Report

of the

Tribunal of Inquiry

into

Payments to Politicians

and Related Matters

Part II

Volume 1

Tribunal of Inquiry
(Payments to Messrs Charles Haughey and Michael Lowry)
Appointed by instrument of
An Taoiseach
dated the 26th day of September 1997
Sole Member:
The Honourable Mr. Justice Michael Moriarty

Tribunal Office
State Apartments
The Upper Yard
Dublin Castle
Dublin 2
Tel: 01-6705666
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March, 2011

Mr Kieran Coughlan
Clerk of the Dail
Dail Eireann
Leinster House
Kildare Street
Dublin 2

RE: TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921 AND 1979 (NO. 2) ORDER 1997

Dear Mr Coughlan

I enclose the Second Part of my Report as Sole Member of the Tribunal appointed by Order made on the 26th September, 1997, by the then Taoiseach, pursuant to resolutions of Dail Eireann and Seanad Eireann passed on the 11th and 18th days of September, 1997, respectively, to inquire into any payments made to certain politicians and associated matters in accordance with the Terms of Reference contained in the said Order.

As you will be aware, I am required on foot of provisions of the said Order to report to the Clerk of the Dail and, as in the case of the First Part of my Report, I have also furnished the Second Part to the Taoiseach, and have written in similar terms to him.

The Second Part of the Report comprises Volumes 1 and 2, the Appendices to which are contained within those respective Volumes.

In accordance with a decision I took approximately five months ago, in the interests of security and economy, this Second Part is mainly published in digital form, and, as now greatly facilitated by 21st century technology, in a form that I believe is more accessible and readily available for distribution to members of the Oireachtas, to interested parties and to the public at large. Accordingly, whilst a very few printed copies are also on this occasion delivered, for laying before the Houses of the Oireachtas, as necessary, please note that the Second Part is, at

present, only otherwise available in digital form, on electronic disc, and also on the Tribunal's website. In due course, it will be reproduced in hard copy format.

Apart from time factors in general, that a limited number of affected persons or entities have sought to delay further or prevent publication, and thereby thwart the unanimous expressed will of the Oireachtas, is among the several matters addressed in these pages.

Please note that this concludes the substantive inquiries of this Tribunal.

Yours sincerely

Michael Moriarty
Sole Member of the Tribunal

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March, 2011

Mr Enda Kenny TD
Taoiseach
Government Buildings
Upper Merrion Street
Dublin 2

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Yours sincerely

Michael Moriarty
Sole Member of Tribunal

Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 2) Order, 1997

WHEREAS a Resolution in the following terms was passed by Dail Eireann on the 11th day of September, 1997 and by Seanad Eireann on the 18th day of September, 1997.

"Bearing in mind serious public concern arising from the Report of the Tribunal of Inquiry (Dunnes Payments) published on 25 August, 1997, which established that irregular payments were made to and benefits conferred on certain persons who were members of the Houses of the Oireachtas between 1 January, 1986, and 31 December, 1996.

And noting that the said Tribunal established that money was held on deposit in certain Irish banks by offshore banks in memorandum accounts ("the Ansbacher accounts") for the benefit of Irish residents including Mr Charles Haughey, (the history of which deposits is set out in Chapter 6 of the Report of the said Tribunal),

And noting further that the Dunnes Payments Tribunal was unable by reason of its terms of reference to investigate the source of the Ansbacher accounts, other than in respect of sums paid by certain persons referred to in the said terms of reference.

Resolves that it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Act, 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, to inquire urgently into and report to the Clerk of the Dail and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:

(a) Whether any substantial payments were made, directly or indirectly, to Mr Charles Haughey (whether or not used to discharge monies or debts due by Mr Charles Haughey or due by any company with which he was associated or due by any connected person to Mr Charles Haughey within the meaning of the Ethics in Public Office Act, 1995 or discharged at his direction) during any period when he held public office commencing on 1st January, 1979 and thereafter up to the 31st December, 1996 in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with any public office held by him or had the potential to influence the discharge of such office.

(b) The source of any money held in the Ansbacher accounts for the benefit or in the name of Mr Charles Haughey or any other person who holds or has held Ministerial office, or in any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr Haughey or for the benefit or in the name of a connected person within the meaning of the Ethics in Public Office Act, 1995, or for the benefit or in the name of any company owned or controlled by Mr Haughey.

(c) Whether any payment was made from money held in any of the accounts referred to at (b) to any person who holds or has held public office.

(d) Whether Mr Charles Haughey did any act or made any decision in the course of his Ministerial offices, to confer any benefit on any person making a payment referred to in paragraph (a) or any person who was the source of money referred to in paragraph (b), or any other person in return for such payments being made or procured or directed any other person to do such an act or make such a decision.

(e) Whether any substantial payments were made directly or indirectly to Mr Michael Lowry (whether or not used to discharge monies or debts due by Mr Michael Lowry or due by any company with which he was associated or due by any connected person to Mr Michael Lowry within the meaning of the Ethics in Public Office Act, 1995 or discharged at his direction), during any period when he held public office in circumstances giving rise to a reasonable inference

that the motive for making the payment was connected with any public office held by him or had the potential to influence the discharge of such office.

(f) The source of any money held in the Bank of Ireland, Thurles branch, Thurles, Co. Tipperary, the Allied Irish Bank in the Channel Islands, the Allied Irish Banks, Dame Street, Dublin, the Bank of Ireland (I.O.M.) Limited in the Isle of Man, the Irish Permanent Building Society, Patrick Street branch, Cork or Rea Brothers (Isle of Man) Limited, in accounts for the benefit or in the name of Mr Lowry or any other person who holds or has held Ministerial office or in any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr Lowry or for the benefit or in the name of a connected person within the meaning of the Ethics in Public Office Act, 1995, or for the benefit or in the name of any company owned or controlled by Mr Lowry.

(g) Whether Mr Lowry did any act or made any decision in the course of any Ministerial office held by him to confer any benefit on any person making a payment referred to in paragraph (e) or any person who was the source of any money referred to in paragraph (f) or on any other person in return for such payments being made or procured or directed any other person to do such act or make such decision.

(h) Whether any payment was made from money held in any of the bank accounts referred to at (f) to any person who holds or has held public office.

(i) Whether any holder of public office for whose benefit money was held in any of the accounts referred to at (b) or (f) did any act, in the course of his or her public office, to confer any benefit on any person who was the source of that money, or directed any person to do such an act.

(j) Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr Michael Lowry and Mr Charles Haughey of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (e) above and the gifts received by Mr Charles Haughey identified in Chapter 7 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (a) above.

And further in particular, in the light of its findings and conclusions, to make whatever broad recommendations it considers necessary or expedient:-

(k) to ensure that the integrity of public administration is not compromised by the dependence of party politics on financial contributions from undisclosed source

(l) for the reform of the disclosure, compliance, investigation and enforcement provisions of company law (including in particular those which relate to directors' duties).

(m) for maintaining the independence of the Revenue Commissioners in the performance of their functions while at the same time ensuring the greatest degree of openness and accountability in that regard that is consistent with the right to privacy of compliant taxpayers

(n) for enhancing the role and performance of the Central Bank as regulator of the banks and of the financial services sector generally

(o) for the effective regulation of the conduct of their members by such professional accountancy and other bodies as are relevant to these terms of reference, for the purpose of achieving the highest degree of public confidence, and

(p) for the protection of the State's tax base from fraud or evasion in the establishment and maintenance of offshore accounts, and to recommend whether any changes in the tax law should be made to achieve this end.

"Payment" includes money and any benefit in kind and the payment to any person includes a payment to a connected person within the meaning of the Ethics in Public Office Act, 1995.

"Person" includes any natural or legal person or any body of persons whether incorporated or not.

And that the Tribunal be requested to conduct its enquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979:-

(i) To carry out such investigations as it thinks fit using all the powers conferred on it under the Acts (including, where appropriate, the power to conduct its proceedings in private), in order to determine whether sufficient evidence exists in relation to any of the matters referred to above to warrant proceeding to a full public inquiry in relation to such matters,

(ii) To enquire fully into all matters referred to above in relation to which such evidence may be found to exist, and to report to the Clerk of the Dáil thereupon,

(iii) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate, on the steps taken by the Tribunal to determine what evidence, if any, existed,

(iv) To report on an interim basis, not later than three months from the date of establishment of the Tribunal or the tenth day of any oral hearing, whichever shall first occur, to the Clerk of the Dáil on the following matters:

the numbers of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings:

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference);

And that the person or persons selected to conduct the Inquiry should be informed that it is the desire of the House that -

(a) the Inquiry be completed in as economical a manner as possible and at the earliest date consistent with a fair examination of the matters referred to it, and

(b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt."

NOW I, Bertie Ahern, Taoiseach, in pursuance of those Resolutions, and in exercise of the powers conferred on me by section 1 (as adapted by or under subsequent enactments) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. This Order may be cited as the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 2) Order, 1997.

2. A Tribunal is hereby appointed to enquire urgently into and report and make such findings and recommendations as it sees fit to the Clerk of the Dáil on the definite matters of urgent public importance set out at paragraphs (a) to (p) of the Resolutions passed by Dáil Eireann on the 11th day of September, 1997, and by Seanad Eireann on the 18th day of September, 1997.

3. The Honourable Mr Justice Michael Moriarty, a Judge of the High Court, is hereby nominated to be the Sole Member of the Tribunal.

4. The Tribunals of Inquiry (Evidence) Act, 1921 (as adapted by or under subsequent enactments) and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, shall apply to the Tribunal.

GIVEN under my Official Seal, this 26th day of September, 1997.

Bertie Ahern

TAOISEACH

Part II - Volume 1

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INTRODUCTION

PRELIMINARY

1.01 Part II of the Tribunal's Report will be presented in two Volumes, of which this, Volume 1, deals mainly with the money trail aspects of the Terms of Reference concerning Mr. Michael Lowry. Volume 2 relates mainly to the second mobile telephone licence competition.

1.02 Mr. Michael Lowry, T.D., who, as then a Fine Gael T.D., held the office of Minister for Transport, Energy & Communications, in what was known as the Rainbow Coalition Government, formed by Fine Gael, Labour and Democratic Left in late 1994, until his resignation from the Cabinet in November, 1996. Mr. Lowry has continued in public office as an Independent T.D., since that resignation.

1.03 The matters to be dealt with in this Volume fall into three broad categories which may shortly be expressed as follows:

(i) whether or not any persons made payments or conferred other benefits on Mr. Lowry in circumstances referable to his holding of public office;

(ii) the identification of the sources of funds in bank accounts in the name or for the benefit of Mr. Lowry;

(iii) whether, Mr. Lowry in the course of any public office had done any act or made any decision to confer a benefit upon any person who had made such a payment, or was the source of funds held in such a bank account.

1.04 The precise provisions of the Terms of Reference are contained in paragraphs (e), (f), and (g). Because the Tribunal has received extensive submissions from affected persons concerning the construction of paragraph (g), reference should be made to its full terms, which are as follows:

> "*(g) Whether Mr. Lowry did any act or made any decision in the course of any Ministerial office held by him to confer any benefit on any person making a payment referred to in paragraph (e) or any person who was the source of any money referred to in paragraph (f) or on any other person in return for such payments being made or procured or directed any other person to do such act or make such decision.*"

It has been submitted by certain affected persons that, from the use of the expression *"in return for such payments being made"*, as it appears in paragraph (g) above, it follows that a finding that Mr. Lowry did any act or made any decision within the meaning of the paragraph necessarily requires that the Tribunal be satisfied that there is evidence to show that any such act or decision was specifically *"in return for"* payments pursuant to paragraph (e), or sources of money in bank accounts pursuant to paragraph (f). The Tribunal is satisfied that these submissions proceed on the basis of an incorrect interpretation of the whole of paragraph (g). Whilst this is a matter which requires some degree of analysis, it is nonetheless a matter of considerable importance and therefore appropriate that it should be set out at this stage.

1.05 The Tribunal is satisfied that paragraph (g) embraces three factual elements, as follows:

(a) whether Mr. Lowry did any act or made any decision to confer any benefit on any person making a payment referred to in paragraph (e);

(b) whether Mr. Lowry did any act or made any decision to confer any benefit on any person who was the source of any money referred to in paragraph (f);

(c) whether Mr. Lowry did any act or made any decision to confer any benefit on any other person in return for such payments under paragraphs (e) and (f) being made by a different person.

In other words, where Mr. Lowry conferred a benefit on a person who was found to have made a payment to him, or to have been a source of money in certain bank accounts, there is no requirement in the Terms of Reference that the Tribunal should further find that such a benefit had been conferred specifically *"in return for"* those payments made, or monies in those bank accounts.

1.06 It is only in the third instance outlined above where it is contemplated that a benefit may have been conferred by Mr. Lowry on a person other than the individual either making the relevant payment, or who was the source of the relevant monies, that the Tribunal is obliged to take the additional step of being satisfied that the benefit in question was *"in return for"* the payment or monies in question. This is the only reasonable construction since, if the *"in return for"* qualification did not apply in the third case, the Tribunal would be required to examine a potentially infinite number of acts or decisions on the part of Mr. Lowry. Logically, it is only in a case where the person enjoying the benefit of Mr. Lowry's act or decision is distinct from the person making the payment that there must, of necessity, be a link such that the conferral of the benefit on one person

is shown to be *"in return for"* a payment made by a different person altogether. In the most obvious case this would capture situations where benefits are conferred on acquaintances, business associates or family members of persons making payments.

1.07 In concluding that this is the true and correct interpretation the Tribunal is fortified by the wording of paragraph (i) of its Terms of Reference which states as follows:

> *"(i) Whether any holder of public office for whose benefit money was held in any of the accounts referred to at (b) or (f) did any act, in the course of his or her public office, to confer any benefit on any person who was the source of that money, or directed any person to do such an act."*

This paragraph does not contemplate the third factual instance set out above and embraced by paragraph (g), and does not contain the expression *"in return for",* for the reason that the paragraph only envisages inquiry by the Tribunal into acts whereby benefits are conferred on persons who themselves were the sources of money held in accounts for the benefit of any holder of public office. In a situation contemplated in paragraph (i) the notion of the conferral of a benefit on a person other than one who was a source of money does not arise.

1.08 It is clear to the Tribunal that the Houses of the Oireachtas, in adopting its Terms of Reference proceeded on the basis that if the result of the Tribunal's inquiries was that Mr. Lowry had conferred a benefit in the course of his Ministerial office on a person whom the Tribunal had found to have made a payment to him or to have been a source of monies in any bank account held for his benefit, those two matters in themselves were of sufficient public importance that the Tribunal should report upon them. It is obvious that such a set of circumstances is sufficient to give rise to public concern without any requirement for evidence demonstrating that such payments were *"in return for"* the conferral of the benefit in question, or, indeed, vice versa. It follows that what the Houses of the Oireachtas, in adopting the Terms of Reference, sought to condemn was the doing of any act or the making of any decision by a holder of public office so as to confer a benefit on a person from whom the holder of office had received payments; likewise that any holder of public office should not receive a payment from an individual who had been the beneficiary of an act or decision of that holder of public office.

1.09 Nonetheless, even if it were a requirement that in every case the qualification had to be met, the Tribunal is satisfied that the evidence in the case of Mr. Dunne as set forth in **Chapter 13** of this Volume, and in the case of Mr.

Denis O'Brien as set forth in Volume 2 of this Part of the Report, supports the finding of the appropriate nexus between the relevant payments and the particular acts.

COURSE OF TRIBUNAL HEARINGS

1.10 By early 2001, by which time the Tribunal had concluded most of its hearings concerning the aspects of the Terms of Reference dealing with Mr. Michael Lowry, it seemed unlikely that the portion of the Report dealing with those matters would warrant the publication of a second volume. By that time, it remained merely to examine those Terms of Reference dealing with the Revenue Commissioners treatment of certain aspects of Mr. Michael Lowry's financial affairs. The Tribunal's initial inquiries suggested that the findings would constitute a carry over from the McCracken Tribunal, focusing primarily on a number of additional payments connected with Mr. Ben Dunne. Whilst those payments added to the sum of knowledge concerning the relationship between Mr. Lowry and Mr. Ben Dunne, they would have warranted very little by way of further commentary on that relationship.

1.11 A number of other payments were identified and, but for the fact that the name of one of the individuals involved was mentioned in later evidence in connection with aspects of the Doncaster Rovers transaction, the circumstances appeared to suggest poorly documented but not improper payments, although not returned to the Revenue Commissioners.

EMERGENCE OF NEW MATERIAL

Attempted conferral of substantial benefits on Mr. Ben Dunne

1.12 What subsequently emerged is significant for a number of reasons, but at this stage it will suffice to mention two. Firstly, in the case of Mr. Ben Dunne, it transpired that Mr. Lowry sought, but fortunately was foiled in his attempt, to confer on Mr. Dunne a benefit amounting to approximately £2.38 million in the short term, and a potential capital value increase of £7.35 million. Mr. Lowry, whilst Minister, had sought to intervene in a property arbitration, with the object of procuring the fixing of the rent of premises leased to Telecom Éireann, a semi-State company then within his Ministerial remit, at a level almost twice what the market would have justified. Mr. Lowry had sought to bring wrongful influence to bear on a member of the firm of Sherry FitzGerald, then engaged in the pending arbitration, as arbitrator, with a view to having the inflated rent imposed. This was done at the behest of Mr. Ben Dunne, who had previously made substantial payments both to Mr. Lowry personally, and to Fine Gael. The impropriety of Mr.

Lowry's approach was compounded by the fact, which brings it within the Tribunal's Terms of Reference, that the premises actually fell within his Ministerial remit. This evidence indicated the lengths to which Mr. Lowry was prepared to go in securing financial advantages for Mr. Dunne, for whom he had reason to be grateful, for his contributions to Mr. Lowry's own personal finances, and also for his contributions to the finances of the Fine Gael party. Secondly, it reflected Mr. Lowry's contempt for the quasi-judicial process in which the arbitrator, who was in a position analogous to a judicial officer, was involved, and from whom Mr. Lowry expected cooperation in what, had it succeeded, would have amounted to a gross impropriety in the discharge of the functions of an arbitrator.

1.13 Prior to the emergence of this matter, it seemed likely that, had the Tribunal's inquiries concerning Mr. Lowry terminated in the examination of those Terms of Reference concerning his dealings with the Revenue Commissioners, the Tribunal would not have learned of this crystallising aspect of his relationship with Mr. Ben Dunne. It is salutary to bear in mind that no file, either within Telecom Eireann, or within Mr. Lowry's Department, would have contained anything likely on its face to suggest a need for further inquiry. This is because, had the rent been reviewed, albeit improperly, as intended, the new rent, having been fixed in the course of the quasi-judicial process of arbitration, would have been immune from ordinary scrutiny.

Payments from Mr. Denis O'Brien

1.14 Secondly, with regard to Mr. Lowry's dealings with Mr. O'Brien, from evidence subsequently heard, it transpired that much of these were conducted through agents or associates of the latter, at times during which Mr. Lowry was interacting with the Tribunal as part of its informal investigative process, or in the course of evidence. So careful was Mr. Lowry in obscuring from the view of the Tribunal his improper dealings with Mr. O'Brien that, in his evidence and other contacts with the Tribunal, concerning the property he had purchased at Carysfort Avenue, Blackrock, County Dublin, in late 1996, he made reference to his dealings with the lenders, Irish Nationwide Building Society, and its Chief Executive, Mr. Fingleton, disclosed full details of his loan account with the Society, but concealed the fact that at around the same time he had received a payment of £147,000.00 into his own off-shore account in Irish Nationwide Bank in the Isle of Man. Despite the fact that his belated explanation for this transaction was that it did not constitute a payment from Mr. O'Brien, but rather a loan from Mr. David Austin, and further despite the fact that, according to Mr. Lowry, the purpose of the loan was to pay for refurbishments he intended to carry out; and indeed had in part carried out on the Carysfort premises; no mention

was made of those refurbishments, nor of his having partly carried them out, nor of his having earmarked funds in the Irish Nationwide Isle of Man bank for that purpose. Mr. Lowry had mentioned other off-shore accounts to the Tribunal, but not this one.

1.15 A key feature of that account, as any examination of it at that time would have shown, was the involvement of Mr. David Austin and Mr. Aidan Phelan in the covert routing of funds from an account of Mr. O'Brien's in Woodchester Bank in Dublin, via off-shore accounts in the Isle of Man, to an off-shore account in the Channel Islands and from there back to another off-shore account, Mr. Lowry's, in the Isle of Man. Moreover, there is every reason to believe that an examination of Mr. David Austin's accounts, and in particular his Channel Island accounts, through which these monies had been routed, would have disclosed the covert routing of a $50,000.00 donation by Esat Digifone to Fine Gael, eventually exposed in the course of an article of Mr. Matt Cooper in The Sunday Tribune, in March, 2001.

1.16 Up to that time, the Tribunal had never scrutinised, having had no reason to do so, any aspect of Mr. Denis O'Brien's financial affairs. Had the $50,000.00 donation to Fine Gael, or the £147,000.00 payment in Mr. Lowry's Isle of Man account been disclosed in the course of Mr. Lowry's initial dealings with the Tribunal, then it is likely that all of the internal inquiries conducted within Esat Digifone and Esat Telecom in 1997, at the time of the latter's Initial Public Offering, would have emerged, including evidence concerning statements made by Mr. O'Brien to Mr. Barry Maloney, to the effect that he had paid £100,000.00 to Mr. Michael Lowry. There was also a real likelihood that the revelation of those dealings, including in particular the involvement of Mr. Aidan Phelan, could have led to the disclosure of Mr. Lowry's UK property transactions in which Mr. Phelan played a significant role, in Doncaster, Mansfield and Cheadle.

1.17 The events referred to in this Volume are not laid out in the chronological order in which they occurred. Rather, to a significant degree, they are dealt with in the order to which they came to the notice of the Tribunal. This is because, although following the Mr. Matt Cooper/Investec Bank disclosures, certain information concerning the $50,000.00 donation to Fine Gael, and the Mansfield and Cheadle transactions, was brought to the attention of the Tribunal, much relevant material concerning these properties and the Doncaster Rovers property was either withheld from the Tribunal, or provided to the Tribunal in such a form as to misrepresent the true picture. The Report endeavours, so far as it is intelligibly possible to do so, to present the evidence so as to show how, from time to time, the material actually provided, and disclosed on the footing that it

reflected cooperation of the providers with the Tribunal, in fact amounted to an attempt either to confuse, or conceal the true situation.

1.18 The detailed chapters which follow in relation to the money trail evidence and in one case, as appears in **Chapter 13**, in relation to the conferral of benefits, set forth a sequence of payments, property and other financial transactions, and other dealings between centrally involved persons, as regards all of which one common characteristic was their absence of disclosure to, or concealment from, the Tribunal in the first instance, resulting in knowledge of these matters being acquired by the Tribunal only belatedly. This element, allied to a level of cooperation from interested persons that in some instances fell far below that which might have reasonably been expected to be accorded to a Tribunal established by unanimous resolutions of both Houses of the Oireachtas, gravely delayed and extended the duration of the work of the Tribunal.

1.19 When, in early spring of 2001, significant information first came to the notice of the Tribunal, suggesting a requirement to reopen its inquiries into matters relating to Mr. Michael Lowry, and examine at public sittings a number of possible associations between Mr. Lowry and certain individuals, all of whom had connections with Mr. Denis O'Brien, it had seemed that the Tribunal's work was comparatively close to completion. Although the declining health of Mr. Haughey had retarded conclusion of his evidence, and there was a likelihood that some further matters referable to him would require examination, it had up to the time of those disclosures appeared that further public hearings in regard to Mr. Lowry might not be required, beyond some brief hearings that actually took place in 1999. It accordingly seemed, until those disclosures, in Spring of 2001, that there was every likelihood that the completion of the Tribunal's work, if not achieved by the end of 2001, would not proceed far in 2002. It would be unrealistic to seek to encapsulate all that emerged from the extensive money trail evidence in a few short paragraphs in a preliminary chapter, but it may be helpful nonetheless to set forth certain of the primary features that emerged from that evidence.

BRIEF SURVEY OF CHAPTERS

Chapter 2: Initial hearings concerning Mr. Michael Lowry

1.20 Turning now to a brief survey, but not an executive summary of the contents of this Volume, which is in fact set forth as its final chapter, the first chapter pertaining to substantive matters, **Chapter 2**, deals with information elicited from the comparatively short public hearings held in 1999 in relation to Mr. Lowry's business, financial and tax affairs. Whilst not unimportant in

themselves, what was noteworthy, as has already been mentioned, in relation to that evidence, was that it was represented by and on behalf of Mr. Lowry that its content was the entirety of the remaining matters required to be addressed by the Tribunal in regard to the Terms of Reference referable to him.

Chapters 13 and 14: Mr. Ben Dunne; and Mr. Michael Lowry's tax

1.21 **Chapters 13 and 14** are distinguishable from what may be termed the money trail chapters. **Chapter 13** relates to events which occurred in 1995 but which did not come to the attention of the Tribunal until November, 2002, in the course of the Tribunal's inquiries concerning the second GSM competition, and in particular concerning dealings between Mr. Michael Lowry and Mr. Mark FitzGerald. The chapter relates to Mr. Lowry's dealings with Mr. Dunne, already mentioned in paragraph 12 above.

1.22 **Chapter 14** relates to the manner in which the Revenue Commissioners exercised their powers in collecting taxes due by Mr. Lowry and his associated company, Garuda Limited, trading as Streamline Enterprises, in regard to certain specific payments and gifts. A chapter, in broadly analogous or parallel terms, with reference to Mr. Haughey, as also required by the Terms of Reference, was contained in Part I of the Tribunal's Report.

Chapter 3: A $50,000.00 covert donation to Fine Gael

1.23 **Chapter 3** pertains to a $50,000.00 donation, made off-shore, in December, 1995, in a clandestine fashion and intended for Fine Gael, then the senior partner in Government, shortly after the result of the second GSM competition had been announced in October, 1995. The payment was made by the Norwegian entity, Telenor, part of the successful Esat Digifone consortium, following an approach via telephone made to Mr. O'Brien by Mr. David Austin. Although at the time rejected by the leader of Fine Gael, Mr. John Bruton, the payment was not in fact returned by Mr. Austin to Telenor, or Esat Digifone, but was retained by him in an off-shore account and subsequently donated to Fine Gael, this time disguised as a personal payment of Mr. Austin himself. At the time the payment was first transmitted to Mr. Austin, Mr. Lowry was Chairman of the trustees of Fine Gael. The implausible explanation advanced by Mr. Denis O'Brien for this payment was that it was in fact a donation made by Telenor, Mr. O'Brien's Norwegian partners, as a formal expression of interest in Irish affairs, and was later reimbursed by Esat Digifone to Telenor, equally implausibly only through the exercise of some form of force or compulsion on the part of Telenor. Although a serious matter, this transaction differs from others addressed in this Volume involving improper payments or transactions in which Mr. Lowry was personally

involved, as opposed to a connection in this instance arising through his said office as Chairman of the Fine Gael trustees.

Chapter 4: Conversations between Mr. Denis O'Brien and Mr. Barry Maloney concerning a payment to Mr. Michael Lowry

1.24 Chapter **4** relates to certain conversations had between Mr. Denis O'Brien and Mr. Barry Maloney, respectively Chairman and Chief Executive Officer, of Esat Digifone, in late 1996 and 1997, in the course of which Mr. O'Brien conveyed to Mr. Maloney, firstly, that he had made a substantial payment to Mr. Lowry personally, at a time shortly after the successful outcome of the GSM competition; subsequently that he had not made the payment but that he had considered making it; finally, that having considered making it and having attempted to make it, and taken some steps toward doing so, the payment was not transmitted to Mr. Lowry but in fact had become "*stuck with an intermediary*". It will be seen that, whilst the events addressed in that chapter were considered sufficiently serious to put the Initial Public Offering of shares in Esat Telecom at risk, none of those involved saw fit to make timely disclosure of them to the Tribunal.

Chapters 5, 6 and 7: The Carysfort, Mansfield and Cheadle transactions

1.25 Chapters **5, 6** and **7** deal with a number of financial transactions of which some details were notified to the Tribunal around the time of Mr. Matt Cooper's disclosures in relation to the $50,000.00 donation to Fine Gael. The information concerning these transactions was notified by Mr. Aidan Phelan and Mr. Michael Lowry. The Tribunal was also furnished with information by Investec Bank as a result of its own internal inquiries into one of those transactions, a loan transaction relating to a property purchase in Cheadle, near Manchester, in the UK. The information provided by Mr. Lowry and Mr. Phelan, though presented as a voluntary disclosure, was in any case likely to come to the attention of the Tribunal as part of the ordinary inquiries that would have been prompted by Mr. Matt Cooper's disclosures, and the inevitable examination of Mr. Austin's bank account, on the one hand, and, on the other hand, by the inquiries that would have been prompted by the information provided by Investec Bank.

1.26 Chapter 5 deals with a payment of £147,000.00 by Mr. O'Brien to Mr. Lowry in 1996, while Mr. Lowry was still in office. This payment was made indirectly, having been transmitted by an off-shore route, through Mr. Aidan Phelan and the late Mr. David Austin. It was to this payment that Mr. O'Brien was referring in his conversations to Mr. Barry Maloney, referred to, in Chapter **4**.

1.27 The transaction was described by Mr. O'Brien as a payment to Mr. Austin for the sale by the latter of his Marbella holiday home, and by Mr. Lowry as a loan from Mr. David Austin to him, to enable him to refurbish his newly purchased Carysfort Avenue, Dublin, residence. However, despite its supposedly unblameworthy character, neither the accounts from and through which the payment was made, nor the so-called underlying transaction, were disclosed by Mr. O'Brien in the course of a relevant internal inquiry within Esat Digifone/Esat Telecom in November, 1997, in connection with and just prior to the Initial Public Offering of shares in Esat Telecom. Nor was it disclosed to the Tribunal by Mr. Lowry in the course of his evidence concerning the Irish Nationwide Building Society loan for Carysfort Avenue, despite his contention that the money in question was borrowed from Mr. Austin for the express purpose of carrying out the refurbishment of the property purchased with that loan, and further, despite the fact that the amount of the so-called loan had been lodged to an off-shore bank wholly owned by Irish Nationwide Building Society. The sum in question, never withdrawn from Mr. Lowry's account, was re-transferred to Mr. Austin at the time that the McCracken Tribunal was established. The statement by Mr. O'Brien to Mr. Maloney that this payment had become *"stuck with an intermediary"* resonates with the fact that at that time, February, 1997, it had been re-transferred to one of the *"intermediaries"* by whom it had been transmitted to Mr. Lowry, namely, Mr. Austin.

1.28 Chapter 6 relates to a payment of Stg.£300,000.00 by Mr. O'Brien to Mr. Lowry, the bulk of which was used for the purchase of a property by Mr. Lowry at Mansfield, in Derbyshire in the UK. The acquisition of the property, in Mr. Lowry's name, had completed in March, 1999, just three months prior to Mr. Lowry's first giving evidence to the Tribunal, in June, 1999. The sale was completed with the transmission of funds from a London bank account of Mr. Denis O'Brien, Credit Suisse First Boston, to Mr. Lowry's UK solicitor for that purpose. The transmission of the funds was processed by Mr. Aidan Phelan. This was the second occasion on which funds, originating in an account of Mr. O'Brien, terminated, as a result of directions from Mr. Aidan Phelan, in an account where they were held for the benefit of Mr. Lowry. Mr. Lowry maintained in evidence that the property represented a joint venture, whereby he paid a deposit of Stg.£25,000.00, and the balance was paid by Mr. Aidan Phelan. Mr. Phelan and Mr. O'Brien testified that the funds, though transmitted directly from Mr. O'Brien's account, represented Mr. Phelan's entitlement to payment for business services rendered by him to Mr. O'Brien. This so-called payment was never invoiced, formalised, journalised or returned to Revenue.

1.29 **Chapter 7** pertains to another English property transaction, involving the purchase of another UK premises at Cheadle, near Handforth, Cheshire. This transaction was first brought to the attention of the Tribunal as a result of inquiries conducted by Investec Bank, which had provided finance for the purchase, those inquiries having indicated that it appeared that Mr. Michael Lowry's name was connected with that of Mr. Denis O'Brien in relation to the transaction, within the bank; the transaction had been represented to two officials of the bank, by another official, as a Denis O'Brien transaction, at a time when, unknown to the bank, the company through which the purchase was made, Catclause Limited, was in fact a vehicle of Mr. Michael Lowry. The deposit for this purchase was paid for by the application of the balance of the Stg.£300,000.00 remaining in Mr. Lowry's client account with Mr. Christopher Vaughan, after the completion of the Mansfield transaction. The balance of Stg.£420,000.00 was provided by Investec Bank under arrangements negotiated by Mr. Aidan Phelan. The purchase was completed in Christmas week of 1999.

1.30 Although both Mr. Michael Lowry and Mr. Aidan Phelan testified that the loan, and the property, were taken over by Mr. Aidan Phelan at, or shortly after, the closing of the sale, from correspondence, initially suppressed, but which ultimately came to the attention of the Tribunal during the belated evidence of Mr. Christopher Vaughan, the solicitor handling the transaction, it was clear that the apparent removal of Mr. Lowry from the transaction, by the removal of his company, Catclause, was effected for secrecy reasons. From other documentation, again initially suppressed, but which ultimately came to notice in the course of the above mentioned evidence, it is clear that, when there was a prospect of selling the property, along with the Cheadle property, in September, 2000, it was beyond doubt that Mr. Lowry was to be the beneficiary.

1.31 When the matter became the subject of internal inquiries within Investec Bank in 2001, both Mr. Aidan Phelan and the Investec official with whom he negotiated the loan, Mr. Michael Tunney, repeatedly asserted that the transaction was a Denis O'Brien transaction. Although Mr. O'Brien at all times testified that he had no involvement whatsoever with the purchase or the loan, when faced in evidence with the testimony of the bank officials, his only response was to suggest that the bank and its officials had in effect fabricated their files so as to implicate him in the provision of the loan, an action which, as the Tribunal has found, and is in any case self-evident, would not have inured to the bank's benefit either in terms of the inconvenience, and unwelcome publicity, likely to be associated with its dealings with the Tribunal, or in terms of its commercial relationship with a substantial customer such as Mr. O'Brien.

Chapter 8: The falsification of Mr. Christopher Vaughan's files

1.32 **Chapter 8**, entitled *"Falsification of Mr. Christopher Vaughan's Files"*, relates to differing forms of correspondence coming to the attention of the Tribunal, primarily in the files of Mr. Christopher Vaughan, an English solicitor, retained by Mr. Lowry for both the Mansfield and Cheadle transactions, from which it appears that original letters, accurately recording the nature and details of Mr. Lowry's involvement in these transactions, had been falsified in such a fashion as to convey a substantially misleading factual position to the Tribunal. This suppression and deception came to be assessed by the Tribunal on two occasions, firstly, in relation to two letters at a relatively early stage of inquiries into UK property transactions, and secondly in regard to much more extensive correspondence, when Mr. Vaughan belatedly came to testify at a late stage of public sittings in 2009. In every case the falsification and suppression was directed to either obscuring or removing references to Mr. Lowry in the files of Mr. Vaughan, which reflected Mr. Lowry's interest in certain English properties, and his involvement in those transactions, at a time when he was asserting in evidence a reliance on other aspects of Mr. Vaughan's files to the effect that he had no such interest or involvement.

Chapters 9 and 10: The Doncaster Rovers transaction and Mr. Denis O'Connor's shuttle diplomacy

1.33 **Chapters 9 and 10**, although not exclusively in the case of the latter, deal with the Doncaster Rovers Football Club transaction, a further UK venture whereby Mr. O'Brien acquired the property interest of that club, and with matters brought to the attention of the Tribunal suggesting an involvement on the part of Mr. Lowry in the acquisition. Chief amongst these was a letter written by Mr. Vaughan, who in this instance acted for the purchasing vehicle of Mr. O'Brien, to Mr. Lowry, for whom he was also acting separately in another matter at the time, in which Mr. Vaughan referred to not having appreciated Mr. Lowry's *"total involvement"* in the transaction. The letter also alluded to Mr. Lowry's intimate participation in a meeting concerning the project, disclosed highly confidential and sensitive information concerning dealings with the vendors, and referred to various confidential enclosures. The chapter also refers to other references to an involvement on the part of Mr. Lowry in this transaction, made by Mr. O'Connor, a close associate of Mr. Lowry, and recorded by Mr. O'Brien's London solicitor, Ms. Ruth Collard. Mr. O'Connor's intimate role in dealing with disputes concerning Doncaster, between both Mr. Kevin Phelan and the vendors, on the one hand, and the purchaser, and the O'Brien interests on the other, an extensive account is provided in Chapter 10 in this Volume. The Tribunal was able to determine that Mr. Lowry had an involvement in the transaction, one which was intended would entail the conferral of some pecuniary advantage on him. However, on the basis

of the inquiries undertaken and the evidence heard, the Tribunal was unable to determine the precise nature of his interest in the property, or the extent to which it was intended he would benefit from the transaction. There were further lines of inquiry which the Tribunal could have pursued but, having regard to the extended time period already devoted to the matter, and the extent of the concealment, suppression and deliberate falsehoods encountered by the Tribunal in endeavouring to conduct its inquiries into all of the UK properties, the Tribunal was doubtful that any such further inquiries would cast any further light on the matter.

Chapter 11: Conduct of lawyers

1.34 In **Chapter 11** the Tribunal considers aspects of the relationship between a lawyer and his client, in which it may become necessary to advise the client to take a course such as the disclosure of documents, or the disclosure of information, palpably relevant to the Tribunal's proceedings, where such disclosure may be contrary to the client's wishes. One of the matters examined concerns the active non-disclosure by Mr. O'Brien, his father Mr. Denis O'Brien Senior, or his lawyers, of a reference in a document to Mr. Michael Lowry in the context of the Doncaster transaction, when both client and lawyers acknowledged the relevance and importance of the document. A not dissimilar situation arose relating to the attitude of the City of London Police, concerning the disclosure of information regarding a complaint regarding the handling by the police of a complaint of blackmail made by Mr. Denis O'Brien Senior. Two firms of solicitors, one in London, and one in Dublin, were centrally involved in a failure to disclose information which, on the evidence available, was palpably relevant and, more seriously, relayed to the Tribunal information which misrepresented the true position.

Chapter 12: Share transaction anomalies

1.35 Chapter **12** addresses certain share transaction anomalies in the course of the flotation of Esat Telecom, involving Mr. O'Brien, Mr. David Austin, and the firm of New York stockbrokers, Donaldson Lufkin & Jenrette.

SOME FEATURES OF THE EVIDENCE

Testimony of friends of, and professional advisers to, Mr. Denis O'Brien

1.36 Those who read the chapters which follow, in particular those relating to the money trail, will have an opportunity to assess the evidence that was heard, and the conclusions that have been drawn by the Tribunal on foot of it. At the very outset of the Tribunal, it was stated that, in its investigations and

reporting, it should neither be a witch-hunt nor a whitewash. In the context of the nature and weight of evidence heard and evaluated, it is the considered view of the Tribunal that a report, which failed to draw the conclusions necessitated by that evidence, would emphatically fall into the latter category. Those chapters set forth detailed analysis of each of the individual transactions and separate portions of evidence heard. Some characteristics common to various of these transactions are further examined and analysed in those chapters. But there is also a cumulative element which must be taken into consideration. If the donation of $50,000.00 made to Fine Gael had indeed been motivated by the wish of Telenor, Mr. O'Brien's Norwegian partners within Esat Digifone, and if the money advanced off-shore by Mr. O'Brien's friend and confidante, Mr. David Austin, to Mr. Lowry only coincidentally happened to be the same funds, as had separately been paid by Mr. O'Brien to Mr. Austin, for the latter's Spanish property, it surely strains any rational evaluation of coincidence that, again thereafter, substantial funds of Mr. O'Brien moved, through a further trusted associate in Mr. Aidan Phelan, to be applied for the benefit of Mr. Lowry in relation to the UK property transactions, unless an intent consistent with that application underlay the entire course of dealings.

1.37 A common feature of the evidence from which adverse conclusions have been drawn with regard to Mr. Lowry and Mr. Dunne, and particularly Mr. O'Brien, was that in no case could it convincingly be suggested that any of the material had emanated from sources with any demonstrable history of hostility to any of those individuals. Mr. O'Brien's case is the most illustrative, in that inquiries concerning his dealings with Mr. Lowry were in the main prompted by remarks he himself had made to Mr. Maloney, the thrust of which he had acknowledged in evidence. As the inquiry proceeded, it was statements contained in documents generated by his own solicitors, Mr. Christopher Vaughan and Ms. Ruth Collard, that to a significant degree propelled inquiries in relation to English property transactions. Likewise, it was from statements made by his agent Mr. Aidan Phelan, and his long term business contact, and later associate, Mr. Michael Tunney, that many other inquiries were pursued in connection with those same English property transactions. Of course it could not be suggested, in the case of Mr. Lowry, that Mr. Aidan Phelan or Mr. Michael Tunney had any animus or bad feeling toward Mr. Lowry. In Mr. Lowry's case, also, it was statements made by his own solicitor, also Mr. Christopher Vaughan, and by his associate and agent, Mr. Denis O'Connor, which featured prominently in evidence concerning the English property transactions. Where Mr. Dunne was concerned, there was no suggestion of any hostility against him by Mr. Mark FitzGerald, nor indeed any serious suggestion to the same effect where Mr. Lowry was concerned. In the course of the cross-examination of Mr. Christopher Vaughan by Mr. O'Callaghan, counsel for Mr. O'Brien, it was suggested that the situation in which Mr. O'Brien found himself, having to answer for the contents of Mr.

Vaughan's correspondence, in the case of Doncaster Rovers specifically, was something for which Mr. Vaughan was culpable; what was in effect put was that Mr. Vaughan was to blame, for mistakenly noting an involvement on the part of Mr. Lowry that he acknowledged in evidence did not exist. To this suggestion Mr. Vaughan responded that any erroneous statements he had made were not his fault, but the result of what had been stated to him by Mr. Lowry and certain agents and associates of Mr. O'Brien. It also has to be said that, in assessing the evidence of Mr. Lowry, Mr. O'Brien and some of the witnesses associated with each of them, and in particular responding to the evidence of the class mentioned above, clear elements of implausibility and improbability emerged. This applied to Mr. Lowry, not merely in the context of the chapters specifically addressing the money trail, but in regard to his dealings with Mr. Ben Dunne and Mr. Mark FitzGerald in relation to the Marlborough House rent arbitration. As to Mr. O'Brien, even allowing for the difficulties inherent in testifying for periods of some days on relatively detailed and intricate matters, in common with Mr. Lowry, his testimony in many respects proved unconvincing, unpersuasive and unsatisfactory. Frequently argumentative, intemperate and bombastic in manner, his disposition towards self-justification in his testimony was manifest in much inaccuracy in his responses to questioning and, as regards significant portions of his testimony relevant to the money trail matters inquired into, the Tribunal found much of what he stated at best unreliable and reckless.

Mr. Denis O'Brien's view of the motivations of witnesses

1.38 Something of the quality of this portion of Mr. O'Brien's testimony may be gauged from his almost habitual readiness to attribute base or unworthy motives to persons who gave evidence that was potentially damaging to his interests. To take some obvious examples;

(i) Mr. O'Brien contended that the motivation of Mr. Barry Maloney, as Chief Executive Officer of Esat Digifone, in bringing to attention his several conversations with Mr. O'Brien, particularly on a delayed basis and when he knew that no improper payment had been made, was because he was seeking to derail the Initial Public Offering of Esat Telecom, the vehicle through which Mr. O'Brien held his interest in Esat Digifone;

(ii) as to evidence from a number of Telenor witnesses, perceived as adverse by Mr. O'Brien, this was attributed by him to Telenor having been unsuccessful in its bid for control of Esat Digifone, and because its witnesses may not have made full and frank disclosure in Norway,

as to the circumstances in which Telenor had made the contribution to Fine Gael;

(iii) when put to Mr. O'Brien in evidence that he was scarcely suggesting that the officials of Woodchester/Investec Bank had not accurately recorded what was stated to them at meetings, some short number of months prior to their giving evidence, relating to the involvement of Mr. O'Brien in supporting the loan which had been advanced to the company controlled by Mr. Lowry, in circumstances where what had been suggested to them at those meetings had obliged them to report the loan to the Central Bank and the Tribunal, Mr. O'Brien responded that, if a realistic view was wanted, banks sometimes put file notes into their files that suited their position;

(iv) other instances indicative of a somewhat simplistic and self-serving view of events on the part of Mr. O'Brien included his observation, in the context of a suggested error on the part of Mr. Peter Muldowney of Donaldson Lufkin & Jenrette, as to the beneficiary of a share purchase described in **Chapter 12** of this Volume, that brokers made plenty of errors when they put shares that had been purchased into the wrong account, although he was unable in evidence to point to any other such instance.

Mr. Denis O'Brien's view on the Tribunal and its legal personnel

1.39 Mr. O'Brien's views on the Tribunal, and its legal personnel, need little introduction, and have been aired energetically by him in evidence, statements, press conferences, advertisements and the internet, as well as in personal letters from him to the Tribunal's Sole Member. In the earlier of two such personal letters in 2010, he expressed the view that the Tribunal was *"totally biased"*, and that its activities constituted *"a new low in Irish judicial history"*. Quite why such supposed bias should have formed and persisted within the Tribunal has never been made entirely clear: what realistically tenable animus could impel the Tribunal to make serious criticisms, or adverse findings, which necessarily entail reputational and other damage, when none are warranted? Whilst a measure of non-disclosure, delay and a court challenge was encountered by the Tribunal in relation to the matters investigated and reported on in Part I of the Report, these were of comparatively modest dimensions, in contrast to the wholesale concealment, non-cooperation and splenetic outpourings of abuse given vent to, by and on behalf of some affected persons on an almost daily basis, in relation to the matters addressed in this Part of the Report. As stated, a later chapter deals with certain of the repercussions caused to the Tribunal by delay and non-disclosure on the part of a small minority of the legal practitioners acting for

affected persons. As to the content and frequency of substantially abusive correspondence by a similarly small minority of practitioners involved, it may be that this will require to be addressed in the course of considering costs.

1.40 In an article in The Irish Times, of 4th May, 2010, it was noted that it was "*regrettable that the outdated legislative infrastructure of the inquiry process has allowed attention to be shifted from the very serious substantive issues at the heart of the tribunal to the method of inquiry*". Further, the writer observed that, in Italian corruption inquiries "*tensions between the political and judicial branches of the state have been exacerbated by accusations that the judicial authorities have unnecessarily intruded into the political realm*", and that "*media attention has shifted from the allegations of corruption to disputes about the alleged bias of judges.*"

1.41 In a similar vein, although in the sphere of major commercial litigation in the High Court of England and Wales, rather than of inquisitional tribunal processes, reference in passing may be apposite to the case of Digicel (St. Lucia) and Ors v. Cable & Wireless plc and Ors [2010] EWHC 774 (Ch). Mr. Justice Morgan, the Trial Judge, dismissed all the claims of the Digicel companies, of which Mr. Denis O'Brien was Chairman, alleged to have amounted to over Stg.£300 million, save for a nominal damages award of Stg.£2.00 on one of the claims, in a lengthy judgment of 15th April, 2010. He also addressed matters of costs on 20th April, 2010. In exercising a discretion to allow the highest level of costs for the successful defendants, subject to a limited percentage discounting, he indicated that, among the factors taken into consideration were:

(i) the allegation that the defendants had acted in bad faith throughout all their dealings with Digicel;

(ii) massive over claiming and gross exaggeration of alleged losses by the claimants, contending that virtually everything the defendants had done was unlawful, and sustaining claims on foot of which they cannot have expected to succeed;

(iii) the use of derogatory press releases and statements calculated to damage the defendants;

(iv) the circulation of written advertising campaigns that were highly critical of the defendants, some at least of which were neither fair nor accurate;

(v) furnishing witness statements which were not confined to facts within knowledge, but contained adverse commentary on the behaviour of others.

The matters noted by the Trial Judge in this regard, bear regrettable similarities to certain conduct on the part of Mr. O'Brien and his advisers experienced for a substantial period of time, by the Tribunal.

"Does all this have the ring of truth?"

1.42 The Tribunal must be wary and vigilant in its evaluation of evidence. Particularly where potentially serious consequences may arise for affected persons, it must guard against drawing conclusions based on evidence that is frail, inadequate or untested, either as regards an individual matter of evidence, or an aggregation of a number of such matters. Such understandable and necessary caution however cannot and should not mean that findings or conclusions can only be expressed, if so unrealistically high a standard of proof is observed as to border upon mathematical certainty, or diverge significantly from what for centuries has been found appropriate in the trial of grave matters in civil litigation. A stage may be reached at which, upon a careful and dispassionate analysis of all of the evidence, particular views or conclusions are clearly warranted, not by way of whim, caprice or marginal preference, but as a basis clearly established in fact. In the present instance, due allowance having been made for frailty of memory or excusable error, the combination of positive evidence heard, allied to the inferences properly to be drawn from such matters as absence of proper disclosure, non-attendance of potentially crucial witnesses, clandestine courses of dealing, the wholesale falsification of crucial solicitors' files, and explanations redolent with increasingly implausible coincidence, warrant conclusions that certain payments or other benefits falling within the Terms of Reference were made available by Mr. O'Brien to Mr. Lowry. Put more bluntly, surveying the odd backdrop of happenstance, silence and implausibility comprised by much of the evidence, and the manner and time in which it came to be recounted, it is inevitable that a stage is reached when the Tribunal must ask *"does all this have the ring of truth?",* and conclude that much emphatically does not.

Tribunal Procedures And The Duration Of Its Proceedings

1.43 In preparing Part II of its Report, the Tribunal has had full regard to all of the obligations and procedures outlined in Part I of the Report, with a view to ensuring fairness to all persons who came within the scope of its inquiries, in what it is appreciated was necessarily a lengthy and demanding process. In particular, it has sought to have full regard to the necessity to apply a civil onus of

proof that respects fully the importance of matters involved to affected persons, and the relevant jurisprudence of the Supreme Court and High Court. The Tribunal has also furnished to such affected persons a full opportunity to make submissions on all matters deemed of importance, and in particular in regard to any proposed or provisional findings or conclusions that may be critical of such affected persons, and has, save for the limited exceptions outlined in Part I of the Report, based the findings made in Part II, exclusively on evidence heard and tested at public sittings. The Tribunal has moreover declined, in respect of a limited number of matters that were considered in private inquiries, to proceed to public sittings, either because such matters were not demonstrably within the Tribunal's Terms of Reference, because the potential prejudicial import appeared to exceed the probative value of what might have emerged, or because the Tribunal could not countenance a further prolongation of its inquiries.

1.44 Before concluding this relatively short introductory chapter, it would be remiss not to refer to the duration of time that has been entailed in bringing the Tribunal's work to a conclusion. Undoubtedly some factors, outside of the control of the Tribunal, have impacted significantly on that overall duration. Firstly, there has been the concealment, falsification of files, non-disclosure of material documentation, and general absence of cooperation, usually presaged by effusive protestations of an anxiety to assist the Tribunal fully, that have been noted on the part of some affected persons and their representatives.

1.45 Secondly, the Tribunal has been required to defend four sets of legal proceedings brought against it, necessitating multiple hearings, including the initial Constitutional challenge brought by Mr. Haughey, each of which proceeded in both the High Court and Supreme Court and, notwithstanding that all these proceedings proved unsuccessful, very significant amounts of time and resources had to be devoted to them by the Tribunal. Indeed, given the very limited impact of the sanctions entailed in costs awards made against exceedingly wealthy individuals, balanced against the delay and disruption necessarily occasioned to Tribunal inquiries, by such litigation, it may realistically be said that litigious success in these instances for the Tribunal was of a somewhat pyrrhic nature. It is of course acknowledged that, in dealing with these cases, both the High Court and the Supreme Court listed and determined them with the maximum expedition possible. Four further sets of legal proceedings, each instituted against the Tribunal in 2010, currently remain pending, and await final determination.

1.46 Thirdly, it should be noted that a significant portion of the period, during which the primary focus of the Tribunal was on the Terms of Reference addressed in this Part of the Report, was also occupied with extensive private investigations into new material which came to light in the course of the inquiries

into Ansbacher (Cayman) Limited, and associated entities, carried out by the Authorised Officer appointed by the Minister for Enterprise, Trade and Employment. Although a detailed Report was prepared and furnished to the relevant Minister, the outcome of these extensive investigations did not require proceeding to public hearings. This entailed the consideration of thousands of pages of documents, and the conduct of private inquiries, including interviews with a significant number of individuals.

1.47 Fourthly, as already alluded to, the Tribunal has had to conduct its investigations and hearings in an environment that has changed unrecognisably since the enactment of the originating Tribunals of Inquiry legislation in 1921. A reading of some of the early Tribunal of Inquiry Reports, in the decades immediately following that originating legislation, conveys an almost arcadian picture of a serene, orderly and cooperative process, that is greatly at odds with contemporary experience, particularly as regards a Tribunal such as this, which is required to investigate the possibility of improper associations between senior politicians and powerful figures in the business world. Not only would such matters as the extent of abrasive correspondence directed to the Tribunal, and the wholesale deployment of media consultants as an integral part of representing a substantial client, prove unrecognisable to those involved in early Tribunals, but the jurisprudence of the High Court and Supreme Court over the currency of this Tribunal, emphasising the rights and fair procedures that must be accorded to affected persons, and properly so, has significantly and crucially changed the landscape. The Tribunal accepts and understands the need for a rights-based jurisprudence, and would in any event never have countenanced the concept of riding roughshod over affected individuals or entities, but one undoubted consequence is that it has become exceedingly difficult to run an efficient and expeditious Tribunal, that equates getting as close as possible to the heart of matters under investigation, whilst fully safeguarding the expanded entitlements of affected persons. It is desirable that something more should be said in this regard in the context of Recommendations. Having noted all these and related matters, however, it has to be said that the aggregate duration of the Tribunal, seeking to inquire into definite matters of urgent public importance, has nonetheless exceeded what was intended, or is desirable, and again this aspect will be alluded to in forthcoming Recommendations.

Tribunal Error

1.48 It would likewise be remiss not to refer to the error made by the Tribunal and referred to at public sittings in March, 2010, even though it is unconnected with any aspect of the investigations addressed in this Volume. That error, whilst extending to a private meeting overlooked by the Tribunal, primarily related to the misinterpretation by the Tribunal of a letter furnished by

the Attorney General in the course of the Tribunal's private investigative inquiries in connection with the GSM licence. As it arose in that context, the error will be addressed and explained in Volume 2 of this Part. Errors can and do occur in all fields of human endeavour, particularly in matters of the complexity with which the Tribunal has been engaged over many years. The error is one which is remediable, and whilst the Tribunal fully accepts that it was an error of the Tribunal's own making, it is one that could have been identified at a much earlier point, had matters over which the Tribunal had no control proceeded otherwise.

RETAINER OF LEGAL TEAM AND MR. JERRY HEALY SC

1.49 Lastly, some limited matters in relation to the Tribunal legal team, which, in comparison with those engaged in comparable agencies, has never been large, and in relation to which the Sole Member has acknowledged and repeats his indebtedness, as expressed in Part I of the Report. The first such matter relates to some remarks made in the course of related business of the Public Accounts Committee, in addition to brief correspondence between Mr. Michael McGrath, T.D. and the Tribunal, the substance of which was a suggestion that an element of *"cronyism"* had applied to the engagement and retention of the members of the legal team. At this juncture, it is proposed only to say that, in the immediate aftermath of the request to the Sole Member to undertake his task from the then Attorney General, Mr. David Byrne SC, a detailed and lengthy discussion took place between them in the Attorney General's office, in which numerous names of practitioners were explored and inquired into, and it was on foot of that considered exchange that the retention of the principal members of the legal team occurred.

1.50 The second matter involving the Tribunal legal team relates to one of its senior members, Mr. Jerry Healy SC, and a contention that has been made persistently for several years that, because Mr. Healy had been retained as senior counsel on a limited and short-term basis by Persona Digital Telephony, the second-placed consortium in the GSM competition, after its outcome had been announced, he had placed himself in a position of potential conflict and bias, by acting as Tribunal counsel in respect of subsequent inquiries into that competition. It is not proposed to embark upon this matter in the detail, or with the venom, in which it has been pursued in correspondence and via the internet, but the essential facts must be briefly stated.

1.51 It has been suggested and portrayed, erroneously, that Mr. Healy advised the Persona consortium in relation to its bid for the GSM licence. That is incorrect. Mr. Healy was first consulted by the solicitor to Persona after the GSM competition had concluded, for the sole purpose of advising in relation to

proposed Judicial Review proceedings to compel the furnishing of reasons as to why Persona had not won the competition. Junior counsel had prepared an opinion, which was then settled or approved by Mr. Healy. Judicial Review proceedings were not issued, and Mr. Healy provided no further advice whatsoever. Having regard to the prominent position of Mr. Lowry in the Tribunal's Terms of Reference, and the possibility that its investigations, as they unfolded, could touch upon the conduct of the GSM competition, Mr. Healy, in accordance with the highest professional standards, duly brought that limited involvement to the attention of the Sole Member before accepting his appointment as counsel to the Tribunal. The Sole Member was satisfied that such a minor prior retention to approve an opinion written by junior counsel, after the completion of the competition, could not give rise to any operative conflict, or any such reasonable perception.

1.52 In March, 2001, Investec Bank reported to the Tribunal the apparent involvement of Mr. Lowry and Mr. O'Brien, in relation to the loan advanced to fund the acquisition of the Cheadle property in the UK. Following further disclosures, and information that came to the attention of the Tribunal regarding matters with which both Mr. Lowry and Mr. O'Brien were associated, it became apparent that these would require investigation by the Tribunal. At that point, in May, 2001, in advance of commencing any inquiries into these matters at public sittings, disclosure of Mr. Healy's prior retention by Persona for the purposes of furnishing that opinion was made to each of the senior counsel acting for the persons affected by those inquiries, namely, Mr. Lowry, Mr. O'Brien and Telenor. They were each asked to convey that matter to their respective clients, and to indicate whether their clients had any objection to Mr. Healy acting as Tribunal counsel in the event that an inquiry was pursued into the GSM licence. Each of those senior counsel, having duly taken their clients instructions, confirmed that their clients had no objection to Mr. Healy's continuing involvement. In the case of Mr. O'Brien, that confirmation was confirmed by his then solicitors, Messrs. William Fry, by letter dated 28th May, 2001.

1.53 Disclosure was likewise made at a later point to senior counsel acting for the State, once the State became a party concerned with the Tribunal's inquiries into the GSM licence. As the involvement of Mr. Dermot Desmond was never regarded as central to any aspect of the Tribunal's inquiries, and indeed was reflected in Mr. Desmond's infrequent and sporadic representation at public sittings, his legal advisers were not formally apprised of Mr. Healy's prior limited involvement in approving that opinion on behalf of Persona, as had the legal advisers to Mr. Lowry, Mr. O'Brien, Telenor and the State.

1.54 Prior to commencing inquiries into the GSM process, the Tribunal took the additional precaution, to protect itself against any complaint that might subsequently be made against the Tribunal by Persona Digital Telephony, arising from Mr. Healy acting for the Tribunal in that investigation, of seeking and obtaining from Persona a waiver of any duty of confidentiality that might have arisen on the part of Mr. Healy, from his limited role in connection with approving the opinion prepared by junior counsel.

1.55 The Tribunal is satisfied that Mr. Healy's conduct in this matter has been exemplary, and beyond reproach. The manner in which efforts have been made to damage the reputation of Mr. Healy, and thereby call into question the integrity and independence of the Tribunal by, firstly, misrepresenting the limited extent of Mr. Healy's prior involvement with Persona, and secondly, by concealing both the fact that disclosure of that involvement had been made, and that no objection had been taken to Mr. Healy's continuing to act as counsel for the Tribunal, has been both opportunistic and reprehensible. The Sole Member has already expressed his views on this matter, in a Ruling made by him in the course of public sittings, on 3rd March, 2004. It is worthy of note that despite his earlier criticisms of Mr. Healy, in the course of the Tribunal's examination of Mr. Michael Andersen, the Tribunal's concluding witness, Mr. Denis O'Brien, who took exception to the retainer of Mr. Michael McDowell SC on the grounds of bias, expressly indicated that he would have had no objection had the examination of Mr. Andersen been conducted by Mr. Healy.

1.56 Although touching on matters primarily addressed in Volume 2 of this Part of the Report, because it was only latterly that the evidence of Mr. Michael Andersen, the lead consultant to the GSM process was taken, it is appropriate at this juncture to remark on his contention that Tribunal counsel had displayed bias and hostility in their dealings with him. As was stated on more than one occasion in the course of the Tribunal's proceedings, the Sole Member of the Tribunal cannot put himself in a position where he would be obliged to decide on a contested question of fact as between members of his legal team, or indeed members of his administrative staff, on the one hand, and a witness on the other. A Ruling to this effect was made by the Sole Member in the course of the Tribunal's public sittings on 23rd March, 2010, on the basis that, by reason of long association with members of both his legal team and his staff, he would in doing so effectively be deciding as a judge in his own cause.

1.57 It was following this public Ruling that Mr. Andersen drafted a statement to the Tribunal, and indicated that he would make himself available as a witness at public sittings.

BELATED ATTENDANCE OF MR. MICHAEL ANDERSEN

1.58 The statement of Mr. Michael Andersen contained a number of allegations of bias and misconduct against named and unnamed members of the Tribunal legal team, and was provided to the Tribunal, not by Mr. Andersen or his lawyer, but by solicitors acting for Mr. Denis O'Brien. The Tribunal subsequently learned, some four months later, that Mr. Andersen had discussed the statement with Mr. Tom Reynolds, solicitor, an employee of Digicel and an associate and legal adviser to Mr. O'Brien, and had provided it to Mr. Reynolds in return for what then was an undisclosed indemnity from Mr. O'Brien.

1.59 Despite the Ruling, the complaint of bias was frequently repeated in evidence by Mr. Andersen. Whether any such bias against, or hostility towards, Mr. Andersen was displayed, as he contends, cannot conclusively be determined by this Tribunal insofar as any such determination would entail resolving conflicts of evidence as between members of the Tribunal legal team, who it should be recorded categorically reject the complaint, and Mr. Andersen.

1.60 However, it is appropriate to lay before the reader certain features of the evidence of Mr. Andersen concerning these matters. Any commentary must of necessity be limited to what can be deduced from Mr. Andersen's own evidence. Firstly, there is the fact that despite the vehemence with which these views were expressed by Mr. Andersen in evidence, there had been no complaint to the Tribunal in any correspondence following any of the meetings with Tribunal counsel over a period of five years between 2003 and 2008. Nor have any of these matters, at any time, been raised in any forum (a) where they were justiciable and, (b) where members of the legal team involved would have an opportunity to dispute the complaints.

1.61 Complaints of bias were made, for the first time, by Mr. Andersen, in December of 2008, in a response to Provisional Findings notified to him in November, 2008. Of all the complaints made, the most serious, and the only one to which reference can be made at this juncture, was the assertion that the Tribunal had suppressed a set of quantitative results generated by AMI, Mr. Andersen's firm, in the course of the GSM evaluation process. Mr. Andersen alleged that in the course of a private meeting, members of the Tribunal legal team had displayed bias in favour of Persona, and had suppressed a version of the quantitative evaluation provided by AMI, because it did not rank Persona in first place. It was also alleged that the Tribunal did not refer to the evaluation in the course of public sittings and did not raise it again with AMI. This complaint was repeated in various forms in Mr. Andersen's Statement furnished to the Tribunal by Messrs. Meagher & Company, solicitors for Mr. Denis O'Brien, on 14th

April, 2010. The full significance of the complaint cannot be demonstrated in this introductory chapter and will not be properly appreciated until the reader has digested at least the Executive Summary of Volume 2 of this Part.

1.62 In the course of Mr. Andersen's evidence, this assertion was demonstrated to be wholly without foundation. Apart from anything else, the quantitative results in question had been referred to at length in the Tribunal's Opening Statement in December, 2002. Further, they had been dealt with in evidence on various occasions with Departmental witnesses, including Days 201, 214, 215, 222 and 232. In the course of evidence, it became clear that they had also been faxed to Mr. Andersen's lawyer for the purposes of a meeting between Tribunal counsel and Mr. Andersen in October, 2003.

1.63 In the course of the Tribunal's last sittings, Mr. Andersen was eventually obliged to withdraw the complaint, and to accept that the evaluation had not been suppressed.

1.64 The Statement produced to the Tribunal by Mr. O'Brien's solicitors on behalf of Mr. Andersen in April, 2010, contained additional specific allegations against named and unnamed members of the Tribunal legal team, which had never previously been set out by Mr. Andersen. It is noteworthy that these assertions were made for the first time after the Tribunal had publicly ruled that it could not call its own lawyers or staff to give evidence on matters of dispute. It is also noteworthy that when this Statement was provided to the Tribunal, the extent of the dealings between Mr. Andersen and Mr. O'Brien, and Mr. Tom Reynolds, a legal adviser to Mr. O'Brien which led to the production of the Statement, including the provision of a comprehensive indemnity by Mr. O'Brien in return for the Statement, was kept undisclosed.

2 EARLY EVIDENCE RELATING TO MR. MICHAEL LOWRY

INTRODUCTION

2.01 In addressing the Terms of Reference that related to Mr. Michael Lowry, the Tribunal sought to assemble all potentially relevant available information relating to his financial affairs, both inside and outside the State. Whereas the focus of the McCracken Tribunal was confined to examining payments to Mr. Lowry and his company Garuda Limited t/a Streamline Enterprises from Dunnes Stores and/or Mr. Ben Dunne, this Tribunal was required to examine all or any relevant payments to him whilst holding public office, and also to inquire into the sources of all monies held in bank accounts for him.

2.02 Further to repeated assurances by and on behalf of Mr. Lowry that the maximum degree of cooperation and disclosure was being afforded to the Tribunal, various copy statements of bank accounts held by Mr. Lowry were made available. Whilst a majority of lodgments to these accounts appeared identifiable with income from Mr. Lowry's business, and other sources of remuneration, a number did not appear to reconcile with known sources of income, notwithstanding extensive reconstructive work undertaken by the accountant retained by Mr. Lowry to assist in his dealings with the Tribunal. Following substantial preliminary investigations, which further had regard to the related inquiries and findings of the McCracken Tribunal, matters proceeded to public sittings in late June, 1999. In the course of these, a general review of Mr. Lowry's finances between the years 1987 and 1996, inclusive, was followed by an examination of a limited number of payments or transactions, considered relevant to the Terms of Reference, that had come to light in the course of these inquires.

2.03 Mr. Lowry's accountant, Mr. Denis O'Connor, a Partner in the firm of Brophy Butler Thornton, indicated that his professional association with Mr. Lowry dated only from December, 1996, although he had previously known him socially. He had assisted Mr. Lowry in relation to the McCracken Tribunal as well as this one, and was aware that both Tribunals had addressed numerous queries to Mr. Lowry, seeking to relate bank lodgments to income receipts. This entailed extensive dealings with banks. It was accepted that, prior to Mr. O'Connor's involvement, the financial affairs of Mr. Lowry had been conducted in a haphazard fashion. Income appeared to derive from firstly, salary and expenses as a public representative and Minister, secondly, salary and commission from Butler Engineering Limited, thirdly, salary from Garuda, fourthly, bonus payments from Dunnes Stores and/or Mr. Ben Dunne for work done independently of the money paid to Garuda, fifthly, other payments in connection with refrigeration

consultancy services, sixthly, proceeds from sales of assets, including furniture, and finally, some rental income from a dwelling house and lands.

2.04 Between business and joint accounts, the bank accounts acknowledged by Mr. Lowry as having been held by him were some nineteen in all, including some of limited transactions and short duration. These may conveniently be classified as follows:

(i) two Bank of Ireland current accounts at Thurles, one personal and opened prior to January, 1987, and the other in the name of Michael Lowry trading as Streamline Enterprises, opened on 14th November, 1988;

(ii) four Irish Permanent Building Society accounts, a deposit account at Thurles opened prior to January, 1987, a deposit account at Cork opened on 14th May, 1992, a further Cork deposit account opened on 18th May, 1992, and a joint loan account with Mrs. Catherine Lowry at Cork, opened on 29th May, 1992;

(iii) an Allied Irish Banks, Dame Street, Dublin, current account, opened on 9th May, 1991;

(iv) five Allied Irish Banks, Dame Street, Dublin, deposit accounts, opened respectively on 12th July, 1989, 15th March, 1993, 5th January, 1995, 19th May, 1995, and 10th October, 1996;

(v) an Allied Irish Banks Finance and Leasing deposit account, opened on 10th January, 1992, and a further Allied Irish Banks Finance and Leasing deposit account, in this instance in sterling, opened on 29th October, 1990;

(vi) two Allied Irish Banks Thurles accounts, one a home loan opened on 17th January, 1992, and the other a current account, opened on 19th January, 1992;

(vii) an Irish Nationwide Building Society loan account, opened in September, 1996, from Head Office, in relation to the purchase of a house in Blackrock, County Dublin;

(viii) an Allied Irish Banks Channel Islands sterling deposit account, opened on 17th January, 1991;

(ix) a Bank of Ireland, Isle of Man, sterling deposit account, opened on 9th October, 1990.

2.05 Mr. O'Connor gave comparatively detailed evidence regarding the reconstructive accountancy work that he had undertaken, in seeking to equate bank lodgments with income receipts in respect of each of the calendar years from 1987 to 1996, inclusive. He stated that, as with other clients he had represented, this exercise became more difficult the further one went back. Addressing financial records, that in Mr. Lowry's case by any appraisal left much to be desired, was further complicated by his apparent practice of, on occasion, retaining cheques for quite lengthy periods before lodging them, and of taking partial cash withdrawals of limited amounts, in the course of the exercise of making lodgments.

2.06 Mr. O'Connor then dealt for each of the years under consideration with his exercise of balancing unidentified lodgments to accounts, with income receipts not matched to lodgments, and addressing in particular payments or transactions queried by the Tribunal, certain of which will shortly be referred to. In general, the pattern that emerged was that, for the early years in question, excesses of unidentified lodgments over unmatched income receipts were apparent, whereas for 1994 to 1996 inclusive, the last three relevant years, the converse appeared the position. Allowing for correction of the view initially formed in relation to the position applicable in 1992, Mr. O'Connor accordingly indicated that he found the net position for each of the relevant years to be as recorded in the table below:

Year	Excess of income receipts over lodgments
1987	£ 8,986.84
1988	£ 3,714.15
1989	£ 3,498.74
1990	£16,836.73
1991	£11,265.62
1992	£ 8,439.49
1993	£ 1,785.42
1994	-£6,459.33
1995	-£3,420.54
1996	-£3,517.44

2.07 In the latter course of his evidence, Mr. O'Connor corrected the 1992 figure, to the effect that it in fact revealed a deficit of £1,393.09, rather than an £8,439.49 excess. Aggregating these respective balances for the years in question, there thus emerged from Mr. O'Connor's inquiries an excess of unidentified lodgments over unmatched income receipts of approximately £31,295.00, balances in pence for the respective years having been ignored. Mr.

O'Connor stated that it was characteristic of such cases that transactions in the earlier years were harder to verify, and that a somewhat improved position was apparent in relation to latter years, to the extent that, for the last two years, during which Mr. Lowry was a Cabinet Minister, no large lodgment had remained unidentified, so that there was then in broad terms a balancing of books. Applying accountancy principles of materiality, and bearing in mind the finding of the McCracken Tribunal, that turnover in excess of £12,000,000.00 was received between 1989 and the end of 1996, from Dunnes Stores, Mr. O'Connor was of the view that the said aggregate amount of lodgments that could not be attributed to income was essentially immaterial, in terms of accepted accountancy practice.

PARTICULAR TRANSACTIONS REVIEWED

2.08 Having reviewed Mr. Lowry's finances over these years in general terms, more detailed evidence was then directed to a limited number of transactions considered to have particular relevance to the Terms of Reference concerning Mr. Lowry. In ascending order of importance, these comprised:

(i) a sum of £35,000.00 cash paid by Mr. Patrick Doherty, property developer, to Mr. Lowry in May, 1995, for the purchase of certain antique paintings and furniture;

(ii) certain payments made in cash, or by cheques payable to cash, for refrigeration consultancy services undertaken by Mr. Lowry for (1) Mr. Bill Maher of Maher Meat Products, and (2) Mr. Patrick Whelan of Whelan Frozen Foods Limited;

(iii) a further payment of £15,000.00 paid to Mr. Lowry by Mr. Ben Dunne of Dunnes Stores, seemingly as another bonus payment for refrigeration services, and in this instance by way of a credit transfer;

(iv) assistance received from the late Mr. Michael Holly in connection with the purchase of premises at 43 Carysfort Avenue, Blackrock, County Dublin;

(v) certain sterling deposits made off-shore for the benefit of Mr. Lowry to Allied Irish Banks in the Channel Islands in 1991.

2.09 The evidence heard in relation to these matters related, apart from Mr. O'Connor's inquiries, to material documentation, Mr. Lowry's own recollection of them, and the testimony of available individuals who had dealt with him. Some of these matters have in the ultimate transpired to be of relatively modest weight in

the context of the Terms of Reference, and may be summarised without setting forth much of the detail that is apparent from the full transcripts of evidence. Other portions of this evidence have proved to be of somewhat greater importance, although more in the context of separate or subsequent evidence heard, than on a basis of being considered in isolation. In addition, some of the matters proved relevant in the context of Terms of Reference (j), requiring the Tribunal to examine dealings had between the Revenue Commissioners and Mr. Lowry and his company, which have been addressed in a later chapter.

Cash payment by Mr. Patrick Doherty to Mr. Michael Lowry for paintings and antiques

2.10 A lodgment of £32,950.20 to one of Mr. Lowry's accounts in Allied Irish Banks, Dame Street, Dublin, on 19th May, 1995, represents the preponderance of the proceeds of sale of certain antiques and paintings by him to Mr. Patrick Doherty. The four items in question comprised a landscape painting by Henry John Boddington, an English Victorian artist of some distinction, which had been an inheritance from an uncle two years previously, another painting of gun dogs, a three-piece 19th century clock set and a George II walnut bureau. Mr. Lowry felt that these items were unsuitable for his new home in Tipperary, and did not wish to keep them. He had known Mr. Doherty socially, and in the context of horseracing interests for some years, and both had apartments in Finsbury House, Dublin. The two men had met for a drink in Jury's Hotel, Ballsbridge, in early 1995, and during their conversation, Mr. Doherty alluded to his interest in furniture and antiques, whereupon Mr. Lowry stated that he had some items that would be available for sale. Mr. Doherty expressed interest, and requested that a valuation be obtained, following which Mr. Lowry obtained a valuation from the antique dealer, Mr. Charles Fleury, in the amount of £39,000.00. On a later visit to Munster, Mr. Doherty stopped off in Tipperary, inspected the items and agreed to purchase them from Mr. Lowry for £35,000.00 as a fair valuation. Mr. Doherty then arranged that his brother drove to Mr. Lowry's premises, paid the agreed sum in cash, and took possession of the items. Whilst the two men maintained some social contact, there had never been any business relationship between them, or any transaction other than this agreement. Mr. Fleury recalled preparing the valuation of the items at Mr. Lowry's request, with some of which he was already familiar. Whilst he had initially thought his involvement to value the items was sought for insurance purposes, he was disposed to regard the total sale figure as a good price.

2.11 The foregoing evidence was agreed, and the only difference between the testimony of Mr. Doherty and Mr. Lowry was as to the circumstances in which so substantial a price as £35,000.00 came to be paid in cash. Mr. Doherty stated that Mr. Lowry had asked for cash on delivery, that Mr. Doherty agreed, and duly organised this facility together with his brother. He took the view that such a

request meant the provision of physical cash, and was disinclined to agree with Mr. Lowry's counsel that it might equally have meant a bank draft. Mr. Lowry in contrast stated that it was incorrect that he specifically requested cash, and that all he was concerned about was that, when the goods were removed from his house, there would be a transaction whereby he would then and there be paid. Cash was not specifically looked for, and what would have been expected was a bank draft. What in fact was presented was cash in a large white envelope, which Mr. Lowry later lodged to his Dublin bank account. At the time he would have been anxious to cut out the involvement of an auctioneer or other middle-man, but in hindsight he accepted, particularly as a Cabinet Minister at the time, that another form of payment would have been preferable. He had not given Mr. Doherty any receipt for the cash. Although not discussed at the time, he accepted, and had duly recognised with his accountants, that the transaction would have had a capital tax implication, but he stated that it had not been his intention to avoid this.

Payments for refrigeration consultancy services by Mr. Michael Lowry

2.12 These transactions relate to refrigeration services furnished personally by Mr. Lowry to clients wholly unconnected with Dunnes Stores. In the case of Mr. Bill Maher of Maher Meat Products, Mr. Lowry had advised him since the late 1980s in regard to various queries concerning refrigeration of meat processing plants, and the services giving rise to the payment under consideration related to three specific projects undertaken by Mr. Lowry at Mr. Maher's request. Since Mr. Maher's business was based exclusively in England, two of these related to premises at Brackley, Northampton, and the last related to premises at the Central Smithfield Market in London.

2.13 The first of these projects dated from the year 1990, and save for some letters exchanged, little of a documentary nature existed in relation to them. Particularly in relation to the first and last projects, Mr. Lowry indicated that he had carried out very large amounts of work, had made a substantial number of site visits and, in relation to one particular refrigeration unit, Mr. Lowry recalled that his advice had proved very beneficial and profitable for Mr. Maher. Mr. Lowry also stated that there was no agreement between himself and Mr. Maher in regard to any method of payment for these services, or agreed rate; although their relationship was a business one, he stated that there was trust between them. However, he recalled that he did probably put some pressure on Mr. Maher to settle up for these services about late 1992, and Mr. Maher telephoned him to say that he was coming home for Christmas, and would meet with Mr. Lowry to resolve matters. They duly met on or around 23rd December, 1992, in Dublin, at the Royal Dublin Hotel, and Mr. Maher said *"there's £25,000.00"*, and gave him that amount in cash. Mr. Lowry could not recall

whether the money was in an envelope, but recalled Mr. Maher saying that he was sorry for the delay in payment, and since he would need Mr. Lowry in the future, some unspecified amount of the payment related to anticipated future work. Mr. Lowry thought the amount generous without being excessive, and accepted that if Mr. Maher engaged him again, he would have to allow him a degree of credit.

2.14 As events transpired, on the one later occasion when he was again contacted by Mr. Maher in regard to another English project, he was then a Cabinet Minister, and unable to assist. As to Mr. Maher, in relation to whom further Tribunal inquiries came to be addressed at a much later stage in its investigations into the Doncaster Rovers transaction, he furnished some information in correspondence to the Tribunal on the refrigeration services rendered by Mr. Lowry, but was not disposed to testify at public sittings and, being resident in England, could not of course be compelled to do so.

2.15 With regard to Mr. Patrick Whelan of Whelan Frozen Foods Limited, it appeared that two payments for consultancy services were made to Mr. Lowry, the first a £10,000.00 cheque payable to cash, dated 14th May, 1992, in relation to construction of a new cold store at premises at Jamestown Industrial Estate, Dublin, and the second a further £5,000.00 cheque payable to cash, dated 17th May, 1994, in respect of installation of refrigeration at a plant at Ballysimon, County Limerick. Once again Mr. Lowry testified that no rate was agreed with his customer in advance for these works, but that Mr. Whelan afterwards determined the amount, and he accepted it. This he conceded was unusual, but he said that a relationship of trust had developed between the two over a period of years. He again acknowledged that the practice had been far from ideal, particularly in regard to a holder of public office, and that difficulties could easily have arisen in enforcing payment. He stated that he had lodged each of the two cheques to bank accounts, and that he had in recent times rectified his practice in regard to consultancy works, by having a company incorporated for that purpose in late 1998, Abbeygreen Consulting Limited, which duly issued invoices.

2.16 Mr. Whelan also testified in regard to his dealings with Mr. Lowry, and whilst acknowledging that the latter was excellent as a refrigeration contractor, differed somewhat in his recollection of their payment arrangements. He stated that Garuda had tendered the most competitive price for supply and installation of the new cold store at the Jamestown premises, but that Mr. Lowry had at the time also indicated that he would be charging a separate fee in respect of consultancy services, somewhere between £7,500.00 and £12,000.00. This fee was subsequently agreed at £10,000.00, and Mr. Lowry requested that he be fixed up in cash. When Garuda was awarded the subsequent Ballysimon contract, Mr. Lowry again indicated that he would be charging a separate consultancy fee,

in this instance of between 7.5% and 12.5% of the contract price, and Mr. Whelan recalled that Mr. Lowry had referred on a number of occasions to dissatisfaction on his part at the fee paid for the earlier services. Eventually, the lesser sum of £5,000.00 was agreed and paid, and Mr. Lowry did not express dissatisfaction with this. As to the form of payment, his recall was that it was likely that Mr. Lowry simply asked to be paid in cash, and Mr. Whelan interpreted this as meaning a cheque payable to cash, because he did not retain large amounts of cash, and cash payments were not his practice. Whilst it was correct that no VAT was provided for as regards either payment, this entailed no benefit to Mr. Whelan's company, as the amounts had to be put through their books.

Further Dunnes Stores payment of £15,000.00 to Mr. Michael Lowry of 25th November, 1992

2.17 Both Mr. Ben Dunne and Mr. Lowry testified in broadly similar terms in relation to this payment, which appears to have been a further bonus payment in accordance with the general basis of agreement between them, whereby Garuda would make a small profit on its refrigeration services as invoiced, and Mr. Lowry would receive separate bonus payments from Mr. Dunne on behalf of Dunnes Stores, contingent on satisfactory performance. That aspect of satisfactory performance was never in issue, as all persons having dealings with Mr. Lowry as a refrigeration contractor were unanimous that his expertise and level of performance were excellent. Although a payment which would obviously have come within the remit of the McCracken Tribunal, this particular payment of £15,000.00 only came to light after that Tribunal had completed its Report. It was discovered by Mr. Denis O'Connor in the course of further inquiries made by him with Allied Irish Banks in November, 1997, and prompt contact was then made with both Tribunals. The payment of 23rd November, 1992, was made by a bank giro from the Donnybrook branch of Allied Irish Banks, which in turn had been funded by the Marino branch of Bank of Ireland.

2.18 Mr. Dunne accepted in evidence that the credit to Mr. Lowry's account corresponded to the debit from the Marino Bank of Ireland account, which was one used both for Dunnes Stores business, and also for some of Mr. Dunne's private business. Although Mr. Dunne doubted that the *"B Dunne"* signature on the somewhat poor available copy of the giro form was his, he noted that the name on the form authorising the debit appeared to be Michael Irwin, who would have had authority from him to do this. The procedure used differed from the normal basis, whereby Mr. Lowry was paid by cheque, and may either have indicated some urgency, or that Mr. Dunne was out of Ireland at the time, but had agreed to make the payment. Mr. Dunne could not recall the purpose of the payment, but was satisfied that it must have related to work that Mr. Lowry had undertaken for Dunnes Stores, and would seem to have been a bonus.

2.19 Mr. Lowry confirmed these details, and stated that the only two persons with whom he had contact in Dunnes Stores with regard to payment were Mr. Dunne and Mr. Irwin. It was Mr. Lowry's recollection that he had had no dealings with Donnybrook Allied Irish Banks, and did not then know of the Marino Bank of Ireland branch, although he had since encountered it. He thought it probable that Mr. Irwin had asked him for an account number, and then had the payment transferred to him. It was because the procedure did not accord with the normal pattern of these payments that probably accounted for Mr. Lowry and his advisers missing it in the first instance. He agreed that the use of the giro procedure may have indicated some urgency, recalling that he had heavy property commitments at that time.

Assistance received from the late Mr. Michael Holly in connection with the purchase of 43 Carysfort Avenue, Blackrock, County Dublin

2.20 Attaining Ministerial office meant for Mr. Lowry that he was required to spend a great deal more time in Dublin than solely as a back-bench Tipperary T.D. Having incurred considerable expense in renting Dublin accommodation, he became anxious to purchase a suitable property, and discussed his needs with a number of professional persons, including his accountant, Mr. O'Connor, Mr. Ken MacDonald and Mr. Mark FitzGerald. In all, he asked at least eight people to keep a look-out for a suitable property, and inspected some six properties that proved to be unsuitable. Another of the persons he spoke to was Mr. Michael Holly, since deceased, a person with whom he had had no prior business dealings before or since this transaction, but who was known to him socially through Gaelic games and horseracing. He knew Mr. Holly was a successful builder and property developer, and when he mentioned to him that he was anxious to find a property in Dublin, Mr. Holly said that he would keep an eye out for him.

2.21 In July, 1996, Mr. Holly telephoned Mr. Lowry to say that he had seen a property at 43 Carysfort Avenue, Blackrock, County Dublin, that he thought would be suitable for Mr. Lowry's needs, and good value, and that he would in any event be attending the auction the following day. On 17th July, 1996, Mr. Holly went to the auction and purchased the property for £200,000.00, his building company paying a deposit of £20,000.00. Mr. Holly gave Mr. Lowry first option on the property and, having viewed it, Mr. Lowry decided to exercise this. The contract was signed by Mr. Donal Gahan, solicitor, and different members of Mr. Gahan's firm subsequently acted for both Mr. Holly and Mr. Lowry. Mr. Lowry obtained a mortgage for the full purchase price, indemnifying Mr. Holly for the deposit paid, and paying the balance to the vendors. Within a short period of months, when matters relating to Mr. Lowry's Tipperary home at Holycross became a source of major public controversy, there was also negative publicity in relation to the Blackrock premises; not wanting to repeat all that he had had to bear in regard to

his premises at Holycross, Mr. Lowry testified that he decided for the sake of retaining some degree of privacy to dispose of the Blackrock premises. He spoke further to Mr. Holly, and Mr. Holly agreed to re-purchase the property from Mr. Lowry on 10th January, 1997, for the same price. Mr. Lowry stated that he took this course in the context of his accumulated problems, and unwillingness in the changed circumstances to move home. He did not consider seeking to let the premises, or sell them at a profit, feeling that Mr. Holly had been decent to him, and the honourable course was now to offer the premises back to him. He stated that no question of him receiving any additional or bonus payment arose. It was also stated by Mr. Lowry, who was the only witness called in relation to the transactions at that stage, that until Mr. Holly's untimely death, he continued to see him socially, but not otherwise.

2.22 As will be set out in a subsequent chapter, significant additional facts surrounding this short-lived property acquisition by Mr. Lowry in 1996, which were not disclosed to the Tribunal at the time of its initial investigations in 1999, were to emerge in further evidence heard by the Tribunal in the summer of 2001.

1991 off-shore sterling deposits for the benefit of Mr. Michael Lowry in Allied Irish Banks, Channel Islands

2.23 In the McCracken Report, it was noted at page 25 that some nine cheques were between November, 1988, and March, 1993, issued by the Dunnes Stores Group in favour of Streamline Enterprises, but that each of these appeared to have been either cashed by Mr. Lowry, or lodged by him to bank accounts for his own benefit. The respective dates, currencies and amounts of each of these nine payments were noted in the Tenth Schedule appended to the Report. That Report also referred to the lodgment by Mr. Lowry of a sum of Stg.£100,000.00, in his name and that of his three children, with Allied Irish Banks in the Channel Islands. It concluded that the penultimate payment listed in the Tenth Schedule, being Stg.£34,100.00, comprised a portion of that deposit.

2.24 In its preliminary inquiries, this Tribunal ascertained that the balance of the Stg.£100,000.00 lodgment appeared to be comprised of a sterling draft for Stg.£7,562.72, dated 30th August, 1991, and drawn on Allied Irish Banks, Dame Street, Dublin, plus a further sterling payment in the amount of Stg.£58,337.28. This latter payment in turn represented the accrued balance due to Mr. Lowry on foot of a Stg.£55,000.00 sum placed on his behalf with the Channel Islands branch of Allied Irish Banks, on 17th January, 1991. Although it had appeared that Mr. Lowry had been conducting his Dublin personal banking, since July, 1989, at the Dame Street branch of Allied Irish Banks, which was and is a large branch fully equipped to handle foreign exchange transactions, it became apparent that it was in fact the Allied Irish Banks branch at 37/38 O'Connell Street, Dublin, that

had furnished the draft for Stg.£55,000.00, and directed the opening of the Channel Islands account on Mr. Lowry's behalf. The documentation that was made available regarding these transactions, by both Mr. Lowry and Allied Irish Banks, appeared scanty in material respects, and the Tribunal accordingly proceeded to hear the evidence of those involved, addressing primarily the sources of the monies lodged on Mr. Lowry's behalf, other than the sum of Stg.£34,100.00, the circumstances whereby the O'Connell Street branch, rather than the Dame Street branch of Allied Irish Banks, came to initiate the off-shore deposit for Mr. Lowry in January, 1991, and the degree to which exchange control requirements, which were mandatory at the time, were complied with or disregarded. In addition to the evidence of Mr. Lowry, and bank officials from both branches who had been involved in the transactions, the Tribunal also had the assistance of Mr. Seamus O'Neill, who, on hearing initial media reporting of the matters being inquired into, recalled material involvement when engaged with JC Financial Management Limited, and volunteered his testimony.

2.25 The bald and uncontested facts are that on 14th January, 1991, apparently after attending at his own Dame Street branch, Mr. Lowry attended at the O'Connell Street branch of Allied Irish Banks, where he held no account, and appeared to have had no previous dealings. He dealt there with the assistant manager, Mr. Liam O'Connell, and despite having seemingly brought neither cash nor valuable instruments from Dame Street or elsewhere, a bank draft for Stg.£55,000.00 was then made available, and used to open an off-shore term deposit account for Mr. Lowry in the Banks' Channel Islands affiliate. Mr. O'Connell addressed a written memorandum of the same date to the Channel Islands manager, referring to a proposed account in the name of Mr. Lowry, enclosing the Stg.£55,000.00 draft, and confirming telephone instructions earlier that day to place it on deposit for three months at an interest rate of 13.25% per annum. A reference was also made to having enclosed a copy history card. The money was duly lodged, and the deposit renewed for a further three months on 17th April, 1991, at the somewhat lower rate of 10.875%, so that when the O'Connell Street branch sought repatriation of the deposit on 17th July, 1991, a balance of Stg.£58,337.28 had accrued. A cheque in this amount was duly sent to the O'Connell Street branch, and from there transmitted to Mr. Lowry.

2.26 It seems that, for the next disposition of this money, Mr. Lowry reverted to his Dame Street branch, and after some months of apparent inactivity, he combined the cheque with the Dunnes Stores cheque for Stg.£34,100.00, and a further draft of Stg.£7,562.72, which he purchased from the Dame Street branch. This exactly rounded off the aggregate to a sum of Stg.£100,000.00, which, with the assistance of the Dame Street branch on this occasion, he placed on further deposit with the Channel Islands branch. A letter on Dame Street notepaper to the Channel Islands manager was produced, signed by Mr. Lowry, and stamped

as having been received on 20th December, 1991, seeking that confirmation of the deposit be sent to Mr. Lowry, c/o the Dame Street branch.

2.27 The evidence heard related primarily to the circumstances in which these transactions occurred, with emphasis upon the areas of inquiry that have already been indicated. The sequence of witnesses observed was that Mr. Lowry followed Mr. O'Connor in dealing with this aspect, along with the other matters addressed in this chapter, in accordance with a statement of evidence prepared and furnished in advance of his testimony. The various banking and finance witnesses then testified and, because some fresh matters were then raised which had not been notified to Mr. Lowry when he was asked to prepare his statement, he was recalled near the end of that further evidence to address those matters.

2.28 In his initial evidence, Mr. Lowry dealt with some general banking matters before referring to the off-shore transactions. Although he had long held bank accounts in Thurles, and did not suggest that officials there would have breached confidentiality, he said that he wanted to ensure that people from his locality knew as little as possible about his private banking business. It accordingly became necessary to deal with a Dublin bank, and the reason he chose Allied Irish Banks on Dame Street was because he knew an official there, who came from the same part of Tipperary. He accepted responsibility for the poor state of his accounts, and those remaining items that could not be traced, but emphasised on this, and on many later occasions in this evidence, that he had given a worldwide waiver of confidentiality to facilitate the Tribunal's work. Given the lengthy process of reconstruction that had been undertaken, he stated that a majority of transactions were now explained, leaving only a discrepancy of approximately £31,000.00 over a ten year period. He acknowledged that he had a practice of holding cheques for a long time, pooling them and taking an odd sum in cash when making an aggregate lodgment, so that an even figure appeared as lodged; save for such limited cash amounts, he stated that he always lodged monies received to his various bank accounts.

2.29 Turning to the off-shore transactions, Mr. Lowry testified, in accordance with his statement, that he had purchased from Allied Irish Banks in O'Connell Street a draft for Stg.£55,000.00, on 14th January, 1991. He could not recall the sources of funds used for the purchase, but believed they must have been comprised of those remaining payments set out in the Tenth Schedule to the McCracken Report that had not otherwise been accounted for, although he could not exactly prove this. As far as he could recall, he was directed to the O'Connell Street branch by personnel in his own Dame Street branch, although he could not recall who in fact was so involved. He acknowledged that these other payments noted in the McCracken Report ranged over a considerable time previously, and said that, whilst he did walk around regularly with cheques in his pocket, he

would not have held them for so lengthy a period of time. They must therefore have been put somewhere, but despite having given much thought and agonising to this, all he could say was that he did not cash the cheques, but plainly did conduct some business with them, so that they must have been somewhere in Allied Irish Banks in Dame Street. He had never seen the funds in his account in Dame Street, and had given no instructions that they were to be put in the O'Connell Street branch, where he held no account. His best recollection was that he was told it was necessary to visit the O'Connell Street branch, and that the transaction in question could be carried out there, but not in Dame Street. The reason he wanted to put money off-shore in the Channel Islands was for the benefit of his family. There was obviously some telephone or other contact between officials in the two Allied Irish Banks branches in question. Since the aggregate of the six cheques not yet accounted for was approximately Stg.£65,000.00, Mr. Lowry believed he had used approximately Stg.£10,000.00 to pay off a debt owed to Allied Irish Finance, so the resultant balance would in broad terms have equated with the amount of the off-shore deposit.

2.30 The arrangement whereby he went to O'Connell Street was not of his making, and he thought that he proceeded there on the same day as he went to Dame Street. Although he was not carrying any letter or other documentation from Dame Street, he found that the sum of Stg.£55,000.00 was available to him there, and duly proceeded to complete the transaction. Regarding the reference, in Mr. O'Connell's memorandum to the Channel Islands, to enclosing a history card, Mr. Lowry had no recollection of having any prior dealings in O'Connell Street, such as would give rise to this. He acknowledged his signature on the short handwritten letter of December, 1991, from the Dame Street branch to its Channel Islands counterpart. Insofar as any other witness might say that Mr. Lowry came to O'Connell Street accompanied by a financial consultant, this was absolutely incorrect, and it was his recollection that he was on his own. He could not recall any discussion of the issue of exchange control in O'Connell Street. When he reverted to dealing with Dame Street for the later aggregated deposit in December, 1991, he did not recall which official he may have dealt with there, but it must have been someone at management or senior level. From his prior business experience, Mr. Lowry would have had some experience of obtaining bank drafts to pay suppliers in England from his existing accounts.

2.31 Mr. Liam O'Connell, the then assistant manager at the O'Connell Street branch, then testified. He recalled meeting Mr. Lowry once, in 1991, at a brief introductory meeting at the branch, brought about by a representative of JC Financial Management Limited. As was then the normal practice, Mr. Lowry was accompanied to the meeting by a representative of that firm, whose name he could not recall, and introduced as someone who would be doing business with the bank. He could not remember whether or not an account was opened there

and then, but acknowledged his signature on the memorandum of 14th January, 1991, addressed to the manager of the Channel Islands branch. As to its reference to a history card, normally this would have a sample signature, and details regarding the particular client and the account held in a particular branch. As best he could recall, Mr. Lowry was not simply sent down by the Dame Street branch, and it would have been very strange if he came with nothing and procured a draft. The branch did little work with its Channel Islands counterpart, and for a transaction such as this it would have been usual to check where the customer was already banking. He did not then know that Mr. Lowry was a T.D., and he was not introduced as such, or as an existing Allied Irish Banks client. Whilst his recollection of events was hazy, and he had had little opportunity to examine any available documentation, through only just having returned from holidays, he believed that the financial consultant would effectively have directed affairs, and requested the particular transaction in question. As to exchange control, this would on the face of things have been required for the opening of such an account in the Channel Islands. Whilst stating that he would not have sent the funds abroad without exchange control, he acknowledged that, from such documentation as had become available, it did not appear there had been compliance with exchange control requirements. It was the case that either exchange controls were complied with, or the law was being broken.

2.32 The representative of the financial consultants, Mr. Seamus O'Neill, then testified. He had been a director of JC Financial Management Limited, advising on insurance and pension matters, in 1991, and recalled on an occasion during that year meeting Mr. Lowry at the latter's company's premises in Thurles. A mutual acquaintance brought Mr. O'Neill to Mr. Lowry's premises, where he was unable to interest Mr. Lowry in purchasing an insurance or pension product, but he also indicated to Mr. Lowry that the connections of JC Financial Management Limited with Allied Irish Banks might enable a better rate of return to be obtained from that bank, on investing money, than otherwise. He recalled Mr. O'Connell telling him that this might be the case, if he introduced new clients to the O'Connell Street branch. However, Mr. Lowry was, to the best of his knowledge, the only person he had referred to the bank on that basis. On subsequent contact being made after the Thurles visit, Mr. O'Neill set up a meeting at the O'Connell Street branch, and arranged to meet Mr. Lowry outside it. Mr. Lowry was late, and indicated that he had had business "*in a bank*", which was not identified. On entering, Mr. O'Neill introduced Mr. Lowry to Mr. O'Connell, but had nothing further to do with their subsequent dealings. Most such business had by Mr. O'Neill with the bank involved mortgages on which, unlike investment business, a commission was payable, but he nonetheless hoped to improve his already good relations with Mr. O'Connell by introducing further business. The meeting took between fifteen and thirty minutes, and on conclusion Mr. O'Neill and Mr. Lowry left the branch and shook hands. Mr. O'Neill received no intimation that any

business had been done, whether off-shore or otherwise. Nor was his company's account in Allied Irish Banks involved in any related transaction. He recalled informing Mr. O'Connell that Mr. Lowry was a T.D. and a businessman, and was glad to introduce what seemed a good prospect. Those were his only two meetings with Mr. Lowry. The bulk of his daily business related to insurance and pensions, rather than off-shore investments, and he was not familiar with exchange control procedures.

2.33 Some other Allied Irish Banks witnesses, then attached to the two branches in question, also testified, and it is unnecessary to detail all that was stated. Ms. Mairead Lynham was, in 1991, another Assistant Manager at the O'Connell Street branch, and acknowledged having been a signatory of the letter of 17th July, 1991, from her branch to the Jersey branch, seeking the return of the funds deposited with interest. She stated that she had no recollection of the transaction, and surmised that the normal practice would have been for a colleague from the Foreign Exchange Department to have brought the letter to her for signature, whereupon she would normally have inquired of the other official whether or not that person was happy with the transaction. She confirmed that Mr. Lowry at no time had any account in the O'Connell Street branch, and that its involvement was accordingly unusual. She similarly found the absence of any documentation relating to receipt of the cheque from Jersey surprising, but said that if there was any irregularity in the transaction, she was unaware of it.

2.34 Some further evidence was heard from Mr. O'Connell, who took issue with Mr. O'Neill's account that Mr. Lowry was specifically introduced to him as a T.D. and businessman, and said that, had that been the case, the interview would not have been conducted at the public counter. He remained utterly unable to throw any light on the issues of how the O'Connell Street branch got value for the draft, and compliance or lack thereof with exchange control procedures.

2.35 Evidence was also heard from Mr. Liam O'Brien, Manager of the Dame Street branch at the time, and Mr. Peter Tierney, then an Assistant Manager there. In the course of that evidence, somewhat belated information was presented regarding certain of the Dunnes Stores payments set out in the Tenth Schedule to the McCracken Report, which had hitherto been unaccounted for. This related to such cheques having been presented for payment at the Dame Street branch and, whether through the normal process of presentation of sterling instruments at the Banks' London collecting agents, or through presentation at the Ulster Bank in Newry itself, value for them being given to Mr. Lowry. Nonetheless, in particular for those substantial Dunnes Stores payments to Garuda most recently preceding the off-shore sterling payments of January and December 1991, which Mr. Lowry felt must have funded the investments, there was nothing approximating to an appropriate history of how those amounts were

credited to Mr. Lowry. Other than some general recollection of dealing with cheques in favour of Garuda that were credited to some other account, perhaps on three or four occasions, Mr. Tierney stated that he was unable to recall individual transactions, and had no memory of cash being provided, which for such relatively large amounts would have required some notice or preparation.

2.36 Mr. Tierney acknowledged that, due to a mutual Tipperary connection, he was the person who handled most of Mr. Lowry's banking business in Dame Street. He agreed that, if Mr. Lowry handed cheques over the counter in Dame Street, and did not receive cash for them, they would have to have been credited for his benefit in some account. He alluded to some possibility of a suspense account being used, but acknowledged that, even in that instance, there would require to be some documentary reference to the customer.

2.37 The issue of exchange control was also addressed, both as regards the issue of the draft for Stg.£7,562.72, which appeared not to have been debited to any of Mr. Lowry's accounts at the branch, and the subsequent aggregated off-shore deposit of Stg.£100,000.00. Mr. Tierney acknowledged his handwriting on both the application form for the draft, and in the body of the handwritten letter of December, 1991, signed by Mr. Lowry, requesting confirmation from Jersey of the Stg.£100,000.00 deposit.

2.38 It has to be said that the general exchange control position regarding these transactions largely mirrored what had emerged from the evidence of Mr. O'Connell in connection with the O'Connell Street branch, with a professed adherence to the requirements then imposed on bankers being accompanied by an utter absence of evidence of compliance, for purposes of the relevant transactions. Some mention of the banks' retention policy regarding documents, and of a more relaxed regime being operative in the final years of exchange control, do not explain the complete absence of evidence of compliance from any source. With regard to the initial Stg.£55,000.00 draft, regard is also had to the general content and lack of relevant entries on the form of application for that instrument. Whilst both Mr. O'Brien and Mr. Tierney made mention of a limited practice of furnishing foreign drafts in limited amounts to trusted customers who were contemplating possible commercial purchases of goods abroad, there was no suggestion from Mr. Lowry that any such context arose on these occasions, and it was acknowledged by Mr. Tierney that such a practice entailed no inbuilt safeguard for repatriating funds, if the foreign sales did not proceed. Brief evidence regarding the operation of exchange control was also heard from Mr. Philip Dalton, of the Central Bank of Ireland, confirming that, even with the more relaxed procedures applicable in the final years before abolition of exchange control at the end of 1992, some transactions, including the opening of deposit accounts abroad, always required specific permission. For the opening of off-

shore deposit accounts on behalf of Mr. Lowry in 1991, Mr. Dalton advanced the view that this was the type of transaction for which exchange control could not have been obtained, and expressed himself surprised if any bank manager was of the view exchange control could be obtained, in such circumstances.

2.39 On foot of the fresh information emerging, Mr. Lowry was recalled, and remained of the view that all the cheques made out by Dunnes Stores to Streamline Enterprises were entrusted to his bankers, although the 6th and 7th payments in the Tenth Schedule to the McCracken Report, for Stg.£19,730.00 and Stg.£15,825.00 respectively, had not been shown as having been credited to any account of Mr. Lowry. He stated that he did not get cash or drafts for them, and that upon presentation at Dame Street they remained within the Allied Irish Banks system until they went to form a portion of the initial off-shore deposit. He said that he rarely gave instructions as to in which account money presented should be credited, tending to leave this aspect to the official he dealt with, and expecting that the form of lodgment used would be to his best advantage. Regarding the two Dunnes Stores payments in question, he said that he probably did *"express an intention"*, when presenting them in Dame Street upon the same occasion on 22nd November, 1990, and that it was possible that the staff in Dame Street could have had the understanding that the sums in question would not go into his current or deposit accounts. It was only with Mr. Tierney, and members of his team in Dame Street, that he dealt in regard to these matters, rather than with any junior bank official, and whilst he had no direct recollection as to who may have directed him from Dame Street to O'Connell Street for the initial transaction, he thought that it was probably Mr. Tierney.

CONCLUSIONS

2.40 Noting the cash payments by Mr. Patrick Doherty and Mr. Bill Maher, the cheques made payable to cash by Mr. Patrick Whelan, and the relevant testimony of Mr. Doherty, Mr. Whelan and Mr. Lowry, the Tribunal is satisfied that in each of these transactions Mr. Lowry sought payment in cash. It has to be concluded that, even where money received was lodged to bank accounts, this was motivated by a wish on Mr. Lowry's part to mask the transactions and avoid the tax liabilities that would have arisen in relation to monies received.

2.41 Whilst credit is due to Mr. O'Connor for identifying the further Dunnes Stores payment of £15,000.00 to Mr. Lowry, its emergence is yet a further demonstration of the covert arrangements devised between Mr. Dunne and Mr. Lowry to remunerate Mr. Lowry in a manner that would evade tax.

2.42 In disclosing to the Tribunal his financial arrangements made for the short-term purchase of the premises at Carysfort Avenue, Blackrock, County Dublin, it is a matter of significance that Mr. Lowry failed or omitted to disclose additional financial arrangements, that he indicated in later evidence were entered into, in the context of that house purchase, a matter which will be examined in detail in a later chapter.

2.43 Regarding the aspects of exchange control and tax compliance that undoubtedly were applicable to the off-shore deposit accounts opened on behalf of Mr. Lowry during 1991, the conclusion is unavoidable that Mr. Lowry, and some officials attached to both the Dame Street and O'Connell Street branches of Allied Irish Banks, knowingly and improperly combined to circumvent these. It is beyond doubt that some clandestine form of receiving and dealing with these monies was devised to enable the opening of off-shore investment accounts to be shielded from the gaze of both Revenue and the Central Bank of Ireland. In this manner, a public office holder was enabled to avoid tax, to participate in a type of transaction that involved taking a stand against the currency, and thereby received higher real rates of return than would have been available if the law had been complied with. Given the extent of inadequacy and ambiguity in both testimony and documentation as to the conduct of Mr. Lowry's business in the branches of Allied Irish Banks involved, it is unnecessary to make precise findings as to all aspects of what transpired, but it has to be stated that such conduct was inadequate, in breach of clear procedures, and indeed byzantine.

2.44 Even though the amount of unidentified lodgments ultimately found was relatively limited in proportion to the turnover of Mr. Lowry's business interests, his financial arrangements in general disclosed palpably inadequate book-keeping, a want of transparency in his dealings, and a disposition to declare and discharge his tax liabilities far below what could reasonably be expected from a holder of public office.

2.45 Had the Tribunal's inquiries not been delayed in the year 2000, consequent on Mr. Charles Haughey's health problems, it may well have been the case that the Tribunal's work would have concluded before March, 2001, or not unduly long thereafter, in advance of further material information coming to the attention of the Tribunal, regarding Mr. Lowry's finances. Had that been so, this short chapter would have represented the entire of the Tribunal's Report of its investigations of Mr. Lowry's financial affairs pursuant to paragraphs (e) and (f) of its Terms of Reference.

3

THE ESAT/TELENOR $50,000.00 DONATION TO FINE GAEL

INTRODUCTION

3.01 A payment of $50,000.00 which ultimately no one connected with it appeared to want, had its origins in certain fundraising activities on behalf of the Fine Gael party, initiated by the late Mr. David Austin. For much of his business career, Mr. Austin had been a senior executive of the Smurfit Group, and had resided at various times in Ireland, England and France. Although never a trustee or other officer of Fine Gael, he had for some years been involved in a relatively loose and informal way with fundraising activities for it, arranging golf classics and some similar functions. During his period of involvement in matters covered by this Volume of this Part of the Report, he had unhappily been diagnosed as suffering from an illness that was likely to prove fatal, a condition he seems to have faced with no little courage and fortitude, and his death resulted in early November, 1998. Apart from his role in the present transaction, his earlier involvement in the making of a payment to Mr. Charles Haughey has already been noted in Part I of the Report, and the events set forth in a succeeding chapter, involving financial arrangements with Mr. Michael Lowry, will again indicate a pivotal involvement on his part. As was acknowledged by both Mr. Lowry and Mr. Denis O'Brien in evidence, each of them had long-standing personal friendships with Mr. Austin, the former for approximately seventeen years in the context of shared political and horse-racing interests, and the latter since boyhood in South County Dublin, in a family and water sports context. Given the events in this chapter, and chapters 5 and 12 of this Volume, it is worthy of note that on 4th May, 1995, Mr. Lowry, as Minister for Transport, Energy and Communications, appointed Mr. Austin a director of Aer Lingus, a matter of record which was acknowledged by Mr. Lowry in the Official Report of proceedings in Dáil Éireann on 20th February, 1996.

3.02 Having become the senior partner in the Government formed in December, 1994, Fine Gael faced substantial accumulated debts. Mr. Lowry was then the Chairman of the trustees of the party, and appears to have been widely regarded as a person with particular aptitudes for fundraising, not merely on behalf of Fine Gael, but in prior projects related to Gaelic Athletic Association causes. There appears to have been a feeling within Fine Gael that, since Fianna Fáil had in the past successfully undertaken fundraising activities in the USA, this course could usefully be emulated, now that Fine Gael were back in Government. This view was articulated in a letter of 4th July, 1995, written by Mr. Austin to Mr. Lowry in his capacity as Chairman of the trustees.

THE FUNCTION AND THE PAYMENT

The fundraising function is proposed by Mr. David Austin

3.03 Headed *"Most Private and Confidential"* and addressed to the Minister at his Dublin office, this letter from Mr. Austin proposed that the two meet to discuss in greater detail a proposal for a fundraising event to be held in the USA by way of a private dinner, on Thursday, 9th November, 1995, with the Taoiseach present as guest of honour. He proposed that the function be held in an appropriate New York Hotel or club, and that a maximum of thirty American business executives be invited at a cost of $7,500.00 per head. A small organising committee should be formed to make arrangements, and those attending the dinner should include the Taoiseach, Ministers Lowry, Barrett, Yates, Kenny and Mr. Peter Sutherland, who was also envisaged as heading the committee. Invitations of high quality should issue, accompanied by letters signed by one of the senior party figures expected to attend. A draft list of prospective invitees was appended to the letter. A copy of this letter can be found in the Appendix to this chapter.

3.04 Over the ensuing months, arrangements for the function were finalised, and it was duly held in the 21 Club in New York on 9th November, 1995, which was a little over two weeks after the announcement on 25th October, 1995, that Esat Digifone had been the successful consortium in the GSM licence competition. Documentation was made available to the Tribunal by Fine Gael, recording the persons who attended the dinner and the amounts received from them, and there was similarly made available a follow-up list of persons who were intended targets, including a number seemingly intended to be contacted by Mr. Lowry. Of some six such persons, the first listed was Mr. Thomas Mulcahy of Allied Irish Banks, and an entry beside that name was to the effect that *"Spoke to the Taoiseach, not attending, and it is not clear whether they are contributing at this stage"*. Whilst Mr. Lowry's overall evidence on this transaction will be set out later in the chapter, it is fair at this juncture to note that he had no recollection of receiving Mr. Austin's letter, recalled being too busy either to attend the function or take any active role in its organisation, and made no contact with Mr. Mulcahy, or any other persons listed as referable to him.

Mr. Denis O'Brien is asked for a donation and the payment is made off-shore

3.05 The documentation relating to the organisation of the function contains no reference to any person connected with the successful licence consortium, and the basis on which any contribution in this sphere arose

appears to relate to a telephone approach, made by Mr. Austin to Mr. Denis O'Brien, the Chairman of both Esat Digifone and Esat Telecom. As Mr. O'Brien's recollection was that Mr. Austin discussed the possibility of Mr. O'Brien attending the dinner, he believed the conversation must have been prior to the dinner on 9th November, 1995, but only by a period of some days or a week. Mr. O'Brien's evidence was that in the telephone conversation Mr. Austin indicated the date, venue and nature of the function, his involvement in it as a fundraiser, and requested that "*Esat*" take two tables at the function at a suggested tariff of $50,000.00. Mr. O'Brien's recollection of his response was that he indicated that neither Esat Telecom nor himself would participate or make a donation, but that Telenor, his Norwegian partner in the Esat Digifone consortium, might be interested in contributing, as they were keen to become involved in Irish affairs, and with this in mind he would discuss the matter with Mr. Arve Johansen, then the most senior executive involved in the Esat Digifone project, and have him contact Mr. Austin.

3.06 Whilst Mr. O'Brien testified that he rang Mr. Johansen in this regard shortly after his conversation with Mr. Austin, Mr. Johansen in evidence had no such recollection. From this point on, indeed, a number of differences emerged between the testimony of witnesses attached to Telenor, and that of witnesses attached to the other partners in the Esat Digifone consortium. It will be necessary to return to some of these differences at the conclusion of this chronological summary of the main events that transpired. The companies that comprised the Esat Digifone consortium were Esat Telecom, of whom Mr. O'Brien was non-Executive Chairman, Telenor, a Norwegian State-owned communications company, and International Investment and Underwriting Limited (IIU), chaired and controlled by Mr. Dermot Desmond. Both Telenor and Esat Telecom held 40% interests in Esat Digifone, with the remaining 20% held by IIU, when the GSM licence was finally issued in 1996.

3.07 Mr. Johansen and Mr. O'Brien agreed that the matter of the donation was discussed at the conclusion of a meeting between them, in Oslo on 8th December, 1995, although their respective accounts of what took place are widely differing. That meeting was held to discuss the proposed engagement of Mr. Barry Maloney as Chief Executive Officer of Esat Digifone. Whilst at loggerheads over the issue of whether the $50,000.00 donation was to be paid by Telenor in its own right, as testified by Mr. O'Brien, or merely to facilitate the then uncapitalised Esat Digifone which would duly reimburse it, an initial decision that Telenor should make the payment was arrived at. It is likewise not in issue that Mr. O'Brien telephoned Mr. Johansen with a contact telephone number for Mr. Austin, and although Mr. O'Brien was of the view, contrary to Mr. Johansen, that a London rather than a Dublin number was furnished, the late production of a *"post-it"* note by Mr. Johansen shortly before he first gave

evidence, containing a Smurfit Group number at Clonskeagh, Dublin, supported the latter being the case. A copy of this note can be found in the Appendix to this chapter.

3.08 On 11th December, 1995, which was for Mr. Johansen a day of air travel, he telephoned Mr. Austin at this Dublin number, and found that Mr. Austin was expecting his call, knew the amount of the donation, and that it had been agreed with Mr. O'Brien. When Mr. Johansen said that if he was to make the payment sought, his company would need some form of paper documentation, Mr. Austin responded that he would issue an invoice, and that this would be expressed as having been for consultancy work. On Mr. Johansen further inquiring as to how the payment would be, in these circumstances recognised by Fine Gael as a donation, Mr. Austin replied that that would not be a problem, and he would see to it that this was acknowledged by top people within the party, mentioning Mr. Lowry, and the then Taoiseach, Mr. John Bruton. In support of his recollection, Mr. Johansen referred to certain entries on the *"post-it"* note written by him at the time of the telephone call, including references to Mr. Bruton and Mr. Lowry and, in Norwegian, to the sending of an invoice.

3.09 Mr. Austin promptly sent to Mr. Johansen from his English residence in Chelsea, London, a letter and invoice, both dated 14th December, 1995. The former was brief, and merely stated:

> *"Dear Mr. Johannson* [*sic*],
>
> *Please find invoice for consultancy work for the duration of 1995 as agreed with Mr. Denis O'Brien. I hope that you will find this in order".*

The letter was signed by Mr. Austin, and it also bore a subsequent handwritten internal Telenor memorandum in Norwegian, dated 20th December, 1995, which was addressed to *"Per"*, and was translated by Mr. Johansen as meaning *"this must be paid by us and invoiced as management cost to Digifone",* with the signature indicated as being that of Mr. Knut Digerud, another Telenor executive associated with the project, who had in turn passed it on to his colleague Mr. Per Simonsen. Copies of both that letter and the invoice can be found in the Appendix to this chapter.

3.10 The accompanying invoice was expressed as being for consultancy work for 1995 as per agreement, was in the sum of $50,000.00 with a conversion to Norwegian Kroner, and contained an instruction that payment should be made by a bank draft in favour of Mr. Austin, forwarded to a numbered account in Bank of Ireland, St. Helier, Jersey. Mr. Johansen testified that this was

the first intimation he received that the payment was to be made to an off-shore bank account. At the bottom right-hand corner of the invoice there was a file reference *"David F.T. Austin/FG/Dec 95."*

3.11 On 29th December, 1995, Mr. Johansen duly arranged for the sum of $50,000.00 to be transferred to Mr. Austin's off-shore Jersey account through Telenor's bankers, Den Norske Bank.

3.12 The resultant indebtedness of Esat Digifone to Telenor was noted as the converted sum of £31,600.00 due in relation to Mr. David Austin, in a handwritten internal working paper prepared by Mr. Colm Maloney, an accountant who worked for Esat Digifone between November, 1995, and February, 1996. This was an initial exercise towards preparation of a set of accounts for Esat Digifone to the end of 1995, and was carried out at the request of Mr. Maloney's then Chief Financial Officer, Mr. Peter O'Donoghue. With regard to recouping the amount, which Mr. Johansen said he effectively paid on behalf of Esat Digifone, three successive invoices were issued to Esat Digifone by Telenor. It is right to say that, when Mr. Johansen was the sole initial witness who testified on behalf of Telenor, certain of the information provided by him in relation to these invoices and related aspects proved from later evidence to be inexact and inaccurate, and as the Tribunal inquiry into these events progressed in greater detail, it proved necessary to recall Mr. Johansen, and hear the testimony of other Telenor witnesses at a later stage in the sittings.

Three invoices

3.13 Of the three invoices issued by Telenor to Esat Digifone, the first was dated 3rd January, 1996, was numbered 1000050, and was in the amount of Norwegian Kroner 316,000.00, which corresponded to $50,000.00. This invoice also contained an express reference to *"Consultant David F.T. Austin"*. A copy of this first invoice can be found in the Appendix to this chapter. Mr. Johansen's initial evidence was that, on receipt of this, it was conveyed to Mr. Per Simonsen, Esat Digifone Project Manager and the individual earlier referred to in Mr. Austin's documentation as *"Per"*, that this was unacceptable to Esat Digifone, and that a fresh invoice should be sent in the amount of $50,000.00, without any reference to Mr. Austin. A handwritten entry in Norwegian on the first invoice recorded this, and that the invoice had accordingly been shredded. A second invoice was thereupon issued, bearing the same number, in the amount of $50,000.00 and referring to a consultancy fee in respect of Telenor. It was dated 31st December, 1995, presumably being backdated to come within that financial year. A copy of this second invoice can be found in the Appendix to this chapter. This apparently was also unacceptable to Esat Digifone, which requested that it

be reversed by the issue of a credit note, and that a further invoice in Irish currency be issued some four to six weeks later. Telenor was again amenable to this variation, a credit note for $50,000.00 was issued on 24th January, 1996, and the third and final invoice, number 1000084, was issued on 27th March, 1996, in the amount, of £31,300.00. A copy of both the credit note and this third invoice can be found in the Appendix to this chapter. This was charged to the running account between Telenor and Esat Digifone, and was discharged by Esat Digifone as part of an appreciably larger aggregate payment made on 30th June, 1996.

The donation is acknowledged but is unwelcome

3.14 Meanwhile, other events were unfolding elsewhere. Although Mr. Johansen had not sought from Mr. Austin a written acknowledgment of the payment, he nonetheless received one dated 19th February, 1996, in what was referred to in evidence as a somewhat cryptic form, making no explicit reference to Fine Gael but stating:

> *"This was certainly not something that was taken lightly on my part and not on those from* (sic) *who have received payment please be assured of their appreciation and thanks."*

3.15 Later in that month, probably on Saturday, 24th February, 1996, the Taoiseach Mr. John Bruton had a telephone conversation with Mr. Austin. Having approved Mr. Austin's American project, Mr. Bruton had duly attended the New York dinner as planned, and was appreciative of Mr. Austin's endeavours and the financial receipts that accrued from the function to Fine Gael. It had been intended that the two would have lunch together in Government Buildings on 23rd February, 1996, but high level negotiations with other international political leaders in regard to the Peace Process forestalled this. By way of some recompense, it was arranged that the two would speak by telephone the following day, so that Mr. Bruton could thank Mr. Austin and hear whatever he wished to say. Mr. Bruton recalled the telephone conversation in evidence, stating that since he was not in a position to take notes of what was said, it was probably the case that Mr. Austin rang him, rather than the converse. Mr. Austin told him that there was money available from Esat Digifone interests for Fine Gael, although Mr. Bruton did not believe that any amount was mentioned. He thought Mr. Austin mentioned Mr. O'Brien by name, but could not be sure of this. Being mindful of how recently it had been announced that Esat Digifone had won the competition for the mobile phone licence, Mr. Bruton was adamant that no donation should be accepted by Fine Gael from that source at that time, and made this clear to Mr. Austin, despite the latter's anxiety that Fine Gael should

accept the money. It was also Mr. Bruton's recollection that Mr. Austin made some mention of the money being available in a bank account, and this conveyed to Mr. Bruton the impression that the money was still under the control of the donor, rather than Mr. Austin. Seeking to convey that the donation should not then be accepted by the party, without causing offence, or ruling out for all time a possible donation from that source, Mr. Bruton believed he used the phrase *"leave it where it is"*. In evidence Mr. Bruton was disposed to accept that this phrase was less than entirely clear or unambiguous, but he had sought to make it clear to Mr. Austin that acceptance by Fine Gael of the donation at that juncture was quite inappropriate. In the light of this, when he subsequently learned of what had in fact transpired in regard to the covert transmission of the donation, Mr. Bruton felt that some *"sleight of hand"* had been exercised by Mr. Austin.

The donation is transmitted to Fine Gael disguised as a contribution from Mr. David Austin

3.16 Over the following months, during which the licence was being negotiated with Esat Digifone and actually awarded on 16th May, 1996, nothing transpired in relation to the donation, which remained in Mr. Austin's off-shore Jersey account. The next significant occurrence, which did not occur for almost a year, was an occasion, probably in late April, 1997, when Mr. Austin rang Mr. Jim Miley, the General Secretary of Fine Gael, at the party headquarters in Dublin. It was then the run-up period to the 1997 General Election, and Mr. Miley recalled in evidence that, after he had made inquiries about Mr. Austin's health problems, which he knew had curtailed his fundraising activities, Mr. Austin told him that he wanted to make what he clearly indicated was a personal donation. Whilst not disclosing the amount, he indicated it would be sizeable, and said *"it's in my dollar account"*.

3.17 At a time that was probably soon after Mr. Austin's telephone call to Mr. Miley, he made a further telephone call, in this instance to Mr. Frank Conroy, an old friend of over thirty years' standing, and a member of the capital branch of Fine Gael, who had long been prominently involved in party fundraising. Mr. Austin told the late Mr. Frank Conroy that he was sending him money for transmission to Fine Gael, something Mr. Miley was aware of and was expecting. Mr. Austin also told Mr. Conroy that the money came from the 1995 New York dinner that had been attended by the Taoiseach, but no mention was made of Esat Digifone, or anyone connected with the licence process, so Mr. Conroy inferred the funds were the tail-end of the money raised in New York. He duly received a cheque payable to himself from Mr. Austin for the equivalent in Irish pounds of $50,000.00 and, as requested, endorsed it and transmitted it to Fine Gael. Having had the cheque made out to himself personally for endorsement to

Fine Gael, rather than made out directly to that party, was a departure from accepted fundraising practice, of which he disapproved, and despite his friendship with Mr. Austin, Mr. Conroy in evidence expressed himself as very annoyed on learning more fully the history of the payment, and at the manner in which he had become involved. Mr. Conroy also said he had been a friend of Mr. Michael Lowry for some years, through mutual political and horse-racing interests; he knew Mr. Denis O'Brien only slightly, and when public controversy in relation to the matter arose in 2001, he recalled receiving a telephone call from Mr. O'Brien, expressing regret that Mr. Conroy had become involved.

3.18 Whilst the contribution made available to Fine Gael through Mr. Conroy was one of the larger sums received at that period, it arrived at a hectic and demanding time prior to the General Election, and only very limited attention was then paid to it, although it was noted that past personal contributions from Mr. Austin had been of sums a great deal less than in this instance.

DEALINGS BETWEEN PARTNERS

The donation becomes an issue in the Esat Telecom IPO

3.19 As the later months of 1997 passed, the position accordingly was that Fine Gael had received the monies comprised in the donation, but knew little as to the full circumstances or background. For his part, Mr. O'Brien had determined to proceed with a public flotation of Esat Telecom, and to promote this had embarked with colleagues upon a vigorous "*roadshow*" in the USA. As the projected date of flotation approached, it was obvious that any possible infirmity affecting the GSM licence awarded to its associate company would necessarily entail grave consequences, and that potential concern was further heightened by the establishment of this Tribunal on 26th September, 1997, part of whose Terms of Reference clearly related to acts or decisions undertaken in the course of public office by Mr. Lowry.

3.20 The prospectus prepared by Esat Telecom preparatory to the flotation conveyed some limited information to intending investors with regard to the GSM licence award. Under a section headed "*Risk Factors*", with a further sub-heading "*Importance of Esat Digifone License*", it was stated:

> *"Esat Digifone offers cellular services in Ireland pursuant to a GSM licence awarded in May 1996.*
>
> *The Irish government has established a tribunal of inquiry to investigate certain decisions made under the auspices of certain government*

ministers, one of whom is the former Minister for Transport, Energy & Communications, Michael Lowry. The decisions to be investigated will include the award by Mr. Lowry of the GSM license to Esat Digifone. Allegations have been made of improprieties in the award of the GSM license. Revocation or modification of the GSM license would have a material adverse affect on the Company.

While there can be no assurance, the Company does not expect that the tribunal will recommend that the award of the GSM license should be revoked or otherwise modified".

3.21 During the weeks prior to the issue of this prospectus on 7th November, 1997, the issue of a possible improper payment from Mr. O'Brien to Mr. Lowry having been acknowledged in a conversation between Mr. O'Brien and Mr. Barry Maloney, in late 1996, was raised among the directors and shareholders of Esat Digifone, and caused acute and understandable concern. A series of formal and informal meetings, procedures and inquiries followed, full details of which will be set out in a succeeding chapter, and the position was compounded later in October, when Mr. Johansen brought to the attention of his Esat Digifone colleagues the circumstances of the $50,000.00 Fine Gael donation. Whilst this issue was considered the less critical of the two besetting the company, matters continued to be in a state of high alert, and on 4th November, 1997, a meeting of the Esat Digifone directors was held to discuss concerns relating to the prospectus and possible consequences. It appears that this was not constituted as a board meeting, but as a meeting of the individual directors in the presence of their respective legal advisers, Messrs. McCann Fitzgerald, solicitors for Esat Digifone itself, Messrs. William Fry, solicitors for Esat Telecom and its nominee directors, and Messrs. Kilroys, solicitors for Telenor and its nominee directors. The meeting was held at the offices of IIU, Mr. Dermot Desmond's company, in the Financial Services Centre in Dublin.

Necessity to establish that money had been duly received by Fine Gael

3.22 In the discussion at the meeting relating to the donation, it appears to have been decided that it would be necessary to prove that the money was duly received by Fine Gael, and thereby exclude any possibility that Mr. Lowry personally benefited by it, which would have rendered disclosure to this Tribunal inevitable. Yet, rather than seeking such confirmation from Fine Gael, what would be decided was that a letter would be sought from Mr. Austin, confirming that basis of payment.

3.23 Whilst a representative of William Fry appears to have offered to contact Mr. Austin for this purpose in the first instance, what in fact happened

was that one of the Esat Digifone directors, Mr. Leslie Buckley, perhaps with the assistance of an associate, Mr. Paul Connolly, contacted Mr. Aidan Phelan to this end. Mr. Phelan was an accountant and financial adviser to Mr. O'Brien, and was then working in the USA in the concluding phase of the "*roadshow*" promoting the flotation. Mr. Phelan promptly contacted Mr. Austin, who was well known to him, at his then residence in France, with what was obviously an urgent request, but the state of Mr. Austin's illness was such that he could not comply immediately, and Mr. Phelan had to make further contact within a day or so. On foot of this latter contact, an undated handwritten letter was forthwith furnished by fax by Mr. Austin and in turn sent by William Fry to McCann Fitzgerald on 7th November, 1997. It was signed by Mr. Austin and stated at the outset that it was from him, and was addressed "*to whom it concerns*". It went on to state as follows:

> *"I confirm that as Chairman of the Fund Raising Committee for a dinner held in the 21 Club in New York in Dec. '95, for the purposes of raising monies for the "Fine Gael" Party - I received a contribution from Telenor A.S. for the amount of $50,000.*
>
> *I duly forwarded these funds to the Fine Gael party."*

3.24 Following a further meeting on 5th November, 1997, and other dealings between the directors, it was decided to issue the prospectus on 7th November, 1997, with the reference to risk factors associated with the licence according in substance with what has been quoted. The IPO proceeded successfully.

Telenor's concerns and actions: direct approach to the Fine Gael party

3.25 However the misgivings held by Mr. Johansen in relation to the donation had increased rather than lessened as events unfolded, and in January, 1998, Telenor sought advice from their Irish solicitors as to whether the payment should be brought to the attention of this Tribunal. Having obtained that advice, Telenor was of the view that the handwritten letter from Mr. Austin did not amount to sufficient proof that Fine Gael had in fact received the donation, so that it would be preferable and advisable to seek direct confirmation from the party itself. The task of telling the other shareholders in Esat Digifone of Telenor's intention to approach Fine Gael directly was entrusted to Mr. John Fortune, who acted as one of Telenor's three non-executive directors on the Esat Digifone board for a period of slightly over a year, between August, 1997, and September, 1998. Apart from Mr. Fortune's prior experience as an investment banker, and as chief financial officer to a NASDAQ-listed company, it was felt by

Telenor that engaging one Irish director might be more conducive to improving relations with other shareholders then persisting with exclusively Norwegian board representation.

3.26 Mr. Fortune gave evidence that in or around 10th February, 1998, he verbally informed both Mr. O'Brien and Dr. Michael Walsh, who was the other IIU representative on the Esat Digifone board along with Mr. Desmond, of Telenor's intention to obtain prompt confirmation from Fine Gael that the party had actually received the donation, on a basis that Mr. Austin's handwritten letter was thought insufficient. Mr. Fortune's recollection was that, whilst Dr. Walsh showed immediate understanding of Telenor's wish to clear up this aspect, Mr. O'Brien's initial response was negative, and he said that since Esat Digifone had reimbursed Telenor for the donation, it, rather than Telenor, should seek confirmation from Fine Gael; he volunteered to go to Mr. Austin and have him obtain a response from Fine Gael, but said this should be deferred for a short time because Mr. Austin was then undergoing chemotherapy, whereupon Mr. Fortune responded that *"it will be done"*, and Telenor would proceed to make direct contact with Fine Gael as soon as possible.

3.27 Telenor enlisted the public relations consultant, Mr. Fintan Drury, to contact Fine Gael, in order to arrange a prompt meeting. That meeting in fact proceeded in the party's Dublin headquarters in Upper Mount Street, on the evening of Friday, 13th February, 1998, with Mr. Drury and a member of Kilroys, representing Telenor, and the General Secretary, Mr. Jim Miley and Mr. Kevin O'Higgins, solicitor to the party, representing Fine Gael. Mr. Fortune testified that he had, in advance, spoken further to Dr. Walsh, and made abortive efforts to communicate by telephone and fax with Mr. O'Brien, who had gone to New York, to update them with events, so that, even if a precise time and venue was not conveyed, it was made clear to the other shareholders that a meeting was promptly proceeding.

Inquiries are made by Fine Gael but the Tribunal is not informed

3.28 On foot of what he had learned from the Telenor representatives, Mr. Miley carried out some initial inquiries, and on 16th February, 1998, telephoned Mr. John Bruton, by then Fine Gael leader in opposition. He told him that it seemed as if the $50,000.00 donation disclosed by Telenor was one and the same as the £33,000.00 donation received from Mr. Austin in May, 1997. Recalling his earlier conversation with Mr. Austin, and his instructions that the proposed donation be left where it was, Mr. Bruton stated that he would not have approved, had he known the money was later paid to Fine Gael, and instructed that it be returned at once.

3.29 Between 17th and 23rd February, 1998, Mr. Miley had some three telephone conversations with Mr. Austin. In the course of these conversations, Mr. Austin confirmed that he had approached Mr. O'Brien for a contribution to the New York fundraising dinner. He further told Mr. Miley that Mr. O'Brien indicated that he wished to have the donation paid via Telenor in order to ensure confidentiality. Mr. Austin accordingly made arrangements with Telenor to have the money paid to him, and held the money until May, 1997, when he passed it on to Fine Gael. He had been contacted in 1997, to confirm that he passed the money onto Fine Gael, and had given such confirmation. Mr. Austin also recalled that he had mentioned the donation to Mr. Bruton, who had expressed misgivings about receiving it, and who would never have known that the payment had in fact been made. Mr. Austin was emphatic that he had had no discussions with Mr. Lowry on the matter, as Mr. Lowry had nothing whatever to do with the contribution. He acknowledged to Mr. Miley that he had told him appreciably less than the full facts, when he first expressed his wish to make a personal contribution prior to the General Election. Mr. Miley was somewhat annoyed, and felt many questions remained unanswered, but in the circumstances of the relationship, and Mr. Austin's declining state of health, was reluctant to press matters unduly. When Mr. Miley told Mr. Austin that Fine Gael was resolved to return the money, Mr. Austin was opposed to this, and stated that handing it back would make it seem that the payment was underhand or flawed in the first instance.

Fine Gael return the donation to Telenor by way of a cheque for £33,000.00

3.30 All these conversations and dealings over two weeks meant for Mr. Miley and Fine Gael that what had previously been thought a welcome personal pre-election donation from Mr. Austin had now been shown to be a transaction beset with difficulties. Apart from deciding to return the money, the party now shared with Telenor the dilemma of resolving whether or not the donation fell within the Terms of Reference of this Tribunal. If it did, unpalatable though that conclusion might be, there would be no other available option but to report the transaction to this Tribunal. On 2nd March, 1998, the solicitor to Fine Gael, Mr. Kevin O'Higgins, wrote to Kilroys on behalf of Telenor, alluding to the changed and ambivalent circumstances that had been brought to light regarding the donation, and enclosing a cheque payable to Telenor in the sum of £33,000.00, by way of its return. A mutual apprehension as to any possible involvement or connection with the donation on the part of Mr. Lowry was evident in discussions between the respective solicitors on receipt of the letter. Then on 6th March, 1998, Kilroys wrote to Mr. O'Higgins, requesting confirmation that Mr. Lowry was not a named account holder of any of the party accounts into which the monies were paid, and stating that, on the basis that this could be confirmed, Telenor

believed that the donation did not fall within this Tribunal's Terms of Reference. Some further correspondence and discussion followed, culminating in a letter of 25th March, 1998, from Mr. O'Higgins to Kilroys, confirming that as of the time when the contribution was paid over to the party in May of 1997, Mr. Lowry was not a named account holder, and at that time had neither authority nor signing capacity in relation to the same. In fact, by the time the contribution was received by Fine Gael, as opposed to the substantially earlier time when it was first paid to Mr. Austin, Mr. Lowry was no longer a member of Fine Gael, and obviously had likewise ceased to be a trustee or a person with any remaining authority in relation to the party accounts. At the time of the New York dinner in the latter part of 1995, and throughout 1996, he had been Chairman of the party trustees and a signatory on the Fine Gael accounts. The accounts of the party were and remain the property of its trustees, subject to the trusts regulating their duties.

3.31 Whilst the correspondence between the solicitors was taking place, Fine Gael on 13th March, 1998, received the written opinion of senior counsel, which was to the effect that the donation did not fall within the Tribunal's Terms of Reference, and was accordingly not required to be reported to it. Mr. Miley indicated some degree of surprise, mingled with relief, at this, but acknowledged that at the time neither he nor any legal advisers to Fine Gael had available to them such potentially important documentation as the various letters of Mr. Austin, the successive invoices, and the "*post-it*" note made by Mr. Johansen.

Telenor return the cheque for £33,000.00 to Fine Gael; Fine Gael counter by sending a bank draft to Telenor

3.32 At the time of Fine Gael's return of the cheque to Telenor, Mr. Miley also made contact with Mr. Denis O'Brien, telephoning him on 27th February, 1998, and then meeting him on the following 4th March, 1998. He conveyed to Mr. O'Brien the course that the party felt obliged to take, saying that no offence was intended, and although Mr. O'Brien urged that the cheque should not be returned, Mr. Miley was not in a position to negotiate. The two spoke again by telephone on 2nd June, 1998, at which stage Telenor had returned to Fine Gael the cheque which had been issued to it by Fine Gael on 2nd March, 1998, a course subsequently countermanded by Fine Gael, by the issue this time of an equivalent bank draft from Fine Gael to Telenor. According to Mr. Miley's note of the conversation, Mr. O'Brien stated that he felt he had to send back the cheque:

> *"given that we were asked for money in the first place, we don't feel we should take it back. We think if we had taken it back, we would look guilty. We have nothing to be guilty about."*

3.33 Some fractious exchanges also took place between the Esat Digifone shareholders after the return of the donation by Fine Gael, commencing with a letter of 24th March, 1998, which Mr. Johansen handed to Mr. O'Brien, indicating that the donation had been returned, but that since Telenor had been reimbursed for making the payment in the first instance, the Fine Gael cheque had been endorsed and was enclosed. On the following 30th March, 1998, Dr. Walsh of IIU wrote to Mr. Johansen, indicating that the cheque had been passed to him by Mr. O'Brien, but that, since it had been crossed account payee only, it could only be lodged to the account of Telenor. The letter also referred to an assurance provided by Telenor by letter of 6th November, 1997, in the context of the issue of the Esat Telecom prospectus, that it had *"taken no action which could in any way jeopardise the Esat Digifone mobile licence."*

3.34 There seems little point in detailing the convoluted letters exchanged between the Esat Digifone shareholders over ensuing months in 1998, which led to the cheque being returned to Fine Gael, a course that was rekindled in 2001, after Fine Gael in the wake of media disclosures sent the solicitors to Telenor a bank draft for the amount equivalent to the original donation. Punctuated by letters between representatives of Telenor and Esat Digifone, whose only common thread was profound anxiety that the other should take the benefit of the money, the draft passed incongruously to-and-fro, and, when last mentioned in evidence, appeared to have come to rest somewhere in Esat Digifone. After media coverage of these matters at public sittings, it was scarcely surprising that the correspondence received by the Tribunal included requests from both Mullingar Active Retirement Association and a CBS Monkstown Junior School "*Children help Children*" project in Dublin, to the effect that, if no one really wanted the money in question, each would be grateful to avail of it.

EVIDENCE OF MR. ARVE JOHANSEN AND OF OTHER TELENOR OFFICIALS

3.35 Before concluding this chapter with some account of what was stated in relation to the donation in the evidence of both Mr. O'Brien and Mr. Lowry, it is necessary to return to aspects of the evidence given on behalf of Telenor. As already stated, the initial evidence given by Mr. Johansen when he was the sole witness called on behalf of Telenor, in relation to material aspects of the three successive invoices furnished to Esat Digifone and of the ongoing dealings had by Telenor personnel with Mr. O'Brien, was misleading or at least incomplete. In essence, although Mr. Johansen in his earlier evidence undoubtedly referred to matters referred by Esat Digifone to Mr. Per Simonsen, the Project Manager provided by Telenor, he did then indicate the shredding of the initial invoice was carried out on instructions from Dublin, and further indicated a likelihood of direct personal dealings had by him with Mr. O'Brien, in which the latter was

made or appeared aware of the basis upon which Mr. Austin was implementing the donation. When Mr. Johansen again testified in October, 2001, on which occasion Mr. Per Simonsen, Mr. Knut Digerud and Mr. Jan Edvard Thygesen also gave evidence as Telenor representatives, the position on these matters appeared as follows.

3.36 Regarding actual dealings with Mr. O'Brien, Mr. Johansen accepted that he could not prove direct contact with Mr. O'Brien on the lines he had initially thought probable; however, having considered and discussed matters in more detail, in particular with Mr. Per Simonsen, he stated that he did clearly convey to Mr. O'Brien, on 20th December, 1995, the crucial basis upon which Mr. Austin had sought to mask the donation as an invoice for consultancy services to Telenor, and sought payment to his off-shore Jersey bank account. He stated that he had received by post on 19th December, 1995, the relevant letter and invoice from Mr. Austin, dated 14th December, 1995. With a view to preparing for a board meeting of Esat Digifone the following day in Dublin, he showed Mr. Digerud the letter and invoice, explaining what they were, and then put these in his briefcase to bring to Dublin to show them to Mr. O'Brien for approval. The following day, he travelled early to Dublin with Mr. Digerud for the board meeting, which was held in The Malt House, Grand Canal Quay.

3.37 At a point either before or during a break in that meeting, he had a discussion with Mr. O'Brien, at which Mr. Digerud was present, although he did not participate. Mr. Johansen showed Mr. O'Brien the original letter and invoice received. He informed Mr. O'Brien that he would arrange for Telenor to facilitate the $50,000.00 payment as requested by Mr. O'Brien, and then invoice Esat Digifone for an equivalent sum by way of reimbursement, as also agreed. He did not recall whether he mentioned that Mr. Simonsen would be managing this reimbursement process, but did remember Mr. O'Brien agreeing to the payment of the invoice from Mr. Austin, and its reimbursement by Esat Digifone to Telenor as a Telenor expense. Later on the same occasion, Mr. Johansen handed Mr. Digerud the original invoice and letter, and asked him to arrange for the processing of the payment of the invoice and subsequent reimbursement by Esat Digifone to Telenor. Mr. Johansen stated that he did not thereafter deal further with Mr. O'Brien or Mr. Digerud in relation to processing the transaction, but he was adamant that he had made clear to Mr. O'Brien the basis upon which Mr. Austin was proposing to proceed and that Mr. O'Brien indicated that this was acceptable to him.

3.38 Mr. Johansen was also asked to comment on a matter that had been raised when Mr. O'Brien first gave evidence, to the effect that, in the course of the shareholders' negotiations, Telenor had contrived to force or pressurise Esat

Digifone to pay to it the amount of the donation made by it in the first instance. In his response to this, Mr. Johansen was emphatic that no such question arose, that the payment was a very limited and uncontroversial part of extensive negotiations, that could never remotely have been viewed as a sticking point, and that all that was done was to give effect to reimbursement in accordance with the initial agreement. He stated that neither verbally nor in writing had any such basis of forced or pressurized payment been advanced, until Mr. O'Brien first gave evidence. As to the variations between the initial and latter evidence tendered on behalf of Telenor, Mr. Johansen acknowledged that this had caused him and his colleagues some embarrassment, but he said that pressure of business and difficulties of liaising had made it difficult to address all aspects in the first instance, and that Telenor had done its utmost to assist the Tribunal, in circumstances where its witnesses were not compellable in Ireland, and where it had little or nothing to gain from such cooperation.

3.39 Although Mr. Johansen's evidence received some corroboration from Mr. Knut Digerud, the former Chief Executive Officer of Esat Digifone, in relation to the events of the 8th, 19th and 20th December, 1995, probably the potentially most significant additional evidence tendered on behalf of Telenor was that of Mr. Per Simonsen, as to dealings had in relation to the successive invoices raised by Telenor. Mr. Simonsen stated that he was a Telenor employee, and had been Esat Digifone Project Manager between May, 1995, and February, 1996. In the course of what was a period of frantic activity, he was in late December, 1995, informed by Mr. Digerud that Telenor had been requested by Mr. O'Brien to facilitate a payment in respect of a fundraising dinner, and had agreed to do so. Mr. Digerud deputed him to implement payment by Telenor, on the basis of Mr. Austin's letter and invoice, which were furnished to him shortly before Christmas, and then to seek re-indemnification from Esat Digifone in turn. Mr. Simonsen stated that it was only much later that he ascertained that the payment was in fact a political contribution. When he received the letter and invoice, the former bore the handwritten instruction from Mr. Digerud which has already been mentioned, that is, the note which recorded:

> *"this must be paid by us and invoiced as management cost to Digifone".*

3.40 Mr. Simonsen further stated that, around that time, he received a telephone call from Mr. O'Brien, in which Mr. O'Brien indicated concern about Mr. Austin's name being mentioned on documentation from Telenor seeking reimbursement of the payment. This presented no difficulty to Mr. Simonsen, who had understood that the amount should be invoiced as a Telenor cost to Esat Digifone; he had transmitted the documentation to the accounts department, instructing that payment should be made to Mr. Austin, following which an invoice should be issued to Esat Digifone for the same amount,

designated as a Telenor consultancy fee. He believed he had conveyed this instruction on the last working day before Christmas, and on returning to work on 3rd January, 1996, following, an individual in the accounts department came to him and gave him copies of both Mr. Austin's invoice and the invoice that was to be raised by Telenor to Esat Digifone for reimbursement. Observing that the latter bore the words *"consultant David FT Austin"*, he realised that this was inconsistent with his instructions and inquired if the invoice had yet been faxed. When he was informed that it had been, he telephoned Esat Digifone and spoke to a person in the Dublin office, whose name he was unable to remember. He indicated that the original text of the invoice has been incorrect and requested that the original invoice be shredded. When the Dublin employee indicated that this had been done, Mr. Simonsen then requested that a second invoice would be prepared and sent, omitting the name David FT Austin, for $50,000.00.

3.41 Mr. Simonsen stated that he subsequently received a further telephone call from Mr. O'Brien, informing him that he did not wish the currency on the invoice to be in US dollars, and would prefer it to be in Irish currency. Mr. O'Brien then requested that the issue of such a *"revised"* invoice be delayed for a period of four to six weeks. Again these requests presented no problem, and Mr. Simonsen accordingly instructed the accounts department that a credit note should be issued, to reverse the apparent US dollar indebtedness, and that after a period of four to six weeks, a third version of the invoice should be issued in Irish pounds.

3.42 The Tribunal also heard brief evidence from Mr. Jan Edvard Thygesen who had been Chief Executive Officer of Esat Digifone between November of 1995, and his replacement by Mr. Digerud, on 19th February, 1996. He stated that in the course of these duties, he had not been made aware of, or had any involvement in any aspect of the payment, its reimbursement or related documentation. It was accordingly the sworn testimony of the various Telenor witnesses that only Mr. Johansen, Mr. Digerud and Mr. Simonsen on the Telenor side were conversant with the transaction. Mr. Thygesen was also questioned in relation to certain recollections of Mr. Colm Maloney who, as mentioned earlier, in the course of accountancy duties for Esat Digifone during a brief period of service, had prepared a handwritten memorandum of inter-company balances between Esat Digifone and Telenor, as of 31st December, 1995. In his subsequent evidence, Mr. Maloney stated that, following inquiries as to any indebtedness to companies with whom Esat Digifone had dealings, he inserted in his memorandum a reference to a sum of £31,600.00 as outstanding to Telenor *"re. David Austin"*. Thinking the sum a substantial one for what Mr. Maloney from his general knowledge surmised to be an indebtedness for public relations, Mr. Maloney thought it probable that he had brought the matter to the attention of Mr. Thygesen in the course of a brief conversation, whereupon Mr. Thygesen,

although he gave Mr. Maloney no information, left the accountant with the impression that he was familiar with the matter. When this was put to Mr. Thygesen in evidence, he stated that he had no recollection whatever of the handwritten document or, by implication, of the conversation with Mr. Maloney. He declined to speculate as to whether or not it was surprising that, as the most senior Telenor executive involved with Esat Digifone, he was not made aware of what, by any realistic appraisal, was an unorthodox and exceptional transaction to involve a State-owned telecommunications company. In evaluating these matters, it must in fairness to Mr. Thygesen be borne in mind that, although Mr. Maloney appeared an impressive and dispassionate witness, he was disposed, at the end of a searching cross-examination by counsel for Telenor, to withdraw this contention that Mr. Thygesen appeared familiar with the transaction in the course of their brief conversation.

EVIDENCE OF MR. DENIS O'BRIEN

3.43 The account of events given in evidence by Mr. O'Brien commenced by acknowledging that Mr. Austin had been a lifelong family friend, initially through swimming interests shared by the O'Brien and Austin families. Although Mr. O'Brien had had some business contacts with Mr. Austin going back as far as 1983, it was only at the outset of the events now under consideration, in late 1995, that he became aware that Mr. Austin was actively involved in fundraising activities on behalf of Fine Gael.

3.44 Mr. O'Brien recalled in his evidence being telephoned by Mr. Austin in late 1995, in respect of the forthcoming Fine Gael fundraising dinner that was to be held in the 21 Club restaurant in New York, with the Taoiseach Mr. Bruton in attendance. Mr. Austin inquired if Esat would be prepared to take two tables at the dinner, and indicated a suggested donation in the amount of $50,000.00. Mr. O'Brien responded that neither he nor his company would consider participating or making a donation, but mentioned his partner Telenor as a body that might be interested, in view of being keen to become involved in Irish affairs. Mr. O'Brien told Mr. Austin that he would discuss the matter with Mr. Johansen of Telenor, and request him to contact Mr. Austin. Mr. O'Brien recalled telephoning Mr. Johansen soon after this conversation with Mr. Austin, informing him about the dinner and requesting him to contact Mr. Austin. Mr. O'Brien believed that he had given Mr. Austin's UK telephone number to Mr. Johansen on that occasion.

3.45 Mr. O'Brien continued that he recalled going to Oslo on 8th December, 1995, to discuss with Telenor the possible employment of Mr. Barry Maloney with Esat Digifone. After dealing with that business, Mr. O'Brien recalled again discussing with Mr. Johansen the matter of Mr. Austin's approach and the Fine

Gael dinner in New York. Shortly after returning from Oslo, Mr. O'Brien telephoned Mr. Johansen, and it was his evidence that he also then furnished Mr. Johansen with Mr. Austin's UK telephone number, possibly after a telephone call to him from Mr. Austin.

3.46 Mr. O'Brien then referred to copies of the letter and invoices sent by Mr. Austin to Mr. Johansen, each dated 14th December, 1995, but stated that he had received these only on 4th November, 1997, from Telenor. He did not discuss or agree with Mr. Austin the basis whereby Mr. Austin invoiced Telenor for the donation, and expressed it as being for consultancy services, or that Esat Digifone should, after payment, be invoiced as a management cost. Mr. O'Brien believed Mr. Austin's reference in the letter to an agreement with Mr. O'Brien was an exaggeration of his role in putting Mr. Austin and Telenor in mutual contact. He believed his initial telephone call from Mr. Austin was prior to the actual dinner on 9th November, 1995, as he recalled Mr. Austin discussing the possibility of Mr. O'Brien actually attending the dinner, and having an opportunity of meeting the Taoiseach.

3.47 As to the successive invoices furnished by Telenor to Esat Digifone, Mr. O'Brien stated that his role of non-executive Chairman of Esat Digifone at the time, was such that documentation of this type would not have been, and was not brought, to his attention. Accordingly, he could not comment on these documents, nor was he then aware of, or able to assist in relation to the lengthy period that the donation appears to have lain in Mr. Austin's Jersey off-shore account, until it was transmitted as an apparently personal donation from Mr. Austin, through Mr. Conroy, to Fine Gael in May, 1997.

3.48 Regarding the absence of any reference to the payment in the prospectus prepared for the Esat Telecom flotation, Mr. O'Brien stated that this was because it was considered that the donation was a legitimate political contribution by an affiliate company, Esat Digifone.

3.49 With regard to the time that Telenor brought the payment to the attention of Fine Gael, Mr. O'Brien had no recollection of having been informed of any intention to do this, and was unaware of when it was done. He recalled being approached by Mr. Jim Miley, on behalf of Fine Gael on 27th February, 1998, and subsequently meeting with him. On that occasion, he refused to accept the return of the cheque from Fine Gael. When Fine Gael sent a cheque for the amount of the donation to Telenor, which in turn endorsed it to Esat Digifone, Mr. O'Brien discussed the matter with Dr. Michael Walsh of IIU, agreed that acceptance by Esat Digifone would effectively imply that the original payment had been wrongful, and the cheque was thereupon returned to Telenor.

3.50 Consequent upon the acquisition of Esat Digifone by British Telecom, Mr. O'Brien confirmed that he had had no involvement with either Esat Telecom or Esat Digifone since resigning in September, 2000. Referring back to his initial telephone call from Mr. Austin, Mr. O'Brien thought this was in the first week of November, 1995. Although Mr. Austin as a senior businessman would have known the distinction between Esat Telecom and Esat Digifone, Mr. O'Brien's recollection was that the form of the approach was simply for a contribution from "*Esat*". When Mr. O'Brien told Mr. Austin that neither he, nor Esat Telecom, would participate in the dinner, he did so because his instinct was that it was inappropriate, and not the correct thing to do. One reason for this was the close proximity to the conclusion of the GSM evaluation process. He recalled that there was much controversy and media comment at the time, perhaps reflecting the views of disappointed candidates. Even though the competition had been won fairly and squarely, Mr. O'Brien took the view that, to have contributed at that particular time would not have been the right thing to do. He mentioned Telenor to Mr. Austin, because he had known for a while that Telenor wanted to get involved in Irish affairs. He did not purport to offer Mr. Johansen any advice in the matter. Whilst Mr. O'Brien's view that a contribution was inappropriate was initially offered only on behalf of Esat Telecom, he was in the course of further questioning disposed to take the view that it would also have been inappropriate on the part of Esat Digifone; this indeed was a view with which other directors of Esat Digifone in subsequent evidence readily concurred.

3.51 With regard to the reimbursement of Telenor by Esat Digifone, Mr. O'Brien stated that Telenor "*made*" Esat Digifone pay: in the course of a large number of issues arising between the shareholders, Telenor exerted particular pressure on this matter, and since it was only part of a much bigger picture, Mr. O'Brien and his associates had to agree to reimbursement. Had the issue stood alone, he would have refused.

3.52 At the time of the crisis meetings in November, 1997, immediately prior to the Esat Telecom IPO, Mr. O'Brien said he was too committed to the "*roadshow*" to approach Mr. Austin for the required letter, but could have proposed Mr. Aidan Phelan as an appropriate person known to Mr. Austin. It was, he agreed, unfortunate that the issue necessitated a sick man being disturbed. As to why someone might not simply have telephoned Fine Gael instead for the required confirmation, Mr. O'Brien said he did not know, but sometimes people did not do the obvious thing. He was unable to assist as to whether or not an approach to Fine Gael then would perforce have failed to elicit confirmation that the particular payment had been received.

3.53 Regarding Mr. John Fortune's account of his conversation with Mr. O'Brien about Telenor's intention to make direct contact with Fine Gael in or around 10th February, 1998, Mr. O'Brien stated that he had no recall of any such conversation, and he viewed Telenor as having undertaken an absolute solo run in the manner of approaching Fine Gael. Mr. O'Brien added that it was in any event a mistake for Mr. Austin, or anyone else on behalf of Fine Gael to have approached him for a donation at the particular time in question, when there was much controversy in the media, and whingeing by disappointed aspirants for the licence.

3.54 In the course of Mr. O'Brien's examination, he was also questioned in relation to some matters which he appeared to have stated in the course of the meeting of directors on 4th November, 1997. Among the various notes of what transpired at that meeting were those of Kilroys, to Telenor, and Mr. O'Brien was disposed to agree that, subject to some limited reservations, these notes comprised a substantially full and helpful record of what had taken place. In that note, Mr. Kevin O'Brien, one of the members of Kilroys, was recorded as having asked Mr. O'Brien whether the payment was made by Telenor, by Mr. O'Brien himself, or by Esat Digifone, whereupon Mr. O'Brien acknowledged that he wanted the payment to be made outside the country. Questioned about this by Tribunal counsel, Mr. O'Brien responded that he did not remember saying precisely that, but that probably it was that Telenor, as an overseas company, would make the donation, adding that he could have said what had been attributed to him. The notes continued, as was put to Mr. O'Brien, to the effect that Mr. O'Brien stated that he was not sure who ended up paying, that Telenor paid Mr. Austin, and that he did not know whether, in making payment to Mr. Austin, Telenor were saying that they were paying on their own, or someone else's behalf. At a stage shortly thereafter in these notes, Mr. Kevin O'Brien was noted as putting to Mr. Denis O'Brien that Telenor was paying Mr. Austin, on Mr. O'Brien's behalf, whereupon Mr. O'Brien responded that he was not sure.

3.55 Mr. O'Brien gave some recalled evidence on this matter on 22nd October, 2001, which was after the additional Telenor evidence given by Mr. Johansen, Mr. Digerud, Mr. Simonsen and Mr. Thygesen. Regarding the account of what transpired during a break in the Esat Digifone board meeting in Dublin on 20th December, 1995, Mr. O'Brien denied that he had then been shown the letter and invoice of Mr. Austin from some days previously, or that a conversation on the lines described by Mr. Johansen took place. Mr. O'Brien was equally adamant in denying that he made either of the telephone calls to Mr. Simonsen as described in his evidence, seeking on each occasion to amend the form of reimbursement invoice from Telenor to Esat Digifone. When questioned as to why Telenor should offer false evidence against him, Mr. O'Brien inclined to the

view that this may have been because Telenor did not succeed in a bid that they had subsequently made to acquire Esat Digifone, and because they may not have made full and frank disclosure back in Norway as to the circumstances in which they made the contribution to Fine Gael.

EVIDENCE OF MR. MICHAEL LOWRY

3.56 When Mr. Michael Lowry gave evidence to the Tribunal for some six days at the end of October and start of November, 2001, the donation was the first issue he addressed, and the essence of his evidence was that his connection with the matter was no more than slight and peripheral. As to other persons involved, Mr. Lowry said he had for many years been a close personal friend of Mr. Austin, and apart from common interests in Fine Gael and horse-racing, the two regularly attended social functions together. He enjoyed a similar relationship with Mr. Conroy. He knew Mr. O'Brien well from around the early 1990s, meeting him regularly at social functions, but he would not have been a close friend like Mr. Austin and Mr. Conroy. Whilst Mr. Lowry was a Government Minister, Mr. O'Brien never requested any political favours from him, and nor did Mr. Lowry ever seek or obtain any political contributions from Mr. O'Brien. The latter may well be the case, but it is nonetheless noteworthy that during the year 1995, commencing from the month of March, and the year 1996, significant donations to and support of Fine Gael was evident on the part of Mr. O'Brien and his companies.

3.57 It was Mr. Lowry's evidence that, shortly after becoming Chairman of Fine Gael, in 1993, he was appointed as Chairman of the trustees of the party, and continued in that role until his resignation in November, 1996. Mr. Lowry stated that he had no knowledge whatsoever regarding the Telenor payment. As a Fine Gael trustee, he was aware that a fundraising activity was taking place in New York, but had no involvement whatever in its organization, and no contact with Mr. Austin, Mr. O'Brien or Mr. Conroy in relation to any aspect of it. He knew only in a general way that it was being organized, and became aware of specific details only through media revelations earlier in 2001. Accordingly he had no knowledge of any dealings had between Mr. Austin and the Taoiseach, Mr. Bruton, or of the payment in May, 1997, of the donation to Fine Gael by Mr. Austin, through the agency of Mr. Conroy, or indeed any subsequent material dealings between those concerned.

3.58 Mr. Lowry was of the view that Mr. Austin, whilst never a large scale or consistent fundraiser for Fine Gael, was nonetheless a strong supporter, who was prepared to use his extensive corporate business contacts to assist in raising finance. In the course of their friendship, no week would go by, and in the latter years hardly a day, without contact between the two, mainly by telephone.

Regarding Mr. Austin's letter to Mr. Lowry of 4th July, 1995, headed "*Most Private and Confidential*", proposing the New York fundraising function, Mr. Lowry stated that he had no recollection of receiving the letter, which he thought may have gone to his ministerial private secretary. He accepted that the letter had been sent, but became aware of its contents only after being furnished by the Tribunal. When Mr. Austin first informally raised the idea of the function with him, he explained to Mr. Austin that he would be extremely busy and unable to make a decision on the matter, and proposed that Mr. Austin contact Mr. Bruton directly about it. Accordingly, Mr. Lowry felt that the letter to him was a courtesy copy to the Chairman of the trustees, on foot of Mr. Bruton requesting that the idea be expressed in a proposal. Mr. Lowry also stated that, having checked his diary, he was out of the country on ministerial business on both of the dates proposed in the letter for a meeting.

3.59 Thereafter, Mr. Lowry believed that the Taoiseach brought the proposal to the attention of the party trustees, and following discussion at a meeting, the party approved of the function proceeding. Mr. Lowry did not attend the function, and despite the reference to him in the letter, did not recall being asked to attend. Since the Taoiseach had committed himself to attending, this did not particularly surprise Mr. Lowry. Nor did Mr. Lowry recall any question of his being asked to approach any potential guests, with a view to attending the function or contributing.

3.60 Even if he may have seemed a person particularly suited to enhance the fundraising prospects of the function, Mr. Lowry said the reality of events at the time was that he was running the busiest of all Government Departments, with enormously demanding commitments both domestically and in a European Union context, and he simply did not have the time to do anything more as regards the function than encourage it from a distance. Apart from his initial discussion with Mr. Austin, his only later relevant contact with Mr. Austin was to communicate to him the complimentary and appreciative comments made by the Taoiseach and some trustees at a meeting shortly after the actual function. Otherwise he had no discussion or contact with Mr. Austin, in relation to any aspect of the event. Whilst Mr. Lowry had no doubt that the competition for the licence was conducted in a manner that was extremely impartial and fair, with no interference from him, he took the view as a matter of political reality, from the point of view of perception, that it would have been unwise to seek a contribution from the successful competitor, in the immediate aftermath of the result. Accordingly, much as he had valued Mr. Austin as a person and friend, it was wrong and unwise for him to have sought this particular contribution.

CONCLUSIONS

3.61 What was in essence a political donation to Fine Gael, the senior party in Government, agreed to be paid by or within Esat Digifone in the immediate aftermath of its successful outcome in the GSM competition was made in a manner which, having regard to its false and misleading documentation, the initial payment to an off-shore Jersey account, and the eventual delayed and misrepresented form of transmission to Fine Gael, was secretive, utterly lacking in transparency, and designed to conceal the fact of such payment by or on behalf of the donors.

3.62 Given the then prevailing time and circumstances, the making of such a donation by Esat Digifone, or by any of the entities or shareholders within it, was inappropriate and imprudent, either in the manner that transpired or otherwise. Any suggestion that payment by Telenor was legitimate as an expression of interest in Irish affairs, but not by any other entity or shareholder within the Esat Digifone consortium, was specious and untenable.

3.63 No person or entity connected with the payment saw fit to notify the Tribunal of it, notwithstanding a substantial degree of knowledge of its clandestine circumstances and proffered return, and it is likely that, without the media disclosures that occurred in 2001, the matter would have remained hidden from public knowledge. The entitlement of such persons to seek and act on legal advice is not in question, but it is nonetheless viewed by the Tribunal as regrettable that no such disclosure whatsoever to a public Tribunal of Inquiry transpired. Whilst allowance is made for the factors mentioned at 3.31, this observation nonetheless is seen as applying to Fine Gael, whose role both in Government and Opposition had been instrumental in the establishment of this Tribunal, in favour of which establishment its Oireachtas members had unanimously voted.

3.64 Of matters which received consideration within Esat Digifone and its constituent entities or shareholders, it appears to the Tribunal that firstly, the nature and purport of the payment ought primarily to have been assessed as of the time of its transmission to Mr. David Austin, rather than when he belatedly caused it to be received by Fine Gael, and secondly, in examining the circumstances of the payment, recourse should in the first instance have been had to Fine Gael as supposed recipients, rather than to Mr. Austin.

3.65 With regard to certain matters arising in the evidence heard, the Tribunal is of the view that: firstly, Mr. Denis O'Brien sought to have payment made initially by Telenor, not in its own right, but on behalf of the entire Esat

Digifone consortium, whether by reason of undercapitalization, confidentiality, or both; secondly, Mr. O'Brien had notice and awareness of the substantive matters involved in the making of the payment, including related documentation; and thirdly, the suggestion that the reimbursement of the amount of the donation by Esat Digifone to Telenor was *"forced"* upon it is improbable, and unsupported by the weight of the evidence.

3.66 Although Mr. Austin had envisaged that Mr. Lowry would occupy a leading role in the New York fundraising project, Mr. Lowry's own evidence was to the effect that pressure of other business precluded this, and that he had no involvement in, or knowledge of, the $50,000.00 payment at the relevant time. This was borne out by the evidence of the General Secretary of Fine Gael, Mr. Jim Miley, in relation to conversations had by him with Mr. Austin. It is nonetheless the position that, at the time when the actual payment was transmitted to Mr. David Austin and for a considerable time thereafter, Mr. Lowry was Chairman of the Fine Gael party trustees, and a signatory on the Fine Gael accounts.

3.67 Whilst it was acknowledged by Mr. John Bruton that in his conversation when Taoiseach with Mr. Austin on or around 24th February, 1996, his use of the phrase *"leave it where it is"* was less than entirely clear or unambiguous, the Tribunal is satisfied that he sought to convey to Mr. Austin that acceptance of the donation was then entirely inappropriate. This is confirmed by his subsequent direction that the donation should immediately be returned to the donors on learning that, contrary to his wishes, the donation had in fact been received by Fine Gael.

3.68 As in other instances involving Mr. David Austin, the absence of disclosure of the payment, or its circumstances, materially impeded the capacity of the Tribunal to investigate the payment, in particular by precluding it from hearing Mr. Austin's own account of events prior to his death in November, 1998.

3.69 Whilst not the instigators of the making of the payment, Telenor elected to acquiesce in its making, when clearly aware of its false documentation and disguised nature, and in so doing acted inappropriately.

3.70 The Tribunal's inquiry into this payment was primarily material to an understanding of its wider inquiries into other financial transactions to which the same individuals were party, and in particular, Mr. O'Brien, Mr. Austin and Mr. Phelan, and with which Mr. Lowry had a direct involvement. The payment, which was intended as a donation to Fine Gael, was not one that was made, either directly or indirectly, to Mr. Lowry within the meaning of paragraph (e) of the

Tribunal's Terms of Reference. Mr. Lowry was, at the relevant time, Chairman of the trustees of the party, in whom the property and assets of the party were vested. When the payment was made by Telenor, on behalf of Esat Digifone, to Mr. Austin in December, 1995, it was received by Mr. Austin, and held by him on behalf of the trustees, including Mr. Lowry. It follows therefore that, once Mr. Austin lodged the proceeds of that payment into his off-shore account with Bank of Ireland, Jersey, that bank account became impressed with a trust in favour of the trustees, including Mr. Lowry, and it became an account for the benefit of Mr. Lowry, in common with all accounts then held by Fine Gael, within the meaning of paragraph (f) of the Tribunal's Terms of Reference, and the Tribunal was obliged to inquire under that paragraph into the source of money held in that account. It is however appropriate to state that there was no evidence that Mr. Lowry in his personal capacity benefited from this donation to Fine Gael.

3.71 The source of the lodgement on 29th December, 1995 to account no. 66064/2 with Bank of Ireland, Jersey, held in the name of Mr. Austin, and received by him on behalf of and for the benefit of Fine Gael, of which Mr. Lowry was then a trustee, and ultimately credited to an account in the name of Fine Gael, was the sterling proceeds of a transfer of $50,000.00 from an account in Den Norske Bank, in the name of Telenor, which payment was made by Telenor on behalf of Esat Digifone, and was a donation to Fine Gael made by Telenor on behalf of Esat Digifone, at the instigation of, and was promoted by, Mr. O'Brien.

Conversations Between Mr. Denis O'Brien And Mr. Barry Maloney And Their Aftermath

Introduction

4.01 On an occasion in the latter months of 1996, subsequent to the award of the GSM licence to Esat Digifone on 16th May of that year, a conversation took place between Mr. Denis O'Brien and Mr. Barry Maloney, respectively Chairman and Chief Executive Officer of the successful consortium. Although certain aspects of that conversation are disputed, including its date and venue, it is not in issue that Mr. O'Brien, in the course of urging Mr. Maloney to expedite the making of certain success payments relative to the licence award, made a reference to having had to make two payments of £100,000.00 each, one of which was either stated, or understood to have been to Mr. Michael Lowry.

4.02 The potentially far-reaching implications of the conversation remained in abeyance for many months, and were again discussed by the two men, long-time friends and business associates, only in the course of a series of meetings in the period preparatory to the Initial Public Offering (IPO) of Esat Telecom in 1997. Again, differences emerged in the accounts of what transpired, but following legal advice, Mr. Maloney felt obliged to, and did make disclosure of what had arisen to the other directors and shareholders in Esat Digifone.

4.03 The understandable alarm felt by those directors and shareholders was soon compounded by awareness of the further critical issue of the Esat/Telenor payment to Fine Gael. Both matters had to be considered against a backdrop of the imminent flotation, approval of any appropriate reference to possible risk in the prospectus to be issued, and the establishment and announcement of Terms of Reference of this Tribunal, so it was natural that an intense period of discussions and meetings of varying degrees of formality followed. Very extensive notes and memoranda of the content of these meetings were made available on request to the Tribunal by the persons involved, and their legal advisers. Whilst claims of legal professional privilege were initially asserted on behalf of some of those involved, regarding portions of this material, these for the most part were subsequently waived or abandoned. Public sittings then proceeded in considerable detail, with the testimony of those persons involved, and production of the various notes and memoranda. To set forth all of these, even in a truncated form, would extend this chapter to inordinate lengths. Also, in investigating the substantive underlying possibility that an improper payment was made by Mr. O'Brien to Mr. Lowry, it must be borne in mind that certain of the evidence received entailed elements of hearsay, and whilst Tribunals are entitled to exercise greater latitude than Courts of Law in addressing such evidence, fair

procedures require that factual conclusions and findings be based upon evidence that in the aggregate has been adequately tested, and is of sufficient quality and reliability.

4.04 Whilst mindful of this, the content of the relevant conversations between Mr. O'Brien and Mr. Maloney, and of the subsequent meetings and discussions held between the various shareholders and directors, with the benefit of legal advice, together with the courses of conduct decided upon, and taken in relation to the two issues, are relevant and important matters for consideration, not merely in isolation, but in conjunction with other evidence, and in the context of assessing credibility of crucial witnesses.

4.05 As to the numerous notes and memoranda, for certain of the latter and larger meetings, detailed contemporaneous notes were prepared by solicitors in attendance, and these are viewed as likely to have more accurately and fully set forth what transpired, than the more fragmented and personal content of many of the individual directors' notes.

4.06 Accordingly there will now be set out an abridged account of:

(i) the respective conversations and dealings had between Mr. O'Brien and Mr. Maloney relating to a payment by the former to Mr. Lowry, as recounted in evidence by each of them, and;

(ii) the principal meetings held in consequence, together with actions and decisions taken on foot of them;

(iii) reference will be made to some relevant fresh matters that were raised in the course of the related public hearings of the Tribunal.

WHAT WAS SAID AND WHERE

Mr. Barry Maloney's account of what transpired

Old friends

4.07 It was not until May, 2001, that the Tribunal learned of the exchanges between Mr. Maloney and Mr. O'Brien which gave rise to the issues confronted by Esat Telecom and Esat Digifone in October and November, 1997, in advance of the Esat Telecom IPO. This followed from inquiries made by the Tribunal of both companies, which had in the previous year been acquired by British Telecom, in relation to the Esat/Telenor donation of $50,000.00 to Fine Gael. It was in the

context of the Tribunal's examination of the actions which had been taken by Esat Digifone and Esat Telecom, in advance of the IPO, to ascertain the circumstances surrounding that donation, that Mr. Maloney, having been specifically asked about those actions, informed the Tribunal of the other significant aspect of the inquiries put in train at that time. As it was Mr. Maloney who first brought the matters giving rise to this chapter to the attention of the Tribunal, his account of events will be outlined first, although as matters transpired, Mr. O'Brien, who addressed these matters in conjunction with the Esat/Telenor payment to Fine Gael, was the earlier to testify.

4.08 By way of background, Mr. Maloney recalled that he and Mr. O'Brien had been close and long-standing friends since student days. Even when Mr. Maloney's employment took him overseas, they stayed in contact, and Mr. Maloney had invested in various of Mr. O'Brien's business enterprises, including Esat Telecom. The idea of Mr. Maloney returning from his employment with Rank Xerox in the USA to take up the position of Chief Executive Officer with Esat Digifone in the wake of its recent licence success was first raised with him by Mr. O'Brien, and then supported by Mr. Arve Johansen of Telenor. In the event, Mr. Maloney initially took up the role of Chief Executive Officer jointly with Mr. Knut Digerud from 30th July, 1996, latterly acting solely in that behalf from 1st July, 1997, and set about the many marketing, personnel and other functions entailed in building up the company following the formal award of the licence. Mr. O'Brien was non-executive Chairman of Esat Digifone, and also of Esat Telecom, and regular meetings were held between Mr. Maloney and himself to review progress in building up the company. At this point, Mr. Maloney's recollection was that relations between the two men remained cordial, although differences had arisen between Mr. O'Brien and Mr. Digerud.

I've had to make two payments of £100,000.00 each

4.09 One such meeting was, in Mr. Maloney's recollection, on a date he could not precisely identify in October or November, 1996, in Mr. O'Brien's office in The Malt House, in Dublin. In the course of it, Mr. O'Brien raised the issue of success payments that were due to certain consultants who had worked on the bid for the licence. Mr. Maloney responded that, when such expenditure was appropriately vouched, he would make and already had on occasion made payment, but he could not make such proposed payments as remained until full supporting paperwork was to hand. Mr. O'Brien expressed frustration, stating that he was meeting the individuals concerned from time to time socially, and was embarrassed that they remained unpaid. It was Mr. Maloney's recollection that the individuals concerned were, or included Mr. PJ Mara and Mr. Stephen Cloonan, and that in the former's case, which Mr. O'Brien may already have referred to, no documentation had been received, whilst in regard to the latter,

subsequent work and negotiation proved necessary to agree a financial settlement in lieu of initial share option entitlements. As the conversation continued, with Mr. Maloney becoming somewhat exasperated, he recalled Mr. O'Brien then saying:

> *"Well, you think you've got problems. I've had to make two payments of £100,000 each, one of which was to Michael Lowry"*,

or words similar. Knowing that Mr. Michael Lowry was the Government Minister associated with the formal award of the licence approximately six months previously, Mr. Maloney was surprised and taken aback by this, viewing what he had heard as improper and possibly corrupt, and responded that he *"didn't want to know"*, and that, as far as he was concerned, it had nothing to do with Esat Digifone, meaning that he did not wish to become involved, or learn more of something that was Mr. O'Brien's affair. According to Mr. Maloney, no more was said, and the meeting ended.

It didn't go through

4.10 Months passed, during which Mr. Maloney discharged such success payments as remained, once vouching documentation came to hand. Feeling the matter of the payment raised in their conversation was not related to Esat Digifone, Mr. Maloney said that he put this issue out of his mind and did not raise it, although he acknowledged that he did not wish to be digging too deep. According to Mr. Maloney, it was in fact Mr. O'Brien who reverted to the content of the earlier conversation on a number of occasions, and this, together with publication of the Terms of Reference of this Tribunal, and preparation of a reference to related risk to the licence in the prospectus for the Esat Telecom flotation, brought the matter into sharper focus for Mr. Maloney.

4.11 The first such reference was, in Mr. Maloney's recollection, at the end of one of his regular liaison meetings with Mr. O'Brien, on a Monday in August, 1997, shortly prior to Mr. O'Brien's marriage. As Mr. O'Brien was picking up his papers at the conclusion of the meeting, he used words to the effect that:

> *"Do you remember I told you about the payment to Lowry. Well, I just want to let you know I didn't do it. Thank God I didn't do it."*

Again the meeting ended without any response on the part of Mr. Maloney.

4.12 The next relevant conversation was at another such liaison meeting between the two, in one of their offices. Whilst he could not be positive, Mr. Maloney felt that this was on a further Monday meeting in August, probably a

week following the earlier one, and again prior to Mr. O'Brien's departure for his wedding and honeymoon. On this occasion, again at the conclusion of the meeting, Mr. O'Brien broached the subject, using words to the effect of:

> *"I know you must be worried, and I just want to assure you it didn't happen. I did not make the payment. It didn't go through."*

Once more, Mr. Maloney made no response, and the meeting concluded, but the concerns he felt after these two further meetings, over the possibility of improper payments in the context of the impending IPO, and establishment of this Tribunal, grew over ensuing weeks, augmented by certain shareholder differences, some technical and operational issues, and a generally deteriorating relationship between both men.

It got stuck with an intermediary

4.13 They met again on the afternoon of 8th October, 1997, in The Malt House. Mr. Maloney recalled that he then outlined his concerns in the context of his position, and pressed upon Mr. O'Brien that he should not at that point in time proceed with the IPO. Mr. O'Brien responded that, although he had no particular wish to do so then, he was being pressed to proceed by US financial institutions, and sought to reassure his colleague that there was no cause for concern or deferral of the IPO, since he had made no payment to Mr. Lowry. Mr. Maloney's concerns continued, and as they left the office and went down the stairs, Mr. O'Brien said:

> *"Like, you are not buying it, are you? You don't believe me?"*

or words similar. Mr. Maloney referred to the series of conversations they had had as causing him much worry. Mr. O'Brien responded:

> *"Well, what I didn't tell you was that I was going to make the payment, but it got stuck with an intermediary. I thought about it but I didn't do it."*

He also said:

> *"It didn't go through. Had it gone through, I couldn't be doing the IPO."*

4.14 Although notes provided by Mr. Maloney in relation to this meeting referred to Mr. O'Brien informing Mr. Maloney that money went to a middle-man, but not to Mr. Lowry or his account, Mr. Maloney in evidence was disposed to accept that Mr. O'Brien did not use the word middle-man, and that this was

merely an inaccurate transposition on his part; however, he stated that he had a very clear recollection of the term *"intermediary"* being used.

4.15 It was shortly prior to that meeting of 8th October, 1997, that Mr. Maloney had first confided in any third party regarding the matters Mr. O'Brien had raised, by recounting them to Mr. Fergus Armstrong, of Messrs. McCann Fitzgerald, solicitors to Esat Digifone, in order to seek legal advice on behalf of Esat Digifone. Whilst claims of legal professional privilege were asserted in relation to certain communications and advices in this regard, it nonetheless became obvious that Mr. Armstrong viewed what had arisen as critical and alarming: if any improper payment had in fact been made, it could imperil the flotation and compromise Mr. Maloney's own position, and accordingly the flotation should be deferred, and the board of Esat Digifone made aware of what had arisen. Mr. Maloney recalled Mr. O'Brien saying in the course of the 8th October meeting that, if Mr. Maloney wished to bring the matter to the board, he Mr. O'Brien was agreeable, whilst still expressing sensitivity about Telenor representatives becoming aware of it.

4.16 In this context, it was inevitable that other board members and advisers would become involved in the days following. A summary of what transpired at the main ensuing meetings and enquiries will follow, but it is first necessary to conclude Mr. Maloney's account of dealings had specifically with Mr. O'Brien in relation to the matter under investigation, and then set forth Mr. O'Brien's partly diverging account of what passed between them on these occasions.

Monkey off my back

4.17 Following further advice from Mr. Armstrong, Mr. Maloney again met with Mr. O'Brien on the morning of 13th October, 1997. In evidence, he stated that he had noted in advance the matters he felt would have to be raised, in particular the hazards entailed in proceeding with the Esat Telecom IPO if impropriety could be shown, and no intimation of risk having been conveyed to prospective investors, beyond the limited prospectus reference to risk factors already referred to in an earlier chapter; in this context he noted that it would be necessary for him to appeal to Mr. O'Brien to:

> *"delay the IPO until after the Tribunal"*,

and

> *"if he refuses, I want the monkey off my back and the Board to be part of the risk"*,

to which end he would seek a board meeting, or share his concern with another director.

4.18 At this 13th October meeting, Mr. Maloney conveyed these concerns to Mr. O'Brien, but felt he was not getting very far, so he gave him a copy of Mr. Armstrong's preliminary advices, in order to emphasise the potential pitfalls ahead. He recalled that Mr. O'Brien then asked him to come across the road for a coffee to Paddy Kavanagh's, a nearby public house, and whilst there enquired as to who also knew of these conversations, to which Mr. Maloney responded that no one other than Mr. Armstrong as Esat Digifone's solicitor did. They parted, but later in the morning Mr. Maloney recalled receiving a telephone call from Mr. O'Brien, asking that he meet with Mr. O'Brien and Dr. Michael Walsh, an Esat Digifone Director who, along with Mr. Dermot Desmond, had been nominated to represent IIU on the board. This duly took place, and will be reverted to as the first meeting involving non-legal Esat Digifone representatives beyond Mr. O'Brien and Mr. Maloney, in due course.

4.19 However, the last relevant meeting between Mr. Maloney and Mr. O'Brien without others from Esat Digifone present was on the night of the same day, at approximately 11:00pm, when Mr. Maloney said he went to Mr. O'Brien's house in a last gasp attempt to change his mind, and induce him to defer the IPO, in circumstances that Mr. Maloney was finding increasingly stressful. Calling at that time of night was not a course he took lightly, and he recalled that Mr. O'Brien was in fact out on his arrival, whereupon he sat in the kitchen with Mr. O'Brien's wife and a female relative, over a few glasses of wine, until Mr. O'Brien's return. They then went to another room, and discussed what was now undoubtedly a crisis further. Once more Mr. Maloney pressed for a deferral of the IPO, and alluded to the need for a board meeting, whereupon Mr. Maloney recalled Mr. O'Brien stating that he did not want Telenor to be informed of what had arisen, fearing they would leak it to the media. Mr. Maloney responded that he could not keep the information from Telenor, and Mr. O'Brien, who had become agitated, responded that Mr. Maloney had not handled the situation well, and was making life difficult for Mr. O'Brien. Mr. Maloney also recalled making mention of the need to involve US lawyers in relation to the position there, which would need board approval, but Mr. O'Brien made it clear that he did not wish this.

4.20 As will be seen when dealing with subsequent meetings of Esat Digifone personnel when the process of inquiry into the issue had been set in train, Mr. O'Brien was in the course of these to contend that his initial remarks to Mr. Maloney were made in the context of a joke or bravado element; when this was put to Mr. Maloney in the course of his examination at the Tribunal's sittings,

he said that, from his knowledge of Mr. O'Brien over several years, he regarded what was said by him as having been stated in a manner that was entirely serious, and that this also applied to their subsequent conversations.

Mr. Denis O'Brien's account of what transpired

I have paid £200,000.00

4.21 Now to Mr. O'Brien's account, as given in evidence, regarding his conversations and dealings with Mr. Maloney about the matter examined in this chapter. He recalled, in this instance similarly to Mr. Maloney, that the initial conversation had taken place in the context of his having expressed concerns to Mr. Maloney about what he felt was slowness on the latter's part in paying success fees to certain consultants and advisers who had been involved in the successful licence bid. He believed, referring to a diary entry, that the conversation took place on the afternoon of Sunday, 17th November, 1996, and differed particularly from Mr. Maloney in recalling that it arose in the course of a run with him, lasting one and a half hours. Mr. O'Brien felt he had already supplied Mr. Maloney with any necessary vouching documentation to enable him to make the payments, believed the situation of the individuals, which he had raised on previous occasions, had become serious, and he felt he needed to tackle Mr. Maloney on it. He said to Mr. Maloney:

> *"If you think you have got problems paying these people, I have paid £200,000"*

or words similar. This he said was a strategy he adopted, knowing the psychology of his colleague, to induce him to make the delayed payments, by conveying that he himself was suffering pain; it was however, he said, a false statement, as he had made no such payment or payments. He made no mention of Mr. Lowry in the course of this conversation. Nor did Mr. O'Brien recall Mr. Maloney remarking that he did not want to know. Whilst Mr. O'Brien did not then go on to say the remark was unfounded, he thought Mr. Maloney would have known from his tone of voice that it was not to be taken at face value.

4.22 Mr. O'Brien recalled that the outstanding payments to consultants and advisers over which he had been concerned, were made a relatively short time after the conversation by Esat Digifone, although at the time Mr. O'Brien had thought he himself would have to pay them. He next recalled a further conversation with Mr. Maloney in the summer of the year following, in July or August, 1997, at one of the weekly meetings the two of them used to have. He said that Mr. Maloney raised the issue of "*the Tribunal*", the McCracken Tribunal having reported in August of that year, and asked whether any money had been

paid to Mr. Lowry, not referring to the run the previous year. Mr. O'Brien replied categorically in the negative. Knowing that his remark at the earlier conversation was spoken in jest, Mr. O'Brien said he would have had no reason to raise it with Mr. Maloney.

4.23 Mr. O'Brien believed that the matter was again raised by Mr. Maloney during what he felt was a further Monday morning meeting between them, on 8th October, 1997. Although this was a Wednesday, nothing turns on that fact. On this occasion, Mr. Maloney asked was there any problem about a payment to Mr. Lowry, and Mr. O'Brien assured him that that was absolutely not the case.

Issue being raised to cause trouble

4.24 As to 13th October, 1997, Mr. O'Brien agreed with Mr. Maloney that there had been two meetings between them, the latter having also been attended by Dr. Michael Walsh. Following the former, which took place at 9:00am, with the issue again being raised and Mr. O'Brien questioning why the matter was now being raised by Mr. Maloney, Mr. O'Brien said he was left with an uneasy feeling about the "*agenda*" being pursued by Mr. Maloney, so he telephoned Dr. Walsh and set up the further lunch-time meeting.

4.25 Regarding the night-time meeting of 14th October, 1997, at Mr. O'Brien's house, which was the last relevant encounter between the two of them solely, Mr. O'Brien differed from Mr. Maloney as to its initial circumstances, recalling that it was shortly after he returned home after dinner with his wife, at about 11:00pm, that Mr. Maloney knocked on his door, and said he wanted to talk to him, whereupon they went to the living room. Mr. O'Brien said he gave Mr. Maloney "*fairly short shrift*", being annoyed at the late hour of the visit, and recalled Mr. Maloney again urging that the IPO be deferred; he may also have requested that there should be a greater degree of disclosure relevant to the issue in the provisional form of prospectus then being used, colloquially known as the "*red herring*" prospectus. It was only at an appreciably later stage than this that he recalled reference being made to the Terms of Reference of this Tribunal.

4.26 By this stage Mr. O'Brien was of the view, and this was the context of his unease expressed over Mr. Maloney's agenda, that the issue was being raised to cause trouble, and stop the IPO taking place, rather than *bona fide* in the course of Mr. Maloney's duties as Chief Executive Officer of Esat Digifone; he recalled that, within two months of the initial conversation between them, and subsequently in or around July of 1997, Esat Telecom had launched public bond issues to raise finance, on each of which occasions a prospectus was prepared and registered with the Securities and Exchange Commission in the USA, and yet

on neither occasion had Mr. Maloney raised the issue, or expressed concern in any way, still less in the immediate aftermath of the first conversation.

MAIN SUBSEQUENT MEETINGS HELD AND ACTIONS TAKEN IN CONSEQUENCE.

4.27 Commencing with Dr. Michael Walsh's lunch-time attendance to meet Mr. O'Brien and Mr. Maloney on 13th October, 1997, an increasingly intense process of consultation and enquiries between those primarily involved in Esat Digifone and their legal advisers, and subsequently between the same personnel in Esat Telecom, into the crisis that had arisen was set in train and continued for three and a half weeks. In appraising what took place, of particular interest are:

(i) the cumulative degree of detail as to the full meaning and intent of Mr. O'Brien's initial remark to Mr. Maloney, chiefly as evinced by Mr. O'Brien in response to many queries addressed to him;

(ii) the range of factors or concerns adverted to or noted by those pursuing the enquiries, and;

(iii) what actually was done or undertaken in seeking to resolve the problem.

4.28 Dr. Walsh was in no doubt from the outset of the gravity of the matter which had arisen, and initially sought a form of letter to be agreed between Mr. O'Brien and Mr. Maloney confirming that, as stated by Mr. O'Brien at the lunch-time meeting, no payment had in fact been made to Mr. Lowry. Such a letter was prepared later that day by Mr. O'Brien. Dr. Walsh telephoned his fellow IIU representative on the Esat Digifone board, Mr. Dermot Desmond, to inform him of events, although he expressed confidence that the quality of civil servants involved in the licence competition would have left no room for impropriety. Mr. Desmond was similarly concerned, but annoyed that Mr. Maloney had taken so long to raise the matter.

Evil thoughts never brought to fruition

4.29 On the following day, 14th October, 1997, Mr. Maloney came to see Dr. Walsh, after discussing the legal position with Mr. Armstrong. Mr. Maloney told Dr. Walsh he was concerned because he believed an intermediary was involved, and that money intended for Mr. Lowry had got "*stuck*" for some unexplained reason. Whether or not this was raised by Mr. Maloney on the previous day, which from Dr. Walsh's notes the latter thought improbable, it was certainly referred to on 14th October, 1997. Dr. Walsh had sent Mr. Maloney a written memorandum

before that second meeting, indicating that, in all the circumstances, and particularly since it seemed no actual payment had been made, he did not feel that Esat Digifone had cause for concern. However, he noted that Mr. O'Brien *"admits to having had evil thoughts"*, but had confirmed that those thoughts were *"never brought to fruition"*, and stated that he did not *"like what had happened, and what was contemplated was totally unacceptable behaviour"*. He was also insistent that Esat Digifone and its directors should not be liable in any fashion for the content of Esat Telecom's prospectus.

4.30 In the course of this second meeting, Mr. Maloney also mentioned that the intermediary was aware of Mr. O'Brien's intention to give money to Mr. Lowry. Since, on the previous day Mr. Maloney had seemed content that nothing adverse had actually happened, this enhanced rather than alleviated Dr. Walsh's worries. Although Dr. Walsh shared Mr. Desmond's view that Mr. Maloney should have reported the matter earlier, he nevertheless was disposed to believe Mr. Maloney regarding the matter raised, having found him a very good chief executive officer, and enjoyed a satisfactory relationship with him.

4.31 Over the days following, matters were discussed with urgency between the shareholders in Esat Digifone and their legal advisers. Mr. Desmond and Dr. Walsh were concerned at the degree of gravity with which the company solicitors appeared to be viewing the position, when it seemed even from Mr. Maloney's account that no actual payment by Mr. O'Brien to Mr. Lowry had been made, or at least completed; they acknowledged that, if it was certain that Mr. O'Brien had made a payment to Mr. Lowry, that should be disclosed to this Tribunal. In the circumstances, Mr. Desmond requested that Dr. Walsh arrange a meeting of those primarily involved and of the shareholders in Esat Digifone, which was duly fixed for 20th October, 1997, at the IIU offices. Since Mr. O'Brien was travelling extensively to promote the Esat Telecom IPO, he participated by way of conference call, as also did Mr. Johansen and Mr. Rolf Busch, Telenor's senior legal adviser. This meeting, which was chaired by Mr. Desmond, was also attended by Mr. Maloney, Dr. Walsh, Mr. Leslie Buckley and Mr. John Callaghan, Directors of Esat Telecom and Esat Digifone, and it was characterised as a meeting of representatives of Esat Digifone shareholders, with Mr. Maloney present as an invited guest.

A wind-up: apology to Mr. Barry Maloney

4.32 At the meeting, Mr. O'Brien was called on to explain the circumstances of the original conversation with Mr. Maloney. He responded that no payment had actually been made, and stated his remarks were in the nature of *"a wind-up"*, because he was getting a lot of grief from Mr. Maloney about paying expenses

which arose as part of the bid process. He apologised for the difficult position he had put Mr. Maloney in, and said that what he had stated was whilst out on a run, and was just a bit of bravado on his part. Mr. O'Brien was on subsequent occasions also to refer to elements of a joke or bravado being behind what he had said, and it seems that this was the first occasion on which such an element was attributed to what had hitherto been characterised as a conversation of serious intent. Following a detailed discussion, Mr. Desmond informed Mr. O'Brien that, whilst he accepted his assurance that nothing untoward had occurred, he was very upset by what had arisen, and if it transpired that he was being misled he would sue Mr. O'Brien, or indeed anyone else who had done anything which could undermine Esat Digifone, for damage caused. To this end, he sought assurances from each of the shareholders that nothing had been done which could impact adversely upon the licence. He also expressed annoyance with Mr. Maloney for having delayed in raising the issue. It was in conclusion resolved that all reasonable steps should be taken to ensure nothing untoward had happened and, assuming this to be so, to ensure maximum protection for Esat Digifone in the context of the Esat Telecom IPO against any possible liability to intending investors. To this end, it was agreed that:

(i) Mr. O'Brien would furnish a letter as previously discussed confirming no impropriety;

(ii) Mr. Maloney and Mr. Callaghan would engage with the Esat Telecom accountants, and ensure relevant books were checked to confirm that there was no improper payment disclosed, and;

(iii) Mr. Maloney and Dr. Walsh would deal with Esat Digifone's solicitors to ensure the fullest legal protection for it.

Inquiries conducted

4.33 Some discussion with the solicitors accordingly followed on 21st October, 1997, and Dr. Walsh noted a telephone call to him at the request of Mr. O'Brien from Mr. Owen O'Connell, a partner in the firm of Messrs. William Fry, solicitors to Esat Telecom, agreeing that Mr. Armstrong's advices should be circulated to the board, and that, if Mr. Maloney felt it necessary to brief the board further regarding his concerns, that opportunity should be provided, since Mr. O'Connell felt it was likely Mr. Maloney would be called as a witness by this Tribunal. In evidence, Mr. O'Connell had no specific recollection of this conversation, feeling that his first substantive involvement with matters dated from the following day, but not an inordinate amount turns on this.

4.34 On 22nd October, 1997, Mr. O'Brien and Mr. Aidan Phelan, his financial adviser and also a consultant retained in regard to the IPO, whose role relating to the Esat/Telenor payment to Fine Gael has been noted in the previous chapter, met with Mr. O'Connell at the offices of William Fry, and discussed the matters raised by Mr. Maloney. In a lengthy telephone call to Dr. Walsh on the same day, Mr. Maloney reiterated his belief that a third party was involved, even though no transaction had gone through, and he felt Esat Digifone could be in trouble because of Mr. O'Brien's intention. A board meeting was fixed for the following day, and it is fair to say that all the shareholders and directors of Esat Digifone involved by this stage approached matters with a considerable degree of concern and apprehension.

4.35 At 9:00pm on 23rd October, 1997, which was the time most suitable in the context of travelling commitments, a meeting was held at the offices of IIU. Following further legal discussions, it was in the ultimate not designated as a formal board meeting, and was attended by Mr. Armstrong as Esat Digifone's legal adviser, along with Mr. Johansen, Mr. Busch, Mr. Knut Digerud and Mr. John Fortune on behalf of Telenor, Mr. O'Brien, Mr. Buckley and Mr. Callaghan on behalf of Esat Telecom, by Mr. Desmond and Dr. Walsh on behalf of IIU, the former by conference call, and by Mr. Maloney. Dr. Walsh indicated that the primary business was whether or not, in the context of the matters that had arisen (as noted earlier, the issue of the Esat/Telenor payment of $50,000.00 had by now become an additional concern for the directors), Esat Digifone should support the Esat Telecom IPO which was under way. Discussion ensued, initially on whether what had transpired between Mr. O'Brien and Mr. Maloney was referable to Esat Digifone, as opposed to Esat Telecom. Mr. Busch noted that it seemed the inevitable conclusion of Mr. Armstrong's advices that the IPO should be postponed. Dr. Walsh however stated that such a course could only be taken on reasonable grounds, and Mr. Desmond stressed the damage to all Esat companies that a deferral would occasion, stating that he would be happy to accept an appropriate letter of denial from Mr. O'Brien as company Chairman, backed by documentation from the company auditors, and adding:

> *"there is a lust to overthrow success."*

Thereupon Mr. Armstrong acknowledged that it was open to the directors to accept and act on written assurances from Mr. O'Brien, and certification from auditors, that nothing untoward had occurred. Both Mr. Maloney and Mr. O'Brien reiterated much of what they had already expressed, with the former stating that, whilst he accepted Mr. O'Brien's word, he still felt uneasy, and believed that Esat Digifone was at risk, insofar as a third party had knowledge of what had been intended. Mr. O'Brien again assured all present that no actual payment had been made and said that he could not recall all details of the conversation, but it was

in a context of payment of success fees, following which the matter was not again raised by Mr. Maloney until some five or six weeks previously.

4.36 Whilst much further discussion is recorded in the various memoranda of the meeting made available, what was probably the most important fresh matter to emerge was in regard to the nature or identity of the intermediary that had been referred to by Mr. O'Brien. At one point Mr. Callaghan queried whether any third party had been named, given Mr. O'Brien's reference to payment having *"got stuck"*. It appears that Mr. O'Brien then gave for the first time the explanation that the intermediary was Woodchester Bank, which was the financial institution at that time primarily involved in his dealings. Mr. Maloney stated that his main concern was that there was a middle-man or intermediary other than just a bank involved, and said that, if called to this Tribunal, his evidence would be the same as what he had stated that evening. Discussion then turned to the less critical issue of the Esat/Telenor payment of $50,000.00. The meeting concluded on the basis that the discussion would be resumed a week thereafter, and that, in addition to implementing the courses already set in train, legal advice would be obtained from the USA, and a written communication would be made to the underwriters retained for the IPO, clarifying the limits of Esat Digifone's responsibilities.

4.37 On 30th October, 1997, Mr. Callaghan, Mr. Buckley and Mr. Aidan Phelan called to the offices of William Fry to see Mr. O'Connell. The context of the meeting was that Mr. Callaghan and Mr. Buckley, as common directors of both Esat Telecom and Esat Digifone, were formally notifying the solicitors to Esat Telecom of all that had transpired, and copies of the advices given to Esat Digifone by Messrs. McCann Fitzgerald were given to Mr. O'Connell, along with copies of statements by both Mr. O'Brien and Mr. Maloney. Mr. O'Connell felt that the basis of Mr. Aidan Phelan's presence was by virtue of him being a consultant to the IPO, and involved with the promotional roadshow.

4.38 From Mr. O'Connell's notes of this meeting, it appears reference was made to an Esat Digifone board meeting earlier that day, in which Mr. Knut Digerud, as one of the Telenor representatives, had expressed particular anger at what had arisen, and was insistent on *"pulling"* the IPO. It had also been decided, seemingly on foot of advices taken in the USA by McCann Fitzgerald, that a meeting in the form of a structured inquisition should be held the following week, in which Mr. O'Brien in particular would be questioned on both critical matters by a McCann Fitzgerald representative other than Mr. Armstrong, with a view to better enabling the Esat Digifone board to form a view on the appropriate course to be taken. Other portions of Mr. O'Connell's notes indicate that there was discussion of many of the matters that had by then emerged including:

"intermediary – Woodchester?",

"other £100k?",

"payment stuck"

"had thought about making payment but chose not to do it"

in addition to the matter of the Esat/Telenor payment. It also appeared that the earlier board meeting had deputed Mr. Callaghan and Mr. Buckley to approach Mr. O'Connell. There was also reference to the ongoing investigations, the imminent issue of the prospectus the following Tuesday week, and it seems that Mr. O'Connell was asked to consider the whole matter and consult with Mr. O'Brien.

4.39 Further to his instructions, Mr. O'Connell set about making contact with Mr. O'Brien, who was on the west coast of the USA, and arranged that they should effectively meet half way, in Boston, on 1st November, 1997. He also made contact with Ms. Ann Foley, Mr. O'Brien's bookkeeper, with a view to assembling relevant information from Woodchester Bank, pursued some matters relevant to the Esat/Telenor $50,000.00 payment with the solicitors to Telenor, and discussed the overall position with Dr. Walsh. From his notes of his conversation with Dr. Walsh, it seems he was told that there was no denial of the existence of an intermediary, and there was a suggestion it was Woodchester, which:

"jarred a bit, but people prepared to accept it."

4.40 On 1st November, 1997, Mr. O'Connell traveled to Boston to meet Mr. O'Brien as arranged, and during his flight prepared notes on a wide range of matters, primarily the issues that would be raised and the questions that would be asked at the forthcoming inquisition. As with a variety of other notes and memoranda prepared by him, Mr. O'Connell made these notes available to the Tribunal, although he stated that when they were made they were never intended for any purpose other than his own use. He indicated that they were largely to provide an agenda or questionnaire for the detailed interview he was going to conduct with Mr. O'Brien on arrival.

4.41 Amongst many other matters alluded to in these notes, Mr. O'Connell addressed such issues as what exactly was said in the initial conversation between Mr. O'Brien and Mr. Maloney, and the venue and date of the occasion; he mused as to whether it was reasonable to accept that such serious matters

were addressed in a jocose or bravado context, addressed some possibilities regarding the supposed second payment of £100,000.00, and considered the phrase "*stuck with intermediary*"; in this regard he wrote that the implication that Woodchester was the intermediary was not consistent, and speculated as to whether there was another intermediary instead of, or as well as, Woodchester; he noted as portion of one of the responses advanced by Mr. O'Brien:

> *"had thought about making a payment, but chose not to do it";*

he observed that if the original statement was acknowledged but not adequately explained, there could be serious effects in regard to *"Tribunal, price, pols, share values";* he alluded to the possible position of Mr. Michael Lowry at the time, and possible contacts had by Mr. O'Brien with him, nothing that many, on any appraisal, then existed in the telecommunications field, and speculated whether anything material was known about funding or involvement in regard to the Carysfort Avenue, Blackrock house purchase by Mr. Lowry; he considered the degree of particularity with which it was going to be necessary for him to check Mr. O'Brien's accounts, listing them, dealing with all withdrawals beyond a certain minimum amount since 1995, or an aggregate of smaller sums to the same payee, and nothing the element of "*offshore payment".* The notes ranged over many matters, and have been of some value to the Tribunal as representing the reflections of a senior lawyer seeking to advise the board of Esat Telecom on the throes of the undoubted crisis that had arisen, as he journeyed to meet its chairman, Mr. O'Brien.

4.42 Having arrived in Boston, Mr. O'Connell met with Mr. O'Brien, and over an approximately six hours' duration questioned him closely on matters likely to be raised at the forthcoming inquisition. He made few notes, stating that he viewed it as his priority to assess and observe Mr. O'Brien as he responded to questions, but did obtain Mr. O'Brien's responses to six questions, which Mr. Armstrong had furnished to Mr. O'Connell, and which obviously were indicative of what was likely to be raised in the course of the inquisition. Mr. O'Connell already had what was described as a "*Draft Statement of Denis O'Brien to McCann Fitzgerald*", which recounted what he recalled of the circumstances of the pivotal conversation in the course of a run, denied that any money was paid by him to Mr. Lowry for the Esat Digifone licence, and expressed regret to Mr. Maloney and the board for the anxiety and trouble occasioned by the matter, whilst concluding that:

> *"a casual and untrue remark made in a social context should not be blown into something which will have consequences out of all proportion to its significance."*

4.43 Although the responses to the six questions accorded with much that was stated by Mr. O'Brien on other occasions around this time or in evidence, certain other matters arose, and since their content represented the most considered response at that time on the part of Mr. O'Brien to the controversy, it is worth setting out their substance.

4.44 Question One concerned whether Mr. O'Brien's explanation of the conversation was in accordance with Mr. Maloney's impression. Mr. O'Brien responded:

> *"My recollection of the conversation is that it was non-serious, i.e. two very old pals bullshitting about business, sport and women out on a run one Sunday morning."*

4.45 Question Two concerned whether it was reasonable that comments of such a serious nature would have been made out of bravado. Mr. O'Brien's response was:

> *"Yes - anyone who knows me knows that I will laugh about anything. (I just do not take myself or life in general too seriously).*
>
> *I have known Barry for 22 years, we have the most extraordinary experiences. Nothing was sacred between us and there was nothing that could not be joked about."*

4.46 Question Three addressed where the conversation took place. Mr. O'Brien replied:

> *"I remember the conversation taking place while running in the Wicklow mountains near Roundwood in October last year. On the day in question I remember badly twisting my ankle. I have checked my diary...We agree to differ on this point."*

4.47 Question Four was as to the significance of the second £100,000.00 payment, to which Mr. O'Brien responded:

> *"There was no first payment nor any second payment. I said I had paid out two amounts of £100,000 each out of bravado, to persuade Barry to get the finger out and the bonuses to PJ Mara, Eddy Kelly and Stephen Cloonan.*

If payments had ever been made, most people would assume one of them would have been to ML, but there is no one else who could be assured reasonably to have got a payment of that scale.

There was nothing in the mind of either of us as to who a second (£100) person might be. As I've said, the whole thing was just bravado."

There then followed some further remarks about the circumstances of the bonus payments, of a similar nature to what was stated by Mr. O'Brien on other occasions.

4.48 Question Five queried the expression *"Payment got stuck with an intermediary"*, to which Mr. O'Brien furnished the following explanation:

"In Oct 96, I had a couple of million pounds in cash from property and share deals (IFSC & sale of shares to US investors) and things were going very well for me.

*Meanwhile, ML was under attack politically and in the media, and someone told me his company was (*an expletive used to signify that the company was in trouble).

I felt and still feel that ML had always been above board and fair with Esat both as regards the licence, and our disputes with TE [Telecom Eireann].

I decided that I would help him out with his company by giving him £100,000. I earmarked £100k of deposits with Woodchester for that purpose.

All of this was on my mind at the time of my conversation with Barry on the mountainside. I pretended that I had already made the payment, and I doubled for effect. However shortly afterwards I realised that the payment, if I made it, would be misunderstood. Thank God I saw sense and did nothing about it. Whether or not I used the phrase 'stuck with an intermediary', I meant that the earmarked amount was left in Woodchester.

For the record, I frequently had discussions with ML concerning Esat Telecom's warfare with TE [Telecom Eireann], *and wouldn't deny that I would discuss the auto-dialler issue. However, no promises or understanding of any kind were ever sought from or given by the Minister in relation to the licence."*

4.49 The Sixth and last question was phrased as concerning "*13th October, Barry Maloney versus 23rd October meeting re intermediary*", to which Mr. O'Brien responded:

> *"I don't remember saying anything at the 13th October meeting which was only for half an hour, which would lead to conclusions that the so called intermediary was anyone other than Woodchester. Anyway, I don't see the importance of this since Woodchester would only have been used to transfer money if I had made the payment. They would have been an intermediary only in the sense of making the payment.*
>
> *I think there might have been a misunderstanding here between me and Barry."*

4.50 Following Mr. O'Connell's return to Dublin, he proceeded to write to the directors of Esat Telecom summarising events to date. On 4th November, 1997, he received from Mr. O'Brien's bookkeeper, Ms. Ann Foley, documentation from Woodchester Bank regarding Mr. O'Brien's bank accounts, and in particular all details of withdrawals from those accounts in excess of £25,000.00. It appears that it was Mr. O'Connell who had selected this sum as the minimum payment requiring examination for purposes of the inquiry being pursued.

4.51 Also on that day, at 2:15pm, the planned inquisition meeting took place at the offices of IIU at the Irish Financial Services Centre. Mr. Desmond, Dr. Walsh, Mr. Buckley, Mr. Digerud, Mr. Fortune and Mr. Callaghan attended in person, with Mr. O'Brien and Mr. Johansen present by telephone. Legal advisers to each of the three shareholders attended, amongst whom Mr. Armstrong stated that what was intended was not a formal board meeting, but a meeting of directors aided by legal advisers, seeking by way of a question and answer session to understand better the two issues that had arisen. After a review of recent events and some general discussion, by arrangement Mr. Michael Kealey, a litigation partner of McCann Fitzgerald, who had not previously been involved in dealing with either issue, proceeded to question Mr. O'Brien. The format was not ideal, since teleconference facilities had not proved possible to arrange, so those present were confined to hearing Mr. O'Brien's responses. When questioned about Woodchester, he said it was the intermediary, and his principal bank, where he had seven or eight personal accounts. He was happy that all these be opened up. He stated that the initial conversation had taken place on a run near Roundwood, probably on or near 17th November, 1996, and had been in the context of overdue success fees to be paid. It was a light-hearted conversation, befitting two persons who had long been friends, and in an effort to persuade payment, Mr. O'Brien wrongly said he had had to make two payments of

£100,000.00 each. Although he did not mention Mr. Lowry, he acknowledged the context may have appeared referable to him as one of the recipients. It was Mr. Maloney's response that he did not want to know, and it had nothing to do with the company. Mr. O'Brien said that his reference had been bravado, and neither payment had in fact been made. In further response to Mr. Kealey, Mr. O'Brien said that, although it was not then in the public domain, he knew Mr. Lowry's business Streamline was in major difficulty, and starting to collapse. As to subsequent meetings with Mr. Maloney the following year, he acknowledged having said:

> *"I didn't actually do it, thank God"*,

and admitted he had thought about paying Mr. Lowry: he had been flush with cash, and felt that Mr. Lowry had been above board in relation to his dispute with Telecom Eireann. He could have provided £100,000.00 out of his Woodchester deposits, but realised it would have been misinterpreted. In saying the money was stuck with an intermediary, he meant that it had been earmarked out of Woodchester. But he changed his mind, and no payment was made. When put by Mr. Kealey that, in normal usage, a reference to an intermediary would not seem to refer to a bank, Mr. O'Brien said he differed, that it obviously did mean a bank, and that people in any event do not always say the obvious thing.

4.52 Some further questions were asked by others in attendance, including some matters relating to the Esat Telenor $50,000.00 payment, before Mr. O'Brien departed to take up his commitments in the USA. Mr. Maloney then, at the request of Mr. Armstrong, addressed a number of matters, stating that it was his understanding that Mr. O'Brien had not been referring to a bank when a third party intermediary was raised, and that it was only on the previous 23rd October, 1997, that Woodchester was first mentioned. He confirmed his account of the venue of the initial conversation, stating that he and Mr. O'Brien had indeed gone running on most Sundays at that time, but that the occasion in question took place in The Malt House.

4.53 This long series of meetings concluded with meetings respectively of Esat Telecom and Esat Digifone on 5th and 6th November, 1997. On the second day, there was also a conversation between Mr. O'Connell and Mr. Aidan Phelan, in which the latter informed the former, in regard to Mr. O'Brien's bank accounts that, whilst a household expenses account and a UK salaries account existed, there were no other significant accounts that required examination in the context of the exercise undertaken. The upshot of the meetings was that the IPO of Esat Telecom would proceed as planned, and Esat Digifone would not object to it, on the basis of the warning in the actual prospectus remaining, without specific reference to either controversy, though given greater prominence than in its draft

form, subject to the other matters resolved upon, including the checking and certification of the bank accounts of Esat Digifone and of Mr. O'Brien, the provision of an appropriate affidavit from Mr. O'Brien and, in relation to the Esat/Telenor $50,000.00 payment, a letter from Mr. Austin confirming that he had paid the sum in question to Fine Gael. In addition, over the concluding days of the process, letters had been exchanged between Esat Digifone, IIU, Telenor and Esat Telecom, to the effect that none of them had taken any action which could in any way jeopardise the licence.

Non-disclosure to internal inquiry of substantial covert payments from Woodchester account of Mr. Denis O'Brien

4.54 The evidence required to be heard in reviewing all the foregoing matters was necessarily lengthy and detailed, especially in regard to the testimony of Mr. O'Brien and Mr. Maloney. Due to the clear conflicts between them, and the importance involved in their resolution, more latitude in cross-examination was allowed than in most earlier Tribunal sittings, even after extensive examination by Tribunal counsel. Apart from the two principal witnesses and Mr. O'Connell, evidence was also heard from Esat Digifone directors, Dr. Michael Walsh, Mr. Dermot Desmond, Mr. Leslie Buckley, Mr. John Callaghan and Mr. Arve Johansen. Some other Esat Digifone testimony was limited to the Esat/Telenor $50,000.00 payment. Whilst some relatively limited differences emerged in the testimony of these witnesses, with Mr. John Callaghan observing that banks in general terms were frequently described as financial intermediaries, none was disposed to say, in addressing the proposition that Woodchester Bank may have been the *"intermediary"* with which *"payment got stuck"*, that he would similarly have described what in the circumstances had occurred.

4.55 Reference has already been made to the involvement of Mr. Aidan Phelan, Mr. O'Brien's accountant and financial adviser in the meetings and considerations that were then proceeding. The inquiries put in train by the boards of Esat Digifone and Esat Telecom entailed a scrutiny of Mr. O'Brien's bank accounts, and an examination of all payments from those accounts in excess of £25,000.00. That task was undertaken by Mr. O'Connell, and he stated that he had inquired of Mr. Aidan Phelan about all of Mr. O'Brien's personal accounts, and was assured that, apart from those accounts identified, no other accounts had been overlooked. Whilst Mr. Phelan could not recall that exchange, he stated that he did not disbelieve Mr. O'Connell's evidence, and confirmed that he was aware of the inquiry then being conducted by Mr. O'Connell.

4.56 Mr. Phelan did not on that occasion disclose to Mr. O'Connell that in July of the previous year, that is July, 1996, some six weeks after the GSM licence had been issued to Esat Digifone, Mr. Phelan, on Mr. O'Brien's instructions, had

withdrawn £407,000.00 from an account of Radio Investments NV, the company through which Mr. O'Brien held his broadcasting interests, at Woodchester Bank, by way of repayment to Mr. O'Brien of a loan due to him by that company. Mr. Phelan had then transferred that sum of £407,000.00 to a special purpose account opened by him, on behalf of Mr. O'Brien, in his own name in Allied Irish Banks, Isle of Man. He had thereafter made disbursements from that account on Mr. O'Brien's instructions, including two payments, in July, 1996, amounting to £150,000.00 to Mr. David Austin; one by cheque for £50,000.00 dated 10th July, 1996, and the other by telegraphic transfer to an account held by Mr. Austin in Bank of Ireland, Jersey. Mr. Phelan never disclosed to Mr. O'Connell the fact of this account held by him in his name on behalf of Mr. O'Brien, or the payments made out of it, all of which exceeded the threshold level of payments into which Mr. O'Connell was charged to inquire. Nor for that matter did Mr. O'Brien, who was fully aware of the extent and purpose of Mr. O'Connell's investigations.

4.57 The failure of both Mr. Phelan and Mr. O'Brien to disclose that information to Mr. O'Connell, or to the boards of Esat Telecom and Esat Digifone, in the context of the investigations then being undertaken in advance of the Esat Telecom IPO is addressed in greater detail in the succeeding chapter. Suffice to say at this juncture, that the disclosure of those other payments to Mr. Austin, through whom the Esat/Telenor $50,000.00 donation had been channelled to Fine Gael, would undoubtedly have caused even greater concern on the part of the two companies, and would certainly have necessitated a deeper consideration of the information which had emerged, and in particular Mr. O'Brien's explanation that money he had earmarked in Woodchester Bank for payment to Mr. Lowry, had become *"stuck with an intermediary"*, when Mr. Austin had already acted in that capacity in the payment of the $50,000.00 donation to Fine Gael. Had such deeper consideration been given, and additional inquiries made of Mr. Austin, it is conceivable that the ultimate application of all, but £3,000.00, of that £150,000.00, by transfer to an account in Mr. Michael Lowry's name in Irish Nationwide, Isle of Man, should have emerged.

4.58 Certain additional matters not apparently canvassed at the time of the IPO were also raised in the course of this extensive evidence. It was put to Mr. Maloney by counsel for Mr. O'Brien that his recollection of the dates of the various meetings with Mr. O'Brien was inaccurate and unreliable and, more forcefully, that in omitting to raise the matter of the initial conversation until a time close to the IPO the following year, he was not *bona fide* acting in the interests of the company of which he was chief executive officer; this, it was further suggested, was consistent with a pattern shown by his actual resignation from the company late in the previous year, at a time of particular sensitivity in its development and fund raising, and reflected a clear preference on the part of Mr. Maloney for a flotation of Esat Digifone rather than Esat Telecom. Much detail

was advanced on this matter, but it will suffice to note that Mr. Maloney's substantive response was that, whilst a flotation of Esat Digifone would indeed have had preferable aspects for him, he had always acted with proper regard to all involved, particularly Mr. O'Brien: this was exemplified by his readiness, on the occasion of his earlier resignation, to return on an almost immediate basis in response to a personal appeal to him from Mr. O'Brien, out of regard for their long friendship, even though substantial residual issues regarding his entitlements remained to be addressed. In no sense, he said, had he at any stage sought to sabotage the Esat Telecom IPO, or act in any *male fide* fashion.

4.59 Other directors, in particular Mr. Buckley and Mr. Desmond, were also critical of Mr. Maloney with regard to his timing in raising the issue. Mr. O'Brien in evidence further expressed concern as to the belated manner in which certain notes and memoranda of meetings relied upon by Mr. Maloney were produced only after the relevant phase of evidence had commenced; Mr. Maloney responded that it was only upon returning to Ireland to give evidence that he had had occasion to review some remaining documentation, a portion of which transpired to be relevant, and that the relevant content of his notes was amply borne out in notes separately prepared by his solicitor.

4.60 The IPO of Esat Telecom in any event proved successful, and its sale, together with Esat Digifone and other related companies, to British Telecom in 2000 proved highly lucrative. Only in 2001 did the two issues which absorbed so much attention at the time of the flotation, together with the other transactions that were never brought to the attention of either board, come to public and Tribunal knowledge.

CONCLUSIONS

4.61 Noting that the events addressed in this chapter were considered of sufficient gravity to imperil the forthcoming Initial Public Offering of Esat Telecom, and that it was clearly anticipated that this Tribunal would investigate the granting of the GSM licence, the Tribunal regrets that none of those involved saw fit to make timely disclosure thereof to it.

4.62 Whilst the conflicts of evidence between Mr. Barry Maloney and Mr. Denis O'Brien in relation to their relevant conversations and dealings related more to matters of intent than content, the Tribunal in general finds the testimony of Mr. Maloney the more persuasive and coherent.

4.63 Having regard to the fact that much of what was disclosed by Mr. Maloney to the Tribunal, and then contained in his evidence, was confirmed as to

its content by Mr. O'Brien, the Tribunal finds such relative accuracy on the part of Mr. Maloney as tending to support his account on certain disputed matters, including the venue of the first material conversation, and the circumstances of the late-night visit by Mr. Maloney to Mr. O'Brien's home.

4.64 Although it was the evidence of Mr. O'Brien that he did not bring to finality the making of any payment to Mr. Michael Lowry, the Tribunal must have due regard to Mr. O'Brien's own evidence and account to the effect that, at the time of his initial conversation with Mr. Maloney, he had decided to give a sum of £100,000.00 to Mr. Lowry, and had earmarked a like sum, in deposits with Woodchester, for that purpose.

4.65 The justifications advanced in evidence by Mr. O'Brien for his remarks to Mr. Maloney in their initial conversation, whereby he initially attributed his motivation to a form of tactical pretence, and then indicated that the remarks were addressed in a jocose or bravado context, appear to the Tribunal unconvincing and implausible. A similar view is taken on Mr. O'Brien's identification of the banking entity Woodchester as the intermediary involved.

4.66 As earlier stated, the various matters arising in what has been described as the money trail portion of the inquiry required to be revisited in the context of the entire aggregate of evidence heard, and this applies in particular to the matters discussed in this chapter.

5

FROM CARYSFORT TO MARBELLA

INTRODUCTION

5.01 Had the progress of the Tribunal's work prior to 2001 not been delayed by proceedings instituted by Mr. Charles Haughey against the State and the Tribunal, and by special arrangements adopted to take account of Mr. Haughey's failing health for the purposes of hearing his evidence, there was at least a possibility that its inquiries might have concluded before the appearance in The Sunday Tribune of Mr. Matt Cooper's article dealing with the $50,000.00 donation to Fine Gael, or before certain later communications from Investec Bank, successor to Woodchester, concerning a loan, elements of which, appeared to have involved both Mr. Michael Lowry and Mr. Denis O'Brien. These disclosures made in February and March, 2001, prompted much of the Tribunal's work from that date onwards.

5.02 Whilst the circumstances surrounding the $50,000.00 donation to Fine Gael have already been outlined in detail, further reference will be made to them in this chapter in the context of the internal inquiries made within Esat Digifone in 1997 on the occasion of the Initial Public Offering, that is, the flotation, of shares in Esat Telecom. At this stage it is sufficient to recall that Mr. David Austin was centrally involved in the fundraising exercise of which the $50,000.00 was a part, and specifically was the pivotal figure in the covert routing of funds from Esat/Telenor to Fine Gael.

5.03 The Investec disclosures ultimately prompted inquiries by the Tribunal into what has become known as the Cheadle transaction, and later, and as a result of a related disclosure by Mr. Aidan Phelan, into what has become known as the Mansfield transaction, both of which are addressed in subsequent chapters of this Volume of this Part of the Report.

5.04 In examining aspects of the $50,000.00 payment to Fine Gael, and in particular the role of Mr. David Austin in arranging the contribution, and thereafter in the covert routing of the funds to Fine Gael, the Tribunal had been granted access to details of Mr. Austin's bank accounts, including his off-shore bank accounts, and specifically his off-shore accounts in the Channel Islands. The Tribunal's access to these accounts enabled it to examine and to track movements on the accounts. Some time shortly after the Tribunal had commenced examining these off-shore accounts, the Tribunal was informed by Mr. Lowry's advisers that a sum of £147,000.00 had been paid, as Mr. Lowry contended, by way of a loan to him, by Mr. Austin, during the autumn of 1996, and subsequently repaid in circumstances referable, according to Mr. Lowry, to the disposal of his short-lived Carysfort house purchase.

5.05 Thereafter, over a number of years, the Tribunal instituted inquiries concerning various financial transactions, together with related property transactions, which appeared to involve Mr. Lowry and Mr. Denis O'Brien. Initially the Tribunal examined transactions involving properties in the UK. In scrutinising those matters, it was noted that from time to time reference was made to a Doncaster Rovers transaction. The Tribunal was assured by Mr. O'Brien that this had no connection whatsoever with Mr. Lowry, and Mr. Lowry himself provided similar assurances. However, about eighteen months after the Cooper/Investec disclosures, an article appeared in The Irish Times, from which it emerged that the solicitor representing the O'Brien interests in the Doncaster purchase had, in a letter to Mr. Lowry, described Mr. Lowry as having a *"total involvement"* in the transaction. The Tribunal thereafter instituted inquiries into the Doncaster Rovers transaction.

5.06 The inquiries therefore with which succeeding chapters of the Report will be concerned pertain in the main to four property transactions, and related financial dealings, which are as follows:

(i) property at Carysfort Avenue, Blackrock, County Dublin.

(ii) property at Mansfield, Hill Top Farm, Chesterfield Road, Gapwell, Bolsover, England.

(iii) property at Cheadle, formerly St Columbus Church, Wilmslow Road, Handforth, Cheadle, England.

(iv) property at Doncaster Rovers Football Club premises at Belle Vue, Doncaster, England.

For ease of reference these transactions will be referred to respectively as the Carysfort, Mansfield, Cheadle and Doncaster transactions.

THE NEW CONTEXT OF THE CARYSFORT TRANSACTION

5.07 In the course of the Tribunal's inquiries into Mr. Lowry's affairs in the period prior to the Cooper/Investec disclosures, the purchase of a property on Carysfort Avenue, Blackrock, County Dublin, had been alluded to. On the face of it the transaction was described to, and accepted by, the Tribunal as a simple house purchase funded by a loan from the Irish Nationwide Building Society. In order to understand the impact of the Cooper/Investec disclosures, it is important to put the state of the Tribunal's inquiries as at the date of those disclosures in context. At the outset of its work, and following on from its Terms of Reference,

and reflecting also the approach of the McCracken Tribunal, the Tribunal had in the main conducted its investigations along what has come to be known as the *"money trail"*. Up to 2001, the Tribunal believed that it had received full cooperation from Mr. Lowry in conducting both its preliminary private investigations, and its public inquiries in connection with his financial affairs.

5.08 Mr. Denis O'Connor, an experienced accountant and an adviser to Mr. Lowry, was made available to the Tribunal. Mr. O'Connor had assisted Mr. Lowry in connection with evidence he had given to the McCracken Tribunal. Mr. O'Connor provided the Tribunal with assistance in the course of its preliminary private investigations, and in the course of the evidence heard at its public sittings. In evidence, he recounted his instructions from Mr. Lowry to furnish the Tribunal, to the fullest extent possible, with a complete account of Mr. Lowry's financial affairs: and that to that end he had been accorded complete cooperation by his client, and had been provided with full access to all of his client's affairs.

5.09 As already detailed in Chapter 2, the Tribunal's inquiries revealed a number of payments made to Mr. Lowry over and above those identified in the course of the evidence given to the McCracken Tribunal. This new evidence, as already mentioned, involved payments from Mr. Ben Dunne, Mr. Pat Doherty, Mr. Bill Maher and Mr. Patrick Whelan. In the case of all of these payments, Mr. Lowry testified, and in support of his testimony, brought evidence to the attention of the Tribunal, that the payments were made for work done or value given; that in other words, they were all demonstrably commercial payments.

5.10 Needless to say in the main it was those individuals identified or potentially identified as the providers of funds, in the course of the examination of the money trail, who determined the perspective of the Tribunal's inquiries into any decisions made by Mr. Lowry in the exercise of his ministerial functions which potentially could come within the ambit of the Tribunal's Terms of Reference. By the conclusion of the Tribunal's initial inquiries into the money trail, that is, by June, 1999, it appeared that, as was the case with the inquiries of the McCracken Tribunal, Mr. Ben Dunne was still the main provider of payments to Mr. Lowry warranting scrutiny within the ambit of the Tribunal's Terms of Reference.

5.11 The Tribunal's early inquiries concerning Mr. Lowry's accounts, including his Irish Nationwide Building Society loan account, as already outlined in detail in Chapter 2, resulted in information concerning the Carysfort purchase, from which it appeared that Mr. Lowry had obtained the assistance of a builder, Mr. Michael Holly, in securing the premises. Mr. Lowry had expressed an interest

to Mr. Holly, amongst other friends and acquaintances of his, in acquiring such a property. Mr. Holly successfully bid for the property at auction. Mr. Lowry at the time was abroad on European Union business. Mr. Holly facilitated Mr. Lowry by allowing him the opportunity to take over the purchase on the basis that, if Mr. Lowry expressed no interest on his return from abroad, he himself was happy to complete the purchase. This was the extent of the information relayed to the Tribunal concerning Mr. Holly's involvement. On the basis that this was a simple purchase funded by a Building Society, and the Tribunal's belief that it had been provided with what was represented to it as an account of all of the circumstances connected with Mr. Lowry's acquisition, ownership and disposal of this property, there was nothing to warrant further scrutiny. In particular no mention had been made of the role of Mr. Austin in connection with Mr. Lowry's acquisition, ownership, refurbishment or disposal of this property.

Timing of initial disclosures concerning role of Mr. David Austin in financial dealings with Mr. Michael Lowry and Mr. Denis O'Brien

5.12 Some short time following the disclosure by Mr. Lowry's advisers that a sum of £147,000.00 had, as he informed the Tribunal, been paid to him by way of loan by Mr. David Austin, the Tribunal was contacted by Raidio Telefís Eireann. This was on 3rd May, 2001. By that date, the Tribunal had not circulated any other persons with information concerning the dealings between Mr. Lowry and Mr. Austin. The communication from RTE indicated that it had obtained information concerning the dealings between Mr. Lowry and Mr. Austin, and that it proposed to broadcast details of those dealings on the 6:00pm news transmission. In response to concern expressed by the Tribunal that this could compromise ongoing confidential inquiries, RTE agreed to defer the transmission until its 9:00pm broadcast and, since legal and practical considerations disposed the Tribunal not to pursue measures of legal restraint, this duly proceeded. It referred, amongst other matters, to a loan of £147,000.00 having been made to Mr. Lowry, whilst he was a Cabinet Minister, by payment into an off-shore account in an Isle of Man bank, and then having been repaid to Mr. Austin with interest within a few months thereafter.

5.13 Following this disclosure, Messrs. William Fry, solicitors to Mr. Denis O'Brien, notified the Tribunal by letter of 16th May, 2001, and in subsequent correspondence, of another property transaction, in this instance between Mr. Austin and Mr. O'Brien, and which was stated to have taken place at a time some short while prior to the dealings between Mr. Lowry and Mr. Austin. The essence of the information relayed by William Fry on behalf of Mr. O'Brien was that he had paid Mr. Austin £150,000.00, the purchase price, for a holiday property in Marbella.

5.14 By this time therefore, the Tribunal had been informed of two transfers of funds, in regard to each of which Mr. Austin was a common element. Firstly, the payment of £150,000.00 by Mr. O'Brien to Mr. Austin which was deposited in an off-shore account of Mr. Austin in Jersey in the Channel Islands. Secondly, there was a payment some short time later by Mr. Austin from that same Jersey account, of £147,000.00, to Mr. Lowry, lodged to an off-shore account of Mr. Lowry in the Isle of Man. In examining these matters, it seems appropriate in the first instance to set forth what seemed to be the, mainly uncontroverted, facts as to the movement of funds from Mr. O'Brien to Mr. Austin on the one hand, and the movement of funds from Mr. Austin to Mr. Lowry on the other, and to deal with what the related witnesses who were available to testify stated as to the purposes underlying the movements of funds in each case.

Movement of £147,000.00 from Mr. Denis O'Brien to Mr. Michael Lowry

This diagram illustrates how £150,000.00 was transmitted from Mr. Denis O'Brien's Radio Investments NV Account in Woodchester Bank, Dublin, (subsequently known as Investec Bank) through Allied Irish Banks, Isle of Man and Bank of Ireland, Jersey, Channel Islands, to Mr. Michael Lowry's Irish Nationwide, Isle of Man Account.

It remained in that account until 7th February, 1997, when £148,816.93 was transferred through Allied Irish Banks, Dame Street, Dublin, back to Mr. David Austin's Account Number 66064-4 in Bank of Ireland, Jersey, Channel Islands.

7th February, 1997 was the date on which the McCracken Tribunal was established.

THE CENTRAL FACTS OF THE MONEY TRAIL

Off-shore transfer of funds from Mr. Denis O'Brien to Mr. David Austin

5.15 From information provided by Mr. O'Brien in evidence, and through his solicitors, it appears that in the summer of 1996, amongst the various accounts held by him and his connected enterprises, with what was then known as Woodchester Bank, was one referable to Radio Investments NV, a subsidiary company within his Communicorp Group, that was then wholly or predominantly owned by Mr. O'Brien, and which accordingly was not part of, and was distinct from Esat Digifone.

5.16 At or around the beginning of July, 1996, Mr. O'Brien instructed his financial adviser, Mr. Aidan Phelan, to transfer a sum of £407,000.00, from that RINV account at Woodchester Bank, and to open a new account in the Isle of Man. The Isle of Man account was to be opened not in Mr. O'Brien's name, but in Mr. Phelan's name, with that sum of £407,000.00. Mr. Phelan, who was an authorised signatory on the RINV account, duly made the withdrawal on 3rd July, 1996, and the money was transferred through Allied Irish Banks, Dublin, to Allied Irish Banks, Isle of Man, on foot of routing instructions provided by Mr. Phelan, or another associate of Mr. O'Brien. Until the arrangements for the setting up of a new account could be finalised by Mr. Phelan, the money was lodged to the Allied Irish Banks, Isle of Man, off-shore account of Diest, a trading company that imported goods from the Far East for sale in Europe, and in which Mr. Phelan had an interest. A new account was then opened in Mr. Phelan's name. The address ascribed to the account was Cape Cod, Hyannis, USA, which was a business and correspondence address used periodically by Mr. Phelan, and a colleague, for dealings in sports goods. Copies of the account statements for the RINV account in Woodchester/Investec Bank, and the Mr. Aidan Phelan account in Allied Irish Banks, Isle of Man, referred to above can be found in the Appendix to this chapter.

5.17 This account had been opened by Mr. Phelan purely for the purpose of receiving Mr. O'Brien's money. It had not been conveyed to the Isle of Man bank that the funds belonged to Mr. O'Brien and not to Mr. Phelan. This arrangement was probably unique in Mr. Phelan's entire period of acting as a financial adviser to Mr. O'Brien. Once the funds were transferred, Mr. O'Brien gave Mr. Phelan a series of instructions as to particular payments to be made to specified individuals. Although the account was not closed until 17th May, 1999, and the last cheque paid out of it on 12th May, 1997, there was no significant activity on the account after 26th July, 1996, when the funds on the account had largely been dissipated. It was during a short period therefore, between the transfer of

the £407,000.00 to the Isle of Man on 10th July, 1996, and the 26th of that month, that most of the significant activity on the account took place.

5.18 After two initial debits were made to the account, there was a payment by way of cheque for £50,000.00 drawn in favour of Mr. David Austin on 10th July, 1996. That was followed by a further payment in favour of Mr. Austin, in this instance of £100,000.00, by telegraphic transfer to an account held by Mr. Austin in Bank of Ireland, Jersey, in the Channel Islands on 19th July, 1996. This was the same bank as that in which Mr. Austin held the Esat/Telenor donation of $50,000.00 between December, 1996 and May, 1997. On 26th July, 1996, Mr. Austin transferred the £100,000.00 within his accounts to an account, specifically created for holding Irish funds, namely, account number 66064-4. On 7th August, the earlier cheque payment of £50,000.00 was lodged to this same Irish pound designated account. A copy of the account statement for Mr. David Austin's account in Bank of Ireland, Jersey, referred to above can be found in the Appendix to this chapter.

Off-shore transfer of funds from Mr. David Austin to Mr. Michael Lowry

5.19 The funds remained in that account of Mr. Austin's until 16th October, 1996, when, following a request to that effect, Mr. Austin's Jersey Bank furnished him with a draft payable to himself for the sum of £147,000.00, funded by a debit to account number 66064-4. This draft appears to have been furnished by Mr. Austin to Mr. Karl Tully, a senior official in Irish Nationwide (IOM) Limited. Irish Nationwide (IOM) Limited was an Isle of Man bank, based in Douglas, Isle of Man. It was wholly owned by the Dublin-based Irish Nationwide Building Society. The draft was furnished to Mr. Tully with instructions that its proceeds should be deposited in a new account in Mr. Michael Lowry's name. The Isle of Man bank duly recorded on 30th October, 1996, that this amount had been credited, as of 21st October, 1996, to an instant access account in the name of Mr. Lowry. Copies of the bank draft for £147,000.00, and the Irish Nationwide (IOM) Bank confirmation referred to above can be found in the Appendix to this chapter.

5.20 As a new customer of Irish Nationwide (IOM) Limited, Mr. Lowry was required to complete account opening documentation. It appears that the relevant form was obtained by Mr. Austin, and sent to Mr. Lowry by post, and completed by him in manuscript either in Dublin, or Tipperary. This documentation was headed *"private and confidential"*, and its contents included some surprising features. Mr. Lowry set forth his address as being that of accountants, Messrs. Brophy Butler Thornton of Foxrock, Dublin, although it was acknowledged by both Mr. Lowry and the partner in that firm retained by him, Mr. Denis O'Connor, that no permission to that effect had been sought from that firm. In fact, Mr. O'Connor stated in evidence that he only became aware of the fact

that this address was used on the account towards the end of April, 2001, that is, at the time of the Tribunal's then inquiries into these matters. The form proceeded to state that no correspondence should be sent to Mr. Lowry except on request, and curiously, set forth Mr. Lowry's occupation as being that of company director, although as a serving Cabinet Minister at the time, Mr. Lowry was required to and had in fact resigned his directorship in Garuda Limited t/a Streamline Enterprises. A copy of the account opening documentation signed by Mr. Lowry can be found in the Appendix to this chapter.

5.21 There appears to have been no activity on the account until, on 7th February, 1997, pursuant to written instructions sent by Mr. Lowry two days previously, a sum of £148,816.93 was transferred through the agency of Allied Irish Banks, in Dublin, to the account of Mr. Austin, account number 66064-4, with Bank of Ireland, Jersey, Channel Islands. After deduction of a sum for commission and expenses, this left only a small balance of £164.53 standing to the credit of Mr. Lowry's account. 7th February, 1997, was the day upon which the McCracken Tribunal was established. Copies of Mr. Lowry's written instructions, and the Irish Nationwide (IOM) Bank confirmation, can be found in the Appendix to this chapter.

5.22 Much of this information was obtained by the Tribunal on foot of relevant waivers of confidentiality furnished to Irish Nationwide (IOM) Limited. Also, a director of the Isle of Man bank, Mr. Michael Fingleton, the then long standing Managing Director of its Irish proprietor, Irish Nationwide Building Society, attended public sittings as a witness, albeit primarily in relation to the Society's dealings, in Dublin, with Mr. Lowry in providing mortgage finance for the purpose of the Carysfort Avenue premises. Notwithstanding the connection between the two institutions, common directors, and despite waivers and the professed wish of Irish Nationwide Building Society, its proprietor, that full cooperation be afforded, the Irish Nationwide Bank in the Isle of Man declined to accede to the Tribunal's request that Mr. Karl Tully, as the senior official primarily involved in the matters under inquiry, should attend to testify.

Main Evidence At The 2001 Sittings

5.23 During sittings held, mainly in 2001, the following matters were examined:

(i) the information originally provided to the Tribunal concerning the purchase by Mr. Lowry of Carysfort;

(ii) the information originally provided concerning Mr. Lowry's relationship with Irish Nationwide Building Society;

(iii) the new information concerning Mr. Lowry's dealings with Irish Nationwide (IOM) Limited in the Isle of Man, and the connection between those dealings and Mr. Austin;

(iv) information concerning movements of funds between Mr. Denis O'Brien and Mr. Austin;

(v) information provided by Mr. O'Brien and others including Mr. Aidan Phelan and Mrs. Maureen Austin in connection with the payment of £150,000.00 to Mr. Austin;

(vi) information provided by Mr. Lowry concerning his dealings with Mr. Austin in connection with the deposit of £147,000.00 in the Isle of Man bank;

(vii) information obtained by the Tribunal from various sources concerning the manner in which the dealings with Mr. Austin were examined in the course of the IPO, and the conclusions at which those inquiring into the matter in the course of the IPO arrived;

(viii) information obtained from various sources concerning other aspects of the inquiries conducted in the course of the IPO.

5.24 During the examination of these matters, the main evidence was given by Mr. Aidan Phelan, Mr. Denis O'Brien, Mr. Michael Lowry, Ms. Helen Malone and Mr. Denis O'Connor. As Mr. O'Brien gave evidence to the Tribunal in advance of Mr. Lowry's evidence, it seems appropriate to deal with the information provided by Mr. O'Brien, or his solicitors, and with the evidence given by him, and in particular by Mr. Aidan Phelan, prior to dealing with the information provided by, and the evidence given by, Mr. Lowry.

5.25 Initially the Tribunal obtained two accounts from Mr. O'Brien's solicitors concerning his dealings in relation to Mr. Austin's property. In a letter of 28th May, 2001, William Fry, solicitors, on behalf of Mr. O'Brien, informed the Tribunal as follows:

(i) that during the summer of 1996, Mr. O'Brien agreed to purchase from Mr. Austin his Spanish holiday home with the intention of making it available to his parents, who frequently holidayed in Spain;

(ii) the property was located at Aloha, Pueblo, 145, Nueva, Andalucía, Marbella, and the vehicle whereby Mr. Austin had enjoyed ownership was a Gibraltar company, Tokey Investments Limited, whose shares were in turn held by Finsbury Holdings Limited and Finsbury Nominees Limited;

(iii) the property was purchased in August of 1996; the sale was effected by transferring the beneficial ownership in the shares to an Isle of Man Trust, Walbrook Trustees (Isle of Man) Limited, to hold those shares for the benefit of Mr. O'Brien;

(iv) no solicitors were retained by either side, the sale being effected by a simple transfer of the beneficial ownership of the shares;

(v) the affairs of Tokey Investments Limited were administered in Gibraltar by Valmet Limited, a company secretarial service;

(vi) with this information, copies of the relevant Declarations of Trust, whereby the shares in the company were held for the benefit of Mr. O'Brien, were enclosed; from these documents it appeared that the sale had been effected on 12th August, 1996, and that the primary Declaration of Trust by the Finsbury companies in favour of Walbrook Trustees was so dated; the later Declaration of Trust by Walbrook Trustees in favour of Mr. Denis O'Brien was dated 15th May, 2001. Copies of the Declarations of Trust referred to above can be found in the Appendix to this chapter.

5.26 By letter of 11th June, 2001, this version was expanded, essentially to the following effect:

(i) that it was in April or May of 1996, that Mr. Austin first mentioned to Mr. O'Brien that he was anxious to dispose of his Spanish property, and of an apartment in London, before he died;

(ii) a £50,000.00 payment was made in early July, 1996, at a time when agreement in principle to purchase had been reached, and so as to evince a commitment to deal on the property, but no price was fixed;

(iii) a sale price of £165,000.00 was agreed but shortly afterwards Mr. Austin reverted to Mr. O'Brien to say that he had a strong desire to attend the Ryder Cup, which was to be held in Valderrama, Spain, in the autumn of 1997, and he requested that the sale should proceed, but that he would be allowed to retain occupation of the house until after the Ryder Cup; this was agreed, in return for a reduction of the price to £150,000.00;

(iv) a payment of £100,000.00, to make up the purchase price of £150,000.00, was paid shortly after the price was finalised;

(v) Mr. Austin was looking after the transfer of ownership in 1996, and initially arranged for Declarations of Trust to be executed by the Finsbury companies in favour of Walbrook Trustees, and copies of those were enclosed with the William Fry letter of 11th June, 2001;

(vi) completion of the transfer was subsequently delayed, by reason of the fact that documentation had been misplaced, by Mr. Austin; although it was suggested that there had been a delay in the completion of the transfer, the Tribunal was still referred to the document of 12th August, 1996, as constituting the primary Declaration of Trust;

(vii) Mr. O'Brien had no documents regarding the purchase, other than the August, 1996, and May, 2001, Declarations of Trust, which had already been furnished to the Tribunal;

(viii) in the course of the correspondence, William Fry provided material waivers sought, and also made available an amount of documentation relating to title, bank accounts and payments made by Mr. Aidan Phelan, in addition to papers from the various agents involved, some extracts from which were alluded to in subsequent evidence.

5.27 A feature of the evidence heard was that, despite the elements of proximity or connection in terms of personnel, time and money used in relation to what may be called the '*Marbella purchase*', and the '*Carysfort loan*', the substantive testimony of each of the witnesses who were called was limited to one or other such transaction, and none purported to be conversant with, or able to assist in respect of both, something which obviously the late Mr. Austin would have been able to do had he been alive to testify. Mr. Austin would have been available at an earlier point to provide information or testimony in relation to the money trail, whereby funds had been transferred from Dublin, routed to one off-shore account in the Isle of Man, then to another off-shore account in the Channel Islands, and from there, apparently at Mr. Austin's direction, to a separate off-shore account in the Isle of Man. Mr. Austin would of course also have been available to testify in relation to the covert routing of the $50,000.00 Esat/Telenor donation to Fine Gael, the subsequent rejection of that donation, and its later covert re-routing to Fine Gael disguised as a personal payment by Mr. Austin.

5.28 To return to the evidence actually provided, three principal witnesses were heard in relation to these matters; Mr. O'Brien and Mr. Phelan in relation to the following:

(i) the opening of the special purpose account in Allied Irish Banks, Isle of Man, with a sum of £407,000.00 withdrawn from Woodchester;

(ii) the payment from that account of £150,000.00 to Mr. Austin, and subsequent dealings in relation to those monies in a context stated by Mr. O'Brien and Mr. Phelan to be referable to the purchase of the Marbella property.

Evidence was heard from Mr. Lowry in relation to the financial dealings he had with Mr. Austin in a context stated by him to be referable to the intended refurbishment of the house premises, purchased by him at Carysfort Avenue, Blackrock.

5.29 Before considering their testimony, it is appropriate to refer to a number of witnesses who gave shorter and more peripheral evidence on related aspects of these matters, those witnesses being Mr. Michael Fingleton, Mr. Eddie Holly, Mr. Michael O'Leary, Mr. Denis O'Connor and Ms. Helen Malone.

Evidence of Mr. Michael Fingleton: twin role as managing director of the building society and director of its off-shore bank

5.30 Mr. Michael Fingleton, had been Managing Director for many years of Irish Nationwide Building Society, and a Director of Irish Nationwide (IOM) Limited, when he testified mainly in relation to a loan made by the building society to Mr. Lowry in respect of the Carysfort Avenue purchase. His testimony also dealt with the circumstances in which the Isle of Man bank had declined to make the evidence of Mr. Karl Tully available to the Tribunal.

5.31 Mr. Fingleton had known Mr. Lowry in a social context, primarily referable to GAA activities, from the late 1980s, but had not dealt with him in his political capacity as Minister or T.D. He recalled receiving a telephone call from Mr. Lowry, near the end of August, 1996, seeking to meet him, to discuss a property purchase. He met him by appointment the following day. At that meeting, Mr. Lowry informed Mr. Fingleton of the purchase of the Carysfort premises for £200,000.00, and of his borrowing requirement for the entire of that amount, stating however that he had sufficient finances from his own resources to carry out necessary renovations and refurbishment. Mr. Fingleton approved the granting of the facility. He stated that this was done on a basis which was within his authority, and that it was processed normally on a commercial footing.

5.32 Mr. Fingleton was able to refresh his memory by reference to a handwritten memorandum, which he had made in the course of his meeting with Mr. Lowry, which he then caused to be placed on Mr. Lowry's mortgage file. This referred to Mr. Lowry and his position as a Government Minister, identified the property and its purchase price, noted that funds for necessary work on the property were available from the borrowers own resources, and in addition to reference to the values of Mr. Lowry's Tipperary properties, including a bungalow for sale at £75,000.00, recorded Mr. Lowry's salary as a T.D. and Minister as then being £65,000.00, supplemented by some annual income accruing to his wife, and an annual sum of £20,000.00, assessed as income from the company of which he was noted as being the owner. Noting also that Mr. Lowry required the funds quickly to complete the transaction, Mr. Fingleton then made a further short note to his advances manager, observing that the advance required appeared to be well within the Minister's capacity, that the property seemed to have excellent potential, and requesting that the matter be dealt with as a priority. All necessary arrangements were thereupon finalised speedily, and the loan of £200,000.00 to complete the purchase was advanced on 4th September, 1996, within a matter of days after their initial meeting.

5.33 In the course of evidence, reference was also made to a facility known as the Dual Abode Allowance, whereby Government Ministers, and Junior Ministers, resident outside of Dublin, who, on appointment acquired or rented additional premises in Dublin, obtain entitlement to generous tax allowances and relief in respect of expenditure incurred in purchasing and maintaining, including repairing or renovating, either the Dublin or the original home premises. Mr. Fingleton stated that he had been aware from his knowledge of some such special arrangement, but felt that it had not been discussed between himself and Mr. Lowry when the facility was sought.

5.34 As to the relationship between the Dublin building society and the Isle of Man bank, Mr. Fingleton stated that the former owned the latter in its entirety, but that in terms of operational control the bank was independent of the building society, being run by an Isle of Man board, a majority of whose members were required to be Isle of Man residents, with similar provisions attaching to the management. He further stated that the banking licence, under which the bank carried out its business, was issued in the Isle of Man, and that it was vital for retention of its status that control was seen to rest in the Isle of Man, rather than in Dublin. Apart from ownership, Mr. Fingleton acknowledged that the bank deposited its funds with the building society in Dublin, and that a number of directors were common to both boards, including himself and the Dublin-based individual who had initially chaired both boards.

5.35 It should be observed that the operation and activities of the Irish Nationwide Building Society's Isle of Man subsidiary bore many characteristics in common with the operation and activities of Guinness & Mahon, and its subsidiary Ansbacher (Cayman) Limited, which featured so prominently in the investigations of the Tribunal which formed Part I of its Report. As with Guinness & Mahon, and its Cayman subsidiary, the society and its Isle of Man subsidiary shared common directors, the Isle of Man subsidiary was subject to the regulation of the off-shore location in which it was established, and most strikingly, the Isle of Man subsidiary deposited its funds in Dublin with the society, as the Ansbacher accounts has been deposited with Guinness & Mahon.

5.36 Returning to the matter of the senior Isle of Man bank official, Mr. Karl Tully, Mr. Fingleton agreed that all necessary waivers had been provided by the relevant customers of the bank to enable his attendance, but said that the decision not to make Mr. Tully available had been made, following discussion by the Isle of Man board of which he was a member. Having taken advice, that board had agreed to furnish documents, and if required, to make available its new chairman, but was not prepared to make Mr. Tully available. It was Mr. Fingleton's evidence that it was the policy of the building society to cooperate fully with the Tribunal, and that the building society had made its views known to the Isle of Man bank. He stated that the building society, although the proprietor of the bank, could not control or compel the decision that was taken by the bank's own board. According to Mr. Fingleton, the building society had no difficulty with the witness, Mr. Tully, attending, and could not say why the further cooperation sought had been refused by the Isle of Man bank, save that it may have appeared that, by dealing with the Tribunal in correspondence, and furnishing relevant documentation, the bank felt that it had dealt with the matter sufficiently and fully.

Evidence of Mr. Eddie Holly: identification of a suitable property

5.37 Mr. Holly stated that he was a brother of the late Mr. Michael Holly, both of them having been directors of the family building company, Cedar Building Company Limited. At the time that Mr. Lowry had dealings with the company in 1996, Mr. Michael Holly had been Managing Director, and was also involved in other businesses. Mr. Eddie Holly had run the company in conjunction with his brother. He had met Mr. Lowry on only one occasion, when introduced to him at a race meeting many years before, and he had never met Mr. Austin. He recalled having been informed in 1996, by his late brother, of discussions with Mr. Lowry in regard to the possible purchase of the property at Carysfort Avenue, Blackrock. His brother had become aware of the house being auctioned, liked the premises himself, but felt that if Mr. Lowry on return from Government business

abroad was similarly impressed, he would give him an option to purchase. On that basis, solicitors were instructed, and a successful bid was made.

5.38 The property was in poor repair and required total refurbishment. Mr. Michael Holly agreed with Mr. Lowry that the company would undertake the refurbishment under the supervision of an architect. A bill of quantities was drawn up and furnished with a covering letter to Mr. Lowry, on 2nd September, 1996. The price was the sum of £90,725.45, including VAT, which was not to include such items as kitchen and utility room units, wardrobes, tiling, carpets, wallpaper and other similar matters. Whilst Mr. Eddie Holly had no direct dealings with Mr. Lowry, he understood from his brother that the basis of the price was that it incorporated a reasonable profit margin for the company.

5.39 Works began in or around mid-September, 1996, and a considerable amount had been undertaken by the following November, when Mr. Lowry resigned from the Government. Given the circumstances of Mr. Lowry's resignation, and all the attendant publicity, both brothers were apprehensive as to whether or not Mr. Lowry wished to continue on the basis of the agreed costings, and in order to protect the company, a valuation of the works to that date in the sum of £32,446.80, including VAT, was sent to Mr. Lowry on 4th December, 1996. When no response was received, Mr. Michael Holly made direct contact with Mr. Lowry. Mr. Michael Holly had been a friend of Mr. Lowry, and it was natural that he should have been the person to seek to make contact with Mr. Lowry at this time in connection with the matter. It was agreed between them that the company would buy back the premises from Mr. Lowry at a price that was to reflect the costs incurred by him, and particularly so as not to penalise him by virtue of the purchase and sale back. On this basis a total price of £252,750.00 was agreed, comprising £237,875.00 in respect of the house, and works plus stamp duty of £13,380.00 and £1,495.00 legal costs. Mr. Eddie Holly placed the time of the agreement to buy back the premises as being just before Christmas of 1996. The deposit was paid on the following 10th January, 1997, and the balance on 17th January, 1997. The company then completed the refurbishment and undertook the necessary fitting of the premises in order to rent it out.

5.40 At no stage had Mr. Michael Holly informed Mr. Eddie Holly that he had been aware that Mr. Lowry had funds available to him from Mr. Austin to meet the refurbishment costs. In view of their joint concerns at the time, Mr. Holly felt sure that, if his late brother had been aware of the availability of any such funds for refurbishment, he would have been so informed by his brother, so as to put his mind at rest.

Evidence of Mr. Michael O'Leary: co-executor of estate of Mr. David Austin

5.41 Mr. Michael O'Leary stated that he had been a neighbour and close friend of the late Mr. Austin for over 25 years, prior to his death in November, 1998, and he had acted as one of his four co-executors. It had been an easy estate to administer, as Mr. Austin had been a very orderly person, had known he was dying for two years, and had departed with his affairs well in order. Having been diagnosed with his final illness, and having undergone extensive treatment, Mr. O'Leary said that he felt that in October, 1996, it was clear to Mr. Austin *"that he wouldn't be around for too long"*.

5.42 In the course of the evidence of Mr. Lowry, a handwritten document was produced to the Tribunal as a memorandum of acknowledgment of a loan by Mr. Austin to Mr. Lowry in the sum of £147,000.00. From his knowledge of the deceased, it appeared to Mr. O'Leary, having been shown the document that, other than the date and signature thereon, the handwriting was that of Mr. Austin. However, this document had not been in any of the papers made available to the executors, and none of them had been aware of any such agreement. Neither had Mr. O'Leary, nor any of his co-executors, been furnished at any time with a copy of a written repayment acknowledgement of 24th October, 1996, in the form of a letter from Mr. Austin, a document also produced to the Tribunal by Mr. Lowry. The executors had only become aware of those matters as a result of correspondence from the Tribunal and media reports. Mr. O'Leary also stated that Mr. Austin's solicitor, Mr. Walter Beatty, had informed him that no one in his firm had been made aware of any such loan agreement, of the making of any such loan, or of the repayment of any such loan, and that Mr. Beatty had also told him that Mr. Austin's widow, Mrs. Maureen Austin, had told him that neither she nor Mr. Austin's accountants knew anything of any such transaction, and further that no other firm of solicitors had acted for Mr. Austin at that time.

5.43 Of course, assuming that, as was contended by Mr. Lowry, he had received a loan of £147,000.00 from Mr. Austin in October, 1996, which he repaid in February, 1997, nothing further was required of any executor by way of recovery of this money, when Mr. Austin died in November, 1998. However, bearing in mind that Mr. Austin had known for a number of years prior to his death that he was very ill, and for a considerable period of time terminally ill, it is surprising, that being an orderly person who had left his estate in a condition to be readily administered, he had not deposited those documents with any of his executors, or his solicitor, between October, 1996, and February, 1997. It is also rather surprising, once again, having regard to Mr. Austin's reputation as an orderly person concerning his affairs, that the loan documentation and repayment acknowledgement should have been so carefully drafted and brought into

existence in 1996 and 1997, as was testified by Mr. Lowry, whilst at the same time he should have dealt, as will appear below, with the disposal of his Marbella holiday property in such a casual manner, as was suggested by Mr. O'Brien.

Evidence of Mr. Denis O'Connor: out of the loop

5.44 Mr. Lowry's accountant, having already testified in relation to Mr. Lowry's affairs in 1999, confirmed that he had first met Mr. Lowry in late 1986, in connection with Tipperary hurling, following which a social relationship between them had evolved. Their professional involvement first commenced around May, 1996, when Mr. Lowry mentioned to him that his refrigeration company, Garuda Limited, was undergoing trading difficulties, and he requested Mr. O'Connor to contact his brother, who was then managing the company, with a view to examining the matter. On foot of this instruction, Mr. O'Connor and a colleague set up a system involving the preparation of regular management accounts, and having examined particular areas of the business, made remedial recommendations. At the time his firm, Brophy Butler Thornton, were not auditors to the company, but this work ultimately led to the appointment of his firm as auditors in July, 1997. Meanwhile in late 1996, Mr. Lowry asked Mr. O'Connor to examine his personal financial affairs, and this gave rise to his involvement with Mr. Lowry in connection with his evidence to the McCracken Tribunal, and to his own and Mr. Lowry's dealings with this Tribunal, and also entailed a contribution by Mr. O'Connor to the content of Mr. Lowry's Statement to the Dáil on 19th December, 1996. These latter services were provided to Mr. Lowry personally, as distinct from his company.

5.45 When first asked to advise in 1996, in connection with Garuda Limited, Mr. Lowry had not informed Mr. O'Connor of the irregular arrangements operating between himself and Mr. Ben Dunne in relation to the company's business, and these matters were only brought to Mr. O'Connor's attention the following year, in preparation for the McCracken Tribunal.

5.46 Mr. O'Connor's earlier evidence to the Tribunal in June, 1999, purporting, according to Mr. Lowry, to represent an accurate and comprehensive account of his affairs has already been detailed. As to the Irish Nationwide (IOM) bank account, which was opened for Mr. Lowry by Mr. Austin, Mr. O'Connor stated that he became aware of this only in early April, 2001, when Mr. Lowry advised him of the background, and queried whether or not the matter then came within the Terms of Reference of this Tribunal. Mr. O'Connor's response to Mr. Lowry was that it did so come within the Terms of Reference. Due to Mr. O'Connor's commitments out of the country, some delay was occasioned in preparing Mr. Lowry's Statement on the new matters, including the Isle of Man bank account.

This was eventually done on or around 20th April, 2001, and forwarded to the Tribunal, followed by banking documentation made available by the Bank. It is of significance that, as already mentioned, not only had Mr. O'Connor's firm not authorised the use by Mr. Lowry of the firm's office address in the opening of the bank account; not only had they not been aware of this until 2001, but at the relevant time, that is, in October, 1996, the only services Mr. O'Connor had been providing to Mr. Lowry related to his refrigeration company, as opposed to his personal affairs, that is, those matters to which the evidence concerning his off-shore account specifically related.

5.47 Mr. O'Connor stated in evidence that he understood that, in the context of his earlier dealings with the Tribunal, he had been provided by Mr. Lowry with access to all information concerning Mr. Lowry's finances, including all accounts held by him in banks either in the State or off-shore. It is notable that, in the context of the access he enjoyed to information concerning Mr. Lowry's financial affairs, that he had been afforded information concerning the Irish Nationwide Building Society mortgage account opened to fund the purchase of the Carysfort Avenue premises, but that, at the same time, no mention had been made to him by Mr. Lowry of any other funds he may have had to enable refurbishments to the property to be carried out. In particular no mention had been made of the existence of an Isle of Man bank account, although it had been opened just shortly after the opening of the mortgage account with its proprietor company, Irish Nationwide Building Society in Dublin. Also, Mr. Lowry made no mention to him of any involvement on the part of Mr. Austin as the provider of a loan to fund the refurbishment works to the Carysfort premises.

5.48 It is important to recall that in late 1996, in his personal Statement to the Dáil, having resigned from Government, Mr. Lowry drew attention to a practice of placing funds abroad for the purposes of concealment, a practice which he eschewed, and indeed implicitly decried in this Statement. Although Mr. O'Connor, along with a number of other advisers had an involvement in the preparation of this Statement, he had not been informed at the time of the Isle of Man account, notwithstanding the fact that it had been opened some short period of time prior to the making of the Statement, and indeed was in existence at the very time that the Statement was made.

5.49 Mr. O'Connor's earlier evidence, that is, in 1999, had been subsequent to Mr. Lowry's involvement in UK property ventures at Mansfield and Cheadle. During the period of Mr. Lowry's involvement in the Mansfield and Cheadle ventures, however, Mr. O'Connor had likewise not been informed of any of these transactions by Mr. Lowry. These matters are mentioned at this point by reason only of the evidence, referred to in later chapters, of the involvement of Mr. Aidan

Phelan in various aspects of them, and in other aspects of Mr. Lowry's affairs at or around the same time. Mr. O'Connor had, some years previously, dealt with Mr. Aidan Phelan in connection with aspects of Mr. Lowry's company's affairs, but he had not then been informed of Mr. Lowry's involvement in UK property ventures, or of his dealings with Mr. Aidan Phelan in connection with those ventures, or in connection with Mr. Lowry's own personal affairs, at that time.

5.50 It would appear therefore that, although for the purposes of presenting an account of Mr. Lowry's financial affairs to the Tribunal, Mr. O'Connor had been informed by Mr. Lowry concerning various aspects of those financial affairs, and of the affairs of his company, he had not been informed of any of those elements of Mr. Lowry's financial or property transactions connected with, or which involved dealings with, either Mr. David Austin, Mr. Aidan Phelan, or elements of which entailed connections with Mr. Denis O'Brien.

Evidence of Ms. Helen Malone: backdating of transaction documents

5.51 Ms. Helen Malone was an associate of Mr. Aidan Phelan. She stated that her expertise was in the provision of corporate secretarial services in which she had been engaged, since 1993, and she was, at the time of her evidence, on 16th October, 2001, a business partner of Mr. Aidan Phelan in the firm AP Consulting. She informed the Tribunal of her handling of aspects of what she stated she understood to be the purchase by Mr. O'Brien of Mr. Austin's Marbella apartment. Her evidence was that in September, 1997, she was requested by Mr. Phelan to undertake a number of tasks, one of which was the transfer of shares in a company registered in Gibraltar and known as Tokey Investments. This was over a year after the sale was, according to Mr. O'Brien, said to have taken place, in August of 1996. However, although according to Ms. Malone, Mr. Phelan first mentioned the matter to her in September, 1997, as one of a list of matters that he wished her to attend to, it was not until December, 1997, that she actually received instructions, or any documentation to enable her to process the transaction. At that point, Mr. Phelan furnished her with documentation which he had prepared, and asked her to forward it to Mr. Perera of Valmet in Gibraltar, to whom he, Mr. Phelan, had already spoken. Ms. Malone was unable to do so, as the documentation had not been correctly completed, and certain necessary documents to give effect to the transaction, had been omitted. She then worked on the documentation herself, and sometime just after Christmas of 1997, went to Mr. Austin's apartment in Monkstown, with Mr. Phelan to have the relevant papers signed, although she herself did not actually meet Mr. Austin on that occasion, or witness his signature on the documents.

5.52 It is helpful at this juncture to digress briefly to recap on the manner in which Mr. Austin's title to the property was held, and the role of Mr. Perera of Valmet in Gibraltar in relation to the Marbella property. The property was not directly owned by Mr. Austin in the conventional sense, but rather was owned by a Gibraltar registered company, by the name of Tokey Investments Limited. The shares in that company were in turn substantially owned by another Gibraltar company, Finsbury Holdings Limited, and a single share was held by its connected company, Finsbury Nominees Limited. Mr. Austin was entitled to the beneficial interest in the shares of Tokey Investments Limited by virtue of a Deed of Trust executed on his acquisition of the property in 1988. It was accordingly through that beneficial interest in the shares of Tokey Investments Limited which owned the property, that Mr. Austin held title to it.

5.53 In order for Mr. O'Brien to acquire title to the property, two steps had to be taken. Firstly, the beneficial interest in shares in Tokey Investments had to be vested by the Finsbury companies in a trust company in the Isle of Man, Walbrook Trustees (IOM) Limited, and secondly, that company, Walbrook Trustees had to declare that its interest in the shares was held in trust for Mr. O'Brien. What complicated matters at that juncture, in December, 1997, was that Mr. Austin had apparently mislaid the 1988 Declaration of Trust in his favour issued on his acquisition of the property. In these circumstances, what Ms. Malone had to obtain from him, apart from a transfer of his beneficial interest in the shares, was a Letter of Indemnity signed by Mr. Austin in relation to his lost 1988 Declaration of Trust. Valmet was the Gibraltar based company that managed and administered the affairs of the Finsbury companies, and it was Mr. Perera of Valmet who had dealt with Mr. Austin.

5.54 Returning to Ms. Malone's evidence, she testified that she had herself spoken to Mr. Perera in December, 1997, and although she did not exactly remember the details of their conversation, it being four years prior to her giving evidence, she stated that it was her impression that Mr. Perera had told her that he had acted for Mr. Austin since the property had been purchased in 1988, and that Mr. Perera had told her that Mr. Austin had informed him in 1996, that he had sold the property to a friend. In that regard, Ms. Malone's attention was drawn to a file note prepared by Mr. Perera of a telephone conversation which he had had with Mr. Austin on 3rd July, 1996, in which he had recorded that Mr. Austin had indicated to him that *"he was considering"* selling the property, and inquiring how that transaction might be effected. Ms. Malone confirmed that what Mr. Perera had conveyed to her would have conformed with the content of that file note, and although she acknowledged that she had little recollection of their conversation, she indicated nonetheless that it was her impression that Mr. Austin had in fact told Mr. Perera that he had *"sold"* the property in question.

Despite that aspect of her evidence, she acknowledged that the contents of Mr. Perera's note probably reflected the true situation. She could not recall whether Mr. O'Brien's name had been referred to by Mr. Perera as the friend to whom the property had been sold.

5.55 The documents she processed comprised a Deed of Transfer, and a Letter of Indemnity to account for the mislaid documentation. It was Ms. Malone who witnessed Mr. Austin's signature on both of these documents, each of which was dated 7th January, 1998, something which she acknowledged was technically incorrect in view of the fact that Mr. Phelan had handed her the documents soon after he had had Mr. Austin sign them, she herself not having witnessed the signing of them. She sent the documents to Mr. Perera on 7th January, 1998, together with a formal letter of instruction also signed by Mr. Austin, and informed Mr. Perera that the new beneficial owner was to be a trust registered in the Isle of Man and administered by Walbrook Trustees (IOM) Limited, and that it was to Mr. Christopher Tushingham of Walbrook Trustees that Mr. Perera should refer, if he required any further information.

5.56 Mr. Perera appeared to have responded promptly, by a fax of 9th January, 1998, indicating the remaining procedures to be followed including the issue of new Deed of Trust in favour of Walbrook Trustees Limited, and seeking instructions as to whether he should request payment of his outstanding fees from Ms. Malone, or from Mr. Tushingham. Ms. Malone replied on 21st January, 1998, indicating that Mr. Phelan would contact Mr. Perera to discuss the date of the Trust Deeds to be issued in favour of Walbrook Trustees as, according to what she stated in that letter, Mr. Austin had actually been paid for the property in July, 1996.

5.57 On 4th February, 1998, Mr. Perera forwarded two original Deeds of Trust in respect of the shares in Tokey Investments Limited, held by the Finsbury companies, in favour of Walbrook Trustees, to Mr. Christopher Tushingham in the Isle of Man. Both Deeds of Trust, one of which related to 99 of the 100 shares of Tokey Investments, and one of which related to a single share, had been backdated to 12th August, 1996. As to the backdating of those Deeds to 12th August, 1996, Ms. Malone in her evidence confirmed that Mr. Phelan had informed her that he himself would make contact with Mr. Perera concerning the matter. She accordingly had not dealt with it, and had, as indicated, notified Mr. Perera to that effect. It was Mr. Phelan who had informed Mr. Perera that the Deeds of Trust, which had not been signed until on or shortly before 4th February, 1998, should be backdated to 12th August, 1996. Although it would appear therefore that Ms. Malone had not herself taken part in the backdating of these documents, she commented that an element of backdating was not particularly unusual in her work, and that several situations would arise in the company

secretarial world in which issues had to be, as she put it, *"tidied up"* after the event. Whatever may have been the practice in Ms. Malone's company secretarial work, it is obviously extremely unsatisfactory and unorthodox that a document executed in 1998 should purport to have been executed some one and a half years earlier, as had indeed been represented to the Tribunal by William Fry, in one of their earlier letters, relaying their client's instructions as to what had transpired in relation to this matter.

5.58 In March, 1999, it seems that Ms. Malone had a further occasion to contact Valmet in order to obtain copies of the Deeds of Trust executed in favour of Walbrook Trustees. These were furnished to her together with Share Certificates by Valmet on 19th March, 1999. Whilst Ms. Malone testified that she was uncertain as to what the purpose of that request was, she thought it probable that Mr. Phelan had asked her to confirm that the Deeds of Trust had been executed, and she surmised that he may have asked her to clarify the position in the context of preparing a statement of assets for Mr. O'Brien.

5.59 The final Declarations of Trust by Walbrook Trustees in favour of Mr. O'Brien, which would give effect to confirming Mr. O'Brien's ownership, were not, in the event, issued until 15th May, 2001. In that regard, Mr. Christopher Tushingham of Deloitte & Touche, Isle of Man, confirmed that those Declarations of Trust, stating that the shares in Tokey Investments were held in Walbrook Trustees to the order of Mr. O'Brien, were not issued until May, 2001, due to an administrative oversight. Whilst the Tribunal accepts that explanation for the further delay, it is nonetheless of some significance that the perfection of Mr. O'Brien's title was subject to such an administrative oversight, which did not it seems come to anybody's attention until the matter became material to the Tribunal's inquiries.

Evidence of Mrs. Maureen Austin: no knowledge of a loan to Mr. Michael Lowry

5.60 Mrs. Maureen Austin, widow of the late Mr. David Austin, was one of those witnesses whose testimony was requested by an affected person, on notification of Provisional Findings in late 2008. As the information she had furnished to the Tribunal in the course of its private investigations in 2001, did not reflect adversely on affected persons, the Tribunal had in the first instance intimated its intention to accept that information, to obviate the necessity of her giving evidence at public sittings.

5.61 She stated that, some years prior to moving with her husband to London in 1993, they had purchased a Spanish townhouse at Aloha Pueblo, Neuva Andalucía, Marbella, for use as a holiday home. During the four years of

her husband's worsening health, before his death in November, 1998, she had paid little attention to matters other than his welfare. They had decided to sell the property in 1996, and purchased a property in the south of France. The sale was to Mr. Denis O'Brien, who she understood had wished to buy it for his parents' use. As the company, Tokey Investments Limited, owned the premises, the purchase did not pass directly from the Austins to Mr. O'Brien. After the sale, they had continued to have access to it until after the Ryder Cup, in 1997. She recalled clearing personal belongings from the property, either before or after the Ryder Cup, and thought this was in or around October, 1997.

5.62 Whilst aware of the New York fundraising event organised by her husband in November, 1996, she knew no details, although he may have told her that it had been successful. She thought her husband's friendship with Mr. Michael Lowry had been peripheral, in a context of racing and Fine Gael functions, although he had been a close and longstanding friend of the late Mr. Frank Conroy. His friendship with Mr. Denis O'Brien was close, and dated back many years. Mr. O'Brien would have visited her husband occasionally in his latter years, as did Mr. Lowry and Mr. Conroy. She had been aware that her husband intended to assist Mr. Lowry in regard to the acquisition of a Dublin property, at Carysfort Avenue, Blackrock, and recalled driving past the property once, whereupon her husband had pointed it out, and said he intended to help Mr. Lowry. This she felt may have been in a context of providing some form of guarantee, and she would not have thought he had intended to lend Mr. Lowry £147,000.00.

5.63 In cross-examination on behalf of Mr. O'Brien, she stated that she recalled something of her husband having had difficulty in locating papers during his last years of illness and treatment, including the Declarations of Trust relevant to the property sale. As to whether the £150,000.00 paid was not in fact for the property purchased, she knew of no other transaction giving rise to such a payment to her husband from Mr. O'Brien, and he would not have given the property free. She stated that, in fact, the worsening of her husband's health had prevented them going back to the premises for the Ryder Cup, as had been intended.

5.64 In re-examination by Tribunal counsel, she agreed that, at the time the sale had been raised, they were spending most of their time in the south of France, where they had purchased their property, although they may not have moved into the new premises, which was then under construction. She had had no involvement in the negotiations with Mr. O'Brien, and only recalled the reduction agreed in relation to the Ryder Cup. As to the joint account in Jersey, into which a payment of £150,000.00 was made, she acknowledged that she

had only become aware of this after her husband's death. She was unable to assist as to why her husband should have requested payment to be made from an off-shore account, and her husband had at that time retained an Irish bank account. She had had no contemporary awareness of any loan agreement or repayment acknowledgement, each involving her husband, and Mr. Lowry, and no such documents had been in her husband's papers after his death. As to a reference in a note of the earlier of two meetings had by her with Tribunal lawyers, to the effect that it had not been her husband, but someone else, who first mentioned the matter of Mr. Lowry buying the Carysfort Avenue house, she stated that it had always been the position that she knew about this from her husband. She stated that her husband had never told her that virtually all of the £150,000.00 that he had received, namely £147,000.00, had been loaned by him to Mr. Lowry. Accordingly, she was entirely unaware that virtually all of the house sale proceeds appeared to have been loaned to Mr. Lowry. Put that the terms of loan repayment did not involve regular instalments, but provided for repayment at the end of five years with accumulated interest, she stated that her husband had been very optimistic in relation to his prospects of longer survival in the context of his illness.

Evidence of Mr. Aidan Phelan: setting up covert route for transfer of funds

5.65 To put the evidence of both Mr. Aidan Phelan and Mr. Denis O'Brien in context in relation to the account that the £150,000.00 payment, by Mr. O'Brien to Mr. Austin, was for the sale of his Spanish holiday home, it is necessary to appreciate the circumstances in which inquiries were pursued with Mr. O'Brien and with Mr. Phelan in 1997, in connection with the IPO of Esat Telecom.

5.66 It will be recalled that the matters under scrutiny in 1997 pertained in the main to a statement by Mr. Denis O'Brien, made in the latter portion of 1996, to Mr. Barry Maloney, then Chief Executive of Esat Digifone, that effectively he had made a payment of £100,000.00 to Mr. Lowry. It will also be recalled that subsequently Mr. O'Brien contended, when the matter was brought to the attention of other directors and shareholders of Esat Digifone, that the remark, essentially accurate, had been made in jest and that although he had intended to make a payment to Mr. Lowry, and had earmarked funds to that effect in Woodchester Bank, the funds ultimately became *"stuck"* with an intermediary. The Tribunal has concluded that Mr. O'Brien's statement to Mr. Maloney in late 1996, was not made in jest and that it accurately reflected what, as he stated, he had done, that is, he had embarked upon making a payment to Mr. Lowry.

5.67 The inquiries instituted within Esat Digifone at that time included queries concerning payments made from accounts of Mr. Denis O'Brien to any third parties where the amounts exceeded £25,000.00. Certain queries in the

course of those inquiries were addressed to Mr. Phelan, with a view to identifying any such payments, and with a view to ensuring that all of the relevant accounts had been scrutinised. The shareholders and directors of Esat Digifone, on the occasion of that scrutiny, extremely highly pressurised by reason of the imminence of the IPO, were not aware that a payment of £150,000.00 had been made by Mr. O'Brien to Mr. David Austin in July, 1996.

5.68 In his evidence Mr. Phelan dealt with many of the matters to which reference has already been made in an earlier part of this chapter concerning the instructions he received from Mr. O'Brien, to transfer the sum of £407,000.00 from an account in Woodchester Bank in Dublin, to an account in the Isle of Man. It will be recalled that initially the money was transferred to an account in the name of Diest, and that subsequently an account in Mr. Phelan's own name was opened and the money was deposited in that account, and from that account paid to a number of different individuals and entities on the instructions of Mr. O'Brien. Mr. Phelan thought that no one but Mr. O'Brien and himself was aware that the account had been opened in Mr. Phelan's name.

5.69 According to Mr. Phelan, Mr. O'Brien had asked him to obtain a draft for Mr. Austin in the amount of £50,000.00, stating that he was considering buying a house from Mr. Austin, but that the price had not been agreed and that this was a down payment. As has already been stated, this payment was made on 10th July, 1996. On 19th July, 1996, there was then, again on Mr. O'Brien's instructions, a telegraphic transfer of £100,000.00 to Mr. Austin's Channel Islands account. This was, according to Mr. Phelan, on foot of Mr. O'Brien telling him that he had agreed the final price at £150,000.00, and that the balance should be sent to Mr. Austin.

5.70 This evidence would therefore suggest that at the time the first payment was made, namely on 10th July, 1996, Mr. O'Brien had not agreed a price with Mr. Austin. Since Mr. O'Brien testified that he initially agreed a price of £165,000.00, subsequently reduced to £150,000.00, on the understanding that Mr. Austin should stay on in the premises until after the Ryder Cup, it must follow that the sequence of events, on the basis of Mr. O'Brien's evidence, was as follows:

(i) that Mr. O'Brien indicated to Mr. Austin a desire to purchase Mr. Austin's Marbella property;

(ii) that on 10th July, 1996, the sum of £50,000.00 was paid to Mr. Austin as an earnest of Mr. O'Brien's commitment;

(iii) that no final price had been agreed;

(iv) that some time following 10th July, 1996, a final price of £165,000.00 was agreed;

(v) that some time very shortly thereafter a price of £150,000.00 was agreed, a reduction of £15,000.00 in consideration of Mr. Austin being permitted to remain on in the premises until after the Ryder Cup, and that the balance of £100,000.00 on that basis was paid on 19th July, 1996.

5.71 It does not appear that Mr. O'Brien informed Mr. Phelan of the £165,000.00 agreement, or of the basis upon which it was reduced to £150,000.00.

5.72 In the course of evidence, Mr. Phelan, as will be recalled from the previous chapter, was asked about the recollection of Mr. Owen O'Connell of William Fry, that in examining the matters involving Mr. O'Brien and Mr. Barry Maloney in November, 1997, he had queried Mr. Phelan in regard to any other significant accounts of Mr. O'Brien, and that Mr. Phelan had referred to small accounts only. Mr. Phelan stated that he did not disbelieve Mr. O'Connell's evidence in that regard, but that he could not, in advance of the IPO, recall such a conversation. He did however confirm that he was aware that Mr. O'Connell was inquiring into payments made in excess of £25,000.00. As is apparent from the previous chapter, it is clear that Mr. Phelan was aware of the context in which queries concerning Mr. O'Brien's accounts had arisen, namely, the suggestion that Mr. O'Brien had stated to Mr. Barry Maloney that effectively he had paid £100,000.00 to Mr. Lowry.

5.73 It is important to recall that Mr. Phelan's Isle of Man account, from which the two payments to Mr. Austin were made in July, 1996, was not closed until 17th May, 1997, that is, a mere five and a half months prior to Mr. O'Connell's inquiries of Mr. Phelan. Mr. Phelan agreed that he did not tell Mr. O'Connell of the Radio Investments NV account, from which Mr. O'Brien had instructed him to withdraw £407,000.00 on his behalf to be held in an off-shore account in the Isle of Man in Mr. Phelan's name. At the time of Mr. O'Connell's inquiries, Mr. Phelan confirmed that he had recalled that £150,000.00 had been paid to Mr. Austin, but he did not believe that this was significant. Mr. Phelan's evidence, was that whilst he recalled the payment, he did not recall the account from which the payment was made. As to the amount being a sizeable payment to someone with no business connection with Mr. O'Brien, and who had been a conduit in the $50,000.00 payment to Fine Gael, Mr. Phelan's view was that this payment of £150,000.00 was in respect of a house purchase, and on that basis,

it had not occurred to him at the time to tell Mr. O'Connell about it. As will be clear from the previous chapter, the only accounts scrutinised, by Mr. O'Connell, by way of queries to Mr. O'Brien's bookkeeper, were those personal accounts of Mr. O'Brien in Woodchester, and not the RINV account which, although not a personal account, was nevertheless an account over which Mr. O'Brien had control, sufficient control to arrange for the withdrawal from the account of the substantial sum of £407,000.00.

5.74 As to the unusual features of the so-called property transaction, Mr. Phelan acknowledged that Mr. O'Brien had funds in other accounts from which the monies to pay Mr. Austin for the purchase of the Spanish property could have been openly transmitted. He did not accept that the primary basis of the off-shore account, opened in his name on the instructions of Mr. O'Brien, had been concealment, insisting that Mr. Austin wished to be paid from an off-shore account. However he did agree that the manner in which the payment was processed did conceal the true identity of the owner of the funds in the account, and that, whilst he said it had not been a huge discussion point between them, it was reasonable to assume that Mr. O'Brien did not want his name on the account in the Isle of Man. Furthermore, he acknowledged that anyone looking at the account would have regarded it as Mr. Phelan's account, and that the payments made from it to Mr. Austin were his, Mr. Phelan's, and not Mr. O'Brien's.

5.75 In this connection, it is significant that, although it was Mr. Phelan's evidence that Mr. Austin had insisted that payment be made from an off-shore account, there was no evidence that it was at his suggestion, or that he had stipulated, that the payment should come from an account unconnected on its face with Mr. Denis O'Brien. In summary, Mr. Phelan's evidence was that his reason for omitting to draw the matter to the attention of the individuals responsible for conducting the inquiry at the time of the IPO was that he viewed it merely as a house purchase. This explanation will be reviewed below.

5.76 With reference to the evidence of Ms. Malone, Mr. Phelan confirmed that it was in September of 1997 that he had first asked her to attend to the completion of the documentation necessary to effect a transfer of ownership in Mr. Austin's property to Mr. O'Brien. However, it was not until Christmas, 1997, that he met Mr. Austin for the purposes of advancing the matter. He also agreed that it was from him that Mr. Perera of Valmet in Gibraltar had obtained the information to enable the Deeds to be backdated to 12th August, 1996, notwithstanding that on any view of the manner in which the documentation was processed, the paperwork was not completed, until at the earliest, subsequent to 21st January, 1998.

5.77 When queried as to his view of Mr. O'Brien's own knowledge of his financial situation, Mr. Phelan said that Mr. O'Brien operated in very broad terms, rather than having a great grasp of detail, but in the context of an amount such as that of £407,000.00, he would have been aware of the movement of funds.

5.78 Mr. Phelan stated that he was unaware that Mr. Austin had paid Mr. Lowry £147,000.00 out of the £150,000.00 received by him from Mr. O'Brien. Although Mr. Phelan had been asked by Mr. Austin during the last month of his life to be one of his executors, he had never discussed this matter in any context prior to Mr. Austin's death. He stated that he only became aware of these matters when they arose through the Tribunal's inquiries.

5.79 He recognised that, in the circumstances of the important matters having very significant repercussions for the IPO, which were being inquired into in late 1997, he now saw matters very differently, and with the knowledge he now had of money being transmitted from Mr. Austin to Mr. Lowry, out of the funds transmitted by him on behalf of Mr. O'Brien to Mr. Austin, alarm bells would have rung for him in 1997, and he would have informed Mr. O'Connell.

Evidence of Mr. Denis O'Brien: merely a property purchase

5.80 Mr. O'Brien's evidence concerning his statement to Mr. Maloney that he had already paid £100,000.00 to Mr. Lowry has already been referred to in detail. For this reason, as in the case of Mr. Aidan Phelan, it will not be referred to in this chapter in the same detail, but does of course form the background for much of the evidence given by Mr. O'Brien concerning his dealings with Mr. Austin in 1996, in connection with what Mr. O'Brien contended was the purchase by him of Mr. Austin's Spanish property.

5.81 One of the features of Mr. O'Brien's evidence concerning his dealings with Mr. Austin is that it was from Mr. O'Brien himself that the Tribunal first learned of this purchase. Whilst, needless to say, had the Tribunal's inquiries of Mr. Austin's executors concerning his bank accounts taken their normal course, as a matter of probability the relevant aspects of the money trail would in due course have come to the Tribunal's attention, the fact remains that the first the Tribunal heard of any purchase of property came from Mr. O'Brien himself. In evidence, when queried by Tribunal counsel, suggesting a connection between the £150,000.00 payment to Mr. Austin, and Mr. Austin's dealings with Mr. Lowry, Mr. O'Brien responded that this was a far-fetched notion, and reflected the Tribunal's tendency to add one and one to make twenty. Yet earlier in his evidence, when asked about his first having informed the Tribunal of the transaction, he stated that it was after the RTE report of a loan from Mr. Austin to

Mr. Lowry that he, as he put it, promptly wrote to the Tribunal to say that he had bought a house from Mr. Austin. When asked how he connected the house purchase with the RTE broadcast in relation to the loan, Mr. O'Brien replied that the broadcast mentioned £150,000.00, and he had bought a house for that sum, and that it was on that basis that he decided to bring the matter to the Tribunal's attention; that he was concerned that he had bought a house from Mr. Austin and that later in the same year Mr. Austin had given a loan to Mr. Lowry. He emphasised however that he, Mr. O'Brien, knew only about the former, but not the latter transaction.

5.82 As in the case of the evidence of Mr. Phelan, in the examination of Mr. O'Brien, the Tribunal wished to ascertain why neither the RINV account, nor the payment of £150,000.00 to Mr. Austin had been brought to the attention of those charged with conducting inquiries in November, 1997, at the time of the IPO, and specifically, Mr. Owen O'Connell, who had devised a particular approach to dealing with the issues which arose in the examination of statements made by Mr. O'Brien to Mr. Maloney.

5.83 Mr. O'Brien explained his connection with Radio Investments NV, stating that the company had been set up in 1991, to hold overseas radio assets; that it had been bought out by some shareholders in 1994, and that at the time of giving evidence, Mr. O'Brien held the controlling interest, perhaps somewhere between 70% and 90%, following a complex demerger. He testified that he had lent money to the company, and that what was involved in the withdrawal of the £407,000.00 transferred to the Isle of Man, was the repayment of that loan.

5.84 Mr. O'Brien's evidence, in summary, was that whilst he was aware that he had bought a property, and that he had paid Mr. Austin £150,000.00 he was not aware of the details, and did not know from which account the money had been paid. He stated that if he had been questioned at the time of the actual transaction, he might well have adverted to the details, but sixteen months later, that is, at the time of the IPO, he would only have remembered vague elements of it.

5.85 Mr. O'Brien emphasised, throughout his evidence, essentially in explanation of his inability to remember the account, that it was what he called a *"special purpose account"*, opened and closed within a short period of time. Whether or not he remembered the account or the details of the transaction, Mr. O'Brien did not bring the fact that he had made a payment to Mr. Austin of £150,000.00 to the attention of his fellow shareholders in Esat Digifone and Esat Telecom in November, 1997, even though the recipient of that payment, Mr.

Austin, was himself the focus of inquiries regarding the $50,000.00 donation to Fine Gael.

5.86 Mr. O'Brien however pointed out that, whatever inquiries might have been carried out at that time, had he disclosed the fact of the payment of £150,000.00 having been made by him to Mr. Austin, all that would have emerged was a property purchase, and that even looking at the matter in retrospect, he did not believe that the boards would have had any problem with the transaction. It should be observed that it was of course the case at that time, November, 1997, that no documentation to effect the transfer of ownership from Mr. Austin to Mr. O'Brien had yet been executed.

5.87 Describing the circumstances of his dealings with Mr. Austin, he stated that the property purchase had been agreed in May, 1996, and implemented in the following July. His evidence was that he had had dinner with Mr. Austin in London in May, 1996, and that on that occasion Mr. Austin had raised the issue of his Spanish property. Mr. O'Brien then agreed to buy the Spanish property. He recalled Mr. Austin taking out a folder, showing him some documents, and saying that he owned the company that owned the property. Various stages were involved in completing the transaction: the payment of the money; Mr. Austin being allowed as part of the agreement to keep the premises until after the Ryder Cup; and the handover of possession following the Ryder Cup. Asked whether he had ever used the property, Mr. O'Brien said that, upon getting possession after the Ryder Cup, it was rented immediately. In the event, he thought that Mr. Austin had been too ill to attend the Ryder Cup. As regards the intended use by Mr. O'Brien's parents, Mr. O'Brien said that ultimately his father did not use the property, and instead went to the Algarve region of Portugal where he, Mr. O'Brien, had purchased a site at in or around the same time. Whilst it had been Mr. O'Brien's original intention to acquire the property for the use of his parents, events did not work out in that way.

5.88 In relation to the late execution of the trust documentation in early 1998, Mr. O'Brien stated that Mr. Austin had shown him the original documentation from his purchase of the property in 1996, at the time of their meeting in London, but that he, Mr. O'Brien, later heard that new documents were being sought. However, he had not handled the transaction, the matter having been put in the hands of Mr. Phelan and Ms. Malone. Regarding the discrepancies between the actual dates of execution of the documents, and their purported dates, namely, the fact that the documents were not executed until 1998 but had been backdated to 1996, Mr. O'Brien stated that he was satisfied that the basis for this was Mr. Austin's delay; that he had been aware of Mr. Austin's ill health; that he did not wish to seem to be hounding him; and that it

may have been the position that Mr. Austin kept saying that he would find the missing documents.

5.89 In this connection, the queries arising at the time of the IPO concerning the $50,000.00 Fine Gael donation were recalled, and it was suggested to Mr. O'Brien that, whilst he had testified that by reason of Mr. Austin's ill-health, he did not wish to be hounding him in 1996, and 1997, concerning the conclusion of the purchase of the property, the same sensitivities did not appear to apply concerning the request to Mr. Austin to provide a letter relating to the $50,000.00 Fine Gael donation. Mr. O'Brien's response was that he would not have pushed too hard for that letter, unless it appeared that Mr. Austin was well enough to write it. However, when it was suggested to him that Fine Gael might have been an alternative route from which to obtain the information, and of course obviously the most relevant route, Mr. O'Brien's response was that this involved using hindsight. He also stated that it was the directors of Esat Digifone, who were handling the matter, and that if he himself had been there, then perhaps he might have gone to Fine Gael. This proposition is distinctly at odds with the stance taken by Mr. O'Brien in February, 1998, when Telenor, once again through their Esat Digifone nominee director Mr. John Fortune, brought the matter of the $50,000.00 donation to a head, and it is clear from the evidence that Mr. O'Brien still had no enthusiasm for going to Fine Gael to seek clarification on the matter.

5.90 Mr. O'Brien was also queried as to his evidence that it was the hearing of the RTE report that had prompted him to inform the Tribunal of his purchase of a property from Mr. Austin, on the basis of this being relevant to the work of the Tribunal. Reference has already been made to the fact that Mr. O'Brien's evidence was that he felt that this would be helpful for the Tribunal to know, by reason of the similarity between the amounts purported to have been lent by Mr. Austin to Mr. Lowry, and that paid by him to Mr. Austin for the property acquisition. However, when queried as to why he had not informed the Tribunal of the matters arising in his conversation with Mr. Maloney, which had formed such a central feature of the final days of the IPO process, Mr. O'Brien agreed that he had only dealt with this matter after the Tribunal had raised it, by reason of his fear of "*trial by media*".

5.91 Whilst some aspects of the evidence of Mr. O'Brien and Mr. Phelan concerning the purchase have been commented on, it seems appropriate to refer to the evidence of Mr. Lowry concerning these matters before concluding those comments.

Evidence of Mr. Michael Lowry: a loan for refurbishments

Non-disclosure of off-shore account in initial 1999 evidence

5.92 In Mr. Lowry's evidence, the main issues which arose were the fact that the Isle of Man bank account, in which £147,000.00 had been deposited to his credit, had not been disclosed to the Tribunal at the time of Mr. Lowry's earlier evidence in 1999, that is, at a time when he purported to have provided the Tribunal with access to all of his financial affairs to include all off-shore holdings. Furthermore, although the Carysfort purchase had been disclosed, the separate contract with Mr. Michael Holly for its refurbishment, said by Mr. Lowry to have been what prompted the loan from Mr. Austin, had not been disclosed, nor that Mr. Lowry's source of funding for the refurbishment was a loan from Mr. Austin. In his earlier evidence, Mr. Lowry had disclosed Mr. Michael Holly's role in the purchase of the property, but not his role in its refurbishment, or any of Mr. Lowry's dealings with Mr. Austin in that regard. In brief Mr. Lowry had disclosed the fact of the loan from the Irish Nationwide Building Society to fund the purchase of the property, but not, what he contended, was the related loan from Mr. Austin, the proceeds of which had been lodged to the Isle of Man bank, which was a wholly owned subsidiary of Irish Nationwide Building Society.

5.93 In his evidence to the Tribunal in 1999, Mr. Lowry had described the purchase of, and the circumstances of the purchase of, the Carysfort property. In light of later evidence following the Cooper/Investec disclosures, this description proved to be markedly incomplete. What he had indicated to the Tribunal, in that earlier evidence, was that prior to the purchase of the property he had intimated to a number of individuals his desire to purchase a Dublin residence. One of the individuals to whom he had mentioned this matter was Mr. Michael Holly of Cedar Building Company Limited. According to Mr. Lowry, Mr. Holly had contacted him about this property, explaining that he felt that it was a good investment, and that he believed it could be acquired at an acceptable price. The property was due to be auctioned within a day or so of his communication to Mr. Lowry. Mr. Lowry was abroad on Government business, and so it was agreed between them that Mr. Holly would proceed to endeavour to secure the property and that, if on his return, it met with Mr. Lowry's approval, he would be offered first refusal at the purchase price. This is what occurred, and Mr. Lowry purchased the property, in fact through Mr. Holly's solicitor who had signed the contract in trust, as is frequently the case, at the auction.

5.94 In his 1999 evidence, Mr. Lowry alluded to the role of Irish Nationwide Building Society in providing loan finance for the purchase. However, once again his account of his dealings with Irish Nationwide Building Society was significantly

incomplete. Nor did Mr. Lowry make any mention of any role of Mr. Denis O'Connor in connection with the property, in the course of that evidence.

2001 disclosures

5.95 In 2001, Mr. Lowry provided the Tribunal with both a different and a much lengthier account of the circumstances of that transaction. What he then informed the Tribunal was that he felt he needed appropriate residential accommodation in Dublin and, having learned from a fellow Minister of the available tax incentive, he sought particulars of the Dual Abode Allowance, as already outlined, and investigated through various agents the availability of suitable properties. As mentioned in his earlier account, he again stated that he had intimated his desire for a suitable property to a number of friends, and it was through Mr. Holly that he had learned of Carysfort. He informed the Tribunal that, when the property was acquired, it was in a very poor state of repair, and that Mr. Holly felt that substantial funds would be needed for renovations. Mr. Lowry stated that he had obtained loan finance from Irish Nationwide Building Society on the basis of 100% of the purchase price, which necessarily implied that he would have to fund refurbishment costs himself. He had intended initially to use a sum of approximately £140,000.00, which he held in a Channel Island account for this purpose, and that was how matters stood at the conclusion of his discussions with Mr. Fingleton, although he had made no reference in the course of those discussions to the fact of his having £140,000.00 in an off-shore account earmarked for that purpose.

5.96 Mr. Holly had informed him that his company would carry out the necessary refurbishment for approximately £90,000.00, recognising that there would also be substantial expenditure entailed in the fitting out, to include such items as decoration, furniture, flooring, tiling and the like. Mr. Lowry stated that he discussed the cost of refurbishment with Mr. Holly who was anxious to know that finance was in place, and he then informed Mr. Austin of the entire position, whereupon Mr. Austin offered to make him a loan of the funds required. Between them, Mr. Holly and Mr. Austin had calculated the total amount that would be involved at £147,000.00. Mr. Lowry testified that in deciding to accept Mr. Austin's offer, he was influenced both by personal factors, and by possible tax liabilities resulting from his relationship with Mr. Ben Dunne. He did not inform Messrs. Oliver Freaney & Company, his then accountants, at the time of this loan arrangement, although he had inquired of them in relation to the Dual Abode Allowance.

5.97 It is helpful at this juncture to recall that from the evidence of Mr. Eddie Holly, it would appear that consequent on the controversy surrounding Mr. Lowry's resignation as a Minister, he and his late brother, Mr. Michael Holly had become apprehensive as to whether the refurbishment would be paid for or completed. Following a certain degree of what might be described as gentle pressure from the Hollys, the question of payment for refurbishment works was raised with Mr. Lowry in December. On 4th December, 1996, a bill for £32,466.80 (inclusive of VAT), a valuation of the works to that date, was sent to Mr. Lowry, and when no response was received, Mr. Michael Holly made direct contact with Mr. Lowry. According to Mr. Eddie Holly, it was then agreed between his brother, Mr. Michael Holly, and Mr. Lowry, that the company would buy back the premises from Mr. Lowry. It would appear that agreement to that effect had been reached prior to Christmas. Shortly after Christmas, the relevant contractual steps were taken, and the repurchase completed by payment of the purchase price, intended to reflect merely Mr. Lowry's costs of acquisition, which was paid by 17th January, 1997. Sometime after that, on 5th February, 1997, Mr. Lowry paid to Mr. Austin the sum of £148,816.93. Mr. Lowry's evidence was that this represented the funds lent to him for refurbishment, and that as they were no longer required for that purpose, the amount of the loan together with the interest, which he had agreed to pay at commercial rates, was repaid to Mr. Austin.

5.98 It also appeared from his later evidence that he had at the time intimated to Mr. Denis O'Connor, who as will be recalled was engaged professionally by Mr. Lowry from mid-1996, that he would request him to oversee the refurbishment works on his behalf. He did not, however, tell Mr. O'Connor of the Isle of Man account from which, according to Mr. Lowry, this refurbishment was to be funded using a loan provided by Mr. Austin, as the issue never arose between them. Nor, as already mentioned, had he informed Mr. O'Connor that it was Mr. O'Connor's firm's name that he had given as his address to the Isle of Man bank. In his 2001 evidence, Mr. Lowry relied on certain documentation in support of his testimony that the deposit of £147,000.00, in his Isle of Man bank account, was by way of a commercial loan transaction with Mr. Austin. Of course this documentation had not been provided to the Tribunal in the course of Mr. Lowry's 1999 evidence or at any time thereafter until a point towards the conclusion of his 2001 evidence.

5.99 One of the obvious questions which arose concerning Mr. Lowry's evidence of his relationship with Mr. Austin in connection with this money, was why Mr. Austin had not simply written Mr. Lowry a cheque for £147,000.00. Mr. Lowry's response was that it was in fact Mr. Austin *"as a non-resident"* who suggested how the funds should be transferred; that he decided how it should be done; and that he had facilitated the opening of Mr. Lowry's account in the Isle of

Man; and that Mr. Lowry could only assume that it suited Mr. Austin to arrange matters in this way. It was Mr. Austin who had obtained the necessary papers for opening the account, and it was Mr. Austin who requested Mr. Lowry to complete the documents, and to return them to Mr. Karl Tully, the official in the Isle of Man bank.

5.100 Mr. Lowry explained that he had a very close relationship with Mr. Austin particularly in Mr. Austin's latter years, and that the two would have stayed in touch, by telephone or otherwise, virtually on a daily basis. This element of Mr. Lowry's evidence was at variance with the evidence of Mrs. Maureen Austin who described her late husband's relationship with Mr. Lowry as being peripheral. Whilst Mr. Austin had stipulated how the funds should be provided, he had not discussed with Mr. Lowry any aspect of the origin, or source of the funds. Regarding the banking documentation and, in particular, the fact that the address given by him was neither his Dublin nor Tipperary addresses, but the address of Mr. Denis O'Connor's firm, Brophy Butler Thornton, Mr. Lowry accepted that he did not seek their consent, but that this was because he did not think it was necessary. In explanation for his use of that address when that firm had not yet undertaken all of his affairs, and when in fact Oliver Freaneys were still formally the accountants to his refrigeration company, he stated that he had started doing some business with Mr. Denis O'Connor, and that he had intended to move all of his affairs to Mr. O'Connor.

5.101 Dealing with the form signed for the opening of the account, Mr. Lowry stated that the reference to *"no correspondence except on request"* was normal. As to describing himself as a company director, he stated that he had been a Minister for less than two years, and that although he had resigned from the refrigeration company, as was required of him, *"in his mind"* he still remained a company director. It was not his practice, he stated, to promote himself on the basis of being a Government Minister, and in any event, the Isle of Man bank knew who he was.

5.102 Mr. Lowry's failure to inform the Tribunal of his off-shore account in the Irish Nationwide Building Society in the Isle of Man was not due to any excusable omission. From his evidence, there was no question of his having failed to recall either the account in the Isle of Man bank, or his dealings with either Mr. Austin as to the opening of the account, and the processing of payments to and from it, or his dealings with Mr. Michael Holly as to the refurbishment of the Carysfort property. His stated reason for non-disclosure was that he felt that the off-shore Isle of Man account was outside the Tribunal's Terms of Reference. When he mentioned the matter to his advisers in 2001, in the context of disclosures being made concerning the Mansfield and Cheadle properties, they took the view that

he should disclose it. He sought to place special emphasis on the fact, as he put it, that this transaction was a loan for a specific purpose, which transpired not to be needed, and was thereupon repaid. He also suggested that as he had provided a world-wide waiver this should have enabled the Tribunal to access the account. He went further and stated that he felt that his waiver to Irish Nationwide Building Society in Dublin would have embraced the off-shore Isle of Man bank as well.

5.103 Whilst this evidence of Mr. Lowry, purporting to excuse his non-disclosure of the account and/or the loan will be returned to again, at this stage it should be observed that Mr. Lowry's initial engagement with the Tribunal was on the basis that, through his agent Mr. O'Connor, the Tribunal would be provided with all information concerning his financial affairs and details of all bank accounts held by him, not merely that information which he, or his adviser, deemed to be relevant. Mr. Lowry had stated that he wished to afford the Tribunal full cooperation, and the early evidence of Mr. O'Connor in June, 1999, was on the footing that he had been instructed by Mr. Lowry to provide the Tribunal with every assistance; that he had been informed by Mr. Lowry that he had been provided with information concerning all of Mr. Lowry's financial affairs, and all of his accounts, on-shore and off-shore.

5.104 The suggestion that because this account was opened and indeed closed within a short period of time, it did not warrant being brought to the attention of the Tribunal, is preposterous, when it is borne in mind that the related account, that is, the account in Irish Nationwide Building Society in Dublin, was an account of almost equally short duration, and furthermore was an account set up, according to Mr. Lowry, for a similarly specific purpose, which transpired ultimately not to be needed and was on that score, repaid. Furthermore, Mr. Lowry saw fit to bring to the attention of the Tribunal accounts of even shorter duration than the account in the Isle of Man off-shore bank.

5.105 The suggestion that the fact that the Tribunal was in possession of a waiver constituted disclosure is an equally unmeritorious excuse. The mere fact that the Tribunal had a waiver simply afforded it the opportunity of procuring documentation, including bank accounts from individuals or entities thought to have relevant material if they were prepared to act on foot of such a waiver which, in the case of financial institutions in off-shore locations, did not always prove to be the case. The fact that a world-wide waiver was in place did not entail an obligation on any bank in any part of the world to provide information to the Tribunal, and it is hardly realistic or rational to suggest that the Tribunal was under an obligation to communicate with every financial institution on earth.

5.106 Mr. Lowry also made much of the fact that as this transaction was not a payment, but, as he contended, a loan, that is, a commercial transaction, it did not merit disclosure. Of course the fact is that however Mr. Lowry came to acquire the funds, they were placed in a deposit account in his name. This attitude on Mr. Lowry's part is to be contrasted with the various transactions brought to the Tribunal's attention by him in the course of his earlier evidence with a view to establishing that those transactions, apparently payments to Mr. Lowry, were ordinary commercial arms length transactions, notwithstanding that on the face of it, there appeared to be in some cases, only limited documentary material to support those propositions.

5.107 As to Mr. Lowry's contention that his waiver to Irish Nationwide Building Society in Ireland would have embraced the Irish Nationwide Bank in the Isle of Man, this proposition is at variance with Mr. Lowry's official utterances. In the course of his personal Statement in the Dail in December, 1996, following his resignation from the Government, he asserted that:

> *"If someone were trying to hide income, would he or she not be more likely to put it in an off-shore account?"*

thereby demonstrating his clear understanding that what frequently, in Mr. Lowry's view as a matter of probability, prompts the conduct of banking transactions with off-shore banks, is the desire for concealment. That Dáil Statement made by Mr. Lowry, including the extract referred to above, was quoted and considered in some depth in the McCracken Report. Whilst that Tribunal concluded that it was not part of its functions to determine whether Mr. Lowry had deliberately misled the Dáil, it nonetheless regarded itself as entitled to take into account, in making its findings, Mr. Lowry's apparent lack of candour on that occasion.

5.108 Lastly, Mr. Lowry in his evidence made much of the fact that it was he who brought the details of his dealings with Mr. Austin in connection with Carysfort, the refurbishment of the premises, and the opening of the Isle of Man account, to the attention of the Tribunal. This is true, but occurred belatedly, and only in 2001, at a time when the Tribunal was in the process of examining all of Mr. Austin's accounts and when, as a matter of probability, it was only a question of time before movements from Mr. Austin's account, however covert, to an off-shore account of Mr. Lowry would have been discovered by the Tribunal.

Production of documentation in support of a loan from Mr. David Austin

5.109 In support of his evidence that his arrangement with Mr. Austin amounted to no more than a loan to assist with the refurbishment of the Carysfort

property, Mr. Lowry very belatedly provided the Tribunal with certain documentation. Firstly, a document dated 24th October, 1996, whereby Mr. Lowry is stated to have acknowledged to Mr. Austin that on 18th October, 1996, he had received the sum of £147,000.00 by way of loan, bearing interest at the lending rate of the Irish Permanent Building Society, the interest to accrue annually, and to be repaid on the date of repayment of the loan, which was to be not later than 18th October, 2001, or upon the earlier sale of 43 Carysfort Avenue, Blackrock. Secondly, a document dated 27th February, 1997, which was in the form of a letter from Mr. Austin to Mr. Lowry acknowledging the repayment of £147,000.00 and interest as promised, following the sale of the Carysfort Avenue property. These two documents were in manuscript form, and both of them, according to Mr. Lowry, in Mr. Austin's handwriting, save for the dating of the first document, the loan agreement, and the signature of Mr. Michael Lowry on that document. A copy of both documents referred to above can be found in the Appendix to this chapter.

5.110 Mr. Lowry testified that the loan agreement, properly a loan acknowledgement, was a homemade document produced by Mr. Austin, and signed by Mr. Lowry at Mr. Austin's Monkstown apartment on the occasion of his having been in the area attending at the official launch of a commercial premises in Blackrock. The second document was dated 27th February, 1997, some twenty days after the repayment on 7th February, 1997. The repayment was arranged, not by Mr. Lowry, but by Mr. Austin, who contacted the Isle of Man bank, with the result that subsequently the necessary banking documents to effect that repayment were sent to Mr. Lowry. After the return of the money, Mr. Austin left the original acknowledgement of debt in an envelope at the offices of Mr. Denis O'Connor, who on the evidence heard by the Tribunal knew nothing at that time of the financial dealings between Mr. Lowry and Mr. Austin, having already sent Mr. Lowry the letter of acknowledgement of repayment.

5.111 It will be noted that, although Mr. Austin's letter of 27th February, 1997, purports to thank Mr. Lowry for the repayment and furthermore, to thank him for the *"prompt return of all funds"*, the fact is that the return of the funds was organised by Mr. Austin, and not by Mr. Lowry. Another feature of the letter is that Mr. Austin expresses the hope that Mr. Lowry did not lose out in the buying and selling, a surprising remark in view of Mr. Lowry's evidence that they were in regular if not daily contact, and that the initial arrangement with Mr. Michael Holly was one in which Mr. Austin was intimately involved, from which it seems curious that he would not have been aware of the nature of the final arrangement, whereby Mr. Holly took over the property on terms which caused no financial loss to Mr. Lowry.

5.112 Notwithstanding that one of these documents was actually delivered to the offices of Mr. O'Connor, and probably during the currency of the McCracken Tribunal, Mr. O'Connor was never informed of the matter, according to Mr. Lowry.

5.113 When queried as to why it appeared that this arrangement between Mr. Lowry and Mr. Austin had not come to the attention of Mr. Austin's wife, his executors or his solicitor, Mr. Lowry's response was that it was an arrangement between trusted friends which he would have honoured, so that there was no need to inform any of those parties. If it is accepted for a moment that Mr. Lowry and Mr. Austin ordered their relationship as lender and borrower on a basis of honour, then these documents served no purpose. The only purpose documentation of this kind could have served, in the context of a relationship of this nature, was to evidence the arrangement in the event of the passing away or the incapacity of the parties. Where however neither the executors nor the solicitor to the lender, nor his wife, had been informed of these arrangements, there was every reason to believe that Mr. Austin had actually exposed his wife, or other estate, to the loss of a substantial asset. That this prospect could have been accepted by a man in Mr. Austin's position, both in terms of his business experience and the fact that he was suffering from a terminal illness, seems highly implausible.

5.114 Mr. Lowry's evidence was that he was unaware that the £147,000.00, paid by Mr. David Austin into the deposit account in his name in the Isle of Man bank, represented the bulk of the £150,000.00 transferred by Mr. Denis O'Brien to Mr. Austin some months earlier. Likewise, Mr. O'Brien's evidence was that he was unaware that the £150,000.00 he transferred, in two parts comprising a £50,000.00 cheque, and a direct transfer to the Channel Islands account of Mr. Austin, was used to fund the deposit in Mr. Lowry's account.

5.115 Although Mr. Austin had died by the time of the Cooper/Investec disclosure, and therefore his evidence was unavailable to the Tribunal, it is clear that, on any view of the evidence, he was the one person who must have been aware that these monies transferred to him by Mr. O'Brien were subsequently transmitted by him to Mr. Lowry's Isle of Man account. As an individual who must have been politically aware, it is reasonable to suppose that Mr. Austin was conscious of the political sensitivities entailed by financial transactions linking two such individuals at that time. Not long before, in the latter part of 1995, he had reason to enhance his consciousness of these matters in as much as the leader of Fine Gael, the then Taoiseach, Mr. John Bruton, had rejected the $50,000.00 party political contribution by Esat Digifone. He betrayed an even sharper consciousness of the implications of any such connections when, in early

May, 1997, he arranged for that contribution to be routed to Fine Gael by a covert path, disguised as a contribution of his own.

5.116 It is also appropriate at this juncture to mention a characteristic, strikingly evident in the testimony of the principal witnesses, which has particular relevance with regard to the role of Mr. Austin in the various transactions examined in the course of the Tribunal's inquiries. This relates to what might be termed an informal variant of the *"Chinese Wall Policy"*. This is a comparatively recent practice in certain professional organisations for dealing with sensitive information, and its intent has been described as insuring that people are only allowed access to information which is not held in conflict with any other information which they already possess, and its objective has been described as preventing information flows which might cause a conflict of interest for individuals. Evidence has been recounted in this chapter and elsewhere as to the degree of personal friendship that existed between Mr. Austin on the one hand, and each of Mr. O'Brien, Mr. Lowry and Mr. Phelan, on the other, in the case of the latter, less extensive and of short duration but in the case of Mr. O'Brien, both extensive and intimate. This continued until Mr. Austin's death.

5.117 Despite such associations, and recollections of Mr. Austin as a convivial and entertaining person even during his last illness, and the extent to which there was frequent contact between him and both Mr. Lowry and Mr. O'Brien, the evidence given, sought to suggest that he evinced a remarkable degree of reticence and non-disclosure in his dealings. According to Mr. O'Brien, as has already been mentioned, he was never informed by Mr. Austin that, of the £150,000.00 received by him from Mr. O'Brien for, so Mr. O'Brien contends, the Spanish property, virtually its entirety had been advanced, as a loan to Mr. Lowry. Mr. Phelan was similarly never informed by Mr. Austin to such effect. According to Mr. Lowry, neither had he learned anything from Mr. Austin in relation to the source of the funds proposed to be made available to him, as he contended, on loan. It is of significance, although on a related matter, according to their evidence, that neither Mr. Lowry, Mr. Phelan nor Mr. O'Brien were ever informed by Mr. Austin of all that transpired in relation to the $50,000.00 donation to Fine Gael and specifically, the fact that it had been rejected by the party, and subsequently routed to the party in a disguised format.

5.118 If Mr. Austin's letter of 27th February, 1997, is to be viewed as genuine, it would appear that Mr. Lowry never brought him within his confidence in relation to the arrangements he made with Mr. Michael Holly for the ultimate disposal of the Carysfort property, and the arrangements he made with Mr. Holly which absolved him of any obligation to pay for any of the refurbishments already carried out, and which effectively meant that he made no loss on the transaction.

TWO TRANSACTIONS OR ONE TRANSACTION

A purchase by Mr. Denis O'Brien: a loan to Mr. Michael Lowry

5.119 In the course of the evidence, it was suggested to both Mr. Lowry and Mr. O'Brien, suggestions with which they disagreed, that there were not in fact two transactions here but one, namely, a payment to Mr. Lowry by Mr. O'Brien, and that this was the payment alluded to in the course of his conversation with Mr. Barry Maloney. In other words, the question which ultimately arises is whether the evidence supports there having been two separate transactions, coincidentally associated by the use of the same money, or whether there was in essence a payment to Mr. Lowry by Mr. O'Brien, that was hurriedly reversed upon the establishment of the McCracken Tribunal, and later elaborately concealed both from the IPO inquiry in November of 1997, and thereafter from this Tribunal.

5.120 If the versions of events advanced by Mr. O'Brien and Mr. Lowry were accepted, then, in July, 1996, Mr. Aidan Phelan, on the instructions of Mr. O'Brien, transferred £407,000.00 of the latter's money to an off-shore account in the Isle of Man. The funds were initially lodged in an account of a company associated with Mr. Phelan, and thereafter placed in a new account in Mr. Phelan's name, in terms which did not disclose Mr. O'Brien's ownership of the funds. From that account, firstly, the sum of £50,000.00 was debited, and paid by way of cheque to Mr. David Austin. Subsequently, £100,000.00 was transferred to an off-shore account of Mr. Austin in the Channel Islands on Mr. Austin's direction that it be transmitted from another off-shore account. That sum of money was due to Mr. Austin on the purchase of his Spanish property. Those two sums were aggregated by Mr. Austin in a newly designated Irish currency account in the Isle of Man. The sale transaction was documented by an instrument backdated to 12th August, 1996, but not actually either prepared or executed until early 1998.

5.121 The £150,000.00 remained in Mr. Austin's Channel Islands account until 16th October, 1998, when £147,000.00 was debited from the account and transmitted to an off-shore account in the Isle of Man in the name of Mr. Michael Lowry. This sum of money represented a loan of that amount to Mr. Lowry from Mr. Austin, to pay for the refurbishment of his newly acquired Carysfort property. When the refurbishments, and indeed the entire project at Carysfort Avenue, were abandoned, that sum of money was repaid to Mr. Austin, in February, 1997.

5.122 Mr. Austin's arrangement with Mr. Lowry was supported by a homemade, but comprehensive, loan acknowledgment drawn up by Mr. Austin

himself, and signed by Mr. Lowry, together with a letter acknowledging receipt of the repayment of the money in 1997.

5.123 In essence, what the Tribunal was told was that there was merely a purchase on Mr. O'Brien's side, and a loan on Mr. Lowry's side, although in each case involving the same money.

Covert operations

5.124 Dealing with these two different explanations, of a number of features common to much of the evidence concerning the arrangements made to carry through the transactions, the first is the markedly clandestine and covert manner in which the relevant money was moved in the several stages entailed between the withdrawal from Mr. O'Brien's account, payment to Mr. Phelan's Isle of Man Diest account, thereafter to Mr. Phelan's new account in the Isle of Man, from there to the Channel Islands to Mr. Austin, and finally from Mr. Austin to Mr. Lowry's account in the Isle of Man. The movement between the funds of these accounts is traced in the diagram which appears earlier in this chapter.

5.125 When Mr. Phelan, at Mr. O'Brien's direction, paid £150,000.00 to Mr. Austin, this was not done, as one would have expected, by way of a transfer from one of Mr. O'Brien's accounts in Dublin, or by way of a cheque drawn on one of his accounts, but rather from an account in the Isle of Man, and even then an account not in the name of Mr. O'Brien, but in the name of Mr. Aidan Phelan. This type of arrangement was probably unique in all of Mr. Phelan's time acting for or on behalf of Mr. O'Brien. The account was described by Mr. O'Brien as a "*special purpose account*", but from the evidence it is clear that its primary, if not its only, purpose in the case of the transfers to Mr. Austin, was one of concealment. Mr. O'Brien's explanation, that the transfer was effected from one off-shore account to another off-shore account, at the direction of Mr. Austin, whilst far-fetched from any fiscal or ordinary commercial point of view, does not explain Mr. O'Brien's conduct of the account through the agency and name of Mr. Aidan Phelan.

5.126 As to Mr. Lowry, the manner in which he came to be in receipt of £147,000.00 in a newly opened off-shore bank account in Isle of Man, to which Mr. Austin sent a draft for £147,000.00, more than matched the reticence shown by Mr. Phelan, Mr. O'Brien and Mr. Austin in relation to the transfers mentioned in the last paragraph. Although, on the evidence of Mr. Lowry, this sum was calculated, as far as can be judged, from the evidence, to the pound, to refurbish the Carysfort property, he could offer no satisfactory explanation as to why Mr. Austin did not simply write a cheque for that amount, to be lodged to an account

of Mr. Lowry in Ireland. Furthermore, although the account was set up for the express purpose of refurbishing this property, and calculated as has already been indicated to the pound for that purpose, the person, namely Mr. Denis O'Connor, charged with overseeing the works and their payment, was left completely oblivious to the existence of the fund, notwithstanding the fact that the address given on the account in which this sum was placed was that of Mr. O'Connor's firm, although without its consent or knowledge.

5.127 Once again, and recognising that any bank customer is entitled to confidentiality in his dealings, it seems surprising, for what was ostensibly an arrangement which it was asserted involved no Revenue irregularities, and was envisaged as enabling tax allowances to be claimed under the Dual Abode Allowance, and was intended to be administered from Dublin for the purposes of completing refurbishments to a property in Dublin, that it was necessary to apply the designation *"no correspondence except on request".*

5.128 A further feature of Mr. Lowry's dealings with the Isle of Man bank, is his description of himself as a *"Company Director"* at a time when, as a serving Cabinet Minister, he was required to and had resigned his directorship in the refrigeration company, Garuda Limited. Mr. Lowry's response when queried on this, to the effect that he remained a company director *"in my mind"*, carries minimal conviction, and can only be realistically viewed as indicating a wish to remain as inconspicuous as possible.

Non-attendance by Irish Nationwide (IOM) witness

5.129 The Tribunal is not in a position to provide any fully informed view as to the extent, if any, to which the Isle of Man bank may knowingly have facilitated any of these covert arrangements, apart altogether from the extent, acknowledged by Mr. Lowry, to which off-shore banks have been used or made themselves available for covert arrangements of this kind. The Tribunal is not entitled to infer from the unwillingness of the Irish owned Isle of Man bank, to make available the evidence of the senior official involved, Mr. Karl Tully, that his evidence would have confirmed or added to a wish for secrecy on the part of the individuals involved in the transaction, but his absence is nevertheless unsatisfactory. Indeed, given the degree of assistance afforded on other matters by a number of financial institutions outside Ireland, the Tribunal views it as reprehensible and not readily or satisfactorily explained by Mr. Michael Fingleton's remarks in evidence, that Irish Nationwide (IOM) Limited did not accede to the request from the Tribunal that Mr. Tully attend.

Non-disclosure

5.130 The second disquieting element, and ultimately one of the most telling elements, in the evidence concerning the transactions examined by the Tribunal in this chapter, is the complete absence of any disclosure of them: in the case of Mr. O'Brien, initially to the board of Esat Digifone prior to the IPO, notwithstanding the inquiries directed into potentially relevant payments, and thereafter to the Tribunal, until they were belatedly notified to it in the aftermath of the Cooper/Investec disclosures; in the case of Mr. Lowry, in failing to disclose to the Tribunal or even his own advisers, whilst representing to the Tribunal that he had afforded access to all relevant information concerning his financial affairs. As already mentioned, it is a matter of high probability that these transactions, would have been discovered by the Tribunal in the course of the examination of Mr. Austin's accounts.

5.131 In consequence of the non-disclosure, the Tribunal was deprived of any opportunity of making inquiry of Mr. David Austin, who died on 1st November, 1998, and who, as the person who received from Mr. O'Brien £150,000.00, and then provided the bulk of it to Mr. Lowry, was obviously an important witness. This is particularly so, as both Mr. O'Brien and Mr. Lowry were adamant in their evidence that it was Mr. Austin who directed that off-shore locations were to be utilised in his dealings with each of them; in the case of Mr. O'Brien, that it was from an off-shore account that Mr. Austin was to be paid for his Spanish property; and in the case of Mr. Lowry, that it was in an off-shore account that the loan proceeds of £147,000.00 were to be lodged, in a deposit account in his favour. Where Mr. O'Brien is concerned, it is also of relevance that Mr. Phelan, responsible for managing significant elements of his affairs, did not disclose the relevant elements of the payment to the IPO. In commenting on the extent of non-disclosure, it is proposed to deal firstly with Mr. Phelan's evidence, then Mr. O'Brien's and lastly, that of Mr. Lowry.

Mr. Aidan Phelan: failure to disclose a relatively unique transaction

5.132 Mr. Phelan's evidence concerning his response to queries at the time of the IPO, that whilst he may have remembered the transaction, that is, as he put it, as a purchase of a property from Mr. Austin, and the payment of £150,000.00 to that end, he did not remember the account opened in his name in the Isle of Man, is not acceptable in light of the many unique aspects both of the account, and indeed of the payments made from it. Of those constituent aspects, the most memorable, are as follows:

(i) this was probably the only time that Mr. Phelan had ever used his own name on an account set up for the benefit of Mr. O'Brien;

(ii) Mr. Phelan, in endeavouring to set up an account for Mr. O'Brien, had firstly to use another account of his own, Diest, in which to shelter the monies temporarily;

(iii) this £150,000.00 was the largest of the payments out of the £407,000.00 lodged to the account for the purposes of making a number of payments, only one of which is relevant to the Tribunal's inquiries;

(iv) the account had been closed by Mr. Phelan a mere matter of months before the inquiries were made;

(v) furthermore, in September of 1997, if Mr. Phelan's evidence is to be accepted, he had asked Ms. Helen Malone to *"tidy up"* the transaction, which means that both the transaction and the account must have featured in his consciousness, at least twice, if not more than that in the period of a few months prior to the queries raised at the IPO.

5.133 It is of particular significance that the 1997 IPO inquiries concerning accounts of Mr. O'Brien were responded to by reference to a number of small accounts within this jurisdiction, but without reference to a substantial account which, whilst not in his name, was clearly under his dominion, and directly known to be so by Mr. Phelan, who controlled the account.

Mr. Denis O'Brien: could not remember any of the details

5.134 Mr. O'Brien, when queried regarding inquiries made at the time of the IPO concerning accounts, effectively responded that he could not remember any of the details. His evidence that he did not recall telling Mr. Owen O'Connell, solicitor, that he should look at the Radio Investments NV account, from which the bulk of the money was debited, and that this was a matter that he left to Mr. Phelan, is not so much an answer, but a wholly unsatisfactory excuse. If, as he testified in evidence, this was a simple property transaction agreed in July, 1996, and not in fact concluded until after the Ryder Cup in 1997, it is hard to credit that he could have forgotten even an outline of the relevant details.

5.135 Had inquiries been made of Mr. O'Brien at the time of the IPO regarding this matter, he stated that all that would have emerged was that he had purchased a house. This of course, as appears from the Tribunal's examination of the transaction, is not the case, for at that time there was no documentary

evidence in existence from which it could have been demonstrated that he had purchased a house from Mr. Austin. Although the primary document vesting title in Mr. O'Brien was backdated to 12th August, 1996, this was not executed until the early months of 1998, some three months after the IPO inquiry. The absence of any such documentation would no doubt have put those responsible for conducting inquiries, at the time of the IPO, on even further inquiry. Inquiries to Mr. Austin, assuming they were answered in accordance with the evidence heard at the Tribunal's proceedings, might have led to the examination of his accounts, or to queries concerning his accounts, from which truthful answers would have elicited the information that £150,000.00, a sum well in excess of the threshold of £25,000.00 set by Mr. O'Connell, had been covertly transmitted from an off-shore account in the Isle of Man under the control of, but not in the name of, Mr. O'Brien to Mr. Austin, and that the bulk of those funds were transmitted by Mr. Austin to an off-shore account of Mr. Lowry in the Isle of Man. Needless to say, had information from Mr. Austin been available to the effect that £148,816.93 had been repaid by Mr. Lowry to Mr. Austin in February, 1997, this would have given those conducting the inquiry pause for thought, when addressing Mr. O'Brien's explanation that his intended payment to Mr. Lowry had become:

> *"stuck with an intermediary."*

It seems difficult to doubt that, in that context, that expression must have referred to the retransmission of the money by Mr. Lowry to Mr. Austin in February, 1997, at the time of the establishment of the McCracken Tribunal; that Mr. Austin was in fact the *"intermediary"* referred to by Mr. O'Brien and that the money only got *"stuck"* with him, after retransmission to him by Mr. Lowry.

5.136 If Mr. O'Brien's evidence to the Tribunal is to be accepted, he should have had no reason to omit informing the IPO inquiry of the payments to Mr. Austin. Not only did they, according to his evidence, merely represent the purchase price of a holiday home in Spain, they in no way connected him with Mr. Lowry. It will be recalled in this regard, that it was Mr. O'Brien's evidence that he knew nothing of the fact that these funds were transmitted by Mr. Austin to a deposit account of Mr. Lowry in the Isle of Man. Though a large payment, well in excess of the threshold set by Mr. O'Connell, this sum would have been readily explicable on the basis of the account furnished to the Tribunal by Mr. O'Brien of what he maintains was the situation, and on the basis of what he understood to be the whereabouts of the funds at the time of the IPO. Indeed, he would have been gratified on any ordinary assessment of the situation to have been able to explain such a large payment by what, on the face of it, was in his contention a perfectly simple transaction. The fact remains that no such explanation was provided to the IPO inquiry, and any of the hard facts which might have focused the minds of those conducting the inquiry, were carefully excluded from view.

Mr. Michael Lowry: did not regard the transaction as relevant to the Tribunal's inquiries

5.137 Mr. Lowry's reason for failure to disclose, as part of his initial engagement with the Tribunal, his dealings with Mr. Austin and his Isle of Man account, was that he did not regard what he considered was the underlying transaction as relevant. He stressed that what was ultimately disclosed was not a payment to him of possible impropriety, but merely an advance and repayment over a short period of months of a loan for an intended house refurbishment. At the time of his initial engagement with the Tribunal, there ought to have been no impediment to his disclosing this transaction, which was not only relevant, but within the ambit of his professed willingness to make available to the Tribunal, either personally or through his agent, Mr. Denis O'Connor, full details of all his financial affairs, including all his accounts, whether within the jurisdiction or off-shore.

5.138 According to his later evidence, not only was this merely a loan from Mr. Austin, it was one which in his view was amply vouched by supporting documentary material, in the form of a homemade, but nevertheless clear, acknowledgement of debt on his part, coupled with what was effectively a receipt for the return of the money in the form of a letter from Mr. Austin in 1997. Indeed, the receipt for the return of the money in the form of that letter must have been relayed to him, either some time in 1997, during the currency of the McCracken Tribunal, or if not then, during the currency of the initial phase of this Tribunal, up to the date of death of Mr. Austin in November, 1998. Furthermore, mirroring the state of affairs related by Mr. O'Brien, Mr. Lowry, on his own evidence, could have had no reason to suspect that the disclosure of this sum of money might have entailed any embarrassment, since he professed to have no knowledge whatsoever that the money, used to fund what he considered was a loan to him, had in fact been received by Mr. Austin from Mr. Denis O'Brien. There was, if his evidence is accepted, to his mind, no connection between the money transmitted by Mr. O'Brien to Mr. Austin, and the money transmitted by Mr. Austin to him. Neither would it seem on the basis of his evidence that Mr. Lowry should have had any concern in identifying Mr. Austin as the source of this loan as, Mr. Lowry had professed himself entirely unaware of Mr. Austin's role in the $50,000.00 donation made on behalf of Esat Digifone to Fine Gael.

5.139 The true position, in the Tribunal's view, is that there was real sensitivity on Mr. Lowry's part, arising from the involvement of Mr. Austin in connection with his Isle of Man account. This was mirrored by, as the Tribunal finds, Mr. O'Brien's parallel sensitivity to the involvement of Mr. Austin in the transmission of money from Mr. O'Brien's covert Isle of Man account to Mr. Austin's Channel Island account.

5.140 A further feature of the so-called loan arrangement concerns the retention by Mr. Lowry of what would appear to be relevant documentation. One of the distinguishing features of all aspects of Mr. Lowry's testimony was the extent to which he had failed, over a considerable period of time, during which he was the subject of scrutiny by a Tribunal of Inquiry, to retain relevant documentation concerning his involvement in any of the other transactions inquired into by the Tribunal. Notwithstanding that at the time of his evidence in 2001, those transactions, which on any view of the evidence, entailed an involvement on his part, and were therefore live transactions, Mr. Lowry appears to have adopted a policy of non-retention of relevant documentation. Yet the Tribunal is asked to accept that between February, 1997 and April, 2001, he had retained documentation concerning a loan arrangement which was long discharged, and which in any case, reflected an obligation of honour resting on friendship, rather than on any commercial basis.

5.141 It was Mr. Lowry's evidence that in acquiring the Carysfort property, he intended to avail of his entitlement, as a Minister, to the Dual Abode Allowance. If that be so, Mr. Lowry would have been obliged to produce all material documentation to Revenue in order to qualify for that Allowance. It is hardly likely that Mr. Lowry, who already recognised the necessity of engaging with Revenue on outstanding taxation due on payments received from Mr. Ben Dunne, would have regarded the production to Revenue of documentation relating to his Isle of Man account as a palatable prospect.

Was there a sale of a holiday home to Mr. Denis O'Brien?

5.142 It is true that some limited measure of evidence did emerge of an intention on the part of the late Mr. Austin to sell his Spanish holiday home. This appeared from the evidence of Mr. O'Brien in terms of his account of his conversation with Mr. Austin in the latter's London apartment, where Mr. Austin explained his desire to dispose of properties in contemplation of what he felt could be his relatively imminent death. It also appeared from the evidence of the late Mr. Austin's wife, Mrs. Maureen Austin, and further appeared from a document in the form of a note prepared by Mr. Perera of Valmet, although the latter document referred to a contemplated disposal to a friend rather than specifically to Mr. O'Brien, and made no reference to a price.

5.143 However, such sale as was mentioned in evidence appears to have been shrouded to a remarkable degree in circumstances of secrecy, delay, ambivalence and want of coherent rationale in the transaction itself. It is stated to have taken place in July, 1996, which was supported by a document backdated to have purportedly been executed in the following month. No document of any sort was executed at that time. It was not until shortly before 4th

February, 1998, that the relevant document to carry through the purchase was in fact executed.

5.144 The Tribunal is asked to accept that a purchase did take place in July, 1996, although nothing concrete was done about it until January, 1998. If the evidence of Mr. O'Brien, Mr. Aidan Phelan, Ms. Helen Malone and Mr. Michael Lowry was accepted, it would have to be concluded that Mr. Austin, having received £150,000.00 from Mr. O'Brien, in fulfilling his obligations under his agreement to sell, had behaved in an uncharacteristically inefficient, if not cavalier fashion, in omitting to take any steps to carry through the transaction, either in failing himself to take any such steps, or in failing to instruct Mr. Perera to take any steps. He had thereby allowed his affairs to lapse into a state of disarray which was wholly at odds with the manner in which, if Mr. Lowry's evidence was accepted, he had transacted his loan arrangement. If Mr. Lowry's evidence was accepted then whilst, either by reason of ill-health or an uncharacteristic neglect of his business affairs, Mr. Austin had failed to process the purchase transaction, or instruct his agent so to do, notwithstanding the fact that he was retaining £150,000.00 of Mr. O'Brien's money, at the same time he took the most careful precautions to document a loan arrangement, described as resting on a footing of honour, as between himself and Mr. Lowry.

5.145 Mr. O'Brien asks the Tribunal to accept that the 1996 sale was not processed until February, 1998, by reason of delays, for which Mr. Austin was primarily responsible, although due, according to Mr. O'Brien, to his health status. This proposition is utterly at variance with the facts that in late 1996, Mr. Austin was able to put in place all of the arrangements to secure the opening of a deposit account for Mr. Lowry in an Isle of Man bank, and further, to arrange for the lodging to that account of £147,000.00, of Mr. O'Brien's money. Some months later, notwithstanding his health status, suggested as being responsible for his failure to attend to paperwork, he was able to put in place further banking arrangements necessary to ensure the retransmission of that money from Mr. Lowry's Isle of Man bank to his own bank in the Channel Islands. The Tribunal is asked to accept that Mr. Austin, by reason of his health status, delayed in attending to the processing of the sale of his holiday home whilst, having received the money in payment for the property, he went to considerable trouble to arrange to transfer it to, and subsequently retransfer it from, an Isle of Man bank account which he himself set up for Mr. Lowry.

5.146 During the same period, Mr. O'Brien's behaviour in failing to take any steps to complete this transaction is markedly at odds with the manner of dealings shown with other transactions by so resourceful and energetic an entrepreneur. It is also at odds with the manner in which, during part of the same

period, Mr. O'Brien had seen fit to arrange for his agents to make contact with Mr. Austin in France so as to secure a letter purporting to confirm that the $50,000.00 Esat Digifone donation had actually been transmitted to Fine Gael.

5.147 Whilst, in light of the evidence of Mrs. Austin and the contents of Mr. Perera's file note, it seems reasonable to conclude that Mr. Austin had intended to sell his Spanish holiday home, and indeed sold it to Mr. O'Brien, there is no rational basis upon which it could be concluded that this sale was accounted for by the transmission in July, 1996, of £150,000.00 from Mr. O'Brien's covert account in the Isle of Man to Mr. Austin's Channel Island account. Neither possession of, nor title to, the property passed from Mr. Austin to Mr. O'Brien at that time, and further, there was not even the skimpiest recorded acknowledgement that full payment in advance had been made for the property. There is no level of intimate friendship or attachment that could have supported such a haphazard arrangement in the case of a terminally ill vendor who continued in possession of the property until October, 1997.

5.148 Once the funds had been returned by Mr. Lowry to Mr. Austin in February, 1997, they remained in Mr. Austin's Channel Island account, and were applied by him for other purposes in April, 1997, and in July, 1997. On 28th April, 1997, £33,000.00 was debited to the account in connection with the transmission to Fine Gael, via the late Mr. Frank Conroy, of the $50,000.00 Esat/Telenor donation, disguised as a donation by Mr. Austin himself. The final balance of the funds, amounting to £114,518.69, was withdrawn from the account on 3rd July, 1997, and transmitted to ACC Bank in repayment of a loan held by Mr. Austin. As title to the Spanish property was transferred by Mr. Austin to Mr. O'Brien in early February, 1998, it is reasonable to conclude that, at some point after the funds were retransmitted by Mr. Lowry to Mr. Austin in February, 1997, they were appropriated to the agreement for the sale of that property.

5.149 Although it might appear that such appropriation must have occurred sometime before 3rd July, 1997, when the final balance of the funds were applied by Mr. Austin for his own purposes, that does not necessarily follow. Mr. Austin had a multiplicity of accounts with Bank of Ireland, Jersey, including the dollar account in which he held the $50,000.00 donation to Fine Gael. Instead of utilising those funds for the transmission of the donation to Fine Gael in April, 1997, he instead withdrew sufficient from the Irish pound account in which he held only the funds retransmitted from Mr. Lowry in February, 1997. Mr. Austin may also have utilised those Irish pound funds, instead of funds in accounts held by him in other currencies in July, 1997, to facilitate the repayment of his Irish pound loan to ACC Bank. In Mr. Austin's absence, it is not possible for the Tribunal to determine precisely when that appropriation occurred, save that it was

at some point over the twelve month period from February, 1997, to February, 1998.

CONCLUSIONS

One transaction: a payment to Mr. Michael Lowry that got stuck with an intermediary

5.150 If, notwithstanding the concealment of these two transactions by both Mr. O'Brien and Mr. Lowry, the Tribunal was to accept the proposition that the purchase on the one hand, and the loan arrangement on the other, were unrelated transactions which coincidentally involved the same money, it is impossible to accept that the late Mr. Austin, who was privy to and fully aware of all that was involved in each instance, and a friend to both Mr. O'Brien and Mr. Lowry, and was an able business executive with an acute political sensitivity, would contemplate engineering, or even countenance a connection between the two transactions that could compromise his two close friends, unless he felt that his entire actions reflected what was requested of him.

5.151 On any reasonable analysis of the evidence, there was a deliberate concealment on the part of both Mr. O'Brien and Mr. Lowry of the two transactions on every occasion when it would have been relevant to disclose them: in Mr. O'Brien's case, to the IPO in the first instance, and latterly to this Tribunal: in Mr. Lowry's case, to his advisers, and also to this Tribunal. The suggestion that in one case there was merely a purchase of property, and in the other, a friendly loan arrangement, was a belated attempt retrospectively to clothe those transactions with some commercial reality, in circumstances prompted by a realisation that at some point they might be uncovered. Not surprisingly there was insufficient confidence on the part of either Mr. Denis O'Brien or Mr. Michael Lowry in these explanations to make appropriate disclosure either to the IPO, or to this Tribunal.

5.152 The evidence discloses the making of a carefully planned and covert payment of £147,000.00 by Mr. O'Brien to Mr. Lowry through the agency of Mr. Aidan Phelan and the late Mr. Austin, that was hastily repaid out of fear of possible disclosure at the time that the McCracken Tribunal was established. The objective reality of the covert and contrived elements of the money trail, whereby £147,000.00 of the £150,000.00, transmitted by Mr. O'Brien to Mr. Austin, and within a short time transmitted by Mr. Austin to Mr. Lowry, was consistent with Mr. O'Brien's own evidence.

5.153 It is supported by his evidence that he had intended to make a payment to Mr. Lowry; that he had earmarked funds for that purpose in Woodchester Bank and that those funds had become *"stuck with an*

intermediary". The proposition that in that context, Woodchester Bank, from which the £407,000.00, of which the £150,000.00 was a part, was debited, "*was an intermediary*", is wholly unconvincing, having regard to the fact of Woodchester's wholly passive role as merely the bank from which the monies were transmitted. From the evidence, it is clear that it was through the intermediation of Mr. Aidan Phelan, and the covert use of two of his accounts in the Isle of Man, that the £150,000.00 was transmitted to Mr. Austin's Channel Island account. Subsequently, it was through the intermediation of Mr. Austin that those funds were transmitted to an account of Mr. Lowry in the Isle of Man. When the funds were retransmitted by Mr. Lowry to Mr. Austin in February of 1997, at the time of the establishment of the McCracken Tribunal, it was with Mr. Austin that the funds, as Mr. O'Brien had stated, became "*stuck*".

5.154 The Tribunal accordingly finds that a payment of £147,000.00 was made by Mr. Denis O'Brien to Mr. Michael Lowry, indirectly, through the conduit of Mr. Aidan Phelan, and the late Mr. David Austin, during a period when Mr. Lowry held public office, in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with the public office then held by him, namely the office of Minister for Transport, Energy & Communications, and which payment was accordingly a payment within the meaning of paragraph (e) of the Terms of Reference of the Tribunal.

5.155 The circumstances which give rise to that inference are as follows:

(i) the covert and secretive manner in which the payment was made;

(ii) the absence of any commercial purpose for the payment;

(iii) the non-disclosure by Mr. Denis O'Brien and Mr. Aidan Phelan of the payment of £150,000.00 made by Mr. Denis O'Brien to the late Mr. David Austin in July, 1996, to the Esat Digifone inquiry held in advance of the Esat Telecom IPO, in November, 1997;

(iv) the non-disclosure by Mr. Michael Lowry of the Irish Nationwide (IOM) account opened in his name on 21st October, 1996, and the provision of £147,000.00 to him by Mr. David Austin which was lodged to that account, to the Tribunal in 1999, and his belated disclosure in 2001, when it was likely that the Tribunal would discover it;

(v) the statement made by Mr. Denis O'Brien to Mr. Barry Maloney that he had made a payment to Mr. Michael Lowry in circumstances immediately referable to the public office then held by him.

5.156 The source of the sum of £147,000.00 lodged on 21st October, 1996, to account number 023/01/01505 with Irish Nationwide (IOM) Limited, being an account held in the name of and for the benefit of Mr. Michael Lowry, was the proceeds of the payment made by Mr. Denis O'Brien to Mr. Michael Lowry, through the conduit of off-shore accounts in the name of Mr. Aidan Phelan, and the late Mr. David Austin.

THE MANSFIELD TRANSACTION

INTRODUCTION

6.01 At the time when Mr. Michael Lowry first gave evidence to the Tribunal, in June, 1999, he was actively involved in a property venture in the north of England, at Mansfield, in Derbyshire. The acquisition of that property, in Mr. Lowry's name, had completed just three months earlier in March, 1999, with funds transmitted from a London bank account of Mr. Denis O'Brien with Credit Suisse First Boston to Mr. Lowry's UK solicitor for that purpose. This was the second occasion on which funds, which originated in an account of Mr. O'Brien, terminated in an account where they were held for the benefit of Mr. Lowry. Approximately three months after his evidence, Mr. Lowry embarked upon a further such property acquisition in the UK, involving similar personnel and associations, in this instance at Cheadle, near Manchester. This chapter will examine the context of, and the course of, the Mansfield transaction, leaving the final conclusions to be set out at the end of the next chapter, which deals with the Cheadle transaction. Those conclusions will be found at Chapter 7.

6.02 In subsequent evidence, Mr. Lowry was to state that he did not in 1999, consider that Mansfield transaction relevant to the Tribunal. Like other matters dealt with in this Volume, each came to Tribunal attention only in 2001, the Cheadle transaction being reported to the Central Bank, and thence to the Tribunal, by Investec Bank, concerned over aspects of its lending arrangements that had come to light, and the Mansfield transaction being notified by Mr. Aidan Phelan, after the imminent notification to the Tribunal of the Cheadle transaction, became apparent.

6.03 Public sittings in relation to both transactions duly followed, after the Tribunal had determined that their circumstances, in particular, the respective funding arrangements, and the persons with whom Mr. Lowry was in each instance associated, fell within its Terms of Reference. A summary of the main matters to emerge in that evidence in 2001 will now be set forth in chronological sequence, together with some further evidence relative to each transaction, which emerged in later sittings in 2002, and again in 2009, when Mr. Christopher Vaughan, the solicitor who acted on behalf of Mr. Lowry, belatedly attended to give evidence. In due course it will be necessary to determine whether or not the enablement of these transactions wholly or partially constituted payments or gifts to Mr. Lowry within the Terms of Reference.

6.04 Because the Mansfield transaction was the earlier in time, and is in some ways the more readily susceptible to analysis, it is appropriate to set forth the evidence heard relating to it first.

6.05 However, before approaching either transaction, it is necessary to refer to some initial dealings had by Mr. Lowry with persons who were associated with them. These relate to the provision of a mobile telephone facility for him, not long after he resigned from office as a Government Minister in November, 1996, followed by some inconclusive dealings with a view to a possible realignment of his business, Garuda Limited trading as Streamline Enterprises, that on any appraisal seem to have had some relevance to the circumstances of his subsequent involvement in the UK property ventures.

THE MOBILE TELEPHONE

6.06 On his traumatic withdrawal from office as a Minister, Mr. Lowry experienced the abrupt withdrawal of all the communications and other support systems that had gone with his position. He was also affected by the intense media scrutiny into his affairs at the time, and raised with Mr. Denis O'Connor, not at that time his accountant, but an associate and friend since 1986, the possibility of obtaining a mobile telephone facility with the greatest possible privacy. Although Mr. O'Connor had himself a client who dealt in mobile phones, he reckoned the desired objective would better be served by obtaining the assistance of Mr. Aidan Phelan, who was known to him, and acted for a major distributor. To this end he telephoned Mr. Phelan, and asked him to arrange a mobile phone for Mr. Lowry. Obviously Mr. Lowry could have taken out the facility himself, but would have been required to disclose and to prove his identity. Accordingly, to ensure the required confidentiality, Mr. Phelan obtained a phone and account directly from his client, on a basis that he was effectively the subscriber. The initial accounting arrangement was that calls were billed to Mr. Phelan, but the account was then passed by him to Mr. O'Connor to deal with, and it was contemplated between them that the account would subsequently be listed in some other person's name, so that the facility was not traceable to Mr. Phelan. This was in or around February, 1997, and in Mr. Phelan's recollection was probably the only occasion on which he had obtained a mobile telephone in this manner.

6.07 However, it seems that Mr. Lowry lost his PIN number, unwisely contacted Eircell directly in that regard, and an internal *"leak"* to the Press led to an article appearing in the Sunday World newspaper, identifying Mr. Phelan as being the donor of the phone to Mr. Lowry, and referring to him as being *"Denis O'Brien money man"*, or words similar. Mr. Phelan commented in evidence that, having been a low profile person, the publication caused him some embarrassment, but he expressed relief that the article had not appeared in a broadsheet newspaper. Upon the matter becoming public, Mr. O'Connor cancelled the number of the account, and named himself through his firm as subscriber, since which time he had paid the bills, and had been recouped by Mr.

Lowry. Recalling the incident and its surrounding circumstances, Mr. Lowry was not inclined to attach much importance to it.

REALIGNMENT TALKS

6.08 Not long after the article in The Sunday World appeared, either in late February, 1997, or soon thereafter, it appears that a brief informal meeting took place in Mr. Denis O'Connor's office in Foxrock, attended by Mr. O'Connor, Mr. Lowry and Mr. Phelan, in which the mobile telephone incident was discussed, in a context of sorting out what had happened. This was identified as the first occasion upon which Mr. Lowry and Mr. Phelan had met. Whilst nothing further was then discussed, Mr. Phelan did indicate interest to Mr. O'Connor as to how Mr. Lowry and his business were then faring. On foot of this, Mr. O'Connor conveyed to Mr. Phelan that the position of Garuda was such that some form of strategic alliance would merit consideration. Mr. Phelan had a business relationship with a Mr. David O'Keeffe, Managing Director of Masser Hammond, which he thought might be of interest in this regard, and a series of perhaps seven or eight meetings between Mr. Phelan and Mr. Lowry then ensued over the summer of 1997, and into 1998, enquiring into this and other possible business associations. Although matters progressed to the stage of Mr. O'Keeffe visiting Mr. Lowry's Thurles premises, no successful conclusions to any of these discussions resulted. For all the consultancy services undertaken by Mr. Phelan, he furnished Mr. Lowry, in 1999, with a fee note for £4,840.00 being £4,000.00 plus VAT, which was duly paid. Mr. Phelan indicated in evidence that he would probably have charged Mr. Lowry a higher fee if the various discussions had given rise to any concrete agreement.

6.09 Over this period, Mr. Lowry and Mr. Phelan socialised together from time to time, and as Mr. Lowry put it, went on one or two *"tears"* together: many topics were discussed between them, including Mr. Lowry's relationship with Mr. Ben Dunne, and the basis upon which Mr. Lowry was being subjected to considerable *"flak"* over the GSM issue, both having been matters which then received extensive media attention. Regarding the latter matter, Mr. Lowry stated that he made it clear to Mr. Phelan that his conduct had been above reproach, and that he had neither interfered in nor influenced, the outcome of the GSM competition; whilst Mr. Lowry accepted that he would have inquired of Mr. Phelan as to how Esat Digifone was faring, he was insistent that Mr. Phelan had not communicated to him the nature of the two controversies that were raging within Esat Digifone in the weeks immediately preceding the flotation of Esat Telecom, or Mr. Phelan's role in events relating to those matters. Neither did the late Mr. David Austin relate any such matters to Mr. Lowry, and Mr. Lowry accordingly stated that he was then aware only in the most general terms of some degree of internal friction within the two Esat companies, as was then reported upon in the

business pages of various publications, and he learned of the matters giving rise to the two controversies only when they were brought to his attention by the Tribunal in 2001. Accordingly, the Tribunal was asked to accept that, despite Mr. Lowry having been the focus of controversy within Esat Telecom and Esat Digifone concerning matters in which Mr. Phelan and Mr. David Austin were involved, no mention of any aspect of these matters were made by either individual to Mr. Lowry, even though in Mr. Phelan's case there was a close acquaintanceship, and in Mr. Austin's case, at least according to Mr. Lowry, a longstanding and close friendship.

THE MANSFIELD ACQUISITION

Dealings between Mr. Michael Lowry and Mr. Kevin Phelan

6.10 In October or November, 1997, through a mutual friend from the Holycross area of County Tipperary, it was Mr. Lowry's evidence that he was made aware that a person named Kevin Phelan was anxious to make contact with him. Mr. Kevin Phelan is a property development consultant, who carries on business in England, and resides in Northern Ireland. Although no relation to Mr. Aidan Phelan, Mr. Kevin Phelan had subsequent to his initial meeting with Mr. Lowry, become associated with Mr. Aidan Phelan, and also Mr. Denis O'Brien, in connection with two English property ventures. Mr. Lowry stated that he agreed that Mr. Kevin Phelan might contact him, but without knowing the nature of the intended business. He received a short phone call from Mr. Kevin Phelan, and it was arranged that the two would meet in Monaghan. In the course of that meeting, Mr. Kevin Phelan explained the nature of his business, indicating that he was actively involved in the UK property market, and had facilitated a number of Irish investors satisfactorily, in identifying properties and arranging transactions there; he gave Mr. Lowry to understand that he felt he would be a good prospect, and enquired whether or not Mr. Lowry would be interested in a venture of that sort. Indeed, it appeared to Mr. Lowry that Mr. Kevin Phelan seemed to feel that there were extensive funds at Mr. Lowry's disposal, or as Mr. Lowry put it in evidence that, *"[he] could buy London"*. Mr. Lowry sought to let Mr. Phelan down gradually in that regard, and the meeting ended on a basis that, if Mr. Phelan identified an appropriate property, then, subject to financial constraints, Mr. Lowry would be interested in getting involved.

6.11 They parted, and it was not until about June or July, 1998, that Mr. Lowry recalled Mr. Kevin Phelan renewing contact. He then stated that he had a small development opportunity in Mansfield, that he thought merited exploration on Mr. Lowry's part. They again met in September, 1998, and on this occasion Mr. Phelan also introduced Mr. Lowry to Mr. Christopher Vaughan, a Northampton solicitor who had acted in previous transactions initiated by Mr.

Phelan, who it was proposed would undertake the legal aspects of any transaction in relation to the Mansfield property on Mr. Lowry's behalf. From his own assessment of the property, allied to Mr. Kevin Phelan's positive advice, Mr. Lowry resolved to take an interest, but explained that an outright purchase was not financially feasible, whereupon Mr. Kevin Phelan indicated he was skilled at putting combinations of investors together, that it was feasible for Mr. Lowry to take a part interest, and then have Mr. Phelan seek to secure some one or more other investors to take up the balance of the investment.

6.12 At the time of that renewed contact, Mr. Kevin Phelan had also had dealings in the meantime with Mr. Aidan Phelan, and Mr. Denis O'Brien, in connection with two substantial UK property ventures. Mr. Lowry testified in 2001 that he had been entirely unaware of that association, which related to a transaction at Luton, in which Mr. Aidan Phelan and Mr. O'Brien had been joint investors, and a subsequent transaction relating to the Doncaster Rovers Football Club ground, in relation to which Mr. O'Brien was stated to be the sole investor, assisted by Mr. Aidan Phelan as his adviser. Matters that subsequently came to light were to make the latter transaction the subject of extensive examination by the Tribunal.

6.13 That initial introduction of Mr. Lowry to Mr. Vaughan in September, 1998, as outlined in evidence by Mr. Lowry in 2001, and as conveyed to the Tribunal by Mr. Vaughan in correspondence and at a private meeting, was a relatively brief encounter, which entailed a single meeting between Mr. Lowry and Mr. Vaughan at the latter's office in Northampton, at which discussion was confined to the prospective Mansfield purchase. What the Tribunal was not told in 2001, either by Mr. Lowry in evidence, or by Mr. Vaughan in correspondence, or at that private meeting, was that the interaction between them in September, 1998, was considerably more extensive. It later emerged that their dealings on that occasion commenced on the evening of 23rd September, 1998, when Mr. Lowry, Mr. Kevin Phelan and Mr. Christopher Vaughan met outside Mr. Vaughan's office, primarily in relation to the Doncaster Rovers transaction, and extended beyond the meeting in Mr. Vaughan's office on 24th September, 1998, when Mr. Vaughan drove Mr. Lowry to an appointment, a car journey of in excess of one hour's duration. In the course of what occurred during the previous evening, and during the car journey, Mr. Vaughan formed the impression that Mr. Lowry also had a *"total involvement"* in the Doncaster Rovers transaction, and wrote to him in those terms on 25th September, 1998. The Tribunal however knew nothing of those matters when it was conducting its investigations into the Mansfield purchase in 2001.

6.14 On foot of what was agreed between Mr. Kevin Phelan and Mr. Lowry, Mr. Phelan negotiated a price of Stg.£250,000.00 with the vendors of the property, and it was agreed that Mr. Lowry would pay a deposit of 10% of that amount, in order to procure a 10% share of the property ownership, leaving Mr. Phelan to obtain investors for the 90% balance. This, he assured Mr. Lowry, he would be able to do.

Mr. Michael Lowry enters a contract to purchase for Stg.£250,000.00

6.15 In pursuance of this arrangement, in or around December, 1998, Mr. Lowry put Mr. Vaughan in funds to the extent of the Stg.£25,000.00 deposit, using funds that he had earlier withdrawn from one of his Irish bank accounts at Thurles, County Tipperary. But the signing of the contract, referred to in England as the exchange of contracts, was significantly delayed, and this did not proceed until February, 1999, at which time the deposit was paid over by Mr. Vaughan. No further funds had by then been arranged, although the date of completion was fixed for 18th March, 1999, on the basis of Mr. Kevin Phelan procuring suitable investors. Given the element of risk to his deposit, Mr. Lowry stated that he would not have become involved, unless convinced by Mr. Phelan that those investors would be obtained. However, having fully assessed the site and all proposed arrangements, including certain possibilities in relation to planning permission, Mr. Lowry in all the circumstances felt content to undertake any element of risk involved in committing himself to the contract. It must be borne in mind that, if Mr. Phelan had not obtained such an investor or investors, Mr. Lowry would have been liable not only to forfeiture of his Stg.£25,000.00 deposit, but to an order for payment of the balance. In other words, although standing to gain no more than 10% of any potential profit, he was placing himself at risk for 100% of the liability.

6.16 Mr. Kevin Phelan gave Mr. Lowry to believe that a number of approaches to prospective investors were made by him, although he did not learn the identity of any such persons, and he himself had made no approaches to any investors. In his evidence to the Tribunal, Mr. Lowry testified that what in fact transpired was that Mr. Aidan Phelan, whose previous association with his namesake was at that stage, according to Mr. Lowry, unknown to him, was introduced to the project. Mr. Lowry said that he inquired from Mr. Kevin Phelan if Mr. Aidan Phelan was aware of the identity of his intended partner, and was content to proceed, and Mr. Kevin Phelan reassured him to that effect. Mr. Lowry also expressed some surprise at discovering that Mr. Kevin Phelan had already undertaken previous UK property ventures, in which Mr. Aidan Phelan had an involvement. However, Mr. Lowry's evidence to the Tribunal in this regard, given at a time when the Tribunal was not yet inquiring into the Doncaster Rovers

transaction, was subsequently shown to be incorrect, as, in the course of later evidence concerning Doncaster Rovers, Mr. Lowry himself testified that he had been aware of Mr. Aidan Phelan's dealings with Mr. Kevin Phelan in relation to Doncaster Rovers from at least as early as September, 1998.

6.17 According to Mr. Lowry, it was in the immediate aftermath of Mr. Kevin Phelan receiving a letter, by way of completion statement from Mr. Vaughan, dated 10th March, 1999, requiring a total balance of Stg.£230,546.42 to be paid to enable the Mansfield sale to be completed by 18th March, 1999, that Mr. Kevin Phelan informed Mr. Lowry, for the first time, that he had approached Mr. Aidan Phelan as a prospective partner. Mr. Lowry and Mr. Aidan Phelan met, and the Tribunal was provided with a letter dated 15th March, 1999, from Mr. Aidan Phelan to Mr. Lowry, referring to that meeting, and to discussions had with Mr. Kevin Phelan. In that letter, Mr. Aidan Phelan confirmed a general interest in the Mansfield project, and other possible property opportunities in the UK, referred to a suggestion by Mr. Lowry of a 75/25 partnership arrangement between them in Mr. Aidan Phelan's favour, but indicated a preference for a 90/10 division, with some provision for Mr. Lowry and Mr. Kevin Phelan being *"rewarded disproportionately on the upside"*. As to the sum of Stg.£230,546.42 exceeding the purchase price less the deposit, this was because that balance reflected provision for such matters as stamp duty, Land Registry fees, and Mr. Vaughan's fees. Accordingly, Mr. Lowry's Stg.£25,000.00 deposit represented somewhat less than the 10% of the full amount of the cost of the transaction.

The money moves

6.18 Following receipt of Mr. Aidan Phelan's letter of 15th March, 1999, Mr. Lowry recalled having further discussions with Mr. Aidan Phelan, on foot of which he stated that the Mansfield transaction was concluded on the 90/10 basis proposed by Mr. Aidan Phelan. Given that the vendor's solicitors were invoking completion procedures in this regard, there was obviously a high degree of urgency in making available the balance of the purchase price. Before resuming the further dealings had between Mr. Lowry and Mr. Aidan Phelan, it is therefore necessary to note the manner in which the requisite money was made available to Mr. Christopher Vaughan, to enable such completion.

6.19 By the time of these events, and indeed until about mid-1999, Mr. Aidan Phelan had established a very close business and financial association with Mr. Denis O'Brien, as an adviser and associate, and his involvement in a wide range of matters relating to Esat Digifone and otherwise has already been noted. Mr. Aidan Phelan was in addition much immersed in other corporate ventures pursued by Mr. O'Brien, two in particular having been the acquisition of the Quinta Da Lago resort in the Portuguese Algarve, and of a shareholding in

Versatel Telecom NV. Both Mr. O'Brien and Mr. Aidan Phelan testified that the latter had carried out substantial work on both projects, and that, in or around December, 1998, discussions took place between the two, in relation to a payment of fees on account to Mr. Aidan Phelan. These were alluded to in two memoranda that were produced to the Tribunal in 2001, the first of which was from Mr. Aidan Phelan to Mr. O'Brien, and dated 22nd December, 1998. It referred to discussions earlier that day, regarding Mr. Aidan Phelan's work on both projects, to little or no fees having to that date been drawn by him, and alluded to agreement that, when there was liquidity in Mr. O'Brien's stock in Versatel Telecom NV in particular, a percentage fee should be payable. This, it was stated, should be at a rate of 3%, up to a maximum of $1.5 million. Mr. O'Brien had added a brief handwritten entry to the memorandum, indicating that he was in agreement with its contents.

6.20 Both Mr. O'Brien and Mr. Aidan Phelan also referred to a second memorandum from the latter to the former, dated 25th March, 1999, relating to this proposed advance payment of fees, which referred to a telephone conversation between them on that day, and stated that Mr. Aidan Phelan was proceeding to make a drawing in the amount of Stg.£300,000.00, on what was described as the Credit Suisse First Boston account, as an advance on Versatel fees. There was again a brief manuscript indication of agreement to this from Mr. O'Brien on the memorandum. The account there referred to was a substantial one held by Mr. O'Brien in the London branch of the Credit Suisse First Boston Bank, over which Mr. Aidan Phelan had drawing authority, and was used by Mr. O'Brien as a facility to enable the discharge of significant amounts owed by him.

6.21 On 29th March, 1999, Stg.£300,000.00 was debited from this account by Mr. Aidan Phelan, and transmitted directly to the client account of Mr. Christopher Vaughan, at his Northampton practice address, where it was credited to Mr. Lowry. Mr. Vaughan forthwith applied the preponderance of that amount, to discharge the balance of the price of the Mansfield property, to the vendor's solicitors in completion of the sale, in respect of which a week had elapsed since the agreed completion date.

6.22 Mr. O'Brien stated that he had neither inquired of Mr. Aidan Phelan, nor been informed by him, of this intended application of the fees payment made, and that he became aware of any alleged connection on his part with UK property ventures involving Mr. Lowry, only when matters pertaining to Investec Bank, and the latter of the two UK transactions, Cheadle, were brought to his attention, in March, 2001. Had he known in March, 1999, that the money from his account was primarily to be applied to complete a purchase in respect of which Mr. Lowry was to be the registered owner, he stated that it would not necessarily have

caused him concern, as Mr. Aidan Phelan was entitled both to the money, and to do business with whomsoever he wished, but the question did not in any event arise.

6.23 As to liquidity in Mr. O'Brien's Versatel shareholding, which according to the memorandum of December, 1998, was to trigger Mr. Phelan's entitlement to an advance payment of his fees, Mr. O'Brien testified that he sold a small amount of his holding, in the following June or July, 1999. He acknowledged that no subsequent payment to Mr. Aidan Phelan in respect of the full potential balance of his entitlement to fees, as referred to in the memorandum, had since been made. He further accepted that no documentation relating to this Stg.£300,000.00 payment, other than the two rather basic memoranda, was available, whether by way of invoice, receipt, accounting entry, VAT or other tax-related entry. It is noteworthy that, although in respect of a much smaller sum, namely the payment of £4,840.00 by Mr. Lowry to Mr. Aidan Phelan in 1999, Mr. Phelan was in that instance able to produce a full VAT invoice, in contrast to the utter absence of any accountancy documentation for the immeasurably larger transaction which, according to the evidence heard, also related to a fee payment.

Joint Venture Agreement

6.24 It was the evidence of Mr. Lowry and Mr. Aidan Phelan in 2001 that, at the time of concluding the Mansfield transaction, they decided that a more formal basis of agreement between them, governing their respective interests in that transaction, and possible future ventures, should be reduced to writing. It was further agreed that Mr. Christopher Vaughan should prepare such an agreement. According to their evidence, Mr. Vaughan sent a proposed basic draft of a joint venture agreement to Mr. Aidan Phelan in Dublin by disc, that Mr. Aidan Phelan informed Mr. Lowry that this document was ready for signing as soon as was convenient for him, and that in consequence Mr. Lowry attended at Mr. Aidan Phelan's Clonskeagh offices, on the evening of 29th March, 1999, for that purpose. Having read the document, Mr. Lowry signed, as did Mr. Aidan Phelan, Ms. Helen Malone witnessing both signatures.

6.25 The document was set forth as a joint venture agreement between Mr. Lowry and Mr. Aidan Phelan, as promoters, and recorded an agreement to carry on the business of property development together, as had already been commenced. Following a number of standard provisions, it then recited that the profits and losses of the venture should belong to the promoters in shares of 90% for Mr. Aidan Phelan and 10% for Mr. Lowry, subject to a performance-related incentive payable to Mr. Lowry, as should from time to time be agreed between them. A copy of the joint venture agreement referred to above together with

copies of the memoranda of 22nd December, 1998, and 25th March, 1999, can be found in the Appendix to this chapter.

6.26 At this point it is material to note that, in addressing the circumstances of the Mansfield transaction at public sittings, the Tribunal had available to it as of 2001, when its inquiries were being undertaken, only the evidence of Mr. Lowry and Mr. Aidan Phelan. As has been stated, Mr. Denis O'Brien referred in evidence to the basis upon which the funds used to complete the purchase were debited to his Credit Suisse First Boston account, but denied any knowledge at the time of any intended use of those funds on the part of Mr. Aidan Phelan. Regarding Mr. Kevin Phelan and Mr. Christopher Vaughan, although both took some part in the preliminary enquiries into the transaction pursued by the Tribunal, and Mr. Vaughan attended a meeting in Dublin Castle with Tribunal lawyers, both in the ultimate then declined to attend to testify on request. Since both individuals reside and have their places of business beyond the jurisdiction of the Tribunal, neither could legally be compelled to attend, despite the clearly expressed wishes of the Tribunal and their mutual clients in that regard. Mr. Vaughan did belatedly attend to testify in 2009, after the Tribunal's Provisional Findings had been notified to him.

6.27 In the course of their involvements in the Tribunal's preliminary enquiries, both Mr. Kevin Phelan and Mr. Christopher Vaughan made available to the Tribunal a considerable amount of documentation, some of which has already been alluded to. In addition, Mr. Kevin Phelan wrote to Mr. Lowry on a number of occasions in the latter part of 1998, initially on 30th September, setting forth details as to the Mansfield property and its development possibilities. He wrote again to Mr. Lowry on 9th October, 1998, indicating an intention to enter into an acceptable purchase agreement for the property, and to retain Mr. Vaughan as solicitor, and requesting instructions as to whether the purchase was to be made in the name of a limited company, or in Mr. Lowry's own name. A further such letter of 23rd October, 1998, referred to a recent meeting with Mr. Lowry in Dublin, and confirmed certain terms of agreement on costs and fees that had then been discussed. It transpired that Mr. Lowry had noted *"no profit, no fee"* in manuscript on that letter, as an indication of his understanding of those terms.

6.28 Mr. Kevin Phelan again wrote to Mr. Lowry on 2nd December, 1998. It appears that the vendor's solicitors were exerting some pressure to proceed with the proposed purchase, and he requested that Mr. Lowry forward a 10% deposit to him. With that letter was enclosed a letter from the vendor's solicitor, which recited the proposed purchaser as being Abbey Green Consulting Limited. Mr. Lowry in evidence confirmed that this was a company established by him a short time previously, and that his initial intention had been to use it as a purchase

vehicle for the Mansfield property, but that, on taking advice as to possible Capital Gains Tax repercussions, he had decided to proceed in his own name. Each of these letters, written by Mr. Kevin Phelan, referred to Mr. Lowry as an intending purchaser without qualification, and in none of them is there any reference to any possible involvement or procurement of other potential investors as purchasers.

The sale completes

6.29 Reverting to the actual completion on 26th March, 1999, Mr. Vaughan wrote to Mr. Lowry to inform him that completion of the purchase of the Mansfield site had been effected earlier that day, enabled by the balance of the price having been furnished by Mr. Aidan Phelan. He stated that the interest acquired was in Mr. Lowry's sole name, but subject to his agreement with Mr. Aidan Phelan, and with this in mind indicated that he would advise Mr. Aidan Phelan to enter a caution on the register, to provide against Mr. Lowry dealing with the property without Mr. Aidan Phelan's consent, in which regard Mr. Lowry was encouraged to discuss the position with Mr. Aidan Phelan. The legal procedure relating to a caution in property transactions applies somewhat similarly in both English and Irish law, and in essence a caution is a document lodged at the Land Registry, to prevent land or property being sold without notice to the cautioner.

6.30 Mr. Lowry stated that he and Mr. Aidan Phelan had duly discussed the possible adoption of this course, but both felt that the joint venture agreement sufficiently defined their respective interests, and saw no necessity to proceed on that basis. Accordingly the Mansfield property was registered in the sole name of Mr. Lowry, a position that remained in place for approximately three years.

6.31 When Mr. Lowry gave further testimony to the Tribunal on 30th July, 2002, he indicated that, whilst he still retained a 10% interest in the Mansfield property, he had, some three or four months previously, transferred its registered ownership to Mr. Aidan Phelan, at the latter's request. It appeared that Mr. Aidan Phelan had telephoned Mr. Lowry, made this request on grounds of efficiency, and thereafter sent documents for execution to Mr. Lowry. These had been prepared by a new firm of solicitors in Manchester retained by Mr. Aidan Phelan, whose identity was not then known to Mr. Lowry, but who had replaced Mr. Christopher Vaughan as solicitors acting in the matter. Mr. Lowry then stated that he had had no contact whatsoever in recent months with Mr. Vaughan, and was content that the new Manchester firm should act. As to Mr. Vaughan's continuing involvement prior to this change, more particularly in regard to the Cheadle transaction, it will be necessary to return to this matter in more detail in a succeeding chapter.

6.32 Regarding the Capital Gains Taxation aspect referred to earlier, Mr. Lowry stated that he had made inquiry only in general terms, rather than in the specific context of the Mansfield transaction, of Mr. Denis O'Connor, and had surmised from his response that it was preferable that the property be acquired in his own name, rather than in that of Abbey Green Consulting Limited. In his initial evidence relative to this matter, Mr. O'Connor did not recall such an inquiry being addressed to him, but, following that evidence, Mr. Lowry reiterated to him that he had discussed with him in general terms the tax implications of any UK property disposals. On checking the position within his office, Mr. O'Connor located a memorandum from his former colleague, Ms. Patricia Quigley, in response to a request from him relating to UK property disposals. Although Mr. O'Connor still had no direct recollection of the exchange, he accepted the matter had been discussed. On contacting Ms. Quigley, who was no longer employed by Messrs. Brophy Butler Thornton, she indicated to him that she may have discussed the matter generally with Mr. Lowry. Ms. Quigley made available a memorandum from her to Mr. O'Connor of 30th August, 1999, part of which related to other aspects of Mr. Lowry's finances of no relevance, and which otherwise indicated that she had been asked to advise Mr. Lowry on the issue of tax arising from UK property disposals, but was unable to find the Capital Gains Tax workings she had undertaken for this purpose. This would seem to indicate that she had been furnished with some information with a view to calculating what chargeable gain might arise on a particular transaction, including some information as to estimated sale proceeds, whether actual or hypothetical.

6.33 At the time of Ms. Quigley's memorandum, the only UK property in which Mr. Lowry acknowledged an interest was that at Mansfield. Mr. O'Connor agreed with Tribunal counsel in evidence that the making of such a request for advice would probably be on the basis of anticipation of some relatively substantial Capital Gains Tax liability, and that it would scarcely be worth the trouble of consulting an accountant as to such liability in the context of a mere 10% interest in the property in question. Of course no Capital Gains Tax liability could attach to Mr. Lowry unless and until such time as a beneficial disposal of the property had been effected, which would not appear to apply to the 2002 transfer to Mr. Aidan Phelan that was described by Mr. Lowry. What the Tribunal was unaware of in 2001, and what did not emerge until 2009, was that around the time that Mr. Lowry was seeking Capital Gains Tax liability advice, it was contemplated that the Mansfield property, together with the subsequently acquired property at Cheadle would be sold together in a single transaction, and that the substantial part of the net proceeds would accrue to the benefit of Mr. Lowry.

CONCLUDING REMARKS

6.34 As the course and principal focus of dealings relating to UK property ventures on the part of the persons primarily involved quickly shifted from the Mansfield transaction to that relating to the property in Cheadle, it is proposed to defer any expression of conclusions relative to Mansfield until after the related but more complicated facts of and surrounding the Cheadle transaction have been set forth in the next succeeding chapter.

6.35 In closing this short chapter, it must be observed that the version of events tendered in evidence in 2001 by Mr. Lowry and Mr. Aidan Phelan, and the documentation submitted in support of that version, was wholly at odds with documentation that came to light in 2009, and the evidence then available to the Tribunal, primarily represented by the belated attendance of Mr. Vaughan. What became apparent at that late stage was a contemplated sale of the Mansfield and subsequently acquired Cheadle properties in 1999, on terms which were inconsistent with a partnership agreement on the footing of Mr. Lowry holding a 10% interest, and were consistent only with an intention that the substantial net proceeds would accrue for Mr. Lowry's sole benefit. What also emerged initially in 2002, and latterly in 2009, was the falsification of Mr. Vaughan's files as produced to the Tribunal by him in 2001, consistent only with an intention that its contents should support the version of ownership with which the Tribunal was furnished in 2001, namely that of Mr. Lowry holding the registered title of the Mansfield property as a nominee on behalf of a partnership in which he had a mere 10% interest.

THE CHEADLE TRANSACTION

INTRODUCTION

7.01 In early summer of 1999, Mr. Michael Lowry, through Mr. Kevin Phelan, with whom he had already dealt in connection with Mansfield, and an associate of Mr. Phelan, Mr. John Eastham, was introduced to a further property in the UK at Cheadle, near Handforth, Cheshire. By an agreement of 14th September, 1999, a UK registered company known as Catclause Limited, a vehicle for Mr. Lowry, contracted to purchase the property for the sum of Stg.£445,000.00. Prior to March, 2001, the Tribunal was unaware of the Cheadle transaction or the source of monies used to fund it, or of any connection between the transaction and Mr. Lowry. The transaction came dramatically to light in early 2001, when Investec Bank, having previously drawn the matter to the attention of the Central Bank, conveyed information it had acquired to the Tribunal. Investec, a multinational entity, which in 2000 took over the banking business of Woodchester Bank, had provided a loan of Stg.£420,000.00 to enable the property to be purchased.

7.02 The Investec action in notifying the Tribunal was prompted by the result of internal inquiries, from which it appeared that Mr. Michael Lowry's name was connected with that of Mr. Denis O'Brien in relation to the transaction; specifically, that the transaction was one which initially had been represented to two officials of Investec, by another official, as a Denis O'Brien transaction; that the company, Catclause Limited, used to purchase the property, although appearing to the bank to be the vehicle of Mr. Aidan Phelan, Mr. O'Brien's accountant and representative, was in fact the vehicle of Mr. Michael Lowry.

7.03 As has already been mentioned, at the time of the Investec disclosures, roughly coterminous with the disclosures in The Sunday Tribune by Mr. Matt Cooper, further information was conveyed to the Tribunal, initially by Mr. Aidan Phelan, and subsequently by Mr. Michael Lowry, concerning their earlier involvement in the Mansfield transaction, the circumstances of which have already been set forth in Chapter 6. It was also following the Matt Cooper disclosures that the Tribunal was informed of the Carysfort transaction. It will also be recalled that Mr. Aidan Phelan played a significant role in the transmission of money to Mr. Lowry, via Mr. David Austin, in connection with aspects of that transaction. At this point, it is necessary to repeat that, whilst the deposit for the Mansfield purchase, amounting to some Stg.£25,000.00, was provided by Mr. Lowry from his own resources, the balance of the purchase monies, together with other related funds required in connection with the purchase, was provided from a sum of Stg.£300,000.00, directly transferred from Mr. Denis O'Brien's bank account at Credit Suisse First Boston, London, to Mr. Lowry's client account with

Mr. Christopher Vaughan, the solicitor handling both transactions. The deposit which enabled Mr. Lowry to proceed with the Cheadle contract came from what remained of the Stg.£300,000.00 in Mr. Lowry's client account with Mr. Vaughan.

Course of the evidence

7.04 Evidence was heard in relation to the Mansfield, Cheadle and Carysfort properties in the latter months of 2001. To a significant degree, the Tribunal's private inquiries and its public hearings concerning the Mansfield and Cheadle properties were informed by documents provided by Mr. Christopher Vaughan, solicitor. As the solicitor retained by Mr. Lowry in respect of each of these transactions, Mr. Vaughan furnished the Tribunal with what were represented to the Tribunal as copies of all of the relevant material relating to the acquisition and ongoing dealings of Mr. Vaughan in relation to these transactions.

7.05 The Tribunal's initial impression of the transactions was based on these documents, and on the evidence given by Mr. Lowry, Mr. Aidan Phelan, Mr. Denis O'Brien, Ms. Helen Malone, several officials of Investec, and by Mr. Michael Tunney, a former official of Woodchester Bank, incorporating their responses to queries arising from Mr. Vaughan's files, and to queries resulting from information provided, and evidence given, by the Investec witnesses.

7.06 On first examining the documentation and evidence concerning this matter, it then appeared that few if any more ambivalent or confusing transactions had come to the attention of the Tribunal. The solicitor who had carried out the transaction, and therefore the person acting merely under instructions, was unwilling to give evidence. From Investec, it was learned that the relevant bank loan file had gone missing and was unavailable, although the bank had satisfied itself that such a file had been created, and was in existence prior to its own internal inquiries. Investec endeavoured, insofar as it could, to recreate its original loan file, and this included a copy of one of the early letters made available to the bank regarding the loan, from Mr. John Eastham, Mr. Kevin Phelan's associate, describing the property and its prospects. But this letter had been truncated by the deletion of those portions of it which identified the addressee, who was Mr. Lowry.

7.07 Curiously, none of these features seemed in any way intended or calculated to conceal the existence or extent of a liability to repay the facility to the bank, but rather appeared directed to conceal the identity of the individual or entity who was actually the borrower. Initially, that central element of ambivalence persisted in much of the lengthy and detailed evidence that was adduced. However, as a result of information which came to the Tribunal in or

around March 2002, it was possible, in the course of subsequent evidence, to discern a pattern of concealment or obfuscation.

7.08 On 21st March, 2002, an Irish Times journalist, Mr. Colm Keena, furnished the Tribunal with purported versions of two letters, written by Mr. Christopher Vaughan, that markedly and significantly diverged in content from the forms of those letters that had been made available to the Tribunal a year earlier, as part of Mr. Vaughan's files, and which formed part of its initial investigations at its public hearings. The divergence between the two forms, called the *"short forms"* and *"long forms"*, of the relevant letters, was directed to removing references to Mr. Michael Lowry's involvement or continued involvement in the Cheadle property, at a time when it had been represented to the Tribunal that he had ceased to have any beneficial interest in it.

7.09 From evidence given and documentation provided, in the course of Mr. Christopher Vaughan's belated appearance as a witness in 2009, it became ever more clear that the documents made available to the Tribunal, that is, the *"short form"* letters, constituted merely one part of a wholesale effort to recreate Mr. Vaughan's files, so as to conceal Mr. Lowry's continuing role and beneficial interest in the Cheadle transaction, and also the full extent of his role and interest in the Mansfield transaction. It had become evident by that time that other letters had been entirely removed from the files. These other letters cast further light on what had, as mentioned, initially appeared to be somewhat confusing elements of the original files, as produced to the Tribunal, and enabled the Tribunal to view the falsely generated *"short form"* letters in a wider perspective, indicating not just wholesale falsification of the files, but the true extent of Mr. Lowry's involvement in the two properties.

7.10 By the time of the Investec disclosures in 2001, very little remained to be done to dispose of the Tribunal's remit, so far as the Terms of Reference regarding Mr. Lowry were concerned. Most of the relevant evidence had already been given in 1999. By that time, the Tribunal's impression was that it had obtained from Mr. Lowry, and from his accountant, Mr. Denis O'Connor, all available information concerning his financial affairs. Whilst Mr. O'Connor was represented to the Tribunal as Mr. Lowry's accountant, and as the individual to whom he had confided information concerning his financial affairs, it appears that he was wholly unaware of the Mansfield and Cheadle transactions, and indeed, unaware that Mr. Lowry was engaged in them in the period in which he, Mr. O'Connor, and Mr. Lowry were dealing with the Tribunal in relation to Mr. Lowry's financial affairs. Mr. Aidan Phelan's involvement with Mr. Lowry, in connection with these properties, was not conveyed to the Tribunal, or apparently to Mr. O'Connor.

HOW THE CHEADLE TRANSACTION CAME ABOUT

Mr. Michael Lowry operates through Catclause, a limited company

7.11 According to Mr. Michael Lowry, he was contacted in April or May of 1999, by Mr. John Eastham, in relation to the possible acquisition from a religious organisation of an approximately two acre site, including a church, at Cheadle in Cheshire. Having inspected and assessed the property, Mr. Lowry was very enthusiastic about its investment potential. Mr. Eastham entered into negotiations with the vendor over succeeding months, and it appears that it was after discussing the projected purchase price with Mr. Aidan Phelan in September, 1999, that Mr. Lowry agreed to purchase the property, for a price of Stg.£445,000.00.

7.12 The negotiation of the contract for this purchase was of a fairly lengthy gestation, from the time of the initial contact in April or May of 1999, up to the middle of September, 1999. It is of significance that in the middle of this period, Mr. Lowry gave his first evidence to the Tribunal concerning the matters upon which the Tribunal's inquiries were then focused, namely, those Terms of Reference relating to the sources of funds kept by or on behalf of Mr. Lowry. The first witness to give evidence in connection with Mr. Lowry's affairs was not Mr. Lowry himself, but his accountant, Mr. Denis O'Connor, who gave evidence on 22nd June, 1999. Mr. Lowry also gave evidence on that day and on the following day. At no point in the course of his evidence, nor in the course of the evidence of Mr. O'Connor, nor at any point in the course of the Tribunal's preliminary private investigatory discussions with Mr. O'Connor and Mr. Lowry in that year, was any reference made to this transaction. Needless to say, no reference had been made to the earlier transaction, namely, the Mansfield transaction, which by this point had already been concluded.

7.13 Mr. Lowry stated that, following the Mansfield transaction, he had been advised by Mr. Aidan Phelan that, if further UK property ventures were to be entered into by them, it would be preferable, contrary to the advice he had apparently followed in relation to the earlier transaction, that a special purpose company be used as a purchase vehicle, on grounds both of facilitating the obtaining of loan facilities from a bank, and of reducing Capital Gains Tax liabilities that might arise. It transpired that Mr. Christopher Vaughan had available as a vehicle a UK *"shelf"* company called Catclause Limited. Mr. Lowry, and his adult daughter, were, on 1st June, 1999, appointed directors of this company, with Mr. Lowry also being appointed its secretary. Mr. Lowry stated that, when asked whether he wished to become a director of any such company, Mr. Aidan Phelan declined.

7.14 When Mr. Lowry came to discuss the probable purchase of the Cheadle property with Mr. Aidan Phelan in the summer of 1999, it was initially in the context of an investment on the basis of their joint venture agreement, purportedly entered into shortly after the Mansfield purchase. However, Mr. Phelan was much less enthusiastic than Mr. Lowry about the Cheadle property, feeling that there could be planning difficulties in having a change of use approved, and that procuring a profitable outcome on the investment could be long and difficult. Mr. Lowry was undeterred, and anxious to proceed on his own. Eventually, the result of their discussions was that Mr. Phelan indicated that he would make available, as a loan to Mr. Lowry, the balance of the funds lodged in Mr. Lowry's client account with Mr. Vaughan after the Mansfield purchase, so as to enable a deposit to be paid to the vendors.

Meeting with Mr. Michael Tunney of Woodchester/Gandon in the Radisson Hotel

7.15 Prior to any agreement being concluded in relation to the Cheadle property, a meeting, organised by Mr. Aidan Phelan, was held in the Radisson Hotel in Dublin, at which Mr. Lowry was introduced by Mr. Phelan to a friend and associate of his, a Mr. Michael Tunney, who was then a senior executive with Gandon Capital Markets, effectively the corporate banking arm of what was then Woodchester Bank, and a person who, in common with Mr. Phelan, had had prior associations in business ventures involving Mr. Denis O'Brien. The meeting was also attended by Mr. Phelan's business partner, Ms. Helen Malone. Mr. Tunney was subsequently to play a pivotal role in arranging and obtaining bank finance for the Cheadle transaction, which was at that time under consideration by Mr. Lowry. It seems beyond doubt, on the evidence heard by the Tribunal, that this meeting at the Radisson Hotel occurred sometime after Mr. Lowry had brought the Cheadle transaction to the attention of Mr. Phelan.

7.16 There were marked divergences in the evidence of the four persons present as to what transpired at this meeting, but it is likely that it was, amongst other matters, connected with the provision of loan finance to Mr. Lowry, to enable him to purchase the Cheadle property, the negotiations for which were then in train.

7.17 According to Mr. Aidan Phelan, it was understood by him that the balance of the purchase price to complete the Cheadle transaction would be funded by Mr. Lowry himself, either through another investment partner, or by way of loan finance. Mr. Lowry's evidence in relation to this matter was not entirely clear, but he suggested that, having discussed the matter with Mr. Aidan Phelan, and having obtained a loan of a deposit, which he claimed not to need, Mr. Phelan also informed him that he would assist him in any way that he could.

Although inconsistent with the evidence of Mr. Phelan, this may explain the behaviour of Mr. Lowry in the period between the exchange of contracts and the looming closing date of 30th November, 1999.

Mr. Michael Lowry's tentative efforts to obtain loan finance

7.18 Mr. Lowry's exertions, in that period, to obtain loan finance were at best tentative. He acknowledged in evidence that he had done nothing at all to obtain finance in September, and very little in October, 1999. Evidence in relation to the efforts he made was very limited, in as much as he was able to proffer no satisfactory explanation as to why, having signed a contract binding himself to pay a balance of over Stg.£400,000.00, by the agreed closing date of end-November, his attempts to obtain finance had been minimal. In evidence, he stated that he had mentioned the entire proposition to a Mr. John Daly in October, 1999, with a view to ascertaining how he would go about funding the transaction. This however was inconsistent with other evidence he gave concerning his meetings with Mr. John Daly, and the content of them, the question of finance not having then been mentioned. He suggested that he had discussed finances with both his local bank manager in Thurles, and in the Cork office of the Irish Permanent Building Society, but had to concede that at no point in the course of those discussions had he specifically sought finance to complete the Cheadle purchase. His evidence was also that he never went to his own accountant for assistance, when it proved impracticable for him to get loan finance, although at the time Mr. O'Connor was helping him in all matters relating to the Tribunal, and indeed had provided him with critical assistance in relation to the McCracken Tribunal, and his taxation affairs. He explained his omission to tell Mr. O'Connor on the basis that one did not have to tell one's accountant everything, stating also that he had an accountant in the person of Mr. Aidan Phelan to deal with the matter. Subsequently he resiled from this position, suggesting that he had in fact mentioned the matter to Mr. O'Connor, and that Mr. O'Connor was aware in general terms. This proved to be inconsistent with Mr. O'Connor's evidence, as will later be addressed.

7.19 The fact that Mr. Lowry had made no efforts to put any finance in place, notwithstanding that he had exposed himself to considerable risk by agreeing to a completion date of 30th November, 1999, contrasts markedly with what was stated by Mr. Lowry in other evidence, concerning the Carysfort property. In relation to that purchase, he was at pains to indicate that he was not prepared to commit himself to a substantial expenditure, until such time as he had secured borrowings from Irish Nationwide Building Society, and that this was testimony to his prudence in such matters. Whilst, at the time of the Carysfort purchase, he was in receipt of a Ministerial salary, and was entitled, and

according to his own evidence, intended, to claim ample tax relief in relation to the property, the Cheadle transaction in contrast was entered into at a time when he no longer held Ministerial Office, when his business affairs were challenging, and where no arrangements had apparently been made by him to secure the balance of a purchase price then in excess of Stg.£400,000.00. Therefore, it appears for the second time, over a period of a year in dealing with UK property purchases, he had exposed himself to a liability to pay a substantial sum of money, in the event of his being forced to complete a sale without having funds available, and had also exposed himself, potentially, to the forfeiture of his deposit and payment of damages.

Mr. Aidan Phelan again provides assistance

7.20 Again, as in the case of the Mansfield transaction, it transpired that it was through Mr. Aidan Phelan that the balance of the purchase price was obtained. On Mr. Lowry's own evidence, his rather tentative efforts to obtain finance having failed, he turned to Mr. Phelan for assistance. Mr. Lowry stated that he thought that his approach to Mr. Phelan was made in mid-November, 1999. Mr. Phelan's recollection was that, by the time he was approached, the closing date of 30th November, 1999, had passed, and matters had become urgent. From Mr. Vaughan's file, insofar as it can be relied upon, it appears that considerable pressure was being applied by the vendor in early November. Having been approached by Mr. Lowry, Mr. Aidan Phelan made contact with Mr. Michael Tunney in Woodchester with a view to obtaining a loan. As will appear below, the documents to enable this transaction to be processed in Woodchester were not sent to Mr. Tunney until in or around 17th December, 1999. It seems therefore, that the approach to Mr. Phelan by Mr. Lowry must have been initiated sometime in or around the second week of December, 1999, as opposed to mid-November, 1999.

The Granting Of The Loan

Loan proposal made to Woodchester by Mr. Aidan Phelan

7.21 At the time the loan was granted, Woodchester Bank, including an associated company, was in the process of being acquired by Investec Bank, a circumstance which, to some extent, compounded the ambivalence and confusion that developed in the bank in relation to the transaction. The takeover was a lengthy process, lasting from some time in 1999, prior to the application for funds, to complete the Cheadle transaction, until in or around April, 2000.

7.22 The officials of the bank who dealt with the application were Mr. Michael Tunney, Mr. Michael Cullen, Mr. Tony Morland and Mr. Ian Wohlman. Mr. Michael Tunney was, at the time of the introduction of the application for the loan, a senior figure in the bank. He had been engaged in banking for thirty years, twenty years with Allied Irish Banks, and from 1995 was a director of Gandon Capital Markets, an associated company which was also taken over by Investec. Mr. Cullen was a senior executive of the Irish operation, with previous senior banking experience, also in Allied Irish Banks. Mr. Tony Morland's prior associations were with Investec in the UK. He was charged with responsibility for establishing a Risk Management Division in the newly acquired Irish entity, and was the senior Investec official sent from the UK to work in Dublin during the time of these events, although his involvement was complicated by study leave, relating to a Master of Business Administration course in University College Dublin. Mr. Ian Wohlman was a UK-based director of Investec, charged with Group Credit and Risk Management, and exercised certain supervisory functions in relation to loans advanced by Woodchester during the changeover period.

7.23 The arrangements in place during this period entailed that all new credit applications were to be submitted to the credit department of Investec in the UK for approval. There were a number of individuals authorised as signatories to sign off on any loans proposed by Woodchester, including Mr. Morland in Dublin, and Mr. Wohlman in the UK.

7.24 A further feature of the management configuration of the entity, in the interregnum period, was that Mr. Tunney was unwinding his relationship with the bank in advance of his intended retirement. From 31st December, 1999, he had reduced his activities with the bank to a three day week, and ceased day-to-day activities altogether from March, 2000, though he remained a non-executive director of what had become Investec Gandon. Although he later became involved in the difficulties concerning this loan, which ultimately led to its referral to the Central Bank and to the Tribunal in March, 2001, he had in fact already established a business on his own account outside banking by that time. As mentioned, during his time in Woodchester, he had formed an association with Mr. Denis O'Brien, as a client, both corporate and private, and also with Mr. Aidan Phelan, as a client on his own behalf, and also as an agent for Mr. Denis O'Brien. From the time he left the bank, he had continuing business involvements with both Mr. O'Brien and Mr. Phelan, as an investor in the former's venture capital arm, and as an investor with the latter in a property venture.

7.25 The request for a loan to complete the Cheadle transaction was apparently initiated by way of a telephone approach from Mr. Aidan Phelan to Mr. Michael Tunney, in or around the second week of December, 1999. Mr. Phelan

indicated to Mr. Tunney that the property would be acquired by a special purpose company, Catclause Limited. It was intended that the company would make the purchase, get planning permission and then dispose of the property. The bank, in the person of Mr. Tunney, was provided with details concerning the property, including the letter from Mr. Eastham, already mentioned, outlining details of the property. Mr. Tunney testified that Mr. Phelan had stated to him that the money was needed urgently to prevent the site being lost to another potential purchaser, that such situations had previously arisen with Mr. Phelan, and that the dealings had always been resolved to the satisfaction of the bank. None of the foregoing, in connection with the immediate need for funds, if stated by Mr. Phelan, was correct. There was no question of the loss of an opportunity to buy this site. A contract for the purchase of the site had already been signed. The deposit was at risk, and Mr. Lowry's company, Catclause, was also at risk of an action for specific performance to complete the sale, and was exposed to a potential liability for damages.

7.26 Mr. Michael Cullen testified that Mr. Tunney brought the transaction to him, Mr. Cullen having previously handled many of Mr. Aidan Phelan's dealings with the bank. According to Mr. Cullen, what was sought was Stg.£420,000.00 for the purchase of a property in the Manchester area, the borrower to be a company, Catclause, and the bank to be given a first charge over the property, as well as a guarantee from a high net worth individual, a Mr. John Daly. Mr. Cullen was informed that Mr. Daly, who was from Cork, was not known to the bank, and that independent confirmation as to his means was to be sought. He viewed Catclause as a special purpose vehicle, and believed that it was Mr. Phelan's company, although acknowledging in this connection that it was slightly surprising in the circumstances that an apparently unconnected third party such as Mr. Daly was proposed as a guarantor, rather than Mr. Phelan himself.

Mr. Denis O'Brien's support invoked at inception of loan proposal

The transaction "wouldn't be allowed to get into difficulties"

7.27 Mr. Cullen testified that Mr. Tunney had told him that Mr. Denis O'Brien "*was aware*" of the transaction, which to Mr. Cullen, was unsurprising, as Mr. Phelan had regularly represented Mr. O'Brien in dealings with the bank. Mr. Cullen's understanding, not unexpectedly, was that Mr. O'Brien might or might not have had some interest in the transaction. He did not, however, view Mr. O'Brien as being behind the transaction in terms of the credit application. Nonetheless, Mr. O'Brien had been a valued customer of the bank for a considerable time, and from that association Mr. Cullen obtained certain comfort. He felt that this degree of comfort concerning Mr. O'Brien's involvement or association might never come into play, but he would have regarded it as an additional factor, making it less

likely that the bank would suffer loss, if the transaction got into difficulties. Mr. Cullen testified that he understood the information relayed to him by Mr. Tunney to mean that the transaction *"wouldn't be allowed to get into difficulties"*. However, he testified that, as the association with Mr. O'Brien was something which gave comfort merely to the bank, the credit approval being independently secured, he did not contact Mr. O'Brien to check this aspect of the matter directly with him.

7.28 Pursuant to the arrangement whereby all new credit applications were to be submitted to the UK credit department of Investec for approval, it was the responsibility of Mr. Tunney to ensure that the conditions for this loan were satisfied, and further to ensure that Investec's approval was forthcoming. To that end, Mr. Tunney dealt with Mr. Ian Wohlman. He informed Mr. Cullen that, though some queries had been raised by Mr. Wohlman, he was confident that the requisite approval would be obtained. The minute of a credit committee meeting of 19th December, 1999, in relation to the transaction, had been signed by Mr. Cullen and by Mr. Tunney, and faxed to Mr. Wohlman in the UK, along with certain other documentation. This included a memorandum of 22nd December, 1999, from Mr. Tunney, indicating that he and Mr. Cullen had *"signed off"* on the proposal, but that Mr. Tony Morland in Dublin had not yet done so, pending the obtaining of more detail on the means of Mr. John Daly, the proposed guarantor, but stating that this had since been provided, and that Mr. Morland would be adding his signature on his return to the office. It should be stated that Mr. Morland testified that he had never signified any such actual, or intended, approval. Mr. Wohlman, following receipt of Mr. Tunney's memorandum, considered the proposal, and, having discussed it with a colleague, Mr. Tapnack, Chief Executive Officer of Investec, took the view that, in all of the circumstances, including the level of finance sought for a transaction to an apparently new customer, the loan could only be granted on the basis of enhanced terms and security. Mr. Wohlman distinctly wrote:

> *"no way!"*

on the memorandum, and on 23rd December, 1999, sent a fax to Mr. Tunney, conveying his rejection of the facility as proposed.

7.29 However, as Mr. Cullen acknowledged in evidence, Mr. Wohlman's indication on 23rd December, 1999, of his unwillingness to grant the facility on the terms proposed was academic, since by that time loan approval had already been notified to the borrower's solicitor, Mr. Christopher Vaughan, and indeed the funds, Stg.£420,000.00, had already been transferred to Mr. Vaughan's client account on 21st December, 1999.

A proposed Denis O'Brien transaction

7.30 Mr. Tony Morland's evidence was that his first knowledge of the Catclause loan for the Cheadle transaction was in December, 1999, when he was contacted by Mr. Michael Tunney. Mr. Tunney informed him of what he described as:

> *"A proposed 'Denis O'Brien transaction'"*

introduced by Mr. Aidan Phelan, involving the purchase of a property in the Manchester area. Mr. Tunney had informed him about the security being sought, namely a charge on the property, and the guarantee of Mr. John Daly, but he was not furnished with precise details of the site, the amount required, and similar information. However, he did inform Mr. Tunney of Investec's requirements, including independent verification of the means of the proposed guarantor, Mr. Daly. He took no further part in the credit process, as he was away on study leave over Christmas. He did however confirm that he had not signed off on the loan, and that, had he been requested to approve the transaction, he would not have reviewed it piecemeal, but only on the basis of the facts in their totality, and rejected the notion that he had signified any conditional approval.

7.31 Mr. Morland in evidence also testified that he had thought that Mr. Tunney had informed him that the purchase involved buying property from a UK religious order, but that Mr. Denis O'Brien did not want his name associated with the transaction. This had been stated by Mr. Tunney, not because the sale was from a religious order, but merely that the nature of the transaction was that it involved a purchase from a religious order, and that it was Mr. O'Brien's wish that his name would not be connected with it. Mr. Morland knew of Mr. O'Brien, whom he had once met with Mr. Tunney at a lunch. However, he did not know of Mr. O'Brien's net worth, or standing in the Irish business community, other than from having dealt with due diligence exercises, in relation to certain of his companies. At that time Mr. Morland would have regarded Mr. O'Brien as the effective beneficiary of Catclause, but this would not have meant a great deal to him, as he would not have been aware of any details of the company. Although, when pressed in cross-examination, Mr. Morland was certain that he had been informed that the transaction was a Denis O'Brien transaction, he was less certain of his evidence that this was a transaction with which Mr. O'Brien did not want his name associated, and it seems that this may have been an inference on his part from what was stated by Mr. Tunney, but as to the actual information relayed by Mr. Tunney, it was only as to it being a Denis O'Brien transaction that he could be certain.

Mr. Denis O'Brien's name would naturally never be far away

7.32 Mr. Tunney's evidence was that, regardless of the fact that a corporate vehicle was used, he was making a loan to Mr. Aidan Phelan. He stated that he had no recollection of having informed Mr. Cullen that Mr. Denis O'Brien was aware of the transaction. However, he acknowledged that, if Mr. Cullen had so testified, this must have been correct. He testified that he should not have made such a statement but, acknowledging that it had been made, found it extremely difficult to explain why he would have asserted what, as he stated, he contended to be false. He did however point out that, whilst untrue, it was a statement which would not have done any harm to the transaction. Asked why he would have said something which was untrue, he replied that much of Mr. Aidan Phelan's strength in the bank was his link with Mr. O'Brien, that the bank had done a lot of business with both, and that both were seen as *"good news"*.

7.33 Whilst acknowledging that he must have mentioned Mr. O'Brien's name to Mr. Cullen, Mr. Tunney stated that this was not as a result of anything that Mr. Phelan had conveyed to him. It was simply that he had given this indication, although having no authority to do so, and no basis upon which to misrepresent the position; further, he did not accept that Mr. O'Brien had anything whatsoever to do with the transaction. His evidence was that he had *"to put my hands up"* for having made such a statement but, bizarrely, went on to contend that he did not believe that he had misled Mr. Cullen. In an even more curious twist, he stated, by way of further explanation, that where Mr. Aidan Phelan was concerned:

> *"Mr. O'Brien's name would naturally never be far away."*

Involvement of Mr. Michael Lowry

7.34 Mr. Aidan Phelan's evidence was that, when approached by Mr. Lowry, he offered to assist and, having a good relationship with Woodchester through Mr. Tunney, agreed to approach him. He further testified that he was aware that Mr. Lowry had failed to secure either a partner in the project, or loan finance. His evidence was that, having been present at the Radisson Hotel meeting, he had formed the impression, from what had transpired at the meeting, that Mr. Lowry did not have access to ready money. Somewhat contradictorily however, he testified that, in December of 1999, he believed that Mr. Lowry was capable of servicing repayments on a loan sufficient to purchase the Cheadle property, from his own resources.

Catclause was the purchaser

7.35 Mr. Phelan was aware that Catclause was the purchaser, as a vehicle for Mr. Lowry. According to Mr. Phelan's evidence, he discussed the matter with Mr. Tunney, and referred specifically to the involvement of Mr. Lowry, and of his daughter. His evidence was that he was told by Mr. Tunney that a suitable guarantor would be necessary to support the loan. It appears that Mr. Lowry did not offer himself as guarantor but provided Mr. John Daly in this regard, and documents, purporting to satisfy the requirement for a guarantor, were faxed to Woodchester by Mr. Phelan on 17th December, 1999. In order to finalise the transmission of funds, it was necessary to furnish to the bank a resolution of the company, authorising the opening of a loan account, and related details. The resolution, however, was signed, not by Mr. Lowry or his daughter, but rather by Mr. Phelan and his associate, Ms. Helen Malone. In explaining this, Mr. Phelan stated that neither Mr. Lowry nor his daughter was available to sign the necessary resolution, and that they therefore, on Ms. Malone's advice, authorised Mr. Phelan and Ms. Malone to sign as directors. Whilst it was intended that ultimately the position would shortly thereafter be formalised, Mr. Phelan's evidence was that regrettably this was not done, by reason of the fact that by the time the appropriate official forms were ready, it had been decided to *"drop Catclause"* as the vehicle for the purchase of the property. Therefore, the formal documentation presented to the bank gave the impression that the directors of the company were Mr. Phelan and Ms. Malone, and not Mr. Lowry and his daughter.

No indication of involvement of Mr. Michael Lowry on the face of bank documentation

7.36 In bringing the transaction to Mr. Tunney, Mr. Phelan faxed him several documents pertaining to the matter, including the letter from the agent, Mr. Eastham, by whom the transaction had been introduced to Mr. Lowry. Mr. Phelan agreed in evidence that the name of the addressee, that is, Mr. Lowry, appeared to have been removed from that letter. Mr. Phelan's evidence was that he had obtained the letter from Mr. Lowry by fax in that form, although Mr. Lowry's evidence was that he had not altered the letter. Mr. Phelan insisted that he did not think it was possible that he forgot to mention Mr. Lowry to Mr. Tunney, or that Mr. Tunney did not hear him allude to Mr. Lowry's involvement, stating also that he knew that Mr. Lowry and Mr. Tunney had had telephone conversations regarding the transaction, and that Mr. Tunney had so informed him over Christmas, 1999. Mr. Lowry had been badgering Mr. Tunney to complete matters, telling him that Mr. Christopher Vaughan was holding off the vendors. Mr. Phelan acknowledged that, on the face of the documentation presented to the bank, there appeared to be no indication of Mr. Lowry as a party to the transaction.

7.37 Mr. Cullen, Mr. Morland and Mr. Wohlman testified that, at the time of the processing of the loan, that is, effectively at the time of the transmission of the funds in December, 1999, they had no knowledge of any involvement or association of Mr. Michael Lowry, or of his daughter, with the transaction, and that it was not until the early part of 2001, that they became aware of the role of Mr. Lowry in the company, Catclause.

7.38 No Companies Office search appeared to have been carried out in relation to Catclause prior to February, 2001, when the matter had become problematic. Mr. Cullen, whilst acknowledging that the actual registered details regarding the company were publicly discoverable at all times, stated that the omission to search was because the individual the bank had dealt with, Mr. Phelan, was well regarded, and because Mr. Phelan and Ms. Malone had represented that they were the directors. Mr. Tunney's evidence was that, from his experience of banking, he was unable to recall an occasion on which a bank, who knew a customer well, ran a check on the registration of particulars behind a corporate vehicle. His evidence was that it was assumed that the person who brought the corporate vehicle to the bank was associated with it.

7.39 Mr. Tunney did not agree that Mr. Phelan had disclosed to him the involvement of Mr. Lowry. Nor did he agree that it was from Mr. Lowry that he had obtained information to enable him to make contact with Mr. John Daly, to ascertain his financial details. His understanding was that Catclause was a company owned or controlled by Mr. Phelan. Mr. Tunney stated that at the meeting at the Radisson Hotel some months earlier, there was no question of Mr. Lowry having sought a loan, or indicated a request for financial assistance, in relation to the Cheadle or indeed any UK property. Mr. Tunney testified that the guarantee was not a requirement stipulated by the bank, but that it was offered, unsolicited, by Mr. Phelan. Although it had not been a regular feature of the bank's requirements in dealings with Mr. Phelan, Mr. Tunney's evidence was that no banker would refuse an offer of additional security.

A guarantor procured by Mr. Michael Lowry

7.40 Mr. Daly was a businessman, who had been friendly with Mr. Lowry for over a decade. He recalled having met Mr. Lowry socially in November, 1999, toward the end of the month, and that Mr. Lowry had informed him of a UK property deal, and sought his advice. Mr. Daly regarded the project as an attractive one. Quite when he agreed to become a guarantor is unclear, as indeed was most of Mr. Daly's evidence. He testified that, whilst he formed a favourable view of the transaction, he stated that he would need to see relevant documents before he made up his mind. Certain documents were then produced to him, either toward the end of November, 1999, or the beginning of December, and at

that point he seems to have either agreed, or confirmed an earlier agreement, to provide a personal guarantee, stating that he felt that Mr. Lowry would have done the same for him, although in fact they had never had any prior business dealings.

7.41 Mr. Daly was unsure of the status of the transaction at the time it was first raised with him by Mr. Lowry, but he thought that Mr. Lowry had stated that he was interested, as opposed to already committed, although it is clear that by that time, in November, 1999, Mr. Lowry, through Catclause, was already bound to the transaction, having executed a contract the previous September.

7.42 Certain documents were then sent to Mr. Daly including, it would appear from his evidence, a form of guarantee to which his unwitnessed signature was eventually applied. Mr. Daly's evidence was that this guarantee was sent to him, together with other documents relating to the transaction. The guarantee form was expressed in terms of a guarantee to Woodchester of the liabilities of Catclause, and could therefore presumably only have come into existence after Mr. Phelan had introduced the application to Mr. Tunney, which the Tribunal is satisfied was in mid-December, 1999.

7.43 Mr. Daly's evidence lacked coherence in terms of the sequence of events, the timing of the various events leading up to his ineffective execution of the guarantee, and the events leading subsequently to his apparent refusal to execute an enforceable guarantee. However, leaving aside the dating of events, the Tribunal was told that some time after receiving the documentation, Mr. Lowry telephoned him on his mobile phone requesting that he sign the guarantee as a matter of urgency, Mr. Lowry having stated that he was under pressure. Mr. Daly agreed. As he was then travelling by car between Enniscorthy and Dungarvan, he signed the guarantee, and faxed it from an auctioneer's office in Dungarvan to the fax number he was given. At that point, which Mr. Daly believed was close to Christmas, he understood that he had fulfilled his commitment to Mr. Lowry, and had bound himself as a guarantor for the indebtedness that Mr. Lowry had incurred in respect of the Cheadle transaction.

7.44 Mr. Daly's evidence of his direct dealings with Woodchester was that he received a telephone call, again on his mobile phone, at least once, if not twice, from Mr. Michael Tunney; further, that Mr. Tunney had stated that Mr. Daly's mobile number had been furnished to him by Mr. Lowry, that he explained who he was, and that he made some general inquiries of Mr. Daly, indicating that some certification of his financial resources from his accountant would be necessary, for purposes of his guarantee. Mr. Daly testified that he thought he had given Mr. Tunney his accountant's phone number, and in addition, the name

of his principal banker. As the certificates of his accountant and banker appear to have been faxed to Woodchester on 17th December, 1999, it seems reasonable to conclude that the conversation between Mr. Daly and Mr. Tunney was some time shortly prior to that date.

7.45 There was some confusion apparent from those references for Mr. Daly, ultimately received by Woodchester, in that, on one view, the letter from his accountants, and on any view, the letter from his bankers, are indicative of Mr. Daly being an intending purchaser or investor in the project. Mr. Daly's evidence was that he had never seen the letter from his bankers, and it may be that this degree of confusion stemmed from the undoubted urgency of the situation at that time. Mr. Daly was in no doubt that Mr. Tunney had stated to him that he had received his mobile phone number from Mr. Lowry, which is in conflict with Mr. Tunney's evidence that, as he contended, he had no knowledge of Mr. Lowry's involvement in the transaction.

7.46 Mr. Tunney rejected the suggestion that the involvement of Mr. Daly could only have flowed from the fact that Mr. Lowry, through the vehicle of his company Catclause, was the borrower. Through his counsel, Mr. Phelan suggested that it was because of the involvement of Mr. Lowry, a disclosed involvement, that the bank, in the person of Mr. Tunney, required a guarantee, going on to suggest that it was as a favour to Mr. Phelan that the facility was being put in place, which the bank would not have otherwise granted. All of these suggestions, that Mr. Lowry's name was mentioned, were rejected by Mr. Tunney, who persisted in his evidence that Mr. Lowry's name had not been disclosed, and that he regarded the facility as having been extended to Mr. Phelan alone, notwithstanding firstly, the requirement of a guarantee, and secondly, the involvement of an unknown guarantor, Mr. Daly from Cork, whose only association with the transaction was through Mr. Lowry.

Funds Are Transmitted To Mr. Christopher Vaughan And The Sale Completes

7.47 It seems that it was in mid-December, 1999, some two weeks after the passing of the completion date of 30th November, 1999, that Mr. Christopher Vaughan was informed that loan finance was being arranged through Mr. Aidan Phelan with Woodchester to enable the sale to complete. According to Mr. Vaughan's file, it appears that he wrote to Mr. Phelan on 14th December, 1999, indicating, firstly, that he had not appreciated Mr. Phelan's involvement in the matter at all, and secondly, pointing out that he was in desperate need of funds to meet the completion deadline. In passing, it should be noted that, whilst that letter suggests that Mr. Vaughan was unaware of Mr. Phelan's involvement in the matter, that is not consistent with an earlier note of 8th September, 1999,

appearing on his file, recording Mr. Phelan's consent to the use of the balance of the Mansfield money to pay the deposit on Cheadle. Three days after writing to Mr. Phelan, on Friday, 17th December, 1999, Mr. Vaughan received a telephone call directly from Mr. Tunney, who promised that the balance of the Stg.£420,000.00 required to complete the sale would be provided by the bank.

7.48 On the following Monday, 20th December, 1999, Mr. Vaughan wrote to Mr. Tunney confirming his understanding, furnishing his bank details and confirming that on completion Catclause would have a good and marketable title to the property, and that he would deal with stamping and registration. He concluded by inquiring whether the bank wished to register a charge against the property, and if so, he asked that the bank forward a completed charge form to him, and that he would then arrange for it to be filed at Companies House in the UK, and registered simultaneously with the transfer of the property. The funds were then transmitted to Mr. Christopher Vaughan's client account on the following day, 21st December, 1999, by Mr. Tunney, in advance of any approval having been secured from Mr. Ian Wohlman of Investec Bank, in accordance with the protocol in being during the months immediately preceding the formal takeover of Woodchester by Investec. The receipt of these funds enabled the completion of the sale by Mr. Vaughan. Despite the loan having been made to Catclause, the property was not registered in its name. Mr. Vaughan testified that he took a decision, in the absence of instructions, to register the property in his own and his wife's name on the basis that they would hold it as trustees.

7.49 At the time of the completion of the sale, the bank's loan file, insofar as can be ascertained, the original having disappeared during the year 2000, contained the following documents:

(i) a copy of a letter dated 3rd December, 1999, from Mr. John Eastham, Mr. Lowry's property consultant, known to have been addressed to Mr. Lowry and outlining the elements of the transaction, from which Mr. Lowry's name and address had been deleted;

(ii) a facility letter dated 20th December, 1999, addressed to *"the Directors, Catclause Limited, c/o John Daly, Court House Chambers, 27/29 Washington Street, Cork"*, that is, at the address of Mr. Daly, the putative guarantor;

(iii) a resolution of Catclause, signed by Mr. Aidan Phelan and Ms. Helen Malone, respectively designated as chairman and secretary, purporting to be a resolution of the directors of Catclause, authorising the acceptance of the facility letter;

(iv) a letter of application for the opening of accounts by Catclause dated 20th December, 1999, showing the Washington Street, Cork, address as the address of the company, and signed by Ms. Malone, designated as secretary, to which was appended a further resolution by way of a mandate to the bank also signed by Mr. Phelan, designated as chairman, and Ms. Malone, designated as secretary, and also dated 20th December, 1999;

(v) a faxed copy of an unwitnessed and undated guarantee signed by Mr. John Daly, together with references from Mr. Daly's accountant and from his bank.

Therefore, on the basis of the loan file as reconstructed, the bank documentation, although referring to Catclause, did not identify Mr. Michael Lowry in any capacity.

7.50 As already outlined, according to Mr. Phelan, the reason that the resolution and facility letter required to be signed by Catclause were signed, not by Mr. Lowry and his daughter, as directors, but by Mr. Phelan and Ms. Malone, was that it became necessary to take this step due to the non-availability of Mr. Lowry or his daughter at the relevant time, even though it appears that there were a number of other days during which Mr. Lowry and his daughter could have signed the documents. Mr. Phelan and Ms. Malone signed as directors, having been technically appointed as alternate directors of Catclause for that purpose, with the intention that the matter would be formalised shortly afterwards, although it seems that no such formal steps to regularise the matter were ever taken.

7.51 Mr. Lowry was unable to say why Mr. Daly's address was used for the purposes of the facility letter to Catclause, as it had also been used in the bank mandate. As to the letter from Mr. Eastham, from which Mr. Lowry's name and address had been removed, Mr. Lowry confirmed that he had received that letter, having sought it himself from Mr. Eastham, in response to queries about the property from the bank. As to why his name and address were removed, Mr. Lowry's response was that he himself had not removed those details. Put that the documentation furnished to the bank had no reference to him, his daughter, or his address, Mr. Lowry reiterated that Catclause was the named borrower, and that it was a matter of public record, that he and his daughter were directors of the company. As to why the facility letter was signed by Mr. Phelan and Ms. Malone, Mr. Lowry stated that when contacted concerning this matter, he was in a remote part of his constituency and inquired as to the feasibility of any alternative course, and that thereupon Mr. Phelan informed him that he, Mr. Phelan, could be designated as an interim director for this purpose. Notwithstanding the absence of any reference to Mr. Lowry on the bank file, and

in fact the contrary references to Mr. Aidan Phelan and Ms. Helen Malone as directors of Catclause, Mr. Lowry insisted that there was no doubt that the bank, in the person of Mr. Tunney, was aware that it was dealing with him, and he referred also to the evidence that Mr. Phelan had given that he had informed Mr. Tunney in like terms.

7.52 The evidence of Mr. Tunney and Mr. Phelan in that regard has already been recounted, but it does seem significant that, according to Mr. Lowry, he had personal contact with Mr. Tunney during the course of the processing of the loan, and that it was he who had furnished Mr. Tunney with Mr. Daly's details, to enable Mr. Tunney make contact with him. That matter was confirmed by Mr. Daly, who testified that, upon contact being made with him, Mr. Tunney informed him that Mr. Lowry had been the source of his contact details.

Mr. John Daly Apparently Declines To Perfect His Guarantee And The Consequences

7.53 Mr. Lowry informed the Tribunal that early in the New Year of 2000, he again contacted Mr. Daly, indicating to him that the faxed guarantee, furnished by him prior to Christmas, which was both undated and unwitnessed, was inadequate, and that it would be necessary for Mr. Daly to re-execute the original guarantee documentation, and to have it duly dated and witnessed. Mr. Daly's evidence was that, at this point, he had changed his mind, needing all his resources for a project of his own, that was coming on stream more quickly than expected, and that he indicated this to Mr. Lowry. This aspect of his evidence is difficult to reconcile with his earlier evidence that he believed, on signing the faxed guarantee before Christmas, that he had already committed himself, unless, as an experienced businessman, he did not actually believe that the faxed document sent to Woodchester created any binding obligation on his behalf. Further inconsistencies arose from his testimony that, in the following month, February, 2000, he yet again spoke to Mr. Lowry and inquired whether he was free of the guarantee, to which Mr. Lowry responded that he was, and that in fact a Mr. Phelan had taken it over. Likewise inconsistent was Mr. Daly's evidence that he was unaware that the loan sought by Mr. Lowry had in fact been drawn down, since Mr. Lowry had not told him that he had received the money. With reference to the impact of his post-Christmas refusal, Mr. Daly's evidence was that, whilst Mr. Lowry was annoyed with him at first, he *"saw my point"*, by reference to his own investment priorities, and that thereafter the two remained the best of friends.

7.54 Mr. Phelan's evidence was that it was the refusal of Mr. Daly to perfect his guarantee that left him in an embarrassing position, in that the required security had not been provided to the bank. He stated that he made the position

clear to Mr. Lowry, but that as Mr. Lowry had no alternative proposals, he was obliged to take the view that morally he had no option but to become responsible to the bank for the loan. This, he testified, was in the light of his long relationship, both business and personal, with Mr. Tunney. Accordingly, it was agreed that Mr. Lowry would cease to have any beneficial interest in Cheadle, and that the entire beneficial interest would pass to Mr. Phelan, as would the obligations of Catclause to the bank. Mr. Vaughan was accordingly instructed to hold the property in trust for Mr. Phelan.

7.55 In the belated evidence of Mr. Christopher Vaughan, there was no suggestion that it was on this basis that he was prompted to register the property in his own name and that of his wife. Mr. Vaughan's evidence was that he was so instructed by Mr. Tunney, but not by reason of any reference to the failure of the guarantee, rather because it had been decided to restructure the transaction. That element of Mr. Vaughan's evidence was also inconsistent with Mr. Tunney's evidence that, in response to Mr. Vaughan's inquiry of 20th December, 1999, he had instructed him to register the property in the name of Catclause, with a charge against Catclause in favour of the bank, and he had made no mention in his evidence of having subsequently directed Mr. Vaughan to ignore that instruction, and instead to hold the property in trust.

7.56 Whatever Mr. Phelan's views may have been as to his personal responsibilities, it seems that he took no action to inform Mr. Tunney, or the bank, that he had assumed either a primary or a secondary obligation to repay the loan, and there is no evidence of any contact in that regard between Mr. Phelan and the bank. Furthermore, it was Mr. Tunney's evidence that he had not heard at all of the difficulties encountered in relation to Mr. Daly's guarantee, until Tribunal statements had come to hand, in the period shortly before his evidence. He had heard that an initial attempt to secure the guarantee had been ineffective, and was aware that Mr. Phelan had been contacted with a view to obtaining an original guarantee properly completed. He made no reference to any approach from Mr. Phelan to him, driven by embarrassment, or a moral obligation to assume responsibility for the loan, and of course, to have testified to that effect would have been contrary to his own evidence that Mr. Phelan was in any case, as far as he was concerned, the person primarily responsible to the bank. It was Mr. Phelan's evidence that he had drawn these matters to the attention of Mr. Tunney, but that Mr. Tunney was indifferent to them.

7.57 Whilst therefore, on Mr. Phelan's side there was a crisis, purportedly precipitated by Mr. Daly's default, compelling him to take over a substantial loan from Mr. Lowry's company, there was no evidence of any such drama, or any notification to the bank that the borrower, Catclause, had been supplanted, and

that security was now being provided by the new owner of the property which was to be Mr. Aidan Phelan. It appears that the bank, even assuming that it had some, even the vaguest, knowledge of these events at the time, was disinterested or at best indifferent. As Mr. Cullen put it, the guarantee had *"fallen off the page".*

7.58 The evidence of communications with Mr. Vaughan at this time was perplexing, if not implausible. Mr. Phelan informed the Tribunal that having, as he contended, taken over the borrowing from Mr. Lowry, Mr. Vaughan was then instructed that the property should be held by him as trustee for Mr. Phelan, and in that regard, Mr. Vaughan was prepared to act on Mr. Phelan's instructions. In other words, Mr. Vaughan was prepared to take Mr. Phelan's instructions to hold a property, one acquired by Mr. Lowry through his company, Catclause, in trust for Mr. Phelan. This, as was acknowledged by Mr. Phelan, was most unusual, in that it appeared that a solicitor was prepared to take instructions concerning a client's property from another individual, the effect of which was to transfer the property from the solicitor's client to that individual.

7.59 In that regard, Mr. Lowry's testimony was contrary to that of Mr. Phelan in that he stated that he was present when a telephone conversation to this effect took place between Mr. Phelan and Mr. Vaughan, and that he reinforced or endorsed those instructions. Whilst a letter, as will appear below, seems to have been written by Mr. Vaughan to Mr. Phelan, around this time, reflecting to some degree certain changes in the transaction, though not to the effect contended for by Mr. Phelan, there appears to have been no letter to Mr. Lowry seeking his confirmation that he had ceased to have any interest in the property.

7.60 The letter in question was from Mr. Vaughan to Mr. Phelan, of 11th January, 2000, where he states:

> *"Further to our telephone conversation I am writing to confirm the completion of St. Columba's Church took place on the 21st December 1999 and I enclose a copy of the completion statement, the handwritten notes at the end are my workings out of the interest that had to be paid.*
>
> *Following the decision that Catclause Limited is no longer the purchasing vehicle the property is to be registered in the names of myself and my wife (who is also a solicitor) as 'bare trustees.*
>
> *I have spoken to Michael Tunney in respect of the transaction and I would like to meet you when I come to Dublin for the Notaries Conference..."*

Whilst this letter does reflect what might be termed a restructuring of the transaction, that is, that Catclause was no longer to be the *"purchasing vehicle"*, it does not reflect the proposition that Mr. Lowry had exited from the transaction, to be replaced by Mr. Phelan.

7.61 It was Mr. Phelan's further account of what transpired at this time that, although having taken over the property and the loan, he nevertheless held Mr. Lowry, with Mr. Lowry's agreement, morally responsible to find a buyer for the property. He also testified, somewhat intriguingly, that he regarded Mr. Kevin Phelan as bound by the selfsame moral obligation. When queried by counsel, he pointed out that Mr. Lowry had got him into this difficulty, but was unable to explain quite why he should have felt able to expect a similar moral obligation from Mr. Kevin Phelan.

7.62 In support of his evidence that he had assumed ownership of the transaction on the failure of the guarantee, and that Mr. Lowry had thereupon ceased to have any interest, other than a moral obligation, Mr. Aidan Phelan pointed to a letter, dated 26th January, 2000, that he wrote to Mr. Lowry, in which he stated as follows:

> *"It is now clear that you are not able to obtain a replacement guarantor for Mr. 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, and he is holding the property in trust for me until the loan is repaid.*
>
> *Although I am prepared to 'backstop' the loan you have full responsibility to move the property as soon as possible."*

Mr. Phelan did not agree with Tribunal counsel that the term *"backstop"* was consistent only with his assuming liability as a guarantor, or on some secondary basis, as opposed to the assumption of ownership of the property, and the primary obligation under the loan. Assuming that the letter reflected the true situation, it can only mean that Mr. Phelan was, if anything, standing behind the borrower or supporting the loan, having regard to his relationship with Mr. Lowry, but not that he had assumed direct responsibility for it, or ownership of the property purchased with its proceeds. Whatever interpretation is placed on the wording of the letter, the fact remains that, despite the rather dramatic language used by Mr. Phelan in recounting the impact of Mr. Daly's resiling from his guarantee obligations, no similar letter, nor any letter of any kind, was sent to the bank reflecting any of the content, however interpreted, of the letter to Mr. Lowry.

7.63 Furthermore, if, as has been contended, the bank, in the person of Mr. Tunney, was alerted to a change in the legal liability under the loan, and in the ownership of the property intended as security for the loan, no new facility letter was issued, naming Mr. Phelan personally as the borrower, nor any attempt made to obtain a security from Mr. Phelan over a property now asserted to be in his ownership.

THE THISTLEWOOD AND BERWOOD SALES AND THE INTENDED BENEFICIARY OF THE PROCEEDS

7.64 The issue concerning the ownership of the Cheadle property arose at various times in the course of the Tribunal's sittings. In the course of its first sittings touching on the Cheadle transaction, when it had been testified by Mr. Phelan and Mr. Lowry that from January, 2000, after Mr. Daly's refusal to execute a completed guarantee, Mr. Phelan had assumed ownership of the property and direct responsibility to the bank for the borrowings, reference was made to a letter from Mr. Aidan Phelan to Mr. Lowry, dated 2nd November, 2000, which, noting that the *"Thistlewood deal"*, which would have yielded Stg.£1.1 million, had fallen through, stated that Mr. Aidan Phelan wanted Mr. Kevin Phelan and Mr. Lowry to move the site at once. Mr. Aidan Phelan insisted that this letter did not mean that Mr. Lowry was still *"in the frame"* in the sense that he still had a tangible interest, but rather that he continued to have a moral obligation to assist in disposing of the property. In fact, the circumstances surrounding this sale, sometimes referred to as the Thistlewood sale, did not fully emerge until Mr. Vaughan finally gave evidence in 2009. What had actually transpired in 2000 began to become clear in 2002, when further documentation made available to the Tribunal indicated that Mr. Christopher Vaughan's files provided to the Tribunal had been falsified by the substitution of altered forms of letters for the original letters contained on the file. In 2009, it emerged that this substitution of altered forms of letters was accompanied by the removal of other letters altogether from the files.

UK property ML

7.65 The Thistlewood sale was referred to at the meeting in Jury's Hotel, Dublin on 17th August, 2000, to which reference has already been made in the previous chapter. The meeting was attended by Mr. Lowry, Mr. Vaughan, Ms. Helen Malone and Mr. Aidan Phelan. Ms. Malone prepared a note, indicative either of what transpired at the meeting, or of the agenda envisaged for the meeting. This note referred to the Mansfield and Cheadle properties, and the then state of affairs as regards their development or sale. The document was headed:

"UK Property ML",

and appears to suggest a continuing interest on the part of Mr. Lowry in both the Mansfield and Cheadle properties. In evidence, it was contended by Mr. Aidan Phelan and Mr. Lowry that any suggestion that the wording of this note indicated a continuing involvement on the part of Mr. Lowry was incorrect, and both insisted that his interest was then limited to a 10% equity in Mansfield, he having ceased to have any interest since January, 2000, in Cheadle. A copy of Ms. Malone's note can be found within the Appendix to this chapter.

Long form, short form letters

7.66 At this point, it is appropriate to mention two letters written by Mr. Vaughan to Mr. Kevin Phelan, and dated respectively 9th August, 2000, and 5th September, 2000, although the latter preceded the former in coming to the Tribunal's attention, being one of what was referred to in evidence as the two *"long form"* and *"short form"* letters produced by Mr. Colm Keena, of The Irish Times. The circumstances of these letters will be addressed more fully in the next chapter, entitled *"Falsification of Mr. Christopher Vaughan's Files"*. For present purposes, it will suffice to state that the Tribunal has concluded that the form of the 5th September, 2000 letter, which was conveyed as part of Mr. Vaughan's correspondence file, was a deliberately truncated and altered version of the actual letter then written and sent, a course taken to suppress and withhold from the Tribunal a true account of Mr. Lowry's subsisting beneficial interest in the Cheadle property, and to furnish a false version, in accordance with which information and evidence were then given. Both versions of the letter dated 5th September, 2000, are now reproduced.

Short Form

SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone. BT72 5QA

5 September 2000

Dear Kevin

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

Could you therefore let me know :-

1. What is the current situation with regard to the grant of planning consent for the proposed residential scheme? Who is going to submit and pay for the planning application and when will it be done?
2. Presumably the access will be dealt with at the same time as the planning application is submitted?
3. Are Thistlewood undertaking a soil survey at the present time?

Do you know the identity of Thistlewood estates clients? I have done a company search against Thistlewood, and I enclose a copy herewith which says very little. Do you know who their actual clients are?

Kind regards.

Yours sincerely
C J VAUGHAN

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT. Tel: 01908 226881. By Appointment only.
VAT Number: 608 4809 28

Long Form

SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone. BT72 5QA

5 September 2000

Dear Kevin

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

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

Could you therefore let me know :-

1. What the current situation is with regard to the grant of planning consent for the proposed residential scheme. Who is going to submit and pay for the planning application and when will it be done.
2. Presumably the access will be dealt with at the same time as the planning application is submitted.
3. Are Thistlewood undertaking a soil survey at the present time?

Do you know the identity of Thistlewood Estates clients. I have done a company search against Thistelwood, and I enclose a copy herewith which says very little. Do we know who their actual clients are?

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

Kind regards.

Yours sincerely
C J VAUGHAN

follow.

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at The Old Rectory, Haversham, Milton Keynes MK19 7DT. Tel: 01908 226881. By Appointment only.
VAT Number [illegible]

Removal of references to Mr. Michael Lowry

7.67 Comparing the two forms of the 5th September, 2000 letters, it is obvious that the *"short form"* removes any references to Mr. Michael Lowry. The original form of the letter, the *"long form"*, makes it clear that Mr. Michael Lowry was in fact the owner of the property, and the person by whom arrangements for its disposal were being directed, and for whose benefit those arrangements were

being structured. What the letter suggests is that a timetable be set up for a sale so that the property, already held by Mr. Christopher Vaughan as trustee, could be held in Mr. Michael Lowry's own name, presumably for fiscal reasons, for a period prior to the sale. The letter goes on to indicate that Mr. Vaughan had a sensitivity about writing to Mr. Lowry about this matter, indeed a sensitivity well exemplified by the substitution of a *"short form"* of the letter, when the files were provided to the Tribunal. He went on to state that a copy of the letter had been sent to Mr. Aidan Phelan, on the basis that he needed to keep the mortgage lender happy as to the loan that Mr. Lowry had taken out, a clear reference to Mr. Aidan Phelan's role in arranging the borrowing for the property through Mr. Michael Tunney, and indeed to the continuing involvement of Mr. Phelan as the liaison with the bank, and as the person whose good offices were being used to facilitate the continuing extension of credit, but not as owner or as lender.

7.68 Mr. Vaughan provided various explanations as to how this letter, and other correspondence, came into existence in the course of correspondence and of private meetings with the Tribunal. Mr. Lowry endorsed these explanations of which, initially at least, the main one was that they arose through confusion on Mr. Vaughan's part in his communications with Mr. Kevin Phelan, leading to his mixing one client's name up with another as regards particular properties. Mr. Aidan Phelan found this explanation implausible, a view shared by the Tribunal, and indeed an unavoidable conclusion on the facts. However, Mr. Phelan went on to suggest that the documents were forgeries, but was unable to point to any person harbouring a sufficient degree of malice to warrant engaging in such activity.

7.69 From further documentation, and from the evidence of Mr. Christopher Vaughan, it now appears that the accounts of that meeting of 17th August, 2000, in Jury's Hotel, contained in the entire of the evidence heard prior to June, 2009, concerning the Cheadle transaction were wholly misleading. It was testified by Mr. Lowry, Mr. Aidan Phelan and Ms. Malone that the central thrust of the meeting was to monitor the handling, by Mr. Kevin Phelan and Mr. Lowry, of Mr. Aidan Phelan's ownership in the Cheadle property, and that to that end, certain steps were to be taken to secure his fiscal or taxation interests. Mr. Vaughan's initial evidence in April, 2009, was to the same effect, and he resisted any suggestion to the contrary. From his evidence, given two months later in June, 2009, and in particular from the contents of the two letters dated 9th August, and 5th September, 2000, and a further third letter, dated 18th August, 2000, it became obvious that this account could not be sustained. The letters of 9th August and 18th August, 2000, were not made available to the Tribunal until 22nd June, 2009. Copies of these letters can be found within the Appendix to this chapter.

7.70 From the letter of 5th September, 2000, it is clear that it was not Mr. Aidan Phelan's fiscal position, but Mr. Michael Lowry's fiscal position that was, at that point, in issue. With the assistance of Mr. Kevin Phelan, Mr. Lowry was seeking to dispose of both Mansfield and Cheadle, with the profit on both to accrue to him. That the Thistlewood sale, or any other sale, never came to pass is beside the point. The central feature of the dealings between Mr. Aidan Phelan and Mr. Michael Lowry around this time was the envisaged disposal of Cheadle and Mansfield, with the proceeds or profits of the transactions to inure to the benefit, not of Mr. Aidan Phelan, but of Mr. Michael Lowry. Whether, and to what extent, the bank was to be repaid by Mr. Lowry, is not clear. What the letter makes obvious, however, is Mr. Lowry's dominion over the properties, contrary to everything stated by himself, by Mr. Aidan Phelan, and by Mr. Christopher Vaughan, in earlier evidence, concerning his interest and continued involvement in them.

7.71 Although Mr. Phelan ultimately discharged the loan due on the Cheadle property, that did not take place until in or around 21st March, 2001. By the time the Tribunal came upon these transactions, at which point Mr. Lowry's interest was as reflected in the letter of 5th September, 2000, it has to be assumed that all further dealings were bound to take place in the light of the false explanations to be afforded to the Tribunal. The subsequent dealings with these properties, and in particular the discharge of the indebtedness due on the Cheadle property, therefore cast no valid light on what was actually envisaged at the time of the events, the subject matter of this chapter.

"A link with M"

7.72 The second letter from Mr. Vaughan to Mr. Kevin Phelan, that is, the letter dated 9th August, 2000, and mentioned above, had not been at any time or in any form produced to the Tribunal, until it emerged in the latter portion of Mr. Vaughan's 2009 evidence. It recorded, amongst other matters, Mr. Vaughan's concern that, if anyone undertook a company search against Catclause,

> *"they would find out a link with M"*,

and then notes that it was on Mr. Aidan Phelan's advice that Catclause had been abandoned, and the Cheadle property put into the names of Mr. Vaughan and his wife,

> *"for reasons of secrecy."*

This document sheds considerable light on what was then happening, and, in particular, with regard to the circumstances surrounding the removal of

references to Mr. Lowry in the context of the Cheadle property. What it establishes beyond doubt is that the true motivation for abandoning Catclause as the purchasing vehicle, and registering the property in the names of Mr. Vaughan and his wife on trust, was *"for reasons of secrecy"*, which can only have been intended for the purpose of obscuring Mr. Lowry's ownership.

What were the *"reasons of secrecy"*?

7.73 It is reasonable to assume that what prompted the responses of Mr. Vaughan contained in this letter was an inquiry concerning the extent to which connections between Mr. Lowry and the Mansfield and Cheadle transactions, and in particular the sources of funds used to enable those transactions, could be discerned from Mr. Vaughan's files, including his client accounts, or bank documentation containing references to Catclause. As Mr. Vaughan pointed out in his letter of 9th August, 2000, to Mr. Phelan, the references to Catclause in bank documentation could lead to Mr. Lowry's true interest being discovered, were the company's details to be searched. The *"reasons of secrecy"*, which prompted the removal of Catclause from the transaction, were palpably reasons connected with the fact that Mr. Lowry's interest was potentially ascertainable. The Tribunal is satisfied that it was those reasons of secrecy which led to the attempts to remove references to the involvement of Mr. Lowry from the documentation made available to the bank. The decision to *"abandon"* Catclause, and the so-called restructuring of the loan, were devised to remove the source of a connection and interest not otherwise documented within the bank.

7.74 As stated, this letter is also referred to in the next succeeding chapter, and it is unnecessary at this stage to recount the utterly implausible explanations propounded by Mr. Vaughan for the use of the expression *"reasons of secrecy."*

7.75 The third of the letters to which reference has been made, and which, like the letter of 9th August, 2000, only came to light on 22nd June, 2009, is dated 18th August, 2000, the day following the Jury's Hotel meeting. It was a further letter written by Mr. Vaughan to Mr. Kevin Phelan in which Mr. Vaughan recounted, for Mr. Kevin Phelan's benefit, the discussions which had proceeded on the previous day. It is abundantly clear from its terms that it was Mr. Michael Lowry who was not only the owner of the Mansfield and Cheadle properties, but the person controlling the scheme for their disposal. There can be no question from the terms of that letter that the focus of the Jury's Hotel meeting, contrary to the version of events tendered in all of the evidence heard by the Tribunal prior to June, 2009, was the financial and fiscal affairs of Mr. Michael Lowry, and not those of Mr. Aidan Phelan, as recorded in the second paragraph as follows:

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

7.76 Reference should again be made at this point to the fact that between August and October, 2000, it was realised within Investec that the original bank file relating to the Cheadle loan had gone missing. It is not possible to say definitively whether there is any connection between the disappearance of the file, and the "*reasons of secrecy*" alluded to in the letter of 9th August, 2000. Whatever the position, its disappearance was a factor which made it difficult to establish all of the facts in this matter, although ultimately the main features seemed to emerge in the evidence heard prior to Mr. Vaughan's attendance as a witness. In the course of Mr. Vaughan's testimony, evidence emerged which enabled the Tribunal to form a virtually complete picture of what had in fact transpired.

Consent of ML: sale for Stg.£1.36 million

7.77 Amongst the documentation belatedly disclosed to the Tribunal in June, 2009, were letters relating to another proposed sale, of both the Mansfield and Cheadle properties, to a firm or entity called Berwood Park Associates. The contents of this correspondence, which dated from late September, and early October, 2000, was also illuminating as to the true ownership of the UK properties, and confirmed, had there been any doubt, the true position as apparent from the earlier Christopher Vaughan correspondence. The letters were dated 19th September, 2000, 21st September, 2000, and 4th October, 2000, copies of which can be found within the Appendix to this chapter. The first of these letters, dated 19th September, 2000, was again from Mr. Vaughan to Mr. Kevin Phelan, and referred to a purchaser having been found for both the Mansfield and Cheadle sites for a total purchase price of Stg.£1.3 million. The letter states:

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

In his evidence to the Tribunal, Mr. Vaughan sought to suggest that, in this sentence, he had in mind only Mr. Lowry's 10% interest in the Mansfield property, although the plain language of the sentence would appear to suggest an interest on the part of Mr. Lowry in both properties.

7.78 The letter of 21st September, 2000, was written by Messrs. Goldsmith Williams, solicitors acting for Berwood Park Associates, to Mr. Vaughan and states:

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

7.79 In response, on 4th October, 2000, Mr. Vaughan wrote to Messrs. Goldsmith Williams, confirming he acted on behalf of Mr. Lowry in respect of the transaction covering both sites, indicating the total consideration for the entire transaction was to be Stg.£1,360,000.00, without any specific apportionment of the purchase price between the two properties, but that *"for various financial reasons"*, the sale price of the site at Mansfield was to be Stg.£300,000.00, and the sale price of Cheadle was to be Stg.£1,060,000.00. Mr. Vaughan also stated that the Cheadle property was vested in the name of trustees, who were in the process of transferring the property into Mr. Lowry's name.

7.80 In evidence, Mr. Vaughan insisted that what was in fact proposed was an arms-length transaction whereby Mr. Lowry would effectively be buying the property from Mr. Aidan Phelan immediately prior to its onward sale, and refuted the suggestion that what was recorded in the correspondence was no more than a paper transaction designed to give effect to a tax scheme for the benefit of Mr. Lowry, which was agreed at the Jury's Hotel meeting on 17th August, 2000. For his part, Mr. Aidan Phelan testified that he was not aware of any of these dealings, and suggested that what the correspondence reflected was Mr. Lowry and Mr. Kevin Phelan attempting to do a deal on both of the properties, with a view to putting a proposition to Mr. Aidan Phelan, but that this was all occurring without his knowledge. As he described it, Mr. Lowry and Mr. Kevin Phelan were *"running around in the undergrowth"*.

7.81 Mr. Lowry never brought any of his dealings in connection with either the Thistlewood or Berwood sales to the attention of the Tribunal when it initiated its inquiries in 2001, or at any time thereafter, despite the fact that both proposed sales had been in train barely six months prior to those inquiries, and Mr. Lowry had committed himself to providing full assistance to the Tribunal.

THE THISTLEWOOD AND BERWOOD SALES FOUNDER AND THE LOAN BECOMES PROBLEMATIC

Bank concern

7.82 It was initially envisaged that the Cheadle loan would be of short duration, that interest would be rolled up, and that on maturity, that is, 31st July, 2000, all interest and capital due would be repaid. That repayment date had long passed, and no interest payments had been made. Mr. Michael Cullen, in the absence of Mr. Michael Tunney, who had retired, had by then effectively assumed

responsibility for its management. Repayment had been sought from Mr. Aidan Phelan by way of an Investec memorandum, dated 16th August, 2000. Believing at that time that the property was in the course of being resold, Mr. Cullen remained not unduly concerned at the non-repayment, although he was not then aware that the property had not been formally mortgaged to the bank, or that the guarantee had not been obtained. Ultimately, it was not until early in 2001, by which time both the Thistlewood and Berwood sales had failed, that Mr. Tony Morland instituted an investigation into the transaction to ascertain what security was held by the bank, the file having gone missing.

Bank learns of involvement of Mr. Michael Lowry

7.83 Mr. Morland had numerous dealings with Mr. Vaughan, with a view to clarifying the position, specifically with a view to reconstructing the file, and establishing precisely who the bank's borrower was, and what security, if any, had been perfected. Efforts to clarify the matter with Mr. Vaughan had proved unsuccessful. In late February, 2001, the bank learned, for the first time, as far as the Investec officials were concerned, that Mr. Michael Lowry had an involvement in the company Catclause. The involvement of Mr. Lowry was something of which neither Mr. Cullen nor Mr. Morland, had been aware at the time the loan was granted. It was something of which no mention had been made by Mr. Vaughan in his correspondence with the bank. Nor indeed had any mention been made of it by Mr. Phelan, at a meeting with Mr. Cullen and Mr. Tunney on 19th January, 2001. Although Mr. Tunney had long retired from any executive role in the bank, as the official who had processed the loan in December, 1999, his assistance had been sought in seeking to clarify matters.

7.84 The information that was relayed to the bank in late February, 2001, not ultimately confirmed until after 28th February, 2001, was that a search in the UK Companies Office had revealed that the directors of Catclause were Mr. Michael Lowry and his daughter, and not Mr. Aidan Phelan and Ms. Helen Malone, as had previously been represented to the bank. It was also discovered that, pursuant to an application by the company itself, made in or around September, 2000, it had been struck off the register, and subsequently dissolved by February, 2001.

Mr. Aidan Phelan describes Cheadle as a *"DO'B"* transaction

7.85 On foot of these developments, no doubt alarming in the context of earlier references to Mr. Denis O'Brien, a meeting was held on 28th February, 2001, with Mr. Aidan Phelan at his office, attended by Mr. Cullen and Mr. Morland. As the information concerning the involvement of Mr. Lowry had not yet been confirmed, no reference was made to it at the meeting. The twofold purpose

of the meeting was to ascertain the true beneficiary of the property, and to have the loan repaid. Mr. Aidan Phelan, in seeking to satisfy the bank, assured Mr. Cullen and Mr. Morland that this was a *"DO'B"* transaction. When asked why Mr. Daly had become involved in the first instance, Mr. Phelan stated that they were only trying to help out Mr. Tunney from a credit viewpoint, to enable the transaction to be banked. Reference was also made at the meeting to a trust deed, under which the bank had been informed that Mr. Vaughan was holding the property. Mr. Phelan stated that this deed would be made available to the bank, although, in a strangely inconsistent stance, he declined to disclose the identity of the other party to the deed there and then.

7.86 Despite Mr. Phelan's assurances, the bank never received a copy of any trust deed. It appears that none has ever been produced and it appears certain that none ever existed. In this connection, reference should also be made to the fact that, at the meeting with Mr. Phelan, the difficulties the bank had encountered in obtaining information from Mr. Vaughan were alluded to, with Mr. Phelan informing the bank that Mr. Vaughan had been instructed not to reveal any information relating to matters concerning Mr. Aidan Phelan or Mr. Denis O'Brien, without instructions from the principals themselves. Mr. Phelan further pointed out that Mr. Vaughan had acted for Mr. O'Brien in property transactions in the UK, such as the *"'Doncaster Rovers' transaction"*, where confidentiality and privacy were required. Mr. Cullen, whilst not referring to specific facts, informed Mr. Aidan Phelan that the bank's updated information about the transaction was inconsistent with what the bank had been led to believe. Mr. Morland made handwritten notes of what transpired at the meeting from which, later that evening, or the following day, he prepared a written memorandum, a copy of which can be found in the Appendix to this chapter.

7.87 That Mr. O'Brien's name had been used, as recorded by Mr. Morland, in his memorandum, was rejected by Mr. Phelan. In cross-examination by counsel for Mr. Phelan, Mr. Morland stated that, whilst he could not be sure as to the exact words used, what had been stated by Mr. Phelan at the meeting accorded with the content of his memorandum. When, similarly, it was suggested to Mr. Cullen that these words were not spoken, he stated that it was his firm recollection that Mr. Aidan Phelan did so refer to Mr. O'Brien, going on to say that, having discovered the involvement of Mr. Lowry, the one further name the bank did not wish to hear was that of Mr. O'Brien.

7.88 In evidence, Mr. Phelan acknowledged that there had never in fact been any trust deed, although stating that he believed that there had been one when he had referred to it in the course of his meeting with Mr. Morland and Mr. Cullen. He disagreed with Mr. Morland's memorandum of the meeting, and whilst

not suggesting that Mr. Morland had *"manufactured"* the reference to Mr. O'Brien in the memorandum, he believed that what had been recorded was in error, and that Mr. Morland may have taken it that Mr. O'Brien and himself were synonymous, through Mr. Phelan having acted for Mr. O'Brien over a number of years. In considering this explanation, it needs to be borne in mind that Mr. Morland would not have automatically associated Mr. Phelan with Mr. O'Brien in terms of their dealings with the bank, as he had not worked with the bank over the relevant period. Further, and perhaps of even greater significance, is the fact that Mr. Cullen's recall of what transpired at the meeting, and in particular with reference to the statement that the transaction was a *"DO'B"* transaction, accords with Mr. Morland's note. Mr. Cullen, having regard to his experience in the bank, and his experience of Irish business and political life in general, cannot have failed to appreciate the significance of the description of the transaction as a *"DO'B"* transaction. Having regard to that experience, it could not be suggested that he would have failed to distinguish between Mr. O'Brien and Mr. Phelan. In addition, as has been mentioned, he could hardly have welcomed the connection between Mr. O'Brien and Mr. Lowry, having regard to the knowledge he had just obtained of Mr. Lowry's involvement in Catclause; nor could he have been lightly tempted to make such a connection, having regard to the undoubted discomfort it was bound to cause for the bank.

7.89 Directly after that meeting, Mr. Cullen made prompt contact with Mr. Michael Tunney, and, arranged to meet him at an hotel. Again, Mr. Cullen was accompanied at this meeting by Mr. Morland. Mr. Cullen expressed concern at the situation, and asked Mr. Tunney whether he was aware who the directors of Catclause were. Mr. Tunney stated that he believed that Mr. Phelan was a director, whereupon Mr. Cullen encouraged him to carry out appropriate searches but, as with his earlier meeting with Mr. Phelan, he did not disclose the details of what he had already learned, but which had not been formally confirmed. Mr. Cullen and Mr. Tunney were to meet again the following day.

7.90 By then, the bank had received formal confirmation of the result of searches carried out in Companies House, namely that:

(i) the registered office of Catclause was the office of Mr. Christopher Vaughan, solicitor;

(ii) its directors were Mr. Michael Lowry and his daughter, both having been appointed on 1st June, 1999, and Mr. Michael Lowry having also been appointed on that date as secretary;

(iii) Mr. Michael Lowry and his daughter, as directors, had applied to have the company struck off the register on 25th September, 2000;

(iv) the company had in fact been dissolved, and struck off the register on foot of that application.

7.91 On that day, Mr. Cullen once again met Mr. Tunney at another hotel in the city centre. He informed Mr. Tunney that Mr. Lowry and his daughter were registered directors of Catclause. His evidence was that, on this information being relayed to him, Mr. Tunney appeared shocked. Soon afterwards, Mr. Cullen also confirmed to Mr. Aidan Phelan that he was in possession of the details of Mr. Lowry's involvement in Catclause.

7.92 Following Mr. Aidan Phelan's meeting of 28th February, 2001, with Mr. Cullen and Mr. Morland, he wrote to the bank, as did Mr. Christopher Vaughan, on Mr. Phelan's instructions. Mr. Vaughan, by letter dated 1st March, 2001, confirmed that the Cheadle property was held by him strictly to the order of Catclause, and that he and his wife, who was also a solicitor, were trustees of the property for the benefit of Mr. Aidan Phelan, or Mr. Aidan Phelan and Catclause, or Catclause. On two fronts this letter cannot have afforded any consolation to the bank, in as much as the solicitor handling the transaction appeared to be unclear as to the nature of the trust under which he purported to hold the property, and further, described one of the potential beneficiaries as a company which, as the bank well knew at that stage, had been dissolved. It is beyond doubt that this letter could not have been written, had either Mr. Phelan or Mr. Vaughan been aware of the fact that the bank by this time had learned that Mr. Lowry and his daughter were directors of the company.

7.93 A second letter, written to the bank by Mr. Phelan, at the request of Mr. Cullen, and setting out his understanding of the transaction, was dated 5th March, 2001, and was addressed to Mr. Tony Morland. That letter was written at a time when the bank had confirmed its knowledge of the information concerning Mr. Lowry's involvement in Catclause, and at a time when Mr. Phelan knew, from a discussion with Mr. Cullen, that the bank was so aware. The letter purported to give an account of the history of the transaction, stating that, whilst it had been intended that Catclause would acquire the property, and that Mr. Aidan Phelan would be appointed a director of the company, it was later decided that he would hold the property personally. That letter made no reference to Mr. Lowry's involvement in Catclause, or that Catclause was a vehicle for Mr. Lowry, or that it was on his behalf that the property had been acquired from the outset. The letter was devoid of any reference to Mr. Lowry, and Mr. Phelan's evidence was that that was what the bank, in the person of Mr. Cullen, had requested. When he had written the letter, he had understood that documentation would be put in place by way of a fresh facility letter, naming him as the borrower.

7.94 Mr. Cullen's evidence on this point was somewhat unsatisfactory, bearing in mind what he had just learned concerning Mr. Lowry's associations with the transaction. As to dictating the contents of the letter, he said that he certainly told Mr. Phelan that he wanted a letter expressing clearly what he accepted as his responsibilities in relation to this account, and what security had been, and would be, held for it. Whilst agreeing that he had asked that Mr. Phelan outline the history of the transaction, he did not accept that he had dictated the letter, in the sense of telling Mr. Phelan what words were to be used; he was precise as to the subject matter, but not the form of words. Mr. Cullen's further evidence was that he had been concerned that the bank should have a letter establishing the credit position, and what Mr. Phelan then acknowledged as his contractual responsibility. As to references to Mr. Lowry, Mr. Cullen's evidence was that he did not ask Mr. Phelan to include or exclude references to Mr. Lowry: that whilst this aspect was important to the Tribunal, it was not relevant to Mr. Cullen's purpose in requiring the letter; that he wanted the relationship of Catclause to the transaction clarified, but was not concerned with the past ownership or control of the company. From Mr. Cullen's viewpoint, the letter exactly represented what he wanted covered.

7.95 Whilst there does seem to be some basis upon which it could be suggested that Mr. Cullen was anxious, at least in terms of establishing a credit line, to avoid recording an involvement of Mr. Lowry after the controversy had blown up, and bearing in mind that Mr. Phelan was prepared to assume the role of borrower, this is irrelevant to the question which the Tribunal has to consider: namely, whether at its inception, and indeed up to the time the controversy erupted, Mr. Lowry was in fact the individual to whom, or the individual behind the company to which, the loan had been made, with the support of Mr. Phelan and Mr. O'Brien.

7.96 Notwithstanding the contents of these letters from Mr. Vaughan and Mr. Phelan, the bank continued to pursue the matter, both with regard to the protection of the credit, and the related issue of the perfection of its security. To that end Mr. Ian Wohlman requested the bank's English solicitors to take steps to have a caution registered against the property in the English Land Registry, and this was done on 8th March, 2001.

Mr. Michael Tunney again describes Cheadle as a "Denis O'Brien" transaction

7.97 Around this time, the bank, in particular Mr. Wohlman, was anxious to make further contact with Mr. Michael Tunney, to ascertain what he knew of the transaction. According to the evidence of Mr. Morland, he met Mr. Tunney on a number of occasions around this time, not by appointment, but in the course of

other business in the bank, and relayed to him the fact that Mr. Wohlman urgently wished to meet with him. Mr. Tunney's response was to ask Mr. Morland whether he realised that this loan was a *"Denis O'Brien"* transaction.

7.98 Eventually Mr. Wohlman succeeded in making contact with Mr. Tunney, who telephoned him on 12th March, 2001. Mr. Tunney was at the time on holiday in the Swiss Alps; Mr. Denis O'Brien was on holiday in the same resort, and they were in regular social contact. When he received Mr. Tunney's telephone call, Mr. Wohlman was in the company of Mr. Morland, Mr. Cullen and another colleague. Mr. Wohlman made a memorandum of the content of the conversation. Mr. Tunney informed him, amongst other matters, that he had told Mr. Vaughan to buy the property in the name of Catclause, that a charge should be taken, and that as the deeds of the property were held to the order of the bank, he felt that the bank was protected. He went on to state that it was not necessary to worry in regard to the credit, as:

> *"Denis was behind it"*.

On inquiry from Mr. Wohlman, Mr. Tunney confirmed that this person was Mr. Denis O'Brien, with whom the bank had had dealings. Mr. Tunney also stated that Mr. Phelan would ensure that the bank was repaid.

7.99 Mr. Tunney had a further telephone conversation with Mr. Wohlman on the evening of the following day, 13th March, 2001, the content of which he again noted. Acknowledging the seriousness of the situation, Mr. Tunney offered to return from Switzerland, to make contact with Mr. Phelan, and to obtain further clarity concerning the situation. Mr. Tunney stated that Mr. Phelan had told him that Mr. O'Brien was behind the transaction. When queried in evidence as to his statement to Mr. Wohlman, and in particular that the bank should not worry about the credit as *"Denis was behind it"*, Mr. Tunney agreed that he had so informed Mr. Wohlman, but stated that this was based on a conversation he had with Mr. Phelan during the previous month, when Mr. Phelan had said to him that *"Denis was behind* [him]*"*; and that *"Denis is there"*. In response to counsel, he rejected the suggestion that it was only after he had made contact with Mr. O'Brien in the Swiss Alps, that he first asserted that it was from Mr. Phelan he had received this information, rejecting also the notion that there was any distinction between his assertions prior to that telephone call, namely that this was a *"Denis O'Brien"* transaction, and what he had stated in the course of the telephone call, that *"Denis was behind it"*.

7.100 In the course of an extremely uncomfortable examination, Mr. Tunney was unable to provide any satisfactory explanation as to how he came to use Mr.

Denis O'Brien's name at any time in relation to this transaction, either at its inception, in conversation with Mr. Cullen and Mr. Morland, or later, after the controversy erupted. Nor was he able to provide any satisfactory explanation as to how he continued to use Mr. O'Brien's name in relation to the transaction, describing it as a *"Denis O'Brien"* transaction, even after he had been informed that the bank was aware of Mr. Lowry's role. His evidence was to the effect that at no point did he regard Mr. O'Brien as having had anything to do with the transaction, despite having invoked his name in support of it on numerous occasions. He further testified that, whilst feeling responsible in part for what had transpired within the bank, he had never sought to explain that he had been deceived, as he now contended, by Mr. Phelan into thinking that this was a transaction with which Mr. Phelan alone was involved, albeit through his company Catclause, nor that Mr. Phelan had effectively engaged in sharp practice in securing a loan for Mr. Lowry, whilst deceiving Mr. Cullen into thinking that it was for himself. Nor, having learned of Mr. O'Brien's view in the course of skiing in the Alps, did he contact the bank, as one would have expected, with a degree of urgency, to correct the impression he must have realised he had created, that Mr. O'Brien was connected with this transaction, knowing it to have had a connection also with Mr. Lowry. His attempts in evidence to dilute the ordinary meaning of the words he used in describing Mr. O'Brien's association lacked any conviction.

EVIDENCE OF MR. DENIS O'BRIEN

No involvement: no knowledge

7.101 Mr. Denis O'Brien's evidence may be summarised very simply: he was not involved in the Cheadle transaction, had no knowledge of the property, and did not become aware that his name may have been used in regard to it in dealings with Investec Bank, until March, 2001.

7.102 He stated that, upon becoming aware of the fact that his name had been used in connection with the transaction, he contacted Mr. Michael Cullen of Investec, and expressed his anger that his name had been so used within the bank, without any reference to him. In particular, he was concerned that the bank had not sought any clarification from him to the effect that he was involved in, or stood behind the loan. Whilst accepting that part of the Stg.£300,000.00 transferred from his Credit Suisse First Boston account by Mr. Aidan Phelan, by way of what was contended by each of them to be an advance payment on fees due for work done, had been used to fund the deposit on the Cheadle property, he stated that he knew nothing at the time of any part of these monies being so used. Mr. Phelan had told him nothing about it then, nor of any of his meetings

with Mr. Cullen or Mr. Morland in 2001. It was from Mr. Tunney that he first learned of these matters, in the course of the ski trip to the Alps.

7.103 Mr. O'Brien could not understand the references to him within the bank, and his position was that those references were untrue. Furthermore, he pointed out that, had he been involved, he would have expected the bank to have requested him to sign a guarantee.

A realistic view of the bank

7.104 In replying to his own counsel, he stated that, having been appointed a director of the Bank of Ireland during the first half of 2000, it was a matter of concern to him that another bank, Investec, had referred the matter to the Central Bank. At the same time, in response to counsel for the Tribunal, when put that he was scarcely suggesting that Mr. Ian Wohlman and Mr. Tony Morland were not accurately recording what was stated to them at meetings, Mr. O'Brien responded that, if a *"realistic view"* was wanted, banks sometimes put file notes onto their files that suited their position. He was, in other words, suggesting that Investec had fabricated the files so as to implicate him in the provision of a loan to Mr. Lowry, in circumstances where Mr. Lowry's involvement in the loan had been concealed, so far as the records of the bank were concerned. There was no evidence whatsoever of any animus on the part of any official of Investec to implicate Mr. O'Brien in any way in the provision of loan finance, or support for the provision of loan finance to Mr. Lowry. The evidence within the bank, of Mr. O'Brien having provided such support, consisted of the testimony of bank officials as to what had been conveyed to them by two associates, and indeed personal friends, of Mr. O'Brien, Mr. Aidan Phelan and Mr. Michael Tunney. Far from having a vested interest in implicating Mr. O'Brien in any such transaction, the Investec interest was self-evidently contrary to any apparent association of Mr. Lowry and Mr. O'Brien in the loan, and it is to the bank's credit that the matter was brought to the attention of the Central Bank and the Tribunal.

Overview Of Evidence Of Mr. Michael Lowry's Ownership Of UK Properties

7.105 Mr. Lowry initially furnished a relatively brief account of his involvement in the Cheadle transaction to the Tribunal:

(i) that the proposal was introduced to him by Mr. John Eastham, an associate of Mr. Kevin Phelan, in April/May of 1999;

(ii) that he discussed the venture with Mr. Aidan Phelan;

(iii) that Mr. Aidan Phelan stated that he would help Mr. Lowry in organising funding and that, as an interim measure, he would allow Mr. Lowry access to the balance of the Stg.£300,000.00 introduced to Mr. Christopher Vaughan's client account for the Mansfield transaction, to pay the deposit of Stg.£44,500.00;

(iv) that a shelf company, Catclause Limited, was used for the acquisition, and that Mr. Lowry and his daughter were appointed directors;

(v) that Mr. Aidan Phelan informed him that he was in a position to arrange funding through Investec Bank, but that the bank would require, in addition to a first legal charge over the property, a guarantee from a third party;

(vi) that a guarantor, Mr John Daly, was proffered;

(vii) that finance was released by the bank to enable the purchase to be completed;

(viii) that it later transpired that the guarantee purportedly provided by Mr. Daly was ineffective;

(ix) that Mr. Lowry was then informed that Mr. Daly wished to withdraw;

(x) that this left Mr. Aidan Phelan in an embarrassing situation with the bank, with the result that he took over the entire transaction.

Source of the deposit

7.106 A more detailed account emerged from Mr. Lowry's evidence, much of which has already been recounted. From his examination it became clear that he viewed his continuing dealings with UK property, after the Mansfield purchase, as part of his joint venture with Mr. Aidan Phelan. Having mentioned the Cheadle matter to Mr. Phelan, shortly after it was first brought to his attention in April/May, 1999, Mr. Lowry's testimony was that he did not discuss the specifics of the project with Mr. Phelan again, until shortly before contracts were exchanged in mid-September, 1999, by which time a price of Stg.£445,500.00 had been agreed. The deposit, for which Mr. Lowry claimed to have had access to sufficient funds of his own, was nevertheless provided by Mr. Aidan Phelan who, according to Mr. Lowry, allowed him access to what he initially described as "*our*" client account, but eventually corrected to "*his*" client account, containing the balance of Stg.£300,000.00 after the purchase of the Mansfield property.

Source of the balance of purchase price

7.107 Mr. Lowry's testimony was that, whilst at the Radisson Hotel meeting he made no specific request to Mr. Michael Tunney for funds, he was left with the impression that Mr. Tunney could assist with finance. Although it was not long afterwards that the contract on behalf of Mr. Lowry to purchase the Cheadle property was executed, Mr. Lowry testified that there was no connection between the Radisson Hotel meeting and the contract, in the sense that there was no suggestion of a promise of funds having been made at that meeting.

7.108 When queried regarding an apparent memorandum of Mr. Christopher Vaughan of 1st September, 1999, recording telephone conversations of that date with Mr. Kevin Phelan and Mr. Lowry, with the former exhorting Mr. Vaughan to delay matters, and the latter indicating that no funds would be available until November at the earliest, Mr. Lowry said that this meant exactly what was stated, and that he was seeking to push back the time for payment as far as possible.

7.109 In the summer months before the contract was concluded, Mr. Lowry had made no attempt to assemble funds, despite knowing of the distinct lack of interest of his joint venture partner in the project. Reference has already been made to his, at best, tentative and unspecific efforts to secure finance, even after he had committed himself to the contract. Mr. Lowry's approach to Mr. Aidan Phelan, sometime in late November, 1999, on his own evidence, or in the early part of December, 1999, on Mr. Phelan's evidence, cannot have been entirely unconnected to the impression he gave Mr. Christopher Vaughan in September that funds would not be available until November at the earliest. It is impossible to view his marked inactivity in the matter of funding as between the execution of the contract, and the approach to Mr. Phelan in November or December, as other than connected with the Radisson meeting, especially when it is borne in mind that the funds were provided at very short notice, through the intervention of the two other major participants in the Radisson meeting, Mr. Phelan and Mr. Tunney.

7.110 Mr. Lowry's evidence was that the approach to the bank was made by Mr. Aidan Phelan, and that he himself made no direct approach, but that subsequently he was in contact with the bank through Mr. Tunney. This arose from the bank's requirements for the loan, initially conveyed to Mr. Lowry through Mr. Phelan, namely, for a first legal charge on the property, and for a guarantee from a third party.

Catclause meant Michael Lowry

7.111 Mr. Lowry in evidence emphasised the identity of Catclause as the borrower as indicative, apart from his contact with Mr. Tunney, of the transparency of his involvement in the transaction, having regard to the availability of information concerning his position as a director of the company through the UK Companies Office.

Mr. Michael Lowry and Mr. John Daly

7.112 Mr. Lowry's dealings with Mr. Daly have already been alluded to, and in particular the lack of clarity as to the basis upon which Mr. Lowry approached him. There appears however to be no conflict in their evidence as to the initial approach which, as both agreed, was for the purpose of running the proposition past Mr. Daly who, according to Mr. Lowry, took the view that it was a good investment and a bankable project. Of course, as has already been mentioned, as this meeting took place in October, 1999, the project was no longer in the future but was already one to which Mr. Lowry had committed himself.

7.113 A number of features of this transaction, as recorded in the bank, and to which reference has already been made, should be noted again at this stage. They are:

(i) that the facility letter was addressed to "*the Directors, Catclause Limited, c/o John Daly, Court House Chambers, 27/29 Washington Street, Cork*";

(ii) that the directors of Catclause, notwithstanding the official entries as recorded in Companies House in the UK, were given as Mr. Aidan Phelan and Ms. Helen Malone;

(iii) that the letter of 3rd December, 1999, from Mr. John Eastham, a part of documentation made available by Mr. Lowry to Mr. Phelan to enable him to advance matters with the bank, did not contain Mr. Lowry's name or address, the portions of the letter containing this information having been removed;

(iv) that the change in ownership of the property, and the loan, as contended by Mr. Lowry and Mr. Phelan, with Mr. Lowry being replaced as owner and borrower by Mr. Phelan, was not recorded in the bank.

7.114 Mr. Lowry was unable to say why Mr. Daly's address was used, and when it was suggested that his own name appeared nowhere in the bank

documentation, he stated that the name Catclause did, and that as far as he was concerned, he was the borrower through Catclause. As to why his name and address had been removed from Mr. John Eastham's letter of 3rd December, 1999, Mr. Lowry stated that he had not removed the information. To the suggestion that the removal of his name and address meant that somebody did not want that letter arriving at the bank with those details on it, Mr. Lowry responded that this was to assume a lot. Overall Mr. Lowry's evidence, which he repeated, was that his interest in the transaction was made clear, and that Mr. Tunney was well aware that it was with Mr. Lowry he was dealing.

7.115 At the same time there was again no documentation on Mr. Christopher Vaughan's file indicating that, as solicitor for Mr. Lowry and Catclause, he, Mr. Vaughan, was now proposing to act for Mr. Aidan Phelan, or that Mr. Phelan having taken over both the property and the loan, Mr. Lowry was now released from all obligations, either as owner or borrower. As already mentioned, Mr. Lowry's evidence in relation to his dealings with Mr. Vaughan was at variance with Mr. Phelan's, in that, whilst Mr. Phelan acknowledged how unusual it was that a solicitor would take instructions from a third party as regards a client's affairs, replacing the client with the third party, Mr. Lowry's evidence was that he was present when instructions to that effect were given, and that the changed situation was acknowledged by Mr. Vaughan.

Removal of Catclause meant removal of Mr. Michael Lowry

7.116 When Mr. Vaughan's letter to Mr. Aidan Phelan of 11th January, 2000, referring to Catclause no longer being the vehicle, and Mr. Phelan's letter to Mr. Lowry of 26th January, 2000, referring to his being

> *"prepared to 'backstop' the loan"*,

were referred to, and it was suggested that both these letters were consistent with Mr. Lowry remaining in the transaction, Mr. Lowry's response was that the removal of Catclause meant his removal, and that not only had Mr. Phelan taken over the loan, he had fully repaid it. When it was suggested that this was only after the matter had come to the attention of the Tribunal, Mr. Lowry's response was that he had made his views clear.

7.117 As to the reference in Mr. Phelan's letter of 26th January, 2000, to Mr. Lowry having *"full responsibility to move the property on as soon as possible"*, Mr. Lowry's evidence was that what was conveyed by these words was that, since he had been dealing with the transaction and was familiar with it, it would have been expected that he would involve himself in helping to achieve a quick disposal.

7.118 With reference to Ms. Malone's note of the meeting held in Jury's Hotel, Dublin, on 17th August, 2000, containing the heading *"UK Property ML"*, and a subsequent entry referring to *"loan from partnership 44.5k",* neither of which appeared consistent with Mr. Lowry then having long since had no interest in Cheadle, and the Stg.£44,500.00 having been Mr. Aidan Phelan's money, Mr. Lowry responded in terms implicitly critical of the accuracy of Ms. Malone's note-taking.

Mr. Denis O'Connor's knowledge of the Cheadle transaction

7.119 Moving to events of 2001, Mr. Lowry was referred to a meeting held in the Regency Airport Hotel between himself, his accountant, Mr. Denis O'Connor, Mr. Kevin Phelan, Mr. Christopher Vaughan, Mr. Aidan Phelan and Ms. Helen Malone. It was suggested to Mr. Lowry that the evidence that had been given in relation to this meeting, by Mr. O'Connor, clearly linked Mr. Lowry's dealings with the bank to his original meeting in the Radisson Hotel, arranged by Mr. Aidan Phelan, with Mr. Michael Tunney. Mr. Lowry's response was that this was absolutely not the position, but that he understood how Mr. O'Connor could have formed such a view from Mr. Lowry's summary of events.

7.120 As to why the details of his UK property transactions had not been brought to the attention of Mr. O'Connor, Mr. Lowry said that this was for good reason, in that any financial matter likely to have had tax implications would have been brought by him to the tax partner within Mr. O'Connor's office. It was the evidence of Mr. O'Connor that no details of any of Mr. Lowry's UK transactions were brought either to his attention, or to the attention of the tax partner in his office. At the same time it was clear that there had been an approach to the tax partner with an inquiry, unspecified as to property, as to the incidence of taxation on a sale of UK property. It is of some significance that such an approach should have been made by Mr. Lowry at a time when, on his own evidence, his interest in UK property extended to no more than 10% of the Mansfield transaction, and, as was acknowledged by Mr. O'Connor in evidence, so limited an interest would scarcely have merited making such an inquiry.

7.121 Mr. O'Connor's evidence in relation to these matters was that he had not been informed by Mr. Lowry of his involvement in the Mansfield and Cheadle property ventures when these were initially being pursued, which was at a time when Mr. O'Connor was representing Mr. Lowry's interests in dealings with the Tribunal. He had of course been aware of Mr. Lowry's contacts with Mr. Aidan Phelan, involving obtaining a mobile phone for him, having made the relevant arrangements with both Mr. Lowry and Mr. Phelan, and was also aware of Mr. Phelan's role in examining the possibility of a strategic alliance or other options

for Mr. Lowry's refrigeration business. He had nonetheless never learned that Mr. Lowry and Mr. Phelan were involved together in UK property ventures. It was not until shortly prior to the examination of these matters by the Tribunal, in 2001, that he became aware of either the Mansfield or Cheadle transactions. He had not been aware of the role of Mr. John Daly, and had never heard of Mr. Christopher Vaughan, who acted for Mr. Lowry as solicitor in relation to both these matters. Regarding Mr. Lowry's dealings with Woodchester, he stated that shortly prior to his disclosures to the Tribunal in 2001 on behalf of Mr. Lowry, he had learned from Mr. Lowry that he had property dealings with Woodchester, and that he had also heard of the meeting at the Radisson Hotel with Mr. Michael Tunney, and stated further that Mr. Lowry must have informed him that the Woodchester dealings were connected with the Radisson Hotel meeting with Mr. Tunney, of whom he had never heard until that time.

INITIAL OBSERVATIONS ON EVIDENCE HEARD

Source of deposit

7.122 At the conclusion of the Tribunal's initial sittings concerning the Mansfield and Cheadle transactions in 2001, the Tribunal had heard evidence that, in the case of the Mansfield transaction, the deposit was funded by Mr. Lowry from his own resources, the balance of the purchase price coming from a Stg.£300,000.00 transfer from Mr. Denis O'Brien's Credit Suisse First Boston London account to Mr. Lowry's client account with Mr. Christopher Vaughan. In the case of the Cheadle transaction, the deposit was funded from the same source.

Source of balance: Denis O'Brien was behind it

7.123 The evidence concerning the Cheadle transaction, from the point of view of the bank, and what had been stated to Mr. Michael Cullen, Mr. Tony Morland and Mr. Ian Wohlman, by individuals involved in the loan used to finance the transaction, was clear and unequivocal. It was to the effect that, on the introduction of the transaction by Mr. Michael Tunney, he had referred, in conversations with Mr. Cullen, to Mr. O'Brien's support for the loan. Bringing the matter to the attention of Mr. Morland, Mr. Tunney had likewise described the loan as having being sought for a Denis O'Brien transaction. When queried by the bank, following the loan becoming problematical, and before it had been referred to the Central Bank and this Tribunal, both Mr. Tunney and Mr. Phelan had adverted to Mr. O'Brien's support for the transaction, stating either that it was a Denis O'Brien transaction, or that Mr. Denis O'Brien was behind it. The evidence of Mr. Cullen, Mr. Morland and Mr. Wohlman on these matters was of central

significance, both because it was clear, and because, on any analysis, it must be regarded as having been against interest. The three bank officials had no vested interest to burden themselves with the suggestion that the bank had been implicated in the making of a loan, much of the records for which could not be located, to Mr. Lowry, with the support of Mr. O'Brien; nor that a loan for Mr. Lowry had been raised within the bank, on the basis that in fact it was a Denis O'Brien transaction; nor that the company to which the loan was granted, Catclause, was represented to the bank as having as directors Mr. Aidan Phelan and Ms. Helen Malone, when in fact the directors were Mr. Lowry and his daughter.

Evidence of bank officials convincing

7.124 The evidence of Mr. Aidan Phelan that he had not so described the transaction cannot, having regard to the matters earlier referred to, in particular the memorandum of Mr. Morland, be accepted by the Tribunal. It is worth repeating that neither Mr. Cullen nor Mr. Morland had any vested interest to introduce Mr. O'Brien's name into this matter, or to fabricate evidence, as was candidly acknowledged by Mr. Phelan, to that effect. Mr. Tunney's testimony as to accepting Mr. Cullen's evidence that he must have invoked Mr. O'Brien's name to Mr. Cullen at the inception of the loan, although having no recollection of this, and only in some limited or *"global"* context, was singularly unpersuasive. Overall, Mr. Tunney's evidence, but more particularly on this matter, was by reason of many inconsistencies and implausibilities, utterly unconvincing. Once again it should be noted that Mr. Cullen had no interest in suggesting that, at the inception of this loan, Mr. Denis O'Brien's name had been invoked by Mr. Tunney, more particularly in light of the fact that that evidence was consistent with what he had subsequently been told both by Mr. Tunney and by Mr. Aidan Phelan concerning the transaction, all of which tended to confirm the unwelcome conjunction of Mr. Lowry and Mr. O'Brien at two pivotal points in the life of this loan transaction.

Mr. Denis O'Brien's response unconvincing

7.125 Mr. O'Brien's evidence was as starkly unconvincing as that of the officials was equally starkly credible. It was Mr. O'Brien's response to the evidence of the officials of the bank, that the transaction had been described to them as a Denis O'Brien transaction, that brings into focus the implausibility of his denial of any involvement. When faced with the evidence of the officials, of what had been stated to them by Mr. Phelan and Mr. Tunney, his response effectively was to suggest that this evidence had been invented or fabricated. Mr. O'Brien pointed to no basis for this suggestion, other than a blanket criticism of the conduct of banks, even though at the time he was a director of the Bank of

Ireland, suggesting that banks had a propensity to such behaviour. Even assuming that this wholly unwarranted attack on the integrity of the Woodchester and Investec bank officials was justified, it could only be accepted on the basis that each of the officials had a personal animus towards Mr. O'Brien, that they and the bank had a vested interest in damaging Mr. O'Brien, and that they were prepared to take such action, despite the fact that it would draw their bank into a controversy, which could not have served its interests, and in particular where, in the case of Investec, it was newly established in the State.

Evidence of Mr. Aidan Phelan implausible

7.126 The evidence of Mr. Aidan Phelan and the correspondence of Mr. Vaughan, insofar as it appeared to the Tribunal at that point, in 2001, in relation to this transaction was both confusing and implausible. Whilst that evidence will be referred to in more detail below, and in particular in light of developments in 2002 and 2009, the thrust of the evidence was to the effect that, whilst this may initially have been a transaction for the benefit of Catclause, it had been taken over by Mr. Aidan Phelan, who by reason of the default of Mr. John Daly, thereupon became the owner and borrower. Had that been the case, it is curious that, in describing the transaction to the bank in correspondence around the time of the bank's heightened concerns, in 2001, no reference was made to Mr. Lowry's involvement in the transaction, or to his having exited the transaction by reason of the default of Mr. Daly. Despite the prominence that was given to this explanation in Mr. Phelan's and in Mr. Lowry's evidence as determining Mr. Lowry's replacement by Mr. Phelan, it was ignored, as was any involvement of Mr. Lowry, in Mr. Phelan's letter to Mr. Morland of 5th March, 2001, and likewise in Mr. Vaughan's description of the transaction in his earlier letter of 1st March, 2001. The central conflict between Mr. Phelan and Mr. Tunney, as to who was disclosed as the substantive borrower behind Catclause in their initial dealings, is considered below.

7.127 It is noteworthy that in his dealings with the officials of Investec and in particular Mr. Ian Wohlman, after the matter had become problematical within the bank, Mr. Michael Tunney never sought to indicate that he had been the victim of lies, sharp practice and misrepresentation, as he suggested in evidence. Nor does there appear to have been any sundering of his long relationship with Mr. Phelan, by reason of Mr. Phelan's supposedly irregular dealings with him in connection with the loan.

Relationship of Mr. Michael Lowry and Mr. John Daly

7.128 A relationship equally unimpaired by what might be thought to be similarly disloyal behaviour on the part of a friend was that between Mr. Lowry and Mr. John Daly. Despite failing to execute the guarantee he had promised to Mr. Lowry, Mr. Daly purportedly exploited a technicality to desert the transaction and, on the face of it, his friend of many years, Mr. Lowry. As the evidence showed, neither betrayed any real concern, either at the time or in the course of their testimony that one should have, as it was put, "*welched*" on the other, thus depriving him of a profitable opportunity, and exposing him to legal and financial complications.

7.129 Given the length and detail of evidence heard in relation to the Cheadle transaction, it is not necessary to record observations on all matters in which a conflict of evidence was apparent: thus, for example, the difference between Mr. Michael Tunney and Mr. Phelan, as to whether, when the loan was sought, the procurement of a suitable guarantor was insisted upon by Mr. Tunney, as Mr. Phelan contended, or merely volunteered as additional security by Mr. Phelan, as stated by Mr. Tunney. This was in any event of little consequence, since the procurement of a guarantor became a term of the loan, although, like the first charge over the property, it was never complied with, or insisted upon.

Conflict between Mr. Aidan Phelan and Mr. Michael Tunney

7.130 However, a much more significant conflict arises from other aspects of the diametrically opposed testimony of Mr. Phelan and Mr. Tunney. The former was in no doubt that he informed the latter that he sought the loan on behalf of Mr. Lowry, through the vehicle of Catclause; the latter was equally adamant that no mention of Mr. Lowry was made to him by Mr. Phelan, and that he was led to believe that it was Mr. Phelan himself who was the borrower behind Catclause. Why should two experienced financial figures who were friends and associates over many large transactions, some on behalf of Mr. O'Brien, differ on so fundamental an aspect, when there seemed no motive why they should have quarrelled, or found themselves on opposing sides? The difference was not explicable by mistake, and Mr. Phelan acknowledged in evidence that it seemed that one of them was providing an untruthful account.

7.131 Either extreme version has its improbabilities: if Mr. Phelan was correct in testifying that he had indicated that Mr. Lowry was behind Catclause, why was there no reference whatsoever to Mr. Lowry in the documentation produced to the bank, even to the extent of the deletion of Mr. Lowry's name from the letter sent by Mr. Eastham, and why, if Mr. Tunney was so openly informed, did he

unilaterally withhold any reference to Mr. Lowry, at the inception of the loan, from Mr. Cullen, Mr. Morland and Mr. Wohlman? Why also, if Mr. Phelan was correct that he and Ms. Malone signed the loan documentation as purported officers of Catclause, solely because of Mr. Lowry's unavailability, did he not, as an experienced accountant, with a partner fully versed in corporate forms and procedures, rectify that record, as opposed to leaving indefinitely the explicit representation that he and Ms. Malone were actual officers of the company? It is nonetheless noteworthy that Mr. Tunney was willing unquestioningly to process in considerable haste a transaction introduced by Mr. Phelan, entailing the somewhat unwieldy and improbable combination of Mr. Phelan applying through the vehicle of a UK shelf company, supported by a Cork property developer as an intended guarantor. This is particularly so, in the light of Mr. Phelan clearly having been of sufficient financial substance to have undertaken a personal guarantee himself, and of Mr. Daly having been someone with whom the bank had no previous history.

7.132 It must be remembered that a considerable range of problems arose for affected persons in the wake of the sudden disclosure by Investec of a transaction appearing to link Mr. Lowry and Mr. Denis O'Brien. As will be examined more fully in later chapters of this Volume, two substantial meetings were held, one at Mr. Phelan's Clanwilliam Court office, attended by Mr. Lowry, and a second at the Regency Airport Hotel, primarily for the benefit of Mr. Denis O'Connor, Mr. Lowry's accountant. Whilst exception was taken in evidence to suggestions that these meetings were to a degree convened for the purpose of enabling potential witnesses to have their stories straight, it would surely be unrealistic to suppose other than that some appreciable care was given to the responses that should be made by way of statements furnished to the Tribunal. Primarily, the problems were these: firstly, the money trail inquiries that would be instituted on foot of the Cheadle disclosures would almost inevitably bring to light the transmission by Mr. Phelan, from Mr. O'Brien's account, of the Stg.£300,000.00, and the closing of the Mansfield transaction that those funds in the first instance enabled. Secondly, given the ongoing degree of involvement on Mr. Phelan's part, and what had emerged in relation to Catclause, he could scarcely profess himself ignorant of the details and directors of that company. Thirdly, it appeared that it would be stated on behalf of Investec that the support of Mr. O'Brien had been invoked in the obtaining of the loan.

7.133 It would appear that, in these circumstances, what must have been decided upon was that the Mansfield transaction should promptly be disclosed to the Tribunal, prior to being elicited by Tribunal inquiries, and that, with regard to Cheadle, it should be intimated to the Tribunal that Mr. Lowry had indeed been the intending purchaser behind Catclause, that his unavailability had caused Mr. Phelan and Ms. Malone to sign the requisite bank documentation as directors,

but that Mr. Lowry had shortly thereafter been let down by Mr. Daly as a guarantor, and had dropped out of the transaction in favour of Mr. Phelan.

7.134 Yet significant problems remained for both Mr. Phelan and Mr. Tunney in relation to the information to be furnished to the Tribunal on behalf of each of them: if both stated that the loan was for Mr. Phelan through the vehicle of Catclause, then Mr. Phelan, knowing as he did the details relating to Catclause, had materially misled the bank; if both stated that the loan was for Mr. Lowry through the vehicle of Catclause, the position was worse again, given that evidence on behalf of the bank would inevitably be to the effect that Mr. Tunney had invoked Mr. O'Brien to the bank in support of the loan facility.

7.135 At no point did Mr. Tunney criticise Mr. Aidan Phelan in his response to queries from bank officials scrutinising the matter, to the effect that he had been actively deceived by Mr. Phelan. Nor in the course of responding to similar queries did Mr. Phelan suggest that Mr. Tunney had put forward a version of events which was deceitful. Whilst in evidence Mr. Phelan and Mr. Tunney pursued conflicting furrows in relation to their dealings with each other, and in their evidence of their responses to queries from the bank officials, it is interesting that the evidence of the officials was to the contrary, that essentially the accounts given by both individuals converged, with each effectively asserting that the loan was a Denis O'Brien transaction, and that, from his support for the transaction, the bank should take such comfort as something that ought to have allayed its concerns. Yet in observing the many stark conflicts in their evidence, the divergence between them appeared not merely to lack any rational basis, but to be a contretemps that was stylised and devoid of animus. In these circumstances, it may indeed be the case that, notwithstanding the evident lack of animosity between them, Mr. Phelan and Mr. Tunney effectively found themselves boxed into a corner, in consequence of which differing versions had to be advanced by each of them in evidence.

Confusing accounts of simple transactions

7.136 Their conflicting evidence was a natural consequence of the overall attempt to present what was bound to be a confusing and artificial version of a series of events which, from the correspondence, can be shown to be extremely simple. That the confusion stemmed from the manner in which the transaction was presented in evidence, and from the manner in which important evidence was altered or suppressed, should not be allowed to distract from the simple fact that this loan commenced with the Radisson Hotel meeting which, whilst not entailing a promise of finance, nevertheless involved, on Mr. Lowry's part, the anticipation that in due course funds could be provided through the intercession,

as it were, of Mr. Phelan and Mr. Tunney. This proved to be the case in late December, 1999, with the provision of Stg.£420,000.00 from Woodchester, on foot of a transaction which had to be presented within the bank as an Aidan Phelan transaction, and for which, as Mr. Phelan put it, the involvement of Mr. Daly was secured so as to enable the proposition to be banked, that is, to enable the paperwork to be got right. That the suggestion that it was the withdrawal of Mr. Daly that prompted the takeover of the property and the loan by Mr. Phelan was as artificial as Mr. Daly's introduction, is borne out by the absence of any concern within the bank at this turn of events. It is also borne out by the fact that Mr. Vaughan's holding the property in his own name, suggested in evidence to be the necessary consequence of Catclause dropping out of the transaction, occurred in advance of Mr. Daly's post-Christmas, if not early January, departure from the transaction.

7.137 As referred to earlier, and as the following chapter will make clear, a letter from Mr. Vaughan to Mr. Kevin Phelan of 9th August, 2000, indicates in the clearest terms that it was "*for reasons of secrecy*" that Catclause was abandoned and that, though the vehicle was abandoned, the beneficiary of the loan and the owner of the property, Mr. Lowry, remained in control as the person for whom Mr. Vaughan was holding the property in trust, and as the individual who, as the correspondence with two potential purchasers, Thistlewood and Berwood, demonstrates, was the person to benefit from what were then hoped would be successful sales of the properties.

Missing documents

7.138 What was missing at the time of the Tribunal's initial examination of this matter, in 2001, was the documentation, parts of Mr. Vaughan's file, which did not emerge, until firstly, in or around 2002, and were then examined as part of the hearings dealing with "*long form*" and "*short form*" letters, and the subsequent documents which did not come to light until the latter part of the evidence of Mr. Vaughan in 2009. When this evidence is examined, the transaction, on Mr. Vaughan's side, Mr. Lowry's side and Mr. Phelan's side, becomes a simple one, namely a transaction funded for the benefit of Mr. Lowry, one in which Mr. Lowry's name had to be, insofar as possible, obscured, and one in which he had the entire interest right up until the matter was brought to the attention of the Tribunal. Such documentation has already been referred to in connection with both the Mansfield and Cheadle properties, and will be returned to in a different context in the next chapter, but its importance is so pivotal that it is at this juncture necessary to revisit it.

7.139 In this connection, it will be recalled that Mr. Lowry repeatedly drew the attention of the Tribunal to the fact that the borrowing was in the name of Catclause, that Catclause was Michael Lowry, and that this fact was readily ascertainable by an examination of the records in the English Companies Office. Furthermore, he testified that he had in any case made his involvement known to Mr. Michael Tunney directly, and indirectly through Mr. Aidan Phelan. Despite his assertion that his involvement was discernible, by reference to the company's records, the fact remains that he was party to a misrepresentation to the bank that Mr. Phelan, and his associate Ms. Helen Malone, were directors of Catclause. He was of course correct in his assertion that an examination of the Companies Office would have disclosed the fact that neither Ms. Malone nor Mr. Phelan were directors, and that he, Mr. Lowry, and his daughter were the directors of the company. That this connection between Mr. Lowry and the company, despite the misrepresentation that Mr. Phelan and Ms. Malone were directors, was ascertainable if the matter were scrutinised was obviously also exercising the minds of Mr. Vaughan and Mr. Aidan Phelan. This was evident from the letter of 9th August, 2000, from Mr. Vaughan to Mr. Kevin Phelan, dealing with this matter and related matters, connected with Mansfield.

Mr. Christopher Vaughan's explanations for the letter of 9th August, 2000, and other similar documents

7.140 Mr. Vaughan suggested that this letter had been written for the purpose of arming Mr. Kevin Phelan with information to enable him to furnish details to third parties of the properties, their title and similar matters. The letter, far from arming Mr. Phelan, or more importantly any third party, with acceptable information concerning the properties referred to, was likely to excite very real suspicions that the transactions had been conducted improperly. It was no more likely to have been furnished to third parties than, until its belated and unsought disclosure, to the Tribunal. In the portion of the letter dealing with Mansfield, under the heading *"Hilltop Farm"*, the last sentence is indicative of the very real sensitivities of the owner of this property to any scrutiny concerning the source of the funds used to purchase it, which states as follows:

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

7.141 As no third party in the course of an ordinary conveyancing transaction would have had any right to any information concerning Mr. Vaughan's client account bank statements, the sensitivities in this case can only have related to a scrutiny by other agencies. As Mr. Aidan Phelan was the apparent co-owner by virtue of the joint venture agreement, it cannot have been by reference to his role

in sourcing the funds that the sensitivities arose, but rather by reference to the source of the funds having been Mr. Denis O'Brien's account with Credit Suisse First Boston in London.

7.142 The second portion of the letter under the heading *"St. Columba's Church"*, deals with the Cheadle transaction. Mr. Vaughan, after pointing out that the property was held by himself and another person as trustees for an unnamed beneficiary, contrary to everything that had been stated in correspondence with the Tribunal, and indeed in his evidence, went on to state that he held the land certificates strictly to the order of GE Capital Woodchester, and after recording that the deposit and other monies came from *"M"*, went on to state:

> *"If you recall originally, Catclause Limited was a Limited Company set up for the acquisition of this Property.*
>
> *Therefore although the Registered Proprietors of the Property are shown to be Trustees if anyone ever managed to see a copy of the Banking documentation which I believe refers to Catclause, and then did a company search against Catclause, they would find out a link with M.*
>
> *It was on the advice of AP that Catclause Limited was abandoned and the property put into the names of Trustees for reasons of secrecy."*

The *"M"* referred to in various portions of this letter was, as is in any case clear from other facts, acknowledged by Mr. Vaughan to be Mr. Michael Lowry. What was recorded in that letter by Mr. Vaughan was that, although originally Catclause was set up for the acquisition of this property, it was *"on the advice"* of Mr. Aidan Phelan that the company was *"abandoned"*, and the property put in the names of trustees for secrecy. It is not intimated that Mr. Aidan Phelan had taken over the loan, or that he had purported to instruct Mr. Vaughan that the loan was to be taken in his name, or for that matter that Mr. Lowry had so instructed Mr. Vaughan. It was on the footing of *"advice"* that the changeover is explained, and not on the footing of any change of proprietor.

7.143 The letter furthermore makes clear that Catclause was abandoned, not because of the failure of a guarantee, or the takeover of a loan, but put into the names of trustees *"for reasons of secrecy"*. Those *"reasons of secrecy"* appear from the middle paragraph of the passage quoted above. From this it is evident that there was a very real apprehension on the part of those involved in the transaction that a company search against Catclause would reveal a link with Mr. Michael Lowry. That the object of the abandonment of Catclause was the obscuring or concealment of this link is apparent from the terms of this letter,

from the fact of its having been suppressed, and from related letters dealing with both Mansfield and Cheadle.

7.144 In another letter from Mr. Vaughan to Mr. Kevin Phelan, written shortly afterwards, on 18th August, 2000, Mr. Vaughan, referring to the meeting on 17th August, 2000, at Jury's Hotel, attended by Mr. Vaughan, Mr. Aidan Phelan, Ms. Malone and Mr. Lowry, mentioned the properties in terms from which it is abundantly clear that Mr. Lowry was the proprietor, and furthermore the individual directing the conduct of affairs. This is of course at variance with the suggestion that by that time Mr. Aidan Phelan was the proprietor, the individual directing the conduct of affairs, and that Mr. Lowry in regard to Cheadle had a mere subsidiary role, on foot of a moral obligation to move the property along.

7.145 The second paragraph of this letter is as follows:

> *"Michael felt that he knew where both these Properties were now going and a scheme has been devised to assist him financially and taxwise as well."*

This passage conflicts with evidence given long before the letter emerged, that at the Jury's Hotel meeting what had been discussed was a scheme to assist Mr. Aidan Phelan financially and fiscally in relation to these properties, and that it was his tax affairs that were in issue, and not those of Mr. Lowry. The scheme entailed the nominal purchase of the property from the trustees, so that it would be held in Mr. Michael Lowry's name for a period of time prior to disposal to a developer. This scheme was also referred to in one of the letters described as the *"long form"* and *"short form"* letters, which came to light in or around early 2002. The letter, dated 5th September, 2000, from Mr. Vaughan to Mr. Kevin Phelan, was provided to the Tribunal in 2001, within Mr. Vaughan's files in a falsified form, removing those references from which it was evident that Mr. Lowry was the owner of these properties.

7.146 By 21st September, 2000, Messrs. Goldsmith Williams, solicitors for prospective purchasers, wrote to Mr. Christopher Vaughan in connection with the purchase of the Mansfield and the Cheadle properties, identifying *"Michael Lowry"*, as the vendor, for whom, as that firm stated, it believed Mr. Vaughan was acting. Mr. Vaughan in his reply of 4th October, 2000, confirmed that he was so acting on behalf of Mr. Lowry in respect of the transaction, and set out how the purchase price was to be structured, apportioning, of the total of Stg.£1.36 million, Stg.£300,000.00 to Mansfield, and Stg.£1.06 million to Cheadle. In evidence in June, 2009, and having earlier testified to the contrary, Mr. Vaughan, having regard to the correspondence which by then had emerged, acknowledged

that any suggestion that the Jury's Hotel meeting of 17th August, 2000, was connected with fiscal or taxation affairs of Mr. Aidan Phelan, was incorrect. He had earlier in his evidence, in April, 2009, described a suggestion that it was Mr. Lowry's affairs that were in issue at that meeting, as appeared from the *"long form"* version of the letter of 5th September, 2000, as *"nonsense"*. When the letters of 9th August and 18th August, 2000, came to light, in addition to other correspondence, Mr. Vaughan was left with no alternative but to reverse his earlier evidence, acknowledging that important conclusions which might have been drawn by the Tribunal from that evidence would have been incorrect. Mr. Vaughan's evidence concerning these letters, his dealings with third party solicitors, and indeed the entire pattern of falsification and suppression that emerged were consistent only with Mr. Lowry's continuing ownership in Cheadle, and indeed Mansfield, up to the point where Cheadle had become subject to scrutiny within the bank in early 2001.

7.147 The attempts to suppress documentation, and the falsification of other documentation, so as to avoid or conceal references to Mr. Michael Lowry, and his ownership of these transactions, in addition to the abandonment of Catclause, *"for reasons of secrecy"*, can only have been connected with the source of the funding for each of these transactions, namely the account of Mr. Denis O'Brien, in the case of the Cheadle deposit, and the Mansfield balance, and the support of Mr. Denis O'Brien for a loan from Woodchester, in the case of Cheadle.

CONCLUSIONS

7.148 Whilst this section has already set forth certain conclusions arrived at by the Tribunal in relation to the Cheadle transaction, a number of further conclusions of a more formal nature now require to be set forth. Since conclusions relating to the Mansfield transaction were, as stated in the previous chapter, then deferred until the principal facts relating to the Cheadle transaction had been addressed in this chapter, it is now necessary to state in the first instance the conclusions drawn in relation to the Mansfield transaction. As already noted, a reading of the next chapter is also instructive in relation to the conclusions drawn in regard to both transactions.

The Mansfield transaction

7.149 The source of the sum of Stg.£300,000.00 lodged on or around 29th March, 1999, to the client account of Mr. Michael Lowry with Mr. Christopher Vaughan, solicitor, was the proceeds of a payment made to and for the benefit of Mr. Lowry by Mr. Denis O'Brien through the agency of Mr. Aidan Phelan, who

withdrew that sum from the account of Mr. O'Brien with Credit Suisse First Boston, London, and that account of Mr. Lowry with Mr. Vaughan was accordingly an account held for the benefit of Mr. Lowry within the meaning of Term of Reference (f) of the Terms of Reference of the Tribunal.

7.150 Mr. Michael Lowry received a payment of Stg.£300,000.00 from Mr. Denis O'Brien through the agency of Mr. Aidan Phelan in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with the public office of Minister for Transport, Energy & Communications, formerly held by Mr. Lowry.

7.151 The form in which the payment of Stg.£300,000.00 was made by Mr. Denis O'Brien to Mr. Michael Lowry, namely, through the agency of Mr. Aidan Phelan, directly to a solicitor's account held outside the State, was motivated by a desire to conceal the fact that Mr. O'Brien was the true source of the payment to Mr. Lowry.

7.152 Mr. Michael Lowry through the agency of Mr. Christopher Vaughan applied approximately Stg.£230,546.42, the preponderance of the said sum of Stg.£300,000.00, held in the account of Mr. Lowry with Mr. Vaughan, to the discharge of the balance of the purchase price of the Mansfield property, which thereupon was held in the sole name of Mr. Lowry.

7.153 As to the basis advanced in evidence by Mr. O'Brien and Mr. Phelan to the effect that this sum of Stg.£300,000.00 was by way of a payment of remuneration on account of work done by the latter for the former, the sole documentary evidence adduced consisted of two informal and self-serving memoranda. Notwithstanding the substantial amount involved, and the purported basis of payment, no single entry by way of any account, audit, tax or other record capable of vouching such a payment, at the relevant or any time, has been produced from the books or records of either Mr. O'Brien, Mr. Phelan, or any companies or partnership with which either was associated, or from any of their professional advisers. The Tribunal has had regard to all of the circumstances, including those relating to the falsification of Mr. Vaughan's files, the secrecy and want of prompt disclosure shown in regard to these dealings, the evidence tendered that was markedly at variance with the true version of Mr. Vaughan's files, and the facts surrounding the Cheadle and other transactions investigated by the Tribunal, including the omission on the part of Mr. Phelan to convey to any agency, at the time of the Initial Public Offering of Esat Telecom or thereafter, the existence or relevant details of the prior substantial off-shore account opened by him on Mr. O'Brien's directions. The Tribunal finds such inherent implausibility in the version of events represented by the two memoranda, and the purported joint

venture agreement between Mr. Phelan and Mr. Lowry, as not to represent the true basis of agreement, which was to the effect that Mr. Lowry should be entitled to the entire beneficial interest in the Mansfield property, and that this position continued until the transaction came under investigation by the Tribunal.

7.154 Had Mr. Lowry's interest in the Mansfield property in fact been limited to 10%, it is inconceivable that the files of Mr. Vaughan would have been falsified by altering and removing letters from the copies of such files furnished to the Tribunal, so as to conceal references to Mr. Lowry's ownership which were inconsistent with the suggestion that his interest was thus limited.

7.155 Had the Mansfield property been held by Mr. Aidan Phelan and Mr. Lowry, on a 90/10 basis in favour of the former, it is inconceivable, as acknowledged by Mr. Denis O'Connor in his evidence, that Mr. Lowry would have consulted the tax partner in Messrs. Brophy Butler Thornton to ascertain the extent of his exposure to Capital Gains Tax, a course clearly more consistent with Mr. Lowry being entitled to the entirety of the beneficial interest in the property.

7.156 The preparedness of Mr. Michael Lowry to pay the deposit on the Mansfield purchase from his own resources, without any binding commitment in relation to funding the balance of the purchase price, contrasts strongly with his stated view of the Carysfort transaction, and can only be indicative of a degree of confidence on his part as to such funding, appreciably in excess of the possibility of recruitment of a suitable partner by Mr. Kevin Phelan.

The Cheadle transaction

7.157 Mr. Michael Lowry applied the balance of the Stg.£300,000.00 that remained in his client account with Mr. Christopher Vaughan, a sum which the Tribunal has found to be a payment made indirectly by Mr. O'Brien to Mr. Vaughan in circumstances falling within paragraph (e) of its Terms of Reference, in payment of a deposit for the purchase of the Cheadle property.

7.158 The source of the sum of Stg.£420,000.00, lodged on 21st December, 1999, to the client account of Mr. Christopher Vaughan, solicitor, with Co-operative Bank, Northampton, was a loan from Woodchester/Investec Bank, which had been sourced by Mr. Aidan Phelan for Mr. Lowry, through the support of Mr. Denis O'Brien.

7.159 Mr. Michael Lowry received an indirect payment or benefit, or benefit equivalent to a payment from Mr. Denis O'Brien by reason of his support for the loan of Stg.£420,000.00, made by Woodchester/Investec Bank, in circumstances

giving rise to a reasonable inference that the motive for providing the support was connected with the office of Minister for Transport, Energy & Communications, formerly held by Mr. Michael Lowry.

7.160 The involvement of Mr. Lowry in the loan transaction had been suppressed and withheld at its inception from the officers who dealt with it, namely Mr. Michael Cullen, Mr. Tony Morland and Mr. Ian Wohlman, and such involvement was not conveyed in verbal representations or documents made available to the bank. Accordingly, Mr. Cullen, Mr. Morland and Mr. Wohlman were unaware of any involvement on the part of Mr. Lowry until February, 2001. Such suppression extended to the removal from a letter relating to the property of that portion which would have identified Mr. Lowry as its recipient, and to a representation that Mr. Aidan Phelan and Ms. Helen Malone were directors of Catclause Limited, Mr. Lowry's purchasing vehicle when in fact the actual directors were Mr. Lowry and his daughter. In addition, it appeared that the relevant bank file could not be located. The effect of these and related matters, and in particular representations made by Mr. Michael Tunney to both Mr. Cullen and Mr. Morland in regard to Mr. O'Brien's support for the loan at its inception, was to persuade Mr. Cullen to advance the said loan for the benefit of Mr. Lowry through the said company, but whilst unaware of any involvement on the part of Mr. Lowry.

7.161 The said loan was advanced in circumstances of much haste and informality, reflecting the urgent and critical position of Mr. Lowry, the agreed closing date of the sale having passed, and also in circumvention of agreed interregnum procedures in place whilst Woodchester was being taken over by Investec.

7.162 The number of occasions on which the support of Mr. O'Brien for the loan application was referred to merits brief repetition. What had prompted the bank to bring the matter to the attention of the Central Bank, and thereafter to the Tribunal, was the fact that the loan had become problematical as to repayment, that the bank file could not be located, and that Mr. Tunney, when processing the application for loan finance, had described it to Mr. Cullen as a loan of which Mr. O'Brien was aware, an expression deemed by Mr. Cullen to mean that Mr. O'Brien was behind the loan, in the sense that it would not be allowed, by reason of his connection with it, to cause a problem for the bank. Mr. Tunney also at that time, in describing the prospective loan to Mr. Morland, referred to it as a Denis O'Brien transaction. Subsequent to the granting of the loan, when bank investigations disclosed a possible connection between Mr. Lowry and Mr. O'Brien, and the matter was brought to the attention of Mr. Tunney and Mr. Aidan Phelan, both responded to the effect that the transaction was a

Denis O'Brien transaction. Mr. Aidan Phelan informed Mr. Morland and Mr. Cullen that, as the transaction was a Denis O'Brien transaction, he, Mr. O'Brien would ensure that the bank was looked after. Mr. Tunney likewise informed Mr. Wohlman, in telephone calls, that the bank need not be concerned in relation to the credit, as Mr. O'Brien was behind it. Mr. Tunney had also made similar statements to Mr. Morland on two occasions on which Mr. Morland had drawn to his attention the fact that Mr. Wohlman was anxious to speak with him concerning the matter.

7.163 The incidence, frequency and emphasis apparent in representations as to the support of Mr. O'Brien, coming from a senior and trusted associate in Mr. Tunney at its inception, and thereafter having on several occasions been repeated by both Mr. Tunney and an even more trusted and senior associate of Mr. O'Brien, in the person of Mr. Phelan, was both a critical factor in disposing the bank to grant and ratify the facility, but also was such as to discredit any purported explanation of unauthorised or reckless representations to such effect.

7.164 Although Mr. Cullen acknowledged in evidence that he had advanced the loan without due or sufficient regard to agreed procedures in being in the course of the takeover by Investec, the Tribunal found his evidence, and that of Mr. Morland and Mr. Wohlman, in relation to the support of Mr. O'Brien for the loan to be direct, dispassionate and unambiguous, particularly since the finding of an apparent connection in the loan between Mr. Lowry and Mr. O'Brien was obviously unwelcome, and contrary to the interest of the bank.

7.165 Not all matters, in what had initially appeared to the Tribunal a perplexing and ambivalent transaction, require the expression of formal conclusions, but it appears to the Tribunal clear that, from what was discussed at a meeting in the Radisson Hotel, Dublin, between Mr. Lowry, Mr. Tunney, Mr. Phelan and Ms. Malone, some months prior to the loan application, it must have been apparent to Mr. Tunney that the substantive beneficiary of the subsequent application was Mr. Lowry. It further appears to the Tribunal that the somewhat curious and short-lived involvement of Mr. John Daly, as a prospective guarantor, was comprised more of form than substance, and had little likelihood of being converted into an actual surety liability, which in any event was never insisted upon by the bank. Mr. Daly's evidence was not without its incongruities and improbabilities, and it was not surprising that, when it was put to him in evidence that he seemed to recall very little with certainty about the whole matter, he responded *"you are dead right"*. In this regard, it was also noteworthy that Mr. Aidan Phelan, in describing the transaction and the involvement of Mr. Daly, stated that the latter had been produced merely so as to enable the transaction to be banked, in effect to get the paperwork right.

7.166 As in the case of the Mansfield transaction, the correspondence that belatedly emerged in the latter part of the evidence of Mr. Christopher Vaughan in 1999 makes it abundantly clear that, until both transactions came to Tribunal attention in 2001, it was fully intended that Mr. Lowry would be the entire beneficiary of all such profits as would be generated on both the Cheadle and Mansfield transactions, and that the *"reasons of secrecy"*, alluded to by Mr. Vaughan in his letter to Mr. Kevin Phelan of 9th August, 2000, giving rise to the abandonment of Catclause as a vehicle, related to the deposit for Mr. Lowry's Cheadle purchase having come from Mr. O'Brien's Credit Suisse First Boston account, and further, the fact of his support for the loan within the bank.

7.167 In concluding that the portions of the Stg.£300,000.00 respectively paid in part discharge of both the Mansfield and Cheadle purchases, and the support of Mr. O'Brien for the Cheadle purchase loan, each constituted a payment or benefit equivalent to a payment, to Mr. Lowry by Mr. O'Brien in circumstances falling within Term of Reference (e), the Tribunal has had regard to all material circumstances. These include the secrecy of the transactions, their want of commerciality, the falsification and suppression of material documentation and correspondence, the deployment of off-shore accounts, the absence of due or proper vouching or tax certification of the substantial Stg.£300,000.00, the specious explanations advanced in evidence, and the acute sensitivity that was apparent in much testimony regarding what were contended to be appropriate and transparent transactions.

8 FALSIFICATION OF MR. CHRISTOPHER VAUGHAN'S FILES

8.01 This chapter addresses the matter of correspondence, either altered or concealed, primarily emanating from Mr. Christopher Vaughan, solicitor, whose role in the Mansfield and Cheadle property transactions, in which he acted for Mr. Michael Lowry, has been described in the two previous chapters, and who acted, and to this day, as the Tribunal understands, continues to act for Mr. Denis O'Brien in the Doncaster Rovers transaction, through the purchasing vehicle employed for that purpose.

8.02 This chapter is divided into two sections. The first deals with two letters of Mr. Vaughan, the existence of two significantly differing forms of which was first drawn to the Tribunal's attention, through copies of what have come to be known as the "*long form*" of each letter having been delivered to the Tribunal solicitor, on 21st March, 2002, by an Irish Times journalist. Having investigated and heard relevant evidence in 2002, it appeared to the Tribunal that, by making available to it only the "*short forms*" of each letter, it was being falsely conveyed in evidence heard that the interest of Mr. Lowry in the Cheadle transaction differed significantly from what was in fact the case.

8.03 Such a view was greatly reinforced by reason of the matters which are set out in the second section of the chapter. When Mr. Vaughan came belatedly to testify to the Tribunal in 2009, it emerged in the final stages of his evidence that there had been in fact a multiplicity of critical correspondence from his conveyancing file that had been altered and truncated, or indeed never produced at all, with a view to persuading the Tribunal, which was in receipt only of the altered and truncated forms, that an account of Mr. Lowry's interests in the transactions that was untrue in material respects represented the fact of matters.

8.04 This crucial latter evidence raised in much starker form the obvious inquiry: if it was merely coincidental that it happened to be Mr. O'Brien's money that, through the conduit of Mr. Aidan Phelan and Mr. Vaughan, inured to the benefit of Mr. Lowry in both transactions, what could have impelled the wholesale falsification, deception and suppression that sought to mislead the Tribunal as to Mr. Lowry's true interests in the transactions? The unavoidable answer will be returned to at the chapter's conclusion.

LETTERS SHORT AND LONG

Introduction

8.05 In the course of its private investigative inquiries concerning the Mansfield and Cheadle transactions, the Tribunal had been provided with copies

of what were represented to it as the documents pertaining to these transactions on Mr. Christopher Vaughan's files. The Tribunal had been informed, by Mr. Michael Lowry and Mr. Aidan Phelan, that Mr. Christopher Vaughan, solicitor, had handled each of these transactions on their behalf. Certain documents were also furnished to the Tribunal by Mr. Kevin Phelan, Mr. Aidan Phelan and Mr. Michael Lowry. The Tribunal's initial public sittings in 2001, in which these transactions were examined, were conducted on the basis of these documents.

8.06 Then, in March, 2002, there was a development concerning these transactions. On 21st March, 2002, Mr. Colm Keena, a journalist with The Irish Times, furnished Mr. John Davis, solicitor to the Tribunal, with photocopies of two letters, each on the headed notepaper of Mr. Christopher Vaughan, solicitor, of Old Church Chambers, Sandhill Road, Northampton, England, and purporting to have been written by him to Mr. Kevin Phelan, at an address in Omagh, County Tyrone. The two letters were respectively dated 12th July, 2000, and 5th September, 2000. Mr. Keena also then furnished Mr. Davis with apparent file copies of two letters, involving identical dates and parties, which were similar to what was set forth in the copies of the letters on headed notepaper mentioned above, but which nonetheless showed significant differences as to both form and content.

8.07 The delivery of these documents to the Tribunal by Mr. Keena followed an initial approach to Mr. Davis, on foot of which a meeting was arranged, at which Mr. Davis received them, as part of the private investigative work of the Tribunal. No arrangement or agreement of any kind was entered into with Mr. Keena, other than that the documents would be examined to ascertain to what extent they might prove to be relevant, which they did, to the Tribunal's Terms of Reference.

A description of the documents

8.08 The relevance of these documents stemmed from the fact that, from its initial public sittings concerning the Mansfield and Cheadle transactions, the Tribunal had been aware from documents made available by Mr. Vaughan, and Mr. Kevin Phelan, of correspondence between Mr. Vaughan and Mr. Kevin Phelan, on both 12th July, 2000, and 5th September, 2000. The Tribunal had been furnished by Mr. Vaughan with copies of the file, or office copies of the letters, apparently dispatched by him to Mr. Kevin Phelan on these dates. Copies of similar letters provided by Mr. Kevin Phelan were in precisely the same terms as those file copies furnished by Mr. Vaughan. The documents provided by Mr. Colm Keena included copies of the file copies which had been furnished to the Tribunal, and which were in the same terms as those provided to the

Tribunal. In contrast however, the copies of the letters written on Mr. Vaughan's headed notepaper, and dated respectively 12th July, 2000, and 5th September, 2000, demonstrated marked discrepancies, changes and additions from the other form of the letters, and the content and potential implications of the discrepancies between these two sets of documents became the focus of Tribunal inquiries.

8.09 The documents furnished by Mr. Christopher Vaughan purported to be file copies, retained by him, of original letters sent by him to Mr. Kevin Phelan on both 12th July, 2000, and 5th September, 2000. They are set out below, and for ease of reference will be described as the *"short form"* of the letters dispatched respectively on those dates to Mr. Kevin Phelan.

SHORT FORM

Mr Kevin Phelan
106 Gillygooley Road
Omagh
County Tyrone BT72 5QA
Northern Ireland

12th July 2000

Dear Kevin

St Columbas Church

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

You will recall that this property was purchased I my name as Trustee for Aidan Phelan. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied.

Could you please let me know, as a matter of urgency.

1. Have you managed to find a Purchaser.
2. If not, is there now a Tenant in the house as discussed with you recently?
3. Can you please ensure that the conditions be complied with immediately as the policy could be null and void and I could personally be liable for losses?

Yours sincerely

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone. BT72 5QA

5 September 2000

Dear Kevin

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

Could you therefore let me know :-

1. What is the current situation with regard to the grant of planning consent for the proposed residential scheme? Who is going to submit and pay for the planning application and when will it be done?
2. Presumably the access will be dealt with at the same time as the planning application is submitted?
3. Are Thistlewood undertaking a soil survey at the present time?

Do you know the identity of Thistlewood estates clients? I have done a company search against Thistlewood, and I enclose a copy herewith which says very little. Do you know who their actual clients are?

Kind regards

Yours sincerely
C J VAUGHAN

8.10 The copy letters, dated similarly 12th July, 2000, and 5th September, 2000, provided by Mr. Colm Keena, written on the headed notepaper of Mr. Vaughan, and addressed to Mr. Kevin Phelan on those dates, are set out below, and subsequently were confirmed in evidence by Mr. Vaughan to be copies of the originals actually sent by him on those dates. These letters, for ease of reference, will be described as the *"long form"* of the letters dispatched to Mr. Kevin Phelan on respectively 12th July, 2000, and 5th September, 2000.

LONG FORM

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Mr Kevin Phelan
106 Gillygooly Road
Omagh
County Tyrone BT 72 5QA
Northern Ireland

FAX 01662 250 744
12th July 2000

Dear Kevin

Re: St Columba's Church

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

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

Could you please let me know, as a matter of urgency,

1. Have you managed to find a purchaser
2. If not, is there now a tenant in the house as discussed with you recently ?
3. Can you please ensure that the conditions be complied with immediately as the policy could be null and void and I could personally be liable for losses?

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

Yours sincerely,

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT Tel: 01908 226881 By Appointment only

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone. BT72 5QA

5 September 2000

Dear Kevin

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

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

Could you therefore let me know :-

1. What the current situation is with regard to the grant of planning consent for the proposed residential scheme. Who is going to submit and pay for the planning application and when will it be done.
2. Presumably the access will be dealt with at the same time as the planning application is submitted.
3. Are Thistlewood undertaking a soil survey at the present time?

* Do you know the identity of Thistlewood Estates clients. I have done a company search against Thistelwood, and I enclose a copy herewith which says very little. Do we know who their actual clients are?

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

Kind regards.

Yours sincerely
C J VAUGHAN

* To follow.

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at The Old Rectory, Haversham, Milton Keynes MK19 7DT. Tel: 01908 226881. By Appointment only.

8.11 The convenience of referring to these documents as the *"short form"* and *"long form"* of the relevant letters will be obvious from a comparison of the main discrepancies between them. The *"long form"* of the letter of 12th July, 2000, contains a second paragraph as follows:

> *"You will recall that this property was purchased I* [sic] *my name as Trustee for our client. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied."*

In the "*short form*" of that letter, the equivalent passage is as follows:

> *"You will recall that this property was purchased I* [sic] *my name, as Trustee for Aidan Phelan. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied."*

In the "*long form*", the final paragraph reads as follows:

> *"I seem to recall when the lending process was being completed that the lender was going to require a six monthly report on the marketing of the property. Can you please let me have details so I can deal with this? I think the same will apply to Mansfield as well."*

In the "*short form*" of the same letter, there is no such paragraph.

8.12 Proceeding to the two versions of the letter of 5th September, 2000, the "*long form*" of this letter contains a second paragraph as follows:

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

The "*long form*" of this letter concludes as follows:

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

Neither of those paragraphs is contained in the "*short form*" of that letter. The "*long form*" also contains an asterix against the penultimate paragraph. This relates to a manuscript addition at the bottom, which signified that the company search mentioned in that paragraph was, "*to follow*".

8.13 In the Appendix to this chapter, the two versions of each of the letters have been set out in immediate succession to each other. From a visual inspection of these, it can readily be ascertained that:

(i) the additional content of each of the "*long*" forms significantly extends what in any event are short letters;

(ii) as regards the substance common to each form, broad similarities are apparent as to both content and form, these extending, in the case of the

12th July, 2000, letters, even to an apparent typographical error in the first line of the second paragraph, ("*l*" instead of "*in*") being common to both forms;

(iii) on any more careful comparison of the "*long*" and "*short*" forms, a significant incidence of differences as to wording, spelling, punctuation and formatting is apparent, a list of which differences can also be found in the Appendix to this chapter.

8.14 Save for a brief reference to the Mansfield transaction at the conclusion of the "*long form*" of the 12th July, 2000 letter, the content of the "*long form*" versions of both letters relates exclusively to the Cheadle property.

Mr. Christopher Vaughan's non-attendance prior to 2009

8.15 Following the Investec disclosures, Mr. Vaughan provided the Tribunal with certain assistance, both by responding to queries in correspondence, and at a private meeting with members of the Tribunal legal team, on 19th June, 2001. In correspondence, he provided the Tribunal with copies of his files relating to the Mansfield and Cheadle transactions, documents which purported to contain the full account of his dealings on behalf of his clients with these properties.

8.16 As was made clear in Opening Statements, the Tribunal had always proceeded, as it would seem reasonable to do in any matter involving the actions of solicitors carried out on behalf of their clients, on the basis that a solicitor performing a professional duty, where any obligation of confidentiality had been waived by his clients, would readily make himself available as a witness, to testify in relation to matters connected with his file. However, Mr. Vaughan would not attend at any of the Tribunal's sittings concerning these properties at the time of either its initial inquiries, following the Investec disclosures, or in the course of its subsequent inquiries concerning the "*long form*" and "*short form*" letters, that is, in 2002, or when the Tribunal proceeded with inquiries in relation to the Doncaster transaction in 2004, and again in 2007. As Mr. Vaughan resided beyond the jurisdiction, he could not be compelled to attend to testify at public sittings, nor could he be compelled to attend for examination on oath in England. Unless Mr. Vaughan was prepared to attend voluntarily, he could only be summoned to testify if his presence in Ireland enabled the Tribunal to arrange for him to be served with a process to enforce his presence at its public sittings. Ultimately, it was not until 2009 that, in response to notification of the Tribunal's Provisional Findings, Mr. Vaughan made himself available to accept service of a witness summons, and subsequently attended to testify. For non-legal readers, it is important to bear in

mind that, although the Tribunal conducted a meeting with Mr. Vaughan in England, this was conducted on a voluntary basis, and the contents of that meeting did not constitute, and indeed could not constitute, evidence for the purpose of the Tribunal's proceedings.

8.17 The Tribunal's efforts to secure Mr. Vaughan's attendance as a witness commenced in 2001 when, by letter dated 19th June, 2001, he was requested to attend the Tribunal's then forthcoming public sittings to testify in connection with the Mansfield and Cheadle transactions, its very first sittings held in connection with those transactions. Mr. Vaughan responded in the negative stating that, as a practising solicitor and notary in England, he was unfamiliar with the laws of Ireland, especially with regard to Tribunals, and felt that, from a professional viewpoint, he could not expose himself to public testimony relating to his past professional representation of his clients since, as he contended, to do so would place him in an impossible position. The Tribunal regarded this rationalisation as untenable, and sought to reassure Mr. Vaughan as to the broad similarities relating to Tribunal law and practice in both jurisdictions. This however was to no avail. The Tribunal's initial hearings concerning the Mansfield and Cheadle transactions were therefore conducted without the attendance of Mr. Vaughan but, as already mentioned, on the basis of the documentation made available by him, documentation which was represented by Mr. Vaughan, and indeed by both Mr. Lowry and Mr. Aidan Phelan, as containing an accurate record of the Mansfield and Cheadle transactions.

8.18 Further sittings were held in October of 2001, and prior to those sittings the Tribunal reopened its correspondence with Mr. Vaughan, regarding his attendance at the Tribunal's public sittings to testify. Prior to that, Mr. Vaughan in earlier correspondence had indicated that he did not believe his evidence would be of any value, and furthermore, drew attention to a medical condition which was likely to be aggravated by the stress of giving evidence. In reply to Mr. Vaughan, the Tribunal indicated that, if appropriate evidence of his health condition was furnished, it might be open to the Tribunal to hear his evidence otherwise than at public sittings. Mr. Vaughan's response on 17th July, 2001, was that he was not prepared to attend the Tribunal to testify, either in public or at sittings which, under the Tribunals of Inquiry Acts, could in appropriate circumstances be held on commission in private. It should be noted that both Mr. Lowry and Mr. Aidan Phelan had provided Mr. Vaughan with full waivers of confidentiality, thus avoiding any risk that he could be exposed to any liability to those clients, were he to give evidence concerning his dealings with them or on behalf of them. Moreover, both had exhorted him to attend to testify, but notwithstanding these exhortations, and the relevant waivers, Mr. Vaughan was unmoved to alter his decision, refusing to attend.

Written explanations provided by Mr. Christopher Vaughan concerning the "*long form*" and "*short form*" letters in 2002

8.19 Upon the emergence of the "*long form*" of the letters, as produced by Mr. Keena, on 21st March, 2002, it was apparent to the Tribunal that, if either or both transpired to be genuine letters written by Mr. Vaughan, the content of those portions, which either differed from the "*short form*" letters, or were additions unique to the "*long form*" letters, could give rise to possible inferences that, rather than Mr. Lowry ceasing involvement in the Cheadle transaction at the beginning of 2000, in favour of Mr. Aidan Phelan, Mr. Lowry's interest had continued. The second paragraph of the "*long form*" letter of 12th July, 2000, refers to the purchase of this property in the name of Mr. Vaughan, as trustee "*for our client*". In the "*short form*", apart from deleting the final paragraph as set out in the "*long form*", the italicised words are replaced by the words "*Aidan Phelan*". The suggestion that this property was purchased in trust for Mr. Phelan is palpably wrong on any analysis of the evidence, already mentioned in relation to the Cheadle transaction, in that the contracts were exchanged on 14th September, 1999, Mr. Phelan, even on his own evidence, not having become involved until 2000.

8.20 The second paragraph of the "*long form*" of the letter of 5th September, 2000, reads as follows:

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

This paragraph had been deleted from the "*short form*". The final paragraph in the "*long form*" letter is as follows:

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

This paragraph had likewise been deleted from the "*short form*". The deletions from each of these letters appear to suggest that Mr. Lowry, as of July, and September, 2000, was the purchaser, and the person for whose benefit these properties were being held in trust by Mr. Vaughan. If the "*long form*" letters or either of them proved genuine, consideration would have to be given as to the motivation whereby it was the "*short form*" that had formed part of Mr. Vaughan's conveyancing files produced to the Tribunal, and, in particular, as to whether the "*short form*" letters were devised or generated in order to conceal an ongoing

involvement on the part of Mr. Lowry, and to misrepresent the identity of the true purchaser, or owner of the properties.

8.21 Following receipt of the letters from Mr. Keena, the Tribunal in the course of its private investigative work pursued explanations for these letters from Mr. Vaughan, Mr. Kevin Phelan, Mr. Aidan Phelan and Mr. Lowry. The questions arising from the letters formed the subject-matter of public hearings in July and December, of 2002, in which evidence was given by Mr. Aidan Phelan and Mr. Lowry. Ultimately it transpired, as will appear below, from evidence given by Mr. Vaughan when he did attend to testify in 2009, that the explanations given in correspondence, and in evidence in 2002, were incorrect and had misrepresented the position. It is nevertheless important to set out briefly what was then represented to the Tribunal as the true state of affairs concerning these letters, at a time when the Tribunal's evaluation of the matter was confined to a limited number of documents, and was conducted in the absence of documents which did not come to light until much later, and in some cases not until the course of Mr. Vaughan's examination in 2009.

8.22 On 21st March, 2002, the day he received the letters in both forms from Mr. Keena, Mr. Davis wrote to Mr. Vaughan by fax, enclosing copies of both the *"long"* forms and *"short"* forms, referring to the *"long form"* as having been received by the Tribunal only that day, and requesting that Mr. Vaughan reply by return. Mr. Vaughan responded by telephoning Mr. Davis, stating that he did not have any particular comment in relation to what he had received, did not think he was instructed in the matter any further, and that he would reply by fax later that day. He further stated that it was, or may have been the case, that the *"short forms"* of each letter were merely drafts, which he had expanded upon when writing to Mr. Kevin Phelan on each occasion. When Mr. Davis put it to him that the *"long forms"* did appear to be his letters, he replied, as recorded by Mr. Davis at the time that:

> *"Oh yes, they are my letters; they have my name on them."*

8.23 Mr. Davis duly received by fax a letter of the same date from Mr. Vaughan, in which he acknowledged receipt, and confirmed that he had no immediate comment to make, indicating that he was no longer instructed by any of the relevant persons, and was indeed unsure whether their waivers of confidentiality still applied, but that he would be prepared to contact them, to see if they wished to instruct him further.

8.24 On 25th March, 2002, Mr. Davis wrote to Mr. Vaughan with reference to Mr. Vaughan's earlier explanation that he may have expanded upon the *"short form"* of the documents, when writing to Mr. Kevin Phelan on each occasion in July and September, 2000. Mr. Davis requested that Mr. Vaughan examine his file so as to clarify the position, pointing out that he felt that Mr. Vaughan would *"agree"* that it was *"unusual that a Solicitor would not retain an office copy of the final draft of a letter issued on behalf of a client"*.

8.25 In a further letter to Mr. Vaughan, dated 12th April, 2002, Mr. Davis also pointed out that he did not think that Mr. Vaughan's explanation for the letters was satisfactory, and suggested that, from the existence of the *"long forms"* and *"short forms"*, a number of inferences could be drawn, including the following:

(i) that Mr. Vaughan had generated two separate sets of correspondence concerning the letters;

(ii) that only one set was made available to the Tribunal on foot of its original request for assistance;

(iii) that a separate set of documentation was obscured from the view of the Tribunal;

(iv) that two files appeared to have been kept in connection with the matter, one for disclosure to the Tribunal, and one to be obscured from disclosure to the Tribunal;

(v) that this concealment appeared to be related to the involvement of Mr. Lowry.

8.26 Mr. Vaughan wrote to the Tribunal on 16th April, 2002, indicating that he had not yet obtained instructions, and after a further letter from Mr. Davis, wrote again on 29th April, 2002, acknowledging Mr. Davis' most recent letter, stating that he had been seeking instructions from his clients, and going on to state that he was *"enclosing copies of an exchange of correspondence"* between himself and Mr. Kevin Phelan, for the information of the Tribunal. What was enclosed was a letter of 18th April, 2002, from Mr. Vaughan to Mr. Kevin Phelan at his address at Omagh, County Tyrone. The letter was in the form set out below:

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
email: christophervaughan@breathemail.net
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
Omagh
Co Tyrone
BT72 5QA

18 April 2002

Dear Kevin

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

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

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

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

Yours sincerely

C J VAUGHAN

VAT Registration No. 608 4809 28

8.27 From that letter, it appeared that Mr. Vaughan had written to Mr. Kevin Phelan, indicating that the Tribunal had been in contact with him, and that he had queried certain documents passing between himself and Mr. Kevin Phelan, in July and September, 2000. Mr. Vaughan had sought the assistance of Mr. Kevin Phelan, with regard to the queries raised by the Tribunal in relation to the documents. He enclosed copies of the *"long"* and *"short"* forms of each of the letters, and he requested that Mr. Kevin Phelan examine his files, and that he provide his comments and observations to Mr. Vaughan.

8.28 With his letter to Mr. Davis of 29th April, 2002, Mr. Vaughan also enclosed Mr. Kevin Phelan's reply to him, which was dated 23rd April, 2002, and which is set out below:

106 Gillygooley Road
Omagh
Co.Tyrone
N.Ireland
BT78 5QA
Fax: (04882) 250744

Mr. Christopher Vaughan
Solicitor
Old Church Chambers
Sandhill Road
Northampton NN5 5LH

23rd April 2002

Dear Christopher

I acknowledge receipt of your letter dated April 18th 2002. I have examined my files as requested by you and confirm the only letters I have on file are "July A" and "September A".

I recall on some occasions in the past you issued correspondence to me outlining incorrect details following our prolonged and detailed meetings. I know on occasions you confused clients and projects, which resulted in corrections having to be made and new correspondence to be issued. I believe the documentation you have forwarded has probably arisen for this reason. In any event as stated I have letters marked "July A" and "September A" on my files which I hold as originals.

I have no idea where the documents marked "July B" and "September B" have come from.

I trust this information is of assistance.

Yours sincerely

Kevin Phelan

8.29 If Mr. Vaughan's remarks on the telephone to Mr. Davis concerning these letters are ignored, on the basis that he may not have had sufficient opportunity to consider the matters being drawn to his attention, or to seek the instructions of his clients, the various explanations later offered by him in correspondence, for the existence of the *"long form"* and *"short form"* of the letters, should be noted. A number of features of Mr. Vaughan's correspondence with Mr. Davis, and partly also with Mr. Michael Kelly of Kelly Noone & Company, solicitors for Mr. Lowry, are noteworthy in light of subsequent evidence, and other documentation which came to the attention of the Tribunal shortly before and during the course of Mr. Vaughan's evidence in 2009.

8.30 Referring firstly to Mr. Vaughan's letter of 29th April, 2002, it will be observed that this letter was written after instructions, and referred to the enclosure by Mr. Vaughan of *"an exchange of correspondence"* between himself and Mr. Kevin Phelan. The exchange consisted of one letter from Mr. Vaughan, purporting to raise the issue of the *"long"* and *"short"* form letters, and one letter in response from Mr. Kevin Phelan, purporting to explain them. From subsequent evidence given in 2009, it is clear that the exchange of correspondence between Mr. Vaughan and Mr. Kevin Phelan concerning these matters was not limited to these two letters. The suggestion that these two letters contained the relevant exchange of correspondence wholly misrepresented the position. The true picture, which did not emerge until 2009, was that there was an exchange of correspondence between Mr. Kevin Phelan and Mr. Vaughan, also embracing correspondence between Mr. Kevin Phelan's solicitors and Mr. Vaughan, concerning matters similar to those, and in some cases identical to those, being raised in the correspondence between the Tribunal and Mr. Vaughan. From the correspondence enclosed by Mr. Vaughan with his letter of 29th April, 2002, it appeared, as no doubt it was intended to appear, that this matter of the *"long form"* and *"short form"* letters had just ten days previously been raised by Mr. Vaughan with Mr. Kevin Phelan, so as to elicit the response from Mr. Kevin Phelan dated 23rd April, 2002. The true facts are that Mr. Kevin Phelan had been corresponding both directly, and through his solicitors, with Mr. Vaughan in relation to a number of assertions, the thrust of which was that documentation he held, concerning matters similar, and in some cases identical, to matters being raised by the Tribunal, diverged from documentation which had been furnished to the Tribunal concerning those matters. In short, Mr. Kevin Phelan was effectively suggesting that altered versions of letters, actually sent by Mr. Vaughan to him, had been relayed to the Tribunal, so as to misrepresent the true position. Had this correspondence been made available to the Tribunal, it would not have been open to Mr. Vaughan to furnish Mr. Kevin Phelan's letter to him of 23rd April, 2002, as a purported explanation for the *"long form"* and *"short form"* letters.

8.31 When, in response to his letter of 29th April, 2002, enclosing his correspondence with Mr. Kevin Phelan, Mr. Davis again wrote seeking his assistance, Mr. Vaughan responded, on 7th May, 2002, stating that he did not think that there was anything further he could do to assist the Tribunal. Efforts were then made by the Tribunal, with the solicitors to both Mr. Lowry and Mr. Aidan Phelan, to have them obtain a more comprehensive explanation from Mr. Vaughan. Mr. Lowry's solicitors, in response, informed the Tribunal that they had written to Mr. Vaughan, seeking an explanation as to why, in the context of their client's dealings in regard to the Cheadle property, the reference:

"Michael wants to own the property in his own name for a month prior to the sale",

along with the different versions of:

"...this property was purchased I (sic) my name as Trustee for Aidan Phelan"

and

"this property was purchased I (sic) my name as Trustee for our client"

came to be made.

8.32 Following an initial holding letter, Mr. Vaughan's substantive reply to Mr. Lowry's solicitors was sent on 4th July, 2002. In the course of what was a relatively lengthy letter, he referred to the two property transactions undertaken as having been somewhat confusing and difficult, and stated:

"Because Kevin Phelan acted for both Aidan Phelan and Michael Lowry and was involved in other matters as well, it was very difficult when speaking with Kevin Phelan over the telephone to know whom he was representing at any one time, especially as any telephone conversation could cover a number of different matters.

This certainly caused confusion on various occasions which is why there may have been more than one version of a document prepared by me because the first may have been prepared by me following a misunderstanding of my instructions."

8.33 At a later point in his letter, after referring to his view that Mr. Lowry relinquished any claim to ownership of the Cheadle property in early 2000, and that the public registration of the identities of Mr. Lowry and his daughter as officers of Catclause Limited did not seem to accord with a disguised involvement on the former's part, Mr. Vaughan continued, in purporting to explain the second paragraph of the *"long form"* of the letter of 5th September, 2000, containing a reference to Mr. Michael Lowry wishing to own the property in his own name, and stated:

"You indicate that I have confused Aidan Phelan and Michael Lowry. This is not unexpected, bearing in mind what I have written above.

However, I was instructed that The Revenue would expect that any site should owned [sic] *by an investor personally to minimise any Capital Gains Tax liability. Therefore the objective was correct but the name was stated*

incorrectly by me - I would put this down to either a simple error or lack of concentration. Kevin Phelan complained to me over it and I simply corrected it.

With regard to your reference to the duplicate letters as mentioned above, I regularly faxed transmissions to Kevin Phelan throughout our whole working relationship.

If he then corrected something on receipt of a FAX, I would have sent him the amended version and kept that hard copy on my file, but probably not the first version, of the FAX. Kevin Phelan would therefore have two versions of the same letter, and I would only have the final version."

8.34 In a letter to the Tribunal dated 17th July, 2002, in further addressing the question of how two forms of the two letters in question came to be generated, with only the "*short form*" being provided to the Tribunal, Mr. Vaughan stated:

"Kevin Phelan may well then have corrected my understanding of events on the receipt of a Fax to him. I would then have sent him an amended version and kept the hard copy of that amended version on my file. I probably would have disposed of the first version of the Fax to avoid further confusion.

The end result would be that Kevin Phelan would have two versions of the same Fax, the first incorrect version and the second correct final version.

Kevin Phelan in his letter to me of the 23rd April 2002 states that he only has one version of the two letters in question, I assume therefore that he likewise disposed of the incorrect version.

However, the Faxes may well have had a wider distribution as copies could have been sent through to the clients and possibly other professional advisors, and one of those third parties may well have mischievously sent the incorrect version through to the Tribunal for some reason only known to the Sender.

I cannot speak on behalf of Kevin Phelan but so far as I am concerned the Tribunal has the correct version of the Faxes in question."

8.35 Correspondence was also exchanged with the solicitors for Mr. Denis O'Brien, Mr. Aidan Phelan and Mr. Lowry; in essence, the respective solicitors indicated that they were unable to explain the discrepancies between the

different forms of the letters, but since each of these individuals testified at public sittings, it seems unnecessary to recount this correspondence.

8.36 As to Mr. Kevin Phelan, whose letter of 23rd April, 2002, to Mr. Vaughan has already been referred to, he remained unprepared to attend and testify at the Tribunal's sittings, and summarised his position in a letter sent by fax to the Tribunal at lunchtime on 29th July, 2002, the day the relevant public sittings commenced. In this letter he referred to earlier correspondence, said that he had discussed the matter with his solicitor, and went on to state:

> *"Any issue considering the validity of correspondence with Christopher Vaughan is a matter that should be addressed with him. It is for the Tribunal to come to its own conclusion over the validity or otherwise of correspondence that has come from Mr. Vaughan. I would respectfully state therefore that questions as to the validity of this documentation have wrongly been directed to me.*
>
> *Further I have instructed solicitors in England to act on my behalf in relation to issues that have arisen of which Christopher Vaughan is connected to. At this stage therefore my priority has to be the resolving of issues that I am connected to in relation to ongoing disputes arising out of business transactions within England. What I do not wish to do is to prejudice my position in relation to these ongoing matters by divulging information to the Tribunal."*

8.37 Mr. Kevin Phelan concluded this letter by stating that, whilst it was his wish to co-operate with the Tribunal, he felt, in the context of the matters mentioned, unable to respond substantively or attend public sittings, but that no inferences should be drawn from the absence of such a substantive response.

8.38 At this time, Mr. Kevin Phelan, as will become apparent from a later chapter, was engaged in comprehensive negotiations with Mr. Aidan Phelan, Mr. Lowry and Mr. O'Brien, and had corresponded with Mr. Vaughan, with solicitors for Mr. Aidan Phelan, with solicitors for Mr. Denis O'Brien, and possibly others, in connection with matters related to the inquiries being conducted by the Tribunal in 2002, with specific reference to the *"long form"* and *"short form"* letters. He did not inform the Tribunal, as subsequently emerged from the evidence of Mr. Christopher Vaughan, not given until 2009, that he had, both directly and through solicitors, been in correspondence with Mr. Vaughan suggesting that certain letters, including that of 5th September, 2000, had been provided to the Tribunal, as part of Mr. Vaughan's conveyancing files, so as to misrepresent the true state of affairs concerning the ownership of the Mansfield and Cheadle

properties. Whilst in his correspondence to the Tribunal Mr. Kevin Phelan alluded to dealings with Mr. Christopher Vaughan, connected with disputes in which he was involved in England, it is now clear, in light of subsequent evidence, that he could not have brought the correspondence referred above to the attention of the Tribunal. To have done so would have betrayed a complete contradiction between what was asserted in that correspondence with respect to Mr. Christopher Vaughan's activities, and what was contained in his letter of 23rd April, 2002, to Mr. Christopher Vaughan, which was forwarded to the Tribunal as a purported explanation for the existence of the *"long form"* and *"short form"* versions.

EVIDENCE HEARD

8.39 Public sittings in relation to the two letters and their different forms commenced on 29th July, 2002. Following an Opening Statement, Mr. John Davis gave evidence, in his capacity as Tribunal solicitor, in relation to the foregoing correspondence, and his dealings with individuals involved, including Mr. Keena. It is worth noting that, in the course of his evidence, Mr. Davis was queried by counsel on behalf of Mr. Aidan Phelan as to whether he had endeavoured to ascertain from Mr. Keena the source of the *"long form"* and *"short form"* letters provided to the Tribunal. Mr. Davis' response was that he saw little point in pursuing the matter, as he assumed, and the Tribunal believes justifiably, that Mr. Keena, as a journalist, would not have been prepared to disclose his sources.

Evidence of Mr. Denis O'Brien: no involvement in the transaction

8.40 Mr. Denis O'Brien then gave evidence. He stated that he did not see how the correspondence in question concerned him and, in accordance with what had already been conveyed in writing to the Tribunal by his solicitors, confirmed that he knew nothing of the letters in question, or the transaction to which they primarily related, and that he saw no reason why there should have been differing forms of the same letters. He acknowledged that he was now aware that Mr. Kevin Phelan and Mr. Vaughan had acted professionally for himself and Mr. Aidan Phelan, in relation to property transactions at Doncaster and Luton, but stated that he had never met either of these individuals, and in particular was unaware, at the time of the Doncaster transaction, that Mr. Vaughan was acting as solicitor for the vehicle that was used for purposes of the purchase. Accordingly, he was entirely unaware of any practice that might have taken place, whereby Mr. Vaughan may have sent letters to Mr. Kevin Phelan for approval, and nobody had brought any such practice to his attention. In conclusion, he reiterated earlier evidence, to the effect that he had had no

involvement whatsoever in the Cheadle transaction, either in regard to loan finance or otherwise, and he remained very unhappy that he had been wrongly linked to it.

8.41 Mr. O'Brien did not however inform the Tribunal that, as subsequently emerged, at or around the time he was giving evidence, and for some time shortly afterwards, he was in dispute with Mr. Kevin Phelan; that negotiations were being conducted on his behalf with Mr. Kevin Phelan; that negotiations were, to some extent, integrated with negotiations then being conducted with Mr. Kevin Phelan by Mr. Denis O'Connor. Furthermore, there was at that time, on the part of Mr. O'Brien and his interests, an apprehension that Mr. Kevin Phelan was hostile to Mr. O'Brien, and that there was a prospect or risk that he might give evidence hostile to Mr. O'Brien in the course of the Tribunal's proceedings. All of these matters are recounted in greater detail in the course of a later chapter in this Volume, dealing with the Doncaster transaction.

Evidence of Mr. Michael Lowry:

Not happy that there appeared to be two versions of the letters in existence

8.42 Mr. Michael Lowry gave evidence on 30th July, 2002. Part of his evidence then described the updated arrangements he had entered into in regard to the Mansfield transaction, as well as detailing certain meetings held with his advisers, after Investec Bank had caused the Cheadle transaction to be brought to the Tribunal's attention, and these matters are referred to in the previous chapters relating to the Mansfield and Cheadle transactions.

8.43 Mr. Lowry also dealt with the letters from Mr. Vaughan to Mr. Kevin Phelan; he confirmed his earlier evidence, to the effect that he had ceased to have any beneficial interest in the Cheadle property as and from early in 2000, and stated that he was at a total loss to understand how Mr. Vaughan appeared to indicate otherwise in the longer forms of the two letters. Insofar as Mr. Vaughan came to do this, Mr. Lowry stated that this was emphatically not on foot of any instructions given by him. He had never received either letter in any form, at the times they had been sent to Mr. Kevin Phelan, and had become aware of their existence only by reason of having been furnished with them by the Tribunal, following which he had instructed his solicitors to comply with the Tribunal's requirements, in particular by requesting a detailed explanation as to what had transpired from Mr. Vaughan.

8.44 When it was put to Mr. Lowry by Tribunal counsel that Mr. Vaughan's written response to his solicitors left much to be desired, by way of providing adequate responses to the queries raised, Mr. Lowry responded that this was not for him to judge, and was a matter for the Tribunal, but that it seemed to him

that Mr. Vaughan had responded to the best of his ability. Mr. Lowry acknowledged that he was not happy that there appeared to be two versions of the letters in existence. If references in the *"long form"* related to him, and suggested an ongoing involvement in the Cheadle property on his part after early 2000, they were wrong.

8.45 Regarding the letter of 12th July, 2000, and the *"long form"* reference to Mr. Vaughan having purchased the Cheadle property as trustee *"for our client"*, Mr. Lowry accepted that this was in substance correct, assuming the reference was to him, and that the *"short form"* reference to having purchased as trustee for Aidan Phelan was in fact incorrect. As to the reference in the *"long form"* of the letter of 5th September, 2000, to Mr. Vaughan being unhappy about sending correspondence to Mr. Lowry, Mr. Lowry stated that there was no basis or reason whatsoever for this. When it was put to Mr. Lowry that the basis for changing the reference to a purchase *"for our client"* in the letter of 12th July, 2000, to a purchase *"for Aidan Phelan",* was to remove any reference to Mr. Lowry in that context, Mr. Lowry replied that he could not accept that, and there would have been absolutely no reason why that should have been done, but he was unable to advance any explanation of his own for it, save to refer to Mr. Vaughan's own letter, to the effect that he had been confused.

8.46 With regard to the portion of the *"long form"* of the letter of 5th September, 2000, which stated:

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

Mr. Lowry testified that, insofar as this seemed to refer both to the Cheadle transaction and himself, he had at that date no remaining interest in the Cheadle property, and he had given no instructions whatsoever to any such effect to Mr. Vaughan.

8.47 Mr. Lowry was then referred to the meeting in Jury's Hotel, in Dublin on 17th August, 2000, attended by himself, Mr. Vaughan, Mr. Aidan Phelan and Ms. Helen Malone, to which reference has already been made. The note of that meeting that had, as will be recalled, been prepared by Ms. Helen Malone, had been headed *"UK Property ML"*, and, after a series of references to the Mansfield property, had then referred to the Cheadle property in terms of its history, cost, financing and projected action, including an apparent reference to Mr. Vaughan being the registered owner, in a capacity of trustee. It was suggested by Tribunal counsel to Mr. Lowry that, having taken the trouble to

attend a meeting in Dublin with regard to both transactions, less than three weeks prior to his letter of 5th September, 2000, it seemed highly improbable that Mr. Vaughan could at the time of such writing have been mistaken or confused as to the true facts. Mr. Lowry reiterated earlier responses in regard to his surprise that two forms of the letters existed, his unhappiness with this fact, and his inability to explain portions of the *"long form"* letters, which were primarily a matter for Mr. Vaughan.

8.48 Tribunal counsel also raised in some detail with Mr. Lowry the various discrepancies between the *"long form"* and *"short form"* of both letters, in matters of wording, spelling, punctuation and the like, in terms similar to those set forth in the Appendix to this chapter, and Mr. Lowry was in agreement that what was disclosed appeared to indicate that, in the case of each letter, two separate occasions of preparation were involved; in other words, rather than the *"long form"* letters having been corrected, to remove elements of mistake, it seemed that each letter had been entirely reconstituted.

Mr. Michael Lowry understood Mr. Christopher Vaughan's position to be that he got confused

8.49 In conclusion, Mr. Lowry repeated that he had accurately recounted in his earlier evidence all material details relating to his involvement in the Cheadle transaction, and furnished to the Tribunal all material documents that were known to him; any suggestion that Mr. Vaughan as his solicitor may have created the *"short form"* of the letters, in order that these alone might be made available to the Tribunal, whilst withholding from it the *"long form"*, was a falsehood and did not happen. Mr. Lowry testified that he could offer no explanation as to how or why Mr. Vaughan wrote the *"long form"* letters, stating that he understood Mr. Vaughan's position to be that he got confused, and that at times he confused Mr. Lowry with Mr. Aidan Phelan. In other words, Mr. Lowry adopted the explanation contained in Mr. Kevin Phelan's letter to Mr. Vaughan, of 23rd April, 2002, which Mr. Vaughan had forwarded to the Tribunal as his response to the inquiries then made. At the same time, in recounting what had happened in the course of two meetings in Dublin, one at the offices of Mr. Aidan Phelan in Clonskeagh, on 15th March, 2001, and the other at the Regency Airport Hotel, on or around 27th March, 2001, Mr. Lowry could not recall whether Mr. Vaughan had stated at any of those meetings that there were times when he got confused as to who his clients were.

Evidence of Mr. Aidan Phelan: long form letters created mischievously

8.50 At a somewhat later stage, on 20th December, 2002, evidence in relation to these letters was given by Mr. Aidan Phelan. He stated that he had

had no knowledge of the *"long form"* of either letter, until so informed by the Tribunal. Mr. Phelan agreed that the *"long forms"* appeared to be on Mr. Vaughan's notepaper, and to contain his signature, and he accepted that, apart from the changes and additions apparent between the *"long"* and *"short"* forms, they seemed in each instance to be different in their overall format and layout. Save for absence of any reference to the company Catclause, Mr. Aidan Phelan felt that the *"short form"* of the letter, of 12th July, 2000, substantially reflected the actual situation as of that date, insofar as he had by then taken over the Cheadle transaction, and he further felt that the *"short form"* of the 5th September, 2000 letter accorded with what had emerged in prior evidence given to the Tribunal. He agreed that the *"short form"* of the letters contained no reference to Mr. Lowry having any beneficial interest in the Cheadle property after the start of 2000, that the *"long form"* letters were quite different in this regard, and that, whilst the reference, in the 12th July, 2000 *"long form"* letter to Mr. Vaughan having purchased the property *"as Trustee for our client",* could have referred to anyone, it was quite possible that the reference was to Mr. Lowry.

8.51 Regarding the meeting of 17th August, 2000, at Jury's Hotel, in relation to which Ms. Helen Malone had prepared a note, Mr. Aidan Phelan confirmed that, at that meeting, he believed that Mr. Vaughan could have had no doubt that he, Mr. Aidan Phelan, was the beneficial owner of the Cheadle property, and that Mr. Lowry had only a moral responsibility to assist in giving effect to any sale: that accordingly, the *"long forms"* of the letters were in this regard incorrect. If the *"long forms"* were in fact correct, Mr. Phelan agreed that they would provide clear evidence that Mr. Lowry remained beneficially entitled, and that evidence to the contrary was incorrect.

8.52 When Mr. Aidan Phelan had gone to discuss the matter with Mr. Vaughan, he pointed out to him, in the context of the additional paragraph in the *"long form"* of the 5th September, 2000 letter, that no mortgage lender had been involved in the Mansfield transaction, and Mr. Phelan recalled that Mr. Vaughan had accepted that this was not something he should have or could have written, and that it flew in the face of the facts. Mr. Phelan's recollection was that Mr. Vaughan was unable to provide an adequate explanation as to how the *"long form"* of the letters came into existence; when he had told him that his initial explanation, as advanced to Mr. Davis, seemed implausible, Mr. Phelan got the impression that Mr. Vaughan was under pressure, and was seeking closure in the matter. He conveyed his concern that the *"long form"* letters did not reflect the factual position, particularly in regard to Mr. Lowry's cessation of involvement in the Cheadle transaction in early 2000, but had found Mr. Vaughan somewhat confused, and unable to explain satisfactorily how the *"long form"* of the letters had come about. Mr. Phelan more than once expressed the

view that the *"long form"* letters had been created mischievously, and that, if they had not been created by Mr. Vaughan, they were in effect forgeries, for the purpose of the creation of which access would have been required to Mr. Vaughan's office, or at least his notepaper. He agreed that such a course would have required malice, and would in addition have entailed an intention to mislead the Tribunal, but he was unable to point to any person that he felt might have been responsible for this. He disagreed with the suggestion that the *"long form"* letters may have recounted the true position that obtained, and that the *"short form"* letters were devised to obscure Mr. Lowry's involvement, and to withhold the true facts from the Tribunal.

8.53 In all, Mr. Aidan Phelan had met Mr. Vaughan on three occasions, and had urged him to come to Dublin to testify on each occasion; however, Mr. Vaughan was unprepared to do so, feeling that he had done enough, by making his conveyancing files available, and by attending a private meeting with Tribunal lawyers. Mr. Aidan Phelan agreed with Tribunal counsel that there were elements of improbability in the account advanced in correspondence in relation to the letters by Mr. Vaughan, and he had indicated to Mr. Vaughan his own view that the *"long forms"* of the letters were created mischievously, which he said Mr. Vaughan had agreed was possible. However, when Mr. Vaughan eventually came to give evidence in 2009, he suggested that the only time the letters could have been altered was whilst they were in fact in the custody of or under the control of Mr. Aidan Phelan, as will appear later in this chapter, when the relevant evidence of Mr. Vaughan given in 2009 is considered.

8.54 In response to counsel for Mr. Lowry, Mr. Phelan agreed that there were persons who could have shed light on the matter who had not testified to the Tribunal, and that these included Mr. Vaughan, Mr. Kevin Phelan, Mr. Keena, and whoever may have been his informant. He also agreed that whoever had provided Mr. Keena with both *"short"* and *"long"* versions had been close to the actual transactions, and must have been generally aware of the Tribunal's dealings, but that by reason of absence, the reliability of any such person could not be tested. As will appear from further evidence of Mr. Aidan Phelan in 2009, at the time of his earlier evidence in December, 2002, Mr. Phelan was in fact in possession of instances of other similarly altered correspondence, of which the Tribunal was then unaware, and which will be dealt with later in this chapter. Whilst therefore Mr. Aidan Phelan drew attention to the absence of certain witnesses, he did not see fit to bring to the attention of the Tribunal that, at that point, he had in his possession documentation that was directly germane to the matters on which the Tribunal was examining him.

Evidence of Ms. Helen Malone

8.55 Evidence was also heard from Ms. Helen Malone, business partner of Mr. Aidan Phelan, who dealt with the various meetings she had attended, initially that of 17th August, 2000, then at those held subsequent to the Cheadle transaction having been notified to the Tribunal. Regarding the meeting of 17th August, 2000, she confirmed that she had kept the note of the meeting that had commenced with a heading or reference relating the subject matter to Mr. Lowry's UK properties, and had then gone on to record what had been decided, in relation to both the Mansfield and Cheadle properties. As to the issue of the *"long form"* and *"short form"* letters, she said that she knew nothing about these documents, and stated that her attendance in some instances was by virtue of her expertise as a company secretary, preparing a note of any meeting as required, and advising on corporate matters, such as the striking off of Catclause, rather than as a contributor to any discussions of strategy.

Overview Of Evidence Heard Up To 2002

Different stages: initial evidence

8.56 The evidence heard by the Tribunal in 2002, concerning the *"long form"* and *"short form"* letters, was not the end of the Mansfield and Cheadle story. It was not until after further documents came to light, and further evidence had been given relating to aspects of the Doncaster transaction, that the true position concerning those transactions became clear. More documentation was to follow in the course of the evidence of Mr. Christopher Vaughan, when eventually he testified in 2009. Both that documentation and his evidence were to prove of major significance in particularising and reinforcing the impression that had already emerged of wholesale suppression of the true facts. It is important however that the information which came to light at each stage of the Tribunal's inquiries concerning these and related matters should be outlined, so that it will be understood that, despite repeated protests on the part of relevant witnesses that the Tribunal had their full co-operation, the opposite in fact proved to be the case.

8.57 It will be recalled that, prior to 2001, the Tribunal understood that it had received a comprehensive account of Mr. Lowry's financial affairs, including all his bank accounts. The Cooper/Investec disclosures brought to light the full extent of the Carysfort transaction, the part played by Mr. David Austin in the transaction, and the existence of a substantial account of Mr. Michael Lowry in an Isle of Man off-shore bank. In addition, resulting from those disclosures, information also emerged concerning the Mansfield and Cheadle transactions.

In evidence in 2001, the Mansfield transaction was represented as involving dealings between Mr. Lowry and Mr. Aidan Phelan only, as purchasers, and that Mr. Lowry's involvement extended to the enjoyment of a mere 10% interest, on foot of his somewhat less than 10% contribution to the purchase price of that property. The Cheadle transaction was represented as a purchase by Mr. Lowry's company, Catclause, which due to a default by a promised guarantor, was taken over by Mr. Aidan Phelan. Documents purporting to represent the conveyancing files of Mr. Christopher Vaughan, solicitor, were produced in support of those accounts.

Revelation of existence of "*long form*" and "*short form*" letters

8.58 At the next stage, the revelation of the existence of the *"long form"* and *"short form"* letters suggested that the earlier Mansfield and Cheadle evidence may have been incomplete, and that a distorted version of the true facts may have been provided to the Tribunal.

8.59 As is clearly apparent from visual inspection of the "*long*" and "*short*" forms of the two letters, and was in any event canvassed with, and acknowledged by, Mr. Lowry in the course of his evidence, the two forms of the letters were in each instance separately conceived and generated. It is untenable to suggest, as was in the first instance advanced verbally by Mr. Vaughan to Mr. Davis, that the *"short forms"* of the letters were merely initial drafts, which Mr. Vaughan then expanded upon in writing to Mr. Kevin Phelan, on each occasion.

8.60 It is similarly unrealistic to seek to explain the different forms of the letters by suggesting, as was raised by Mr. Kevin Phelan, in his letter of 23rd April, 2002, regarding the matter to Mr. Vaughan, that they probably resulted from the repetition of a practice whereby, as in previous transactions, Mr. Vaughan had confused and misstated clients and projects, thereby requiring correction and fresh correspondence. Apart from it being self-evident that the *"short form"* letters are not mere corrected versions of the *"long form"* letters, there is neither logic nor rationale in the suggestion that Mr. Kevin Phelan, to whom the letters were addressed, and who on the basis of Mr. Vaughan's explanation, was manifestly not confused, should have required the letters to be reissued, corrected and resent to him. Furthermore, Mr. Aidan Phelan in evidence sensibly acknowledged the improbability of such a basis for the emergence or generation of these documents.

8.61 In light of subsequent evidence, it is curious that Mr. Aidan Phelan, in endeavouring to explain the letters, should have expressed the view that the

"long forms" of the letters had been created mischievously, that is, forged, although being unable to point to any person or persons who he felt may have been responsible for this. At the time that evidence was given, Mr. Aidan Phelan was in possession of documentation sent to him by Mr. Kevin Phelan, in which Mr. Kevin Phelan, in correspondence with Mr. Vaughan, had effectively suggested, on the basis of the existence of *"long form"* and *"short form"* letters, that Mr. Vaughan and Mr. Aidan Phelan had misled the Tribunal. It is also curious that Mr. Aidan Phelan, in his evidence, acknowledged that to enable the creation of such forgeries, access would have been required to Mr. Vaughan's office, or at least to his notepaper, a suggested explanation which was echoed ultimately in Mr. Vaughan's evidence that his file had been left by him in the custody of Mr. Aidan Phelan for some time. Of course, the Tribunal was wholly ignorant of all these matters at the time of its examination of the *"long form"* and *"short form"* letters. Furthermore, Mr. Vaughan had in any event acknowledged, in his initial telephone conversation with Mr. Davis after discovery of the *"long form"* letters, that the *"long form"* letters were indeed his letters, and were not forgeries, a proposition from which he never resiled in correspondence with, or later in evidence to, the Tribunal, despite the evidence of Mr. Aidan Phelan to the contrary. Accordingly, the *"long form"* letters cannot be regarded as forgeries.

8.62 Despite the *"long"* and *"short"* forms of the letters having been separately generated, it was clear in 2002 that efforts had been made, through the general similarities of form and content between them, and the duplication of an obvious and uncorrected spelling error ("*l*" instead of "*in*"), to convey a false impression that both were generated in the course of the same process.

8.63 Most significant of all was the evidence concerning the meeting at Jury's Hotel, Dublin, on 17th August, 2000, in which, according to Mr. Lowry, Mr. Aidan Phelan and Ms. Helen Malone, what was discussed was a proposal or scheme to mitigate the incidence of taxation in the context of a sale by Mr. Aidan Phelan. In the *"long form"* letter of 5th September, 2000, Mr. Vaughan alluded instead to the steps to be taken to enable the property to be disposed of by Mr. Lowry. What was suggested was that Mr. Lowry required that the property be held in his own name for a short period prior to sale; that is, in his own name as opposed to the name of the then trustee holding the property, Mr. Vaughan. From this letter, it seems clear that Mr. Lowry was the beneficiary of the trust, and was the person directing the conduct of the transaction, and benefiting from the disposal. The suggested explanation for the generation of this letter, namely that Mr. Vaughan tended to confuse clients and properties, does not bear scrutiny when it is remembered that the letter was written on 5th September, 2000, just over a fortnight after the meeting, and it is impossible to credit that an efficient solicitor, charged with such responsible work, should have so

radically misunderstood his instructions, so soon after receiving them, and should have so fundamentally confused the identity of the clients so soon after meeting them.

8.64 It is impossible to avoid the conclusion that the *"long form"* of the letter of 5th September, 2000, set forth what Mr. Vaughan sought to convey to Mr. Kevin Phelan on foot of what had transpired at the meeting on 17th August, 2000, at Jury's Hotel in Dublin. Likewise, it was impossible, in 2002, for the Tribunal to avoid the conclusion that a view had been taken, that the content of the *"long form"* of the letter of 5th September, 2000, would be perceived to involve Mr. Lowry beneficially in the Cheadle transaction, at a time and in a manner at variance with the account which had been conveyed to the Tribunal. Furthermore, it was clear that on foot of that realisation, it had been determined deliberately to suppress and withhold from the Tribunal the *"long form"* letters, with the *"short forms"* being subsequently created and provided to the Tribunal as supposedly the true communications. Whilst the *"long form"* letters do contain elements of inaccuracy, their overall tenor is to the effect that Mr. Lowry remained beneficially interested in Cheadle in the year 2000, and was so at the dates of each of the letters

8.65 The *"short form"* letters were created at a time or times appreciably subsequent to their purported 2000 dates, and at or around the time that the Cheadle transaction had been referred to the Tribunal in 2001, and were devised to substitute and supersede the *"long form"* letters, with the effect of misleading and delaying the Tribunal.

THE EMERGENCE OF YET FURTHER FALSIFICATION

Mr. Christopher Vaughan's belated evidence in April, 2009

8.66 In November, 2008, the Tribunal, having heard what it regarded as the available evidence, issued Provisional Findings, comprising the Tribunal's provisional views of the evidence heard, and which if made, could impact adversely on persons to whom they related. Such affected persons were accordingly notified of those Provisional Findings, and accorded an opportunity to provide written submissions to the Tribunal addressed to them. As part of this process, Mr. Christopher Vaughan, even though he had not attended as a witness, was notified of a number of such Provisional Findings.

8.67 Following this notification, in January, 2009, the Tribunal was informed by Messrs. Meagher, solicitors, acting for Mr. Denis O'Brien, that Mr. Vaughan would be travelling to Dublin to attend a consultation with Mr. O'Brien's legal representatives. This offered the Tribunal an opportunity to serve Mr. Vaughan

with a Witness Summons whilst in the jurisdiction. In the event, the Tribunal arranged for Mr. Vaughan to attend at the Tribunal's offices in Dublin Castle, to accept service of a witness summons, on 30th January, 2009. Mr. Vaughan duly did so, was served with a witness summons, and was asked to take the witness box briefly to enable him to comply formally with that summons.

8.68 Mr. Vaughan's substantive evidence was scheduled to commence on 21st April, 2009. On the morning of his attendance, Mr. Vaughan produced to the Tribunal a voluntary Statement, together with certain documentation. This included documentation which had recently been located on a complaint file, maintained by the firm with which his own practice had merged, Messrs. Scott Fowler, solicitors, and included correspondence from Mr. Kevin Phelan personally, and from his then solicitors, Messrs. Woodcock & Sons, in relation to a series of disputes between him and Mr. Vaughan, dating back to early 2001. Much of this material had never previously been provided to the Tribunal. At that time, Mr. Vaughan also provided the Tribunal with fresh copies of his own conveyancing files in connection with the Mansfield and Cheadle transactions, identical to those initially provided to the Tribunal in 2001, that is, containing the *"short form"* letters.

8.69 In the course of his evidence in April, 2009, Mr. Vaughan furnished a detailed explanation, which he testified was based on his best recollection, for how the *"long form"* and *"short form"* letters of 12th July, 2000, and 5th September, 2000, had come into existence. In brief, his explanation was to the effect that, shortly after sending the *"long form"* versions of those letters to Mr. Kevin Phelan, he was contacted by Mr. Phelan, who informed him that he had made errors in those letters. Mr. Vaughan therefore had amended the letters, and sent the resulting *"short form"* or so-called corrected versions to Mr. Kevin Phelan. Having done so, he destroyed his file copies of the original *"long form"* letters, and placed the *"short form"* versions on his file in substitution for them.

8.70 As to why, both *"short form"* letters had been, in every case, completely reconstituted, and not simply amended, Mr. Vaughan stated that, from time to time, his own secretary might not have been available to him; that, in that event, he would have arranged to have a document retyped by one of the secretaries in Scott Fowler, who at the time occupied adjoining offices. As to why, in circumstances in which he stated he was sensitive to criticism by Mr. Kevin Phelan, he would have sent him a letter, then sent him an altered version of that letter, and not have retained copies of both versions on his file, it was Mr. Vaughan's evidence that the letters were wrong, and they were destroyed. In response to the suggestion put to him that by so doing, he was putting himself at the mercy of a person likely to criticise him, Mr. Vaughan agreed that the

proposition was absolutely correct, but it was not a matter that occurred to him at the time, and he observed that "*the benefit of hindsight is wonderful*".

Resumption of Mr. Christopher Vaughan's evidence in June, 2009

Further documents from Mr. Christopher Vaughan's files came to light

8.71 It was not possible to complete Mr. Vaughan's evidence in April, 2009, and consequent on the non-availability of his counsel, the balance of his evidence was deferred to 23rd June, 2009. The Tribunal learned that, in the interim period, between April, 2009, and June, 2009, Messrs. Oliver Roche & Company, solicitors, of Omagh, County Tyrone, representing Mr. Kevin Phelan, had written to Mr. Vaughan's solicitors enclosing a large quantity of copy correspondence, including letters from Mr. Vaughan to Mr. Kevin Phelan, which had never previously been disclosed to the Tribunal by Mr. Vaughan, or by any other person with whom the Tribunal had had dealings. Whilst there was a regrettable delay in forwarding this material to the Tribunal, it was ultimately produced on the afternoon before Mr. Vaughan's evidence was due to resume. The documents produced included further instances of what appeared to be altered correspondence, where Mr. Michael Lowry's name had again been removed, and in addition, a number of instances of correspondence containing references to the UK property transactions, and in particular the Cheadle transaction, which were inconsistent with the evidence previously heard by the Tribunal about those transactions, and were consistent with an involvement on the part of Mr. Lowry at variance with that evidence. None of these documents had been within the conveyancing files produced by Mr. Vaughan to the Tribunal, either in 2001, or again shortly before his initial attendance in April, 2009.

8.72 Apart from that documentation which had emanated from Mr. Kevin Phelan, further new information came to the Tribunal's attention after the completion of Mr. Vaughan's attendance, when Mr. Aidan Phelan provided the Tribunal with a copy of a letter, dated 8th March, 2002, and enclosures, which he had received from Mr. Kevin Phelan's then solicitors. The letter contained a number of assertions relating to the UK property transactions which had been under examination by the Tribunal from 2001, and attached to that letter was a set of documents, which included documents which the Tribunal had never previously seen, and others which the Tribunal had only seen as a result of the then recent correspondence, from Mr. Kevin Phelan's Omagh solicitors, to Mr. Vaughan's solicitors. These documents, appended to the letter of 8th March, 2002, included yet further instances of altered correspondence, and of correspondence that had never been included in the conveyancing files produced by Mr. Vaughan to the Tribunal.

8.73 The most significant of the items of correspondence belatedly produced, in terms of the Tribunal's inquiries, are itemised in the Appendix to this chapter in chronological order and, where the document in question is a "*long form*" letter, the corresponding "*short form*" letter, as it appeared on the files initially produced to the Tribunal, is also appended for ease of reference. These documents in the Appendix are as follows;

(i) a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 5th October, 1998;

(ii) the "*short form*" and "*long form*" versions of a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 27th August, 1999;

(iii) the "*short form*" and "*long form*" versions of a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 12th November, 1999;

(iv) the "*short form*" and "*long form*" versions of a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 1st December, 1999;

(v) a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 9th August, 2000;

(vi) a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 18th August, 2000;

(vii) a letter from Mr. Christopher Vaughan to Mr. Aidan Phelan of 19th September, 2000;

(viii) a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 19th September, 2000;

(ix) a letter from Messrs. Goldsmith Williams, solicitors, to Mr. Christopher Vaughan of 21st September, 2000;

(x) a letter from Mr. Christopher Vaughan to Messrs. Goldsmith Williams, solicitors, of 4th October, 2000;

(xi) a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 18th January, 2001;

(xii) a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 26th January, 2001;

(xiii) a fax from Mr. Aidan Phelan to Mr. Kevin Phelan, with an attached memorandum, of 17th March, 2001.

The April 2009 evidence revisited

8.74 On the resumption of his evidence in June, 2009, Mr. Vaughan's earlier testimony, on the *"long form"* and *"short form"* letters, was revisited in the light of the newly disclosed material furnished by Mr. Kevin Phelan's solicitors. His attention was drawn to the contents of the newly disclosed letter, dated 18th August, 2000, which he had written to Mr. Kevin Phelan, already referred to in an earlier chapter, in which reference was made to the meeting of 17th August, 2000, at Jury's Hotel, in Dublin, attended by Mr. Vaughan, Mr. Lowry, Mr. Aidan Phelan and Ms. Malone, and for which Ms. Malone, had generated a note headed *"UK property ML"*.

8.75 From the contents of that letter, written on the day following that meeting of 17th August, 2000, it was clear that what had been discussed on that occasion related to the tax implications that would arise for Mr. Michael Lowry consequent on a sale of the Cheadle property, and not, as Mr. Vaughan had insisted in the course of his evidence in April, 2009, for Mr. Aidan Phelan, and as had likewise been testified by Mr. Lowry, Mr. Aidan Phelan and Ms. Malone in 2002. It followed that Mr. Vaughan was obliged to concede that testimony that he had given in April, 2009, seeking to explain the *"short form"* letter of 5th September, 2000, could no longer be sustained, and he was compelled to acknowledge that the *"long form"* was the true letter. The *"long form"* was of course consistent only with Mr. Lowry's continuing ownership of Cheadle.

8.76 As to why the additional material now made available, including the letter of 18th August, 2000, had not appeared within his files, Mr. Vaughan initially advanced, by way of explanation, that he had maintained separate files relating to the disposal of the Cheadle property, which had not come within the terms of the production made by him to the Tribunal in 2001. When put to him by Tribunal counsel that he had purported to provide documents relating both to the purchase and further disposal of the Cheadle property, Mr. Vaughan accepted that at least some of the material had not been contained in a separate file, and should have been included in the files he had produced to the Tribunal.

Files out of Mr. Christopher Vaughan's possession

8.77 Having been pressed on this matter, Mr. Vaughan then stated, in the course of his evidence, that his files had been out of his possession for a period of time. He testified that, following the meeting, to which reference has already

been made, at Mr. Aidan Phelan's office in Dublin, in March, 2001, he had left his files in the custody of Mr. Aidan Phelan and Ms. Malone for a period of time. Whilst this matter will be returned to, it should nonetheless be observed at this juncture that this aspect of Mr. Vaughan's June, 2009 evidence, when he testified that he was absolutely *"positive"* that he had left his files at Mr. Aidan Phelan's office, directly conflicted with his earlier evidence in April, 2009, when he had told the Tribunal that he did not have a good recollection of whether he had brought his files with him to that meeting, and queried what evidence Mr. Aidan Phelan and Ms. Malone had given on that point. The Tribunal is compelled to conclude that Mr. Vaughan's evidence in that regard in April, 2009, was untruthful and evasive, and demonstrated an acute sensitivity on his part surrounding what had occurred at that meeting in Dublin, in March, 2001.

8.78 The Tribunal cannot but record its dissatisfaction with the evidence of Mr. Vaughan, and in particular surrounding those aspects of his evidence which differed so markedly, between his initial attendance in April, 2009, before that additional material had come to light, and his later attendance in June, 2009. Had that material not become available, the Tribunal, as confirmed by Mr. Vaughan, would have been left with Mr. Vaughan's incorrect and untruthful account of what had occurred. The Tribunal is also satisfied that Mr. Vaughan's belated acknowledgment, but only when pressed, as to the falsified and incomplete contents of the files that he had produced to the Tribunal, was provided only when it became impossible to persist with his incorrect account, in the light of the documentation then before the Tribunal. This false account was one which Mr. Vaughan had maintained to the Tribunal since mid-2001.

Persistent adherence to a false version of events

8.79 The Tribunal also found much of Mr. Vaughan's evidence, as to the meaning of the unaltered *"long form"* correspondence, to be both implausible and unsatisfactory in a number of respects. This evidence has already been examined in the context of the Cheadle transaction, but it warrants repetition that Mr. Vaughan's evidence involved an attempt on his part to ascribe meanings to the contents of a number of letters which were wholly at variance with their plain and ordinary meaning, and the language which he had used. The Tribunal is compelled to conclude that this reflected a persistent effort on Mr. Vaughan's part to adhere to the false version of the transactions provided to the Tribunal by him, and by others, from the inception of the Tribunal's inquiries in 2001. This aspect of Mr. Vaughan's evidence is exemplified by his testimony in relation to the matters examined in the following paragraphs.

8.80 One of the letters that belatedly came to the Tribunal's attention was dated 9th August, 2000, and was written by Mr. Vaughan to Mr. Kevin Phelan. The letter contains reference to the fact that there was no indication on Mr. Vaughan's client account bank statement of the source of funds that had been used to complete the Mansfield property acquisition, which funds, as will be recalled, had originated in a bank account of Mr. Denis O'Brien. The letter also records, in relation to the Cheadle property, that if anybody undertook a company search against Catclause, the company which had been incorporated by Mr. Michael Lowry to hold the property,

> *"they would find out a link with M"*,

and continues by recording that it was on the advice of Mr. Aidan Phelan that Catclause had been abandoned, and the Cheadle property had been put into the names of Mr. Vaughan and his wife as trustees,

> *"for reasons of secrecy"*.

A copy of this letter can be found within the Appendix to this chapter. Whilst it was patently clear, from the plain terms and the ordinary meaning of its contents, that the purpose of that letter was to alert Mr. Kevin Phelan as to what might have been discoverable in relation to the funding of the Mansfield property, and the ownership of the Cheadle property, Mr. Vaughan in his evidence to the Tribunal insisted that the letter was written by him for no other purpose than to outline the mechanics of the two transactions, and was intended as a letter that Mr. Kevin Phelan would be at liberty to provide to prospective purchasers for their information. As to the reference in that letter to *"reasons of secrecy"*, it was Mr. Vaughan's evidence that that merely recorded a desire on his part to keep the reasons for the abandonment of Catclause, as the acquiring vehicle for the Cheadle property, secret from Mr. Kevin Phelan, and was not a desire on the part of the principals to the transaction to maintain secrecy as to the ownership at the time of its completion.

8.81 As regards the letter of 18th August, 2000, which was written the day after the meeting at Jury's Hotel on 17th August, 2000, and a number of other letters which followed and continued into early 2001, all of which on their face related to a scheme whereby the Cheadle property would be transferred into Mr. Michael Lowry's name, and that, when both that property and the Mansfield property were sold together, Mr. Lowry would be entitled to the substantive proceeds, Mr. Vaughan nevertheless sought to insist that these did not reflect a continuing interest on the part of Mr. Lowry in the Cheadle transaction after January, 2000.

8.82 It is important at this point to record that Mr. Vaughan accepted that the *"long form"* versions of his correspondence to Mr. Kevin Phelan were genuine items of correspondence, and likewise the correspondence which had emerged, and which had never been included in his files in any form. He also accepted that the contents of the *"long form"* and additional correspondence represented the true facts pertaining to the property transactions, at the time the correspondence was issued, although his evidence as to the import of the contents of that correspondence was wholly unimpressive and unreliable. It is also of significance that Mr. Vaughan never suggested that the correspondence that had come to light after his files had been furnished to the Tribunal, namely, the *"long form"* correspondence and the additional correspondence, were forgeries, a version of events which had been advanced only by Mr. Aidan Phelan.

8.83 It will be recalled that when the Tribunal examined the two *"long form"* and *"short form"* letters that emerged in 2000, it became clear that the *"short form"* versions had been entirely reconstituted. A detailed analysis in this regard is set out earlier in this chapter. It is clear, from even a cursory examination, that all of the three *"long form"* and *"short form"* letters, that were belatedly disclosed to the Tribunal in 2009, were similarly reconstituted. Furthermore, the *"long form"* versions contained references to an involvement of Mr. Michael Lowry in the transactions which are not consistent with the evidence which had been provided to the Tribunal. Moreover, the additional correspondence, which was not included in any form in the files produced to the Tribunal, also contained references to an involvement on the part of Mr. Michael Lowry in those transactions which are likewise inconsistent with the version of events advanced in evidence. In the light of all of the evidence heard by the Tribunal, the Tribunal is satisfied that Mr. Christopher Vaughan's files, as produced to the Tribunal were falsified in two significant respects:

(i) by the removal of certain correspondence, and its replacement with *"short form"* versions, in which references to Mr. Michael Lowry's involvement in the transactions were deleted;

(ii) and by the removal altogether of other correspondence, containing references to Mr. Lowry's involvement in those transactions.

8.84 Having received that additional documentation, and having heard the evidence of Mr. Vaughan, it became clear that, from the initial examination by the Tribunal of the possible alteration of two letters on Mr. Christopher Vaughan's files, what had emerged was the wholesale and quite startling

falsification of those files. The Tribunal is satisfied that the sole purpose of that falsification was to mislead the Tribunal as to the true nature and extent of Mr. Lowry's involvement in those transactions, and to thereby undermine its investigations, the effect of which has been to protract significantly the Tribunal's work. The question of when that falsification occurred, and who was party to it, will now be examined.

When and by whom the files were falsified

8.85 On the day prior to the Tribunal being notified of the Cheadle transaction by the solicitors acting on behalf of Investec Bank, Mr. Aidan Phelan, who had just returned from a business trip to Canada, made arrangements for all of the persons involved in the Cheadle transaction to attend at his office in Dublin, on 15th March, 2001. The location of the meeting or meetings on that day was erroneously described in evidence on a number of occasions as Clonskeagh. However, Mr. Aidan Phelan's practice had by March, 2001, relocated from Clonskeagh to Clanwilliam Court, where the events of that day in fact proceeded. The Tribunal heard evidence in connection with what occurred on 15th March, 2001, at a number of different stages in the course of its hearings, and in a number of different contexts. Firstly, the meetings were touched upon in the course of evidence given relating to the Mansfield and Cheadle transactions, during 2001. Secondly, they were revisited in the context of evidence heard in 2002, in connection with the *"long form"* and *"short form"* letters. And finally, they were further returned to in the course of the evidence given by both Mr. Christopher Vaughan and Mr. Aidan Phelan, in 2009. Different accounts of the circumstances of the meetings, and of the persons who were in attendance, were given by different witnesses at different times.

8.86 In his initial evidence given in July, 2001, only four months after the March meetings, Mr. Aidan Phelan stated that Mr. Lowry, Mr. Vaughan, and possibly Ms. Malone had attended. For her part, Ms. Malone told the Tribunal in October, 2001, that it was Mr. Aidan Phelan and Mr. Lowry who were in attendance, that Mr. Vaughan made an appearance, and that she thought, though she was unsure, that Mr. Kevin Phelan was also in attendance, if only briefly. She confirmed that she was herself in attendance.

8.87 When Mr. Lowry gave evidence in November, 2001, he had referred only to a meeting between himself and Mr. Aidan Phelan. He stated that Mr. Phelan had telephoned him on 15th March, 2001, to say that there was internal confusion in Investec Bank, and had asked him if he would call to see him about it. Mr. Lowry happened to be in Dublin at the time, and so was able to call in to see Mr. Phelan. In the course of his evidence on that occasion, Mr. Lowry did not mention that Mr. Vaughan was present, but he did state that he believed

that Mr. Kevin Phelan was in Mr. Aidan Phelan's office when he arrived, although the former was not present for his meeting with Mr. Aidan Phelan.

8.88 When the Tribunal again examined the circumstances surrounding this meeting in July, 2002, Mr. Lowry testified that Mr. Vaughan was also present in the office at the time Mr. Lowry had called in, and, whilst he spoke to him briefly, he did not have any meeting with him. Mr. Lowry's meeting on that occasion had been predominantly on a *"one-to-one"* basis with Mr. Aidan Phelan, although he said that Mr. Kevin Phelan may have been present for part, though not for all of the meeting. He did not see Ms. Malone, but he understood that she was in the vicinity.

8.89 Mr. Aidan Phelan and Ms. Malone gave further evidence in December, 2002. On that occasion, Mr. Aidan Phelan testified to the Tribunal that it was not correct to view what occurred on that day as a single meeting. He said there were various meetings, proceeding during the course of the day with various people, but that he was a common attendee at all meetings. He told the Tribunal that Mr. Kevin Phelan was the first to call to his office, and did so at around 9:00am or 10:00am that morning, having been asked to do so by Mr. Lowry. Mr. Aidan Phelan, according to his evidence, told Mr. Kevin Phelan that there was a problem with Investec Bank, but that there did not appear to be any commercial ramifications for the properties, and he stated that, after their exchange, Mr. Kevin Phelan had departed. As to whether Mr. Kevin Phelan remained in his office for most of the day, Mr. Aidan Phelan testified that he had not. Mr. Aidan Phelan confirmed that both Mr. Vaughan and Mr. Lowry also called during the course of that day, and that Ms. Malone would have come in and out of meetings.

8.90 In her evidence in late 2002, Ms. Malone stated that Mr. Aidan Phelan had spoken to her on that morning about the difficulties which had arisen with Investec Bank. This was the first time she had heard about the matter. Her recollection was not clear, but she thought that Mr. Kevin Phelan was the first of those who attended on that day to meet with Mr. Aidan Phelan. Mr. Lowry and Mr. Vaughan then arrived. Mr. Lowry was in Mr. Aidan Phelan's office, Mr. Vaughan joined them, and then Mr. Aidan Phelan asked Ms. Malone to join them. She did not stay for long, and she thought that Mr. Lowry had not been there for long either. As far as she could recall, Mr. Vaughan may have still been there with Mr. Aidan Phelan, when she left the office that evening.

8.91 Whilst there were divergences between the evidence of Mr. Lowry, Mr. Aidan Phelan and Ms. Malone as to who was in attendance at Clanwilliam Court on that day, and at what particular times, there was broad consensus that their

business was directed to the problems that had arisen with Investec Bank concerning the Cheadle transaction. Mr. Lowry's definite recollection was that Mr. Aidan Phelan, Mr. Kevin Phelan and Mr. Vaughan were consulting for the purposes of the making of a statement to the Tribunal. However, Mr. Lowry said that he was not interested in the detail, and that he merely wanted a general overview of the problem that had arisen, observing that when he left Clanwilliam Court, he was not much the wiser. He stated that neither he, nor Mr. Aidan Phelan, had any documents at the meeting. He was not involved in any round table meeting with the others present, was annoyed by the matter, and left them to get on with whatever information gathering exercise they were engaged in between themselves.

8.92 In her earliest evidence, Ms. Malone had testified to the Tribunal that she viewed the purpose of the meeting as having been to brief her, and everybody concerned, in relation to the Cheadle transaction. Her recall was that a history was given of what had occurred, that she was very confused, and that she thought others were similarly confused. She knew very little about the affair and, according to her evidence, it was Mr. Aidan Phelan, Mr. Lowry and Mr. Vaughan who were discussing matters. Her involvement related solely to the fact that she had signed the bank documentation on behalf of Catclause Limited, as an officer, albeit that in so doing she had been acting as an alternate in place of either Mr. Lowry or his daughter, who were the registered officers of Catclause. Mr. Aidan Phelan confirmed to the Tribunal that he felt that he had to provide an explanation to Ms. Malone in that, by reason of having signed the bank documentation, the matters which had arisen might impact on her. Mr. Aidan Phelan believed that he needed to prepare a statement in view of the matter being imminently brought to the attention of the Tribunal. He wished to have the assistance of Ms. Malone in preparing a statement.

8.93 There would likewise appear to have been broad agreement that the discussions of lengthiest duration were those that occurred on that day, between Mr. Aidan Phelan and Mr. Vaughan. It is clear that Mr. Vaughan brought his property files to that meeting, and Mr. Aidan Phelan stated that he would have reviewed the entire of those files in the course of their interaction.

8.94 On both occasions that he gave evidence in 2009, Mr. Vaughan testified in relation to his attendance at the meeting. In his initial statement to the Tribunal, which he confirmed at the commencement of his evidence, he stated that, at a meeting at Clanwilliam Court, on 15th March, 2001, he met Mr. Lowry, Mr. Aidan Phelan, Ms. Malone and, briefly, Mr. Kevin Phelan. By that time, as testified by Mr. Vaughan, his relationship with Mr. Kevin Phelan had

already begun to sour, and as will become apparent later in this Volume, the breakdown of their relationship escalated considerably in the following year.

8.95 Mr. Vaughan told the Tribunal that it was at that meeting, on 15th March, 2001, that he learned for the first time of the existence of the Tribunal, and of the matters into which it was inquiring. He was requested to attend, to discuss the Mansfield and Cheadle transactions, but in the course of the meeting he was also informed, for the first time, about the O'Brien family interest in another of the property transactions in relation to which he was acting, namely, the Doncaster Rovers transaction. As to whether he had brought his files to the meeting, Mr. Vaughan's evidence in April, 2009, on his first attendance to testify, was that he had probably done so, but that he could not remember. As already related, when he resumed his evidence in June, 2009, by which time the critical additional altered correspondence had come to the attention of the Tribunal, he testified that he had no doubt that he had brought his files with him on that occasion, and further that, at the conclusion of that meeting, he had left his files in the custody of Mr. Aidan Phelan and Ms. Malone. He could not recall how long they were out of his possession, but he was clear that, when he returned to England following that meeting, he did so without his files. As to whether his files could have been interfered with during the period that they were out of his possession, Mr. Vaughan testified:

> *"if I haven't got control of the file, I can't say what anybody might have done to it".*

He said the files were *"quite definitely"* at the meeting on 15th March, 2001, and he was *"absolutely positive"* that he left his files there.

Fax from Mr. Aidan Phelan to Mr. Kevin Phelan of 17th March, 2001: summary of a false position

8.96 There is one final document to which reference must be made, in any consideration of the circumstances in which Mr. Vaughan's files were falsified, and that is a fax from Mr. Aidan Phelan to Mr. Kevin Phelan dated 17th March, 2001, two days after the controversial interactions of 15th March, 2001, in Clanwilliam Court. The contents of that fax, and the evidence of Mr. Phelan in that regard will now be reviewed.

8.97 Before proceeding to consider that document, it should be recorded that it was Mr. Aidan Phelan's evidence that, whilst Mr. Christopher Vaughan's files were available on 15th March, 2001, and that he had an opportunity to review their contents on that occasion, Mr. Vaughan, contrary to his evidence to the Tribunal, did not leave those files behind him in the custody of Mr. Phelan or

Ms. Malone, but took them with him at the conclusion of their meeting. Mr. Phelan further categorically denied that he had any hand, act or part in the interference with, or falsification of, the contents of Mr. Vaughan's files as produced to the Tribunal. He observed that he believed that Mr. Kevin Phelan had access to those files, and that the Tribunal should make inquiries of him. In that regard, it must be borne in mind that, since the inception of the Tribunal's inquiries in 2001, Mr. Kevin Phelan had steadfastly refused to make himself available as a witness to the Tribunal, and although an Irish national, not being resident within the jurisdiction, he was not a compellable witness. This state of affairs was well known to Mr. Aidan Phelan when he gave his evidence in 2009.

8.98 The fax of 17th March, 2001, was an attachment to the letter of 8th March, 2002, from Mr. Kevin Phelan's solicitors to Mr. Aidan Phelan's solicitors, and had never been disclosed to the Tribunal until it was produced on the afternoon of 25th June, 2009. The fax enclosed a three page memorandum relating to the Mansfield and Cheadle properties. A copy of the memorandum can be found in the Appendix to this chapter.

8.99 Mr. Aidan Phelan accepted that the contents of the memorandum set out a factual account of the circumstances of the Mansfield and Cheadle transactions, in keeping with Mr. Christopher Vaughan's file as produced to the Tribunal, that is, the file which contained altered correspondence, and from which correspondence had been removed. He also accepted that what was stated in the memorandum did not and could not reflect the true position as would have been recorded in Mr. Vaughan's files, had they not been falsified. Mr. Aidan Phelan did not however agree, when it was put to him by Tribunal counsel, that it appeared that the memorandum reflected the making of preparations, so as to deprive the Tribunal of access to information as to the true nature of the relationships between the individuals involved in the Mansfield and Cheadle transactions.

8.100 The fax cover sheet, which recorded the sending of the memorandum by Mr. Aidan Phelan to Mr. Kevin Phelan, was in the following terms:

> *"Dear Kevin*
>
> *I append the list as discussed. I will call you on Monday to plan for next week.*
>
> *Yours sincerely,*
>
> *Aidan Phelan"*

8.101 It was Mr. Aidan Phelan's evidence that he believed that the memorandum had been prepared, not by him, but by Mr. Kevin Phelan. He testified that they had had a lengthy telephone conversation, after he had returned from Canada, in connection with the background to the two transactions, and that he thought that Mr. Kevin Phelan had drafted the memorandum following that conversation. He thought that Mr. Kevin Phelan did so in his own office or home, and then brought the document with him to Mr. Aidan Phelan's office, on 15th March, 2001. He could not recall how the document had come into being, but in looking at it, he observed that it was not framed in his kind of language, and so he believed that he had conveyed certain matters to Mr. Kevin Phelan, that Mr. Kevin Phelan had researched his own files, and that Mr. Kevin Phelan had prepared the memorandum to assist Mr. Aidan Phelan in the preparation of his prospective statement for the Tribunal. As to why he might then have faxed what he contended was Mr. Kevin Phelan's document to Mr. Kevin Phelan two days later, he thought that was because Mr. Kevin Phelan had asked him to do so.

8.102 Having regard to the contents of the memorandum, and all of the evidence heard by the Tribunal, it is the Tribunal's view that Mr. Aidan Phelan's evidence as to how, and by whom, the document was generated is not reliable. In that regard, it is the Tribunal's view that the following matters are significant:

(i) in his evidence to the Tribunal in December, 2002, Mr. Aidan Phelan testified that he had a clear memory of the circumstances of the meeting of 15th March, 2001, as would have been expected, given the relatively close proximity of that meeting to Mr. Phelan's evidence. On that occasion he informed the Tribunal that Mr. Kevin Phelan called to his office early in the morning of 15th March, 2001, saying that he had been requested to do so by Mr. Lowry; that the extent of his dealings with Mr. Kevin Phelan on that day was to inform him that there was a banking problem, but that it did not have commercial ramifications for the properties, following which, according to his earlier evidence, Mr. Kevin Phelan had departed. Mr. Aidan Phelan's evidence on that occasion, was that he had "*no reason to deal with him at all*";

(ii) at no point on any of the occasions that he attended to give evidence prior to July, 2009, did Mr. Aidan Phelan make any reference to any prior conversation between himself and Mr. Kevin Phelan, or to Mr. Kevin Phelan having brought, and having left with him, any document relating to the transactions, to assist him in the preparation of his prospective statement for submission to the Tribunal;

(iii) there are many references in the memorandum to correspondence on Mr. Vaughan's files sent to persons other than Mr. Kevin Phelan, and to which Mr. Kevin Phelan could not have had access prior to 15th March, 2001. Mr. Vaughan had of course brought his files with him on that day, and this therefore would have been the first occasion on which access could have been had to them;

(iv) significantly, the memorandum makes reference to a number of matters, in relation to documents submitted to Investec Bank on behalf of the company Catclause which, as will be recalled, were signed by Mr. Aidan Phelan and Ms. Helen Malone, in terms which could only be consistent with the document having been generated either by Mr. Aidan Phelan or by Ms. Helen Malone. Most notable amongst those passages is the one which reads as follows:

> *"Since the Company was not being used we did not file the Forms 288 and we did not believe that the bank was acting on the documentation that we signed."*

(v) in general terms, having regard to the level of detail and the references to documentation, the memorandum appears to have been prepared following the interactions on 15th March, 2001, and following a full consideration of all files held relating to the properties.

8.103 The Tribunal is satisfied, having regard to the considerations set forth above, that the memorandum must have emanated from Mr. Aidan Phelan, and not from Mr. Kevin Phelan. Despite Mr. Aidan Phelan's denial in evidence, the Tribunal is satisfied that the memorandum was prepared as a summary of a false position in relation to the UK properties, that it was intended would be conveyed to the Tribunal in response to its imminent inquiries. The Tribunal is also satisfied that this false position was agreed in the course of the meetings on 15th March, 2001, and that such a false position could only be advanced to the Tribunal if Mr. Christopher Vaughan's files relating to Mansfield and Cheadle were accordingly falsified.

CONCLUSIONS

8.104 There were clear differences and inconsistencies in the evidence heard by the Tribunal in connection with the events at Clanwilliam Court on 15th March, 2001, even when that evidence was given a matter of months after those events had taken place. The Tribunal has already noted the striking inconsistencies between the evidence given by Mr. Vaughan, in the course of his first attendance

as a witness, and the evidence he provided during his later attendance, at a time when additional documentation had come to the Tribunal's attention. The Tribunal is satisfied that all of the evidence, relating to those events of 15th March, 2001, was characterised by a degree of evasiveness and want of candour which betrayed an extreme sensitivity surrounding what had occurred on that occasion.

8.105 Regarding the files of Mr. Christopher Vaughan relating to the Mansfield and Cheadle transactions, the Tribunal is satisfied that the versions of those files which were produced to the Tribunal by Mr. Vaughan, in April and May, 2001, and again in April, 2009, in advance of the commencement of his evidence, had been falsified by the alteration of certain correspondence, and by the removal of other correspondence, with the intention of concealing references to Mr. Michael Lowry in connection with those transactions, and of ensuring that the contents of Mr. Vaughan's files could be presented in a form which appeared to be consistent with the false account of Mr. Michael Lowry's involvement, which it was intended would be conveyed to the Tribunal. The Tribunal is satisfied that the falsification of the files occurred on or after the interactions of 15th March, 2001, and is also satisfied that the falsification was decided upon and implemented with the full knowledge of Mr. Aidan Phelan, Mr. Michael Lowry, Mr. Christopher Vaughan and Mr. Kevin Phelan.

8.106 Mr. Aidan Phelan was the person most directly exposed to the Tribunal's inquiries, having been drawn into the controversy with Investec Bank over the previous number of weeks. Furthermore, as Mr. Denis O'Brien's accountant and financial adviser, he had a significant interest in concealing the true nature of the transactions on Mr. O'Brien's behalf, so as to obscure evidence of connections between Mr. O'Brien and Mr. Lowry, particularly having regard to the clear evidence of a money trail, commencing with Mr. O'Brien and terminating with Mr. Lowry.

8.107 Mr. Michael Lowry had a direct personal interest in ensuring that documentation linking him to the transactions, and thereby to Mr. Denis O'Brien, would be concealed from the Tribunal. Whilst the evidence suggests that Mr. Lowry's participation in the events of 15th March, 2001, was relatively limited, the Tribunal is nonetheless satisfied that Mr. Lowry must have been fully aware of the course decided upon, and of its implementation. Otherwise, Mr. Lowry could not have given the false account of his involvement in those transactions which he subsequently provided to the Tribunal in the course of evidence, an account which he could not have given, had the concealed documents not been removed from the file.

8.108 It was suggested to the Tribunal, on behalf of Mr. Vaughan, that he was innocent of any alteration to his files, which he had simply left with Mr. Aidan Phelan, and then subsequently produced to the Tribunal. Whatever occurred on or after 15th March, 2001, it was Mr. Vaughan who produced those files to the Tribunal, and it was therefore his responsibility to ensure that those files were genuine. Even if Mr. Vaughan was entirely unaware that the files had been interfered with, he must have realised very soon thereafter that the true position relating to the transactions was not represented by the contents of those files. Furthermore, the account of those transactions, which Mr. Vaughan provided to the Tribunal, in the course of correspondence, and at private meetings, and in the course of his evidence in April, 2009, could only have been provided in the knowledge that the concealed documents would not be available to the Tribunal.

8.109 The Tribunal must also have regard to the fact that the altered *"short form"* letters bear Mr. Vaughan's signature, and appear on his professional letterhead, facts that Mr. Vaughan accepted in evidence. It follows therefore that Mr. Vaughan must have been privy to the creation of these false *"short form"* versions of his correspondence, at least insofar as he signed them, and provided his letterhead for the purpose of generating them.

8.110 The Tribunal is also satisfied that Mr. Kevin Phelan was fully aware that Mr. Vaughan's files had been falsified, and that those falsified files had been provided to the Tribunal. This is evident from the fact that the documents produced to the Tribunal by Mr. Kevin Phelan also contained the altered versions of the correspondence, and which tallied with the contents of Mr. Vaughan's falsified files. It follows therefore that Mr. Kevin Phelan's files were likewise falsified, to reflect and correspond with the falsified versions of Mr. Vaughan's files produced to the Tribunal. Mr. Kevin Phelan's complicity is also evident from his own conduct, and in particular his use of his knowledge that the files produced to the Tribunal had been falsified, in order to secure personal financial advantage in dealing with Mr. Vaughan, Mr. Lowry and Mr O'Brien. Mr. Kevin Phelan provided to Mr. Vaughan the letter of 23rd April, 2002, which was adopted and forwarded by Mr. Vaughan to the Tribunal as a purported explanation for the two versions of those letters, albeit an explanation that was utterly implausible. It should be added that at a later date, when the Tribunal drew that letter of 23rd April, 2002, to Mr. Kevin Phelan's attention, he responded by informing the Tribunal that what he had stated in that letter was incorrect, that the letter had not been drafted by him, and that he had subsequently requested that it be withdrawn.

8.111 It was belatedly suggested by both Mr. Vaughan and Mr. Aidan Phelan, in the course of their evidence to the Tribunal in 2009, that it was Mr. Kevin Phelan who was solely responsible for the falsification of Mr. Vaughan's files.

Whilst the Tribunal is satisfied that Mr. Kevin Phelan was either a party to, or had full knowledge of that falsification, it is equally satisfied that Mr. Kevin Phelan could not have acted alone, without the knowledge and complicity of Mr. Aidan Phelan, Mr. Vaughan and Mr. Lowry.

8.112 At the beginning of this chapter, the question was raised: if it was merely coincidental that funds of Mr. Denis O'Brien inured to Mr. Lowry's benefit in both transactions, what could have impelled the wholesale deception that sought to mislead the Tribunal as to Mr. Lowry's true interests in the transaction? The unequivocal answer is that it was because of the acute sensitivity engendered by unwanted disclosure of that connection, and that the experienced and respected professional persons involved, including the solicitor who remains retained by Mr. O'Brien in the Doncaster transaction, set about and implemented a cynical and mendacious course of furnishing to the Tribunal a materially false documentary record of those transactions. This was buttressed by untruthful testimony, which sought to misrepresent and minimise Mr. Lowry's true interests and involvement, and thereby to delay and mislead the Tribunal.

9 DONCASTER ROVERS FOOTBALL CLUB TRANSACTION

9.01 During the course of the Tribunal's renewed investigations into matters relating to Mr. Michael Lowry in 2001, and in particular the bank account opened by Mr. Lowry in Irish Nationwide Bank, Isle of Man, in October, 1996, with funds transferred from an account controlled by Mr. Denis O'Brien, and Mr. Lowry's acquisition of UK properties at Mansfield and Cheadle, the Tribunal had been informed of two other UK property transactions, one at Luton, and the other at Doncaster. The Tribunal had been given to understand that Mr. Lowry had no connection with either of these transactions: the former entailed a joint acquisition by Mr. Aidan Phelan and Mr. Denis O'Brien, and the latter was an acquisition by Mr. O'Brien solely. Nothing emerged from the evidence, then given in 2001, to suggest that any further scrutiny of either transaction was warranted.

9.02 Then on 11th January, 2003, The Irish Times published a number of articles written by Mr. Colm Keena relating to the second of those two transactions, that is, the Doncaster transaction. The articles referred to a letter dated 25th September, 1998, from Mr. Christopher Vaughan, the UK solicitor who had acted in both the Mansfield and Cheadle transactions, addressed to Mr. Lowry, and published the text of the letter. The letter was addressed to Mr. Lowry at his home in Thurles, County Tipperary, and was headed:

> *"Re. Doncaster Rovers Football Club Limited."*

It referred to meetings between Mr. Vaughan and Mr. Lowry over two days in September, 1998, and dealt with a number of issues, all relating to the Doncaster transaction. The second of two numbered paragraphs on the first page of the letter stated:

> *"I had not appreciated your total involvement in the Doncaster Rovers' transaction, and I am therefore enclosing a copy of my Completion Letter which was sent to Kevin Phelan, Paul May and Aiden* [sic] *Phelan on Completion."*

A copy of the letter of 25th September, 1998, can be found within the Appendix to this chapter.

9.03 At the time of publication of those articles in January, 2003, the Tribunal had long completed hearing evidence in relation to the UK properties, and had proceeded with inquiries into the GSM licence competition, and in that regard had commenced public sittings in December, 2002. In the light of the contents of the articles, private enquiries were initiated into the Doncaster

transaction, and the task of gathering evidence, information and documentation relevant to it was commenced. Having largely completed hearing evidence in relation to the GSM competition, and having in the meantime also advanced its private enquiries into the Doncaster transaction, the Tribunal proceeded to public hearings which commenced on Wednesday 15th September, 2004, when the Tribunal delivered its first Opening Statement on the matter. Immediately following the delivery of that statement, on 17th September, 2004, Mr. Denis O'Brien commenced Judicial Review proceedings against the Tribunal seeking, amongst other reliefs, to quash the decision of the Tribunal to proceed to public hearings in connection with the Doncaster transaction on the grounds that there was insufficient evidence to warrant the Tribunal inquiring into the matter. In the circumstances, it was necessary for the Tribunal to suspend hearing evidence until Mr. O'Brien's Judicial Review proceedings were completed.

9.04 The first stage of Mr. O'Brien's legal proceedings involved an application for leave to bring a substantive challenge on numerous grounds against the Tribunal. This application was refused in the High Court, but on appeal to the Supreme Court, Mr. O'Brien was permitted to bring his substantive challenge, but limited to two grounds. The substantive challenge failed in the High Court, and Mr. O'Brien's appeal to the Supreme Court was ultimately dismissed on 16th February, 2006.

Suspension Of Hearings: New Documentation

9.05 Those proceedings delayed the Tribunal's investigations. However in the interim between suspension of and resumption of hearings, documentation produced by Mr. O'Brien in the course of the proceedings, which had not previously been made available to the Tribunal, but which proved to be highly significant, was examined. In support of his proceedings, Mr. O'Brien submitted, as an exhibit to his grounding affidavit, a correspondence file of Mr. Christopher Vaughan, the UK solicitor who had acted for Mr. Lowry in relation to the Mansfield and Cheadle transactions, and who had also acted for Mr. O'Brien in the Doncaster acquisition, relating to Mr. Vaughan's dealings with the Tribunal. This file contained an amount of documentation, never previously seen by, or provided to, the Tribunal, and it prompted the Tribunal to embark in private on a number of new lines of inquiry. As a result of those new inquiries, the Tribunal gathered a considerable quantity of further information and documentation, which likewise had not previously been produced to the Tribunal. Therefore, when the Tribunal resumed public sittings to hear evidence in relation to the Doncaster transaction in February, 2007, it was in possession of a large quantity of additional material to which it had not had access when it had been obliged to suspend public sittings in September, 2004.

9.06 It was a regrettable and recurring feature of much of the Tribunal's work into the money trail aspect of its inquiries that relevant documentation and information was withheld from the Tribunal on a number of separate occasions. This is examined in detail in the previous chapter of this Volume in connection with the Mansfield and Cheadle transactions, and is also examined in Chapter 11 in connection with Doncaster. It should nonetheless be observed at this juncture that much of the material obtained by the Tribunal in the period between the suspension and resumption of its sittings into the Doncaster transaction should have been provided to the Tribunal at a much earlier stage. In particular, two categories of material relating firstly, to the settlement of a series of disputes during 2002 with Mr. Kevin Phelan, the property agent who sourced the Doncaster transaction, and secondly, relating to a blackmail complaint made to the London Metropolitan Police by Mr. Denis O'Brien Senior, Mr. O'Brien's father, resulting from an incident which occurred during mediation proceedings in litigation relating to the Doncaster acquisition, were both of central relevance to the Tribunal's inquiries, and the Tribunal is satisfied that there was no valid reason for the withholding of this material in advance of its public sittings in 2004.

9.07 In his Judicial Review proceedings, Mr. O'Brien asserted, ultimately unsuccessfully, that the Tribunal could not proceed to investigate the Doncaster transaction at public sittings in the absence of his solicitor, Mr. Christopher Vaughan, as a witness. It will be recalled that Mr. Vaughan had refused, until 2009, to attend as a witness at any of the Tribunal's public sittings, and, as he was resident outside the jurisdiction, the Tribunal could not compel his attendance. The circumstances in which Mr. Vaughan ultimately attended, following notification of the Tribunal's Provisional Findings in November, 2008, have already been addressed in detail in Chapter 8 of this Volume. Despite his refusal to attend as a witness from 2001 to 2008, Mr. Vaughan did in part engage with the Tribunal's private inquiries, to the extent of furnishing the Tribunal with documentation, providing the Tribunal with information, and attending two private meetings. When Mr. Vaughan ultimately attended to give evidence in April, 2009, and again in June, 2009, the Tribunal was provided immediately before both of his attendances with yet more new documentation. As is apparent from the preceding chapters of this Volume, it thereupon became evident that the versions of Mr. Vaughan's files, produced to the Tribunal in 2001, had been falsified, and that information which he had furnished to the Tribunal prior to his attendance to give evidence, and evidence he gave on the first occasion of his attendance, were in each case erroneous.

9.08 What emerged in the course of the Tribunal's inquiries was that Mr. Vaughan's letter of 25th September, 1998, was not the only occasion on which

professional persons associated with Mr. Lowry described him as having an involvement in, or connection with, the Doncaster transaction. Apart from a faxed letter from Mr. Kevin Phelan to Mr. Aidan Phelan in August, 1999, which did not emerge until after Mr. O'Brien had issued his proceedings, the most unexpected development lay in the role played by Mr. Denis O'Connor, Mr. Lowry's adviser and accountant. Mr. O'Connor had been centrally involved in Mr. Lowry's dealings with the Tribunal from the outset. He assisted the Tribunal in its early inquiries into the sources of funds in accounts held by Mr. Lowry. He had been unaware of any of Mr. Lowry's UK property acquisitions until March, 2001, when they came to the attention of the Tribunal. It transpired however, as will be seen, that from that time Mr. O'Connor became increasingly enmeshed in dealings with Mr. Kevin Phelan, not only on behalf of Mr. Lowry, but also on behalf of Mr. Aidan Phelan, Mr. Christopher Vaughan, and a number of other persons and entities, including Mr. O'Brien's company, Westferry Limited. He played a pivotal role in agreeing terms with Mr. Kevin Phelan in 2002, whereby the latter was paid more than Stg.£60,000.00 by Vineacre, a company of which Mr. Lowry was a director, and Stg.£150,000.00 by Mr. O'Brien, through his company Westferry. What was even more perplexing is that, later in 2002, he then assumed responsibility for endeavouring to reach a compromise of the litigation which had been instituted by the vendors of Doncaster Rovers against Westferry, and in that context at a meeting in London with the solicitor acting for Westferry, he too indicated that Mr. Lowry had a connection with the Doncaster transaction.

Background To Doncaster Rovers Transaction

9.09 In the late 1990's, Doncaster Rovers Football Club had fallen on hard times, both financially and in the performance of its teams. In or around the latter months of 1997, a proposal was put to the club which involved the acquisition of the club's ground, Belle Vue, located in the centre of Doncaster, and the relocation of the club to a new stadium in a different area of the city. The lands at Belle Vue could then be redeveloped with the prospect of securing sizeable profits. The intention was to promote a retail development, subject to the necessary planning permission being secured from Doncaster Metropolitan Borough Council.

9.10 This proposal was made and promoted by Mr. Kevin Phelan, the same property development consultant who later played a role in the promotion of the Mansfield and Cheadle transactions. It was Mr. Kevin Phelan who set about locating investors to provide finance to fund this transaction.

9.11 Mr. Kevin Phelan appears to have conducted his business in the UK through a number of different companies and entities, including Gameplan

International, Glebe Trust and M&P Associates. The last of these, M&P Associates, was the entity through which he acted in the early stages of both the Mansfield and Doncaster transactions. Sometime shortly before the Tribunal's public sittings into the Doncaster transaction resumed in 2007, it came to the Tribunal's attention that an address used by M&P Associates in some correspondence matched the address which had been used in other correspondence, which had featured in earlier public sittings of the Tribunal. That other correspondence was from Maher Meat Packers Limited, a company owned and operated by Mr. Bill Maher. Mr. Maher had featured in the initial inquiries of the Tribunal into Mr. Lowry's affairs conducted in 1999, as the source of a cash payment of Stg.£25,000.00. That matter is addressed in Chapter 2 of this Volume, and for current purposes it is sufficient to note that Mr. Maher declined to attend to give evidence on that occasion, but that Mr. Lowry testified that he had known Mr. Maher from the late 1980s, as they would have been of the same generation and came from neighbouring parishes, and he had a number of business dealings with Mr. Maher, involving Mr. Lowry advising Mr. Maher in relation to the refrigeration needs of his meat packing business.

9.12 An examination of official Court and Companies Office records is informative as to the association between Mr. Kevin Phelan and Mr. Maher. It seems that they were co-directors of a Northern Ireland registered company, Classic Home Interiors Limited, which was wound up by Order of the High Court of Northern Ireland on 29th April, 1997, with the consequence that Mr. Kevin Phelan and Mr. Maher were disqualified from holding company directorships for eight and six years respectively. Mr. Kevin Phelan had previously been disqualified from holding office as a company director in this jurisdiction in late 1994, arising from his directorship of a company by the name of Classic Home Interiors (Ireland) Limited.

9.13 From the evidence of Mr. Christopher Vaughan, when he did attend in 2009, it appears that from the late summer of 1997, Mr. Kevin Phelan and Mr. Maher were actively engaged in seeking property development opportunities in the North of England. Mr. Vaughan stated that his first encounter with Mr. Kevin Phelan occurred in late summer, 1997, when he was introduced to Mr. Vaughan by an independent financial adviser known to him, and was asked to give some urgent advice to Mr. Kevin Phelan, and two others, following a meeting between them and representatives of Hull City Football Club, the purchase of which they were negotiating. It was in those circumstances that Mr. Vaughan met Mr. Kevin Phelan, Mr. Bill Maher and a Mr. Paul May in a hotel near the M1 Motorway that same evening. Mr. May is an English businessman who appears, amongst other things, to have operated a company called Cash-A-Cheque Limited, and who was subsequently involved both directly, and through that company, with the affairs of Doncaster Rovers. Mr. Vaughan was subsequently instructed by Mr. Kevin Phelan

to act in relation to the proposed Hull City Football Club transaction. As matters transpired, a new partner became involved, and the purchase was ultimately handled by the solicitor acting for that partner. Mr. Vaughan confirmed that the *"M&P"* in the name of Mr. Kevin Phelan's business, M&P Associates, referred to Maher and Phelan.

9.14 Despite the fact that Mr. Kevin Phelan was in partnership around this time with a long-standing personal and business associate of Mr. Lowry, in the person of Mr. Bill Maher, it will be recalled that it was Mr. Lowry's evidence in 2001, that his introduction to Mr. Kevin Phelan arose through the somewhat circuitous means of an approach made to him by an unconnected mutual friend, who furnished Mr. Lowry with Mr. Kevin Phelan's telephone number, and a message requesting Mr. Lowry to make contact with him. They then met in Monaghan in October or November, 1997, when Mr. Kevin Phelan outlined to Mr. Lowry the property investment opportunities to be had in the North of England, and they agreed that Mr. Kevin Phelan could make contact with him when an appropriate opportunity arose. According to Mr. Lowry's evidence, there was no further contact between them until June or July the following year when, Mr. Kevin Phelan brought the Mansfield property to his attention.

9.15 When the Tribunal brought the equivalent addresses of Maher Meat Packers and M&P Associates to Mr. Lowry's attention, when he gave evidence in connection with Doncaster in 2007, Mr. Lowry stated that he did know that the business name M&P Associates referred to Mr. Maher and Mr. Kevin Phelan, and that he had only learned of that connection around the time he had first given evidence to the Tribunal in June, 1999, relating to the cash payment of Stg.£25,000.00 which he had received from Mr. Maher. Shortly after giving that evidence in 1999, Mr. Kevin Phelan had told Mr. Lowry that he had not realised that Mr. Lowry and Mr. Maher had a business association. According to Mr. Lowry, it was Mr. Kevin Phelan's explanation that because of some restriction that had been placed on him, he had an agreement with Mr. Maher, whom he had known previously from the meat business, whereby he could use Mr. Maher's office as an address for his business, but that was merely an act of convenience, and that Mr. Maher had no involvement in the business of M&P Associates. Whatever may have been said to Mr. Lowry by Mr. Kevin Phelan in 1999, it appears from Mr. Christopher Vaughan's evidence that in 1997 Mr. Kevin Phelan and Mr. Maher were involved together in the Hull City Football Club transaction.

9.16 Whilst Mr. Vaughan was aware of the association between Mr. Maher and Mr. Kevin Phelan in the property business, and Mr. Aidan Phelan also confirmed in his evidence that he was aware of Mr. Maher's connection with M&P Associates, it seems that Mr. Lowry, who unlike either Mr. Vaughan or Mr. Aidan

Phelan was both personally and professionally acquainted with Mr. Bill Maher for a long number of years, was the only person centrally connected with the various English property transactions who was unaware of Mr. Maher's involvement. This apparently coincidental association between a person not only known to Mr. Lowry, but with whom Mr. Lowry had business dealings, and Mr. Kevin Phelan, was not the only such coincidence to emerge in connection with the Tribunal's inquiry into the Doncaster transaction.

9.17 At the time the Doncaster acquisition was conceived by Mr. Kevin Phelan in late 1997, the large majority of shares in the club was held by two companies, Dinard Limited and Shelter Trust Anstalt. Those companies were owned by Mr. Ken Richardson, and members of his family, and the companies were represented by a Mr. Mark Weaver. It was intended that the purchase of the club would be effected by a transfer of the shares held by Dinard and Shelter Trust.

9.18 The vehicle that was ultimately used to purchase the shares in August, 1998, on behalf of a trust controlled by Mr. O'Brien, was a company by the name of Westferry Limited. That company had in fact been incorporated by Mr. Kevin Phelan on 23rd October, 1997, at around the same time that, according to Mr. Lowry, he and Mr. Kevin Phelan had their first meeting in Monaghan to discuss possible investments in UK properties. Westferry was an off-shore company, incorporated in the Isle of Man, and its initial beneficial owner was Glebe Trust, a trust established by Mr. Kevin Phelan at the same time as he incorporated Westferry. The only purpose for which Westferry was ever used was to acquire the shares in Doncaster Rovers.

9.19 It was when the Tribunal finally received a full copy of Mr. Christopher Vaughan's files relating to the Doncaster acquisition in April, 2007, that the second unusual coincidence emerged. What became apparent was that it was initially envisaged in early 1998, that the Doncaster project would be funded by Mr. Pat Doherty. Like Mr. Bill Maher, Mr. Doherty had also featured in the Tribunal's inquiries into Mr. Lowry's affairs conducted in 1999, in connection with a payment of £35,000.00 in cash made to Mr. Lowry by Mr. Doherty in May, 1995, for the purchase of some items of antique furniture. Mr. Doherty, who had been involved in the property development business for some years, unlike Mr. Maher, did attend to give evidence, and stated that he had known Mr. Lowry for some ten years prior to his giving evidence to the Tribunal in 1999.

9.20 It should be pointed out that the Tribunal has heard no evidence to suggest that the involvement of Mr. Bill Maher or Mr. Pat Doherty in these matters had, in itself, any connection with any possible links between Mr. Michael Lowry

and Mr. Denis O'Brien. Nor likewise does there appear to be a link between Mr. Maher's and Mr. Doherty's involvement in Doncaster Rovers, and their earlier payments to Mr. Lowry. Nonetheless, it is a curious feature that Mr. Lowry was acquainted with three of the personalities centrally involved in the embryonic stages of the transaction, prior to any involvement on the part of Mr. Aidan Phelan or Mr. Denis O'Brien, namely Mr. Kevin Phelan, Mr. Bill Maher and Mr. Pat Doherty. Mr. Lowry was also personally acquainted with Mr. Aidan Phelan, having been introduced to him by Mr. Denis O'Connor, following reports in the media relating to the provision by Mr. Aidan Phelan of a mobile telephone for use by Mr. Lowry as detailed in Chapter 7. Thereafter, Mr. Aidan Phelan acted for Mr. Lowry, in a professional capacity, and there then developed between them a close personal acquaintanceship.

Initial Involvement Of Mr. Aidan Phelan And Mr. Denis O'Brien In The Doncaster Rovers Project

9.21 Mr. Aidan Phelan informed the Tribunal in evidence that Mr. Kevin Phelan approached him some time around January or February, 1998, at a time when Mr. Aidan Phelan was sourcing investment opportunities for Mr. Denis O'Brien. Mr. Aidan Phelan was unable to recall precisely how he had first encountered Mr. Kevin Phelan, and informed the Tribunal that there was genuine confusion as to how his association with Mr. Kevin Phelan had been formed.

9.22 Apparently Mr. Kevin Phelan told Mr. Aidan Phelan that he had previously been involved in a similar project involving the relocation of Hull City Football Club to a new ground, and the development of the existing site. Mr. Aidan Phelan travelled to Doncaster and met with the local council, which was keen to move the football ground from its then current location at Belle Vue to a new site at a location called Lakeside, and it ultimately provided Mr. Aidan Phelan with a letter, stating that it would support a planning consent. Mr. Aidan Phelan also met with representatives of Asda, who were potential occupiers of the redeveloped Belle Vue site. Mr. Aidan Phelan viewed it as a good project, which would take no longer than about nine months, and he agreed that Mr. Kevin Phelan would be entitled to 40% of the profits on the project, provided he ran the project right through to the end, that is, to a point where planning permission was obtained.

9.23 In evidence, Mr. Denis O'Brien confirmed that Mr. Aidan Phelan brought the Doncaster project to him some time in early 1998, but said that he himself had never met, or had any dealings with Mr. Kevin Phelan. Mr. O'Brien understood the project to be enthusiastically supported by Doncaster Council, believed that the project had exceptionally high profit potential, and shared Mr. Aidan Phelan's view that the project could be turned around in a short period of

time, without the requirement for any other resources, other than funding, from his end. *"It was to be money-in-money-out"*, as he put it. Mr. O'Brien said that the relatively high equity share to which Mr. Kevin Phelan would be entitled reflected the intensive work that it was expected would be required in turning the project around in a short time.

9.24 Mr. O'Brien provided a deposit of Stg.£670,000.00, and on 8th May, 1998, a share purchase agreement was entered into between Westferry Limited and Dinard and Shelter Trust, with an agreed purchase price of Stg.£4.3 million. Of this, Stg.£697,000.00 was by agreement held in retention in a joint account at Lloyds Bank in Jersey, pending the final resolution of certain matters related to payments to be made by the purchasers, including compensation payments to players, the repayment of loans and various other fees. In addition, Stg.£250,000.00 from this retention amount was to be paid by the purchasers to the vendors if evidence could be produced, prior to the completion of the share purchase, that Doncaster Council had granted a new lease in respect of a car parking area adjoining the main football stadium at Belle Vue.

9.25 For commercial reasons, Mr. O'Brien decided to keep his involvement in the acquisition confidential, and he was conscious that, as he was running a publicly quoted company at the time, the perception that he was becoming involved in a football venture might not have been wholly beneficial in that context. He also had a concern that shareholders in Esat Telecom might become apprehensive that he was becoming distracted from his role as chairman and chief executive of that company. In the circumstances, Mr. Aidan Phelan fronted the project.

9.26 Indeed, whilst Mr. Vaughan testified that he became aware of Mr. Aidan Phelan's involvement in the transaction some time during the period between the share purchase agreement of 8th May, 1998, and the completion of the transaction on 18th August, 1998, Mr. Vaughan informed the Tribunal that at no time throughout the whole process of the Doncaster Rovers Football Club acquisition was he ever aware of the existence or involvement of Mr. Denis O'Brien. The first time he became aware that Mr. O'Brien had an involvement in Doncaster Rovers was at a meeting in Mr. Aidan Phelan's offices in Clanwilliam Court, Dublin, on 15th March, 2001, which has been examined in Chapter 8, and which related to the Tribunal's inquiries concerning the Mansfield and Cheadle transactions.

9.27 Mr. Peter Vanderpump, a director of Walbrook Trustees (IOM) Limited, a company owned by Deloitte & Touche and involved in providing trust and company administration services, gave evidence to the Tribunal that on 13th

August, 1998, Mr. Aidan Phelan asked Walbrook Trustees, as trustees of the Wellington Trust, which was set up for the benefit of Mr. Denis O'Brien and his family, to take over administration of Westferry Limited. As a result, both he and one other Walbrook Trustees director were appointed as directors of Westferry. Prior to this, the beneficial owner of Westferry was the Glebe Trust.

9.28 The completion of the contract for the sale of the shares in Doncaster Rovers took place on 18th August, 1998, the same day that Doncaster Rovers played their first match in the Vauxhall Conference, to which they had been relegated the previous season. Mr. Aidan Phelan informed the Tribunal that he attended in Doncaster at the match, and also for the completion of the acquisition, the outstanding funding for which was provided by means of a loan facility advanced by Anglo Irish Bank to Mr. O'Brien.

9.29 Five days later, on 23rd August, 1998, Mr. Christopher Vaughan wrote a lengthy seven page letter, with enclosures, addressed to Mr. Paul May and Mr. Kevin Phelan, dealing with a large number of issues which needed to be considered urgently. These included the fees payable to both Mr. Vaughan and to a firm of accountants, Grant Thornton, Mr. Vaughan's appointment as company secretary of Westferry, the issue of the retention monies, and the crystallisation of previous approaches to Doncaster Council. In relation to the Stg.£250,000.00 retained to cover payment to the vendors in the event of a renewal of the lease on the car park attached to Belle Vue stadium, Mr. Vaughan advised that it was vital that Westferry should as soon as possible divest itself of all its assets, moreover that it would continue to exist merely as a shell company, so that there would be little point in the vendors suing Westferry to claim the sum due. This paragraph in the letter took on a particular significance in the context of a dispute that developed between Westferry and the vendors.

9.30 On a point of detail, Mr Paul May's role in the Doncaster Rovers project was to take over as financial director of the football club, which he was to have a central role in running, and which was intended to continue as a going concern, once relocated to new playing facilities. Neither he, nor Mr. Kevin Phelan, who are both resident outside this jurisdiction and, as such, not compellable as witnesses, were agreeable to attend to give evidence at the Tribunal's hearings.

9.31 Returning to Mr. Vaughan's letter of 23rd August, 1998, the final paragraph stated:

> *"a second copy of this letter is enclosed for Aiden* [sic] *Phelan, and I think that a meeting should be arranged within the next two weeks by which time I hope that a lot of the financial issues will have been clarified."*

Mr. Vaughan was anxious at this time to meet with the representatives of Westferry, and in particular Mr. Aidan Phelan, with a view to resolving the various issues that were then outstanding in connection with the acquisition.

9.32 One month later, on 23rd September, 1998, Mr. Vaughan wrote to Mr. Aidan Phelan, inquiring as to arrangements for a meeting on the following day, 24th September, 1998, and enclosing a brief agenda of topics that Mr. Vaughan wished to discuss, as well as a detailed bill of legal costs, and revised completion and financial statements. Mr. Vaughan's letter also stated that the most important issue was turning Westferry into a shell company with no assets as soon as possible, in accordance with his earlier advice of 23rd August, 1998.

9.33 Mr. Vaughan informed the Tribunal that he had been anxious to have a meeting with Mr. Aidan Phelan, whom he had never previously met, and so, when Mr. Kevin Phelan told him a meeting had been arranged, he assumed it was to be with Mr. Aidan Phelan, and wrote to him accordingly. He did not have the correct fax number for Mr. Aidan Phelan, and therefore the letter did not reach him on 23rd September, 1998, but arrived by post at a later date. Mr. Vaughan also informed the Tribunal that subsequently it transpired that the meeting was not to be in connection with Doncaster Rovers, but rather the purchase of the Mansfield property by Mr. Michael Lowry.

MEETINGS BETWEEN MR. CHRISTOPHER VAUGHAN, MR. KEVIN PHELAN AND MR. MICHAEL LOWRY IN SEPTEMBER, 1998, AND MR. CHRISTOPHER VAUGHAN'S LETTER OF 25TH SEPTEMBER, 1998

9.34 As already mentioned, the Tribunal's inquiries into the Doncaster Rovers transaction were prompted by the contents of the letter of 25th September, 1998, written by Mr. Christopher Vaughan to Mr. Michael Lowry, which related to the Doncaster Rovers project, and referred to a meeting on the previous day at which both men were in attendance.

9.35 In evidence given to the Tribunal in 2001, at a time when the Tribunal was not inquiring into the Doncaster transaction, and was not aware of the letter of 25th September, 1998, Mr. Lowry testified that, following their initial contact in late 1997, the next time that he heard from Mr. Kevin Phelan was in or around June or July of 1998, when the latter informed him that he had a small development in Mansfield that he thought Mr. Lowry should take a look at. Nothing further occurred until some time in September, 1998, when, according to Mr. Lowry's earlier evidence in 2001, he met Mr. Kevin Phelan and looked at the Mansfield property. Initially Mr. Lowry informed the Tribunal that it was on this same trip that he met Mr. Christopher Vaughan for the first time. In later evidence, given at a time when the Tribunal was inquiring into the Doncaster

transaction, and when it had become clear that there was no visit to the Mansfield site in the course of Mr. Lowry's trip to England, referred to in Mr. Vaughan's letter of 25th September, 1998, Mr. Lowry corrected his earlier evidence, by stating that he believed he had visited the Mansfield site with Mr. Kevin Phelan a number of weeks before the September meeting.

9.36 In the course of the Tribunal's private inquiries, Mr. Lowry produced copies of airline tickets which showed that his visit to Northampton in fact took place on 23rd and 24th September, 1998, and not on 24th and 25th September, 1998, as recorded in Mr. Vaughan's letter of 25th September, 1998. Whilst Mr. Lowry disputed the accuracy of the dates recorded in Mr. Vaughan's letter, he accepted that he did meet with Mr. Vaughan on the evening of Wednesday, 23rd September, 1998, and then again on the morning of Thursday, 24th September, 1998.

Available information

9.37 In examining Mr. Lowry's visit to Northampton over the course of 23rd and 24th September, 1998, and, in particular, what gave rise to the terms of Mr. Vaughan's letter, dated 25th September, 1998, to Mr. Lowry, in which he refers to Mr. Lowry's *"total involvement"* in the Doncaster transaction, the Tribunal has had regard to a number of different accounts of those events. In the course of public hearings in 2007, the Tribunal examined a number of varying accounts given by Mr. Vaughan at different times relating to the events over that Wednesday and Thursday. There were a number of significant inconsistencies between those accounts, which could not be resolved satisfactorily until Mr. Vaughan agreed to attend as a witness in the course of 2009.

9.38 The chronological order in which these accounts were given is significant, as is the order in which they came to the attention of the Tribunal, which differed. It is accordingly proposed that the accounts given by Mr. Vaughan be set out first in the chronological order in which Mr. Vaughan provided them, whilst noting the chronological order in which they came to the attention of the Tribunal, where relevant. Thereafter, it is proposed to consider Mr. Vaughan's evidence to the Tribunal in 2009, and then, finally, Mr. Lowry's evidence, which was given in 2007.

Mr. Christopher Vaughan's versions of his meetings with Mr. Michael Lowry over 23rd and 24th September, 1998

Mr. Christopher Vaughan's letter to Mr. Michael Lowry of 25th September, 1998

9.39 As the letter of 25th September, 1998, was the starting point for the Tribunal's inquiries into the Doncaster transaction and, more specifically, the

events surrounding Mr. Lowry's visit to England at the end of September, 1998, it merits reproducing the text of Mr. Christopher Vaughan's letter in full.

The letter is on Mr. Vaughan's headed notepaper and reads as follows:

"Mr. Michael Lowry
Abbey Road
Thurles
County Tipperary
Eire

25th September, 1998

Dear Michael,
Re: Doncaster Rovers Football Club Limited

I was very pleased to meet you on the 24th and 25th September 1998.

My apologies for getting you to Leicester a few minute [sic] *late for your BUPA appointment. I hope that all went well and that you eventually returned to Ireland.*

I am enclosing

1. Copies of my letters of the 23rd and 25th September 1998 to Aiden [sic] *Phelan. You did take a copy of the letter of the 23rd with you on the 24th. However, you will recall that two of the figures were wrong on the Completion Statement and those have now been amended, and I would be grateful if you would destroy the incorrect copy and substitute this one.*

2. I had not appreciated your total involvement in the Doncaster Rovers' transaction and I am therefore enclosing a copy of my Completion Letter which was sent to Kevin Phelan, Paul May and Aiden Phelan on Completion.

You will see that in that letter I make reference to the divesting by Westferry of all its assets. This is a matter that I discussed with you on the 24th September and it is absolutely vital that this process is initiated urgently.

It is not an issue that I can deal with as a Solicitor as I think that there is a possible conflict of interest with my involvement with Doncaster Rovers.

I think that it would be best for Aiden Phelan to arrange for the matter to be dealt with via Anglo Irish Bank and either their solicitors in London Theodore Goddard, or Messrs Simcocks in the Isle of Man, who dealt with the other Westferry matters, prior to the acquisition of the shares in Doncaster Rovers.

I have absolutely no doubt in my mind that if Mr. Richardson, who was the controller of Dinard Trading and Shelter Trust Anshalt, does not receive his £250,000 on the 31st December 1998 a lot of expensive unnecessary and embarrassing litigation will ensue which will not be to anyone's benefit!

Agreement - Gameplan International LTD and Bryan Phelan

I have heard nothing from Kevin since the document was FAXED through to him.

Doncaster Rovers/Westferry/Paul May

I am preparing as [sic] *draft agreement and I am discussing this with Paul at the moment in respect of his £120,000 and the transfer of the shares to the new Chairman.*

I understand that you are trying to organise a meeting between myself and Aiden Phelan.

Obviously one of the matters to be discussed is the question of my outstanding costs as an enormous amount of work has gone into the Doncaster Rovers acquisition and only half my fees have been paid.
Likewise I believe that there is an outstanding account due to Grant Thornton which needs to be paid as we still need their financial input in producing a balance sheet as at the completion date of the 18th August 1998 to enable the Retention Funds to be accessed.

Kind Regards,

Yours sincerely"

The letter is signed by Mr. Vaughan, and there is a manuscript note at the bottom which reads as follows:

*"*P.S I may meet Aiden* [sic] *on Thursday 1st October."*

A copy of both the office copy of this letter, from Mr. Vaughan's files, and a faxed copy of the final signed version, which ultimately came into the possession of Mr. Ken Richardson, and Mr. Mark Weaver, can be found in the Appendix to this chapter.

9.40 Of all Mr. Vaughan's accounts of his dealings with Mr. Lowry at the end of September, 1998, his letter of 25th September, 1998, is the first in time, and the only one that is contemporaneous. On its face, the letter suggests the following:

(i) that Mr. Vaughan met Mr. Lowry over what now appears established as having been 23rd and 24th September, 1998;

(ii) that Mr. Vaughan drove Mr. Lowry to his BUPA appointment in Leicester on 24th September, 1998;

(iii) that Mr. Lowry was given a copy of Mr. Vaughan's letter to Mr. Aidan Phelan dated 23rd September, 1998;

(iv) that the figures in the completion statement attached to that letter of 23rd September, 1998, were discussed, and it was pointed out to Mr. Lowry during the meeting that two of the figures were wrong;

(v) that Mr. Vaughan formed the impression from his dealings over those two days, that Mr. Lowry had a *"total involvement"* in the Doncaster transaction, something Mr. Vaughan had not previously appreciated;

(vi) that Mr. Vaughan discussed with Mr. Lowry his advice that Westferry should be divested of its assets, as also referred to in his letter of 23rd August, 1998, sent to Mr. Kevin Phelan, Mr. Paul May and Mr. Aidan Phelan;

(vii) that Mr. Vaughan also discussed with Mr. Lowry an agreement governing a payment due to Mr. May, arising out of his work in operating the football club;

(viii) that Mr. Vaughan understood that Mr. Lowry was going to try to organise a meeting between Mr. Vaughan and Mr. Aidan Phelan.

9.41 Some six months before that letter featured in an Irish Times report, it had become a source of considerable concern to a number of individuals and entities connected with the Doncaster transaction. The production of a copy of the letter by Mr. Ken Richardson and Mr. Mark Weaver, representatives of Dinard and Shelter Trust Anstalt, in the course of a mediation negotiation with Mr. Denis O'Brien Senior on behalf of Westferry, gave rise to a blackmail complaint being made to the London Metropolitan Police by Mr. O'Brien Senior against Mr. Richardson and Mr. Weaver. The Tribunal knew nothing of these events at the time they occurred, and was unaware of the contents of the letter of 25th September, 1998, or of any suggestion that Mr. Lowry might have had an involvement of any nature in the Doncaster transaction, or that a letter from Mr. O'Brien's solicitors indicating such an involvement had been used to blackmail him.

9.42 When the letter became the cause of controversy at the time of the mediation, it appears that its existence or significance had not been previously appreciated by some of those connected with the transaction. Prompt inquiries were made of Mr. Vaughan as to the circumstances in which the letter had come to be written in September, 1998. The Tribunal heard evidence from Mr. Aidan Phelan, Mr. Peter Vanderpump, in his capacity as a director of Westferry, acting on behalf of Mr. O'Brien, Mr. Denis O'Connor, accountant and financial adviser to Mr. Michael Lowry and Ms. Kate Macmillan, solicitor acting for Westferry, each of whom gave evidence in relation to accounts given to them by Mr. Vaughan concerning the circumstances in which the letter was written. These accounts will now be reviewed.

Mr. Christopher Vaughan's account to Mr. Aidan Phelan

9.43 Mr. Aidan Phelan testified that, after Mr. Denis O'Brien Senior had brought the existence of the letter of 25th September, 1998, to his attention, some time in or around September, 2002, he made contact with Mr. Vaughan by telephone. It seems that Mr. Aidan Phelan may also have visited Mr. Vaughan at a later time, following the publication of the letter in The Irish Times in January, 2003. Mr. Aidan Phelan in his evidence stated that Mr. Vaughan had confirmed to him that he had written the letter of 25th September, 1998, and told him that he had formed the impression, from something Mr. Lowry had said, that Mr. Lowry was involved in the Doncaster transaction. Mr. Vaughan also informed Mr. Aidan Phelan that when Mr. Kevin Phelan became aware of the terms of the letter of 25th September, 1998, he told Mr. Vaughan that Mr. Lowry had misrepresented his involvement in Doncaster.

Mr. Christopher Vaughan's explanations arising from inquiries made by Mr. Peter Vanderpump in October, 2002

9.44 Following the production of Mr. Vaughan's letter by Mr. Ken Richardson and Mr. Mark Weaver in the course of the mediation with Westferry in September, 2002, Mr. John Ryall, an accountant and employee of Mr. Denis O'Brien, informed Mr. Peter Vanderpump, a Director of Westferry, of what had occurred at the mediation, and requested Mr. Vanderpump to write to Mr. Vaughan to clarify the situation regarding his letter. Mr. Vanderpump did so on 17th October, 2002, stating that it had come to Westferry's attention that correspondence from Mr. Vaughan's office suggested that Mr. Lowry had a shareholding in Westferry, or was involved in the negotiations relating to the Doncaster purchase. The letter reminded Mr. Vaughan that the sole beneficial owners of Westferry were Mr. O'Brien and his family, that no other party was involved, and sought Mr. Vaughan's confirmation that this was his full and complete understanding of the matter. It should be pointed out that this letter only came to the attention of the Tribunal by reason of its having been included in Mr. Vaughan's file, exhibited as part of Mr. Denis O'Brien's affidavit in support of his Judicial Review application in September, 2004, against the Tribunal, as also were two responses drafted by Mr. Vaughan, one dated 21st October, 2002, and the other 23rd October, 2002.

9.45 The first version, dated 21st October, 2002, may have been a draft prepared by Mr. Vaughan which he may not have sent. Insofar as it contains an account of what had occurred in the course of Mr. Vaughan's meetings with Mr. Lowry at the end of September, 1998, the letter states as follows:

> *"What I can state quite categorically is that before I met Michael Lowry for the first time on the 24th September I had absolutely no knowledge that*

he might have been involved in the acquisition of DRFC, and you will see that in that letter I explained to him 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 that letter. Suffice it to say that none of those matters were resolved by Michael Lowry.

I do not think that I misunderstood his comments to me that he was involved in DRFC, but in hindsight I must put it down to some sort of political ego that he was trying to attach his name to what appear [sic] *to be a successful venture."*

9.46 Mr. Vaughan's recollection was that the response dated 23rd October, 2002, was sent to Mr. Vanderpump, and whilst this version does not specifically deal with the meetings with Mr. Lowry in late September, 1998, it does contain the following passage:

"I am quite convinced that during the course of the acquisition of DRFC by Westferry, Kevin Phelan maintained to me that he was the beneficial owner of a trust called 'Glebe Trust', and also that he had a beneficial interest in Westferry. I am also sure that he made representations to me to the effect that Michael Lowry was also involved in Glebe Trust.

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 later following Completion."

Mr. Christopher Vaughan's accounts to Mr. Denis O'Connor

9.47 On 18th October, 2002, the day following Mr. Vanderpump's letter to Mr. Vaughan, Mr. Mark Weaver visited Mr. Vaughan's office, and in the course of their interaction furnished him with a copy of his letter of 25th September, 1998, addressed to Mr. Lowry. Mr. Denis O'Connor testified that he happened to have received a telephone call from Mr. Kevin Phelan on the same day, informing him of Mr. Mark Weaver's visit to Mr. Vaughan's office. As a result, Mr. O'Connor telephoned Mr. Vaughan and arranged to meet Mr. Vaughan in Northampton, on 23rd October, 2002.

9.48 It was Mr. O'Connor's evidence that when he met with Mr. Vaughan on 23rd October, 2002, he had not previously seen a copy of the letter of 25th September, 1998, recording Mr. Lowry's Doncaster involvement. He stated that when he attended Mr. Vaughan's office, there was a lot of chaos, Mr. Vaughan was unable to find a copy of the letter of 25th September, 1998, but did provide a copy of his file note of 18th October, 2002, recording Mr. Weaver's visit, which Mr.

O'Connor read. He testified that Mr. Vaughan told him that the letter that Mr. Weaver had given him was a bad copy of one of his own letters, which had issued in error, and was of no concern. It should be observed that the date of this meeting between Mr. O'Connor and Mr. Vaughan was the same date as Mr. Vaughan's letter to Mr. Peter Vanderpump in which he set out his revised explanation of how the letter of 25th September, 1998, came to be written; further that despite Mr. O'Connor's suggestion that Mr. Vaughan was unable to find a copy of the letter, he had nevertheless attached a copy when writing that day to Mr. Vanderpump.

9.49 Mr. O'Connor also testified that on another occasion, although he was unclear as to when, he did ask Mr. Vaughan about his letter of 25th September, 1998, and how Mr. Vaughan had come to write it. Mr. O'Connor could recall a conversation wherein either he or Mr. Vaughan, referring to Mr. Lowry, made a comment along the lines of "*typical politicians*". Mr. O'Connor stated:

> *"...I remember some type of discussion like that, politicians pretending to do everything so that at least they are the big people at the end when the right result comes out. That type of a conversation."*

Mr. O'Connor also said that he recalled his conversation with Mr. Vaughan including reference to "*loose talk*" or "*bravado talk*" or bragging by Mr. Lowry, which led to Mr. Vaughan writing the letter in the terms he did.

Mr. Christopher Vaughan's accounts to Ms. Kate Macmillan

9.50 Ms. Kate Macmillan and Ms. Ruth Collard were solicitors in the firm Carter-Ruck & Partners, and were acting on behalf of Westferry, primarily in connection with the ongoing dispute with Dinard and Shelter Trust over the retention monies, but they were also instructed in connection with Mr. O'Brien Senior's blackmail complaint arising out of the events that occurred in the course of the mediation meeting in September, 2002. On 22nd October, 2002, Ms. Macmillan telephoned Mr. Vaughan, and made handwritten notes of her conversation with him, which she then converted into a typed attendance of the same date. Although when testifying, her specific recollection of her conversation with Mr. Vaughan was not very clear and, she was accordingly relying in the main on the notes she took at the time, Ms. Macmillan confirmed that those notes were an accurate contemporaneous record of her conversation with Mr. Vaughan. The typed attendance she prepared recorded the following:

> *"CV said that it was important to look at his letter to ML of 25 September 1998 in context. The letter was written a month after the purchase on the day that CV had met ML for the first time. ML had said that he was*

involved in Doncaster Rovers Football Club Limited. CV said that perhaps was [sic] *ML had said to him about Doncaster Rovers Football Club Limited was politicians' puff. Perhaps he was latching on to some transaction, which might have been perceived at the time as successful and therefore considered it was advantageous for him to be connected to it. CV said that he had never taken instructions from ML in relation to Doncaster Rovers Football Club Limited. CV said that he believed that ML was not involved in Doncaster Rovers Football Club Limited at all."*

9.51 Ms. Macmillan again spoke to Mr. Vaughan on the telephone on 28th October, 2002. She provided the Tribunal with her handwritten notes of that conversation, which recorded that Mr. Vaughan had told her, by reason of Mr. Lowry's late arrival, that the meeting on the evening of 23rd September, 1998, had had to be deferred, and that it took place later at Mr. Paul May's house. Ms. Macmillan recorded the following in her note:

> *"I was genuinely surprised when he sd inv*
> *sd in pres of PM/KP."*

She confirmed in evidence that this portion of her handwritten note recorded that Mr. Vaughan told her that he was genuinely surprised when Mr. Lowry had said he was "*involved*", which he had done in the presence of Mr. May and Mr. Kevin Phelan. Ms. Macmillan also recorded Mr. Vaughan as having expressed his belief that Mr. Kevin Phelan was behind, and had orchestrated, the events that had given rise to the blackmail complaint.

9.52 On foot of these telephone contacts, Ms. Macmillan prepared a draft witness statement for Mr. Vaughan which, if approved by him, was intended for use in the blackmail complaint. She faxed her draft of the witness statement to Mr. Vaughan, under cover of letter dated 8th November, 2002. This draft statement came to the attention of the Tribunal for the first time by reason of it having been included in the copy of Mr. Vaughan's file exhibited in Mr. O'Brien's Judicial Review proceedings. That copy of the statement contains handwritten annotations made by Mr. Vaughan in the course of reviewing the draft. In parts of the statement, certain alterations or corrections are made in handwriting, whereas ticks appear beside other paragraphs where no alterations or corrections are made. The relevant section, containing an account of the meeting with Mr. Lowry at the end of September, 1998, reads as follows:

> *"23. I met him for the first time on the evening of 24 September 1998 at Paul May's house. At this meeting were myself, Kevin Phelan, Michael Lowry and Paul May. The meeting took place at Paul May's house because Michael Lowry had been late arriving in*

England and time was short. The meeting was fairly brief and took place before the other three went out for dinner somewhere. The meeting was mainly about the proposed Mansfield property deal, but it touched on a number of issues including DRFL. Kevin Phelan is a person who hops around a great deal in conversation: he changes tack frequently and is the sort of person who can talk about twenty different subjects in twenty seconds.

24. I met Michael Lowry again in my office on 25 September 1998 to discuss the Mansfield deal and then had an approximately 50 minute long car journey with him when I drove him to Leicester. Someone else had been supposed to drive him there, but this person dropped out and I stepped into the breach.

25. From the meeting on 24 September 1998 and from my meetings with Michael Lowry on 25 September 1998, I got the impression that I could talk to Michael Lowry about DRFL, which is why I wrote to him in the terms I did on 25 September 1998...I had a number of issues to sort out regarding the transaction, and I thought he might be able to help. I did not have Westferry Limited's express authority to write this letter but I did not think I needed it because Westferry Limited's representative, Kevin Phelan, had spoken about DRFL openly in Michael Lowry's presence the previous evening."

There were no corrections to any of these numbered paragraphs, and all have a handwritten tick beside them.

Mr. Christopher Vaughan's accounts to the Tribunal

9.53 It is noteworthy that, in all of the accounts given by Mr. Vaughan set out above, almost all of which occurred at a time prior to the time when the letter of 25th September, 1998, came to the attention of the Tribunal, Mr. Vaughan is recorded as having indicated that he wrote his letter referring to *"total involvement"*, on the basis of what he had been informed by Mr. Lowry, albeit that he was subsequently of the belief that Mr. Lowry had no involvement in Doncaster Rovers, and, with the benefit of hindsight, he believed that what Mr. Lowry had told him might have been by reason of a desire on Mr. Lowry's part to associate himself with a transaction that he perceived to be successful.

9.54 When the Tribunal became aware of the contents of the letter of 25th September, 1998, a number of queries were raised with Mr. Vaughan by letter of the 13th January, 2003. Mr. Vaughan responded by letter dated 6th March, 2003,

in which he provided the following account of Mr. Lowry's visit to the UK in late September, 1998:

> *"I met Kevin Phelan and Michael Lowry on the 24th September. We had a general discussion about the Mansfield property. I believe that Kevin Phelan broadened the discussion by raising queries on other projects which he was involved in. I would have certainly raised with Kevin Phelan the issue as to the outstanding matters in DFRC* [sic] *and the need to have a meeting with Aidan Phelan to consider those matters and I gave him a copy of my letter dated 23rd September 1998 which I had unsuccessfully attempted to fax to Aidan Phelan the previous day.*
>
> *Michael Lowry was present throughout the whole of those discussions and I formed what I subsequently discovered to be a totally incorrect view, that because of the frank manner in which Kevin Phelan was discussing the outstanding issues relating to DRFC, Michael Lowry was somehow involved in the DRFC project.*
>
> *Michael Lowry and Kevin Phelan then wanted to go on to have a meal somewhere but I returned to my home. It was arranged for Michael Lowry to come to my office the following day to finalise some of the details relating to the Mansfield property and for me to speak to the Vendors Solicitor in respect of the property.*
>
> *Michael Lowry was brought to my office early in the morning of the 25th September presumably by Kevin Phelan but I have no note or recollection of meeting Kevin Phelan on that day. It had been arranged that a car would come to my office and collect Michael Lowry during the course of the morning and take him to Leicester for an appointment at the BUPA Hospital. The car failed to arrive (I cannot recall what went wrong) and I then offered to take Michael Lowry in my car to the BUPA Hospital in Leicester, which is about 30 miles north up the M1 motorway from my office.*
>
> *Following Michael Lowry arriving at my office on the morning of the 25th September we examined the Mansfield property file. I contacted the Vendors Solicitors as to issues that had arisen from our discussions as to the purchase of that property.*
>
> *No one else travelled in my car to Leicester other than myself and Michael Lowry.*

So far as I can recall the discussions in the car related to the general property market in England, Sport and Irish Politics.

Based on my incorrect assumption from the previous days meeting the outstanding issues relating to DRFC were again touched on again by me. It is my recollection that Michael Lowry offered to assist me in resolving those outstanding issues, by agreeing to try arrange [sic] *a meeting with Aidan Phelan whom he led me to believe he knew.*

I have found no handwritten notes on the DRFC file in relation to the meeting on the 24th September or the discussion in the car the following day, which is not surprising as Michael Lowry had come to Northampton to discuss the Mansfield property."

It is noteworthy that Mr. Vaughan in his response to the Tribunal made no reference to Mr. Lowry having told him that he was involved in Doncaster, but rather he limited his explanation for having written the 25th September, 1998, letter to the fact that Mr. Kevin Phelan had discussed the Doncaster project in Mr. Lowry's presence, and the fact that Mr. Lowry had, in the course of the car journey the following day, offered to try to arrange a meeting with Mr. Aidan Phelan. The Tribunal was not at the time it received this response from Mr. Vaughan aware of any of his previous accounts, as set out above.

9.55 Following receipt of Mr. Vaughan's letter of 6th March, 2003, the Tribunal was informed by Mr. Lowry that the meeting on the evening of his arrival in England had taken place in a hotel premises and was, as he described it, a social meeting over drinks. The Tribunal wrote to Mr. Vaughan relaying Mr. Lowry's account and queried why, if the meeting was to be about Mansfield, he had brought his Doncaster file with him, and had made available to Mr. Lowry copies of the completion statement. Mr. Vaughan responded to the Tribunal on 8th September, 2004, the day before he was due to meet members of the Tribunal legal team at a private meeting in London, and asserted that Mr. Lowry was mistaken, that the meeting had taken place in the boardroom at Mr. Vaughan's office, that Mr. Vaughan did not go to an hotel or have drinks socially with Mr. Lowry, that Mr. Vaughan met Mr. Lowry purely for business in his building, and that the Doncaster files were in his room, which was close to the boardroom, and were available to be consulted.

9.56 At the meeting in London on the following day, 9th September, 2004, Mr. Vaughan reiterated and confirmed this version of events, saying that the meeting took place within office hours, which as far as he was concerned meant some time before 6:00pm. At this time, the Tribunal had not yet received a copy

of Mr. Lowry's plane ticket indicating that his flight had not departed from Dublin until 6:15pm.

9.57 When subsequently the Tribunal became aware for the first time of the draft witness statement prepared by Ms. Kate Macmillan, which recorded the meeting as having occurred in Mr. Paul May's house, the Tribunal again wrote to Mr. Vaughan to seek his assistance, and received a reply by letter dated 7th October, 2004, in which Mr. Vaughan stated that he had started to go through the draft witness statement, as could be seen from his manuscript notes, but he had given up because there were so many aspects that were wrong. What could be seen were his initial attempts to edit the draft statement, but he came to the conclusion that the whole statement needed rewriting. In correspondence Mr. Vaughan sent to Ms. Collard at the time, that is, in November, 2002, he indicated that he wished to confine his witness statement to matters related to his meetings with Mr. Mark Weaver, and he did not state in that correspondence that the draft witness statement contained erroneous material or that the draft statement needed to be rewritten by reason of its being erroneous in any aspects.

Evidence of Mr. Christopher Vaughan

Location and participants at meeting of September, 1998

9.58 Given the non-compellability of Mr. Kevin Phelan and Mr. Paul May, the evidence of what occurred over those days, and of the interactions which led to Mr. Vaughan's letter of 25th September, 1998, in terms which indicated that he regarded Mr. Lowry as a principal party to the Doncaster transaction, was confined to that of Mr. Vaughan and Mr. Lowry. As Mr. Vaughan's various accounts of what had transpired on those days, and what had prompted him to write in that manner to Mr. Lowry, have just been outlined, it is helpful to set out a summary of his evidence in the first instance, even though Mr. Lowry's evidence was heard earlier, during the Tribunal's resumed substantive inquiries into the Doncaster transaction, in 2007.

9.59 Mr. Vaughan stated that in the period leading up to the meetings of 23rd and 24th September, 1998, he was anxious that matters would be moved along in relation to Doncaster. The completion in mid-August, 1998, had been relatively fraught from his point of view, as receipt of the monies to close the sale had been delayed. The completion also coincided with Mr. Vaughan's annual holidays, and he had brought the files relating to what was the largest transaction for which he had up to then been retained, and a fax machine, with him, so that he could deal with the completion whilst on holidays. Mr. Vaughan regarded the completion as merely the first step in a complicated process, and it was for that reason that he set about drafting the lengthy letter of 23rd August, 1998, addressed to Mr. Paul May and Mr. Kevin Phelan, and copied to Mr. Aidan Phelan,

setting out all the matters that needed to be attended to in the short term following completion.

9.60 Subsequent to his return from holidays, on 24th August, 1998, Mr. Vaughan met with Mr. Paul May, whom he described as a careful and clever businessman, and who shared his concerns that matters needed to be progressed. Thereafter, there was a period of limbo for some three weeks or so when nothing appeared to happen. Accordingly, when Mr. Vaughan learned that a meeting had been arranged for 24th September, 1998, he assumed that it would pertain to Doncaster, and that Mr. Aidan Phelan would be in attendance. It was in those circumstances that he prepared his letter to Mr. Aidan Phelan dated 23rd September, 1998, with which he enclosed a copy of an agenda for the meeting, a note of his fees setting out a detailed history of the work undertaken by him in connection with the transaction, a completion statement for the transaction, and a statement of the finances of the football club. Mr. Vaughan faxed the letter, and also sent a hard copy by post but, as matters transpired, he had used the incorrect fax number, and Mr. Aidan Phelan did not receive the letter until the hard copy arrived a number of days later. In any event, Mr. Kevin Phelan had contacted Mr. Vaughan shortly before the meeting to tell him that Mr. Aidan Phelan would not be attending, but that he would be bringing another client of his, Mr. Michael Lowry, who Mr. Kevin Phelan indicated was an investor in the much more modest Mansfield transaction. It was Mr. Vaughan's evidence that at that stage he had no inkling that Mr. Lowry might have any connection with the Doncaster transaction.

9.61 Despite the fact that Mr. Lowry's airline ticket for 23rd September, 1998, recorded that his flight did not depart Dublin until 6:15pm, it was Mr. Vaughan's evidence that the meeting on that evening had proceeded in the boardroom of his office in the early evening, some time around 6:00pm; that, apart from Mr. Kevin Phelan and Mr. Lowry, Mr. Paul May might possibly have been in attendance. In that regard, Mr. Vaughan's evidence to the Tribunal was at variance with a statement which he provided the day before his evidence commenced, in which he had positively indicated that Mr. May had attended the meeting. Mr. Vaughan believed that, after the meeting in his office had concluded, the others may have proceeded elsewhere in order to have a meal, but he did not join them. He denied that the location of the meeting that evening had been Mr. Paul May's house, as Ms. Kate Macmillan had recorded Mr. Vaughan as conveying to her in October, 2002, or that the meeting had proceeded in a social setting in an hotel, as had been testified by Mr. Lowry.

Substance of the meeting

9.62 As to what transpired at that meeting on the evening of 23rd September, 1998, Mr. Vaughan testified that there was a wide-ranging and detailed discussion of Doncaster. He had no recollection of Mansfield featuring, other than to postpone dealing with it until the following morning. The proceedings, in the main, were conducted by Mr. Kevin Phelan and Mr. Paul May, although Mr. Lowry may have provided some input in a general way, as Mr. Vaughan understood Mr. Lowry to be a successful businessman, as well as a politician. It was Mr. Vaughan's evidence that it was apparent that Mr. May and Mr. Kevin Phelan had no difficulty in discussing Doncaster openly in the presence of Mr. Lowry, and Mr. Vaughan did not believe it was for him to stop them. He stated that Mr. Lowry seemed to indicate that he might be able to assist in moving matters along.

9.63 Mr. Vaughan's key concern at the time was to meet with Mr. Aidan Phelan, whom he regarded as the proper person with whom to arrange to have certain required company documentation executed on behalf of Westferry. Mr. Vaughan was disappointed that Mr. Aidan Phelan was not present, and viewed Mr. Lowry, who indicated that he knew Mr. Aidan Phelan and might be able to arrange a meeting between them, as a man who *"could help"*, as he put it. It was his evidence that it was this, combined with the fact that both Mr. May and Mr. Kevin Phelan discussed Doncaster so openly in front of Mr. Lowry, that caused him to form, what he subsequently learned was a mistaken impression, that Mr. Lowry was involved in the transaction.

9.64 Mr. Vaughan confirmed, as stated in his letter of 25th September, 1998, that he gave to Mr. Lowry at the evening meeting on 23rd September, 1998, a copy of his letter to Mr. Aidan Phelan of the same date, with its attachments, that is, the agenda for the meeting, Mr. Vaughan's legal bill, a copy of the completion statement, and a copy of the Doncaster Rovers Club financial statements.

9.65 The following morning, 24th September, 1998, Mr. Kevin Phelan dropped Mr. Lowry to Mr. Vaughan's office in Northampton. Mr. Lowry and Mr. Vaughan then proceeded to discuss matters in relation to Mansfield, after which Mr. Vaughan offered to drive Mr. Lowry to a medical appointment he had made in Leicester. Whilst Mr. Vaughan had no specific recollection of their exchanges in the course of the car journey to Leicester, he stated that he felt that here at last was someone who could move matters along in relation to Doncaster. Indeed, at a later point in his evidence, Mr. Vaughan appeared to suggest that it was primarily their discussions in the course of that journey that led him to believe that Mr. Lowry was a person who *"could help"*.

9.66 As to his letter dated 25th September, 1998, Mr. Vaughan agreed that it was a contemporaneous, or a near contemporaneous, record of what had occurred over the previous two days. He agreed that the letter was effectively an attendance note of those meetings, and that it accorded with his general practice of treating a letter, such as the letter in question, written after a meeting, as constituting an attendance for the purposes of his file. In relation to his description of Mr. Lowry as having a *"total involvement"* in the Doncaster transaction, it was Mr. Vaughan's evidence that he believed that the word *"total"* was unfortunate, and should not have been used in the letter.

9.67 Insofar as Mr. Vaughan had stated in the letter that it was his understanding that Mr. Lowry was:

> *"trying to organise a meeting between myself and Aiden* [sic] *Phelan"*

he testified that for the first time over those days he had met somebody who indicated that he might be able to facilitate such a meeting. Mr. Vaughan agreed that from his point of view Mr. Aidan Phelan was the principal in the transaction, and that Mr. Lowry was the man who was going to get to Mr. Aidan Phelan on his behalf. He stated that one of the most important issues for him was that Mr. Lowry seemed to be somebody who could facilitate contact between him and Mr. Aidan Phelan, something which he had been unable to achieve previously.

Response to the evidence of Mr. Michael Lowry and Ms. Kate Macmillan

9.68 Insofar as Mr. Lowry in his evidence had disputed the contents of Mr. Vaughan's letter, effectively stating that what Mr. Vaughan had written could not have been based on Mr. Lowry's contact with him over the preceding days, and that there had been no detailed discussion between them in relation to Doncaster, it was Mr. Vaughan's evidence that he thought the contemporaneous evidence, that is, the contents of his letter of 25th September, 1998, was correct.

9.69 As to Mr. Vaughan's draft letter to Mr. Peter Vanderpump of Westferry dated 21st October, 2002, which according to the evidence, had not been sent by him, but had been retained by him on his file, and in particular the passage in which he had written:

> *"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 appear* [sic] *to be a successful venture."*

Mr. Vaughan stated that he believed that he had reviewed the draft and thought that it was not correct. As regards the passage of the letter, in which he had indicated that he had not misunderstood Mr. Lowry's comments, it was his evidence that in so stating he had been *"totally wrong"*, although he stood by the portion of that passage relating to his perception of Mr. Lowry's motivations as having arisen from *"some sort of political ego"*.

9.70 As to the matters which he relayed to Ms. Kate Macmillan, solicitor, on two separate occasions in October, 2002, namely that the location of the meeting on the evening of 23rd September, 1998, had been Mr. Paul May's house, as Mr. Lowry's flight had been delayed, that Mr. Lowry had said or indicated that he was involved in the Doncaster transaction, and that Mr. Vaughan was surprised that Mr. Lowry had said this in the presence of Mr. May and Mr. Kevin Phelan, Mr. Vaughan criticised Ms. Macmillan's notes. He observed that he had not had an opportunity to test Ms. Macmillan's earlier evidence in relation to her confirmation of the accuracy of her notes.

9.71 As to the draft police statement prepared by Ms. Macmillan and sent to Mr. Vaughan for his approval, arising from their two conversations in October, 2002, and which again recorded that the meeting on the evening of 23rd September, 1998, occurred in Mr. May's house, and which Mr. Vaughan in his own annotations had ticked, it was Mr. Vaughan's evidence that the draft statement was fundamentally wrong, and was never signed by him. It was his explanation that the ticks he had made on that statement may simply have been indicative of his having read the paragraphs in question. As to why he had never conveyed to Ms. Macmillan, on receipt of the draft statement, that it was fundamentally wrong, Mr. Vaughan testified that he could have written a lengthy letter to Ms. Macmillan, but the simple fact was that he was unhappy with the statement, and did not sign it.

9.72 One of the most revealing elements of Mr. Vaughan's evidence, in relation to what caused him to form his understanding of Mr. Lowry's *"total involvement"* in the Doncaster transaction, arose at the conclusion of his evidence, in the course of cross-examination by counsel for Mr. Denis O'Brien. His responses to Mr. O'Brien's counsel were in direct conflict with his evidence to the Tribunal that he had been mistaken in his understanding of Mr. Lowry's role and, that in drafting his letter of 21st October, 2002, to Mr. Vanderpump, in which he had indicated that he did not think that he had misunderstood Mr. Lowry's comments to him that he was involved in the Doncaster transaction, he had been incorrect.

9.73 In the course of that cross-examination by counsel for Mr. O'Brien, it was put to Mr. Vaughan that the mistake he made in his letter of 25th September, 1998, had caused embarrassment and difficulty for Mr. O'Brien. Mr. Vaughan's trenchant response, as recorded in the transcript of that day's evidence, was as follows:

> *"A. When I say I made a mistake, I was led into making a mistake, it was -- the opinion --*
>
> *Q. I am not seeking to apportion blame Mr. Vaughan.*
>
> *A. -- the opinion I reached was based on what I was told. So, I think it's wrong actually to say I made a mistake. I formed a genuine opinion which later on proved to be wrong. So, I will retract the fact that I made a mistake.*
>
> *Q. I will accept that. You had a genuine opinion based on information you were given by Mr. Lowry, isn't that correct?*
>
> *A. Correct."*

9.74 After much prevarication and not a little obfuscation in his testimony, Mr. Vaughan, in this exchange, was emphatic in asserting that he had formed a genuine opinion of Mr. Lowry's "*total involvement*" in the Doncaster transaction based on information he had been given by Mr. Lowry. Mr. Vaughan also retracted, in the clearest terms, his evidence that he had been mistaken in the understanding which he reached on that occasion. In acknowledging that he had made an error, he explained that this was on the basis of what he had subsequently been told.

9.75 Mr. Vaughan testified that his letter to Mr. Lowry of 25th September, 1998, had been posted to Mr. Lowry at his address in Thurles. Although the original of that letter never came to light, a copy of it, that is, the letter on Mr. Vaughan's letterhead, with his signature, and bearing a handwritten postscript, to which further reference will be made, did come to the attention of the Tribunal. Whilst evidently that copy had been improperly obtained, either by Mr. Kevin Phelan or Mr. Mark Weaver, it was nonetheless a genuine copy of the original letter which, according to Mr. Vaughan, he had posted to Mr. Lowry. He confirmed its authenticity in his evidence.

9.76 According to his evidence, Mr. Vaughan spoke to Mr. Kevin Phelan some short time after sending the letter of 25th September, 1998, when Mr. Kevin Phelan was horrified to learn that Mr. Vaughan had written to Mr. Lowry in

those terms, and informed him that he was in error, and that Mr. Lowry had no involvement in the Doncaster transaction. It was Mr. Vaughan's testimony that he had also prepared a letter addressed to Mr. Aidan Phelan of the same date, in which he had confirmed his understanding that Mr. Lowry was trying to arrange a meeting between them some time in the near future. When he spoke to Mr. Kevin Phelan, he also indicated to him that he had written to Mr. Aidan Phelan in those terms, which, according to Mr. Vaughan, heightened Mr. Kevin Phelan's concern as to the potential embarrassment that would be caused by his further reference in that letter to Mr. Lowry. It happened that Mr. Vaughan had not by then sent the letter to Mr. Aidan Phelan, so that he was able to put Mr. Kevin Phelan's mind at rest, and it was, he stated, for that reason that he had drawn a line across the copy of that letter on his file.

Evidence of Mr. Michael Lowry

9.77 When Mr. Lowry gave evidence in 2001, in relation to his meeting with Mr. Vaughan in Northampton in September, 1998, his evidence had been of a single meeting with Mr. Vaughan relating solely to the Mansfield acquisition. At that time, he had not informed the Tribunal that their dealings on that occasion had extended to a meeting on the evening of 23rd September, 1998, or to a car journey after their meeting the following day. Nor for that matter had Mr. Vaughan in his correspondence with the Tribunal, or at private meetings which he attended, given any account which expanded upon a single meeting with Mr. Lowry in his office, confined to the Mansfield acquisition.

9.78 Mr. Lowry's evidence concerning his visit to England in September, 1998, when he attended again in 2007, was considerably more expansive. He stated that Mr. Kevin Phelan collected him from Birmingham Airport some time on the evening of 23rd September, 1998. The primary purpose of his visit to the UK was to attend a medical appointment in Leicester the following day. This had been arranged for him by Mr. Kevin Phelan. It had initially been envisaged that Mr. Lowry and Mr. Kevin Phelan would meet Mr. Vaughan together the following morning, that is, on the morning of 24th September, 1998, at Mr. Vaughan's office. However, late in the day, Mr. Kevin Phelan had to attend an important meeting elsewhere, which disrupted arrangements for 24th September. It was in those circumstances that Mr. Kevin Phelan had arranged to meet Mr. Vaughan, at the hotel in which Mr. Lowry was staying on the evening of his arrival. They met, and Mr. Kevin Phelan availed of that opportunity to have a general discussion about several projects with Mr. Vaughan. According to Mr. Lowry, because Mr. Kevin Phelan had a relationship with Mr. Vaughan which dated back some time, they were both involved in several other projects with which Mr. Lowry had no

connection. There was also a general discussion in relation to the Mansfield project.

9.79 Although the text of Mr. Vaughan's letter of 25th September, 1998, records that Mr. Vaughan furnished Mr. Lowry at that meeting on 23rd September, 1998, with a copy of his letter of the same date to Mr. Aidan Phelan, together with its attachments, as was subsequently confirmed by Mr. Vaughan in evidence, Mr. Lowry denied that he had received that letter, or any documentation in connection with the Doncaster transaction, from Mr. Vaughan. Mr. Lowry did not know whether Mr. Vaughan had files with him at their meeting on 23rd September, although he did recall that there was paperwork and documentation on the table. Whilst he recalled that there were a number of projects discussed between Mr. Vaughan and Mr. Kevin Phelan, he did not know if Doncaster was included in those discussions. He only had a passing interest in what was happening. It appeared that Mr. Vaughan and Mr. Kevin Phelan had no difficulty in discussing their affairs in his presence, even though he had no involvement in those discussions, and he had remained at the table merely so as to be sociable. Mr. Lowry made no reference to Mr. Paul May as having been a participant at that meeting.

9.80 Mr. Vaughan's letter of 25th September, 1998, made absolutely no sense whatsoever, and he could not explain why he was the named addressee. He stated that he did not receive it, and suggested that it was not intended for him, that it had been sent to him by mistake and that it was intended for either Mr. Kevin Phelan or Mr. Aidan Phelan. This proposition is unsustainable in light of the fact that the letter opens with a reference to Mr. Lowry's BUPA appointment, something which cannot have applied to either Mr. Kevin Phelan or Mr. Aidan Phelan.

9.81 Mr. Lowry testified that on the second day of his visit to the English Midlands, on 24th September, 1998, Mr. Kevin Phelan dropped him to Mr. Vaughan's office in the morning, and, that as Mr. Kevin Phelan was otherwise engaged, when their meeting had concluded, Mr. Vaughan offered to drive Mr. Lowry to his appointment in Leicester. They had some general discussions in the car on the way to Leicester covering topics such as politics, Mr. Lowry's recent resignation, the Tribunal, and rugby. Mr. Lowry told Mr. Vaughan that he knew Mr. Aidan Phelan, in which context Mr. Vaughan alluded to the difficulties he had encountered in making contact with him, and thereupon Mr. Lowry offered to telephone Mr. Aidan Phelan, but ultimately did not do so. At that point, it was Mr. Lowry's understanding that Mr. Aidan Phelan was the sole investor in the Doncaster transaction.

9.82 In his evidence in 2001, in relation to the Mansfield acquisition, Mr. Lowry testified that he was unaware that Mr. Aidan Phelan, who by then was both a business and personal acquaintance, had had any dealings with Mr. Kevin Phelan in relation to UK properties until he was introduced in March, 1999, by Mr. Kevin Phelan as the 90% investor in the Mansfield project. That aspect of his evidence must be regarded as incorrect, in the light of his 2007 evidence, from which it appears that he was aware, at the latest from September, 1998, of Mr. Aidan Phelan's involvement in UK property transactions with Mr. Kevin Phelan.

MR. CHRISTOPHER VAUGHAN'S UNDERSTANDING OF MR. MICHAEL LOWRY'S ROLE

9.83 The starting point of any consideration of what actually transpired on 23rd and 24th September, 1998, between Mr. Lowry and Mr. Vaughan, and what caused Mr. Vaughan, an experienced solicitor, to form the view that Mr. Lowry was totally involved in the Doncaster transaction, and to write to him in terms and furnish him with documentation appropriate only to a party as intimately involved as either Mr. Kevin Phelan or Mr. Aidan Phelan or Mr. May, must be Mr. Vaughan's letter of 25th September, 1998. Mr. Vaughan himself acknowledged that his letter was the most contemporaneous record, and was equivalent to a solicitor's attendance for the purposes of his files.

9.84 Whilst it was suggested on many occasions, and in particular by means of an explanation for the *"short form"* and *"long form"* correspondence, that Mr. Vaughan had a tendency to confuse transactions, and clients, and to form incorrect impressions and understandings, the opposite proved to be the case from the belated availability of a series of letters, which had either been removed entirely from Mr. Vaughan's files, as produced by him to the Tribunal, or replaced with other letters in which references to Mr. Lowry had been erased. Whatever may be said of Mr. Vaughan's interaction with the Tribunal, he is undoubtedly an experienced, skilled and astute solicitor, and the Tribunal regards it as inconceivable that he could have been so fundamentally in error in his appreciation or understanding of Mr. Lowry's role as to write to him on the footing that he had a *"total involvement"* in the Doncaster transaction, if he had no connection whatsoever with the transaction.

9.85 It is apparent from the contents of Mr. Vaughan's letter that the topics discussed with Mr. Lowry over the previous two days included:

(i) Mr. Vaughan's proposal that Westferry should divest itself of all assets, to ensure that it was proofed against any judgment that the vendors might secure, in respect of an agreement that an additional Stg.£250,000.00 should be paid by Westferry in respect of a car park lease;

(ii) an agreement for the retention of Mr. Paul May by Doncaster Rovers at a fee of Stg.£120,000.00;

(iii) Mr. Vaughan's outstanding fees for work done in relation to the Doncaster acquisition;

(iv) fees due to Grant Thornton in connection with the transaction.

9.86 With that letter, Mr. Vaughan furnished Mr. Lowry with another copy of his letter, dated 23rd September, 1998, and enclosures, although noting that Mr. Lowry *"did take"* a copy of that letter with him the previous day, appended to which was an agenda for the meeting which Mr. Vaughan had been expecting to have with Mr. Aidan Phelan, a copy of a statement of his own professional fees, a copy of the completion statement in relation to the acquisition of Westferry, and a copy of a breakdown of the finances of Doncaster Rovers and the application of the purchase monies which had been provided to Mr. Vaughan. Also furnished with the letter of 25th September, 1998, was a copy of the very extensive letter dated 23rd August, 1998, which Mr. Vaughan had sent to Mr. Paul May, Mr. Kevin Phelan, and Mr. Aidan Phelan which extended to some seven pages, and which addressed in the greatest of detail all issues which had arisen in relation to the acquisition, the various retention funds, and the continuing administration and operation of the business of the football club. In so writing to him on 25th September, 1998, Mr. Vaughan furnished Mr. Lowry with information and documentation of the most confidential and sensitive nature, and the Tribunal is satisfied that he would not have done so, had he any uncertainty regarding Mr. Lowry's entitlement to that material.

9.87 Mr. Vaughan's efforts, in the course of his examination by Tribunal counsel, to portray his perception of Mr. Lowry's role as having been one which resulted from no more than Mr. Kevin Phelan's and Mr. Paul May's preparedness to discuss the Doncaster project in his presence, and from his own understanding that Mr. Lowry, being acquainted with Mr. Aidan Phelan, could facilitate contact between Mr. Vaughan and Mr. Aidan Phelan, from whom he was so anxious to obtain instructions, does not rest easily with the contents of his letter of 25th September, 1998, and the depth and sensitivity of the confidential material which he furnished Mr. Lowry. It was also one that did not withstand cross-examination when, after persistently adhering to this account, Mr. Vaughan asserted that he had not in fact made any mistake in the understanding which he had formed; that he formed a genuine opinion; that the opinion was based on what he was told, and on information which he was given by Mr. Lowry. In that element of his evidence, Mr. Vaughan's testimony was also entirely consistent

with the information he had conveyed to Ms. Kate Macmillan in October, 2002, and with his initial draft letter to Mr. Vanderpump of 21st October, 2002.

9.88 The location of the evening meeting of 23rd September, 1998, although of secondary importance to what transpired in the course of it, was, the Tribunal is satisfied, neither in the boardroom of Mr. Vaughan's office, as he testified, nor in an hotel, as was testified by Mr. Lowry. The Tribunal is satisfied that the location of the meeting was at Mr. Paul May's house, as had been conveyed by Mr. Vaughan to Ms. Kate Macmillan in October, 2002. Furthermore, such a view was fortified by receipt of yet another letter, which had been withheld from the Tribunal, after the completion of Mr. Vaughan's evidence, that is, a letter written by Mr. Vaughan to Mr. Kevin Phelan dated 5th October, 1998, some ten days after these events. Whilst the dating of the meetings, to which Mr. Vaughan referred in that letter to Mr. Kevin Phelan, was again in error, the sequence and location could not have been clearer, in that what Mr. Vaughan stated to Mr. Kevin Phelan on that occasion was:

> *"It was clear from the discussion that I had with Michael Lowry at Paul's house on 24th September, 1998, and subsequently when I drove him to Leicester on 25th September, 1998, that he is seeking to make money to resolve his personal financial difficulties."*

9.89 The significance of the location of that evening meeting lies in the matters which were intended to be discussed. Mr. Paul May, as far as the Tribunal is aware, had no role or function in relation to any UK property transaction involving Mr. Kevin Phelan, other than the Doncaster transaction. Mr. May was appointed an officer of the Doncaster club, Mr. Vaughan's lengthy post completion letter of 23rd August, 1998, was addressed to him jointly with Mr. Kevin Phelan, and the terms of Mr. May's engagement by the club was one of the matters discussed at some point over those two days between Mr. Vaughan and Mr. Lowry, as confirmed in the letter of 25th September, 1998. Since, as the Tribunal has found, the meeting did proceed in Mr. Paul May's house and not elsewhere, the matters intended to be discussed can only have been the Doncaster transaction.

9.90 Whilst the Tribunal is satisfied that Mr. Vaughan's understanding and impression of Mr. Lowry's *"total involvement"* in the Doncaster transaction was based on what Mr. Lowry told him, and not on his passive presence at a meeting at which Doncaster issues were discussed, it does not of course follow of itself that Mr. Lowry had any such involvement. Mr. Vaughan confirmed that, by the time he gave evidence, he realised that he had been in error. That realisation had

not resulted from any independent investigation that he had undertaken, but rather from what he had been told after the event.

9.91 The Tribunal is satisfied that Mr. Vaughan did post his letter of 25th September, 1998, to Mr. Lowry at his Thurles address. It is further satisfied that, contrary to Mr. Lowry's evidence, that letter must have been received by him. What he then did in relation to it is uncertain, but what is clear is that the original letter was copied, and ultimately came into possession of the representatives of the vendors of Doncaster, who produced it at a later date in the context of litigation relating to that transaction. That copy of Mr. Vaughan's original letter to Mr. Lowry also came to the attention of the Tribunal, and in the course of Mr. Vaughan's evidence he confirmed its authenticity. In the absence of some unknown third party having intercepted that letter in the post from Mr. Vaughan in Northampton to Mr. Lowry in Thurles, the only conclusion that can be reached is that the original letter was received by Mr. Lowry, and it was as a result of his dealings with it, which are unknown, that a copy ultimately came into the hands of the vendors' representatives.

9.92 That copy of Mr. Vaughan's original letter, as posted by him to Mr. Lowry contained a postscript in Mr. Vaughan's handwriting, in the following terms:

> "**PS I may meet Aiden* [sic] *on Thursday 1st October."*

It seems therefore that, before this letter was posted, Mr. Vaughan had in fact made at least a tentative arrangement to meet with Mr. Aidan Phelan. That arrangement would of course have rendered his letter of the same date to Mr. Aidan Phelan somewhat marginal, and the Tribunal views the fixing of a date as that which must have prompted Mr. Vaughan to withhold sending the letter, and to put a copy on his file with a line through it.

9.93 As to Mr. Vaughan's evidence of his interaction with Mr. Kevin Phelan some days after 25th September, 1998, when Mr. Kevin Phelan expressed his horror, in response to Mr. Vaughan informing him that he had written to Mr. Lowry in those terms, and informed Mr. Vaughan that he was in error in his understanding of Mr. Lowry's involvement, the Tribunal must register its caution surrounding the reliability of Mr. Vaughan's account of that encounter. Mr. Vaughan was far from dependable in his evidence to the Tribunal, as reflected in his admission in June, 2009, that significant matters in the evidence he had given in April, 2009, regarding the Mansfield and Cheadle properties were incorrect.

9.94 Also, it is noteworthy that Mr. Vaughan did not bring this interaction with Mr. Kevin Phelan to the attention of either Mr. Peter Vanderpump or Ms. Kate Macmillan in the course of their inquiries in October, 2002. This is particularly surprising given that Mr. Vaughan informed Ms. Macmillan that he believed that Mr. Kevin Phelan was behind the emergence of the copy of the letter of 25th September, 1998, produced by Mr. Ken Richardson and Mr. Mark Weaver in the course of the mediation between Dinard and Westferry, and which had caused significant concern for Westferry, and had given rise to the making of the blackmail complaint. In that context, information to the effect that Mr. Kevin Phelan had corrected Mr. Vaughan's belief about Mr. Lowry's involvement in the Doncaster transaction very shortly after the letter of 25th September, 1998, had issued, would have been both relevant and useful from Westferry's perspective, and it is difficult to believe that Mr. Vaughan would have omitted to bring that critical information to Westferry's attention. Indeed, the first time that this purported conversation between Mr. Kevin Phelan and Mr. Vaughan was alluded to was in response to inquiries raised by the Tribunal.

9.95 It is also surprising that, if, shortly after sending the letter of 25th September, 1998, he had such a conversation with Mr. Kevin Phelan, no corrective steps were taken by Mr. Vaughan to ensure that the highly sensitive material he had forwarded to Mr. Lowry was returned. Mr. Vaughan's evidence that he may have assumed that Mr. Kevin Phelan would *"sort it out"*, did not reflect the kind of response which would be expected of an experienced solicitor in such a serious situation. There is no evidence to suggest that any steps were taken by any person to rectify the situation.

Further Instances Of References To Mr. Michael Lowry In The Course Of The Doncaster Project

Progress of the transaction

9.96 Before proceeding to relate some further instances of recorded references to Mr. Lowry in the course of the Doncaster project, it is helpful to outline the progress of the transaction, following the completion of the acquisition in August, 1998. At that point, the shares in the club had been transferred to Westferry, which was by then owned and controlled by the O'Brien family trust. What was acquired by Westferry was both the playing club, and its stadium at Belle Vue. The intention was that the playing club would relocate to a new ground, and would be sold to new owners. Planning permission for the existing ground would be obtained, and the ground would be sold for redevelopment. The project would be managed by Mr. Kevin Phelan exclusively, and he would be entitled to 40% of the profits secured. It was anticipated that all of the elements of the project would be accomplished, and brought to completion within nine to twelve months from August, 1998.

9.97 Matters did not however proceed according to plan. Doncaster Council did not prove as supportive of the redevelopment of the stadium as Mr. Aidan Phelan had been led to believe. Mr. Aidan Phelan took an increasingly more active role in managing the project, and, as it continued to stall, he became progressively more disenchanted with Mr. Kevin Phelan's ability to deliver the intended outcome. He appointed McAlpine Special Projects, UK-based property consultants, as development partners, and ultimately Mr. Kevin Phelan was excluded from any managerial role in Doncaster, and indeed in the other UK projects which he had introduced.

9.98 By 2001, when the Mansfield and Cheadle properties first came to the attention of the Tribunal, relations between Mr. Kevin Phelan and Mr. Aidan Phelan had deteriorated, as had relations between Mr. Kevin Phelan, Mr. Christopher Vaughan and various other professionals involved in the Doncaster transaction. When Mr. Aidan Phelan severed his business connections with Mr. Denis O'Brien, and his own business interests increasingly became directed to overseas activities, stewardship of the Doncaster project passed in early 2002 to Mr. Denis O'Brien Senior, Mr. O'Brien's father. As will be seen, Mr. O'Brien Senior assumed responsibility for a number of issues relating to Doncaster, most significantly a claim then pending by Mr. Kevin Phelan for fees due to him, and litigation also then pending between the vendors of Doncaster, Dinard and Shelter Trust, and Westferry, relating to the retention funds which had been held on completion of the transaction in August, 1998.

Fax from Mr. Kevin Phelan to Mr. Aidan Phelan of 11th August, 1999

9.99 In August, 1999, some twelve months into the project, a fax was transmitted from Mr. Kevin Phelan to Mr. Aidan Phelan. In the course of references to a series of matters pertaining to Doncaster, and short references to other projects, the fax contained the following passage:

> *"7. ML*
> *Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan."*

A copy of the fax referred to above can be found in the Appendix to this chapter.

9.100 This document had not been within the files of Westferry produced to the Tribunal in advance of the delivery of its Opening Statement in September, 2004, or in advance of the issue of Mr. O'Brien's Judicial Review proceedings immediately thereafter, in which he sought to prevent the Tribunal from investigating the Doncaster transaction on the grounds of insufficient evidence. It was not only in Mr. O'Brien's possession, in the possession of Westferry, and in

the possession of his solicitors, Messrs. William Fry, but had come specifically to their attention some time earlier in the context of the negotiations, for which Mr. Denis O'Brien Senior had assumed responsibility, with Mr. Kevin Phelan's solicitors, which culminated in a payment of Stg.£150,000.00 to Mr. Kevin Phelan by Westferry in August, 2002. A copy of the document was finally produced to the Tribunal on 1st November, 2004, in circumstances which are related more fully in Chapter 11 of this Volume.

9.101 At the time the fax came to the attention of Mr. O'Brien's solicitors, in 2002, they advised that inquiries would have to be instituted regarding the reference to *"ML"* in the context of Doncaster. What emerged from the inquiries actually made was a suggestion by Mr. Denis O'Connor, Mr. Lowry's accountant and adviser, whose role in all of these matters will be explored in the next chapter, that the *"ML"* reference in the fax might have related to a Mr. Michael Lloyd, with whom he understood Mr. Kevin Phelan had some business connection. The inquiries made of Mr. Kevin Phelan's UK solicitors, Messrs. Woodcock & Sons, who were then in correspondence with William Fry, were to the effect that *"ML"* was indeed a reference to Mr. Lowry, but was intended to relate to the Mansfield property. It should be added, that this followed upon an initial response from Woodcock & Sons, when asked to confirm that Mr. Lowry had no involvement in the Doncaster transaction, that this was tantamount to asking the impossible.

9.102 It was in these circumstances that the Tribunal pursued inquiries in 2007 into the reference to *"ML"* in the context, and during the currency, of the Doncaster Project. As Mr. Kevin Phelan refused to attend as a witness, it was to Mr. Aidan Phelan, the recipient of the fax, that the Tribunal's inquiries were primarily directed. It was Mr. Aidan Phelan's evidence that he had no recollection of what he understood Mr. Kevin Phelan to be referring to at paragraph 7 of his fax, if he ever saw it. He had no knowledge of a Mr. Michael Lloyd, that is, the individual suggested on foot of Mr. Denis O'Connor's inquiries as having possibly been the *"ML"* alluded to. Mr. Aidan Phelan agreed that the explanation furnished by Mr. Kevin Phelan's solicitors to William Fry that the passage, whilst referring to Mr. Michael Lowry, related not to the Doncaster transaction but to the Mansfield transaction, made no sense. Mr. Kevin Phelan was managing the Mansfield project as of August, 1999, so that the notion of him referring queries to Mr. Aidan Phelan in relation to it made no sense to him. He also agreed in cross-examination by counsel for Mr. Denis O'Brien that the reference to Mr. Lowry was equally senseless in connection with Doncaster. He confirmed that no inquiries had been pursued with him in 2002, by William Fry, or by any representative of Westferry, when the reference came to the attention of William Fry.

9.103 Mr. Michael Lowry testified to the effect that he had never seen the document, and he could not speculate as to why his name should have appeared in a document generated in the course of the Doncaster project. He recalled that his accountant and adviser, Mr. Denis O'Connor, had mentioned the matter to him at one point, following a meeting which Mr. O'Connor had attended with Mr. Kevin Phelan's UK solicitors, Woodcock & Sons, when Mr. O'Connor had inquired of him whether he knew of a Mr. Michael Lloyd.

9.104 The explanations which the Tribunal received, in the absence of Mr. Kevin Phelan, as to the reference to *"ML"* in Mr. Kevin Phelan's fax to Mr. Aidan Phelan in the context of the Doncaster project, were unimpressive. The relevant passage in its ordinary meaning is clear: as regards *"ML"*, that is, Mr. M. Lowry, Mr. Kevin Phelan was to refer all queries, in connection with Doncaster, to Mr. Aidan Phelan. Mr. Aidan Phelan's evidence that he had no idea what Mr. Kevin Phelan was referring to, was unconvincing, as was the explanation seemingly accepted by William Fry, Westferry and the O'Brien interests, in advance of paying Stg.£150,000.00 to Mr. Kevin Phelan, that there had been an error, and that the reference should in fact have related to Mansfield.

Letter from Mr. Kevin Phelan to Mr. Aidan Phelan of 30th August, 2000

9.105 A further reference to Mr. Lowry, in the course of the Doncaster project, arose in correspondence from Mr. Kevin Phelan to Mr. Aidan Phelan the following year, in a letter dated 30th August, 2000. Before referring to the contents of this letter, it is helpful to place it in context. It will be recalled from preceding chapters that on 17th August, 2000, there had been a meeting in Jury's Hotel in Dublin, attended by Mr. Aidan Phelan, Mr. Michael Lowry, Mr. Christopher Vaughan and Ms. Helen Malone. A note was produced at that meeting by Ms. Malone, which was headed:

> *"UK property ML."*

The Tribunal was unaware in the course of its substantive investigations of the Mansfield and Cheadle transactions in 2001, by reason of the falsification of Mr. Christopher Vaughan's files, that at that meeting what had been under discussion was a disposal of both the Mansfield and Cheadle properties in one transaction, on terms that the entire of the proceeds, gross or net, would accrue to Mr. Lowry. This fact only emerged conclusively when Mr. Vaughan returned to give evidence in June, 2009, by which time the full extent of the falsification of his files had become apparent, and the actual correspondence from his files, which reflected what had been discussed on that occasion, came to light. The correspondence in

question was dated 18th August, 2000, and is referred to in detail in an earlier chapter of this Volume.

9.106 Mr. Kevin Phelan's letter to Mr. Aidan Phelan, dated 30th August, 2000, written on behalf of Gameplan International, an entity through which Mr. Kevin Phelan conducted business, opened as follows:

> *"Dear Aidan,*
>
> *Further to our discussion with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting, we have now had time to reflect on those discussions and also consider the letter received from Christopher Vaughan dated 18th August 2000."*

The letter then proceeded to record disappointment over Mr. Aidan Phelan's failure to keep Gameplan advised on progress regarding Doncaster, and over a reference that had apparently been made whereby the Doncaster property had been described as a *"pup"*. The letter then asserted that lack of progress had been due to the exclusion of Gameplan as managers of the Project, and enclosed invoices for fees due in respect of two other projects, namely, projects at Luton and Altrincham. A copy of the letter can be found in the Appendix to this chapter.

9.107 What the letter suggests on its face, particularly bearing in mind that it was headed *"Ref: Doncaster/Altrincham/Luton projects"*, was that Mr. Kevin Phelan had discussions with Mr. Vaughan and Mr. Lowry in connection with the Doncaster project, and it was in those circumstances that this document was also raised in the course of the Tribunal's inquiries in 2007.

9.108 Mr. Aidan Phelan stated that he did not believe that the Doncaster project was discussed at the meeting in Jury's Hotel on 17th August, 2000, and in that regard he pointed to Ms. Helen Malone's note. He believed that in the course of that meeting he would have criticised Mr. Kevin Phelan, would also have had harsh words with Mr. Lowry, and would have said that Mr. Kevin Phelan had not performed on the Mansfield and Cheadle projects. In his view, Mr. Kevin Phelan's letter of 30th August, 2000, was a response to that criticism, or *"returning serve"*, as he put it. He imagined that his criticism of Mr. Kevin Phelan had been passed on to him by Mr. Vaughan and Mr. Lowry, and that Mr. Kevin Phelan had retaliated in his letter by criticising Mr. Aidan Phelan's lack of progress on the Doncaster project. He did not believe that Mr. Kevin Phelan had any discussions with Mr. Lowry or Mr. Vaughan in connection with Doncaster.

9.109 It was Mr. Lowry's evidence that he recalled that the meeting at Jury's Hotel had in fact covered not just Mansfield and Cheadle, but also Doncaster, Altrincham and Luton. Mansfield and Cheadle were discussed at the beginning of the meeting, and when those discussions were concluded, he left the meeting and Mr. Vaughan, Mr. Aidan Phelan and Ms. Helen Malone remained for a relatively lengthy time to discuss the other projects. Mr. Lowry thought that this meeting of 17th August, 2000, marked the commencement of the souring of relations with Mr. Kevin Phelan, in that it was felt that Mr. Kevin Phelan had not delivered on the property investments which he had introduced, and it was time that somebody so informed him. It was Mr. Lowry's evidence that he was probably directed to relay to Mr. Kevin Phelan the misgivings surrounding his performance in relation to Cheadle and Mansfield, and that Mr. Vaughan was told to convey the same information in relation to Doncaster, and that between everybody Mr. Kevin Phelan got a sharp message that he was not performing. Mr. Lowry further testified that he thought that Mr. Kevin Phelan was probably stung by that message, and that it was that which prompted him to write to Mr. Aidan Phelan in the terms in which he did.

9.110 The Tribunal can appreciate that Mr. Kevin Phelan's criticisms of the management of the Doncaster project by Mr. Aidan Phelan may well have resulted from some rebuke which he perceived to have originated with Mr. Aidan Phelan. This does not however explain his reference to discussions with Mr. Lowry, in the letter headed *"Doncaster/Altrincham/Luton Projects"*. Apart from a request for the payment of fees in respect of Luton and Altrincham, the letter related solely to Doncaster, and no reference whatsoever was made to Mansfield or Cheadle, either explicitly or by inference. The discussion which Mr. Kevin Phelan had with Mr. Lowry, on foot of which he wrote that letter, can only have been material to the subject-matter of his criticisms, if they related to Doncaster.

ENCOUNTERS WITH MR. DENIS O'CONNOR

Brokering settlements

9.111 On 10th September, 2002, a meeting took place in London, at the offices of Messrs. Carter-Ruck, solicitors for Westferry, which again drew Mr. Michael Lowry, not just by name, but by association, into the most confidential and sensitive realms of the Doncaster project. Ms. Ruth Collard, an experienced litigation partner in the firm, had been instructed to represent Westferry in the defence of proceedings which had been instituted by the vendors of Doncaster, in which it was sought to recover the retention funds held back when the acquisition completed. Ms. Collard had initially taken instructions from Mr. Aidan Phelan, and following the termination of his business relationship with Mr. Denis O'Brien, her

instructions were received from Mr. Denis O'Brien Senior, when he assumed responsibility for Doncaster.

9.112 The significance of that meeting in terms of the Tribunal's inquiries lay not just in what transpired at it, and in Ms. Collard's record of what she was informed, but also in the purpose of the meeting, and the person for whose benefit it was convened. The purpose of the meeting was to brief that person on the claim by the vendors against Westferry, with a view to brokering a settlement, by that person, between the parties to the litigation in advance of a mediation of the dispute, due to proceed in London on 27th September, 2002. The person in question was Mr. Denis O'Connor, Mr. Lowry's accountant and adviser, who had played a central role in all of Mr. Lowry's earlier dealings with the Tribunal, and who had assisted and facilitated the Tribunal's inquiries into the sources of funds in accounts of Mr. Lowry, the Tribunal's further inquiries in 2001 into Mr. Lowry's account in Irish Nationwide (IOM), and into his involvement in the Mansfield and Cheadle properties.

9.113 Mr. O'Connor, as will be examined in the next chapter, had from March, 2001, when, according to the evidence heard by the Tribunal, he first learned of Mr. Lowry's involvement in UK property investments, developed a relationship with Mr. Kevin Phelan. Between June, 2001, and August, 2002, Mr. O'Connor personally assumed responsibility for resolving disputes which had arisen between Mr. Kevin Phelan and virtually all of the parties who featured in the UK property transactions which had come to the attention of the Tribunal. By August, 2002, Mr. O'Connor had brokered or promoted the resolution of disputes, including the withdrawal of complaints made by Mr. Kevin Phelan to professional bodies, on behalf of Mr. Lowry, Mr. Aidan Phelan, Brian Phelan & Partners, the accountancy firm of which Mr. Aidan Phelan had formerly been a partner, Mr. Christopher Vaughan, Mr. Craig Tallents, an accountant who had been retained by Westferry, and Westferry itself.

9.114 Having successfully achieved a resolution of these disputes, which embraced aggregate payments of more than Stg.£210,000.00 to Mr. Kevin Phelan, Mr. O'Connor then became enmeshed in the Westferry litigation. Before proceeding to outline what transpired at the meeting of 10th September, 2002, between Mr. O'Connor and Ms. Collard in London, there is one final detail which should not be overlooked. Mr. Kevin Phelan, in the course of the various disputes, had made what were regarded as wild and untruthful allegations concerning a number of matters, including the falsification of documentation submitted to the Tribunal. Those latter allegations were, as the evidence ultimately conclusively revealed, neither wild nor untruthful. What was undoubtedly clear to those involved, was that Mr. Kevin Phelan was in possession of information which could

be damaging, principally to Mr. Denis O'Brien and Mr. Michael Lowry, were it to come to the attention of the Tribunal, and, as was evident from Mr. Kevin Phelan's correspondence to various parties in 2001 and 2002, that he intended to use the information to achieve his own ends. Some of that information did in fact come to the Tribunal's attention in March, 2002, when Mr. Colm Keena furnished the Tribunal with copies of the original *"long form"* letters. As will be seen, it was at this time that Mr. Denis O'Connor seems to have redoubled his efforts to meet Mr. Kevin Phelan's demands.

9.115 Apart from Mr. Kevin Phelan's use of this information to promote his own ends, there was evident concern on the part of Westferry as to assistance from him to the vendors of Doncaster, in their litigation against Westferry. It was apparent that Mr. Kevin Phelan had already furnished the vendors' representative, Mr. Mark Weaver, with a copy of Mr. Christopher Vaughan's lengthy confidential post-completion letter of 23rd August, 1998, which Mr. Weaver himself produced to Mr. Christopher Vaughan when he attended at his offices in Northampton on 18th February, 2002. On that occasion, Mr. Weaver also intimated that he was in possession of another letter which linked Mr. Lowry to the Doncaster project. That letter can only have been Mr. Vaughan's letter of 25th September, 1998, and it seems that, before final payments were actually made to Mr. Kevin Phelan, he had already provided the vendors with a copy of that letter. The Tribunal is satisfied that all of these matters were known to Mr. O'Connor, when he seemingly volunteered himself as an intermediary between Westferry on the one hand, and Mr. Weaver and Mr. Richardson of the vendors on the other hand.

Meeting with Ms. Ruth Collard and Mr. Craig Tallents 10th September, 2002

9.116 Whilst the circumstances in which Mr. O'Connor came to become involved in this dispute, in particular having regard to his previous involvement in other disputes with Mr. Kevin Phelan, will be examined in greater detail in the following chapter, it is sufficient for current purposes to focus upon what occurred at the meeting between Mr. O'Connor, Ms. Collard and Mr. Tallents on 10th September, 2002.

9.117 Ms. Collard produced a typed attendance of that meeting, which was an expansion of some handwritten notes she had taken in the course of that meeting. A copy of Ms. Collard's typed attendance note can be found in the Appendix to this chapter, and it will be seen that it recorded that Mr. O'Connor explained how he had become involved in the matter, and that he had been trying to *"sort out"*, on Mr. O'Brien Senior's behalf, the position with Mr. Kevin Phelan. He said that Mr. Kevin Phelan had told him that he had spoken to Mr. Mark

Weaver, who had indicated that the vendors would drop their Stg.£250,000.00 claim arising from the car park lease issue, if Westferry agreed to the release of the retention fund to them, and withdrew its claim in connection with a payroll matter. Mr. Kevin Phelan would do this for an *"uplift"* of Stg.£25,000.00, and in return for an opportunity to sell the stadium at Belle Vue. Ms. Collard asked Mr. O'Connor what was meant by *"uplift"* and recorded Mr. O'Connor as replying that he did not know.

9.118 The attendance note further recorded Mr. O'Connor as informing Ms. Collard that he was also representing a member of the Irish Parliament, Mr. Michael Lowry, who was being investigated as part of Tribunal proceedings in Dublin, and that Mr. Kevin Phelan had made various threats to cause trouble for Mr. Lowry. She noted that Mr. O'Connor said that, as a result of discussions he had had with Mr. Denis O'Brien Senior and Mr. Kevin Phelan, he had been asked if he would be prepared to meet Mr. Ken Richardson and Mr. Mark Weaver, and that at Mr. O'Brien Senior's request, a meeting had been arranged; that Mr. O'Connor had stated *"that the other side were laughing at us"* and that they wanted to cause the maximum embarrassment for Mr. O'Brien and for others, including Mr. Lowry. The attendance note then recorded the following:

> *"RC asked how they could cause any embarrassment to ML, as, so far as she was aware, he had no connection to the proceedings. DOC said that ML did have a connection and that he had been in the room when discussions had taken place between KP and KR regarding the lease. RC said no one had ever suggested that to her previously."*

9.119 Mr. O'Connor in his evidence disputed a number of portions of Ms. Collard's attendance note, while accepting that other portions appeared to be correct. For example, Mr. O'Connor took issue with the portion of Ms. Collard's note dealing with Mr. Kevin Phelan's suggestion that he would take an *"uplift"* arising from settlement of the litigation between Westferry and Dinard. Insofar as Ms. Collard's note suggested that Mr. O'Connor told her that he did not know what *"uplift"* meant, Mr. O'Connor disputed this and said he knew exactly what it meant.

9.120 In relation to the critical passage of the attendance note, where Mr. O'Connor is recorded as informing Ms. Collard that Mr. Lowry had a connection with Doncaster Rovers, Mr. O'Connor testified that he did not know how Ms. Collard could have made such a record as he had never been aware of Mr. Lowry meeting Mr. Ken Richardson. He further testified that he could not have said anything regarding Mr. Lowry's involvement with any discussions connected with

the Doncaster car park lease, because he knew nothing of the lease, or the part it played in the Doncaster purchase.

9.121 For her part, Ms. Collard testified that she believed that Mr. O'Connor did inform her of a connection on the part of Mr. Lowry in the manner recorded in her attendance note, and observed that the matter of the car park lease had been one of the main issues that she had had to deal with in the litigation, and accordingly, she would have been particularly attentive to any mention of a meeting involving the lease. In addition, Ms. Collard was able to produce to the Tribunal her much shorter handwritten notes which were taken contemporaneously in the course of the meeting, and which recorded:

> *"ML – lease meeting"*

When asked if it was possible that a meeting about the lease might have been mentioned, but that she could have been mistaken about the identity of those she had been told had been in attendance, Ms. Collard testified that she did not believe she would have noted it in the manner she had in her typed attendance, if that was the case. Ms. Collard stood over her notes, and believed they were accurate. Regard must be had to the fact that Ms. Collard's notes were a contemporaneous record of what occurred at the meeting, and also to the importance which, as she stated, she attached to any matter relating to the lease, by reason of its central importance to the litigation in which she was then involved.

9.122 Ms. Collard impressed the Tribunal as a careful, retentive and independent professional witness. She testified that Mr. O'Connor's observation had surprised her, as she had not understood that Mr. Lowry had any Doncaster involvement, and retained that belief; she acknowledged a degree of discomfort at her part in conveying views of the London Police to the Tribunal in regard to the blackmail complaint made by Mr. O'Brien Senior, as recounted in Chapter 11; in testifying that she did not think that she would have noted and confirmed the content of Mr. O'Connor's remark, unless he had said it, which self-evidently was not evidence in the interest of her clients, she evinced a quiet and impressive conviction. Apart from Mr. O'Connor's denial of having stated what was attributed to him, he did also speculate that something he may then have said, which amounted to no more than a reference to a number of persons happening to have a general involvement with the Tribunal, could have been set down out of context by Ms. Collard. This cannot realistically be viewed as requiring serious analysis or consideration.

CONCLUSIONS

9.123 The foregoing has set forth a limited number of significant matters relating to Doncaster explored at public hearings following extensive private inquiries. In the next chapter it will be apparent that, from March, 2001, onwards, which was the month in which the Mansfield and Cheadle transactions came to the attention of the Tribunal, efforts to resolve outstanding financial entitlements raised by Mr. Kevin Phelan, not merely for Doncaster, but for all the property transactions dealt with in this Volume, intensified, with Mr. Denis O'Connor continuing to act as the person primarily involved in seeking and implementing such resolution. It is accordingly proposed to defer the expression of further substantive conclusions on Doncaster until the conclusion of that chapter.

10 DISPUTES AND SETTLEMENTS ON UK PROPERTIES

INTRODUCTION

Five stages

10.01 The Tribunal's inquiries into the UK properties proceeded over what were effectively five separate stages. The first stage was the initial inquiries into Mansfield and Cheadle in 2001. The second stage in 2002 related to the two *"long form"* and *"short form"* letters. The third stage entailed enquiries focused on the Doncaster transaction, prior to the institution of proceedings by Mr. Denis O'Brien to halt that inquiry, following delivery of the Tribunal's Opening Statement in September, 2004. The fourth stage comprised the substantive Doncaster hearings, and proceeded in March, 2007, following the dismissal of Mr. O'Brien's court challenge, and the further information unearthed by the Tribunal, consequent on the contents of the file of Mr. Christopher Vaughan, disclosed by Mr. O'Brien in that challenge. The final stage arose from Mr. Christopher Vaughan's belated attendance as a witness in April and June, 2009, he having declined to attend during any of the substantive public sittings convened by the Tribunal from 2001 to 2007. Each stage of public sittings encompassed a revisiting of earlier inquiries into the Mansfield, Cheadle and Doncaster properties.

10.02 At the outset of the Tribunal's inquiries, in the case of Mr. Michael Lowry, in 1997, and in the case of other persons in 2001, the Tribunal was assured by all persons in possession of information relevant to its inquiries that they wished to assist the Tribunal, and that they would volunteer all material information and documentation. As those inquiries unfolded, it became evident incrementally, that those assurances had been hollow. On the contrary, what had emerged, by the time of the conclusion of its investigations, was a deliberate and calculated strategy to mislead the Tribunal and to conceal the true facts surrounding those transactions. This strategy, as the Tribunal has already found, commenced in or about the 15th March, 2001, in the course of interactions between Mr. Lowry, Mr. Aidan Phelan, Ms. Helen Malone, Mr. Christopher Vaughan and Mr. Kevin Phelan, at Mr. Aidan Phelan's office in Dublin. It was further elaborated at a gathering at the Regency Airport Hotel on 27th March, 2001, when the same persons assembled, with the addition of Mr. Denis O'Connor, Mr. Lowry's accountant and adviser, with whom the Tribunal had at that point established a positive professional relationship in the context of its earlier inquiries in 1999 into Mr. Lowry's affairs. That strategy entailed a wholesale falsification of Mr. Christopher Vaughan's files, so that the contents of his files, as produced to the Tribunal, would support a false account of the transactions, with which the Tribunal would be provided, initially in the form of information, and ultimately in the form of sworn testimony.

Impact of Tribunal proceedings on Mr. Kevin Phelan

10.03 What those involved did not perhaps anticipate in March, 2001, was that the grievances of Mr. Kevin Phelan, even then apparent in the case of Mr. Vaughan and Mr. Aidan Phelan, would be fuelled by adverse references made to him in the course of evidence at public sittings of the Tribunal, and that he might use his knowledge of the falsification of Mr. Vaughan's files to promote his own interests. Nor was it anticipated that, such was the vehemence of his hostility, he might assist the Doncaster vendors in their litigation against Westferry, by providing them with information and documentation damaging to the O'Brien interests.

10.04 Following the Regency Airport Hotel gathering, Mr. Denis O'Connor assumed a central role in seeking to reach what were described as "*settlements*" with Mr. Kevin Phelan. The Tribunal is satisfied that the objective of these settlements was not essentially commercial, but was to counter the risk that, as a result of Mr. Kevin Phelan's dealings, the false accounts with which the Tribunal had been furnished would be eroded, and the true facts would become apparent, as would the extent of the efforts to mislead and undermine the work of the Tribunal.

SHUTTLE DIPLOMACY

10.05 These efforts on the part of Mr. Denis O'Connor, which Mr. Vaughan described as "*shuttle diplomacy*", extended over the years 2001 and 2002. All of these matters were withheld from the Tribunal, and when material inquiries were made, they were met with either misrepresentation or obfuscation. Mr. O'Connor's activities are the subject matter of this chapter, and will be traced from their origins at the Regency Hotel gathering, through to their culmination in the latter months of 2002, spanning the Tribunal's inquiries into the Mansfield and Cheadle transactions and the Doncaster transaction.

Regency Airport Hotel meeting on 27th March, 2001

10.06 It will be recalled, from preceding chapters, that on 15th March, 2001, which was the day before the solicitors acting for Investec Bank informed the Tribunal of the Cheadle transaction, a series of meetings took place at Mr. Aidan Phelan's offices at Clanwilliam Court, Dublin, at which Mr. Aidan Phelan, Mr. Kevin Phelan, Mr. Christopher Vaughan, Mr. Michael Lowry and Ms. Helen Malone attended, to formulate responses to the anticipated inquiries from the Tribunal concerning both the Cheadle and Mansfield properties. Upon the return of Mr. Denis O'Connor from a business trip to the USA, he met Mr. Lowry. Following that meeting, Mr. O'Connor made direct contact with the Tribunal by telephone, and

conveyed intended future co-operation on Mr. Lowry's part. Mr. O'Connor and Mr. Lowry met again subsequently, Mr. Lowry on this occasion bringing documents, with Mr. O'Connor feeling a better grip on the situation was required, it being clear to him that Mr. Lowry was likely to have to testify once again to the Tribunal.

10.07 A meeting was organised for 27th March, 2001, at the Regency Airport Hotel in Dublin, at which Mr. Aidan Phelan, Ms. Malone, Mr. Lowry, Mr. O'Connor, Mr. Vaughan and Mr. Kevin Phelan were present. Although early evidence, in the course of public hearings relating to the Mansfield and Cheadle transactions, was unclear as to the degree of participation by Mr. Kevin Phelan, later evidence given by Mr. O'Connor, in the course of public hearings relating to the Doncaster transaction, indicated that Mr. Kevin Phelan played only a limited part in the meeting, by reason of a deterioration in relations between him and Mr. Aidan Phelan.

10.08 The purpose of the meeting was to brief Mr. O'Connor on UK property transactions, so that Mr. O'Connor would be armed with the necessary information to enable him to assist the Tribunal on Mr. Lowry's behalf. Though the meeting was a very lengthy one, and despite the presence of several experienced professionals, no note was taken. Ms. Helen Malone told the Tribunal that she was not asked to take a note at this meeting, and when asked whether this was because matters discussed at the meeting were too sensitive, she responded in evidence:

> *"I can't say that."*

Mr. Kevin Phelan's fee claims against Westferry and others

10.09 It will be recalled that it was originally agreed between Mr. Kevin Phelan and Mr. Aidan Phelan that the former would be entitled to 40% of any profits from an ultimate Doncaster sale. Mr. Kevin Phelan became disappointed with progress, and in a letter of 30th August, 2000, referred to in the previous chapter, he sought payment of agreed fees, or alternatively to have his company Gameplan revert to managing the project. With that letter, he enclosed fee invoices in relation to property projects at Luton and Altrincham, but does not appear to have enclosed any invoices in connection with Doncaster.

10.10 At the meeting in the Regency Airport Hotel, Mr. Aidan Phelan testified that, despite the apparent tensions, he had queried Mr. Kevin Phelan in relation to money due. Mr. Kevin Phelan stated that he was owed Stg.£5,000.00 in connection with the Mansfield and Cheadle transactions, which Mr. Aidan Phelan duly paid, believing that this payment cleared all outstanding monies owing to Mr. Kevin Phelan in respect of all projects in which Mr. Aidan Phelan had a role. As to

Doncaster, Mr. Aidan Phelan viewed Mr. Kevin Phelan's entitlement as being strictly limited to 40% of any future uplift.

10.11 Mr. Denis O'Connor informed the Tribunal that, prior to the meeting at the Regency Airport Hotel, he had had only one unrelated contact, through another client, with Mr. Kevin Phelan, in early 1997, and he believed that there was a degree of mutual recognition between the two as a result. However, following that meeting, Mr. O'Connor became the point of contact for Mr. Kevin Phelan in regard to overall issues relating to the UK properties, and in particular Mr. Kevin Phelan's claims for fees.

10.12 On 18th June, 2001, following a meeting between Mr. O'Connor and Mr. Kevin Phelan in the course of the previous week, Mr. O'Connor wrote to Mr. Aidan Phelan, setting out Mr. Kevin Phelan's claims in relation to Doncaster, Altrincham, Cheadle and Mansfield. In the letter, Mr. O'Connor stated that he knew nothing about Doncaster or Altrincham, but offered to assist if required. He enclosed with the letter three invoices provided to him by Mr. Kevin Phelan, including an invoice relating to Doncaster, whereby Mr. Kevin Phelan claimed Stg.£149,200.00 in respect of travel, time and accommodation for the years 1998 to 2000. In the conclusion of his letter, Mr. O'Connor expressed the anxiety of Mr. Michael Lowry to complete his deals, but alluded to Mr. Kevin Phelan's hostility, stating that Mr. Kevin Phelan had said that he would not deal with Mr. Aidan Phelan, but might deal with Mr. O'Connor. Mr. Kevin Phelan had referred in the course of his conversation with Mr. O'Connor to the claim by the vendors in the Doncaster transaction in relation to the car park lease, and Mr. O'Connor stated in his letter that he might be able to help in that regard, provided he was given more details. However, his priorities were stated as being to ensure Mansfield was sorted out, and to bring the Cheadle transaction to finality, by reason of Mr. Lowry's *"moral obligation"* in relation to that transaction.

10.13 The letter of 18th June, 2001, from Mr. O'Connor to Mr. Aidan Phelan, was obtained by the Tribunal from the files of Messrs. William Fry concerning the fee dispute between Westferry and Mr. Kevin Phelan, a file which was not made available to the Tribunal until after the suspension of its initial hearings into Doncaster in September, 2004. The letter had not been provided by Mr. O'Connor, either for the Tribunal's initial Doncaster hearing, or, indeed, three years earlier, in regard to Mansfield or Cheadle. This was stated by Mr. O'Connor to have been by reason of the fact that the letter was in a file of documents relating to Mr. Kevin Phelan, which Mr. Kevin Phelan had insisted on retrieving from Mr. O'Connor. However, subsequent evidence showed that the file had not been given to Mr. Kevin Phelan until in or around August, 2002, whilst Mr. O'Connor testified concerning Mansfield and Cheadle in late July, 2001,

approximately six weeks after the date of the letter. No mention was then made to the Tribunal of the letter, or of Mr. Kevin Phelan's claims, either by Mr. O'Connor, Mr. Aidan Phelan, or by Mr. Lowry, who had received a copy of the letter at the time it was sent.

10.14 Mr. O'Connor's expressed willingness, in that letter, to volunteer his assistance is somewhat at odds with his later evidence of having met Mr. Kevin Phelan at the latter's request on a Saturday afternoon at this time. Mr. O'Connor testified that he formed the impression that Mr. Kevin Phelan was seeking fees from him, to which Mr. O'Connor responded that this was Mr. Aidan Phelan's problem, and he did not wish to be dragged into it.

Mr. Denis O'Connor visits UK properties with Mr. Kevin Phelan

10.15 Shortly after sending his letter of 18th June, 2001, to Mr. Aidan Phelan, Mr. O'Connor travelled to the UK to meet Mr. Kevin Phelan, and viewed Mr. Lowry's properties. Some uncertainty arose in evidence between Mr. O'Connor and Mr. Lowry as to who had suggested the trip, with Mr. O'Connor indicating that the idea emanated from Mr. Lowry. On a date which could not be established with precision, Mr. O'Connor travelled to the UK and met Mr. Kevin Phelan, by whom he was driven to Mansfield and Cheadle. Then, en route to a property in Wigan, owned by Vineacre Limited, a company of which Mr. Lowry was a co-director, Mr. Kevin Phelan also brought Mr. O'Connor to the Doncaster Rovers site. In his evidence, Mr. O'Connor said that, at the time, he felt that Mr. Kevin Phelan was endeavouring to demonstrate to Mr. O'Connor that the Doncaster project was the type of deal he could source, and that perhaps he viewed Mr. O'Connor as someone who could put the other side of the equation together, that is, organising a buyer or raising the finance. According to Mr. O'Connor, Mr. Kevin Phelan particularised the Doncaster project fully, explaining the difficulties that had arisen in the transaction, and showing Mr. O'Connor both the old and new locations of the stadium, despite its seeming irrelevance. The details even extended to Mr. Kevin Phelan's own fees regarding Doncaster.

Mr. Denis O'Connor's initial efforts to reach settlement with Mr. Kevin Phelan

10.16 On 21st July, 2001, Mr. O'Connor and Mr. Christopher Vaughan met at Birmingham Airport. According to Mr. O'Connor, this was to discuss issues relating to Catclause, which, it will be recalled, was the company of which Mr. Lowry and his daughter were directors, and which was initially intended to be the beneficial owner of the Cheadle property. Some few days thereafter, Mr. O'Connor testified at the Tribunal's public sittings in relation to the Mansfield and Cheadle properties, on 26th and 27th July, 2001. Mr. Aidan Phelan's evidence in this regard was also then heard. Later, on 2nd August, 2001, Ms. Caroline Preston, of

Messrs. A&L Goodbody, solicitors, and Mr. Denis O'Connor, representing respectively Mr. Aidan Phelan and Mr. Lowry, met Mr. Vaughan in Manchester, the stated purpose being to persuade him to testify at the Tribunal, which he declined to do.

Mr. Kevin Phelan alleges false and misleading evidence given to the Tribunal

10.17 It appears that, following his evidence, Mr. Aidan Phelan's relationship with Mr. Kevin Phelan further deteriorated. It seems that Mr. Kevin Phelan became angry concerning Mr. Aidan Phelan's evidence, telephoned Mr. Aidan Phelan on 27th July, 2001, and also wrote, expressing concern at false and misleading information having been given in evidence regarding his involvement in certain transactions, and stating that the matter was with his lawyers in regard to possible proceedings. He also then demanded the return of all documents which he had given to Mr. Aidan Phelan.

10.18 Mr. Kevin Phelan also wrote in August, 2001, to Morton Thornton, accountants, in London, the firm of which Mr. Craig Tallents was a member, which, it will be recalled, was engaged by Westferry in connection with the Doncaster project. In that correspondence, Mr. Kevin Phelan made complaints regarding both Westferry and Gameplan, Mr. Tallents having apparently done some audit work on behalf of the latter also, and requested that Morton Thornton should cease to act, and return all documents. In response, the firm denied the complaints, and forwarded the correspondence to Mr. Peter Vanderpump, of Walbrook Trustees, acting on behalf of Westferry, stating that Mr. Kevin Phelan had no authority to determine any retainer on behalf of Westferry. Mr. Kevin Phelan also made a formal complaint in relation to Mr. Craig Tallents to the Institute of Chartered Accountants of England and Wales. Mr. Tallents testified to the Tribunal that, although this complaint was never followed up, and was entirely unfounded, it was nonetheless a cause of extreme distress to him. It remained in being until withdrawn as part of a larger settlement between Westferry and Mr. Kevin Phelan, which will be returned to below.

10.19 Further irate correspondence followed from Mr. Kevin Phelan in September, 2001. On 12th September, 2001, he wrote to Mr. Aidan Phelan, stating that he would indicate his concerns to the Tribunal concerning Mr. Aidan Phelan's evidence, and would also withdraw all correspondence and documents sent to the Tribunal, on the basis that his documents had not been returned by Mr. Aidan Phelan on request. On the following day, 13th September, 2001, Mr. Kevin Phelan requested from the Tribunal the return of those documents and correspondence. On 14th September, 2001, he again wrote to Mr. Aidan Phelan, stating that he had had two telephone conversations with Mr. Michael Lowry, who had conveyed to him that Mr. Aidan Phelan felt disadvantaged by Mr. O'Connor's

role in negotiating in relation to property projects, and seeking confirmation from Mr. Aidan Phelan as to whether this information was correct. In the course of his evidence, Mr. Lowry accepted that he had several conversations with Mr. Kevin Phelan around that time, but could not specifically isolate those two particular telephone calls.

Who was Mr. Denis O'Connor acting for?

10.20 Profound distrust by then existed between the two Phelans. There was an apparent willingness on the part of Mr. O'Connor to seek to settle differences between them, though it was not clear for whom he was acting. In evidence, he stated that he would then have considered that he was looking after Mr. Kevin Phelan's interests, not particularly those of Mr. Michael Lowry. When queried regarding his previous letter of 18th June, 2001, prioritising Mr. Lowry's interests in Mansfield and Cheadle, he responded that he saw June and September of 2001 as quite separate, no progress having resulted from his June letter.

Agreements negotiated by Mr. Denis O'Connor from which Mr. Kevin Phelan intended to benefit to the extent of Stg.£225,000.00

10.21 In September, 2001, Mr. O'Connor negotiated and entered into agreements with Mr. Kevin Phelan relating to certain UK property projects. Mr. O'Connor felt that he had Mr. Aidan Phelan's authority to negotiate these agreements with Mr. Kevin Phelan, despite the apparently differing view of Mr. Aidan Phelan, who in evidence stated that, although Mr. O'Connor had signed up on his behalf to some *"cobbled-together agreements"*, his solicitor subsequently informed Mr. O'Connor that he was not entitled to act as his agent, although Mr. Aidan Phelan accepted that he would have acquiesced in a settlement effort, had it been successful.

10.22 At the time in 2007 when initially evidence was taken concerning the agreements negotiated and entered into by Mr. O'Connor and Mr. Kevin Phelan in September, 2001, the Tribunal was aware only of the existence of two agreements, namely those in connection with the Mansfield and Cheadle transactions. As to the Mansfield agreement, signed by Mr. Kevin Phelan on the one hand, and Mr. O'Connor, on behalf of Mr. Aidan Phelan and Mr. Michael Lowry on the other, on 19th September, 2001, its main provisions were: that Mr. Kevin Phelan was not due any fees; that Mr. Aidan Phelan, Mr. Lowry and Mr. Kevin Phelan agreed *"no claims against"* each other *"in respect of this agreement or site transaction"*; that on signing the agreement, Mr. Kevin Phelan would introduce Mr. O'Connor to a purchaser; that after signing, all communications would be through Mr. O'Connor, and all money would be transferred to the vendor's benefit on Mr. O'Connor's instructions; that the

vendors were Mr. Aidan Phelan and Mr. Michael Lowry in 90%/10% proportions; that Mr. Kevin Phelan would sell the site unconditionally for Stg.£375,000.00; that on completion, the vendors would receive Stg.£300,000.00, with the balance going to Mr. Kevin Phelan, and that if completion was not achieved by 21st December, 2001, Mr. Kevin Phelan would relinquish the exclusive right to sell, and would receive a reduced sum of Stg.£50,000.00 on completion.

10.23 As to the Cheadle agreement, again signed by Mr. Kevin Phelan on the one hand and Mr. O'Connor on behalf of Mr. Aidan Phelan on the other hand, also on 19th September, 2001, the substantive provisions were: that Mr. Kevin Phelan would be due Stg.£150,000.00 fees; that Mr. Aidan Phelan and Mr. Kevin Phelan agreed that there would be *"no claims against"* each other or *"in respect of this agreement or site transaction"*; that the vendor was Mr. Aidan Phelan, with 100% of the ownership; that Mr. Kevin Phelan would receive his fees in three stage payments of Stg.£50,000.00 each, the final payment to be due on sale or disposal of the premises, and that Mr. Kevin Phelan would provide Mr. O'Connor with planning permission in relation to a nursing home within fourteen days.

10.24 Accordingly it seems that Mr. Kevin Phelan had a prospective purchaser for Stg.£375,000.00 for Mansfield, on which basis he would receive Stg.£75,000.00. Regarding Cheadle, phased fees payable to Mr. Kevin Phelan amounted to Stg.£150,000.00. If both transactions were finalised, Mr. Kevin Phelan would be entitled to receive a total of Stg.£225,000.00.

10.25 In evidence, Mr. O'Connor agreed that, with regard to Mansfield, under the terms of the agreement, it was likely that Mr. Aidan Phelan and Mr. Lowry as vendors would make no profit, and would perhaps make a loss, having paid Mr. Kevin Phelan Stg.£75,000.00. As to Cheadle, Mr. O'Connor testified that Mr. Kevin Phelan saw high potential in the property, and was also adamant that he had a buyer, although not willing to disclose his identity. Queried whether Mr. Kevin Phelan was going to walk out of Mr. Aidan Phelan's life for Stg.£225,000.00, Mr. O'Connor responded *"I believe so"*. Put that this was rather exotic, since Mr. Kevin Phelan had invested no money in either transaction, the purchase prices of which amounted in the aggregate to Stg.£775,000.00, but would yet receive Stg.£225,000.00, Mr. O'Connor responded:

> "[t]*hat's what he was demanding, on the one hand. I am not disputing that with you at all."*

When further asked why these agreements were not produced to the Tribunal in the course of its Mansfield and Cheadle inquiries and hearings in 2001, Mr. O'Connor responded that he did not believe they were relevant. As to why he had

not kept a file, or retained the agreements, Mr. O'Connor said that he did not regard Mr. Kevin Phelan as a client, and was in effect doing him a favour in trying to resolve matters, and that therefore normal accountancy procedures did not apply.

10.26 Mr. O'Connor also stated that he had informed Mr. Lowry of the negotiations with Mr. Kevin Phelan in September, 2001, and that Mr. Lowry had responded that he should do whatever he could to settle the fee dispute with Mr. Phelan. Mr. O'Connor also stated that Mr. Lowry agreed to the level of fees mentioned above, and that the agreement with Mr. Kevin Phelan at the outset had been that he would be entitled to a 40% uplift on any profits generated in both the Mansfield and Cheadle projects. In his evidence, Mr. Lowry testified that he had been told about the agreements in general terms by Mr. O'Connor, but was not involved in the documents, or provided with copies. His evidence was that he was then primarily worried about Mansfield, although, because he had passed Cheadle onto Mr. Aidan Phelan, he would have liked to have seen some benefit in that transaction for him. Mr. Lowry himself was satisfied to get his money back, but left the details to Mr. O'Connor.

10.27 When these matters were addressed in evidence by the Tribunal in 2007, the Tribunal was not by then aware of the attachments to a letter dated 8th March, 2002, which has already been referred to in preceding chapters, and which had been sent by solicitors acting for Mr. Kevin Phelan to solicitors acting for Mr. Aidan Phelan. The attachments consisted of a number of documents which were all to prove relevant to the Tribunal's inquiries. It will be recalled that this letter and its attachments were kept from the Tribunal until 25th June, 2009. Amongst the attachments were two agreements entered into by Mr. Kevin Phelan and Mr. O'Connor, both again dated 19th September, 2001, and relating respectively to the Altrincham and Doncaster projects. Whilst, in correspondence seen by the Tribunal, Mr. Kevin Phelan repeatedly grouped the Mansfield, Cheadle, Doncaster and Altrincham projects together as related transactions, which he claimed involved the same participants, the Tribunal never ultimately examined the Altrincham transaction in any detail and, therefore, it is not proposed to set out the terms of the agreement of 19th September, 2001, relating to Altrincham.

The Doncaster agreement negotiated by Mr. Denis O'Connor in September, 2001

10.28 As to the Doncaster agreement, described as being between Mr. Kevin Phelan on the one hand, and Mr. Aidan Phelan on the other hand, and signed by Mr. Kevin Phelan, and Mr. O'Connor on behalf of Mr. Aidan Phelan, the substantive terms were: that Mr. Kevin Phelan was prepared to settle his existing claim for fees in the order of Stg.£150,000.00, on the basis that instead he

would be paid Stg.£47,500.00 in a number of instalment payments; that the two Phelans agreed that they had no further claims against each other in respect of the transaction; that Mr. Aidan Phelan was the 100% owner of the transaction, and that the agreement was to include Westferry; that Mr. O'Connor was to review the file on the project and report back in writing to Mr. Kevin Phelan within twenty one days; that Mr. Kevin Phelan was to advise Mr. O'Connor in writing as to where fees were to be paid, and that Mr. O'Connor was to report back in writing as to progress; that Mr. Kevin Phelan was entitled to 40% of profits on the transaction, which entitlement was to be committed to a legal agreement; and finally that Mr. Kevin Phelan would withdraw all claims and allegations in writing, and the agreement would settle all disputes between the parties.

10.29 In November, 2004, the Tribunal wrote to the solicitors acting for Mr. Aidan Phelan arising from documentation that had then only recently come to the attention of the Tribunal, and requesting that Mr. Aidan Phelan would provide the Tribunal with all documents relating to any disputes or dealings with Mr. Denis O'Connor and/or Mr. Kevin Phelan. In what was stated to be an exhaustive response, the Tribunal was provided with certain information and documentation, including the Mansfield and Cheadle agreements of 19th September, 2001. However, the Tribunal was not provided with either the Altrincham or Doncaster agreements of the same date, although it is now clear to the Tribunal that those agreements were in the possession of Mr. Aidan Phelan, as attachments to the letter his solicitors had received from Mr. Kevin Phelan's solicitors on 8th March, 2002. Indeed, that letter of 8th March, 2002, also fell within the terms of the documentation then sought by the Tribunal, but was not provided at that time. It was not ultimately produced until June, 2009.

Mr. Denis O'Connor denies any involvement in a Doncaster settlement with Mr. Kevin Phelan

10.30 In the evidence given in 2007 by both Mr. Aidan Phelan and Mr. Denis O'Connor, in connection with the agreements of 19th September, 2001, the Tribunal was not informed of the additional agreements in relation to Altrincham and Doncaster. In the course of Mr. O'Connor's evidence on 20th March, 2007, the following exchange with Tribunal counsel occurred:

> *"Q. ...In relation to these two agreements of September 2001, when they didn't come off, remember you said you gave your papers back, and so forth; were there any other agreements involving Aidan Phelan and Kevin Phelan at that time - -*
>
> *A. Not to my knowledge.*
>
> *Q. - - to get rid of, we'll say, Altrincham or Doncaster?*

A. Not to my knowledge. I mean, Altrincham is an absolutely complete blank to me. I don't even know what it's about.

Q. You are sure there were no other Agreements at this time?

A. To my knowledge, there wasn't, yeah."

10.31 It was Mr. O'Connor's evidence that he did not retain any documentation concerning his dealings with Mr. Kevin Phelan, including the agreements relating to Mansfield and Cheadle of 19th September, 2001, and, by extension, the agreements relating to Altrincham and Doncaster, as all such documentation according to Mr. O'Connor was put into a file which he, at some subsequent stage, handed over to Mr. Kevin Phelan. Even allowing for this, and the passage of time between 2001 and the time at which they were giving evidence, it was nonetheless the case that the Tribunal was misled by the responses it received in evidence from Mr. Aidan Phelan and Mr. O'Connor as to the true extent of Mr. O'Connor's knowledge of, and involvement in, negotiations relating to property transactions with Mr. Kevin Phelan in September, 2001.

10.32 Of course, because the agreements of 19th September, 2001, relating to the Mansfield and Cheadle transactions were documented after evidence had been given concerning these matters, the transactions were described in terms conforming to the versions of events already given to the Tribunal, including for example the 90%/10% shareholding as between Mr. Aidan Phelan and Mr. Lowry, in connection with Mansfield, and the exclusive ownership by Mr. Aidan Phelan of the Cheadle property, versions of those transactions which were generated in March of 2001, for the purposes of obscuring the true position. Whilst there was considerable delay before the agreements relating to Mansfield and Cheadle were made available to the Tribunal, it was not until 2009 that the Tribunal learned that, at the same time as drafting those agreements, Mr. O'Connor was involved in drafting agreements relating to Doncaster and Altrincham. It is reasonable to conclude that, whatever reticence may have attached to the production of the Mansfield and Cheadle documentation at the time these matters were first ventilated in evidence, the failure to disclose that at the same time a similar agreement was drawn up by Mr. O'Connor concerning Doncaster betrayed intense sensitivity to the uncovering of the true extent of Mr. O'Connor's dealings with Mr. Phelan in relation to that project. Moreover, given that the Tribunal is satisfied that the agreements relating to Mansfield and Cheadle in September, 2001, did not reflect the true historical position regarding those transactions, little weight can be attached to the Doncaster agreement insofar as it purported to set out the position regarding that transaction.

10.33 In any event, the agreements of September, 2001, were never implemented. By letter of 3rd January, 2002, Mr. Kevin Phelan again sought the return of his original files and documents from Mr. Aidan Phelan, and indicated concern that Mr. O'Connor had ceased to be involved in resolving various matters. In response, Mr. Aidan Phelan's solicitors, A&L Goodbody, stated that Mr. O'Connor in no sense acted on behalf of Mr. Aidan Phelan in relation to any transaction, and that neither Mr. Aidan Phelan nor Ms. Helen Malone had any documents belonging to Mr. Kevin Phelan.

Hostile correspondence from Mr. Kevin Phelan

10.34 In the early months of 2001, significant tensions had developed between Mr. Kevin Phelan and Mr. Christopher Vaughan, particularly in respect of a property project known as the Vineacre transaction. This transaction related to a property in Wigan, introduced by Mr. Kevin Phelan to Mr. Lowry and a partner of his, both of whom became directors of the company Vineacre Limited. As with the other properties introduced by Mr. Kevin Phelan, Mr. Vaughan was the solicitor acting in the transaction. Disagreements arose, resulting in Mr. Vaughan informing Mr. Lowry and his partner in Vineacre that he could no longer act in the matter. Tensions had flared further between Mr. Kevin Phelan and Mr. Christopher Vaughan concerning transactions other than Vineacre when, by letter of 4th October, 2001, Mr. Kevin Phelan made a formal complaint concerning Mr. Vaughan, relaying a number of matters to the Office for the Supervision of Solicitors in England. Mr. Phelan also intimated intended legal proceedings, and indicated that he was considering similar action in respect of Mr. Aidan Phelan.

10.35 Following his exchange of correspondence with Mr. Aidan Phelan's solicitors in early January, 2002, referred to above at paragraph 10-33, Mr. Kevin Phelan instructed Messrs. Woodcock & Sons, solicitors, of Bury in Lancashire, to write again, by letter of 26th January, 2002, outlining an intended claim for breach of joint venture agreements, a letter which was also withheld from the Tribunal by Mr. Aidan Phelan until 25th June, 2009, notwithstanding his prior assurances to the Tribunal that all relevant material had been provided. Both this letter, and the other letter referred to previously, dated 8th March, 2002, from Woodcock & Sons, were provided to the Tribunal in response to queries raised by it, arising from a document produced by Mr. Christopher Vaughan at the commencement of his evidence to the Tribunal in April, 2009. The document so produced by Mr. Vaughan was a letter from Woodcock & Sons, to Mr. Vaughan, dated 28th January, 2002, some two days after the letter sent to Mr. Aidan Phelan, and which indicated that Woodcock & Sons had corresponded with Mr. Aidan Phelan, Mr. Denis O'Brien, Mr. Michael Lowry and Mr. Denis O'Connor. When this letter to Mr. Vaughan was raised with A&L Goodbody, acting for Mr. Aidan Phelan, the

letters he had received from Woodcock & Sons on 26th January, 2002, and 8th March, 2002, were finally provided to the Tribunal. Denials of having received any such correspondence were furnished to the Tribunal on behalf of Mr. O'Brien, Mr. Lowry and Mr. O'Connor.

Mr. Mark Weaver's visit to Mr. Christopher Vaughan on 18th February, 2002

10.36 On 19th February, 2002, Mr. Christopher Vaughan wrote a lengthy letter to Mr. Aidan Phelan, setting out the details of a visit paid by Mr. Mark Weaver to Mr. Vaughan's office on the previous day, 18th February, 2002. Mr. Weaver was an associate of Mr. Ken Richardson, and an agent of the Doncaster vendors, Dinard and Shelter Trust, in the ongoing litigation against Westferry. Mr. Vaughan was not directly involved in the litigation, Messrs. Carter-Ruck, solicitors, having been instructed. Mr. Vaughan recounted in his letter to Mr. Aidan Phelan how Mr. Weaver had produced to him a copy of the letter of 23rd August, 1998, from Mr. Vaughan to Mr. Paul May and Mr. Kevin Phelan, referred to in the previous chapter, which letter contained Mr. Vaughan's advice that Westferry should immediately divest itself of all assets, so that it would become a shell company, from which no funds could be obtained by Mr. Richardson in respect of his claim for Stg.£250,000.00, arising from the car park lease at Doncaster. It should be pointed out that, in his evidence, Mr. Vaughan explained to the Tribunal that it was only after the completion of the Doncaster transaction that he discovered that the car park lease already had an extension, typed on the reverse side of the document. It appeared to him therefore that the contract seemed to require that Westferry would pay Stg.£250,000.00 over and above the purchase price for an extension of a lease that they already had, because it was within the assets of Doncaster Rovers acquired by the share purchase. Mr. Vaughan was somewhat peeved and felt, as he put it, that *"they have lifted our leg over this; they have just got one over on us"*. Given that he believed that the vendors had tactically obscured a vital piece of documentation as to the extension of the lease, he took the view that Westferry was entitled to use similar tactics, and it was for this reason that he advised the divesting of Westferry's assets, so as effectively to avoid liability.

10.37 In the copy of the letter that Mr. Weaver produced to Mr. Vaughan during his visit on 18th February, 2002, the passage relating to the divesting of assets was highlighted. Mr. Vaughan asked Mr. Weaver how he had obtained the letter, pointing out that it was a confidential letter to his clients, which Mr. Weaver should not have had a copy of at all. Mr. Weaver responded that it had been sent to him anonymously, but stated that he assumed that it had come from Mr. Kevin Phelan.

10.38 Mr. Weaver also alluded to, but did not produce, another letter which he claimed had been sent to him anonymously, and which likewise he assumed had come from Mr. Kevin Phelan, which had been written by Mr. Vaughan, and indicated that Mr. Lowry was involved in Doncaster Rovers. This was presumably a reference to Mr. Vaughan's letter to Mr. Lowry of 25th September, 1998. Mr. Vaughan's account of Mr. Weaver's visit, in his letter to Mr. Aidan Phelan, set out his view that, *"on balance"*, he thought it was *"more than likely that Kevin Phelan was somehow behind this visit than not"*. In his evidence to the Tribunal in 2009, Mr. Vaughan confirmed that he formed the impression from Mr. Weaver's visit that Mr. Kevin Phelan was causing trouble, and he felt it worthwhile to prepare a detailed file note, and to inform Westferry of what had happened.

10.39 Upon receiving Mr. Vaughan's letter, Mr. Aidan Phelan conveyed the position to Ms. Kate Macmillan, of Carter-Ruck, and provided her with a copy of the letter, along with a copy of a letter from Mr. Weaver to Mr. Ned Carroll, of Brian Phelan & Company, accountants, Mr. Aidan Phelan's former firm, in which his brother continued as a partner. The latter document contained a veiled reference to the existence of a letter connecting *"Mr. L"* to Doncaster Rovers. Mr. Carroll forwarded a copy of the Weaver letter to Mr. Denis O'Brien who appeared to have made it available to Mr. Aidan Phelan. Following a consultation, Ms. Ruth Collard, who was the partner handling the Westferry litigation, wrote to Mr. Reg Ashworth, solicitor for Dinard and Shelter Trust, demanding that his client, Mr. Weaver, immediately cease his behaviour. In evidence, Mr. Aidan Phelan's response to all of this correspondence was to the effect that it was nonsense.

Complaints against Mr. Aidan Phelan

10.40 By letter of 4th March, 2002, Mr. Kevin Phelan made a formal complaint to the Institute of Chartered Accountants in Ireland against Mr. Aidan Phelan, citing breaches of undertakings on the part of Mr. Aidan Phelan and Brian Phelan & Company, regarding fees on the UK transactions, and also claiming that Mr. Aidan Phelan had refused to return files to him, which he claimed to require for the purposes of his dealings with the Tribunal. In referring in the letter to Mr. Kevin Phelan as acting as agent for Mr. Denis O'Brien *"and another"* in respect of four projects, it would appear that Mr. Kevin Phelan was referring to Mr. Lowry as the other party. Four days later Woodcock & Sons also wrote on behalf of Mr. Kevin Phelan to Messrs. DLA solicitors, in Manchester, to whom Mr. Aidan Phelan had transferred his legal business. This letter and the attachments included with it have already been referred to, and it will be recalled that the letter was withheld from the Tribunal until June, 2009.

10.41 When queried in the course of his 2009 evidence as to why the letter and its attachments had been withheld from the Tribunal until June, 2009, Mr. Aidan Phelan said that he only read the letter, which he saw as outrageous and false, and did not examine the attachments. Despite the Tribunal having sought from him all documents relating to disputes with Mr. Kevin Phelan, Mr. Aidan Phelan said that his motivation had not been to mislead the Tribunal or delay its work. He accepted that he had made a *"bad call"* in deciding not to produce the letter.

10.42 Although the contents of the letter were not opened in public hearings, Mr. Aidan Phelan confirmed that it contained a claim for fees in respect of Doncaster, for Stg.£155,000.00, plus 40% of any profit made on sale of the property, on behalf of Mr. Kevin Phelan. Mr. Phelan acknowledged that, as to his earlier response in evidence of 15th March, 2007, that Mr. Kevin Phelan had never at any stage told him that Mr. Lowry was involved in Doncaster, it was in fact the case that Mr. Kevin Phelan asserted in the letter of 8th March, 2002, that Mr. Lowry had a Doncaster involvement, being an entitlement to a share in the 40% of the profits with Mr. Kevin Phelan. Further, as to Mr. Aidan Phelan's justification for not producing the attachments on the basis that the dispute had been concluded, it was the case that the attachments to the 8th March, 2002, letter included several *"long form"* and *"short form"* letters, which the Tribunal only saw for the first time in 2009. Nor were other attachments to the letter, being documents which had been removed altogether from the falsified files of Mr. Christopher Vaughan, brought to Tribunal attention at the time of its initial *"long form/short form"* inquiries in 2002.

More of *"Long Form"* and *"Short Form"* letters

Lying like a trooper

10.43 Details of the letters produced by Mr. Colm Keena of The Irish Times, and which resulted in Tribunal inquiries, have been set out in a previous chapter. The Tribunal also obtained, as part of the file of Mr. Christopher Vaughan exhibited in Mr. O'Brien's Judicial Review proceedings instituted in September, 2004, the final page of a letter dated 21st March, 2002, from Woodcock & Sons, on behalf of Mr. Kevin Phelan, to Mr. Christopher Vaughan. This referred to altered correspondence having been furnished to the Tribunal, referring in particular to five letters dating from 1999 and 2000, including the letter of 12th July, 2000, produced by Mr. Keena, and examined in Chapter 8. What was there stated by Mr. Kevin Phelan's solicitors to Mr. Vaughan differs diametrically from what Mr. Kevin Phelan apparently conveyed to Mr. Vaughan a mere month later, in a letter dated 23rd April, 2002, and previously referred to in Chapter 8. In that letter Mr. Kevin Phelan purported to explain the *"long form"* and *"short form"*

letters by reference to Mr. Vaughan's tendency to confuse clients and projects. Insofar as the letter stated that Mr. Kevin Phelan had no idea where the *"long form"* versions of the letters had come from, it is hard to disagree with Mr. Vaughan's counsel, when he stated in the course of the Tribunal's sittings that, in the letter which was forwarded by Mr. Vaughan to the Tribunal as his explanation for the existence of two versions of his letters, Mr. Kevin Phelan was

> *"lying like a trooper"*

and that it was *"blindingly obvious"* that the *"long forms"* of the letters came from Mr. Kevin Phelan's own files.

10.44 In his 2002 response to the Tribunal, Mr. Vaughan also withheld two further critical documents. The first was a letter to him from Mr. Kevin Phelan's solicitors, Woodcock & Sons, of 26th March, 2002, referring to an outline agreement having been reached in regard to an overall settlement for Mr. Kevin Phelan, to be crystallised upon the return of Mr. Denis O'Connor from the USA, and also stating that despite earlier threats of complaint, in fact no professional complaint had been made against Mr. Vaughan, concluding that:

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

The second document withheld by Mr. Vaughan was a letter of 19th April, 2002, also from Woodcock & Sons to him. Referring to earlier allegations and requests, the letter indicated agreement that there was no requirement to respond to any of those matters, that Mr. Kevin Phelan had been acting as agent either for a disclosed or undisclosed principal, that the professional complaint against Mr. Vaughan was unreservedly withdrawn, that no claim for negligence was being made, and that no return of files was sought. This letter only came to light as part of the file produced to the Tribunal by William Fry in late 2004, concerning the fee dispute between Mr. Kevin Phelan and Westferry.

Charade

10.45 In essence, what the matters set out in paragraph 10-40 to 10-44 above indicate is that Woodcock & Sons, as solicitors for Mr. Kevin Phelan, in correspondence with both Mr. Vaughan and Mr. Aidan Phelan, conveyed the apparent alteration of five *"long form"* and *"short form"* letters concerning Mansfield and Cheadle, together with, in regard to Mr. Aidan Phelan, a contention that Mr. Lowry had a Doncaster involvement to the extent of an entitlement to split 40% of the Doncaster profits with Mr. Kevin Phelan. The documentation

conveyed a totally different picture of Mr. Lowry's involvement from what had been conveyed to the Tribunal. Whilst all these matters were afoot, including the sensitive documentation held by Mr. Weaver, progress was being made towards a settlement in favour of Mr. Kevin Phelan, to be finalised through Mr. Denis O'Connor, and a picture of events that was little more than a charade was being conveyed to the Tribunal.

10.46 In this regard, it was ascertained by the Tribunal, although only after the conclusion of Doncaster hearings in 2007, that Mr. Kevin Phelan was paid a total of Stg.£65,000.00 remuneration in relation to a property project in Wigan in the name of Vineacre Limited, a company of which Mr. Lowry was a director. Over Stg.£56,000.00 of this sum was paid to Mr. Phelan on 22nd April, 2002, the day before he provided his letter to Mr. Vaughan, which Mr. Vaughan subsequently forwarded to the Tribunal, setting forth a contrived and untrue explanation in relation to the *"long form"* and *"short form"* letters. At the same time, the parallel and entirely contradictory course of correspondence from Woodcock & Sons was concealed from the Tribunal. The Tribunal has received correspondence from an English solicitor instructed by Vineacre at the time that the payments were made, and has been informed that the fees paid to Mr. Kevin Phelan were intended to draw a line under Mr. Kevin Phelan's involvement in the Vineacre project, and that the amount paid was reasonable in light of the work that Mr. Kevin Phelan had undertaken. Whatever the position may have been regarding those fees paid by Vineacre, having regard to the timing of the payment of those fees, the Tribunal is satisfied that the exchange of correspondence between Mr. Vaughan and Mr. Kevin Phelan, which was provided to the Tribunal, was a choreographed falsehood in which Mr. Kevin Phelan would not have agreed to participate, but for the payment of those fees.

10.47 Much of Mr. Vaughan's evidence in this regard was wholly unsatisfactory and self-serving, including contentions that at the time he did not see the Woodcock & Sons correspondence as being relevant to the Tribunal, and that what was being done by Mr. Kevin Phelan was no more than typical tactical manoeuvring. He testified that initially he did not view the allegations made by Woodcock & Sons on behalf of Mr. Kevin Phelan as a serious matter. As has previously been set out in Chapter 8, the Tribunal is satisfied that Mr. Christopher Vaughan was fully aware of the circumstances in which his files were falsified prior to being submitted to the Tribunal in 2001. In those circumstances, it is hard to imagine a more serious turn of events than the discovery by the Tribunal of two such falsified letters. The Tribunal considers the entirety of Mr. Vaughan's evidence on this matter to be unreliable. Conclusions are unavoidable that he was well aware of the falsification of his files, that he prevented the Tribunal from having timely awareness of many other *"long form"* and *"short form"* documents,

and that he advanced to the Tribunal a basis of events that he knew to be groundless.

10.48 The Tribunal is further satisfied that, in participating in the choreographed exchange of misleading correspondence, Mr. Vaughan understood that a request to Mr. Kevin Phelan for an explanation for the *"long form"* and *"short form"* letters would elicit a response incorporating an innocent explanation, for onward transmission to the Tribunal. In this regard, there is a striking contrast between the aggressive and threatening character of the previous correspondence from Woodcock & Sons, and the amicable and civil tone of the subsequent exchange of correspondence between Mr. Vaughan himself and Mr. Kevin Phelan. Having regard to the fact that Mr. Denis O'Connor was involved in negotiating the terms of settlement with Mr. Kevin Phelan, as he was compelled to accept in his evidence, and which was confirmed by the belatedly produced correspondence from Woodcock & Sons to Mr. Vaughan referred to above, and having regard to the fact that Mr. Lowry had knowledge of the status and progress of the Vineacre payment, the Tribunal is satisfied that the clearance provided to Mr. Vaughan to write to Mr. Kevin Phelan came from Mr. O'Connor, acting as agent for Mr. Lowry.

10.49 The Tribunal is accordingly satisfied that these elements of choreographed falsehood were negotiated and orchestrated by Mr. O'Connor and Mr. Lowry, in the knowledge that the effect would be to mislead the Tribunal, and that the purpose was to ensure that Mr. Kevin Phelan's co-operation would be obtained in matters relating to the Tribunal's inquiries, and in particular with a view to obscuring the true position pertaining to the *"long form"* and *"short form"* correspondence, which the Tribunal was examining at the time. The ultimate intention can only have been to preclude the Tribunal from discovering the true facts surrounding the full extent of Mr. Lowry's ownership of the Mansfield and Cheadle properties.

Mr. Kevin Phelan's dispute and settlement over Doncaster Rovers

Getting Mr. Kevin Phelan on side

10.50 A telephone attendance of 2nd May, 2002, made by Ms. Kate Macmillan of Carter-Ruck, on Mr. Aidan Phelan, to the effect that the latter thought he might be able to get Mr. Kevin Phelan *"on side"*, and that he might provide a witness statement and evidence at the trial of the pending litigation, seems extremely surprising in the light of what is now known of the acrimony between both Phelans. That the attendance also recorded that Mr. Aidan Phelan *"might know what the position was regarding KP* [Kevin Phelan]" within the following four days suggests, as was in fact the case, that someone else was

endeavouring to get Mr. Kevin Phelan *"on side"*, and not, as Mr. Aidan Phelan claimed in evidence, that he was considering telephoning Mr. Kevin Phelan himself to ask him to give evidence.

Mr. Denis O'Brien Senior takes over

10.51 In or around spring of 2002, Mr. Denis O'Brien Senior, at the request of his son, took over Mr. Aidan Phelan's former responsibilities in regard to Doncaster. Mr. Denis O'Brien himself viewed the project as one of no great significance, with the main matters entrusted to his father being the resolution of the acrimonious dispute with the vendors in regard to retention monies, and the further issue of Mr. Kevin Phelan's claim for fees, and his entitlement to 40% of the profits realised. Mr. O'Brien Senior confirmed that these were the only issues with which he was concerned. He also stated that, despite the difficulties relating to both matters, and the extent of other business interests with which he was occupied, he managed to resolve both within a period of approximately four months.

10.52 Mr. O'Brien Senior testified that, soon after taking over these matters, he made contact with Mr. Denis O'Connor, with whom he said he had become acquainted in the course of attending earlier Tribunal hearings when his son, Mr. Denis O'Brien, was testifying. In conversations that developed between them, it emerged that Mr. O'Connor knew Mr. Kevin Phelan, who was claiming monies for Doncaster, and Mr. O'Brien Senior believed that he asked Mr. O'Connor to let Mr. Kevin Phelan know that Westferry would pay sums properly due, whereupon Mr. O'Connor offered to assist in whatever way he could. Their conversations also touched upon the rumour that Mr. Lowry had a Doncaster involvement.

10.53 Mr. Aidan Phelan always regarded Mr. Kevin Phelan as having no fees entitlement regarding Doncaster, but merely a right to a 40% uplift or profit share, if and when the property was sold on. Although he testified in 2007 that he did not inform Mr. O'Brien Senior that Mr. Kevin Phelan was seeking Stg.£150,000.00 fees, it is now known that he had received a letter of 8th March, 2002, from Woodcock & Sons, which included a claim by Mr. Kevin Phelan for Stg.£155,000.00 in respect of Doncaster. In evidence, he further accepted that he had received the earlier letter of Mr. O'Connor of 18th June, 2001, which included a Doncaster invoice in approximately the same amount. However, at the Regency Airport Hotel meeting of 27th March, 2001, he recalled that all that Mr. Kevin Phelan had sought was Stg.£5,000.00 expenses regarding Mansfield and Cheadle, which he duly paid. Accordingly he felt it improbable that he would have told anyone that Stg.£150,000.00 was due for Doncaster to Mr. Kevin Phelan.

Payment to a potential witness might be misconstrued

10.54 Mr. O'Brien Senior instructed William Fry to act in relation to any claims of Mr. Kevin Phelan, and documents were furnished and dealings had with Mr. Owen O'Connell and Mr. Owen O'Sullivan of that firm. Knowing that Mr. Kevin Phelan was a potential Tribunal witness hostile to the O'Brien interests, and having been told by Mr. O'Brien Senior of his intention to settle all claims by paying a lump sum, Mr. O'Connell was concerned that any such payment to a potential witness might be misconstrued. His view was that it would have to be established that any proposed payment was properly due to Mr. Kevin Phelan from Westferry, so that, if it ever came to light, it could be shown that Mr. O'Brien Senior was not paying for some other reason. It appeared, from an attendance note on the relevant William Fry file, that Mr. O'Connell may have spoken to Mr. Denis O'Connor in relation to ownership of Westferry, that Mr. Vaughan had also been mentioned by Mr. O'Brien Senior as a possible source of information, and, extraordinarily, that it was Mr. O'Connor, ultimately, who suggested that inquiries should be directed to Walbrook Trustees. Mr. O'Connor testified that Mr. O'Brien Senior had requested that he get ownership information from Mr. Vaughan, on foot of which Mr. O'Connor had contacted Mr. Vaughan who, he confirmed in evidence, had no difficulty in discussing matters relating to Doncaster and Westferry with him, although knowing him to be Mr. Lowry's representative. However, Mr. O'Connor testified that he was not involved as Mr. Lowry's representative, but was merely responding to Mr. O'Brien Senior's request.

10.55 Mr. Vaughan in evidence confirmed having met Mr. O'Connor on 30th May, 2002, in a London restaurant, following telephone conversations; that he had then provided contact details concerning individuals involved in Westferry and Doncaster; that it had appeared to him that Mr. O'Connor was acting in negotiating a whole series of settlements by way of *"shuttle diplomacy"*, and that he needed information in order to bring parties together.

10.56 On 31st May, 2002, Mr. O'Connor, who was not either an agent for or connected with Westferry, faxed details of the individuals involved in Westferry and Doncaster Rovers to both Mr. O'Sullivan of William Fry, and to Mr. O'Brien Senior, respectively solicitor for, and representative of, Westferry. Mr. Owen O'Connell then received a memo from Mr. O'Brien Senior, summarising details of Doncaster, including the dispute with the vendors, and enclosing a copy of the letter, faxed at the end of February, 2002, by Mr. Weaver to Mr. Ned Carroll of Brian Phelan & Company, containing the oblique reference to a *"Mr. L"* in a context of Doncaster Rovers, as referred to above.

10.57 On 11th June, 2002, Mr. Owen O'Connell noted an attendance on Mr. O'Brien Senior, expressing his concern regarding the latter making payment to

Mr. Kevin Phelan, in the circumstances of the Tribunal's inquiries, particularly in the context of apparent collaboration with Mr. Lowry, or a Lowry adviser, in making a larger payment. In evidence, Mr. O'Connell stated that he thought the context of this was that Mr. O'Brien Senior had been pressing William Fry to get the matter with Mr. Kevin Phelan resolved, and was also in communication with Mr. O'Connor, an apparent intermediary between Mr. O'Brien Senior and Mr. Kevin Phelan. Mr. O'Connell's testimony was that Mr. O'Brien Senior had told him that Mr. O'Connor had been in touch with Mr. Kevin Phelan, primarily to negotiate fee claims by Mr. Kevin Phelan against Mr. Michael Lowry for other UK property transactions, but arising from discussions between Mr. O'Brien Senior and Mr. O'Connor, the latter proposed that an overall global settlement, as Mr. O'Connell described it, might be concluded with Mr. Phelan for a single payment in satisfaction of all UK property claims; of this, Mr. Denis O'Brien would bear his proportion, and Mr. Lowry his. Mr. O'Connell testified that he had advised against such a course on the basis that anything which suggested connections between Mr. Denis O'Brien and Mr. Michael Lowry was sensitive in the context of the Tribunal's inquiries, and should not be promoted. He further testified that he had known for quite some time that Mr. O'Connor was acting for Mr. Lowry, but was never very clear as to Mr. O'Connor's connection to the O'Brien interests. At the time Mr. O'Connell gave this evidence, he believed that his advice had been followed, and that he had effectively *"scotched"* such a collaborative approach.

10.58 The Tribunal had no knowledge, during Mr. O'Connell's evidence, of the Vineacre fee settlement, and obviously there was a clear difference between what might have seemed a situation of Mr. Lowry and Mr. O'Brien both contributing to a Doncaster payment, as opposed to a Lowry payment in respect of a different transaction. In any event, what neither the Tribunal nor Mr. O'Connell knew, at the time he testified in regard to his advice that a global settlement be avoided, was that Mr. Lowry had in reality already made his contribution to such a settlement, in the form of the Vineacre payment, the final portion having been paid on 22nd April, 2002, the day prior to Mr. Kevin Phelan's contrived and untruthful letter to Mr. Christopher Vaughan as to the circumstances of the *"long form"* and *"short form"* correspondence, being the letter then submitted by Mr. Vaughan to the Tribunal as an explanation for those letters.

10.59 It seems the case that Mr. Owen O'Connell was correct in supposing that the proposal for a global settlement came from Mr. O'Connor. Neither Mr. Aidan Phelan nor Mr. O'Brien Senior then had any contact with Mr. Kevin Phelan, and Mr. O'Brien Senior in evidence stated that, apart from knowing Mr. Aidan Phelan, he had no relationship with any of the other persons involved. When noting his advice to Mr. O'Brien Senior concerning the proposed payment, Mr. O'Connell had also prepared a draft letter to be sent to Mr. Kevin Phelan, seeking a note of all claims made, and all supporting evidence in relation to any

entitlement. This was returned with minor amendments by Mr. O'Brien Senior on the same day, who then also indicated to Mr. O'Connell that he had spoken to Mr. Vaughan to make sure there were no *"loose ends"*, and that Mr. Vaughan had sent him a copy of the Woodcock & Sons' letter of 19th April, 2002, in which all allegations and claims against Mr. Vaughan had been withdrawn by Mr. Kevin Phelan.

Mr. Kevin Phelan prepared to settle Doncaster for Stg.£150,000.00

10.60 On 11th June, 2002, Mr. O'Brien Senior informed Mr. O'Connell, in a telephone message, that he could expect a follow-up letter from Woodcock & Sons. Such a letter duly arrived the following day, stating that Woodcocks acted on behalf of Mr. Kevin Phelan, who represented the Glebe Trust, and that they were instructed that there were outstanding fees and costs in relation to Doncaster Rovers, and also an agreed uplift of 40% of the profits. The letter then stated that their client was prepared to accept Stg.£150,000.00 in settlement of any claim for outstanding fees or uplift. Bank account details were provided, and it was stated to be a condition of the offer that the sum would be paid into the specified account by 4:00pm on the following Monday, 17th June, 2002.

10.61 Woodcock & Sons also copied that letter to Mr. Denis O'Connor, who in turn forwarded it to Mr. O'Brien Senior, writing *"as discussed"* in the fax cover sheet. Mr. O'Connor testified that he believed that he must have had a discussion with Mr. Kevin Phelan prior to receiving the letter in relation to the latter's willingness to compromise the claim for Stg.£150,000.00. At different times during his evidence, Mr. O'Connor described his role as liaising with Mr. Kevin Phelan, acting as a link between Mr. Kevin Phelan and the deal, and conveying messages between Mr. Kevin Phelan and William Fry and others. He testified that he did not know of any negotiations before a figure was arrived at, but he thought that at some stage he would have conveyed a message from Mr. Kevin Phelan that a payment of Stg.£150,000.00 would be sufficient to settle the matter. It should be observed that no witness heard by the Tribunal other than Mr. O'Connor seems to have had a role in arriving at that settlement figure.

10.62 Although Mr. O'Connor testified that these matters were occupying a tiny proportion of his professional time, it nonetheless appears that he had:

(i) met Mr. Kevin Phelan in his own office in Foxrock, before writing to Mr. Aidan Phelan on 18th June, 2001;

(ii) travelled to England to a meeting with Mr. Kevin Phelan in June or July, 2001, and to view the various UK properties;

(iii) met Mr. Vaughan on two occasions at Birmingham and Manchester Airports;

(iv) had a number of meetings with Mr. Kevin Phelan at a Dun Laoghaire hotel prior to signing the agreements in September, 2001, in connection with the Mansfield, Cheadle, Doncaster and Altrincham properties;

(v) been involved in negotiations with Mr. Kevin Phelan in March and April, 2002, which led to the withdrawal of all claims against Mr. Vaughan;

(vi) met Mr. Vaughan for dinner in London on 30th May, 2002, at which matters relating to Doncaster were discussed, resulting in Mr. Vaughan's letter of the next day giving contact details for various persons involved, for the assistance of the O'Brien interests;

(vii) conveyed to Mr. O'Brien Senior that a payment of Stg.£150,000.00 would settle Mr. Kevin Phelan's outstanding claim for fees together with his 40% profit claim.

He also testified that he had been asked by Mr. O'Brien Senior to intervene with Mr. Kevin Phelan in connection with his professional complaints against Mr. Aidan Phelan, Mr. Bryan Phelan and Mr. Craig Tallents, and that he had taken some limited steps in that regard.

10.63 On 17th June, 2002, Mr. Owen O'Connell prepared a draft response to the settlement offer, sending a copy to Mr. Peter Vanderpump of Westferry, from whom he had received formal instructions on 11th June, 2002. This confirmed that his client would discharge the Stg.£150,000.00 payment in full and final settlement of all fees and expenses arising out of Doncaster, including the 40% share of any uplift. This was approved the next day by Mr. Vanderpump, who referred to the ongoing litigation and requested that Mr. O'Connell would keep Carter-Ruck informed of developments, to ensure against any prejudice to Westferry's case, as was later done.

10.64 It also appears that the solicitor to the vendors in the litigation, Mr. Reg Ashworth, had written on 13th February, 2002, to Mr. Kevin Phelan seeking information, from which it may be inferred that the vendors wished to ascertain whether Mr. Kevin Phelan could be called as a witness in support of their case. On 20th June, 2002, Mr. O'Brien Senior telephoned Ms. Ruth Collard of Carter-Ruck, and informed her that he was in possession of Mr. Ashworth's letter of 13th February, 2002. She expressed concern that he should be in possession of such a document, stating that she did not wish to see a copy of it, when Mr. O'Brien Senior offered to send it. She also expressed concern regarding the proposed

payment to Mr. Kevin Phelan, indicating that it made her extremely uncomfortable, as any such payment made could be represented to be in connection with his evidence in the litigation, and therefore as an impropriety. Ms. Collard had noted Mr. O'Brien Senior informing her that, though not in contact with Mr. Kevin Phelan himself, there had been contact through an intermediary. Her evidence accorded with the note kept by her. Mr. O'Brien Senior testified that the intermediary in question was Mr. Denis O'Connor, and Mr. O'Connor also accepted this in evidence, although stating he had never seen the Ashworth letter until made available to him by the Tribunal.

10.65 Over ensuing days, Mr. O'Brien Senior queried with William Fry whether or not settling with Mr. Kevin Phelan could complicate the ongoing English High Court litigation. There appeared to be a view that Mr. Kevin Phelan would not complete the resolution of all other outstanding disputes, until it seemed that Westferry was ready to settle in relation to Doncaster. In an internal William Fry memorandum of 24th June, 2002, reference was made to a phone conversation had by Mr. Owen O'Connell with Mr. O'Brien Senior, in which the latter had suggested that the letter to be sent to Woodcock & Sons should require, as part of the overall settlement, a written account from Mr. Kevin Phelan of the negotiations leading up to the dispute between Westferry and the vendors. William Fry in consequence wrote that day to Woodcock & Sons, stating that the proposed settlement was now subject to such a narrative account being furnished. Also on that day, Mr. Aidan Phelan telephoned Ms. Ruth Collard, she having previously failed to reach him, being anxious to discuss with him her recent dealings with Mr. O'Brien Senior. The proposed payment to Mr. Kevin Phelan was discussed, and Ms. Collard again expressed concern over any such payment being linked to his testimony in the litigation, which, she stated, could amount to a criminal offence. This was dismissed by Mr. Aidan Phelan, who said they were simply paying him a fee to go away, and Mr. O'Brien Senior wanted to sort the matter out. Mr. Aidan Phelan later testified that, although told of this course, he was always opposed to it, and felt that Mr. Kevin Phelan was owed nothing, as it was his view that no fees were due to him for Doncaster, and that any entitlement he had was contingent on a profit being realised on resale of the property.

"ML" in the context of Doncaster

10.66 In their response to William Fry on 28th June, 2002, Woodcock & Sons stated their client would indeed provide a narrative, but that much documentation would be involved, and it would be costly and time-consuming. It was also stated that Mr. Kevin Phelan had no precise knowledge of the ongoing dispute with the vendors. Two items of correspondence were enclosed, the second being the fax of 11th August, 1999, examined in the previous chapter, from Mr. Kevin Phelan to

Mr. Aidan Phelan, by which it was sought to demonstrate that from that date, Mr. Aidan Phelan had fully taken over the project from Mr. Kevin Phelan. In that fax was contained the *"ML"* reference, in an apparent Doncaster context. Mr. Owen O'Connell testified that, having until then sought a narrative from Mr. Kevin Phelan solely to protect the Westferry position in the impending litigation, they had now received an apparent Doncaster reference to Mr. Michael Lowry, which required clarification.

10.67 Much of what then followed is set forth in the chapter *"Delays, Non-Disclosures and Lawyers"*. Mr. O'Brien Senior scented intimidation or blackmail, stating that he wanted a proper explanation before paying money. He testified that he could not be faulted for his failure to produce that *"ML"* document to the Tribunal at the time, in 2002 or at any time prior to the issue of proceedings by Mr. Denis O'Brien; that he was a lay person, and that it was up to William Fry to advise him in that regard.

10.68 On the 11th July, 2002, William Fry duly sought clarification, from Woodcock & Sons, of the identity of *"ML"*, repeating their request for a narrative, and stating that the proposed settlement figure would include and cover any costs incurred in preparing it. Yet on 16th July, 2002, Mr. Richard Breen of William Fry made an attendance note headed *"DOB. Snr - Westferry"*, which recorded that he was to ring Woodcock & Sons to inform them that they could for the time being disregard the request for confirmation of the identity of *"ML"*. Mr. O'Brien Senior testified that the note had nothing to do with him, and that he had never had such a conversation.

10.69 On 24th July, 2002, Woodcock & Sons sent some limited particulars by letter as to the background to the Doncaster transaction, indicating anxiety to finalise the settlement. Also on that day, Mr. Owen O'Connell recorded in a file note that the O'Brien interests had been put on inquiry by reason of the reference in the fax of 11th August, 1999, to *"ML"* in the context of Doncaster, and that appropriate inquiries would have to be pursued in relation to it. Accordingly, the following day, William Fry wrote to Mr. O'Brien Senior, referring to the fact that it had been agreed with Mr. O'Brien Senior the previous week that the *"ML"* reference issue would be reviewed by them, and the matter having been discussed with Mr. Owen O'Connell, they were satisfied of the need to make appropriate inquiries, with Woodcock & Sons, with Mr. Denis O'Connor, with Mr. Denis O'Brien and Mr. Aidan Phelan, adding that they regretted that they had all been put to this trouble, but hoped Mr. O'Brien Senior appreciated that there was no alternative in the circumstances. Such limited inquires as followed, although none were made of Mr. Aidan Phelan or Mr. Denis O'Brien, elicited nothing beyond Mr. Denis O'Connor's suggestion that the *"ML"* reference was to a

"Michael Lloyd", and Woodcock & Sons' later explanation that the reference was to Mr. Michael Lowry, but in a Mansfield context. Nor did it seem that the content of the fax had been in any way queried at the time of its receipt in 1999.

10.70 Also on 25th July, 2002, Mr. O'Connor travelled to England to attend a meeting with Mr. Kevin Phelan and his solicitors, Woodcock & Sons, in Bury, Lancashire. In a letter to William Fry five days later, on 30th July, 2002, Woodcock & Sons indicated that overall agreement had not proved possible with Mr. O'Connor and Mr. Lowry, who apparently required further amendments to protect themselves in relation to future claims. Mr. O'Connor testified that it had been a very hostile meeting, Mr. Kevin Phelan believing that his Westferry settlement was being unfairly delayed. Regarding discussion of the *"ML"* reference at the meeting in Bury, clearly the new sticking-point to agreement, Mr. O'Connor first testified that it was not discussed, then changed his evidence to the effect that it had been, but that Mr. Kevin Phelan and his solicitor had said that they would sort it out.

10.71 Mr. O'Connor testified that he would have found it hard to believe that he had not, at this time, mentioned to Mr. Lowry that there was a possible reference to him in connection with Doncaster Rovers, arising from the *"ML"* fax, but declined a suggestion that he should have asked William Fry for a copy of the document, stating that he would have been *"told where to go"*, and that William Fry had tended to use him as a messenger boy, whenever difficulties were encountered, due to his acquaintance with Mr. Kevin Phelan.

10.72 Despite the Bury meeting, there was clearly no progress on the matters then still in dispute. Indeed, hostility on the part of Mr. Kevin Phelan appears, if anything, to have been amplified by the failure to resolve matters. In this regard, it is noteworthy that the copy of Mr. Vaughan's critical letter to Mr. Michael Lowry of 25th September, 1998, referring to Mr. Lowry's *"total involvement"* in the Doncaster Rovers project, which came into the possession of Mr. Mark Weaver and Mr. Ken Richardson, carried on it a fax banner indicating that it was received by them at 00:59am on 26th July, 2002, that is, late into the night following the Bury meeting. Whilst the fax banner does not identify the sender, it seems highly probable that the source of the letter was Mr. Kevin Phelan. If the time and date on the fax banner is correct, then it would appear that Mr. Kevin Phelan was so angered by the outcome of his meeting with Mr. Denis O'Connor earlier on the previous day, that he faxed this private and highly sensitive letter to Mr. Weaver and Mr. Richardson, when he must have known that in doing so, they were likely to use the letter in an attempt to embarrass and to damage Mr. Lowry and Mr. O'Brien, which, as will be seen, they duly did.

Had to have a simple statement that Mr. Michael Lowry had no Doncaster involvement

10.73 During July, 2002, contact between Woodcock & Sons and William Fry was characterised by the former pressing for payment of Stg.£150,000.00, the latter responding that they were working toward concluding the matter, but that the *"ML"* reference had created concern, and required an explanation that *"ML"* was not Mr. Michael Lowry, or confirmation that Mr. Lowry was not in any way involved in the Doncaster transaction. A William Fry attendance note around this time recorded Mr. O'Brien Senior as having informed Mr. Denis O'Connor, presumably with the intent that it be conveyed to Woodcock & Sons, that they had to have a simple statement that Mr. Lowry had no Doncaster involvement.

Being asked to provide the impossible

10.74 However, in the further course of their letter to William Fry of 30th July, 2002, the earlier portion of which has already been referred to, Woodcock & Sons stated that their client had done all that was possible to agree satisfactory terms, that matters were being delayed for no good reason, that in the context of the explanation sought for the *"ML"* reference, their client was now being asked *"to provide the impossible"*, and that due to the *"very serious implications"* of the request made, Woodcock & Sons had been specifically instructed to terminate negotiations.

10.75 What was not known to the Tribunal at the time of that 2007 evidence was that, in the correspondence provided latterly to it by Mr. Aidan Phelan, was a letter of 8th March, 2002, from Woodcock & Sons which, as confirmed by Mr. Phelan in his 2009 evidence, contained an assertion that Mr. Michael Lowry did have an involvement in the Doncaster transaction, and was entitled to split a 40% profit uplift with Mr. Kevin Phelan. Having so written, less than five months prior to their letter of 30th July, 2002, it would patently have been impossible for Woodcock & Sons to accede to the request of William Fry, hence their references to being asked *"to provide the impossible"*, and to the *"very serious implications"* of the request.

Settlement negotiations in train while evidence being taken at Tribunal hearings

10.76 In order to put these events in late July, 2002, in their proper context, it should be pointed out that at the very time that this correspondence was being exchanged between William Fry and Woodcock & Sons, and some four days following the crucial meeting in Bury between Mr. O'Connor, Mr. Kevin Phelan and his solicitor, the Tribunal was hearing evidence in the course of 29th and 30th July, 2002, from witnesses, including Mr. Denis O'Brien, Mr. Michael Lowry and Mr.

Denis O'Connor himself, concerning the two *"long form"* and *"short form"* letters, that were then the totality of what was known to the Tribunal concerning alteration of documents to remove references to Mr. Michael Lowry. No witness brought to the attention of the Tribunal the fact that ongoing negotiations were at a critical stage with Mr. Kevin Phelan, and that in the course of those negotiations, a document containing an apparent reference to Mr. Michael Lowry in connection with another UK property transaction, with which the Tribunal had previously been told in evidence Mr. Lowry had no connection, had come to light, and was at that very time causing the negotiations with Mr. Kevin Phelan to collapse, in circumstances where Mr. Kevin Phelan was not prepared to provide the assurance sought that Mr. Lowry had no involvement in that transaction. Furthermore, as has previously been set out, the Tribunal was not told at the time of that evidence, or at any time, that the dealings then ongoing with Mr. Kevin Phelan had included payment to him of Stg.£65,000.00 in March and April, 2002, referable to another Michael Lowry property interest, more than Stg.£56,000.00 of which was paid the day before a letter was written to Mr. Christopher Vaughan, which had been produced to the Tribunal as an apparent explanation for the existence of the *"long form"* and *"short form"* letters then being examined, but which has been shown to be a complete misrepresentation of the true facts. Nor was the Tribunal told that it was intended for Mr. Denis O'Brien to make a further payment to Mr. Kevin Phelan of Stg.£150,000.00, but that payment had been delayed, pending the provision of a satisfactory explanation in relation to the *"ML"* reference.

10.77 The Tribunal had no knowledge of the events then occurring in the background, when taking evidence on 29th and 30th July, 2002. The Tribunal had, since being made aware of the *"long form"* and *"short form"* correspondence, continued efforts to persuade Mr. Kevin Phelan to attend as a witness at Tribunal hearings. The then most recent letter to Mr. Kevin Phelan in that regard was written on 12th July, 2002, to which he responded by letter dated 29th July, 2002. With the benefit of hindsight, and with the knowledge of what was in fact occurring in the background, the letter makes interesting reading, although it was of course the case that the Tribunal was not in a position to appreciate the true context in which it had been written. In his letter, Mr. Kevin Phelan stated that any issue concerning the validity of correspondence from Mr. Christopher Vaughan was a matter that the Tribunal should address with Mr. Vaughan, and he pointed out that it was for the Tribunal to come to its own conclusions concerning the validity or otherwise of that correspondence and that any questions in that regard had been wrongly addressed to Mr. Kevin Phelan. He also stated that he had instructed solicitors in England to act on his behalf in relation to issues that had arisen, to which Mr. Vaughan was connected, and that, at that stage, it was his priority to resolve ongoing disputes, and that he did not wish to prejudice his position in relation to those matters by divulging information

to the Tribunal. He concluded his letter by stating that no inference could be drawn, from his failure to agree with or to contradict *"the assertions as put forward by the Tribunal in relation to Christopher Vaughan's correspondence"*.

William Fry press for an explanation of the "ML" reference; confirmation that Mr. Michael Lowry was involved or confirmation that he was not

10.78 William Fry responded to Woodcock & Sons' letter of 30th July, 2002, on 2nd August, 2002, pointing out that they had sought the narrative from Mr. Kevin Phelan as a matter of prudence, in order to have an appropriate record of his activities as their agent, and that they did not regard it as unduly difficult or controversial. The letter went on to state that they had interpreted the *"ML"* reference as a possible indication that Mr. Lowry was involved in some way in the Doncaster transaction, and they had felt it incumbent upon them to seek an explanation, which could have been confirmation that Mr. Lowry was involved, or confirmation that he was not, perhaps accompanied by an explanation that the initials referred to someone other than Mr. Lowry, or that the reference was added in error, or some other appropriate explanation. They stated that they did not believe that they acted unreasonably in seeking such confirmation, and could not understand the letter under reply, where it stated that the giving of such a confirmation or explanation was considered unreasonable or impossible. William Fry repeated the willingness of their client to pay the sum of Stg.£150,000.00, provided such an explanation was furnished, and pointed out that they could not comment on or be responsible for the progress of any discussions in which Woodcock & Sons might be engaged with other parties for whom they did not act. Mr. O'Connell testified that, in respect of this latter aspect of the letter, in common with his earlier advice that no global settlement be attempted involving Mr. Lowry, he was anxious to make it clear that no other negotiations were of any concern to Westferry, and in so doing, he was seeking to avoid *"the creation of a mare's nest of disputes"*.

10.79 Thereafter, at least insofar as can be discerned from the William Fry files, there was an apparent lull in what had been, up to that time, a relatively frenetic period of activity directed to the settlement. On 6th August, 2002, Woodcock & Sons sent a brief acknowledgement of William Fry's letter of 2nd August, 2002, indicating that they were taking instructions. Despite the absence of recorded activity on the William Fry file, it seems that Mr. Denis O'Connor for his part continued to pursue the matter in contacts with Mr. Kevin Phelan. Accordingly, on 13th August, 2002, Mr. Owen O'Connell kept a note of a telephone conversation which, as he informed the Tribunal in evidence, he had with Mr. O'Connor, in the course of which the latter enquired whether it would be possible for William Fry to meet with Woodcock & Sons on the following Monday afternoon in Dublin, to finalise the settlement, and indicated that there would be a

"...'practically full' retraction". Mr. Denis O'Connor had enquired whether any such meeting could be off the record, to which Mr. O'Connell replied that it could be *"without prejudice"*, which was not the same thing. Mr. O'Connell testified that he was always unclear as to what Mr. Denis O'Connor's position was, or for whom he was speaking, so he tended to receive information from him when proffered, but rarely questioned it or gave information back. He was aware that Mr. O'Connor represented Mr. Lowry, and he was never entirely relaxed concerning Mr. O'Brien Senior's involvement with Mr. O'Connor in relation to the dispute with Mr. Kevin Phelan, and was accordingly always cautious.

10.80 Mr. O'Connor did not have a clear recollection of any such conversation with Mr. Owen O'Connell, but testified that he did recall at some stage telling William Fry that he was *"sick of this"*, and indicating that the parties should get together themselves in order to resolve the matter. If he telephoned anyone on the other side, it was Mr. Kevin Phelan, and not Woodcock & Sons.

10.81 On the following day, 14th August, 2002, Mr. Denis O'Brien Senior left a telephone message for Mr. Owen O'Connell, indicating that he had arranged for Woodcock & Sons to contact Mr. O'Connell in order to make an appointment for a meeting, with a view to finding an acceptable wording regarding the retraction of the *"ML"* reference. He also indicated that he had learned that an American lawyer had approached Woodcock & Sons seeking the release, for a fee, of all papers concerning the dispute, and requesting that Mr. O'Connell would indicate to Woodcock & Sons, in the course of the intended meeting, that, as part of the settlement, Westferry would take possession of all Mr. Kevin Phelan's relevant files. As matters transpired, there appears to have been no such meeting between Mr. Owen O'Connell and Woodcock & Sons, and the settlement was ultimately concluded by correspondence.

10.82 On 19th August, 2002, there was an exchange of *"without prejudice"* letters between Woodcock & Sons and William Fry. The first letter was from Woodcock & Sons, and indicated that the respective clients were close to terms of settlement. Mr. Owen O'Connell testified that, whilst he had no involvement in any negotiations leading to that position, he would have been aware that such an agreement had been reached, because the funds to make the payment to Mr. Kevin Phelan had been received into William Fry's client account a few days previously. Woodcock & Sons' letter indicated that the terms of settlement were that Westferry would pay to Mr. Kevin Phelan Stg.£150,000.00 in settlement of all monies due, arising out of the Doncaster project, and that the payment would cover not only Mr. Kevin Phelan, but also their clients, M&P Associates, Gameplan International Limited and the Glebe Trust.

10.83 The letter also set out that the reference to *"ML"* in the fax, dated 11th August, 1999, from Mr. Kevin Phelan to Mr. Aidan Phelan, was indeed a reference to Mr. Michael Lowry, but that it related to a project in Mansfield, in which Mr. Lowry was a shareholder. Also enclosed with the letter was a short additional letter, purporting to satisfy the requirement by Westferry for a narrative account from Mr. Kevin Phelan. That attached letter recorded that Mr. Kevin Phelan at all times received direct instructions from Mr. Aidan Phelan to manage and promote the Doncaster venture, and reported solely to Mr. Aidan Phelan. It also stated that, at all times, Mr. Kevin Phelan dealt with matters in a professional and competent fashion, and was satisfied that the actions that he took, and his view in relation to the retention sums, were correct.

No confirmation that Mr. Michael Lowry had no involvement in Doncaster.

10.84 It is abundantly clear that neither the explanation in respect of the *"ML"* reference contained in the letter itself, nor the purported narrative contained in the attached letter, were anywhere near what was envisaged or initially required by Westferry. In particular, earlier correspondence from William Fry had indicated that they wished to receive a confirmation that Mr. Lowry had no involvement in the Doncaster project, and it is clear that no such confirmation was provided. In his evidence, Mr. Owen O'Connell said that he did not feel terribly happy about the purported clarification of the *"ML"* reference, but he felt that it was all he was going to get, and it was probably at, or close to, the bare minimum necessary. It was very much the case that Mr. O'Brien Senior wanted William Fry to get on with the settlement, and Mr. O'Connell felt that they had gone as far as they could go. Mr. O'Connell faxed a copy of the Woodcock & Sons' letter to both Mr. Denis O'Brien and Mr. Denis O'Brien Senior.

10.85 On the same day, 19th August, 2002, Mr. O'Connell responded, again on a *"without prejudice"* basis, to Woodcock & Sons, confirming Westferry would offer to pay the sum of Stg.£150,000.00 in full and final satisfaction of all fees due to Mr. Kevin Phelan, of his claim to be entitled to a 40% share of any profits, and also of all other claims by Mr. Kevin Phelan of any nature whatsoever and howsoever arising against Westferry, its shareholders, directors, employees and other consultants relating to the project. The letter also sought confirmation that, unless compelled by law, neither Mr. Kevin Phelan nor Woodcock & Sons would release their files relating to the project to any third party without Westferry's prior written consent. Finally, Mr. O'Connell requested that the confirmation concerning the *"ML"* reference would be given in a separate and open letter, at the time the settlement was concluded.

10.86 On the following day, 20th August, 2002, Woodcock & Sons responded, taking issue with two of the points raised. In relation to the contention that a

Stg.£150,000.00 payment would settle all claims against Westferry's shareholders, directors, employees and other consultants, it was indicated that Mr. Kevin Phelan was not prepared to compromise any claims he might have against individuals whose identities were not known, and requested that, if specific individuals were to be covered by the agreement, they should be identified. Further, Mr. Kevin Phelan would require a reciprocal agreement with any individual so identified, in order to ensure that no claims could be brought against him.

Handover of files to Mr. Denis O'Connor

10.87 Woodcock & Sons indicated that they would discuss the matter of the release of files with Mr. Owen O'Connell. Mr. Kevin Phelan's stated concern was that documentation was held by a number of people, and he could not be held responsible for disclosure by a third party; that the burden would be on Westferry to show that any disclosure which occurred had come from Mr. Kevin Phelan after the date of settlement. It appears that Mr. O'Connell spoke to Mr. David McCann, of Woodcock & Sons, on that day, 20th August, 2002, in connection with those two points. Mr. O'Connell informed Mr. McCann that he would provide him with a list of names, and would confirm that he had the authority to furnish reciprocal waivers on their behalf. In relation to the issue concerning the release of files, Mr. O'Connell recorded Mr. McCann as saying that there had been discussions with Mr. Denis O'Connor, to whom Mr. Kevin Phelan would hand over his files. Mr. McCann enquired whether Mr. O'Connell was aware of those discussions, which Mr. O'Connell testified he was not.

10.88 Immediately following that conversation with Mr. McCann, Mr. Owen O'Connell set about compiling a list of people to be included in the terms of the settlement. These included Mr. O'Brien, Mr. O'Brien Senior, and the directors of Westferry acting on behalf of Walbrook Trustees. Mr. O'Connell also appears to have made inquiries in respect of Mr. Aidan Phelan, and Mr. O'Brien Senior in turn made contact with Mr. Aidan Phelan, who responded that his solicitor was away at the time, and he would revert on his return. As has already been pointed out, at the time the Tribunal was examining these events in the course of its public hearings in 2007, it was unaware of the extent of the claims and allegations that had been made by Mr. Kevin Phelan against Mr. Aidan Phelan in the Woodcock & Sons' letter of 8th March, 2002, which was withheld from the Tribunal until June, 2009.

Withdrawal of request for files

10.89 As regards the issue of the release of files, a William Fry file note of a telephone message left by Mr. Denis O'Brien Senior, on the following day, 21st

August, 2002, recording that Mr. McCann, of Woodcock & Sons, had stated that no assurances could be given if Westferry were to hold the files, noted that Mr. O'Brien Senior had asked Mr. O'Connor to *"withdraw his request"* for the files. Ultimately, the handover of files did not form part of the settlement and it seems reasonable to assume therefore that Mr. O'Connor agreed that any stipulation regarding the transfer of files would no longer have to form part of the settlement. In evidence, it was denied by Mr. O'Connor that he had had any role in relation to these files. However, his denials of the extent of his involvement in brokering this, and related settlements, is unconvincing in the teeth of a number of William Fry memoranda and in the teeth of further evidence, which did not become available until 2009, from which his overall role in dealing with Mr. Kevin Phelan in connection with Westferry and related matters, including Cheadle, Mansfield and Altrincham became apparent. The Tribunal is satisfied that Mr. Denis O'Connor was the only person in direct contact with Mr. Kevin Phelan in connection with these matters. From William Fry memoranda, it is clear that he had a significant role in relation to the question of the release of files, in as much as the memoranda acknowledged that the waiver of a condition regarding the transfer of files was effectively a matter to be cleared by him. Mr. O'Connor's disowning of his involvement in these settlements, and of his overall role in various agreements between Westferry, Mr. Kevin Phelan, Mr. Lowry and others, including Messrs. Richardson and Weaver, betrays a sensitivity that suggests he was in fact the key linkage in this aspect of the Westferry settlement.

10.90 In the file note of 21st August, 2002, Mr. O'Brien Senior stated that he was happy to settle on that day and to furnish the cheque for Stg.£150,000.00, without further assurances being given. William Fry, accordingly, wrote to Woodcock & Sons by letter of 21st August, 2002, offering the sum of Stg.£150,000.00 in full and final satisfaction of all fees and profit claims by Mr. Kevin Phelan in connection with Doncaster, either against Westferry Limited or against Mr. O'Brien, Mr. O'Brien Senior, the directors of Westferry, and also Walbrook Trustees. The letter also confirmed that Westferry, and the other persons identified, agreed that any claims arising from the project that they might have had against Mr. Kevin Phelan were also fully and finally satisfied by the settlement. As regards the issue of the release of files, William Fry sought confirmation that files would not be released, unless compelled by law, as had previously been suggested in their *"without prejudice"* letter. The requirement for the handing over of files was, accordingly, abandoned.

10.91 Woodcock & Sons accepted those terms of settlement in their response of the same day, and enclosed a copy of the *"narrative"* letter, which had been previously furnished in draft form. Curiously, no separate letter was provided explaining the issue of the *"ML"* reference as requested. The transfer of

funds from Westferry to Woodcock & Sons to complete the settlement then proceeded on the following day, 22nd August, 2002.

Mr. Denis O'Connor's continuing involvement in promoting settlements

Mr. Denis O'Connor truly fed up with the whole affair

10.92 Mr. O'Connor's evidence to the Tribunal was that, by August, 2002, he was *"sick of"* the negotiations between Westferry and Mr. Kevin Phelan, and wished that the parties would cease *"tormenting"* him. He also testified that he had become *"truly fed up"* with the whole affair, which was *"driving* [him] *crazy".* Nonetheless, the Tribunal heard evidence that Mr. O'Connor continued to have dealings with Mr. Kevin Phelan after the conclusion of the Westferry settlement on 22nd August, 2002, including in relation to a settlement of Mr. Kevin Phelan's separate complaint with Brian Phelan & Associates, which entailed Mr. O'Connor apparently liaising with Messrs. LK Shields acting for the firm, in relation to an exchange of settlement documents in early September, 2002.

10.93 Further evidence of Mr. Denis O'Connor's wide-ranging involvement in the brokering of settlements was given in 2009. This appeared from the testimony, only belatedly given by Mr. Aidan Phelan, in relation to the involvement of Mr. O'Connor in the settlement of Mr. Aidan Phelan's dispute with Mr. Kevin Phelan, arising from claims made by Mr. Kevin Phelan in his withheld letter of 8th March, 2002. As has previously been mentioned, whilst the contents of the letter were not opened fully in the course of Tribunal hearings, nonetheless, Mr. Aidan Phelan testified that one of the contentions made in the letter was that Mr. Lowry had an involvement in the Doncaster transaction, to the extent that it was asserted that he was entitled to a share of 40% of the profits on the project with Mr. Kevin Phelan. From the evidence of Mr. Aidan Phelan, it was apparent that Mr. O'Connor was a pivotal intermediary in securing a settlement between Mr. Kevin Phelan and Mr. Aidan Phelan.

Really interesting stuff.

10.94 Even more surprising than Mr. O'Connor's continuing involvement in those existing disputes was the fact that in early September, 2002, as touched upon in the previous chapter, Mr. O'Connor involved himself again in matters in connection with Westferry, in what he claimed was an entirely new matter for him, namely the litigation between that company and the Doncaster vendors. Mr. O'Connor testified that his involvement in that issue was entirely separate from the Westferry/Mr. Kevin Phelan fees dispute. In evidence, both Mr. O'Connor and Mr. O'Brien Senior stated that, following a meeting they had in late August or early September, 2002, Mr. O'Connor offered to meet Mr. Richardson and Mr. Weaver,

representing the Doncaster vendors, to explore the possibility of resolving the issues in the litigation, and also offered to review the relevant files held by Carter-Ruck in London, the solicitors acting for Westferry, so that he could give his opinion as to the extent of Westferry's liability. Mr. O'Connor's explanation for his involvement in the Westferry litigation was that the dispute was the type of matter which he had handled many times before, that he found it to be *"really interesting stuff"*, and *"it was an opportunity to do something positive in this whole thing."*

10.95 In a letter from Mr. O'Connor to Mr. Craig Tallents, the accountant acting for Westferry in the litigation, dated 2nd September, 2002, Mr. O'Connor wrote that Mr. O'Brien Senior had *"authorised this approach"*, and that he was *"trying to settle the position between all parties, including the retention and other claims issues, with the vendors"*. It was in this letter that Mr. O'Connor suggested that he should meet with Mr. Tallents in London, on 10th September, 2002, in order to get an overview of what had happened in the litigation over the previous two years.

10.96 On the following day, 3rd September, 2002, Mr. John Ryall, an accountant employed by Mr. Denis O'Brien, sent an email to Ms. Ruth Collard of Carter-Ruck, who was also due to attend the meeting scheduled for the following week with Mr. O'Connor, informing her that Mr. O'Connor was not representing either Westferry or the Doncaster vendors, but might be able to assist in resolving matters. There was subsequent confusion on Ms. Collard's part in that regard, as, following the meeting of 10th September, 2002, both she and Mr. Tallents were mistakenly of the belief that Mr. O'Connor had in fact been representing Westferry, despite that earlier email of Mr. John Ryall.

Maximum embarrassment for Mr. Michael Lowry

10.97 Ms. Collard's attendance of the meeting with Mr. O'Connor and Mr. Tallents on 10th September, 2002, is included in the Appendices to the previous chapter. It records that Mr. O'Connor had been in contact with Mr. Kevin Phelan, who had suggested that a settlement of the matter might be possible, whereby the Doncaster vendors would drop their claim for Stg.£250,000.00 of the retention fund which related to the car park lease, provided Westferry agreed to pay over the remainder of the retention monies to them. Mr. O'Connor was endeavouring to arrange a meeting with Mr. Richardson and Mr. Weaver, although it appears that, following concerns that arose after his dealings with Carter-Ruck as to Mr. O'Connor's precise role, ultimately no such meeting ever took place. Ms. Collard's attendance also records Mr. O'Connor as stating that, if a settlement failed, the vendors would cause *"maximum embarrassment"* for Mr. Michael Lowry and Mr. Denis O'Brien. The Tribunal is satisfied that this was Mr.

O'Connor's primary concern in involving himself in the litigation, and not, as he had testified, that it was something which he found to be *"really interesting"*.

Mr. Denis O'Connor frozen out

10.98 On 16th September, 2002, Mr. Tallents met with Mr. John Ryall and Mr. O'Brien Senior at Communicorp's offices in Dublin, in order to discuss the impending mediation. Following their meeting, Mr. Tallents telephoned Ms. Collard from Dublin Airport, and it appears, from her attendance, that she recorded Mr. Tallents as informing her that he had learned from Mr. Ryall and Mr. O'Brien Senior that Mr. O'Connor was not in fact acting for the O'Brien interests. He informed Ms. Collard that Mr. O'Brien Senior had asked him what he thought Mr. O'Connor was trying to get out of the whole thing. This was of some concern to Ms. Collard and to Mr. Tallents, as they had imparted very sensitive confidential material to Mr. O'Connor at the meeting on 10th September, 2002. Whilst Ms. Collard, in her evidence, accepted that she should have realised that Mr. O'Connor was not acting for Westferry, from Mr. Ryall's email to her of 3rd September, 2002, she wrote to Mr. Ryall on 17th September, 2002, outlining her concerns about Mr. O'Connor's involvement. She also stated her preference that any proposed meeting between Mr. O'Connor and the vendors' representatives should be cancelled, unless it was established what his role was, and what he hoped to attain, and that, in any case, undertakings to protect the O'Brien interests should be obtained from him in advance of any such meeting. Subsequently, at Mr. Ryall's request, Ms. Collard drafted such an undertaking, but it does not appear that the matter was pursued. Mr. O'Brien Senior stated in evidence that he accepted Ms. Collard's advice to the effect that it would be preferable that Mr. O'Connor did not become involved in dealings with the vendors, and therefore the proposed meeting between Mr. O'Connor and the vendors did not proceed. Mr. O'Connor testified that he believed that he was eventually *"frozen out"* or *"sidelined",* but that this was because those dealing with the matter did not agree with the figures he came up with when he analysed the files, following his meeting with Ms. Collard and Mr. Tallents on 10th September, 2002. Ms. Collard told the Tribunal that this was not the case, as she felt that Mr. O'Connor's figures were broadly similar to her own, and that his analysis was impressive.

Mr. Denis O'Connor's knowledge of Mr. Christopher Vaughan's description of Mr. Michael Lowry's "total involvement" in Doncaster

10.99 The mediation between Westferry and the Doncaster vendors took place in London on 27th September, 2002. As previously mentioned, in the course of that mediation, a copy of Mr. Christopher Vaughan's letter to Mr. Michael Lowry, dated 25th September, 1998, recording Mr. Lowry's *"total involvement"* in Doncaster, was produced by Mr. Ken Richardson and Mr. Mark

Weaver, resulting in Mr. O'Brien Senior making a blackmail complaint to the London Metropolitan Police shortly after the mediation. Mr. O'Brien Senior prepared a witness statement to support his complaint, the first draft version of which, prepared in November, 2002, set out as follows:

> *"In the week prior to the mediation on 27 September 2002 I was faxed a copy of a letter from Christopher Vaughan (the solicitor who had acted for Westferry in the acquisition of Doncaster Rovers Football Club Limited) to Michael Lowry dated 25 September 1998....The letter suggests that Michael Lowry was connected with the DRFL transaction, which is untrue.*
>
> *...I received a message via Michael Lowry's accountant, Denis O'Connor, which I was told originated from the representatives of Dinard, Ken Richardson and Mark Weaver, that a copy of this letter would find its way to people I would not want to see it unless I settled the litigation in respect of DRFL on terms which were very favourable to Dinard. I understood this to mean that the letter would be sent to the Moriarty Tribunal. Denis O'Connor informed me that information about this matter had come from Kevin Phelan."*

10.100 Whilst Mr. O'Connor denied in evidence ever having passed on such a message to Mr. O'Brien Senior, that passage in Mr. O'Brien Senior's draft witness statement, prepared a short time after the events described in it, is consistent with the information imparted by Mr. O'Connor to Ms. Collard on 10th September, 2002, that the Doncaster vendors were intent on causing embarrassment for Mr. Lowry and Mr. O'Brien. On the basis of both of those documents, it is clear that Mr. O'Connor was aware, at around the same time that he involved himself in the Westferry litigation, apparently from Mr. Kevin Phelan, that Mr. Ken Richardson and Mr. Mark Weaver had in their possession a copy of Mr. Vaughan's letter of 25th September, 1998, to Mr. Lowry, and that they intended to make use of the letter to cause difficulties for Mr. Lowry and Mr. O'Brien, if their demands were not met.

10.101 Mr. O'Connor repeatedly denied in the course of his evidence that he ever had sight of the letter of 25th September, 1998, before such time as it became public, by reason of the articles published in The Irish Times in January, 2003. As regards Mr. O'Brien Senior's witness statement, Mr. O'Connor indicated that at some time in or around September, 2002, whilst he was out of his office and away on business, he was telephoned by his secretary, who indicated that a document had been received from Mr. Mark Weaver. Mr. O'Connor testified that he at that time wanted nothing to do with Mr. Weaver, and therefore instructed his secretary to forward the document to Mr. O'Brien Senior by fax. When asked

whether he then saw a copy of the document, which Mr. O'Brien Senior confirmed in evidence was a copy of the letter of 25th September, 1998, Mr. O'Connor denied that he had seen it, and speculated that his secretary may have binned the document, after putting it through the fax machine to Mr. O'Brien Senior. Mr. O'Connor's evidence, that he wanted nothing to do with Mr. Weaver at that time, is entirely at odds with the fact that, as he acknowledged, he was then endeavouring to arrange to meet with him and Mr. Richardson, with a view to trying to resolve the Westferry litigation. The only conclusion that can be drawn from the evidence, and in particular the available documents, including specifically Ms. Collard's attendance note of the meeting of 10th September, 2002, and Mr. O'Brien Senior's first draft witness statement, is that Mr. O'Connor, despite his denials, was fully aware of the existence of Mr. Vaughan's letter of 25th September, 1998, and its contents, and also of the fact that it was in the possession of Mr. Richardson and Mr. Weaver. It was for that reason that Mr. O'Connor involved himself in the Westferry dispute, in the hope that he might resolve the matter, so that the contents of the letter of 25th September, 1998, recording Mr. Lowry's *"total involvement"* in Doncaster, would not become public, either by being provided to the Tribunal, or to the media.

10.102 It will be recalled from the previous chapter that, after the letter of 25th September, 1998, was produced by Mr. Richardson and Mr. Weaver at the mediation meeting with Mr. O'Brien Senior, contact was made by a number of people with Mr. Christopher Vaughan, the author of the letter, to ascertain the circumstances in which he had recorded an involvement on the part of Mr. Lowry in Doncaster in 1998. It will also be recalled that Mr. Weaver visited Mr. Vaughan's office on 18th October, 2002, and furnished him with a faxed copy of his original signed letter of 25th September, 1998. Further, Mr. O'Connor then made telephone contact with Mr. Vaughan and arranged to travel to Mr. Vaughan's office in Northampton to discuss the matter with him directly. Mr. O'Connor attended at Mr. Vaughan's office on 23rd October, 2002, and he testified that, by reason of there being what he stated was a state of chaos in Mr. Vaughan's office on that day, Mr. Vaughan was unable to locate any copy of the letter, and that accordingly, Mr. O'Connor did not have sight of it.

10.103 In effect therefore, it was Mr. O'Connor's evidence that, although he had been the source of the provision of a copy of the letter of 25th September, 1998, to Mr. O'Brien Senior, and upon hearing of Mr. Weaver's visit and of his furnishing Mr. Vaughan with a copy of it, he had travelled to Northampton to meet Mr. Vaughan, he had never seen a copy of the letter himself. That aspect of his testimony is also at variance with information which Mr. Vaughan had at the time provided to Ms. Kate Macmillan of Carter-Ruck solicitors, to enable her to draft a witness statement for the purposes of Mr. O'Brien Senior's police complaint against Mr. Weaver and Mr. Richardson.

10.104 On 22nd October, 2002, the day before Mr. O'Connor's trip to Northampton, Mr. Vaughan informed Ms. Kate Macmillan of his impending visit, and told her that Mr. O'Connor had in his possession a copy of the letter with which Mr. Vaughan had been furnished by Mr. Weaver, that is, a faxed copy of the original signed version. Some five days after Mr. O'Connor's visit, on 28th October, 2002, Mr. Vaughan informed Ms. Macmillan that, on the day of that visit, he had given Mr. O'Connor copies of the same paperwork that he had previously provided to her, which included a copy of that letter, as received from Mr. Weaver. Ms. Macmillan had recorded that information in her contemporaneous attendances, and confirmed their contents when she subsequently gave evidence.

10.105 When Mr. Vaughan attended in 2009, and Mr. O'Connor's evidence was brought to his attention, he testified that, due to the passage of time, he could not comment, and suggested that the Tribunal should draw its own conclusions. He confirmed on that occasion that he had forwarded copies of that letter of 25th September, 1998, to both Ms. Kate Macmillan, and Mr. Peter Vanderpump of Westferry, at that time. Indeed, he had furnished Mr. Vanderpump with a copy of it on 23rd October, 2002, the same day that Mr. O'Connor attended at his offices.

10.106 The Tribunal is satisfied that Mr. O'Connor had sight of the letter of 25th September, 1998, at the latest, by September, 2002, and regards it as highly probable that he was familiar with its contents at a much earlier stage, either through information imparted to him by Mr. Lowry, or by Mr. Kevin Phelan, who was in possession of it, and with whom Mr. O'Connor had been engaged in intense negotiations from March, 2002. Mr. O'Connor was the source of the letter to Mr. O'Brien Senior, and was recorded as having been furnished with it by Mr. Vaughan. His evidence of the letter having been destroyed by his secretary in his absence, and of Mr. Vaughan having been unable to locate it on 23rd October, 2002, due to what was stated was the *"chaos"* in his office, even though Mr. Vaughan had sent a copy to Mr. Peter Vanderpump on that same day, was contrived, at variance with the contemporaneous records, and wholly unconvincing.

OVERVIEW OF MR. DENIS O'CONNOR'S ROLE

Intermediary in payments of Stg.£215,000.00 to Mr. Kevin Phelan

10.107 In the course of the private phase of its inquiries concerning the Doncaster transaction, and in preparation for the commencement of initial public sittings in September, 2004, the Tribunal pursued inquiries with a large number of persons, who it appeared to the Tribunal might be in possession of material

information, and who had expressed themselves willing to assist the Tribunal. These included inquiries made of Mr. Denis O'Connor, which were largely prompted by the contents of documents produced by Ms. Ruth Collard to the Tribunal in April, 2004. In particular, Ms. Collard's attendance of her meeting with Mr. O'Connor and Mr. Craig Tallents in London, on 10th September, 2002, suggested a significant degree of involvement on the part of Mr. O'Connor, not only in relation to the Westferry litigation, but in other dealings with Mr. Kevin Phelan, as did earlier attendances of Ms. Collard recording her unease surrounding dealings with Mr. Kevin Phelan, and the role of an "*intermediary*". At the time of making its inquiries of Mr. O'Connor, the Tribunal knew nothing of the following:

(i) That payments totalling Stg.£215,000.00 were made to Mr. Kevin Phelan:

(a) a payment of Stg.£65,000.00 in instalments, in March and April, 2002, by Vineacre, a company in which Mr. Lowry had an interest;

(b) a payment of Stg.£150,000.00 made in August, 2002, by Westferry;

(ii) that Mr. O'Connor had been instrumental in the terms on which both payments had been made, and in negotiating earlier settlements with Mr. Kevin Phelan in relation to the Mansfield, Cheadle, Altrincham and Doncaster transactions;

(iii) that Mr. O'Connor had been instrumental in securing the withdrawal of complaints or threatened complaints made by Mr. Kevin Phelan against Mr. Christopher Vaughan, Mr. Aidan Phelan, Brian Phelan & Company and Mr. Craig Tallents, to their respective professional bodies;

(iv) that Mr. O'Connor had been instrumental in the withdrawal of allegations made by Mr. Kevin Phelan against Mr. Christopher Vaughan, including allegations of the provision of falsified correspondence to the Tribunal;

(v) that Mr. O'Connor had been instrumental in the provision of a false explanation by Mr. Kevin Phelan to Mr. Christopher Vaughan of the "*long form*" and "*short form*" letters, with the intention that it would be transmitted by Mr. Vaughan to the Tribunal.

Denials of Mr. Denis O'Connor's role

10.108 The Tribunal addressed a number of requests for information and documentation to Mr. O'Connor, which yielded no positive response. In accordance with its usual practice, in advance of its scheduled public sittings in

September, 2004, the Tribunal converted those responses into draft statements, and submitted them to Mr. O'Connor for his approval. Those statements were duly approved and confirmed by him. The statement which relates to his knowledge of the Westferry dispute, and its resolution, is characteristic of the responses received and statements made by Mr. O'Connor concerning these matters. That statement, apart from informing the Tribunal that:

> *"Mr. O'Connor was aware in a general way from Mr. Kevin Phelan that he had a fees dispute in relation to expenses and time spent on Doncaster",*

recorded that Mr. O'Connor had no knowledge of the dispute, or its resolution, and had no role in it.

10.109 That and other statements in the same vein were drawn to Mr. O'Connor's attention in the course of his evidence in 2007. He acknowledged that the information with which he had provided the Tribunal, in relation to the Westferry dispute, was incorrect, as was the statement which he had approved. He also accepted that, at the time he furnished those responses and that statement, the Tribunal was not in possession of the greater part of the documentation to which reference was made during the course of his examination in 2007. Mr. O'Connor testified that, at the time he had furnished his solicitors with instructions to respond in those terms to the Tribunal's queries, he had been on holidays in Italy, and that he responded as he had out of frustration and annoyance at what he felt was further intrusion on his time by the Tribunal. Mr. O'Connor informed the Tribunal that he had no documentation in his possession in relation to any of his related interactions, efforts and dealings dating from March, 2001. He had, according to his evidence, placed all of the documents in a "*drop down*" file. Mr. Kevin Phelan had it seems demanded that Mr. O'Connor furnish all of those documents to him, and Mr. O'Connor had done so, without retaining any copies. He was unsure whether he had so furnished the file to Mr. Kevin Phelan in 2001 or 2002.

10.110 At the conclusion of Mr. O'Connor's 2007 evidence, it was suggested to him that it would have been more prudent to have avoided any involvement in the Doncaster Rovers dispute, having regard to his known position as Mr. Michael Lowry's adviser. Mr. O'Connor's response was that this did not occur to him, referring to his disposition to be a workaholic, and stating that he sometimes ended up in difficult cases through not thinking matters out in time. As to the fact that Mr. O'Connor received no payment from Mr. O'Brien Senior or Westferry for any of the work he carried out in the course of 2002, even though Mr. O'Brien Senior invited him to provide an invoice, following his involvement in the attempted settlement of the dispute between Westferry and the Doncaster vendors, Mr. O'Connor said that he felt annoyed, having done a good job on the

retention issue, but it appeared not to suit the other professionals, and that they had turned on him. Indeed, he felt that Mr. O'Brien Senior's parting remark was virtual sarcasm, and he was not going to go *"begging"* to a multi-millionaire. However, it remains the fact that Mr. O'Connor was not, according to his testimony, remunerated for any of the extensive work he carried out in connection with the various disputes with Mr. Kevin Phelan.

10.111 Despite having heard lengthy evidence from a number of witnesses, no explanation was provided for Mr. O'Connor's central and extensive involvement in the various disputes with Mr. Kevin Phelan, other than the unconvincing one that he had an insignificant prior business contact with Mr. Kevin Phelan. There was extensive concealment, both by Mr. O'Connor, and others, of the nature and extent of Mr. O'Connor's involvement in settling disputes with Mr. Kevin Phelan, and the material and documentation that came to light in the course of those disputes and settlements. In this regard, the Tribunal is satisfied that both the fax of 11th August, 1999, from Mr. Kevin Phelan to Mr. Aidan Phelan, containing a reference to *"ML"* in the context of Doncaster Rovers, and the letter of 25th September, 1998, from Mr. Christopher Vaughan to Mr. Michael Lowry recording the *"total involvement"* of the latter in Doncaster, and both of which arose in the course of disputes in which Mr. O'Connor had played a role, were concealed from the Tribunal, in circumstances where the Tribunal is satisfied that Mr. O'Connor was fully aware of the existence and contents of both documents. This is particularly striking in light of Mr. O'Connor's previously stated position concerning documentation, namely, that *"if in doubt, bring it in"* to the Tribunal. Further, given the inherent folly in O'Brien interests retaining Mr. O'Connor, Mr. Lowry's primary adviser, in connection with matters relating to Doncaster, and given Mr. O'Connor's obvious extreme sensitivity in revealing the extent of his involvement, can any coherent rationale for that involvement, other than attending to Mr. Lowry's interests, be entertained?

Role in neutralising risk of information coming to the attention of the Tribunal

10.112 The Tribunal is satisfied that Mr. O'Connor's activities and efforts, dating from March, 2001, were directed to neutralising the risk of damaging information coming to the attention of the Tribunal as a result of the actions of Mr. Kevin Phelan. The latter's actions flowed directly from the strategy, initially devised, without input from Mr. O'Connor, which was further developed at the gathering which Mr. O'Connor attended at the Regency Airport Hotel on 27th March, 2001, of providing the Tribunal with an untruthful account of Mr. Lowry's involvement in the UK property transactions, including his involvement in the Doncaster transaction, and in pursuance of which the files produced to the Tribunal were sanitised and falsified. Mr. O'Connor, who had by 2001 developed a positive professional relationship with the Tribunal, abused that relationship,

and the Tribunal is satisfied deliberately provided false responses and false statements to the Tribunal in 2004, in the belief that the Tribunal did not have available to it information or documentation from which those falsehoods would be apparent. His explanation for the provision of that false information was without foundation in fact, and his refusal to acknowledge in evidence in 2007 that he had deliberately sought to mislead the Tribunal, and even at that late point, to give a truthful account of his role in seeking to preserve and protect the false version of events with which the Tribunal had been furnished, was regrettable and reprehensible.

10.113 It must however be acknowledged that Mr. O'Connor was not, in the actions which he took, acting on his own account, but rather was acting as a facilitator for, and an agent of, his client, Mr. Michael Lowry. To the extent that he assisted in the implementation of the strategy devised in March, 2001, he was doing the bidding and seeking to serve the interests of others, and the Tribunal is in no doubt that those others were, primarily, Mr. Michael Lowry, and secondarily, Mr. Denis O'Brien, the latter through his various representatives, including his father, Mr. Denis O'Brien Senior, and his accountant and adviser, Mr. Aidan Phelan.

CONCLUSIONS

10.114 The Tribunal is satisfied, as previously found, that the timing of the payment of Stg.£65,000.00 to Mr. Kevin Phelan in March and April, 2002, made by reference to Vineacre, in which Mr. Lowry had an interest, was for the principal purpose of presenting a contrived falsehood to the Tribunal. This was effected by the withdrawal of allegations which had been made by Mr. Kevin Phelan against Mr. Christopher Vaughan, in connection with the provision to the Tribunal of altered correspondence, and at the same time, the provision by Mr. Kevin Phelan to Mr. Christopher Vaughan of a false but purportedly innocent explanation for the existence of the altered *"short form"* versions of the genuine *"long form"* correspondence. That explanation was forwarded to the Tribunal by Mr. Christopher Vaughan, in circumstances where it was known to be untrue.

10.115 The Tribunal is further satisfied that the payment of Stg.£150,000.00 made to Mr. Kevin Phelan by Mr. Denis O'Brien, referable to Westferry, was primarily intended to ensure that Mr. Kevin Phelan, by his actions, would not further undermine the false version of Mr. Lowry's involvement in the UK properties already tendered in evidence to the Tribunal in 2001, and the false explanation already presented, with the complicity of Mr. Kevin Phelan, for the existence and provision to the Tribunal of the altered *"short form"* correspondence.

10.116 In making Findings in relation to any interest of Mr. Michael Lowry in the Doncaster Rovers transaction, the Tribunal has had regard to the fact that, unlike the Mansfield and Cheadle properties, Mr. Lowry did not acquire any legal title to Doncaster at any time after the share transfer in August, 1998. It has also had regard to the fact that, again unlike Mansfield and Cheadle, there was no evidence of a movement of funds connecting Mr. Lowry to the Doncaster project. Furthermore, all of those who testified denied that Mr. Lowry had any involvement in the Doncaster transaction, however questionable and self-serving some such denials may have been. Those denials must of course be weighed in the context of the extent of falsehoods, concealment and suppression which emerged. Also, what was colourfully described by Mr. O'Connor in his evidence as *"devilment"* was undeniably apparent in conduct on the part of Mr. Richardson and Mr. Weaver, on behalf of the Doncaster vendors, not least in their unannounced attendance at the Tribunal's offices in Dublin Castle, in possession of a clearly forged letter, purportedly written by solicitors acting for the Tribunal.

10.117 Yet it is not from adversaries of either Mr. Lowry or Mr. O'Brien that evidence emerged which appeared to implicate Mr. Lowry in the Doncaster project, but from persons bound by the closest ties of friendship or professional association. Mr. Denis O'Connor is not only Mr. Lowry's accountant and adviser, but has demonstrably shown his loyalty and commitment to Mr. Lowry's interests. Mr. Christopher Vaughan acted as solicitor to both Mr. Lowry and to Mr. Denis O'Brien, and as regards the latter remains, possibly to this day, retained by the O'Brien interests. Likewise, Ms. Ruth Collard and Ms. Kate Macmillan, of Carter-Ruck, were solicitors to Westferry, and owed their allegiance to Mr. O'Brien. Furthermore, the Tribunal must have regard to the fact that the reliability and credibility of the evidence of Mr. Vaughan and Mr. O'Connor on pivotal aspects of evidence heard by the Tribunal have been anything but persuasive or impressive.

10.118 The Tribunal is also mindful that, in circumstances where Mr. Kevin Phelan has refused to attend as a witness, statements contained in correspondence written by him must be treated with the utmost caution, amounting, as they do, in evidential terms, to no more than hearsay. However, the Tribunal has had regard to the manner in which those statements were dealt with by others, particularly where inquiries were made, as in the case of the fax containing the *"ML"* Doncaster reference of 11th August, 1999, and where correspondence which emanated from Mr. Kevin Phelan was deliberately concealed from the Tribunal.

10.119 As regards Mr. Kevin Phelan, the Tribunal is satisfied that, whilst refusing to attend as a witness, he nonetheless sought to engage directly and indirectly with the Tribunal, and in doing so, provided untruthful and misleading

information so as to secure advantage for himself in his dealings with Mr. Lowry and Mr. O'Brien, under threat that his attendance as a witness, or further disclosure of documents, would expose the extent of the false evidence provided to the Tribunal by Mr. Lowry, Mr. O'Brien, and their associates. In doing so, Mr. Kevin Phelan sought to undermine the work of the Tribunal for his own gain.

10.120 Having regard to all of the matters examined both in this, and other chapters, and in particular the following:

(i) that Mr. Christopher Vaughan, an experienced and astute solicitor, from what Mr. Lowry told him, and from interactions which he had with Mr. Lowry over 23rd and 24th September, 1998, formed an impression that Mr. Lowry had a *"total involvement"* in the Doncaster transaction, and concluded that it was in order for him to correspond with Mr. Lowry as a principal to that transaction, and furnish him with confidential information and documents of the highest degree of sensitivity concerning that transaction;

(ii) the concealment of key matters, including in particular the payments made to Mr. Kevin Phelan in 2002 amounting to Stg.£215,000.00, the extent of Mr. Denis O'Connor's involvement in efforts to negotiate with and appease Mr. Kevin Phelan, and the existence of both the fax of 11th August, 1999, containing the *"ML"* reference in connection with Doncaster, and Mr. Vaughan's letter to Mr. Lowry dated 25th September, 1998, which recorded his total involvement in Doncaster Rovers, when they first emerged;

(iii) the concealment from the Tribunal of inquires undertaken at the instigation of William Fry, solicitors, when the fax of 11th August, 1999, containing the *"ML"* reference in connection with Doncaster first came to light, and the further concealment of the unsatisfactory outcome which emerged from such inquiries as were pursued, and specifically the fact that Mr. Kevin Phelan, despite a request, was not prepared to confirm that Mr. Lowry had no involvement in Doncaster;

(iv) that Mr. Denis O'Brien made a payment to Mr. Kevin Phelan of Stg.£150,000.00 in August, 2002, where Mr. Aidan Phelan, who had managed the Doncaster project on behalf of Mr. O'Brien, was satisfied that no monies were due to Mr. Kevin Phelan by Westferry, and in particular having regard to the timing of that payment, which followed upon actions taken by Mr. Kevin Phelan to undermine, for his own ends, the false account of Mr. Lowry's involvement in the UK properties, and the false testimony presented to the Tribunal in that regard;

(v) that the payment of Stg.£150,000.00 made by Mr. O'Brien was part of a larger payment made to Mr. Kevin Phelan, which included payment of Stg.£65,000.00 referable to one of Mr. Lowry's property interests, likewise made at a time when it was clear that Mr. Kevin Phelan, by his actions, had already sought to undermine the false account, documents and testimony tendered to the Tribunal;

(vi) the concealment by Mr. Aidan Phelan until June, 2009, of the letter dated 8th March, 2002, from Woodcock & Sons, on behalf of Mr. Kevin Phelan, and its attachments, which letter contended that Mr. Lowry was entitled to a share of Mr. Kevin Phelan's entitlement to 40% of profits realised on a sale of Doncaster;

(vii) that Mr. Denis O'Connor told Ms. Ruth Collard and Mr. Craig Tallents at a meeting on 10th September, 2002, that Mr. Lowry did have a connection with the Doncaster Rovers transaction,

the Tribunal is satisfied that Mr. Lowry did have an involvement in the Doncaster Rovers transaction, which it was intended would entail a payment to, or the conferral of a pecuniary advantage on, Mr. Lowry by Mr. Denis O'Brien.

10.121 On the basis of the inquiries undertaken and evidence heard, the Tribunal is unable to determine the precise nature of Mr. Lowry's interest in the Doncaster Rovers transaction, or the extent to which it was intended that he would benefit from it. There are further lines of inquiry which the Tribunal could have pursued but, having regard to the extent of the concealment, suppression and deliberate falsehoods encountered by the Tribunal in endeavouring to conduct its inquiries into all of the UK properties, both on the part of the principals, and on the part of their associates and representatives, the Tribunal is doubtful that any such further inquiries would elucidate matters. Whilst the Tribunal could comment on what it believes may have been the nature of Mr. Lowry's interest and involvement, having regard to the fact that he was acquainted with all of the central figures on the purchasing side of the transaction, at a time prior to Mr. Aidan Phelan's or Mr. Denis O'Brien's initial involvement, and having regard to the fact that Mr. Aidan Phelan was unable to explain satisfactorily how it was that he first encountered Mr. Kevin Phelan, to do so would be unduly speculative.

DELAYS, NON-DISCLOSURE AND LAWYERS

INTRODUCTION

11.01 In an article in The Bar Review, shortly prior to his appointment as Attorney General, the distinguished lawyer, Mr. Paul Gallagher SC drew attention to the thinking of the noted American academic, Mary Ann Glendon, Learned Hand Professor of Law at Harvard Law School, concerning ethical issues in the legal profession. In her ground-breaking analysis, *"A Nation Under Lawyers"* (1994), (Farrar, Strauss and Giroux, New York) regarding ethical problems facing lawyers in the United States where ethical codes and aspirations to professional ideals had come under attack, she observed that it is precisely because most of us need lots of help and support in finding an upright path, that the exercise of stating professional ideals serves an important function. Continuing in chapter 4 of her book, she states:

> *"...today's lawyers wander in an increasingly impersonal, bureaucratized legal world, where neither honesty-based nor loyalty-based systems seem to be operating very well. The families, communities, neighbourhoods and schools that once served as seedbeds and anchors for personal and professional virtues are themselves in considerable disarray. Client's whether corporate or individual, are in the grip of the same maladies...*
>
> *The legal ethos that is emerging is very different from the world in which most lawyers were at least orientated toward visions of lawyering that demanded a considerable degree of self-subordination, whether of the guardian or trader variety."*

She goes on to point out that:

> *"'lawyers' self interest is apt to run amok when anyone who places court and client above profit is branded a hypocrite or a chump. Moreover, a lawyer who takes his duties to the court and the legal system seriously will often be at a disadvantage against a less scrupulous adversary. Many lawyers are fearful that in today's competitive environment, contrary to what Lincoln said, good ethics may not make for good business."*

She observes that many lawyers seem to have concluded that the best survival strategy is not ethical adaptability, but mere ethical agility.

11.02 Although it is well settled law that Tribunals of Inquiry are not engaged in the administration of justice, it is equally so that the findings of such Tribunals, in addition to what may transpire in the course of evidence at public sittings, may

significantly impact upon the reputations and fortunes of affected persons. It can accordingly scarcely be doubted that practising lawyers, whether barristers or solicitors, appearing before or having dealings with a Tribunal of Inquiry are bound by ethical principles and duties not dissimilar to those referred to in the article cited in the preceding paragraphs.

11.03 Despite being vested by Statute with all the powers and entitlements of the High Court, in respect of such matters as compelling the production of documents or the attendance of witnesses, this Tribunal has throughout its duration operated on a basis of a clear preference for procuring voluntary co-operation from affected persons and their legal advisers. The positive outcome of this policy has been that, in a clear majority of instances, affected persons and their legal advisers have afforded such voluntary co-operation, so that only a very limited number of Witness Summonses and Orders for Production of documents have been required to be made. However, there have to this been a minority of exceptions, but significant exceptions nonetheless, in which, often accompanied in correspondence by effusive protestations of an anxiety on behalf of their clients to co-operate with the Tribunal's inquiries and comply with its requests, legal advisers have sought and contrived to deprive the Tribunal of, or withhold from it, documentation that was palpably relevant to ongoing inquiries, have delayed its proper and timely progress, and generally have sought to render more difficult and arduous the Tribunal's discharge of its proper functions.

11.04 The Tribunal is neither entitled to nor does it contend for any unrealistically arduous or untenable duty towards it on the part of legal advisers to affected persons, and appreciates and is conscious of the duty of lawyers to protect the best interests of their clients. Nor, with significant matters at stake for those clients, does the Tribunal expect other than that there will on occasion be vigorous and robust expressions in support of those interests in the course of both correspondence and public hearings. What this chapter seeks to address, in as truncated a form as can convey the essence of related dealings, is a number of significant instances in which it has appeared to the Tribunal that the course of conduct adopted by legal advisers on behalf of their clients has materially impacted upon the Tribunal's capacity to advance and resolve specific areas of inquiry properly adopted by it. For the purposes of this chapter, the emphasis with regard to the matters being addressed will be upon communications had between the Tribunal and a number of solicitors, and the substantive evidence heard in relation to the particular matters under investigation is set forth more fully earlier in this Volume. In this chapter, three instances of delays and non-disclosure are examined with reference to the extent to which lawyers were implicated in promoting the interests of their clients by non-disclosure or delay in the production of palpably relevant materials. These instances will be examined under three separate headings: relating to the dealings between Messrs. William

Fry and the O'Brien interests and specifically Mr. O'Brien Senior; between Messrs. LK Shields and Mr. Denis O'Brien Senior and Westferry; and between Mr. Duncan Needham and Mr. Christopher Vaughan.

THE BLACKMAIL COMPLAINT TO THE CITY OF LONDON POLICE

The mediation and The Irish Times article

11.05 The mediation formed a material part of Tribunal investigations into what has been referred to as the Doncaster Rovers transaction. As detailed elsewhere, the interest of Mr. Denis O'Brien in this venture derived from a purchase transaction concluded in August, 1998, whereby Westferry Limited, a company incorporated in the Isle of Man and ultimately acquired by an O'Brien family trust company, concluded the purchase of the shares in Doncaster Rovers Football Club Limited, a company owning the leasehold interest in the former Doncaster Rovers Football Club ground at Bellevue Stadium in Doncaster, from Dinard Trading Limited and another. Some outstanding matters however remained unresolved, and appeared to defy resolution over a considerable period. Towards the middle of 2002, Mr. Denis O'Brien asked his father, Mr. Denis O'Brien Senior, to become involved in, and if possible to resolve these remaining aspects. One in particular was a set of legal proceedings that had been instituted in the High Court in London against Westferry Limited by Dinard Trading Limited.

11.06 Both Messrs. O'Brien and Westferry Limited had at this time retained William Fry, solicitors in Dublin as their solicitors in an Irish context. In London, Messrs. Carter-Ruck, solicitors, had been instructed to defend the proceedings instituted against Westferry by Dinard. Ms. Ruth Collard and Ms. Kate Macmillan were the solicitors involved in that behalf. In late summer of 2002, preparations were underway for a mediation hearing to be held with a view to resolving the matters at issue in the proceedings. This duly took place on 27th September, 2002, in Littleton Chambers in London, before Mr. Michael Kallipetis QC, as Mediator.

11.07 From the evidence of witnesses associated with Westferry, it seems that in the course of the mediation Mr. Ken Richardson and Mr. Mark Weaver of Dinard requested, through the mediator, a private meeting with Mr. Denis O'Brien Senior. Whilst agreeable to meeting with them, Mr. O'Brien Senior insisted that the mediator and Mr. John Ryall, who had attended on behalf of Westferry, should also be present. In his evidence, Mr. O'Brien Senior stated that it had been suggested to him by the representatives of Dinard that Westferry should purchase Dinard for approximately Stg.£2.5 million, in order to stop various parties gaining

access to the files of Dinard. From this, it appeared to Mr. O'Brien Senior that he was being blackmailed, and having received advice from Carter-Ruck as to how best to address this complaint, he subsequently attended Snow Hill Police Station in London with Ms. Ruth Collard, on 12th November, 2002, for the purposes of making a formal complaint, and provided a draft Witness Statement to the City of London Police. Following certain matters of clarification requested of Ms. Collard by the police, an amended draft Witness Statement was provided on 27th November, 2002.

11.08 These developments first came to the attention of the Tribunal on Saturday, 11th January, 2003, through being reported by The Irish Times, which had earlier brought to attention what have come to be referred to as the *"long and short form letters"* of Mr. Christopher Vaughan, solicitor, relating to other Tribunal inquiries. In the latter publication in The Irish Times, it was conveyed that the basis for the complaint to the police had been the production, at the mediation meeting, of a letter of Mr. Vaughan, to Mr. Michael Lowry and dated 25th September, 1998, referring to involvement of Mr. Lowry in the Doncaster transaction, during negotiations between representatives of the respective sides. Whilst the letter itself may not have been produced at the mediation, as is suggested in The Irish Times article, its production prior to the mediation and the references to the Dinard file at the mediation were clearly all related to the threat to disclose material suggesting a connection between Mr. Michael Lowry and the Doncaster transaction.

The Tribunal's request for documentation relating to blackmail complaint

11.09 Following publication of this article, the Tribunal wrote on Monday, 13th January, 2003, to William Fry, seeking confirmation as to the accuracy of the article and other information, in addition to seeking copies of all relevant documentation in relation to any such complaint. After provision by William Fry of certain documentation, including a copy draft Witness Statement of Mr. O'Brien Senior, the Tribunal sought further assistance and documentation, including a copy of the relevant file of Carter-Ruck, and any additional statements made in support of the complaint, whether by Mr. O'Brien Senior or otherwise.

11.10 On Monday, 27th January, 2003, five days after that further request for assistance, it later emerged in evidence that Ms. Kate Macmillan of Carter-Ruck telephoned and spoke with Detective Kieran McNinch, of the City of London Police. She inquired of him as to the police view on the matter of releasing the blackmail complaint file to the Tribunal. Ms. Macmillan recorded the Detective's comments to her in her attendance note of the same date, including the following:

> *"KMc* [Detective Kieran McNinch] *said that the police had no control over what happened to PCR&P's* [Peter Carter-Ruck & Partners] *file. KMc said that he would have thought that very little would be at risk in releasing the file to the Moriarty Tribunal. He could not see any problem with disclosing anything to the Moriarty Tribunal. It was a matter for the O'Brien family. KMc said that it was not as if one had an ongoing situation where one had to act fast or something would be lost.*
>
> *KM* [Kate Macmillan] *said that PCR&P's principal concern was that nothing be done which might prejudice or jeopardise the police investigation. KMc said that he did not think the release of PCR&P's file would jeopardise the investigation at all."*

A copy of this attendance can be found in the Appendix to this chapter.

11.11 On Wednesday, 29th January, 2003, William Fry, replied to the Tribunal, indicating that they had corresponded with Carter-Ruck, and that their client, Mr. O'Brien Senior, who was specifically dealing with this matter on behalf of Westferry, was abroad, but would be returning the following week, at which time they expected to meet with him. William Fry informed the Tribunal that they would revert to it on all of the queries, when they were in a position to do so.

Legal advice provided to Mr. Denis O'Brien Senior, and his response

11.12 It also later emerged in evidence that, some two weeks thereafter, on 12th February, 2003, Ms. Ruth Collard wrote directly to Mr. John Ryall, an accountant in the employment of the O'Brien family interests entrusted with liaising with the solicitors in regard to the Doncaster Rovers transaction, including the blackmail complaint. She advised Mr. Ryall in relation to the request for further assistance from the Tribunal. Having stated that, although the material sought by the Tribunal was subject to legal professional privilege, she continued:

> *"Having said that, the privilege belongs to Denis as the client and if he wishes to waive it, then he is able to do so."*

She further advised that:

> *"It seems to me that the documents that the Tribunal is really interested in are those relating to our communications with the police... Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal then this material I believe can be*

made available and in fact as I understand it the statement in its various drafts has already been handed over."

Her conclusion was that:

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

11.13 On 14th February, 2003, Ms. Collard wrote, at Mr. Ryall's request, directly to Mr. O'Brien Senior, identifying what documentation and information the Carter-Ruck file held, and advising Mr. O'Brien Senior that, although the material requested by the Tribunal was subject to legal professional privilege:

"Having said that, the privilege belongs to you as the client and if you wish to waive it, then you are able to do so."

She then reiterated her earlier advice to Mr. Ryall, stating that, whilst legal professional privilege applied to communications with the police, if it was wished to assist the Tribunal, then that material could be made available. She added:

"We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result the suspects are likely to be alerted to the investigation and it is possible (although unlikely) that they could flee the jurisdiction. They will also have more time to prepare a defence and their response to an approach by the police than would have otherwise have been the case. Having said that, the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution."

She concluded:

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

On the same day, Ms. Collard also wrote to William Fry, in substantially similar terms. A copy of each of the three letters referred to above can be found in the Appendix to this chapter.

11.14 Having received copies of both Ms. Collard's letters of 14th February, 2003, Mr. O'Brien Senior wrote to Ms. Collard on Monday, 17th February, 2003. Under cover of this letter, which was marked *"URGENT"* and signed on behalf of Mr. O'Brien Senior by his assistant, a Ms. Prendergast, Mr. O'Brien Senior returned to Ms. Collard copies of both of her letters, and requested that she alter the content of both, to incorporate certain deletions and insertions, which he forwarded to her. A copy of that letter can be found in the Appendix to this chapter. What cannot realistically be doubted, and appears to have been acknowledged by all material witnesses who testified, is that the effect of these alterations was to change very significantly the content of the advice given, to the extent that an unsuspecting third party receiving only the altered advices would form the view that Ms. Collard's advice in both letters was that the police had a very real concern about providing the copy of the Carter-Ruck blackmail complaint file to the Tribunal.

Altered legal advice provided to Mr. Denis O'Brien Senior at his request

11.15 Ms. Collard complied with the request of Mr. O'Brien Senior, and altered both letters of advice as requested. On the following day, 18th February, 2003, she sent the letters in their altered form to their intended recipients, Mr. O'Brien Senior and William Fry. In addition, Mr. O'Brien Senior also received a copy of the altered letter of advice addressed to William Fry. On receipt of those altered letters, both Mr. O'Brien Senior and William Fry had possession and awareness of two mutually incompatible communications from Mr. O'Brien's London solicitors, each reflecting significantly different positions. In the case of Mr. O'Brien Senior, this state of things had of course been effected at his own instigation. A copy of both letters referred to above and a fax cover sheet can be found in the Appendix to this chapter.

11.16 At this time, the Tribunal was entirely unaware of that correspondence between Mr. O'Brien Senior and his advisers, was awaiting a response from William Fry to its request for access to the police complaint file, and was proceeding with lengthy public sittings over ensuing months. It was only on 25th September, 2003, prompted by a written Tribunal reminder, that William Fry informed the Tribunal in writing that they would no longer be dealing with this matter, and that all issues *"relating to the acquisition and management"* of the interest of Mr. Denis O'Brien in Doncaster Rovers were being dealt with by his father. The Tribunal was also then informed that a new firm of solicitors, LK Shields, would represent Mr. O'Brien Senior and Westferry in relation to the Doncaster Rovers matter thereafter. The following day, 26th September, 2003, LK Shields confirmed to the Tribunal that they were acting in the matter and would revert to the Tribunal *"in early course"*.

11.17 It subsequently emerged in evidence that, on 30th September, 2003, Mr. Owen O'Sullivan, solicitor, of William Fry, faxed a communication to Mr. Hugh Garvey, solicitor, of LK Shields, enclosing a copy of both the original and altered letters of advice of the previous February, sent by Ms. Ruth Collard to William Fry. He referred to a related voicemail sent to Mr. Garvey the previous day, and appeared to be anxious to ensure that LK Shields were aware of the position. Mr. O'Sullivan stated:

> *"Hugh,*
>
> *I refer to my voicemail yesterday evening and enclose copies of two letters received from Ruth Collard in Peter Carter-Ruck & Partners in case these are not among what you received from Denis. For completeness, I also enclose one email received from Ruth Collard.*
>
> *Regards.*
>
> *Yours sincerely*
> *Owen O'Sullivan*
> *William Fry*
> *Solicitors"*

A copy of the fax referred to above can be found in the Appendix to this chapter.

11.18 Despite the assurances of LK Shields that they would revert *"in early course"*, it was necessary for the Tribunal to write to them on 27th November, 2003, over ten months after the initial request for further assistance, and nine months after Mr. O'Brien Senior and his then Dublin solicitors had been informed by Ms. Collard that it was a matter for Mr. O'Brien Senior to assist the Tribunal, should he have chosen to do so. In response to an intimation from the Tribunal in that letter of 27th November, 2003 that *"an alternative course"* could be pursued if the further assistance was not forthcoming, LK Shields responded on 3rd December, 2003, indicating that their client was addressing the further queries, and that they expected to be in a position to furnish certain information to the Tribunal the following week. Nevertheless, in further exchanges of correspondence over the ensuing two months, although some other documentation was provided to the Tribunal, and further excuses and assurances advanced, no progress was made with regard to the provision of the blackmail complaint file.

The Tribunal is misled

11.19 On 4th February, 2004, LK Shields wrote to the Tribunal, raising with it for the first time concerns that they stated were held by the City of London Police, regarding the release or provision of the blackmail complaint file to the Tribunal. In this letter it was stated:

> *"Messrs. Peter Carter-Ruck & Partners have expressed a concern (which we understand is shared by the police) about that material potentially coming to the attention of the parties who are the subject matter of the complaint in question. My clients share that concern."*

A copy of that letter can be found in the Appendix to this chapter. Not wishing in any way to jeopardise a potential prosecution, the Tribunal accepted in good faith and at face value what had been stated by LK Shields as set out above, concerning the attitude of the City of London Police, and did not press the request for provision of the blackmail complaint file, although it continued to seek other information and documentation that were long outstanding. This course of dealings persisted over the following months, with LK Shields reiterating in correspondence to the Tribunal their understanding of the concerns of the police that had previously been expressed. It was added in a letter dated 21st April, 2004, that their clients were anxious to continue to co-operate with the Tribunal but that:

> *"In the circumstances of the legal advice which it has received the Tribunal will appreciate that Westferry Limited is reluctant to do anything that might put the police complaint in jeopardy. You will appreciate that this causes my client some difficulties vis-a-vis its dealing with the Tribunal and its desire to continue to co-operate with the Tribunal."*

11.20 The Tribunal proceeded to public sittings into the Doncaster transaction on 15th September, 2004, without having had access to the police complaint file. Following delivery of its Opening Statement, Mr. Denis O'Brien issued High Court proceedings to restrain the Tribunal from proceeding to investigate the transaction. Notwithstanding the concerns twice expressed to the Tribunal in relation to fears of jeopardising a possible prosecution, this concern did not seem to have been shared by Mr. O'Brien, as he exhibited, in the course of his grounding Affidavit, a draft of a Witness Statement made by Mr. Christopher Vaughan, the solicitor who had acted on behalf of Westferry in the Doncaster Rovers acquisition, to the City of London Police which contained new information which was highly significant to the Tribunal's inquiries. When the Tribunal thereupon renewed its request for files of Westferry and Carter-Ruck in relation to

the blackmail complaint, all that was elicited was a reply of 23rd September, 2004, from LK Shields, reiterating the concerns already expressed. On 24th September, 2004, the Tribunal informed LK Shields that, in the circumstances it proposed taking the matter up directly with the police in London, and for that purpose sought the name and contact details of the officer in overall charge of the investigation, stating that the Tribunal would need this information by return so that its efforts to advance its inquiries were not delayed further.

The Tribunal discovers the true position

11.21 On 8th November, 2004, the Tribunal wrote to the City of London Police directly, inquiring of Detective Constable Richard Gordon of the Central Detective Unit as to whether or not there were concerns regarding information pertaining to the blackmail complaint coming into the public domain in the course of public hearings of the Tribunal, and whether he had at any time expressed any such concerns to legal advisers dealing with the blackmail complaint. Detective Constable Gordon responded on 9th December, 2004, stating that:

> *"With respect to information concerning this allegation, or any other information (including draft statements prepared and presented to the Tribunal by Mr O'Brien), which may be required by the Tribunal in the course of its deliberations, this office does not express concern at this time, that this information may be brought into the public domain by the Tribunal (with the obvious exception of any personal details of witnesses contacted by Police). This fact has previously been relayed to Mr O'Brien's legal representatives, Messrs. Carter-Ruck & Ptns."*

He then further stated:

> *"At this time I do not anticipate that any enquiries made by the Tribunal, either previously or in future, will hamper or hinder mattes* [sic] *currently under investigation by the City of London Police."*

A copy of both letters referred to above can be found in the Appendix to this chapter.

11.22 It is unnecessary to detail the entirety of the subsequent correspondence between the Tribunal and LK Shields. Despite pointing out that the City of London Police did not share the concerns repeatedly ascribed to them in correspondence on behalf of Mr. O'Brien Senior it was not until 8th February, 2005, over two years after its initial request, that the Tribunal actually received a copy of the blackmail complaint file of Carter-Ruck. It was noteworthy that the

documentation then provided did not include the exchange of correspondence in February, 2003, that led to the alteration of the advice letters to Mr. O'Brien Senior and William Fry. Notwithstanding requests for an explanation in respect of matters which had occasioned the Tribunal extensive delay and cost, none was provided. Reliance was, on 11th April, 2005, placed by LK Shields on their awaiting the outcome of the Judicial Review proceedings brought by Mr. O'Brien:

> *"....before taking any further steps in the Tribunal's inquiries particularly involving the issue of Doncaster Rovers."*

Following the granting of leave, on limited grounds, to institute the Judicial Review proceedings by the Supreme Court on Appeal, those matters were heard and determined in favour of the Tribunal by the High Court on 24th August, 2005, an outcome appealed to the Supreme Court. Following renewed correspondence, LK Shields wrote to the Tribunal on 13th October, 2005, stating that:

> *"In circumstances where the proceedings referred to in previous correspondence are, our clients understand, currently under appeal to the Supreme Court, our clients believe it inappropriate that any step be taken in the matter until that appeal has been determined."*

11.23 When the Supreme Court gave judgment in favour of the Tribunal on 16th February, 2006, the Tribunal again drew the attention of LK Shields to clear inconsistencies between what had been contended for by them, and what had been elicited from the City of London Police directly. On 3rd October, 2006, LK Shields responded, stating:

> *"The clear implication from your letter is that our clients have set out to mislead the Tribunal. Our clients utterly reject that implication. Previous correspondence accurately recorded our clients' understanding of the position of the Metropolitan Police. Our clients had been of that understanding as a result of their dealings with Messrs Peter Carter-Ruck & Partners who, as the Tribunal is aware, dealt directly with the Metropolitan Police. For the avoidance of doubt our clients did not, at any material time, understand the position of the Metropolitan Police to be as recorded in the attendance enclosed with your letter."*

11.24 Given the absence of any explanation for what were patent inconsistencies, the Tribunal wrote directly to Carter-Ruck on 2nd February, 2007. It was stated in that letter that the Tribunal might be obliged to draw conclusions concerning the role of their firm in what the Tribunal was concerned may have been a misrepresentation of the views of the City of London Police, and that the Tribunal wished to have the benefit of their views on the matter. In replying on

12th February, 2007, Carter-Ruck denied what they termed the Tribunal's "*suggestion*" in its letter of 2nd February, 2007. They also responded with a further letter to the Tribunal on 19th February, 2007, stating:

> *"You should have now received a letter dated 16 February with enclosures from L.K. Shields, solicitors. Further to our letter dated 12 February, we repeat that the 'suggestion' of this firm that your letter dated 2 February contains is flatly and categorically denied."*

11.25 Only on 26th February, 2007, just two days before the resumption of the Tribunal's public sittings into the Doncaster transaction, which had been delayed for approximately two and a half years by Mr. O'Brien's unsuccessful litigation, did the Tribunal actually become aware of the original advice of 14th February, 2003, and the altered advice of 18th February, 2003, that had been given by Carter-Ruck to Mr. O'Brien Senior and to William Fry, when copies of that exchange of correspondence were forwarded to the Tribunal from Carter-Ruck, via LK Shields.

Evidence of solicitors

11.26 It is now proposed to review the evidence that was given to the Tribunal by Ms. Ruth Collard, of Carter-Ruck, and Mr. Hugh Garvey, of LK Shields, who each testified at a late stage of Tribunal sittings. After various delays and false starts, involving the provision of a waiver and indemnity, and other difficulties, Ms. Collard gave evidence on Commission in Middle Temple, London, on 17th April, 2007, and her colleague at the time of relevant events, Ms. Kate Macmillan, also then testified. Mr. Garvey sought to testify in person, subsequent to service of Provisional Findings, and his evidence was given on 21st July, 2009.

11.27 In addition to dealing with other matters relating to the Doncaster transaction, Ms. Collard addressed the question of her initial letters to Mr. O'Brien Senior and William Fry, her subsequent instructions from Mr. O'Brien Senior, and the resultant altered letters written by her in response. At page 74 of the transcript of the evidence on Commission, she was asked by Tribunal counsel whether she was happy to make the amendments on foot of her client's letter of 17th February, 2003. Her response in the context of her dealings with Mr. O'Brien Senior was as follows:

> *"I decided that I would make them. I remember thinking quite carefully about it and I remember thinking that whatever Mr. O'Brien was seeking to achieve by making the amendments, I didn't believe could be achieved because, in particular, his solicitors had had the information in my*

previous letter and he had had that information and nothing could change that information and the fact that they had it. I think that I thought that someone had to have a conversation with Mr. O'Brien about this and the approach perhaps that he was seeking to take. In hindsight, I should have decided that I would have that conversation but I think I thought his solicitors would have that conversation with him."

11.28 She then confirmed that it was William Fry that she was referring to as "*his solicitors*", and when asked what she felt Mr. O'Brien Senior was seeking to achieve, responded:

> *"...I believed that he was trying to minimise what I had said about the police's approach to the matter. But when I say what I thought he could - I couldn't see how he could achieve anything with my letters in that they were my letters to him and his solicitors. They were not letters to a third party, in particular not letters to the Tribunal."*

She acknowledged that her original letters correctly reflected the view of the City of London Police, to the effect that it was a matter for Mr. O'Brien Senior, and that the police had no problem if he gave the material to the Tribunal. She further agreed that her amended letters:

> *"certainly gave a very different impression"*,

but added that she did not see how they could be used, stating that it would not have been open to Mr. O'Brien Senior, or anyone else who had all of the letters, to misrepresent the true position. Whatever restriction or limitations Ms. Collard believed was placed on the use which Mr. O'Brien Senior could make of her altered advices, cannot detract from the fact that she permitted her client to dictate to her the revision of her letters to give, as she recognised, *"a very different impression."*

11.29 In Mr. Garvey's evidence, he acknowledged that he had received both forms of the relevant correspondence, and also Mr. Owen O'Sullivan's fax to him, when receiving documentation for the purpose of taking up representation of Mr. O'Brien Senior and Westferry. But he stated that he did not know how much he went back to those letters when corresponding with the Tribunal. He further, on a number of occasions, sought to suggest that, if any culpability arose in relation to the misrepresentation of the matter to the Tribunal, it should rest with Ms. Collard of Carter-Ruck, who he said had set out to him in correspondence subsequent to those letters a particular position, which he had understood to be correct, and that in none of his dealings with that firm in the subsequent year was it indicated to him that that was not the correct position.

11.30 As regards Mr. Garvey's letter to the Tribunal of 3rd October, 2006, utterly rejecting what he said was the clear implication from the Tribunal that his clients had set out to mislead it, he stated that in writing that letter on behalf of Mr. O'Brien Senior and Westferry, he thought and assumed it was Mr. John Ryall who had given him the relevant instructions in relation to that response. Mr. Garvey also stated that the note made by Ms. Kate Macmillan of her initial telephone conversation with Detective Kieran McNinch of the City of London Police, in which he had made it clear that the police had no reservations surrounding the production of the police complaint files to the Tribunal, had not been furnished to him at the commencement of his instructions to act for Mr. O'Brien Senior and Westferry, but had reached him only at a later stage, on approximately 15th February, 2005.

11.31 Tribunal counsel put the matter to Mr. Garvey querying how he could have written to the Tribunal indicating that the police had concerns regarding the provision of confirmation to the Tribunal in the circumstances of the documentation then available to him, namely:

(i) a letter from a solicitor, Ms. Ruth Collard of Carter-Ruck, correctly indicating that the City of London Police had no concerns regarding the making available of the material;

(ii) a faxed letter from his client, Mr. O'Brien Senior, instructing Ms. Collard that the letter just mentioned should be altered;

(iii) a further letter reflecting the alteration sought by his client from which it was clear that the alterations indicated that the police did have such concerns.

Mr. Garvey's response was that what was written by his firm to the Tribunal was on the basis of the instructions he had received.

11.32 As stated, Ms. Kate Macmillan also testified on the day of the London evidence on Commission, including confirmation of the accuracy of the telephone note made by her of her conversation with Detective McNinch of the City of London Police.

Conclusions: role of LK Shields and Carter-Ruck in misrepresentation of views of City of London Police

11.33 Before dealing with the involvement of individual legal practitioners, it is beyond doubt, as acknowledged by Mr. O'Brien Senior in evidence, that he directed the relevant changes to the correspondence in question, that the revised

versions set forth a markedly different representation of the views of the investigating City of London Police that was at variance with the facts, and that the Tribunal, having placed reliance on that revised version, as conveyed to it by Mr. Garvey of LK Shields as being true and accurate, was thereby occasioned needless difficulties, lengthy delays and significant expense.

11.34 Reference is made elsewhere in this and in the previous Part of the Report to the device or concept of a Chinese Wall, often invoked in business as a possible means of avoiding conflicts of interest and insider trading, but loosely of potential application in the present instance as a barrier that separates two or more groups, usually as a means of restricting the flow of information. Whilst the solicitors who testified on this matter did not place any explicit reliance on such a concept, their evidence nonetheless adverted to deficiencies of actual information, absence of or shortcomings in mutual consultation, and individual inability to affect ongoing events. In this regard, it is significant that all or virtually all significant and relevant information appeared to pass freely between the three firms of solicitors involved, and there seemed to have been no restrictions on any flow of information. Ms. Collard appears to have conveyed all relevant documents and information to Mr. O'Sullivan in William Fry. He in turn, when instructed to transfer Doncaster-related matters affecting Mr. O'Brien Senior and Westferry to LK Shields, appears to have adopted a similar course in relation to Mr. Garvey, specifically adverting in his voicemail and fax to the dual forms of the relevant correspondence as a material matter, when handing over what was scarcely an inordinately detailed or complex part of overall representation in respect of the O'Brien family interests. It was also the case that the same barristers, Mr. Eoin McGonigal SC, Mr. Gerry Kelly SC, Mr. Jim O'Callaghan SC, and latterly Mr. Darren Lehane BL were retained by both William Fry, and LK Shields.

11.35 There seemed to be a tendency in the evidence heard to suggest that, if any blame or culpability arose, it should relate to some other solicitor. Ms. Collard sought to rationalise what was plainly a portion of her evidence that she found uncomfortable, by saying that, once Mr. O'Sullivan in William Fry had been furnished by her with the dual versions, responsibility effectively rested with him. Mr. Garvey on a number of occasions in his evidence sought to assign any blame that arose to Ms. Collard. Mr. O'Sullivan did not testify, but presumably, if he had done so, he would have understandably stated that he specifically drew Mr. Garvey's attention to the two versions in his voicemail and fax. The element of buck-passing that emerged, particularly as regards Mr. Garvey, was not particularly edifying.

11.36 The Tribunal finds it extremely difficult to accept that Mr. Garvey overlooked or failed to appreciate the significance of what had been stressed to him by Mr. O'Sullivan in the course of transferring documents, particularly as it was on three separate occasions that Mr. Garvey conveyed in broadly identical terms a position according only with Ms. Collard's altered advice. If so, he certainly ought to have read and appreciated what had transpired. He also disclaimed knowledge of Ms. Macmillan's attendance upon Detective McNinch until about 15th February, 2005, but on any appraisal of the evidence was aware of, and had knowledge of this prior to 3rd October, 2006, being the date of his somewhat strident further letter of denial written to the Tribunal on the instructions of Mr. John Ryall. Given all the circumstances, including his protestations of anxiety to co-operate with the Tribunal on the instructions of his client, the Tribunal finds it incomprehensible that a senior commercial solicitor then wrote in these terms. That the instructions for this course were furnished by his clients, who were privy to, and involved in, all material events pertaining to the blackmail complaint, including being present at the mediation meeting, confirms that a course of misleading and delaying the Tribunal was consciously embarked upon and persevered with.

11.37 As the solicitor primarily involved in Carter-Ruck, Ms. Collard, however she rationalised her compliance with the instructions of Mr. O'Brien Senior in generating the altered letters, must have known that the latter form materially misrepresented the true situation. Given her extensive ongoing dealings thereafter with the Tribunal, and with both the Dublin firms of solicitors involved, it is difficult to surmise that she gained any grounds for reassurance that her correct, rather than incorrect letters, had formed the basis of subsequent representations to the Tribunal regarding the views of the City of London Police, all of which caused lengthy delay and significant expense to the Tribunal.

A Facsimile Between Phelans

11.38 What is involved in this instance is a document sent by Mr. Kevin Phelan, a Northern Ireland businessman who operated as agent in relation to the UK properties examined by the Tribunal, to his unrelated namesake Mr. Aidan Phelan, Mr. O'Brien's then accountant and financial adviser, by fax on 11th August, 1999, which contained an extract of potential significance to the Tribunal's inquiries into the Doncaster transaction. In what was a memorandum of matters undertaken or requiring attention in respect of a number of UK property transactions, one of the extracts referable to Doncaster Rovers was set out under a heading of the initials *"ML"*. Awareness of this on the part of the Tribunal obviously prompted an inquiry into whether or not this could have referred to Mr. Michael Lowry, and if so, in what context. Yet again, the Tribunal's

actual knowledge of this document was acquired only after a very considerable lapse of time, and it is necessary to examine as succinctly as possible the circumstances in this regard. As in relation to the blackmail complaint, details relating to the substantive evidence are more fully set forth in the portions of this Volume dealing specifically with the Doncaster transaction. It is the belated circumstances of disclosure that are the primary concern of this chapter. Further, the procedural background permits of a somewhat greater abbreviation, as it overlaps to a considerable degree with matters already alluded to in the context of the blackmail complaint.

The background to the faxed document

11.39 The background to the sending of the faxed document, and what transpired on foot of it, is detailed elsewhere, but may be summarised briefly. When Mr. O'Brien Senior took over management of the Doncaster Rovers project at the request of his son, the difficulties that he was required to address were not confined to the litigation and other controversies with Dinard and its personnel, but also included the matter of seeking to negotiate and finalise whatever outstanding payments might be due to Mr. Kevin Phelan, who had sourced and managed the project in its early years, until replaced by Mr. Aidan Phelan. It will be recalled that Mr. Kevin Phelan, a businessman whose interests included finding and managing UK property ventures for Irish clients, appears with relative frequency in that behalf in a number of chapters of this Volume; despite having been a native of Ireland and having, for some time, an office in the State, he has for several years carried on business and resided in England and Northern Ireland, and accordingly has not been compellable as a witness at public sittings of the Tribunal.

11.40 In early summer of 2002, William Fry, then representing the extended O'Brien family interests in relation to the Doncaster project, were engaged in somewhat intricate negotiations with a view to effecting a final settlement of Mr. Kevin Phelan's financial claims with Messrs. Woodcock & Sons, the English solicitors retained by Mr. Kevin Phelan and his companies. The matter was fraught with difficulties, not the least of which related to a degree of involvement on the O'Brien side on the part of Mr. Lowry's accountant and adviser, Mr. Denis O'Connor, a connection which Mr. O'Brien Senior testified had originated from his meeting and becoming acquainted with Mr. O'Connor, in the course of earlier Tribunal hearings, at which his son had testified. When Mr. Owen O'Connell, of William Fry, gave further evidence on 27th March, 2007, he acknowledged that this involvement had caused him some unease and caution, in view of Mr. O'Connor's known and long-standing association as a friend and accountant to Mr. Lowry. By June of 2002, matters in correspondence had reached the stage of

being close to a settlement on a basis of a final payment of Stg.£150,000.00 to Mr. Kevin Phelan by Westferry. However, ongoing complications and difficulties in and around the existing English litigation then pending between Dinard and Westferry were such that, by letter of 24th June, 2002, to Woodcock & Sons, it was stipulated by William Fry that, although they were in a position to make the Stg.£150,000.00 settlement as a full discharge of any entitlements due to Mr. Kevin Phelan and his associate companies, they first required a narrative account of Mr. Kevin Phelan's position regarding the negotiations leading up to the conclusion of the Doncaster transaction, and the subsequent and ongoing dispute between Westferry and Dinard.

11.41 Further correspondence between the solicitors proceeded, with Woodcock & Sons taking issue with the requirement for a full narrative statement on a basis of being inordinately time-consuming, and in part beyond his clients means of knowledge, and threatening to terminate negotiations. In a context of demonstrating that Mr. Kevin Phelan had at latter stages been replaced by Mr. Aidan Phelan, Woodcock & Sons later sent to William Fry copies of correspondence that their client had had with Mr. Aidan Phelan, and included in this was Mr. Kevin Phelan's fax to Mr. Aidan Phelan of 11th August, 1999. A copy of the fax referred to above can be found in the Appendix to this chapter.

11.42 In that document, following initial references to matters relating to Doncaster Rovers, some later paragraphs addressed aspects of other UK projects, but then reverted to the former at item number 7, stating as follows:

> *"ML*
>
> *Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan."*

11.43 Receipt of this communication caused predictable concerns. Mr. O'Brien Senior immediately identified it as a possible reference to Mr. Michael Lowry, acknowledged that it created a lot of problems, and stated that he was most upset about it. He testified that he was *"completely dumbfounded by it. So were Fry's"*. It seemed to him that it had been sent completely out of the blue, despite only a narrative having been sought, although Mr. O'Connell acknowledged that there had been some logic in Woodcock & Sons sending him correspondence relating to responsibilities having moved from Mr. Kevin Phelan to Mr. Aidan Phelan. Overall, Mr. O'Brien Senior felt that behind this, there *"had to be some form of intimidation or blackmail"*.

11.44 Following some further correspondence, matters eventually appeared to be resolved between William Fry and Woodcock & Sons, and the payment of

Stg.£150,000.00 was duly made in settlement of Mr. Kevin Phelan's entitlements. But the reference to *"ML"* in an apparent Doncaster context had remained a matter of concern, and the view taken by Mr. O'Connell, following discussions with his colleague in the firm, Mr. Owen O'Sullivan, was to the effect that, having been put on inquiry as to the *"ML"* reference, appropriate related inquiries had to be made in this regard on the O'Brien side. Reference was made to such inquiries having to be made of Woodcock & Sons, and also of Mr. Denis O'Connor. In his latter evidence, Mr. O'Connell acknowledged that this development was one which could have proved to have significance in relation to operations before this Tribunal.

Internal inquiries regarding "*ML*" reference

11.45 On 25th July, 2002, Mr. O'Sullivan wrote to his client, Mr. O'Brien Senior, referring to having discussed the matter with Mr. O'Connell, and being *"satisfied that, having been put on notice of the reference, appropriate enquiries have to be made"*. He then referred to his view that these inquiries should extend to Woodcock & Sons, to Mr. Denis O'Connor, to Mr. Aidan Phelan, and to Mr. O'Brien, and concluded the letter by expressing his regret that *"we have all been put to this trouble but hope you appreciate that we have no alternative in the circumstances"*. A copy of the letter referred to above can be found in the Appendix to this chapter.

11.46 It seems that the inquiries pursued elicited, by way of possible explanation, an observation from Mr. Denis O'Connor that the *"ML"* reference was to a Mr. Michael Lloyd, being a person with whom Mr. Kevin Phelan had had business dealings for a number of years, and also a communication from Woodcock & Sons that the reference to *"ML"* was indeed to Mr. Michael Lowry, but was solely in relation to the Mansfield property transaction. This followed upon an initial response from Woodcock & Sons on behalf of their client, when asked to confirm that Mr. Lowry had no involvement in the Doncaster transaction, that this was asking the impossible, and that they had done all legally within their power to finalise the matter.

11.47 Since it was only at a very belated stage of public hearings that it was conveyed to the Tribunal that Woodcock & Sons had, shortly prior, written on behalf of Mr. Kevin Phelan to Mr. Aidan Phelan setting out references to the alleged involvement of Mr. Lowry in the Doncaster transaction, it is not difficult to see how the request effectively amounted to asking the impossible. It also appears that Mr. Denis O'Connor telephoned Mr. O'Connell, referring to the possibility of a *"practically full"* retraction in relation to the *"ML"* reference being to Mr. Lowry, but this did not proceed, and Mr. O'Connell testified that he *"tended*

to receive information from him when it was proffered, but rarely, if ever, to question it or respond or give information back. I was generally quite reserved in my dealings - my very occasional dealings with Mr. O'Connor". Nothing came of this communication.

11.48 Although matters dragged on between William Fry and Woodcock & Sons, with the terms of the settlement only being finalised in the latter days of August, 2002, no further information appears to have come to hand of substance which might have enabled clarification of the identity of "*ML*". Mr. O'Connell was not enthused about the level or quality of information that the inquiries had elicited, stating that he "*wouldn't assert that it was entirely satisfactory*", that "*it was probably at or close to the bare minimum necessary*", and later that he "*wasn't particularly happy. There were more elaborate or other explanations I'd have preferred, but I felt it was all we were getting*".

Non-disclosure to the Tribunal

11.49 The matter of notifying the Tribunal of the content of the fax, and further related information, was raised in evidence with both Mr. O'Brien Senior and Mr. O'Connell. As the client, Mr. O'Brien Senior acknowledged that the matter was not brought to the Tribunal's attention. He then continued:

> *"...But that has nothing to do with me. I was taking advice from William Fry's...Surely it was for William Fry's to say 'Mr. O'Brien, this has to be given to the Tribunal'. Had they said that to me I would have said, 'of course'...Don't give me the responsibility of not telling the Tribunal. It was not me who did not tell it. I was in the hands of my solicitors."*

11.50 When the same inquiry was made of Mr. O'Connell, he responded that, although he did not recall ever discussing it with Mr. O'Brien Senior, he had little doubt that he discussed it with his colleague Mr. O'Sullivan. The outcome of that discussion was that they should not refer the matter to the Tribunal. They discussed formally advising Mr. O'Brien Senior to notify the matter, but decided against doing so. Asked why, he responded as follows:

> *"A. For a number of reasons. One was, that we have, and for many years, been in the unusual position vis-à-vis this Tribunal, that pretty much all of our advice to our clients comes to the Tribunal, and the consequence of that is that our client receiving our advice in this situation is not in the position a client normally is in, in which he can privately accept advice, consider it and act on it or contrary to it. Formal advice from us to Mr. O'Brien in this case would have been tantamount to a direction from us to*

notify the Tribunal. In our view, right or wrong, but I think right, he would have had no alternative. Now, it was clear to us that he didn't want to receive that advice. He was absolutely adamant.

Q. Could you say that again, he didn't want to receive that advice?

A. He didn't want to receive that advice. By that I don't mean to suggest that he took us aside and said 'Don't you tell me so and so'. It was entirely apparent from the context of everything that we had done, he and Denis O'Brien Junior were adamant, and had been so throughout, that Mr. Lowry had no involvement in Doncaster. So had, as I understand it, Mr. Lowry been adamant, and others had similarly made that statement. The only contrary evidence of which we were in possession was this 'ML - refer matters regarding Doncaster to Aidan Phelan' reference in the letter of 1999, and we took the view, and maybe we were wrong, we took the view that giving formal advice to Mr. O'Brien to bring that matter to the attention of the Tribunal was not justified, and that's what we did."

11.51 Continuing his evidence, Mr. O'Connell said that he was not directly involved in the circumstances whereby William Fry ceased to act for Westferry and handed over the papers to LK Shields, learned about it only subsequently, but believed it occurred about mid to late summer of 2003, and he did not know of the circumstances that occasioned this. Whilst not a litigation lawyer, and uninvolved in the proceedings brought by Mr. O'Brien, he was aware of the Judicial Review proceedings instituted in relation to the Tribunal's inquiries into Doncaster. He acknowledged that, when seeking equitable relief such as the injunctions sought by Mr. O'Brien in regard to Doncaster, lawyers were required to make all available information known to the High Court by way of full disclosure, but stated that he was not aware that the existence of the *"ML"* reference was not brought to the attention of the Court when the application was made. He also indicated that he had not been aware that no inquiry had been made of Mr. Aidan Phelan in relation to any knowledge that he might have had of the *"ML"* reference, notwithstanding this having been one of the aspects of inquiry initially decided upon by Mr. O'Sullivan and himself.

Procedural sequence

11.52 As earlier indicated, the dealings between the Tribunal and legal advisers to the O'Brien interests, which led to the Tribunal's belated awareness of the faxed document, moved largely in tandem with overall Tribunal inquiries into the Doncaster transaction. When, in the aftermath of the matters published by

The Irish Times of 11th January, 2003, the Tribunal raised more detailed inquiries of William Fry by letter of 22nd January, 2003, the request included the following:

> *"The Tribunal wishes to obtain copies of all documents in the power, possession or procurement of your clients in relation to the acquisition, funding and holding of the Doncaster Rovers property, including copies of the files of all of your client's professional advisers."*

11.53 Despite reminder by the Tribunal, the preponderance of the queries raised remained outstanding, and on 25th September, 2003, William Fry informed the Tribunal that LK Shields were taking over representation on behalf of Mr. O'Brien Senior and Westferry. On 27th November, 2003, the Tribunal took the outstanding queries up with LK Shields, indicating that it had been ten months since the matters had first been raised with their clients. An apology was conveyed to the Tribunal on behalf of Mr. O'Brien Senior and Westferry by letter from LK Shields dated 12th December, 2003, in particular with regard to the provision of a narrative statement, as requested from Mr. O'Brien Senior, which it was indicated would be given priority in January, 2004.

11.54 Between the months of December, 2003, and April, 2004, some documentation referable to Westferry and other matters was provided by LK Shields, but from February, 2004, onwards the misrepresentation, as already found by the Tribunal, that the City of London Police had concerns about the release of documentation pertaining to the blackmail complaint was adopted as stated. Since the Tribunal had been anxious to meet with Ms. Ruth Collard, of Carter-Ruck, waivers were provided by Westferry and both Messrs. O'Brien, but the intended meeting was initially delayed as a result of the intervention of Mr. John Ryall, who appeared to have concerns relating to confidentiality in regard to the mediation process. It was not until mid-March, 2004, that it was possible for Tribunal counsel to meet with Ms. Collard, and shortly thereafter the Tribunal received from Carter-Ruck, via LK Shields, four folders of correspondence relating to Westferry and the Doncaster Rovers matter, including the litigation with Dinard.

11.55 It was not until those documents were received from Carter-Ruck that the Tribunal became aware of an attendance made by Ms. Collard of a meeting between her, Mr. Denis O'Connor and Mr. Craig Tallents, another Westferry adviser, on 10th September, 2002, in which Mr. O'Connor was recorded as saying that Mr. Michael Lowry did have a connection with the Doncaster transaction.

11.56 On 11th May, 2004, the Tribunal wrote to LK Shields at some length, referring to the delay occasioned up to that time, and seeking assistance on a number of matters. In particular, the following was set forth at bullet point seven:

"It appears from the information and documents available to the Tribunal that subsequent to the acquisition of DRFC, a dispute arose between Mr. Kevin Phelan and Westferry and its representatives which may have related to fees which Mr. Phelan claimed he was owed arising from the project. It appears that this dispute was resolved at some time prior to the mediation. In this regard, I would draw your attention to an attendance of Ms. Ruth Collard of Carter Ruck on your client, Mr. Denis O'Brien, dated 20th June, 2002 and to Ms. Collard's attendance on Mr. Denis O'Connor on 10th September, 2002.

The Tribunal wishes to obtain the comments of your clients in relation to the above matters and in particular wishes to obtain the following information:

(a) Details of the dispute with Mr. Kevin Phelan to include when the dispute arose and to what it related.

(b) When the dispute was resolved and the terms on which it was resolved.

(c) If the resolution of the dispute involved the making of any payment or compensation to or for the benefit of Mr. Phelan, the amount of such payment or compensation, the manner in which it was paid and the source or sources of the funds which were utilized.

(d) The identity of the 'intermediary' to whom Mr. O'Brien was referring in his conversation with Ms. Collard on 20th June, 2002.

(e) The identity of all representatives of your clients' or persons in whatsoever capacity who were involved, directly or indirectly, in the resolution of the dispute with Mr. Kevin Phelan.

(f) The role, if any, of Mr. Denis O'Connor in the resolution of the dispute.

(g) Details of all information provided by your clients or their representatives to your client's son, Mr. Denis O'Brien in relation to these matters.

The Tribunal also wishes to obtain copies of all documents in the power, possession or procurement of your clients in relation to the dispute with Mr. Phelan, the resolution of the dispute and the provision of any payment or compensation to or for the benefit of Mr. Phelan."

Despite assurances from LK Shields to the Tribunal that the queries raised would be responded to promptly, and a number of reminders sent by the Tribunal, such

responses, in particular with regard to the fees dispute with Mr. Kevin Phelan, were not in fact furnished.

11.57 As stated, the intended commencement of public sittings in relation to Doncaster Rovers did not proceed beyond an Opening Statement, by reason of the Judicial Review proceedings instituted by Mr. O'Brien. On 4th October, 2004, the day prior to when Ms. Collard was due to appear as a witness before the Tribunal in Dublin Castle, Ms. Collard informed the Tribunal that she would be unable to attend, as she had not been provided with a waiver or authorisation by her clients. This was taken up with LK Shields, and an Order for Production was threatened in respect of Ms. Collard's statement and any draft statements, which were then awaited. Those statements were then provided on 5th October, 2004, without such an Order having to be made.

11.58 Having thus received the witness statements of Ms. Collard in both draft and final form, it became clear to the Tribunal, that a number of documents were there referred to which had not been included in the Carter- Ruck folders provided to the Tribunal in April, 2004. The Tribunal accordingly wrote immediately to LK Shields, on 5th October, 2004, seeking such outstanding documents, and also that a further full copy of the relevant Carter-Ruck files be provided to the Tribunal.

11.59 A further reminder and threatened Order for Production in this regard proved necessary, by letter of 12th October, 2004, from the Tribunal to LK Shields. It was then that, on 14th October, 2004, LK Shields responded that, since the unsuccessful High Court application was under Appeal to the Supreme Court, their clients were advised to reserve their position in relation to addressing the balance of matters outstanding on foot of correspondence received from the Tribunal, pending the conclusion of that Appeal.

11.60 On the following day, 15th October, 2004, the Tribunal responded to LK Shields, seeking the balance of Ms. Collard's file including the documents referred to in her statements not previously produced to the Tribunal. On foot of the further intimation that an Order for Production would promptly be made, if these were not produced, those documents were produced on 19th October, 2004, with LK Shields indicating that those documents had not been on the files received by them from Carter-Ruck. By way of immediate response, the Tribunal indicated that they would wish to receive an entire copy of all relevant files of Carter-Ruck, and further reiterated its request of 11th May, 2004, for all documentation relating to the dispute with Mr. Kevin Phelan. Despite an indication from LK Shields that such documents would be produced on 21st October, 2004, they were not forthcoming, and following another abortive

reminder from the Tribunal, notice of the Tribunal's intention to make an Order for Production, returnable for 4th November, 2004, was on 29th October, 2004, served on LK Shields.

11.61 On 1st November, 2004, LK Shields indicated by letter that the documents would be made available voluntarily, and two folders were provided on 3rd November, 2004. It was within the documents then provided that the fax, including the reference to *"ML"* in connection with the Doncaster transaction, was contained, which was the first time the Tribunal had sight of that document. The foregoing summary of relevant communications may be somewhat turgid, but its inclusion is felt necessary to demonstrate the nature and extent of delay occasioned to the Tribunal in acquiring a document acknowledged as being material to its inquiries. During this period, the Tribunal was urged in other correspondence to desist from public hearings in relation to the Doncaster transaction on various grounds, including an insufficiency of linking evidence between Mr. Lowry and the transaction, and High Court proceedings seeking similar relief were instituted, all without disclosure of the relevant document.

Conclusions: role of William Fry in non-disclosure of fax

11.62 The principal matter to be considered is the absence of disclosure of the faxed document to the Tribunal until the very belated stage when it was finally produced. As already noted, the recollections of Mr. O'Brien Senior and Mr. O'Connell in evidence were divergent: Mr. O'Brien Senior said that he relied on his solicitors, and would readily have produced the document to the Tribunal, if advised to do so; on the other hand, Mr. O'Connell felt that most advice given to his client tended to come to the attention of the Tribunal and, having discussed the position with Mr. O'Sullivan, they formed a view that Mr. O'Brien Senior would clearly not wish to receive advice from them that he should disclose the document to the Tribunal, that formal advice to that effect would have been tantamount to a direction to notify the Tribunal, and that, having decided against giving such advice, they concluded on their own account that the document should not be referred to the Tribunal.

11.63 Before the matter of referral of the document was considered, the first question that arose was whether or not an internal inquiry should be conducted in relation to the identity of *"ML"* and related circumstances; in that instance, Mr. O'Brien Senior was properly and fully advised that, having been put on notice of the matter, there was no alternative to investigating it, and the various courses necessary in this regard were outlined in the letter then written to Mr. O'Brien Senior. From the somewhat apologetic tone of the letter written in this regard by Mr. O'Sullivan to Mr. O'Brien Senior on 25th July, 2002 (*"I regret that we have all*

been put to this trouble, but hope you appreciate that we have no alternative in the circumstances"), it is reasonable to infer that Mr. O'Brien Senior had made it apparent that he was far from pleased with the development, had made this clear to his solicitors, and that their feeling that he would not be readily disposed to making the document available to the Tribunal was well-founded.

11.64 Having quite properly directed an internal inquiry in the first instance, it was nonetheless the case that, when the only two explanations forthcoming which purported to negative any connection between Mr. Lowry and the Doncaster transaction came to hand, neither of which were particularly persuasive or satisfactory, the decision was then taken by William Fry not to refer the document, without consulting or advising Mr. O'Brien Senior further.

11.65 The reasoning behind this decision does not withstand serious scrutiny. It has never been the contention or understanding of the Tribunal that, in being vested with the powers of the High Court in relation to production of documents, it has any entitlement whatsoever to override legal professional privilege. Advices falling within that category would clearly be protected from disclosure and it is unclear to the Tribunal how it can realistically be contended that advices between solicitor and client in relation to Tribunal matters in some way came automatically to Tribunal attention. But even apart from that consideration, it can scarcely be a tenable course of dealings that, because it is felt that a client is reluctant to receive and act on particular advice, no advice is in effect given, and a course adopted which accords with the client's perceived preference.

11.66 It is also the case that, whilst aware of the document, its troublesome potential, and the somewhat unsatisfactory inquiries conducted into it, the legal advisers in question proceeded on a basis, not merely of withholding disclosure from the Tribunal, but of urging in repeated correspondence that no sufficient basis for embarking upon public sittings in relation to Doncaster existed, and then making application to the High Court without disclosure in that regard. That last factor is of course a matter for the Court itself, but it accords with a regrettable pattern, whereby disclosure was lacking, and unwarranted delay was occasioned.

11.67 At one point in his evidence, Mr. O'Connell remarked that he was unaware of the reason why LK Shields were separately engaged on behalf of the O'Brien interests. Having regard to the absence of any apparent conflict of interest, as evident from the continued retention of the same counsel, and the fact that LK Shields were not on record in any related proceedings, it is difficult to see what apparent purpose that separate representation served, other than to

facilitate a course of unwarrantedly delaying and obfuscating the Tribunal's inquiries into the Doncaster transaction.

11.68 The Tribunal has received written submissions on behalf of William Fry, which it has considered carefully, and found useful and constructive. Whilst allowing for all the matters contained in those submissions, it nonetheless is the view of the Tribunal that in failing to make the document available until so extended a period of delay had passed, urging the Tribunal to desist from public sittings in relation to Doncaster in the manner and for the reasons advanced, and bringing and maintaining the Judicial Review proceedings without such disclosure, the solicitors fell short of the level of cooperation with the Tribunal professed by them, and contributed to the significant delays occasioned. It should however be said that, just as Mr. Owen O'Sullivan had diligently and correctly drawn the attention of LK Shields to the two forms of advices from Ms. Collard when handing over relevant papers, (and to hold that he should thereafter have checked or ascertained from LK Shields that this had been acted upon would be excessive and unwarranted), so also Mr. O'Connell, in the course of his dealings with the Tribunal both in evidence and in correspondence, but more particularly in the context of the GSM competition, in general terms fairly equated his duties to his clients with a significant level of cooperation with the Tribunal, that was helpful and constructive.

Late Letters About The UK Properties

11.69 The disposition to delay and withhold documentation of clear and manifest relevance to Tribunal inquiries into the UK property transactions was by no means confined to the early years of investigations, but continued right up to the latter days of public sittings in 2009. It will suffice to set forth only a limited summary of the principal, although not exclusive, instance in this regard.

11.70 The principal instance of crucial documentation coming to the attention of the Tribunal only in 2009, although generated and capable of production previously, relates to Mr. Christopher Vaughan, solicitor, who was represented at all times by Mr. Duncan Needham, of Messrs. Max Engel solicitors, who like their client were based in Northampton, England.

11.71 For much of the period of the Tribunal's inquiries into UK property transactions, and particularly since the disclosures by The Irish Times of matters relating to his correspondence as a solicitor, Mr. Vaughan has been a highly significant potential witness. Extensive dealings were had in correspondence between him and the Tribunal, in addition to which he met with Tribunal counsel on two occasions, the former in Dublin Castle and the latter in London. But

despite the pivotal importance of hearing his testimony at public sittings, an aspect commented upon by the Supreme Court in the course of the Judicial Review proceedings in regard to Doncaster Rovers instituted by Mr. Denis O'Brien, Mr. Vaughan for several years resisted repeated requests to attend as a witness. That state of things only altered when he was in receipt of certain Provisional Findings notified to him by the Tribunal in late 2008: following notification from Messrs. Meagher, solicitors for Mr. Denis O'Brien in succession to William Fry, that Mr. Vaughan would be attending in Dublin to consult with them, an arrangement was made whereby Mr. Vaughan attended at Dublin Castle, was served with a Witness Summons, and later attended with his solicitor and counsel to testify over four days in April, 2009, and three subsequent days in June, 2009.

11.72 In common only with Mr. Denis O'Connor, the role of Mr. Vaughan as a professional adviser was so extensive and wide-ranging in relation to matters inquired into by the Tribunal, that he falls into a separate category beyond that of undertaking professional duties for a client, which requires to be set forth and considered elsewhere. All that arises for purposes of this chapter are the dealings had with him and his solicitor, Mr. Needham, after Mr. Vaughan had made himself amenable to testifying. Given the extensive history of correspondence and meetings had with him over several years, and the fact that the Tribunal had no alternative but to undertake to discharge his reasonable legal costs and expenses of attending as a witness, it might be thought that the cooperation afforded in relation to his testimony would have been full and whole-hearted. This would seem particularly so, since the focus of a great deal of prior testimony had been upon Mr. Vaughan's correspondence as a solicitor, in a context of making full and prompt disclosure of all such additional correspondence as was clearly material, and relevant to the investigations of the Tribunal.

11.73 During the period between Mr. Vaughan's two attendances at Dublin Castle for testimony, approximately four weeks before he resumed evidence on 23rd June, 2009, it appears that Mr. Oliver Roche, solicitor, of Strabane, County Tyrone, then acting on behalf of Mr. Kevin Phelan, furnished to Mr. Needham a considerable amount of documentation. Among this there was in particular a significant number of copy letters written by Mr. Vaughan, primarily referable to the Mansfield and Cheadle transactions, but also touching upon the Doncaster transaction. In several of these letters, as is detailed elsewhere, the content diverged from versions that had already been made available to the Tribunal, insofar as references then set forth to involvement on the part of Mr. Michael Lowry had been deleted, in a manner somewhat akin to what has earlier been described as having occurred in the *"long form/short form"* letters of Mr. Vaughan. The matter seems to have arisen in a context of Mr. Roche protesting

on behalf of Mr. Kevin Phelan at certain reported references to his client by Mr. Vaughan in the course of his earlier evidence.

11.74 It was accepted by Mr. Vaughan when he resumed evidence in June, 2009, that the copy correspondence furnished in the interim by Mr. Roche were true copies of letters actually written by him. Mr. Stephen Nathan, QC, as counsel for Mr. Vaughan acknowledged that the material furnished was *"obviously relevant"* to the Tribunal. Further, at the conclusion of his evidence, Mr. Vaughan accepted that, had not the further documentation come to light, he would have been inviting the Tribunal to draw important conclusions from portions of his earlier evidence that he had to accept, in the context of the further documentation, would have been entirely incorrect.

11.75 As was indicated in the course of Mr. Vaughan's latter evidence, certain communications took place between Mr. Needham and the Tribunal, during the period after Mr. Needham had received the further documentation from Mr. Roche, but before Mr. Vaughan resumed his evidence on 23rd June, 2009. In a telephone conversation on 2nd June, 2009, Mr. Needham raised a query with the Tribunal solicitor, Mr. Brady, as to whether or not the Tribunal had received any correspondence, or been in communication with the solicitors to Mr. Kevin Phelan, since Mr. Vaughan's earlier evidence. Mr. Brady responded that he could not confirm or deny this, as the Tribunal was unable to comment on its dealings with other affected persons. Mr. Needham stated that he appreciated the position, and also referred to having received complaints from Mr. Kevin Phelan's solicitor in respect of Mr. Vaughan's earlier evidence in respect of Mr. Kevin Phelan. In this regard, Mr. Needham said that his response had been that his client could not comment, as he was giving evidence, and any queries should be taken up with the Tribunal directly.

11.76 Also on 2nd June, 2009, Mr. Needham wrote to the Tribunal in broadly similar terms, referring to his request as to whether any correspondence had been received from Mr. Roche, Mr. Brady's reply, and enclosing a copy of Mr. Roche's letter of complaint to Mr. Needham of 1st May, 2009, and Mr. Needham's response ten days later. Mr. Needham concluded his letter by referring to an indication in the said letter from Mr. Roche that he had communicated with the Tribunal, and renewing in that context his request for provision of copies of any letters or enclosures which the Tribunal had received from Mr. Roche, so that he might consider matters.

11.77 Two further letters, dated 12th and 16th June, 2009, were written by Mr. Needham to Mr. Brady, on each occasion seeking in more urgent terms a response as to whether any letters or correspondence had been furnished to the

Tribunal by Mr. Roche, and, if so, that they should be provided forthwith to Mr. Needham. The matter was again reverted to in a telephone conversation of 17th June, 2009, between Mr. Needham and Mr. Brady, with a repetition of Mr. Needham's request and a similar response from Mr. Brady.

11.78 Notwithstanding all of those communications, it was not until the late afternoon of Monday, 22nd June, 2009, the day prior to the resumption of Mr. Vaughan's evidence, that the Tribunal received the relevant documentation. It was delivered in hard copy under cover of a letter dated 19th June, 2009, from Mr. Needham, in the course of which he stated:

> *"I enclose a further witness statement and exhibits which have resulted from further communications that I received from Oliver Roche & Co. My client believes that this correspondence should be brought to the attention of the Tribunal. Apart from the documents already produced to the Tribunal by my client, none of the documents referred to in the witness statement can be found by my client in his current files."*

Conclusions: late disclosure by Mr. Christopher Vaughan of highly relevant letters

11.79 Regarding the delay in furnishing to the Tribunal what were undoubtedly material and important documents, the Tribunal was informed by Mr. Stephen Nathan QC, who acted for Mr. Vaughan, that his professional commitments abroad retarded the holding of a consultation with Mr. Vaughan and Mr. Needham, to enable Mr. Nathan to provide Mr. Vaughan with the advice he deemed necessary in order to consider whether the documentation in question ought to be furnished to the Tribunal. The delay, by reason of Mr. Nathan's absence abroad was significant and it was in that period that the various queries were addressed to the Tribunal concerning the reception, if at all, by the Tribunal of copies of the relevant material directly from Mr. Roche. Whilst it is difficult not to find fault with such a delay in failing to forward promptly to the Tribunal what were relevant documents, it is accepted that the belated furnishing of these documents was contributed to by Mr. Nathan's overseas commitments and his solicitor's inability to consult him until shortly before the documents were produced. Although Mr. Needham's wish to obtain the advice of counsel before committing himself to advising his client, Mr. Vaughan, must be respected, it is nevertheless regrettable that what, as Mr. Vaughan must have known, and was accepted by him in evidence, was a copy of a portion of his file, a portion as yet undisclosed to the Tribunal, should have been withheld for so long.

CONCLUDING OVERVIEW

11.80 The foregoing falls far short of a definitive list of the delays occasioned to the work of the Tribunal in the course of dealings with legal advisers to interested persons. However, it serves to illustrate the type of delays and disruptions that not infrequently impeded progress. Further, although advancing the interests of clients, and seeking relevant information, undoubtedly required some measure of correspondence with the Tribunal on the part of solicitors retained, the proliferation in this regard was in some instances of such dimensions as to cast doubt on the realistic need and actual intention underlying long sequences of letters. It should not of course be suggested that legal practitioners as a whole sought to delay matters, or withhold co-operation with the Tribunal, and even among solicitors representing persons or entities who had lengthy and detailed involvement with the Tribunal, it was evident that they capably equated their duties to their clients with conducting their dealings with the Tribunal in a prompt and positive manner.

11.81 The impact of lengthy legal challenges in the Courts inevitably impacts significantly upon advancing and concluding the work of the Tribunal. It is trite to state that persons affected by Tribunal inquiries have a right of access to the Courts, and that Tribunals can make errors which, if not corrected by the Tribunal itself, require correction by the Courts to vindicate the rights of affected persons. However, in the present instance, the impact of eight substantial sets of proceedings brought before the High and Supreme Courts, all unsuccessful, has undoubtedly extended the duration of the Tribunal. When taken in conjunction with the other matters alluded to in the course of this chapter, it means that the time-scale for completion of the work of the Tribunal has been delayed significantly beyond what could have been projected, a factor that unsurprisingly permits of somewhat facile depictions in some public relations and media sources. Certainly, from the examination by the Tribunal of the workings and reports of Tribunals of Inquiry appointed under the same originating legislation in the early years of the State, it would seem that the change of environment is such as to enable significant delay and disruption at the behest of wealthy entities or individuals, for whom a legal defeat may be sizeably offset by the resultant temporary stagnation induced in Tribunal workings. Regarding the proceedings brought against the Tribunal, it should be said that in each instance the High and Supreme Courts undoubtedly sought to hear and determine the matters in issue with the minimum delay feasible, but their impact upon the work of the Tribunal was nonetheless substantial.

SHARES FOR FRIENDS AND FAMILY

INTRODUCTION

12.01 This chapter, on the Tribunal's investigations into financial matters pertaining to Mr. Michael Lowry, relates back to information which came to the attention of the Tribunal in the course of its scrutiny of dealings involving the late Mr. David Austin, who, as the Tribunal has already found, was a conduit for both a donation from Esat Digifone to Fine Gael, and a payment by Mr. Denis O'Brien to Mr. Michael Lowry. This aspect of the Tribunal's investigations related to share transactions involving holdings of Mr. Austin in the shares of Esat Telecom following that company's successful Initial Public Offering in November, 1997. One of these transactions bore close similarity to other dealings between Mr. O'Brien and Mr. Austin investigated by the Tribunal, in that a substantial shareholding in Esat Telecom, held in Mr. Austin's name, was acquired shortly before his death, on the instructions of, and paid for, by Mr. O'Brien, but was reversed after Mr. Austin's death, unbeknown to his executors, in circumstances which were far from orthodox. Furthermore, in common with many other aspects of the Tribunal's inquiries, the person who effected both limbs of that share dealing, that is the USA based stockbroker, Mr. Peter Muldowney of Messrs. Donaldson Lufkin & Jenrette, refused either to attend to give evidence at public sittings of the Tribunal, or to provide direct assistance to the Tribunal in the course of its private investigations.

12.02 On the occasion of the IPO of Esat Telecom, on 7th November, 1997, some 5% of the shares being made available were, in line with usual practice, reserved to the self-explanatory category of a Friends and Family Scheme. It appears that there was much demand for this minority of shares in a generally over-subscribed issue, with many persons canvassing senior Esat Telecom personnel, including Mr. O'Brien, for amounts of these shares at what was in any event a hectic and busy period.

12.03 Two persons in particular requested that Mr. O'Brien enable them to buy shares under this category, these being his friend, Mr. Austin, and his father-in-law, Mr. Noel Walshe. Provision was duly made for each of them in separate transactions, but it was in relation to a further and later purchase of 12,000 shares, initially acquired in the name of Mr. Austin, but which subsequently appeared to have been transferred to Mr. Walshe, on foot of matters and dealings arising close to the date of death of Mr. Austin, on 1st November, 1998, that Tribunal inquiries centred.

12.04 In the case of all three transactions, whilst instructions were forthcoming from either Mr. O'Brien or Mr. Aidan Phelan on his behalf, the professional stockbroking aspects were handled in US currency by Donaldson Lufkin & Jenrette, an American firm associated with Credit Suisse First Boston. Within that firm, the individual primarily involved was Mr. Peter Muldowney, an Irish individual based for some years in the United States, who was a close associate of Mr. O'Brien, and in regular communication with him during the period of the flotation.

12.05 Following the death of Mr. Austin, the solicitor acting in the administration of his estate was Mr. Walter Beatty, of Messrs. Vincent & Beatty, Dublin, who acted on behalf of the executors, which included Mr. Aidan Phelan and Mr. Michael O'Leary. Mr. Beatty was of prompt assistance to the Tribunal in taking instructions and furnishing available documentation, which enabled a more complete picture of the transactions to be presented, than when they first arose in evidence. Accordingly, in the absence of Mr. Austin, testimony was heard from Mr. O'Brien, both before and after that additional documentation was received, Mr. Aidan Phelan and Mr. Noel Walshe, in addition to more limited testimony from Ms. Helen Malone, a business associate of Mr. Phelan's.

Initial Acquisitions Of Esat Telecom Shares

12.06 Before outlining the evidence relating to the 12,000 share purchase, it is appropriate to refer by way of background to the initial transactions whereby both Mr. Walshe and Mr. Austin acquired Esat Telecom shares in circumstances referable to the Friends and Family Scheme.

12.07 Mr. Walshe stated that he had made an initial purchase of shares under this scheme, close to the time of the IPO, that an account in his name had been opened for this purpose with Donaldson Lufkin & Jenrette, and that the purchase had been funded in the first instance by his son-in-law, Mr. O'Brien. The value of the shares rose appreciably, and in February, 1998, Mr. Walshe disposed of all of his holding, save for one share, transferring to Mr. O'Brien such as was sufficient to reimburse the initial purchase, and three months later applied the proceeds to purchase a quantity of Smurfit shares.

12.08 As to Mr. Austin's initial involvement, Mr. O'Brien testified that, in the period immediately surrounding the IPO, Mr. Austin had asked him on a number of occasions to obtain shares under the Friends and Family Scheme. When Mr. O'Brien inquired how much Mr. Austin wished to invest, Mr. Austin indicated a sum of $100,000.00, whereupon Mr. O'Brien told his friend to leave the matter with him. In the context of the many similar requests received, and overall

pressures of that time, Mr. O'Brien stated that in the event he overlooked making any provision for Mr. Austin's holding, and it was only when Mr. Austin commented to him how well the share price was going, that Mr. O'Brien realised his omission. Having told Mr. Austin that he could cover him for the $100,000.00 investment in an immediate context, then request payment in due course, Mr. O'Brien stated that he did not have the heart to confess he had not made the investment. By the time he addressed the matter on 18th February, 1998, the shares in fact had appreciated in value by 50%, so Mr. O'Brien on the same day transferred $50,000.00 out of a Radio Investments NV account in Woodchester Bank to the credit of Donaldson Lufkin & Jenrette, in effect thereby personally funding the differential between what the shares would have cost under the Friends and Family Scheme at flotation, and what a similar quantity, namely 6,600 shares, actually cost to purchase on the market some four months later.

12.09 From the documentation relating to Mr. Austin's estate made available by Mr. Beatty, it appeared that on 8th October, 1998, that is to say, only some three weeks before his death, Mr. Austin wrote a letter on unmarked notepaper, to Donaldson Lufkin & Jenrette, with regard to this holding in the following terms:

> *"Please transfer 6,600 ADS's* [sic] *of ESAT Telecom Group pic from my account 22Y208238 to Maureen Austin's account at DLJ.*
>
> *I appreciate your prompt attention in this matter,*
>
> *Yours truly,*
>
> *David Austin"*

The usage *"ADR"*, misquoted in the letter as *"ADS"*, refers to American Depository Receipt, representing the ownership in the shares of a foreign company trading on US financial markets. Notwithstanding that a manuscript notation at the top of the letter appeared to contain the word *"done"*, it seems that this instruction was not implemented by the time of Mr. Austin's death, and that his executors were unaware of any intention to transfer the shares to his wife, as the Inland Revenue Affidavit prepared by his executors set out the shareholding as remaining part of his assets at date of death. A copy of the letter referred to above can be found in the Appendix to this chapter.

SUBSEQUENT ACQUISITIONS OF ESAT TELECOM SHARES

12.10 Turning to the final share transaction, which appeared to involve both Mr. Austin and Mr. Walshe, the documentation made available to the Tribunal indicates the following sequence:

(i) In September, 1998, again through the agency of Donaldson Lufkin & Jenrette, 12,000 Esat Telecom shares were purchased with funds provided by Mr. O'Brien for the account of Mr. Austin, the amount paid was $294,000.00.

(ii) Those shares remained in Mr. Austin's account until 16th November, 1998, fifteen days after his death, when Donaldson Lufkin & Jenrette, acting on foot of what was deemed a customer authorised transfer, transferred the holding out of Mr. Austin's account to that of Mr. Walshe.

(iii) Donaldson Lufkin & Jenrette indicated in correspondence to Mr. Beatty that the authority on foot of which they effected this transfer was comprised in a further letter of Mr. Austin, dated 13th October, 1998, and again on unmarked notepaper, but in this instance addressed not to the stockbrokers, but to Mr. Aidan Phelan, at his business address at Clonskeagh, Dublin 14; this was headed *"Re. ESAT Telecom Group Plc"* and was in the following terms:

"Dear Aidan

Further to our recent conversation, I would be obliged if you would request DLJ in New York to transfer my holding of 12,000 ADR's in the above company to Mr. Noel Walshe, who I understand has an existing account... with DLJ."

An account number referable to Mr. Walshe was given, and Mr. Austin concluded by thanking Mr. Phelan for his assistance, and signing the letter. A copy of the letter referred to above can be found in the Appendix to this chapter.

(iv) Donaldson Lufkin & Jenrette thereupon gave written notice to Mr. Walshe of his entitlement to the 12,000 shares, probably in early December, 1998. That notification in fact referred to a fresh aggregate holding of 22,000 shares, of which the additional 10,000 was referable to the exercise of an entitlement on the part of existing shareholders to acquire a fixed further proportion of the amounts of shares actually purchased and

paid for *"on the margin"*, in effect on the security of the existing holding. The statement of account furnished to Mr. Walshe in respect of the period between 31st October, 1998, and 27th November, 1998, notified him as to the amount of his indebtedness in respect of the shares acquired on the margin account, and also recited a *"customer authorised transfer"* of 16th November, 1998, whereby the 12,000 Esat Telecom shares had been transferred from Mr. Austin's account to that of Mr. Walshe.

(v) In April, 1999, by which time the Esat Telecom share price had risen to in excess of $40.00 per share, Mr. Walshe sold 6,500 shares of his overall holding in Esat Telecom, realising a sum of $261,210.04. Of that sum, as recorded in Donaldson Lufkin & Jenrette's account statement for the period between 27th March, 1999, and 30th April, 1999, $260,000.00 was transferred to Mr. O'Brien's account, to discharge the liability for the funds advanced by Mr. O'Brien to purchase the 12,000 shares, that is, the shares which had originally been held by Mr. Austin.

12.11 Before proceeding to recount the salient features of the evidence heard, it is necessary to mention the contents of a letter, dated 7th September, 2001, from Mr. Peter Muldowney to Mr. Walter Beatty, in response to the queries raised by him at the instance of the Tribunal. Apart from referring to copies of documents pertaining to Mr. Austin's share account with the brokers, which were enclosed with the letter, Mr. Muldowney advanced a basis of mistake in his initial instructions as to the intended beneficiary of the shares, an aspect that arose in evidence primarily in the testimony of Mr. O'Brien. After referring to letters received from Mr. Beatty, Mr. Muldowney went on to state:

"1. The holding of 12,000 Esat shares remained in David Austin's account until November 16, 1998, when we received a letter of authorization (copy enclosed, dated October 13 1998) from David Austin to transfer the shares to the account for which they were originally intended.

2. The documents we sent are the record of all transactions on Mr. Austin's account, including share dealings, share transfers and receipt/disbursement of funds and do not show supporting documentation authorising transfers on the account. When an error is discovered in an account, and particularly if some period of time has elapsed, we request a letter of authorisation from the account holder (copy enclosed) to permit us to rectify the error by transferring the shares to the proper account.

3. As requested, we enclose copies of all documents held by DLJ in relation to the late Mr. Austin's account including all share dealings on the

account, including the transfer of any shares into or out of the account, the receipt of funds on the account and the receipt of any instructions by or on behalf of Mr. Austin in relation to all share dealings.

4. We enclose a copy of the trade confirmation for the purchase of 12,000 Esat shares in Mr. Austin's account and the letter of authorization subsequently received from Mr. Austin to transfer the shares to the account for which they were originally intended. The error arose from a misunderstanding in verbal instructions given by Mr. Denis O'Brien to DLJ to purchase 12,000 Esat shares for his Father-in-law, Charles Walshe. During the conversation both Mr. Austin's and Mr. Walshe's names were mentioned and in error DLJ bought the stock in the wrong account.

5. The 12,000 Esat shares were transferred out of Mr. Austin's account on Mr. Austin's authority on November 16, 1998. We requested and received a letter of authorization from Mr. Austin (copy enclosed) dated October 13, 1998 on the November 16, 1998 to transfer the shares to the party for whom they were originally intended.

Yours sincerely
Peter Muldowney"

It is understood that the Mr. Charles Walshe referred to in the letter and Mr. Noel Walshe are one and the same person. A copy of the letter referred to above can be found in the Appendix to this chapter.

12.12 The evidence of those witnesses who testified in relation to the final transaction will now be summarised.

Evidence of Mr. Noel Walshe: a second purchase

12.13 Having referred to his initial purchase of shares under the Friends and Family Scheme, with the proceeds of their sale being applied to reimburse his son-in-law Mr. O'Brien, and purchase a quantity of Smurfit shares, Mr. Walshe stated that those shares proved vastly less to his advantage, and diminished significantly in value over succeeding months. With a view to offsetting that loss, Mr. Walshe resolved to buy further Esat Telecom shares, perhaps in an amount similar to that acquired under the Friends and Family Scheme. He recalled indicating this wish to Mr. O'Brien, on an occasion when Mr. O'Brien and Mr. Walshe's daughter had paid a visit to Mr. Walshe's home. Since Mr. Walshe was reluctant to canvass the matter in the presence of his wife or daughter, this

request was conveyed to Mr. O'Brien only casually and briefly, as Mr. O'Brien was about to leave the house.

12.14 Mr. Walshe stated that he was uncertain when he actually learned full details of his new purchase of Esat Telecom shares, but felt that he would probably have received a copy statement of account in early December, 1998, from Mr. Muldowney in Donaldson Lufkin & Jenrette, showing his entitlement to 22,000 shares; of that quantity, he assumed that Mr. O'Brien had funded 12,000 shares, with the 10,000 balance being secured by way of margin account on his new purchase, and other shares. He believed that shortly after obtaining that statement he would have raised the position generally with Mr. O'Brien, who reassured him in terms of *"don't worry about it",* or words similar. No actual discussion of the amount or time of repayment took place with Mr. O'Brien, and when he sold the 6,500 shares in April, 1999, to enable repayment of $260,000.00 to Mr. O'Brien, this amount was notified to him by Mr. Muldowney, with whom Mr. Walshe said he had become quite friendly, in the course of telephone conversations in regard to his account. It was put to Mr. Walshe by Tribunal counsel that it seemed from account documentation that Mr. O'Brien had in fact paid $294,000.00, in September, 1998, for the shares that were subsequently transferred to Mr. Walshe, but Mr. Walshe merely responded that the amount he repaid was that notified to him by Mr. Muldowney.

12.15 Mr. Walshe further stated that he knew nothing in relation to any question of the 12,000 shares having in error gone into the wrong account, and that he did not at the time attach significance to his own statement of account describing the acquisition as a *"customer authorised transfer"*, rather than as an actual purchase, simply taking it to be the case that these shares had been purchased for him. What in fact was Mr. Austin's account number on the relevant statement was assumed by Mr. Walshe to be that of Mr. O'Brien, as the person funding the acquisition in the first instance. Mr. Walshe had not been acquainted with Mr. Austin.

12.16 Mr. Walshe said that there was certainly no question of his having given any person a Power of Attorney when he opened his account with Donaldson Lufkin & Jenrette; nor, when the content of Mr. Austin's letter, requesting transfer of the holding to the stated number of Mr. Walshe's account was brought to his attention, could he recall giving that number to Mr. O'Brien or anyone else, or authorising Mr. Muldowney to divulge that number, although he felt Mr. O'Brien could probably have ascertained this. In the ultimate, the entire of his Esat Telecom share transactions had realised a profit, and he had discharged the appropriate Capital Gains Tax.

Evidence of Mr. Aidan Phelan: only involved in second purchase

12.17 Mr. Phelan stated that he had had no involvement in the initial belated purchase of shares by Mr. O'Brien for Mr. Austin under the Friends and Family Scheme, and thought that this transaction had been effected by Mr. O'Brien himself in contact with Donaldson Lufkin & Jenrette by telephone. He did recall the other significant transaction on Mr. Austin's account with the brokers, in September, 1998, which was the purchase of 12,000 Esat Telecom shares for in excess of $295,000.00. The funds came from an account of Mr. O'Brien with Credit Suisse First Boston, and Mr. Phelan arranged for the acquisition on Mr. O'Brien's instructions. He would probably have got a phone call from the brokers asking for payment for the 12,000 shares in question, in respect of Mr. Austin's account. Mr. Phelan said that, when he did this, he understood he was purchasing shares for Mr. Austin on the instructions of Mr. O'Brien, would have checked with Mr. O'Brien to this effect, and was in no doubt of his instructions that the shares were to go directly to Mr. Austin's account. There was, he insisted, no question of any mistake on his part. Prior to the transaction, there were 6,600 Esat Telecom shares in Mr. Austin's account, and when the further purchase was added, Mr. Austin owned 18,600 shares. Asked if Mr. O'Brien would have known that the purchase money was being applied for shares held on Mr. Austin's account, Mr. Phelan responded in the affirmative, observing *"it's a fair sum of money"*.

12.18 Given that the final statement of Donaldson Lufkin & Jenrette, sent to Mr. Austin on 30th October, 1998, two days before his death, still showed 18,600 Esat Telecom shares in his account, Mr. Phelan believed that the 12,000 shares must have been transferred from Mr. Austin's account to Mr. Walshe's account after Mr. Austin's death; however, as one of Mr. Austin's executors and a friend of long-standing, Mr. Phelan said that neither he, nor to his knowledge any of his co-executors, gave any instructions to Donaldson Lufkin & Jenrette to sell or transfer the shares. It was only subsequently that, in dealings between Mr. Phelan, Mr. Beatty and the brokers, he became aware of any possible issue of a mistake having been made, and he understood Donaldson Lufkin & Jenrette would be providing a response in this regard. The address given for Mr. Austin on the relevant statements from the brokers was that of Bryan Phelan & Company, accountants in Clonskeagh, Dublin, of which Mr. Aidan Phelan was a partner.

12.19 Mr. Phelan gave further evidence on 17th October, 2001, regarding his dealings with Donaldson Lufkin & Jenrette in connection with Mr. Austin's shareholding. He stated that the transaction, whereby the brokers had been instructed to transfer the 12,000 shares funded by Mr. O'Brien from Mr. Austin's account to that of Mr. Walshe, had no particular impact on him, especially as his

role was that of a facilitator or conduit only. He said that he technically relayed instructions of Mr. Austin by forwarding the letter of 13th October, 1998, to Donaldson Lufkin & Jenrette only. In this regard, he had no recall of receiving the letter. At the time, his office was used as a mailing address for correspondence with the brokers, and he believed that the letter was passed on to them by his secretary. However, having made inquiries within his office, nobody remembered the letter, and no copy was available. He could not account for the delay between the date of the letter, 13th October, 1998, and its apparent receipt by the brokers in or around 16th November, 1998.

12.20 As to the reference to a conversation between Mr. Austin and Mr. Phelan in the letter of 13th October, 1998, from the former to the latter, Mr. Phelan said that he had no recall of any such conversation, but had some recall, in conversation with Mr. Austin shortly before his death, of discussing the possible transfer by him to his wife of some shares other than the 12,000 in question. He recalled no dealings in relation to this letter, and had no idea whether or not the brokers knew of Mr. Austin's death, not having acted as his agent with them. Regarding any such transfer to Mr. Austin's wife, Mr. Phelan agreed that it seemed that the brokers had not acted on foot of the instructions set forth in Mr. Austin's earlier letter of 8th October, 1998. Regarding the terms of the letter of 13th October, 1998, addressed to them directly, Mr. Phelan also agreed that it seemed that Mr. Austin was saying the shares in question were his, and this was what Mr. Phelan had believed in sending the funds for their purchase. Mr. Phelan said he would have seen no need for Mr. Austin to write to him in this regard, and felt that a phone call to the brokers should have sufficed. He confirmed that he had no recall of any question of an error being made at the time; nobody so informed him in this regard, and his only awareness of any possible error had arisen in the context of dealings with the Tribunal.

Evidence of Mr. Denis O'Brien: error in communications

12.21 Mr. O'Brien gave evidence relating to these share transactions on two occasions. The first was on 27th June, 2001, when only incomplete documentation was to hand, and the identity of his father-in-law Mr. Walshe was not referred to.

12.22 Having referred to his initially overlooked purchase of 6,600 Esat Telecom shares for Mr. Austin, as already noted, Mr. O'Brien proceeded to refer to the later transaction, in which he said he had sought to fund the purchase of 12,000 shares for Mr. Walshe, who was not identified on that occasion, but due to an error in communications, these shares were in fact purchased in the first instance for Mr. Austin.

12.23 He had in September, 1998, directed Mr. Aidan Phelan to advance funds to buy 12,000 shares for Mr. Walshe, but in error Mr. Phelan had arranged their purchase on 3rd September, 1998, for Mr. Austin, who like Mr. Walshe had an existing account with Donaldson Lufkin & Jenrette. Accordingly, on 18th September, 1998, Mr. Phelan arranged for the transfer of the purchase price to Mr. Austin's account, and the shares were subsequently transferred in correction of the error to Mr. Walshe's account. No financial benefit accrued to Mr. Austin, and it was a case of miscommunication between the agents acting on Mr. O'Brien's behalf, that is, between Mr. Aidan Phelan and Mr. Peter Muldowney. In fact, in his further evidence, Mr. O'Brien stated that he thought the error was on the part of the brokers, who subsequently corrected it when they became aware of it, but he was not 100% sure of this, since it could have been on the part of Mr. Phelan. It looked to Mr. O'Brien as if the brokers had got confused between their Irish clients. He remarked that brokers make plenty of errors when they put shares into the wrong account, or buy shares and put them into the wrong account. As to who was actually the author of the mistake, Mr. O'Brien said he really did not know, and it would be necessary to check with Donaldson Lufkin & Jenrette which, as was already observed, was not disposed to be of direct assistance to the Tribunal.

12.24 Mr. O'Brien said he did not know whether or not Mr. Austin, who he thought was in hospital in London at that time, knew of the matter, and felt if Mr. Austin had received a statement from the brokers relating to a new acquisition of shares, he would have telephoned to inquire what was happening. Indeed, Mr. O'Brien went on to say that Mr. Austin would have been very embarrassed, if told he had received shares from Mr. O'Brien in these circumstances, and Mr. O'Brien would not have told him.

12.25 Following that evidence, the further documentation sought by the Tribunal was made available, and on 22nd October, 2001, following the testimony of Mr. Walshe, Mr. O'Brien resumed his evidence. He said that he believed he had given verbal instructions to Mr. Peter Muldowney to purchase approximately $300,000.00 worth of Esat Telecom shares in September, 1998, and had wished to acquire these for the account of his father-in-law. Whilst unsure of the exact date of giving these instructions, he was sure it was on, or just before, 3rd September, 1998, when the shares were purchased. He referred to Mr. Muldowney's letter to Mr. Walter Beatty, which referred to there having been a mention of Mr. Austin's name, and the error having been made in consequence, but said that he could not recall the details of the conversation with Mr. Muldowney, or his having mentioned Mr. Austin. He confirmed that he gave Mr. Phelan instructions to pay for the shares, and believed that it was in mid to late September, 1998, when Mr. Phelan asked for approval to make the payment,

that he Mr. O'Brien discovered the error that had been made. He nevertheless approved the payment, because he wanted the shares for Mr. Walshe: having been purchased, they had to be paid for, whereupon it would then merely be a question of correcting the error. The payment was sought by the brokers on 18th September, 1998, and made four days later. Insofar as he had previously ascribed the error to Mr. Phelan, this was because he had discovered it in the course of a conversation with him. Other than Mr. Phelan, he had dealt only with Mr. Muldowney, and believed that he had telephoned him, and asked him to correct the error after his conversation with Mr. Phelan. He recalled no dealings with Mr. Austin, or any other person, which might have given rise to the letter from Mr. Austin of 13th October, 1998, addressed to Mr. Phelan requesting him to arrange for the transfer of those 12,000 shares to Mr. Noel Walshe.

12.26 Mr. O'Brien agreed with Mr. Walshe that the latter had indicated his interest in further Esat Telecom shares in conversation at Mr. Walshe's home, in August, 1998, and that it was in the course of the succeeding week that he had spoken to Mr. Muldowney. Whilst Mr. O'Brien could not recall the conversation, in relation to which Mr. Muldowney had written that both Mr. Austin and Mr. Walshe were mentioned, thereby giving rise to the error, he said that Mr. Muldowney did know Mr. Austin, having been introduced by Mr. O'Brien when his account was first opened, and it may have been that Mr. Muldowney mentioned Mr. Austin in some context in the conversation, thereby giving rise to the misunderstanding. He could only speculate that Mr. Muldowney may have inquired how Mr. Austin was; as to whether any similar mistake with a broker had taken place in his experience, Mr. O'Brien said that there may have been, but none had ever been brought to his attention. However, Mr. O'Brien said that his telephone call was for one purpose only, to purchase shares for Mr. Walshe. That request had given rise to the further holding of shares acquired by Mr. Walshe on his margin account.

12.27 Insofar as Mr. Phelan had expressed himself unaware of any error, Mr. O'Brien said that he did not know if he referred to the error in his conversation with him, and could not recall doing so, but he knew an error had occurred, and had told Mr. Phelan to pay the price, even though in respect of the wrong account. He took no further steps with Mr. Phelan, but rather rang Mr. Muldowney, and pointed out the mistake, whereupon the latter stated that he would correct the position, and have the shares transferred to the account of Mr. Walshe; it was Mr. Muldowney's mistake, up to him to rectify, and Mr. O'Brien said that he did not speak to Mr. Austin at all, regarding the matter. He did see Mr. Austin both on the night he died, and some days previously, but the very advanced stage of illness enabled no more than a few words to be exchanged, and it was no time to talk of shares.

12.28 Mr. O'Brien stated that he would not have been aware of Mr. Walshe's account number with Donaldson Lufkin & Jenrette. When put by Tribunal counsel that Mr. Muldowney, a close associate throughout the Esat Telecom flotation, and person of Irish origin, was unwilling to attend to give evidence, or even take part in a conference call with the Tribunal, Mr. O'Brien stated, as earlier had Mr. Walshe, that he had no objection whatsoever in this regard. He observed that, in the course of the flotation period, he would have spoken to Mr. Muldowney nearly every day.

12.29 As to the necessity for Mr. Austin's letter to Mr. Phelan, of 13th October, 1998, requesting transfer of the holding, Mr. O'Brien indicated that the brokers would have requested written confirmation to rectify the error. Not having been privy to dealings between Mr. Austin and Mr. Muldowney, he could not account for that letter having been addressed to Mr. Phelan, rather than as with the earlier direct instructions to the brokers to transfer shares to his wife, which was dated 8th October, 1998, only five days before.

12.30 Mr. O'Brien agreed that it appeared to be the case that this letter of 13th October, 1998, had been received by Donaldson Lufkin & Jenrette only on 16th November, 1998, 15 days after Mr. Austin's death. As to how, in those circumstances, it transpired that the brokers had transferred 12,000 shares, a portion of Mr. Austin's estate, Mr. O'Brien said that he had not been involved, would not have known of the transfer at the time, and did not recall discussing Mr. Austin's death with Mr. Muldowney.

12.31 Regarding Mr. O'Brien's initial evidence that the error may have been that of Mr. Phelan, he said that, after that evidence, Mr. Phelan had told him that he remembered there was an error in respect of the person for whom the shares had been purchased, but such error had not been his, but that of Donaldson Lufkin & Jenrette. That aspect of Mr. O'Brien's evidence was directly in conflict with the evidence given by Mr. Phelan himself.

12.32 Mr. O'Brien said that all that had transpired was a simple human error as to the beneficiary of the shares, that he had taken steps to rectify upon learning of it; there was never any intention on his part that Mr. Austin would acquire the shares in any context, still less any reversal of any such acquisition, in the context of Mr. Austin's impending demise. Asked if all telephone conversations with Donaldson Lufkin & Jenrette were at that time recorded, Mr. O'Brien was unable to be of specific assistance; he felt that in some circumstances this would be the case, but stated that he had never been informed by a broker that a conversation with him was being taped.

Evidence of Ms. Helen Malone

12.33 Apart from the foregoing evidence, Ms. Helen Malone also testified on 16th October, 2001, that she had assisted Mr. Austin, at the request of Mr. O'Brien, in opening an account with Donaldson Lufkin & Jenrette, for the purpose of holding his initial acquisition of shares in Esat Telecom, perhaps in January or February of 1998. She recalled obtaining account-opening forms, and thought that she gave these to Mr. Phelan, to have signed by Mr. Austin; upon this being done, she felt that she probably sent them to Donaldson Lufkin & Jenrette. As her office address was used as a correspondence address on the account, she believed she would have received account statements, put them in an envelope, and given them to Mr. Phelan, to bring to Mr. Austin when he next saw him. She did not recall issuing or receiving instructions in relation to shares from Mr. Austin, but said that she or her secretary could well have passed on such instructions. However, she could not remember passing on any instructions on behalf of Mr. Austin to Donaldson Lufkin & Jenrette, and specifically said that she did not have dealings in relation to the transfer of the 12,000 Esat Telecom shares out of Mr. Austin's account, some fifteen days after his death.

CONCLUSIONS

12.34 The transaction relating to the 12,000 Esat Telecom shares shows both certain individual perplexing features and, in the belated alteration or reversal of an ostensibly straightforward dealing, and in the further involvement of Mr. Phelan and Mr. Austin in arrangements commencing with funds moving from Mr. O'Brien, potential affinities with earlier transactions investigated by the Tribunal. In these circumstances, as was set out in the relevant Opening Statements, the transaction was examined as part of the exercise, whereby the Tribunal scrutinized connections between a number of transactions, and a number of persons common to those transactions, all of whom had associations with Mr. Michael Lowry.

12.35 Following a conversation between Mr. O'Brien and Mr. Muldowney, the shares were purchased in the name of Mr. Austin, and in arranging and seeking approval for payment on this basis, Mr. Phelan was entirely unaware of any error. The basis of a subsequently rectified error by him as to the beneficiary is of course a possibility, but certain inherent improbabilities are in the circumstances apparent.

12.36 Since it is apparent from the evidence that, when Mr. Phelan sought approval from Mr. O'Brien to make payment to benefit Mr. Austin, he was not informed of any error, it seems extraordinary, given the close association between

Mr. O'Brien and Mr. Phelan at the time, and the fact that each of them was a personal friend to Mr. Austin, that Mr. O'Brien was silent as to error and, when a revised instruction then could easily have rectified the position, permitted Mr. Phelan to pay the purchase price for the wrong party.

12.37 Further, although no evidence was heard on the matter, it appears implicit from Mr. Muldowney's letter to Mr. Beatty that Donaldson Lufkin & Jenrette were unaware that Mr. Austin had in fact died over two weeks prior to the transfer of ownership of the shares executed by them. Since, as with Mr. Walshe, Mr. Muldowney had become acquainted with Mr. Austin through Mr. O'Brien's introduction, to the extent that Mr. Muldowney may have made inquiry as to Mr. Austin's health when Mr. O'Brien telephoned initial instructions as to the share purchase, and in view of the incidence of contact had between Mr. O'Brien and Mr. Muldowney at the time, it seems surprising that Mr. O'Brien, having attended Mr. Austin on the night he died, did not impart the news of his friend's death.

12.38 Whilst allowance must be made for the further documentation that came to hand between the two occasions on which Mr. O'Brien gave evidence, it is nonetheless curious that Mr. O'Brien initially testified that he was unaware whether or not Mr. Austin, who himself had made no payment for the shares, knew of the transaction, would have been embarrassed if informed, and was not in fact so informed by Mr. O'Brien, when it was subsequently to transpire that the basis of the transfer of ownership required by the brokers was Mr. Austin's request in that behalf, shortly before his death.

12.39 Obviously, if Donaldson Lufkin & Jenrette were aware of Mr. Austin's death, it would have been entirely inappropriate for them to have acted in relation to the transfer on foot of a letter subsequently received from Mr. Austin.

12.40 Assuming no such knowledge, what has been asserted on behalf of Donaldson Lufkin & Jenrette by Mr. Muldowney nonetheless presents difficulties to the Tribunal. The basis of error, speculated upon by Mr. O'Brien, and asserted only in correspondence by Mr. Muldowney, was that, what may have been a mere courteous inquiry by Mr. Muldowney of Mr. O'Brien as to Mr. Austin's health, in the course of a conversation instructing the purchase of shares for Mr. Walshe, gave rise to the shares being acquired for Mr. Austin, rather than Mr. Walshe. Whilst possible, it is nonetheless not easy to see how Mr. Muldowney came to superimpose the identity of the person he inquired of socially, over that of the person for whom he was asked to buy shares. Whilst Mr. O'Brien initially remarked that brokers often make such errors, he was in the event unable to point to any similar situation ever having been brought to his attention. That Mr. Muldowney, not least as a person of Irish origin, has been unprepared to attend

to testify, or even to assist by participating in a conference call with the Tribunal, and that no assistance has been forthcoming as regards any possible record of the relevant telephone conversation or conversations, has significantly restricted the investigation of this matter, diminished such weight as may in any event be attached to the basis of error, and must be viewed as a reprehensible omission on the part of a leading stock-broking and banking entity.

12.41 The clear evidence of Mr. Phelan as to his instructions and steps taken to check them, allied to the infirmities noted as to the basis of mistake advanced, justifies a view that the likelihood is that the shares were intended to be purchased for Mr. Austin at the outset, and that Mr. Muldowney was instructed accordingly. Nonetheless, it would clearly be unsubstantiated and unwarranted to find that the holding, or its value, was connected in any way with Mr. Michael Lowry, either in circumstances within the Terms of Reference or otherwise. Whilst entitled to have regard to overall assessments of the credibility of witnesses, the Tribunal must ultimately base findings relating to particular transactions upon evidence that is appropriate and sufficient. There is neither any evidence implicating Mr. Lowry, nor any proper basis for impugning the general tenor of Mr. Walshe's evidence, which rightly was not put in issue when he testified. Nor, given the point in time of the events, and the advanced stage of Mr. Austin's terminal illness, would a course of deploying him as a conduit for some clandestine disposal in this regard seem other than fraught with high risk and difficulty. In all the circumstances, whilst the matters noted justify clear misgivings as to the basis of events contended for by Mr. O'Brien, the Tribunal makes no finding as to any impropriety in the substantive transaction falling within the Terms of Reference.

THE MARLBOROUGH HOUSE ARBITRATION

INTRODUCTION

Terms of Reference

13.01 Whilst the contents of this Volume of the Tribunal's Report are largely directed to the Tribunal's money trail inquiries made pursuant to paragraphs (e) and (f) of its Terms of Reference, there is one aspect of its inquiries into acts and decisions which fell within the ambit of paragraph (g) of its Terms of Reference, which was unrelated to the balance of the Tribunal's inquiries under that paragraph, and which it is appropriate to report on at this point. Those inquiries related to a matter which ought to have been brought to the attention of the McCracken Tribunal, as it related to dealings between Mr. Ben Dunne and Mr. Michael Lowry, and had it been, the inquiries of the McCracken Tribunal might well have taken a different course.

Doubling of rent

13.02 In brief, what this evidence establishes is that Mr. Michael Lowry sought to influence the outcome of an arbitration being conducted in 1995 in relation to the reviewed rent payable by the tenant of a substantial building in Dublin, to a company owned and controlled by Mr. Ben Dunne, which had recently acquired the landlord's interest. What Mr. Lowry sought to secure, through deploying his influence was a doubling of the rent then payable, which would have resulted in a corresponding doubling of the investment value of Mr. Dunne's interest in the property. What was reprehensible about his actions was that the tenant of the building was Telecom Éireann, of which, as Minister for Communications, Mr. Lowry was the ultimate shareholder. Had Mr. Lowry secured this benefit for Mr. Dunne, he would have done so at the expense of Telecom Éireann, the shares of which he held on behalf of the State, that is, on behalf of the people of Ireland.

Emergence of information

13.03 In 1995, Mr. Mark FitzGerald was a principal member of the auctioneering firm of Sherry FitzGerald, that he had been instrumental in founding some years previously. He was also, having both on his own and his wife's family side a long tradition of involvement in Fine Gael, actively involved in the affairs of that party. He had been since 1991, a trustee of the party.

13.04 Mr. FitzGerald's involvement in the matters in relation to which he gave evidence emerged somewhat belatedly, and in the course of preliminary investigations on the part of the Tribunal into political contributions and

donations made to Fine Gael in the years 1995, and 1996. Documents referable to a Fine Gael golf classic held in October, 1995, noted that sponsorship relevant to other aspects of the Tribunal's inquiries had been arranged *"via Mark Fitzgerald"*. In response to the Tribunal's initial inquiries of him, Mr. FitzGerald furnished the Tribunal with a statement in which he referred to a number of meetings with Mr. Lowry in his Department. Following further inquiries made arising from that, and other aspects of his first statement, Mr. FitzGerald provided the Tribunal with two further statements in which he recounted dealings had with Mr. Lowry as Minister. These dealings included certain meetings and conversations between them in regard to the rent arbitration involving a large commercial premises in Marlborough Street, Dublin, in relation to which the landlord's interest had recently been acquired by a company owned and controlled by Mr. Ben Dunne.

13.05 Although the matters conveyed by Mr. FitzGerald in relation to the rent arbitration were unconnected with the GSM competition, their content was promptly conveyed under a seal of confidence to the solicitors for both Mr. Lowry and Mr. Dunne, with a view to eliciting responses. However, within less than a week, the entry of these matters into the public domain was accelerated by the publication in The Sunday Independent issue of 1st December, 2002, of a substantial article, in which the majority of the matters related by Mr. FitzGerald were *"leaked"*. Accordingly, it became necessary to incorporate these matters, together with such responses as could be made available within the time, on 6th December, 2002, in the course of the Tribunal's lengthy Opening Statement, made primarily in regard to the GSM competition.

13.06 In July, 2003, Mr. FitzGerald gave evidence in relation to the matters comprised in his various statements, and additional evidence was heard from work colleagues of Mr. FitzGerald at the time, from persons connected to Fine Gael, and from persons likely to be affected by Mr. FitzGerald's testimony. In setting forth the principal elements of the evidence heard, reference will be confined to those relating to the rent arbitration, and other relevant dealings had between Mr. FitzGerald and Mr. Lowry, as described in the former's second and third statements.

THE RENT ARBITRATION

Evidence of Mr. Mark FitzGerald

Background

13.07 Mr. FitzGerald initially recalled some early encounters of little moment with Mr. Lowry, who was known to him as a fellow Fine Gael trustee, in 1993, and 1994. These comprised a request by Mr. Lowry to have an apartment in Kimmage

valued, of which nothing came, and a brief conversation with Mr. Lowry and fellow Fine Gael T.D., Mr. Phil Hogan, in a golf club following a Fine Gael outing.

13.08 After Mr. Lowry became a Minister in the new Government at the end of 1994, the first meeting with him that Mr. FitzGerald recalled was a short conversation prior to a meeting of Fine Gael trustees in February, 1995. Mr. Lowry mentioned a vacancy for the chairmanship of ESB, and inquired if Mr. FitzGerald knew of anyone in the business world who would both be a good appointment, and acceptable to Mr. Dick Spring and the Labour Party. Mr. FitzGerald mentioned two individuals, one being Mr. William McCann, who was already a member of the ESB Board. It later transpired that Mr. McCann was appointed as Chairman.

Mr. Michael Lowry's first approach

13.09 In late March or early April, 1995, Mr. Lowry telephoned Mr. FitzGerald on his mobile phone, and asked him was there *"a man called Gill"* working in Sherry FitzGerald, who was involved with a Dublin building off O'Connell Street, of which Telecom Éireann was the tenant. This struck Mr. FitzGerald as unusual, and he was unaware of having given Mr. Lowry his mobile number, but as someone was with him at the time, he did not ask the reason for the request. Mr. FitzGerald responded by confirming that Mr. Gordon Gill was a colleague in Sherry FitzGerald, and that he, Mr. FitzGerald, knew nothing about the particular matter but that he would make inquiries. Mr. Lowry concluded the call by stating that he would be in touch again. Mr. FitzGerald telephoned Mr. Gill at home in relation to the query, and Mr. Gill informed him that the property in question was Marlborough House, also known as Telephone House, in Marlborough Street, and that he had just been appointed as arbitrator to review the rent. In the circumstances Mr. FitzGerald felt that it was inappropriate to discuss the position further with his colleague, whilst the rent process was ongoing. The premises in question was held under a lease dating from 1978, of which Telecom Éireann was the tenant and of which Mr. Ben Dunne was landlord, having acquired the landlord's interest that same year through a company which Mr. Dunne and members of his immediate family owned and controlled.

A second approach

13.10 A very short time after, Mr. Lowry again telephoned Mr. FitzGerald, on this occasion in his office, and requested that they meet in a premises close to Mr. Lowry's office in Kildare Street, that had previously been Powers Hotel. Within an hour or so, they met over coffee and Mr. Lowry told Mr. FitzGerald that Marlborough House had recently been purchased by Mr. Ben Dunne, and that Mr. Dunne had been in touch with him, and wanted the rent increased from £5.00 to

£10.00 per sq. foot. He referred to Mr. Gill being involved, and asked could Mr. FitzGerald organise it. Mr. FitzGerald told Mr. Lowry emphatically that he could not, and would not, and referred to Mr. Gill's independent role as an arbitrator. Mr. Lowry then said:

> *"what are 'we' going to do, as Ben Dunne has contributed £170,000.00 to Fine Gael?"*

Mr. FitzGerald replied that this was the first he had heard of that, and that Mr. Lowry should not pursue the matter further. Mr. FitzGerald understood Mr. Lowry's reference to *"we"* as meaning Fine Gael.

Mr. Michael Lowry persists

13.11 Within a further short period of days, Mr. Lowry telephoned Mr. FitzGerald again at his office, and said that he wanted to buy a house, but wished to keep a low profile. He referred to a mews house that had been advertised for sale by Sherry FitzGerald, in the Palmerston Road area of Rathmines, and inquired could he view it the following day. Mr. FitzGerald said that he would arrange this, and quickly reverted to him with a proposed time, and the name of his colleague, who would show Mr. Lowry the property. However, Mr. Lowry stated that he only wished Mr. FitzGerald to show him the property, and did not want other members of the firm to know his business. Mr. FitzGerald said that was not the way the firm operated, but he agreed to attend at the viewing with his female colleague who was actually handling the transaction. Either then, or in a short subsequent telephone call, Mr. Lowry requested that Mr. FitzGerald would pick him up in advance of the viewing, at the Orwell Lodge Hotel in Rathgar. This was done, and they proceeded to the property. Following a brief and perfunctory conversation on an unrelated matter, Mr. FitzGerald's colleague arrived and the inspection took place, but Mr. Lowry never expressed further interest in the property. At Mr. Lowry's request, Mr. FitzGerald drove him back to his Department, but en route he again mentioned the matter of Marlborough House: Mr. FitzGerald stated that he was exceptionally emphatic in his response, and said that he could not, and would not, interfere with Mr. Gill in his role as arbitrator. Having checked with his colleague by means of her appointment diary, Mr. FitzGerald believed that the date in question was 6th April, 1995. It seemed to Mr. FitzGerald that this amounted to three contacts in relation to Marlborough House in the course of one week, which Mr. FitzGerald viewed as rather intensive.

No intervention by Mr. Mark FitzGerald in arbitration

13.12 Mr. FitzGerald also referred to what had occurred later on the same day as he had met Mr. Lowry in the Powers Hotel premises, when he discussed

Mr. Lowry's approach with his colleague, Mr. Killian O'Higgins, at the firm's commercial office in 11 Hume Street. The purpose of this conversation was to seek Mr. O'Higgins' agreement with his view that it was inappropriate to make Mr. Gill aware of the approach whilst he was acting as arbitrator, feeling that he would inevitably have had to resign, if so informed. At the end of the discussion, Mr. FitzGerald decided, with Mr. O'Higgins' agreement, that Mr. Gill should not be informed until the arbitration had been finalised. In the course of the conversation, Mr. O'Higgins had indicated his awareness of the premises in question, and his view that a rent in the vicinity of £5.00/6.00 per sq. foot was likely to be assessed. Mr. FitzGerald recalled being informed by office colleagues, approximately one month after his dealings with Mr. Lowry, that Mr. Gill had fixed the rent for the building at a rate of approximately £6.00 per sq. foot. Apart from speaking to Mr. Gill after the arbitration had been concluded, Mr. FitzGerald did not inform any other member of the firm. However, he did discuss the position with a number of people to whom he was closely connected personally.

13.13 Tribunal counsel put to Mr. FitzGerald the content of a statement that had then recently been made available on behalf of Mr. Lowry, which was essentially to the effect that, whilst contact had been made by Mr. Lowry with Mr. FitzGerald in regard to the arbitration, it had been solely with a view to expediting the conclusion of the process, rather than in any way seeking to influence the level of rent, a basis also advanced by Mr. Ben Dunne. Mr. FitzGerald's response was to the effect that this did not accord with his recollection of events, that a request to hurry the process had not been specifically raised and that, in any event, had an approach been made solely on that basis, he would not have brought it to Mr. Gill's attention. Mr. FitzGerald stated that his impression was one of being asked by Mr. Lowry to influence the rent.

Other dealings between Mr. Mark FitzGerald and Mr. Michael Lowry

13.14 The concluding portion of Mr. FitzGerald's evidence in regard to Mr. Lowry related to the remainder of his dealings with him whilst Minister. About late April, or early May, 1995, Mr. FitzGerald recalled being telephoned by Mr. Lowry again, wishing to talk to him in relation to CIE, an agency which, like ESB and Telecom Éireann, fell within the ambit of Mr. Lowry's Ministerial remit. Mr. Lowry stated that his Department was keen to have its Assistant Secretary, Mr. Michael McDonnell, since deceased, included on a short list for the position of chief executive of CIE. Mr. FitzGerald had been aware that CIE was experiencing problems at board and senior executive level, and responded to Mr. Lowry that, although he had only met Mr. McDonnell once, both his father and brother had, from previous dealings with Mr. McDonnell, come to view him as a public servant of high calibre. Mr. Lowry then expressed a similar view, and stated that he had contacted Mr. FitzGerald because the appointment of a chief executive was soon

to be made from a short list compiled by Messrs. PricewaterhouseCoopers, and that this list was being handled by Mr. Tom O'Higgins, who Mr. Lowry believed was known to Mr. FitzGerald, and related to his wife. Mr. Lowry accordingly requested Mr. FitzGerald to have a word with Mr. O'Higgins, in relation to the qualities of Mr. McDonnell, and to say that the Department was keen to see him on the relevant short list. Mr. FitzGerald stated that he duly did this, and that Mr. O'Higgins did not respond, save to confirm the general good impression of Mr. McDonnell, but that Mr. McDonnell was duly short-listed, and was subsequently selected as CIE Chief Executive.

13.15 The only remaining dealings with Mr. Lowry alluded to by Mr. FitzGerald related to internal Fine Gael arrangements: in January, or February, of 1996, Mr. FitzGerald came to understand that Mr. Lowry intended to hold a fundraising dinner in Dublin for his constituency of North Tipperary; this had occasioned a degree of angst amongst Dublin T.D.s in the party, and led to Mr. FitzGerald sitting in on meetings of the organising committee with a view to resolution: a course that Mr. FitzGerald implemented by proposing that a significant percentage of the fund raised should be applied for the benefit of some less affluent Dublin constituency associations. Mr. FitzGerald stated that the meetings held in relation to this function were the only ones he had attended in Mr. Lowry's Department.

Late disclosure by Mr. Mark FitzGerald

13.16 It was put to Mr. FitzGerald by Tribunal counsel that he might have considered making his evidence available at an earlier stage of this Tribunal's proceedings, or indeed to the McCracken Tribunal. In reply, Mr. FitzGerald stated that this thought had crossed his mind, that he had considered the position, and sought legal advice on it, but had been told that he was not so required; once specific questions had been raised with him by this Tribunal, he had sought to answer them as fully and accurately as possible.

Alarm bells

13.17 In questions by counsel for Mr. Lowry, the matter of late disclosure of evidence was again alluded to, in response to which Mr. FitzGerald responded similarly, and stated that he had not particularly wanted to volunteer for an unpleasant task. It was suggested to Mr. FitzGerald that, over a number of years as fellow trustees of Fine Gael, there must have been more contact between the two, rather than Mr. Lowry's call to Mr. FitzGerald's mobile in March/April, 1995 having been the first such contact. Mr. FitzGerald replied that that was not the case, and that he had not been particularly involved in fundraising matters. He similarly took issue with the suggestion that he and Mr. Lowry had often gone to

the bank used by Fine Gael together, stating that Mr. Lowry was a full-time politician, whilst he was a voluntary party worker. It was further put that Mr. Lowry would surely have known that Mr. FitzGerald would not interfere with a process of arbitration, in response to which Mr. FitzGerald stated that he had at first thought that Mr. Lowry's concern with the matter might have been as a public servant, and that it was not until the meeting at the former Powers Hotel premises, when he had explained Mr. Gill's role, that the full picture had emerged and, as he had stated earlier, alarm bells had rung for him. It was again suggested to Mr. FitzGerald that Mr. Lowry had wanted only to speed up the process: Mr. FitzGerald replied that he stood by his evidence, that when Mr. Lowry had seen Mr. FitzGerald's disinclination to intervene, he went on to make the remark about the £170,000.00 contribution which had been made by Mr. Ben Dunne, and had again raised the matter in the course of the visit to the Palmerston Road premises, after he had had an opportunity to reflect on the position.

13.18 Mr. FitzGerald was, in conclusion, asked, albeit primarily in relation to differences emerging in relation to a separate aspect of his evidence, whether he had had any falling-out with Mr. Lowry other than had emerged in his evidence, and he responded that that was absolutely not the case.

Evidence of Mr. Gordon Gill

13.19 Evidence was then given by Mr. Gordon Gill, a senior member of Sherry FitzGerald, specialising in residential property. He confirmed that he had been nominated on 31st March, 1995, as arbitrator, to determine the revised rent to be paid by Telecom Éireann as tenants of Marlborough House under a lease dated 31st December, 1978. His appointment as arbitrator had followed upon another senior valuer having stood down in that capacity. The landlord's interest in the premises had recently been acquired by Bark Island Limited, a company controlled by Mr. Ben Dunne and other family members.

13.20 Mr. Gill proceeded to state that his appointment as arbitrator had been confirmed on 7th April, 1995, and that he had convened a preliminary meeting with the valuers representing both sides, on 12th April, 1995, at which he had issued directions, and received documents from both sides in relation to properties thought to be of importance as comparators.

13.21 On 15th May, 1995, Mr. Gill held the final arbitration hearing in the matter, hearing the evidence and submissions that were presented by both sides. The landlord had sought a rent fixed at a rate of £9.25 per sq. foot, which, allowing for the area of the building with basement stores, car-parking and a percentage loading, to reflect there being a seven year rental period rather than

five, gave rise to an aggregate sum of £892,989.00, approximated downwards to an annual rent of £890,000.00. On the other side, the tenant had advanced figures giving rise to an aggregate sum of £483,793.00, which was approximated upwards to £484,000.00.

13.22 On 26th May, 1995, having received his fees in accordance with standard arbitration procedures, Mr. Gill issued his award, fixing an annual rent of £640,000.00 for the seven year period in question. He stated that, as a rough rule of thumb, a building's capital value as of that time, could be calculated as being approximately the annual rental multiplied by fifteen. Soon after he had made his award, Mr. Gill recalled being contacted by Mr. FitzGerald, who told him he had been approached by Mr. Lowry, in a context of seeking to influence the level of reviewed rent. With regard to Mr. FitzGerald's evidence of an initial phone call to inquire whether Mr. Gill had any involvement with the premises, Mr. Gill stated that he had no recollection of this, but it would not have been unusual. Other than this, Mr. Gill had only conversed with his colleague, Mr. Killian O'Higgins in relation to the matter.

13.23 The whole process of the arbitration from Mr. Gill's nomination as replacement arbitrator had occupied a little under two months, which Mr. Gill viewed as being *"pretty good"*. In approximate terms, the figures advanced by the competing valuers reflected a rate of somewhat under £10.00 per sq foot being sought by the landlord, as opposed to somewhat over £5.00 per sq foot being offered by the tenant, giving rise to a differential of £406,000.00 when aggregated. Mr. Gill's figure had been a little over £6.00 per sq foot. He was somewhat shocked at what Mr. FitzGerald had relayed to him, and thought that both Mr. FitzGerald and Mr. Killian O'Higgins had displayed similar sentiments.

13.24 In response to questions from counsel for Mr. Lowry, Mr. Gill said that the period of approximately two months occupied by the arbitration process was somewhat quicker than usual. He stated that both sides would have wanted the arbitration concluded with expedition, and that what took place was in accordance with usual procedures. As to requests to expedite an arbitration being made, he said that it does happen that there will be such requests, but that it was preferable that any such requests should be in writing, and made by one of the valuers involved: for such a request to be made by a principal, or another intermediary, would be unusual. As to his recollection of his conversation with Mr. FitzGerald after the arbitration had concluded, Mr. Gill confirmed that it was his evidence that Mr. FitzGerald had said to him that Mr. Lowry had sought to influence the decision.

Evidence of Mr. Killian O'Higgins

13.25 Brief testimony was then heard from a further member of Sherry FitzGerald who dealt at the time in commercial property, Mr. Killian O'Higgins. Mr. O'Higgins stated that he was unrelated to Mr. Tom O'Higgins, or to Mr. FitzGerald's wife. In his speciality of commercial property, he had been engaged with Sherry FitzGerald between 1983, and 2001, since when he had been with an associated company in London. He recalled Mr. FitzGerald informing him in early 1995, that he had been approached by the then Government Minister, Mr. Michael Lowry, seeking to influence the outcome of a rent revision arbitration, in which their office colleague Mr. Gill was the arbitrator. Mr. FitzGerald had identified the property, the interest of Mr. Ben Dunne as landlord, and had said that Mr. Lowry had told him that Mr. Dunne wanted a new rent of £10.00 per square foot. Being involved in that type of property, and generally aware of the premises in question, Mr. O'Higgins remembered commenting to Mr. FitzGerald that £10.00 would be at least double the existing rent, and expressing surprise at such an approach by Mr. Lowry. Having discussed the position, they decided to say nothing to Mr. Gill, or anyone else in Sherry FitzGerald, whilst he was acting as arbitrator.

13.26 In June, 1995, after the award had been made, Mr. O'Higgins recalled Mr. Gill telling him that Mr. FitzGerald had then relayed to him Mr. Lowry's approach, and the decision taken in regard to it. Mr. O'Higgins and Mr. Gill briefly discussed the inappropriateness of such an approach.

Evidence of Mr. Ben Dunne

Purchase of property

13.27 Mr. Ben Dunne's evidence commenced with his formal confirmation of the statement that he had then recently made available to the Tribunal. This was to the effect that Bark Island Limited, a company of which he was a director, had acquired Marlborough House in 1995, subject to a 1978 lease. A rent review had been due on 23rd July, 1994, and a valuer was retained to deal with this issue. As it had not proved possible to agree a revised rent, the arbitration clause in the lease was invoked. Mr. H. Whittaker was appointed as arbitrator in February, 1995, but he stood down, whereupon Mr. Gill took his place. By 31st March, 1995, matters had not gone beyond the appointment of that arbitrator, and Mr. Dunne was anxious for more rapid progress. With this in mind, once he heard that Mr. Gill of Sherry FitzGerald was involved, he telephoned Mr. Lowry, and asked did he know Mr. Mark FitzGerald. Upon Mr. Lowry confirming that he did, Mr. Dunne then asked him to speak to Mr. FitzGerald, and ask if the rent review could be progressed quickly. Mr. Dunne said that his reasoning in this regard was that

he did not know anybody in Sherry FitzGerald, and Mr. Lowry came to mind, since he and Mr. FitzGerald were both involved with Fine Gael.

Never sought a political favour from Mr. Michael Lowry

13.28 Mr. Dunne said that he had never mentioned to Mr. Lowry that he wanted the rent increased from £5.00 per square foot to £10.00 per square foot, but could not be sure that he may not have said to him over the telephone that there was a sum of approximately £50,000.00 between the respective negotiating positions of the parties. Some days afterwards, Mr. Lowry telephoned him, and informed him that Mr. FitzGerald was not in a position to do anything in regard to the request. Mr. Dunne did not pursue the matter further. He stated that he had never sought any political favour from Mr. Lowry. Such requests as he had made of Mr. Lowry in the past were confined to seeking tickets for All-Ireland Finals, and even in that regard, the requests had not been confined to Mr. Lowry.

13.29 Questioned further in evidence by Tribunal counsel, Mr. Dunne stated that his company, Bark Island Limited, was one in which he and his family had interests, and had no connections whatever with Dunnes Stores Limited. Regarding the purchase of Marlborough House, his valuers had brought the building to his attention as a potentially good investment, and he had expended £5.4 million in purchasing the property. Discussions in relation to the revised rent had started about the time that he had purchased the property, and Mr. Gill had been appointed, in substitution for Mr. Whittaker, shortly after he had closed the sale. He was unaware why Mr. Whittaker had stood down. Despite the fact that his valuers were very experienced, Mr. Dunne had not asked them to contact Mr. Gill to urge that the process be conducted speedily; over the years, Mr. Dunne had had experience of rent reviews, and tended to ring someone in the relevant valuers, not the arbitrator. That was the way he operated. He accepted that it would have been in order to have had his own valuers contact the arbitrator or his firm.

Looked terrible

13.30 As to why the approach had been made to Mr. Lowry, Mr. Dunne responded that this was just spontaneous, and that was his style. He acknowledged that for someone reading his evidence, it *"looks terrible"*, but that was the way he did business. He accepted that the arbitration was concluded speedily. As to his possible mention of £50,000.00 differential between the parties to Mr. Lowry, Mr. Dunne felt that there had been mention of figures, and that that was the only context in which this would have been mentioned.

13.31 Reminded by Tribunal counsel that, by virtue of his Ministerial Office, Mr. Lowry was at the time of the approach effectively the tenant of the premises, Mr. Dunne stated that he certainly should have been aware of this, but at the time it had not been at the forefront of his mind. Put that, in the context of the landlord's asking figures, as described by Mr. Gill, it might seem likely that Mr. Dunne mentioned £10.00 per sq. ft. to Mr. Lowry, Mr. Dunne responded that it appeared that way, and he could not disagree, but to his best recall on oath, he did not mention figures on that basis. He said that he did understand the difference between his best recollection and being absolutely positive. He acknowledged that, if he had approached Mr. Lowry on that basis, it was tantamount to seeking a favour.

13.32 It was pointed out to Mr. Dunne that he had previously given money to both Fine Gael and to Mr. Lowry, to which Mr. Dunne replied that he knew what was being said, and could not disagree. He had not at the time thought of all the points that had been made to him in the course of his evidence, but he could not now walk away from them.

Spontaneous approach

13.33 Mr. Dunne was further asked whether or not he wished to modify the evidence that he had given to the McCracken Tribunal to the effect that he had never sought any political favour from Mr. Lowry. He reiterated that he had never sought any political favour. Put that he had contacted Mr. Lowry with a view to approaching a fellow Fine Gael associate in Mr. FitzGerald, having known Mr. Lowry in a context of giving money both to him and to Fine Gael, Mr. Dunne said that this was so, but that he had first known Mr. Lowry through their business association. Mr. Dunne acknowledged that, if the way he approached Mr. Lowry was interpreted as seeking a favour, he could not deny this, but he again stated that his approach to Mr. Lowry had been a spontaneous one, rather than one based on all the circumstances that had been raised with him.

13.34 In response to counsel for Mr. Lowry, Mr. Dunne again stressed the spontaneous nature of his approach to Mr. Lowry, stating that he had contacted him in a personal context, rather than as a Minister, and that his intention was to expedite the process, rather than interfere with it. Once Mr. Lowry indicated to him that Mr. FitzGerald was unable to accede to the request, he had not contacted Mr. Lowry further in regard to the matter. He had not adverted to the aspect of Mr. Lowry being in effect the tenant of the premises; as he had seen it at the time, the rent was frozen and, having paid more than £5 million for the property, he wanted the position sorted out as soon as possible.

Not a political favour: based on a commercial relationship

13.35 Responding to his own counsel, Mr. Dunne said that any such favour as he had requested had not been a political one, having been based on his prior commercial relationship with Mr. Lowry through Streamline Enterprises, otherwise Garuda. In this regard, he confirmed the evidence that he had given to the McCracken Tribunal. He agreed with his counsel that the property had been introduced by his valuers to him as a recommended investment, and that they had advised on the price in the context of the rent thought likely to be obtained on review. He similarly so agreed that the issue had been largely reduced to parameters of £650,000.00 and £600,000.00 well before his approach to Mr. Lowry, and that the bottom line which he had given to his experts was quite close to Mr. Gill's eventual determination. Similarly, Telecom Eireann had by that stage its own board of directors, so that, even if Mr. Lowry was the responsible Minister, he was not involved in the company on a day-to-day basis. Mr. Dunne confirmed that he had been told in February, 1995, of Mr. Whitaker's appointment, but had done nothing until he heard that Mr. Gill had replaced him, following which Mr. Gill worked very fast. It was acknowledged by Mr. Dunne that, if he had mentioned the level of rent to Mr. Lowry, the matter was serious, but that did not accord with his recall.

Evidence of Mr. Michael Lowry

Formal memorandum of evidence rejects any suggestion of influence

13.36 The evidence of Mr. Michael Lowry commenced with his confirmation of the content of a statement which he had provided to the Tribunal. After indicating some relatively minor differences in his recollection of initial dealings had with Mr. FitzGerald, he turned to the matter of the Marlborough House rent arbitration. His recollection was to the effect that Mr. Dunne did inform him as to the level of rent he was seeking, and that this was being arbitrated; however Mr. Dunne's request was that Mr. Lowry should ask Mr. FitzGerald if the matter could be speeded up, since a staff colleague was acting as arbitrator. Mr. Lowry recalled that he followed up on the matter, and had a fairly brief general discussion with Mr. FitzGerald, in the course of which he relayed the information he had obtained from Mr. Dunne. Mr. Lowry stated that he would have had a general understanding of the process, but for Mr. FitzGerald to suggest that he was in any way attempting to influence the level of rent review was neither fair nor correct, and Mr. Lowry rejected that suggestion absolutely. As to what Mr. FitzGerald had stated in regard to Mr. Dunne's contribution to Fine Gael, it was Mr. Lowry's view that Mr. FitzGerald would have been well aware that Mr. Dunne was a contributor to Fine Gael, and the statement which Mr. FitzGerald had attributed to Mr. Lowry in this regard was not made. Regarding CIE and the late

Mr. Michael McDonnell, Mr. Lowry stated that he had some recollection of a conversation with Mr. FitzGerald about this. Whilst he could not recall the content of that conversation precisely, he felt that both of them had agreed that Mr. McDonnell was a capable and efficient public servant who merited short listing for the position of chief executive. Mr. Lowry felt that Mr. McDonnell had expressed interest in the position, and had been put on the short list on his own merits.

13.37 Mr. Lowry concluded his formal statement or memorandum of intended evidence by referring to the Fine Gael fundraising function held in the Burlington Hotel that had been mentioned by Mr. FitzGerald. This had been arranged and held within a very short space of time, and had the approval of Fine Gael headquarters. Mr. Lowry's view at the outset had been that the primary purpose of the function was to fund weaker Dublin constituencies, in addition to raising funds for Mr. Lowry's own constituency. Mr. Lowry had organised the persons who ran the event, and there was never any need for Mr. FitzGerald to make any proposal, as the twofold purpose of the function was known at all stages.

Mr. Mark FitzGerald's account inaccurate

13.38 In the course of his further evidence, Mr. Lowry was examined in more detail on these matters, in particular with regard to his dealings relating to Mr. Dunne. He stated that the account given by Mr. FitzGerald in this regard above all disappointed him, and was damaging and inaccurate. What had happened was that he had received a telephone call from Mr. Dunne, in the course of which his only request was in the context of Marlborough House being stuck in an arbitration over rent, which he was concerned would last indefinitely. Mr. Dunne knew that Mr. FitzGerald and himself were both involved with Fine Gael, and he merely asked for expedition. On foot of this request, he did telephone Mr. FitzGerald on his mobile phone and did indicate the request, whereupon Mr. FitzGerald said he would attend to it. If it had been a wrongful request, Mr. FitzGerald would have refused, but he knew it only concerned expedition. He rang back, stating that Mr. Gill was dealing with the matter and he had conveyed the request, in response to which Mr. Gill had said that it would have to take its course. Mr. Lowry reported back to Mr. Dunne accordingly, the matter did take its course, a rent was fixed, and no doubt that outcome was proper and correct. When Mr. Lowry had first telephoned Mr. FitzGerald, he did not believe that he had asked was there a man called Gill in Sherry FitzGerald, because he would not have known this unless Mr. Dunne had told him.

13.39 As to Mr. FitzGerald's further evidence of the two of them meeting shortly thereafter, at Mr. Lowry's request, for coffee in a building that had

formerly been Powers Hotel, this was totally inaccurate, and what had been attributed to him by Mr. FitzGerald, that is, that he had referred to Mr. Dunne as having contributed £170,000.00 to Fine Gael, had not been said. He had conveyed the initial request, and no further meeting was needed. The two did meet in the former Powers Hotel, but on a totally different matter. In any event, the idea of the rent actually doubling was ludicrous, and even Mr. Lowry would have known that this was not remotely feasible.

13.40 Regarding the subsequent inspection of a house on the books of Sherry FitzGerald at Mr. Lowry's request in the company of Mr. FitzGerald and a colleague, this related to evidence formerly given by Mr. Lowry in relation to having contacted a number of Dublin auctioneers in regard to buying a property. Otherwise Mr. FitzGerald's account was substantially accurate, save that Mr. FitzGerald was inaccurate in stating that Mr. Lowry had once again raised the matter of the Marlborough House rent review: he had conveyed what Mr. Dunne wanted, and no long drawn out process was involved.

Mr. Michael Lowry disappointed

13.41 On the matter overall, Mr. Lowry stated that he was very disappointed at the tone and content of what had been said by Mr. FitzGerald. Mr. FitzGerald had never indicated any annoyance to him, no one had ever reprimanded him, and he had never heard Mr. FitzGerald use bad or forceful language. If Mr. FitzGerald was correct in his evidence, what had occurred was certainly improper, but he was incorrect. There was nothing wrong in seeking to expedite the process, which was all that had happened, an everyday occurrence for politicians. As to the possibility that Mr. FitzGerald may have had some motive for being malicious towards him, Mr. Lowry did not wish to be judgmental, could not answer, and had moved on: he had always been helpful and courteous to Mr. FitzGerald and his family, had never had any personal difference with them, and did not know if there had been something under the surface. But this matter had caused him particular hurt. In a later response to his own counsel, Mr. Lowry endeavoured to suggest that in some way which, he did not explain, there was a connection between Mr. FitzGerald's evidence and what he termed *"disaffection"* between Mr. FitzGerald and the Fine Gael party.

13.42 On the lesser matters that had arisen between Mr. Lowry and Mr. FitzGerald, there was not much conflict in relation to what had been discussed in relation to Mr. McCann and ESB more a difference of emphasis. Mr. Dick Spring had raised the matter of ESB and Mr. McCann, and Mr. Lowry had merely asked Mr. FitzGerald was Mr. McCann a proper candidate, to which he responded positively. It was Mr. Spring, rather than Mr. FitzGerald, who had first raised the matter of Mr. McCann. Similarly, with regard to CIE and the late Mr. Michael

McDonnell, the vast majority of what had been stated was correct, save that the telephone contact had been instigated by Mr. Lowry himself, rather than by Mr. FitzGerald. Ultimately, Mr. McDonnell was appointed to the position. As to the Fine Gael fundraising dinner in Dublin, the emphasis adopted by Mr. FitzGerald in what he had stated bordered on the ridiculous, it was Mr. Lowry who had come up with the proposal for what turned out to be Fine Gael's largest fundraiser in modern times, and he had cleared it both with the Taoiseach, Mr. John Bruton, and the General Secretary, Mr. Jim Miley. Benefits accrued to the weaker Dublin constituencies as well as to Mr. Lowry's constituency, and Mr. FitzGerald had made a valuable contribution.

CONCLUSIONS

Influence was sought to be exercised

13.43 Having considered all the evidence heard in relation to the matters set forth in this chapter, comprising as they do a number of serious conflicts of evidence, along with all that has been urged on behalf of interested persons, the Tribunal is of the view that the following conclusions are appropriate.

13.44 It is not in dispute that, whilst the arbitration process was pending, with Mr. Gordon Gill recently appointed as a replacement in the role of arbitrator, Mr. Ben Dunne contacted Mr. Michael Lowry in that regard, who in turn contacted his fellow Fine Gael trustee, Mr. Mark FitzGerald. The crucial conflict is as to whether what was sought in that contact was to influence the level of rent, or merely expedite the conclusion of the arbitration process. Only limited assistance in resolving that conflict is to be derived from such documentation as became available.

13.45 Both from assessing the direct evidence that was heard, and having regard to the circumstantial factors that emerged, the Tribunal is satisfied that the influence that was sought to be exercised on Mr. Gill, was with a view to a substantial enhancement of the rent, rather than merely expediting the process: at the time of the approach, Mr. Gill had just been appointed, had given no indication of any likelihood of delay in discharging his duty, and proceeded to complete the process in a commendably short time; in addition, for a landlord who was newly aware of the appointment of a replacement arbitrator, it would seem a remarkable commencement of dealings, even through conventional channels and still more so in the light of what transpired, to urge him to hurry up with the matter. Further, if, as the Tribunal accepts, three verbal approaches were made by Mr. Lowry to Mr. FitzGerald in the space of one week, it would seem improbable that the objective was the mere acceleration of the process, which

Mr. Dunne acknowledged in evidence could readily have been sought through his experienced valuers.

13.46 Whilst by no means exactly equating to a requested increase from £5.00 per square foot to £10.00 per square foot, the figures relayed by Mr. Gill as having been comprised in the submissions advanced to him by the valuers on both sides, do appear to broadly correspond with those parameters, rather than to support Mr. Dunne's recollection of conveying to Mr. Lowry an overall differential of £50,000.00 between the parties.

13.47 Some degree of confirmation of Mr. FitzGerald's version of events, at least with regard to what was said between Mr. Lowry and Mr. FitzGerald, is to be derived from Mr. Killian O'Higgins' evidence of a largely contemporaneous conversation in like terms had by Mr. FitzGerald with him.

Mr. Mark FitzGerald: lack of malicious intent

13.48 Apart from careful appraisal of the content and manner of Mr. FitzGerald's evidence, no motive has been suggested whereby he might have been disposed to give false or unreliable evidence of a nature potentially damaging to Mr. Lowry and Mr. Dunne. Such apparent lack of malicious intent is indeed borne out by his reluctance to volunteer the information made available to the Tribunal until it came to address specific queries to him. It is true, and was put to Mr. FitzGerald by Tribunal counsel, that he did not volunteer the evidence, and that without his responses to those queries, the information thereby elicited would probably never have come to public notice. However, the Tribunal has given careful attention to what was stated by him in this regard, and also to what was conveyed on his behalf by his solicitors. Given that the content of his statements was likely to involve a degree of embarrassment for the political party with which he had had a lifelong association, in addition to being scarcely beneficial in his professional and business life, and that his responses on the more peripheral matter relating to CIE involved to a limited degree implicating his wife's family, the Tribunal views his reticence in volunteering for what he himself envisaged as likely to be *"an unpleasant task"* as understandable, and indeed as enhancing rather than diminishing the weight of his testimony.

Potential financial benefit of €3.022 million to €6.86 million

13.49 It is not difficult to estimate the financial benefits that would have accrued to Mr. Dunne had the rent been increased from £5.00 per square foot to £10.00, instead of the £6.00 that was fixed by Mr. Gill. Given an approximate square footage of the premises of 85,000 square feet, at a revised rent of

£10.00 per square foot would have given rise to an annual aggregate rental of approximately £340,000.00 (€431,711.00) in excess of what was actually fixed. Allowing for seven years of that additional rental until the next rent review arose, this would have amounted to an additional £2.38 million or, converting to euro, an additional equivalent of €3.022 million. If the rule of thumb enunciated by Mr. Gill, that the capital value of a building would at that time, in broad terms, have been calculated by applying a multiple of fifteen to the annual rent, the additional rent, if it had been secured, would have resulted in a capital value of the property of £12.75 million (€16.19 million), a virtual doubling of Mr. Dunne's investment of £5.4 million (€6.86 million) made just months earlier.

Profoundly corrupt

13.50 In finding that Mr. Lowry sought, at the request of Mr. Dunne, to influence the revised level of rent payable for Marlborough House, it has to be said that, not merely was this patently improper conduct on the part of both Mr. Lowry and Mr. Dunne, as private individuals, but it was in addition a particularly flagrant dereliction of duty on the part of Mr. Lowry. As Minister entrusted with telecommunications matters, Mr. Lowry in effect stood in the shoes of Telecom Éireann as tenant of Marlborough House, and for him to have sought to procure unwarranted rent increases, that would have improperly enriched Mr. Dunne over a seven year period, and thereby burdened public funds within his Ministerial remit, amounts to a grave conflict of duty and interest. This is compounded by the fact that the manner of such attempted influence clearly countenanced an attempt to suborn the independent and quasi-judicial functions of Mr. Gill as arbitrator. The seriousness of what was attempted is not diminished by the fact of Telecom Éireann having by then become a statutory company with its own board. Indeed, what was contemplated and attempted on the part of Mr. Dunne and Mr. Lowry was profoundly corrupt to a degree that was nothing short of breathtaking. Further, had the increase been achieved, it would have been appreciably immune from scrutiny having been obtained through a quasi-judicial process.

13.51 Both the McCracken Report and this Tribunal have found that Mr. Dunne was the source of funds in bank accounts held in the name and/or for the benefit of Mr. Lowry, including accounts of Fine Gael, of which Mr. Lowry was trustee. The requests made by Mr. Lowry of Mr. FitzGerald were acts, calculated to confer, or procure, or direct Mr. Gordon Gill to confer a benefit upon Mr. Dunne, the person who was a source of money to Mr. Lowry within the meaning of paragraph (g) of the Tribunal's Terms of Reference.

13.52 Mr. Lowry's intent in seeking to procure the conferral of that benefit on Mr. Dunne was reflected in his response to Mr. FitzGerald's trenchant rejection of Mr. Lowry's request that he seek to influence Mr. Gordon Gill in the discharge of his office as arbitrator, when Mr. Lowry responded, as the Tribunal accepts, in the following terms:

> *"What are 'we' going to do, as Ben Dunne has contributed £170,000.00 to Fine Gael?"*

As evident from that response, Mr. Lowry's request of Mr. FitzGerald was inextricably linked to Mr. Ben Dunne's status as a financial supporter and benefactor of Fine Gael. That he was a financial benefactor of Mr. Lowry himself has already been established by the McCracken Tribunal.

13.53 In reporting on the role in this matter of Mr. Dunne, the Tribunal has had regard to medical reports forwarded on behalf of Mr. Dunne, suggesting that his recollection and capacity had been adversely affected by his kidnapping and other experiences. It was also the case that a member of the public made contact with the Tribunal, indicating that Mr. Dunne had afforded him vital assistance at a critical time in his life, and requested that, whilst wishing to retain anonymity, this be recorded in the Tribunal Report. The Tribunal does not doubt the authenticity of that contact, or that Mr. Dunne may have performed other gratuitous acts of kindness on occasion. Likewise, notwithstanding adverse conclusions, it should be recorded that both Mr. Dunne and his legal advisers were at all times prompt, courteous and cooperative in their dealings with the Tribunal. However, having carefully appraised his evidence on the several occasions that he testified, the Tribunal has no hesitation in finding that, as in earlier instances, Mr. Dunne remained an astute businessman who was fully aware of what he was doing.

How Revenue Taxed Mr. Michael Lowry

Introduction

14.01 Chapter 19 of Part 1 of the Report of the Tribunal dealt with the manner in which the Revenue Commissioners addressed the taxation of Mr. Charles Haughey in respect of payments or gifts identified by the McCracken Tribunal as having been made to Mr. Haughey, and also of payments or gifts to Mr. Haughey found by this Tribunal as coming within those Terms of Reference that were relevant to Mr. Haughey.

14.02 What accordingly now remains is Term of Reference (j), insofar as it relates to Revenue dealings with Mr. Michael Lowry and the company associated with him, Garuda Limited trading as Streamline Enterprises. Deleting the portions applicable to Mr. Haughey, the Term of Reference reads:

> *" (j) Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (e) above."*

14.03 Once aware of apparent irregularities on the part of Mr. Lowry and Garuda Limited trading as Streamline Enterprises (Garuda) in regard to their tax compliance, it became the task of Revenue to investigate that position in full. As had been the position with Mr. Haughey, Revenue was required to piece together all instances of undisclosed payments or benefits giving rise to tax liabilities, decide upon the particular type or types of taxes that thereby arose, and then assess the amounts due, both for tax and, if applicable, interest and penalties. There was also in this instance the further problem of determining whether such liability was to be borne by Mr. Lowry personally, by Garuda, or apportioned in some manner between both. In evidence given by senior Revenue officials, much emphasis was placed upon the paramount requirement of selecting the correct taxable entity and the correct type of tax: whatever of evidence, or views expressed in the course of Tribunals, Revenue had to act strictly within the confines of existing tax law and practice, and in what was potentially a high profile case, any errors that led to tax not being recovered were going to be an unwanted embarrassment.

14.04 Whilst, in general terms, the relevant tax affairs of Mr. Lowry and Garuda were less labyrinthine and diffuse than those of Mr. Haughey, they nonetheless encompassed the extensive works carried out on the instructions of Mr. Ben Dunne to Mr. Lowry's house at Holycross, County Tipperary, a considerable range of payments from Dunnes interests to Mr. Lowry and/or Garuda, which were deposited into a number of Irish and off-shore accounts, and a number of additional payments from other sources examined by this Tribunal. In addition, it was necessary for Revenue to become fully aware of any possible tax consequences arising from the UK property transactions in which Mr. Lowry had an actual or suggested involvement, and in other financial arrangements entered into by him. Each of these latter matters was examined by the Tribunal in private investigations, and public sittings over a number of years from 2001 onwards, as has been set forth in earlier chapters of this Volume of this Part of the Report.

Transactions Giving Rise To Actual Or Potential Tax Liabilities

14.05 Commencing with matters investigated and reported upon by the McCracken Tribunal, and then proceeding to those which came before this Tribunal, it is proposed to set forth the relevant transactions. Only very brief summaries are included at this point, as full relevant details in relation to the former are to be found in the McCracken Report, and in relation to the latter, in relevant individual chapters of this Volume. Before listing the transactions, it is well to set out some brief further matters in relation to the works carried out at Mr. Lowry's house in Holycross. It will be recalled that in Chapter 2 of the McCracken Report, reference was made to allegations having appeared in the media in November, 1996, to the effect that the Dunnes Stores Group had paid over £200,000.00 towards the renovation of this house. In Chapter 5 it was then reported that the cost of these works actually extended to the sum of £395,107.00, which was paid to the builders Faxhill Homes Limited by Dunnes Stores, that payment was treated in the books of Dunnes Stores as having been payments for work done for Dunnes Stores at the ILAC Centre in Dublin, and that this course was directed by Mr. Ben Dunne in a manner which appeared to indicate a clear intention on his part that there would be no record of payment having been made for the benefit of Mr. Lowry.

14.06 Evidence heard from Revenue officials at this Tribunal revealed some further details in relation to Revenue's awareness of the works undertaken to Mr. Lowry's house, and steps taken in response. Initial Revenue interest into possible irregularities in this regard had in fact considerably preceded the November 1996 media disclosures. It was in late August, 1992, some four years earlier, that an anonymous letter was received by Ms Kathleen Maher, a Revenue official

employed at Thurles, to the effect that sub-contractors working at Mr. Lowry's home were employing persons who were claiming to be unemployed; following this, she visited the site with a representative from the Department of Social Welfare. What she found there, including the rapid exodus of some of the workmen upon her arrival, suggested that there were indeed irregularities in the operation, and she duly furnished a report to Mr. John Hussey, the Senior Inspector of Taxes and District Manager of the Thurles office. Mr. Hussey in evidence recalled receiving this report, but stated that it was noted in a context of possible adverse consequences for the sub-contractors and workers, rather than Mr. Lowry. Mr. Hussey gave evidence of his dealings with Mr. Lowry as a local taxpayer, which in general terms were unremarkable, and do not require to be detailed. Prior to 1991, Mr. Lowry had had no tax agent and had made no tax returns, and it was in August, 1991, that Messrs. Oliver Freaney & Company had made contact on his behalf, and furnished the outstanding returns for years going back to 1987/88. This was however not unusual for someone in Mr. Lowry's position as of that time, and in fact a refund was furnished to him in 1992, Revenue having appraised his position both as a T.D. and in the context of his refrigeration activities. Over the years in question, Mr. Lowry made payment of tax due on his income as disclosed, more or less on time and, when late, some interest was collected. When the media disclosures arose in 1996, he had been short-listed for a PAYE/PRSI audit, but his operation overall was not regarded as one of high risk, particularly since Garuda in practice traded with only one large client, Dunnes Stores.

Residential Property Tax

14.07 Apart from considerations of taxing Mr. Lowry in respect of the benefit conferred on him by reason of the refurbishment of his house, Revenue had also to address the possibility that the self-assessed valuations of the premises returned by him for Residential Property Tax purposes might not have adequately reflected the then inevitable increase in value. As he had earlier done in relation to Mr. Haughey's Abbeville residence, Mr. Fergus Carroll, then the head of the relevant section in Revenue, gave succinct and helpful evidence in relation to the Residential Property Tax paid by Mr. Lowry in respect of the Holycross house, and the steps taken by Revenue in consequence. The relevant years were 1993 to 1996 inclusive, and in assessing the initial 1993 return, allowance was made for the fact that Mr. Lowry's overall purchase had included substantial lands, and for a period when the property was under renovation and not being used by Mr. Lowry and his family. The returns were furnished punctually, save in respect of 1995, on which occasion a small interest charge was made for the fact that the return was two months late. At the time it appeared in the circumstances that there was no reasonable basis for suspecting any substantial undervaluation of the property.

14.08 When the nature and apparent cost of the refurbishment works came to light in 1996, this aspect was re-visited in the course of a full investigation being instituted into Mr. Lowry's tax affairs. In the course of information furnished to Revenue in April, 1997, by Messrs. Ernst & Young on behalf of Mr. Lowry, revised valuations for the house were furnished, based on valuations then obtained from a local auctioneer. After matters had been shelved for a period pending wider investigations, Mr. Carroll contacted the Office of the Commissioner of Valuation, seeking an opinion on the revised valuations. An inspection was carried out, following which Mr. Carroll was notified that the revised valuations were adequate. The resultant aggregate balance due, including interest, and allowing credit for the overpayment made in relation to the year 1993, when building works appeared to have been in progress, was £4,831.00. This amount was duly discharged as part of a larger payment made on account of unpaid tax. The position may be summarised as set forth in the Table below:

YEAR	SELF-ASSESSED VALUATION	REVISED VALUATION
1993	£115,000.00.	£ 90,000.00
1994	£115,000.00	£220,000.00
1995	£115,000.00	£240,000.00
1996	£125,000.00	£275,000.00

Instances of potential taxation liability

Payments referable to McCracken Tribunal

14.09 Chapter 5 of the McCracken Report had four categories of payments by Dunnes interests to Mr. Lowry and/or Garuda, the first such category being payments to Mr. Lowry personally, all from a Dunnes Stores account in Bank of Ireland, Marino, at the direction of Mr. Ben Dunne, the details of which were as follows:

(i) a cheque for £6,000.00 dated 20th December, 1989, payable to Mr. Lowry which was cashed by him;

(ii) a cheque for £8,500.00 dated 21st December, 1990, payable to cash which was lodged to Mr. Lowry's personal account in the Thurles, County Tipperary branch of the Bank of Ireland;

(iii) a cheque for £6,500.00 dated 10th July, 1991, payable to M. Lowry which was lodged into his personal account at the Dame Street, Dublin branch of Allied Irish Banks;

(iv) a cheque for £8,000.00 dated 11th December, 1991, payable to cash which was also lodged to the personal account of Mr. Lowry in the Dame Street, Dublin branch of Allied Irish Banks;

(v) a cheque for £12,000.00 dated 15th December, 1992, payable to cash which was cashed by Mr. Lowry.

All these payments, with the exception of that at paragraph no. (iii) above, were found by the McCracken Report to have been made on the instructions of Mr. Ben Dunne, for the purpose of paying Christmas bonuses to Garuda staff.

14.10 The second category of payments identified by the McCracken Report were cheques issued by Dunnes in favour of Garuda under its trade name of Streamline Enterprises, which were either cashed by Mr. Lowry, or lodged to his own bank accounts, details of which were as follows:

(i) a cheque for £6,000.00 dated 14th November, 1988, which was lodged to Bank of Ireland, Thurles;

(ii) a cheque for Stg.£5,000.00 dated 13th December, 1988, which was cashed by Mr. Lowry;

(iii) a cheque for Stg.£9,945.00 dated 2nd February, 1989, which was cashed by Mr. Lowry;

(iv) a cheque for Stg.£7,875.00 dated 25th October, 1989, which was cashed by Mr. Lowry;

(v) a cheque for Stg.£7,950.00 dated 16th October, 1989, which was cashed by Mr. Lowry;

(vi) a cheque for Stg.£19,730.00 dated 19th October, 1990, which was cashed by Mr. Lowry;

(vii) a cheque for Stg.£15,825.00 dated 14th September, 1990, which was cashed by Mr. Lowry;

(viii) a cheque for Stg.£34,100.00 dated 3rd September, 1991, lodged to an account in Allied Irish Banks, Channel Islands, in the name of Mr. Lowry and his three children;

(ix) a cheque for Stg.£55,314.00 dated 15th March, 1993, which was lodged to Allied Irish Banks, Dame Street.

The McCracken Report did not accept Mr. Lowry's evidence that these payments were made by Dunnes Stores to him personally for work done, and recorded that that Tribunal was satisfied, as far as Dunnes Stores were concerned, that these sums were paid to Garuda for work carried out by that firm, and were intended for Garuda, not for Mr. Lowry.

14.11 The third category of payments identified by the McCracken Report were bonus payments made by Dunnes Stores to Mr. Lowry, the details of which were as follows:

(i) a payment of Stg.£25,000.00 made on 9th October, 1990, lodged to an account in Bank of Ireland, Isle of Man and transferred on 20th May, 1992, to an account of Mr. Lowry in Irish Permanent Building Society, Cork;

(ii) a payment of Stg.£40,000.00 made on 1st August, 1991, transferred from an account of Tutberry Limited with Rea Brothers (Isle of Man) Limited to an account of Badgeworth Limited, then transferred on 18th May, 1992, to an account of Mr. Lowry with Irish Permanent Building Society, Cork;

(iii) a payment of £40,000.00 made on 29th May, 1992, lodged to an account of Mr. Lowry with the Irish Permanent Building Society, Cork;

(iv) a payment of £50,000.00 made on 27th May, 1992, and also lodged to an account of Mr. Lowry with the Irish Permanent Building Society, Cork.

14.12 The fourth category of payments identified by the McCracken Report related to Mr. Lowry's house at Holycross, County Tipperary, in respect of which the contractor had been paid £395,107.00 by Dunnes Stores, on foot of certificates issued by an architect engaged for that purpose. Arrears of Residential Property Tax and interest also arose in this regard, as set forth earlier in this chapter.

Matters referable to this Tribunal

14.13 The remaining instances are referable to this Tribunal, as detailed within this Volume. Firstly, in this regard is a further payment of £15,000.00 on 13th November, 1992, to Mr. Lowry from the Dunnes Stores account at Bank of Ireland, Marino, which was drawn to the attention of the Tribunal by Mr. Lowry's advisers, by whom it was indicated that this payment was a bonus to Mr. Lowry personally similar to those enumerated at paragraph 14-11 above amongst payments referable to the McCracken Tribunal.

14.14 The next is a sum of £25,000.00 from Mr. Bill Maher of Maher Meat Products, a UK based business, to Mr. Lowry, lodged to an account of Mr. Lowry, at Allied Irish Banks, Dame Street, Dublin 2, on 23rd December, 1992. This was stated in evidence by Mr. Lowry to have been paid in respect of refrigeration consultancy work undertaken by him personally.

14.15 The next are payments amounting to £15,000.00, by Whelan Frozen Food Limited, in May, 1992, lodged to Mr. Lowry's account at Bank of Ireland, Thurles, and also contended by him to have been in respect of refrigeration consultancy work undertaken by him personally.

14.16 The next is a sum of £35,000.00 cash, stated by Mr. Lowry to have been paid to him by Mr. Pat Doherty for the sale of some antiques, of which £32,950.20 was, on 19th May, 1995, lodged to an account of Mr. Lowry at Allied Irish Banks, Dame Street, Dublin 2.

14.17 There then is a deposit of Stg.£100,000.00, made by Mr. Lowry with Allied Irish Banks in the Channel Islands on 3rd September, 1991. In the McCracken Report, it was concluded that this sum of Stg.£100,000.00 included the cheque for Stg.£34,100.00 detailed at paragraph 14-10 (viii) above. The evidence given to this Tribunal indicated that the account in question was first opened by Mr. Lowry with Allied Irish Banks in the Channel Islands in January, 1991, with a deposit of Stg.£55,000.00; this may have represented the bulk of the same funds noted in paragraph 14-10 (ix) above. The deposit matured on 17th July, 1991, and the sum of Stg.£100,000.00 may have comprised the proceeds of the matured deposit, plus the proceeds of the Stg.£34,100.00 cheque, together with a further small sterling draft drawn on Allied Irish Banks on 30th August, 1991.

14.18 The next instance relates to the account which was opened in the name of Mr. Lowry in Irish Nationwide (IOM) Limited in Douglas, Isle of Man, in October, 1996, with a lodgment of £147,000.00. This account closed on 7th February, 1997, and the source of the funds lodged to the account was a bank draft drawn by the late Mr. David Austin on his account with Bank of Ireland, Jersey, which was opened on 26th July, 1996, with £150,000.00 transferred from an account of Mr. Aidan Phelan, a close associate of Mr. Denis O'Brien, which the Tribunal was informed represented the proceeds of the sale of a property in Spain by Mr. Austin to Mr. O'Brien, but has found represented a payment made by Mr. O'Brien to Mr. Lowry channeled through Mr. Austin.

14.19 The next instance relates to the property in Mansfield, England, purchased in March, 1999, in the name of Mr. Lowry, for a sum of

Stg.£250,000.00, as already addressed in this Volume. According to Mr. Lowry and Mr. Aidan Phelan, this was purchased by them in partnership together, with Mr. Lowry and Mr. Phelan holding 10% and 90% interests respectively. The deposit of Stg.£25,000.00 was paid from Mr. Lowry's own funds, and the balance due on completion was provided by Mr. Phelan from funds held in an account in Credit Suisse First Boston in London in the name of Mr. Denis O'Brien. Mr. Phelan informed the Tribunal that he had the authority of Mr. O'Brien to draw this payment, and it represented an advance on a bonus payment he was negotiating with Mr. O'Brien in connection with services rendered by him to Mr. O'Brien. The Tribunal has also found that the funds used to complete the purchase of this property represented the proceeds of a payment made by Mr. O'Brien to Mr. Lowry, through the conduit of Mr. Phelan.

14.20 Detailed evidence was also heard in relation to the property at Cheadle, England: according to Mr. Lowry, he intended to purchase this property for his sole benefit. It was intended to be taken in the name of Catclause Limited, of which company Mr. Lowry and his daughter were directors. A deposit of Stg.£44,500.00 was paid in September, 1999, out of the surplus of funds transferred to the client account of Mr. Christopher Vaughan, solicitor, for the Mansfield purchase referred to at paragraph 14-19 above. The balance for completion was paid in late December, 1999, with funds borrowed from GE Capital Woodchester/Investec Bank. The property was not taken in the name of Catclause Limited, but in the name of Mr. Vaughan. Relevant further evidence was heard from Mr. Vaughan at a late stage of the sittings referable to this Volume of this Part of the Report. The Tribunal has further found that the deposit Stg.£44,500.00 represented the balance of the payment made by Mr. O'Brien to Mr. Lowry, through the conduit of Mr. Phelan and that the borrowings from Woodchester/Investec Bank were secured with the support of Mr. O'Brien.

14.21 A final matter of potential relevance to the manner in which the Revenue dealt with Mr. Lowry's affairs arose from media reports which came to the attention of the Tribunal only at a late stage in the dealings between Mr. Lowry and Revenue. This related to a reputed involvement on the part of Mr. Lowry in a further English property transaction, the purchase of Doncaster Rovers Football Club, which ostensibly was acquired by interests referable to Mr. Denis O'Brien. Mr. Lowry denied any such involvement. Evidence in relation to this transaction was heard in 2007 and subsequently, and has been addressed elsewhere in this Volume.

14.22 Regarding the final three items above, arguments were made to Revenue on behalf of Mr. Lowry to the effect that no basis for any taxation was

disclosed, and it appears that Revenue took the view that, at least until the Tribunal had published this Volume, no steps should be taken.

REVENUE DEALINGS WITH REPRESENTATIVES OF MR. MICHAEL LOWRY AND GARUDA IN RELATION TO TAX LIABILITIES

14.23 As was done in relation to the taxation affairs of Mr. Charles Haughey, the approach adopted by Revenue in relation to taxation of Mr. Lowry and Garuda was to monitor closely all relevant evidence at both the McCracken Tribunal and this Tribunal, and to investigate fully all relevant aspects in relation to potential civil liabilities under taxation law, in addition to any possible criminal consequences, with regard to both Mr. Lowry and Garuda. The officials primarily involved on behalf of the Investigation Branch of Revenue were Mr. Aidan Nolan and Mr. Liam Liston, both Principal Officers, and in dealing respectively with the civil and criminal aspects, they reported periodically on developments to Mr. Patrick Donnelly, Assistant Secretary of Revenue.

14.24 The investigation had commenced in November, 1996, on foot of the information that had been conveyed to Revenue as to the financing of building works to Mr. Lowry's home at Holycross, and media disclosures as to payments made by Dunnes interests. On 2nd December, 1996, Oliver Freaney, Mr. Lowry's then tax agents, informed Revenue of possible errors or omissions in the tax returns made on behalf of both Mr. Lowry and Garuda. On 18th April, 1997, Revenue received from Messrs. Ernst & Young, then also acting, a submission relating to additional liabilities for Mr. Lowry in relation to Income Tax and Residential Property Tax, and for Garuda in relation to PAYE, PRSI and Value Added Tax. A payment of £100,000.00 on account of unpaid tax was enclosed with that submission, and it was indicated by Mr. Lowry's advisers that the aggregate of undeclared income amounted to approximately £500,000.00. Mr. Liston viewed this sum as falling short of a true figure, which he regarded as amounting to not less than £618,000.00.

14.25 As Mr. Lowry had availed of the tax amnesty provided for by the Waiver of Certain Tax Interests and Penalties Act, 1993, Revenue was in the first instance precluded from inquiring into his affairs for the years prior to the tax year 1992/1993. In order to advance investigations in respect of that period, it was necessary for Revenue to make an application to the Appeal Commissioners under that Act to set aside the Certificate issued to Mr. Lowry, when he had availed of that tax amnesty. This was done, and an Order was made by the Appeal Commissioners on 3rd November, 1997, with the consent of Mr. Lowry, thereby enabling further investigation into 1992/1993 and previous years to proceed.

14.26 A further indication of the intensification of the investigation arose on 24th February, 1998, when Mr. Lowry attended for an interview by Revenue. By that time, Mr. Liston had formed the view that any question of possible criminal prosecution had reached the point that Mr. Lowry could be adversely affected by any admissions he might make at the interview. Having forewarned Mr. Lowry's advisers of his intended course, Mr. Liston proceeded to caution Mr. Lowry formally at the meeting, in effect warning him that any admissions he might make could be used against him in any subsequent criminal prosecution that might be brought by the Director of Public Prosecutions. Whilst undoubtedly the proper and just course for Mr. Liston to have taken, this inevitably had the effect of giving rise to some element of mutual tension between the civil and criminal aspects of the investigation, and in particular in complicating possible negotiations with Mr. Lowry's advisers with a view to reaching settlement of the civil liabilities resulting from unpaid tax. However, efforts continued to be made to agree and resolve the undoubtedly substantial civil liabilities, and in addition to the £100,000.00 payment on account made in April, 1997, some four further payments on account were made in the course of 1997 and 1998, amounting to £342,000.00.

14.27 Initial evidence was heard from Mr. Liston in March, 2001, indicating the progress of the investigation as of that time. On the civil side of matters, the principal unresolved aspect was determining how much more Mr. Lowry and Garuda would be required to pay to dispose of outstanding tax, interest and penalties, over and above the payments already made. In this regard, a very significant factor was whether or not Mr. Lowry would be found to have made what Revenue describe as a voluntary disclosure in respect of the further matters under investigation, by virtue of the letter to Revenue from Oliver Freaney of 2nd December, 1996. In essence, a voluntary disclosure occurs when a taxpayer freely discloses a tax default to Revenue, rather than Revenue discovering it through an investigation. Whilst Mr. Lowry and his advisers contended that such a voluntary disclosure had been made, this was not accepted by Mr. Liston or his colleagues, whose view on behalf of Revenue was that by 2nd December, 1996, the relevant information was available to or ascertainable by Revenue. The making of a voluntary disclosure by a taxpayer involves very significant advantages, both insofar as the amount of financial penalties in respect of unpaid tax will be very substantially mitigated, and as the publication of the taxpayer's identity in the periodic list of tax defaulters will thereby be avoided. Apart from these civil aspects, the matter of whether or not a criminal prosecution would be initiated by the Director of Public Prosecutions remained unresolved in March, 2001. In the circumstances of these unresolved matters, the Tribunal, in ease of Mr. Lowry and at the urging of his legal advisers did not then pursue further related inquiries or sittings, as it did not wish to interfere with or jeopardize their resolution.

14.28 Matters thereafter moved slowly for a time, reflecting a number of factors, including some understandable caution in advancing civil negotiations, with the spectre of a criminal prosecution still unresolved, and procedural difficulties which delayed the documentary records of Garuda becoming available to Revenue until early 2002. Revenue cannot be faulted in this regard as considerable difficulties were encountered by Revenue in gaining access to the relevant records of Garuda, which was secured only after High Court proceedings to that end. Contact between Mr. Lowry's advisers and Revenue resumed in the course of 2002 by which time Revenue, based on the relevant records of Garuda, had been able to raise assessments in relation to the amounts of unpaid tax considered due.

14.29 Apart from the actual sums involved, the issue as to voluntary disclosure and the ongoing possibility of criminal prosecution, a more immediate concern for Revenue arose: were the liabilities those of Mr. Lowry personally, or of Garuda, and if liabilities were to attach to both, what were the respective proportions? This in turn reflected not only Revenue concern as to where legal liability lay, but also as to the ability to pay on the part of Mr. Lowry and, more particularly, Garuda. With these factors in mind, protective assessments were raised on both Mr. Lowry and Garuda, thereby seeking to cover both options, although from an early stage it was felt in Revenue that Garuda was likely to bear substantially the larger portion of liability. From Mr. Lowry's own vantage point, a new impetus towards seeking to resolve issues with Revenue arose with the enactment in 2001 of the Standards in Public Office Act, under Section 21 of which he was obliged, within nine months of election or re-election as a T.D., to provide either a tax clearance certificate, or a document referred to in that Act as an application settlement.

14.30 A meeting of representatives of both sides was held on 2nd September, 2002. This was at the request of Mr. Denis O'Connor, of Messrs. Brophy Butler Thornton, chartered accountants, who had by then become Mr. Lowry's tax agents. Both Mr. Liston and Mr. Nolan attended on behalf of Revenue, and Mr. O'Connor was accompanied by Mr. Neale O'Hanlon, also of Brophy Butler Thornton, whose primary concern was with the representation of Garuda. From the minutes of the meeting, it appears that Mr. O'Connor acknowledged his awareness that Mr. Lowry had received a caution in regard to a possible criminal prosecution, but nonetheless indicated that he wished to advance matters in relation to the civil tax liability by seeking to agree figures for payments and benefits, and then to decide by whom the resultant tax and associated liabilities were properly payable. This course appeared to have been acceptable to Revenue, and Mr. Nolan recalled in his evidence that, contrary to Revenue's view that the entity primarily liable was Garuda, the initial submission advanced by

Brophy Butler Thornton was that the primary liability was that of Mr. Lowry. At that point, it seems that Brophy Butler Thornton, which were also auditors to Garuda, had not been in a position to close off the accounts of Garuda for the year ended 2001, and there was a concern that, if Garuda was liable for the tax protectively assessed, the company could be insolvent, and unable to trade further. On foot of this agreed basis of co-operation, estimated income and tax figures were provided by Revenue to the tax agents for discussion purposes, and Mr. O'Connor in turn made available to Revenue a wide range of accounts, documentation and analysis relating to Mr. Lowry's financial transactions, including off-shore account documentation, the production of which was not then yet legally compellable under existing law.

14.31 Further meetings between the same representatives followed in December, 2002, with attention being given to all the items comprised in a Table of Income Figures prepared by Revenue, setting forth the substantive matters giving rise to unpaid tax, as summarized earlier in this chapter. Apart from resolving a number of matters in relation to rates of tax applicable, discussion appears to have centered upon three issues affecting the aggregate computation of figures undisclosed for tax purposes. These were firstly, a deduction that Mr. O'Connor considered should have been allowed in respect of a payment to a UK supplier, secondly, a figure of Stg.£100,000.00 referred to at page 25 of the McCracken Report as a lodgement made by Mr. Lowry to an Allied Irish Banks Channel Islands account on 3rd September, 1991, which Mr. O'Connor considered had been double-counted in the figures provided by Revenue, and thirdly, a contention by Mr. O'Connor that the Revenue computation of the value of the renovation works at Mr. Lowry's Holycross house substantially exceeded their actual value. Additional discussions led to the first two such matters being agreed in accordance with Mr. O'Connor's contentions, and the third being agreed on the basis of the Revenue valuation of the Holycross works.

14.32 By 31st March, 2003, matters had progressed to the extent of Mr. O'Connor furnishing Mr. Nolan with a draft letter for discussion purposes, setting out proposals for finalising the liabilities of both Garuda and Mr. Lowry. The somewhat tentative form of the letter probably reflected ongoing concern at the continuing criminal investigation, and the caution previously administered by Mr. Liston. In the letter, Mr. O'Connor calculated the aggregate tax due by Mr. Lowry and Garuda as €1,096,184.24, but this figure was based upon assumptions that a voluntary disclosure had been made, thereby mitigating all penalty payments by 95%, that interest should not be charged beyond 31st March, 1998 (arguing that a settlement on a similar basis had been aborted through Revenue's cancellation of a meeting with the tax agents at that time), and that the lower figure for the house renovations should be accepted by Revenue.

14.33 Within days, Revenue conveyed emphatically to Mr. O'Connor at a meeting that this sum, and the assumptions governing it, were wholly unacceptable. Mr. O'Connor responded that substantially larger figures would be beyond the capacity of both Mr. Lowry and Garuda, and that, if agreement could not be reached, Garuda would have to be treated as insolvent, and would have to be liquidated. Much attention was given by Revenue to this contention of inability to make full payment on the part of Garuda, and copies of accounts and other documentation regarding its financial capacity were sought and examined in detail. The other substantial matter of concern for Revenue, as already mentioned, was whether the civil tax liability should rest with Mr. Lowry, Garuda, or be shared between both.

14.34 Prior to the end of August, 2003, Revenue finalised their quantification of tax, interest to March, 2003, and penalties, these last being computed on a basis of being full penalties payable by both Mr. Lowry and Garuda, in effect rejecting the argument that voluntary disclosure had been made. As regards Mr. Lowry, the total sum assessed was €173,074.00, being in respect of additional Residential Property Tax on the revaluation of his residence, Income Tax on the payments from Maher Meat Products and Whelan Frozen Foods, plus interest on undeclared bank deposits, both Irish and off-shore. In the case of Garuda, the total inclusive of interest to March, 2003, and penalties was €1,708,620.00 being in respect of Valued Added Tax, PAYE and PRSI in respect of the payments identified by Revenue from the McCracken Report, the public sittings of this Tribunal, and its own examinations.

14.35 In his evidence, Mr. Nolan stressed the careful consideration that had been given within Revenue to the matter of whether finalised assessments should be made against Mr. Lowry or Garuda or, if both, the respective amounts. In making substantially the larger assessment against Garuda, he had had regard to a number of factors, including the clear documentary course of dealings whereby Dunnes payments were consistently expressed as having been made to Streamline Enterprises, as the trading name of Garuda, and invoices furnished to Dunnes were similarly expressed, and quoted the relevant Valued Added Tax number. Mr. Nolan also recalled speaking to Mr. Ben Dunne in this regard, and being informed by him that his dealings had been with Streamline Enterprises, and even in the instances where no documents were available, Mr. Nolan and his colleagues formed the view that the trading entity was Garuda rather than Mr. Lowry. Indeed, Mr. Nolan expressed his concern that, other than in the instances which had no connection with Garuda, had Mr. Lowry been assessed personally, Revenue might well have been unsuccessful in any hearing before the Appeal Commissioners.

14.36 The contention of inability to pay the full amount of tax, interest and penalties made on behalf of Garuda also led to a detailed examination by Revenue of all relevant documentation in regard to its trading position and prospects. On foot of this, both Mr. Nolan and Mr. Liston concluded that the position of the company was frail and unpromising, that a genuine incapacity to discharge the assessments in full was then disclosed, and that the option of liquidation would be lengthy, and unlikely to lead to any ultimate outcome preferable to a realistic negotiated settlement. Mr. Nolan in evidence expressed the view that, if this option had been pursued, less than the actual tax assessed would in the ultimate have been available, never mind the interest and penalties.

14.37 These considerations concentrated the minds of both sides towards seeking a negotiated settlement. At a meeting on 17th April, 2003, Mr. O'Connor detailed further intended sources of funding, and indicated that the highest further sum that could be raised was €900,000.00. Mr. Nolan responded that, even if allowance was made for inability to pay, he could not recommend so discounted an amount, and urged Mr. O'Connor to improve his offer. Returning on 30th June, 2003, Mr. O'Connor said an increased further €100,000.00 could with difficulty be raised, and it appears that in August, 2003, it was agreed in principle that if such an aggregate sum of €1,000,000.00 was paid in reduction of the overall Garuda assessment, Mr. Nolan would recommend that the balance outstanding for interest and penalties would be waived on a basis of inability to make full payment. That balance amounted to €447,000.00. Of the €1,000,000.00 further payment, €135,000.00 was paid in November, 2003, and it was initially understood that the balance would be cleared the following month.

14.38 However, matters then stalled. This seems to have been due to a number of factors, including a further downturn in the business of Garuda, a concern on the part of Revenue that it might be premature to conclude a settlement if this Tribunal had yet to embark on possible public sittings into the UK property transaction involving Doncaster Rovers, and a concern on the part of the advisers to Mr. Lowry and Garuda that the process of settlement might compromise their situation, if criminal proceedings were instituted, against Mr. Lowry and/or Garuda.

14.39 Nevertheless, telephone contact was maintained between the various representatives, a brief correspondence took place with Ms. Suzanne Kelly, a Tax Practitioner, and eventually substantive contact between Mr. O'Connor and Mr. Nolan was resumed in 2005. This led to an email being sent by Mr. Nolan to Mr. O'Connor on 5th May, 2005, the contents of which may usefully be set forth as a record of the updated basis of understanding between both sides.

"Denis,

As you are aware Garuda's Liability based on discussed figures at the end of August 2003 was

VAT	*€ 158,603*
PAYE	*€ 548,009*
	€ 706,612
Interest	*€ 595,375*
Penalties	*€ 406,633*
	€1,708,620

Payments to that date amounted to €570,808 leaving a balance tax due of €135,804. That amount was finally paid in November 2003. There is still the matter of Interest and Penalties on this debt. I am aware of the company's inability claim to pay this amount in full. I am not prepared too [sic] *accept the proposed payment of €664,000 as representing a "full and final settlement in respect of Garuda Ltd." I would be prepared to accept the payment as a further payment on account and should nothing further untoward arise from the Moriarty Tribunal I would then be prepared, as discussed, to recommend to the Revenue Commissioners acceptance of a formal offer of €1,261,250 as the maximum sum Garuda Ltd. could now raise. This would be without prejudice to the outcome of the criminal investigation and would of course be conditional on receipt of*

(a) Present day value Statement of Affairs for Michael Lowry.

(b) Latest Draft Accounts of Garuda Ltd.

(c) Further information if we deem it necessary.

Subject to the above and pending receipt of an offer in settlement acceptable to the Revenue Commissioners I regard the assessments as still under Appeal.

At present the status of the SIPO certificate is proper to the Collector General. This can be discussed further at our next meeting.

If it is the intention of Michael Lowry to issue a public statement Revenue will have no input into the text of the statement.

Reviewing my conversation with Neale O'Hanlon the meeting has been arranged for next Monday, 9th May, 2005, at 10:30 in my office.

Regards,

Aidan"

14.40 On foot of these arrangements, a further meeting duly took place on 9th May, 2005, on which occasion Mr. O'Connor furnished Mr. Nolan with a cheque for the outstanding balance of €664,000.00 in addition to updated documentation in relation to the financial position of Garuda and Mr. Lowry. The payment was enabled by bank borrowings taken out by Mr. Lowry, and other sources which were disclosed both to Revenue and to the Tribunal in private investigations, which it was not necessary to particularise in evidence.

14.41 Although Mr. Lowry had accordingly paid on behalf of Garuda what Mr. Nolan had indicated would be sufficient for him to recommend settlement to the Board of the Revenue Commissioners, no such approval was granted or sought in the immediate aftermath of the May, 2005, arrangements. It would appear that, from the viewpoint of Revenue, a shadow had been cast over the matter by reason of both relevant public sittings of the Tribunal not having concluded, and a decision whether or not to bring criminal prosecutions not yet having been made. This element of probably understandable caution in seeking to conclude matters was evident when Revenue witnesses testified in April, 2006.

14.42 Mr. Nolan dealt with the majority of matters that have been summarised in this chapter, and confirmed that, over and above limited discretions to conclude final settlements with taxpayers vested in Revenue officials of different grades, higher settlements had to be approved by the Board of the Revenue Commissioners. Any such positive recommendations as he himself had made to the Board in the past in this regard had been accepted, and he had been prepared to recommend settlement regarding Garuda in May, 2005, but, the matter having not then been resolved, he still had to receive a formal offer and reappraise Garuda's inability to make full payment, and in the light of those factors he then might or might not recommend settlement. Accordingly, he viewed the position as of May, 2005, as limited to being a snapshot as of that time. As to the matter of publication as tax defaulters, Mr. Nolan stated that it was and remained the view of Revenue that relevant details in regard to both Mr. Lowry and Garuda would in due course be published in this fashion.

14.43 As Assistant Secretary of Revenue, Mr. Donnelly acknowledged having been briefed periodically on the matter by Mr. Nolan and Mr. Liston, and having approved of how they had conducted matters, but he felt that the position had remained some distance short of a binding settlement. Whilst the matter was one of hundreds of cases being pursued by Revenue, its most conspicuous factor was the high profile of Mr. Lowry. Although the financial sums involved were not in relative terms huge, he accepted that a potential write-off of close to €500,000.00 for a company of modest proportions was sizeable.

14.44 Mr. Liston, who had testified in more detail at earlier sittings, confirmed Mr. Nolan's evidence, and stated that his primary function in relation to the negotiations had been to ensure that the potential criminal aspects of the investigation were not compromised. He confirmed in response to counsel for Mr. Lowry that it was standard practice to caution a suspect where there was a prospect of a prosecution being brought. The treatment of Mr. Lowry had been *"very much by the book"*, and was neither more robust nor more favourable than would have applied to anyone else selected for criminal investigation. As to the proposed discounting of the Garuda assessments, this was based on inability to pay, and reflected as large a sum as could be bargained for, on foot of company accounts that were far from promising.

14.45 Mr. Frank Daly, Revenue Chairman, then testifying in relation to both Mr. Haughey and Mr. Lowry, alluded to the tension that had arisen in seeking to conclude the recoupment of unpaid tax by Mr. Lowry and Garuda, and the danger of cross-contamination between civil and criminal aspects. Given the then unresolved position regarding a criminal prosecution, and the ongoing financial position of Garuda, he felt that it was premature to state what final view he would take on the terms of settlement proposed in 2005.

14.46 On 19th February, 2007, the Tribunal was notified by the solicitor to Revenue that it had been conveyed by the Office of the Director of Public Prosecutions to Revenue that a decision had been made not to institute a prosecution against either Mr. Lowry or Garuda. In the light of that decision, and further dealings had between the respective representatives, it appeared likely to the Tribunal that a final settlement of the outstanding tax liabilities in issue, either in terms of the 2005 arrangements or in revised and related terms that were broadly similar, was likely to be reached.

14.47 Later that year, the settlement arrangements were duly finalised. With regard to Garuda Limited, a total liability of €1,261,250.00 was discharged in respect of underdeclaration of VAT and PAYE/PRSI, consisting of €706,612.00 for tax, and €554,638.00 for interest and penalties. As to Mr. Lowry personally, the aggregate liability discharged for underdeclaration of Income Tax was €192,120.24, consisting of €63,516.09 for tax, and €128,604.15 for interest and penalties. As had been expressed as the intention of the Revenue, and was required by Section 1086 of the Taxes Consolidation Act, 1997, particulars of the settlement, amounting in total to €1,453,370.24, were set forth in the list of Revenue defaulters published in the Iris Oifigiúil edition of 25th September, 2007.

CONCLUSIONS

14.48 In the investigations, assessments and negotiations carried out by Revenue in relation to the relevant unpaid tax liabilities, Mr. Nolan and Mr. Liston in general terms discharged their duties in a manner that was diligent and professional. Given the difficulties involved in the case, the eventual resolution was justified and satisfactory. The delay in bringing finality to the negotiations primarily related to the mutual tension arising as a result of deploying criminal and civil procedures at the same time, and Revenue cannot be faulted in this regard.

14.49 From the evidence heard, in particular with regard to prior media reports, it would appear that the initial approach made to Revenue by Mr. Lowry's then tax agents was correctly viewed by Revenue as not constituting voluntary disclosure. It is noted that the overall quantification of financial penalties on the basis of an absence of voluntary disclosure was not queried by or on behalf of Mr. Lowry or Garuda, and that any element of discounting arose solely on a basis of inability to pay on the part of Garuda.

14.50 Whilst local tax officials did become aware of potential irregularities at Mr. Lowry's Holycross house, this was in a context referable to those then carrying out works at the initial stages, and not Mr. Lowry. Given the absence of any evidence that an extension was then being constructed, the location of the premises, the self-assessment nature of Residential Property Tax, and all other circumstances, it would be setting forth an inordinately high duty of care to criticise Revenue for not having physically inspected the premises, or investigated further in advance of the 1996 media disclosures.

14.51 The issue of which taxable entity should be held liable for undeclared income was an important and substantial decision to be made by Revenue. Whilst it is accepted that the constraints of the tax code and the documentation existing in relation to material payments left Revenue little option but to regard the majority of payments made by Dunnes as having been received by Garuda, it is noteworthy that minimal if any evidence exists of any such payments having been reinvested into the growth of the Garuda business or otherwise having accrued to its benefit. On the contrary, the almost invariable course of dealing appears that the payments were appropriated to Mr. Lowry's personal benefit, either by encashment or lodgment to Irish or off-shore bank accounts in his name. Most reprehensibly, of the sums intended to be dispensed among Garuda employees as Christmas bonus payments, these appear to have been personally appropriated in their entirety by Mr. Lowry. It is readily understandable that Revenue had to *"shoehorn"* the apparent liabilities within the constraints of

existing law and practice, and that there was anxiety to avoid any speculative or incorrect basis of assessment. Nonetheless, this was a case of Mr. Lowry as agent having personally benefited from the vast preponderance of payments ostensibly paid to his company as principal, and given the forms of redress that can be pursued in civil law against an agent in similar circumstances, it would seem desirable that some form of provision be made in tax law and practice for holding an agent liable in such circumstances, particularly if a company as principal is likely to be insolvent. Having said this, it is also right to note that Mr. Lowry and his advisers are entitled to credit for raising substantial funds on behalf of Garuda, rather than saddling Revenue with a poorer outcome from a potentially insolvent company.

14.52 Further by way of recommendation, reference has already been made to the difficulties raised for both Revenue and taxpayer by the mutual tension between the criminal and civil aspects of investigation. From the evidence, it would seem that although Mr. Nolan and Mr. Liston both sought to define their separate functions, they carried out their duties in tandem and as a team, so that any such demarcation could be said to be little more than notional. It is surely in ease of both Revenue and taxpayer in cases involving both a criminal and civil investigation that meetings and other dealings on each aspect assume some real and physical demarcation, thereby facilitating prompt payment of arrears in a manner that will be demonstrably without prejudice to a legal caution, or other processes proper to the separate criminal investigation.

Concluding Observations

15.01 In concluding this Volume with a brief overview, it is of interest to refer to a number of characteristic features that appeared common to most, if not all, of the individual transactions and dealings addressed in the preceding chapters.

Non-disclosure

15.02 First and foremost of these was the fact that, although at least a substantial portion of these matters was acknowledged by Mr. Michael Lowry to be material to the Tribunal's Terms of Reference, none of them was brought to the attention of the Tribunal until the disclosures of March, 2001, from Mr. Matt Cooper, and from Investec Bank, regarding respectively the $50,000.00 donation, and the Cheadle transaction. These in turn prompted further information being furnished on the part of some affected persons in relation to the transactions involving Carysfort, Marbella and Mansfield, and by Mr. Barry Maloney, in response to queries raised by the Tribunal, in relation to a number of material conversations had between him and Mr. Denis O'Brien. It is reasonable to assume that, in the absence of what had thus been conveyed by Mr. Cooper and Investec, the Tribunal would in early course have concluded its outstanding inquiries relating to the late Mr. Charles Haughey, and found no basis of association between Mr. Michael Lowry and Mr. Denis O'Brien, in any context referable to the Terms of Reference. The withholding of all of this information and, as later emerged, the furnishing of much false and contrived documentation and evidence, delayed and extended completion of this crucial portion of the Report inordinately. Much that was offered in the evidence of affected persons, mainly by way of contention that matters were not relevant to the Tribunal was unconvincing in the extreme.

Things are not what they seem

15.03 Apart from concealing in the first instance from the Tribunal transactions and dealings that ought to have been disclosed, it was the case that, once such matters had emerged, some affected persons and their representatives promptly set about depicting them in terms in which, it was contended that, however uneasily or uncomfortably they might sit with the apparent meaning of what seemed to occur, no adverse inferences within the Terms of Reference were warranted. The most significant and recently uncovered instance of this was the wholesale falsification and suppression of much crucial documentation in the files of Mr. Christopher Vaughan, the UK solicitor who acted for Mr. Lowry in respect of the Mansfield and Cheadle transactions, and for Mr. O'Brien in respect of the Doncaster Rovers transaction. By the truncation of

certain documentation, and the removal of other documents, it was possible to make available to the Tribunal a documentary record of events which could have appeared, at least on a strained interpretation, to accord with false evidence provided on important aspects of the property transactions, particularly Cheadle and Mansfield.

15.04 As to the $50,000.00 donation to Fine Gael, what might have seemed a disposition on the part of Mr. O'Brien that his consortium, Esat Digifone, should respond handsomely, yet discreetly, to a major international fundraising endeavour, on the part of the main party in the Government that had recently awarded the GSM licence to Esat Digifone, was explained in evidence by Mr. O'Brien as an essentially autonomous move by his Norwegian partner, Telenor, with the object of becoming more involved in Irish affairs, giving rise to a payment that he stated would have been inappropriate for himself, but which he later indemnified, although only in response to "*bullying*" by Telenor, that he could never have foreseen.

15.05 Similarly, the later undisclosed instances of money from accounts of Mr. O'Brien moving covertly, via intermediaries, to Mr. Lowry, in one instance being abruptly returned on the establishment of the McCracken Tribunal, and in the other, proceeding to fund substantial proportions of the Mansfield and Cheadle purchases, are given apparent justification in evidence by a series of loans, other financial transactions purporting to constitute remuneration, and property transactions in different jurisdictions. These entailed the transmission of £147,000.00 to Mr. Lowry, described by Mr. O'Brien on the one hand, and Mr. Lowry on the other hand, as two separate and independent transactions, from which it appeared, as it was contended, purely coincidentally, that that sum of money was transferred, covertly, from an off-shore account of Mr. O'Brien to an off-shore account of Mr. Lowry. Likewise in the case of the Mansfield transaction, the transfer of Stg.£300,000.00 from an account of Mr. O'Brien to Mr. Lowry's account with Mr. Christopher Vaughan, was as the result of, what was again contended to be two purely coincidental transactions. The Stg.£300,000.00 transferred from Mr. O'Brien's account to Mr. Lowry's account, was stated to have constituted remuneration to Mr. Aidan Phelan who, it was testified, was coincidentally to go into business with Mr. Lowry at the selfsame time.

15.06 Just as Mr. O'Brien did not bring any of these matters to the attention of the Tribunal, neither did Mr. Lowry bring to the attention of the Tribunal his Isle of Man off-shore bank account to which the £147,000.00 was credited, nor his account with Mr. Christopher Vaughan to which the sum of Stg.£300,000.00 was credited. In the case of the Cheadle transaction, the plain words of two intimate associates of Mr. O'Brien to the effect that he was behind a transaction entailing

a loan of Stg.£420,000.00 for the benefit of Mr. Lowry, as recorded by responsible officials of Investec Bank, with no vested interest, were dismissed as the result of misunderstanding, confusion or even fabrication on the part of the officials, or in the case of one of Mr. O'Brien's associates, as a result of representations which he conceded had probably been made by him, but which he had stated in evidence were unauthorised and false. None of these matters could readily, if indeed at all, have been gleaned from the ostensible money trail facts. Again, the recorded expression of views of a number of professional witnesses, to the effect that Mr. Lowry had an interest in the Doncaster Rovers transaction, disputed by Mr. O'Brien, was met by a series of explanations based on mistake, or inaccurate note-taking on the part of professionals who, despite such mistakes and unprofessional behaviour in so serious a matter, nevertheless continued to be retained by Mr. O'Brien on the one hand, and Mr. Lowry on the other.

Recurring personnel

15.07 The most delicate liaison roles in all the transactions and dealings under review appear always to have been undertaken by a small number of close confidants, essentially, in the case of Mr. O'Brien, the late Mr. David Austin and Mr. Aidan Phelan. The former was the initiator and conduit involved in the $50,000.00 payment to Fine Gael, was the person who had a central role in dealings pertaining to both Carysfort and Marbella, and also had a significant role in the Friends and Family share transactions. The latter initially emerged in evidence as the individual who made the vital approach to the former in 1997, with regard to confirmation that $50,000.00 had made its way to Fine Gael, by which time Mr. Austin was gravely ill, was centrally involved in implementing Mr. O'Brien's directions as to the dealings with his funds which are addressed in the chapter entitled *"From Carysfort to Marbella"*, was involved in both the crisis inquiries undertaken in consequence of the conversations between Mr. O'Brien and Mr. Maloney, in addition to the Friends and Family share transactions, and was a pivotal figure at critical stages of each of the three UK property transactions examined.

15.08 As regards Mr. Michael Lowry, his accountant and friend, Mr. Denis O'Connor, was intimately involved on his behalf from the Tribunal's earliest days, and indeed going back as far as the McCracken Tribunal, in a like role. Having become so emphatically identified with Mr. Lowry, it came as an appreciable surprise in latter evidence to learn of his extensive and undeclared involvement in numerous guises referable to each of the three UK property transactions, including dealings with aspects of the Doncaster Rovers transaction, at the request of Mr. Denis O'Brien Senior, and his cryptic peregrinations in this regard

are examined in Chapters 9 and 10. In common only with Mr. Christopher Vaughan, he, as a professional witness, attained a degree and range of involvement that was unique in the lengthy hearings held. Finally, whilst in no sense indicative in itself of an involvement in the Doncaster Rovers transaction on the part of Mr. Lowry, the disposition towards recurring personnel was exemplified when Mr. Bill Maher and Mr. Pat Doherty, two business associates of Mr. Lowry who had made payments to him that were addressed in the somewhat uncontroversial evidence heard in 1999, in regard to Mr. Lowry, made unexpected reappearances as persons who had been involved in the embryonic stages of that transaction.

Witnesses refuse to attend

15.09 Potentially critical witnesses who were not compellable, being resident outside the jurisdiction, declined to testify. Two of them, Mr. Kevin Phelan and Mr. Peter Muldowney, both Irish nationals, with clear connections to the jurisdiction, relied on the fact that they were outside of the Tribunal's reach in failing to cooperate with it, despite the fact that, in the case of Mr. Peter Muldowney, he was an executive of a company, Messrs. Donaldson Lufkin & Jenrette, which was at the time associated with major international financial institutions. Mr. Karl Tully, resident in the Isle of Man, an official of Irish Nationwide Bank in the Isle of Man, also declined to testify, despite the fact that Irish Nationwide Bank was wholly owned by Irish Nationwide Building Society in Dublin, and transacted, as far as can be judged, most of its business with the Dublin-based Building Society. Mr. Christopher Vaughan, although ultimately a witness at the Tribunal's proceedings, attended only belatedly after several prior refusals. In the delay occasioned by concealment, Mr. David Austin, who would have had much important information to convey to the Tribunal, passed away.

Professional persons' actions are inexplicable

15.10 Apparently competent and intelligent businessmen and professional persons comport themselves with inadvertence and loss of memory, or make unorthodox or capricious decisions, which can scarcely characterise their normal dealings. Instances include:

(i) board members of both Esat Telecom and Esat Digifone, with the aid of eminent legal and financial advisers, seeking confirmation of receipt of the $50,000.00 by Fine Gael, do so from Mr. Austin, rather than Fine Gael, palpably the only authoritative source of confirmation, not least having regard to the fact that an approach at that juncture to Fine Gael could

have elicited only a response that the money had not by then been received;

(ii) correspondence and evidence suggesting that Mr. Christopher Vaughan, as a specialist conveyancing solicitor, was prone to confusing the nature of instructions given to him in property transactions by Mr. Kevin Phelan;

(iii) Mr. Aidan Phelan, purporting to forget or overlook what was a unique and relevant opening of a substantial account on behalf of Mr. O'Brien, when specifically queried in that regard by Mr. Owen O'Connell, in the course of investigations conducted by Esat Digifone and Esat Telecom in advance of the latter's IPO;

(iv) Mr. Peter Muldowney, as an experienced stockbroker, and on the strength only of a supposed reference to Mr. David Austin's health in a telephone conversation, making him, rather than Mr. O'Brien's father-in-law, Mr. Noel Walshe, the beneficiary of a significant share transaction;

(v) Mr. O'Brien and Mr. Aidan Phelan, apparently agreeing a considerable financial advance of Stg.£300,000.00, from the former to the latter, which funded much of the purchase price of the Mansfield and Cheadle transactions, at a time and in a manner which was devoid of business efficacy, proper accounting, or fiscal procedures;

(vi) Mr. Michael Lowry, given his evidence as to entitlement only to 10% of the beneficial interest in the Mansfield property, seeking and obtaining specialist Capital Gains Tax advice from a colleague of Mr. Denis O'Connor, consistent as was conceded in evidence by Mr. O'Connor, only with a substantial interest in the property;

(vii) Mr. Denis O'Connor, Mr. Lowry's accountant and representative, and a person synonymous with him, deciding to interpose himself as a broker between Westferry and the Doncaster vendors, for no other reason than that the retention fund disputes were apparently issues of personal fascination for him.

15.11 If indeed a measure of falsification and reconstruction has been deployed, to enable a false picture to be conveyed in respect of crucial aspects of evidence, as the Tribunal finds, haste or panic may have contributed to errors being made, and gaps being left. This may be an element in Mr. Lowry and his daughter having appeared ascertainably for a period as directors of Catclause Limited in the UK, and the needless duplication of typing errors in reconstituted correspondence emanating from Mr. Christopher Vaughan.

"*Chinese Walls*"

15.12 The nature of this concept was explained in an earlier chapter. In practice, what it amounts to, in the context of dealings between affected persons and their associates, is a professed course of conduct on the part of such persons, having obvious common concerns and interests in matters of particular sensitivity, to avoid conversing or otherwise communicating on those matters. Its existence in practical terms was first noted in Part I of the Report, which referred, at Chapter 3, paragraphs 116 and 117, to how Mr. Charles Haughey had testified that conversations with Mr. Desmond Traynor during the latter's visits, when administering Mr. Haughey's bill-paying service, never addressed the identities of Mr. Haughey's benefactors, but were confined to vague and general discussions on the state of the economy and the nation. Some such instances are noted in earlier chapters of this Volume relating to the money trail, particularly the $50,000.00 donation, and the Carysfort and Marbella transactions, where the nature and content of conversations had with the late Mr. David Austin, a convivial and widely informed person, who enjoyed friendship with each of Mr. Lowry, Mr. O'Brien and Mr. Aidan Phelan, would from much of their evidence appear to have been strangely inhibited and curtailed.

Confusion advanced as recurring theme

15.13 Mr. Christopher Vaughan, in a written response to a Tribunal query concerning the "*long form*" and "*short form*" letters, produced an exchange of correspondence between himself and Mr. Kevin Phelan, in which Mr. Kevin Phelan suggested that the generation of those letters stemmed from confusion in Mr. Christopher Vaughan's mind as to who his client was at various times in relation to the Cheadle transaction, and to some extent also the Mansfield transaction. Mr. Vaughan himself, in a letter to Mr. Lowry, adopted this as the explanation for his having generated both the "*long form*" and "*short form*" letters. Mr. Vaughan persisted with this explanation until new documentation, which came to light in the course of his evidence in 2009, made it impossible for him to sustain the proposition.

15.14 Confusion was on another occasion advanced as an explanation for unusual aspects of the transactions. This occurred in the course of the evidence of Mr. Lowry, who indicated that the purpose of his meetings at Mr. Aidan Phelan's offices in Clanwilliam Court on the 15th March, 2001, and at the Regency Airport Hotel some days later, was to endeavour to get to the bottom of what he effectively described as an extremely confusing situation, namely, the suggestion that he should be drawn into a controversy, involving an implication that he had a continuing involvement in the Cheadle transaction, and that that

involvement was connected also with an involvement of Mr. Denis O'Brien, in the eyes of Investec Bank.

15.15 Again, it was contended that it was confusion, on the part of Mr. Christopher Vaughan, which prompted him to write to Mr. Lowry on 25th September, 1998, in relation to the Doncaster Rovers acquisition, in terms consistent only with Mr. Lowry being a principal party to that transaction. Likewise, Ms. Ruth Collard, a senior litigation partner in Messrs. Carter-Ruck, Mr. Denis O'Brien's solicitors in London, was confused when she recorded Mr. Denis O'Connor informing her that Mr. Lowry was involved in that transaction, according to Mr. O'Connor.

Little by way of genuine confusion

15.16 There was in fact little by way of genuine confusion concerning these transactions. Once the entirety of the facts of the transactions had emerged, by the time of Mr. Vaughan's evidence in 2009, and once also from that evidence the extent of the lengths to which individuals connected with those transactions had gone in order to obscure or conceal them became clear, it was possible to discern the real source of confusion. The confusion stemmed, not from the simple transactions themselves, which were fairly ordinary purchases of uncomplicated pieces of property in the UK, but rather from the repeated attempts to obscure the transactions, to conceal Mr. Lowry's involvement in them, the extent of his involvement in them, and the fact that his involvement persisted after he had claimed to have ceased to have any interest in the Cheadle transaction.

15.17 Because these transactions were conducted in the UK, there was obviously a much reduced likelihood of their coming to the attention of the Irish public and therefore, unless directly through the actions of any person involved in them, they were unlikely to come to the attention of the Tribunal. As Mr. Lowry's initial dealings with the Tribunal were conducted, or at least mediated, through the engagement of Mr. Denis O'Connor, the non-disclosure to him of any aspect of those transactions, either the loan from Investec Bank for the Cheadle transaction, or what was contended as the loan from Mr. Aidan Phelan to fund the Mansfield transaction, effectively shielded those activities from the view of the Tribunal. This also applied to the funding of the Carysfort refurbishment, by way of what Mr. Lowry contended was a loan from Mr. Austin. In other words, every aspect of Mr. Lowry's property dealings, which were connected directly or indirectly, either through Mr. David Austin, or Mr. Aidan Phelan, with Mr. Denis O'Brien, were excluded until 2001 from the view of his accountant, Mr. Denis O'Connor. As Mr. O'Connor was Mr. Lowry's interface with the Tribunal, those transactions were therefore obscured from the Tribunal's gaze. It is striking that

though Mr. O'Connor was kept out of the loop at this stage, after 2001, he became central to a range of interactions between almost every person or entity involved in the Tribunal's examination of matters connected with English property: Mr. Lowry, Mr. Denis O'Brien, Mr. Denis O'Brien Senior, Mr. Aidan Phelan, Mr. Kevin Phelan, Mr. Richardson and Mr. Weaver, Mr. Christopher Vaughan, Messrs. Carter-Ruck, Messrs. William Fry, Messrs. LK Shields, Mr. Bryan Phelan and Mr. Craig Tallents.

15.18 The recounting of much of what transpired in relation to these transactions has entailed considerable repetition, both in evidence and in this Report. This is the inevitable result of the Tribunals having repeatedly to examine the transactions once critical new evidence came to light. What is characteristic about the Tribunal's repeated views of these transactions was the fact that the belatedly disclosed evidence clearly had been suppressed, and that the earlier evidence can only have been given in the knowledge that relevant parts of Mr. Vaughan's files had been withheld from the Tribunal, and other parts had been falsified.

Disaffection of Mr. Kevin Phelan

15.19 Undoubtedly what conspired to bring much of this information to the notice of the Tribunal was the disaffection of Mr. Kevin Phelan who had, over a repeated period of time, been either centrally or peripherally involved in dispute with Mr. O'Brien's interests, and to some degree also with Mr. Lowry's interest.

15.20 Whilst the Tribunal would have been slow to act on matters brought to its attention, even indirectly, by someone so patently disaffected, if not hostile to the interests of Mr. O'Brien, the material brought to light in this case consisted exclusively of portions of the relevant files of Mr. Christopher Vaughan concerning the Mansfield, Cheadle and Doncaster Rovers transactions. Even before Mr. Vaughan gave evidence, it had not been open convincingly to any person connected with these transactions to suggest that any of this material had been forged. Once Mr. Vaughan gave evidence, it was clear that the material had in fact been generated in the course of these transactions, and that the "*long form*" letters, and other additional material excluded from the copy files furnished to the Tribunal, had been suppressed in dealings with the Tribunal. In other words, it was those altered, concealed or suppressed documents which represented the true features of those transactions, and the distorted files of documents submitted to the Tribunal were intended to present a picture which excluded the ownership of Mansfield and Cheadle by Mr. Michael Lowry, which had been denied in evidence by Mr. Lowry, and other individuals. Those denials would not

have been possible, had that material been available to the Tribunal when those matters first arose in evidence.

The closest of associates are the sources of crucial evidence

15.21 Highly significant portions of the evidence and information tending to implicate Mr. Denis O'Brien in transactions and other matters inquired into, in the course of the money trail, came, not from adversaries or persons of whom it could have been suggested were likely to be hostile to his interests, or those of Mr. Lowry, but from business and professional associates who had no motive so to act. Accordingly, it was not from such persons as Mr. Ken Richardson or Mr. Mark Weaver, representatives of the Doncaster vendors, or from Mr. Kevin Phelan, that evidence which might be termed negative as regards Mr. O'Brien and Mr. Lowry, was heard, but from Mr. Michael Tunney, Mr. Christopher Vaughan, Ms. Ruth Collard and Ms. Kate Macmillan.

15.22 In addition, evidence was given by officials of Investec Bank, persons with no conceivable vested interest, of statements made by close friends and intimate business associates of Mr. O'Brien, namely Mr. Aidan Phelan and Mr. Michael Tunney, evidence, the plain implications of which were of concealed financial connections between Mr. O'Brien and Mr. Lowry.

15.23 Indeed, having regard to the conversations had between Mr. O'Brien and Mr. Maloney, although portions of their content were disputed, it is noteworthy that significant matters contributing to the conclusions formed by the Tribunal in this regard emerged from Mr. O'Brien's own acknowledgements as to matters said by him on those occasions.

Cumulative aspects

15.24 Although the preceding chapters, from numbers 2 to 12 inclusive, have dealt separately with the money trail matters, and the three separate chapters in accordance with their titles, it would be wrong to take the view that, in the ultimate, each much be considered in total isolation. As stated in Chapter 1, the introductory chapter, there is also a cumulative element which must be taken into consideration. The repeated involvement of both Mr. Austin and Mr. Aidan Phelan in this respect is instructive. Mr. David Austin was centrally involved in the covert routing of, and the generation of false documentation so as to facilitate a donation of $50,000.00, intended for the Fine Gael party; significant also was his role, together with that of Mr. Aidan Phelan, in the production of a cryptic receipt, designed to satisfy the IPO inquiry, but in fact calculated to conceal the true position. Can it be coincidence that both Mr. Phelan and Mr. Austin were the

primary actors involved in transferring a substantial payment, £147,000.00, from Mr. Denis O'Brien to Mr. Michael Lowry, in 1996, by a sinuous and obscure off-shore route, and that Mr. Aidan Phelan was the individual who, along with Mr. O'Brien himself, obscured this payment from the IPO? Again it was through Mr. Aidan Phelan that substantial funds were applied for the benefit of Mr. Lowry, firstly in Mansfield, and secondly in Cheadle. Was it coincidental that, no sooner was the Mansfield transaction completed in March, 1999, Mr. Phelan had introduced Mr. Lowry to Mr. Michael Tunney, a close business associate of both Mr. Phelan and Mr. O'Brien, and that, before Christmas of that year, Mr. Phelan should have negotiated a loan, rushed through the bank's lending procedures, to meet a completion deadline, and described at various times by both of them as a "*Denis O'Brien transaction*"? Again was it coincidence that, apparently, Mr. Lowry's initial dealings with English property should have occurred in circumstances in which the first communication from his solicitor, Mr. Christopher Vaughan, should have dealt at length, not with Mansfield, the stated purpose of his visit, but with the Doncaster transaction? The Tribunal has concluded that it strains any rational evaluation of the facts that these matters could have been coincidental. They reflected nothing other than an intent consistent with the application of funds for the benefit of Mr. Lowry, in the crediting of £147,000.00 to his off-shore Isle of Man bank account, the transfer of Stg.£300,000.00 for the Mansfield, and later the Cheadle, transaction, and the support for a loan of Stg.£420,000.00 for the Cheadle transaction.

Timing of conversations

15.25 It is also of interest that the timing of the conversations between Mr. O'Brien and Mr. Maloney, referring to payments of £100,000.00, accords significantly with the evidence in relation to the changing circumstances affecting the sum of money transferred by Mr. O'Brien, via Mr. Phelan and Mr. Austin, to Mr. Lowry. Mr. Maloney's evidence was that his first conversation with respect to these matters occurred in October or November, 1996. The conversation pertained to two payments of £100,000.00. According to Mr. O'Brien's evidence, that conversation occurred on 17th November, 1996. On either witness's evidence as to the date of the conversation, it took place after money had been covertly transferred by Mr. O'Brien to Mr. Austin, on 10th July, when £50,000.00 was transferred, and on 19th July, when a further £100,000.00 was transferred. If the conversation took place in November, it occurred shortly after money was transferred by Mr. David Austin to Mr. Lowry's Isle of Man bank account, that is, between 16th and 21st October, 1996. Evidence was given of subsequent conversations between the two men respecting the same matter, two of which conversations appeared to occur in or around August, 1997 and another, in or around 8th October, 1997, in the course of which Mr. O'Brien, recalling his 1996 conversation with Mr. Maloney, had stated that he had not in fact made any

payment to Mr. Lowry; in a later conversation, he stated that the payment did not happen, that the money *"didn't go through"*; in their last exchange, Mr. O'Brien stated that what he had not told Mr. Maloney on an earlier occasion was that, whilst he was going to make the payment, it had *"got stuck with an intermediary"*, and that he had *"thought about it but...didn't do it."* By the time of those latter conversations, the £147,000.00, transferred to Mr. Lowry's Isle of Man bank account in October, 1996, had already, since in or about 7th February, 1997, been retransferred to Mr. Austin. By that time, in other words, it had become *"stuck with an intermediary".*

Lawyers and accountants

15.26 With reference to the roles of lawyers and accountants in connection with aspects of the money trail, certain observations are appropriate. Acknowledging that it is the duty of lawyers fearlessly to represent their clients, it must equally be acknowledged that it is no part of a lawyer's duty to place the interest of his client above the duties of his professional calling. In this context, the matters referred to in Chapter 11 will be recalled, and specifically the Tribunal's findings with respect to the conduct of solicitors, both in England and in Ireland, in representing to the Tribunal that the City of London Police had concerns regarding the making available to the Tribunal of access to documentation concerning the blackmail complaint made by Mr. O'Brien Senior. In submissions relevant to the obvious reliance by the Tribunal on assurances relayed to it by solicitors acting for Westferry, Mr. Denis O'Brien's company, it was contended, without any expression of regret as to what had happened, that instead of relying on those assurances, the Tribunal should have contacted the police directly. In other words, the Tribunal should accept a submission, now being made on behalf of Mr O'Brien, the effect of which is that it should have rejected earlier statements from solicitors acting for one of his companies, surely an extreme case of seeking to have one's cake and eat it. In regard to submissions made on behalf of Mr. Denis O'Connor, the Tribunal in particular notes his expressions of regret for involvement in certain latter activities addressed in evidence, and want of due cooperation with the Tribunal, in regard to these.

The money involved

15.27 Whilst the separate matters addressed in relation to Mr. Lowry in Chapters 2, 14 and, particularly, 13, speak for themselves, it must be said that, with regard to the money trail chapters, no conclusion can be arrived at, other than that repeated and clandestine courses of actions were adopted by persons intimately associated with Mr. O'Brien, to confer payments or other benefits upon Mr. Lowry, on behalf of Mr. O'Brien. This initially occurred, in the case of the

payment of £147,000.00 from Mr. O'Brien, through Mr. David Austin in a series of off-shore moves which, in many ways savoured of the methods adopted in the transmission of the $50,000.00 donation, covertly through Mr. Austin, to the Fine Gael party. These two transactions, sharing many similar characteristics as regards method and personnel, were obscured from the IPO. Next, there was the payment of Stg.£300,000.00 to Mr. Lowry's client account with Mr. Vaughan, which funded over Stg.£231,000.00 of the overall purchase price, including interest, of the Mansfield property and a further Stg.£44,500.00, by way of deposit on the Cheadle property, the balance of which completion funds, Stg.£420,000.00, was supplied by way of loan, rushed through Woodchester Bank as a *"Denis O'Brien transaction"*: a transaction, the ostensible structure of which, involving a company with which Mr. Lowry was associated, was reversed in early 2000, for *"secrecy"* reasons.

15.28 That no money trail connection linking Mr. Lowry with the Doncaster Rovers transaction was identified, and that a succession of witnesses, some found to be of less than persuasive credibility in other evidence, have denied such an interest on the part of Mr. Lowry, does not explain the sequence of representations made to the contrary by persons within the nexus of the O'Brien interests. Nor does the generally unpropitious course of endeavours, initially calculated to benefit Mr. Lowry, whereby payments were returned or reversed, and property projects failed to live up to expectations, detract from the initial intent by which such matters were motivated.

15.29 Above all, the wholesale falsification, concealment and delay afforded to the Tribunal, by and on behalf of the persons primarily involved, frequently following spurious assurances of full cooperation, confirms the validity, and indeed necessity, of the findings that have been made. Notwithstanding the appointment of the McCracken Tribunal, and the fact that disclosures were made which caused the Mansfield and Cheadle transactions to come unexpectedly to the attention of this Tribunal in 2001, both necessitating the taking of steps to reverse or falsify actions taken, the Tribunal is satisfied that Mr. Lowry received payments of £147,000.00 from Mr. Denis O'Brien in July, 1996, Stg.£300,000.00 from Mr. Denis O'Brien in March, 1999, and a benefit equivalent to a payment in the form of Mr. O'Brien's support for a loan of Stg.£420,000.00 in December, 1999. Had the Thistlewood sale of Cheadle proceeded, the Tribunal is satisfied that an enhanced benefit would have accrued to Mr. Lowry, in the order of Stg.£1.1 million. Had the Berwood sale gone ahead, a total sale price for both Mansfield and Cheadle would have been achieved in the order of Stg.£1.36 million. It should be observed that, at the time of the making of these payments, the annual Dáil and/or Ministerial salary entitlements, enjoyed by Mr. Lowry, on any appraisal paled in comparison with their amounts.

EXECUTIVE SUMMARY

CAVEAT

16.01 In Part I of its Report, published in December, 2006, the Tribunal followed the practice of previous recent Tribunals of Inquiry of including an Executive Summary of the principal conclusions, findings and recommendations contained in the main body of its Report. On that occasion, the Tribunal noted that it had been conveyed that that practice should, if possible, be adhered to. In the case of this Volume of the Tribunal's Report, it is also intended to set out, as now follows, a comparatively brief resumé of the principal matters comprised in each of the preceding chapters of this Volume.

16.02 As before, the Tribunal wishes to record that it is far from an easy task to set out in condensed form an accurate or sufficient summary of chapters, that already represent a truncated and distilled account of matters that transpired over many days of evidence, and of voluminous documentation, together with associated conclusions, findings and recommendations. The Tribunal therefore wishes to reiterate that what follows can be regarded as no more than in itself an endeavour to enable a reader acquire a superficial overview of the main matters addressed; it cannot hope to replicate the full content of what is contained in the detailed chapters, or to reflect in a fully satisfactory way the balance conveyed in those chapters, or to enable a full and informed understanding of the substantive subject matter of the Report.

EARLY EVIDENCE RELATING TO MR. MICHAEL LOWRY

16.03 Chapter 2 traces the evidence heard, and the outcome of the Tribunal's initial investigations in 1999 into Mr. Lowry's financial affairs pursuant to paragraphs (e) and (f) of its Terms of Reference, which culminated in public sittings over a comparatively short number of days in June, 1999. The evidence heard reflected the outcome of an exercise of relatively lengthy duration conducted confidentially, in the course of the Tribunal's private investigations in advance of those public sittings, whereby the Tribunal scrutinised lodgements to Mr. Lowry's disclosed bank accounts over the years then regarded as relevant, that is, over the years 1987 to 1996. In conducting that exercise, the Tribunal was assured, by and on behalf of Mr. Lowry, that the maximum degree of co-operation and disclosure was being afforded to it.

16.04 In all, the Tribunal examined lodgements to nineteen bank accounts held by Mr. Lowry, including accounts held off-shore, which had already been discovered by the McCracken Tribunal. The Tribunal received assistance in this regard from Mr. Denis O'Connor, Mr. Lowry's accountant and adviser, who carried

out an exercise of reconstructing the history of Mr. Lowry's finances, and of matching lodgements to those bank accounts, to Mr. Lowry's known income, and other receipts from various sources. This exercise produced an aggregate figure of unmatched lodgements of £31,295.00, which Mr. O'Connor testified was immaterial in terms of accepted accountancy practice. Whilst the Tribunal did not regard that differential, over a ten year period, as sufficiently significant to warrant further inquiry, the Tribunal has concluded that Mr. Lowry's financial arrangements in general disclosed palpably inadequate book-keeping, a want of transparency in his dealings, and a disposition to declare and discharge his tax liabilities far below what could reasonably be expected from a holder of public office. Furthermore, at that time, the Tribunal was unaware that there was considerable additional information not made available to it, and which did not emerge until 2001, and thereafter up to 2009.

16.05 Apart from scrutinising lodgements to Mr. Lowry's then known bank accounts, the Tribunal also pursued investigations into five separate transactions which appeared to have particular relevance to the Tribunal's Terms of Reference concerning Mr. Lowry. The evidence heard, and the outcome of those investigations is also set forth fully in Chapter 2.

16.06 Investigations related firstly to a cash payment of £35,000.00 made by Mr. Patrick Doherty to Mr. Lowry, the substantial proceeds of which were lodged to an account of Mr. Lowry in Allied Irish Banks, Dame Street, in May, 1995. This related to the purchase by Mr. Doherty of a painting and certain items of antique furniture from Mr. Lowry. The second set of dealings investigated also related to cash payments, or cheque payments payable to cash, made for refrigeration consultancy services provided by Mr. Lowry personally to Mr. Bill Maher of Maher Meat Products, who operated in the UK, and Mr. Patrick Whelan of Whelan Frozen Foods Limited. Mr. Lowry received £25,000.00 in cash from Mr. Maher, in December, 1992, £10,000.00 in May, 1992, and £5,000.00 in May, 1994, by cheques payable to cash, from Mr. Whelan. Mr. Maher, who together with Mr. Doherty was to feature in investigations conducted many years later into the acquisition of Doncaster Rovers Football Club, and who was resident in the UK, declined to attend as a witness to the Tribunal.

16.07 The third financial transaction, which featured in the Tribunal's early sittings, related to a further bonus payment of £15,000.00 by Mr. Ben Dunne, on behalf of Dunnes Stores, to Mr. Lowry, in addition to those identified by the McCracken Tribunal. As with other such payments, the source of this payment was the bank account of Dunnes Stores, maintained by Mr. Dunne at Bank of Ireland, Marino. The payment came to light in the course of investigations conducted by Mr. Lowry's accountant and adviser, Mr. Denis O'Connor, after the

publication of the Report of the McCracken Tribunal, and its emergence further demonstrated the covert arrangements devised by Mr. Dunne and Mr. Lowry to remunerate Mr. Lowry in a manner that would enable him to evade tax.

16.08 The fourth matter examined in the course of those sittings was the acquisition and subsequent disposal by Mr. Lowry of a property in Carysfort Avenue, Blackrock, County Dublin, through the agency of the late Mr. Michael Holly, of Cedar Building Company Limited. The evidence heard on that occasion related solely to the purchase of the property in July, 1996, by Mr. Holly for £200,000.00, the extending by him of an option to Mr. Lowry to acquire it, of which Mr. Lowry availed, and Mr. Lowry's subsequent resale of the property to Mr. Holly in January, 1997. Significant additional facts surrounding the short-lived property acquisition were not disclosed to the Tribunal at that time, notwithstanding repeated assurances, by and on behalf of Mr. Lowry, of full co-operation having been afforded to the Tribunal. Those full facts, which did not emerge until 2001, related to the provision of £147,000.00 to Mr. Lowry, seemingly to assist him in the refurbishment of the Carysfort property, through the late Mr. David Austin, from monies which he had received from Mr. Denis O'Brien, and which funds were held by Mr. Lowry in an off-shore account in his name in Irish Nationwide (IOM) Limited, in the Isle of Man.

16.09 The final transaction investigated by the Tribunal in 1999, and reported on in Chapter 2, was the sources of a Stg.£100,000.00 deposit made in January, 1991, to an off-shore account in the name of Mr. Lowry and his three children, with Allied Irish Banks, in the Channel Islands, and the manner in which that deposit was initiated with the assistance of officials of the Dame Street and O'Connell Street branches of Allied Irish Banks, without adherence to exchange control regulations. The Tribunal has concluded that, in the making of that deposit, Mr. Lowry, together with officials of those branches of Allied Irish Banks, knowingly and improperly combined to circumvent exchange control regulations then in force, and to aid Mr. Lowry in evading his taxation liabilities in respect of the funds placed off-shore.

16.10 Had the Tribunal's inquiries not been delayed in the year 2000, consequent on Mr. Charles Haughey's health problems, it may well have been the case that the Tribunal's work would have concluded before further material information regarding Mr. Lowry's finances, which had been withheld from the Tribunal, came to its attention. Had that been so, Chapter 2 would have represented the entire of the Tribunal's Report of its investigations into Mr. Lowry's financial affairs, pursuant to paragraphs (e) and (f) of its Terms of Reference.

THE ESAT/TELENOR $50,0000.00 DONATION TO FINE GAEL

16.11 Chapter 3 is the first of the series of chapters which addresses the further evidence heard in 2001, 2002, 2004, 2007 and again in 2009, regarding Mr. Lowry's finances. The chapter traces the evidence heard and conclusions drawn by the Tribunal in relation to a donation of $50,000.00 made on behalf of Esat Digifone to Fine Gael, some approximately two months after it was announced that Esat Digifone had won the GSM competition, and whilst negotiations were continuing between Esat Digifone and the Department for the granting of the licence. The late Mr. David Austin, who also featured in Part I of the Tribunal's Report, in relation to a payment made by the Jefferson Smurfit Trust to Mr. Charles Haughey, was a conduit for this donation, which was paid to and held by him in an off-shore account in the Channel Islands, until the 1997 General Election, when it was remitted to Fine Gael by Mr. Austin in the guise of a personal donation. Ultimately, when the surrounding facts emerged, neither the donor nor the recipient wished to retain it.

16.12 The donation was ostensibly made towards a Fine Gael fundraising dinner promoted by Mr. Austin, and held in the 21 Club in New York on 9th November, 1995, although the event had long passed by the time the donation was made in late December, 1995. The evidence heard, which touched on a multiplicity of circumstances surrounding the tortuous process by which the donation was made, retained and remitted, is addressed at some length in Chapter 3, as are the ramifications which flowed from it.

16.13 The payment was made by Telenor, Mr. O'Brien's Norwegian partners in Esat Digifone, the company which competed for and won the GSM licence, with Telenor subsequently being reimbursed by Esat Digifone. The issue, over which there was considerable conflict in the evidence heard, was whether the donation was intended to be one made by Telenor on its own account, arising from its interest in Irish affairs, or one made by Telenor, on behalf of Esat Digifone.

16.14 The material events commenced some short time prior to 9th November, 1995, approximately two weeks after the result of the licence competition had been announced, when Mr. Austin, who was a close friend of both Mr. Denis O'Brien and Mr. Michael Lowry, telephoned Mr. O'Brien to inquire whether *"Esat"* would take two tables at the New York dinner, at a suggested tariff of $50,000.00. Mr. Austin was long deceased by the time the matter came to light, and evidence was heard by the Tribunal in 2001. In early December, 1995, at the end of a meeting in Oslo, Mr. O'Brien raised the matter with Mr. Arve Johansen, the most senior Telenor executive involved in the GSM project. They

differed as to what was said on that occasion, and a full account of their evidence, and the conflicts which arose, is set forth in Chapter 3.

16.15 Mr. Johansen then made telephone contact with Mr. Austin, arising from which he received from Mr. Austin an invoice for $50,000.00 for consultancy services, and a direction that payment should be made to a numbered account in Bank of Ireland, Jersey. On 29th December, 1995, payment was made by the transmission of funds from Telenor's bank, Den Norske Bank, to Bank of Ireland, Jersey, for crediting to Mr. Austin's account.

16.16 Telenor then raised a series of three separate invoices to Esat Digifone for recovery of that amount, in which payment was sought, initially in Danish Kroner, then in US Dollars, and finally in Irish Pounds. The third invoice was charged to the running account between Telenor and Esat Digifone, and was discharged by Esat Digifone, as part of a large aggregate payment made on 30th June, 1996.

16.17 Mr. Austin acknowledged receipt of the payment by letter to Mr. Johansen in February, 1996, and towards the latter part of that month, he informed the then Taoiseach, Mr. John Bruton, that money was available from Esat Digifone interests for Fine Gael. A full account of Mr. Bruton's recollection of their conversation is set forth in Chapter 3, as is Mr. Bruton's evidence that, mindful of the recent announcement of Esat Digifone as the winner of the GSM licence competition, he was adamant, and so informed Mr. Austin, that no donation from that source would be accepted by Fine Gael at that time. Being under the impression that the funds were in an account under the control of the donor, Mr. Bruton believed that he had informed Mr. Austin to *"leave it where it is"*.

16.18 The $50,000.00 remained in Mr. Austin's off-shore account in Bank of Ireland, Jersey. In late April, 1997, in the run-up to the General Election, Mr. Austin telephoned Mr. Jim Miley, the then General Secretary of Fine Gael, and informed him that he wished to make a sizeable personal donation to Fine Gael, and indicated that it was *"in my dollar account"*. Mr. Austin then telephoned an old friend of his, the late Mr. Frank Conroy, a long-standing supporter of Fine Gael, and also a person well known to Mr. Michael Lowry, and told him that he was sending him money for transmission to Fine Gael, and that it was the balance of funds raised in connection with the New York fundraiser. Mr. Conroy received a cheque, payable to himself, from Mr. Austin for the Irish Pound equivalent of $50,000.00, endorsed it, and transmitted it to Fine Gael.

16.19 Unbeknown to the Tribunal, this donation was subject to close scrutiny by Esat Digifone, Esat Telecom, Mr. O'Brien's telecommunications holding company through which he held his shareholding in Esat Digifone, Fine Gael, and separately by Telenor in 1997 and 1998. Close consideration was given to whether it should be brought to the attention of the Tribunal, but it was not. This consideration arose in the context of certain inquiries which were pursued by Esat Digifone and Esat Telecom in advance of the issue by Esat Telecom of a prospectus in November, 1997, in connection with an Initial Public Offering in the US of Esat Telecom shares. These inquiries were primarily directed to statements, reportedly made by Mr. Denis O'Brien, to the chief executive officer of Esat Digifone, that he had made a payment to Mr. Michael Lowry in connection with the award of the GSM licence, and which, if true, could have given rise to a significant liability on the part of both companies for the contents of the prospectus. In the context of that inquiry, Telenor also brought the circumstances of the $50,000.00 payment to the attention of both companies.

16.20 It was decided, following deliberations in both companies, that it would be necessary to establish that the $50,000.00 payment had been received by Fine Gael, thereby excluding any possibility that Mr. Lowry might have benefitted personally from it. Rather than making contact with Fine Gael to obtain confirmation to that effect, Mr. Aidan Phelan, was deputed to contact Mr. Austin, who was then gravely ill in France. Mr. Aidan Phelan was Mr. O'Brien's adviser and close associate, who featured in many other aspects of the Tribunal's inquiries into Mr. Lowry's finances, and who also happened to be a close friend of Mr. Austin, and was ultimately to act as one of the executors of his estate. As a result of this contact, Mr. Austin furnished, around 7th November, 1997, an undated handwritten fax addressed "*to whom it concerns*", in which he stated:

> *"I confirm that as Chairman of the Fund Raising Committee for a dinner held in the 21 Club in New York in Dec. '95, for the purposes of raising monies for the "Fine Gael" Party - I received a contribution from Telenor A.S. for the amount of $50,000.*
>
> *I duly forwarded these funds to the Fine Gael party."*

This was, it seems, accepted as sufficient evidence of receipt by Fine Gael, the prospectus was issued, the IPO proceeded, and the matter was not drawn to the attention of the Tribunal.

16.21 Telenor's concerns continued, and in January, 1998, they sought advice from their Irish solicitor as to whether the payment should be referred to the Tribunal. Telenor was advised in the first instance, that direct confirmation of

receipt from Fine Gael should be sought. Having informed their fellow shareholders in Esat Digifone of their intentions, and having retained a public relations consultant, Telenor representatives met with Fine Gael representatives at the party headquarters in Dublin, in February, 1998. The investigations then undertaken by Fine Gael are detailed in Chapter 3, including inquiries made of Mr. Austin, and of Mr. Bruton, on foot of which it was decided that the donation should be returned by Fine Gael. Consideration was also given by Fine Gael to whether the payment should be referred to the Tribunal, and the opinion of senior counsel was obtained. The opinion was to the effect that the payment did not fall within the Tribunal's Terms of Reference, although it was acknowledged in evidence by Mr. Jim Miley that, at that time, neither Fine Gael, nor any of its legal advisers, had available to them significant documentary evidence then in existence. The payment was not therefore referred to the Tribunal by Fine Gael, nor was it referred by Telenor, having received confirmation from Fine Gael that Mr. Michael Lowry was not a named account holder at the time the payment was transmitted to Fine Gael in May, 1997. Likewise, neither Esat Digifone, Esat Telecom, Mr. Denis O'Brien, or any of the numerous directors and personnel of those companies, who had a deeper knowledge of the circumstances, brought it to Tribunal attention.

16.22 Fine Gael returned the payment, by cheque payable to Telenor, forwarded to their solicitors on 2nd March, 1998. Telenor, which had long been reimbursed for the payment by Esat Digifone, promptly delivered it to Mr. O'Brien. There then commenced a fractious course of dealings between the Esat Digifone shareholders, which led to the cheque being returned to Fine Gael. Following media disclosures in 2001, which resulted in the matter coming to the attention of the Tribunal for the first time, the process was re-kindled by Fine Gael, this time by bank draft, which passed to-and-fro between the shareholders of Esat Digifone, and when last mentioned in evidence had come to rest somewhere in Esat Digifone.

16.23 Chapter 3 recounts in some detail the evidence of those centrally involved in connection with the events to which reference has been made in this summary, and it is not intended to outline that evidence further, save to refer briefly to the evidence of Mr. Michael Lowry. Mr. Lowry was Chairman of the trustees of Fine Gael from 1993, until his resignation in November, 1996. Mr. Austin was a very close personal friend of Mr. Lowry, with whom he was in weekly contact, and in latter years in virtual daily contact. Whilst aware, as Chairman of the trustees, of the New York fundraising event, and having been informed of it formally in correspondence by Mr. Austin, he had not attended it, and, according to his evidence, despite the closeness of his relationship to Mr. Austin, had known nothing of Mr. Austin's dealings with Mr. Denis O'Brien, or with Mr. Arve Johansen of Telenor. He had no knowledge of the payment, or of any controversy

surrounding it in 1997 or 1998, and first learned of it as a result of media coverage in early 2001.

16.24 As concluded in Chapter 3, what was in essence a political donation to Fine Gael, the senior party in Government, agreed to be paid by Esat Digifone, in the immediate aftermath of the successful outcome of the GSM competition, was made in a manner which, having regard to its false and misleading documentation, the initial payment to an off-shore Jersey account, and the eventual delays and misrepresented form of transmission to Fine Gael, was secretive, utterly lacking in transparency, and designed to conceal the fact of such payment, by or on behalf of the donors. The Tribunal has rejected as spurious and untenable the suggestion made, in the course of public sittings, that the payment by Telenor was legitimate, as an expression of interest in Irish affairs, but not by any other entity or shareholder within the Esat Digifone consortium. The Tribunal is satisfied that the intention from the outset was that the payment was one made by Telenor, on behalf of Esat Digifone, and not on its own account.

16.25 Whilst acknowledging the entitlement of persons to seek and act on legal advice, it is nonetheless viewed by the Tribunal as regrettable that no disclosure whatsoever was made to a public Tribunal of Inquiry, notwithstanding a substantial degree of knowledge concerning the clandestine circumstances of the payment. This observation also applies to Fine Gael, whose role both in Government and Opposition had been instrumental in the establishment of this Tribunal, in favour of which establishment its Oireachtas Members had unanimously voted.

16.26 The failure of those concerned, in determining whether the donation was one that should have been referred to the Tribunal, was to have regard to the significance of Mr. Lowry's position, as of the date on which the donation was made, that is, in December, 1995. At that time Mr. Lowry was Chairman of the trustees of Fine Gael, and an account holder on behalf of Fine Gael. This omission betrayed a marked reluctance to engage with the Tribunal, and a sensitivity surrounding the circumstances of the payment. The Tribunal has found that the payment, although not one ever intended for Mr. Lowry personally, was nonetheless one that technically falls within its Terms of Reference, and was a payment to Fine Gael, on behalf of Esat Digifone, at the instigation and promotion of Mr. Denis O'Brien.

CONVERSATIONS BETWEEN MR. DENIS O'BRIEN AND MR. BARRY MALONEY AND THEIR AFTERMATH

16.27 Chapter 4, as is apparent from its title, relates to certain conversations which took place in 1996, and 1997, between Mr. Denis O'Brien, and Mr. Barry Maloney, Chief Executive Officer of Esat Digifone, and a long-standing intimate friend of Mr. O'Brien. The content of those conversations, and what was stated by Mr. O'Brien, which in substance was not disputed by the latter either in 1997, or in his evidence to the Tribunal in 2001, was the principal subject matter of the crisis investigations conducted by Esat Digifone and Esat Telecom, in advance of the Esat Telecom Initial Public Offering in the US, which proceeded in late November, 1997.

16.28 Chapter 4 sets out in considerable detail both the evidence heard relating to those conversations, and to the internal investigations put in train when those conversations became known to the directors and shareholders of Esat Digifone, in mid-October, 1997. The first of the conversations took place in October or November, 1996, when Mr. O'Brien was pressing Mr. Maloney for Esat Digifone to make success payments due to consultants, who had assisted Esat Digifone in its successful bid for the GSM licence, which had issued the previous May, 1996. Mr. Maloney, it seems, indicated that the payments would be made, once they were properly vouched, and in response, Mr. Maloney recalled Mr. O'Brien saying:

> *"Well, you think you've got problems. I've had to make two payments of £100,000 each, one of which was to Michael Lowry"*,

or words similar. Mr. O'Brien was subsequently to assert that what he stated on that occasion was false, that the statement had been made in jest and bravado in order to induce Mr. Maloney to make the outstanding success payments, and that he had never mentioned Mr. Lowry by name. Mr. Maloney and Mr. O'Brien differed as to the context of the conversation: it arose, according to Mr. Maloney, in the course of a business meeting in Mr. O'Brien's office at the Malt House in Dublin; Mr. O'Brien placed it as having occurred in the course of a Sunday run that the two were in the habit of doing in the Wicklow mountains.

16.29 The further conversations took place in August and October, 1997, in the aftermath of the Report of the McCracken Tribunal, and in the latter instance, in the aftermath of the establishment of this Tribunal. Mr. O'Brien's and Mr. Maloney's evidence as to what prompted the August, 1997, exchange differed. According to Mr. Maloney, it was Mr. O'Brien who raised the topic on both occasions, and on the first instance, used words to the following effect:

"Do you remember I told you about the payment to Lowry. Well, I just want to let you know I didn't do it. Thank God I didn't do it",

and on the second occasion used words to the following effect:

"I know you must be worried, and I just want to assure you it didn't happen. I did not make the payment. It didn't go through."

Mr. O'Brien recalled only one exchange, when it was Mr. Maloney who raised the matter, and inquired whether any money had been paid to Mr. Lowry, to which Mr. O'Brien replied categorically in the negative.

16.30 Some weeks later, in early October, 1997, by which time this Tribunal had been established, and its Terms of Reference published, the two spoke about the matter again on 8th October, 1997, and on 13th October, 1997. It was Mr. Maloney who, by then having become increasingly anxious about the information which Mr. O'Brien had imparted to him, in the light of the forthcoming IPO of Esat Telecom, and the potential liability that might attach to Esat Digifone, in the event that the licence was impugned consequent on any irregularity in dealings between Mr. O'Brien and Mr. Lowry, impressed on Mr. O'Brien that he should not at that time proceed with the IPO. Mr. O'Brien sought to reassure Mr. Maloney that there was no cause for concern and said:

"Like, you are not buying it, are you? You don't believe me?..
Well, what I didn't tell you was that I was going to make the payment, but it got stuck with an intermediary. I thought about it but I didn't do it...

It didn't go through. Had it gone through, I couldn't be doing the IPO."

16.31 Having taken legal advice from Esat Digifone's solicitors, Messrs. McCann Fitzgerald, Mr. Maloney again met with Mr. O'Brien on 13th October, 1997. By then, he had resolved that, unless Mr. O'Brien agreed to postpone the IPO, he wanted the matter considered by the directors of Esat Digifone, and he so informed Mr. O'Brien. Mr. Maloney made a final effort on the evening of 13th or 14th October, 1997, when he visited Mr. O'Brien at his home late in the evening. Whilst considerable conflict arose between Mr. Maloney and Mr. O'Brien as to what then transpired, there was no conflict as to the outcome, and Mr. O'Brien did not agree to the postponement urged by Mr. Maloney.

16.32 By then, Mr. O'Brien had informed Dr. Michael Walsh, a director of Esat Digifone, and an associate and representative of Mr. Dermot Desmond who, through one of his companies, was a minority shareholder in Esat Digifone, of

what had arisen. From that point, there proceeded over the ensuing weeks an intense process of inquiry and consultation, initially between the shareholders and directors of Esat Digifone, and which latterly extended formally to Esat Telecom, the company about to be floated in the US. Mr. O'Brien was in the US during this process, and largely participated through conference telephone facilities. Chapter 4 details the sequence and substance of the meetings and considerations which took place, the evidence relating to them which was heard, and the contents of the contemporaneous records kept.

16.33 The initial phase of this process entailed the directors and shareholder representatives of Esat Digifone meeting to consider the various statements made by Mr. O'Brien, as reported by Mr. Maloney, and substantially accepted by Mr. O'Brien, and the risks for Esat Digifone in terms of potential liability, arising from the Esat Telecom IPO, and the contents of the proposed prospectus. Mr. O'Brien was asked to explain those statements at meetings held on 20th October, and 23rd October, 1997, neither of which was designated as a board meeting of Esat Digifone, even though its directors were in attendance. Mr. O'Brien participated by conference telephone facilities, and was called upon to explain the various statements he made to Mr. Maloney, and the circumstances of them. On being questioned at the first of these meetings, Mr. O'Brien indicated that what he had stated regarding the making of payments to Mr. Maloney was untrue, and for the first time it seems that he attributed elements of jest and bravado to the circumstances. In response to questioning at the second meeting, and in written replies to questions, Mr. O'Brien identified the *"intermediary"* referred to by him in the course of his exchange with Mr. Maloney on 8th October, 1997, as Woodchester Bank in Dublin, his then principal bankers.

16.34 A matter of particular concern to Esat Digifone, and to Mr. Maloney, was Mr. O'Brien's statement that he had thought of making a payment to Mr. Lowry, but that it had not proceeded, and it had got *"stuck with an intermediary"*. From this it was feared that a third party had knowledge of Mr. O'Brien's intent, and this gave rise to a risk of future exposure. Following the matter having been formally brought to the attention of Esat Telecom, and legal advice, including legal advice from US attorneys, having been taken, it was resolved that further more formal inquires would be necessary, primarily in relation to Mr. O'Brien's statements to Mr. Maloney, but also regarding the $50,000.00 payment made to Mr. David Austin on behalf of Fine Gael, which had by then also emerged, and that Esat Digifone's support for the Esat Telecom IPO would be dependent on the outcome of these inquiries.

16.35 Two forms of investigation were pursued:

(i) the formal structured questioning of Mr. O'Brien by a litigation partner of McCann Fitzgerald in the presence of the directors and shareholder representatives, and their legal advisers, to enable them form a view of Mr. O'Brien's explanations;

(ii) the scrutinising of all relevant bank accounts, including Mr. O'Brien's bank accounts with Woodchester Bank, to identify any payments from them potentially of the type described by Mr. O'Brien to Mr. Maloney.

16.36 The questioning of Mr. O'Brien, again by conference telephone facilities, proceeded on 4th November, 1997, when the directors and shareholders of Esat Digifone, together with their respective legal advisers, assembled at Mr. Dermot Desmond's offices in the International Financial Services Centre. A full account of Mr. O'Brien's responses to the questioning posed can be found within Chapter 4. His evidence to the Tribunal, as already summarised, was consistent with the responses given by him and recorded on that occasion. He also stated that he had known in late 1996, at the time of his first conversation with Mr. Maloney, that Mr. Lowry's business was in difficulty. He acknowledged having said to Mr. Maloney subsequently that:

"I didn't actually do it, thank God",

and admitted that he had thought about paying Mr. Lowry: he had been flush with cash, and felt that Mr. Lowry had been above board in relation to a dispute he had with Telecom Éireann. He could have provided £100,000.00 out of his Woodchester deposits, but realised it would have been misinterpreted. In saying the money was *"stuck with an intermediary"*, he meant that it had been earmarked out of Woodchester. But he changed his mind, and no payment was made. When put to him that, in normal usage, a reference to an intermediary would not refer to a bank, Mr. O'Brien said he differed, that it obviously did mean a bank, and that people in any event do not always say the obvious thing.

16.37 Having considered Mr. O'Brien's responses, and some observations made by Mr. Maloney, the meeting resolved that the Esat Telecom IPO should proceed without objection by Esat Digifone, subject to certain warnings appearing in the prospectus, and subject to certification being made in respect of the auditing of all relevant bank accounts, the provision of an affidavit by Mr. O'Brien, and confirmation being received from Mr. David Austin that the $50,000.00 payment had been received by Fine Gael. All of those conditions were it seems subsequently met to the apparent satisfaction of Esat Digifone.

16.38 The investigation of drawings from relevant bank accounts proceeded under the direction of Mr. Owen O'Connell, of William Fry, solicitors, who was then an adviser to Esat Telecom, who had flown to Boston to meet Mr. O'Brien over the weekend prior to 4th November, 1997, to examine him thoroughly on all issues. The exercise conducted entailed Mr. O'Brien's bookkeeper examining the relevant accounts to isolate all debits in excess of £25,000.00, with a view to identifying their ultimate application. Mr. O'Connell also made inquiries of Mr. Aidan Phelan, Mr. O'Brien's accountant and financial adviser, to ensure that all relevant bank accounts had been identified and examined. Mr. Phelan informed Mr. O'Connell that, apart from a household expenses account, and a UK salaries account, there were no other relevant accounts requiring examination in the context of the exercise being undertaken. Mr. Phelan was fully aware of the purpose of that exercise, and the context in which it arose, and played a further part in advancing the overall investigation by contacting Mr. Austin to obtain confirmation regarding the application of the $50,000.00 payment received by him on behalf of Fine Gael.

16.39 The Tribunal has found that it is significant that Mr. Phelan did not disclose to Mr. O'Connell that, in July of the previous year, that is, July, 1996, some six weeks after the GSM licence had been issued to Esat Digifone, Mr. Phelan, on Mr. O'Brien's instructions, had withdrawn £407,000.00 from an account of Radio Investments NV, a company controlled by Mr. O'Brien, at Woodchester Bank. He had then, again on the instructions of Mr. O'Brien, transferred that sum of £407,000.00, initially to an off-shore account of a third party company with which he was associated. From there, it was promptly transferred to an off-shore account opened by Mr. Phelan, on behalf of Mr. O'Brien, but not in Mr. O'Brien's name, in Allied Irish Banks in the Isle of Man. He had thereafter made disbursements from that account on Mr. O'Brien's instructions, including two payments, in July, 1996, amounting to £150,000.00 to Mr. David Austin. Like Mr. Phelan, Mr. O'Brien, who was also fully aware of the extent and purpose of Mr. O'Connell's investigation, did not disclose the existence of that account. Neither Mr. O'Connell, nor the directors of either Esat Telecom or Esat Digifone, discovered that, after receiving that money, Mr. Austin had transferred the bulk of it, £147,000.00, to an off-shore account of Mr. Lowry, specifically opened in the Isle of Man to receive it.

16.40 The failure of both Mr. Phelan and Mr. O'Brien to disclose that bank account to Mr. O'Connell is of even greater significance in the context of the matters investigated by the Tribunal, which are the subject of Chapter 5. For the purposes of the investigations being conducted in 1997, the disclosure of those other payments by Mr. O'Brien, through Mr. Phelan to Mr. Austin, through whom the $50,000.00 donation to Fine Gael had already been channelled, and from

whom confirmation as to its application was then being sought, would undoubtedly have caused even greater concern on the part of the two companies. It would have necessitated a deeper consideration of the information which had emerged, and in particular Mr. O'Brien's explanation that money he had earmarked in Woodchester for payment to Mr. Lowry, had become *"stuck with an intermediary"*, when Mr. Austin had already acted in that capacity in the payment of the $50,000.00 donation to Fine Gael.

16.41 The Tribunal has concluded in Chapter 4 that it was regrettable that none of those persons involved in the extensive inquiries conducted in 1997 saw fit to make a timely disclosure of them to the Tribunal, at a time when Mr. Austin's evidence would have been available.

16.42 Overall, the Tribunal has concluded in Chapter 4 that, for the reasons set forth in that chapter, the Tribunal in general found the testimony of Mr. Maloney the more persuasive and coherent. It has further found that the justifications advanced in evidence by Mr. O'Brien for his remarks to Mr. Maloney in their early conversation, whereby he initially attributed his motivation to a form of tactical pretence, and then indicated that the remarks were addressed in a jocose or bravado context, are inconsistent, unconvincing and implausible. A similar view has been taken on Mr. O'Brien's identification of the banking entity Woodchester as the intermediary involved.

16.43 The full import and intent of Mr. O'Brien's statements to Mr. Maloney in 1996 and 1997 regarding the making of a payment to Mr. Lowry, and that payment having become *"stuck with an intermediary"*, can only be appraised in the context of the Tribunal's inquiries, reported on in Chapter 5 of this Report, and which are summarized in the next succeeding section of this Executive Summary.

FROM CARYSFORT TO MARBELLA

16.44 Although Chapter 5 commences with a brief overview of the various property transactions, first coming to the Tribunal's attention in 2001, which appeared to disclose possible associations between Mr. Michael Lowry and Mr. Denis O'Brien, its principal content addresses what was heard in evidence in relation to a series of payments, accounts and their surrounding circumstances, involving a number of off-shore locations. That evidence involved relatively intricate details, and the caveat entered at the start of this chapter is particularly apposite in this instance, in that any reader seeking a properly informed understanding of the evidence heard, and the conclusions drawn, will require to

read and consider Chapter 5 in full, rather than rely on an abbreviated summary such as is here provided.

16.45 Despite the comparative complexity of the evidence, the overriding question that had to be assessed and answered by the Tribunal could be reduced to limited proportions: did the evidence disclose the making of a covert off-shore payment by Mr. O'Brien to Mr. Lowry, then still Minister for Transport, Energy and Communications, that was hurriedly reversed upon the establishment of the McCracken Tribunal, or were there in fact two transactions, one a loan to Mr. Lowry by Mr. David Austin, a person well known to both Mr. Lowry and Mr. O'Brien, whose involvement in the $50,000.00 payment to Fine Gael has already been recorded in Chapter 3, and the other, a payment made by Mr. O'Brien to Mr. Austin for the purchase of a premises near Marbella, Spain, which coincidentally used the same money?

16.46 The matter came to Tribunal attention in the following manner. As part of the succession of disclosures that appeared to have been prompted early in 2001, by Mr. Matt Cooper's article on the $50,000.00 payment to Fine Gael, and the Investec Bank reference to the Tribunal of a loan transaction at Cheadle, UK, which appeared to disclose associations with both Mr. Lowry and Mr. O'Brien, it was conveyed to the Tribunal by Mr. Lowry's advisers that he had received from Mr. David Austin a loan of £147,000.00, which had subsequently been repaid with interest. Not long afterwards, on 3rd May, 2001, by which time the Tribunal had not circulated any other persons with this information, Radio Telefis Eireann reported the loan on its 9:00pm news transmission. Following this disclosure, Messrs. William Fry, solicitors to Mr. O'Brien, notified the Tribunal by letter of 16th May, 2001, and in subsequent more detailed correspondence, of another relevant property transaction, in this instance between Mr. Austin and Mr. O'Brien, and which was stated to have taken place shortly prior to the dealings between Mr. Lowry and Mr. Austin. In essence what was then conveyed was that Mr. O'Brien had paid Mr. Austin £150,000.00 as the purchase price for a holiday property in Marbella.

16.47 What will in the first instance be summarised are what appear the uncontroverted money trail facts of what transpired in relation to certain substantial funds of Mr. O'Brien, as dealt with by certain close associates, in particular Mr. Aidan Phelan and Mr. David Austin. In or around early July, 1996, Mr. O'Brien instructed Mr. Aidan Phelan, then his principal financial adviser, to transfer £407,000.00 from the account at what was then Woodchester Bank of Radio Investment NV, a company within Mr. O'Brien's Communicorp Group, and to open a new account in the Isle of Man in Mr. Phelan's name. This was done on 3rd July, 1996, and the funds were transferred to Allied Irish Banks, Isle of Man.

As an interim measure, before a new account was set up, the funds were lodged to an off-shore account of Diest, a trading company in which Mr. Phelan had an interest. Then the new account was opened in Mr. Phelan's name, with an address ascribed to it at Cape Cod, Hyannis, USA, which had been used by Mr. Phelan for other unrelated dealings.

16.48 Various payments were made to certain individuals from the account over ensuing weeks in accordance with Mr. O'Brien's instructions, and the balance in the account was largely dissipated by the end of July, 1996. Among those payments was a £50,000.00 cheque in favour of Mr. David Austin, and subsequently a further sum of £100,000.00, which was transmitted by telegraphic transfer to an account held by Mr. Austin in Bank of Ireland, Jersey, Channel Islands. On receipt of those funds, Mr. Austin transferred the £100,000.00 to a new account, and seven days later further lodged the £50,000.00 cheque to the credit of that new account. Then on 16th October, 1996, Mr. Austin instructed his Jersey Bank to furnish a draft, payable to himself, for £147,000.00. This was then furnished to Mr. Karl Tully, a senior official in Irish Nationwide (IOM) Limited, in the Isle of Man, with instructions to open a new account in the name of Mr. Michael Lowry. The documentation completed in manuscript by Mr. Lowry for purposes of opening that account had some unusual features: his address was stated as that of Messrs. Brophy Butler Thornton, accountants, of Foxrock, County Dublin, despite the unawareness of that firm in this regard; it was stipulated that there should be no correspondence except on request, and, despite the fact that Mr. Lowry was, as a Government Minister, required to, and had resigned his directorship in his refrigeration company, Garuda Limited, his occupation was stated as having been that of a company director. Finally, on 7th February, 1997, further to instructions from Mr. Lowry, the sum of £148,816.93 was transferred from the Irish Nationwide (IOM) Limited account to Mr. Austin's Jersey account. This was the day that the McCracken Tribunal was established.

16.49 The three most substantial witnesses heard were Mr. Phelan, Mr. O'Brien and Mr. Lowry. What had been conveyed to the Tribunal by William Fry in correspondence was that, in April or May of 1996, Mr. Austin had informed Mr. O'Brien that he was keen to dispose of his property in Marbella before he died, that on foot of what was only then an agreement in principle, a sum of £50,000.00 was paid in July, 1996, on account of an eventual purchase price by Mr. O'Brien, that a total price of £165,000.00 was then agreed, but that this was later reduced to £150,000.00, to reflect Mr. Austin's wish to remain in occupation for the duration of the Ryder Cup golf contest, the remaining £100,000.00 was thereafter paid, and that subsequent delays in completing all sale procedures were by reason of Mr. Austin being unable to locate all relevant documents. Mr. Phelan testified that Mr. O'Brien had informed him that the

respective £50,000.00 and £100,000.00 payments were referable to what had been agreed as a purchase of the Marbella premises by Mr. O'Brien from Mr. Austin for £150,000.00. It did not appear that he had been informed by Mr. O'Brien of the initial £165,000.00, or its subsequent reduction. As to the evidence of Mr. Owen O'Connell of William Fry, that he had queried with Mr. Phelan any payments in excess of £25,000.00 made from Woodchester accounts of Mr. O'Brien, at the time of the inquiries made prior to the Initial Public Offering of Esat Telecom, Mr. Phelan stated he could not recall this specific query, but was aware of the general nature of Mr. O'Connell's inquiries. He agreed that he had not informed Mr. O'Connell of the £407,000.00 which he had transferred off-shore from Woodchester Bank on Mr. O'Brien's instructions. Regarding the £150,000.00 comprised by the two payments from that account, he had viewed that at the time merely as a house purchase, but if he had then known all the matters which came latterly to light, he would have seen matters differently, and informed Mr. O'Connell accordingly.

16.50 Mr. Phelan acknowledged that Mr. O'Brien had funds in other accounts from which he could have openly transmitted the purchase price to Mr. Austin for the Spanish property. Whilst he did not accept that the primary basis of the off-shore account, opened in his name on the instructions of Mr. O'Brien, had been concealment, stating that Mr. Austin wished to be paid from an off-shore account, he did agree that the manner in which the payment was processed concealed the true identity of the owner of the funds, leading any person examining the account to regard it as Mr. Phelan's account. He also agreed that it was reasonable to assume that Mr. O'Brien did not want his name on the account in the Isle of Man. As to Mr. O'Brien's own knowledge of his financial situation, Mr. Phelan stated that, in the context of an amount as large as £407,000.00, Mr. O'Brien would have been aware of the movement of funds. Mr. Phelan also testified that he had been unaware that Mr. Austin had paid Mr. Lowry £147,000.00, out of the £150,000.00 received by him from Mr. O'Brien. Although Mr. Phelan had been asked by Mr. Austin shortly before his death to be one of his executors, he had never discussed this matter in any context before Mr. Austin's death, and became aware of these matters only when they arose through Tribunal inquiries.

16.51 Mr. Denis O'Brien testified in accordance with the account of events furnished by his solicitors on his instructions. He stated that for the Tribunal to link the property transaction and the loan was far-fetched, and reflected the Tribunal's tendency to add one and one and get twenty. Asked why, at the time of the IPO of Esat Telecom, he had not disclosed the payment out of the Radio Investments NV account, and in particular the aggregate payment of £150,000.00 to Mr. Austin, he responded that he had been aware of the property purchase, but did not recall from which account it had been paid. In any event, it was only a property purchase. It was pointed out to Mr. O'Brien, in the course of

his examination, that at the time of the IPO there would have been no documentation in existence giving effect to the ownership transfer of the Marbella property. Mr. O'Brien had intended the Marbella property to be for the use of his parents, but ultimately matters did not work out that way, and his father had made use of part of a further substantial purchase made by Mr. O'Brien in the Algarve, in Portugal. The fact that transfer documents in relation to the Marbella transaction were not executed until 1998, but had been backdated to 1996, was due to delay on the part of Mr. Austin; Mr. O'Brien had known of Mr. Austin's failing health, and was not anxious to hound him.

16.52 As to taking the decision to tell the Tribunal of the £150,000.00 purchase, when he himself contended that for the Tribunal to link it with a loan by Mr. Austin to Mr. Lowry was far-fetched, Mr. O'Brien stated that he felt that it would be helpful for the Tribunal to know of the transaction, involving as it did a similar amount of money. When then asked why he had not informed the Tribunal of his conversations with Mr. Maloney, which had occasioned much concern at the time of the IPO, Mr. O'Brien agreed that he had only dealt with this matter after the Tribunal raised it, fearing "*trial by media*".

16.53 Mr. Michael Lowry also gave evidence. In his earlier 1999 evidence, he had informed the Tribunal of his short-lived purchase of a house at Carysfort Avenue, Blackrock, County Dublin, but had made no disclosure whatsoever of any loan of £147,000.00 to him from Mr. Austin, in particular for the intended purpose, as the Tribunal was told, of refurbishing the Blackrock property. Asked why he had not then disclosed this loan transaction, when he had purportedly made full disclosure of all material matters to the Tribunal, including the Blackrock purchase, but not the refurbishment loan, or its source, he responded that, having obtained 100% purchase finance from Irish Nationwide Building Society, it would have been necessary for him to pay refurbishment costs himself, the property being in poor repair; he had initially intended to use a sum of approximately £140,000.00 held by him in an off-shore Channel Islands account, but in conversation with the builder Mr. Michael Holly, and Mr. David Austin, they had calculated that the aggregate costs would amount to approximately £147,000.00, and Mr. Austin had offered to provide him with a loan in that amount. In support of that loan, Mr. Lowry relied on two handwritten documents, stated by him to have been prepared by Mr. Austin, one reciting the basis of the loan, and the other acknowledging receipt of its return with accrued interest. Asked why, instead of the intricate off-shore accounting procedures used, Mr. Austin had not simply written him a cheque for the £147,000.00, Mr. Lowry responded that Mr. Austin had been a non-resident, and had suggested the procedure followed.

16.54 As to the unusual features in his own handwritten entries in the loan documentation, Mr. Lowry agreed that he had not sought the consent of Brophy Butler Thornton for the use of their address, but did not think this had been necessary; regarding his stipulation for *"no correspondence save on request"*, this was normal, and when he described himself as a company director, rather than as a Government Minister or politician, he stated that he had remained a company director *"in my mind",* and that it was not in any event his practice to promote himself as a Government Minister. As to his not having disclosed the entire transaction to the Tribunal at the outset, it was Mr. Lowry's response that this was because he did not then feel that it came within the Terms of Reference, even though the account was opened when Mr. Lowry held Ministerial Office. When it was suggested that Mrs. Maureen Austin, Mr. Austin's widow, appeared never to have known of the loan, or the documentation recording it, Mr. Lowry responded that there had never been any need in this regard, as what had been involved was an arrangement between trusted friends. Mr. Lowry further professed himself entirely unaware that the £147,000.00 received by him from Mr. Austin had in fact been the bulk of the £150,000.00 transferred by Mr. Phelan to Mr. Austin, from Mr. O'Brien's Radio Investment NV account.

16.55 Some other evidence was heard, including testimony from Mr. Michael Fingleton, the then long-serving Chairman of Irish Nationwide Building Society, and a director of Irish Nationwide (IOM) Limited. Whilst his testimony primarily related to the loan made by the building society to Mr. Lowry in respect of the Carysfort Avenue purchase, he was also queried as to the circumstances in which the Isle of Man Bank had declined to make the evidence of Mr. Karl Tully available to the Tribunal. He stated that, even though the building society in Dublin owned the Isle of Man bank in its entirety, in terms of operational control, the bank was independent of the building society, being run by an Isle of Man board, a majority of whose members had to be Isle of Man residents. The decision not to make Mr. Tully available had been that of the Isle of Man bank, and was beyond the control of the board of the building society. Mr. Fingleton stated that he had no difficultly with the witness attending, but he stated that it may have been the position that the Isle of Man bank, of which he was also a director, considered it had already furnished sufficient compliance with the Tribunal in corresponding with it, and making documentation available.

16.56 Mr. Eddie Holly testified in relation to the purchase and refurbishment arrangements entered into with Mr. Lowry in relation to the Carysfort Avenue premises, although stating that the primary involvement in this regard had been that of his late brother, Mr. Michael Holly. A considerable amount of the agreed building refurbishment works had been carried out by the time of Mr. Lowry's resignation from the Government, whereupon Mr. Michael Holly, who had been a

friend of Mr. Lowry, made contact with him, ultimately with a view to both buying back the premises from Mr. Lowry, and doing so at a price that would reflect the costs incurred by him. Mr. Holly stated that his late brother had never informed him that he had been aware that Mr. Lowry had funds available to him from Mr. Austin to meet the refurbishment costs.

16.57 Other comparatively brief witnesses were also heard. Mr. Michael O'Leary, a neighbour, friend and co-executor of Mr. Austin, stated that the estate had been an easy one to administer, as Mr. Austin had been a very orderly person, had known that his health was terminally failing for two years, and had departed with his affairs well in order. No knowledge or documentation of any loan made by Mr. Austin to Mr. Lowry had at the time been acquired by Mr. O'Leary. Mr. Denis O'Connor, accountant to Mr. Lowry, testified that he had sought to make full disclosure of all material matters relating to Mr. Lowry within the Terms of Reference, at the time of his 1999 evidence, but that these and other matters had only come belatedly to his notice, whereupon he had sought to have the Tribunal informed of all such matters as promptly as possible. Ms. Helen Malone, the business partner of Mr. Aidan Phelan, dealt with steps undertaken by her in late 1998, at the request of Mr. Phelan, to give effect to the intended transfer of the Marbella premises, and to the delays that occasioned belated and backdated documentation. Mrs. Maureen Austin, widow of Mr. Austin, was one of those witnesses whose testimony was requested by an affected person, following notification of Provisional Findings in late 2008. As the information she had first furnished to the Tribunal during 2001 private investigations did not reflect adversely on affected persons, the Tribunal had, in the first instance, indicated its intention to accept that information. She stated that she recalled a decision on the part of her late husband and herself to sell the Marbella property in 1996 to Mr. Denis O'Brien, and purchase instead a property in the South of France. She recalled that they continued to have access to the premises until after the Ryder Cup, and that she had cleared out personal belongings from it in or around October, 1997. She had been aware that her husband intended to assist Mr. Lowry in regard to his acquisition of a property at Carysfort Avenue, Blackrock, and recalled an occasion when Mr. Austin had referred to the premises, when driving past it. She had thought this may have been in a context of providing some sort of guarantee, but would never have thought that her husband had intended to lend Mr. Lowry £147,000.00. She recalled her husband having had some difficulty in locating papers relative to the property transaction during his last years of illness and treatment, and knew of no other equivalent transaction paid for by Mr. O'Brien. She had only become aware of the account in Jersey, into which the £150,000.00 had been paid, after her husband's death. She could not help as to why he should have requested payment to be made from an off-shore account, as her husband at that time had retained an Irish bank account. She knew nothing of any loan agreement or

repayment acknowledgement involving her husband and Mr. Lowry, and no related documents had been in his papers after his death.

16.58 In arriving at its conclusions, Chapter 5 reviews certain particular aspects of the evidence heard, including the markedly clandestine and covert manner in which the relevant money was moved from Mr. O'Brien's account to Mr. Lowry's account in the Isle of Man. The second disquieting element, and ultimately one of the most telling elements, was the complete absence of any disclosure of the relevant events, in the case of Mr. O'Brien, initially at the time of the IPO of Esat Telecom, notwithstanding the inquiries directed into potentially relevant payments, and in the case of Mr. Lowry, in failing to disclose to the Tribunal, or even his own advisers, these matters, whilst representing to the Tribunal, in the context of its initial 1999 inquiries, that he had afforded access to all relevant information, when he must have known that the transaction and the off-shore bank account in Irish Nationwide, in the Isle of Man, were palpably relevant. Whilst disclosure was made in 2001 of certain events by both Mr. Lowry and Mr. O'Brien, it is a matter of high probability that these transactions would, in any event, have been discovered by the Tribunal at that time, in the course of examination of Mr. Austin's accounts. All of the witnesses heard purported to be able to testify only in relation to one transaction, either the loan, or the property sale, and the Tribunal was deprived of the opportunity to hear the crucial evidence that would have been forthcoming from Mr. Austin, as the only person apparently privy to all that had transpired, and had been intended, in regard to the movement of funds. Similarly, the evidence of Mr. Aidan Phelan that, in 1997, at the time of the IPO, whilst he may have remembered the Marbella purchase, he did not advert to the account opened in his name in the Isle of Man, is not acceptable, in the light of the many unique aspects of the account, the payments from it, and a time span of conspicuous brevity.

16.59 If, notwithstanding concealment of two transactions by both Mr. O'Brien and Mr. Lowry, the Tribunal was to accept the proposition that what was disclosed were unrelated transactions, coincidentally involving the same money, it is impossible to accept that the late Mr. Austin, an able business executive of political acuity, who was fully aware of all that was involved in each instance, and was a friend to both Mr. O'Brien and Mr. Lowry, would have even countenanced a connection between the two transactions, that could compromise his two friends, unless he felt that his entire actions reflected what was requested of him.

16.60 In the light of the evidence of Mrs. Austin, and the contents of a file note of Mr. Perera, Mr. Austin's Gibraltar agent, it seems reasonable to conclude that Mr. Austin had intended to sell his Spanish holiday home, and indeed sold it to Mr. O'Brien. However, there is no rational basis upon which the Tribunal could

conclude that this sale was accounted for by the transmission in July, 1996, of £150,000.00, from Mr. O'Brien's covert account in the Isle of Man, to Mr. Austin's Channel Island account. The transfer of funds in July, 1996, is not accounted for by a sale contended to have taken place in that month, but in respect of which nothing concrete was done to effect it until January of 1998. Had the sale actually taken place in 1996, and been properly documented either then, or within a reasonable time thereafter, can it be doubted but that it would have been referred to at the time of the IPO, by way of explanation for a payment of £150,000.00, a payment that would then have been amply supported by appropriate legal documentation? That this payment of £150,000.00 was relevant to the IPO inquiries then being conducted is incontrovertible. Whilst it appears there was a sale of the property, there could be no more eloquent testimony to the fact that this payment of £150,000.00 was not made in the purchase by Mr. O'Brien of any such property, than that no reference was made to it at the time of the IPO, when it could have been so readily explained, had the position as contended for by Mr. O'Brien and by Mr. Phelan been true.

16.61 The evidence disclosed the making of a carefully planned and covert payment of £147,000.00 by Mr. O'Brien to Mr. Lowry, through the agency of Mr. Phelan, and the late Mr. Austin, that was hastily repaid out of fear of possible disclosures at the time of establishment of the McCracken Tribunal. Having regard to the content of Mr. O'Brien's conversations with Mr. Maloney at the time of the IPO of Esat Telecom, the Tribunal rejects the proposition that Woodchester Bank could have been the *"intermediary"* at that time alluded to by Mr. O'Brien, and views Mr. Austin as the person with whom such funds became *"stuck"*.

16.62 Having regard to all the circumstances, including the absence of any commercial purpose for the payment, the content of what was stated by Mr. O'Brien to Mr. Maloney, the absence of disclosure, and secretive manner of dealings, already noted, the Tribunal has accordingly concluded that a payment of £147,000.00 was made by Mr. O'Brien to Mr. Lowry, through Mr. Phelan and Mr. Austin, during a period when Mr. Lowry held public office, in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with the public office of Minister for Transport, Energy and Communications, then held by him, within the meaning of paragraph (e) of the Terms of Reference. Further, the source of the £147,000.00 lodged to the Irish Nationwide (IOM) Limited account, being an account held in the name of Mr. Lowry, was the proceeds of the payment made by Mr. O'Brien to Mr. Lowry, through the conduit of off-shore accounts in the name of Mr. Phelan and the late Mr. Austin.

THE MANSFIELD TRANSACTION

16.63 Chapter 6 addresses the involvement of Mr. Michael Lowry in a property venture in the North of England, at Mansfield, Derbyshire. The acquisition of the property in Mr. Lowry's name, had been completed in March, 1999, with funds transferred from a London bank account of Mr. Denis O'Brien, with Credit Suisse First Boston, to Mr. Lowry's UK solicitors, for that purpose. Those funds were transmitted, through the agency of Mr. Aidan Phelan, Mr. O'Brien's close associate, and through whom funds had already been channelled off-shore from Mr. O'Brien to Mr. Lowry in 1996. The completion of the sale took place in March, 1999, only three months before Mr. Lowry first gave evidence to the Tribunal in regard to his financial affairs, in June, 1999. In subsequent evidence, Mr. Lowry stated that he did not in 1999 consider the transaction relevant to the Tribunal. It was following the reporting to the Tribunal of a further UK property venture, in which Mr. Lowry also became involved later in 1999, that the Mansfield transaction was notified to the Tribunal by Mr. Aidan Phelan.

16.64 Before recounting the evidence relating to the Mansfield transaction itself, Chapter 6 also refers to some initial dealings had by Mr. Lowry, which appeared to be relevant to his subsequent involvement in the UK property ventures. The first of these relates to the circumstances in which Mr. Lowry stated that he came to acquire a mobile telephone, all such communications facilities having been suspended after his traumatic withdrawal from Government Office. Through Mr. Denis O'Connor, a friend of long standing and later his accountant, it was with Mr. Aidan Phelan that he was put in contact, who acted for a major distributor, and what was arranged was that, with a view to privacy and confidentiality, Mr. Phelan obtained a telephone and account directly from that client, on a basis that Mr. Lowry was not the disclosed subscriber. However, Mr. Lowry inadvertently made such disclosure when contacting Eircell, leading to a Sunday World article publicising the matter.

16.65 This association with Mr. Phelan according to their evidence, led to Mr. Lowry and Mr. Phelan socialising together on occasions, and also to discussions between them and Mr. O'Connor as to Mr. Lowry's refrigeration company, Garuda Limited, entering into a strategic alliance. Although nothing came of a number of meetings arranged by Mr. Phelan in this regard, he was paid a fee of £4,840.00, being £4,000.00 plus VAT, by Mr. Lowry for the consultancy services undertaken. They testified that, as their acquaintanceship developed, Mr. Lowry and Mr. Phelan came to discuss many matters, although seemingly eschewing sensitive matters such as the developments within Esat Digifone in 1997, which are addressed in other chapters.

16.66 In October or November, 1997, through a mutual friend, Mr. Lowry was made aware that a Mr. Kevin Phelan, a property development consultant, wished to make contact with him. A meeting in Monaghan followed, in which Mr. Kevin Phelan explained to Mr. Lowry that he had satisfactorily facilitated a number of Irish investors in the UK property market, viewed Mr. Lowry as a good prospect, and inquired as to his interest. Contact was renewed in June or July, 1998, when Mr. Kevin Phelan indicated that he had a small development opportunity in Mansfield, which could be of interest, and also introduced Mr. Lowry to Mr. Christopher Vaughan, a Northampton solicitor who had acted in other similar transactions. Whilst interested, Mr. Lowry indicated his financial constraints, whereupon Mr. Kevin Phelan stated that he was skilled in putting combinations of investors together. At this time, Mr. Kevin Phelan had also been dealing with Mr. Aidan Phelan and Mr. Denis O'Brien, in connection with two substantial UK property ventures, but Mr. Lowry testified in 2001 that he was not then so aware. It was in subsequent evidence to emerge that the interaction between Mr. Lowry and Mr. Vaughan was appreciably more extensive than a single meeting in Northampton in relation to the Mansfield transaction in September, 1998, as testified by Mr. Lowry, but indeed extended to discussions regarding a much more substantial Doncaster Rovers transaction, of a nature and detail that disposed Mr. Vaughan to view Mr. Lowry as having a *"total involvement"* in that transaction, a matter which is returned to in a later chapter.

16.67 As to the Mansfield transaction, Mr. Kevin Phelan negotiated a Stg.£250,000.00 price with the vendors, and it was agreed that Mr. Lowry would pay a deposit of 10% of that amount to acquire the property, leaving Mr. Kevin Phelan, according to Mr. Lowry, to obtain investors for the remaining 90%, a course that he assured Mr. Lowry he would be able to achieve.

16.68 Mr. Lowry duly put Mr. Vaughan in funds with the Stg.£25,000.00 deposit in December, 1998, using monies withdrawn from one of his personal bank accounts in Thurles. No further funds had then been arranged, but Mr. Lowry felt disposed to rely on Mr. Kevin Phelan arranging suitable investors by the 18th March, 1999, completion date, and was seemingly content to undertake whatever risk was involved, extending not only to forfeiture of his deposit, but to an order for payment of the balance of the purchase price.

16.69 What Mr. Lowry testified as having transpired was that Mr. Aidan Phelan, then thought by Mr. Lowry, according to his evidence in 2001, to have had no prior connection with his unrelated namesake, was introduced as the investor who would provide the balance of the purchase price. However, in later evidence relating to Doncaster Rovers, Mr. Lowry accepted that he had in fact

been aware of dealings between Mr. Aidan Phelan and Mr. Kevin Phelan from at least as early as September, 1998.

16.70 According to the evidence of Mr. Michael Lowry and Mr. Aidan Phelan they met, and in a letter to Mr. Lowry of 15th March, 1999, produced to the Tribunal, Mr. Aidan Phelan seemingly confirmed his interest in the Mansfield project and other opportunities, referred to a suggestion from Mr. Lowry of a 75/25 partnership in Mr. Phelan's favour, but indicated a preference for 90/10, with some provision for Mr. Lowry and Mr. Kevin Phelan being *"rewarded disproportionately on the upside"*. Further discussion apparently led to agreement to complete the purchase on this 90/10 basis.

16.71 At this time, as a senior and trusted associate of Mr. Denis O'Brien, Mr. Aidan Phelan had been immersed in large corporate ventures pursued by Mr. O'Brien, including one relating to Versatel Telecom NV, in respect of which it appeared Mr. Aidan Phelan had carried out extensive work. Both Mr. Aidan Phelan and Mr. Denis O'Brien testified that discussions between the two in and around December, 1998, had resulted in agreement between them that, when there was liquidity in Mr. O'Brien's stock in Versatel, a percentage fee should be payable to Mr. Phelan, at a rate of 3%, up to a maximum of $1.5 million. A brief memorandum to such effect was produced to the Tribunal bearing the date of 22nd December, 1998, from Mr. Phelan to Mr. O'Brien, with Mr. O'Brien's assent signified, and also a second such memorandum from Mr. Phelan to Mr. O'Brien, dated 25th March, 1999, recording apparent agreement that Mr. Phelan should make a Stg.£300,000.00 drawing as an advance on Versatel fees, on Mr. O'Brien's Credit Suisse First Boston London account.

16.72 On the same day, 25th March, 1999, Stg.£300,000.00 was debited from that account by Mr. Phelan, and transmitted directly to Mr. Vaughan's client account in Northampton, where it was credited to Mr. Lowry. Mr. Vaughan forthwith applied the preponderance of that sum to discharge the Mansfield purchase balance, in addition to smaller related sums.

16.73 In evidence, Mr. O'Brien stated that he had no knowledge of Mr. Phelan's intended application of the fees withdrawn from his account, and only became aware of any alleged connection on his part when the two UK property ventures were brought to the attention of the Tribunal in March, 2001. Had he known at the outset of the proposed use, it would not have concerned him, as Mr. Phelan was entitled both to the money, and to do business with whoever he wished, but the matter did not in any event arise. Mr. O'Brien also acknowledged in evidence that no subsequent payment of Versatel fees, in accordance with the memorandum bearing the date of 22nd December, 1998, had since been made,

and that no documentation, other than the two informal memoranda submitted to the Tribunal, was available, whether by way of invoice, receipt, accounting entry, VAT or other tax-related entry. This significantly contrasted with the formality of the mere £4,000.00 fee transaction between Mr. Aidan Phelan and Mr. Lowry, earlier referred to.

16.74 Mr. Lowry and Mr. Aidan Phelan testified that, at the time of concluding the Mansfield purchase, they decided that a more formal basis of agreement for possible future ventures was desirable. Accordingly, a joint venture draft agreement was furnished by Mr. Vaughan, and was signed by both Mr. Lowry and Mr. Aidan Phelan at the latter's offices. The document, as produced to the Tribunal, recorded an agreement to carry on the business of property development together, and following a number of standard provisions, recited that profits and losses of the venture should belong in shares of 90% for Mr. Aidan Phelan, and 10% for Mr. Lowry, subject to a performance-related incentive to Mr. Lowry, as should be agreed between them.

16.75 Certain correspondence was also produced to the Tribunal, in particular letters from Mr. Kevin Phelan to Mr. Lowry, during the latter part of 1998, in each of which Mr. Kevin Phelan referred to Mr. Lowry as the intending purchaser without any qualification, or any reference to any possible procurement of other potential investors.

16.76 The Tribunal was provided with a letter dated 26th March, 1999, from Mr. Vaughan to Mr. Lowry, informing him that completion of the Mansfield purchase had been effected earlier that day, enabled by the balance of the price having been furnished by Mr. Aidan Phelan. Mr. Vaughan added that the property acquired was in Mr. Lowry's sole name, but subject to his agreement with Mr. Aidan Phelan, and in this regard indicated that he would advise Mr. Aidan Phelan to enter a caution on the register, to provide against Mr. Lowry dealing with the property without Mr. Phelan's consent. A caution in essence is a document lodged at the Land Registry, to prevent land or property being sold without notice to the cautioner. In evidence Mr. Lowry stated that he had discussed the position with Mr. Phelan, but both felt that their agreement sufficiently defined their respective interests. Accordingly, the Mansfield property was registered in the sole name of Mr. Lowry, a position that remained in place for approximately three years, until after the matter was drawn to the Tribunal's attention. In later testimony of Mr. Lowry, in July of 2002, he indicated that, whilst he still retained his 10% Mansfield interest, he had a few months previously transferred its registered ownership to Mr. Aidan Phelan, at the latter's request.

16.77 The matter of Capital Gains Taxation was touched upon in some of the evidence, and it appeared that, at a time when the only UK property in which Mr. Lowry acknowledged an interest was his 10% share in Mansfield, he made an inquiry of the tax partner in Mr. Denis O'Connor's firm, Brophy Butler Thornton, in relation to Capital Taxation with regard to UK property. In evidence, Mr. O'Connor agreed that the making of such a request for advice would probably be on the basis of anticipation of some relatively substantial Capital Gains Tax liability, and that it would scarcely be worth the trouble of consulting an accountant as to such liability, in the context of a mere 10% interest in the Mansfield property. At the time of that evidence in 2001, the Tribunal was of course entirely unaware of what was only much later to emerge in the evidence of Mr. Christopher Vaughan in 2009, that, it was in fact contemplated in late 2000 that the Mansfield property, together with the subsequently acquired Cheadle property, would be sold together in a single transaction, with the proceeds to accrue to the benefit of Mr. Lowry. In this regard, it must be observed that the version of evidence tendered in 2001 by Mr. Lowry and Mr. Aidan Phelan, and the documentation submitted in support of that version, was wholly at odds with documentation and evidence that came to light in 2009, primarily represented by the belated attendance of Mr. Vaughan. This critical aspect, attributable primarily to the wholesale falsification of Mr. Christopher Vaughan's files, is considered in detail in later chapters, and will be referred to at a subsequent point in this Executive Summary.

16.78 Having assessed all of the evidence heard, the Tribunal concluded, amongst other findings, that the source of the Stg.£300,000.00, the preponderance of which funded the balance of the Mansfield purchase price, was the account of Mr. Denis O'Brien with Credit Suisse First Boston, London, and that, further within the Terms of Reference of the Tribunal, Mr. Lowry received payment of that sum from Mr. O'Brien, through the agency of Mr. Aidan Phelan, in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with the public office of Minister for Transport, Energy and Communications, formerly held by Mr. Lowry.

THE CHEADLE TRANSACTION

16.79 It was disclosure to the Tribunal by Investec Bank of this transaction, a UK property venture undertaken by Mr. Michael Lowry under the name of a company, Catclause Limited, that led to other affected persons informing the Tribunal of the earlier Mansfield and Carysfort transactions. Investec, which over the course of 1999 and 2000 had taken over the Irish bank Woodchester, discovered early in 2001 that an outstanding loan, by which it had financed the purchase of the Cheadle property, appeared to record connections between Mr.

Lowry and Mr. Denis O'Brien, and following initial reference to the Central Bank, Investec very properly referred it to the Tribunal.

16.80 Mr. Lowry informed the Tribunal that, following his dealings with Mr. Kevin Phelan and Mr. Aidan Phelan which gave rise to the Mansfield purchase, this larger transaction came to his attention through an associate of Mr. Kevin Phelan, but that, on raising it with Mr. Aidan Phelan, the latter took a more cautious view, but nonetheless offered to loan Mr. Lowry sufficient of the balance remaining in Mr. Christopher Vaughan's client account, of the Stg.£300,000.00 remitted from Mr. O'Brien's Credit Suisse First Boston account, to discharge payment of the deposit. This was done, an agreement for sale entered into, on 14th September, 1999, for a price of Stg.£445,000.00, and a closing date of 30th November, 1999, fixed. Mr. Lowry had in or around August, 1999, met a Mr. Michael Tunney, then in the latter stages of a senior career within Woodchester, at a meeting in the Radisson Hotel, Dublin, arranged by Mr. Aidan Phelan, and it appears to the Tribunal that the potential of funding from that bank was addressed in their conversations on that occasion. In late December, 1999, the closing date for completion of the sale had passed, the vendors were clamouring for completion, and, following the matter having been initiated by Mr. Tunney with Mr. Michael Cullen, a senior executive within Woodchester, payment of the required loan facility of Stg.£420,000.00 was made to Mr. Vaughan on 21st December, 1999. Mr. Vaughan duly proceeded to complete the transaction. Despite the loan having been made to Catclause, the property was not registered in its name. Whilst evidence as to communications between Mr. Vaughan and Mr. Tunney was conflicting and uncertain in this regard, what in the event transpired was that Mr. Vaughan registered the property in the names of himself and his wife, also a solicitor, on a basis that they would hold it as trustees.

16.81 Certain unusual features emerged from the dealings between Mr. Tunney and Mr. Cullen. Despite the undoubted interest of Mr. Lowry as principal of Catclause, it was the evidence of Mr. Cullen, which the Tribunal accepts, that no reference was made to him by Mr. Tunney of any involvement on the part of Mr. Lowry in the borrowing or purchase; further, despite the fact that Mr. Lowry and his adult daughter were registered as directors of Catclause, it was conveyed in documentation produced to the bank that Mr. Aidan Phelan and his business partner, Ms. Helen Malone, were in fact directors of the company, and a letter apparently sent in relation to the property by an English auctioneer to Mr. Lowry was also furnished to the bank in a form in which the portion of the letter containing his name and address had been removed. As to the directors named, the explanation offered by Mr. Lowry, Mr. Phelan and Ms. Malone in evidence was that, when the documentation was required, Mr. Lowry was in a remote part of his constituency and unavailable, whereupon Mr. Phelan assented to Ms. Malone's proposal that both of them should be named as directors of Catclause on an

interim or alternate basis on account of urgency, a course implemented, although not later rectified, before Catclause was abandoned as the purchasing vehicle.

16.82 It was also conveyed to Mr. Cullen, and shortly thereafter to a bank colleague, Mr. Tony Morland, by Mr. Tunney, at the time of the making of the loan application, that Mr. Denis O'Brien was aware of the loan, and in the latter instance, that this was *"a proposed Denis O'Brien transaction",* which afforded comfort to Mr. Cullen that the loan would not be allowed to get into difficulties, as he was aware of Mr. Tunney having, like Mr. Aidan Phelan, been associated with Mr. O'Brien in prior substantial transactions with the bank, which had always been resolved satisfactorily. Apart from the absence of any documentary or verbal references to Mr. Lowry having been conveyed to Mr. Cullen, Mr. Morland, or Mr. Ian Wohlman, the senior UK-based Investec executive involved in the loan application, the bank file relating to the transaction later went missing, and has not since been located.

16.83 During the period of the Investec takeover of Woodchester, certain procedures for the approval of new Woodchester loans had been set in being, but despite concerns and misgivings expressed by both Mr. Morland and Mr. Wohlman in this instance, it seems that these were circumvented by Mr. Tunney and Mr. Cullen in proceeding to advance the loan money without delay. Accordingly, the sale was closed in circumstances whereby, other than Mr. Tunney, the three senior individuals involved within the bank had no knowledge of any interest on the part of Mr. Lowry in the transaction.

16.84 The crucial matter of who was disclosed as the substantive individual behind Catclause as purchaser also arose in a conflict of testimony between Mr. Aidan Phelan and Mr. Tunney, with regard to what was stated by each, when the former brought the initial proposal to the latter in the first instance. Mr. Phelan testified that he made it clear that Mr. Lowry was the individual behind Catclause, whereas Mr. Tunney contended that no such information was imparted, and that he was led to the belief that it was Mr. Phelan himself who was the true purchaser. This aspect, and other conflicts of evidence, are considered in detail in Chapter 7, but what became clear as the months of 2000 passed was a notable lack of urgency on the part of either bank or borrower. Despite it having been a condition of the loan that a guarantor would be provided, and also that a first charge would be taken out on the property, neither was insisted upon, and when the individual who had in the first instance been held out as a prospective guarantor in the event proved unwilling to execute an enforceable guarantee, it seems to have occasioned minimal controversy within the bank. Likewise, the agreed repayment date in the summer of 2000 passed by, without any repayment of principal or interest. Although aware of the procedural shortcomings and

frailties in the manner in which the loan was granted, there appeared to be a feeling within the bank that, in all the circumstances, it was not exposed to any significant credit risk. Repayment was sought from Mr. Aidan Phelan in an Investec memorandum, dated 16th August, 2000. Two sale proposals, each of which would have yielded a satisfactory profit, were under consideration, and ultimately it was not until early 2001, by which time both sales had failed, that Mr. Morland instituted an investigation into the transaction. On the day after repayment was sought from Mr. Phelan, which was 17th August, 2000, a meeting was held in Jury's Hotel, Dublin, between Mr. Phelan, Mr. Lowry, Mr. Christopher Vaughan and Ms. Helen Malone. A note of the meeting, prepared by Ms. Malone, was headed

> *"UK Property ML",*

and from its content appeared to suggest that Mr. Lowry retained a continuing beneficial involvement in both the Cheadle and Mansfield transactions. When questioned in that regard, Mr. Lowry's response was to indicate shortcomings in Ms. Malone's note as an accurate record of the meeting.

16.85 In late February, 2001, the bank learned for the first time, as far as the Investec officials were concerned, that Mr. Lowry had an involvement in Catclause, with Mr. Lowry and his daughter being its registered directors, and not Mr. Phelan and Ms. Malone, as had previously been represented to the bank. Meeting urgently with Mr. Aidan Phelan on 28th February, 2001, Mr. Cullen and Mr. Morland were informed by Mr. Phelan that the bank had nothing to be unduly concerned with, as this was a DOB transaction, and he would ensure the bank was looked after. Although this was noted as part of a detailed memorandum prepared by Mr. Morland, Mr. Phelan later denied in evidence that he had used Mr. O'Brien's name in that fashion. It was only on the day following that meeting that the bank received formal confirmation as to the identity of the directors of Catclause, and a number of meetings and conversations were had with Mr. Tunney, who had appeared *"shocked"*, when first informed that Mr. Lowry had been a director of the company. Yet in subsequent conversations, with both Mr. Morland, and thereafter Mr. Wohlman, the response of Mr. Tunney was to ask Mr. Morland whether he realised that the loan was a *"Denis O'Brien"* transaction, and when later speaking by telephone to Mr. Wohlman from the Swiss Alps, where he was on holidays in the same resort as Mr. O'Brien, Mr. Tunney sought to reassure Mr. Wohlman, as

> *"Denis was behind it",*

then identifying that person as Mr. Denis O'Brien. These and the other matters summarised led to the matter being reported to the Tribunal. Shortly thereafter,

Mr. Aidan Phelan repaid to the bank the entire amount of the loan and accumulated interest.

16.86 Mr. O'Brien's evidence was to the effect that he had not been involved in the Cheadle transaction, had no knowledge of it, and did not become aware that his name may have been invoked in regard to it in dealings with the bank, until March, 2001. When so informed, he stated that he had contacted Mr. Cullen in Investec, and expressed his anger that his name had been used within the bank without any reference to him. As to such references to him within the bank, his position was that those references were untrue. When put that he was scarcely suggesting that Mr. Wohlman and Mr. Morland were not accurately recording what had been stated to them, Mr. O'Brien responded that, if a *"realistic view"* was wanted, banks sometimes put file notes onto their files that suited their position.

16.87 The testimony of Mr. Lowry, substantially confirmed by Mr. Phelan, was in essence to the effect that, having obtained from Mr. Phelan the loan to fund the deposit on the purchase, he returned to Mr. Phelan seeking further assistance in relation to the balance. Mr. Phelan informed him that he could arrange funding through Investec bank, but that the bank would require as security a charge over the property in addition to a guarantee from a third party. Following application to Mr. Tunney, whom he had met at the prior Radisson Hotel meeting, a prospective guarantor, Mr. John Daly, a friend to Mr. Lowry of long standing, was proffered, and the required balance was released by the bank to enable the purchase to be completed by Mr. Vaughan. However, the Tribunal was informed that Mr. Daly declined to execute an enforceable guarantee, leaving Mr. Lowry with no option but to approach Mr. Phelan once again, who stated that he would take over the entire transaction. Thereupon, what was advanced to the Tribunal by Mr. Lowry was that he retained no beneficial interest in the Cheadle property, merely being under a moral obligation to assist in moving the property on, in the light of all that had transpired with Mr. Phelan. Catclause was accordingly abandoned as the purchasing vehicle. When put to Mr. Lowry that no documentation furnished to the bank appeared to make any mention of his involvement as purchaser, he responded that he and his daughter had been registered as directors of Catclause, and that the particulars to that effect were publicly discoverable.

16.88 In its consideration of the quite lengthy evidence, the Tribunal has had careful regard to certain of the correspondence belatedly produced by Mr. Christopher Vaughan, in the course of the latter part of his 2009 evidence. Much of what there emerges by way of a contemporary record, as already noted in a previous chapter dealing with the Mansfield transaction, is significantly at

variance with much evidence heard, and falsified documentation produced, in addition to other correspondence having been withheld. Although the evidence of Mr. Michael Cullen in relation to the abridged manner in which he approved the loan facility merited the reproof expressed by Mr. Wohlman, the Tribunal nonetheless found his evidence, and in particular that of Mr. Wohlman and Mr. Morland, to be persuasive, dispassionate and convincing, specifically in the context of it obviously having been contrary to the bank's interest. It would certainly be a perverse finding to hold that the bank officials fabricated that evidence, and having regard to the frequency and consistency at all stages of the transaction with which Mr. Michael Tunney and Mr. Aidan Phelan expressed the support of Mr. O'Brien, both being persons then involved at a senior and close level with Mr. O'Brien, it does not appear to the Tribunal that their content or effect was either unauthorised or reckless, but rather that those representations made at the time of the inception of the loan were material and significant in inducing acceptance.

16.89 In its substantive conclusions, the Tribunal has found that the source of the Stg.£300,000.00 was Mr. Denis O'Brien's Credit Suisse First Boston account in London, and that further, within the Terms of Reference of the Tribunal, Mr. Lowry received payment of that sum through the agency of Mr. Phelan in circumstances falling within Term of Reference (e). It follows logically that a similar conclusion is drawn in regard to the portion of the Stg.£300,000.00 which was used by Mr. Lowry as the Cheadle deposit. Further, the support for the Stg.£420,000.00 loan provided by Mr. O'Brien amounted to an indirect payment or benefit to Mr. Lowry, in circumstances falling within Term of Reference (e).

16.90 In conclusion, the extent of the part taken by Mr. Aidan Phelan, in this and the preceding four chapters, should not be ignored. Whilst it may have been coincidental, in connection with the provision of a mobile phone for Mr. Lowry following his resignation from Ministerial Office, that the phone should have been provided by Mr. Phelan, known to be an intimate associate of Mr. Denis O'Brien, it can scarcely have been coincidental that the same individual, with responsibility for much of Mr. O'Brien's personal and business affairs, should have been involved on successive occasions in the transmission of Mr. O'Brien's funds to Mr. Lowry.

FALSIFICATION OF MR. CHRISTOPHER VAUGHAN'S FILES

16.91 On two separate occasions, the first in March, 2002, the second in June, 2009, the Tribunal became aware for the first time of the existence of documentation relating to both the Mansfield and Cheadle property transactions, which had never previously been produced by any person to the Tribunal, despite

the fact that the Tribunal's inquiries into both those transactions had been conducted and, so far as the Tribunal was then concerned, concluded in the course of 2001. The circumstances surrounding the belated revelation of this material are examined in detail in Chapter 8, which is effectively divided into two parts, the first dealing with the documents that emerged in early 2002, and the second dealing with the substantial additional documentation that came to light for the first time in 2009.

16.92 On 21st March, 2002, The Irish Times journalist, Mr. Colm Keena, provided to the Tribunal solicitor copies of two letters written by Mr. Christopher Vaughan to Mr. Kevin Phelan, dated respectively 12th July, 2000, and 5th September, 2000, and which had been sent to Mr. Keena. Versions of the same letters were already in the possession of the Tribunal, having been provided to it by both Mr. Christopher Vaughan and Mr. Kevin Phelan in early 2001, as part of their files relating to the Cheadle transaction. However, the versions previously produced by both Mr. Vaughan and Mr. Kevin Phelan were significantly different from the letters provided by Mr. Keena in March, 2002. The letters provided by Mr. Keena became known as the *"long form"* letters, whilst the letters already in the Tribunal's possession were referred to as the *"short form"* versions. The *"long form"* letters contained references to Mr. Lowry, in connection with the Cheadle transaction which were not contained in the *"short form"* versions of the letters previously produced. It was also clear that the *"short form"* versions had been entirely reconstituted, and were not simply amendments of the *"long form"* letters.

16.93 In the course of its private investigative work, the Tribunal pursued explanations for these letters from Mr. Vaughan, Mr. Kevin Phelan, Mr. Aidan Phelan and Mr. Michael Lowry, and ultimately public hearings were held in the course of 2002, although both Mr. Vaughan and Mr. Kevin Phelan refused to attend as witnesses, and could not be compelled to do so as they resided outside the jurisdiction. Nonetheless, Mr. Vaughan forwarded to the Tribunal, by way of purported explanation for the existence of the two different versions of the letters, an exchange of correspondence between him and Mr. Kevin Phelan, including a letter dated 23rd April, 2002, from Mr. Kevin Phelan to Mr. Vaughan, and purporting to provide an innocent explanation for the existence of the *"long form"* letters. However, further exchanges of correspondence between Mr. Kevin Phelan's solicitors and Mr. Vaughan, immediately preceding this particular exchange of correspondence, were withheld from the Tribunal, and did not emerge until a number of years later. That correspondence contained assertions made on behalf of Mr. Kevin Phelan to the effect that Mr. Vaughan had provided altered documentation to the Tribunal, assertions which were identical in nature to the very matters then being examined by the Tribunal. Had this further correspondence been provided to the Tribunal, it would have been impossible to

represent Mr. Kevin Phelan's purported explanation in his letter of 23rd April, 2002, as being truthful. Further, as is addressed in Chapter 12 of the Report, it subsequently came to the attention of the Tribunal a number of years after the letter of 23rd April, 2002, was provided by Mr. Vaughan to the Tribunal, that at the very time that this exchange of correspondence between Mr. Vaughan and Mr. Kevin Phelan had taken place, a payment totalling Stg.£65,000.00 had been made to Mr. Kevin Phelan in connection with a property transaction in which Mr. Michael Lowry had an interest. The Tribunal has separately concluded in Chapter 10 that, were it not for the making of this payment to Mr. Kevin Phelan, he would not have written the letter of 23rd April, 2002, which was forwarded by Mr. Vaughan to the Tribunal as a purported innocent explanation for the existence of the *"long form"* and *"short form"* letters.

16.94 The evidence heard in the course of 2002 is set out in Chapter 8. In the absence of Mr. Vaughan and Mr. Kevin Phelan, both Mr. Michael Lowry and Mr. Aidan Phelan, who gave evidence in relation to the *"long form"* and *"short form"* letters, informed the Tribunal that they could not understand, and could not explain their existence. The Tribunal was nonetheless satisfied, on the basis of all the information available to it, that the *"short form"* versions of the two letters were created at a time subsequent to their purported 2000 dates, and were devised to substitute and supersede the original and accurate *"long form"* letters, so as to remove references to Mr. Michael Lowry's true involvement in the Cheadle transaction, and so as to mislead the Tribunal, and to permit a false version of the events surrounding that transaction to be advanced in evidence to the Tribunal.

16.95 In the course of 2009, following the notification of the Tribunal's Provisional Findings, Mr. Christopher Vaughan belatedly made himself available as a witness to the Tribunal, and in the course of his attendance, a large body of further documentation emerged for the first time in circumstances which are set out more fully in Chapter 8. These documents had either been removed entirely from the files provided to the Tribunal, some eight years previously, or had, in common with the two *"long form"* letters examined earlier, been substituted with altered versions of correspondence, from which references to the involvement of Mr. Michael Lowry in the UK properties had been removed. Prior to the emergence of this material, Mr. Vaughan had, in the course of his evidence to the Tribunal, purported to provide detailed explanations as to how the *"short form"* versions of the two letters of 12th July, 2000, and 5th September, 2000, had come into existence, and insisted that it was the *"short form"* versions which conveyed the accurate position, the *"long form"* letters having been written by him in error.

16.96 However, following the emergence of the further extensive documentation, it became clear that the *"long form"* letters were accurate, which, in the case of the letter of 5th September, 2000, Mr. Vaughan was obliged at that late stage to accept. He also accepted that those letters which belatedly emerged, and which had been removed altogether from his files, all of which contained references to the involvement of Mr. Lowry in the Cheadle and Mansfield properties, which were at variance with evidence given to the Tribunal in 2001 concerning those transactions, were accurate letters which conveyed the true position. It being clear that the files he had provided to the Tribunal in relation to the properties in 2001 had been significantly falsified, Mr. Vaughan testified that he had left those files with Mr. Aidan Phelan, following a meeting he had attended at his office in Dublin on 15th March, 2001, at a time when it had become clear that the Cheadle transaction was imminently to be brought to the attention of the Tribunal by Investec Bank.

16.97 The Tribunal has concluded that the falsification of Mr. Vaughan's files occurred on or after the meetings in Mr. Aidan Phelan's office in Dublin on 15th March, 2001, and the Tribunal is satisfied that the falsification was a course decided upon and implemented, with the full knowledge of Mr. Aidan Phelan, Mr. Michael Lowry, Mr. Christopher Vaughan and Mr. Kevin Phelan, and was undertaken with the intention of concealing references to Mr. Michael Lowry in connection with the Mansfield and Cheadle transactions, and of ensuring that the contents of Mr. Vaughan's files could be presented in a form which appeared to be consistent with a false account of Mr. Michael Lowry's involvement, which it was intended would be and was, conveyed to the Tribunal. This was motivated by a desire to obscure from the Tribunal a clear financial connection between Mr. Denis O'Brien and Mr. Michael Lowry, and the payments by the former to the latter.

DONCASTER ROVERS FOOTBALL CLUB TRANSACTION

16.98 In the course of the Tribunal's investigations into matters relating to Mr. Michael Lowry in 2001, including the UK properties at Mansfield and Cheadle, the Tribunal had been informed of another property transaction in Doncaster. The Tribunal had been assured that Mr. Lowry had no connection with that transaction, it being an acquisition by Mr. Denis O'Brien solely, and nothing emerged from the evidence in 2001 to suggest that further scrutiny of the transaction was warranted.

16.99 On 11th January, 2003, a number of articles appeared in The Irish Times newspaper relating to a property transaction concerning the purchase and development of the stadium of Doncaster Rovers Football Club. The Irish Times

articles related to a letter, dated 25th September, 1998, from Mr. Christopher Vaughan, who was instructed in the matter, to Mr. Michael Lowry, in which Mr. Christopher Vaughan referred to a *"total involvement"* on the part of Mr. Lowry in the Doncaster Rovers transaction. At the time of the articles, the Tribunal believed it had completed its investigations into the UK property transactions, and other *"money trail"* matters, and was in the course of lengthy inquiries into the mobile GSM licence process. The Tribunal began private inquiries into the Doncaster transaction, and ultimately commenced its public sittings in September, 2004, although the hearings were then postponed by reason of Judicial Review proceedings brought by Mr. Denis O'Brien, challenging the Tribunal's decision to proceed to public hearings in relation to Doncaster. These proceedings were finally dismissed by the Supreme Court in February, 2006, and the Tribunal, having published Part I of its Report in December, 2006, resumed hearings in February, 2007. By that time, a substantial amount of further information and material had come to the Tribunal's attention, which had not previously been disclosed prior to its initial public hearings in September, 2004.

16.100 Matters concerning the Doncaster transaction are touched upon in Chapters 9, 10 and 11 of this Volume. Chapter 9 includes an outline of the background to the transaction, as well as its details, and thereafter, in the main, contains an analysis of a number of occasions on which persons associated with Mr. Lowry described him as having an involvement in, or connection with the Doncaster transaction, including the letter of 25th September, 1998, from Mr. Vaughan to Mr. Lowry.

16.101 The Doncaster project involved a proposal whereby Doncaster Rovers Football Club ground, Belle Vue, located in the centre of Doncaster, would be acquired, with the club being relocated to a new stadium, and the lands at Belle Vue being redeveloped for retail purposes, subject to the necessary planning permission being secured from the local council. The promoter was Mr. Kevin Phelan, who had also been behind the Mansfield and Cheadle transactions. Ultimately, the investor was Mr. Denis O'Brien, who, for reasons of commercial sensitivity, wished to keep his name out of the project, and it was Mr. Aidan Phelan who accordingly fronted it on his behalf. In fact, as was only belatedly discovered by the Tribunal in circumstances more fully set out in Chapter 9, two long-standing and close acquaintances of Mr. Lowry namely, Mr. Bill Maher and Mr. Patrick Doherty, were also involved in different capacities in the embryonic stages of Doncaster, prior to its introduction to Mr. Denis O'Brien. Both featured in evidence heard concerning transactions examined in further detail in Chapter 2 of this Volume. The Tribunal was assured that their involvement in Doncaster was entirely coincidental, and unrelated to Mr. Lowry.

16.102 The sale of Doncaster took place by way of transfer of shares from the vendor companies and majority shareholders, Dinard Limited and Shelter Trust Anstalt, to a vehicle on behalf of a trust controlled by Mr. Denis O'Brien, Westferry Limited. The transaction completed on 18th August, 1998.

16.103 A little over one month later, on 23rd and 24th September, 1998, Mr. Michael Lowry travelled to Northampton and met with Mr. Christopher Vaughan and Mr. Kevin Phelan. Whilst there was significant controversy on the issue, the Tribunal is satisfied that Mr. Paul May, a businessman who it was intended would subsequently act as Chairman of Doncaster Rovers Football Club, was also in attendance at a meeting with Mr. Vaughan, Mr. Kevin Phelan and Mr. Lowry, on the evening of 23rd September, 1998, a meeting which occurred in Mr. May's house. Mr. Lowry had a further meeting with Mr. Vaughan on the following morning, 24th September, 1998, and Mr. Vaughan then drove Mr. Lowry to a medical appointment in Leicester, in the course of which they had further discussions.

16.104 It was following this visit by Mr. Lowry to the UK that Mr. Vaughan wrote his letter of 25th September, 1998, to Mr. Lowry, referring to a *"total involvement"* on the part of Mr. Lowry in the Doncaster transaction. The Tribunal's inquiries into this matter were initially hampered to some extent by the fact that Mr. Vaughan continued to refuse to make himself available as a witness, and being resident outside the jurisdiction, could not be compelled to do so. However, when Mr. Vaughan did eventually make himself available as a witness in 2009, the Tribunal was able to examine the circumstances of Mr. Lowry's visit to Northampton, and the matters which gave rise to Mr. Vaughan's letter of 25th September, 1998, in more detail. A significant portion of Chapter 9 is taken up with an analysis of those matters, by reference not only to the evidence heard from Mr. Vaughan and Mr. Lowry, but also by reference to a number of accounts Mr. Vaughan gave at different times and to different persons, including the Tribunal, concerning the events that led him to write his letter of 25th September, 1998. Whilst it is not proposed here to set out in detail that analysis, or the evidence heard by the Tribunal, it is worth recording that it appeared to the Tribunal that, in almost all of the recorded accounts given by Mr. Vaughan, at a time prior to the letter of 25th September, 1998, coming to the attention of the Tribunal, Mr. Vaughan indicated that he had written the letter based on what he had been told by Mr. Lowry. However, in his responses to the Tribunal, once the letter had come to its attention, Mr. Vaughan suggested that he had written the letter mistakenly, based on the fact that Mr. Kevin Phelan had been willing to discuss the Doncaster transaction in Mr. Lowry's presence.

16.105 For his part, Mr. Lowry always insisted that there was no basis on which Mr. Vaughan could have formed the impressions which led to the letter of 25th September, 1998, as Mr. Lowry had no knowledge of, or involvement in, Doncaster, nor did he have any discussions or dealings in the course of his visit to Northampton in September, 1998, concerning the transaction, other than insofar as he may have offered to assist Mr. Vaughan in making contact with Mr. Aidan Phelan, who Mr. Vaughan led him to believe he was having difficultly in reaching. For almost the entirety of his eventual evidence to the Tribunal in 2009, Mr. Vaughan appeared reluctant to accept that his letter was based on anything Mr. Lowry had told him. Nonetheless, at the conclusion of that evidence, Mr. Vaughan changed his position, and testified that, in writing the letter of 25th September, 1998, he had formed a genuine opinion of Mr. Lowry's *"total involvement"* in Doncaster, based on what he had been told by Mr. Lowry. He also retracted his earlier evidence to the effect that he had, at the time, been mistaken in the impression he recorded in that letter.

16.106 Having regard to all the circumstances and evidence, and in particular having regard to the contents of Mr. Vaughan's letter itself, and the level of detailed interaction between Mr. Vaughan and Mr. Lowry in relation to Doncaster which that letter records, including the provision by Mr. Vaughan to Mr. Lowry of confidential and sensitive documentation concerning the transaction, and having regard to other surrounding circumstances, including the fact that the crucial meeting on the evening of 23rd September, 1998, took place in Mr. Paul May's house, a fact originally withheld from the Tribunal, but which clearly suggested that the meeting related to Doncaster, and not any other UK transaction, the Tribunal is satisfied that Mr. Vaughan was under no misconception when he wrote to Mr. Lowry on 25th September, 1998, and his understanding and impression of Mr. Lowry's *"total involvement"* in the Doncaster transaction was based on what Mr. Lowry told him.

16.107 The remainder of Chapter 9 sets out further instances of apparent references to Mr. Lowry in the course of the Doncaster project. Taken chronologically, the first such reference appears in a fax from Mr. Kevin Phelan to Mr. Aidan Phelan, dated 11th August, 1999, at a time when, according to the evidence heard, Mr. Kevin Phelan was effectively dropping out of managing the project. The fax contained, in one of a series of bullet points, a heading *"ML",* under which was a reference to Mr. Kevin Phelan referring all queries regarding Doncaster to Mr. Aidan Phelan. The fax was subsequently to take on a particular significance in the context of a dispute that arose between Mr. Kevin Phelan and Westferry, in connection with Doncaster Rovers, and which was ultimately settled in the course of 2002, through the intercession of Mr. Denis O'Connor, Mr. Lowry's accountant and adviser, by the payment of Stg.£150,000.00 to Mr. Kevin

Phelan. In the course of those negotiations, this fax of 11th August, 1999, came to light, having been sent by Mr. Kevin Phelan's solicitors to Westferry's solicitors, William Fry, with the latter advising that appropriate inquiries would have to be made regarding the reference to *"ML"*, in the context of Doncaster. The fax is examined in Chapter 9, insofar as it contains on its face a reference to Mr. Lowry in connection with Doncaster. It is returned to in Chapter 10, in the context of the significance of its emergence in the course of negotiations between Mr. Kevin Phelan and Westferry, and the inquiries thereupon carried out. It further features in Chapter 11, in the context of the consideration by the Tribunal of the fact that the fax, the negotiations in the course of which it emerged in 2002, and the inquiries then directed by William Fry, were withheld from the Tribunal until 3rd November, 2004, almost two and a half years later.

16.108 The next reference to Mr. Lowry in the course of the Doncaster project occurred in a letter from Mr. Kevin Phelan to Mr. Aidan Phelan of 30th August, 2000, which was written shortly after the meeting of 17th August, 2000, in Jury's Hotel in Dublin, attended by Mr. Aidan Phelan, Mr. Michael Lowry, Mr. Christopher Vaughan and Ms. Helen Malone, and referred to in detail in earlier chapters of this Volume relating to Mansfield and Cheadle. Mr. Kevin Phelan's letter of 30th August, 2000, was headed *"Ref. Doncaster/Altrincham/Luton projects"*, and referred to recent discussions had by Mr. Kevin Phelan with Mr. Michael Lowry. The letter then proceeded to deal almost exclusively with matters relating to Doncaster. Both Mr. Aidan Phelan and Mr. Michael Lowry testified that they believed that the letter was Mr. Kevin Phelan's response to strong criticism levelled against him at that time, in relation to his conduct of the Mansfield and Cheadle transactions, and that his complaints in connection with Doncaster were his way of *"returning serve"*, but did not mean that Mr. Lowry had any discussions with him in that regard. Nonetheless, the letter on its face suggests that the discussion, which Mr. Kevin Phelan had with Mr. Lowry on foot of which he wrote the letter, can only have been material to the subject matter of his criticisms, if it related to Doncaster.

16.109 The final reference to Mr. Lowry in the context of Doncaster, examined in Chapter 9, occurred at a meeting on 10th September, 2002, in London, between Mr. Denis O'Connor, Mr. Lowry's adviser, Ms. Ruth Collard, of Messrs. Carter-Ruck, solicitors for Westferry, and an accountant also acting for Westferry, Mr. Craig Tallents. The meeting occurred by reason of Mr. O'Connor's then involvement in attempts to settle an ongoing dispute, between the vendors of Doncaster and Westferry, over certain monies which had been retained following the sale, and in respect of which disagreement had arisen, including in relation to monies claimed by the vendors concerning the securing of a continuation of the lease on the car park adjoining Belle Vue Stadium. The circumstances in which Mr. O'Connor involved himself in this dispute are examined in Chapter 10. Having

regard to all the available evidence, the Tribunal is satisfied that, at the time of this meeting, Mr. O'Connor was aware that Mr. Kevin Phelan was in possession of information which could be damaging, principally to Mr. Denis O'Brien and Mr. Michael Lowry, if it came to the attention of the Tribunal, and more particularly, the Tribunal is satisfied that Mr. O'Connor was aware that Mr. Kevin Phelan had made available to representatives of the Doncaster vendors, namely Mr. Ken Richardson and Mr. Mark Weaver, a copy of Mr. Vaughan's letter of 25th September, 1998, recording a *"total involvement"* on the part of Mr. Lowry in the Doncaster project.

16.110 Ms. Ruth Collard, who gave evidence to the Tribunal, made a note of the meeting on 10th September, 2002, at which Mr. O'Connor attended, and recorded that Mr. O'Connor said that Mr. Lowry

> *"did have a connection"*

with Doncaster, and had been in a room when discussions had taken place between Mr. Kevin Phelan and Mr. Ken Richardson regarding the lease on the car park adjoining the stadium. An analysis of the evidence given by both Ms. Collard and Mr. O'Connor on this matter is set out in Chapter 9, but it should be pointed out that Mr. O'Connor strongly denied ever having said anything of the sort, and stated that he could not have said such a thing, as he never believed that Mr. Lowry had any connection with the Doncaster project. For her part, Ms. Collard stood over the accuracy of her note, and pointed out that the matter of the car park lease had been one of the main issues in the litigation that she had had to deal with, and she would have been particularly attentive to any mention of a meeting relating to it. The Tribunal has concluded that Mr. O'Connor did say at that meeting what is recorded in Ms. Collard's attendance note, that is, that Mr. Lowry did have a connection with Doncaster, and had been at a meeting at which the lease was discussed.

16.111 Final conclusions in relation to Doncaster are postponed, in the body of this Volume, until the end of Chapter 10, which addresses a number of disputes, primarily between Mr. Kevin Phelan and individuals and firms connected with the UK property transactions examined by the Tribunal, that arose from March, 2001 onwards, and in the resolution of which Mr. Denis O'Connor played a central role.

Disputes And Settlements On UK Properties

16.112 Having concluded in Chapter 8 that a course was decided upon in March, 2001, whereby Mr. Christopher Vaughan's files in connection with Mansfield and Cheadle would be falsified, prior to their provision to the Tribunal,

so as to obscure connections between Mr. Michael Lowry and Mr. Denis O'Brien in relation to those transactions, the Tribunal in Chapter 10 then traced developments, in large part directed towards that end, that occurred from that date onwards, beginning with a meeting at the Regency Airport Hotel on 27th March, 2001, the purpose of which, the Tribunal was told, was to brief Mr. Denis O'Connor on Mansfield and Cheadle, so that Mr. O'Connor would be armed with the necessary information to assist the Tribunal on Mr. Lowry's behalf. Mr. Kevin Phelan also attended, albeit peripherally, at that meeting, and Mr. O'Connor met him there. From that day forward, Mr. O'Connor assumed a central role in seeking to appease Mr. Kevin Phelan, who was in dispute with virtually all those connected with the UK properties, and who, as events unfolded, demonstrated a preparedness to use his knowledge of the falsification of documentation, and the false versions of the ownership of UK properties advanced to the Tribunal, for his own purposes.

16.113 In his dealings with Mr. Kevin Phelan, Mr. O'Connor met with him in June, 2001, and subsequently wrote to Mr. Aidan Phelan, outlining Mr. Kevin Phelan's then claims. Around the same time, Mr. O'Connor, at Mr. Lowry's request, travelled to the UK and met Mr. Kevin Phelan, the stated purpose of which trip was to visit those UK properties with which Mr. Lowry was connected. In the course of this visit, Mr. O'Connor was brought by Mr. Kevin Phelan to view the Doncaster site, and was given a run-down of the project.

16.114 In the summer of 2001, following evidence given by Mr. Aidan Phelan at the Tribunal's hearings concerning Mansfield and Cheadle, Mr. Kevin Phelan became increasingly hostile to Mr. Aidan Phelan, and was angered by a number of matters stated by Mr. Aidan Phelan in the course of his evidence. Strong correspondence ensued between Mr. Kevin Phelan and Mr. Aidan Phelan, in which, amongst other things, Mr. Kevin Phelan sought the return of documents of his, which he claimed Mr. Aidan Phelan had in his possession.

16.115 Then, in September, 2001, Mr. Denis O'Connor negotiated and entered into agreements with Mr. Kevin Phelan relating to UK property projects. Initially, the Tribunal was told that two agreements were negotiated, relating to Mansfield and Cheadle. It subsequently emerged from documents, eventually made available to the Tribunal by Mr. Aidan Phelan in 2009, but which had been in his possession since at latest March 2002, that further agreements were entered into in September, 2001, in relation to Altrincham, a transaction which the Tribunal never had cause to examine in any detail, and, more significantly, in relation to Doncaster, with these agreements also having been negotiated and signed by Mr. Denis O'Connor. The agreements of September, 2001, were ultimately never acted upon, as sales of the properties, on which they were

conditional, did not proceed. Details of these agreements, and the negotiations are set out in Chapter 10.

16.116 Commencing from the early months of 2001, significant tensions had also developed between Mr. Kevin Phelan and Mr. Christopher Vaughan, and in October, 2001, Mr. Kevin Phelan made a formal complaint regarding Mr. Vaughan to the Office for the Supervision of Solicitors in England. In early 2002, Mr. Kevin Phelan's hostile correspondence continued, and he instructed a firm of solicitors, Messrs. Woodcock & Sons, in Bury, Lancashire. Very limited extracts of correspondence from Woodcock & Sons incidentally came to the Tribunal's attention, in the course of Mr. O'Brien's legal proceedings seeking to halt the Tribunal's inquiries into Doncaster, and had not been produced to the Tribunal in the course of its private inquiries leading up to its first public hearings in September, 2004. A large amount of further correspondence from Woodcock & Sons, both to Mr. Christopher Vaughan and to Mr. Aidan Phelan, containing information and comprising attached documentation, all of which was centrally relevant to the Tribunal's inquiries, was not produced to the Tribunal until 2009, more than seven years later. It emerged that the correspondence sent by Woodcock & Sons in early 2002 contained assertions relating to the alteration of Mr. Vaughan's files, as produced to the Tribunal, as well as assertions, in the correspondence sent to Mr. Aidan Phelan, relating to an involvement of Mr. Lowry in the Doncaster transaction, including that Mr. Lowry was entitled to split 40% of the profits of the project with Mr. Kevin Phelan.

16.117 This correspondence included a letter of 21st March, 2001, from Woodcock & Sons, to Mr. Vaughan, enclosing copies of two different versions of five letters from Mr. Vaughan's files concerning the Cheadle transactions, only the falsified versions of which had been provided by Mr. Vaughan to the Tribunal. It was at the same time that Mr. Colm Keena furnished the Tribunal with the *"long form"* and *"short form"* documents which he had received, and which became the subject of Tribunal inquiries, set out in Chapter 8. The Tribunal is satisfied that Mr. Kevin Phelan at this time was using the existence of the falsified documentation, and the threat that it might come to the attention of the Tribunal, to secure advantage for himself in his dealings with others, including Mr. Lowry.

16.118 The Tribunal discovered that, at this time, that is, in March and April, 2002, Mr. Kevin Phelan was paid Stg.£65,000.00, which the Tribunal was told represented fees relating to one of Mr. Lowry's other property interests, known as Vineacre, of which sum more than Stg.£56,000.00 was paid on 22nd April, 2002. It was on the following day, 23rd April, 2002, that Mr. Kevin Phelan wrote to Mr. Christopher Vaughan, purporting to provide an innocent explanation for the existence of the *"long form"* and *"short form"* correspondence, which explanation

was forwarded by Mr. Vaughan to the Tribunal. At the same time, Mr. Vaughan withheld from the Tribunal the correspondence he had just previously received from Woodcock & Sons, on behalf of Mr. Kevin Phelan, in which the assertions about altered documentation were made. Shortly before the provision by Mr. Kevin Phelan of his purported innocent explanation of 23rd April, 2002, Woodcock & Sons wrote to Mr. Vaughan indicating that all allegations and claims against him were withdrawn. The Tribunal has concluded that the exchange of correspondence between Mr. Vaughan and Mr. Kevin Phelan, which was provided to the Tribunal by Mr. Vaughan, was a choreographed falsehood, in which Mr. Kevin Phelan would not have agreed to participate but for the payment to him of Stg.£65,000.00. The Tribunal has concluded that this choreographed falsehood was negotiated and orchestrated by Mr. O'Connor and Mr. Lowry, with the objective of misleading the Tribunal, and the purpose of which was to secure Mr. Kevin Phelan's co-operation in the false version of events and explanations advanced to the Tribunal.

16.119 It appears that Mr. Kevin Phelan, also around the same time, leaked confidential correspondence concerning the Doncaster project to Mr. Mark Weaver, one of the representatives of the Doncaster vendors, who were then in dispute with Westferry. Mr. Weaver visited Mr. Christopher Vaughan's office in February, 2002, and indicated that he was in possession of such material, which might be damaging to Mr. Vaughan and Westferry in the context of the ongoing litigation, and further suggested that he had also in his possession a letter recording Mr. Lowry's involvement in Doncaster.

16.120 Shortly thereafter, and following the payment of Stg.£65,000.00 to Mr. Kevin Phelan, Mr. O'Connor became involved, through Mr. Denis O'Brien Senior, who had taken over the running of the Doncaster project from Mr. Aidan Phelan on behalf of Westferry, in negotiations with Mr. Kevin Phelan with a view to settling his claim for fees against Westferry. It was Mr. Aidan Phelan who had agreed Mr. Kevin Phelan's entitlements at the outset of the project, and he testified that these were limited to a share in any profits generated. Significantly, he told the Tribunal that he was always of the belief that Mr. Kevin Phelan was owed no fees in connection with Doncaster.

16.121 Mr. Owen O'Connell, the solicitor in William Fry acting for Westferry at the time, testified that Mr. O'Brien Senior informed him that Mr. Denis O'Connor had proposed that the Westferry settlement with Mr. Kevin Phelan would form part of a global settlement with Mr. Kevin Phelan, with Mr. Lowry contributing a payment relating to a different property. The amount of the payment to Mr. Kevin Phelan from Westferry was to be Stg.£150,000.00, and there was no evidence of any negotiation on this figure. When queried in the course of private inquiries by

the Tribunal about his role in these negotiations, Mr. O'Connor repeatedly insisted to the Tribunal that he had no role whatsoever. Following the delayed production of the files concerning the negotiations, it became clear that Mr. O'Connor had in fact played the central role in negotiations with Mr. Kevin Phelan on Westferry's behalf. He was also involved at the same time in negotiations with Mr. Kevin Phelan on behalf of others, including Mr. Aidan Phelan, Brian Phelan & Company, accountants, which was Mr. Aidan Phelan's former firm, Mr. Craig Tallents and Mr. Lowry.

16.122 Whilst those negotiations were relatively complex, and are examined in some detail in Chapter 10, apart from the significance of Mr. O'Connor's role in them, the Tribunal also had regard to the fact, previously mentioned, that the fax of 11th August, 1999, from Mr. Kevin Phelan to Mr Aidan Phelan, containing the reference to *"ML"* in a Doncaster context, emerged in the course of those negotiations, and caused William Fry to direct that inquiries should be made to ensure that there was no connection between Mr. Lowry and the Doncaster transaction. Indeed, the requirement for a confirmation from Mr. Kevin Phelan that there was no such connection almost collapsed the entire negotiations. Following a particularly tense and hostile meeting in England at the end of July, 2002, between Mr. Kevin Phelan and his solicitor, and Mr. O'Connor, Woodcock & Sons wrote to William Fry formally withdrawing from the negotiations on the grounds that their client was now being asked:

> *"to provide the impossible."*

Also of significance is the fact that this crucial stage in the negotiations occurred precisely at the same time that the Tribunal was hearing evidence in relation to the *"long form"* and *"short form"* correspondence, including evidence from Mr. Denis O'Connor, much of which was directed to advancing the innocent explanation set forth in Mr. Kevin Phelan's letter of 23rd April, 2002. Neither at that time, nor for more than two years thereafter, was the Tribunal aware of the document containing the reference to *"ML"* in relation to yet another UK property transaction, which the Tribunal had been previously informed had no connection with Mr. Lowry, namely Doncaster. Nor was the Tribunal aware of the inquiries which William Fry felt it necessary to direct, consequent on that reference; nor that these inquiries had failed to elicit a satisfactory explanation for the *"ML"* reference. This information did not come to the Tribunal's attention until after such time as Mr. O'Brien had issued proceedings, through William Fry, acting as his solicitors, seeking to halt the Tribunal's Doncaster inquiries.

16.123 In August, 2002, Mr. Kevin Phelan, notwithstanding Woodcock & Sons' earlier assertions of impossibility, provided an explanation for the *"ML"* reference in the fax of August 1999, to the effect that it did refer to Mr. Lowry, but was

erroneous, in that the reference should have been in the context of Mansfield, and not Doncaster. The negotiations were promptly concluded with Westferry, and Mr. Kevin Phelan was paid Stg.£150,000.00.

16.124 In mid-2002 it seems that Mr. Kevin Phelan also provided a copy of Mr. Christopher Vaughan's letter dated 25th September, 1998, containing the reference to Mr. Lowry's *"total involvement"* in Doncaster, to Mr. Ken Richardson and Mr. Mark Weaver. This document was produced by them in the course of a mediation meeting in September, 2002, aimed at concluding the litigation between the Doncaster vendors and Westferry, which in turn gave rise to a complaint of blackmail, being made by Mr. Denis O'Brien Senior to the London Metropolitan Police. In a witness statement prepared by Mr. O'Brien Senior to support his complaint in November, 2002, Mr. O'Brien Senior stated that in the week prior to the mediation, he was faxed a copy of the letter of 25th September, 1998, and received a message, via Mr. Denis O'Connor, which he was told originated from Mr. Ken Richardson and Mr. Mark Weaver, that a copy of the letter would find its way to people he did not want to see it, unless he settled the litigation in respect of Doncaster on terms which were favourable to the vendors. In this statement it was also said that Mr. O'Connor had informed Mr. O'Brien Senior that the information about this matter had come from Mr. Kevin Phelan. Whilst Mr. O'Connor, in his evidence, rejected what was recorded in Mr. O'Brien Senior's statement, and insisted that he had never had sight of the letter of 25th September, 1998, until it became public by reason of The Irish Times articles in January, 2003, the Tribunal has nonetheless concluded that he was fully aware of the existence and contents of both the letter of 25th September, 1998, and also the fax of 11th August, 1999, containing the *"ML"* reference in the context of Doncaster, both of which documents had been withheld from the Tribunal. Indeed, the Tribunal is satisfied that Mr. O'Connor's activities and efforts, dating from March, 2001, were directed to neutralising the risk of damaging information coming to the attention of the Tribunal as a result of the actions of Mr. Kevin Phelan. The Tribunal acknowledges that Mr. O'Connor was not, in the actions which he took, acting on his own account, but rather was acting as a facilitator for, and an agent of his client, Mr. Michael Lowry, and to the extent that he assisted in the implementation of the strategy of deceiving the Tribunal devised in March, 2001, he was doing the bidding and seeking to serve the interests of others, primarily Mr. Lowry, and secondarily Mr. Denis O'Brien.

16.125 The Tribunal has concluded that the payment of Stg.£65,000.00 to Mr. Kevin Phelan in March and April, 2002, in connection with a property interest of Mr. Michael Lowry, was for the principal purpose of presenting a contrived falsehood to the Tribunal. This entailed the withdrawal of assertions which had been made by Mr. Kevin Phelan against Mr. Christopher Vaughan in connection with the provision to the Tribunal of falsified correspondence, and at the same

time, the furnishing by Mr. Kevin Phelan to Mr. Christopher Vaughan of an untrue innocent explanation for the existence of the *"long form"* and *"short form"* correspondence, which explanation was forwarded to the Tribunal by Mr. Christopher Vaughan, when it was known to be untrue.

16.126 The Tribunal has further concluded that the payment of Stg.£150,000.00 to Mr. Kevin Phelan by Mr. Denis O'Brien, through Westferry, was primarily intended to ensure that Mr. Kevin Phelan would not further undermine the false version of Mr. Lowry's involvement in the UK properties already tendered in evidence to the Tribunal in 2001, and the false explanation already presented, with the complicity of Mr. Kevin Phelan, for the existence and provision to the Tribunal of the falsified *"short form"* correspondence.

16.127 As regards its substantive inquiries into Mr. Michael Lowry's association with, and role in, Doncaster, the Tribunal has had regard to all the relevant circumstances, which are fully set forth in Chapters 9 and 10. The Tribunal has concluded by reference to all matters considered in those chapters, and in particular to:

(i) the events of 23rd and 24th September, 1998, when Mr. Lowry travelled to the UK;

(ii) the contents of Mr. Vaughan's consequent letter of 25th September, 1998, recording a *"total involvement"* on the part of Mr. Lowry in Doncaster;

(iii) Mr. Denis O'Connor's statement to Ms. Ruth Collard and Mr. Craig Tallents at the meeting on 10th September, 2002, in London, that Mr. Lowry had a connection with Doncaster;

(iv) the extensive concealment of various matters centrally relevant to Doncaster;

that Mr. Lowry did have an involvement in the Doncaster transaction, which it was intended would entail a payment to, or the conferral of a pecuniary advantage on him, the source of which was the ultimate beneficial owner of Doncaster, that is, Mr. Denis O'Brien.

DELAYS, NON-DISCLOSURES AND LAWYERS

16.128 The manner in which certain critical documentation concerning Doncaster Rovers, and other matters, was withheld from the Tribunal, is examined in detail in Chapter 11, particularly having regard to the actions of a

number of solicitors acting for persons or entities before the Tribunal. Although not an exhaustive analysis of all the delays to the Tribunal's work that were, over its lengthy duration occasioned, Chapter 11 deals with three particular instances, where critical information was withheld from the Tribunal, thereby causing delays to, and undermining its work.

16.129 The first such instance examined by the Tribunal concerns misrepresentations made by Messrs. LK Shields, solicitors acting for Westferry and Mr. Denis O'Brien Senior, to the Tribunal, on three separate occasions, to the effect that the London Metropolitan Police had concerns about files being provided to the Tribunal relating to the blackmail complaint made by Mr. Denis O'Brien Senior on behalf of Westferry, following the mediation between Westferry and the representatives of the Doncaster vendors in September, 2002. The effect of these misrepresentations to the Tribunal by LK Shields, and which were accepted by the Tribunal as reflecting the true position, was to delay significantly the provision of files relating to that blackmail complaint, and accordingly to undermine the Tribunal's work.

16.130 The Tribunal's request for such material was first made in January, 2003, but, largely by reason of the misrepresentations made by Westferry's solicitors, LK Shields, the material was not ultimately secured by the Tribunal until 8th February, 2005, over two years after its initial request. This occurred because the Tribunal had, shortly before, in early December, 2004, having made direct contact with the London Metropolitan Police, ascertained for the first time that the representations made by LK Shields were incorrect, and that the London police had no concerns regarding the provision of material relating to the blackmail complaint to the Tribunal. When the Tribunal immediately thereafter made inquiries of LK Shields as to how they had made representations to the contrary, LK Shields refused to engage with the Tribunal, relying on the fact that Mr. Denis O'Brien's Doncaster litigation remained ongoing, and refused to provide any response until such time as Mr. O'Brien's then Appeal to the Supreme Court had been determined.

16.131 Accordingly, it was not until two years later, in February, 2007, that the Tribunal was provided with a sequence of correspondence dating from February, 2003. This commenced with two letters, each dated 14th February, 2003, from Ms. Ruth Collard, of Carter-Ruck, English solicitors acting for Westferry, the first to Mr. Denis O'Brien Senior, and the second to William Fry, at that time acting for Westferry. In those letters, she had indicated that the police had no concerns about the release of the blackmail material sought by the Tribunal, and that it was a matter for Mr. Denis O'Brien Senior. Mr. O'Brien Senior's response to Ms. Collard's advice, was to request her to alter both letters, so that, as altered, they

would give the false impression that the police did have concerns. Ms. Collard made the alterations sought by Mr. O'Brien Senior, and those altered letters were sent to him and to William Fry.

16.132 In September of that year, when LK Shields took over from William Fry, as solicitors representing Westferry and Mr. O'Brien Senior, in their dealings with the Tribunal, Mr. Owen O'Sullivan, of William Fry, took the precaution of sending a fax to Mr. Hugh Garvey, of LK Shields, specifically drawing to his attention both the original and altered versions of Ms. Collard's correspondence of February, 2003, addressed to William Fry. Notwithstanding, this communication from the solicitor previously acting, LK Shields made representations to the Tribunal, based only on the contents of the altered version of the correspondence, whilst disregarding the contents of the original version, without making any inquiries as to the reason for the alterations having been made, in circumstances where those alterations were directed by the client, Mr. O'Brien Senior.

16.133 Evidence was heard from Mr. O'Brien Senior, who acknowledged that he had directed the changes to Ms. Collard's correspondence. Evidence was also heard from Ms. Collard of Carter-Ruck, and Mr. Garvey of LK Shields, and that evidence, together with that of Mr. O'Brien Senior, is examined in Chapter 11. In summary, Ms. Collard told the Tribunal that she had thought quite carefully about making the changes requested by Mr. O'Brien Senior. She believed that he was trying to minimise the effect of what she had told him about the police having no concerns, but she also believed that, whatever Mr. O'Brien Senior was seeking to achieve, could not be achieved, as his solicitors would have in their possession both the original and altered versions of her correspondence. She acknowledged that the altered versions gave a very different impression. Mr. Garvey testified that he did not know to what extent he had examined the two versions of Ms. Collard's letter to William Fry, when responding to the Tribunal, and, in any event, he suggested that any culpability rested with Ms. Collard and Carter-Ruck, as they never corrected him in relation to what had been conveyed to the Tribunal, even though they were subsequently provided with all correspondence that passed between LK Shields and the Tribunal. He also told the Tribunal that LK Shields' letters to the Tribunal were written, on the basis of the instructions he had received.

16.134 Whilst there was a tendency in the evidence heard from Mr. Garvey and Ms. Collard to suggest that, if any blame or culpability arose for this misrepresentation, it should lie elsewhere, the Tribunal has found that it is difficult to accept that Mr. Garvey overlooked or failed to appreciate the significance of what had been highlighted to him by Mr. Owen O'Sullivan, in the course of transmission of documents relating to Westferry from William Fry to LK Shields. If he did overlook the matter, Mr. Garvey certainly ought to have read and

appreciated what had transpired, particularly as he subsequently wrote on three separate occasions to the Tribunal, conveying a position according only with Ms. Collard's altered letter. In writing to the Tribunal, in October, 2006, in strident terms, denying on behalf of his clients that they had misled the Tribunal, Mr. Garvey was certainly by that time in possession of all relevant information, and the Tribunal has found it incomprehensible that he then wrote in these terms. Ms. Collard, in altering her original letter, must also have known that the altered form materially misrepresented the true situation and, given her extensive dealings with the Tribunal over a lengthy period thereafter, she must also have been aware that the incorrect position had been conveyed to the Tribunal. It is beyond doubt that the course of events surrounding the alteration of Ms. Collard's letters, and the misrepresentations then made, occasioned needless difficulties, lengthy delays and significant expense to the Tribunal.

16.135 The second instance of delays to the Tribunal's work examined in Chapter 11 relates to the failure to provide to the Tribunal a copy of the fax dated 11th August, 1999, previously referred to, from Mr. Kevin Phelan to Mr. Aidan Phelan, containing the reference to *"ML"* in the context of Doncaster. The fax had emerged in the course of settlement negotiations between Westferry and Mr. Kevin Phelan in mid-2002.

16.136 The receipt of the fax by Westferry, in the circumstances already outlined caused concerns, with Mr. O'Brien Senior immediately identifying it as a possible reference to Mr. Lowry, and concluding that it had to be some form of intimidation or blackmail by Mr. Kevin Phelan. Mr. Owen O'Connell and Mr. Owen O'Sullivan, the solicitors in William Fry dealing with the matter quite properly, took the view that they had been put on inquiry as to the *"ML"* reference, and informed Mr. O'Brien Senior to that effect. The ensuing inquiries and the significance of the *"ML"* reference in the context of the ongoing negotiations with Mr. Kevin Phelan, are examined in Chapter 11, and also in Chapter 10.

16.137 As regards the non-disclosure of both the document, and the circumstances surrounding its emergence in mid-2002, the Tribunal heard evidence from both Mr. O'Brien Senior and Mr. Owen O'Connell. Mr. O'Brien Senior testified that the failure to bring the matter to the Tribunal's attention had nothing to do with him, and it was for William Fry to tell him that the information had to be given to the Tribunal. He was in the hands of his solicitors. Mr. O'Connell did not recall discussing the matter with Mr. O'Brien Senior at the time, but he did discuss it with his colleague Mr. Owen O'Sullivan, and they considered whether they should formally advise Mr. O'Brien Senior to notify the matter to the Tribunal, but decided against doing so. In evidence, he testified that his firm was in an unusual position vis-à-vis the Tribunal, in that almost all of its advice came

into the possession of the Tribunal, with the consequence that formal advice to Mr. O'Brien Senior would have been tantamount to a direction that he notify the Tribunal, and it was clear that Mr. O'Brien Senior was absolutely adamant that he did not want to receive that advice. In expanding on this, Mr. O'Connell made it clear that at no point did Mr. O'Brien Senior state to Mr. O'Connell, or anyone else, that he did not want to receive the advice, but it was clear, from the context of everything that had gone before that both Mr. O'Brien Senior and his son, Mr. Denis O'Brien, were adamant that Mr. Lowry had no involvement in Doncaster. The only contrary evidence, of which William Fry was aware, was the *"ML"* reference in the fax of 11th August, 1999, and Mr. O'Connell took the view that giving formal advice to bring that matter to the attention of the Tribunal was not justified.

16.138 As regards the litigation brought by Mr. O'Brien against the Tribunal, with William Fry acting as his solicitors, Mr. O'Connell testified that he was not a litigation lawyer, and was not involved in the proceedings, but acknowledged that, when seeking equitable relief, such as the injunction sought by Mr. O'Brien in regard to Doncaster, applicants and their lawyers were required to make all information in their possession available to the Court by way of full disclosure. Mr. O'Connell stated that he was unaware that the existence of the *"ML"* reference was not disclosed to the Court, when the application was made.

16.139 The manner in which the fax of 11th August, 1999, eventually came to the attention of the Tribunal, was lengthy and somewhat complicated, and is set out in full in Chapter 11. Suffice to say at this juncture that, following The Irish Times articles concerning Doncaster on 11th January, 2003, and the subsequent commencement of the Tribunal's private inquiries into the matter, the fax, and related documents, were withheld from the Tribunal until 3rd November, 2004, almost two years later.

16.140 Having quite properly directed an internal inquiry into the *"ML"* reference upon its emergence in mid-2002, and having received an explanation for the reference which was not, as acknowledged by Mr. O'Connell, particularly persuasive or satisfactory, a decision was then taken by William Fry not to refer the document to the Tribunal, without consulting or advising Mr. O'Brien Senior further. The Tribunal has found that William Fry's decision in this regard cannot withstand serious scrutiny. The rules of legal professional privilege relating to advices given to clients apply with equal force in a tribunal context, as they do in the Courts, but in any event, it could hardly be suggested as a tenable course of dealings that, because it is felt that a client is reluctant to receive and act on particular advice, no advice to that effect is given, and a course is therefore adopted which accords with the client's perceived preference.

16.141 Not only was the document not provided, but the legal advisers, whilst aware of the document and its troublesome potential, and the unsatisfactory outcome of inquiries conducted into it, proceeded on a basis, not merely of withholding disclosure from the Tribunal, but of urging in repeated correspondence that no sufficient basis for embarking upon public sittings in relation to Doncaster existed, and then making application to the High Court, on behalf of their client, Mr. Denis O'Brien, without disclosure in that regard.

16.142 Whilst the submissions received on behalf of William Fry in relation to this issue were useful and constructive, and the Tribunal acknowledges that Mr. O'Sullivan and Mr. O'Connell, in the course of other dealings with the Tribunal, and in the case of Mr. O'Connell, in the course of evidence given, have acted both diligently and fairly, nonetheless in failing to make the document available, whilst urging the Tribunal to desist from public sittings in relation to Doncaster, and bringing and maintaining Judicial Review proceedings, without such disclosure, the solicitors and their clients fell short of the level of cooperation with the Tribunal professed by them, and contributed to significant delays thereby occasioned.

16.143 The final instance examined in Chapter 11 concerning dealings between the Tribunal and lawyers acting for affected persons, relates to the eventual attendance of Mr. Christopher Vaughan, as a Tribunal witness, in the course of 2009. Initially, it had been hoped that Mr. Vaughan's evidence would be disposed of within one week, in April of that year, but by reason of his evidence overrunning the initial estimated time-frame, it was necessary to postpone the balance of his testimony until June, 2009.

16.144 In the intervening period, approximately four weeks before Mr. Vaughan resumed evidence on 23rd June, 2009, Messrs. Oliver Roche & Company, solicitors of County Tyrone, acting on behalf of Mr. Kevin Phelan, furnished to Mr. Duncan Needham, of Messrs. Max Engel, solicitors of Northampton, England, acting for Mr. Vaughan, a considerable body of documentation. Among this, there was in particular a number of copy letters written by Mr. Vaughan, referable to Mansfield, Cheadle and Doncaster, several of which letters, as examined in more detail in Chapter 8 and elsewhere, had either been previously provided to the Tribunal in an altered form, where references to Mr. Lowry's involvement in property transactions had been deleted, or alternatively had never been produced previously to the Tribunal in any form, and also contained references to an involvement of Mr. Lowry, inconsistent with information and evidence previously furnished to the Tribunal. It appears that these documents were provided by Oliver Roche & Company, on behalf of Mr.

Kevin Phelan, in protest at certain reported references to their client by Mr. Vaughan in the course of his April evidence.

16.145 When Mr. Vaughan's evidence resumed in June, 2009, he accepted that the copy correspondence furnished, in the interim, by Oliver Roche & Company, comprised true copies of letters actually written by him, and his counsel acknowledged that the material furnished was *"obviously relevant"* to the Tribunal. Further, at the conclusion of his evidence, Mr. Vaughan accepted that, had the further documentation not emerged, the Tribunal would have been invited to draw important conclusions from portions of his earlier evidence that he had to accept, in the light of the further documentation, would have been entirely incorrect.

16.146 There were certain communications between Mr. Needham, on Mr. Vaughan's behalf, and the solicitor for the Tribunal, following the receipt by Mr. Needham of the documentation in question, which dealings are detailed in Chapter 11. These began with a telephone call from Mr. Needham on 2nd June, 2009, in which he inquired whether the Tribunal had received any correspondence from Mr. Kevin Phelan's solicitors since Mr. Vaughan's earlier evidence. The Tribunal solicitor responded that he could not confirm or deny this, as the Tribunal was unable to comment on its dealings with other affected persons. By letter of the same day, 2nd June, 2009, Mr. Needham wrote to the Tribunal in broadly similar terms, and enclosed a copy of a letter of complaint from Oliver Roche & Company of 1st May, 2009, and Mr. Needham's response of 10th May, 2009. Mr. Needham repeated his inquiry as to receipt by the Tribunal of correspondence from Mr. Kevin Phelan, and his request for provision of copies of any such correspondence.

16.147 Mr. Needham wrote to the Tribunal again on 12th and 16th June, 2009, with a further telephone call on 17th June, 2009, on each occasion repeating his earlier inquiries and requests. The Tribunal's response on all occasions was to a like effect as its initial response. It was not until the late afternoon of Monday 22nd June, 2009, the day prior to the resumption of Mr. Vaughan's evidence, that the Tribunal received, by hand, from Mr. Needham, the relevant documentation, under cover of a letter from him, dated 19th June, 2009.

16.148 Regarding the delay in furnishing the Tribunal what were undoubtedly material and important documents, the Tribunal was informed by Mr. Stephen Nathan QC, who acted for Mr. Vaughan, that his professional commitments abroad retarded the holding of a consultation with Mr. Vaughan and Mr. Needham, to enable Mr. Nathan to provide Mr. Vaughan with the advice he deemed necessary in order to consider whether the documentation in question

ought to be furnished to the Tribunal. Whilst it is difficult not to find fault with such a delay in failing to forward promptly to the Tribunal what, on any appraisal, were significant documents, it is accepted that the belated furnishing of these documents was contributed to by Mr. Nathan's overseas commitments, and his solicitor's inability to consult him until shortly before the documents were produced. Whilst it is acknowledged that Mr. Needham wished to obtain the advice of counsel before committing himself to advising his client, Mr. Vaughan, to bring this material to the notice of the Tribunal, and further that counsel was abroad for a period of time, during which Mr. Needham was unable to make contact with him, nevertheless it is regrettable that what, as Mr. Vaughan knew, was a copy of a portion of his file, a portion as yet undisclosed to the Tribunal, should have been withheld for so long. However, in terms of both the length of delay, and fact of actual though belated disclosure, this instance is distinguishable from other instances addressed in Chapter 11.

SHARES FOR FRIENDS AND FAMILY

16.149 Chapter 12, the final chapter on the Tribunal's investigations into financial matters pertaining to Mr. Michael Lowry, relates to the acquisition of shares in Esat Telecom, on behalf of the late Mr. David Austin who, as found by the Tribunal, was in 1995 and 1996, a conduit both for a donation by Esat Digifone to Fine Gael, and for a payment by Mr. Denis O'Brien to Mr. Michael Lowry. The instructions in relation to the acquisitions investigated by the Tribunal were provided, not by Mr. Austin, but by Mr. Denis O'Brien, and were effected through the agency of Messrs. Donaldson Lufkin & Jenrette, a firm of US Stockbrokers, and in particular Mr. Peter Muldowney. Mr. Muldowney is an Irish individual who has been based for some years in the US, who had close personal and professional ties to Mr. O'Brien, and who refused either to attend as a witness, when requested by the Tribunal, or to provide direct assistance to the Tribunal in its private inquiries. The dealings in question were discovered by the Tribunal, consequent on a full investigation of Mr. Austin's finances conducted by the Tribunal in the course of its confidential inquiries. What prompted Tribunal attention was that, in each instance, Mr. O'Brien, as had been the case in the Carysfort transaction, was the source of all, or part of the funds, which financed the share acquisitions in Mr. Austin's name. The latter of the two transactions had in addition significant features of irregularity, which warranted close scrutiny. Furthermore, in determining that inquiries into these transactions should be pursued at public sittings, the Tribunal had regard to the proximity of apparent dealings between Mr. O'Brien and Mr. Austin in connection with the initial share acquisition, to the confirmation provided by Mr. Austin in November, 1997, regarding the $50,000.00 Esat Digifone donation to Fine Gael, the provision of which was a condition of Esat Digifone's support for the Esat Telecom IPO.

16.150 The first of these share dealings, according to what the Tribunal was told, arose in the context of provision made at the time of the Esat Telecom IPO for the reservation of 5% of the shares offered for the category of a Friends and Family Scheme. Whilst the IPO proceeded in November, 1997, it was not until the following 18th February, 1998, that 6,600 shares were acquired, on behalf of Mr. Austin, on the instructions of Mr. O'Brien, and placed on an account in Mr. Austin's name with Donaldson Lufkin & Jenrette. This shareholding, which by reason of the appreciation in value of Esat Telecom shares over the three months that they had traded on the Stock Market, cost $150,000.00, rather than the $100,000.00 that it would have cost if purchased at the time of the IPO. The differential, that is $50,000.00, was funded by Mr. O'Brien, so that Mr. O'Brien covered one third of the cost of Mr. Austin's share purchase.

16.151 As Mr. Austin was long deceased by the time the Tribunal discovered this transaction, and as his executors had no information of assistance to the Tribunal, it was primarily to Mr. O'Brien that the Tribunal's inquiries were addressed. It was Mr. O'Brien's evidence that Mr. Austin had conveyed to him at the time of the flotation in November, 1997, his desire to acquire $100,000.00 worth of Esat Telecom shares. Mr. O'Brien agreed that he would arrange for Mr. Austin's participation through the Friends and Family Scheme, and that he would attend to the acquisition on his behalf. Mr. O'Brien's evidence was that he overlooked the matter, and following an inquiry made by Mr. Austin in that regard, realising his oversight, he purchased an equivalent number of shares on the market, and absorbed the $50,000.00 price differential personally. In other words, Mr. O'Brien made provision of $50,000.00 for Mr. Austin's benefit from his own funds. These shares remained in Mr. Austin's name as of the date of his death, even though it seems that he had instructed Donaldson Lufkin & Jenrette to transfer them into the name of his wife, some three weeks prior to his death.

16.152 The second of these two share transactions was bizarre in its apparent elements of error, misunderstanding and irregularity. It entailed instructions furnished by Mr. O'Brien directly to Mr. Peter Muldowney, of Donaldson Lufkin & Jenrette, to purchase 12,000 Esat Telecom shares on the stock market, at a cost of $294,000.00. These funds were transferred by Mr. Aidan Phelan, Mr. O'Brien's accountant and associate, who had also been a conduit for payments off-shore from Mr. O'Brien to Mr. Lowry. It was Mr. Phelan's understanding at the time he made those arrangements that the funds were being transferred to cover the cost of the purchase of Esat Telecom shares for Mr. Austin.

16.153 The 12,000 shares, having been paid for by Mr. O'Brien, were placed and remained in Mr. Austin's account with Donaldson Lufkin & Jenrette until 16th November, 1998, some fifteen days after his death, when the shares were

transferred out of Mr. Austin's account, to that of Mr. Noel Walshe, Mr. O'Brien's father-in-law. Despite the death of Mr. Austin, that step was taken by Donaldson Lufkin & Jenrette on foot of a letter dated 13th October, 1998, from Mr. Austin, addressed to Mr. Aidan Phelan, asking Mr. Phelan to arrange for the transfer of the 12,000 shares to Mr. Walshe, furnishing the latter's account number. Mr. Aidan Phelan, although testifying that those instructions would have been passed on by his secretary, had no recollection of receiving them.

16.154 Mr. O'Brien gave evidence in relation to this transaction in June, 2001, and again in October, 2001, by which time additional documentation had been secured by the Tribunal. Differing versions of events were advanced on those two occasions. A full account of Mr. O'Brien's evidence, and that of Mr. Phelan and Mr. Walshe, is set forth in Chapter 12. In brief, it was Mr. O'Brien's evidence that the shares had been purchased in Mr. Austin's name in error. In June, 2001, the error was that of Mr. Aidan Phelan, who, according to Mr. O'Brien, had arranged the purchase of the shares on his instructions, and it was all as a result of miscommunication between the two agents acting on his behalf, that is, Mr. Phelan and Mr. Peter Muldowney of Donaldson Lufkin & Jenrette. By October, 2001, when Mr. O'Brien resumed his evidence, he testified that he believed that it was he who had given verbal instructions to Mr. Peter Muldowney in early September, 1998, to purchase those shares, not for Mr. Austin, but for the account of Mr. Walshe. Although Mr. O'Brien could not recall discussion between them of Mr. Austin, Mr. Muldowney had written to the solicitors representing the estate of Mr. Austin, indicating that they had also discussed Mr. Austin in the course of that exchange, and that the shares had been placed in Mr. Austin's account in error. In other words, in October, 2001, the error was that of Mr. Peter Muldowney alone. The Tribunal requested, but was never furnished with a transcript of that telephone call. Mr. Muldowney declined to attend as a witness, and refused to participate in a conference telephone call with the Tribunal in the course of its private inquiries. Although Mr. O'Brien seemingly discovered the error, from conversations with Mr. Aidan Phelan, from which it appeared that the shares had been placed in Mr. Austin's account, Mr. O'Brien did not, however, inform Mr. Phelan that an error had been made, and he did nothing to rectify it at that point.

16.155 The Tribunal has concluded from the evidence heard, and from all of the surrounding circumstances, that the likelihood is that the 12,000 shares purchased in September, 1998, on the instructions of, and funded by Mr. O'Brien, were in fact intended for Mr. Austin's account. This, and the earlier share acquisition, were transactions which most certainly warranted close scrutiny by the Tribunal, given their affinity to earlier material transactions examined, and the roles of Mr. Austin and Mr. Aidan Phelan as conduits for the passage of funds from Mr. O'Brien to Mr. Michael Lowry. It must nonetheless be recorded that,

despite infirmities in the accounts of events forthcoming, there was no evidence that connected this transaction, or indeed the initial share acquisition on behalf of Mr. Austin, of which $50,000.00 was funded by Mr. O'Brien, to Mr. Michael Lowry, within the meaning of the Tribunal's Terms of Reference, or in any other respect.

THE MARLBOROUGH HOUSE ARBITRATION

16.156 Whilst the contents of this Volume are largely directed to the Tribunal's money trail inquiries made pursuant to paragraphs (e) and (f) of its Terms of Reference, there is one aspect of its inquiries into acts and decisions falling within the ambit of paragraph (g) of its Terms of Reference, which is unrelated to the balance of the Tribunal's inquiries into that paragraph, but which forms the subject matter of Chapter 13 of this Volume. Those inquiries concerned a matter which ought to have been brought to the attention of the McCracken Tribunal, as it related to dealings between Mr. Ben Dunne and Mr. Michael Lowry, and had it been, the inquiries of the McCracken Tribunal might well have taken a different course.

16.157 Chapter 13 relates to evidence heard by the Tribunal in relation to Mr. Michael Lowry's intervention in 1995, when he held office as Minister for Transport, Energy & Communications, and when he was Chairman of the trustees of Fine Gael, in an arbitration then being conducted to fix the revised rent payable in respect of a substantial building known as Marlborough House, located in Marlborough Street, Dublin. The parties to the arbitration were Mr. Ben Dunne, who had recently acquired the landlord's interest in the property for £5.4 million, and Telecom Éireann, which had held the tenant's interest for some years, and of which Mr. Lowry, as Minister for Communications, was ultimate shareholder. The arbitrator was Mr. Gordon Gill, a partner in Sherry FitzGerald, Estate Agents and Auctioneers, and it was through Mr. Mark FitzGerald, who was a trustee of Fine Gael, and had a long-standing family history of association with the party, and who was a partner of Mr. Gill, that Mr. Lowry endeavoured to intervene.

16.158 The Tribunal has concluded that Mr. Lowry sought, through Mr. FitzGerald, to influence Mr. Gordon Gill in the discharge of his remit as arbitrator so as to bring about a result in which the rent would be increased from £5.00 per square foot to £10.00 per square foot instead of the £6.00 per square foot that was actually fixed by Mr. Gill. As the approximate square footage of the premises was 85,000 feet, this would have resulted in an increase in the annual rental, above that actually fixed, by a sum of £340,000.00 (€431,711.00). This would have resulted in the capital value of Mr. Dunne's interest increasing to £12.75

million (€16.19 million), more than doubling Mr. Dunne's investment of £5.4 million (€6.86 million), made just months earlier.

16.159 Chapter 13 recounts the circumstances in which this matter came to the attention of the Tribunal, and recites in some detail the evidence of those centrally involved, that is, Mr. Mark FitzGerald, Mr. Michael Lowry, and to a lesser degree, Mr. Ben Dunne, together with the evidence of two witnesses who were more peripherally concerned, that is, Mr. Gordon Gill, the arbitrator, and Mr. Killian O'Higgins, a colleague of Mr. FitzGerald, in whom he confided at the time concerning Mr. Lowry's overtures.

16.160 In brief, the evidence of the two protagonists, was directed to three interactions between them, over a very short duration, commencing with a telephone call by Mr. Lowry to Mr. FitzGerald in late March, or early April, 1995, and proceeding to two meetings between them. Whilst Mr. FitzGerald and Mr. Lowry agreed that those contacts had taken place, there was a critical conflict between them over what had occurred.

16.161 It was Mr. FitzGerald's evidence that Mr. Lowry initially telephoned him inquiring whether *"a man called Gill"* was involved with a Dublin building off O'Connell Street, of which Telecom Eireann was tenant, to which Mr. FitzGerald responded that Mr. Gordon Gill was a colleague of his, that he knew nothing of the matter, but would make inquiries. Mr. FitzGerald then ascertained that Mr. Gill had been appointed arbitrator to fix the revised rent. A short number of days later, Mr. Lowry again telephoned Mr. FitzGerald, and asked him to meet him in a premises in Kildare Street, near Mr. FitzGerald's office. They met over coffee, and it was at this meeting, according to the testimony of Mr. FitzGerald, that Mr. Lowry informed him that Mr. Dunne had recently purchased Marlborough House, and wanted to secure an increase in the rent payable from £5.00 per square foot, to £10.00 per square foot. Mr. Lowry referred to Mr. Gill's appointment as arbitrator, and asked Mr. FitzGerald if he could organise for Mr. Gill to revise the rent to this level. Mr. FitzGerald responded emphatically in the negative, to which, according to his evidence, Mr. Lowry responded:

> *"what are 'we' going to do, as Ben Dunne has contributed £170,000.00 to Fine Gael?"*

Mr. FitzGerald understood Mr. Lowry's reference to *"we"*, as meaning Fine Gael.

16.162 The third interaction, again within a matter of days, which Mr. FitzGerald believed was on 6th April, 1995, occurred in the context of Mr. Lowry's request that Mr. FitzGerald show him a property which Sherry FitzGerald had on

its books for sale. Having shown the property to Mr. Lowry, in the company of the Sherry FitzGerald colleague dealing with it, Mr. Lowry asked Mr. FitzGerald to drive him back to his Department, and en route, Mr. Lowry again raised the Marlborough House arbitration and repeated his request. Mr. FitzGerald, in the same vein as before, emphatically reiterated his refusal to interfere with Mr. Gill's arbitration.

16.163 The conflict in the evidence of Mr. FitzGerald and Mr. Lowry centred on what occurred on those occasions of contact. Put simply, it was Mr. Lowry's evidence that the Marlborough House arbitration had not featured at all on either of the occasions on which he met Mr. FitzGerald, that is, on the first occasion, when they met for coffee in Kildare Street, and on the second occasion, when Mr. FitzGerald drove Mr. Lowry back to his Department. Mr. Lowry testified that the arbitration only arose in the course of their initial telephone contact. Mr. Lowry accepted that, in the course of that contact, he did ask Mr. FitzGerald to raise the arbitration of the Marlborough House arbitration with Mr. Gill, but not for the purposes of seeking to influence the revised rent. His request was directed solely to Mr. FitzGerald asking Mr. Gill to expedite the arbitration process, and nothing more. He had never asked Mr. FitzGerald to seek to influence Mr. Gill in the level of revised rent fixed by him, and he denied that he had ever made the statement attributed to him by Mr. FitzGerald, concerning Mr. Dunne having contributed £170,000.00 to Fine Gael.

16.164 In his evidence, Mr. Ben Dunne confirmed that he had made contact with Mr. Lowry in connection with the arbitration of the revised rent for Marlborough House, which he had recently acquired for £5.4 (€6.86) million. He did request Mr. Lowry, who he believed would know Mr. Mark FitzGerald, through their mutual association with Fine Gael, to approach Mr. FitzGerald. Consistent with Mr. Lowry's evidence, it was Mr. Dunne's testimony that this approach was not intended to relate to the revised rent to be fixed by Mr. Gill, but to encourage the expedition of the arbitration process. The request made by him was spontaneous, he acknowledged that for someone reading his evidence, it *"looks terrible"*, but he testified that that was the way he did business.

16.165 The evidence of Mr. Killian O'Higgins was confined to a conversation he had with Mr. FitzGerald, when the latter confided in him that Mr. Lowry had asked him to influence Mr. Gill to fix the revised rent for Marlborough House at £10.00 per square foot, and that Mr. FitzGerald had refused, and their discussion and agreement that Mr. FitzGerald should not relay that matter to Mr. Gill at that point, as Mr. Gill would then have been obliged to resign as arbitrator. Mr. Gill's evidence was directed to two matters: firstly, his conduct of the arbitration, and his fixing of the revised annual rent at £640,000.00 (€812,632.00),

approximating to a little over £6.00 per square foot, on 26th May, 1995; secondly, to Mr. FitzGerald informing him, after the conclusion of the arbitration, of Mr. Lowry's earlier intervention. Mr. O'Higgins' and Mr. Gill's evidence, of what Mr. FitzGerald had told them in 1995, was consistent with Mr. FitzGerald's testimony of what had occurred.

16.166 As set forth in Chapter 13, the Tribunal has concluded that, having considered all of the evidence heard, having assessed the direct evidence, and having had regard to the circumstantial factors that emerged, the influence that was sought to be exercised by Mr. Michael Lowry on Mr. Gordon Gill, through Mr. Mark FitzGerald, was with a view to a substantial enhancement of the rent, rather than merely expediting the process. Apart from the absence of any motive having been suggested whereby Mr. FitzGerald might have been inclined to give false or unreliable evidence of a nature potentially damaging to Mr. Lowry and Mr. Dunne, the Tribunal views Mr. FitzGerald's reticence in volunteering the relevant information concerning the Marlborough House arbitration, for what he himself envisaged as likely to be *"an unpleasant task",* as understandable, and indeed as enhancing, rather than diminishing the weight of his testimony.

16.167 In finding that Mr. Lowry sought to influence the revised level of rent payable for Marlborough House, it must be recorded that, not merely was this patently improper conduct on his part, but it was in addition a particularly grave dereliction of duty. As Minister entrusted with telecommunications matters, Mr. Lowry in effect stood in the shoes of Telecom Eireann, as tenant of Marlborough House, and for him to have sought to procure unwarranted rent increases, that would have improperly enriched Mr. Dunne over a seven year period, and thereby burdened public funds within his Ministerial remit, amounts to a grave conflict of duty and interest. Indeed, what was contemplated and attempted on the part of Mr. Lowry and Mr. Dunne was profoundly corrupt, to a degree that was nothing short of breathtaking.

16.168 Both the McCracken Tribunal and this Tribunal have found that Mr. Dunne was the source of funds in bank accounts held in the name of, and/or for the benefit of, Mr. Lowry, including accounts of Fine Gael, of which Mr. Lowry was trustee. The requests made by Mr. Lowry of Mr. FitzGerald were acts, calculated to confer, or procure, or to direct Mr. Gordon Gill to confer, a benefit upon Mr. Dunne, a person who was a source of money to Mr. Lowry, within the meaning of paragraph (g) of the Tribunal's Terms of Reference.

HOW REVENUE TAXED MR. MICHAEL LOWRY

16.169 Chapter 14 outlines the Tribunal's findings arising from the balance of its inquiries pursuant to paragraph (j) of its Terms of Reference. Deleting the portions applicable to Mr. Haughey, the Term of Reference reads:

> *" (j) Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (e) above."*

The Tribunal's inquiries focused on the actions of Revenue in seeking to collect taxation due by Mr. Lowry and/or his company, Garuda, arising from the payments identified in Chapter 5 of the Report of the McCracken Tribunal, and of any other relevant payments or gifts identified by this Tribunal, pursuant to its inquiries on foot of paragraph (e) of its Terms of Reference.

16.170 Chapter 14 identifies the payments made to Mr. Lowry and/or Garuda which gave rise to potential instances of taxation in respect of which the discharge of Revenue's remit was investigated by the Tribunal. These included all payments within the four categories identified by the Report of the McCracken Tribunal, that is:

(i) payments amounting in total to £41,000.00 made between December, 1989, and December, 1992, to Mr. Lowry personally from a Dunnes Stores account in Bank of Ireland, Marino, at the direction of Mr. Ben Dunne;

(ii) cheques issued by Dunnes Stores between November, 1988, and March, 1993, in favour of Garuda, under its trade name of Streamline Enterprises, either cashed by Mr. Lowry, or lodged by him to his own bank accounts, amounting in total to Stg.£155,739.00 and £6,000.00;

(iii) bonus payments made by Dunnes Stores to Mr. Lowry between October, 1990, and May, 1992, and amounting in total to Stg.£65,000.00 and £90,000.00;

(iv) payments relating to the refurbishment of Mr. Lowry's home at Holycross, County Tipperary, which had cost Dunnes Stores £395,107.00.

16.171 The potential payments identified by this Tribunal in the course of evidence heard are also identified in Chapter 14. In brief, they are:

(i) a further payment of £15,000.00 in November, 1992, from the Dunnes Stores account with Bank of Ireland, Marino;

(ii) a payment of £25,000.00 by Mr. Bill Maher, of Maher Meat Packers in the UK in December, 1992;

(iii) a payment of £15,000.00 by Whelan Frozen Foods;

(iv) a payment of £35,000.00 by Mr. Patrick Doherty in 1995;

(v) a deposit of Stg.£100,000.00 made with Allied Irish Banks in the Channel Islands in September, 1991;

(vi) funds of £147,000.00 lodged to an Isle of Man account in the name of Mr. Lowry in Irish Nationwide (IOM) Limited, in October, 1996;

(vii) the acquisition of properties in the UK at Mansfield and Cheadle, funded in part by Stg.£300,000.00 provided by Mr. Aidan Phelan from an account of Mr. Denis O'Brien;

(viii) the possible involvement of Mr. Lowry in the acquisition of Doncaster Rovers Football Club in August, 1998.

16.172 The Tribunal heard the evidence of Revenue officials on two occasions: initially in March, 2001, and subsequently in April, 2006, in relation to the investigations undertaken by Revenue, and the ultimate settlement of the liabilities of Mr. Lowry and of Garuda. Chapter 14 traces in some detail Revenue consideration of those liabilities, Revenue dealings with Mr. Lowry's and Garuda's tax agents, and the matters which informed Revenue's decision to accept a discounted payment from Garuda.

16.173 Revenue's investigation of the tax affairs of Mr. Lowry and Garuda commenced in November, 1996. Following media coverage, and Mr. Lowry's resignation as Minister, on 2nd December, 1996, Mr. Lowry's then tax agents notified Revenue of possible errors or omissions in Mr. Lowry's tax returns, and those of Garuda, and in the following April, 1997, a submission was made to Revenue of additional tax liabilities, in which it was indicated that the aggregate undeclared income amounted to approximately £500,000.00. A payment of £100,000.00 was made on account. Revenue never accepted that this

notification and submission constituted a voluntary disclosure by Mr. Lowry or Garuda, for the purposes of the mitigation of penalties, or the capping of interest.

16.174 Revenue's investigation was delayed by difficulties in accessing relevant records, both of Mr. Lowry and Garuda. Those difficulties were twofold. Firstly, Mr. Lowry had availed of the then recent tax amnesty, and Revenue was precluded by law from investigating his affairs prior to the tax year 1992/1993, without an Order of the Appeal Commissioners, which Order was obtained in November, 1997. Secondly, Revenue was unable to access the relevant Garuda records, which were in the possession of various inspectors, and at one point in the possession of the Tribunal. It was not until 2002 that those records were secured, and then only after High Court proceedings instituted by Revenue to that end.

16.175 In the meantime, Revenue had determined that its investigation should proceed on both a civil and criminal footing, and Mr. Lowry was duly cautioned in the latter regard, in February, 1998. The spectre of possible criminal prosecution undoubtedly inhibited both Revenue and Mr. Lowry in progressing the recovery of the outstanding liabilities, as did Revenue's caution in raising assessments, or proceeding to settlement, in the face of the renewal of this Tribunal's investigations into Mr. Lowry's financial affairs in 2001.

16.176 It was not until September, 2002, that the parties engaged with each other meaningfully. Mr. Lowry had in the meantime paid in 1997, and 1998, an additional aggregate £342,000.00 on account of outstanding taxes. Revenue had raised protective assessments, whereby the entire liability was assessed on both Mr. Lowry and Garuda, to enable Revenue to keep both options open. This was done even though it was Revenue's view from an early stage that, by reason of the evidence heard by the McCracken Tribunal, that the larger part of the undeclared funds had been intended for Garuda, rather than Mr. Lowry, and by reason of the documentary records, for tax purposes, the liabilities were primarily those of Garuda, notwithstanding that the funds had been largely retained by Mr. Lowry personally.

16.177 Following a series of interactions, on 31st March, 2003, Mr. Lowry's tax agents furnished proposals for discussion purposes, and submitted a figure of £1,096,184.24 for the entire of the outstanding tax liability. That calculation was based on the assumption that a voluntary disclosure had been made, and that there was an entitlement to mitigation of penalties by 95%, and that interest should be capped as of 31st March, 1998. This figure, and its underlying assumptions, were rejected by Revenue. By August, 2003, Revenue finalised its computation of the liabilities of Mr. Lowry personally, and of his company Garuda.

Revenue assessed Mr. Lowry's liability at £173,074.00, being in respect of some additional Residential Property Tax, Income Tax on the payments identified by this Tribunal from Maher Meat Products and Whelan Frozen Foods, plus interest on undeclared bank deposits, both Irish and off-shore. In the case of Garuda, the total assessed, inclusive of interest to March, 2003, and penalties, was £1,708,620.00 being in respect of VAT, PAYE, and PRSI relating to the payments identified by Revenue from the McCracken Report, the public sittings of this Tribunal, and its own examinations.

16.178 Chapter 14 details the evidence heard by the Tribunal regarding the considerations underlying Revenue's calculation of the relative liabilities of Mr. Lowry and of Garuda, and in particular the factors which led Revenue to the conclusion that it was obliged, under the tax code, to apportion the preponderance of those liabilities to Garuda, rather than to Mr. Lowry, notwithstanding his appropriation and retention of the greater part of the funds received from Dunnes Stores. The Tribunal is satisfied that Revenue's approach was not only a reasonable one, but was the only course that could have been taken.

16.179 Negotiations by reference to Revenue's assessments then proceeded over a number of years, and it was not until 2007 that a final binding settlement was concluded, although the agreed liability had been discharged in full by Mr. Lowry by May, 2005. The negotiations were progressed on the footing that agreement in principle would be reached, payment would be made by Mr. Lowry, and that a recommendation would ultimately be made by Revenue to the Board of the Revenue Commissioners that the settlement should be approved. That approval could not be sought until possible criminal prosecutions of Mr. Lowry, and of Garuda, had been determined, either by such prosecutions concluding, or by the Director of Public Prosecutions determining that no prosecutions should be instituted against them. It was the latter eventuality that came to pass, and following formal confirmation to that effect, the recommendation and settlement were approved by the Board of Revenue, and thereupon became binding on Revenue.

16.180 The terms of settlement with regard to Garuda entailed the discharge of a total liability of €1,261,250.00, in respect of under-declaration of VAT and PAYE/PRSI, comprising €706,612.00 for tax, and €554,638.00 for interest and penalties. As to Mr. Lowry personally, the aggregate liability discharged for under-declaration of Income Tax was €192,120.24, comprising €63,516.09 for tax, and €128,604.15 for interest and penalties. As required by s.1086 of the Taxes Consolidation Act, 1997, particulars of the settlement, amounting in total to

€1,453,370.24, were set forth in the list of Revenue defaulters published in Iris Oifigiuil on 25th September, 2007.

16.181 The settlement formally concluded in 2007 entailed a waiver of the balance of €447,000.00 due by Garuda. Revenue's agreement to this waiver arose from a contention made by Mr. Lowry's tax agents of inability to pay the full assessment on the part of Garuda. This assertion, made in 2003, led to detailed examination by Revenue of all relevant accounts and documents regarding Garuda's trading position and prospects, from which examination, Revenue concluded that a genuine incapacity had been established. The alternative to a partial waiver, that is, liquidation of Garuda on the petition of Revenue, was considered, but was rejected, as it would be lengthy, and unlikely in the ultimate to yield an amount equivalent to that which had been offered on behalf of Garuda.

16.182 Chapter 14 concludes with a finding that, in the investigations, assessments and negotiations carried out by Revenue in relation to the relevant unpaid tax liabilities, Revenue in general terms discharged its duties in a manner that was diligent and professional. Given the difficulties involved in the case, the eventual resolution was justified and satisfactory, and the delay in bringing the negotiations to finality primarily related to tension arising as a result of deploying criminal and civil proceedings at the same time, and Revenue cannot be faulted in this regard.

16.183 The chapter closes with certain observations regarding the desirability of a change in the taxation code to cater for circumstances, such as those which arose in this instance, where Mr. Lowry, who owned and controlled Garuda, appropriated and personally benefited from the payments intended by Dunnes Stores for Garuda, and yet escaped all personal liability for taxation on those payments. Further, it is observed that, in circumstances involving both civil and criminal investigations by Revenue, there is much to recommend provision being made for the separation of civil and criminal liability, to the extent of enabling payments to be made by a taxpayer, subject to a criminal investigation, and to be accepted by Revenue, demonstrably without prejudice to such criminal investigation, or any potential criminal culpability.

CONCLUDING OBSERVATIONS

16.184 Chapter 15 seeks to draw together and consolidate the substantive matters addressed in earlier chapters. It touches briefly on a number of characteristic features that appeared common to most, if not all, of the individual transactions and dealings addressed in the preceding chapters. Its length is such as to render a summary superfluous. An appreciation of its content is essential to an understanding of the Tribunal's overall conclusions.

Appendices to Chapter 3

THE ESAT/TELENOR $50,000.00 DONATION TO FINE GAEL

Index

1. Letter dated 4th July, 1995, from Mr. David Austin to Mr. Michael Lowry;
2. Mr. Johansen's "*post-it*" note of December, 1995;
3. Letter dated 14th December, 1995, from Mr. David Austin to Mr. Arve Johansen enclosing invoice of the same date;
4. The First Invoice issued by Telenor to Esat Digifone dated 3rd January, 1996, for Norwegian Kroner 316,000.00;
5. The Second Invoice issued by Telenor to Esat Digifone backdated to 31st December, 1995, for $50,000.00;
6. Credit Note issued by Telenor to Esat Digifone dated 24th January, 1996, for $50,000.00;
7. The Third Invoice issued by Telenor to Esat Digifone dated 27th March, 1996, for £31,300.00.

David F.T. Austin
99 Salthill Apartments
Monkstown
Co. Dublin

Most Private & Confidental

4 July 1995

Michael Lowry, T.D.,
Minister for Transport,
Energy and Communication.
Office of the Minister for
Transport, Energy and Communications
Dublin 2.

Copy

Dear Michael,

I would like to propose that we meet to discuss the following in greater detail, perhaps my secretary could contact your office to ascertain your availability for the afternoon of either the 20th or the 21st of July.

However, I have set out below some brief details on my ideas for a Fund Raising event in the United States for the Fine Gael Party in November of this year:-

1. *A Private Dinner to be held on Thursday 9th of November 1995, with the Taoiseach as the Guest of Honour.*

2. *A maximum of thirty US Business Executives to be invited.*

3. *Suggested cost per head - I am recommending $7,500.*

4. *My choice of venue would be either a Private Club in New York or Park Plaza Hotel, this is to be confirmed later.*

5. *There should be a small committee formed, chaired by Peter Sutherland and I would liaise directly with Peter with the support of Maurice Buckley in the US. We could then call upon certain people on an adhoc basis, who may be able to provide us with some help to us in order to achieve the thirty names.*

6. *I will personally look after the organisation and make the necessary arrangement for the dinner etc.,*

7. *I am suggesting that the following people should be in attendance for the Dinner in the USA:- The Taoiseach Mr John Bruton, Ministers Lowry, Barrett, Yeats, Kenny and Peter Sutherland.*

8. *The party could for the duration of their stay at the Fitzpatrick Manhattan Hotel in New York and I would suggest that they could fly out on the morning of the dinner from Dublin. This is unless the Taoiseach has prior engagements or wishes to make alternative arrangements.*

9. *I feel there should be invitations of the highest quality and an accompanying letter issued to each guest, some of which may need to be signed by either the Taoiseach or Peter Sutherland, or perhaps some of the Ministers as I feel that this would reinforce the support behind the event.*

As you know, I have briefly discussed the idea of Fund Raising in the United States with the Taoiseach and yourself. I have since had further discussions with Peter Sutherland and we have decided to secure names from both sides of the Atlantic, that would be of an interest to us here in Ireland, and who would be interested in attending this very exclusive dinner.

At these initial stages of the organisation, I have approached Solomon, Smurfits, Pamarco and Pratt, all of whom have show a definite interest in their involvement. I attach a ***draft A List*** for your perusal, of those people whom I feel that we should make contact with over the coming months, with a view to extending an invitation, I would appreciate your comments on these.

I do not feel that it would be necessary to have a large committee on this side. With the support and commendation of the Taoiseach and yourself, I feel that the best course of action to follow, would be to make contact with prospective guests on a one to one basis. For instance it would be people such as Dan Tully of Merrill Lynch, who have just set up their first operation here in Dublin at the IFSC, who would be interested to make definite contact and to avail of the opportunity to discuss their future within Ireland under a Fine Gael Government, and I am sure that there are many others in a similar position.

I am dictating this from Spain as I am taking a few day break, however, should you have any queries on the above, please do not hesitate to contact me. Again, I am open to all suggestions and would appreciate any comments that you might have. As you are aware this will not be an easy task.

I lock forward to discussing this in further detail with you soon or on the dates that I have suggested above.

Kind regards,

(Dictated by
David F.T. Austin.
and signed in his absence)

Back to report

Denis O'Brian 11.12.95 / 10.00

David Austin

+353 / 269 6622

Ring Monday

between 3 & 4 (16-17 n. Ird)

IEL.

Tel 11.12.95 (fra Budapest)

kl. 1725 lokal tid (1625 Budapest)

David F.T. Austin

John Bruton ⇒ Denis O'Brian

Michael Lowry, Sender fakturer

David F.T. Austin
109 Flood Street
Chelsea
London SW3 5TD
ENGLAND

14 December 1995

Mr. Arve Johannson
Telnor International
Po. Box 6701
St. Olavs Pel
Oslo
Norway 0130

Ref. Betaler må betales av oss og faktureres som mgmt cost til Digi Phone.
20/12-1995

Dear Mr. Johannson,

Please find invoice for consultancy work for the duration of 1995 as agreed with Mr. Denis O'Brien. I hope that you will find this in order.

Yours sincerely,

David Austin
David F.T. Austin

Kopiera / Fakturera vidare.

Ref: V 52695

22/12-95

David F.T. Austin
109 Flood Street
Chelsea
London SW3 5TD
ENGLAND

Tel: 0044 171 352 5203
Fax: 0044 171 352 2807

Invoice: For consultancy Work for 1995, as per agreement.

Date: 14th December, 1995

To: Arve Johannson

Telnor International
Po. Box 6701
St. Olavs Pel
Oslo
Norway 0130

Tel: 0047 900 333 75
Fax: 0047 22 779 040

OK

Amount: $50,000.00 + 6,32 = 316 000 NOK

A Bank draft can be made payable to David F.T. Austin and forwarded to account number: 66064

Bank of Ireland Jersey Limited, P.O. Box 416 Templar House, Don Road, St Helier, Jersey JE4 8W. C.I.

David F.T. Austin/FG/Dec 95

Telenor

East Digiphone
South block, Malt House
Grand canal Quay
DUBLIN 2 - IRELAND

Date: 03.01.96
Terms of payment:
Payment due: 03.01.96
Customer no: 110015

INVOICE 1000050

Product no:	Product description:	Number:	Price:	Amount
	Consultant David F.T. Austin	1	316.000,00	316.000,00
	Ordresum			316.000,00

IRMA

DENNE ER NÅ MANGLET HOS MOTTAGER.
DET SKAL SENDES FAKTURA PÅ
KONSULENT-TJENESTER FRA TELENOR
PÅ 50.000 USD, UTEN BILAG ELLER HENVISNINGER
TIL D. AUSTIN. JEG VIL GJERNE SE FAKTURAEN
FØR DEN SENDES.
Per

This invoice is issued in: NOK

Please remit the above mentioned amount into our bank account:
USD: 5006 04 42107 *NOK: 7029 05 20051*

SWIFT adress:
DNBANOKK

Den Norske Bank
Posthox 1171 Sentrum
N-0107 OSLO
NORWAY

Please note that the quoted date format is of Norwegian standard DD:MM:YY

International

Esat Digiphone
South block, Malt House
Grand canal Quay
Dublin 2
Ireland

Terms of payment: net in 30 days
Payment due: 31.01.96
Customer no: 110015

Oslo 31.12.95

INNVOICE NO 1000050

Consultancy fee Telenor Invest AS 50.000 USD

[redacted]

Please remit the above mentioned amount into our bank account:
7029 05 20051

SWIFT adress:
DNKANOKK

Den Norske Bank
Postboks 1171 Sentrum
N-0107 OSLO
NORWAY

Svein
kan du lage
en kreditnota på
denne (om forakning:
feil fakturert) og
lage en ny som vi
sender ut om 4-6 uker.
i JEP

Telenor Invest AS
Office address: Universitetsgt. 6 N-0164 Oslo
Postal address: P.O. Box 6701 St. Olavs pl. N-0130 Oslo
Telephone: +47 22 77 99 30
Telefax: +47 22 77 99 35
X400: S=pasumptak-invest;OU=oslo;O=invest;P=telenor;A=telemax;C=no;
Head office: Universitetsgt. 6 N-0164 Oslo
Enterprise number: NO 983 815 840

Telenor International

Esat Digiphone
South block, Malt House
Grand canal Quay
DUBLIN 2 - IRELAND

Date:	24.01.96
Terms of payment:	
Payment due:	24.01.96
Customer no:	110015

INVOICE 1000071

Product no:	*Product description:*	*Number:*	*Price:*	*Amount*
	Consultancy fee Telenor Invest AS	-1	50.000,00	-50.000,00
	Ordresum			-50.000,00

This invoice is issued in: USD

Please remit the above mentioned amount into our bank account:
USD: 5006 04 42107 ***NOK: 7029 05 20051***

SWIFT adress:
DNBANOKK

Den Norske Bank
Postbox 1171 Sentrum
N-0107 OSLO
NORWAY

Please note that the quoted date format is of Norwegian standard DD:MM:YY

Telenor Invest AS

Office address:
Universitetsgt. 8
N-0164 Oslo

Postal address:
P.O. Box 6701
St. Olavs pl.
N-0130 Oslo

Telephone:
+47 22 77 99 30
Telefax:
+47 22 77 99 35

Head office:
Universitetsgt. 8
N-0164 Oslo
Enterprise number:
NO 963 815 840

X400: S=postmottak-invest;OU=oslo;O=invest;P=telenor;A=telemax;C=no;

Telenor

East Digiphone
South block, Malt House
Grand canal Quay
DUBLIN 2 - IRELAND

Date:	27.03.96
Terms of payment:	
Payment due:	27.03.96
Customer no:	110015

INVOICE 1000084

Product no:	*Product description:*	*Number:*	*Price:*	*Amount*
	Consultancy fee Telenor Invest AS	1	31.300,00	31.300,00
	Ordresum			31.300,00

This invoice is issued in: *IEP*

Please remit the above mentioned amount into our bank account:
USD: 5006 04 42107 *NOK: 7029 05 20051*

SWIFT adress:
DNBANOKK

Den Norske Bank
Postbox 1171 Sentrum
N-0107 OSLO
NORWAY

Please note that the quoted date format is of Norwegian standard DD:MM:YY

Appendices to Chapter 5

FROM CARYSFORT TO MARBELLA

Index

1. Extract statement from Mr. Denis O'Brien's Radio Investment NV Account in Investec Bank (formerly Woodchester Bank), showing withdrawal of £407,000.00 on 3rd July, 1996.

2. Extract statement from Mr. Aidan Phelan's Account in Allied Irish Banks (Isle of Man) showing credit of £407,000.00 on 10th July, 1996 and showing the £50,000.00 cheque payment to Mr. David Austin on 10th July, 1996, and the transfer of £100,000.00 to Mr. Austin on 19th July, 1996.

3. Extract statement from Mr. David Austin's Irish Pound Account in Bank of Ireland (Jersey) showing credit of £100,000.00 on 26th July (value date 19th July,) 1996 and credit of £50,000.00 on 7th August, 1996.

4. Bank Draft in the amount of £147,000.00 issued by Bank of Ireland (Jersey) dated 16th October, 1996.

5. Confirmation document from Irish Nationwide (IOM) recording that £147,000.00 was credited to Mr. Michael Lowry's Account on 21st October, 1996.

6. Mr. Michael Lowry's account opening documentation for his account in Irish Nationwide (IOM) Limited.

7. Mr. Michael Lowry's Irish Nationwide (IOM) Limited customer withdrawal request for the amount of £148,816.93, dated 5th February, 1997.

8. Confirmation document from Irish Nationwide (IOM) Limited recording that £148,816.93 was withdrawn from Mr. Lowry's account on 7th February, 1997.

9. Declarations of Trust by Finsbury Holdings Limited & Finsbury Nominees Limited in favour of Walbrook Trustees (IOM) Limited backdated to 12th August, 1996.

10. Declarations of Trust by Walbrook Trustees (IOM) Limited in favour of Mr. Denis O'Brien dated 15th May, 2001.

11. Handwritten Loan Acknowledgement dated 24th October, 1996.

12. Handwritten letter dated 27th February, 1997, from Mr. David Austin to Mr. Michael Lowry acknowledging repayment of £147,000.00 plus interest.

Investec

Investec Bank (UK) Limited (Irish Branch)
Andersen House
1 Harbour Master Place
International Financial Services Centre
Dublin 1 Ireland
Telephone + 353 1 670 1970
Facsimile + 353 1 670 1330

RADIO INVESTMENTS NV
ATT: PADDY HALPENNY
SOUTH BLOCK
THE MALT HOUSE
GRAND CANAL QUAY
DUBLIN 2

Statement Date:	23 May 2001
Statement Number:	*INTERIM*
Page Number:	4
Account Holder:	RADIO INVESTMENTS NV
Account Number:	01D/02/067599/01
Account Title:	CALL DEPOSIT
Currency:	IEP

STATEMENT OF ACCOUNT

ITRY ATE	DESCRIPTION	DEBIT	CREDIT	VALUE DATE	BALANCE
96	Balance Brought Forward				
[redacted]		[redacted]		[redacted]	[redacted]
Jul	WITHDRAWAL TO AIB DUBLIN -00-67	407,000.00		03 Jul 96	[redacted]
[redacted]		[redacted]	[redacted]	[redacted]	[redacted]

Investec Bank (UK) Limited is regulated for investment business in the UK by the SIA
A member of the London Stock Exchange Authorised institution in the UK under the Banking Act 1987
Registered Branch office as above. Registered in Ireland Number 904429

MR AIDAN PHELAN
32 PITCHERS WAY
HYANNIS MASS
02601
USA

A/C: 23/51403/35 ACCOUNT
CALL DEPOSIT

** FILE COPY **

CONVERSION RATE : 1 EURO = 0.78
PAGE NO: 0001 FOR FIRST TO LAST DATE 17MAY99
10JUL96 BROUGHT FORWARD 0.00
10JUL96

IR50000 CHQ F/O DAVID AUSTIN
ISSUED 10/7/96 105,000.00

O/O BIBST TRADING (PAKISTAN)
LTD 607,000.00
18JUL96
19JUL96 TT TO BANK OF IRELAND, JERSEY
A/C DAVID AUSTIN & IR35
CHARGE 130,035.00

26JUL96

29JUL96
27MAR97
12MAY97

17MAY99 CLOSING ENTRY 0.00
MR AIDAN PHELAN
32 PITCHERS WAY
HYANNIS MASS
02601
USA

Statement of Account with

Bank of Ireland Jersey

Bank of Ireland House
P.O. Box 416
Francis Street
St. Helier
Jersey JE4 9WD
Channel Islands

Client Services (01534) 638600
Fax: (01534) 737916
Telephone: General (01534) 638630
Telex: 4192428
SWIFT Address: BIGTJESX
http://www.boijersey.com

International Dialling Code +44 1534

Customer: MR DAVID AUSTIN (DECEASED)
& MRS MAUREEN AUSTIN
CAPITAL A/C

A/C Name: AUSTIN MR DAVID & MRS MAUREEN - CAPITAL A/C

A/C Number: 66064 4

Details: -IRISH POUNDS DEPOSITS GENERAL RESIDENT
Date: -Balance at close of business on 1-Nov-1998 0.00
Statement: Interest Accrued and Outstanding at 1-Nov-1998 0.00
-Rate 5.12500% per annum
-Term fixed to 3-Jul-1997 Status : Closed

Date of Statement: 4-MAY-2001 16

Date	Particulars	Value Date	Debit	Credit	Balance
	HAPPY NEW EURO. COMING 01/01/02 - WE'RE READY. ARE YOU?				
26 Jul 96	SWIFT RECD PER AIB JERSEY	19 Jul 96		100,000.00	100,000.00
7 Aug 96	SOURCE OF FUNDS FROM ACCOUNT 66064			50,000.00	150,000.00
	DES 2 GBP AT RATE OF 0.9746 :				
19 Aug 96	INTEREST CREDIT			425.75	150,425.75
19 Aug 96	RENEWAL - NEW RATE : 4.45000				150,425.75
	- NEW TERM : 19-Sep-1996 1MF				
19 Sep 96	INTEREST CREDIT			568.53	150,994.28
19 Sep 96	RENEWAL - NEW RATE : 4.45000				150,994.28
	- NEW TERM : 21-Oct-1996 1MF				
16 Oct 96	REPAID BY CHEQUE IFO MR DAVID		147,000.00		3,994.28
	AUSTIN TO HOME ADDRESS				
21 Oct 96					
21 Oct 96					
21 Nov 96					
21 Nov 96					
18 Dec 96					
18 Dec 96					
17 Jan 97					
17 Jan 97					
17 Jan 97					
23 Jan 97					
23 Jan 97					
10 Feb 97					
12 Feb 97					
12 Feb 97	SOURCE OF FUNDS BY SWIFT PER INBS			148,816.93	153,342.32
	(IOM) :				
18 Feb 97					
18 Feb 97					
18 Feb 97					
11 Mar 97					
14 Mar 97					

Mail To:

HOLD CORRESPONDENCE

Statement Period: 1 Dec 1994 To 1-Nov-1998

Statement Produced On: 4-MAY-2001

CHAPTER 5, APPENDIX (3)

Customer: MR DAVID AUSTIN (DECEASED)
& MRS MAUREEN AUSTIN
CAPITAL A/C

Statement of Account with

Bank of Ireland Jersey

Bank of Ireland House
P.O. Box 416
Francis Street
St. Helier
Jersey JE4 9WD
Channel Islands

Client Services (01534) 638600
Fax: (01534) 737916
Telephone: General (01534) 638630
Telex: 4192428
SWIFT Address: BIGTJESX
http://www.boijersey.com

International Dialling Code +44 1534

A/C Name: AUSTIN MR DAVID & MRS MAUREEN - CAPITAL A/C

A/C Number: 66064 4

Details: -IRISH POUNDS DEPOSITS GENERAL RESIDENT
Date: -Balance at close of business on 1-Nov-1998 0.00
Statement: Interest Accrued and Outstanding at 1-Nov-1998 0.00
-Rate 5.12500% per annum
-Term fixed to 3-Jul-1997 Status : Closed

Date of Statement: 4-MAY-2001 17

Date	Particulars	Value Date	Debit	Credit	Balance
	HAPPY NEW EURO. COMING 01/01/02 - WE'RE READY. ARE YOU?				
18 Mar 97					
18 Mar 97					
18 Mar 97					
18 Apr 97					
18 Apr 97					
18 Apr 97					
23 Apr 97					
23 Apr 97	CHARGES :		20.00		150,312.32
28 Apr 97	REPAID BY CHEQUE SENT TO : BANK OF IRELAND LOWER EAGGOT STREET BRANCH DUBLIN 2 IRELAND A/C ATT.MARIUS GALLAGHER		33,000.00		117,312.32
19 May 97					
19 May 97					
19 May 97					
19 Jun 97					
19 Jun 97					
19 Jun 97					
23 Jun 97					
23 Jun 97					
3 Jul 97	INTEREST CREDIT			226.37	114,518.69
3 Jul 97	REPAID BY SWIFT SENT TO ACC BANK : A/C 16297216		114,518.69		0.00

Mail To:

HOLD CORRESPONDENCE

Statement Period: 1-Dec-1994 To 1-Nov-1998

Statement Produced On: 4-MAY-2001

CHAPTER 5, APPENDIX (3)

Bank of Ireland (Jersey) Limited

Templar House, Don Road, St. Helier, Jersey, JE4 8WZ Channel Islands

16th October 96

90-13-94

Pay MR DAVID AUSTIN

Date

HUNDREDS OF THOUSANDS	TENS OF THOUSANDS	THOUSANDS	HUNDREDS	TENS	UNITS
ONE	FOUR	SEVEN	ZERO	ZERO	ZERO

PENCE AS IN FIGURES

ACCOUNT PAYEE ONLY

******147000.00
IR £

BANK OF IRELAND
INTERNATIONAL BANKING DIVISION
DUBLIN 2

For and on behalf of
Bank of Ireland (Jersey) Limited
External Account

SIGNATORY

SIGNATORY

Bank Security Printing Ltd/DR 96/21 2/96

⑈111507⑈ 90⑈1394⑆ 84100087⑈ 10

CHAPTER 5, APPENDIX (4)

IRISH NATIONWIDE
(I.O.M.) LIMITED

PO Box 188, 5 Hill Street, Douglas, Isle of Man, IM99 1 UG Telephone 01624 673373 Fax 01624 673263

MR MICHAEL LOWRY
C/O IRISH NATIONWIDE IOM LTD
PO BOX 188
5 HILL STREET
DOUGLAS
IM99 1UG

DATE: 30/10/1996

ACCOUNT: 023/01/01505/

PAGE: 1

WE WISH TO ADVISE THAT THE UNDERMENTIONED ENTRIES HAVE BEEN POSTED TO THE ABOVE INSTANT ACCESS A/C - IND ACCOUNT:

VALUE DATE	DETAILS	AMOUNTS
21/10/1996	CHEQUE DEPOSIT 111507 A/C 84100087 S/C 90-13-94	IEP******147,000.00CR

THE BALANCE IS NOW IEP******147,000.00CR
THE CURRENT INTEREST RATE ON THE ACCOUNT IS 4.5 P.A.

THIS CONFIRMATION REQUIRES NO SIGNATURE

REGISTERED WITH THE I.O.M. FINANCIAL SUPERVISION COMMISSION FOR BANKING BUSINESS
REGISTERED IN THE ISLE OF MAN NO. 064556C. REGISTERED OFFICE 5 HILL STREET, DOUGLAS, ISLE OF MAN.

Telefax

To: Mr. Michael Lowry
Fax: 00 353 1 289 2311
From: Karl Tully
Date: 25/4/01 Pages:

IRISH NATIONWIDE
(I.O.M.) LIMITED

APPLICATION FORM FOR FIXED RATE ACCOUNTS

☐☐☐☐☐-01505☐☐
ACCOUNT NUMBER TO BE COMPLETED BY THE COMPANY

ACCOUNT TYPE REQUIRED (PLEASE TICK BOX)

International Offshore – Guaranteed Bond ☐ 1yr ☐ 2yr ☐ 3yr ☐ 4yr ☐ 5yr 7 yrs @ 5.5%.

International Offshore – Money Market ☐ 7 days or ☐☐ no of months (1–12)

I/we enclose _____ Irish Pounds/Sterling to open an account (PLEASE DELETE APPROPRIATE CURRENCY)

I wish to open an account now and transfer funds later ☐ PLEASE TICK BOX

	Title	Full name	Date of birth
1		Michael A. Lowry (Private & Confidential)	13/3/54
2		Brophy Thornton	
3		The Fables	
4		Forrest G Dalton	

Registered address
As above

Correspondence address
As above

Daytime Telephone No. No Correspondence except on request.

Business: _____ Home: _____ Fax No: _____

Nationality: Irish. Occupation: Company Director

Operation of account

☑ any signature ☐ all signatures ☐ other (PLEASE SPECIFY) _____

☐ please tick this box if you would like withdrawals by fax (PLEASE COMPLETE A SEPARATE FAX INDEMNITY)

FOR OFFICE USE

Cheque details

Bank NAME	
Amount	
Cheque no.	
Account no.	
Sort Code	

Keyed by	
Checked by	
Date	

10 DEC 1999

CHAPTER 5, APPENDIX (6)

PTO

PAYMENT OF INTEREST

☑ Please add interest to the account

☐ Please pay interest to the Irish Nationwide Building Society account ☐☐☐☐☐☐-☐☐☐

☐ Please pay interest to the Bank or Building Society account no. ☐☐☐☐☐☐☐☐

☐ Please pay interest to another Irish Nationwide (IOM) account ☐☐☐☐☐☐☐☐☐☐☐☐☐

Account holders name MICHAEL A. LOWRY

Bank / Building Society name _____ Bank sort code ☐☐ ☐☐ ☐☐

Bank / Building Society address _____

DECLARATION:

I/we declare that this investment of £ _____ is being deposited in Irish Nationwide (I.O.M.) Limited

☑ me as sole beneficial owner

☐ us as joint beneficial owners (and it is not made as nominee for any other individual)

☐ on behalf of a Company

☐ me as a trustee for the following individual - Name _____

Date of Birth _____ Relationship to Trustee _____

I/we confirm receipt of a copy of the Terms and Conditions and agree to be bound by them.
I/we understand this deposit is governed exclusively under Isle of Man Law and funds will only be accepted at and repaid from the Company's main place of business in Douglas, Isle of Man.

Signature 1 Michael Lowry 2 _____

3 _____ 4 _____

te _____

In accordance with the Data Protection Act 1986 Irish Nationwide (I.O.M.) Limited may wish to send you information about new products and its associated bodies.
If you do not wish to receive this information please tick the following box ☐ Registered with the Isle of Man Financial Supervision Commission for Banking Business.

AUTHORITY FOR VERIFICATION OF IDENTITY
This section must be filled in to comply with Isle of Man Regulations.

I/we authorise Michael Lowry Bank/Building Society Bank account no ☐☐☐☐☐☐☐☐

at _____ (BANK ADDRESS)

to provide Irish Nationwide (I.O.M.) Limited, P O Box 188, 5 Hill Street, Douglas, Isle of Man, IM99 1UG with a bank verification of name address and signature.

Name _____

Address (FILLED BY YOUR BANK) _____

Signature 1 Michael Lowry 2 _____

3 _____ 4 _____

IRISH NATIONWIDE
(I.O.M.) LIMITED

CUSTOMER WITHDRAWAL REQUEST

Account Name: Mr. Michael Lowry

Address: 8 Bray Thornton, The Gables, Foxrock, Co. Dublin.

Account No: 023D1/D1505

Withdrawal Amt: To Close (one hundred + forty eight thousand eight hundred + sixteen pounds + 93p only) £148,816.93

Signed: Michael Lowry SIG OK

Date: 5/2/97.

For Office Use

Signature Verified ✓

Checked By

CHAPTER 5, APPENDIX (7)

Hold on file

IRISH NATIONWIDE
(I.O.M.) LIMITED

PO Box 188, 5 Hill Street, Douglas, Isle of Man, IM99 1 UG Telephone 01624 673373 Fax 01624 673263

MR MICHAEL LOWRY
C/O IRISH NATIONWIDE IOM LTD
PO BOX 188
5 HILL STREET
DOUGLAS
IM99 1UG

DATE: 07/02/1997

ACCOUNT: 023/01/01505/

PAGE: 1

WE WISH TO ADVISE THAT THE UNDERMENTIONED ENTRIES HAVE BEEN POSTED TO THE ABOVE INSTANT ACCESS A/C - IND ACCOUNT:

VALUE DATE	DETAILS	AMOUNTS
07/02/1997	TT WITHDRAWAL	IEP******148,816.93DR

THE BALANCE IS NOW IEP**********164.53CR
THE CURRENT INTEREST RATE ON THE ACCOUNT IS 2.0 P.A.

THIS CONFIRMATION REQUIRES NO SIGNATURE

TO: **Walbrook Trustees (Iom) Limi**
Grosvenor House,
66/67 Athol Street,
Douglas,
Isle Of Man IM99 1XJ.

WE: **Finsbury Holdings Limited**
Suites 7b & 8b,
50 Town Range,
Gibraltar.

(hereinafter called "the Trustees")

(1) ADMIT that the shares specified in the Schedule hereto (hereinafter called "the said shares") are your absolute property and they only stand registered in our name at your request as your nominee in trust for you absolutely and that we have no beneficial interest whatsoever in the said shares.

(2) AGREE to deal with the said shares and all dividends and interest thereof and any other benefits or advantages accruing in respect thereof and to vote at all meetings whether of the Board of Directors or of the Company in respect of the said shares in such manner as you may direct.

(3) DECLARE and agree that you have the power from time to time by writing under your hand to remove us as such Trustees and to appoint new Trustees in our place.

SCHEDULE above referred to

99 Ordinary share(s) of GBP1.00 each, held within Share Certificate number 4. In the Undertaking known as Tokey Investments Limited. A Company registered in Gibraltar under the Companies Ordinance with Registered Office at Suites 7B & 8B, 50 Town Range, Gibraltar.

IN WITNESS whereof the Trustees have caused their Common Seal to be hereunto affixed this 12th day of August, 1996.

THE COMMON SEAL of the)
within-named Trustees)
was hereunto affixed)
in the presence of:-)

DIRECTOR

FINSBURY SECRETARIES LIMIT
SECRETARY

TO: **Walbrook Trustees (Iom) Limit**
Grosvenor House,
66/67 Athol Street,
Douglas,
Isle Of Man IM99 1XJ.

WE: **Finsbury Nominees Limited**
Suites 7b & 8b,
50 Town Range,
Gibraltar.

(hereinafter called "the Trustees")

(1) ADMIT that the shares specified in the Schedule hereto (hereinafter called "the said shares") are your absolute property and they only stand registered in our name at your request as your nominee in trust for you absolutely and that we have no beneficial interest whatsoever in the said shares.

(2) AGREE to deal with the said shares and all dividends and interest thereof and any other benefits or advantages accruing in respect thereof and to vote at all meetings whether of the Board of Directors or of the Company in respect of the said shares in such manner as you may direct.

(3) DECLARE and agree that you have the power from time to time by writing under your hand to remove us as such Trustees and to appoint new Trustees in our place.

SCHEDULE above referred to

1 Ordinary share(s) of GBP1.00 each, held within Share Certificate number 3. In the Undertaking known as Tokey Investments Limited. A Company registered in Gibraltar under the Companies Ordinance with Registered Office at Suites 7B & 8B, 50 Town Range, Gibraltar.

IN WITNESS whereof the Trustees have caused their Common Seal to be hereunto affixed this 12th day of August, 1996.

THE COMMON SEAL of the) **DIRECTOR**

within-named Trustees)

was hereunto affixed)

in the presence of:-) **FINSBURY SECRETARIES LIMITED**
SECRETARY

DECLARATION OF TRUST

TO: Mr Denis O'Brien

WE Walbrook Trustees (IOM) Limited of Grosvenor House, 66/67 Athol Street, Douglas, Isle of Man

HEREBY DECLARE that the shares specified in the Schedule hereto, the Certificate in respect whereof have been or will be delivered to you, are now and have at all times since the said Shares became held to our order by Finsbury Holdings Limited on 12 August 1996 been held in trust for you absolutely and **HEREBY UNDERTAKE** to transfer or otherwise deal with the said Shares as you may from time to time direct and to account to you for all dividends or other moneys paid to us in respect of the said Shares and to exercise our voting powers and other rights in respect of the said Shares in such manner as you shall from time to time direct.

THE SCHEDULE above referred to

Name of Company	Particulars of Shares
Tokey Investments Limited	99 Ordinary shares of £1.00

IN WITNESS whereof this Declaration of Trust has been sealed by us this 15th day of May 2001

DECLARATION OF TRUST

TO: Mr Denis O'Brien

WE Walbrook Trustees (IOM) Limited of Grosvenor House, 66/67 Athol Street, Douglas, Isle of Man

HEREBY DECLARE that the shares specified in the Schedule hereto, the Certificate in respect whereof have been or will be delivered to you, are now and have at all times since the said Shares became held to our order by Finsbury Nominees Limited on 12 August 1996 been held in trust for you absolutely and **HEREBY UNDERTAKE** to transfer or otherwise deal with the said Shares as you may from time to time direct and to account to you for all dividends or other moneys paid to us in respect of the said Shares and to exercise our voting powers and other rights in respect of the said Shares in such manner as you shall from time to time direct.

THE SCHEDULE above referred to

Name of Company	Particulars of Shares
Tokey Investments Limited	1 Ordinary share of £1.00

IN WITNESS whereof this Declaration of Trust has been sealed by us this 15th day of May 2001

I. Michael Lowry, of Frishkey, Hollybrook Ballybrack Dublin Rep. of Ireland, acknowledge that I received on the 18TH Oct. 1996 from David F.T. Austin of 109 Flood Street London S.W.3 S.D. England, the sum of one hundred & forty seven thousand pounds (£147.000) by way of loan, bearing interest at the lending rate of the Irish Permanent Building Society such interest to accrue annually and to be repaid on the date of repayment of the said loan, which I undertake to repay, on the 18TH Oct 2001, or upon the sale of the property known as 43 Carysfort Ave. Blackrock to Dublin Rep of Ireland. Whichever shall be earlier

Dated, 24th Oct 1996.

Michael Lowry → Michael Lowry

David F.T. Austin

CHAPTER 5, APPENDIX (11)

104 Flood St
Chelsea
London SW3 5TD

Thursday 27th Feb '97

Dear Michael.

Many thanks for the repayment of my loan, to you for the house in Blackrock of £147 000 + interest as promised.

I was sorry that you could not keep the house but I fully understand this privacy was gone - Hopefully you did not lose out overall on buying + selling.

I love being away from London in Spain for most of Feb. + back for a medical check up as part of treatment Hopefully OK.

Again thank you for prompt action on all findings

Kind personal regards

Dick A -

Appendices to Chapter 6

THE MANSFIELD TRANSACTION

Index

1. Memorandum dated 22nd December, 1998 to Mr. Denis O'Brien from Mr. Aidan Phelan, re. Success Fee.

2. Memorandum dated 25th March, 1999 to Mr. Denis O'Brien from Mr. Aidan Phelan, re. Advance of Fees.

3. Joint Venture Agreement dated 30th April, 1999, between Mr. Aidan Phelan and Mr. Michael Lowry.

SA Fax | ok send

Memorandum

To: Aidan
From DB

To:	Denis O'Brien
From:	Aidan Phelan
Date:	22/12/98
Re:	Success Fee

Agreed,

Dear Denis,

Following our meeting earlier today in relation to a general review of projects of which I have been working on I have summarised our discussion as follows: -

The two major projects I worked on for the year was the acquisition of Planal S.A. and my continuing role in Versatel. Versatel concluded the high-yield offering in May last raising US$225m and has just completed a tack-on high yield offering in November raising a further US$150m. As you know from the EGM earlier this month the Company intends to do further high yield offering early next year leading to an IPO in the second or third quarter.

I have drawn little or no fees from the above projects and it was agreed particularly in relation to Versatel that when you have liquidity in your stock it will be a % fee.

Although not cast in stone I'll receive a success fee if Versatel goes public at a price range of $10 to $12 per share. This will mean that your stake will be worth $40m to $50m. As agreed I will receive a fee as you realise you investment and sell your stock. This fee is agreed at 3% up to a maximum of US$1.5m.

Regards,

Aidan

Memorandum

To: Denis O'Brien

From: Aidan Phelan

Date: 25/3/99

Re: Advance of fees

AnDO
OK

Denis,

As discussed on our call today. I am making a drawing today on the CSFB account in the amount of Stg£300k. This is an advance against the Versatel fees.

Regards,

Aidan

THIS JOINT VENTURE AGREEMENT is made the 30th day of April 1999 **BETWEEN AIDAN PHELAN** of Orchard House, No 2 Clonskeagh Square Dublin 2 (1) and **MICHAEL LOWRY** of Abbey Road, Thurles, County Tipperary, Eire (2) jointly referred to as the Promoters.

IT IS AGREED as follows :-

1.1 The Promoters shall carry on business together for the purpose of Property Development.

1.2 The Venture has already commenced and this Agreement has been entered into to regularise the position until it is terminated as provided in this Agreement.

2. Neither Promoter shall without the consent of the other.

2.1 Lend any Joint Venture money

2.2 Release any debt due to the Venture

2.3 . Enter into any Contract for the sale or purchase of any property.

2.4 Enter into any borrowing or other arrangements with Mortgage Lenders or Bankers in respect of any Assets or prospective Assets of the Joint Venture

2.5 Become Guarantor for any person.

3. **Financial**

The profits and losses of the Venture shall belong to the Promoters in the following shares:-

(i) Aidan Phelan – 90%

(ii) Michael Lowry – 10%

Subject to a performance related incentive payable to Michael Lowry which from time to time shall be agreed between the Promoters

4. **Termination**

The Joint Venture may be terminated by either Promoter giving to the other not less than three months notice in writing at any time. On termination the Assets will be divided between the Promoters by Agreement but in default of Agreement to be determined by an expert appointed in default of Agreement by the President of the Institute of Chartered Accountants of Ireland.

5. If any property is acquired under the terms of this Agreement but is acquired in or registered at H M Land Registry in the name of one only of the Promoters it shall be held subject to the terms of this Agreement

IN WITNESS whereof the parties have hereunto signed this Agreement the day and the year first before given.

SIGNED as a Deed by the said
AIDAN PHELAN in the
Presence of:
Orchard House
Churchtown Sq. Dublin 14

SIGNED as a Deed by the said
MICHAEL LOWRY in the
Presence of:
Orchard House
Churchtown Sq
Dublin 14

Appendices to Chapter 7

THE CHEADLE TRANSACTION

Index

1. Note dated 17th August, 2000 entitled "*UK Property ML, Meeting Notes*".
2. Letter dated 9th August, 2000, from Mr. Christopher Vaughan to Mr. Kevin Phelan.
3. Letter dated 18th August, 2000, from Mr. Christopher Vaughan to Mr. Kevin Phelan.
4. Letter dated 19th September, 2000, from Mr. Christopher Vaughan to Mr. Kevin Phelan.
5. Letter dated 21st September, 2000, from Messrs. Goldsmith Williams, Solicitors to Mr. Christopher Vaughan.
6. Letter dated 4th October, 2000, from Mr. Christopher Vaughan to Messrs. Goldsmith Williams.
7. Note dated 28th February, 2000, entitled "*Notes of meeting held on 28th February, 2001 at offices of AP Consulting*".

UK PROPERTY ML

MEETING NOTES

Date: 17th August 2000

Present: ML – CV – AP – HM

- **HILLTOP FARM**

Acquired:	March 1999
Cost:	Stg. 250K
Registered Owner:	ML
Financed by:	Partnership Investment AP

Action

- ML to hold as Trustee.

- **ST. COLUMBAS CHURCH**

Acquired:	December 1999
Cost:	Stg. 445K
Registered Owner:	CV as Trustee
Financed by:	Investec – loan from partnership 44.5K – original loan - 420K – balance o/s at 16/8/00 - 444K

Action

- AP to obtain copy from ML of letter of offer from developers in relation to this site.
- Planning application to be submitted within 3 weeks.
- CV to arrange strike-off of Catclause - check

6.1

CV 5

SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Mr Kevin Phelan
106 Gillygooly Road
Omagh
County Tyrone
BT72 5QA

FAX 01662 250744

9th August 2000

Dear Kevin

Re: Hilltop Farm, Chesterfield Road, Glapwell

I refer to our recent discussion as to this and I confirm that this Property was purchased on the 26th March 1999 from B Jephson (Mansfield) Limited and is registered with Title Number DY315408 the total funds required to complete the purchase were£300,000.00.

The Registered Proprietor is shown as Michael Anthony Lowry of Old Church Chambers, 23 Sandhill Road, St James, Northampton NN5 5LH.

The Property is not mortgaged to any third party and I am not aware of any charges or incumbrances over the Property, and in my opinion, it has a good and marketable title.

The Property does have the benefit of an option to purchase the balance of the land owned by B Jepson (Mansfield) Ltd being in Title Number DY200003.

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

Re: St Columba's Church Hansworth

This property was purchased in December 1999 for £445,000. It is registered with Title Number GM759030. The Registered Proprietors are myself and another as Trustees for an unnamed beneficiary.The Property has a good and marketable title

6.1

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at The Old Rectory, Haversham, Milton Keynes MK19 7DT Tel 01908 226881 By Appointment only

I hold the Land Certificate strictly to the order of G E Capital Woodchester Bank Ltd of Dublin as they provided £420,000.00 towards the purchase price, of the Property and that is indicated on my Client Account Bank statement.. The deposit and other monies came from M.

If you recall originally, Catclause Limited was a Limited Company set up for the acquisition of this Property. .

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

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

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

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

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

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

Yours sincerely

CV 4

CHRISTOPHER VAUGHAN

SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq.,
106 Gillygooly Road
Omagh
County Tyrone
BT72 5QA

FAX 01662 250 744

18th August 2000

Dear Kevin,

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

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

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

No figure was actually discussed BUT I would imagine that to cover the outstanding loan and costs we are looking for a minimum of £375,000. No doubt you will proceed with this a quickly as possible.

St Columba's Church – Michael told us at the meeting that a firm offer had been received for £1,100,000.00 for this Property, subject to the obtaining of residential planning consent.

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

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CHAPTER 7, APPENDIX (3)

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT Tel: 01908 226881

The scheme will be that Michael will purchase this Property from the Trustees about two months before completion of the sale to the Developer.

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

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

In order for the Trustees to transfer the site to Michael they will need to receive about £450,000 plus the Deposit originally paid of £44,500 from Michael

We are going to meet again to discuss both these sites almost certainly in the week commencing the 2nd October 20000 by which time it is hoped that Contracts will have been exchanged.

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

However, what is vitally urgent and what you have still not come back to me about is the identity of the people who are inspecting the property on a weekly basis. I explained at the meeting that the property insurance on this site was dependent upon a number of conditions one of which was that someone had to visit the property at least once every seven days. I cannot stress the importance of this as of course it exposes me personally if there should be a claim on the insurance of the property.

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

Yours sincerely,

6.2

CHAPTER 7, APPENDIX (3)

CV3

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq

Fax No. 02882 250744 19 September 2000

Dear Kevin

St Columbas Church, 377 Wilmslow Road, Cheadle And Mansfield

You indicated to me on the telephone on Monday 18th September that a Purchaser had been found for both sites for 1.3 million pounds.

You did not tell me who the Purchaser was but said that I would be hearing from other Solicitors "who would want the title deeds".

As I explained to you I cannot hand over the title deeds in respect of both properties without the consent of M L.

With regard to St Columbas Church I am on undertaking to the Bank and obviously cannot release the deeds without being released from that undertaking, which will only be done by an undertaking from Solicitors which would satisfy the Bank and release me, or by me paying the outstanding debts to the bank in full.

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

I am sending a copy of this letter to Aiden Phelan.

Yours sincerely

C J VAUGHAN

Christopher

CHAPTER 7, APPENDIX (4) 6.4

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at The Old Rectory, Haversham, Milton Keynes [illegible]

Goldsmith Williams
SOLICITORS

42/44 Stanley Street
Liverpool L1 6AL
Telephone 0151-231 1292 (20 lines)
Fax: 0151-236 2074
DX No 14136 LIVERPOOL

Please ask for: JOHN JONES

Our ref: JEJ/B4333001

Your ref:

Date: 21 September 2000

Christopher Vaughan Solicitors
Old Church Chambers
Sandhill Road
Northampton
NN5 5LH

Dear Sirs

Re: PURCHASE OF TWO LAND PARCELS FROM M.LOWRY

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

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

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

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

Yours faithfully

Goldsmith Williams

0585
963323

01604
758908

Partners:
Edward R. Goldsmith LL.B. Christopher G. Williams LL.B
Simon L. Cottell M.A. (Hons)

This firm is regulated by the Law Society in the conduct of Investment Business

6.5

CV6

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Messrs Goldsmith Williams
Solicitors
DX 14186 Liverpool

JEJ/B4333001
4th October 2000

Dear Sirs.

Re: Sale of Two Parcels of Land by Mr Lowry to Berwood Park Associates

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

I enclose herewith Land Registry Office Copy entries relating to:

1. The Site at Mansfield : and I also enclose Office Copies of the entries relating to the adjoining property over which Mr Lowry has an Option and a copy of the Option Agreement dated the 26th March 1999 and

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

The total Consideration for this whole transaction is for your clients to pay my client the sum of £1, 360,000 (One million three hundred and sixty thousand pounds) without any specific apportionment of the Purchase Price between the two properties (however. see below.)

In addition, your clients are to make a contribution to my costs to be agreed, and to be paid on Completion **Together** with the Completion Monies to me.

For various financial reasons the sale price of the site at Mansfield in the Contract is to be £300.000 (Three hundred thousand pounds) and the sale price of the site at St Columba's is to be £1,060,000 (One million and sixty thousand pounds)

6.6

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

Following Mr Lowry's acquisition of the St.Columba's Property, your clients will complete the purchase of it from him at the agreed purchase price of £1,060,000 (One million and sixty thousand pounds.)

My instructions are that it will be necessary for two separate Contracts in respect of each of the properties to be prepared rather than one Contract in respect of both the Properties.

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

Perhaps you could please confirm to me that this complies with your understanding of the Transaction – if so, I will let you have the two draft Contracts.

Yours faithfully,

Notes of meeting held on 28th February 2001 at offices of AP Consulting

Subject: Catclause Loan dated 21st December 2001.
Present: Aidan Phelan (AP), Michael Cullen (MC) and Tony Morland (TM).

The Bank stated that the purpose of this meeting was a follow-up to the meeting in January between AP, MC and Michael Tunney (MT) and that the documentation and the security for the loan were still in an unsatisfactory condition.

- AP apologised for not attending to the Banks request to formalise this facility however stated that from a credit viewpoint the Bank had nothing to be unduly concerned with as this was a DO'B transaction and he would ensure the Bank was looked after. AP would do everything necessary to sort out the Bank's documentation problems.
- When asked why the transaction had not closed and the loan repaid AP informed the Bank that 'other business' events had taken precedence over this matter.
- Security
    - AP enquired as to whether the Bank still required the guarantee of John Daly. The Bank said it did not think so and asked how he had become involved in the transaction in the first instance. AP stated that 'They were only trying to help MT out from a credit viewpoint to enable the transaction to be banked in the first instance'.
    - On the property itself the Bank informed AP that it had been brought to their attention that the property was registered ino Christopher Vaughan (CVS, the solicitor to Catclause) and his wife and that the Bank were finding it extremely difficult to extract information from CVS in relation to this deal. The Bank also informed AP that they had requested CVS to forward the title deeds and a copy of the Trust Deed to their lawyers in Cardiff.
- AP informed the Bank that CVS had been instructed not to reveal any information relating to matters concerning AP or DO'B without instruction from the principals themselves. He acted for DO'B on property transactions in the UK, such as the 'Doncaster Rovers' transaction, where confidentiality and privacy were required. AP would instruct him to co-operate with the Bank in this matter. When asked by the Bank whether AP was prepared to disclose whom the 'other party' to the Trust Deed was, AP declined to do so stating he 'Never lied to his Bankers'. He would get for the Bank a copy of the Trust Deed by Friday 2nd March 2001.
- The Bank asked for a copy of the Valuation/Marketing report that had been prepared on the property by Chesterton's in the UK. AP informed the bank that he only had a poor quality faxed copy and would arrange for a better copy to be sent to the Bank.
- The Bank informed AP that certain information had come to their attention that brought into question the validity of certain of the documentation held by the bank. AP promised to get a list of the directors and the particulars of them too the Bank although he did think that the company had since been dissolved.
- The Bank asked that AP prepare a statement for the Bank relating to this transaction and how it had come about and what were the intentions of the owners of the property. AP promised to have all the required information to the Bank by Friday, 2nd March 2001, as he was going to the Isle of Man and then Canada at the end of the week.

The Bank at no time indicated to AP that they were aware of whom the registered Directors of Catclause were as we had no confirmation as yet from Companies House in the UK.

Appendices to Chapter 8

FALSIFICATION OF MR. CHRISTOPHER VAUGHAN'S FILES

Index

1. "*Short form*" version of letter from Mr. Christopher Vaughan to Mr. Kevin Phelan, 12th July, 2000, which was produced to the Tribunal in Mr. Christopher Vaughan's files in April, 2001.

2. "*Long form*" version of letter of 12th July, 2000, provided to the Tribunal by Mr. Colm Keena in March, 2002.

3. "*Short form*" version of letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 5th September, 2000, which was produced to the Tribunal in Mr. Christopher Vaughan's files in April, 2001.

4. "*Long form*" version of the letter of 5th September, 2000, which was produced to the Tribunal by Mr. Colm Keena in March, 2002.

5. List of differences as to wording, spelling, punctuation and formatting between the "*short form*" and "*long form*" of the letters of the 12th July, 2000.

6. List of differences as to wording, spelling, punctuation and formatting between the "*short form*" and "*long form*" of the letters of the 5th September, 2000.

7. Letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 5th October, 1998, produced to the Tribunal for the first time by Mr. Aidan Phelan on 25th June, 2009.

8. "*Short form*" version of letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 27th August, 1999, produced to the Tribunal in Mr. Christopher Vaughan's files in April, 2001.

9. "*Long form*" version of letter of 27th August, 1999, produced to the Tribunal for the first time by Mr. Aidan Phelan on 25th June, 2009.

10. "*Short form*" version of letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 12th November, 1999, produced to the Tribunal in Mr. Christopher Vaughan's files in April, 2001.

11. "*Long form*" version of letter of 12th November, 1999, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

12. "*Short form*" version of letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 1st December, 1999, produced to the Tribunal in Mr. Christopher Vaughan's files in April, 2001.

13. "*Long form*" version of 1st December, 1999, produced to the Tribunal for the first time by Mr. Aidan Phelan on 25th June, 2009.

14. Letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 9th August, 2000, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

15. Letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 18th August, 2000, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

16. Letter from Mr. Christopher Vaughan to Mr. Aidan Phelan of 19th September, 2000, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

17. Letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 19th September, 2000, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

18. Letter from Messrs. Goldsmith Williams, Solicitors, to Mr. Christopher Vaughan of 21st September, 2000, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

19. Letter from Mr. Christopher Vaughan to Messrs. Goldsmith Williams, Solicitors, of 4th October, 2000, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.

20. Letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 18th January, 2001, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 22nd June, 2009.
21. Letter from Mr. Christopher Vaughan to Mr. Kevin Phelan of 26th January, 2001, produced to the Tribunal for the first time by Mr. Christopher Vaughan on 21st April, 2009.

22. Fax from Mr. Aidan Phelan to Mr. Kevin Phelan, with attached Memorandum of 17th March, 2001, produced to the Tribunal for the first time by Mr. Aidan Phelan on 25th June, 2009.

Mr Kevin Phelan
106 Gillygooley Road
Omagh
County Tyrone BT72 5QA
Northern Ireland

12th July 2000

Dear Kevin

St Columbas Church

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

You will recall that this property was purchased I my name as Trustee for Aidan Phelan. I have only appreciated upon reading the policy schedule the conditions as to the property whilst it is unoccupied.

Could you please let me know, as a matter of urgency.

1. Have you managed to find a Purchaser.
2. If not, is there now a Tenant in the house as discussed with you recently?
3. Can you please ensure that the conditions be complied with immediately as the policy could be null and void and I could personally be liable for losses?

Yours sincerely

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Mr Kevin Phelan
106 Gillygooly Road
Omagh
County Tyrone BT 72 5QA
Northern Ireland

FAX 01662 250 744
12th July 2000

Dear Kevin

Re: St Columba's Church

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

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

Could you please let me know, as a matter of urgency,

1. Have you managed to find a purchaser
2. If not, is there now a tenant in the house as discussed with you recently ?
3. Can you please ensure that the conditions be complied with immediately as the policy could be null and void and I could personally be liable for losses?

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

Yours sincerely,

CHAPTER 8, APPENDIX (2)

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Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT Tel 01908 226881 By Appointment only

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone. BT72 5QA

5 September 2000

Dear Kevin

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

Could you therefore let me know :-

1. What is the current situation with regard to the grant of planning consent for the proposed residential scheme? Who is going to submit and pay for the planning application and when will it be done?
2. Presumably the access will be dealt with at the same time as the planning application is submitted?
3. Are Thistlewood undertaking a soil survey at the present time?

Do you know the identity of Thistlewood estates clients? I have done a company search against Thistlewood, and I enclose a copy herewith which says very little. Do you know who their actual clients are?

Kind regards.

Yours sincerely
C J VAUGHAN

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone. BT72 5QA

5 September 2000

Dear Kevin

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

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

Could you therefore let me know :-

1. What the current situation is with regard to the grant of planning consent for the proposed residential scheme. Who is going to submit and pay for the planning application and when will it be done.
2. Presumably the access will be dealt with at the same time as the planning application is submitted.
3. Are Thistlewood undertaking a soil survey at the present time?

Do you know the identity of Thistlewood Estates clients. I have done a company search against Thistelwood, and I enclose a copy herewith which says very little. Do we know who their actual clients are?

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

Kind regards.

Yours sincerely
C J VAUGHAN

* To follow.

CHAPTER 8, APPENDIX (4)

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Also at The Old Rectory, Haversham, Milton Keynes MK19 7DT. Tel: 01908 226881. By Appointment only.
VAT Number 608 4809 28

DIFFERENCES IN LONG AND SHORT FORM VERSIONS OF 12TH JULY, 2000 LETTERS

1. Spelling of Gillygooley/Gillygooly Road.
2. Spacing of postal address following "*County Tyrone*".
3. Absence and presence of "*Re.*" in line under "*Dear Kevin*".
4. Absence and presence of apostrophe in name of Church; also change in typeface.
5. Absence and presence of fax number above date.
6. Positioning of "*only*" in first paragraph.
7. In second paragraph "*Trustee for Aidan Phelan*" as opposed to "*Trustee for our client*'.
8. Positioning of words "*recently*", "*immediately*" and "*personally*" in sentences preceded by letters two and three.
9. Absence and presence of complete final paragraph commencing with words "*I seem to recall*'.
10. Positioning of "*yours sincerely*", and absence and presence of comma.

CHAPTER 8, APPENDIX (5)

DIFFERENCES IN LONG AND SHORT FORM VERSIONS OF 5TH SEPTEMBER, 2000 LETTERS

1. Spacing between "*Co Tyrone*" and postal address at head of letter.
2. Absence and presence of paragraph commencing with words "*what I would like to do*".
3. Position of word "*is*" in line preceded by numeral 1.
4. Presence and absence of interrogation mark following word "*scheme*" in line following.
5. Presence and absence of further interrogation mark following word "*done*" in line following.
6. Presence and absence of further interrogation mark following word "*submitted*" in sentence preceded by numeral 2.
7. Presence and absence of further interrogation mark after word "*clients*" in line following, in addition to absence and presence of "*E*" in word "*Estates*".
8. Different spellings of word "*Thistlewood*".
9. Use of "*do you know*" as opposed to "*do we know*" in line following.
10. Absence and presence of entire following paragraph commencing with words "*I have not written to Michael about this*".

CHAPTER 8, APPENDIX (6)

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DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Mr Kevin Phelan
FAX 01 662 250 744

5th October, 1998

Dear Kevin,

Re: B Jephson (Mansfield) Ltd
Hill Top Farm, Chesterfield Road, Glapwell
Michael Lowry

On my return from the meeting in Doncaster on Thursday last, I re-visited the site outside Mansfield which Jephson wishes to sell to Michael Lowry's Company.

I had visited this site very briefly before on my way to Mansfield for the meeting with Mr Dawson, but on Thursday I had a much longer look at the site.

I am sending this letter to you as Michael Lowry's advisor, as although I have an address for him I do not have a FAX number.

I have only been involved in this site as a Solicitor and have not been aware of the work that you have done behind the scenes as to the onward sale of the property and its potential for future expansion. It may therefore be that what I say in this letter is irrelevant, and has already been researched by you in depth.

It was clear from the discussion that I had with Michael Lowry at Paul's house on the 24th September 1998, and subsequently when I drove him to Leicester on the 25th September1998, that he is seeking to make money to resolve his personal financial difficulties.

He views the Mansfield site as a purchase with borrowed money which he will be able to turn round very quickly, so that the "sale on" to a third party coincides as closely as possible to him having to find the whole of the purchase monies, and thus make himself a profit.

It is with the knowledge of these considerations that I looked again at the Mansfield site.

1. Jephsons purchased this land in 1989. In 1992 they made application for planning consent for Hotel and Leisure Use on the site.

2. I have not made any enquiries at the Planning Office as I believe Peter Bowers has dealt with all that.

3. Planning Consent was eventually given in January 1994 some 18 months after the application was made, which indicates to me that this was a difficult Consent to obtain after a lot of negotiation.

This is also indicated by the fact that a fairly comprehensive S106 Agreement was entered into by Jephsons restricting the use of all the adjoining land to "agriculture and forestry use only".

4. Therefore this site has been up for sale, I would suspect, at the latest since 1994, and possibly at the earliest either when Jephsons' acquired the land or when the application was first made in 1992.

5. This poses the following questions –

1 Why has not it been sold before?

2 Why is it being marketed in such an amateurish way – there are two signs at the entrance to the site "Site with Leisure Planning Use Tel No..." The wooden posts supporting these boards look very dilapidated indeed.

6. When I first looked at the site, I drove from Mansfield past the site to the M1, and perhaps traffic conditions were such that I did not appreciate how far it was from the site to the motorway.

However, it is some three miles along a rather unexciting A Road which leads to the M1 at Junction 29 which is not the main junction access to Mansfield – that being Junction 28 which has a Swallow Motel on the Junction.

I re-iterate that my observations may be totally groundless, but I would have thought that since 1994 every major hotel/leisure group must have been invited to look at this site and obviously have rejected it, otherwise it would have been sold and developed far earlier.

I do not know what advice Peter Bowers has given but if he has not advised on its saleability once it has been acquired by Michael Lowry then he should be asked to so advise NOW before contracts are exchanged ! If he is not competent to advise on such a matter, I feel that specialist advice ought to be sought from hotel/leisure specialist agents such as Chestertons, or Christies.

I look forward to hearing from you as I am under some pressure to approve the amended contract.

Yours sincerely,

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone
BT72 5QA

27 August 1999

Dear Kevin

St Columbas Church

I enclose copy faxes I have received in respect of this matter.

I appreciate that we spoke when I went to Nottingham with you about this matter and you indicated that you wanted the matter delayed for 10 days or so, with then an exchange and a completion within six weeks or so.

It is up to Andrew Ward, who appears to be your Agent, to negotiate the exchange and completion terms etc.

However, what I need from you is :-

1. The identity of the Purchaser.
2. The date when you wish the completion to take place.
3. A positive indication that funds are available.

It adds very substantially to my costs and the general stress of dealing with the matter if funds are not available when they should be.

My own clear preference is for me to be in possession of the funds prior to exchange so that I am sure everything can go according to plan.

With that in mind I enclose herewith a draft completion statement showing that I shall need a minimum of £459,568.75 to complete this matter.

I suspect that there are also fees for John Eastham and Andrew Ward.

When I am in funds I think that the matter can proceed.

Yours sincerely

C J VAUGHAN

Back to report

CHRISTOPHER VAUGHAN
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Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co. Tyrone
BT72 5QA

27 August 1999

Dear Kevin

ST COLUMBA'S CHURCH

I enclose copy faxes I have received in respect of this matter.

I appreciate that we spoke when I went to Nottingham with you about this matter and you indicated that you wanted the matter delayed for 10 days or so, with then an exchange and a completion within six weeks or so.

It is up to Andrew Ward, who appears to be your Agent, to negotiate the exchange and completion terms etc.

However, what I need from you is :-

1. The identity of the purchaser.
2. The date when you wish the completion to take place.
3. A positive indication that funds are available.

I can remind you of the Mansfield site where you spent several months telling me to exchange, which I did, only for no funds to be available on completion which resulted in Michael Lowry having to pay £380.00 worth of interest for being late on completion as the funds were not available.

It adds very substantially to my costs and the general stress of dealing with the matter if funds are not available when they should be. Again I only have to point to

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Doncaster Rovers where because of the unavailability of funds Contracts were varied on two occasions.

My own clear preference is for me to be in possession of the funds prior to exchange so that I am sure everything can go according to plan.

With that in mind I enclose herewith a draft completion statement showing that I shall need a minimum of £459,568.75 to complete this matter.

I suspect that there are also fees for John Eastham and Andrew Ward.

When I am in funds I think that the matter can proceed.

Yours sincerely

C J VAUGHAN

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Mr Kevin Phelan
106 Gillygooley Road
OMAGH
County Tyrone
BT72 5QA

Fax 01662 250 744

12th November 1999

Dear Kevin

Site of St Columbas United Reform Church, Cheadle

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

I am enclosing the Transfer which please arrange to have signed.

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

My bank details are
The Co-operative Bank Plc
Christopher Vaughan Solicitors Client Account
A/C No. 70547674
Sort Code 08-90-73

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

Yours sincerely

Back to report

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Tel: 01604 758908 Fax: 01604 751960

Mr. Kevin Phelan
106 Gillygooly Road
Omagh
County Tyrone
BT72 5QA

FAX 01662 250 744

12th November, 1999

Dear Kevin,

Re: Site of St Columba's United Reform Church, Cheadle

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

I am enclosing the Transfer which please arrange to have signed by you and Michael Lowry as Directors.

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

My bank details are
The Co-operative Bank plc
Christopher Vaughan Solicitors Client Account
A/c No 70547674
Sort Code 08:90:73

I look forward to hearing from you as soon as possible,

Yours sincerely,

CHAPTER 8, APPENDIX (11)

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CHRISTOPHER VAUGHAN
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Tel: 01604 758908 Fax: 01604 751960

Mr Kevin Phelan
106 Gillygooley Road
Omagh
County Tyrone
BR72 5QA

Fax 01662 250 744

1st December 1999

Dear Kevin

Site of St Columbas United Reform Church, Cheadle

As you are aware, completion of this should have taken place on the 30th November 1999.

It was clear from my telephone conversations with the Solicitors acting for the Vendors that they had no knowledge of the funding problem that Michael Lowry was having.

I know from our telephone conversation of the 30th November 1999, that you had spoken to Peter Townley of Dunlop Hayward, the Agents, and had apparently negotiated a two-week extension.

When I mentioned this to the Solicitors for the Vendors, they had no knowledge of that extension and were "considering the position".

I have done a Company Search against Catclause Limited, a copy of which is enclosed herewith, showing Michael and Lorraine Lowry to be the officers of the Company.

CHAPTER 8, APPENDIX (12)

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VAT Number: 608 4809 28

I suspect that if I do not have any positive information to give the Vendor's Solicitors, they may well serve a Notice to Complete which will state that Completion must take place within 14 days otherwise they will forfeit the deposit, have the right to re-sell the Property to a third party and claim any losses from Catclause Limited.

Because Catclause, the contracting purchasing party is a Limited Company, the Vendor cannot look behind that company to try and claim its losses from the Officers. So far as I am aware Catclause has no assets from which the Vendor could claim damages.

However, it is possible that a prudent Solicitor acting for a Vendor, would not only serve a Notice to Complete on me as the Solicitor for Catclause and the site of Registered Office of Catclause, he may also serve one on the Company's Officers as well.

There I think that Michael and Lorraine Lowry ought to be warned that they may have a Notice to Complete served upon them at some stage and what its significance is.

Perhaps you will let me know what the current position is?

Yours sincerely

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Mr. Kevin Phelan
106 Gillygooly Road
Omagh
County Tyrone
BR 72 5QA

FAX 01662 250 744

1st December 1999

Dear Kevin

Re: Site of St Columba's United Reform Church, Cheadle

As you are aware, Completion of this should have taken place on the 30th November 1999.

It was clear from my telephone conversations with the Solicitors acting for the Vendors that they had no knowledge of the funding problem that Michael Lowry was having.

I know from our telephone conversation of the 30th November 1999, that you had spoken to Peter Townley of Dunlop Hayward, the Agents, and had apparently negotiated a two-week extension.

When I mentioned this to the Solicitors for the Vendors, they had no knowledge of that extension and were "considering their position".

I have done a Company Search against Catclause Ltd, a copy of which is enclosed herewith, showing Michael and Lorraine Lowry to be the officers of the Company.

CHAPTER 8, APPENDIX (13)

Christopher Vaughan is regulated by the Law Society in the Cond

I suspect that if I do not have any positive information to give the Vendor's Solicitors, they may well serve a Notice to Complete which will state that Completion must take place within 14 days otherwise they will forfeit the deposit, have the right to re-sell the Property to a third party and claim any losses from Catclause Limited.

Because Catclause, the contracting purchasing party is a Limited Company, the Vendor cannot look behind that company to try and claim its losses from the Officers. So far as I am aware Catclause has no assets from which the Vendor could claim damages.

However, it is possible that a prudent Solicitor acting for a Vendor, would not only serve a Notice to Complete on me as the Solicitor for Catclause and the site of Registered Office of Catclause, he may also serve one on the Company's Officers as well.

Therefore I think that Michael and Lorraine Lowry ought to be warned that they may have a Notice to Complete served upon them at some stage and what its significance is.

I am aware that you have told John Eastham to try and find a purchaser for this Property, but in the interim I wonder if it might be possible to arrange some sort of temporary bridging finance on the security of not only this Property, but also the Mansfield site, which of course is not charged to anyone ?

Perhaps you will let me know what the current position is ?

Yours sincerely,

SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax 01604 751960

Mr Kevin Phelan
106 Gillygooly Road
Omagh
County Tyrone
BT72 5QA

FAX 01662 250744

9th August 2000

Dear Kevin

Re: Hilltop Farm, Chesterfield Road, Glapwell

I refer to our recent discussion as to this and I confirm that this Property was purchased on the 26th March 1999 from B Jephson (Mansfield) Limited and is registered with Title Number DY315408 the total funds required to complete the purchase were£300,000.00.

The Registered Proprietor is shown as Michael Anthony Lowry of Old Church Chambers, 23 Sandhill Road, St James, Northampton NN5 5LH.

The Property is not mortgaged to any third party and I am not aware of any charges or incumbrances over the Property, and in my opinion, it has a good and marketable title.

The Property does have the benefit of an option to purchase the balance of the land owned by B Jepson (Mansfield) Ltd being in Title Number DY200003.

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

Re: St Columba's Church Hansworth

This property was purchased in December 1999 for £445,000. It is registered with Title Number GM759030. The Registered Proprietors are myself and another as Trustees for an unnamed beneficiary.The Property has a good and marketable title

CHAPTER 8, APPENDIX (14)

I hold the Land Certificate strictly to the order of G E Capital Woodchester Bank Ltd of Dublin as they provided £420,000.00 towards the purchase price, of the Property and that is indicated on my Client Account Bank statement.. The deposit and other monies came from M.

If you recall originally, Catclause Limited was a Limited Company set up for the acquisition of this Property. .

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

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

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

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

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

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

Yours sincerely

CHAPTER 8, APPENDIX (14)

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq.,
106 Gillygooly Road
Omagh
County Tyrone
BT72 5QA

FAX 01662 250 744

18th August 2000

Dear Kevin,

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

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

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

No figure was actually discussed BUT I would imagine that to cover the outstanding loan and costs we are looking for a minimum of £375,000. No doubt you will proceed with this a quickly as possible.

St Columba's Church – Michael told us at the meeting that a firm offer had been received for £1,100,000.00 for this Property, subject to the obtaining of residential planning consent.

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

CHAPTER 8, APPENDIX (15)

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT Tel: 01908 326881 By Appointment

The scheme will be that Michael will purchase this Property from the Trustees about two months before completion of the sale to the Developer.

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

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

In order for the Trustees to transfer the site to Michael they will need to receive about £450,000 plus the Deposit originally paid of £44,500 from Michael

We are going to meet again to discuss both these sites almost certainly in the week commencing the 2nd October 20000 by which time it is hoped that Contracts will have been exchanged.

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

However, what is vitally urgent and what you have still not come back to me about is the identity of the people who are inspecting the property on a weekly basis. I explained at the meeting that the property insurance on this site was dependent upon a number of conditions one of which was that someone had to visit the property at least once every seven days. I cannot stress the importance of this as of course it exposes me personally if there should be a claim on the insurance of the property.

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

Yours sincerely,

CHAPTER 8, APPENDIX (15)

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Aiden Phelan Esq
A P Consulting

Fax No. 00353 6761141 19 September 2000

Dear Aiden

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

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

DRFC

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

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

Yours sincerely

C J VAUGHAN

Meeting 16th Sept 2000
KP|AP|ML 12.30

CHAPTER 8, APPENDIX (16)

Christopher Vaughan is regulated by the Law Society in the

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq

Fax No. 02882 250744 19 September 2000

Dear Kevin

St Columbas Church, 377 Wilmslow Road, Cheadle And Mansfield

You indicated to me on the telephone on Monday 18th September that a Purchaser had been found for both sites for 1.3 million pounds.

You did not tell me who the Purchaser was but said that I would be hearing from other Solicitors "who would want the title deeds".

As I explained to you I cannot hand over the title deeds in respect of both properties without the consent of M L.

With regard to St Columbas Church I am on undertaking to the Bank and obviously cannot release the deeds without being released from that undertaking, which will only be done by an undertaking from Solicitors which would satisfy the Bank and release me, or by me paying the outstanding debts to the bank in full.

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

I am sending a copy of this letter to Aiden Phelan.

Yours sincerely

C J VAUGHAN

CHAPTER 8, APPENDIX (17)

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at The Old Rectory, Haversham, Milton Keynes MK19 7DF Tel: [illegible]

Goldsmith Williams
SOLICITORS

42/44 Stanley Street
Liverpool L1 6AL
Telephone 0151-231 1292 (20 lines)
Fax: 0151-236 2074
DX No 14186 LIVERPOOL

Please ask for: JOHN JONES

Our ref: JEJ/B4333001

Your ref:

Date: 21 September 2000

Christopher Vaughan Solicitors
Old Church Chambers
Sandhill Road
Northampton
NN5 5LH

Dear Sirs

Re: PURCHASE OF TWO LAND PARCELS FROM M.LOWRY

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

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

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

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

Yours faithfully

Goldsmith Williams

0585
963323

01604
758908

CHAPTER 8, APPENDIX (18)

Partners:
Edward R. Goldsmith LL.B. Christopher O. Williams LL.B
Simon L. Cornell M.A. (Hons)

This firm is regulated by the Law Society in the conduct of Investment Business

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Messrs Goldsmith Williams
Solicitors
DX 14186 Liverpool

JEJ/B4333001
4th October 2000

Dear Sirs.

Re: Sale of Two Parcels of Land by Mr Lowry to Berwood Park Associates

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

I enclose herewith Land Registry Office Copy entries relating to:

1. The Site at Mansfield ; and I also enclose Office Copies of the entries relating to the adjoining property over which Mr Lowry has an Option and a copy of the Option Agreement dated the 26th March 1999 and

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

The total Consideration for this whole transaction is for your clients to pay my client the sum of £1, 360,000 (One million three hundred and sixty thousand pounds) without any specific apportionment of the Purchase Price between the two properties (however, see below.)

In addition, your clients are to make a contribution to my costs to be agreed, and to be paid on Completion **Together** with the Completion Monies to me.

For various financial reasons the sale price of the site at Mansfield in the Contract is to be £300,000 (Three hundred thousand pounds) and the sale price of the site at St Columba's is to be £1,060,000 (One million and sixty thousand pounds)

CHAPTER 8, APPENDIX (19)

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Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT. Tel: 01908 226881. By Appointment only

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

Following Mr Lowry's acquisition of the St.Columba's Property, your clients will complete the purchase of it from him at the agreed purchase price of £1,060,000 (One million and sixty thousand pounds.)

My instructions are that it will be necessary for two separate Contracts in respect of each of the properties to be prepared rather than one Contract in respect of both the Properties.

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

Perhaps you could please confirm to me that this complies with your understanding of the Transaction – if so, I will let you have the two draft Contracts.

Yours faithfully,

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 758908 Fax: 01604 751960

Kevin Phelan Esq
106 Gillygooley Road
OMAGH
Co Tyrone
BT72 5QA

18 January 2001

Fax No. 0288 2250 744

Dear Kevin

St Columbas Church Site

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

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

1. The refurbishment and possible slight enlargement of the house, and
2. The conversion of the existing church buildings to apartments, possibly two/three.

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

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

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

CHAPTER 8, APPENDIX (20)

Christopher Vaughan is regulated by the Law Society in the Conduct of Investment Business
Also at: The Old Rectory, Haversham, Milton Keynes MK19 7DT Tel: 01908 226881. By Appointment only

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

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

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

Perhaps you could let me have your thoughts on this.

I note from the photographs that I have been sent from Chesterton appraisal of the Mansfield Site that the Gameplan telephone number is shown as 01604 230702. This is a discontinued telephone line and therefore if anybody did want to make contact with Gameplan they would fail, as there is no way of contacting them.

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

Mr Kevin Phelan
FAX 02 882 250 744

26th January 2001

Dear Kevin,

Re: St Columba's Church/ Mansfield Sites

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

However, you seem to misunderstand the "chain of command". You are not my client, both you and I are Agents of the Landowner and therefore we both take instructions from him.

There are two mortgage lenders -

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

Irrespective of what the Landowner, you or I might think, either Lender could exercise the powers of a mortgage lender and sell either property to repay the debt that is owed to them.

There is no point in your saying "the only person who can sell these properties is me " because this is not correct.

Both of us are in an identical position - we are employed professionals acting on behalf of our Principal. If he decides to give us instructions for whatever reason it is up to us to carry them out. Likewise if he decides to ask other professionals to advise him, it is his privilege and neither you nor I have any right to complain about that.

You will appreciate from what I said to you on the telephone that Chestertons have completed reports on both St Columba's Church and Mansfield.

Without our Principal's consent I cannot send you copies but you said that you did not want to see copies of them in any event as they would be a "load of rubbish".

If you, as you stated on the telephone, are confident of selling St Columba's Church for between £1.1 - £1.2 million pounds you will have done a brilliant job and should be applauded for it.

Please do not think that I am in any way trying to go behind your back or criticise your professional skills. I was asked by a Principal to do a particular job - namely to obtain an independent appraisal on these two properties from a firm of Agents and that is what I have done.

Yours sincerely,

16, Clanwilliam Terrace
Grand Canal Quay
Dublin 2

AP Consulting

Fax

To:	Kevin Phelan	From:	Aidan Phelan
Co:		Date:	March 17, 2001
Fax:	0044 2882 250744	Pages:	4
Re:		CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Dear Kevin,

I append the list as discussed. I will call you on Monday to plan for next week.

Yours sincerely,

Aidan Phelan

Mansfield Site

Kevin Phelan met with Aidan Phelan in late 97 early 98 through Brian Phelan. Aidan Phelan had met Michael Lowry through Denis ML Accountant) who asked Aidan to get phone for Michael Lowry following his resignation as Minister.

Aidan introduced ML to KP because Gameplan was operating in the UK and Michael was interested in buying properties in the UK because there was better opportunities there.

AP Consulting did consultancy work for Michael and a fee was done for services on This work included the proposed sale of Streamline and a meeting was held with David Hammond from Masser Hammond. Another fee was done in December 2001 for the following professional work on properties in UK and due deligence.

Gameplan introduced property to Michael in Mansfield in July 1998 (See Christopher Vaughan letter from Vendors Lawyers.

On 10th August 1998 Michael Lowry gave a personal cheque in the sum of £28,700 (Stg25,000) to CV to cover deposit on site.

Kevin Phelan has understanding that he would share part of the profits in the deal ie 20% as introducer and project manager.

Michael was to raise funds to cover the balance of the purchase price Stg£225,000. However by Feb 1999 he realized that he would have difficulty raising the balance and since the Vendors solicitors were putting pressure on to close (letters on file) Kevin suggested that they approach Aidan Phelan to help in the financing. Having reviewed the deal Aidan decided to invest.

CHAPTER 8, APPENDIX (22)

He was owed money by DOB for work carried out on ?
On 26th March 1999 he transferred money from an account operated in the UK by DOB to Christopher Vaughan client account in Aidan Phelan name.

The land was to be registered in Michael Lowrys name c/o Christopher Vaughans address because the could not have overseas address. See letter from Christopher to Michael

Christopher held a balance of funds in his client account and wrote to ML in March 1999 saying that he held the balance and asked for instruction. See letter

In November 1999 the land was registered in Michael Lowrys name because he had paid deposit his name was on original contract. However Christopher advised him that he needed to discuss issued with Kevin and Aidan in view of the agreement which was in place.

St Columbas Church

13th July 1999 letter from Town Needle to C V saying that site would be sold to Gameplan

2nd September 1999 letter from CV saying Catclause would be company used

14th September 1999 deposit Stg 44,500 was paid following instruction from Aidan by phone confirmed back by letter from Christopher to Aidan See attached.

17th December 1999 fax to Investec enclosing documentation of John Daly etc

Aidan and Helen signed resolutions and letters on behalf of Catclause because Michael Lowry was not available. Forms 288 were completed and signed by Aidan and Helen but would not be filed until after Christmas. Christmas post etc.

On 11th January 2000 we decided that Catclause was not suitable vehicle as Guarantee from Daly was not acted on and when he was approached to re sign the guarantee he was not happy.

Therefore since the bank was exposed Aidan decided to take over the loan and the company was withdrawn. Christopher held the property in his name for Aidan but to the order of Investec See Christopher letters.

Since the Company was not being used we did not file the Forms 288 and we did not believe that the bank was acting on the documentation that we signed.

We understood that new documentation would be drawn up in the name of Aidan Phelan.

No further need for company so it was requested that company be struck off August 2000.

CHAPTER 8, APPENDIX (22)

Investec then wrote to Aidan Phelan

In January Michael Cullen asked to see Aidan to clarify situation since he had done search on Catclause and had seen that a request to strike off was filed. They then asked Christopher to ensure that the property be transferred into the name of Catclause Limited since their documentation was in that name and was required to tidy up the file.

Christopher then wrote to Investec saying that he would transfer the title but was unaware of the status of the company.
Subsequently Michael Cullen visited Aidan Phelan and requested that if Aidan did a letter to the bank confirming that it was his loan and explaining the circumstances they would accept this

Aidan did this letter and faxed it to Investec and called Investec and Michael Tunney saying that if they needed any documentation he would complete same but that he was going to Canada on Tuesday and would require it prior to Tuesday. He did not hear from either party.

Appendices to Chapter 9

DONCASTER ROVERS FOOTBALL CLUB TRANSACTION

Index

1. Letter dated 25th September, 1998 (office copy) from Mr. Christopher Vaughan, Solicitor, to Mr. Michael Lowry.

2. Letter dated 25th September, 1998 (fax copy) from Mr. Christopher Vaughan, Solicitor, to Mr. Michael Lowry.

3. Fax dated 11th August, 1999, from Mr. Kevin Phelan, Gameplan International, to Mr. Aidan Phelan.

4. Letter dated 30th August, 2000, from Mr. Kevin Phelan, Gameplan International, to Mr. Aidan Phelan.

5. Attendance note dated 10th September, 2002, by Ms. Ruth Collard of Carter-Ruck, Solicitors, subject: Doncaster Rovers Football Club – Contract Dispute.

Mr Michael Lowry
Abbey Road
Thurles
County Tipperary
Eire

25th September, 1

Dear Michael,

Re: Doncaster Rovers Football Club Limited

I was very pleased to meet you on the 24th and 25th Septembe

My apologies for getting you to Leicester a few minute late fo
BUPA appointment. I hope that all went well and that you eve
returned to Ireland.

I am enclosing

1. Copies of my letters of the 23rd and 235th September 1998 to
Phelan. You did take a copy of the letter of the 23rd with you
However, you will recall that two of the figures were wrong o
Completion Statement and those have now been amended, and
grateful if you would destroy the incorrect copy and substitute

2. I had not appreciated your total involvement in the Doncaste
transaction and I am therefore enclosing a copy of my Comple
which was sent to Kevin Phelan, Paul May and Aiden Phelan
Completion.

It is not an issue that I can deal with as a Solicitor as I think that there is a possible conflict of interest with my involvement with Doncaster Rovers.

I think that it would be best for Aiden Phelan to arrange for the matter to be dealt with via Anglo Irish Bank and either their solicitors in London Theodore Goddard, or Messrs Simcocks in the Isle of Man, who dealt with the other Westferry matters, prior to the acquisition of the shares in Doncaster Rovers.

I have absolutely no doubt in my mind that if Mr Richardson, who was the controller of Dinard Trading and Shelter Trust Anshalt, does not receive his £250,000 on the 31st December 1998 a lot of expensive unnecessary and embarrassing litigation will ensue which will not be to anyone's benefit !

Agreement – Gameplan Internatyoin LTD and Bryan Phelan

I have heard nothing from Kevin since the document was FAXED through to him.

Doncaster Rovers /Westferry/Paul May

I am preparing as draft agreement and I am discussing this with Paul at the moment in respect of his £120,000 and the transfer of the shares to the new Chairman.

I understand that you are trying to organise a meeting between myself and Aiden Phelan.

Obviously one of the matters to be discussed is the question of my outstanding costs as an enormous amount of work has gone into the Doncaster Rovers acquisition and only half my fees have been paid.

Likewise I believe that there is an outstanding account due to Grant Thornton which needs to be paid as we still need their financial input in producing a balance sheet as at the completion date of the 18th August 1998 to enable the Retention Funds to be accessed.

Kind regards,

Yours sincerely,

CHRISTOPHER VAUGHAN
SOLICITOR & NOTARY PUBLIC
Old Church Chambers
Sandhill Road, Northampton NN5 5LH
DX 15620 NORTHAMPTON 3
Tel: 01604 751908 Fax: 01604 751960

Mr Michael Lowry
Abbey Road
Thurles
County Tipperary
Eire

25th September, 1998

Dear Michael,

Re: Doncaster Rovers Footbal[illegible] Limited

I was very pleased to meet you on the 24th and 25th September 1998

My apologies for getting you to Leicester a few minute late for your DUPA appointment. I hope that all went well and that you eventually returned to Ireland.

I am enclosing

1. Copies of my letters of the 2[illegible] 9th September 1998 to [illegible] Phelan. You did take a copy of the letter of the 23rd with you [illegible] However, you will recall that two of the figures were wrong on the Completion Statement and those have now been amended and I would grateful if you would destroy the incorrect copy and [illegible] this one.

2. I had not appreciated your total involvement in the [illegible] transaction and I [illegible] which was [illegible] Completion.

You will see [illegible] Westferry of [illegible] the 24th September [illegible] urgent [illegible]

CHAPTER 9, APPENDIX (2)

Christopher Vaughan [illegible] Notary [illegible]
Also at The Old Vicarage [illegible] 1800 2[illegible]

It is not an issue that I can deal with as a Solicitor as I think that there is a possible conflict of interest [illegible] my involvement with Doncaster Rovers.

I think that it would be [illegible] Aiden Phelan to arrange for the matter to be dealt with viz Anglo [illegible] and either their [illegible] lors in London Theodore Goddard, or Me[illegible] Simcocks in the Isle [illegible] an, who dealt with the other Westferry matters, prior to the acqu[illegible] of the shares in Doncaster Rovers.

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Agreement [illegible] Gameplan Internat[illegible] LTD and [illegible] Phelan

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Doncaster Rovers /Westferry/Paul May

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Kind regards.

Yours sincerely,

CHAPTER 9, APPENDIX (2)

+ P.S. [illegible] must A [illegible] 1st [illegible]

Gameplan International

Fax

To: Mr Aidan Phelan **From:** Kevin Phelan

Fax: **Pages:** 3

Phone: **Date:** August 11, 1999

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Doncaster Project

Following our meeting on Monday 9th August, this is a note to confirm our discussions and also detail the correspondence which has taken place to date between Mc Alpine (Stephen Barker, Andy White) and Westferry (Kevin Phelan).

1. Joint Venture

   Aidan Phelan will now deal directly with Andy White in all matters involving Asda, B & Q and the Council relating to the development at Bell Vue and additional land which will be made available by Doncaster Council

   Kevin Phelan will continue to correspond directly with the Board of the Football Club and in particular determine all grant aid available for the project. Kevin Phelan will also endeavor to establish the stadium specification and the cost of the construction of the stadium.

2. Mc Alpine / Westferry List of Correspondence

   Mc Alpine to Westferry (Kevin Phelan)

   (a) Letter 14th June 1999, detailing way forward including stadium costings

   (b) Copy draft programme received from Stephen Barker 22nd June 1999

   Westferry (Kevin Phelan) to Mc Alpine (Stephen Barker)

   (a) Fax 16th June confirming meeting / agenda, copied to David Pritchard and Barry Needham

   (b) Fax 24th June minutes of meeting

August 11, 1999

(c) Fax 9th July regarding plan / appraisal preparations

(d) Fax 24th July regarding minutes of meeting

(e) Fax 24th July regarding plans from David Lyons & Associates

3. Retention Fund

Christopher Vaughan and Craig Tallants will meet with Reg Ashworth on Thursday 12th August to discuss the accounts which have been produced.

4. Outstanding Expenses

Aidan Phelan will make payment this week of the two invoices received. All invoices received by Aidan Phelan will be for his records only.

5. Altrincham

Kevin Phelan to prepare a report on this project for Aidan Phelan.

6. Luton

Kevin Phelan to prepare a final report on this project.

7. ML

Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan

It is agreed to continue holding regular meetings on the Doncaster Project. It has been taken on board our shared concern regarding Mc Alpine and in particular the other site which Mc Alpine have in Doncaster and also conflicts regarding construction, costings and appointment of their own professional contacts.

Regards

Kevin

Mr Aidan Phelan
AP Consulting
16 Clanwilliam Terrace
Grand Canal Quay
Dublin 2

30th August 2000

Dear Aidan

Ref: Doncaster / Altrincham / Luton Projects

Further to our discussion with Christopher Vaughan and Michael Lowry following your 17th August 2000 meeting, we have now had time to reflect on those discussions and also consider the letter received from Christopher Vaughan dated 18th August 2000.

We are extremely disappointed that you have failed to reply to our recent correspondence or make any contact with Gameplan. You agreed to keep us informed on progress regarding the Doncaster Project. We are concerned but not surprised that our so called 'development partners' are describing the Doncaster property as a 'pup' which is what is expected from people who have a serious conflict of interest and have ulterior motives. At a meeting in your office on 11th April 2000, the Chairman of Stannifer, a reputable property developer, described the site as the 'best site in Doncaster' and Gameplan agree with his assertion.

In our opinion the Doncaster Project remains an extremely good opportunity, however since Gameplan were requested to allow others to manage the Project little progress has been achieved. In the period since others have taken control Westferry have managed to lose creditability by not continuing the momentum which Gameplan had established over the previous period. At this point we are unwilling to accept the current position and request payment of our previously agreed fees and costs or alternatively allow Gameplan to take back the management of the Project. Gameplan have worked extremely hard on the Projects listed above in good faith and we believe we have been treated very unfairly.

We enclose an invoice for the fees agreed for the Luton Project, at our meeting on 9th February 1999 together with a schedule of our involvement. We enclose an invoice for the Altrincham Project and a schedule of our involvement, we believe the fee for this Project is reasonable considering the time and effort involved.

We trust you clearly understand our position.

Yours sincerely

Kevin Phelan
Gameplan International

ATTENDANCE NOTE

Fee Earner:	Ruth Collard
Date:	10 September 2002
Subject:	Doncaster Rovers Football Club - Contract Dispute
Matter No:	12027.1

RC attending meeting with Craig Tallents and Denis O'Connor. Discussing the position in the litigation generally with CT prior to DOC's arrival.

DOC said he would explain how he had become involved in the matter. He had been trying to sort out, on Denis O'Brien's behalf, the position with Kevin Phelan. DOC had represented someone who had been in partnership with KP and KP had made trouble for him at the same time. In discussions with KP, he had mentioned the litigation and the position with the retention fund. At one point, KP had told him that he had spoken to Mark Weaver, who had said that he would drop the £250,000 claim if Westferry handed over the retention fund and dropped the payroll claim. He would do this for an "uplift" of £25,000 and in return for an opportunity to sell the stadium at Doncaster. RC asked what was meant by an "uplift" and DOC said he had no idea.

DOC said he was also representing a member of the Irish Parliament, Michael Lowry. He was being investigated as part of the Moriarty Tribunal proceedings in Dublin. KP had made various threats to cause trouble for ML.

DOC said he had discussed the position with DOB and learned about the mediation which was to take place. DOB had said to DOC that the mediator would impose a binding agreement on the parties. DOC said when he had said this to KP, KP had said this was not correct and had telephoned MW who had sent a fax through of part of the mediation documents. DOC said it was clear from this that the mediator would not impose his decision. RC said this was correct and was the essence of mediation. She was surprised that DOB had apparently not understood this, as it had been made clear to Aiden Phelan on several occasions.

DOC said the upshot of all his discussions with DOB and KP had been that he had been asked if he would be prepared to meet Ken Richardson and Mark Weaver and at DOB's request a meeting had been arranged, first in Manchester and then in Dublin. DOC said from all he had heard if his discussions with KR and MW to settle the matter were not successful and it went to mediation, the mediation would fail. He said that the other side were laughing at us and that they would ensure that the mediation did not succeed and would then take the matter to court. They wanted to cause the maximum embarrassment for DOB and for others, including ML. RC asked how they could cause any embarrassment to ML, as, so far as she was aware, he had no connection to the proceedings. DOC said that ML did have a connection and that he had been in the room when discussions had taken place between KP and KR regarding the lease. RC said no one had ever suggested that to her previously.

RC said that the position was that we had been trying to talk to them about a settlement for nearly a year. RC said that their legal advisors, Reg Ashworth and their Counsel, seemed keen to talk about a settlement but RA had always said to her that his clients would not settle. We had seen their agreement to the mediation as a major step forward. RC said that DOC might say they were laughing at us in relation to this but her experience of mediations was that they often did achieve settlements and KR and MW would find that they came under

a lot of pressure from their lawyers and from the mediator to settle, if a reasonable deal was put to them.

If they did not settle, RC did not regard their threats to expose various matters in court particularly seriously. If the mediation failed and the case went forward, we would be making a substantial payment into court at an early stage. If they wanted they could go on after this but if our payment was well judged, it would put enormous pressure on them and it would be very expensive if they failed to beat the sum paid in. RC said she was telling DOC this so that he should not be too impressed by what KP was telling him. The fact was that there were merits in their claim and vulnerabilities in our case, but they also had vulnerabilities and we were not without resources. RC said it was very important that we did not appear desperate to settle.

DOC said he understood this. He said it would be helpful if he could have an outline of the factual matters. RC said she would ask CT to explain the background to the litigation as he could explain the accountancy details. CT then ran through the background, dividing the matter into three issues, the retention fund, the claim in respect of the lease and our claim in respect of the payroll warranty. DOC said he now began to appreciate that the issues were extremely complex. He wondered how he would be fully briefed prior to the meeting taking place. Agreeing that DOC needed a further briefing and that RC would prepare a file for him consisting of CT's original briefing documents and the pleadings.

At the conclusion of the meeting RC reiterated that DOC should not be too impressed by the threats he had heard. If the mediation did not work, then that would be a pity, but we would move on. DOC said that one good thing was that KP would now be a witness for us. RC said it might be helpful that he would not be available to the other side, but he would be a much discredited witness, and she was far from sure we would want to use him.

Finally impressing on DOC that it was essential that any meeting took place "without prejudice". DOC said he understood that. RC said she could not emphasise too highly how important this was. Otherwise, DOC might make some concessions on behalf of DOB which, if the matter did not settle, would prove extremely difficult for us to cope with in the ongoing proceedings.

RC engaged 2 hours 12 minutes (including short meeting with CT afterwards going through the papers he required)

Appendices to Chapter 11

Delays, Non-Disclosure And Lawyers

Index

1. Attendance note dated 27th January, 2003, of Ms. Kate Macmillan of Carter-Ruck, Solicitors, on Detective Inspector Ciaran McNinch of the City of London Police.

2. Letter dated 12th February, 2003, from Ms. Ruth Collard of Carter-Ruck, Solicitors, to Mr. John Ryall of Westferry Limited.

3. Letter dated 14th February, 2003, from Ms. Ruth Collard of Carter-Ruck, Solicitors, to Mr. Denis O'Brien Senior.

4. Letter dated 14th February, 2003, from Ms. Ruth Collard of Carter-Ruck, Solicitors, to William Fry, Solicitors.

5. Letter dated 17th February, 2003, from Mr. Denis O'Brien Senior to Ms. Ruth Collard of Carter-Ruck, Solicitors, with attached copies of her letters dated 14th February, 2003, to William Fry, Solicitors (5A) and to Mr. Denis O'Brien Senior (5B), with manuscript revisions.

6. Fax cover sheet dated 18th February, 2003, from Ms. Ruth Collard of Carter-Ruck, Solicitors, to Mr. Denis O'Brien Senior.

7. Altered letter dated 18th February, 2003, from Ms. Ruth Collard of Carter-Ruck, Solicitors, to Mr. Denis O'Brien Senior.

8. Altered letter dated 18th February, 2003 from Ms. Ruth Collard of Carter-Ruck, Solicitors, to William Fry, Solicitors.

9. Fax dated 30th September, 2003, from Mr. Owen O'Sullivan of William Fry, Solicitors, to Mr. Hugh Garvey of LK Shields, Solicitors.

10. Letter dated 4th February, 2004, from LK Shields, Solicitors, to the Tribunal.

11. Letter dated 8th November, 2004, from the Tribunal to the City of London Police.

12. Letter dated 9th December, 2004, from the City of London Police to the Tribunal.

13. Faxed document dated 11th August, 1999, from Mr. Kevin Phelan to Mr. Aidan Phelan.

14. Letter dated 25th July, 2002, from William Fry, Solicitors, to Mr. Denis O'Brien Senior.

ATTENDANCE NOTE

Fee Earner:	~~Ruth Collard~~ KM
Date:	27 January 2003
Subject:	Doncaster Rovers Football Club Limited/Westferry
Matter No:	12027.2

KM attending Kieran McNinch ("KMc") on telephone (out).

KM saying that she was calling to update KMc on recent developments regarding Denis O'Brien snr/Westferry's blackmail complaint.

She explained that the Christopher Vaughan letter had been leaked to the Irish press. Consequently there had been a number of stories in the Irish media, in the Irish Times newspaper particularly, which had alleged that Mr Michael Lowry was involved in the Doncaster Rovers transaction.

KM said that one article was headlined: "Lowry linked to £4m deal by letter." Its first sentence was: "Lawyer believed former minister was 'totally involved'."

KM said that the Moriarty Tribunal had become interested in the transaction and had asked PCR&P for a copy of its blackmail complaint file.

KM wanted to know what the Police view was regarding the possibility of PCR&P releasing the file.

KMc said that the police had no control over what happened to PCR& P's file. KMc said that he would have thought that very little would be at risk in releasing the file to the Moriarty Tribunal. He could not see any problem with disclosing anything to the Moriarty Tribunal. It was a matter for the O'Brien family. KMc said that it was not as if one had an ongoing situation where one had to act fast or something would be lost.

KM said that PCR&P's principal concern was that nothing be done which might prejudice or jeopardise the police investigation. KMc said that he did not think the release of PCR&P's file would jeopardise the investigation at all.

KM said surely if the documents were put into the public domain the blackmail suspects would know they were being investigated and the nature of the enquiry. KM asked if the Police had approached the suspects yet?

KMc said the Police had not approached the suspects yet, so they would not know from this source that they were under investigation. However, there was nothing in the statement of which the suspects would be unaware. They knew about everything in statement save for the fact that they were under investigation.

The worst that could happen if the suspects knew that they were being investigated would be that they would flee the jurisdiction (which KMc thought was unlikely), or would have additional weeks or months to prepare a defence.

If the case were to go to trial the suspects would have several months to prepare their defence anyway.

KM suggested to KMc that it would be helpful for him to see a copy of the articles in the Irish Times. KMc agreed and said that once he had received them he would do an addendum to the CPS.

KM thanked KMc for his assistance.

KMc has a new telephone number which is 020 7601 2417, his fax number is 020 7601 2467.

Direct Email: Ruth.Collard@carter-ruck.com
Direct Fax: 020 7583 6225

Our Ref: RC/ALP/12027.2

Date: 12 February 2003

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and Partners

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Tel 0141 221 8020
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By fax to: 00 353 1 432 5955

John Ryall
6th Floor
Grand Canal 2
Dublin 2
Ireland

Dear John,

Westferry Limited/Complaint to the Police

Thank you for your email of yesterday's date.

First of all, so far as the police are concerned, we have not heard anything further since Kate spoke to them on 27 January. At that stage, the matter had gone to the Crown Prosecution Service, for it to consider a prosecution, and we are still waiting to hear regarding a decision. I have asked Kate to chase them again, this week.

I now turn to the letter from William Fry in relation to the Moriarty Tribunal. I did telephone Owen Sullivan to speak about this, but we missed each other on a couple of occasions and the conversation has still not taken place. The position regarding our file is as follows:

1. Our file in relation to the complaint to the police consists of all the documents we hold in connection with our work on that matter. These include, for example, our letters and emails exchanged with you, the invoices we have rendered to you, notes of our telephone conversations with you, print outs of our computerised time recording, internal communications between Kate and I regarding the matter, as well as the draft statements and our communications with the police, Christopher Vaughan and Michel Kallipetis.

2. I am not sure whether, when a request is made for our file, this is intended to encompass the whole file, down to our computerised time records, internal communications, notes and invoices etc. All of the material in the file is covered by legal professional privilege and would not, in an English context, be subject to disclosure. Having said that, the privilege belongs to Denis as the client and if he wishes to waive it, then he is able to do so. I am at a loss, however, to know what assistance the majority of our file (for example the administrative material etc) would be to the Moriarty Tribunal and, indeed, it seems to me its time would be wasted by having to go through it.

3. Aside from the above, I do not consider it helpful or right that our legal advice, as contained in letters to you and notes of conversations with you, should be disclosed to any third party. In particular, you will recall that our

advice about pursuing the complaint in blackmail was not entirely positive and that (very understandably) Denis took the view he wanted to proceed in any event in order to be seen to be taking action.

4. It seems to me that the documents that the Tribunal is really interested in are those relating to our communications with the police. These essentially encompass the witness statement of Denis we first presented to them, the same statement which was e mailed back incorporating the police's queries, the revised draft statement responding to those queries and various emails we have subsequently exchanged with the police. Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal then this material I believe can be made available and in fact as I understand it the statement in its various drafts has already been handed over.

5. Finally, so far as Christopher Vaughan's draft statements are concerned, you will recall that there are two drafts of this, neither of which have been signed by Mr Vaughan. Indeed, in relation to the first draft, he has specifically informed us that he is not happy with its terms and, accordingly, is not prepared to sign. In these circumstances, I believe it would be wrong to make those drafts available to any third party without Mr Vaughan's approval.

In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police. Alternatively, I would suggest I go through our file with you or someone from William Fry to discuss the position further.

I look forward to hearing from you.

Kind regards,

Yours sincerely

Ruth Collard

PS. I now have your e mail of today. I suggest that perhaps we discuss the above first, before I send any letter.

Direct Email : Ruth.Collard@carter-ruck.com
Direct Fax : 020 7583 6225

Our Ref : RC/ALP/12027.2

Date : 14 February 2003

By fax to: 00 353 1 432 5955

Denis O'Brien Senior
6th Floor
Grand Canal 2
Dublin 2
Ireland

Dear Denis,

Westferry Limited/Complaint to the Police

Further to a letter I sent to John on Wednesday, he has now asked that I readdress my advice to you in connection with the above and the request from the Moriarty Tribunal for documents.

The position regarding our file is as follows:

1. Our file in relation to the complaint to the police consists of all the documents we hold in connection with our work on that matter. These include, for example, our letters and emails exchanged with you, the invoices we have rendered to you, notes of our telephone conversations with you, print outs of our computerised time recording, internal communications between Kate and I regarding the matter, as well as the draft statements and our communications with the police, Christopher Vaughan and Michel Kallipetis.

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

them, the same statement which was e mailed back incorporating the police's queries, the revised draft statement responding to those queries and various emails we have subsequently exchanged with the police. Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal then this material I believe can be made available and in fact as I understand it the statement in its various drafts has already been handed over.

We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result the suspects are likely to be alerted to the investigation and it is possible (although unlikely) that they could flee the jurisdiction. They will also have more time to prepare a defence and their response to an approach by the police than would have otherwise have been the case. Having said that, the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution.

5. Finally, so far as Christopher Vaughan's draft statements are concerned, you will recall that there are two drafts of this, neither of which have been signed by Mr Vaughan. Indeed, in relation to the first draft, he has specifically informed us that he is not happy with its terms and, accordingly, is not prepared to sign. In these circumstances, I believe it would be wrong to make those drafts available to any third party without Mr Vaughan's approval.

In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police. Alternatively, I would suggest I go through our file perhaps with someone from William Fry to discuss the position further.

John has also asked me to advise you on your position in libel regarding disclosure of the statements. Complaints to the police are covered by privilege in England, so that no proceedings can be taken against you in respect of this. As the statement is being handed to the Moriarty Tribunal at that body's request, again, this publication is likely to be the subject of privilege, although I do not know what the position would be under Irish law. If the contents of the statement are leaked to the press and published in a newspaper in England, I do not believe you would be liable for that publication, as you have not authorised or intended it and it could not be foreseen by you as a consequence of handing over the statement to the Tribunal. If the contents of the statement are published as part of a fair and accurate report of the Tribunal's proceedings, again a form of privilege would apply. Again, however, you would have to check the position under Irish law.

At John's request, I have also sent a letter to William Fry today, a copy of which follows.

I hope the above is helpful.

Kind regards,

Yours sincerely

Ruth Collard

PCR1-183084.1

Direct Email : Ruth.Collard@carter-ruck.com
Direct Fax : 020 7583 8225

Our Ref : RC/PP/12027.2
Your Ref : 012360.0067.00S

Date : 14 February 2003

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By Fax: 00 353 1 639 5333

Messrs William Fry
Fitzwilton House
Wilton Place
Dublin 2
Ireland

COPY

Dear Sirs

Denis O'Brien Jnr and Denis O'Brien Snr

We refer to your letter dated 24 February.

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

As you know, these statements were produced in the context of a pending police investigation. We have spoken to the police about the statements potentially coming to the attention of the suspects at this stage. The police have commented that it is possible (although they regard this as unlikely) that as a result the suspects could flee the jurisdiction. Additionally, they will have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case. Having said this, the police regard the disclosure of the statements as a matter for the client.

In the circumstances, we believe that it would be preferable for any disclosure of the statements to the Moriarty Tribunal to take place on the basis that they should be dealt with in private and not public, so far as possible.

We hope the above is helpful.

Yours faithfully

Peter Carter-Ruck and Partners

cc: Denis O'Brien Snr.

Regulated by the Law Society

14. FEB. 2003 14:52 PETER CARTER RUCK & PARTNERS NO. 8669 P. 4

DENIS O'BRIEN SNR.
6th Floor, One Grand Canal Quay, Dublin 2

URGENT

Ms. Ruth Collard
Partner
Peter Carter-Ruck and Partners
International Press Centre
76 Shoe Lane
London EC4A 3JB
United Kingdom

Fax: 00 44 207 353 5553 (5 pages)

17th February 2003

Dear Ruth,

Ref: Denis O'Brien Jnr. And Senior/ Westferry Limited

Very many thanks for your comprehensive letter addressed to William Fry Solicitors, dated 14th February, which I have read carefully.

Could I possibly trouble you to send this letter again with the following omissions or amendments (see attached).

Turning to the second letter addressed to me personally and which is quite comprehensive in detail, could I ask you please to arrange the following omissions and or additions (see attached). If you have any queries please contact Nicola in my office on +353 1 432 5902.

Many thanks for all your help. Best regards to Kate. I look forward to hearing from you.

Yours sincerely,

pp

Denis O'Brien Snr.

Direct Email : Ruth.Collard@carter-ruck.com
Direct Fax : 020 7583 6225

Our Ref : RC/PP/12027.2
Your Ref : 012350.0057.003

Date : 14 February 2003

Peter Carter-Ruck and Partners

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In the circumstances, we believe that it would be preferable for any disclosure of the statements to the Moriarty Tribunal to take place on the basis that they should be dealt with in private and not public. (~~so far as possible.~~)

We hope the above is helpful.

Yours faithfully

Peter Carter-Ruck and Partners

cc: Denis O'Brien Snr.

Regulated by the Law Society

Direct Email : Ruth.Collard@carter-ruck.com
Direct Fax : 020 7583 6225

Our Ref : RC/ALP/12027.2

Date : 14 February 2003

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

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

them, the same statement which was e mailed back incorporating the police's queries, the revised draft statement responding to those queries and various emails we have subsequently exchanged with the police. Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal then ~~(this material I believe can be made available and in fact as I understand it the statement in its various drafts has already been handed over.)~~ we feel it would be appropriate to answer specific queries raised rather than hand files over. We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result the suspects are likely to be alerted to the investigation and it is possible (~~although unlikely~~) that they could flee the jurisdiction. They will also have more time to prepare a defence and their response to an approach by the police than would have otherwise have been the case. ~~(Having said that, the police say that the disclosure of the statement is very much a matter for you and that it is unlikely to have a significant effect on any eventual prosecution.)~~

5. Finally, so far as Christopher Vaughan's draft statements are concerned, you will recall that there are two drafts of this, neither of which have been signed by Mr Vaughan. Indeed, in relation to the first draft, he has specifically informed us that he is not happy with its terms and, accordingly, is not prepared to sign. In these circumstances, I believe it would be wrong to make those drafts available to any third party without Mr Vaughan's approval.

~~In summary, I believe the best way forward may be to make available to the Moriarty Tribunal the material I hold concerning our communications with the police. Alternatively, I would suggest I go through our file perhaps with someone from William Fry to discuss the position further.~~
I suggest I go through our file with you to discuss the matter further.
John has also asked me to advise you on your position in libel regarding disclosure of the statements. Complaints to the police are covered by privilege in England, so that no proceedings can be taken against you in respect of this. As the statement is being handed to the Moriarty Tribunal at that body's request, again, this publication is likely to be the subject of privilege, although I do not know what the position would be under Irish law. If the contents of the statement are leaked to the press and published in a newspaper in England, I do not believe you would be liable for that publication, as you have not authorised or intended it and it could not be foreseen by you as a consequence of handing over the statement to the Tribunal. If the contents of the statement are published as part of a fair and accurate report of the Tribunal's proceedings, again a form of privilege would apply. Again, however, you would have to check the position under Irish law.

At John's request, I have also sent a letter to William Fry today, a copy of which follows.

I hope the above is helpful.

Kind regards,

Yours sincerely

Ruth

Ruth Collard

FAX

Our Ref:	RC/ALP/12027.2
Your Ref:	
Date:	18 February 2003
For the attention of:	Denis O'Brien Snr
Company:	
Fax Number:	00 353 1 432 5955
From:	Ruth Collard
Group:	Media Litigation
Direct Email:	Ruth.Collard@carter-ruck.com
Direct Fax:	020 7583 6225
Total number of pages:	4

Solicitors

International Press Centre
76 Shoe Lane
London EC4A 3JB

Tel 020 7353 5005
Fax 020 7353 5553

DX 333 Chancery Lane

Email lawyers@carter-ruck.com
Web site www.carter-ruck.com

Andrew Stephenson
Alasdair Pepper
Guy Martin
Nigel Tait
Barton Taylor
Mark Thomson
Ruth Collard
Cameron Doley
Claire Gill

Consultants
Martin Smith
Solicitor Lawyer
Paul Wheeler

Partnership Secretary
Michael Croxford

Associate Firm
Bannatyne Kirkwood France & Co
Exchange House
16 Royal Exchange Square
Glasgow G1 3AG

Tel 0141 221 6020
Fax 0141 221 5120

Denis,

Thank you for your fax of today.

I have slightly amended the letters as requested and sent the revised version through to William Fry. My revised letter to you and a copy of the letter to William Fry are attached.

Regards,

Ruth

THIS FAX IS CONFIDENTIAL AND MAY BE PRIVILEGED. IF YOU ARE NOT THE ADDRESSEE YOU SHOULD NOT COPY ANY OF ITS CONTENTS OR READ, USE OR OTHERWISE DISCLOSE THEM TO ANYONE. IF RECEIVED IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY.

Direct Email: Ruth.Collard@carter-ruck.com
Direct Fax: 020 7583 6225

Our Ref: RC/ALP/12027.2

Date: 18 February 2003

Peter
Carter-Ruck
and Partners

Solicitors

International Press Centre
76 Shoe Lane
London EC4A 3JB

Tel 020 7353 5005
Fax 020 7353 5553

DX 333 Chancery Lane

Email lawyers@carter-ruck.com
Web site www.carter-ruck.com

Andrew Stephenson
Alasdair Pepper
Guy Martin
Nigel Tait
Barton Taylor
Mark Thomson
Ruth Collard
Cameron Doley
Claire Gill

Consultants
Martin Smith
Scottish Lawyer
Paul Wheeler

Partnership Secretary
Michael Croxford

Associate Firm
Bannatyne Kirkwood France & Co
Exchange House
18 Royal Exchange Square
Glasgow G1 3AG

Tel 0141 221 8020
Fax 0141 221 5120

By fax to: 00 353 1 432 5955

Denis O'Brien Senior
6th Floor
Grand Canal 2
Dublin 2
Ireland

Dear Denis,

Westferry Limited/Complaint to the Police

I am writing to set out my advice to you in connection with the above and the request from the Moriarty Tribunal for documents.

The position regarding our file is as follows:

1. Our file in relation to the complaint to the police consists of all the documents we hold in connection with our work on that matter. These include, for example, our letters and emails exchanged with you, the invoices we have rendered to you, notes of our telephone conversations with you, print outs of our computerised time recording, internal communications between Kate and I regarding the matter, as well as the draft statements and our communications with the police, Christopher Vaughan and Michel Kallipetis.

2. I am not sure whether, when a request is made for our file, this is intended to encompass the whole file, down to our computerised time records, internal communications, notes and invoices etc. All of the material in the file is covered by legal professional privilege and would not, in an English context, be subject to disclosure. I am at a loss, in any event, to know what assistance the majority of our file (for example the administrative material etc) would be to the Moriarty Tribunal and, indeed, it seems to me its time would be wasted by having to go through it.

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

4. It seems to me that the documents that the Tribunal is really interested in are those relating to our communications with the police. These essentially encompass your witness statement as we first presented it to them, the same statement which was e mailed back incorporating the police's queries, the revised draft statement responding to those queries and various emails we have subsequently exchanged with the police.

Again, all of this material is subject to legal professional privilege. If, however, it is felt that you wish to assist the Tribunal I feel it would be appropriate to answer specific queries raised rather than hand files over.

We have spoken to the police about their view of the statement being handed over and potentially being put into the public domain. As a result the suspects are likely to be alerted to the investigation and it is possible that they could flee the jurisdiction. They will also have more time to prepare a defence and their response to an approach by the police than would have otherwise have been the case.

5. Finally, so far as Christopher Vaughan's draft statements are concerned, you will recall that there are two drafts of this, neither of which have been signed by Mr Vaughan. Indeed, in relation to the first draft, he has specifically informed us that he is not happy with its terms and, accordingly, is not prepared to sign. In these circumstances, I believe it would be wrong to make those drafts available to any third party without Mr Vaughan's approval.

I suggest I go through our file with you to discuss the matter further.

John has also asked me to advise you on your position in libel regarding disclosure of the statements. Complaints to the police are covered by privilege in England, so that no proceedings can be taken against you in respect of this. As the statement is being handed to the Moriarty Tribunal at that body's request, again, this publication is likely to be the subject of privilege, although I do not know what the position would be under Irish law. If the contents of the statement are leaked to the press and published in a newspaper in England, I do not believe you would be liable for that publication, as you have not authorised or intended it and it could not be foreseen by you as a consequence of handing over the statement to the Tribunal. If the contents of the statement are published as part of a fair and accurate report of the Tribunal's proceedings, again a form of privilege would apply. Again, however, you would have to check the position under Irish law.

I have also sent a letter to William Fry today, a copy of which follows.

I hope the above is helpful.

Kind regards,

Yours sincerely

Ruth Collard

Direct Email : Ruth.Collard@carter-ruck.com
Direct Fax : 020 7583 6225

Our Ref : RC/PP/12027.2
Your Ref : 012350.0057.009

Date : 18 February 2003

Peter Carter-Ruck and Partners

Solicitors

International Press Centre
76 Shoe Lane
London EC4A 1JB

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Fax 020 7353 5553

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Email lawyers@carter-ruck.com
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Martin Smith
Jessica Lewer
Paul Wheeler

Partnership Secretary
Michael Croxford

Associate Firm
Bannatyne Kirkwood France & Co
Exchange House
16 Royal Exchange Square
Glasgow G1 3AG

Tel 0141 221 6020
Fax 0141 221 5120

By Fax: 00 353 1 639 5333

COPY

Messrs William Fry
Fitzwilton House
Wilton Place
Dublin 2
Ireland

Dear Sirs

Denis O'Brien Jnr and Denis O'Brien Snr

We refer to your letter dated 24 February.

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

As you know, these statements were produced in the context of a pending police investigation. We have spoken to the police about the statements potentially coming to the attention of the suspects at this stage. The police have commented that it is possible that as a result the suspects could flee the jurisdiction. Additionally, they will have more time to prepare a defence and their response to an approach by the police than would otherwise have been the case.

In the circumstances, we believe that it would be preferable for any disclosure of the statements to the Moriarty Tribunal to take place on the basis that they should be dealt with in private and not public.

We hope the above is helpful.

Yours faithfully

Peter Carter-Ruck and Partners

cc: Denis O'Brien Snr.

Regulated by the Law Society

William Fry
SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2
IRELAND
TELEPHONE (353-1) 639 5000

PRINCIPAL FAX NUMBER (353-1) 639 5333

TO:	FROM:
Hugh Garvey	**Owen O'Sullivan**
COMPANY:	DATE:
LK Shields	**30 September 2003**
FAX NUMBER:	NUMBER OF PAGES INCLUDING COVER:
661 0883	**6**
YOUR REFERENCE:	OUR REFERENCE:
	015255.0002.OOS

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE (353-1) 639 5000 AND ASK FOR Olivia McCormack

NOTES / COMMENTS

Denis O'Brien Snr

Hugh

I refer to my voicemail yesterday evening and enclose copies of two letters received from Ruth Collard in Peter Carter Ruck & Partners in case these are not among what you receive from Denis. For completeness, I also enclose one email received from Ruth Collard.

Regards.

Yours sincerely

Owen O'Sullivan
William Fry
Solicitors

WF-201621-v1

CONFIDENTIALITY NOTE: This fax is confidential and is intended for delivery to the person(s) named above. If it has been delivered to you by mistake, please contact 00 353 1 639 5000 to alert us to the error and then destroy this fax. Thank you for your co-operation and assistance.

LK SHIELDS
SOLICITORS
39 / 40 Upper Mount Street
Dublin 2, Ireland

Telephone: 353 +1 661 0866
Facsimile: 353 +1 661 0883
D.D.E. Box No: 123
E-Mail: email@lkshields.ie
Website: www.lkshields.ie

VIA FACSIMILE – 6705 490

Personal Private & Confidential

Open Addressee Only
Michael Heneghan Esq.,
Tribunal of Inquiry,
(Payments to Messrs Charles Haughey and Michael Lowry), State Apartments, The Upper Yard,
Dublin Castle, Dublin 2.

OUR REF: 4262-001/HG/MOB/040202S1

YOUR REF:

4 February 2004

Re: Our clients: Denis O'Brien Senior Esq., and Westferry Limited

Dear Mr. Heneghan,

I refer to previous correspondence.

I expect to be in receipt, shortly, of the waivers requested of my clients with regard to the files of Messrs Peter Carter Ruck & Partners, Solicitors.

According to the draft letter to Messrs Peter Carter Ruck & Partners (enclosed with your letter of the 20th January) among the material sought of them is any material relating to the making of any complaints to the police. As you are aware a complaint has been made to the police and the Tribunal has been furnished with a draft of that complaint.

Messrs Peter Carter Ruck & Partners have expressed a concern (which we understand is shared by the police) about that material potentially coming to the attention of the parties who are the subject matter of the complaint in question. My clients share that concern.

In the circumstances I would be grateful if you would confirm that the material relating to the complaint made to the police (including the statements made to the police) will be treated confidentially by the Tribunal and that in the event that the Tribunal ultimately determines that it is necessary to hear evidence in relation to those matters, that the Tribunal will do so in private in order to ensure that the relevant ongoing police investigation is not prejudiced in any way.

I look forward to hearing from you.

Yours sincerely,

HUGH GARVEY

CHAPTER 11, APPENDIX (10)

LAWRENCE K. SHIELDS, EDMUND BUTLER, PATRICIA McGOVERN, HUGH GARVEY, JOSEPH M. CAVIN, EMMET SCULLY, GERARD HAGGERNY, JUSTIN McGINNA, MICHAEL KAVANAGH, DAVID J.H. WILLIAMS, FIONA THORNTON, NICOLA PALMER, PHILIP DALY, MARCO W. HICKEY

ADIFE BRADLEY, STEPHEN BRENNAN, JILL CALLANAN, THOMAS CASEY, JENNIFER CLARKE, SUSAN CONNOLLY, EOIN CUNNEEN, GILLIAN DULLY, JENNIFER HIGGINS, JENNIFER McGUIRE, ORLAITH O'DWYER, DERVAL O'HALLORAN, GERARD O'HANLON, JENNIFER O'NEILL, KATRINA SMYTH, CORA CRAMPTON (Financial Controller), THOMAS JACKSON (Consultant).

PRIVATE & CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

8th November, 2004

Detective Constable Richard Gordon,
Central Detective Unit,
City of London Police,
Wood Street Police Station,
37 Wood Street,
London EC 2P 2NQ
England.

RE: TRIBUNAL OF INQUIRY (EVIDENCE) ACTS, 1921 AND 1979 (NO. 2) ORDER 1997

Dear Detective Constable Gordon,

I am writing to you as the Solicitor to the above entitled Tribunal of Inquiry. For your reference I enclose a copy of the Tribunal's Terms of Reference.

The Tribunal of Inquiry is presided over by a High Court Judge, The Honourable Mr. Justice Michael Moriarty. In the course of the inquiries instituted by the Tribunal the attention of the Tribunal has been drawn to a number of English property transactions, including a transaction involving the purchase, by a company known as Westferry Limited, of Doncaster Rovers Football Club's premises at Doncaster.

My purpose in writing is to inquire concerning an investigation being carried out by you on behalf of the City of London Police relating to a complaint of blackmail. From information made available to the Tribunal by Solicitors acting on behalf of Mr. Denis O'Brien Snr., Westferry Limited and a number of individuals associated with that company it would appear that a complaint of blackmail was lodged with your police force on the date of 12th November, 2002, in which it was suggested that Mr. Denis O'Brien Snr. and members of the O'Brien family were being blackmailed by Mr. Ken Richardson and Mr. Mark Weaver.

In carrying out its inquiries in to the practice of the Doncaster Rovers Football Club premises the Tribunal has been in contact with the purchasers and with a number of individuals associated with the purchasers. The Tribunal has also received communications from Messrs. Richardson and Weaver, two individuals associated with the vendors. The Tribunal has also been in contact with a number of individuals who appear to have been involved either in the purchase itself or in efforts to resolve a dispute between the vendors and the purchasers, notably Mr. Christopher Vaughan, Solicitor of Northampton, Ms. Ruth Collard Solicitor of the London firm of Carter Ruck & Partners, Solicitors, Mr. Denis O'Connor, Accountant of Dublin and Mr. Michael Lowry, of Dublin, a former Irish Government Minister. Mr. Michael Lowry is referred to in the Tribunal's Terms of Reference.

In the ordinary way the Tribunal's inquiries take the form of preliminary private investigatory work. This work is almost invariably conducted through correspondence or in the course of private informal meetings with individuals from whom the Tribunal believes it may be able to obtain information. Where the Tribunal determines that the matters being investigated in the course of the private investigative stage warrant investigation in public it then proceeds to public hearings and evidence is taken from individuals identified by the Tribunal as having or likely to have information relevant to its Terms of Reference. In the course of carrying out its private investigations in relation to the Doncaster Rovers transaction the Tribunal has examined certain documentation which appears to relate to the police complaint made to the City of London police. This includes statements made to, or at least drafts of statements made to the police or documents containing material assembled in preparation for the making of statements or draft statements to the police. The Tribunal has been informed by Solicitors for Mr. Denis O'Brien Snr., (by whom the complaint was made to your police force) that your police force has a concern that material which the Solicitors may have been asked to provide to the Tribunal, material of the kind mentioned above, may potentially come to the attention of parties who are the subject matter of the complaint in question. They have also indicated that the London firm acting for Mr. O'Brien Snr., Messrs. Peter Carter-Ruck & Partners have expressed a similar concern.

It is true to say that the Tribunal's public hearings in relation to the English property transactions I mentioned above including the Doncaster Rovers transaction in particular will entail reference to some of the material I have mentioned above which appears to be connected with your inquiry. I should say that some of this material has already been put into the public domain by the individual who is effectively the "*owner*" of Westferry Limited, Mr. Denis O'Brien, who is a son of Mr.Denis O'Brien Snr. In fact this material first came to the attention of the Tribunal after it had been put into the public domain by Mr. Denis O'Brien in the course of High Court proceedings in Ireland. I have described Mr. Denis O'Brien as the "*owner*" of Westferry Limited. Westferry Limited is an Isle of Man company which is owned by a Trust, the Wellington Trust. Mr. O'Brien has asserted that he is effectively the sole beneficiary of the Wellington Trust.

I would be obliged to know whether your police force has any concerns regarding information coming into the public domain in the course of this Tribunal's public hearings concerning the complaint made to your police force and including either statements or draft statements made to your police force or documents containing materials preliminary to the assembly or preparation of a draft statement (and including the information already put into the public domain by Mr. Denis O'Brien).

I would also be obliged to know (assuming that you are at liberty so to inform the Tribunal) whether you have in fact expressed these concerns to either Messrs. Carter Ruck & Partners, Solicitors or to Messrs. L.K. Shields & Partners Solicitors either in general or specifically with respect to the workings of or public hearings of this Tribunal.

I would be much obliged to hear from you at your earliest convenience and if you have any queries please do not hesitate to contact me at the above telephone number.

Yours sincerely,

Michael Heneghan
Solicitor to the Tribunal

Telephone: 020-7601-2826

Textphone:

Fax: 020-7601-2040

Our Ref: Burdock

Your Ref:

Email: Richard.gordon@city-of-london.pnn.police.uk

Central Detective Unit
Police Headquarters
37 Wood Street
London
EC2P 2NQ

9 December 2004

Michael Heneghan.
Solicitor to the Tribunal.
Tribunal Office,
State Apartments,
The Upper Yard
Dublin Castle,
Dublin 2.

Dear Sir

With respect to your letter dated 8th November 2004, I can confirm that an allegation of Blackmail was reported to the City of London Police by Mr Denis O' Brien Snr.

The alleged offence occurred during a mitigation meeting in the Temple, which was attended by Mr O'Brien and his legal team, and concerned the settlement figure following the sale of Doncaster Rovers Football Club from Messrs Weaver and Richardson.

I can confirm that this office is investigating that allegation, but only in so far as to the events which allegedly occurred within that meeting. This office is not currently investigating any of those matters concerning the sale, which occurred in 1999, or any of the other agreements or land transactions which may have occurred during the same period, a fact of which Mr O'Brien and his legal team are aware. It is my belief that these matters are already currently under review by the Tribunal.

With respect to information concerning this allegation, or any other information (including draft statements prepared and presented to the Tribunal by Mr O'Brien), which may be required by the Tribunal in the course of its deliberations, this office does not express concern at this time, that this information may be brought into the public domain by the Tribunal (with the obvious exception of any personal details of witnesses contacted by Police). This fact has previously been relayed to Mr O'Briens legal representatives, Messrs. Carter Ruck & Ptns.

This office does not seek to obstruct the Tribunals deliberations in any way and I am happy to assist if I am able. At this time I do not anticipate that any enquires made by the Tribunal, either previously or in future, will hamper or hinder mattes currently under investigation by the City of London Police. Should you have any further enquires please do not hesitate to contact me.

Yours Sincerely.

Richard Gordon.

Gameplan International

Fax

To: Mr Aidan Phelan	**From:** Kevin Phelan
Fax:	**Pages:** 3
Phone:	**Date:** August 11, 1999
Re:	**CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Doncaster Project

Following our meeting on Monday 9th August, this is a note to confirm our discussions and aslo detail the correspondence which has taken place to date between Mc Alpine (Stephen Barker, Andy White) and Westferry (Kevin Phelan).

1. Joint Venture

   Aidan Phelan will now deal directly with Andy White in all matters involving Asda, B & Q and the Council relating to the development at Bell Vue and additional land which will be made available by Doncaster Council.

   Kevin Phelan will continue to correspond directly with the Board of the Football Club and in particular determine all grant aid available for the project. Kevin Phelan will also endeavor to establish the stadium specification and the cost of the construction of the stadium.

2. Mc Alpine / Westferry List of Correspondence

   Mc Alpine to Westferry (Kevin Phelan)

   (a) Letter 14th June 1999, detailing way forward including stadium costings

   (b) Copy draft programme received from Stephen Barker 22nd June 1999

   Westferry (Kevin Phelan) to Mc Alpine (Stephen Barker)

   (a) Fax 16th June confirming meeting / agenda, copied to David Pritchard and Barry Needham

   (b) Fax 24th June minutes of meeting

August 11, 1999

(c) Fax 9th July regarding plan / appraisal preparations

(d) Fax 24th July regarding minutes of meeting

(e) Fax 24th July regarding plans from David Lyons & Associates

3. Retention Fund

Christopher Vaughan and Craig Tallants will meet with Reg Ashworth on Thursday 12th August to discuss the accounts which have been produced.

4. Outstanding Expenses

Aidan Phelan will make payment this week of the two invoices received. All invoices received by Aidan Phelan will be for his records only.

5. Altrincham

Kevin Phelan to prepare a report on this project for Aidan Phelan.

6. Luton

Kevin Phelan to prepare a final report on this project.

7. ML

Kevin Phelan to refer all queries regarding Doncaster to Aidan Phelan.

It is agreed to continue holding regular meetings on the Doncaster Project. It has been taken on board our shared concern regarding Mc Alpine and in particular the other site which Mc Alpine have in Doncaster and also conflicts regarding construction, costings and appointment of their own professional contacts.

Regards

Kevin

William Fry
SOLICITORS

Our Ref 015255.0002.OOS 25 July 2002

By Fax

Mr Denis O'Brien Snr
Sixth Floor
1 Grand Canal Quay
Dublin 2

Westferry Limited

Dear Denis

I refer to ongoing efforts to settle Kevin Phelan's claims for costs and an entitlement to a share in any profits on the Doncaster project.

As you know, it was agreed that we would require, as a condition of any settlement, a narrative from Kevin Phelan of his role in the project. Pursuant to that request, Woodcock & Sons Solicitors sent us copy correspondence between Kevin Phelan and Aidan Phelan which contains a reference to an "ML" in the context of the Doncaster project. I told you that that reference having been put on the record, we should make appropriate enquiries. We have allowed Woodcock & Son's preparation of a draft narrative to proceed and a copy of that draft narrative as received yesterday afternoon is enclosed for your comments. Clearly, it is not adequate in the context of what was sought, and you might consider what response should be made to it. It seems to us that at least three possible responses could be made:-

1. Accept the narrative, even though it is inadequate.

2. Reject the narrative and demand (again) a comprehensive account of events.

3. Accept the narrative subject to the correspondence being annexed to it and confirmed as a true account of events (i.e. effectively make the correspondence the narrative). The narrative would also have to explain the "ML" reference (see below).

I also agreed with you last week that I would review the "ML" reference issue with you and with Owen O'Connell when he and I both got back from our holidays. Having discussed the matter with Owen, we are satisfied that, having been put on notice of the reference, appropriate enquiries have to be made. Subject to anything else you feel should be done, we think that those enquiries should comprise:-

1. Following up on our request to Woodcock & Sons of 11 July that they clarify the identity of the "ML" referred to in the correspondence.

CHAPTER 11, APPENDIX (14)

Fitzwilton House, Wilton Place, Dublin 2, Ireland. DX23 Dublin
T: +353-1-639 5000 F: +353-1-639 5333 E: central.mail@williamfry.ie W: www.williamfry.ie

A list of partners appears on the reverse
In association with Tughans, Northern Ireland

2. Since Denis O'Connor understood the "ML" reference was to a Mich whom Kevin Phelan had had business dealings for a number of years, Denis O'Connor to follow up on what Michael Lloyd's role might have to Doncaster. I understand that Denis O'Connor is making further e regard today.

3. Having regard to evidence given to the Moriarty Tribunal, we sho O'Brien Jnr to confirm that Michael Lowry does not have any interest i project, and ask him whether he knows anything about Michael Lloyd.

4. Since the correspondence is between Aidan Phelan and Kevin Phelan, Aidan for his explanation of the "ML" reference, and who he understand

I regret that we have all been put to this trouble but hope you appreciate t alternative in the circumstances.

Yours sincerely

pp Olivia McCormack

Owen O'Sullivan
William Fry
Solicitors

Direct Dial: +353 -1- 639 5369
E-Mail: owen.osullivan@williamfry.ie

31204-v1

Appendices to Chapter 12

SHARES FOR FRIENDS AND FAMILY

Index

1. Letter dated 8th October, 1998 from Mr. David Austin to Donaldson Lufkin Jenrette.

2. Letter dated 13th October, 1998, from Mr. David Austin to Mr. Aidan Phelan.

3. Letter dated 7th September, 2001 from Mr. Peter Muldowney of Donaldson Lufkin Jenrette to Mr. Walter Beatty of Vincent & Beatty, Solicitors for the Estate of Mr. David Austin.

done
5/18

Donaldson, Lufkin & Jenrette,
Securities Corporation,
277 Park Avenue,
22nd Floor,
New York,
New York 10172-0099.

8th October 1998

Dear Sirs,

Please transfer 6,600 ADS's of Esat Telecom Group plc from my account 22Y08238 to Maureen Austin's account at DLJ. 224 2373 71

I appreciate your prompt attention in this matter.

Yours truly,

David Austin

CHAPTER 12, APPENDIX (1)

13th October 1998

Mr Aidan Phelan,
Orchard House
Clonskeagh Square,
Clonskeagh,
Dublin 14.

Dear Aidan,

Re Esat Telecom Group PLC

Further to our recent conversation, I would be obliged if you would request DLJ in New York to transfer my holding of 12,000 ADR's in the above company to Mr Noel Walshe who I understand has an existing account (Acc No 22Y197498) with DLJ.

Thank you for your assistance.

Yours sincerely,

David Austin
22Y 208238

SEP.20.2001 2:53PM DLJ/156 NO.766 P.9/10

CREDIT SUISSE | FIRST BOSTON

Donaldson, Lufkin & Jenrette Securities Corporation
an affiliate of
CREDIT SUISSE FIRST BOSTON CORPORATION

277 Park Avenue
New York, NY 10172
Telephone 212 892 8795

PRIVATE CLIENT SERVICES
Peter J. Muldowney
Vice President

September 7, 2001

Mr. Walter Beatty
Vincent & Beatty Solicitors
67/68 Fitzwilliam Square
Dublin 2
Ireland

Re: The Estate of the late Mr. David Austin, account 22Y-208238.

Dear Mr. Beatty:

We refer to your letters of June 28 and August 21.

1. The holding of 12,000 Esat shares remained in David Austin's account until November 16, 1998, when we received a letter of authorization (copy enclosed, dated October 13 1998) from David Austin to transfer the shares to the account for which they were originally intended.

2. The documents we sent are the record of all transactions on Mr. Austin's account, including share dealings, share transfers and receipt/disbursement of funds and do not show supporting documentation authorizing transfers on the account. When an error is discovered in an account, and particularly if some period of time has elapsed, we request a letter of authorization from the account holder (copy enclosed) to permit us to rectify the error by transferring the shares to the proper account.

3. As requested, we enclose copies of all documents held by DLJ in relation to the late Mr. Austin's account including all share dealings on the account, including the transfer of any shares into or out of the account, the receipt of funds on the account and the receipt of any instructions by or on behalf of Mr. Austin in relation to all share dealings.

4. We enclose a copy of the trade confirmation for the purchase of 12,000 Esat shares in Mr. Austin's account and the letter of authorization subsequently received from Mr. Austin to transfer the shares to the account for which they were originally intended. The error arose from a misunderstanding in verbal instructions given by Mr. Denis O'Brien to DLJ to purchase 12,000 Esat shares for his Father in-law, Charles Walshe. During the conversation both Mr. Austin's and Mr. Walshe's names were mentioned and in error DLJ bought the stock in the wrong account.

5. The 12,000 Esat shares were transferred out of Mr. Austin's account on Mr. Austin's authority on November 16, 1998. We requested and received a letter of authorization from Mr. Austin (copy enclosed) dated October 13, 1998 on November 16, 1998 to transfer the shares to the party for whom they were originally intended.

Yours sincerely,

Peter Muldowney

Peter Muldowney

PART II, VOLUME 1,
LIST OF PARTIES GRANTED REPRESENTATION

No	Applicant	Date of Application/Order Granted	Order Granted
1	The Revenue Commissioners	31st October 1997	Representation Granted
2	Mr. Michael Lowry	31st October 1997	Representation Granted
3	The Public Interest	5th November 1998	Representation Granted
4	Mr. Ben Dunne	28th January 1999	Representation Granted
5	Allied Irish Banks plc	16th February 1999	Representation Granted
6	Mr. Seamus O'Neill	29th June, 1999	Representation Granted
7	Whelan Frozen Foods	6th July, 1999	Representation Granted
8	Mr. Dermot Desmond	1st December, 1999	Representation Granted
9	Telenor	31st May 2001	Representation Granted
10	Fine Gael	31st May 2001	Representation Granted
11	Mr. Denis O'Brien	1st June, 2001	Representation Granted
12	Esat Digifone Group and Mr. Barry Maloney	2nd July, 2001	Representation Granted
13	Dr. Michael Walsh	11th July, 2001	Representation Granted
14	Mr. Leslie Buckley	12th July, 2001	Representation Granted
15	Mr. Owen O'Connell and William Fry Solicitors	13th July, 2001	Representation Granted
16	Mr. Michael Tunney	17th July, 2001	Representation Granted
17	AP Consulting, Mr. Aidan Phelan and Ms. Helen Malone	17th July, 2001	Representation Granted
18	Investec Bank	17th July, 2001	Representation Granted
19	Mr. John Daly	19th July, 2001	Representation Granted
20	Mr. Noel Walshe	22nd October, 2001	Representation Granted
21	Mr. Mark FitzGerald	16th July, 2001	Representation Granted
22	Order of Mr. Mark FitzGerald extended to include Sherry FitzGerald Limited, including Mr. Gordon Gill and Mr. Killian O'Higgins.	17th July, 2001	Representation Granted
23	Mr. Michael Lowry's Order for Representation extended to include Mr. Denis O'Connor.	15th October, 2003	Representation Granted

PART II, VOLUME 1,
LIST OF WITNESSES WHO APPEARED BEFORE THE TRIBUNAL

Tuesday, 22nd June, 1999 (Day 22)

Mr. Denis O'Connor
Accountant

Mr. Michael Lowry
T.D.

Wednesday 23rd June, 1999 (Day 23)

Mr. Michael Lowry
T.D.

Mr. Liam O'Connell
Branch Manager AIB, St. Stephen's Green, Dublin

Mr. Charles Fleury
Antiques Dealer

Tuesday 29th June, 1999 (Day 24)

Mr. Ben Dunne
Businessman, Former Chairman and Chief Executive of Dunnes Holding Company

Mr. Seamus O'Neill
Former Director JC Financial Management

Mr. Patrick Doherty
Property Developer

Mr. Liam O'Connell
Branch Manager AIB, St. Stephen's Green, Dublin

Mr. Liam O'Brien
Bank Manager, AIB, Dame Street, Dublin

Mr. Michael Lowry
T.D.

Wednesday, 30th June, 1999 (Day 25)

Mr. Peter Tierney
AIB Officer, Personal Financial Manager.

Mr. Michael Lowry
T.D.

Mr. Philip Dalton
Central Bank Official

Tuesday, 6th July, 1999 (Day 26)

Mr. Patrick Whelan
Whelan Frozen Foods

Ms. Mairead Lynam
Former Assistant Manager, AIB, O'Connell Street

Mr. Liam O'Brien
Manager, AIB, O'Connell Street

Wednesday 21st March, 2001 (Day 107)

Mr. John Hussey
Revenue Official

Mr. Fergus Carroll
Revenue Official

Ms. Kathleen Maher
Revenue Official

Thursday 22nd March, 2001 (Day 108)

Mr. Liam Liston,
Revenue Official

Mr. Padraig O'Donghaile,
Revenue Official

Thursday 31st May, 2001 (Day 115)

Mr. Arve Johansen,
Telenor Executive

Friday 1st June, 2001 (Day 116)

Mr. Arve Johansen
Telenor Executive

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Tuesday 12th June, 2001 (Day 117)

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Mr. Jim Miley
Former General Secretary of the Fine Gael Party

Wednesday 13th June, 2001 (Day 118)

Mr. Jim Miley
Former General Secretary of the Fine Gael Party

Mr. John Bruton
Former Taoiseach

Mr. John Fortune
Former non-Executive Director of ESAT Digifone Limited

Thursday 14th June, 2001 (Day 119)

Mr. Frank Conroy
Fine Gael Fundraiser.

Monday 25th June, 2001 (Day 120)

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Tuesday 26th June, 2001 (Day 121)

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Wednesday 27th June, 2001 (Day 122)

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Thursday 28th June, 2001 (Day 123)

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Friday 29th June, 2001 (Day 124)

Mr. Denis O'Brien
Businessman, Former Chairman and CEO of ESAT Telecom

Monday 2nd July, 2001 (Day 125)

Mr. Barry Maloney
Former CEO, ESAT Digifone Limited

Tuesday 3rd July, 2001 (Day 126)

Mr. Barry Maloney
Former CEO, ESAT Digifone Limited

Wednesday 4th July, 2001 (Day 127)

Mr. Barry Maloney
Former CEO, ESAT Digifone Limited

Thursday 5th July, 2001 (Day 128)

Mr. Barry Maloney
Former CEO, ESAT Digifone Limited

Wednesday 11th July, 2001 (Day 129)

Dr. Michael Walsh
Director, IIU Nominees Limited

Thursday 12th July, 2001 (Day 130)

Mr. Leslie Buckley
Former Director, ESAT Digifone

Mr. John Callaghan
Former Director, ESAT Digifone

Friday 13th July, 2001 (Day 131)

Mr. Owen O'Connell
Solicitor, William Fry Solicitors

Mr. Eddie Holly
Director, Cedar Building Company Limited

Tuesday 17th July, 2001 (Day 132)

Mr. Michael Cullen
Chief Executive Officer, Investec Gandon

Wednesday 18th July, 2001 (Day 133)

Mr. Michael Cullen
Chief Executive Officer, Investec Gandon

Mr. Ian Wohlman
Director of Investec Bank (UK) Limited

Mr. Anthony Keith Morland
Former Employee Investec Bank

19th July, 2001 (Day 134)

Mr. Anthony Keith Morland
Former Employee Investec Bank
Mr. John Daly
Businessman, BCE Developments Limited

Mr. Michael Tunney
Former Director of Investec Bank

20th July, 2001 (Day 135)

Mr. Michael Tunney
Former Director of Investec Bank

23rd July, 2001 (Day 136)

Mr. Michael Tunney
Former Director of Investec Bank

Mr. Dermot Desmond
Businessman and Director of IIU Nominees Limited

24th July, 2001 (Day 137)

Mr. Aidan Phelan
Accountant

25th July, 2001 (Day 138)

Mr. Aidan Phelan
Accountant

26th July, 2001 (Day 139)

Mr. Aidan Phelan
Accountant

Mr. Denis O'Connor
Accountant

27th July, 2001 (Day 140)

Mr. Michael O'Leary
Executor of the Estate of David Austin
Mr. Denis O'Connor
Accountant

Mr. Michael Fingleton
Managing Director, Irish Nationwide Building Society

12th October, 2001 (Day 141)

Mr. Peter O'Donoghue
Company Executive, ESAT Digifone

Mr. Michael Cullen
CEO, Investec, Gandon.

16th October, 2001 (Day 142)

Ms. Helen Malone
Partner, AP Consulting

17th October, 2001 (Day 143)

Mr. Aidan Phelan
Accountant

Mr. Arve Johansen
Telenor Executive

18th October, 2001 (Day 144)

Mr. Arve Johansen
Telenor Executive

Mr. Knut Digerud
Telenor Executive

Mr. Jan Edvard Thygesen
Telenor Executive
Mr. Per Simonsen
Telenor Executive

19th October, 2001 (Day 145)

Mr. Jan Edvard Thygesen
Telenor Executive

Mr. Per Simonsen
Telenor Executive

22nd October, 2001 (Day 146)

Mr. Noel Walshe
Businessman,

Mr. Denis O'Brien
Former Chairman and Chief Executive, Esat Telecom Limited

23rd October, 2001 (Day 147)

Mr. Denis O'Brien
Former Chairman and Chief Executive Esat Telecom Limited

30th October, 2001 (Day 148)

Mr. Colm Maloney
Accountant

Mr. Michael Gaffney
Irish Permanent Official

Mr. Michael Lowry
T.D.

31st October, 2001 (Day 149)

Mr. Michael Lowry
T.D.

1st November, 2001 (Day 150)

Mr. Michael Lowry
T.D.

2nd November, 2001(Day 151)

Mr. Michael Lowry
T.D.

6th November, 2001 (Day 152)

Mr. Michael Lowry
T.D.

7th November, 2001 (Day 153)

Mr. Michael Lowry
T.D.

Monday 29th July, 2002 (Day 154)

Mr. John Davis
Former Solicitor to the Tribunal

Mr. Denis O'Brien
Former Chairman and Chief Executive Esat Telecom Limited

Tuesday 30th July, 2002 (Day 155)

Mr. Michael Lowry
T.D.

Mr. Denis O'Connor
Accountant

Friday 20th December, 2002 (Day 166)

Mr. Aidan Phelan
Accountant

Ms. Helen Malone
Partner, AP Consulting

16th July, 2003 (Day 235)

Mr. Mark FitzGerald
CEO, Sherry FitzGerald Group

17th July, 2003 (Day 236)

Mr. Mark FitzGerald
CEO, Sherry FitzGerald Group

Mr. Gordon Gill
Arbitrator, Sherry FitzGerald

18th July, 2003 (Day 237)

Mr. Killian O'Higgins
Company Executive, DTZ International

22nd July, 2003 (Day 238)

Mr. Ben Dunne
Businessman, Former Chairman and Chief Executive of Dunnes Holding Company

15th October, 2003 (Day 240)

Mr. Denis O'Connor
Accountant

Mr. Sean Barrett
T.D.

4th April, 2006 (Day 321)

Mr. Aidan Nolan
Principal Officer, Revenue Commissioners

5th April, 2006 (Day 322)

Mr. Aidan Nolan
Principal Officer, Revenue Commissioners
Mr. Liam Liston
Principal Officer, Revenue Commissioners

Mr. Patrick Donnelly
Assistant Secretary, Revenue Commissioners

6th April, 2006 (Day 323)

Mr. Frank Daly
Chairman, Revenue Commissioners

1st March, 2007 (Day 335)

Mr. Craig Tallents
Professional Adviser and Accountant, Westferry Limited and Doncaster Rovers Football Club Limited

2nd March, 2007 (Day 336)

Mr. Denis O'Brien Senior
Father of Mr. Denis O' Brien

6th March, 2007 (Day 337)

Mr. Peter Vanderpump

Partner Deloitte & Touche, Isle of Man, Director of Walbrook Trustees (Isle of Man) Limited

Mr. Christopher Tushingham
Director of Westferry Limited

Mr. Denis O'Brien Senior
Father of Mr. Denis O' Brien

7th March, 2007 (Day 338)

Mr. Denis O'Brien Senior
Father of Mr. Denis O' Brien

8th March, 2007 (Day 339)

Mr. Denis O'Brien Senior
Father of Mr. Denis O' Brien

Mr. John Ryall
Company Executive, Island Capital

9th March, 2007 (Day 340)

Mr. John Ryall
Company Executive, Island Capital

Mr. Aidan Phelan
Accountant

15th March, 2007 (Day 341)

Mr. Aidan Phelan
Accountant

16th March, 2007 (Day 342)

Mr. Denis O'Connor
Accountant

20th March, 2007 (Day 343)

Mr. Denis O'Connor
Accountant

21st March, 2007 (Day 344)

Mr. Denis O'Connor
Accountant

22nd March, 2007 (Day 345)

Mr. Denis O'Connor
Accountant

27th March, 2007 (Day 346)

Mr. Owen O'Connell
Solicitor, William Fry, Solicitors

Mr. Michael Lowry
T.D.

28th March, 2007 (Day 347)

Mr. Michael Lowry
T.D.

17th April, 2007 – (Sitting on Commission Middle Temple, London)

Ms. Ruth Collard
Solicitor, Peter Carter-Ruck, Solicitors, London

Ms. Kate MacMillan
Solicitor, Formerly of Peter Carter-Ruck, Solicitors, London

5th June, 2007 (Day 348)

Mr. Denis O'Brien
Former Chairman and Chief Executive, Esat Telecom Limited

6th June, 2007 (Day 349)

Mr. Denis O'Brien
Former Chairman and Chief Executive, Esat Telecom Limited

30th January, 2009 (Day 354)

Mr. Christopher Vaughan
Solicitor

21st April, 2009 (Day 355)

Mr. Christopher Vaughan
Solicitor

22nd April, 2009 (Day 356)

Mr. Christopher Vaughan
Solicitor

23rd April, 2009 (Day 357)

Mr. Christopher Vaughan
Solicitor

24th April, 2009 (Day 358)

Mr. Christopher Vaughan
Solicitor

23rd June, 2009 (Day 364)

Mr. Christopher Vaughan
Solicitor

24th June, 2009 (Day 365)

Mr. Christopher Vaughan
Solicitor

25th June, 2009 (Day 366)

Mr. Christopher Vaughan
Solicitor

20th July, 2009 (Day 367)

Mrs. Maureen Austin
Widow of Mr. David Austin

21st July, 2009 (Day 368)

Mr. Hugh Garvey
Solicitor, LK Shields & Company, Solicitors

31st July, 2009 (Day 370)

Mr. Aidan Phelan
Accountant