

THE TRIBUNAL RESUMED ON THE 30TH JANUARY, 2009 AS FOLLOWS:

CHAIRMAN: Yes, Mr. Healy.

MR. HEALY: Yes, sir, the purpose of this sitting is, I suppose, if I could use the word essentially, administrative, is to enable Mr. Christopher Vaughan, who is an English solicitor outside the jurisdiction, to answer a summons, which Mr. Vaughan has done this morning, to attend at the Tribunal. It's not proposed obviously to proceed with questioning Mr. Vaughan today or raising any inquiries with him, and I simply call Mr. Vaughan to confirm his attendance to the summons, and then in due course I understand it's your intention to adjourn the sittings to a date to be notified on the web site so as to enable people to prepare for his evidence.

CHAIRMAN: Very good.

MR. MEAGHER: Good morning, Chairman. If I deal with the preliminary issue first of all in relation to representation. I appear as solicitor for Mr. Denis O'Brien Junior, and while I have already informed the Tribunal in correspondence that my firm will be taking over the handling of his representation at the Tribunal to its conclusion, I suppose I should go through the formal process of actually applying to you for representation in not something analogous to a notice of change of solicitor, which I haven't served on the Tribunal which I hope you'll accept from me.

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CHAIRMAN: There is no difficulty about that Mr. Meagher, in the context of recent correspondence and your own notification and that of the former solicitors, Messrs.

William Fry, of course consider it to be taken as a matter of course that you are now the solicitor on record for the balance of the Tribunal's business.

MR. MEAGHER: And that issue in relation to representation may be something which I may wish to revisit at a later date but I don't wish to do so this morning. I am here on my own without counsel because I got 15 minutes notice of this sitting, and this is important because it's relevant to how we find ourselves here this morning.

In relation to Mr. Vaughan, I want to make my position, my client's position very clear. Mr. Vaughan is not my client. I have nothing to do with his compellability or otherwise; that's matter for the Tribunal. And it was my firm that took the step of writing to the Tribunal on the 28th January to notify you, Mr. Chairman, that Mr. Vaughan would be coming to Dublin for the purpose of assisting me and our legal team in preparing detailed replying submissions to your provisional findings of the 18th November, and that is the purpose, and I also said in that letter of the 28th January, that I wanted to try and establish whether Mr. Vaughan would be willing and available to attend the Tribunal to give evidence.

And the reason I say this is I want to make it very clear

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from my position and from my client's position that I am

putting no impediment whatsoever in the way of Mr.

Vaughan's attendance. And the impression I get from the

way this summons issue has been dealt with here this

morning is that there is some attempt good, bad or

indifferent to prevent Mr. Vaughan attending, and I think

in fairness to me and to my firm and to Mr. O'Brien and his

legal team, that it should be acknowledged that we took

the went the extra yard, notified you that Mr. Vaughan

was coming to Dublin, that he was coming to meet me. I

have never met the man. I still haven't met him. He has

met with you here this morning before he has met me. He

was meant to meet me

CHAIRMAN: Not myself.

MR. MEAGHER: I will deal with that, Chairman, because the

reality is he has made himself available. This is his

third occasion he has made himself available to the

Tribunal, and a meeting was scheduled for half eight this

morning to deal with the provisional findings where Mr.

Vaughan is referred to.

MR. HEALY: With respect, sir, I want to make one thing

absolutely clear, I hope I can shorten this. The

provisional findings are confidential and should not be

alluded to in any public forum, including this Tribunal. I

think if I could just finish please. I think there is absolutely no question or doubt about it that the service of a summons on Mr. Vaughan was facilitated by Mr. Meagher le Court Reporters Ltd.

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and his client. There is absolutely no question of not acknowledging that and I can't see how in any way today's proceedings could be suggested to give rise to the notion that Mr. O'Brien was placing an impediment on Mr. Vaughan's attendance here. It was Mr. O'Brien's solicitor's communication with the Tribunal which enabled the Tribunal to take this step, and indeed I should say that Mr. Vaughan has made himself available today on foot of direct communications by the Tribunal with Mr. Vaughan's solicitor in England, which communications were prompted, again I may add, as a result of helpful information made available to the Tribunal by Mr. Meagher. But beyond that, I don't believe there should be any reference to any matter connected with the provisional findings.

CHAIRMAN: That is the case, I think, Mr. Meagher. It is, of course, accepted by me fully that it was on foot of your recent correspondence notifying the intended arrival of Mr. Vaughan for a meeting with you that the steps have been taken to seek to procure his assistance by way of testimony, and it would be quite unreal to suggest that in any sense has there been any default on your part or any attempt to stop Mr. Vaughan testifying in the context of

recent events. So, it may be taken as a given that your assistance has been material in enabling this course to be taken and I certainly confirm what Mr. Healy has said, that it would be quite wrong to make any reference to provisional findings at this stage.

MR. MEAGHER: I appreciate that, Mr. Chairman. I was not the Court Reporters Ltd.

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going to go into the matter of provisional findings. I was merely making reference to the fact that this man, Mr. Vaughan, a solicitor from the UK, who has his own solicitor and own counsel, is here of his own free will to meet me to facilitate a professional request from me as a fellow colleague, albeit that he is outside of the jurisdiction, to come to Dublin at short notice to meet me and my legal team this morning at half eight. That process has been interrupted, that's as far as I'll put it, to facilitate the Tribunal, at my insistence, that he attend here between nine and half nine this morning, which has absolutely wrecked, forgive the description, wrecked my plans to have a lengthy consultation with counsel today to deal with the provisional findings. I am not going to go into the provisional findings and forgive me, Mr. Healy, if you thought I was, but I definitely was not going to go into them.

All I am saying is, I needed this man at half eight this morning. My meeting was adjourned to facilitate we met

anyway at half eight. It was adjourned, insofar as Mr.

Vaughan's involvement was concerned, to allow his attendance here to accept the summons.

Now, can I deal with the summons? I was informed by the Tribunal by fax that he was required to attend. As far as I am aware, there is no duty or obligation, there is no order, there is no subpoena, there is no order from the High Court, there is no compellability in the UK. In any event, it's arguable that it's not required because he has the Court Reporters Ltd.

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already assisted the Tribunal on two separate occasions.

He assisted the Tribunal by voluntarily attending a meeting with the Tribunal's legal team and I understand you, Chairman, but I may be corrected

CHAIRMAN: I never met Mr. Vaughan, Mr. Meagher. I do not meet in these circumstances.

MR. MEAGHER: Forgive me if I am wrong. And a further meeting that meeting was in 2001, and there was a further meeting in London in 2004, and he attended both of those. This is his third time to attend. And the issue I have with the Witness Summons, and it only came to my notice 15 minutes ago when Mr. Brady, solicitor for the Tribunal, phoned me and I was in a consultation and I think all of us know exactly what that means, that you have to leave what you are doing to go and attend to something else.

I thought this was going to be plain sailing. I thought I had facilitated the Tribunal. I gave certain advice which I don't want to go into because it's privileged. I told Mr. Vaughan's solicitor in the UK that he should cooperate fully and make himself available. I did not know, when I gave that advice, or gave my view, because he is Mr. Needham's client, I cannot give Mr. Vaughan advice, he is not my client, I did not know that when the Tribunal were going to serve a summons on him, that they were going to request his attendance forthwith.

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And in my opinion, in my respectful opinion, and it's my submission, I was taken short, Mr. Vaughan was taken short, Mr. Vaughan's solicitor was taken short, his counsel Stephen Natham of Blackstone Chambers in London was taken short. None of us knew what the Tribunal planned. And isn't it incredible that I got notice 15 minutes before you were due to sit, Mr. Chairman, to deal with this. And I was told there was no need to attend but yet the press were called. The press were called, not the solicitor.

CHAIRMAN: It's a public sitting, Mr. Meagher. I am not entitled to sit in private.

MR. MEAGHER: Mr. Chairman, my information, my reliable information, and I am reluctant to say it, is that the Tribunal contacted the media to tell them there was a sitting here this morning. What is the sitting about?

It's a sitting about a Witness Summons.

MR. HEALY: I must interject, sir. This is a distortion of all of the matters relating to Mr. Vaughan's attendance here, and in fairness to Mr. Vaughan, I want to say, the solicitor to the Tribunal has already contacted his solicitor this morning. Mr. Vaughan has been informed that the purpose of this sitting was to enable him to attend and to comply with his summons. The press had not been informed until after the sitting was announced for that purpose, and the press have been informed this was a purely administrative sitting, the purpose of which was to the enable Mr. Vaughan to comply with the summons. It was the Court Reporters Ltd.

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never envisaged that Mr. Vaughan would be subjected to a sitting in which he would be asked questions. Nor was it envisaged that Mr. Vaughan be subjected to a sitting in which any aspects of his dealings with the Tribunal in the past would be referred to, and I regrettably have to refer to them at this stage, though in doing so I should qualify it by saying that Mr. Vaughan's dealings with the Tribunal this morning have been on an most cordial and cooperative basis.

But the fact remains that, and I am delighted that Mr. Meagher should now say so, that Mr. Vaughan is not a compellable witness, notwithstanding the fact that proceedings were instituted in the High Court and

maintained in the Supreme Court in which the Tribunal was criticised for its failure to ensure Mr. Vaughan's attendance. Mr. Vaughan's attendance, in the view of the Tribunal, is something that is likely to be of considerable value not only, one hopes, in the context of evidence that might affect Mr. O'Brien, but also evidence that might affect Mr. Lowry, who is the object of the Tribunal's inquiries.

The Tribunal has a duty to ensure that a witness like that, whom Mr. Lowry made efforts to bring to Ireland, should be available. Its paramount duty is to ensure that that evidence is made available to the Tribunal and it's so that end that the arrangements that have been put in place here today occurred. There is no suggestion of taking Mr. Vaughan short, Mr. O'Brien short, his counsel short or Mr. le Court Reporters Ltd.

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Vaughan's counsel or solicitor short. Arrangements have been put in place to ensure that they are all facilitated, and the suggestion that anything to the contrary was engineered by the Tribunal or that the press were brought here for some display is tantamount to ludicrous.

CHAIRMAN: Briefly, Mr. Meagher, you have complained that your day has been interrupted. You are not assisting it and you are not assisting your client by persisting in these rather unusual observations. The suggestion that it was intended to swear Mr. Vaughan in and proceed to examine

him in the absence of interested persons is absolutely untenable.

MR. MEAGHER: My point is this, Mr. Chairman: With all due respect, we went to lengths to make sure that Mr. Vaughan attended here between 9.00 and 9.30 this morning. I was not notified in advance that he was going to be requested, he was going to be served with a Witness Summons which, quote unquote, requested him to attend forthwith. Now, the reason I make that point is that he has the right, or would have had the right if his solicitor was present with him, to seek independent advice, seek his own advice as to whether he should attend here at the public sittings of the Tribunal or whether, as a solicitor living and practicing in the UK, would prefer to exercise the option to have his evidence heard on Commission, and he would have had the time to seek that advice, but he was deprived it. I am not saying it was intentional, but that is the effect of what has happened here this morning.

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Mr. Vaughan, as I understood it, and all the lawyers involved on his side - he is not my client - attended here to receive a Witness Summons, to be formally served. That he did. But what I didn't know was that he was going to be required to attend forthwith and I was given 15 minutes notice of this sitting, and I submit to you that that is neither fair nor reasonable.

CHAIRMAN: It was with a view to fixing an approximate date for his evidence to be taken and for no other purpose. The fact that this was, nonetheless, a public sitting meant that notice had to be given to persons in order to report the matter. But it was made clear, as I understand, by the Tribunal's solicitor to you, that all that was to be entailed today was to formally raise the matter of the Witness Summons and consult with Mr. Vaughan as to his convenience for approximate attendance with the assistance of his legal advisers.

MR. MEAGHER: That's not quite what I was told. What I was told when I was phoned at 15 minutes notice was that he was, quote unquote, going to be put in the box. Now what does that mean to me as a solicitor if I am not here?

CHAIRMAN: Well, Mr. Meagher, if you are suggesting that it was proposed to take Mr. Vaughan's testimony in the absence of all interested persons, I suggest you better have a word with your counsel.

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MR. MEAGHER: Is that that I am wrong, Chairman? That I wasn't that I was mistaken?

CHAIRMAN: The notion, Mr. Meagher, that this Tribunal was going to preceptorially call Mr. Vaughan for his substantive testimony in the absence of interested persons, particularly in the context of your recent correspondence with the Tribunal, does not reflect the reality of events

in the slightest. Now, really must we proceed with this,

Mr. Meagher, because it's significantly unhelpful?

MR. MEAGHER: I am prepared to leave it at that.

CHAIRMAN: It's inconvenient to Mr. Vaughan.

MR. MEAGHER: It's very inconvenient to me, Mr. Chairman,

but I was prepared to live with that as we try to make

arrangements for him to get back to the UK this afternoon

and it has interfered with my meeting to deal with very

substantive matters, and in that regard it has interfered

with my ability to meet your deadline in relation to the

delivery of submissions. More of that anon. I propose

addressing that in correspondence with you privately. And

I am prepared to leave it at that for this morning.

CHAIRMAN: Mr. Healy?

MR. HEALY: Well, Mr. Vaughan has attended, sir, and I

don't see what more needs to be done. He is here and I

have already spoken to him. And he has complied with the

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summons and I think the Tribunal has discharged its duty to

ensure that he is made available. And, having spoken to

Mr. Vaughan, what I would suggest is that the proceedings

be adjourned to a date to be agreed and to be notified to

the other affected persons in due course.

CHAIRMAN: I think that is the case, Mr. Vaughan. Thank

you for your attendance this morning and I think you have

already had an informal discussion with Mr. Healy and you

have notified him of your engagement of the solicitor who has already been in correspondence with the Tribunal and also a member of the Inner Bar from England. And accordingly, as I think Mr. Healy intimated to you, it is the intention to seek to facilitate you as far as we can by having the time for your hearing fixed. You will appreciate that time is somewhat of the essence, and whilst of course I must make some allowance for you, it will have to be in a rather proximate time.

MR. VAUGHAN: Good morning, Chairman. That's absolutely right, I have acknowledged that I have been served this morning with the summons and I have had certain discussions with Mr. Brady and Mr. Healy outside, and I am perfectly content for this morning's hearing just to be adjourned to a date to be agreed between all the interested parties. I don't think I need say anything more.

CHAIRMAN: Quite so. Thank you for attending again.

MR. MEAGHER: Mr. Chairman, would the Tribunal like to le Court Reporters Ltd.

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indicate approximately what dates it envisages calling Mr. Vaughan or whether that is a matter that they will address with Mr. Needham, his solicitor?

CHAIRMAN: Well, we will certainly have to deal with Mr. Needham and we will have to have regard to not only the convenience of yourself and your counsel and Mr. O'Brien, but also to some of the other practitioners who appear for

persons who are obviously interested persons as regards
this matter.

So, I envisage that very prompt communication will be made
in this regard with a view to fixing an approximate date.

MR. MEAGHER: I am obliged. I did indicate in
correspondence in relation to the calling of another
witness, that Friday the 13th would not suit the 12th
and the 13th would not suit one of our team, one of our
counsel.

CHAIRMAN: Well, I will have regard to what I hear from any
person who has genuine difficulties, Mr. Meagher, but you
will appreciate I also have a very considerable duty to
expedite the remaining stages of the Tribunal's
proceedings, but in a way consistent with fair procedures.

I will have regard to the genuine difficulties that persons
may raise but equally I will have to show some dispatch in
attending to these limited remaining matters. Very good.

MR. MEAGHER: In conclusion, could I ask that the Tribunal
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solicitor be kind enough to fax me a copy of the Witness
Summons which was served on Mr. Vaughan this morning.

CHAIRMAN: I am sure there is no difficulty about that,
Mr. Meagher. Thank you very much. Adjourned until a later
date.

THE TRIBUNAL ADJOURNED UNTIL FURTHER NOTICE.
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