

Lowry Tape Article

The secretly taped conversation between Michael Lowry and Kevin Phelan, which occurred apparently in 2004, tells us a lot about what happened behind the scenes between some of the dramatis personae in the Moriarty Tribunal.

While Michael Lowry now insists that the payment of almost £250,000 to Mr Phelan which features in the conversation was a payment that was “*fully declared*” (whatever that means), he has been careful not to dispute that the voice on the tape is his, and he has not suggested that the tape was doctored in any way, or that he did not use the words attributed to him in the transcripts of the tape which were published in the Sunday Independent.

It was only when excerpts from the tape were broadcast in their original form on the Vincent Browne programme on TV3 that the penny dropped in the minds of the Irish public that they were actually listening to an expletive laden, foulmouthed plea by an elected Irish public representative to an obscure land speculator not to take any steps which could link him in any way with the Doncaster Rovers land deal then being investigated by the Moriarty Tribunal.

That investigation formed part of its enquiries as to whether Denis O’Brien, who had an interest in the Doncaster development (which, we hear, he has finally disposed of just this month), was using, or had used or had intended to use, the Doncaster land deal to enrich Michael Lowry, whom the Tribunal found had wrongfully intervened as Minister in the interests of Mr O’Brien in a competitive licensing process in which Mr O’Brien’s consortium had been successful.

The taped phone call also suggested, to many peoples’ minds, that Mr Lowry seemed well acquainted with the manner in which Denis O’Brien proposed to deal with the on-going investigations of the Moriarty Tribunal.

The details and the intricacies of the Moriarty Tribunal’s enquiries were only understood by a small minority of the Irish public when they were on-going, and the exact significance of the evidence tendered to the Tribunal was quite difficult to follow at the time (in part due to the lamentable failure of the Irish media to keep the Irish people in the picture).

Once the transcript of the tape was published in the Sunday Independent, and once the tape itself was broadcast on TV3, the exact implications of what was said on the tape became clear to those few who had the time and the industry to revisit the evidence that had been given to the Moriarty Tribunal concerning the alleged involvement of Michael Lowry and of Denis O’Brien in English property transactions.

Michael Lowry had told the tribunal that he had made only one payment in the amount of £65,000 to Kevin Phelan and that this payment related to a land transaction in Wigan. The tape suggests that there had been an additional payment arranged by Mr Lowry to Mr Phelan in the sum of £250,000. The tape suggests that Mr Lowry was confident that this larger payment would not be discovered by the Moriarty Tribunal. The tape also suggested that Mr Lowry was very fearful that the £250,000 transaction would

be linked by the Tribunal to Westferry Ltd, a company involved in the Doncaster Rovers land deal in which Denis O'Brien was involved. If that linkage were found, Mr Lowry believed that he would be *"f*****g ruined"*.

It is important to put these matters into context.

Kevin Phelan would not testify at the Moriarty tribunal and could not be compelled to do so because he resided in Northern Ireland.

The Tribunal concluded (at paragraph 16.125 of its final report) that the admitted payment by Mr Lowry of £65,000 to Mr Phelan "was for the principal purpose of presenting a contrived falsehood to the Tribunal".

That contrived falsehood entailed the withdrawal of assertions previously made by Mr Phelan against Mr Christopher Vaughan, a Northampton solicitor, in connection with the provision to the tribunal of falsified correspondence, and at the same time, the furnishing by Mr Phelan to Mr Vaughan of an untrue innocent explanation for doctored correspondence tendered to the Tribunal by Christopher Vaughan when it was known to be untrue.

The Tribunal further concluded (at paragraph 16.126) that a wholly separate and distinct payment of £150,000 to Kevin Phelan made by Denis O'Brien through Westferry Ltd had a similar motivation, in that it was *"primarily intended to ensure that Mr Kevin Phelan would not further undermine the false version of Mr Lowry's involvement in the U.K. properties already tendered in evidence to the Tribunal in 2001, and the false explanation already presented, with the complicity of Mr Kevin Phelan, for the existence and provision to the Tribunal of the falsified "short form" correspondence"*.

Although Michael Lowry and Denis O'Brien strongly denied (and continue to deny and reject) the Tribunal's findings in respect of the use of UK property transactions as a channel to enrich Michael Lowry using funds owned or controlled by Denis O'Brien, the Tribunal came to the conclusion that in respect of two of the transactions – Mansfield and Cheadle – Denis O'Brien had caused a very large payment, or benefit equivalent to a payment, to be made to Michael Lowry in circumstances giving rise to a reasonable inference that the motion for making the payment was connected to a public office held by him or had the potential to influence the discharge by him of such office.

As regards the Doncaster deal, the Tribunal found that, contrary to the denials of Michael Lowry and Denis O'Brien, Michael Lowry did have an involvement in the Doncaster transaction. It found (at paragraph 16.127) that this connection was one *"which it was intended would entail a payment to, or the conferral of a pecuniary advantage on him, the source of which was the ultimate beneficial owner of Doncaster, that is, Denis O'Brien."*

That the recently disclosed tape would have been of profound importance to the enquiries of the Moriarty tribunal there can be no doubt. Its publication, in my mind, provides confirmation that the Moriarty tribunal drew the correct inferences from the limited evidence it had in relation to the UK property transactions.

I use the word *“limited”* in relation to the evidence on the UK property transactions in a charitable way.

Anyone who reads the report of the Moriarty Tribunal will not fail to notice the extent and duration of what the Tribunal found was a sustained campaign to throw the tribunal off the scent by the provision of false testimony and false documentation in relation to those transactions.

The Tribunal found that Michael Lowry, Kevin Phelan, Aidan Phelan and Christopher Vaughan were all complicit in a plan to mislead the Tribunal by supplying it with false evidence and false documents designed to conceal the truth concerning the UK property transactions. (See paragraphs 8.104 to 8.110 of the Report).

What the Tribunal could never state with certainty was the *exact* nature of Michael Lowry’s involvement in the Doncaster deal or the *exact* amount by which he was intended to gain by his involvement. Why not? It found that *“having regard to the concealment, suppression and deliberate falsehoods encountered by the Tribunal in endeavouring to conduct its inquiries into all of the UK properties, both on the part of the principals, and on the part of their associates and representatives”*, further inquiry on that matter would be fruitless. (paragraph 10.121)

However, the Tribunal found that the motive for the deception strategy deployed against it in relation to the Mansfield and Cheadle properties was *“because of the acute sensitivity engendered by unwanted disclosure of that connection”*, and it found that *“experienced and respected professional persons involved, including the solicitor who remains retained by Mr O’Brien in the Doncaster transaction, set about and implemented a cynical and mendacious course of furnishing to the Tribunal a materially false documentary record of those transactions.”* (paragraph 8.112).

Happily, the massive report of the Tribunal is still available to every citizen of this Republic via the internet, so that each and every one of us can consider not merely the report but also the oral testimony on which the report is based.

While I don’t expect that many people will plough through the report of the Moriarty Tribunal from beginning to end, it is easily accessible to those who wish to do so. No one, I feel, should criticise the report or discount its findings without taking the elementary step of reading it – or at least reading the Executive Summary.

In a related, but distinct, context, judges of the Supreme Court have very recently remarked as to the unprecedented nature and gravity of the plaintiffs’ claims based on findings of the Moriarty Tribunal which in substance are being relied on in litigation by disappointed competitors in the mobile phone licensing competition which they claim was vitiated by the interventions by Mr Lowry. The Irish State, as one of the defendants in that litigation, while denying liability, is now claiming to be indemnified by its co-defendants, Mr Lowry and Mr O’Brien, in respect of any judgment for damages if the plaintiffs succeed.

It will be interesting to see whether Kevin Phelan is a willing witness in those proceedings or whether his testimony will be secured in the UK by means of Mutual Legal Assistance in civil proceedings.

On any view, the very suggestion that a Minister of the Irish State, after allegedly wrongly intervening in a public competitive licensing process in favour of one applicant, could later become the beneficiary or object of a series of transactions or payments amounting to €1,000,000 at the behest of that applicant is a matter of the gravest public importance.

That is why the Moriarty Tribunal was established. That is why its findings to that effect are so important and cannot be ignored or discounted.

The publication of the Kevin Phelan tape is therefore in itself a matter of huge public importance. Its implications are very far reaching. While no one believes that its contents should not be treated with care and circumspection, that is no reason for ignoring it or for treating it as “too hot to handle”.

That only one newspaper (the Sunday Independent) and only one broadcaster (TV3) has put serious resources into the publication of the contents of the tape, and that only a few brave analysts have attempted to give the public some sense of the significance of the tape in the media, raises concerns about the decision by RTE, our national broadcaster (which has not merely the right but the duty to report on matters of public importance in a fair and impartial way), to steer clear of the issue and, largely speaking, to ignore it. That failure is mystifying and worrying. RTE’s silence, in effect, is genuinely a “deafening silence”.

It is bad enough for Ireland that the Moriarty Tribunal had to make the findings that it did.

If we have reached the point at which our national broadcaster is too frightened to deal thoroughly, impartially and objectively with an issue which goes to the heart of our standards as a democracy, as a community, and as a sovereign state, we have reached a pretty pass.

The law of libel has recently been amended to facilitate careful and fair journalism and broadcasting on issues of public importance. Provided RTE is fair and careful, it could easily present the Irish people with a fair and clear picture of the issues involved without defaming anyone and without infringing its own duties of impartiality. Our libel laws are not the problem. Absence of will appears to be the problem.

We are constantly bombarded on RTE with the message told that “*there are many ways to pay our TY licence but that Feng Shui is not one of them*”. On the Lowry tape, all we are getting from RTE is Feng Shui.

If the national broadcaster can pay its programme presenters multiples of the Taoiseach’s salary without blushing, as it can, it should be able to find the funds to pay a modest wage to programme researchers who are not invertebrates and who have the skills and the drive to examine and explain the true significance of the Lowry tape for the Irish public.

Let us remember that it was precisely because the civil and criminal courts were not appropriate venues for the making of the enquiries to which the Moriarty Tribunal relates, that the tribunal itself was established. Our courts are adversarial, not inquisitorial.

Tribunals should not be necessary in a society in which ordinary standards of transparency and accountability are functioning properly. The print and broadcasting media are vital organs in keeping the body politic healthy, functional and democratic.

In the UK – the land of Mansfield, Cheadle and Doncaster – the Kevin Phelan tape would already have probably resulted in a vigorous police enquiry centring on whether the discrepancies between its contents and sworn testimony given to the Moriarty tribunal disclosed any criminal offence.

In Ireland, by contrast, an Irish version of Chris Huhne MP would never have resigned and would be preparing to top the poll at the next election by portraying himself as a victim of his wife, the Establishment, and the media.

The Government is feigning unconcern in the hope that “this too will pass”. The present Government’s attitude to what was found against Michael Lowry may mystify some people – but not me.

Our media seem to be cowed and the “authorities” seem to be paralysed in their responses to matters of serious public importance.

Must we wait for *Panorama* or *Spotlight* or *World in Action* or *Dispatches* to inform the Irish public about major issues as was required in the past. Maybe the cynic who famously proposed that our national symbol should be changed to the Harp with broken strings above the motto “T’will Do” was not so far off the mark after all.