

THE TRIBUNAL RESUMED ON THE 7TH JUNE, 2007 AS FOLLOWS:

MS. O'BRIEN: Sir, today's sittings relate to examinations on commission which were conducted in London on the 17th April last, sir. And the Commission evidence was taken on foot of an order which was made by you pursuant to Section 1(C) of the Tribunals of Inquiry (Evidence) Act of 1921.

As I said, sir, the Commission proceeded and was completed on the 17th April and there were two witnesses who were examined in the course of that Commission, both of whom were solicitors who acted for Westferry Limited in the proceedings that had been instituted by Dinard Trading and which were ultimately compromised in the course of the mediation at the end of September of 2001, and both those solicitors were also involved in representing Mr. Denis O'Brien Senior in the complaint which he ultimately made to the City of London Police against Messrs. Richardson and Weaver. And the two solicitors, sir, who were examined were Ms. Ruth Collard, who is a partner in the firm of Messrs. Carter Ruck in London, and Ms. Kate McMillan, who, at the relevant time, was a solicitor with that firm and who assisted Ms. Collard in connection with both of those two matters. And you have determined, sir, that the transcript of the Commission should be adopted as evidence of the Tribunal and, on foot of that determination, the transcript will be read into the record of the Tribunal today by the registrar to the Tribunal, Ms. Siobhan Hayes.

CHAIRMAN: I think, Ms. O'Brien, at the conclusion of

yesterday's public sitting there was some brief discussion

le Court Reporters Ltd.

of an abridged procedure being considered, but I think,

having conferred with you and other members of the legal

team, it seems clear to me in law that I am probably

precluded from taking any such course and that the normal

procedure that has been laid down and that has existed for

many years whereby the registrar will read the record of

what took place in London should be adhered to. In any

event, over and above all else, we are a public tribunal

and it is the only appropriate course to take.

It's quite a long undertaking for Ms. Hayes. I think the

entire transcript runs to just fractionally over 200 pages.

So we will provisionally go on a basis of a projected two

hour sitting with perhaps a short break should she require

it in the middle and similarly in the afternoon. It will

comfortably be dealt with in the course of the day but it's

still a long undertaking and I'll have full regard to

Ms. Hayes' stamina.

MS. O'BRIEN: Very good. May it please you, sir.

CHAIRMAN: I think it's also the case, Ms. O'Brien, that

Mr. Brady, the Tribunal solicitor, was in touch with all

the interested and represented parties' legal

representatives and indicated to them the nature of what

would be taking place today and that it would in no sense

be required of them or be a necessary courtesy that they

attend. Hence the absence of the usual legal

practitioners.

le Court Reporters Ltd.

MS. O'BRIEN: Yes indeed, sir. That is the position.

CHAIRMAN: Very good. Ms. Hayes.

le Court Reporters Ltd.

THE TRANSCRIPT OF THE EVIDENCE ON COMMISSION WAS THEN READ
INTO THE RECORD AS FOLLOWS:

"THE COMMISSION COMMENCED ON THE 17TH APRIL, 2007 AS
FOLLOWS:

COMMISSIONER: Good morning, ladies and gentlemen. As
everyone is aware, we are in attendance here to receive the
Evidence on Commission of two intended witnesses in these
latter stages of the Tribunal hearings, that is to say two
London based solicitors, Ms. Ruth Collard and Ms. Kate
McMillan; an order to that effect was made on Thursday
last.

I am very much obliged to the benchers and other
authorities of the Middle Temple for making these splendid
and historic premises available and I acknowledge, also,
the very considerable assistance that has been afforded to
the Tribunal by the Irish Ambassador in London and his
staff.

In the context of representation, we have, I think, or are
in the process of acquiring what is, I think, a somewhat
truncated version of representation akin to what has been
deliberating on these matters in Dublin in recent weeks.

That is to say, it is envisaged that on behalf of Mr.

O'Brien Senior and Mr. O'Brien Junior there will be Mr. Owen McGonigal and Mr. Gerry Kelly, instructed by the two firms representing the O'Brien interests, that is to say Messrs. Fry's and Messrs. Shields & Co. I understand the Court Reporters Ltd.

there is some element of difficulty with the delayed arrival of Mr. McGonigal and Mr. Owen O'Sullivan of Fry's, but I am aware that Mr. Gerry Kelly is in attendance, as also is Mr. Tom Reynolds, formerly of Messrs. Fry's, who is representing, on an informal basis, the O'Brien interests.

I note on behalf of Mr. Michael Lowry and Mr. Denis O'Connor, who also attends in person, the attendance of Mr. Donal O'Donnell.

On behalf of the Tribunal, the representation comprises Mr. Jerry Healy and Mr. Stephen McCullough instructed by Mr. Brady, the Tribunal solicitor.

We have, and we are fortunate to have our usual capable stenography services who brought their facilities over from Dublin, but of course those present will be aware we do not have access to the real time facilities normally available in Dublin Castle.

Now, the immediate contingency that must be faced is the late arrival of Mr. McGonigal and Mr. O'Sullivan, and obviously I do not wish to take anyone short but we have considerable pressures of time, and what I envisage is perhaps allowing a short deferral, by which I mean a matter of minutes rather than hours, to see if matters can be put

in order. I do note that Mr. Kelly and Mr. Reynolds are present and no doubt, if needs be, can afford capable legal representation. I would be anxious to facilitate Mr. McGonigal and Mr. O'Sullivan but I propose a very short le Court Reporters Ltd.

deferral to see how matters proceed.

Ms. Collard, is it envisaged that Mr. Alistair Pepper of your firm is to be in attendance?

A. No, I don't believe so.

COMMISSIONER: Well, I am obliged for your statement and your assistance thus far to date and I am sorry for the inconvenience of the slightly delayed start. In these circumstances I'll rise for a short period to monitor developments and we will reappraise the situation shortly.

THE COMMISSION ADJOURNED AND RESUMED AS FOLLOWS:

COMMISSIONER: Very good, well it's now ten past ten and noting that exchanges between practitioners have indicated that Mr. McGonigal and the balance of other persons proposing to attend as legal representatives have landed quite sometime ago and are very close to being here, that it would be an inconsiderable encumbrance to delay Ms. Collard further and the initial portion of evidence, in any event, will consist of going through the statement that she has afforded, I propose to take the view that we must now proceed.

MR. KELLY: Before you go into evidence, I would just like to say a very sincere thanks for being so helpful to us in

trying to get the full team together.

COMMISSIONER: Very good. Thank you, Mr. Kelly. Well
le Court Reporters Ltd.

perhaps we'll just have Mr. Collard sworn.

le Court Reporters Ltd.

RUTH COLLARD, HAVING BEEN SWORN, WAS EXAMINED BY MR. HEALY
AS FOLLOWS:

Q. MR. HEALY: Ms. Collard, do you have a copy of the
statement that you provided to the Tribunal I think some
years ago now?

A. I don't think I do I think I'd probably rather stand
I do know, I am aware and these were draft statements and
there were three drafts in total.

Q. I think what I have here and what you should have in front
of you, I think, is the, I think what's called the 'final
draft' but what I would propose to do is to quickly read
through it. If there is anything in it that you want to
change or if there is anything that you want to revise, you
can let me know either as I am going through it if it's a
short matter or at the end if it's a long matter and then
we'll look at some of the documents and we may come back to
some of the statements at the end.

A. That's fine.

Q. This was

COMMISSIONER: Are you really happier standing?

A. I think I am for the time being. If I feel I want to sit

MR. HEALY: Anyway I think we don't have the benefit of sound men, so I think your voice mightn't carry from down there.

A. I think that's right.

Q. But if you are getting tired, don't hesitate to sit down.

le Court Reporters Ltd.

In fact we can arrange a separate table so that you won't be hidden behind the lectern.

A. I am fine really.

Q. I am reading your statement.

"The claim form. The initiating documentation for the litigation was issued initially on behalf of Dinard Trading Limited only as Claimant and against Westferry Limited as Defendant on the 12th June, 2001 and was served together with particulars of claim under cover of a letter of the same date. The defence, including a Part 20 claim by way of counterclaim, a claim for damages by Westferry against Dinard, was served on the 5th September 2001. A reply and defence to the Part 20 claim was served on 19th September, 2001. On 19th November, 2001 a hearing took place before Master Foster in the High Court at which he made directions for the future conduct of the case. These included amendment of the claim to add Shelter Trust Anstalt as an additional claimant. Amendments were made to all of the documentation filed by the parties referred to in consequence.

"Standard disclosure, that is exchange of lists of the

documents on which each party relies or which adversely affects its own or another party's case or support another party's case took place on 15th September, 2002. The stages of the litigation which were then due to follow, that is exchange of the statements of witnesses of fact upon whom the parties propose to rely, exchange of expert reports, discussions and narrowing of the issues by the le Court Reporters Ltd.

experts and finally trial fixed for 13th January, 2003 never took place as the proceedings then settled at the mediation on the 27th September, 2002. The litigation was formally brought to an end by a Court Order dated 2nd October, 2002.

"In the proceedings Dinard and Shelter sued Westferry for breach of contract in relation to their sale of shares in Doncaster Rovers Football Club Limited to Westferry in 1998. Westferry counter-claimed for the return of sums paid under the sale. Under the agreement signed by the parties in relation to the sale a substantial amount of the balance of the purchase price was retained in a joint account (the retention fund) held in the names of the solicitors for the parties including Christopher Vaughan on behalf of Westferry. My firm was not involved at that stage. The monies were retained in order to deal with various matters which were unresolved at the time of the completion of the share purchase such as, for example, tax liabilities.

"Dinard and Shelter sought, in the proceedings, payment of all of the retention fund together with a sum which they claimed Westferry had failed to pay into the retention fund together with other payments which they claimed were due.

"Westferry's counterclaim was for an amount which Westferry claimed it had agreed to pay due to a misrepresentation by a representative of Dinard and Shelter plus another sum which Westferry claimed it had paid under a mistake of fact
le Court Reporters Ltd.

plus various sums it claimed were due to be paid to it out of the retention funds.

"The initial instructions came from Craig Tallents beginning on 3rd October, 2000. I first met Aidan Phelan on 29th August, 2001 when he, together with Craig Tallents, attended a conference with counsel. I continued to take instructions from Craig Tallents after this until 21st November, 2001 when I began to take instructions from Aidan Phelan. This continued until 26th July, 2002 when I began to take instructions from John Ryall.

"From my file it appears I was first aware of any dispute between Westferry and Kevin Phelan as a result of a meeting with Craig Tallents and Aidan Phelan on 29th August, 2001. During the course of this meeting Craig Tallents told me that Kevin Phelan was alleging that neither Craig Tallents' accountancy firm nor my firm were properly instructed on behalf of Westferry and that he was the only person empowered to give instructions on behalf of that company.

Aidan Phelan also told me that Kevin Phelan was due a fee for his work as a site finder in the Doncaster Rovers deal.

"The note of the meeting states that Aidan Phelan said this was only supposed to be paid once DRFCL was sold, although I believe I understood him to mean once the land at the football ground was sold and that the fee would be no more than 40% of the sale proceeds. Aidan Phelan also said that Kevin Phelan was trying to cause trouble so that he, Aidan Phelan, would write him a cheque.

le Court Reporters Ltd.

"These two elements, that is Kevin Phelan's claim that he was empowered to give instructions on behalf of Westferry and the fact he sought payment of a fee, cropped up at various stages of the case after this. For example, Craig Tallents subsequently informed me that Kevin Phelan had lodged a complaint about him with his professional body.

"As far as the question of authority to act was concerned, I received a copy of a letter from one of the directors of Westferry confirming that Craig Tallents was authorised to act on the company's behalf. As my firm's instructions came from Craig Tallents, this resolved that issue as far as I was concerned.

"On the 19th June, 2002 I was faxed some documents by Sandra Ruttle in Denis O'Brien's office which included a draft letter to solicitors for Kevin Phelan agreeing to pay him a sum of money in full and final settlement of his claims relating to the Doncaster Rovers deal and a

preceding letter from those solicitors seeking payment of this sum. I discussed this with Denis O'Brien on the 20th June and with Aidan Phelan on the 24th June, 2002. My notes of those conversations show that I had some concern about the settlement in relation to Kevin Phelan's claim for fees being represented as connected to his agreeing to give evidence in the proceedings on behalf of Westferry and that Aidan Phelan reassured me in connection with this. I do not know if this payment was made but I assume that it was and that it resolved the dispute over fees with Kevin le Court Reporters Ltd.

Phelan, as I do not recall that I heard anything about this thereafter except that at our meeting on 10th September, 2002 Denis O'Connor mentioned that he had been trying to 'sort out' the position with Kevin Phelan on behalf of Denis O'Brien.

"During the course of the case there were various discussions between myself, Craig Tallents, Aidan Phelan and our counsel, Richard Lord about the possibility of calling Kevin Phelan to give evidence. From the time of the meeting on the 29th August, 2001 it appeared to me unlikely that he would be prepared to appear as a witness for Westferry. This was reinforced by the fact on the 11th March, 2002 I was sent a copy of a letter from Christopher Vaughan to Aidan Phelan in which Christopher Vaughan said that during the course of a meeting he had had with Mark Weaver, a representative of Dinard, Mark Weaver had hinted

that Kevin Phelan had been assisting them in the case. I note that on 2nd May, 2002 my assistant Kate McMillan had a conversation with Aidan Phelan during which he told her he might be able to get Kevin Phelan to give a witness statement and evidence at trial, but nothing further came of this as far as I was aware.

"In the meeting I had with Denis O'Connor on the 10th September, 2002 he informed me that Kevin Phelan would now be a witness for Westferry. At an earlier stage of the meeting he had told me he had been in discussions with Kevin Phelan. I noted that my response to this was that he would be a much discredited witness and that even if he was the Court Reporters Ltd.

able to us, I was not sure we would want to use him. I understood the purpose of the meeting with Denis O'Connor on the 10th September, 2002 to be to discuss a potential means of settling the litigation which Denis O'Connor might be able to help with. Craig Tallents and I were to take him through the main points of the litigation and brief him for a meeting he was going to attend with Ken Richardson. So far as my understanding of the capacity in which he attended the meeting was concerned, having looked at my file, this is not straightforward.

"I note that in an e-mail dated 3rd September, 2002 John Ryall told me that 'Denis O'Connor is not representing either Westferry or Dinard but he may be able to assist in resolving matters.' However, at some point prior to the

meeting a week later my understanding of this changed, as by the time of the meeting both Craig Tallents and I believed Denis O'Connor to be acting as a representative of Westferry. I cannot see from my file when it was that my understanding changed but in a telephone conversation with John Ryall on 16th September, 2002 and in a letter to John Ryall dated 17th September, 2002 I said that I had understood from him that this was the case. I assume from this that we had a conversation at some time after his e-mail of 3rd September, 2002 and before the meeting on the 10th September, 2002 from which this understanding derived.

"I now believe, however, that there was in fact a misunderstanding between John Ryall and I about this, as when I raised this in my conversation with him on the 16th le Court Reporters Ltd.

September, 2002, he said Denis O'Connor was not representing Westferry and he had said the same to Craig Tallents that day.

"I confirm that the attendance note on my file of the meeting on the 10th September, 2002 is an accurate record of the meeting. It is obviously not a verbatim account but represents an accurate record of the main matters which were discussed. From my file it is clear that after the meeting I received a fax from Denis O'Connor on the 11th September, 2002 and that we spoke that evening. On the 12th, 13th and 16th September, 2002 we exchanged e-mails. He was trying to come to grips with issues in the

litigation and he asked me a number of specific questions.

"I note from my file that in a telephone conversation with Craig Tallents on 2nd September, 2002 he informed me that Denis O'Connor had a meeting with Ken Richardson in Manchester on 2nd September, 2002. At our meeting on the 10th September, 2002 Denis O'Connor told us that a meeting had been arranged with Ken Richardson and Mark Weaver first in Manchester and then in Dublin. My note does not record any dates for the meeting. In an e-mail sent to me on the 16th September, 2002 Denis O'Connor told me 'we' I assume himself, Ken Richardson and Mark Weaver, 'are trying to establish meeting for this coming Friday morning, that is 20th September 2002.'

"I believe that following my letter to John Ryall dated 16th September, 2002 he and/or Denis O'Brien contacted le Court Reporters Ltd.

Denis O'Connor and that the proposed meeting never went ahead. I understood the purpose of the proposed meeting to be the discussion of a possible settlement of the litigation.

"I became concerned in relation to Denis O'Connor and his attendance at the proposed meeting when Craig Tallents told me that contrary to our understanding he was not acting as a representative of Westferry. I considered that in view of this, before he attended the meeting, we should clarify with him what he saw as his role and what he hoped to attain himself as a result of the meeting, seek an

undertaking him in writing not to disclose any confidential information or make any concessions on behalf of Westferry and require him to agree with Dinard and Shelter in writing before the meeting that it would take place on a without prejudice basis.

"I wrote to John Ryall on 17th September, 2002 setting out my views. Following my letter dated 17th September, 2002, John Ryall asked me to draft an undertaking which could be given by Denis O'Connor and an agreement for Dinard and Shelter to sign. I did so and sent this to him under cover of a further letter dated 17th September, 2002. I later spoke to John Ryall and he told me that the meeting was not likely to go ahead as Denis O'Connor would not sign the undertaking. I do not believe I heard anything more about Denis O'Connor or the meeting after that.

"The meeting was attended by, on Westferry's side, myself, le Court Reporters Ltd.

my assistant Kate McMillan, our counsel Richard Lord, Denis O'Brien, John Ryall and Craig Tallents. On Dinard/Shelter's side, their solicitor Reg Ashworth, their counsel Peter Cranfield, Ken Richardson and Mark Weaver and the Mediator Michael Kallpetis. The events which took place at the mediation and the terms on which the litigation was compromised are both subject to obligations of confidentiality.

"I have no knowledge of any other involvement of Denis O'Connor in the litigation or any other aspect of the

Doncaster Rovers Football Club project. I believe I was first told about this letter by Denis O'Brien on 26th September, 2002, the day before the mediation, when we met at my offices.

"I now note, however, that reference is made to what must be this letter in a letter from Christopher Vaughan to Aidan Phelan dated 19th September, 2002 which I received on the 11th March, 2002. In this letter Christopher Vaughan described a meeting which he had had the previous day with Mark Weaver during which he said Mark Weaver had stated he had a letter written by Christopher Vaughan which indicated that Michael Lowry was involved in DRFC. I should also add that for the purposes of the litigation, Christopher Vaughan's files relating to the purchase were passed to my firm and I later discovered, after September 2002, that these included a copy of the letter dated 25th September, 1998. Although my assistant went through these files in early 2002, this was for the purposes of disclosure, and as le Court Reporters Ltd.

this letter was not a disclosable document I do not believe she ascribed any significance to it at the time and she certainly did not draw it to my attention.

"I believe I discussed the letter with Denis O'Brien, John Ryall, Craig Tallents and Richard Lord at our meeting on the 26th September, 2002. I discussed it subsequently with Denis O'Brien, John Ryall and members of the Metropolitan Police in connection with for the complaint of blackmail

made by Denis O'Brien in relation to events at the mediation on the 27th September 2002."

Just to take up a point you make at the latter part of your statement, Ms. Collard. You mention when your firm first became involved in the litigation and you go on to mention the acquisition by your firm of Christopher Vaughan's files. Now, you say that you didn't examine the files when they came in, is that right?

A. Certainly not in detail.

Q. Yes, all right. When you say that your assistant examined them, do you mean Kate McMillan?

A. I do.

Q. And at that stage had you been given an overview of what the dispute was or what the files contained by anybody else? Had your clients instructing you given you an account what the transaction involved in general?

A. Yes. I mean, I am trying to remember when the files came to us. We certainly had papers from Christopher Vaughan, I think at a reasonably early stage, some papers. When all of his files came to us, I'm not sure. It should be
le Court Reporters Ltd.

evident from my file somewhere. They were certainly with us by the time we were going through papers for the purposes of disclosure. Whether we had everything before then, I don't know. But obviously by the time we got to disclosure I knew quite a lot about the case.

Q. And from subsequently checking the file perhaps at a time

when the letter of the 25th September, 1998 would have made more sense to you, you found an office copy of it on the file?

A. That's right. Either I did or I asked Kate McMillan to.

Q. I suppose you are not likely to remember this but I'll just ask you in case you do. Near that letter on Christopher Vaughan's file, I think perhaps the next letter on the file, is a letter to Aidan Phelan with a line drawn across it indicating, according to Christopher Vaughan, that it hadn't been sent, relating to some of the matters mentioned in the letter to Michael Lowry. Does that ring a bell with you?

A. It doesn't, I am afraid.

Q. Now, in the course of your statement you refer to, I think, a document which is contained in Leaf 1 of the Book of Documents which doesn't in fact have a number. It says "Documents re evidence of Ruth Collard and Kate McMillan." It's sort of a shortened version or a much truncated version of a larger set of Tribunal documents.

A. Right. This one I think.

Q. I think for the record it makes sense to call that Book 84, I think. Just so that you can orientate yourself, you see that that leaf contains a fax from the Isle of Man, from Aidan Phelan, concerning trouble he was having by way of le Court Reporters Ltd. correspondence sent by Mark Weaver to Mr. Ned Carroll, a former partner of his, and also a letter from Christopher

Vaughan documenting a meeting he had had with Mark Weaver some time prior to the fax, which is dated 11th March, 2002?

A. Yes.

Q. Now, if you just go to, I think it's probably the last document in the fax, which is Christopher Vaughan's letter to Mr. Phelan of the 19th February, 2002?

A. Yes.

Q. In your statement you allude to that letter again at a time when you, I suppose, examined it, maybe with the benefit of 20:20 hindsight, would that be right?

A. Yes.

Q. And in examining it retrospectively, you discerned, and I think correctly, that Christopher Vaughan referred to Mark Weaver describing a letter which he did not produce or a copy of which he did not produce but which he said connected Michael Lowry with the Doncaster transaction?

A. Yes, I am trying to find the reference to that.

Q. I'll find it for you.

A. I have got it. It's at the top of the

Q. If you go to the fourth page, second paragraph: "Mark Weaver then went on to talk about the other letter that had also been sent to him anonymously and which he would not show me but which apparently was written by me and indicated that Michael Lowry was involved in DRFC and that both letters, the one of the 23rd August 1998 and the one which I did not see, were in the possession of Colm Keena

amongst other documents and that the reporter was trying to
le Court Reporters Ltd.

make out some sort of case to prove that Michael Lowry had
lied on oath at the Tribunal about his involvement at
DRFC."

A. Yes.

Q. That's the second letter that's referred to there. But if
you leave the letter aside for a moment, Christopher
Vaughan is referring, do I take it for the first time in
your file, to Michael Lowry and allegations or suggestions
that he may have been involved in the Doncaster Rovers
transaction?

A. To the best of my recollection, yes.

Q. And had you heard anything to that effect, do you think, in
the course of conversation with your clients prior to that?

A. I don't recall that, no.

Q. Now, if you look at the next paragraph there is also a
reference to it, and I am going to try to avoid going
through chapter and verse in these letters to save time,
but if you look at the next paragraph he refers again to
something which apparently connected Michael Lowry to DRFC.

And if you go onto the next paragraph there is a reference
to this Tribunal. And if you go onto the second-last
paragraph on the next page, Mr. Vaughan says, "On the other
hand, I found his knowledge of the Moriarty Tribunal and
the veiled threats to Michael Lowry in that Colm Keena had
a lot of information which the Tribunal would be interested

in and suggesting that there could be some form of private prosecution against Paul May to be slightly threatening.

On balance, I think it is more than likely that Kevin Phelan was somehow behind this visit than not."

le Court Reporters Ltd.

Would you agree with me that the letter, the second half of the letter in any case, suggests that trouble is being made for Christopher Vaughan, and possibly for your clients as well, for Mr. Aidan Phelan in view of the fact that he sent you the letter, and for Westferry arising from suggestions that Michael Lowry was connected with the Doncaster transaction?

A. Yes, that certainly appears to be the case.

Q. And do you recall whether at that time that wouldn't have prompted an inquiry from you to Aidan Phelan: What's all this business about Michael Lowry and Doncaster, threats and so on?

A. It may have done. I don't remember I remember all of this material coming up and being rather confusing but I also remember I was quite focused on the litigation and dealing with that, and beyond these rather odd individuals, Mark Weaver and Kevin Phelan who seem to be drifting about and making trouble, I wasn't terribly interested apart from perhaps trying to shut them down. And I know that at some stage, I can't remember if it was after this or at some other stage, I wrote to Ashworth, the solicitor for

Q. You did, yes.

A. Dinard, basically trying to put a stop to this sort of issue, but I don't remember taking a huge amount of interest in it otherwise because it didn't seem to be impinging directly on the litigation.

Q. I suppose the person you'd have more likely than not taken it up with was Aidan Phelan in view of the fact that he sent you the letters, not in a way as part of your instructions or something that he wanted you to take on the Court Reporters Ltd.

board in the context of the litigation, but as part of your instructions in relation to what he believed was sort of harassment, would that be right, that he was getting from Richardson and Weaver and Kevin Phelan maybe?

A. I think I probably discussed it with him but, yes, I mean it wasn't immediately relevant to the litigation.

Q. No, but you did respond. You responded to Reg Ashworth. You said, "Look, please stop this. We'll have to put up with these people. We are conducting litigation. Let's do it within the parameters of the litigation process" and so on. But you don't recall going beyond it in terms of your discussions with Aidan Phelan to obtain more instructions from him as to what was happening?

A. I don't recall that.

Q. If you go on to Document 4 for a moment please. This is an attendance of yours of the 20th June, 2002. It says "RC attending a call-in from Denis O'Brien." Do you have that document?

A. Yes.

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

DOB said he has one or two questions for RC. He asked about the proposal to arbitrate the case" and you go on to explain how the arbitration process worked. You also

indicated that you had to be conscious of client

confidentiality and you were seeking to establish his role

in relation to the Wellington Trust in relation to

Westferry and so on which, as we now know, is owned by the

le Court Reporters Ltd.

Wellington Trust which is primarily owned by his son; isn't

that right?

A. Yes.

Q. "DOB said they were currently in this position with Kevin Phelan and had a letter from Reg Ashworth to him. DOB said

he refused to talk to Kevin Phelan himself but through an

intermediary has asked Kevin Phelan what the current

position was following that letter and whether he was going

to be a witness. Ruth Collard said what Denis O'Brien was

mentioning made her extremely uncomfortable. She asked if

the letter he was referring to was one from Reg Ashworth to

Kevin Phelan. Denis O'Brien said it was and he could fax

it through. Ruth Collard said she did not want to see it.

She asked how it was we had got hold of such a letter and

said that it was privileged. In addition, what Denis O'Brien had said about Kevin Phelan being a witness concerned her. This was why she wanted to discuss the matter with Aidan Phelan. Any payment made which could be represented to be in connection with KP's evidence in this matter would be improper and a serious matter. Denis O'Brien said it was not to do with him being a witness but that he was not going to reach a settlement with him on the outstanding fees when it appeared that Kevin Phelan was going to give hostile evidence. Ruth Collard said this concerned her and she was concerned about how it could be presented. She did need to discuss it with Aidan Phelan. Denis O'Brien reiterated that he had left a message for Aidan Phelan and hoped he would contact Ruth Collard soon."

Now, I think from your statement it's clear that

le Court Reporters Ltd.

subsequently you were sent correspondence referring to this dispute, isn't that right? Sorry, that previously, I beg your pardon

A. Yes, I think it was before this.

Q. On the 19th June you had received correspondence referring to this dispute?

A. That's right.

Q. And from that correspondence, which I don't think I need to go into it, it seems that a dispute with Kevin Phelan was being settled with a payment of $\frac{1}{2}$ 150,000. Now, you had obviously enough on your plate in relation to the

litigation but do you recall do you recall did you ever were you ever kept up to speed on what prompted that payment or what was the reason for that payment other than outstanding fees? You know, were you told there had been a falling out between Kevin Phelan and the O'Briens?

A. I mean, I was aware that Kevin Phelan was pursuing Aidan Phelan in particular for outstanding fees and that Kevin Phelan, the various problems he was creating like reporting Craig Tallents and Christopher Vaughan to their professional bodies probably arose from his annoyance over that dispute. I don't think I was ever aware that there was anything other than that to the whole matter.

Q. Were you ever aware that Aidan Phelan did not regard Kevin Phelan as being due any monies at all?

A. I think he may have told me that in a conversation just after this, did he?

Q. Well

A. I can't remember. I know I had that conversation with him.

Q. We'll just come to it. It might be of assistance so that the Court Reporters Ltd.

we can discuss the whole thing.

A. You know, I also I think this issue first cropped up, I could be wrong about this but my recollection is this issue first cropped up when I first met Aidan Phelan. He came over for a conference with counsel which was the occasion I first met him and there was some discussion about Kevin Phelan at that stage and I think he may have told me then

that Kevin Phelan was claiming he was due a fee. Yes, as I say, I think that's the first occasion I was aware of it.

Q. Aidan Phelan has given evidence that as far as he was concerned, Kevin Phelan was due nothing, not a penny.

A. Right.

Q. And I suppose in those circumstances you'd be surprised that he was being paid $\frac{1}{2}$ 150,000?

A. I suppose I would, although obviously different people might take a different view of whether or not he was due a fee. I can't remember if Aidan Phelan told me that at the time but quite possibly he did.

Q. Right.

A. I do remember the letter that was sent to me by Sandra Ruttle, I think, to the solicitors, to Kevin Phelan's solicitors did arrive out of the blue and there had been no build-up discussion to that. There had been this conversation with Aidan Phelan, as I say, when he came over for the conference, I believe. It may have cropped up to some extent after that but I do remember there was nothing, to me, that preceded this letter immediately. The letter just arrived.

Q. Do you mean that in the beginning you heard there was a row between Kevin Phelan or a dispute between Kevin Phelan and the Court Reporters Ltd.

Aidan Phelan about fees and the next time the matter cropped up, you get a letter showing he has been paid $\frac{1}{2}$ 150,000?

A. It may not have been the very next time, there may have been something else in the meantime but yes, essentially.

Q. If you just go onto the next leaf we'll come to the document you may have been referring to a moment ago.

A. Yes.

Q. This is the 24th June, a few days after the previous attendance when you have received a call from Aidan Phelan, and if you come to the second paragraph: "Aidan Phelan said he had messages that Ruth Collard wanted to contact him about a payment to Kevin Phelan. He had not yet spoken to Denis O'Brien about this. Ruth Collard said she had received telephone calls first from Sandra Ruttle and then from Denis O'Brien. Not really knowing what their involvement was, she had been a little wary about speaking to them. AP said that Denis O'Brien was behind Westferry. In fact he was the principal shareholder. AP was a shareholder as well and ran the company for Denis O'Brien. Sandra Ruttle ran Denis O'Brien's financial affairs. Denis O'Brien was extremely wealthy having sold his company to British Telecom for 2.9 million."

Can I just clarify one thing here? You understand that Denis O'Brien and Denis O'Brien Senior are father and son, and the it was Mr. Denis O'Brien and not Mr. Denis O'Brien Senior who was responsible for the very highly successful telephone company that sold out to BT? You understand did you understand that distinction at the le Court Reporters Ltd.

time?

A. No I didn't. I do understand that now. At the time, no, I didn't understand and I don't know if anyone made it clear to me at this point. So, yes, there is undoubtedly a little bit of confusion.

Q. It's the same DOB all the time?

A. Well, it certainly I believed there was simply one Denis O'Brien; that he was the gentleman I had spoken to a few days before and that this was the gentleman about whom Aidan Phelan was talking.

Q. All right. Okay.

A. But obviously I understood shortly afterwards that was not the case.

Q. "Ruth Collard asked about the payment to Kevin Phelan. Aidan Phelan said that Kevin Phelan had persistently been asking for a fee and had, as Ruth Collard knew, been making trouble in the litigation. Ruth Collard said she was aware of this. What concerned her was whether any settlement with Kevin Phelan had anything to do with him being a witness either for our side or for theirs. Ruth Collard said such an arrangement would be a criminal offence.

Aidan Phelan said there was no question of this, they were simply paying him a fee to go away. Aidan Phelan said he personally was against this and any negotiations with Kevin Phelan but Denis O'Brien wanted to sort the matter out.

Ruth Collard said Denis O'Brien had mentioned something to her about Kevin Phelan being a witness which had concerned

her. She reiterated that any payment connected with this would be a criminal offence and a contempt of court. Aidan Phelan said he understood this and would make that point to the Court Reporters Ltd.

Denis O'Brien Senior in no uncertain terms and would revert to her later on today" presumably meaning later on that day. There is no further note of him having reverted to you later on that day. Does that mean that he probably didn't?

A. Probably. I don't remember.

Q. I think there is no continuous note on the file suggesting that he got back to you about it soon afterwards?

A. I don't remember anything further about this, I must say. So, quite possibly he didn't.

Q. When you were discussing this with Mr. Aidan Phelan

COMMISSIONER: Mr. Healy, I might just note the arrival of Mr. McGonigal and his two instructing solicitors.

MR. MCGONIGAL: I do apologise, Commissioner, for being so late but unfortunately there was a technical delay.

COMMISSIONER: These matters can happen, Mr. McGonigal. We deferred matters for a period and matters haven't proceeded greatly beyond simply going through Ms. Collard's statement. Thank you.

Q. MR. HEALY: At that time, the time that you made that you had the benefit at this time, the time you made this note, of having had sight of the letters in which the amount of the settlement was mentioned, is it 150,000?

A. Yes.

Q. I suppose you assumed Aidan Phelan was aware of that as well?

le Court Reporters Ltd.

A. I am sure I would have done, yes.

Q. If you look at your own note, your handwritten note do you have your handwritten notes? I'll get you a copy if you haven't.

A. I don't know, unless they are are they in the file? I think they might be at the very back.

Q. Yes, but I am sure it will be easier to read them if you have them separately. If you go to your numbered page 2 of your manuscript, do you have the manuscript as well as the typed?

A. I have just the typed but I think the manuscript are at the back.

Q. It's in you leave yours there so you can have them both at the same time; it's much easier. On page 2 of the manuscript you have a date 24/6 AP, it looks like a telephone attendance; is that right?

A. Yeah, that means telephone in.

Q. And then if you go to the typed version, which I think is easier to read, you say "AP telephone in" I presume 12 minutes or something like that.

"Away in Canaries.

In Dublin.

Not spoken to Denis O'Brien principal shareholder in

Westferry, behind Westferry" that's picked up in your typed attendance.

A. Yes.

Q. "I am a shareholder as well.

Run it for him.

He is the guy writing the cheques.

KP issue affected him.

le Court Reporters Ltd.

Negotiations I not a party."

Now, that seems to suggest that the Kevin Phelan issue was affecting Denis O'Brien presumably as well as Aidan Phelan,

isn't that right, is that the subtext? But that Aidan

Phelan, you see that, was not a party to the negotiations.

A. Yes. This obviously hasn't made it into the typed note which maybe I was not entirely sure what he meant.

Certainly it appears to me from this that he is saying

Aidan Phelan was not a party to the negotiations. Quite

what he means by "KP issue affected him," I don't know. I can't recall.

Q. Well, if you look at it from the point of view of the

information that you had that he didn't have and the

information that he had that you didn't have I think this

might make sense. He knew that when he uses the term

"Denis O'Brien" he knew which of the Denis O'Briens he was referring to, the father or the son.

A. Right.

Q. He says "Denis O'Brien principal shareholder". You have

"Denis O'Brien principal shareholder behind Westferry. I am a shareholder as well. Run it for him." He is running it for Denis O'Brien, Mr. Denis O'Brien Senior's son.

A. Yes.

Q. "He is the guy writing the cheques," he is the man with the money behind it. "KP issue affected him" meaning the Kevin Phelan issue affected Denis O'Brien as opposed to Denis O'Brien Senior.

A. Right.

Q. Who had a role in all of this but, if you like, a le Court Reporters Ltd. management role as opposed to a pure ownership role, if you know what I mean?

A. Denis O'Brien Senior?

Q. Yes.

A. Right.

Q. Then "Negotiations" presumably referring to the negotiations of which you were aware from the documents you had received some days previously; you would have been aware from those documents the sum involved was 150,000.

Then it says "I not a part." Do you see that?

A. Yes.

Q. Meaning, presumably, that Aidan Phelan was not involved in or was not certainly participating in those negotiations?

A. Yes.

Q. If you go onto the next part of the note it says "Knew litigation going on." That presumably must mean Kevin

Phelan knew that litigation was going on. Aidan Phelan

must have known the litigation was going on?

A. Aidan Phelan or Kevin?

Q. Aidan Phelan had to know the litigation was going on?

A. They both did.

Q. The O'Briens knew the litigation was going on; they were parties. Kevin Phelan was not a named party in the litigation, so

A. He obviously knew it was going on.

Q. So it must have been him that's being referred to?

A. I assume so, yes.

Q. "Could they bind him into overall settlement?" Now, do you see that?

A. I do.

le Court Reporters Ltd.

Q. That's not reflected in the printed attendance.

A. No.

Q. But it is reflected in other documents the Tribunal has seen from the files of William Fry in which apparently suggestions were being made of some major settlement involving Kevin Phelan and the O'Briens and even Michael Lowry. Were you aware of any of that?

A. No. I think, again I don't know why this didn't make it into my note, probably because when I came to look at my handwritten notes I didn't understand what it meant. I think I would have taken this to mean an overall settlement of the litigation.

Q. Yeah, but why would Kevin Phelan be bound into an overall settlement of the litigation?

A. That, I don't understand.

Q. Now, just before we pass on, could I just ask you, if we just digress for a moment, to explain your practice in relation to note taking and subsequent, presumably, dictation of your notes on to a typed attendance?

A. Right. Well, all of the notes that I have transcribed here were obviously taken by me personally, which obviously was the case with telephone conversations. Meetings I would generally have a note taker there. What my practice is to, well obviously I take the note during the meeting or telephone conversation and then dictate subsequently. I try to make the dictation as soon after as possible, that is within a few days.

Q. So your note, contains, presumably, key words?

A. It tends to contain the headlines. I must say sometimes I find I am writing down things that I don't find are
le Court Reporters Ltd.

terribly relevant and missing out things that are because I tend to get carried away, perhaps, with the conversation or the meeting. But the attempt is to you know, for example, I have noted that Aidan Phelan was away in the Canaries and that's not a particularly pertinent piece of information. I tend to try and note the headlines and then use those to prompt my memory when I come to dictate the full note.

Q. I'll ask you now to go to Document Number 8 please. This is an attendance of a call to you from Craig Tallents. It says "RC attended a call-in from Craig Tallents. Craig Tallents said he had been having various conversations with Aidan Phelan and John Ryall and Sandra Ruttle in Denis O'Brien's office. The upshot of this was that he was travelling to Dublin on the 15th and 16th September to discuss matters in advance of the mediation. He had also been in communication with Denis O'Connor who is an accountant at Brophy Butler Thornton and he had coordinated the settlement of Kevin Phelan. He asked if Ruth Collard had come across Denis O'Connor and she had said she had not. Craig Tallents said he had received a letter from Denis O'Connor. He read out this to Craig Tallents. In the letter Denis O'Connor asked to be sent documents regarding claims and counterclaims in the litigation and had a meeting with Craig Tallents and Ruth Collard on 10th September. Craig Tallents asked how Ruth Collard felt about this. Ruth Collard said she would need to know that he had the authority of Westferry before she could discuss matters with him. Craig Tallents said he had had the same reaction and he would follow this up. He had been told by le Court Reporters Ltd.

Denis O'Connor's office that he had a meeting with Richardson in Manchester on the 12th September. Presumably this was with a view to sorting matters out. Ruth Collard said as she had always advised if some settlement could be

brokered this would be in Westferry's best interest. This was the reason for the mediation. She was not opposed to negotiations taking place direct between the clients but they needed to keep us informed about what was going on. CT asked Ruth Collard to pencil in a meeting for 10th September and to wait to hear from him once he had further communicated with Denis O'Connor."

Do I take it that when you refer to your communication from Craig Tallents that Denis O'Connor was an accountant who had co-ordinated the settlement with Kevin Phelan, that you understood that to mean that he had co-ordinated the settlement of which you had been given some knowledge or some information some months, was it, previously or days, months previously; isn't that right?

A. Yes. I didn't know about anything else, so, yes.

Q. If you now go to Leaf 13, please. This is a note of your meeting with Denis O'Connor, the meeting that Craig Tallents referred to in the earlier attendance and which was eventually set up for the 10th September, 2002 at your offices in London.

A. Yes.

Q. And you say "Ruth Collard attending meeting with Craig Tallents and Denis O'Connor. Discussing the litigation generally with Craig Tallents prior to Denis O'Connor's arrival. Denis O'Connor said he would explain how he had le Court Reporters Ltd. become involved in the matter. He had been trying to sort

out on Denis O'Brien's behalf the position with Kevin Phelan. Denis O'Connor had represented someone who had been in partnership with Kevin Phelan and Kevin Phelan had made trouble for him at the same time. In discussions with Kevin Phelan he had mentioned the litigation and the position with the retention fund. At one point Kevin Phelan had told him that he had spoken to Mark Weaver who had said that he would drop the $\text{€}250,000$ claim if Westferry handed offer the retention fund and dropped the payroll claim. He would do this for an uplift of $\text{€}25,000$ and in return for an opportunity to sell the stadium at Doncaster. Ruth Collard said what was meant by an uplift and Denis O'Connor said he had no idea. Denis O'Connor said he was also representing a member of the Irish parliament, Michael Lowry, he was being investigated as part of the Moriarty Tribunal proceedings in Dublin. Kevin Phelan had made various threats to cause trouble for Michael Lowry. Denis O'Connor said he had discussed the position with Denis O'Brien and learned about the mediation which was to take place. Denis O'Brien had said to Denis O'Connor that the Mediator would impose a binding agreement on the parties. Denis O'Connor said when he had said this to Kevin Phelan that Kevin Phelan said this was not correct and had telephoned Mark Weaver who had sent a fax through of part of the mediation documents. Denis O'Connor said it was clear from this that the Mediator would not impose his decision. Ruth Collard said this was correct and was the

essence of mediation. She was surprised that Denis O'Brien had apparently not understood this as it had been made clear to Aidan Phelan on several occasions.

le Court Reporters Ltd.

clear to Aidan Phelan on several occasions.
"Denis O'Connor said the upshot of all his discussions with Denis O'Brien and Kevin Phelan had been that he had been asked if he would be prepared to meet Ken Richardson and Mark Weaver and at Denis O'Brien's request a meeting had been arranged, first in Manchester and then in Dublin.

Denis O'Connor said from all he had heard if his discussions with Ken Richardson and Mark Weaver to settle the matter were not successful and it went to mediation, the mediation would fail. He said that the other side were laughing at us and that they would ensure that the mediation did not succeed and would then take the matter to court. They wanted to cause the maximum embarrassment for Denis O'Brien and for others including Michael Lowry. Ruth Collard asked how they could cause any embarrassment Michael Lowry as so far as she was aware he had no connection with the proceedings.

"Denis O'Connor said Michael Lowry did have a connection and that he had been in the room when discussions had taken place between Kevin Phelan and Ken Richardson regarding the lease. Ruth Collard said no one had ever suggested that to her previously. Ruth Collard said that the position was that we had been trying to talk to them about a settlement for nearly a year. Ruth Collard said that their legal

advisers, Reg Ashworth and their counsel seemed keen to talk about a settlement but Reg Ashworth had always said to her that his clients would not settle. We had seen their agreement to the mediation as a major step forward. Ruth le Court Reporters Ltd.

Collard said that Denis O'Connor might say they were laughing at us in relation to this but her experience of mediations was that they often did achieve settlements and Ken Richardson and Mark Weaver would find that they came under a lot of pressure from their lawyers and from the Mediator to settle if a reasonable deal was put to them.

If they did not settle Ruth Collard did not regard their threats to expose various matters in court particularly seriously. If the mediation failed and the case went forward we would be making a substantial payment into the court at an early stage. If they wanted they could go on after this but if our payment was well judged, it would put enormous pressure on them and it would be very expensive if they failed to beat the sum they paid in. Ruth Collard said she was telling Denis O'Connor this so that he should not be too impressed by what Kevin Phelan was telling him.

"The fact was that there were merits in their claim and vulnerabilities in our case but they also had vulnerabilities and we were not without resources. Ruth Collard said it was very important that we did not appear desperate to settle. Denis O'Connor said he understood this. He said it would be helpful if he could have an

outline of the factual matters. Ruth Collard said she would ask Craig Tallents to explain the background to the litigation and he could explain the accountancy issues.

Craig Tallents then ran through the background dividing the matter into three issues, the retention fund, the claim in respect of the lease and our claim in respect of the payroll warranty. Denis O'Connor said he now began to le Court Reporters Ltd.

appreciate that the issues were extremely complex. He wondered how he would be fully briefed prior to the meeting taking place agreeing that Denis O'Connor needed a further briefing and that Ruth Collard would prepare a file for him consisting of Craig Tallents' original briefing documents in the pleadings.

"At the conclusion of the meeting Ruth Collard reiterated that Denis O'Connor should not be too impressed by the threats he had heard. If the mediation did not work then that would be a pity but we would move on. Denis O'Connor said that one good thing that was Kevin Phelan would now be a witness for us. Ruth Collard said it might be helpful if he would not be available to the other side but he would be a much discredited witness and she was far from sure we would want to use him, finally impressing on Denis O'Connor that it was essential that any meeting took place without prejudice. Denis O'Connor said he understood that. Ruth Collard said she could not emphasise too highly how important this was. Otherwise Denis O'Connor might make

some concessions of behalf of Denis O'Brien which, if the matter did not settle, would prove extremely difficult to cope with in the ongoing proceedings."

Now, at that point I think, judging from your statement and from the other documents we have seen, you understood that Denis O'Connor was going to become involved as a negotiator but as somebody representing the Westferry side?

A. Yes.

Q. That he had, as it were, access to the other side. He had the Court Reporters Ltd.

some relationship with them that would enable him to perhaps resolve the dispute without going to either mediation or litigation?

A. Yes.

Q. But that he would be approaching it as a representative of or as a person on the same side as the Westferry lawyers in the context?

MR. McGONIGAL: I wonder if that's right, Mr. Commissioner?

If they could refer to the meeting, the letter of the 9th September, Tab 9.

COMMISSIONER: All right.

MR. HEALY: Yes, I appreciate that. We have been through that in the statement earlier. I'll be coming back to it.

MR. McGONIGAL: It doesn't seem to me you are going through it properly.

Q. MR. HEALY: That's what that statement that I have just read out means, that's what you thought?

A. That's what I thought. I mean, I now think I was wrong but that is what I thought.

Q. And in your statement you refer to the document

Mr. McGonigal has just referred me to, the fact that

earlier John Ryall had said to you that Denis O'Connor was

not representing either Westferry or Dinard but might be

able to assist in resolving matters?

A. Yes, that's his e-mail to me.

le Court Reporters Ltd.

Q. That's the earlier e-mail?

A. Yes.

Q. And you had what you believed to have been a very frank

exchange with Denis O'Connor?

A. Yes.

Q. I mean, clearly your understanding of what transpired

between you makes it clear that you believed you were at

liberty to explain your tactical approach to the matter as

well as providing him with the accountancy papers to enable

him to make some specific accountancy, or to form some

specific accountancy appreciation of the numbers aspect of

the dispute; isn't that right?

A. Yes.

Q. And Craig Tallents appears to have been of the same view at

the time?

A. Yes.

Q. Do you think that was because you had represented to Craig

Tallents that Denis O'Connor was somebody that you could

deal with as somebody on the same side as Westferry or do you think it was because Craig Tallents had independently come to the same view as you had apparently come to?

A. I think it was an independent, he had come to that view independently. As to how I came to that view, either I had a further conversation with John Ryall, I believe, but I have no note of that, or I had or in some way it was a conversation with Craig Tallents. I am very clear Craig Tallents had that view independently of me, so that is a possibility.

Q. Because there is no doubt that what impression you had at that stage completely flies in the face of the John Ryall le Court Reporters Ltd.

telephone conversation; isn't that right?

A. It does, I accept that.

Q. Or e-mail?

A. That's why I say I think I am wrong, I was wrong. So that if I did have a further conversation with John Ryall, I must have misunderstood him because John Ryall made that very clear statement to me on the 3rd September, and when both Craig and I talked to him about this subsequently, he remained very clear about that and his position didn't change. So if it was from John that I derived that impression, I was obviously mistaken.

Q. If we could just go on for a moment before we deal with the content of that attendance, if you'd go on to Leaf 20 please. This is an attendance of yours on Craig Tallents

dealing with the same matters.

A. Yes.

Q. "Craig Tallents said he was at Dublin Airport on his way back after meeting with the client. He needed to speak to Ruth Collard about Denis O'Connor. He had learned that Denis O'Connor was not, as he and Ruth Collard understood, acting for the O'Briens. In fact the clients had asked him what he thought Denis O'Connor was trying to get out of the whole thing. Craig Tallents said his response had been to the effect that he presumed they were paying Denis O'Connor and they had said they were not. Craig Tallents said he was extremely concerned about this and he wondered what Ruth Collard's reaction was. She said she was also extremely concerned. Both she and Craig Tallents had been very candid with Denis O'Connor and we had also given him papers." These included papers prepared by Craig Tallents
le Court Reporters Ltd.
and so on.

If you go onto the next paragraph: "Craig Tallents said the clients now seemed happier about the position generally. They had asked a few questions regarding our fees" and so on.

And then I think the next document in the next leaf, 21, is you contacting John Ryall, presumably after your call from Craig Tallents?

A. Yes.

Q. Because at this stage what you were now learning was

completely at variance with the impression you had at the meeting with Mr. Denis O'Connor; isn't that right?

A. Yes.

MR. O'DONNELL: I don't think that's what she said. I think, in fairness, this witness has very fairly said that she may have been wrong about this because

MR. HEALY: She just said it.

MR. O'DONNELL: I think Mr. Healy is putting to her that she had an impression at the meeting with Mr. O'Connor.

COMMISSIONER: Let's clarify it.

Q. MR. HEALY: At the time you wrote that attendance, the long attendance, you had the impression Mr. O'Connor was acting for the O'Briens?

le Court Reporters Ltd.

A. Yes, for Westferry.

Q. That's the impression you had at the time?

A. Yes.

Q. Notwithstanding the earlier e-mail from Mr. Ryall?

A. That's right.

Q. And subsequently, then, Craig Tallents rang you?

A. Yes.

Q. And he expressed his concern because it was completely at variance with the impression you had at the time of the meeting; isn't that right?

A. Yes.

Q. And you rang Mr. Ryall afterwards, again on the same issue

A. Yes.

Q. isn't that right? You say "Ruth Collard said she just had a call from Craig Tallents regarding Denis O'Connor which had concerned her. She said she had understood from John Ryall that Denis O'Connor was acting for the O'Briens. John Ryall said that this was not the case and they had been puzzled about why Denis O'Connor had wanted to become involved. Ruth Collard said she was now concerned about the material and information which she and Craig Tallents had given to Denis O'Connor. She was also concerned about the meeting going ahead at all. She had exchanged e-mails with Denis O'Connor only this morning in which she had emphasised that she wanted him to have an agreement in writing that would take place on a without prejudice basis. Without that the meeting should certainly not go ahead, agreeing that Ruth Collard would drop John Ryall a line regarding her concerns for him to consider. John Ryall le Court Reporters Ltd. said he had been through the draft position statement with Craig Tallents and was happy with it. Ruth Collard said she had spoken to Richard Lord about this and he was also content with the document so that we would now finalise it."

Now, at that stage of your discussion with Mr. Ryall, although he seems to have been in fact not only was he certain that Mr. O'Connor was not representing the Westferry interest, he seemed to be completely puzzled

about why Mr. O'Connor was involved at all, according to your note, isn't that right?

A. Yes.

Q. Did that prompt you to ask him well what was he doing? or why is he over here at all? Did you wonder yourself what his role was in all of this?

A. Well, yes, I did. There was no point in asking John Ryall that because he was saying that he was puzzled.

Q. But he had definitely sent him to you; isn't that right?

A. Yes.

Q. He had sent Mr. O'Connor to you?

A. Yes.

Q. But whatever confusion arose between you and John Ryall, John Ryall had said he wasn't acting for the O'Briens?

A. Yes.

Q. He knew he was coming to meet you to become engaged in or to act in discussions which would hopefully lead to settle the dispute, isn't that right?

A. Yes.

Q. There is no disagreement about that, isn't that right?

le Court Reporters Ltd.

A. No.

Q. He was definitely to be involved in settling the dispute.

A. Yes.

Q. The only difficulty that arose concerned his precise role at the time of his meeting with you?

A. Yes.

Q. And you, although you had a clear statement from Mr. Ryall that he wasn't representing Westferry, you had no clear statement from him who he was from Mr. Ryall now who he was representing?

A. No, that's right.

Q. And puzzlement from Mr. Ryall afterwards as to who he was representing?

A. Yes.

Q. Now, if we could just go back to the content of that document.

Mr. O'Connor did say to you at the meeting that he was representing Michael Lowry, isn't that right?

A. Why.

Q. And I think he agrees with that, that he said he had represented Michael Lowry?

A. Yes. I mean, he said to me that he was also representing Michael Lowry.

Q. At this time. And I suppose, I mean I am asking the question just in case you may be able to throw some light on it but there is no reference to it in your statement, but at this time did any of your earlier awareness or earlier knowledge of the references to Michael Lowry in the Christopher Vaughan letter to Aidan Phelan come to mind when Mr. O'Connor mentioned his representing Michael Lowry? le Court Reporters Ltd.

A. I think I have been wondering about that and I think it may have come back to me during the course of the meeting.

I think when Mr. O'Connor first said to me that he was representing Mr. Lowry, I didn't know who he was talking about, and in fact my handwritten note says Mr. Leary. But I think when he then went on to mention the Moriarty Tribunal, then my knowledge, very sketchy knowledge of that from, probably from that, it must have been from that Christopher Vaughan note, did come back to me in some form. I think I did recall that.

Q. But if you recall in that earlier letter the, what was concerning, and I think this is my summary of it, what was concerning Aidan Phelan was that this man, Weaver, was visiting Christopher Vaughan, making trouble for Christopher Vaughan and indirectly for Mr. Phelan and the Westferry interests by suggesting a connection between Michael Lowry and Doncaster, and that this was a negative aspersion to be casting on the Doncaster deal. Did any of that was any of that part of your consciousness at this time, do you think?

A. That, I can't remember.

Q. Now, I want to come to your handwritten and typed transcript of your handwritten original notes of that meeting.

A. Yes.

Q. And I recall that you have you got them?

A. Yes.

Q. They are page 3 of the manuscript and I think the second page of the typed transcript of the manuscript.

A. Yes.

le Court Reporters Ltd.

Q. I recall you saying earlier that in general you obviously made your own notes of telephone conversations but that when you were at meetings you frequently had a note taker?

A. Yes.

Q. From the handwriting it seems that you made this note of this meeting yourself, would that be right?

A. Oh, yes, yes. I mean, I find it difficult to take notes at meetings that I am conducting.

Q. For obvious reasons, yes.

A. Which is why I would usually have a note taker. Obviously I didn't on this occasion.

Q. So you took this note and participated in the meeting?

A. Yes.

Q. And subsequently then you transcribed a more expanded version of it?

A. I dictated it.

Q. Or dictated a more expanded version of it?

A. Yes.

Q. Now, Mr. O'Connor says that he doesn't recall you taking any note, or anybody taking any note at the meeting. And I don't for a moment suggest to you that he is saying you are telling lies or anything like that.

A. Right.

Q. But you have no doubt that this note was made?

A. I took this note at the meeting.

Q. There and then at the time?

A. Yes.

Q. Now, I'm not going to go into all of the areas in which he takes issue with the note, and indeed his counsel is here and it will save a lot of time in fact if he does some of the Court Reporters Ltd.

it, but he says that, for example, while he agrees with many of the areas touched on, he doesn't agree with the detail of what you have stated in relation to the areas identified as having been covered at the meeting. And I'll just take one, as it's not necessarily a critical point but it is of significance to Mr. O'Connor is suggesting you may have been inaccurate in the note.

If you look at the typed note for a moment, the formal attendance rather as opposed to the typed transcript.

A. Yes.

Q. The second paragraph where the third last sentence you say "At one point Kevin Phelan had told him that he had spoken to Mark Weaver who had said he would drop the 1/2250,000 claim if Westferry handed over the retention fund and dropped the payroll claim. He would do this for an uplift of 25,000 and in return for an opportunity to sell the stadium at Doncaster. Ruth Collard asked what was meant by an uplift and Denis O'Connor said he had no idea."

If you look at those two sentences, the second last sentence in fact appears to explain the question that you are posing in the last sentence, but Denis O'Connor said he

would have understood an uplift to mean what you seem to suggest it means in the second last sentence in any case, more money on top of what had already been agreed.

A. Right.

Q. And that if you had asked, as you suggest here, asked him what an uplift meant, he would have known what it meant.

A. Right. Well, it's hard to remember, but I think my le Court Reporters Ltd.

question was probably directed at the term "uplift" and

Q. I think that's what he that's what he is, if you like, taking issue with.

A. Right. Well, this is my note of my question and his response. I can't really

Q. You can't put it any further than that.

A. Not really. You know, if it's there in the note then I believe he said it.

Q. If we can just go to a part of the note where you suggest that Michael Lowry, or that he had stated that Michael Lowry may have had a connection or did have a connection with the Doncaster transaction. This is the second-last paragraph on the first page.

A. Yes.

Q. If you go to about the middle of that paragraph "They wanted to cause maximum embarrassment for Denis O'Brien and for others including ML" now that is Ken Richardson and Mark Weaver.

A. Yes.

Q. "Ruth Collard asked how they could cause any embarrassment to Michael Lowry as, so far as she was aware, he had no connection to the proceedings. Denis O'Connor said that Michael Lowry did have a connection and that he had been in the room when discussions had taken place between Kevin Phelan and Ken Richardson regarding the lease. Ruth Collard said no one had ever suggested that to her previously."

Can I just ask you about one part of that passage? You note Mr. O'Connor as saying "they" meaning Richardson and le Court Reporters Ltd.

Weaver "wanted to cause the maximum embarrassment for Denis O'Brien and others including Michael Lowry. Ruth Collard asked how it could cause any embarrassment to Michael Lowry as, so as far as she was aware, he had no connection to the proceedings."

What did you mean by that? Obviously he wasn't a party to the proceedings, we know that. But when you say he had no connection, do you mean that you had taken this up with somebody before and you had been informed that he had no connection with the proceedings or the subject matter of the proceedings?

A. 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.

Q. All right. And then "Denis O'Connor said that Michael Lowry did have a connection and that he had been in a room

when discussions had taken place between Kevin Phelan and Ken Richardson regarding the lease." Now he says he couldn't have said that. He said there is no conceivable way he could have said that, and he goes even further in his evidence, because he says he would never have even referred to Michael Lowry in the context of any aspect of the lease. Leaving aside the possibility that in the course of a meeting names might have got mixed up, you might have referred to Richardson when possibly you meant somebody else or Kevin Phelan when you meant somebody else, but he said there had never even been a discussion or he had never alluded to Michael Lowry in the context of the lease because he knew nothing of the lease or knew nothing of the Court Reporters Ltd.

of the lease issue or the part it played in the purchase of the Doncaster Rovers club and so on. This was his evidence in Dublin recently. Unfortunately at the time, because the Tribunal didn't have these documents, the Tribunal wasn't in a position to ask him to comment on aspects of your written notes which I had asked you to comment on now.

If you go to your transcript of your handwritten notes which are on the second page of your printed transcript, you say "Discussed with Craig Tallents" that seems to be reflected in your attendance. "Denis O'Connor representing someone in partnership with Kevin Phelan. Trouble with him. He removed from picture. Trouble in BG" I presume that's background?

A. Yes.

Q. " for Denis O'Brien. A year ago trying to sort out Kevin Phelan. He mentioned Dinard, Weaver etc. Outlined problem with retention fund. Kevin Phelan suggested retention including creditors including Christopher Vaughan.

Denis O'Connor said this money in an account.

Kevin Phelan said spoke to Weaver. They said would drop 250,000 claim if goes through retention and drop payroll claim for uplift of 25,000.

My client Mr. Michael Leary" that's Denis O'Connor saying who his client was, is it?

A. Yes.

Q. "Gave Kevin Phelan opportunity to sell stadium, 2 to 3 months. He said they in background causing trouble. KP rang Weaver. Faxed through page of mediation documents not bound by.

le Court Reporters Ltd.

Ruth Collard correct.

Asked if Denis O'Brien prepared to meet Richardson and Weaver, originally Manchester then Dublin.

ML lease meeting.

Ground possible move of Doncaster Rovers to new ground.

Stadium convinced Council acceptable solution.

Other side keen to explore.

Ruth Collard explain attempts to talk.

Craig Tallents explain background." I presume background there means accountancy background?

A. I think so.

Q. "3 issues retention fund, 250,000 for lease,

Our claims against them, payroll warranty.

Kevin Phelan will now be a witness for us.

Ruth Collard their threats.

Meeting must be without prejudice."

Now, there is a reference in your handwritten notes to

Michael Lowry in the context of a meeting and it says

"Michael Lowry lease meeting" isn't that right?

A. Yes.

Q. Now, does that throw any additional light for you on how

this matter came up?

A. I don't think so. It's a basis for my making that note in

the penultimate sentence.

Q. The note in your sentence is rather more expansive, isn't

it?

A. It is.

Q. In that you don't just refer to the lease but you refer to

a meeting and specifically who was at it?

le Court Reporters Ltd.

A. Yes.

Q. If Mr. O'Connor says he couldn't have mentioned, firstly he

couldn't have mentioned Michael Lowry being in a meeting

with Ken Richardson and Kevin Phelan because he didn't know

any of that, what would you say to that?

A. I would say this is what he said to me. I mean, as you can

see by the following sentence I was very surprised by this

statement. It had been quite an issue for us during the litigation. It was the basis of our counterclaim. It seemed to me inconceivable really that this could be the case and no one had ever previously mentioned this.

Q. In fairness to Mr. O'Connor, is it possible that Michael Lowry was mentioned in the context of the lease or being at a meeting where the lease was mentioned but without any of the individuals involved having been mentioned?

A. I am sorry, I am trying

Q. Is it possible and I'm just going by your handwritten note where the only words used are "ML meeting" sorry, "ML lease meeting," is it possible that that, that a suggestion was made by Mr. O'Connor that Mr. Lowry was at a meeting at which the lease was discussed but that you may have mistaken who the other participants or the other persons present at the meeting were?

A. I don't believe so. I don't believe I would have noted it in this way. I can't recall, though, it's fair to say, the precise words Mr. O'Connor used.

Q. Now, even after the conversation you had with Craig Tallents and John Ryall regarding Mr. O'Connor's capacity, you continued to deal with him and Mr. Ryall did not withdraw your authority to deal with him, isn't that right?

le Court Reporters Ltd.

A. Is that right?

Q. I think it's right from the file, yes.

A. Right, okay.

MR. O'DONNELL: I don't think it is.

A. It's not my recollection I must say.

MR. HEALY: I'll just come to the documents so that we are clear about it.

MR. O'DONNELL: I think Mr. O'Connor's instructions were withdrawn after the 16th September.

Q. MR. HEALY: If you go to Leaf 22. This is your letter to Mr. Ryall after your telephone call with him.

A. Yes.

Q. And while I am not going to go through the whole of the letter, if you go to the end of the second paragraph, the paragraph that begins "As you are aware..." you say "Given this to learn that he is not in fact your representative and that indeed you do not know what 'he is getting out of this' causes me to have grave doubts about allowing him to go forward in a discussion with the claimants."

And you, then, at the very end of the letter, the second page you say "In the circumstances, my preference would be that the proposed meeting involving Denis O'Connor not to go ahead due to the concerns I have outlined. If you wish it to continue, I would advise the following" and you suggest that steps are taken to clarify with Mr. O'Connor le Court Reporters Ltd.

precisely what he sees as his role and what he hopes to attain for himself as a result ;

2. That he undertakes not to disclose to the defendants any confidential information or make any concessions

whatever purportedly on your behalf regarding the litigation. His roll would be simply to find out what the other side might be prepared to settle for. I would suggest that such an undertaking would be in writing.

3. That he agrees with the claimant in writing before the meeting that this is to be on a without prejudice basis" and so on.

You say "If there is anything you would like to discuss arising out of the above, please do not hesitate to contact me."

Now, that was the day after your telephone conversation?

A. Yes.

Q. On the next day, which was the 17th, and which is in an e-mail of that date from John Ryall to you contained at Leaf 23, Mr. Ryall asks you "I would be grateful if you could draft the undertaking and letter suggested in points 2 and 3 of this letter." So, it's live at that stage anyway, isn't it?

A. Yes.

Q. And then on your reply to that and your replies are contained in the next leaf, and that's Leaf 24, and the matter is still alive. And if you go to the next leaf, which is Leaf 25, again on the same day, via letter which you send to Mr. Ryall and enclose a draft undertaking. And le Court Reporters Ltd.

that seems to have been the end of your dealings with him?

A. Yes.

Q. Prior to that you had exchanged information with him concerning the facts and the figures; isn't that right?

A. Yes.

Q. Mr. Ryall never got back to you to indicate what steps he proposed to take, except that you do mention in your statement that he told you something about the draft undertaking?

A. I think at some point I was told the meeting wouldn't be going ahead because Mr. O'Connor wouldn't signed the undertaking.

Q. Yes, that's what you say in your statement.

A. Yes.

Q. And was that the reason you were given? Is that the only reason you were given sorry?

A. I think so, yes.

Q. Now, I can't be sure, because this matter wasn't taken up with Mr. O'Connor but I feel sure from the evidence he gave that he wouldn't agree with that because his evidence was that he felt that his services had been dispensed with and he saw them simply as his services because the facts and figures he was coming up with weren't very welcome to your side?

A. No, that's not the case at all. I think don't I say in an e-mail these figures are not dissimilar to mine?

Q. You do, yes.

A. No, I think he analysed the situation very rapidly and in a manner that I thought was quite impressive, really,

considering the short time he had, and I felt that his

le Court Reporters Ltd.

analysis was similar to ours. No, I didn't have a problem

Q. In fairness to Mr. O'Connor, that's the impression he had because nobody, he says, got in touch with him, and I take from his evidence that nobody asked him to sign a document that he refused to sign?

A. Okay.

Q. Right. Now, could I ask you to go to Leaf 27, please?

This is an attendance of yours of the 9th October, 2002.

And at this stage the mediation had taken place. The dispute had been settled but the blackmail issue had arisen arising out of what had happened the week prior to and at the mediation?

A. Yes.

Q. And you wrote to Mr. O'Brien setting out, really, how you thought the blackmail might be pursued. This is in Leaf 26; I am not going to go through it in detail. You indicated that the threats might be the basis for a blackmail complaint either in England or in Ireland. In Ireland arising out of what you understood had transpired in Ireland from what had been relayed to you by Mr. Denis O'Brien, which I think I can summarise as follows: that he had received the letter of the 25th September, 1998 from Mr. Denis O'Connor, and that via Mr. O'Connor he had received a threat that the Richardson/Weaver interest were

going to use the letter to the detriment of the O'Briens unless the O'Briens were more generous to them than their claim in the proceedings warranted. Would that be a fair way of putting it?

A. I don't think I knew about it in that detail at this stage.

le Court Reporters Ltd.

Q. Right.

A. Mr. O'Brien mentioned this when he came to London the day before the mediation. They had a meeting, I think this was the first I heard of it. To be honest, I was very focused on the mediation and on preparing for that. So that I didn't focus on the details of what he was telling me about this threat because it wasn't immediately material to what we were doing on the following day. I don't know if I was aware that, for example, Denis O'Connor's name had been mentioned at that stage, but it may have been.

Q. Maybe it's a matter that we can take up with Ms. Kate McMillan. Are you aware that Ms. McMillan made an attendance of what transpired at the mediation meeting in terms of threats made by Mr. Richardson?

A. Yes. I mean, I know she made that note. The letter was also discussed at the mediation meeting. Maybe it was then it was discussed rather than the previous day. I do remember it being discussed. I simply don't know how much I retained at that point about it.

Q. Right, okay.

A. Because the main thing I was focused on was trying to get

the dispute settled at that stage.

Q. In any case, Mr. O'Brien telephoned you on the 9th October, 2002 and you made an attendance as follows. "DOB thanked Ruth Collard for her letter regarding the blackmail complaint which he said had been extremely helpful. He said that the first point he would make was that the letter that he had received had not been directly from Richardson or Weaver but had come from Denis O'Connor. Denis O'Connor had informed him that he had got the letter via Ken le Court Reporters Ltd.

Richardson from Kevin Phelan." The reason I mention those matters is they are consistent with Kate McMillan's note of what happened at the mediation.

A. Right.

Q. "Denis O'Brien said that at the time he had been trying to figure out Denis O'Connor and had to be friendly to him. Denis O'Brien said the question was where we went from here. Ruth Collard said she thought the option was open to them to make a formal complaint. She was not very optimistic about the prospect of a successful prosecution. However, it seemed to her that it was difficult from the point of view of the evidence. She was not sure how interested the police would be. Denis O'Brien said he would like to make a complaint and he would like Ruth Collard to remain as his solicitor for that purpose. Ruth Collard suggested that she drafted something. Ruth Collard said she would like a copy of the letter which had been

sent to Denis O'Brien prior to the mediation. Denis O'Brien said he was not sure that he wanted to pursue the Irish complaint at the moment as it might prove embarrassing for Denis O'Connor and Michael Lowry. He felt it was likely to pursue the complaint relating to London and then at least if this came up during the Tribunal at any time in the future he could say that he had already reported the matter to the police. Ruth Collard said she would draft something appropriate and send this to Denis O'Brien."

Now, you got a handwritten note of that telephone conversation as well. It's at page 4 of your manuscript le Court Reporters Ltd.

notes and page 3 of the typed transcript of the manuscript notes.

A. Yes.

Q. And it says "Denis O'Brien Junior" is that right?

A. No, that's JR: John Ryall.

Q. Sorry, John Ryall. So that presumably, is it a conference call then?

A. Yes.

Q. Right. "Extremely helpful letter.

1. Letter I received not directly from Richardson/Weaver.

Handed over by O'Connor.

He said got via KP, KR from KP." I think the first KP is crossed out, but I think that you, in your attendance you say it came from Richardson via Kevin Phelan; is that

right?

A. Well, the phraseology is odd because it said it informed him he got the letter via Ken Richardson from Kevin Phelan.

Q. But that, in other words, that he believed the source of it was Richardson; that it came through Phelan, came from him to O'Connor and came from him to Denis O'Brien Senior?

A. So from Richardson to Phelan to O'Connor to O'Brien; that's what I understand. I am not sure my note quite expresses that but that's what I would have understood to be the case.

Q. "Evidence have to speak to Denis O'Connor." Then it peters out. "Trying to figure out Denis O'Connor. Want to see if Michael Lowry appeared in file. I had to be friendly. Remain involved as our solicitors. Copy of letter Richardson.

Denis O'Connor/Michael Lowry involvement.

le Court Reporters Ltd.

Pursue London only.

Want to pursue B" whatever that is?

A. That's "because".

Q. "Because of ongoing Tribunal. Inform them already reported."

You have noted that latter part as "If this came up during the Tribunal at any time in the future he could say that he had already reported the matter to the police."

Do I take it that I understand your note, either your handwritten or your formal attendance correctly to the

effect that he did not intend informing the Tribunal at that stage but only envisaged informing the Tribunal if it came up at the Tribunal that he had already reported the matter to the English police?

A. Yes.

Q. Now, I can't see where, in your formal attendance, you have picked up this portion of your handwritten note which goes "Trying to figure out Denis O'Connor. Wanted to see if Michael Lowry appeared in file. I had to be friendly."

A. I think I have got the "trying to figure out Denis O'Connor" and "had to be friendly." I haven't got the "wanted to see if M. Lowry appeared in the file."

Q. Do you know what wanted to see if M. Lowry appeared in the file?

A. I don't I am afraid. And I don't know what "the file referred to" is either.

Q. You see the other reference above that to "Mr. O'Connor evidence? Have to speak to Denis O'Connor" do you see le Court Reporters Ltd. that?

A. Yes.

Q. Then it prompts "trying to figure out Denis O'Connor"?

A. Yes.

Q. Did you want to discuss the matter with Denis O'Connor because of the information you had been given that the threat, as you saw it, had come from Richardson, Phelan O'Connor to O'Brien?

A. I can't recall, but it may be that's what this means; that I would if we were to pursue that complaint, I would wish to speak to Denis O'Connor first. I think that probably would be the case because I would feel I didn't have sufficient information about where the letter had originated from to produce a complaint.

Q. Do you know what the current status of course you are not actively working at the moment, but just in case you do know, maybe somebody else can tell the Tribunal this, what the current status of the prosecution is?

A. As far as I know, we have heard nothing from the police for over two years, I think. I think when I last spoke to the police, they informed me they were still looking into it.

Q. In your mind, did you ever get to the bottom of what you thought Denis O'Connor was, to adopt the phraseology of some of the notes, was trying to get out of this, or who Denis O'Connor represented or what his role was?

A. No, but I don't think I attempted to.

Q. Right.

COMMISSIONER: Ms. Collard, just taking your various advices to Mr. O'Brien and your various verbal and written le Court Reporters Ltd.

communications, is it a fair summary of the position that you explained the law in the England and Wales on blackmail under the Theft Act and essentially you said it may be stateable but you didn't hold out any enormous hopes, and of the alternative remedy, it might have been an arguably

stronger course to have pursued matters in Ireland rather than in the UK?

A. Yes, I think that probably is a fair summary. Though, having said that, I really wasn't very clear about what had happened in Ireland. So I didn't have any great basis for making the statement "it might be stronger in Ireland." I certainly was not very convinced that a complaint in England would be successful.

COMMISSIONER: Thank you.

MR. HEALY: I am just thinking, sir, of timing. It's twelve o'clock. I am going to be a little there are one or two other documents, well, maybe more than one or two but not too much longer with Ms. Collard. I was thinking if we rose for half an hour and finished Ms. Collard by half one, we could then, at two o'clock, take up Ms. McMillan. I am thinking of indications to be given to Ms. McMillan

COMMISSIONER: Given your colleague and indeed your own considerations, Ms. Collard, does that seem a fair compromise? I wouldn't wish to have you more than two hours consecutively. So I think perhaps, so you are proposing, Mr. Healy, is
le Court Reporters Ltd.

MR. HEALY: A half hour now, then resume, then finish with Ms. Collard and then a short break and I think if the Tribunal is to get some further documents I gather from Ms. McMillan and then proceed with Ms. McMillan at two

o'clock.

COMMISSIONER: That seems sensible.

MR. O'DONNELL: Commissioner, I am not sure, and subject to Ms. Collard's convenience, I am not sure we need a half hour break. I am concerned because we know when it's proposed to finish with Ms. Collard and that would eat into the time for the examination of the other parties. It's a matter for us, in truth, and I am quite happy to try and convenience Ms. Collard but I wonder if it's possible if a shorter break might be appropriate?

COMMISSIONER: I obviously have to think of the witness, Mr. O'Donnell, and I am particularly, as Ms. Collard has elected to stand up, it's not fair to will I truncate the half hour now and simply say we'll take 15 minutes? We'll then conclude Ms. Collard and then you set an approximate two o'clock or perhaps marginally after we start for Ms. McMillan. Very good. Thank you very much."

CHAIRMAN: The transcript recorded there was a short adjournment and that's probably a suitable moment for us to act similarly. We will take a slightly truncated lunch and resume for the balance of the reading of the transcript at the Court Reporters Ltd.

ten to two and conclude it in two relatively limited sessions with perhaps a ten-minute break in the middle.

THE TRIBUNAL ADJOURNED FOR LUNCH.

the Court Reporters Ltd.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EVIDENCE ON COMMISSION BEING READ INTO THE
TRANSCRIPT:

"THE COMMISSION ADJOURNED AND RESUMED AS FOLLOWS:

Q. MR. HEALY: Thank you, Ms. Collard. I wanted to ask you some questions concerning the draft police statements prepared on behalf of Mr. Denis O'Brien Senior. Firstly, I just want to know what role you had, if any, in the preparation of those statements?

A. I can't remember if the very first initial draft was produced by my assistant, Kate McMillan, or by me but either way I had a considerable input into that very first draft which was then sent to the client.

Q. Okay. All right. Well, I have that first draft here at Leaf 35.

A. Well, I'm not sure I would call this the first draft.

Q. I see. Right.

A. Because my understanding is that this is, I could be wrong

Q. The final version of the first draft?

A. Exactly; the final version of the first. This is, I think, what we took to the police, is that correct?

Q. Yes, I think you are right. Well then maybe you'd want to restate your answer.

A. Well, there will be earlier versions on my file, and the very first version was produced, as I say, either by Kate or by me and I will have had considerable input into that.

Q. I am conscious of time constraints and I am not going to waste time on this if you can't help the Tribunal on it. I just want to come to a passage in this and related passages in one or two other drafts, if I can call them that, or final versions.

If you go to page the second page of this version, and paragraph number 7, you will see where it states "In the week prior to the mediation on the 27th September 2002 I was faxed copy of a letter from Christopher Vaughan to Michael Lowry dated 25th September 1998. A copy of that letter appears at DOB 1. The letter suggests that Michael Lowry was connected with the DRFL transaction which is untrue. I understand that Christopher Vaughan also represented Michael Lowry in some property transactions in England but these are unrelated to me, my family or my family's companies. The confusion regarding Michael Lowry's involvement in the DRFL transaction may have arisen as the property agent Kevin Phelan who brought transaction to Westferry was also involved in introducing property transactions in England to Michael Lowry.

"I received a message via Michael Lowry's accountant, Denis O'Connor, which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver that a copy of that letter would find its way to people I would not want to see it unless I settled the litigation in respect of the DRFL on terms which were very favourable to Dinard. I understood this to mean that the letter would be

sent to the Moriarty Tribunal. Denis O'Connor informed me
le Court Reporters Ltd.

that information about this matter had come from Kevin
Phelan. This individual had acted on our behalf in the
purchase of DRFL but had subsequently become hostile to us
following a dispute over fees and has been in communication
with Ken Richardson and Mark Weaver, the representatives
and agents of Dinard."

Now, do you remember I summarised earlier what I understood
to be the position regarding the involvement of Denis
O'Connor in transmitting information and a threat from
Dinard, Richardson, Weaver, Phelan, whoever, to the O'Brien
family?

A. Yes.

Q. And that seems to be reflected in this portion of the
statement; isn't that right?

A. Yes.

Q. And this version is dated November 2002, which is shortly
after the mediation meeting took place and not too very
long after the events of the week prior to the mediation in
which Mr. O'Brien Senior received a copy of the letter?

A. Yes.

Q. If you could now go to Leaf 36, you'll see, I think, what
is the same, roughly the same statement but this time in
police form, if I can put it that way, with queries, I
think, highlighted by the police in places. Do you see
that?

A. Yes.

Q. And if you go to Continuation Sheet Number 4; the numbers are on the top right-hand side?

A. Yes.

le Court Reporters Ltd.

Q. You'll see a similar passage to that I mentioned or I drew to your attention a moment ago: "In the week prior to the mediation I was faxed copy of a letter from Christopher Vaughan." If you go down to the third next paragraph, it says "I received a message via Michael Lowry's accountant, Denis O'Connor, which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver, advising me that a copy of Christopher Vaughan's letter to Michael Lowry was in their possession and that it would be in my family's best interest to settle the litigation in a friendly and generous manner as otherwise a copy of the letter will find its way to the Tribunal or the newspapers. Denis O'Connor informed me that the information about this matter had come from Kevin Phelan." And he goes on again to explain Kevin Phelan's role in the matter.

And then there is another version, again what I'll call police form, at Leaf 46, which I think is a signed version of the previous statement with a few, I think, not terribly material changes. And if you go to Continuation Sheet 4 again, you will see the paragraph that begins "In the week prior to the mediation" Mr. O'Brien says he was faxed copy of the letter from Christopher Vaughan.

If you go to the second next paragraph he says "I received a message via Michael Lowry's accountant, Denis O'Connor, which I was told came from the representatives of Dinard, Ken Richardson and Mark Weaver, advising me that a copy of Christopher Vaughan's letter to Michael Lowry was in their possession" and so on.

le Court Reporters Ltd.

A. Yes.

Q. And this version, in fact, was actually signed, and I think Mr. O'Brien accepts that this and the previous one I mentioned to you are virtually the same, and this is signed by Mr. O'Brien.

If you go to what I think is the final, if I can call it, the final final version, which is at Leaf 48. If you go to Continuation Sheet 3 you will see a paragraph that begins it's the second paragraph on that page "During the week prior to the mediation..."

A. I think it's page 8 actually.

Q. I beg your pardon, page 8.

A. Yes.

Q. Mr. O'Brien again refers to being faxed copy of the letter of the 25th September 1998. Then he says "The copy letter that arrived in my fax machine had the name Brophy Thornton at the top of the page so I assume the fax came from Butler Brophy Thornton, Denis O'Connor's firm. I called Denis O'Connor on the day I got the fax. He indicated to me that he had not seen the fax before it was sent to me as he was

out of the office on the day it was sent. Denis O'Connor was aware of my involvement in the Doncaster project as I had previous discussions with him in relation to this matter and I understood that he had issued a standing instruction to his secretary to forward to me anything in relation to Doncaster that arrived in his office.

"A number of press inquiries had arisen in view of the publicity surrounding the Tribunal and she forwarded the le Court Reporters Ltd.

fax without showing it to Denis O'Connor beforehand. Denis O'Connor did not advise me of the source of this fax. I believe it was sent by or on behalf of Mr. Weaver. I gave no substance to the fax at the time because I know the contents to be untrue, although I suspect that it had been sent to me in connection with the mediation.

"Denis O'Connor also told me that he was aware of Colm Keena, a journalist with the Irish Times, approaching Michael Lowry's solicitor saying he had information that Michael Lowry was involved in Doncaster. Denis O'Connor felt this was all connected and had to do with intimidation to reach a settlement. I cannot recall the exact detail at this stage but I certainly understood the content to convey a threat from Mark Weaver."

Do you notice that in the statement I have just read the threat is not in the express terms that are contained in the two earlier statements?

A. Yes.

Q. Can you throw any light on why that aspect of the statement is not replicated in that last statement, or last version?

A. I believe it was amended by Denis O'Brien.

Q. I see.

A. I think that should be evident from my file.

Q. I see. Do you know why Mr. O'Brien amended it?

A. I expect I discussed it. I am afraid I don't remember. I expect I did discuss it with him.

Q. Could I just ask you to go to Leaf 64, please. Now, have you got that Leaf?

le Court Reporters Ltd.

A. Yes.

Q. You'll see on that page a letter from you, from Peter Carter-Ruck to Denis O'Brien Senior of the 14th February, 2003.

A. Yes, I have actually got sorry, leaf?

Q. Sorry, it's not the first document in the leaf, sorry. It's the eighth page in the leaf?

A. I have got the fax cover me to Denis O'Brien, 14th February.

Q. Yes. If you go onto the next page then?

A. Yes.

Q. Letter Peter Carter-Ruck to Denis O'Brien Senior, 14th February, 2003.

"Dear Denis,

"Westferry complaint/complaint to the police.

"Further to a letter I sent to John on Wednesday he has now

asked that I readdress my advice to you in connection with the above and the request from the Moriarty Tribunal for documents."

So this appears to have arisen in the context of a request from the Tribunal for documents concerning the police file and a discussion you had with John Ryall sometime previously and, presumably, you must have given him some advice on the phone and he asked you to write to him with the advice addressed to Mr. Denis O'Brien Senior, is that right? Would that be a fair summary of what probably happened?

le Court Reporters Ltd.

A. Well, I think a fair summary but I think I did write to John first.

Q. I see, right. Maybe I haven't seen that letter.

A. I am pretty sure I have seen it somewhere in the file.

Q. I won't delay now. If it comes up later we can come back to it, it won't take more than a minute or two. It goes on

"The position regarding our file is as follows:

"1. Our file in relation to the complaint to the police consists of all the documents we hold in connection with our work on that matter. These include for example our letters and e-mails exchanged with you, the invoices we have rendered to you, notes of our telephone conversations with you, printouts of our computerised time recording internal communication between Kate and I regarding the matter as well as the draft statements and our

communications with the police, Christopher Vaughan and Michael Kallpetis.

"2. I am not sure whether when a request is made for a file, this is intended to encompass the whole file down to our computerised time records, internal communications, notes and invoices, etc. All of the material in the file is covered by legal professional privilege and would not, in a English context, be subject to disclosure. Having said that, the privilege belongs to you as clients and if you wish to waive it then you are able to do so. I am at a loss however to know what assistance the majority of our file, for example, the administrative material, etc. would be to the Moriarty Tribunal and indeed it seems to me that the Court Reporters Ltd.

time would be wasted having to go through it.

"3. Aside from the above, I do not consider it helpful or right that our legal advices contained in letters to you and notes of conversations with you should be disclosed to any third party. In particular, you will recall that our advice about pursuing the complaint in blackmail was not entirely positive and that, very understandably, you took the view you wanted to proceed in any event in order to be seen to be taking action.

"4. It seems to me that the documents that the Tribunal is really interested in are those relating to our communications with the police. These essentially encompass your witness statement as we first presented it

to them. The same statement which was e-mailed back incorporating the police queries, the revised draft statement responding to those queries and various e-mails we have subsequently exchanged the police. Again all of this material is subject to legal professional privilege.

If, however, it is felt you wish to assist the Tribunal then this material, I believe, can be made available and in fact, as I understand it, the statement in its various drafts has already been handed over.

"We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result the suspects are likely to be alerted to the investigation and it is possible, though unlikely, that they could flee the jurisdiction. They will le Court Reporters Ltd.

also have more time to prepare a defence and their response to an approach to the police than would have otherwise been the case. Having said that, the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution.

"Finally, so far as Christopher Vaughan's draft statements are concerned, you will recall that there are two drafts of this, neither of which have been signed by Mr. Vaughan. Indeed, in relation to the first draft, he has specifically informed us that he is not happy with its terms and accordingly is not prepared to sign. In these

circumstances I believe it would be wrong to make those drafts available to any third party without Mr. Vaughan's approval.

"John has also asked me to advise you on your position in libel regarding disclosure of the statements. Complaints to the police are covered by privilege in England"

sorry, I appear to have missed a paragraph.

After the words "without Mr. Vaughan's approval" you go on in a new paragraph.

"In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police.

Alternatively I would suggest I go through our file perhaps with someone from William Fry to discuss the position le Court Reporters Ltd.

further.

"John has also asked me to advise you on your position in libel regarding disclosure of the statements. Complaints to the police are covered by privilege in England so that no proceedings can be taken against you in respect of this.

As the statement has been handed to the Moriarty Tribunal, at that body's request, again this publication is likely to be the subject of privilege although I do not know what the position would be under Irish law.

"If the contents of the statement are leaked to the press and published in a newspaper in England, I do not believe you would be liable for that publication as you have not

authorised or intended it and it could not be foreseen by you as a consequence of handing over the statement to the Tribunal. If the contents of the statement are published as part of a fair and accurate report of the Tribunal's proceedings, again a form of privilege would apply. Again, however, you would have to check the position under Irish law. At John's request I have also sent a letter to William Fry today, a copy of which follows.

"I hope the above is helpful."

Sincerely."

The next document in that leaf is the letter you have just referred to, a copy of a letter which I think you were you say you are sending to William Fry.

le Court Reporters Ltd.

"Dear Sirs,

"Denis O'Brien Junior and Denis O'Brien Senior.

"We refer to your letter dated 24th February.

"We have been asked to write to you regarding the draft statements of Denis O'Brien Senior which we understand you already hold. We further understand that it is proposed that these are made available to the Moriarty Tribunal.

"As you know, these statements were produced in the context of a pending police investigation. We have spoken to the police about the statements potentially coming to the attention of the suspects at this stage. The police have commented that it is possible, although they regard it as unlikely, that as a result the suspects could flee the

jurisdiction. Additionally, they will have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case. Having said this, the police regard the disclosure of the statements as a matter for the client. In the circumstances we believe that it would be preferable for any disclosure of the statements to the Moriarty Tribunal to take place on the basis that they should be dealt with in private and not public so far as possible."

Now, those letters are dated the 14th February. And the next document in the Leaf is an urgent letter from Denis le Court Reporters Ltd.

O'Brien Senior to you. I think the 14th to the 17th February may be a weekend I think; I had that impression.

A. Right. I have no idea.

Q. It says "Dear Ruth,

"Re: Denis O'Brien junior and senior/Westferry Limited.

"Very many thanks for your comprehensive letter addressed to William Fry Solicitors dated 14th February which I have read carefully. Could I possibly trouble to you send this letter again with the following omissions or amendments?

See attached.

"Turning to the second letter addressed to me personally and which is quite comprehensive and detailed. Could I ask you please to arrange the following omissions and/or additions. See attached.

"If you have any queries, please contact Nicola in my

office on" and there is a telephone number there but it may have been obliterated because this document was put on public display; I think that might be other personal line.

"Many thanks for all your help. Best regards to Kate. I look forward to hearing from you." This is signed, I think, by Nicola Prendergast, per pro Mr. Denis O'Brien Senior.

Then the next document is a copy of the letter you had already sent to William Fry and in which Mr. O'Brien asked the Court Reporters Ltd.

you to make some changes.

I suppose I should qualify that. I don't know if it went to William Fry or not.

A. The original one?

Q. Yes.

A. Yes, it did.

Q. All right. It says "The police have" sorry, I beg your pardon, if you go to the sentence which begins in the second paragraph, the third sentence "The police have commented that it is possible" and then "although they regard it as unlikely" is taken out so that the sentence now reads: "The police have commented that it is possible that as a result the suspects could flee the jurisdiction."

Then it goes on "Additionally, they will have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case." The next sentence which reads: "Having said this, the police regard

the disclosure of statements as a matter for the clients"

has been removed.

Then if you go to the next paragraph, the words "so far as possible" are removed and instead it now reads: "In the circumstances, we believe that it would be preferable for any disclosure of the statements to the Moriarty Tribunal to take place on the basis that they should be dealt with in private and not public" the qualification having been removed.

A. Yes.

le Court Reporters Ltd.

Q. Now, Mr. O'Brien also referred you to his letter addressed to him personally and he suggested that it be resent to him with a number of changes. They are highlighted.

If you go to paragraph 2, numbered paragraph 2, sorry. The sentence referring to privilege and the capacity of a client to waive privilege which reads: "Having said that, the privilege belongs to you as the client and if you wish to waive it, then you are able to do so" has been removed.

And on the next page in paragraph numbered 4, the last sentence reads: "If, however, it is felt that you wish to assist the tribunal, then this material, I believe, can be made available and in fact, as I understand it, the statement in its various drafts has already been handed over." That portion of the statement which suggests that this material could be made available and that in fact it had been handed over has been removed and instead it reads:

"If, however, it is felt that you wish to assist the tribunal, then we feel it would be appropriate to answer specific queries raised rather than hand files over."

The next paragraph refers to contact with the police and says "We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result the suspects are likely to be alerted to the investigation and it is possible" and then the words "although unlikely" are removed. So that it reads: "It is possible that they could flee the jurisdiction. They will also have more time to prepare a le Court Reporters Ltd.

defence and their response to an approach by the police than would otherwise have been the case."

Then the next sentence is removed. It read: "Having said that the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution."

After the numbered paragraph you then have a summary, and that summary has been removed all together. The summary that's been removed is as follows: "In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police. Alternatively I would suggest I go through our file, perhaps with someone from William Fry, to discuss the position further."

What it reads is: "I suggest I go through the file with

you to discuss the matter further."

Now, as I understand it, I think those amendments were incorporated by you in these letters and sent to Mr. O'Brien and William Fry on the 18th February, isn't that right?

A. Yes.

Q. And they are the next documents. And can you tell me, did you have any discussion with anybody about these amendments?

A. No, I didn't.

Q. And do I take it, therefore, that you were happy to make the Court Reporters Ltd. them on foot of Mr. O'Brien's letter to you of the 17th February, 2003?

A. I decided that I would make them. I remember thinking quite carefully about it and I remember thinking that whatever Mr. O'Brien was seeking to achieve by making the amendments, I didn't believe could be achieved because, in particular, his solicitors had had the information in my previous letter and he had had that information and nothing could change that information and the fact that they had it. I think I thought that someone had to have a conversation with Mr. O'Brien about this and the approach perhaps that he was seeking to take. In hindsight I should have decided that I would have that conversation but I think I thought his solicitors would have that conversation with him.

Q. By 'his solicitors', who did you mean?

A. William Fry.

Q. I see. When you say that you thought that whatever he was seeking to achieve he wouldn't be able to achieve because you had sent the letters in their original form containing, and I put it this way, a somewhat more negative perspective on the situation from Mr. O'Brien's perspective

A. Yes.

Q. what do you think, or what did you feel he was seeking to achieve?

A. I could see that he was well, I believed he was trying to minimise what I had said about the police's approach to the matter. But when I say what I thought he could I couldn't see how he could achieve anything with my letters in that they were my letters to him and his solicitors.

le Court Reporters Ltd.

They were not letters to a third party, in particular not letters to the Tribunal.

Q. I suppose if somebody represented that they had received a letter from you containing what I call the amended content, then they could contend that the situation was as stated in the letters with the amended content without alluding to the earlier letters, isn't that right?

A. But I don't see who was going to receive those letters other than Mr. O'Brien and his solicitors. They were not the sort of letters that would be sent to a third party, and Mr. O'Brien and his solicitors had the original

content.

Q. The original content contained a reflection of the police view that, putting it broadly, it was a matter for

Mr. O'Brien. They didn't have a problem if he gave material to the Moriarty Tribunal, would that be right?

A. Yes.

Q. But the letters as amended, and if they could be used without referring to the unamended versions, gave perhaps almost the opposite impression?

A. I accept they certainly gave a very different impression. But I did not see how they could be used.

Q. Provided the person well perhaps I'll just clarify that.

You are saying that it wouldn't have been open to Mr. O'Brien or anybody who had all of the letters to misrepresent the true position; is that right?

A. Yes.

Q. If somebody only had part of those letters they might be in a position legitimately, as it were, relying on the letters to misrepresent the true position?

le Court Reporters Ltd.

A. If someone saw only the amended letters, but I did not anticipate, and I suppose I still don't know that this was the case, that anyone would see the letters apart from Mr. O'Brien and his solicitor.

Q. Well, you are aware of correspondence between the Tribunal and Mr. O'Brien's subsequent solicitors, Messrs. LK Shields, in which it was suggested the police did have

problems with releasing the documentation. You are now aware of that I take it?

A. I am now aware of that. I don't know that I am aware am I? I don't recall seeing that LK Shields saw only the amended letters but, is that the case?

Q. I don't know. But I will endeavour to establish that.

A. Right.

Q. Thanks, Ms. Collard.

THE WITNESS WAS EXAMINED BY MR. McGONIGAL AS FOLLOWS:

Q. MR. McGONIGAL: Ms. Collard, I appear for Denis O'Brien Junior and also for Westferry and their interests. If I can just take up the last matter that Mr. Healy has been dealing with. Whatever it was that Denis O'Brien Senior suggested to you in relation to changing the two letters, that was a request to you as a solicitor which you followed through on and had no difficulty in doing?

A. I considered it carefully before I did it and I considered what use could be made of the letters and came to the conclusion I just expressed to Mr. Healy. But I made the amendments, yes.

Q. I understand completely what you are saying now, but if I le Court Reporters Ltd. could just ask you to look at the letter which you wrote on the 18th February of 2003 to Denis O'Brien Senior where you say "Thank you for your fax of today. I have slightly amended the letters as requested and sent the revised version through to William Fry. My revised letter to you

and a copy of the letter to William Fry are attached."

There doesn't seem to be any suggestion of any concern of any kind in that letter?

A. No. That doesn't mean I didn't have a concern.

Q. Nor does there seem to be any suggestion by you to Denis O'Brien or to anyone else that they should in fact have a consultation about this matter?

A. No, I didn't discuss it with anyone.

Q. So whatever thoughts you had at the time remained with you?

A. Yes.

Q. So we can only take it as it is here, as you wrote it at the time, and as that representing your view at that time?

A. I am not sure this represents this says anything about what my view is.

Q. Well "I have slightly amended the letter" seems to indicate

A. That's what I did.

Q. not a great concern, I would have said?

A. I did not express a concern in this fax, I accept that.

Q. Of any kind. Just in relation to those letters,

Ms. Collard, you referred very briefly to the fact that there may have been some communications prior to those letters, and I think you are right about that. I think you managed to retrieve some of your own documents around the 12th February between yourself and John Ryall and you sent the Court Reporters Ltd.

them to LK Shields, you sent them to the Tribunal on the

9th March, and I'll just give you copies of them.

(Documents handed to witness.)

I think you managed to rescue these very recently from wherever they were in your preparation for giving evidence in this Commission?

A. I think it was in response to the letters, or a letter from the Tribunal raising queries about this.

Q. Just, I suppose, the easiest way to do it is if you go to the one of the 12th March first because I want to try and take them in sequence, in fairness, so that they read, insofar as they can, and if you go to the bottom of the first page of the second page, there seems to be one John Ryall 11/2/2003, 14:22, do you have that?

A. Yes.

Q. "I am writing on two issues.

First, has there been any communication from the police with the client by Mr. O'Brien?

"Secondly, we had discussions some weeks ago in relation to the request for documentation in relation to a letter you had received from William Fry Solicitors in relation to Moriarty Tribunal. During the conversation I expressed certain concerns in relation to disclosure of information and indicate the issue of legal and professional privilege arose in relation to the information you were requested to provide. In addition you raised particular issues in relation to two matters, the draft statement of Christopher Vaughan which we understand has not been signed and

secondly, the witness statement of Denis O'Brien Senior,
le Court Reporters Ltd.

which again has not been signed and remains as a draft
statement.

"Westferry and the O'Brien family wish to assist the
Tribunal insofar as if they can subject to any advice
it/they may receive from its/their advisers. I would be
grateful, therefore, if you would write to us formally on
this issue. I don't know if you have responded to the
William Fry letter."

And that, in a sense, speaks for itself, doesn't it?

A. Yes.

Q. You wrote then at least, yes, you wrote to John Ryall or
to his reply the next day at 3:20.

"Dear John,

"I will be sending you a fax about these matters shortly."

And then again from John Ryall, at the top of the page
actually I think you better go to the one of the 9th March
first because it comes first in time from you to John on
the 12th at 15:20. Sorry yes, 15:20 "I will be sending
a fax on these matters shortly."

And then the next one is from John to Ruth.

"You expressed your displeasure at the fact that we have
given the draft police statement to the Tribunal as you
felt it might hinder the police investigation. In view of
your advice, we have asked William Fry to write to the
le Court Reporters Ltd.

Tribunal requesting the situation remain private until the police and Crown Prosecution Service have completed their inquiries and determined what course of action, if any, they propose to take. I would be grateful if you would write to William Fry confirming your advice in this regard."

And then I think there comes the other letters. Does that help you to recollect things?

A. I don't think I have a problem recollecting but I think what I was referring to is a letter I wrote to John Ryall, which is the one I refer to at the beginning of the letter to Denis O'Brien. I wrote a letter in similar terms to John Ryall first.

Q. My understanding is that all of that comes from a meeting, or an attendance note, which again is in the 9th March, dated 27th January, 2003 where you are attending a call from John Ryall and you say that you looked at the letter from William Fry. "She said that all the material that has been asked for is subject to legal professional privilege.

Therefore it wouldn't be acceptable to RC said she was very reluctant to hand over material ... seemed to her it would only lead to requests for further material.

JR agreed he would ask to talk to William Fry and revert to RC." (Quoted)

So it does appear that certainly at that stage you had concerns?

A. Yes.

Q. And that, in a sense, is helping to put the following
le Court Reporters Ltd.

documents that I have referred to in proper context?

A. Right.

Q. Culminating, I think, with Mr. O'Brien's request to you and
your dealing with his request, slightly amending the
letters and sending them back without comment?

A. Yes.

Q. Now, one of the others matters I want to turn to a
different matter, Ms. Collard. One of the matters I am
trying to understand is in relation to the police
statements of Denis O'Brien Senior, and Mr. Healy has taken
you through the statements. What I want to try and
understand is the interaction between you and some of the
people that may have been involved in the making of these
statements. Now, I think in particular that there was a
meeting in December involving you, I think Inspector
Gordon, or is it Detective Inspector Gordon?

A. Yes. I can't remember his precise title. I think that was
December '03, yes.

Q. And at that stage at that meeting, or can you help me in
relation to that meeting?

A. In what sense?

Q. In any sense. I am not trying to catch you out,
Ms. Collard. I am actually trying to understand this,
because I think that there were a number of drafts of
statements. There was the signed statement. I think there

was then a meeting in December '03 between the police and yourself and Mr. O'Brien and I think Mr. Ryall, I am not a hundred percent sure, and at that meeting the statement was gone through in depth and the statement came out of it which was subsequently sent to the police, and I'm not sure
le Court Reporters Ltd.

what happened then insofar as the statements were concerned.

A. Yes. I mean, I struggle to remember without my file, but there were many drafts of the statement passing between me and John Ryall on behalf of Denis O'Brien, and passing between me and the police.

Q. Yes.

A. Yes, I recall that meeting at which we did go through things in some depth. After that there was certainly a meeting in Dublin which I didn't attend, and I think after that the statement was signed, but I have a feeling there may have been a signed version, another signed version.

Q. I may be wrong about this now, I may be absolutely wrong about this, Ms. Collard, but I thought there was only one signed statement and then the other drafts came into being, but I may be wrong about that. But there was further documentation which again was sent to the Tribunal arising from all of this by you, and in trying to extract some of the relevant material, to try and help you in some of it, there was an e-mail from Richard Gordon to you on the 16th December, 2003 where I don't know if the Tribunal have

copies. I think we have had a slight glitch in our system in the sense that we omitted to bring copies of these documents, COMMISSIONER, but it says "Apologies for the delay but I have been committed elsewhere. In relation to the statement, please see the attached in italics....these areas MG 11/2 document for discussion and development. Should you have any queries, I will be back in the office tomorrow for the whole day."

So that appears to be Gordon sending back the MG 11/2 le Court Reporters Ltd.

document which is in preparation for the meeting that is to take place, doing the best I can.

And then subsequent to that, on the 17th December you wrote to John Ryall and you said "After many e-mails and chasing by telephone I finally received the attached from Richard Gordon of the police late last night. You may recall that I had a meeting with him on the 4th November and that he was supposed to send me the document the following week.

You will see that the document has many queries in italics.

I am afraid he has given the impression that the document was produced in a rush because at least some of the queries are answered within the statement itself and many others I went through with him at our meeting. I have exchanged e-mails with him this morning and I have agreed that given the shortness of time before the meeting, we should aim to make the amendments at the meeting itself. This will now take place here and we will have the statement on computer

to incorporate the amendments as we go along. I believe that in advance of the meeting, however, it would be helpful for you and Denis to read through the statement and make a note of his responses, in particular the corporate matters which I am now familiar with. I look forward to seeing you at 3:00pm tomorrow. I would be grateful if you would let me know that you have safely received this e-mail."

Do these bring back flashes of memory, Ms. Collard?

A. Yes.

Q. On the 17th, then, of December from John to you: "He got the Court Reporters Ltd.

the statement. It is under major... Mr. O'Brien is on his way to the UK. Will try to get a copy to him later today."

That's on the 17th.

Again on the 17th well that's actually yours, I don't need to go into that one again.

Then on the 6th January: "Further to our meeting before Christmas I attached a revised copy of Denis's statement.

This incorporates the amendment you went through at that meeting, although it also includes various gaps which you and Denis need to complete. You will recall that Richard Gordon suggested he might be in Dublin during the course of next week. He leaves around the 14th, and if we were to take advantage of this trip for you to see him again for signature, we obviously need to have a new version ready soon. I will e-mail Richard and ask him if it is possible

for him to see you then and let you know what he says."

That seems to be referring back to the meeting which took place, I think, on the 18th December. It was a big meeting to discuss the finalising of the statement with the relevant parties present, and then this, that comes out of it and there is a statement then attached to it.

Now, after that, on the 14th January, to John Ryall from you, you say "Further to our telephone conversation I attach revised versions of your and Denis's statements. I have marked one or two amendments in Denis's and where I have made the same amendments on yours I have not marked
le Court Reporters Ltd.

these. The information about Ken Richardson seems to have some... to Craig Tallents. I have amended this as appropriately and ... reference to the date of the article on Richardson's conviction.

"I checked the position in relation to the permission needed from Christopher Vaughan. I hope to have this by next week.

"The one remaining query on Denis's statement is in relation to trusts ... page 13. I have not seen a reference to this before. Do we know that Dinard is owned by a trust? As far as your statement is concerned, I have greatly cut this down." And that's referring, I think, to John Ryall's statement. "I do not believe it is necessary to duplicate the introductory sections of Denis's statement. I have also taken out references to your

discussions with Craig as I believe these are irrelevant.

It would be good for as much as of the statement to be in your own words as possible and not to duplicate Denis's but I appreciate this will be difficult. Richard may comment on this.

"Once you and Denis have further considered the statements and made any further changes let me know and I will send them to Richard in advance of your meeting next week."

And then following that, there was a letter of the 16th January from Denis O'Brien, sixth floor I presume this is Denis O'Brien Senior, of the 16th. "Further to our le Court Reporters Ltd.

telephone conversation I confirm I will be waiting for Richard Gordon on Tuesday afternoon as arranged. No doubt you have given my company address and telephone numbers.

"Regarding my police statement I would like to make the following changes: Please insert the following paragraph immediately after the second paragraph on page 8 which is handwritten in connection with the mediation. 'Denis O'Connor also told me that he was aware from the journalist of the Irish Times approaching Michael Lowry's solicitors saying he had information that Michael Lowry was involved in Doncaster. Denis O'Connor felt it was all connected and had to do with intimidation to receive a result in the retention dispute. I cannot recall the exact details at this stage but I certainly understood the content to contain a threat from Mark Weaver.'

"Please remove at the top of page 9: 'Subsequent to this with my permission Denis O'Connor called to the London solicitors and reviewed the retention files. As a result of ... assert money was due.' I don't think that went in, Ms. Collard, but it's there in his letter. "I'd be grateful if you could send me the complete revised statement by DHL so I could have it ready for John Gordon on Tuesday. Please also confirm that they have receipt of this fax."

That was on the 16th January, and on the 16th January, from Ruth to John "Further to my letter, I have now spoken to Denis regarding the statement. He wanted to make some le Court Reporters Ltd.

further statement and referred to his fax of today's date.

After we discussed these we agreed would I insert the first paragraph referred to and delete the second one but would not insert the final paragraph as this is not an accurate account of mine and Craig's meeting with Denis O'Connor. I had mentioned no... but duly made these changes and attach a revised version of the statement. I have also now spoken to Richard Gordon. As you know he has seen the statements ... yesterday and he is happy with them and I mentioned there were some minor further changes to Denis's which uncontroversial. He said this was likely to be fine but I would be grateful if you would draw them to the attention."

Attached to that then is the final statement, as I understand it.

A. Right.

Q. Does that all help you in relation to trying to remember what may have happened in 2004?

A. Yes. I mean it would be more helpful by seeing them but

Q. In a sense in one sense, whether you remember or not is immaterial in the sense that the documents speak for themselves. I mean, they seem to be one after the other.

And we get a very clear picture of what was happening and the contents of the documents equally speak for themselves in that sense. But it probably helps you to recollect things that might have happened that you had forgotten, things of that nature?

A. I don't know what you are asking me exactly.

Q. I am just really asking you is your memory improving by the le Court Reporters Ltd.

fact that these documents are being brought to your attention?

A. I don't know my memory of what specifically but, yes

Q. I'd be happy with that, Ms. Collard. There are just a couple of other small matters. I just wanted to try and understand something in my own mind because I am quite interested in it. At the meetings that you attended and you took your notes, there would be a passage of time between the taking of the notes and the dictating them into the dictating machine?

A. Yes.

Q. And then you'd hand them over to someone who would type them up and they would be put on the file?

A. Yes.

Q. There is no attempt when the note came back to try and correct it or ensure it was correct?

A. Generally speaking, my secretary, having typed up an attendance note, she would put them back on my desk. They wouldn't go straight onto the file but I can't say I then went through and made careful amendments to attendance notes, but I would glance at them before putting them into the filing myself. Occasionally, as a result of glancing at them, I would make some amendments.

Q. Just for my own curiosity, Ms. Collard, just bear with me while I try to find it, I wanted to ask you about your note of the meeting of the 10th September. I am looking at the typewritten version now.

A. Yes. Can you remind me what tab that is?

Q. Well, I don't think it's a tab but it's the transcript
le Court Reporters Ltd.

MR. HEALY: You mean the transcript of the manuscript.

A. Oh the transcript, yes, I have got that, yes.

Q. MR. MCGONIGAL: I just wanted to ask you, going down to the one which Mr. Healy is most concerned about: "Asked if I got prep to meet Richardson and Weaver/orig. Man/Dublin."

Is that saying ask if DOC would be prepared to meet Richardson and Weaver?

A. I think so. I think it's saying I, Denis O'Connor, was

asked if I was prepared to meet Richardson and Weaver.

Q. Sorry?

A. I think it's saying I, Denis O'Connor, was asked if I was prepared to meet Richardson and Weaver.

Q. I was just wondering could you go now to Tab 13?

A. Yes.

Q. And the second last paragraph?

A. Yes.

Q. And do you see where that now is "DOC said that ML did have a connection and that he had been in the room when discussions had taken place between KP and KR regarding the lease"?

A. Yes.

Q. That would seem to be totally different to what you have just told me is the meaning that appears on the transcript.

A. But what you have just asked me about on the transcript refers to the first sentence of that paragraph.

Q. Yes. If DOC was prepared to meet Richardson and Weaver.

A. Yes.

Q. Not that there had been a meeting with Richardson and Weaver.

le Court Reporters Ltd.

A. Oh, no, I didn't think there had been a meeting.

Q. I see. Because I had actually quite clearly wrongly believed that you are saying in the note that there had been a meeting between Richardson and Weaver?

A. No. A meeting had been arranged, yes, and I can add some

words first: to take place in Manchester and then to take place in Dublin. There had been arrangements made but that not that a meeting had taken place.

Q. Do you see what your actual transcript says?

A. That at Denis O'Brien's request a meeting had been arranged first in Manchester and then in Dublin."

Q. No, no, that "Denis O'Connor said that ML did have a connection and that he had been in a room when discussions had taken place between KP and KR regarding the lease."

A. That's not the meeting that I am referring to when I say "asked if I, Denis O'Connor, was prepared to meet Richardson and Weaver." That meeting I am referring to in the first sentence of that paragraph.

Q. I see. So that doesn't relate to that at all?

A. No.

Q. I see. Well what does?

A. The brief phrase at the end "ML lease meeting".

Q. I am sorry, I am totally confused but it may be just me, Ms. Collard. Are you actually saying to me that "ML lease meeting" was that there had been a meeting between Richardson and Weaver which ML attended?

A. That refers to, yes, the penultimate sentence

Q. Even though the sentence before seems to be saying Denis O'Connor was preparing to meet Richardson and Weaver?

A. The note in the transcript that begins "Asked if I, DOC, le Court Reporters Ltd. prepared to meet Richardson and Weaver originally

Manchester then Dublin. ML lease meeting" those two lines encompass the whole of that paragraph that begins.

"DOC said the upshot of all his discussions with DOB".

Q. You see it may be my stupidity, and don't be surprised at that, Ms. Collard, but I wonder if you could go to Tab 8 for me please for a second?

A. Yes.

Q. Do you see there in the middle of that you have a sentence "He had been told by DOC's office that he had a meeting with Richardson in Manchester on the 12th September."

A. Yes.

Q. So that's a meeting to happen?

A. Yes.

Q. Because the other memo is the 10th September?

A. Yes.

Q. So does that mean that the meeting with Richardson and Weaver hadn't happened?

A. Yes.

Q. And if it didn't happen on the 12th, then it would never take place?

A. I don't know that it would never take place, no.

Q. Well it would never take place on the 12th, sorry, you are quite right.

A. Well, I mean here I have Craig Tallents telling me that a meeting has been arranged in Manchester on the 12th September. When I met Denis O'Connor he told me that the meeting had been arranged first for Manchester, presumably

on the 12th, and then in Dublin. So that I think at the time of the meeting on the 10th, I understood that there was no longer a meeting to take place in Manchester on the 12th or whenever, but there was now to be a meeting taking place in Dublin.

Q. To be taking place?

A. To be taking place.

Q. Now, the only other matter that I wanted to ask you about, Ms. Collard, was you had a meeting with the Tribunal counsel, I think?

A. Yes.

Q. Was that the only meeting you had?

A. With the Tribunal counsel?

Q. Yes.

A. There was just one, yes.

Q. And the other matter that I wanted to ask you about. Am I right in understanding that there has been an agreement between yourself, or your firm, and the Tribunal in relation to the payment of your costs?

A. I believe so, but that's not been dealt with by me because I am not currently working, it's been dealt with by one of my partners. But I believe so.

Q. That your costs are to be paid?

A. Yes.

Q. Regardless of anything?

A. Regardless of?

Q. Regardless of whatever happens?

A. Yes.

Q. Don't be surprised, Ms. Collard. You seem to be the first witness who has achieved that status of having their costs agreed before they give evidence even though every witness who gives evidence is a witness to the Tribunal. It's the Court Reporters Ltd.

actually a point which is greatly appreciated by the

English system under the 1921 Act.

Thank you very much, Ms. Collard.

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

Q. MR. O'DONNELL: Good afternoon, Ms. Collard. I appear for

Mr. Lowry and Mr. O'Connor. I just want to ask you a few

questions and, firstly, I think you are familiar in general

with the workings of the Tribunal of Inquiry, or you have

become familiar with the working of a Tribunal of Inquiry,

and you may be aware that the Tribunal has emphasised on a

number of occasions that it sees its role as not adversarial

but inquisitorial; seeking to discover what occurred. And

in the same sense, I want you to understand that the

questions I am asking you are not in any sense adversarial

to you. They are an attempt to tease out possible areas of

confusion and misunderstanding and attempting to try and

get some understanding of, at this remove, of what occurred

in 2001 and 2002 when you were dealing with this matter.

Do you understand that?

A. Yes.

Q. Now, firstly, I think you may also now understand that some of your documents have been the subject of fairly intense scrutiny at this Tribunal?

A. Yes.

Q. And, in particular, some of your attendances. And I think you have explained but I just want to be clear about your process where you would produce an attendance note such as le Court Reporters Ltd.

some of the notes that we have looked at here earlier this morning, and in the case of some meetings, you would have a note taker because, as you say yourself, you are not the best note taker of a meeting in which you were participating in?

A. Yes.

Q. But in meetings where you do take a note, you take headlines and sometimes, as you say, and this is I think an entirely human thing, you pick up on matters which in retrospect may not appear entirely relevant and sometimes don't have a clear note about some things that in retrospect appear very relevant?

A. Yes.

Q. Is that right?

A. I think that's fair.

Q. I don't think you are unusual in that regard, Ms. Collard. Then I think you say that your practice would be within a matter of days to attempt to dictate an attendance note which would be a fuller note of the meeting and you use

your handwritten notes to jog your memory, as it were?

A. Yes.

Q. And that attendance note comes back to you, but again I think you say very fairly, and again this is something in respect of which I would say you are not unusual, it's not something that you would scrutinise very carefully before it would go on the file?

A. No.

Q. And when we are dealing with matters it would seem to follow that when we are dealing with matters that appear in your attendance note but aren't recorded at all or fully

le Court Reporters Ltd.

or at all in the handwritten notes, that what's being represented there is an exercise of memory?

A. Yes.

Q. Rather than the transcription of actual words or events, is that fair, Ms. Collard?

A. Yes.

Q. And is it also fair to say that this, it appears, was a piece of messy litigation undoubtedly but not a very remarkable piece of litigation, not a very significant piece of litigation and that you would have been dealing with other matters at the same time?

A. Yes.

Q. And that, therefore, when you come to give evidence, as you have done very fairly and conscientiously, what you are doing is going back to your file and attempting, at this

remove, to recollect what occurred from what is set out there and in other correspondence, is that fair?

A. Yes.

Q. So there is a sort of double act of memory involved. And if you look at the documents that lawyers produce generally, there are, I must suggest to you that they fall into a number of different categories. Some are drafted with very great precision and are subject to drafting and redrafting and reconsideration such as contracts or possibly important letters or possibly pleadings. And others, such as an affidavit, may be subject to a process of backwards and forwards with the client, clarifying exactly what was being done and asking them to be quite clear about what's set out in the document. Is that fair?

A. Yes.

le Court Reporters Ltd.

Q. And still others may be the subject of circulation to ensure or to obtain approval, such as the minute of a meeting?

A. Yes.

Q. And it will be circulated among the participants to see that they agree that this is a record of the meeting?

A. Yes. That's not something I would normally do

Q. within your practice. But the attendance note, I am going to suggest to you, is something considerably different from that. It's not intended to be circulated among participants of a meeting to provide some defined

record of a meeting?

A. No.

Q. And it's not the subject of painstaking drafting and redrafting?

A. No, indeed.

Q. And we know that both those types of documents can still contain misunderstandings or errors of transcription?

A. Yes.

Q. But an attendance note is something that is, I suppose, of the lowest order of lawyers' documents, and I don't mean to underestimate it in that sense, because it's intended, in a sense, for very few eyes?

A. Yes.

Q. It is intended for the file so that the lawyer can themselves go back to the file and familiarise themselves with the general background. Is that

A. Yes, it's a record for the file.

Q. And in most cases it rarely comes to public view, as it were?

le Court Reporters Ltd.

A. Yes.

Q. And if any of the information contained in such a document was ever to become important for the purposes of a transaction or a litigation or any other piece of drafting or work that a lawyer will be doing, normally one would expect well what would happen, there would be a more formal process and perhaps the drafting of the pleadings or

the letter or the correspondence will go in, the checking of the client, the taking of instructions, etc. You wouldn't, as it were, take the attendance note and go straight ahead and draft an important document and not have it checked by a client or considered by a colleague, would that be fair?

A. If I were to use an attendance note?

Q. Yes.

A. To produce another document?

Q. Yes.

A. Well, I think what I would do is produce the other document and then the other document would be circulated.

Q. Exactly, exactly. In a sense, it's background information for the lawyers own purpose, as it were?

A. Yes.

Q. And I suppose it doesn't reflect at all on the conscientiousness or accuracy of the note taker if there are sometimes either errors or misunderstandings or confusions in an attendance note that is produced?

A. Well, obviously one hopes you don't have errors in misunderstandings but inevitably they come in.

Q. Precisely. It's an almost inevitable consequence of the process of communication and recording?

le Court Reporters Ltd.

A. Yes.

Q. And indeed memory, isn't that right?

A. Yes.

Q. And it's a commonplace of human communication in a sense, that we think of that as a process that's ongoing, that you think you understand what somebody has said, they come back and said "Well no, I actually meant something different" and by that process we communicate with each other; isn't that right?

A. Yes.

Q. Now, I just want to tease out with you just some areas of possible confusion, and I suppose the linguistic philosopher will say that confusion is the order of the day rather than the opposite; that it's very rare that you have the absolutely clear communication by one person and the equally clear understanding by another?

A. Right.

Q. And it doesn't reflect on either the communicator or the communicatee if there is that area of misunderstanding. They both can be doing their best. They both can be telling the truth.

A. Yes.

Q. And I want to just look at some of those areas of, I suppose, possible confusion. One some relatively uncontroversial areas, for example. Firstly, if we can take the issue of your understanding of who Denis O'Connor was acting for and that problem, and that occurs within a very short time scale; isn't that right?

A. Yes.

Q. Because you didn't know about Denis O'Connor before the 2nd

le Court Reporters Ltd.

September, 2002 and he, in a sense, goes out of your gaze or view by about the 16th or 17th of that month?

A. Yes.

Q. And you have the situation where, I think you very fairly said, you may be wrong in relation to these matters. Can you just clarify for me what you mean by that, in what way you were wrong?

A. It's evident to me from the file that John Ryall was completely consistent in what he said about Mr. O'Connor and his role. Therefore, my understanding so my understanding of his role at the meeting on the 10th September was wrong. I do not know from where I derived that understanding following Mr. Ryall's e-mail to me on the 3rd September.

Q. Well, perhaps we can try and locate the source of your understanding of Mr. O'Connor's role as differing from that which Mr. Ryall, as you say, consistently said on the 3rd September and the 16th September. Just let's look at that carefully for a moment.

I think you very fairly say yourself there is an absolute consistency in what Mr. Ryall says to you on the 3rd September, at Indent 10 I think it is, and what he says to you and to Craig Tallents on the 16th September and to you and Craig Tallents I think subsequently on the 16th or 17th September?

A. Yes.

Q. So he has never or on those two dates he is saying something absolutely consistent?

A. Yes.

le Court Reporters Ltd.

Q. You say in your statement, and again I think this is a normal way in which we attempt to recall what happens or what happened, and try our best to recall, that you must have formed the impression that you had the impression that Mr. O'Connor was in some way acting for Westferry?

A. Yes.

Q. That had to have occurred after the 3rd September?

A. Yes.

Q. Because the e-mail of the 3rd September is very clear. And before the 16th September?

A. Yes. Before the 10th.

Q. Well, let's just look at that. I think you say in your statement you must have had a conversation, or you may have had a conversation with Mr. Ryall?

A. Well, the possibility seemed to me that either I had a conversation with Mr. Ryall in which I misunderstood what he was telling me because of his consistency, as it appears to me, or I had a conversation with Craig Tallents.

Q. Well, I think the suggestion you made in your statement, and it's only a suggestion and I understand that, was that you had a conversation with John Ryall?

A. Right. But it occurs to me that the other possibility is that I had a conversation with Craig Tallents.

Q. Exactly. And I suggest to you one of the reasons that that occurs to you is the unlikelihood of there having been such a conversation with Mr. Ryall, just as a matter of probability and logic. Again this doesn't reflect in the slightest on anyone, least of all you.

A. I had conversations all the time with Mr. Ryall at this stage because we were discussing the mediation apart from the Court Reporters Ltd. anything else.

Q. Exactly. But can I just suggest to you, and this is I am not attempting in any way to trick you or trap you or contradict you in any way, I am just trying to help you and hope that you will help us in this regard. Can I suggest to you that there are three reasons why it seems unlikely that such a conversation took place? Firstly, it would involve Mr. Ryall changing his position between the 3rd and 16th, having a position on the 3rd, changing it and then changing it back again on the 16th?

A. Well, not necessarily if I misunderstood him.

Q. Exactly. That would suggest either you misunderstood him or he changed his position?

A. Yes.

Q. And the first and the changing of his position is unlikely?

A. Yes.

Q. Secondly, nearly all your conversations are properly recorded in attendance notes, even conversations as short

as six minutes, because you would have to do that for the purposes of proper time keeping and recording of information that is being given to you; isn't that right?

A. I certainly would try to make a note of the important conversations, yes.

Q. And there is no note of any such conversation?

A. There is no note.

Q. And thirdly, Mr. Ryall was asked about this in his own evidence and he has no recollection or doesn't believe any such conversation took place because his position was entirely consistent.

le Court Reporters Ltd.

A. Yes.

Q. So that would seem to suggest that no such conversation took place in which you could have understood or misunderstood Mr. Ryall, as a matter of probability; would you accept that, Ms. Collard?

A. I would, apart from the fact that something happened to change my mind and I don't know what it was.

Q. Perhaps I am going to come to what it was, come to the alternative possible suggestion. But it would seem to suggest that you didn't speak to Mr. Ryall in that period between the 3rd and 16th, certainly to have had the opportunity of understanding or misunderstanding him in relation to Mr. O'Connor's role. And that's why you think in your evidence today you suggest it may have been a conversation you had with Mr. Tallents?

A. It may have been Mr. Tallents.

Q. And it may have been indeed from Mr. Tallents who you picked up the belief that Mr. O'Connor was acting for Westferry, that may well have been the case. But I am going to suggest to that that was after the meeting on the 10th September, because you see, Mr. Tallents gave evidence himself to the Tribunal in Dublin, and he had never received either the e-mail of the 3rd September or any corresponding e-mail, do you understand?

A. Yes.

Q. So he was in a different position from you?

A. Yes.

Q. He never started with that positive piece of information.

So he attends the meeting of the 10th September, briefs Denis O'Connor, and his evidence is, as I recall it, that the Court Reporters Ltd.

he goes to the meeting on the 16th September and becomes alarmed to discover the position that you had been told on the 3rd September, which is, Mr. O'Connor is acting as somebody through whom a settlement can be achieved?

A. Yes.

Q. And that's entirely understandable because he had never been told that?

A. Yes.

Q. And he may have had a misunderstanding of Mr. O'Connor's role and became alarmed at it, and then communicates to you on the 16th, immediately on the 16th September and

communicates to you not only that fact but also his alarm and concern?

A. Yes.

Q. And it would be entirely natural and normal that you would, I suppose, react to his expression of concern because he is the person who is your most direct point of contact in this case, isn't that right, in terms of management

A. Certainly at this stage I was talking to John quite frequently as well, but throughout the case it had always been, yes, Craig Tallents.

Q. Yes, exactly. And, in a sense, he was the other professional managing the case?

A. Yes.

Q. Rather than disruptor or a participant in it?

A. Yes.

Q. And he very understandably becomes alarmed. He communicates that to you and it seems possible, and I think Mr. Tallents agreed with this, that what happened was that you, as it were, may have not recalled the instruction of le Court Reporters Ltd.

the e-mail of the 3rd and simply reacted to that situation and corresponded with Mr. Ryall and said 'Hold on a second, we have to be very careful what Mr. O'Connor is doing'?

A. I don't think that's right. I think I went into the meeting on the 10th with a view about Mr. O'Connor's role.

Q. But, you see

A. Because I don't think it can have been a case of simply

forgetting what Mr. Ryall had told me because I came to a positive view about things.

Q. Is there anywhere you think you recorded that positive view?

A. No.

Q. And Mr. Tallents, again as I recall it, did not suggest, or did not identify any occasion upon which he had been instructed prior to the 10th September or even picked up the impression from Mr. Ryall as to Mr. O'Connor's role, do you understand?

A. Yes.

Q. So there was nothing where he learnt positively of Mr. O'Connor's role being that of representing Westferry?

A. Right.

Q. So it seems possible, at least, and I might suggest to you probable, that you had a situation where he attended the meeting, assumed or deduced that Mr. O'Connor was acting for Westferry on the 10th September and then became alarmed on the 16th September.

MR. HEALY: I just wonder if that's correct. Maybe Mr. O'Donnell would look at Document 7 in Book in this book in fact, the book we are calling Book 84; that is Court Reporters Ltd.

Mr. O'Connor wrote to Mr. Tallents and copied to Mr. O'Brien. Maybe that could be the source of it.

Q. MR. O'DONNELL: I don't think Mr. Tallents ever gave that evidence, and I am open to correction on that. Perhaps if

we just leave it there, Ms. Collard, and agree that's an area of some possible misunderstanding and confusion?

A. Yes, I certainly accept that.

Q. Which is entirely innocent. It doesn't reflect on anybody.

It's, I suppose, the nature of human communication or miscommunication?

A. Yes.

Q. Now, I want to ask you to look now at the file attendance of the 10th September at Indent 13. Now, I think in your evidence you said that you picked up on, I think, the third paragraph there, somehow perhaps supporting your view as to your understanding of Mr. O'Connor's role at that meeting.

You say that he was also representing a member of the Irish parliament Mr. Michael Lowry?

A. Yes.

Q. Now, I want to and of course that's again how we piece together our memory; we look at a document and we sort of test our memory against the bits we know to be fact or which appear to be fact or which are recorded somewhere.

A. Yes.

Q. And we see if that fits, as it were, isn't that right?

A. Yes.

Q. But in fact, Ms. Collard, I want to suggest to you that that reference firstly, that the attendance note nowhere records Mr. O'Connor as saying that he was representing the Court Reporters Ltd.

Westferry?

A. Yes.

Q. Neither the note nor indeed the handwritten the attendance note nor the handwritten note?

A. No, that's correct. I mean, he does say in the previous paragraph that he had been trying to sort out on Denis O'Brien's behalf the position with Kevin Phelan. But, no, nowhere does it say he is representing Westferry.

Q. Or he does, or you record him as saying that he represented somebody and also represents Mr. Lowry?

A. Yes.

Q. Because there is two references to him saying that he represented someone?

A. He had represented someone who had been in partnership with Kevin Phelan.

Q. Exactly. And that again is recorded. That comes from your handwritten note because I think the tense isn't apparent, is just says 'rep someone' and then again subsequently it says 'represented Michael Leary' as your handwritten note says?

A. Yes.

Q. And so, he did you record him as identifying those representations, as it were?

A. Yes.

Q. Now, the reference to 'also', therefore, I would suggest to you, relates back to that sentence in the second paragraph where he says he had represented someone who had been in partnership with Kevin Phelan and Kevin Phelan, and he also

represented Michael Lowry?

A. It could do. Equally, I think it could refer back to 'he
le Court Reporters Ltd.

had been trying to sort out on Denis O'Brien's behalf'.

Q. Possibly, but I suppose what we are engaged in then is
attempting to piece together what it was you were thinking
when you recorded the note; isn't that right?

A. Yes. I obviously can't say.

Q. Precisely.

A. I am speculating, as you are, on the basis of the note.

Q. Well one thing I suppose, Ms. Collard, that we can clear up
is that I think up until now the Tribunal has been
proceeding on the assumption that the someone referred to
in the second paragraph was Mr. Lowry, but that doesn't
appear to be the case; is that right?

A. I have no idea who that someone was.

Q. But it appears to be someone different from Mr. Lowry;
isn't that right? Otherwise would you not have written the
third paragraph and the first sentence of the third
paragraph in the way you did?

A. Well unless that was trying referring back to trying to
sort out on Denis O'Brien's behalf.

Q. It hardly makes sense he represented someone as being in
partnership with Kevin Phelan and then to say a little
later he was also representing a member of the Irish
parliament?

A. Yes, I would agree with that.

Q. That suggests, it seems fairly clear, that those are two different people?

A. Yes.

Q. And that's an example of how, I suppose, when you look, sometimes when you only have a document and you look carefully at it, you can be misled by it?

le Court Reporters Ltd.

A. Yes. Yes, no, I see what you mean about that.

Q. That appears to be, I suppose, the logic of what's being said there. And it also follows from your handwritten note that whatever about the documents that have been circulated to you, I think in March, the name Michael Lowry did not leap out at you as being something you recognised or as being any significance for you?

A. No. I think, as I say, it came back to me during the course of this meeting that there was an issue to do with Michael Lowry and the Moriarty Tribunal, probably no more than that, but certainly when the name was first mentioned, it wasn't in my head to the extent of me getting it wrong.

Q. Exactly. And there is nothing surprising about that. It might be more worrisome for Mr. Lowry if you were a member of the electorate of North Tipperary but it's not surprising in this case, Ms. Collard. But and if we put this document in context, I suppose of all firstly, of all the documents that might bring you to give evidence in court or before a Tribunal of Inquiry, it's one that of a of all the things you would produce as a lawyer, it's

possibly one of the ones least likely that you would ever have thought that would have brought you to give evidence beneath the gaze Viscount Lindley, Mr. Justice Moriarty and Sir Edward Carson?

A. I certainly would never have anticipated

COMMISSIONER: I am very flattered, Mr. O'Donnell.

Q. MR. O'DONNELL: A modest reward, Ms. Collard, being offered for a sentence that can include those three people. Now the Court Reporters Ltd.

but because it's an attendance of a meeting, it's to tell you about something, and I want to now place that meeting in context as well, because when you say you had some dim awareness about, if you had, about Michael Lowry and the Moriarty Tribunal. But of course these matters are now seen through the perspective where this Tribunal has spent many years indeed considering the relationship or otherwise between Mr. Lowry and Mr. O'Brien, the award of the licence, etc.

A. Yes.

Q. But the time for you, I suggest, that this was something on the very periphery of your concerns and knowledge?

A. Yes, that would be right.

Q. And furthermore, this was a meeting which would, if we place it in context, was not a meeting principally for Mr. O'Connor to tell you something, but rather was for you and Mr. Tallents to brief Mr. O'Connor about the dispute?

A. Yes.

Q. The nature of the dispute, the detail of the dispute, to allow him to form some get some understanding of it and to form some view of it; isn't that right?

A. Yes.

Q. And as a result, your handwritten notes run to, I think, some two pages for a meeting that takes more than two hours?

A. Yes.

Q. That's principally because the thrust the meeting is to tell Mr. O'Connor things?

A. The majority of the meeting is probably encompassed in a few sentences which was Craig Tallents going through the le Court Reporters Ltd. details of the accountancy matters.

Q. And when you are recording these matters, and of course you are conscientiously taking a note with all the frailties and infirmities that you have identified, you are recording matters that are not in any way central to the case as far as you are concerned?

A. That's right. I think I made a reasonably extensive note of them because they struck me as fairly curious.

Q. But they are not matters it's not a case where you are taking instructions from Mr. O'Connor?

A. No.

Q. It's not a case where you are taking a witness statement from him

A. No.

Q. which you want to identify. It's a conversation and most of the conversation is going in the opposite direction?

A. Yes.

Q. Now, I want you to look at a phrase that has been the subject of significant scrutiny, perhaps undue scrutiny over the last month or more, and that's at the bottom of the penultimate paragraph. It's something Mr. McGonigal asked you about. And it's the sentence that starts with "They wanted to cause the maximum embarrassment for DOB and others including ML," do you see that?

A. Yes.

Q. I may be wrong because I have only just seen these notes but I don't think that sentence is in any way reflected in the handwritten notes?

A. No, that's correct. I mean, as I said to Mr. McGonigal, le Court Reporters Ltd.

this entire paragraph is encompassed in a couple of lines in my

Q. A couple of lines and a few words?

A. Yes.

Q. And so when we are looking at this paragraph and attempting to put meaning on it, this is clearly the exercise of memory post meeting?

A. It is.

Q. And the, I suppose, attempt to remember what was said?

A. Yes.

Q. And doing that, I suppose, is an exercise is looking at what notes you have taken, trying to remember the words that the impression that was created?

A. Yes.

Q. And ultimately what it was that you understood or felt or believed as to what transpired at the meeting?

A. Yes.

Q. And if you look at the next, the last sentence, "DOC said that ML did have a connection and that he had been in the room" those words are being interpellated, as it were, into the notes. I think "connection" and "being in the room" are something that isn't referred to in the notes?

A. No. All it says I think is "ML lease meeting".

Q. Yes, exactly, those three words about "ML lease meeting". And, in particular, as Mr. Healy has pointed out to you, the reference to discussions between KP and KR regarding the lease; that's again something that appears for the first time in the attendance note and therefore is part of your recalled memory of the meeting rather than the notes you took?

le Court Reporters Ltd.

A. Yes.

Q. Now, I think Mr. Tallents there were only three people at that meeting: Mr. O'Connor, Mr. Tallents and yourself?

A. Yes.

Q. Mr. Tallents himself made notes, although he said he didn't claim any great quality of comprehensiveness for them, but

his notes don't contain anything that approximates to this.

A. Right.

Q. And, furthermore, and I just want to ask you to comment on this. His memory of that meeting was that he has no memory of that sentence, that discussion, that concept of Kevin Phelan, Mr. Richardson, the discussion of the lease with Mr. Lowry.

A. Right.

Q. And, more importantly, I think he says the reference to Mr. Michael Lowry, as far as he was concerned, it was a question of so what? It wasn't in any way either central to his concerns or relevant to his concerns, or indeed particularly significant as far as he was concerned.

A. Yes, well that's entirely as I would expect. I mean, for him Craig was obviously there to focus on the accountancy matters and not on the tactical, evidential matters which obviously I was focusing on.

Q. Now, as Mr. Healy has said to you, Mr. O'Connor has given evidence already that he does not believe and did not say that Michael Lowry had a connection to the transaction in that Mr. Richardson, he was in a room with Mr. Richardson and Mr. Phelan when the lease was discussed. In saying that, that's his best recall and he is not by any means impugning your integrity or conscientiousness, but if you le Court Reporters Ltd.

look at just stand back from this for a moment and look at the sequence you have described, there are a number of

possible explanations why Mr. O'Connor may come to that conclusion or may give that evidence and why you may have this attendance note in place, without either impugning his truthfulness or your conscientiousness. Do you understand, Ms. Collard?

A. Yes.

Q. Leaving aside this for a moment. Logically the possibility are that Mr. O'Connor did indeed say that sentence and you remembered it when you came to make your attendance note and put it in?

A. Yes.

Q. The second possibility is that you recorded it sorry, the second possibility that he said something that you understood as meaning that and that you recorded that?

A. Yes.

Q. The third possibility is that you misunderstood misrecorded something that had been said. These are all possibles?

A. Yes.

Q. I suppose a fourth possibility is that you misremembered when you came to make the attendance note when you looked at your handwritten notes and put in what you believed to be the best account of what happened?

A. Yes.

Q. I suppose there is a further possibility of confusion or misunderstanding in memory when you come subsequently to look again at what you had said and written. And those are

all possibilities, isn't that right, Ms. Collard?

le Court Reporters Ltd.

A. Yes, yeah.

Q. Now, looking at those just for a moment, one feature of this Tribunal of Inquiry is that it has enormous fact finding power. In a sense you can see that yourself today, the extent it can go to find attendance notes, retrieved e-mails and try to piece together all these matters?

A. Yes.

Q. Now, one thing in relation to that sentence is firstly, that's something that isn't recorded in your handwritten notes of the actual meeting, it's not recorded in Mr. Tallents's notes and it's not something Mr. Tallents recalls. Do you understand? Furthermore, there is, as I understand it, no evidence whatsoever that any such meeting ever took place.

A. Yes.

Q. Do you understand that?

A. The lease meeting obviously took place between Kevin Phelan and Ken Richardson.

Q. But the concept of Mr. Michael Lowry being involved and present at a meeting is something for which there is no other evidence whatsoever?

A. Absolutely. Which is reflected by my following sentence which is that no one had ever suggested that to me before.

Q. And subsequently it does not seem to have been suggested there is no independent evidence of it, do you understand

that?

A. No.

Q. And it goes a little further than that, or it goes considerably further than that, Ms. Collard, because I think you were aware from the process of this litigation the Court Reporters Ltd.

that some of the parties involved were, as you say, quite odd; isn't that right?

A. Yes.

Q. Just for the record, if you could, when you are nodding your head

A. Yes, sorry, yes. There was odd behaviour throughout.

Q. Exactly. Odd and peculiar behaviour and in particular, behaviour on the part of Mr. Phelan whom you refer to as not a creditworthy witness; is that right?

A. A discredited witness, I think.

Q. But that's the same thing, isn't it, not a creditworthy witness?

A. Yes, I guess so.

Q. And Mr. Richardson and Mr. Weaver, who wrote these bizarre letters and acted in this bizarre fashion; isn't that right?

A. Yes.

Q. And, you see, and one of the things that is apparent at this remove and may have become apparent as you move through this litigation was, that for different reasons parties who were antagonistic to Mr. O'Brien would be

willing to do almost anything to try and bring additional pressure to bear on Mr. O'Brien. For example, to settle the dispute?

A. Yes.

Q. And you may have become aware and may now be aware that one of the most potent ways of doing that was to attempt to link Michael Lowry's name to Mr. O'Brien in relation to a transaction, because that was the subject of active investigation in a Tribunal of Inquiry?

le Court Reporters Ltd.

A. Yes.

Q. And so Mr. Richardson and Mr. Weaver certainly, and Mr. Phelan would have had every incentive to link Mr. Michael Lowry to a meeting at which the lease for Doncaster Rovers was discussed?

A. Yes.

Q. If indeed such a meeting had taken place. And, furthermore, they had ample recipients for that information, not just this Tribunal, but I think, as you are aware and some of the documents show, the matter was being actively investigated by some newspaper journalists?

A. Yes.

Q. Who would clearly print the matter without there having to be a public inquiry, cross-examination, attendance of witnesses. And also there is evidence that the matter was being carefully investigated by companies who had been disappointed bidders at the time of the licence who were in

the business of procuring evidence that might damage

Mr. O'Brien?

A. Yes.

Q. So, I mean, so there was every incentive for

Mr. Richardson, for example, or Mr. Phelan if they wanted

to damage Mr. O'Brien to say "Oh, yes, there was such a

meeting and it occurred on such a day." And there was

every incentive for various parties to receive that

information?

A. Yes.

Q. And there is considerable evidence that all those parties

had been in communication with each other and with the

Tribunal from time to time. And in all that communication,

le Court Reporters Ltd.

neither Mr. Phelan nor Mr. Richardson, for example, suggest

there was ever any such meeting?

A. Yes. Well, as I say, I recorded my reaction which was

Q. Which was that it would be, if it were being said, it would

be surprising because it didn't seem correct?

A. I thought it was incredible.

Q. It is an incredible thing to suggest, isn't it, in the

light of what you knew?

A. Yes. You know, I had obviously lived with this litigation

for quite a long time.

Q. And you'd never heard anything

A. The lease meeting was a crucial meeting. Our evidence in

relation to it was quite poor, and I found it incredible

that anyone else, let alone Michael Lowry, could have been involved in that meeting and it never be mentioned.

Q. And that's why I suggest to you that it may be possible there was some misunderstanding in what occurred and what you undoubtedly understood Mr. O'Connor to say and what Mr. O'Connor may have said, because there is simply no evidence of any such meeting and it would therefore be a bizarre thing for Mr. O'Connor to have said to you and, as Mr. Healy I think put it to you, it may be possible that there was a confusion between the protagonists at that meeting; that it may have referred that he may have been referring to some other meeting, for example, do you understand?

A. I do.

Q. That seems a possibility, is that right, Ms. Collard?

A. I mean, I think all I can say really is, my response to Mr. Healy that I believe this is what he said. I don't
le Court Reporters Ltd.

believe I would have recorded it otherwise if this wasn't what he had said.

Q. Against that, and looking back at it from this remove, we have to say it's not something that's recorded in your contemporaneous note. It's not something recorded in Mr. Tallents note?

A. Absolutely.

Q. It's not something that lodged in Mr. Tallents' memory. It's not something, as far as we can humanly know, ever

occurred. And it's something Mr. O'Connor says he didn't say.

Now, I want to just ask you one further question. You made the point in evidence that it was a surprising thing if it were true and if it were said because, as you say, it was central to one of the issues in the case. This has got nothing to do it with Mr. Michael Lowry. As you say, if anyone else had been present at the meeting, that was important from your point of view?

A. Yes.

Q. But it does not appear, Ms. Collard, or does it, that either you or Mr. Tallents did anything further about that fact?

A. No.

Q. You didn't seek a statement from Mr. Lowry in relation to that meeting?

A. I didn't believe it was true.

Q. So it was something you didn't believe was true even at the time it was said to you, is that right?

A. Yes.

le Court Reporters Ltd.

Q. And so you discounted it?

A. Yes.

Q. So whatever Mr. O'Connor said to you, was something you didn't believe to be true?

A. I didn't believe it was true that Mr. Lowry had been there.

Q. I suppose one final thing is, and again it's not a matter

I am sorry, one final thing that I should just deal with, Ms. Collard, is the fact that the circumstances in which Mr. O'Connor stopped, as it were, being involved in this. I don't think any of the other witnesses have been asked in any detail about this but, just for the record, I think the point is that your advice in your letter of the 17th September, which is at Indent 22, your primary advice, as it were, was that Mr. O'Connor should not be further involved?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. And your secondary advice was that, in the event, you nevertheless wanted to proceed, have him sign these documents and equally have Dinard's representatives sign the documents?

A. Yes.

Q. And, in the event, that seems to Mr. Ryall did not seem to, I don't think he gave evidence that Mr. O'Connor had refused to sign the document; that it may be that that all petered out because your advice was accepted or your unhappiness with the process was accepted?

A. Yes. I mean, my recollection, but this could easily be wrong, is that John Ryall told me Mr. O'Connor wouldn't sign the undertaking.

Q. And that's again a matter that's not recorded anywhere and,

as you say, it's your recollection and it may well be wrong?

A. It may well be wrong.

Q. I don't think Mr. Ryall himself said that, and certainly Mr. O'Connor doesn't believe that to be the case, but nothing may turn on it, Ms. Collard. It's certainly not something you had recorded anyway?

A. Right.

Q. Thank you, Ms. Collard.

XXX

CHAIRMAN: I might just briefly break in there. We are virtually at the end of Ms. Collard's evidence and there remains only the considerably shorter evidence of Ms. McMillan and we are two thirds way through the entire transcript, or a little bit more. I am conscious it's quite a marathon for Ms. Hayes, and without in sense in any way trying to replicate Easter liturgical practice, I think some sharing of the load for the remaining portion might make some sense. I see we have, organising the exhibits, Mr. Stephen McCullough who was in fact the counsel who examined the next witness, Ms. McMillan. So what I propose, in ease of Ms. Hayes, for the remaining 60 pages or so, that if Ms. Hayes would continue to give the responses of the witnesses, Mr. McCullough can perhaps deal with the questions that he himself asked, and I'll put in myself such interventions as I may have made or other barristers who may have spoken. I am conscious that there

are appreciably less exhibits involved in relation to

le Court Reporters Ltd.

Ms. McMillan's examination and if the gentleman of the

press have any difficulties, of course any necessary

exhibits will be made available immediately afterwards. So

we'll just take it up on that basis.

CONTINUATION OF EVIDENCE ON COMMISSION BEING READ INTO THE

TRANSCRIPT

"MR. HEALY: Just one or two small matters.

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

Q. MR. HEALY: One thing I should have mentioned to you,

Ms. Collard; I thought Mr. O'Donnell might have mentioned

it to you. In his evidence to the Tribunal in Dublin,

Mr. O'Connor stated with reference to the portion of the

attendance on the 9th September, or rather of the 10th

September which you have been just been discussing, he said

the following, at Day 345, page 18:

"The reference in the attendance note of Ms. Ruth Collard

as to a connection with the proceedings and involvement of

Michael Lowry is being misunderstood. If, in stating that

Michael Lowry had an involvement, Mr. O'Connor was making

such comment solely with reference to the ongoing Tribunal

hearings and the suspicion that attempts were being made by

third parties to convey the impression that Mr. Lowry had

an involvement, the foregoing was of itself viewed by

Mr. O'Connor as an involvement, and this was all that he

was seeking to convey."

le Court Reporters Ltd.

Does that throw any light on the meeting for you that Mr. O'Connor, if he said there was an involvement, he meant Mr. Michael Lowry was involved in the inquiry, not that he was involved in Doncaster?

A. Not really. I think I no, not really.

Q. And just the last matter. I appreciate the points you are making concerning the, how pivotal the lease was and any discussions about the lease were. Do you remember I asked you earlier about a meeting you had on the 9th October, I think, with Mr. O'Brien and Mr. Ryall?

A. Yes.

Q. The one where I was trying to work out what you meant by "Wanted to see if Mr. Lowry appeared in file. Trying to figure out Denis O'Connor I had to be friendly." Did you form any impression of what that meant "I had to be friendly" meaning, presumably, friendly with Mr. O'Connor? Did you form any impression about what that meant?

A. Not that I can recall.

Q. Thanks very much.

COMMISSIONER: Ms. Collard, thank you very much for your assistance and cooperation through a very long morning indeed. I see a lady who has arrived who I take is your former colleague, Ms. McMillan. Given the exigencies of time it's unrealistic that we have any lengthy deferral but for the purpose of documents and so forth, I suppose I

better say 20 minutes.

le Court Reporters Ltd.

MR. McGONIGAL: I apologise again for our delay, Mr.

COMMISSIONER. I think the lost half hour may well be our fault. I do apologise for that but it was completely unavoidable.

COMMISSIONER: So be it, Mr. McGonigal. I appreciate the situation. Very good, 20 minutes. Thank you very much.

THE COMMISSION ADJOURNED AND RESUMED AS FOLLOWS:

MR. McCULLOUGH: Kate McMillan.

le Court Reporters Ltd.

KATE McMILLAN, HAVING BEEN SWORN, WAS EXAMINED BY MR.

McCULLOUGH AS FOLLOWS:

Q. MR. McCULLOUGH: Now, Ms. McMillan, just perhaps to begin by way of background. I am correct, I think, in saying that at the relevant time which, if we were to call it from early 2002 until perhaps January, February 2003, which would be I think the period I'll be taking you through, that you were an assistant to Ms. Ruth Collard in Peter Carter-Ruck & Partners Solicitors, is that correct?

A. That's correct.

Q. And would I be correct, and you can correct me if I am wrong, that, as such, you would have perhaps been involved in meeting clients and in perhaps getting information, taking in information, recording information, but that you would not necessarily have been making any decisions without the authority or without consulting first with

Ms. Collard, would that be correct?

A. That's correct.

Q. Now, I think you have a Book of Documents in relation to your evidence and that of Ms. Collard, and I am going to hopefully confine what I'll be dealing with to that book.

So, perhaps can I ask you to turn just to the first tab in that book, please, Tab Number 1, Divider 1.

COMMISSIONER: Are you happier standing or sitting?

A. I am happier standing.

Q. MR. McCULLOUGH: I think we are calling this Book 84 now, although it may not be marked as Book 84. But I just le Court Reporters Ltd.

wanted to briefly draw this document to your attention.

This is a fax from Aidan Phelan to you, and the cover sheet states as follows:

"Dear Kate,

I attach for your attention the following:

"1. A letter from Mark Weaver to Mr. Ned Carroll a former partner of mine in a chartered accountants ... which I resigned from in December, 1997. He has no connection with this transaction and it is very concerning that matters which are the subject of litigation are being sent out to unrelated parties by a person who purports to act for the plaintiffs in this case.

"2. A letter from Christopher Vaughan, solicitor documented a meeting he had with Mark Weaver.

"I hope you can read the Mark Weaver letter but in any case

I will have copies for our meeting on Wednesday morning next.

"Yours sincerely.

Aidan Phelan."

Now, he enclosed with that letter one lengthy enough document which comprises in fact two fax sheets, one handwritten and then one typed and then a letter from Mark Weaver to Brian Phelan & Company Accountants, to which was attached, I think, an earlier letter from Christopher Vaughan to Mr. Paul May and Kevin Phelan, which in turn had the Court Reporters Ltd.

attachments.

And then after that, which I think is the second document referred to, is a letter and it's towards the end, it would be about four or five pages from the end of the Divider, is a letter on Christopher Vaughan's headed paper dated 19th February, 2002 to Aidan Phelan from Christopher Vaughan.

And it's essentially his recording of Mark Weaver arriving at his offices.

A. Yes.

Q. And I simply want to ask you, did you, or do you recall whether you would have considered those documents in any detail when you received them back in March, 2002?

A. I am afraid I can't recollect whether I considered them at that time or not.

Q. And I think you did subsequently; there is a mention of a meeting on the following Wednesday. Now, I don't intend to

go into it in any detail, but I think it was a meeting in fact with your counsel in connection with the mediation that was going on, and I think Aidan Phelan was there and Craig Tallents and you attended and Ms. Collard attended as well. And I think there may have been, and Ms. Collard has already I think given this evidence, there may have been some discussion at that meeting, and I am just wondering do you recall that discussion now or do you recall any of the details of that discussion now?

A. I am afraid I only have a waiver from my former clients in relation to legal professional privilege in relation to two lines of inquiry, one of which is the taking of the witness statement from Christopher Vaughan and the second of which is the Court Reporters Ltd.

is my dealings with the police. So I am afraid I can't answer any questions in relation to the mediation.

Q. That's fine. I'll move on from that. Perhaps, then, if I just go on a bit in the book to Tab Number 30. And this, I think, is an attendance note that you prepared of a conversation that you had had, in fact a telephone conversation you had made to Christopher Vaughan on the 22nd October, 2002?

A. That's correct.

Q. And, as I understand it, this would have been typed up from some handwritten notes that you would have made at the time. And I wonder, those handwritten notes were, I think, provided to the Tribunal last Friday, and do you have those

there? I think they are towards the back of your book?

A. Yes, I have both the original notebooks and the

Q. And you have the originals with you, is that correct?

A. And the copies of the transcripts.

Q. I think for the moment if we just start with the typed version, the typed attendance note?

A. Yes.

Q. Now, I don't want to go into any of the details of the mediation obviously, but I think just from a chronological perspective, the mediation had occurred on the 27th

September, and following that, there had been

Mr. O'Brien Senior had sought advice from Ms. Collard as to the possibility of bringing a prosecution for blackmail arising out of an incident that occurred at the mediation.

And Ms. Collard, I think, gave that advice on the 4th

October and Mr. O'Brien and John Ryall, I think, had a

conference call with Ms. Collard on the 9th October where

le Court Reporters Ltd.

they said that they would like to proceed with the

complaint in England.

Now, in that context, I am just wondering what exactly was

it that prompted your telephone call to Christopher

Vaughan, and just perhaps I should open maybe the second

paragraph of it first. And it says "After Christopher

Vaughan had transferred Kate McMillan you from his

secretary's office to his own office, Kate McMillan

explained that she understood that Christopher Vaughan had

received a visit recently from Mark Weaver in connection with Westferry Limited."

I suppose my question is, was it you learning that he had received a visit from Mark Weaver which prompted the telephone call to him?

A. I am afraid I am relying on my recollection here of events which were some five years ago, but I suspect that Ruth would have asked me to telephone Christopher Vaughan.

Q. And do you think that you would have would she have been asking you to telephone him in a general way, or was it in response to the fact that he had received a visit from Mark Weaver?

A. Certainly the second paragraph of that attendance note suggests that I am making the call because I understand he is being visited from Mark Weaver.

Q. And you think that it was Ms. Collard who would have asked you to make the phone call?

A. I suspect that that's what happened, but I am afraid I can't recollect exactly.

le Court Reporters Ltd.

Q. Okay. But you don't, for example, recall that anybody else, for example, Mr. Denis O'Brien Senior for example, Mr. John Ryall or some other representative of Westferry, your client, that you don't recall whether any individual like that may have asked to you make the phone call?

A. I don't recall. If you can point to a document which suggests that

Q. No, I can't, and I would if there was. I was just wondering. I'll just go through the attendance note and maybe ask you about a couple of things.

"Kate McMillan asked Mr. Vaughan if he could explain what ... their client Westferry Limited was considering making a complaint regarding Mark Weaver's visit if appropriate.

Christopher Vaughan asked Kate McMillan to hold on while Christopher Vaughan got a copy of the detailed file note he had made about Mark Weaver's visit. Christopher Vaughan explained that the attendance note had been dictated not long after Mark Weaver's visit. Christopher Vaughan then went through the content of his file note of the 18th October, 2002 with Kate McMillan. Christopher Vaughan said that he had thought that Michael Lowry (ML) had had no involvement in Westferry whatsoever. Christopher Vaughan said that he had never met ML before the 24th September, 1998. Kate McMillan asked Christopher Vaughan for a copy of the letter and for his attendance note and Christopher Vaughan said he would be happy to provide Kate McMillan with the same." And therefore I assume you didn't have the copy while you were having this conversation with him. He was simply reading from his file note but you didn't have a le Court Reporters Ltd.

copy in front of you?

A. That's my recollection.

Q. "Christopher Vaughan said that the letter was a photocopy of the fax and on the second page there was some areas

which did not reproduce very well. Christopher Vaughan said that he thought that Mark Weaver was trying to blackmail the O'Brien family. He interpreted Mark Weaver's visit as the forerunner of something else that was going to happen. He believed that Mark Weaver was flagging the situation and he expected there to be a response to it.

"Christopher Vaughan said that Mark Weaver had come to see him a year ago. At that time he had been clearly trying to obtain some financial benefit as a result of meeting with Christopher Vaughan. After Mark Weaver came to see Christopher Vaughan last time, a letter found its way to the Irish Police."

I am just wondering just if I stop there are you aware of, or can you recall did he identify the letter that made its way to the Irish Police or did he simply refer to a letter in general? I don't think it's in for example, I don't think it's identified in any more detail in your handwritten note. I am just wondering, therefore, do you have an independent recollection at this stage?

A. I am afraid it's so long since the event, I have to rely on my handwritten notes and the attendance note.

Q. That's fine. "Christopher Vaughan explained that Denis O'Connor was coming to see him from Ireland. DOC had in his possession the faxed copy of the top copy of the le Court Reporters Ltd.

letter, the letter of the 25th September, 1998 which Mark Weaver had produced on 18th October, 2002 had been sent

only to ML. Christopher Vaughan said that he was of the view that the letter could have come only from Michael Lowry. The letter had not been stolen from Christopher Vaughan's file. Christopher Vaughan said that he understood that Michael Lowry had passed all his files to Kevin Phelan at one stage. It was Christopher Vaughan's view that Kevin Phelan probably copied all Michael Lowry's papers in an attempt to secure an advantage for himself. Kate McMillan asked Christopher Vaughan if he had an attendance note of his previous conversation with Mark Weaver which Christopher Vaughan could let Kate McMillan have."

In fact, I think we have already seen that that was sent to you by Aidan Phelan as part of that bundle in March, but I suppose at this stage, in any event, I am not sure whether you would have been conscious that you had already seen a file note relating to a previous visit of Mark Weaver?

A. The fact that I am asking for it here suggests that I don't have recall of it at that time.

Q. The note then goes on at the top of the second page: "Kate McMillan asked Christopher Vaughan if he would be prepared to sign a witness statement in respect of his contact with Mark Weaver should her client wish to pursue a complaint against Mark Weaver in relation to work could be construed as blackmail. Christopher Vaughan said that he would be happy to assist although he was of the view that what Mark Weaver had said did not prove the offence of blackmail.

le Court Reporters Ltd.

Christopher Vaughan said that Denis O'Connor had called Christopher Vaughan 25 minutes after Mark Weaver's visit. Denis O'Connor had told Christopher Vaughan that he was acting for Michael Lowry and a copy of the letter Mark Weaver had shown Christopher Vaughan had been faxed to Denis O'Connor. Kate McMillan asked Christopher Vaughan what his relationship was with Denis O'Connor. Christopher Vaughan said that he had purchased some properties in Mansfield and Stockport for Michael Lowry. The Moriarty Tribunal had raised questions in relation to these purchases. Christopher Vaughan said that his relationship with Michael Lowry was simply as a solicitor employed to buy two properties on Michael Lowry's behalf. Christopher Vaughan said that the Doncaster Rovers Football Club acquisition was introduced to him by Kevin Phelan who had had some contact with Michael Lowry."

Now, just in relation to that, I think you have brought your original notebooks with you today and I think because the last two pages were written on the back cover of the notebook, it wasn't possible to photocopy them clearly.

A. That's correct.

Q. And so we were only provided with the first two or three pages of the note of this conversation and then a full transcript which you prepared very kindly?

A. That's correct.

Q. And I just want to jump to that briefly, and I think it's

at Divider 66, and it's five pages in in my Divider; it's the second of the typed pages. And at the bottom of that, about five lines from the bottom, it says "DRFC le Court Reporters Ltd.

acquisition" and then "through" seems to be crossed out "introduced to me by Kevin Phelan, though had some contact with Michael Lowry."

A. I am sorry, I am not on the right page yet.

Q. Sorry.

A. Yes, I am with you now.

Q. You have it now. So if you go up about five lines in from the bottom. "DRFC acquisition" then the word "through" appears to be crossed out "introduced to me by Kevin Phelan though had some contact with Michael Lowry."

A. Yes.

Q. Now, I was a bit confused obviously because the typed attendance which, as I understand it, was prepared on the basis of these notes says "who had some contact with Michael Lowry." And because we hadn't been able to see the handwritten note, it was unclear whether it in fact said "who" or "though". But can you confirm what word is in fact written on the cover of the book?

A. The word that's written is "though", capital T-H-O".

Q. The sentence should in fact read "Doncaster Rovers Football Club acquisition" "through" crossed out "introduced to me by Kevin Phelan though had some contact with Michael Lowry"?

A. That's correct.

Q. Then if I could ask you, maybe, to go back to the typed

version of the attendance note, that's at Tab 30, and I'll

just continue on. It's about half-way down the second

page, the large paragraph. "Christopher Vaughan said that

it was important to look at his letter to Michael Lowry of

25th September 1998 in context. The letter was written a

le Court Reporters Ltd.

month after the purchase on the day that Christopher

Vaughan had met Michael Lowry for the first time. Michael

Lowry had said that he was involved in Doncaster Rovers

Football Club Limited. Christopher Vaughan said that

perhaps what Michael Lowry had said to him about Doncaster

Rovers Football Club Limited was politician's puff.

Perhaps he was latching on to some transaction which might

have been perceived at the time as successful and therefore

considered it was advantageous for him to be connected to

it. Christopher Vaughan said that he had never taken

instructions from Michael Lowry in relation to Doncaster

Rovers Football Club Limited. Christopher Vaughan said

that he believed that Michael Lowry was not involved in

Doncaster Rovers Football Club Limited at all. Kate

McMillan asked Christopher Vaughan if he had a middle name

and Christopher Vaughan confirmed that he had and it was

James."

Now, I think the purpose of that was simply to identify

exhibits in connection with a police statement. And I just

wonder, does that mean, or were you having this conversation with Christopher Vaughan specifically for the purposes of preparing a witness statement?

A. I believe I was.

Q. "Christopher Vaughan asked Kate McMillan if Denis O'Connor was representing Westferry. Kate McMillan confirmed that Denis O'Connor was not representing Westferry."

Now, just on that point, there was some discussion earlier during Ms. Collard's evidence about the role, the exact role of the Court Reporters Ltd.

role being played by Mr. O'Connor in early September when, I think, he did some work in connection with the mediation and had a meeting with Ruth Collard and Craig Tallents on the 10th September. I am just wondering, were you aware at this stage that there had been some confusion as to precisely who Denis O'Connor was representing?

A. I vaguely recall Ruth attending a meeting but, really, that's a question that should be put to her because she was the one who met with Denis O'Connor and handled that aspect.

Q. I suppose my point is, she certainly remembers there being an issue as to who he was representing and she believes that at one stage she understood that she had been informed that he was representing Westferry, but that she now believed she was wrong and that she hadn't been informed that he was representing Westferry, but there was some contact between both Ms. Collard and Craig Tallents with

John Ryall in particular, and also some contact with Denis O'Brien Senior wherein neither side seemed to be sure exactly who Denis O'Connor was representing. And were you ever aware, just in general terms, that there was a confusion, if you like, in the office?

A. In the vaguest terms, yes.

Q. But by this stage, on the 22nd October, you were able to confirm to Christopher Vaughan that Denis O'Connor was not representing Westferry, is that correct?

A. That's correct.

Q. "Christopher Vaughan said that Denis O'Connor was probably involved because his client was the person to whom the letter of 25th September 1998 which had popped up was sent, the Court Reporters Ltd. and therefore he naturally had an interest in it.

Christopher Vaughan said that he was intrigued however as to why Denis O'Connor telephoned Christopher Vaughan 20 minutes after Mark Weaver came to see Christopher Vaughan in respect of the letter. Christopher Vaughan said that his instinct was that Kevin Phelan was probably behind all this. In Christopher Vaughan's view, Kevin Phelan was a very dangerous character. Christopher Vaughan explained that he and Kevin Phelan had fallen out in a very big way.

Christopher Vaughan said that Kevin Phelan had tried to get him to send letters containing things which Christopher Vaughan knew were untrue. Christopher Vaughan knew that Kevin Phelan was a liar and a cheat and he could prove that

easily. Kevin Phelan had told Christopher Vaughan that he had sent objectionable letters about Christopher Vaughan to the Law Society, whereas in fact those letters had never been sent. Kate McMillan thanked Christopher Vaughan for his assistance and said that she looked forward to receiving the material Christopher Vaughan had promised shortly. Kate McMillan said there was no need for Christopher Vaughan to write a fax cover sheet as she was very close to the fax machine."

Now, after you were able to confirm to Christopher Vaughan that Denis O'Connor was not representing Westferry, Christopher Vaughan then said that he believed that Denis O'Connor was involved, was probably involved because his client was the person to whom the letter of the 25th September 1998 was sent and so he naturally had an interest in it. I am just wondering, and you may not be to recall, le Court Reporters Ltd.

did you discuss that with Ruth Collard, for example, in the context of there having been confusion as to the precise nature of Denis O'Connor's role a month previously?

A. The usual course of events would have been for Ruth to see attendance notes of conversations I did. You would have to ask her whether she did in fact see this attendance note and when she saw it.

Q. If you just go over the tab, I think the next tab is Number 31, just in relation to the last paragraph where you said that you were near the fax machine and you look

forward to receiving the material. You will see that on the same date there is a fax from you, in fact, to John Ryall and you state "Please see attached copy letter from Christopher Vaughan to Michael Lowry dated 25th September '98, Christopher Vaughan's file note of his meeting with Mark Weaver 18th October 2002, letter from Christopher Vaughan to Aidan Phelan dated 10th February 2002. I would be grateful if you would call me once you have had a chance to read them" and those three items that are mentioned there are attached.

Now, firstly, can I just ask you, you said you were near the fax machine, you didn't need to do a fax cover sheet up. Do you remember this is the same day that you are sending them on do you remember them arriving soon after you had a conversation or was it later on in the day or do you have a recollection?

A. I am afraid it's so long ago I can't remember.

Q. But you do appear to have got them the same day?

A. Yes, it would appear that way.

le Court Reporters Ltd.

Q. And then you forward them on to John Ryall and you mention in the last paragraph, "I'd be grateful if you would call me once you have had a chance to read them." Do you recall whether Mr. Ryall did in fact contact you after he received the documentation?

A. I am afraid I don't. Is there any attendance note?

Q. I haven't found an attendance note. I am not aware of one.

And can I just finally ask you, when you now received these documents and they included the earlier letter dating back to February, 2002 written by Christopher Vaughan to Aidan Phelan which effectively amounts to an attendance of Mark Weaver's first visit, do you remember if you then recalled having received that previously from Mr. Aidan Phelan?

A. The documentation suggests that I am seeing that for the first time.

Q. Okay. But you would accept that it's not in fact the first time that you had received it?

A. I don't have any recollection of seeing, of looking at that document when the documents were sent to me earlier.

Q. And I'd just like to perhaps now to go back to the handwritten notes in Number 66.

A. Of course.

Q. And I'll just go back through them in a bit more detail.

Now, I suppose, just in general terms, there was some discussion with Ms. Collard earlier about her procedure, if you like, for taking notes, and she said that often if she was at a meeting where she might have a lot of involvement in it she would bring a note taker with her because obviously it's very difficult to take notes if you are the primary speaker, and it would appear that at certain meetings you may have been the note taker?

A. Mm-hmm.

Q. This was a situation where you were involved in a

conversation?

A. That's correct.

Q. And am I correct in saying that, therefore, that the handwritten notes were contemporaneous and were taken at the time that you were having the conversation?

A. Yes. What would have happened is I would have been holding the telephone and writing in my counsel's notebook and it's likely that most of what's written is what Christopher Vaughan said to me rather than what I said to Christopher Vaughan. Although I may have, if it was very important, I might have made a note of the question that I was asking. But generally it would be largely what he is saying to me.

Q. And then at some stage later it would be dictated and typed up into a more formal attendance note like the one we have just gone through?

A. Generally, but not always, particularly in the context of witness statements. Sometimes, if the purpose of the call was to write a witness statement the information would go straight into the statement rather than putting the client to the expense of a separate attendance note.

Q. I understand.

A. So I think that explains why there is an attendance note for the 22nd and not for the 28th.

Q. I was going to move on to that. Having looked at your access to the files, there isn't in fact a formal attendance note in relation to the conversation of the 28th?

le Court Reporters Ltd.

A. I haven't seen one.

Q. I think just for ease I am going to go through the typed version, the transcript version, if you like, that you provided?

A. Yes, I think that's a good idea.

Q. In any event, we don't have all the pages of the handwritten version of this one. And I don't intend to go through the whole lot, but I would just perhaps

Ms. Collard indicated that she would often just take headline notes and then, I suppose, particularly if she was involved in the meeting, and then she would fill it out with her recollection later. But, I have to say it does appear to me that your handwritten notes are quite full in comparison to the attendance note, and would that have been your practice to have taken as full a note as possible?

A. Yes. Obviously sometimes I was unable to keep up with the speed of the speaker, but generally I try to write down everything that was said.

Q. And it appears, certainly in relation to this one at least, that the majority there seems to be not very much difference between the content in the handwritten version and the content in the attendance note. In other words, almost everything that you had recorded is recorded then in the attendance note. And I don't intend to go through it in any great detail.

It starts off: "Mr. Weaver" which is I presume is you

saying "I hear that Mr. Weaver attended at your office" and him saying "I have done a detailed note about this. Hold on one second" as he goes off to get it, and that's the Court Reporters Ltd.

reflected in the attendance note. And then I think the rest of that page and over the next page in fact is paraphrasing of him reading out the attendance note of the 18th October to you, and I don't think we need to go through the document because the Tribunal have been through it on a number of occasions. And he then, at the end of that, he says "The letter is a photocopy of the fax. On the second page there are some areas which don't reproduce." And that appears to be him now talking to you again, if you like, and not by reference to reading out the attendance note?

A. Mmm.

Q. If you go down to, towards the end, under the bolded section it says "Page 4 of 5 pages of notes" it says "Denis O'Connor rang 25 minutes later. Acting for Michael Lowry. Letter sent to him." Then it says "Not acting for Denis O'Connor." And that doesn't appear in the attendance note. I am just wondering can you recall what that might refer to, just the single sentence, the third point there, just saying "Not acting for Denis O'Connor"?

A. I am afraid I can't really shed any light on that beyond what's in the note.

Q. I presume the most logical explanation is perhaps that

Christopher Vaughan was simply telling that you he wasn't acting for Denis O'Connor?

A. That may be the case.

Q. Then further down, it says "I have done work for chartered accountants in Dublin. Through them acted for Michael Lowry re two properties." Now, I think I am correct in the Court Reporters Ltd.

saying that there isn't a reference in the attendance note, in the typed formal attendance note to having done work for a chartered accountant. It simply says that "I was involved in the purchase of two properties." Do you recall at the time whether you identified the chartered accountant? I think it's something we will come back to.

I think he does identify it at a later stage. I just wonder did he identify it to you at this stage on the phone?

A. I am afraid I am reliant on the notes, and the fact that I didn't write down the name suggests that a chartered accountant wasn't named at that stage, or possibly I didn't have time to write down a name but I would have thought that was unlikely.

Q. Okay. If I come down, then, to the section I was asking you about earlier. "DRFC acquisition" and "through" crossed out "introduced to me by Kevin Phelan though had some contact with Michael Lowry." And you confirm that is in fact what your contemporaneous handwritten note says?

A. Yes. The handwritten notes would always be preferred to

the typed up attendance note.

Q. And so perhaps it was a typographical error in the attendance note, but your contemporaneous note certainly says "though"?

A. Yes.

Q. And it would appear that in fact that changes the meaning somewhat in that if it was simply, if it was as the attendance note says "DRFC acquisition introduced to me by Kevin Phelan who had some contact with Michael Lowry," that we know that Kevin Phelan had contact with Michael le Court Reporters Ltd.

Lowry in connection with the two other properties in fact that are mentioned, Mansfield and Stockport, and indeed around that time he had contact with Michael Lowry in connection with Mansfield specifically. But that when it actually reads "DRFC acquisition introduced to me by Kevin Phelan though had some contact with Michael Lowry," that would appear to suggest that Christopher Vaughan is saying that he had some contact with Michael Lowry in connection with Doncaster Rovers. And I am just wondering do you recall, do you have a recollection of that, that he said that to you?

A. I am afraid I can't recall because it was so long ago, but the note very clearly says "though" and not "who".

Q. And you would be happy that that note recorded what was said to you?

A. Yes.

Q. Then just under that there is a short reference to "para 2 said" I think is what "SD" would be short for, is that correct?

A. I believe so.

Q. Now, you didn't have any documentation at this stage because he hadn't faxed it to you yet?

A. That's correct.

Q. But I suppose if I just go back to Tab 31 for a second, and to the letter of the 25th sorry, that's just the first, it's the first document behind the fax cover sheet. I don't know if you have that?

A. Is that the one

Q. It's Christopher Vaughan, the 25th September 1998?

A. To Michael Lowry?

le Court Reporters Ltd.

Q. It's addressed to Mr. Michael Lowry.

A. Mm-hmm.

Q. And he says "Para 2 said" and there is not much else and it's not transferred into the attendance note. There are two numbered paragraphs in the letter and the second one is and they are not actually, if you like, the second paragraph in the letter but I am talking about slightly further down you have paragraph 1 and paragraph 2, and they are the numbered paragraphs. And paragraph 2 is in fact the one that has, I suppose, drawn the most attention from the Tribunal and it reads: "I had not appreciated your total involvement in the Doncaster Rovers transaction and I

am therefore enclosing a copy of my completion letter which was sent to Kevin Phelan, Paul May and Aidan Phelan on completion."

And I just wonder whether, in the context of the previous sentence which we now know reads "DRFC acquisition introduced to me by Kevin Phelan though had some contact with Michael Lowry" and then he goes on to refer, it appears, to paragraph 2 wherein he talks about "I had not realised your total involvement in Doncaster Rovers." And that, may I suggest, be an explanation for why he wrote paragraph 2 in the context of the previous sentence, and I am just wondering can you throw any light on that?

A. I mean, again, paragraph 2 said may well be a reference to the second paragraph in the letter to which he referred. But that's construction after the event and I am afraid I simply can't remember what he was

Q. I suppose my point is that he said that he had had some contact with Michael Lowry in connection with DRFC?

A. That's right.

Q. And his next reference is to paragraph 2 where he says "I had not appreciated your total involvement"; that they might make logical sense when read together like that?

A. Yes.

Q. And then the only other thing I'd like to refer you to I think in those transcripts, is at the very last line on the following page, and the last line says "January 2000

property deal. Asked me to write letters which were untrue."

And I think in the typed version of the attendance note there is a general reference to Kevin Phelan asking Christopher Vaughan to write letters which Christopher Vaughan knew to be untrue but there isn't a specific reference to a January 2000 property deal. And I am just wondering can you assist as to was that property deal identified in any more specific way by reference to a name or a location or anything along those lines?

A. No. Just going back to my original notes, the writing on the original, which you may want to inspect, looks smaller than the writing above. So I'm not absolutely certain that that was something that was said on the phone.

Q. I see.

A. It's in my note as a phone conversation, but looking at the original I see that the writing is smaller, so I don't know whether I put the phone down and added that because it had been said, or quite how that came to be.

Q. Okay. Well, if you just read I suppose if you read the le Court Reporters Ltd.

four or five lines before it, "He sent objectionable letters" and I think that's a reference, in the attendance note at least, to objectionable letters to the Law Society. Letters had never been sent, and that's reflected in the attendance note. Then it says "Wouldn't argue with me" and I think that means Kevin Phelan wouldn't argue with me,

Christopher Vaughan, because he knows I know he is a liar and a cheat. "I could I prove that easily. January 2000 property deal asked me to write letters which were untrue."

I suppose reading it in that context, it would appear that it's only information that you could have received from Christopher Vaughan? In other words, you wouldn't have added the detail at the end off your own bat, if you like?

A. No, I don't believe I would.

Q. And are you happy that your note does say "January 2000 property deal"?

A. It says "January 2000 prop deal asked me to write letters which were untrue."

Q. But there is no other identification of what that property might be?

A. No.

Q. Now, I just wonder could you jump back just a slight bit to Divider 28? And this is a letter from Mr. Vanderpump of Westferry Limited written to Mr. Vaughan on the 17th October, 2002. Again I was discussing earlier the chronology that at this stage it had been decided that a complaint would be pursued in connection with the incident that had occurred at the mediation. And perhaps as part of the Court Reporters Ltd.

that, or in tandem with that, this letter was also sent by Westferry saying that they had become aware that there was apparently a letter in existence. And I'll just read it

out quickly.

"Dear Mr. Vaughan,

"We refer to the above matter.

"It has come to our attention during the mediation that there is dispute with Dinard Trading Limited and Shelter Trust Anstalt. That certain correspondence from your office suggests that Mr. Michael Lowry has or had a shareholding in Westferry Limited or indeed was involved in negotiations on the completion of the purchase of Doncaster Rovers Football Club Limited.

"We wish to advise you that the sole shareholders in Westferry Limited is Walbrook Trustees (Isle of Man) limited in its capacity as the trustees of the Wellington Trust. The beneficiaries of the Wellington Trust are Mr. Denis O'Brien and his family and no other party was or is involved.

"We'd be grateful if you would confirm in writing that this is your full and complete understanding of matters."

Now, were you aware that Westferry were going to right or had written to Christopher Vaughan in those terms at this time?

le Court Reporters Ltd.

A. I am afraid I can't remember.

Q. Okay. If you just go over to the next divider, that's number 29, and this is a letter taken from Mr. Vaughan's file, so it's a file copy of a letter which is addressed to Mr. Vanderpump but which was never received by

Mr. Vanderpump. Well it doesn't appear, at least, to have been received by Mr. Vanderpump and he certainly has told the Tribunal that he never received it. But I just want to quickly read through it. This is in response to the request from Westferry that he clarify his understanding as to the situation in relation to Westferry.

"Thank you for your letter of 17 October. I now fully understand the structure of Westferry Limited as set out in your letter. You should be aware that I do not have any documentation relating to the acquisition of DRFC by Westferry save for the original lease and some copies of various property documentation. However I am quite positive in my mind that Kevin Phelan represented himself on a number of occasions as having an interest in Westferry Limited and, you will no doubt recall, that he was maintaining that situation in August 2001.

"I now understand that Kevin Phelan did not have any interest in Westferry whatsoever. Do I however enclose a copy of a letter from me to Michael Lowry dated 25th September 1998 together with a file note as to how that letter came into my possession. What I can state quite categorically is that before I met Michael Lowry for the first time on the 24th September, I had absolutely no knowledge what he might have been involved in the acquisition of DRFC. When you see that in that letter I explained to him some of the future problems facing the
le Court Reporters Ltd.

knowledge what he might have been involved in the acquisition of DRFC. When you see that in that letter I explained to him some of the future problems facing the

acquisition at the club and with the thought that he might have some influence, I set them out in that letter.

Suffice it to say that none of those matters were resolved by Michael Lowry.

"I do not think that I misunderstood his comments to me that he was involved in DRFC but in hindsight I must put it down to some sort of political ego that he was trying to attach his name to what appears to be a successful venture.

I would however reiterate that so far as I was aware throughout the whole of the negotiations with the DRFC acquisition, Michael Lowry was never ever involved in giving me any anyone instructions.

"I am not sure whether you are aware but in October/November 1998 I was sacked by Kevin Phelan from having any further involvement in the matter and he had instructed other solicitors Messrs. Betesh Fox in Manchester. At a later date, sometime in early 1999 I was reinstructed to try and sort out various matters as Betesh Fox and Kevin Phelan had fallen out. I hope that this explains my position."

I am just wondering did Christopher Vaughan you were in contact with Christopher Vaughan the following day, and I am just wondering did Christopher Vaughan mention to you anything about this letter or did he discuss it with you?

le Court Reporters Ltd.

A. If there is no reference to it in my attendance note, it's likely that it wasn't discussed with me.

Q. Right. I suppose if you just look at the final paragraph on the first page: "I do not think that I misunderstood his comments to me that he was involved in DRFC but in hindsight I must put it down to some sort of political ego that he was trying to attach his name to what appeared to be a successful venture."

And that does appear to tally with what he said to you the following day? If you go over to the next tab, which is the attendance note we have already been through, the second page, and the big paragraph half-way down the page, it says "CV said it was important to look at his letter to ML of the 25 September 1998 in context. The letter was written a month after the purchase on the day that CV had met ML for the first time. ML had said that he was involved in Doncaster Rovers Football Club Limited.

Christopher Vaughan said that perhaps what ML had said to him about Doncaster Rovers Football Club Limited was politician's puff."

That does seem to correspond with what he had written in what appears to have been a letter that wasn't sent on the previous day, would you agree with that?

A. There appears to be a relationship between the two but that's simply speculation on my part, looking at the documents now.

Q. He didn't discuss that letter with you?

A. I don't recall him discussing it, but then I am solely le Court Reporters Ltd.

reliant on my attendance note and handwritten notes.

Q. Well, then, I just want to very quickly, then, I don't want to dwell too much on it, but if you go to Tab 32. This is in fact a copy of the letter that was sent to Westferry in response to the first letter we opened of the 17th October.

A. So is the document at 29 a draft?

Q. The document that we were just talking about, the 21st October, appears it's a file copy from Mr. Christopher Vaughan's file that was not received in any event by Mr. Vanderpump, to whom it was addressed. And this letter dated the 23rd October, 2002 is the letter that Mr. Vanderpump did receive. And I just want to and this was a day after you had been speaking to Mr. Vaughan. And I just want to take you down to the fourth paragraph on the first page: "I am quite convinced that during the course of the acquisition of DRFC by Westferry, Kevin Phelan maintained to me that he was the beneficial owner of the trust called Glebe Trust and also that he had a beneficial interest in Westferry. I am also sure that he made representations to me to the effect that Michael Lowry was also involved in Glebe Trust."

And that is a different, if you like, response to the response in the previous letter, and I am just wondering did he mention anything relating to anything called the Glebe Trust to you when you were talking to him on the previous day?

A. If he had mentioned Glebe Trust to me, Glebe Trust would be

written in the handwritten note.

Q. Okay. Now, I just I think

le Court Reporters Ltd.

A. I made a particular point, when I wrote attendance notes, to write down names. So something as important as a name, I would have my normal practice would have been to write that down had it been mentioned.

Q. So you would have noted it. I think if we go to Tab 66 again, I just want to go onto the second part, the second half, if you like, of those notes.

A. At Tab 66?

Q. Tab 66 again. But if you go to the second half, and that's the notes relating to your conversation of the 28th. I think, again, there is, this time, a full set of the handwritten notes and then you have again kindly provided a typed transcript. And I think, again just for ease, I am just going to go through the typed transcript, and I think as you previously indicated, there is no formal attendance note prepared from these notes. So, if you like, these handwritten notes are the only note of the conversation?

A. I can't recall whether I did an attendance note but its absence from the file suggests that no such note was ever prepared.

Q. I think you said

MR. O'DONNELL: Sorry to interrupt Mr. McCullough. I just wonder is there a spare copy of the transcribed note?

MR. McCULLOUGH: I think it was sent but perhaps

Mr. O'Donnell has an earlier copy of the book. It was updated, I think, after these notes were sent to us on Friday last.

le Court Reporters Ltd.

Q. In any event, I'll just go through the note. I think at the top of the note are in fact notes to help us understand them, if you like, and they are not part of the transcription?

A. That's correct.

Q. And if you just go down to under "page 1 of 5 pages."

"1. Did he think the other letter referred to in his first meeting with Kevin Phelan was letter of the 25th September 1998?

2. Under whose authority did Christopher Vaughan write to Michael Lowry in the terms he did on the 25th September 1998?

3. What happened when DO" and I think that is Denis O'Connor "came to see him."

And I think you say above in the heading "KM notes written prior to conversation." I think these are your notes of the issues that you wished to deal with Mr. Vaughan?

A. That's correct. Those are clearly made before I picked up the phone to him.

Q. Then there is the phone number which I suppose suggests that you called him. So I presume from here on, these are the notes of the conversation?

A. That's correct.

Q. And I suppose, immediately you start with the first issue, which is "Did he think the other letter referred to in the first meeting with Kevin Phelan was letter of the 25th September 1998?"

"Don't know which letter he meant when Mark Weaver saw me at the Court Reporters Ltd. second time."

That may be at cross-purposes because I think you are really trying to find out what is the letter that he wasn't given at the first meeting, not at the second meeting, if you like. But, in any event, "Could there have been any other letters?" And that might be a yes from you to him.

"No, may have been letter. Can't see if there had been another letter. May have been puff." And then it seems to be numbered "1. Think he'd have produced it" that's probably produced it?

A. Mmm.

Q. "I think the letters he was referring to in February was the letter from me to Kevin Phelan. One Tribunal had missing" and then Tribunal crossed out "Clause."

Now, I think we'll come back to it very briefly after this but, this I think it becomes apparent that what

Christopher Vaughan is saying to you is that he believes that the other letter that Mark Weaver wouldn't show him at the first meeting was in fact a letter which colloquially the Tribunal have come to call one of the long form/short form letters, and I think we'll see it in a moment, but

John Ryall forwards on a bundle of these letters to you after this meeting I think for your ease in preparing the statement of Christopher Vaughan, and in fact one of them becomes an exhibit. We'll come back to that perhaps in more detail. What I just wanted to ask you now is, you will recall at the end of your previous note at the meeting of the 22nd October in the handwritten and transcript le Court Reporters Ltd.

version there is reference to a "January 2000 prop deal" in the context of "asked to write letters which knew to be untrue." And I am just wondering was there any reference made here to which to whether this had any connection with that, for example, or to his previous reference to letters being written which Kevin Phelan knew to be untrue, or do you recall or?

A. I am afraid I simply don't recall.

Q. Well, I wonder actually can I just ask you about the sentence itself. "Think he'd have produced it"? Do you agree that's probably what that means "think he'd have produced it"?

A. I think "pro" does stand for produce, yes.

Q. "I think the letters he was ref" referring "to in February was a letter from me to KP" and then "one Tribunal had missing clause."

Now, I suppose it could be read perhaps in a couple of ways, but I am wondering does that mean that the one, that the letter the Tribunal had was missing a clause? Or can

you assist us in what your shorthand might mean?

A. Certainly now I would interpret this note as saying the one the Tribunal had was missing a clause. But that's my construction on it in 2007.

Q. I think when we come back, in fact it may become more clear in terms of when you are sent the letters by Mr. Ryall. In any event, the note goes on "Don't think it was the same letter" then "an hour," I think that might be just the time the attendance was taken. "Didn't ask for authority from Westferry." I think now you are on the Item 2, if you like, of the three items that you intended to discuss with the Court Reporters Ltd.

like, of the three items that you intended to discuss with him. "Under whose authority did CV write to ML?" He says "didn't ask for authority from Westferry. Letter was written a month after DRFL. Here is a copy of letter to PM, KP lengthy five to six page letter. At no time before 24th, 25th, had he given instructions or been to meeting. Why I said I had no idea. Struggling on these points. After that I never heard from him again. I wonder if I spent some time with him on 25th because in car with him for an hour lift to Leicester. Never involved. Sole purpose of meeting was him to talk re Mansfield. I have look at copy of file. Letter refers to amended contract on 25th. Didn't have authority. Westferry's mouthpiece was KP. AP, Helen Malone transferred money but had no input. Weren't you worried about disclosing sensitive inf?" And that sounds like it's a question from

you to Christopher Vaughan?

A. It does indeed.

Q. "No. We met on 24 to discuss Mansfield. He was late.

Stayed for a few minutes. Adjourned to later in evening.

Met with KP on 24 September. Discussed Mansfield site. KP

also discussed DRFL in ML's presence. ML indicated he was involved." Then onto the next page of the handwritten:

"Con with KP present" I presume that's conversation?

A. Mm-hmm.

Q. Or conference, perhaps?

A. Probably conversation.

Q. "Paul May also there in evening. At Paul May's house on

evening of 24th September. KP, ML, myself, PM at PM's

house." And then I think, as you will see further down,

le Court Reporters Ltd.

that there is an arrow in the handwritten version of the

note that then links that section with a section below the

next bolded heading, if you like. So it would continue on

"Was mainly about Mansfield but covered a number of issues.

I wasn't there long. They went out and had supper

somewhere. ML was late turning up. Went on way home.

Popped in briefly. Would come into office the next day."

Then I am going to go back up to, if you like, just after

where the arrow continues on.

"Something went wrong with lift. I gave him a lift to

Leicester. 45-50 minutes up M1. Hadn't met AP at that

time. Not long after that I was totally disoriented. KP

took DRFL to Betesh Fox in Man. They refused to carry on and came back to me."

A. Mm-hmm.

Q. Now, what Christopher Vaughan appears to be telling you there is that, and it's slightly unclear and I am just wondering if you can help, but he says, if you go back up above the, up to the first section, if you like, the last bullet point where it says after your question "Weren't you worried about disclosing sensitive inf? No. We met on 24th to discuss Mansfield. He was late. Stayed for a few mins."

Now, I am just wondering, do you have any idea or can you work out whether he is talking about him himself

(Christopher Vaughan) staying for a few minutes or Michael Lowry staying for a few minutes? Or is it possible for you le Court Reporters Ltd.

to work that out at this stage? Because then it goes on to say "adjourned to later in the evening," and I just wonder if it's because Michael Lowry was late, that Christopher Vaughan only stayed for a few minutes and then the meeting was adjourned to later in the evening?

A. I am afraid now I can't say whether the "stayed for a few minutes" refers to Christopher Vaughan or Michael Lowry. I am sorry.

Q. Right, okay. That's fine. But, in any event, he goes on then to describe a "con," being either a conversation or a conference "with Kevin Phelan present. Paul May also there

in the evening at Paul May's house on evening of 24th

September. KP, ML, myself, PM at P M's house."

A. Mm-hmm.

Q. If I continue on then, maybe, at the bottom of the page.

"Gameplan Kevin Phelan's company." Sorry, just before I

go on, when the arrow links up it says "At Paul May's

house" and then, as I understand it, the arrow links, then

it's a continuation, if you like, "Was mainly about

Mansfield but covered a number of issues. I wasn't there

long. They went out and had supper somewhere. Michael

Lowry was late turning up. Went on way home. Popped in

briefly." He told you that the meeting in Paul May's house

was mainly about Mansfield?

A. That's right. And that also seems to suggest that the

"stay for few minutes" refers to Christopher Vaughan

because he says "I wasn't there long. Popped in briefly."

Q. Yes, I take your point.

A. But, again, that's my construction on the document today.

Q. And it must be on his way home obviously, because Michael

le Court Reporters Ltd.

Lowry doesn't live in England.

A. Correct.

Q. In the United Kingdom?

A. It seems I went back and wanted more detail about what

happened that evening

Q. And that's why you think there is an arrow, to get the

specifics of that meeting?

A. Mm-hmm.

Q. I see. It continues on "Gameplan KP's company. KP is a man who can talk about 20 different subjects in 20 seconds.

Pops from one to the other. Always changing his tack.

Hard to keep up with him. Talked to all parties.

Negotiated amended points of contract with Reg Ashworth.

He is a total crook."

Now, just to clarify there. As I understand, reading that,

the reference to "he is a total crook" is a reference to

Kevin Phelan. But and I think in fact that perhaps

becomes clear when we look at the draft statement, or maybe

it doesn't, but I am just wondering can you clarify that?

A. From its positioning in the note that appears to be the

case. And I don't believe it's a reference to Reg

Ashworth.

Q. That's what I was trying to clarify. Then there is another

section where it says "Late we met at PM's house.

Talked in office. To Leicester ." That appears, if you

like, to be almost like a chronology of the events over the

two days in question, if you like. In other words, Michael

Lowry was late. Then next line: "We met at Paul May's

house." Next line: "Talked in office" which I understand

le Court Reporters Ltd.

they did the following day. And then "to Leicester," which

was the car journey to Leicester which we know that they

did both take. And that appears, if you like, to be a

chronology, a brief chronology of the order in which things

happened.

And you go on: "Denis O'Connor," and I think this is the third item that you wanted to talk about, and that was what had happened when Denis O'Connor had been to visit Christopher Vaughan, which I think was going to take place on the 23rd October, the day following your previous conversation with Christopher Vaughan; isn't that correct?

A. Mm-hmm.

Q. And then so Christopher Vaughan says "he concerned re Michael Lowry. Gave him the paperwork I gave to you." And I presume the paperwork he gave to you, I have assumed, is the stuff that he faxed to you on the 22nd; that's the letter of the 25th September which he had been provided, his file note of the 18th October and perhaps his file note of the earlier or, sorry, his letter to Aidan Phelan being the letter dating back to the Mark Weaver visit in February 2002.

A. I mean, that appears to be a reasonable assumption but I can't recall what paperwork he was referring to then.

Q. That is the only paperwork he gave to you at that time. In other words, it was the only paperwork he had given to you prior to Denis O'Connor's meeting, if you like, on the 23rd?

A. I mean, obviously a huge amount of material came from Christopher Vaughan in the context of a litigation.

le Court Reporters Ltd.

Q. I am sorry?

A. I am sorry, a vast amount of material was supplied from Christopher Vaughan in the context of the litigation as a whole.

Q. I know. I suppose in the more narrow context of the discussions that you were having on the 22nd and now again on the 28th, and you asking about the meeting that he had had with Denis O'Connor on the 23rd, in other words, the day after you had last spoken to him, where he says "Gave him the paperwork I gave to you." Am I right in saying that the only paperwork he had given you on the 22nd, the day before Denis O'Connor arrived, were the three documents that I have just referred to, the ones that you then faxed on to John Ryall?

A. I believe so. It's a reasonable assumption.

Q. The next line then, "I was genuinely surprised when he said in presence of PM, KP ." Now, I am just wondering, it's not clear who he is referring to there, and I was just hoping for your assistance. Is there any way you can work it out? I mean, I suppose isn't it it seems more logical that he must be, in this sentence, referring to Michael Lowry, because he is talking about something being said in the presence of Paul May, Kevin Phelan and also that he was surprised when it was said, and he has just indicated to you previously that he, Michael Lowry, Paul May and Kevin Phelan were all in the house having that meeting?

A. Mm-hmm.

Q. So it would seem logical, I would suggest, that that is a reference "he was genuinely surprised," i.e. Christopher le Court Reporters Ltd.

Vaughan was genuinely surprised when Michael Lowry said in presence of PM, KP. Would you agree?

A. It's a logical

Q. I just want very quickly, and I don't want to dwell on it too long, if you go to the handwritten notes I am sorry, in your last answer did you say that was logical or illogical?

A. I said it was logical, but I can't recall.

Q. If you go to the handwritten note in relation to this, and the fourth page of the handwritten note about half-way down under the heading "Denis O'Connor" is this sentence, if you like, in handwritten version. There is a heading underlined "Denis O'Connor" with a question mark.

A. Yes.

Q. And about two subparagraphs below that: "I was genuinely surprised when he said something" and then "Said in presence of PM, KP" and there seems to be an additional, if you like, "said something" and then "said in presence of PM, K." I am just wondering whereas the typed version of the notes, the typed version of the transcript says "I was genuinely surprised when he said in presence of PM, KP" if you know what I mean? It only has

A. Yes, there seems to be a repetition, doesn't there, of "said" which I can't explain. Obviously when I was

preparing the transcript I glossed over that as an error,
that's why it doesn't appear in the transcript.

Q. I was just going to clarify with you, is it "I was
genuinely surprised when he said in?" Is that an "in"?

A. It certainly looks like an "in".

Q. I am just wondering could it be an "I-N-V", could it be
le Court Reporters Ltd.

I-N-V being short for "involved" and the next line "Said in
presence of PM, KP"?

A. Yes, it could. It could be I-N-V.

Q. It might read "I was genuinely surprised when he said
involved" i.e. the shorthand for involved. And then the
next line is "Said in presence of PM/KP."

A. Yes, that could say I-N-V.

Q. And in that context then it's certainly a reference, or it
must be a reference to Michael Lowry?

A. Yes.

Q. Then if you go on I'm going back to the transcript notes
just for ease of reference.

A. I apologise for that error in the transcript.

Q. That's no problem at all. I was just wondering if you were
able to help.

But if you continue on, then, it says "Surprised when he
said he had been discussing Tribunal with Kevin Phelan.

Have to run with everyone." I think in the context of the,

I think the statement we'll come to later, that I think in

fact here Christopher Vaughan may be referring to Denis

O'Connor?

A. Yes.

Q. That he was surprised that when Denis O'Connor "said he had been discussing Tribunal with Kevin Phelan. Have to run with everyone" and I think that sounds like

A. Yes.

Q. Christopher Vaughan saying that Kevin Phelan told sorry, that Denis O'Connor told him that you had to run with everyone.

le Court Reporters Ltd.

A. Mm-hmm.

Q. Just continue on, "Kevin Phelan has caused huge difficulties. He was with Denis O'Connor and Michael Lowry. Made me cautious of " Do you have any idea what that might relate to? It seems to just stop there. What made him cautious? Or what did it make him cautious of or, can you recall?

A. I think he is saying he is concerned about becoming embroiled in something where there is huge difficulties.

Q. Yes. Could it be that it made him cautious of Denis O'Connor? Because KP had caused huge difficulties and KP was with Denis O'Connor and Michael Lowry "Made me cautious of" If you can't assist, then we can move on.

A. I am afraid the note is ambiguous because I haven't specified.

Q. Then it says "Nothing you can grab hold of." You don't know, maybe, what that might refer to? It doesn't make any

sense.

A. I think he is saying it's referring back to feeling cautious and he is saying, you know, there is nothing tangible, nothing you can grab hold of but I just feel cautious.

Q. I see what you mean. He can't identify the reason for it.

A. Mmm.

Q. "I think Kevin Phelan orchestrates all of this. I have been with him on several occasions has no hesitation in saying different things to different people. I think he is being paid off by Michael Lowry/Denis O'Connor. I think KP is behind it all."

le Court Reporters Ltd.

And then on the final page it just goes on to say "Paul May is no friend of Kevin Phelan. He lost a lot of money by investing a lot in something recommended by Kevin Phelan and he never got fees for DRFL. He has no compunction."

Now, I am just wondering, just in the section I have just towards the bottom of the page where it says "I think he is being paid off by Michael Lowry/Denis O'Connor. I think KP is behind it all." And Ms. Collard gave evidence earlier that at some stage in, I think it was on the 19th June in 2002 she was sent, if you like, the initiating documentation in a settlement of a dispute between Kevin Phelan and Westferry. In other words, a letter saying that from I think I have this correct, I think it was a letter from Kevin Phelan's solicitors saying they had a

claim for fees, and I think to shorthand it, it was for 150,000, and then a draft letter to be sent to the solicitors saying that they would pay 150,000 in settlement of that claim. And I am just wondering would you, through your dealings with this case in general, have been aware that there was this settlement going on at that time?

A. I recall there being an issue regarding outstanding fees owing to Kevin Phelan for the work that he did.

Q. And I asked you earlier, I think, about whether you were conscious of a confusion, if you like, perhaps held by Ms. Collard, as to exactly what Denis O'Connor's role was, who he was representing? And I think you said that you may have been aware but in a very general sense of that kind of confusion. I just wonder, did you pay any particular attention to this in the context of those factors where le Court Reporters Ltd.

Christopher Vaughan tells you "I think he is being paid off by Michael Lowry/Denis O'Connor, I think Kevin Phelan is behind it all" or do you remember paying any particular attention to that at all?

A. I don't recall paying particular attention to that, and it's not something that finds its way into the draft witness statement, I believe.

Q. Yes, it doesn't find its way in.

A. I mean, the purpose of this conversation on the 28th was to obtain further information which we, as a firm, considered necessary to finalise a draft witness statement for

Christopher Vaughan.

Q. Well, is there any particular reason that you can recall why it didn't make it into the draft statement?

A. I think it's because I considered it irrelevant to the issues I had been asked to cover in the witness statement.

Q. Okay. But if Kevin Phelan was orchestrating all of it, and if he thinks and if Christopher Vaughan is saying "I think Kevin Phelan is behind it all," isn't that very relevant to a complaint that a company is being blackmailed by two individuals, if in fact what is being suggested here is perhaps another individual is behind it all and orchestrating it?

A. I mean certainly in the draft witness statement that I prepared I included the phrase "My feeling is that Kevin Phelan is behind the appearance of the letters" which is the subject of this witness statement. So I obviously did consider it significantly important to include in the draft witness statement.

Q. Right. So what you felt wasn't relevant was "I think he is le Court Reporters Ltd.

being paid off by Michael Lowry/Denis O'Connor"?

A. No, I didn't attach particular significance to that at that time.

Q. So you didn't include that in the witness statement?

A. No.

Q. Okay. I just want to move, then, quickly to that statement, and that's at Number 33. Sorry, I may have

given the wrong number sorry, in fact I should have sent you to sorry, it is 33, sorry, it's my fault, I was at the wrong tab.

A. Don't worry.

Q. Now, I was just I don't think it's of much relevance but I think I handed you a document earlier before you began your evidence, and I'll just perhaps hand out a few copies, but it's the bundle of documents where the first page is a fax from John Ryall to you. And it's from sixth floor, 1 Grand Canal Quay. I'll perhaps hand you another copy. And I just want to refer to it just very quickly. Effectively the front page of it is a fax cover sheet and it's addressed to you from John Ryall.

It's dated 1st November, 2002.

"Dear Kate,

"Please find attached letter referred to in Christopher Vaughan 's statement. These letters are public knowledge and have been disclosed to the Moriarty Tribunal. Some of the participants have given evidence and Aidan Phelan is due to give evidence later this month.

le Court Reporters Ltd.

Regards,

John Ryall."

The next page I don't think is particularly relevant; it's just William Fry's on the same day sending those letters to John Ryall who I think then sent them on to you. And then there is a bundle of documents, and these are the documents

I was referring to earlier as being the long form/short form letters, or at least that's how they have become known in the Tribunal's proceedings. And you will recall that we were discussing earlier whether a shorthand phrase meant the one the Tribunal has, has a missing clause. And you said that you, looking at it now, you think that that may well be what that meant. And I think we'll see it perhaps in a bit more detail but, in any event, for the moment, I think, having spoken to Christopher Vaughan and him having informed you that he believed that the letter that he wasn't shown in February when Mark Weaver turned up, was in fact one of these letters, you then, it seems, sought these letters from, I presume, John Ryall who then sent them on to you. Would that be a fair assumption?

A. I am afraid I don't have any recollection of asking John Ryall for letters.

Q. Well, would you have perhaps would you have discussed what Christopher Vaughan had said to you with John Ryall, do you think, in advance of preparing the

A. I don't believe I did.

Q. You don't believe you did. But, in any event, you did receive these letters for one reason or another on the 1st November

le Court Reporters Ltd.

A. Yes.

Q. according to that documentation?

A. Can I just put this into context?

Q. Sure.

A. Most of the communication with the client was with Ruth.
So my contact with the client was quite minimal.

Q. So you may have discussed it with Ruth. Ruth may have contacted John Ryall and perhaps

A. I think what was happening is that I was reporting to Ruth and Ruth was reporting to the client.

Q. And John Ryall may have been aware that you were dealing with the Christopher Vaughan statement and therefore he may have sent it directly to you?

A. Yes, he would have known that I was drafting it.

Q. Well, sorry, perhaps if you do turn over to the second page, and this is the fax from William Fry to John Ryall and it says "John, I refer to our recent telephone conversation and enclose copies of the various letters as requested. Feel free to give me a call if you have any particular query."

And that does seem to suggest that John Ryall was requesting copies of the letter?

A. Yes, it does.

Q. And, in any event, he did send them on to you?

A. Yes.

Q. And then it says "Dear Kate, please find attached letters referred to in Christopher Vaughan's statement." So it does seem to be he is sending them to you in reference to the preparation of Christopher Vaughan's statement?

le Court Reporters Ltd.

A. Yes.

Q. Well, then, if you go on to Tab 33, and this is your fax to

A. I don't really have any recall of this document, I have to say.

Q. I think I'll show you, I think, one of them. I may not be correct about this, but I think one of them appears as an exhibit, in fact, to the draft statement of Christopher Vaughan. I'll show it to you as we go through it but I think it may become clearer to you then. But in any event, you fax over to Christopher Vaughan on the 8th November and there is a cover letter.

"Dear Mr. Vaughan,

"I write further to our telephone conversations last Month" those are the two conversations you had with him.

"As you are aware Westferry Limited is making a complaint to the police because it is of the view Dinard Trading Limited representatives may have intended to blackmail it.

An appointment has been made for Westferry's representatives to attend the police ... Tuesday 12th November 2002 at 11 a.m..

"I have pleasure enclosing draft witness statement from yourself relating to encounters with Dinard Trading Limited representatives Mark Weaver, together with Exhibit CJV1 referred to therein. I'd be most grateful if you could check the statement and exhibit carefully. Please telephone me if you are unhappy with anything in the

le Court Reporters Ltd.

statement so that I can amend it and arrange for the amended draft to be sent to you as a matter of urgency. If you happy with the statement please sign the back pages and return it to me by fax as soon as possible."

Now, I am conscious of time constraints so I don't intend opening the entire thing, and I should just point out to you that in fact all but the first page of the draft witness statement are in fact taken from Christopher Vaughan's own files, and simply because the first page of the statement doesn't appear on his file, that has been inserted from Carter-Ruck's files just for completeness. So the first page is a cleaner copy and you will see there is no marks on it, but from there on all the pages are numbered in the top right-hand corner and they all come from Christopher Vaughan's files and they appear to contain handwritten ticks and in some places corrections which he appears to have made when he received it.

A. Mm-hmm.

Q. And I think, and again I don't intend to open it in any detail, but it appears that I should perhaps ask you.

You seem to have prepared this, is that correct?

A. That's correct.

Q. And what were the sources you used to prepare this document?

MR. O'DONNELL: Perhaps it should just be clarified which of the two statements that we are referring to? The clean

copy that sorry

le Court Reporters Ltd.

MR. McCULLOUGH: Well, sorry, the clean copy.

MR. O'DONNELL: Perhaps it could be clarified with this witness whether she ever saw the copy with the handwritten ticks for adjustment.

MR. McCULLOUGH: Perhaps if we deal with that.

Q. You prepared the original copy that was sent to Christopher Vaughan?

A. Yes.

Q. Did you ever see the ticks and corrections that Mr. Vaughan made?

A. I think I did, but I am not sure.

Q. You think you may have?

A. I may have. I am really not sure. I just can't remember.

Q. You can't remember?

A. No, I am sorry, I just can't remember.

Q. Okay. Well, I had just asked what were the sources of the information that you put into this statement. We know obviously that you spoke to Christopher Vaughan on two occasions?

A. Yeah.

Q. But just in the interest, perhaps, of moving things along, it does appear also that some of the information may have been taken from the attendance notes of the two

A. As far as I recall, the sources for the statement were Christopher Vaughan's letter to Aidan Phelan of the 19th

February which he had sent me and the two telephone

conversations I had with him.

Q. And perhaps also then the

le Court Reporters Ltd.

A. And I think the blurb at the beginning is from my own

knowledge of the litigation.

Q. Yes, exactly.

A. So from, really, paragraphs 1 to 3 are written by me. And

possibly 4. And then the rest is based on information

Q. Well I'll just give you an example

A. I got from the documents.

Q. If you go down to paragraph 6 in the second page it says "I

received a visit from Mark Weaver on Monday 18th February

2002 at approximately 1:45. Mark Weaver is a

representative" now that's corrected by Christopher

Vaughan to read "Mark Weaver represented himself to be a

representative of Dinard Trading Limited. Mark Weaver did

not have an appointment and I have neither met nor spoken

to him." That appears to be paraphrased and lifted, if you

like, from the attendance note or letter to Aidan Phelan

describing the meeting when Mark Weaver attended?

A. These early paragraphs, I believe, are lifted from the

letter to Aidan Phelan.

Q. And I'll just perhaps go through you see there are some

ticks, there are some paragraphs on the bottom of that page

that aren't ticked and you go over the page you see that he

says "No, wrong letter." I think he raises an issue about

this, or at least it becomes an issue in later correspondence. Now, I have to say that I think my understanding was always that that is in fact, that that draft is correct, that that is the letter, but do you have any idea what letter he believed it was?

A. I remember that there was confusion about which letter was referred to and I remember believing strongly that I was the Court Reporters Ltd. right, and I think did I write to Christopher Vaughan later?

Q. No, you did. And in fact we'll leave it and maybe when we come to it in turn; I don't much turn on it in any event.

A. I mean, I seem to recall a letter saying "I think I am right."

Q. Yes, exactly yes, that's correct and there is that letter. But if you go to paragraph 12 "Mark Weaver told me that the other letter was written by me and indicated that Michael Lowry was involved in DRFL. I believe he may have been referring to a letter from myself to Kevin Phelan dated 5th September 2000 of which there are two slightly different versions in circulation which have gone before the" he corrects the name of the Moriarty Tribunal "in Ireland. Copies of the two versions of the letter appear at pages 8 and 9 of CJV 1." And if you go just go on to, it's actually CRV1 but, in any event, the pages are numbered at the bottom, and if you go to pages 8 and 9, you will see that two of the documents from the bundle that I was

referring to a moment ago are included as part of the exhibit and they are two versions of a letter of the 5th September 2000, and you will see that one version of it, the first version on Christopher Vaughan's headed paper, I am not going into this in any detail, is missing a paragraph which is in the second version of the letter.

You will see at the bottom "I have not written to Michael about this as I get concerned about correspondence going to him but a copy has been sent to Aidan as he needs to keep the mortgage lender happy as to the loan that Michael took out." Do you see that?

le Court Reporters Ltd.

A. Mm-hmm.

Q. And it just seems that of the bundle of documents that were sent to you by John Ryall, those are the only two versions that have in fact a reference to the name Michael, if you like, or Michael Lowry if you were to extend it.

A. Mm-hmm.

Q. And it seems to me that what you may have done is simply taken those letters as being the logical ones which Christopher Vaughan believes were being referred to in the first meeting, as they do seem to contain at least a partial reference to Michael Lowry; do you see my point?

A. Yes, I do see your point.

Q. Sorry, a point has been raised there. When you said that you believe I am going back up to the top of the page that you were in fact right about the letter of the 23rd

August actually, sorry I'll move on from that because

I think it could be dealt with, it will be clarified in a few moments. I'll just continue on.

If you go over the next page, it's page number 248, and just paragraph 20: "I acted for Michael Lowry in the purchase of two properties in England, one in Mansfield and one in Stockport. This work was introduced to me by a Dublin firm of accountants" and you seem to have added in the name with a question mark "with whom I had worked in the past."

Now in this version, Christopher Vaughan has included a manuscript note saying "Brian Phelan & Co."

A. Mm-hmm.

le Court Reporters Ltd.

Q. Do you ever remember receiving that or being told that the gap that the name of the firm was Brian Phelan & Company, and that they had introduced the two properties in Mansfield and Stockport to Christopher Vaughan?

A. I just can't recall. I can't recall whether I saw this ticked version.

Q. You can't recall?

A. No. Is there any documentation that could assist?

Q. There is a following letter, there is a letter at the next tab of the 24th and sorry, that's Tab 34. It's the next tab, and I just don't want to jump too far ahead but that's the letter of the 11th November, 2002 that Christopher Vaughan writes to you:

"Dear Kate,

"Thank you for your letter of the 8th November.

Unfortunately I was not in the office on Friday afternoon to read the fax. I am unhappy about the witness statement as it relates to a lot of issues that are not within the original file note and letter to Aidan Phelan and I would limit any witness statement to what is contained in those two documents. Also the letter that forms part of the Exhibit CJV1 dated 23rd August is not the letter that was shown to me by Mark Weaver, as that was a letter dated 24th September 1998 and not the 23rd August," do you see that?

A. Mm-hmm.

Q. That seems to relate back to his note "the wrong letter."

"I am going to be out of the office for the majority of Tuesday, Wednesday and Thursday morning this week and I le Court Reporters Ltd.

simply will not have sufficient time to consider the draft witness statement in time for your meeting with the police" and I think you had asked him if he could do that in the cover letter "However I have no objection to you showing them my file note and letter."

A. Mmm.

Q. I am sorry now, you may have to skip a couple of tabs. If you go to Tab 37, you then enclose you write back to him

"Thank you for your letter. I understand your concerns regarding the witness statement and enclose revised draft.

Limited to your letter to Aidan Phelan of 9th February and

file note of 18th October" that's the two Mark Weaver letters or notes, if you know what I mean "I note from the third paragraph of your letter of the 11th November that you state that the letter Mark Weaver showed you was a letter dated 24th September 1998 and not 23rd August 1998. As you can see from the witness statement, my understanding remains that at your first meeting with Mark Weaver on the 18th February he showed you the letter from yourself and Paul May and Kevin Phelan of the 23rd August 1998. I draw this conclusion from paragraph 3 on the second page of your letter to Aidan Phelan of 19 February 2002 and from your description to Aidan Phelan of the letter you were shown. My understanding from your file note of 18th October" there is a bit missing "then showed you the letter from yourself to Michael Lowry dated 25th September 1998 at your second meeting with him on 18th October 2002. "I would be grateful if you would telephone me so I can arrange to either amend the statement or engross it for le Court Reporters Ltd. your signature."

In fact I don't think that clarifies it much as to whether or not you saw the actual copy because I think the issue of the wrong letter was dealt with in the correspondence, if you like, and none of the other corrections are mentioned by either of you, if you like, other than his concern that the draft statement was too broad and should be confined to those two notes. And I think the second draft that you

sent was in fact confined to those two notes.

Sorry, if you could just go back to Tab 33. And if you go over to, on to page 249, it's paragraph 25. It says "From the meeting on the 24th September 1998 and from my meeting with Michael Lowry on the 25th September 1998 I got the impression that I could talk to Michael Lowry about DRFL which is why I wrote to him in the terms I did on the 25th September 1998. Copy of my letter to him appears at pages 10 to 11 of CJV1.

"I had a number of issues to sort out regarding the transaction and I thought he might be able to help. I did not have Westferry's express authority to write this letter but I did not think I needed it because Westferry's representative, Kevin Phelan, had spoken about DRFL openly in Michael Lowry's presence the previous evening."

Now, you do make a reference to Kevin Phelan or sorry, this draft statement which you prepared makes a reference to Christopher Vaughan having, the previous evening the Court Reporters Ltd.

the previous evening, having been present when Kevin Phelan discussed DRFL in Michael Lowry's presence, and that he also formed, from the meeting, he got the impression that he could talk to Michael Lowry about DRFL. Now, in both the conversations on the 22nd and the 28th I think

Christopher Vaughan went a bit further than that and he said that Michael Lowry had represented that he had an involvement in DRFL, not that he, if you like, got an

impression from the meetings. I just wonder, there may not be a huge amount of difference, but is that what you intended to convey in your draft here, or did you

A. I think my understanding was that he thought Michael Lowry was involved but he actually wasn't. So I don't think I am suggesting that Michael Lowry represented that he was involved.

Q. Yes, but there is

A. I'd have to go back to the notes again.

Q. I don't necessarily want to go back if we can avoid it just for time reasons. But there is, I would suggest to you, there is a difference between getting the impression from meetings and from the fact that Kevin Phelan discussed DRFL in Michael Lowry's presence and forming an impression that Michael Lowry was involved on the basis of that, and from forming an impression that Michael Lowry had an involvement because Michael Lowry indicated that directly to him.

Would you agree with that?

A. I see there is a distinction between the two.

Q. And I wonder, in drafting this, did you make a decision not to say in the statement that Christopher Vaughan formed the impression because Michael Lowry told him he had an involvement in Doncaster Rovers? Do you remember making any decision to phrase it in a certain way?

A. I don't remember making a decision. This statement would have reflected my understanding of the conversation that I

had, the conversations that I had with Christopher Vaughan, and my understanding was that he got the wrong end of the stick which is why I imagine it's phrased in the way that it's phrased.

Q. This is a witness statement that is going to be used in criminal proceedings that are going to be brought

A. It's a draft which is being sent to the witness to consider and amend.

Q. For a witness to consider but based on notes that you have, detailed conversations that you had with Christopher Vaughan?

A. Mm-hmm.

Q. And on both occasions you spoke to him, Christopher Vaughan told that you Michael Lowry had told him that he had an involvement in Doncaster Rovers Football Club, according to your own notes. And I am just wondering

A. I mean, the only way to resolve this issue is to go back to the notes because they will say whether Christopher Vaughan said Michael Lowry represented himself to me as being involved or I got the wrong end of the stick I am afraid, I am sorry.

Q. Well, whether he got the wrong end of the stick or not, he formed the impression initially, according to his own conversations with you, from indications given to him directly by Michael Lowry. So, I am just wondering whether it seems more nuanced in the draft statement and I am

just wondering whether you, or did you have a conversation with anybody about it as to what should be inserted?

A. I don't recall having a conversation with anyone about it.

Q. Well

A. Which paragraph are we looking at in the statement please?

Q. In Christopher Vaughan's draft statement?

A. Yes.

Q. It's on page 249, paragraph 25. I think you said earlier that your handwritten notes are better than, or preferable to any notes made later on, if you like; that they are the best version, I think it was in connection to whether it was "who" or "though"?

A. Well, it's contemporaneous.

Q. And wouldn't it then be the case that in this case your handwritten notes would be the better version

MR. O'DONNELL: In fairness, the witness has given her answer to that question, sir.

COMMISSIONER: Well, you have indicated a general course that the actual contemporaneous handwritten notes might probably be inclined to be the more accurate.

A. Mmm-hmm.

Q. MR. McCULLOUGH: I think perhaps just to clarify it. If we go to 66, Tab 66.

A. Thank you.

Q. And if you go to the second the typed transcript, in other words, the last thing in it relating to the second meeting; that's at the 28th October.

le Court Reporters Ltd.

A. Yeah.

Q. And if you go to the second page?

A. Yeah.

Q. And if you go half-way down, just above the "page 3 of 5 pages"?

A. Yeah.

Q. And you will see the last line "KP also discussed DRFL in ML's presence" then it's hyphen

A. Where is this again?

Q. "KP also discussed DRFL in ML's presence - ML indicated he was involved" do you see that?

A. Yes.

Q. That's the meeting of the 28th where Christopher Vaughan appears to be telling you that Michael Lowry indicated to him that he was involved?

A. Yes.

Q. Okay. Now, if you go back, and I think just the easiest place we will finish up now in a moment, but if you just go go back to your attendance of the 22nd October, 2002, and that's Number 30, Tab 30, and the second page of that.

A. Tab 30?

Q. Tab 30, second page, the large paragraph in the middle.

"CV said that it was important to look at his letter to ML of 25th September 1998 in context. The letter was written a month after the purchase on the day CV had met ML for the first time. ML had said that he was involved in Doncaster

Rovers Football Club Limited."

So again it's a statement Christopher Vaughan made to you that Michael Lowry had said that he was involved. Do you see my point?

le Court Reporters Ltd.

see my point?

A. That seems to fit with the indication that he was involved.

Q. On both occasions you have spoken to him you have noted that he said that Michael Lowry said that he was involved in Doncaster Rovers. And I am simply asking you, is there any reason why it's stated in a lesser way in the draft statement of Christopher Vaughan?

A. I don't recall giving that issue a huge amount of thought at that time.

Q. Okay. And then just the final thing. I just want to quickly deal with the fact, I think we have already dealt with it, that you sent a very, if you like, truncated amended version of the statement that only limited itself to the two attendance notes?

A. Yes.

Q. And I think that's there. And then I should just raise one thing with you?

A. Where is that?

Q. That's at Tab 37.

A. Tab 37, okay.

Q. I just want to very quickly raise at Tab 38. It's a letter from Christopher Vaughan to the Tribunal, 7th October, 2004. Do you see that?

A. Mm-hmm.

Q. If you go to the fourth page of it?

A. Mm-hmm.

Q. And you'll see under the, under 'B', letter 27th September 2004, that's in response to a letter the Tribunal sent him.

"Kate McMillan, an assistant to Ruth Collard, neither of whom I have ever met spoke to me on the telephone some time
le Court Reporters Ltd.

in 2002 as to various issues relating to the mediation

which I had no involvement in and little knowledge of.

Carter-Ruck were acting on behalf of Westferry. Over the telephone I gave her some general background information.

She then produced a draft statement. I started to go

through the draft statement as can be seen from my

manuscript note but I gave up because there were so many

aspects that were wrong. What can be seen in pages 2, 4,

6... were my initial attempts to edit the draft statement.

However, I came to the conclusion that the whole draft

needed rewriting. The draft prepared by Carter-Ruck was

abandoned. No new draft was ever prepared and no statement

has ever been signed by me."

I suppose, first of all, it does appear that a new

statement was prepared; this is the truncated version?

A. Mm-hmm.

Q. And was it sent to Christopher Vaughan?

A. I can't recall.

Q. There is a cover letter.

A. If there is a cover letter saying it was sent, it was sent.

Q. Is he correct in saying that it wasn't signed? That he never in fact signed any

A. That is correct.

Q. Did he ever contact you to say there were too many or so many aspects of it that were wrong?

A. All I recall is the letter that we looked at a while ago.

Q. The 11th November?

A. I can't remember which tab it was, he wanted to restrict what he said to the notes that he had prepared himself.

le Court Reporters Ltd.

Q. Sorry, the last if you go to tab 59, then, the last thing. And that, you will see there is a letter there, 8th February, 2005 from LK Shields. If you actually go behind the letter, the third page in the tab, it's just an attendance note of your meeting with Kieran McNinch. I don't intend to open it, it's been gone through a number of times. I just want to confirm that is your note and that is your attendance of your meeting with Kieran McNinch, is that true?

A. Yes, that's correct.

Q. Thank you very much.

THE WITNESS WAS EXAMINED BY MR. McGONIGAL AS FOLLOWS:

Q. MR. McGONIGAL: Ms. McMillan, good afternoon. Just one or two questions I just want to try and understand myself.

The statement at Tab 33 which is the one that was sent to Christopher Vaughan, he responds in relation to that

statement on the 11th November, which is Tab 34, and insofar as it's material, he indicates that he is unhappy with the statement and that he is not going to be available for a number of days to enable him to deal with it?

A. Mm-hmm.

Q. But what's clear is that he doesn't return the statement to you at that time?

A. I imagine that if he was enclosing it, he would have written in brackets "enclosed" or put a note at the bottom to say it was enclosed.

Q. Precisely. So at that stage not only does it appear not to have been corrected, but it wasn't sent back to you. You le Court Reporters Ltd.

then have your letter, which I think is the Tab 37, where you deal in correspondence with a number of matters; isn't that right?

A. Yes.

Q. And you are keen, in the second-last paragraph, that he should arrange to either amend the statement or engross it for his signature?

A. Mm-hmm.

Q. And which statement are you referring to there?

A. It's the revised draft which is enclosed.

Q. So

A. In the second paragraph it says "I enclose revised draft limited to the documents".

Q. So this is a revised draft by you, is it?

A. I believe so.

Q. Well, when you say you believe so, is it yours or is it somebody else's, or do you know at this stage?

A. I can't recall.

Q. I see.

A. And it's not a sort of point that I have checked.

Q. I understand. On the basis that Mr. Vaughan had not corrected the first statement, on what basis was the second statement produced?

A. It would have been prepared on the basis of his instructions which were that he

Q. On the telephone?

A. wanted to limit no, in letter where he says he wants to limit himself to what's in his own documents.

Q. Okay. And the third document that I want to refer you to is at Tab 38, which is the one that Mr. McCullough has just le Court Reporters Ltd.

recently referred you to where he says on the fourth page, he talks about in the second paragraph he says "I started to go through the draft statement as can be seen from my manuscript notes" and he gave up because there were so many aspects that were wrong. We see he made initial attempts to edit. "I came to the conclusion that the whole draft statement needed rewriting. The draft prepared by Carter-Ruck was abandoned. No new draft was ever prepared and no statement has ever been signed by me."

A. Mm-hmm.

Q. That would seem to suggest that at some point in time this statement or statements got filed in both offices and nothing was done with them. Certainly it doesn't seem to indicate an activity of work in relation to the preparation of the statement at some stage?

A. I can't say what was filed where because that's not my responsibility.

Q. Your evidence really, Ms. McMillan, is, insofar as you can, based entirely on trying to recollect from what has been written down by you, because you now, at this remove, have no clear recollection of anything?

A. I have to rely on the documents that I prepared at the time.

Q. And insofar as you purport to rely on those documents, I suppose the documents speak for themselves without explanation in the first instance?

A. Yes.

Q. And insofar as an explanation is required, you are simply guessing or speculating in parts as to what may or may not have been intended?

le Court Reporters Ltd.

A. Yes.

Q. Is it correct for me to say that you, as a lawyer, and I take it are you still a criminal lawyer?

A. No, I am a civil lawyer.

Q. Well, bearing in mind the distinction between civil and criminal proof, which you probably do understand?

A. Yes, I do.

Q. Am I right in understanding in so far as you understand, that you are not aware of any evidence that Michael Lowry was ever involved in Doncaster Rovers?

A. I don't believe that Michael Lowry was involved in Doncaster Rovers from my work in this litigation.

Q. Thank you very much.

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

Q. MR. O'DONNELL: Ms. McMillan, I only want to ask you a few questions and I appear on behalf of Mr. Lowry and Mr.

O'Connor, and just at the outset, sir, I just want to observe that clearly in so much as Ms. McMillan is referring to the notes of her conversations with Mr.

Vaughan in so much as those notes contain what Mr. Vaughan says, they are, as a matter of law, hearsay. Obviously that's a matter that will have to be addressed.

COMMISSIONER: These are obviously matters of submission.

There is a degree of extra latitude that a tribunal may have obviously bearing in mind the importance of issues involved, but we needn't address that now.

le Court Reporters Ltd.

MR. O'DONNELL: I simply wanted to observe that in passing and address that in submissions in due course.

Q. Now, Ms. McMillan, what Mr. McGonigal last asked you in relation to Mr. Lowry's involvement is in fact not just your belief but it's also consistent with what Mr. Vaughan told you; isn't that right?

A. Yes. His evidence was, or what he said to me was "I thought he was involved because of this meeting that we had but I think I am wrong now."

Q. And in fact if you look at your notes he says "Never involved," isn't that right?

A. Yes.

Q. If you look at the second page of the typed notes of 28th October, I think four lines down?

A. Can I just get to those?

Q. Perhaps if we look at the first page of those.

A. This is of the 28th?

Q. Yes. If you look at the bottom of the page under the heading "page 2 of 5". "At no time before 24th/25th had he given instructions or been to a meeting" this is Mr. Lowry he is referring to; is that right?

A. Mm-hmm.

Q. "Why I said I had no idea." Is that why he said whatever he said he had no idea?

A. I think the phrase was "I had no idea of your total involvement" if my memory serves me correctly.

Q. And Mr. Vaughan saying why he said that I had no idea, or why he said that he had no idea; is that right?

A. Yes.

le Court Reporters Ltd.

Q. And then he is struggling on these points. "After that I never heard from him again."

A. Mm-hmm.

Q. So he appears to have had no contact prior to the 24th/25th and no contact after the 24th/25th. "I wonder I spent time with him on the 25th because I was in a car with him for hour lift to Leicester." Then the next one is "Never involve." Again, as I understand that, that's a reference to Mr. Lowry never being involved in the Doncaster transaction?

A. I believe it is, yes.

Q. Mr. Vaughan was the solicitor who had acted in the conclusion of the Doncaster Rovers transaction, the acquisition of Doncaster Rovers by Westferry; isn't that right?

A. That's correct.

Q. And Mr. McCullough asked you about your attendance note at Indent 30 I think. I'll just go back to that, I am sure you are very tired of looking at that, and I think it was in this context that you observed to him that this was prepared from handwritten notes and if there was a difference, the handwritten notes would be more accurate?

A. Yes, I believe that this was dictated on the day. But, of course, with dictation, bits can be left out because the tape

Q. I am sure we all understand that and have done it ourselves on many occasions, perhaps not as diligently, Ms. McMillan, but just to get the sequence clear in relation to the preparation of this statement. You never met Mr. Vaughan face-to-face; is that right?

le Court Reporters Ltd.

A. No, I didn't.

Q. In relation to this?

A. That's right.

Q. You had three sources of information?

A. Yes.

Q. One, the letter he had written to Aidan Phelan?

A. Yes.

Q. And your two telephone conversations?

A. That's right.

Q. Is that right?

A. Yeah.

Q. And from the sum total of that, you prepared the first draft of the witness statement?

A. That's right.

Q. Sent it to Mr. Vaughan?

A. Yes.

Q. Who responded to you on the, you sent it on the 8th November. He responded on the 11th November, indicated that he wanted only to limit it to the two matters and you then prepared a subsequent statement and sent it to him?

A. Yes. The only bit about that that I am not sure is whether I did that second statement or not. I just can't remember, I am sorry.

Q. And it certainly appears that he did not send back to you the ticked version because, as you have discussed with Mr. McGonigal, if he had done that, you would imagine he'd say

"I am unhappy because, and I want the changes made as enclosed" or "I am enclosing amendments and perhaps you would make them" and it would I appear on your file?

A. I would expect that.

le Court Reporters Ltd.

Q. As far as I am aware, the provenance of the ticked document is from Mr. Vaughan's own files?

A. I believe that to be the case.

Q. So that would suggest you never saw the ticked document?

A. I don't think I did.

Q. Yes. Thank you, Ms McMillan.

A. I think the first time, I think the first time I saw it was when I got the file, the papers.

Q. These Tribunal papers?

A. Yes.

Q. In the context of giving this evidence?

A. Mmm.

Q. And I think you have said on a number of occasions you have to rely on what's in your documents and your, in a sense, evidence doesn't extend, can't extend beyond that?

A. It's such a long time ago. It's five years ago. I had a large case load. I have to rely on the documentation.

Q. I appreciate that, Ms. McMillan. And when you were preparing the statement, as Mr. McCullough has put it to you, this was a statement that was going to be delivered, or was intended perhaps to be delivered to the police, something that you were being careful about?

A. We would have only delivered something to the police with which Mr. Vaughan was happy.

Q. Absolutely.

A. And had signed.

Q. But in so as much as that statement sets out a narrative, it sets out the synthesis of your understanding of everything he had told you?

A. It's a first draft: This is what I think the position is, le Court Reporters Ltd.

please correct me if I am wrong.

Q. Exactly. This is, as it were, my understanding of the picture you have presented to me?

A. Yes, based on the documents and conversations.

Q. And in so as much as it presents a picture of his dealings with Mr. Lowry, it is, as best you can make it, your understanding of how he recounted those dealings to you?

A. Yes. It's a, it contains the contents of our two conversations and the letter to Aidan Phelan.

Q. And if I can just ask you to look briefly at that attendance note now, and on the second page I think there is

A. Is that Tab 33?

Q. That's Tab 33 yes sorry, Tab 30. And perhaps if you just keep your finger on Tab 33 for these purposes, because then perhaps we can speed things up. Just above the middle of that page there is a sentence to which Mr. McCullough referred to, it is "Christopher Vaughan said that Doncaster

Rovers Football Club acquisition was introduced to him by KP who had some contact with Michael Lowry" and he discussed with you your handwritten notes and the possibility that that might mean though he had had contact with Michael Lowry?

A. Mmm.

Q. Now, I think if you look, then look at that being Christopher Vaughan having had contact with Michael Lowry rather than Kevin Phelan. I think that's what Mr. McCullough was suggesting to you.

A. Sorry, can you just point out where it is in the attendance note again? I have just lost my place.

le Court Reporters Ltd.

Q. It's just above half-way. It's about, I suppose, ten lines down: "CV said Doncaster Rovers Football Club" it's on the second page, do you see that?

A. I see it.

Q. "Introduced to him by KP though had had some contact with ML." As I understand it, the handwritten notes say "though," is that right?

A. That's right.

Q. And that that refers to Mr. Vaughan's contact with ML?

A. That's how I would construct "though," yeah.

Q. And he goes on to describe contact being contact around the 24th and 25th September?

A. That's right.

Q. Those are the dates he gives?

A. That small window.

Q. And that's the only contact he ever described to you; isn't that right?

A. That's right.

Q. And if you go to your first draft statement at Indent 33, at paragraph 19, you will see you set out his dealings with Michael Lowry.

A. Which paragraph is it?

Q. Paragraph 19 at page 248 on the top right-hand corner.

A. Yes.

Q. And the only dealings that are dealt with there in the context of Doncaster Rovers are this so called 24th/25th September incident?

A. That's right.

Q. Which is again this question of impressions being gained, discussions being had; is that right?

le Court Reporters Ltd.

A. That's right.

Q. But nothing else?

A. Yes.

Q. And otherwise the position is entirely consistent with your, or in fact the position is entirely consistent with your notes where Mr. Vaughan tells you he had never attended a meeting, never taken instructions from Mr. Lowry before the 24th or 25th and he didn't hear from him again after the 24th/25th?

A. Mm-hmm.

Q. Now, during your limited contact with Mr. Vaughan, did you form any impression about his personality, because we hadn't had the benefit of his evidence in this Tribunal?

A. I don't think it would be appropriate for me to comment on his personality.

Q. Very good. But in a number of respects it appears, Ms. McMillan, that Mr. Vaughan is not entirely reliable on matters that can be checked, as it were. Taking let's take a simple example. The letter that was put to you where he said he had never received a revised statement, that appears to be incorrect; isn't that right?

A. From this set of paper, it does. I mean the only thing that I can base any view upon is Mr. Vaughan's letter which says that there were so many aspects of the statement that were wrong, and my own personal understanding that, you know, this was not perfect, but a reflection of what he had said to me plus what had been written in the letter to Aidan Phelan.

Q. Yes

A. So, I don't believe that this witness, the first draft le Court Reporters Ltd. witness statement is entirely wrong.

Q. It's as wrong as he says it was. Therefore, you don't necessarily think

MR. HEALY: I think there is some confusion. I don't think he ever said that in a letter to this witness.

MR. O'DONNELL: I think that was what this witness was

referring to, was the reference which had been put to her

A. No, what I am referring is the letter to Mr. Heneghan of the 17th October which states where there were so many aspects.

MR. HEALY: Maybe it's my fault.

MR. O'DONNELL: Just in terms of, I suppose, precision of

A. There were so many aspects that were wrong which doesn't sit with a ticked draft.

Q. Something would you take issue with, and it's a more general statement by Mr. Vaughan perhaps. It's not a very precise statement. It doesn't identify what he takes issue with; isn't that right?

A. That's right.

Q. And, as I say, it looks like he is wrong about whether a subsequent statement was ever sent to him?

A. I don't, I don't recall much about the second draft, I am afraid.

Q. There is certainly correspondence
le Court Reporters Ltd.

A. Do we have a covering lettering regarding that?

Q. Yes I think we do.

A. Yeah, "I am enclosing a revised draft."

Q. Well, if I can just help you on some other matters. On perhaps more dramatically, it appears, as far as it can be determined by this Tribunal, I don't want to anticipate any

finding, but it appears that Mr. Vaughan is clearly wrong about some of the matters he was referring to and in particular, a simple matter such as the date of those famous meetings, because you may recall that he refers to the trip to Leicester as occurring on the 25th to attending the BUPA clinic and it appears that that appointment was on the 24th, which would make the arrival in England the 23rd.

And that's

A. I think, to be fair to Mr. Vaughan, when he is talking to me about the dates, he is saying 24th, 25th, not a hundred percent sure.

Q. Although the letter of the, the famous letter of the 25th refers to the 24th and 25th?

A. Yes.

Q. But even more dramatically, Ms. McMillan, and I don't know if this has been brought to your attention, you faithfully record Mr. Vaughan telling that you that a meeting took place on what I'll call the first evening, 23rd or 24th, it doesn't matter for these purposes, do you understand?

A. Mmm.

Q. And he records that as having occurred, or told you that that occurred in Paul May's house?

A. Mm-hmm.

Q. And you inserted that in the first draft of the statement; le Court Reporters Ltd. isn't that right?

A. That's right.

Q. And were you aware that Mr. Vaughan had had a private interview with this Tribunal and that there is a transcript available of that?

A. I was aware I think last I am aware that Mr. Vaughan has had some contact with the Tribunal.

Q. But were you aware

A. Because as a matter of courtesy to him when I was asked to give evidence, I informed him that I had been asked to give evidence about the contents of our conversations.

Q. But you are not aware of the content of his discussions with the Tribunal other than the letter you have just seen, for example?

A. No. The first time I saw this was, this letter saying that there were so many aspects of this statement that were wrong was when I received the file from the Tribunal.

Q. And in that contact with the Tribunal, as I recall it, Mr. Vaughan stated categorically that the meeting on the first evening had taken place at his office. And on one version he has given yet a third possible location for the meeting. You weren't aware of that?

A. No. All I am aware of is what he said to me in the phone call and it's only fair to him to say that, you know, his recollection was a little vague about precise dates.

Q. And clearly locations?

A. I think there is a point in the note where I say 24th/25th question mark, I think.

Q. Well, we are here dealing with where a particular meeting

takes place and he has given at least two different

le Court Reporters Ltd.

DENCE ON COMMISSION [MORIARTY TRIBUNAL] - DAY 347A

accounts of that, and consequently the people at the meeting?

A. Well, the account he gave to me was that it occurred, a meeting occurred at Paul May's house.

Q. But if it is correct that he has given a different account to the Tribunal on a different occasion, that would raise some question marks over the full reliability of everything Mr. Vaughan may have told you or you recorded Mr. Vaughan as having said in those conversations?

A. Really that's a matter for the Tribunal to decide based on the documents.

Q. I am sure you are right, Ms. McMillan. Thank you very much.

COMMISSIONER: Nothing in conclusion? Thank you very much for your assistance and attendance today, Ms. McMillan. We have, I think, satisfied our witching hour of half four towards five and covered the matters that were required to be dealt with. Accordingly, this Commission sitting will be adjourned and the Tribunal will be in prompt communication with interested persons about the limited amount of remaining matters. Thank you.

THE COMMISSION THEN CONCLUDED."

CHAIRMAN: That concludes the rather lengthy reading of day's evidence that was taken in London some weeks ago. I

am very much obliged to those who have assisted in dealing
with that necessary procedure and in particular, to
Ms. Hayes for bearing the lion's share of it.

le Court Reporters Ltd.

DENCE ON COMMISSION [MORIARTY TRIBUNAL] - DAY 347A

I direct and order that the record as taken and as now read
will be deemed to form part of the official transcript of
the Tribunal proceedings. And, again, prompt communication
will be made in relation to the matter of the outstanding
ruling and such very limited matters by way of the
Tribunal's public business as may remain. Thank you very
much.

THE TRIBUNAL ADJOURNED UNTIL FURTHER NOTICE.

le Court Reporters Ltd.