

THE TRIBUNAL RESUMED ON THE 5TH OF JUNE, 2007, AS FOLLOWS:

MR. MCGONIGAL: Before Mr. Coughlan takes up questioning of

Mr. O'Brien, Chairman, there are just two matters. First

of all, on Friday, at sometime around five o'clock, there

were 14 lever-arch files delivered to my solicitors. The

matters apparently relating to these lever-arch files

referred to matters not being dealt with today, in

particular they seemed to deal with matters concerning

Cheadle and Mansfield and certain other financial matters.

There are two matters that concern me, and one on which I

want to reserve my position.

First of all, I am disappointed, to put it mildly, that the

documents were served so late, not simply because they were

served prior to Mr. O'Brien giving evidence, but because

they appear to be documents which related to matters which

have already been the subject matter of inquiry a long time

ago, and even though the Tribunal may have taken the view

at sometime that these documents were not relevant at that

time, that was also an opportunity which has been denied to

us to consider their relevancy and to decide whether we

thought they should have been put in evidence. And I am

specifically reserving my position in relation to that

matter because, to be honest, nobody had an opportunity,

needless to say, of considering these documents, bearing in

mind that they were served so late.

There was also a letter served in relation to an issue of

evidence, and I am grateful for that letter. It's clear

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IARTY TRIBUNAL - DAY 348

that there is an issue, and we will be responding in writing on that issue, and if it's deemed appropriate, seeking an oral hearing in relation to it, because I am aware that other people are concerned with that issue, and I would be seeking a determination on that issue prior to any submissions which may be made in relation to issues of fact which may have to be determined at a later stage.

Those are two preliminary matters that I wanted to mention.

So far as today's proceedings are concerned, Mr. O'Brien has prepared a personal statement which he wishes to deliver prior to dealing with any issues, and I am happy to give a copy to you, Chairman, and a copy to the others; they are available. And he has also prepared a memorandum of evidence which I will also give subsequent to Mr. O'Brien having delivered his personal statement, and the memorandum of evidence can either be opened by Mr. Coughlan, if he wishes, or I will be happy to open that memorandum of evidence, if necessary.

CHAIRMAN: Do you want to respond to that?

MR. COUGHLAN: In relation to the two preliminary matters raised by My Friend, of course he is entitled to reserve his position in relation to the documents which were not documents which were served in the normal course of hearing documents, but which were documents which were requested by

Mr. O'Brien's solicitors in matters which Mr. O'Brien had not participated. They are O'Callaghan documents. But I le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

understand My Friend's point, that he is entitled to consider those and address the relevance in due course, and of course he will be entitled to do that.

On the second issue in relation to submissions in relation to standards of burdens of proof, of course that is a matter that will have to be dealt with, and I understand My Friend's point in relation to that.

I am quite happy to lead Mr. O'Brien through any evidence that as has been the practice

CHAIRMAN: That has been the practice.

MR. COUGHLAN: So I don't think there is any problem with any of these matters.

A. MR. O'BRIEN: Chairman, may I ask a question? It just puzzles me that, going back for so many years that we have had correspondence with the Tribunal, that, on a bank holiday weekend, that these boxes of files would suddenly appear, and knowing full well that this is probably my last opportunity to appear before the Tribunal, I certainly feel at a distinct disadvantage that I have had no opportunity to even look at this documentation, and there may be matters in those ring-binders that have relevance to what I would say today. So I actually am quite surprised that this has happened and it is grossly unfair

MR. COUGHLAN: If Mr. O'Brien had listened to his own  
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IARTY TRIBUNAL - DAY 348

counsel in relation to those documents, sir, his mind  
should be set at ease.

A. My mind is not at ease, Mr. Coughlan.

MR. COUGHLAN: Sorry, if Mr. O'Brien would permit me to  
speak.

A. You just interrupted me to speak.

MR. COUGHLAN: Would you permit me to speak?

A. I hadn't finished, Mr. Coughlan.

MR. COUGHLAN: May I speak? The documents which were  
served are unrelated to Doncaster Rovers matters. The  
documents are what are known as O'Callaghan documents.  
They relate primarily in relation to other property matters  
which Mr. O'Brien said that he never had any involvement in  
and gave evidence to that effect in the past. Now,  
My Friend is entitled to consider those documents to see  
whether there is any relevance from Mr. O'Brien's point of  
view. Mr. O'Brien will not in any way be shut out from  
giving any further evidence or making any submissions to  
this Tribunal in his interest at any stage, so I can assure  
him that he should not feel in any way disadvantaged in  
relation to the workings of the Tribunal

A. I understood I am appearing here, Mr. Coughlan, today, and  
you gave documents that we have been requesting for years,  
okay, all of a sudden at 5 o'clock

MR. COUGHLAN: That, sir, is an incorrect statement. I will not permit Mr. O'Brien to make incorrect statements. le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

A letter was received by the Tribunal a few weeks ago in relation to these documents. That is the first time.

Now

MR. McGONIGAL: That is not correct. There has been correspondence from us throughout the years seeking documentation. Mr. O'Brien is absolutely correct about that. That's the first thing.

The second thing is, apart all together from anything I may say, Mr. O'Brien is perfectly entitled to make it clear his annoyance and the fact that he is disturbed by the way in which this material has been furnished to him. The fact that he is concerned that this material may have an impact one way or the other on anything he says today or any evidence he gives, is equally a matter which he is entitled to be concerned about.

The real there are two real issues here. First of all, the fact that the documents were served so late; documents which referred to matters in 1999 and 2001. And regardless of whether we asked for them or not, it seems clear that the fact that they were covered by the O'Callaghan judgement means that those documents should have been served a long time ago. Equally, it may be correct for Mr. Coughlan to say that no advantage will be taken of

Mr. O'Brien in relation to any of those documents. That is all Mr. Coughlan can say at face value. However, Mr. O'Brien, as the witness who is giving evidence, is equally entitled to assure himself in whatever way he feels the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

appropriate and necessary, and that would include looking at the documents to decide for himself that these documents will not impact. And what Mr. O'Brien is saying this morning is (a) these documents have been served very late; (b) he has been put at a disadvantage in several different respects; thirdly, he is going ahead with his evidence at this time, but that should be borne in mind; and fourthly, that he is reserving his position in relation to the outcome of his perusal, assisted by his legal advisors, in relation to those documents.

Those, in my respectful submission, are all very valid points.

CHAIRMAN: I think you have made that clear, Mr. McGonigal.

My own appraisal of matters is that this aspect of preparing documents relating to Cheadle and Mansfield and other UK property matters unrelated to the subject of today's examination was at least galvanised by correspondence in recent weeks, and it was on foot of that that particular effort was put in by the Tribunal over the last approximately two weeks to make that documentation available. It is not going to be the subject matter of any

questioning today and I fully accept that rights are entitled to be reserved in that regard.

Now, Mr. O'Brien, if there is a matter that you want, by way of a preliminary statement, please do so, because I am anxious, in your interest, as well as everybody else, that we make dispatch in a business-like fashion with the le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

evidence.

A. Thank you very much, Chairman.

I have a short statement, and it's entitled

"Statement of Denis O'Brien re Tribunal of Inquiry:

"This is the final time I shall give evidence to this Tribunal, and therefore my final right of reply. It is important to remind ourselves that this Tribunal was established by order of An Taoiseach on the 26th September, 1997. It was established for the purposes of inquiring, inter alia, into the finances of two politicians: the late Charles J. Haughey and Michael Lowry. The Terms of Reference indicate that when the inquiry was being set up in 1997, that this was a matter of urgent public importance. However, the Tribunal will celebrate its 10th anniversary before its final report is published or indeed completed.

"Since then, we have recently completed a second General Election and one of the persons specifically mentioned in the Terms of Reference has died: the late CJ Haughey. It

is difficult to seriously believe that whatever urgency existed in 1997 when the Tribunal was first set up, still persisted in 2007. However, despite this, this Tribunal's lack of urgency in completing its inquiries, the second General Election has just been completed. The voting public might have thought that they were entitled to expect that a matter of urgent public importance in 1997 would be done and dusted by 2007.

THE HUMAN RIGHTS TRIBUNAL - DAY 348

have been done and dusted by 2007.

"As part of this process of inquiry, it appears that the Tribunal has the authority to inquire into both the public and private aspects of the person's lives that it decides should be inquired into. We have seen with all tribunals how people's reputations and integrity have been irrevocably damaged by tribunal procedures and findings. This Tribunal purports to make findings based on reaching a reasoned opinion. However, I believe and I am advised that a tribunal may only make findings of fact based on evidence properly admitted and which satisfies a standard of proof as recognised by law. There is no standard of proof of reasoned opinion known to law. I believe that for this Tribunal to introduce such a standard is profoundly unfair and unconstitutional and against European human rights law.

I

It has often been said that a tribunal is an inquisitorial inquiry, not an adversarial process, but, for me, it is a



process which appears to involve a number of steps. They are:

1. Secret or private meetings in which I am not involved.
2. The gathering of information from people who may or may not have material which may or may not impact on the Terms of Reference; what I understand would be described as fishing in a court of law.
3. The arbitrary determination as to what information or the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

material will be adduced in public sittings.

4. The arbitrary determination as to what material or information will be given to the various persons who may have an involvement in those public sittings.
5. Distribution of that material in advance of public sittings which ensures publicity in newspapers before the public sittings commence.
6. Deciding what persons it will call to give evidence and which persons will not be called to give evidence.
7. The pervasive influence of hearsay, rumour and anonymous letters through the proceedings.
8. The provision of documentation at the very last minute prior to me giving evidence.

"It is clear that the proceedings before this particular Tribunal have been dominated by a number of relevant people whose evidence the Tribunal has not heard. The Tribunal will therefore not have the benefit of such important

evidence in reaching its findings. Interaction with these relevant people has created various documents, letters and transcripts of conversations with Tribunal counsel and reports and memoranda. These people are not available to give positive evidence on these miscellaneous documents, and, more importantly to me, are not available for cross-examination on these miscellaneous documents as the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

required by law.

"However, despite the absence of these material witnesses on issues of relevance to me and importance to others, this Tribunal nevertheless shows all the signs of intending to determine such issues in the absence of material evidence adduced in public and based, instead, on material and information collected in private session. This is completely and utterly unfair. It is wholly prejudicial and contrary to constitutional and European rights law.

"In a criminal case, a court would not be allowed to rely on documents or anonymous notes without this material being properly proved in evidence, whereas a tribunal of inquiry may use unproved documents, hearsay and rumour as a means of inquiry, but may not use them as a basis for making findings of fact.

"This is the process that I found myself inextricably locked into for the last eight years. It should be remembered that when this Tribunal was first set up, as a

nonresident I had the opportunity not to involve myself and to take no part in the inquiry. However, I instructed solicitors and counsel and advised them that I wanted to fully cooperate with the inquiries. The Tribunal have had access to all my personal papers, including my trust documents. There has been no hiding behind trust companies; no hiding behind redacted documents; no claim of solicitor/client privilege which could have restricted the Tribunal's inquiries. They have available to them  
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#### IARTY TRIBUNAL - DAY 348

everything and anything that was ever in my possession or under my control. At all times I have cooperated with the workings of this Tribunal. I have found myself spending an ever-increasing amount of time giving evidence on matters that should never have been ventilated in public. I have been asked to give evidence in response to matters of hearsay, rumour and anonymous letters. I have been asked repeatedly about Doncaster Rovers Football Club, despite having shown, by way of title deeds and financial payments, that it has always been, and remains, my property. The Tribunal has not and will not call the following persons on whose information they rely for justifying what they are now doing. I believe its failure to do so speaks volumes.

They are:

A. Christopher Vaughan.

B. Kevin Phelan.

C. Ken Richardson.

D. Mark Weaver.

E. Colm Keena.

F. Gerry Maloney.

G. Jerry Healy, Tribunal counsel.

"These are people who have periodically, directly or indirectly, fed information to the Tribunal and the the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Tribunal have duly acted on that information. They have put this information to everyone involved with my personal commercial interests, but they have called none of the above people. I am not to be allowed to challenge or cross-examine these people, yet I must give more evidence in response to their untested allegations. I believe that what the Tribunal has done and is doing in inquiring into Doncaster Rovers Football Club in public is completely unjustified and persuades me that there is a clear bias against me and my interests.

"The following examples of lack of procedural fairness illustrate my concerns as to a lack of impartiality on the part of the Tribunal:

1. The determination of the Tribunal to prepare to make findings based on documents which are not favourable to me, have not been proven in evidence and in respect of which I have had no opportunity to cross-examine persons.
2. The failure of the Tribunal to produce Mrs. Margaret

Austin as a witness and make available memos of attendance by the Tribunal in May 2001 and October 2002 which I believe would support my evidence that the late David Austin sold his Spanish property to me in or about 1996 and that Mrs. Austin understood I purchased it for my parents.

3. The failure of the Tribunal, until queried by a witness, to furnish the letter from the Trustees of the Glebe Trust which has already been dealt with by Michael le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Lowry in evidence recently.

4. The failure of the Tribunal, until queried by a witness, to furnish the 14th September 1995 letter from Martin Brennan to Michael Andersen of AMI and the Gannt chart documentation which revealed that there was no acceleration of the GSM2 process. The Tribunal failed to disclose these crucial documents during the course of the cross-examination of, I believe, 18 civil servants.

5. The failure of the Tribunal to be transparent in its use of Peter Bacon, the economist, and his reports into the GSM2 licence process and not to furnish his two reports promptly to persons that were entitled to this report.

These reports cost the Tribunal close to  $\frac{1}{2}$ 100,000 in fees.

6. The failure of the Tribunal to disclose all of its dealings with Persona, the defeated GSM licence applicant, backed by Motorola and Tony Boyle, its correspondence with Gerard Moloney and counsel's involvement with Persona.

7. The failure to disclose the Advent documentation, which supports a financing commitment by Advent, or to inquire whether Advent or Massimo Prelz, the investment director of Advent and the person responsible for the Advent investment in Communicorp, would assist the Tribunal.

8. The failure to produce to Telenor witnesses documentation and correspondence with Telenor showing their knowledge of the involvement of IIU in the Esat consortium. le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

9. The failure of the Tribunal to follow up the evidence of Per Simonsen, a Telenor executive, regarding the construction of certain faxed invoices or, alternatively, to furnish the related correspondence following up on that evidence, as they agreed to do.

10. The service by the Tribunal on Friday the 1st June, 2007, at 5pm, of three boxes containing 14 lever-arch folders the weekend before I give this evidence to the Tribunal today, giving my solicitor no opportunity of distributing same, my lawyers no opportunity of considering same, and, most importantly, giving myself no opportunity of even reading this documentation.

"Since the Tribunal was first set up in 1997, it is probable that in every year and nearly every month of every year since then, my business and my private affairs have been discussed publicly or privately by all of the members of this Tribunal. All of my bank accounts, my diaries and

family details and, worst of all, including my wife's medical records, have been made available to the Tribunal and inquired into both publicly and privately over the past ten years and particularly in the last eight years.

"I cannot believe that any fair-minded individual could see this as being anything other than very unfair to me and my family, both immediate and extended. I am disappointed that the Tribunal and the courts have failed to protect me or my reputation or my entitlement to fairness in the fact le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

of what I believe to have been a complete disregard of my human rights as guaranteed both by our Constitution and the European Court of Human Rights.

"I believe that this Tribunal system creates a gross injustice and an improper invasion of the public and private lives of those persons who come up against it. It is a system which, in my opinion, and for the reasons that I have already described, has been found to be grossly flawed, grossly unfair and of little democratic effect or benefit in the way in which it has been developed in this country. It is my experience that the Tribunal formula is biased against the private individual. It provides no protection to a person and it has no respect for his person or his reputation. It appears not to be accountable to the politicians or the Houses of the Oireachtas, who created it, and, although accountable to the courts, they seem

unable or unprepared to defend the legitimate concerns of private individuals or protect their own independence and integrity in the public interest. I do not believe that it was ever envisaged, when our legal system or our judiciary was created, that sitting High Court judges would become defendants in Judicial Review proceedings, or that they would be witnesses in a prosecution open to depositions and cross-examination for work carried out as a tribunal chairman, whilst holding office as a judge of the superior court. I further believe that it is grossly unfair that High Court judges adjudicate on their own colleagues and friends. The person who suffers from such unfairness is the litigant taking the case against the High Court judge.

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IARTY TRIBUNAL - DAY 348

"The public perception of a tribunal presided over by a sitting High Court judge is that it is a court. It has all the trappings of a court. It is physically laid out like a court. The Chairman has tipstaff who behaves as in a court. Representation by counsel is placed as in a court. Most importantly, the public perceive the rulings of a tribunal as if it were a ruling of the court. Therefore, when a finding goes against a person, to the public it is no different to a guilty verdict by a judge or jury.

Indeed, it is a verdict by a judge in a court by any other name but without all of the protections to which one is entitled as a matter of natural justice. This was never



envisaged when the 1921 Tribunal of Inquiry Act was passed by the English Houses of Parliament. It is, again, I believe, and am advised, unconstitutional and contrary to European human rights law.

"Indeed, it is remarkable that last week on the Vincent Browne radio show on RTE 1, that Colm Keena, a journalist with The Irish Times who reports regularly on this Tribunal and who was the one responsible for bringing the letter of the 25th September, 1998, from Christopher Vaughan to Michael Lowry, which he received anonymously in The Irish Times in January 2003, Mr. Keena told Vincent Browne that 'Tribunals are really very rough instruments. They do intrude a lot, without a doubt, into people's rights.

Things are done which you would never get a chance of doing in the courts, and which, arguably, should not be done.

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IARTY TRIBUNAL - DAY 348

But the deal we have all made in a way is that there were such terrible things going on, that we set up tribunals and reduced people's rights and anybody who gets dragged into these tribunals have their rights walked all over, rights that they would have if they were down in the courts or anywhere else, and we, I think, as a society, we need to do this because we need to sort out this mess.'

Well, this is a mess.

"The Irish people, including myself, have been funding this Tribunal without any justification, accountability,

transparency or explanation of why it is costing so much or why it is taking so long and how it can now hope to meet the matters of urgent public importance which existed in the last century. It has, to date, cost the State many millions of pounds; somewhere in the region of 150 to 200 million euros. It will cost the State many millions more.

To date, I have spent nine million euros on legal representation before this Tribunal, and it is still costing me. Others have had their representation without being able to afford the sums involved. There are very few individuals or companies who could afford to finance the legal costs of representation over an eight-year period.

The State will ultimately have to reimburse me and others for their costs and expenses incurred in this Tribunal. I do not believe that this procedure, costing millions as it is, may now be said to be in the public interest. This cost includes the occasion where I had to break a family holiday on the 29th of September, 2002, to return to Dublin  
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IARTY TRIBUNAL - DAY 348

to give evidence as a matter of urgency to the Tribunal, which lasted all of twelve minutes. The evidence related to a matter of no consequence and it certainly wasn't urgent. It was no coincidence that Michael Lowry was due to give evidence the next day. I believe that this was a deliberate attempt to try and link us together in the public mind as reported by the journalists. The public

interest was given limited representation, which it has never been heard on these issues. Their silence is deafening.

"It is also worth remarking that the 9/11 commission into the world trade disaster, which involved the deaths of over 2,000 people, was completed promptly in September 2003. I believe the Tribunal system to be completely unfair, discriminating against the individual or company involved and leads to a gross inequality of representation.

"There are a number of matters that I wish to make absolutely clear:

1. Esat Digifone won a mobile licence because it was the best contestant, presented the best application and achieved the highest number of points in the competition.
2. I have never paid Michael Lowry any sum of money or given him any benefit for the purpose of assisting me in winning the mobile licence, or awarding him when my company won the mobile licence.

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IARTY TRIBUNAL - DAY 348

3. Michael Lowry had no hand, act or part in the Doncaster Rovers Football Club transaction.

"I believe, and am satisfied, that Michael Andersen and the AMI team, giving evidence as requested by the Tribunal, if not already satisfied, would have been satisfied beyond ye or nay that my company was the best and was properly awarded the licence in 1995/1996. Michael Andersen

reported in respect of the GSM application that, and I quote: 'The quality and the consistency of Esat Digifone's application with regard to the extent and content of the information provided is among the absolute best that AMI has seen during the many evaluations AMI at that time and since has participated in.' This appeared on page 37 of the memorandum of AMI's experience of the GSM tender in Ireland, 1995, prepared by AMI in January 2002. AMI have evaluated 120 licence applications around the world. I find it very disturbing that the Tribunal has taken inordinate steps to undermine the decision of Michael Andersen that the licence be awarded to Esat by introducing alleged expert advice from an economist, Mr. Peter Bacon, whose only expertise was in failing by a country mile to reduce inflation in the Irish housing market. It is noteworthy that Mr. Bacon was paid the best part of €100,000 by the Tribunal in invoices addressed to Mr. Jerry Healy, Tribunal counsel."

We still have not seen this report, despite repeated requests to the Tribunal.

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IARTY TRIBUNAL - DAY 348

"I brought proceedings against the Tribunal in respect of their failure to obtain the evidence of Michael Andersen and the other AMI persons involved in the licence competition. I lost both in the High Court and finally in the Supreme Court on the 30th May, 2006. I believe, and am

advised, that the courts are wrong, and I have therefore lodged a complaint with the European Court of Human Rights with a view to having this matter examined by the European Court. I will reluctantly bring further proceedings against this Tribunal, if I believe and am advised that there is a danger of any further injustice being carried out again, if necessary, to the ECHR.

"I believe and am satisfied that had Christopher Vaughan, Mark Weaver, Ken Richardson, Kevin Phelan and Colm Keena given evidence, as requested by me, that, if not already satisfied, the Tribunal would have been satisfied that Michael Lowry had no hand, act or part in Doncaster Rovers Football Club.

"It should be remembered that the Tribunal had access to Christopher Vaughan; that Mark Weaver and Ken Richardson came to see them in Dublin Castle and that Kevin Phelan is and has been available in Northern Ireland. The Tribunal has had ample opportunity to ask all of the hard questions that should have been asked of Christopher Vaughan and others, including Colm Keena. All relevant persons have confirmed that Michael Lowry had no hand, act or part in the Doncaster Rovers Football Club transaction. In particular:

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IARTY TRIBUNAL - DAY 348

1. In his letter of the 6th March, 2003, Christopher Vaughan made it clear that Michael Lowry had no involvement

in Doncaster Rovers Football Club.

2. In his meeting with Tribunal counsel on 9th September, 2004, Christopher Vaughan made it clear that Michael Lowry had no involvement in Doncaster Rovers Football Club.

3. In Christopher Vaughan's attendance on Mark Weaver, dated 18th October, 2002, Mark Weaver made it clear that Michael Lowry had no involvement in Doncaster Rovers Football Club.

4. In his letter of the 17th August, 2004, Kevin Phelan made it clear that Michael Lowry had no involvement in Doncaster Rovers Football Club.

5. Gerard Maloney has produced no evidence that Michael Lowry was involved in Doncaster Rovers Football Club.

6. Colm Keena has produced no evidence that Michael Lowry was involved in Doncaster Rovers Football Club.

"It was my interests and my interests alone who purchased the shares in Doncaster Rovers Football Club in August 1998. That ownership position continues to this day.

Doncaster Rovers Football Club was and is 100% Denis O'Brien property. There is no evidence to contradict that fact. This has been demonstrably clearly and unequivocally  
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IARTY TRIBUNAL - DAY 348

established by a voluminous documentation showing the title to the Doncaster Rovers Football Club transaction and all of the financial background to this transaction. All of this was disclosed to the Tribunal back in 2001. Yet,

despite this uncontradicted evidence being available to the Tribunal, it has insisted in Tribunal hearings and in the courts on maintaining that there was some matter which still required further public hearings to try and show in some way, as yet unidentified way, that Michael Lowry was involved in Doncaster Rovers Football Club and the transaction.

"The Tribunal has failed to identify any evidence to support such a finding, and it has failed to identify at any time throughout the proceedings what it understands the word 'involved' to mean insofar as it applies to Michael Lowry and the Doncaster Rovers Football Club. It is a fact that every single witness of the 11 witnesses who have given evidence before this Tribunal has unequivocally confirmed that Michael Lowry was not involved in any way in the Doncaster Rovers Football Club transaction. It is equally clear that every person who was a potential witness who has not given evidence has clearly stated in documents or transcribed conversations or letters that Michael Lowry had no involvement in the Doncaster Rovers Football Club transaction. I gave this evidence before this Tribunal in October 2001, and it has never been contradicted. I now have to give that evidence once again.

"Chairman, I believe that any objective review of the above  
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IARTY TRIBUNAL - DAY 348

would result in the Doncaster Rovers Football Club inquiry

being terminated summarily and I should not have to answer any further questions on the issue."

The statement ends.

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IARTY TRIBUNAL - DAY 348

DENIS O'BRIEN JUNIOR, PREVIOUSLY SWORN, WAS EXAMINED BY MR.

COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Thank you, Mr. O'Brien. Now, I understand that you have prepared a Memorandum of Intended Evidence, also, Mr. O'Brien, which I'd be quite happy to lead you through.

A. I am happy to read it if you don't want to read it.

Q. Do you wish to read it yourself?

A. Thank you.

Q. That's fine.

"Memorandum of Intended Evidence.

"Tribunals are really very rough instruments. They do intrude a lot, without a doubt, into people's rights.

Things are done which you could never get a chance of doing in the courts, and which, arguably, should not be done, but the deal we have all made in a way is that there were such terrible things going on that we set up tribunals and reduced people's rights and anybody who gets dragged into these tribunals have their rights walked all over, rights that they would have had if they were down in the courts or anywhere else, and we, I think, as a society, we need to do this because we need to sort out this mess."



"This is a quote from Colm Keena speaking on the Vincent Browne show on RTE on the 28th May, 2007.

"Acquisition of Doncaster Rovers Football Club by my  
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IARTY TRIBUNAL - DAY 348

interests:

"In early 1998, Aidan Phelan brought two UK commercial property investment opportunities to my attention. The first related to the joint purchase of a small office block in Luton involving myself and Aidan Phelan. The other opportunity was Doncaster Rovers. I understand that both opportunities were presented to Aidan Phelan by Kevin Phelan. I have never met Kevin Phelan nor have I personally had any dealings with him. The rationale behind the Doncaster deal was that the shares would be acquired on my behalf and that the club's playing grounds would subsequently be relocated from Belle Vue to an out-of-town green field site. The Belle Vue property would then be redeveloped commercially. At the time that Aidan Phelan presented the opportunity to me, this proposal was being enthusiastically supported by the Doncaster Borough Council. A number of large retail multiples, including Asda and B&Q, had also indicated a substantial interest in the proposed redevelopment. On that basis, the project appeared to have exceptionally high profit potential. It was my intention and understanding that DRFC was to be a short-term project, that it would come to fruition within

around nine to twelve months. My motivation for making the investment was entirely commercial and focused solely on the realisation of a value of the commercial redevelopment of the Belle Vue site.

"I agreed with Aidan Phelan that he would manage and front the deal on my behalf. I decided to keep my involvement in le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

the acquisition confidential for commercial reasons. I was conscious that I was running a publicly quoted company at the time and the perception that I was becoming involved in a football venture might not wholly be beneficial in that context. I also had a concern that shareholders in Esat Telecom plc might become apprehensive that I was becoming distracted from my role as Chairman and Chief Executive by becoming involved in a football club.

"counsel for the Tribunal has stated on numerous occasions that my involvement in DRFC was entirely obscured or that there was no reference to me on the 'official documentation'."

And this is a quote from the Opening Statement on Day 334 on the 28th February, 2007, page 24, and I quote:

"The Tribunal has been provided with what appears to be most of the material documents relating to this Doncaster Rovers transaction. On the face of it, these, as I said, I'll call them official documents, contain no references whatsoever to Michael Lowry. Of course they do not contain

any references, for that matter, to the individuals behind the corporate purchaser, Westferry Limited.'

"This is simply not true. In January 2002 I provided the Tribunal with a copy of the facility letter from Woodchester Bank by which I personally took out a loan to cover the deposit monies required for the deal. That facility letter is openly addressed to me. I have also le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

furnished the Tribunal with the banking documentation whereby Westferry was subsequently advanced the money to fund the balance monies for the purchase of the shares by Anglo Irish Bank in August 1998. I personally acted as guarantor on that loan and I am openly named in that documentation, including as a signatory to the loan acceptance on behalf of Westferry. I was clearly behind the deal. Completing commercial property deals of this nature through a corporate vehicle without publicly disclosing the shareholder behind the corporate vehicle is normal business practice.

"Whilst I was aware, in a general sense, of the nature of the transaction, I did not involve myself in the detail of what was involved, nor was I involved in the negotiation of the deal itself. I left the day-to-day management of the project at that time wholly in the hands of Aidan Phelan.

My understanding was that Kevin Phelan would be responsible for delivering on the project, i.e. in terms of securing

all that was necessary to allow for the relocation of the playing grounds and the subsequent redevelopment of the Belle Vue site.

"It had been proposed that Kevin Phelan would be remunerated by 'sweat equity' as distinct from a set transaction fee or an ongoing retainer arrangement. I agreed with this, which, in effect, meant that Kevin Phelan's financial return would be tied entirely to the success of the project. In the event, it was agreed that Kevin Phelan would have an entitlement to 40% of the le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

profits once interest and other costs were taken into account. This relatively high percentage of sweat equity reflected the envisaged intensive efforts and work that would be required by Kevin Phelan to flip the property in a period of nine to twelve months. This was to include intensive negotiations in relation to the club itself, dealings with the Doncaster Borough Council, dealings with developers and dealings with other third parties such as large retail chains. In short, I was making a cash investment for what I believed would be a profitable return within a short period. Other than Aidan Phelan's role in monitoring the deal on my behalf, it was not envisaged that any other resources, apart from funding, were to be employed from my end. It was to be money-in-money-out.

"The shares in Doncaster Rovers Football Club were acquired

on my behalf by Westferry Limited, a shelf company incorporated in the Isle of Man. I now understand from material produced to the Tribunal that Kevin Phelan had commenced negotiations with Doncaster Borough Council and other interested parties in respect of the proposed development of the site prior to bringing the deal to Aidan Phelan's attention in early 1998. At that stage, Mr. Kevin Phelan was using Westferry as the identified investment vehicle in his negotiations. It was decided by Aidan Phelan that Westferry would be maintained as the investment vehicle purely to ensure continuity and for practical reasons. At all times prior to the completion of the transaction on the 18th August, 1998, Westferry was effectively a shelf company and held no assets whatsoever. le Court Reporters Ltd.

#### IARTY TRIBUNAL - DAY 348

The only act carried out by Westferry prior to the completion was the signing of the contract for sale in May 1998. At that point, a deposit of £690,000 sterling was paid. I funded that deposit in full.

"I now understand, having been informed by material provided by the Tribunal, that prior to August 1998, Westferry was beneficially owned by Kevin Phelan through a trust known as the Glebe Trust. However, it is important to understand that the ownership of Westferry was transferred to my interests prior to the shares of Doncaster Rovers Football Club being transferred into

Westferry. As such, neither the Glebe Trust nor Kevin Phelan ever held any shares or interest in Doncaster Rovers Football Club Limited. I owned Westferry Limited before Westferry Limited owned Doncaster Rovers Football Club. Thus, the Glebe Trust never owned shares in Doncaster Rovers Football Club. Westferry Limited has been owned by the Walbrook Trustees (Isle of Man) Limited, known as Walbrook, as Trustees of the Wellington Trust since the transaction was completed on the 18th August, 1998. That position continues to this day.

"I should say in passing, and as the Tribunal is aware, Walbrook Trustees also held title to my Spanish property purchased from David Austin in the summer of 1996. This purchase was also effected through a Share Purchase Agreement. I gave lengthy evidence to the Tribunal in respect of that particular property almost six years ago.

I note that the Tribunal did not lead any questions to the le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Trustees, Mr. Chris Tushingham and Mr. CPA Vanderpump, when they gave evidence in public concerning the Spanish property. I have recently been made aware that critical information given in private meetings to the Tribunal by Mrs. Austin on the 22nd May, 2001, and the 20th October, 2002, has not been led in evidence. This information supports my evidence that David Austin sold this property to me in the summer of 1996. The Wellington Trust was

established on my behalf on the 16th September, 1997. Full details of the Wellington Trust were furnished to the Tribunal some considerable time ago. At all times the only beneficiaries of the Wellington Trust have been me or members of my immediate family. It has been conclusively demonstrated to the Tribunal, and reaffirmed in evidence given before this Tribunal, that the shares in Doncaster Rovers Football Club were, at all material times, since August 1998, wholly and exclusively owned by my interests. As such, it is an incontrovertible fact that one was clearly and conclusively demonstrated prior to these hearings by comprehensive documentation provided by me to the Tribunal that Michael Lowry had no ownership or beneficial interest whatsoever in Doncaster Rovers Football Club.

"Between the inception of the transaction in early 1998 up to mid-2002, Aidan Phelan was responsible for managing the project on my behalf. I did not involve myself to any extent, other than to keep myself generally abreast of what the overall status was. During that period, I was almost wholly devoted to developing my telecommunications le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

businesses both in Ireland and abroad, and was not in a position to take a hands-on role in relation to Doncaster Rovers Football Club.

"Involvement of my father, Denis O'Brien Senior:

"In spring of 2002, I asked my father to take over the primary responsibility for DRFC project from Aidan Phelan. Aidan's personal circumstances were such that he was unable to devote sufficient time to the project as he was focusing on his own personal business interests and indeed was no longer living in Ireland. Since this was not a major investment, I was unable to devote any real time myself, as my Digicel business was going through a period of significant and rapid expansion across the Caribbean.

"As I understood it, the problem we had was that, some four years on from the acquisition in 1998, we were unable to make a clean break from the vendors of the project arising from serious disputes over retention monies flowing from the original Share Purchase Agreement. This dispute was becoming extremely acrimonious and was only resolved at a mediation hearing held in London on the 27th September, 2002. A further issue involved Mr. Kevin Phelan. Although Mr. Kevin Phelan's role in the project had diminished over time, I was aware, although only in very general terms, that he was maintaining an entitlement to fees and to 40% of the profits realised on the deal, less costs and bank interest. I asked my father to get involved in resolving both of these issues. I had an initial conversation with le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

my father and asked him to get together with Aidan Phelan so that he could bring himself up to speed in relation to



the issues involved and direct the project moving forward.

I understand that my father very quickly took the view that Westferry had to sever links entirely with Kevin Phelan and the original vendors and move on with the redevelopment plans without the potential interference of those parties.

This approach was understandable and driven by a commercial pragmatic view against the backdrop of very little, if any, real progress having been made in almost four years. To my father's credit, he managed to achieve both objectives in a relatively short period of time, within six months.

"My father made me aware that there was a proposal to pay Mr. Kevin Phelan the sum of sterling  $\frac{1}{2}$ 150,000 in full and final settlement of all claims he had against Westferry regarding his 40% sweat equity and fees. In the context of his claims and the value of my investment, I believe that this was an excellent settlement from Westferry's perspective. It is clear to me, as it was to my father, that it would prove to be extremely difficult to move on with the DRFC project in any real sense and practically impossible to sell it in a situation where such an outstanding claim rested against the company.

To me, it made perfectly reasonable commercial sense to pay Kevin Phelan sterling  $\frac{1}{2}$ 150,000. It was good business, plain and simple.

"Any suggestion that the payment was in any way surreptitious or sinister, as has been implied by the le Court Reporters Ltd.

Tribunal's legal team, is emphatically denied. I have no difficulty with the assertion that Westferry paid Kevin Phelan  $\frac{1}{2}$ 150,000 sterling for him to go away in the context of DRFC. The alternative would have been to allow the dispute drag on even further and perhaps remain in place to this day. In that scenario, Kevin Phelan's claim in relation to the 40% share of the profits, less interests and other costs, would have grown in accordance with the passage of time and the attendant increase in value of the Doncaster site. In effect, Mr. Kevin Phelan would have been on the sidelines doing nothing, yet the value of his claim against Westferry would have increased perhaps significantly.

"I believe that my father did an excellent job. He had a commercial problem and he dealt with it on a purely commercial basis.

"Involvement of Mr. Denis O'Connor:

"I personally had no dealings with Mr. O'Connor at that time, nor do I believe subsequently. I understood, although only in very general terms, that Mr. O'Connor was regarded by my father as someone who could possibly be of assistance arising from the fact that he seemed to know Kevin Phelan and that he had somehow formed some kind of a relationship with him. As previously stated and explained, my father was driving the resolution of both these disputes and I was more than happy to rely on his judgement and

experience in matters as they arose. Indeed, I believe

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IARTY TRIBUNAL - DAY 348

that my father became aware of this arising from general discussions that he had with Mr. O'Connor when both were attending public sittings of this Tribunal.

"References to Michael Lowry, TD:

"I understand from Mr. Healy's Opening Statement that the Tribunal believes that a number of separate references or potential references to Michael Lowry being somehow 'involved' DRFC exist within the documents provided to the Tribunal. It should be noted that the Tribunal legal team have in their possession tens of thousands of pages of documentation relating to Doncaster Rovers. Most of this voluminous documentation was provided by me and/or my interests. I gather that this material encompasses in or about 35 large lever-arch files. That said, there may well be more material relating to Doncaster Rovers Football Club that the Tribunal legal team have received and that they have withheld from circulation. This deliberate withholding of critical information in respect of Doncaster Rovers Football Club already occurred in relation to critical documentation received from Charterhouse, the Trustees of the Glebe Trust (days 346 and 347). It was only because Michael Lowry actually raised the issue during his evidence on the 27th and 28th March, 2007, and forced the hand of the Tribunal's legal team, that this material

came into the public domain. Frankly, I have absolutely no way of knowing that all relevant documentation or information in the possession of the Tribunal's legal team has been presented to me. As stated in my earlier *le Court Reporters Ltd.*

IARTY TRIBUNAL - DAY 348

statement, I have absolutely no faith in the Tribunal legal team's bona fides in this regard. I firmly believe that the Tribunal legal team has actively and deliberately suppressed information at various stages of their inquiries over the past six years. This has occurred once again in relation to the Doncaster Rovers hearings. The Glebe Trust episode conclusively supports that view. I hold the Tribunal's legal team solely and completely responsible in this regard.

"other than the few references being laboured incessantly by the Tribunal's legal team in these sittings, the fact remains that the amount of material within the Tribunal's possession which supports the true position, i.e. that Michael Lowry was not involved, is absolutely overwhelming.

"The reality of the situation, i.e. that the overwhelming body of material available to the Tribunal, leads pointedly to the conclusion that Michael Lowry is not involved and is not being properly or objectively presented to the public.

It appears to me that, where possible, the worst construction or spin is being put on the circumstances that exist. Once again, it's a case of guilty until proven

innocent. Once the evidence has shown that Michael Lowry was not involved in Doncaster Rovers Football Club, the media are suddenly silent. The plain reality is that, despite the fact that the evidence has been wholly in my favour, I have already been condemned in the court of public opinion. With the publication of the letter in The Irish Times in January 2003 and the sensational Opening le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Statement of the Tribunal delivered in September 2004, the reputational damage to me has been well and truly cemented.

Having an opportunity today to set the record state, in June 2007, is of little benefit to me.

"My comments in relation to the individual references or potential references identified by the Tribunal where reference has been made to Michael Lowry are as follows:

"1. Letter of 25th September, 1998, from Christopher Vaughan to Michael Lowry;

2. Fax of 11th August, 1999, from Kevin Phelan to Aidan Phelan;

3. Letter of the 30th August, 2000, from Kevin Phelan to Aidan Phelan;

4. Letter of the 4th March, 2002, from Kevin Phelan to the Institute of Chartered Accountants;

5. Ruth Collard's attendance, 10th September, 2002;

6. Letter of the 23rd October, 2002, from Christopher Vaughan to Peter Vanderpump.

"I believe the above are the relevant matters and I deal with them below individually.

"1. Letter from Christopher Vaughan to Michael Lowry dated 25th September, 1998.  
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IARTY TRIBUNAL - DAY 348

25th September, 1998.

"I am not in a position to assist the Tribunal, other than reiterate, as I have done time and time again, that Michael Lowry had no involvement in the Doncaster Rovers transaction. The reference in Mr. Vaughan's letter is thus entirely erroneous. I understand that evidence in respect of how Mr. Vaughan arrived at this erroneous conclusion has been presented to the Tribunal. Christopher Vaughan also explains in his letter of the 6th March, 2003, and at the meeting with the Tribunal counsel on the 9th September, 2004, that Lowry had no involvement.

"Christopher Vaughan, who qualified as a solicitor in 1972, is a well-known notary public in England and is secretary of the Notaries Forum, having previously served as vice-president and president, became involved in the Doncaster Rovers Football Club transaction in early 1998 and continues to be involved to this present day. As such, he has been involved in Doncaster Rovers Football Club for nine years. It appears that Mr. Vaughan formed an erroneous view that Michael Lowry was somehow involved in Doncaster Rovers but subsequently altered this view. This, however, can be resolved if Mr. Christopher Vaughan gives

evidence. Mr. Vaughan has repeatedly stressed that he has absolutely no knowledge or belief that Michael Lowry was involved in any way in Doncaster Rovers Football Club. It should also be noted that Christopher Vaughan's erroneous impression arose from his first ever meeting with Michael Lowry.

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IARTY TRIBUNAL - DAY 348

"Mr. Vaughan was interviewed at length in private by the Tribunal legal team in London in September 2004. During that interview, Mr. Vaughan, again, confirmed, unequivocally, that, as far as he was concerned, Mr. Lowry had no involvement whatsoever in Doncaster Rovers Football Club. What seems to have happened is that once the Tribunal team did not succeed in obtaining any information from Mr. Vaughan that they could use in their favour, i.e. information that they could use against me, the entire content of the interview has been completely ignored and deliberately kept out of the mix by the Tribunal legal team as if it had never happened. None of what Mr. Vaughan said during his interview was ever raised by the Tribunal legal team in direct examination with any witness. Why is this so? I have no doubt whatsoever that if Mr. Vaughan made even a single throwaway remark or comment that could even be construed as supporting the conclusion that Michael Lowry was somehow involved in Doncaster Rovers Football Club, then that remark would be hailed from the roof-tops

of Dublin Castle by the Tribunal's legal team and heralded as effectively conclusive evidence to support the Tribunal legal team's theories that Michael Lowry was involved in Doncaster Rovers Football Club, just as they seem determined to do with his letter of the 25th September, 1998. In the event, he said nothing of the sort, and, thus, from the Tribunal's perspective, the interview was an absolute waste of time and was not even included with the books circulated for these hearings.

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IARTY TRIBUNAL - DAY 348

"Would this have happened if the Tribunal legal team managed to get a quote that they felt they could use? It certainly would not have been omitted or ignored; that's an absolute certainty. For instance, the Tribunal's legal team have never referred to the fact that Vaughan stated at that meeting, and I quote: 'From the moment when I was first introduced by Kevin Phelan, I think in January 1998, to when I met Michael Lowry over those two days in September his name had never ever been mentioned. I had never heard of him mentioned in the context of Doncaster.'

"Nor has the Tribunal legal team ever referred to the following statement as made by Christopher Vaughan:

'I gained no impression whatsoever that he was, to use your word, an investor or involved in it, i.e. Doncaster Rovers Football Club, because he obviously had no knowledge of it.'



"For the record, the reason that I challenge this private meeting with Mr. Vaughan as part of my Judicial Review proceedings was not because such a meeting took place, but rather because of this attitude of the Tribunal's legal team in respect of the information provided by Mr. Vaughan during the meeting.

"Hiding evidence:"

"The Tribunal legal team's attitude is very simple and abundantly clear for all to see. It is this: If they  
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IARTY TRIBUNAL - DAY 348

manage to find something, anything, no matter how small, that could possibly support a finding that I made a payment to Michael Lowry, then they will put this upfront and centre and hammer it home incessantly for months on end.

If they don't manage to obtain something which might support the findings that they wish to make, or indeed if they obtain something that totally flies in the face of the findings that they want to make, which is precisely what happened when they interviewed Mr. Vaughan in September 2004, then they will lock it all away and hope it never sees the light of day, just like what happened with the Glebe Trust correspondence. The following are other examples, by no means exhaustive, as known to date:

"1. The information I believe Mrs. Austin provided to the Tribunal regarding her husband's sale of the Spanish property to me.

"2. The letter from Martin Brennan to Michael Andersen dated the 14th September, 1995, which came to light through Maev Nic Lochlainn and the Gantt sheet, both documents which disprove the Tribunal's theory that there was an acceleration of the process to announce the licence.

"3. The detail of the Tribunal's interaction with the Economist, Mr. Peter Bacon.

"4. The Tribunal's dealings with Michael Andersen of AMI.

"5. The Tribunal's dealings with Persona, the applicant  
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IARTY TRIBUNAL - DAY 348

that did not win the mobile licence.

"6. The Tribunal's dealings with Advent International, which assist in evidencing Advent's commitment to funding Communicorp's financing requirements to take up its shares in Esat Digifone.

"7. The documents disproving the Tribunal's own theory that Telenor were not actively involved in the deal leading to IIU's involvement in Esat Digifone.

"8. The Tribunal following up on the evidence of Per Simonsen in respect of the Telenor invoices, to name but a few examples, but there could be many more.

"This selective presentation of material by the Tribunal legal team has happened far too often, in my experience, at Dublin Castle to be considered anything other than conclusive evidence of objective bias against me on the part of the Tribunal legal team. This notion or mantra

that this Tribunal operates on an inquisitorial basis is just simply not true. It is obvious to those observing this Tribunal legal team in action that they are only interested in leading in public information that could possibly support negative findings or anything else is either ignored or deliberately concealed. This situation is akin to the phenomenon known as 'rough justice' that existed in the United Kingdom in the 1970s and 1980s. The similarities involving the concealment of information and the lax approach to legal rules and norms are alarming.

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IARTY TRIBUNAL - DAY 348

Irate rejections of that contention from the Chairman or whatever quarter do not change the reality of the situation that exists at this Tribunal.

"This concealment of evidence, combined with the apparent determination of the Tribunal to be prepared to make findings based on documents not favourable to me, which have not been proved in evidence and in respect of which I have had no opportunity to cross-examine, reveals the total absence of fairness to which I am exposed by this Tribunal.

"Whilst on the subject of Mr. Vaughan, I wish to categorically state that I have done everything in my power to ensure that Mr. Vaughan fully cooperated at all times with the Tribunal. I have discharged his fees relating to his interaction with the Tribunal so as to ensure that he continued to cooperate and provide the Tribunal with

information being sought on an ongoing basis stretching over six years. I have only spoken with Mr. Vaughan on one occasion, and that was in the days leading up to his meeting with the Tribunal legal team in September 2004. I did ask Mr. Vaughan to assist the Tribunal in every way he could, including by partaking fully in the private meeting on September 9th, 2004. On that occasion, Mr. Vaughan explained to me that he felt he has been mistreated by the Tribunal's legal team during their previous private meetings. He also explained that the Tribunal produced notes of that meeting which he felt did not reflect the discussions that took place. He also explained that he was insisting on having his own solicitor present, along with a le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

court stenographer, to record the content of the interview. I believe that I told Mr. Vaughan that I would be happy to cover the costs incurred in this regard. To my mind, this was the proper and correct thing to do. I also requested my legal team to meet Mr. Vaughan in Northampton with a view to persuading him to come and give evidence. Their understanding, when they left, having seen him, was that he was seriously considering attending to give evidence either in Ireland or on commission in England. Indeed, they expected him to do so. I am very disappointed that Christopher Vaughan ultimately decided not to give evidence in Dublin recently. However, I would like an assurance

that following his decision not to give evidence in Dublin and before the Tribunal went to London to take Ruth Collard and Kate McMillan's evidence on commission on the 17th April, 2007, that the Tribunal invited Christopher Vaughan, as an alternative, to give evidence on commission in London at that same time."

MR. COUGHLAN: Perhaps I could assist you there, if I could just intervene.

A. You can do it at the end, thanks very much.

MR. COUGHLAN: Just in relation to that

A. Sorry, I am focused on my statement.

CHAIRMAN: Just a moment, he is answering your point.

MR. COUGHLAN: I am answering your point. You can have that assurance, he was invited.

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IARTY TRIBUNAL - DAY 348

A. He wasn't asked?

Q. He was invited.

A. He wasn't or he was?

Q. He was invited. He was invited to give evidence on commission at his option

MR. McGONIGAL: Before the 17th?

MR. COUGHLAN: I'll give the exact date in a moment, but he was asked to give evidence on commission in England.

A. "I note that Ms. Caroline Preston, solicitor, of A&L Goodbody, has recorded Mr. Vaughan as stating that he was 'abused by the Tribunal legal team'.

"It is also noteworthy from the correspondence from 2003 that Mr. Michael Andersen, an absolutely key witness in the GSM model, was treated in a heavy-handed, offensive and threatening tone by the Tribunal's legal team. This suggests that Mr. Vaughan's experience may not have been an isolated incident.

"I would like to cross-examine Mr. Vaughan on his letter of the 25th September, 1998; his letter of the 6th March, 2003; his interviews with the Tribunal legal counsel, and other matters.

"2. Fax from Kevin Phelan to Aidan Phelan dated 11th August, 1999:

"The Tribunal's attention has been drawn to a fax from le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Kevin Phelan to Aidan Phelan dated 11th August, 1999, as to the particular reference:

"7. ML

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

"I have no idea as to who the 'ML' refers to. I believe that the only person who can give evidence on this issue is Kevin Phelan. He has declined to give evidence. If it refers to Mr. Lowry, it makes no sense to me. I would certainly like to cross-examine him on this note and on other matters.

"I understand that this Tribunal would have complained that

we did not disclose this ML document in our Judicial Review proceedings. It is further presented on the basis that this was deliberate on our part. This is absolutely denied. The fact that the document was not disclosed was simply because I knew that Michael Lowry had no involvement in Doncaster Rovers Football Club. As well as that, I had no recollection of this document at the time of the institution of the Judicial Review proceedings. William Fry was not representing Westferry at the time. Those papers had been sent to LK Shields approximately one year earlier. To suggest that I or my legal team deliberately withheld a document from the Tribunal makes no sense, given that they have manifestly always provided all documents to the Tribunal without redaction or any hiding behind claims to privilege, even when it was open to me to make such

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IARTY TRIBUNAL - DAY 348

claims.

"I now do not believe that the ML referred to in the fax is Michael Lowry. From recent inquiries, I believe the ML refers to Mick Lloyd, a person involved in the property business in Doncaster for over 25 years. Recent press reports suggest that Mr. Mick Lloyd has been involved in profit ventures with Kevin Phelan. I have been aware of no correspondence between the Tribunal and Mr. Mick Lloyd.

"I further understand that Kevin Phelan confirmed in a letter dated 19th August, 2002, from Woodcock Solicitors to

William Fry Solicitors, that the reference was incorrect and related to a property other than Doncaster. I am also aware that Kevin Phelan wrote a comprehensive letter to the Tribunal on the 17th August, 2004, stating in no uncertain terms that Mr. Lowry was not involved in Doncaster Rovers Football Club. Kevin Phelan has refused to give evidence. I repeat that I would like to cross-examine Kevin Phelan on all of the above matters.

"3. Letter from Kevin Phelan to Aidan Phelan dated 30th August, 2000:

"I understand from evidence given to the Tribunal that the meeting of the 17th August, 2000, which contains the reference to Michael Lowry, actually related to properties that Michael Lowry and Aidan Phelan were involved in and in relation to which evidence has already been given to the Tribunal. I have already given evidence to the Tribunal re Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

that I had no involvement whatsoever in those properties and that I had no contemporaneous knowledge of them. I know nothing of the meeting that took place on the 17th August, 2000. Insofar as it may impact against me, I would like to cross-examine Kevin Phelan on this document, too.

"4. Letter from Kevin Phelan to the Secretary of the Institute of Chartered Accountants dated 4th March, 2002:

"I have no knowledge of this letter. I understand that it is the reference in the second paragraph 'Mr. Denis O'Brien



and another' that is causing concern. In relation to the four projects named, I was solely involved in Doncaster Rovers. There was no other party involved in purchasing Doncaster Rovers other than myself. I had no involvement whatsoever in respect of the other three named projects. As such, this statement is out of context and quite misleading. I am not aware of any evidence having been given by Kevin Phelan on this matter, and, insofar as it may be damaging, I would like to cross-examine Kevin Phelan on it.

"5. Ruth Collard attendance note of 10th September, 2002:

"I understand that Ruth Collard, English solicitor to Westferry on the retention dispute, gave clear evidence to the Tribunal in London that she did not believe that Michael Lowry was involved in Doncaster Rovers Football Club, and I quote: 'I think I meant that as far as from my experience of conducting the proceedings, I had no knowledge of Mr. Lowry having any connection to them.' (Day 347A, 17th April, 2007, page 48). And her colleague, Kate McMillan, solicitor, also gave evidence on the same day that, to her knowledge, that Michael Lowry had no involvement in Doncaster Rovers Football Club, and I quote: 'I don't believe that Michael Lowry was involved in Doncaster Rovers from my work in this litigation.' (Day 347A, 17th April, page 192.)

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PARTY TRIBUNAL - DAY 348

knowledge of Mr. Lowry having any connection to them.' (Day 347A, 17th April, 2007, page 48). And her colleague, Kate McMillan, solicitor, also gave evidence on the same day that, to her knowledge, that Michael Lowry had no involvement in Doncaster Rovers Football Club, and I quote: 'I don't believe that Michael Lowry was involved in Doncaster Rovers from my work in this litigation.' (Day 347A, 17th April, page 192.)

"It is apparent that the Tribunal agreed to pay the costs of Ruth Collard and Kate McMillan prior to their giving evidence on commission in London. This was at a rate, I understand, of £1/2250 sterling per hour. This is unprecedented, and significantly, the Tribunal have not disclosed the correspondence relating to this matter. It is also, I believe, contrary to standard legal precedent for a tribunal to pay legal fees prior to the publication of a report.

"6. Letter from Christopher Vaughan to Peter Vanderpump dated 23rd October, 2002:

"This letter has been dealt with by Mr. Vanderpump and I can add nothing to it. I can confirm that the Glebe Trust did not, at any time, have any interest in Doncaster Rovers Football Club in terms of shareholding. The Glebe Trust merely transferred ownership of the shelf company, Westferry, to Walbrook Trustees. This transfer took place before Westferry held any interest in Doncaster Rovers Football Club.

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IARTY TRIBUNAL - DAY 348

"It is important also to note that the letter received from the Trustees of the Glebe Trust clarifies that Michael Lowry was never involved in the Glebe Trust in any capacity. Charterhouse, who were acting as the Trustees of the Glebe Trust, is a very significant and reputable international organisation. I do not understand how it may

still be maintained, in the light of all of the above, how Michael Lowry had any involvement in Doncaster Rovers Football Club. I would like to cross-examine Christopher Vaughan on this letter.

"Nature of Tribunal's inquiries into Doncaster Rovers Football Club:

"By the Tribunal's own admission, the inquiries into Doncaster Rovers Football Club were prompted wholly and exclusively by the publication on the 13th January, 2003, of a letter received anonymously by journalist Colm Keena in The Irish Times. Coincidentally, this was the precise date that the English High Court proceedings between Westferry and Dinard had been set down for hearing before the High Court in London. I believe that The Irish Times, the national paper of record, was used by third parties as a vehicle to attack me. What is not clear is in what circumstances and when and from whom Colm Keena received this letter anonymously, which was not published until January 2003. It would appear that he was making inquiries sometime prior to January 2003. Colm Keena has not been asked to give evidence, but has been used, I believe, by the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Richardson, Weaver, Tony Boyle and Persona to feed information at critical times to the Tribunal to ensure that an unjustified inquiry is maintained into my private affairs and my reputation was damaged. I believe that the

only explanation that can be reasonably put on this is that they were out to damage my interests and my reputation, together with Michael Lowry's reputation. I say this because I believe at the time this material was given to the Irish Times, the persons who gave it had no intention of ever giving evidence to this Tribunal.

"I believe that Mr. Keena's centrality in the Tribunal's inquiries into Doncaster Rovers Football Club has created a significant conflict of interest and compromised his journalistic integrity and that of The Irish Times. Since January 2003, Mr. Keena has written a significant number of lengthy articles, including a number of double-page spreads in relation to Doncaster Rovers Football Club. This sensationally-presented coverage has succeeded in causing very considerable harm to me during that period. However, now that each of the twelve witnesses before the Tribunal has given evidence to the fact that Michael Lowry was not involved in Doncaster Rovers Football Club, Mr. Keena's coverage has diminished considerably. No one seems to have any interest in evidence that refutes allegations being made. It doesn't sell newspapers, but the damage has been done.

"I believe that Mr. Keena has a clear vested interest in creating and maintaining the impression that Michael Lowry  
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IARTY TRIBUNAL - DAY 348

was involved in Doncaster Rovers Football Club. This

slanted approach to Doncaster Rovers Football Club, brought about by his personal involvement in the Tribunal's inquiries, has permeated entirely into his coverage of these sittings. I have not seen any double-page spreads in The Irish Times in recent times setting out the actual position, i.e. that every person involved before the Tribunal has rubbished the suggestion that Michael Lowry was involved in Doncaster Rovers Football Club. Indeed, I believe that the coverage in The Irish Times has been lacking a balanced approach or the impartial and unbiased reporting expected of a national newspaper. It can not be without significance that Colm Keena, who has attended almost every sitting of the Moriarty Tribunal, said on the Vincent Browne radio show on the 29th May of this year: 'Tribunals are really very rough instruments. They do intrude a lot, without doubt, into people's rights. Things are done which you would never get a chance of doing in the courts and which, arguably, should not be done, but the deal we have all made in a way is that there were such terrible things going on that we set up tribunals and reduced people's rights, and anybody who gets dragged into these tribunals have their rights walked all over, rights that they would have if they were down in the courts or anywhere else. And we, I think, as a society, we need to do this because we need to sort out this mess.'

"It is incredible that as a journalist who effectively caused this module, he has not once written on this

unfairness or trampling of people's rights. This quotation  
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IARTY TRIBUNAL - DAY 348

supports my view that the courts have failed to recognise  
the unfairness caused to me and others by the procedures  
adopted by tribunals.

"It seems to me that the Tribunal abandoned its five-year  
inquiry into the GSM licence, as that inquiry, by general  
consent, was going nowhere, as it has failed to uncover any  
evidence of interference on the part of Michael Lowry.

Doncaster Rovers Football Club may have provided the  
Tribunal's legal team with a timely and welcome redirection  
and an opportunity to rekindle the public's interest in  
their great work. Mr. Keena's article, coupled with the  
Tribunal's inquiries and subsequent sensationalist Opening  
Statements, certainly served to draw attention away from  
the fact that the 140-day GSM licence inquiry had yielded  
absolutely nothing, despite years of massively expensive  
and unbalanced inquiries on the part of the Tribunal's  
legal team.

"It should be remembered that the Tribunal has heard  
evidence on the licence from 65 different witnesses over  
140 sitting days spread over a five-year period; on  
average, 28 sitting days per year, calendar year, since the  
Opening Statement. Among this, extremely detailed evidence  
was given by 18 civil servants, one official from the  
European Union, one former Taoiseach and five Government

ministers. Not a single person has given any direct evidence of any interference in the licence process by Michael Lowry. The parallels with the Doncaster Rovers Football Club inquiry are striking. It is also the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

unacceptable that despite multiple requests by me for disclosure of documents in the possession of the Tribunal relevant to these inquiries, some of these documents have only been furnished to my solicitors last Friday at 5pm of a bank holiday weekend. I am also unaware as to what relevant documents remain within this Tribunal. All such documents should be furnished to me as a matter of urgency and not on the eve of me giving evidence.

"Involvement of Persona/Tony Boyle/Gerard Maloney in the Doncaster Rovers Football Club inquiry:

"I do not understand the role played by Persona, Mr. Tony Boyle, Mr. Gerard Maloney in the inquiries conducted by this Tribunal. It does appear that Persona, Mr. Boyle, through his solicitor, Mr. Gerard Maloney, was making inquiries in England, Ireland and Belgium with a view to collecting information which was damaging to my interests, to be fed to this Tribunal. Persona/Motorola/Tony Boyle. Through his solicitor and company secretary, Mr. Gerard Maloney, may have been in constant contact with this Tribunal throughout the last six years. The conduit for this contact was by or through Mr. Moloney to Mr. Healy,

senior counsel, who had previously acted for Persona as senior counsel. Mr. Moloney has clearly involved himself in conducting a parallel inquiry and providing material generated through these dubious inquiries to Mr. Healy, senior counsel, and the Tribunal legal team. It would appear that the Tribunal's legal team has received this material, and indeed may have encouraged Mr. Moloney in his role as a Court Reporter Ltd.

THE TRIBUNAL - DAY 348

endeavours. This was clearly evidenced by:

- A) The waiver provided by the Tribunal to the European Commission in favour of Mr. Moloney and;
- B) The waiver provided by Persona to the Tribunal in favour of Mr. Healy, senior counsel, and member of the Tribunal legal team.

"In the first instance, the Tribunal confirmed to the Commission that it has absolutely no difficulty with the Commission's disclosing any information it might have to Mr. Moloney, notwithstanding the Commission's stated concern that the matters in question were under investigation by the Tribunal and should not perhaps be provided to third parties. In the second, despite repeated requests, we have been unable to obtain a copy from the Tribunal of the waiver from Persona to the Tribunal in respect of Mr. Healy, senior counsel.

"I have been concerned about the nature of the close relationship between Tribunal counsel, Mr. Healy, SC, and



key persons associated with Persona, in particular

Mr. Gerard Maloney. These concerns have been greatly exacerbated by what I have learned in the course of the Doncaster Rovers Football Club inquiry. Mr. Healy's involvement with Persona and Mr. Moloney goes all the way back to at least November 1995.

"Within days of the announcement of the fact that Esat had the licence to operate the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

won the licence competition in October 1995, Mr. Healy was apparently briefed with others by Persona concerning a potential Judicial Review to prevent the awarding of the second GSM licence to my company, Esat Digifone. I believe that any person objectively reviewing this aspect of the Tribunal's affairs would share my concern that there appears to be a strong bias against my interests. I believe that the Tribunal is determined to make findings against me which are not in any way justified on the evidence adduced in public hearings. Let us not forget that Mr. Moloney has spent a considerable amount of time, effort and his client's money in courting Mr. Ken Richardson and Mr. Mark Weaver, the vendors of the shares in Doncaster Rovers Football Club. Mr. Richardson was sentenced to four years in an English prison for conspiracy to cause arson for his attempts to burn down the Doncaster stadium in 1995. He was also banned by the Jockey Club for 25 years for a central part in one of the most notorious

betting scams ever to occur in the United Kingdom: the Flockton Grey horse racing scandal of 1982. Mr. Richardson was convicted of conspiracy to defraud as a result of this ill-fated attempt at using a "ringer" in place of another horse. In their dealings with the Tribunal, Mr. Richardson and Mr. Weaver have demonstrated an ability and propensity to create forged or completely false correspondence. They use this tactic to inveigle themselves into the Tribunal's inquiries. Indeed, they were interviewed by Mr. Healy with others, having turned up at Dublin Castle with an elaborately forged letter purportedly from a firm of solicitors operating in Dublin Castle.

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IARTY TRIBUNAL - DAY 348

"Mr. Gerry Maloney, by his own admission, has gone to extraordinary lengths and expense to convince these two deviants to give evidence or provide information that would assist his client and the Tribunal at arriving at a conclusion or 'an informed expression of opinion' that Michael Lowry was involved in Doncaster Rovers Football Club. The Tribunal legal team made none of this information public to myself or others and this information was only made available through intensive efforts on the part of my legal team who were relying on the judgement passed by the High Court in O'Callaghan versus Mahon Tribunal. Only for this, none of this information would ever have been provided to me.

"I have to question how a solicitor representing the party with the single biggest vested interest in having negative findings against me, i.e. Persona, would be asked to provide a waiver in favour of the senior counsel leading the Tribunal's inquiries into the selfsame licence. This waiver was sought by the Tribunal and provided by Mr. Moloney so as to allow Mr. Healy openly divulge in private whether information he felt he had gathered from his previous life as legal advisor to Persona, which he must have felt was substantial, to the Tribunal. To this day, I have no idea what information was available to Mr. Healy that required a waiver and prohibited him to continue acting for the Tribunal legal team. This has to be one of the most extraordinary conflicts of interest to ever have arisen in a tribunal. Yet, the Tribunal would be Court Reporters Ltd.

PARTY TRIBUNAL - DAY 348

wish us, and the public, to believe that it is a non-issue.

I believe it was an appropriate opportunity for the Tribunal to have sought a ruling from the Professional Practices Committee of the Bar Council. I believe that such an opportunity still exists and I shall be pursuing it.

"Persona has openly stated before the High Court that it does not intend proceeding with its claim against the State until the Tribunal issues its report. I have to pose the question: Is Persona using the machinery of the State to

act as a stalking horse in a massive financial claim that it has taken against the State? If so, this is an extraordinary situation. Why bother spending money pursuing your case in the High Court when a tribunal will do the job for you? Why else would a solicitor be travelling around Europe, as he has been, on behalf of Persona and sending material he has gathered to the Tribunal for the personal attention of Tribunal counsel? The presence of Mr. Moloney and his clients working in the background and the massive efforts that they have made to achieve a multi-million euro State-funded payout has not been presented to the Irish public.

"The issue is simple: Persona want to sue the State for an absolute fortune. The man who is doing more than any other to assist them in achieving this is their former legal counsel, Mr. Healy, senior counsel, who now happens to be senior counsel at the Moriarty Tribunal. The astonishing steps taken by the Tribunal over a considerable period to le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

prevent this information coming into the public domain bears testament to the fact that this Tribunal knows precisely how much and how far it has compromised its own position in pursuit of negative findings.

What has been allowed to pass in this respect is staggering by any standards and would offend even the most basic sense of justice and fairness.

"My lawyers, as well as lawyers for Telenor and Mr. Dermot Desmond, have raised these concerns at various stages in correspondence with the Tribunal. I gather that the Tribunal has never responded to my queries in any substantive manner. My counsel also raised this matter before the Tribunal during the evidence of Mr. Tony Boyle back in November 2005. The Sole Member's displeasure at my counsel's intervention was clear on Day 304. However, despite the comments levelled at my legal team by the Chairman and his team, at no stage has a full and frank explanation of the precise nature of Mr. Healy's relationship with Persona and Mr. Gerry Maloney ever been provided, either publicly or privately. This issue will not go away until this is done.

"I await a full and frank explanation in writing of the relationship between Mr. Healy, senior counsel to the Tribunal, and Persona and Mr. Moloney. This is long overdue and wholly merited. It is abundantly clear that Gerry Maloney is involved in the Tribunal's inquiries into the Doncaster Rovers Football Club. I believe that Mr. Moloney may have had an involvement in the leaking of the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

the letter to The Irish Times. Mr. Moloney seems to have spent as much time carrying out private inquiries as the Tribunal itself. It is incumbent upon this Tribunal, as it has been for some considerable time, to clarify this

relationship, particularly now given the significant burden that this inquiry has placed on the Irish exchequer.

"Active concealment of Doncaster Rovers Football Club material advantageous to my defence:

"It is ironic that the same members of the Tribunal legal team who have openly criticised witnesses in public for supposedly failing to deliver documentation on time, have themselves been actively involved in repeated shameless episodes of concealing information that would be of enormous assistance to myself and others in defending ourselves against these most serious allegations being created and propagated by the selfsame Tribunal legal team.

It could be that the behaviour of this Tribunal's legal team is worthy of the establishment of a further tribunal of inquiry in and of itself.

"The reality is that if I had been facing a court proceeding rather than a tribunal, I would have been cleared of all allegations many years ago and let go on with my life with my reputation fully vindicated. The very contrary is the case in the present-day tribunal process.

I have had to live with serious allegations against my character for over six years, and it is really only now becoming clear that the Tribunal legal team have been the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

pursuing a completely one-sided vendetta to deliver my head on a plate.

"However, I have been involved too long in this Tribunal process to expect any form of admonition to be rendered. Seemingly, there are no rules or standards when it comes to a modern-day tribunal of inquiry. It is fast and loose. The Tribunal legal team seem to be able to do as they please, and make up/abandon the rules as they go along. Any time my counsel interjects on my behalf to object to this, his concerns have been dismissed out of hand. From my own bitter experience, the courts, with some notable exceptions, are clearly not inclined to intervene and take responsibility for this complete deterioration in legal norms and natural justice. It is also manifestly apparent that the political powers that be, abdicated responsibility in respect of the Tribunal process a long time ago. The Government is clearly absolutely impotent when it comes to their ability to restrain or curtail Tribunal excesses. I hold the view that rough justice is alive and well at Dublin Castle and no one seems willing to take responsibility for reeling it in. This Tribunal's legal team act as though they are answerable to no one and their behaviour reflects this.

"Doncaster Rovers Football Club Judicial Review proceedings:

"I understand that the Tribunal has made reference at every available juncture to the Judicial Review proceedings that the Court Reporters Ltd.

I instituted against the Tribunal in September 2004. The thinly-veiled allegation being made by the Tribunal legal team is that I went to the courts in a deliberate attempt to prevent the Tribunal uncovering a conspiracy of Michael Lowry's involvement in Doncaster Rovers Football Club.

This is clearly nonsense. The Tribunal team have also repeatedly sought to portray my seeking recourse to the courts as having delayed the Tribunal's work. This, too, is also complete nonsense. Why did the Tribunal's legal team not complete the GSM inquiry in the interim?, is one question that could well be asked. Why is an inquiry that began in December 2002 still rumbling on with no end in sight? Who will this Tribunal seek to blame for that?

"I took those proceedings against the Tribunal because I had had enough of the Tribunal's constant ventilation of my affairs in public and their efforts to embarrass me and cause me harm at every possible turn. I went to court because I believed that the procedure adopted by the Tribunal to go into public session was wrong and because the Tribunal had no material witnesses available to them, and, in reality, the circumstances which existed before the public inquiry began have not changed. No evidence has been produced showing any involvement of Michael Lowry in the Doncaster Rovers Football Club transaction. Now that the Tribunal has poured over every conceivable aspect of the deal in painstaking detail and the costs are millions of euro, the basic premise of my claim had been proven to



be completely correct. There never was any reason to inquire into Doncaster Rovers Football Club in public. le Court Reporters Ltd.

#### IARTY TRIBUNAL - DAY 348

These proceedings cost me approximately two million euros.

I may not ultimately have won in the courts, but my objection has been vindicated by the evidence heard before the Tribunal and I believe that I am entitled to a full reimbursement of all of the costs arising from this Tribunal, including the costs of the Judicial Review proceedings. Furthermore, I hope that the ECHR will admit the complaint I made to it in the Andersen proceedings and will also admit any other complaint made by me arising from any further proceedings which I may bring.

"The massive delay of this Tribunal in completing its work has been entirely of its own making. It seems to me that the Tribunal's legal team are now focused on playing 'the blame game' and trying to offload the responsibility for an absence of real evidence on myself and others. The present sittings seem to be devoted solely towards establishing excuses for depriving certain parties of their entitlements to costs.

"The Tribunal has gone on far too long and has cost way too much. Each of the three senior counsel had earned in the region of six million euros, surely the highest paid State employees ever in the country's history. They continue to earn €2,750 each day for every day that the Tribunal

remains in existence. This equates to between  $\text{€}1/255,000$  and  $\text{€}1/277,000$  per month per senior counsel, which is more than double the average yearly wage, all earned in one month.

In addition to this, the massive costs incurred by the army of lawyers employed by myself and others on behalf of the Court Reporters Ltd.

LIBERTY TRIBUNAL - DAY 348

witnesses affected by the Doncaster Rovers Football Club inquiry must also be covered. That final figure will be in the tens of millions just for this module.

"Now, in a purely defensive manoeuvre to mask this cost exposure, Tribunal counsel has gone on an aggressive offensive in an effort to establish some form of an argument to follow the Tribunal to possibly refuse cost entitlements. I fully reserve my rights in this regard and will address these issues in a more fulsome manner at the appropriate time and as may be required. I refuse to sit by and take on the role of the fall guy for the Tribunal legal team. That is precisely what has been going on here."

Q. Thank you very much, Mr. O'Brien. I wonder do you have Tribunal book Number 82 there, please, and we'll start with that.

A. Chairman, do you mind if I take a break for a minute?

CHAIRMAN: Certainly. We will resume at 12:00.

THE TRIBUNAL ADJOURNED BRIEFLY AND THEN RESUMED AS FOLLOWS:

Q. MR. COUGHLAN: Thank you, Mr. O'Brien. I just wonder do

you have the first book of documents? It's Tribunal Book

82.

A. I do.

Q. If we just I suppose the first document that I'd like to

refer you to, it's just a brief reference in a paragraph

sorry, it's behind Tab Number 4. It's a letter from

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IARTY TRIBUNAL - DAY 348

Messrs. A&L Goodbody's to Mr. Davis, the Tribunal

Solicitor, writing on behalf of Mr. Aidan Phelan. And I

just wanted to if I might draw your attention to

paragraph number 3 in that particular letter, do you see

it? "Mr. Aidan Phelan approached Denis O'Brien informing

him of the project. In broad terms, the deal involved the

acquisition of the shares in Doncaster Rovers Football Club

which owned the lease on a site in Belle Vue, Doncaster,

comprising of approximately seven acres. Doncaster Council

were anxious to relocate the football club to a new site at

Lakeside, Doncaster, because of health and safety and

traffic issues. The return of the project was driven by

the development of the site for retail purposes which was

supported by the Council. Denis O'Brien was interested in

the project and put sterling  $\frac{1}{2}$ 700,000 down as a deposit in

March 1998. The transaction was finally closed in August

of 1998."

Now, that seems to be an indication of your first

involvement in Doncaster, isn't that correct? Would you

agree with that, in broad terms? And we can tease it out in a moment.

A. This letter is from Aidan Phelan's solicitor, isn't it?

Q. Yes. It's what Aidan Phelan is informing the Tribunal.

A. In broad terms

Q. I beg your pardon?

A. In broad terms.

Q. In broad terms. Well, if I can just try and ascertain exactly how you got any knowledge of this particular project and the state of your knowledge at that time.

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IARTY TRIBUNAL - DAY 348

That's the first issue we might inquire into. Now, it was something which Aidan Phelan brought to you, isn't that correct?

A. Yes, in early 1998.

Q. In early 1998. And what did he tell you? Did he tell you that it was a man called Kevin Phelan had come to him with this particular proposition, or did you have any knowledge as to where it came from?

A. Well, I think the conversation focused on the opportunity, not where it came from.

Q. Fair enough.

A. Initially, anyway.

Q. So, would I be correct, and I know you won't have total recall in relation to this sort of matter, but it's your recollection of events that what Mr. Aidan Phelan came to

you with was an opportunity in relation to Doncaster, that there was a potential for a quick turn-around; I think you described it as money in, money out, yourself. Would that be the general type of discussion?

A. Yes, that's correct.

Q. And he didn't inform you or you don't have any great recollection, in any event, of who brought the project to him?

A. No. I understood, because he did mention that the opportunity was presented by Kevin Phelan to Aidan Phelan.

Q. You understood that a man called Kevin Phelan had brought it to

A. The conversation is nine years ago, but I would have said I would have asked him, "Well, who initiated this deal?"

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IARTY TRIBUNAL - DAY 348

Q. And you believe that he would have told you that it was a man called Kevin Phelan?

A. He probably would have, yes.

Q. And you wouldn't have known who Kevin Phelan was at that time, would you?

A. No.

Q. Did he expand on it in any way as to why somebody was bringing this particular project to you?

A. I think most of the conversation was about the transaction itself.

Q. Funding it, I presume?

A. How much it was going to cost, you know, how we fund it. You know, there was a £690,000 deposit; where that money was going to come from, and what the plan was for the site. It was a commercial site and it was a fairly straightforward transaction on paper, at least, but obviously it was complicated by a number of moving parts.

Q. I suppose the existence of a football club being one of them, or a group of supporters, matters of that nature?

A. That would be one, but, also, you know, to physically move to an out-of-town location, a football club is would be intricate enough.

Q. Now, in any event, you, on the advice of or the information imparted to you by Mr. Phelan, decided that it looked like a reasonable project?

A. Yes, it looked as if it was a shortish project, you know, somewhere six to nine months.

Q. And did he discuss anything with you at that time about, you know, terms? I don't mean terms I understand that he discussed with you the costing in terms of the purchase of the Court Reporters Ltd.

PARTY TRIBUNAL - DAY 348

of the shares in the club. You discussed how that might be financed, and we saw how that was financed. Did he discuss with you anything about how the profit would be dealt with at that time?

A. Yeah, there was the person who initiated the deal, Kevin

Phelan, was to earn sweat equity where he would receive 40% of profits less whatever costs associated were involved, if we were going to sell the grounds to a third party.

Q. And just so that we can understand it, because you are a businessman; sweat equity is the reward which somebody gets who is not necessarily putting up any capital in relation to the matter but is bringing in expertise and involvement or work and perhaps introduction to the actual project itself?

A. Generally, sweat equity doesn't involve any cash commitment by the person.

Q. It's expertise on work?

A. In kind, yeah.

Q. And what work did you understand that Mr. Phelan would need to do in order to be entitled to the sweat equity?

A. Well, he would be, you know, responsible for the general work of the project in terms of securing the necessary all the necessary permissions to relocate the playing grounds to an out-of-town location, working, you know, dealing with the planners, talking to potential people who were going to buy the footballing side, which subsequently was sold to, I think, a guy called Ryan.

Q. That's right.

A. So it was a fairly intensive amount of work at the outset.

Q. And

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A. Including discussions with people who potentially wanted to become tenants of new developed grounds which was going to be for retail.

Q. And do you know what work Mr. Kevin Phelan did? And I think the idea was that this was to be a fairly quick project, wasn't it? Twelve months

A. Six, nine months, probably. I don't know. I broadly know that he was talking to some of the multiples, talking to the Council.

Q. And do you know what work Mr. Aidan Phelan was doing at the same time?

A. You know, this is a small project. He would have, from time to time, given me an update about the project.

Q. And can you remember any of those updates?

A. Well, the updates were fairly positive at the outset, but then the longer I held the investment, maybe the more intricate the whole investment became, because there was a lot of things that had to be achieved for a successful outcome.

Q. Now, there were certain disbursements necessary for the operation of events, for example the football business had to continue, isn't that correct, at the beginning, before it was disposed of the normal running of the business, isn't that right?

A. I believe so.

Q. This is just general. I just want to ascertain this. If any monies were paid during the course now, I don't mean



just monies for the purchase of the shares by way of the deposit and the subsequent monies for the balance of the shares and your underwriting position, but I mean

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IARTY TRIBUNAL - DAY 348

disbursements; they may have been small in the thousands, under 20,000, and that sort of thing; if they came from the office of Bryan Phelan, perhaps Mr. Aidan Phelan, would that always have been your money, to the best of your knowledge?

A. I haven't seen I mean, maybe there is stuff in the documentation here, but I was never involved in signing off disbursements or agreeing to disbursements if there were costs associated with holding Doncaster Rovers.

Q. And would you have been asked to sign off on everything, do you think, by Mr. Phelan?

A. I wouldn't have known the day-to-day detail.

Q. That's how I understand it. He'd have a reasonable free hand in the ordinary running of the affairs, would that be

A. Yes, he would, totally.

Q. Now, if you just go over the page in that letter, it's only a small matter. Just, do you have any knowledge or recollection of this. It's paragraph number 9. I think Mr. Phelan had been asked by the Tribunal if he had any documents in relation to the Doncaster Rovers project.

Now, we know, and we'll come to it in due course, that your

father took over the affairs from Mr. Aidan Phelan, isn't that correct? And he just said here that "Mr. Phelan has no files or documentation in his possession relating to this project and at all times he acted as agent for Mr. O'Brien. All files and papers were returned to Mr. O'Brien when he ceased to act on Mr. O'Brien's behalf." You have no reason to disbelieve that he would have handed over the papers to your father?

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IARTY TRIBUNAL - DAY 348

A. I think it was files and papers to my father, not to me personally.

Q. Yes, to your father, you think, yes?

A. As far as I know. I actually don't know.

Q. Fair enough. They would have gone to your father at least.

That would seem reasonable.

A. What did Mr. Phelan say about this? What did he say about that? Did he confirm that?

Q. Yes, that he handed over the papers, yes. I don't think there is any big controversy about it. I just wanted to ask you about it.

A. If he says he did, then he did.

Q. Now, if you then go to tab number 8. Behind tab number 8, you will see this is a fax from Mr. Phelan and you can see it's sent to Mr. Murray, and what he is doing in this document, he is setting out what the project is in broad terms, isn't that right? If you go over the page.

"Doncaster Rovers Limited project overview.

Westferry Limited has a contract to acquire the share capital of Doncaster Rovers Football Club Limited for consideration of 3.385 million sterling. The promoters are Denis O'Brien and Aidan Phelan for publicity reasons in the UK, Aidan Phelan is fronting the project.

"On completion of the above agreement the ground lease (65 years from Doncaster Council) at the club will be transferred to a new company and the latter will negotiate with Doncaster Council for the release of the freehold of the site. The Council's chief development officer, Michael le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Clynch, will confirm in writing that it will facilitate the above assignment and transfer.

"Asda, who has a premises bordering the site, have been in discussion with our representatives, Lambert Smith Hampton, and Doncaster Council, to locate an extension to its premises (20,000 square feet) and B&Q store (on the existing Doncaster Rovers ground). Asda's representatives, DTZ, have put a land value of approximately 7 million on the site. I am anticipating an offer in writing on Tuesday of this week confirming their interest.

"In addition to the above discussions, we have been negotiating with McAlpine plc in relation to their interest in developing the site and I am anticipating an offer from them in writing early this week, in the region of 8 million

sterling. They are also interested in developing a new green field site for the new stadium.

"I have been working closely with Premier Crew Sports Management Limited in identifying and securing this opportunity and they have located a buyer for the business of the club at a price of sterling  $\frac{1}{2}$ 500,000. Although not directly relevant to the feasibility of the sale of the ground, it may have a real impact on the downstream relocation development which I am also discussing with McAlpine. It will also have a significant effect on executing a speedy transfer of the property freehold.

"The finance required is as follows." And he set it out.

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IARTY TRIBUNAL - DAY 348

"Cost of investment - 4.135 million overall.

Equity contributed - 750,000.

Loan facility - 3.385.

"I am seeking a cash advance facility for a period of up to 1 year.

"I will call you tomorrow to discuss this note and how security could be taken.

Regards."

Did that, or does that broadly concur with your understanding of how things were brought to your attention at the time?

A. I never heard of Premier Crew Sports Management. I didn't know that Lambert Hampton Smith were involved and I

certainly didn't know that the Council had to assign

give consent to assign the property.

Q. Right.

A. I didn't really know the detail of this, to be honest with

you.

Q. All right. So it was a broad-brush understanding you had

that this was a good opportunity and Aidan Phelan was

recommending it to you, would that be

A. Yeah, correct.

Q. Now, if you go behind document number, or tab number 9, and

all I want to refer you to, if you go to the second page of

that letter of the 13th August, 1998. Do you see under the

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IARTY TRIBUNAL - DAY 348

heading "7. Security," and then B, this is how the

security "The personal guarantee of Mr. Denis O'Brien on

the bank's standard guarantee form. The guarantor

undertakes that, within six months, in the absence of

planning permission, he will pledge to give assets of not

less than 2 million, and in the event that the facility

remains unpaid by the 31st August 1999, he will pledge

assets totalling 3.5 million." So you were under you

were guaranteeing the whole of the amount, in effect?

A. I was fully behind the investment. And if I am right, I

think I signed the personal guarantee myself.

Q. Yes. Yes, if you continue on a few pages, you will see

there, we have it in blank form, but I think you signed the

guarantee?

A. It's not in this tab.

Q. We only have it in blank form.

A. But I do believe I signed it.

Q. Now, just very briefly, if I can then skip to tab number 23, I think. You can see that this is an extension of the facility, dated 9th November, 1999.

A. Mm-hmm.

Q. And if you go to the second page of this letter under the heading "Security" 7C "The personal guarantee of Mr. Denis O'Brien on the bank standard guarantee form supported but not limited to an undertaking from Deloitte & Touche to hold to our order shares in VersaTel plc in the amount of the guarantee." And that was a company of yours, isn't that right, it was VersaTel?

A. It was a company I was an investor in. I didn't control it.

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IARTY TRIBUNAL - DAY 348

Q. But these were your shares?

A. Correct.

Q. Now, if you go behind tab number 24. I am not going to open this. This was a document that we opened with Mr. Aidan Phelan in great detail. I just wanted to ask you, before we look at the document, did you hear anything around this time, that is in August of 2000, that Kevin Phelan was making fee demands? Would you have been

involved in that level of detail?

A. I actually don't remember.

Q. Because that's what this letter it's the beginning, it's a fee demand being made by Mr. Phelan?

A. It's difficult for me to answer questions on this letter because I actually don't know the context of what why he was writing to

Q. He was writing to Aidan Phelan

A. Yeah.

Q. about property transactions in general in the United Kingdom, if you take my point. But here he is writing about Doncaster, and he said: "We are extremely disappointed that you have failed to reply to our recent correspondence or make any contact with Gameplan. You agreed to keep us informed on progress regarding the Doncaster project. We are concerned but not surprised that our so-called 'development partners' are described in the Doncaster property as a 'pup' which is what I expected from people who have a serious conflict of interest and have ulterior motives. At a meeting in your office on the 11th April 2000, the Chairman of Stannifer, a reputable property developer, described the site as the best site in le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Doncaster, and Gameplan agrees with this assertion.

"In our opinion, Doncaster remains an extremely good opportunity, however since Gameplan were requested to allow

others to manage the project very little progress has been achieved".

What he is doing is he is complaining to Mr. Aidan Phelan that things haven't moved on in relation to Doncaster, and I think it's correct that things had not moved on in relation to Doncaster by this time, and what he was asserting was that if he had been left effectively managing the project, things would have moved on, but as they had been asked to step aside, things had slowed up.

First of all, did you know that Mr. Kevin Phelan or his company had been asked to step aside to allow others to involve themselves in some way in the management of the project?

A. I actually don't remember.

Q. All right. And you don't have any recollection of any discussion with Mr. Aidan Phelan at this time now, this would have been in August 2000, about any fees which Mr. Kevin Phelan may have been looking for, or of paying them, or of agreeing to pay them; you don't have any recollection?

A. I don't remember.

Q. All right. Now, the next document I wonder if you might look at, it's behind Tab 27. And again, this document isn't addressed to you. It's from Mr. Denis O'Connor of le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Brophy Thornton Butler to Mr. Aidan Phelan regarding



Mr. Kevin Phelan's claims for various fees. Did you have any awareness, say, in June of 2001, that Mr. Denis O'Connor was in any way involved or acting in some way in trying to resolve an apparent dispute between Mr. Aidan Phelan and Mr. Kevin Phelan in relation to fees in the UK property matters?

A. No, I don't remember.

Q. Now, the next document I might ask you to look at then is behind Tab 31. And this is a letter which Mr. Kevin Phelan wrote to Mr. Aidan Phelan in August of 2001 after Mr. Aidan Phelan had given evidence at this Tribunal and may have said something which was critical of Mr. Kevin Phelan, and this is Mr. Kevin Phelan writing in strong terms to Mr. Aidan Phelan around this time. Were you aware around this time or around the time that Mr. Aidan Phelan gave evidence in relation to other property transactions, that he had received any communication from Mr. Kevin Phelan of an angry nature?

A. I wasn't aware of this correspondence, no.

Q. Well, were you aware, whatever about the correspondence, were you aware from Mr. Aidan Phelan, perhaps, that Kevin Phelan was annoyed with him over the evidence he had given?

A. No, I don't remember, no.

Q. All right. Does it appear to be the situation, and correct me if I am wrong, but that from the period of the commencement of the project, when Mr. Aidan Phelan brought the project to you and explaining it in terms of its

opportunity and the fact that there was a Mr. Kevin Phelan who would be coming in as a sweat equity partner, that you le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

had very little personal involvement in this project?

A. That's correct.

Q. And that Mr. Aidan Phelan, as far as you were concerned at least, was the man who had the hands-on involvement?

A. Until my father took over.

Q. Until your father took over, I understand.

A. Which was a year after this letter, I think.

Q. Yes, 2002.

A. Less than a year.

Q. And as far as you were concerned, if there were any debates, disputes, or anything of an ordinary nature, those were matters which you would have expected, in the normal course of business, Mr. Aidan Phelan would have sorted out himself without having to come to you for yea or nay in relation to them?

A. Probably, yes.

Q. Did you now and I know in the period 2000 and 2001 you were very heavily involved in relation to your other businesses, but did you ever inquire of Mr. Aidan Phelan as to what happened with that Doncaster thing or

A. Infrequently, he might mention it to me and say, "Well, this is the latest. Here is an update on Doncaster." It could be for a couple of minutes, that's all. I mean, once

it wasn't sold after six to nine months, I lost interest in it, to be honest with you.

Q. Yes, because, again, just as far as you were concerned, this was to be a quick investment?

A. Correct.

Q. And that was explained to you. And can I take it as far as you understood it as well, that for everybody involved in the Court Reporters Ltd.

JUDICIAL TRIBUNAL - DAY 348

the matter, it was to be a quick investment?

A. Certainly that's how it was explained to me.

Q. That's how it was explained to you. Now, if we then go behind tab number 38, if you wouldn't mind, Mr. O'Brien.

Again, it's Mr. Kevin Phelan writing to Mr. Aidan Phelan.

And I take it you weren't aware of this particular piece of correspondence you weren't aware of the correspondence at that time at all, I take it?

A. No.

Q. And he wrote to him on the 14th September, 2001: "I have decided to write this letter as a result of two telephone conversations I had with Mr. Michael Lowry.

"As you are aware, Mr. Denis O'Connor is currently endeavouring to assist in resolving outstanding issues regarding various projects. I understand that you are satisfied with his involvement and that you approve of his endeavours. Michael Lowry has given me the impression that in some way you feel disadvantaged in these negotiations.

I must ask you to confirm by return if you feel in any way disadvantaged in these negotiations.

"I have written to you regarding another matter which must deal with at this time. The matter I refer to has nothing to do with me and I did not involve myself in the matter.

I would be pleased to resolve issues with Denis if possible. However, if you feel that the negotiations are in any way difficult for you, I would ask you to inform me immediately."

le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Were you aware, not by reference to correspondence, but I suppose through Mr. Aidan Phelan, that Denis O'Connor was involving himself on behalf of or in any way a dispute which existed between Mr. Aidan Phelan and Mr. Kevin Phelan at this time?

A. At that time, no.

Q. This was in September 2001?

A. No, not at that time.

Q. Now, I wonder if you just might go to Tab 46, please. I am not going to open this whole letter at all, Mr. O'Brien; it's been opened a number of times at the Tribunal. I'll tell you in general terms what it's about. It's

Mr. Christopher Vaughan writing to Mr. Aidan Phelan and informing him that a Mr. Mark Weaver had arrived at the reception area in his office and details his involvement on that day with Mr. Mark Weaver. I take it you have read

this letter, have you?

A. I have, yeah.

Q. What I want to at this time, did Mr. Aidan Phelan tell you anything about it? That was in February 2002.

A. It would have been very close to the time when representatives were negotiating. My father was negotiating to take out Kevin Phelan's sweat equity.

Q. Yes, it's probably a little bit it's probably slightly before it, I agree with you it's around the time, it's a few months beforehand, but

A. When I read this, it's fairly bizarre stuff.

Q. But I just want to know, did you know about it at the time, do you remember?

A. No. Only when I read it when you sent these documents to the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

me.

Q. Just recapping for a moment. When the contract was concluded to purchase the shares in Doncaster Rovers Football Club initially, it took a normal form of some retention money, isn't that correct, in relation to concern contingencies or potential outstanding matters. That would be fairly normal. And there was also, I think, a question arising about a  $\frac{1}{2}$ 250,000 payment in relation to an extension on a lease. Were you aware of that level of detail?

A. No, I wasn't involved in that level of detail at all.

Q. You weren't even aware?

A. I didn't even know about the retention until much later.

Q. That would have been left to Mr. Aidan Phelan, I presume, would it?

A. I mean, the complete negotiations were handled by Aidan Phelan, and I think Kevin Phelan was involved.

Q. Kevin Phelan initially, yes. Fair enough, so you weren't really aware of that level of detail in relation to the retention money or the  $\text{€}1/2250,000$  in relation to the lease?

A. No. I mean, the only document I did was the bank document that I saw in regard to the transaction.

Q. Fair enough. And when did you become aware, because things didn't happen for a few years, and I think that Mr. Aidan Phelan put it politely by saying that Mr. Richardson was unavailable for the first few years in relation to the following the contract in respect of the retention money and the money in relation to the lease. When did you become aware that they were looking for this and then proceedings

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IARTY TRIBUNAL - DAY 348

A. I heard that he was in jail. That's what I heard.

Q. When did you become aware that they were looking for the well, whatever was due under the retention money and the  $\text{€}1/2250,000$  for the lease?

A. Sometime in spring, early 2002.

Q. Around the time your father became involved, would it have

been?

A. I think so, yeah. I mean, this wasn't really on it didn't feature

Q. On your radar?

A. as an investment of any significance for me.

Q. And, again, can I take it up to your father taking over, it was Mr. Aidan Phelan, as far as you were concerned, was looking after this particular matter?

A. Yeah. Aidan Phelan went to live abroad and also to work on his own projects and he, you know, he handed over to my father and my father was experienced in these kind of things, in property, and I asked him to handle the whole thing.

Q. And can I take it that at this time you might have had a general awareness that there was a solicitor called Christopher Vaughan I think by this time you would have known there was a solicitor called Christopher Vaughan because I think both you and Mr. Phelan had given evidence in relation to other property matters, and that whilst you had never met Christopher Vaughan, you knew that there was a solicitor called Christopher Vaughan acting on behalf of your interests?

A. I knew that Christopher Vaughan had acted for me in the purchase of an office block in Luton, and also in Doncaster le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Rovers.

Q. But that was as much as you knew. You didn't know Christopher Vaughan and Mr. Aidan Phelan was involved in those matters also, or in the Luton matter, also, in handling that, as was Mr. Kevin Phelan, I think?

A. I mean, some of this goes back to 2001, so whatever my evidence was in 2001, I'd stand over.

Q. Yes. Can I take it that up to the time that your father took over the project from Aidan Phelan, you were, in fact, or you had no great awareness that there were proceedings involving Dinard and Westferry and that Messrs. Carter-Ruck were acting on behalf of Westferry?

A. Again, I would have only known that, you know, from what my father said to me, but not in any great detail. He said there was a couple of issues to be sorted if we were ever going to get liquidity from the property.

Q. So, as far as you were concerned, so, apart from this significant involvement in signing the bank documents in relation to the funding, Mr. Aidan Phelan looked after this particular matter up to the spring of 2002, or thereabouts, and then your father took it over?

A. That's broadly right, yes.

Q. Would that be broadly your understanding? And in relation to detail, that Mr. Aidan Phelan and your father would have a greater understanding as far as you

A. Quite definitely.

Q. Now, again, the next document that I'd just ask you to look at is behind tab number 48, and this is a complaint which



Mr. Kevin Phelan made to the Institute of Chartered Accountants in Ireland against Mr. Bryan Phelan, Mr. Bryan le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

Phelan and the practice and Mr. Aidan Phelan. Did anybody tell you about that? Did Mr. Bryan Phelan tell you anything about that, can you remember?

A. I actually don't. I mean, I have read this in the last well, I have read it some time ago and then recently, in the last week or so, so I don't know when I first heard of this, but clearly the only two projects that I am involved in are Luton and Doncaster.

Q. I was just wondering

A. And nobody but me, obviously, is involved in Doncaster Rovers, either.

Q. Well, I wasn't asking you about that at the moment. I was asking you about were you aware that Mr. Kevin Phelan had made a complaint to the Institute of Chartered Accountants?

I take it you know Mr. Bryan Phelan as well as Mr. Aidan Phelan?

A. I do, yeah.

Q. And

A. But, sure, the whole thing is ridiculous.

Q. Well, what I am asking you, Mr. O'Brien, is, were you aware that this complaint was made at the time? If you can't remember, that's fine.

A. I can't remember.

Q. The next document, then, is at tab number 58. You will see there is a handwritten note and behind that there are the typed notes; these are notes of Mr. Owen O'Connell of Messrs. William Fry, Solicitors. And you can see that it's dated the 11th June, 2002, and the compliant is Denis O'Brien, the matter is Moriarty, and it's an attendance or information to be imparted to your father, DOB Senior, re le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

K. Phelan payment. And this was Mr. O'Connell expressing his own view here. "Concern about DOB making payment to KP in circumstances of current Tribunal where KP a potential witness (hostile to DOB).

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

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

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

"Above to DOB Senior, 11/6/03, 9.35am."

Do you know anything about that at the time?

A. What I did know was that there was an opportunity to settle

the sweat equity in fees or any amounts outstanding to Kevin Phelan at that time and there was negotiations going on to achieve that.

Q. And from whom did you get that information, to the best of your knowledge?

A. Well, my father told me there were two outstanding items. One was to take Kevin Phelan out of the picture and there the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

was an opportunity to pay him a certain amount of money and buy out his sweat equity; and the second thing was to sort out all the disputes with the previous owners of Doncaster Rovers.

Q. When did your father tell you that it was an opportunity to buy out the sweat equity specifically, can you remember?

A. Very soon when he took over, when he there was a hand-over between Kevin and him. I mean, he told me these were the two issues and he was going to go off and sort them out.

Q. I may be incorrect in this, and I'll stand corrected in relation to it, but as I understood your father's evidence, that he understood that when he took over the project from Aidan Phelan, that there were fees due to Kevin Phelan in respect of the project. Do you have any recollection of that?

A. All I know, that we bought out his sweat equity interest which may have covered fees, I don't actually know,

Mr. Coughlan.

Q. Because you know that Mr. Aidan Phelan had been handling the matter up to that, and, as far as you were concerned, he had the detail, or a greater grasp of the detail than you had anyway, and it has been his evidence that Mr. Kevin Phelan wasn't entitled to any fees because there were no fees due, and that, as far as he was concerned, the period for his - we will use the term sweat equity, had elapsed, effectively, because the matter hasn't turned over, or 'flipped' I think is the expression used?

A. I think that's a matter of opinion. I am sure I have no doubt that if Mr. Kevin Phelan was around when and if we the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

ever sell the property, that he would have been claiming 40% sweat equity. So this was an opportunity for a modest sum of money to actually take out any claim for sweat equity.

Q. And you think that your father said that to you?

A. I don't even know where I was at that time, but my father would have said, "Look, Kevin Phelan is claiming 40% on the up side. Good business, good commercial sense is to actually try and take out that and buy it in so that when we actually go to sell the property, it won't be there." I don't think anybody would argue that, you know, that that was not the clever and sensible thing to do.

Q. Did you have any understanding or knowledge that, at this

time, that your father had a contact with Mr. Denis

O'Connor or I'll put it the other way: that Mr. Denis

O'Connor had a contact with your father because they both

saw the contact as coming into being in a different way?

A. I may have been peripherally aware that he was talking to

Denis O'Connor, I am not sure now.

Q. Did that cause any hesitation in your mind?

A. None whatsoever.

Q. Were you aware that Mr. Owen O'Connell had concern about

it?

A. No.

Q. And you couldn't you yourself couldn't see any reason

for having a concern?

A. No.

Q. And you knew that it was, or did you know that it was in

relation to dealings with Kevin Phelan?

A. I think I broadly knew, I wouldn't be one hundred percent

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IARTY TRIBUNAL - DAY 348

sure, that Denis O'Connor knew Kevin Phelan, and he was

trying to be helpful in trying to forge an agreement with

Kevin Phelan for him to sell his sweat equity.

Q. Yes, but I think you knew from evidence which had been

given at the Tribunal previously that Mr. Michael Lowry had

retained Mr. Denis O'Connor as his accountant/financial

advisor in relation to certain matters and in dealings with

this Tribunal, isn't that correct?

A. Of course, I have seen him here.

Q. And I think you were also aware that Mr. Kevin Phelan had an involvement with Mr. Michael Lowry in relation to property transactions in England and that Mr. Aidan Phelan may also have had an involvement in relation to those, isn't that correct?

A. I have learnt that subsequently at the Tribunal, yes.

Q. At the Tribunal. But at this time, then, when your father was dealing with Mr. Kevin Phelan and there was, I'll use the neutral term, contact between your father and Mr. Denis O'Connor, who was Mr. Lowry's accountant, that didn't cause you to have any concern in relation to perceptions at least?

A. I think we need to be clear. The context here was not Michael Lowry; it was Denis O'Connor knowing Kevin Phelan. Nothing to do with Michael Lowry. I mean, I knew of, you know, better than anyone else, that Michael Lowry was not involved in Doncaster Rovers, but my father talked to Denis O'Connor about Kevin Phelan, I know that much now.

Q. And it didn't, in terms of perceptions at least, cause you any concern that your father and Denis O'Connor, in negotiating with Kevin Phelan, albeit as you say in respect of the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

of the different transactions or different amounts, that that might be perceived as unwise at least?

A. What do you mean by negotiation?

Q. Dealing with in respect of, you say, the sweat equity in respect of Doncaster, as far as you and your father were concerned

A. I don't think he was ever

Q. And Mr. O'Connor having an involvement with Mr. Michael Lowry and any claims which Mr. Kevin Phelan might have had on Mr. Michael Lowry in respect of different properties, if we put it that way?

A. I'm not sure whether Denis O'Connor was negotiating a settlement with Kevin Phelan. My understanding was it was solicitor to solicitor.

Q. And what did you understand, so? And again, you say you just perceived this information from your father, not in great detail what was your understanding of your father's contact with Denis O'Connor and Denis O'Connor's contact with Kevin Phelan?

A. I think it came up in discussion maybe in this room or in a break, or something, about Denis O'Connor, and I actually don't know the nature of the conversation that the detail of the conversation that they had at that time.

Generally, I'd say, Mr. Coughlan, you know, if you have a dispute with somebody and somebody can help sort it out, it doesn't matter who they are.

Q. I am not questioning that, Mr. O'Brien. What I was asking you, you were always very concerned, and rightly so, as you have given evidence in the past, of there being any inappropriate perception of a relationship between yourself

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IARTY TRIBUNAL - DAY 348

and Michael Lowry, isn't that right?

A. Well, I just look at the facts. I know that Michael Lowry never had any interest in this investment, so...

Q. If I might just, and I beg your pardon, go to the previous tab, really. It's 57. You will see the handwritten note and then the typed note. Again, it's Mr. Owen O'Connell's, and what he is setting out here are matters for himself to understand.

"1." and this relates to dealings with this Tribunal, it's headed "Moriarty".

"1. Ownership of Westferry.

2. Rights of Kevin Phelan against Westferry.

3. Denis O'Brien written instructions.

4. Letter to Kevin Phelan seeking particulars.

5. Response.

6. Letter to Kevin Phelan offering settlement.

7. Acceptance.

"Through John Mulcahy?"

Can you throw any light on it? Nobody can throw any light on it and I don't think much turns on it. Do you know if any person called John Mulcahy that might have had any discussions with Kevin Phelan?

A. I do know John Mulcahy, yes.

Q. But related to in the Kevin Phelan context?

A. I don't know how he is dropped into this.



Q. You can't throw any light on it in the context of this?

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IARTY TRIBUNAL - DAY 348

A. No.

Q. I think he had been involved as a property arbitrator in relation to something at an earlier time.

A. Maybe.

Q. But there you don't it wasn't anything that you were concerned about or had

A. No, definitely not.

Q. And then "Denis O'Connor/Christopher Vaughan re ownership of Westferry in first instance." And then, top right-hand corner, there was a Post-it: "Owen, as discussed, please copy and return to me. Denis O'Connor said Christopher Vaughan can't help re Westferry ownership but Walbrook Trustees did it I think they are DOB's people in the Isle of Man. (Deloitte's?) Sandra will know." Sandra is somebody in your own office or your father's office?

A. That's right.

Q. So what Mr. O'Connell wanted to get clear is, as you can understand from a solicitor's point of view, get it all straightened out, he wanted to establish the ownership of Westferry. Then you had to go behind that to the Walbrook Trustees and establish all of that type of information. He wanted to establish what rights Kevin Phelan had against them. Written instructions from you or your father.

Letter to Kevin Phelan seeking particulars. His response.

And a letter offering settlement. That was the process that he was suggesting, that that's the way things would be done in an appropriate manner. Was any of this brought to your attention at that time, that Mr. O'Connell was advising this course of action?

A. No. I don't remember this at all.

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IARTY TRIBUNAL - DAY 348

Q. It isn't surprising, though, is it, when you look at it?

It's what you'd expect?

A. Well, I don't know how much he knew at the time, so

Q. I don't think he knew too much at all?

A. He wanted to know who owned Westferry.

Q. Yes, that's precisely. He didn't know that. It's the type of thing you'd expect the solicitor to be doing, isn't it, if there were going to be any dealings with Kevin Phelan in relation to making any payments to him?

A. I don't know where I mean, he has a checklist of things that he wants to look through or raise or remind

Q. Not unremarkable?

A. Not particularly.

Q. And then, as a result of what he is told, we go back to the document behind the next tab, he does express a concern, but you say that this concern wasn't brought to your attention and it wasn't a concern which you would have shared, is that correct?

A. Sorry, you are going back to

Q. Yes, to 58. "Concern about Denis O'Brien making payment to Kevin Phelan in circumstances of current Tribunal where KP a potential witness (hostile to DOB)." Did you have any reason to believe that Kevin Phelan would be in any way hostile to you, as far as you were concerned?

A. No.

Q. You had dealings with him, as far as you were concerned you had no dealings with him, but as far as you were concerned, your interests had dealings with him in respect of Luton and Doncaster, as far as you were concerned, isn't that right?

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IARTY TRIBUNAL - DAY 348

A. Correct. I had no problem paying whatever it was, i.e. 1/2 150,000 sterling, to take out his potential interest or claim for 40% of the profits. It didn't matter whether he was coming to the Tribunal or not.

Q. But what I'm saying is you didn't have any concerns about him, and you didn't have any concerns about the fact that Michael Lowry might have been dealing with him as well at the same time in respect of his own affairs?

A. Well, I didn't know any of that.

Q. But you knew that your father had some contact with Denis O'Connor and that Doncaster had some contact with your father and that didn't cause you any concern, either?

A. As I have said, yes, no, it didn't cause a concern. You see, if you are me, you know the facts so you don't have

these concerns. If you are inquiring, I can see why you ask the questions.

Q. And you can see that Mr. Owen O'Connell didn't know the facts either at the time and he was asking the questions?

A. We don't know what was in his head at the time or what he knew, so he has his own little list there.

Q. Now, were you aware that there then commenced correspondence between Messrs. William Fry on behalf of Westferry Limited, which started, I think, if you look behind tab 59, a letter dated the 11th of June to Mr. Kevin Phelan at his home address, and, "We are instructed by Westferry Limited. We understand that you have certain claims against the company in relation to certain fees due to you and possibly otherwise. We would be obliged if you would let us have a note of all complaints made by you together with whatever evidence is available to you as to the Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

your entitlement so that we may advise our client as to the amount properly due to you."

That's how it started off. Were you kept informed that this correspondence was commencing?

A. All I knew is negotiations when I read this, I can see that there was two solicitors involved, one for Kevin Phelan and one for my father.

Q. Well, for Westferry Limited?

A. Or Westferry.

Q. Sorry, your father, I'll accept, your father, yes, your father was handling the matter.

A. Yes. So that's all I knew. I didn't know the detail.

Q. And just very briefly, I am not going to open it; the next document is the response to that, the next day, saying that

"We are instructed that there were outstanding fees and costs in relation to the above project. We are further instructed that there was an agreed uplift of 40% of the profit of the project. Our clients have forward 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."

So that's the response. Westferry solicitors asked them, "What's your claim?" And they say, "This is our claim in full and final settlement of fees, uplift, the whole lot, 150,000," isn't that right?

A. That's what the letter says, yes.

Q. Then, for some reason, it was sent to Mr. Denis O'Connor, le Court Reporters Ltd.

IARTY TRIBUNAL - DAY 348

the next tab, also by Messrs. Woodcock's or by Mr. Phelan on behalf of Woodcock's, and he sent it on to your father.

And then the next document, at Tab 63, is just a letter to Mr. Vanderpump of Westferry Limited from Mr. Owen O'Connell setting out sending on the claim. And I suppose, just that it's understood by the public, technically

Mr. O'Connell was taking his formal instructions from  
Mr. Vanderpump of Westferry Limited in the Isle of Man?

A. That's correct.

Q. Now, can I take it that, as you say, that you had no  
particular or you had no knowledge of any complaint made  
by Mr. Kevin Phelan to the Institute of Chartered  
Accountants in Ireland against Brian Phelan & Company. Can  
I take it that you had no knowledge of it being withdrawn  
either?

A. I don't remember when I learned of that first.

Q. Very good.

CHAIRMAN: Having regard to the hours indicated,  
Mr. Coughlan, maybe if there is just one or two short  
documents in that volume, you might conclude that, but we  
won't go beyond another five minutes or so.

MR. COUGHLAN: Yes, sir.

Q. I'll just very briefly go to the next document so,  
Mr. O'Brien. Document number 65; this is an attendance  
note on Ruth Collard. There is only one question I want to  
ask you about this. Do you see the second paragraph?

"Denis O'Brien said he had one or two questions for Ruth  
Collard. He asked about the proposal to arbitrate the  
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IARTY TRIBUNAL - DAY 348

case." This was the case involving Dinard and Westferry  
now, and she was the solicitor in Messrs. Carter-Ruck  
handling it on behalf of Westferry.

"Ruth Collard said that she was in difficulty speaking to Denis O'Brien as she was not entirely clear where he fitted in and she had to be conscious of client confidentiality."

What I am trying to establish here, is that your father or was it you she was talking to, can you help us about that?

Do you ever remember

A. I think it was my father.

Q. You think it was your father. You don't ever remember having any discussions with her?

A. No, I don't remember.

Q. All right.

MR. COUGHLAN: I'll leave it there, sir.

CHAIRMAN: In view of the hours indicated, with a view,

Mr. O'Brien, to concluding your evidence tomorrow, I think

it's sensible that we start at half past ten, if that's not

inconvenient to you, and the other remaining immediate

business will then be to read into the record, as is

required, the testimony heard on commission in London some

weeks ago of the two London lady solicitors. Very good.

Half ten tomorrow. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, THE 6TH OF JUNE, 2007, AT 10.30AM.

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