

THE TRIBUNAL RESUMED ON THE 27TH OF MARCH, 2007,

AS FOLLOWS:

OWEN O'CONNELL, PREVIOUSLY SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Good morning, Mr. O'Connell. Thank you very much for making yourself available at short notice to assist at this late stage of the Inquiry. You are, of course, already sworn from your earlier evidence in relation to the GSM competition.

Q. MR. COUGHLAN: Thank you, Mr. O'Connell. And again, thank you for making yourself available at short notice, and I think

A. Not at all.

Q. we put together a book for you, I think, on Friday, and these are the documents which we have extracted from the two volumes which everybody else has. So if I refer to a number, it will correspond to a number that will appear in the yellow books. That's in ease of everybody else, if that's all right.

A. Yes.

Q. I think, Mr. O'Connell, from your file, it would appear that it was towards the end of May or the beginning of June of 2002 that Messrs. William Fry's had any contact or anything to do with the issues which surrounded Kevin Phelan, is that correct?

A. Yes, that's correct.

Q. And I think, am I correct in understanding that if we go to

the book which we gave you, I think behind Tab 57 is a note which was made by you, is that correct?

A. Yes.

Q. That's around the end of May, 24th May, and I think you very kindly, when asked by the Tribunal some time ago, you had all the handwritten notes typed up, is that correct?

A. That's correct.

Q. And I think if you just the note reads:

"1. Ownership of Westferry sorry, the matter is "Moriarty".

"1. Ownership of Westferry.

2. Rights of Kevin Phelan again Westferry.

3. Denis O'Brien written instructions.

4. Letter of Kevin Phelan seeking particulars.

5. Response.

6. Letter to Kevin Phelan offering settlement.

7. Acceptance."

And then I think there was a Post-it, and you have said that that should read: "Owen, as discussed, please copy and return to me. Denis O'Connor said CV" Christopher Vaughan "can't help re Westferry ownership but Walbrook Trustees did it I think that they are Denis O'Brien's people in the Isle of Man Deloitte's Sandra will know."

Can you just help the Tribunal, enlighten the Tribunal, what information you received at that time and what the note is about?

A. Yes, certainly. To the best of my recollection, Mr. O'Brien Senior asked to come to see us, that is Owen O'Sullivan and myself, and did so, and told us that they were "they" being, I suppose, Westferry and Denis O'Brien Junior's interest were in a dispute with this man Kevin Phelan concerning his fees for the Doncaster transaction, and I had heard Kevin Phelan's name before, but hadn't particularly been aware of him except I knew he had been involved in some of the English property transactions which had been inquired into by the Tribunal. And I knew that, I think I knew at the time, I did, that the Tribunal was trying to get him to come as a witness, but that he was declining to do so. I don't know whether I knew I presume I did know he lived outside the jurisdiction, but I don't think I knew where.

So, he really said or we said, "Yes, we'll help you with this, we'll take the instructions, but insofar as you are proposing to pay him something," Mr. O'Brien I think had told us that there was a fee due to him and there was a claim for some form of return or ownership or percentage uplift in the property, and the intention was to settle all claims by payment of a lump sum. I was concerned that the payment by Mr. O'Brien Junior, or one of his interests, of money to someone who was a potential witness in front of the Tribunal might be misconstrued, and I said that we would have to be careful in terms of how we went about it and we would have to go through a series of steps. And the

seven steps, the numbered steps in my note are those which I wrote down, I don't think at the meeting, I think immediately afterwards, as summarising those which we would need to follow. So, for instance, in Number 1 where I talk about ownership of Westferry, I am saying that if the payment is coming from Denis O'Brien and the debt is due by Westferry, we need to be sure that Denis O'Brien owns Westferry.

Q. Yes.

A. And that it isn't Denis paying, obviously, we can demonstrate it isn't Denis paying for some other reason. Similarly, that in number 2, that Kevin Phelan did have rights to be paid. Thirdly, I wanted written instructions from Denis. Fourthly, we would have to ask Kevin Phelan to set out his claim, what he was entitled to or felt he was entitled to. 5, reply to that. 6, offer a settlement. And 7, hopefully, get acceptance. I mean, that was an ideal sequence of events. I didn't necessarily feel it would be followed to the letter.

Then, to the best of my recollection, Denis Senior suggested that we might be able to negotiate the settlement through John Mulcahy. I think he was looking for a person who would talk to Kevin Phelan and resolve this, who would conduct the negotiations. And to the best of my recollection, I said that I thought John Mulcahy would not be a good person, wouldn't be a good idea to do it. It's just not his area of expertise. He is an estate agent.

Then I think I made a note that Denis had told us to check with Denis O'Connor and/or Christopher Vaughan on item 1, which is the ownership of Westferry, that they would be able to give us particulars of that in the first instance, and obviously if we didn't get it from them, we'd go on somewhere else.

Then, at the end of the meeting, Owen O'Sullivan asked me for a copy of my note for his file, and the Post-it attached to the top of the note is simply me internally forwarding my note and asking him to send it back to me. I presume by the time I sent it, I can't specifically remember, I had spoken to Denis O'Connor who, I imagine, told me that Christopher Vaughan wouldn't know anything about the ownership of Westferry, but that I should refer to Walbrook Trustees, and, in fact, as I speculate in the note, Walbrook Trustees are, or were at that time - I am not sure if they still are - are a Deloitte company, secretarial company in the Isle of Man.

Q. But you think it was from Denis O'Connor that you would have received the information that Christopher Vaughan wouldn't have known about the ownership of Westferry?

A. I think so, because I say in the note "Denis O'Connor said CV can't help."

Q. Very good. Now, I think, then, you received if I might just go back on the tab sorry, I don't know whether you personally Messrs. William Fry's received certain documentation, isn't that correct?

A. Yes, I think we started to get information.

Q. Information. And I think if I go back to Tab 27 I'm not going to read we have been through these documents already. And that's a document of Denis O'Connor's from Brophy Butler Thornton dated June 18th, 2001. And there were certain attached documents setting out statements and invoices on behalf of Mr. Kevin Phelan, or companies associated with him, is that correct?

A. Yes, I think so. I think this was being given in response to our request that Mr. Phelan's claim be substantiated in some way.

Q. Yes. This was advice you were giving, that the claim should be substantiated, isn't that correct?

A. Yes.

Q. Now, there is a document, if I might just ask you if you can assist us. I am going to put it up. It's attached to a fax at Tab 53. It probably isn't in your book. I am going to put it up. You may recognise it, if you just look at the screen for the moment. I'll just put up the

A. Yes, I have that.

Q. You have that document?

A. Mmm.

Q. Now, can you help us as to your understanding of that document, or were you told anything about it? We have asked Mr. O'Connor about it already, Mr. Denis O'Connor.

A. I can't really. I think, putting it after the fax from Denis O'Connor is right. I think it is the enclosure. I

think it's out of sequence in the book because it does

follow my note of the 24th May. It's a week later,

according to the fax information at the top.

Q. Right. Okay.

A. And I suspect it was Denis O'Connor this is only my assumption that it was Denis O'Connor, in response to my request for information about ownership of Westferry, asking Christopher Vaughan, Christopher Vaughan sending him a note saying he didn't know and Denis O'Connor sending it on to Owen O'Sullivan.

Q. Right.

A. I am speculating all that.

Q. That's helpful. Now, if you go just to tab 56. That is a letter or a fax sent to you by Mr. Denis O'Brien Senior, and I think that was an enclosure they seem to be documents which he also had and he is indicating that you may have heard from Denis O'Connor in relation to some of the documentation and he seems to be sending on similar documentation, isn't that right?

A. Yes, it's actually sent to Owen O'Sullivan, but we were, to some degree, operating interchangeably here. I think it was part of the same process.

Q. He points out in that note to Mr. O'Sullivan: "As you can see, Christopher Vaughan is not fully aware of the background regarding Westferry. However I have now spoken with Sandra Ruttle in my office and she will be contacting you shortly to give you much more accurate information

concerning the details in relation to Westferry." She was going to make contact with the people in the Isle of Man, isn't that right?

A. Yes, I might just add, Mr. Coughlan, that the document following this, in my book, is

Q. That's the Woodcock?

A. is a Woodcock letter dated 19th April, '02.

Q. That's not in correct sequence, I accept that. I know it's addressed to Mr. O'Sullivan, but perhaps you can help us.

If you go back to Tab 55, there is a fax from Mr. Fogarty in Mr. Denis O'Brien's office dated 4th June, 2002, which has an enclosure "Content of memo to be sent by Denis O'Brien Senior. The following consideration should be incorporated into any agreement," and then there is a list.

Do you recognise that as being a document which would have come from your office or from Mr. O'Brien's office or from public relations

A. No, but I don't think it is the enclosure with the fax that precedes it in the book, and the reason I say so is that although the fax date isn't very clear there, it is in a later copy and it's dated 15th August, 2002.

Q. I see. So we should be looking at that at a later stage?

A. So logically I think so. And it does, in fact, appear in the book later at the correct date.

Q. Well, what appears to be happening, and I have here also your file and I am trying to and I know it's hard to sort of see where some documents may fit in, the documents



may have been moved around by us and by some other people who may have had the file, and there is nothing wrong with that. So I am just trying to get things in sequence. But you received instructions, you set out what you thought would be the appropriate steps to take in dealing with this matter and then we now, at this stage, appear to be engaged in that process of information being gathered, is that correct?

A. I think that's correct.

Q. Would that be a fair way of putting it? And then, I think, if you go to Tab 58, there is a note made by you on the 11th June of 2002, and it seems to be it's your note to the file.

"Denis O'Brien.

"Matter: Moriarty.

"Denis O'Brien Senior re K. Phelan payment.

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

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

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

" if this rejected before any payment is made, follow steps in OOC's previous note of which key ones are to

establish DOB ownership (i.e. beneficial) of Westferry and get written evidence of Westferry indebtedness to Kevin Phelan in excess of proposed payment.

"Above to DOB Senior." Then there is the date and the time.

First of all, does it appear that this is information, a view being taken by you, first, and information then being made available or advice being given to Mr. O'Brien Senior?

A. Yes, I think the context of this was Denis was pressing me, or pressing us to get the thing with Kevin Phelan resolved, and he was also talking to Denis O'Connor, who seemed to have become something of an intermediary between Denis Senior and Kevin Phelan. Now, exactly how that occurred I'm not sure, but he did seem to have come into that role.

And here I was, to some degree, repeating myself from the 24th May note, and essentially I'm saying, "Look, really, we can't go too quickly here. We have to do it properly.

There is a worry about Denis Junior making, directly or indirectly, a payment to Kevin Phelan. We have to document it properly." Now, the reference to collaboration with ML or ML advisor in making a larger payment, which I think may have caused some confusion, is explained as follows:

Denis Senior had told me that Denis O'Connor was in touch with Kevin Phelan, that he was in touch primarily to negotiate fee claims by Kevin Phelan against Michael Lowry for other UK property transactions, but arising from discussions between Denis O'Brien Senior and Denis

O'Connor, Denis O'Connor had offered or proposed that perhaps an overall global settlement might be done with Kevin Phelan in which a single payment would be made to him in satisfaction of all claims for all of the UK property transactions, and then Denis Junior would bear his proportion, whatever it was, of that payment and Michael Lowry would bear his. And in this note, I am advising that that's a really bad idea, because anything which suggested connections between Denis O'Brien Junior and Michael Lowry was sensitive in the context of this Tribunal, and shouldn't be followed or promoted. And that is the explanation for that payment. The larger payment would be the global payment.

Q. I understand the point. Now, I think the information that you based your advice on, you received from Denis O'Brien Senior, you believe, is that right?

A. Yes.

Q. So, the position, as you understood it, by this date, was that the steps sorry, you had been approached by the O'Brien interests to deal with an issue involving Kevin Phelan which they had. You set about or you set out certain steps which you believe should be taken. You understood that Denis O'Connor was acting in some way as an intermediary on behalf of Mr. O'Brien and may also have been dealing with Kevin Phelan on behalf of Michael Lowry. That's

A. I think I knew he was acting for Michael Lowry. I had

known it for a long time.

Q. But that he was involved in an issue with Kevin Phelan, involving Kevin Phelan and Michael Lowry, or you became aware of that?

A. Yes, although I was never very clear as to his capacity or motivation or, really, what his connection to the O'Brien interests was or why there should be one.

Q. Yes. And as of this stage, this is in May/June of 2002, the one thing that you wanted clarified before you would advise that a payment would be made to Kevin Phelan in respect of the O'Brien interests, was to establish the clear ownership of Westferry, isn't that correct?

A. And then that it owed money to Kevin Phelan.

Q. Sorry, of course, that follows through.

A. Yes.

Q. And in 2002, you had been informed, I suppose first of all, by a note from Denis O'Connor, and subsequently by a note from Christopher Vaughan himself, that he was unable to assist as of that time as to the ownership of Westferry, isn't that correct?

A. Yes, but I think about this time I also got a letter from, I think, Walbrook, saying that they I think saying that Westferry was owned by Wellington Trust.

Q. I understand. This is so. I am not disputing that at all, you are correct about that. But Christopher Vaughan wasn't able to help you in 2002 as to the ownership, in 2002?

A. No.

Q. Now, the next at the next tab then, 59, I think, this is a document that Mr. O'Brien Senior spoke to you about including. He has decided to include this this seems to be a member of Mr. O'Brien's staff, in any event?

A. Sally Ann was Denis O'Brien Junior's secretary at the time.

I think the enclosure with this was the long note in the very large font that Denis O'Brien Senior wrote, and I think also a note from Mr. Carroll which itself enclosed some further documents, his briefing pack.

Q. Yes. Now, if you then go to Tab 60, and I have I think you have them, there are a group of documents clipped together attached to behind Tab 60. I think we may have given them to you

A. I have just got a phone note. I don't have anything else.

Q. All right, I'll give you it's just they are all in the documents. They are just

A. Oh, yes, sorry, I remember these. I actually broke these up and put them into the book in date sequence.

Q. Now, at this stage you were still, or you appeared to be still in the process of gathering information, is that correct?

A. I think I had information from Walbrook by now.

Q. You now had information, you think, from Walbrook?

A. And I think I had got the invoices as well, but I'm not certain.

Q. Right. So you think you were now in a position that you had information about ownership, and you possibly had the

information about invoices or a claim by then?

A. I think so.

Q. And I think, then, there is a letter dated

A. Sorry, just perhaps I didn't, excuse me I am just reading this note again.

Q. I am not trying to I am looking for clarity rather than confusion. So if we go through it step by step and see when you became aware of different matters, is that all right?

A. Okay.

Q. I think the 11th June, 2002. It's a letter to Mr. O'Brien from you:

"Dear Denis,

"Further to our telephone conversation of this morning I enclose a draft letter. This is the form in which it will be written by me. Alternatively, you can slightly amend it so that it becomes a letter from you. If it is to go from me, I would need to have confirmation from Walbrook Trustees as to the beneficial shareholders and directors of Westferry, together with an instruction from the directors to act on behalf of the company. I called John Ryall as arranged and left a message for him, as he was not available.

"I received your message regarding the maximum entitlement but I feel that is something for the next letter. At this stage we are merely asking him to state his claim and it would be contradictory to say that, no matter what it is,

we will pay the given amount."

It looks as if you were in the process of getting information from Walbrook, or it was on the way?

A. Yes.

Q. And I think whilst Mr. O'Brien Senior had indicated to you the amount of Kevin Phelan's claim, you were advising him, "Look, let us ask him to state it. We are not just going to pay him any figure he writes down at all"?

A. Yes, I think he told me that "We are going to pay  $\frac{1}{2}$ 150,000 sterling and no more." And I was saying, "Look, let's conduct this as a process, ask him what he wants and then make him an offer."

Q. Yes. But the figure of  $\frac{1}{2}$ 150,000 came from Mr. O'Brien; it wasn't something you were suggesting, or anything like that

A. No.

Q. or had any information about, in effect, other than what you were being told by Mr. O'Brien and the documents which Denis O'Connor had sent over?

A. It certainly came from Mr. O'Brien. It wasn't something that I made up.

Q. And if we go just, you will see then the message note:

"Important message.

"DOB Senior.

"Re attached fax. Can expect letter from Woodstock as follow-up. Also, do not reply to Kevin Phelan solicitors until we have dealt with Denis O'Connor matter. 3.30."

Can you help us about that at all?

A. Not really. I have puzzled over it myself. I note where it is in the sequence, but I also note it's not dated. I am afraid I can't really shed any light on that, even who wrote it. Probably my secretary at the time, but...

Q. It may be that the Denis O'Connor matter may have related to your recommendation to Mr. O'Brien on the Michael Lowry, on a global settlement or

A. That's possible.

Q. Now, over the page, then, is a letter from Denis O'Brien Senior of the 11th June to you.

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

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

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

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

"Best regards,

Denis O'Brien Senior."

Then, over, is the draft letter which he had your draft which he had adapted, isn't that right?



A. Yes.

Q. Now, I am just wondering, in the letter which Mr. O'Brien Senior said to you "I have spoken" sorry, I beg your pardon, the second paragraph, "I have spoken with Christopher Vaughan to make sure there are no loose ends. As a result, he sent me the enclosed copy letter and I give it to you in case it may be of any use in the future" and we have included a Woodcock letter to Christopher Vaughan dated the 19th April, 2002, in that sequence. Does that appear to be correct, do you know?

A. It looks right. The fax information at the top is identical to that in the Denis O'Brien letter to me. So I think it is the enclosure he is referring to.

Q. And I think it relates to a complaint Kevin Phelan had made against a complaint to the Law Society, that's what it appears to be?

A. Yes, I knew nothing about that.

Q. Did you know anything at this time about a complaint which had been made against Christopher Vaughan to the Law Society?

A. I don't think so.

Q. Or that there was any dispute between Kevin Phelan and Brian Phelan and partners or company

A. Again, I don't think so. I was only in this at this stage, whatever, two weeks or so, and

Q. At this stage, you don't believe you were aware of complaints he had made against various professional people

to their professional bodies?

A. I don't believe I was. I made no reference to it in anything. And I'm not sure why I would have been concerned in it, anyway.

Q. And what I want to know, would you have been, or were you at this time aware that Denis O'Connor was involved in any dealings with Kevin Phelan in relation to the resolution of a dispute involving Kevin Phelan and Christopher Vaughan and the Law Society of England and Wales?

A. I don't think so, and I don't think I'd have been terribly interested if I was aware.

Q. The next document, then, that I would ask you to go to is behind Tab 61, and it's a letter from Woodcock to your firm.

"Dear Sirs,

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

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

"We are instructed that our client is prepared to accept  $\frac{1}{2}$ 150,000 sterling in settlement of any claims for outstanding fees or uplift in relation to the above.

"Our client has made it clear to us that it is a condition, however, of this offer that such sum be paid to our client

account," on such a date, and the details of the account is set out below.

So that's the formal claim arriving from Mr. Kevin Phelan's solicitors, isn't that correct?

A. Yes, and this was quite reassuring from solicitors in England where, substantiating the claim, at least in their view, they were making the claim on behalf of Mr. Phelan.

So we had something to base the payment on.

Q. Well, I think what they were just explaining is what they accept, and it seemed to be the same figure that had been mentioned to you about Mr. O'Brien Senior previously, isn't that right?

A. Yes.

Q. Could I ask you, do you maybe you don't recollect did you accept receiving such a letter?

A. I am afraid I can't recall at this remove. I would certainly have sought something sooner or later, and quite possibly I did, but I am speculating.

Q. Well, the one thing was sure anyway, you had been informed previously by Mr. O'Brien Senior that  $\frac{1}{2}$ 150,000 was the figure that he was prepared to pay, isn't that correct?

A. Yes, I believe so.

Q. And I take it that you didn't, as far as you were concerned, or you weren't involved in any negotiating in relation to the figure?

A. No.

Q. Or your firm wasn't?

A. I certainly wasn't. I am not aware of Owen O'Sullivan having been involved, no.

Q. Now, the same documents or sorry, the Woodcock documents which were sent to your firm, the claim documents, appear to have been sent to Mr. Denis O'Connor as well, and the next tab shows him faxing those, I think, to Mr. O'Brien Senior, isn't that correct?

A. Yes. I don't think I knew that at the time.

Q. No, I am not suggesting that you knew it at the time. Which would seem to indicate that, apart from communication being made with your firm as solicitors for Westferry or the O'Brien interests, Mr. O'Connell was also being kept informed of that particular transaction?

A. Yes, that seems to have been the case.

Q. Now, the next document is instructions from or sorry, I beg your pardon, the next document is you seeking, I think, instructions from Mr. Vanderpump in the Isle of Man?

A. Yes, I think we have skipped over a letter in which he instructed me formally in the matter, and I am responding to that.

Q. Yes, you obtained formal instructions?

A. Yes.

Q. I think, then, if we go behind the next tab, I am not going to open we have opened a lot of these documents before just behind Tab 66 then.

So, at this time, when you wrote to Mr. Vanderpump seeking formal instructions in relation to the payment, can I take

it that was your understanding, that matters, other than sending the cheque, matters were about to be concluded?

A. I think that would have been my assumption, yes.

Q. And things seemed to be progressing without incident, as far as you were concerned, is that right?

A. Yes.

Q. The sum of £150,000 had been sought and, as far as you understood, it was agreed that that should be paid?

A. I don't think it had been agreed. I think the elements of the agreement were there in the sense that Mr. O'Brien had told me that's what he'd pay, and Woodcock's had written to say that's what they'd accept, but the loop hadn't been closed in the form of an acceptance letter, and I had written to Mr. Vanderpump asking him whether I could do so.

Q. Writing to Mr. Vanderpump was a formality, it was to seek formal instructions, isn't that right?

A. Yes.

Q. Mr. Vanderpump wasn't a person who could have

A. He wasn't the principal.

Q. He wasn't the principal in relation to the matter. But to all intents and purposes, it looks as if matters were settled, didn't it?

A. Or were about to be.

Q. Were about to be settled?

A. Yes.

Q. And then, on the 21st June, 2002, I think behind Tab 66, there is a note of yours: "Denis O'Brien Senior. Problem.

OOS told Denis O'Connor another letter required for signature. What required?

"Denise in Denis O'Brien Senior office.

"One letter from us to Woodcock Solicitors which Westferry (have) approved. Money being paid, full plus final settlement. Don't have authority to release awaiting Denis O'Brien Senior authority. (Litigation impact Dinard Trading and Westferry query to Sandra awaiting response this am.)

"We awaiting money from Westferry.

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

What's that about?

A. Well, I have put it together as best I can.

Q. Fine.

A. And I believe what it is, is actually a couple of conversations. The first is Denis Senior ringing me and saying he had heard there is a problem, that Owen O'Sullivan had said to Denis O'Connor something was required, and what is required, because presumably he thought everything was sorted, and would I come back to Denise, who I imagine is someone in his office, to explain that. And I think I then went to Owen O'Sullivan and asked him what this was about, and he told me, "No, there is no extra letter. All we need is a letter from us to Woodcock Solicitors confirming the payment. We need it to get the money." But I think Owen O'Sullivan was telling me that

Denis wanted us first to check something about the litigation, and I think this was the first I heard in any detail about the litigation, before releasing the money, or, in fact, we hadn't yet got the money, we were awaiting the money, but before we would release the money. I had been out of this for a week or so, at this stage, I think.

I haven't check my diary so I don't know what else I had been doing, but I think Owen O'Sullivan had been handling the mechanics, and Denis Senior rang me up and said, "Apparently there is some kind of a problem. Can you find out what it is and let my secretary," or whoever, "know".

Q. Okay. But again, I know, putting it together as best you can, the problem wasn't coming from the Woodcock side, was it?

A. No, it seemed no, it didn't, no. I think there may have been a mix-up in that, again, very much building a certain amount of speculation anyway, it seems Denis O'Connor had told Denis O'Brien Senior that Owen O'Sullivan had told him there was a problem. The problem seems actually to have originated from Denis Senior himself looking for something on the litigation, but by the time it had gone around the loop, he hadn't realised that it was his own problem he was being told about and thought it was one being created by us. As best I can make out, that's what's happening.

Q. It also looks, at this time, that Denis O'Connor was still very much involved in whatever talks were going on?

A. Yes, it does.

Q. Now, the next tab is Tab 67. It's the 24th June, 2002.

It's from you to Owen O'Sullivan. And you told him that

"Herewith letter received on Friday last from Denis O'Brien

Senior together with my reply. I subsequently had a

conversation with him, in which I explained that I had no

knowledge of the Doncaster Rovers matter."

That's the litigation I think you are talking about, isn't

that right?

A. Yes, I think so.

Q. "He accepted that and suggested that the letter to Woodcock

& Co should require, as part of the overall settlement, a

written account by Kevin Phelan of the negotiations leading

up to the dispute and of the dispute itself (the same to

apply to any other dispute regarding Westferry which is

current).

"I would be obliged if you would issue a draft letter as

instructed to Woodcock & Sons and copy it to Denis O'Brien

Senior. The letter to them should be clearly identified as

a draft and issued without prejudice in accordance with

Denis O'Brien Senior's instructions herewith."

So you then, I think, wrote to Denis O'Brien Senior, behind

that:

"I am arranging to send a letter to Woodcock & Sons as

requested providing for full and final settlement of

disputes, claims, etc., by Kevin Phelan either directly or

indirectly against Westferry, and for an account of the

Doncaster Rovers negotiations and dispute. I will send a



copy of the letter to you later today."

And we then have a fax from Denis O'Brien Senior dated 21st June, 2002, to you:

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

"The enclosed letter is self-explanatory and you will see that it is dated the 13 February 2002 and is written by Ashworth solicitors and addressed to Kevin Phelan.

"With reference to this letter, could I please have your opinion that if Kevin Phelan should become or indeed is legally bound to become a witness in all of the disputes relating to Doncaster, does this in any way complicate our draft letter addressed to his solicitors, Woodcock & Sons.

Regarding the dispute in relation to the Escrow account or indeed to any other matter, for example contingency funds which are being held by us to meet any other potential outstanding claims from 3rd parties which the Doncaster club may be responsible?

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

"Important: Could you please in any case send to Woodcock & Son your draft letter for Kevin Phelan's eventual

signature making it quite clear at the top of the letter whatever you feel is appropriate, such as without prejudice, and of course leave the draft unsigned. The reason I ask you to do this is because I have been told that Kevin Phelan will not complete all other outstanding disputes until he has some form of communication from us indicating that we are ready to settle re Doncaster.

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

"Kindly acknowledge safe receipt of the telefax."

Then there is a letter enclosed with that, or copy of a letter, or Mr. Ashworth's letter addressed to Kevin Phelan asking him to become a witness in a case which you were not involved in and knew nothing about, isn't that right?

A. Yes.

Q. Now, I think Mr. O'Brien informed you here in this telefax that there were a number of outstanding disputes with Kevin Phelan, isn't that right?

A. Yes.

Q. Did he tell you what they were at that time, or did you ask?

A. I don't think he told me at the time. I don't remember. But I was certainly aware, at this stage, of the claims by

Kevin Phelan against Michael Lowry, because if you recall, there had been discussion of a global settlement of them which I had scotched. I don't think I was ever, or am now, aware of any other disputes, and I knew very little, if anything, about the Dinard dispute. I knew there was some litigation

Q. That was a litigation matter

A. in the UK, but I didn't know the detail. I mean, really what happened here is that we were on the point of settling for the  $\frac{1}{2}$ 150,000, and Denis Senior got, I don't know from where, the letter from Ashworth to Kevin Phelan saying, "We are going to make you a witness in this Dinard litigation"

Q. Asked him to become a witness?

A. Asked him well, I think he told him he was going to subpoena him. And Denis said, "Look, before we settle with Kevin Phelan, we need to know what he is going to say, so can you hold up the settlement until we find that out."

And asked me to cover us totally and completely regarding all contingencies into the future, which is, I suppose, a typical client request of a solicitor.

Q. But you were not aware, at this stage, that there were outstanding disputes or sorry, outstanding complaints made by Kevin Phelan against various professional people.

You were possibly aware that there had been some Christopher Vaughan matter?

A. I think I was aware I think I had got the letter I

had been sent the letter in which the complaint against Christopher Vaughan had been withdrawn. So, had I thought of it, I'd have known, or had I checked my file, I'd have known there had been such a dispute, and I did know there were claims for fees against Michael Lowry, but I don't think I was

Q. You weren't aware of the complaint made against Mr. Tallents or against Messrs. Bryan and Aidan Phelan?

A. I don't think so, no.

Q. And as regards a claim for fees against Michael Lowry, did you know anything about the detail of those?

A. Nothing at all.

Q. Or what properties they related to?

A. No, except that they would have been in the UK.

Q. Except that they were in the UK, yes. The next tab, then, is a letter to Messrs. Woodcock & Son from your firm:

"Dear Sirs,

"We refer to previous correspondence and enclose a draft of a letter our clients is prepared to authorise for issue subject to our first receiving a narrative account of your client's position regarding the negotiation leading up to the conclusion of a deal and the subsequent and ongoing dispute with Dinard Trading.

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

And I think then you enclosed a draft.

"We refer to your letter of the 12th June 2002, and having taken instructions from our client, Westferry Limited,

confirm that our client will discharge the  $\text{€}150,000$  payment referred to in your letter in full and final satisfaction of (i) all fees and expenses due to our client whether trading through Gameplan International, the Glebe Trust or otherwise arising out of the Westferry/Doncaster Rovers project (ii) your client's claim to be entitled to a 40% share of any profits on the project and (iii) all other claims by your client of any nature whatsoever and howsoever arising against our clients, shareholders, directors and other consultants relating to the project.

This is a terminating payment and your client will not be required or entitled to have any future role either in terms of managing or potentially developing the project.

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

So that was the letter, the draft which you sent indicating that your client would be prepared to pay the  $\text{€}150,000$  and attempting to cover every contingency on behalf of your client then, is that correct?

A. I am not certain it was Owen O'Sullivan, but I'm not certain this was the enclosure.

Q. I see. Fair enough.

A. And the reason I say so is that it's dated the 21st June, and it doesn't make any reference to a statement.

Q. Yes, that's true.

A. To getting a statement. Now, Denis O'Brien, on 21 June, had told me he wanted this written account. It was the first reference to the statement that became the subject of controversy later on. And on 24th June I wrote to Denis and said, "I am arranging to send a letter to Woodcock's providing for full and final settlement," and so forth, and for an account of the Doncaster Rovers negotiations and dispute. I suspect what probably happened - because in a moment we'll see that when Woodcock's come back, they refer to the requirement for a statement - I think the letter you have just read out, Mr. Coughlan, date the draft dated 21 June is what had been prepared before the conversation with Denis O'Brien Senior, and I think it was subsequently amended, or perhaps the covering letter was amended, one or the other, to refer to the requirement for a statement.

Q. Yes, I am just wondering, and I understand the point you are making, that the draft, you think, may have been prepared before you had the conversation with Mr. Denis O'Brien. I am just wondering, if you look at the letter of the 24th June, that is Messrs. William Fry's, Mr. O'Sullivan's letter to I am just wondering, it may be that it went in that form?

A. That's possibly so, yes, in which case you'd be correct and that is the enclosure.

Q. On the 28th June, Woodcock replied, isn't that correct?

"Dear Sirs,

"Thank you for your letter of the 24th June."

Attached to it seems to be the letter of the 21st June, so

perhaps the way it went

A. I think you are right.

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

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

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

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

"1. The negotiations leading up to the conclusion of the deal.

2. The dispute with Dinard Trading.

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

it clear, however, that these negotiations were very intense negotiations over a nine-month period. There is a substantial volume of documentation to evidence the negotiations which would run to several lever-arch files. For our client to be able to review all the documentation and to prepare a narrative (bearing in mind the length of time that the negotiations go back) would be a very substantial exercise. We would envisage that it would take our client the best part of a week to prepare a narrative, and that during this period of time he would need assistance from the writer to enable the same to be concluded. As you appreciate, our client is busy on other projects and does not wish to spend this length of time unless it is wholly necessary. Further, as you appreciate, our client would not wish to incur the expense of having to do this if it was not wholly necessary. Due to the difficulties, therefore, in the preparation of the narrative, would you please clarify the precise reasons as to why it is needed. Christopher Vaughan was the solicitor who was instructed in relation to the negotiation and conclusion of the deal in this matter and no doubt he would be able to provide you with his files on the basis that he was instructed by Westferry Limited (currently your client). Please revert to us on this.

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



We believe it would be helpful if it is that our client was to let you have sight of correspondence that was sent by him to Aidan Phelan of Brian Phelan & Co, Chartered Accountants, recording the position as of the 21st November 1998, some 13 weeks after the project had commenced. This identifies at that stage the difficulties that our client was having in this matter with Aidan Phelan. We further attach correspondence from our client to Aidan Phelan recording the outcome of the meeting on the 9th August 1999. This identifies at point 1 that Aidan Phelan was to deal directly with Andy White in relation to all matters in relation to the joint venture. In essence, this therefore meant that any issue relating to payments being made out of the retention fund would fall directly upon Aidan Phelan and from that day on our client ceased to have any direct involvement whatsoever with the retention fund or Dinard Trading. If it is that you wish to raise specific questions, therefore, in relation to the dispute, would you please let us have those as at the moment or client can add nothing further in relation to the general requests that have been made.

"With regard to the possibility of settlement as a whole, if it is that you are saying it as a condition precedent that your client must receive a narrative account of the position as stated above, then we look forward to hearing from you in relation to the issues that have now been raised by us. If your client, however, is prepared to make

an offer to our client to settle ongoing matters, without being a condition precedent, then a narrative account must be received, then please let us know the precise terms of your client's offer. Upon receipt of an offer we will then take our client's instructions.

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

So the response was that you have altered the terms, or your side has altered the terms of the negotiations that had been taking place up to then; that Mr. Kevin Phelan was involved in the affairs of Westferry involving the negotiations leading to the conclusion of the purchase of the shares in Doncaster Rovers by Westferry, but, after that, matters should be addressed to Mr. Aidan Phelan in relation to any ongoing dispute that existed in relation to the retention monies. That's in essence

A. That's essentially what it's saying, yes.

Q. And with that he said, "I can provide a narrative in relation to what I was involved in, but there are many lever-arch files, I'll need legal assistance. It will take time and it's going to cost. In relation to the other matters, to evidence the fact that I was not involved I'll show you or I'll send you the correspondence that I sent to Aidan Phelan." Isn't that what he did, isn't that right?

A. Yes, that's right.

Q. And I'm not going to read out all this correspondence, but

if you go to the document headed "M&P Associates," it sets out a fairly long detailed account of various matters relating to the Doncaster Rovers matter, isn't that right?

A. Yes, and refers to the fee.

Q. And refers to the fee. And also included was a fax which had been sent to Aidan Phelan on the 11th August 1999 dealing with Doncaster Rovers, isn't that right?

A. Yes, I think there is some glitch later, that he thinks we didn't get it and sent it on

Q. Yes, he thinks you didn't get it and the solicitor sent it on, isn't that right?

A. Yes.

Q. And we all know we have now come to look at something which was contained in the fax, isn't that right

A. Yes.

Q. which caused a concern. And we might as well go straight to it. It's item Number 7:-

"ML"

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

A. Yes.

Q. Now, I think Mr. O'Sullivan, if you go to the next tab, sent these documents on to Mr. Denis O'Brien Senior?

A. Yes, they had actually come in to him, I think.

Q. I see, yes. And then the next tab, 71, Mr. O'Sullivan faxed to Mr. O'Brien, "I attach a final version of a recent letter to Woodcock & Sons which is slightly revised from

the draft you approved for reasons I will explain if you give me a call I am out of the office..." etc.

And then the draft, or the letter is behind that:

"Dear Sirs,

"Thank you for your fax of the 5th July 2002 and for your follow up on the 7th July. With that later fax you enclosed a fax from your client to Aidan Phelan dated 11 August 1999. As a prerequisite to being able to take this matter any further, can you please clarify who the ML referred to at 7 is. Subject to getting that clarification, our client simply requires a narrative signed by your client as outlined in our letter of the 4th July 2002. That narrative should recite who retained your client, from whom your client took instructions, to whom he reported, a general description of the project followed by some broad chronological description of significant events. A broad indication of the time and expenses incurred to back up the invoices furnished should also be included.

"While we appreciate that this will involve some time and input from your client, we don't believe it should necessitate the amount of work you suggest in your letter of the 28th June 2002 and our client's position is that the settlement figure proposed would include and cover any costs or expenses your client might incur in preparing the narrative."

So Woodcock's are being informed that "We would like a narrative in relation to the work you did and who you took

instructions from, but that it has now become a prerequisite that there be clarification in relation to the ML reference," is that

A. Yes, you see this is the first time the ML has come up obviously. Up to that point the purpose of the narrative had related to the Dinard litigation, not at all to Michael Lowry or the Tribunal, or anything like that, and, of course, the purpose of the narrative, as I understood it anyway, wasn't actually to provide information; it was to get Kevin Phelan to say, in writing, what his version of events in relation to the Dinard dispute was, so that if he was subsequently subpoenaed by the plaintiffs in that dispute, he would be on record with a particular version of events, and if, whether out of hostility to the O'Brien interests or anything else, he departed from it, there would at least be something with which he could be challenged. That was the motive for the narrative, as I understood it. Woodcock's had responded not, of course, with a narrative, but with copy correspondence, and for the first time in the copy correspondence, there was an indication there had been unanimity prior to this that Mr. Lowry had nothing to do with Doncaster, and here, for the first time, was an apparent reference to some involvement on his part, and that is why we sought the clarification.

Q. Where was the unanimity before that?

A. I think it was here. I think everyone who gave evidence

here had said that Michael Lowry had nothing to do with Doncaster.

Q. People had said that here, is that right?

A. That's I probably departed from the record now, but

Q. No

A. I think that's the case.

Q. I think that is so. I think Mr. O'Brien I think

Mr. Lowry I think the Tribunal accept accepted what

it had been told in relation to Doncaster by Mr. O'Brien

and Mr. Phelan, I think. Would that be broadly correct?

A. And I think we did, too.

Q. Yes, I accept all that. But what had happened here was

that the terms of what appeared to be a negotiated

settlement to pay Kevin Phelan  $\frac{1}{2}$ 150,000 was interrupted by

a request from Mr. Denis O'Brien Senior, isn't that

correct?

A. For the narrative, yes.

Q. For the narrative. And what was received from Mr. McCann

in Woodcock's in response to that was: "Look, we can

provide you with a narrative but it's going to take a long

time because we were the ones involved in the negotiation,

but we cannot help you after that because it was Aidan

Phelan who ran the show after that, and, as evidence of

that, we will send you the correspondence which our client

sent to Aidan Phelan at that time back in 1998 and 1999,"

isn't that right?

A. Yes.

Q. The sort of thing that any solicitor might do, isn't it, in putting forward their client's position and explaining to somebody that they were involved in negotiations with, "You know, this is the position. We can help you here, it's going to cost. We can't help you here. And here is what we sent to Aidan Phelan."

A. Yes, I take your point.

Q. Now, the next document, then, at Tab 72. This is a letter or a fax from Mr. Denis O'Brien Senior to Mr. O'Sullivan dated 15th July, 2002.

"I was speaking with AP" Aidan Phelan "regarding Doncaster. I asked him what did he believe is required to complete the close off in every avenue. I enclose his brief reply which I trust will prove helpful.

"I shall try to speak with you on the telephone soon.

"Kindly acknowledge safe receipt of this telefax.

"With best regards,

"Yours sincerely,

Denis O'Brien."

Then over the page, "Doncaster property," and there is set out then a note from Mr. Aidan Phelan to Mr. O'Brien of his view of what was necessary for the closing off of matters in relation to Doncaster. Doesn't that appear to be what was sent to Mr. O'Sullivan?

A. Yes.

Q. And here he sets out "Doncaster property. I append a copy of the option agreement which" that's I am not going

to deal with that. That's with the football club.

Then "Denis, I refer to our call this morning and set out below requirements from KP.

"Party Requirement.

"Directors of Westferry: No claims against them or ownership of shares.

"Craig Tallents of Morton Thornton: No claims against him or his firm or that KP was never a principal.

"Christopher Vaughan: No claims against him of his firm , that Kevin Phelan was never a principal and Christopher Vaughan was properly authorised to transfer ownership on behalf of Westferry Ltd from Glebe Trust to Deloitte & Touche.

"Aidan Phelan: No claims against Aidan Phelan for any matters whatsoever in relation to Doncaster or any other matters.

"Mike Clynch: No claims against him and that he withdraws accusations about him working for Aidan Phelan while still working in the Doncaster Council."

Now, did you see that document?

A. I don't think I did at the time. I don't remember seeing it.

Q. The next document then is a note dated the 16th July, 2002.

It's an internal William Fry's note, I think?

A. Yes, that's from Owen O'Sullivan sorry, it may be from Richard Breen, who was Owen's assistant

Q. Yes, I think it might be Richard Breen.



A. To Owen O'Sullivan.

Q. I think it's Richard Breen. I think that was clarified.

"David McCann ring.

He can disregard request for confirmation or[sic] identity of 'ML' for moment.

When client gets back deal with narrative."

A. I think it might be confirmation of identity. I know it looks like if you look at the way he has written "of" in the same line, it seems to be the same.

Q. It looks like Mr. Breen's own notes of what he might have been advised to do. Does that

A. I think he is telling Owen O'Sullivan about a call from Denis O'Brien Senior.

Q. Right. Yes. And those were the instructions he was noting, yes.

A. That's in the first part of the note.

Q. Yes.

A. The second part of the note, which is headed by the abbreviation

Q. "Ring David McCann, tell him he can forget about the request for the confirmation of the identity of ML for the moment, and then when client gets back, deal with narrative." Would that be

A. Yes. And then the next bit is headed "Att tel," which I would understand to mean an attendance by telephone. So has rung David McCann and he is recording what was said in the second part.

Q. He records that David McCann understands what's been communicated to him. "Hopes to speak Kevin Phelan on Thursday. Understands the request as reference was made to initials but he doesn't know to whom they refer himself. Will be speaking to client on Thursday and will ask for instructions and work on narrative will disregard request for confirmation for the time being."

Then, on the 24th July, the next document, there is a letter from a Mr. McCann from Woodcock:

"Dear Sirs,

"We refer to previous correspondence between ourselves attempting to negotiate terms of settlement.

"There have been further discussions, as you appreciate, in the matter and our client is now anxious to look towards crystallising terms of settlement.

"We understand from our client that the correspondence that you now require differs to that previously requested. We attached draft correspondence that is without prejudice to our client's right to pursue claims in this matter which we should be grateful if you would review and approve. If it is that this correspondence can be agreed, then of course, subject to being in receipt of the agreed settlement figure due from your client in relation to the above, we believe that we can crystallise terms of settlement. We would propose that settlement be agreed by way of exchange of correspondence including the draft letter.

"Please contact me at your earliest opportunity to progress

this matter. We are instructed now by our client that due to previous delays, time is of the essence."

And then the draft that's included is "We have been instructed by our client in relation to the above project and at all times have direct instructions from Aidan Phelan to manage and promote the venture.

"The venture itself was involved and protracted, but in essence involved the acquisition of Doncaster Rovers Football Club and its grounds. 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..."

It seems to be a draft intended to be the narrative, would that be?

A. I think so, yes.

Q. Now, the next document then is a note made by you, and it seems to be a discussion with Owen O'Sullivan, isn't that correct, or maybe not?

A. Yes, I think so.

Q. "Denis O'Brien Senior letter," is that indicating that a

letter should be sent to Denis O'Brien, do you think?

A. I think we were discussing a letter which we felt should be sent to Denis.

Q. I think the two of you, in discussion, perhaps took a view here, "Look, we have been put on inquiry by Woodcock because of the ML reference," isn't that right?

A. Yes, we did.

Q. "And we must make inquiries"?

A. Yes. More that he must make inquiries, but the O'Brien side.

Q. I understand. You were the solicitor, you were advising your client "we are put on notice here of something by Woodcock. We must make inquiries." That's what you are saying?

A. Yes.

Q. "Proper inquiries are Woodcock as already"

A. I think there should be a dash there.

Q. "Discussed Owen O'Connell proper inquiries are"

A. Then I am listing them out. "Woodcock as already" is the first item, meaning the inquiries the request we have already put to Woodcock that they explain the ML reference.

Q. Yes, I understand the point. So you are advising

A. We have to follow that up.

Q. Putting that inquiry back in train?

A. Yes.

Q. "Denis O'Connor as already plus follow up re who is ML Lloyd and what is his connection."

A. That's Michael Lloyd.

Q. I understand that. But obviously some information or somebody was in contact with Denis O'Connor on this ML reference, isn't that right, or it appears to be, at least, anyway?

A. Yes.

Q. Do you know whom?

A. No, I don't.

Q. Denis O'Connor obviously had informed somebody who informed somebody in William Fry's that the ML reference, it could be a Michael Lloyd, is that right?

A. Yes, I think so. When I read the file over the weekend, it seemed to me that the Michael Lloyd reference may have been the reason for the instruction of a moment ago to tell Woodcock to disregard the ML inquiry.

Q. Fair enough. But you want a further inquiry made, or yourself and Mr. O'Sullivan discussing here what is the connection of Michael Lloyd to Doncaster, you are just pursuing an inquiry?

A. And who is he.

Q. And then "DOB" this is obviously noting some contact or reference with Mr. Denis O'Brien "No Michael Lowry connection and who is Michael Lloyd? Aware difficulties and regret them but matter on record and must be resolved." So you are saying, "We have something on record here. It can't be ignored"?

A. Yes.

Q. Because, would I be correct in thinking, you recognise that there could be a significance here in relation to the operations before this Tribunal, isn't that right?

A. Yes.

Q. And when I say "you," I mean your firm and people involved in your firm. I am not just

A. Yes.

Q. Now, I think the next document, then, is a letter written to Mr. O'Brien by Mr. O'Sullivan dated 25th July, 2002.

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

"As you know, it was agreed that we would require as a condition of any settlement a narrative from Kevin Phelan of his role in the project.

"pursuant to that request, Woodcock & Sons, Solicitors, sent us a copy correspondence between Kevin Phelan and Aidan Phelan which contains a reference to an 'ML' in the context of the Doncaster project. I told you that reference having been put on the record, we should make appropriate inquiries. We have allowed Woodcock & Sons preparation of a draft narrative to proceed and a copy of that draft narrative was received yesterday afternoon is enclosed for your clients. Clearly, it is not adequate in the context of what was sought and you might consider that response should be made to it. It seems to us that at least three possible responses could be made.

"1. Accept the narrative even though it is inadequate.

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

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

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

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

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

"3. Having regard to evidence given to the Moriarty Tribunal, we should ask Denis O'Brien Junior to confirm

that Michael Lowry does not have any interest in the Doncaster project and ask him whether he knows anything about Michael Lloyd.

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

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

So Mr. O'Sullivan wrote to Mr. O'Brien setting out your advice of the appropriate steps to take in relation to this reference.

A. Our joint advice, or advice as a firm.

Q. Your firm's advice as you considered it, yes. The next matter, then, I think that I'd ask you to look at, is behind Tab 77. It's a letter to your firm from Messrs. Woodcock & Sons, and they informed you that they refer to previous communications. They met their client on that day.

"Our client is anxious now to move this matter forward.

With the above in mind, we take it that you are in possession of your client's fund to the sum of  $i_{\bar{c}}\frac{1}{2}150,000$ .

"We have forwarded to you draft correspondence that our client prepared to send in this matter. We further attach draft correspondence that we would require your firm, on behalf of your client, to send to ourselves.

"We are looking towards completing settlement of the



outstanding claims between the parties in the matter on Monday of next week.

"With the above in mind, would you please confirm that you are authorised to transfer to our firm the sum of £150,000. We will hold this sum on account to your order. We would expect, however, to receive correspondence from you at the time of payment being transferred to us confirming that upon our client authorising us to sign the draft letter that has been forwarded to you and such correspondence being delivered to your firm and at the same time the draft correspondence attached being signed by your firm and forwarded to our firm that the sum of £150,000 would be held by us can therefore be immediately released to our client.

"We detail below our bank," and they give the details.

Then there is a draft contained with that, isn't that right?

A. Yes.

Q. Maybe you can help us. I don't think anything much turns on it. That appears to be the same writing as Mr. Breen's writing, but maybe I am wrong. It just an amendment being made, you see, to the draft?

A. It does look similar, yes. I think it might be Owen O'Sullivan's, actually.

Q. Oh, right. I think if we just skip over for the moment - we'll come back to it - Tab 78, and go to Tab 79. I think that's the correct date order. Perhaps, before I would

ask you to look at Tab 78 just for a moment, I'll come back to it because you'll see it's later on in the book as well. It's just a reference there in the second full paragraph on page 1: "Last Thursday the writer together with Kevin Phelan met with Denis O'Connor. Previously draft correspondence had been proposed by our client in relation to all parties and also a draft agreement in relation to Michael Lowry had been supplied. The terms of the draft letters and draft agreement were not satisfactory to Michael Lowry and Denis O'Connor. The key amendments to the agreements were amendments that Michael Lowry/Denis O'Connor required to protect themselves in relation to future claims."

That meeting took place on the 25th, Thursday the 25th July.

A. I see.

Q. Do you know anything, or did you know anything about such a meeting at the time?

A. No. And I think we replied, in fact, fairly firmly that the discussions with Michael Lowry were nothing to do with us.

Q. In due course you say, "We'll deal with our client and" yes.

Now, if you go to Tab 79. It's dated the 26th. "Go on to Denis O'Connor. Has to have simple statement in reply to William Fry query no connection.

"Late Saturday O'Connor has assurance will give through

Woodcock's.

"Owen O'Connell write to Woodcock's understand client happy to give assurance."

Can you help us with that?

A. I think this is not a good note obviously because I didn't head it properly, but I think it is a record of my conversation with Denis O'Brien Senior on the 26th July and he is telling me that he has spoken to Denis O'Connor and told Denis that he "has to have a simple statement in reply to our the William Fry query," which I am sure means the ML query. That late on Saturday, presumably the Saturday previous to the 26th of July, Denis O'Connor got an assurance, and I would imply there, I think, from Kevin Phelan, but I'm not certain, that he will give such a statement through Woodcock's. And then the final paragraph, that I am to write to Woodcock's saying I understand their client is happy to give an assurance.

Q. Then, if you go to the next document, it's a file note of Mr. Breen's, 26th July. "Telephone attendance on David McCann. Having spoken with Owen O'Connell in relation to Woodcock & Son's fax on Friday afternoon, I conveyed 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 client to clarify instructions in this respect on Monday and again stress that had 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, perhaps you can help us just trying to put the note together in terms of time sequence. Would you agree that the first part of the note seems to be a matter which arose first? Do you get my point, that Mr. Breen was dealing with Woodcock

A. Yes.

Q. on the Friday, perhaps?

A. Is the 26th of July a Friday?

Q. Yes.

A. Yes, okay.

Q. He then spoke to you, I think, is that right

A. I think he had got a fax and he spoke to me about the fax and then he rang David McCann.

Q. If we go back then to the previous note, that would seem to come to follow up from that. Do you understand the point I am

A. I do, although it could have preceded either, I think, I agree it could be either way.

Q. But in any event, what had happened here was Mr. Breen had been talking to Mr. McCann about a fax that he had received and had been informing Mr. McCann of the necessity for confirmation in relation to 'ML', that the 'ML' was not a reference to Michael Lowry or confirmation that Michael Lowry was not involved in the Doncaster transaction in any way. That seems to be what

A. Or an explanation of the reference.

Q. Yes. And then you had a discussion with him sorry, Mr. McCann recommended that contact be made with Mr. Denis O'Connor, isn't that right, according to Mr. Breen's note?

A. Yes.

Q. And we know from the McCann or the Woodcock letter of the 30th July and from the evidence of Mr. Denis O'Connor, that he did have a meeting with Mr. Kevin Phelan and Mr. Woodcock [sic] on that Thursday, the day before?

A. I see. But I think my note probably preceded the conversation that Richard Breen is recording.

Q. I see.

A. Because he says at the end, he passed all of the information on to me and I said that Denis O'Brien Senior had already spoken to Denis O'Connor and "we need the necessary confirmation".

Q. Then if you go to the second line of the note "Late Saturday, O'Connor has assured us" that seems to

indicate do you understand the point, that an inquiry is

made and a comeback from Denis O'Connor

A. I am not sure I do understand, Mr. Coughlan. I am sorry.

Q. If you look at your note. I beg your pardon.

A. Yes.

Q. "Go on to Denis O'Connor. Has to have simple statement in reply to William Fry inquiry"?

A. I think this is Denis O'Brien saying he got on to

Q. I understand. Then "Late Saturday O'Connor has assurance will give through Woodcock." It seems to happen the next day, does it, or

A. If the 26th July is a Friday, I am not sure how unless it was the previous Saturday, which would have been quite a long time ago.

Q. Or you added it on the Monday when you came in?

A. Or I added it on the Monday, possibly, yes.

Q. In any event. The next document, then, is at Tab 82; it's your letter to Woodcock. "As confirmed to you by telephone on Friday" it's dated 29th July, 2002, which is a Monday

"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 that, in any event, that Mr. Lowry had no interest in or connection to the Doncaster Rovers matter.

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

The next document, then, at Tab 83. It's Mr. McCann's letter in response, dated 30th July, 2002:

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

"It is our view that our client has done everything that is possible to agree satisfactory terms. You will be aware that our client is in negotiations with your firm on behalf of Westferry Limited, LK Shields Solicitors on behalf of Bryan Phelan, together with Brian Phelan & Company, and also Denis O'Connor on behalf of his client, Michael Lowry.

There are also issues concerning Aidan Phelan and Craig Tallents (an English registered accountant). The writer is liaising with Denis O'Connor in relation to these two individuals.

"Last Thursday the writer together with Kevin Phelan met with Denis O'Connor. Previously draft correspondence had been proposed by our client in relation to all parties and also a draft agreement in relation to Michael Lowry had been supplied. The terms of the draft letters and draft

agreement were not satisfactory to Michael Lowry and Denis O'Connor. The key amendments to the agreement were amendments that Michael Lowry/Denis O'Connor required to protect themselves in relation to future claims.

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

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

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

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



"As previously stated, there are currently no concluded terms of the settlement and in those circumstances our client will now review all options that are open to him and decide how best to proceed.

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

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

And I think a letter, the next document is one which was sent to Messrs. LK Shields in respect of their client, Messrs. Brian Phelan's?

A. Yes.

Q. Now, I think whilst you were aware from your previous involvement that Mr. Kevin Phelan may have been involved in some dispute or resolution of some difference with Mr. Michael Lowry in respect of fees arising on properties in the United Kingdom, and you were aware from the document which you received, or the copy document from Messrs. Woodcock's withdrawing the complaint against Mr. Christopher Vaughan made to the Law Society. Was this the first time that you were aware that there was a dispute

involving Kevin Phelan and Mr. Tallents and Mr. Aidan Phelan/Brian Phelan & Company?

A. I think it probably was, but I didn't I wouldn't have paid much attention to it. It just wasn't of concern to me.

Q. I see.

A. I couldn't be certain that it was. It's entirely possible somebody would have mentioned to me that this guy is fighting with everybody, or something to that effect, but if to the extent I was focused on this at all, and the reason for that comment is that Owen O'Sullivan was doing a lot of mechanics and I was consulted periodically, I was really focused on the Westferry/Denis O'Brien Senior dispute, the  $\frac{1}{2}$ 150,000, getting it settled, getting it out of the way. To the extent that other disputes were coming in, I was either actively resisting them, doing so, or disregarding them. So I wouldn't have paid much attention to that.

Q. Just to be clear and to be fair to yourself, when you were saying you were actively resisting them, was it you were busy and weren't taking on other work, or you had decided, as a policy, in relation to this, you would not receive any further

A. Both of those things, but in particular the latter.

Q. You weren't going to take on any further information?

A. Not that I wasn't going to take on any more information. I wasn't willing to complicate the settlement of the

Westferry dispute or make it conditional in any way on the settlement of other disputes. And when I say I had resisted it, I mean that some months previously I had advised that no global settlement be attempted involving Michael Lowry's alleged debt to Kevin Phelan, and I think in my reply or our reply to this letter, I say that, "Look, nothing else, no other disputes are of any concern to us."

Really what I was doing, I think, to the best of my recollection, is trying to avoid the creation of a mare's nest of disputes, all of which depended on one another, and unless all were resolved, none would be. I was trying to resolve just this dispute.

Q. I think you then or Mr. O'Sullivan wrote on the 2nd August, 2002, to Messrs. Woodcock's?

A. That's actually my signature on the bottom there, the letter is more or less my syntax as well.

Q. Your firm wrote to Messrs. Woodcock's?

A. Yeah.

Q. "Dear Sirs,

"We refer to your telefax of the 30th 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 client 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 investments in relation to Doncaster Rovers. We interpreted this (and we are perfectly prepared to be told that this interpretation was incorrect) as a possible indication that Mr. Lowry was not 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 that 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  $\pounds 150,000$  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 discussion."

So that was the response.

Now, of course you were not involved in any negotiations in relation to any other matters. Did you ask Mr. O'Brien about what was going on?

A. I don't remember doing so. I could have, but I doubt it.

Q. Now, the next document then, page 85. Again, it's your note to file.

"Westferry.

Matter: Denis O'Brien Senior."

Does this seem to indicate that information you were getting from Mr. O'Brien again, on this note?

"Denis O'Connor"

A. No, I think it's Denis O'Connor calling me.

Q. You think Denis O'Connor spoke to you?

A. Yes.

Q. "Denis O'Connor.

Finish Monday pm? Doncaster '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.)"

Can you help us with that note, as to what happened there?

A. I think it's Denis O'Connor calling me, asking whether it would be possible to finalise the Westferry/Phelan settlement on the following Monday afternoon; indicating that there would be a 'practically full' retraction," which I take to mean relates to the ML reference; wanting to know whether I could meet Woodcock the following Monday, to which I seem to have said yes, I could. And he seems to have raised the possibility in some way of that meeting being off the record. And I said, "Yes," I said I could meet them without prejudice, but without prejudice isn't off the record, meaning that what was said might subsequently come onto a record such as this. But could be without prejudice to the dispute that was still in existence between our respective clients.

Q. In other words, it wouldn't be binding in relation to

A. Wouldn't be binding, correct.

Q. You wouldn't be binding each other, effectively?

CHAIRMAN: Whereas obviously a 'without prejudice' meeting that ends in agreement, it then becomes an open matter, of course.

A. It would then become open, yes, Chairman.

Q. MR. COUGHLAN: Did you query Mr. O'Connor as to what he meant by "practically full"? Because obviously those are words he used, you have put them in quotation marks here.

A. Yes, if I put them in quotation marks, he'd have used the words.

Q. Did you seek clarification, or do you remember?

A. I don't remember doing so.

Q. The next document at Tab 86

A. Sorry, perhaps I should add, in fairness, Mr. Coughlan, that my dealings with Mr. O'Connor, of which I had very few, I think, I'd always have been quite reserved because he wasn't my client, nor did he represent, as a lawyer, anyone with whom my client was dealing, so his position and who he was speaking for and what weight his words should carry were always unclear, and therefore, I tended to receive information from him when it was proffered, but rarely, if ever, to question it or respond or give information back. I was generally quite reserved in my dealings my very occasional dealings with Mr. O'Connor.

Q. It was your understanding, I think from early on, because of the note you made, that it was your understanding that

Denis O'Connor was Michael Lowry's agent in general terms?

A. Yes, but not his solicitor.

Q. Of course not his solicitor, no, and I understand the point you make about speaking to another solicitor, and I take that distinction. But your client, Mr. O'Brien Senior, seemed to have an involvement with him in relation to the dispute, if it was a dispute?

A. Yes, that was apparent, and I was never entirely relaxed about that. I was always cautious.

Q. Tab 86, then. And this is a note from I think it's Number 3 sorry, I'll go through the whole note.

"Owen,

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

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

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



they will want to own all IP.

"Denis is available on his mobile if you want to call him

but he said he was just calling to let you know about

Woodstocks contacting you and in particular point 2.

"Carol." It's obviously a telephone note or a message.

A. Carol was my secretary at the time.

Q. And going to point 3, did you get together with, do you

know, with Mr. McCann?

A. No, I never met with Woodcock's or Mr. McCann.

Q. Do you know if anyone from your firm did?

A. I don't know. I think the settlement was concluded by

correspondence. I am not sure

Q. That's what it appears to be. I am just wondering, in

light of that message, whether anyone did meet with them?

A. I don't believe so, but certainly I didn't.

Q. I am not saying it was inappropriate to meet another

solicitor.

A. Sorry?

Q. And I am not suggesting there is anything inappropriate in

meeting a solicitor.

A. I certainly never did. I am not aware of anyone else

having done so.

Q. Now, the next thing is a without prejudice letter, isn't

that right, which enclosed a draft letter, dated 19th

August, 2002, from Messrs. Woodcock & Son?

A. Yes, I have it.

Q. "We refer to previous correspondence that has passed. We

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

Were you aware of that at the time?

A. I think I probably was because I checked and we had got the money a few days earlier into our client account, which is always a sure indication that

Q. Somebody is going to pay money?

A. Yes.

Q. But you weren't involved in any, or to the best of your knowledge, your firm was not involved in any negotiations or dealings giving rise to the position being stated here?

A. No, I don't think so.

Q. "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 client 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 our client that it is prepared to put forward such proposal as an offer is 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 the 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 this related to a project in Mansfield in which Michael Lowry was a shareholder. We trust that this clarifies the position.

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

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

Do you remember that letter being received?

A. I don't remember it specifically, but obviously I'd have seen it, yes.

Q. And enclosed with it was a draft letter which was

A. Which I think we have seen before.

Q. Which we have seen before. And that is the narrative

letter, isn't that right?

A. The so called.

Q. The so called narrative letter, yes. And then the next document did you have any discussion, or do you remember, sorry, I beg your pardon, having any discussion with your client about that particular without prejudice letter received from Messrs. Woodcock?

A. I don't remember having had, but I am sure I would have checked with him, but I think, by then, it was very much the case that Denis wanted us to get on with it.

Q. Yes, he wanted it settled?

A. Yes. And, I mean, unless something new came up, which in fact it's about to, the third hurdle is about to arise, he just wanted us to settle the thing.

Q. Right. Well, by that, can I take it that you felt that you were off inquiry, if you understand the point, by virtue of the instructions you had received?

A. I think I felt we had gone as far as we could go. I wouldn't assert that it was entirely satisfactory, but it was pretty apparent from Woodcock's attitude that there wasn't any more forthcoming.

Q. In other words, the clarification you weren't well, how did you feel about the purported clarification?

A. As far as I can remember now, and it is five years on, I didn't feel terribly happy about it, but it was all I was going to get, I felt. Woodcock's had displayed extreme impatience throughout. It was a statement that Michael

Lowry was not in Doncaster, or words to that effect. And my client was pressing me to finalise the settlement. So I wasn't terribly happy, but it was probably at or close to the bare minimum necessary.

Q. All right.

A. And I suspect Owen O'Sullivan would have felt the same way.

Q. I am only I understand the point that you are making.

There is, then, at Tab 88, a letter dated 19th August, 2002, and this is a formal offer.

"We refer to your letter of the 19th August.

"We confirm that our client will formally offer to pay

€150,000 referred to in our letter in full and final

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

Phelan whether trading through or as Gameplan

International, 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 in the project (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 letters referred to in paragraph number (iii) 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 settlement is concluded.

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

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

And then I think then you received, again, a without prejudice document from Woodcock dated the 20th August, 2002, going through the various matters, setting out that which is acceptable.

Then at point (iii): "This is not acceptable. Our client is not prepared to compromise any claim that it might have against individuals whose identities are not known. Our client does not know who the shareholders, directors or employees or other consultants are that you refer to. If you wish a specific individual to be covered by this agreement, then you should make this clear. As you appreciate, our client would wish a reciprocal arrangement with that individual that they compromise any claim that they may have against our client. This clause therefore is simply too wide."

Then dealing with the release of files. I don't think I

need to go into that. Sorry, I beg your pardon, I am getting punch drunk.

"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 the documentation is now held by a number of people. Our client cannot be held responsible for the disclosure of documentation from a third party. We make it clear therefore that the burden would be on your client to evidence that in fact if there was disclosure, that it had come from our client after the date of compromise being reached.

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

6. With regard to the clarification of the reference ML, we confirm that we are instructed to clarify the position in a separate open letter at the time settlement was concluded in the form of your words used at paragraph (ii) to our correspondence of yesterday.

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

Now, the next document I would ask you to look at is Document Number 90, then. It's a note, your note of the

20th August, 2002:

"Dave McCann per his letter 20th August.

"(iii) Will give list of names. Confirm OOC acts for or

has authority to give reciprocal waiver.

(iv) Have been discussions with Denis O'Connor. Kevin

Phelan will hand over his files to Denis O'Connor.

"Owen O'Connell whether aware of Denis O'Connor discussions

re documentation."

Can you help us with that note?

A. Obviously, it's a conversation between me and David McCann.

I don't have a direct recollection of it. But we are

trying to sort out the outstanding points that are left, or

as listed in his letter of the same day. And on

point (iii) I think I am saying that I will give a list of

names and will confirm that I act for or have authority to

bind them and to give a reciprocal waiver, and on that

basis he will give the waiver that I want. And then on

point (iv) I think he is saying that there have been

discussions with Denis O'Connor, and Kevin Phelan will hand

over his files to Denis O'Connor. And he asks me whether I

am aware of Denis O'Connor discussions regarding

documentation. Now, in fact, I think I wasn't, but I don't

record my answer.

Q. Can you help us now what documentation might have been

A. I think where this came from was the American lawyer

reference of a few minutes ago, when Denis O'Brien Senior

had learned that an American lawyer was in the UK trying to



get files relative to Denis O'Brien Junior. And that created the, what I referred to a minute ago, the third hurdle, perhaps it was the fourth if you take the list of parties involved, with Denis now saying he also wanted to get the files, and I didn't have very much to do with this aspect of it, and I am being told here, "Look, Denis O'Connor has been on to us about this already and we are going to give the files to Denis O'Connor." And recreating what I would have probably thought and said at the time, but not from direct recollection, I would have said, "Well, look, fine, if it's sorted out with Denis O'Connor, I'll check with Denis O'Brien Senior, and if he is happy, I'm happy." I really was very strongly motivated by this point to finalise the thing.

Q. Do you think that it and I know you are trying to recollect do you think that the reference to the files was the reference which we had previously seen in the telephone memorandum which had been left for you of a suggestion that Mr. O'Brien Senior had been informed that an American lawyer had approached Dinard, or Mr. Richardson and Weaver in relation to

A. I think that created a paranoia about files, or reinforced one, maybe, and he was just saying, he being Denis O'Brien Senior, was just saying, "Look, we don't want these files floating around. We want to get them, have them in our possession."

Q. I just wonder would it be of any assistance or maybe assist

your recollection in any way, that this was the 20th August, 2002. On the 29th and 30th July, 2002, there were hearings here in this room where I think Mr. Denis O'Connor and Mr. Michael Lowry may have given evidence in relation to what was described as the long form/short form letters; that is letters of Mr. Christopher Vaughan's which appeared in two dated for the same dates but containing different information. Do you remember that, in general terms?

A. I remember being vaguely aware that there were different forms of letter, one was a draft and another wasn't. The expression "long form" and "short form" doesn't ring any bells with me. I don't remember that.

Q. All right. And the reason I ask you, because what happened before the Tribunal, when the Tribunal wrote to Mr. Vaughan and he confirmed that the letter but we sought an explanation, and Mr. Vaughan then enclosed a letter which was written by Mr. Kevin Phelan giving an explanation in general terms that Mr. Vaughan sent him letters in draft form and sometimes he would have got them wrong and he would have corrected it. Does that help you, as to being something that Mr. Phelan may have had files which may have been of some interest to people?

A. I can see the point. I don't remember being aware of it at the time.

Q. All right.

A. I do understand the point you are making, though. Certainly, I think I thought of these as the Dinard files.

Q. All right. Fair enough. Now, if you then go to Tab 91.

This is your note.

"Denis O'Brien Senior.

Tushingham and Vanderpump refer to David Sykes or Sandra Ruttie. Denis O'Brien and Denis O'Brien Senior.

Aidan Phelan Denis O'Brien Senior to ask and revert.

We are happy to drop requirement re files consent." That's crossed out. "No, Denis O'Connor request likely to be withdrawn.

David Sykes.

Peter Vanderpump.

Chris Tushingham.

We to contact them re matter.

Confidentiality."

That's the 20th August. Can you help us?

A. I think that is probably me ringing Denis O'Brien after the conversation with David McCann and I am trying to line up the various elements of the settlement in order to get it concluded, and the first reference, and also the reference further below to Tushingham, Vanderpump, David Sykes, etc., are me trying to get instructions to give waivers on their behalf and in return to get waivers. If you remember, I had told David McCann that I'd get authority to give them on behalf of various people. And the Denis O'Brien and DOB Senior reference would be the same, confirming that I had been authorised to give and receive waivers on their behalf as well. And then I think I asked about Aidan Phelan, and,

of course, Denis Senior couldn't give me authority in relation to Aidan Phelan, so he says he'll ask Aidan and come back to me. That's the "AP DOB Senior to ask and revert," meaning he'll go and ask Aidan Phelan and come back to me.

I think he then seems to have told me that we're not bothered about the files any more, but then he seems to have had a second thought, as a result of which I crossed out my note and said "No, just tell him that Denis O'Connor's" presumably the request to be given the files will be withdrawn. And I note that.

Now, the "We to contact them re matter." When I looked at the handwritten note originally, I wasn't actually sure whether it was "we" or "he", and I am well aware, Mr. Coughlan, that I had this note typed, I had the actually, when I looked at it, it looks more like a "he" than a "we" in the original manuscript version. So I'm not sure about that.

Q. All right.

A. And then "confidentiality" I think is just Denis saying, "Look, get a confidentiality clause, a standard confidentiality clause in."

Q. So this is getting things ready to conclude matters finally, is that

A. Yes.

Q. Now, I think, then, the next note is a phone message from Denis O'Brien Senior, the 21st August, "Spoke with Denis at

10 o'clock this morning. He had a message to call but wasn't sure if it was just an overlap. I mentioned the message I had from 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. Aidan said his solicitor was on holiday, but he would try to get someone else to act on his behalf. (Denis O'Brien Senior already informed Owen O'Connell).

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

"Denis is on" then it's just his mobile number.

Can you help us with that?

A. I think this is my secretary again giving me a note, obviously, of a call she had received for me from Denis Senior. And I think it's still following up, I suppose you'd call it, the box-ticking exercise we had been engaged in the previous day involving the settlement issues. And he had got on to Aidan and Aidan seemed happy enough, but his solicitor was away, and he was trying to get someone

else to talk to me. On the files, I don't think the note is entirely consistent with what was said on the previous day because the previous day we were already talking about withdrawing the request. What it seems to be saying, that instead of handing over the files, Woodcock's would give us assurances they wouldn't hand them over to anyone else. That, by the way, is partly what prompted my comment a few moments ago that I thought the American lawyer reference had triggered this concern, but then McCann saying, "Of course I can't give you assurances. I won't hand them over if I don't have them. So you have got to get Denis O'Connor to drop his request to have the files so that I have them and then I can give an assurance."

Q. It seems to be Denis O'Connor was looking for the files?

A. It seemed to be.

Q. According to that note, at least?

A. Yeah, but that Denis O'Connor was to stop, withdraw his request for them and then Woodcock's could give an assurance they wouldn't hand them over. And then I suppose the third point is just Denis pressing me to get on with it and pay over the money.

MR. COUGHLAN: I'd imagine I'd be about another half an hour, Mr. O'Connell. It might be preferable to break for lunch.

CHAIRMAN: If that doesn't put you out, it's preferable we'll keep it in the context of another witness attending and I'll slightly abbreviate matters and make it two

o'clock punctually.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF OWEN O'CONNELL BY

MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Thank you, Mr. O'Connell. Perhaps we'll

just go back to a document which you thought was out of

sequence in the book; that's the document behind Tab 55.

You think that is mid-August, do you or that's what you

thought at least, anyway?

A. I think I took it from the fax date at the top.

Q. Oh, yes, yes.

A. I'm just getting it now, Mr. Coughlan, if you just bear

with me. This is the

Q. "Contents of memo to be sent by DOB Senior." Do you see

that particular document? "The following consideration

should be incorporated in any agreement. In general all

future events occurring as a result of the hearing and

particularly the following:

"1. Any reference to the party occurring during the

business of the hearing.

2. Any publicity (radio, TV, other) occurring directly or

indirectly as a result of the hearing.

3. Any correspondence, summonses resulting from either the

hearing or litigation involving any of the property

transactions which are the subject of the agreement.

4. Any attention resulting from the agreement or any

payments made by parties to the agreement from the Inland Revenue or any taxation authorities, Companies House and Bankruptcy Assignee.

5. Any complaints rendered to the party to this agreement which are not under our control."

Do you know what that's about at all?

A. I don't specifically. I had a feeling, partly from the date, the fax date at the top, which is the 15th August, and to some degree from the context, that it might have been related to the whole confidentiality and files area of the settlement and

Q. And seems to contemplate a bigger settlement than just Westferry settlement?

A. Yes. Now, none of that ever ended up oh, and perhaps but none of that ever ended up in the Westferry settlement.

Q. Do you remember where it ended up?

A. No, I mean sorry, the only settlement I can comment on is the Westferry settlement.

Q. That you are aware of?

A. Yes, it never ended up in there.

Q. Like, you were I know you were responding McCanns had written the letter saying "We can't be responsible for disclosures," isn't that right?

A. Yes.

Q. And I appreciate the point you are making, that as far as you were concerned, you were just acting for the one, the one client in relation to the settlement of a matter, isn't



that right?

A. Oh, absolutely, yes.

Q. But

A. If you go to Tab 86, you'll see it's in there as well.

Q. Right.

A. And I think it makes more sense there.

Q. That is the message the Carol McNeillis?

A. Sorry, it's not in yours. I put it into Tab 86. There is

a fax to Olivia at William Fry, Solicitors, from Denis

O'Brien Senior, dated 15th August, '02, which says

Q. You think it might be more

A. "Attached memo and cover note from Mr. Owen O'Sullivan."

And that's 15th of August at 14:40, and this note is 15th

of August at 14:40 and I think that's where it belongs.

Q. All right. Now, if we go to I think we had been at

Tab 93, is it, before lunch? I think we had that's your

letter to Woodcock, isn't that right

A. Yes.

Q. of the 21st August?

A. It's Owen O'Sullivan's.

Q. Yes. "Dear Sirs,

"On behalf of our client we hereby agree to pay i<sub>c</sub>½150,000 in

full and final satisfaction of:

"(i) All fees, expenses due to your clients or any of them

(howsoever described) arising out of this project.

(ii) Your client claim to be entitled to a 40% share of any

profit on the project and

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

"Our client also requires confirmation that unless compelled by law, neither you nor your clients will release your respective files nor any papers on them nor any other documentation related directly or indirectly to the project which is under your clients' control to any third party without our client's prior written consent. However, it is acknowledged that such confirmation is subject to the fact that your clients will not be in breach of this confirmation if court proceedings are issued against any of your clients, such that, your clients will be at liberty to rely upon such documentation as they have in their possession as is reasonably required to defend their position. Further, our client would require the enclosed letter, drafted by you, to be signed by you on behalf of Mr. Phelan and sent to us with acceptance of this offer.

"If you accept this offer on behalf of your clients, such acceptance will be deemed to constitute the satisfaction and confirmation referred to above, whereupon we will forthwith transfer to you the said sum of  $i\frac{1}{2}$ 150,000. We confirm that we have been placed in funds by our client for that purpose.

"We further confirm that we have been authorised by each of

our clients, Mr. Denis O'Brien, Mr. Denis O'Brien Senior, Mr. Peter Vanderpump, Mr. Nicholas Williamson and Walbrook Trustees Limited to declare fully and finally satisfied all claims of any nature whatsoever or howsoever arising against your client relating to the project upon and in consideration for your clients' acceptance of this offer and that such satisfaction shall be deemed to have occurred upon your acceptance as aforesaid.

"The offer is available for acceptance until 5:30 on Friday next, 23 August, whereupon it shall lapse if not previously accepted. Acceptance should be made in writing without condition or qualifications (save as to the due transmission and receipt of funds) to us at our above address and fax number together with a duly signed engrossment of the enclosed draft letter.

"We look forward to hearing from you."

Now, the next document, then, is the acceptance by Woodcock's, isn't that right, and the enclosing of the signed draft of the letter sent, isn't that right?

A. Yes.

Q. And the draft is, as we have seen in the past, the so called narrative, isn't that right?

A. Yes.

Q. And then if we just go to the next document, then, 95, 21st August:

"Denis O'Brien Senior wants to settle today. Go ahead without Aidan Phelan if necessary. Denis O'Connor withdraw

request for files. Better to have commitment re

non-release. Aidan Phelan no intention of suing.

If you don't get him Denis O'Brien Senior will keep after him.

Owen O'Connell or Owen O'Sullivan confirm position at end of day."

Now, can I take it that that note must have been perhaps written before or made before the letter was written?

A. Logically, it would

Q. It would seem like that?

A. Yes.

Q. That Mr. O'Brien wanted this thing settled today, isn't that right?

A. Yes.

Q. And what you received was acceptance of the  $\text{€}150,000$ , isn't that right the settlement you paid  $\text{€}150,000$ ?

A. Yes, we did.

Q. That was accepted?

A. Yes.

Q. And what you received was the draft that we had seen before, that is the draft in relation to a narrative, isn't that right?

A. Yes.

Q. Did you ever receive any separate letter in relation to the confirmation which was sought?

A. Not to my knowledge. I think we took the earlier letter as sufficient.

Q. As what?

A. As sufficient.

Q. As sufficient, the without prejudice letter as sufficient?

A. Yes.

Q. Notwithstanding that you had sought

A. I think we had said it would be preferable, or words such as that. I don't think it was ever essential.

Q. All right. Now, could that be because you were not happy with what you have told us arrived in the without prejudice letter in relation to the ML reference?

A. No.

Q. You had specifically or sorry, your firm, your firm had specifically requested, in relation to confirmation, that the ML did not refer to Michael Lowry, the confirmation one of the matters that might have been acceptable, that the ML did not refer to Michael Lowry, and you were told in the without prejudice letter it did refer to Michael Lowry?

A. It did, yes.

Q. What you had also sought was confirmation that Michael Lowry didn't have anything to do with Doncaster, isn't that right?

A. Well, we thought that as one of a number of alternatives.

Q. Did you seek that?

A. Yes, we did.

Q. You did not receive that confirmation?

A. Oh, I beg your pardon. No

Q. Do you understand the point I am making? You sought

confirmation on the confirmation issue, what you were looking for was this: ML isn't Michael Lowry. Now, that was not the case, as it transpired?

A. It was Michael Lowry, yes.

Q. You then sought that, in any event, that Michael Lowry was not involved in the Doncaster transaction, if you understand me?

A. We sought that as one of a number of alternatives.

Q. It was an alternative, correct. But you didn't receive that?

A. No, we got another one of the alternatives which was an explanation for the reference

Q. That Doncaster meant Mansfield?

A. Yes.

Q. You weren't happy with that, were you?

A. I wasn't particularly happy. There were more elaborate or other explanations I'd have preferred, but I felt it was all we were getting.

Q. I understand that from the point of view of your involvement with your client. He your client then wanted to settle, isn't that right?

A. Yes.

Q. And wanted and required you to settle expeditiously, would that be a fair way of putting it?

A. Yes.

Q. Was there any discussion at this time, bearing in mind the concerns you had, and Mr. O'Sullivan had when the reference

to ML first arose, was there any discussion at this time about bringing this matter to this Tribunal?

A. I am sure there would have been. I don't remember a specific occasion or who said what, but I'd have little doubt that the possibility of a reference to the Tribunal would have been discussed would have arisen and would have been discussed.

Q. I mean now, between you and your client?

A. I don't remember ever discussing it with my client. I am pretty sure I discussed it with Owen O'Sullivan.

Q. Do you know if Owen O'Sullivan discussed it with your client?

A. No, I don't.

Q. One of the matters which you both had considered prudent in carrying out your own, first of all, initial inquiry into the matter, was to make inquiry of Aidan Phelan, the person who had received this fax transmission back in '99, isn't that right?

A. Yes.

Q. Were you aware then that Aidan Phelan had not been asked about it?

A. I don't think I was aware of that. I think, if you recall the letter, we were saying these are the things which should be done.

Q. Yes, I appreciate that.

A. We took one of them on board, which was pursuit of the inquiry of Woodcock; and I think Denis O'Connor had a

second, which was the Michael Lloyd thing; and then

Mr. O'Brien Senior had the third and fourth, one of which was Aidan Phelan.

Q. I am not suggesting were you aware that Mr. Phelan had not been asked?

A. I don't think I was aware of that, no.

Q. And on the basis of the discussion you had with Mr. Owen O'Sullivan as to whether the matter should be referred for the consideration of this Tribunal, can you tell us what the outcome of that discussion was?

A. The outcome was that we certainly concluded that, on our own account, we should not refer it.

Q. Yes, I understand that.

A. We discussed formally advising Mr. O'Brien to notify it, and we decided against doing so.

Q. Why?

A. For a number of reasons. One was, that we have, and for many years, been in the unusual position vis-a-vis this Tribunal, that pretty much all of our advice to our clients comes to the Tribunal, and the consequence of that is that our client receiving our advice in this situation is not in the position a client normally is in, in which he can privately accept advice, consider it and act on it or contrary to it. Formal advice from us to Mr. O'Brien in this case would have been tantamount to a direction from us to notify the Tribunal. In our view, right or wrong, but I think right, he would have had no alternative. Now, it was



clear to us that he didn't want to receive that advice. He was absolutely adamant.

Q. Could you say that again, he didn't want to receive that advice?

A. He didn't want to receive that advice. By that I don't mean to suggest that he took us aside and said "Don't you tell me so and so". It was entirely apparent from the context of everything that we had done, he and Denis O'Brien Junior were adamant, and had been so throughout, that Mr. Lowry had no involvement in Doncaster. So had, as I understand it, Mr. Lowry been adamant, and others had similarly made that statement. The only contrary evidence of which we were in possession was this "ML refer matters regarding Doncaster to Aidan Phelan" reference in the letter of 1999, and we took the view, and maybe we were wrong, we took the view that giving formal advice to Mr. O'Brien to bring that matter to the attention of the Tribunal was not justified, and that's what we did.

Q. And was that both in the context of it being a reference to Doncaster and Mansfield which was a matter which was then currently being inquired into before the Tribunal?

A. I don't think we knew anything about Mansfield at that time. Certainly, in Note 2, we didn't know anything about Mansfield. Doncaster was the one we were aware

Q. Mansfield was being inquired into had been inquired into before this Tribunal.

A. I see. I wasn't even aware of that. I was certainly aware

Doncaster had been the subject of sworn evidence before the Tribunal.

Q. Who told you that?

A. I can't remember now, but I frequently I didn't always, but I frequently read transcripts.

Q. Yes, fair enough. Doncaster was a fairly brief reference in the evidence before this Tribunal at the time. Do you remember that?

A. Possibly so. I don't remember, no.

Q. Very good. Now, I think in January 2003, the famous Christopher Vaughan letter of you'll find that at the beginning, Tab 19, the famous Christopher Vaughan letter of the 25th September, 1998.

A. I don't think I have that, Mr. Coughlan.

Q. Okay. It's at the very beginning.

A. At the beginning, I beg your pardon.

Q. At the very beginning of the book, I am sorry.

A. I have Mr. Vaughan's letter to Paul May and Kevin Phelan, 23 August, '98.

Q. The one to yes, to Mr. Michael Lowry, 25 September, 1998. I wonder do you have that? It's at the beginning of the book, Tab 19 it's Tab 19, in any event.

A. Yes, I have it.

Q. When did you first become aware of the existence of that particular document?

A. Actually, when I read your book, that was the first time I could ever remember reading the letter. I think I had been

aware of a Christopher Vaughan letter that created issues involving Mr. Lowry and I knew there were two versions of the letter, but all in quite a vague way and I don't recall ever having read it before I got this book.

Q. Well, perhaps we are talking about two separate things.

The issues relating to Christopher Vaughan and letters, two of them representing a different position, perhaps, in relation to Mr. Lowry, were the documents that I referred to earlier as the long form/short form.

A. Right.

Q. There has never been any suggestion that there were two forms of this letter?

A. I see. I have read, in transcripts, references to this BUPA appointment, but I don't remember reading the letter itself before.

Q. So, to the best of your knowledge, that was not brought to your attention, was it?

A. I'd be reluctant to say it wasn't, but I don't remember reading it.

Q. Right. Well, did you become aware of it when it appeared in an article in The Irish Times in January of 2003?

A. Quite likely.

Q. And that raised an issue, didn't it, just like a fax which had been sent to Mr. Aidan Phelan in 1999 raised an issue of Mr. Lowry having an involvement in Doncaster, isn't that right?

A. I have to say it didn't raise any such issue for me,

because I didn't read the letter.

Q. Who would have been dealing with it, do you think, in your office, so?

A. I imagine it would have been Mr. O'Sullivan.

Q. All right. Now, can I take it if anyone had suggested to you that there was blackmail afoot here, you'd have noted that, wouldn't you?

A. I am sorry, could you give me the question again?

Q. If Mr. Denis O'Brien had said to you that he was being blackmailed at this time, you'd have noted that, wouldn't you?

A. Oh, I am sure I would, yeah.

Q. Look, I am not making a big issue about this. Mr. O'Brien is an elderly man. He sat in that witness box. He accused Kevin Phelan of being a blackmailer, dishonest, and all of the rest of it. Can I take it that was never said to you?

A. Not that I can recall. And I probably you are right, I would have noted it. It would have been certainly something that I would have done.

Q. It's dramatic?

A. Yes. I am aware of the police report later on.

Q. That's in relation to another matter.

A. Yes.

Q. Now, when and in what circumstances did William Fry's cease to act for Westferry and hand over the papers to Messrs. LK Shields?

A. Again, I wasn't directly involved. I was told about at or

after the event, but I believe it was about the mid to late summer of 2003. The circumstances, I don't know.

Q. Now, I understand the reasoning, your reasoning and the decision you made not to advise Mr. O'Brien to bring this matter to the Tribunal, bearing in mind that it would have effectively been a command, as far as you were concerned, to him. But there was an issue here, wasn't there, an issue of Michael Lowry and a connection with Doncaster; there was an issue to be considered, wasn't there?

A. Yes.

Q. And are you aware that proceedings were commenced in the High Court and taken on appeal to the Supreme Court by Mr. Denis O'Brien, seeking an order of certiorari quashing the decision of this Tribunal to commence inquiries, public inquiries into Doncaster Rovers?

A. I was aware of the proceedings, but I had no involvement in them. I am not a litigation lawyer, so I wouldn't have been engaged.

Q. Was your view sought?

A. Not that I can recall.

Q. Are you aware that the reliefs which were sought in the first instance, of certiorari and an interlocutory injunction and, on the full hearing, certiorari and a permanent injunction?

A. No, I wasn't aware of the specific reliefs sought.

Q. No, just for the public to understand; certiorari is an order quashing a decision taken by some inferior tribunal,

isn't that right?

A. Yes.

Q. And an injunction is an order of the Court stopping you doing something, isn't that right

A. Yes.

Q. in broad terms. It can compel you but, in this situation, stopping you?

A. Yes.

Q. And aren't all lawyers aware that when one is seeking such relief, one must make everything that is available to you known to the Court, isn't that right?

A. If you are asking me am I aware as a matter of equitable relief, yes, I am aware of that.

Q. And are you aware that it was not brought to the attention of the Court in the application taken by Mr. Denis O'Brien of the existence of this particular 'ML' reference at the time that application was made?

A. I am not aware of that, no.

MR. COUGHLAN: Thank you very much indeed, Mr. O'Connell.

CHAIRMAN: There may be a couple of questions from other counsel, Mr. O'Connell. Mr. McGonigal?

MR. MCGONIGAL: I have no questions.

CHAIRMAN: Mr. O'Donnell?

THE WITNESS WAS EXAMINED BY MR. O'DONNELL AS FOLLOWS:

Q. MR. O'DONNELL: Mr. O'Connell, just a few questions.

Firstly, I think you are a partner in the firm of William Fry, and that's a very well-known and substantial firm in

the City of Dublin?

A. Yes.

Q. And you are a senior partner in that firm?

A. Yes.

Q. And you obviously have occasion to deal with very substantial transactions; for example, Mr. O'Brien Junior is a very substantial and successful businessman?

A. Yes.

Q. And notwithstanding that, I think you observed at one stage, in answer to Mr. Coughlan, that there are certain things that hold true for nearly all solicitors dealing with all their clients, which is that the clients are somewhat want things done immediately and are somewhat impatient of the difficulties that solicitors seem to put in their way in terms of completing transactions, isn't that right?

A. That's often true, yes.

Q. And in this case, I think you were first introduced to this issue on the 24th May, 2002?

A. Yes.

Q. Doncaster, as we know, stretches back into 1998, we know now?

A. Yes.

Q. And it was brought to you, and I think you were concerned to do what solicitors do when somebody comes saying they want to do a deal, buy a house, make a will or they have done something, which is to put some structure on the

transaction and to make sure it was documented?

A. Yes, as far as possible.

Q. And that's something clients sometimes find tedious or pedantic, but it's something solicitors, as it were, seek to do for their clients?

A. Yes.

Q. Was there anything unusual, from your perspective, about what you were being asked to do here?

A. From my personal perspective, yes. It just wasn't the sort of thing I'd normally do. I am a corporate lawyer. And typical work for me would be

Q. Bigger transactions?

A. purchase the sale of companies, investments, flotations.

I suppose, at that time, my history, acting for Denis O'Brien, my history with the Tribunal, made me someone they came to when they wanted it sorted out, but settlement of a debt would not have been something I would have done for many, many years.

Q. But in this case, there was a transaction, a proposed transaction with Kevin Phelan, and you were aware that Kevin Phelan had figured before in this Tribunal?

A. Yes, I was.

Q. And therefore, you would have been particularly concerned to ensure that this was a transaction that was properly structured and documented?

A. Yes.

Q. Because of the risk of misunderstanding or misapprehension



or mischief-making, is that right?

A. Yes, correct.

Q. And I think, from your perspective, perhaps one of the most important documents is a memo at indent 67 of the one month later, of the 24th June, 2002, which points out, in a sense, that you knew nothing of Doncaster prior to the 24th May, 2002, isn't that right?

A. Beyond the occasional reference here, no, nothing.

Q. And you knew nothing about the detail, as it were, of any part of it until you were asked on the 24th of May?

A. No, the most I'd have known was that it was a purchase of a football ground.

Q. And at that time, as you were being asked to become involved in it or in the Westferry/Phelan dispute, did anyone suggest to you that this was a matter of particular sensitivity for Mr. O'Brien, that there was something sinister lurking in the background that you should be aware of?

A. Nothing beyond the involvement of Kevin Phelan.

Q. And the sequence of the transaction is that you were asked as far as you were concerned, you were resolving the Westferry dispute with Kevin Phelan?

A. Yes.

Q. Structuring that, documented it, seeing it dealt with.

Then, as that was about to be concluded, Mr. Phelan produced, it appears, the letter from Messrs. Ashworth, seeking his evidence in respect of the Dinard dispute, the

retention dispute, is that right? I'm not sure that

Mr. Phelan necessarily produced it

A. I don't think it was well, to my knowledge, I don't

think it was Mr. Phelan. I don't know

Q. It wasn't directly produced by Mr. Phelan; it was

Mr. O'Brien Senior, I think, had it?

A. Yes, I think so.

Q. But it could probably only have come from Mr. Phelan since

it was a letter directed to him?

A. Well, I don't know, but that's certainly a conclusion one

could reach, yeah.

Q. And in any event, that raised, then, the concern that

Mr. Phelan might give evidence in that dispute, or might

become a witness in that dispute?

A. Yes, I mean, my understanding was that that gave concern in

regard to the Dinard dispute.

Q. Exactly.

A. And that's why that's what gave rise, I think, to the

files issue, and so forth.

Q. Well, and just before that, the Dinard dispute is what gave

the fact that

A. Sorry, I was wrong. That gave rise to the request for the

narrative.

Q. For the narrative, exactly. It was that fact, the

production of that letter and with what it implied, and if

it came from Mr. Phelan, perhaps with what it implied from

that source, that gave rise to the demand for a narrative

or the request for a narrative which was to provide some protection for your client, as you said, that in the event that if he did become a witness and did say something different, there would be an account against which he could be challenged?

A. That was my understanding, yes.

Q. And that's not unusual in disputes between individuals or parties, that sometimes, that a party would like to have an account of what somebody might say to make sure that if they say something different, it will be they'll be able to challenge them about that?

A. As I said, I'm not a litigation lawyer, but it made sense.

Q. And it was in response to that that was a request simply for a narrative in respect of his dealings with Dinard and the retention dispute, etc.?

A. Yes.

Q. And it was in response to that request that Mr. Phelan's solicitors then wrote the letter of the 28th June, 2002, enclosing the fax and the other documentation?

A. Yes.

Q. And that gave rise to the 'ML' reference?

A. Yes.

Q. And at each stage, you were involved in following what these issues that had been raised and attempting to resolve them?

A. Yes.

Q. And from your vantage point, you are somebody who comes to

this with no previous knowledge and no previous instructions as to the significance, or otherwise, of these matters, and you are just led from one to the other by the sequence of events, is that right?

A. I think it's fair to say that when I saw the 'ML' reference, I wouldn't say that I necessarily understood all implications of it, but I certainly was aware it had implications in respect of the Tribunal.

Q. And did you consider that that was an entirely innocent reference introduced by Mr. Phelan at that stage in his letter of the 28th June when he is refusing the narrative you are asking for in respect of Dinard? Was it something that just happened to drop out or do you think it was something that Mr. Phelan or his solicitors thought might be useful?

A. You mean was it a shot across the bows? It could have been either, in fairness. It could have been a shot across our bows. But there was a logic to the letter it was contained being sent to us, meaning it was the letter, as Woodcock's said, by which Kevin Phelan recorded the termination of his involvement and the handing over to Aidan Phelan. So it could have been either/or; it could have been two birds with one stone.

Q. Well, I think it only recorded the dealing, the handing over the dealing with Andy White, and if you look at that fax, Mr. Phelan continues to be involved in a number of other respects?

A. I think the broader point is, there was, if you were fair about it, there was some logic to the letter being sent

Q. Some apparent logic to it at least?

A. Yes. But, of course, it could also serve the other purpose which you

Q. And I suppose anybody coming to you and asking you to resolve a matter, or anybody coming to any solicitor in a firm such as yours, would know that it is standard practice to take detailed memoranda attendances to record, as we have seen, even fairly short conversations internally or externally?

A. As far as possible. I mean, it's a counsel of perfection and there is rarely enough time to do it properly, but yes.

Q. There is just, I suppose, one other thing that was raised before I come to one last matter. Mr. Coughlan asked you to look at a memorandum that you made on the 20th, or a memo on the 20th August, 2002, which is at indent 90.

A. Yes.

Q. And there is a reference there to KP handing over his files to Denis O'Connor. And Mr. Coughlan, I think, suggested to you that that might have had some connection to hearings at the Tribunal the previous month, in July 2002. And I think you, in fact, suggested that you believed that was a reference to an American lawyer seeking to purchase files or papers?

A. Yes, which had occurred just before this.

Q. And Mr. Coughlan, I think, suggested to you that that was

only in relation to Dinard, and it is the case that Dinard's solicitors recorded an interest from abroad in their papers, but if you go back to indent 86, I think, which is Ms. McNeillis's e-mail to you of just six days previous to this memo, and paragraph 2 there records "Mr. O'Brien Senior mentions he had heard an American lawyer (unknown) had approached Woodstock and Sons and asked whether they would, for a fee, release all papers concerning the dispute."

A. That's what I was referring to in my reply to Mr. Coughlan.

Q. That's Woodstock/Woodcock, that's Mr. Phelan's solicitors?

A. Yes.

Q. And as you say, that appears to be the reference there.

And was that then resolved by Woodcock coming back to you and saying they can't give you an assurance if they hand over the files?

A. Yes.

Q. The assurance being that they will not transmit the files to this mysterious third party who is seeking to purchase them?

A. Frankly, or anyone, but I think that's what was in mind.

Q. And from your vantage point coming into this transaction, or coming into this whole matter in May 2002 and observing it as you go along and recording what occurs, you are aware now that, in January, a letter emerges from Christopher Vaughan, dated in 1998, which seems to suggest there had been a total involvement of Michael Lowry in affairs

concerning Doncaster.

A. I have read that letter, yes.

Q. Now, from your vantage point and what you saw, did you see anything that suggested to you any involvement, still less a total involvement, of Michael Lowry in matters related to Doncaster Rovers?

A. No, no. Apart from the 'ML', obviously.

Q. Apart from the 'ML' reference, which, of course, you had come across. And secondly, you may be aware that there is an attendance note of Ms. Ruth Collard on Mr. Denis O'Connor of the 10th September, 2002, in which she records him as suggesting that Mr. Lowry had been in a room with Mr. Phelan and Mr. Richardson when they discussed the lease. Apart from that reference itself, did you see anything or hear anything or come across anything that suggested that that

A. I am only vaguely aware of that reference, Mr. O'Donnell. I think I read it in the newspaper. But nothing else, no.

Q. Thank you, Mr. O'Connell. I am sorry, there is one other question I was going to ask you. When was your file delivered to the Tribunal? When was the file we have just been looking at containing those memos

A. Delivered to the Tribunal?

Q. Yes.

A. I am not sure, actually, because we were directed to deliver our file to LK Shields, I think. Now, again, Mr. O'Sullivan handled this, but it's my understanding that

it was LK Shields who delivered the file to the Tribunal,

but I don't know when they did so.

Q. Is it a matter of days, months, weeks or years?

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

Q. And can you tell us when you were first asked to explain and assist in relation to these matters, and, for example, to consider your to give the account you have now given about these memoranda and the correspondence that concerned you?

A. I don't know when the firm was first asked, but I personally was first asked last Friday.

Q. Thank you, Mr. O'Connell.

CHAIRMAN: Nothing in conclusion, Mr. Coughlan?

MR. COUGHLAN: No.

CHAIRMAN: Thank you very much for your attendance and assistance, Mr. O'Connell.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Mr. Healy?

MR. HEALY: Mr. Michael Lowry, please.

MICHAEL LOWRY, PREVIOUSLY SWORN, WAS EXAMINED BY MR. HEALY AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Lowry. Thank you for attending for your final attendance in these parts, and of course you are already sworn from earlier occasions.

Q. MR. HEALY: Mr. Lowry, do you have a copy of Book 82 and Book 83?

A. Yes.



Q. And do you have a copy of Book 62? If necessary, I'll give you a copy.

A. 82 and 83 only.

Q. Now, if you go to Book 62, and you go to Leaf 7, it's the last one of the last leaves in the book, fifth-last leaf in the book.

A. What number, sorry?

Q. Number 7, do you see that? Just the Number 7 on its own.

A. I am just after getting this book, so

Q. Take your time. On mine, it's the seventh-last tab; fifth-last tab I am told on your one. If you turn over the page it says "Mr. Michael Lowry," and then there is a list of four memoranda of intended evidence. Do you see that?

A. Yes.

Q. And as on previous occasions, what I propose to do is to take you through those first.

A. The memorandums?

Q. Yes, if you are happy with that.

A. The memoranda start at 7A?

Q. 7A, correct. You see where it says "Mr. Michael Lowry has informed the Tribunal as follows:

"1. Mr. Lowry has no recall of ever having had sight of a letter containing the text as outlined in the Tribunal's letter of the 13th January, 2003, and the supporting article from The Irish Times, i.e. the text of a letter dated 25th September 1998 from Christopher Vaughan, solicitor, addressed to Mr. Michael Lowry. Mr. Lowry feels

that if he had received such a letter, he would certainly have recalled the content as Mr. Lowry has never had any beneficial, legal or material interest in the Doncaster Rovers property.

"2. In September of 1998, an appointment had been made through Mr. Kevin Phelan for Mr. Lowry to undergo a medical examination at a medical centre operated by BUPA in Leicester and primarily for this purpose, Mr. Lowry travelled to the UK. He was collected from Birmingham Airport by Mr. Kevin Phelan and, by arrangement, they went to a hotel premises in Northampton where they had a meeting with Mr. Christopher Vaughan socially. Over drinks there was a wide-ranging discussion including a general chat on the Mansfield property. As it had also been arranged to have a specific meeting in Mr. Vaughan's office the next morning on Mansfield, Kevin Phelan took the opportunity to review his other ongoing property deals with Mr. Vaughan.

"3. If Mr. Kevin Phelan created the impression with Christopher Vaughan or if Christopher Vaughan made the assumption that Mr. Lowry had some involvement with Doncaster Rovers, then most certainly this was erroneous.

"4. Mr. Lowry recalls that on the following morning he visited Mr. Christopher Vaughan's solicitor's office for the purpose of a detailed discussion and appraisal in relation to the Mansfield property and subsequently Mr. Vaughan drove Mr. Lowry to a prearranged appointment at the BUPA facility in Leicester. Mr. Lowry is satisfied

that there were only Mr. Vaughan and himself in the vehicle in the course of the trip from Northampton to Leicester.

"5. Mr. Lowry had no knowledge of the letter referred to as the 25th September letter, 1998, until he was advised of the contents of the article in The Irish Times and the subsequent letter of the 13th January, 2003, from the Tribunal. Mr. Lowry had no knowledge of the matters referred to resulting in a complaint to the police in London."

Now, if you go to the next document, it is the first of a number of supplemental memoranda. The first one is dated the 17th June, 2004.

It says it refers to further information concerning the letter of the 25th September, 1998, from Christopher Vaughan addressed to you, and says:

"1. Mr. Lowry did not on the 24th September take or receive any documentation or correspondence from Mr. Lowry[sic]. If any correspondence or documentation passed at the meeting" I think I may have misread the letter.

I'll just read that again, Mr. Lowry.

"Mr. Lowry did not on the 24th September 1998 take or receive any documentation or correspondence from Mr. Vaughan. If any correspondence or documentation passed at the meeting on the 24th September, it was between Mr. Vaughan and Mr. Kevin Phelan. Mr. Lowry accepts that he was present at the meeting on the 24th September, 1998,

and there was considerable involved discussion as between Mr. Vaughan and Mr. Kevin Phelan, but Mr. Lowry would have had a peripheral interest only. In the course of the meeting on the 24th September, and indeed whilst in Mr. Vaughan's presence on the following day, any discussion that took place involving Mr. Lowry was of a general nature and Mr. Lowry is emphatic in stating that he could not have discussed items in any detail as he had absolutely no knowledge of any specific details in relation to the matters being mentioned or discussed."

And just so there is no dispute about it, I think there may be something about the dating here. It could be 23rd, 24th, but I take what you mean, no matter what date, you had nothing we could change the dates here and the statement would be the same, isn't that right?

A. Exactly.

Q. Go on to the next document, "Second Supplemental Memorandum of Information provided by Mr. Michael Lowry," dated 17th June, 2004.

The first item is headed "Visit of Mr. O'Connor to the United Kingdom in late summer 2001." And the queries you were asked to respond to related to:

"A. The purpose for which Mr. O'Connor visited the UK in late summer 2001 and met with Mr. Kevin Phelan;

"B. The person by whom the visit was suggested;

"C. The person who arranged the visit;"

"D. The individuals with whom Mr. O'Connor met in the

course of the visit."

And then, the answer to A, B, C and D is as follows:

"Mr. O'Connor has for some years past had a wide ranging involvement in Mr. Lowry's affairs and has greatly assisted Mr. Lowry in dealing with various matters. It is Mr. Lowry's recall that in the course of some discussion with Mr. O'Connor, it may have been suggested that Mr. O'Connor might go to England to review matters generally, and whilst there was no specific arrangement, Mr. Lowry would have been aware that it was Mr. O'Connor's intention to travel to England and review matters.

"It is Mr. Lowry's recall that he would have been particularly anxious that Mr. O'Connor might endeavour to formulate a business strategy in relation to the property in Wigan. Subsequent to the visit, Mr. Lowry recalled some general discussion with Mr. O'Connor but it is his recall that nothing of significance had arisen and they had nothing more than a general discussion in relation to the visit."

The next is the second heading, and it's as follows:

"2. Contacts between Mr. Denis O'Connor and Mr. Denis O'Brien Senior in relation to the dispute between Dinard Limited and Westferry Limited in August/September 2002, including the attendance of Ms. Ruth Collard of a meeting with Mr. Denis O'Connor on the 10th September, 2002.

"Mr. Lowry is at a total loss as to what was going on. Mr. Lowry had never had any interest in the Doncaster

Rovers property and had never even met Mr. Ken Richardson or Mr. Mark Weaver. For somebody to assert that he had a meeting with these gentlemen is simply incorrect, as he had never had any meeting or discussion with either of them, and as stated previously, had no interest in the Doncaster Rovers project. Mr. Lowry was not aware of discussions which Denis O'Connor was having with Mr. Denis O'Brien Senior in relation to these matters, and does not believe that Mr. O'Connor could have made any comment to the effect that Mr. Lowry had any involvement in Doncaster when he had no such involvement.

"At some point in time, Mr. Lowry was aware that Mr. O'Connor had become involved in some matters involving Mr. Denis O'Brien Senior, but he had no specific knowledge or involvement in these matters."

Then I come to the third supplemental memorandum, dated 17th June, 2004, and again, it's based on a number of headings, and the first heading is in relation to contacts between Mr. Denis O'Connor and Mr. Denis O'Brien Senior in May/June of 2002. And it's broken down into subheadings A, B, C, D, E, F, G.

"A. Mr. Lowry's knowledge, direct or indirect, of dealings between Mr. O'Connor and Mr. O'Brien Senior in relation to the DRFC project.

"B. Mr. Lowry's knowledge, direct or indirect, of all matters which prompted Mr. O'Brien Senior to make contact with Mr. O'Connor in relation to the DRFC project.

"C. Mr. Lowry's knowledge, direct or indirect, that the purpose for which Mr. O'Brien Senior informed Mr. O'Connor that he was absolutely dealing with the DRFC project.

"D. Mr. Lowry's knowledge, direct or indirect, of rumours that were then circulating in relation to his involvement in the DRFC project, either at that time or at any other time, and the source or sources of such rumours.

"E. Details of all dealings, discussions or contacts which Mr. Lowry had with any person at any time in relation to such rumours.

"F. Mr. Lowry's knowledge, direct or indirect, of any further contact between Mr. O'Brien Senior and Mr. O'Connor prior to the mediation of the dispute between Dinard Limited and Westferry Limited in September 2002 or with any other person as a result of Mr. O'Brien Senior's contact with Mr. O'Connor.

"G. In each instance, Mr. Lowry should indicate the source or sources of his knowledge where his knowledge is not direct."

Second heading is "Dispute between Mr. Kevin Phelan and Westferry Limited and/or its representatives."

"A. Details of the dispute between Westferry Limited and Mr. Kevin Phelan to include when the dispute arose and to what it related.

"B. When the dispute was resolved and the terms on which it was resolved.

"C. If the resolution of the dispute involved the making of

any payment or compensation to or for the benefit of Mr. Phelan, the amount of such payment or compensation, the manner in which it was paid and the source or sources of funds which were utilised.

"D. Mr. Lowry's knowledge, direct or indirect, of the identity of the intermediary to whom Mr. O'Brien Senior apparently referred in his conversation with Ms. Ruth Collard on the 20th June, 2002, as recorded in Ms. Collard's attendance of that date.

"E. The identity of all representatives of Westferry or persons in whatsoever capacity who were involved, directly or indirectly, in the resolution of the dispute with Mr. Kevin Phelan.

"F. Mr. Lowry's knowledge, direct or indirect, of the role, if any, of Mr. Denis O'Connor in the resolution of the dispute.

"G. In each instance, Mr. Lowry should identify the source or sources of his knowledge, where his knowledge, if any, is not direct."

The third heading is "Dealings between Mr. Denis O'Connor and Mr. Christopher Vaughan."

"A. Mr. Lowry's knowledge, direct or indirect, of meetings, dealings or contacts between Mr. Denis O'Connor and Mr. Christopher Vaughan. Mr. Lowry's knowledge, direct or indirect, of the purpose of all such meetings, dealings or contacts.

"C. Mr. Lowry's knowledge, direct or indirect, of the



outcome of all such meetings, dealings or contacts.

"D. In each instance, Mr. Lowry should indicate the source or sources of his knowledge of the above matters if his knowledge, if any, is not direct."

The fourth heading is as follows: "Contact between Mr. Denis O'Brien Senior and Mr. Denis O'Connor subsequent to the resolution of the dispute between Dinard Limited and Westferry Limited."

"A. Mr. Lowry's knowledge, direct or indirect, of all dealings, contacts or meetings between Mr. Denis O'Brien Senior or any person on behalf of Westferry and Mr. Denis O'Connor subsequent to the mediation of the dispute in September 2002.

"B. Mr. Lowry's knowledge, direct or indirect, of the purposes of all such dealings, contacts or meetings.

"C. Mr. Lowry's knowledge, direct or indirect, of the details of all negotiations, contacts or dealings between Mr. O'Brien Senior or Westferry or their respective representatives and any party or parties identified or introduced by Mr. O'Connor as having an interest in acquiring DRFC.

"D. Mr. Lowry's knowledge, direct or indirect, of the outcome of all such dealings, contacts and negotiations.

"In each instance, Mr. Lowry should identify the source or sources of his knowledge where his knowledge, if any, is not direct."

And the answer to A1, 2, 3, 4 is as follows:

"Mr. Lowry feels that his position in relation to this matter has already been made abundantly clear in his responses. In the fairly recent past, Mr. Lowry has become aware of Mr. O'Connor's involvement with Mr. Denis O'Brien Senior and generally in relation to the Doncaster Rovers project, but this was neither at the request of Mr. Lowry or on his behalf. Mr. Lowry has no specific knowledge of the matters detailed above."

Now, Mr. Lowry, can I just go back to your initial contacts with Kevin Phelan, right back to when you first became involved with him. Do you remember your evidence in relation to the Mansfield project?

A. Yes.

Q. And then after that, the Cheadle project. And you will recall that, in the course of examining those property transactions, the Tribunal came across documents from Mr. you won't I won't have to trouble you with them for the moment, so as to avoid you juggling all those things. And you can probably put that document away to avoid you juggling those 62 for a while, anyway.

Do you remember that some of the correspondence from Mr. Kevin Phelan relating to the Mansfield and Cheadle projects would be headed "M&P Associates"? Do you remember that heading?

A. Yes.

Q. And I didn't, in fact, know until recently, I didn't have any idea who M&P Associates were. Do you know who M&P

Associates are?

A. My understanding of M&P, it's Maher and Phelan.

Q. And did you know that the Mr. Maher appears to be the Mr. Maher that you had dealings with in your refrigeration business?

A. No.

Q. And do you know if it is the same Mr. Maher?

A. I presume it is.

Q. Do you remember that you gave evidence some years back now, in connection with your dealings with Mr. Maher?

A. Yes.

Q. You provided him with refrigeration expertise, and I think he did quite well out of it, in fact, because I think he may have been selling some business, or something, and it was very successful.

A. Yes.

Q. And he paid you, I think,  $\frac{1}{2}$ 25,000, and he didn't give evidence to the Tribunal, I don't think he'd come here, but he did provide the Tribunal with a letter. I think that letter was referred to at the time, but I'm just going to give you a copy of it. Do you see where the third paragraph and I think this, if my recollection serves me correctly, coincides with your own evidence, that you knew Mr. Maher for a number of years?

A. Yes.

Q. You were from neighbouring parishes in Tipperary, and, apart from anything else, there was the Tipperary

connection. You had lost contact because I think he went to England or got involved in the meat trade.

In the mid-1980s, I think he says that, in the third paragraph of that letter, that you linked up again in Tipperary, and he became aware that you were involved in the refrigeration business.

A. Mm-hmm.

Q. And from that, I think a new commercial relationship developed, and that resulted in some business dealings between you, and the one that was referred to in the course of the Tribunal's hearings related to a payment made in 1992 of  $\text{€}25,000$ , remember that?

A. Yes.

Q. And if you go over the page of that document, on to the second page, if you look at I'll summarise it and you can disagree with me if you like. I think what he says is he was using you to give him bouncing ideas off you, as far as I can see, asking you for advice from time to time, and in 1992 that culminated in him making a payment to you.

Did you continue to have a business relationship after that, do you recall?

A. With Mr. Maher?

Q. Yes.

A. No.

Q. Or with one of his companies any of his companies?

A. No.

Q. Do you know if you continued to have a friendship or an

acquaintanceship after that?

A. Yes, he I haven't met him regularly. In fact, I have hardly met him at all because he doesn't come back to Tipperary much. I think he bought a house in Spain and spends a lot of his time there. The last time I met Mr. Maher, in terms of a business connection, was I didn't meet him; he rang me, and asked me to give him a quotation in relation to a job that he wanted to do on his house in Spain, which was to replace the air conditioning. I said I wouldn't be down there, and it wasn't practical. I asked him to measure it up, give me the measurements and then I would give him a proposal, but he didn't, in fact, come back to me. That's the last business contact I had with him.

Q. And can you remember roughly when that was?

A. I'd say probably 2003.

Q. 2003?

A. 2003, 2004. I can't be

Q. And he rung you in Tipperary, was it?

A. I can't remember where he rang me.

Q. When you were dealing with Kevin Phelan, did you know that he was involved with Mr. Maher in M&P Associates?

A. No.

Q. Do you remember the if you look at the letter if you look at the heading on the letter that I put on the overhead projector a moment ago and of which you have a copy, can you see that the address is 70 High Street,

Weedon, Northants; do you see that?

A. Yes.

Q. And if you go to the document Book Number 83 of the two document books you have there.

A. 83?

Q. Yeah.

A. Is that Book 2?

Q. Book 2, yes. It may be called Book 2, yes.

A. Yes.

Q. I think it must be the first document in that, Number 70, is a William Fry fax, and then if you turn over the page, you will see a copy of a letter from M&P Associates to Mr. Aidan Phelan, do you see that letter?

A. 73?

Q. 70. It should be the very first document. At the bottom of the first page of that document, it is dated the 21st November, 1998, you will see the address of M&P Associates, you see that?

A. Yes.

Q. It's 70 High Street, Weedon, Northants, which is the same address and the same post code as Maher Meat Packers Limited. But even further than that, if you look at the monitor in front of you, you will see that the telephone number is the same as the telephone number of Maher Meat Packers and the fax is the same fax number, do you see that?

A. Yes.

Q. So would you agree with me that would seem to suggest that not only are they being run from the same building, but there must be the same person taking the calls coming into each of the different businesses, do you see that?

Wouldn't it seem to follow?

A. I have no idea about their arrangement, other than what I was told at a later stage.

Q. I appreciate that. But I presume if you rang up on the 15th June, 1999

A. Pardon?

Q. On the 15th June, 1999, if you rang up Maher Meat Packers at the number contained in that document, you might also get M&P Associates, do you see that?

A. I didn't make any call in '99.

Q. No, but I'm just telling you, isn't that likely to be the case?

A. Yes. I know that to be the case.

Q. I am sorry, maybe I am confusing you. You know it to be the case?

A. Yes. What's the question you are asking me?

Q. I am asking you, did you know that they conducted their business from the same building and, what's more, that they used the same telephone number?

A. After I gave evidence we may as well cut to the chase and put the question directly. When after I gave evidence in relation to my contact with Bill Maher, Kevin Phelan said to me he hadn't realised that I had done

refrigeration business for Bill Maher. And I hadn't made the connection. It was in or around that time that I gave evidence when I made the connection between the two of them, and naturally I asked him what was the arrangement or had he an arrangement? And the answer that I received was that because of some restriction that was placed on him, and I didn't go into the detail, I don't know what the detail of it is, is that he had an agreement with Bill Maher, who he had known previously in the meat business, and that he had an agreement with him, an arrangement with him whereby he would use his office as the address, and whatever goes with an office, to facilitate M&P

Q. Associates' business?

A. Yes. And you further asked him were they actually in business together, and he said it was something of whatever, an act of convenience for him that Bill Maher was facilitating him, but that he actually had no involvement in M&P.

Q. That Bill Maher had no involvement?

A. That Bill Maher had no involvement. Let me make it abundantly clear: At no stage, at any stage, in any transaction that I ever had with M&P, did I deal with Bill Maher. I always dealt with Kevin Phelan. And I also understand that in any of the property transactions that I was involved in with Kevin Phelan, I was dealing solely and exclusively with him. And I want to make it abundantly clear: I had absolutely no contact whatsoever with Bill



Maheer. I had contact with Bill Maheer which ceased in 1992, and it was a business relationship, and, after that, I didn't have contact with him. And I want to put on the record of this Tribunal that I have never met Bill Maheer since that, other than by coincidence - and I know you will probably hommer me on coincidence - other than last week at Cheltenham, he happened to be in a social gathering, I saw him in the distance, and to my surprise, about an hour later, I met another person at Cheltenham who actually was at this Tribunal previously, and that was Mr. Barry Maloney. So that was the first time that I had seen Bill Maheer since, actually, 1992. So I had no contact with Bill Maheer whatsoever in relation to property transactions. I never met Bill Maheer at any stage with Kevin Phelan. Never.

Q. When Kevin Phelan rung you to say, rung you after Bill Maheer gave evidence or sorry, after Bill Maheer's

A. I don't know whether he rang me or I met him, or what have you, but it came up in conversation.

Q. Just to go over that again. He said to you, "I never knew that you were connected with Bill Maheer," is that it?

A. He raised the issue in or around that time there was and you have to understand my position; it's very confusing if you are in the position that I am in for the past ten years, where every day you pick up a paper and you read an article where every other day you are reading some commentary in relation to the Tribunal. So it gets very

confusing as to what you knew then, what you learned

during

Q. I follow that

A. Excuse me, let me make my point. You have been making it

for ten years. This is my opportunity to make my point,

and I have been subjected to a consistent stream of

reporting of this Tribunal, so it is difficult for me to

place precisely ten or twelve years ten years later, or

even in this case, when was this M&P, 1992? So, I don't

know precisely, but all I know is that I had a conversation

with Kevin Phelan in respect of it. Kevin Phelan outlined

to me that his relationship with Bill Maher in respect of

M&P was one of convenience where Bill Maher was

facilitating him and allowing him to use the office. And

again, I want to put on the record that I had no contact

whatsoever with Bill Maher in relation to property

transactions.

Q. Kevin Phelan would, presumably, have known Mr. Maher, so,

reasonably well, if Mr. Maher was going to facilitate him

like this in letting him use his telephone number and his

address?

A. I can't comment on what their relationship is or how long

it's there.

Q. Do I take it, then, that your answer, when you say you had

no property dealings with Bill Maher, does that cover also

how Kevin Phelan first came in contact with you? Because,

do you remember your evidence I think was that it was some

friend of yours who rang you to tell you that there was a message from Kevin Phelan

A. Yes.

Q. That he wanted to meet you; do you remember that evidence you gave?

A. Correct. Now, that's not what I told you. I told you that. But subsequent to that, this Tribunal got a Memorandum of Intended Evidence which corroborates precisely what I said and which gave the factual and the accurate position in relation to that, and I don't understand why you are now questioning my evidence on oath as to how I met Bill Maher when you have somebody to corroborate precisely what I said to you all those years ago.

Q. Well, the Tribunal wrote to Mr. Maher but didn't get an answer from him.

A. No, I am not talking about Mr. Maher; I am talking about the mutual contact that I had who provided this Tribunal with an intended memorandum of evidence, and that isn't that quite clear and specific in relation to my contacts?

Q. Yes.

A. So why do you suggest, Mr. Healy, why do you suggest that in a contact with Kevin Phelan was Bill Maher, because it wasn't; it was with it was in the manner in which I outlined.

Q. I am not suggesting anything to you, Mr. Lowry. What I'm asking to know I am trying to find out, is this: The

business with which you dealt, as part of your refrigeration business, is conducted from the same address, telephone number and fax number as M&P Associates.

A. I have explained why.

Q. And you have explained why. That's why

A. An understanding that I came to after the event and when I was told by Kevin Phelan.

A. Mr. Healy, before you move from that, let me be quite precise and specific. The request and the first time that I made had any contact with Kevin Phelan, came through the mutual friend who phoned me and asked me if it was okay to give she had had the request from Kevin Phelan.

That's the first time I had any contact with Kevin Phelan, and that's years after my transaction with Bill Maher.

Q. And the first time that Kevin Phelan, according to your evidence, ever appreciated that you had had a business relationship with Bill Maher was when he heard about the evidence?

A. Yes, that's my understanding.

Q. Now, could we just go back to the time that Kevin Phelan first contacted you. You then met him in Monaghan, isn't that right?

A. That's correct.

Q. And you heard nothing from him then for months?

A. Yes. Sorry, there was obviously a valley period. I have given all that in evidence already.

Q. I think you said you heard nothing from him for

A. Some time, I don't know

Q. A number of months?

A. Yeah.

Q. Well into 1998, or maybe towards this time in 1998, in August of 1998 in September of 1998 when you went to Northampton?

A. Yes.

Q. So between when he contacted you in '97 and this time, I think your evidence was you had no contact at all?

A. Little or no contact, anyway. When I say contact maybe, I can't I mean, how can I go back that length of time and think of what I had, but that was my recollection, yes.

Q. And going to England in 1998, in September of 1998, going to Northampton was, you say, primarily to go to BUPA?

A. Yes.

Q. Which had been organised by Aidan Phelan?

A. Kevin Phelan.

Q. By Kevin Phelan, I beg your pardon. And in addition to doing that, you also met Christopher Vaughan?

A. That's correct.

Q. You flew to England, is that correct?

A. That's correct.

Q. Who met you at the airport, do you recall?

A. I was met by Kevin Phelan.

Q. And after that, did he bring you to meet Mr. Vaughan?

A. He brought me to meet Christopher Vaughan.

Q. And I think you have checked, I think you'll correct me if

I'm wrong, was your flight delayed?

A. Pardon?

Q. Was your flight delayed? Did you arrive late in the afternoon or in the early evening?

A. No. I think my flight was on time, but it was an evening flight, yes.

Q. I see. It was an evening flight. Does that mean that you landed, then, sometime in the evening, 7 or 8 o'clock, in whatever airport you landed in?

A. Yes.

Q. And from there, was it Kevin Phelan brought you to Northampton?

A. Yes, Kevin Phelan the arrangement was, if I can assist you to help you to understand it and to speed up the process, the arrangement was that Kevin Phelan was to collect me at the airport. He was to bring me to that morning after we would have a meeting with Christopher Vaughan in his office, and what happened was, Kevin Phelan, at a late stage that day, was requested to attend a meeting with British Steel the morning after, which was important to him. So the arrangements for the morning after got obviously, they are interrupted because of that. What happened was, Kevin Phelan rang, obviously, or made contact, whatever he did, he arranged to meet Christopher Vaughan that night in the hotel where I was staying, and so that we proceeded to the hotel from the airport. We met with Christopher Vaughan at the hotel. And at that

meeting, obviously Kevin Phelan availed of the opportunity of having Christopher Vaughan there to deal with the matters which he intended to deal with, and in my presence, there was a general discussion about several projects that Kevin Phelan was involved in. And it's important to understand that it is my understanding at this stage that Kevin Phelan had several projects other than the ones that I was involved in with Christopher Vaughan, and they had a relationship going back some time. And that was that particular night. And the morning after, Kevin Phelan dropped me, on his way to his meeting, wherever it was, at Christopher Vaughan's office. I went through the Mansfield project with Christopher Vaughan, and then Christopher Vaughan obliged me by taking over from Kevin Phelan, who was to bring me back to the BUPA centre, but, in fact, Christopher Vaughan obliged me by filling in for Kevin Phelan and bringing me to the BUPA centre in Leicester.

Q. The night before, after you finished your meeting with well, after Kevin Phelan finished his meeting with Christopher Vaughan, what happened?

A. Well, what happened?

Q. Yeah.

A. Well, actually, if you want to know, I'll tell you, because it was quite unusual. We had a discussion, we sat around the table, we had a few drinks, and Christopher Vaughan left after they discussed the business in my presence, I might add, and something happened then that I haven't seen

happen since or before. We were in a hotel and Kevin Phelan ordered a take-away to the hotel and he and I ate it. That's what happened.

Q. So the meeting with Christopher Vaughan Christopher Vaughan didn't eat with you, in other words, or socialise with you?

A. No.

Q. It was a pure business meeting with him?

A. It was a business meeting, I suppose, in a social setting, is the only way I could describe it. There was probably drinks on the table. There was a discussion going on. There was documents going between them. They were discussing different projects.

Q. Now, Mr. Lowry, I just want to refer you to Mr. Vaughan's letter of the dated 25th September, 1998, of which you will find an office copy at number 18 of Book 1, or Book 82, if you like.

A. 18?

Q. Yes, number 18. Have you got that?

A. Yes.

Q. Now, just so that you can orientate yourself; that's an office copy of the letter of which a photocopy of the original is contained at number 19. If you just go to number 19 for one split second, just so you can orientate yourself.

A. 90?

Q. 19, yes.



A. In Book 1?

Q. In Book 1. Do you see the document that's there on Christopher Vaughan's headed notepaper? Do you see that?

A. My book only goes up to 69 in my book.

Q. I think we are at cross-purposes. 19.

A. 19, sorry.

Q. Yes. Now, do you recognise that document?

A. Do I recognise it?

Q. Yes. Well, do you recognise it as a document the Tribunal has written to you about, and so forth, in the first instance?

A. 19?

Q. Yes.

A. Yeah.

Q. The reason it's easier to look at number 18, is that number 18 is an office copy retained by Christopher Vaughan of that document, and it's in better condition. So, now that you know what I'm talking about, if you go back to 18, you will find it easier to read number 18.

Now, this is a letter written by Christopher Vaughan based on the dealings he had with you and Kevin Phelan at the time of your visit. Now, I understand your evidence to be that you have never received this letter, isn't that right?

A. That's correct. And I think Mr. Vaughan has subsequently stated in evidence to the Tribunal that I didn't get the letter, and he can't confirm that I got the letter. My understanding is that, at some stage or other, he said he

didn't send the letter.

Q. I think it's the other way around. Certainly and I am happy to be corrected on it, maybe somebody can correct me after we adjourn at four o'clock, but I am fairly certain that what he has informed the Tribunal is that he is certain he did send the letter and that he sent it to no one else but you.

A. I certainly never got the letter.

Q. I appreciate that's your evidence.

A. We will agree to differ. We can check it. Is this this famous letter?

Q. Yes.

A. Of my total involvement?

Q. Yes.

A. How many times? I am blue in the face of telling anybody who wishes to listen that I never received that letter, never I never got sight of that letter.

Q. I appreciate that. And I want to try and look at it in the first instance, I want to get that issue out of the way.

Mr. Vaughan says he sent it to you, but you say most definitely you never got it?

A. Yes, I never got the letter.

Q. Right. Okay. I just want you to look at the letter for the moment as an account Mr. Vaughan gave of his dealings with you and Aidan Phelan and Kevin Phelan, sorry, at the time of your visit.

"Michael Lowry,

Abbey Road,

Thurles,

County Tipperary

Eire.

25th September, 1998.

"Dear Michael,

"Re Doncaster Rovers Football Club Limited.

"I was very pleased to meet you on the 24th and 25th  
September 1998."

A. Now, could we clear that up at this point? That's  
factually incorrect, because the meetings were the 23rd and  
the 24th, not the 24th and the 25th.

Q. I am aware of that.

A. So you know, first line factually incorrect.

Q. Right. Did he meet you on the 23rd and 24th?

A. He met me on the night of the 23rd at the hotel and on the  
morning of the 24th in his office.

Q. All right. So he is wrong in relation to the dates that he  
met you, because it was the it was the 23rd and 24th,  
not the 24th and 25th; are we agreed on that?

A. Yes.

Q. "My apologies for getting you to Leicester a few minutes  
late for your BUPA appointment. I hope that all went well  
and that you eventually returned to Ireland."

I take it he is right about that, that you were a few  
minutes late for Leicester, but he brought you there,  
anyway?

A. Yes.

Q. And we know you got back to Ireland.

He says, "I am enclosing,

"1. Copies of my letters of 23rd and" I think that should be, if you look at the original "23rd and 25th September 1998 to Aidan Phelan. You did take a copy of the letter of the 23rd with you on the 24th. However, you will recall that two of the figures were wrong on the Completion Statement and those have now been amended, and I would be grateful if you would destroy the incorrect copy and substitute this one."

Now, your evidence is that you didn't get the letter, therefore you couldn't have got the documents enclosed with it, isn't that right?

A. That's correct.

Q. But if you look at the second sentence, he says, "You did take a copy of the letter of the 23rd with you on the 24th. However, you will recall that two of the figures were wrong on the Completion Statement." If we just take that sentence first. He suggests that he gave you a copy of a letter in the course of your meeting, or either of your meetings.

A. Absolutely not. The only documentation, the only discussion that I had with Christopher Vaughan at that meeting was in respect of Mansfield, the only documentation that I would have taken with me from that meeting was in respect of Mansfield. And it is my view that this letter,

which was written to me, was obviously meant for Kevin Phelan or Aidan Phelan, but I certainly never got the letter. I don't know what confusion is there, but I certainly didn't get the letter and took no enclosures or got nothing from Christopher Vaughan on that particular day.

Q. Right. Well, let's just take that slowly, then. During the course of your meeting in the Northampton hotel, they were discussing, you say, not only Doncaster, but also other projects, and did Christopher Vaughan have his files with him to enable him to conduct those discussions?

A. I don't know. There certainly was paperwork between them, because my recollection is that there was a number of projects, and I don't even know if Doncaster was one of those; I presume that it was, but there was a number of projects under discussion. They definitely had documents on the table. As to what they were, I don't know. I only had a passing interest in what was happening.

Q. Can I just ask you: Why did you stay around when they were having a discussion of what must have been, to you, extremely interminably boring things?

A. I may as well be sitting with them as be bored sitting on my own at the counter. The sociable thing to do was to sit there and stay mum.

Q. But are you satisfied Christopher Vaughan understood that his meeting with you was for the following day?

A. Yes. You see, I have explained to you, Mr. Healy, what

happened. What happened was

Q. I appreciate that.

A. The original idea was there was to be a meeting in Christopher Vaughan's office. Kevin Phelan got called away to British Steel, some meeting with British Steel, and he obviously changed to meet Christopher Vaughan at the hotel, and he availed of that particular night to dispose of his particular concerns and whatever business he had.

Mansfield was parked up. We had a short discussion on it.

And Christopher Vaughan said he would go through that with me the following morning. Kevin Phelan dropped me to his office the following morning. He didn't even go into the office. I went up and I met Christopher Vaughan and I went through Mansfield. Now, whatever discussion I had with him at that meeting was simply and solely to do with Mansfield.

Whatever document I took, and I am almost certain that I took a map of the layout of Hilltop Farm, that's all I left Christopher Vaughan's office with that day. We got into the car, he drove me to BUPA. And you have had extensive correspondence with me, because, originally, let's be clear about it, Mr. Healy, you thought that I was going over, or you were obviously looking at the suggestion that I was there for a medical for insurance purposes to buy a property, but I proved conclusively to you, after prolonged correspondence with you, that I was there for the reason I stated from the outset that I was there for, for a general medical check-up. I gave you my medical records and I gave

you everything to do with it. So, I left that particular

centre and I travelled home and

Q. Do you not think it somewhat curious that or would you

not regard it as curious that you sat around while a

solicitor and his client were discussing a whole load of

property transactions that you weren't involved in?

A. I told you, I was a casual observer to what was going on,

and, to be quite blunt about it, I in some cases like

that, it can be interesting. I mean, we learn a lot by

listening and there was a discourse between them about

this, that and the other, what have you. I didn't find it

that boring. As I said to you, I had a passing interest in

it.

Q. It was other people's affairs, wasn't it?

A. Pardon?

Q. It was other people's affairs, wasn't it?

A. It probably was, yes. It wasn't mine, anyhow.

Q. Just to be clear about it, your evidence is that it most

definitely wasn't your affairs?

A. Yes.

Q. It was somebody else's affairs?

A. Well, it had to be somebody else's affairs if they were

having a discussion about it, but I wouldn't have had any

knowledge of who the individuals or the companies, or

whatever, was transacting, so I don't think there was

anybody breaking any trade secrets.

Q. Well, neither Mr. Vaughan nor Mr. Phelan had any concern

about you being present during this discussion?

A. Absolutely none, no.

Q. And did you participate in the discussion in any way?

A. I don't think so. Maybe I don't recall. How many years ago is that meeting?

Q. I am just wondering did you? Did you participate in it?

A. I don't recall participating. I doubt it.

Q. If you go on to the next paragraph, 2, he said, "I had not appreciated your total involvement in the Doncaster Rovers' transaction and I am therefore enclosing a copy of my completion letter which was sent to Kevin Phelan, Paul May and Aidan Phelan on completion."

Now, you say you did not get the letter and therefore you couldn't have got a copy of the completion letter?

A. I am absolutely emphatic about that.

Q. But you said a moment ago that you thought this letter might have been intended for Kevin Phelan or Aidan Phelan.

A. It's the only

Q. You are speculating, I agree.

A. What I am saying the only thing I can say with certainty is that I didn't get the letter, and the letter couldn't be accurate in relation to saying that I had a total involvement in Doncaster, because I think, even at this stage, after all the evidence that's been heard, the Tribunal couldn't even claim that I had a total involvement in Doncaster after all the people that have been in and out of here giving evidence. I think ten people have given



evidence at this stage to the Tribunal and every one of the ten of them, from start to finish, have said that I had no involvement in Doncaster Rovers. So, how Christopher Vaughan could write that, I simply do not know. Like everybody, you know, and let me say this is important too, Mr. Healy that this particular total involvement line has been paraded through The Irish Times, The Irish Independent, through their commentators who are keeping a close eye on these proceedings here, but there is other letters in existence where Mr. Vaughan retracts what he said and said that, on reflection, that that was totally inaccurate. I have seen nobody, including the Tribunal, alluding to those letters. Why is that?

Q. Well, I'll certainly look at that, but I am going to go through those letters. I am not aware of a letter where he retracts it at all, Mr. Lowry.

A. In my view, he has.

Q. I'll come to it. The only thing I am asking you at this stage and as I said, I am not suggesting you are making this as a statement of fact; you are simply speculating that this letter was intended for Kevin Phelan or Aidan Phelan. And all I am suggesting is, because it's stated here, "I had not appreciated your total involvement in the Doncaster Rovers transaction. I am therefore enclosing a copy of my Completion Letter which was sent to Kevin Phelan, Paul May and Aidan Phelan." You'd hardly put that in a letter intended for either Kevin Phelan or Aidan

Phelan, do you follow me?

A. Well, neither would you write a letter on the 25th and say that you had on the 25th, now, and say that you had a meeting on the 24th and 25th, making a mistake the day you write the letter. Now, you know...

Q. I see. Go on to the next one. "You will see that in that letter I make reference to the divesting by Westferry of all its assets. This is a matter that I discussed with you on the 24th September and it is absolutely vital that this process is initiated urgently."

Now, did you discuss that and forget the 24th September for a moment did you discuss that with him on either day?

A. There was absolutely no discussion whatever on I never had any discussion with Christopher Vaughan the previous night or the day that he drove me to the airport, I had no detailed discussion about Doncaster Rovers because I knew nothing about it, and I simply it's totally illogical to contend that this kind of discussion took place with me.

It didn't. It simply did not happen.

Q. I take your point on board, Mr. Lowry, and I am going to give you an opportunity to be as emphatic about every single line of it as you have been.

So you are saying you never discussed that with him, or anything like it?

A. No.

Q. He goes on then for a bit. "It's not an issue that I can

deal with as a solicitor as I think there is a possible conflict of interest with my involvement with Doncaster Rovers. I think it would be best for Aidan Phelan to arrange a further matter to be dealt with via Anglo Irish Bank and either their solicitors in London, Theodore Goddard, or Messrs. Simcocks in the Isle of Man, who dealt with the other Westferry matters, prior to the acquisition of the shares in Doncaster Rovers.

"I have absolutely no doubt in my mind that if Mr. Richardson, who was the controller of Dinard Trading and Shelter Trust Anstalt, does not receive his  $\text{€}1/2250,000$  on the 31st December 1998, a lot of expensive, unnecessary and embarrassing litigation will ensue which will not be to anyone's benefit."

The next heading is "Agreement Gameplan International Limited and Bryan Phelan."

"I have heard nothing from Kevin since the document was faxed through to him.

"Doncaster Rovers/Westferry/Paul May.

I am preparing a draft agreement and I am discussing this with Paul at the moment in respect of his  $\text{€}1/2120,000$  and the transfer of the shares to the new Chairman.

"I understand that you are trying to organise a meeting between myself and Aidan Phelan."

Now, that's a reference to

A. Is that to me?

Q. An involvement of yours again. It's complete nonsense?

A. That letter

Q. Let's just deal with that line.

A. That line that letter makes absolutely no sense

whatsoever. That letter, I can't explain to you why that letter was written with my name on top of it. All I can say to you for definite is that I didn't get the letter.

That letter wasn't intended for me. It was obviously intended for somebody, but it wasn't intended for me. The only reference to Aidan Phelan in the course of my conversation was on the way back to the airport in the car, there was two of us in the car and we discussed Leicester

I don't know what the journey took us, 45 minutes, maybe a bit longer or down to Leicester from his office, and the only topics that were discussed in the car were in general terms. We discussed politics in Ireland. He discussed my resignation as a minister. He discussed and asked me about the tribunal system. He discussed about British politics at the time and as he saw their position.

We discussed rugby. It was general matters. Now, at some stage or other in the car, at some stage or other in the car Aidan Phelan's name came up in relation to he was talking about general property development, and I do remember telling him that I knew Aidan Phelan and I remember him also saying to me that he had some difficulties in making contact with Aidan Phelan, and the only thing that I probably said was, that if he had a difficulty, well I'd ring Aidan Phelan for him. But I

didn't get involved. I came home and that was the end of it.

Q. What involvement did you think Aidan Phelan had in the Doncaster business?

A. What did I?

Q. What involvement did you think Aidan Phelan had in the Doncaster business?

A. I actually didn't know. I didn't know. It was only years later when it unravelled initially, I thought Aidan Phelan owned Doncaster - I am talking now about when all this became public - and then it transpires that he was acting for Denis O'Brien, and that was as a result of Denis O'Brien's evidence to this Tribunal. So, I wouldn't have been aware of any specifics or details in relation to Doncaster.

Q. So the name Aidan Phelan came up, as far as you are concerned, in the context of general discussion that wasn't related to property, was it?

A. Yeah, I would think it was. I presume that it was. Maybe it even related to Doncaster. All I know, I can recall him saying I think, at that stage, there was a picture emerging that he had conflicting instructions from, obviously I am only talking now with the benefit of hindsight it looked as if that he had conflicting instructions from the likes of Kevin Phelan and then he found it difficult to get Aidan Phelan to get clarifications. That's as I understand it now. But I do

recall, I have to say, that he did mention that he had a business relationship, and am I right in saying that Aidan Phelan had previously done business with Christopher Vaughan, or am I wrong in that?

Q. I don't know.

A. I think he had. I'm not sure, but I am nearly certain he had. So his name came up and Bryan Phelan's name the Phelan brothers or Phelans or Aidan Phelan came up, and I said, which I did, that I knew him, and if I could assist, I would. And that's where the matter rested. I wasn't asked to do anything. I was simply, I suppose, being courteous.

Q. Did you have any discussion with Kevin Phelan about organising a meeting with Aidan Phelan?

A. About?

Q. Did you have any discussion with Kevin Phelan about organising a meeting with Aidan Phelan?

A. No. Because, you know, I had no discussion in relation to that.

Q. I'm not suggesting that you had a discussion with him. I am simply inquiring whether you might have had any discussion with Kevin Phelan concerning setting up a meeting with Aidan Phelan, having nothing to do with Doncaster whatsoever?

A. At that stage, I had no contact, you know, with Aidan Phelan in that sense, so I doubt very much that anybody could suggest that I did. And as far as I know, Kevin

Phelan and Aidan Phelan, in looking back on it - as I say, I am only reading documents - they obviously had had a lot of contact. I don't think they had any difficulty at that stage communicating with each other. They didn't need me to do it for them.

Q. It goes on, "Obviously one of the matters to be discussed is the question of my outstanding costs as an enormous amount of work has gone into the Doncaster Rovers acquisition and only half of my fees have been paid.

"Likewise, I believe that there is an outstanding account due to Grant Thornton which needs to be paid as we still need their financial input in producing a balance sheet as at the completion date of the 18th August 1998 to enable the retention funds to be accessed.

"Kind regards," that's the end of the letter.

You say I think you may have said a moment ago, I don't know if I picked you up correctly, that Mr. Vaughan brought you to the airport?

A. No, he brought me to the BUPA centre.

Q. And after that?

A. I got a taxi

Q. To the airport yourself?

A. Yes.

Q. And you came back to Ireland?

A. Yes.

Q. And you didn't contact Aidan Phelan at all?

A. No.

Q. If you just go to number 19, which is a photocopy of the original of the letter, and you go to the second page of it.

A. Is this the same letter?

Q. Yes, what we were reading was the office copy retained on the solicitor's files. If you just go to the second page

A. Sorry, could you sorry, could I get a clear understanding of this. What you are saying to me is that there is two versions of the one letter?

Q. No, there is an office copy. When a solicitor sends a letter out to somebody, he sends him out the top copy with his name, headed notepaper, and then he retains some solicitors retain a photocopy of that, I understand, but most solicitors retain an office copy which is on plain paper and doesn't have the solicitor's headed notepaper on it. We were looking at that because it's in far better condition than the original, so it was easier to read it.

A. Right, okay.

Q. But if you just go to the second page of this document, it's number 19 in your book, but it might be just as easy to see it on the screen.

A. I see it on the screen, it's okay.

Q. If you go to the very end of the page, where it says "Signed, Christopher," and then there is a "P.S. I may meet Aidan on Tuesday 1st October." I just want to draw that to your attention, just so you know what Mr. Vaughan says the



original contains, but in any case, you had no further contact with Aidan Phelan in relation to any matter, nothing to do with Doncaster

A. I have no recollection. Obviously I spoke to Aidan Phelan at various times, but whether I certainly didn't come back from wherever it was, the airport, with documentation, as is portrayed in this, to hand over to anybody. I had no documentation other than my own documentation in relation to Mansfield. So what I'm saying is that that letter is simply is not correct. I didn't have any knowledge or interest in the detail that's outlined in that letter.

Q. You came back to Ireland. Mansfield was the only thing on your radar as regards Christopher Vaughan. Ultimately you signed a contract for Mansfield, isn't that right?

A. Months later, yes.

Q. Yes, months later. And you paid a deposit, I have forgotten the amount now, 20-odd thousand pounds?

A. 25.

Q. 1/25,000. And then there is a long gap in closing, isn't that right?

A. Yes.

Q. And then Aidan Phelan came back into your life, isn't that right?

A. Pardon?

Q. Aidan Phelan came back into your life?

A. Yes.

Q. He put up the balance of the money?

A. Yes.

Q. Now, can you just remind me again, and I'm not I'm not trying to trap you in your evidence. I'll have a quick look at it myself tonight so I can remind you of most of it. But when you got when Aidan Phelan came back into this transaction, or rather came back into your life, when he came into this transaction, it was Kevin Phelan brought him in, isn't that right?

A. Yes.

Q. You didn't bring him in at all?

A. No.

Q. So you had no contact with Aidan Phelan to bring him into that transaction?

A. It was Kevin Phelan's initiative.

Q. And can you remember your reaction when you were told that the man who is going to provide, basically, most of the money for this transaction was going to be Aidan Phelan?

A. Can I remember my reaction?

Q. Yes.

A. I was damn glad of it.

Q. Apart from being glad of it, you were obviously damn glad of it, but was it in any way a surprise to you?

A. Why would it be?

Q. Well, because this was a man whom you had known. He was mentioned in the course of your meeting with Christopher Vaughan, and, almost serendipitously, he turns up again as the person who is going to help you out of your

transaction; just for no other reason, was it a surprise to you?

A. I can't recall what my reactions were at the time, but I suppose isn't that the way business happens? Isn't there that kind of interaction every day in business?

Q. I suppose, yes. Now, Mr. Lowry, if you go to document number, I think it's 125, or 126.

A. Which one?

Q. Book 2, number in fact, it's Number 131. This is a letter from Mr. Christopher Vaughan on the 23rd October, 2002, to Mr. Vanderpump of Westferry in the Isle of Man, and it arises from a query concerning Mr. Vanderpump regarding the beneficial ownership of Westferry Limited.

And Mr. Vaughan says,

"Dear Mr. Vanderpump,

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

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

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

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

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

"I have to say that at no time during the acquisition of DRFC by Westferry did Michael Lowry have any input into that process, nor later following completion. I do not know if you are aware, but shortly after completion I was sacked by Kevin Phelan who then took the whole matter to Betesh Fox in Manchester. At a later date I was re-engaged to try and sort out the retentions."

Now, unless you want me to, I don't think there is anything else in that letter I want to draw to your attention.

A. No.

Q. But do you see in the fourth and fifth paragraphs on the first page, the one beginning "I am quite convinced" and the next one "I have to say that at no time during the acquisition of DRFC," do you see those two paragraphs?

A. Yes.

Q. Mr. Vaughan says that Kevin Phelan maintained to him that he was the beneficial owner of a trust called Glebe Trust, and in a lot of correspondence that the Tribunal has obtained in connection with disputes between Mr. Kevin Phelan and Westferry over fees, and so forth, he refers to

Glebe Trust as the trust, I think at one point, that owned Westferry, because he set up Westferry, day one, in order to purchase the football club and its premises. And he said that he was also sure that Kevin Phelan had made representations to him to the effect that Michael Lowry was also involved in the Glebe Trust.

Now, did you ever hear of the Glebe Trust?

A. Did I?

Q. Ever hear of the Glebe Trust?

A. No, until I got correspondence from the Tribunal. And let me say that I have absolutely never had, do not have anything to do with Glebe Trust.

Q. And do I take it that in all of your dealings with Kevin Phelan over property matters, you never got involved in any trust?

A. Absolutely not. And I would welcome, Mr. Healy I can't give you the authority, but I am sure the Tribunal has the authority and the power, I don't know whether or not you have made inquiries as to whether or not I am involved in Glebe Trust.

Q. Well, it's possible, you see, without Kevin Phelan's cooperation is the problem.

A. So you have had no contact with

Q. Well

A. Have you had any contact in relation to whether or not because, Mr. Healy, I am a bit tired of accusations being made about me that are without foundation. I never had any

involvement whatsoever in Glebe Trust. And, Mr. Chairman, I would like that this Tribunal would make its inquiries in relation to Glebe Trust, if it hasn't done so already, and clear my name in relation to any involvement in Glebe Trust, because I had none.

Q. You are saying, in any case, that not only have you no involvement in it, you never heard of it until the Tribunal?

A. I had nothing to do until I got a letter from the Tribunal asking me about my involvement in Glebe Trust. I have no involvement in Glebe Trust. And I would have thought that after three or four years of investigation, that at this stage the Tribunal would be in a position to acknowledge to me that I have no interest in Glebe Trust. I am sure there is ways of doing it.

MR. McGONIGAL: Mr. Chairman, might I query have the Tribunal been in touch with the Glebe Trust and have they got a response from the Glebe Trust?

CHAIRMAN: I can check.

MR. HEALY: We have been in touch with the company that formed Westferry, sir, and they have given us some information. However, they will only give us a certain amount of information at the moment. They said that well, I don't want to go into all the details of what they have said, but they have said at the moment that they are prepared to tell the Tribunal, if my memory serves me correct, I think these are being prepared as part of an

O'Callaghan disclosure, these and other documents, but they are prepared to tell the Tribunal that, if I am right in this, Mr. Lowry had nothing to do with any dealings Charterhouse had in the setting up of Westferry, as far as I know, and I think they may have said that I'll have to check on what they said about the Glebe Trust. As far as I know, they said Mr. Lowry had nothing they never came across Mr. Lowry in connection with the setting up of Westferry, which is the company that they set up for, as far as I can see, Mr. Kevin Phelan, although they wouldn't give us any other information on the basis that I think they didn't have their client's permission to do so. But in any case, these documents, and a number of other documents, all of which the Tribunal has obtained in the past few weeks, are being put together as part of an O'Callaghan disclosure. So there will and Mr. McGonigal's clients will get them, hopefully, as soon as

MR. MCGONIGAL: When, Mr. Chairman, it seems strange that we haven't got them all ready.

CHAIRMAN: Well, there has been no shortage of documentation.

MR. O'DONNELL: There is no shortage of documentation, but this is important documentation and it relates to a question being put to my client now, and when it doesn't seem to be much use to me to get documentation in relation to Glebe Trust which exculpates Mr. Lowry after he has

given evidence.

MR. HEALY: I am not aware of the exculpation that My Friend talks about, but I'll certainly get the documentation. Mr. Lowry will be here tomorrow morning. What I can say is this, sir: that the question that I directed to Mr. Lowry is as to a statement by the solicitor who is dealing with the transaction, a person who has, as far as the Tribunal is aware and has never heard anything to the contrary, has no axe to grind where anybody involved in this Tribunal is concerned. As far as I know, and I think that Mr. Lowry and his advisors would agree, Mr. Vaughan has no axe to grind against Mr. Lowry or Mr. O'Brien or anyone else, and that's why I am asking the question, because this is an individual who has what I might describe as a neutral, if not indeed and it couldn't be a criticism of him a friendly disposition toward Mr. Lowry and the O'Brien interests.

A. Mr. Chairman, could I please ask for your indulgence for one moment.

I have had the Glebe Trust printed for days on end, for weeks on end. There is a prevailing view out there, and it certainly was within the Tribunal's view, that I had some involvement in Glebe Trust. Now, I am asking a direct question, Mr. Chairman: Is there correspondence between this Tribunal and the Glebe Trust which eliminates me from any involvement in the Glebe Trust? Is that correspondence in the possession from what Mr. Healy is saying now he



is saying that there is correspondence in the possession of this Tribunal. How can he ask me questions, asking me have I involvement, if he already knows that I haven't? And that's the only thing I can read into what Mr. Healy is after saying back to me now.

MR. HEALY: Perhaps I'll just

A. I think it's grossly unfair. It's selective presentation.

MR. HEALY: I think this is the last question I want to ask

Mr. Lowry.

Are you aware of any information concerning the Glebe Trust, Mr. Lowry?

A. No, I am not.

Q. Right. Thank you.

A. That's why I have asked you to provide or to get the information, because this is obviously a very serious matter for me. It goes to the core of this issue. And I do not want my name associated with a trust, for obvious reasons, particularly when I have absolutely nothing to do with it, and I feel that this Tribunal has an obligation to me to clear that up. And I have asked you, at the outset, did you make any efforts to do it? Initially you told me no, and now you are saying that you have had correspondence. I want to see the correspondence,

Mr. Chairman.

Q. Mr. Lowry, can I just ask you that question again. Do you know anything about the Glebe Trust?

A. Nothing.

Q. Have you ever been in contact with the Glebe Trust?

A. Never.

Q. Have you ever made an inquiry about the Glebe Trust from anyone?

A. Never.

Q. Has anyone ever written to you about the Glebe Trust?

A. Never.

CHAIRMAN: Half past ten tomorrow.

THE TRIBUNAL ADJOURNED UNTIL THE 28TH OF MARCH, 2007,

AT 10:30AM.