

THE TRIBUNAL RESUMED ON THE 24TH OF JUNE, 2009, AS FOLLOWS:

MR. NATHAN: Sir, before Mr. Healy continues his cross-examination, there are a couple of points that I would like to raise with you, sir.

First of all, the thrust of part of the cross-examination yesterday was along the lines that it could not be understood why there should be a moral obligation on Mr. Lowry to assist in the sale of Cheadle. And what was being put to my client was, amongst other things, at question 236: "It's just that the moral obligation proposition is contained nowhere in any document."

Now, that line of cross-examination was of great concern obviously to me and to my client. And it occurred to me to do some further homework, and as a result of searching through some of the materials, and including the questioning of my client in September 2004, it occurred to me that there must be a document which has not been disclosed to my client and to his legal team in all these documents that have been provided by the Tribunal, and apparently either it has been overlooked or withheld. And I appreciate there had been some other problems and allegations made against the Tribunal legal team about the way in which they have conducted the disclosure of documents, because obviously if there are such documents that may be relevant to the issue of the obligation on the part of Mr. Lowry, those are documents which and those are documents which are within the possession and control

of the Tribunal, those are documents which obviously ought to have been produced right at the outset.

Now, as it turns out, we made an inquiry of Mr. Brady yesterday, and within about five minutes Mr. Brady produced to us a copy of a letter dated the 26th January, 2000, written by Aidan Phelan to Michael Lowry. And perhaps we could put it up on the screen. This is dated the 26th January, 2000, which is obviously a critical time, because it is within one month after the acquisition of St. Columba's Church by Mr. Vaughan as a Trustee, along with his wife, and where, as we know from all the background facts, that Catclause has dropped away as being the intended transferee or ultimate purchaser of the property, and it reads as follows:

"Dear Michael" it's addressed to Michael Lowry

"It is now clear that you are not able to obtain a replacement guarantor for John Daly. This places me in an extremely embarrassing position with Mick Tunney, as I have given my word that this loan which he arranged in a hurry would be sorted out. As you know, Christopher has been instructed that Catclause is gone" wholly consistent with one of the letters which we have newly presented from one of the files that no longer exists in Mr. Vaughan's hands.

"Christopher has been instructed that Catclause is gone and he is holding the property in trust for me until the loan is repaid. Although I am prepared to backstop the loan,

you" that is Michael Lowry "had full responsibility

to move the property as soon as possible."

Now, that document indicates to me, as a humble commercial

lawyer, that actually it's something much more than just a

moral responsibility, but certainly responsibility there

is. But it would appear that as between Mr. Phelan and

Mr. Lowry, this document indicates that there was something

either in the nature of a legal obligation undertaken by

each of them, or alternatively, something very closely akin

to it, but certainly in layman's eyes, something much

stronger than any kind of moral obligation on the part of

Mr. Lowry to assist in because he had full

responsibility to move the property as soon as possible.

Now, how this letter could have got overlooked or not

disclosed, I do not know.

CHAIRMAN: Well, I think it was fully ventilated in

evidence, Mr. Nathan, and I have clear recall of it. And I

think in Mr. Aidan Phelan's

MR. NATHAN: Well, you may have recall of it, but the

problem as you will appreciate, sir, is we come in, as it

were, at the tail end of matters and obviously are very

reliant upon the Tribunal producing to us the relevant

documents as they see them for this purpose. But when the

question is put: "Is it just that the moral obligation

proposition" question 236 yesterday "is contained

nowhere in any document" by Mr. Healy; that just simply

wasn't right.

Now, that takes me to a further point which I, again, would ask your assistance, sir, because I am, again, concerned.

One of the questions really relates, as one knows full well, as to what exactly was the nature of the relationship between Mr. Lowry and Mr. Aidan Phelan in relation to Cheadle, and the nature of the trust relationship or whatever it may be? One of the critical factors, it's obviously relevant for my client to know, is what actually happened when Cheadle was sold? We have, this morning, conducted a search in the English Land Registry, and the result is that we find that on the 19th January, 2004, in the Proprietorship Register of the property at Cheadle, there was a sale on the 14th January, 2004, for  $\text{£}1\frac{1}{2}600,000$ .

Now, it doesn't identify, of course, to whom the  $\text{£}1\frac{1}{2}600,000$  went, but what I would like to know is whether the Tribunal through you, sir, has got any documents which show to whom first of all, by whom the sale took place, who paid off the Investec loan? Because that's obviously critically important. It's entirely central to the whole trust of the cross-examination which took place yesterday. If there was solicitors acting on behalf of the vendors or vendor, on whose behalf or instructions was he acting? And again, I cannot believe that the Tribunal can have got this far without there actually being some documents, relevant documents, which ought to have been produced to us.

And then most importantly of all, Investec having been paid off, who was it who actually got the equity portion of the

consideration the profit that Mr. Healy was so anxious to invest and suggest as being something in the order of half a million pounds? Because if, for example, the documents that the Tribunal have got show that it was Mr. Aidan Phelan who actually was the recipient of that money, that's entirely consistent with everything that my client has been saying as the solicitor, and if there are such documents of that kind, they ought to have been produced. It's unfair that they have not been produced in the course of the material that was produced to my side, to my instructing solicitor for the benefit of Mr. Vaughan and myself. And I am just if there are such documents, I'll obviously reserve comment for later, but it would be astonishing that if there were some documents that they haven't been produced. But if they are there, the first thing that is really, really critical, I would respectfully say, sir, is that they must be produced immediately. It's not something that one could just leave over and hope somehow because it is central material in the context of the cross-examination that is taking place. Because one of the features which one has got to bear in mind always is that here is a solicitor who is not party to all the transactions that are going on between clients of any kind, he stands apart. He acts upon his client's instructions to carry out things, functions here. In the case of the conveyancing solicitor, he acts and conveys or acts in dealing with property. He doesn't originate things, he

reacts to instructions and acts upon instructions either to do things or to communicate with people. And in this sense, where one is dealing with Mr. Lowry, he has two people to whom he responds. He responds directly to Mr. Lowry as may be appropriate. Or more particularly, as we see, he repeatedly responds to instructions from or inquiries from Kevin Phelan, the agent of Michael Lowry.

Now, what is, therefore, quite critical to know always, I respectfully say, is one needs to be able to see from our perspective the picture which may not necessarily all have been known to Mr. Vaughan, because some of what he has said and has in his mind, if it is consistent with later events, those are very important corroborating pieces of information which, at this stage, when one is now looking back with hindsight, it's critically important for him to know. And if there are such documents, sir, I would ask please that we could be forthwith given those documents.

Finally, sir, in the well, there are two other points.

Firstly, because my instructing solicitor is not giving evidence to you, sir, it's important to understand how this correspondence arose in the course of June of this year in relation to the documents which Mr. Kevin Phelan had provided to him through his solicitors, Roche and Co.. And the situation is that there were there was one oral inquiry, I think on the 2nd June, followed up by a written request for information, to which there was no response whatsoever from the Tribunal. And that was followed on the

12th June by a further written request, to which there was no response at all. Followed on the 16th June with another written request, to which there was no response from the Tribunal Secretariat at all. And on the day when I held my conference with my client, on the 17th June, there was a telephone conversation between Mr. Brady and my instructing solicitor.

But when one looks at the letter, and we might just perhaps for a moment pass to that; if you look at the new bundle which we have been looking at, sir, you will see that one of the difficulties that one has if we look at the letter of the 26th May from which is Tab C/1

Mr. Roche wrote extremely vaguely in the second paragraph:

"I am enclosing a number of documents for your client's attention which he believes are relevant to my client's current appearance." Mr. Needham's client's current appearance. He says: "I am enclosing a number of other documents which I believe confirm," and so on. "My client has no difficulty with this documentation being produced to the Tribunal."

Now, you have heard from the evidence that Mr. Vaughan said that he had no difficulty about giving instructions that these ought to be disclosed. But what was troubling my instructing solicitor, and I say this on instructions, is that because of the way Mr. Phelan has been conducting his relationship with the Tribunal, as we know, putting it in simple terms, he appears to have been playing games, what

is very important is that therefore, when one has got something as vague as "a number of documents" repeated twice, it becomes quite important to know what actually is it? Is this everything? Is it only part of the picture that Mr. Phelan is producing? It's quite important to know exactly what he was doing, to which there was unfortunately no response from the Tribunal, but there we are. But it's not something which I think one can place any criticism on the part of Mr. Needham for being anxious about, in the light of the way that Mr. Kevin Phelan has acted.

Now, I say these things because, of course, my instructing solicitor is not a person who is giving any evidence to the Tribunal.

CHAIRMAN: Well, obviously I'll hear Mr. Healy on these matters when you have concluded, Mr. Nathan, and I take your point that obviously your client wished to consult with you as the leader of the legal team, but it might seem that some of this documentation was palpably relevant in any event and could have been furnished somewhat earlier than within the last 48 hours.

MR. NATHAN: Well, sir, obviously I take on board what you say. But one sees how the sequence of events went, and it may be unfortunate, but it's not something which can find any criticism, I respectfully say, against Mr. Vaughan.

That's the key element, because it is him that is the person to whom criticism or not may be addressed.

I think, sir, that that is all, save only that at the



conclusion of yesterday afternoon, you quoted from GK Chesterton from his famous poem, "The Donkey," but what I think is important to bear in mind, that whilst those are the opening lines of that famous poem, notwithstanding all that there was, the donkey is the truth, the donkey is the reality. There is this lopsided four-sided four-legged creature, but he is the one who actually is the truth regardless of what else there may be.

CHAIRMAN: Well, on that, Mr. Nathan, I wasn't investing your client with the title of the poem. It merely appeared to me in the context of you mentioning the rather unpropitious Chesterton's report, that another Chesterton had one line that may have had potential relevance.

MR. NATHAN: I think if I may quote to Mr. Healy another line from GK Chesterton: "The trust of others was not truth to me." And therefore, if one starts with the perception and wants to get to a line, it may not necessarily be the thesis corresponds entirely with the evidence which is being given. But there we are. That's a matter ultimately for you.

CHAIRMAN: Very good. Thank you, Mr. Nathan. Mr. Healy.

MR. HEALY: I'll deal with the last point first.

I put a proposition to the witness. I endeavoured to suggest to the witness what, as it were, thesis, or what line of inquiry I am pursuing so that the witness will be afforded every opportunity to respond, and that's the purpose of that modus operandi, is to enable the witness to

know where the Tribunal is going.

Now, in relation to some of the other points Mr. Nathan has just made. The Tribunal solicitor is not present, but he gave a somewhat distorted account of the Tribunal's solicitor's dealings with Mr. Needham in relation to these documents. And because the solicitor is not present, I can't be absolutely accurate in what I am about to say, but I am quite certain of the following:

That while there was correspondence from Mr. Needham, that correspondence was added to by quite a number of telephone calls from Mr. Needham to Mr. Brady, in which Mr. Needham persistently asked Mr. Brady would he be able to tell him whether the Tribunal got documentation or not from Mr. Roche. Now, I'll wait until the lunchtime adjournment till I have checked with Mr. Brady as to what happened in the course of those conversations, and having heard Mr. Nathan's explanation yesterday as to why, due to his unavailability a consultation could not be held to advise on these documents until late in the day, the matter was left to stand, and we had Mr. Vaughan's own evidence that it was his intention at all times that the documentation would have been produced. But what is significant, what is now significant, I suggest, is that despite numerous letters from Mr. Needham and numerous telephone calls asking whether the Tribunal had received documentation from Oliver Roche, no indication was given of the documentation which Mr. Needham had obtained. And I would have thought

that Mr. Needham might have informed Mr. Brady by simply sending on the documentation to him by fax, and alerting him to what had happened and, in particular, if, as is now being suggested, there might have been or there was an apprehension of dirty tricks, then all the more reason to have sent it on directly.

Now, in relation to some of the other points the in relation to the other matter, that letter of the 26th January, 2000, to which Mr. Needham draws attention was ventilated Mr. Nathan draws attention, I am sorry, was ventilated I think at length in the course of a number of sittings. I have no idea whether it was in the Tribunal books or not, I am sure that can be checked. As far as I can recall, it was in the Tribunal's books, but that can be checked, and as far as I know, Mr. Vaughan would have received all of these.

Now, the fact that Mr. Vaughan has chosen very, very late Mr. Vaughan, if he had received them, would have received them in the course of the service by the Tribunal of earlier Tribunal books of documents. But I want to be absolutely sure about that, and I'd prefer to check it before being definitive on it. But I don't think Mr. Vaughan can make a virtue of the fact that after repeated attempts by the Tribunal to secure his attendance here, he comes here very late in the day, and indeed, in the course of his evidence, as I recall, explains that it's so late in the day that he doesn't have a lot of documents.

He was asked to make himself available at a much earlier stage when both his memory and his access to the documents might have been better, and it is only now, and as we understand at the moment, purely adventitiously that he has become available as a witness at all as a result of a letter received by the Tribunal from Mr. Meagher, solicitor from Mr. O'Brien, alerting the Tribunal to his intended present within the jurisdiction.

Now, in relation to the sale of Cheadle: The Tribunal was informed in evidence, as far as I recall, either about the sale or the proposed sale of Cheadle by Mr. Aidan Phelan.

What the Tribunal is inquiring into is what was happening between 1999, or 1995 1998, sorry, and 1999, 2000 and 2001, and up to 2002. The Tribunal was endeavouring to ascertain what was intended by the various parties in relation to these transactions at that time, hence my concentration with Mr. Vaughan yesterday on what was intended in relation to the Cheadle transaction, an intention which was never in fact realised.

Now, I'll have to come back to the other matters after the lunchtime adjournment when I get a chance to look into them.

CHAIRMAN: Well, I'll have regard to what was said, Mr. Nathan, and if needs be they can be revisited in the course of the day.

MR. NATHAN: May I just make two observations in relation to what Mr. Healy has said. My client coming along to give

evidence to the Tribunal has nothing whatever to do with the Tribunal's obligations as a matter of law and proper and fair conduct in terms of providing documents and information. Also, may I add, I am slightly startled by the idea that this inquiry, as it were, when looking at the Cheadle property, has given itself some kind of cut-off date, apparently 2002, according to what Mr. Healy has just indicated, when clearly what happened to the property and who got the money, I would have thought, was about the most important fact that, or one of the most important facts that this Tribunal actually is inquiring into. Because it's a real fact, it's there, establishable in some way or another. I can't believe that, therefore, and indeed we are told that it's been the subject of evidence by Mr. Aidan Phelan. But if there are documents, then those are documents which I believe, as I say, ought to have been disclosed, and if they are there, they ought to be disclosed now. Mr. Healy has not indicated whether there are documents or not.

MR. HEALY: What I was indicating is that the matter was ventilated in the course of evidence, and if there are documents, I am fairly certain there aren't, if there are documents, I'll certainly make them available.

CHAIRMAN: Well, we will proceed with evidence. I might just clarify one matter

MR. HEALY: Sorry, sir, just in relation to could I just make one other point. The document in question may have

actually been produced in the course of the meeting between members of Tribunal counsel and Mr. Vaughan in London in 2004, because it was the document that Mr. Nathan referred to of the 20th January, 2000, was referred to and quoted at that meeting. Mr. Vaughan had a transcript of the, the exchanges that took place at the meeting, and indeed, it was from that transcript that he asked Mr. Brady yesterday to identify the document in question. But from the fact that the document was quoted at the meeting, I'd be surprised if it wasn't produced.

At page 51 of the transcript, line 15 sorry, I beg your pardon, sorry. Page 51. This document is at Tab 32 of the supplemental book, page 51. If I start at line 1. In fact, if we go to the previous page, page 50, line 23:

Question from me: "What I am trying to tease out a little more is the fact that the evidence we have heard is in January 2000 Aidan Phelan took over?"

Mr. Needham: This is January 2000.

Mr. Healy: The deal closes in December 1999, and after some pressure from you, Mr. Vaughan, the money is produced by the bank?

Answer: Yes:

Mr. Needham: That money is used to purchase the property and the property is parked in the name of Christopher Vaughan and Debbie Vaughan, his wife, because he did not know where else to put it.

Answer: Correct.

Question: He was on an undertaking to the bank so the bank's position was secured?

Answer: Correct.

Mr. Coughlan: That is none of our concern, just as I cannot bind Mr. Vaughan, I cannot bind Investec.

Mr. Healy: That aspect of the matter is not a major concern of ours. The evidence is that point that

Mr. Phelan wrote to Mr. Lowry and said 'You can't really sustain this transaction. You have put me in an embarrassing position. The bank'

Mr. Needham: This is Aidan Phelan?

Mr. Coughlan: Yes.

Mr. Healy: He says 'As you know, Christopher has been instructed that Catclause has gone and he is holding the property in trust for me until the loan is repaid.'

Answer: That makes perfect sense. It is not a letter that I am aware of.

Mr. Needham: That makes perfect sense.

Mr. Healy: 'Although I am prepared to backstop the loan, it is your full responsibility to move the property as soon as possible.' That, obviously, to some extent, is inconsistent with the letter in which Michael Lowry is recorded as wanting to own the property in his own name for a month, is it not?

Answer: I think we are back to the point that I really, genuinely, don't know why there are two versions of this letter. I wish I could help, but I cannot."

I draw that to your attention because it would appear to suggest that, firstly, virtually all of the contents of that letter were brought to Mr. Vaughan's attention, and although I can't be sure at this stage, I'd be surprised, since I was quoting from it, that I didn't have a copy of it and make it available at the time.

CHAIRMAN: Well, I will revisit these, if necessary. And obviously I am anxious, as a foremost consideration, that procedural fairness has been complied with, but I am also anxious that we make dispatch because time is present. It's the second time that Mr. Vaughan and yourself and Mr. Needham have attended, Mr. Nathan, and perhaps in the context of clarifying the sequence of succeeding examination after Mr. Healy has concluded, I might just clarify. I take it, Mr. Shipsey, your presence isn't academic, it is in the context of your instructions on behalf of Mr. Michael Tunney?

MR. SHIPSEY: It is, sir, and I would not be longer than 20 or 35 minutes, I would have thought, and I am not sure what order

CHAIRMAN: I would envisage you being first, followed by counsel for Mr. O'Brien, then Mr. O'Donnell on behalf of Mr. Lowry, and finally Mr. Nathan, because, of course, it's his witness in accordance with the practice that has been observed.

MR. SHIPSEY: I am very grateful, Chairman.

CONTINUATION OF EXAMINATION OF CHRISTOPHER VAUGHAN BY



MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Mr. Vaughan

A. Mr. Healy, I don't know whether we are just going to go back at all to, in particular, the letter that we were talking about yesterday, the letter that I sent to Kevin Phelan giving him core information about the property transaction.

Q. Well, feel free to make any comment you want about it?

A. There is obviously I was very conscious when we left here yesterday of the Chairman's criticism of how I dealt with certain matters, and I have had an opportunity of looking through the transcript in some detail. I think I'll just reiterate what Stephen Nathan has said; that my position, of course, is a solicitor, and I don't think I made this clear in my evidence, this is probably my fault; that I was acting on instructions from the parties. I didn't devise any scheme to assist Michael Lowry in his taxation issues at all. I was just acting on instructions very, very specifically that were given at the meeting of the 17th, and then helpfully recorded in the letter of the 18th.

And also much has been made yesterday of my word "Secrecy," which concerned me slightly, because when I first looked at the letter, which I hadn't seen for some eight and a half years until recently, I think Mr. Healy and I were possibly looking at that word from different ends. The secrecy that was clearly intended by me in the letter was secrecy

keeping facts from Kevin Phelan, because it certainly was nothing whatsoever to do with this Tribunal. I didn't know the Tribunal existed at that time. There were certain facts relating to the loan that had been organised and the relationship of Aidan Phelan and Michael Lowry that I didn't think was appropriate for Kevin Phelan. I have used the word "Secrecy," and as I said in my statement, I rather fudged over that. I didn't want to give him that information. And so, secrecy to me meant keeping something from Kevin Phelan. It certainly under no circumstances meant keeping it from this Tribunal, which although must have existed, I didn't know anything about it and I wasn't involved or aware of its interest in those properties at that time.

I think the other point which came a little later on, and I can see, Mr. Chairman, how you may have got somewhat frustrated with my evidence, was the words that Mr. Healy used to me, namely "Profit". And the way I interpreted Mr. Healy's questioning was that he wanted me to say that Michael Lowry was going to earn 5 or 1/2 600,000 from this UK property deal. And I didn't say that, I kept evading that particular question. But quite clearly, Michael Lowry would have made a profit had the transaction gone through. It's as simple as that. But what I couldn't answer, and I still can't answer, is how much profit he would have made, because we know what the proposed sale price was, but what we don't know is what the deductions were. And if figures

had been given to me of what the deductions were, namely how much was owed to the bank, because it was sometime since the bank loan was taken out, what money had to go to Kevin Phelan, his profit, or his finder's fee, we could have done the calculation. But I can see, reading through the transcript, that I kept obscuring a simple straightforward answer.

The answer was, yes, Mr. Healy, a profit would have been made, but I can't do the calculation, unfortunately. And I am sorry if that frustrated you yesterday, sir.

Q. I want to come to that, I may come back to something you said a minute ago afterwards, but I quite understand the point you make about expenses. I think I was using the expression "gross profit," and I think we can presumably now agree that by "gross profit" I mean the difference between what you pay for something and what you sell it for?

A. Absolutely, I agree with you entirely. I can see that yesterday I was not answering properly.

Q. So what I am trying to understand is this: If you look at your letter of the 18th August, which is in Tab 6.2

A. Excuse me one second, I gave my papers to Mr. Nathan.

Q. 81D, 6.2.

A. I'll look at it on the screen.

Q. I'd rather you were comfortable with it. We'll get you

A. Thank you, Mr. Healy. I have now got a copy in front of me.

Q. 6.2.

A. Yes.

Q. Now, in that letter do you recall you were canvassing the state of affairs as you were aware of them after the meeting of the 17th August?

A. Yeah.

Q. And, again, echoing something Mr. Nathan made some remarks Mr. Nathan made, and I think I made them, if I recall at the very outset of my, all of my examination of you, that I think you said at one point in a letter to Mr. Ryall, and I may have reminded you of this before, Mr. Ryall of Westferry, that one of the difficulties you had in dealing with all of these matters is that what you said at any one particular time, or what you wrote at any one particular time, was based on the information available to you, on what people told you at that particular time; what you said at a later date would depend on what people said to you at a later point in time, isn't that right? Do you remember writing to him in those terms?

A. Yes, and I think I said something not dissimilar to the Tribunal about my contemporaneous knowledge.

Q. Precisely. Your contemporaneous knowledge is based on whatever has been said to you, whatever instructions you received, whatever you have been asked to do or the impressions you formed from the people you have been asked to meet at any particular time?

A. Yes.

Q. That is what the inquiry is interested in. And when we come to this letter of the 18th August, you were now canvassing the state of affairs as they existed, in particular in the light of what I think you believed at the time to be excellent to use, that there was a bit of movement on these properties, if I can put it that way?

A. Correct.

Q. And in the letter, if you want me to read any particular parts of it I will, but I am going to go through it quickly because we have been through it a few times.

You say in relation to Mansfield that no figure was actually discussed at the meeting, but you felt 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."

Then St. Columba's Church, it would appear that in relation to that the meeting had been told that you had a firm offer of  $\frac{1}{2}$ 1.1 million sterling, isn't that right?

A. Yeah, that's what I recorded the following day.

Q. All right. In relation to the Mansfield property, you refer to an outstanding loan. Do you know what you were referring to there or do you want to refresh your memory by looking at the UK property ML meeting notes?

A. Well, Mansfield was a property that was vested sorry, I'll start again. Mansfield was a property that was registered in the name of Michael Lowry, but some of the money came, as we know, from Aidan Phelan, because he is

recorded in the Joint Venture Agreement of the 30th April.

So my expression "Outstanding loan" related to money that had been put in to it.

Q. You saw that as a loan to enable the property to be

A. I obviously did on that day, yes.

Q. Now, if you go on to the second page, we come to the calculation I was seeking to make yesterday. You were dealing with Cheadle, and you are suggesting that "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."

And I was suggesting to you that that meant that you would have expenses of about  $\frac{1}{2}$ 500,000, you would have thought?

A. That would seem a realistic figure, yes.

Q. If you then go on to your letter dated 6.4. You are writing to Kevin Phelan by fax, and you are saying: "You indicated to me on the telephone on Monday 18th that a purchaser had been found for both sites for 1.3 million pounds."

So it looks like there is a little more certainty as far as your instructions are concerned at that stage?

A. It would appear so, yes.

Q. And if you go on then to your letter of the 4th October, 2000, which is a letter to Goldsmith Williams, the thing has crystallised even further. And in the first paragraph after the two numbered indents, you say: "The total consideration for this whole transaction is for your

clients to pay my client the sum of  $\frac{1}{2}$ 1,360,000 sterling,"

isn't that right?

A. Yes.

Q. And then you said: "For various reasons the sale price of the site at Mansfield in the contract is to be  $\frac{1}{2}$ 300,000 and the sale price on the site of St. Columba's is to be  $\frac{1}{2}$ 1,060,000"?

A. Yeah.

Q. That's the way you were going to apportion the total purchase consideration of 1.36 million?

A. Yes, I agree.

Q. And presumably, that was to reflect the tax structure that you had discussed at the meeting in Dublin?

A. Well, I think all I can say, that those were the instructions given to me by Kevin Phelan. That was the split.

Q. Well, I appreciate that. But you had canvassed something along those lines in your letter of the 18th August as well. So presumably it had been discussed

A. I had, yes.

Q. in Dublin. And it was in Dublin that the tax scheme was being discussed. It was you first drew that to Kevin Phelan's attention?

A. Yeah. It had to be the matter was obviously discussed in the Jurys Hotel meeting, so Kevin Phelan had to be aware of that so that if the scheme went ahead as devised by Michael Lowry, then it was no good the purchaser saying we

want to complete tomorrow. The delay had to be built into the negotiations that Kevin Phelan was undertaking.

Q. So there were two things. We have discussed this the last time you gave evidence, not yesterday. There had to be a built-in delay to enable the scheme to be put into effect, and there also had to be a division of the consideration along the lines we have discussed?

A. What is obviously what's in the letter are the instructions I received from Kevin Phelan.

Q. Yes. Now, if the scheme went ahead along, or if the scheme had gone ahead, we know it didn't, if it had gone ahead along those lines, judging from what we know about the purchase price paid for Mansfield and without knowing anything in detail about the expenses, there wouldn't have been much by way of profit on Mansfield?

A. No, no. I think if we look at the letter of the 4th, I have obviously been told that  $\frac{1}{2}$ 300,000 is the Mansfield price, but that is obviously lower than my instant reaction as to you have got to have this to clear the debt, the 345.

Q. So there might have been a loss on Mansfield, a small loss?

A. Probably, yes.

Q. And most of, what I'll call the gross profit, without knowing what had to be deducted from it, which would be in the order of about I think between 5 and  $\frac{1}{2}$ 600,000, I am not sure of the exact figures now, that would have come off the Cheadle site?

A. It would have done, yes.



Q. On the basis of that structure as retailed to you in Dublin, would I not be correct in thinking that Michael Lowry, assuming he went through with the thing, would end up with the lion's share of the money, on the face of it, from the sale of the two properties?

A. He would, yeah. And let me just sort of carry that forward slightly. There was only really yesterday after we had finished that I suddenly if you work that through, he actually was putting himself in exactly the same position as he was twelve months before. He was being given an opportunity to buy a property, Cheadle, sell a property, Cheadle, and make a profit. That was what his intention was in September the year before. And suddenly there is an opportunity for him to do it again. So, yes, he would have been the beneficiary of the profit if the matter had gone through as outlined.

Q. He had been the beneficiary of the entire arrangement up to that time concerning the UK ML property?

A. No, I don't think that's right, because we have got Aidan Phelan, who we know quite clearly is the owner of Cheadle, and as the correspondence says, if Michael Lowry wishes to avail himself of the scheme that was discussed at Jurys Hotel, then he would have to buy the property. He would have to have it transferred into his name and the debt would have to be paid.

Q. I appreciate he had to buy it, but we are not talking about an arm's length transaction now, sure we're not? He wasn't

even paying the cost price for Mansfield.

A. Well, I don't know what the cost price was.

Q. But can we be reasonable about this? As you said yourself,

the cost price for Mansfield was probably in or about  
£375,000 at this stage. And a consideration of 300,000  
would leave you in a loss. So he wasn't even paying the  
cost price for that?

A. I am sorry, Mansfield I thought you meant Cheadle.

Cheadle was being sold. But on your figures, it would seem  
as though it would have been sold at a slight loss from the  
acquisition price.

Q. All I am saying is that they are not my figures, they  
are the figures in the documents

A. The figures that you have mentioned.

Q. Well, the figures that were given to you as part of your  
instructions. But on those figures what I am suggesting to  
you is that those figures appear to me to indicate, whereas  
you may describe it as a purchase by Michael Lowry at that  
particular time of the Mansfield property, it was a purely  
paper transaction, having no reality, since Michael Lowry  
was being afforded an opportunity, as you put it, to buy  
the property at a loss, isn't that right?

A. Well

Q. Can we just deal with that first. He would have been  
buying at a loss, a loss

A. Can we just I am not just so sure what property we are  
dealing with.

Q. Mansfield.

A. This is Mansfield. Mansfield was already registered in his name, so if he was selling it at that price, he may have sold it at a slight loss.

Q. Yes. But the other property?

A. Cheadle.

Q. He was buying that at close to cost as well, wasn't he?

A. I don't think I can really answer that because I don't think a price was agreed, because what's in the paperwork is, if Michael Lowry buys or acquires the property, and unfortunately I introduced the expression "paper transaction" at one stage yesterday, which you then picked up and then we both seemed to use it in different contexts, and if I may sort of develop this very slightly. There seemed to be two ways that the property could have that Michael Lowry could have benefited from the sale of Cheadle, if it had ever gone through. The first way is what we are talking about in the paperwork, which is he has to buy the property, and whether he buys it for cost price merely to clear the debt or not is possibly not particularly relevant. But he pays for it, and then the Trustees can transfer it to him. What he does with it then is up to him, and he may have made the profit of a level that you have indicated. And that would actually allow him to have the property in his name for one month or two months as I mentioned in different letters. And that seems to be the proper way, if he wanted to sell it from his own,

from his ownership, that's the only way it could happen, but it did depend on him paying off the debt to the bank. The other, and I think this is where you and I possibly diverge as to our understanding of the words "paper transaction." I think that what you are suggesting is that the Trustees could have perfectly easily, without involving a sale to Michael Lowry, which would cost him Stamp Duty, they could have transferred it to the end purchaser, Berwood or Thistlewood or whoever, they would have then accounted to the bank for the balance sorry, for the debt. The balance they would have passed to Aidan Phelan as the registered proprietor, and from that moment onwards, it was no concern of mine what happened to the money. But if that were to have happened, then the taxation issues that were floated at this meeting wouldn't have come into play because he would have never had it in his name. So we have two sorts of taxation issues here. We have a Stamp Duty issue, which is English law which I can talk about. We have a taxation issue in Ireland, which is the gain, which I can't talk about.

Q. The end result of the transaction, if it had been carried through, is that Michael Lowry would have ended up nominally, at least, with all of the money?

A. Yeah, he would.

Q. I'd suggest to you, and I'll be coming back to this in relation to other documentation, that would indicate that he was the true beneficial owner of that, of those

properties?

A. I am not aware of that, because back in January the owner and the person who seemed to have adopted the debt was Aidan Phelan. And I think that's strengthened by the letter that was produced this morning where Aidan Phelan said "I am backstopping the loan."

Q. Had he adopted the debt? He said he was backstopping it. What does "backstop" mean?

A. Well, I don't know. I assume it meant he had adopted the loan.

Q. Because backstop means I stand behind you, something like that?

A. It's not till I read the letter, I didn't really it's not an expression I had come across before.

Q. It sounds to me to be an expression that resonates with the words used in your letter of the, is it the 12th September, is it? The 5th September, where you say: "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 has taken out."

Aidan Phelan is characterised in this letter as somebody who is keeping the mortgage lender happy, keeping him on side. I suggest to you that resonates with the expression "I am prepared to backstop the loan"?

A. But my clear understanding was that Aidan Phelan had taken this property and it was his property. And eventually, as

we know, it became registered in his name and was sold by him.

Q. But I suppose

MR. NATHAN: It does seem to me important, he seems to be putting the third paragraph but ignoring completely the instruction that Christopher has been instructed in the second paragraph of this letter as that Catclaus is gone and "he is holding the property interest for me."

Now, the proposition that has been put to this witness is based entirely upon the concept of although I am prepared to backstop the loan, you have full responsibility. But it ignores altogether that second paragraph. Now, it seems to me you can't put to somebody that would indicate that he was the true beneficial owner.

CHAIRMAN: Well, I am sure the letter isn't going to be put selectively.

A. I don't have a copy of the letter.

Q. MR. HEALY: I am sorry. I think you were provided with a copy yesterday.

A. No, no, I am talking about the no, my solicitor distributed copies to everybody except me.

Q. We are looking at the letter of the 26th January, 2000, Aidan Phelan to Michael Lowry?

A. Yes.

Q. I am going to come back to it later.

A. Okay.

Q. I want to look at the evidence you gave about some of these

matters on Day 357 on the 23rd April. Just before I do so, I want to mention something you said about them in your first statement. Do you have a copy of your first statement?

A. I don't, but

Q. I can let you have a copy. If I could ask you to turn to page 17, please. You see the heading "Letter dated 5th September 2000, Book 81, Tab 45"?

A. I can, yes.

Q. If you go to paragraph 45.4: "Like the letter of the 12th July, the letter of the 5th September, 2000, was addressed only to Kevin Phelan, and the two versions of the top copy can only have come from his file. Once again, I understand that the Tribunal has got a photocopy of the two top copies and no original version of the top copy of this letter. By this stage I had had a meeting in August in Jurys Hotel with Aidan Phelan, Helen Malone and Mr. Lowry. All of them had expressed their concern, and Aidan Phelan stepped in to take charge because a resale of this property was just not taking place and the purchase offers which had been produced by Kevin Phelan were under suspicion."

I take it you mean the purchase offers being produced prior to that date?

A. Yes.

Q. "By the 5th September Kevin Phelan had produced a written offer from a company called Thistlewood Estates, which was conditional upon planning consent for a residential

development being obtained. At the time I thought this was a genuine offer and we were all pleased that it had been received. Subsequently, when I was instructed to obtain an independent appraisal and valuation of the property from Messrs. Chestertons, it emerged that there was never any prospect of obtaining planning permission for the residential development of the site. So far as I am aware, the 'Offer' from Thistlewood Estates never proceeded beyond the first letter. At one stage my solicitor's suspicions about Kevin Phelan were so strong that he thought that Letter F might be a forgery, but I think he was wrong about that. The signature appears to be mine and the words 'To follow one' are also in what I believe is my handwriting. I have not, however, seen the original Letter F, nor has the Tribunal. With regard to the paragraph starting 'What I would like...' there is a mistake."

That's the paragraph that begins "What I would like" and goes on "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."

"This was in fact a mistake on my part, since it was a reference to the position with regard to tax of Aidan Phelan, not that of Michael Lowry. There was never any real question of Mr. Lowry personally owning Cheadle. Originally Catclaus had been acquired as his family's intended vehicle for acquiring the Cheadle property, but it was not transferred to that company for the reasons I have



already explained. The question of the identity of the intended transferee had been resolved long before this letter was dictated by me for my secretary to type. The intended transferee was known to be Aidan Phelan, and it was he or Helen Malone who had referred to his tax requirements. I believe at the meeting at Jurys Hotel in August 2000, my wife and I still continued to hold the title of the properties in our own names."

Now, I think referring to that, and there were questions from me on Day 357. If you go to page 61 of the transcript for that day, I'll have it put on the overhead projector, you will see that you are being asked about that letter at question 220 at the bottom of the page.

A. Yes.

Q. "Question: Can I ask you now to look at the letter of the 5th September. And you refer to this at paragraph 45.1 of your statement." And then part of your statement is read out, I think the part that I have just read out now. And there is a discussion about it. And if you go on to page 68, you see that the wording of the letter is taken up again at question 238.

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

Answer: That was clearly a mistake there.

Question: And you go on to describe the tax position of Aidan Phelan as having been referred to at the meeting in Jurys, isn't that right?

Answer: Yeah.

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

Answer: This was something that was said at the meeting.

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

This was a relief; great, we have found a purchaser. And we were aware of that, that it was happening at the meeting of the 17th August sorry, the property was in the names of Debbie and myself as Trustees. We would have then had to have transferred it through to Aidan Phelan. And the comment there, which I have picked up from the meeting, which isn't recorded I mean, this isn't a minute, it's just a note as to what was happening was, oh, from his tax point of view, this is what I was told, he has got to own it for at least a month. So, if Thistlewood were going

to buy St. Columba's Church, then it was no good Debbie and myself transferring that property to Thistlewood Estates.

There would be an intermediate transfer to Aidan Phelan which would not have been expensive because there would be no Stamp Duty payable because we held as Trustee, through to him, and what I was told, that I suppose it's Irish and English tax, anyway what I was told is you have got to have it for a month to help his position. Hence my reference in the letter to Kevin Phelan about that. But saying 'Michael' is rubbish, it's nothing to do with Michael Lowry."

Now, I was then asking you why, if the only problem was that it was Michael Lowry's if the only problem is that it wasn't Michael Lowry's tax position but Aidan Phelan's, why not simply delete 'Michael' and insert 'Aidan.' But we continue discussing the matter, and if you go to page 76, you will see you refer to the tax scheme again in the last sentence of the answer to question 259, where you have described the process, the conditionality with regard to planning, access and so forth.

You say: "We are a long way off completing. There'll be plenty of time to deal with the transfer of the property from myself and my wife as the Trustees into the name of Aidan Phelan so he can hold it for a month to sort out his tax risks."

And then at page 78, question 267, you were asked:

"Question: Were any of Michael Lowry's tax issues

discussed at the meeting?

Answer: No."

That's the meeting in August.

Now, I then asked you, at question 268:

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

Answer: I think the answer to that is I got it wrong.

There is no other you can't really add to that. It is wrong. It was replaced."

Now, if I could just go back over some of those matters, some of those answers again.

At page 78 when you were asked were any of Michael Lowry's tax issues discussed at the meeting, and you answered no, the answer should have been yes, shouldn't it?

A. Quite clearly yes, it should be.

Q. And when you were describing the length of time that you would have to get this transaction in order, on page 76 of the transcript at question 259, when you said: "There'd be plenty of time to deal with the transfer of the property from yourself and your wife as Trustees into the name of Aidan Phelan so that he could hold it for a month to sort

out his tax risks," you should have referred to the time that you would have to transfer the property into the name of Michael Lowry so he could hold it for a month to sort out his tax risks?

A. Certainly in the light of the letter of the 18th, that would be correct.

Q. And then if you turn back to page 69, if you look at the end of that, your answer to question 240, you say:

"Hence my reference in the letter to Kevin Phelan about that." Referring to the need to have the property in Michael's name for a month to help his position, you say, "But saying 'Michael' is rubbish, it's nothing to do with Michael Lowry."

Now, saying "Michael" was not rubbish?

A. No, I must agree with you, in light of, as I said a moment ago, the letter of the 18th.

Q. Saying "Michael" was in fact correct, isn't that right?

A. Yeah.

Q. So when you said that you had got it wrong, that it was wrong and that it was replaced, the letter was replaced, in fact you hadn't got it wrong?

A. No.

Q. You had got it right?

A. That's correct, yes.

Q. The letter was absolutely correct, having regard to what had happened

A. Yes.

Q. at the meeting? And this is now apparent from the letter that's come to light of the 18th August?

A. That's right. If that letter had been available to me, I wouldn't have written any of this, because it would have obviously jogged my memory as to what happened.

Q. Yes, but for a moment I am not concerned solely with the evidence you gave the last day, I am just concerned to establish that the explanation you gave for why the letter was changed appears to be unsustainable?

A. Certainly in the light of the evidence we have produced yesterday, it does, yes.

Q. So, if the letter wasn't wrong, why was it altered?

A. I don't know. When I made the original statement, I tried to piece together the circumstances from my memory and from looking at the documents, but now having looked at the letter, in particular the letter of the 18th August, the day after the Jurys Hotel meeting, that must be the the facts in there must be right because they are contemporaneous with the meeting. I was going to say, my piecing together what I thought must have been discussed and put into this Tribunal in my statement and then also cross-examined by you is now quite clearly wrong.

Q. But, you see, a lot of the evidence you gave in April about this was from memory?

A. It was

Q. You remembered what had happened at the meeting in Jurys Hotel, you remembered about the tax problem, you remembered

how the scheme would be structured. We didn't use the word "Scheme" then, but you remembered how it would be structured, and you remembered that there would be no Stamp Duty implication. Now, do you remember yesterday I was asking you about the Stamp Duty implications, and you didn't seem terribly enthusiastic to respond to my suggestion, which I think is borne out by your evidence, that there was a Stamp Duty advantage being canvassed as part of the scheme?

A. There is a lot of questions there. But let me just answer the last one first. If the property had been transferred by the Trustees to Aidan Phelan, there is no Stamp Duty because he is the beneficiary. If the Trustees had transferred it to a third party, Michael Lowry, then there would be Stamp Duty payable because it's an arm's length transaction between the Trustees and a buyer, and the buyer would have to pay Stamp Duty on that.

Q. Why would Michael Lowry do that? Why would anyone do that?

A. It depends on the scheme that was agreed upon.

Q. But the evidence you gave, Mr. Vaughan, is that this was a well worked scheme. You had a clear memory, you said, of how it had been described to you, and you clearly described the Stamp Duty advantage, in my view, as a key element of the scheme. Do you want me to read your evidence again?

A. No, because I have described Stamp Duty sorry, a transfer to, for the property to be sold for the benefit of Aidan Phelan where there wouldn't be any Stamp Duty

payable.

Q. I just want to go over what you said again. It's at page 69 of the transcript.

"And the comment there which I have picked up on from the meeting which isn't recorded." I suggest to you at that stage that you are basing what you are saying on your memory, is that right?

A. It is, yeah.

Q. "I mean this isn't a minute" you are referring to the UK ML property note. You are saying that's not a minute, it's simply a set of bullet points?

A. It is, yes.

Q. I suggest to you that the reason you are distinguishing between the form of the document and a minute is because you were saying I remember things that aren't in that?

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

Q. The reason you are distinguishing between what's in the bare-bones of the ML UK property note and a minute is so as to support your memory of what had transpired at the meeting?

A. But as we know there wasn't a minute.

Q. Pardon?

A. There wasn't a minute.

Q. Yes. So the fact that what you were now remembering wasn't in the minute didn't mean that it hadn't happened, isn't that what you were seeking to convey?

A. There wasn't a minute.



Q. There wasn't a minute?

A. No.

Q. The UK ML property note was not a minute?

A. It's a note of I honestly don't know whether it was an agenda item, you know, an agenda or whether it was produced after the meeting. I don't know.

Q. Okay. It's called "UK Property ML Meeting Notes"

I think you are correct in describing it as not a minute.

It doesn't say so and so said this, so and so said that, or there was a discussion about this or there was a discussion about that. And in your evidence you say: "And the comment there which I have picked up from the meeting which isn't recorded, I mean this isn't a minute..." I suggest that you made that statement so as to convey that the fact that it wasn't in the minute didn't mean in the note, sorry, didn't mean that it hadn't been discussed?

A. I am not a hundred percent sure which particular point you are making there. What had been if the taxation had been discussed or the transfer had been discussed. Sorry, I am not trying to be difficult

Q. I want to be sure you are not confused.

A. Sorry, I am not trying to be difficult.

Q. No, no, I appreciate that. "The property was in the names of Debbie and myself as Trustees. We would have then had to have transferred it through to Aidan Phelan. And the comment there, which I have picked up on from the meeting, which isn't recorded I mean, this isn't a minute, it's

just a note as to what was happening was, oh, from his tax point of view, this is what I was told, he has got to own it for at least a month."

And then you go on to explain what was being proposed.

A. Yeah.

Q. That is not contained in the UK ML property notes?

A. No.

Q. You were distinguishing that document, which is now on the overhead projector, the meeting notes, from a strict minute?

A. I am, yes, yeah.

Q. And I suggest that what you are seeking to convey is that although there was no reference in the meeting notes to the tax position, you had a memory of it, and the fact that it wasn't in the note didn't in any way detract from your memory because the note wasn't a minute?

A. Correct.

Q. Okay. So what you were describing to the Tribunal the last day was the mechanics of a scheme to dispose of these properties as devised at this meeting?

A. Yeah.

Q. That scheme, you told the Tribunal, entailed Aidan Phelan holding the property in his name for a short period of time?

A. Correct.

Q. I take it the scheme has to be the same anyway regardless whether it's Michael or Aidan who is involved?

A. The scheme would be slightly different because the Trustees were holding the property for the benefit of Aidan Phelan, but if I go back to what I said a little while ago. If Michael Lowry was going to sell the property, there are the two methods I have described: Either he reimburses the Trustees with their debt and the property is either transferred to him or held by Aidan Phelan, they do with it what they look sorry, it's then transferred to him. The alternative would be that the Trustees dispose of it and it's up to Aidan Phelan to deal with the net proceeds of sale. So it's slightly different

Q. The evidence you gave of the scheme the last day was your evidence to explain the letter of the 5th September?

A. That's right, yeah.

Q. And your letter did explain why somebody would hold the property for a short period of time in their own name for tax reasons?

A. Yes.

Q. If the property was in your name as Trustees, you could be compelled to transfer it into anyone's name, isn't that right?

A. Correct.

Q. It could have been transferred into Michael Lowry's name as beneficial owner, if he was the beneficial owner, without any Stamp Duty or other tax implications, isn't that right?

A. If Aidan Phelan, who I knew to be the

Q. No, no

A. Well, if he had directed me, the answer to your question is yes. But subject to the payment of the debt, repayment of the debt.

Q. Yes. If, in fact, Mr. Lowry was the beneficial owner of the property, whether you knew it or not, the scheme that you described in April last as designed to assist Mr. Aidan Phelan could have applied just as readily to Mr. Michael Lowry, isn't that right?

A. Yes, because it's the scheme that I put forward in the long form letter of the 5th September, that Michael would need to own the property in his own name for a period of time.

Q. There was no need to change this letter on the 5th September, isn't that right?

A. Well, it was changed. I put forward, in April, what I thought was a proper explanation for it to be changed, and that was my firm view at that stage, otherwise I wouldn't have put it in the statement. It seemed to be the logical answer to the question. I tried to work out in my own mind how these two letters came about. I did remember that we had talked at the Jurys Hotel about the tax, but for whatever reason, I was pretty convinced by April that it had nothing to do with Michael Lowry. However, the events of receiving, in particular the letter of the 18th which I wish I had earlier, makes me change my mind totally, as I have explained to you. It makes the evidence I gave before wrong. And that is the situation.

Q. But, Mr. Vaughan, do you recall when you last gave evidence

what I was trying to puzzle out was how you could have made a mistake such as you were then claiming you had made on the 5th September, having had a meeting about the very matters you were writing about on the previous 17th August, do you remember that?

A. I do.

Q. So, having written that letter, having written the correct letter on the 5th September, do I understand your evidence to be that on that day, or sometime shortly thereafter, when Kevin Phelan contacted you maybe, you changed it?

A. Yeah, because my previous evidence, as I have said now, is totally wrong. What is written in the light of the letter of the 18th August in the long form letter of the 5th September sets out the correct position.

Q. Yes, that is the correct position?

A. I agree with you totally.

Q. Now, that letter was not provided to the Tribunal?

A. The long form one?

Q. Mm-hmm?

A. No.

Q. When was it changed?

A. I can't answer that. I don't know.

Q. Well, you have given quite a lengthy explanation to the Tribunal in the course of your April evidence as to how this letter was changed. Am I correct in summarising it that you think the letter was completely retyped?

A. Well, I am pretty certain it is completely retyped because

we have agreed upon that.

Q. It's surely hard to credit that you would have dictated a new letter on that day changing the content of the letter so as to remove the second paragraph when, as we now know, the second paragraph is what reflects your meeting of the 17th and your earlier letter of the 18th?

A. Yeah, in fact it's two paragraphs. It's the last paragraph

Q. Of course, yes.

A. Yeah.

Q. Well, do you want to reconsider that evidence that you gave to the Tribunal the last day about the change?

A. Well, I reconsider it on the basis of in the light of the letter of the 18th August I was wrong, and my evidence that I gave before was based on what I had believed to be the case, using the letters. It seemed, when I gave evidence before, when I submitted my statement, that that's how it fitted into the jigsaw. It's now absolutely clear that I was wrong, and it's difficult to say I am wrong because I had worked out very carefully, looking at the documents that I had, that this was how it must have happened. And it is somewhat of a surprise to realise that I was totally and completely wrong, because when Kevin Phelan's solicitors had produced these letters it was blindingly obvious that I had got the evidence I gave before wrong.

Q. What I am anxious to canvass though is that you did give a description of actually going into Scott Fowler I think,

making contact with the secretary there?

A. I think it was a possible way of how it happened. We were trying to work out how the letter came to be typed. I don't think I said that that's a hundred percent how it happened, but I was saying that's the way it could have happened.

Q. You had written the letter of the 18th August to Aidan Phelan, what, three weeks before that?

A. I think Kevin.

Q. Sorry, Kevin Phelan, I beg your pardon, the letter of the 18th August to Kevin Phelan just three weeks before this?

A. Yeah.

Q. And in that letter you had set out the entire scheme?

A. Mm-hmm.

Q. So maybe we take it that the contents of that letter of the 5th September couldn't have come as any surprise to Kevin Phelan?

A. No, because except the only difference is that, and I think this is one of the factors that possibly confused me to some extent, is that the letter of the 5th September, both of these, are talking about a different purchaser, they're talking about Thistlewood Estates. But ignore the identity of the purchaser, the basic structure of the deal set out in the long form letter of the 5th is virtually the same as set out in my post-meeting letter to Kevin Phelan of the 18th August.

Q. Yeah, I agree, leave aside the scheme, generically was the

same, whoever the purchaser was?

A. Yes.

Q. So presumably, he would have had no reason to ring you and to say what's this about Michael holding the property for a month?

A. Probably not, no.

Q. When the short form letter was sent to the Tribunal, the one that's now on the overhead projector, it gave a completely incorrect impression of what was actually happening at this time, isn't that right?

A. The structure is there but it misses out the person to whom the letter was dealing with, because in the long form letter quite clearly in two places, the second and last paragraphs, deals with the identity being Michael Lowry, and that short form letter doesn't mention it.

Q. You see, the feature of this letter, the other long form/short form letter and the letters that have now been produced, is that all the long form letters and the letters that have now been produced contain references to Michael Lowry?

A. Correct.

Q. That would tend to suggest that sending the short form letters to the Tribunal was intended to exclude references which connected Michael Lowry with these transactions at this date in late 2000?

A. I think you could draw that inference from that, yes.

Q. If you can't now remember when the short form version of



the letter of the 15th September was 5th September was produced, can you recall whether anybody directed you as to how your file should be produced to the Tribunal?

A. No, certainly not. I mean the files relating to these two properties at some stage were out of my possession, but nobody

Q. When were they out of your possession?

A. When I can't remember the exact dates now, but certainly Aidan Phelan and Helen Malone wanted to see the files as to what happened to these transactions, and they had the files at some stage to look at what happened.

Q. When was that?

A. I think it's we had the meeting, I can't remember the exact date now, but it was sort of February/March time, I think, there was a meeting in their offices, and if you remember, Kevin Phelan was there as well. So this is 18 months later, something like that.

Q. Are we talking about February/March of 2001?

A. I think that's possibly the meeting. If you remember by

Q. Well, can I just get one thing clear

A. I certainly took the files with me for them to, you know, see what happened with those properties.

Q. Can we just get the dates right? You brought the files with you to Mr. Aidan Phelan's offices in Clonskeagh?

A. I think I said that at the last hearing, that I took the files there, yeah.

Q. That was about what, six months after this letter was

written?

A. That's right, yes.

Q. September to March. And did you leave them with the files?

A. I think so, yeah.

Q. How long did you leave them with the files?

A. They came back to me at a later date, I can't tell you when. But certainly I remember, I think Aidan Phelan brought them back to me at some stage, but I took those files because, I think it was the very first time that I became aware of, and I think I gave this evidence before, of the existence of the Tribunal. And if you recall, you questioned me previously about what had been said at that meeting, and you were somewhat surprised that Denis O'Brien's name had been mentioned or Doncaster Rovers. But that was the meeting where I was asked to go and, you know, here are the files, you have a look at them. And that's what I did.

Q. And just to come back on the question I asked you a moment ago. How long did you leave the files?

A. I really don't know. I can't answer that question, because I don't remember.

Q. But you did go back to England without your files?

A. I think so, yes, because I think they wanted to consider them. They were but then they were certainly available a little bit later because then Mr. Davis wrote to me, didn't he, so...

Q. I appreciate that. So, they must have had them for a month

or so, maybe less?

A. I honestly don't know.

Q. All right.

A. But they were not in my possession for a period of time, quite clearly.

Q. Were you at a meeting subsequently at the Regency Airport Hotel?

A. Yeah.

Q. Were your files given back to you?

A. I can't tell you. I don't know.

Q. Was it not what was the purpose of that meeting, can you recall?

A. The evidence I have given previously was to bring, I think, the various parties up to date with where we were and explain, I think specifically to Denis O'Connor, what the situation was, although the evidence that I have given, and I think it's also in a letter, I don't remember actually Denis O'Connor being there, but I had never met him before, so perhaps he didn't sort of impact on me at all. But I was at that meeting, which was, I think, sort of a month, six weeks after my first visit, which is recorded in the Tribunal, I gave evidence about it before, and I think Helen Malone gave evidence about it as well.

Q. Could your file have been interfered with during the period when it was out of your possession?

A. If I haven't got control of the file, I can't say what anybody might have done to it.

Q. The altered letters are on your headed notepaper, isn't that right?

A. They appear to be, yes.

Q. Did you provide anyone with copies of your headed notepaper?

A. Oh, I wouldn't, no. I wouldn't have thought so, no.

Q. If we just look at the letter of the 5th September again, if you want to look at your own copy of it. The long form, please. Go to the bottom of the letter, you will see that you have signed it, that's your signature, isn't that right?

A. It is, yes.

Q. And it has the postscript to follow on the left-hand side?

A. Correct.

Q. With the asterisk to which it presumably refers in the penultimate paragraph?

A. Yeah.

Q. Now, if we go to the short form of that letter, of the altered letter, the altered version, if we just go to the bottom of it, please. Again, it's on your headed notepaper and it's signed by you?

A. That appears to be my signature, yeah.

Q. Could I suggest to you that if somebody asked you on the 5th September, 2000, to alter that letter and to sign it, you'd have remembered it?

A. Certainly on that day, on the well, I think if somebody had said "Alter this letter, sign it," I am sure I would

have I can't imagine anyone giving me that instruction.

Why would somebody say alter a letter?

Q. And you have no reason why you would alter the letter?

A. None whatsoever, no.

Q. When you brought your file to Dublin, the time that you left it in Dublin, and to come back again to the meeting at the Regency Hotel, do you remember if you went through what appeared to be your file at the Regency Hotel?

A. I can't remember now.

Q. Is it possible you didn't have your file there either?

A. No, the files were brought with me to this meeting sorry, can we just go back. Which meeting are we talking about again?

Q. Let's be clear about it. We'll call the first meeting the meeting in the Clonskeagh offices of Mr. Aidan Phelan and Ms. Helen Malone. At that meeting you handed over your file?

A. The files were there quite definitely and I think, in fact, that's Helen Malone's evidence as well, isn't it?

Q. Yes. And you left the file there?

A. I am absolutely positive I did, yeah.

Q. And the second meeting in the Regency Airport Hotel is the one I am asking you about now. And do you recall if you had your files, if your files had been given back to you before that meeting?

A. I can't remember.

Q. Can you remember if you had your files at that meeting?

A. I can't remember at all. It's probable that I did, but I cannot state categorically that I had them or not.

Q. Had you any concern about letting your file out of your possession?

A. I don't think so. They were people who had been giving me instructions about the matters. It was a solicitor's file, it belonged to the client, if they wanted it. They presumably wanted to consider what was in the paperwork there.

Q. Presumably the files you brought at that stage included all of the material, including certainly the long form of the letters of the 5th September and the 12th July?

A. I would assume so certainly, because yeah.

Q. And presumably they contained all the other material that was made available earlier this week?

A. Well, I don't know that. Because the evidence I have given this week relating to the Berwood matter, I believe that the reason that that wasn't produced earlier was that it was in a separate file, it was a file that became redundant because it didn't proceed at all.

Q. When did the Berwood matter commence, as far as you were concerned?

A. It commenced I think in the July let me just have a look the letter of me I think it's the 8th August actually.

Q. Sorry?

A. Let me just get the letter here. Berwood I think, the link

begins with the letter of the 9th August, 2000, which is letter 6.1. That is a response to Kevin Phelan, who clearly asked me a series of questions to which he wanted answers. And just to continue that, it concludes, I assume, on the 4th October, or very shortly after that, because nothing else seems to have happened.

Q. Sorry, just bear with me for a minute. The letter of the the long form of the letter of the 5th September relates to the meeting of the 17th August, isn't that right?

A. I am not sure that it does specifically because it refers to a letter that I faxed through to Kevin Phelan about Thistlewood Estates. But then if you look at the second paragraph, then that obviously relates to a discussion to have the property in Michael Lowry's name, and that must have come from the meeting of the 17th August.

Q. And would that not have been on if that document was on the files, wouldn't the document of the 18th August also have been on the files?

A. Sorry, we are talking about long form 5th September being on the file?

Q. Yes.

A. I don't think well, I don't know is the simple answer. Yes, there is a logic to it being on the file certainly.

Q. I think I am going to I wonder, sir, would you adjourn, because I want to have a look at some other documents.

CHAIRMAN: Well, we are just a couple of minutes before one o'clock, so we'll adjourn for lunch and resume at

two o'clock. Thank you very much.

THE TRIBUNAL ADJOURNED FOR LUNCH

THE PROCEEDINGS RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF CHRISTOPHER VAUGHAN BY

MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Thank you, Mr. Vaughan. Just before lunch, you were telling the Tribunal I think that you brought your file to Dublin to a meeting at Clonskeagh, isn't that right, in the offices of Mr. Aidan Phelan and Ms. Helen Malone?

A. That's correct.

Q. And you left your file there for some time, you are not quite sure how long?

A. That's my recollection, yes.

Q. Present at the meeting were apart from yourself, Ms. Malone and Mr. Aidan Phelan and Mr. Michael Lowry, do I understand you to say that?

A. I don't remember Michael Lowry being there. If he is there, if it is in my evidence I don't think he was there. Kevin Phelan was there.

Q. Kevin Phelan was there?

A. Yes.

Q. I see.

A. This is the occasion when they sort of put it together for a little while to see if we can resolve our differences.

Q. Yes. And you did, to some extent, in any case?

A. Well, I thought we had.



Q. Enough to enable you to go on with the meeting?

A. Oh, yes, yes.

Q. So, how did the meeting progress then?

A. Oh, I don't know. I certainly we had a meeting, I certainly can't recall anything about the meeting at all.

I remember being

Q. Michael Lowry in his evidence says he was at the meeting?

A. Oh right. Well, if he was there, he was there. I mean, the point main point that I remember about this particular meeting was being asked to be alone in the same room as Kevin Phelan for a little while to see if we could resolve our differences. I seem to recall the evidence I gave last time that we had a perfectly civilised discussion and we didn't come to blows or anything.

Q. Now, by the time that you attended that meeting, I don't think the Tribunal have been in contact with you, is that right?

A. I don't think so, no, no.

Q. And what did you understand the purpose of the meeting to be?

A. I think the evidence I gave before, I would have to sort of check it up exactly what I said, but it was to tell me about the Tribunal.

Q. The Tribunal had not been in touch with you?

A. I don't think it was in touch with me until April.

Q. Yes?

A. Yeah.

Q. Some weeks later?

A. Yeah.

Q. Would I be right?

A. Yeah, yeah.

Q. And how long did the meeting take, do you remember?

A. I can't tell you that. I simply don't know.

Q. So, your file was out of your possession then for some time?

A. Correct.

Q. You retained that - you got your file back?

A. Correct, yeah.

Q. You can't remember precisely when?

A. No.

Q. And you can't remember if you had it at the Regency Airport Hotel meeting?

A. I think it more likely than I had it than not because it was a briefing meeting for Denis O'Connor.

Q. So then you took your file, if you had it then, back to England with you?

A. I would have done, yeah.

Q. So, at that stage, presumably, on the basis of the evidence you have given today, you couldn't you can't remember having by that time, made any changes to the letter of the 5th of September?

A. Certainly not. I mean, I gave evidence before about altering the July letter upon the instructions of Kevin

Phelan Dublin.

Q. Yes, yes?

A. So, that's I just looked it up over lunchtime and it is in my statement that I altered that letter, a new version was produced.

Q. Yes, but you gave similar evidence concerning the letter of the 5th of September?

A. I think - it is now

Q. Just to clarify that - do I understand correctly that in relation to both letters you gave evidence that it was at the request of Aidan Phelan?

A. No, Kevin

Q. Or Kevin Phelan - or on your own initiative but you couldn't be sure?

A. I don't think it was on my own initiative because why would I do anything without instructions from a client? But certainly the first letter, the July letter, my evidence before was that upon Kevin Phelan's instructions the letter was changed.

Q. Yes. Can we come to the 5th of September letter then. You don't remember making any changes to that and you couldn't have made any changes to it because it was correct?

A. The evidence I gave this morning was absolutely right, that the long form letter, if we call it the 'long form', of the 5th of September, fits into the evidence that I gave earlier, namely the letter of the 18th of August ties in with this. And I had in my original statement sort of

tried to rationalise this and tried to work out, as I said before lunch, how the letter came to be done, but I was wrong.

Q. Well, just to be clear about that?

A. Yes.

Q. I don't think you gave your earlier evidence on the basis of a rationalisation, but on the basis of your memory, that obviously your memory must have been wrong?

A. I think the expression I used this morning was it was a jigsaw, to try and sort of fit it together, how did we come to

Q. That is what you are saying this morning. I just want to clarify you didn't say that before?

A. Right, okay. What has obviously changed and what has helped in the evidence is, of course, the production of these other letters, and

Q. I understand that?

A. Yeah.

Q. Yes.

A. And I think one of the points that has come out of this, of course, is that we have before the Tribunal three sets of letters, whereas a long and short form, a point you made to this me this morning, was that the unique point about these three letters is that they all either mention or hint at Michael Lowry.

Q. Yes.

A. And I have said as to the first letter, the July letter,

that was changed by me on the instructions of Kevin Phelan.

The inescapable conclusion is that he must have told me to change the others ones as well because he was the person that letters went to. He was the only one who was within this correspondence, myself, Kevin Phelan. Nobody else had these letters.

Q. I think what you told the Tribunal this morning in answer to my questions, but echoing a submission made by Mr. Nathan, was that what you did you did on the instructions of your clients?

A. Yeah.

Q. Now, I think you repeatedly have pointed out that your clients, in relation to this transaction, were not Kevin Phelan?

A. Well, he was the client's agent.

Q. I appreciate that but he wasn't the client?

A. Well, one would take instructions from an agent as much as from the client because that is the definition of an agent.

Q. All right. Okay. Okay. And this letter was based on instructions which you had received from your actual clients, the principals, at a meeting in Dublin on the 17th of August, isn't that right? It was a reflection of what you had learnt at that meeting?

A. It is yeah, it is a reflection of that although as I mentioned this morning, of course, it seems to be a different purchaser.

Q. Yes, yeah.

A. Yeah.

Q. But the scheme is a reflection

A. I agree entirely, because I said I agreed to that this morning. And I think one of the things that may have led me up the wrong path was Thistlewood Estates as opposed to Berwood, but the structure is the same.

Q. Okay. And I understood you to say to me this morning that you don't remember changing that letter. And would I be right in saying that there would be no reason to change that letter in light of the contents of your letter of the 18th of September?

A. I would have only changed it if I

Q. 18th of August - sorry

A. The only reason that I would have changed the letter looking at the 5th of September, the 5th of September letter, would be if I had been told to change it, that but I just can't remember being told.

Q. And there could have been no reason, I think, as we agreed this morning to change it because it was consistent with the discussions you had earlier?

A. It was. I mean, the only, as I said before, this letter only went to one person and he was the only person who could have told me to change it.

Q. Well, it was on your file, wasn't it?

A. Well, this is what I don't know because are both - I don't know whether both versions - because they are presumably done in the 5th of September or possibly for the 6th, the

next one, they are on the file at some later date, but I only seem to have a file with the short firm - short form letter of the 5th of September on it.

Q. Did you not say before lunch that that letter was on your file when you brought it to Dublin?

A. What, the long form letter?

Q. Yeah, the long form?

A. When I say 'brought it to Dublin', is this for the meeting.

Q. No, no, when you brought it to Dublin to the meeting in Clonskeagh?

A. Yes, I was just clarifying that.

Q. Yes?

A. No, I said I brought the file. I assumed that all the correspondence was in it. I mean, I can't tell you exactly what was in that file.

Q. Yes?

A. But it is logical that one or other of those letters was in it. When I come to deliver the file to the Tribunal, then we know what the position is; only the short form letter is delivered up.

Q. Yes?

A. That is an inescapable fact now.

Q. Yes?

A. And just so there is no dispute about it, I mean I cannot these letters are obviously signed by me, they are that.

Q. Yes?

A. And I have given evidence I certainly remember the first

discussion with Kevin Phelan about the other letter. But this one, it must fall into the same category because he is the recipient of the letter.

Q. And when Mr. Davis contacted you about the matter again in 2002, only the short form was on your file, is that right?

A. That's right yes.

Q. So between September 2000 and, I think it was March 2002, somebody must have removed the long form?

A. Correct, yes, yeah. I mean, perhaps I can just go and say, I mean it could have been me, I mean the conclusion that I am coming to, looking through this, looking at the other evidence, is that I have obviously been instructed to change the letters. It - it is not unusual to change a letter for whatever reason. There is nothing untoward about it, to me, if the recipient says you are wrong. So, I suppose I may have then disposed of the long form letter but the recipient, Kevin Phelan, quite clearly hadn't because he is the one that comes up with them.

Q. But I understood that the office copy was still on your file?

A. Of the long form letter?

Q. Yes.

A. I don't think that's right. I don't think I have given that evidence. I think the short form, quite clearly, was.

Q. Okay. I think what you said is you don't see anything wrong with changing the letter if there is something wrong with it?



A. Um.

Q. I think we agree there is absolutely nothing wrong with that letter?

A. In the light of the letter of the 18th of August, it fits into that sort of matrix but if I had been told to change it, for whatever reason, it got changed.

Q. That is not what you said a moment ago you said you saw no reason to change a letter if it was wrong, I just want to move on from that. Are you now saying you would change any letter if anybody asked you to do it?

A. No. The recipient of the letter - and the recipient is Kevin Phelan - quite - it seems inescapable to me now that he has said 'redo this letter' and I have redone the letter. That's the only conclusion that I can form.

Q. So you are saying that you wrote the letter of the 5th of September, 2000, you sent it out, isn't that right, either by fax or by post or both?

A. Yes. I mean - excuse me - it hasn't got a fax number on this one or either of them.

Q. Yes?

A. On the other hand, that's not a guarantee it wasn't faxed. And the other point is that Kevin Phelan spent a very substantial amount of his time in England and he would have been in and out of the office constantly because we were dealing with other matters as well. The Doncaster thing was still rumbling on. He could have quite easily picked it up.

Q. I am sure you can understand, Mr. Vaughan, we have had a number of different explanations for this and I think you understand?

A. That's right.

Q. I think you understand how pivotal it is in view of the emphatic references to Mr. Lowry in it. I just want to be clear precisely what you are now saying about it. Can we just go back to when it was originally drafted. Presumably in drafting the letter or in typing the letter, your system, your secretary generated an office copy?

A. There would have been a copy, yes.

Q. An office copy of the long form of the letter of the 5th of September?

A. Yes, that would have happened, yes.

Q. And that would have gone on your file?

A. Yeah.

Q. And the letter would have been either sent or faxed or both?

A. Yeah.

Q. Or possibly even picked up?

A. Yes, yes.

Q. I see. Now, looking at the letter again, might I draw your attention to the asterisk and the "to follow"?

A. Yes.

Q. That would seem to suggest that the letter was, in fact, sent either by fax or by post, wouldn't it?

A. It - I don't no, that is not necessarily right. I mean,

Q. But in any case you would have put that on yourself when you were signing the letter?

A. That's right. At the time to put that letter into an envelope to be either sent or collected, I hadn't got the enclosure, so I have just made the manuscript amendment.

Q. Yes, yes?

A. And I recognise that as a device I use from time to time.

Q. Yes, okay. And the letter says that "a copy has been sent to Aidan". Do you see that?

A. Yes, I do.

Q. So that may have happened as well?

A. If a copy, it says, has been sent to him, it has been sent to him.

Q. So?

A. Sorry, can I just go back to the copy?

Q. Yes?

A. I think actually - I think the copy is the letter from Thistlewood, not a copy of this letter of the 5th of September. I think if I look at the beginning:

"I faxed through to you on the 4th of September a letter from Thistlewood." "I have not written" - sorry - go down to the bottom - "I have not written to Michael about this because I get concerned about correspondence, but a copy has been sent to Aidan as he needs to keep the mortgage lender happy".

So, I know that Aidan Phelan was under pressure from the

mortgage lender to do something. I think the copy that is sent to him is not a copy of my letter of the 5th, it is a copy of the Thistlewood Estate offer to buy.

Q. Right. It could be a copy of this letter or it could be a copy of the letter you had from Thistlewood Estates?

A. It certainly could be. It is more logical that it is Thistlewood because that - why would Investec Bank want to see the letter of the 5th of September? They would want to see a letter from a third party buyer to give them comfort.

Q. So are you now saying that you can remember something happening following this?

A. I - at this time I can't remember.

Q. Right.

A. I think this is why I struggled before to think how could we have written these letters and you try and rationalise, don't you, you know, 'this is what happened, that's what happened, therefore this must have been the sequence of events'. But as I have had to admit, I was wrong in what I said before.

Q. At some stage between this date and the date that Mr. Davis - or the date, rather, that you sent the file to Mr. Davis, which was on the 25th of April, 2001?

A. Yeah, yeah.

Q. You recall you refer to that letter, I think, in your second statement. I will come back to it. It is just the date. A change was made to this letter?

A. Yeah. Sorry, we are talking about the July?

Q. We are talking about the 5th of September letter, 2000.

Between the date of the letter, the 5th of September?

A. Yeah.

Q. And date that the file was sent to the Tribunal on the 25th of April, 2001, that letter was altered?

A. I think it is more than altered. The long form is discarded, the short form is substituted.

Q. Yes, yes?

A. I don't think that is an alteration, that's a change.

Q. Right. So, a letter on the file, the office copy of the long form is removed from the file?

A. At some stage it must have been disposed of.

Q. And an office copy of the short form is placed on the file?

A. Correct, yes.

Q. And a top copy of the short form is also created?

A. Yes, yes, correct.

Q. Right?

A. And we know, of course, that it reaches its recipient because Kevin Phelan produces a top copy.

Q. Yes.

A. So to some extent that is a relief that at least the top copy did get sent.

Q. Yes. I think of course we have no evidence from Kevin Phelan so we have no idea what he got or didn't get, isn't that right?

A. He clearly has a substantial amount of correspondence tucked away there.

Q. Yes, yes. So, yes, do you know how he got all the correspondence?

A. No.

Q. Have you ever speculated how he got it?

MR. NATHAN: Not for speculation...

A. I don't know. I mean, I haven't, I mean, I was going to say the last time I met him was at the meeting in Clonskeagh Square and I have not met him face to says since then. But of course we had some correspondence.

Q. MR. HEALY: If Kevin Phelan asked to you change this letter, do you think you would have asked him why.

A. Probably not.

Q. What is the point in your changing letters for clients when they - when they don't explain to you why?

A. If we have got something wrong or the client disagrees with the format of the letter 'can you put it in a different way?' or 'can you say something different?' That is not uncommon for you to be asked, but only if it is the recipient who is going to ask you. I mean, you wouldn't dream of altering a letter that is gone to a third party.

Q. Why not? The client might say "I don't agree with what you said"?

A. Well, you wouldn't dream of altering it if the third party asked you to.

Q. No. If a client asked you to alter a letter you were sending to a third party you might alter it on the basis that the client disagreed with what you were saying?

A. Yes. I mean, if there is a mistake but

Q. But let's get back to this letter?

A. Yes.

Q. There are no mistakes in this letter and you are informing Kevin Phelan of something. This is what, for me, is puzzling. You are informing him of something, you have already informed him of it. You have informed him of the scheme in an earlier letter. What could be so troubling about this letter to anybody that they might want it altered?

A. In September 2000 I would have had no idea what might be troubling. I can - I can hear his rather strident Northern Irish accent saying 'this is no good, it needs to be changed'. And I am sure I wouldn't have asked him why.

Q. You don't remember any such conversation?

A. I don't, no, because I - we had some very, very difficult conversations over the three years and he is a fairly aggressive character. And if he has said 'that letter needs to be changed', I would have changed it. I wouldn't have - you know, it's between the two of us and let's be very specific about this - obviously you wouldn't change a letter that was to a third party and the third party is going to act on it. This is to him. It is not to anybody else.

Q. Isn't it surprising that he didn't ask you to change the letter of the 18th of August, which was in similar terms?

A. I - yes, interesting. I don't know...

Q. The letter of the 18th of August was never provided to the Tribunal until now, of course?

A. No, I hadn't got it on my file, as you know.

Q. Well, you must have had it on your file at the time you went to Dublin to the meeting in Clonskeagh?

A. Well, not necessarily because my

Q. I thought you said this morning you had?

A. No, I don't think so. I think I said it would have been a separate file relating to the sale to Berwood. But that sale had fallen away incredibly quickly. My problem, to some extent, is I simply don't remember when it fell away. But if Kevin Phelan has sent us all the paperwork relating to the Berwood sale, then it never got beyond the exchange of letters between myself acting for the seller and Goldsmith Williams acting for the buyer. Exactly the same as Thistlewood. It never went anywhere. So, it was a redundant file. It wasn't - wasn't happening.

Q. The letter of the 8th of August is to do with a general scheme, isn't that right - the 18th of August, sorry?

A. Well, the 18th of August sets out

Q. Sorry, I beg your pardon, I am confusing you. The 19th of August. The 18th of August. Sorry. I don't want to confuse you, I just want to make sure we are actually looking at the correct letters. The letter of the 18th of August, you say, is to do with the Berwood, the Berwood scheme, isn't that right, the Berwood purchase?

A. Sorry, I was just - sorry, just give me it is all right.



My understanding, having looked at the letter of the 18th and, as I have said in the statement, putting together the figures in that statement, it must be the Berwood scheme.

It is not Thistlewood because Thistlewood has different figures.

Q. Yes. What were the Thistlewood figures?

A. I can't remember offhand.

Q. How can you say that then?

A. Well, you know, there is a letter here on the file, if I find it.

Q. All right.

A. Off the top of my head I can't remember what the figure was.

Q. And how were these files - are they are not all kept close to one another then?

A. There would be a separate paper file, cardboard file created.

Q. I appreciate they are all, they are all files in the same place, presumably? You would have the Berwood Cheadle file and you have the Thistlewood Cheadle file, they are all presumably together?

A. Yeah.

Q. There are the Cheadle files together?

A. If - if the filing of these files within a filing cabinet follows my regular form, they would be in a, you know, a cabinet relating to these particular matters.

Q. Yes.

A. But usually if a matter is not going anywhere it gets discarded pretty rapidly.

Q. But you don't remember discarding these? Do you have a shedding system?

A. Sorry, it would go - if we didn't have a file that was current - without mentioning any particular file, but I could - if we had a file that suddenly became redundant, we have a person buying a property, we have a set of instructions from the agents 'your client is buying this farm, open a file', and then it goes nowhere. That file initially would go into storage. But then, after a period of time, it would get shredded and that would be it.

Q. But you have, presumably you have a protocol or a system, a regime for shredding, you don't just shred a file because you think it is no longer going to be relevant? You may have - you client may sue you, somebody else may sue you, you will want to see what happened on a file, won't you?

A. I think if it is a file that is clearly redundant, it's gone nowhere.

Q. But isn't the file relevant both in terms of what the client wants to do and in terms of the client's relationship with you?

A. Well, I - it depends on the particular circumstances - but if a file is going nowhere then it has been discarded.

Q. We will just deal with this slowly. If you open a file you are opening it on behalf of the client with a view to achieving something, isn't that right?

A. Yeah, yes.

Q. And if you don't achieve anything then that file ceases to be an active file?

A. Yeah.

Q. You no longer have a relationship with the third party with whom you were dealing on behalf of the client on that file?

A. No.

Q. But you have a continuing relationship with your own client with regard to what happened on that file?

A. Yeah.

Q. And it is relevant to that continuing relationship, isn't it?

A. Yes, but if the client if the matter is not going anywhere then that is the end of it. I mean, it is not going to be...

Q. Isn't it relevant to your relationship with the client, in particular in this case where the client's agent was somebody who was liable to be somewhat troublesome or truculent, I think is how I'd describe it?

A. I really don't know how to answer that question because it's so speculative.

Q. How is it speculative. How long do you keep clients' files for?

A. We are talking about files that have gone. I mean the good thing about it, obviously the client had got copies of the file, whereas I hadn't, the client's agent had got copies.

Q. I suggest to you that any solicitor keeps all his files to

protect himself until at least the limitation period has passed? You may have a - would that be right?

A. No.

Q. What is the Law Society rules on retaining files?

A. I can't tell you off the top of my head. I would have to look it up. But they have different rules relating to if a matter was a sale, a purchase or probate matter or if it didn't actually go anywhere. It is on their website. I could look it up and tell you but I wouldn't, off the top of my head.

Q. I suggest it certainly wouldn't - I doubt it would countenance, would you agree with me, the destruction of a file after a matter of months or weeks?

A. Well, I don't see that because it's a redundant file, it wasn't going anywhere.

Q. All right. The letter of the 18th relates to the Dublin meeting, isn't that right?

A. It does.

Q. The Dublin meeting of the 17th of August?

A. Correct.

Q. And, in fact, on your evidence, the letter of the 18th of August is the clearest record of what happened at that meeting, isn't that right?

A. It is.

Q. It is the closest thing you have to an attendance of what happened at that meeting?

A. Correct.

Q. And it is in line with your practice, in fact, sometimes that, having letters that reflect what happened at meetings as opposed to a mere attendance? It is one way of making sure that you know what happened at a meeting. If you are going to write a letter to somebody about it you don't really need to keep an attendance?

A. That's right, yeah, yeah.

Q. I take it you have no attendance of the meeting of the 18th in Dublin?

A. Not that I can find, I haven't.

Q. Do you remember making notes at the meeting?

A. I don't, no.

Q. So this is the only really extensive record we have of what happened at that meeting?

A. It is, yes. It is the only record that I have seen that I have prepared.

Q. And from your file, we do have the short UK ML Property notes?

A. I don't remember having a copy - I must have - that document was obviously produced at the meeting but I don't remember having a copy of it. I mean, if I looked at the file that we have produced to the Tribunal, is there a copy on it? I don't know.

Q. Well, it is on that file?

A. Is it?

Q. Yes.

A. Well, then I had one then.

Q. Right. And do you remember when you got it?

A. What, this document?

Q. Yes.

A. I am pretty sure that it was the working agenda document for the meeting.

Q. Right. So rather than being a minute of the meeting or a note of what happened at the meeting, even a truncated one, you think it was produced in advance of the meeting?

A. I am pretty sure that that was - when we got to Jurys Hotel that was what was produced.

Q. And while that did stay on your file the letter of the 18th of August didn't?

A. No, because they are heading in different directions, I think, because, as I said, I think this relates to Berwood, the Berwood purchase and it has got the key components in it of what Berwood were going to do. So this is why, unfortunately, the file have gone.

Q. If we go back to the 9th of August 2000 letter for a moment and just clarify one or two things about it. That is document 6.1. I think you describe this as being part of the Berwood file again, is that right

A. It is, yeah.

Q. Why do you say that, as a matter of interest?

A. Well, what I said earlier was that Berwood, if we look at the letter 6.5 and 6.6.

Q. Yes.

A. Is that they were buying, if you look at the heading to

Goldsmith Williams letter, "Purchase of two parcels of land from M. Lowry"

Q. Yes.

A. If we look at the - and I have said the same thing when I have replied to them - so they were buying both properties and the - one, two - third paragraph down of the, is it 6.5, the Goldsmith Williams letter says: "To enable the matter to proceed speedily, we understand you will be releasing the title deeds to us upon receipt of this letter," et cetera.

Q. Yes.

A. This is what makes me think that the letter of the 9th of August is part of the Berwood deal because it was giving Kevin Phelan, at his request, the - I think the phrase I used yesterday 'the core information' to pass on to a purchaser because it relates to both properties.

Q. Berwood was the subject that was being discussed at the meeting on the 17th, isn't that right?

A. Probably, yes. We got two purchasers, Berwood and Thistlewood.

Q. It was a big surprise then, a pleasant surprise, isn't that right?

A. What, at the meeting?

Q. Yes?

A. Yes. I mean, my evidence has been quite clear that that meeting was called by Aidan Phelan and Helen Malone to see where we were going. And I am repeating myself as to what

I said before. It was a great relief - and I can't remember what the words I have used now in the letter, isn't it?

Q. I think you said that you thought the meeting might be rather tense and, in fact, it was a great relief to get the news?

A. Yes, absolutely.

Q. Yes.

A. And suddenly there was a purchaser.

Q. Yes.

A. Who was going to take these properties off the hands of Michael Lowry, Aidan Phelan, whoever was going to be responsible for them.

Q. And - but I suggest to you that that would seem to suggest that that was the first time that Berwood came on the agenda?

A. Well, I don't - I don't quite know what you mean by that because I don't think I had heard - I quite clearly hadn't heard the name 'Berwood'. Because if we look at the long/short form letters of the 5th of September, I talk about Thistlewood.

Q. Yes.

A. 19th of September letter to Kevin Phelan which says.

"Dear Kevin, you indicated on the telephone on the 18th of September a purchaser had been found. You didn't tell me who the purchaser was".

Q. Yes.



A. So I didn't know and so at some stage it must have been immediately after the letter of the 21st of September, which was the letter from Goldsmith Williams, that I suddenly discover this name of Berwood Park Associates. So, from the documentation that I have, that letter of the 21st of September is the first indication I have of the identity of that purchaser, although we have had floating about the one, or possibly two, letters from Thistlewood. And this is why in my original statement, which I accept now is wrong, I thought Thistlewood must have been the purchaser that Kevin Phelan was referring to and we talked about at the meeting, yes.

Q. But if you are right in what you have just said now, am I not right in concluding that the 9th of August letter couldn't have been a Berwood letter as such because you hadn't heard of Berwood by then?

A. I am not - Kevin Phelan was the agent, he was doing the negotiating.

Q. Sorry, I didn't quite?

A. I hadn't but Kevin Phelan is the agent.

Q. Yes, yes.

A. He is doing the negotiating. The letter of the 18th is giving this key information.

Q. No, but the letter of the 9th was well before you had acquired this information about Berwood?

A. Sorry, the letter of the 9th?

Q. The letter of the 9th of August?

A. The letter on here?

Q. Yes.

A. Sorry, I said 18th a minute ago. My apologies. I meant the 9th of August letter was the one at that gave the key information to Kevin Phelan.

Q. But at that stage you hadn't heard of Berwood?

A. I personally hadn't, no.

Q. Yes. So presumably this just went on your ordinary Cheadle file?

A. That's right, yes. I am sure we would have had it but then, once Berwood came on the scene, you then assimilate the papers, put them together, we have then got a new - open a new file.

Q. You are not basing this on anything other than a rationalisation, isn't that right?

A. That is absolutely right, yes.

Q. There is no reference to Berwood in the 9th of August?

A. No, no, none at all.

Q. None whatsoever?

A. There is not even a reference later on when Kevin Phelan speaks to me.

Q. Yes. And the information contained in the letter of the 9th of August is relevant to any potential sale of these properties, if your evidence is correct that you gave yesterday, isn't that right?

A. It is, yes, yes. But it does deal with both properties and the - what makes me in my own mind link it to Berwood is

the fact that Berwood, for some reason, seemed to say 'you are going to send us the files, we are going to do it'.

Q. Yes.

A. And I stressed to Kevin Phelan that both properties have - and I have used this phrase, a 'good and marketable title' which is the sort of standard conveyancer's phrase to reassure a purchaser that you can be relied on.

Q. But why do the Thistlewood documents appear on the file?

A. I think there is only one letter for - is it one or two letters to Thistlewood and that's it.

Q. But they are on the file?

A. I can't answer that because presumably Berwood became the live issue, Thistlewood wasn't.

Q. How many letters to Berwood are there?

A. One letter.

Q. One or two?

A. That's right.

Q. You see, wouldn't that suggest that the Thistlewood documents were left on the file and what you describe as the 'Berwood documents' were not, because they were, perhaps, inconvenient?

A. I don't know. I don't understand what you mean by "inconvenient" because at the time

Q. Inconvenient because in the context of the Tribunal's inquiries they contain too many references to Michael Lowry?

A. Well, I wasn't aware of the Tribunal in 2000, so...

Q. You were aware of the Tribunal in 2001?

A. Right. So? But the Berwood matter had long since disappeared, it had disappeared in

Q. So the Thistlewood matter had long since disappeared as well, hadn't it?

A. Sorry?

Q. The Thistlewood matter had long since disappeared as well?

A. It had, yes. I mean, for whatever reason there is a letter on the file or two letters on the file.

Q. I gather there are five Thistlewood documents on the file?

A. Five, are there?

Q. Yes. But none of the Berwood documents. None of the Thistlewood documents, I think, refer to Michael Lowry, but what you describe as the 'Berwood documents' do?

A. Right.

Q. You see, I have to suggest to you that there is nothing in either of these two documents that would cause them to be characterised as either Berwood or Thistlewood or anything other than Cheadle documents?

A. Well, you are putting that to me.

Q. Yes.

A. I think I am possibly in a slightly better position to answer that because I am the author of the letter and it just seems to ring true with Berwood trying to buy both properties.

Q. Doesn't that bring you back to the troubling point that all the documents that you had difficulty either explaining the

changes that were made to them, or the documents that you have had difficulty explaining the production of, all relate to - or non-production of - all relate to Michael Lowry?

A. They are also all addressed to Kevin Phelan.

Q. Yes.

A. But yes, you are quite right.

Q. Yes. And you don't remember precisely what documents you brought to Dublin to the Clonskeagh meeting. But is it not reasonable to assume that you brought every document you had relating to this?

A. I don't think you can assume that. I brought the files relating to the two transactions. Excuse me.

Q. Mansfield and Cheadle, all the files you believed related to them?

A. I think it unlikely that I would have bought papers that are redundant because this was to look at the current situation. We have already had one meeting at Jurys Hotel to try and see where we are going, relief all round, one, and possibly two, purchasers. We then have another meeting six months later. So far as I am aware there was no purchaser on the scene at this stage.

Q. No, Mr. Vaughan, the meeting in Dublin was nothing to do with purchasers. Haven't you already told me that the meeting in Dublin was to do with the Tribunal?

A. Well, it was but the properties hadn't been sold so they were certainly have been an agenda item.

Q. Are you now telling me that the meeting in Dublin was not primarily about the Tribunal, or was partly about the Tribunal and partly about something else?

A. It was about the properties.

Q. What about the properties, selling them on?

A. Well, my evidence has been that I came to Dublin, I brought the files with me. I was briefed and explained that this Tribunal had been set up and what its purpose was. But it is inconceivable that nobody said what the state of play was to try and sell the properties.

Q. Of course, somebody may have said that in passing but, as I understood your earlier evidence, and I am suggesting to you that your earlier evidence was that you came to Dublin to deal with Tribunal inquiries, or possible Tribunal inquiries, concerning these properties?

A. That's right. I was being briefed as to the Tribunal and what its purpose was but I can't imagine that nobody talked about the sale of the properties because that was

Q. And you came to a meeting in Dublin to help the people, the principals involved in this matter and you didn't bring your files with you, you only brought some of your files?

A. Well, no, I am sure I brought all the relevant files.

Q. But 'all the relevant files' presumably means all the files?

A. No, it wouldn't mean a redundant file.

Q. Why?

A. Well, it is finished, gone, no point.

Q. So what Tribunal what - why do you think it wouldn't be of interest to - of relevance to inquiries being conducted by the Tribunal?

A. Oh, that's not the question that is being put. I had absolutely no idea what this Tribunal was looking into. I mean, its unfortunate, looking back some nine years later at what might have been, but I took with me to Dublin files of papers relating to Cheadle and Mansfield. I can't tell you categorically whether or not I took the Berwood papers but it seems unlikely to me because it was a transaction that didn't go anywhere.

Q. So was Thistlewood?

A. It was.

Q. And you brought the Thistlewood files?

A. They are on the file, yes.

Q. Yes.

A. I haven't set up a separate file for whatever reason.

Q. So you brought the Thistlewood documents, even though they weren't relevant, and you didn't bring the Berwood files, you think, because they weren't relevant either. So you had two different motivations causing you to - or the same motivation - causing you to do two different things?

A. Well, I think you have identified the problem yourself because I've quite clearly set up a separate file relating to Berwood and I haven't set up a separate file relating to Thistlewood. We therefore have a file, meaning a paper folder, which has those letters in it. I haven't gone

through it and extracted bits of paper.

Q. Are you - are you talking from memory now, Mr. Vaughan?

A. I am. I keep saying that I can't - I have - I said a few minutes ago I cannot categorically state whether or not I took the Berwood file to the meeting at Clonskeagh but I, just in passing, said it seems unlikely that I would have taken a redundant file. So I can put it no higher than that.

Q. Can you remember did you open a Berwood file?

A. I can't remember whether there was a specific Berwood file, but it seems highly likely, because all these papers which Kevin Phelan have sent all relate, in my opinion, to the same transaction, and it is likely that they were in a separate file. You see,

Q. Do you not understand my problem, Mr. Vaughan? Perhaps you can deal with this. Just let me explain to you?

A. Yeah.

Q. You are rationalising. This it is not based on any memory.

You have a document here of the 9th of August that relates, I think we agreed, to generically the sale of these properties. It could apply to a sale to anyone?

A. I don't think it was but it could - it would be wrong of me to be categoric because I can't remember, but it is more likely, in my opinion, to relate to Berwood.

Q. All right. All right. Soon after this document was created two potential purchasers came on the scene, Thistlewood and Berwood, isn't that right?



A. Correct.

Q. And soon after that both of them disappeared?

A. Correct.

Q. If you didn't create any separate file for Thistlewood, as appears to be the case from the fact that the Thistlewood documents are on this file, isn't it more probable than not that you didn't create any separate file for Berwood either?

A. I think there was a Berwood file. The reason I say that is that if I look at the letter of the 4th of October, I have said there that I enclose Land Registry Office copy entries relating to the site at Mansfield and the adjoining property. So, we would have got from the Land Registry official copies. So there is three separate documents here. We have the site at Mansfield and the adjoining property over which Mr. Lowry had an option and a copy of the option agreement. And then we also have official copy entries relating to St. Columba's Church. I wouldn't have bothered to keep copies of the office copies from the Land Registry because you just get another copy. So there would have been quite a wodge of paper here and it would not have fitted comfortably on another file. I could imagine us opening a new file, 'Berwood sale', we have now got quite a large amount of paperwork. I know, because I have seen the file, the Mansfield official copy entries have got some, have quite big plans on them. So, it would have needed a file to put them in.

Q. Now, when you went to Dublin in 2001 - or 2000 - 2001, that's right?

A. Is this the Clonskeagh meeting?

Q. Yes, Clonskeagh. I just want to clarify that meeting again. I understood this morning that this meeting was exclusively about the Tribunal. You now say it had another purpose as well?

A. No, I didn't - I didn't say that at all. I said it was inconceivable that the sale of the properties wouldn't have been mentioned as well.

Q. I see?

A. The primary aim was to brief me that this Tribunal had been set up and I would have to assist the Tribunal.

Mr. Chairman, while Mr. Healy is just consulting

Q. - Yes, work away.

A. Can I just sit off here for a moment? I have just got a cramp in my knee.

CHAIRMAN: Do please. You want to take a couple of minutes

A. Just a second. I will be all right.

CHAIRMAN: Five minutes.

THE PROCEEDINGS ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

A. Thank you Mr. Chairman.

Q. MR. HEALY: Mr. Vaughan, I am trying to get to the bottom of this whole Thistlewood/Berwood issue. Now, I have got a copy for you of the material part of the full file.

(Document handed to Chairman, witness and parties)

Now, before we come to it I just want to mention - draw to

your attention - that the two documents we were talking about a moment ago were dated the 9th of August and the 18th of August and the appropriate file to which they appear to relate, and I think you were endeavouring to assist the Tribunal based on your rationalisation of what you believed to be the logic of the documents, is that right?

A. It was, yes.

Q. Now, this document that I now want to refer you to is the first of the little bundle of documents I have given you, is a Thistlewood Estates letter of the 30th of August, 2000.

"Christopher Vaughan Solicitors, Old Church Chambers, Sandhill Road, Northampton.

Dear Sir, former St. Columba's Church, Wilmslow Road."

That's Cheadle, isn't it?

A. Yes, yes.

Q. "Further to our recent inspection of the above site, my clients have instruct me to submit on their behalf an offer of 1.1 million for the site, subject to the following conditions."

- and there are then a number of conditions. Now, the next document in its place on your file is the 5th of September, the short form, or altered version, of that letter. Do you see that?

A. Correct, yes.

Q. The next document on the file is a letter from you to Aidan

Phelan dated the 11th of September. It is obviously some office copy, I think, saying.

"I faxed through to you the offer 1.1 million in respect of St. Columba's last Tuesday, the 5th. I have heard nothing from Kevin about this but I will chase him up. I am concerned that unless the matter is pushed along it may not happen as quickly as you and the lenders require."?

A. Correct, yeah. I think this sort of ties - sorry to interrupt you - it sort of ties into the

Q. Yes. What was sent to Aidan Phelan on the 5th was a copy of the Thistlewood Estates offer?

A. I agree with you.

Q. Yes. Okay. The next document seems to be some Investec bank figures?

A. It is my handwriting.

Q. Yes.

A. And Georgina Keane was somebody who was in touch with me from Investec about the progress of the sale of St. Columba's. I assume that is her phone number.

Q. Yes. All right. And then if you go onto the 23rd, this is a memorandum of yours, it's the next document, the 23rd of October.

"Kevin Phelan, Thistlewood are about to require a contract for purchase. Full details to come from him. Price et cetera."

Do you see that?

A. I can, yeah.

Q. Now, just going back to these letters again, if we look at the staging of them. The first letter of the 30th of August refers to an offer of 1.1 million, isn't that right?

A. Yeah.

Q. If you go back to the letter of the 18th of August for a moment, document 6.12 - 6.2, I am sorry - 6.2?

A. Yes.

Q. Under the heading St. Columba's Church what you say is "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".

A. Um hum.

Q. Now, I suggest to you that he must have been referring - and indeed you must have been referring - to the Thistlewood offer at that stage?

A. It seems to tie in with that, yeah.

Q. So that would seem to suggest that the 18th of August letter was appropriate to the Thistlewood file?

A. Yes.

Q. And there being no Thistlewood file, it should have been with all the other Thistlewood documentation on the main Cheadle file?

A. Well, I think there is only one - I mean, I think at the 18th of August I am recording there Michael Lowry told us at the meeting that a firm offer had been received for 1.1 million for this property.

Q. Yes.

A. But at that time I hadn't received anything from Thistlewood?

Q. Oh, you hadn't received anything formal, of course, I appreciate that?

A. So it is just a verbal comment.

Q. Yes. The Thistlewood - the 18th of August letter, I suggest to you, ought to be characterised as a Thistlewood letter, just as you have yourself pointed out the 5th of September letter, in any form, whether in its original or its altered form, is a Thistlewood letter?

A. Correct.

Q. And I suggest to you that at the time these documents were created that the probability is, based on, I submit, the logic of the documentation here, the probability is that the 18th of August letter was on the main file with the other Thistlewood documents?

A. Sorry, just let me go back to that.

Q. Take your time?

A. Yeah. Yeah, I can see that there is a logic in that. I can also actually see, having just looked at this letter again, that we deal at the end of this letter about insurance and I think it is probably more logical that that is on the general

Q. Sorry, sorry?

A. Sorry, just looking at the letter again, I see at the end we deal with the insurance issue as well. It is more logical that that is on the general file as well.

Q. And what I suggest to you is that from that logic, and indeed borrowing from your earlier contention, it must follow that the letter of the 9th of August was also more appropriate to the main Cheadle file?

A. Yes, because that also deals with insurance issues as well.

Q. Well, are we right in that? Sorry, it does deal with insurance issues, yes, in the last line?

A. I think - can I just go back to what you were talking about a minute ago before I had cramp in my knee? I had said that these must go on the file for Berwood but I have suddenly realised, of course, there are other non-Berwood related matters. I think it is more likely, to follow what you said earlier, that the letters, certainly of the 9th and the 18th, should have been on the general file that I had with me.

Q. Yes, okay. Now, before lunch we touched on this and I took the opportunity when you were stretching your legs, literally and metaphorically, to look at this matter. At - and this can be clarified on the transcript later, on the confirmed transcript, I think these are page numbers or breaks of some kind, at No. 51, line 29?

A. Sorry, I am not quite sure what we are referring to.

Q. I am reading - I am reading from the actual, live transcript for this morning, all right?

A. Okay.

Q. And I am identifying to you, I don't know if these numbers that I had on the live transcript actually tally with the

ultimate transcription that you will get later on?

A. Yes.

Q. But I am going to read it out and you can use the transcription concordance at the back to check it. I think it will be on page 51, line 29.

"Presumably the files you brought at that stage included all the material including, certainly, the long form of the letters of the 5th of September and the 12th of July?"

That was with reference to what you brought to Dublin.

And the answer you gave was.

"I would say presume so, certainly because - yeah.

Question: And presumably they contained all the other material that was made available earlier this week?

Answer: Well, I don't know that because the evidence I have given this week."

- excuse me -

"Relating to the Berwood matter, I believe that the reason that that wasn't produced earlier was that it was in a separate file. It was in a file that became redundant because it didn't proceed at all."

And then we started trying to analyse this whole Berwood matter?

A. Yes.

Q. So now I think that - am I now right in saying that at least we are in agreement, based on an examination of the documents only, I admit, that the letters of the 9th of August and the 18th of August must have been on your file



when you went to Dublin?

A. I think now it's more likely than not, I agree.

Q. And the letters of the 5th of September and the 12th of July must also have been on the file?

A. Well, certainly the - the short form - the short form version should have been on.

Q. Well, I understood your answer to my question to be that the long form version was on the file?

A. I don't think that is right because whichever version had been discarded, had been changed, wouldn't have been on the file.

Q. But you had no idea, you couldn't remember and your earlier evidence of having remembered, I think you now accept, is wrong. You couldn't remember having altered the letter of the 5th of September, isn't that right?

A. I don't want to seem unhelpful but there is a lot of speculation and 'I simply don't know' is the simple answer. It would be wrong for me to say categorically what bits of paper were on which file because I don't know.

Q. Right?

A. It seems likely that certain things were there.

Q. You can look at the transcript yourself tonight?

A. Yes.

Q. But if you can't remember having changed the letter of the 5th of September - let's just stay with that one for a moment - it must have been on the file in any case when you came to Dublin?

A. Yeah, yeah.

Q. In the long form?

A. Well, that's what I don't know. Because if I don't remember when it was changed then it could have been changed on the 5th of September.

Q. Well

A. We are aware of the July letter which was changed, and that was changed very rapidly.

Q. You certainly said this morning that you believed that they had gone to Dublin. You can look at the transcript yourself later?

A. Yeah, yeah.

Q. When you got your file back you presumably used that file thereafter in responding to Tribunal requests for information?

A. Correct.

Q. Now, you received a request for information from Mr. Davis on the 21st of March, 2002 - sorry, no I am confusing you, on the - 2001 - you received a request from Mr. Davis on the 20th of April, 2001 and you had a telephone conversation with him on Monday the 23rd of April, 2001, and then you replied by letter of the 25th of April, 2001, which is contained at Book 81A, Tab 1 and you have referred to this letter in your second statement.

MR. NATHAN: I wonder, just to be clear, because so far I have got the note of the 21st of March, first of all of 2002 and then 2001. But the first letter from the Tribunal

to Mr. Vaughan is, as I read it, the 20th of April, 2001.

So, the 20th of April, that is the one.

A. I don't have that in front of me.

MR. HEALY: I will get a copy put on the overhead projector.

MR. NATHAN: I wonder if Mr. Vaughan could be given a copy of 81A?

Q. MR. HEALY: Well, you presumably are familiar with your own letter, Mr. Vaughan, since you refer to it in your statement. I will just ask you, firstly - I will just ask you, firstly, to go to your second statement, page 3. Have you got your second statement?

A. I am just looking for it elsewhere. Can you just let me have another copy? (Document handed to witness.)

Q. If you look at the first long paragraph after No. 6.1 to 6.6. You go on to say: "As far as I am aware these letters have not before 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 6.1/6.6 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 25th April, 2001 Tab 1, Book 81 I explained 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 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 both these transactions had been sent to DLA Solicitors, acting for Aidan Phelan."

Now, if you look at your letter of the 25th of April, 2001, and I think if you go to the last page of it, you will see "as mentioned" - do you have a copy of it?

A. I am looking at it now.

Q. "As mentioned to you on the telephone, my files are in two distinct parts.

1. The file relating to the acquisition of the property.
2. The subsequent marketing of the property and correspondence I have had with the two agents concerned, Messrs. Chesterton and Mellor Braggin.

"The very clear instructions I have from both Aidan Phelan and Michael Lowry are to make available all paperwork to you that you require and I am perfectly happy to do so".

"However, it seems to me that you probably only require the paperwork relating to the purchase of the property and not the subsequent paperwork as to its sale which is, of course, an ongoing file as the property has not yet been sold. The file is therefore current and I am dealing with matters on it at the present time".

"I am therefore faxing this letter through to you initially to inquire whether you require all of the paperwork or just that part relating to the acquisition of the property."

And, as I mentioned to you, and as I think you must be aware, you had a telephone conversation with Mr. Davis - I don't need to refer to it because you wrote the next day on the 26th of April, 2001 and, in fact, contrary to what's said in your statement in your letter you say: "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" - presumably - "of the present ongoing disposal file."

Do you see that?

A. Yes, I am looking at it on the screen.

Q. Right. Now, in your statement you were - if I can put it this way - you were explaining why you didn't have any of the documents now being produced. I presume you were deducing this from the file, am I right?

A. Sorry, deducing what?

Q. You were explaining why the documents that you were now producing, the ones from Oliver Roche?

A. Yes.

Q. Had not been produced?

A. Yes.

Q. And you were explaining the basis upon which you had provided information to the Tribunal by way of files?

A. The letters from Oliver Roche were obviously sent to my solicitor.

Q. Yes.

A. I explained that I hadn't got copies of those.

Q. Yes.

A. They hadn't been produced to Mr. Davis. But on the other hand the letter - and you asked me this question yesterday, - makes it quite clear that it relates to the present ongoing disposal file.

Q. No, let me just clarify this. What you said was.

"I do not have any of the documents 6.1 to 6.6."

- that's if we call them the 'Oliver Roche documents' produced?

A. Okay.

Q. And that we have been examining. You then explain that in your letter to the Tribunal of the 25th you only sent the purchase file; do you see that?

A. This is the 26th.

Q. No, the 25th we are saying. In your statement you said?

A. Yeah.

Q. Right. You rely on your letter of the 25th. I am not suggesting you were trying to misrepresent the situation.

You were obviously examining documents on the file and didn't see one of them. But you, relying on the letter of the 25th, you say: "I explained that the file delivered to the Tribunal related to the purchase and not the sale because that was a working file."

The 25th, Mr. Vaughan?

A. Yes, yes. I am with you, yeah.

Q. You then go on to say that it was only in February, 2009 when preparing for your appearance, that the working file

got produced. Do you see that?

A. Correct. I am looking at that.

Q. And you say that: "Only then such parts of it as were in my possession, since the majority of the papers relating to both of these transactions had been sent to DLA Solicitors, acting for Aidan Phelan."

A. Yes.

Q. Now, that's not correct, isn't that right, as an explanation?

A. Explain to me what is incorrect about it.

Q. Well, you say that you wrote - I am - I think you may not be appreciating the documents. It has been a long day. You say there are a number of documents that have not before been produced to the Tribunal?

A. Right.

Q. But we know they relate to Mansfield and Cheadle, isn't that right?

A. Yes.

Q. You say "I did not have any of these documents in my possession"?

A. Yeah. I didn't say - "I do not have any of them", yeah.

Q. "I do not." I beg your pardon. "I do not have any of these documents in my possession." You then explain that you did give a file to the Tribunal under cover of your letter of the 25th of April, isn't that right?

A. Yes.

Q. And in that letter of the 25th of April, not the one you

are looking at the screen now?

A. No.

Q. You explained that you are only sending the purchase file?

A. Correct.

Q. Okay. Then you go on to say in your statement.

"It was only in February, 2009 in preparation for my appearance before the Tribunal, that the working file which related to the post completion work in respect of Cheadle and Mansfield, gets produced to the Tribunal, and then only such parts of it as were in my possession."

- you having parted with possession of the majority of the papers to DLA Solicitors?

A. Yeah, correct.

Q. Now, the missing link there is the letter that is on the overhead projector, isn't that right?

A. That's right, yes. I

Q. I appreciate that you were drawing these conclusions from the documents you had in front of you?

A. The statement I drafted was based on that letter, yes.

Q. Yes. Can I put it this way to help you, that perhaps if you were going to be extremely formal about it you might have said 'I cannot, I do not have those documents in my possession, from the correspondence I have in front of me I must have sent only my purchase file, I mustn't have sent my ongoing file and I must have passed that on to DLA', isn't that right? I am saying the same thing but I am putting it in terms that reflect a deduction rather than a



memory?

A. Is that not what I am saying in my statement?

Q. It is exactly what you are saying in your statement, is what I am suggesting?

A. Right.

Q. I don't want to weary you with this, the fact is you didn't have that letter. If you had that letter you wouldn't have said this, you would have said 'I see that I was asked for the second part of my file and I sent it on', isn't that right?

A. Yes, yes. I am not quite sure why I haven't got that letter but it doesn't seem to be on my files.

Q. All right?

A. That is so.

Q. But in any case, the point is that what you sent to the Tribunal was both your historic purchase file and your ongoing file?

A. Yeah.

Q. In April of 2001?

A. Um.

Q. And that was presumably the file, as you believed it, that you had brought to Dublin with you?

A. Yes.

Q. Right. You copied that file?

A. Yeah. Well, I think more properly

Q. Sorry?

A. I think more properly the file that was given back to

me from Dublin.

Q. Yes.

A. Because it can't have been the file I took to Dublin because I didn't do the copy at that time, I did the copy when I got the file back.

Q. Yes.

A. If you are with me?

Q. Yes. You didn't copy the file before you left it out of your possession in Dublin?

A. No, no.

Q. And it was when you got it back that you copied it?

A. Yes, I mean when I had the letter from Mr. Davis and we spoke on the phone yesterday, we saw a manuscript note of his conversation with me, it was at that stage that I copied the file and I think it was sent by DHL or something to the Tribunal, which is in anticipation of me then coming here to Dublin Castle, when we had our private discussion.

Q. Yes, right. So, on the assumption that the conclusion that we arrived at, and I think agreed on a moment ago, that the 9th of August and the 18th of September letters were on the main file and they were brought to Dublin and brought back to - and the file was then given back to you, but those documents were not copied to the Tribunal, it must follow somebody removed them, isn't that right?

A. They, they presumably weren't on the file, yeah.

Q. When you got it back? But they must have been on it when you handed it over?

A. I think we are certainly moving to that conclusion because I started off on the premise that they were on the separate Berwood file.

Q. Yes.

A. You have pointed out to me that they could have related to something - the Thistlewood matter as well. And then, when I looked at them again, I then realised that they also, in the last paragraph of both those letters, start talking about insurance issues. And the logic behind that is that they should have been, more properly, on the general file rather than on the specific Berwood file. But I would still say that there was a 'Berwood file' with, at the very least, the letter Goldsmith Williams, and the letter, me to them, because it would have had the Land Registry paperwork as well and would have generated an Office of Ground debit as well because we had to pay the Land Registry. So little things like that. So, there would have been a file. The Thistlewood - because we had never sent a contract out, or no paperwork out, then I can see that those letters, though in fact there seems to be just one letter, would have been on the general file before separated away. If the Thistlewood had gone ahead, we would have had another file. It gets nowhere, does it?

Q. But I assume that your evidence is that when you sent the file to the Tribunal you copied everything that was then on the file?

A. I am sure that happened. I would almost certainly copy it

myself.

Q. You didn't make any decision as to what was relevant and what was not relevant?

A. No. I am sure I wouldn't.

Q. And if you sent on a file that didn't contain the letters of the 9th of August and the 18th of August, or the long form/short form - or the long form - sorry - of the short form letters, that was because they weren't on the file at that time?

A. I think that must be right and I think also, I am just looking at this letter of the 20 - sorry, the 16th of May, which also deals with correspondence, I am sorry to jump ahead but it does seem to be relevant.

Q. Yes, go ahead?

A. If you look - it is a three-page letter. If you look at the last

Q. Please tell me what you are looking at so?

A. I am looking at my letter to Mr. Davis, 16th of May, 2001. It is the second letter in Tab 2 in this book you have just produced to me.

Q. What is the number of the book? I didn't hear that book number?

A. It is 81A.

Q. Yes. Let's have a look at it. Please go ahead?

A. So the second letter under that tab is a 3-page letter from me.

Q. Yes.

A. If you look at the last page.

Q. Yes.

A. You will see in the penultimate paragraph there is a paragraph that says

Q. Yes.

A. "It would appear there is one letter missing from that file, which I would assume dated mid-August 2008" (SIC) et cetera, et cetera.

I mean, it is clear from that comment that I had obviously looked through the file to check that everything tied in, was in order, because I then discover this is to do with Mansfield, there is a missing Mansfield letter.

Q. Right.

A. And I - almost certainly, it is certainly my practice when doing copy documents, to do them myself because I then know that they have been done. And I just happened to see that phrase when I was flicking - flicking over the file, it is quite clear to me that I looked through the file to make sure everything was there and cross-referenced it.

Q. Yes. When Mr. Davis again contacted you in 2002 - do you remember that, we discussed this when you were giving evidence on the last occasion - concerning the matter that had then come to his notice, i.e. the long form/short form letters?

A. I remember, yes.

Q. One of the letters that he was drawing to your attention, the 5th of September, the one we have been discussing at

length today, the 5th of September, 2000, was also one of the letters that Mr. Phelan had asked you about in his letter of complaint, isn't that right? In his solicitor's letter of complaint, the letter from Woodcocks?

A. That's right, yes. There is a list of five, six numbered letters

Q. Yes, yes.

A. in the middle of the second page. And it says, you know, there are something like discrepancies well, you have found it for me.

Q. We now have three of them, I think.

A. Yes.

Q. I think, in fact, I have confused myself - certainly confused you, Mr. Vaughan, there is no letter of the 5th of September there on that - on that list?

A. No.

Q. The only letter on - the only letters on that list that tallied - the only letter on that list that tallies with the letters that Mr. Vaughan was bringing to your attention was the 12th of July, 2000, do you see that, the last one?

A. Yes, I am looking at that and also

Q. Well, we now know the 12th of November, '99?

A. Yes.

Q. That is one that that has now come to light. When Mr. Davis brought the letter of the 5th of September to your attention at that stage, it was but a fairly short time, wasn't it, since the letter had been generated and

since the events to which it related had occurred, isn't that right? Well, not a terribly short time, about a year and six months?

A. It is a year and six months.

Q. Yes, yes, wrong to call it 'a very short time' but it wasn't a year in, any case?

A. No.

Q. And the events with which it was connected, did they stand out in your mind in any way inasmuch as they involved a meeting in Dublin?

A. The events of what, sorry?

Q. The events to which the letter of the 5th of September related, the meeting in Dublin on the 17th of August, the Thistlewood offer, in fact, indeed?

A. Right so

Q. If you want to add in the Berwood offer subsequently, but the two abortive offers - or aborted offer?

A. Right. So I am terribly sorry, I am not sure what you are asking me specifically.

Q. Do you remember when Mr. Davis brought the letters of the 5th of September and the 12th of July to your attention, do you remember did you have any memory of the events with which the 5th of September letter was connected?

A. Well, I suppose I must have done because I certainly remember going to the Jurys Hotel meeting.

Q. You see, we know that that letter was not incorrect, isn't that right?

A. We are talking about the long form letter of the 5th of September.

Q. Yes, yes.

A. I can only say what I said this morning; we went through it in detail.

Q. Yes. At that stage you didn't offer to Mr. Davis the benefit of your recollection of what happened around that time?

A. What do you mean "what happened"? Do you mean the meeting?

Q. Well, you had a meeting in Dublin, you then wrote a letter to Kevin Phelan, the letter was about a proposed sale by Michael Lowry?

A. All I can say is I assume I answered the questions that John Davis put to me. Sadly it is just too long ago to remember.

Q. Yes, I accept that, yes. It is a long time ago. Now, - excuse me - could I now just go back to something we were discussing the last time you gave evidence, and that's the letter of the 25th of September, 1998. That's the letter from you to Mr. Michael Lowry where you say that you hadn't appreciated his total involvement in the Doncaster Rovers transaction?

A. Oh right, yeah, yes.

Q. It is at Book 81 Tab 3.

A. That's - I will ask Mr. Brady if I can do a swop. Oh, there it is there. Thank you. I am looking at Tab 3 in this book. Is that the correct version?



Q. I think that is the correct tab. Do you have - does it contain the letter on your book?

A. We are looking at the same thing, yeah.

Q. Now, do you remember we were canvassing how you came to write that letter?

A. Yeah.

Q. What had transpired that prompted you to write it?

A. Yes.

Q. Firstly, to write it to Mr. Lowry and, secondly, to bring him into your confidence as, it were, concerning the affairs of Doncaster Rovers and the purchase by Westferry of the company.

A. Yeah.

Q. And I think we also mentioned a letter that you wrote some, I suppose some years later, to Mr. Vanderpump concerning this matter, when he wrote to you following the mediation in London, expressing concern about whatever understanding you may have had regarding the people involved in this transaction. Do you remember that letter?

A. Well, there are two letters to Mr. Vanderpump.

Q. Yes.

A. There was one that was sent and one which was a draft.

Q. Yes.

A. And the one that was sent was a for more expanded version.

Q. Yes.

A. In answer to your question, I remember a letter going - being drafted for Mr. Vanderpump. I couldn't tell you

without looking at it what was in it.

Q. Yes, that is fine. The first letter you wrote to him - or the one that you didn't write to him, the one you merely drafted?

A. I drafted one that was never sent, yes.

Q. Yes. Was that of the 21st, and the second was that of the 23rd, and they are contained at leaves 14 and 16 respectively

A. Yes.

Q. of that book. Now, although the letter of the 21st was never sent you did actually leave it on your file, isn't that right?

A. Yeah, that's right, it was there.

Q. In fact, you put it on your Tribunal file, didn't you?

A. Well, I don't think I had a Tribunal file as such. It was on a - it is on my Doncaster Rovers/Westferry file which - I am not quite sure whether this letter of the 21st of October was sent into the Tribunal by William Fry or whether it was sent in by me. I suspect it was William Fry.

Q. It was sent by William Fry?

A. Right.

Q. Sorry. Just to recap on that. I think I may have explained this to you before. The Tribunal acquired it as part of an exhibit to an affidavit in High Court proceedings?

A. Right.

Q. But I think you are correct in thinking that you may have sent it and, in fact, I think you did send it, to Messrs.

William Fry?

A. I don't think - going over old ground - but I don't think I sent into this Tribunal any documentation at all relating to Doncaster Rovers. Everything I had was handed to Craig Tallents of

Q. Yes.

A. whatever his firm was called, Morton Thornton, who in turn gave them to Peter Carter Ruck, who in turn passed them on to William Fry.

Q. Yes.

A. And eventually they returned to me.

Q. I think this file, in fact, went directly from you to William Fry. Do you remember me reminding you that the photocopy, or the faxing rather, was taking too much time and am I right in thinking that you eventually couriered it?

A. I do, yes. This is one - you will have to remind me if this was one of those letters that was sent across.

Q. I am not sure very much turns on it except that I think that you didn't send this information to the Tribunal, you sent it to William Fry and it came to the Tribunal in the course of proceedings instituted by Mr. O'Brien in which Messrs. Fry were instructed?

A. Right, okay.

Q. And this - and it contained this letter amongst other

things. And just to - can you remind me why you think that you held on to this letter on the file?

A. It is a draft letter that was prepared and the main letter was prepared from it, I think, wasn't it?

Q. It is similar?

A. I would - it is a long time ago. It is a long time that I gave some evidence about this and I hadn't refreshed my memory on this particular point. I don't really want to say anything that would contradict what I said last April.

I know we talked about it last April.

Q. One of the things that I was exploring with you is why you didn't put a line through it, which I think is your practice, is that not right?

A. Well, I think there was one letter, wasn't there, to Aidan Phelan

Q. Yes.

A. which is possibly further back here in this tab which had a got a line through it because he didn't manage to get the fax through. I can't say it's a - it is a practice of mine occasionally to put a line through letters, but why this one didn't, I don't know. It may have been in a file that said 'drafts' or something on it.

Q. Do you have a file that says "drafts"?

A. I am just speculating slightly because it is given this letter is being given the same sort of degree of credence as if it was the one actually sent to Mr. Vanderpump. What I can't tell you is whether it was in a separate file that

said "draft letters" on it or something like that which was then - you are saying it's in the file. It may have been clear to me, or it may have been clear to Mr. Reynolds, wasn't it, of William Fry.

Q. Yes?

A. It may have been clear to him that this was a draft document. But it has been put in as one exhibit. I have no idea obviously.

Q. But you did send it to him?

A. Oh, yes, yes. And I have absolutely - I think he probably said "send us all your files" and as they were the client they got all the files.

Q. Yes, yes.

A. But I have no idea what the exhibit was and I don't know what it was used for or what its purpose was.

Q. But in any case you saw no reason to exclude this document?

A. It was in the file that was - I sent them the file that I got.

Q. And a part of the document that I want to draw your attention to is the section where you deal with meeting Michael Lowry. In the penultimate paragraph on the first page you say: "What I can state quite categorically is that before I met Michael Lowry for the first time on the 24th of September I had absolutely no knowledge that he might have been involved with the acquisition DRFC and you will see some of the future problems facing the acquisition of the club and with the thought that he might have some

influence I set them out in the letter. Suffice it to say that none of those matters were resolved by Michael Lowry."

I take it that, in fact, reflects your thinking in any case, does it, even if you didn't send it?

A. It was my initial thinking. I think that the proper letter to look at would be the one that was actually sent, which says more or less the same thing, doesn't it, in the 1, 2, 3, 4, 5th paragraph down.

Q. I think you are absolutely right.

A. Yes. I think it would be wrong to look at a draft because it is the second paragraph up from the bottom: "I have to say that at no time during the acquisition of DRFC by Westferry did Michael Lowry have any input into that process, nor letter following completion."

Q. We'll go to the last paragraph on the first page of the 21st of October.

A. Yes.

Q. You say: "I do not think that I misunderstood his comments to me that he was involved in DRFC but in hindsight I must put it down to some sort of political ego, that he was trying to attach his name to what appeared to be a successful venture"?

A. Yes.

Q. Do you see that?

A. I do.

Q. I suggest to you that that probably reflected your thinking at that time?

A. It probably did, yes.

Q. And I think that passage, in fact, was one that you alluded to in the course of the meeting with the Tribunal legal team in London, isn't that right?

A. That's right and I don't think I have put it into the main letter, have I? The letter that was sent.

Q. Yes, it is not in the main letter?

A. Yeah.

Q. Yes. But in the course of that meeting you alluded to it and you thought you had put it in a letter, in fact, and I think you were corrected and eventually this document turned up?

A. Yes. That's right. I think one of the Tribunal team managed to find it, yes.

Q. Yes. And I think the Tribunal's then-solicitor wrote to you and say - wrote to you and said 'is that the point you were making at the meeting and is that the document you were referring to?' And I think you said 'yes'?

A. Yes.

Q. Yes. So?

A. Sorry, Mr. Brady, was it?

Q. It may have been Mr. Brady or Mr. Heneghan, I am not sure. It might have been Mr. Heneghan, I think?

A. I think you said 'Mr. Roche' and that's what confused me somewhat.

Q. Sorry, sorry. If we could just look at what you are saying here when you say: "I do not think that I misunderstood

his comments to me that he was involved in DRFC."

And then you say that in hindsight you put it down to some sort of political ego. But just to be clear about it, you are saying, am I right, that it was as a result of what Mr. Lowry said to you that you formed the impression that prompted you to write your letter of the 25th of September - among other things, I suppose I should say?

A. I think we - the 25th of September I think we can use the political ego quote, but I think it would be wrong to use the line "I don't think I misunderstood his comments," because this is in a draft letter that was never sent. So, when I have come to edit it, I have obviously thought that that was an inappropriate comment to make or an incorrect comment to make, which indicates that he was involved in DRFC. What, of course, my evidence is that he could help with DRFC.

Q. Are you saying that this doesn't represent your view?

A. Sorry, can we just cancel that because it doesn't actually - sorry it is getting late.

Q. Yes.

A. Of course the letter of the 25th of September, which I should remember, is the one that uses the phrase.

"Total involvement." Doesn't it?

Q. Look, I appreciate that. It is

A. And this is the which total involvement which

Q. I am not going to hold you to it Mr. Vaughan, you can look at it in the morning, I am quite happy to deal with



that?

CHAIRMAN: All right. Should I say half ten tomorrow, Mr. Healy, to guard against any doomsday scenario?

MR. HEALY: Yes.

MR. SHIPSEY: Chairman, I just - I have a personal difficulty dilemma and I appreciate that you can't accommodate all personal difficulties, but if it is the case that I can't here - and I anticipate at 11 or half ten, and I anticipate Mr. Healy is likely to continue for, I don't know how much longer, but looking at

CHAIRMAN: Well, I will have regard to your situation. You can liaise with both the Tribunal team and I will do my best to see you are not taken short.

MR. SHIPSEY: If you don't mind perhaps I could go after Mr. O'Callaghan or Mr. O'Donnell, but before Mr. Nathan.

CHAIRMAN: Yes. I don't see any difficulty with that but we will approach that in the morning.

MR. SHIPSEY: Thank you, Sir.

THE PROCEEDINGS ADJOURNED UNTIL THE FOLLOWING DAY,  
THURSDAY, THE 25TH OF JUNE, 2009, AT 10:30 A.M..