

1 THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 11TH FEBRUARY 2004
2 AT 10.30 A.M:

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4 CHAIRMAN: Morning.

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6 MR. O'NEILL: Good morning, Mr. Chairman. The first matter on the business of
7 the Tribunal today concerns the resumed hearing of the response of Mr. Liam
8 Lawlor to the opening address of counsel to the Tribunal, which was delivered
9 at the commencement of this module on Day 439, the 20th January and if I might
10 just briefly outline the background to this current hearing. It is as follows.

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12 The opening address of counsel was delivered on the 20th January and on the
13 following day, the 21st January, Mr. Lawlor indicated at the public session his
14 wish to respond thereto and to take up the invitation which had been extended
15 by you, Mr. Chairman, the day before, to any person who was affected by the
16 opening statement; that they could, if they so wish, make a response to
17 counsel's opening address.

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19 Mr. Lawlor delivered his preliminary initial response to that address on the
20 21st and in the course of that, he indicated that his response had been one
21 prepared following an examination overnight of the 75-page statement which had
22 been delivered and that he wished to make a more detailed or comprehensive
23 response to the Tribunal following a more detailed study of counsel's
24 submission.

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26 The Tribunal indicated that it would accede to that. On the following day,
27 that is the 23rd of January, Mr. Lawlor wrote to you, Mr. Chairman, as you
28 recall, thanking you and the fellow members of the Tribunal for the opportunity
29 of making his preliminary reply to the opening statement of counsel. On the
30 28th of January, the solicitor to the Tribunal wrote to Mr. Lawlor, inquiring

1 from him as to whether or not he had now completed his consideration of
2 counsel's opening address and if so, to furnish to the Tribunal four dates
3 suitable to him to resume his delivery of his response. Mr. Lawlor responded
4 on the 29th indicating that he had nearly completed his review and he provided
5 a number of dates when he would be available to give evidence in this module
6 and equally, sorry, that he wouldn't be able, but indicated that in the week of
7 the 23rd of February, he would be available. On the 30th, the Tribunal
8 responded to him indicating that the Tribunal will not be sitting in this
9 module in the week of the 23rd, since it is concluding this particular module
10 at this phase on the 13th. But indicated that the matter could be dealt with
11 today and accordingly, it has been listed for hearing today.

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13 So that it is the resumption, as I say, of the submission which has already
14 been made.

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16 CHAIRMAN: All right. Mr. Lawlor?

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18 MR. LAWLOR: Thank you, Mr. Chairman, for giving me the opportunity to respond
19 in greater detail to counsel for the Tribunal's opening statement, which was
20 outlined, as Mr. O'Neill has just stated, at a public session on Day 439 of the
21 proceedings of the Tribunal.

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23 I have studied the 75 page opening statement and as you will recall, I don't
24 want to be repetitious, I gave an overnight response on Day 440.

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26 I would now like to take the opportunity to outline, in detail, my further
27 responses to the opening statement on the Carrickmines 2 module. This current
28 module which is underway is to establish land ownership in the Carrickmines
29 area. Regarding ownership, my inquiries must take me back to my first
30 recollections of any references to my supposedly having an interest in the

1 lands at Carrickmines and they were a series of newspaper articles in 2001 and
2 2002 in implying that I had a connection in the lands. The Sunday Tribune
3 wrote on the 28th October 2001, "Lawlor linked to firm seeks 35 million state
4 pay off" and again in the Sunday Tribune on the 8th September 2002 "Massive
5 state pay out for firms with links to Liam Lawlor".

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7 It was around this time that the Tribunal provided me with written statements
8 by Mr. Frank Dunlop, prior to the opening of the Carrickmines 1 module.

9 Mr. Dunlop made wholly inaccurate statements regarding my alleged interest or
10 beneficial interest in the lands at Carrickmines.

11
12 Since those earlier references and in particular evidence provided by Mr. Frank
13 Dunlop to the Carrickmines 1 module, referring to ownerships and interests, I
14 repeatedly corresponded to the Tribunal, protesting at the fact that my name
15 was persistently raised in public sessions during the Carrickmines 1 module,
16 referring to some form of interest I was supposed to have in these lands.

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18 In this letter to me of the 5th of February, 2003, the Tribunal specifically
19 advised me as follows: "The matter of ownership of companies associated with
20 Carrickmines 1 lands will be the subject of Carrickmines 2 inquiry, evidence of
21 which has not yet been served."

22
23 Yet despite this, Mr. Chairman and Tribunal members, the legal team at that
24 time, pursued the matter of my so-called beneficial interest throughout the
25 Carrickmines 1 inquiry. And I would now wish to refer to the public sessions,
26 to the transcript where ownership was raised by counsel for the Tribunal and on
27 that occasion Mr. Gallagher and was responded to by Mr. Frank Dunlop.

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29 On Day 343, page 23, lines 29 to 30, Mr. Gallagher in questioning Mr. Dunlop
30 regarding his witness statement said "--

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MR. O'NEILL: Before this quotation us given, I have to say, sir, this would

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not appear to be a response to the opening address of counsel which was

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addressing the issues which will be dealt with in this module and the

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opportunity which has been afforded to Mr. Lawlor to appear in this Tribunal to

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make a statement is in the context of his submissions in response to counsel's

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opening address.

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From the quotations that Mr. Lawlor appears to be embarking upon, it would seem

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that he is making submissions as to the evidence which was offered in the

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Carrick 1 module. It has been indicated to him on previous occasions that all

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submissions will be heard in relation to that at the conclusion of the

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Carrickmines module. This in other words is not the opportunity or the

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occasion upon which criticisms of the manner in which the Carrick 1 module

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proceeded should be entertained by the Tribunal and I outline this because

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there is obviously further evidence being called in the module that is

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currently at hearing. I have witnesses waiting to be called on that issue.

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The Tribunal has extended Mr. Lawlor a second opportunity to continue with what

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he commenced on Day 440, that is, the response to counsel's opening address and

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it seems to me that he is going beyond that and going to address an entirely

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separate or certainly identifiably distinct issue and I raise that as an

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objection to --

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CHAIRMAN: All right, Mr. Lawlor, the purpose of your reply is to deal with

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issues which have been raised by Mr. O'Neill in his opening at the commencement

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of this module. You cannot use the reply or the opportunity to make a reply as

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a platform to make submissions in relation to evidence given or things said at

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earlier modules or in earlier modules and we are going to stick rigidly to that

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rule. It's a rule that applies not just to you, but to everyone and it has to

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be respected, otherwise people's replies or the replies of parties become

1 unwieldy and interfere with the smooth running of the Tribunal.

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3 So, you will have to restrict yourself to dealing with issues that Mr. O'Neill
4 raised. If you have submissions relating to matters which were dealt with or
5 were opened in other modules, you will have an opportunity to make submissions
6 at an appropriate time in the future, as would other parties. But for the
7 moment, you have to restrict yourself to dealing with issues which Mr. O'Neill
8 raised or mentioned in his opening statement and issues which he indicated
9 would be dealt with in the course of this module.

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11 MR. LAWLOR: Thank you, Mr. Chairman for that clarification. Mr. O'Neill had
12 just said "the criticism". I am not criticising the counsel in any way in what
13 I was saying. This is specifically dealing with ownership and Mr. O'Neill was
14 afforded a full day and 75 pages of addressing the ownership issue. The
15 historic ownership issue was also dealt with in Carrickmines 1. That's not my
16 fault. That's the fault of the Tribunal's allowing that process at that time
17 and this ownership issue is on the record from Carrickmines 1 module. Now, if
18 Mr. O'Neill was addressing, in his opening statement, the comprehensiveness of
19 the ownership issue in the Carrickmines 2 module, he should have pulled
20 together the straying into ownership in the Carrickmines 1 module, which is
21 Mr. Gallagher's quoting of ownership issues with Mr. Dunlop.

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23 Now, surely they were relevant and are relevant to this particular response to
24 his statement of 75 pages, dealing with ownership?

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26 CHAIRMAN: The evidence which will be led in this module relates to the
27 ownership issue and it will only be in relation to evidence led in this module
28 that conclusions would be made by the Tribunal in relation to ownership and I
29 think there's been evidence or there's been correspondence, I think, between
30 yourself and the Tribunal over recent weeks and issues have been raised by you,

1 I am not saying without good reason as far as you are concerned, but I think it
2 was made clear to you in correspondence that these were issues which would not
3 be or could not be dealt with in any reply of yours and would not be dealt
4 with, in any event, in the evidence to be led in this particular module.
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6 MR. LAWLOR: May I ask for clarification, do you think it was reasonable that
7 the ownership issue was addressed in the Carrickmines 1 module with no
8 opportunity to address that particular aspect of ownership and now we are to
9 leave it all behind and move on, and I'm not to have any right to refer to the
10 fact that ownership was specifically queried by counsel for the Tribunal during
11 the Carrickmines 1 module? I have never, because you weren't dealing with
12 ownership at that process, yet it was trawled right through the Carrickmines 1
13 module and it appears now, you know, and I am not wishing to be contentious, I
14 just want to, because ownership has been attributed to me 18 months ago and
15 left hanging in the public domain and widely reported in the media as a result
16 of public sessions of this Tribunal conducted by counsel and witnesses and I'm
17 to have no opportunity to address the 75 page statement and anything I am now
18 addressing are omissions possibly from the 75 page statement and maybe the
19 Chairman at the time should have ruled that ownership should not have been part
20 of counsel's questioning at the time.
21

22 But I don't wish to get into any contention, other than to say, I think it's
23 wholly unreasonable that I'm not allowed to address the ownership issues that
24 have arisen up and to and concluding with Mr. O'Neill's opening statement and
25 that's all we are dealing with here.
26

27 CHAIRMAN: Well we are concerned, Mr. Lawlor, to restrict matters or at least
28 evidence relating to ownership to evidence that's led in the course of this
29 particular module. You will have an opportunity to give evidence and to
30 cross-examine witnesses, including Mr. Dunlop, at some date in the future. And

1 not in the too distant future and so I think the position and this would be our
2 final position, is that you can only deal with in your reply to matters, you
3 can only refer to matters which have been raised by Mr. O'Neill in his opening.
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5 MR. LAWLOR: I appreciate your position, Chairman, and I don't wish to delay
6 the workings of the Tribunal, as Mr. O'Neill said, there are other people here
7 and it's very time consuming, but I'll pass on with one final comment,
8 Chairman. Maybe the previous Chairman allowed ownership to be addressed
9 incorrectly and it's on the record, and it hasn't been answered and the only
10 alternative now is that I will release a statement to the effect of what I was
11 going to address here because it appears every medium in Ireland can talk about
12 the Tribunal, but people attending and witnesses, are supposed to operate a
13 confidentiality situation. So I don't wish to get contentious at all, I just
14 feel that over the period of Carrickmines 2 module, ownership was addressed and
15 it's relevant to this module and as Mr. O'Neill should have pulled these issues
16 together in his opening statement and tidied up the Carrickmines 1 module
17 ownership that was allowed happen at the time.
18

19 So I have made my point and you have made your ruling and I respect it.
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21 CHAIRMAN: Well we will, Mr. Lawlor, we will look again at the evidence given
22 in Carrick 1 and if we feel that issues there should be revisited in some shape
23 or form, we will do so in this module and we will let you know. All right?
24

25 MR. LAWLOR: It's just, Chairman, that various contradictions arose later about
26 what was alleged to be an interest and they are not referred to in the
27 statement at all, so I'm trying to put what I think Mr. O'Neill should have put
28 in his statement which would have tidied up those issues, but we won't get
29 bogged down in it now. I appreciate that.
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1 So, I would just go on to say that you know, I was finally called to give
2 evidence on the 24th of September in the Carrickmines 1 module and even then,
3 during my appearance in the witness-box, the ownership issue was addressed and
4 references made to it, but I pass on Chairman and say that I duly received the
5 witness statement book which listed 19 parties and I was provided with four
6 lever arch files for this Carrickmines 2 module. Now, I asked for guidance
7 from the legal team to highlight to me their allegations, interpretations,
8 views or positions to justify my so-called interest in the Carrickmines lands,
9 having studied the 2,150 pages I received for this module. I was told that it
10 was in the documentation. Now, again I don't wish to queer the procedures so I
11 have here lists of all the various references that were made to me in the four
12 or five volumes I received regarding this module and I note that for instance,
13 Mr. Caldwell, through his solicitor, Miley & Miley, will say that I had no
14 interest in the lands; he will go on to say in his correspondence in this
15 module that I never had any beneficial legal or equitable interests in the
16 lands, folio 4940. That's what Mr. Caldwell will say in his statement. He
17 will also go on to say that I never discussed the Carrickmines lands with
18 Mr. Lawlor. Mr. Lawlor to the best of my knowledge and belief does not and
19 never had any interest whatsoever in the Carrickmines lands.

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21 Now, the point I'm making here, Chairman, is that I think those quotes were
22 worthy of inclusion in the opening statement because they are the facts being
23 stated by third parties regarding what is a very important issue to me.

24 There's a witness, Mr. Jude Campion, will say that he saw me at many meetings
25 with various parties that are under investigation. I will just get the
26 opportunity at the time to rebut that evidence, in giving evidence to the
27 Tribunal, but I will say that this gentleman, there's no basis for what is put
28 into his statement and it's on the record and it will come up in due course.

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30 Now, as part of one of the witness statements which Mr. O'Neill refers to in

1 his opening statement, is the statement from Mr. Leddy and that statement just
2 dealt with -- and Mr. Stanley's evidence here and on the public record and in
3 his witness statement, it dealt with planning, nothing to do with land
4 ownership.

5
6 Now that seems to contradict the point I was trying to make earlier, that this
7 is allowed now in this module when it has nothing to do with ownership and if
8 there was a proper investigation and I raised this in my response to Mr.
9 O'Neill's opening statement, that I didn't have any information about this
10 planning issue relating to Mr. Leddy's statement, in an ownership module and by
11 the time I got home to Lucan after that session, the last time I was here
12 before the Tribunal, the smoke was coming out of the fax machines and papers
13 coming in from the Tribunal about planning matters, because I had raised it
14 here in public session.

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16 Now if that matter was addressed, as was addressed by Mr. O'Neill, it would be
17 my contention that the planning file, the minutes of the meetings, there's
18 reference to a Section 4 motion, which meant elected members had to table the
19 motions. There was recorded public meeting of the Council and the members
20 voting for and against and so forth and then Mr. Stanley withdrew that evidence
21 here under questioning by myself that well -- he didn't really know whether
22 what he had claimed in his statement was fact or fiction. Because I didn't
23 even know about these planning matters, but Mr. Stanley, in his statement, was
24 allowed state, which is his right, that Mr. Kennedy, I think, asked me to
25 interfere in the planning process and to effectively block Mr. Leddy getting a
26 planning permission, if somebody didn't get a right of way. And there was no
27 reference by Mr. O'Neill to Lawlor made representations, Lawlor attended a
28 meeting, Lawlor did interfere. There's no record of Lawlor interfering. It's
29 just left hanging there for the media to speculate and it's contradicting the
30 point Mr. O'Neill is trying to restrict, in that he allows planning matters to

1 be trawled in an ownership module, but if I wish to rebut it, there seems to be
2 a problem.

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4 So I'll just park the Leddy thing saying, I would like, Chairman, that you
5 would seek a file on the planning aspect of Mr. Stanley's claims and my saying
6 I know nothing about the planning matter and come to some conclusion whether
7 it's fact or fiction. It's fiction as far as I am concerned.

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9 Now Mr. Miley will go on to say that he himself never received any instructions
10 from Mr. Liam Lawlor regarding Jackson Way lands. Mr. Redmond will say that he
11 never discussed these or any other lands with me or that he ever met me in the
12 company of Mr. Kennedy, ever in our lives and it will come up again and I don't
13 wish to delay.

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15 Regarding Mr. Stanley, Mr. Stanley gave evidence here about those issues that I
16 have just trawled and I would like just the opportunity, chairman, to read the
17 transcript of the withdrawals said to me when I was questioning him to see that
18 they are fulsome and they are clearing up the matter, so maybe at a future
19 date, if they are not as clear as I would like to think they are on the record,
20 they could be revisited.

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22 MR. O'NEILL: Before Mr. Lawlor does so, if I might just indicate to the
23 Tribunal that Mr. Lawlor is clearly now making a submission, not on the basis
24 of what counsel's opening was, but rather on the evidence by which has been
25 heard in the Tribunal to date. He is of course perfectly free to do so at the
26 time that the evidence in this module has concluded and he will be specifically
27 invited to make a submission as to the meaning and effect and weight to be
28 given to evidence of various witnesses, but to do so now really transgresses
29 again on the area where he has been invited to address.

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1 CHAIRMAN: I think the position, Mr. Lawlor, and this applies to everyone, you
2 can't, in the course of a reply, make submissions based on evidence because in
3 the ordinary way a reply would be made at the commencement, before you would
4 hear any evidence and it's at the end of the evidence is when -- and you would
5 be perfectly entitled to make reference to transcripts of evidence given by
6 other people at the conclusion of the module, but it's not appropriate that it
7 would be done now.

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9 MR. LAWLOR: I appreciate that, but it does hang in the media balance for six
10 or 12 months and it's left unanswered by the injured party, but it's a problem
11 you have and it's not an easy one to solve and I understand that.

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13 CHAIRMAN: Well hopefully it won't hang in the balance for 12 months. I accept
14 that and that's unfortunate aspect of any lengthy court case or Tribunal, but
15 there's nothing we can do about it.

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17 MR. LAWLOR: OK, well chairman in referring to Mr. O'Neill's opening statement
18 and documentation that I have received, I don't believe there's any equitable
19 analysis, where any objective conclusion can be drawn as provided by the legal
20 team with confirmation of an allegation or an interest or a consultancy under
21 any heading regarding my involvement with the Carrickmines lands.

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23 And I put it to you, chairman, that no such inference can be taken from the
24 documents I have been provided with. Counsel for the Tribunal, Mr. O'Neill's
25 opening statement cannot be taken as inquisitorial. Throughout the opening
26 statement, Mr. O'Neill attempted to gather threads from a whole series of
27 completely unrelated matters, to stitch together a kind of patchwork quilt,
28 which he then uses to arrive at opinions and conclusions regarding myself. Mr.
29 O'Neill has adopted a wholly adversarial approach which is evidenced by his
30 method of arriving at such conclusions.

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Counsel for the Tribunal and its legal team, have pre-judged from the statements in its possession and have arrived at a verdict already. And if I can refer to page 69 of Mr. O'Neill's opening statement and I quote from his opening statement:

"It seems from the documentation presently available to the Tribunal relating to the Carrickmines lands, that there was an involvement on the part of Mr. James Kennedy, Mr. John Caldwell, Mr. Liam Lawlor, Mr. Martin Bullock, Mr. Nicholas Morgan and his trust company."

Chairman, if we refer back to the documentation that I have been referring to, taken from the volumes of the documentation provided by the Tribunal in relation to Carrickmines 2, how can we possibly reconcile Mr. O'Neill's conclusions with the contents of the documentation? Now it just -- I just digress for a second and it was raised by Mr. Redmond with you, chairman, regarding the voluminous work you have in trying to cope with the documentation associated with your inquiries but -- and you don't, as you refer to, see all the documentation, you leave it to the counsel for the Tribunal to provide you with what they believe to be relevant. Well, I studied the documentation. I don't think there's a relevance to my so-called interest in Carrickmines in the documentation I have been provided with and I just raise that matter with you and I hope I am not trying to burden with more than you have to deal with, but I would like that if yourself and your fellow members would look at the documentation and see can you conclude what Mr. O'Neil has concluded in his opening statement.

I put it to the Tribunal members that despite having studied the briefing documentation, one cannot reconcile these contradictory matters. These matters should more properly await your further consideration and determination

1 subsequent to hearing all of the evidence in relation to the Carrickmines 2
2 module.

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4 I respectfully wish to state, chairman, that counsel for the Tribunal is not
5 going to be allowed to have an each-way bet on the Carrickmines 2 ownership
6 module, from my point of view. Counsel for the Tribunal, having littered his
7 opening statement with his opinions and conclusions, then tries to have an exit
8 strategy as per page 13, lines 10 to 17, on Day 439. And Mr. O'Neill went on
9 and I quote:

10 "The Tribunal will examine in detail the documents which have been provided to
11 the Tribunal and which suggest that elaborate steps have been taken to conceal
12 the identity of the Carrickmines lands, I presume they should have concealed
13 the ownership of the Carrickmines lands. To date the Tribunal's effort to
14 establish the ownership of the lands have ended at the door of Isadore Goldman
15 and Company, solicitors, a firm of London solicitors who act on behalf of
16 Mr. Morgan, C.I. Law Trust group, Hayes and Trias and others, who will be shown
17 to be involved in many of the land transactions in which it appears that
18 Mr. Kennedy, Mr. Lawlor and Mr. Caldwell were involved."

19
20 Mr. Chairman, I respectfully suggest that this strategy by counsel for the
21 Tribunal is wholly unacceptable. In response to previous orders for discovery
22 last year, Isadore Goldman provided to me and stated specifically that I had
23 been given all the documentations to which I had an entitlement. A whole
24 series of letters from this law practice were discovered to the Tribunal,
25 cumulating in a letter dated the 5th of September 2003, discovered by way of
26 affidavit of the 12th of September 2003. Where all the documentation sought by
27 the Tribunal was dealt with in a clear and specific fashion under the headings
28 of the order of the Tribunal of the 31st of July 2003.

29
30 If counsel for the Tribunal has specific allegations to make against this firm

1 of solicitors, it should do so and not be engaging in slurs or smears against
2 the character of those involved with this legal practice. Chairman, has
3 counsel for the Tribunal communicated with Isadore Goldman Solicitors,
4 requesting any information regarding myself and the Carrickmines lands? If
5 not, can counsel explain in due course why not?

6
7 To suggest that Mr. O'Neill, in his colourful way of explaining it, it ends at
8 the door of this solicitor's practice and if you can't prove during these
9 proceedings that he can say, well we couldn't get the information and we
10 therefore had to leave it as with the first report of this Tribunal, probably
11 won't do as far as I'm concerned with this one. This is going to have to be
12 definitive and if Mr. O'Neill has some query with Isadore Goldman and hasn't
13 pursued them, why not? And I respectfully suggest get on with pursuing same
14 and seek whatever clarification Mr. O'Neill requires as part of his
15 investigations. And if that fails, he can come back and report to you,
16 chairman. But in the interim, to be putting into his opening statement that he
17 has this exit strategy that he couldn't find out and therefore it must be true.

18
19 I now refer to the following, which obviously could have serious consequences
20 in another forum from my point of view, namely the courts.

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22 Chairman, I had the responsibility, as a Dail deputy and a councillor, to make
23 statutory declarations and in the case of Dail Eireann, on an annual basis and
24 in the case of the former Dublin County Council, after each election. And if
25 issues arose regarding a conflict of interest from the council, one declared
26 that interest and did not attend or announced one's intention of withdrawal
27 from any meeting where any of these matters were being discussed.

28
29 These were and are, statutory responsibilities to declare land ownership,
30 company shareholding held under any heading, consultancy agreement, shadow

1 directors, trusts, foundations, whatever. If one is to accept the opinion
2 stated by counsel for the Tribunal in his opening statement, the law has been
3 broken by me, a most serious allegation to levy against me at the opening of a
4 module, whose function is to investigate and make findings, not preempt its
5 findings.

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7 I have written to the Tribunal when queries arose regarding my involvements
8 concerning these lands, confirming that I never had any interest in the lands
9 at Carrickmines or any associated company. On the 29th of October, I wrote to
10 the then arbitrator, and I forwarded a copy to the Tribunal, Mr. Shackleton,
11 because it was arising in media coverage and I don't want it to digress and I
12 appreciate I may be straying into an area that's not relative to the opening
13 statement, but again I just put it on the record, I had no interests in these
14 lands and they were being referred to regularly.

15
16 Now, studying the import of counsel for the Tribunal's position adopted
17 concerning the Carrickmines lands, it is, in my opinion, wholly adversarial.
18 The opening statement has now created the following scenario. The legal team
19 for the Tribunal, like all legal people practising that profession, think and
20 operate in an adversarial setting. Court cases are to be won or lost. Counsel
21 for the Tribunal has adopted this attitude in this module. They have acted as
22 judge and jury and have given their verdict via their stated opinions, that
23 Lawlor has an ownership or interest in the lands.

24
25 The media circus that surrounds this Tribunal has benefited from the many leaks
26 and stories about my purported interest and because of the stance taken by
27 counsel for the Tribunal, they have also obviously reached their conclusion
28 some time ago.

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30 So, I put it to you chairman, that your difficult duty and your Tribunal

1 colleagues, in reporting on both Carrickmines 1 and 2 modules to bring finality
2 to this issue of my so-called ownership of lands at Carrickmines and release me
3 from this untenable position, where nothing more on my part can be done to
4 prove I had no interest in these lands. From my point of view, there simply is
5 no objective evidence to prove that I have any beneficial interest, whatsoever,
6 in the lands in question. However, if the Tribunal believes it has such
7 evidence and it is in the opinion reflected in your report that I have some
8 form of interest in these lands, it could be interpreted as victory for the
9 Tribunal's legal team but, to date, all we have is media interpretations of
10 counsel for the Tribunal's stated position.

11
12 If, on the other hand, a sensible conclusion, taking into account all the
13 relevant facts, is that Lawlor has had or has no financial interests in the
14 Carrickmines lands, that he never received or has any entitlement to any monies
15 from these lands, then it could be seen as major defeat for the Tribunal's
16 legal team and a major victory for myself. Of course this should not be so.
17 The legal team setting out its method of operation repeatedly, tells the public
18 that it operates on an inquisitorial and not adversarial function. Can that
19 position be understood by anyone any more? I suggest, in Mr. O'Neill's opening
20 statement, his actions in this matter clearly contradict the Tribunal's stated
21 objectives.

22
23 If it is reported that I have no interest following the completion of the
24 Carrickmines 2 module and the land ownership in Carrickmines, it will be a
25 victory not for me and not a defeat for counsel for the Tribunal, it will be a
26 victory for the Oireachtas, the former Dublin County Council and the public
27 generally. It will show that one of its representatives acted with propriety
28 and integrity and by giving very limited advice to a constituent and his
29 advisors, voted in support of the County Manager's recommendation that was to
30 the detriment of the owners of the lands in Carrickmines.

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I must respectfully suggest, Mr. chairman, that I see this issue in black and white terms and I desire that it be dealt with rationally and unambiguously in your final report.

Also at this juncture, I just draw your attention to and question the process adopted by the legal team in conducting this section of the module in relation to the ownership of the lands at Carrickmines. The schedule of witnesses runs to 19. Who are those witnesses and how best can they assist to ensure the Tribunal meets its Terms of Reference as handed down by Oireachtas Eireann. Even if the 19 are professional people, engaged in advising companies and contractual and taxation matters and are referred to by Mr. O'Neill, one would respectfully suggest, whilst interested in hearing their evidence, their only contribution can be to provide a side show of information regarding how certain persons or companies conducted their commercial activities and upon reading the brief, it's my understanding that persons have all stated they have no knowledge of the planning process or of alleged payments to politicians.

Five of the 19 are land owners in Carrickmines, but oddly enough, missing are Messrs. O'Halloran Kilcoyne Darragh, who are very much interrelated landowners and had probably more dealings with the Paisley Park and Jackson Ways than any other company. However, for some inexplicable reason for the selectivity for the legal team for the Tribunal, they cannot shed any light on land ownership, despite their established detailed inter-relationship with the parties under investigation.

One can only wonder at the criteria required of the witness and selectivity in showing how the list is completed. Mr. Tracey, the owner of the said lands, appears from the brief to be desperately wanting to sell his lands, we are informed he got an offer from his neighbour Messrs. Galvin for 200,000 pounds;

1 despite this -- and he got other offers -- and despite his apparently
2 vindictive attitude, he subsequently received 700,000 pounds some 13 or 14
3 years later. He notes that owners have now been awarded whatever they have
4 been awarded for this motorway acquisition. Mr. Gallagher, counsel for the
5 Tribunal, referred to the lands being valued at 100 million pounds and I wonder
6 was that from his period as counsel to Dublin County Council and counsel
7 provided legal opinions to myself as a member of the council and if Liam Lawlor
8 was in that position, there would be a conflict of interest and there would be
9 a separate Tribunal called for.

10
11 So, when you go down through the witnesses and you try to address what's to be
12 addressed, also it appears that Mr. Campion, who is going to give evidence and
13 I'm not going to stray into that area, he omits from the statement that he was
14 sacked from an amusement arcade in Westmoreland Street run by Mrs. Antoinette
15 Kennedy, who had a lot to do with companies matters regarding the Carrickmines
16 ownership and, again, hasn't made it to the witness list.

17
18 So we are left with Mr. Stanley, Mr. Kennedy and Mr. Caldwell. And they are
19 the relative parties and we had Mr. Caldwell, who obviously set out as a legal
20 adviser, Mr. Kennedy was appearing to be acting as an auctioneer and
21 Mr. Stanley appears to be like the X in Oxo, he was representing Mr. Tracey,
22 Mr. Kennedy, himself and various other parties regarding the ownership.

23
24 How those parties concluded their business and as of the 11th of February 2004
25 may be a matter of most interesting speculation from a commercial transaction
26 point of view, but how relevant is it to the Tribunal's Terms of Reference? I
27 leave that for others to judge. I'm not making the witness list. It now
28 appears Frank Dunlop and myself will, in due course, feature. An omission in
29 Mr. O'Neill's opening statement, on the brief received, chairman, on page 990
30 and 991 in the briefing documents, there are other parties, which I am not

1 going to name referred to in that documentation, and they don't appear to be
2 called as witnesses and they could be very helpful and there's certain
3 implications in the minute of that note that is worthy of your consideration
4 and study; to see whether those persons referred to should be called to give
5 assistance in this whole matter and I just leave it that. I don't wish to get
6 into any further complications.

7
8 But I just want, chairman, to say the Carrickmines 2 module, the legal team has
9 hitched its wagon to this star and its urgent desire to provide conflict and
10 wrongdoing on my behalf. I respectfully suggest that they now themselves find
11 themselves in the position described by the former chairman, Mr. Justice Flood,
12 who at one stage suggested in the public session we appear to be like lost
13 Arabs wandering around in the desert. The Tribunal's legal team in wandering
14 around the remains of Carrickmines Castle and 'piseogs' and other leprechaun
15 haunts, searching for some invisible crock of wrongdoing on my part and I'm not
16 in a position to oblige the legal team in this matter.

17
18 From the perspective of the Tribunal's remit, the issue of the ownership of
19 Carrickmines land should have been a simple matter. Mr. Caldwell explained the
20 ownership and the structure, Mr. Stanley had a disagreement which does not
21 impact on the Tribunal's remit. A half day should have seen this matter
22 resolved, yet we have had day upon day of irrelevant evidence and direct and
23 cross-examination, counsel for the Tribunal has ill-served the Tribunal and the
24 taxpayer in this module so far and 75 pages of an opening statement is littered
25 with half truths, inaccuracies and conclusions which can not be substantiated.

26
27 I look forward to bringing finality to the Carrickmines 2 module and I must put
28 it very succinctly, you will find, probably for the first time since this
29 Tribunal commenced proceedings far too long ago than I care to remember, in
30 their rush to judgment, the Tribunal's legal team in their opening statement

1 have overlooked the obvious truth which is there in front of them. I also have
2 to suggest that it's no longer credible that the legal team maintain control of
3 the documentation in possession of the Tribunal, which I and other witnesses
4 are denied and which are of major importance to me and to the chair and I would
5 respectfully suggest that you reflect on that matter.

6
7 Now in referring to the opening statement and my response on the following day,
8 Mr. O'Neill set a precedent on Day 442 in dealing with the Carrickmines 2
9 module. It became clear that counsel for the Tribunal had interviewed Mr. Sam
10 Stanley for four hours at his home in Galway and Mr. O'Neill, on Day 445,
11 created a precedent of putting to Mr. Stanley in the box various extracts. Now
12 they weren't read out to clarify the reason why my name was used in any format
13 and you know, I really feel that this is going to the heart of trying to
14 establish facts and because of Mr. O'Neill's stated position now, chairman,
15 that he has concluded that I have an interest and he has his hand on the legal
16 documentation, is he really going to circulate and objectively put into any
17 future proceedings a reversal of that position, if the facts don't stand it up?

18
19 I believe I'm entitled to the private hearings of the Tribunal where my name
20 was trawled, referred to, so that I can defend whatever references there are to
21 me or rebuke them and it understandably colours Mr. O'Neill's thinking and if
22 various witnesses, in private session make certain comments and if he adopts a
23 position based on that and I don't have the opportunity to know what was said,
24 how can I address and refute it?

25
26 In response to previous questions, chairman, you confirm that you and the
27 Tribunal members, you have access to all of the documentation, you don't seek
28 to have access and due to the volume you accept what's put before you by your
29 legal team to allow you conduct the inquiries. I must now request the release
30 of all private inquisitorial transcripts where my name and the other names of

1 other landowners in Carrickmines have been referred to based on counsel for the
2 Tribunal's precedent established on Day 445, and to come in and attempt to
3 selectively quote and in my reading of the transcript, put words into
4 Mr. Stanley's mouth instead of reading the section is wholly wrong. Does
5 counsel for the Tribunal really think you addressed the matter adequately on
6 Day 445 regarding that particular question and inquisitorial interview and I am
7 further calling on you, chairman, to end what I believe is a cover up of the
8 documentation, selected, I suggest, with a degree of bias by counsel for the
9 Tribunal in providing us with our briefs for this module and in the opening
10 statement. Mr. O'Neill appears to think -- well Mr. O'Neill does choose what
11 is relevant. We all have a right to decide on the relevance when we have the
12 opportunity to see what is being said about us and allows us the right to
13 defend our representations, from my point of view, has been knowingly and
14 purposely shredded in public session of this Tribunal. That's where we came
15 in.

16
17 I should also raise, Mr. chairman, the necessity for you to give a ruling on
18 Judge Nicholas Kearns' High Court decision of the 2nd of July 1999, in respect
19 of three orders made in relation to me by the then Sole Member on the 26th of
20 April 1999. On that first order, Judge Kearns found against the Tribunal.
21 This order related to the private sessions of the Tribunal and I quote:

22
23 "The Court further holds that a power of substance cannot be deputed by the
24 Sole Member to any other person." This decision was upheld by the Supreme
25 Court. Were those inquisitorial private sessions to which I have earlier
26 referred conducted with the independence of the chair, as legally appropriate,
27 or is the 'star chamber' concept alive and well operated by the legal team
28 despite the high and supreme court judges to be what I interpret to be to the
29 contrary? Maybe Mr. O'Neill would like to come in and, you know, address other
30 issues and I am not going to get into contention, because I have written to the

1 Tribunal, the Tribunal has said it has looked at it and I pass over it, but
2 it's to do with a landowner in Carrickmines, a private session and information
3 provided by Mr. Dunlop about the private session which appears to be
4 contentious.

5
6 However, having read Mr. O'Neill's efforts to deal with the related issues and
7 in this module, my first inclination was to suggest that the Tribunal should
8 forget about these issues and focus on their Terms of Reference, least this
9 Tribunal be mistaken for something other than a planning tribunal.

10
11 The foundation of the twisted logic by counsel seeks to bring the so-called
12 related issues into this module is laid at the end of page 14 on Day 349 where
13 counsel states and I quote,

14 "Examination of the documentation generated in connection with a number of
15 seemingly unrelated land transactions in County Dublin in the 1980s may assist
16 the Tribunal in its determination as to the relationship which exists between
17 these three parties and in particular, whether Liam Lawlor has a claim or
18 entitlement to share in the profits which would result from the sale or
19 development of the Carrickmines lands. This in turn may assist the Tribunal in
20 determining who engaged Mr. Dunlop to assist in rezoning the Carrickmines lands
21 and why he was so engaged."

22
23 It appears nonsensical for counsel for the Tribunal to suggest that because it
24 is alleged that somebody has had a history of dealing with certain parties that
25 they must be involved in every transaction those parties undertake. It,
26 apparently this is the corner stone of counsel's case for the prosecution as I
27 interpret it, are we now working on the premise that if the table as four legs
28 and a dog has four legs, there must be a connection worth investigating?

29
30 On page 12 of Day 349, Mr. O'Neill repeats a frequent refrain,

1 "Mr. Lawlor has publicly denied having any business dealings with Mr. Kennedy."
2 As I understand, as I understand, is this piece of so-called evidence to be
3 based on a media report. I submit, chairman, that if we are required to
4 account for every media story about the last 15 years, I think your hearing
5 would go on forever and I don't know where else counsel can take that
6 conclusion from. If I have been provided with documentation and evidence and
7 continue to do so. The contact I had with the late Henry Beatty and Jim
8 Kennedy and John Caldwell related to the Lucan area and I have given evidence
9 in all these matters and I have discovered all the details, but these appear to
10 be the thread of the related issues which Mr. O'Neill is trying to tag into a
11 module now, in Carrickmines.

12
13 The fact that those parties have an involvement won't be allowed to provide a
14 smoke screen for counsel for the Tribunal to muddy the mess that is the
15 Carrickmines lands today. In further referring to the so-called related
16 matters, Mr. O'Neill in his opening statement, the opening statement was so
17 extraordinary it must surely have broken every rule and regulation in respect
18 of conduct of Tribunals of Inquiry. In the Carrickmines 1 module the Tribunal
19 would say to witnesses look, we are only putting to you the allegations,
20 Mr. Dunlop, these are not our allegations. Yet in Mr. O'Neill's opening
21 statement, counsel behaved as though he had just come from the Four Courts and
22 was adopting its methods in dealing with Tribunal matters.

23
24 As an opening statement in a criminal trial, it could not be faulted, provided
25 the defence had a been given the book of evidence. Prosecution counsel could
26 stand up and say the state will show this or the state will prove a connection,
27 a witness for the prosecution will swear. Counsel for the Tribunal goes
28 further in his opening statement. At times in his opening statement he played
29 a part of a witness to the Tribunal and proceeded to lead himself to
30 conclusions. Mr. Chairman, there is a problem here. This is not court, as we

1 all know. I know this because I have listened carefully and this is what the
2 Tribunal itself quoted to me in a letter of the 5th of February 2003.

3
4 "You are not a person accused as in a criminal trial or a party as in a civil
5 trial. You and all persons called to give evidence to the Tribunal are
6 witnesses upon whose testimony the Tribunal will reach conclusions as required.
7 You have been afforded all the rights accruing to witnesses before an inquiry,
8 in particular you have received, in advance, all the statements and
9 documentation forming the evidence available to the Tribunal."

10
11 How does this statement, chairman, compare with the Tribunal's legal team's
12 actions to date? The final sentence,

13 "You have received, in advance, all the statements and documentation forming
14 the evidence available to the Tribunal."

15
16 I want to put it on the record that I most certainly have not in this module.
17 Not one single statement or briefing document has been provided to me in
18 respect of the matters referred to by Mr. O'Neill on pages 17 and 18 of the
19 transcript of Day 439, the 20th of January. Namely Blakes of Cookhouse,
20 Coolamber and parts of lands at Baldoyle. Yet here is legal counsel on page
21 18, not only referring to the documentation of which I have had no sight of,
22 here he is providing interpretations and drawing conclusions from the
23 documentation which I have not seen. And I quote:

24 "The documentation discovered in respect of these various land transactions
25 suggests Mr. Lawlor, Mr. Kennedy and Mr. Caldwell were acting in concert."

26
27 Where is this documentation? Who gave counsel for the Tribunal the right, in
28 the course of an opening statement, to pass judgment or to draw inferences
29 relating to any person before that evidence has been served upon witnesses and
30 before rebuttal evidence has been provided by witnesses in written or oral

1 form?

2

3 And counsel goes on to apply the further tactics. Who has extended counsel's
4 role to encompass this pre-judgment on his part? How can members of the
5 Tribunal not be influenced by this opening statement? Has the position -- has
6 your position been compromised in that they can no longer make an unbiased
7 finding based on the evidence and not on Mr. O'Neill's opinion? On page 29 of
8 the Tribunal's opening statement, counsel referred to the documentation made
9 available to the Tribunal in relation to an Irish limited company with two
10 directors, Mr. O'Neill continues, "The documentation made available to the
11 Tribunal suggests a connection with Mr. Lawlor. Mr. Lawlor has not provided
12 any documentation which suggests that he had an interest in or acted for
13 Sarack." Now this name is, maybe I shouldn't name the company, I have no clue
14 what this company's named for, what it's supposed to have done or not done and
15 you know, if I had been given what supposedly is available, by way of
16 documentation, I might have had a better understanding of it, but as stated
17 here, I can throw no light on it.

18

19 But leaving aside the negative presentation and clear attempt by counsel to
20 imply something sinister by way of wrongdoing, a tactic that has been followed
21 throughout, I must again ask, where is the documentation? Is it that no
22 evidence can be found and no supporting documentation is available to support
23 these theories or are we being asked to believe and have faith because it is
24 counsel's opinion? Later, on page 34 of the opening statement, Mr. O'Neill
25 states and I quote, "Mr. Caldwell will say he believed that Mr. Liam Lawlor was
26 the beneficial owner of Navona Limited."

27

28 Mr. Chairman, is it not for Mr. Caldwell to say by way of evidence. Counsel
29 for the Tribunal now appears to be giving evidence on behalf of a witness.
30 More than that, he is providing hearsay evidence based upon hearsay evidence.

1 Mr. Caldwell apparently says he believes. Where is Mr. Caldwell's statement?
2 Why do I not have it? How can I fully respond to something I have not seen?
3 But upon which the media can speculate to their heart's delight? Has this
4 Tribunal moved so far from its stated objectives and principles of fair play
5 and equal justice for all. Further and I referred to this earlier, counsel --
6 Mr. O'Neill -- has been acting as a witness. He has been describing evidence
7 which has not been provided to me. He is making insinuations about this
8 evidence. He is interpreting evidence on behalf of others. He is drawing
9 conclusions from these interpretations; Mr. O'Neill, in other words, has
10 redefined his role and is effectively giving testimony.

11
12 Mr. Chairman, the scenario that has been allowed to develop at this stage is
13 beyond incredible. Indeed I am reminded of the remarks of Judge Nicholas
14 Kearns in the High Court when previous counsel, Mr. Hanratty, was down there
15 and the judge requested of the legal counsel for the Tribunal, when considering
16 the orders made by the Tribunal, the judge asked Mr. Hanratty, "Where are you
17 deriving your powers or are we in outer space on this?" Counsel for the
18 Tribunal has chosen to be a material witness to the Tribunal. He is reaching
19 conclusions about me based upon evidence which has not been served upon me and
20 is offering evidence on behalf of other witnesses.

21
22 It is clear that counsel should perhaps be called as a witness so that he may
23 be cross-examined. The members will be aware of the decision of the Supreme
24 Court in 1999 relating to the procedures of a Tribunal, which I will now read
25 into the record. "Procedural requirements set down in re: Haughey 71 IR is
26 applied to tribunals by the Supreme Court in Haughey V Moriarty 1999 3 IR. A
27 tribunal of inquiry of this nature involves the following stages: A, a
28 preliminary investigation of evidence available; B, the determination by the
29 Tribunal what it considers to be evidence relative to the matters into which it
30 is obliged to enquire. C, the service of such evidence on persons likely to be

1 affected thereby. D, the public hearings of witnesses in regard to such
2 evidence and the cross-examination of such witnesses by or on behalf of persons
3 affected thereby and; E, the preparation of a report.

4
5 Chairman and Tribunal members, I do not believe that the judges of the highest
6 court in the land set these procedures out lightly and I do not believe they
7 intend those procedures be applied in a cavalier, self-serving fashion. To
8 most people it's clear that C comes before D. Counsel for the Tribunal appears
9 to have some difficulty with that. Counsel's behaviour and that of the legal
10 team could be seen as in direct contempt of the decision of the Supreme Court.
11 It's both absurd and dangerous state of affairs where counsel for this Tribunal
12 can describe the content of the evidence knowing that the media can speculate
13 upon that evidence prior to an affected witness coming into the possession of
14 such evidence and goes against the principles of natural justice.

15
16 Counsel's stated opinions have become nothing more than a pre-ordained pathway
17 down on which members are being asked to reach conclusions. The Tribunal is
18 duty bound to provide me with all the relevant material prior to the
19 ventilating of such evidence in public. This is not optional. The Supreme
20 Court said so. Oddly enough, so did the Tribunal, as evidenced by the
21 following statement and that was the Tribunal ruling and I think chairman, your
22 predecessor, maybe it was yourself, in reply to Mr. Michael O' Higgins, senior
23 counsel, for Senator Liam Cosgrave on the 4th February. The ruling was, "The
24 constitutional rights of Mr. Cosgrave and any other witness or person
25 interested in the proceedings of a Tribunal and particularly those affected are
26 likely to be affected by allegations of wrongdoing which arise in statements or
27 in evidence are always kept under review to ensure that the least possible
28 damage is caused to their good name and that any such damage which necessarily
29 flows from such allegations is kept to a minimum and is delayed in coming into
30 the public arena for as long as possible so as to ensure the persons so

1 affected are in a position to respond to such allegations as soon thereafter as
2 possible."

3
4 Now, I raised it the last day and I don't wish to get into controversies with
5 you but the swapping and changing of modules completely runs in the face of
6 that stated ruling. You are going to terminate the process of this module in,
7 I think, next week and go off on to Quarryvale or Arlington or some other
8 module and just it doesn't rest with what's stated there.

9
10 How can I be expected to respond to third party allegations conveyed to me via
11 the interpretations of counsel for the Tribunal when I have had no sight of
12 these documents or statements to which counsel so liberally refers to. Not
13 only have my constitutional rights been affected by counsel but counsel has
14 driven a coach and four through them.

15
16 Chairman, I regret to say counsel for the Tribunal and the Tribunal's legal
17 team are not solely responsible for this state of affairs. And a very heavy
18 burden of responsibility sits upon the shoulders of yourself and your fellow
19 members and it appears and you can judge this, that you have allowed the biased
20 behaviour of counsel to proceed unchecked. What is the Tribunal's members'
21 role if counsel is allowed make conclusions?

22
23 And I quote there a Tribunal ruling which in turn contains a statement from the
24 Supreme Court given by Justice Susan Denham, an extract from the Tribunal's
25 ruling on day 352, this reply to Mr. O'Higgins from Senator Cosgrave.

26 "Mr. Dunlop is the Tribunal's witness and not that of Mr. Gallagher. It is a
27 core feature of the Tribunal of Inquiry that it is conducted by the Tribunal
28 itself and not by its counsel, a fact recognised by Denham J in the course of
29 her judgment in Lawlor V Flood, given on the 8th October 1999. The Tribunal
30 itself inquires into matters rather than its counsel."

1

2 Chairman and members, you sat there silent as the grave while counsel delivered
3 his opening statement. You heard him refer to documentation which you knew was
4 not in my possession. You heard Mr. O'Neill give evidence on behalf of other
5 witnesses. You heard him describe the contents of documents which I do not
6 possess. You heard him provide his interpretation of the content of the
7 documentation which I do not possess and also just to the detriment to my name,
8 you heard counsel refer to me in a presumptive and judgemental manner, you
9 heard counsel attempt to draw in a whole range of unrelated matters in order to
10 tie me into some concept of ownership of lands at Carrickmines. Yet you did
11 and said nothing.

12

13 It is an effect of no longer being in a position to afford legal representation
14 that I automatically am denied my legal entitlements by counsel for the
15 Tribunal. Even when Mr. O'Neill on the following page 70 of the transcript and
16 I quote, "The expression of opinion contained in this opening are of my own,
17 based upon the information which is contained in the brief circulated to all
18 affected parties in this phase. And which will be circulated in subsequent
19 phases prior to their public hearing."

20

21 Two important issues arise. Firstly, here is counsel clearing admitting that
22 the documentation which he repeatedly interpreted and drew conclusions from was
23 not provided to me. When will it be provided? A month from now? Two months?
24 And all the while, the media speculation can proceed. If counsel is to be the
25 filter for evidence and documentation circulated and has already concluded that
26 I have an interest in the Carrickmines lands, it's completely contrary to any
27 basis of fair play or analysis and, secondly, and of great significance in the
28 assertion of Judge Denham that the Tribunal itself inquires into matters rather
29 than its counsel. The logical consequence is that it's the Tribunal itself
30 which express its opinions on the evidence and which it arrives at conclusions,

1 yet counsel on page 70 of his opening statement just referred to says the
2 opinions contained in the opening statement are his. Are these opinions the
3 opinions of the members of the Tribunal? Is it implicit in counsel's remark
4 that they may not be? Certainly the Tribunal made no effort to clarify its
5 position on that day. It made no effort to rein in counsel for the Tribunal
6 when he proceeded to give evidence on behalf of other people based upon
7 documentation, that the members knew, are not in my possession.

8
9 As I understand it, opening statements must be substantiated in due course.
10 However such a blatant one-sided presentation as that delivered by counsel
11 cannot be allowed to stand. It's not acceptable that these allegations be made
12 in public and fed to the media without any evidence being circulated to those
13 involved. It is not acceptable that the good name of individuals and companies
14 should be taken without notice or justification and it is not acceptable that
15 false allegations and so-called conclusions must colour the honourable members'
16 approach, should they be presented in this way.

17
18 Chairman and Tribunal members, I believe that the errors in procedure are
19 glaring and the statement by counsel so presumptive and judgemental as to make
20 it impossible to me to receive any fair or equitable treatment in line with my
21 constitutional rights. Because these matters are of such importance, I must
22 ask the members of the Tribunal to restrain counsel from venturing an immediate
23 response. Instead I would appreciate if the Tribunal members would take some
24 time to consider its position before giving a ruling on agreeing to provide the
25 transcripts of all private sessions where my name has been referred to or
26 raised. I would like to enquire also as to whether evidence has been taken in
27 private session without recording.

28
29 Chairman, I apologise if I have gone on too long. I hope the prolonged
30 exposure to Tribunals is not making me develop some of the traits of respective

1 counsel but the bias in counsel's opening statement is clear for all to see. I
2 ask you and the honourable members to take time to step back from this approach
3 and ensure that the fairness required is restored to the process. The damage
4 from counsel's opening statement cannot be undone. The minimum action required
5 at this stage is that the circulation of all documentation which relates to the
6 so-called allegations against me before further evidence is taken; circulation
7 of any statements taken in private session which refer to me or are the basis
8 of allegations against me and finally, a statement from the Tribunal as to the
9 role of the Tribunal counsel and the requirement for fairness in their
10 approach, given that counsel has already concluded against me in this module
11 and I do not believe he is capable of make meeting the standard.

12
13 Chairman and members, as a postscript, I must raise the matter of great
14 importance relating to Mr. O'Neill, counsel for the Tribunal in the course of
15 his examination of Mr. Charlton on Day 449, when I was out of the country.

16
17 CHAIRMAN: Mr. Lawlor, that is not a matter for reply. You can deal with that
18 by way of submission at the end of the module, if there's some matter which
19 arose when you were out of the country and in Mr. Charlton's evidence and if
20 you feel you want to cross-examine Mr. Charlton on that particular point you
21 may write to the Tribunal, indicating what you want to raise and we'll consider
22 whether or not to recall Mr. Charlton.

23
24 MR. LAWLOR: I appreciate that, it's just a reference to the Isle of Man.

25
26 CHAIRMAN: All right, well that can be dealt with in that way.

27
28 MR. LAWLOR: I'll write to you on the matter, chairman. Thank you. I would
29 just therefore conclude, chairman, by saying that I believe that Carrickmines 2
30 module relating to Carrickmines (a), is something that I think was entered into

1 as a commitment because Carrickmines 1 strayed into the area. I communicated
2 at length, objecting to what was happening and we are here now dealing with a
3 module about ownership. And effectively, the opening statement is the digging
4 of massive hole by the Tribunal, particularly by its legal team and you and the
5 chair and your colleagues are going to have to take the shovel away because it
6 is going nowhere. I have stated under oath, in declarations to the Dail and in
7 any other forum that I have no interest in the Carrickmines lands. And I would
8 be delighted to declare an interest if I had such an interest and I have no
9 reason, why I shouldn't declare, if I had sufficient an interest. So just in
10 conclusion to say, chairman, that you are off on a module, gone on for days
11 here, professional people arguing about what commercial members of the
12 community tried to shaft the other one or did or didn't and the core of this is
13 that, where in the Terms of Reference is ownership of land part of the process
14 of the Tribunal?

15
16 I am not, nobody has suggested, in any of the documentation, that I have
17 received a penny from the lands in Carrickmines. The only record of my overlap
18 in my public duties was the vote in the negative to the detriment of the land
19 and the reason I did that the manager had summed up at a meeting and I took my
20 decision as an elected member, nobody had ever asked me or lobbied me about the
21 land, I didn't know who owned the land, Carrickmines was a very far gone place
22 back in the period, it came before the council when I was a member of the 19 up
23 to 1991. So it appears that the conclusions reached by Mr. O'Neill are, as
24 stated in his opening statement and the one unfinished piece of business, is
25 the Isadore Goldman comment. I would respectfully suggest, chairman, that
26 rather than impugn a legal practice, who claim to have given me all my rights
27 under discovery orders, that you would deal direct with this practice and
28 satisfy yourselves that what you have been provided with addresses the queries
29 or inquiries of this Tribunal, because I have not ever taken a corrupt payment
30 or asked for a corrupt payment or, in particular on this module, have anything

1 to do with the Carrickmines 2 module of land ownership and I respectfully
2 suggest, chairman, that as I have outlined there, yourself and your two
3 colleagues should take a long hard look at the merits, the validity and the
4 necessity of prolonging this particular module which is going nowhere.

5

6 Thank you.

7

8 CHAIRMAN: All right. Mr. Lawlor, just a couple of things, in relation to what
9 you have said in your lengthy reply, we will consider what you say and if
10 anything needs to be done, we will certainly ensure that it's done. Secondly,
11 there's no question and this may be a statement of the obvious, but for what
12 it's worth, I repeat it, there's no question of the Tribunal viewing its
13 conclusions as a defeat or victory for anyone. The conclusion of the Tribunal
14 will be based fairly and squarely on the evidence and any conclusions made by
15 us will be those of the Members of the Tribunal and not of counsel for the
16 Tribunal or indeed of anyone else. And Judge Faherty asked me to also state
17 that no conclusions have been made and no view has been taken by us as to the
18 evidence. It may well be the case that the Tribunal will conclude that you
19 don't have any interest in the Carrickmines lands. So that's --

20

21 MR. LAWLOR: Do you think it's reasonable, at the outset of a module, that
22 counsel for the Tribunal has so concluded and do you have a view on that?

23

24 CHAIRMAN: I wouldn't necessarily agree with that, but whether or not you feel
25 he has, the conclusions will be the conclusions of us, the Members of the
26 Tribunal and we no views at this stage, we have to hear the evidence. The
27 purpose of the evidence is to help us to decide on these issues, but it doesn't
28 necessarily mean that any particular findings will be made in relation to any
29 individual, including yourself.

30

1 MR. LAWLOR: Thank you, Mr. Chairman, for that clarification, I appreciate it
2 and fully accept the outline as you have suggested, that the chair and your two
3 colleagues will conclude and not conclude as Mr. O'Neill has concluded in his
4 opening statement.

5
6 CHAIRMAN: Well, we are not necessarily agreeing that he has made them but we
7 are just emphasising the fact that the conclusions will be our conclusions.

8
9 MR. LAWLOR: I appreciate that.

10
11 MR. O'NEILL: I feel, sir, I should put on the record firstly, the rejection by
12 the Tribunal legal team of bias on the part of any member of the Tribunal legal
13 team either in its approach to Mr. Lawlor or in the presentation of the
14 material which will subsequently be led in evidence before you. It is made
15 clear in the course of counsel's opening statement that the facts are the facts
16 to be drawn by the Tribunal at the conclusion of the evidence and that the
17 determination of the facts will await the resolution by the Tribunal having
18 heard the evidence of the witnesses. That was made perfectly clear. I equally
19 would wish to indicate that the opening of counsel did not reach any
20 conclusions. I specifically indicated that these were the areas which would be
21 covered in the evidence of the witnesses. Mr. Lawlor makes a criticism of the
22 reference to Isadore Goldman, solicitors, and suggests that in Counsel's
23 opening there has been a slur upon that legal firm. That equally, I think, is
24 a matter which I should correct at this point in time. There is no slur laid
25 against this particular firm. What was said in the opening was that the
26 Tribunal's inquiries into ownership end at the doors of Isadore Goldman.
27 Mr. Lawlor seems to focus on Isadore Goldman in his own dealings with them and
28 you will recollect from the compliance hearings, which were heard in July last,
29 that Isadore Goldman was a firm of solicitors representing the interests of
30 Mr. Morgan and his associated law trust companies, with which Mr. Lawlor had

1 been in communication in relation to the discovery process, which followed upon
2 the sale of the one acre of land in Lucan, which found itself in Gibraltar and
3 it was in that context that Mr. Lawlor was dealing with Isadore Goldman.

4
5 The Tribunal, however, has been dealing with Isadore Goldman, as has been
6 outlined in the Carrick 1 module, as the solicitors to Jackson Way Properties,
7 the company which had initially representation before this Tribunal, through
8 Mr. Miley and Mr. Miley's instructions to act on behalf of that company were
9 withdrawn by Isadore Goldman, who indicated that he no longer had instructions
10 of their clients, Jackson Way, to deal with the matter.

11
12 It is in that context that the Tribunal is focusing on Isadore Goldman in this
13 particular module and it is because they are or were at some point in time the
14 solicitors to the firm which holds the registered legal title to the
15 Carrickmines lands. They are of course connected in other ways, one of which
16 was the connection with Mr. Lawlor and the funds which went to Gibraltar, but I
17 think that is a matter which requires clarification because Mr. Lawlor seems to
18 have focused on it from one aspect only. It is multi-faceted as many other
19 aspects of this case are.

20
21 CHAIRMAN: Thank you.

22
23 MR. LAWLOR: I just ask would the Tribunal communicate, requesting clarity from
24 Isadore Goldman because it's not acceptable that Mr. O'Neill can claim its left
25 at the door, there's a big letterbox there and if he tries to get through there
26 and seeks clarification for what he requires then you can come and include that
27 he got no response from Isadore Goldman in seeking clarification of the
28 information the Tribunal requires to reach conclusions. So I would urge,
29 chairman, that the matter should be pursued so that some finality could be
30 brought to it and not left the way it is in Mr. O'Neill's opening statement.

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MR. O'NEILL: It has been pursued as I have outlined. It has been brought to a conclusion.

CHAIRMAN: All right. We are going to rise for ten minutes.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND
RESUMED AS FOLLOWS:

MR. O'NEILL: Mr. Ronan O'Siochain please.

1 MR. RONAN O'SIOCHAIN, HAVING BEEN SWORN, WAS QUESTIONED

2 AS FOLLOWS BY MR. O'NEILL:

3

4 Q 1 Good afternoon, Mr. O' Siochain, you are a solicitor by profession, is that
5 correct?

6 A Yes, that's correct.

7 Q 2 And in 1988, you were a member of the firm of Reddy Charlton & McKnight,
8 solicitors, isn't that so?

9 A That's correct.

10 Q 3 And we have heard, for some days, the evidence of Mr. Charlton and you recall
11 that he indicated that your area of expertise was conveyancing?

12 A That's correct.

13 Q 4 I think you have had the benefit of being present throughout his examination?

14 A Yes, I have.

15 Q 5 And cross-examination, isn't that so? I want to focus on a number of specific
16 issues that you were involved in, on behalf of initially your client,
17 Mr. Stanley, and subsequently, on behalf of Paisley Park Investments Limited
18 and possibly also Mr. Stanley. I think it's correct to say, that the initial
19 relationship between Reddy Charlton & McKnight and Mr. Stanley, was one
20 conducted through Mr. Charlton rather than yourself.

21 A The initial gains were through Mr. Charlton, yes.

22 Q 6 And I think it is correct to say that your first recorded involvement took
23 place in or around late June of 1988.

24 A Correct.

25 Q 7 Isn't that so? We have heard that the transaction which gave rise to your
26 involvement, commenced in or around the 9th of March of the same year, so that
27 for some three months or a little more than that, Mr. Charlton had been dealing
28 with matters, but as of the 29th of June 1988, you were in a position to write
29 to your client setting out the matters which you considered to be issues that
30 he had to deal with you, isn't that right?

1 A Yes.

2 Q 8 We will see that at page 165 on screen. It breaks down essentially to two
3 matters. Firstly, the question of the title to the property and secondly, the
4 sub sale aspects of it. Do I take it that before you wrote this letter, you
5 had spoken to Mr. Charlton, you had familiarized yourself with what his
6 understanding was of where you were going to be going on this issue?

7 A Yes, I'm sure I did. Yes.

8 Q 9 Right. There's references, as you will see in a number of places in this
9 document, to a sub sale of the property.

10 A Yes.

11 Q 10 Firstly, in paragraph 1, "when we received further information you suggested it
12 would be useful to have a meeting to discuss problems arising from the title
13 furnished and the feasibility of completing a sub sale of the property."
14 There are references then at paragraph number 2 to the "closing date being the
15 21st of December 1989, which will facilitate a sub sale of the property to the
16 third party which we understand is Paisley Park Investments Ltd. For various
17 reasons, one of which being that the purchaser is an offshore company, we would
18 strongly suggest that the property be taken in the name of a company which can
19 be set up on short notice."

20
21 Now just in relation to that paragraph, that places Paisley Park Investments
22 Ltd as a third party in a transaction, isn't that right?

23 A Correct.

24 Q 11 The first party, I think, is easily identifiable and that is Mr. Tracey, who
25 was the registered owner of the property and would have to be a party and the
26 second party, if I might describe it as that, might well be a company which you
27 would set up, isn't that so?

28 A In the context of a sub sale, there would need to be a middle man, so to speak,
29 yes.

30 Q 12 Exactly and that was what was envisaged here.

1 A That was my understanding, yes.

2 Q 13 Right. By the time you had written this particular letter, if you considered
3 the file generated by Mr. Charlton and if so, did you see the document which
4 was at page 120 -- if we could have 120 on screen please.

5 A Yes, I'm sure I did.

6 Q 14 Right. Does that document set out what you would describe as a sub sale
7 arrangement? I am not saying it necessarily is the one that came to fruition,
8 but it was what was intended. That there would be three parties involved, a
9 Mr. Tracey, a middle man or middle company, as described, and ultimately
10 Paisley Park Investments Ltd, isn't that right?

11 A Correct.

12 Q 15 If you saw this document of course, you would be familiar with the fact that
13 there appears to be a one million pound premium, if we might call it that?

14 A I was familiar with that, I was aware of that, yes.

15 Q 16 Right. And I think that in writing to Mr. Stanley at this time, one of your
16 concerns was to try and ensure that the one million pounds entitlement would be
17 protected or secured in some way, isn't that right?

18 A Yes.

19 Q 17 And we know that the sub sale project was one which did not ultimately proceed
20 and we know that about a week after the letter of the 29th of June, there was a
21 meeting which took place in your offices with Mr. John Caldwell, the solicitor,
22 who was going to be acting in Paisley Park Investments Ltd's interests.

23 A That's right.

24 Q 18 And this was a sort of three-way meeting, in the sense that yourself,
25 Mr. Charlton and Mr. Caldwell sat down to discuss the way forward.

26 A Yes.

27 Q 19 And if we look to document 172, we'll see that Mr. Charlton is recorded here,
28 by Mr. Caldwell, as having said that the transaction was to proceed by way of
29 the sub sale for 540,000 pounds, the deposit was to be 20,000 and he said that
30 a further 10,000 had been received from Martin Bullock, who as we know is the

1 Paisley Park director in the Isle of Man.

2 A Yes.

3 Q 20 You will see equally, that Mr. Caldwell here records his reaction to that and
4 before we get to dealing with that, could I ask you whether or not you have a
5 memory of this meeting and Mr. Caldwell's presence?

6 A I accept that the meeting took place, I don't actually remember the meeting.

7 Q 21 Right. It has been suggested by, in cross-examination of Mr. Charlton, that
8 Mr. Caldwell was very surprised at the suggestion that there was such an
9 agreement. Was any surprise ever manifested to you or observed by you on
10 Mr. Caldwell's part? Did he ever seem to be surprised or taken aback by the
11 proposition that was being put to him by Mr. Charlton in this instance?

12 A I can only say what is in the memorandum. I mean I can only surmise from what
13 is in the memorandum. I have no memory of the actual meeting.

14 Q 22 Right. If Mr. Caldwell, for example, had said that this was a preposterous
15 suggestion or that it was wholly unreasonable and bore no relationship to the
16 value of the land which was for 540,000 and this one million pounds was now
17 being brought into the equation, I take it that that is something that you
18 would be --

19 A I think that would register and I would know. Yes, I think that would register
20 with me and I don't recall any such reaction.

21 Q 23 Sure. If we move then to Mr. Caldwell's own note of what took place, his
22 understanding of the transaction was that the property was to be closed into a
23 company controlled by Martin Bullock for 540,000, the shareholding was to be 20
24 percent, 80 percent the shareholders' agreement would cover the relationship,
25 and further down, where it talks about the reasons for it not going ahead with
26 the one million pounds payment, he says that.

27 "I said that my understanding was that this could take at least two years after
28 zoning and this would take this, something that would not happen until well
29 after completion, the transaction would not stand up if one and a half million
30 pounds was being paid out at the end of 1989."

1

2 Now it appears from that quotation, that there, that whatever about the payment
3 of the one million pounds, it was not to take place as envisaged by the parties
4 until the closing of the contract, at the earliest, in 1989.

5 A That's my recollection.

6 Q 24 And do you know whether or not that payment was to be subject to there being
7 successful or buildable planning permission, in other words was the original
8 intention that Mr. Stanley would get the million pounds irrespective of whether
9 the land value increased because of planning permission or was it the case that
10 he was to get the one million pounds only if planning permission was obtained?
11 Have you any recollection?

12 A My understanding of it at the time was that it would be when planning
13 permission was obtained.

14 Q 25 And whilst we know that the value, which Mr. Tracey was receiving at this time,
15 was 540,000 pounds, which was considerably in excess of the agricultural value
16 of the land, I mean the bare agricultural value of the land, is it the way that
17 it was still well below what the development potential per acre would be?

18 A Correct.

19 Q 26 So if one was trying to evaluate the extent to which one million pounds
20 represented a commission, one would look to its ultimate value rather than the
21 purchase price.

22 A Correct.

23 Q 27 Now, it appears from this document that Mr. Caldwell did not take issue with
24 the fact that one million pounds in some shape or form might be payable to
25 Mr. Stanley, but that it was not going to be paid at the closing date in 1989,
26 for the reasons advanced here, that if one had to carry the borrowing from 1989
27 for a further two years or so after zoning had been obtained, that that would
28 make the whole deal financially unviable.

29 A I think that's correct, yes. That's my understanding as well.

30 Q 28 Now, he proposed or he records here, that after making his understanding known,

1 that Mr. Charlton said that he would talk to his man, presumably Mr. Stanley
2 and is that your recollection, that leaving that meeting, yourself and
3 Mr. Charlton were of the view that you would have to see what Mr. Stanley's
4 view would be to a proposal, in which he would possibly get shares or a
5 percentage in the company, rather than one million pounds?

6 A This was the first occasion that the question of shares had been brought up.

7 Q 29 Yes.

8 A And up to this point, we understood that it was a cash deal between Sam Stanley
9 and Jim Kennedy.

10 Q 30 Right.

11 A And that the figure mentioned by our client was one million pounds. This was
12 the first time that the question of a shareholders' agreement was suggested by
13 Mr. Caldwell.

14 Q 31 And in Mr. Caldwell suggesting that share agreement, is it the case that he did
15 not indicate that there was already an agreement between Mr. Kennedy and
16 Mr. Stanley that there would be such a shareholding, but rather that
17 Mr. Charlton was to take instructions as to whether such a proposal would be
18 acceptable.

19 A Sorry, I didn't get that.

20 Q 32 Mr. Charlton was cross-examined on the basis of an account of events of
21 Mr. Charlton's was, sorry, of Mr. Caldwell's was put to him and in that account
22 of events, it was suggested that Mr. Caldwell had indicated that there was in
23 fact an agreement between the parties that there would be an 80-20 sharing
24 arrangement and that that was his understanding coming to this meeting.

25 A Right. That wouldn't have been my understanding.

26 Q 33 No. And certainly where he says that you were to talk to your man about it --

27 A Yes.

28 Q 34 -- did you believe that that was to put that proposal to him and is that in
29 fact what you did, was to put that proposal to him?

30 A Correct.

1 Q 35 And obviously in doing so, the question of there being a sub sale was out the
2 picture, if he was to go that route, there was no longer going to be a sub
3 sale.

4 A Well that was Mr. Caldwell's suggestion.

5 Q 36 And on page 190, in your letter to your client, Mr. Stanley, at paragraph 4,
6 you say as follows:

7 "It may have originally been intended to proceed by way of a sub sale, but we
8 understand that this is now not -- is not now the intention. However a matter
9 of great importance is the question of securing your interest in the
10 transaction, whether by way of shareholding in the company or any other
11 alternative methods." And then you go on to say "As suggested in our letter of
12 the 29th of June, it would be important to have a meeting to discuss the
13 various outstanding problems. This is now becoming extremely urgent as John
14 Caldwell, acting for the third party, and ourselves agree, that the vendor may
15 try to get out of the existing contract."

16

17 So, you are indicating to your client here possibly an uncertainty as to
18 whether or not there was an instruction to go ahead with the sub sale or
19 otherwise.

20 A Yes.

21 Q 37 The idea of there being a shareholding then is discussed at page 193, the very
22 bottom of that. On 193, in the penultimate paragraph there, you are in this
23 letter, writing to Mr. Caldwell and you say:

24 "We refer to our discussion about how our client, Mr. Stanley, is to be secured
25 in his agreement for the future with your client, Mr. Jim Kennedy, and/or his
26 company. We also understood from you that this had not been finally resolved
27 between Mr. Stanley and Mr. Kennedy." So this is some two days after your
28 earlier communication.

29 A Yes.

30 Q 38 The proposal that there should be a shareholding and possibly some element of

1 cash in the transaction seems to have emanated from the Reddy Charlton side, if
2 I might put it that way as we see on page 208 where there's an attendance of
3 the 18th of July. This is four days after the letter to Mr. Caldwell. Where
4 the person who took this attendance says that:

5 "I discussed with Mr. Stanley the question of his arrangements with Mr. Kennedy
6 and I told him of the letter we had sent to Binchy and Partners, we could only
7 act on Mr. Stanley's behalf and if we were to act for Paisley Park Investments
8 Ltd, it could only be with Mr. Stanley's agreement. I pointed out to
9 Mr. Stanley that he wanted cash for his profit element. Mr. Kennedy on the
10 other hand wanted to give him shares. I suggested there was a third way and
11 that would be a mixture of both.

12
13 Mr. Stanley stated that he would be agreeable to this."

14
15 It's the genesis of the suggestion that there should be a shareholding
16 agreement. In other words, it's not come from Mr. Stanley, but rather from
17 yourself, is that right?

18 A From Mr. Caldwell.

19 Q 39 Well Mr. Caldwell proposed it to you or to Mr. Charlton and yourself at the
20 meeting of the 4th of July. This is now two weeks later and you are discussing
21 the matter with your client and --

22 A Yes.

23 Q 40 And what is said here is that, "I suggested there was a third way and that
24 could be a mixture of both."

25 A Yes. Yes. We suggested that there is a compromise which would be a mixture of
26 cash and shares, yeah.

27 Q 41 That in fact didn't take place in the sense of there being a cash payment,
28 followed by a shareholding.

29 A No.

30 Q 42 But the shareholding, if translated, would realise cash, is that the way

1 ultimately it was intended to work.

2 A Yes.

3 Q 43 We then see that there is this dispute going on around this time, as to whether
4 or not Reddy Charlton are the solicitors to Paisley Park or otherwise, isn't
5 that right?

6 A That's right.

7 Q 44 Page 217, in a letter which Mr. Charlton wrote to Mr. Caldwell, it says in the
8 final paragraph.

9 "As indicated by your client, Mr. Caldwell, at the recent meeting" -- and I
10 think the only meeting to that point was the meeting of the 4th July, a little
11 over two weeks earlier --

12 A Yes.

13 Q 45 "At this office, the agreement between Mr. Kennedy and Mr. Stanley is that
14 shares to is a value of one million pounds in Paisley Park Investments Ltd
15 would be issued to Siteland Management Limited and/or Mr. Stanley and this is
16 to be the subject matter of a shareholders' agreement to protect the interests
17 of Mr. Stanley. Please let me hear from you in this regard."

18 A Yes.

19 Q 46 So that proposal emanated with the addition, the PS, postscript there,
20 "Mr. Stanley has raised the question of being paid cash or a mixture of shares
21 and cash."

22 A Yes, that emanated from the meeting with Mr. Stanley.

23 Q 47 One of the matters which was indicated to Binchy and Partners in this letter is
24 in the paragraph immediately above that, which I read to you, which says
25 "Having discussed the matter with Mr. Stanley, he has expressed his agreement
26 to our acting formally on behalf of Paisley Park Investments Ltd in this
27 transaction." You see that?

28 A Yes.

29 Q 48 And that was followed up or rather at the same time as this letter was written,
30 a handwritten authority was received from Mr. Stanley allowing your firm to act

1 for Paisley Park?

2 A I recall that, yes.

3 Q 49 Now we know or it's apparent from the documentation that shortly after this, a
4 caution was registered on the folio of the lands.

5 A Yes.

6 Q 50 But it was registered by a solicitor called Frank Friel, Frank Friel and
7 company?

8 A Yes.

9 Q 51 And in support of that caution there was an affidavit sworn by Mr. Martin
10 Bullock in which Mr. Martin Bullock sought to ensure that the interests of
11 Paisley Park were protected on the folio by registering this caution and saying
12 that there was a contract in existence between the vendor Mr. Tracey and
13 Mr. Gerard Charlton in trust and that Mr. Charlton was acting for Paisley Park
14 Investments.

15 A Yes.

16 Q 52 And that took place almost immediately after you had confirmed to Binchy &
17 Partners that, as you say here.

18 "Our client has expressed his agreement to our acting formally on behalf of
19 Paisley Park Investments Ltd." Were you ever contacted by Binchys to say that
20 they were going to move to register a caution on the lands in favour of Paisley
21 Park?

22 A Not to my knowledge.

23 Q 53 And of course that would be, I suppose, a formal recognition on the title that
24 Paisley Park was a person who was contractually entitled to acquire the lands,
25 isn't that right?

26 A Oh yes.

27 Q 54 And if that avenue was pursued, Mr. Stanley's position at this stage might be
28 in jeopardy, is that right, as regards securing his payment of a million
29 pounds?

30 A If it could be established, but I wouldn't have accepted that was the position.

1 Q 55 True. Insofar as there was documentation which would evidence the contract
2 between Mr. Tracey and a purchaser, that was documentation which remained in
3 the possession of Reddy Charlton at this point, isn't that right?

4 A Correct.

5 Q 56 And obviously then for to be an enforceable contract, there would have to be a
6 note or memorandum and you retained that note or memorandum?

7 A Yes, that's correct.

8 Q 57 Mr. Bullock at some stage, in fact, wrote to you asking for the documents to be
9 sent to his firm, to him in the Isle of Man, isn't that right?

10 A That's right.

11 Q 58 But the documents were not so sent?

12 A No.

13 Q 59 They stayed with you. The issue of there being a share agreement under which
14 Mr. Stanley was to get one million pounds worth of shares was something that
15 was disputed by Mr. Caldwell as we see at page 227 where at the bottom of that
16 letter he says "I reject the statement that I indicated to you that there was
17 an agreement in relation to the share value of one million pounds."

18
19 Now in that, it can be read as saying he rejects that there was a share
20 agreement at all or that there was a share agreement that the shares to the
21 value of one million pounds would be given, isn't that right?

22 A That's correct, yes.

23 Q 60 And that issue then was joined by yourself I think in, sorry, by Mr. Charlton
24 in his response at 238 in the second last two paragraphs of that page where it
25 is said "We have already advised our clients it would be essential to the terms
26 of the agreement between our clients and Mr. Kennedy/Paisley Park Investments
27 Ltd clarified before any such agreement is concluded." Now the agreement
28 that's been referred to there is the purchase agreement with Mr. Russell, the
29 solicitor acting on behalf of Mr. Tracey but what's stated here is that before
30 you go there, you are going to have to resolve the issue between Mr. Kennedy

1 and Mr. Tracey, isn't is that right?

2 A That's correct.

3 Q 61 And then "We note with surprise the last paragraph of your letter of the 22nd.
4 During a meeting held at this office" -- and that again is the meeting of the
5 4th of July, some 24 days earlier -- "Mr. Caldwell clearly confirmed that there
6 was an agreement between Mr. Kennedy and Siteland Management Limited for the
7 allotment of shares to the value of one million pounds in Paisley to Siteland."
8 That I think on reflection is probably not accurate insofar as Mr. Caldwell was
9 putting forward a proposal at that point in time rather than reciting that
10 there was an agreement, isn't that right?

11 A Yes.

12 Q 62 This was in late July and it wasn't, I think, until late August that there
13 actually was a concluded agreement on the issue between Mr. Kennedy and
14 Mr. Stanley as far as your firm was concerned?

15 A Yes, that's correct.

16 Q 63 And we see at page 288 there was a handwritten attendance of the 31st August
17 1988 which records at the top as follows "20 percent agreed with J Kennedy and
18 Paisley. Kennedy doesn't mind paying out one million as soon as it
19 is available instead of 20 percent stake. They expect planning permission
20 before Christmas. Kennedy will pay fees of Paisley and also will pay the 1,000
21 pounds for Stanley." Ask Caldwell I think is the reference.

22 A Yes.

23 Q 64 Now, that agreement as it's noted here suggests that whilst there's a 20
24 percent shareholding in the company agreed, the real point of the agreement is
25 that a million pounds will be paid and that it might be paid ahead of any
26 realisation of the --

27 A Well that's what Mr. Stanley was telling us anyway, yeah.

28 Q 65 But that's what you understood the agreement to be?

29 A Oh yes, that he would get a million pounds, yeah.

30 Q 66 Right. The company La Mira here we know is substituted subsequently by Xenon

1 and we are aware from the documentation which came from Mr. Corcoran that he
2 believed it would be inappropriate that a Manx company would hold a Manx asset,
3 presumably for tax structure purposes.

4 A Yes.

5 Q 67 And therefore Xenon comes on to the scene. Did you know who formed Xenon? Had
6 you any dealings with the setting up of that company?

7 A No, I had nothing to do with setting it up.

8 Q 68 Right. The shareholders' agreement then was something which had to be signed
9 by the parties and considered by you before it was recommended to your client
10 and we know from the evidence of Mr. Charlton that the document itself was
11 drafted by Mr. Caldwell and sent by Mr. Caldwell to your firm, is that right?

12 A That's right.

13 Q 69 And having come to your firm, it was analysed, certain alterations amendments
14 to it were proposed in correspondence which passed between your firm and
15 Mr. Caldwell, is that right?

16 A That is correct.

17 Q 70 But ultimately, you reached a point where they were not prepared to give more
18 and you were stuck in a situation where either you accepted the agreement as it
19 was or rejected it?

20 A Yes, it was a take-it-or-leave-it situation.

21 Q 71 And that arose on the 8th September where at page 301 you write to your client
22 Mr. Stanley -- sorry I'm somewhat in advance. This is when you received the
23 letter, the shareholders' agreement, you sent the draft to him, you invited him
24 to consider it and then any amendments that might be necessary. You expressed
25 the view that it seemed reasonable subject to assurances you might regard in
26 paragraph 8(b) and the writer would be out of the country in the coming week
27 and you could contact Paul Keane regarding the enclosed draft.

28

29 Mr. Stanley has indicated that he had no recollection of actually proposing
30 amendments himself but that he left it in the hands of yourselves to advise him

1 on it and you did so advise.

2 A Yes, that's right.

3 Q 72 And as a result of that, he received advice that his interests had been
4 protected and that was about two months later and you see at page 339 you write
5 to him on the 4th of November, the first paragraph of which you say "We confirm
6 that we have now received a letter from John Caldwell in response to your
7 letter of the 21st November requesting further amendments to the shareholders'
8 agreement. Having gone through the agreement in the amended memorandum and
9 articles of association of the company, we are satisfied that your interests
10 are protected. They have not agreed to all the amendments suggested by us but
11 in view of the fact that you are a minority shareholder, holding 20 percent, we
12 feel that the amendments they have agreed to are adequate and in any event,
13 they have made it clear that they have made substantial concessions and are not
14 prepared to concede any further."

15

16 Now in that, you obviously had read the document, you had adjudicated on its
17 merits from your client's point of view and you were satisfied that firstly it
18 would confer a 20 percent shareholding on him in the company, isn't that right?

19 A That's correct.

20 Q 73 Now we know that the shareholding in the company at that time was that it had
21 the potential to issue 2,000 shares of one pound each, isn't that right?

22 A That's right.

23 Q 74 But the only shares issued to that point in time were two shares to the
24 original subscribers, they in turn had been transferred or -- yes, transferred
25 to Mr. Bullock and Mr. Harker who were the two directors of the company?

26 A That's right.

27 Q 75 And what was now intended as an adjunct to the shareholding agreement is that
28 further shares would be issued as A shares and B shares so as to bring the
29 total number of shares issued to one hundred, of which your client would hold
30 20 shares and the other 80 would be divided as between 78 to the other entity,

1 the other entities, Maskani and Renzenbrinck and one share each to Mr. Bullock
2 and Mr. Harker.

3 A Yes.

4 Q 76 Did you ever consider whether or not the other shares, that is the other 1900
5 shares which were not issued, did you give any consideration to the fact that
6 those shares might be issued to others and in that way that your own client's
7 interest would be diluted to the extent that he would be the holder of 20
8 shares out of 2,000 rather than 20 shares out of 100?

9 A Well I should explain, perhaps, that that was the position but I was not
10 actually dealing with the commercial or the commercial law aspects of the
11 shareholders' agreement. That was done by our commercial department, Paul
12 Keane and his department so I wouldn't have considered that aspect of the
13 matter.

14 Q 77 I see. Insofar as Mr. Keane considered it, presumably he took the information
15 either from yourself or from Mr. Charlton as we don't see there being any
16 attendance on Mr. Stanley with Mr. Keane, isn't that right?

17 A That appears to be the case, yes.

18 Q 78 Your understanding at this time in point in writing to your client in November
19 that it was an agreement, if implemented, which protected his interests and his
20 interests at that time, as far as you are concerned, was to obtain one million
21 pounds once the transaction had progressed to the point where the property was
22 acquired by Paisley Park and it got planning permission and rezoning
23 permission?

24 A Yes, that's right.

25 Q 79 We know from the agreement itself there were a number of parties to it in
26 addition to Paisley Park. If we just run through the parties. Firstly,
27 there's Paisley Park Investments Ltd which at that point in time you knew to be
28 an Isle of Man registered limited liability company which was a private
29 company.

30 A That's correct.

1 Q 80 And who did you understand to be the principals before your client,
2 Mr. Stanley, became involved with it? Who were at that point in time did you
3 understand to be the ultimate beneficial owners of Paisley Park Investments
4 Ltd?

5 A I can only say what I understood from Mr. Stanley, namely that I always
6 understood Jim Kennedy was Paisley Park.

7 Q 81 Right. Now in your writing to Mr. Caldwell and there's an amount of
8 correspondence leading to this date, there are references from your firm to
9 Mr. Kennedy/Paisley Park, isn't that right?

10 A Yes.

11 Q 82 At any point in time -- and I can tell you that it's not disputed in the
12 correspondence but for completeness -- in any telephone response to any of your
13 letters, was it ever indicated to you that your assumption that Kennedy/Paisley
14 Park was one and the same, was an erroneous assumption on your part?

15 A No, no, never.

16 Q 83 Equally, I think it's common case that Mr. Caldwell didn't surface anywhere in
17 this documentation over the years as being a person who claimed a personal
18 interest?

19 A No I wouldn't have been aware of that. I mean I didn't understand that to be
20 the case.

21 Q 84 Sure. In the exchanges which took place and they were both by telephone, in
22 writing and face to face at meetings, it is the case that Mr. Caldwell never
23 said I am a party to this transaction and my views have to be respected and
24 dealt with?

25 A No, no.

26 Q 85 Although you were acting for the company Paisley Park Investments Ltd of which
27 it would appear, if one accepts Mr. Caldwell's evidence on this point, he was
28 in fact the an ultimate beneficial owner.

29 A I discovered that from reading the brief but that came as a surprise to me.

30 Q 86 When the Isle of Man agents who were representing the interests of Xenon, which

1 was the company through which Mr. Stanley was to hold his interests, wrote to
2 you, you communicated with him on the 21st of November 1988 which we see at
3 page 369. This was your communication with Jim McDonald esquire and I think
4 that he is an accountant in a firm of accountants called Thompsons in the Isle
5 of Man at the time.

6 A Yes, I wasn't aware of that at that time but I believe that's what he is, yes.

7 Q 87 He telephoned you apparently from this document and further to that telephone
8 communication, you then wrote to him saying that we furnish the following
9 resume of the shareholders' agreement.

10 A That's right.

11 Q 88 Now, he evidently had the written document, the written shareholders' agreement
12 which had been executed by the parties by that time?

13 A Yes.

14 Q 89 When I say executed, I really mean that it had been approved by the lawyers for
15 execution, it was sent to him for execution?

16 A That's right.

17 Q 90 On behalf of Xenon. So obviously in his telephone communication, he must have
18 asked you what the background to this shareholders' agreement was.

19 A Yes, he asked me for a resume of what was the background and I agreed to send
20 him this letter.

21 Q 91 And this is your best summation of what the relationship between the parties
22 was at that time?

23 A Yes.

24 Q 92 You say "The agreement is in essence putting into formal legal language the
25 existing verbal agreement between the parties." So from that we gather that
26 it's a verbal agreement number one and it's made between the parties, that is
27 Mr. Stanley and Mr. Kennedy.

28 A Yes, I probably would have been a bit inaccurate in saying between the parties.
29 The parties in my reference there are Sam Stanley and Jim Kennedy, not Xenon
30 and the other companies.

1 Q 93 No. "The agreement is intended to be security for the sum of one million
2 pounds to be paid to Xenon Limited as a priority out of the dividends from the
3 profits of the development intended to be carried out by Paisley Park
4 Investments Ltd at lands at Carrickmines, County Dublin." The phraseology of
5 that, Mr. O' Siochain, certainly seems to suggest that the agreement is
6 security for the payment of monies?

7 A Correct.

8 Q 94 Isn't that right? Not that it independently is conferring a right but that it
9 is security for another agreement?

10 A The verbal agreement, yes.

11 Q 95 Yes.

12 A The verbal agreement between Jim Kennedy and Sam Stanley.

13 Q 96 You go on then in the next paragraph to say "The agreement does not
14 specifically refer to a sum of one million pounds but it was verbally agreed
15 that the security would be in the form of 20 percent of the dividends of the
16 enterprise." Now, again at this point in time, can you offer any explanation
17 as to why there wasn't a reference to one million pounds in some written
18 agreement rather than relying upon the verbal agreement which you recite here?

19 A My understanding was that the 20 percent at the time or I should say when the
20 agreement came to fruition, at the time it would come to fruition that the
21 value of lands would be approximately five to six million pounds and 20 percent
22 of that would be, roughly speaking, a million pounds.

23 Q 97 Right.

24 A So the understanding was that he would get 20 percent of the company, 20
25 percent of the company which would approximate to what the verbal agreement
26 would amount to.

27 Q 98 We know that at this point in time on the 21st of November 1988, you were both
28 the solicitor to Paisley Park in the context of being the acquiring body from
29 Mr. Tracey.

30 A Yes.

1 Q 99 And you also were dealing with this shareholding agreement in relation to
2 Paisley Park.

3 A Yes.

4 Q 100 In which various parties were going to hold disparate interests, isn't that
5 right?

6 A That's right.

7 Q 101 Did you ever give any consideration at this time to the possibility that those
8 parties, the shareholders might fall out between themselves as to what the
9 interpretation of their arrangement was?

10 A I didn't particularly, no.

11 Q 102 So when we look to the agreement itself, which we will see at page 594 --

12

13 CHAIRMAN: Mr. O'Neill, perhaps -- it's gone one o'clock. We won't sit until
14 ten past two.

15

16 MR. O'NEILL: Very good.

17

18 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2.10 P.M.

MR. O'NEILL: Mr. O' Siochain please.

CONTINUATION OF QUESTIONING OF MR. RONAN O'SIOCHAIN

BY MR. O'NEILL:

Q 103 Before the lunch break, Mr. O' Siochain, we were looking at the document at page 594 which is the front page of the shareholders' agreement which is represented in a deed dated the 14th June of 1989. Could we have that on screen please. 594. And you will see in this document, there is reference to a number of corporate entities, the first of which is Maskani Management Limited; second, Renzenbrinck Investments Limited; thirdly, Xenon Investments Limited and fourthly, Paisley Park Investments Ltd. To this point, we had been discussing an agreement regarding the shareholding in Paisley Park which was to be reflected by 80 percent of the shares being owned by persons other than Xenon, Xenon was to own 20, isn't that right?

A That's right.

Q 104 But it seems to have moved forward to a point where there were to be two parties owning 40 percent and one party owning 20, isn't that right?

A That's correct.

Q 105 And your understanding was that Paisley Park was effectively owned by one party, Mr. Kennedy, as far as you knew from anything, you had had dealings with Mr. Caldwell or anybody else. Did you ever seek to enquire as to why it was that two further parties were being added to this arrangement rather than one?

A No, I didn't.

Q 106 Was it your belief that whichever parties there were to the shareholding agreement, that were not your own client, were Kennedy interests?

A Yes.

1 Q 107The other two interests here, that's Maskani and Renzenbrinck, apparently were
2 to have equal shares in this venture as you know?

3 A Yes.

4 Q 108So that one could effectively cancel out the other, in a way, in any voting
5 arrangement that might take place.

6 A I hear what you say. I didn't -- I was satisfied that my client was getting 20
7 percent and how the other 80 percent was split was not a matter that concerned
8 me.

9 Q 109It was also apparent that one of them was in Panama, whatever about accessing
10 information from Douglas in the Isle of Man, it might be very difficult to deal
11 with a Panamanian entity.

12 A Yes, I would imagine so.

13 Q 110So you never asked Mr. Caldwell, anyway, to prepare the draft document, as to
14 why it was that he had seemingly delivered a document which had two 40 percent
15 interests and one 20 percent interest.

16 A No.

17 Q 111Your focus was on the fact that there appeared to be a 20 percent interest that
18 would be retained for your client and that would be the lever that would be
19 used to --

20 A I assume that they had some reasons for Mr. Kennedy's interests being
21 represented in the way it is. I didn't really enquire into that.

22 Q 112Was it your understanding at this time that Mr. Stanley had, in effect, earned
23 his contribution towards the shares by producing a contract from Mr. Tracey
24 which was going to be utilised for the benefit of the other shareholders?

25 A Yes, and presumably work that he might also be asked to do in the future in
26 getting the planning permission.

27 Q 113Right. We know that some two years after this document, in April of 1991, a
28 call was made upon your client for 20 percent of the cash necessary to buy the
29 land --

30 A Yes.

1 Q 114 From Mr. Tracey, is that right?

2 A That's right.

3 Q 115 And I take it that that caused you some considerable concern to see that
4 somebody could mount such a claim?

5 A Yes, to put it mildly, yes, that did concern me.

6 Q 116 As far as you were concerned, to that point it had not formed any part of the
7 arrangement between the parties and you had, as far as you were concerned,
8 catered for all the protection that would be necessary for Mr. Stanley to give
9 effect to what you understood the agreement to be?

10 A Correct, in fact the contrary was my view, my view was that the contrary, the
11 position as we have already seen is expressed by Mr. Caldwell in his own
12 memorandum where he says that the 20 percent was to be free until planning
13 permission was obtained.

14 Q 117 Well certainly that's an interpretation you put on that document and, just for
15 completeness, it seems that Mr. Caldwell has another interpretation to put on
16 it and we had better just look at the document in that context. It's page 172,
17 the reference to 20 percent and the payment was that, "There would be no
18 payment in relation to the 20 percent in respect of which purchase agreement
19 would operate before a buildable planning permission issued." What
20 Mr. Caldwell says this means, according to what was advanced yesterday by
21 Mr. Finlay, was that the 20 percent reference means that it was not to be paid
22 for by the other shareholders. That's the interpretation he puts on it. Your
23 interpretation is that he, Mr. Stanley, was not to make any payment for it
24 before a buildable planning permission issued. But I suggest to you that
25 possibly the third interpretation of it that I'll put to you is probably the
26 more accurate one, and that is that there would be no payment out to Stanley
27 until a buildable planning permission is issued. In any event, this is
28 Mr. Caldwell's note, this is how he interprets it. But, from the agreement
29 that you have indicated to us, there was never going to be a payment for that
30 20 percent by Mr. Stanley --

1 A That was his, those were my instructions.

2 Q 118At the beginning or the end, it matters not whether there was going to be a
3 buildable planning permission, he was not going to be called upon for the 20
4 percent --

5 A Exactly, that was my client's position.

6 Q 119We know from the documentation which has been considered that the initial
7 position adopted by Mr. Caldwell in April was to say that your client was
8 obliged to find 20 percent of the cash which would then be expended by the
9 company to acquire the asset.

10 A Yes.

11 Q 120And that this situation subsequently changed to one where company itself made a
12 call upon its shareholders requiring them, in the event that they wanted to
13 maintain their proportionate shareholding, to contribute at the rate of 375.25
14 pounds sterling per share, isn't that so?

15 A Yes, that's right.

16 Q 121And this position was one which arose in the first instance one week after the
17 date upon which the contract should have been closed.

18 A Correct.

19 Q 122And I think you took a view of the entire situation here in the context of what
20 had taken place since 1989. Firstly, you drew attention to the fact that,
21 whilst the deposit of 50,000 pounds had been paid in 1989 in combination, I
22 should say, with the monies that were paid earlier in 1988; that your client,
23 Mr. Stanley, had not paid up 20 percent of that contribution which would be
24 10,000 pounds.

25 A Correct.

26 Q 123And you indicated that this was evidence of the fact that there was no such
27 agreement, but this was rejected by Mr. Caldwell?

28 A That's correct.

29 Q 124Nonetheless, it appears that the company proceeded with its share allotment,
30 the effect of which was that the 20 shares held by Xenon Limited ultimately

1 represented one percent only of the shares issued in the company?

2 A That's right.

3 Q 125And in addition to that, you then learned that there was a resolution passed by
4 the company to the effect that there would be a distribution in specie so that
5 the land would go in its entirety to the 99 percent shareholder.

6 A Yes.

7 Q 126And the interest of your client or of Xenon and your client would be translated
8 into a cash payment of approximately 7,000 pounds sterling?

9 A That's right.

10 Q 127So that the agreement that you had hoped would ensure that your client was
11 protected to the extent of a million pounds had now translated into a situation
12 where it was being claimed by the company's owners that that interest was only
13 worth 7, and that that was the consideration for the transaction in effect?

14 A I didn't accept that but that's what they were saying, yes.

15 Q 128Right. Now we know that you sought the advices of counsel, that there were
16 attendances between yourself and your client and these culminated in a letter,
17 as far as we see, at page 968 of Mr. Senan Allen, the third paragraph he says
18 "I think Mr. Stanley is snookered". He was at that time reviewing the
19 situation which had occurred, namely that the new shares had been issued at a
20 premium reflecting the purchase price of the lands.

21 A That's right.

22 Q 129Mr. Charlton was of the view that at that point in time counsel was offering a
23 view on the basis of the documents which had been supplied to him. Now
24 obviously where in paragraph 4 counsel says, "I have always had some
25 difficulty in understanding why Mr. Stanley might have been made a gift of one
26 million pounds, I was as clear in my view from the shareholders' agreement that
27 he might in the future be requested to put up more money if he was to retain
28 his proportionate shareholding." The explanation for that was something that
29 rested with yourself and Mr. Charlton, isn't that right?

30 A That's correct.

1 Q 130And obviously is there anything to indicate that that was made known to counsel
2 at this point, because he doesn't seem to refer to there being a verbal
3 agreement under which a million pounds was to be provided on the terms that we
4 now know --

5 A I think he was interpreting the document just on its own. I think he was given
6 the document to interpret it on its own.

7 Q 131Right. Obviously some reference was made of the fact of there being one
8 million pounds because that doesn't appear from the document itself. There's
9 no mention of a million pounds in the document.

10 A No, there isn't.

11 Q 132For the reason that you explained in your letter to Mr. McDonald in November of
12 1989 you said that it was part of a verbal agreement. I'm just wondering how
13 it was that counsel could come to this view on the one million without having
14 some detailed instructions from somebody about what the million pounds was for.

15 A Yes, well I presume that -- I can't recall exactly what -- I don't have my file
16 which, presumably, would also include whatever the brief was, but I'd be
17 surprised if I hadn't explained to him that the shareholders' agreement was to
18 replace an original verbal agreement for a million pounds.

19 Q 133We'll see that in May 1991, Mr. Caldwell ceases to be your correspondent in
20 relation to the company and Mr. Bullock starts writing to you and you respond
21 to him later in the month. It is to him at document 981 that you indicate that
22 the validity of the notice is being challenged, that is the notice served on
23 Xenon Investments.

24 A Yes.

25 Q 134And you indicate that you note what he says in relation to the directors'
26 decision to fund the acquisition by allotting further shares to the
27 shareholders. "In this connection we have already made our client's position
28 very clear in correspondence both with yourself and John Caldwell of Binchy &
29 Partners. Our clients repeat that the purported allotment of shares is not a
30 bona fide attempt to raise capital but is, in effect, an attempt to squeeze

1 out Xenon Investments from its legal entitlement and/or to dilute the
2 shareholding in Paisley. No doubt you are aware that Mr. Kennedy recently
3 approached Mr. Stanley on the one hand asking the latter to provide part of the
4 purchase price and, on the other hand, offering to buy out our client's
5 interest at a preposterously low price. The agreement was that Paisley would
6 borrow the finance to purchase the lands and/or that Mr. Kennedy would lend the
7 same to the company at a reasonable rate of interest. Mr. Kennedy is called
8 upon to honour this agreement."

9
10 Now, that position which you adopted was rejected by Mr. Bullock in a document
11 which we see at page 977 and in that document, he draws attention to the
12 absence of any reference to the one million pounds that was to be paid in the
13 shareholders' agreement. We see it in the second paragraph he says "I am not
14 aware of any discussions between Mr. Kennedy and Mr. Stanley. Indeed if any
15 discussions have occurred, that is a matter between them." If I stop at that
16 point there. The discussions which had taken place, in fact, were discussions
17 which involved not only Mr. Kennedy and Mr. Stanley but also Mr. Caldwell,
18 isn't that right?

19 A Yes. We had, as you know, a meeting with Mr. Caldwell, myself and Mr. Charlton
20 had.

21 Q 135And whilst Mr. Bullock is here advancing a position on behalf of the directors
22 of the company and, as we see later in the document, he will suggest that
23 Mr. Kennedy was only an estate agent in this transaction, what was the factual
24 position as far as you are concerned as to the role of the directors, both
25 Mr. Bullock and Mr. Harker? Were they principals, were they agents?

26 A I had understood that Mr. Kennedy was the principal on all accounts and I
27 suppose I assumed that they were nominee directors of some sort.

28 Q 136Right. And the next paragraph we will see that Mr. Bullock says "I deny on
29 behalf of Paisley that the agreement alleged by your client exists or ever
30 existed. Neither this company nor its directors were ever informed of any such

1 alleged agreement, either by Mr. Stanley or Mr. Kennedy or Xenon and this
2 company could reasonably and properly have expected that it would be informed
3 of any such agreement by at least one of those parties."

4
5 Did you know of any impediment there would be in Mr. Bullock contacting either
6 Mr. Caldwell or Mr. Kennedy to establish whether or not such an agreement did,
7 in fact, exist?

8 A Of course not. In fact, I would have understood that when Mr. Bullock was
9 writing to me, I actually understood that Mr. Kennedy was writing to me. I
10 would have understood that -- I think Mr. Stanley at one point said to me that
11 Mr. Kennedy would basically draft all these letters anyway.

12 Q 137Mr. Bullock goes on to say "It is my understanding that there is a full and
13 elaborate shareholders' agreement between the company's shareholders. I find
14 it amazing that in view of such an agreement, the agreement alleged by your
15 client is not contained in that document. In any event, Mr. Kennedy does not
16 have any authority under the terms of his estate agency agreement or otherwise
17 with this company to bind this company."

18
19 Now, to that point in time, had there been any reference to Mr. Kennedy acting
20 in the capacity as an estate agent in his dealings on behalf of this land?

21 A None whatsoever, there was no reality in that at all.

22 Q 138In 1989 when it came to the signing of the agreement by Paisley Park,
23 ultimately by Paisley Park Investments Ltd, in November of 1989, you were the
24 person who had signed the document in trust.

25 A Correct.

26 Q 139Isn't that right? And you had signed that document in trust on behalf of
27 Paisley Park Investments Ltd and Mr. Bullock subsequently confirmed that you
28 were entitled to do so, isn't that right?

29 A That's correct, I had written instructions from the Isle of Man.

30 Q 140Now, before that agreement was reached -- sorry, before you signed that

1 agreement which was in the standard form of the Incorporated Law Society
2 Conditions of Sale of the time, there had been negotiations conducted directly
3 between Mr. Kennedy and Mr. Tracey, the vendor of the lands, isn't that right?

4 A Yes.

5 Q 141And these were being conducted independently of legal proceedings which had
6 been commenced by Paisley Park Investments Ltd for a specific performance of
7 the contract and in which --

8 A The earlier contract.

9 Q 142Of the earlier contract, and in which advices had been received which were
10 described as pessimistic as to the chances of success.

11 A Correct.

12 Q 143But Mr. Kennedy and Mr. Stanley, as we know, went on and reached this agreement
13 in November to settle the affairs by increasing the purchase price to the sum
14 of 700,000.

15 A Yes.

16 Q 144And it appears that to implement this agreement, Mr. Russell was in contact
17 with you on the 15th of November of 1989 --

18 A Yes.

19 Q 145-- and he took a detailed attendance of that meeting which we see at page 690
20 and subsequently. At page 690, the very top of the page it records that "Ronan
21 O'Siochain rang. He confirms that he will be signing the contracts, not
22 Mr. Kennedy. He is also getting a deposit. I will fax over the contracts in
23 due course."

24

25 Now, apparently Mr. Kennedy had wanted to sign this contract himself, without
26 reference to yourself. Did you know that?

27 A No, that would surprise me I must say.

28 Q 146And that Mr. Russell will say that, as a matter of professional courtesy, he
29 informed Mr. Kennedy that since there was a solicitor on record, namely
30 yourself, that the matter should properly be brought through you rather than

1 otherwise.

2 A Right.

3 Q 147You were unaware of that.

4 A Yeah. I'm sure there was some discussion between myself and Mr. Caldwell at
5 the time as to who would, whether I would sign the contract in trust and I
6 certainly got instructions to do so.

7 Q 148Oh yes. Certainly we will see that that is so, but I'm just dealing firstly
8 with what your knowledge of the concluded agreement between Mr. Kennedy and
9 Mr. Tracey was and whether or not you were aware that Mr. Kennedy had indicated
10 to Mr. Tracey that he wanted to sign the contract himself that night, that
11 subsequently Mr. Russell indicated that it should be done through you because
12 you were the solicitor on record.

13 A Yeah, the earlier parts, I am afraid I wasn't -- I'm not aware of that.

14 Q 149Very good. Once the contracts went out to you from Mr. Russell, we'll see at
15 page 691 that you returned a telephone call which he had made and you see in
16 the first paragraph there, it says "Mr. O' Siochain returned my call at 2.45
17 p.m. He tells me that Mr. Kennedy will be giving his personal guarantee to
18 indemnify Mr. Tracey against any claim by Sam Stanley. If this is not
19 acceptable to Mr. Tracey, he doubted if there could be any deal. He agrees
20 with me that obviously the best way to deal with it would be for our
21 perspective clients to agree on something."

22

23 Now, that paragraph refers to what was to be a clause in the contract dealing
24 with the payment of Mr. Sam Stanley's fees.

25 A Yes.

26 Q 150And what was sought by Mr. Tracey, the vendor, was an indemnity against any
27 claim that might be brought against him?

28 A That's right.

29 Q 151And the question was who was going to deal with that?

30 A That's correct.

1 Q 152 Do you agree with that, in your telephone call with Mr. Russell on this
2 occasion, you indicated to him that Mr. Kennedy will be giving his personal
3 guarantee to indemnify Mr. Tracey against the claim?

4 A I'm sure I did.

5 Q 153 And I take it as a solicitor you would not have indicated to another solicitor
6 that such an undertaking would be forthcoming unless Mr. Kennedy had indicated
7 to you that you were authorised to give this indemnity on his behalf?

8 A I suggested that it may have come from Mr. Caldwell, or through Mr. Caldwell, I
9 don't think I spoke to Mr. Kennedy at that stage.

10 Q 154 Right. Well if it was through Mr. Caldwell then, you were accepting the
11 undertaking of Mr. Kennedy as transmitted by his duly accredited solicitor to
12 you.

13 A Yes, that's correct.

14 Q 155 And are there any circumstances that you can see that a person who was acting
15 in an estate agency capacity only would be giving an indemnity, a personal
16 indemnity against a future payment of a liability that arose in the course of a
17 contract?

18 A Of course not.

19 Q 156 Now, it seems from this attendance that, we see the last paragraph there that
20 at 4 p.m. on the same date, Mr. Kennedy and Mr. Tracey arrived at the offices
21 of Mr. Russell.

22 A That's correct.

23 Q 157 And we see an exchange that took place there where Mr. Russell says, "I put it
24 to Mr. Kennedy that, first of all, I was speaking totally without prejudice to
25 any proceedings that were in hand, namely those under record number 799/1989
26 when I was talking to him about any possible liability of Mr. Tracey to
27 Mr. Stanley. He accepted this. I told him that my advice to Mr. Tracey was as
28 I had suggested to Mr. O' Siochain earlier. He said he would need one month to
29 get a letter from Mr. Stanley but he would not agree to the sale falling
30 through if he could not get such a letter." Now, again, Mr Kennedy is here

1 dealing as a principal, isn't that so?

2 A Yes.

3 Q 158 On the following page at page 692, Mr. Russell records that he rang you and in
4 the second paragraph, "I rang Mr. O' Siochain then and he pointed out that no
5 matter what Mr. Kennedy agreed, he had no authority to bind Paisley Park
6 Investments Ltd, although he agreed with me that Mr. Kennedy had some say in
7 the running of that company."

8

9 Now in that reference there, have you a recollection of whether or not you said
10 you had no authority to bind Paisley Park or is it intended that Mr. Kennedy
11 had no authority to bind Paisley Park?

12 A I'm surprised, I would have been surprised if I said that Mr. Kennedy had no
13 authority to bind Paisley Park, but I obviously said something to that effect.
14 I would imagine -- I'm surmising now, but I think I was saying something in the
15 context of, that I was dealing with Mr. Caldwell in relation to this matter and
16 I didn't want Mr. Kennedy getting involved or appearing to -- you know, there
17 were enough solicitors involved as it was. But, I mean, on the net point of
18 having authority to bind Paisley Park, I would be very surprised if I said that
19 or -- I didn't mean it anyway in the sense that it is there. I certainly would
20 have had the view at the time that Mr. Kennedy was in a position to bind
21 Paisley Park.

22 Q 159 So that insofar as this interpretation is taken by Mr. Russell, if he did
23 record that at that time, that is not what you intended to convey?

24 A I am sure Mr. Russell recorded exactly what he understood me to say. I'm not
25 questioning that at all. I'm saying that I'm not sure what I meant by what I
26 said, put it that way. I definitely did not mean that Mr. Kennedy did not have
27 authority to bind Paisley Park.

28 Q 160 You see in the next paragraph then that Mr. Russell records "That Mr. Kennedy
29 then spoke with Mr. O' Siochain", and that's obviously on the telephone?

30 A Correct.

1 Q 161 "From his office. Mr. Russell left the room at that point." Now, he records
2 that Mr. Kennedy spoke to Mr. Caldwell and with Mr. Siochain by telephone a
3 number of times. Does that accord with your recollection? Do you remember
4 that Mr. Caldwell --

5 A I'm sure it's correct. I don't recollect it at all. But I am sure it is
6 correct. I don't recollect anything to do with the conversation I had with
7 Mr. Kennedy, for instance. I did not want to speak to Mr. Kennedy. I'm sure I
8 spoke to him under protest, shall we say, and I may not have been paying too
9 much attention to what he was saying. I certainly didn't want to speak to him.
10 I didn't feel that I wanted him to get involved. My instructions had already
11 been expressed and I didn't want him to get involved.

12 Q 162 In the next paragraph then you see that Mr. Russell records that "We then went
13 back into the room" and I think by that he means both himself and Mr. Tracey
14 went back into the room, and "He spoke with John Caldwell by telephone, Mr. O'
15 Siochain also being in the room when they suggested instead of the deal falling
16 through, if the letter was got from Mr. Stanley, in addition I propose special
17 condition number 9 be that the penalty for not getting the letter would be that
18 they would pay an additional 8,100 pounds on closing." That is a proposition
19 that was adopted --

20 A That's correct.

21 Q 163 And it seems that what Mr. Russell was saying here was that this discussion
22 which led to that agreement was one which took place on the telephone with
23 Mr. Caldwell and that Mr. Caldwell was in the room with you on the other end?

24 A I suspect he was in my office.

25 Q 164 Yes.

26 A Kennedy, Tracey -- and Tracey were with Mr. Russell in his office and I was in
27 my office and I'm fairly certain that, I'm sure that's correct and John
28 Caldwell must have been there as well.

29 Q 165 So that whatever exchanges took place between Mr. Kennedy and Mr. Caldwell that
30 afternoon by telephone, they took place within earshot of you who was there

1 with Mr. Caldwell receiving this information at the time.

2 A Again I accept what's in the memo. I have no recollection of it. No memory of
3 it.

4 Q 166When it came to closing this contract and paying over the money to Mr. Tracey's
5 solicitor, Mr. Russell, it seems that there were problems about producing the
6 funds, if we look to page 1043.. It's somewhat indecipherable. The money is
7 coming from a third party. Firstly it says "Called to Reddy Charlton &
8 McKnight at 3.30. This is on the 5th."

9 A Yes.

10 Q 167The anticipated closing date. "Waited 10 minutes. Told money on its way by
11 courier. I left by" -- I am not sure what that is -- "by agreement, " sorry,
12 "to return in the afternoon -- or half an hour".

13 A Half an hour, yes.

14 Q 168"Did this" something with ROS, "the money was coming from a third party, it was
15 from a third party that the illegible fax came by post." No, in your
16 discussion with Mr. Russell, there obviously was a glitch at this point in
17 time, he had attended as a matter of practice to close the deal. He expected
18 to pass over the title documentation to you as solicitor acting for the
19 purchaser and in return he would receive a draft and would leave with it, but
20 when he arrived there was no funds.

21 A I hadn't been put in funds. He, in fact, was facilitating me because normally
22 I would go to his -- as the vendor's solicitor, I would go to his office and he
23 had been in town, I think, and it suited everybody. But he facilitated me by
24 coming to my office and I was not in funds although I expected, I think I had
25 reason to expect that I should be in funds.

26 Q 169Do you know who the third party is that you refer to in your dealings with
27 Mr. Russell at this time? Obviously you were embarrassed at the fact you
28 didn't have the money, the money should have been there --

29 A Yes.

30 Q 170-- and you say that the money was coming from a third party. Normally you'd

1 expect the money to be coming from your client to meet the contract which your
2 client was entering into?

3 A Yes, but third party in that event, I'm sure, was referring to my client, I am
4 not sure I was referring to either, when I say my client, I was referring to
5 either Paisley Park or John Caldwell as their solicitor or whoever.

6 Q 171Did you, in fact, know what the source of the funds, the 667,000-odd pounds,
7 did you know what the source of that fund was?

8 A Paisley Park.

9 Q 172Paisley Park. And was that because you believed they were your client and you
10 believed they were putting up the funds?

11 A Yes.

12 Q 173Did those funds come through Binchys?

13 A I would imagine -- that's what I was expecting, that John Caldwell was
14 organising the funds and they'd come through Binchys.

15 Q 174Rather than directly from Paisley Park to you?

16 A Yes, I think so. I think so, I am not a hundred percent sure about that, but I
17 think so. I think there's some correspondence, did I write to John Caldwell
18 expressing my disappointment that funds hadn't arrived?

19 Q 175You did, there was a dispute and ultimately it was not your firm that actually
20 closed the contract at all because you and Binchy & Partners did not reach
21 agreement as to the level of fee that you were entitled to for the work which
22 had been done.

23 A That's right.

24 Q 176And as a result of that, you were informed by Binchys that you were no longer
25 acting on behalf of Paisley Park Investments and they went on to close the deal
26 with Mr. Russell, isn't that right?

27 A I am, I am not sure, I don't think I told them I was no longer acting for
28 Paisley Park.

29 Q 177I'm suggesting they told you you were no longer acting?

30 A Yes.

1 Q 178 And there was some conversation then between yourself and Mr. Russell about
2 whether or not you had in fact a lien on any deeds?

3 A I was claiming a lien on the deeds, yes.

4 Q 179 But the ultimate completion of the contract was one which was done by Binchy &
5 Partners on behalf of Paisley Park.

6 A That's right.

7

8 JUDGE FAHERTY: Before you move on, Mr. O'Neill, could I ask you, Mr. O'
9 Siochain, you said in response to Mr. O'Neill that you expected the funds to
10 come through Binchys because John Caldwell was organising the funds.

11 A Yes.

12

13 JUDGE FAHERTY: I just wonder if you would elaborate what you meant by that or
14 what you understood that to mean at the time.

15 A I think it's recorded in the documentation actually that the funds were, my
16 recollection is that the funds were sent to the Isle of Man to Binchys. But
17 that was my normal, I would have expected somebody was going to have to give me
18 a cheque to close the sale and I expected that was going to come from John
19 Caldwell.

20

21 Q 180 MR. O'NEILL: Mr. Caldwell had been involved with the payment of the balance of
22 the deposit of the monies in November of 1989 and as we see on document 693,
23 which is the third page of the attendance taken by Mr. Russell on the 15th of
24 November 1989. In the second last paragraph there, Mr. Russell says "We then
25 confirmed to John Caldwell by telephone that Mr. O' Siochain would sign the
26 contract this evening and Mr. Caldwell would drive out with the cheque for
27 35,327.18 pounds, being the amount required to make up the deposit of 50,000
28 pounds on top of the money that I was holding in respect of security for
29 costs."

30 A Correct.

1 Q 181 So on the previous occasion, two years before the closing, Mr. Caldwell had, by
2 agreement with yourself as the solicitor, was on record for the purchaser and
3 as the person who was going to sign the contract in trust. The actual payment
4 of the deposit came from Mr. Caldwell in this amount of 35,327, does that
5 accord with your recollection?

6 A I think to be exact about that, a bank draft for 35,000 was delivered to me and
7 I made out a cheque, a Reddy Charlton McKnight cheque for 327.18 pounds and
8 endorsed the bank draft and both cheques were given to -- I think now, this is
9 my recollection -- I think both bank drafts were brought by John Caldwell out
10 to Phillip Russell's office.

11 Q 182 If we look to page 694 of the brief, we will see the two documents you have
12 just referred to. The first being the bank draft of 35,000 pounds made out to
13 yourselves and the second being your own cheque for 327.18 which in total made
14 up the shortfall in the deposit.

15 A That's right.

16 Q 183 To bring it up to 50,000 pounds.

17 A That's correct.

18 Q 184 Right.

19 A I had some difficulty with that because I knew I had never been out to
20 Mr. Russell's office and I am wondering how did we get the bank draft, and I
21 think I saw in a memo or whatever that this, the memorandum we have been
22 discussing and I'm surmising that the only way that it would have happened is
23 that I arranged it that John Caldwell was going out, I arranged to give the two
24 cheques to him and he brought them out, I would imagine.

25 Q 185 Yes. Now we know that there was no resolution to the dispute in relation to
26 the 20 percent shareholding insofar as Mr. Stanley never recovered the funds
27 which you understood he was to get out of this particular transaction?

28 A That's correct.

29 Q 186 And in the course of next two years or so after Mr. Bullock had rejected your
30 client's entitlement to more than what he had, there were a number of occasions

1 upon which Mr. Stanley made contact with your office and with yourself with a
2 view to advancing his claim against Mr. Kennedy and/or Paisley Park and/or the
3 owners of the land, isn't that right?

4 A That's correct.

5 Q 187And in the early stages of that, we have heard from Mr. Charlton that a
6 document was produced which is described as the 'Redacted' statement of
7 Mr. Stanley which was a draft document given to Reddy Charlton & McKnight which
8 accompanied a letter of the 16th October 1991 --

9 A Yes.

10 Q 188-- at page 10 which is at page 1064 of the brief. That letter "I therefore
11 suggest that you request a meeting with John Caldwell to resolve matters now
12 for everybody's sake. If what I have to say about Carrickmines as well as Jim
13 Kennedy's land deals with Portrane, Finnstown, Baldoyle etc. is made public,
14 then Carrickmines will be ruined for all time. I also enclose details of these
15 ventures herein which, subject to resolution of the dispute, are client
16 confidential" And the document which accompanied that I believe to be the
17 document at page 1060.

18 A Mmm.

19 Q 189In which Mr. Stanley sets out the history of his dealings with Mr. Kennedy from
20 1981 onward, isn't that right?

21 A That's correct.

22 Q 190And in the course of that document which has been opened in full already, he
23 makes reference to Mr. George Redmond as being a person who was in the pocket
24 of Mr. Kennedy, isn't that right?

25 A That's correct.

26 Q 191Now, whilst this document was provided and I take it would have been read by
27 you, there was no further discussion or analysis of this document between
28 yourself and Mr. Stanley, is that correct?

29 A None, none whatsoever.

30 Q 192The suggestion that there would be a meeting set up with Mr. Caldwell and his

1 client never in fact came to fruition, isn't that right?

2 A I am not sure of the exact chronology of this, where it fits in, but I think
3 you are right. Not in relation -- certainly not in relation to this document.

4 Q 193 Exactly. There's never been an exchange between Reddy Charlton & McKnight and
5 Binchys or vice versa at which the content of this document --

6 A None whatsoever.

7 Q 194 -- formed the subject matter of discussion. When ultimately it was envisaged
8 that proceedings might be instituted against Mr. Kennedy or his companies, that
9 was in 1993, so two years after this document was --

10 A Yes, that's correct.

11 Q 195 We have heard Mr. Charlton's evidence on this point and I take it that is
12 something that you agree with, namely that Mr. Stanley was going to the west of
13 Ireland and retiring to the west of Ireland to conduct his business there.

14 A Yes.

15 Q 196 And you felt that he would not be best served by your firm, is that it?

16 A Well he had a solicitor actually, I think Florence McCarthy, in Loughrea and I
17 think we were notified of that fact and certainly in relation to this document
18 here, I think we would have taken the view that if he wants us to act in a
19 legal way through the law that's one thing, but we weren't interested in the
20 sort of connotations of that document, shall we say.

21 Q 197 Right. Finally, Mr. O' Siochain, in the overall, having reviewed and thought
22 about the situation in the years that have gone by since this was done, having
23 had the benefit of the Tribunal documentation which contained not only your own
24 attendances, but also the attendances of Mr. Russell who was acting on behalf
25 of the vendor of the lands and the statements which are contained within the
26 brief from the various witnesses who will give evidence as to ownership, was
27 there anything at all at any time that you can think of that would have alerted
28 you or confirmed to you that Mr. Caldwell ever had a personal interest in any
29 of the land dealings involved, either through Mr. Stanley, his agent, or
30 otherwise.

1 A No, the first time I became aware of that was when I read the brief where I saw
2 that he accepted that he had an interest in the property. I wasn't aware of
3 that before then.

4 Q 198 And in your meetings with Mr. Caldwell and in your discussions with him, was
5 there ever anything to indicate to you that either Mr. Bullock or Mr. Harker
6 was acting in a capacity other than as directors of a nominee company acting at
7 the direction of Irish principals?

8 A No. No.

9 Q 199 Thank you.

10

11 CHAIRMAN: Mr. Miley, do you want to ask any questions?

12

13 MR. MILEY: No, I have no questions.

14

15 MR. CORCORAN: No questions.

16

17 MR. O'DONNELL: No questions, chairman.

18

19 JUDGE KEYS: Just one question. In relation to the 20 percent in the company
20 Mr. Stanley was to maintain, was it your understanding that there was a cap on
21 the value of that 20 percent; in other words when the property was to obtain
22 planning permission, that the maximum he was going to receive was a million
23 pounds at the end, irrespective of whether the value of the property had jumped
24 to 20 million or 30 million?

25 A No, that was not my understanding, he was to get whatever the value of 20
26 percent was.

27

28 JUDGE KEYS: Was. I see, thank you very much.

29

30 CHAIRMAN: All right. Thank you very much, Mr. O' Siochain.

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MR. O'NEILL: Mr. Russell will be the next witness. Thank you, Mr. O' Siochain.

THE WITNESS THEN WITHDREW.

MR. O'NEILL: Mr. Russell please.

1 MR. PHILIP RUSSELL, HAVING BEEN SWORN, WAS QUESTIONED AS FOLLOWS

2 BY MR. O'NEILL:

3

4 Q 200 Good afternoon, Mr. Russell, you also are a solicitor by profession?

5 A That's correct.

6 Q 201 And you acted as the solicitor to Mr. Robert, otherwise Bob Tracey, the owner
7 of the lands which were known as Hinchogue Farm at Carrickmines in County
8 Dublin in 1988, is that so?

9 A Yes.

10 Q 202 You did so, I think, as successor to your uncle-in-law, Mr. John Denny Stokes,
11 who was the solicitor originally engaged by Mr. Tracey in this transaction in
12 March/April of 1988, isn't that so?

13 A That's correct, yes.

14 Q 203 Mr. Stokes was to retire within two or three months of March 1988 and he
15 subsequently died in September of the same year, is that right?

16 A Yes.

17 Q 204 At the time of your involvement, which I understand commenced in or about June
18 of 1988, the parties had been in communication through their solicitors Reddy
19 Charlton & McKnight, acting on behalf of the intended purchaser of the lands
20 and Mr. Stokes acting on behalf of Mr. Tracey, isn't that so?

21 A Yes, I think I first met Mr. Tracey in April of 1988.

22 Q 205 I see. I think you may then have been working with Mr. Stokes for a period, is
23 that right, and then took over in June formally? The documentation appears to
24 suggest that certainly Reddy Charlton identify you as being the solicitor
25 acting on behalf of Mr. Tracey from June onward, but it obviously --

26 A Yes, I had started in sole practice at the beginning of 1988 and Mr. Stokes was
27 our neighbour so he, I worked with him on a number of things.

28 Q 206 We know that at the inception of your involvement here, there was a dispute as
29 to whether or not the terms of such agreement as had been reached by Mr. Tracey
30 and Mr. Stanley were as claimed by Mr. Stanley, isn't that so? There was a

1 dispute as to the amount of the deposit which was to have formed the initial
2 down payment?

3 A Before being given all the papers by the Tribunal, I had very little
4 recollection of this whole transaction except I do remember clearly the
5 question which was the subject of a lot of discussion, as to whether
6 Mr. Stanley was Mr. Tracey's agent or the agent of the purchaser.

7 Q 207Right.

8 A That's my strongest recollection of the whole thing.

9 Q 208Right. We'll see from a document at page 417 which was a handwritten document
10 of Mr. Tracey's which was setting out his account of events for the purpose of
11 instructing his then solicitor, Mr. Stokes, I understand. And it was his
12 history of what had taken place at the Green Isle Hotel. I'll try and get you
13 a typed copy of that which we also have on screen. The conclusion of it in any
14 event --

15

16 JUDGE FAHERTY: I have it here, I think this is the document.

17

18 MR. O'NEILL: It is, yes. In fact, it's on screen now in front of you,
19 Mr. Russell. It sets out a sequence of events according to Mr. Tracey, it
20 closes in effect with the statement "I will not go back on my word, I am
21 prepared to sell the farm for 540,000 pounds, deposit 25,000 and closing date
22 December 1989."

23

24 We know from the review of the documentation that that 25,000 pounds deposit
25 was disputed by Mr. Stanley, the written letter of irrevocable authority
26 provided for a deposit of 15,000 pounds or 20,000 pounds if that could be
27 obtained. And for some months in the initial stages, there was a dispute as to
28 whether or not there had been an agreement on the terms which Mr. Stanley
29 claimed had been agreed and Mr. Tracey was rejecting it on the basis that the
30 deposit figure was not the appropriate deposit figure. That in turn was

1 resolved by an agreement between the parties that 20,000 pounds would be an
2 acceptable deposit and, on that basis, you sent out contracts in June to the
3 solicitors who were on record for the purchasers, namely Reddy Charlton &
4 McKnight. We can see that at page 155, which was a copy of a letter from you
5 to your solicitors, sorry, to your client, Mr. Tracey. It's your file copy so
6 we assumed the letter went out. It's page 155. At the bottom of that you say
7 that "Mr. Charlton confirmed that he did not feel there would be any problem
8 about increasing the deposit to 20,000 pounds as Mr. Stanley apparently told
9 you directly. Therefore I have now sent out the draft contracts to him in
10 exactly the same format as I sent to you previously, but with the change of
11 deposit from 25,000 pounds to 20,000 pounds and I have also asked him to return
12 the draft contracts duly signed, together with the deposit within 10 days."

13
14 That's in June of 1988. There is reference you see there in the first two
15 paragraphs to Mr. Bernard McEvoy, solicitor, who I understand acted for the
16 client of Mr. Ken Gregory, auctioneer, so there was a second prospective
17 purchaser on the margins at that point in time.

18 A I presume so.

19 Q 209 You see, at a later stage it was to be suggested in correspondence that, sorry
20 in an attendance of Mr. Caldwell's, that there was some collusion between
21 Mr. Tracey and Mr. Stanley to abort the contract which was entered into in 1988
22 by stopping the deposit cheque and this was done in collusion between them so
23 as to allow Mr. Tracey to go on and negotiate for a higher price with another
24 purchaser. In the course of that, I think you indicated to Mr. Messrs. Reddy
25 Charlton & McKnight that there had been a purchaser as early as June who was
26 interested in the property, isn't that so?

27 A Yes, I first saw mention of this suggestion of collusion in reading some of the
28 transcripts of the workings of the Tribunal. I find it amazing. It had
29 nothing whatsoever to do with me. And I think if there had been two people
30 interested in the property and one set of contracts had gone out, I would have

1 been anxious for each party to know the exact position. I don't think I would
2 have been happy sending out contracts to a second person without telling both
3 parties that this meant there were now two sets of contracts out there.

4 Q 210And you didn't in fact do that, although we know that when it came to January
5 of 1989, after the cheque had been stopped or, sorry, after the cheque had been
6 referred to drawer, you were contemplating sending papers to, contracts to
7 Hickey Beauchamps Kirwan & O'Reilly who were going to act for Sorohan builders?

8 A I think so.

9 Q 211But, in any event, as regards any suggestion at any time there was a collusion
10 between your client, Mr. Tracey, and Mr. Stanley, is there any substance in
11 that as far as you are concerned?

12 A Absolutely not and I find it an amazing suggestion.

13 Q 212I think, in fact, Mr. Tracey was quite irate at the fact that the cheque had
14 not been honoured and he had wanted nothing further to do with Mr. Stanley, is
15 that right?

16 A That's correct.

17 Q 213Although Mr. Stanley was trying to apparently have him accept a banker's draft
18 now for the 5,000 pounds which had been the amount of the cheque which was not
19 honoured, isn't that right?

20 A Well, as I say, I don't recollect that, but I see from the file that I seem to
21 have been told by Mr. Tracey that Mr. Kennedy was trying to get him to accept
22 it.

23 Q 214Right. At this point in time when the contracts were sent out by you, they
24 were in the standard form of the Incorporated Law Society contract, isn't that
25 right?

26 A Yes. Probably with some special conditions attached.

27 Q 215We will see at page 157 that the intended purchaser in the documents that you
28 sent out was Mr. Gerard Charlton in trust.

29 A Yes.

30 Q 216So to that point in time, whilst you were aware that the transaction had been

1 one which took place between your client, Mr. Tracey, and Mr. Stanley on the
2 other hand, the intended purchaser was a named purchaser in trust and namely
3 the solicitor Mr. Gerard Charlton, isn't that right?

4 A Yes.

5 Q 217And it wasn't for sometime that you became aware that there was another, or the
6 identity of the party behind Mr. Charlton in trust, isn't that right?

7 A Yes, I can't recollect when I became aware of that, I don't have a good
8 recollection of the chronology.

9 Q 218I think you will see on the 10th August 1988 at page 264, there is a reference
10 to Mr. Kennedy and I believe that that would be the first reference of yours to
11 Mr. Kennedy having an involvement here. In manuscript at the bottom of the
12 page --

13 A I wish I had taken writing lessons actually.

14 Q 219That's shared I think by ourselves. A letter from SS, who was Sam Stanley,
15 refers to a letter of authority, that was the document generated on the 9th
16 March 1989 under which Mr. Tracey apparently appointed Mr. Stanley as his agent
17 with irrevocable authority to sell to Mr. Charlton in trust. It says "Lengthy
18 meeting with Mr. Kennedy, going to lodge planning permission" sorry -- "going
19 to lodge PP" -- I think is for planning permission perhaps?

20 A Yes, planning application, yes.

21 Q 220"Expect difficulties in PP and then SS no longer acting on behalf of RAT." RAT
22 being the initials for your client, Robert A Tracey.

23 A Yes.

24 Q 221So Mr. Kennedy appears for the first time here and you will see that in the
25 body of that letter, you are drawing attention to the fact that your client
26 wishes to forward the papers to another potential purchaser. It says "Further
27 to my letter of the 25th ult, and as no acceptable offer has been made by your
28 client for this property, please now return all documents so that I may forward
29 them to another potential purchaser's solicitors. My client is now
30 entertaining offers from an alternative purchaser."

1

2 This is some two months after you had sent out the original documentation to
3 Reddy Charlton & McKnight in the form, as I say, of the standard conditions of
4 the Incorporated Law Society. I think it was being suggested or contended for
5 by the purchasers that the contract that they had was not necessarily an
6 Incorporated Law Society standard form contract, but rather that the contract
7 was contained within the letter of irrevocable authority and it was on that
8 document that they were entitled to proceed with the contract, does that accord
9 at all with your memory now of events?

10 A Yes, I think that I had discussions with Reddy Charlton & McKnight as to
11 whether, if we signed or if the clients signed the form of contract that I had
12 sent out, would that overwrite whatever agreement they said there might have
13 been.

14 Q 222Yes. The standard form conditions would of course contain a number of
15 protections for the purchaser and indeed for the vendor. There would be
16 certain identified rights and entitlements which would cover eventualities that
17 might rise from the contract and bring certainty to the relationship, but
18 apparently these documents were not being sent back to you, albeit that there
19 was now a delay of more than two months from the date upon which the contract
20 documents were sent out and a delay of five months or so from the date upon
21 which agreement had been reached by Mr. Stanley and Mr. Tracey in March of that
22 year, isn't that so?

23 A May I ask, Mr. O'Neill, if it would be in order for me to follow this
24 chronology by having my original file --

25 Q 223Absolutely.

26 A Is that in order?

27 Q 224I think we could probably.

28 A I have them here.

29 Q 225It may, I think, possibly extend things a little, Mr. Russell. If you do want
30 to refer to it, please do so, but we have circulated only relevant parts of

1 your file rather than the entire and the case effectively, the issues will be
2 determined upon what has been circulated rather than documents in your file.
3 I'll try and advance through it as quickly as I can. The purchasers, the
4 intended purchasers, Paisley Park Investments Ltd, lodged a caution on the
5 folio which effectively warned off any other prospective purchasers and that
6 was lodged by a firm called Frank Friel & Company Limited who were solicitors
7 acting on behalf of Paisley Park apparently in the dealings with the Land
8 Registry, and that is a matter which came to your client's attention on the
9 29th August of that year and that was followed by a letter from you to Reddy
10 Charlton & McKnight on the 2nd of September 1988, which is at page 293. Where
11 it seems that you were prepared to go ahead with the proposals to sell to Reddy
12 Charlton's clients. It says "Further to my letter of the 10th inst. I
13 understand from Mr. Tracey that he has been talking with Mr. Stanley who
14 advises him that he has forwarded you a cheque for the deposit. Therefore
15 would you kindly return all documentation including completed contracts with
16 deposit as soon as possible."

17
18 And that had the desired result because at page 296 we see that on the 7th
19 September, Reddy Charlton wrote to you saying "We have received your letter of
20 the 2nd, we confirm we have received a deposit from the purchasers. We have
21 received a deposit of 10,000 pounds and we understand that a booking deposit of
22 5,000 pounds is already held by Mr. Stanley as agent. Our instructions are
23 that it has been agreed to increase the deposit from 15,000 to 20,000 and we
24 are now requesting our clients to furnish us with a further 5,000. We enclose
25 our cheque in the sum of 10,000 pounds in payment of the deposit presently in
26 our possession. Please indicate if it is in order for Mr. Stanley as agent to
27 retain the booking deposit of 5,000 as stakeholder. We will forward the
28 additional balance of 5,000 as soon as possible. We note what you say in the
29 second paragraph of your letter and we reiterate what we have stated in
30 previous correspondence, to the effect that the memorandum of the 9th March

1 1988 represents a binding contract and our clients are not anxious to enter
2 into any further formal contract. However strictly without prejudice to the
3 foregoing, we are prepared to take our client's further instructions. If you
4 wish to indicate any additional special conditions by correspondence. Yours
5 faithfully"

6
7 That still left open that position as to whether or not the contract was the
8 original letter of authority or whether it would be the Incorporated Law
9 Society's conditions and that was a matter which was to, I think, concern the
10 parties for some further months. Mr. Tracey, I think at this point, was
11 becoming somewhat irate and at page 303 on the screen, you will see that you
12 took an attendance from him where he said "20,000 pounds or no deal, Stanley
13 working as site foreman for Kennedy, not to hold the 5,000 pounds." So that
14 the entire of the deposit was to be paid, as far as Mr. Stanley was concerned,
15 as a matter of urgency, isn't that so? We will see that it wasn't until
16 November of 1988 that the agreements which you had sent out for signature were
17 returned to you duly signed. Mr. Bullock was written to by Reddy Charlton on
18 the 10th November 1988, which we see at page 345, where he says "Dear
19 Mr. Bullock, thank you for your letter of the 2nd November enclosing the
20 agreements duly executed."

21
22 Those agreements we'll see were executed at 355, your client Mr. Tracey signed
23 on the 17th November, that date was then inserted here in the contract. But
24 apparently whilst the documents you had sent out showed Mr. Gerry Charlton in
25 trust as the purchaser, the first page had been substituted by this page which
26 came back showing Paisley Park Investments Ltd as the purchaser.

27 A Yes.

28 Q 226 An it's signed by the directors of that company. So this is the November 1988
29 contract. It is now a contract in the form of the Incorporated Law Society
30 which is acceptable to yourself and to your client, obviously conceded by the

1 purchasers that they were now bound by this contract and the dispute as to
2 deposit was resolved insofar as they agreed now to pay the 20,000 and not the
3 15,000 originally provided for, or the 25,000 originally sought by your client.
4 We know that this contract, which is entered into here, was subsequently
5 repudiated, the grounds for repudiation being the fact that part of the deposit
6 was represented by the 5,000 pounds cheque from Siteland Management, which was
7 marked 'referred to drawer' when it was presented by you to your bank for
8 payment, sorry, presented to your bank and they, in turn, received notification
9 from Mr. Stanley's bankers that it was not being honoured?

10 A That's correct.

11 Q 227And at that point in time, if the contract conditions applied, under one of
12 those conditions you were entitled to repudiate and upon your client's
13 instructions, you did so, isn't that right?

14 A I think so, yes.

15 Q 228And we'll see at page 397 that Mr. Tracey was in a position where he had some
16 monies in his hand, he had 15,000 pounds which was there which had not bounced,
17 but he had another party he wanted to contract. He didn't want to lose
18 Mr. Kennedy until he had another party involved contractually, isn't that
19 right?

20 A That's right.

21 Q 229We see that on the 8th of the eleventh, you have an attendance here that "RAT
22 rang, does not want to issue possible" -- sorry "does not want to end possible
23 deal with Kennedy unless he has a deal with Sorohan. Purchaser has agreed that
24 it would be wise to" sorry --

25 A Then he agreed it would be worse to be stuck with both of them.

26 Q 230Right. Further down then "Doesn't want to return the 15,000 pounds to Kennedy
27 until he is sure that Kennedy will have no claim against him."

28 A Yes.

29 Q 231Now, we know that as a result of the repudiation of the contract by
30 Mr. Stanley, that legal proceedings were commenced in the High Court by Paisley

1 Park Investments Ltd against your client, Mr. Tracey, suing him for specific
2 performance of the November 1988 contract or, alternatively, of the March 1988
3 contract as reflected in the letter of authority.

4 A Yes.

5 Q 232And that continued, those proceedings continued from the date of issue of the
6 plenary summons until the settlement of that matter directly between the
7 clients, that is Mr. Kennedy and Mr. Tracey, in November of 1988, isn't that
8 so, '89?

9 A Yes, I don't remember the date.

10 Q 233Right. To that point where the legal proceedings are issued by Paisley Park
11 and are defended by Mr. Tracey, did you understand, who did you understand the
12 principal to be behind the Paisley Park acquisition?

13 A I presume it was Mr. Kennedy.

14 Q 234Yes.

15 A I cannot recall at what stage Mr. Caldwell's involvement was mentioned, but I
16 don't think I would have thought of him as the principal, no, so Mr. Kennedy.

17 Q 235Yes. Now we know from the document that was recently considered on screen by
18 Mr. O' Siochain, I think it's at 692, that you were given the task of
19 implementing the agreement which had been reached by the parties directly. By
20 that I mean the agreement where the sale price was increased to 700,000 from
21 540,000 pounds, the deposit was increased from the agreed 20,000 to an agreed
22 50,000 pounds and the closing date was advanced from December of 1989, which
23 had originally been provided for, to March of 1991. Those terms, we will see
24 that on the 15th of November of 1989, you set about implementing those terms,
25 but perhaps if I look first to page 689, which is a telephone attendance of
26 yours. I think it says "Mr. K", that's Mr. Kennedy "last night, new deal,
27 700,000, 50,000 deposit to be released to our T, balance on the 31/3/91.
28 Possession to RT until the 30th December 1991. K to sign company name, K
29 confirms SS not to have any claim. Proceedings to be stopped, perhaps? Each
30 to pay their own costs. JT rang" -- I think that's Jack Tracey, the brother.

1 "Bob Tracey rang to confirm this also. Ring or rang ROS and inform --"

2 A Fax contract to him.

3 Q 236I think that's a telephone attendance you had on your client and it, in effect,
4 confirmed that there was this direct contact between the parties which led to
5 the agreement being reached and you were now to implement this and at page 690,
6 you record this a very lengthy attendance which runs to some four pages or so,
7 "That Mr. O' Siochain rang and he confirmed that he would be signing the
8 contracts, not Mr. Kennedy. He is also getting a deposit and I will fax over
9 the contracts in due course." And we see there was a difficulty apparently
10 with this fax machine and you were unable to fax over the contracts. But Mr.
11 O' Siochain got in touch with you and there was a discussion between the two of
12 you about the special conditions about indemnifying Mr. Tracey against any
13 claim by Mr. Sam Stanley. Mr. Stanley apparently was not a party to the
14 subsequent negotiations of what I call the second contract and he wasn't to
15 receive any benefit from that as far as Mr. Tracey was concerned, is that so?

16 A I think Mr. Stanley was claiming fees and we were denying that he was
17 responsible for them.

18 Q 237Mr. Stanley's claim to fees was in respect of fees on the first contract which
19 had a consideration of 540,000 pounds and at one and a half percent, his fee on
20 that would be 8,100 pounds and that represented one of the special conditions
21 in the contract which was entered into by the parties which expressly provided
22 that if he did not waive that within the period, I think within two weeks or
23 so, that the purchaser, Paisley Park, took on the obligation of paying that sum
24 on closing.

25 A Yes.

26 Q 238But in November 1989 then, Mr. Kennedy apparently was identified as being the
27 party who would sign initially. It is then substituted in this attendance by
28 Mr. O' Siochain saying that he would be signing, isn't that correct?

29 A Yes.

30 Q 239And later in this attendance at page 691, there is the reference to the

1 personal guarantee being given by Mr. Kennedy in relation to the discharge of
2 Mr. Stanley's fees, we have referred to that earlier, it's at the first
3 paragraph of 691, and then at the bottom of the page, your attendance on what
4 took place in your office in the presence of Mr. Kennedy and Mr. Tracey and
5 your subsequent telephone calls to Mr. O' Siochain, who was attended also by
6 Mr. Caldwell, isn't that right?

7 A Yes, I should state that I have absolutely no recollection of Mr. Kennedy
8 coming to my office and I was most surprised to see that recorded on the file.
9 It doesn't even bring it back to me to read it.

10 Q 240 Whilst you have no recollection at all of it, I take it you stand over the
11 accuracy of --

12 A Yes.

13 Q 241 Of your note, and the Tribunal may take it that from that note, there were in
14 fact telephone conversations taking place between yourself and Mr. O'
15 Siochain --

16 A Yes.

17 Q 242 -- and also between Mr. Kennedy and Mr. O' Siochain/Mr. Caldwell?

18 A Yes.

19 Q 243 Right. The upshot of all that being that a contract was signed in the standard
20 form of the Incorporated Law Society by Mr. O' Siochain in trust, providing for
21 the sale of the lands on the terms that I have already mentioned, 700,000
22 pounds for the capital sum, 50,000 which was to be paid by way of a deposit
23 which was non refundable and the contract was to be closed some 22 months later
24 or thereabouts in March of 1993, is it? 1991, I'm sorry. 1991. In that, the
25 attendance, you also recall that 35,327.18 pounds was to be payable to you and
26 that Mr. Caldwell was going to drive out with that. Have you any recollection
27 now of Mr. Caldwell dropping out to see you and to give you these two cheques,
28 sorry, bank draft and cheque, that we have already seen this afternoon?

29 A No, I have no recollection. I don't know if it was him or whether it was his
30 assistant whom I think I so referred to as Stephanie Goggins, but I don't

1 actually remember her.

2 Q 244 Right. In any event, the deposit did come to you on time but, as far as you
3 were concerned, and your client was concerned, on the 15th November of 1989,
4 everything was now going to proceed smoothly so that in March of 1991 you would
5 receive the balance of the funds and the purchase would be completed as of that
6 date, isn't that right?

7 A That's right. It wasn't that smooth though.

8 Q 245 It wasn't. We know that two issues were raised to support a further delay of
9 the contract. They were, firstly, the question of a wayleave having been
10 served by Dublin County Council on your client, approximately a month perhaps
11 before the closing date, indicating that the council was going to lay the new
12 Carrickmines' sewer through part of the lands and therefore it wanted to
13 acquire them, as it was entitled to, under the Sanitary Services -- Sanitary
14 Services Act, it was indicated to you by the purchaser's solicitors, they
15 wanted further detail of this and you were saying that this was a matter for
16 them to deal with ultimately once they completed the property, they could deal
17 directly with the council.

18 A Yes, we probably took the view that it was to their benefit to deal with it in
19 the manner in which they wanted to.

20 Q 246 Exactly. They were asking you to arrange for them to have access to the
21 pipeline once it was constructed and you were saying that was a matter that
22 they could deal directly with.

23 A I think so.

24 Q 247 Once they became the owners of the land, I should say. The second issue then
25 was to deal with the adequacy of the statutory declaration made under the
26 family homes legislation where it was indicated to you that this was perhaps
27 insufficient given the status of Mr. Tracey's marriage at that point in time.

28 A Yes.

29 Q 248 Those two matters in combination were raised as a defence to a notice for
30 completion, a 28-day completion notice, which was served pursuant to the

1 contract requiring them to complete, isn't that right?

2 A Yes, I think I felt they were delaying tactics though. They weren't genuinely
3 serious causes for concern.

4 Q 249We have heard from Mr. Charlton that that also was a view, to some extent
5 shared by the solicitors themselves, that is Reddy Charlton & McKnight, who did
6 not have any faith in these two grounds as being a defence to the notice but,
7 in any event, you remedied the statutory declaration point with Mrs. Tracey and
8 you sent a second statutory declaration without prejudice to the first one --

9 A Second completion notice.

10 Q 250Sorry, a second completion notice and, as a result of that, there was a date
11 set for closing with Mr. O' Siochain and yourself, isn't that right?

12 A Yes.

13 Q 251And that was in early June, the 5th June of 1991 and, as we have heard this
14 afternoon from Mr. O' Siochain, when you arrived, he was not in a position to
15 give you the money which was your contractual entitlement, isn't that right?

16 A Yes.

17 Q 252And it subsequently transpires Reddy Charlton & McKnight's authority to
18 conclude the authority with you was withdrawn and you closed with another firm,
19 with Binchys, isn't that right?

20 A Yes, I seem to remember feeling awkward about it because there was some
21 disagreement between the two firms over fees and I didn't like to think that
22 one firm, as a result of their client's actions, was going to be left out of
23 fees. But ultimately there was little I could do about it.

24 Q 253Your client was ultimately paid his money and that, as far as your client was
25 concerned, concluded his involvement with the lands, isn't that so?

26 A Yes.

27 Q 254The Tribunal has heard at length of a dispute which existed between Paisley
28 Park Investments and a company called Xenon Limited which represented the
29 interests of Mr. Stanley in a shareholders' agreement that touched on the
30 ownership of Paisley Park Investments Ltd, I take it that you were entirely

1 unaware of the fact that Mr. Stanley was to have a share in the ownership of
2 the company which was to acquire these lands, namely Paisley Park, or that
3 there had indeed been a dispute between those parties?

4 A Entirely unaware.

5 Q 255Right. Throughout your dealings then on behalf of Mr. Tracey with the proposed
6 purchasers of these lands, did you believe that any person other than
7 Mr. Kennedy was the ultimate beneficial owner of the Paisley Park company,
8 which would acquire the lands from your client?

9 A I was aware of Mr. Caldwell in the background obviously providing some kind of
10 advice on how to structure the transaction, but I don't think I would have
11 thought of him as being a principal or a beneficial owner.

12 Q 256At page 1042 on screen, you will see a manuscript note of yours where there was
13 a discussion regarding the role of Mr. Caldwell. This is in the context of a
14 dispute being identified to you regarding the role which Reddy Charlton &
15 McKnight were going to play. "Retainer not discharged, therefore authority,
16 fax from JC to say he is closing." JC, this is John Caldwell I understand --

17 A Yes.

18 Q 257Is. Masterminding the whole operation and this is par for the course for him.
19 You have this I think in quotations at the end.

20 A Yes, that's something that Mr. O'Siochain would have said to me or did say to
21 me.

22 Q 258Right. Can you assist the Tribunal as to what that meant in the context of
23 Mr. Caldwell's, firstly, relationship with Reddy Charlton & McKnight and,
24 secondly, whether or not it has any reference to ownership or control of the
25 company itself?

26 A I suppose I was aware, I had come across Mr. Caldwell previously in relation to
27 other matters where this comment about him 'masterminding' the whole operation
28 rang a bell with me. It reflected the previous experience that I had had of
29 his involvement in transactions in relation to other clients and my late
30 father.

1 Q 259I see.

2 A I mean, to this day I don't know how he operates or how he ever operated or
3 what advice he gave, but it was certainly very proactive advice in terms of how
4 people should structure their affairs.

5 Q 260Your father practised under the firm name of Reid & McNabb, is that right?

6 A That's right, my father acted for builders called Brennan & McGowan, so I was
7 here before in the Brennan & McGowan module. Again the chronology is not clear
8 to me. I remember speaking with Mr. Caldwell on a number of occasions but I
9 cannot remember if it was in connection with this transaction or in connection
10 with what I call the Brennan & McGowan transactions.

11 Q 261Right. In that transaction he was acting for Brennan & McGowan?

12 A Again, he was in the background, a shadowy figure providing advice, I think.

13 Q 262As regards the role Reddy Charlton & McKnight therefore were playing vis-a-vis
14 yourself, they were not nominally the solicitors acting on behalf of the
15 purchaser and is it in that context that you make the reference to Mr. Caldwell
16 masterminding events?

17 A Well this comment about Mr. Caldwell masterminding the whole operation was not
18 my comment, but one made by somebody in Reddy Charlton & McKnight, I think it
19 was Mr. O'Siochain. My impression was Reddy Charlton McKnight were effectively
20 doing the nuts and bolts of conveyancing and, albeit a relatively complicated
21 transaction because it involved various sets of proceedings and that
22 Mr. Caldwell was the person deciding on how this should all be financed. And
23 Reddy Charlton were just really, they were stuck without the money, which was
24 going to come through John Caldwell.

25 Q 263Finally, Mr. Russell, I wanted to draw your attention to another reference of
26 yours which we see in a memo you prepared on the 30th January 1989, it's at
27 page 474 of the brief. You will see, if I correctly interpret it or decipher
28 it, it's "Redmond retiring, May 1989, DCC want to buy for 900,000 pounds,
29 planning permission 190 houses. SS" -- I am not quite sure what that means?

30 A I can't decipher that myself.

1 Q 264Sam Stanley --

2 A It looks like wants to pay.

3 Q 265"Wants to pay. RT " --

4 A "Won't accept".

5 Q 266Now to put this in context, the cheque had been stopped on the 28th November,
6 the cheque had been dishonoured on the 28th of November of the previous year
7 and you were repudiating the contract which had been sent out, this is the
8 first contract -- sent out in 1988 and signed in the 17th of November 1988 by
9 your client with Paisley Park Investments, you were relying upon one of the
10 general conditions of that contract where if the deposit is not paid, you are
11 entitled to repudiate and you were exercising that right and it was around that
12 time that this note is taken, "Redmond retiring May 1989, DCC want to buy for
13 9000,000 " As regards the source of any information in connection with these
14 lands, was Mr. Tracey your only source of information?

15 A Yes. I'd be sure that was an attendance of a telephone conversation with
16 Mr. Tracey. I tended -- there were times when I just wrote down what
17 Mr. Tracey was saying, it didn't necessarily make any sense to me but I wrote
18 it down.

19 Q 267At this time you may know, you may not know, that Mr. George Redmond was
20 Assistant City and County Manager for Dublin County Council and in fact he was
21 intending to retire on age grounds, I think, when he attained the age of 65 and
22 that would take place in June of 1989. You have no recollection of this
23 attendance being taken by yourself?

24 A I have no recollection of the attendance and I actually wouldn't have known who
25 Mr. Redmond was until recent reports in the newspaper to be frank, I think
26 there was some talk of somebody being stopped on a flight with a suitcase. I
27 didn't know who he was before then so this, as I say, I must have taken down
28 that note from Mr. Tracey but it wouldn't have meant anything to me. I
29 certainly don't recollect it meaning anything.

30 Q 268Right. Thank you, Mr. Russell. There may be questions put by others.

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CHAIRMAN: Mr. Miley, do you want to ask an questions?

MR. MILEY: Just one issue if I may, judge.

THE WITNESS WAS QUESTIONED AS FOLLOWS BY MR. MILEY:

Q 269Mr. Russell, could you tell me why you told Mr. O'Neill that the suggestion of collusion between Mr. Tracey and Mr. Stanley was an amazing one, and following on from that, the basis upon which you say that.

A Well --

Q 270I'm just curious in this sense, would it not have been possible for this collusion, had it taken place, to have taken place without your knowledge?

A Yes, it was amazing to me, just the whole idea.

Q 271OK. Thank you. Thank you, judge.

Counsel: No, chairman, no questions.

JUDGE FAHERTY: Mr. Russell, there's just one matter. We know from Mr. Tracey, his evidence and the documentation, that he made a statement to the Gardai in July of 1989, I recall. Did you have any knowledge of that?

A I had no input into that. I can't remember when I became aware of that.

JUDGE FAHERTY: That's what I'm asking you.

A I don't know. I mean I -- it would have been sometime afterwards, but I cannot honestly remember how long afterwards I would have become aware of that. It's a long time afterwards, I think.

JUDGE FAHERTY: Right. Thank you.

1 CHAIRMAN: Thank you very much, Mr. Russell.

2

3 THE WITNESS THEN WITHDREW.

4

5 MR. O'NEILL: That concludes today's evidence.

6

7 CHAIRMAN: All right. Half ten tomorrow.

8

9 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

10 THURSDAY, 12TH FEBRUARY, 2004 AT 10.30 A.M:

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