

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

CHAIRMAN: May I apologise for the somewhat late start, as my understanding is that it has been necessary to circulate in manageable form some potentially important documentation that was received only shortly prior to 4 p.m. yesterday.

Mr. Healy.

MR. HEALY: I just propose to make a short opening statement in advance of dealing with the evidence. If Mr. Vaughan wants to stay where he is sitting, he is, of course perfectly free to do so.

A. I am perfectly happy, Mr. Chairman, to sit here.

MR. HEALY: Now, this arises from the fact that you have pointed out that new documents - when I say "new", I'll explain what I mean in a moment - were provided to the Tribunal late yesterday afternoon. These documents related to the Mansfield/Cheadle and, peripherally, to the Doncaster transactions.

The documents consist mainly of exchanges between Mr. Vaughan's firm, Mr. Vaughan himself, and Mr. Phelan, Mr. Kevin Phelan. There is also correspondence to Mr. Aidan Phelan and correspondence with third party solicitors. The documents pertain to complaints or the documents in part, I should say, appear to pertain to a complaint being made by Mr. Kevin Phelan to Mr. Vaughan arising out of evidence Mr. Vaughan gave to the Tribunal, and arising out of what seems to be a continuing or persistent claim by Mr. Kevin Phelan concerning his

relationship with Mr. Vaughan, and specifically, his right to certain information concerning transactions in respect of which he appears to maintain he may be a principal, but in respect of which Mr. Vaughan maintains, as he has already indicated in evidence, that Mr. Phelan was merely an agent. I am not going to open that correspondence, although it has been circulated. I am going to concentrate on the documentation that relates to the Mansfield/Cheadle and, as I said, peripherally the Doncaster transaction.

Now, the Tribunal in 2001 was provided with what it believed to be copies of the Mansfield and Cheadle files.

These were provided to the Tribunal by Mr. Vaughan. His files, in other words, in relation to those transactions, or copies of his files in relation to those transactions.

The documents which have now been produced to the Tribunal by Mr. Vaughan were not included in the documentation made available to the Tribunal in 2001.

Now, of course there is always the likelihood that a document here or there might stray from a file in a busy solicitor's practice, but a feature of these documents is that they appear to suggest connections between Mr. Lowry and the Mansfield and Cheadle transactions, connections which are at variance with documents that had already been produced to the Tribunal as constituting the file kept by Mr. Vaughan concerning those transactions.

The contents of some of the documents, they are letters, appear to have, or to have echoes in them or to resonate

with the changes that were made to the, what has come to be known as the long form/short form letters; in other words, references to Mr. Lowry have been excluded from the version of a document provided to the Tribunal while now a version has been produced which incorporates a reference to Mr. Lowry.

Most of the documents have never been furnished to the Tribunal, copies of them have never been furnished to the Tribunal, and the content of them has never been furnished to the Tribunal in any form. What characterises those documents, and what the Tribunal will wish to pursue in its inquiries in relation to them, are the references to Mr. Lowry, in some places fairly emphatic references to Mr. Lowry's involvement in these transactions at a time when, from information already provided to the Tribunal in evidence and evidence given at this Inquiry, it is suggested that Mr. Lowry had no involvement, or only a very limited involvement with these transactions.

So that the letters which I propose to open in a moment can be put in perspective in light of the evidence that's been given to date, I think it would be appropriate briefly to give a synopsis of the elements of the evidence relating to these transactions.

To date, the Tribunal primarily has heard evidence in relation to the Mansfield and Cheadle UK property transactions between May in the period, rather, between May and November of 2001, I should have said, of 2001. The

Tribunal's inquiries have recently been revisited consequent on the attendance of Mr. Vaughan who acted in the acquisition of the properties to give evidence. Now, it will recalled that the Mansfield transaction related to the purchase in March of 1999 of land at Hilltop Farm, Chesterfield Road, Glapwell near Mansfield in the name of Michael Lowry, that's been called the Mansfield property.

The property, according to the evidence heard by the Tribunal, was identified and introduced to Mr. Lowry by Mr. Kevin Phelan in September of 1998. It was Mr. Lowry's evidence that he agreed to fund the deposit of £25,000 sterling, and that Mr. Kevin Phelan would provide an investment partner to fund the balance of the purchase price of £250,000 sterling less the deposit. Mr. Lowry duly provided the deposit. The contract was signed and the transaction was due to complete in March of 1999.

The investment partner introduced by Kevin Phelan just prior to the completion date was Mr. Aidan Phelan, a close business associate of and advisor to Mr. Denis O'Brien, and with whom Mr. Lowry, by then, had had both a professional and a personal relationship.

Mr. Aidan Phelan provided £300,000 sterling, which was lodged to Mr. Christopher Vaughan's Client Account to the credit of Mr. Lowry, and was used to fund the purchase of the property in Mr. Lowry's name. The sale completed on the 26th March, 1999, and the property was acquired and registered in the name of Mr. Lowry. Mr. Aidan Phelan and

Mr. Lowry testified that thereafter the property was owned by Mr. Lowry subject to a Joint Venture Agreement between Mr. Lowry and Mr. Aidan Phelan whereby they agreed that the profits from the joint venture would be shared between them as to 90% to Mr. Aidan Phelan and 10% to Mr. Lowry.

This Joint Venture Agreement, which the Tribunal was told was in writing and was dated the 30th April, 1999, was signed by Mr. Lowry and Mr. Aidan Phelan, and witnessed by Ms. Helen Malone, a business associate of Mr. Aidan Phelan.

The Tribunal recently heard evidence from Mr. Christopher Vaughan that he had provided a template Joint Venture Agreement which he believed he furnished to Ms. Malone on a computer disc, but he had not, until his involvement with the Tribunal, had sight of the signed agreement.

The $\frac{1}{2}$ 300,000 sterling transferred by Mr. Aidan Phelan to Mr. Vaughan's Client Account and credited to Mr. Lowry was debited by Mr. Aidan Phelan from an account controlled by Mr. Denis O'Brien. Mr. Aidan Phelan and Mr. Denis O'Brien testified that Mr. Aidan Phelan had authority to make withdrawals from Mr. O'Brien's account, and that the withdrawal in question represented an advance of a bonus payment by Mr. O'Brien to Mr. Aidan Phelan.

Now, the Cheadle transaction, sometimes referred to as the St. Columba's Church transaction, was also brought to Mr. Lowry's attention by Mr. Kevin Phelan some months after the completion of the purchase of the Mansfield property.

The purchase of the Cheadle property, on the evidence heard

by the Tribunal, was to be entirely independent of the joint venture between Mr. Lowry and Mr. Aidan Phelan and was to be solely purchased by Mr. Lowry with the intention of a quick turnaround. The purchase price of the property was £445,000 sterling a 10% deposit of £44,500 was paid on the 8th September, 1999, from the funds held on Mr. Vaughan's Client Account to the credit of Mr. Lowry, and which represented the balance of the £300,000 sterling transferred by Mr. Aidan Phelan from Mr. O'Brien's account in March 1999.

It was intended that Mr. Lowry would acquire the property, the Cheadle property that is, through a UK registered limited liability company, Catclause Limited, which had been acquired by Mr. Vaughan on Mr. Lowry's instructions, and of which Mr. Lowry was appointed Director and Secretary, and of which his daughter was appointed a Director in June, on the 1st June of 1999. In that transaction, a Completion Notice was also served on Mr. Vaughan by the vendor's solicitors, and this was due to expire on the 13th December, 1999, although Mr. Vaughan managed to negotiate an extension to the time for completion. The balance of the purchase monies were ultimately provided by Woodchester, or I think Investec Bank, as they were about to become, on foot of arrangements made by Mr. Aidan Phelan with Mr. Michael Tunney, an executive of the bank, in the form of a loan to Catclause Limited.

The relevant bank documents to enable that loan to be advanced and drawn down were not signed by Mr. Lowry and his daughter who were the registered Directors of the company, but by Mr. Aidan Phelan and his associate, Ms Malone, on foot of authorities provided by Mr. Lowry.

The Tribunal heard evidence that the facility had to be arranged urgently and at short notice due to the imminent expiry of the Completion Notice, and that they were signed by Mr. Aidan Phelan and Ms. Malone, as Mr. Lowry was not then available in Dublin to sign the documents personally.

The funds in question were transferred by Mr. Tunney of Investec Bank to Mr. Vaughan on the 20th December, 1999, to enable Mr. Vaughan to complete the purchase. As will be recalled, the original Woodchester/Investec Bank file relating to the facility was not available to the Tribunal as it had gone missing and could not be found, and such of the banking documents as were available had been reconstituted from the bank's records for the purpose initially, I think, of the bank's own inquiries and ultimately for the purpose of this Tribunal's inquiries.

The Cheadle property was not registered in the name of Catclause Limited, that is in the Land Registry, but rather in the name of Mr. Vaughan and his wife as Trustees. And Mr. Vaughan testified on the last occasion that he attended in April of this year, that he took this step in the absence of instructions in order to protect the position of the bank on the one hand, and the other investors whom he

saw as Mr. Aidan Phelan or Mr. Lowry on the other.

The Tribunal has heard evidence from Mr. Lowry and from Mr. Aidan Phelan that following the completion of the purchase with the loan advanced by the bank to Catclause Limited, which had been arranged by Mr. Aidan Phelan and Mr. Tunney, that Mr. Lowry ceased to have any interest in the Cheadle property, and it was indicated to the Tribunal that thereafter it would be owned by Mr. Aidan Phelan.

Mr. Lowry, according to the evidence, nonetheless had a continuing obligation to assist in securing a sale of the property.

It will be recalled that the Cheadle transaction was brought to the attention of the Tribunal by Investec Bank following consultation with the Central Bank arising from statements made to the bank regarding Mr. Denis O'Brien's apparent involvement in the transaction, and that occurred in 2001.

Now, the material to which I referred at the outset was provided to the Tribunal under cover of a letter dated Friday, 19th June, 2009, from Messrs. Max Engel Solicitors to Mr. Vaughan, addressed to Mr. Brady. It was received yesterday at around ten to four. The material was sent by, purely by hard copy and not by fax. It contained the documents which I have described in very general terms already, and a statement of Mr. Vaughan's concerning the documents. It would appear that the documents were brought to the attention of Mr. Vaughan about a month ago as a

result of correspondence he received from Messrs. Oliver Roche & Co. Solicitors, solicitors for Mr. Kevin Phelan in the North of Ireland.

I don't propose to go into Mr. Roche's correspondence at this stage, but simply to refer to the documents as far as they appear to relate to the Mansfield and Cheadle and, as I said, peripherally the Doncaster transaction.

Now, they have been put into a separate file, Tribunal Book 81D. And the first document that I think relates to the transactions that I mentioned is contained at Tab 2.

I should correct something that I think I said a moment ago, just to be absolutely clear about it. As far as I am aware, this document is a document of which the Tribunal already had a copy, though it may be necessary to revise that view, but as far as my own memory is concerned, I think this is a document to which the Tribunal has already been provided with a copy. It's a letter to Mr. Lowry at Abbey Road, Thurles, on the 26th of March

"Dear Michael,

"Mansfield site.

"I am writing to confirm that completion of the purchase of this site took place today. Aidan has sent me the balance of the purchase moneys to enable the completion to take place.

"The purchase of the property and the 'Option Agreement' to enable you to acquire additional land is in your name, but is held by you subject to the agreement between yourself

and Aidan.

"I must advise Aidan in order to protect his interests that a Caution be placed on the Register to reflect the fact that you cannot deal with this property without his consent. Could you speak to him about that please.

"I enclose herewith a Completion Statement showing that I am holding the balance. I am aware that some of this money is required to renew the planning consent. I am holding the balance pending your instructions.

"I will now proceed to register the title."

CHAIRMAN: I think you are correct, Mr. Healy. I clearly recall this having come up at an earlier stage.

MR. HEALY: The next document is a signed copy of the Joint Venture Agreement, that's also at 81, 28.

Now, the next document is a letter from Mr. Vaughan to Mr. Kevin Phelan of the 12th November, 1999. It's by fax.

"Dear Kevin,

"Re site of St. Columba's United Reform Church, Cheadle.

"As you know, completion of this matter is scheduled for the 30th November, 1999.

"I am enclosing the transfer. Would you please arrange to have signed by you and Michael Lowry as Directors.

"I am also enclosing the Completion Statement which shows that there is £415,126.75p due on completion. Can you please arrange for this to be transferred to my bank account by Friday 26th November, 1999.

"My bank details are the Cooperative Bank plc, Christopher

Vaughan, Solicitor's Client Account" and the Client

Account is given and the sort code.

Then it says:-

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

Now, this document was not on the file of documents provided to the Tribunal when the Cheadle and Mansfield files were originally furnished. It is one of the letters referred to by Mr. Kevin Phelan's solicitors, Messrs.

Woodcock's, in their letter, I think, of the 21st March, 2002 of which, until evenly, as most people will be aware, the Tribunal has only had a partial copy

81(C)3 is where the partial copy is to be found, and I can make copies of the full copy available. That's the first page of the full copy. If we go to the fourth page of the full copy, push it up please so that the list of letters is visible.

the third letter is dated the 12th November, 1999, and appears to be a reference to the letter that I just read out a moment ago because, if you go on a few tabs to Tab 5.1,

MR. NATHAN: Sorry, before My Friend goes any further, can we get this absolutely straight. This letter that we are now looking at, number 4.1, appears in the supplemental bundle Tab 26. There isn't in fact internal pagination, but it's about halfway through, a bit more towards the end, but you will find that this selfsame letter is already in front of the Tribunal.

I am just wondering, sir, before we go any further, I appreciate Mr. Healy wants to go through the correspondence. As you are aware, sir, these documents have come to light in a way which my client has thought it proper required him to produce to the Tribunal, and so he has done. He has also provided the Tribunal, as you know, sir, with a supplemental statement, or a further statement, because some of these documents clearly do require some explanations, partly because they come from files which had been long ago discarded, for the reasons which my client has explained in his witness statement.

Now, it struck me that before Mr. Healy, as it were, starts to go through these documents, it might perhaps assist the Tribunal if my client is able to deliver to the Tribunal his further statement, whether it be in the written form which it is in this bundle which we are looking at or whether it is to be done orally by my client. But I am certainly anxious that he should be given the opportunity of giving that explanation, since these are documents which he is providing to the Tribunal. This is not something where he is trying to hide something from a tribunal. These are matters which he has properly brought to the Tribunal's attention but, nevertheless, they do call for certain explanations, as he feels.

CHAIRMAN: I appreciate that view, Mr. Nathan, and I think what Mr. Healy is seeking to do in the first instance, is to place in context with the Tribunal's existing inquiries

some of the documentation that has been forwarded, and I have no doubt that once that has been done relatively briefly, he will immediately proceed to go through the supplemental statement from your client.

MR. NATHAN: Very well. I am grateful. Thank you.

MR. HEALY: I think the letter I was referring to is contained at Tab 4.1, and I think I am right in saying that that letter was not provided to the Tribunal in any form. I am drawing your attention, sir, to the fact that the date on the letter corresponds with one of the dates on the letter of the 21st March, 2002, from Mr. Kevin Phelan's solicitors, Woodcock's, to Mr. Vaughan complaining of duplicate letters, and the letter to which it appears to relate, and which was provided to the Tribunal, is contained at Leaf 5.1, which is, again, addressed to Mr. Kevin Phelan, again sent to him by fax re it's regarding the site at St. Columba's Church, Cheadle. And it's more or less in content the same as the letter, as the version of the letter that I opened a moment ago, except that the third paragraph, or the second paragraph rather, has been changed. And in the version that was furnished to the Tribunal, what the letter says is: "I am enclosing the transfer. Would you please arrange to have signed." Whereas in the new document, which has now become available, what the letter says is: "I am enclosing the transfer which please arrange to have signed by you and Michael Lowry as Directors."

I want to refer to a document contained at Leaf 6.1. This is a letter of the 9th August, 2000, from Mr. Christopher Vaughan to Mr. Kevin Phelan.

It says:

"Dear Kevin.

"Re: Hilltop Farm, Chesterfield Road, Glapwell" that's the Mansfield transaction.

"I refer to our recent discussion as to this, and I confirm that this property was purchased on the 26th March, 1999, from B Jephson (Mansfield) Limited and is registered with title number DY315408, the total funds required to complete the purchase were $\frac{1}{2}$ 300,000.

"The registered proprietor is shown as Michael Anthony Lowry of Old Church Chambers, 23 Sandhill Road, St. James, Northampton, NN55LH. The property is not mortgaged to any third party and I am not aware of any charges or encumbrances over the property and in my opinion it is a good and marketable title.

"The property does have the benefit of an option to purchase the balance of the land owned by Mr. B. Jephson (Mansfield) Ltd., being title number DY200003.

"The completion monies for this property were sent to me by telegraphic transfer and there is no indication on my Client Account bank statement as to the source of those funds.

"Re: St. Columba's Church, Hansworth" that's the Cheadle property.

"This property was purchased in December 1999 for i£½445,000.

It is registered with title number GM759030. The registered proprietors are myself and another as Trustees for an unnamed beneficiary. The property has a good and marketable title.

"I hold the land certificate strictly to the order of GE Capital Woodchester Bank Limited of Dublin, as they provided i£½42,000 towards the purchase price of the property, and that is indicated on my Client Account bank statement. The deposit and other monies came from M.

"If you recall originally, Catclause Limited was a limited company set up for the acquisition of this property.

"Therefore, although the registered proprietors of the property are shown to be Trustees, if anyone ever managed to see a copy of the banking documentation, which I believe refers to Catclause, and then did a company search against Catclause, they would find out a link with M.

"It was on the advice of AP that Catclause Limited was abandoned and the property put into the names of Trustees for reasons of secrecy.

"You have had all the above information in my letters and faxes at the time of the events. Surely the overriding fact in relation to both of these property transactions, and the reasons for the long delay before completion days were fixed, was to enable the loans on both Mansfield and St. Columba's Church to be no more than short-term bridging loans, as purchasers had already been lined up before the

properties were acquired.

"I had certainly understood from my lengthy conversation with M, in a car journey on the way to Leicester, that no properties would be acquired unless purchasers had been found, so that the purchase monies were borrowed for a minimum period.

"No doubt you will let me have your further instructions as to purchasers as soon as possible.

"In particular, I need to have the details of the neighbour at St. Columba's Church for insurance purposes which is becoming urgent, if we do not wish the property to become uninsurable or for the insurance cover to be cancelled."

Now, that letter, just in case I didn't make that clear because of the confusion about the later letter, is one of which the Tribunal has never had any version good, bad or indifferent. And the same is true of the next document to which I now want to refer, which is contained at Leaf, or at Tab 6.2. It's a letter of the 18th August, 2000, from Christopher Vaughan, solicitor, to Kevin Phelan.

"Dear Kevin,

"As no doubt Michael will have reported to you we had a very positive and useful meeting yesterday lunchtime.

"Michael felt that he knew where both these properties were now going and a scheme has been devised to assist him financially and tax-wise as well."

Now, I think this will become clear in due course. That appears to be a reference to a meeting of the 17th August

in Dublin attended by Mr. Michael Lowry, Mr. Aidan Phelan, Ms. Helen Malone and Mr. Christopher Vaughan.

Then there is a sort of a heading: -

"Mansfield: Various documents have to be drawn up in respect of Mansfield, and I will deal with this on my return from holiday, but a sale of the site is needed as soon as possible.

"No figure was actually discussed, but I would imagine that to cover the outstanding loans and costs we are looking for a minimum of $\pounds 375,000$ sterling. No doubt you will proceed with this as quickly as possible.

"St. Columba's Church: Michael told us at the meeting that a firm offer had been received for $\pounds 1,100,000.00$ sterling for this property, subject to the obtaining of residential planning consent.

"Apparently the planning application is to be made in the next two or three weeks, which I suspect will be a formality. My experience of all planning matters nowadays is that because planning fees are so enormous, people simply do not submit applications until they have been more or less guaranteed by the planning officer that consent will be granted.

"The scheme will be that Michael will purchase this property from the Trustees about two months before completion of the sale to the developer" - I think the reference to the Trustees will become clear that it's a reference to Mr. Vaughan and his wife.

"So that contracts can be prepared both for the sale by the Trustees to Michael and by Michael to the developer. Can you please let me know the identity of the developer and, if possible, their solicitors so that I can write to them and ensure that there are no delays on the sale of this site.

"On the sale by the Trustees of that site their borrowing will have to be repaid and replaced by the loan that Michael is taking out on the site for a couple of months before completion to the developer. He told us that a loan had been agreed in principle through a company that he does business with in Manchester.

"In order for the Trustees to transfer the site to Michael, they will need to receive about $\frac{1}{2}$ 450,000 sterling plus the deposit originally paid of $\frac{1}{2}$ 44,500 from Michael.

"We are going to meet again to discuss both these sites almost certainly in the week commencing the 2nd October, 2000, by which time it is hoped that contracts will have been exchanged.

"Michael told me that he had absolutely no idea that he was meant to be reimbursing me the insurance premium on the St. Columba's site as apparently you had not told him about this. He is arranging to repay me separately, so there is no need for you to both about that" - I suppose that should be "worry" about that issue any longer.

"However, what is vitally urgent and what you have still not come back to me about is the identity of the people who

are inspecting the property on a weekly basis. I explained at the meeting that the property insurance on this site was dependent upon a number of conditions, one of which was that someone had to visit the property at least once every seven days. I cannot stress the importance of this as, of course, it exposes me personally if there should be a claim on the insurance of the property.

"I looked forward to hearing from you as soon as possible."

The next document is at Leaf 6.3, and, again, this is a document which has never been provided to the Tribunal in any form. It's a letter to Mr. Aidan Phelan from Mr. Christopher Vaughan dated the 19th September, 2000. It seems to be sent by fax only.

"Dear Aidan,

"Kevin spoke to me on Monday 18th September and told me that you had had a meeting over various issues at the weekend.

"I enclose a copy of the letter I have today sent to him with regard to St. Columba's Church and the Mansfield sites.

"DRFC:

"Kevin said that this had been discussed and did not enlarge further.

"No doubt you will let me know if you wish me to do anything.

"Yours sincerely

C J Vaughan."

Then there is manuscript at the bottom left-hand side:

"Meeting 16th September 2000

KP/AP/ML 12.30."

Now, that apparently is not in the handwriting of

Mr. Christopher Vaughan and a question of whose handwriting

it is has to be pursued in due course.

The next document, again related to the same exchanges, is

another letter from Mr. Vaughan to Kevin Phelan, and

apparently sent by fax only, of the 19th September, 2000.

"Dear Kevin" again that letter that was never provided

to the Tribunal and of which it has no version in any form.

"Dear Kevin,

"St. Columba's Church, 377 Wilmslow Road, Cheadle and

Mansfield.

"You indicated to me on the telephone on Monday 18th

September that a purchaser had been found for both sites

for 1.3 million pounds.

"You did not tell me who the purchaser was, but said that I

would be hearing from other solicitors 'who would want the

title deeds.'

"As I explained to you, I cannot hand over the title deeds

in respect of both properties without the consent of ML.

"With regard to the St. Columba's Church, I am on

undertaking to the bank and obviously cannot release the

deeds without being released from that undertaking, which

will only be done by an undertaking from solicitors which

would satisfy the bank and release me, or by me paying the

outstanding debts to the bank in full.

"Perhaps you could let me have full instructions when they are available.

"I am sending a copy of this letter to Aidan Phelan.

"Yours sincerely

Christopher Vaughan."

The next document, of which again the Tribunal has not been provided to date with a copy, is contained at Leaf 6.5.

And it's a letter from third party solicitors, Goldsmith William Solicitors of 42/44 Stanley Street, Liverpool, to Mr. Vaughan of the 21st September, 2000.

"Dear Sirs,

"Re: Purchase of two land parcels from M Lowry.

"We act for Berwood Park Associates. We are instructed in connection with the purchase of the above properties from Michael Lowry for whom we understand that you act.

"We shall be grateful if you would send us a draft contract as quickly as possible.

"To enable the matter to proceed speedily, we understand that you will be releasing the title deeds to us upon receipt of this letter. We undertake to hold those deeds to your order pending completion of these matters.

"We look forward to hearing from you. Any correspondence prior to exchange is expressly subject to formal contract.

"Yours faithfully."

I don't know what the two phone numbers at the bottom are about.

The next document, of which again the Tribunal has not been to date provided with a copy, is contained at Leaf 6.6.

And it's a reply from Mr. Vaughan dated the 4th October, 2000, to Messrs. Goldsmith Williams in Liverpool. It seems to be a reply either by fax or it's actually a DX.

"Dear Sirs,

"Re: Sale of two parcels of land by Mr. Lowry to Berwood Park Associates.

"Thank you for your letter of 21st September, 2000. I confirm that I act on behalf of Mr. Lowry in respect of this transaction.

"I enclose herewith Land Registry office copy entries relating to

"1. The site at Mansfield, and I also enclose office copies of the entries relating to the adjoining property over which Mr. Lowry has an option and a copy of the option agreement dated 26th March, 1999, and

2. St. Columba's, 377 Wilmslow Road, Cheadle.

"The total consideration for this whole transaction is for your clients to pay my client the sum of $\pounds 1,360,000$ sterling (one million three hundred and sixty thousand pounds) without any specific apportionment of the purchase price between the two properties. (However see below).

"In addition, your clients are to make a contribution to my costs to be agreed, and to be paid on completion together with the completion monies to me.

"For various financial reasons the sale price of the site

at Mansfield in the contract is to be £300,000 (three hundred thousand pounds) and the sale price of the site at St. Columba's is to be £1,060,000 sterling (one million and sixty thousand pounds.)

"You will see from the office copy entries of St. Columba's that currently that property is vested in the names of Trustees, who are in the process of transferring the property into the name of Michael Lowry.

"Following Mr. Lowry's acquisition of the St. Columba's property, your clients will complete the purchase of it from him at the agreed purchase price of £1,060,000 (one million and sixty thousand pounds). My instructions are that it will be necessary for two separate contracts in respect of each of the properties to be prepared rather than one contract in respect of both the properties.

"I would be obliged if you could let me have details of your clients' full name(s) and address(es) for inclusion in the contracts.

"Perhaps you could please confirm to me that this complies with your understanding of the transaction. If so, I will let you have the two draft contracts."

The next document I want to refer to is at Tab 7, and it brings us into 2001. It's, again, a letter of which the Tribunal has no knowledge until last evening.

It's from Mr. Vaughan to Mr. Kevin Phelan. It's addressed to him, but it also has a fax number.

"Dear Kevin,

"St. Columba's Church site.

"I received a report from Chestertons, whom I instructed at the request of ML to appraise this site.

"They have had detailed discussions with the local Planning Authority and it is quite clear to them that because the site is in an area designated as 'green belt' by Stockport Borough Council, no development can take place on the site other than

"1. The refurbishment and possible slight enlargement of the house and

"2. The conversion of the existing church buildings to apartments, possibly two/three.

"Under the present planning policies no other development would be permitted on the site.

"Chesterton inform me that the planning authorities have received a number of inquiries as to this site, and this information has been given to all those inquiring, which presumably is the reason why no one wants to buy the site for development purposes.

"It seems to me, therefore, that ML is going to struggle to make any sort of profit on this site or, indeed, even get his money back.

"I had clearly understood that John Eastham of EBL had done a detailed site survey of this property which would have highlighted the planning problems. If those problems had been known then I am sure that the property would not have been purchased.

"This poses the question as to whether John Eastham had been negligent in carrying out his investigations. If this is the case, then there may well be claim against him for loss of profits because of the failure as to being able to develop the site.

"I also note from the accounts that have been sent to me by Messrs. Peter Harrison, architects, that they also did work on this site to the value of £1,374.80. That work appeared to be done in December 1999, which was before the property was purchased. Had they been negligent as well?

"Perhaps you could let me have your thoughts on this.

"I note from the photographs that I have been sent from Chesterton appraisal of the Mansfield site that the Gameplan telephone number is shown as 01604230702. This is a discontinued telephone line and therefore if anybody did want to make contact with Gameplan they would fail, as there is no way of contacting them.

"Do you think you ought to put up a new board with a proper telephone number on it?

"Christopher Vaughan"

Now, the other documents on this in this book relate mainly to a dispute, as I mentioned earlier, between Mr. Vaughan and Mr. Kevin Phelan concerning the nature of their relationship. And I don't propose to go into them.

The first letter gives a flavour of what the dispute is about, in that it's a letter from Mr. Vaughan to Messrs. Haynes Watts Solicitors dated 3rd March, 1999. And

Mr. Phelan has underlined what I presume to be the part of the letter to which he wishes to draw attention as part of his dispute with Mr. Vaughan. "I understand that my client, Mr. Kevin Phelan, has spoken to you on the telephone." And it's in that vein that the other letters have been included in this correspondence.

MR. NATHAN: Whilst one is reading matters into the transcript, then he might perhaps just look at the heading itself.

CHAIRMAN: Certainly.

MR. NATHAN: "Re Stainsfort Sports Limited," a company involving an arrangement with my client, Westferry Limited. And then two lines later he says: "I understand that my client." As I said, in his further statement my client gives an explanation about that. It's important to realise that he says "my client" with two different names.

CHAIRMAN: Yes.

MR. HEALY: Now, Mr. Vaughan has provided the Tribunal with a statement concerning these matters. In the ordinary way, I would allude to the main thrust of what a witness is going to say in an Opening Statement, but because Mr. Vaughan is in the witness-box and would, in any case, be referring to his statement in a matter of minutes, there seems to be little point in my opening it, and I think what I'll merely say at this stage is that, what the Tribunal received yesterday was a document which the Tribunal was informed was Mr. Vaughan's statement subject to

clarification of a few dates.

I have now been provided with a signed statement, dated the 23rd June, 2009, which I gather to be a corrected version of what was provided to the Tribunal yesterday. If there are any major divergences, no doubt we can deal with them.

But what I would suggest, sir, is that in a moment I will ask Mr. Vaughan if, assuming that again it's his preference to read out his own statement, he would read it out.

Obviously what the Tribunal will wish to inquire into is how these documents, or why these documents have only so belatedly been brought to its attention, and whether there is any connection between the belated bringing of these documents to the attention of the Tribunal and the fact that they appear to suggest, as I said, a quite emphatic involvement on the part of Mr. Michael Lowry with these two transactions, Mansfield and Cheadle, at a time when, according to the evidence, he had no such emphatic connection with them.

CHRISTOPHER VAUGHAN, PREVIOUSLY SWORN, WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

Q. So, Mr. Vaughan, I think you'd prefer to read out your statement yourself, would you?

A. I think it would be helpful, Mr. Healy, because it does give an overview of these particular documents, and no doubt you will want to look at them in further detail later on, but I think it would be helpful if I just read through what is, in fact, a relatively short statement.

CHAIRMAN: Certainly.

MR. HEALY: You may proceed, yes.

MR. NATHAN: Before Mr. Vaughan starts to do that, can I just emphasise two things: One, Mr. Healy said in his opening was that it was a month since these documents were provided to my client. In fact it's not a month, it's three weeks. I am afraid, if there has been delay, I no doubt am partly responsible for it because I have actually been travelling abroad for sometime and only came back in the middle of last week to be able to have a conference with Mr. Vaughan about these documents so they could be produced to the Tribunal.

So if there is delay, I am afraid I must partly take responsibility.

sir, as you will appreciate, it was obviously important that my client should discuss these matters with his counsel and solicitor before anything should be produced to the Tribunal. It's an obvious matter that one necessarily needs to seek advice, because, sir, as you will appreciate in the other documents to which Mr. Healy has not referred, there is some slightly odd behaviour going on, to say the least. It was on the part of Mr. Kevin Phelan in the early part of the correspondence, because one can see what he has been trying to do. I don't want to start going into it because he apparently takes great offence at people saying nasty things about him.

CHAIRMAN: Yes, I think there was some correspondence

between Mr. Needham and Mr. Brady inquiring as to what documents the Tribunal might have from Mr. Kevin Phelan over those couple of weeks.

MR. NATHAN: Yes, one has been trying to find out because Mr. Kevin Phelan seems to operate on the basis of saying he is sending things but then actually doesn't do what he claims to be doing. One can see an example in the documentation which we have now newly provided where he claims to have sent a fax to Mr. Vaughan, but Mr. Vaughan has never received the fax. So there is something very odd going on within the house of Mr. Kevin Phelan, let me just rest there at this point.

Sir, therefore, I mean my client has been anxious to provide the Tribunal with material which is obviously relevant for it to have. And as you know, in his statement, he does give an explanation as to the reasons why these documents were not contained, first of all, in the original purchase file provided to the Tribunal, and then thereafter much more recently, in the sale files which he has also provided to the Tribunal insofar as he still had them.

CHAIRMAN: Yes, very good. Well, would you like to proceed then Mr. Vaughan with your further statement? Thank you.

A. Thank you Mr. Chairman.

"I, Christopher James Vaughan, a consultant solicitor to Scott Fowler Solicitors of Old Church Chambers, 23 Sandhill Road, St. James, Northampton, NN55LH, will say as follows:

"1. On Tuesday 21st April, 2009, Day 355 of the public hearings of this Tribunal of Inquiry, I appeared as a witness and read a statement setting out my involvement in various matters that the Tribunal was looking into.

"2. On Friday the 24th April, 1999, Day 358 of the public hearings, the Tribunal adjourned with my cross-examination still in progress. Since 24th April, 1999, my solicitor, Duncan Needham of Max Engel, has received correspondence from Oliver Roche and Co. Solicitors of Strabane acting on behalf of Kevin Phelan.

"3. Attached to this statement are the following letters/documents.

"(A) Letter from Oliver Roche and Co. to Max Engel - 1st May 2009.

(B) Letter from Max Engel to Oliver Roche and Co. - 11th May 2009.

(C) Letter from Oliver Roche and Co. to Max Engel - 26th May 2009.

"4. The letter from Oliver Roche and Co. dated 1st May is self-explanatory. Max Engel replied on my behalf saying they are not prepared to enter into discussion over this matter as I was in the middle of giving evidence. Included with the letter of the 1st May, 2009, from Oliver Roche and Co. is a copy fax dated 27th April, 2009, addressed to me. I did not receive that fax.

"5. The letter of the 26th May, 2009, with its various enclosures raises issues that I ought to address in this

supplemental statement as some of the enclosures to that letter appear to be at variance with my statement given to the Tribunal on the 21st April, 2009.

"I have paginated separately the letters and documents enclosed with the letter of the 26th May. I comment upon them using the following abbreviations: -

"CV Christopher Vaughan

ML Michael Lowry

KP Kevin Phelan

AP Aidan Phelan

"In addition, I have endeavoured to cross-reference documents sent by Oliver Roche and Co. with any numbering and reference already attributed to them by the Tribunal, to which I have referred to as the Tribunal reference 'TR'.

The enclosures with the letter of the 26th May, 2009, from Oliver Roche and Co. appear to fall into two parts, namely:

"(I) Those that are relevant to my appearance before this Tribunal and

(II) The question as to whether or not Kevin Phelan was ever a client of mine.

"The numbers below refer to the document number that I have given to the attachments to the letter of the 26th May, 2009.

"1. Letter dated 26th May, 2009, Oliver Roche and Co. to Max Engel.

"2. Letter dated 26th March, 1999, from CV to ML TR
Tab 27 book 81.

"3. Joint Venture Agreement between AP and ML dated 30th April, 1999, TR Tab 28, Book 81. I comment that I had not previously seen a completed copy of this document.

"4.1. Letter CV to KP dated 12th November, 1999 TR Tab 26 supplemental book

"4.2. Undated transfer form TR1 United Reform Church (1) Catclause (2).

"4.3. Undated Completion Statement.

"5.1. A second copy of the letter CV to KP dated 12th, November, 1999. This is the same document as 4.1.

"5.2. This is a handwritten version of the Completion Statement at number 4.3.

"Documents numbers 6.1 to 6.6: As far as I am aware these letters have not previously been produced to the Tribunal.

They all relate to the proposed sale of Cheadle and Mansfield. I do not have any of the documents numbers 6.1 to 6.6 in my possession and until produced by Oliver Roche and Co. to me, I had forgotten about one particular abortive sale.

"In my letter to the Tribunal of the 25th April, 2001, Tab 1, Book 81, I explain that the file delivered to the Tribunal related to the purchase of Cheadle and not the sale because that was a working file. It was only in February 2009 in preparation for my first appearance before the Tribunal did the 'working file' which related to the post-completion work in respect of Cheadle and Mansfield get produced to the Tribunal; and then only such parts as

were still in my possession, since the majority of the papers relating to both of these transactions had been sent to DLA Solicitors acting for AP.

"I refer to my first statement (page 28, Day 355). In my first statement I went into detail about the background and reasoning behind the meeting at Jurys Hotel on the 17th August, 2000, which was attended by ML, CV, AP and Helen Malone. AP was concerned at the lack of progress on the sale of Cheadle and Mansfield and the Jurys Hotel meeting was called to consider how these properties could be moved forward, since neither of them had been sold by then. KP, much to his annoyance, was not invited to attend.

"The proposed sale to Thistlewood was dealt with in my first statement and also in evidence given to the Tribunal.

"The letters now produced by Oliver Roche and Co., numbers 6.1 to 6.6, show that there was another proposed sale to Berwood Park Associates about which I had completely forgotten. I do not have that file. I expect it was discarded by me sometime in the last nine years, almost certainly when I joined Scott Fowler, at which point a large number of redundant files were disposed of. I had no reason to keep it. It was yet another abortive sale transaction produced by KP.

"Letter Number 6.1: This letter CV to KP dated 9th August, 2000, gives KP information that he asked me to provide to him. In paragraph 2 ML's address is care of my office, because at that time HM Land Registry in England would not

accept foreign addresses for any owner of a registered property (this is now changed).

"The first paragraph at page 2 of this letter needs a little explanation. By this date I was aware that ML and AP were concerned about the conduct of KP, and in that regard there was to be the meeting a few days later at Jurys Hotel, Dublin. I did not wish to disclose much information to KP in response to his inquiries to me about the role of Catclause. I therefore 'fudged' the circumstances in which my wife and I came to be holding the title of St. Columba's Church to stop him making further inquiries and I spoke mysteriously of 'reasons of secrecy' to try to put an end to this inquiry which was inappropriate. The rest of the letter dealt with:

(a) the problem with his failure to find a purchaser for the properties following their acquisition some months earlier and

(b) an insurance problem.

"Letter Number 6.2: I produced this letter on the day after the Jurys Hotel meeting of 17th August, 2000. When it was announced to the meeting that a potential purchaser had been found, the meeting turned into a far more relaxed discussion than I had anticipated. In my first statement and in my evidence to the Tribunal I had assumed that the proposed purchaser was Thistlewood but, having read the anticipated sale figure and other letters within this section, I should probably have referred to the Berwood

sale.

"This letter also touches on ML's tax position, since it was important to alert KP that, in his negotiations, he needed to allow enough time for the previous day's suggestion at the meeting to transfer the property to ML before completion took place as a possible tax-saving device of some kind. I was informing KP of no more than the current thinking at that meeting as to how the sale of the properties might be handled. In the event nothing at all happened; there was no sale at that time and there was no such transfer to ML, and as I stated in paragraph 45.7 of my first statement, Cheadle was owned by AP at that time in any event.

"It proved to be yet another occasion when KP produced a paper purchaser who never took the matter beyond an opening round of correspondence.

"In my first statement I pointed out an error in my letter of the 5th September, 2000, where I had in the long form letter referred to ML's tax position. However, the letter of the 18th August, 2000, also mentions ML's tax position. I think my first statement and the evidence to the Tribunal may have been wrong and the letter of the 5th September should indeed have referred to ML's tax position and not Aidan Phelan's, since no one had told me by that date of a change from the proposal as it had been at the date of the Jurys Hotel meeting.

"Letter 6.3: The letter dated 19th September, 2000, from

CV to AP kept him informed as to what was happening. The handwritten note at the foot of the page was not written by me. As at the 18th September, 2000, KP was engaged (according to him) in finding a purchaser for both Cheadle and Mansfield properties for a price of $\frac{1}{2}$ 1.3 million sterling; see my letter dated 19th September to KP, Document Number 6.4. Two days later, on the 21st September, 2000, solicitors acting for Berwood Park Associates wrote to me with their first and only letter in which they identified the proposed vendor as ML (presumably because that is what KP had told them).

"6.4: Letter CV to KP of 19th September, 2000: The purchaser was Berwood but, again, KP fails to understand my position as solicitor and my responsibility to the bank as mortgagee. Also, as the property was registered at the Land Registry, there were no title deeds.

"Letter 6.5: Letter Goldsmith Williams to CV dated 21st September, 2000, regarding Berwood. See my comment under letter 6.3 above.

"Letter 6.6: Letter CV to Goldsmith Williams dated 4th October, 2000, regarding Berwood. This must have been written after KP provided me with the information contained in this letter. It was he who instructed me that I was to act on this occasion for ML, not ML himself (with whom I had no contact at that time). This sale transaction, however, progressed no further and I had no reason to contact ML or KP further about it.

"7: Letter CV to KP dated 18th January, 2001: By this date no sales to Thistlewood and/or Berwood had materialised and Chestertons, an independent property consultants, were appointed to advise on the properties. The reference to ML in the penultimate paragraph is clearly wrong, as my wife and I had been holding Cheadle for AP since January 2000.

"Letters 8.1 to 8.8: These are various letters produced by KP to suggest that he had been a client of mine. KP, however, acted as an agent for various parties, not as principal. (He has never paid a bill to my firm).

Strictly speaking and looking back in the light of his assertions now, I should have made it clear, but he was the individual who was particularly active in acting for some parties who were clients of mine.

"None of these letters are currently held in my files. As with others, letters 8.1 to 8.3, have been discarded as they related to an abortive transaction and there was no reason for me to keep them. Letters 8.4 to 8.7 were in the files that I handed to Messrs. Waltons of Luton as they relate to Vineacre.

"8.9: This is an invoice from CV to KP regarding Hull City Football Club. KP refused to pay the bill because he said he was not the client. Eventually the bill was paid by the purchaser of Hull City Football Club. That person has no connection with this inquiry. I no longer hold a copy of this document with my records.

"Number 9: A letter CV to Bill Houle of Phoenix Beard dated 7th December, 1999, TR tab it's a Tribunal letter, but I haven't got the reference. This letter has already been produced to the Tribunal.

"There is one further matter to be mentioned, and that is during the course of my evidence in April 2009, the Chairman, Mr. Justice Moriarty, made an observation about the two versions of the letter of the 12th July, 2000, where the same typing mistake appears relating to the capital letter 'I' in the phrase 'I my name....'. My office uses Word for its computers. If the letter 'i' is typed followed by touching the space bar (instead of the letter 'n' as with the word 'in'), then the letter 'i' automatically changes to a capital 'I.' The letter "n" on the QWERTY keyboard is on the bottom row of letters. This is a common feature of the Word system which my office has used for many years.

"I understand that it is a commonly repeated mistake made by professional typists as well as others who are typing fast, to hit the space bar instead of a letter just above it.

"I believe the facts stated in this statement are true."

Signed by me, 23rd June, 2009.

CHAIRMAN: And you would adopt that as your Statement of Evidence?

A. Yes, Mr. Chairman. There is a signed version which is handed in to your clerk.

Q. MR. HEALY: Mr. Vaughan, just to deal with one matter concerning the timeline, or the chronology relating to the provision of these documents to the Tribunal. I think you say that, or Mr. Nathan said on your behalf that they were obtained by you some time ago, he says three weeks, I think in fact it may be four weeks, but we can clarify that, and that the delay in providing them to the Tribunal is because you had to get advice. I take it that's your explanation?

A. Yes, I needed to refer them to Stephen Nathan, who has been advising me, and it wasn't possible for all three of us to meet until, in fact, last Thursday, Thursday morning, Thursday afternoon in fact it was, was the first occasion all three of us were available to actually discuss them.

Q. You are aware that your solicitor was in contact with the Tribunal's solicitor on a number of occasions, both by telephone and in correspondence, inquiring whether the Tribunal had obtained copies of any letters received from Oliver Roche, you are aware of that?

A. I am aware that some sort of communication went on, because we were obviously concerned about the first the letters that we haven't actually read out, the first letter. I think we were concerned that I am in the middle of giving evidence and there may be some sort of hint that somebody was trying to talk to a witness whilst they were giving evidence. I think that was Duncan Needham's concern about it.

Q. Yes, but in asking and inquiring of the Tribunal solicitor

whether Mr. Phelan, Kevin Phelan had sent any documents to the Tribunal, he didn't send on the documents he had received Mr. Phelan, isn't that right?

A. No, he didn't, no. Do you want me to well, I can tell you exactly why; because I was told about these documents the day or day after they were received, and my immediate instructions to Duncan Needham were to send them to the Tribunal. We then said well we ought to just find out what Stephen Nathan's view is, do we just send them cold? Do we send a supplemental statement with it? And because we are all busy people, last Thursday was the first time we could actually discuss the matter in detail. My instant reaction, I stress again, was as soon as these letters hit Duncan Needham's office, was send them straightaway.

Q. Yes, I can understand that, but what the Tribunal received from Mr. Needham, I can go through the letters if you like, but what he wanted to know was had the Tribunal received any letters or any enclosures from Oliver Roche, he didn't specify what documents he was inquiring about; he just wanted to know had the Tribunal got anything from Mr. Roche, and he repeated that. His last written repetition was on the 16th June, 2009: "Can you please respond to my request regarding information on Kevin Phelan and correspondence you have received from his solicitors, Oliver Roche. Have you received anything from Oliver Roche? And if so, can you please provide copies by return?"

A. Yes, I mean

Q. It looks like Mr. Needham was endeavouring to ascertain whether, on your instructions it looks as if he was endeavouring to ascertain whether the Tribunal had got the documents which you had got?

A. It seems a perfectly genuine inquiry to see, you know, if the Tribunal received anything as well.

Q. Anything what though? You didn't say, "Here is the documents I have received from Mr. Phelan." You could have said what you liked about him in the letter. You could have said any of the things that Mr. Nathan said. "Here are the documents I have received from him. Have you received any documents like this?"

A. I think it was just the way that it was dealt with. I see nothing untoward about the way that Duncan Needham approached the issue.

Q. You see, I wonder if the Tribunal solicitor had written back and said the Tribunal has received nothing from Oliver Roche, nothing whatsoever, nor any documents from Kevin Phelan, what impact would that have had on you?

A. None whatsoever.

Q. Well then why ask the question?

A. Because if other documents had been received by the Tribunal that had not been sent to us, then we would want to know what they were, because they may have fitted in to the documents that we had received.

Q. But why

A. You know, I think we needed a total picture to be able to deal with it.

Q. I quite understand that. But why not send the Tribunal what you had received to enable your precise purpose to be clear?

A. Well, I think it needed, as I said a few minutes ago, the method of delivery of the documents. Did they need to be sent? Here is the letter from Oliver Roche with the attachments, or would it be more helpful: Here is the letter from Oliver Roche together with a supplemental statement to explain the background to these documents. I mean, if I can go to the documents in section 6, I had totally and completely forgotten about this transaction. If I had been asked it last time, do you remember Berwood Avenue? Do you remember these people trying to buy it? I would have almost certainly said no, because I had forgotten about the whole thing. It was only when my memory was jogged looking at these documents did I remember it.

Q. We can return to it later because I may want to ask you some questions about it later on.

In any case, what you said, and I think this has been said by your counsel on your behalf as well, is that when you furnished the Tribunal with documentation to enable it to carry out its inquiries in 2001, you provided what you called the purchase file?

A. Correct.

Q. And do I take it that you are seeking to distinguish between the file or the documents that were generated or which you received in connection with the acquisition of those two properties, but not in connection with any ongoing disposal of them?

A. That's right, yes. I mean, I brought to this Tribunal downstairs with me the files that were current at that time, but then, as things progressed, other letters, other correspondence, other matters occurred, so what I haven't done is to copy in everything that happened to the Tribunal.

Q. And are you saying that that's your explanation for why what why these documents, which appear to relate, if you like, to the disposal side of the transaction were not brought to its attention, is that it?

A. Yes, I mean we are looking at this possible sale, or proposed sale to Berwood Avenue. A file existed with half a dozen letters in it, it was something that went nowhere. When I was here last time, we had a similar matter with Thistlewood; it's something that went nowhere.

Q. Can we just deal with the generic proposition for a moment.

I think what you are saying is that you gave the Tribunal what you believed the Tribunal was looking for, the purchase or the acquisition file, you didn't give it the active or disposal file. And do I understand you to be saying to the Tribunal that it's on that side of the file that any of this information that has now become available

would have been contained?

A. Well, this I mean, we are concentrating, aren't we, in the letters in section 6? This is sometime later on when this purchaser has been found by Kevin Phelan. Nobody told me that I should be copying in documents to the Tribunal relating to the property or the sale of the property at all. What I am going to say now, I am not in any way trying to be flippant, but since St. Columba's site, there was quite a large file there relating to people who had smashed the windows, people changing locks, security people coming to look after it relating to the insurance. It's just the way that the property was managed. So I haven't I was under no instruction that every time correspondence or an issue arose relating to Cheadle or Mansfield, to copy that into the Tribunal.

Q. Can I just remind you of a letter you wrote to Mr. John Davis, the Solicitor to the Tribunal, on the 26th April, 2001. I'll put it on the overhead projector now.

Now, this letter was sent by you following a telephone conversation with Mr. Davis, and I have a copy of the note of that telephone conversation, which I'll put on the overhead projector in a moment. But in your letter, you say:

"Dear Mr. Davis,

"Re: Michael Lowry, Aidan Phelan, Catclause Limited, St. Columba's Church site, Stockport.

"I refer to our telephone conversation of this afternoon,

and I am enclosing a full copy of the file relating to the acquisition of St. Columba's site, and a full copy of the present ongoing disposal file."

Do you see that?

A. I am looking at that.

Q. Wouldn't that seem to suggest that you believed in April 2001 that you were sending on both sides of the file?

A. Yes, I think the relevant words are "Ongoing disposal file." April 2001 is a long time after the sale to Berwood fizzled out.

Q. Leave Berwood out, it's just the ongoing disposal file.

The disposal file was going to involve Berwood or anybody else who was likely to be a potential candidate for the onward purchase of this site, isn't that right?

A. I am sorry, can you say that again please?

Q. The Berwood, the identification of the disposal file as the Berwood file I suggest to you is irrelevant, whether it's Berwood, whoever it is? The disposal file is the disposal file, whether the disposals or the purported disposals or the attempted disposals or the inchoate disposals go anywhere is beside the point, it's either the disposal file or not?

A. I repeat what I said a few moments ago, it's the ongoing

Q. I think you are trifling with the Tribunal?

A. I don't think I am trifling at all.

Q. I think you are.

A. As I have said earlier on, there is obviously this very

small file with a sale that never went anywhere. It certainly wasn't ongoing in April 2001. It had disappeared in October sorry, September/October 2000.

Q. I'll just put a copy of Mr. Davis's note on the overhead projector. It might remind you of the conversation you had with him.

"Spoke to Christopher Vaughan and told him we wanted both parts of his file.

He will send them out either this morning if he can or first thing in the morning by DHL."

Do you see that?

A. Mm-hmm.

Q. So obviously the question of both parts of the file was being discussed, not just the acquisition of the property?

A. But this was if we are talking about Berwood, it's a redundant sale, it never went...

Q. Were you talking about Berwood at the time?

A. Well, I probably wasn't. It probably had disappeared from my mind.

Q. You see, what you said in your statement that you read out a moment ago at, I think, page 3, your references to para 6.1 to 6.6, you said: "I had forgotten about one particular abortive sale. In my letter to the Tribunal of 25th April, 2001, Tab 1, Book 81, I explain that the file delivered to the Tribunal related to the purchase of Cheadle and not the sale because that was a working file." But you had in fact already agreed to send a working file,

isn't that right?

A. There seems to be a slight difference between what's in the 26th of April. But I'd stress the last line of it, it says: "The ongoing disposal file."

Q. Can we just look at some of these letters, and we'll begin with the document at and you'll have to bear with me, Mr. Vaughan, because I have marked up a different set to the set that we are now working on.

A. I have no documents here other than

Q. All right, I'll get you a book. This is Book 81D.

A. I have these documents.

Q. Well, I suppose it's preferable that

A. I will use your book.

Q. Yes. If you want to take time referring to your own copy in case that makes more sense to you, feel free to do so.

The first document I want to refer to is at Tab 4.1.

That's a letter, I think, of the 12th November, 1999. Do you see that?

A. I can, yes.

Q. There is another version which you say is the same, at Tab 5.1. But I think I have already drawn attention to the fact that there is indeed a difference between the two letters.

If you look at the first letter, the one at Tab 4.1, you will see that the second paragraph says: "I am enclosing the transfer which please arrange to have signed by you and Michael Lowry as Directors." Do you see that?

A. I do, yes.

Q. And on the other version contained at Tab 5.1, the letter simply says: "I am enclosing the transfer which please arrange to have signed." Do you see that?

A. I do, yes.

Q. And what's omitted is a reference to Michael Lowry, do you see that?

A. Well, I think it's more important that what is omitted is "arrange to have signed by you and Michael Lowry," because the first one, 4.1, and until you have just pointed this out to me, I hadn't noticed this difference myself, it's quite clear that the letter 4.1 is wrong, because Kevin Phelan was never a Director of Catclause.

Q. Correct.

A. So, I have obviously redone the letter and said "Please arrange to have it signed."

Q. I suppose you could have simply said "Signed by Michael Lowry and the other Director"?

A. I have just changed it because I have obviously faxed one letter through. I am just looking to see if there is any sort of time on it. I have obviously just faxed the letter through, realised I have made a mistake and then faxed it through again, because quite clearly Kevin Phelan was not an authorised signatory on behalf of Catclause, and that now ties in with the fragment letter. I hadn't, until you showed me that a little while ago, appreciated that's what the point was in Kevin Phelan's solicitor's comment about

different letters.

Q. I think I can see the point you're making, Mr. Vaughan, but if I ask you to look at the two letters again, you will see that it isn't a simple case of you telling your Secretary "I enclose the transfer, would you please arrange to have signed" full-stop and then delete the next few words, which is what one would have thought you would have done if your purpose was as simple as the one you have just described.

But in fact this letter, like some of the other long form/short form letters we have looked at is a complete reworking of its partner, if I can put it that way. I mean, I can quickly draw a few things to your attention.

If you look at, we'll call it the long form, the one that contained "Signed by you and Michael Lowry as Directors," you will see that the words on that, the word "fax" are all in capitals, whereas in the other one only the "F" is in capitals.

In the next one there is a comma after "November" in the long form, and there is no comma in the short form. Again, there is a comma after "Kevin" in the long form and none in the short form. There is, in the long form, is a "Re" before "site of St. Columba's Church United Reform Church, Cheadle," and in the short form there is no "Re" and the words "Site of St. Columba's United Reform Church, Cheadle," have been bolded.

There are a few other differences.

If you go to the third paragraph, "I am enclosing the

completion statement," in the long form there is a pence, a "P" for pence after the 75 in the figure and it's omitted in the short form.

If you go to the address of your bank, and the account number, in the long form it's capital A/small c, and the sort code is 08:90:73, whereas in the short form it's capital A/capital C for the account, and the sort code is 08/90-73. And finally

CHAIRMAN: Isn't it pretty self-evident, Mr. Vaughan, that it was retyped?

A. Yes, obviously it was.

Q. MR. HEALY: And again I'll just ask you: Why, again, did it have to be retyped?

A. I can't tell you. Perhaps it wasn't saved. I just don't know. But it's quite clear I can see the points you are making, but I just...

Q. But doesn't it seem to be an unfortunate feature of the three long form/short form letters that we have examined, that for the reasons that you have described, perhaps nonavailability of a typist, each one of them has had to be retyped?

A. I mean, it obviously has been retyped. But the first one, if we can say is 6.1, whether you call that the long form, it refers to Michael Lowry; the second one doesn't. But I'd see no problem with that because he is an officer of Catclause, so the transfer has to be signed, and the only people who can sign it are the officers of the vendor

company.

Q. I just can't understand why, if it was as simple an error as that, you wouldn't either have done what I suggested, or even just drawn a line through it. You see, what I don't understand is why did you have the whole thing retyped and presumably by a different secretary?

A. Well...

Q. We'll have to come back to that again.

I am going to pass on to a new letter now, sir.

CHAIRMAN: Well, it may be an appropriate time to rise until two. Thanks Mr. Vaughan.

THE TRIBUNAL ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MR. VAUGHAN BY MR. HEALY:

MR. NATHAN: Sir, before Mr. Healy resumes, I have made some inquiries of Mike Clarke, in view of the criticism that is being levelled at Mr. Vaughan. It's right, sir, that you should know what my own dates were so as to make it impossible for us to meet until the 17th June. If I can just give you, sir, so it goes onto the record, my own dates.

The letter arrived at the offices of my instructing solicitors, Max Engel, on the 28th May. On the following day I left for the Gulf on a Bar Council delegation, and after that I went straight on to an international law forum taking part in Qatar, leaving there on the 17th June and arriving back into Heathrow at 10.30 at night that evening.

On the following day I had free, except that I was preparing for a three-day hearing, 9th, 10th and 11th June in the Queen's Bench division. At the same time, Mr. Vaughan was unable to meet on the days 9th to the 12th June. On the 13th June, Saturday morning, I departed for India to see some clients in India and returned on the evening of the 16th June. In the meantime, because I had had to go to India in rather a hurry, a conference that had been arranged with Mr. Vaughan had to be cancelled and was rearranged for the day after I arrived back, which was the 17th June, that's last Thursday, at which point the witness statement was being prepared, and that, as you know, sir, was completed in a penultimate final form yesterday and overnight was, in fact, perfected so that the Tribunal had it this morning in its final form.

And that, I think, explains why there has been perhaps, if there is criticism for delay in providing the documents to the Tribunal. First of all, my client obviously took the view that he wanted to have advice in respect of his own position, and that it was impossible to provide to him until the 17th, that is to say last Thursday.

CHAIRMAN: Well, I'll note those matters, Mr. Nathan, and indeed, your very far-ranging remit.

MR. NATHAN: I am simply concerned that if there is criticism to be levelled at anybody, then perhaps it's me because I wasn't around to be able to provide that advice. But there it is.

CHAIRMAN: Right. Mr. Healy.

Q. MR. HEALY: Thank you, Mr. Vaughan.

A. Can I just inquire, have we finished with 4.1 and 5.1 yet?

Q. No, 4.1 and 5.1 possibly. If you just give me a chance, I have to refer to this book. Yes.

A. There is one point I don't think came out very clearly.

Q. Yes, okay.

A. So if I can just add that in?

Q. Please do. Letter 4.1 is the letter which includes the statement: "I am enclosing the transfer which please arrange to have signed by you and Michael Lowry as Directors." "You" being Kevin Phelan, it's directed to him.

And then 5.1 is the one that again the letter is to Kevin Phelan, it says: "I am enclosing the transfer which please arrange to have signed." Now, both those letters refer to two other documents, which are the Completion Statements and the document TR1. Now, both those documents quite clearly the Completion Statement is headed "Catclause Limited," but more importantly, the TR1, which is the document that I have asked Kevin Phelan to arrange to have executed, has to be executed by Catclause Limited, because they appear as the transferee in box 6 of the transfer.

So, both those documents refer to Catclause. The fact that one letter refers to "you and Michael Lowry," and the other refers to "have executed" have to be read in conjunction, I think, with the transfer, because it is quite clear that it

has to be executed by Catclause. Catclause, of course, is a company where Michael Lowry was one of the officers. So it hasn't confused anybody as to who had to execute the document, the letter quite clearly, as the Chairman pointed out, has been retyped, but the effect is identical.

Q. Do you know if that document, which you refer to, was ever executed?

A. No, because the document was redone so that the transferee were the Trustees: Myself and my wife, we had to redo that because Catclause then was not the purchaser or transferee. Christopher Vaughan, etc., were the transferees.

Q. Could I ask you then to go on to Tab 6.1, please. This is a letter of the 9th August, 2000?

A. Correct.

Q. Now, I read this in opening, but I think I am going to read it again, maybe we'll stop as we go along.

I'll read the first few paragraphs quickly.

"I refer to our recent discussion as to this and I confirm that this property was purchased by me on the 26th March, 1999, from B Jephson Mansfield Limited and is registered with title number DY315408. The total funds required to complete the purchase were $\frac{1}{2}$ 300,000.

"The registered proprietor is shown as Michael Anthony Lowry of Old Church Chambers, 23 Sandhill Road, St. James, Northampton, NN55LH.

"The property is not mortgaged to any third party and I am not aware of any charges or encumbrances over the property

and, in my opinion, it has a good and marketable title.

"The property does have the benefit of an option to purchase the balance of the land owned by B Jephson (Mansfield) being title number DY200003.

"The completion monies for this property were sent to me by telegraphic transfer and there is no indication on my Client Account statement as to the source of those funds."

Do you see that sentence, and indeed, the paragraph: "The completion monies for this property was sent to me by telegraphic transfer and there is no indication on my Client Account bank statement as to the source of those funds."?

What inquiry from Mr. Kevin Phelan prompted that response, can you recall?

A. He must have asked me or else I wouldn't have put the clause in. Looking at this letter for the first time, for obviously somewhat nine years or so I think, there is two phrases in it that attract my attention as a property lawyer, and that is it has the phrase in the third paragraph down, and also in the last paragraph, it has the phrase "It has a good and marketable title," and those are standard phrases for a solicitor to put into any report on title to a bank. You are giving your guarantee as a solicitor that this property has a good and marketable title. And I am pretty sure that this was a letter that Kevin Phelan wanted that he could show to a potential purchaser, probably Berwood, because as we discover a

little bit later on, Berwood wanted to buy the properties as a package. They also wanted the deeds, which obviously was a nonsense. But this was a letter from me to Kevin Phelan to establish that the two properties were registered, had good titles. He could have shown that letter quite easily to a potential purchaser. There is nothing sort of secret in it so far as a potential purchaser was concerned.

Q. Why would a potential purchaser be interested in knowing how the monies used for the property were described in your bank statement?

A. Well, I don't know. I mean, I assume that I answered the questions that Kevin Phelan asked, because it's a somewhat strange letter, in that it refers historically to the acquisition of both these properties, and all I can say is that he obviously asked a question and I answered it.

Q. Does it suggest to you that there was some concern that scrutiny of your bank account might disclose the source of the funds used to purchase the property?

A. I don't think so. I mean, the source of the funds has become known to the Tribunal. I think all I am recording is that my bank statement, for whatever reason, didn't say where they came from.

Q. You seem to be putting somebody's mind at rest, could I suggest, that there was no indication on your Client Account bank statement as to the source of the funds?

A. All I can say is I was asked a question and I answered it.

Why it was asked, I can't answer it.

Q. We'll go on.

Under the heading "Re: St. Columba's Church Hansworth" you

say: "This property was purchased in December 1999 for

£445,000. It is registered with title number GM759030.

The registered proprietors are myself and another as

Trustees for an unnamed beneficiary. The property has a

good and marketable title.

"I hold the land certificate strictly to the order of GE

Capital Woodchester Bank Limited of Dublin, as they

provided the £42,000 sterling towards the purchase price of

the property, and that is indicated on my Client Account

statement. The deposit and other monies came from M."

Now, who do you say "M" is?

A. Michael Lowry.

Q. Michael Lowry. "If you recall originally, Catclause

Limited was a limited company set up for the acquisition of

this property.

"Therefore, although the registered proprietors of the

property are shown to be Trustees, if anyone ever managed

to see a copy of the banking documentation, which I believe

refers to Catclause, and then did a company search against

Catclause, they would find out a link with M."

Now, again, could I suggest to you that in conveying that

information to Kevin Phelan, you were conveying information

to the effect that the registered ownership of the property

would not suggest that the owners are anyone other than

Trustees holding for an unnamed beneficiary, but that notwithstanding that, if somebody got access to a copy of the banking documentation, that that would disclose a link with Mr. Lowry?

A. Because the original banking document Catclause was to do with Michael Lowry, but of course that never happened.

Q. "It was on the advice of AP that Catclause Limited was abandoned and the property put into the names of Trustees for reasons of secrecy."

What was that advice about?

A. Well, as I said in my statement about this, Kevin Phelan would not have been privy to the difficulties that arose with the funds not flowing through for Catclause as was originally intended, and when I was here on the last occasion, we went through in some detail about the funds and Michael Tunney, etc., and looking at the bank file.

Kevin Phelan was the agent who was buying and selling. He wasn't involved with the other elements, I don't think. So I rather sort of fudged this over, I think, when I came to look at this letter again. I didn't want to go into the letter because I am pretty sure he wanted to show this to somebody else into other issues which weren't particularly relevant. Catclause was abandoned and the Trustees hold it, the property.

Q. Was this were these two paragraphs, or these three paragraphs beginning with "If you recall originally Catclause Limited" and ending with "put into the names of

Trustees for reasons of secrecy," could I suggest to you that what those three paragraphs mean is that originally it was intended or thought that this property would be taken in the name of Catclause, but that's not now being done.

And Aidan Phelan has advised that "We abandon Catclause, and for reasons of secrecy, we take the property in the name of Trustees, but there is still a worry that if anyone ever managed to see the banking documentation, they would find out a link with M;" that the purpose of putting the title into the name of Trustees was solely to avoid a link with M being disclosed?

A. I don't think so, because Catclause had been abandoned by this stage. So Michael Lowry, who was an officer of Catclause and was the proposed purchaser, by the time completion took place and the purchase monies handed over to the seller's solicitors, then it is the money from GE Woodchester Bank who provide the money, and then we know because of the telephone conversation I had with Mr. Tunney, that it's Aidan Phelan's property. So Aidan Phelan is the beneficial owner

Q. Why didn't you put it in Aidan Phelan's name then?

A. Well, we talked about this last time. It wasn't put in his name straightaway. I was waiting for the banking documents

Q. What you told me the last day, Mr. Vaughan, was that you and your wife decided independently, that you took the initiative yourself in the absence of instructions, to hold

it in your names. You did not tell me on the last occasion that it was on the advice of AP that Catclause was abandoned and the property put into the name of Trustees for secrecy reasons?

A. No, I mean I am not going to put that in a letter to Kevin Phelan.

Q. But you have just put it in a letter to Kevin Phelan?

A. Sorry, I am not going to put it, meaning what I said at the last hearing, that we had these concerns, as I explained at the last hearing, as to who actually was the beneficial owner, because we had, going back again to the last hearing, a twist of possible owners. My main, main concern, of course, is to protect the mortgage lender, and one of the reasons why the property wasn't put into the name of Aidan Phelan was that we didn't have the mortgage security documentation which would have to have been completed contemporaneously to register the charge. So it couldn't be done. There is no point in putting that to Kevin Phelan.

Q. You better start again, Mr. Vaughan, because you have confused me now.

A. Right.

Q. I think this letter is very clear. It's one of the clearest letters that we have seen in all this correspondence, and perhaps we'll just deal with this letter first.

Would you agree with me that Catclause was not the company

name in which the property was taken, because Mr. Aidan Phelan so advised, and you abandoned it, is that what this means?

A. The letter indicates that Catclause wasn't the purchaser of the property.

Q. The letter indicates that it was abandoned as the purchaser and the property put in the name of Trustees for reasons of secrecy. That's what it says?

A. That's absolutely what the letter says. But I am not

Q. We'll just stick with that first

A. I think you are stopping me halfway through.

Q. All right.

A. That is quite clearly what the letter says. But if I went into the true facts behind this and explained to Kevin Phelan the difficulties over the financing of it, it is irrelevant to him. It was just to tell him Catclause was abandoned, it's now in the name of Trustees. That's all the letter says.

Q. Why did you have to why would you have had to tell Kevin Phelan about the difficulties in financing? Didn't he know all about them?

A. Well, I don't know whether he did. That's why I haven't mentioned them.

Q. Had you not told him, had you not told Mr. Tunney, had you not told Mr. Aidan Phelan "Talk to Kevin and Michael about this if you want to get the details"?

A. That was certainly what was said to them in the early days

of the delayed completion.

Q. That was what was said to them in 1999?

A. I don't think Kevin Phelan was involved in the Michael Tunney advance from the bank.

Q. Well, let me just remind you we'll look at the documents. You wrote a letter to Mr. Aidan Phelan. You told him you said to him "I hadn't realised you were involved in this at all"?

A. Yeah.

Q. You brought him up to speed on the state of affairs and you said money was needed urgently?

A. Yeah.

Q. You then wrote to Mr. Tunney, and you said to Mr. Tunney that you assumed that he'd had access to your letter to Mr. Phelan. In the earlier letter to Mr. Phelan, you had informed Mr. Phelan that if he wanted to know anything about the transaction, he should talk to Michael or Kevin. So I suggest to you that to endeavour to indicate now that Mr. Phelan knew nothing about the details of this is absurd, he was fully in the loop?

A. I can't say that, but I don't think that he was.

Q. I'll just refer you to a letter at Tab 35 in book Tab 33 in Book 81; it's the letter I was referring to a moment ago. It's by fax to Aidan and Helen, AP Consulting, 14th, I'll get a copy put on the overhead projector.

"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 that Michael Lowry has given you the relevant figures, but I am in desperate need of the 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 14th September for completion on or before 30th November.

"A Completion Notice has been served which meant that if completion did not take place on 13th December the deposit paid would be forfeited. I have managed to persuade the seller's solicitors to extend completion for an extra day, but I do not think they will be very enthusiastic about extending it even further.

"My bank details are..." and so on.

"Michael and Kevin have all the Completion Statements, etc. but if you want any further information please telephone me."

Does that not seem to suggest that Kevin Phelan was fully in the loop as regards the state of this transaction at that point?

A. At that moment he was, yes, but things move on after that, don't they?

Q. Well, if we go to the next document in Leaf 34. This is a letter to Mr. Tunney. We have been through the letter

before so I'll just quickly go through it.

"Dear Mr. Tunney,

"I refer to our telephone conversation..."

You go on to say: "I confirm that I act on behalf of Catclause Limited who exchanged contracts to purchase this site which is registered with absolute title," and so on.

"Can you confirm to me that the bank who will be funding this purchase will 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."

This is a letter to Mr. Tunney in which you told him that you believed that he had a copy of your earlier letter to Aidan Phelan, and I suggest to you that at that stage your state of mind was that you were telling Mr. Tunney how much money you would be getting from him as per your telephone conversation with him. You were referring to your letter of the 14th, which seems to suggest that you were happy that he would have had all that information. And I suggest to you that Michael and Kevin referred to in your letter of the 14th December, 1999, knew precisely what was happening, that the money was being provided by Aidan Phelan through Mr. Tunney in Woodchester, and that anyone reading these documents could not but conclude that Kevin Phelan was completely up to speed with the transaction?

A. I obviously can't speak for Kevin Phelan, but I cannot see

how you can link those three letters, merely because they happen to form a remote chain. I mean, I don't see that at all. This is a letter to Michael Tunney, and interestingly enough of course, it has in the last paragraph on the screen, the phrase that I mentioned a minute ago "A good and marketable title." This is what lenders want to know from a solicitor.

Q. What do lenders want to know about reasons of secrecy or Trustees?

A. I didn't say that lenders did.

Q. You told me a moment ago that you'd have been happy for Kevin Phelan to show that document to anyone, the document we are just reading from?

A. Yes, but you said about lenders.

Q. To show it to anyone; you'd have been happy for him to show that document to anyone, the document we are just reading now?

A. That's what it was designed for, yes.

Q. Pardon?

A. I am not quite sure where this question is going to.

Q. I understood you to say to me a few minutes ago when we were looking at part in fact the first page of this document of the 9th August, 2000, that you'd have been happy for Aidan Phelan to show this document to anybody interested in purchasing this property?

A. Yeah, I think the letter is addressed to Kevin Phelan, but yes.

Q. Kevin Phelan, sorry, I beg your pardon.

A. Yes, I'd have been quite happy for him to show it. It's got basic core information about it's got title numbers, it is there with a lot of facts in it.

Q. It's a lot of background information?

A. Yeah.

Q. And I suggest to you that the background information with a view to alerting Kevin Phelan to what somebody else could find out about this transaction if they probed deeply enough?

A. Yes, I mean Catclause is a company that's in the public domain.

Q. And that's why you were advised, was it not, that it should be abandoned?

A. No, I think we talked about this before, and I think I'd have to look at the answers I gave previously because we went into this in great detail.

Q. We did, Mr. Vaughan, but I didn't have this letter in front of me at the time.

A. This is a different letter. This is to Kevin Phelan. This isn't a letter to explain the background of the lending, it is a letter for him to give him the basic core information to produce to a potential purchaser.

Q. Are you suggesting to me that a potential purchaser would be interested in knowing that if anyone ever managed to see the banking documentation which you believed referred to Catclause, and then did a company search, they would find

out a link with M, whoever M might be in their minds?

A. Well, I don't think there is any streak to it, because 'M' appears in full on page 1 - Michael Anthony Lowry.

Q. Why would a purchaser be interested in that information?

A. I think if I was a purchaser, I'd want to know who the owner was.

Q. The owners were, according to you, Trustees?

A. That's right.

Q. What does that have to do with it? You are purchasing from Trustees?

A. I think if you were a purchaser, you would want to make every inquiry possible as to the property you were buying.

Q. Why would you want to bother somebody who was the registered owner and had a proper, I don't know what you call it in England, in Ireland it's called a land certificate? Why would you want to go behind what was contained on a land certificate?

A. I am sure there is a huge number of reasons why you'd want to know who was behind a particular transaction.

Q. Is it the case in England, as it is in Ireland, that the person on the face of the land certificate is the person with whom the purchaser deals and doesn't want to be burdened with any knowledge about anyone behind him?

A. Well, on the face of it, you are going to be dealing with the registered proprietor, which is the phrase used in England, to show who the Land Registry regard as the owners of the property.

Q. And isn't the purpose of registration of title to clear all trusts and anything like that off the title so the purchaser doesn't have to worry about them?

A. Well, in a certain way, but I think if we go back to the previous page, it says here "As Trustees for an unnamed beneficiary." I think quite frequently, and in fact the example is here I think, if we look at the transfer of TR1, does it not say as "Trustees for the United Reform Church" or something? So you have a named beneficiary.

Q. But why does a purchaser need to burden himself with that information?

A. I think this is information that I was giving to Kevin Phelan to explain a situation to him.

Q. You suggested in your statement that the purpose of referring to these matters was to fudge the facts?

A. I put that in because I didn't think that I didn't want to go into all the Michael Tunney loan, what was going to happen, then

Q. What was going to happen?

A. Well, that wasn't anything to do with Kevin Phelan, was it? He was selling the property, he wasn't involved in the finance.

Q. Very good. But you didn't tell Mr. Phelan all about that. But why did you tell him what you have put in these three paragraphs? What were you fudging by telling him that "if anyone ever managed to see a copy of the banking documentation, which I believe refers to Catclause, and

then did a company search against Catclause, they would find out"? And I suggest to you those words are quite significant, "They would find out a link with M." What were you fudging when you told him that?

A. I was trying to reduce it to something very simple. I was obviously answering his inquiry as to wanting this information about the two properties. I am giving him the basic facts to be able to answer a potential purchaser's questions, and so I have given this information. It may be that potential purchaser, for whatever reason, may have believed this lost property belonged to Catclause. Kevin Phelan may have believed that, I don't know, because I am not Kevin Phelan. So I have given them this information to say they didn't buy it, it's in the name of Trustees for an unnamed beneficiary.

Q. Who are you saying owned it so?

A. I am just giving the information to Kevin Phelan. It enables him to be armed with the right facts to talk to somebody.

Q. If you just go on to the next document for a moment, we'll come back to this one later. 18th August, 2000. This was, as I mentioned this morning, the day after the UK property meeting that you attended in Dublin; isn't that right?

A. It is, that's correct.

Q. "Dear Kevin,

"As no doubt Michael will have reported to you, we had a very positive and useful meeting yesterday lunchtime.

"Michael felt that he knew where both of these properties were now going and a scheme had been devised to assist him financially and tax-wise as well."

So, at that meeting what you learned was that a scheme had been devised to assist Michael Lowry financially, that is in relation to funding, and tax-wise; isn't that right?

A. That's what it says, yeah.

Q. "Mansfield various documents have to be drawn up in respect of Mansfield, and I will deal with this on my return from holiday, but a sale of the site is needed as soon as possible.

"No figure was actually discussed, but I would imagine that to cover the outstanding loan and costs we are looking for a minimum of $\frac{1}{2}$ 375,000. No doubt you will proceed with this as quickly as possible."

"St. Columba's Church Michael told us at the meeting that a firm offer had been received for $\frac{1}{2}$ 1.1 million for this property subject to the obtaining of a residential planning consent." And you deal with that.

On the next page you say: "The scheme will be that Michael will purchase this property from the Trustees about two months before completion of the sale to the developer.

"So that contracts can be prepared both for the sale by the Trustees to Michael and by Michael to the developer, can you please let me know the identity of the developer and, if possible, their solicitors so that I can write to them and ensure that there are no delays on the sale of this

site.

"On the sale by the Trustees of that site their borrowing will have to be repaid and replaced by the loan that Michael is taking out on the site for a couple of months before completion to the developer. He told us that a loan had been agreed in principle through a company that he does business with in Manchester.

"In order for the Trustees to transfer the site to Michael they will need to receive about $\frac{1}{2}$ 450,000 plus the deposit originally paid of $\frac{1}{2}$ 44,500 from Michael.

"We are going to have to meet again to discuss both these sites almost certainly in the week commencing the 2nd October, 2000, by which time it is hoped that the contracts will have been exchanged.

"Michael told me that he had absolutely no idea that he was meant to be reimbursing me the insurance premium on the St. Columba's site, as apparently you had not told him about this. He is arranging to repay me separately, so there is no need for you to both worry about that issue any longer."

Then you asked him about the insurance again.

A. I wonder if it might be helpful if we could just have the other document relating to this, which is the agenda item

Q. Is that the UK

A. Yes, the one that says because they do tie together, and I should have pulled my copy out at the same time.

Q. Tab 37 of Book 81.

A. Unfortunately I haven't got any books here.

Q. We'll get you a copy. Did you want to make some point about that?

A. Well, I think you are going to ask me questions about this letter and I think it would be of assistance just to refer to that.

Q. Right. From your letter of the 18th August, 2000, it would appear that you were satisfied, following the meeting, that potential purchasers had been found for both the Mansfield and Cheadle properties at certain prices, or at I think

A. I think it's a potential purchaser in the single.

Q. A potential purchaser for both properties?

A. Yeah.

Q. But the thrust of your letter is that the person who is going to benefit from these two purchases was Michael Lowry, and to that end a scheme was being devised to deal with, presumably, what were Capital Gains Tax issues?

A. Certainly taxation was discussed, yeah.

Q. Well, I don't know

A. Because it's put in the letter.

Q. Well, are there other taxes? I am not familiar with English taxation. Is it Capital Gains Tax?

A. It almost certainly would be, yeah.

Q. And in the letter to Kevin, you describe in some detail how the scheme is going to work in terms of ownership of the property?

A. That's right. This was obviously a scheme that was floated at this meeting. I mean, the key component of it, of course, is in the third paragraph, which says that Michael has to acquire the property. I mean the property doesn't belong to him. We know that the property is held in trust for Aidan Phelan. So if he is going to be the seller of the property, he has got to acquire it first, and that is why the letter talks about him, on the sale by the Trustees of the site, their borrowing will have to be repaid and replaced by a loan that Michael's got; he has got to buy it. He doesn't own it, he has got no interest in it, so if he is going to benefit from the discussion that took place, then he has got to buy the property. He didn't own it at the time.

Q. So if I understand you correctly, you are saying that you came to Dublin and Michael Lowry said "Look, I could buy this property off you and sell it to somebody"?

A. That's what the letter says. I mean, he wasn't the beneficial he didn't own it, hadn't got an interest in it. He had an interest in Mansfield.

Q. I am going to stop you there and give you a chance to consider that question again, because I suggest to you that is not what this letter means. What this letter means, and you can think about your answer now, is that a scheme had been devised to assist Michael financially and tax-wise.

That you were at the meeting, and a scheme was being proposed to avoid, perhaps perfectly legally, Capital Gains

Tax, and that that scheme would involve his purchasing the property from the Trustees at some price that he would have total control over, that he would have total control over?

A. No, I think you are putting words into to say "total control" because it says here that he has to repay the borrowing. Well, we know that the borrowing, whatever Mr. Tunney said, it's 1/2 450,000 or something, so you are hinting that it could be sold at a price to be agreed with the Trustees.

Q. I am suggesting to you that what this property what this letter does is it suggests that one of the long form/short form letters that we discussed before, the letter of the 5th September, in which reference was made to the need for Michael to hold the property in his own name for sometime, was the true state of affairs as regards your correspondence with Kevin Phelan, and that that letter was altered so as to conceal the true state of affairs in documents that were sent to the Tribunal, and that the true state of affairs is reflected in this document of the 18th August, namely that Michael wanted to hold the property in his name for sometime for tax purposes?

MR. NATHAN: Before we go any further, Chairman. I think there are about six questions wrapped up in a number of statements. I do think that in fairness to this witness, it's important that the questions should not be rolled up in a whole series of questions to which if the answer is "yes", somehow then everything is answered. I do think

that's the kind of question which needs to be broken up,
because obviously it's important.

MR. HEALY: I think Mr. Vaughan knows what I think of the suggestion that this document, on its face, indicates that serendipitously Mr. Lowry was going to purchase this property for the first time in August of 2000, and we are going to go into the other documents now and we'll go into them slowly one by one.

MR. NATHAN: Sir, it's very interesting that Mr. Healy gives us the benefit of his thinking, but that isn't the object, with respect, of asking questions in cross-examination. The object of asking questions is to ask questions and not make statements. So I am very concerned that we have got a series of statements, in effect, put into some kind of wrapped up way as a question, when in fact we haven't had a question really yet. So, if My Learned Friend wants to ask questions, which is obviously his objective, it would, I think, be more helpful if he asks questions in a way which the witness is able to answer in a logical, simple order so we don't get confused. Mr. Vaughan has come here in order to try to assist the Tribunal. There is a moment to which one starts to get confused. I am confused, and if I am confused I fear that Mr. Vaughan is going to get confused. And I am, therefore, very concerned that we don't get to a position where something awful is being suggested, it suddenly then comes out in some way without being properly the subject of

appropriate and proper questioning. That's all.

CHAIRMAN: Well, I think it comes down to reasonably net and manageable propositions. I think at a certain stage we can move on and I have to make a decision on it.

Q. MR. HEALY: I am letting you have the benefit, Mr. Vaughan, of what I think the documents mean. Of course I want you to know exactly where I am going in relation to this.

There is no question of my trying to trap you. I am trying to suggest to you what I think the documents mean on their face so you will know precisely where I am going.

Now, if I ask you now to look at your letter of the 5th September, 2000

A. Sorry this letter of the 18th?

Q. You can leave that there?

A. Have we finished with it?

Q. I am not leaving it, no.

A. Because I was going to say we haven't dealt with it at all.

Q. No, I agree, yes.

A. Sorry, which letter are we going to?

Q. It's at Book 81C, and it's at Tab 10.

Now, on the 17th August you'd had a meeting in Dublin attended by Mr. Aidan Phelan and Ms. Helen Malone, and I take it that following that meeting it's clear that at least by the 18th August you were in no doubt that Mr. Michael Lowry's tax position was being catered for by a scheme that had been discussed the day before?

A. You're making a statement there. I think we have to go

back to the purpose of the letter, of the meeting of the 17th August. We have to go back to the point that when this meeting was organised, neither Cheadle nor Mansfield had been sold. This was a meeting to discuss the way forward in respect of these two properties. When we get to the meeting, a purchaser, and now it would appear since these other documents have been produced, two potential purchasers have been found: Berwood and Thistlewood, and we then look at the meeting and we look at how to sell the properties, how to transfer them on. Now, the meeting, the dynamics of it change. We are looking at how to deal with it, and obviously taxation comes into this, and I don't think this is any great secret that Michael Lowry was involved, because if you look at the action point on the meeting notes, the first bullet point says "AP" - whose presumably Aidan Phelan - "to obtain copy from ML" Michael Lowry - "Letter of Offer from developers in relation to this site."

So, quite clear documents before the Tribunal emphasise the fact that Michael Lowry was involved in the property, and having looked at some of the evidence previously, which I think we looked at before, he said that he thought he had a moral obligation to help move this particular property on, bearing in mind of course that he had an interest in Mansfield but he had no interest in Cheadle, but he had, in his words I think, a moral obligation to move it on. I think that's why he is going to get the Letter of Offer

from the developers. And this is why he is going to send it to Aidan Phelan. So this is quite clearly before the Tribunal at the last hearing and previously as well. So I think that's the context you have to look at it.

And then my letter, which we looked at a minute ago, of the 18th, the day afterwards; it just carries on from that, because this letter is now talking about the disposal of the property, how to help the tax situations of Michael Lowry and Aidan Phelan, because they both have interests in the properties, and that's what we then discussed and this is what is floated in the letter.

Q. Where does it say anything about the tax position of Aidan Phelan?

A. I assume that he must be concerned as well.

Q. Just answer the question as well. Where does it say anything about the tax position of Aidan Phelan?

A. It doesn't anywhere in the documentation that I have seen, but it obviously was a concern, because he was the joint owner, the majority owner in Mansfield. He would have had the same concerns.

Q. Is it mentioned anywhere in the UK property ML meeting notes?

A. It isn't, no.

Q. It's not?

A. No.

Q. And are you suggesting that in order to discharge Michael Lowry's moral obligation to move the property on, he was

not just going to have to find a purchaser, he was going to engage in a scheme that involved tax advice to dispose of it?

A. It seems a perfectly proper scheme. Because I think the key thing is he has to buy the property, he doesn't own it.

Q. What does buying the property do with his moral obligation to move it on?

A. I think you are mixing up two things there. We are saying he was at the meeting. He didn't own the property. He had a moral obligation to move it. A purchaser had been found for the property and there was a possibility that this could have helped Michael Lowry's tax situation. But, but, only if he buys it. He didn't own it, he has got to buy it.

Q. Just a minute, Mr. Vaughan, you are telling the Tribunal that you have no doubt in your mind that Michael Lowry had a moral obligation to move this property on, is that right?

A. Those are his words, they are

Q. Is that your evidence? Is that your evidence that you had no doubt that he had a moral obligation to move it on?

A. I have heard him say that and I think he said it at this meeting, and I have seen it in Tribunal documents.

Q. Forget about Tribunal documents. At this particular time, was that your frame of mind, that Michael Lowry was at this meeting because he had a moral obligation to move the property on?

A. I think that's right, because if you look at bullet point

1, he is involved, isn't he?

Q. Does it say anything about him having a moral obligation to move it on?

A. Well, this is a minute of a meeting, you are not going to write every word that was said.

Q. If he had a moral obligation to move it on, hadn't he found a purchaser and wasn't that a discharge of his moral obligation?

A. Well, I can't answer that.

Q. Why not?

A. I can't tell you what is in his mind.

Q. You are the person who said, as far as you were concerned, he had a moral obligation to move it on?

A. That's what I have been told.

Q. I suggest to you that what this is about is nothing to do with a moral obligation to move it on, it's to do with Michael Lowry moving on his own property, or a property in which he has a substantial interest?

A. I think if you look at the first paragraph of the second page, "The scheme will be that Michael will purchase the property from the Trustees." It doesn't say they are going to give it to him. He has got to buy it. And then it goes down

CHAIRMAN: Mr. Vaughan, are you telling me that everything that we have learned from today's documentation leaves intact the proposition that Mr. Lowry's interest in Cheadle as and from early 2000 had ceased to be that of a

beneficiary and had been relegated to some moral obligation to move the property on, having regard to your subsequent references to your concerns of him making any money on it or even getting his outlay back, to your inability to part with the title deeds without his approval and other matters in these documents? I am sorry to put a rolled up question to you, but I don't want to keep you here an indeterminate number of days?

A. I think if you look at the second page of this letter, it's quite clear that Michael Lowry has no interest in this property because it says he has to purchase it. In the third paragraph down it says to purchase it, he has to get the money. So he can't have an interest in it.

When I go back to the moral obligation, he is trying to keep the thing ticking over because he was the person who was going to be the first purchaser through the corporate vehicle Catclause.

Q. MR. HEALY: Who was going to make the profit on this transaction?

A. I have no idea.

Q. Isn't it perfectly obvious Mr. Lowry was the man who was going to make the profit?

A. I can't say that.

Q. And wasn't it to protect his profit that a tax scheme was being devised?

A. I can't say, because it's not within my knowledge.

Q. And isn't that what the expression "Michael felt that he

knew where both those properties were now going and a scheme has been devised to assist him financially and tax-wise," isn't that what that means?

A. Well, he had an interest in Mansfield, and the scheme, of course, only hangs together if he buys it. Cheadle, that is.

Q. Forget about Mansfield, let's think about Cheadle.

A. Right.

Q. "In order for the Trustees to transfer the site to Michael," and that's Cheadle?

A. Correct.

Q. "They will need to receive about $\frac{1}{2}$ 450,000 plus the deposit originally paid of $\frac{1}{2}$ 44,500 from Michael"?

A. Yeah.

Q. We are just talking about transferring the property for what had been paid for it, isn't that right?

A. Yeah.

Q. Michael Lowry was going to make the profit on the sale for 1.odd million; isn't that right?

A. He was yeah, if he bought it.

Q. He was going to make the profit of approximately half a million on it, isn't that right?

A. The problem is though, that the purchase never took place.

Q. That's nothing to do

A. I think that's the most relevant point, because the one thing that we don't know, and I don't know, is Berwood, and again with Thistlewood, they are both potential sales of

these properties that went nowhere, they went nowhere.

Q. Can we go back to the 18th August, Mr. Vaughan. We know, with the benefit of hindsight, none of these things materialised, no sale crystallised?

A. That's right, yes.

Q. That adds nothing to the two letters that were written by you in August and September or any other letters written by you concerning this transaction. In August you believed they were going to work; isn't that right?

A. If the purchaser

Q. Yes.

A. If what is written in that letter happened, then yes.

Q. So yes; so you believed they were going to work?

A. Well, if the purchaser came forward, yes.

Q. And assuming that the purchaser came forward at the price that had been mentioned, Mr. Lowry was going to make over half a million pounds, isn't that right?

A. Well, those are your figures, not mine. I haven't sat down and worked out

Q. They are only your figures I am using. If you go to the first page of the letter of the 18th August, "Michael told us at the meeting that a firm offer had been received for £1.1 million for this property subject to the obtaining of residential planning consent." Do you see that?

A. I see that, but if you used the expression a few moments ago "in the benefit of hindsight." In the benefit of hindsight, we know if we look at the letter where I

reported on the Chesterton view of this property, that this offer with respect to the property was pie in the sky, because the property was not worth

Q. How does that answer my question, Mr. Vaughan?

A. Well it does, because you are speculating that if the transaction had gone through, this amount of money would have been made. We now know that the property wouldn't have gone through because it wasn't worth what

Q. I am trying to ascertain what was in your mind when you were talking about devising a scheme to carry this through, and I am suggesting to you that what was in your mind, on the face of your letter, is a scheme whereby Michael Lowry would make a half a million pounds?

A. I don't think that I devised a scheme.

Q. I am not saying you did. What was in your mind when you were writing the letter is that a scheme was being devised which would leave Michael Lowry with a profit of about half a million pounds sterling?

A. It's a proposition that contains a huge number of ifs. And I think if we go back

Q. What "if" does it contain?

A. The main if is that they offered him money sorry, this purchase price subject to planning, and planning never materialised.

Q. But, Mr. Vaughan, on the 18th August, when you drafted this letter, you had none of these facts in your head, you couldn't have, they were in the future?

A. That's right.

Q. Yes. So when you drafted your letter at the time that you drafted your letter, you had to have known that what was likely to occur, if the transaction materialised, was a profit of about a half a million pounds sterling, and that a scheme had been devised to shelter that?

A. The scheme was there it sets out in the letter. But you are asking me to quote figures

Q. What was the purpose of the scheme

A. that I can't assist with.

Q. Sorry, why can't you assist with the figures?

A. I can see the figures there, but I am not I don't know what other liabilities there may have been.

Q. All right. There may have been other liabilities.

A. I don't know.

Q. There may have been other liabilities.

A. You can quite happily stand there and make a statement but, unfortunately, I can't agree with you because I don't know.

Q. Can you agree with me that the gross profit, the gross profit on those figures would have been about a half a million pounds sterling?

A. You are right in saying that, but you are missing the main point. There is two major hurdles to overcome: One is the obtaining of planning consent, and secondly the fact that Michael Lowry has got to buy the property; he didn't own it. He is being

Q. He is being what? A scheme is being devised whereby it

will go into his name at cost price, isn't that right?

A. Well, I don't know what

Q. What does it mean then, Mr. Vaughan? You tell me what it means.

A. It says here that I wouldn't say cost price, but he has got to pay back the borrowings.

Q. Is it cost price, give or take a few thousand pounds, is it?

A. He has got to

Q. Sorry, let's deal with this in small questions so, one at a time, because we are going to be here all day. Is it cost price give or take a few thousand?

A. Yeah, they have got to recover, the lenders have got to recover their money.

Q. Okay. Right. Let's try and use little code words. Cost price is what I mean by the vendors recovering their what they have out laid?

A. You are putting words in my mouth. You know, the Trustees, in order for them to discharge their responsibility to the lender, have got to get the money back. It's not up to me as a solicitor to say what the profit or otherwise is, that's up to those involved.

Q. Right. Did we agree it was cost price give or take a few thousand is the figure you are talking about?

A. No, you are using an expression "cost price".

Q. Right, okay.

A. I don't know.

Q. Will you add for me then, because I don't want to waste any more time, 450,000 plus 44,500. What does that come to?

A. 494,500.

Q. So if you pay that for it and you sell it for over a million, what profit do you make gross, gross, what profit do you make?

A. I can see where you are coming from, but it would be improper for me to say that is the profit because I don't know what the other

Q. I am not going to trouble you with it, Mr. Vaughan. I want to put it to you that your letter says that there was an offer of $\frac{1}{2}$ 1.1 million for the property, and you suggested a scheme involving a purchase price on a sale by the Trustees of 495,000, that's right, isn't it, that's what your letter says?

A. Subject to planning permission.

Q. Yes, but that's what your letter says?

A. Absolutely.

Q. And subject to whatever conditions you refer to, that would have generated, had it happened, a gross profit of in or about $\frac{1}{2}$ 600,000 sterling?

A. But it didn't happen.

Q. Sorry, it would have - did you listen to what I am saying - isn't that right? Are you saying yes or no?

A. It's a paper transaction.

Q. Okay, it's a paper transaction. And if somebody made $\frac{1}{2}$ 600,000 on a transaction, it would seem sensible, wouldn't

it, to find a tax shelter for it?

A. Well, that's up to their tax advisors. It's not my job to do that.

Q. And wasn't, in fact, the transaction between the Trustees a paper transaction simply designed to facilitate the ultimate profit by Mr. Lowry?

A. The Trustees' concern was to discharge the bank. If Aidan Phelan, who was the beneficial owner of this property, had instructed the Trustees to transfer it to a third party, then they would have done so because they would have discharged their duty to the mortgage lender.

Q. You are telling Mr. Phelan here, you are telling Mr. Phelan that in order for the Trustees to transfer the site, they will need to receive about $\frac{1}{2}$ 450,000 plus the deposit originally paid from Michael?

A. Correct.

Q. You are telling him that?

A. I am telling that because that's my advice to Kevin Phelan.

Q. So you are telling him they will need cost price, they will need $\frac{1}{2}$ 495,000?

A. You keep referring to this phrase "cost price." I am looking at

Q. I will avoid that phrase "cost price." They would need $\frac{1}{2}$ 495,000?

A. The Trustees have a liability to the bank, and to discharge that liability they need that amount of money.

Q. Yes.

A. What those were the beneficial interest in this property, namely Aidan Phelan, does with it then is up to him, it's not up to me.

Q. What I am suggesting to you, that that transaction is a paper transaction simply to facilitate an onward sale?

A. I don't understand the expression "paper transaction".

Q. It's a paper transaction, one over which Michael Lowry had as much control as the Trustees had and designed simply to facilitate the tax treatment of the sale by him?

A. I can't comment on that at all. I don't think he has got any control at all. He wasn't the beneficial owner.

Q. We'll go on to the next document then. I'll come back to this document in a moment in fact, of the 19th September, except to say that you wrote to Aidan Phelan and you enclosed a copy of the letter that you had sent to Kevin Phelan that we were discussing a moment ago?

A. Correct.

Q. If you go on to your next letter of the 19th September, it's to Kevin Phelan?

A. Is this 6.3 or 6.4?

Q. 6.4.

"Dear Kevin,

"You indicated to me on the telephone on Monday that a purchaser had been found for both sites for $\frac{1}{2}$ 1.3 million."

That was the day before.

"You did not tell me who the purchaser was, but said I would be hearing from other solicitors 'who would want the

title deeds.'

"As I explained to you, I cannot hand over the title deeds in respect of both properties without the consent of ML.

"With regard to St. Columba's church, I am on undertaking to the bank and obviously cannot release the deeds without being released from that undertaking which would only be done by an undertaking from solicitors which would satisfy the bank and release me of my paying the outstanding debts to the bank in full.

"Perhaps you could let me have your full instructions when they are available.

"I am sending a copy of this letter to Aidan Phelan."

Now, here you are telling Aidan Phelan or you are telling Kevin Phelan, sorry, that you can't hand over the title deeds without the consent of Michael Lowry?

A. Yeah, I think, if you look at that letter, I think that particular paragraph, as I explained to you, "I can't hand over the title deeds in respect of both the properties without the consent of ML," I think it really talks about Mansfield, because the next paragraph talks about St. Columba's Church, because that's a totally different issue because there we are on a bank undertaking. Mansfield is a property where there is no mortgage on it. But I need his consent to hand over any documentation. I think the letter is slightly sort of unclear there, but it should be Mansfield we are talking about there, because in the next paragraph we deal with St. Columba's Church.

Q. And why wouldn't you need Michael Lowry's consent to hand over St. Columba's Church?

A. We don't.

Q. You don't?

A. No.

Q. Why?

A. St. Columba's Church is the next paragraph, "With regard to St. Columba's Church, I am on undertaking to the bank..." etc.

Q. But I thought you said a moment ago that Michael Lowry was going to buy St. Columba's Church from you under the scheme?

A. Well, if he bought it, then that would put it in a different situation. But this letter is written the next day, isn't it? Nothing has happened. We have got two hurdles to overcome, as I have said. One is getting planning consent, and secondly, is him finding the cash to buy it to discharge the debt on it.

Q. Can I suggest to you that your reference to St. Columba's Church is a reference to an additional restriction on the handing over of any documents, as opposed to an alternative restriction?

A. I don't read it like that, no.

Q. I see. All right. If we now go on to the next document, which is the 21st September. This is a document from third party solicitors to you?

A. Correct.

Q. "Purchase of two parcels of land from Michael Lowry.

"We act for Berwood Park Associates. We are instructed in connection with the purchase of the above properties from Michael Lowry for whom we understand that you act.

"Send us a draft contract as quickly as possible" and so on.

This is from a third party solicitor, and you believe that the reference to M. Lowry and to Michael Lowry came as a result of what the third party solicitors or their client was informed by Kevin Phelan, isn't that right?

A. It must have been, because I had not been in touch with them. I have also realised, looking at the figures on the bottom, they relate to an old mobile phone number of mine and an old telephone number of mine. It's my private line now. But that's not my handwriting.

Q. Do they not tally, or does the reference to the purchase of two land parcels from Michael Lowry in the letter of the 21st September from Goldsmith Williams, does that not tally with your letter of the 18th August, 2000, in which the scheme that was being devised was that Mr. Lowry would hold the properties, isn't that right?

A. Absolutely it tallies because, you know, this was the proposal. But it went nowhere.

Q. And in the next letter on the 4th October, 2000, you write back to Messrs. Goldsmiths, and you confirmed that you acted on behalf of Mr. Michael Lowry in the transaction, isn't that right?

A. Correct.

Q. So at that stage, as far as you were concerned, you were this transaction was going ahead, you hoped?

A. Yes, I wouldn't have written the letter if it wasn't a live transaction.

Q. Yes, so

A. You know, Kevin Phelan had instructed me to deal with it, but that, as far as I am aware, my letter of the 4th October is the end of the matter; it goes no further.

Q. On the second page of that letter, at the top of the page, referring to the title you say: "You will see from the office copy entries of St. Columba's that currently that property is vested in the names of Trustees, who are in the process of transferring the property into the name of Michael Lowry."

Do you see that?

A. Correct, yes.

Q. You don't say, as it happens that they are selling it to Michael Lowry, or that Michael Lowry is purchasing it from them?

A. I think transferring and purchasing are interchangeable words.

Q. I see. I suppose in the ordinary, I don't know if this is the case in England; if you are purchasing land from one person and selling it to another person, is there a Stamp Duty advantage in flipping the property over without having the first purchaser take the title?

A. There certainly isn't today because we now have Stamp Duty Land Tax, but I don't think there would have been a benefit at all then.

Q. At that time

A. A Stamp Duty benefit.

Q. At that time, as long as a contract, as long as a purchase, rather, remained in contract

A. It's not a point I have given any consideration to. I'd have to think about it, but I can tell you it wouldn't work today.

Q. That's because the law has been changed to avoid people flipping contracts like that and avoiding Stamp Duty; isn't that right?

A. Possibly.

Q. But there is no suggestion of that being done here, because there was a different tax reason, I suggest to you, to enable Mr. Lowry to shelter tax?

A. I don't think I could be party to sort of any transaction that avoided paying Stamp Duty that was a proper tax, so I think we are straying from the main point of the letter a little.

Q. If you go on to your next letter of the 18th January, 2001.

"Dear Kevin

"St. Columba's Church site.

"I have received a report from Chestertons who I am instructed requested have ML to appraise the site. They have had detailed discussions with the local Planning

Authority, and it is quite clear to them that because the site is in an area of land designated as 'green belt' by Stockport Borough Council, no development can take place on the site other than:

"1. The refurbishment and possible slight enlargement of the house and

"2. The conversion of the current church buildings to apartments, possibly two or three.

"Under the present planning policies, no other development would be permitted on the site.

"Chestertons informed me that the Planning Authorities have received a number of inquiries as to this site and this information has been given to all those inquiring, which presumably is the reason why no one wants to buy the site for development purposes.

"It seems to me, therefore, that ML is going to struggle to make any sort of profit on this site, or indeed, even get his money back."

"I had clearly understood that John Eastham of EBL had done a detailed site survey of this property which would have highlighted the planning problems. If those problems had been known, then I am sure that property would not have been purchased.

"This poses the question as to whether John Eastham had been negligent in carrying out his investigations? If this is the case, then there may well be a claim against him for loss of profits because of the failure as to being able to

develop the site."

And then he refers to a similar potential negligence claim against architects. And you ask for Kevin Phelan's thoughts on this. Then you refer to the problem with the telephone number.

Now, at this stage Michael Lowry had asked you to retain Chestertons, isn't that right?

A. Yes, I mean Chestertons, I don't think they are mentioned on the meeting of the 17th August, but before a purchaser had been found for the two properties, one of the points that I had been asked to look at, and this is why Kevin Phelan hadn't been invited to this meeting, was to get an independent appraisal of the two properties, and I had suggested this particular firm, Chestertons, because I knew that they dealt with this type of property and they dealt in the geographic areas where they were both situated. And so, I think the Chesterton instructions were discussed at the meeting of the 17th August, and then when the sale didn't proceed, the Berwood, the Thistlewood, I then acted on the discussion that we had earlier and got the, got Chestertons to actually go out and have an evaluation. And I think amongst the paperwork I gave the last time is the actual report from Chestertons. It comes from somebody called John Norris.

Q. At the end of page 1 of this letter you say: "It seems to me, therefore, that ML is going to struggle to make any sort of profit on this site, or indeed, even get his money

back." What does that mean?

A. Well, I think if you go back to our scheme that he was going to buy it. So if he went ahead and acquired it, he would make a loss on it.

Q. But he certainly hadn't bought anything at this stage?

A. No, so he hasn't bought it.

Q. And there was no that's what I mean by there was no reality in this proposed sale; it was a paper sale. It was not going to take place unless a purchaser could be found?

A. That's right. And I think

Q. Aren't I therefore correct in describing it as a paper sale?

A. Sorry, I don't understand that question, say it again please.

Q. It's a paper sale; that sale was never going to take place unless a purchaser for the property could be found?

Mr. Lowry was not going to buy this property on spec?

A. No sale is ever going to happen unless a purchaser wants to buy it.

Q. No.

A. And I think, unfortunately, we get to January 2001, and the various purchasers who are going to buy subject to planning, subject to a soil survey, etc., suddenly I realise for the first time because I then get a proper firm of independent surveyors, Chestertons, to look at the properties and this letter of the 18th alludes to the report on both Mansfield and on Cheadle, and suddenly I

realise for the first time that these properties, certainly Cheadle, is unsalable in a way that had been previously suggested to me. And so that goes back to the figures of £1.3 million and whatever, they were pie in the sky; they were never going to work.

Q. That's as may be, but Michael Lowry, on the 18th August, was going to participate in a scheme which would make him the owner of the property for a short while, isn't that right, prior to any sale?

A. I agree with you totally, but only if somebody was going to buy it. So he wasn't going to expose himself to buying something with borrowed money from the Trustees if the purchaser wasn't tied up. And if we look at the well, my report of the Chestertons letter, we realise that nobody was going to buy it.

Q. And what you were thinking about on the 18th August was not Michael Lowry out of the blue deciding to purchase this property, I suggest, but rather you were finding a scheme whereby Michael Lowry could purchase this property in his own name, hold it for a while and sell it on for a tax purpose?

A. I think you are misinterpreting that, because you are saying I am devising a scheme. I am not devising a scheme at all. I am not a tax lawyer. I am merely reporting on the suggestions that were floated; if somebody wants to buy it, if we can get planning permission, if Michael can find the money to repay the debt, then he might buy it and sell

it on. But none of those things happened. It's all speculation.

Q. Michael wasn't going to buy anything?

A. I can only report what is in my letter.

Q. Can I suggest to you that there is no reality in your suggestion that Michael Lowry was buying anything. He wasn't paying an arm's length purchase price for anything, isn't that right?

A. I can't possibly agree with that. I have no idea what he was doing.

Q. Didn't you write a letter suggesting what the Trustees would have to receive, and I suggested to you that that letter indicated that they'd have to receive cost price?

A. Yeah, because the Trustees are not beneficial owners. The Trustees have a liability to GE Woodchester Bank to pay the debt off. Once that debt has been paid, the Trustees then hold the property for the benefit of Aidan Phelan. If Aidan Phelan wants to sell the property, it's up to him, it is certainly not up to me.

Q. The original scheme in relation to this property was that it was to be taken in the name of Catclause, isn't that right?

A. Correct, yeah.

Q. But for reasons of secrecy that was abandoned?

A. Well, secrecy is the word I used to Kevin Phelan. We know, because we have explored it at length

Q. I don't know anything, Mr. Vaughan, let's be clear about

that, and I never knew about this letter until yesterday,
so I don't know anything.

A. I am not talking about this letter, I am talking about the reason that the property was not purchased in the name of Catclause. We know, because we have explored it in depth in this Tribunal, as to what happened, why Catclause didn't acquire it.

Q. No, Mr. Vaughan, that's not correct. We know from your letter that Mr. Aidan Phelan advised that Catclause be abandoned and that the property be put into the names of Trustees for reasons of secrecy.

A. Yeah, but this is a letter to Kevin Phelan to give him some background information. It is not a letter to go into minute detail of what happened in December and January 2000 and 2001 with the banking details and the transfers of the property.

Q. And if that abandonment of Catclause had not occurred, for whatever reason, Michael Lowry would have been the owner of the property on the face of it, wouldn't he?

A. Yeah, if he had come up with $\frac{1}{2}$ 450,000, yeah.

Q. No, no

A. He has got to buy it, hasn't he? He can't just sort of acquire it. You had the Trustees of the church wanting the money.

Q. Around this time you told the Tribunal that in dealing with Kevin Phelan you felt you were dealing with somebody who could use documents against you, and that that was one of

the reasons you went to so much trouble to correct errors on documents such as the long form/short form, isn't that right?

A. Can you point out where I have said that Kevin Phelan could use documents against me? I don't recall using that phrase.

Q. I said that in dealing with Kevin Phelan, maybe I am expressing it too compendiously, and you can correct me, that when we were discussing the long form/short form documents the last day, you indicated that you went to the trouble of correcting documents you had sent to Kevin Phelan, although he couldn't have been confused by them, because you said he would have known the true facts, because you felt the need to be particularly careful in dealing with him?

A. I think I'd actually like to see what I said, because I am sure we could find the reference to it.

Q. All right. We will find it.

Can we now go back to the document, the long form/short form letters of the 5th September and the 12th July, because I said they are in Book 81C, Tab 10. Have you got those?

A. Can you just remind me which letter we are looking at?

Q. Yes, could we start off by looking at the letters of the 12th July, 2000. Now, in that tab, I think the first document is a short form of the letter is the office copy of the short form of the letter of the 12th July,

2000. And the second document is the top copy of the short form of that letter. And the next document is the long form of the 12th July. Can you just orientate yourself and make sure you have all three documents?

A. Yes.

Q. Now, the first document, the short form office copy, and the short form top copy were the documents that the Tribunal had, and the document which subsequently came into the Tribunal's possession, and I think you suggest from Kevin Phelan, circuitously from Kevin Phelan, was the long form of the 12th July in which you are writing to Kevin Phelan. You say:

"Re St. Columba's Church,

"I enclose copy letter and policy schedule relating to this property which has just only been sent to me.

"You will recall that this property was purchased in my name as Trustee for our client. I have only appreciated, upon reading the policy schedule, conditions as to the policy whilst it's unoccupied.

"Could 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 in the house as discussed with you recently?

"3. Can you please ensure that the conditions be complied with immediately, as the policy could be null and void and I could be personally liable for losses.

"I seem to recall when the lending process was being

completed that the lender was going to require a six-monthly report on the marketing of this property. Can you please let me have details so I can deal with this. I think the same will apply to Mansfield as well."

Now, in the short form, in the second paragraph of that letter, first sentence, a change was made so that the sentence reads: "You will recall that this property was purchased as Trustee for Aidan Phelan," isn't that right?

A. Correct.

Q. Now, going back to the long form for a moment, you say: "I have only appreciated, upon reading the policy schedule, the conditions that the property was if its unoccupied."

Then you ask a number of questions. And they seem to be related to, firstly, have you managed to find a purchaser, because that was the overall objective, isn't that right, at the time?

A. Yeah.

Q. Then you were concerned to know was there a tenant. I think that may relate to some insurance issue. And certainly the third one relates to an insurance issue, isn't that right?

A. Correct, yes.

Q. So, in the second paragraph you said: "I have only appreciated, upon reading the policy schedule, conditions as to the property whilst it is unoccupied." I suggest that in using those words, you were dealing with or you were adverting to matters that had come to your attention

and that you wanted attended to in the three bullet points, because if the property was occupied, then the policy conditions wouldn't be, wouldn't have been broken, isn't that right?

A. Yeah.

Q. If you find a purchaser, obviously it's the end of the matter. If you had a tenant, it would be occupied. And if you didn't, could you do something else to ensure that the policy conditions are complied with?

A. Correct, yes.

Q. And in your letter of the 18th August, I think you seem to allude to something related to that matter as well, if you look at the last two substantive paragraphs. It's document 6.2 in the recent book, 81D.

Do you see where it says: "Michael told me he had absolutely no idea that he was meant to be reimbursing me the insurance premium on the St. Columba's site, as apparently you had not told him about this. He is arranging to repay me separately, so there is no need for both of you to worry about that issue any longer." Do you see that?

A. I do, yeah. There is obviously a word missing in the second line, yeah.

Q. Would I be right in thinking that in both cases you are referring to the same thing, the same insurance policy?

A. Yes, because when the property is purchased, the Trustees insured it, and that's what is referred to in the letters

of the 12th July and in the letter of the 18th

Q. Of August.

A. of August. And also in the last paragraph of the

letter of the 9th August.

Q. Yes.

A. Insurance was a concern.

Q. Yes. Insurance was a concern, but you regarded Michael

Lowry as responsible for paying it, isn't that right?

A. Yes, I don't know why I said that. Obviously it's quite

clear there that it's been mentioned; of course this was

the day after the meeting, and I think that I go back to

his moral obligation and the fact that he was going to deal

with the letter from the developers. Obviously he said

that he would deal with this.

Q. Could it not also, or would it not also be reasonable to

suggest that he was paying it because he was the person who

was going to be primarily in profit if it sold?

A. I don't think so, no, because he didn't own the property,

he wasn't the beneficiary of a trust that the property was

held in. I can only assume that he regarded this as one of

his sort of obligations just to liaise with Kevin Phelan

about insurance.

Q. Wouldn't it suggest that he was in fact the beneficial

owner of the property?

A. Well, no, I don't think no, we are quite clear about

that because of the borrowing from the bank.

Q. Subject to the borrowing from the bank?

A. Well, that's the key issue, yes.

Q. But wouldn't it suggest he was the beneficial owner of the entire property subject to the borrowing from the bank?

A. No, no. I go back to the handwritten note of January, when I spoke to Michael Tunney. I mean, I haven't got it in front of me, but it quite clearly indicates that this is now Aidan Phelan's property. We know that Michael Lowry, for whatever reason, couldn't raise the funds. So why should he be the beneficial owner of it?

Q. Why should he be paying the insurance premium?

A. Well, all I can think of is that he somehow had said that he would, you know, deal with that at the meeting.

Q. Okay.

A. He had, alluding back again to this meeting note, he was doing something, he was liaising with the developer about the planning permission or whatever it was, yeah, so perhaps the insurance came into the same category.

Q. In your letter of the 18th August, 2000, you don't say anything along the lines that Michael Lowry was liable on the insurance because he had a moral obligation to Aidan Phelan?

A. No, I don't, but it's a letter. I mean, there is a lot of things that I am sure isn't in that letter about what happened at this meeting.

Q. It's just that the moral obligation proposition is contained nowhere in any document?

A. Well, I think this was implicit because if he didn't have

an obligation or a moral obligation, why did he turn up at the meeting at Jurys Hotel?

Q. Well, what was the heading of the memorandum?

A. He refers to his properties.

Q. It refers to Michael Lowry

A. The UK property ML, yes.

Q. Not Aidan Phelan's property, ML. And isn't the heading on that document consistent with the letters that we have just seen where Michael Lowry is seen to be in the cockpit where control of these transactions is concerned?

A. Well, from my perspective I don't see it like that because I look at it from the point of view that he hadn't got a financial involvement in it, so it wasn't his property.

Q. If you go back to this letter of the 12th July, 2000

A. Yeah.

Q. you say you will recall "that this property purchased in my name as Trustee for our client." And then you go on to deal with the insurance issue?

A. Yes.

Q. And presumably at that time in your mind the person who was going to be paying the insurance premium or reimbursing you for it was Michael Lowry, isn't that right?

A. Well, Michael Lowry's name is not mentioned on either the long form or short form version.

Q. No, but in your mind at that time, judging from what you subsequently wrote?

A. No, I don't think so, because I think it was only after the

meeting of the 17th that he became or he either offered to pay or he said that he was going to pay or whatever, or he was going to deal with it. He certainly as far as I was aware, he was nothing to do with this property save for the moral obligation which we referred to, which obviously came out of this meeting on the 17th August because, as we know from evidence that we have given before, Michael Lowry was totally and completely out of this property in January 2000, subject to his moral obligation to help Aidan Phelan get rid of it, dispose of it, sell it.

Q. And the only explanation, do I take it then, in your evidence, for his name cropping up repeatedly in connection with it, is this moral obligation?

A. Yeah, absolutely.

Q. Turning back to the letter of the 12th July. As I said, that was, it now seems, a letter mainly about insurance, isn't that right?

A. Well, the letter is self-evident what it is talking about, yeah.

Q. About insurance?

A. Yes.

Q. And you say that you changed that letter to substitute Aidan Phelan for the words "For our client" because you felt Aidan Phelan was the owner at that stage?

A. No, I think I said in my evidence that I realised that the letter of the 12th July needed to be supplemented by the addition of the last paragraph because the 12th of July

long form was faxed through to Kevin Phelan. The short form, which was, I think we established, was quite clearly typed by somebody different, doesn't have that last paragraph.

Q. No, but let's deal with the second paragraph.

A. Yes.

Q. I think in relation to the second paragraph, am I not right in recalling that what you said in evidence was that the words "As Trustee for our client" were changed to "As Trustee for Aidan Phelan," because you wished to be more specific about the identity of the actual beneficial owner of the property at that time?

A. I think I'd just like to look again at exactly what I said, because I don't think that's what I said. If you can find the transcript?

Q. Yes, I'll try and find it. That's a fair point. I think I have it here.

If you go to - we'll see whether I am right or wrong - if you go to page 52 of Book 357 of the transcript, and we'll put it on the overhead projector. At the bottom of that page the two changes are referred to. You sent the new version on the same day and then quoting: "The changes were" - this, I think, is a reference to your statement -

"1. The deletion of the last paragraph.

2. The change of the words 'our client' Kevin Phelan"

A. I don't follow this in connection with what we are looking at really.

Q. Can you follow that? Maybe we'll go to the start of the question.

A. Yes, I think it's you haven't got a spare paper copy because it's easier if I look at that?

Q. Yes, I can.

A. I wonder if I could just have a look at this for a moment?

Q. Yes, fine. I think most of this, in fact, Mr. Vaughan, is about the whole question of who your client was. Do you want to read it out?

A. I think there must be a little bit more before this.

Q. I can pass on from it and come back to it, Mr. Vaughan. I don't want to delay too much on it. I am happy to come back to it.

A. I am happy to look at it overnight to just sort of reference my memory, if it's of assistance to you?

Q. So that you will understand what I am asking you. If Mr. Lowry was the person who was paying the insurance policy at that stage

A. Sorry, you are making a statement. Nobody had paid the insurance policy at this stage.

Q. But didn't you regard Mr. Lowry as the person who was liable to pay it?

A. No, not on St. Columba's Church, no, because it wasn't his property. The short form letter of the 12th July, Aidan Phelan.

Q. Maybe we are at cross-purposes, but in your letter of the 18th August, 2000, on the second-last substantive

paragraph, if we go to it again you say: "Michael Lowry told me he had absolutely no idea that he was meant to be reimbursing me the insurance premium on St. Columba's site, as apparently you had not told him about this."

Now, this was August of 2000, and you had bought it just at the end of

A. Beginning of 2000.

Q. The previous year. So, the insurance premium was going back to presumably when you bought it or maybe even when you signed the contract, I don't know?

A. No, sorry, the insurance liability would have commenced on completion. So it would have been six months earlier.

Q. Well, eight months at this stage, I suppose, wouldn't it?

A. Yeah, six, eight months, yeah.

Q. You must have told him something at that stage, you must have said to him, "You must pay the insurance, you have to reimburse me all the insurance"?

A. I don't think insurance had actually come up until the letter of the 12th July, because it is quite clear from this letter that I have suddenly looked at the policy and realised that there were conditions, and in the short form letter I am saying specifically Aidan Phelan, you know, we have got to somebody has got to pay for it at some stage.

Q. But in your letter of the 18th August you made it quite clear that Michael Lowry was meant to be reimbursing you?

A. Yeah, I agree with you. I think this is something that

came out of the meeting.

Q. But what does meant to be reimbursing you mean? Doesn't that suggest that he was the person who was liable?

A. Reimburse means I paid for it out my own office account.

Q. Of course it means that you pay, but he is to then repay you?

A. We have a firm of brokers who do all our insurance. I would have paid them and, you know, I was waiting for somebody to reimburse me the premium for it.

Q. And you saw Michael Lowry as the person who would be obliged to do that?

A. Well, I think his name doesn't appear anywhere else about it until the 18th, and obviously he has said something at that meeting which has caused me to refer it back to Kevin Phelan.

Q. I think what you say is, if I can just go over your words again: "Michael told me that he had absolutely no idea that he was meant to be reimbursing me the insurance premium on the St. Columba's site, as apparently you had not told him about this." I suggest that what that means is he never realised that he was meant to be paying you or repaying you the insurance premium or premia, whatever, that you had been paying since right back to the time that the purchase was completed?

A. Yes, I mean I just assume that at the meeting he said that he was, this was an aspect he was going to deal with.

Q. No, no, no, what he was told at the meeting was "Michael,

you must reimburse me for the whole of the premium." It's not an obligation you are going to be taking on now. What you are saying is that he had no idea that he was liable for it right to the very beginning?

A. I mean, I see what the paragraph there is, but somebody was reimbursing me for the insurance premium.

Q. It's not that somebody was reimbursing you for it, it's that somebody was meant to be reimbursing you for it from the very beginning?

A. All I can say about that particular paragraph, which I have obviously read and thought about, is that he was going to deal with this aspect in exactly the same way as he was dealing with the potential purchaser, and this is the important bit, why I wanted the meeting note up, because it's important to realise that he had put himself forward to deal with some aspects of St. Columba's Church, and I assume that this is one of the aspects he had put forward.

Q. It seems to me that it was you must have put this matter forward to him?

A. Well, I can see how the letter reads, but it's Kevin Phelan in the letters of the 12th July I am saying, you know, sort out the insurance.

Q. It's to Kevin Phelan, on the 12th July, you are saying make sure the conditions are complied with, let me have the information. And I am suggesting to you that at that time you must have believed that Michael Lowry was the person who was liable to reimburse you for all that insurance?

A. No, because the 18th is when I start mentioning Michael Lowry.

Q. You mention it for the first time on the 18th?

A. Yes.

Q. But on the 18th you mention it as something that goes right back to the beginning of the contract. He wasn't reimbursing you in the future, he wasn't taking this on as a gesture of goodwill to Mr. Phelan, Mr. Aidan Phelan at that time. He believed, for the first time, as far as we can judge from your letter, that he was going to be liable from the very beginning. And I am suggesting to you that that must have been your frame of mind on the 12th July. Would you agree?

A. I can't go beyond what is written there because I would be guessing. But, you know, it's quite clear what I have said in that paragraph.

Q. All right.

A. He was going to reimburse me for the insurance premium. It's difficult not to speculate, but I just get the impression that the 12th July, I had only just got this insurance policy through. The brokers that we use, I know them quite well, and they could have easily put the property on cover and then only five, six months later got round to sending the payment work out.

Q. Aidan Phelan was the person whose name you substituted for "Our client" in the letter of the 12th July. Why wasn't Aidan Phelan liable to pay the insurance premium?

A. I don't know. I don't know. My letter of the 18th reads to me as though it was something that Michael Lowry volunteered to do.

Q. It reads to you?

A. It reads to me that he volunteered to do this.

Q. Out of the blue?

A. Well, I think sort of transport ourselves back to the meeting at Jurys Hotel, there is a whole raft of topics that have to be discussed, and the main one, of course, is the satisfaction that Kevin Phelan has come up with the goods and found a purchaser, if not two purchasers for this property. We then talk about the disposal of it, and the insurance is another agenda item that needs to be dealt with. All I can assume is that he offered to deal with it.

Q. I suggest to you your letter doesn't say that, but you disagree with me?

A. Yes.

Q. Could we go on to the letter of the 5th September, 2000, which is in the same tab, and if we go to the long form of the top copy of that letter, which is the last document in that tab?

A. Yes.

Q. It says:

"Dear Kevin,

"I faxed through to you on the 4th September the letter from Thistlewood Estates that was waiting for me when I returned from holiday. This looks to be excellent news,

depending on whether the conditions can be satisfied.

"What I would like to do is to set up a timetable, bearing in mind that Michael wants to own the property in his own name for a month prior to the sale to Thistlewood Estates.

"Could you therefore let me know, 1, 2, 3" and then:

"Do you know the identity of Thistlewood Estate's clients?

I have done a Company search against Thistlewood, and I enclose copy herewith which says very little. Do we know who their actual clients are?

"I have not written to Michael about this as I get concerned about correspondence going to him, but a copy has been sent to Aidan as he needs to keep the mortgage lender happy as to the loan that Michael took out."

Now, if you go to the start of that letter again, and firstly you say: "I faxed through to you on the 4th September a letter from Thistlewood Estates which was waiting for me when I returned from holiday. This looks to be excellent news depending on whether the conditions can be satisfied." So a potential purchaser, isn't that right?

A. It was. I think we have seen the letter.

Q. Yes. "What I would like to do is to set up a timetable, bearing in mind that Michael wants to own the property in his own name for a month prior to the sale to Thistlewood Estates."

Do you see that?

A. Yeah.

Q. Now, that seems to be a clear reference to what was being

discussed at the meeting on the 17th August, isn't that right?

A. That's correct, yes.

Q. Isn't it in fact a reference to the scheme that was being proposed whereby Michael, meaning Michael Lowry, wanted to own the property in his own name?

A. Well, provided he could pay for it, yes.

Q. Well, it doesn't say anything, it just says "Michael wanted to own the property." That was the scheme, isn't it? He wants to own it in his own name for a month prior to the sale to Thistlewood Estates?

A. Yes, but Kevin Phelan would have known what was in my letter of the 18th setting out that the conditions, namely to pay off the Trustees and get rid of the debt.

Q. And what you were saying was you need to set up a timetable to enable space to be found so that Michael could own the property in his own name, isn't that right?

A. That's right. It says the same as the letter of the 18th, doesn't it? Or he hints to the same scheme, yes.

Q. As a matter of interest, why didn't it say "Bearing in mind that Michael wants to own the property for a month"? Why did it refer to his own name?

A. Well, does that what letter of the 18th also

Q. Isn't that because of the scheme, is what I am suggesting?

A. You see, the top of 6.2: "The scheme will be that Michael will purchase this property from the Trustees for about two months" - in this letter - "before completion." Obviously

I was told there had been a clear gap of when he owned the property in his own name. But, as I say, it's subject to him paying off the debt.

Q. If you go to the last paragraph: "I have not written to Michael about this, as I get concerned about correspondence going to him, but a copy has been sent to Aidan as he needs to keep the mortgage lender happy as to the loan that Michael took out."

Now, that suggests that you are keeping Aidan in the loop because Aidan needs to keep the mortgage lender happy, that is Investec, as to the loan that Michael took out, suggesting that it was Michael took out the loan?

A. Yes, I mean, we talked about this before. That's quite clearly wrong because we know that he didn't take the loan out.

Q. Well, we don't know that he didn't take the loan out.

A. I think we do know he didn't take the loan out because Michael Tunney, through his bank, lent it to Aidan Phelan.

Q. He lent it to Catclause?

A. No, he didn't lend it to Catclause, he lent it to

Q. Did you not write a letter saying that this was lent to Catclause?

A. Well, we said that it would be held I think there is a letter from me to Michael Tunney before the money arrived saying that the property would be vested in the name of Catclause. But then there is this handwritten note which is after Christmas, when it's not going to be Catclause,

it's Aidan Phelan who is the purchaser.

Q. It says that it's Aidan Phelan's name who is going to be on it as purchaser, isn't that right?

A. Well, he is therefore the person who is liable for the borrowings. And what we know, because you were helpful to find us the bank file before, that, you know, Catclause were there, but there was sort of confusion within the bank, I think. If we go back to the situation that I was trying to protect my situation, hence the property was in the name of Trustees.

Q. You are not trying to protect your situation. According to your earlier letter, Mr. Vaughan, you were advised by Mr. Aidan Phelan to take it in your name as Trustees for secrecy reasons?

A. That is in a letter to Kevin Phelan which is taken out of context.

Q. But I am not taking it out of context, that's what you said in the letter?

A. I agree it's in the letter, but the context of that letter is not a technical letter as to the facts relating to the loan.

Q. And if you take your letter of the 5th September, 2000, at face value in its long form, doesn't it suggest that Michael Lowry was the person who had the liability to repay the loan?

A. You are absolutely right. The last phrase of that paragraph, but

Q. Just hold on a minute, suggests that?

A. Yes.

Q. You were going to say something else?

A. I was going to say you can't get away from the wording in the last phrase of that last paragraph, but we know that it's wrong.

Q. And if you take it at face value, doesn't it suggest that Aidan Phelan, because he had to keep the mortgage lender happy, must have had a role in getting that loan for Mr. Lowry?

A. Well, the loan wasn't to Michael Lowry.

Q. Isn't that what it suggests?

A. No, it suggests that I have made a mistake in the letter.

Q. No, no, sorry, Mr. Vaughan, I am asking you to look at the document on its face. The document does not say I have made a mistake. On its face the document suggests that Michael Lowry took out a loan, and it suggests that Aidan Phelan had a role in that because he has to keep the lender happy as to the loan, on its face?

A. Yeah, but I am the author of this letter and I can see where there is a mistake.

Q. But on its face is that not what it suggests?

A. On the face of it, it says certain things. But it's quite clear, if you know the background information that there is an error.

Q. Mr. Vaughan, you have given the Tribunal considerable evidence about the meaning of this letter already.

A. Mm-hmm.

Q. And you have had to completely retract that evidence, haven't you?

A. I have certainly taken a different view of it in view of the other correspondence we have received from Kevin Phelan.

Q. We'll come back to your other explanation of it later, but on its face, isn't that what it suggests?

A. Yeah. I mean that's what the words say in it.

Q. And doesn't that letter of the 5th September and the letter of the 18th August suggest that Michael Lowry was the person dictating the pace, that he was the person who was saying "I want to hold the property in my own name for a month because I need a scheme to shelter the profit"?

A. It is, of course, subject to him buying it, because he didn't own it.

Q. Wasn't that in fact the mechanism by which he would pay back the loan?

A. Well, I don't know the mechanics of it.

Q. Well, you have described the mechanics of it?

A. I have, because what I have described is a meeting where a potential purchaser has been found to buy the two properties subject to two matters being satisfied: The obtaining of planning permission on Cheadle and the if it's going to be sold by Michael Lowry, as is set out in the letter of the 18th, is that he has got to clear the debt. And because it's he has got to acquire the

property. It's set out quite clearly in the letter of the

18th.

Q. He has got to clear the debt is the key to it, is it? That

is all that he has got to do?

A. No, the letter of the 18th makes it quite clear that he has

got to acquire the property.

Q. Can we go back to the form of words you used a minute ago,

because I think that is the key to it.

A. Sorry, which words?

Q. "He has got to clear the debt." And isn't that all he has

got to do?

A. No, because the paragraph 1, page 2, letter of 6.2: "The

scheme will be that Michael will purchase this property

from the Trustees."

Q. The scheme, the scheme was simply a way of clearing the

debt, isn't that right? He wasn't going to have to pay any

more than the debt to get rid of it?

A. He had to he had to find money to buy the property.

Q. Wasn't he simply going to substitute the Manchester

borrowing for the Investec borrowing?

A. Well, he didn't owe Investec anything. I mean

Q. According to your letter he didn't, isn't that right?

A. The last phrase on the long form letter has an error in it,

and he was not the borrower, as we know, of the money from

Investec.

Q. Although you did so describe him?

A. Yeah, I made a mistake.

Q. Well, we will take it up in the morning.

CHAIRMAN: Shall I say half ten or eleven, Mr. Healy?

MR. HEALY: I think eleven.

CHAIRMAN: I will reserve longer hours for the latter part of the week. Very good, eleven o'clock.

Mr. Vaughan, I am not prone to making poetic excursions on the bench, but when you referred to commissioning a report from Messrs. Chestertons half way through your evidence this afternoon, I had a distant memory of a poem by the other Chesterton which I think commenced "When fishes flew and forests walked and fig grew upon thorn..." now I am certainly not going to form any view of your evidence until I have heard the entirety of it, but I have to say at this stage some of your responses today did not appear to me to carry all the balance and objectivity that one would expect of a senior solicitor and notary, and I very much hope we can make somewhat more appreciable progress tomorrow. Eleven o'clock.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, WEDNESDAY, 24TH JUNE, 2009, AT 11 A.M..