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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1178/5/7/11

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

14 March 2012

Before:

LORD CARLILIE OF BERRIEW QC  
(Chairman)  
PETER FREEMAN CBE QC  
MARCUS SMITH QC

Sitting as a Tribunal in England and Wales

**BETWEEN:**

**2 TRAVEL GROUP PLC (IN LIQUIDATION)**

Appellants

– v –

**CARDIFF CITY TRANSPORT SERVICES LIMITED**

Respondent

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**HEARING (DAY 3)**

## **APPEARANCES**

MR. M BOWSHER QC and MS A BLACKWOOD (instructed by Addleshaw Goddard) appeared on behalf of the claimant.

MR. J FLYNN QC and MR C WEST (instructed by Burges Salmon) appeared on behalf of the respondent.

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1 Wednesday, 14 March 2012

2 (10.00 am)

3 THE CHAIRMAN: Yes, Mr Bowsher. Where are we going?

4 Application by MR BOWSHER

5 MR BOWSHER: Our next witness is Mr Huw Francis. Before

6 I call Mr Francis, I have a short application to make in  
7 respect of his evidence, and I think the same point will  
8 apply to the evidence of Mr Nigel Short. I've told my  
9 learned friend Mr Flynn that I was going to make this  
10 application this morning. I think I can make it fairly  
11 shortly.

12 This concerns one specific topic that Mr Francis  
13 covers, and that concerns the value of the Swansea depot  
14 land. Our application is in respect of one part of the  
15 evidence here. We would ask that evidence regarding the  
16 current value, not value on historic dates, but the  
17 current value of the Swansea land and the assembly of  
18 the site to realise that value, should be given not at  
19 this hearing but in writing, at a later date to be fixed  
20 by the tribunal.

21 The reason for that is this: Mr Francis and Mr Short  
22 are currently engaged in a transaction which was  
23 supposed to have exchanged last week, but it is at its  
24 crucial point, as it were, over the next few days in  
25 regard to that land, and they are concerned that any

1 information regarding that should not reach the public  
2 domain in any way. They're concerned that that be done  
3 in a way in which their position can be protected. Our  
4 proposal, therefore, was that they be given in this way  
5 in writing at a later date, after the transaction has  
6 been dealt with.

7 I'm not sure how much of a problem this entails, but  
8 it's that specific point.

9 THE CHAIRMAN: So it's in writing to be disclosed to?

10 MR BOWSHER: In writing to be disclosed to the defendant  
11 after the transaction has been dealt with, after the  
12 transaction has closed.

13 THE CHAIRMAN: Yes. That's information that's publicly  
14 available anyway, isn't it?

15 MR BOWSHER: Exactly.

16 THE CHAIRMAN: If it's registered land.

17 MR BOWSHER: Once we get there, it will become public,  
18 indeed. That's our application. We would say that this  
19 is an application made consistently with the rules of  
20 the tribunal, particularly rules 50 and 53. Rule 50 is  
21 the provision regarding the hearing in public. I think  
22 it's probably the answer to the question that you asked  
23 me, sir, a couple of days ago, about the powers to have  
24 this matter heard in public or otherwise:

25 "The hearing shall be in public except as to any

1 part where the tribunal is satisfied that it would be  
2 considering information which is, in its opinion,  
3 information of the kind referred to in paragraph 1.2 of  
4 schedule 4 to the 2002 Act."

5 That schedule includes a list of the sorts of  
6 information that is likely to be sensitive.

7 THE CHAIRMAN: So you're asking us to abridge time under  
8 rule 53?

9 MR BOWSHER: In effect, yes, because of the sensitivity of  
10 this. As I say, in fact, it should have exchanged last  
11 week and the sensitivity has been exacerbated by the  
12 delay in the closing of that transaction. I think  
13 you have the point. This is information which, if it  
14 were to reach the public domain, would seriously affect  
15 the legitimate commercial interests of two undertakings,  
16 in this case, Mr Francis and Mr Short, two individuals,  
17 also in terms of -- on a personal level, also two  
18 individuals, Mr Francis and Mr Short, and that  
19 therefore, falls flat within the category of information  
20 which the tribunal expects to protect, as described in  
21 schedule 4 to the 2002 Act. I don't know if you want to  
22 look that up, but those are the categories. That is our  
23 application.

24 THE CHAIRMAN: Right. Mr Flynn?

25



1           What Mr Bowsheer's asking for is, as it were, firstly,  
2           the opportunity to put in evidence after the event.  
3           Presumably we would be entitled to cross-examine on  
4           that, should that actually be necessary. But the rules  
5           to which you were taken relate, really, to the hearing  
6           of evidence in camera or in private or whatever the  
7           post-Woolfian term is for these things, and that, if  
8           necessary, if we are in the course of cross-examination  
9           today, straying into such territory, then it's possible  
10          to raise a flag and say, "Let's take this in private".  
11          Without indicating the line of cross-examination,  
12          I think we are more interested in generic or  
13          illustrative issues relating to this site than precisely  
14          what's happening to it today. That was for the  
15          claimants to make a case. We're still quite unclear  
16          what their case is. As I've submitted to you, our  
17          primary case is the company got full value for this site  
18          and insofar as it's being said that it did not, we don't  
19          understand what the case is and we don't know what value  
20          is to be attributed or how the tribunal could possibly  
21          reach a figure on that.

22                 So it's not as if we're trying to establish for our  
23          own interests, a precise figure for the value, we're  
24          approaching it in a different way. So my submission  
25          would be that the application should be rejected. We

1           should cross-examine Mr Francis in the normal way and if  
2           there are topics which make him feel uncomfortable, at  
3           that point an application can be made, but for the  
4           reasons I have given, we may not even need to get there.

5   THE CHAIRMAN: Thank you. Mr Bowsher, a traffic light  
6           approach is suggested.

7   MR BOWSHER: I'm happy with that. Mr Francis is in court.

8           As long as he can understand that and feels able to, as  
9           it were, change the colour of the traffic light, he  
10          obviously is in, in that sense, a better position to  
11          judge what is or is not problematic.

12   THE CHAIRMAN: I think the tribunal well understands the  
13          concern and it might be simply more practical for us to  
14          adopt a traffic light approach and if you raise an amber  
15          flag, as it were, then we'll consider the matter at that  
16          stage rather than making a formal order. Yes, we're  
17          agreed on that.

18   MR BOWSHER: Both I and Mr Francis can keep an eye on that  
19          as we go.

20   THE CHAIRMAN: And I should say that if Mr Francis becomes  
21          concerned whilst he's giving evidence, he just should  
22          indicate and, if necessary, he will be allowed to talk  
23          to you.

24   MR BOWSHER: Thank you very much. Much obliged.

25   THE CHAIRMAN: I'm sure there will be no objection to that,

1           will there, Mr Flynn?

2   MR FLYNN:  There wouldn't have been, even if you hadn't made  
3           that indication.

4   THE CHAIRMAN:  I'm sure.

5   MR FLYNN:  Just as a preliminary matter, it's just to say  
6           that we have to hand up, if the tribunal would find it  
7           useful, the table that I mentioned the other day, giving  
8           cross-references from the E to the G bundles.

9   THE CHAIRMAN:  That would be helpful.

10  MR FLYNN:  I think as with Mr West, references in  
11           cross-examination will be to the E bundles, so you'll be  
12           able to find out --

13  THE CHAIRMAN:  If you pass that down to Mr Lusty, he will  
14           organise us, as ever.  (Handed)

15                                   MR DAVID HUW FRANCIS (sworn)

16                                   Examination-in-chief by MR BOWSHER

17  MR BOWSHER:  Mr Francis, what are your full names?

18  A.  David Huw Francis.

19  Q.  And your address?

20  A.  [Address given].

21  Q.  In this matter, you have made two statements.  Can I ask  
22           you just to identify and prove those for us.  Take  
23           file C1, tab 4, page 379.  That is marked as a first  
24           statement.  And if you go to page 389, it's the pages  
25           in the bottom right-hand corner; is that your signature?

1 A. It is.

2 Q. And it is dated 23 September, and it has a number of  
3 attachments, which run on for a number of pages  
4 thereafter. Have you had a chance to check that  
5 statement over?

6 A. I have.

7 Q. Was there anything in there that you wanted to correct  
8 or --

9 A. No.

10 Q. Are the contents of that statement true?

11 A. Yes.

12 Q. Then you probably want to put that to one side because  
13 we may come back to it. Can we look at C2, tab 13,  
14 page 112. Again, there is another statement bearing  
15 your name, which runs on to page 119. Is that your  
16 signature there?

17 A. Yes.

18 Q. Dated 30 January 2012. Again, have you had the  
19 opportunity to check that statement?

20 A. I have.

21 Q. Is there anything you wish to correct in that?

22 A. No.

23 Q. Again, is that statement true to the best of your  
24 knowledge and belief?

25 A. It is, yes.

1 Q. Thank you. In the nature of these things, some of the  
2 points have developed since you produced the witness  
3 statements and I may just ask a few introductory  
4 questions, but I don't propose to be very long, really  
5 picking up some of the themes we've already heard about  
6 in this hearing.

7 I'm not sure whether you were in court during the  
8 cross-examination of Mr Fowles, but one of the themes  
9 which we see from the record is that Mr Carl Waters,  
10 while he was finance director, was on a number of  
11 occasions, suggesting to others in management of  
12 2 Travel that the right course was to liquidate the  
13 company and get value out of it. He puts it in a number  
14 of different ways in different places, but that's the  
15 theme. Is that your recollection?

16 A. It is, yes.

17 Q. What was your personal reaction to that proposition?

18 A. I disagreed with him.

19 Q. What was the basis for that disagreement?

20 A. Well, the company had only just floated. We expected to  
21 have losses early on and we had faith that the property  
22 would eventually sell and discharge the company's  
23 indebtedness. He wanted to dispose of the property  
24 straightaway and I felt it was too soon to do that. We  
25 needed time for it to realise its full potential.

1 Q. What was your view as to the viability of the core  
2 bus/coach business?

3 A. From what I understood -- I wasn't a bus person myself,  
4 but from what I could understand and the meetings  
5 I attended, Bev Fowles was a top man as far as buses  
6 were concerned. He had faith in it. Nigel Short and  
7 I spoke to people independently of the company and they  
8 had faith in it and I had faith in it.

9 Q. Could you turn to file E19, page 274. Do you see that  
10 letter?

11 A. I do.

12 Q. It's a three page letter. Although this isn't signed,  
13 it's clearly the file copy of a letter from  
14 Sir Richard Needham to City financial Associates of  
15 8 March 2004. Were you at all involved in the writing  
16 of that letter?

17 A. No.

18 Q. Did you become aware of it later?

19 A. Yes.

20 Q. Could you describe the circumstances as far as you were  
21 aware, as to why this letter was being written?

22 A. I think Sir Richard was unhappy with the way that  
23 Mr Rawlinson had written to the company and I became  
24 aware of this letter when I was told about it just prior  
25 to a board meeting.

1 Q. Do you know roughly when that board meeting was?

2 A. No.

3 Q. Have had you a chance to look over that letter?

4 A. I have, yes.

5 Q. Had you seen it before that board meeting, when it was  
6 drawn to your attention?

7 A. I did see it just before the meeting, yes.

8 Q. Was it a letter which you agreed with or had different  
9 views of?

10 A. I did agree with it.

11 Q. We heard yesterday from Mr Fowles that there reached  
12 a point, as the predation went on, where he began to  
13 feel that it wasn't fair to ask you and Mr Short to  
14 carry on funding the company. That was the short way of  
15 putting it. Is that a view that Mr Fowles expressed to  
16 you?

17 A. Yes, it was, yes.

18 Q. What was your reaction to him saying that to you?

19 A. Clearly, we were concerned about the cash, but we were  
20 quite sad about it. It meant a lot to him and he'd put  
21 his life savings into it. So had we been able to go on,  
22 we would have chosen to go on, but it made little sense.

23 Q. Attached to your second statement, C2, we see -- I'm not  
24 going to take you to the specific reference, but we can  
25 see that there's the transcript of a hearing

1 in October 2004 -- it's C2, page 151, just so that you  
2 can see it -- where you were discussing matters,  
3 including funding matters, with the Traffic  
4 Commissioner. We can see there's an exchange between  
5 you and the Traffic Commissioner. At that point, were  
6 you still willing to put funds into the company?  
7 It's October 2004.

8 A. Yes.

9 Q. If you then turn to E10, page 14. This is the appeal  
10 decision, if I can loosely describe it that way, the  
11 decision of the Transport Tribunal by way of the appeal  
12 from the decision which followed on from that October  
13 hearing. I'm jumping a step ahead, as it were. What  
14 we can see is that the tribunal considers whether or not  
15 the Traffic Commissioner was right in revoking the  
16 licences. If you look at paragraph 15 on page 21,  
17 you'll see that the tribunal comes to this:

18 "This brings us to the decision making in the  
19 present case."

20 Do you see that?

21 A. No, I can't. Oh sorry, yes.

22 Q. "This brings us to the decision-making in the present  
23 case. Mr Laprell [who was acting for 2 Travel] stated  
24 on express instructions that the company accepted that  
25 many of the problems had been of its own making

1           ...(reading to the words)... stated that he hoped that  
2           a further hearing would not be necessary. The  
3           impression given was that there would be a further  
4           hearing or at least a further opportunity to make  
5           representations, if the Traffic Commissioner was not  
6           satisfied about the available funds."

7           That's the impression which was being said on behalf  
8           of 2 Travel. For yourself, what impression did you  
9           have? Did you have the impression that it was open to  
10          you to make available further funds to support the  
11          company?

12         A. Yes, yes.

13         Q. We see that the tribunal goes on to say:

14                 "We have to say that there is force in these  
15                 comments. We understand the Traffic Commissioner may  
16                 well have thought by December 2004 that enough was  
17                 enough, but if so, he had to make this clear before  
18                 causing the axe to fall, with serious consequences."

19                 Again, at that point, if I can put the hypothesis in  
20                 this way. If the Traffic Commissioner had  
21                 said: actually, I'd like to call you on putting forward  
22                 the available funds that you said might be available,  
23                 would you have done so at that point,  
24                 after October 2004?

25         A. Yes.

1 Q. Were you surprised then, when the Traffic Commissioner,  
2 as the tribunal puts it, brought down the axe without  
3 asking you the question?

4 A. The Traffic Commissioner didn't want to hear anything  
5 that I was trying to put before him in relation to the  
6 predation. And as a result of that, I wasn't really  
7 surprised at anything he said because he'd only heard  
8 half the story.

9 Q. I wanted to ask just a couple of questions about the  
10 land at Swansea and I wanted -- again, it may be helpful  
11 just to keep the chronology in our mind. I just wanted  
12 to make sure that you had the opportunity to explain the  
13 sequence of values that goes through your statement. If  
14 you have C1, tab 4, page 387. We see first at  
15 paragraph 55 is the start of the short narrative,  
16 setting out the different values.

17 Sorry, I've just started in the wrong place. Sorry,  
18 can I go back to paragraph 36? Apologies.

19 Paragraph 36, where you start. 35 and 36. You deal  
20 with the Redrow offer. Could you just explain how it is  
21 that the Redrow offer comes to be worth £5 million to  
22 2 Travel, as you've described in paragraph 35 and 36?

23 A. The Redrow offer wasn't worth £5 million, the total  
24 offer was.

25 Q. How does that work?

1 A. Well, Lidl had offered, I think it was either 2.1 or  
2 2.2 million for an acre and a half. The balance of the  
3 land, about three and a half acres, was at £800,000 per  
4 acre, and there was a premium in regard to the fact that  
5 the land opened up land at the rear.

6 Q. Right. And it's because of that premium, is it, that  
7 you concluded at that point that there was a possible  
8 profit between 7 and 12, as you've described in  
9 paragraph 37?

10 A. No, that related to other land.

11 Q. Okay. Of course, at this point, I'm sure Mr Waters, if  
12 he'd been asked, would have said -- and it would be  
13 consistent with what he was saying: well, sell it now,  
14 I suppose. That was his consistent line during this  
15 period. At what point did the value of the land reach  
16 the top of the market, as it were? What was the highest  
17 value that you were able to attribute to that land?

18 A. Probably about 2005, it was worth the type of cash that  
19 you're talking about here. But it wouldn't have been  
20 until about 2006/2007 that it would have reached the  
21 very highest.

22 Q. Did you receive any offers in about 2006/2007?

23 A. Yes.

24 Q. How much did that value the land at?

25 A. Wimpey at one stage offered £1,180,000 an acre and there



1 A. Well, I invested in it, but I wasn't familiar with it.

2 Q. You invested in 2 Travel?

3 A. That's right.

4 Q. But not otherwise in transport? Is that correct?

5 A. I invested in 2 Travel.

6 Q. Yes, you did. Of course, of course. We're well aware

7 of that. I'm simply saying your investments in your

8 portfolio have not been in transport as a sector.

9 You've been --

10 A. No, they have. I was a large shareholder in a few

11 companies, which involved transportation.

12 Q. But you're not the operations man?

13 A. No.

14 Q. That's what you were saying earlier. So you were one of

15 the founding shareholders of 2 Travel?

16 A. I was, yes.

17 Q. When it was set up, you had half the shares with --

18 A. That's right.

19 Q. -- your cousin, Mr Bev Fowles?

20 A. That's right.

21 Q. When it began, you were the company secretary, but not

22 a director at that point?

23 A. That's right.

24 Q. The origins of the -- well, the 2 Travel business, as it

25 were, took off with the acquisition of Capital Coaches?

1 A. That's right.

2 Q. In 2000. And one aspect of that deal, the term of that  
3 deal, was that 2 Travel would have an option to acquire  
4 the freehold of the Swansea depot?

5 A. That's right.

6 Q. And that is land adjacent to what I think we now know as  
7 the Morfa Retail Park?

8 A. It is, yes.

9 Q. And what is now known as the Liberty Stadium?

10 A. That's right.

11 Q. In fact, you say in your evidence that -- this is right,  
12 isn't it -- it was that, it was the potential for  
13 developing that site which was one of the reasons which  
14 led you to be interested in investing in 2 Travel in the  
15 first place?

16 A. That's right.

17 Q. 2 Travel floated on the alternative investment market,  
18 AIM, in January 2003. Correct?

19 A. Mm-hm.

20 Q. One of the uses, one of the principal uses of the  
21 flotation proceeds was to purchase the freehold of the  
22 Swansea property?

23 A. That's right.

24 Q. That was done with some of the proceeds and with  
25 a mortgage?

1 A. I believe so, yes.

2 Q. And that happened in around June 2003?

3 A. Yes.

4 Q. So at that point, that's when 2 Travel became the owner  
5 of the freehold?

6 A. I believe so.

7 Q. We have a report from early 2004 from Poolman Harlow.  
8 Perhaps we should just look at that briefly. That's in  
9 E5 at page 536. I'm looking for the date. I don't  
10 immediately see it on the document itself, but I'm sure  
11 we know that it's, in any event, early in 2004. If you  
12 go to page 544 of that, just to summarise where they got  
13 to, they put a market value of the property with vacant  
14 possession throughout the site as it stood then, at  
15 £850,000.

16 I don't think we need to go through that in detail,  
17 but this is one of the valuations that has been obtained  
18 during the period of 2 Travel's ownership of the site.  
19 So you bank a valuation of £850,000.

20 If we then go in that file to page 271, we see what  
21 we know is the first report from PwC. The relevance of  
22 turning that up, just for the moment, is that we see at  
23 page 302, the working capital requirements of the  
24 company that the PwC report identifies, which I think  
25 is -- we see just at the end of the summary on page 302,

1           they refer to a requirement of £600,000. Do you see  
2           that?

3    A. I do.

4    Q. That requirement for working capital was met through the  
5           provision of bank loans from Barclays, which were  
6           guaranteed by you and Mr Nigel Short, who was a director  
7           of the company at the time. In exchange for that, you  
8           had security over the Swansea depot. That's correct,  
9           isn't it?

10   A. I believe so, yes.

11   Q. We have guarantees to be found in bundle E12, page 188.  
12           These are the best copies that I think have turned up in  
13           the disclosure exercise. They're not finally signed.  
14           We have a signature from Mr Short at page 195, we don't  
15           have a signature from you. This is not actually dated,  
16           but as we understand it, these were executed and you  
17           gave the guarantee to Barclays. I don't think there's  
18           any controversy about that, is there?

19   A. No.

20   Q. So in April 2004 then, there is a second charge on the  
21           land in your favour and Mr Short's favour. That's where  
22           we've got to at that point. We come to the summer of  
23           2004, if you're keeping up with me on the chronology.  
24           There are some changes in the board of 2 Travel at that  
25           time, aren't there? Mr Bev Fowles ceased to be the CEO?

1 A. In the summer?

2 Q. In the summer of 2004. He became the operations  
3 director and in terms of chief executive, he was in  
4 effect, replaced by you, wasn't he?

5 A. No.

6 Q. In this sense: you assumed management control of the  
7 company, so we were told?

8 A. No.

9 Q. Can we look at file E7, please, page 414. This is  
10 a memorandum prepared by Mentor UK, who were the  
11 corporate director on the board, weren't they?

12 A. That's right, yes.

13 Q. Representing the -- I think it's the loan stock holders  
14 on the board?

15 A. Mm-hm.

16 Q. This memo is not dated, but it's headed  
17 "2 Travel August 2004", and the internal evidence  
18 suggests that it must be dated quite early in August  
19 because at the end of the first paragraph, one sees  
20 a reference to a board meeting rescheduled for 6 August.  
21 And in the third paragraph, the fact that it is recorded  
22 that the Traffic Commissioner has called for a public  
23 inquiry on 16 and 17 August in Neath. So we assume  
24 it is before both of those dates.

25 It's Mr Spooner, isn't it, who's the --

1 A. That's right.

2 Q. -- the Mentor person. An action plan was agreed with  
3 the NOMAD, that's the AIM nominated adviser, which was  
4 CFA, represented by Mr Rawlinson. Isn't that right?

5 A. Mm-hm.

6 Q. "An action plan was agreed with the NOMAD, following our  
7 meeting on 2 July 2004. Further meetings have taken  
8 place on 21 and 30 July with 2 Travel's postponed board  
9 meeting rescheduled for 6 August."

10 Then he lists some developments. These are some of  
11 the director changes that I was mentioning: a new  
12 management team identified by PwC, Mr Cook and  
13 Mr Hugh Jenkins to replace the current FD. And for the  
14 current MD, Bev Fowles to become director of operations?

15 A. That's right.

16 Q. "The current financial director, Carl Waters, will leave  
17 2 Travel in mid-September. PwC provide the interim  
18 financial support."

19 I think that means technical support on the  
20 financial side rather than money, doesn't it?

21 A. Right.

22 Q. And then it refers to the Traffic Commissioner, and then  
23 says:

24 "Huw Francis is to become the director for  
25 regulation. Announcement will be made to AIM this week.

1 He has effectively taken management control of  
2 2 Travel."

3 That's what I was referring to. You did in fact  
4 take over management control --

5 A. No, I didn't. Martin Cook and Hugh Jenkins did.

6 Q. But this was an interim stage, wasn't it, before they  
7 had taken their positions?

8 A. Well, he might have meant that I was doing it until they  
9 took over, but I certainly didn't take control and I wouldn't  
10 have been able to.

11 Q. He'd previously expressed the view that you were to be  
12 regarded as a shadow or de facto director in any case,  
13 hasn't he?

14 A. Who had?

15 Q. Mr Spooner.

16 A. He asked me to go on the board, as we'd invested so much  
17 cash, and I agreed.

18 Q. Yes. He did think that you should be on the board, and  
19 after some time and discussion about that, then you did.  
20 It took a while, didn't it?

21 A. What took a while?

22 Q. For you to go on the board. Time was taken between it  
23 being suggested that you should go on the board and you  
24 taking that status, as it were?

25 A. Well, what time do you suggest? I don't know what

1           you're trying to say.

2   Q.   Well, I'll have to come back to the chronology of that.

3   A.   The fact is, I went on the board. I was asked.

4   Q.   You ended up on the board.

5   A.   But I certainly didn't take over management control.

6   THE CHAIRMAN: Were you aware of this memorandum?

7   A.   No, sir. But I think what Graham Spooner probably meant

8           was that in the interim period, until Martin Cook and

9           Hugh Jenkins came in, but I certainly didn't take

10          control of the management team.

11  THE CHAIRMAN: It says at the end, in the summary, that

12          Mr Spooner had been working closely with the NOMAD, the

13          chairman, that will be Sir Richard Needham, and the

14          executive directors, to seek a solution and it rather

15          suggests that this had been discussed with the board.

16          Had it?

17  A.   What, sir? The fact that we were looking to try and

18          find a solution?

19  THE CHAIRMAN: I'm just looking at the contents of

20          paragraph 4. You say it's wrong, but the words speak

21          for themselves.

22  A.   Well, it's wrong, sir. I didn't take control of the

23          management at all. Never did.

24  THE CHAIRMAN: What I'm trying to discover is whether you

25          knew that anyone was saying this, whether it was true or

1 not?

2 A. No, I didn't know anyone was saying it.

3 THE CHAIRMAN: Thank you.

4 MR FREEMAN: Is "Director for regulation", which is also

5 referred to in paragraph 4, is that an executive post?

6 A. It is, sir. I think basically, because we'd invested so

7 much money, they wanted us on the board, and I would do

8 precisely what I did whilst I was company secretary.

9 That was the idea.

10 MR FREEMAN: So you'd be director responsible for regulatory

11 matters?

12 A. That's right.

13 MR FLYNN: In the reference in the summary to executive

14 directors, that would have included you?

15 A. It would have.

16 Q. Thank you.

17 THE CHAIRMAN: Sorry. Just one further question arising

18 from Mr Freeman's question. What did you do as director

19 of regulation?

20 A. What I did as company secretary, sir.

21 THE CHAIRMAN: Which was?

22 A. Just keep minutes.

23 MR FREEMAN: Sorry, we may be getting ahead of ourselves.

24 Did you not attend the Traffic Commissioner's hearing?

25 A. Yes, I did, yes.

1 MR FREEMAN: Was that in your capacity as director of  
2 regulation or your capacity as --

3 A. I think I was company secretary at that point in time,  
4 and later on, in November, as a director, yes.

5 MR FLYNN: But regulatory issues included not just keeping  
6 minutes at meetings, did it? It did also involve  
7 responsibility for the company being in compliance with  
8 the law more generally?

9 A. Yes, it did.

10 Q. Including the traffic regulations?

11 A. Yes.

12 MR FREEMAN: That's what I understood by "regulatory  
13 matters".

14 MR FLYNN: So Mr Francis, you had been a director in other  
15 companies and you became a director in 2 Travel.

16 A. That's right.

17 Q. You were formerly a solicitor. You were aware of the  
18 responsibilities of a company director?

19 A. I was.

20 Q. And you knew, for example, did you not, that you should  
21 not put yourself in a position where your personal  
22 interest conflicts with the interests of the company of  
23 which you're a director?

24 A. I did, yes.

25 Q. And that you had an obligation to act in the best

1 interests of the company at all times?

2 A. Yes.

3 Q. And you knew also, presumably, that related party  
4 transactions would need the approval of shareholders?

5 A. I did.

6 Q. So around that time we get a further valuation,  
7 a different valuation of the Swansea depot, from  
8 King Sturge, now Jones Lang LaSalle. That we find in the same  
9 bundle, E7, if you've still got that in front of you, at  
10 page 608. "A valuation as at 31 August 2004", is what  
11 it says there on page 608.

12 If we turn over to 610, we can see a description of  
13 the -- we see the executive summary, which includes the  
14 location of the site, a description of it, which I think  
15 the tribunal has not yet seen, so we might just look at  
16 that:

17 "A detached single storey industrial complex with  
18 two storey ancillary office section, dating from the  
19 1950s and totalling [a number of square metres or square  
20 feet] ..."

21 That relates to buildings, does it, those figures in  
22 square metres and square feet?

23 A. Yes.

24 Q. " ... on a site area of 1.9-hectares or 4.69 acres."

25 That's the size of what we call the Swansea depot

1 site:

2 "The buildings are outmoded by contemporary  
3 standards and the buildings are nearing the end of their  
4 useful economic life."

5 And for a freehold tenure, they say that for  
6 existing use, there's a valuation of £650,000, "Land  
7 apportionment, £400,000." What does that mean? I ask  
8 out of ignorance.

9 A. I'm equally as ignorant as you, I'm afraid. I'm not  
10 sure.

11 Q. Very well. In that case, we probably don't need to  
12 dwell on it if it's not relevant to your assessment.  
13 And "Market value, £1 million." So the market value of  
14 the freehold at that point, if someone would take it off  
15 your hands, they are suggesting a market value of  
16 £1 million; is that correct?

17 A. It is, yes.

18 Q. And then they go on to say:

19 "It offers short to medium term potential for  
20 redevelopment."

21 And that's not included in the million, as  
22 I understand it. The short or medium-term potential for  
23 redevelopment. If someone paid you £1 million for it,  
24 those are the opportunities that they would then have;  
25 is that correct?

1 A. Sorry, I don't follow you. I'm looking at the £500,000  
2 to £700,000. Is that what you're saying?

3 Q. I'm saying that the summary is the market value of the  
4 site is £1 million, in the condition described.

5 A. Yes.

6 Q. But saying that:

7 "The subject site affords short or medium-term  
8 potential for redevelopment for residential or non-food  
9 retail uses, subject to the following."

10 And then it lists some things, issues --

11 A. And the figure at the bottom, £500,000, to £700,000 an  
12 acre.

13 THE CHAIRMAN: So that's £1 million without planning consent  
14 and more with planning consent.

15 MR FLYNN: That's the upside they're saying. So someone who  
16 took it off you for £1 million, would have that  
17 potential upside?

18 A. That's right.

19 Q. That's what I was trying to get at. In PwC's second  
20 report, which we find at page 416 of the same bundle,  
21 they give some revised forecasts, working capital  
22 estimates and so forth, and they end up with, I think,  
23 what is called the "peak working capital requirement" of  
24 £937,000. I think we'll see that on page 427. It's  
25 a sideways on table, but one sees a projected cash flow

1 month by month, from June 2004 to August 2005. The  
2 bottom line is the cash flow requirement at the end of  
3 each of those months. The highest figure in that row is  
4 £937,000. That's what I think they refer to as the  
5 "peak cash flow requirement."

6 So you'd given guarantees for some £675,000, I think  
7 it was, in April. And what you did in order to meet the  
8 company's requirements for additional working capital as  
9 estimated by PwC, you executed further guarantees, you  
10 and Mr Short executed further guarantees for £300,000.  
11 Is that correct?

12 A. That's right, yes.

13 Q. Your agreement or your willingness to give those  
14 guarantees was conditional on 2 Travel, on the company  
15 granting you and Mr Short an option to purchase the  
16 property?

17 A. That's right, yes.

18 Q. And the terms of that option were that the purchase  
19 price would be £2 million on exercise of the option,  
20 plus 20 per cent of the increase of the value of land if  
21 you resold within a certain period. That was the terms  
22 of the deal, wasn't it? Shall we just look at those  
23 option agreements? It's on page 728 of the file.

24 It's dated 22 September 2004.

25 MR FREEMAN: Sorry, which page?

1 MR FLYNN: 728 in E7. That's the cover sheet showing a date  
2 of 22 September. I think that the tribunal may have  
3 seen this with Mr Fowles yesterday.

4 THE CHAIRMAN: Yes. So this is 22 September 2004?

5 MR FLYNN: 22 September 2004. And while we're in it,  
6 because it's relevant to later matters, we might just  
7 look at -- if we look through the interpretation  
8 provisions, we see the call option. The call option  
9 enables you to call for the property --

10 A. Mm.

11 Q. -- as buyer. You and Mr Short. And it's a five-year  
12 option that lasts until 22 September 2009. The start  
13 date is the date of execution of the deed. If we go  
14 over the page, we see:

15 "Condition precedent means the satisfaction of all  
16 applicable Companies Act and AIM rules, requirements  
17 necessary to allow the seller to enter into this  
18 agreement, including particularly, the approval of the  
19 seller's shareholders, pursuant to section 322 of the  
20 Companies Act."

21 And we also see "Planning condition", which means  
22 "planning condition as defined in schedule 4", as it  
23 helpfully says. I'm not going to go through schedule 4  
24 in any detail, but it's to be found at page 745. And in  
25 short, on page 748, one sees "Planning condition". It

1 says:

2 "Subject to paragraph 2.1, the planning condition is  
3 the grant of satisfactory planning permission."

4 Which is defined just above as:

5 "Planning permission for development of a property  
6 for residential or industrial or retail use, acceptable  
7 to the buyer, acting reasonably in good faith."

8 So that was the condition.

9 Going back to page 730, we see the purchase price is  
10 2 million, as set out there.

11 Just to complete the documentary record, if we go  
12 back in that file to 720, we see the corresponding  
13 guarantee to Barclays, executed, as we see from  
14 page 727, by you and Mr Short on 22 September. So  
15 that's how the transaction was set up.

16 We know -- and we'll come back to it -- that you  
17 increased the guarantees further in October of 2004,  
18 didn't you? You increased the guarantee by £650,000  
19 in October. We'll go over that in a minute.

20 The NOMAD and Mentor UK, who were extremely troubled  
21 about these transactions, weren't they -- and if we look  
22 at page 788 in this file, we'll see that. This is  
23 a letter of 28 September, so six days after the  
24 signature of the option and the guarantees.

25 THE CHAIRMAN: Could you just note, Mr Flynn, I'm trying to

1 work from a computer stick that I was given, which is  
2 very easy to use. Everything is two pages out.

3 MR FLYNN: Right.

4 THE CHAIRMAN: It's plus two. So if there's any confusion,  
5 I'm working from plus two, and I think some of the  
6 people behind you are as well, judging by the nods.

7 MR FLYNN: Right, sir. I knew I'd had that problem with  
8 some of the files on my own, but I'm afraid my  
9 arithmetic skills are such that I would hesitate to try  
10 to correct your reference.

11 THE CHAIRMAN: Just in case there's any delay. You give us  
12 your numbers and we'll work from plus two.

13 MR FLYNN: Mine is 788, so if we're on the same page for the  
14 moment. This is a letter of 28 September 2004 from  
15 Mr Rawlinson, who was the NOMAD, wasn't he?

16 A. That's right, yes.

17 Q. It says:

18 "Dear Huw and Bev. As you know, we were astonished  
19 to learn yesterday [so they learned on the 27th,  
20 according to that] afternoon that the option and loan  
21 agreements had been entered into, albeit it  
22 conditionally, prior to the company's lawyers having  
23 consulted with us and Graham Spooner, who represents the  
24 independent board. I note that you, Huw, deny that they  
25 have been entered into, although this contradicts the

1 telephone conversation and e-mail I've had from your  
2 lawyers. Bev spoke to me at 2.30 last Friday, he did not  
3 tell me that he had been to the lawyers to sign the  
4 paperwork or that he was on his way there. Getting  
5 David Fowles to counter sign when David is, as far as  
6 I know, not involved in the transaction, appears to me  
7 to have been done in order to avoid us and  
8 Graham Spooner, who is leading the transaction for the  
9 independent board, as he would have known that Graham  
10 would have refused to sign the documents at this stage."

11 Then he goes on to say he is unclear why the  
12 documents need to be entered into with such haste:

13 "Your solicitors state this was done in order to  
14 alleviate the company's funding difficulties. You tell  
15 us this was not the case and that your loan monies had  
16 been released to the company previously. Someone is not  
17 telling us the truth. I was also astonished to learn  
18 that despite all of our requests to be kept informed,  
19 the company had received a demand from the Inland  
20 Revenue two weeks ago for payment of a substantial sum,  
21 which I understand from our conversation last night to  
22 be £400,000, and that this sum has been paid out by  
23 means of Huw passing over funds to Bev, for him to make  
24 the payment. I do not understand this process and I do  
25 not know when or if payment has been made. The only

1 mitigating factor as far as I can see, is a comment made  
2 by Richard Needham last night, to the effect that the  
3 Inland Revenue had reached agreement with you earlier in  
4 the year and you'd spent the last two weeks negotiating  
5 with them to get them to stand by their original  
6 agreement. Without telling us, you have also apparently  
7 increased the amount of your and Nigel Short's loan to  
8 the company, you say to meet the shortfall of working  
9 capital arising from the increased payment to the Inland  
10 Revenue. You say you have checked the additional  
11 requirement by running PwC's working capital model."

12 And then really comes the gist of his complaint:

13 "You, as directors of an AIM quoted company, had  
14 a clear duty to report these matters to your fellow  
15 board members and to keep us, in our capacity as your  
16 nominated adviser, fully informed. You are in clear  
17 breach of your obligations to us, as set out in our  
18 NOMAD appointment letter."

19 Then he says:

20 "Before we can decide whether there has been any  
21 breach of the AIM rules, we need the full facts by no  
22 later than 12 noon today, supported by paperwork, being  
23 photocopies of the option and loan agreements;  
24 confirmation that the originals have been torn up, on  
25 the basis they were entered into without having

1 considered the implications under rule 12; copy  
2 correspondence from the Inland Revenue, copies of  
3 correspondence between the company and the Inland  
4 Revenue; photocopies of the letter from the Inland  
5 Revenue, relating to the monthly payment of £25,000;  
6 bank statements; copy of the PwC working capital model  
7 and written confirmation from you."

8 And I think although the letter is addressed to you  
9 and Mr Fowles, this must be you, Mr Francis, I think:

10 "Written confirmation from you and Nigel Short that  
11 you have advanced these additional amount of funds to  
12 the company and your loan is available to draw down."

13 They say also:

14 "We are concerned there may have been a breach of  
15 rule 10 in terms of your failure to notify without  
16 delay, any change in the financial condition,  
17 performance in business or expectation of performance.  
18 Our understanding is you are currently unable to provide  
19 us with this information. We also need to consider,  
20 this afternoon, our continuing as the company's NOMAD,  
21 given the breakdown in communications between us."

22 I think it's fair to say that Mr Rawlinson was  
23 extremely disappointed and troubled by the steps that  
24 had been taken and that he was particularly concerned by  
25 the fact that they hadn't been told anything about it

1 and the Stock Exchange hadn't been notified?

2 A. That's right, yes.

3 THE CHAIRMAN: Presumably, as an AIM listed company, there  
4 would have been a page, as it were, on the London Stock  
5 Exchange and AIM websites, providing a snapshot of the  
6 company's position at any given time?

7 A. That's right.

8 THE CHAIRMAN: I think they update them every 15 minutes,  
9 don't they, or thereabouts? And on that screen,  
10 in relation to an AIM company, at least, one would see  
11 directors' transactions, related party transactions and  
12 the like?

13 A. Yes, I think so.

14 THE CHAIRMAN: With an obligation to notify anything that  
15 was pertinent under the AIM rules?

16 A. That's right.

17 THE CHAIRMAN: So this is a realtime obligation on any  
18 listed company, the AIM being a baby of the London Stock  
19 Exchange?

20 A. That's right, yes. So the position was that we'd  
21 already notified Sir Richard Needham and Sir  
22 Richard Needham was meant, as chairman, to be talking to  
23 Tony Rawlinson, which he did do, on a regular basis.  
24 And Sir Richard was perfectly familiar with the  
25 position. There had been a falling out between

1 Tony Rawlinson and Sir Richard Needham previously.  
2 Sir Richard wrote a very lengthy letter to  
3 Tony Rawlinson because Tony Rawlinson basically wanted  
4 the company to contact him on a daily basis and charge  
5 the company a substantial amount of money each time they  
6 did. So the position in regard to the Inland Revenue  
7 meant the company had to move very promptly. We  
8 notified Sir Richard and I also spoke to Graham Spooner.  
9 So I'm not quite clear as to why he made that point.  
10 Subsequently, they all got together and agreed that they  
11 had been informed and they did deal with it.

12 But from our point of view, sir, taking this in  
13 isolation is all very well, but it needs to be put in  
14 context in terms of what was happening to the company  
15 with the predation that was going on. Whilst my friend  
16 is taking me through all this, it makes us look really  
17 bad, but in these circumstances we had to move very,  
18 very quickly. The company was running out of cash, the  
19 only access to cash it had was out of my pocket and  
20 Mr Short's pocket. The bank would give the company what  
21 it wanted, provided we guaranteed it. So I think it's  
22 entirely unfair that it be suggested that over a matter  
23 of a day or so, that we weren't complying with things  
24 when we were talking to Sir Richard on a regular basis.  
25 Mr Fowles at that stage, sir, I think you'll be

1 interested to know, was driving drivers from Swansea to  
2 Cardiff at 5 o'clock in the morning, then going back,  
3 literally to clean buses, because there was no driver  
4 there to do it, and in all fairness to Carl Waters --  
5 he was the finance director -- he was also driving  
6 buses, as was the chief engineer and as was most of the  
7 staff. Largely because all the drivers in Cardiff had  
8 been poached by Cardiff Bus. So the company was in some  
9 difficulty, not of its own doing, but because of  
10 Cardiff Bus.

11 So the situation is yes, there were delays of a day  
12 or so in relation to dealing with these matters, but you  
13 need to look at that in the context of what the company  
14 was doing and the position the company was in at that  
15 particular point in time.

16 MR FLYNN: Mr Francis, just as a matter of formality, your  
17 evidence should really be directed at the tribunal.

18 THE CHAIRMAN: Don't worry about that.

19 A. I'm sorry, sir.

20 THE CHAIRMAN: I asked the question, you were getting the  
21 answer. We both heard it.

22 MR FLYNN: I think everyone heard the answer.

23 Nevertheless, the obligation is a strict one,  
24 Mr Francis, isn't it? I mean, there may have been a lot  
25 of pressure. There may have been time pressure --

1 A. And the obligation was fulfilled, as far as we were  
2 concerned. We spoke to Sir Richard Needham on literally  
3 a daily basis. He was familiar with the matter and  
4 I think the letter acknowledges that. I think the  
5 letter also acknowledges that what had been done was  
6 conditional because the company needed that money  
7 quickly and Mr Short and I provided it quickly.

8 Q. You said, just to clear one thing up, that Sir Richard  
9 wrote a long letter to Mr Rawlinson.

10 A. That was probably, I think, back in April.

11 Q. Was that the March letter that you were taken to by  
12 Mr Bowsher in --

13 A. I think so, yes.

14 Q. -- E19/274? That was a long letter from  
15 Sir Richard Needham and I note that it did say something  
16 about your legal fees to Mr Rawlinson, which I think is  
17 the point you were making?

18 A. The point was, sir, that as far as Tony Rawlinson was  
19 concerned, each phone call cost the company considerable  
20 sums of money and Sir Richard was becoming concerned  
21 that he wanted to be involved in every aspect of the  
22 matter, largely to charge a fee, and the company  
23 couldn't afford it. Sir Richard did report the matters  
24 to him on a regular basis and I think there's some  
25 reference in one of the letters that Tony Rawlinson

1           wasn't available on the day, and therefore we spoke to  
2           Graham Spooner. It was a very small company. We spoke  
3           to Graham Spooner on a regular basis, and if it was  
4           necessary, we would go up and see him at his home or he  
5           would come down. So it wasn't a question that they  
6           didn't know what was going on. Equally, the board had  
7           already agreed the course of action. We discussed on  
8           a monthly basis what the arrangements were going to be  
9           in terms of how funds were going to be raised in the  
10          future, because we were the only option as far as the  
11          company was concerned.

12        Q. The letter to which you're referring had been written  
13          some six months before and it is plain from  
14          Mr Rawlinson's letter that they had only learnt the day  
15          before, that is --

16        A. I'm not suggesting -- I'm just using that as an example  
17          of the relationship that existed between Sir Richard and  
18          Tony Rawlinson. I think this letter shows that he had  
19          spoken to Tony Rawlinson the night before, unless I've  
20          read it incorrectly. But my line of communication was  
21          with Sir Richard and once a week, or perhaps twice  
22          a week, with Tony Rawlinson.

23        Q. Mr Francis, the director of regulation should be the one  
24          who makes the necessary contacts with the Stock  
25          Exchange, should he not, or the company's NOMAD?

1 A. The NOMAD actually did it, and we would ring  
2 Tony Rawlinson, but there was no guarantee that you'd  
3 get through to him. But we spoke at least twice a week.

4 Q. The documents were entered into on 22 September and he's  
5 writing on 28 September to say he found out yesterday  
6 afternoon?

7 A. No, sir. The documents were entered into conditionally.  
8 The board knew what was going to happen. If they wanted  
9 to borrow the money, those were the terms of the loan.  
10 We weren't particularly interested in lending the cash,  
11 we could have done without that. But over and above  
12 this, I think Nigel Short, Bev Fowles and I put £500,000  
13 of our own cash in, which was unsecured, to meet this  
14 demand. I think the actual documentation was signed  
15 subsequent to that.

16 Q. The document is signed on 22 September. We looked at  
17 it.

18 A. What I'm saying to you is that we had lent the company  
19 money at that stage to pay the Inland Revenue 450 or  
20 £500,000, and it was before the documentation was  
21 signed.

22 Q. Various figures are given for what was paid to the  
23 Inland Revenue. I don't think any of them go up to 500.

24 A. It wasn't just that. Each time the company needed the  
25 cash, it was given cash.

1 Q. We'll come back to that, but I do suggest that it is  
2 quite clear that whether you had relied on  
3 Sir Richard Needham to pass the information on or  
4 whether you had tried to get through to Mr Rawlinson or  
5 Mr Spooner, the fact of the matter is they were kept in  
6 the dark for the best part of a week and were extremely  
7 annoyed about it.

8 A. Well, I don't accept that.

9 Q. What ultimately happened was that it was accepted that  
10 this had to be approved, it had to be put to the  
11 shareholders as a related party transaction and it was  
12 so approved. And I think I'd like to look at that now,  
13 which is in file E8 at 89. I think the tribunal has  
14 seen this document already.

15 THE CHAIRMAN: This is the trading statement?

16 MR FLYNN: It's the trading statement. I think that's  
17 a short title. The official title below the company's  
18 name is "Trading statement related party transaction and  
19 directorate change". So it's a three for one  
20 announcement to the market. And I think we've looked at  
21 the trading statement. We then look at the related  
22 party transaction, which is on page 90, the second page  
23 of the document.

24 Firstly, a correction is made from a previous  
25 announcement. The date of the present one is 8 August,

1           so this is correcting something which had been told to  
2           the market -- sorry, it's 8 October. So it's correcting  
3           what had been told to the market in August, not quite  
4           two months earlier:

5           "The company announced that Huw Francis and  
6           Nigel Short, both directors of the company, had provided  
7           the company with an unsecured loan of up to £937,000 for  
8           working capital purposes. In fact, the facility that  
9           was provided to the company by Huw Francis and  
10          Nigel Short was in the aggregate amount of £975,000 and  
11          comprised guarantees in respect of the money advanced to  
12          the company by the company's principal bankers. This  
13          facility was made on condition that security would be  
14          granted to Mr Francis and Mr Short over certain property  
15          and assets, including the company's freehold site and  
16          depot at Upper Bank, Swansea, and that they would be  
17          given an opportunity to acquire this site from the  
18          company."

19          And it goes on to say:

20          "A recent update of the earlier working capital  
21          review revealed that the facility referred to above  
22          would not be sufficient for the company's requirements.  
23          As part of agreeing the security agreement and option  
24          agreement with Huw Francis and Nigel Short, they have  
25          agreed to facilitate the company's revised requirements

1 by giving an undertaking, direct loans and also by  
2 agreeing to make available guarantees in respect of part  
3 of the company's indebtedness to its principal bankers.  
4 Such guarantees in aggregate, amounting to  
5 1.625 million, inclusive of the previous guarantee  
6 commitments by them."

7 And it goes on to say:

8 "These agreements are classified under the AIM rules  
9 as a related party transaction and require the approval  
10 of shareholders under the Companies Act and a circular  
11 will be sent."

12 The option at the top of page 91 is then described  
13 and that may be a useful place for the tribunal to  
14 recall where the option is actually described. As far  
15 as I know, that is an accurate and useful summary. It's  
16 a reference to the King Sturge valuation as at  
17 31 August, 650, existing use, or £1 million market value  
18 freehold, vacant possession, without any changes to  
19 existing planning permission.

20 Then it records:

21 "The independent directors ..."

22 And as was said yesterday, that means the directors  
23 that are not party to the related party transaction:

24 "... comprising Sir Richard Needham, Bev Fowles,  
25 David Fowles and Mentor UK, after consulting City

1 Financial Associates, the company's nominated adviser,  
2 believed that the terms of the related party transaction  
3 are fair and reasonable insofar as the shareholders are  
4 concerned. In forming their views on the transaction,  
5 the independent directors have taken into account the  
6 working capital shortage in the company and the lack of  
7 alternative sources of funding. Without the proposed  
8 facilities being put in place, the independent directors  
9 do not believe the company will be able to continue to  
10 trade. With the proposed facilities in place, the  
11 company remains solvent and has a viable future."

12 At that point, just while we're looking at the page,  
13 the board changes that we've already discussed:

14 "Mr Francis and I are mentioning Mr Martin Cook will  
15 join the board of the company as managing director with  
16 immediate effect."

17 So that's October 2004. And there's reference to  
18 the new finance director, Hugh Jenkins.

19 So that is the notice that was given to the market.  
20 The view taken on consideration by the independent  
21 directors was that the transaction was fair and  
22 reasonable for shareholders. That's what we see there.  
23 In other words, £2 million plus 20 per cent of the  
24 uplift over a period on re-disposal by you, was a fair  
25 market price for the land.



1 to Mr Short, subsequently, weren't they?

2 A. Yes.

3 Q. And we should look at that. That's in bundle E9,  
4 page 450. This is, again, the best copy of this  
5 document that we have. It's an assignment made on  
6 22 December 2004, presumably, although the year isn't  
7 given.

8 A. Yes.

9 Q. Mr Francis, I should have said that over the interval,  
10 two things were asked. One was that when I'm reading  
11 quotations, I should read them more loudly, so I don't  
12 mean to shout at you. The other is, if you're answering  
13 a question, we need a yes or a no, not just a nod.

14 A. Sorry, I apologise.

15 Q. That's fine. I should have noticed that myself, and I'm  
16 sorry. Those are the rules of the game. So it's an  
17 assignment of 22 December 2004 between the company,  
18 Mr Short and yourself. It recites:

19 "In order to facilitate the ongoing conduct of the  
20 company's business, Mr Short has agreed to advance a sum  
21 of £300,000."

22 Some of which he has already put forward, as it  
23 were, and the balance is coming in on that date, 22nd.

24 It is a condition of his advancing those monies that  
25 the company assign to him the benefit of the payment

1 under the option agreement. That payment is the overage  
2 rights, isn't it?

3 A. It is, yes.

4 Q. And so that is the purpose of this deed. I don't think  
5 we need to go into the details of it, but we just note  
6 paragraph 5, where you give your consent, should that be  
7 necessary, to the company completing the assignment and  
8 that the payment for any overage will go to Mr Short.  
9 That's the effect of this document, isn't it?

10 A. It is, yes.

11 Q. Mr Francis, presumably that £300,000 was the fair market  
12 value for those rights at that time, was it?

13 A. I think we actually paid £400,000.

14 Q. The document refers to £300,000.

15 A. Yes. But I think £400,000. Well, yes, it would have  
16 been at that time.

17 Q. It would have been a fair price?

18 A. Yes.

19 Q. Now, again, as you've said, you're conscious of your  
20 role and responsibilities as a director of the company?

21 A. Mm-hm.

22 Q. No notice of this transaction was given to the Stock  
23 Exchange as a related party transaction, was it?

24 A. By this time I think the shares had been suspended and  
25 the company was no longer on AIM, as I understand it.

1 Q. As at 22 December?

2 A. Yes.

3 Q. I don't know if you were here yesterday. Mr Fowles said  
4 simply, there wasn't time to do it. Things were so  
5 desperate that there wasn't time.

6 A. I think at that time the NOMAD had resigned and we were  
7 no longer on AIM, I believe.

8 Q. So your position is that it wasn't necessary --

9 A. That's my belief.

10 Q. -- to give an announcement. But nevertheless, it would  
11 still be a related party transaction, wouldn't it?  
12 It would still be unconscionable for a director to enter  
13 into a transaction of this kind that enriched the  
14 director at the expense of the company?

15 A. It would, yes.

16 Q. But your evidence is that this was a fair market value?

17 A. Yes, and I think it was covered by the original option  
18 agreement.

19 Q. I'm sorry, I don't understand the answer. What was  
20 covered by the original option agreement?

21 A. The original option was to pay £2 million, then  
22 £400,000. In effect, what this did was --

23 Q. Up to 20 per cent on top?

24 A. That's right.

25 Q. That would be 400.

1 A. Yes.

2 Q. So buying this out for £300,000, that's --

3 A. This wasn't the total amount. I think I paid £150,000  
4 in cash as well.

5 Q. But in relation to this specific matter, the buying out  
6 of -- whatever other cash you may or may not have put in  
7 the company in relation to specifically buying out the  
8 uplift, the overage rights, this is £300,000, which  
9 Mr Short advanced?

10 A. Yes. What I'm saying to you is that I think that the  
11 company had about £450,000. That's the figure I've got  
12 in my head.

13 THE CHAIRMAN: Let's be clear what you're saying. Are you  
14 saying that you bought part of the overage rights?

15 A. No, I provided £150,000'ish, something like that.

16 THE CHAIRMAN: But was that to Mr Short to enable him --

17 A. No, it was to the company. At this point in time, the  
18 company was in total disarray and the hope was that at  
19 any given time, Cardiff Bus would stop the predation.  
20 For months, every discussion at the board was: this  
21 can't carry on, it's bound to stop soon. Jokes were  
22 being made, sir, that we're not dealing with the Gambino  
23 crime family in New York, we're dealing with  
24 Cardiff Council; it cannot carry on. Yet month after  
25 month after month, it carried on.

1           Now, in 2004, at the beginning of 2004, when PwC  
2           came in, they came in after a three-month investigation  
3           by Bevan and Buckland to work out the total financial  
4           requirement of the company for the forthcoming year.  
5           A lot of thought was put into it, a lot of time was  
6           spent on it, and it was decided that £650,000 would be  
7           sufficient. We made arrangements for that £650,000 over  
8           that period of time. That £650,000 became £1.6 million.  
9           The amount needed -- I can't concentrate while they're  
10          talking, sir --

11   MR FLYNN: I'm sorry.

12   A. So the point I was trying to make is that the cash call  
13          on the company was increasing at such a rate, over and  
14          above anything else. The point I made earlier on -- and  
15          I think the tribunal needs to understand this.  
16          Bev Fowles had been managing director of the First Group  
17          in Bristol, which was a company three times the size of  
18          Cardiff Bus. He had run Glasgow. He was a very  
19          competent guy and he was literally having to ship  
20          drivers from Swansea up to Cardiff because of the  
21          shortage there, then come back down to Swansea and drive  
22          a bus himself. Carl Waters, in the August, was driving  
23          buses. The chief engineer was driving buses because all  
24          the drivers in Swansea were having to be shipped up to  
25          Cardiff.

1           Now, the context of the questions that are being put  
2           to me need to be understood because the answers that I'm  
3           giving give a one dimensional view of the position of  
4           the company at that point in time. But when it comes to  
5           giving notices and all the rest of it, the company was  
6           at the point of liquidation. It was hoped that  
7           something could be rescued. Cardiff had, I think -- the  
8           company had withdrawn from Cardiff and it was hoped that  
9           something could be rescued in Swansea in order that  
10          Bev Fowles had something that he could earn a living  
11          from.

12           So the situation was, as far as we were concerned,  
13          £2.4 million -- as far as Mr Short was concerned, that  
14          was a particularly small investment. It was a  
15          reasonable investment from my point of view but at the  
16          end of the day, it wasn't something that we focused  
17          a lot of attention on. The focus was to try and get  
18          cash quickly into the company, and that's basically what  
19          we did.

20          Q. Sorry we were talking across you, Mr Francis. We were  
21          just trying to find out the date of the suspension of  
22          the company from the AIM listing, and if you look at  
23          page 477 in the bundle in front of you, you'll see that  
24          2 Travel was, as they put it, deleted from the AIM index  
25          with effect from the start of trading on 30 December.

1           So on 22 December, you were still on the AIM. One  
2           infers from this --

3    A. Right.

4    MR BOWSHER: Can I interrupt? I think if questions are  
5           going to go down that line, the full position should be  
6           given. If you take E9, page 64. I don't know which set  
7           of numbers I'm using there. Plus or minus 2.

8    THE CHAIRMAN: I think it's only E7 where we're plus 2.

9    MR BOWSHER: That, I think, provides you with the date of  
10          the suspension.

11   THE CHAIRMAN: That was the temporary suspension on  
12          15 November?

13   MR BOWSHER: Yes. I don't know if that gives you the full  
14          context of what the witness was talking about. Sorry,  
15          I don't want to interrupt the questions any more, but  
16          I think --

17   THE CHAIRMAN: Did the temporary suspension continue until  
18          the final suspension?

19   MR BOWSHER: There's no other document that suggests it  
20          didn't, but I'm not ...

21   A. We had been informed by Mr Rawlinson that it had been  
22          terminated.

23   THE CHAIRMAN: Thank you.

24   MR FLYNN: This may not be a matter we would need or can  
25          finally resolve, sir, but if you turn over the page to

1           478, there's a rather bad photocopy. Mr Francis, I was  
2           just looking at 478 in that bundle, E9. There is  
3           a newspaper report.

4   THE CHAIRMAN: Is it dated?

5   MR FLYNN: The date ...

6   THE CHAIRMAN: The fax header is in January 2005.

7   MR FLYNN: Sir, I think if you go on to the next page --

8   THE CHAIRMAN: Coach and bus, January 20, 2005. The bottom  
9           of 479.

10   MR FLYNN: I think that is right, sir. What I was simply  
11           going to point out was the bit at the bottom left on  
12           page 478. You'll see that there is a cut-off heading,  
13           "Failure to appoint new financial adviser sees troubled  
14           South Wales firm ejected", presumably. And then it  
15           says:

16           "2 Travel's forced removal from the Stock Exchange  
17           was just as dramatic and negative as the headlines it  
18           has made since it arrived in the city two years ago.  
19           A failure to appoint new financial advisers after the  
20           last lot packed their bags in November, saw it fall foul  
21           of the rules under which it remained in the alternative  
22           investment market and on December 30th, it was kicked  
23           out. The share price has been suspended."

24           But it doesn't appear that the company was  
25           actually --

1 A. Can I say something about this?

2 THE CHAIRMAN: Just bear with us for a moment. Listen to  
3 what I'm going to put. So it looks to me as though the  
4 evidence is that the shares were suspended  
5 on November 15 and remained suspended, but the company  
6 remained on the AIM market until the end of business on  
7 30 December. Therefore, at least ostensibly subject to  
8 AIM rules in the interim period. Whatever the reality  
9 of the situation, that would be the legal situation?

10 MR FLYNN: That is what I take from that, sir.

11 THE CHAIRMAN: Do you want to comment on that?

12 A. I can only tell you what we were advised by the NOMAD,  
13 sir.

14 THE CHAIRMAN: Yes. Go on.

15 A. Which was that the suspension was completed earlier than  
16 that.

17 THE CHAIRMAN: Okay. Thank you.

18 MR FLYNN: The NOMAD wasn't giving you any advice from the  
19 middle of November?

20 A. No, but we rang him and asked.

21 Q. It's probably as far as we can take that one,  
22 Mr Francis. Let's move on to the exercise of the  
23 option. You gave notice to exercise the option on  
24 16 March 2005, did you not?

25 A. Yes.

1 Q. And we'll turn up a document on that in E10, page 25.  
2 Again, the best copy that has turned up in the course of  
3 these proceedings. It's a document addressed to  
4 2 Travel Group, dated 16 March, referring to the option  
5 agreement as varied, it says, by a supplemental  
6 agreement of 24 January 2005:

7 "We give you notice that we, as buyer, exercise the  
8 call option and call on you to complete the sale and  
9 purchase of the property in accordance with the terms of  
10 the agreement. We confirm, in accordance with our  
11 discussions, in light of the monies that have previously  
12 been provided by us to you for the ongoing conduct of  
13 your business, that no deposit will be paid over on  
14 exercise of this option, but the full amount will fall  
15 due on completion. We confirm our discussions whereby  
16 you have agreed to waive the requirement for the  
17 planning condition to have been satisfied, prior to the  
18 exercise of the option."

19 So the effect of this document is to enable the  
20 option to be exercised immediately rather than after the  
21 planning condition has been satisfied. That's what  
22 that is saying, isn't it?

23 A. That's right.

24 Q. And this copy, we only have -- I'm not even sure mine is  
25 complete, but the only signature I see on it, I believe,

1           is Mr Bev Fowles' at the bottom there?

2    A.   Mm.

3    Q.   But this document was entered into, was it not?

4    A.   It was, yes.

5    Q.   What you actually did, rather than handing over money to

6           2 Travel, was to assume liability for their debts to

7           Barclays; isn't that right?

8    A.   That's right.

9    Q.   So you didn't make a payment as such, but you took over

10           from them as being liable to Barclays?

11   A.   It's the same thing, isn't it?

12   Q.   Yes.  I'm not suggesting -- I'm just --

13   A.   It sounds better when you say it the way I'm saying it.

14   Q.   You're saying it's the same thing.  I'm simply saying

15           you didn't hand any cash over to 2 Travel, you assumed

16           that their debts to Barclays --

17   A.   That's right, yes.

18   Q.   And the effect of that was that it released you from the

19           guarantees that you'd given to Barclays that we looked

20           at a moment ago.  You became directly liable to Barclays

21           rather than to --

22   A.   That's right.

23   Q.   So let's just summarise the position at that point then.

24           Once you had obtained the option, you could advance

25           guarantees for the company's indebtedness up to

1           £2 million without making any difference to you, because  
2           the amount under the guarantees could be treated as the  
3           purchase price under the option? That's right, isn't  
4           it?

5   A. What do you mean that it doesn't make any difference to  
6           me? I'm liable for the guarantee if the company doesn't  
7           pay.

8   Q. Yes, but once you've got the option to purchase, you are  
9           secured for the £2 million. You can then give  
10           guarantees up to that amount because the guarantees are  
11           treated as the purchase price under the option?

12   A. The bank wouldn't lend the company the money without our  
13           guarantees. It wouldn't just simply take the security  
14           of the property. We took the security of the property  
15           and gave the guarantees.

16   Q. But once you have got the option, you can take that at  
17           any point. So you're covered by your guarantee. By  
18           giving your guarantee, you don't have to advance any  
19           cash, you can safely advance guarantees to the company  
20           up to the amount of £2 million because you have the  
21           option?

22   A. I don't understand your point.

23   THE CHAIRMAN: Isn't the point that at 16 February 2005, you  
24           and Mr Short acquired the land -- title to the land;  
25           yes?

1 A. In March, was it, sir?

2 THE CHAIRMAN: Sorry, whatever the date is. Yes, March, I'm  
3 sorry. I couldn't read my own writing. In March, you  
4 acquire the title to the land and you acquire liability  
5 to Barclays?

6 A. That's what happened.

7 THE CHAIRMAN: So it's your land and the Barclays loan is  
8 secured against what is now your land?

9 A. That's right.

10 THE CHAIRMAN: Is that a simple way of describing it?

11 A. Far simpler, yes.

12 THE CHAIRMAN: Am I wrong, Mr Flynn?

13 MR FLYNN: No, that's correct.

14 THE CHAIRMAN: I will take the compliment as it's meant.

15 MR FREEMAN: Can I just ask a question that arises from  
16 that. Mr Francis, you said that the bank would not  
17 accept security of the land directly. Was that  
18 discussed with the bank, the possibility of their taking  
19 a direct charge on the land?

20 A. Yes, it was discussed, but it wasn't -- they just  
21 wouldn't entertain it, sir. There was a lot of work to  
22 do to this property --

23 MR FREEMAN: Did they think the land was not worth as much  
24 as you thought it was worth?

25 A. I think they felt it was easier recourse to satisfy

1           their debt by Mr Short and myself giving a guarantee  
2           rather than having to sell as a mortgagee in possession,  
3           sir. The land had substantial potential, but there was  
4           work that needed to be done to it.

5   THE CHAIRMAN: So they wanted to ensure they had your focus  
6           on the land rather than being lumbered with the land  
7           themselves?

8   A. That's right.

9   MR FLYNN: The total amount that you gave by way of  
10           guarantee was £1.625 million; is that right?

11   A. Can you say that again, please?

12   Q. I will indeed, yes. The total amount that you  
13           guaranteed to the company -- and I think in three  
14           stages -- came to 1.625 million?

15   A. I don't know. But I do know that we cleared the  
16           company's entire indebtedness to Barclays Bank, which  
17           was some £2,450,000.

18   Q. Yes. My point is a slightly different one. At the  
19           point you were giving the guarantees, the guarantees  
20           which I think came in the order of 600, 300, 625,  
21           something like that, you gave three lots of guarantees  
22           and we've looked at them. They totalled 1.625.

23   A. What's your point? I don't understand what you're  
24           trying to get to.

25   Q. The point I'm making is that that amount is less than

1 the purchase price that you had to pay under the option?

2 A. I think we paid, as I said to you earlier on, about  
3 £400,000 more than we were obliged to, which is the  
4 point I made about the £300,000 that you were talking  
5 about earlier on. We took over the entire indebtedness  
6 of the company, which was some £2,450,000.

7 Q. The indebtedness to Barclays?

8 A. Yes.

9 Q. Prior to the exercise of the option, you weren't giving  
10 unsecured lending to the company, were you?

11 A. Yes, I was, yes.

12 Q. Your guarantees were secured against the option and you  
13 could treat those as advance sums, advance payments  
14 under the option. You didn't just put money into the  
15 company?

16 A. You're assuming that you've only got the guarantees to  
17 Barclays Bank, which is wrong.

18 Q. I'm simply comparing the guarantees to Barclays Bank  
19 with the purchase price under the option.

20 A. Yes, but we also gave a lot of other guarantees, which  
21 I had to pay out, which I did pay out, which were  
22 unsecured.

23 Q. Either we are not able to trace those through or those  
24 are not what we're talking about here. I'm simply  
25 talking about the option and the Barclays --

1 A. You said I'd only given secured guarantees and that's  
2 not right.

3 Q. In relation to the property and Barclays.

4 A. Right, and I'm saying to you I've given other guarantees  
5 which I've paid up, over and above those.

6 Q. When you assumed the bank debts, the Barclays Bank debts  
7 of 2 Travel, that enabled you to take the Swansea  
8 property, didn't it, clear of Barclays' prior charge  
9 over the land?

10 A. Barclays still had a charge over the land. It's just  
11 that we were the people obliged to pay.

12 Q. And it brought an end to your liability under the  
13 guarantees?

14 A. Those particular guarantees.

15 Q. Which you had given to the company. So in the end,  
16 Mr Francis, the point here I'm making is that you  
17 didn't, did you, put capital into 2 Travel as a result  
18 of this transaction? It had its bank loan lending paid  
19 off, but it didn't have a fresh injection of capital.  
20 You say in your witness statement that by entering into  
21 the option agreement, you put much needed capital into  
22 the company. But that's not what happened, is it? You  
23 assumed the bank debts.

24 A. The position as far as I'm concerned is that we entered  
25 into a guarantee to enable the company to be able to

1 borrow cash for its working capital. It's something  
2 that our accountants knew, PwC knew, and the NOMAD and  
3 the board knew. And each and every time we did it, the  
4 company had access to cash. At one point they needed  
5 £600,000. They got it within a matter of two hours,  
6 purely because of the guarantees that the bank held from  
7 Mr Short and myself.

8 Q. Well, as to what happened to the cash and what it was  
9 needed for, we'll explore that with other witnesses.  
10 But I'm simply saying, at that point you didn't put  
11 fresh capital into the company, you simply took over  
12 their bank debts?

13 A. I think you're splitting hairs. Sir, can I say  
14 something on this? The position as far as we were  
15 concerned, Mr Short and I weren't particularly  
16 interested in dealing with this property. Had we wanted  
17 to buy -- it's very difficult, sir, to concentrate  
18 whilst they're talking like this, every time I try to  
19 say something.

20 THE CHAIRMAN: Well, you address me and ignore them.

21 A. Thank you.

22 THE CHAIRMAN: They'll listen if they want to.

23 A. Sir, the position was, as far as Mr Short and myself  
24 were concerned, and certainly before Mr Short got  
25 involved, when I negotiated this deal, it was always on

1 the understanding, as far as Mr Fowles was concerned,  
2 and the company was concerned, that the property  
3 eventually would realise a profit and discharge the  
4 company's indebtedness both to the bank and to the hire  
5 purchase company. It was always in the background and  
6 it was always going to create that profit.

7 Now, sir, we saw that opportunity, when there were  
8 butterflies in the field, not bulldozers, okay?  
9 Eventually, you've got all the plant and machinery in  
10 and the site became a very, very prominent site in  
11 Swansea. So over the period of four years, you got the  
12 Liberty Stadium, then you got Boots and Next, and then  
13 you got Barratts coming in to build 400 houses and the  
14 site gained in prominence and became worth a lot of  
15 cash. Our idea, and you're dealing with -- from my  
16 point of view, my cousin, who I love dearly, it was his  
17 business, he was going to go in there and run it and as  
18 far as I was concerned, that profit would have cleared  
19 his indebtedness and set that company on the route to  
20 generating profit. I was confident that he could do it.  
21 He had done it for the First Group, and indeed I think  
22 it's fair to say that as far as Alan Kreppel, who  
23 started all this predation in Cardiff Bus, when  
24 Alan Kreppel was in Swansea and started off his bus  
25 companies, he recruited Bev Fowles. He could have gone

1 to anyone, but it was Bev Fowles that he brought in to  
2 run the buses. He was really good at what he did and as  
3 a result of that, we decided that we would make certain  
4 investments but purely because the property in the  
5 background would enable the company to expand in line  
6 with the plans that Bev had.

7 When the company went on AIM, the company didn't  
8 realise the amount of cash that it expected to realise  
9 because there were 350,000 to 400,000 of additional fees  
10 that had to be paid. That created a shortfall of cash  
11 and as a result of that, the board sat down and decided  
12 we needed to get PwC in to provide a business plan and  
13 they consulted with the company's accountants, who came  
14 up with a figure of 635 or 600 and odd thousand pounds.  
15 The company's accountants decided they needed a further  
16 £75,000.

17 Now, once we're in that situation, the property was  
18 there as security for all these loans.

19 THE CHAIRMAN: If I can just stop you. I think the  
20 underlying point that's being put, Mr Francis, is that  
21 the property was realised when the call option was  
22 exercised for its full market value at that time?

23 A. Yes, sir. The point I'm trying to make --

24 THE CHAIRMAN: Is that right?

25 A. That is right. The point I'm trying to make is these

1 questions in isolation make it look as if the directors  
2 were doing things that they weren't meant to do and what  
3 I'm saying is that, against a background of a solid  
4 business plan with a solid asset to discharge the  
5 company's indebtedness, the company then was subjected  
6 to intense predation for a very long period of time, and  
7 as a result of that, all the benefit from that property  
8 was sucked into the costs that were incurred. The costs  
9 quadrupled as a result of Cardiff Bus's predation.

10 THE CHAIRMAN: Let's pause. Mr Flynn will now continue.

11 I know lawyers are very annoying. Possibly why you left  
12 the profession, but we'll now continue in a conventional  
13 way if we could. Mr Flynn.

14 MR FLYNN: We have now moved off the guarantees and we'll  
15 talk for a while about the site itself and what's  
16 happened to it since you exercised the option, so since  
17 you and Mr Short took control of the property.

18 I think you were in court earlier, you heard the  
19 chairman's remarks, so you know that there is  
20 a possibility of raising an amber light if we get on to  
21 anything that is --

22 A. Sir, the position I am in on this is clear. You may or  
23 may not make an award in relation to this to the  
24 liquidator, and our investment in that was some 1.5 to  
25 £2 million. Mr Short and I have already invested

1 a further £5 million in this property, and as a result  
2 of that, that amount of cash is at risk and I had  
3 a solicitor's letter yesterday, advising me that I had  
4 to deal with this on a confidential basis.

5 THE CHAIRMAN: I understand. Let's progress and if anything  
6 arises that you feel is too confidential to answer,  
7 either you say so or Mr Bowsher or Ms Blackwood will  
8 say so.

9 A. Thank you.

10 MR FLYNN: Mr Francis, you have provided us with a selection  
11 of documents relating to matters since the demise of  
12 2 Travel and the exercise of the option. You haven't  
13 sent us, have you, any development appraisal documents  
14 or cash flow documents for the transaction that you are  
15 currently contemplating? So I am simply not aware of  
16 the issue that's worrying you at the moment.

17 A. Well, I invited your instructing solicitors to come to  
18 our office. I was prepared to give them access to  
19 everything. But given Cardiff Bus's track record in  
20 terms of the press and the leakage and all the rest of  
21 it, I wasn't keen on them seeing the information I had.  
22 I invited Burges Salmon and offered them free access.  
23 Our solicitors are around the corner. We offered them a  
24 room at the solicitor's office for them to see whatever  
25 they wanted to see.

1 Q. It wasn't in any way a criticism, Mr Francis, I'm simply  
2 saying that we have been supplied with a selection, but  
3 it's only a selection.

4 A. I'll help you as best I can.

5 Q. I recognise that we've been given the option of  
6 yesterday or the day before, going round to your  
7 solicitors and looking for more.

8 A. Even a week ago.

9 Q. There is some evidence in the proceedings before the  
10 tribunal from a Mr Sutton of then King Sturge, and I'll  
11 be putting some detailed questions to him. But if I can  
12 summarise his position. He advised you, I think back in  
13 2005, maybe earlier, that the site, the Swansea depot  
14 site that was in 2 Travel's ownership, would need to be  
15 consolidated with adjacent plots of land, to realise the  
16 development potential to the full?

17 A. That's not right, no. The situation is, the parcel of  
18 land that the company owned could be developed on its  
19 own, but it would realise considerably more if the other  
20 parcels were acquired. But there was nothing to prevent  
21 it being developed as a single entity on its own.

22 Q. It had some access problems?

23 A. No, it didn't, and it hasn't. There's a public highway  
24 directly into it.

25 Q. We'll take that up with Mr --

1 A. You can take it up with me. I know a lot more about the  
2 site than he does.

3 Q. It is Mr Sutton, to be fair, who's given evidence on it.

4 A. Do you want me to give evidence? I know the site --

5 THE CHAIRMAN: Hang on. I was at a public meeting last  
6 night in mid-wales and this is beginning to sound a bit  
7 like that arena. Can we just have question and answer  
8 and you can be re-examined later by --

9 A. The only point I'm making, sir, is that Mr Flynn is  
10 suggesting that Chris Sutton would know more about the  
11 property than I know, and that's just not the case.

12 THE CHAIRMAN: You have made that point. But you'll have to  
13 bear with the questions he asks and if Mr Bowsher wants  
14 to re-examine you about your knowledge, I'm sure he will  
15 do so because I can see he's listening intently.

16 MR FLYNN: Mr Sutton refers to certain offers or expression  
17 of interests that were made over the period from 2004 to  
18 something like 2007. One was that part of the site  
19 should be sold to Lidl for a discount food store. That  
20 didn't happen, did it?

21 A. No.

22 Q. There were offers by Bovis and Redrow for development as  
23 a residential site. That hasn't happened yet?

24 A. No.

25 Q. In fact, no development has yet occurred on the site;

1 is that correct?

2 A. No, it started about three months ago.

3 Q. And there are some problems with the site, are there  
4 not? There's mine workings?

5 A. There's mine workings on most sites in South Wales.

6 Q. That may be a local condition, but it's nevertheless  
7 something that has to be dealt with, isn't it?

8 A. It's something we always deal with when we're dealing  
9 with land in that area, yes.

10 Q. But --

11 A. I can tell you that the foundations that have been  
12 designed for that land currently are traditional  
13 foundations, so that suggests there isn't a problem with  
14 mines.

15 Q. And there's some ground contamination?

16 A. It's an industrial site.

17 Q. It's an industrial site, and it has been an industrial  
18 site for a very long time, I believe?

19 A. I've just developed 10 acres full of asbestos, 100,000  
20 acres of contaminated buildings and have just put  
21 a brand new Tesco on it. It doesn't prevent the  
22 development. So it can be dealt with. Is costed and is  
23 dealt with.

24 Q. And it takes time? It takes a long time?

25 A. It doesn't take a long time at all.

1 Q. How long does it take to get to your putting a Tesco on  
2 the site you're talking about?

3 A. I've just done a deal with Tesco, I've just completed  
4 that. That took 18 months.

5 Q. Indeed, I'm just saying that to sort out industrial land  
6 to the state where you can put a residential development  
7 on it or a retail development on it, there's a time and  
8 significant time and cost factor in those things?

9 A. There is time, yes, but it's not significant, no.

10 Q. Planning permission for residential development was  
11 given in 2006 on the site?

12 A. 2007.

13 Q. 2007, with various conditions attached. Those  
14 conditions haven't been satisfied yet, have they?

15 A. When you say conditions, from our point of view, the  
16 scheme that we're preparing for development hasn't  
17 actually been applied for as yet.

18 Q. As we understand it, there are various conditions,  
19 including the need to provide new vehicular access from  
20 the Nantong Road. That's one of the conditions that  
21 would need to be satisfied?

22 A. If we pursue that particular design, yes. As it is,  
23 we're not, we're going in from Brunel Way, and planning  
24 permission's been granted for it.

25 Q. As we understand the documents, there are rights of way

1 issues just over the pure 2 Travel --

2 A. No, there's not.

3 Q. So a document that says that there is, is just  
4 incorrect?

5 A. It's a public highway. Sorry?

6 Q. Very well, Mr Francis, is what I said.

7 MR BOWSHER: Sorry to interrupt. If there is going to be  
8 a point made -- there has been a contradiction, but if  
9 there is a specific right of way issue that there's  
10 a contradiction about, perhaps it would be helpful if  
11 that issue is joined by being explained to the witness,  
12 what it is that's being said.

13 THE CHAIRMAN: It is a matter for Mr Flynn.

14 MR FLYNN: Sir, I will need to find a reference, and  
15 I apologise for not having it in front of me. I dare  
16 say we'll be coming back at 2 o'clock, so I can take  
17 that up then.

18 Mr Francis, as I said, I did not want to get deeply  
19 into the development issue with you because principal  
20 evidence on this is being given by Mr Sutton. What  
21 I want to move on to is a different topic now and  
22 I apologise for not having that reference --

23 A. I'm sorry to interrupt you, but again, sir, Mr Sutton  
24 purely did a valuation in 2007. In terms of him giving  
25 principal evidence on that, that's just wrong. If my

1 friend wants evidence on it, then I ought to be giving  
2 it.

3 THE CHAIRMAN: I suppose we're all a bit bound by the case  
4 that's been served. But perhaps we can return to that  
5 at 2 o'clock.

6 MR FLYNN: Yes.

7 MR SMITH: Mr Francis, I did have one question. You said  
8 a few moments ago that since the exercise of the option,  
9 you had spent a great deal of money on the site.  
10 I think you gave a figure of £5 million. Would that be  
11 right?

12 A. That's right, that includes the acquisition costs.

13 MR SMITH: What other costs would be comprised in that?

14 A. What we've done is we've carried out traffic impact  
15 assessments, geotechnical reports, geological reports.  
16 We've demolished all the buildings that Mr Flynn was  
17 talking about. We've removed all the asbestos from the  
18 site. We've profiled the site. And the access has now  
19 been created. We've entered into agreements in relation  
20 to services for the site, which are the amber light bits  
21 that we were talking about. And we've brought in  
22 Hoggans. We have spent a lot of money, sir.

23 MR SMITH: But roughly, the split would then be about 2 and  
24 a bit million acquisition and probably nearly a further  
25 3 million after that?

1 A. Yes. 2.45, I think, sir. Something like that.

2 MR SMITH: Thank you.

3 MR FLYNN: Subject to coming back to the property aspects  
4 after lunch, Mr Francis, I want to move to a different  
5 topic now, which is the proceedings of the Traffic  
6 Commissioner. The Traffic Commissioner, we saw the  
7 reference to it earlier, held a public inquiry into  
8 2 Travel in August 2004. One of the issues that arose  
9 in those proceedings was the financial standing of the  
10 company, wasn't it?

11 A. Yes, it was.

12 Q. At that point, 2004 -- and we've looked at the  
13 documents -- the company had a loan facility from  
14 Barclays, which you had guaranteed, for £675,000;  
15 is that correct?

16 A. Yes.

17 Q. We need E7, please. If we look -- and I'm sorry, this  
18 is E7, 414. It is a document we've already seen. It's  
19 the Mentor UK note.

20 THE CHAIRMAN: August 2004 background?

21 MR FLYNN: That's the one, sir. On the second page of that  
22 note, 415 in the bundle, you'll see a reference saying  
23 that the £675,000 facility which Mr Francis and Mr Short  
24 guaranteed, is fully drawn. So that was the position  
25 before the Traffic Commissioner hearing. Isn't that

1 right, Mr Francis?

2 A. I think the Traffic Commissioner asked if we were  
3 prepared to grant further guarantees, and the answer was  
4 yes.

5 Q. Before we get to the Traffic Commissioner, there are one  
6 or two other steps to take, in any event. Just to save  
7 time, we looked at a Price Waterhouse report, didn't we,  
8 and we saw that the maximum working capital requirement  
9 they identified, the peak working capital, was £937,000.  
10 That's correct, isn't it?

11 A. Yes.

12 Q. And at 465 of this file -- and I think this may be what  
13 you were referring to -- you and Mr Short write to the  
14 board, saying that you're prepared to offer a loan  
15 in the short-term of that amount, subject to the charge  
16 and the option. That's right, isn't it? Sorry,  
17 do you see that? Page 465?

18 A. Yes.

19 Q. Paragraph 3 of that letter -- I'm checking we are  
20 looking at the same letter -- says that the charge and  
21 option have to be entered into within 28 days of that  
22 letter being sent; is that right?

23 A. That's what the letter says, yes.

24 Q. Ultimately, that loan wasn't made, was it? You didn't  
25 make a loan of £937,000, did you, in the end? You

1 provided the additional guarantees that we've already  
2 looked at instead; isn't that right?

3 A. The company had access to £937,000.

4 Q. Through you providing guarantees --

5 A. That's right.

6 Q. -- of the bank lending, in a different sum, £300,000,  
7 followed by £650,000. Those are the ones we've looked  
8 at. It's a larger amount by way of guarantee. It's not  
9 a direct loan, is it?

10 A. I don't -- yeah, the company had access to that amount  
11 of cash.

12 Q. Not by the way of a loan, but by way of you -- it had  
13 bank facilities which you guaranteed?

14 A. That's right.

15 Q. That's right, isn't it? And we have already seen that  
16 the fact of the loan had been announced to the Stock  
17 Exchange, although the loan was not actually made, and  
18 it was corrected in the trading statement and related  
19 party transaction that we looked at a while ago. We can  
20 go back to these documents if necessary, Mr Francis, I'm  
21 just trying to move it along.

22 A. Yes.

23 Q. So that is the position at 16 August, which is when the  
24 Traffic Commissioner's inquiry opened. That's right,  
25 isn't it? At that point, the £675,000 facility was

1 fully drawn, as we saw from the Mentor paper. You'd  
2 offered a loan of £937,000, but that had not been taken  
3 up.

4 A. As I understand it, it went up to 1.625 million, didn't  
5 it?

6 Q. Later. I'm simply --

7 A. That's what we were talking about in the Traffic  
8 Commissioner's court, as I understand it.

9 Q. We'll come on precisely to what happened in the Traffic  
10 Commissioner's court now, but the point is, at the date  
11 of that hearing, the company's facility with the bank  
12 was fully drawn down, the 675, no more money to take  
13 from the bank at that point. That's right, isn't it?

14 A. I can't remember now. I'll take your word for it.

15 Q. You had offered a loan of £937,000, but that hadn't  
16 actually been entered into or materialised at  
17 16 August 2004?

18 A. Sorry, and your point is?

19 Q. My point is that that was the state of play. The  
20 company had no more money to be taken from the bank and  
21 it hadn't got the benefit of a loan from you at the date  
22 of the Traffic Commissioner's hearing?

23 A. Mr Short and I told the company that they had a loan  
24 from us and that was that.

25 Q. But it hadn't been made?

1 A. Mr Flynn, I told you earlier on, I travelled from  
2 Swansea to London and the company needed £600,000. By  
3 the time I got to London, it was in its account and  
4 Nigel Short and I told the company that they had that  
5 loan and they had that loan. Now, if paperwork had to  
6 be worked out subsequently, then it would have been. As  
7 far as I'm concerned, we had offered up to 1.6 million,  
8 whatever it was, and that was what we told the Traffic  
9 Commissioner.

10 Q. Not at that stage you hadn't, to be accurate about it.  
11 You had offered a loan of £937,000, but that hadn't been  
12 taken up?

13 A. Again, I told you earlier on -- you keep on referring to  
14 the guarantees on the property. Over and above that,  
15 guarantees and cash were given to the company in  
16 addition to what was on the property. I explained that  
17 to you earlier on.

18 Q. Mr Francis, the documents before us show that there was  
19 an offer of a loan, the offer was not taken up at that  
20 point. It was changed later, after the Traffic  
21 Commissioner's hearing, to guarantees of £300,000  
22 in September and then a further £650,000 a couple of  
23 weeks later, in early October. That's what happened.  
24 But money had not been advanced to the company in any  
25 form as at 16 August --

1 A. If the offer's made, it's a matter for them when they  
2 take it up. Had they needed it then, they'd have got it  
3 then. And that was the history of what happened over  
4 that year.

5 Q. But it hadn't been taken up?

6 A. I've got no idea. But if you look at this from  
7 the April, all the way through, we offered guarantees to  
8 the bank, which the bank accepted, from something like  
9 £300,000 to £600,000 to 900 to 1.6 million, and then we  
10 ended up 2.4 million. Okay? So whatever we said  
11 we would do, we did.

12 Q. I'm just taking a snapshot, Mr Francis, at  
13 16 August 2004.

14 A. Mr Short and I told the company that it would have that  
15 facility if it needed it and we told the Traffic  
16 Commissioner.

17 Q. You represented 2 Travel at the Traffic Commissioner's  
18 proceedings, didn't you?

19 A. Yes.

20 Q. And the issues that arose included failure to operate  
21 registered services, which we've gone over with  
22 Mr Bev Fowles; maintenance issues, which will be for  
23 Mr David Fowles, but with you, I would just like to look  
24 at the finance issues. The legal requirement was --  
25 this is right, isn't it -- to have 9,000 euros available

1 for the first vehicle and 5,000 for each further vehicle  
2 within the company's fleet? That was the legal  
3 requirement?

4 A. I can't remember.

5 Q. Let's have a look at the decision in December, which is  
6 in E9, page 465. This is the decision of the Traffic  
7 Commissioner, taken in December, referring to the  
8 hearing on 16 August.

9 THE CHAIRMAN: So the hearing's on 16 August 2004 and the  
10 decision's 24 December?

11 MR FLYNN: Well, this is the ultimate decision, yes, sir,  
12 because the Traffic Commissioner, insofar as -- we'll go  
13 over this, but insofar as the financial standing was  
14 concerned, the Traffic Commissioner gave time and  
15 effectively adjourned for further information to be  
16 provided, I think on two occasions. But I'm really  
17 pointing to this at the moment, just to find out what  
18 he was actually looking for. If one looks at  
19 paragraph 16 on page 474, you'll see that the total  
20 amount he held that the company needed to have readily  
21 available was £332,400 in relation -- that's the total  
22 of 110 licensed vehicles. And as I understand it,  
23 that's a total based on a requirement to have  
24 9,000 euros for one vehicle and 5,000 for each  
25 additional vehicle. That was the total requirement that

1 he believed the company had to show.

2 If one looks -- if we need to know what available  
3 capital actually means, then that is to be found in the  
4 document that has already been shown to the tribunal,  
5 which is the appeal from the Traffic Commissioner's  
6 decision, which is in E10 at page 14. Again, I show  
7 this just at the moment, for the purpose of reminding  
8 Mr Francis what available capital means in this context.

9 Mr Francis, you see in paragraph 10 on page 19 of  
10 that appeal judgment, a quotation from what is the  
11 leading case on this, "having available." "Available" is  
12 defined as:

13 "Capable of being used, at one's disposal, within  
14 one's reach, obtainable or easy to get. In other words,  
15 an operator only has available financial resources or  
16 capital and reserves if he has money in the bank, which  
17 is capable of being used, ie, it is not already needed  
18 for the payment of debts in the ordinary course of the  
19 business."

20 And other examples are given.

21 THE CHAIRMAN: So money saved up for VAT or PAYE wouldn't  
22 do?

23 MR FLYNN: Exactly. Well, I mean, they precisely go on to  
24 consider that sort of example. After completing the  
25 list of examples, the tribunal went on to say, whichever

1 tribunal it is -- the tribunal decision in this JJ Adam  
2 case:

3 "Whether or not an operator has available,  
4 sufficient financial resources or has available, capital  
5 and reserves, is a question of facts and degree, has to  
6 be determined according to the circumstances in each  
7 individual case. For example, two different operators  
8 might each have £50,000 in a bank account. If, in the  
9 case of the first, the money was deliberately kept in  
10 a deposit account in case of emergency, there would be  
11 no difficulty in concluding that the operator had  
12 available financial resources or capital and reserves of  
13 that amount. If, in the case of the second, the money  
14 had been earmarked to meet a VAT or a tax bill which was  
15 due in the next few days, there would be little  
16 difficulty in concluding the £50,000 ought not to be  
17 included in any calculation of available financial  
18 resources. It would not meet the requirement of being  
19 available."

20 And so on.

21 So that's the general test. Now, the hearing  
22 in relation to finances was heard in camera, wasn't it,  
23 Mr Francis; in private?

24 A. It was, yes.

25 Q. As you will recall. Now, a transcript of that is to be

1 found, I believe, at E9/465. But I have to say, when  
2 I looked at mine, I found that it wasn't complete. So  
3 if we get into difficulties, I have an alternative  
4 reference, which I will give just for the sake of it.  
5 It's G2/713. I'm sorry, I've confused two references.  
6 I think the transcript is to be found at E7 -- I'll  
7 check this -- page 481. In case people are working off  
8 different ones, I'll use internal page numbering to the  
9 best of my ability.

10 If everyone has one or other of those in front of  
11 them. You provided various documents to the Traffic  
12 Commissioner, Mr Francis, I think. You provided audited  
13 accounts, a loan offer from Barclays for the £675,000  
14 that we know was already drawn down, and the factoring  
15 agreement with Aston Rothbury. Is that right? Then  
16 if we look at page 6 -- I'm looking at the internal  
17 pages. The numbers are in the middle of the page --

18 THE USHER: We're in bundle E7 and it doesn't have a 6.

19 THE CHAIRMAN: You'll have to use G2. E7 has a lot of pages  
20 missing. Pages 3 to 21 are missing.

21 MR FLYNN: Yes. Let's start again. I'm sorry about this.

22 G2, page 713 is the start. There, Mr Francis,  
23 do you see the front page of the transcript from the  
24 hearing? That's in front of you there. If you turn  
25 over the page, you will see there are internal page

1 numberings in the middle. 1 and 2 at the bottom of  
2 that. In the middle of the page there's a little number  
3 and those are the ones that I'll be using, just so  
4 we can navigate our way.

5 At the bottom of page 2 you'll see in brackets that  
6 the hearing went into camera.

7 A. Yes.

8 Q. So what follows is the in camera hearing. Obviously,  
9 without going over all of this, you give at page 5, for  
10 example, some explanation of what is going on with the  
11 company, and you were alone, without a finance director  
12 at that time and without the accountants as well,  
13 I think. You say at C on page 6 that most of the papers  
14 are with PwC and you hadn't got the factoring  
15 statements. The Traffic Commissioner says at E that  
16 he's looking for --

17 "Although he's happy, in principle, to have  
18 witnesses, finance is not a complicated thing. It's  
19 simply a matter of either a company or operator has  
20 money or he has not. That's something I normally judge  
21 by looking at documents rather than hearing witnesses.  
22 The documents I normally look at are bank statements."

23 Two lines down:

24 "I look at bank statements, overdraft facilities.  
25 If, in part, it relies on factoring, then the factoring

1 agreement and the factoring statements. Those are  
2 factual things, they're not complicated, they're very  
3 straightforward, and that demonstrates what is available  
4 to an operator and the process, normally, is just to  
5 look at documents and take a view. It doesn't normally  
6 involve witnesses. That's why I'm a bit puzzled."

7 Because you hadn't provided him with the relevant  
8 paperwork, had you?

9 A. It doesn't appear so, no.

10 Q. On page 11, you produce to the commissioner, a letter  
11 from Sir Richard Needham, addressed to the commissioner,  
12 and the terms of that are quoted in the inset paragraph:

13 "I confirm the company has carried out a working  
14 capital review. It is based on a financial model  
15 prepared by PricewaterhouseCoopers. The outcome of this  
16 review revealed a maximum peak facility requirement of  
17 £937,000. Two of the company's directors had provided  
18 the company with an immediate facility, totalling this  
19 amount. This information has been given to and accepted  
20 by the Stock Exchange and a public announcement to that  
21 effect is being made by the company."

22 That wasn't right, was it? At that point, the  
23 company didn't have any available capital. The bank  
24 facility, the 675, was all drawn down?

25 A. As I explained to you earlier on, Mr Short and myself

1 offered the company the facility it needed and as and  
2 when they wanted the money for the PAYE, they got  
3 £450,000 the next day. We told them this facility was  
4 available and it was available. I don't quite  
5 understand your point.

6 Q. My point is that although it was said that a loan had  
7 been provided, provided an immediate facility totalling  
8 £937,000 -- and that's in the inset paragraph in the  
9 letter from Sir Richard Needham -- that simply wasn't  
10 the case?

11 A. I don't accept that. It was the case.

12 Q. The loan had not been provided. The company didn't have  
13 £937,000 from you at that point?

14 A. We had offered the loan to the company, the company had  
15 accepted the loan. Mr Fowles would perhaps come to me  
16 or Mr Short and ask for £50,000, or £100,000, and he got  
17 it. We were his bankers.

18 Q. But at that point, they hadn't taken it?

19 A. What do you mean, they hadn't taken it? We had made the  
20 offer.

21 Q. But it hadn't been taken up and the money was not with  
22 the company?

23 A. It was taken up on a daily basis. Whenever the company  
24 wanted cash, they came to Mr Short and myself. We had  
25 made that offer to them and they'd accepted that offer.

1           When he wanted 450 or 500, whatever the figure was, for  
2           the PAYE, he didn't go to Barclays or anyone else, he  
3           came to us. We were his bank.

4   Q. Mr Francis, we've already looked at the subsequent  
5           announcement to the Stock Exchange, in which it was said  
6           that a correction was needed, and the £937,000 had not  
7           been given to the company?

8   A. Those were the regulations that Tony Rawlinson talked  
9           about, but as far as the actual availability of funds,  
10          we'd made an offer to him.

11 Q. Those were the regulations of the Stock Exchange?

12 A. We had made the offer to the company of that loan. And  
13          we honoured that when they asked for it.

14 Q. And at that time, all funds available from  
15          Aston Rothbury, the factors, they were all needed to pay  
16          wages, hire purchase and other costs of the business?

17 A. I suspect so, yes. Sir, can I give you an indication as  
18          to where the company was? Mr Flynn talks about  
19          maintenance and Mr Fowles dealing with that. But I had  
20          to deal with it with the Traffic Commissioner, and the  
21          position was, because of the predation and because of  
22          Cardiff Bus's relationship with the Traffic  
23          Commissioner -- and on that specific point, sir, the  
24          Traffic Commissioner apologised to Mr Fowles in court  
25          because Cardiff Bus knew that 2 Travel had lost its

1 licence before the company was informed. Equally, in  
2 terms of maintenance, as far as Swansea, Cwmbran,  
3 Llanelli and Cardiff were concerned, the company would  
4 be inspected by monitors perhaps once a week, perhaps  
5 once a month. Once we'd gone into Cardiff, it happened  
6 on a daily basis, and what you tended to have was, if  
7 a child was on a bus coming back from a school and an  
8 inspector inspected that bus, there was a high  
9 probability that there'd be something wrong with the  
10 bus. Either a hammer would have gone from the glass  
11 which they used to smash the windows, or they would work  
12 their seat belts loose. And it's known within the  
13 industry that if one of those monitors comes and comes  
14 at that specific point in time, they will find something  
15 wrong with the bus.

16 What we tended to find was that we were being  
17 monitored on a daily basis as the buses were coming back  
18 in, and the general feeling was that Cardiff Bus were  
19 instigating this. Once that happened, a PG9 was issued  
20 and once the PG9 was issued, that vehicle had to be  
21 subjected to an MOT. The cost of an MOT was anywhere  
22 between £800 and £1000. So that happened on a regular  
23 basis and it was part of the predatory tactics that they  
24 employed against the company.

25 In addition to that, there were regular letters from

1 David Brown to the Traffic Commissioner, complaining  
2 about the activities of 2 Travel, and as a result of  
3 that, there was a far greater focus of attention on the  
4 company. And as a result of that, the financial  
5 standing and the maintenance investigations took place.  
6 And I think the question that you are putting to me  
7 needs to be looked at in that context.

8 Q. Mr Francis, at page 14, internal page 14 just below D,  
9 we have a question from Mr Callaghan. Now, he was the  
10 Traffic Commissioner's financial assessor. I think  
11 that's probably his correct title.

12 A. Mm-hm.

13 Q. Mr Callaghan asks:

14 "Has the £675,000 been fully drawn down?"

15 And your answer is:

16 "Not all of it, sir."

17 But that wasn't right, was it?

18 A. I've got no idea, but if I said it, then I believed it  
19 was right.

20 Q. But I have taken you a short while ago to the report  
21 from Mentor, which said that the £675,000 had been fully  
22 drawn down, and that was in early August?

23 A. I've also taken you to the fact that there were funds  
24 available from Mr Short and myself. Now, what the  
25 financial director did in terms of replenishing one pot

1 with the other, I don't know. What I do know is that  
2 those funds were made available to the company.

3 THE CHAIRMAN: Just so it's clear to me, are you saying that  
4 funds were made available, forgive the term, on the  
5 drip, in small sums as needed?

6 A. Sir, if Mr Fowles -- and you know, it's all very well  
7 looking at this in this context. One needs to  
8 understand the pressures Mr Fowles was under.

9 THE CHAIRMAN: I understand that. You have explained that  
10 three times to us. Can you just answer the question?  
11 If Mr Fowles said to you he was short of, say,  
12 £30,000 --

13 A. He came and asked for it.

14 THE CHAIRMAN: How would that £30,000 be given to the  
15 company?

16 A. Much of it was given in cash. I think I paid either  
17 £150,000 on the PAYE and Mr Short continuously, on  
18 a weekly basis, would give Mr Fowles substantial sums of  
19 money.

20 THE CHAIRMAN: In cash?

21 A. By cheques or whatever.

22 THE CHAIRMAN: Or bank transfer?

23 A. I have no idea.

24 THE CHAIRMAN: So it would be recorded somewhere?

25 A. Yes. Things as well, sir, like fuel and things like

1           that. I mean, it may well be that the company wouldn't  
2           have cash for the fuel on a daily basis. Okay? So that  
3           was given to the company on a cash basis.

4   THE CHAIRMAN: I'm just concerned about the recording of  
5           transactions for a listed company. Well, for any  
6           company, under the Companies Act --

7   A. Yes, I appreciate that, sir.

8   THE CHAIRMAN: -- there's a requirement to keep books of  
9           account.

10   A. Yes. They were kept, sir, and they were measured  
11          against the --

12   THE CHAIRMAN: Bear with me. There's a requirement under  
13          the Companies Act to keep books of account and reveal  
14          the standing, financially, of the company on a more or  
15          less realtime basis.

16   A. And it was kept, sir, and it was measured against the  
17          value of the loan, the overall £2 million option. Okay?  
18          It was all kept within the context of that.

19   THE CHAIRMAN: Okay. Thank you.

20   A. Other than the £450,000, which was over and above.

21   THE CHAIRMAN: Yes, thank you, I think I understand.

22   MR FLYNN: Sir, clearly, our case in relation to record  
23          keeping and other such things as far as financial  
24          recording in 2 Travel is concerned, that will be dealt  
25          with and has been dealt with elsewhere.

1 THE CHAIRMAN: Yes.

2 MR FLYNN: I'm not coming back on that.

3 THE CHAIRMAN: No, I was just concerned about Mr Francis'  
4 knowledge, given what he said about the way in which  
5 loans were made.

6 MR FLYNN: Yes. The point that the Traffic Commissioner was  
7 on was whether, at that point, the company had available  
8 to it, a sum of something like £330,000. That was the  
9 issue that he was investigating and interested in, isn't  
10 it? We've already looked at that. So the assessor has  
11 asked whether the £675,000 has been drawn down and has  
12 been told that not all of it has. The Traffic  
13 Commissioner goes on to say, still on page 14 -- well,  
14 you say -- the Traffic Commissioner responds to you by  
15 saying:

16 "Presumably, the bank statements [much as the  
17 chairman has] will show how much of it had been drawn  
18 down, will they not?"

19 And you say:

20 "Well, it's done in a way which involves just  
21 drawing down as and when required."

22 The Traffic Commissioner says:

23 "Well, that's fine, but the bank statements will  
24 demonstrate how much."

25 And Mr Callaghan joins in with the Traffic

1 Commissioner and they say that they need bank statements  
2 and they need a facility letter, and you say you take  
3 a note of that.

4 Now, while we're just turning the pages on this,  
5 slightly in parentheses, as it were, on internal  
6 page 70, bundle page 783 of the transcript -- and at  
7 this stage we are in public session. After the lunch  
8 adjournment, and at H, towards the bottom of the page,  
9 you say you've got some evidence and you'd like him to  
10 hear it in camera:

11 "Because there are members in the public gallery  
12 from companies which would be receiving High Court writs  
13 within the next five days. A lot of the evidence is  
14 video evidence. On advice from our solicitors, we've  
15 been advised, 'You should ask to deal with that in  
16 camera if you can'."

17 He does go into camera. If you look at internal  
18 page 80, you'll see that the hearing goes back into  
19 camera. At E, you say you're:

20 "... quite happy to deal with other issues, sir,  
21 while the public are there but there's an application  
22 for an injunction going to be made during the course of  
23 the next seven days. The company has been subjected,  
24 sir, over the last five months, to substantial and  
25 consistent harassment in Cardiff. Quite a substantial

1 file has been created."

2 And so forth. And over the page at B, you're  
3 talking about Cardiff again:

4 "It's this company's firm belief that it's the  
5 intent of Cardiff Bus to drive the company out of  
6 Cardiff and off those routes. There's video evidence  
7 there, but it's only a flavour of what the company has.  
8 The application to the High Court judge will be on the  
9 basis that we haven't been able to prevent Cardiff Bus  
10 from behaving in the way they are and as a last resort,  
11 we've had to apply for an injunction, which won't be  
12 done on an emergency basis, but it will be done on  
13 notice, probably by Friday of this week."

14 No such injunction was ever actually applied for,  
15 was it?

16 A. No, we took advice on it, and, as you'll appreciate,  
17 Cardiff Bus ended up in the traffic court and received  
18 a formal rebuke and they ended up in the Office of Fair  
19 Trading and you know the results of that, and now we're  
20 here in the CAT tribunal. So we did do what we said we  
21 were going to do, it just took longer than we expected.

22 Q. A simple question, and I think you answered it, that no  
23 injunctions were ever issued?

24 A. No injunction was issued.

25 Q. If we go to page 82 at D, we see the Traffic

1 Commissioner's response to your explanations:

2 "My problem, Mr Francis, is that I'm aware there  
3 have been allegations made. I'm aware that there has  
4 been monitoring carried out. I have not seen any  
5 results of the monitoring and it will be in my office  
6 soon. There is a process in my office ...(reading to  
7 the words)... and of Cardiff Bus."

8 And you say that you're confident of the performance  
9 of your own operation:

10 "I can tell you that now."

11 So this is a stage, August 2004, you have complained  
12 to the Traffic Commissioner about the buses and VOSA --  
13 you were mentioning this a moment ago -- had already  
14 carried out monitoring in June and July 2004. That's  
15 right, isn't it?

16 A. That's right.

17 Q. And the conclusion by VOSA was that it hadn't witnessed  
18 any anti-competitive behaviour, wasn't it?

19 A. I don't think they came to that conclusion. Didn't  
20 Sarah, whatever her name is, say they weren't running  
21 the routes or ...

22 Q. So far as there were allegations of sandwiching your  
23 buses or boxing them in or running round a round about,  
24 that sort of thing --

25 A. There was a separate inquiry in regard to that. There

1           was an informal inquiry with Mr Furzeland in November,  
2           wasn't there?

3    Q.   Yes, when we --

4    A.   But the monitor wrote to you.  I think Sarah Johnson, or  
5           whatever.

6    Q.   We --

7    A.   And there was some dispute with Mr Fowles yesterday  
8           about that.  He took a different view from you about  
9           that.

10   Q.   I think you're referring to bundle E7, page 597.

11   A.   Sorry, Sian Thomas.

12   Q.   And the point that I was making on this document --

13   A.   On this document?

14   Q.   On this document to you, was that -- you'll find it on  
15           page 598, so the second page of the letter.  About  
16           two-thirds of the way down:

17           "... although no anti-competitive behaviour was  
18           witnessed by ourselves."

19           That was their conclusion on anti-competitive  
20           behaviour, wasn't it?

21   A.   My response to you was that there was a separate inquiry  
22           in relation to that, an informal one in November.

23   Q.   In front of Mr Furzeland?

24   A.   Yes.

25   Q.   And that's what we come to next.  You represented the

1 company in front of Mr Furzeland in November?

2 A. It wasn't a question of representing, we all just turned  
3 up for a discussion and we showed them the video that we  
4 had.

5 Q. I think we can --

6 A. And then there was an informal discussion about it.

7 Q. -- put away E7 for the moment and look at E9. Sorry,  
8 page 273. It's Mr Furzeland's report to Mr Dixon.

9 A. Mm-hm.

10 Q. I think the tribunal has already seen it, but if we look  
11 at "Recommendations" at the end, page 277, there are  
12 conclusions and recommendations. The tribunal already  
13 has it so I'm not going to read it all out again. At  
14 paragraph 46, his recommendation was:

15 "No action should be taken against Cardiff Bus  
16 because there is no evidence that they have a case to  
17 answer. That may change should the OFT find against  
18 them [as indeed it did later on]. You may wish to  
19 consider calling the driver involved in the aggressive  
20 incident to a hearing."

21 That was the driver who had pushed Mr David Fowles'  
22 camera away when he was being filmed. That was the  
23 outcome of that, as you call it, informal process in  
24 front of Mr Furzeland.

25 A. That was the outcome on the basis of what they heard

1 from Mr Brown, yes, but subsequently it's been accepted  
2 that what he said wasn't correct and, had he told the  
3 truth at that hearing, then perhaps this would have been  
4 different. The situation was, as far as 2 Travel was  
5 concerned, that the vehicles were operating on a daily  
6 basis, pulling in front of the vehicle, the 2 Travel  
7 vehicle, and behind the 2 Travel vehicle. Mr Brown  
8 informed Mr Furzeland that that was a one-off incident,  
9 and that wasn't true. Equally, he informed them that  
10 they were involved in a marketing exercise, and  
11 Mr Furzeland believed that.

12 Subsequently, he accepted in the OFT that that again  
13 wasn't right. Over and above that -- over and above  
14 that -- we now know that they were advised, both  
15 Alan Kreppel and David Brown, at the very outset that  
16 the actions that they proposed were unlawful. Now,  
17 Mr Brown at first didn't recall that, but subsequently  
18 has recognised that he did read that, so he knew that  
19 the actions were unlawful.

20 So when Mr Furzeland was asking about all these  
21 points, Mr Brown knew that what he was managing was  
22 unlawful. Had Mr Furzeland said that, then the  
23 conclusions here would have been different.

24 Q. Mr Francis, I'm in the chairman's hands, but the  
25 company's case is to be made by Mr Bowsher and not by

1           you. Mr Bowsher --

2    A. Well, you've asked me a question on this and I'm giving  
3           you the answer. That's his conclusion, but he didn't  
4           hear the facts correctly.

5    Q. He saw the videos, Mr Francis.

6    A. He saw a video of one incident.

7    THE CHAIRMAN: Pause. Let's go on to the next substantive  
8           question.

9    MR FLYNN: Let's go on to the adjourned hearing on financial  
10           standing. You'll recall that what happened was that the  
11           commissioner had asked for various documents to be  
12           provided and adjourned the hearing for you to provide  
13           those; is that right?

14   A. That's right.

15   Q. The adjourned hearing took place on 5 October 2004. The  
16           transcript of that you'll find -- and I think it's  
17           complete this time -- at E8 at page 30. One purpose of  
18           the adjournment had been to enable your financial  
19           advisers to attend. At the time of the previous hearing  
20           you were, as it were, between finance directors and  
21           I believe that the relevant person at Price Waterhouse  
22           was on holiday. But at this hearing, the adjourned  
23           hearing, you were again alone and not accompanied by  
24           your financial advisers.

25   A. I'm not sure that we had a finance director at this

1 point. This was just short of November, was it?

2 Q. It's 5 October. You had Price Waterhouse on board  
3 and --

4 A. Price Waterhouse were only there in terms of providing  
5 the report.

6 Q. At all events, at B on page 32, internal page 2 of the  
7 transcript, the Traffic Commissioner says:

8 "Now, in regard to finance you requested me to  
9 adjourn the matter because you wanted your financial  
10 advisers to attend. We agreed a time, but I see that  
11 your financial advisers are not present."

12 And you say you didn't think it was necessary.  
13 That's what you say, isn't it?

14 A. Yes.

15 Q. The finance director, Mr Jenkins, I think had been  
16 appointed at this point, hadn't he?

17 A. I don't think he'd actually started at that point.

18 Q. He was already in place at the time of the announcement  
19 to the Stock Exchange. The announcement that we looked  
20 at showed that Mr Cook was --

21 A. Which would have been what date?

22 Q. That was in early October. I may need to be corrected  
23 on this, but ... I'll check the date of the Stock  
24 Exchange announcement. The Traffic Commissioner reports  
25 just below where we are that you do have a financial

1 director that he'd seen in the press.

2 You say:

3 "Yes, I was going to tell you that."

4 And he says:

5 "It was in the press. I am aware of it from that,  
6 but he didn't feel he should come today."

7 And you explain that he's at a completion meeting?

8 A. I think basically, he would have just started literally  
9 at that time. I can't remember the exact date he  
10 started.

11 Q. That was Mr Jenkins?

12 A. That's right, yes.

13 Q. If we look at internal page 5, page 35 of the bundle,  
14 this is where you refer to the repayment to the Inland  
15 Revenue at C.

16 A. Yes.

17 Q. The Traffic Commissioner says:

18 "You're saying there will be no further arrears."

19 And you say there has been substantial payment made:

20 "I couldn't get a receipt off the Revenue so I asked  
21 our lawyers to verify it for you. £460,000 was paid off  
22 that to try and reduce the burden on the balance sheet  
23 and that's been done in September."

24 And you say that once the receipt comes through, you  
25 will let him have it.

1           If we go over the page, about halfway down the page,  
2           Mr Callaghan, the financial assessor, says:

3           "The cash flow forecasts you provided showed  
4           a requirement of £937,000 during 2005 without the  
5           payment of £460,000."

6           And you seem to agree with that.

7           He says:

8           "So in effect, just to continue to trade, you need  
9           at least 1.36, which I imagine is 937 plus 460."

10          And you say that that's not quite correct because  
11          the 937 allows for £25,000 a month. That's the standing  
12          repayment of the arrears to the Revenue, I think; isn't  
13          that right? Do you recall, Mr Francis?

14        A. No. I thought the £460,000 was paid outside of ...  
15          I think we paid that privately.

16        Q. But the point that's being made is that it wasn't  
17          included in the 937 forecast of PwC. That's the point  
18          that's being made there. You are agreeing with that,  
19          except for the fact that the £937,000 did account, so  
20          you say £25,000 a month repayment of the arrears. Then  
21          you go on to say, just below this, that you needed to  
22          increase the working capital requirement to  
23          £1.4 million.

24        A. I think it went up to 1.6 at one stage, didn't it?

25        Q. Yes, but here you refer to 1.4 at any event. The 1.6

1 was the total of the guarantees. We're talking about  
2 the same figure, I suspect, 1.4/1.6.

3 A. Right.

4 Q. An increase in the working capital requirements of the  
5 company. At this point you're saying it's 1.4, but  
6 in October, as we've already seen, the total of the  
7 guarantees given were 1.625. So I think more or less  
8 you're referring to the same --

9 THE CHAIRMAN: You can choose your moment, Mr Flynn.

10 MR FLYNN: Let's stop there, sir. I think that's as good  
11 a moment as any.

12 THE CHAIRMAN: Right. 2 o'clock. Remember not to talk to  
13 anybody about your evidence whilst you're in the witness  
14 box, please.

15 (1.00 pm)

16 (The Short Adjournment)

17 (2.00 pm)

18 MR FLYNN: This morning, Mr Francis, you took exception to  
19 my reference to the difficulties with the access to the  
20 site, and I didn't have the reference to the document  
21 that I was thinking of. Perhaps we could just deal with  
22 that now. It's file E5, page 536. We have the Poolman  
23 Harlow --

24 THE CHAIRMAN: I think because of these tiles, people at the  
25 back are having difficulty hearing.

1 MR FLYNN: I'll try and project against the back wall, my  
2 Lord.

3 Page 536 is the Poolman Harlow report, which was the  
4 first valuation of the site obtained by 2 Travel. On  
5 page 538 at (vii), the longest paragraph on that page,  
6 it says:

7 "We understand discussions have taken place between  
8 the company and representatives of Swansea Council  
9 concerning the relocation of the access to the site  
10 from Nantong Way. The existing access is an adopted  
11 highway that serves both this site and those to the  
12 north. It is, however, acknowledged by the Local  
13 Authority as being potentially hazardous. Concerns have  
14 been expressed that this hazard will worsen, due to the  
15 increase in vehicular traffic ...(reading to the  
16 words)... As a result, the company have made proposals  
17 to introduce a new means of access off Nantong Way to  
18 the east of the existing round about serving the Morfa  
19 development."

20 That was, I think, what I had in mind for saying  
21 that there were some difficulties with access to the  
22 site. I don't know if you -- I promised to give the  
23 chairman the reference. That's what I had in mind. If  
24 you have any observations on that, now is your chance to  
25 make it, otherwise we're going back to where we were

1 before lunch.

2 A. No, things have moved on since then.

3 MR SMITH: Mr Flynn, I am sure it's my fault, but I found  
4 the financing a little obscure this morning. I wonder  
5 if I could just ask Mr Francis to look at a document --  
6 I'm sure it's elsewhere in the bundles -- but I've got  
7 it at D4, tab 37. If in tab 37, Mr Francis, you turn  
8 over the page, I hope you'll have there a memo from  
9 Mr Spooner dated 7 October 2004.

10 MR FLYNN: Sir, do you have a page reference? I don't have  
11 tabs.

12 MR SMITH: I don't. It's exhibit PH1.37.

13 Mr Francis, you'll see there the first substantive  
14 paragraph on that page refers to 2 Travel's funding.  
15 Do you see that?

16 A. I do.

17 MR SMITH: You see there that the total funding from  
18 Barclays is described as amounting to 2.2 million. This  
19 is in October 2004, of which 1.625 million is guaranteed  
20 by yourself and Mr Short.

21 A. Yes.

22 MR SMITH: As I understand it, those guarantees are  
23 threefold. There's one in April 2004 in the amount of  
24 £675,000. One in September 2004 in the amount of  
25 £300,000, and a third guarantee in October 2004 at about

1           this time, in the amount of £650,000 which, if you add  
2           it up, amounts to 1.625 million.

3           Now, the gap between 1.625 and 2.2, that was secured  
4           by a charge over the property; is that right?

5   A.   That's right, yes.

6   MR SMITH:   Then we see reference in the third line of that  
7           paragraph to £300,000 from Mr Short and Mr Bev Fowles.

8           Do you see that?

9   A.   I do.

10   MR SMITH:   That £300,000, is that the amount which was paid  
11           for the assignment of the overage provision in December?

12   A.   I think so, sir, but that was nothing to do with  
13           Bev Fowles, so I'm a little confused on it.   But I think  
14           it is, yes.

15   MR SMITH:   You think it is, thank you.   And you see there  
16           that it then gives you a figure of 2.5 million as being  
17           the total funding to the company.   Now, presumably that  
18           sum is an accurate statement of how the company was  
19           funded.   There isn't any other large tranche of funding  
20           that we need to be aware of in addition to what's  
21           described here, or am I wrong?

22   A.   At this point in October, sir, we were loaning over and  
23           above this, which was not secured, as and when it was  
24           needed, which is the point I made to Mr Flynn this  
25           morning.

1 MR SMITH: That was what provoked this series of questions.  
2 If that's right, why isn't it mentioned by Mr Spooner  
3 here as being part of 2 Travel's funding?  
4 A. I've got no idea, sir. It's a fair question.  
5 MR SMITH: And can you help me just in terms of the amount  
6 that you say this additional funding was, over and above  
7 the 2.5 million in total; a rough, ballpark figure?  
8 A. It was several hundreds of thousands of pounds, sir. It  
9 was more to do with if Mr Fowles wanted to buy  
10 a vehicle, or whatever, we would guarantee the vehicle  
11 or provide cash for some of the vehicles.  
12 MR SMITH: Yes, I see. It's slightly odd because the  
13 vehicles, of course, were financed themselves --  
14 A. Not all of them, some of them were too old to be  
15 financed.  
16 MR SMITH: I see, thank you very much, Mr Francis.  
17 THE CHAIRMAN: Just arising from those questions -- and I am  
18 really addressing this to counsel. Not for the first  
19 time, there has flashed through my mind, section 221 of  
20 the Companies Act 1985, which is the accounting  
21 obligations and the sanctions that follow breach. The  
22 1985 Act was still in force at this particular time,  
23 because it wasn't replaced until 2006. At some point  
24 I think it would be helpful for the tribunal to be told  
25 whether counsel submit that section 221 is relevant in

1           any way, and, if so, what are the consequences for this  
2           case, please. Thank you.

3 MR FLYNN: We've noted that, thank you.

4           Keep Mr Spooner's memo to hand, sir, because we will  
5           be coming back to the amount of £300,000 in the course  
6           of questioning.

7           We were in the transcript of the hearing before the  
8           Traffic Commissioner, Mr Francis. If you have E8 in  
9           front of you now. I think in the light of the questions  
10          from Mr Smith, I won't go over the make-up of the  
11          guarantees again. But if you look at internal page 9,  
12          page 39 of the bundle, you will remember that you spoke  
13          of a 1.4 million requirement at that point. And you are  
14          asked at the top of that page whether you have documents  
15          relating to that. You say you've got the deed of the  
16          priority in the office. This is just above E. And  
17          there you say:

18          "You know, obviously from Mr Short's point of view  
19          and my point of view, we are not in the habit of  
20          forwarding [something inaudible] of 1.4 million without  
21          taking charges."

22          So the point that you're making is that you're not  
23          in the habit and so you tell the Traffic Commissioner  
24          you're not in the habit of advancing sums in the order  
25          of £1.4 million, making that available to the company in

1           any way, without taking a charge. That's what you said  
2           to him.

3    A. That's right, yes.

4    Q. As we've seen, the bank facilities were in fact fully  
5           secured, weren't they? From your perspective, the  
6           guarantees that you gave in respect of the bank  
7           facilities were fully secured by the charge against the  
8           property?

9    A. That's right, yes.

10   Q. And at H on the page at the bottom there, you say:

11                 "The position, sir, is that we have offered  
12                 facilities to the company of up to £2.4 million."

13                 If you go over the page, Mr Callaghan says:

14                 "2.4, not 1.4."

15                 And you explain what you mean by that. You say:

16                 "It encompasses the bank borrowing. It's 2.4. It  
17                 encompasses the bank borrowing. The property's worth  
18                 probably in the region of £4 million and the company's  
19                 agreed to allow it to an option to buy the company at  
20                 2.4 million."

21                 And you go on at C to explain that it's 2 million,  
22                 plus 20 per cent of the uplift. That's the 2.4. That's  
23                 how you get to 2.4, isn't it? So when you say you've  
24                 offered facilities to the company of that much, what you  
25                 mean is that's the price that you'd offered to pay for

1 the Swansea depot under the option agreement?

2 A. No, what I meant was that we'd offered access to

3 2.4 million by virtue of that agreement, yes.

4 Q. The security was only in relation to the bank -- we know

5 this -- but only in relation to amounts guaranteed up to

6 1.625. That's right, isn't it?

7 A. What I'm saying there is that we're prepared to allow

8 the company to have access to 2.4 million.

9 Q. Then going on, you say:

10 "There will be an announcement in the Stock Exchange

11 tomorrow morning, confirming that the majority of

12 shareholders have approved the loan and the option."

13 Do you see that above G? And Mr Callaghan says:

14 "Wouldn't it have to go to an EGM?"

15 Are you with me, Mr Francis?

16 A. I'm not actually, no.

17 Q. Internal page 10.

18 A. Yes.

19 Q. At around G.

20 A. All right, sorry, yes.

21 Q. So you say there's going to be an announcement on the

22 Stock Exchange, confirming the majority of shareholders

23 approved the loan. Mr Callaghan says, "Wouldn't it have

24 to go to an EGM?" You say:

25 "It would do, but there is an undertaking

1           irrevocably given to vote in favour."

2           That's what you said at that point, isn't it?

3   A.   That's right.

4   Q.   The Stock Exchange announcement we have already looked  
5       at, and that is at -- keep a finger in the page you're  
6       at and go forward to 89. We have already looked at  
7       this. There isn't there any statement, is there, that  
8       the majority of the shareholders have irrevocably  
9       undertaken to vote in favour of that transaction?

10   A.   I think by that time, hadn't we had the EGM?

11   Q.   8 October. You have the EGM to take the view that the  
12       terms are fair and reasonable. Isn't that right? The  
13       EGM itself -- this is the view of the independent  
14       directors recommending it to the shareholders, and the  
15       EGM would follow that, surely? I will just find the  
16       date of the EGM. 29 October. So you hadn't had the EGM  
17       at this point?

18   A.   The position was that between Mr Fowles, Mr Short,  
19       Mr Spooner and ourselves, I think we represented about  
20       75 per cent, and that's the point that's being made.

21   Q.   All I'm saying, Mr Francis, is there's no reference  
22       there to irrevocable guarantees. They've made that  
23       irrevocable undertaking but nowhere in this  
24       documentation is there any trace of any irrevocable  
25       undertaking to vote in a particular way when the EGM

1           came about?

2    A.   There was an agreement with Mr Spooner, Mr Short,  
3           Mr Fowles and myself and Sir Richard Needham, on the  
4           limited shares that he had, also agreed to it.

5    Q.   You referred the Traffic Commissioner to irrevocable  
6           undertakings.

7    A.   That's right, yes.

8    Q.   What I'm saying is that that was not said to the Stock  
9           Exchange and there is no trace in these papers of any  
10           such undertakings having been given?

11   A.   The Stock Exchange announcement on 29 October reflected  
12           the consensus at the EGM where this motion was passed.

13   Q.   Subsequent to this announcement, indeed it was passed at  
14           the EGM. It's simply a question of whether in advance  
15           of the EGM, there had been any irrevocable undertakings.

16   A.   Yes, there was.

17   Q.   We say that's not made in the Stock Exchange  
18           announcement and there's no trace of it in these papers.

19   A.   Well, if it's not there, it's not there. I can't say  
20           anything else to that.

21   Q.   Then I think we can move on. At page 41, if I could go  
22           back in the transcript, 11 of the internal pagination of  
23           the transcript, round about F, Mr Callaghan -- this  
24           relates to the PAYE figure -- asks:  
25           "Just going back to the PAYE National Insurance,

1 a letter from Ford & Warren shows a payment of £465,000.

2 Can I ask where that money came from?"

3 You say:

4 "It came from Mr Short and myself."

5 He says:

6 "Is it an unsecured loan to the company at the  
7 moment?"

8 And you say it is, you guaranteed it on the  
9 repayment date. And then there's some more figures that  
10 are given that are in fact more than £300,000. So it's  
11 150 put in immediately and 300 by way of loan.

12 Can I take you to file E9 at 236. I think it's  
13 a slightly confusing e-mail exchange, but if one looks  
14 at the bottom one, below the second hole punch, someone  
15 seems to have sent an e-mail on behalf of Graham, who's  
16 Mr Spooner; is that right?:

17 "Graham has been out of the office today ...(reading  
18 to the words)... unable to make calls. He dictated the  
19 following response."

20 Do you see that towards the bottom of the page?

21 A. Yes.

22 Q. After that is the message that Mr Spooner has asked  
23 someone to send on his behalf:

24 "Grant Thornton were in attendance at a telephone  
25 conference call with the directors and CFA this

1 morning."

2 That's the NOMAD, isn't it?

3 A. Yes.

4 Q. "It was agreed they should be appointed as investigating  
5 accountants and pending the outcome of the  
6 investigation, it was agreed that AIM should be  
7 requested to suspend the shares. Subsequent to that  
8 development, Huw Francis and Bev Fowles ...(reading to  
9 the words)... pressing creditors and the bank seeking  
10 repayment of the £300,000 loan facility."

11 Was that a loan facility to pay the £300,000 of  
12 tax --

13 A. No, I don't think so.

14 Q. -- money?

15 A. I'm not sure. Mr Short put the money up. He put 300,  
16 I put 150.

17 Q. What would this bank facility be? £300,000.

18 A. I don't know who Evelyn Sarbout is or Robert Wilson, so  
19 I've got no idea.

20 Q. This is a message from Mr Spooner that is being sent on  
21 behalf of that -- and I think we have a few e-mails from  
22 Evelyn Sarbout. I suspect she was a PA working in  
23 something connected with Mr Spooner. If you look at the  
24 top of the page, you'll see again there's a message  
25 that is from Mr Spooner that's been apparently either

1 sent from that e-mail box address.

2 A. Yes.

3 Q. But in any event, the relevant message is one from  
4 Mr Spooner. It's the case, isn't it, that some form of  
5 loan facility, bank loan facility, had been taken out  
6 for £300,000 and it fell in at the end of October? And  
7 there was no provision for repaying it?

8 A. I'm sorry, I'm totally at a loss. The bank didn't call  
9 £300,000 in, so I'm not quite clear what it relates to.  
10 As you know, the bank stayed with the company until we  
11 took the indebtedness off in 2005.

12 Q. That's what Mr Spooner says at any rate. Leave that to  
13 one side for the moment, Mr Francis. If we go back to  
14 the transcript -- I'm not going to go all through this  
15 because it's terribly complicated. It's no doubt  
16 a changing situation and we'll be here all day if we try  
17 to sort it all out. Look at page 43. At the bottom of  
18 that page, internal page 13 of the transcript, you say:

19 "The idea is that when the company receives  
20 £2 million from Mr Short and myself, it will clear its  
21 indebtedness and on PwC's figures, will be generating  
22 quite a healthy profit."

23 Mr Callaghan says:

24 "How feasible are the PwC projections?"

25 You say:

1            "They have been cross-referenced by PwC on a regular  
2            basis for the last two ...(reading to the words)... in  
3            others."

4            And then you say, and this may be a slight  
5            transcript error:

6            "It is officially close for Mr Short and I to be  
7            comfortable in lending the money."

8            The word "officially" seems --

9            THE CHAIRMAN: Sufficiently?

10          MR FLYNN: There are a number of things it could be.

11            You're saying, in short, it's a bit close? It's  
12            close for comfort? Is that right?

13          A. That's right, yes.

14          Q. So it's getting up to the max. What happened at this  
15            hearing at the Traffic Commissioner is much the same as  
16            what happened at the August one, namely that the Traffic  
17            Commissioner didn't feel he'd got the necessary  
18            documentary evidence. That's right, isn't it?

19          A. It is, yes.

20          Q. He asked you for various documents which you were to  
21            provide. He set a deadline, 10 November, for that, to  
22            allow you time to put it together and to get through the  
23            EGM. And at page 56 of the bundle, transcript page 26,  
24            we see that. There has been discussion about documents  
25            and the EGM. The Traffic Commissioner says, just below

1 the second hole punch:

2 "We feel this is the way to do it. I mean, I guess,  
3 Mr Callaghan, there is no problem if these documents  
4 ...(reading to the words)... are provided sooner."

5 He says:

6 "No, as long as they are those documents."

7 And the Traffic Commissioner says:

8 "As long as they are those documents, yes. So if  
9 you provide them sooner and if you have the EGM sooner,  
10 that would resolve the whole matter."

11 And then they say that would be helpful if you'd do  
12 that. The outstanding documents were never supplied,  
13 were they?

14 A. Bank loan documentation was supplied, yes.

15 Q. Shall we look at file E9?

16 MR SMITH: Mr Flynn, before you move on from that document,  
17 could you look at page 42 of the bundle, Mr Francis,  
18 internal numbering page 12 of the transcript? At the  
19 top of that page you are being asked about the £300,000  
20 loan. And you say there that it's all a loan:

21 "We have a charge against all of it."

22 So this lending was secured, was it?

23 A. I'm not sure whether this is the £300,000 for the PAYE  
24 or the £300,000 that Nigel Short put in separately. One  
25 formed part of the 2.4 million, the other didn't, sir.

1 MR SMITH: Well, perhaps you can turn back a page to page 41  
2 of the bundle. You can see that Mr Callaghan was saying  
3 that you actually put cash into the company, and you say  
4 that £150,000 was put in immediately and £300,000 by way  
5 of loan.

6 A. That's the Nigel Short loan, sir, that's part of the 2.4  
7 in the option that we talked about earlier on.

8 MR SMITH: So why does it have to be secured by a charge --

9 A. The charge was already in place, sir, is what I meant.

10 MR SMITH: So this is a charge that you have over the  
11 Swansea depot property?

12 A. That's what I think, sir, yes.

13 MR SMITH: Thank you.

14 MR FLYNN: Mr Francis, could you be given E9, page 431.

15 THE CHAIRMAN: Are we moving away from E8 or do I need to  
16 keep it open?

17 MR FLYNN: I hesitate to say --

18 THE CHAIRMAN: I'll minimise it.

19 MR FLYNN: I think I have probably finished with the  
20 transcript, yes, sir. I hope not to be held to that if  
21 we have to go back to it.

22 THE CHAIRMAN: Don't worry.

23 MR FLYNN: I'm putting mine away.

24 On E9 at page 431, this is Mr Callaghan's report, as  
25 you can see on the next page, sent not in fact to the

1 Traffic Commissioner but to someone within the  
2 Department of Transport, but I understand it to be  
3 passed on to the Traffic Commissioner. It states his  
4 conclusions:

5 "At the reconvened public inquiry on 5 October 2004,  
6 Mr Francis was asked to supply original bank statements  
7 for specific dates in respect of loan and trading  
8 accounts. If necessary, these could have been obtained  
9 merely by telephoning the company's bankers. Statements  
10 for all loan accounts were requested from original  
11 take-up date, with statements for the trading account to  
12 cover the period 1 September 2004 to the end  
13 of October 2004. The company appeared to have supplied  
14 only copies of enquiry reports in respect of three loan  
15 accounts and Barclays business master printouts for the  
16 trading account ...(reading to the words)...  
17 22 September, 8 October, 18 October, 1 November 2004.  
18 I am slightly puzzled as to why the company has not  
19 complied with the request made at the hearing on  
20 5 October."

21 So although some documents were supplied,  
22 Mr Francis, the Traffic Commissioner and Mr Callaghan's  
23 requests were not satisfied, were they?

24 A. Over that two month period, I think we were losing  
25 something like £100,000 a month, due to the predation,

1           and I think at that point in time there were about two  
2           or three staff left in the office, and that was it.

3    Q.   Is the answer to my question you agree with the  
4           proposition?

5    A.   Yes, I do.

6    Q.   As far as minutes of the EGM were concerned, which the  
7           Traffic Commissioner also asked for, those were simply  
8           never prepared, as far as we know?

9    A.   The minutes were published and they were sent to him.  
10           They went to the Stock Exchange.

11   Q.   The minutes of the EGM?

12   A.   That's right, yes.  And Tony Rawlinson's letter,  
13           I think, went to him.

14   Q.   I'll stand corrected on that if that's the case.  
15           I don't see any reference to that in his letter there.  
16           He's still waiting for the minutes.

17   A.   The minutes were sent.  It was a simple thing to do and  
18           Tony Rawlinson asked me to make sure that they did go.

19   Q.   The date of this letter, 6 December 2004, the last  
20           sentence.  Having discussed the material that you have  
21           sent, he says:

22           "I note we await a copy of the minutes of the EGM,  
23           certified by the company secretary."

24   A.   Well, they were sent.  I think also a copy of the Stock  
25           Exchange announcement as well.  It wasn't just the

1 actual minutes.

2 Q. Well, one way or another, if that was the case, they  
3 haven't made it into these files.

4 A. It won't be the first time the Traffic Commissioner lost  
5 something.

6 Q. No.

7 A. It was certainly sent anyway.

8 Q. I'll refrain from comment. We've seen the reference  
9 then, to the -- at least on Mr Spooner's account -- bank  
10 lending being the cause for having the shares suspended.  
11 And Grant Thornton were appointed as investigating  
12 accountants, were they not?

13 A. They were.

14 Q. Their advice, when they'd had a look, was that the  
15 company was insolvent. That's right, isn't it? They  
16 gave advice on 23 November. It's in the file in front  
17 of you at page 290. It's a letter from Grant Thornton  
18 addressed to the directors of 2 Travel Group plc,  
19 23 November 2004. If you look at paragraph 1.6, we see:  
20 "The company is clearly insolvent at present, being  
21 unable to pay its debts as and when they fall due.  
22 There is the prospect of further cash injections  
23 ...(reading to the words)... resolve the situation in  
24 the short-term."  
25 What they then do -- it's a lengthy report and we're

1 not going to go through it all, but what they do is  
2 suggest how much money is needed at particular points  
3 for the company to keep trading. If we look at internal  
4 paragraph 4.4 within this document -- just before we get  
5 there -- I'm sorry, Mr Francis, this is a parenthesis,  
6 but it raises something which I think was asked about  
7 earlier. If one looks at paragraph 3.4, in relation to  
8 freehold property, we see a valuation is given there and  
9 I believe Mr Smith asked a question earlier about how  
10 a figure was reached for the valuation with planning  
11 permission. You see there you have "Valuation existing  
12 use, £650,000; market value, 1 million", and with  
13 residential or non-food planning permission, a bracket  
14 is given.

15 The figures there you'll find are the product of  
16 4.7 acres, which is just above, and the indicative  
17 valuation given by King Sturge in their original report  
18 for the price per acre with that permission. So that's  
19 where those numbers come from and what they produce.

20 THE CHAIRMAN: So the 2.35 to 3.5 million is based on  
21 planning permission having been granted for either  
22 residential or non-food?

23 MR FLYNN: Yes.

24 THE CHAIRMAN: Therefore with some of the preparatory work  
25 done. That's right, is it? You see, you told us that

1           you have spent 5.5 million on this land to date.

2    A.   That's right, yes.

3    THE CHAIRMAN:   So the 2.35 to 3.5 million was the potential

4           valuation for the land prepared for sale, as it were,

5           with planning permission at that time?  That's the top

6           valuation, you see, on 23 November 2004, isn't it?

7    A.   Yes.  Sorry, sir, I'm missing the point.

8    THE CHAIRMAN:   You told us that you'd spent £5.5 million --

9    A.   That's right.

10   THE CHAIRMAN:   -- on this land and that you have a

11           transaction in view, which we needn't go into at the

12           moment at least.  Does that involve spending money that

13           has raised the value of the land beyond the equivalent

14           value in --

15   A.   There's two things.  First of all, the 5.5 million

16           relates to this land and the land that I don't want to

17           discuss.  It's the entire package, 11 acres there in

18           total.

19   THE CHAIRMAN:   I see.

20   A.   The second point is I'm having difficulty with this

21           because King Sturge had already had an offer of

22           2.2 million for an acre and a half.  So I'm trying to

23           reconcile these figures and I'm unable to at the moment.

24   THE CHAIRMAN:   So just to be clear in my own mind, there's

25           been an additional six or seven acres added?

1 A. No, sir. That's the amber light that I'm talking to you  
2 about.

3 THE CHAIRMAN: Yes, but we're talking about 11 acres, you've  
4 just said.

5 A. Yes, just under.

6 THE CHAIRMAN: And this site, it says here, is 4.7 acres.

7 A. Subject to that, we bought Hoggans as well.

8 THE CHAIRMAN: So that's Hoggan's business that you bought?

9 A. That's the depot and then there's the third parcel of  
10 land as well, sir.

11 THE CHAIRMAN: Okay, thank you.

12 MR FLYNN: The point of mentioning it now is simply to  
13 illustrate -- I can't remember now how the figure came  
14 up in the first place, but the King Sturge valuation  
15 which is all that Grant Thornton are referring to,  
16 obviously it hasn't been revalued. They're simply  
17 computing out the figure that King Sturge give and the  
18 reference for that is E7, page 610. King Sturge say:  
19 "There is potential for significant upside in value.  
20 Should planning for residential ...(reading to the  
21 words)... we estimate to the order of £500,000 to  
22 £750,000 per net acre, assuming a remediated serviced  
23 site."  
24 So that's how those figures are reached.

25 THE CHAIRMAN: Thank you.

1 MR FLYNN: But it is on the basis of the Swansea depot  
2 acreage of --

3 A. The point of the matter is at that point in time, there  
4 was an offer for 2.2 million from Lidl, for an acre and  
5 a half.

6 Q. Really, Mr Francis, I'm simply on how some numbers were  
7 calculated, not on what they were representing at the  
8 time. I was really giving that for information to --

9 MR SMITH: It was my question and I'm very grateful.

10 MR FLYNN: We're really not on the topic of alternative  
11 offers at that point.

12 Now, forward in this paper to where we were actually  
13 going, which is paragraph 4.4. What Grant Thornton say  
14 on 23 November is:

15 "Without an injection of funds between £300,000 to  
16 £400,000 as identified on the short-term cash flow, the  
17 company will be unable to continue to trade in the  
18 period up to 24 December 2004. The cash flow indicates  
19 that approximately £258,000 will be required this week,  
20 assuming Aston [that's the factoring company] allows  
21 approximately £100,000 drawdown this week. Such funding  
22 will not discharge ..."

23 And then they list potential sources of funding.  
24 Huw Francis, £150,000 undertaking previously given, now  
25 apparently withdrawn. Nigel Short, £300,000, subject to

1 acquisition of the overage rights. £350,000 for an  
2 advance payment of land due to be gifted to the company.  
3 Then other factors are mentioned. The possibility of  
4 a rights issue. Bank overdraft, they seem to be  
5 discounting, and Aston Rothbury has frozen its facility.

6 So that was 23 November. On 2 December, the next  
7 letter from Grant Thornton, that's at page 421 of this  
8 bundle. Again, quite a lengthy letter, but at page 429,  
9 one sees a summary of what they have to say:

10 "Unless the directors are confident that funds of at  
11 least £48,000 to cover wages and fuel costs are injected  
12 into the company by Friday morning, then the directors  
13 will have no option but to cease trade on Friday  
14 afternoon. If £48,000 is injected this week and the  
15 directors are to continue trading into next week with  
16 the intention of ceasing to trade on 10 December 2004,  
17 funds of approximately £110,000 will be needed in  
18 addition to the £48,000 this week."

19 And then there's the following week, which would  
20 require another £108,000. That's the programme that  
21 they outline. So that letter, does it not, Mr Francis,  
22 proceeds on the basis that formal insolvency is  
23 inevitable?

24 A. Yes.

25 Q. And in fact, that's what happened. You stopped

1 operating Cardiff, 17 December, shut down the depot.  
2 And on 24 December the Traffic Commissioner revokes the  
3 operating licence for lack of financial standing. And  
4 you remember that what financial standing means is  
5 having £320,000 or thereabouts readily available. My  
6 question to you is: wasn't he clearly right to do that  
7 in the light of the Grant Thornton report?

8 A. Yes, he was, yes.

9 Q. We've already passed over -- made reference in reading  
10 the Grant Thornton papers to the suspension of the  
11 Aston Rothbury factoring facility. That was formally  
12 terminated in January 2005, was it not? Do you recall  
13 that?

14 A. I think I left in December. I think.

15 Q. Well, page 510 -- I think it must have been slightly  
16 after December, Mr Francis.

17 A. Okay.

18 Q. Page 510 of this bundle is a letter from Aston Rothbury:

19 "Dear Huw, further to your faxed letter today,  
20 I respond as follows."

21 And he sets out a number of things, including saying  
22 that they could have terminated in December but they  
23 reserved the right and suspended the facility instead.  
24 So he was still around in January and basically what  
25 they're saying is they just are collecting now.

1 A. Yes, I don't think I actually was, but yes, I called in  
2 on a regular basis. I wasn't being paid from October,  
3 I don't think.

4 Q. But you were still the company secretary. At least they  
5 were under that impression?

6 A. Yes.

7 Q. Now, despite all that, 2 Travel appealed the decision of  
8 the Traffic Commissioner, did you not? You appealed the  
9 decision on financial standing.

10 A. That was early on.

11 Q. The hearing was in February 2005, of the appeal. Isn't  
12 that right?

13 A. I've no idea. I wasn't there then. If you refer me to  
14 the paper, I'll look at it.

15 Q. Yes, we can look at the hearing, but you remained as  
16 company secretary of the company. Did you --

17 A. No, I resigned as a director.

18 Q. You gave instructions for the conduct of the appeal?

19 A. No.

20 Q. Who would have done that?

21 A. I think it was done earlier than that. I think it was  
22 done immediately the decision came out, so I was there  
23 then. But the conduct of the appeal, no.

24 Q. The decision to make an appeal was yours as a director  
25 of regulation, as I think you were at that time, as well

1 as the company secretary?

2 A. I think the suggestion was that there would be an  
3 attempt to try and reduce the size of the company and to  
4 get sufficient licences for that to happen.

5 Q. Shall we look at the appeal proceedings, which are in  
6 E10? We've already looked at this briefly because it  
7 has the test of financial ready availability.

8 THE CHAIRMAN: Page?

9 MR FLYNN: That, sir, was on page 19. Then over the page on  
10 page 20, you can see the submissions that were made on  
11 behalf of the company. One was the Traffic Commissioner  
12 ought to have given the company an opportunity to  
13 comment before the Traffic Commissioner made a decision,  
14 and we have seen that the Traffic Commissioner was not  
15 supplied with the papers that he had asked for.

16 The second point -- and this is at paragraph 13 of  
17 this decision -- made, was that Mr Callaghan's report  
18 did not contain any mention of the funds available under  
19 a factoring agreement:

20 "On any view, these were substantial. His  
21 conclusion that there was no evidence of financial  
22 standing, must be viewed in the light of this serious  
23 omission. We think that in so stating, Mr Callaghan was  
24 plainly wrong. The extent of the funds available is  
25 a different matter. We would have expected him to have

1 made an attempt at quantifying."

2 So there we see the appeal body, the Transport  
3 Tribunal, attaching importance to the existence of  
4 a factoring facility that at the time of the  
5 Transport Commissioner's decision of 24 December, had  
6 already been suspended. That's right, isn't it,  
7 Mr Francis?

8 A. Sorry?

9 Q. The appeal body is attaching importance to the existence  
10 of a factoring agreement. We see that.

11 A. Yes, I see that, yes.

12 Q. The factoring agreement had been suspended in December.  
13 We saw that a minute ago --

14 A. Right.

15 Q. -- in the Grant Thornton report. And the Traffic  
16 Commissioner's decision was made on 24 December,  
17 Christmas Eve. So at the time the decision was made,  
18 the factoring facility had been suspended. And by the  
19 time of the hearing before the Transport Tribunal, which  
20 is in February 2005, that facility had been terminated,  
21 hadn't it?

22 A. If you say so, yes. I've got no idea. This  
23 is March 2005, isn't it?

24 Q. The decision may be, yes. It's in relation to a hearing  
25 on 24 February 2005, as we see on page 14. You're quite

1 right, the decision itself was made in March, as we see  
2 on page 22. But representations on behalf of 2 Travel  
3 were being made to the appeal body on 24 February at  
4 a time -- it's right, isn't it -- the factoring facility  
5 had been terminated?

6 A. I have no idea. I didn't do this, it was Mr Backhouse.

7 THE CHAIRMAN: Well, we've seen the document.

8 MR FLYNN: Another topic then. The extraordinary general  
9 meeting on 29 October. For this, you're going to need  
10 file E9. Were you present at that meeting, Mr Francis,  
11 the EGM?

12 A. What page is it on?

13 Q. I wasn't going to go to the EGM itself. I'm not sure --  
14 we haven't seen minutes of it. Were you present at the  
15 meeting?

16 A. I don't think so, no. I think it was in  
17 Graham Spooner's house.

18 MR SMITH: So Mr Flynn, there are no minutes of the EGM for  
19 us to see?

20 MR FLYNN: I'll be corrected, but I believe not.  
21 I understand they were not prepared. Our understanding  
22 is they were not sent to the --

23 A. We discussed that earlier.

24 Q. We discussed that earlier and Mr Francis has  
25 a recollection, which I'm not in a position to confirm.

1           They're not in the files anyway.

2   MR SMITH:  It's one thing, them not being sent; it's another  
3           thing, them not being produced at all.

4   THE CHAIRMAN:  Whilst we're on the subject of minutes, if  
5           there are any board minutes of 2 Travel disclosed in the  
6           files, then I can't find them.  So if there are, can  
7           I be told where they are, please?

8   MR FLYNN:  Yes, there are some and I'm sure a list will be  
9           prepared.

10           What we do have, Mr West has rightly reminded me, is  
11           at file E8, page 502, the resolution signed by  
12           Sir Richard Needham and we have the chairman's script  
13           for the EGM on 29 October, page 503, which was to be  
14           held at the Holiday Inn Hotel, The Caldra, Newport.  
15           I don't know whether it happened there but that was the  
16           intention.

17           Mentor raised an objection about fraudulent  
18           preferences.  Do you recall that, Mr Francis?

19   A.  No.

20   Q.  Then you should have a look at file E9, page 321.  It's  
21           addressed to the directors, a letter from Mentor.  
22           That's the corporate director on behalf of the loan  
23           stock holders, a letter of 30 November 2004:  
24           "Dear sirs ..."  
25           Heading is "Circular to shareholders

1 13 October 2004":

2 "... As you are aware, Mentor UK is an unsecured  
3 creditor of the company, the balance of fees outstanding  
4 being £10,000 plus VAT."

5 And it refers to the related party security:

6 "Notwithstanding that the related parties dismissed  
7 the issue of fraudulent preference when it was raised by  
8 Mentor's representative at the company's board meeting  
9 on 29 October, Mentor UK Limited hereby puts the company  
10 and its directors, including the related parties, on  
11 notice that it considers the security granted by the  
12 company to related parties pursuant to the circular, may  
13 constitute fraudulent preference on the company's  
14 unsecured creditors, including Mentor UK Limited.  
15 Mentor UK Limited would also note no minutes have been  
16 circulated to the company's directors as at  
17 24 November 2004 in respect of its board meetings on  
18 6 August and 29 October 2004, notwithstanding letters  
19 they had addressed to Sir Richard Needham."

20 Does that jog your memory, Mr Francis?

21 A. No, it doesn't. It says, basically, it "may"  
22 constitute. All Mentor were interested in was getting  
23 their fee.

24 Q. I'm just asking you now if you remember the letter?

25 A. No, I don't.

1 Q. It was sent to the company secretary. That was you.

2 A. It was, yes.

3 Q. And you don't recall the letter. If you go on in that  
4 file to page 438, another letter from Mentor, again  
5 addressed to the directors, sent for the attention of  
6 the company secretary. It says:

7 "I refer to your letter of 2 December 2004."

8 There was a letter from Mr Cook, which perhaps  
9 I should have gone to first, but anyway, we can go back  
10 to Mr Cook's letter if we need to, it's on page 418.  
11 Perhaps we should see that. At that point Mr Cook says:

12 "Thank you for your letter. Surprised and  
13 disappointed by the contents. The security granted was  
14 fully debated at the board meeting ...(reading to the  
15 words)... Whilst the issue of fraudulent preference may  
16 have been debated, the conclusion reached by the  
17 directors on the basis of advice taken was that insofar  
18 as ...(reading to the words)... any suggestion to the  
19 contrary. I am checking with the company secretary with  
20 regard to the points raised in relation to the  
21 circulation of board minutes and I will revert on this."

22 So he was going to check with you about circulation  
23 of board minutes. It says that the fraudulent  
24 preference issue had been discussed in the meeting. So  
25 going back to Mentor's letter at page 438:

1           "Thank you for acknowledging that the issue of  
2           fraudulent preference was raised by Mentor at the board  
3           meeting of 29 October 2004 ...(reading to the words)...  
4           circulation of the board minutes."

5           And so on:

6           "Specifically, Mentor UK Limited considers that  
7           given the continued deterioration ...(reading to the  
8           words)... granting of security by 2 Travel Group to the  
9           related parties defined in the circular in respect of  
10          their existing guarantees, extended in early 2004 to  
11          2 Travel Group's bankers, may well constitute  
12          a fraudulent preference, should 2 Travel Group become  
13          insolvent by 28 April 2005 ...(reading to the words)...  
14          Mentor UK Limited is one."

15          They say they've instructed their solicitors to take  
16          steps to recover the outstanding balance of their fees.

17          Do you remember that now?

18        A. No.

19        Q. You don't remember that exchange at all?

20        A. As he says, the matter was discussed at the meeting.

21          Sir Richard Needham was copied in on it, he was at the  
22          meeting, and the view was that it was necessary to keep  
23          the company going.

24        Q. It might well have been necessary to keep the company  
25          going, but that doesn't defeat the objection of

1 a potential fraudulent preference, does it?

2 A. It was debated as to whether it was and the consensus  
3 was that it wasn't.

4 Q. It was necessary in the face of that objection to keep  
5 2 Travel going, wasn't it?

6 A. Sorry?

7 Q. It was necessary in the face of the objection by Mentor  
8 that -- the related party transaction could have been  
9 regarded as a fraudulent preference, it was necessary to  
10 keep the company going beyond December 2004, wasn't it?  
11 Because otherwise you risked having your transaction --

12 A. I'm just trying to relate the dates, to see how they  
13 work. The position as far as Martin Cook's concerned,  
14 he sets it out very clearly there. The whole matter is  
15 debated and the consensus of opinion on advice taken was  
16 that it wasn't a fraudulent preference. I can't  
17 remember being at this meeting, which is why he probably  
18 responded to it.

19 Q. The company can't resolve that something is or is not --  
20 the shareholders can't resolve that something is or is  
21 not --

22 A. No, but it can resolve whether or not it wants to grant  
23 the security, which it did do and exercised it properly.

24 Q. Mr Francis, let's move on to something else.  
25 Cardiff Bus accepts in these proceedings that its

1 actions caused some loss of revenue to 2 Travel. We  
2 don't think it's a recoverable loss, but that's for  
3 legal argument. Our expert -- I don't know if you have  
4 read any of the evidence on this -- puts the lost  
5 revenue on the basis of his analysis, at something  
6 between £7,000 and £12,000. I don't know if you have  
7 seen that?

8 A. No, I haven't.

9 Q. I don't expect you agree with it?

10 A. No, I don't.

11 Q. Let's assume for the moment that the tribunal is with us  
12 on that. In October 2004, the company needed loans of  
13 something like £1.6 million. That's right, isn't it?

14 A. It is, yes.

15 Q. We've looked at the weekly cash flow requirements that  
16 Grant Thornton were saying were necessary later in the  
17 year.

18 A. Right.

19 Q. We've looked at those. £11,000, £12,000, would have  
20 made absolutely no difference at all to the state of the  
21 company, would it?

22 A. No.

23 Q. 2 Travel's expert puts the lost revenue somewhat higher  
24 than we do, something between £200,000 and £300,000.  
25 That wouldn't have done it either, would it? It

1           wouldn't have done the trick?

2    A.   I do not know what figure he's putting it at.

3    Q.   He's suggesting £300,000 was the lost revenue due to

4           Cardiff Bus's actions?

5    A.   You told me the lost revenue on the routes, so the

6           consequence right across the company.

7    Q.   I'm talking about the lost revenue on the routes.

8    A.   The loss to the company wasn't just the revenue on the

9           routes.

10   Q.   I'm just talking about that for the moment.  If you'd

11           had the £300,000 that he says you should have had from

12           the routes, that wouldn't have saved the company, would

13           it?

14   A.   Well, as I say, I haven't seen the report and I don't

15           know what to say about it.

16   Q.   You know what the amount is.

17   A.   I don't accept the amount.  That's why I'm puzzled.

18   Q.   The £300,000 wouldn't have paid off the instalment paid

19           to the Inland Revenue.

20   A.   No.

21   Q.   £300,000 wasn't enough for that.  Yet you say,

22           Mr Francis, that if it wasn't for the infringement, you

23           and Mr Short would have continued providing all the

24           money that 2 Travel needed.  That's what you say?

25   A.   Yes.

1 Q. And whether or not it would have been secured?

2 A. On the basis that there was no predation. Absent the  
3 predation.

4 Q. But if there'd been no infringement, if you leave the  
5 Cardiff Bus actions to one side, if the company's  
6 financial position had been what we have seen that  
7 it is, you wouldn't have made unsecured funding  
8 available to the company, would you?

9 A. The position as far as we're concerned is that absent  
10 predation, we were prepared to fund that company for the  
11 amounts that we discussed in the PwC report.

12 Q. Mr Francis, you'd never have done that without taking  
13 security, would you?

14 A. Yes. Perhaps not up to £2 million, but we certainly  
15 advanced an awful lot of cash without security.

16 Q. You told the Traffic Commissioner you wouldn't put  
17 1.4 million in without taking security.

18 A. I told the Traffic Commissioner in August/October. It  
19 was an entirely different ball game.

20 Q. You weren't in the habit of providing any significant  
21 amounts of funding without security, were you?

22 A. We would have provided sufficient funds for the company  
23 to operate. If it had to be unsecured, then we wouldn't  
24 have gone up to 1.4 million, but we would have provided  
25 a reasonable amount. I think we did actually provide

1           £300,000 to £400,000, as I said earlier, which is  
2           a significant sum in itself. The figures you talk about  
3           of £300,000, I don't understand them and I don't accept  
4           them.

5    Q. You have said at some length, I think in answers to the  
6           chairman earlier, that the reason other people weren't  
7           prepared to invest in the company was because of the  
8           infringement by Cardiff Bus.

9    A. That's right.

10   Q. That's not what 2 Travel was telling the Stock Exchange,  
11           is it? If we just look for one last time at the Stock  
12           Exchange announcement at E8, page 89. I'm not going to  
13           read it all out. There's a trading statement there,  
14           which indicates all sorts of problems. Absolutely no  
15           reference to any unfair competition on the part of  
16           Cardiff Bus, is there? Not a word?

17   A. At that point in time, we'd been advised to be careful  
18           about what we said about the predation because we'd made  
19           a formal complaint.

20   Q. Mr Francis, you have to give full information to the  
21           Stock Exchange, don't you? You were the regulatory  
22           director.

23   A. I think we've said here that there were problems on  
24           certain routes.

25   Q. There's nothing there that would lead the market to

1           suspect that the entirety of your problems were being  
2           caused by predatory behaviour of Cardiff Bus company, is  
3           there?

4   A.   No, this trading statement relates to the party  
5           transaction.

6   Q.   I'm not going to argue that with you, Mr Francis.  It's  
7           a three for one.  It has a trading statement, a related  
8           party transaction and board changes.

9   THE CHAIRMAN:  Why not say in the statement: we are awaiting  
10           a ruling by the regulatory authority in relation to the  
11           alleged anti-competitive --

12   A.   It hadn't actually gone to the regulatory authority.  
13           We'd written several letters to them, sir, and  
14           effectively the advice was that we would need to compile  
15           a formal case.  And it took the best part, I think, of  
16           about nine months, for that to be done.  I think  
17           Martin Cook got specialists in to do it.

18   MR FREEMAN:  So when you say in that trading statement, "Our  
19           future success is heavily dependent on the success of  
20           new bus routes generating significant additional  
21           contribution", is that code for the predation?

22   A.   It is what it says, sir.  You know, the company was  
23           hoping to expand its bus routes and Cardiff was the key  
24           element of that expansion.  So as far as the company  
25           itself was concerned, the success depended purely and

1           simply on bus routes because they were moving out of  
2           coaches.

3   MR FREEMAN: I am just trying to make sense of what this  
4           statement actually says. I think when you were asked  
5           about it earlier, you mentioned the predation as being  
6           part of the overall context and I think you referred to  
7           bus drivers having to be moved from Swansea to Cardiff  
8           and the company being generally under a lot of pressure;  
9           is that right?

10   A. That's right.

11   MR FREEMAN: So how does that reconcile with:

12           "Staff turnover and absence has reduced during the  
13           last six months, bringing additional stability to bus  
14           operations."?

15   A. Sir, that was in relation to the Swansea depot, but  
16           subsequent to that, they had to shift the people up to  
17           Cardiff and continuously, after about October/November,  
18           it just became impossible.

19   MR FREEMAN: It doesn't actually say that it's related to  
20           the Swansea depot. It's a general statement.

21   A. The Swansea depot's the main bus route at that point,  
22           sir, and the intentions were to develop the Cardiff one  
23           to the point that it was the central core of the  
24           business.

25   MR FREEMAN: Right. Okay.

1 MR FLYNN: At all events, you don't get the impression there  
2 that the sole or even principal cause of 2 Travel's woes  
3 is predation by Cardiff Bus. No one reading that  
4 statement could take this impression away, could they?

5 A. No.

6 Q. And the truth is, isn't it, that the problems that  
7 2 Travel were facing were not to do with infringement,  
8 but with its own shortcomings?

9 A. No, I don't accept that.

10 Q. I wouldn't expect you to accept it, Mr Francis, but  
11 that's the truth. I put that to you that that is what's  
12 happened here. I have no further questions, sir.

13 THE CHAIRMAN: Thank you, Mr Flynn. Shall we have our  
14 transcription break now? Ten minutes.

15 (3.07 pm)

16 (A short break)

17 (3.17 pm)

18 Re-examination by MR BOWSHER

19 MR BOWSHER: Mr Francis, shall we deal with one quick matter  
20 first? Can you take E5, page 539. This is the question  
21 about access that you were being asked about. I think  
22 it was actually 538. What you were being asked just  
23 after lunch today, I think, was about the item at  
24 paragraph (vii) and the access problems that are  
25 referred to there. This is in the context of you and

1 Mr Flynn not agreeing that there were access issues  
2 regarding the site at Swansea. I think your response  
3 was that things have moved on. In the light of that,  
4 could you describe how things have moved on to deal with  
5 the access issues regarding the site at Swansea?

6 A. The Council resolved that it would be better to have an  
7 access on both ends, but predominantly on this end.

8 Q. This end?

9 A. The Brunel Way end. That in itself is a public highway.

10 Q. Does that resolve the access issues then?

11 A. There never was an access issue.

12 Q. It would be helpful then, if we could just pick up some  
13 of the evidence on the land itself. We can put E5 away  
14 and go to your statement, which will be C1. Your first  
15 statement, C1, tab 4, paragraph 35. It might be useful  
16 just to have by way of comparison, open, the  
17 Grant Thornton report with the valuation that you were  
18 being referred to earlier on, which is E9, page 300.

19 Do you have that?

20 A. I do.

21 Q. Paragraph 35, and this was a point you were correcting  
22 me on this morning, you refer to the Redrow and the Lidl  
23 offers in 2004. That's what's described in paragraph 35  
24 and paragraph 36. That's correct, isn't it?

25 A. Yes.

1 Q. Do I understand it that those offers would have run  
2 together? You'd have been able to make a cumulative  
3 sale?

4 A. Yes. We weren't particularly fixated on Redrow. It  
5 could have been any number of different residential  
6 companies or, alternatively, commercial companies.  
7 Those just happened to be the ones that we spent most of  
8 the time talking to.

9 Q. Right. When we compare the offer that's recorded, the  
10 King Sturge offer that's recorded or valuation that's  
11 recorded on page 300 of E9, that is not, then,  
12 reflecting, is it, the Redrow/Lidl offers; is that  
13 right?

14 A. Yes. I'm not quite sure what this ...

15 THE CHAIRMAN: Was the Redrow offer, as it's described, an  
16 offer?

17 A. Yes, sir.

18 THE CHAIRMAN: It was a firm offer, was it?

19 A. Yes, sir.

20 MR BOWSHER: That is actually attached to Mr Francis'  
21 statement. It's at page 460 of that same bundle.  
22 I don't think we need turn it up, but the letter is  
23 there.

24 Is it right that the valuation of the land by  
25 reference to these offers in September 2004 would have

1           been a valuation with residential or non-food planning  
2           permission, as it were, on a comparable basis to the  
3           third valuation that we've got referred to in the  
4           Grant Thornton report?

5    A.    Could you repeat that?

6    Q.    Do you see in the Grant Thornton report you have  
7           different valuations. The third is with residential or  
8           non-food planning permission. Is the value that you  
9           attribute to the offers in September 2004 on the same  
10          basis?

11   A.    Yes. The offer in 2004 was for an acre and a half for  
12          Lidl and three and a half acres for residential.

13   Q.    Right. And that offer is on the basis, is it, on  
14          a comparable basis, so it would be with that residential  
15          or non-food planning permission; is that right?

16   A.    Yes. I don't follow what you're trying to ...

17   Q.    You have then said in your statement that those offers  
18          would have netted a profit to 2 Travel of about  
19          £5 million.

20   A.    Mm.

21   Q.    That net profit, does that allow for whatever  
22          expenditure needs to be done in respect of that land?

23   A.    Yes. At that point in time, we'd have just handed the  
24          site over and the market was buoyant and you'd have  
25          expected them to incur the cost. As it happens, a lot

1 of work had been done because there were desktop studies  
2 in relation to the site which we'd had sight of, so we  
3 knew roughly what to expect.

4 Q. So the work to be done to get to the relevant permission  
5 stage at that stage, doesn't require further  
6 expenditure; is that what you're saying?

7 A. I think during that time, I'd already applied for an  
8 existing use certificate and the existing use  
9 certificate that we got was for a scrap yard and for  
10 a caravan park and various other bits and pieces which  
11 the authority weren't happy with, because of the fact  
12 they had a very prestigious development on the doorstep.  
13 So they then came in with an existing use for  
14 residential as an alternative and I think an outline  
15 consent was granted round about that time.

16 Q. So this is really picking up questions you were being  
17 asked by the tribunal. If we're trying to make  
18 a comparator with values today, which to get there, you  
19 would have had to spend a lot more money, you've already  
20 given evidence, would you have had to spend that sort of  
21 money back in 2004 to get to the value, the sort of  
22 £5 million profit that you describe in your statement?

23 A. No, the money that would need to be spent, the big  
24 money's in relation to the balance of the site.  
25 2 Travel happened to sit on the better part. There were

1 certain parts that weren't quite up to standard, but the  
2 remediation in relation to that was known and the cost  
3 wasn't excessive.

4 Q. Thank you.

5 MR FLYNN: Sir, I do think if a discussion is going to be  
6 held on this basis, the tribunal and Mr Francis ought to  
7 look at the Redrow offer on page 460 of bundle C1.

8 MR BOWSHER: I anticipate that what my learned friend  
9 Mr Flynn is getting at is that that offer is being made  
10 on what is referred to as a clean land value --

11 THE CHAIRMAN: That's why I asked the question earlier.

12 MR BOWSHER: -- per net developable acre.

13 What is your evidence as to what expenditure was  
14 required to get the 2 Travel land to being clean  
15 developable land, if I can put it that way, to sum up  
16 what the condition is of that offer?

17 A. The evidence I've given is correct. Redrow were in  
18 a competitive situation. It wasn't just them, there was  
19 Persimmon, Barratts. Quite a few of the companies were  
20 there. And we had discussions with Lee Hawker and  
21 he was prepared to review his offer, but from our point  
22 of view, at that point in time, we meandered off course  
23 slightly to look at the potential of getting an IKEA on  
24 the site which would have given a higher value. So  
25 Redrow came back to us several times, but we never

1           pursued it any further than that.

2   THE CHAIRMAN:  Can I just understand this letter clearly.

3           Can we have a look at it.  The first paragraph indicates

4           an initial proposal for the freehold purchase.  So this

5           is the first part of a process?

6   A.  It is, sir, yes.

7   THE CHAIRMAN:  And the offer of £800,000 relates to

8           a serviced and clean land value.  Does that mean after

9           the land has been decontaminated or whatever needs to be

10          done?

11  A.  It does, sir, but that's not as dramatic as it sounds.

12  THE CHAIRMAN:  No, but it's a condition.  It has to be clean

13          land.  What does the term "net developable acre" mean?

14  A.  Clearly, sir, there would be roads and access roads and

15          things and that would reduce the area of land.

16  THE CHAIRMAN:  So it would exclude access roads, green

17          space, whatever the Council insisted on?

18  A.  That's right.

19  THE CHAIRMAN:  What are "abnormals"?

20  A.  Abnormals would be things like if there was an old

21          drainage there or a main sewer going through the site or

22          if there were coal seams or anything like that.

23  THE CHAIRMAN:  So when it says that they "intend to take

24          matters to the next step and calculate abnormals", that

25          means that they would cost up --

1 A. That's right, sir, they would take borehole tests if  
2 necessary or they would do, as in this particular case,  
3 a desktop study because the site they were interested in  
4 didn't have any great issues.

5 THE CHAIRMAN: Yes, but if there was an issue, that would  
6 come off the price, obviously?

7 A. It would, yes. But the position with this, it's the  
8 same as the Lidl offer. That was 1.8 million in the  
9 first week, and by the time we finished three weeks  
10 later, it was 2.2 million. The same thing happened with  
11 Redrow. They offered to sit down and discuss and take  
12 the matter further, as did Barratts and Persimmon and  
13 various other companies.

14 THE CHAIRMAN: The last main paragraph, the lockout  
15 exclusivity agreement. This is, what, a device that's  
16 the equivalent of "We're now going to start on due  
17 diligence"?

18 A. That's right.

19 THE CHAIRMAN: You will not do this with anyone else?

20 A. That's right.

21 THE CHAIRMAN: Not something they pay for?

22 A. They can pay for it, sir, but they didn't offer.

23 THE CHAIRMAN: So if you entered into a lockout exclusivity  
24 agreement, they would, in effect, start the equivalent  
25 of due diligence on the land?

1 A. And we would be obliged to stick with them until they'd  
2 completed that or the option period expired.

3 THE CHAIRMAN: Then they would negotiate with the local  
4 council, the local planning authority, to see if  
5 planning consent could be agreed with the local planning  
6 authority that would suit their purposes?

7 A. I'd done most of that already so they had a good idea as  
8 to where --

9 THE CHAIRMAN: So there are quite a few steps to go through  
10 before they --

11 A. No, not really. Those things would be done very, very  
12 quickly. From our point of view, having got the  
13 certificate of lawful use, the uplift to a residential  
14 consent was pretty straightforward and fairly quick.  
15 You'd be talking about, perhaps, three months.

16 THE CHAIRMAN: So why didn't you proceed with Redrow on this  
17 basis?

18 A. Because the time wasn't right to proceed, sir. We were  
19 in a position whereby the Morfa and the Liberty Stadium  
20 were just starting to come. Barratts had just started  
21 demolishing the property next door to build 400 luxury  
22 apartments and it was my judgment that if the company  
23 held off for a year, perhaps 18 months, they would  
24 increase this price significantly. And if you consider  
25 that when 2 Travel first bought this land, say it was

1           £650,000 or whatever, within less than 12 months,  
2           Mr Short and myself had paid £2.4 million for it. So  
3           absent everything else, there was an increase in value  
4           of some 1.8 million.

5   THE CHAIRMAN: So it was an investment judgment on your  
6           part?

7   A. Well, on behalf of the company, yes, sir.

8   THE CHAIRMAN: Yes, okay.

9   MR BOWSHER: Mr Francis, this letter is  
10           dated September 2004. It's at about this time that the  
11           option that you just mentioned for the purchase of the  
12           property was being mooted.

13   A. It probably was, sir, yes. We had been talking to  
14           Redrow for months and all the others.

15   Q. But was, ever, an exercise carried out to compare the  
16           value inherent in the option of 2 million plus overage,  
17           against the offer that was being made by Redrow and  
18           Lidl?

19   A. Yes, there were valuations taken throughout the process,  
20           sir, and the board asked for two independent valuations  
21           in relation to it.

22   Q. But in a sense, independent valuations are one thing,  
23           a concrete offer from an interested third party is  
24           something different.

25   A. It's an offer that would require planning permission and

1 various other bits and pieces to fall into place. We  
2 would expect to get that planning permission, but you  
3 can never guarantee it.

4 Q. I quite understand that. It's simply that about this  
5 time, one way or the other, 2 Travel was effectively  
6 divesting itself of its interest in the property because  
7 either it would sell the land to somebody like Redrow or  
8 subject the land to an option from yourself and Mr Short  
9 to sell the property for 2 million.

10 A. That's right, sir.

11 Q. And so whatever the increase in value in the land,  
12 2 Travel wasn't going to be fully participating  
13 in the --

14 A. It would have. The only reason they gave as to the  
15 charge was because they needed the funding. From our  
16 point of view, we were quite happy to leave it within  
17 the company, but it necessitated having the cash, the  
18 circumstances of the company and of the company  
19 financially, which is why the option was granted.

20 Q. Of course, but the funding could have come either via  
21 the option or the sale of the land to someone like  
22 Redrow?

23 A. It could, but if Redrow hadn't proceeded, what would  
24 have happened then? It's not a binding contract, and  
25 it's the same with Lidl. We can do all the work we want

1 to try and get the planning consent but it's not  
2 guaranteed. Over and above that, there are fees that  
3 have to be paid and as I said earlier on, there would be  
4 work that was needed to be done. Once you got into the  
5 site, the site became more problematic. But from our  
6 point of view, we would have expected Redrow to actually  
7 have proceeded with this at some time or other.

8 Q. Thank you. We can put C1 to one side for a moment. If  
9 we could look at file E7/788. That was a document which  
10 you've been asked a number of questions about and  
11 you will recognise. This is Mr Rawlinson commenting on  
12 the circumstances regarding the company. Various  
13 questions were put to you about that. Can we just run  
14 back in the file to E7/454. You might want to keep your  
15 finger in 788 so we've got it.

16 454. This is from Mr Spooner to VCT. We can see  
17 what it says, leaving aside the first two couple of  
18 paragraphs:

19 "It is proposed that the funding short fall, which  
20 assumes pro forma purchase of fuel of about 900K, is to  
21 be provided either by increased guarantees from  
22 Messrs Francis and Short which will take total bank  
23 indebtedness to 2 million or by a deeply discounted  
24 underwritten rights issue. The PwC report will be  
25 issued on the return of a PwC partner from holiday later

1 this week ..."

2 I think we can jump across that:

3 "The price of their increased guarantee is for  
4 Francis and Short to have an option to purchase the  
5 Swansea property at its agreed market value.  
6 King Sturge has been instructed. The terms of this are  
7 to be negotiated with the independent directors, being  
8 the chairman and Mentor UK and the NOMAD, City and  
9 Financial. The funding will need to be confirmed by the  
10 end of the month, with the necessary guarantees ..."

11 Now, were you aware of that e-mail being sent? It's  
12 not copied to you, but were you aware of that having  
13 gone from Mentor to VTC?

14 A. Graham Spooner would ring on a regular basis and discuss  
15 various matters and I can remember him talking about the  
16 PwC report. But as I say, he would ring on a regular  
17 basis, once a day sometimes.

18 Q. Is there any particular reason why, if Mr Spooner is  
19 giving, as it were, disclosing that knowledge of the  
20 situation on 9 August, why Mr Rawlinson later in the  
21 month, would be unaware of what's in this e-mail?

22 A. Mr Rawlinson spoke to Graham Spooner more often than  
23 I did. Mr Rawlinson was after his fee.

24 Q. Right. If you then turn to 465, this is from yourself  
25 and Mr Short to the board on the 12th of the same month,

1 copied this time to City Financial. Again, are you  
2 aware of any particular reason why Mr Rawlinson wouldn't  
3 have got to see that letter?

4 A. Sorry?

5 Q. Are you aware of any particular reason why Mr Rawlinson  
6 wouldn't have seen that letter? It's copied to City  
7 Financial.

8 A. No. Unless he wasn't in the office whenever it was sent  
9 to them.

10 Q. Then again, the same thing for 471. That refers to  
11 "Enquiries, Graham Spooner." Again, I just wanted to  
12 check. I am not certain, but these notices don't  
13 usually refer to Graham Spooner as the person for  
14 enquiries. Is there any particular reason why  
15 Mr Rawlinson wouldn't have been aware of the information  
16 from that notice? It's on 471. It's a notice.

17 A. Mr Rawlinson would have known what Mr Spooner was doing  
18 in relation to 2 Travel.

19 Q. We can put E7 away and then go to E8, page 91. It may  
20 be one of those questions that I've noted to do but was  
21 swept up by subsequent questions in the afternoon.

22 THE CHAIRMAN: This concerns the related party transaction?

23 MR BOWSHER: Yes. In that notice -- the trading statement  
24 we've seen a number of times -- if you look on E91, just  
25 above the heading "Board changes", there's a paragraph:

1           "Informing their views on the transaction, the  
2           independent directors have taken into account the  
3           working capital shortage in the company and the lack of  
4           alternative sources of funding. Without the proposed  
5           facilities being put in place, the independent directors  
6           do not believe that the company would be able to  
7           continue to trade. With the proposed facilities in  
8           place, the company remains solvent and has a viable  
9           future."

10           Did the independent directors make clear to you how  
11           these factors were relevant to them forming their views  
12           as to this transaction?

13   A. I don't follow you.

14   Q. At the beginning of that paragraph, the independent  
15           directors are being asked to consider this transaction,  
16           the valuation of the land and so forth, whether it was  
17           fair market value. Are you aware of what the  
18           independent directors had in mind with regard to that  
19           when they were forming their views?

20   THE CHAIRMAN: Well, what did you have in mind?

21   A. The position was unless we were prepared to do it, the  
22           company didn't have access to finance.

23   MR BOWSHER: Did the circumstances of the company therefore  
24           affect the independent directors' assessment of the fair  
25           and reasonable valuation of the property?

1 A. They still wanted a fair and reasonable price and took  
2 steps to ensure that they got it.

3 THE CHAIRMAN: That was your most leading question in the  
4 case so far.

5 MR BOWSHER: One always likes to please.

6 THE CHAIRMAN: You're not unique in asking leading  
7 questions, but then he's allowed to at the moment.

8 MR BOWSHER: If we could look then at E9, there is  
9 a sequence of letters that you were taken to a moment  
10 ago, more than a moment ago, an hour or so ago,  
11 concerning this transaction from Mentor. We can canter  
12 through them fairly quickly. E9 at 321. E9 at 418 is  
13 the response from Martin Cook. And then E9 at 438. Are  
14 you aware of any steps having been taken -- they say  
15 here in 438 that they had instructed  
16 Messrs Stephenson Harwood to look into the matter. Are  
17 you aware of any steps having been taken?

18 A. No.

19 Q. Presumably, almost by definition, you would have --

20 A. I think he sent me a Christmas card, so ...

21 Q. I'm not sure that we've picked this up. I may have been  
22 looking at something else, as we did. In terms of date,  
23 at 507, we actually have the date of the assignment.  
24 Is that the assignment that -- there was some discussion  
25 about whether this assignment did happen while the

1           company was still listed on AIM. Does that help us in  
2           identifying whether the assignment occurred while the  
3           shares were listed on AIM, 507? It's just the date I'm  
4           looking at.

5   THE CHAIRMAN: I shouldn't have stopped you asking leading  
6           questions, should I? You can ask a leading question.

7   MR BOWSHER: The date was 31 December. The short point is  
8           this: given the date is 14 January, I'm just trying to  
9           tie up a loose end here, that in fact the assignment was  
10          executed after the shares were deleted?

11   A. I'm sorry, I'm just trying to read the assignment.

12   Q. Just the date is what matters here. Maybe I can take it  
13          as read.

14   THE CHAIRMAN: Yes.

15   MR BOWSHER: Then can we go back to E8.

16   THE CHAIRMAN: I think Mr Francis is getting tired.

17            Are you all right?

18   A. I'm all right, thank you, sir.

19   MR BOWSHER: I know you were very keen that we finished on  
20          the dot at 4 o'clock.

21   THE CHAIRMAN: No, not today. If you want to go on for  
22          a few minutes after 4 o'clock. Tomorrow is a problem.

23   MR BOWSHER: I'm just conscious that it would be convenient  
24          to complete Mr Francis tonight, but I do have more than  
25          ten minutes. I will carry on.

1 THE CHAIRMAN: See how we go.

2 MR BOWSHER: Mr Francis, if we have E8, page 30, we have the  
3 hearing transcript that you've been asked a number of  
4 questions about. Am I right that your position on that  
5 date is as you summarised in page 52, the third  
6 paragraph from the bottom? (Pause) Is that correct?  
7 Do you have that? Page 52, third paragraph from the  
8 bottom:

9 "Mr Francis, right."

10 Do you see that?

11 A. Yes.

12 Q. Was that what your bottom line position, if I can be  
13 colloquial about it, was on that day? If you just want  
14 to read that. (Pause).

15 A. Yes.

16 Q. So essentially you're saying "If you need £300,000,  
17 we'll make an undertaking to give it, to provide it"?

18 A. Mm.

19 Q. In that context I was slightly unclear as to what may be  
20 being said a few pages earlier on. On page 43 you were  
21 being asked a number of questions. I wondered  
22 whether -- against the background that you've indicated  
23 what you were prepared to do, there is discussion on  
24 page 43 about a third of the way down. It says --  
25 Mr Callaghan:

1            "You are saying the company's bankers have provided  
2 another £600,000 on top of the 675?"

3            Then you say:

4            "Yes, Mr Short and I are bankrolling the entire  
5 company so what I'd intended saying to you is that we  
6 have made certain changes to the board. I've gone on  
7 the board myself."

8            And you carry on. You talk about management, you  
9 talk about the new finance director, who will be coming  
10 on board. As it happens, we can work out that that was  
11 a couple of days later, in fact, because we know from  
12 the trading statement that he was coming on board with  
13 immediate effect from 8 October. That's on page 89, but  
14 I don't think we need to look that up.

15           Then going on down:

16           "The idea is, sir, that when the company receives  
17 2 million from Mr Short and myself, it will clear its  
18 indebtedness and on PwC's figures, will be generating  
19 quite a healthy profit.

20           "How feasible are these projections?"

21           "They've been cross-referenced -- "

22           And this is the bit I want to focus on. So you're  
23 relying on the PwC figures:

24           "They've been cross-referenced by PwC on a regular  
25 basis for the last two months and they are found wanting

1 slightly in some regards and have exceeded in others, so  
2 it's officially close for Mr Short and I to be  
3 comfortable in lending the money."

4 Now, just listening to you speak for the whole of  
5 the day, that doesn't sound to me like something you'd  
6 have said, nor does it quite make sense. What did you  
7 think you meant in that last sentence? It's officially  
8 close for you and Mr Short to be comfortable in lending  
9 the money? Given that what you're saying is the PwC  
10 figures are sometimes high and sometimes low.

11 A. This is the September report from PwC?

12 Q. Yes.

13 A. Having read them, we were prepared to lend the cash.

14 THE CHAIRMAN: I take it that what you were saying here was  
15 there's swings and roundabouts, but it was sufficiently  
16 close to being satisfactory for you and Mr Short to lend  
17 the money. Is that --

18 A. That's right, sir. I just can't recall the September  
19 report but that's what I was saying.

20 THE CHAIRMAN: I think it's just the "sufficiently" rather  
21 than the --

22 MR BOWSHER: That's what it looks like to me. Exactly.

23 Thank you.

24 I'm trying not to rewrite the transcript.

25 It was pointed out that I may have misled Mr Francis

1 and the tribunal slightly. The date for Hugh Jenkins  
2 coming on as finance director is recorded as  
3 30 September on the trading statement on page 89.  
4 Martin Cook was a couple of days later. I'm much  
5 obliged to my learned friend for that correction.

6 MR FREEMAN: But I think you're right about 8 October.  
7 I think it's in another document.

8 MR BOWSHER: The dates don't quite -- yes. We'll track it.  
9 It's a matter of documentary record. We'll track it  
10 down.

11 We're now a couple of months later and there's  
12 continuing discussion about what is going to happen to  
13 the company and what is causing its difficulties.  
14 I wanted to ask you a couple more questions because it  
15 was being suggested to you that, in effect, the  
16 predation didn't really have anything to do with the  
17 final end of 2 Travel as a going concern.

18 Firstly, do you recall there being discussions  
19 between the NOMAD and the board, or on the board, or  
20 amongst the shareholders, as to what effect the  
21 predation was having upon the company?

22 A. Yes, that was discussed in every meeting. The  
23 expectation was that it would stop imminently at every  
24 meeting, but it just carried on.

25 Q. Now, is that something that was taken up in

1           correspondence, that was recorded in correspondence or  
2           in minutes?

3       A.   I wrote a letter to the chief executive of Cardiff City  
4           Council, I wrote a letter to the police, to the Public  
5           Audit Department in Cardiff, the Traffic Commissioner.

6       Q.   Within the company, were there discussions between the  
7           NOMAD, for example, and -- between the various persons  
8           involved, financial advisers and so forth, as to  
9           what was going to happen about the predation and how  
10          that was affecting the company?

11      A.   Basically, as far as they were concerned, they couldn't  
12          understand how Cardiff City Council would permit  
13          what was happening to happen and they fully expected at  
14          any given time that the situation would be reversed.  
15          Sir Richard was chairman of Dyson UK and a whole host of  
16          other companies. He'd been a cabinet member for  
17          Northern Ireland for ten years and he said he had never  
18          seen anything like it and didn't expect it from a Local  
19          Authority. From their point of view, they just expected  
20          that it would be a short burst and then it would come to  
21          an end, but it didn't. So it was discussed at every  
22          meeting.

23      Q.   By the time you reached November, if you could turn to  
24          E8, page 712, this is a letter from City Financial, it's  
25          John Cable this time to Martin Cook. You're not copied

1 in. Would you have seen this letter at this time?  
2 It is marked "private and confidential", but I'm not  
3 sure whether it would have got to you. (Pause).  
4 THE CHAIRMAN: It was copied to the chairman of the company.  
5 MR BOWSHER: Yes.  
6 A. I can remember that we discussed Martin Cook meeting  
7 with Sir Richard, but I can't remember seeing the  
8 letter, no.  
9 Q. Right. You'll see this refers to discussions over  
10 recent days and a board meeting and subsequent  
11 discussions, which you were presumably involved in.  
12 Would that be right?  
13 A. No, I think I was away in November. I don't have a ...  
14 Q. I can just show you the references briefly. 712,  
15 there's a letter, 4 November --  
16 A. I see that.  
17 Q. There's another one, 713, actually, the following day.  
18 He writes again on 5 November. Then on 9 November,  
19 again there's a manuscript note of discussions, but I'm  
20 not quite certain. If I could take you to it and see  
21 whether you recognise it. E9, page 63. It may be this  
22 won't take me any further. I'll have to come back to  
23 the letters at some other point. E9, page 63. It's  
24 a manuscript document, which is headed "Martin Cook",  
25 but do you recognise the writing at all?

1 A. No.

2 Q. I think it may have come from a Mentor file, but I'm not  
3 certain. Would you have been at a meeting on  
4 9 November? I just wonder because at B there does  
5 appear to be a reference to you and Nigel Short, but I'm  
6 not sure that's because you were there or whether it's  
7 reporting a discussion.

8 A. I think I was away in November, but I think somebody  
9 rang me in relation to it.

10 Q. Okay. Would you have been in discussions  
11 during November as to what was going on with the  
12 company?

13 A. Yes, we were discussing it all the time. We were hoping  
14 to try and rescue part of it.

15 Q. So if you're recorded as asking for 48 hours, is that  
16 something that -- as it were, a message that will have  
17 been passed on from yourselves?

18 A. Yes, Nigel would have wanted to sit down and talk things  
19 through.

20 Q. Right. I'm not sure I can take that very much further.  
21 Still in November, if you turn to E9/290, we're back  
22 at the Grant Thornton report. I want to look at  
23 paragraph 1.6. This is obviously a little bit later  
24 than we were talking, than the hearing in front of the  
25 Traffic Commissioner. Do you see paragraph 1.6 on the

1 second page, page 291:

2 "There is prospect of further cash injections from  
3 certain shareholder directors of up to £800,000 that  
4 could resolve the situation at least in the short-term."

5 Is that information that was coming from yourself  
6 and Mr Short?

7 A. Yes.

8 Q. Is that information you provided then directly to  
9 Grant Thornton?

10 A. Through the management, I think it was Martin Cook,  
11 I think, we spoke to.

12 Q. While we're in the same file, you were being asked some  
13 questions about page 236 and various questions were  
14 being put to you about the position regarding the  
15 £300,000 from the bank due for repayment. Were you  
16 aware whether or not that had been resolved at a later  
17 date?

18 A. I didn't know it was a problem at the time, you know.  
19 Normally, the bank would either ring -- well, it would  
20 ring me, basically, if there was a problem and, as far  
21 as I can remember in November, we were prepared to  
22 continue so long as we guaranteed it.

23 Q. If you could turn to page 240, you see repeated the  
24 e-mail string that's at 236, but then a couple of  
25 messages above -- and the one down from the top is

1           17 November from Evelyn Sarbout to Helen Sinclair, but  
2           as it comes from "Regards, Graham", I presume it's  
3           Graham who's actually writing, not Evelyn Sarbout.

4   A.   Yes.

5   Q.   Is the information in that e-mail information that you  
6           had provided to Graham Spooner?

7   A.   It is, yes.

8           Sir, I'm going to need to take a pill for something.

9   MR BOWSHER:   Would it be convenient to stop there?

10   THE CHAIRMAN:   I think we'll adjourn because I don't want to  
11           hurry Mr Bowsher.   Don't talk to anyone about your  
12           evidence at all overnight.

13   A.   No, I'll come back now if you want, sir.

14   THE CHAIRMAN:   Could you be back by 9.30 tomorrow, please?

15           You can go now if you want to.

16                           (The witness withdrew)

17           I think counsel were aware that there is a problem  
18           tomorrow afternoon in that I have to leave early for an  
19           engagement in London in the early evening.   What I was  
20           going to suggest was that we sat Maxwell hours tomorrow,  
21           so sit from 9.30 to 11, have a half hour break, and then  
22           sit from 11.30 with a short break until 2.30 and then  
23           adjourn for the day.   That way, we get in, in effect,  
24           a full day, but finishing at 2.30.   Does that cause  
25           undue inconvenience to anyone?

1 MR BOWSHER: Not for me. Let me just think about witnesses.

2 THE CHAIRMAN: It means we get through a decent day's work.

3 MR BOWSHER: Can I just take instructions?

4 THE CHAIRMAN: Of course you can, Mr Bowsher. (Pause).

5 MR BOWSHER: I'm sure that's fine.

6 THE CHAIRMAN: Mr Flynn?

7 MR FLYNN: No trouble, sir. Obviously we'll need a  
8 timetable discussion at some point, but, as you say,  
9 that gives us a good day anyway tomorrow.

10 THE CHAIRMAN: Yes. I find on the whole -- I've done many  
11 cases with Maxwell hours. One gets through just as much  
12 work in a Maxwell hours day.

13 MR BOWSHER: Yes, absolutely. No problem at all.

14 THE CHAIRMAN: It's rather attractive on Fridays as well.  
15 I saw the transcriber nodding then!

16 MR SMITH: Mr Bowsher, just a supplement to a request the  
17 chairman made for identification of board minutes.  
18 Speaking for myself, it would be very helpful to have  
19 a list of contemporary documents from 2 Travel, which  
20 evidence concern about the predation.

21 THE CHAIRMAN: Yes.

22 MR BOWSHER: That may take a little -- that can't be swept  
23 up quite so readily with just a search.

24 MR SMITH: I quite understand that.

25 MR BOWSHER: Board minutes are probably already in hand, as

1           it were, but yes, certainly.

2   MR SMITH:   Thank you.

3   THE CHAIRMAN:  Thank you very much.  We'll adjourn then  
4           until 9.30 tomorrow morning.

5   (4.06 pm)

6           (The hearing adjourned until 9.30 am the following day)

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