

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 8TH FEBRUARY

2000 AT 10:30AM:

CONTINUATION OF EXAMINATION OF MR. FOLEY BY MR. COUGHLAN:

CHAIRMAN: Thanks, Mr. Foley.

Q. MR. COUGHLAN: Mr. Foley, I just want to express the gratitude of the Tribunal for you making available voluntarily over the weekend your telephone directory and some other documents to the Tribunal and I think you don't have any difficulty with me dealing with it at this time.

A. No, Mr. Coughlan.

Q. Perhaps I am going to hand you the original of the book, Mr. Foley, because it's yours.

(Document handed to witness.)

And I think under you have two entries for Pádraig Collery in your personal telephone directory, is that correct?

A. That's true, Mr. Coughlan.

Q. And I think that the first one or on the first page where there's reference to Mr. Collery I will just hand you the photocopies that I am working from as well (Documents handed to witness.)

A. Thanks.

Q. I think there's a telephone number 01- this is one through which there is a line then. 01-66 can you make it out 2?

A. 237 I think 99 if I am not mistaken.

Q. Yes. Now, if I could hand you the letter Mr. Collery sent you on the 22nd March 1998 or a copy of it and I am not putting that number up. The Tribunal is not putting that number up for the moment anyway. Can you just confirm that that is not the number which appears in the letter sent to you by Mr. Collery in 1990?

A. No, Sir, that's correct.

Q. Now, I think there are, on this particular portion of your telephone directory, there is a mobile telephone number, 086 2525263.

A. That's right.

Q. XX then there's the words "Irish Life" and there's a number 01-662727 I can't make out the rest of it.

A. Sorry, Mr. Coughlan last what's the number?

Q. You see you have a mobile number?

A. That's right.

Q. Then there's "Irish Life" and then there's 01-6627270 something but it's a number of a number anyway and then if go down under the name Padraig Collery, there's XX and then a telephone number.

A. 6361704.

Q. What word is written?

A. I don't think it's private

Q. There's a word written there and then there's "Home" and then there's a number, is that right?

A. There seems to be a duplicate there between "Irish Life"

and "Home" 6627270.

Q. Just to be clear about this, from the original, the words "Padraig Collery", the telephone number with the line through it is written in, is it a blue or a black pen?

A. Blue pen I'd say.

Q. And the other writing is in red?

A. Three in red.

Q. The mobile number is in the red biro is it?

A. That's right.

Q. The XXs, is "Irish Life" what colour?

A. "Irish Life".

Q. And the number also, is that in red also?

A. Yes, that's in red and "Home 01".

Q. 01 at the bottom in red.

A. There seems to be a duplication of "Irish Life" there and "Home".

Q. Can we take it that the writing in red was put on at a later stage?

A. Yes, because the other number was crossed out.

Q. Yes. And if you then go over the page, there is two pages on in your telephone directory, I think there's at the top, there's another entry for Padraig Collery, is that correct?

A. Correct.

Q. And then written up over it is "Kindle Group" and under that "Blessington Street, Dublin 7" and there are two telephone numbers. Can you confirm that none of the numbers that are written in your telephone directory

correspond to the number on the letter you received?

A. No, Sir.

Q. In March of 1990 from Mr. Collery?

A. No.

Q. And can we take it that in the first instance can I ask you can you confirm that those two entries for Pdraig Collery relate to Mr. Collery the witness who has given evidence here?

A. That's right, Sir.

Q. There is another entry in your telephone directory which relates to people called Collery in the United States, can I take it that's a completely private matter?

A. That's a private that's an aunt, a first cousin.

Q. Well it's nothing whatsoever to do with

A. No, no.

Q. But that these two entries do relate to Mr. Pdraig Collery?

A. They do, yes, Sir.

Q. Now when you were giving evidence on Friday and I appreciate you didn't have your telephone directory and I want to emphasise again you voluntarily furnished these to the Tribunal over the weekend. And you thought on Friday that the number you contacted Mr. Collery to set up the meeting in 1998 was in the first instance the number you had got in the letter by him or from him and that when you phoned that number you were given another number by a woman at the end of that telephone line. You wrote that on a

piece of paper and it is on that that you made the contact?

A. That's correct, Sir, yes.

Q. And then it was that number that you had on a piece of paper you phoned in order to make contact with Mr. Collery when you hadn't received the statements for the purpose of your second meeting with your accountant, isn't that correct?

A. That's correct, Sir.

Q. And you weren't able to make contact with him on that second number and the reason you couldn't ring the first number is because your directory was in Leinster House.

A. Yes, Leinster House is right.

Q. Now, would you agree with me that it seems clear that the numbers you have down for Mr. Collery were not numbers which you got from the letter he sent you in 1990?

A. That's correct, Sir. I obviously got them over the phone. I must have got them from somebody because I didn't have this number recorded because I had that letter.

Q. Yes. But you have different numbers, a number of numbers for Mr. Collery, isn't that correct?

A. Three at the one time I'd say because they were in red.

Q. Yes. And where would you have got those?

A. I must have got them, I just can't say, I tried to refresh my memory over the weekend since I looked at the telephone directory and that's the reason I gave it in, I just couldn't recollect where I got them, I didn't definitely get them in writing.

Q. You had to get them from somebody.

A. The only person I was dealing with up to 1994 was Mr. Traynor and prior to that, I think I had a discussion with Guinness & Mahon, Mr. Keane.

Q. Mr. Keane?

A. Martin Keane, that's right.

Q. That was way back in the eighties.

A. That's right and after that then I made contact with Mr. Cleary, following the death of Des Traynor, I just can't recollect how I got the three numbers there and the fact that I have a second entry in it for Mr. Collery as well.

Q. Well you have a mobile number for Mr. Collery.

A. That's right.

Q. An 086 mobile number.

A. That's right.

Q. It's an 086 number with seven digits.

A. That's right, Sir.

Q. Well when do you think you might have got that number?

A. Mr. Coughlan, I have no idea and I tried to go back, I just can't recollect.

Q. Well, let's deal with it this way. You couldn't have got it from Mr. Traynor I think, isn't that right because there wouldn't have been an 086 number back in 1994.

A. That's right.

Q. It had to be after that?

A. It had to be after that, yeah.

Q. Now, the numbers that you had and it's clear that the 086

number is written in in red biro apparently after the name of Mr. Collery had been put in the directory, is that right?

A. That's correct.

Q. And after the, it would appear to be after the number that is crossed out?

A. That's correct.

Q. But the writing at the bottom, which is "Private" and there's a number, and then "Home" and then there's a number opposite that, that seems to have been put on at the same time as the 086 number.

A. That's correct.

Q. It's in red biro.

A. That's correct. I can say if you go up above that, you can see "Noreen Cassidy".

Q. I don't want to go into I don't want to go into your private affairs.

A. But that's written in red as well.

Q. You were going to mention something?

A. Just above that, there you see "Noreen Cassidy, Festival of Kerry" and there I have in red again 2409409. That must have been written in in the last two to three years or less because I think she is only in her second or third year with the Festival.

Q. You think you made that entry around the same time?

A. It was the same type of pen.

Q. A red pen, is it?

A. I was trying to draw a conclusion over the weekend, Mr. Coughlan.

Q. I understand that

A. I am going out of my way to try and be helpful, I produced a diary. I can't answer it.

Q. I want to emphasise again you did voluntarily produce it but you think that you made the entry in respect of Ms.

Cassidy, Festival of Kerry, that is to do with ordinary business in Kerry?

A. Ordinary business, yes.

Q. And you have written her number in in red biro, is that correct?

A. It could be a different time, you know.

Q. And you have an 087 number for her.

A. I have an 087 for her.

Q. With seven digits after it, is that correct, which must have come into being in the last two years?

A. Yeah. I just don't know, Mr. Coughlan, I'm just trying to draw a conclusion there to be helpful.

Q. Now, if we could just put up the other page at the same time. This is two pages over I think in your telephone directory.

A. Precisely.

Q. Is that right?

A. That's correct.

Q. The bottom and the number you have down there for Kindle Group is a six digit number which means it must have been

there for some considerable time, is that right?

A. Yeah, that's right.

Q. I want to confirm it's not the same number that was on the letter you received.

A. No, Sir.

Q. So that it would appear, and correct me, it's something we will have to check, that the six digit number for Kindle perhaps predates Mr. Traynor's death, doesn't it?

A. I couldn't say, Mr. Coughlan, to be honest, I could not say.

Q. Now, if you, I think would you probably agree you could not have received the mobile number 086 from Mr. Traynor, isn't that correct?

A. If you say so, yeah.

Q. Well it's not because I say so.

A. I just don't know.

Q. I stand to be corrected because we are just receiving this information and dealing with it on our feet effectively, I will just have to, we will have to check to see when 086 numbers did become available.

A. I would say I received the two numbers together because they are both put in and there's a duplication there for them. While there are three numbers, two are duplicates and two numbers I must have got at the one time.

Q. You think you got the 086 number and then the number under?

A. 6626260, yes, that's in red.

Q. What about the number under Collery's name?

A. I can't say about that.

Q. What colour pen is that?

A. There's two of them in red and one in black or blue,
6361704.

Q. What colour is that in?

A. Black.

Q. What's written after that?

A. It's not I'd say, it could be "Private", it could be
"Private", Sir.

Q. Is it "Prussia"?

A. It could be "Prussia".

Q. "Prussia Street" perhaps?

A. I don't know.

Q. And then you have after that "home".

A. That's in black, Sir.

Q. You must have got that number at a different time to the
time you got the 086 number?

A. That is definite, Sir.

Q. Well can we take it, just to try and establish the facts,
the numbers you had for Mr. Collery were not given to you
in the letter of March 1990 from Mr. Collery to you?

A. No, Sir, 1990, 22nd March 1990.

Q. And including the numbers which is crossed out, including
the numbers which is crossed out, you have a mobile number,
you have two other numbers, one being and they are
duplicated I think?

A. That's right, Sir.

Q. So that's two numbers, there's the crossed out number, that's three numbers, is that right?

A. That's right.

Q. The numbers under the name Collery, that's four numbers.

A. That's right.

Q. And on the two pages over, you have two further numbers, isn't that correct?

A. That's right, Sir.

Q. And the number in the letter?

A. That's right.

Q. So around six numbers in all?

A. That's right, Sir.

Q. I say six because there's a duplicate.

A. That's right, Sir.

Q. Now, you had to get those numbers from somebody.

A. That is correct.

Q. And can we take it that you didn't get those numbers in writing?

A. I certainly didn't get them in writing because if I had them in writing, I'd be hoarding them, the same as I gave you all the correspondence I had.

Q. So somebody had to give you the number.

A. That's right, Sir.

Q. It meant you had to be in contact with somebody to do with your affairs.

A. That's right.

Q. In respect of your offshore Ansbacher account.

A. That's right.

Q. And you had to have dealt with somebody or had communication with somebody after Mr. Traynor's death as well.

A. That is correct.

Q. You undoubtedly had a number for Mr. Collery well before Mr. Traynor died, that's the Blessington Street number?

A. That's right.

Q. And who would have given you that number?

A. Pardon?

Q. Who gave you that number?

A. If it was before Mr. Traynor's death, I had to get it from Mr. Traynor.

Q. Why would he have given you Mr. Collery's numbers?

A. Because in 1990 Mr. Collery had written to me informing me that he was no longer working in Guinness & Mahon.

Q. Yes.

A. And as a matter of fact, he wrote that letter from 42 Fitzwilliam Square.

Q. Yes. Why would Mr. Traynor have given you Mr. Collery's number?

A. I can't say why he would have given it to me because I had been dealing directly with Mr. Traynor.

Q. He must have said something to you if he gave you a telephone number and you considered it significant enough to put it into your directory?

A. That is correct, that is correct, I just can't say. Once I

put it into the diary, I had to get it there from somebody.

Q. Yes. And again, it's not a matter of concern to the Tribunal or to the public, your own personal or constituency matters in the directory but just from a general flick through it, wouldn't you agree that there is nobody else in the directory has as many numbers entered in the directory?

A. Possibly not as many no, probably would be a few with a few numbers.

Q. There might be an individual with a few numbers?

A. It would be different address or locations. I had to get them or I wouldn't have put them down otherwise, I had to get them from somebody.

Q. I agree and you accept that, Mr. Foley?

A. Yeah.

Q. And really the Tribunal needs to know who you were dealing with to get these numbers in the first instance. Why would Mr. Traynor have given you Mr. Collery's numbers other than you should deal with Mr. Collery, is that correct?

A. I am blank at that stage, Mr. Coughlan. As I say, I went through this at the weekend and I could come up with nothing. I gave it to my solicitor yesterday and I told him to hand it in because I can't explain it and I told him to hand it in.

Q. Yes, of course, and that is absolutely so.

A. Yeah.

Q. And you must have been if we could go back, so in 1995

when you got the €50,000 from Mr. Collery, you contacted him?

A. I did, that's right.

Q. Which number?

A. It's one of the numbers anyway because I was trying to contact him after Des Traynor was dead, it's one of the numbers, it has to be some

Q. It has to be one of the numbers written in black, is that right?

A. What?

Q. One of the numbers written in black.

A. It has to be one of the numbers that you quoted there.

Q. It couldn't have been the mobile number, isn't that correct?

A. I don't think it could be the mobile number. It had to be a Dublin number.

Q. And somebody had to give you the mobile number?

A. That is correct.

Q. And who could that have been?

A. I just can't say, Mr. Coughlan, to be honest. I just can't say.

Q. Well, just think who else did you deal with in relation to your affairs, Mr. Foley?

A. Des Traynor and Padraig Collery and in the eighties then, Martin Keane.

Q. Yes, well it looks as if Martin Keane doesn't come into the question here at all.

A. That's right.

Q. He was a man working in Guinness & Mahon and furnished information on request?

A. That's correct.

Q. And that's all. So there were only two people?

A. That's correct.

Q. Mr. Traynor and Mr. Collery?

A. That's right.

Q. And Mr. Collery was the only one you think could have given you the mobile number, the 086 number.

A. And that would be after '95. I just can't say. I just can't say, Mr. Coughlan. I have gone over this over the last three days now since I got my diary.

Q. I appreciate that but it's something I have to pursue with you.

A. I appreciate that.

Q. And did you ring the mobile number?

A. I can't say that I did, Mr. Coughlan, to be honest. I can't say that I did.

Q. Well, if you say that you had difficulty in making contact with Mr. Collery to set up the meeting in August of 1998

A. Yeah.

Q. Can we take it that you had used your directory in trying to contact him?

A. Well, I had a number there, 6623799, I am not sure whether that was

Q. Yes, well

A. I can't say for definite, Mr. Coughlan. I just can't say.

Q. Well can I ask you this; when you consulted your directory to arrange the meeting for October, sorry, for August of 1998, did you have Mr. Collery's mobile number at that time?

A. If I did have, I would have rang it.

Q. I am asking you did you?

A. I can't say now.

Q. How would you have got Mr. Collery's mobile number?

A. I just can't say. If I could I want to be as helpful...

Q. I know, Mr. Foley, but you see, can you not appreciate that all of these numbers and again I stress you furnished the directory voluntarily to the Tribunal, but that the proliferation of numbers in that directory and numbers apparently added to the telephone directory at different times gives rise to the inference that there was a greater level of contact possibly with Mr. Collery than you seem to recollect, would you agree?

A. No, Sir, I can't agree to that, no, I am just looking at the second line there, "Padraig Collery", there's a home number there and there's an office number, it's possible that it's one of them that I rang. I just can't say, Mr. Coughlan.

Q. It's the mobile number I am more interested in.

A. Yes, that's right.

Q. Doesn't it seem to indicate that your recollection is perhaps faulty about the number of meetings you had?

A. I wouldn't say so, no.

Q. Or the amount of contact you had?

A. No, Sir.

Q. There was an urgency about getting the statements as far as you were concerned.

A. That's right.

Q. And bearing in mind that you didn't have your directory with you, what number did you have written down on a piece of paper?

A. I got a number off I had a number when I phoned and I kept it on a piece of paper in my pocket and I have tried everywhere for that because I normally keep them, I just couldn't get it and I decided then to submit my

Q. Was it a Dublin number, an 01 number?

A. It was an 01 number definitely.

Q. It wasn't a mobile number?

A. No, it was an 01 number.

Q. And you got Mr. Collery at that Dublin number on the first occasion?

A. Yes, that's right.

Q. Could you have got the mobile number at the meeting at Dublin Airport?

A. There was very little discussion in Dublin Airport. I don't believe I got any number there, very little discussion.

Q. But as far as you were concerned, there was an urgency about getting

A. I emphasise that, I was focused on statements, completely focused on statements.

Q. Well, can I ask you this, the telephone directory has been in your possession all the time, isn't that correct?

A. That's correct, yes.

Q. In your office in Leinster House, would that be where you normally keep it?

A. That's right, that's right.

Q. When you were attempting to make contact with Mr. Collery for the purpose of the second appointment you had with the accountant, did you consult your directory at all?

A. The second appointment, that was in August, no.

Q. The first one was in August. The second one was in September, were you still in Tralee?

A. I was in Tralee, I came back in October.

Q. Did you look at your telephone directory since that time?

A. I don't believe I did because the point is this, that after that when I failed to get him, I just said if he had the statements, he'd send them to me, I depended on him that he would send them to me, which I did get them in May of '99 and I wasn't able to contact him after that until I went to the Tribunal then and I was informed by the Tribunal of the information with regard to the Ansbacher.

Q. But I wonder can that be correct, Mr. Foley, because you told the Tribunal when you gave evidence here last week that the reason, one of the reasons you didn't make a further appointment with your accountant when you received

the statements was because that they weren't complete, they weren't a complete history from 1979 up to date or whatever?

A. They were up to '92.

Q. Up to '92?

A. Yeah, December.

Q. What you got was from '92 to '97, you wanted a complete history for the purpose of your accountant's business?

A. That's correct.

Q. And you didn't ring Mr. Collery.

A. After that, I didn't, as far as I can remember, but I did try to make contact with my accountant, made contact with my accountant in November and I told him I had a problem. He emphasized first that I should get all banking records which I couldn't do and then I went back to make clear my position. I got the figure off the Tribunal and I made a complete statement to him which he submitted on my behalf. If I could give the information, Mr. Coughlan, I would. I just can't.

Q. Well now, Mr. Foley, all I am trying to do is to ask you questions to see if I can jog your memory in relation to matters to see if we can get the facts established. You never went back to the accountant after the cancelled meeting in September of 1998?

A. No.

Q. Until after the Tribunal brought the matter to your attention?

A. Correct, correct.

Q. You never went back to him and said you couldn't get the statements?

A. No, I did not, I was in because I made two appointments with him.

Q. Why did you have a mobile telephone number for Mr. Collery?

A. I must have been given it.

Q. Well obviously I think you must have been given it but why?

A. I just can't say, Mr. Coughlan.

Q. Well did you give Mr. Collery any telephone numbers?

A. Did I what?

Q. Did you give Mr. Collery any telephone numbers?

A. No, no, but let me say now, I may have given him one. I contacted him in '95 - let me see, no, I was to make the further contact myself as far as I can remember.

Q. Did you have receive a phone call from Pdraig Collery?

A. I don't recollect receiving a call from him, No, Sir, I don't recollect receiving a call from him. Sorry, let me see, in '95 when I phoned him first about the arrangement, about the €50,000, he did phone me at that stage and said to meet him in Jurys Hotel, as far as I can remember.

Q. Yes.

A. Yeah.

Q. He rang you back?

A. He rang me back as far as I can remember.

Q. Very good.

A. And that was in the Dail.

Q. Very good. And that was the occasion that he described himself to you so you'd recognise him?

A. That's right, yeah.

Q. You then say that you rang him to arrange, you rang him to look for statements in 1998 and that information turned into an arrangement to set up the meeting at Dublin Airport?

A. That's correct, I had an appointment made that day for my accountant I'd fly up, get the statements and go straight to my accountant, the appointment was for 12 noon.

Q. You say you rang two numbers to set up that meeting, you rang the first number you had which was what? Where did you get the first number?

A. I am still not sure but I have a feeling it could have been the second lot there, it may not. I had a home number and an office number for him.

Q. Well

A. It may not have been them numbers, I am still not sure of the numbers I rang him at, Mr. Coughlan.

Q. Well, Mr. Foley, did you have other numbers other than those in the directory?

A. No.

Q. Right.

A. I am not sure whether the number I got off the lady was one of the numbers or not.

Q. That's the number I am inquiring about at the moment. I am

talking about the number you first rang and a lady answered it.

A. That's right.

Q. Which number was that?

A. I am still not sure of that number, Mr. Coughlan.

Q. Well did you get that number out of your telephone directory?

A. Yes, I would have got it out of my telephone directory.

Q. Did it have to be one of the numbers written in black?

A. It had to be one of the Dublin numbers.

Q. And you were given another number?

A. I was, yeah.

Q. Which was a Dublin number, an 01 number.

A. As far as I can recollect, yeah.

Q. And you rang that number and you contacted

A. I spoke to him myself.

Q. You didn't ring him on a mobile number on that occasion?

A. You are just putting a doubt in my mind, I can't say.

Q. Am I putting a doubt in your mind, Mr. Foley? You have a number of times told us that it was a Dublin number.

A. Dublin number as far as I can remember, a Dublin number.

Q. When did you get the mobile number, Mr. Foley?

A. I just can't say but when I got that mobile number, I got the 01-6627270 as well.

Q. Is that the number at the bottom?

A. Yes, they were duplicated.

Q. The duplicated number?

A. Yeah, the duplicated number.

Q. Why is "Irish Life" written on it at the top?

A. I would have been told "Irish Life", otherwise I wouldn't have put it down.

Q. Who would have told you that?

A. Whoever gave me the number.

Q. And were you told that that was the number he would definitely be at or contact number for a day or not?

A. I was told it was a number to contact. When I put down "Irish Life" I got the impression that he was working there. I may not be correct.

Q. And can I take it that you never, as you say, contacted him on the mobile?

A. To the best of my knowledge, no, to the best of my knowledge.

Q. And can we take it that if you had the mobile number after the meeting in August of 1998 when you were trying to make contact with them for the purposes of getting statements, you would have rung that number also?

A. I must have had it at that stage because I put no numbers in definitely. There are all of the numbers. I definitely hadn't got no numbers since '98.

Q. And the only person who could have given you the mobile number was whom?

A. At that stage it would be...

Q. Mr. Collery?

A. Mr. Collery himself but I just can't recollect getting it

from him. I just can't recollect any of the two numbers there, Mr. Coughlan. As I say, when I came across that in my diary at the weekend, I said look I am giving you the diary, give it into the Tribunal because I just can't explain it.

Q. Well I take it you will be available to the Tribunal, Mr. Foley, because this is something we have to carry out some further investigation into.

A. Okay, Mr. Coughlan.

Q. And I think you appreciate one or two matters may arise from some other documents again you brought to the attention of the Tribunal.

A. Thanks, Mr. Coughlan.

CHAIRMAN: Just before, Mr. Foley, some other barristers may have a number of questions for you, am I right in thinking that after the airport meeting with Mr. Collery, in particular it was clear that he was the only person who could deal with two vital matters, firstly how much did you have in the account?

A. Right.

CHAIRMAN: And how was it particularised in the statements, and secondly, was it all going to come out in the open?

A. That's right, Sir.

CHAIRMAN: And I suggest this must have been increasingly on your mind over the months of that meeting?

A. Absolutely, even from once I tried to close the account in

1991 it was on my mind, Sir.

CHAIRMAN: Yes, well that's why I am once again putting Mr.

Coughlan's question to you, does it not seem that one in that position when you were spending your working week in Dublin where Mr. Collery was, there must have been a likely inclination to telephone him on some occasions during the nine months when you got the statements?

A. I am telling you, Chairman, after '98 especially when I got the statements in May, I was, I just didn't know what way to turn, to be honest with you.

CHAIRMAN: Yes. Well, Mr. Quinn, are there any matters you wish to raise? Mr. Seligman? Well the two people who will probably have some questions to ask are clearly Mr. Devitt and then laterally Mr. Barniville. Is there anyone else who wishes to raise a matter? Mr. Devitt.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. DEVITT:

Q. MR. DEVITT: Mr. Foley, just in relation to these telephone numbers, these telephone numbers from your personal telephone directory, can you say or do you have any recollection when these numbers were inserted into the telephone directory?

A. No, Sir, I have no recollection. I have gone over that. I got my telephone directory at the weekend. I told my solicitor that I have no idea when the numbers were I asked him to hand over the telephone directory to the

Tribunal.

Q. Is it possible that they could have been inserted at different times on different occasions?

A. No, Sir, two of the numbers were inserted at the same time because they were in red, one was a duplicate so that would be two numbers and the mobile are in red and as far as I am concerned, they were inserted at the one time.

Q. So do I understand you to say then that all of the numbers were inserted at more or less the same time?

A. No, Sir.

Q. The ones you distinguish there?

A. The three I am speaking about.

Q. So at least numbers may have been inserted at least on two occasions?

A. I beg your pardon?

Q. Numbers may have been inserted on two occasions, is that correct?

A. There could be three occasions. There's two black numbers, one crossed out and three in red.

Q. Would you have any idea what date these numbers were inserted?

A. No, Sir, I have no idea.

Q. Mr. Foley, in relation to the number under Mr. Collery's name on the, what I referred to as the first page, my instructions are Mr. Collery will say that the 636 number refers to a direct dial for a place of employment in Dublin. Does that assist your recollection in any way?

A. No, Sir.

Q. And that that direct dial number was in use or available to Mr. Collery only in 1999, does that assist your recollection?

A. No, Sir.

Q. If we turn to the next page, the second number, the 304 number, Mr. Collery will say that he has no information whatsoever in relation to that number, that it doesn't refer to him and that he doesn't know where it came from.

A. There's no way I would have it down there unless I got it, I have it down as "Padraig Collery, Kindle Group, Blessington Street, Dublin 7, Home 01 6283258 and office 304981".

Q. You couldn't be mistaken about that?

A. No, Sir.

Q. Your recollection is clear?

A. The only recollection is I wouldn't have it down there unless I was told it was Padraig Collery.

Q. What is your recollection where these numbers came from in the first place?

A. I haven't got it.

Q. You don't know where any of these numbers came from?

A. No, Sir.

Q. Mr. Coughlan has been suggesting to you that perhaps some of the numbers came or could only have come from Mr. Collery or Mr. Traynor. Could they have come from anywhere else, come from any other third party?

A. No, Sir, nobody else was dealing with my account only Mr. Traynor and Mr. Collery.

Q. Couldn't these numbers, if they do refer to Mr. Collery, couldn't they have been referred by somebody else? If you ring up an institution, or a third party, they could perhaps have given a forwarding telephone number for him, as it were, isn't that possible?

A. It's possible but unlikely, to be honest.

Q. Isn't it also possible that some of these numbers could have been given after Mr. Traynor's death and it's highly likely that they were? Mr. Traynor died in 1994.

A. Yeah.

Q. In relation to the 01 number that has "Irish Life" written in front of it, Mr. Collery will say that that's where he could be contacted, he was working there in 1997 and 1998. Does that assist your recollection in any way?

A. If I have "Irish Life" there, Mr. Collery was working there.

Q. In relation to the 086 number, that's the mobile number, Mr. Collery will say that he previously had an 087 number and that 086 number came into existence in 1998. Does that assist your recollection?

A. No, Sir.

Q. Can I ask you briefly, Mr. Foley, about your meeting with Mr. Collery in August of 1998?

A. 18th August.

Q. That's correct. Can you recall if there was any reference

to funds held on joint deposit or joint accounts?

A. No, Sir, I was completely focused on statements for that meeting.

Q. So you are saying there was no reference to funds held on

A. No, Sir.

Q. In your name or the name of your daughter?

A. No, Sir.

Q. Do you recall giving evidence that you wrote a letter to Pat O'Dwyer in Guinness & Mahon back in 1988?

A. 25th May, 1988.

Q. What was the purpose of that letter?

A. I was after having a serious heart attack and I was concerned and I wrote to him asking, I had a resident deposit account, and without notifying my daughter I asked him to have my name put, to have her name put on the account, making it a joint account.

Q. And did you keep a copy of that letter?

A. I did, yes.

Q. Does Mr. Collery say in his statement in relation to the meeting that you produced a copy of that letter?

A. At that meeting at the airport?

Q. Yes.

A. I wouldn't even have a copy with me at the airport.

Q. Would you agree with me that there was a lapse of ten years? The letter is dated 1988 and the meeting took place in 1998.

A. The 25th May.

Q. This letter

A. I am sorry, it was, there was no meeting in '88. It was a letter I wrote direct.

Q. Yes. The meeting took place on the 18th August.

A. That's right, yes.

Q. And the letter is dated 1988.

A. Yes, 25th May.

Q. Well, there's a gap now of ten years. This letter wasn't of any particular significance to Mr. Collery at the time it was written, the 25th May of 1988.

A. But I didn't write that letter to Mr. Collery, I wrote it to Mr. Pat O'Dwyer.

Q. I know all that but Mr. Collery, in his version of the meeting in August of 1998, he said that you, that there was reference to joint accounts and that you produced a copy of this letter. Do you accept that?

A. No, Sir, I don't.

Q. Well wouldn't it be extraordinary for Mr. Collery now to refer to a letter that he hadn't had sight of for some ten years previously?

A. I just can't understand because I was, I actually had no files with me. I was only depending on getting statements, going straight to my accountants at 12 noon.

Q. When you met Mr. Collery in 1995, there was mention of John Furze?

A. Yes, he said that John Furze would be looking after the

account.

Q. And in

A. Sorry, Sir, I pointed out to him I had never dealt or met Mr. Furze. As far as I was concerned, that he was looking after the account.

Q. I see. And at a meeting in August of 1998, was there any mention of Mr. Furze?

A. No, Sir.

Q. Mr. Collery said that there was a mention of Mr. Furze.

A. Well I am satisfied, Mr. Devitt, that there was no mention of anything outside of statements and the meeting was very short and I left immediately, even though Mr. Collery had a car, I left and I took a taxi straight into Dublin.

Q. And in August 1998, hadn't you got some concerns, wasn't it your evidence to Mr. Coughlan to the Tribunal that you were hoping against hope that you wouldn't be a holder of one of these accounts?

A. No. This was me after getting the statements. When I got the statements, I didn't make any reference to that, I was still hoping that I wasn't involved.

Q. By August 1998, did you not have concerns you might have been the holder of one of these accounts?

A. I did have concerns, yes.

Q. This matter had been in the public eye and Mr. Furze had died I think in 1997, is that correct?

A. I am not sure of the date he died.

Q. When you met Mr. Collery, if you had some concerns, surely

Mr. Furze would have come up in the conversation?

A. In 1998?

Q. In 1998, yes.

A. No, Sir, it was '95 he mentioned Mr. Furze.

Q. That's correct and wouldn't it have been mentioned again when you met Mr. Collery in August of 1998?

A. No, I wanted statements, I had arrangements made with my accountant and I wanted to make a full disclosure.

Q. You had no other concerns or no other questions?

A. I had no concerns at that time, only my accountant insisted on getting bank records.

Q. I have to suggest to you, Mr. Foley, that Mr. Collery's version of the events in August 1998 is more accurate.

Isn't it likely that you would have asked about Mr. Furze?

A. No, Sir.

Q. Mr. Foley, did you have any hand, act or part in Mr. Collery's decision to go to Cayman in July of 1998?

A. No, Sir, no.

Q. No further questions, Sir.

CHAIRMAN: Mr. Barniville?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARNIVILLE:

Q. MR. BARNIVILLE: Thanks Sir.

Mr. Foley, when you were first contacted by the Tribunal, did you disclose to the Tribunal the investment that you had made with Mr. Traynor in 1979?

A. I did, when I was contacted, yes.

Q. And did you inform the Tribunal of the source of the monies which you used for the purposes of that investment?

A. I did, yes, I made a full statement to the Tribunal.

Q. And did you explain how the funds which you invested in 1979 had been accumulated?

A. I did, it was over a period of 15 years.

Q. And did you explain precisely how you had got those funds to enable you to make the investment?

A. I did, yes, Sir.

Q. I think those monies were invested at a time before you were a TD?

A. That's correct.

Q. And similarly when you were contacted by the Tribunal, Mr. Foley, did you disclose to the Tribunal the source of the funds and the lodgments that you made to your Guinness & Mahon resident account?

A. I did, yes, Sir.

Q. Where you were able to identify the sources of those lodgments, is that right?

A. That's correct.

Q. Now, again when you were contacted by the Tribunal, Mr. Foley, I think you furnished every document that you had in relation to your dealings with Mr. Collery, Mr. Traynor, and Guinness & Mahon, isn't that right?

A. I went out of my way to get whatever information I had going back on files and I presented everything to the

Tribunal.

Q. And I think that included all documentation which you had in relation to your investment with Mr. Traynor and in relation to your Guinness & Mahon account, isn't that right?

A. That's correct.

Q. And I think it's fair to say and Mr. Coughlan I think has fairly accepted that you have cooperated very fully with the Tribunal since you were contacted by it, isn't that right?

A. I appreciate that, yes.

Q. And I think when you were contacted again by the Tribunal, you informed the Tribunal of all dealings that you had to the best of your recollection with the individuals referred to, namely Mr. Traynor and Mr. Collery?

A. That's correct, Sir.

Q. And I think it's fair to say there may have been one or two contacts that initially you couldn't recall but you did recall during the course of your evidence and while the Tribunal has been sitting, isn't that right?

A. That is correct.

Q. And is that because of a difficulty you had in recollection or for any other reason?

A. Difficulty in recollection.

Q. Now, Mr. Foley, I think you were aware that the Terms of Reference of the Tribunal insofar as they relate to you are to inquire into whether any payment was made from monies

held sorry, from monies held in any of the accounts

which have been known as the Ansbacher accounts, isn't that right?

A. That's right.

Q. And in your case, I think the only payments that were made to you were withdrawals, three withdrawals from your own funds, isn't that correct?

A. That's correct, Sir.

Q. And I think you disclosed to the Tribunal when contacted by it, each of those three withdrawals, isn't that right?

A. That's right, Sir.

Q. And as I say, there were three withdrawals, one in 1989, one in 1993, and one in September 1995, isn't that correct?

A. Correct.

Q. And I think you disclosed that information to the Tribunal?

A. That's correct.

Q. And I think in addition when you were contacted by the Tribunal, Mr. Foley, I think you disclosed to the Tribunal the circumstances in which your resident account with Guinness & Mahon was firstly transferred into the joint name of yourself and your daughter in 1988 and then closed in 1990, isn't that right?

A. That's correct, Sir.

Q. Now, insofar as your dealings with Mr. Collery are concerned, can you confirm that you had two meetings with Mr. Collery?

A. That's correct, Sir.

Q. And when were they?

A. The 8th September and the 18th August sorry, the 8th September 1995 and the 18th August 1998.

Q. Insofar as the meeting in August 1998 is concerned, I think you have indicated that the purpose of that meeting was to obtain statements from Mr. Collery, isn't that correct?

A. That's correct.

Q. Can you just indicate just to clarify perhaps a matter that you indicated in your evidence on Friday, whether you contacted Mr. Collery or your accountant first at that time.

A. As far as I know, I contacted my accountant because he was going on holidays sometime in July and he said he wouldn't be back until mid August.

Q. I think you may have indicated in your evidence

A. I did, and I contacted Mr. Collery and I have a doubt about that but definitely, what I said was I had contacted Mr. Collery with a view to arranging a date to meet him for the statements and

Q. Mr. Foley, just a minute I think you may have indicated in your evidence on Friday that you thought your accountant was going away in late August, isn't that right?

A. No, it was actually, I may have said late August but actually it was in the first two weeks in August because the appointment was made for the 18th August.

Q. When did you contact your accountant first?

A. Sometime in July.

Q. When did you contact Mr. Collery?

A. It must have been at sometime after that.

Q. Now, when you met Mr. Collery in Dublin Airport, what was the purpose of that meeting?

A. The purpose, and I was focused on statements, banking records as my accountant said.

Q. Now, there's clearly some dispute between yourself and Mr. Collery in relation to what was discussed at that meeting.

A. I accept that, Sir.

Q. And just one or two things I want to ask you about that.

Did Mr. Collery inform you at the meeting that he had just returned from the Cayman Islands?

A. Not to my knowledge, Sir, no.

Q. Did he inform you that he had seen your name

A. No, certainly not.

Q. Just I'd like to finish

A. Sorry.

Q. in records of Mr. Furze in connection with an at A/A40 or any other records of Mr. Furze?

A. No, Sir.

Q. I think you have confirmed in response to Mr. Devitt that your recollection is Mr. Furze's name didn't feature in that meeting?

A. No, Sir.

Q. Did Mr. Collery say to you as he had indicated in evidence, that he told you Mr. Barry Benjamin was dealing with your investment?

A. No, Sir.

Q. Did he mention Mr. Benjamin's name at all?

A. No, Sir.

Q. Did he tell you to contact anybody else, Mr. Benjamin or anybody else in the Cayman Islands in relation in your investment?

A. No.

Q. Can you remember when you first heard the name Mr. Benjamin?

A. I don't recollect having the name Mr. Benjamin in any discussion. The first I remember seeing his name appear in the press.

Q. Well, is that after you had been contacted by the Tribunal?

A. After.

Q. And I take it that then Mr. Collery is incorrect when he says that he not only mentioned Mr. Benjamin, but also gave you a phone number to contact Mr. Benjamin?

A. No, certainly not.

Q. Again sorry, Mr. Foley

A. I would just say if he had given me a phone number, I don't believe I would have taken it but if he had, I would have put it into my diary.

Q. I don't think it's in your diary.

A. No, Sir.

Q. Now, Mr. Foley, Mr. Devitt put to you and Mr. Collery indicated in evidence that you also discussed and explained to Mr. Collery the circumstances in which your Guinness &

Mahon account was transferred to the joint name of your daughter and yourself in 1988. Can you confirm that that wasn't discussed?

A. No, not discussed.

Q. I think you are now aware from information you have obtained from the Tribunal that your bank statements in relation to that account were being forwarded to Mr.

Collery as and from early 1988?

A. Yes, that's the first I knew of that.

Q. You are also aware now were information from the Tribunal that Mr. Collery was involved in correspondence concerning the closing of that account in November 1990?

A. That's right, Sir.

Q. Now, just moving on to a different issue. Mr. Coughlan suggested to you or asked you whether it was a coincidence that documents which Mr. Collery sought to conceal from the Tribunal contained information in relation to you and I think you said that you felt it was a coincidence, is that right?

A. That is correct.

Q. Well, can I ask you then, lest there be any remaining doubt about this issue, did you or any person representing you request Mr. Collery to keep your name from this Tribunal or to conceal information referring to you from this Tribunal?

A. Certainly not.

Q. Now just in relation to another matter, Central Tourist Holdings Limited, I just want to ask you one or two

questions.

Did you have any knowledge of the fact that the loan that Central Tourist Holdings obtained from Guinness & Mahon in 1972 was secured by some form of a back-to-back deposit?

A. No, Sir.

Q. Well, what was your recollection of the security that was in place in respect of that loan?

A. The four directors, Sir, security from the four directors.

Q. You mean the four guarantees?

A. The four guarantees from the four directors.

Q. Were you aware of any security other than the guarantees?

A. No, Sir.

Q. I think you are aware that the only securities referred to in the facility letter which you have seen were those guarantees?

A. That's correct.

Q. Did you have any knowledge of the fact that the loan appears to have been paid off within Guinness & Mahon sometime in 1985?

A. Not until it was brought to my notice by the Tribunal.

Q. When was it your recollection or understanding that the loan had been paid off?

A. Sometime when the proceedings of the sale, and that was sometime in 1977 - I was out of action.

Q. 1987?

A. '87 I was out of action for a number of months, I was in hospital.

Q. Was that the time that you had your heart

A. That's right, late May, early June of 1987.

Q. In order to assist the Tribunal, you and your solicitor managed to locate a file from the solicitor who handled this sale?

A. That's correct.

Q. That sale, as you discovered from another firm of solicitors, and furnished to the Tribunal?

A. That's correct.

Q. I think as you have indicated in your evidence, you personally sustained losses and had to contract to the affairs of the company on

A. That's correct.

Q. Now, as you know, Mr. Foley, the purpose of the Tribunal is primarily to investigate the payments made and the affairs of Mr. Haughey and Mr. Lowry, is that right?

A. That's correct.

Q. Again lest there be any impression to the contrary, would you regard yourself or would you have been regarded as being close politically or in any way to Mr. Haughey?

A. No, Sir, I was a member of the Parliamentary Party when Mr. Haughey was Taoiseach and I had to attend a number of public functions but outside of that I never socialised or was involved in any way with Mr. Haughey, it was a well-known fact I wasn't a supporter of Mr. Haughey.

Q. At times when Mr. Haughey's leadership was challenged, would you have been a supporter of Mr. Haughey?

A. Not a supporter at that time.

Q. Would you have attended or visited Mr. Haughey's home in Dublin or Kerry?

A. No, Sir.

Q. Now, I think you have indicated to the Tribunal that you have in 1998 and again late in 1999 instructed your accountant to put your financial affairs in order to deal with the Revenue?

A. That is correct, Sir.

Q. And I think a substantial payment has been made already to the Revenue Commissioners?

A. That is correct, Sir.

Q. And I think again to that end, I think you and I think you have disclosed this to the Tribunal, you wrote I think on the 31st January to Mr. Benjamin and to Hamilton Ross, isn't that right?

A. That is correct, Sir.

Q. And I think you have copies of those letters have been furnished to the Tribunal?

A. They have, yes.

Q. And I think you requested Mr. Benjamin, Hamilton Ross, to release the funds in relation to your investment to your solicitor?

A. That's right.

Q. To hold for the purpose of discharging your liabilities you might have to the Revenue Commissioners?

A. That's correct.

Q. And copies of that correspondence has been furnished to the Tribunal?

A. That's correct.

Q. Now, finally, Mr. Foley, would you accept that people may be entitled to feel angry and perhaps let down by the fact that you held an offshore account and have found yourself before this Tribunal?

A. That is correct, Sir, it is a matter which I deeply regret for the hurt I have caused to my family, my colleagues and constituents of north Kerry.

Q. And it's a matter for which you

A. I apologise sincerely for that.

Q. Thanks very much, Mr. Foley.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: There are one or two questions, Mr. Foley, which perhaps you can deal with now and if not, we can come back to at a later stage. But if the evidence from Mr. Collery is to the effect that the Prussia Street number is only a number which was available to him in the year 1999, that's the number at the bottom of the first page.

A. That's right, Sir.

Q. And if you say that you had no contact with Mr. Collery after the meeting in 1998

A. Yeah.

Q. Can you tell the Tribunal who gave you that number?

A. I can say, Mr. Coughlan, that I don't believe I put any numbers in there in 1999. That's less than twelve months ago.

Q. If you just listen. Mr. Collery has said that that number was only available in 1999.

A. Yeah.

Q. If that is so, who gave you the number?

A. I don't believe I got it in 1999. I had it before. I must have had it before. I would recollect it if I had it in 1999.

Q. Well, you have had great recollection in matters going back to 1998 but there are 1988, 1979 there have been occasions when your recollection has been surprisingly faulty, would you agree?

A. I accept that, Mr. Coughlan. That was dealing with my account.

Q. Yes.

A. I don't recollect getting that number in 1999.

Q. Very good. The Irish Life number

A. Yeah.

Q. Well first of all, do you accept that you could not have been given that number by Mr. Traynor?

A. If you say so.

Q. Would you accept that?

A. The Irish Life number?

Q. No, I am talking about the Prussia Street number first of all.

A. If he says it's 1999, I couldn't have been given it by Mr. Traynor.

Q. Yes. Now take the Irish Life number.

A. Yeah.

Q. Mr. Collery was there in 1997 and 1998. If that be the evidence and just accept it for the moment, it means you couldn't have been given that number prior to the meeting with Mr. Collery in 1995, isn't that correct?

A. That's correct.

Q. Or even at the meeting with Mr. Collery in 1995, isn't that correct?

A. That's correct, Sir.

Q. And you said that the only contact and Mr. Traynor was dead in 1995.

A. 1994 he was dead in.

Q. You said that the only contact you made with Mr. Collery was to contact him to set up the meeting at Dublin Airport so somebody must have given you that number and it wasn't Mr. Traynor and you say it wasn't Mr. Collery, is that correct?

A. To the best of my knowledge.

Q. Is that correct?

A. I just I tell you with them numbers, I have given them a lot of thought, Mr. Coughlan, I just can't pin them down.

Q. What we are trying to do is go over it now, Mr. Foley, to look at it. We now know more since I asked you previously if that be so and accepting that that is so, somebody had

to give you the Irish Life number, isn't that right?

A. That's correct, Sir.

Q. Somebody had to give you the Prussia Street number?

A. That's right.

Q. If it wasn't Mr. Collery, it had to be a third party, isn't that right?

A. That is correct, Sir.

Q. And I am asking you under oath, did you speak to any other party for the purpose of obtaining information in respect of the whereabouts of Mr. Collery?

A. No, Sir, not to my knowledge.

Q. Ah now, Mr. Foley, Mr. Foley don't

A. In 1999

Q. Are you qualifying it by saying not to your knowledge? Did you speak to any other third party?

A. No, Sir.

Q. Very good. Did you obtain the numbers from a third party? I mean somebody other than Mr. Collery?

A. I don't recollect getting the numbers, Mr. Coughlan. I don't recollect getting the numbers and that's why it was

Q. How do you not recollect getting the numbers?

A. I just can't. I just can't.

Q. This was quite recently.

A. Yeah, that's right.

Q. It was in the eye of the storm.

A. Correct.

Q. In fact the numbers for 1997 and 1998 were numbers which you must have got and either immediately prior to or during or subsequent to the McCracken Tribunal, isn't that correct?

A. Mr. Coughlan, that number there, 6361704, to me it's an old number.

Q. I am not talking about that number. I am talking about the Irish Life number.

A. Oh the Irish Life, yes.

Q. I am talking about the Irish Life number. If Mr. Collery was there in 1997 and 1998, if that is so, you could only have gotten those numbers or the Irish Life number either immediately prior to or during or subsequent to the McCracken Tribunal, isn't that correct?

A. The McCracken Tribunal was 1997, yes.

Q. Yes.

A. I just don't recollect when I got the numbers.

Q. Would you agree with me that is correct in the first instance, it had to be just immediately prior to, during or subsequent to

A. What Mr. Devitt did say, I thought they were there for a long time, them numbers.

Q. Or the numbers were obtained during this, the work of this Tribunal?

A. No, Sir. I would remember putting them in within the last twelve months.

Q. You wouldn't remember putting them in within the last

twenty-four months or thirty-six months?

A. I just don't recollect, Sir. I just, I presented my diary, I went through it, I racked my brains and I can't recollect when I put in them numbers and I am on oath.

Q. Let's come back to the details so, Mr. Foley. Mr. Collery is apparently going to say that he only had a mobile number 086 since 1998. Prior to that he had an 087 number. That number could only have been obtained by you after the establishment of this Tribunal, isn't that correct?

A. Based on what Mr. Devitt has says.

Q. What third party did you deal with if Mr. Collery was not the person who furnished you with the number, what third party did you deal with who could have furnished

A. The only party I dealt with was Mr. Collery.

Q. And if the Prussia Street number was only available to Mr. Collery in 1999, if that be so

A. I just can't understand it, Sir, I just can't understand it.

Q. Somebody had to give you that number?

A. That would be the position but nobody knew that I had funds with Mr. Traynor. I just want to

Q. We are talking about if that is so, we are talking about within the last twelve months and you just said you would remember if you put something in within the last twelve months.

A. I believe that number was there longer than that period.

Q. We will come back to it.

A. Right, thanks very much.

Q. When you say you weren't a supporter of Mr. Haughey's, what do you mean by that?

A. When the votes were taking place, it was recorded that I had voted against Mr. Haughey.

CHAIRMAN: Obviously, Mr. Foley, I am not going to write the report of this Tribunal on old press archive material and indeed the Tribunal's investigations tend to confirm what you have stated about your views within the Party but there has been a certain amount of publicity showing yourself and Mr. Haughey, as Taoiseach, at various functions, at, for example, the Mount Brandon or Dingle.

A. I was obliged to attend there as local TD and he was Taoiseach at the time. Yes.

CHAIRMAN: Yes.

A. And that was an election night as far as I can remember, that particular one.

CHAIRMAN: Very good, Mr. Foley, I think as Mr. Coughlan has said to you, it may be necessary to raise some matters with you at some stage in the future on notice to you and I'd ask you to please check and revert to the Tribunal if any information or refreshment of memory comes to you in relation to any of the matters that have still been left somewhat unresolved?

A. Thank you, Chairman.

MR. COUGHLAN: Sorry, Sir, Mr. Devitt has brought something to my attention just to clarify for the public and Mr. Foley, the number with the word what appears to be "Prussia" written after it is not a designation that Mr. Collery understands. He doesn't know anything about Prussia Street but I think what Mr. Devitt wants me to bring to the attention of the Tribunal, that this was a direct number at which Mr. Collery could be contacted at for the year 1999.

CHAIRMAN: Thank you. Thanks, Mr. Foley.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Tony Barnes please.

MR. TONY BARNES, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS
BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you Mr. Barnes. Mr. Barnes, you are an associate director with Irish Intercontinental Bank and you have given evidence to the Tribunal on a number of previous occasions.

A. That's correct.

Q. And on this occasion, the Tribunal has requested that you would give some technical banking evidence in relation to two debits to an account of Hamilton Ross & Co. Limited.

A. That's correct, yes.

Q. I think just to put that in context, Chairman, Sir, for the purposes of the public as well, the evidence relates to two

transactions on which Mr. Foley has given evidence and Mr. Collery and that relates to two payments made from the Ansbacher accounts to Mr. Foley, one in 1993 and one for œ50,000 in 1995, that's simply to put your own technical evidence, Mr. Barnes, into context.

Now, I think you have been, in this connection, you have been able to provide the Tribunal with certain documents regarding the two transactions. If we can just deal with the first one which was a debit to the account on the 16th June of 1993 and perhaps we could have the accounts statement on the screen and just before I refer you to the contents of that document, Mr. Barnes, could you confirm that this is the same Hamilton Ross account on which you have previously given quite detailed evidence?

A. Yes, it's the main Hamilton Ross sterling account.

Q. And I think that account, am I correct, was opened in or about mid 1992?

A. That's correct, it was opened in actually October of 1992.

Q. October of 1992. And I think this is the same account which you referred to in the course of detailed evidence which you gave last December, is that correct?

A. That's correct, yes.

Q. And I think it was the account from which it appears from your records that repeated debits were made to funds, cheques which were payable to BEL Secretarial Services Limited?

A. That's correct, yes.

Q. And I think from evidence we have all heard at the Tribunal it appears that those funds were used to make payments on behalf of Mr. Charles Haughey?

A. So it appears, yes.

Q. And this is one and the same account that you are now dealing with?

A. Yes.

Q. Now, the first of the transactions, as I said, is a debit to the account on the 16th June of 1993 of œ9,890 sterling.

A. That's correct.

Q. And I think on the account statement there's a reference to FX, CN 66437?

A. That's right.

Q. And what does that description signify to you on the account statement?

A. It signifies that it involved a foreign exchange transaction converting the amount in sterling to another currency.

Q. I think the contract number there is 66437?

A. That's correct, yes.

Q. And I think you have been able to produce also a copy of the relevant contract note?

A. That's correct, yes.

Q. I think it's there on the monitor?

A. Yes.

Q. You can see there that the contract number is 664370 and

that I think corresponds with the entry on the bank statement?

A. That's correct.

Q. And if you could just deal with the contents of that document and explain what they signify to you?

A. Basically it tells us that the customer involved was Hamilton Ross. That the amounts involved was €9,090 Stg converted into Irish pounds, €10,000. That the account to be debited was the 01 020135481 sterling account.

Q. That's the Nostro Account?

A. Yes, and that the corresponding Irish pounds amount was being paid out by cheque and the cheque was to be made payable to Bank of Ireland.

Q. And I think in fact you have been able to produce to the Tribunal from your own records, a copy of the cheque and I think we have that on the monitor now.

A. In fact I am not a hundred percent sure if that's from your records or from some other source.

Q. Or records of the Tribunal but you are satisfied that that is a copy the cheque that was issued as part of this transaction?

A. Yes indeed.

Q. And I think that cheque is dated 16th June 1993?

A. That's correct.

Q. And it's in the sum of €10,000 and it's payable to Bank of Ireland?

A. Correct.

Q. And that of course is the way in which Irish Intercontinental Bank actually provided debits out of accounts held with them, isn't that correct?

A. That's correct, yes.

Q. You are not part of the retail banking system, you are not in a position to provide cash payments or other form of payments directly from accounts?

A. No, we don't carry out that kind of business.

Q. The second transaction then which the Tribunal has requested you to deal with is a debit of œ50,000 to the same account in August of 1985?

A. That's correct.

Q. And I think in fact the bank has been able to produce to the Tribunal a copy of the letter of instruction which appears to relate to this debit?

A. That's correct, yes.

Q. And I think the letter is dated the 18th August of 1995, it's addressed to Daire Nolan Cassidy who was in corporate services in the bank?

A. She would have been the account administrator.

Q. The appropriate person to send the instructions to?

A. Yes.

Q. It's signed by Mr. P Collery.

A. Yes.

Q. And it's on Hamilton Ross & Company Limited headed stationery, P.O. Box 887, Grand Cayman, Cayman Islands, British West Indies and the top left-hand side we can see

again, please reply to 8 Inns Quay, Winetavern Street,

Dublin 8.

A. Inns Court, yes.

Q. "Dear Daire,

Please arrange to let me have a draft for €50,000 and debit

the cost to your account number 02/01354/81."

A. That's correct.

Q. I think it appears from the face of the letter that the

instruction, the typed instructions were incomplete, is

that correct?

A. Yes, there seemed to be some query as to

Q. If we can just move the letter up slightly.

A. as to what instructions in terms of the payee on the

draft and it would appear that these were subsequently, we

were subsequently informed that it was to be made payable

to Bank of Ireland.

Q. I think there's a notation on the bottom right hand corner

of the letter as well, FX 691639?

A. Yes, that would refer to the foreign exchange transaction,

I take it, which converted the relevant sterling amount

into the IR €50,000.

Q. I think then on the account statement, we can see the debit

of funds from the Hamilton Ross account on the 21st August

of 1995, is that correct?

A. That's correct.

Q. I think that shows a debit of sterling €51,425?

A. Yes, that should correspond with the amount on the foreign

exchange ticket.

Q. I think there the reason for the foreign exchange contract number and it's the same number 69163.

A. That's correct, yes.

Q. I think you have also been able to produce to the Tribunal a copy of that corresponding foreign exchange contract note?

A. Yes indeed.

Q. And we can see it there, contract no. 691639?

A. That's correct, yes.

Q. And again if you just indicate what information is contained in that contract note.

A. Again it indicates the customer being Hamilton Ross, the sterling amount of €51,425 converted into Irish pounds equivalent of €50,000.

Q. That's on the right hand side?

A. Yes.

Q. In those two boxes there?

A. Exactly.

Q. The relevant nostro was the sterling nostro of Hamilton Ross and it was to be paid out in Irish pounds in cheque. Nostro I think signifies how you were to fund this deal?

A. Indeed and nostro out would indicate how it was paid out.

Q. And then I think there's further information in the bottom left-hand box?

A. Yes, that indicates that the cheque was to be made in favour of Bank of Ireland.

Q. Bank of Ireland?

A. There's a reference to a fax instruction here.

Q. "See fax" that would be the same instruction you referred to, the 18th August 1995?

A. Yes.

Q. And then finally I think you have been able to provide the Tribunal with a copy of the cheque which the bank, Irish Intercontinental Bank appears to have issued on foot of this instruction?

A. That's correct.

Q. And I think this is a cheque of, I can't make out the date, I think it's the 26th

A. Is it 22nd August?

Q. 22nd August 1995.

A. And it's made payable to Bank of Ireland for œ50,000 Irish pounds.

Q. And I think you can confirm that that's the cheque that was issued on foot of the instructions on the 18th August?

A. I can, yes.

Q. Thank you very much.

A. Thank you.

CHAIRMAN: Mr. Quinn? Mr. O' Moore? Mr. Barniville?

In summary then, Mr. Barnes, there were two transactions of a type that you have become accustomed to investigating, the same route and mechanism was used in each case to effect the payments out of Hamilton Ross?

A. Yes.

CHAIRMAN: And as it happens, you also have the specific letter of instructions

A. That's right.

CHAIRMAN: from Mr. Collery for the second and larger of the two deals?

A. Yes indeed, Chairman, yes.

CHAIRMAN: Thank you again for your assistance.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Field-Corbett.

SAM FIELD-CORBETT, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

CHAIRMAN: Thank you again for your attendance, Mr. Field-Corbett.

Q. MR. COUGHLAN: Mr. Field-Corbett, I think you were asked by the Tribunal in a letter dated 14th December 1999 to look at a particular transaction which went through the accounts of your business, isn't that correct?

A. That's correct.

Q. And I think as a result of you receiving that letter you reviewed the statements of Management and Investments Services No. 2 Account for the period covering November and December 1990 in response to the letter of the Tribunal?

A. That is correct.

Q. And I think, if we put the statement up, I think you have informed the Tribunal that the statement shows that in December 1990, an amount of œ24,005.95 was credited to the Management Investments Services No. 2 Account, is that correct?

A. Yes.

Q. The account also shows that on the 12th December 1990, the same amount was debited from the Management Investment Services Limited No. 2 Account?

A. That is correct.

Q. And the cheque for the amount of œ24,005.95 was written on the company's No. 2 Account on the 6th December 1990?

A. Yes, that's right.

Q. I think that is the copy of the cheque, isn't that correct?

A. It certainly looks like it.

Q. The writing on the cheque, is that of your partner Mr. McCann?

A. That's correct.

Q. And the signature is yours?

A. That is indeed, yes.

Q. And can I just take it that cheques would be prepared, there would be a large number of cheques prepared over a period of time and you would sign the cheques?

A. That's right.

Q. I think you have informed the Tribunal that from documentation which you have obtained and a copy of which

you have furnished to the Tribunal, it appears that Mr.

McCann lodged this sum of money to the company's No. 2 Account?

A. That's right, yes.

Q. I think that there is also the name of an individual on the back of the lodgment form, though the name has no significance to you. I think you furnished, on behalf of your company, the lodgment form in respect of this particular yes, I think that's the front of the lodgment form in the first instance, isn't it, showing the account number, Bank of Ireland, Talbot Street, isn't that correct?

A. That is correct, Sir.

Q. The No. 2 Account, paid in by Mr. McCann and the address given as Trinity Street?

A. Quite right, yes.

Q. The date and the amount is on the right-hand side, isn't that right?

A. That is right.

Q. That is the front of the lodgment slip.

A. Yes.

Q. I think on the back of the lodgment slip then, although it's faint there, you can see there is a reference to a Mr. and Mrs. Foley, isn't that correct?

A. Foley.

Q. Foley.

A. Sorry?

Q. Foley, isn't that correct?

A. It looks like Foley. Can I see that.

Q. Yes indeed. (Document handed to witness.) Maybe it's just Foley. It seems to be up above.

A. It is actually, I think I have seen the original which it says Foley.

Q. Yes. That's a bad copy.

A. Yes.

Q. Well as far as you were concerned, the name had no significance?

A. At the time, yes.

Q. I think you have informed the Tribunal that you believe that Mr. McCann's action in dealing with this money and your own action in signing the cheque would have been done on the basis of an instruction from Mr. Traynor, is that correct, and I think you make this assumption, that the reason behind Mr. Traynor's instruction in this regard would have been to avoid debiting the Guinness & Mahon account with this sum of money and lodging the exact same sum into Kentford Securities?

A. Yes.

Q. It was being flushed through

A. Well it was being

Q. your account?

A. There was a division between the two.

Q. And I think in your books and statements at the end of year, it would have appeared simply as a contra. I think you have no personal recollection of the matter but you

have put together this statement on the basis of the documentation which has come to hand and the knowledge of the way Mr. Traynor operated?

A. That is quite correct.

Q. On the No. 2 Account can I take it there were only very few transactions, is that correct?

A. Yes, it's not the main account.

Q. And in general terms, what's the No. 2 Account for as opposed to the main account?

A. It's non-trading type situations.

Q. Expenses

A. Not together, mixed up with your ordinary trading.

Q. The No. 1 Account is where you run the secretarial service in and that particular account you'd have large numbers of transactions?

A. All our lodgments and payments out, yes.

Q. And the No. 2 Account is used for what?

A. Well, it would be, if we got dividends belonging to some client of ours, we'd put it in there and pay it out subsequently.

Q. Can I take it it wasn't exclusively for clients or was it - the No. 2 Account?

A. It wouldn't have been our money.

Q. It wouldn't have been your money?

A. Yeah.

Q. And did Mr. Traynor know about the No. 2 Account?

A. He wouldn't have known, no.

Q. And who would have taken the decision to lodge this to the No. 2 Account?

A. I presume Pat.

Q. That's Pat McCann?

A. Yes.

Q. And would this be, would the No. 2 Account be used for any business of the company other than clients' money?

A. Not really, no.

Q. I think Mr. McCann is

A. indisposed at the moment.

Q. Is coming in due course?

A. Yes.

Q. Thank you.

MR. O'MOORE: I have no questions arising out of that, Sir.

CHAIRMAN: Thanks again, Mr. Field-Corbett, for your assistance?

A. Not at all, Sir.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: The next witness is Ms. Sandra Kells.

CHAIRMAN: There's probably not a great deal of benefit in having her embark for three or four minutes of evidence.

We will take up matters at a quarter to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:50PM:

MR. COUGHLAN: Ms. Kells please.

MS. SANDRA KELLS, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

CHAIRMAN: Thank you for your attendance again, Ms.

Kells.

Q. MR. COUGHLAN: Ms. Kells, I think on this occasion, you

have been requested to give evidence in relation to the

operation of an account in Guinness & Mahon in the name of

Mr. Denis Foley and in relation to a loan by Guinness &

Mahon to a company called Central Tourist Holdings Limited

of which Mr. Foley was a director and which loan he was one

of the personal guarantees, was that correct?

A. That is correct, yes.

Q. Now, I think you have been able to inform the Tribunal that

from the bank records, that a deposit this is dealing

with Mr. Foley's deposit account in the first instance?

A. Yes.

Q. That a deposit account was opened in the name of Mr. Foley

on the 19th December 1986 with an account number 10583009

and I think that's document number 1, is that correct?

A. That is correct, yes.

Q. And that is the account opening, is that correct?

A. The deposit account opening in the name of Denis Foley.

Q. And I think that in relation, there are a number of

statements in respect of that account and on the 19th

December 1986, there was a lodgment to the account of

€3,342.05, is that correct?

A. Yes.

Q. Then on the 11th August 1987, which is page 3 of the

account I think this is a reconstituted statement, isn't

that correct?

A. No, it's just our computer system changed so that's why it

looks different.

Q. I think on the 11th August 1987, there was a lodgment of

€4,885.27, is that correct?

A. That's correct, yes.

Q. And on page 4, on the 1st March 1988, there was a lodgment

of €12,180.54, is that correct?

A. That is correct, yes.

Q. And the total sum lodged to the account from the bank

records appears to be €20,407.86, is that correct?

A. Yes, I agree with that.

Q. Now, I think the records disclose that on the 25th May

1988, Mr. Foley wrote to Mr. Pat O'Dwyer who was then

banking manager of the bank instructing him that he wished

to put the account into the joint names of himself and his

daughter, Margaret Foley, isn't that correct?

A. That is correct, yes.

Q. I think on the screen, and Mr. Foley has confirmed himself

that he sent this letter, that is the letter in the bank

records?

A. That is the instruction, yes.

Q. Now, I think the bank records also show that by letter dated 30th May 1988, Mr. O'Dwyer confirmed the account had been transferred into the joint names in accordance with Mr. Foley's instructions, is that correct?

A. Yes, that is the letter.

Q. I think it's just a letter from Pat O'Dwyer. "Thank you for your letter of the 25th inst. As requested I have arranged to transfer the balance of the above account to a joint account into your name and that of your daughter, Ms. Margaret Foley", and please complete joint mandate for completion on its return. What's that, just put the signatures on this?

A. Yes, a special mandate. Previously to this, this had been in the sole name of Mr. Foley and now it's a joint mandate. It also changes the legal status of the account so that if one or other of the parties should die, the other would automatically inherit

Q. Be entitled to the account?

A. Yes.

Q. Now, I think it appears that on up to December of 1987, the registered address of the account was 6 Day Place, Tralee, which you understand to be Mr. Foley's address, or which would have been his address then?

A. Yes.

Q. But from that date, or sometime after that date, the registered address of the account was changed to care of

D.P. Collery, is that correct?

A. Yes, from 1988 onwards.

Q. And what did this mean?

A. It meant that the statements would go straight to Mr. Collery as opposed to being posted from Guinness & Mahon's offices to Mr. Foley in Kerry. They would either be hand delivered to Mr. Collery when he was employed by the bank or alternatively collected by Mr. Collery after he had ceased to be employed by the bank so long as Mr. Foley had an account with the bank.

Q. And we have heard from Mr. Collery that such a facility was made available by the bank for customers, that their statements could be received by an employee, a senior employee of the bank and then collected by the customer, is that correct, is that your understanding?

A. It wouldn't be my understanding. Certainly the current practice or

Q. You don't know what the situation was

A. I am aware from our investigations that we have done on your behalf that there certainly was a facility whereby Mr. Collery and Mr. Traynor was receiving statements on behalf of clients. But the only other facility that I would see available of this would be something known as hold mail, where the client could give the bank an instruction to place correspondence and hold mail and then you come in and collect it at an agreed date or on an annual basis but I don't think it would be determined,

certainly as a current practice now, that we would give correspondence belonging to clients to senior employees for them to collect.

Q. And from your investigations

A. We do know that this was happening in the eighties.

Q. In the eighties?

A. Yes.

Q. And apart from Mr. Collery and Mr. Traynor, is there any evidence of any other senior member you needn't say the name of the person was there any evidence of any other senior person receiving statements or correspondence on behalf of a client sent by the bank?

A. Yeah, there may have been odd occasions but certainly not to the extent that we saw or have seen Mr. Traynor and Mr. Collery receiving statements.

Q. I see. Now, I think from an examination of the records, it appears that the account was closed on the 15th December of November, 1990 and that the credit balance less retention tax amounted to œ24,005.95 was paid to Mr. D. and Mrs. M. Foley, is that correct?

A. That's correct, yes. You can see it from the statement there.

Q. Yes, it actually does say on the statement itself, Mr. D. and Mrs. M. Foley, is that correct?

A. That was directly on Mr. Collery's instructions. If you recollect Mr. Collery's letter of the 9th

Q. Yes, I do. Yes, you have referred to the letter of

Mr. Collery of the 9th November 1990 that is giving the instruction to send a cheque payable to Mr. D. and Mrs. M. Foley for the balance plus interest to date on the account, is that correct?

A. That is correct, yes.

Q. And I think there is also a letter from Mr. Collery acknowledging receipt, is that correct?

A. That's correct, yes, of the draft paid from the account.

Q. Perhaps you'd just explain, would you, why the reference is made to a draft here?

A. Well a cheque issued by a bank is a draft.

Q. Is a draft?

A. Yes. Which means

Q. It's its own cheque?

A. It's its own cheque and cannot be stopped through the clearing system. When it's immediately issued, it's cleared.

Q. I think you have been asked to deal with a transaction across the account of Kentford Securities Limited No. 2 account, number 1246002 which you understand from the Tribunal may be connected to the application to the funds withdrawn from the joint account of Mr. Foley and his daughter, isn't that correct?

A. That's correct, yes.

Q. And I think the Kentford Securities No. 2 account was one of three Kentford Securities accounts which were operated and controlled by the late Mr. Traynor between 1989 and

1994, is that correct?

A. Yes, that's correct.

Q. And I think in the course of your evidence to the Tribunal last December, you referred to the Kentford Securities No.

1 account from which there are a series of debits which appear to match credits to the Haughey Boland No. 3 account which you understand was used to fund expenditures made on behalf of Mr. Haughey?

A. Yes, that's correct.

Q. And I think looking at the account statements of the Kentford Securities No. 2 account, you can see that on the 10th December 1990, a sum exactly equivalent to the payment made to Mr. Foley and his daughter, being €24,005.95, was lodged to the account, is that correct?

A. That's correct, yes.

Q. And I think the statement shows that particular lodgment?

A. Yes.

Q. And I think it appears from the bank's daily input log that the source of this lodgment was the proceeds of a cheque dated 6th December 1990 drawn on Bank of Ireland, 48 Talbot Street, Dublin 1, the account of Management and Investment Services Limited and to which appears to have been signed by Mr. Sam Field-Corbett, is that correct?

A. That is correct, yes, that is the cheque which was lodged to effect the funds received to the Kentford account.

Q. Well I think Mr. Field-Corbett, you may have heard him give evidence

A. Yes.

Q. before lunch and you can see how that particular cheque came into being and a lodgment made by Mr. McCann with the word "Foley" written on the back of the lodgment slip.

A. Yes.

Q. Now, I think the Tribunal provided the bank with two Guinness & Mahon lodgment dockets, one for €20,000 and one for €30,000, both of which appear to be stamped the 5th October 1979 and on which the customer's name is shown as Foley. But there is no account number showing on the lodgment ?

A. No, there isn't?

Q. docket. Now, can you say anything about the searches which took place to see if there was a corresponding lodgment to any accounts around that time?

A. Yes, we have carried out an extensive review of our documentation. We had that documentation already available to us from other investigations we were doing for you earlier, and we reviewed in detail those statements and we can not find any lodgments relating to these two lodgment dockets.

Q. Now, for that period, can you just confirm that you have complete account statements that you were able to carry out a trace?

A. We do not have complete statements. We know we have accounts missing, in particular Amiens accounts, because

Q. Amiens accounts

A. Which are missing, because we were looking, as I said earlier, and we certainly believe there were Amiens accounts in existence in the mid to late seventies. Yet when we reviewed and we literally reproduced every statement that we had on our possession on the microfiche records for this period and we are missing the Amiens accounts.

Q. For this period?

A. Yes.

Q. And just to reiterate in the normal course of business, all the Amiens accounts statement should have been microfiched and held as a record in that form?

A. There was an internal copy held of all statements produced and that would have been sent on a predetermined basis for transfer to microfiche and should have been retained.

There should be no difficulty in retrieving them, unless somebody had removed statements, physically removed statements.

Q. Physically removed?

A. Yes.

Q. Now I think the bank's file include records of a loan to Central Tourist Holdings Limited of £75,000 which was subject to joint and several guarantee of Mr. William Clifford, Mr. Thomas Clifford, Mr. Denis Foley and Mr. John Byrne, isn't that correct?

A. That is correct.

Q. I think we have been through this particular evidence in

the evidence of Mr. Foley and Mr. Collery and that is the facility letter, isn't it?

A. That's right, the initial document, yes.

Q. The initial document. Sorry, and it contains the guarantee

A. It's the guarantee, not the facility letter.

Q. Sorry, it's the guarantee, that's correct.

A. Yes. That's the facility letter there. The initial

Q. And it sets out the terms under which the loan

A. The draw down of the €75,000, yes. Number 3 outlines the

Q. Number 3 says the loan is to be in three stages, €25,000 to be drawn on the 1st June, €25,000 on the 1st August and the final €25,000 on 19th September. Number 5 "As security, we will require joint and several guarantees signed by William Clifford, Thomas Clifford, Denis Foley and John J. Byrne."

A. Correct, which is the earlier document.

Q. Then the guarantee then is the document again where the four directors of the company are jointly and severally guaranteeing the loan, isn't that correct?

A. Yes, on the second page of that guarantee they have all signed the document.

Q. Yes. I think page 2, if I could go back to the facility letter for a moment. I think accepting the acceptance of the facility under the terms set out on behalf of Central Tourist Holdings Limited is signed by Mr. Byrne, a

director, and Mr. Field-Corbett, secretary for and on behalf of Secretarial Trust Company and a secretary of the company in respect of the facility letter being accepted.

A. That's correct, yes.

Q. Now, I think you understand that each of the guarantors was a director of Central Tourist Holdings and I think that has been confirmed by Mr. Foley.

A. Okay.

Q. I think the neither the facility letter nor the letter of guarantee sets out the purpose for which the loan was advanced and it's not apparent from the face of the facility letter, isn't that correct?

A. The initial documents did not, no. Later there is a purpose provided but initially no.

Q. And can you express a view about that form of facility letter going out?

A. Well it would be unusual that there would not be a purpose on the facility letter for which the facilities were being provided.

Q. Now, I think from the statement of the loan account, the total sum actually drawn down was £70,000, is that correct?

A. That is correct, yes, in two tranches.

Q. In two tranches. £50,000 on the 24th July 1972, is that correct?

A. That's correct.

Q. And £20,000 on the 17th October, 1972.

A. Yes.

Q. And I think it appears that the loan was extended from year to year and continued to be outstanding as of November 1985, is that correct?

A. That is correct, yes.

Q. And I think it then was discharged, is that correct?

A. In September '85.

Q. In September of 1985?

A. Yes, yes.

Q. And I think at that stage that you furnished this memorandum, the bank was continuing to inquire to ascertain the precise date on which the loan was discharged and I think you furnished a supplemental memorandum in respect of that.

A. Yes, we have.

Q. I will come to that in a moment.

A. Okay.

Q. I think from the account statements, it appears that in the early years, interest payments were met and the debit balance on the account was kept to a figure of around £70,000, is that right?

A. That's right, it was brought back on pretty much an annualised basis to the £70,000.

Q. But that from early 1982, interest payments ceased to be made and interest was added to the capital balance and the facility was increased each year to cover accrued interest, is that correct?

A. That's correct, yes.

Q. And that by the time the loan was cleared, the debit balance stood at €135,510.68?

A. Yes, in September '85.

Q. In September of 1985?

A. Yes.

Q. And I think the loan when it was initially provided was drawn down in sterling, is that correct?

A. That's correct, yeah.

Q. And it continued as a sterling loan up to February of 1979, is that correct?

A. That's correct.

Q. We were still in the sterling area of course at that time?

A. Yes, we broke with sterling then.

Q. Then when we broke with sterling, the loan was converted into Irish pounds?

A. That is correct, yes.

Q. You don't suppose you could be of any assistance to us as to why it was in sterling to begin with? I know we were in the sterling area, but

A. Well later perhaps, when we see how the loan was repaid, it possibly was related to the security which was provided for the loan.

Q. I see. Now I think it appears from the bank's loan file that at least four of the loan decision memoranda of the bank credit committee which records the decision of the credit committee to provide the facility describe the loan as "suitably secured" or "adequately secured" or words of

that form.

A. Yes.

Q. And I think we can refer to each of them I think we have the memorandum dated 6th December 1976. It's described as "suitably secured", isn't that correct?

A. That is correct, yes.

Q. And then on the memorandum dated 14th December 1977, it's again described as "suitably secured", is that correct?

A. Yes.

Q. And then on the memorandum of December 1983, it's referred to as "considered adequate" as to its security?

A. Yes, that's correct.

Q. Then there is another memorandum of some date in December 1984, where it is described as "the security may be taken as adequate."

A. That's right, yes.

Q. And from your inquiries, can you say, Ms. Kells, what that indicated, that particular statement on the memorandum?

A. Yes, wordings of that nature from our investigations would mean that the facility was backed by a deposit in either Guinness & Mahon Cayman Trust, later known as Ansbacher Cayman, or one of the other offshore subsidiaries of either Guinness & Mahon or GM & Co. in London.

Q. Now, I think when the initial facility letter for the loan dated 1st June 1972 was addressed to the secretary of Central Tourist Holdings, it appears that the bulk of all subsequent correspondence relating to the loan was

addressed to Mr. Foley at Staunton's Road, Tralee, County Kerry.

A. Initially it was addressed, I think those are the offices of Haughey Boland at that time, but later all correspondence was to Mr. Foley in Kerry.

Q. I think that's an example. There is a correspondence, but that's an example, is that correct?

A. That's correct, yes.

Q. Now, perhaps I will move to your supplemental memorandum at this stage and I'll come back to deal with the final paragraph in this memorandum about the lodgment to the Amiens securities or the Amiens SL account in a moment.

A. Okay.

Q. Now, I think having carried out further inquiries about the paying off of the loan of Central Tourist Holdings, you are able to state that it was ultimately repaid on the 4th September 1985, is that correct?

A. That is correct, yes.

Q. And you are able to show that the source of the credit to account number 2437007, that was the account number of the loan, is that correct?

A. That's correct, yes.

Q. Was as follows that, 1, on the 4th September 1985, it appears that €106,863.62 sterling was withdrawn from Guinness Mahon Cayman Trust/College call account number 06040454, is that correct?

A. That is correct. You can actually see it. It's about

the sixth transaction from the bottom there. That's the withdrawal of the funds from that account.

Q. And while the sterling withdrawal appears as a debit on the account on the 6th September 1985, it was the bank's practice that transactions involving the sale of sterling should be posted forward two days, is that correct?

A. Well not so much the bank's practice. It's standard foreign exchange dealing practice.

Q. What does that mean, a forward deal?

A. It's a forward deal. I mean you do the transaction today but you will not have value for the transaction for two days because it has to be cleared through.

Q. And that the second step then is the sum of $\text{€}106,863.62$ was sold and converted into Irish pounds yielding $\text{€}133,579.32$, is that correct?

A. Yes, it was converted at 80 pence in the pound, yielding 133

Q. And the sum was credited to the bank's foreign exchange account 90065018, is that correct?

A. That's the internal foreign exchange dealing account, yes.

Q. Now, on the same day, $\text{€}135,510.68$ was withdrawn from the foreign exchange account and credited to Central Tourist Holdings loan account number 2437007, is that correct?

A. That's correct, yes.

CHAIRMAN: The balance of 19 hundred or so

MR. COUGHLAN: I am going to deal with that now, Sir,

yes. And I think it shows there the debit and the credit

on the two accounts, is that correct?

A. It shows the debit and the credit and just above that is

your €1,900 as well.

Q. Just above that then, there shows the balance of €1,931.16,

is that correct?

A. Being added to the foreign exchange dealing account, yes.

Q. Being added to the foreign exchange

A. Yes, because obviously the 106 had only converted to 133

odd so the 2,000 shortfall had to be made up.

Q. And I think you can see the exact amount, €1,931.16 being

the balance which was realised from the sale of sterling

and a sum of €135,510.68 was made up?

A. If you actually see this, 23,000 there been lodged. That

08116008 is an Amiens account. €23,000 was cash, was

actually lodged to that account. 1,931.166, that cash,

plus the proceeds of the foreign exchange deal we used to

repay the loan on Central Tourist Holdings of €135,510.

Q. So the 106,000-odd converted into 133,000-odd and the

balance to make up the €135,500 came out of an Amien's SL

account, is that correct?

A. Yes.

Q. And I think there is a memorandum of Mr. Pat O'Dwyer dated

16th October 1985, isn't that correct?

A. Yes.

Q. And I think at that time Mr. O'Dwyer was the man who would

have had responsibility for the loans, isn't that right?

A. That's right, in the banking department, yes.

Q. And I think the memorandum deals with many other loans as well, and he is being asked for the up-to-date position in relation to them and he is furnishing this information and he is able to say that as of the 16th October 1985, Central Tourist Holdings account fully repaid.

A. That's correct, yes.

Q. Now, I think that notwithstanding and just to be clear about this, there is now, there is a statement for Central Tourist Holdings as of the 5th September, is that right?

A. 10th September.

Q. Is it the 10th September? That shows the account being paid off, isn't that correct?

A. That is correct, yes.

Q. And it shows a zero balance on the account?

A. As at the 10th September, yes.

Q. And that account number is 02437007?

A. That is the resident loan account for Central Tourist Holdings.

Q. And that is the same account that had been opened back in 1972 or thereabouts?

A. It's not precisely the correct number, because the number changed when we put in a new system but it does trail right through from the original draw down.

Q. Now, the next thing in your investigation you uncovered I think was account statements for Central Tourist Holdings

for October and November of 1985, is that correct?

A. That is correct, yes.

Q. And one of them is a resident loan account being a sum of exactly the same amount, œ135,510, so many pence, whatever it is

A. 68.

Q. 68 pence, effectively appearing to be lent to Central Tourist Holdings, isn't that correct, by the bank?

A. Yes, lent and repaid.

Q. Well

A. Initially.

Q. Initially it looks like this happened?

A. It's a draw down of a facility on the 29th October '85.

Q. Yes. And at the same time I think there is a current account, isn't there, in the name of Central Tourist Holdings?

A. There is, yes.

Q. Which shows that sum of money going into the current account, being credited to the current account?

A. Yes, that's correct.

Q. Then you see that sum of money being debited from the current account as of the 4th November, isn't that correct?

A. That's correct, yes.

Q. And you see that sum of money being credited then to the loan account on the same day creating a zero balance in both accounts, isn't that correct?

A. Yes.

Q. Both of those statements are statements page number 1, isn't that correct?

A. That's right, page number 1 of statement number 1 so the accounts are just opened.

Q. Have just opened?

A. Yes.

Q. That's what that would indicate to you?

A. Yes.

Q. And from looking at what's contained on the statements, can you throw any further light on when they would have been actually created?

A. Well I actually know from my work, I don't know if you have this document available to you, so maybe I should

Q. No, I don't have a document.

A. share the document with you. It's just, I apologies for this but with ongoing investigation, we find additional material. I don't know if you wish to put it up.

Q. We will put it up and you can explain it. I think it's a daily input log, is it?

A. That's correct, yes, and it records the transactions processed on a daily basis. And this is actually the daily input log. The transactions we are concerned about are the last two sets of twos at the bottom of the page.

Q. You can see the 135,000, yes.

A. Precisely, yes. If we just move it over to the right a little bit please, because it's the left-hand side I want to see. This is actually the daily input log for the 4th

November 1985, and it shows the two Central Tourist Holdings holding accounts, the 015 account, the 023 account. The entries were actually processed on the 4th November '85. The initial debit and credit to the respective accounts were back valued. If you see there on the second column in, there is a BV

Q. I do.

A. That stands for back valued. That means that somebody actually backdated the transactions. So whoever was processing the transactions on the 4th November '85, back valued them back to the 29th October 1985. So that if somebody looked at the account, say 31st October, they would see a debit balance for 135,000 and they immediately reversed it because the value, the 4th November which is the dates the entries were being put through the system, put through the debit and credit.

Q. If I could ask you this, and I will take it slowly because this is new information which is coming to the Tribunal, Ms. Kells, because there is no interest showing on the resident loan account, I just want to the total transaction in relation to the resident loan account and the current account occurred on the 4th November 1985, is that correct?

A. That certainly appears to me to be the transaction that occurred on the 4th November.

Q. And all that occurred on the 4th November, that on paper, there was created an indebtedness on the one hand of

€135,000-odd, and a credit on the other hand of €135,000,

is that correct?

A. Yes.

Q. And on the same day, the 4th November, that process was reversed creating a zero balance, is that correct?

A. Yes.

Q. And the appearance was given on the actual statements that the value is backdated to the 29th October, isn't that correct?

A. That's correct, yes.

Q. Now, I think we know well first of all, in respect of this particular transaction being carried out, how would that have been done physically?

A. Somebody would have to prepare what we called an input voucher, an input document. It would should have been approved by an authorised signatory and processed through the system by a computer inputter.

Q. By a computer inputter. But just to be clear about this and perhaps I don't understand it, by doing it all on the 4th November, that is both transactions, and backdating the value of them, no money was ever lent to anybody and no money was ever recovered from anybody?

A. No.

Q. It was just a pure paper transaction, isn't that right?

A. It's pure accounting entry.

Q. Is that an unusual thing to happen in a bank?

A. Yes.

Q. At first sight, I'll just say at first sight, I might ask you does it not appear to be falsifying the bank's record?

A. Yes. My apologies, I mean this document just came to our attention

Q. I appreciate that, absolutely Ms. Kells. And you are the one who is carrying out this inquiry and has discovered this. I just want to make it very clear yes.

Mr. Foley has told us that as a member of the board of Central Tourist Holdings, the only loan they ever applied for and got was the initial loan back in 1972, that there were no further loans.

A. Yes.

Q. Now, I think that in November of 1986 sorry, 1985, is it, the bank received a letter from a firm of accountants acting on behalf of Central Tourist Holdings, isn't that correct?

A. Yes.

Q. It refers to two companies. We are just eliminating the reference to the other company for the moment before we put it up.

A. Fine.

Q. And it's addressed to Mr. Collery at Guinness & Mahon and it's dated 26th November 1985 and it reads "Dear Padraig, I received from Mr. Traynor two statements relating to the above companies..." Well you can forget about the other company for the moment "...as at the 4th November 1985.

I should be obliged if you would kindly let me have an

audit confirmation of the balances for each of the companies as at the 31st October 1985 which is both companies' audit date.

Kind regards,

Yours sincerely." And it's PP-ed to Mr. Carty, isn't that correct?

A. That's correct, yes.

Q. I think there then there is a copy letter from Mr. Collery as the accounts manager, is that correct?

A. Yes.

Q. To Mr. Carty at Haughey Boland, dated 28th November 1985 informing him that he has acknowledged receipt of the letter and he encloses certificates of balance as of the 31st October 1985 for the above clients and there is enclosed then the balances for Central Tourist Holdings showing €135,500-odd as of the 31st October 1985 showing it as a debit balance, isn't that correct?

A. That's correct, yes.

Q. Now in the first instance, was that a standard type of letter or certificate which would have been issued by the bank in respect of many companies around that time?

A. Yes, confirmation of the balance.

Q. It's a printed

A. Yes.

Q. And you just fill in the information, is that correct?

And what would be the proper or the best practice if you are asked for the certificate of the balance on the

company's account? Would one look at all accounts?

A. Yes, of course. I mean it asks for the letter actually says "We hereby confirm the undermentioned amounts were balances in our books at the close of business" so you would expect all balances for that client to be listed on the certificate of balance.

Q. That would include the current account balance?

A. It should include the current account

Q. It should include as well as this as of showing at the 31st October?

A. Yes.

Q. Now, do you know Mr. Collery wasn't able to help us at the time but do you know, and just to be clear about this, this loan account and this current account which now appeared to have been in existence over this period of time, but it all happened on the 4th November of 1985, it would appear.

A. Yes.

Q. They had different account numbers to the original loan account, isn't that correct?

A. Yes, 007 was the original loan account. The current account and the second loan account were 015 and 023 which were different account numbers.

Q. Well, Mr. Collery has told us that hundreds, if not thousands of these type of certificates would be issued by banks.

A. Yes, exactly.

Q. It's a standard business. And that the request would come in and normally a clerk would access the screen and get the balance. Would that be standard?

A. That would be normal, yes, that was normal practice at the time.

Q. What information do you understand, would the clerk need to access the screen?

A. At that time the clerk would look up the client's name, in this case Central Tourist Holdings, they would see what accounts the client had and then they would look up the accounts as at the relevant date. In this case the audit date being the 31st October 1985. So they should examine all accounts for that client as at that date and input them on to this confirmation of balance document which would be signed by an authorised signatory and forwarded to the audit people.

Q. And this is the type of business which goes on day in day out?

A. Yes, because auditors need it to audit accounts.

Q. Now, when you say that the clerk would would they type in Central Tourist Holdings in the first place, do you think or

A. Yes, yes.

Q. And that should throw up the account numbers?

A. They might type in the first couple of digits of the first name and it would show up anything with Cen or Central or whatever and then they would refine it down to the

client. Say there was two there should only ever be one client number, that was the way our computer system worked but say somebody had opened up a second client number, you'd want to confirm that you had captured all balances as at the point in time, so that the accounts clerk would check to make sure that they had all balances for the client.

Q. Now you know the first loan that was paid off in September.

A. Yes.

Q. Would that still have shown up or should it have shown up on the computer as of this date

A. No.

Q. That would be gone?

A. The account would be there, but there would be no balance because the loan was repaid on the 4th September. There is no way there could be a balance on that loan account at the 31st October '85.

Q. So I just want to be clear about this now. That the accounts clerk getting into the computer would see a Central Tourist Holdings with the old account number but it would just show zero, is that correct?

A. Yes, exactly, yes.

Q. And it wouldn't show what it had been prior

A. It may have. I mean you could put in a range of dates. You could put in date, say, from the 1st November '84 to the 31st October '85 if you wanted to see what activity the

client had over the year. But as you were asked, you would see that there was a loan in existence but it had been repaid in September and as you were asked for October '85, you would not report anything.

Q. You would see that that is zero balance, so that would not be anything that you would reply?

A. No, you would not include that on your balances.

Q. Right. So the accounts clerk then would see that there was 135 and a half thousand pounds on this new account number appearing to be an outstanding balance, isn't that correct?

A. Yes, if she went in between the period of the 29th October '85 and the 4th November '85, she would have seen there was a balance on this new loan account, but only between those dates or if she had inquired as at those range of dates.

Q. Well if you were asked for the balances as at the 31st October 1985, what would you do? Would you just look for them on that day?

A. Yeah. They just type in that date.

Q. That would show 135 and a half thousand pounds?

A. Precisely.

Q. And when the accounts clerk had typed in Central Tourist Holdings, should the current account which was created on the 4th November have come up as well?

A. Yes.

Q. And as you were asked for the balances as of October, that

would also have to go into the certificate being furnished to the auditors?

A. It should have.

Q. This is a fairly serious document. Auditors rely on it?

A. Absolutely. They wouldn't be able to reconcile their accounts if they don't have...

Q. Now I think, even though we can see on these particular accounts a zero balance again as at the 4th November 1985, I think you have continued to search, isn't that correct?

A. Yes, yes, we did.

Q. You found in 1986 a page of a statement which again appears to show a loan outstanding to Central Tourist Holdings, isn't that correct?

A. As at the 31st October '86, yes.

Q. As at the 31st October 1986 and it looks as if is there interest added to it it's statement number 3, page 1, what does that mean? If I can take the one showing the interest.

A. Well the first one would have been statement number 1, page 1.

Q. I just want to get this clear now. Sorry, I beg your pardon, yes, I wasn't too sure of this when I was asking Mr. Collery about it. Statement number 1, page 1 was the document which dealt with the purported loan or the fictitious loan back in October/November 1985, is that correct?

A. That is correct, yes.

Q. So that's page 1, statement 1. Or statement 1, page 1.

What we then have is statement 3, page 1 which is the same account number, is that correct?

A. 023, yes, it is.

Q. As the fictitious one which was created and that shows as of December 1986 that there is a debit balance of £149,665.18?

A. As of October '86.

Q. October, I beg your pardon, you are right, yes, October '86. £150,000-odd.

A. Yes.

Q. And what we don't have is, there is another page missing somewhere, is that correct?

A. That's correct. From I mean, it is a practice within the bank that you could put in statement dates for statement dates to automatically be printed off and what looks to have happened in this occasion, because if you move if we can see the left-hand date, it is actually the 6th May I think 5th May '86. The statement number 1 had the 5th November 1986. You go six months forward from that, it's actually the if we see the first statement was 5th November '85, if you go six months forward from that that, it's 5th May '86 which would be statement number 2. If you go six months forward from that, you are roughly at the 5th November '86. This is 31st October 1986 and this is statement number 3 so it is the statement in the middle that we are missing.

Q. The statement in the middle, it appears that interest was added in that middle period as well?

A. Obviously, because the balance has gone from 135,000 to 142-odd.

Q. Yes. So we are missing a page which shows the balance of 135-odd and interest being added to it

A. Yes.

Q. Bringing it up.

A. Yes.

Q. But we have statements which show the balance at zero.

A. Yes. We know that the original loan was paid off in September '85.

Q. I know we know the original loan but even on the fictitious loan, we have statements which show the balance as being zero, isn't that right?

A. Yes, that's correct.

Q. And now we have a fictitious loan showing a balance which appears to have had two interest applications to it?

A. Yes.

Q. Which would of course again, as far as the bank concerned, this is fictitious.

A. Yes.

Q. But it gives the appearance that the loan continues to run and interest continues to be applied to it, isn't that correct?

A. Yes.

Q. And we know from Mr. Foley no further loan was taken out?

A. That's correct, that's my understanding to be the position.

Q. That is the evidence.

A. Right, okay.

Q. I think we do not have a letter of request for 1986 from the accountants seeking the balance.

A. Not that I can find.

Q. That we can find. But you have been able to locate a certificate, again issued by the accounts department, under the signature of Mr. Collery, isn't that correct?

A. That's correct, yes.

Q. And it shows the balances as of the 31st October 1986 at standing around 149,665 150-odd thousand pounds which shows or gives the appearance that interest has been added to the account which appears on the certificate for the previous year as standing at £135,000-odd.

A. Correct, yes.

Q. And I will leave aside the certificates, because the certificates do actually record what would have appeared on the bank's records as of those two dates, the 31st October 1985 and the 31st October 1986, isn't that correct?

A. That's correct, yes.

Q. But can I take it that as far as the bank is concerned, this is not an accurate record of the true situation as existed in the bank?

A. We do not believe so, no.

Q. And from the fact that it is clearly recorded that the account was fully paid off in Mr. O'Dwyer's memorandum and

the statement of the original loan account shows a zero balance.

A. Yes.

Q. And you have been able to trace the route of the payment of that particular indebtedness.

A. Yes.

Q. Does it appear likely that this was just a mistake in the bank?

A. I don't think so.

Q. Thank you, Ms. Kells. Sorry, I think we have to go back to the final paragraph of your first memorandum, isn't that correct, that you, on the 23rd October 1987, there was a credit to the Amiens SL No. 2 account number 10407006 in the sum of €42,680, isn't that correct?

A. That's correct, yes.

Q. And the source of this credit was a cheque dated 20th October 1987 drawn by Central Tourist Holdings on the account of the Bank of Ireland at Listowel, County Kerry?

A. That's correct, yes.

Q. And the cheque is signed by Mr. Foley and another party, isn't that correct?

A. Yes, Mr. Foley and Mr. Byrne.

Q. I think it's Mr. Byrne. I think at the time of the lodgment, the Amiens SL account was overdrawn in the amount of €67,844, is that correct?

A. That's correct, yes.

Q. And Mr. Foley has told us about that cheque and that it was

his understanding that it was being paid to Guinness & Mahon. But could I ask you this, it is made payable to Guinness & Mahon?

A. Yes, it is.

Q. Do you see that?

A. Yes.

Q. I asked Mr. Collery about this. How could it get into an Amiens SL account? Well first of all, we will deal with it this way. A cheque is made payable to Guinness & Mahon, it arrives in Guinness & Mahon, where should it go?

A. Normally we would have a centralised area. If it was addressed to that particular department, it would go to that department. The head of the department would open it. Failing that, it would go to a centralised area where it would be opened on behalf of the department where it was meant to go, if it was generally addressed to the bank, no particular department.

Q. It would be dealt with like the post would be dealt with in the first instance. Like if it's addressed to a specific person, it goes to them. Otherwise a centralised area, the post is allocated?

A. Yes.

Q. This cheque is made payable to Guinness & Mahon, isn't that correct?

A. That's correct, yes.

Q. Now, what happened, or what should have happened to a cheque made payable to Guinness & Mahon?

A. Well it depends. Obviously it had to be accompanied by an instruction, unless it was something that the bank was being paid for in its own right as services or something like that, relating to its profit and loss account. But if it was made payable to the bank on behalf of a client, then it should be accompanied by an instruction to say "Please lodge to my account, please convert whatever..."

Q. Well I will tell what you Mr. Foley's understanding of this was, that this money had been it was accumulating in a bank account in Kerry which had been opened by the company's solicitor. And to the most extent, it was the balance which resulted from the sale of the property in Kerry.

A. Okay.

Q. And it was Mr. Foley's understanding that there had been a negotiation with Guinness & Mahon to settle the debt, because he was concerned about the original debt, he had been a personal guarantor. And that this cheque was a cheque being made payable to Guinness & Mahon in settlement of the original debt which he was unaware had been settled or had been paid off.

A. Okay.

Q. So take it that Mr. Foley understood this was to pay off Guinness & Mahon and he signed the cheque on that basis. What would have happened if it was to pay off the debt?

A. It would have been lodged to the loan account. Had the 007 account, which is the original loan account, been in

operation, presumably the balance would have been then in the region of 160 or 170 thousand pounds if interest had not been paid and no payments had been made, so therefore this money, this £42,000 would have been credited to reduce the debit balance on that loan account.

Q. That's what would happen, if it was made payable to Guinness & Mahon for that purpose?

A. Yes, for the repayment of the loan, yes, if this had been the instruction accompanying the cheque and there were a loan account outstanding.

Q. Yes. How, could I ask you this, could a cheque made payable to Guinness & Mahon get into another account?

A. Because it's Kentford. There are a number of routes it potentially could have

Q. Sorry, I think it was Amiens.

A. Sorry, I beg your pardon, Amiens, yes. Mr. Traynor was no longer employed by the bank at that stage.

Q. That's right.

A. So I mean and having no other correspondence relating to this cheque within the bank, the cheque could have been forwarded to Mr. Traynor who could have onward forwarded it to the bank and asked it to be lodged to the Amiens account. Alternatively it could have been lodged directly to the Amiens account just by being sent into the bank or Mr. Collery could have lodged it to the Amiens account.

Q. But

A. Somebody had to give an instruction for this cheque.

Q. Somebody had to give an instruction for it to get into the Amiens account?

A. Yes.

Q. I am just asking you this, in the first instance if it's made payable to Guinness & Mahon, does it go into some Guinness & Mahon account in the first instance before it moves to the Amiens SL account?

A. No.

Q. It doesn't have to?

A. No, it would go straight into the Amiens account and then go through the cheque clearing, in general.

Q. Right. I understand. So for it to end up in the Amiens SL No. 2 account, an instruction had to be given by somebody to do that?

A. Yes.

Q. As you say, Mr. Traynor was not in the bank at this time?

A. No, he was not. He had resigned in '86.

Q. There was somebody other than Guinness & Mahon had a cheque made payable to Guinness & Mahon, where could they issue an instruction from outside the bank to do something about it?

A. Sorry, repeat that.

Q. This cheque is made payable to Guinness & Mahon.

A. Yes.

Q. If it came to Mr. Traynor

A. That's probably the third route. I should take the first route being if it was sent to the bank with an instruction to lodge to Amiens.

Q. To Amiens. But it had, for instruction to go into Amiens, had to have instructions?

A. Yes.

Q. Thank you, Ms. Kells.

CHAIRMAN: Mr. Shipsey?

MR. SHIPSEY: I just have a few questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. Ms. Kells, I appear for John Byrne, who is a director of Central Tourist Holdings and I just have a few questions for you arising from your memorandum. The first set of questions I have for you concerns what you describe in your memorandum as the loan file. I take it that there is and was a loan file for Central Tourist Holdings within Guinness & Mahon?

A. Oh yes, absolutely.

Q. And in your Memorandum of Evidence, you refer to the fact that at least four of the loan decision memoranda record the decision of the credit committee to provide a facility describing the loan used as, it uses various, "suitably secured", "adequately secured" or

A. The memoranda have the use of that term.

Q. And would I be correct in understanding that there would be an annual review of an account by the credit committee?

A. Certainly of this account, because as you can see in general, the facility was agreed or renewed for an annual

basis. I mean some accounts are not annual accounts but on this account, it appears from the loan file it was reviewed and renewed on an annual basis.

Q. And would I be correct in understanding when you have singled out the year 1976, 1977, 1983 and 1984, that they are the only years in which it is recorded by the credit committee that the loan was adequately secured or security considered adequate?

A. From memory, but I would need to check the file to confirm. We are seeing quite a lot of documentation at the moment, but from memory I think those were the years in which those terms were used.

Q. And so with a life of 30 years at least of this loan from 1972 to 1985, that would suggest that nine of the thirteen years didn't have adequately secured on the annual review, is that correct?

A. I wouldn't like to answer that until I have had an opportunity to check the file.

Q. Is it likely that if there were other years recorded, that you would have given it to the Tribunal?

A. Well we gave a copy of the file to the Tribunal. The reason why those, in particular, may be shown is that there are varying terms ranging from "suitably adequate" to "considered adequate" to "security of an adequate nature" so they are all different terminologies for what we understood or what we currently now understand as a backed facility using the offshore funds but I mean on checking

the file, I wouldn't be surprised to see those terms

repeated on renewed credit memoranda.

Q. You see, the wording from your memorandum from 1976 and 1977 uses "suitably secured" so there is no difference in the choice of wording for '76 and '77 if your memorandum is correct, isn't that right?

A. Is it "suitably secured" in both years? I'd have to check.

Q. I'd just reading from your memorandum. It says "suitably secured" in '76 and '77.

A. Yes, I can see that.

Q. There are different wording used for the years '83 and 1984.

A. Yes, that appears the case.

Q. And if you can just assist us, Ms. Kells, in relation to the words "suitably secured" on a letter from the credit committee. In banking terms, that would not invariably mean that there was a back-to-back arrangement in place, isn't that correct? It wouldn't always mean that there were?

A. No, it wouldn't, but we do have internal documentation available to us in communication from the bank to its head office advising the head office that the use what the use of those words and that terminology means in the case of Guinness & Mahon loans.

Q. And is that internal memoranda, are those internal memoranda related to the Central Tourist Holdings account?

A. No, they are not.

Q. It's a general

A. They are general, yes.

Q. But you are not saying that in all cases the use of the word "suitably secured" means that there is a back-to-back deposit in place?

A. I think in all the cases that we have seen it and where we have investigated, there is a back-to-back deposit. I think we almost have a 100 percent rating on this, that where we have seen the words "suitably secured", "considered adequate" etc., that there is a back-to-back deposit on it backing that loan.

Q. And just so that we are clear, because the term back-to-back deposit is used, that is a form of security that is quite common in banking, isn't that correct?

A. Yes.

Q. In its simplest form you might have company A with a loan of half a million pounds and company B with a deposit of half a million pounds and Company B would agree with the bank that as security for the loan to company A, its deposit can be used in the event that company A defaulted on its loan?

A. Yes, that is correct.

Q. And ordinarily for such a back-to-back facility to be of any worth to a bank, you would have to have documentary evidence from company B in my example to the effect that it was agreeable to its deposit being used as security for the

loan of another?

A. Normally you would have a lien or a hypothecation in a normal banking situation, if you were having back-to-back cash facility acting as security for the loan.

Q. When you are talking about having a lien and a hypothecation, they would be documents which would be executed by again in my example company B?

A. Yes.

Q. Because merely to have on your credit committee the words "suitably secured" would not, from a banker's perspective, be sufficient to enable the bank to go after company B in my example?

A. In normal circumstances, no.

Q. And in this particular instance, the position is, if I understand it, that there was no letter of lien or hypothecation signed by an entity other than Central Tourist Holdings Limited?

A. Sorry, repeat that.

Q. Am I correct in understanding that there is no documentary evidence in the form of a lien or a letter of hypothecation from another entity indicating a willingness to provide security for the loan in favour of Central Tourist Holdings Limited?

A. No. There is not, but I think you must understand that when those words are used, like "considered adequate", "suitably secured", we have not in any case, well in the majority of cases, we have not come across formal

documentation charging, in the bank's favour, a deposit account or whatever. It was usually on the understanding or with Mr. Traynor, that there would be funds retained in a general account or in a coded account or whatever and that would be the backing funds for the particular facility.

Q. But letters of lien and hypothecation were used by Guinness & Mahon, is that correct?

A. Oh yes, I mean in banking, of course there were, yes, but what I am trying to say to you that in suitably secured or considered adequate, we don't appear to have any. It was an agreement with Mr. Traynor.

Q. Can I then just ask you in relation to the security which was provided. There was a letter of guarantee from the four directors, isn't that correct?

A. That's correct, yes.

Q. From Mr. Byrne, Mr. Foley and the two Mr. Cliffords.

A. That's correct, yes.

Q. And I think subsequently one of the Mr. Cliffords died sometime in the early 1980s, were you aware of that?

A. No.

Q. The purpose of the loan you said was not stated on the original letter of offer and you would have expected it to appear there, is that correct?

A. Yes, it would be normal.

Q. Subsequently, insofar as the annual credit committee meetings were concerned, it's described as working capital?

A. That is correct, yes, from my recollection of the file, yes.

Q. And that would be quite a usual type of facility to be provided to a limited liability company?

A. Yes.

Q. And from the letter of offer itself, there are no repayment terms specifically agreed. It's a facility that's repayable on demand and an indication given, I think, that it would be reviewed after a period of one year?

A. It's renewable and there is a liquidity clause, a normal liquidity clause in a facility letter.

Q. Therefore insofar as interest payments were initially charged to the account and made, that was not in breach of the terms of the facility letter?

A. No. The limit was brought back down to the 70,000, pretty much on an annual basis up to 1982 I think it is.

Q. And thereafter

A. It accumulates.

Q. Now, from 1982 onwards, when no interest was paid and the loan started to increase from that period onwards, would it be correct to say that the credit committee on an annual basis would have greater concern with such an account where not even the interest was being met?

A. Well it depends on the relationship and the security.

Q. And was there anything to indicate from your records whether there was concern in relation to this account?

A. I don't think there is. I think the facility was

increased each year and there doesn't appear to have been any concerns as to the creditworthiness of this loan.

Q. Now, can I move just from there to the transactions that were carried out within the bank in 1985. You have mentioned in your evidence I think three separate loan accounts, two loan accounts in fact and one current account.

A. That's correct, yes.

Q. And we have what I might describe as the 007 account which

A. Loan number 1, for want of a better

Q. You describe as being the original loan, although the number wasn't on the loan at that stage, that was something that was created sometime subsequently when a system of numbering was introduced presumably in Guinness & Mahon, is that correct?

A. By numbering, what do you mean?

Q. Well, there was a number attributed to that account

A. Account number?

Q. Yes.

A. Yes.

Q. And then you describe a that was a resident loan account or what was described as a resident loan account.

A. Yes.

Q. And then you have described a second resident loan account which, I think, is number 023?

A. Yes, I understand

Q. And a third account is a current account of 015.

A. Yes.

Q. From your examination of the records of the bank, you have been unable to either produce or find certain bank statements for those various accounts, is that correct?

A. We have been able to find all the bank statements that is recorded on our microfiche for those accounts.

Q. Were these accounts originally on the bank's computer system?

A. Yes.

Q. And at what point in time did they cease to be on the bank's computer system?

A. Well the first loan was repaid in September '85. We changed our computer system in October '87. By that stage, that loan was not brought across to the new system. The bank would have had a procedure whereby on an annual basis, they would have reviewed accounts which had no activity for a year and close them down if they had no activity for the past twelve months, just close them down because the computer system would just become so voluminous that it wouldn't be operative at that stage. So certainly I think from recollection, the first one did not transfer across and the second two, I am not sure.

Q. Well, are you not sure because you didn't check or are you not sure because you don't remember whether you checked or not?

A. I am not sure because I don't remember whether I checked or

not.

Q. But it's something that you could check?

A. Yes.

Q. You see, when you come to describe the second of the resident loan accounts, that's 023 account, we have a statement 1, page 1 from October/November 1985, isn't that correct?

A. The statement 1, page 1, October '85, yes.

Q. And we have a statement 3, page 1 from the 31st October of 1986.

A. That is correct, yes.

Q. We don't have a statement 2, page 2, page 1 in printed form, isn't that correct?

A. We don't have a statement of page 1

Q. No, statement 2, page 1?

A. We don't have a statement for number 2, is that what you are saying? We have statement number 1, we have statement number 3, we don't have statement number 2 for the 023 account.

Q. That's my question. Would it be possible, again if I understood you correctly you were suggesting or perhaps surmising that there was never an actual printout of that particular statement or did I misunderstand you?

A. I am saying there was never a printout of that statement.

Or if there was a printout, it was destroyed before it was microfiched. That would be my statement as opposed to there never was a statement. Sorry, I correct myself

there. There was a statement but it was destroyed

before

Q. And how can you tell that there was a statement?

A. Because you wouldn't have statement number 3. It wouldn't click up to number 3 unless you had number 2.

Q. And that statement presumably would be showing a balance of 142,000-odd overdrawn, is that correct?

A. If there was an interest posting to it, yes and it should also, because that is the balance carried forward anyway to statement number 3.

Q. But if we just look at the figures from October '85 through to October 1986, it wouldn't be unreasonable to assume that if the 135,000-odd was outstanding in October, that by May of 1986, approximately 7,000 would have been added and then perhaps a slightly larger amount would be added in the second six months because you'd have that interest added in May, isn't that correct?

A. Yes.

Q. What became of that \approx 149,000-odd in the books and records of Guinness & Mahon?

A. That is the great mystery because we can find no trace of that balance after that date and when we look at something that is called our interest accruals report, which records the interest accrued on a loan account on a monthly basis, we can not see interest accruing for this loan account in the name of Central Tourist Holdings.

Q. And do you see interest accruing for anybody?

A. Of course we do.

Q. But in relation to this particular loan?

A. We do not see interest accruing on any interest accrued reports for this 023 account. We can see interest accruing in the earlier years for the 007 account but we cannot see interest for these two, the 015 or the 023 account.

Q. And is it your evidence therefore that insofar as this loan which is shown in the records of Guinness & Mahon as at October of 1986, that after October of 1986, it disappears?

A. Yes.

Q. And insofar as this is a printout from a computer within Guinness & Mahon, how does that happen?

A. I don't know, because it also was a double entry system, the bank was operating a double entry system.

Q. And what's a double entry system?

A. Well, for every debit there is a credit. So in this case, if somebody was passing a debit, as we see earlier in '85, to create the loan, they credited the current account and then reversed it, debit/credit over the two accounts again to show a nil balance. If somebody wanted to create a loan account for 1986, they had to debit the loan account obviously, and they had to credit some other account. We cannot find the current account, the 015 current account for Central Tourist Holdings. We cannot find statements for it, and you know, somewhere there had to be a credit, but we can't trace it.

Q. Because it couldn't have disappeared without a credit

A. Precisely.

Q. And if it were to disappear, it must have disappeared at some time after the 31st October of 1986.

A. One would believe so, yes.

Q. If there was to be a credit clearing this amount of 149-odd thousand or whatever increased amount it had become at the time it was cleared, was that something you'd find in the daily log of Guinness & Mahon or would you expect to find it in the daily log in the same way as you have described what you found in the daily log in November of 1985?

A. Yes.

Q. And has the daily log been checked within Guinness & Mahon to your knowledge?

A. No, because we don't know what date to check. We can't find a statement to instruct us as to what date to check.

So unless somebody is going to sit down and go through possibly a thousand transactions a day to look for this transaction, this is the only way we will get it.

Q. But how were you instructed in relation to the October or November 1985 period?

A. Because we can see a transaction date. We can actually see the debit going through on the 29th October and we can see the credit going through on the 5th November 4th November. So we know to actually go and look on the 4th November and this is how we were able to generate, or I was able to get this audit trail but I have looked, I have

looked for general dates for this repayment and I can find nothing. So bar sitting down and going through a couple of hundred thousand transactions...

Q. But you agree with me that it wouldn't disappear off the system unless

A. No.

Q. a credit can be applied to discharge this amount?

A. Yes, and equally, I mean, some other account has got a credit on it. If this account has a debit, some other account has a credit.

Q. Thank you.

THE WITNESS WAS EXAMINED FURTHER AS FOLLOWS BY MR.

COUGHLAN:

Q. MR. COUGHLAN: Just if I may, Sir, just arising from what My Friend was asking there, lest there be any confusion in the public's mind.

Statement number 2 which is missing

A. Yes.

Q. could not be shown to exist, isn't that correct, because statement number 1, page 1 shows a zero balance on the account as of the 4th November of 1985.

A. Yes.

Q. So you can't add interest to a zero balance, isn't that correct?

A. No, unless you have

Q. Unless you have a special arrangement that you want to pay

interest to a bank.

A. Yes.

Q. So statement number 3, which is for an audit period 12 months later, is purporting to show an existing debit balance with two interest payments which would be appropriate, isn't that correct, on €135,000?

A. Statement number 3 is showing a balance carried forward.

Statement number 2 had to have a transaction on it which either was put straight in at €142,000 or was put in at €135,500 plus interest.

Q. I am just trying to deal with why statement number 2 can't exist, because statement number 1 shows a zero balance as of the 4th November. If you look at statement number 1?

A. Yeah, but statement number 2 can have transactions on it and did of

Q. It would have to create a new indebtedness of €135,000 plus added interest, it would have to do that physically?

A. Yes.

Q. Or somebody had to input 142-odd thousand pounds onto it?

A. On to statement number 2.

Q. So statement number 2 couldn't have been a continuation of statement number 1 unless a new debt was created on the statement, isn't that right?

A. Yes, yes I understand.

Q. So the whole thing is in fact a tissue of lies, isn't it?

A. It would appear so because when we checked the interest accrual reports which would be normal for a loan, there is

no interest accruing.

Q. And no interest?

A. No interest accruing.

CHAIRMAN: If there had been any question, Ms. Kells, something that now seems a possibility, that's receded virtually to nothingness of an additional facility being sought by Central Tourist Holdings, perhaps not for the exact amount which is obviously somewhat beyond coincidence, but perhaps for \approx 100,000, am I right in thinking that that could not have been agreed by the bank under the old facility but would have required a fresh agreement which would have to be documented?

A. Absolutely, yes.

CHAIRMAN: Thank you very much.

MR. SELIGMAN: Mr. Chairman, I just have one or two questions.

CHAIRMAN: I beg your pardon, Mr. Seligman, of course.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SELIGMAN:

Q. MR. SELIGMAN: In relation to the loan review of the 31st December of 1977, the word "suitably secured" appears at the foot of same?

A. Yes.

Q. And I think those words are in parentheses?

A. That's correct, yes.

Q. And there are no other words in that document in parenthesis?

A. No, there are not.

Q. And the same applies to the review of the 31st December 1978, once again the words "suitably secured" in parentheses appear?

A. That's correct, yes.

Q. And appear nowhere else on that document?

A. No.

Q. There is just one other question from a point of view of clarity and that is when Mr. Coughlan was mentioning the Kentford Securities Limited No. 2 account, he put to you an account number of 1246002. I think that account number is in fact 12460002.

A. Okay, it is, yes.

CHAIRMAN: Thank you very much.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Sorry, Sir, we have moved a little bit faster with Ms. Kells' evidence. Those are the available witnesses today. We will be ready to recommence at 10:30 in the morning.

CHAIRMAN: I think a lot of documentation in any event, Mr. Coughlan, on an aspect that we will be taking up towards the conclusion of these sittings has come to light and the time will not be wasted. Half ten tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 9TH FEBRUARY 2000, AT 10:30AM.