

THE TRIBUNAL RESUMED ON THE 23RD APRIL, 2009, AS FOLLOWS:

CONTINUATION OF EXAMINATION OF CHRISTOPHER VAUGHAN BY

MR. HEALY:

CHAIRMAN: Good morning, Mr. Vaughan. Sorry for the delay, counsel needed some time to discuss matters.

A. While I am on my feet, there is a couple of very small points I'd like to mention at some stage before Mr. Healy recommences, just relating to yesterday's evidence.

CHAIRMAN: Yes, please do, feel free.

A. I just had the opportunity yesterday evening of looking at the transcript of yesterday's evidence, and there are a couple of points that I think just it would be helpful if I clarified them.

If we look at the transcript on page 35, and it's question 31, where Mr. Healy somewhat surprised, quite properly, says: "What did Westferry or Mr. Ryall have to do with Cheadle?" My answer is: "Well, perhaps I should have said Aidan Phelan. He would have been a client as such, yeah."

That is correct, the correct answer, but then I carry on in question, the reply to question 32, and I explain there my relationship with Westferry, which is all very fascinating but not in the slightest bit relevant. The correct answer is Aidan Phelan, as I had said in reply to question 31, he was the client.

As I said, when I read it last night I thought; well I have added this in, it's useful background, but it doesn't mean anything at all to the question.

The other point really: Before we got to the end of a, I think, Mr. Chairman, as you said, a fairly lengthy day, we are talking about Kate McMillan's notebook, and I was asked whether I wanted to comment on it by Mr. Healy. I think I rather misunderstood that. I think it would have been better if I had been asked do I agree with her notes? And if I had been asked do I agree, the answer would have been no. I have indicated that in the evidence, but I didn't agree with the typewritten version of her notes. And the particular point that we mentioned yesterday is the typewritten version of page 4 of 5 pages, and it's that page there, Chairman.

Towards the end of that, it says: "DRFC acquisition through" which seems to be crossed out "introduced to me by Kevin Phelan." And I got the impression that Mr. Healy yesterday was linking that line there with the next line, "Though had some contact with ML," so that they run together. But they don't run together, they are two separate lines. The "though", the T-H-O is a new line, a new sentence, starting with a capital T. And if one looks at the next page, you will see quite clearly her note is correct, it says, and she is recording what I said, "I never took instructions from ML. ML wasn't involved."

So that's my instruction to her. And I think it's unfortunate if you try and run the other two lines together, "The DRFC acquisition through" - or whatever it's meant to say - "introduced to me by Kevin Phelan." And

then Kate McMillan, her evidence changed the "though" into who", "who had some contact with ML". That is wrong, quite clearly wrong, because the next page quite clearly says "I never took instructions from ML. ML wasn't involved."

I think I just, to be helpful I just clarified that this morning for you, Chairman.

CHAIRMAN: Thank you, Mr. Vaughan.

MR. HEALY: Thank you Mr. Vaughan.

Q. Could I ask you to go to paragraph 15.3 of your statement, please?

A. This is my statement I read out at the beginning?

Q. Yes, yes.

A. That's the one document I haven't got in front of me.

Sorry, it's here.

Q. In this and in the few preceding paragraphs, you are dealing with the Mansfield site, and you talk about how you got the contract?

A. Correct, yes.

Q. You say in 15.3, "There was a substantive reply from me to Mr. Dawson. After the 8th September, 1998, I had been instructed by Kevin Phelan that the purchaser was now to be Abbey Green Consulting Limited, a company which he told me belonged to Michael Lowry, a member of the Irish parliament. I duly so informed the seller's solicitors."

Up to that time I think, you had been taking your instructions from Kevin Phelan, who had identified the property and had instructed you to deal with the vendor's

solicitors?

A. Correct, yes.

Q. I think it was not no surprise to you that he told you eventually who the purchaser was, you knew him to be an agent, as it were, for people who wished to buy property?

A. Absolutely, yes.

Q. You said: "The purchaser is to be a company called Abbey Green Consulting belonging to Mr. Michael Lowry."

A. Yeah.

Q. So, Mr. Michael Lowry was to be your client from then on buying this property through his vehicle Abbey Green Consulting?

A. Yeah, I think technically the client is Abbey Green Consulting, but yes, it's semantics.

Q. The person you were meeting was Michael Lowry? In fact he did take it in his own name?

A. He did, yes.

Q. I am not making an issue of that. You go on, in paragraph 15.4, to say: "At my meeting with Mr. Lowry and Kevin Phelan on 23rd/24th September at my office, I was instructed by Mr. Lowry that he was the purchaser. I do not know whether Mr. Lowry had yet inspected the property at the time of my September meeting with him."

I think there is some confusion about that. Mr. Lowry thought he might have, but I think subsequently, I think, he may have corrected that; that he saw it on another occasion. But I don't think anything turns on it. You met

him over those two days in any case?

A. Yes, yeah.

Q. So he was the person to whom you looked, as you saw it, as the principal in relation to that transaction?

A. Correct.

Q. You say that: "Completion eventually took place on the 26th" sorry, paragraph 15.6 "after service of a Notice to Complete from the seller. That was the end of the purchase transaction so far as I was concerned, apart from the fact that I continued to hold a sum of $\pounds 44,500$ sterling from Mr. Lowry's account."

So you exchanged contracts in that transaction?

A. Yeah.

Q. You got a deposit, I think, from Mr. Lowry, I don't think you mentioned that at this time?

A. I did, of $\pounds 25,000$.

Q. $\pounds 25,000$. Eventually by March of 1999 the balance of the purchase price came through and you put it in Mr. Lowry's account to complete the purchase?

A. Correct.

Q. In fact, rather more than the balance went into your client account; isn't that right?

A. Yes, I had a balance.

Q. Yes, but I mean, you in fact got about 300,000 into your client account?

A. Yes, I can't remember the exact figure without looking at it.

Q. Well, you certainly had you said that you continued to hold a sum of $\frac{1}{2}$ 44,500 from Mr. Lowry's account. I think, in fact, after the completion of Mansfield, you would have had rather more than $\frac{1}{2}$ 44,500. The balance had dwindled as a result of various debits to the account to about 44,500 by the time you came to exchange contracts on Cheadle; isn't that right?

A. That's correct, yes.

Q. So you had 3,000 in you had 300,000 in, I beg your pardon, and then I haven't got the closing, or the completion statement here somewhere, but you were left with a substantial sum of money over, bearing in mind that you only had about, I suppose, you had 225, 250,000 on the contract or was it 225, I can't remember?

A. I haven't got I think you have got the amalgamated client account just just remind me where it is.

Q. Yeah, it's in Book 81.

A. Is that A?

Q. You may find it easier, Mr. Vaughan, rather than jumping around from book to book, sometimes to rely on the overhead projector since unless you really want to read a document, you may find it easier.

A. That's yeah

Q. If we go to the top of the document, please. It says: "MA Lowry, completion statement.

Relating to the purchase of the land at Hilltop Farm, the Mansfield property."

If we just go to the purchase price, 250, and we look down to the balance due, 225,000, and then there is various costs and disbursements, fees and so on, and the amount that was needed was $\frac{1}{2}$ 230,546-odd?

A. Yeah.

Q. So you got 300,000 in. I know there were other debits to the account later on, but you had a balance left over; isn't that right?

A. Yeah.

Q. And as far as you were concerned at that stage, and I think you repeatedly said this in your statement, that was Mr. Lowry's money. Now, if you go to the same book, or if you wish, you can wait till it comes up on the overhead projector. It's Book 81, Divider 27. You will see that you are writing to Mr. Lowry at Abbey Road in Thurles on the 26th March, 1999, confirming the completion of the purchase price, referring to the option agreement to enable Mr. Lowry to acquire additional land, which is to be held by you subject to the arrangement between yourself and, the agreement between yourself and Aidan. "I must advise Aidan in order to protect his interest, that a caution be placed in the Register to reflect the fact that you can not deal with the property without his consent. Could you speak to him about that please.

"I enclose herewith the completion statement" - the document we looked at a moment ago - "I am aware that some of this money is required to renew the planning consent. I

am holding the balance pending your instructions."

The next document in the book, it's at Divider 28, is a joint venture agreement, and I think you have already referred to that document, isn't that right, in your evidence?

A. Yes.

Q. In your statement, I beg your pardon. I don't think you prepared that, you simply produced a template on a floppy disc and gave it to Helen Malone?

A. Yes.

Q. It's dated 309th April, 1999, but in fact that document was never on your file, it came to you from the Tribunal; isn't that right?

A. That's correct, yes. I hadn't seen this document until it was served upon me with the other paperwork.

Q. So you had no idea whether, in fact, it had ever been brought into existence, as it were?

A. No, no.

Q. And when was the first time you became aware of Mr. Phelan's involvement in that Mansfield transaction?

A. Towards the end of when we were coming up to the completion process, I am not sure exactly when I became aware of him. Let me just have a look.

Q. I think what you may have said was you became aware of his involvement just before completion?

A. Yes, I think that's correct. He wasn't on the scene at the beginning because I was taking instructions from Kevin

Phelan and Michael Lowry as to the property. You must recall that Kevin was trying to find another purchaser.

Q. Oh, I appreciate that. They were trying to flip the property on. But one way or another, unless they could flip it on exactly as they closed, they were going to have to pay for it?

A. That was the hope.

Q. Well, that didn't happen in this property, and it didn't happen in Cheadle either, and as you came up to closing, in fact you didn't have the money and you were the subject, as it were, of a Completion Notice; isn't that right?

A. Right, yeah.

Q. So you were going to forfeit the deposit unless the money was produced, and eventually it was produced. All that was preventing you from closing was lack of money, nothing else?

A. Correct, absolutely, yeah.

Q. Now, in your letter of the, I think it's the 26th January, 2001, which is in the documents that you produced to the Tribunal on Monday in book, I think it has been called Book 81B. I think it's the first letter behind Divider 1. I don't think you have put numbers on the dividers, but I am I am now calling the first one Divider 1 and all the other ones 2, 3 -

A. I will look at it on the screen because I haven't got it.

Q. I am not going to delay you too long on it in any case. You will see you were writing to Kevin Phelan. This is the

question about Kevin Phelan understanding his role in those matters?

A. I recognise this.

Q. "Re St. Columba's Church/Mansfield sites.

"I do not propose to write a long letter to you with regard our telephone conversation of the 23rd January, 2001.

However, you seem to misunderstand the chain of command.

You are not my client. Both you and I are agents of the landowner and therefore we both take instructions from him.

There are two mortgage lenders

1. Investec in respect of St. Columba's Church and
2. AP in respect of the Mansfield site."

Now, maybe it was a bit technical to describe Mr. Phelan as a mortgage lender, but you are describing him, in any case, as a lender in respect of the site?

A. Yeah.

Q. Was that because that was your state of mind at the time, that you saw him as a person who provided funds?

A. That's right. If we go back to my completion letter

Q. I understand what you say, "subject to any agreement between Mr. Lowry and yourself"?

A. Yeah, because this property was registered in the name of Michael Lowry, but the purchase monies, or some of them, had come from Aidan Phelan. Aidan Phelan's interest on the property wasn't protected and that's why, in my letter of the 26th March, 1999, I say "I must advise Aidan in order

to protect his interests, that a caution be placed on the

Register." That is a protective notice to stop the

registered proprietor selling the property.

Q. It's the same system with registered property in Ireland?

A. Good, okay.

Q. Not all property in Ireland is registered, as I gather it

is in England?

A. The same in England.

Q. I see. Right. Well, what I am just trying to clarify with

you is that I don't think you learned anything more from

either Aidan Phelan or Michael Lowry in 1999 concerning the

nature of their arrangement; is that right?

A. No.

Q. You didn't register a caution?

A. No.

Q. And nobody gave you a joint venture agreement or anything

like that?

A. No. The template, as you called it, which is a good word

to use, of what we had on the screen a moment ago, was

produced by me, but then it disappeared. I never saw it

again until recently.

Q. Now, could I just ask you a few questions about the Cheadle

property.

You refer to it in your statement you read out on Tuesday

at paragraph 21.1.

A. I have that.

Q. You say: "My first involvement was in receipt of a letter

dated 13th July from Towns Needham Solicitors." Presumably Mr. Kevin Phelan had said, had told them to write to you as the solicitor

A. I assume so, yes.

Q. for the purchaser. "The buyer was referred to at that stage as Gameplan Limited."

If you go to paragraph 23 you say that by that stage Kevin Phelan was telling you, according to your file note, that he was speaking to Michael Lowry or that he would be speaking to Michael Lowry on Wednesday as to funding.

Do you see that?

A. Yes, I am reading it.

Q. You say: "This is the first occasion on which I was informed by Mr. Phelan of any involvement of Mr. Lowry."

And I suppose, is it reasonable of me to assume that at this stage you would have taken the view that Mr. Lowry was going to be the purchaser of this property?

A. Yes.

Q. Whatever about vehicles, he was going to be the man behind it, however he was going to do it?

A. Yes, absolutely, yeah.

Q. As you point out in your statement, the next relevant event was a letter of the 27th August, 1999, from you to Kevin Phelan asking for the identity of the purchaser, and you were told that it would probably be either Michael Lowry or Catclause, a company which you had earlier acquired on Mr. Phelan's instructions. You had purchased it from

Jordan's company

A. It was an off-the-peg company.

Q. Yes. I think we know that that company must have been incorporated sometime in June, or you must have acquired it sorry, sometime in June?

A. That appears to be correct, yes.

Q. Its two directors were Michael Lowry and his daughter was the Company Secretary, as can be seen from the public records.

Now, in paragraph 21.6 you were speaking to Kevin Phelan, and he told you to try to delay until he had managed to find a purchaser to whom the property could be sold. And you say that: "I then spoke to Mr. Lowry, who said that funds would not be available until November."

Now, I think we saw that that's in 81, Divider 30.

A. Just to confirm, that's my handwriting, that's my note.

Q. Yes, that's your file note "Re St. Columba's. Mr. Oldham of Towns Needham on the phone. He is very unhappy about the matter." You said, presumably, "I would be seeing the compliance later today and revert to him."

Then there is a line indicating some sort of division and you have another note: "Spoke KP, try and delay." That is presumably Kevin Phelan's response?

A. Yeah.

Q. Then "But spoke to Michael Lowry on mobile," indicating that you must have had a telephone conversation with him.

"He said no way funds available until November at earliest

agreed purchase vehicle is Catclause?

Offer 5% deposit.

Complete 31/10/1999 or earlier by agreement."

So you had instructions to try to get away with a 5% deposit, although, I suppose, in most cases in England, as in Ireland, it's a 10% deposit, is it?

A. It's certainly normal to have a 10% deposit.

Q. And you were told there would be no funds available until November, so you chose or you agreed with Mr. Lowry, probably, that you'd push the completion date back to the end of November.

Now, shortly after that conversation you exchanged contracts; isn't that right? If you look

A. That's correct, yes.

Q. If you look at, I think it's 21.9. On the 14th September contracts were exchanged with Catclause, as the purchaser, using Mr. Lowry's surplus from his purchase of Mansfield.

So, at that stage, as far as you were concerned, this was a Mr. Lowry purchase through his vehicle, Catclause, and you had after all got the money from him for the deposit?

A. Yes, Catclause was the client, they were the purchaser.

Q. Yes. Now, you say that on Monday, the 13th December, you received a telephone call from Aidan Phelan/Helen Malone sorry, I should refer you to paragraph 21.12 of your statement.

"On Monday the 13th December I received a telephone call from Aidan Phelan/Helen Malone, who told me they were

working on sorting out the finance. On the 14th December, 1999, I sent a fax to Aidan Phelan/Helen Malone confirming our telephone conversation."

A. Correct, yes.

Q. Now, I think I am right in saying that there is no memo of that telephone conversation on the file? I am not criticising you for it, because you wrote a letter soon afterwards.

A. No, I think I was trying to establish over the last couple of days that frequently, rather than writing a note - we had a scribbled note of mine earlier on - if I am writing a letter immediately afterwards, then it's been incorporated into

Q. I am not criticising it.

A. I think it's helpful just to explain how

Q. Yeah. You have had a telephone conversation, you write a letter right away and it incorporates everything. It is the note, perhaps even a better note. So that letter is on the overhead projector now, and it's a letter to Aidan and Helen, you are sending it by fax. So you got their fax number, and you don't have any address for them, so presumably it's only going by fax, I take it?

A. Yeah.

Q. I think, as we know in any case, there was a degree of urgency about this, as you made clear in the second paragraph.

"Dear Aidan/Helen,

Michael Lowry

"I had not appreciated until yesterday Monday 13th December in the morning that you were involved in this matter at all.

"I understand Michael Lowry has given you the relevant figures, but I am in desperate need of funds today before 2 p.m. so that I can complete the purchase of this property.

"I will not concern you with the history of this transaction, but contracts were exchanged on the 14th September for completion on or before 30th November."

You then refer to the Completion Notice and you give the bank details, and you finish up saying: "Michael and Kevin have had all the completion statements, etc., but if you want any further information, please telephone me."

So, at that stage Aidan Phelan had contacted you. Can you remember was it in fact Aidan or Helen who

A. I can't remember.

Q. who spoke to you on the phone?

A. No.

Q. Obviously one or the other. And had you dealt with Helen Malone before that?

A. Yes, because they had been assisting in providing the funds for the purchase of DRFC. If we can just go back to the summer after exchange of contracts of DRFC, we find ourselves in a somewhat similar situation, in that we are wanting money, and I found that Helen Malone was the person

who I could speak to and manage to move things along. So I had known them from that transaction.

Q. I presume, however, that you were asking Michael Lowry for the money, bearing in mind he had told you it would be available not before November; isn't that right?

A. There is a letter, I think, sending a completion statement showing the funds that are required, but I was dealing, as you can see, with both Kevin Phelan as his agent and with Michael Lowry. And I haven't got the letters in front of me, but I have faxed both of them, haven't I, saying this is the situation?

Q. But in your from your letter to Aidan and Helen, it would seem, correct me if I am wrong, that you are writing to them about a Michael Lowry transaction?

A. Yes. I mean, I can put it like that in short form, it's just we need the money.

Q. I appreciate that. But I am just trying to look at it in terms

A. I think if we can we just go to the top of that letter, because it does say, I think, paragraph 3, "I won't concern you with the history of this transaction." So, I am trying to I could write three pages about what had happened, but I just want to say we need the money.

Q. Yeah, I understand that. I am simply trying to understand at that stage who was the person, if you like, who were the person or the persons - and we know that this caused you trouble as well - involved in the transaction? At this

stage, you certainly, to judge from your note, and this is my understanding of your note, correct me if I am wrong, that it was a Michael Lowry transaction, but that Aidan Phelan had now become involved and they were going to arrange for money to be made available, and you gave them your bank details?

A. Yes.

Q. And if they wanted further information, they were to contact Michael and Kevin?

A. They had all the completion statements. I mean, if we just go back to the exchange of contracts. The purchasing vehicle was, of course, Catclause Limited, that is the corporate entity who was buying the property. I appreciate the directors behind it, sorry, the officers behind it.

Q. I know, but you didn't say contact Catclause, you just said contact Michael and Kevin, and you what I'm saying is your impression, that's all I am trying to. I am trying to ask you, do you agree that my interpretation of what's contained in this letter is a reasonable one? It's a letter about Michael Lowry's affairs. It's a letter indicating that Michael Lowry has already been in touch with Aidan or Helen. You say, "I understand Michael Lowry has given you the relevant figures."

A. Yes, yeah.

Q. He has been in touch with them?

A. Yeah, yeah.

Q. He has spoken to you about that, obviously. He said

something along the lines, I am putting words in his mouth,

"Christopher, I have been in touch with Aidan or Helen.

The money is being organised. You can write to them, or they will ring you"?

A. Yeah, I don't think Michael Lowry spoke to me at all about this, because it is the telephone conversation of Monday the 13th December.

Q. All right, fair point

A. Where I am told by Aidan Phelan, I suspect it was him, and he would have then said get in touch with Helen as to the nuts and bolts of it.

Q. I see. All right. So you think the conversation may have come may have been stimulated, or rather the note may have been stimulated purely by a conversation with Aidan or Helen?

A. Yeah. I don't think I was party to a conversation with Michael Lowry.

Q. And that one of those rang you and raised with you Michael Lowry's proposed purchase through his vehicle Catclaus - they may not have mentioned that - of the Cheadle site? Would that be reasonable?

A. Yeah.

Q. And you finish up by saying: "Michael and Kevin have all the information." They knew who the Michael and the Kevin were, Michael Lowry and Kevin Phelan?

A. Yeah.

Q. So, you were at the sharp end of this transaction now, no

money, as you put it?

A. Correct.

Q. You are in desperate need of funds, and Aidan Phelan comes to the rescue again, as it were?

A. Correct.

Q. Now, there is just one strange thing in the file, and I think you may have referred to it before in correspondence yourself. If you go to Tab 31, and I'll put it on the overhead projector, Book 81.

A. Oh, yes, yeah.

Q. We see there is a note which appears to be in your handwriting; isn't that right?

A. I agree, yes.

Q. "8th September.

Deposit of i;½44,500 for purchase agreed with AP. This to come from Mansfield excess"

Taking, for a moment well, perhaps you can, maybe I should ask you: How do you what does that note say to you in terms of who contacted you to warrant your making that note?

A. I would have taken instructions from Aidan Phelan.

Q. You'd have taken them from him?

A. Yeah.

Q. You see, that's why I wonder can that be absolutely correct, bearing in mind that on the 14th December, not long afterwards, you write to Aidan and Helen saying "I hadn't appreciated until yesterday that you were involved

in this matter at all"?

A. Well, I meant yeah, the funding, the producing of the vast majority of the money, or the balance sorry, the balance of the purchase monies.

Q. You know the way you normally do your notes, you normally indicate the person you are speaking to first, don't you, or something like that, or it's fairly clear from your notes whom you are normally speaking to? Is it possible you were speaking with somebody else on the 8th September who told you "I have agreed with AP" or "It has been agreed with AP"?

A. I can't say, I can't speculate on that.

Q. Now, at 21.14 of your statement you say that: "On the 17th December, 1999, I received a telephone call from Michael Tunney of Ge Capital Woodchester Bank Limited, who had informed me that his bank would be providing a transfer of the remaining part of the purchase monies which I needed to have. I had never spoken to him before and had no previous knowledge of him."

Now, if you go to Book 81, Divider 34, you will see a reference to your letter to Mr. Tunney of the 20th December, 1999. I think the 20th December must be a Monday, if the 17th was a Friday. If you look at the first line of your letter.

A. Yes, I am looking at it.

Q. And again, it would appear that this is probably a letter you dictated after a telephone conversation with

Mr. Tunney. Would that be right?

A. It would appear to be.

Q. You probably dictated it on a Friday, but it wasn't typed until the Monday.

"Dear Mr. Tunney.

Re: Catclause Limited purchase of St. Columba's United Reform Church site Cheadle.

"I refer to our telephone conversation on Friday when we discussed this matter. I confirm that I act on behalf of Catclause Limited who have exchanged contracts to purchase this site which is registered with absolute title. You confirm to me that the bank would be funding this purchase and would be sending me $\frac{1}{2}$ £420,000, being the balance of the purchase monies required.

"I think you may have a copy of my letter of the 14th December, 1999, to AP Consulting, but if not, my bank details are.

"I confirm that on completion Catclause Limited will have a good and marketable title to the property and I will... deal with the stamping and registration.

"I am not sure if the bank wishes to register a charge against the property. If so, please send the completed charge to me and I will arrange for it to be both filed at Companies House and registered simultaneously with the transfer.

"If there is any further information that you require, please do not hesitate to contact me.

"CC Helen Malone, AP Consulting."

Now, did you know Mr. Tunney before this telephone conversation?

A. No.

Q. So had you been expecting his call, can you remember?

A. I had been expecting a call from a funder, because that's what I had been told.

Q. All right. When he rang you, presumably there must have been some discussion of some kind about the elements of the purchase?

A. I am sure there must have been, because the first line says "I refer to our telephone conversation."

Q. And in that conversation you'd have told him that the purchaser was going to be a company called Catclause?

A. I think so, yes, yeah.

Q. Is it reasonable to assume that you would have told him that Catclause was a vehicle for Michael Lowry?

A. Mm.

Q. People deal in flesh and blood when they are having these conversations, obviously. You go on to say in the fourth paragraph, "I think you may have a copy of my letter of the 14th December." Is that because you might have been discussing that letter with him, or he may have indicated to you that he was aware of it?

A. Yes, if I look at the preceding paragraph, he has confirmed that the bank are sending the money and he, I must have assumed well, he must have had a copy of my letter of

the 14th, which gives all the bank details.

Q. It does, yes.

A. So...

Q. I mean, you didn't CC that letter to him is what I am trying to explore?

A. No

Q. Something must have been said that led you to believe that you thought he had a copy of that letter?

A. Yeah. I mean, obviously I wasn't privy to anything that was happening behind the scenes.

Q. Of course you weren't?

A. Mr. Tunney rings up, and whatever he might have said to me is recorded in that letter. I think you put your finger onto it at the beginning of this discussion with the word "desperate." We were trying to get this property

Q. Yes, I appreciate that, but I am just wondering why in the middle of a letter to somebody you haven't had any contact with before, you refer to a copy of your letter to AP Consulting of the 14th December, which is the letter we were discussing a moment ago, and I am trying to divine why it is you would have referred to that. And I am suggesting that it's because there must have been some conversation with Mr. Tunney.

Now, if we go to paragraph 21.18 of your statement, please.

A. Yes.

Q. You say: "But the circumstances in which completion took place were, to my eyes, very unsatisfactory. I had

received no paperwork at all from the bank which is funding the purchase, whereas normally I would expect to be instructed to act both for the purchaser and the funder with a view to protecting the funding body's financial interest by way of security, yet here there was nothing. I was also quite unsure if it was right for me to have the property transferred at the Land Registry into the name of Catclause Limited, since the bank might require something different to be done. I also had to have regard for the financial interest of Mr. Lowry, whose personal monies amounting to 44,000 in my ledger account had been used for the 10% deposit in respect of a contract where Catclause Limited was the contractual purchaser."

So, just to clarify one matter about English as opposed to Irish conveyancing practice. In Ireland when a solicitor acting for a purchaser contacts the purchaser's bank in the course of a purchase, he will usually be asked to undertake to the purchaser's bank to hold the title deeds to the order of the purchaser, and that undertaking is effectively a charge on the property, although it's a professional obligation of the solicitor which is backed by the Law Society. Do you understand me? In Ireland, if a solicitor defaults on his undertaking, the consequences are fairly serious for him, but nevertheless the Law Society itself will come up with the money, do you understand me?

A. I understand what you say. I don't think the solicitor's undertaking acts as a charge, but from what you have just

explained to me, the consequences of a solicitor breaching his undertaking both in England and in Ireland would be the same.

Q. Yes, I take your point. Commercially it has effectively the same effect as a charge in Ireland. The bank is totally protected.

A. The bank has a cast iron guarantee which is backed up by the solicitor's undertaking and his PI, professional indemnity policy.

Q. It's the same system then in general, it's the oil that greases the wheels in house purchase and commercial conveyancing.

MR. NATHAN: I am just concerned. There is obviously, sir, a difference between what is the practice in Ireland, which there seems to be a common practice where solicitors give undertakings simply to hold the deeds for the benefit of the bank and that's that, as opposed to in England, where although commercially there might be a good way forward, I don't think Mr. Vaughan is saying that that's what happens in England as a matter of law. I think it's important to understand the distinction.

CHAIRMAN: I think all that we have established is that de facto, irrespective of comparative conveyancing practices, the solicitor's undertaking is pretty sacrosanct and consequential.

MR. NATHAN: Certainly if Mr. Vaughan had been asked to give an undertaking. But certainly so far I don't think we

have seen any hint of that.

MR. HEALY: That's the point I think I am going to come to.

Q. After you wrote to Mr. Tunney on the 14th December I beg your pardon, on the 20th December, shortly after that you receive the money; isn't that right?

A. Correct, yeah.

Q. But if I am correct in reading your file, no indication from the bank that they wished to register a charge?

A. Can you just say that again? I received the money and?

Q. You received the money, but no indication from the bank that they wished you to register a charge in response to your query contained in your letter of the 20th December?

A. Correct, yeah.

Q. And nor did you receive the kind of letter which you would, I think, receive in Ireland - I don't know if it's what you'd receive in England - indicating that the bank is sending on the money on your undertaking. In fact the bank in Ireland, as I understand it, insist on it in their letter, if you follow me? You received no such letter?

A. No. This is it's alluded to later on. This was my concern, because I received no letter of instructions from the bank. And that set of instructions would have included the name of the purchaser that the bank expected to see registered and the name of the purchaser the bank would have expected me to get to sign. If it was an individual, a mortgage; if it was a corporate thing, a mortgage to be registered at Companies House. But nothing there was no

paperwork.

Q. Now, you had received no instructions, no further instructions from Michael Lowry either; isn't that right?

A. I don't think so, no.

Q. If you go to, I think it's paragraph 21.20

A. Yeah.

Q. you say you "discussed the problem with your wife and we agreed that the prudent course would be for us personally to be the transferees and to hold the property temporarily in our joint names as solicitors, to hold for the benefit of the bank and whomsoever would be instructed would be the actual transferee. That is what we did, and in due course the Land Registry completed its registration in our joint names."

I think you may have alluded to this earlier, and you may have expanded on it. You said you were faced with a dilemma over the Christmas holidays, and not having had any instructions from the bank, you thought this is what you'd do to protect their interests?

A. Mm. I haven't mentioned it in here, but there is very severe penalties for late paying of stamp duty, as it was then, and registration of a property, and I couldn't afford to do that, so it had to be registered.

Q. Did you think to contact Michael Lowry or Kevin Phelan or Aidan Phelan?

A. It's not mentioned here, but I am sure I would have done. It was a sort of a deafening silence, so I proceeded with

what I thought was the correct and prudent course to protect the bank and whoever the correct transferee might have been. It was a very flexible way of dealing with it.

Q. Can you remember in fact by what date you would have been obliged to register without incurring a penalty?

A. You have got, I don't know what it was in those days, it was either 21 or 28 days after completion. So after the date of the transfer instrument, you'll have had that period to but they had Christmas in the middle, and you would have had to pay the stamp duty on the property, which was - I'd have to look at the completion date - it's 444,000; it would have been 3%, but it's in the paperwork. So, it's quite a lot of money, and you don't suddenly want to start paying penalty interest.

Q. And it closed, if I am right in saying, on the 21st December, so you'd have until the last week in January; is that right?

A. Yes, yes.

Q. And I think you say you went back to work on the 4th January, am I correct in thinking

A. That's recorded, that was our first day back at work.

Q. 4th January, yeah. You didn't think of waiting until then, no?

A. I think we have to look at the next instruction I got, which I am sure you are coming to.

Q. Yes. This is contained in Divider 81 or Book 81, Divider 35. And you think you got this instruction sometime after

Christmas; is that right?

A. Yes, unfortunately it's not dated, but it obviously was after completion and before registration.

Q. It says: "AP now is to be owner of this site but mortgage to bank do we have forms which could be used? Ill be in Dublin"

A. It's "Early February, perhaps we could meet."

Q. "Tried AP out."

So this is a telephone conversation or note of a telephone conversation from Michael Tunney.

A. Mm. The forms, of course, would be the mortgage forms, the legal charge to be registered against the property.

Q. You were now told somebody else was to be the owner of the site?

A. Yes.

Q. Aidan Phelan. Did you contact Aidan about that?

A. Well, I obviously tried him, whatever, that day.

Q. Of course, but there is no, there is nothing on the file after this to indicate communication between you and Aidan saying, "Dear Aidan, what's this about? The last time I spoke to you this was a Michael Lowry transaction. What's happening now?"

A. No.

Q. And nor, am I right in saying, is there anything on the file, and I am not criticising you, you may not have been able to get these instructions, there is nothing on the file, no telephone call or letter to Michael Lowry, "What's

happening here? I got my original instructions from Michael Lowry, now I am told by somebody else all together, by the bank, that Aidan Phelan is to be the owner of the site"?

A. Well, this is one of the elements that caused my concern, because somebody, a banker who represents the mortgage lender has told me that a totally different person other than the contracting party, Catclause Limited, is now to be the owner. So, conscious of the time constraints, it needed a pragmatic solution, and that's what I did. And in fact, if I have the same problem again, I'll do exactly the same thing.

Q. The way you saw it was, look, I have taken a sort of a protective step. I am holding it as trustee with my wife, and whoever is the beneficial owner we'll sort out in due course?

A. Yes, which is what happened eventually.

Q. So, as I think you said in your statement, the people whose interests were at stake were: Mr. Michael Lowry personally, if you like, himself, because you had the money from his ledger account; Mr. Aidan Phelan possibly, because Mr. Tunney had mentioned his name; Catclause; or possibly a combination of some or all of those?

A. Yeah, I don't think Michael Tunney is it Michael, whatever his name is, would have been a purchaser.

Q. Well, I suppose he'd have had to be part of everything, if you like, as the mortgagor provider, unless he was giving

the money for nothing. But again, there is no normal record on the file, am I right, at this point?

A. No, and this is why we registered it in our names.

Q. I am not criticising you

A. I don't know if it helps slightly, but if you just look at my where was I? I was sitting in my office in

Northampton. This is the third time that we have a

transaction, we have slight money delays. I find it

difficult to get instructions from anybody, and we need to

protect the bank. I have given the bank, if you look at

the last line of my letter to the bank, I have given them,

it doesn't use the word "undertaking", but it is implied

there. I needed to protect everybody, and so I took this

course of action. So everybody was protected. And then

please somebody at some stage sort yourselves out and we

could then finalise it. There may have been an element of

frustration getting into the situation by then.

Q. Now, eventually all sorts of difficulties arose within the

bank, not to mention this inquiry concerning who was the

owner of this property; isn't that right?

A. Well, I now know that.

Q. Yes, of course.

A. Because you very helpfully supplied Stephen Nathan

yesterday with, I don't know what it's called now, Investec

bank file or something, which I have now read. Fascinating

stuff behind the scenes, but I knew nothing about it.

Q. It isn't actually the bank file, because the bank file is

missing, it's a reconstitution or a reconstruction of a file?

A. Right, okay.

Q. Of a portion of a file. I have no idea whether it's the entire file or not.

A. Anyway, it was interesting background reading.

Q. But you communicated with the bank on the 1st March, 2001.

Your letter is at Book 81, Divider 42.

A. This is Mr. Morland, yes?

Q. Now, in this letter you are writing to him re Cheadle, you say: -

"Dear Mr. Morland,

"I refer to the telephone conversation we had on the 28th February, 2001, as to the above property. I subsequently had a telephone conversation with Aidan Phelan with regard to the same matter.

"The history of this transaction is that I was instructed to act in respect of the acquisition of this property, and a limited company called 'Catclause Limited' was set up as the vehicle to acquire the property.

"There were various delays following the exchange of contracts on the 9th September and actual completion on the 21 December, 1999 it should have taken place on the 30th November.

"By that time it had been decided that Catclause Limited was an inappropriate vehicle to acquire the property, and I was instructed that the property should be held in the

names of myself and my partner as bare trustees for Aidan Phelan.

"The advance of £420,000 from your predecessor, GE Capital Bank, was received into my solicitor's client account by bank transfer on the 21st December, 1999, and was immediately utilised to complete the purchase of the property.

"subsequently, following the registration of the property, the land certificate was held by me strictly to the order of your predecessor GE Capital Bank and subsequently to yourselves.

"I understand that the change of identity of the purchaser has caused compliance difficulties within the bank.

"Aidan Phelan has, therefore, instructed me to write to you to confirm that the property is to be held strictly to the order of Catclause Limited, and that the property should be transferred into the name of Catclause Limited at the earliest possible moment.

"Once this transfer has taken place, it should regularise the position so far as the bank as funder of the purchase of the property is concerned.

"You did ask me for details of Catclause Limited. I have now had an opportunity to look at my files, and I discover that all of the documentation I had relating to this company has been passed to Aidan Phelan's English accountants, I am therefore unable to assist you on that particular point.

"However, you may regard this letter as my revocable undertaking to hold the land certificate to the order of yourselves as funders. I confirm that my partner and myself are trustees of the property for the benefit of Aidan Phelan and/or Catclause Limited, and when requested will arrange for the transfer of the property into the name as Catclause Limited as registered proprietor.

"When we spoke on the telephone yesterday you mentioned the difficulty that the bank had, in that money had been sent to me to acquire the property in the name of Catclause Limited. Whilst I appreciate the bank's position, so far as I was aware the bank was fully aware of what was happening.

"I did not have any written instructions whatsoever from the bank to the effect that the property had to be placed in the name of Catclause limited. If I had received such written instructions, then obviously I would have needed to seek a variation of those instructions prior to completion."

You are referring in this letter to a telephone conversation from Mr. Morland?

A. Yeah.

Q. And then to a subsequent telephone conversation you had with Aidan Phelan?

A. Yes.

Q. Can you actually remember any of those conversations, because I don't think there are any notes on any files

about them?

A. Well, I think the telephone conversation with Mr. Morland

is incorporated into the letter of the 1st March, back to

the why bother to write it out if you are doing a letter.

They obviously, by this time, wanted to get the matter

sorted out. And if I am the letter there says that the

property has to be transferred into Catclause. I think

where had we got to? Yes, if you look at the second

paragraph, the top of the second page, it says: "Aidan

Phelan has, therefore, instructed me to write to yourself."

I had obviously spoken to him, and that letter looks

slightly strange, that "Aidan Phelan has instructed me to

write to you to confirm that the property will be held

strictly to the order of Catclause."

When I looked at the file you supplied about the bank, you

then realise why, because all the bank's paperwork is in

the name of Catclause, so it wouldn't comply otherwise.

So, I think that's why the bank wanted me to say it would

be held for Catclause. In fact the property was never

transferred to Catclause, it went to Aidan Phelan. But I

can see the bank wanted to have a letter of undertaking

which tied up with their lending paperwork.

Q. But at the time you wrote this letter, you didn't have any

files; isn't that right?

A. I didn't have anything from the bank at all.

Q. You had no files at all concerning the transaction, am I

right?

A. Where had we got to? No, I got the files. The files weren't passed to I until later.

Q. The only files you had passed over were the files relating to Catclause itself?

A. No, are we talking about the company?

Q. Yes.

A. No, I am sorry. Craig Tallents of Morton Thornton was the accountant who looked after the company matter. There wouldn't be sort of files as such that solicitors usually keep. Sorry, accountants usually keep files on companies. But I think the bank had asked me something about it. If I can guess, they may have said, "What was the date of the Certificate of Incorporation?" Or something like that. I didn't have any of that paper. Of course, it's a company going to Companies House, it takes you ten seconds to find out.

Q. You were giving a sort of a short history of the transaction?

A. Mm.

Q. Just to deal with one matter we were mentioning a moment ago. In the fourth paragraph of the letter you say: "By that time" - this is the time of completion - "It had been decided that Catclause was an inappropriate vehicle to acquire the property and I was instructed that the property should be held in the names of myself and my partner as bare trustees for Aidan Phelan."

That's not quite accurate?

A. No, it's wrong that is. It should say "I decided that the property should be held..."

Q. You didn't decide, because Catclause was an inappropriate vehicle, you decided because you thought there were the interests of too many people involved, and you couldn't get instructions as to whose name the property should be taken in, so you thought to protect everybody I'll hold it as a trustee?

A. That's right, yes.

Q. But it's just that it's a very firm statement here, and I am wondering, did you discuss with anyone

A. No.

Q. making that statement?

A. It's a bit shorthand this, isn't it? But we know the history of it, and I was just trying to explain to Mr. Morland how it came into the names of Debbie and myself.

Q. If you go to the second paragraph: "The history of this transaction is that I was instructed to act in respect of the acquisition of this property, and a limited company called Catclause Limited was set up as the vehicle to acquire the property."

Now, that is correct, in that you were instructed to act in the acquisition and a limited company was set up to acquire the property, but your original instructions were from Michael Lowry; isn't that right?

A. I think we have paperwork from solicitors, Kevin Phelan

says Michael Lowry is going to talk to you. Catclause was then the vehicle that was used.

Q. But I think you agreed with me before that when Kevin Phelan first contacted you about this, you were told Michael Lowry was the man who was going to purchase it; that his vehicle was to be Catclause clause?

A. Yes.

Q. And when the panic about the money arose, you wrote to Helen Malone and Aidan Phelan and you were writing about what was on the face of that document, as far as you were concerned now, a Michael Lowry transaction, and the first person in fact to tell you it was not to be taken in his name was the banker; isn't that right?

A. Well, it's not really it's Catclause is the contracting party.

Q. I understand that. It was the vehicle, it was the vehicle. But, you see, doesn't your letter seem to suggest that Aidan Phelan was the person who was behind Catclause from the beginning?

A. I don't think so.

Q. Well, you say: "Dear Mr. Morland, I refer to the telephone conversation we had on the 28th. I subsequently had a telephone conversation with Aidan Phelan to the same matter. The history of this transaction is that I was instructed to act in respect of the acquisition of this property, and a limited company called Catclause Limited was set up as the vehicle to acquire the property."

Now, the history of the transaction is that you were instructed by Michael Lowry to acquire the property, as I understand it from the documents we have looked at, and a limited company called Catclause was set up as the vehicle, his vehicle, I think we agreed, to acquire the property?

A. Mm.

Q. You go on to say that: "By the time it had been decided that Catclause" "By that time it had been devised that Catclause was an inappropriate vehicle and so I was instructed" which we now know is not absolutely accurate - "to hold it as bare Trustees for Aidan Phelan."

On the second page of your letter you say: "I understand the identity of the purchaser has caused compliance difficulties. Aidan Phelan has, in any event, instructed me to write to you to confirm that the property is to be held strictly to the order of Catclause Limited."

Was Catclause Aidan Phelan or was he holding it through Catclause? Was Catclause not, in fact, Michael Lowry?

A. Catclause was Michael Lowry, because he and his daughter were the officers of Catclause. But I am just reporting to Mr. Morland what I was told to do, so Mr. Morland gets a letter other than the telephone call with Mr. Tunney and my letter to Mr. Tunney, we then have a deafening silence until February 2001, and suddenly Mr. Morland - I don't know what his status in the bank is - phones me up, and so I dictate a letter to give him a brief background of where we had got to. I have to admit, if you regard every single

word here, they are not totally accurate, but it's to give an impression of how we have got there. And I had then spoken to Aidan Phelan who said, tell the bank it's got to be held to the order of Catclause. I have no knowledge at all of what's behind the corporate veil, I don't know who owns Catclause; we have two officers, director, Secretary, they may have nothing to do with it at all. And that's what I did. But just to sort of carry on. Of course the property never was transferred to Catclause.

Q. I appreciate that. I am just concerned with what you believed you were doing when you wrote the letter. When you were told by Aidan Phelan transfer it or indicate that you are going to hold it for Catclause. Catclause, in your mind, was a Michael Lowry vehicle, wasn't it?

A. Mmm. Well, whether it was at that moment or not, I have no idea. Those were the instructions I had. I seem to remember Mr. Morland was a bit concerned to get something from me just to make sure that he had a letter confirmation that we were giving an undertaking, which is what we did.

Q. He certainly had that from you here. But what about Michael Lowry's position at this stage? Even on your earlier evidence that you had a concern regarding his £44,500. Was anybody expressly protecting that interest, even assuming that you thought Catclause was something else all together, or was you know, you weren't prepare to pierce the corporate veil of Catclause? What about his money? Why was there no account taken of that in this

letter?

A. I think there is a letter to the bank. It was nothing to do with the people behind the purchase. This is a letter to a bank saying you lent all this money, you want an undertaking, here you are. It is up to the registered proprietors, as they would have been, to sort out the finance. This is only one stage. Because the next stage, of course, would have been to do a transfer and a mortgage to the bank, and it would have been at that moment that the matter would have been sorted out, but as to who were the beneficial owners or whatever shares there might be. So, Michael Lowry didn't really matter at this stage.

Q. But there is no mention of him by name in this letter?

A. No, no.

Q. If we just go to the last two paragraphs for an moment, just to clarify one matter. "When we spoke on the telephone yesterday you mentioned the difficulty that the bank had, in that money had been sent to me to acquire the property in the name of Catclause Limited. Whilst I appreciate the bank's position, so far as I was aware the bank was fully aware of what was happening."

Now, you are alluding there to what you call a difficulty, but in fact it's a somewhat serious contention on the bank's part that you had been sent money to acquire property for a particular entity and you didn't do it, isn't that what they were saying?

A. Well, no, because the bank had told me, through Mr. Tunney,

after Christmas, that it was no longer a Catclause matter, and hence, what are we going to do with these people? I don't know who it belongs to.

Q. Can I just put it a bit more starkly than that.

Mr. Morland had clearly been somewhat critical of you in suggesting that you were, as I read this, you bore some responsibility for failing to put the property, or to acquire the property in the name of the company for whose benefit the bank sent you the money?

A. Well, this is the problem, you see, because the bank never sent me any paperwork, so I had no idea what the bank instructions were. So, we have a verbal conversation over the telephone, Mr. Tunney and myself. He didn't bother to write to me. I write to him by fax. After Christmas he says, oh, this is an Aidan Phelan or AP transaction now.

Still no paperwork from the bank. I don't think

Mr. Morland was critical at all. That's not the way I looked at it.

Q. I see.

A. He should have been relieved at what we did. And even then, Mr. Morland is not saying here is a mortgage deed or here is this, and this is why, as I explained a moment ago, the next stage never happened. We kept the bank happy, here is an undertaking. But the next stage would be for the bank to say, well, here is the legal charge, get it signed. And if you are saying how about Michael Lowry?

Well, if Catclause is the purchaser, then it is up to

Catclause to execute the legal charge and have it registered at Companies House. Your concern about Michael Lowry is then solved because he and his daughter, as the officers of Catclause, would have had to sign the documents. So they would have then sorted out their respective interest in the property. But it was no concern of mine, quite frankly.

Q. Why didn't you mention at this point that Michael Tunney had told you that Mr. Aidan Phelan was to be the owner of the property?

A. What, in the letter?

Q. Yes.

A. No point. I mean, I may have mentioned on the phone, I don't know.

Q. Did you did Aidan Phelan approve of this letter before it went to the bank?

A. Not that I am aware of, no. It was a letter I mean, I obviously spoke to him about it.

Q. Can I ask you to go to the next divider in that book, Divider 44, please?

A. 44?

Q. Yes, please. And if you go to the third page of that document, which is a letter from you to Michael Kelly?

A. Mm-hmm.

Q. And if you go to the third-last paragraph, the second-last paragraph.

A. Is this numbered paragraph 4 or 5?

Q. Numbered paragraph 5.

A. I am with you, yes.

Q. You are referring here to the long form/short form letters, and the context of the two Mansfield and Cheadle transactions. You say: "So far as I was concerned, Michael Lowry relinquished any claim to ownership of St. Columba's Church in early 2000, and certainly by February 2000. However, I was well aware that Michael Lowry was honour-bound to Aidan Phelan to help achieve a sale of St. Columba's Church. By implication, so was Kevin Phelan, as Michael Lowry's agent."

Now, is that based on anything on the file, that statement?

So far as you were concerned, Michael Lowry had relinquished any claim to the ownership of St. Columba's Church, meaning Cheadle, in early 2000, and certainly by February 2000?

A. Well, I go back to what happened with the Mr. Tunney phone call and the letter to Mr. Morland. I mean, let's talk about this letter in context. This is July 2002, it was a long time after the event.

Q. Yes.

A. And I think if we look at the second paragraph of that letter I am not going to reiterate all the facts of my involvement in the acquisition of Cheadle. I mean, I write very long letters anyway trying to help everybody. If I had explained to Mr. Kelly everything that had happened, he would have had a 15-page letter. This is a shorthand way

of saying, this is what happened, there you are.

Q. Yes, but I just want to be clear about it, that this is not based on any knowledge you had in early 2002 or February 2002? It may be based on things you learned subsequently, but at that stage, judging from what you told me a moment ago, you were unsure as to which one or other of a number of or a combination of entities was the beneficial owner, and you felt the correct thing to do was to hold onto the property, and nobody enlightened you at any stage as to who the real owner was?

A. I am just explaining to Mr. Kelly in a short note as to what happened to St. Columba's Church, and I think that's the property, yeah.

Q. But there is nothing, there is nothing on the file that would have entitled you to have made that statement in early 2000, in February 2000, perhaps at any time in 2000?

A. There may not be a file note that specifically says, and signed by Michael Lowry, saying I have given up all interest in this property.

Q. But there is nothing; no document, no letter?

A. I think there is by this time the agreement, which I have only seen recently, between Michael Lowry and Aidan Phelan, had been signed, hadn't it, the partnership agreement? Which compasses this property. But I don't think

Q. You have seen that now. I am talking about then. What I am trying to do is get into what information you had then,

and I know you have alluded to this difficulty; trying to describe transactions in terms of what you knew at the time the transactions were being carried out and what you now understand about those transactions based on other information. But it's the information or the impressions you had at the time the transactions were carried out that I am concerned with. Do you understand me?

A. Well, you are well aware of my feelings at the time the transaction was carried out, and by that I mean the completion and the immediate post-completion problem that I perceived, namely who is the owner of this property? And so, that is well-documented. I mean, Mr. Kelly, I understand, is Michael Lowry's solicitor, presumably he would know all this himself.

Q. Yes, I think, in fact, in the letter that he wrote to you, he more or less stated all of this.

A. I don't think his letter oh, it is there, yes, yeah. Is that his letter?

Q. Could I ask you to turn to paragraph 45.8 of your statement. Now, I want to read it in contrast with the paragraph in the letter that I have just read out.

You say that: "Michael Lowry had an interest in the Cheadle property, or at least its proceeds of resale, as I have explained above, was never in doubt in anyone's mind, since it was his money that funded the deposit for the purchase in the first place. It would have been, however, obviously appropriate that the correct position should be

set out in the letter" this is a reference to the long form/short form letter "and not a mistaken one..." and so on. We'll come back to the whole paragraph later.

That's rather a strong statement, which appears to be inconsistent with what's in numbered paragraph 5 in the letter to Mr. Kelly a moment ago, that I read out a moment ago; isn't that right?

A. This is 44.8 on page 15 of the statement?

Q. Yes. Sorry, 45.8. Did I say 44.8? Sorry. I said 45.

A. 45.8 starts: "That Mr. Lowry had an interest in the Cheadle property or at least its proceeds of sale..."

Q. "Was never in any doubt in anyone's mind."

A. I don't see any difference between that and paragraph 5.

Q. Paragraph 5 says: "So far as I was concerned, Michael Lowry relinquished any claim to ownership of St. Columba's Church." What's the difference?

A. Well, ownership doesn't mean the interest in the proceeds of sale.

Q. I see. It's rather a fine distinction isn't it, Mr. Vaughan?

A. Well, I don't think so, because I mean well, in fact, we have the example sitting in front of us. We have my wife, Debbie, who is a solicitor, as myself, as "the owner" as recorded on the Land Registry, but we have no interest at all in the proceeds of sale.

Q. Well, you have no doubt, or you say there was never any doubt in anyone's mind that he had an interest in the

property or at least its proceeds of sale?

A. If I look at the finances of it

Q. But by that you mean other than a portion of the ownership; isn't that right?

A. Well, he had an interest in the I thought that he had an interest in the proceeds of sale because it was his money had been used, let's strip out of it the GE

Woodchester/Investec, whatever they are, loan. That $\frac{1}{2}$ 44,500 being the initial deposit had come from Mansfield.

So we start off with a $\frac{1}{2}$ 25,000 cheque which comes in to my account, supplemented by the money from Aidan Phelan, again no mortgage deed. So that sum of the money is mixed up.

Q. I just want to get a grip on the distinctions you are making. I mean, I am not I may not necessarily agree with them, but I am trying to understand them. If we are going to be precise about it, I suppose, anyone who pays a substantial amount of money towards the purchase of a piece of property acquires an interest in that property in equity, if nothing else; isn't that right?

A. Mm.

Q. And where a mortgagor provides money for a piece of property and takes a charge or is given a mortgage

A. Mortgagee.

Q. Mortgagee, sorry. Then his interest is coterminous with the amount of money he has put up, subject, of course, to his right over the whole property as security?

A. Subject to the terms of the mortgagee.

Q. He can only get back what he put in plus any interest or other arrangements he has made in his mortgage deed.

A. Yeah.

Q. And the person who has put up the rest of the money, his interest will automatically enlarge as time goes by and he pays off his mortgage; isn't that right?

A. I am sorry

Q. The equity of the mortgagee increases day-by-day as he pays off his mortgage; isn't that right?

A. No

Q. The equity of the mortgagor, sorry.

A. When I was a law student, the only way I would remember this is mortgagee, E lends the money, but that's the way forward. I am sorry to put it like that, but I still remember it now. But the mortgagee is the bank, they are lending the money. The mortgagor is the

Q. So, the mortgagor's equity, which may usually amount to no more in this case than the deposit, although a substantial deposit, increases as the mortgage is paid down?

A. Yes.

Q. Of course. If the mortgage is paid off, then the mortgagor owns the whole lot?

A. Yes, I think we just have to be a little cautious, because the mortgagor as a registered proprietor, would be in this case, this is all somewhat theoretical

Q. But the registered proprietor was you in this case?

A. Yes, so we had no beneficial interest at all because the

word throughout this that is being used was bare trustees.

We hold it, please somebody tell us who we should transfer it to.

Q. But you had no doubt in your mind, surely, as a solicitor, that you held it for, as you pointed out, one or other of a number of people, and you said you had no doubt, and neither did anyone else, that Michael Lowry had an interest?

A. Well, that was my feeling, certainly, because I could see from my client account that here is a man who put some cash in.

Q. He may not have had ownership in the very, very, as I suggest, narrow way you were describing it a moment ago, but, of course, the only person who had ownership was you; isn't that right, in the narrow sense in which you canvassed it a moment ago?

A. Yes, I mean the property was registered in the names of myself and my wife, but...

Q. "Michael Lowry had relinquished any claim to ownership of St. Columba's Church in early 2000, and certainly by February 2000."

I am suggesting that if we read that in the very technical way you want to read it, it doesn't make any sense, because you were the owner, you and your wife were the owners, and I am suggesting that if you read it in what I would suggest to you is the ordinary way in which you communicated to Mr. Kelly, you were indicating that Michael Lowry was out

of this property, and that that contrasts or is inconsistent with paragraph 45.8 of your statement which says that there was never any doubt that he had an interest in the property. Now, it may be that your statement is more carefully put together.

A. Yeah, I mean ...

Q. I mean, you have got your comment and I am simply inviting you to comment on it, and you are entitled to comment on it whenever you like?

A. I can't quite see where we are going on this, but anyway...

I think there is another point that perhaps ought to be mentioned is, at some stage somebody would have said, transfer the property to me, and then I would have been conscious of the relative claims, equitable claims as to the ownership of this property, and I would have wanted to be sure that it was transferred to the right person. So, their protection would have also arisen at that stage.

Q. Yes. Now, I want you to turn to page 15, paragraph 44 of your statement. Now, in this paragraph you are referring to two letters: The letters of the 12th July and the 5th September, 2000. Now, do you have a copy

CHAIRMAN: We'll easily get it up

A. It's in Tab 45 of the book?

Q. MR. HEALY: Yes, I was going to say if you want, take it out all together because you'll find it easier, you may find it easier, or I'll get you a separate copy of them.

A. If you just bear with me for a minute, Chairman.

CHAIRMAN: Of course.

Q. MR. HEALY: Do you have those documents?

A. I have, yes. I am looking at paragraph 44 onwards, and I have six pages here, A, B, C, D, E, F.

Q. Yes. You say: "There are two sets of letters to which I wish to refer, the first set is within the Tribunal documentation and lettered A to C at Book 81, Tab 45 as follows:

A) File copy of my letter of the 12th July to Kevin Phelan."

I think that's on the overhead projector.

81, Divider 45 is the tab. I should have mentioned it in case anyone else wants to turn it up. That's the short form of the letter of the 12th July, 2000. The office copy, sorry, of the short form. Letter B is the top copy of the short form. And letter C is the top copy of the long form.

Now, at 44.3 of your statement you say: "So far as I am aware, no originals had ever been produced to the Tribunal, and they could only have come from the file of Kevin Phelan."

So, I think what you are suggesting is that Kevin Phelan can have been the only source of these documents, on the basis that it was to him that they were sent first day on any explanation; isn't that right?

A. The only source of B and C, yes. So, the source of A is obviously me.

Q. Yes. Now, if you go to the long form of the letter of the 12th July, which is document C, and you go to paragraph 44.11 of your statement maybe I haven't got the right paragraph. I have, sorry. You say: "Firstly"

A. Sorry, which paragraph?

Q. Paragraph 44.11.

"Firstly, the paragraph at the end starting 'I seem to recall...' is completely wrong. It had nothing to do with Cheadle at all, and I had, I fear, confused Cheadle with a completely different transaction.

"secondly, the reference to 'our client' in paragraph 2 of letter C was by that date too vague. Since my wife and I were holding as trustees for the purchaser and we knew and recognised that that was Kevin Phelan and was no longer Catclause"

A. No, no, Aidan Phelan.

Q. "We knew and recognised that that was Aidan Phelan and was no longer Catclause Limited as set out in the contract. It seemed to me to be important to be clear about it in any letter I wrote.

"I cannot recollect whether it was I who first realised these points or Kevin Phelan who first pointed them out to me when he received letter C from me by fax on the 12th July. I had my secretary make the appropriate changes to the letter, and I signed and sent off a new version, i.e. letter B" that is the short form of the top copy of the letter of the 12th July.

You sent the new version on the same day.

"The changes were:

1. The deletion of the last paragraph.
2. The change of the words 'our client' to 'Kevin Phelan'."

Now "Our client" to "Aidan Phelan," I am sorry, I keep making that mistake.

Now, in the long form of this letter you say that "You will recall that this property was purchased in my name as trustee for our client, and that at that stage Kevin Phelan wasn't your client" or Aidan Phelan sorry, I beg your pardon Aidan Phelan was your client and that he should have been so described as your client, because any vagueness or uncertainty surrounding the ownership of Cheadle had passed. Is that a fair summary?

A. Well, I think what is written in the long form paragraph there just reminds Kevin Phelan as to how the property was purchased.

Q. Well, it wasn't purchased for Aidan Phelan, it was purchased, presumably, for Michael Lowry, for Catclause?

A. We have moved on from there, haven't we?

Q. Well, have we?

A. This is saying what the position was in July 2000, not what the position was on completion. It's been bought. It's in my name as trustee. It's with Aidan Phelan, we think he is the purchaser.

Q. Right. But you didn't have, as it happens, any document or

any formal instruction to that effect at that time. Is

that correct, isn't it?

A. I don't know what you mean "formal instructions"? Aidan

Phelan was the man on the scene, because he had lent or

he had provided the money, or the bank had provided the

money through him.

Q. But looking at it even from your point of view, and that's

the only point of view I want to look at it from, wasn't

there still, surely, in your mind some degree of

uncertainty as to whom the client was at that stage?

A. I think you have to look at this letter as something that's

absolutely nothing to do with the ownership of the

property, it is something to do with an insurance policy

which has been sent to me by the brokers, Excel Insurance,

and I suddenly look at the policy schedule, bearing in mind

that myself and my wife are the registered proprietors of

that property and there are certain conditions on that

policy. And so I have sent it to him. The words "you will

recall this property was purchased in my name for my

client" is short form, but in fact it's too short, because

it needs to identify who we are talking about.

Q. If you go to in your statement you say that "The change

of the words 'our client' to 'Aidan Phelan'" sorry,

referring to the change of the words 'our client' to 'Aidan

Phelan' you say "Aidan Phelan was not a mutual client of

Kevin Phelan while Catclause Limited had been."

A. Correct.

Q. So that, do I take it that what you were saying is, it would have been inaccurate to refer to Aidan Phelan as "our client" because while he might have been your client, he wasn't Kevin Phelan's client, is that it?

A. Yes, you have the client, Michael Lowry. I acted as solicitor, Kevin Phelan acted as agent. Our mutual client. Aidan Phelan, I acted as solicitor. So far as I am aware, Kevin Phelan never acted as his agent. So he wasn't our mutual client.

Q. But isn't the whole purport of this letter to treat Kevin Phelan as an agent of Aidan Phelan?

A. I don't think so, no.

Q. Well: "Can you please let me know as a matter of urgency?

"1. Have you managed to find a purchaser?

2. If not, is there now a tenant?

3. Can you please ensure that the conditions are complied with."

Weren't you expecting Kevin Phelan to carry out work on behalf of Aidan Phelan?

A. I was expecting him to carry out work on my behalf really, because I was the registered proprietor and the insurance policy was in my name, and this is what my concern was, that I had

Q. Could I just stop you there, what does "Have you managed to find a purchaser" have to do with that?

A. Because I think the insurance policy was going to the policy schedule had certain conditions on it. I suppose

purchaser, you know, just generally, you know, what are you doing with the property at the moment?

Q. He was the person, to judge from this letter, who seemed to have been charged with some responsibility to find a purchaser?

A. Mm.

Q. I am not trying to quibble about something small, it's just you make the point that he wasn't a mutual client, but reading this letter he clearly seems to be a mutual client because he is the person who is finding a purchaser?

A. You could read it like that, yeah.

Q. If I just go to the bottom paragraph, the last paragraph.

I think what you say about that paragraph is, if I can find it, is that: "I seem to recall a paragraph is completely wrong. It had nothing to do with Cheadle at all, and I had, I fear, confused Cheadle with a completely different transaction."

Can you remember what that transaction was?

A. I can't offhand, but obviously when I had written, I seem to recall when the lending process was being completed the lender was going to require six-monthly reports. That's obviously totally wrong, because the lender, which was GE Woodchester or Investec, we never had any instructions from them, so to imply that the lender needed this report was obviously incorrect, and it may have been another property that I was dealing with, I really don't know. But it was wrong. And I think, as I have mentioned in my statement,

Kevin Phelan would have pointed this out. I can sort of hear his sort of tones on the phone saying you know, "What's all this?"

Q. But bearing in mind, and I think this was touched on in the London meeting, that you were sending the letter to Kevin Phelan in any case

A. Yeah.

Q. why did it matter if he rang you up and said, "The last paragraph of your letter makes no sense"? Would you not have said, "Oh, terribly sorry, I mistook it for something else?" Why was there a need to go to the trouble of changing it, issuing a new one?

A. Well, I am almost certain that he received this letter and made contact with me, so I just sent him out a corrected version.

Q. You are saying you are almost certain. Do you mean you are deducing that or are you saying you remember it?

A. I mean, the difficulty that I face, of course, is that this is nine years ago.

Q. I appreciate that.

A. So, he was an excitable person, and I can as you will know from some of the paperwork we have produced, about our relationship breaking down. He would get extremely cross.

I could imagine him saying you know "What's this? Sorry, wrong property." It could have been something absolutely nothing to do with him, maybe another file I was dealing with. I mean, going back to what we have talked about

before, a busy solicitor, this is probably one of a hundred matters I was dealing with. Oh, insurance policy, what are you doing with this? I have made a mistake. That is nothing to do the lending has nothing to do, it is quite clear, because all the paperwork the Tribunal has makes it quite clear that Investec's bank never, ever produced any conditions. So how can I refer to conditions which didn't exist?

Q. Well, you said that in your statement, I think you said that in order to avoid criticism or laying yourself open to criticism by Kevin Phelan, and knowing that he wouldn't be misled by this, you nevertheless issued a new letter and destroyed this one?

A. Mm-hmm.

Q. Isn't that a most amazing thing to do if you are sensitive to criticism from your client, to send him a letter and then to destroy the very letter that you had sent him, or destroy your copy of the very letter that you had sent him?

A. I don't think it's extraordinary at all. The letter was wrong and it got destroyed.

Q. But you had sent it to him, and you were conscious, or sensitive to criticism that he might make, justified or not, it may have been simply a nuisance. Was that not all the more reason to write a letter saying "Dear Kevin, please ignore my earlier letter, this is a mistake and the position is as follows:...". Instead you allowed Kevin Phelan to have the offending letter, if you like, the

offensive letter, and you destroyed your own copy of it so your file had no further copy of it, nor would you have had any record of it. Were you not putting yourself at the mercy of somebody likely to criticise you by doing that?

A. As it so happens, that's absolutely correct, but at that moment in July 2000, it was not a matter that occurred to me. I think also you must look again at the time context of this. Why did I change it? Well, Kevin Phelan was, by this time, under pressure, because these properties, Mansfield and Cheadle, weren't selling, and anything that gave him the opportunity to have a go at me, he sort of took that opportunity.

Q. All the more reason, I suggest, why one would have expected you to keep both copies?

A. I totally follow you, but the benefit of hindsight is wonderful.

Q. You said, in any case, that you got your secretary to make the changes, and I presume you had a word processor and she sent out a new letter?

A. Yes, I mean, I know where you are going to, but it's a new letter has obviously been typed.

Q. That's the part I don't understand. I mean, it's a completely new letter, isn't it?

A. It must be, yes. I mean, to sort of shorten this a little bit, I read with interest the examination by you of Michael Lowry about it, and I think you found 14 different differences, and the Chairman found another one at the end.

You know, there are differences in the letter. It's abundantly obvious that the two letters are signed by me and that they are my letters. I mean, a different person might have typed it's just as simple as that.

Q. It's just that what puzzles me is that, if this mistake had occurred, and even with my limited knowledge of modern technology, I would know that, and I think you, yourself, mentioned that you have some skills, perhaps far more than I have, in word processing, and it would have been a simple matter to change "Our client" to "Aidan Phelan". Delete "Our client" insert "Aidan Phelan." And then the final paragraph, and I am sure you will agree with me, you simply highlight the final paragraph, press back space, isn't that right, and that's the end of it?

A. I totally agree with you. And I mean, it's obvious to anybody reading these letters, and also looking at the investigation into them, you know, that's different, that comma is different, etc., which makes it quite clear, as the Chairman said at the end of your examination of Michael Lowry, they are two separate letters. Can I just go back to my own office for a moment? You will see at the top of the notepaper it says "Christopher Vaughan Solicitor," I am a sole practitioner, it's me. And I think a couple of times in correspondence I have mentioned that I had a secretary who worked for me. The address of the building, this isn't in the statement, but the address is Old Church Chambers. At a later stage I became a consultant to Scott

Fowler, hence the Michael Dawe file and the complaints in it, but Scott Fowler Solicitors and Christopher Vaughan Solicitors were in the same building. When we amalgamated, nothing happened except somebody drilled a hole in my wall and stuck a cable into the back of my computer so it went into their system. What happened, we had a very close relationship. My secretary, she has worked for me for 23 years or something like that, but she wouldn't work full-time. If I got into a position that I hadn't got somebody to type something, then I'd walk out the door and get somebody at Scott Fowler to do it. So, it may have been typed by a different person, different machine. And we have talked about I mean, the last thing I want to do is to try and sort of make a letter that's confusing anybody at all, but, you know, to dictate this - and I tried it out when I was preparing my statement - it took me about a minute and ten seconds to dictate C and slightly under a minute to dictate A, a quick process. "Here is a tape, please type this out." They are not going to look the same if they are done by different people. And that seems to be a reasonable explanation of how it's occurred.

Q. When you said your secretary in your statement, I thought you had, you were referring to a particular individual. Do you remember going to another secretary?

A. No, I can't remember, it's far too long ago. And it's, as I have said, this letter would have just taken such a short period of time to do amongst, you know, perhaps 40 or 50

letters during the course of a day.

Q. If you look at the two letters, you will see that on the face of it they appear to be very similar, in that it requires some scrutiny, careful scrutiny to see the differences?

A. Absolutely, I was very impressed with your 14 points.

Q. But it seems to be 15 in fingerprinting, but Mr. Coughlan will probably correct me.

CHAIRMAN: We have had conveyancing law, I don't think we will embark on criminal law.

A. Definitely not me.

Q. MR. HEALY: You will see that in the second paragraph, it's just something that occurs to me, of the long form, there is a typing error. "You will recall this property was purchased I my name." Do you see that?

A. Mm.

Q. Instead of "In my name...". And in the second paragraph of the short form it's the same mistake. Somebody has replicated the mistake?

A. I have noticed it, yes.

Q. Do you think you would have redictated the letter for the other secretary?

A. If it had to be done by somebody else, it would have had to be redictated, yeah.

Q. It's rather odd that you wouldn't have picked that up?

A. It is, I can see it.

Q. Can I ask you now to look at the letter of the 5th

September. And you refer to this at paragraph 45.1 of your statement.

At paragraph 45.4, I think you say: "Like the letter of the 12th July, the letter of the 5th September was addressed only to Kevin Phelan, and the two versions of the top copy can only have come from his file. Once again, I understand the Tribunal has got a photocopy of the two copies and no original version of the top copy of this letter."

You say: "By this stage I had had a meeting in August at Jury's Hotel with Aidan Phelan, Helen Malone and Michael Lowry. All of them had expressed their concern, and Aidan Phelan stepped in to take charge because a resale of his property was just not taking place, and the purchase offers which had been produced by Kevin Phelan were under suspicion. By 5th September, Kevin Phelan had produced a written offer from a company called Thistlewood Estates which was conditional upon planning consent for a residential development being obtained. At the time I thought this was a genuine offer and we were all pleased that it had been received. Subsequently, when I was instructed to obtain an independent appraisal and valuation of the property from Messrs. Chestertons, it emerged that there was never any prospect of obtaining planning permission for the residential development of the site. So far as I am aware, the offer from Thistlewood Estates never proceeded beyond the first letter.

"At one stage my solicitor's suspicions about Kevin Phelan were so strong that he thought that letter F might be a forgery, but I think he was wrong about that. The signature appears to be mine and the words 'To follow' were also, I believe, in my handwriting. I have not seen the original of letter F, nor has the Tribunal."

Now, in paragraph 45.7 then may I just stop you there, just to clarify the first line, "My solicitor" that was Duncan Needham, and if you recall in the September interview you raised that point.

Q. Yes. You say, in paragraph 45.7, where you give a comprehensive account of your, of the changes you say: "With regard to the paragraph starting 'What I would like...' which is the second paragraph on the long form, there is a mistake since it refers to 'Michael wants to own the property in his own name for a month.' This was, in fact, a mistake on my part, since it was a reference to the position with regard to tax of Aidan Phelan, not that of Michael Lowry. There was never any real question of Mr. Lowry personally owning Cheadle. Originally Catclause Limited had been acquired as his family's intended vehicle for acquiring the Cheadle property, but it was not transferred to that company for the reasons I have already explained. The question of the identity of the intended transferee had been resolved long before this letter was dictated by me for my secretary to type. The intended transferee was known to be Aidan Phelan and it was he or

Helen Malone who had referred to his tax requirements, I believe at the meeting at Jury's Hotel in August 2000. My wife and I still continued to hold the title of the property in our names."

Now, just briefly, I think I'll just look at, if I can turn it up, the note of a note of that meeting kept by Ms. Helen Malone.

A. Are you putting it on the screen or

Q. I'll put it on the screen.

A. Thank you.

Q. It's Book 81, Divider 37. I think that is presumably the meeting you have referred to both in this part of your statement and in a part I mentioned a moment ago?

A. That's correct. We had it in the dining room at Jury's Hotel.

Q. "17th August, 2000.

Present: ML, CV, AP, HM" - that's Mr. Lowry, yourself, Mr. Phelan and Ms. Malone?

A. That's correct.

Q. Hilltop Farm is Mansfield and St. Columba's Church is Cheadle?

A. Yeah.

Q. Now, St. Columba's is described as "Acquired December.

Registered owner: CV. Financed by: Loan from partnership." It says, "original loan," and then it gives balance outstanding.

Now, there is no mention there of the beneficial ownership

of that property, is that right, unless the heading, and if we can push the document to the top, unless the heading gives an indication? Do you see that?

A. MH.

Q. It says "UK property ML.

Meeting notes."

Now, I think what you suggested is as the year 2000 wore on, the ownership of this property became less vague, and certainly by July, you were satisfied it was Aidan Phelan.

But this is Aidan Phelan's own office, as it were, producing a heading saying "UK property ML," meaning, presumably, Michael Lowry, and that has been confirmed. Do you notice that?

A. I am looking at it.

Q. Would that seem to suggest to you that at least that wording is an indication that Michael Lowry has an interest in both these properties?

A. Well, I think by this time, also conscious of the partnership agreement, the 90%:10%.

Q. Yes.

A. Can you just remind me of the tab number, because it's easy for me to look at

Q. Yes, I appreciate that. Tab 27, Book 81.

A. Thank you very much.

Q. Take your time looking at it. That document is a document of which you would have been aware by the time the letter of September was written, because it's on your Cheadle

file.

A. Right.

Q. And what I am suggesting to you is that it's clearly not a conclusive document, but the only indication of overall ownership on that document points to Michael Lowry; isn't that right?

A. No, I don't think it is, because if we look at the notes here, I mean these notes were not typed by me, I assume they were typed by Helen Malone.

Q. Yes.

A. We have "Hilltop Farm.

Date of acquisition, cost, registered owner," absolutely right, so that's pure fact.

"Financed by: Partnership investment AP."

So, AP, I assume, is Aidan Phelan, so that must be some of his finance. The way I read this is we have $\frac{1}{2}$ 25,000 as the initial deposit, which was paid into my client account from Michael Lowry. The balance of the finance comes from this AP partnership investment. Then St. Columba's Church, we have exactly the same factual information; acquisition date, cost, registered owner. And then if we look at the finance there, we have Investec, and then we have "loan from partnership", and the partnership in my understanding was the Aidan Phelan/Michael Lowry partnership, that they had this money left over following Mansfield which they had put into St. Columba's Church. So and I think that's really reflected in this agreement. That's how I

understood it.

Q. It's not absolutely clear though, is it?

A. From the notes you could interpret a lot of things, but that was my understanding of it.

Q. Right. But what I suggest to you is that, relying on that note alone, in particular having regard to the heading, which is, I suggest to you, perhaps quite, you know, characteristic of the whole document, it's not called "UK property ML/AP", it's not called "UK property AP Consulting", "UK property partnership." I don't think that that document surely that document couldn't have led you to be as certain as you appear to be in your statement concerning the ownership of Cheadle

MR. NATHAN: Sorry, Mr. Chairman, I don't think this witness has said that this document led him to that understanding, what he said is that he had this meeting in August which led him to this understanding. It's quite apparent this is not his document. And therefore for him to be cross-examined as to what somebody else has chosen to entitle it, does seem to me, with great respect, a waste of time. That's the point.

CHAIRMAN: I don't think it could be foremost, it's only part of the package.

Q. MR. HEALY: I take My Friend's point, and if that's what I suggested to you, that's not what I intended to suggest. I am saying you had the document in your file and I am suggesting to you that that document couldn't have left you

with a clear impression that you appear to have given in your statement that Aidan Phelan was the owner of Cheadle.

I think what your counsel suggests is that the meeting is what left you with that impression?

A. I think that the ultimate ownership, the beneficial ownership of it is set out in these three subparagraphs at the end. So, if this property were sold, then firstly you have got to pay back Investec 420,000 and then the balance, if there is a balance, has to be applied according to the agreement between Michael Lowry and Aidan Phelan. This records that that "partnership", which I assume is different from partnership investment AP

Q. Maybe?

A. put money into the property.

Q. In your statement, in any case, at the paragraph I was reading out, what you were saying is that the second sentence shouldn't have referred the second paragraph shouldn't have referred to "Michael," since it was a reference with regard to the tax position of Aidan Phelan and not that of Michael Lowry?

A. That was clearly a mistake there.

Q. And you go on to describe the tax position of Aidan Phelan as having been referred to at the meeting in Jury's; isn't that right?

A. Mm, yeah.

Q. And was that the tax position that Aidan Phelan wished to hold it in his own name for a short time?

A. This was something that was said at the meeting. I am not an expert on Irish tax, but can we we have to look at this in context. The meeting is held and the meeting was held excluding Kevin Phelan because of the concerns about his acts at that stage. At the meeting suddenly we are aware of this potential purchaser, and if you look at the long form letter of the 5th September, it says "I faxed through to you the 4th September from Thistlewood Estates", etc., etc. "This looks to be excellent news."

This was a relief; great, we have found a purchaser. And we were aware of that, that it was happening at the meeting of the 17th August sorry, the property was in the names of Debbie and myself as trustees. We would have then had to have transferred it through to Aidan Phelan. And the comment there, which I have picked up on from the meeting, which isn't recorded - I mean, this isn't a minute, it's just a note as to what was happening - was, oh, from his tax point of view, this is what I was told, he has got to own it for at least a month. So, if Thistlewood were going to buy St. Columba's Church, then it was no good Debbie and myself transferring that property to Thistlewood Estates.

There would be an intermediate transfer to Aidan Phelan which would have not been expensive because there would be no stamp duty payable because we held as trustee, through to him, and what I was told, that - I suppose it's Irish and English tax, anyway - what I was told is you have got to have it for a month to help his position. Hence my

reference in the letter to Kevin Phelan about that. But saying "Michael" is rubbish, it's nothing to do with Michael Lowry.

Q. Okay. But what puzzles me is, if that is the case, why not delete "Michael" and insert "Aidan"?

A. Well, just remove the whole paragraph about him? It's a short version of the same letter. Again, it's the Kevin Phelan relationship at this stage, it was very difficult.

So, I have sent him, you know, this letter has been done.

But the "Michael" element is not

Q. But you have sent the Michael element to Kevin Phelan?

A. I have.

Q. This is an important matter, because whether it's Michael or Aidan, there is an important tax consideration. The only thing you need to do is ring him up and say, "It's a mistake, it should be Aidan, and I am sending you a new letter. Delete Michael and insert Aidan." Presumably, am I right in thinking that looking at it today, that's what somebody would have done if it was as important as you suggest it was, that Aidan should have held it for a month?

A. And we need to get rid of we need to get rid of the last paragraph, because, again, it doesn't add to the letter, does it?

Q. Don't mind the last paragraph, I am still talking about the second paragraph. If the second paragraph was as important, and I think the way you have described it, it seems to be important, that Aidan Phelan should have held

this for a month, then you needed to setup a timetable.

You couldn't have Aidan Phelan finding a purchaser who wanted to close on the 10th September, that would be no good to you. You needed to make sure that he went and found a purchaser who left you with enough time to implement this tax strategy. So, why was Aidan's name in fact, surely it was of the first importance that that letter would have been changed and that Aidan's name would have gone in there, far more important than the change in the previous letter?

A. I see what you say, but I go back to the main point; there is no doubt that these are both letters done by me. I have redictated it, it's a different typeface. I assume somebody else has typed it and I have just thought, deleted the bits which were wrong nine years ago.

Q. But all that was wrong was the name Michael, the word "Michael", everything else was not only right, it was vital; isn't that right?

A. Well, the last paragraph,

Q. No, no, in the second paragraph all that was wrong was the name Michael. That paragraph was vital, and it was vital, on what you have said, to insert Aidan's name?

A. I hear what you say, but it was the letter was obviously done in a different format.

MR. HEALY: We'll take it up after lunch.

CHAIRMAN: Ten past two. Thank you very much Mr. Vaughan.

THE TRIBUNAL ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

Q. MR. HEALY: Thank you, Mr. Vaughan. I want to go to the long form version in document F, Divider 45 of Book 81. If you just pass to the last paragraph in that letter now. I think if I need to read the last paragraph of paragraph 45.8 of your statement, the last sentence of paragraph 45.8 of your statement: "If I look back" - and you are referring to this letter - "this letter would have taken me only a very short time to dictate and it was an easy mistake for me to mix up the names, given that Mr. Lowry had originally intended to be the purchaser through his company Catclause Limited."

You go on to say: "The same applies to the last paragraph. The loan had been taken out, so far as I was aware, by Aidan Phelan, not by Mr. Lowry. That is what Mr. Tunney of GE Capital Woodchester Bank had told me. I appear to have muddled up the names when I dictated the letter."

Can you just explain to me how muddling up the names would explain writing the last paragraph? I don't quite follow that.

A. Well, I think you have to go back to the second paragraph of the long form letter, where we refer to Michael again. So it needs to be corrected, doesn't it?

Q. We'll just pass on from that for a minute. This letter, you say, was intended in its long form, in any case, or in any form, was intended to deal with the situation that had arisen concerning tax planning, and you

wanted the property to be held in Aidan's name for one month prior to the sale. And that needed to be communicated to Kevin Phelan so as to set up a timetable; isn't that right? You didn't want you couldn't have a quick sale or you'd ruin everything, am I right in that, that was the intention?

A. Yeah

Q. So then you say: "I have not written to Michael about this" - that being a muddle, as you put it - "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."

Now, presumably a copy had been sent to Aidan Phelan?

A. Well, I'm not sure whether it was sent to Aidan Phelan.

Q. Well, you sent it to Kevin Phelan, and it was presumably sometime after you faxed the letter to him, if you did fax it, it doesn't say "fax" on it, but it was sometime presumably after you sent it to him that he got back to you to say you have got this wrong. Wouldn't that be right?

A. Yes, but I had gotten there is nothing on the file that says a copy was sent to Aidan Phelan, other than that paragraph. I have no evidence, that's why I can't confirm a hundred percent that it was sent to him. You see, that I still have this problem about sending stuff to Michael Lowry, and you will recall from the other documents yesterday about the end of the relationship of Kevin Phelan that I, you know, couldn't fax it through to him, the

letter, because I couldn't get hold of him. It's a theme going through this.

Q. Does that explain your saying "I get concerned about correspondence going to him"? "Concerned" strikes me as being a word that conveys something more than what you have described, which I understand to mean that you have difficulties in getting correspondence through to Michael because you have to be sure where he is to receive it?

A. Mmm, concerned as to whether he got it. You know, back to the comparative situation on the Vineacre, when I couldn't get through to him.

Q. If you destroyed this letter on the basis that it no longer made any sense on your file, and if you had sent a copy to Aidan Phelan, would you have destroyed that as well?

A. Well, I think I'd have just sent it through to him as a letter. I wouldn't have done a new letter.

Q. Of course not.

A. Just stuck this on the fax machine or...

Q. Well, your letters generally indicate whether they are by fax or by post, don't they?

A. Yeah, there is no a hundred percent consistency, I can't confirm that.

Q. You tend to put "fax" on a letter to indicate that it's going by fax, if it's also going by post, and...

A. If we look at the first line of the long form letter and the short form letter, I refer then to faxing a previous letter.

Q. You do, but in your last paragraph you say "A copy has been sent", as opposed to "been faxed" to Aidan. I mean, this could be I don't want to tease it out to that level. I mean, you might readily use the word "sent" when you meant faxed, you might readily used the word "faxed" when you also intended to send something. Let's assume for the moment it was sent, it would be a day or so before, at least a day or so before Kevin Phelan got back to you. If it was faxed then it would be sometime at least before he got back to you?

A. I am pretty certain that these letters were faxed, because as I have said earlier on, the majority of my correspondence with Kevin Phelan was by fax.

Q. I appreciate you faxed it to Kevin Phelan, you have said so. You have said that about the 4th September letter. But it's just that it's not mentioned here in relation to this letter. Maybe we are at cross-purposes. You might have faxed it, of course. But if you had sent it, do you agree with me it would be a matter of a day or so before he'd get back to you?

A. I think if you look at this letter, this wasn't a letter that could wait a day or so, it was a letter that needed a response. And so, I am certain that I would have faxed it through. But, you know, there is an inconsistency because the fax number of Kevin Phelan does not appear on either the long or short form letters of the 5th September. But, of course, on the short form letter of the 12th July there

is a fax number. It is down to typing preference, the way the letter was done, speed, etc.

Q. Having regard to the importance of the letter and the need to get it out early, and as you say, perhaps to fax it rather than send it, may we take it that Kevin Phelan never got the instruction to set up the appropriate timetable?

A. I have got no record of the timetable he set up. But, and this is the big but, what were we doing setting up the timetable? We were dealing with the sale of this property to Thistlewood Estates. As you know from my statement, that never got off the ground, so there is no point in setting up a timetable unless the matter was going to proceed, and as we know, Thistlewood never reappeared.

Q. But you didn't know any of that when you wrote this letter?

A. Well, you know, we want to set up a timetable, that would be something in the future if Thistlewood carried on. And if you look at 1, 2 and 3, you know, we are then looking at what Thistlewood need to do to progress this proposed purchase. They have got to get planning, they have got to deal with access, they have got to do a soil survey. We are a long way off completing. There'll be plenty of time to deal with the transfer of the property from myself and my wife as the trustees into the name of Aidan Phelan so he can hold it for a month to sort out his tax risks.

Q. What was the need then to send it so urgently, as you suggested a moment ago, that would probably mean that it was sent by fax? Either it was urgent or it wasn't. If it

was urgent, it was urgent for the reason you mentioned, to set up the timetable. And the fact that the timetable never ultimately came into play is beside the point, isn't it? Can we agree that much? That's in the future at the time you wrote this letter?

A. It is in the future, but

Q. So let's go back to the state of mind you were in at the time you wrote the letter. There was an urgency, you think. That might have, that might suggest the letter was faxed rather than sent. You had to set up a timetable thinking that this needed to be done quickly. Now, if you if you removed that paragraph, then where was the urgency?

A. Well, the urgency was that the whole purpose behind the purchase of Cheadle was a purchase and an immediate sale. So, we had drifted on for the best part of two years and we then needed to get this thing moving, so any information between Kevin Phelan and myself was obviously urgent and needed to be addressed rapidly, and it needed to be accurate. So, this is why we have different versions.

Q. I must say, I can't follow, Mr. Vaughan, how you can say that for the reasons you just stated you had to have different versions of this letter. This letter, the different version of this letter, on your evidence, fails to affect the reason for writing it first day, the urgency, and the tax consideration, it fails to affect that?

A. I think we have established to everybody's satisfaction

that the inclusion of the Christian name in two places in the long form letter of the 5th September of the word "Michael" is totally wrong, and therefore it must be only correct to remove his name from the letter.

Q. Yes, but you didn't do that, you removed the whole paragraph containing his name from the letter, bearing in mind that it was vital that that portion of the paragraph stayed there, or that portion of the letter stayed there?

A. Well, obviously when I read this letter, it didn't occur to me as being as vital as all that. I think it was correcting my error in confusing Michael Lowry and Aidan Phelan.

Q. When you say that, in the last paragraph, "A copy has been sent to Aidan", in the last paragraph you say "A copy has been sent to Aidan, as he needs to keep the mortgage lender happy as to the loan that Michael took out." You say that couldn't be right because Aidan took out the loan, not Michael?

A. Correct.

Q. You'd had a meeting sometime shortly earlier in August, the UK property ML meeting in Dublin. It was at that meeting, I think you said, that the tax considerations that prompted you to put in the second paragraph were canvassed; isn't that right?

A. It had been referred to at the meeting.

Q. Yeah, okay.

A. I had obviously dictated it into this letter.

Q. Were any of Michael Lowry's tax issues discussed at the meeting?

A. No.

Q. You seem, judging from your evidence and the way you have carefully attended to, you know, quite properly, to distinctions between one letter and another letter on one aspect or another aspect of the conveyancing transaction, to operate in a careful way. I am sure you were busy, but how could you get this letter so wrong so soon after a meeting at which the matters that you needed to address in the letter were mentioned?

A. I think the answer to that is I got it wrong. There is no other you can't really add to that. It is wrong. It was replaced.

Q. There is, in any case, you say, no letter to Mr. Aidan Phelan explaining this letter, isn't that right, no letter on the file, sorry?

A. There is nothing on there, on the file, no, about...

Q. This letter, you say, was retyped, in your statement?

A. I think it must have been, yes, because it looks like a different typeface.

Q. Again, why was there a need to retype it when it was surely simply a matter

A. It may not have been as easy as that. As I explained this morning, I may have had to go to Scott Fowler and say "Redo this letter." And it would have been easier if they had to type it for me, to just dictate it again. As I say, it

would have taken me a minute to dictate it, to give somebody a tape and say, "Please do this for me." Because there are so many, you know, differences between the two letters, I am sure this is what happened. The one certainty, of course well, there is two certainties:

One is it is my letter and it's signed by me, and secondly, it was sent to Kevin Phelan.

Q. Now, I want to look at some of the background surrounding circumstances at the time that these letters were being issued, and I want to look at the book of documents that, the bundle that were handed out yesterday.

A. I don't have that, although my counsel has one.

Q. I am handing out, to make it easier for people, because the bundle was handed out undifferentiated yesterday, I am handing out books which contain dividers and index, and it's mostly those documents, there may be a few additional documents.

MR. O'CALLAGHAN: Sorry to interrupt Mr. Healy, Chairman.

First of all, good afternoon, Chairman. Chairman, I am aware that there were some documents handed out yesterday. I just want a confirmation that the documents handed to us are the documents that were given yesterday and aren't any new documents?

CHAIRMAN: So I am advised, Mr. O'Callaghan.

MR. HEALY: There are one or two new documents, yes.

MR. O'CALLAGHAN: Perhaps it could be identified, Chairman, what documents are now so that we could have an opportunity

to review them, because obviously the documentation in respect of this hearing are particularly important, and we were given four folders, and I know there were documents given yesterday. But I'd be concerned that if further documents are being given out now, that I haven't, or my team haven't had an opportunity to appraise. So, if those documents could be identified, Chairman.

MR. HEALY: These were documents produced mainly by Mr. Vaughan on Monday, and the documents that were not in the bundle yesterday that have been added to this bundle are contained as follows:

In the last the last document in Divider 1, that document was received from Mr. Needham, I think very recently.

The next added document is in Divider 3, and it's the second sorry, it's all of the documents in Divider 3 except the first document. They are already Tab 26 in the supplemental book, and they have already been circulated.

The next item is in Divider 13.

MR. O'CALLAGHAN: I just wish to say, Chairman, obviously it would have been preferable if the documents had been brought to our attention when they immediately came into the Tribunal's possession.

MR. HEALY: They were brought to My Friend's attention immediately they were brought into the Tribunal's possession.

MR. O'CALLAGHAN: Sorry, I thought the documents that

Mr. Healy had highlighted were, in fact, new documents we hadn't got. I may be wrong about that.

MR. HEALY: They are new to this book. They have been put into this book so as to for ease of reference.

MR. NATHAN: I am sorry, I may be rather new to this game after the period of time that you, sir, have had the opportunity and counsel for the Tribunal have had to gather together their understanding of documents.

My understanding is that this is now headed "Documents Re Long Form/short Form Letters," which is therefore a brand new file, although compiled from other documents which are for the most part, as I understand it, are in other files which we already have for the purpose of the hearing, apart from a few documents that are considered relevant, which the Tribunal was given on Monday morning by Tuesday morning, I am sorry, by my instructing solicitor.

Therefore, this is a compilation, as I understand it. I am really seeking confirmation so I know exactly where we are going. There is nothing there that as far as I am concerned, is coming taking me by surprise.

MR. HEALY: It's mostly the documents provided on Monday morning. They have been put into this book so as to avoid Tuesday morning so as to avoid the necessity for people to juggle two books at the one time.

MR. NATHAN: I am most grateful. The only thing in a sense is we have got so many books which seem to go in so many different orders of dates that the first four volumes seem

to dart hither and thither without any terrible great logic. But I hope, perhaps, this volume at least does go chronologically. I haven't looked at it. If it doesn't go strictly chronologically, it really isn't going to be a very helpful book to add to the many books which we already have got, sir. That's all I am really concerned about, that we should have one that is useful rather than one

MR. O'CALLAGHAN: Chairman, could I just ask: If there are any further new documents that are going to be relied upon, if we could have them, because my solicitor did write on the 30th of January last and received a reply from the Tribunal actually on that date, and we were told by the Tribunal that any additional documents will be distributed in advance of the Tribunal's sittings. And it is difficult to try to accumulate all the information and the documents, not only puts practitioners at a light disadvantage, it also is an unfairness to my client I say, Chairman. And I'd be anxious that we just be given any further documents, if they are there, in advance.

CHAIRMAN: I am very anxious to avoid surprises to anyone, Mr. O'Callaghan. My understanding is that the primary thrust of these matters are some documents that were received from Mr. Needham, Mr. Vaughan's solicitor, after the sittings had actually started earlier this week. And as far as I can see, the Tribunal legal team have done their best to keep people apprised of them. I don't envisage any new or late shocks of any sort.

MR. HEALY: Just to clarify that. I think we received the documents just before the sittings began, but they were handed out as the sittings began or, perhaps, I think we received them 30 minutes before the sittings.

Q. Now, Mr. Vaughan, if you look at the document in Divider 1, you will see that it's a letter from Woodcock & Sons Solicitors on behalf of Mr. Kevin Phelan, trading as P&M Associates and Gameplan International to you, and it appears to be instituting a dispute. We have been through the letter before, because it was read into the record early on.

A. Correct.

Q. And you'll see that they say they have been instructed to advise in relation to breach of agreement concerning four items, Doncaster Rovers, Altrincham Football Club, Mansfield and Handforth.

"In relation to Handforth: We are instructed that this property was registered in your name on behalf of the parties to the joint venture. Our client has instructed us to advise as to whether he had a legal interest in the land. Please confirm that you will not take any steps to dispose of the interest currently registered in your name until this matter is resolved.

"We have corresponded with all of the parties to the joint venture informing them of our appointment, and have notified them of the instructions we have received.

"Aidan Phelan,

Denis O'Brien,

Michael Lowry,

Denis O'Connor.

"We look forward to hearing from you."

And he encloses a letter of authority, which is the next document.

A. Yes.

Q. And then the next document is a document the Tribunal received I think very recently. It's your reply, do you see that?

A. Correct, 28th January.

Q. Yes. And your reply is effectively to refer to earlier correspondence between yourself, Kevin Phelan and the Office for the Supervision of Solicitors. That was the correspondence that we referred to I think earlier in the week, mainly concerning his requests for documentation on behalf of, was it Glebe Trust and Gameplan International?

A. Glebe Trust was part of it, but then there was an earlier section which you read into the transcript, and that was when he wrote to me, if you remember, 4th October, and with that other letter of the 10th October which copied it. So that was the correspondence to the Office for the Supervision of Solicitors, yeah.

Q. I see. Okay.

A. The reason I mean, it was easier to send to Mr. McCann just copies of those letters, because it explained the situation.

Q. Yes. What you were saying was that you have no papers in your possession relating to Kevin Phelan, M&P Associates or Gameplan. "As far as I was concerned" and this is what you said, I think, in the previous exchange of correspondence, you were acting for a principal, as was Kevin Phelan, and those documents belonged to those principals and not to Kevin Phelan; isn't that right?

A. That is correct. I think what you have to understand, that by January 2002 the relationship had broken down, therefore he was not an agent for anybody at this point.

Q. Yes. Presumably did you alert your clients, the principals in those transactions, to the fact that this letter had been received from Mr. Vaughan's solicitors?

A. There is nothing in my file that says that, so I assume I didn't.

Q. The next document on the file is a letter of the 19th February, 2002, from you to Aidan Phelan. And this is virtually in the nature of an attendance by you concerning a visit you had received from Mr. Weaver with a letter that he appears to have had no right to have; isn't that right?

A. That's right, yes.

Q. I think we have been through some of this before. If you go on to the second page, the third paragraph you say:

"Mark Weaver then produced to me a letter dated 23rd August, 1998, which is written by me to Paul May and Kevin Phelan, with a copy to yourself, setting out the situation after the completion of the purchase of DRFC by Westferry.

That letter also contains the paragraph from me suggesting that Westferry reduce itself to a shell so as to avoid having to pay the $\frac{1}{2}$ 250,000 to Mr. Richardson. That paragraph had been highlighted in the letter with ink crosses in the margins."

Now, that was a fairly firstly, obviously that was a letter from you to your clients?

A. Yeah.

Q. And a private letter?

A. Yeah.

Q. To which Mr. Phelan had absolutely Mr. Weaver had absolutely no right; isn't that correct?

A. Correct.

Q. It was also an extremely sensitive letter in the context of a dispute between Westferry and Richardson; isn't that right?

A. Mm, I agree with you.

Q. "I asked Mark Weaver where the letter had come from, and he told me it had been sent to him anonymously together with another letter which he was not prepared to show me. He said it was up to me to form my own conclusions as to who had sent the letters to him. I said this was a confidential letter to my clients and he should not have a copy of it at all.

"He then said that he assumed that the two letters had come from Kevin Phelan."

If you go on to the next page in the second paragraph, you

say that: "Mark Weaver then said some things which made you wonder whether he had actually been sent to see me by Kevin Phelan to try and put some pressure on you and your colleagues in Ireland. The points he mentioned were:

"1. He told me that he had only received the copy of my letter of the 23rd August, 1998, on Monday last, 11th February, 2002. He then told me he had shown it to Reg Ashworth who told him it was interesting to read, but it was actually inadmissible as evidence. I am not a litigation lawyer, but I assumed that it would be inadmissible as it is a private letter from me to my clients.

"He went on to state that their barrister had looked at the letter and they suggested," and so on, "that they launch a private prosecution."

Then if you go on to the next page, you are recording that Mark Weaver produced or not produced, rather the opposite, "talked about the other letter that had also been sent to him anonymously 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 were in the possession of Colm Keena and that the reporter was trying to make some use out of them."

In the final page of the letter you sum up your views. You say: "My initial thoughts were that Mark Weaver was a perfectly genuine individual who was trying to help Richardson in the court action and happened to be passing

through Northampton at lunchtime and thought it would be a good idea to come and find me with a view to suggesting some sort of the meeting between the two sides in the litigation over the $\frac{1}{2}$ 250,000.

"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 somewhat behind this visit than not."

So, at that stage you had formed the impression, and you felt it was important enough to convey it to your client, Westferry, that Kevin Phelan was causing trouble; isn't that right?

A. Yes, of course you know, the relationship had broken down between us. This man, Mr. Weaver, turns up. So I feel this is well worthwhile, a detailed file note and for Westferry to be informed of what happened. And in addition, he had documents to which he was not entitled.

Q. And did you share his opinion as to where the documents had come from?

A. Well, I think he said they are anonymous, didn't he?

Q. Yeah, but did you not also record the fact that he said that he assumed that they had come from Kevin Phelan?

A. If I look at the note it says "He then said that he assumed

that the two letters had come from Kevin Phelan."

Q. I am just saying, did you share that view?

A. I must have done, because if you look at the last paragraph, I have said "On balance I think it more likely that Kevin Phelan was somehow behind this visit than not."

And this was at the time when he had, you know, we had fallen out and his solicitors only, the tab before, had asked

Q. Yes, just a short while previously his solicitors were writing to you stirring things up, let me put it that way.

A. That's right, yes.

Q. Right. Okay. The next document in Tab 3 is the one page of the letter, the first page of which it has so far proved impossible to retrieve, which appears to be from Mr. McCann, and from other correspondence to which I'll refer in a moment, seems to have been, or must have been dated the 21st March, 2002. And on the second page of this letter Mr. McCann says, "We look forward to hearing from you on this point." Whatever had passed before.

And he goes on: "The final issue that we wish to raise is one that has become apparent whilst we, together with our client, have reviewed documentation that is available to him in relation to the preparation of papers for counsel to enable counsel to advise and thereafter settle particulars of claim in relation to the issue of court proceedings concerning the various property transactions that were referred to in our correspondence of the 28th January,

2002.

"We are instructed that our client" I should say that that letter of the 28th January, 2002, was the first letter that was in the book.

A. Tab 1, isn't it?

Q. Yes.

"We are instructed by our client that he has been handed a substantial amount of documentation by Denis O'Connor, accountant to Michael Lowry. We are further instructed that this documentation has been obtained through the Moriarty Tribunal which, as you are aware, is proceeding in Ireland.

"Included within the documentation that has been recovered by our client is correspondence from you to our client, being in part file copies and in others a copy of correspondence that was sent to our client. The correspondence received differs to the original in our client's possession. Sample letters are dated as follows:

1. 27th August, 1999.
2. 9th September, 1999.
3. 12th November, 1999.
4. 1st December, 1999.
5. 12th July, 2000.

"The alterations to the correspondence are clear.

"At this stage our client is not in any way attempting to insinuate that in fact you were personally responsible for the alterations to the correspondence. Our client is

simply unaware of who has altered this correspondence. On this basis, however, it does appear that altered documentation has been submitted to the Moriarty Tribunal.

There are serious implications.

"Please confirm, therefore, if it is that you are in any way aware of the alterations that have been made to the correspondence in this matter. You will see that both the original and the amended version are included.

"We look forward to hearing from you on all issues at your earliest opportunity."

Now, do you see the five letters that are mentioned there, 27th August to the 12th July?

A. I do, yeah.

Q. You will find copies of those letters in the rest of that file, Tab 3, sorry, in the rest of that divider, I am sorry. These are from your file. And if you leaf through them quickly, you will see that they are all letters from you to Kevin Phelan in '99, and ultimately in 2000, concerning the Cheadle property. And in fact, you will see that one of them is the letter of the 12th July we have been discussing already.

Now, can you remember receiving that letter?

A. The letter from the solicitors Woodcock's?

Q. Yes.

A. Well yes, I must have received it.

Q. No, do you remember it? Do you remember thinking about it when you got it?

A. Do I remember thinking? Well, I would have read the letter, so...

Q. What Mr. Phelan was suggesting, what Mr. Kevin Phelan was suggesting was that - through his solicitors - was that there were two copies or two sets of correspondence applicable to parts of the Cheadle transaction, isn't that right, and that one set had been made available to the Tribunal, but that it differed from, I suggest, what he was insinuating was the true set?

A. Well, he is making certain allegations through his solicitors, yes.

Q. But that seems to be the gist of the insinuation, isn't it?

A. It does, yeah.

Q. Now, if we could just go on to Divider 5. This is a copy of a fax from Mr. John Davis of the Tribunal to you, enclosing copies of letters dated 12th July and 5th September?

A. Correct, yeah.

Q. We discussed that letter before I think, but in any case, there it is. And he encloses the long and short form of the letter of the 5th September, and likewise, the long and short form of the letter of the 12th July. But in each case an office copy of the short form and a copy of an original of the long form.

On the 21st March, you write back saying:-

"Dear Mr. Davis,

"Thank you for your fax. I have no immediate comment to

make on the points raised in the fax, and so far as I am aware, I am no longer instructed by any of the parties in respect of those matters before the Tribunal.

"However, if you wish, I could write to the relevant parties to see if they wish to instruct me further.

"I would also need to be sure that any previous waiver of client confidentiality is still applicable to me."

Now, you will see that the date of that letter, as I said, is the 21st March, and you sent it to the Tribunal by fax?

A. This is Tab 6, isn't it?

Q. Tab 6, yes. And the letter, the contents of which we were canvassing a moment ago, is dated the well, we assume the date of it is the 21st March, 2002, also. Now, it may have been sent to you, so you mightn't have received it on that day. But assuming that the letter of the 21st March of 2002 from Woodcock's containing the five sample letters was sent to you, you would have received it sometime shortly after you wrote to Mr. Davis on the 21st March, 2002; isn't that right?

A. I can't say that because Woodcock's may have faxed their letter of the 21st March, and sadly, we don't seem to be able to get a copy of that letter at the moment. So, it could quite easily have been that the Woodcock's letter, if it was dated the 21st March, would have arrived at the same time as Mr. Davis's letter sorry, it would have arrived, and I my letter of the yes, they are both, Mr. Davis's letter to me and my letter to Mr. Davis are

both the 21st March. So, it seems to me we could have had a whole flurry of activity that day of faxes with all these letters in. I am just having to look at

Q. I appreciate that, but

A. I am sorry to interrupt you for a second.

Q. Take your time.

A. Do I have the fax from Mr. Davis, presumably 21st March, 2002?

Q. Tab 5. Just turn it up there briefly.

A. Oh, right.

Q. You are comfortable with that?

A. Yes.

Q. But assume for the moment that the letter from Woodcock's wasn't faxed and merely sent by ordinary post?

A. That's a bit of a giant assumption to make. I'd hate that to be an assumption that was read into the record, because we don't know.

Q. Didn't you receive it?

A. Didn't I receive what?

Q. That letter?

A. I think I received the letter, but I don't know when. We are trying to compare, aren't we, the Woodcock' letter, which you think is the 21st, but we don't know, with the letter from John Davis of the 21st, which we do know, and my response of the same date which we do know? And we are trying to put those two together to try and prove some point. We can't though, can we?

Q. Let me tell you what I am trying to do and you can comment on it.

A. I am happy to try and help you.

Q. I am saying that I am saying we don't know whether the Woodcock's letter was faxed or sent, because we haven't got the front page.

A. No.

Q. It was on your file, and you have alluded to it in correspondence?

A. Yes.

Q. So, presumably it was sent to you?

A. Well, you received it from me, haven't you?

Q. I have received it from you, yes. And if it was sent to you on the 21st March, 2002 then you'd have got it sometime after that date, not on the 21st, but sometime after it.

That's all I am trying to suggest. You are saying you might not have received it then at all?

A. I don't want to sound difficult about this, but there is the big "if", isn't there? It could have been faxed, it could have been delivered by hand. To say that it would have been received by me after the 21st is a bit of a leap, I think.

Q. I see. Well, we'll just move on a little.

A. I am quite happy to go on and look at it.

Q. We'll come back to it when we come to another letter. On the 25th March Mr. Davis again wrote to you?

A. This is Tab 7?

Q. Yes: He says "With this letter I am enclosing five further copies of the discussion we discussed on the phone." And he goes through. "I am enclosing further copies of the documents we discussed on the phone." And he tabulates them 1, 2, 3, 4. And then he recalls your discussion of the divergence between the office copy and the final issued letter in each case; you felt that the differences were probably due to the fact that you had expanded on the drafts when issuing the final letters.

Now, that, I think, was obviously your first response on the telephone, and I am not trying to hold you to it, because the letters were clearly considered, not expanded; isn't that right?

A. That's right. I obviously have seen this letter recently and looked at it again. I think it depends really on what Mr. Davis asked me, because if he had said "We have two letters, one is longer than the other", then my reply as recorded by him in his letter of the 25th March, correct. I have probably expanded on my letter. If he had said to me "I have a letter, one of which is shorter than the other", I would have probably said, well, I probably edited it. And without knowing what Mr. Davis actually asked me, you know, he has recorded a fact, but, you know, what was the question?

Q. He went on to say: "I'd be much obliged if you could examine your files so as to clarify the position, since I am sure you will agree that it is unusual that a solicitor

would not retain an office copy of the final draft of a letter issued on behalf of a client."

Now, in fact your evidence is that the final draft was the short form of these letters?

A. Yes.

Q. Well, of course the other ones weren't drafts, they were, in fact, sent to Mr. Vaughan as final Mr. Phelan as original letters, and what you did was you destroyed them in your own office?

A. Yeah.

Q. If you go on to Tab 8.

MR. O'CALLAGHAN: Chairman, just as a suggestion, I don't know if it's feasible, but if there were notes of that telephone conversation, it may assist the witness and the Inquiry for the purpose of seeing what, in fact, was said on the phone, and whether Mr. Vaughan's assessment is correct.

MR. HEALY: No, there aren't any. As I mentioned yesterday, when this matter arose, it's dealt with in evidence of Mr. Davis which, for ease of reference, I have included in this book, but he has already dealt with it in evidence.

Q. If you go to Tab 8, Mr. Vaughan.

A. I have that, yes.

Q. This is a letter from Woodcock & Sons Solicitors to you of the 26th March.

"Dear Mr. Vaughan, we refer to our correspondence of the

21st March, 2002. We understand from our client that he has had meetings with parties in Ireland over the weekend who are connected to the various projects that we have referred to within our correspondence.

"We understand from our client that there has been outline agreement in relation to the terms of settlement which is to be crystallised in the form of a formal agreement between the parties upon the return to Ireland of Denis O'Connor. The writer understands that he is currently in America.

"In the circumstances, subject, of course, to crystallised terms of agreement being reached in relation to the disputes that have arisen in this matter, our client would be prepared to confirm that he would not pursue a complaint against you in relation to those issues that have been raised within correspondence. We confirm that the correspondence that has been sent to you last Thursday has not, in fact, been sent to the Office of the Supervision of Solicitors.

"As you appreciate, our client has required the recovery of files that you hold on his behalf on the basis that these would assist him in relation to the claims that he is considering bringing.

"We trust, however, that this matter can be brought to an amicable settlement, and in those circumstances our client is agreeable to leaving matters be.

"No acknowledgment of this correspondence is required."

Now, this is one of the letters that you produced to the Tribunal, or that your solicitors produced on Tuesday. I think it came from the file of Mr. Dawe?

A. It did, yes.

Q. So we have been informed. And that was a file that presumably you made available to Mr. Dawe after you became associated with Scott Fowler?

A. That is correct.

Q. And you will see that the first item referred to is the letter of the 21st March, 2002?

A. Yes.

Q. So, presumably when you got this letter, you must have known what was being alluded to by simply referring to a letter you had received the previous Thursday?

A. It's a logical assumption it's that letter with the missing front page.

Q. If we go on to the divider 9 now, there is a letter of the 15th April, 2002, from Mr. Davis to you referring to previous correspondence, and Mr. Davis says: "I have telephoned your office both on Friday last and today in an effort to contact you, but I have not as yet been able to do so. On the last occasion I left a message with your secretary requesting that you would contact me urgently, but I have not as yet heard from you.

"I wish to send an important fax to your office for your personal attention, and I would be obliged if you could confirm that you will be in a position to receive it at 1pm

today, when I envisage sending it. If some other time

today would suit, please let me know."

Just in case there is any confusion, I have just confused myself momentarily by the next document in Divider 10. The cover sheet is to Christopher Vaughan from John Davis, the 15th April, 2002. And then the document faxed under that cover sheet is dated the 12th April, 2002, obviously having been typed the previous Friday when Mr. Davis was trying to send it to you as he mentioned to you in his letter. And in that letter he says:

"Dear Mr. Vaughan,

"I refer to my letter of the 25th of March, of which I have not had a reply.

"I am now writing to seek, once again, your comments on the matters raised in my letter and in our telephone conversation of Thursday 21st March, 2002. With this letter I am enclosing not just the material to which I draw your attention in my letter of the 25th March, but all the relevant documents to hand concerning this matter, including documents recently supplied to the Tribunal by another party.

"1. Office copy letter 12th July, 2002...". And then we have the list of the various letters again that I don't think I need to repeat.

It goes on: "You will recall that when we spoke on the phone on Thursday 21st March, 2002, and as I stated in my letter of 22nd March 2002, you indicated that letter

number 3 above probably differed from letter number 1 above, because you had expanded on the draft when issuing the top copy from your office. Likewise, you indicated that the same was the position in relation to letters numbered 4 and 6.

"You will see from the copies enclosed that:

"1. It would appear that letter number 3 is not in fact an enlargement of letter number 1.

"2. That letter number 6 is similarly not an enlargement of letter number 4.

"From the foregoing, a number of reasonable inferences that could be drawn are:

"A: That you generated two separate sets of correspondence concerning this matter.

"B: That only one set was made available to the Tribunal on foot of its original request for assistance.

"C: That a separate set of documentation was obscured from the view of the Tribunal.

"D: That two files appear to have been kept in connection with this matter, one for disclosure and one to be obscured from disclosure.

"E: That, as appears from letter number 6, this concealment may be related to the involvement of Mr. Michael Lowry.

"As these are obviously matters of the most serious nature and could ultimately lead to conclusions which might have an adverse impact on your clients and on the conduct of

your own practice as a solicitor, I would be much obliged if you could let me have your comments on the foregoing as a matter of the utmost urgency and certainly by no later than 12 noon on Wednesday next, 17th April.

On the 16th April - this is a letter contained in Divider Number 11 - you write to Mr. Davis.

"Dear Mr. Davis,

"Thank you for your two letters of the 15th April.

"I have taken advice on the points raised in your letters, but, unfortunately, I am unable to respond to the substantive letter without instructions from my clients.

"I have no such instructions at the present time, although I am actively seeking instructions in order to enable me to respond.

"Regrettably, until such time as I have those instructions, I am not able to make any comment whatsoever."

Now, can you do you recognise that letter?

A. It is a letter written by me, yes.

Q. Can you recall who you were actively seeking instructions from or what clients you were actively seeking instructions from in relation to this matter?

A. At this stage I can't. I think the letter is more of a holding letter, just to confirm to Mr. Davis I have got them, because obviously he had had problems making contact with me previously; you know, I have got the letter, I need to take advice, I need to think about them. Because I quite took on board what Mr. Davis says in the last

paragraph of his letter; this could be a serious matter.

And it's something I couldn't just respond to off the top of my head, it needed thought.

Q. Well, as you will see in the letter from the first line in the second paragraph, you had taken the advice, but your problem was that you couldn't respond without instructions from your clients.

A. Yes, I think it's more of a holding letter. I certainly remember Mr. Davis's letter because I remember that, you know, this is a letter that has to be received by you personally, can you stand by your fax? And having read that letter again, or having it read out to me, I do recall it, and it is likely that I would have talked to one of my colleagues in the office about it and said, "Well, this is quite a serious allegation, what should I do?" But obviously it needed thought. No point in rushing to an answer that was guesswork. It needed more information as well, as we will see a little later on.

Q. Well, the next letter is a further reminder this is in Divider 12 a letter of the 17th April.

Then, if you just pass on for a moment to Divider 14, you see that this contains a letter from you of the 29th April, 2002, to Mr. Davis enclosing an exchange of correspondence between yourself and Kevin Phelan. I just want you to ignore your covering letter for the moment and to go on to the second document, which is your letter to Aidan Phelan to Kevin Phelan of the 18th April.

A. Correct, I am looking at it now.

Q. It says: "Dear Kevin, Mr. John Davis from the Moriarty Tribunal has contacted me in recent weeks. Mr. Davis"

A. I am sorry

Q. Have you got it now?

A. I have, yes.

Q. "Dear Kevin, Mr. John Davis from the Moriarty Tribunal has contacted me in recent weeks. Mr. Davis has queried documents which passed between my office and you in July and September 2000. I would be grateful if you could assist me with regard to queries raised in relation to these documents. In order to assist you, I have marked the documents 'July A' and 'July B,' 'September A' and 'September B' respectively.

"As you will observe, these are two letters with the same date in each case. I have forwarded July A and September A to the Tribunal as the only copies on my files. However, the Tribunal now appears to have July B and September B, which raise obvious queries on their part.

"I would ask that you examine your files and let me have your comments and observations. I would appreciate an immediate response, as the Tribunal is anxious to clear up this confusion and are pressing me with some urgency.

"I trust that you will be in a position to assist, and look forward to your early response."

Now, you will see that that would appear to be the first letter you wrote following your letter of the 16th April in

Tab 11, in which you told Mr. Davis that you had taken advice but that you were actively seeking instructions in order to enable you to respond?

A. Mmm.

Q. So you don't appear to have made contact with your clients, do you, or if you did, can you remember what they said?

A. I can't, no.

Q. Mr. Kevin Phelan was most definitely not your client; isn't that right?

A. No, at that moment he was still well, he had got these complaints against me, although if we look back at the letters from the Woodcock's, it would seem as though something was happening to sort out his problems and his various complaints. So, on the basis of the letter from Woodcock's, I then felt that I could write to him. I hadn't received a letter from Woodcock's withdrawing the complaints by that time, but it seemed the logical thing to do, write to him and find out.

Q. You will recall that earlier we referred to your letter to Kevin Phelan setting out the note of your contact with Mr. Weaver, Mr. Aidan Phelan, sorry, I keep making that mistake, Mr. Aidan Phelan?

A. Yes.

Q. You set out your account of your meeting with Mr. Weaver?

A. Yes.

Q. Now, he was the obvious person to whose attention that should be drawn?

A. Absolutely.

Q. But in relation to these letters, all of which pertained to Cheadle, then I suppose the obvious person to write to was, well or contact was either Mr. Phelan or Mr. Lowry or both of them?

A. I totally agree with you. There is nothing on the file that sort of says that I did that. But they are, they must have been "my clients" at that time, the people to contact.

Q. Now, if you just go back for a moment to the document in folder number 13 sorry, the document in tab or divider number 13?

A. Is this the letter from Woodcock's, 19th April?

Q. Yes.

A. Yeah, I have that.

Q. By post and fax.

"Dear sir,

"I have been instructed by my above-named client to correspond with you as follows:" We have read this letter out before in a number of different capacities.

"I would refer to the allegations and requests made to you in our letters of the 28th January, 2002, and 21st March, 2002."

Remember, this is the two letters we opened a moment ago; the earlier one referring to a number of transactions and the later one referring to duplicate letters. Isn't that right?

A. Correct.

Q. And they say "Our client agrees that:

"1. There is no need for you to reply to any of the points raised in the above letters.

"2. At all times when instructions were given by our client on the part of a principal, he was acting as agent either for a disclosed or an undisclosed principal.

"3. He unreservedly withdraws the complaints made about you to the Office for the Supervision of Solicitors.

"4. Our client has no claims for negligence against you.

"5. Our client is not demanding the return of any files."

That would appear to suggest that they were withdrawing all the complaints made in their January letter, or at least withdrawing them in these terms in any case. And they were certainly taking on board the distinction between your client's relationship with Mr. Kevin Phelan as an agent

A. Yeah, that's right.

Q. and his duty to what might have been a mutual principal you had?

A. Mmm.

Q. And specifically they were saying there was no need for you to reply to any of the points raised in the above letters, including the letter which we have just mentioned of the 21st March. So, now you have written to Mr. Kevin Phelan on the 18th April. On the 19th you had received a fax telling you that he was withdrawing his claims about these duplicate letters. And it would appear that he responded

to you on the 23rd April with a letter purporting to explain the letters that you had sent to him; isn't that right, where he says

A. I am just trying to find it. It's the last one in Tab 14?

Q. Correct, yes. He says "Dear Christopher,

"I acknowledge receipt of your letter dated 18th April, 2002.

"I have examined my files, as requested by you, and confirm the only letters I have on file are 'July A' and 'September

A.' I recall on some occasions in the past you issued

correspondence to me outlining incorrect details following

our prolonged and detailed meetings. I know on occasions

you confused clients and projects, which resulted in

corrections having to be made and new correspondence to be

issued. I believe the documentation you have forwarded has

probably arisen for this reason. In any event, as stated,

I have letters marked 'July A' and 'September A' on my

files which I hold as originals.

"I have no idea where the documents marked 'July B' and

'September B' have come from.

"I trust this information is of assistance."

Now, this correspondence with Mr. Davis of the Tribunal had

been going on, I think, for about a month or so; isn't that

right?

A. If you say so, I haven't looked at the first date.

Q. From the 21st March to the 29th April, about five weeks.

And apart from what you had said to Mr. Davis on the phone,

I suppose this was the first substantive response you had given to him; isn't that right?

A. That's correct.

Q. And in that response, you provided him with an exchange of correspondence, one letter from you to Kevin Phelan, and Kevin Phelan's reply to you?

A. Mmm.

Q. But during all this period there had been a lot of other correspondence with Kevin Phelan or with Kevin Phelan's solicitors concerning related matters, isn't that right, and none of that was ever produced to the Tribunal?

A. Which is this correspondence? I am not quite sure.

Q. Well, you see, you wrote to Kevin Phelan, and you furnished this to the Tribunal in response to the Tribunal's request for assistance, you wrote to Mr. Phelan on the 18th April?

A. Yeah.

Q. Telling him that the Moriarty Tribunal had contacted you.

"Mr. Davis has queried documents which passed between my office and you. I would be grateful if you could assist me in regard to queries raised in relation to these documents." And you refer to the documents.

But you had received somewhat threatening correspondence from Messrs. Woodcock's, Mr. Kevin Phelan's solicitors

A. Mmm, I had, yeah.

Q. concerning just the same matter; isn't that right?

A. Mmm.

Q. And, in fact, including one of the selfsame letters. But

you didn't send any of that correspondence to the Tribunal, which might put this, perhaps, in some context.

A. Well, I am not quite sure the letter of the 26th March is a letter that's only just emerged.

Q. It's only just emerged

A. Yes, I think it's only just emerged, because it was pointed out in a recent letter from the Tribunal that, the summons which I collected from the Tribunal office actually related as well to documents in my possession regarding all matters relating to Kevin Phelan. And so this is why we embarked on this search to see what documents we may have got relating to Kevin Phelan. Arising out of that we found the Scott Fowler file relating to complaints which fortuitously had got some of the earlier correspondence about the first complaints, not the 2006 complaints, in them, but also it produced the ring binder that I gave to the Tribunal which had these sort of one hit wonders in them; You know, write to this company, or what are we doing about Bornmouth? So, we found all of that paperwork which we thought was covered by the summons. So, it hadn't been presented to the Tribunal before because so far as I was concerned, it probably wasn't relevant to the Woodcock letter.

Q. But you were asked for these letters before?

A. Well, was I specifically asked for, you know, a letter of the 26th March?

Q. No, because the Tribunal didn't know of its existence. But wasn't it painfully obvious that these letters were all

related to the letter that Mr. Phelan sent you? Wasn't it painfully obvious that Mr. Phelan had raised with you, rightly or wrongly, leave that out of it, the selfsame issue that the Tribunal was seeking to raise with you?

A. Well, I think you have to lump that together with the other allegations that Kevin Phelan had made. I mean, I regarded all these allegations as totally groundless, and that had been shown by the fact that it was discovered by me that the alleged report by Kevin Phelan, the two letters to the Office for the Supervision of Solicitors, had never been sent. The allegations in the Woodcock's letter, which unfortunately we only have the second page of, they look serious allegations, but to my mind, I was very confident in my mind that they were rubbish and they had no basis at all. And I am afraid that these letters, the A letters, B letters, call it what you will, 12th July, 5th September letters, they fell into the same category, so far as I was concerned they were yet another threatening tactic from Kevin Phelan. And this is his modus operandi, isn't it? You know, threaten you, threaten you, hope you come to some sort of resolution. But I wasn't having any of that. And I thought, well, let him carry on with the Office for the Supervision of Solicitors, I felt incredibly confident that there was no basis for his, any of his complaints. These letters are part of the complaint in the Woodcock letter, and I am afraid to my mind they are part and parcel of the whole thing. They are unsustainable complaints. And I

perhaps regarded them like that and didn't look at them in that degree of importance.

When your former clerk, John Davis, started to talk to me about it, I then looked at them in a different light. But it was only when John Davis, in April, spoke to me on the phone and said, well, you know, these he drew then my attention to the importance of these letters. Prior to that moment, the Woodcock correspondence, well this is, I am afraid, Kevin Phelan having another go, raising a load of complaints which are groundless. So, to say that they had been raised is quite correct, but they hadn't been of any significance or importance to me until suddenly John Davis says, "Well, hang on, look at these letters." And that's when I started to realise that there was more to it than met the eye.

Q. Yes. But you regarded them all as part of Kevin Phelan's modus operandi to threaten you and so on. And I think summarising what you have just said, this is the way Kevin Phelan behaves, one needn't pay any attention to him?

A. Yeah.

Q. But isn't that the response that you should have given the Tribunal, and produced Kevin Phelan's letters to show that, to demonstrate just that, instead this matter has been dragging on for six or seven years?

A. Well, the letters that we are possibly talking about now are in the file that I produced on Tuesday morning.

Q. But you had them at the time, surely?

A. They had not been of significance to me so far as I was concerned, or the Tribunal.

Q. But weren't these letters, the Tribunal's letters concerning the long form /short form letters and Mr. Phelan's letters, weren't they weaving in and out of one another at this time? Wasn't it obvious, if you wished to make the point that you are now making so forcefully, that the thing to do was to produce these letters?

A. I can't see that the Woodcock letters are of any relevance at all at that stage, because we have Mr. Davis who phones me up and speaks to my secretary. I think he says, you know, can you be by your fax machine at one o'clock, sends these letters through and they obviously need serious consideration. One of the points that I do is to write to Kevin Phelan and say, you know, these are the letters this is the letter from Mr. Davis, or this is the inquiry from Mr. Davis, can you help me? Because by that time, you know, we obviously had our differences, which I won't bother to go down. Suddenly, and I would say this is sort of very much out of the blue, 26th March letter from Woodcock's, a letter which says "No acknowledgment of this correspondence is required", it says everything seems to be settled, we are negotiating with various people.

So, I feel that I can write to him at that stage and not to Woodcock's. The letter of withdrawal from Kevin Phelan does not arrive, I don't think, until the day after I wrote to him.

Q. What made you think you could write to him, having regard to the threats he had issued and what you regarded as his behaviour? What made you think that you could write to him in the terms of your letter of the 18th, as if this whole question of these duplicate letters was being raised for the very first time, as if he would know nothing about it, when, in fact, he had been sending you threatening letters about the same thing?

A. No, I don't think I indicate that it's for the first time.

It's the first time that the Tribunal has raised it. So, my letter to Kevin Phelan starts off, does it not, "Mr. Davis from the Tribunal has been in touch with me..."? That is what has generated this inquiry of Kevin Phelan, and as I have said a couple of times before, I felt confident that I could now approach him because of the letter of the 26th March, 2002, from Woodcock's.

Q. The letter of the 26th March, 2002, from Woodcock's, do you mean the letter of the letter that said maybe I have got this wrong in my grasp of these letters yes, the letter from Woodcock's of the 26th March said to you that "We understand from our client that he has had meetings with parties in Ireland over the weekend who are connected to the various projects that we have referred to within our correspondence." Then he says everything is waiting until the return to Ireland of Denis O'Connor.

And what they were hoping to do was to implement or achieve a crystallised agreement, presumably on his return; isn't

that right?

A. That's what the letter says.

Q. And that letter seems to indicate that whatever was going on in Ireland involving Mr. O'Connor was going to have an impact on the allegations that had been made in letters to you?

A. That was my understanding of the letter.

Q. So, at that stage Mr. Kevin Phelan's allegations to you in his letter of the 21st March concerning duplicate documents was going to be the subject of some discussions in Ireland which awaited resolution pending the return to Ireland of Denis O'Connor?

A. That's what the letter says. The letter also says in the penultimate paragraph sorry, I'll let you carry on.

Q. No, no, go ahead.

A. I was relieved to see the words "We trust, however, that this matter can be brought to an amicable settlement." I read into that that we were all on side again.

Q. So, did you discuss that letter with anybody when you got it?

A. I don't think so, no.

Q. When you contacted your clients subsequently, either Mr. Phelan or Mr. Lowry, did you allude to that letter?

A. I can't say that, because I don't know.

Q. Surely you must have alluded to it since wasn't that weren't these things all connected? You were getting queries from the Tribunal regarding duplicate letters,

allegations from Kevin Phelan concerning duplicate letters, and Kevin Phelan telling you there were discussions going on in Ireland concerning Denis O'Connor?

A. Let me put it like this: It is likely, but I cannot say, because I don't know.

Q. Who did you understand Denis O'Connor to be at this stage?

A. Ah, well this is Denis O'Connor, he is the accountant, isn't he? And I had come across him briefly by this stage.

I think if you look at the previous notes, we had met a couple of times.

Q. Yes, you had met him?

A. Yes.

Q. And you had also met him in Ireland; isn't that right?

A. Yes, I had, yes.

Q. And in what capacity had you met him, if you like, or in what capacity was he acting whenever you met him?

A. I think it's recorded the first time we met was at the Regency Hotel, although I think my notes or the letters I wrote afterwards say that I actually don't remember him there, but the Regency Hotel meeting was called for me to give a briefing as to the Cheadle and Mansfield property.

Q. A briefing to Denis O'Connor?

A. Yes. So Denis O'Connor was there. When I say I can't remember, I couldn't picture him as an individual at that meeting.

Q. Did you understand him to be Mr. Michael Lowry's representative?

A. I did, yes, because I mean, I was told that's why he was there. He was seeking information, and I took the files with me so that they could be looked at.

Q. So, in this letter when Woodcock's wrote to you and told you everything was dependent on an agreement to be crystallised pending Denis O'Connor's return to Ireland, did you assume that this had something to do with Mr. Lowry, or did you assume it was something to do with Denis O'Connor himself?

A. Well, I assumed it was something to do with Mr. Lowry.

Q. After the letter of the 26th March, you of course continued to receive the correspondence from the Tribunal, and then you wrote saying that you were going to get in touch with your clients. And I think you can't remember getting in touch with them, but it would seem probable that you got in touch with them, would it?

A. With the clients?

Q. Yes.

A. It is probable I did, yes.

Q. And then you felt able to write to Kevin Phelan himself directly, notwithstanding the comments in the letters from Woodcock's that everything could be left lie, isn't that right, until these matters were concluded in Ireland?

A. I was given comfort by the letter of the 26th March that somebody out there was sorting out various outstanding issues that Kevin Phelan was obviously trying to resolve.

I mean, I think I was one element in the criticism directed

against me to try and get other people to come to some sort of settlement. But I had no knowledge of that, I wasn't involved in that. And Kevin Phelan and I, we had worked very closely together over a period of time. He is a person who blows very hot and cold. And when I saw this letter from Woodcock's, and it says "now the matter can be brought to an amicable settlement," I had always believed that all his allegations were part of a process to bring about a settlement. I can't remember whether they are right within the same timescale, but he also reported Craig Tallents to the chartered sorry, the office of the body that looks after chartered accountants in England, and I think he reported Bryan Phelan to their body as well.

So, this is all part of the tactic, isn't it? Same with me: Load a whole lot against him and then when you got what you want, we are all friends together, aren't we? So that's why I felt comfortable in writing to him.

Q. But the deal hadn't been done, as it were, on the 18th April, and you had received your assurance from the solicitors, not from their client, Kevin Phelan?

A. Yes, but I read this letter, and of course suddenly I get Mr. Davis writing to me, and I need a bit of help, don't I? How do these letters come about? The obvious person to write to is Kevin Phelan, so I write to him.

Q. But why Kevin Phelan has made the same accusation, but you have been told, hold it, stop a while; isn't that right? He has made the same accusation against you, of

keeping two files, and could become a result of the findings of this Tribunal; isn't that right?

A. I think Kevin Phelan has made a whole raft of accusations.

Q. I know, but he has made that specific one. He insinuated as much, didn't he?

A. It's amongst all the other accusations. I wouldn't sort of tease one out individually and say look, it's there.

Q. It seems to me, Mr. Vaughan, looking at it, that there must have been something happened or somebody must have told you something around this time, the 18th April, to enable you to feel you could write to Kevin Phelan in these very cordial terms after he had made these insinuations and after his solicitors had been in contact with you?

A. Well, I think if you look at all the correspondence between Kevin Phelan and myself, I am not somebody who gets aggressive or particularly cross about things.

Q. I can see that.

A. He raised a lot of issues, I have always tried to respond to him. I have said, "Dear Kevin", etc.. There seemed little point in getting over-cross, over-stressed.

Suddenly the letter of the 26th March arrives. It would appear as though parties out there are sorting matters out and, quite clearly, the letter says, it looks as though we can come to amicable settlement. Along comes Mr. Davis with his letters, and I need help. So, the logical person to write to is Kevin Phelan. "Dear Kevin, can you help me?"

Q. Okay. So you write to him, and notwithstanding what has passed before, hey presto he provides you with an explanation?

A. I have never written to him, dear Mr. Phelan, he is always dear Kevin.

Q. I know. But after all that has passed in the previous few months, you write to him and within a short period of time he sends you an explanation?

A. Correct.

Q. And may we take it that that has something to do with what you were told was happening in Ireland and awaiting the return of Denis O'Connor?

A. I don't think I was told anything other than the letter of the 26th, whatever it was, March from Woodcock's. I wasn't I don't know anything else about it.

Q. I am suggesting to you that you write to Kevin Phelan asking him about these letters, some of which he already knows about, as we know from his own letters, his own solicitor's letters, and he writes back with a very fine explanation for the whole thing. And I am suggesting to you that that is connected with the letter that you received from his solicitors telling you that you could bide your time and wait, this thing would all sort itself out pending the crystallisation of agreements in Ireland. Isn't that a reasonable conclusion, isn't it?

A. I don't think so. As I said before, I gained comfort from this letter of the 26th March. It looks as though matters

are being resolved, and I therefore wrote to him and said help me out.

Q. You wrote to him and matters were resolved, because he didn't pursue those complaints against you; isn't that right?

A. I am just looking for my Kevin Phelan letter and I have gone and lost it.

Q. Last page of Tab 13.

A. No, that's the reply. I was looking for the letter of the 18th I sent to him. Right. I now have the letter of the 18th. You see that letters says "Mr. Davis has contacted me, Mr. Davis has raised the queries."

Q. Yes. And where did you think Mr. Davis's documents, the ones that he got had come from?

A. Where he got them from?

Q. Yes.

A. I don't think Mr. Davis tells me, does he? He says "letters have been sent to me."

Q. But where, do you think?

A. I don't know.

Q. Where they on your evidence they must have originated from Mr. Kevin Phelan?

A. Absolutely, yes. I mean, he was the recipient, and that's why I wrote. So, it's logical if I write to him, he is the recipient, these letters can only have come from him.

Q. But from the evidence that you have given this inquiry today, why did you need to write to Kevin Phelan at all,

because you seem to have quite an extensive and comprehensive explanation for these letters? Why would you

A. It is an additional element to solving the query that Mr. Davis has asked. I had been asked to deal with the letters. Surely the logical thing is to speak to the person or write to the person to whom those letters were sent? He is the key component in this whole query, so I write to him and say: Look, Mr. Davis has said there is two versions of these letters, can you help?

Q. Mr. Vaughan, you have been asked about these letters by the Tribunal in 2002, and you have given now a very detailed explanation as to why there had to be two letters, why the changes had to be made, what drove you to make the changes, physically how the changes were made. You have even indicated perhaps who made the changes on your instructions.

In April 2002, it was only about just over a year, wasn't it, a year and six months from when

A. 18, 20 months.

Q. when these letters were written?

A. Mmm.

Q. Why did you need to ask Kevin Phelan about them if it was, as we have heard today, if you had all the information yourself?

A. It seemed so logical to write to him. I think it was also the easy way of writing to him because I had not sat down

at that moment and done as you have done and as I have also done now, to look at these letters and say hang on a minute, they are not as simple as we might make out. Kevin Phelan was the person who could answer this query quickly, in my opinion, so I wrote to him.

Q. You know the letter of which of the first page of which we haven't been able to get a copy from Woodcock's?

A. Yeah.

Q. Of the 21st March?

A. Yeah.

Q. That letter was on your Tribunal file?

A. It would have when you say "Tribunal file"?

Q. The file that came to the Tribunal as part of your Tribunal file, your file of Tribunal-related documentation?

A. That's right. This is the file that has gone to two or three different people before it hits the Tribunal?

Q. Yes.

A. Yeah.

Q. But if you deemed it appropriate to put on your Tribunal file, and having regard to the explanation you have given me a moment ago concerning the way Mr. Phelan behaves, why wouldn't you have given it to the Tribunal and the other correspondence at the time that you wrote to Mr. Davis with this letter of Mr. Phelan's of April 2002?

MR. NATHAN: May I just interrupt. I think this is an unfair question, because if you look at what was being asked for, he was being asked for comments, and therefore

then to start saying "And why didn't you send letters?"

seems a little harsh when Mr. Davis was asking for comments.

MR. HEALY: All right.

Q. Am I right in saying you didn't make any comments to the Tribunal, you simply enclosed an exchange of correspondence between yourself and Mr. Kevin Phelan?

A. That's what the letter to Mr. Davis says, "Here is an exchange of correspondence".

Q. But I think as your counsel said, you were being asked to comment. What you actually did was simply to enclose one letter from Mr. Kevin Phelan purporting to explain these letters and one letter from you raising queries concerning the letters, but none of the other letters that we have seen now, and no comment or explanation?

A. I think it was self-evident from my inquiry and his reply, nothing else is required.

Q. When Kevin Phelan wrote to you saying and we'll again look at the last document in Divider 14 "I acknowledge receipt of your letter 18th April, 2002.

"I have examined my files, as requested by you, and confirm the only letters I have on file are July A and September A."

Now, you sent that letter to the Tribunal without comment; isn't that right?

A. I didn't think comment was necessary.

Q. When you were in London, do you remember the question

whether these letters were forgeries was being when the question of whether these letters of being forgeries was being canvassed by Mr. Needham?

A. Yes, I didn't canvass that point.

Q. I know you didn't canvass it, yes. But judging from what you have said here today, and from what's contained in the correspondence you sent to the Tribunal, there was no question of forgery; isn't that right? Absolutely none at all?

A. In my statement that I have given to the Tribunal, I have said that I don't believe these letters were forgeries. Do you want the paragraph number? It's in the statement we read out on day 1.

Q. In the letter that you sent, that you had received from Mr. Kevin Phelan, you know that he refers to the letters and says "They are the only letters I have on file, July A and September A." Is that not, in fact, at variance with what's contained in his letter of the 21st March?

A. It may be.

Q. The Woodcock's letter, I beg your pardon, the Woodcock's letter of the 21st March?

A. It may well be, but I don't recall ever cross-referencing those letters.

Q. You see, Mr. Kevin Phelan is writing to you and telling you that he only has one copy, one copy of the letter of September; isn't that right?

A. That's what his letter says.

Q. And isn't that inconsistent with what's contained in the second page of the letter of the 21st March, which is at Divider 3?

A. No, I don't think it is, because this is the incomplete letter of the 21st March.

Q. Yes.

A. The only letter that is before the Tribunal is the one of the 12th July. These pointed out at

Q. Yes.

A. So letter number 5, 12th July, 2000, the copy that appears to have been with Woodcock's letter of

Q. I am not suggesting there were any copies of Woodcock's, I have added those.

A. Right, okay. I didn't appreciate that.

Q. The Tribunal doesn't have that letter.

A. Right.

Q. You will recall I added them to point out that there are letters on the Cheadle file corresponding with those dates.

I cannot be sure they are these letters, but I am surmising that they are these letters?

A. Right. So to assist me, you put letters from the Tribunal files

Q. From the Cheadle file.

A. Which corresponds to letters 1 to 5 in the Woodcock's letter of the 21st March?

Q. No, no. Just so we are clear, I have taken letters from your Cheadle file.

A. Right.

Q. That contain those dates.

A. Right, okay.

Q. One of them we know, the 12th July, is the same as one of the letters the Tribunal raised queries with you about.

A. Okay. So, in fact the letter from Woodcock's of the 21st March, if that is the letter that we are talking about, is in fact identical to the allegation of Kevin Phelan. "I only have letters July A on my file"?

Q. But you have given evidence that you think the long form originated with Kevin Phelan?

A. I am sorry

Q. The long form of the letter of the 12th July, you have given evidence that that must have originated from Kevin Phelan?

A. I have said that they were addressed to him, therefore he was the only person who got them.

Q. But they must have come from him ultimately, mustn't they?

A. Oh, yes, yes. I mean, this is the evidence, isn't it? We send these letters and we know why I only have the short form. But Woodcock's aren't in their letter of the 21st March, they are not producing the long and short form letters, they merely produce the short form, don't they?

So when Kevin Phelan says on the 23rd February "I have only the short form letters," that is the same as his solicitors.

Q. If we look at his letter again, or his solicitor's letter,

I'll put it on the overhead projector so you can see it.

A. Okay.

Q. "We are instructed by our client that he has been handed a substantial amount of documentation by Denis O'Connor, accountant to Michael Lowry. We are further instructed that this documentation has been obtained through the Moriarty Tribunal, which as you are aware is proceeding in Ireland.

"Included within the documentation that has been recovered by our client is correspondence from you to our client, being in part file copies and in others a copy of correspondence that was sent to our client. The correspondence received differs to the originals in our client's possession. Sample letters are dated as follows:

"The alterations to the correspondence are clear."

I suggest to you that what he is insinuating is that he has the long form of the letter of the 12th July, and I suggest that it's quite clear that's what he is insinuating.

A. But as we don't know what letter he got, we are trying to reach a conclusion

Q. What I am trying to tease out, Mr. Vaughan, is how Mr. Phelan, Mr. Kevin Phelan could have written to you on the 23rd April and say that he only had July A and September A, and for you to send that letter onto the Tribunal by way of explanation without sending on the earlier documentation in which he had made the opposite contention, or opposite statement?

MR. NATHAN: Does that give rise to a question?

Q. MR. HEALY: What I am trying to say to you is, how could you have, as it were, represented Mr. Phelan's letter of the 23rd April, 2002, to you as an explanation for the long form/short form July letter, when he had made a contrary statement in his letter to you of the 21st March, in his solicitor's letter to you of the 21st March?

A. The point about it is the solicitor then withdrew all these allegations. That's the point about it. What I don't think, and unfortunately we don't have the letter, it doesn't say "Here are the five letters", "Here are the differences." It says, "We have gone through the Tribunal letters and they differ from the ones in our client's possession." He doesn't identify the differences.

Q. Sorry for delaying you, I am trying to get this letter, the one that you referred to.

Are you suggesting that the letter of the 21st March doesn't contain the implication that I have put on it?

A. I think the letter of the 21st March has to be looked at in the light of the other spurious claims made by Kevin Phelan. The letter of the 21st March, I honestly don't think I would have taken all that seriously. It's part of his tactic.

Q. This is a very, very low tactic then, isn't it? To get a letter from you, which you say was innocently generated, and to turn around and to try to turn it into a suggestion that you were making duplicate copies of your file?

A. I am not sure about the low tactic

Q. But I want to know do you regard it or would you regard it as a very low tactic?

A. I do, because if you then look at the letter of the 26th March from Woodcock's, it says third paragraph, fourth paragraph down: "We confirm that the correspondence that has been sent to you has not in fact been sent to the Office of the Supervision of Solicitors." So, I am sitting in my office and I get letters from Woodcock's - unfortunately they don't seem to exist either - here is the letter for the Office of the Supervision of Solicitors, but then I am told, they are not sent. It's the same, I am using your word, low tactic.

Q. Mr. Vaughan, could I summarise some of the things you have, as I see it, conveyed in your evidence in the last ten minutes.

Mr. Phelan is a trickster, he will use documentation generated completely innocently and in circumstances which you can wholly explain to try to damn somebody to the Law Society, to a Tribunal of Inquiry, by suggesting they're engaged in keeping two sets of files. He made that allegation to gain some material gain. Negotiations were conducted in Ireland that satisfied him, and his solicitors were prepared then to withdraw those allegations. And that Kevin Phelan is a disreputable person who gets up to this kind of thing. Isn't that what you are saying?

A. Well, those are your words, not mine.

Q. Well, I am suggesting that's what you are saying suggests.

If that is the case, I make one more suggestion: That that would have been something you should have conveyed to the Tribunal there and then, if it was the case?

A. I don't think that's the case at all, because it's a negotiating tactic by Kevin Phelan. I mean, you can see that we have had our we have fallen out. But let not this be taken away from him, he was a very clever negotiator, he did some good work with jobs. Suddenly he is having a go at me. He has a go at me at the Office of Supervision of Solicitors. Woodcock's write this letter, but suddenly Woodcock's write to me, and you can see it's a letter out of the blue because at the end they say no acknowledgment is required, they say matters can be brought to an amicable settlement. My gut reaction is well, Kevin has got what he wants, I can write to him "Dear Kevin, can you help me on these letters?" That's what I have done.

Q. Mr. Vaughan, can I just take you to I want to skip over a lot of these transcripts, except for one that I may refer to.

Did you have any contact around this time with Denis O'Connor concerning just these matters, the complaints that Kevin Phelan was making against you?

A. I don't think so. I mean, he may certainly because we had met a couple of times and I knew that he was trying to gain information about what his client, Michael Lowry, had got into through the work that I was doing. That was the

purpose of the Regency Hotel and the meeting that I had had in Clanwilliam Terrace, and we had met in a restaurant in London once as well. And a couple of other meetings as well at airports. He was trying to suck from me information, because I don't think he knew anything about it. But the letter from Woodcock's indicating that there was to be a withdrawal and the letter of withdrawal, it was genuinely a surprise to me. What's his name? Denis O'Connor, he wasn't sort of he wasn't shuttle diplomacy. He may have spoken to me, but I wasn't engaging him to sort this out. It was nothing to do with me. And I think that's apparent from one of the files that the Tribunal served upon me. Suddenly we see in, is it July of this year, there is an agreement reached between Kevin Phelan and other parties, which it would appear as though Denis O'Connor was the architect of. Well, I wasn't involved in that. And Denis O'Connor certainly wasn't, as I have used the word, shuttle diplomacy. He may have spoken to me, but I really can't remember exactly.

Q. He said in evidence on day

A. Have you got a copy of that?

Q. On Tab 18, Day 234, page 96 of that day's transcript. I have included far more in case anyone wants to see it. But he did say that he was asked by you to deal with Kevin Phelan's complaints. If you look at 466:-

"Do you recognise that letter?"

Answer: I recognise it, yeah. I think this came up the

other day, if I am not mistaken.

Question: We don't need to go into all the details of it.

It will become clear what letter it is now. But it's

essentially an unreserved withdrawal from Kevin Phelan in

any capacity, whether M&P Associates, Gameplan

International or Glebe Trust, of any complaint or any

allegation against Christopher Vaughan, do you see that?

Answer: I do.

Question: And you were presumably involved in arranging

Kevin Phelan to do that?

Answer: You see, I can't actually remember that, right.

Question: You were asked by Christopher Vaughan in any

case to deal with it?

Answer: You see, that's this is just not hanging out

right.

Question: Isn't that your evidence? You were asked by

Christopher Vaughan to deal with it?

Answer: Yeah."

When you got the letter from the solicitors saying

everything was awaiting Denis O'Connor's return, can you

remember would you have contacted him to see could he have

played any part in this?

A. I don't think so. I am just reading the rest of his

evidence. I certainly don't recall him being I'll go

back to my shuttle diplomacy. No, it doesn't ring true at

all. I think the key letter is the Woodcock's letter of

the 30th. Again, total surprise. Negotiations are going

on in Ireland. We are waiting for Denis O'Connor to return from America. He was obviously the architect of the agreement. In fact, I am just looking at Denis O'Connor's answers, line 30, on page 97, I am just reading this for the first time.

Q. Yes.

A. He said, you know, "That period of time doesn't ring a bell with me. That's my problem." I mean, he is not saying he was involved, is he?

Q. What he says, "Isn't that your evidence, you were asked by Christopher Vaughan to deal with it?"

Answer: Yeah."

A. I don't regard that as a definitive yes, because having looked at some of the transcripts, yeah, it come out as just a comment from somebody. I think we can take more positive

Q. I will just go on a bit to question 474. You see, he says:

"You see, I said a minute ago something throws 19th April, 2002, that time, that period of time doesn't ring a bell with me. That's my problem.

Question: But we do know from your evidence that you had an involvement at Christopher Vaughan's request in trying to get Kevin Phelan

Answer: Correct.

Question: to back off, let's put it that way?

Answer: Correct. But this, this, you see, doesn't mean

Question: Did you have any involvement in getting Kevin

Phelan to write that letter?

Answer: This letter here?

Question: Yes.

Answer: No, absolutely not."

A. I mean, that follows what I just said.

Q. Well, you mightn't have got him to write the letter, but did you have any contact with him about this?

A. Not that I am aware of. I am sure in one of the meetings with Denis O'Connor I probably would have mentioned my problems with Kevin Phelan. But I think it's interesting, looking at the letter of the 30th from Woodcock's, there is a far greater picture that I wasn't involved in, that Denis O'Connor was trying to negotiate a settlement. I was obviously a tiny fragment of that and I get dragged into the settlement as well, don't I?

Q. None of that information was furnished to the Tribunal.

A. If you look at the

Q. It is now.

A. Well, that's

Q. It is now.

A. Well, I didn't know that at the time.

Q. No, you did know what's contained in these letters at the time, because these letters give a fair indication that there were negotiations going on even, as you say, the shuttle diplomacy was happening somewhere else?

A. I knew the letter of the 30th. But when they say the way it says don't bother to reply to this letter at the end

indicates it's for my information only. I am not part of this.

Q. Could I ask you to turn to Divider 22, please. And I won't detain you long more on this. This is a further letter, I won't read it out, seeking a response concerning long form/short form letters. And your response is contained in the next divider at leaf, Divider 23.

"Dear Mr. Davis,

Thank you for your letter. I do not think there is anything further I can do to assist the Tribunal."

There was a further request on the 12th July, 2002

A. I have that. That's under Tab 24?

Q. Yes. To which I think you responded, if I am right

A. 4th July.

Q. No, on the 17th July, 2002, Divider 28. Do you see that?

When you went through the matter again and you ended up saying, "So far as I am concerned, this is the end of this correspondence." We may have read out part of this letter already. It says: "Thank you for your fax of the 12th July. I am sorry if you did not consider my letter of the 29th April last, together with the enclosures contained in that letter, 'shed any light' on the situation.

"However, I will try and amplify the point that was implicit in your letter. Practically the whole of the correspondence I had with Kevin Phelan throughout our working relationship was by fax. You must be aware that Kevin Phelan was acting as agent for Michael Lowry and

Aidan Phelan, but he was also involved in a number of other projects which had nothing whatsoever to do with Michael Lowry or Aidan Phelan.

"As you can imagine, any telephone conversation with Kevin Phelan might cover half a dozen separate matters, which would then result in me sending several faxes to him at some stage in respect of those matters.

"Because Kevin Phelan was dealing with so many different matters, with me acting as legal advisor, inevitably some misunderstandings occurred between us.

"Kevin Phelan may well then have corrected my understanding of events on the receipt of a fax to him. I would then have sent him an amended version and kept the hard copy of that amended version on my file. I probably would have disposed of the first version of the fax to avoid further confusion.

"The end result would be that Kevin Phelan would have two versions of the same fax, the first incorrect version and the second correct final version.

"Kevin Phelan, in his letter of the 23rd April, 2002, states that he has only one version of the two letters in question. I assume, therefore, that he likewise disposed of the incorrect version.

"However, the faxes may well have had a wider distribution, as copies could have been sent through to the clients and possibly other professional advisors, and one of those third parties may well have mischievously sent the

incorrect version through to the Tribunal for some reason only known to the sender.

"I cannot speak on behalf of Kevin Phelan, but so far as I am concerned, the Tribunal has the correct version of the faxes in question.

"Since drafting the above to you, I have now received your fax of the 15th July.

"Firstly, I am extremely surprised "

Then you refer to a letter we have already referred to that Mr. Kelly sent to the Tribunal.

"So far as I am concerned, that is the end of this correspondence."

Now, you did say in that letter that you were sorry if the Tribunal didn't consider that your earlier letter had shed any light, and you went on to try to amplify the point that was implicit in that letter. But what you didn't do again in that letter is to draw to the Tribunal's attention all of the other matters which have since come to its attention concerning the dealings you were having with Woodcock's on Kevin Phelan's behalf from early 2002?

A. Well, the dealings with Woodcock's were a set of allegations which were withdrawn. They were a self-contained unit. Why saddle the Tribunal with something that's irrelevant?

MR. HEALY: I don't think I am going to do any more on this topic, sir.

CHAIRMAN: Yes. Well, for what amount you have that is

left, is there any point in starting for 15 minutes ?

MR. HEALY: No, perhaps we could start a bit earlier tomorrow.

CHAIRMAN: I think probably with the obvious anxiety to conclude matters, I think Mr. Nathan it makes sense that we make it 10am start, if that's not inconvenient to you and to your colleague?

MR. NATHAN: I am obviously anxious. The only question I have in the back of my mind, whilst this has now gone on for three days thus far, is that, and, sir, you are aware of my concerns about the length of time that some of these matters have taken, but there we are. I am also, of course, concerned about Mr. Vaughan, because it's a very long court day, just at the end of the day it's quite obvious that he flags and

CHAIRMAN: Of course. I think we will structure the day tomorrow, Mr. Nathan, to see that it's made as manageable as possible for your client, and I think a 10am resumption does make sense. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, FRIDAY, THE 24TH OF APRIL, 2009, AT 10AM.