Michael Lowry

had nothing to do with Doncaster? His letter said the

opposite to what he seems to have told you?

A. But that's where I find this whole array of stuff totally,

if you like, off the wall. I am at a meeting on the 25th

July. I am telling you that at that meeting he said his

only concern was to get his money and that he'd deal with

the issues that were raised in the William Fry narrative

scenario. This suggests that the next day, right, that I

am supposed that either I was asked or something, that

"a simple statement to the William Fry query no

connection," right. And of it was all as simple as that

what I can't understand, looking at all of this stuff, is

why didn't it happen? That's the part that has me totally

confused.

Q. Precisely.

A. I don't know what caused it not to happen if it was supposed to happen, do you know what I mean? This all suggests this problem was sorted out.

Q. And, in fact, it didn't happen, isn't that right?

A. Yeah.

Q. We know it didn't happen, and for some considerable time there was no there appeared to be no move?

A. Yeah.

Q. And, as you say, the request was a very simple one?

A. Yeah.

Q. And it was keeping Mr. Kevin Phelan out of his money?

A. Yeah.

Q. He had nothing to gain from it?

A. Yeah.

Q. Could you go on to Leaf 85 now, please. This is another William Fry file memo dated the 13th August, approximately two weeks after roughly two weeks after the previous letter. It's by Owen O'Connell. It's "Client: Westferry. Matter: Denis O'Brien Senior."

It says, "Denis O'Connor," and I think that that means contact with Denis O'Connor. What I can't be sure about is whether it's you ringing him or Mr. O'Brien relaying a message from you, but I'll just pass on from that for a moment.

"Finish Monday pm? "practically full" retraction.

"If Woodcock come to Dublin Monday, whether we could meet

with Woodcock yes, but not necessarily off record.

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

Now, that suggests that there was further contact between you and Mr. Owen O'Connell, and Mr. O'Connell appears to be quoting something that was said to him that suggests that what the memo means is that he was quoting something that was said by you, "practically full retraction". And I suggest that "retraction" appears to mean, again, that it's a reference to the ML, and the suggestion of a connection between Michael Lowry and Doncaster.

A. That's what "retraction" looks like. What "practically full" means I haven't an idea.

Q. Firstly, were you in further contact with Mr. O'Connell in the early part of August, in the first two weeks of August?

A. I don't recall that. I mean, one thing that does come off this page to me is I do actually recall at one stage saying "Look, contact one another and stop tormenting me about this issue." I remember actually saying to them would they not get together and sort this bloody mess out.

Q. You remember saying to Mr. O'Connell, is it?

A. Someone, I would imagine either him or Owen O'Sullivan. You know, I can't recall who I said it to, but I would have said, "Look, I am sick of this, go and"

Q. You are sick of it?

A. Yeah, "go and sort it out".

Q. Can we come back to that in a minute; I don't want to get away from that. But clearly, at this point, if the

document is a reasonably accurate account of what was happening, it suggests that you were involved with Woodcock's, because somebody seems to have suggested that there be a meeting in Dublin. It looks as if somebody said to Mr. O'Connell, "If Woodcock's come to Dublin, would Fry's meet with them?" Do you see that? Isn't that what it seems to suggest?

A. That's what it suggests, yeah.

Q. And it suggests that you I think what it suggests is that you were conveying this message?

A. I actually don't know what this memo actually means. I told you a second ago the only thing I can pick up out of when I see this, I recall saying to them "Would you not just get together and sort this out?" But the rest

Q. Does this memo bring that is it this memo that brings that to your mind?

A. Yeah, the bit about coming to Dublin. I remember saying, "Look, will you get together." And also, I wouldn't have been ringing Woodcock's, and I am not putting any credence on this; it would have been Kevin Phelan I would have rang, okay? But this memo, as it's called here, doesn't mean anything to me apart from it reminds me that I told them to go and sort it out between themselves.

Q. Is it possible that you have forgotten the extent of your involvement in these matters, and that Mr. O'Connell, who has, you know, what I assume is a reasonably contemporaneous note of it, as most solicitors do when they

receive phone calls or messages, that they record what happened at the time?

A. It's not for me to comment on solicitors' notes.

Q. I'm not asking to you comment on it

A. But you are taking it you are putting it to me that this is accurate and you are asking me to comment on what you are putting to me as an accurate but I don't know if it's an accurate note. What I see here is one line that says "Denis O'Connor". Second line, I mean, what's Denis O'Connor doing there? I don't know. "Finish Monday pm?" "practically full retraction" means nothing to me. But I am telling you that the last bit about coming to Dublin Monday, whether we could meet. At one stage, I definitely said, "I am sick of this. Go and sort it out yourselves." And I would have conveyed that to William Fry. But I cannot get the rest of this memo in context for you. I am sorry about that, I just can't.

Q. I appreciate that. I am just suggesting to you that I think the only reasonable construction to put on it is that you were in contact. There can be no doubt to my mind that, whether you agree with the details of it or not, it suggests you were in contact with Mr. O'Connell?

A. Well, does it?

Q. Yes.

A. It does?

Q. That's what I am suggesting. That's a reasonable suggestion?

A. I just don't understand it, even the way it's kind of written in the long hand, if you like. It just means nothing to me.

Q. Sorry, maybe I haven't picked up your point on the long hand.

A. The matter is "DOB Senior," and the next thing is my name on top. What's it doing there on top? And what's this, "Monday" and "practically full retraction"? It just doesn't add up to me. Everyone can put an interpretation on it.

Q. What interpretation would you put on it?

A. How to interpret Owen O'Connell's note?

MR. O'DONNELL: Why should Mr. O'Connor be asked to interpret Mr. O'Connell's note and listen to what Mr. Healy suggests it may mean, when Mr. O'Connell is a perfectly available witness and hasn't been asked that question himself.

CHAIRMAN: All right, Mr. O'Donnell. We needn't press that matter.

Q. MR. HEALY: Can we press on to the next document, Mr. O'Connor. It's a note from Carol McNeillis to Mr. Owen O'Connell, re Mr. Denis O'Brien Senior. Do you see that?

A. I do.

Q. And then that fax seems to have been sent to William Fry, and then, within William Fry, it seems to have been sent from Mr. Owen O'Connell to Mr. Owen O'Sullivan on the 14th August, do you see that, which is the day after the

previous note?

A. I follow it, yeah.

Q. And it says, "Owen, DOB Senior called at 11.25 and asked me to inform you of the following:

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

And the reason I draw that to your attention is, do you recall having ongoing contact with Mr. Denis O'Brien Senior concerning the retraction or, if you like, the ML reference?

A. You see, that's one of the problems. I don't. I recall kind of the contact with the lawyers in William Fry.

Sorry, who is Carol McNeillis?

Q. I think she is somebody who works in Fry's.

A. Sorry, just asking. I mean, my recollection would be of dealing with Owen O'Connell or Owen O'Sullivan, or, you know, not working with, speaking to.

Q. If you go to the next document now, which is in Leaf 87.

This is a without-prejudice letter dated the 19th August, 2002, from Woodcock's to William Fry's re Westferry project:

"Dear Sirs,

"We refer to previous correspondence that has passed. We understand that our respective clients are close to terms of settlement.

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

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

"1. Your client make payment to our client of $\frac{1}{2}$ 150,000 in settlement of all monies due to our clients arising out of the Doncaster Rovers project. For completeness, our clients are Kevin Phelan, M&P Associates (a firm), Gameplan International Limited and the Glebe Trust. In consideration of our client accepting this sum, it also compromises any claims that your client may have against our clients.

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

"2. We also understand that it would be helpful to your client if it is that our client could seek to clarify reference that was made to the initials 'ML' in a faxed document dated 11th August 1999 to Aidan Phelan. We confirm that we have received written instructions from our client, Kevin Phelan/Gameplan International Limited, that

the reference to 'ML' within the aforesaid document was to Michael Lowry but that they related to a project in Mansfield in which Michael Lowry was a shareholder. We trust that this clarifies the position.

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

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

The next page says, "Draft letter" from Woodcock's to Messrs. William Fry's, 19th August, 2002. "Yet to be approved by Kevin Phelan. Westferry project.

Draft Letter.

"Dear Sir,

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

"The venture itself was involved and protracted, but, in essence, involved the acquisition of Doncaster Rovers Football Club and its ground. The intent was to relocate the football club to a new site with a purpose built stadium and to sell on the existing land (freehold) with planning permission.

"Our client reported solely to Aidan Phelan.

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

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

"Yours faithfully."

Now, do you recall seeing that document before you were asked about it in the course of these inquiries?

A. Before I saw it here?

Q. Yes.

A. No.

Q. Were you aware it had been sent?

A. No. I was aware the thing had been settled, but I wasn't aware of this letter being sent.

Q. And were you aware of this explanation for the ML reference?

A. I think I became aware of that, yeah. Not exactly like as it's written here, but that Fry's got an acceptable explanation for the ML reference, right, and that the matter was closed. That's what I can recall about it.

Now, acceptable is, you know, that they got an explanation.

Q. That they got an explanation?

A. File closed.

Q. Yes, without being aware of what the explanation was, you

understood that that issue had now, was now off the agenda,
is that right?

A. Yes. You know, and just, I do remember saying, "I want no
more to do with this. Go and sort it out yourselves. I am
sick of it." Right?

Q. Would you have said that around the time that you suggested
that they meet way back on the 13th of August?

A. I don't know when I said it, but I certainly do recall
saying it.

Q. Sorry?

A. I certainly do recall saying it, that "I am sick of this.
Go and sort it out yourselves." I was like a yo-yo going
back and forth.

Q. Could I ask you to go on to the next document, which is a
letter from Fry's in reply on the 19th August. It's to
Woodcock's.

"Dear Sirs,

"We refer to your letter of 19 August 2002 and acknowledge
the basis upon which it is written.

"We confirm that our client will formally offer to pay the
sum of stg £150,000 sterling referred to in full and final

satisfaction of (i) all fees and expenses due to your

client, Mr. Kevin Phelan, whether trading through or as

Gameplan International Limited, the Glebe Trust, M&P

Associates or otherwise arising out of the

Westferry/Doncaster Rovers club and ground project

(ii) your client's claim to be entitled to a 40% share of

any profits on the project and (iii) all other claims by your client of any nature whatsoever and howsoever arising against our client, its shareholders, directors, employees and other consultants relating to the project. Our client also requires confirmation that unless compelled by law, neither you nor your client will release your respective files nor any papers on them nor any other documentation related directly or indirectly to the project which is under your client's control to any third party without our client's prior written consent. Our client would require the letter referred to in paragraph Number 3 of your letter and enclosed therewith. It would also be helpful if your confirmation concerning the 'ML' reference could be given in a separate open letter at the time a settlement is concluded.

"Confirmation of the foregoing will also compromise any claims that our client may have against yours.

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

So it seems that Fry's are writing back accepting the terms, suggesting that the explanation be in a separate letter, but adding in a requirement in relation to documents and files. Do you see that?

A. Yeah, that's slightly different than what was written over, yeah.

Q. Now, I suppose inasmuch as this appears to have been the end of the ML issue, it looks as if Mr. Phelan was now saying that it wasn't Mike Lloyd, that it was Michael Lowry, but that it wasn't Doncaster, it was Mansfield. Doesn't that look like a practically full retraction but not a complete retraction?

A. As to which query?

Q. Well, for starters, it doesn't contain any statement to the effect that Michael Lowry had nothing to do with the Doncaster Rovers transaction?

A. I agree, yeah.

Q. It has a sort of an explanation, I don't know how acceptable you think it is, that Doncaster doesn't mean Doncaster, it means Mansfield?

A. I agree with you.

Q. And I am just suggesting that it's like a practically full but not complete retraction?

A. I wouldn't dispute that.

Q. Now, if you go on to the next document, which is a letter from Woodcock & Sons to William Fry's, and I'm not going to go through all the document because we are fairly familiar with what's between or what the parties have agreed at this stage. One of the problems that arose was there were cross-waivers of claims being sought and Woodcock's wanted an identification of what they were being expected to waive. I don't think it need concern you. It's not of huge significance.

But if you go to the fourth item on their letter, with regard to the question of files, they say, "With regard to the release of files, the writer will discuss this with you. The concern our client has, however, which we must state clearly in writing, is that documentation is now held by a number of people. Our client cannot be held responsible for the disclosure of documentation from a third party. We make it clear therefore that the burden would be on your client to evidence that in fact if there was disclosure, that it had come from our client after the date of compromise being reached."

They go on to say that they are prepared to provide a separate letter with the explanation of the ML reference.

Now, this would seem to suggest that a problem was arising in relation to the release of files. There is some suggestion that the disclosure of what was on the files could cause problems.

If you go on to Document 90. This is another file memo of Mr. Owen O'Connell's, dated 20th August, 2002.

"Client: Denis O'Brien Senior.

Matter: Westferry."

It says, "Dave McCann per his letter of 20 August.

"Point 3 will give list of names; confirm OOC acts for has authority and gives reciprocal waiver"

That's the matter I mentioned to you about cross-waivers or reciprocal waivers. Mr. O'Connell is recording here that he doesn't see a difficulty in attending to that part of

the settlement.

Then it goes on in relation to item 4 or point 4, and that's the item relating to the release of files. And it says: "Have been discussions with Denis O'Connor. KP will hand over his files to Denis O'Connor.

"OOO whether aware of Denis O'Connor discussions re documentation."

Now, do you recall having any discussions concerning documentation?

A. I recall being asked in the context of a settlement by, I presume again, either Owen O'Connell or Owen O'Sullivan would I be prepared to collect the files that they sought and give them to William Fry or Denis O'Brien Senior or whoever. I recall that all right, would I be prepared to do it.

Q. Just physically collect them?

A. I can't recall that detail. I think, in other words, that Kevin Phelan might be prepared to give them to me as distinct from Woodcock's to give them to Fry's, or something like that. Or maybe it was a practical issue, that they were in Manchester and William Fry I just can't recall the detail. But I remember being asked, that's all, I remember that.

Q. Do you remember having discussions only with the William Fry side? Did you ever have discussions on the Kevin Phelan side?

A. I can't recall it. I mean, it's possible. It's possible.

There was never an issue. I just can't you know, it never became an issue. I am just agreeing that I was asked at some stage would I be prepared to be the conduit for getting the files from Kevin Phelan, and I remember saying yes, if it's in the context of a settlement.

Q. You mean physically, simply, you would be prepared to physically receive the files?

A. That's the recollection I have, yeah. It was a physical problem as distinct from a, you know, like an electronic problem or

Q. In other words, you weren't involved in the issue; you were simply making yourself available as a messenger?

A. Well, I was asked.

Q. You were asked to make yourself available as a messenger, and you agreed to make yourself available as a messenger?

A. In the context of a resolution.

Q. Yes.

A. I mean, to me, if I had to drive somewhere to see the end of this, I was happy, but that was the only context in which I was prepared to do it, I recall that.

Q. Right. If you go on to the next document. Well, did you get the files, in any case?

A. No.

Q. What happened?

A. I don't know, I actually don't know. It's just as you read it out there to me, I recall that. But it never happened, it just never happened. I mean, I don't even know what

files they were. I mean, it just never happened, I don't know what it's about.

Q. If you go to the next document, this is another Owen O'Connell file note, and there are a list of names. That seems to refer to the list of people from whom Mr. Kevin Phelan was looking for reciprocal waivers. I can tell you that from having read on in the file. But if you look in the middle of it, it says, "We are happy to drop requirement re files," and then a line is drawn through that, and instead, underneath that, is "No. Denis O'Connor request likely to be withdrawn."

Now, if you go on to the next document, it will throw a bit of light on that, I hope. It's Document 92; it's a phone message from Denis O'Brien. It's "Phone message from Denis O'Brien Senior 21 August 2002." I should have said the previous file note is dated the 20th.

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

"1. Asked Aidan Phelan to get his solicitor to call Owen O'Connell to give his assurance that Aidan Phelan will not be suing Kevin Phelan." This is the reciprocal waiver issue that I mentioned a moment ago. "Aidan said his solicitor was on holiday but he would try and get someone else to act on his behalf. (DOB Senior already informed OOC.)

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

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

"3. Denis O'Brien Senior is happy to settle today and to give the cheque for 150,000 without further assurances being dealt with."

Now, it's item number 2 I want to ask you about. It suggests that Mr. Denis O'Brien had had a conversation with you or some contact with you around this time and he had asked you to withdraw your request regarding files. Do you see that?

A. Sorry, I see it, yeah.

Q. Well, if you look at the four sentences. The first sentence is, "McCann had heard we had asked for the files. McCann said he would be unable to give us assurances if we were to hold the files." That suggests that this was now becoming a sticking issue, and that McCann was unwilling to give certain assurances to Kevin Phelan if Fry's were to hold the files. And it goes on and says, "Therefore, Denis asked Denis O'Connor to withdraw his request."

I am happy to let you comment on it, but do you want to wait, do you want to consider it or what?

A. I was just checking back on previous I mean, it wasn't that I asked for the files. As I read it here - that's why I was looking back through stuff you read a minute ago - it

was William Fry's that requested the files.

Q. They requested an assurance in relation to the non-release of the files.

A. Sorry, right, okay. I mean, I didn't ask for the files, if that's what you are putting if that's I mean, it says

"Asked Denis O'Connor to withdraw his request." It's put in the same category under point 2 relating to files, but I wasn't requesting any files, or interested in their files.

Q. Do you remember files becoming a sticking issue?

A. You see, I don't. That's what I'm trying to say to you. I remember being asked was I prepared to collect files and give them back to William Fry in relation to this, but it wasn't a big deal and it was in the context of a settlement. Now, obviously, at this stage, it's still not settled, but it looks like it's proceeding there. But that's all I can recall about that.

Q. Could you go on to the next related file note, which is at 95. It's another Owen O'Connell file note of the 21st August 2002, which I think is the same date as the last one.

"Denis O'Brien Senior" and I suggest to you that

Mr. O'Connell is in contact with DOB Senior.

" wants to settle today. Go ahead without AP if necessary."

Then, "Denis O'Connor withdraw request for files better to have commitment re non-release."

Then a phone message, "AP no intention of suing."

"If don't get him DOB Senior will keep after him.

"OOC or OOS confirm position at end of day."

It seems like a list of things to be done?

A. Like a 'to do' list, yeah.

Q. Again, it suggests that the withdrawal of request for files is linked to you. Does that make any sense to you?

A. It's certainly thrown in there after my name.

Q. You were, as it were, the go-between, according to your own evidence, between both the two firms of solicitors, if not the two clients; isn't that right?

A. Yeah, I looked on it as the go-between between William Fry and Kevin Phelan. That's substantially what it was.

Q. And it suggests that you had, either yourself suggested that the request for files should be withdrawn, or that you had conveyed a message from somebody else, but if so, from whom would you have conveyed that message?

A. You see, I don't read it that way. I mean, I am reading this as, you know, is this saying withdraw the request for Denis O'Connor to get the files? I couldn't tell you, I didn't write this anyway so I just can't put a handle on it.

Q. Without asking you to comment on what it means, it suggests you were involved with Mr. Owen O'Connell in relation to an issue concerned with files, would you agree with that?

A. Either Owen O'Connell or Owen O'Sullivan. I mean, let's be clear, I can't recall which.

Q. Would you agree with that, one or other of them?

A. That I was involved well, sorry, there is also the reference to DOB Senior at the top, but I was involved, yes. With who, I couldn't tell you, reading this. You are asking me in the context of this file note or memo note.

Q. Yes. Well, in any context, do you recall the issue about files dragging on?

A. I don't recall it dragging on, that's the point. I recall being asked if, in the context of a settlement, would I be prepared to be the person that got files from Kevin Phelan and passed them on to William Fry. That's all. I don't recall it being a big issue or a big deal, that's the point.

Q. I suppose it does seem rather odd that a senior partner in a firm of accountants would be going either across to England or elsewhere just to collect files that could be put into a courier's van and sent back to Ireland?

A. Sorry, I was never going to England to collect files, number one.

Q. Where were you going?

A. I don't know.

Q. How do you know you weren't going to England then?

A. But sure it never came to it. I don't know where I was going. I was asked and sorry, where does the courier's van come into it?

Q. They could have been simply couriered from wherever to William Fry's if they were going to be given to William Fry's?

A. You are asking the wrong person about that.

Q. Isn't that a fact?

A. They could have been sent by airplane, boat, courier, anything you care to mention, but that didn't concern me.

Q. I think you said a moment ago you would have done anything to resolve this matter?

A. At that moment in time, in the context of a settlement, I was prepared to do the request asked of me.

Q. Would that mean that you'd have gone anywhere to collect the files?

A. No, Mr. Healy, Timbuktu, no.

Q. Would you have gone to England to collect them?

A. I don't believe so, no, but it didn't arise, that's the point I am trying to make.

Q. Would you have gone to Omagh to collect them?

A. Would I have gone to Omagh? I couldn't tell you. It didn't arise. Like, we can speculate on it all day, but it did not arise.

Q. Now, could I just come on to Document 96 for a moment, and I am sorry for delaying you, Mr. O'Connor, because I am trying to find another document maybe if we could adjourn there, Sir. I'm trying to find another document.

CHAIRMAN: Right, we'll take it up at 2 o'clock,

Mr. O'Connor.

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. I was going to draw a document to your attention before lunch which I wasn't in a position I couldn't find it. Now, I have found it.

Before I do it, I should, I suppose, draw to your attention a letter that your solicitors sent to the Tribunal today, enclosing correspondence that they had with Messrs.

Woodcock's on the 13th March. Are you familiar with it?

I'll put the letters up on the overhead projector. This is a letter of the 13th March from your solicitors, Messrs.

Kelly Noone, to Woodcock & Sons.

It says "Re Westferry Limited project.

"Dear Sirs,

"We write to advise that we act on behalf of Mr. Michael Lowry and Mr. Denis O'Connor who are both shortly due to give evidence before the Moriarty Tribunal.

"In the course of a meeting with counsel over the past few days, a copy of your letter of the 30th July 2002 to Messrs. William Fry which had been made available to us by the Tribunal was being examined and in particular the contents thereof relating to Denis O'Connor and matters he was dealing with on behalf of Michael Lowry, Aidan Phelan, Craig Tallents and Bryan Phelan.

"It appears from an examination of the contents of the letter that a meeting took place sometime in July 2002 with your Mr. McCann, Mr. Kevin Phelan and Denis O'Connor.

There is a reference in the letter of the 30th July to

previous draft correspondence which had been proposed by your client in relation to all parties and also a draft agreement in relation to Michael Lowry. It is our client's understanding that the draft agreement related to issues arising from a transaction Vineacre with which your client and Mr. Lowry had some involvement. The remaining letters apparently dealt with issues re Aidan Phelan, Craig Tallents and Bryan Phelan. It appears that some of the draft letters and/or draft agreement were not satisfactory to Michael Lowry and Denis O'Connor, and as a result, on the date of the meeting further correspondence was sent to Denis O'Connor for approval.

"It would greatly assist us in resolving queries which have arisen if you could fax to us a copy of the draft letters and draft agreement as referred to.

"If for some reason the documentation as requested is not available, then we would request that you might assist us and let us have your recall as to the contents thereof and the issues arising as referred to in your letter of the 30th July 2002.

"We should be very much obliged to hear from you."

Now, that letter was dated the 13th March. And on the 15th, presumably a day after it arrived, unless it went by fax, Messrs. Woodcock & Sons replied to Messrs. Kelly Noone by letter dated 15th March:

"Re our client: Kevin Phelan. Westferry Limited project.

"Dear Sirs,

"Thank you for your letter dated 13th March, 2007.

"I have considered your letter and discussed the matter with my client, Kevin Phelan.

"Neither my firm nor my client is in a position to be able to provide to you the documentation that you have requested.

"It is however the recollection of my client that in 2002 we were instructed in relation to a number of issues arising out of work that my client had undertaken for a number of parties within the UK and Ireland. One of those issues related to ongoing fees that would fall due to my client regarding a project known as Vineacre. My client was of the view that he would be entitled to fees from Michael Lowry in relation to this work and discussion took place in the terms of a meeting at our office in Bury with Denis O'Connor. Ultimately, however, no agreement was reached."

I think it said underneath there on the left, although it's barely discernible, "Yours sincerely," do you see that?

What do you know about these letters?

A. All I know about them, Mr. Healy, is that, after a meeting with counsel, Michael Kelly, in discussion with me, suggested that it might be a good idea to write to Woodcock's. I said, fine. I was aware that he wrote. That's actually the first time that I actually saw the specific letter that Michael Kelly wrote to Woodcock's, and he told me he had got a response, but we agreed to stick

with your testimony, or whatever, here. That's the first time I have seen that.

Q. Your solicitor sent it to the Tribunal today.

A. Fine, but that's the first time I have seen the response and I was only aware of the letter going out.

Q. I see.

A. That's the first time that I have seen it in its entirety.

Seen it at all. I was just conscious of it.

Q. Well, I am slightly anticipating something that we'll be dealing with and that we were referring to this morning, but no documentation was provided to you, am I right, in connection with the Westferry dispute, by Kevin Phelan?

A. No.

Q. Does it surprise you that there is no documentation available by Mr. Kevin Phelan today?

A. Sorry yes, I did not get documentation, just to go back to that issue, so I don't know why he has no documentation.

Q. He says, "I am not in a position to be able to provide you with the documentation that you have requested." Do you see that? That doesn't mean "I haven't got documentation"?

A. Sorry, where is that?

Q. If you like, the third paragraph.

A. Sorry, I was looking at the wrong paragraph. I was looking at the fourth paragraph. That doesn't suggest that there is no documentation.

Q. But why could he not make it available to you?

A. I haven't an idea. I mean, this is the first time I have

seen the response. I was aware

Q. But what is this strange correspondence about when the man who was handling the project on behalf of Michael Lowry, apparently looking for fees from Michael Lowry, won't give Michael Lowry

A. I don't know. That's

Q. the documentation?

A. I haven't an idea.

Q. Do you notice that the letter is headed "Westferry project"?

A. I do.

Q. And that was how your solicitor identified it as well, but does it seem that Messrs. Woodcock's still appear to identify references to you to the Westferry project?

A. I haven't an idea. Genuinely, I knew there was a letter going out. That's the first time I have seen the letter and that's the first time I have seen the response. I have no idea of anything.

Q. Do you remember before the lunch adjournment you mentioned that Michael Lowry had made a payment to Kevin Phelan around the 30th July?

A. Vineacre.

Q. Well, whatever

A. I believe it was Vineacre.

Q. This document suggests that no agreement could be reached about fees?

A. Yeah.

Q. So, can you be sure that the money that Michael Lowry paid at that time was Vineacre money?

A. Only that's the way it was conveyed to me.

Q. By who?

A. Michael Lowry.

Q. Did you convey the fee, the payment? Did you make the payment?

A. Oh, no, no.

Q. Well, were you handling Michael Lowry's affairs so far as Vineacre was concerned?

A. No, I outlined that yesterday.

Q. Did he have another accountant handling those?

A. Certainly I know from the audited accounts that I gave to the Revenue Commissioners that, yes, they had a firm of accountants somewhere, I can't remember the name, but I mean it's easily got, whoever they were. I wouldn't know anything about Vineacre, you know?

Q. But you have must have if you went to a meeting in Bury and flew the whole way over to Manchester Airport?

A. It's easy to put that interpretation on it. What I am trying to tell you is I know Michael Lowry was a shareholder in Vineacre. I saw the project. I know who the other party involved in it is here in Ireland. Michael Lowry told me that there was fees, that Kevin Phelan was part of the project, that there was fees paid to Kevin Phelan through Vineacre and he wanted finality on that. Outside of that, my only knowledge of Vineacre is that in

my dealings with the Revenue Commissioners, I sought from Michael Lowry audited accounts and I think possibly an explanation at some stage about what the project was about, which I conveyed to the Revenue. It's limited to that. So "involvement" is a big word, but that is my knowledge of Vineacre.

Q. Why would a letter written by Messrs. Woodcock's to Messrs. William Fry's in July 2002 indicating that they could not go ahead with the settlement, refer to agreements that you were trying to finalise with regard to Vineacre?

A. I don't understand that.

Q. Now, there is another letter I want to mention to you.

It's a letter written to which your letter provided to the Tribunal last week a letter from Mr. Kevin Phelan.

It's a letter directly from Mr. Kevin Phelan himself. It's addressed to Michael Lowry, but it arises out of evidence given by Mr. Craig Tallents and his cross-examination by Mr. O'Donnell. I don't think Mr. Phelan was aware that Mr. O'Donnell was acting for you as well as for Mr. Lowry or appearing for you as well as Mr. Lowry. If I could just go through it. It's the 3rd March, 2007.

"Dear Sir,

"I refer to previous correspondence.

"I am writing to you in relation to remarks made by your legal representative, Donal O'Donnell, during cross-examination of Mr. Craig Tallents at the Moriarty Tribunal on Thursday, March 2nd, 2007. Mr. O'Donnell

suggested that linking your name to the acquisition of Doncaster Rovers Football Club was part of a tactic to stir up trouble. I reject this assertion out of hand. I believe that the tactics being employed by your legal team and others on your side is to discredit me and my family as much as possible.

"I further believe that Mr. O'Donnell should check all his facts before making such outlandish statements. I will not allow your legal team to destroy me and my family without a fight. I believe you are well aware that all agreements reached were negotiated by a number of solicitors' firms and disputes arose because a number of parties refused to pay their bills. I subsequently agreed a confidential agreement to have my fees paid and the Glebe Trust agreed the disposal of their shares.

"I have instructed Woodcock & Sons to communicate with William Fry in relation to this matter also. As previously indicated, I am writing to the Moriarty Tribunal in the strongest of terms outlining my objections to comments made by witnesses to the Tribunal on Thursday March 1st and Friday March 2nd and also statements made by your legal representative."

Are you aware of this letter?

A. No, this is the first I have seen it.

Q. Is this the first time you have seen it?

A. Yeah. Who got it? Michael Lowry got it?

Q. Yes.

A. At the beginning, I thought you said Michael Kelly got it.

Q. It was sent to the Tribunal by Michael Kelly.

A. Sorry, this is the first I am aware of this letter.

Q. On the 6th March, it was received by the Tribunal from your solicitors at 2 p.m. Are you familiar with it?

A. No. This is the first time I have seen it or aware of it.

Q. Now, I am not going to go into all the details of it, but I should say that Mr. Kevin Phelan wrote a similar letter to the Tribunal complaining about the impact of evidence on his reputation and the Tribunal immediately offered him an opportunity of coming to give evidence at short notice, to which the Tribunal has had no response.

Do you know what Mr. Phelan is referring to when he says in the second paragraph of his letter, "I subsequently agreed a confidential agreement to have my fees paid and the Glebe Trust agreed the disposal of their shares"? Do you know what that's about?

A. I haven't an idea.

Q. Could I now go back to where I was before the lunchtime adjournment. If you go, firstly, to document, I think, 100. Have you got that document?

A. I have.

Q. Now, near the beginning of your testimony, do you remember we discussed your role in the complaint or the resolution of the complaint made by Mr. Kevin Phelan against Mr. Bryan Phelan and his company and Mr. Aidan Phelan in March of 2002?

A. Yes.

Q. And you mentioned that Mr. O'Brien had asked you to see what you could do to resolve or to get rid of it, if you like, I suppose?

A. Yeah.

Q. And, in fact, he had made it clear to you that he wasn't going to settle anything until this was settled. Now, at this stage, the other dispute, which was being resolved by a payment of $\frac{1}{2}$ 150,000 sterling, was coming, one would have hoped, to a close, because the row about the "ML" appears to have been resolved; a row about documents appears to have been in the process of being resolved, and this is a letter from your secretary, I take it, is that right, or else would it have been dictated by you but signed by your secretary, Colette Slattery, to Ed Butler?

A. She has obviously spoken to me.

Q. Yes, it looks like she spoke to you. Either you dictated this or else you asked her to send it on on this basis?

A. I would have asked her to send it on.

Q. It's to Ed Butler, LK Shields, from Colette Slattery for Denis O'Connor. "Reference: Bryan Phelan.

"Dear Ed,

"As you are aware, Denis is in the US at present. I have just spoken to him re the attached and he has asked me to forward it to you for completion."

So you were out of the country. As you said yourself, you were out of the country a lot that year, but you were on

the phone to your secretary and she brought this matter to your attention.

Now, she encloses the the next document is, it looks like a faxed document from Woodcock's, or at least part of a faxed document from Woodcock's. Do you see that?

A. I do.

Q. Now, the top half of your fax transmission sheet appears to be blank. But if you look halfway down, what I appear to have is the top portion of a Woodcock's letter, isn't that right?

A. That's correct.

Q. And it looks to be the second page of a Woodcock's letter, do you see that?

A. I do.

Q. And that's the second page of a letter that appears to have been sent to you, do you see that?

A. I do.

Q. We'll just deal with the text that's on it first. It's headed "Woodcock & Sons," continuation page 2.

"Brian Phelan & Company" is the heading.

"Our client is happy with the amendment to the deed and correspondence as forwarded to LK Shields and we are instructed to finalise these documents. The deed needs to be entered into by our client, but subject to all terms being agreed and a proper copy being supplied by LK Shields, these will be completed. (Correspondence attached)."

Now, just look at the attached correspondence for a moment, and we'll come back to it again. It appears to be a draft of a letter to be issued by Game Plan International, one of the Kevin Phelan's companies, withdrawing a complaint against Bryan Phelan and Aidan Phelan, and then part of an agreement relating to the same matter. Do you see that?

A. I do.

Q. Now, the agreement is on appears to be on page 10 of some document, do you see that? There is a whole load of fax banners at the top of it. The top one

A. I see all the different banners. I am just trying to

Q. But if we just go back for a moment to the part of the Woodcock & Sons letter. Do you know what you received from Woodcock & Sons at this point?

A. No. That page you are asking me to look at now, what I don't understand about it is the different headers on the top and halfway down. That just looks

Q. Well, it may be that it went through the fax machine that way, I don't know. Certainly, the Woodcock & Sons portion would appear to be the top of a Woodcock & Sons page, doesn't it?

A. That's the part I don't understand.

Q. And it has a heading on it "Bryan Phelan & Company," which would tend, would it not, to suggest that if it was a second page of a document, there may have been a number of other headings relating to other matters?

A. There could have been, yeah.

Q. This document came to the Tribunal, I think, from it came to the Tribunal from Mr. Bryan Phelan, but one assumes that you must have this documentation or documentation related to it on your files, or at least you should have had at one time?

A. Yeah, I just haven't an idea. I mean, I would have been conscious of getting something from Woodcock's and getting something from the solicitors acting for Bryan Phelan, but this is not you know, I am not recalling this as I sit here and I am still having difficulty with that second page of that tab.

Q. Well, is it likely that the rest of the Woodcock & Sons correspondence refers to the other matters, the other disputes, disputes with Craig Tallents, disputes with Westferry, disputes with Michael Lowry, disputes with you, if necessary, and that they are all listed

A. Well, the only thing I don't understand

Q. Just let me finish. And that the only part that you are sending to Ed Butler is the part that relates to him? And, you see, if you photocopy that onto a page, isn't it possible it could come out like this?

A. Yeah, there is lots of possibilities, but what I don't understand, it's dated the 3rd September, that's the part that has me confused.

Q. Why is that?

A. Because I thought at that stage that my version of it, looking at it now, is that the dust had settled, let's say,

and the only outstanding was the paperwork and the Bryan Phelan, so that's where I am confused about all of this. I am confused about it. I mean, also, I see that the draft letter is dated June.

Q. Yes.

A. So I am here trying to get a perspective on it and I just can't get it.

Q. Well, if you recall, in June, attempts were being made to sort out all of these disputes and you appear to have been involved at some point and to some extent in all of them, but the key dispute is settling with Kevin Phelan his claim for $\frac{1}{2}$ 150,000, and that dispute was now on the point of being settled, wasn't it, at this time?

A. Maybe I am wrong now

Q. Is that what explains the gap between June and this time?

A. But was it not settled at this point, the fees issue? I am only asking because there is so many dates.

Q. Clearly, it hadn't been settled at this point, judging from this correspondence, but it looks like it was being brought into the loop at this point. And if you look at the letter, or the fax that you got from Woodcock's on the day before, if you look at the fax banner, the "2/9/02, 15.45, Woodcock & Son, Bury, to" and then your fax number?

A. Yeah, I see that.

Q. That letter looks like a letter that referred to a number of different disputes, and the only part of it that is being sent to Mr. Butler is the part that pertains to his

client?

A. I actually can't answer it for you. I mean

Q. All right.

A. My recollection is that the whole Bryan Phelan thing kind of went, let's call it, dead or idle for a while, and then as part of, as I said to you, the tidying-up process, or the 'to dos', it had to be finalised. I recall that. And my recollection is that two firms of solicitors eventually agreed wording, or something, and I facilitated by getting exchanging, possibly, signed copies, I can't remember.

I mean, this just doesn't

Q. I see. If you look at the second document, the agreement, or the page of the agreement that we have here, that document seems to have been through your fax machine already, do you see that?

A. I see the double thing at the top, yeah.

Q. And I see another document that may relate to it and I'll come back to it in a minute; I should have referred you to it.

A. It seems to be there seems to be two sets of the same fax number, I think. I'm not certain.

Q. Well, yes, it looks like it was through, the same document went through your fax machine at one point, and either going in or going out is not clear, but that you appear to have had some involvement with this in August of 2002, and I don't want to catch you out, I'll refer you to another document which did suggest an involvement on your part at

that time, and I'll come back to it. But that would probably account for the second Butler Brophy Thornton fax banner, do you see that?

A. I see it, yeah. It just doesn't mean anything to me.

Q. It does mean that, though, doesn't it, that it went through your fax machine?

A. That's what it suggests, yeah. I mean...

Q. What else could it be?

A. I don't know. I am not a technological geek as regards that, but I'm sure it can mean a lot of things.

Q. I'm not asking you to be a technological geek, either. I am just asking you to agree with me that as somebody who sees machines or sees things that go through their fax machines day by day, if something goes through your fax machine, it picks up a fax banner, doesn't it?

A. It does, yeah.

Q. I am just going to go back for a moment to Document 84.

This is a letter from Woodcock & Sons on the 30th July, 2002, to Messrs. LK Shields. This is the day they wrote the letter to William Fry's saying "We are not going to deal with you any more. We are terminating our negotiations because you have made an impossible and unlawful demand on us," or words to that effect.

On the same day, Woodcock & Sons wrote to Messrs. LK Shields saying,

"Dear Sirs,

"We refer to previous communication between ourselves.

"We have taken our client's instructions on the proposed deed of settlement in this matter.

"We are instructed by our client that he is not prepared to enter into such deed of settlement or in fact further negotiate with yourselves on behalf of your client. As you appreciate, we have been in direct negotiation with William Fry's on behalf of their client Westferry Limited and Denis O'Connor on behalf of his client Michael Lowry and others.

"You will appreciate that our client was looking towards agreeing terms of settlement with all parties relating to property ventures within the UK. It has not been possible to agree terms satisfactory to our client within what our client believed was a reasonable period of time and on reasonable terms. In those circumstances, therefore, our client is now pursuing other options that are available to him."

So he is telling Messrs. LK Shields that they can forget about any settlement of their client's problems with him?

A. Correct.

Q. And he seems to be suggesting that the same goes for William Fry and you on behalf of Michael Lowry?

A. Correct, yeah.

Q. Now, by the 30th August, just a few days before the document I mentioned a minute ago, you appear to have been in contact with Mr. Ed Butler, and if you go to Document 96, you will see a page of fax transmissions, and I think the best way to read it is from the bottom up.

At the bottom is a fax from Denis O'Connor dated 29th

August, 2002, to Ed Butler.

"Subject: Bryan Phelan/Kevin Phelan.

"Have you sorted with David McCann of Woodcock & Sons as to final wording?

"I am exchanging documents on September 12th and you might arrange that I bring over an original signed by your client and collect one signed by the other side."

The response is: "Denis, no word at all and I had not chased. Do you think it would help to do so?

Regards, Ed."

That's from Ed Butler to you.

The next one from you to Ed Butler on the 30th August.

"Ed,

"Can you follow this up need to make sure agreements are sorted."

And his response to you on the same day:

"Denis, did so by fax yesterday but only silence in response."

Do you remember those faxes?

A. I remember the gist of them, yeah.

Q. What were they about?

A. The Bryan Phelan agreement or not agreement, the withdrawal of the complaint.

Q. Well, reaching an agreement about it, I suppose?

A. Yeah.

Q. Well, what do you recall was happening at this time that

seems to have brought this, these negotiations or this agreement back to life?

A. I just read it as unfinished business, that the agreement to withdraw the complaint about Brian Phelan & Co hadn't happened. That's my mere recollection of it.

Q. When you said you were exchanging documents on the 12th September, what was that about?

A. I have looked at this a few times and I actually think it's a reference to actually trying to exchange these documents.

Q. Who had you made that arrangement with?

A. Probably Kevin Phelan, I would imagine.

Q. So when would you have made that arrangement? Sometime in August?

A. That's what I don't know. I'm just looking at it here.

Q. But do you not remember telling me a moment ago that you told Mr. Owen O'Connell at sometime in July, or was it June in July, I think, that you wanted no more to do with this; you were washing your hands of it and let them sort it out themselves?

A. I do, yeah.

Q. But this would suggest that you were still intensively involved?

A. I regard the fact that I was that I had said I would try and solve the Bryan Phelan/Kevin Phelan issue as unfinished business and a simple matter to resolve. I don't see anything significant in it. I was happy to see it out.

Q. What was simple about it? Sure hadn't Mr. Phelan said, on

the 30th July, he wasn't going to do anything; he was going to dig in his heels and do nothing?

A. And when did the Westferry/Kevin Phelan issue resolve itself?

Q. It must have resolved sometime around this time. I am not entirely sure. I see a reference at one point, I think

Mr. O'Brien Senior mentioned money being held in Escrow.

It's possible money was paid over and held in Escrow until various steps were taken?

A. I look at this as just simple, I don't mean to sound petty, housekeeping, finish off, something, like, I would have been conscious of that I said I would sort out.

Q. Where were you going to do the exchange of documents?

A. That, I don't know.

Q. Did you do an exchange of documents?

A. I actually think, in the end, the documents weren't exchanged but were left to my office by hand or by courier, or something, in my absence. That's my recollection of this. By "documents" I mean Kevin Phelan signed what as I understand this all the way through, and everything I see here is kind of bringing it back to me, LK Shields insisted on writing the settlement terms, if you like, of this complaint. I remember the solicitor in LK Shields being adamant about that from day one. So as I read this, they were dictating what they wanted; in other words, the terms upon which they were prepared to settle it. But, eventually, that meant that it had to be agreed, obviously,

with Woodcock's, as I read it, but the main thing was for Ed Butler, for the solicitors acting for Brian Phelan & Co., to get the documents in their hands and submit them to wherever they were submitting them, or whatever. That's my understanding of it.

Q. Can you just explain the final exchange to me? Are you saying that documents were left with you? If they were left with you, by whom?

A. I believe Kevin Phelan either left them with me or arranged to leave them in my office. I just have a recollection that I wasn't there. That's my recollection.

Q. Can you understand why I'd be puzzled why he wouldn't leave them with Ed Butler?

A. I don't know, I don't know why he didn't. I don't know. My recollection is that they were left with me when I wasn't around. That's my recollection.

Q. And what did you do with them?

A. Give them to Ed Butler.

Q. If you look at if you go up through the faxes, the first one is the original one from Denis O'Connor to Ed Butler of the 29th; the next is from Ed Butler to you; and the next is from you to Ed Butler. "Ed, can you follow this up? Need to make sure agreements are sorted." That suggests a little more than housekeeping?

A. All that suggests to me, I remember from the beginning, Ed Butler wanted the settlement, the resolution of the agreement settled in some sort of legal agreement, which

you see a version of here, and he also wanted an agreed letter that he could submit to the Institute of Chartered Accountants.

Q. It seems that somebody would have sent this agreement to you in August, it suggests that you had your role was more than a mere messenger?

A. Sorry, who sent me the documents in August?

Q. If you look at it if we go back to Leaf 100, do you remember a moment ago you agreed with me, or maybe you didn't, but I suggested to you that the page of the agreement that's enclosed here went through your fax machine, seems to have been received by you both on this occasion in September and on an earlier occasion in August, do you see that?

A. Yeah.

Q. What did you do with all these documents?

A. This, I can't recall. But I obviously said, from America, send it to Ed Butler.

Q. That's as may be. But in August, when you got it, what did you do with it in August?

A. You see, I don't recall getting it in August.

Q. Well, leave aside whether you recall or not. What did you do with all these pages? We don't have all of them here, but what did you do with them? Where did they go?

A. Anything I would have had would have gone into a Kevin Phelan file.

Q. And is this the same file?

A. It's the same file we referred to on day one.

Q. That we referred to in the 18th June letter, the selfsame file?

A. Sorry, correct.

Q. The 18th June letter from you to Aidan Phelan, all into that file?

A. Correct.

Q. So you still have this file at this stage in August 2002?

A. In August 2002, yes.

Q. You still have the file?

A. Yes.

Q. I am sorry, I am being reminded that you informed me that the first drop-down file you had, you said you gave to Kevin Phelan in 2002, early.

A. Yeah, well I actually now believe I gave it to him at the resolution of this dispute. I don't know what I said at the beginning. But when I read through all these, it looks like everything settled with Kevin Phelan in September, not earlier. In fact, the contents of this draft settlement would have been beyond my capabilities, because I wasn't familiar with it.

Q. You weren't being asked to draft it, there is no doubt about it, it seems to have been drafted elsewhere, but it does appear as if it was being sent to you either to keep you up to speed or, if not, to at least allow you to comment on it.

A. Well, I can assure you I didn't comment on it because I see

names here that I have never seen before.

Q. What names are they?

A. They are on the last page of the tab. And if you go to the third and fourth line.

Q. Are they the partners with Bryan Phelan?

A. Yeah, five of those names I never saw or heard of before.

Q. Well, let's be clear about this much, Mr. O'Connor: You are not suggesting that the Butler Brophy Thornton fax sheet, the cover sheet sent by Colette Slattery to Ed Butler, is not your document?

A. I am not suggesting that.

Q. And the three pages to follow went with that to Ed Butler?

A. That, I believe to be the case, yeah.

Q. And therefore, you must have seen or had an opportunity of seeing the document that contains the names of Bryan Phelan's partners before now?

A. I believe the opportunity would have been if it was faxed to me in America. I have never I am telling you I have never seen those names.

Q. What did Colette or your secretary, maybe I don't want to suggest she is the only person involved. When you came back from America, is your correspondence left for you on your desk?

A. Sorry, I didn't catch that.

Q. When you came back from America you mentioned earlier that when you come back from your foreign trips, you'll stay in your office as late as need be to finish off your

work. When you come back from America, would I be right in thinking that, like anyone who is away from their desk, their correspondence is left on their desk when they come back to be examined by them?

A. There is, but not all of it. But I mean, and again, this might be beyond the realms of where you are at, but in my office, I spend a lot of my time, even when I am away, which I am a lot, trying to keep my desk clear. So everything that comes in in my absence is not waiting on my desk when I come back.

Q. Of course, I quite I understand that, you try to move things on, even on the phone. But does that not mean that when you would come back, that you'd find the letters that you had received plus the steps you'd taken, or the steps that you'd directed would be taken in relation to all in documentary form on your desk?

A. Not necessarily.

Q. Are you telling me this document wouldn't have been on your desk, the one to you from Ed Butler enclosing the other three pages?

A. I would imagine it wasn't.

Q. Where would it have been?

A. In a file, because I would have said, nothing to do with me, pass it on, file it.

Q. What do you mean, nothing to do with you? Of course it was to do with you.

A. Okay. I am accepting that you can actually put me here all

day, Mr. Healy, but I am trying to explain to you

Q. Can you explain this to me: Where did you write to Mr. Ed

Butler and say, "Mr. Butler, this is nothing to do with me.

Stop sending me faxes"? Where did you write to Woodcock's

and saying, "This is nothing to do with me. Stop sending

me faxes"? Or where did you write to Kevin Phelan saying

the same thing?

A. Nowhere.

Q. Then, what directions did you give about all this material

and where it should be put?

A. Within my office?

Q. Yes.

A. In a Kevin Phelan file. But what I can't get across to you

is all I was interested in here was would you sign off

agree the terms, and I can see references to it here.

Agree the terms, sign it off, get rid of it. That was my

interest. And that

Q. On whose behalf was that your interest?

A. It was what I said on day one I would try and do, and it

was what I was trying to do on the last day of the game:

"Look, here it is, agree it, sign it up. Good luck."

Q. No, no, what you told us on day one is that you were doing

this for Mr. Denis O'Brien Senior because he had asked you

to do it?

A. Correct.

Q. And he had asked you to do it so he could get the $\frac{1}{2}$ 150,000

agreement sorted out; that's why, isn't it?

A. That isn't exactly what he said on day one but

Q. That's what you told me he said. You told me he was not settling with Kevin Phelan until he got the other agreement sorted out.

A. I accept that. The way you put it to me a moment ago, you included the 150. On day one, he didn't say it to me, what you just said. I am not trying to be smart now, Mr. Healy.

Q. You knew there was a payment being made?

A. Yeah, I did.

Q. I presume you'd still have your e-mails that you had, or would you have instructed to get rid of those as well?

A. No, you don't have to instruct. You can either delete, save, or whatever.

Q. That's what I mean. Would you save those for your file as well? Would you save them physically or would you save them to a disc?

A. No, there was no disc in our place. One partner dealt with that technology side of it.

Q. Would you not back up

A. Sorry, Mr. Healy, I'm trying to answer you. I don't handle the computers in our office; someone else does.

Q. Now, the file you got, or the material you got from Woodcock's on that day, on the 2nd August, that would all have gone into the Kevin Phelan file then, would it?

A. I would imagine so, yeah.

Q. And whenever it was, just to jump forward for a moment, whenever it was all of these matters were resolved, you

handed that file back to Kevin Phelan?

A. That's correct.

Q. Why?

A. He asked for it back. He insisted on having it back. He said, "All matters are now closed. That's it, I am finished all my disputes with everyone."

Q. Why would he want your file?

A. Well, he regarded it as his file.

Q. Can we get into the real world. Whose file was it? It was your file in your office, your documents. What made it his file?

A. Because anything that I did was in relation to him trying to settle his fees.

Q. Anything that you did, you did, you told me, because of what Mr. Denis O'Brien asked you to do.

A. Well, Denis O'Brien didn't ask me to do everything.

Q. Well, who asked you to do some of these things?

A. The issues, again, were: Bryan Phelan/Denis O'Brien Senior; Bryan Phelan/Denis O'Brien Senior; Westferry/Denis O'Brien Senior.

Q. Craig Tallents/Denis O'Brien Senior?

A. Sorry, did I say someone twice there? I must have. I'd better start again.

Q. Don't worry.

A. Bryan Phelan/Denis O'Brien Senior; Craig Tallents/Denis O'Brien Senior; Westferry/Denis O'Brien Senior; Vineacre/Michael Lowry; the agreements in, the September

'01 agreements/myself. I think there was something else in all that. Have I left something out?

Q. All of that would have been in that file?

A. Yeah. It was quite a small file. But that's what yeah, and they would have all concerned Kevin Phelan, as far as I was concerned.

Q. Well, they concerned Mansfield, Cheadle, Doncaster, all the properties mentioned in the Bryan Phelan/Aidan Phelan dispute, isn't that right, and all the individuals you have named, and Vineacre, and Vineacre as well?

A. Yeah, I actually don't believe I had anything on Vineacre. That's my recollection. I believe it was a question of trying to agree a position. I mean, it was

Q. So you don't agree with the document that says that you were sent correspondence to do with Vineacre?

A. I can't recall that on Vineacre. That's what I'm trying to explain. I mean, this is difficult. I cannot recall it.

Q. Can you just go on to document 105 for a moment. This is a copy of a letter from LK Shields to Mr. David McCann. It says:

"Dear Mr. McCann,

"Can you confirm the wording as agreed by your client, and when you do so, I will arrange to have documents executed

by Brian Phelan & Co and Bryan Phelan sent to Denis

O'Connor to bring to you and to hand to you in exchange for your clients' copy of the agreement duly executed by your

clients."

Do you see that?

A. I do.

Q. The next document appears to be the same document. So you are still it looks like you are involved as the person in the middle taking the signed documents from both sides?

A. It looks like that, yeah.

Q. If you go on to the next document, which is the 6th of September. Messrs. LK Shields.

"Re: Our client, Kevin Phelan.

Re: Your client, Bryan Phelan & Co.

"Without prejudice.

"Dear Sirs,

"Thank you for your fax of today.

"Our client is content with the wording of the deed and draft letter. Further our client has stated that it should be possible to have the Deed executed with the seal of Gameplan International.

"Our client has taken this away and we understand will be forwarding to us.

"We understand that Denis O'Connor now intends to attend in Manchester on Tuesday of next week rather than Thursday.

There would not, however, appear to be a problem in leaving the date as the 12th. The deeds, however, can be exchanged on the 10th.

"The above is subject to our client being able to return the deed to us duly signed and sealed by Tuesday.

"Of course, the above, as previously stated, is subject to

satisfactory exchange of correspondence/documents in other matters associated to this settlement (which we acknowledge you are not instructed on)."

Do you see that?

A. I do.

Q. Now, do those appointments and those references to your being available in Manchester on a particular day to be moved back to another day, ring any bells with you?

A. Absolutely not.

Q. But one assumes they must have made some arrangements like that?

A. It looks that way. I just, I am not certain of this, but I just have a feeling that I was away in the United States on a dispute issue in South Carolina, I'm not certain, but it doesn't ring bells with me, as you put it.

Q. Well, you are going on memories. Do you have diaries that confirm this?

A. No, we have been through that in private hearing. I have explained my position.

Q. Do you know what other deeds are being referred to here?

Am I right in thinking this is probably all the other arrangements that are going on at the same time?

A. I can only assume that.

Q. If you just go back to Document 99 for a moment, please.

This is a letter from you to Craig Tallents. Do you see that?

A. I do.

Q. It's dated the 2nd September?

A. Correct.

Q. Which was around the time that these letters were being written, the e-mails we discussed a moment ago and the letters that we have just mentioned to you?

A. Yeah.

Q. So it looks like you were probably around at this time, doesn't it?

A. It does. I am just telling you that, like, I mean, I can't check it now, but I will check it, I am sure I can check it.

Q. It looks like you were around. It says:

"Re Westferry

Doncaster purchase/retentions.

"Good to speak to you last week. I didn't think I would be reverting this quick.

"I was speaking to Denis O'Brien Senior last Friday and he authorised this approach.

"I am trying to settle the position between all parties, including the retention and other claims issues with the vendors.

"In this regard, I am very much in the dark.

"What I'm trying to do is get an analysis of the position.

" what is held in retention, why and current status.

what other claims we are making and the basis of same.

what claims vendors are making and basis of same.

"With this to hand, I believe that I may be able to get the

basis of a full settlement all claims settled and withdrawn.

"Also, it would be helpful to get an overview of what has happened legally over the past two years local authority, etc.

"I have to be in London on September 11th in the Horseham area on other business and in the Manchester area on September 12th. Would it be possible to have a meeting with you (and/or solicitors) on the afternoon of September 10th?

"Also, if there are brief overviews you might fax to Colette I am in the USA until Saturday morning.

"Can you keep this as confidential as possible for obvious reasons? Also, I am fully aware of the ADR process."

Now, at this time, you were trying to tie down the what you call the ends, the housekeeping bits of the disputes you had been involved in over the previous almost year with Aidan Phelan, isn't that right?

A. Correct.

Q. And you were well and truly fed up with the whole thing?

A. Correct.

Q. And it wasn't over yet, because even before it was over, here you are writing to Craig Tallents, getting stuck in again into another part of this Doncaster dispute, isn't that right?

A. Correct.

Q. Does it seem that either you're a glutton for punishment or

you may now regret having got involved in all of this, but does it seem that you didn't, or does it seem likely that you said to Owen O'Connell, "I don't want anything more to do with this"? Are you certain you said that to Mr. O'Connell?

A. Yes.

Q. And why did you not act on it and walk away from the whole thing?

A. I more or less did.

Q. But here you are getting involved in it again on September the 2nd in a big way.

A. Well, what was I doing on September the 2nd?

Q. You were writing to Mr. Craig Tallents, trying to get an analysis of this position; you were asking to be involved again, to get briefed fully in relation to the retention issue?

A. To be involved again?

Q. Yes.

A. I had never been involved in it.

Q. Well, hadn't you just been dealing with Kevin Phelan for the previous how many months?

A. You see, again, this stuff would really interest me, this is what I call interesting problems, and you are trying to link both, whereas this is and I think, in fact, it's borne out by the fact that I managed to get it done in one night. This stuff I find interesting. So, you know, it's pretty unfair to try and link what was going on between two

firms of solicitors with what I would call an accounting exercise.

Q. You had just been dealing with an aspect of the Doncaster matter for months and months and months; it was driving you crazy?

A. Correct.

Q. You wanted nothing more to do with it?

A. Correct.

Q. And Mr. Denis O'Brien clearly asks you to get involved in this again, isn't that right?

A. Yes.

Q. Or else you asked him to get involved in it?

A. You keep using the word "again" and I am I am trying to explain to you, and I am not getting it through, obviously.

This is really interesting stuff.

Q. It might be interesting, but it's another part of the Doncaster thing.

A. That's the way

Q. Is it another part of the Doncaster thing?

A. Yes, but it's interesting. I know you think it's boring, but I actually find this type of work interesting, and I was very interested in the whole problem, and it's something that I have handled lots of times before. But, yeah, when you look back at it now, you can say, with all sorts of theories, it was silly, but I thought it was interesting, it was an opportunity to do something positive in this whole thing. It's interesting work. It mightn't

be to everyone else, but I certainly find it interesting

work.

Q. Well, can you remember then what you said to Craig Tallents

when you spoke to him in the week at the end of August?

A. I would believe that that was actually about the dispute

resolution with the Institute of Chartered Accountants.

That's what I would believe, looking at that now.

Q. That's what I thought myself, looking at it.

A. That's my recollection of it, and that's how it fits into

that.

Q. So you were speaking to him about the Institute of

Chartered Accountants thing, which was still live,

obviously, for him, probably, or on the point of settling,

and just as it was live but perhaps on the point of

settling for Bryan Phelan, is that right?

A. The Craig Tallents one, I can't remember that well. I

mean, I just know that there was a complaint made, and I

put it to Kevin Phelan that he had to withdraw that, or

settle that complaint. I was never really privy to it.

And I think that reference there is probably the first time

I ever spoke to Craig Tallents, and it was probably

something to do with the resolution of that. It had to be

to do with the resolution of that because, as I read this,

there would have been nothing else we would have been

discussing bar the resolution.

Q. Did you ring him or did he ring you?

A. I would imagine I probably rang him, got his telephone

number from Denis O'Brien Senior, or something. I'd say it was along the lines that the complaint against him was either going to be settled or withdrawn, or something, I don't know. I recall that he had moved from one practice to another and it was causing him difficulty, I think, in the practice he had been, or something like that. That's a vague recollection of part of it. I would say that was the first time I probably ever spoke to him, that reference there.

Q. Now, again, jumping ahead on the question of documents. You were involved in this matter for a while. What sort of a file did you open in relation to this?

A. This matter being the retention?

Q. This matter that you are now writing to Craig Tallents about.

A. I believe that when I eventually travelled to London, that I actually had nothing on this; that I was going in to get information in the solicitor's office, so I don't believe I opened any file.

Q. Well, this letter to Craig Tallents, where would the office copy of that letter have gone?

A. I'd say it ended up in the file that I got in London; in other words, that I probably brought it with me.

Q. What was the file called? How did you see this?

A. I had no vision of what it was about. I really just knew there was a retention dispute and I was going to look at it.

Q. Can we just look at what you said. "I am trying to settle the position between all parties, including the retention and other claims issues with the vendors."

A. Yeah.

Q. Now, that suggests that your role was a fairly significant one?

A. Yeah.

Q. You were dealing with all parties. Who were they?

A. At that stage I was dealing with Denis O'Brien Senior, Kevin Phelan, and at that stage, as regards this issue, only those two and sorry, obviously, now, Craig Tallents. That would have been it.

Q. So you were still dealing with Kevin Phelan?

A. But I was obviously still liaising with Kevin Phelan, yeah.

Q. In relation to this part of the Doncaster dispute?

A. Yeah, he had mentioned that to me as well.

Q. What had he said to you about it?

A. Now, in fairness, he had mentioned it before just now. I was aware of the, let's call it the retention dispute in I had heard of it a few times at this time of my life. Basically, as I understood the retention dispute, the vendors had had money withheld at the closing; it was in an Escrow account, or something, somewhere. There was reams of correspondence about it. The vendors were annoyed, according to Kevin Phelan, that it couldn't be resolved.

They also I always remember he conveyed to me that they had a major problem over some letter that had been written

by Christopher Vaughan which suggested stripping one of the companies and replacing it by another, or something, so that, in effect, if you were successful in a claim, you had nothing to claim against, I remember that. And he encouraged me, now that everything was getting settled, that he would like to see the settlement of this retention fund, if it was possible, right? I mean, he had always conveyed that to me, and he certainly was in contact with those vendors, right?

Q. At this time

A. That's the gist of it now.

Q. Okay. And it was Mr. O'Brien, apart from Kevin Phelan getting involved, Mr. O'Brien also got involved in asking you to help?

A. Yes.

Q. And why do you think he came to you?

A. You see, that's an over-simplification of it.

Q. I see.

A. I mean, I was speaking to Denis O'Brien Senior at his office and I can just all I can I think I have outlined this before all I can recall in particular was him saying to me that this retention dispute was out of control in London, it was costing him a fortune, he didn't know where it would end. He knew about this mechanism for resolution, but he also knew there was some fixed date in a court list, I think the following year, and he was frustrated by it, and he certainly mentioned it to me. And

my attitude was quite simple: I cannot understand how a retention dispute can't be brought to conclusion after the apparent length of time it was going on. And I had no problem in saying I would have said to him, "Give me a look at it".

Q. Did he tell you he regarded Kevin Phelan as a dishonest person and a blackmailer and an intimidator?

A. No.

Q. Did you hear him give that evidence to that effect here?

A. I didn't read all of as you know, I was abroad, so I didn't hear everything that went on here.

Q. Did you regard Kevin Phelan as a dishonest person?

A. Dishonest? No, I had seen nothing to make Kevin Phelan a dishonest person.

Q. And you are certain Mr. O'Brien never said to you he regarded him as dishonest?

A. Oh, I am certain of that, yeah.

Q. Or that he was trying to blackmail him or intimidate him?

A. No.

Q. In the second page of your letter, you mention being in London in September and in Manchester also in September.

Do you see that?

A. I do.

Q. That appears to tie in to some extent with the impression that both Woodcock's and LK Shields had about your movements, isn't that right?

A. Yes.

Q. And you go on to say, "Can you keep this as confidential as possible for obvious reasons?" Maybe this is just a small thing, but I don't quite understand that; confidential from whom?

A. I don't know, but I am going to give you a good guess at it, that it was and this is a guess that it was a reference to Aidan Phelan.

Q. Why would it be kept confidential from Aidan Phelan?

A. Because I think Denis O'Brien asked me to keep it confidential, Denis O'Brien Senior that is, and I think at that stage, there were for whatever reason, as I would have understood this, that Kevin Phelan was the man in the project. I think he brought Craig Tallents into the project, and I think it's a reference then to not disclosing it to Aidan Phelan. I think it was because maybe there was differences of opinion with Aidan Phelan, I can't recall but that's what I think it refers to, I think that's what it refers to. I think.

Q. But it doesn't say "Aidan Phelan" here?

A. I know that, but you are asking me what I think it refers to. That's what I think it refers to.

Q. I see. If you now go on to document 101, please.

Now, do you remember this morning, and I may have picked you up slightly wrong, so feel free to correct me on it, but you mentioned that you thought you might get some money out of pulling together the various parties if it all worked out in relation to the various disputes you were

involved in up to this time?

A. Yeah.

Q. Would you say they had worked out by this time?

A. That what had worked out?

Q. The disputes with the various people that you were involved in had worked out up to this time?

A. Well, I wasn't in dispute with anyone, so I would say at that time that

Q. I am not saying you were in dispute.

A. All right. I would say at that time they had, but now they had rolled into this retention thing which, I suppose, stupidly put my hand out to get involved in.

Q. Page or Leaf 101 contains a fax, a number of faxes, from firstly, from John Ryall to Ruth Collard on the 3rd September, 2002.

"Dear Ruth,

"I understand from Craig Tallents that he has scheduled a meeting for next Tuesday between Denis O'Connor, you and Craig with a view to progressing the retention issue.

Denis O'Connor is not representing either Westferry or Dinard but may be able to assist in resolving matters. I have requested the directors of Westferry to authorise you to attend the meeting with Mr. O'Connor and to discuss the matters in relation to the retention amounts. You should receive this authorisation either late this afternoon or first thing tomorrow morning."

And there is a response from Ruth Collard sometime later

that day.

"Re meeting with Craig Tallents/Denis O'Connor.

"Dear John,

"Thank you for your e-mail.

"Craig and I have pencilled in next Tuesday afternoon for a meeting with Denis O'Connor and I look forward to receiving the appropriate authority from Westferry.

"Notwithstanding this, there are a number of matters related to the mediation which require decision, as set out in my letter dated 28 August. I should be grateful to hear from you this week regarding these. If we leave it later, we may find that we are not properly prepared for the mediation and that this prejudices Westferry's position. I appreciate that there may be a hope that the matter can be settled with Mr. O'Connell's assistance before the mediation, but it is still necessary to prepare as though it is proceeding, particularly given the short timescale and the fact that the Court has been informed of the date.

"I should be grateful if you could telephone me and I look forward to hearing from you."

Now, can you recall how those meetings or those dates were set up?

A. The date of my meeting?

Q. Yes.

A. Yeah, when I came up with Denis O'Brien Senior, I would have mentioned to him that I had an upcoming meeting in London, one which I did every quarter in connection with a

client of mine, and that, if it suited him, I was prepared to roll it in with that. And he said to leave it with him. Now, I do recall him telling me that he mightn't be able to organise it in time because he was having trouble with authorisations, or something. I do recall that. But he eventually I can't remember the detail, but I know I locked it into my trip sorry, my quarterly trip would have been always arranged from the previous quarter, if you follow what I mean?

Q. Yes.

A. So the date I had in September would have been fixed in June or July type of thing. That's all I can recall about it. I mean, I just said I was available to tie it in with that and it was up to them if they wanted me to do it, to link it in around that.

Q. We know that, in any event, they did eventually get the meeting organised for the 10th, and you went over on the 10th to Peter Carter-Ruck, Solicitors, isn't that right, and Ms. Ruth Collard kept a note of that meeting?

A. 108?

Q. 108, yes.

CHAIRMAN: I suppose we have had this so often now. Have you had a chance to read this yet, Mr. O'Connor?

A. The attendance note?

CHAIRMAN: Yes.

A. Lots of times.

CHAIRMAN: Maybe we can just focus on particular portions.

Q. MR. HEALY: Now, Ms. Collard says that you indicated to her, she says, "DOC said he would explain how he had become involved in the matter."

Do you see that?

A. I do.

Q. And would you agree that you would have said something like that to her?

A. I am sure I would have explained where I was coming from.

Q. And it goes on: "He had been trying to sort out on Denis O'Brien's behalf the position with Kevin Phelan."

Would you have said something like that?

A. I am sure I would have, yeah.

Q. That would be, in any case, an accurate account of what you had been doing over the previous few months?

A. That's why I would agree with it, yeah.

Q. She goes on: "DOC had represented someone who had been in partnership with Kevin Phelan and Kevin Phelan had made trouble for him at the same time."

Now, we discussed this business of being in partnership

before, but leaving that aside, maybe she referred to you

had represented somebody who was in a partnership, right?

Because you certainly had represented somebody who, on his own evidence, was in a partnership with Aidan Phelan, which was buying property which was being handled by Kevin

Phelan, is that right?

A. You are talking about Michael Lowry?

Q. Yes.

A. Yes.

Q. Would you have said that you had represented Michael Lowry in connection with dealings he had with Kevin Phelan?

Would you have said that?

A. It's possible, yeah. That's the truth of the matter, yeah.

Q. Would you have said that Kevin Phelan had made trouble for him?

A. Well, if we are talking about, let's say, Michael Lowry?

Q. Yes.

A. No, I don't know what trouble he would have made for him.

The only thing I would have been aware of were the issues that arose in 2001, the claim in respect of Mansfield.

Q. So you wouldn't say that you wouldn't have said "Kevin Phelan made trouble for Michael Lowry"?

A. I don't believe that I said that. I mean, this is okay, keep going, sorry.

Q. She goes on: "In discussions with Kevin Phelan, he had mentioned the litigation and the position with the retention fund." I think you told me a moment ago that that's correct, isn't that right?

A. That, I would accept, yeah.

Q. "At one point Kevin Phelan had told him that he had spoken to Mark Weaver, who had said that he would drop the $\frac{1}{2}$ 250,000 claim if Westferry handed over the retention fund and dropped the payroll claim." Do you see that?

A. I do.

Q. What can you say to that?

A. I say that could have been true, yeah.

Q. "He would do this for an 'uplift' of $\frac{1}{2}$ 25,000 and in return for an opportunity to sell the stadium at Doncaster."

What about that?

A. I haven't an idea what that is. I think I have said before that I think 'uplift' was phraseology used by Kevin Phelan, but I can't get the context of that correct.

Q. Well, it looks like it's being referred to here in quotation marks as if it was said by somebody?

A. Yeah, I see that.

Q. As far as we know, Ms. Ruth Collard wasn't dealing with Kevin Phelan?

A. Okay.

Q. So does that suggest that you would have used the word 'uplift' in referring to something that Kevin Phelan would have said to you?

A. I would have been conscious that Kevin Phelan used the word 'uplift'. I had heard him use it before, particularly the June meeting, '01.

Q. Yes. But this would suggest that Kevin Phelan had said to you that he could persuade Weaver to drop the $\frac{1}{2}$ 250,000 claim if Westferry handed over the retention fund and he got an opportunity to sell the Doncaster stadium, is that right?

A. That's what that suggests, yeah.

Q. Well, can you remember Kevin Phelan saying something along those lines to you?

A. No. ĩ½25,000, I don't know what that's about.

Q. It's the opportunity to sell Doncaster I am more concerned about.

A. Sorry. I don't recall that ever coming up.

Q. Did he ever tell you he could persuade Mark Weaver to drop part of his claim?

A. Did Kevin Phelan ever say it to me?

Q. Yes?

A. No. It was always conveyed to me it was about settling it rather than dropping it.

Q. Well, there is a settlement involved: Dropping part of it in return for Kevin Phelan getting back into the project, if you like, to sell the stadium, isn't that right?

A. Sorry, you are reading it as it's the opportunity for Kevin Phelan to sell the stadium, yeah.

Q. Yes.

A. I wasn't sure whether

Q. Why is Kevin Phelan still involved in this if you had just been through months and months and months of getting rid of him?

A. Maybe he wasn't. Maybe I am

Q. You did tell me a moment ago that he was, didn't you?

A. But maybe I am conveying then what had been going on.

Q. Yes, I take your point.

A. I mean, I didn't write this. I am trying to put an interpretation on it for you.

Q. I take your point.

"DOC said he was also representing a member of the Irish parliament, Michael Lowry. He was being investigated as part of the Moriarty Tribunal proceedings in Dublin. Kevin Phelan had made various threats to cause trouble for ML."

Now, do you think you said that you were representing Michael Lowry?

A. I am sure I did, yeah.

Q. And do you think presumably you would have explained who he was?

A. I would have, yeah.

Q. So that seems correct, doesn't it?

A. It does.

Q. Do you think you said that Kevin Phelan had made various threats to cause trouble for him?

A. For ML, for Michael Lowry?

Q. Yes?

A. No, that just doesn't get it for me, I am afraid.

Q. You mean no?

A. No.

Q. Judging from what you said to me earlier, you said Kevin Phelan hadn't made any trouble for Michael Lowry?

A. You know, at that time I would have considered that the trouble that had been created by Kevin Phelan was to do with the settling of the Doncaster fees issue.

Q. Yes, but he hadn't made trouble for Michael Lowry, had he?

A. No, no, that's the point I am making.

Q. You didn't see him as making any trouble for Michael Lowry?

A. No.

Q. "Denis O'Connor said he had discussed the position with Denis O'Brien and learned about the mediation which was to take place." That seems to accord with what you have already said in evidence, isn't that right?

A. That would seem to be, yeah.

Q. "Denis O'Brien had said to Denis O'Connor that the Mediator would impose a binding agreement on the parties. Denis O'Connor said when he said this to KP, Kevin Phelan had said this was not correct and had telephoned Mark Weaver who had sent a fax through of part of the mediation documents. Denis O'Connor said it was clear that the Mediator would not impose his decision. Ruth Collard said this was correct and was the essence of mediation. She was surprised that Denis O'Brien had apparently not understood this, as it had been made clear to Aidan Phelan on several occasions."

Now, I'll just take it, if necessary, sentence by sentence, but I suppose the first sentence is the main thing to begin with. Had Denis O'Brien told you there was going to be a mediation? He presumably had

A. Yes.

Q. Because you had mentioned it to Craig Tallents?

A. Yes.

Q. So had he presumably explained to you his understanding of the mediation?

A. I recall that, yes.

Q. And do you recall that you had discussed that with Kevin Phelan?

A. I do, yeah.

Q. And do you recall that Denis O'Brien Senior had informed you that the Mediator would impose a binding agreement on the parties?

A. I recollect that, yeah.

Q. And when you said that to Kevin Phelan, he said, "No, that's not correct." And we know it's not correct. People can obviously get mistaken about these things. I am not criticising Mr. O'Brien. So, is that correct, that Kevin Phelan said to you, "No, you have got that wrong"?

A. Yeah, I remember that, yeah.

Q. And do you recall did he telephone Mark Weaver who sent through a fax of part of the mediation agreement?

A. That, I don't know about. I mean, it's possible that Kevin Phelan said that to me, but, I mean, it doesn't mean anything to me.

Q. Well, Ms. Collard says that she noted you saying it. She is right about you having discussed it with Kevin Phelan?

A. Correct.

Q. She is right about Mr. O'Connor having got it Mr. O'Brien having got it wrong, and the next part you don't remember, or you are saying it never happened?

A. It could have happened. I mean, the like, as you look at that paragraph there, the main context is that I remember Denis O'Brien Senior had one version of how it

worked, and I went along with that, and I remember, subsequently, Kevin Phelan telling me that that was a wrong interpretation of it. He seemed to be more au fait with it than anyone. That's the part I recall.

Q. But who would have mentioned why would there have been a mention of Mark Weaver unless you mentioned it to Ms. Collard?

A. You see, it's possible that Kevin Phelan told me he had seen parts of the mediation from Mark Weaver, that's how it reads to me. And I'm not disputing I said that, but I just don't recall it.

Q. You may have said something along these lines, let's put it that way?

A. Correct.

Q. All right. "Denis O'Connor said it was correct from this that the mediator" sorry, I am reading that again

"Denis O'Connor said the upshot of all his discussions with Denis O'Brien and Kevin Phelan had been that he had asked if he would be prepared to meet Ken Richardson and Mark Weaver and at Denis O'Brien's request a meeting had been arranged first in Manchester and then in Dublin."

What do you say to that?

A. Kevin Phelan had asked me if I would be prepared to meet these guys, and I certainly signalled I would at some stage in time. I cannot understand the reference to Manchester and then in Dublin; that certainly throws me. And that Denis O'Brien requesting a meeting when we hadn't even, if

you like, got to the retention fund or retention fund issues. So that throws me a bit, right? There was some confusion there about the Manchester and Dublin. I am just not

Q. Well, can we agree that you accept that you would have said something along the lines that, from your discussions with Denis O'Brien and Kevin Phelan, the situation, as you saw it, was that you'd been asked would you be prepared to meet Richardson and Weaver, leave it that far for the moment.

A. Yeah, but only as regards only in my discussions with Kevin Phelan. I can't recall it having got to that stage with Denis O'Brien Senior, because there was nothing to talk about.

Q. Well, if you go back to your letter to Craig Tallents. I'm not asking you to turn back to it at the moment, but I'll just read it out to you.

"Dear Craig,

"Good to speak to you last week," and so on.

"I was speaking to Denis O'Brien Senior last week and he authorised this approach. I am trying to settle the position between all parties, including the retention and other claims issues with the vendors." Do you see that?

A. I do or I recall it, yeah.

Q. That would suggest that, at that stage, your role was to try and deal with all parties in this case, both sides, and wouldn't that seem to be consistent with what you are saying here as recorded by Ms. Collard?

A. It would, but my recall is of only having had those discussions with Kevin Phelan, but her note could well be right on that point. I just can't recall that detail of it.

Q. I see. "Denis O'Connor said from all he had heard, if his discussions with Ken Richardson and Mark Weaver to settle the matter were not successful and went to mediation, the mediation would fail. He said the other side were laughing at us and that they would ensure that the mediation would not succeed and would then take the matter to court."

Do you see that?

A. I do.

Q. Do you remember having that impression from what you had heard up to then about the whole thing?

A. From Kevin Phelan, yeah.

Q. From Kevin Phelan?

A. Yes.

Q. Then you go on: "They" she goes on "They wanted to cause the maximum embarrassment for Denis O'Brien and others including Michael Lowry." Do you see that?

A. I do.

Q. Do you think you said that?

A. I said something like that, yeah.

Q. And what did you mean by that?

A. That Kevin Phelan had told me that the vendors here, Mark Weaver and Ken Richardson, were pretty annoyed at what they considered to be the non-completion of their deal on the

purchase of Doncaster. They now identified it as a Denis O'Brien Junior issue, and that they would like, that was what was conveyed to me that they didn't give a thought to the mediation; they were more interested in getting this out on a stage and embarrass Denis O'Brien by linking the Doncaster deal to Michael Lowry to embarrass Denis O'Brien.

Q. How were they going to do that?

A. By, as I understood it by creating the impression that Michael Lowry was involved in Doncaster.

Q. How were they going to do that?

A. I don't know.

Q. Surely you asked?

A. No, that's what Kevin Phelan told me. He said, "You are dealing with different people who are out to cause the maximum damage in any way they can to get their monies."

Q. And they were going to damage Michael Lowry?

A. No, they were going to damage Denis O'Brien.

Q. They were going to damage Michael Lowry, as well, or embarrass him?

A. Yeah.

Q. By suggesting there was a connection?

A. Correct.

Q. And you didn't pursue that with Kevin Phelan?

A. No.

Q. Do you remember when you were discussing the letter, or the fax of the 11th August, 1999, with me well, sorry, yesterday, and I think earlier today as well?

A. Yeah.

Q. You were suggesting that there was some element of devilment involved in it?

A. Yeah.

Q. What did you mean by that?

A. Well, I suppose when I look back at it now, I look at all the stuff that I have seen here, I formed the impression that there was a lot of devilment going on.

Q. I don't think you mean devilment now in a funny sense?

A. No, in all sorts of senses. I think one of the weirdest things I have seen here is a letter from an alleged firm of solicitors with the address of this building here, quoting my name, left, right and centre, which I was never made aware of. That's some form of devilment.

Q. But just deal with the devilment in relation to the letter or the fax of the 11th August, 1999. Deal with that.

A. But I didn't say that was devilment.

Q. You did.

A. No, I didn't. I said there was a lot of devilment going on, Mr. Healy. I didn't say that was devilment. I'm sorry.

Q. Do you think that was devilment?

A. Sorry, maybe you'd better read it back to me. I don't believe I said that to you. Maybe you'd better read it back to me.

Q. We will. We will just go on a bit here.

"RC asked how they could cause any embarrassment to Michael

Lowry as so far as she was aware he had no connection with the proceedings."

Do you think she would have said that?

A. That's possible, yeah.

Q. "DOC said ML did have a connection and that he had been in the room when discussions had taken place between Kevin Phelan and Ken Richardson regarding the lease. Ruth Collard said no one had ever suggested that to her previously."

Now, what do you say to that?

A. I don't know how Ms. Collard could have written that, because I have never been aware of Michael Lowry meeting Ken Richardson, and in all the devilment that's gone on, I have yet to see that one put out.

Q. You are not accusing Ruth Collard of devilment, are you?

A. Pardon?

Q. You are not accusing Ruth Collard of devilment?

A. I don't think you are really putting that to me

Q. You are not suggesting she is inventing this, are you?

A. I am not.

Q. Well, let's just deal with what she recorded. Did you say that?

A. No.

Q. Could you have said anything regarding Michael Lowry's involvement with the negotiation or the discussions connected with the lease, if you take Ken Richardson's name out of it?

A. No.

Q. You had just been through the earlier negotiations with Kevin Phelan in which a letter, or a document, rather, as far as you were concerned, a document was generated which appeared, on the face of it, to link Michael Lowry to Doncaster. Was that in your mind at this time, do you think?

A. No. But I hate to keep saying this to you, I was never aware of a document.

Q. No, no.

A. But you keep telling me about a document. I was never aware of it.

Q. But there must have been a document. You called it a narrative. A narrative is a document?

A. That's what it was in my mind. I wasn't aware of any document.

Q. A document containing a narrative?

A. Yes.

Q. In which there was a reference to Michael Lowry, on the face of it?

A. Correct.

Q. And a connection with Doncaster?

A. Correct.

Q. Could that have been in your mind at this time?

A. Absolutely well, sorry, could it have been in my mind?

It could have been, it could have been, yeah.

Q. When you said or when Ms. Collard records you, which you

don't agree, as saying that Kevin Phelan caused trouble for Michael Lowry, or had made threats to cause trouble for him, could you have been referring to that letter, or that document containing the narrative?

A. That's possible, now that you put it to me that way.

That's possible. I hadn't thought of it in that context.

Q. So you were identifying Kevin Phelan as somebody who could be difficult or troublesome?

A. Difficult or troublesome in the context of?

Q. Michael Lowry?

A. In that context, yeah.

Q. "Ruth Collard said that the position was that we had been trying to talk to them about a settlement for nearly a year. Ruth Collard said that their legal advisors, Reg Ashworth and their counsel seemed keen to talk about a settlement but Reg Ashworth had always said to her that his clients would not settle. We had seen their agreement to the mediation as a major step forward. Ruth Collard said that Denis O'Connor might say they were laughing at us in relation to this but her experience of mediations was that they often did achieve settlements and Ken Richardson and Mark Weaver would find that they came under a lot of pressure from their lawyers and from the Mediator to settle, if a reasonable deal was put to them."

Do you think something like that was discussed or mentioned?

A. It's possible, but I don't recall it.

Q. She goes on to describe how they were going to handle their side of this dispute: "If they did not settle, Ruth Collard did not regard their threats to expose various matters in court particularly seriously. If the mediation failed and the case went forward, we would be making a substantial payment into court at an early stage. If they wanted, they could go on after this, but if our payment was well-judged, it would put enormous pressure on them and it would be very expensive if they failed to beat the sum paid in. Ruth Collard said she was telling Denis O'Connor this so that he would not be too impressed by what Kevin Phelan was telling him. The fact was there were merits in their claim and vulnerabilities in our case, but they also had vulnerabilities and we were not without resources. Ruth Collard said it was very important that we did not appear desperate to settle."

Now, do you recall that sort of discussion? Maybe not the precise detail of the various legal evaluations, but do you recall her saying something along the lines that "We had problems, they had problems, but we didn't want to appear that we were weak"?

A. I don't.

Q. Or that you were desperate to settle?

A. That who was desperate?

Q. You, your side.

A. No, I don't recall that discussion. I mean, like, it takes on

Q. Can I just clarify one thing, I should be clear about it at this stage: there is no letter from you to Woodcock's, is there, along the lines of the letter you sent to Craig Tallents telling him that you were going to settle this on all sides?

A. No.

Q. Or there is no letter from you to Dinard's solicitors, Reg Ashworth, saying the same thing?

A. No.

Q. So you were only writing to the O'Briens?

A. Dealing with

Q. You were only dealing with the O'Briens in relation to this?

A. Yes.

Q. She goes on to say, "Denis O'Connor said he understood this. He said it would be helpful if he could have an outline of the factual matters. Ruth Collard said she would ask Craig Tallents to explain the background to the litigation as he could explain the accountancy details."

Is that correct?

A. Sorry, I do remember, yeah, trying to get into the accountancy details, yeah.

Q. "Craig Tallents then ran through the background, dividing the matter into three issues: the retention fund, the claim in respect of the lease and our claim in respect of the payroll warranty. Denis O'Connor said he now began to appreciate that the issues were extremely complex. He

wondered how he would be fully briefed prior to the meeting taking place, agreeing that Denis O'Connor needed a further briefing and that Ruth Collard would prepare a file for him consisting of Craig Tallents' original briefing documents and the pleadings."

Do you recall does any of that ring a bell with you?

From your own evidence, we know that you did get a bundle of documents, isn't that right?

A. Well, I got a file of documents, yeah. Just

Q. Take your time, we can go through it sentence by sentence if you like. She said that you said that you understood what she was telling you about paying money into court and keeping up their end of the litigation, if you like; you don't agree with that?

A. Like, that sounds logical. I am actually trying to make it short for you by ploughing through it here. It's the part at the end of it that doesn't fully hang together.

Q. Which part is that?

A. "He wondered how he would be fully briefed prior to the meeting taking place, agreeing he needed a further briefing and that RC would prepare a file for him." That just doesn't make sense, because the main purpose I was there was to examine the retention issue. So further briefings don't come into it. I just don't understand what that's about. Do you understand? All I wanted to do was find out

Q. No, but weren't you going to get documents? Don't we know

that you went away and came back?

A. Sorry, they were, if you like well, sorry, what does she mean by "briefing" then, I suppose is the issue? I don't know what she means.

Q. I think that's what she means. You see, she says, "original briefing documents," do you see that, "and pleadings"?

A. That's fine, yeah, that's what she gave me when I came back. That's fine.

Q. You were going to meet with the other side. She wanted you you wondered how you would be fully briefed prior to the meeting taking place. Now, Craig Tallents appears to have brought you through some kind of broad outline of this, but she then agreed that she'd prepare a file for you and give you a whole load of documents, and you appeared we know that you did, from your own evidence that did happen, isn't that right?

A. Correct. I think you have just said it there, my point.

My mind wouldn't have been jumping forward to meetings when I didn't even know, at that stage, what the retention was about. That's the part of it that I can't get into context of the note as it's written there.

Q. "At the conclusion of the meeting, Ruth Collard reiterated that Denis O'Connor should not be too impressed by the threats he had heard. If the mediation did not work, then that would be a pity, but we would move on. Denis O'Connor said that one good thing was that Kevin Phelan would now be

a witness for us. Ruth Collard said it might be helpful that he would not be available to the other side, but he would be a much discredited witness and she was far from sure we would want to use him." Do you agree with the general gist of that paragraph?

A. The general thrust of it, yeah.

Q. When you say that when she says that you said the "good thing was that Kevin Phelan would now be a witness for us," was this based on your knowledge of the issues that you had been dealing with during the previous summer - well, summer of that year is what I mean?

A. No, no, I was basing it on I would have been saying it on the basis that Kevin Phelan had said to me that he would have been prepared to be a witness in the case, in the upcoming, whatever, either mediation

Q. For the O'Briens?

A. Well, I didn't look at it that way. I just looked at it that he was prepared to be a witness, right? I don't know what he could bring to the party, but he was now prepared to be a witness. I know it says "for us".

Q. Well, it suggests that you said it was a good thing that he'd be a witness for you?

A. That he would be a witness, yeah. Like, the "for us" part, like, what difference does that make?

Q. Well

A. That's the point I am trying to make to you.

Q. She is saying that you said it was a "good thing that Kevin

Phelan would now be a witness for us." Firstly, I am suggesting that he'd now be a witness for the O'Brien side and not for the Dinard side?

A. Well, that's the way she has written it down.

Q. Yes.

A. But I think the emphasis was on the fact that he was prepared to be a witness, that's my understanding. I mean, that's my understanding of it, as I look at it.

Q. Was there an advantage? What was the good thing about it for your side?

A. The only good thing was that he was obviously the guy that was there when the deal and acquisition of Doncaster took place. He must have been the one man that knew most of what all this was about. That was my understanding.

Q. And when did he say to you you'd be a witness?

A. Just prior to that. It was recent, like.

Q. Just prior to you going

A. I don't mean that day, but in the immediate time just before that. It could have been two days, a day before, but it was immediate. That's what I'm saying.

Q. I see. And what did that discussion with Kevin Phelan entail that time, without remembering the day of it? Can you remember what you were talking about?

A. The gist of it was what is conveyed, in effect, in part of her memorandum there, or her file note. That, about the threats, you know, all that stuff. The gist of it was, and that he would be able to set up a settlement meeting with

those guys on the right terms. That was the gist of it.

Q. But if Kevin Phelan was, as I think we agreed a moment ago, a person who could be troublesome, if he was going to be a witness for you now, that would mean he probably wouldn't be a troublesome person, isn't that right?

A. Just, I know this sounds not a witness, like she says "for us," that's not what I said. He would have been a witness

Q. Would it be a good thing if he was a witness for the other side?

A. What difference would it make? I think the point was that he was the guy that knew the whole deal

Q. Did you know what difference it would make?

A. No.

Q. Well, then, what point are you trying to make?

A. Well, I didn't write the note. That's the point I'm trying to make.

Q. But you were aware yourself that Kevin Phelan was going to be a witness?

A. Kevin Phelan had told me that he was prepared to be a witness, right, at, I presume, the mediation, but it could have been the court thing, right, because that's the way it seemed to be heading, to court rather than mediation, right, or arbitration, or whatever it was.

Q. And had he ever said that to you before then?

A. No.

Q. He only said that to you after his various issues were

settled?

A. It had to be, because I think they were settled at the end of August, yeah.

Q. Do you know what Ruth Collard meant when she said "Kevin Phelan would be a much discredited witness" and she was far from sure that they would want to use him?

A. No, I don't actually know what she means by that.

Q. "Finally impressing on Denis O'Connor that it was essential that any meeting took place 'without prejudice'. Denis O'Connor said he understood this. Ruth Collard said she could not emphasise too highly how important this was.

Otherwise Denis O'Connor might make some concessions on behalf of Denis O'Brien which, if the matter did not settle, would prove extremely difficult for us to cope with in the ongoing proceedings."

Do you recall her saying something along those lines?

A. I do recall her saying the 'without prejudice' part, yeah.

I don't remember the concessions part, but I certainly understand I recall the 'without prejudice' part.

Q. Yes. After that meeting, what contact did you have with Kevin Phelan with a view to setting up the meeting you were going to have with Richardson and Weaver?

A. I would say a few days later I told him I wasn't prepared to have the meeting.

Q. You told him you weren't prepared to have it?

A. Yeah.

Q. Why was that?

A. Because after I had done the exercise that night and got, if I remember correctly, fairly detailed workings to both Ruth Collard and Craig Tallents, I felt that the conclusions I had arrived at were unwelcome conclusions to all of those people, and in commercial terms, I was more or less told I wasn't wanted any more, type of thing. That's the perception I got of it. I was out of it.

Q. I see. So, in other words, you were analysing it in terms that suggested that the other side were going to get what they were looking for, roughly?

A. I just remember that it was substantial, what I came up with, and I do remember that there was a huge issue about this lease thing, which was the one thing I contacted I think both Ruth Collard and Craig Tallents about the next day, or something like that; in Gatwick, the next evening, I remember ringing them, right? But I remember that was the first indication, in fact, that next day. It was I detected a certain amount of tetchiness because of the findings that were contained in the work I had done.

Q. You remember that there was huge, this huge issue about the lease?

A. I do.

Q. Had that been a huge issue at the discussion you had with yourself and Craig Tallents?

A. At the meeting?

Q. Yes.

A. Well, she was there for the discussion. I mean, at all

times there was three of us in the room, right?

Q. Yes.

A. I think it came up in a bit of detail, but I couldn't comprehend particularly she was explaining it but I couldn't comprehend it because I didn't understand it and I didn't know what it was about at that stage. And my attitude would be "Give me the papers and let me go away and look at it myself." But I do remember it coming up.

It was obviously a contentious issue, this lease. It was the lease on the car-park, I think, if I remember correctly, wasn't it?

Q. Yes. I think Mr. Phelan told us, and I think we have seen documents and I think Mr. Phelan and Mr. Mr. Phelan agrees that they were never going to get the money back on the lease.

A. The vendors?

Q. The purchasers.

A. Right.

Q. They were going to have to pay the $\frac{1}{2}$ 250,000?

A. That was a big issue I remember, yeah.

Q. Now, at that stage, you say that you felt that you were out of this, is that right, and the meeting didn't go ahead?

A. That I was certainly being moved out of it, yeah.

Q. And you said that to Kevin Phelan?

A. That wouldn't have been you know, that would have happened a few days later, I think, do you know what I mean? On the next day, certainly sorry, on that night,

I would have gone to my hotel and worked on it, I remember, pretty late that night, trying to go through the file of documents. I believe I would have then faxed through my handwritten notes to my office. My secretary would have typed them up and either e-mailed or faxed them to, I think, both Ruth Collard and Craig Tallents, but I would have then just zeroed that out of my head because my priority all the next day was the other job in Surrey. So when I got back to the airport that night, I can remember speaking to, I think, Ruth Collard and discussing the content of what I had prepared, and she had an attitude of, that I was more or less, well, wrong on a lot of points, and that's when I detected the less-than-friendly tension.

Q. If you go to document 115, there seems to be a reference to some of this in an e-mail from you to her. That's about a week afterwards. And clearly you are still engaged, as it were. You say, "Many thanks for your e-mail on Friday last. I agree, but what I'm stating is that as per agreement they are due $\frac{1}{2}$ 250,000 which they have not yet been paid.

"Also, they are due retention fund $\frac{1}{2}$ 447,444 less payments discharged. That is the summary at the end of my e-mail last Thursday. In short they could have a legitimate claim at present for $\frac{1}{2}$ 580,784.47 approximately plus interest.

"I hope I am reading this correctly.

"We are trying to establish meetings for this coming Friday morning."

That was the 16th, and the coming Friday was the 20th.

A. Okay.

Q. That was a Monday. So it looked like you were still on target to meet?

A. I agree, yeah.

Q. And where was that meeting going to take place, can you recall?

A. I can't.

Q. If you go on to the next e-mail, the next document, which is a response to your e-mail, she says she agrees with your analysis but then produces another view of it which suggests that, on the basis of the counterclaim, most of the claimants' claim would be wiped out, and then she goes on to say that there is a double claim in relation to the lease. Do you see that?

A. Yeah, I recall this double claim thing, yeah.

Q. Then she goes on, "Let me know when you have a date for the meeting. I know I harped on about this at our meeting, but I would be a great deal more comfortable if you had an agreement in writing that all your discussions were to be 'without prejudice' before the meeting. Our opponents have already shown themselves to be less than trustworthy and if you are not successful in achieving a resolution, I do not want the clients' position in the litigation to become untenable because of concessions made (quite properly) in the course of negotiations." Do you see that?

A. I do.

Q. Now, you seem to be still on side, if I can put it that way, at that point?

A. Yeah, what I told you a few minutes ago was incorrect.

Q. I am not suggesting you were incorrect when you said a few days; it may have been more than a few days, I appreciate that.

A. That's the point I am making. I just have a consciousness of being cut out of this, and I didn't realise until you showed it to me here that it was a week later this was still going on.

Q. Well, are you aware of the evidence that has been given that an issue arose as to who you were acting for?

A. I am aware that the issue arose, but I wasn't aware of it then. That's the problem. I only became aware of it through Tribunal documents.

Q. Right. Well, I'll just summarise those documents and see if you agree with me.

What Craig Tallents and Ruth Collard were saying was "We thought Denis O'Brien was acting for the O'Briens Denis O'Connor was acting for the O'Briens." And they said, "No," and the O'Briens and John Ryall said, "No, he wasn't." In fact, they said, "We don't know what he is trying to get out of this and we are puzzled at what he wants to get out of it." And at one point I think there is a meeting where Mr. O'Brien said, "I have to be friendly with him." That seems to be what led up to eventually their deciding not to run with the meeting you had

arranged. Can you remember that?

A. No. I mean, this all when I see all this stuff, just to put it in perspective, I didn't even know who John Ryall was. I knew none of this stuff was going on. I had never heard of John Ryall, in fact.

MR. HEALY: I don't know whether we are going to finish the rest of this, Sir. I think if we have a short adjournment, we can think about it

CHAIRMAN: Perhaps it might be well to review it. We will sit again in five minutes.

THE TRIBUNAL ADJOURNED BRIEFLY AND THEN RESUMED AS FOLLOWS:

MR. HEALY: It's not going to be possible to finish all this material satisfactorily today, Sir, and we have suggested that we would sit tomorrow at a quarter to ten and go on for two hours, perhaps have a short break and try to dispose of the whole matter tomorrow morning.

CHAIRMAN: Well, I am conscious that Mr. O'Connor has been two hours four hours in the witness box. His testimony is important. And in fairness to him and to everybody else, it would be wrong to press on unduly this evening, and in the context of the arrangements which I appreciate have to take some cognisance of another commitment of Mr. O'Connor tomorrow, I think the preferable course is to accede to that. So 9.45 tomorrow morning. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 22ND OF MARCH, 2007,
AT 9.45AM.