

THE HIGH COURT
COMMERCIAL

[2011 No. 4336 P]

BETWEEN

CIARA QUINN, COLETTE QUINN, BRENDA QUINN, AOIFE QUINN, SEÁN QUINN JNR. AND PATRICIA QUINN
PLAINTIFFS

AND

IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL LIQUIDATION) AND KIERAN WALLACE

DEFENDANTS

AND

SEÁN QUINN, DARA O'REILLY AND LIAM MCCAFFREY

THIRD PARTIES

JUDGMENT of Mr. Justice Haughton delivered on the 23rd day of October, 2015

Ruling on Trial Date

Introduction

1. This is my ruling on the first defendant's application to vacate the trial date set for 12th January, 2016 and bring the matter forward to commence the hearing this term, and the DPP's application to defer the hearing until after the trial of Mr. Sean Fitzpatrick now scheduled to commence on 26th May, 2016.

History of Proceedings/Adjournments

2. It is necessary to recount some of the history of these proceedings to date. These proceedings commenced in May, 2011 and were admitted to the Commercial Division of the High Court on 30th May, 2011. Pleadings have been closed since 2011. A provisional trial date was fixed by Mr. Justice Kelly for April, 2013. On 29th January, 2013 the DPP applied for a stay on the trial on the basis that it would involve hearing matters that were the subject of criminal proceedings taken against former executives of the first defendant's predecessor bank, Anglo Irish Bank Corporation Ltd. ("Anglo"), Pat Whelan, William McAteer and Sean Fitzpatrick. A stay was granted and those criminal proceedings were concluded in April, 2014 whereupon the stay was lifted and the civil proceedings were fixed for hearing on 14th April, 2015.

3. On 28th July, 2014 the DPP raised concerns before the Court over exhibits referred to in affidavit filed on behalf of the plaintiffs, because of the existence of related criminal proceedings against other former Anglo executives and executives of Irish Life & Permanent in proceedings listed for hearing in January, 2016 ("the Back to Back Trial").

4. On 26th February, 2015 the DPP applied to the Commercial Court to stay these proceedings (then scheduled for April, 2015) on the basis that the trial date for criminal proceedings against Mr. Sean Fitzpatrick in respect of certain loan transactions had been adjourned and was due to commence on 13th April, 2015, and there was concern over an overlap/simultaneous hearings. The plaintiffs resisted that application, and were willing *at that time* not to refer at opening to matters referred to in certain paragraphs of the Statement of Claim or to the evidence that they would lead, and they also indicated that they had no objection to reporting restrictions. References were made by counsel for the DPP to the Back to Back Trial and the sequence of proceedings, noting that "by the time that [the Back to Back Trial] comes on that the fade factor from this case would then have been able to diminish to some degree, also the issues aren't exactly the same".

5. In his ruling on 27th February, 2015 McGovern J. determined that the hearing of the matters raised in the Statement of Claim and other pleadings would impugn or might impugn the integrity and honesty of Mr. Fitzpatrick and other senior executives, and that this could not be adequately addressed by reporting restrictions. Accordingly, the stay sought by the DPP was granted and the trial was rescheduled to commence on the 3rd June, 2015, by which time it was anticipated that Mr. Fitzpatrick's criminal trial would have concluded.

6. Unfortunately the criminal proceedings did not conclude as anticipated. They went into lengthy legal argument and a decision was handed down on 2nd June, 2015 with the effect that the jury were discharged and the trial relisted to commence on 5th October, 2015.

7. On 3rd June, 2015, the first day of the trial of this civil action before me, a third application was made by the DPP for a stay of the proceedings, or alternatively to have reporting restrictions put in place. The DPP also brought to the Court's attention the Back to Back Trial due to commence on 12th January, 2016, and sought an order staying the civil proceedings until after that trial, although the main focus was on Mr. Fitzpatrick's trial. The attitude taken by the plaintiffs at that time was neutral; counsel for the first named defendant did not oppose the stay but opposed deferral until after the Back to Back Trial. I decided to impose a stay on the proceedings, listing them for hearing on 12th January, 2016. The intention was that they would not commence until after the conclusion of the criminal trial of Mr. Sean Fitzpatrick, but I was not prepared to extend the stay until after the Back to Back Trial. However, in anticipation that the DPP might at some stage wish to make a further application I indicated that if she wished to do so any such application should be made in good time before Christmas of 2015.

8. Following publicity arising from the hearing of separate criminal proceedings brought by the DPP against former IBRC employees and executives in relation to hidden accounts, a trial which was heard in June, 2015, Mr. Sean Fitzpatrick applied to the Circuit Court to

adjourn his trial on the basis that he could not receive a fair trial. That application was refused in the Circuit Criminal Court, but following a judicial review in the High Court on 29th August, 2015 Mr. Justice Moriarty ruled that his criminal trial should not be listed for hearing before 25th May, 2016. He considered that the seven month deferral would allow for a "fade factor" to apply in relation to any adverse publicity arising from the "hidden accounts trial".

9. Mr. Sean Fitzpatrick's trial has now been listed for hearing in the Circuit Criminal Court on 26th May, 2016. He is charged with some 21 counts under s. 197 of the Companies Act, 1990, and a further six charges under s. 242 of the Companies Act, 1990 relating to alleged events over a period from November, 2002 to February, 2008, and relating to matters concerning Anglo.

The Applications

10. In the light of the foregoing developments two applications were made to this Court. First, the first defendant has applied for directions essentially seeking to bring forward the trial date of the civil proceedings to some date this term on the basis that the trial of Mr. Fitzpatrick has been deferred. This application is grounded on the affidavit of Ms. Karyn Harty sworn on 1st October, 2015. A cross application has been brought by the DPP seeking to defer the hearing of these civil proceedings until after the conclusion of the trial of Mr. Fitzpatrick. The DPP makes the application first on the grounds that Mr. Fitzpatrick's criminal proceedings have been deferred to provide for "fade factor", and secondly on the basis that the hearing of the civil proceedings could prejudice the fairness of the Back to Back Trial pending against William McAteer, John Bowe, Denis Casey and Peter Fitzpatrick. In those proceedings the accused face counts of conspiracy to defraud arising out of transactions which it is alleged were intended to inflate Anglo's balance sheet and financial statements for their 2008 year end.

11. At the Court's direction the DPP in an affidavit of Mr. Henry Matthews sworn on 12th October put before the Court the relevant facts and material supporting her application, and I heard the argument of all parties on 14th October, 2015. The first defendant fully opposed the DPP's application, making extensive written and oral submissions. The second named defendant adopted the first named defendant's position. The plaintiffs made written and oral submissions; while essentially neutral in their stance they did not wish to be seen to be taking or responsible for any steps that could prejudice a fair trial for any of those accused of criminal offences arising out of Anglo affairs, a stance consistent with that which they adopted last June. They confirmed, as they had then, that they were no longer willing to confine their opening, and that they opposed reporting restrictions. No submissions were made by the third parties.

The Principles to be Applied

12. While there was some dispute as to the principles that should be applied by the Court in deciding whether or not to defer these civil proceedings, in reality there was little difference between the parties' respective positions and the main dispute related to the application of those principles to the facts. I take the principles relevant for present purposes to be as follows:-

(i) Article 38.1 of the Constitution provides that:-

"No person shall be tried on any criminal charge save in due course of law".

(ii) There is no rule that civil trials must be suspended pending the outcome of criminal proceedings. See also the judgment of Hardiman J. in *McLoughlin v. Aviva Insurance (Europe) Public Liability Company* [2011] IESC 42 where he stated:-

"There is in my opinion no rule of law whereby a civil case which is ready to proceed, or to proceed to the next procedural stage must yield in priority even to criminal case actually in being."

This was established by the Supreme Court in *Dillon v. Dunnes Stores and others* [1966] I.R. 397, and has been repeated in more recent decisions such as *O'Flynn and O'Regan v. The Mid-Western Health Board & Ors* [1991] 2 I.R. 223.

(iii) It is clear that while in many cases the civil proceedings will be delayed until after the criminal investigation or criminal prosecution has been concluded, that sequence of events "is not immutable" (per Hederman J. in *O'Flynn and O'Regan*).

(iv) The onus is on the party seeking a stay of the civil proceedings to establish grounds necessary to enable the Court to make such an order. See *Wicklow County Council v. O'Reilly & Ors* [2006] 3 I.R. 623 at para. 35 subpara. 3.

(v) The test to be applied by the Court in deciding whether the civil action can proceed before the criminal proceedings is whether there may be a real risk that prejudice might be caused to the criminal proceedings. As Clarke J. stated in *Wicklow County Council* at para.35:-

"In coming to any such assessment the court must, on the one hand, give due recognition to the importance of allowing the plaintiff or other moving party in the civil proceedings to achieve a timely resolution of those proceedings and obtain the benefit of any orders which might be appropriate. On the other hand the court has to balance, as against that, the extent to which there may be a real risk that prejudice might be caused to the criminal proceedings. I am satisfied that in giving consideration to this latter matter the court must attempt to analyse the likelihood of there being any such prejudice and have regard to the extent to which it may be possible by measures to be adopted in the criminal process to minimise or ameliorate any such prejudice as might arise."

(vi) The measures that may be adopted in the criminal process, and which are regularly adopted in our Courts to achieve a fair trial, will include warnings to the jury panel and to juries in relation to any adverse or other pre-trial publicity and any publicity during the course of the trial. As Denham C.J. stated in *Breifne O'Brien v. The Director of Public Prosecutions* [2014] IESC 39 at para. 65, quoting Geoghegan J. in *Rattigan v. DPP* [2008] 4 I.R. 639 at para. 50:-

"There cannot be complete avoidance of the risk because even in a case where eleven out of the twelve jurors may never have noticed particular names when reading an article, if they did read it or, equally probably may have forgotten the names, there may be still one single juror who did know who the accused was and to whom may remind his or her fellow jurors of the offending article."

See further Carney J. in *The DPP v. Haugh and Haughey* [2000] 1 I.R. 184 and Kearns J. in *Redmond v. The DPP* [2002] 4 I.R. 133.

(vii) In assessing this risk the first defendant submits, and I accept, that the Court should also take into account that limited reporting restrictions could be imposed in order to ensure that the potential impact of reporting of the civil action on juries in the criminal trials is minimised. That the Court has such inherent powers was established by the Supreme Court in its decision in *Irish Times Ltd. v. Ireland* [1998] 1 I.R. 359 where Hamilton C.J. stated at p. 385 that:-

"While the public nature of the administration of justice and the constitutional right of the wider public to be informed of what is taking place in courts established by the Constitution are matters of public importance those rights must be in certain circumstances be subordinated to the interests of justice and the rights of an accused person which are guaranteed by the Constitution.

I am satisfied that the exercise of the rights conferred by Article 34.1 can be limited, not only by Acts of the Oireachtas, but also by the courts where it is necessary in order to protect an accused person's constitutional right to a fair trial."

(viii) More recently Charleton J. in the Supreme Court in *MARA (Nigeria) (An infant suing by her mother and next friend OA) v. the Minister for Justice and Equality & Ors* [2014] IESC 71 referred to "non-identification" as a lesser form of limitation in reporting that might allow for the public a right to know and to attend proceedings while preserving "scrutiny of judicial conduct and decision making". He stated that:-

"[e]ven there, in the absence of express legislative requirements, any restrictions should be as limited as the protection of these rights necessarily demands; targeting particular pieces of testimony rather than an entire hearing, unless this is necessary, and favouring restrictions on anonymity over a completely closed hearing, unless this is essential."

(ix) Parties to civil proceedings, particularly in the Commercial Court have a right and expectation that their proceedings will be disposed of within a reasonable time frame. In *Donnellan v. Westport Textiles Ltd. & Ors* [2011] IEHC 11 at para. 31 Hogan J. regarded "the speedy and efficient dispatch of civil litigation [to be] of necessity an inherent feature of the court's jurisdiction under Article 34.1". He pointed out that the litigant's right to a hearing within a reasonable time is guaranteed by Art. 6 of the ECHR, and that there is a "public interest in ensuring the timely and effective administration of justice...". One key consideration in this respect is the recollection of witnesses, and their reliability of their evidence which may be inevitably diminished with the passage of significant time.

(x) "Public interest" elements of the civil litigation are also matters that the Court should also take into account in balancing the competing interests.

Determination

13. I have carefully considered the affidavits sworn by Ms. Harty and Mr. Matthews, and the written and oral submissions made on behalf of the DPP and the first named defendant and the plaintiff. In applying the principles to the facts I have come to the conclusion that if this civil action commences on 12th January, 2016 there is a real risk of prejudice to a fair trial of Mr. Sean Fitzpatrick scheduled to commence on the 26th May, 2016. I am further satisfied that this real risk may not be ameliorated sufficiently by the normal safeguards that would arise in a criminal trial. I am further satisfied that it would be undesirable and impracticable, if not impossible, for this Court to impose limited reporting restrictions in the hearing of the civil action in an effort to ameliorate the risk of prejudice. I am not satisfied that starting this trial earlier e.g. at the start of December, 2015 would avoid or ameliorate the risk of prejudice as the civil proceedings are expected to run over several months. I am further satisfied that there is a real risk of prejudice to a fair trial of the accused in the Back to Back Trial particularly as one of the accused is named as a witness for the plaintiffs in the civil action, and with the current scheduling his criminal trial would undoubtedly be running concurrently with the civil action whether it were to start either in December of this year or January, 2016.

14. My reasons for so concluding are as follows:-

(i) The Irish Bank Resolution Corporation Act, 2013 in Recitals records the public interest in providing "for the orderly winding up of the affairs of IBRC to help to address the continuing serious disturbance in the economy of the State". Were the first defendant to successfully defend these proceedings and succeed in its counterclaim it would potentially recover judgment for substantial sums of money, and insofar as this would benefit the public there is a clear public interest in these proceedings being brought to a timely conclusion. The plaintiffs also have a private interest in pursuing their claims to an early conclusion.

On the other hand the 2013, Act also recognises, in s. 6(6) that neither the Special Liquidation Order nor anything done pursuant thereto under the Act is to affect any proceedings undertaken by *inter alia* the DPP, nor does it preclude any such proceedings. There is also a wide public interest, in the general sense of that term, in the criminal proceedings that are pending proceeding to a conclusion. It is also undoubtedly the DPP's public duty to try to ensure, so far as possible, that the accused receive a fair trial.

Accordingly, there are significant public interests on both sides of these applications. However, while these fall to be considered, the Court's task is not simply a balancing of public interest: what is determinative is not so much the public interest as the question of whether there is a real risk of prejudice to a fair trial if the civil proceedings commence this term or in January, 2016.

(ii) Mr. Sean Fitzpatrick's trial has already been deferred from October, 2015 to 26th May, 2016 to allow for an effective "fade factor" (Moriarty J., 29th August, 2015). The objective of that order would be ill served if, in the interim, the hearing of this civil action resulted in prejudice to that trial.

(iii) The plaintiffs in written and oral submissions make it clear that both in the opening of their case and in the evidence that they will seek to adduce their claims will centre on allegations that Anglo through its staff and executives had knowledge of its allegedly precarious financial position from September, 2007 onwards. They intend to refer to and rely upon allegedly criminal acts in relation to deposits and "Back to Back" transactions which are the subject matter of the

criminal charges described in Mr. Matthew's affidavit. Against this background of alleged improper transactions and financial difficulties, the plaintiffs will pursue their claims that Anglo should not have obtained the guarantees and share pledges which the plaintiffs seek to impugn in the proceedings. They plead in this context that the guarantees/share pledges were obtained by undue influence and breach of duty to advise, and that they were an unconscionable bargain and represent intentional infliction of economic harm. They assert that financial transactions between Anglo and Irish Life & Permanent will be "a central plank" in their case. It is not suggested that such claims do not come within the ambit of their pleadings in the civil action. That being the case I have a real concern of a risk of general prejudice arising in relation to both sets of criminal proceedings.

(iv) There are a number of pleas in the plaintiffs' Statement of Claim that are relevant to a risk of specific prejudice. In particular, para. 74(iii) of the Statement of Claim is directly concerned with the subject matter of certain of the charges against Mr. Sean Fitzpatrick. I accept the averment of Mr. Matthews that "I say that these are the very issues that form the subject matter of the criminal proceedings against Mr Sean Fitzpatrick which are due to commence before a fresh jury next May." (para. 27 of his affidavit).

(v) Mr. Sean Fitzpatrick is further specifically mentioned in a Statement of Claim in para.s 31 and 58, and in para.s 78 and 79 of Replies to Particulars dated 6th July, 2011 furnished by the plaintiffs' solicitors to the first named defendant's solicitors. These further indicate the extent to which the plaintiffs seek to implicate him in the case that they make.

(vi) The plaintiffs have also named Mr. Sean Fitzpatrick as a witness, and a Précis of Evidence (which was not prepared with his cooperation) has been filed. I must consider the risk of prejudice upon the assumption that Mr. Sean Fitzpatrick will give evidence in the civil action, and that if he is unwilling to give evidence his attendance may be secured by a subpoena. While I deliberately refrain from reproducing parts of the plaintiffs' Précis of his evidence it seems to me that it is likely to cross over with evidence that may be given in the criminal proceedings.

(vii) Other pleas in the Statement of Claim make express reference to Mr. Sean Fitzpatrick. At para. 101 there is a plea that:-

"...by reason of the matters already pleaded above, the personal guarantees and share pledges were manifestly improvident and/or unconscionable when executed, in that they were entered into in the context of borrowing to support and maintain Anglo's share price in circumstances where Anglo, its servants or agents, had much greater knowledge in relation to the grave financial situation facing Anglo than did the Plaintiffs."

This plea entitles the plaintiffs to adduce evidence which it can be envisaged will encroach on matters relevant to the criminal proceedings. Also relevant are certain other replies to the first defendant's Particulars: no. 32 names Mr. Sean Fitzpatrick in the context of matters that are the subject of charges against him, and at bullet point 11, sub-bullet points 2 and 3, there is reference to matters that are the subject matter of charges in the Back to Back Trial. Mr. Sean Fitzpatrick is also named in Particular 33.

(viii) In addition, the plaintiffs intend to call as a witness Mr. Sean Quinn Senior, and in his witness statement he specifically refers to "interbank lending".

(ix) It is also apparent from the witness statement of Mr. Sean Quinn Senior that the plaintiffs intend to refer to what have become known as "the Anglo Tapes". Mr. Matthews avers (para. 23) that:-

"...this provides a very specific and concrete example of the danger that the civil proceedings pose to the integrity of the process in the criminal trials."

He points out that on 24th April, 2015 O'Malley J. held Independent Newspapers in contempt of court for publishing extracts from the Anglo Tapes and imposed a fine and granted injunctive relief restraining further publication in advance of the Back to Back Trial. This demonstrates the special problems that arise if this case were to start in advance of both criminal trials. Unless this Court were to impose significant restrictions on the manner in which the plaintiffs case was opened, and the timing of witnesses, and, if necessary, the reportage of evidence including material from the Anglo Tapes, there could be legitimate reporting of the contents of the Anglo Tapes that would give them wider circulation. Ms. Justice O'Malley specifically limited reportage of the body of her judgment "[i]n order to avoid the creation of any fresh prejudice to the pending criminal trial", demonstrating the level of her concern about prejudice. Apart from this I accept the evidence of Mr. Matthews that republication of the Anglo Tapes as evidence in the civil proceedings would pose a danger to the integrity of the process in the criminal trials. In my view this danger would represent a real risk to the accused receiving a fair trial.

(x) Counsel for the first named defendant pointed out that in Interrogatories answered in the civil proceedings the first named defendant has agreed on oath to various facts put to the first named defendant for agreement. They also point to the Defence which admits certain facts and in other instances merely puts the plaintiff on proof while not denying that particular meetings or events occurred. I am not satisfied that these admissions are so clear cut or extensive to obviate the risks posed by the civil proceedings being heard first, and I note that currently there is quite limited agreement in relation to the admission of documents without formal proof. Moreover, even if certain facts are not in dispute what is likely to be disputed is the motive or intention of Anglo staff or executives in and about the time of the acts or omissions resulting in those facts. The plaintiffs have made it plain that they will assert that there was dishonest intention, and as that is the thrust of their claims it heightens the risk that evidence will emerge, perhaps on cross examination of the defence witnesses, that may prejudice a fair trial. I agree with Mr. Matthews' averment in para. 30 of his affidavit that the hearing in this case is "...likely to bring forth a series of allegations of malpractice and probably dishonesty against Anglo Irish Bank and inevitably, either expressly or by implication the office holders involved in it at the relevant time including those who are defendants in the criminal trials."

(xi) The privilege against self-incrimination permits a witness to decline to give testimony if that might incriminate him or her. While this privilege applies whether this civil action is heard now or at a later date, it seems to me that there is an increased risk, perhaps borne of an abundance of caution, of resort to this privilege if this case is heard before the criminal trials. This could have a particular impact on the plaintiffs' ability to fully or properly present their case given the

number of former Anglo staff and executives listed as witnesses.

(xii) The foregoing observations identify some of the specific areas where risk of prejudice may arise. However, this civil case is complex and wide ranging in its subject matter and the time periods covered in the pleadings, and there are likely to be a large number of witnesses. This poses a more generalised risk that something which cannot be identified now will arise over the course of the trial that may give rise to prejudice, and as counsel for the DPP observed "small matters can derail a trial".

(xiii) I am not satisfied that the risk of prejudice can or should be avoided by this Court taking limited measures to restrict media coverage of the hearing in this matter. First, Article 34.1 of the Constitution provides that:-

"Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public."

As Hamilton C.J. stated in *Irish Times Ltd.* at p. 383:-

"As justice is required to be administered in public on behalf of all the inhabitants of the State, such inhabitants are entitled to be informed of the proceedings in the court and to be given a fair and accurate account of such proceedings and the media are entitled to give such an account to the wider public."

Reporting restrictions, or 'non-public trials' should only arise in "exceptional circumstances" (Denham J., at p. 400). This might arise for example if a case concerned commercial secrets. I am not satisfied that this case raises exceptional circumstances. Furthermore, unlike most private law cases there is a clear public interest in this case that argues against reporting restrictions.

The plaintiffs in their submission to this Court are also very clear that they want their case heard in public with media reportage in the normal way, and they oppose restrictions. That is a factor that I take into account.

(xiv) Secondly, imposing effective reporting restrictions would seem to be impracticable, if not impossible. Would the Court have to deliver daily generalised warnings to the media? Or would limited warnings have to be administered whenever "sensitive" testimony was, or was about to be, delivered? Might the Court have to notify the press and give them an opportunity to argue against any particular restriction? It seems to me that the process would be utterly impracticable and would absorb the time and attention of the Court and all involved to a degree that would detract from the real business of presenting and hearing the case. Moreover, in this age of social media it is difficult to see how such restrictions could be effective, or breaches monitored or policed. In this context it would be particularly futile to attempt to rely on a restriction in the form of non-identification of a particular witness. While contempt proceedings, or the threat of same, are part of the armoury of the Court/the DPP, they are not a straightforward or practicable means of preventing the risk of prejudice particularly when the media can legitimately publish fair reports of court proceedings.

(xv) I am also influenced by the reasons given by McGovern J. on 27th February, 2015 when adjourning this action, until, as he thought at that time, after the trial of Mr. Sean Fitzpatrick. The reasons that he enunciated then applied to a situation in which the civil and criminal trials were going to run simultaneously, but still apply in that, whether this action commences this term or in January, 2016, it will run simultaneously with the Back to Back Trial – and there is no guarantee that it will finish before 26th May, 2016. I adopt his reasoning, and in particular his reasoning for rejecting media restrictions as a solution to the problem.

(xvi) While every effort is made to provide for early trials in the cases that are admitted to the Commercial Court, the same principles in relation to risk of prejudice to a subsequent criminal trial apply in such cases as they apply in any civil case. The mere fact that this case is in the Commercial Court with an expectation of a prompt hearing is not therefore a particularly relevant consideration.

15. Accordingly, I will defer the trial of this action until after the trial of Mr. Sean Fitzpatrick has concluded. However – and I will hear counsel further on this – I am reluctant to fix a new date because of the history of adjournments to date combined with concerns arising from two other matters. First, during argument the Court was given limited information by the DPP in relation to further but more confined criminal charges under s. 297 of the Companies Act against two former Anglo executives – one of whom is an accused in the Back to Back Trial – related to an alleged discrete event in September, 2008. That criminal trial is scheduled to commence in early 2017 and the current estimate is that it will take some weeks. Both accused are named as witnesses in these civil proceedings. Secondly, there are extradition proceedings in train that could result in another criminal trial of a former CEO of Anglo. I am all too conscious that this may result in the trial of these civil proceedings being further deferred. My current inclination is to adjourn this matter *sine die* but to put it in for mention in the first instance in late July or early October, 2016.